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S.C. Supreme Court

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[PP. 4501-4515]

STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
(Capital PCR: 2006-CP-23-7719)  
The Honorable D. Garrison Hill, Circuit Court Judge

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Kamell Delshawn Evans, #6016,

Respondent/Petitioner,

v.

State of South Carolina,

Petitioner/Respondent.

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APPENDIX

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Kamell Delshawn Evans, #6016, )  
 )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

C/A No.: 2006-CP-23-7719  
 (Capital PCR Action)

MOTION TO ALTER OR AMEND  
 PURSUANT TO RULE 59(E), SCRPC

FILED  
 CLERK OF COURT  
 GREENVILLE COUNTY  
 SOUTH CAROLINA  
 MAR 11 11 11 2011

Respondent received written notice of entry of the Order in the captioned case on February 28, 2011. Respondent now moves the Court, pursuant to Rule 59(e), SCRPC, to alter or amend its Order. Specifically, Respondent moves the Court to revisit and revise the Court’s ruling on the ineffective assistance of counsel claim based on defense counsel’s failure to object to the jury charge on mercy. Respondent submits the Court has misapprehended facts and or legal precedent in the following particulars:

The Court placed emphasis on, and was apparently guided by, the fact that another circuit court judge has determined “prejudice” in regard to the mercy charge in *Hughey v. State*, 2000-CP-01-0212. (See Order, pp. 109-110). First, *Hughey* is not settled, and is in fact on appeal. Second, the *Hughey* circuit court decision reflects a ruling on a free-standing claim not ineffective assistance of counsel. If one would compare this case to other circuit court rulings, this case would more closely align with the ineffective assistance of counsel claim as raised in *Binney v. State*, 2000-CP-06-11-223. The Honorable J. Michael Baxley has rejected such a claim that was based, as is the instant one, on the subsequent disapproval of the charging language in *Rosemond v. Catoe*, 383 S.C. 439, 529 S.E.2d 721 (2000). (Order Pending, Ruling by Letter dated July 6, 2010). This Court should not be led to believe that there is even an emerging

consensus on the treatment of the issue. Rather, one may fairly take from the differing rulings thus far that *Rosemond* clearly does not dictate a particular result. With that in mind, Respondent would respectfully point out the following specific flaws in the Court's findings of facts and conclusions of law.

The Court's ruling presents a paradox in regard to its interpretation of *State v. Hughey*, 339 S.C. 439, 529 S.E.2d 721 (2000), and its following conclusion of error. Respondent argued that *Hughey* sanctioned and approved the charge at issue. This Court agreed that the Supreme Court of South Carolina in *Rosemond v. Catoe*, 383 S.C. 320 680 S.E.2d 4 (2009), "overrule[d] *Hughey* to the extent it approved the instruction...." (Order, p. 94). Yet, this Court concluded, essentially, that the Supreme Court of South Carolina *always* read the charge as *precluding* mercy. (Order, p. 94). Herein lays the paradox. If that is so, then *Hughey* changed the law of the state and approved a charge precluding mercy. As the charge there is the same here, there could be no error as a matter of state instruction on state law. Consequently, Petitioner is not entitled to any relief. If not, then the State Supreme Court interpreted the phrased charge in *Hughey* as allowing mercy, which was not inconsistent with the charge that the jury may not rely on mere unfettered emotion in sentencing. Again, Petitioner is not entitled to any relief. Moreover, this second interpretation bears the least strain to the fit in light of all circumstances, not the least of which is the *Hughey* opinion.

The *Hughey* opinion supports the alternative interpretation only if one parses the entirety of the ruling. When read in context, the Supreme Court in *Hughey* found:

Hughey contends the jury instruction was confusing because it suggested that an act of mercy would have been an invalid reason for a life vote. The trial judge told the jurors "you may recommend a sentence of life imprisonment for any reason or no reason at all other than as an act of *mercy*." (emphasis added). This argument is

without merit because a judge's charge that the jury should not be guided by sympathy, prejudice, passion, or public opinion is not reversible error. See *Singleton*, 284 S.C. at 393, 326 S.E.2d at 156; *State v. Chaffee*, 285 S.C. 21, 328 S.E.2d 464 (1984).

*The jury charge, reviewed in its entirety, is not confusing because it advises the jurors to consider all mitigating circumstance in making their recommendation. The non-statutory circumstances are repeatedly emphasized by the trial judge and are adequately defined according to current South Carolina case law.*

*State v. Hughey*, 339 S.C. 439, 460, 529 S.E.2d 721, 732 (2000) overruled by *Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009)(emphasis added).

Thus, according to *Hughey*, the jury was instructed to consider all statutory and non-statutory mitigation. This rebuts Petitioner's contention that the instruction allowed mitigation evidence to be disregarded. Moreover, it is virtually inconceivable that defense counsel would argue for the exercise of mercy, the judge would allow argument on the exercise of mercy, but the judge would then intend to instruct the jury that they were not allowed to return a verdict based on mercy. This is especially so when the remainder of his charge so clearly instructed the jury a life sentence may be imposed for based on the mitigation or not:

*...it is not necessary that you find the existence of such mitigating circumstance or circumstances beyond a reasonable doubt. You may recommend a sentence of life imprisonment whether or not you find the existence of a statutory or a nonstatutory mitigating circumstance.*

*...you may also recommend a sentence of life imprisonment even though you find at least one of the statutory aggravating circumstances beyond a reasonable doubt and you find no mitigating circumstances to exist.*

Simply stated, you may recommend a sentence of life imprisonment for any reason or for no reason at all other than as an act of mercy. ...

(R. pp. 1784-1785)(emphasis added).

In light of all the evidence – including the plain language in *Hughey*, the remainder of the charge and defense counsel’s testimony at the PCR hearing that each, independently, believed the charge to allow the exercise of mercy, (see Order, pp. 96-97), – it is most logical to consider the charge, though now disfavored and interpreted differently, was then considered to allow the return of a life sentence as an act of mercy. Further, this Court’s interpretation is even more strained when one considers this same “clear error” occurred without objection in *Hughey*, in *Rosemond*, and in *Binney*, among others. In the Court’s reasoning, multiple well established and well qualified attorneys would have misinterpreted the phrasing (which, of course, begs the question of whether there could be deficient performance at all). Lastly, the strain of the argument is most evident when one considers the Supreme Court in *Rosemond* only addressed the issue in *dicta*. Respondent does not contend that the Supreme Court of South Carolina has not disapproved of the language -- it has -- but there has been no finding of reversible error. *Rosemond* is most fairly read as a guide to the bench and bar that the language at issue may be interpreted as precluding mercy and may not be used where there is “evidence of mercy” (not argument for mercy) that may be discarded from consideration.

Even so, neither interpretation (including or precluding the label of “mercy” on a juror’s act) is inconsistent with this State’s jurisprudence. This is so because whether tagged and identified as “mercy” or merely as a part of our broader allowance that a life sentence may be returned for any reason or no reason at all, we do not require a death sentence, even where a circumstance in aggravation is found. *See, for example, State v. Hicks*, 330 S.C. 207, 218-219, 499 S.E.2d 209, 215 (1998)(“the trial judge is not required to instruct the jury it could impose a

life sentence 'for any reason or no reason at all' where the jury is informed, as it was here, it could consider any mitigating circumstance authorized by law and could impose a life sentence even if aggravating circumstances were found"). In sum, we are a non-weighting state, but no particular tag must be assigned to the recommendation of life.

Moreover, even though this Court makes reference to a long history of mercy in our State's jurisprudence, (Order, p. 99), the State's jurisprudence does not show historical consistency for allowance of the complete disregard of the evidence in favor of an act of mercy. *See, for example, State v. Bethune*, 86 S.C. 143, 67 S.E. 466, 470 (1910)("we do not think that the Legislature meant that the power to recommend to mercy should be exercised arbitrarily or capriciously, or without regard to some circumstance in the case"). At any rate, the focus should be on the post-*Furman* statutes and cases – the statutes and cases that are relevant today. *See generally State v. Torrence*, 305 S.C. 45, 60, 406 S.E.2d 315, 324 (1991)(J.Toal, Concurring)(addressing dispensing with "the outdated doctrine of *in favorem vitae*" noting that "in light of advances in the quality of legal representation; in light of the many protections and avenues of relief available to criminal defendants; and in light of the modern day restricted use of capital punishment post *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972), the doctrine has become counterproductive to the administration of justice in some instances").

Again, without doubt, the jury was repeatedly instructed to consider the statutory and non-statutory mitigation evidence (See R. p. 1784), and that a life sentence could be return regardless of the presence of aggravating circumstances, and regardless of whether mitigating circumstances were proven. In short, life could be recommended for any reason. (See R. pp. 1784-1785).

Further, this Court has clearly erred in determining that mercy is a constitutionally protected sentencing consideration. (See Order, p. 95). The United States Supreme Court has soundly rejected defense challenges to instructions that the jury “‘must not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling,’” *California v. Brown*, 479 U.S. 538, 540 (1987), and emphasized that for a rational and reliable sentencing proceeding, the decision must be “‘rooted in the aggravating and mitigating evidence introduced during the penalty phase.” *Id.* at 542. See also *Johnson v. Texas*, 509 U.S. 350, 371-72 (1993)(“There might have been a juror who, on the basis solely of sympathy or mercy, would have opted against the death penalty had there been a vehicle to do so under the Texas special issues scheme. But we have not construed the *Lockett* line of cases to mean that a jury must be able to dispense mercy on the basis of a sympathetic response to the defendant. Indeed, we have said that ‘[i]t would be very difficult to reconcile a rule allowing the fate of a defendant to turn on the vagaries of particular jurors’ emotional sensitivities with our longstanding recognition that, above all, capital sentencing must be reliable, accurate, and nonarbitrary.’” ); *Saffle v. Parks*, 494 U.S. at 484, 492-493 (1990) (O’Connor, J. concurring) (“It would be very difficult to reconcile a rule allowing the fate of a defendant to turn on the vagaries of particular jurors’ emotional sensitivities without our longstanding recognition, that, above all, capital sentencing must be reliable, accurate, and nonarbitrary”); *Smith v. Quarterman*, 515 F.3d 392, 410 (5th Cir. 2008)(“Smith seems to be asking for an instruction that would allow a jury ‘to dispense mercy on the basis of a sympathetic response to the defendant.’ *Johnson v. Texas*, 509 U.S. 350, 371, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993). The Court rejected this idea and even noted that such a rule might render capital sentencing arbitrary. *Id.* at 371-72, 113 S.Ct. 2658.”). In fact, in *Kansas v. Marsh*, 548 U.S. 163 (2006), the Supreme Court held that “Kansas’ death penalty statute,

consistent with the Constitution, *may direct imposition of the death penalty* when the State has proved beyond a reasonable doubt that mitigators do not outweigh aggravators, including where the aggravating circumstances and mitigating circumstances are in equipoise.” (emphasis added). If there is no Eighth Amendment violation in *requiring* imposition of death where the jury unanimously finds circumstances in aggravation and the circumstances in aggravation and mitigation weighed equally, there could be no Eighth Amendment violation here based on the state charge regarding mercy.

Further, this Court erred in finding counsel was ineffective in failing to object to the charge on the basis of an Eighth Amendment violation in the “restriction on a capital defendant’s ability to present any relevant mitigating evidence” and have such evidence considered. (Order, pp. 99-100). Mercy is an act – not evidence. See Black’s Law Dictionary (9<sup>th</sup> ed. 2009)(“Compassionate *treatment*, as of criminal offenders or of those in distress; esp. imprisonment, rather than death, imposed as punishment for capital murder.”)(emphasis added). *See also Lusk v. Singletary*, 976 F.2d 631, 632 (11<sup>th</sup> Cir. 1992)(rejecting appellant’s argument that the judge evidenced a “refus[al] to consider and give effect to mitigating evidence” based on the “court’s statement that ‘[t]he law of this State does not permit this Court to extend mercy to this Defendant or others convicted of a capital felony.’”).

To the extent a plea for mercy may be considered mitigation evidence, there was no plea for mercy in this case, but there was general testimony from the defendant’s family and friends. But, again, the trial judge specifically charged the jury to consider *all* mitigation -- a fact that this Court found persuasive in another part of the Order regarding the solicitor’s argument that Petitioner maintained “limited” the consideration of his mitigation evidence. (See Order, p. 67). While this Court consistently returned concentration to the one phrase referencing the exercise of

mercy, (see Order, p. 100-101; pp. 103-107), it is undisputed that the jury was repeatedly instructed to consider the statutory and non-statutory mitigating *evidence*. (R. pp. 1783-1785). Moreover, there was no limitation whatsoever on the jury's ability to return a life sentence for any reason, either based on mitigation evidence or not based on mitigation evidence. (See R. p. 1784-1785). There was, in short, no limitation on the jury's ability to consider the evidence or to *exercise* mercy, whether so referenced as "mercy" or not.

Respondent maintains there was no deficient performance. Even so, whether deficient performance is shown or not, it is petitioner's burden to demonstrate prejudice to be entitled to relief under *Strickland v. Washington*, 466 U.S. 668 (1984). This Court has incorrectly relieved Petitioner of that burden by finding that it cannot evaluate the effect the "erroneous mercy charge" would have had on the jury's determination. (Order, p. 103, "It is impossible to estimate the impact of the charge eliminating mercy – an inscrutable concept that defies qualification – as a sentencing consideration on the jurors' reasoned moral response."). Under the Court's reasoning, because this State, a non-weighting state, allows the jury to return a life sentence for any reason or no reason, the *Strickland* prejudice prong would always be met whatever evidence at issue that was omitted may have triggered a mercy *response*. This simply cannot be so as it eviscerates reason in the sentencing phase, and shifts the emphasis *away* from the evidence of the crime and the mitigation, and the defendant himself. This adds literally nothing to information provided to "the jury to assess meaningfully *the defendant's moral culpability and blameworthiness....*" *Payne v. Tennessee*, 501 U.S. 808, 825 (1991)(emphasis added). Moreover, and clearly, the United States Supreme Court has found: "...*Strickland* places the burden on the defendant, not the State, to show a 'reasonable probability' that the result would have been different." *Wong v. Belmontes*, 130 S. Ct. 383, 390-91(2009). "The likelihood of a

different result must be substantial, not just conceivable.” *Harrington v. Richter*, 131 S.Ct. 770, 792 (2011). The instant ruling, respectfully, cannot be reconciled with this precedent.

Further, this Court erred in discounting the *Boyd v. California*, 494 U.S. 370, (1990), analysis as the charge at issue was erroneous not ambiguous. (Order, p. 106). The *Boyd* analysis is not strictly controlling because it is *Strickland* prejudice at issue. Even so, the *Boyd* analysis is persuasive because no case, including *Rosemond*, has reviewed whether the instructions *as a whole* are sufficient. In other words, the *charge* may be considered ambiguous where a portion of the charge is infirm. *Compare Stromberg v. California*, 283 U.S. 359 (1931)(reversing where charge included unconstitutional ground for conviction). *See also Griffin v. United States*, 502 U.S. 46, 53 (1991)(“This language, and the holding of *Stromberg*, do not necessarily stand for anything more than the principle that, where a provision of the Constitution forbids conviction on a particular ground, the constitutional guarantee is violated by a general verdict that may have rested on that ground.”). *Boyd*, thus, sets out the test for evaluating ambiguous instructions. *See also Estelle v. McGuire*, 502 U.S. 62, 71-72 (1991)(applying *Boyd*). The proper question “is whether there is a reasonable likelihood the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence.” *Boyd*, 494 U.S. at 380. Moreover, it is well settled that the appropriate standard for reviewing any jury instruction is to consider the instructions as a whole. *See, e.g. State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010). When “[t]he charge, as a whole, is not misleading,” an applicant’s allegation of error challenging any one particular phrase must be rejected. *State v. Atkins*, 303 S.C. 214, 221, 399 S.E.2d 760, 764 (1990), *citing State v. Patterson*, 299 S.C. 280, 384 S.E.2d 699 (1989). *See also State v. Jackson*, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989)(“Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which

might be misleading do not constitute reversible error”). When considering the charge as a whole, a reasonable juror would not have thought he was precluded from considering any of the mitigation evidence presented in the instant case. *See Jackson*, 297 S.C. at 527, 377 S.E.2d at 572 (“the test is what a reasonable juror would have understood the charge as meaning” in light of the context in which it is given). Additionally, as noted above, as to the state law provision for the exercise of mercy, the charge as a whole was consistent with state law as the charge clearly allowed for same.

Lastly, this Court erred by finding, contrary to *Rosemond*, that evidence of mercy cannot be defined. (Order, p. 103). In *Rosemond*, the Supreme Court tied the propriety of the consideration of mercy to the receipt of “proper evidence of mercy.” 680 S.E.2d at 10 (emphasis added). It is this consideration of mercy based on the evidence that makes the charge consistent with the instruction that “the jury should not be guided by sympathy, prejudice, passion, or public opinion.” *Id.* Thus, according to *Rosemond*, the charging language *does not* support unfettered, unreasoned, emotional reaction; rather, the charge is meant to preserve the exercise of mercy *based on consideration of the evidence submitted*. Moreover, to the extent this logic focuses on reasoned consideration of the evidence, it is consistent with United States Supreme Court precedent. *See Johnson v. Texas, supra*.

Without question, mercy was a “primary element” of the defense argument in closing. (October PCR Tr. pp. 344-345; R. pp. 1760-1772).<sup>1</sup> Here, however, there was no specific plea

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<sup>1</sup> Of course, it was not the only element. Defense counsel reminded the jury of the other significant punishment (life imprisonment without the possibility of parole); dramatized the reality of the death sentence is that the defendant will be killed; urging the jury not to “repay evil with evil”; emphasized the “mental or emotional defect” mitigator and reminding the jury of testimony from experts Dr. Evans and Dr. Berg; emphasized Applicant’s adaptability to the structured environment of prison; downplayed gang membership (against his client’s

for mercy in the penalty phase, but friends and family did testify as to Applicant's good qualities and their emotional bond to Applicant. (See, for example, pp. 1677-1678). Nothing in the charge, though, precluded the jury from consideration of this evidence. Thus, the charge, as a whole did not interfere with either the constitutional right to present mitigation evidence, or consideration of the mitigation evidence presented. Further, as noted above, nothing in the charge prevented the exercise of mercy, whether labeled "mercy" or not – the trial judge without question charged that the jury they could return a life sentence even where they found a circumstance in aggravation, and did not find a circumstance in mitigation, i.e. for any reason. (R. pp. 1784-1785).

#### CONCLUSION

Again, here, the remainder of the charge instructed the jury it could return a life sentence for *any* reason, even if the jury found an aggravating circumstance and no circumstances in mitigation. (R. pp. 1784-1785). This could not preclude consideration of any mitigating evidence or any reason for returning a life sentence. Respondent maintains there is no deficient performance by counsel; however, even if there is such deficient performance there can be no prejudice. Respondent respectfully requests this Court alter or amend its Order and deny Petitioner relief.

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instruction), and reminded the jury of the testimony from prison officials that regardless of membership, Applicant would be kept under close watch thereby countering the suggestion of benefits from gang membership in prison; emphasized the emotion in Applicant's father's testimony to balance victim impact testimony with the crime's impact on the Applicant's family; and emphasized the redeemable qualities, good qualities, that existed in the Applicant who also committed two murders. (R. pp. 1760-1772). In addition to these arguments, counsel discussed mercy, and plainly asked for mercy: "I am going to ask for mercy for Kamell Evans." (R. p. 1770).

Respectfully submitted,

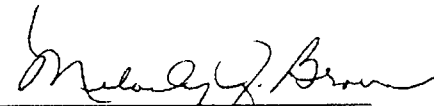
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BY:   
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ATTORNEYS FOR RESPONDENT

March 9, 2011.  
Columbia, South Carolina.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS

Kamell Delshawn Evans, #6016, )  
 )  
Applicant, )

C/A No.: 2006-CP-23-7719  
(Capital PCR Action)

v. )

CERTIFICATE OF SERVICE

State of South Carolina, )  
 )  
Respondent. )

I, Melody J. Brown, Senior Assistant Attorney General, Office of the Attorney General, do hereby certify that I have this date served Respondent's Motion to Alter or Amend Pursuant to Rule 59(E), SCRCP on Applicant by depositing one copy of the same in the United States mail, first class postage prepaid, to each of his attorneys, addressed as follows:

William H. Ehlires, II, Esquire  
Building A, Suite 201  
310 Mills Avenue,  
Greenville, South Carolina 29605

Christopher Seeds, Esquire  
Cornell Death Penalty Project  
112 Myron Taylor Hall  
Ithaca, NY 14853

FILED IN COURT OF COMMON PLEAS  
FALLS WOODS  
GREENVILLE CO. SC  
MAR 11 2011

This 9<sup>th</sup> day of March, 2011.

BY: Melody J. Brown  
MELODY J. BROWN

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

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Kamell Delshawn Evans, #6016 )  
 Plaintiff )  
 )  
 v. )  
 )  
 The State Of South Carolina )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 CASE NO.  
 2007--CP--23-7719  
 MOTION AND ORDER INFORMATION  
 FORM AND COVER SHEET

Plaintiff's Attorney: William H. Ehliens, Ii, Bar No. Address: Building A, Ste. 201, 310 Mills Avenue Greenville, SC 29605 phone: fax: e-mail: other:	Defendant's Attorney: Melody J. Brown, Bar No. #4244 Address: P.O. Box 11549, Columbia, SC 29211 phone: 803-734-6305 fax: e-mail: other:
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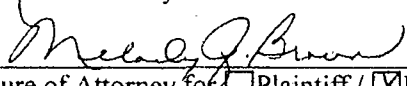
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion:  
 Estimated Time Needed: Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.

  
 Signature of Attorney for  Plaintiff /  Defendant

Date submitted: 3-9-11

**SECTION III: Motion Fee**

PAID - AMOUNT:  
 EXEMPT:  Rule to Show Cause in Child or Spousal Support  
 (check reason)  Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRPC)  
 Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions  
 Name of Court Reporter:  
 Other:

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.  
 Other:

JUDGE: \_\_\_\_\_  
 CODE: \_\_\_\_\_ Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO: 2006CP2307719

**Kamell D. Evans, #6016 vs. State of South Carolina**

CHECK ONE:

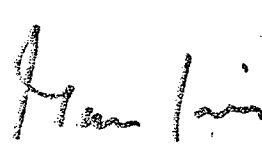
- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Settled);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_

FILED  
MAR 10 2011  
CLERK OF COURT  
GREENVILLE, SC

**IT IS ORDERED AND ADJUDGED:**  See attached order;  Statement of Judgment by the Court:  
Respondent's Motion to Alter or Amend is Denied.

Dated at Greenville, South Carolina, this March 10, 2011.

Court Reporter:



**PRESIDING JUDGE - D. GARRISON HILL**

This judgment was entered on the 10th day of March 2011, and a copy mailed first class this March 10th, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

**William H. Ehlies, II**, Building A, Suite 201, 310  
Mills Avenue Greenville, SC 29605  
**Christopher Seeds**, Cornell Death Penalty Project  
112 Myron Taylor Hall Ithaca, NY 14853

**Melody J. Brown**, Office of the Attorney General  
P.O. Box 11549 Columbia, SC 29211

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
Paul B. Wickensimer - Clerk of Court