

VOLUME SIX

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
L. Casey Manning, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

SAMMIE LOUIS STOKES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000635

APPENDIX

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- 1 Q. And when him and Spencer would be hanging together,
2 you'd be hanging together with them. Is that
3 right?
- 4 A. I don't really hang. When Spencer and Lewis be
5 together, it just be them. We don't really ---
- 6 Q. You don't know what happened after you left that
7 playground, do you?
- 8 A. No.
- 9 Q. And she wasn't sitting in his lap, was she?
- 10 A. Yes, sir.
- 11 Q. You and Utsey -- did you and Spencer talk about it
12 today?
- 13 A. Talk about today?
- 14 Q. Yeah, what you were going to say in here.
- 15 A. I told him -- when he came I told him that she said
16 that he wasn't sitting in her lap, sitting in his
17 lap, and she was.
- 18 Q. Okay. So you told him before that you heard her
19 say that she wasn't sitting in his lap?
- 20 A. When we was in here, and I was sitting here.
- 21 REPORTER: What?
- 22 A. When I was sitting in here.
- 23 Q. So y'all talked about -- compared notes, right?
- 24 A. (No response from the witness.)
- 25 SOLICITOR SIMS: That's all I have, Your Honor.

1 THE COURT: All right, then, anything further from
2 this witness?

3 MR. BOWMAN: No further questions, Your Honor.

4 THE COURT: You can step down.

5 MR. BOWMAN: That will be all the witnesses for the
6 defense, Your Honor.

7 THE COURT: All right, then. Anything in reply on
8 behalf of the State, then?

9 SOLICITOR SIMS: Nothing, Your Honor.

10 THE COURT: All right, then, Madam Forelady, and
11 ladies and gentlemen of the jury panel, the testimony in
12 this case is now complete. After you return from lunch,
13 then, we'll move into the final arguments by the
14 attorneys. At this time, then, I will excuse you. You
15 will not need to return until two fifteen. Please return
16 to your jury room at two fifteen. Thank you very much.
17 You are free until that time.

18 (RECESS)

19 THE COURT: All right, then, if you would renew
20 your motion for a directed verdict that you already had
21 made, sir?

22 MR. BOWMAN: Yes, sir. I would do that. Based on
23 the evidence as presented, I think it is insufficient for
24 them to -- on which the jury could base a verdict of
25 guilty, and I think we'd ask the Court to end the trial

1 at this point ---

2 THE COURT: All right, then.

3 MR. BOWMAN: --- in my client's favor.

4 THE COURT: All right. I would deny that motion on
5 the finding that there is sufficient evidenced that, if
6 believed, upon which a jury could base a verdict of
7 guilty.

8 MR. BOWMAN: Could I add, that ---

9 THE COURT: Yes, sir, uh huh.

10 MR. BOWMAN: --- pursuant to your instructions I
11 have talked with my client again, ---

12 THE COURT: Good.

13 MR. BOWMAN: --- and I urged -- well, I urged upon
14 him that since I had not -- when I talked to him I had not
15 yet made my post-evidentiary motions, that I thought that
16 you would still allow him to take the stand in his own
17 defense, ---

18 THE COURT: Yes, sir.

19 MR. BOWMAN: --- and I urged him to do that so that
20 he could get his side of the story before the jury, and he
21 says that -- he's indicated that he still is not
22 interested in coming into the courtroom. (TIME: 2:25 pm)

23 THE COURT: All right, sir. Thank you very much,
24 and I appreciate your making those inquiries. Of course,
25 you would have the -- no, I see, you did call witnesses,

1 though. You wouldn't have the final argument. I'll
2 instruct the lesser included offense of aggravated
3 assault and battery, in addition.

4 MR. BOWMAN: Yes, sir.

5 THE COURT: And -- yes, sir. Anything further?

6 MR. BOWMAN: I didn't mean to cut you off, but ---

7 THE COURT: That's all right.

8 MR. BOWMAN: --- would you charge the law on no
9 adverse inference

10 THE COURT: Certainly, uh huh.

11 MR. BOWMAN: --- from his failure to testify?

12 THE COURT: Surely.

13 MR. BOWMAN: And at this point I would ask the
14 Court to also charge that they should not draw an adverse
15 inference from his absence from the courtroom, ---

16 THE COURT: Right.

17 MR. BOWMAN: --- you know, based upon the Court's
18 earlier statements that the Supreme Court finds this to
19 be a proper way to proceed, it would seem like it would
20 be proper -- it follows, it's proper for him not to be in
21 the courtroom. There would be proper circumstances for
22 him not being in the courtroom.

23 THE COURT: Yes, sir. I'll instruct the jury about
24 no adverse inference from his failure to be -- to appear
25 at trial. All right. All right, then, as I say, we'll

1 just be at ease, then for a few minutes.

2 (WHEREUPON, THE JURY RETURNS
3 TO THE COURTROOM, AND THE
4 FOLLOWING TAKES PLACE IN THE
5 PRESENCE OF THE JURY.)

6 THE COURT: Ladies and gentlemen, at this time, not
7 for the same reasons as I sent you out this morning, but
8 for a different reason, I've still got to send you back in
9 the hall this afternoon. I apologize for that, but if
10 you would, please step out in the hall for a few minutes.

11 (RECESS)

12 THE COURT: Please bring in our jury panel.
13 (WHEREUPON, THE FOLLOWING
14 TAKES PLACE IN THE PRESENCE
15 OF THE JURY.)

16 THE COURT: Ladies and gentlemen of the jury panel,
17 we will move to the stage of the final arguments by the
18 attorneys. All right, then, you may proceed, Mr. Bowman.

19 MR. BOWMAN: May it please the Court, Your Honor.

20 THE COURT: Yes, sir.

21 MR. BOWMAN: Mr. Sims.

22 SOLICITOR SIMS: Mr. Bowman.

23 CLOSING ARGUMENT BY MR. BOWMAN

24 Ladies and gentlemen, I would first ask you in this
25 trial does what you heard today, was what you had

1 presented to you, does it make sense to you? And I ask
2 you that because despite the fact that Ms. Smith here
3 says that she was horribly choked with a cord that has
4 knots in it, where are the scars from this horrible
5 attack that she says that she underwent?

6 Now let's just look for just a minute about the
7 testimony that she gave you. She says that she was
8 afraid of my client, Sammie Stokes, and yet she admitted
9 on the witness stand that she had her cousin, Mary Ann
10 Bradley, go and talk to him. After she had been apart
11 from him, living in Hanahan, and come back to
12 Branchville, she would have you believe, ladies and
13 gentlemen, that she's afraid of him, but yet she
14 initiated a reproachment, a getting back together. She
15 says that she sent Mary Ann Bradley to go see him. Now,
16 Mary Ann Bradley says "She said she was afraid of him."
17 But does that make sense to you? Do you have -- if
18 you're afraid of somebody do you have one of your
19 relatives to go get him? Now, that testimony was
20 bolstered and reinforced by the testimony of Spencer
21 Utsey, who said he lived with my client, and Johnicia
22 Thornton and his girl friend, and that Mary Ann Bradley
23 came over there to the place where Sammie Lewis Stokes
24 was living -- Mary Ann Bradley came there, asked for him,
25 and that my client left with her. She -- Mary Ann

1 Bradley came and got my client and took him away with her
2 to be with Ms. Smith. But yet, she says she's afraid of
3 him.

4 Let's look at another inconsistency. She says
5 she's afraid of him, yet she left her mother's apartment,
6 I think is what her testimony was, is an apartment at the
7 [REDACTED] [REDACTED], left there and went the distance,
8 they say is a twenty minute walk up to town -- toward
9 town, to that elementary school play ground, or park.
10 She went with him all that distance in the evening. Now,
11 if you're afraid of somebody, do you leave the safety and
12 sanctuary of your relative's home and go out into the
13 night with somebody? Does that make sense to you?

14 Now, ladies and gentlemen, neither Mr. Sims nor I
15 expected you to come, and when you sit in this witness--
16 sit in this jury panel, that you just forget everything
17 you ever learned. In fact, the lawyers in these trials,
18 we count on you bringing your common sense with you to
19 your job as a member of the jury panel. We are counting
20 on you using your every day living experience that you
21 have gained outside the walls of this courtroom, and I
22 ask you, if you are afraid of somebody, do you leave the
23 safety of your family -- your family's home and go out
24 into the night with somebody?

25 I submit to you that the testimony from Audrey

1 Smith is just not credible. And what does that mean? It
2 means it's not believable, because she lied to you on this
3 witness stand. She told everybody in this courtroom that
4 she was not in Sammie Lewis Stokes' lap there in those
5 swings, and she was. How do we know that? Because
6 Nelson Goldsmith and Spencer Utsey sat in this witness
7 chair and swore to it. And as Mr. Sims tried too shake
8 them from it, they wouldn't be shaken, because they know
9 what they saw. They know they saw Ms. Smith go and sit
10 in this -- in Sammie Stokes' lap at those swings. This--
11 is this evidence of the fear that she has for the man?
12 I submit to you, the reason that she is not telling the
13 truth is because this whole story is not true. Sure, she
14 had some injuries, but it was not Sammie Stokes that did
15 it. It's her former boy friend, Mark -- Kevin Rambert--
16 Lambert, however you pronounce his name. He's the one
17 that she, without any warning to him, just up and dumped.
18 She just up and left him. And the person that she was
19 formerly involved with, when she got back to Branchville,
20 Sammie Lewis Stokes, was now living with Johnicia
21 Thornton. And what you heard in this trial today from
22 Audrey Smith was just the statements from a jealous
23 woman. She is determined to punish Sammie Stokes for the
24 fact that he's not going to be with her anymore. He's
25 already got a new girl friend. He was living with

1 Johnicia Thornton. That's the testimony from one of the
2 people that lived in that house, Spencer Utsey.

3 Now, I asked you, how do you know that Ms. Smith
4 was sitting in Sammie Stoke's lap at the swings, and I
5 told you it's because those two witnesses, Mr. Goldsmith
6 and Mr. Utsey, put their hands on this Bible and swore it
7 to be the truth. That's your job, ladies and gentlemen,
8 to decide what's truth in this case. You are the finders
9 of the fact. His Honor, Judge Smith, is the decision
10 maker over issues of law, and he's going to tell you
11 what the law is, but you, ladies and gentlemen, are the
12 sole finders of the facts, and what you've got to do is
13 decide which one or ones of these people up here telling
14 -- that testified were telling the truth and which ones
15 weren't. And I submit to you that not only did, or was
16 Ms. Smith's testimony contradicted by Nelson Goldsmith
17 and Spencer Utsey, but she told a different version of
18 what happened to her, a different story, today from when
19 she testified in Branchville before Magistrate Gerald
20 Thompson. Today she says he took the note back saying "I
21 know you'd give it straight to the police." It's a funny
22 thing, she didn't say anything about that in Branchville
23 on Thursday, February the twenty-first. Is that the way
24 human nature works, where our memories get better as time
25 goes on, or do we start with a good memory, and as time

1 goes on it gets worse and worse? I submit to you that
2 your common living experience tells you that your memory
3 starts out better and over time it diminishes. And yet,
4 Ms. Smith comes into Court here almost a month later, and
5 she's embellishing on the story.

6 Now, what about the times that are involved in
7 this? She says that they went over there to the school
8 about seven twenty, and that after a little bit of talking
9 and laughing, or whatever, at the swings, then they went
10 and they had sex, and then after that my client strangled
11 her. But yet, there were people down there that saw
12 them, Nelson Goldsmith and Spencer Utsey. I think it's
13 the testimony of Spencer Utsey that it was about eight
14 o'clock, and she said it was maybe twenty-five until
15 eight at the time that the difficulties started.

16 But you remember the testimony the way that you
17 recollect it, because what I tell you is not evidence.
18 What you heard from this witness stand is testimonial
19 evidence. You remember it the way you remember it, but I
20 submit to you that nothing about this story adds up,
21 because it's just that. It's just a story by Ms. Smith
22 here, to punish her former lover, Sammie Stokes, because
23 she's jealous that someone other -- some other woman has
24 him now.

25 Ladies and gentlemen, this -- there was no

1 testimony by anybody else about what happened to her
2 except her testimony. Ms. McIntosh didn't see it, Mr. Ott
3 didn't -- Oakley, his name was not Ott, it's Oakley. Ms.
4 Ott didn't see it, Mr. Oakley didn't see it, the man in
5 the camouflage army fatigue outfit, they didn't see it,
6 Not even Ms. Thomasina Miller. The only person that says
7 my client did this to her is Ms. Smith. And yet, she
8 doesn't know what time it was. She said it was too dark.
9 But, yet, the issue of what time it had gotten to be came
10 up. When she was out there sitting in Sammie Stokes'
11 lap, and Nelson Goldsmith and Spencer Utsey were out
12 there talking and fooling around with their girl friends,
13 the issue of time came up. It was directly raised, the
14 question of what time it was. And she says it was too
15 dark to read a lamp -- to read her watch, but yet, it was
16 enough light to read the note. But she said she read the
17 note earlier, while they were over in the light, and then
18 later on she said "Well, I didn't the note til after they
19 left -- til after Nelson Goldsmith and Spencer Utsey
20 left. That's when I felt like I was in trouble."
21 There's just one inconsistency after another, one
22 contradiction after another. Is it -- is it the way that
23 you can -- is it possible that you are going to find my
24 client guilty on the testimony of one person who has been
25 caught in all kinds of lies here today? She didn't say

1 anything about -- in Branchville she didn't say anything
2 about my client taking the note back, saying she knew--
3 he knew she would give it straight to the policeman. She
4 lied out and out about being in my client's lap. She
5 says she's afraid of him, yet she goes off into the night
6 with him.

7 Now, ladies and gentlemen, I think that when I--
8 after I finish speaking and after Mr. Sims finishes
9 speaking, His Honor, Judge Smith, is going to charge you
10 on the law of assault and battery of a high and aggravated
11 nature. And so, therefore, you're going to have more than
12 one possible verdict. And I would submit to you, ladies
13 and gentlemen, that in order for the State of South
14 Carolina to prove their case for assault and battery with
15 intent to kill they've got to prove to you that -- beyond
16 all reasonable doubt that my client did one thing short of
17 a murder. He did everything necessary for a murder and it
18 would have been a murder but for one thing that didn't
19 happen, and that is that Ms. Smith didn't die. Has the
20 State of South Carolina done that? I submit to you that
21 they haven't. I submit to you that they have failed in
22 doing that. But be that as it may, Ms. Smith has an axe
23 to grind against my client, not because, you know, the
24 obvious one, that the State's going to argue to you, that
25 her obvious grudge is that he put a cord around her neck,

1 but she is a jealous woman, she lied to day, she doesn't
2 want to tell the truth, and she did that in order to
3 convict my client.

4 Now, when I made my opening argument I mentioned to
5 you that my client enjoys a presumption and that
6 presumption is, ladies and gentlemen, that he is innocent
7 of this charge. It's a presumption that the State of
8 South Carolina has to overcome. And I ask you, can you
9 give my client the active -- an active presumption that he
10 is innocent and make the State do its job of proving
11 beyond all reasonable doubt that he is, in fact, guilty,
12 or do you just kind of, well -- figure, well, if the case
13 is going on he must be guilty of something. I submit to
14 you that it is the law that you must presume my client to
15 be innocent. To start off with, you must give him that
16 presumption. And it is the position of the defense that
17 if you take all of this into consideration, all of the
18 testimony that you have heard -- and that's all there is,
19 that's all the evidence in this case. There's not
20 anything, there's not this cord, there's not anything.
21 It's just testimony. It's all hot air. And when you
22 deliberate over it you will come to the conclusion that
23 the State has failed to prove its case beyond a
24 reasonable doubt, because there's only one person that
25 says my client strangled Audrey Smith, and that is Audrey

1 Smith, because she is -- has lied today about that and
2 she has lied about other things. She's embellished her
3 story today from the one that she told before the
4 magistrate on February the twenty-first. She's lied
5 about being in his lap. She's lied about being afraid of
6 him, because she went off with him. She had her cousin
7 go get him. And I submit to you that after you enter
8 into your due deliberations, that the verdict that you
9 should return is not guilty. Thank you.

10 THE COURT: All right, then, Mr. Sims, you may
11 proceed, sir.

12 SOLICITOR SIMS: It is please the Court.

13 THE COURT: Yes, sir.

14 SOLICITOR SIMS: Mr. Bowman.

15 MR. BOWMAN: Mr. Sims.

16 CLOSING ARGUMENT BY SOLICITOR SIMS

17 Madam Forelady, and ladies and gentlemen of the
18 jury, but for the grace of God, Sammie Stokes would be
19 charged with murder. Mr. Bowman tells you that in order
20 to prove assault and battery with intent to kill we have
21 to prove everything short of murder. I say to you that
22 but for Audrey Smith blacking out it would have been
23 murder. For some unknown reason, Sammie Stokes thought
24 she was dead. She blacked out from him strangling her.
25 And I would submit to you, but for the fact that she

1 didn't die, that's the only element that's different from
2 murder in this case.

3 Mr. Bowman tries to make out to you a situation or
4 a scenario of a scorned woman who is mad at the Defendant,
5 mad enough to come into this courtroom and tell you that
6 he did it, when, in fact, somebody else did it. He
7 brings up a Rambert, somebody else, and he tries to try
8 Mr. Rambert. Madam Forelady, and ladies and gentlemen of
9 the jury, use your common sense. That's all this case
10 requires, is that you utilize your common sense after
11 having listened to the evidence, and make your decision
12 based upon the evidence; not what if, or what could have
13 been, but what actually happened and what you heard in
14 that chair. And you have to listen to the witnesses.

15 Audrey Smith made no bones about it. She told you
16 she went with him that night. And when these -- when they
17 went into the element school yard nothing was going on,
18 when these alleged friends came up. She hadn't even seen
19 the note at that point. After that the other side of
20 Sammie Stokes began to materialize. What did she say?
21 She went to the back of the school and he started taking
22 off his clothes, and told her they were going to have sex
23 that night. "Why did you have sex with him?" "I was
24 afraid." And that's not the first time that she had
25 indicated that she was afraid. She had told her sister-

1 - her cousin, Ms. Bradley, who came in here and
2 testified. He talks to you about going to get her -- to
3 get Sammie Stokes. When did Ms. Bradley say that
4 happened? I believe it was sometime in September. If I'm
5 mistaken you can listen to that part of the testimony
6 again, to make a decision whether or not it was in
7 September. We are not talking about going to get him on
8 December second of nineteen ninety. We're talking about
9 back in September when she had told her cousin she was
10 afraid of him, trying to make peace. You heard Ms.
11 Bradley's testimony. There's no question, she was afraid
12 of him. When he had her behind that school and said
13 "We're going to have sex" she was afraid of him and she
14 consented at that point, under duress.

15 Sammie Stokes didn't stop there. He didn't stop
16 there. He showed her the note and took the note back from
17 her. Mr. Bowman tells you about a preliminary hearing in
18 February, February twenty-first, that she mentions
19 nothing about the note. Well, she said nobody asked her
20 about the note. She answered the questions that she was
21 asked in February. If you don't ask, you don't get an
22 answer. I asked her "Did you have an opportunity to see
23 this transcript? Did anybody give you the opportunity to
24 make corrections, make deletions, to change anything on
25 it?" "No." Today was the first time she saw it. She

1 didn't certify as to the truth of that transcript. She
2 did what was required of her. She went in, and she
3 answered the questions that had been asked to her on that
4 day. He took the note back because she said he said
5 "You'd go right to the police." And she said "I would
6 have." But then he took her to the corn field and he put
7 the rope around her neck, a plan devised to get her
8 alone. If you can see how his plan was developing from--
9 -- to get her away from home he said "I've got a note I
10 want you to read -- or a letter I want you to read."
11 When he took her to the play ground he had to get her
12 away from everybody else, so he took her behind the
13 school. Then he planned to get her further away so that
14 he could commit his crime, to do exactly what that note
15 said in terms of killing her. And he, I would submit to
16 you, ladies and gentlemen of the jury, thought that he
17 had, in fact, killed her. Thank God, she didn't die.
18 She got up. And what did she say, "I had my shoes in my
19 hand, I was running. I saw a car -- a couple of cars
20 coming." And what did she do at that point? She said
21 she hid because she didn't know what he was going to do.
22 She thought it could have been him. She went to Ms.
23 Miller's home.

24 Ms. Miller is not a jealous woman. She has nobody
25 to reward or punish. She simply came into this courtroom

1 to tell you what her involvement in this case was back on
2 December second. This woman was in her home, with her
3 family when the victim, Audrey Smith, came to her house
4 with herr shoes in her hand. She said she was
5 hysterical. And what was she saying? Right there, the
6 first person she gets an opportunity to talk with,
7 "Sammie tried to kill me, Sammie tried to kill me" over
8 and over, hysterical, "Sammie tried to kill me" a
9 spontaneous utterance. The first person she sees when
10 the door is opened and she has sanctuary she says
11 "Sammie's trying me" or "tried to kill me." No time for
12 reflection, she said it to the first person she saw.
13 What did she say? She went to the hospital and she was
14 in the hospital from the second through the ninth, then
15 she went to the Rose Center so that she could deal with
16 this whole scenario.

17 Sure, Mr. Oakley, Ms. McIntosh and the other people
18 who were EMTs, paramedic or working with the Orangeburg
19 Emergency Services, they weren't there but they told you
20 what they did. They told you the injuries that they saw,
21 the blood shot eyes, bleeding from the nose, hematoma
22 over the choroidal artery. It appeared as though
23 something had been wrapped around her neck. She was
24 having problems breathing. Now, a person in that kind of
25 condition -- use your common sense, a person who has been

1 strangled and placed unconscious, is that person going to
2 have the opportunity to sit back and reflect and develop
3 a story like that, that Mr. Stokes did it as opposed to
4 some jilted boy friend, as opposed to her boy friend? In
5 her condition I would submit to you, she did not have
6 the mental capacity or the time to think about
7 formulating a plan. When she went into Ms. Miller's
8 house she had been hurt, she was in pain, and she told
9 Ms. Miller the truth.

10 But Mr. Bowman tells you that the two witnesses,
11 the two homies, as they call themselves, of Sammie Stokes,
12 one who had been living with him, with him and his other
13 girl, and the other one who was this one's friend, are
14 going to come in here and tell you what they believe is
15 truth, their gospel. Because they -- he said they came
16 in here and they put their hands on the Bible and they
17 told you the truth, but this lady's lying. When you
18 determine whether or not a witness is credible, and by
19 credible I mean believable, the only thing you are
20 required to do is to use your common sense. That's all
21 you are required to do. You have had the opportunity to
22 see those witnesses. You must make a decision as to whom
23 you are going to believe: his home boys, his roadies, his
24 friends, one that took him money and shoes over to the
25 jail, he said; or whether or not this woman is going to

1 come into this courtroom, after having gone through such
2 a traumatic ordeal, and from the moment she met the first
3 person whom she could have sanctuary with, she has never
4 deviated in who committed this crime against her, the
5 Defendant, Sammie Stokes.

6 Sammie Stokes, on December second of nineteen
7 ninety, devised a plan, and that plan was consistent with
8 his note, to kill her, Audrey Smith. Sammie Smith knew
9 that he had to get her away from home, and he got her away
10 from home. Sammie Stokes -- I'm sorry, Sammie Stokes
11 took her to the elementary school, but that wasn't good
12 enough. People were coming around, so he had to get her
13 further away. Sammie Stokes took her behind that school
14 and forcefully had sex with her. But that wasn't good
15 enough, he wanted to do more. Sammie Stokes took her to
16 that field, took that cord and wrapped it around her
17 neck, and tried to murder her, and thought he had
18 murdered her when she blacked out, and left her there.
19 But it wasn't her time to go, so she arose from there and
20 went and got sanctuary, and went to the home of Ms.
21 Miller, and told Ms. Miller what had happened.

22 Mr. Bowman tells you about a presumption of
23 innocence, and that's a legal term we use in our system of
24 law. The Defendant in this case has been stripped bare of
25 any presumption of innocence because he's guilty. On

1 December second, nineteen ninety, in Orangeburg County,
2 down there in Branchville, he committed the crime of
3 assault and battery with intent to kill.

4 Madam Forelady and ladies and gentlemen of the
5 jury, I told you at the beginning of the trial that at the
6 end of this trial I would stand before you again and I
7 would ask you to return a verdict of guilty. I stand here
8 now before you and I ask you to return a verdict of guilty
9 against the Defendant for assault and battery with intent
10 to kill, not based on what ifs, or what could have been,
11 or what should have been, but based upon the evidence
12 that you have been presented in this case. All the
13 pieces of the puzzle have been put together. The picture
14 is clear, and Sammie Stokes is guilty. Thank you.

15 THE COURT: All right, then, ladies and gentlemen,
16 I'm going to be instructing you in just one minute. I
17 need to confer, though, with the attorney in the next case
18 first. Ladies and gentlemen of this -- of our -- waiting
19 to find out about our next jury, it looks like we will be
20 needing you in a few minutes, so we just ask that you
21 remain with us, then.

22 All right, then, Madam Forelady and ladies and
23 gentlemen, let me go ahead, then, and instruct you in
24 regard to the law that's applicable to this case.

25 Now, ladies and gentlemen, those waiting, while I

1 am instructing this jury, if you would like to, you are
2 welcome to step in the hall, or go to the canteen, or
3 remain there. I'll just leave that with you, if you'll
4 just come back in in about fifteen minutes for us,
5 please.

6 CHARGE OF THE COURT

7 Ladies and gentlemen of the jury panel, the
8 Defendant here has been accused in this indictment with
9 the crime of assault and battery with intent to kill.
10 Now, to this indictment the Defendant has entered a plea
11 of not guilty. Now, you'll have this indictment in your
12 jury room, simply because it's our practice to send it in
13 there, but remember, it's not actually evidence in the
14 case. It's just something that accuses the Defendant.

15 Now, ladies and gentlemen, the Defendant's not
16 being present here in the courtroom for the trial of this
17 case cannot and must not be considered against him under
18 any circumstances or in any manner whatsoever. I instruct
19 you, then, that A Defendant not being present for the
20 trial of the case is simply something that you are not to
21 concern yourself with at all. You in no way should hold
22 that against the Defendant. You should not discuss that
23 in your jury room. You should treat this case just as
24 you would if the Defendant was actually present in the
25 courtroom and simply decided not to take the stand and

1 testify. You would consider it just the same way and not
2 hold it against the Defendant in any way whatsoever. Not
3 being present does not waive any of the rights to which
4 an individual is entitled.

5 Now, when a Defendant enters a plea of not guilty
6 to an indictment, as the Defendant in this case has done,
7 that, then, places the sole burden of proof on the
8 prosecution. It's up to the prosecution to prove it's
9 case. It's not up to the Defendant to come in and offer
10 witnesses or testify himself in an effort to try and
11 persuade you that he's not guilty. It doesn't work that
12 way. In this country the sole burden of proof rests with
13 the prosecution. So, ladies and gentlemen, in this case
14 you are required to afford to the -- accord to the
15 Defendant the presumption of innocence, that is, the
16 requirement that you ladies and gentlemen selected to
17 serve on his case presume that he is not guilty of the
18 crime of assault.

19 Now, ladies and gentlemen, this is a substantial
20 part of our justice system in this country, the
21 presumption of innocence, and the Defendant is entitled to
22 that presumption of innocence until and unless the
23 prosecution brings in sufficient evidence to convince you
24 of his guilt beyond all reasonable doubt. Now, if they
25 do that, if they bring in sufficient evidence to convince

1 you of guilt beyond a reasonable doubt, then it's your
2 duty to find the Defendant to be guilty. However, if the
3 State fails to do that, if they do not convince you of
4 guilt beyond all reasonable doubt, and if you have a
5 reasonable doubt, then it would be your responsibility to
6 find the Defendant to be not guilty. So then, that's
7 where you are in this case. It's up to you to make that
8 determination. And I can't define for you what a
9 reasonable doubt is in your mind. That's simply left up
10 to you, ladies and gentlemen, to make that determination.
11 And it could come about because of something that's in
12 the evidence or in the absence of something that's in the
13 evidence.

14 Now, how do you make those type decisions, as to
15 whether you have a reasonable doubt or not. Well, part
16 of that, obviously, is the consideration of the testimony
17 in the case. You have observed the witnesses in the
18 case. It's up to you to use your good, common sense and
19 judgment. It's up to you to determine well which
20 witnesses were convincing or which ones weren't, what
21 portion of the testimony was convincing and what portion
22 was not. And take into consideration, then, what we call
23 the demeanor of the witness, did the witness appear to
24 you to be truthful or not. Consider whether a witness
25 had something to gain or lose by testimony given.

1 Consider whether a witness' testimony was supported by
2 something else in the evidence, or was it contradicted by
3 something else in the evidence. And you can believe one
4 witness against many, or many against one. That's simply
5 left up to you, ladies and gentlemen.

6 Now, it's my job to state to you these legal
7 principles. You are required to accept the law as I
8 state it. You find the facts as you choose to. You find
9 -- make determinations about who was persuasive and who
10 wasn't, and then you apply the law to those facts and
11 then you reach your verdict. But you have to accept the
12 law, of course, as I give it to you as being the correct
13 law in this State.

14 Now, ladies and gentlemen, let's turn now to the
15 matter with which the Defendant has been accused, and
16 that's the crime of assault and battery with intent to
17 kill. Now, for me to explain that to you, let me explain
18 to you first what an assault and battery is. An assault
19 and battery is the unlawful and intentional infliction of
20 a violent injury on someone else, without any
21 circumstances of aggravation, without an intent to kill.
22 When we say violent injury, when we are talking about
23 what we call a simple assault and battery, we simply mean
24 that it doesn't have to be a serious injury for it to be
25 a simple assault and battery. The battery is simply when

1 someone hits someone else, or touches someone else. That
2 improper touching is called a battery. So, then, a--
3 what we refer to as a simple assault and battery is just
4 that. It's a violent injury, it doesn't have to be a
5 serious injury, it's a violent injury on someone else
6 standing alone.

7 Now, the Defendant here is accused not of simple
8 assault and battery, but rather, he's accused of the
9 crime of assault and battery with intent to kill. Now,
10 ladies and gentlemen, in regard to that, the law says
11 that assault and battery with an intent to kill is such
12 an assault and battery that if the person assaulted had
13 died, then the Defendant would be guilty of murder. So,
14 then, for you to fully understand the offense of assault
15 and battery with intent to kill, it's necessary that I
16 instruct you in regard to the law of murder.

17 Murder is the intentional killing of someone with
18 what the law calls malice aforethought, express malice or
19 implied malice. There has to be malice, or a hatred or
20 ill will towards someone, or there can't be a murder.
21 So, then, if someone is killed, there has to be found
22 that malice was present before that killing would be
23 construed to be a murder.

24 So, then, ladies and gentlemen, that malice or
25 hatred or ill will has to be present at the time in order

1 for there to be an assault and battery with intent to
2 kill. You look at all the facts and circumstances
3 involved in the case and determine whether or not if the
4 accused had died as a result of injuries by the nature of
5 the infliction of the injuries, by the facts and
6 circumstances surrounding the parties, is there sufficient
7 evidence to indicate that there was malice present?

8 Now, malice can be express malice. Express malice
9 is such malice as someone voicing an intent to kill
10 someone. Malice can be evidenced by that. And ladies
11 and gentlemen, that is for you determine. Malice is a
12 design of doing something harmful to someone else,
13 whether it comes from -- as I said, from hatred or ill
14 will or otherwise, it's still malice. And malice
15 aforethought means that that malice or that hatred was in
16 that person's mind at the time that that person acted
17 toward the other person at the time that the other person
18 was assaulted. It doesn't have to be there for any
19 particular length of time before, but if it was there at
20 the time that the assault was committed or, as in the
21 definition of murder, at the time that the shot was fired
22 or whatever, then that's sufficient if the jury finds
23 that malice was there. But malice has to be proven and
24 it has to be proven beyond a reasonable doubt. So, then,
25 ladies and gentlemen, that's up to you to determine,

1 whether or not from the facts and circumstances shown, if
2 the person, Audrey Smith, had died as a result of alleged
3 injuries, would that, then, constitute an assault and
4 battery with intent to kill. That is, if she had died,
5 would it have been murder? I didn't state that correctly.
6 If she had died would the State's case, then, have proven
7 beyond a reasonable doubt that the Defendant acted with
8 malice -- with hatred toward her in some way and then
9 caused her death? Now, if the State has not proven that
10 beyond a reasonable doubt, that if she had died, that it
11 would have been murder, then the Defendant could not be
12 found guilty of assault and battery with intent to kill.

13 But, ladies and gentlemen, there is another
14 offense, what we call a lesser included offense that the
15 jury would then consider, and that is assault and battery
16 of a high and aggravated nature. Now, the law says that
17 if the evidence does not make out assault and battery with
18 intent to kill, the jury would then determine "Well, does
19 the evidence make out aggravated assault and battery?"
20 And you would need to determine whether that's been
21 proven beyond a reasonable doubt, if assault and battery
22 with intent to kill has not been proven. Now, aggravated
23 assault and battery, ladies and gentlemen, is the
24 unlawful, intentional infliction of a violent injury on
25 the person of someone else accompanied by circumstances

1 of aggravation. By that, the law means that something in
2 addition to an assault and battery, something that makes
3 it worse, something that tends to aggravate the
4 situation. And the State is contending in this case that
5 the aggravating circumstance came about because of the
6 infliction of an alleged serious bodily injury on the
7 alleged victim. So they are contending that there was an
8 assault and battery accompanied by circumstances of
9 aggravation, that is a serious injury. But, of course,
10 first they are contending it was assault and battery with
11 intent to kill, but their contention is if that is not
12 made out, then that the lesser offense of assault and
13 battery of a high and aggravated nature was made out. So
14 you look at the evidence.

15 Now, you couldn't convict anyone of anything unless
16 you were convinced of guilt beyond all reasonable doubt,
17 so remember that. And if you conclude that an assault and
18 battery had been committed, but you have a question as to
19 was it assault and battery with intent to kill or was it
20 aggravated assault and battery, then you could resolve
21 that in favor of the Defendant and convict only of the
22 lesser offense if you have a doubt as to whether it was
23 assault and battery with intent to kill or not.

24 Now, ladies and gentlemen, whatever your verdict is
25 in this case, it must be unanimous. All of you would have

1 to be in agreement as to that verdict.

2 Now, there are three possible forms of verdict,
3 Madam Forelady, and I'll have them written out on a yellow
4 sheet of paper for you. The three verdicts, the three
5 possible verdicts are not guilty, guilty of assault and
6 battery with intent to kill, or guilty, aggravated
7 assault and battery, one of those three. And the order
8 in which I tell you that has no significance. I've just
9 got to tell you one first, one second and one third. So
10 I'll write those three out. Once the jury comes to that
11 unanimous decision as to one of those three, than you
12 would simply copy over whichever one applies by -- and
13 just copy it on the back of this indictment. You'll see
14 the word "Verdict" and that's where you would write it
15 out, whichever one of those three, and then you would
16 sign your name as the forelady of the jury.

17 Now, in just a minute I'll ask that you step to
18 your jury room. That will give me a chance to confer with
19 these attorneys and see if I've left anything out of my
20 instructions. If I have they will tell me about it and
21 I'll bring you back in and give you those additional
22 instructions. If I do not need to bring you back in for
23 additional instructions, then the bailiff will come to
24 your door. The bailiff will first ask our alternate
25 juror, please, sir, to come out of the jury room before

1 the jury starts talking about the case. We'd like for
2 you to come back into the courtroom and have a seat and
3 just wait with us until they reach a verdict. Please
4 don't discuss anything about the case while you are
5 waiting with us, though. After the alternate's out, then
6 go ahead and talk about the case. When you reach that
7 verdict, please write it out, sign your name and tell the
8 bailiff you've reached a verdict, and we'll bring you
9 back in and see what that verdict is. At this time,
10 then, everyone please step to your jury room.

11 (WHEREUPON, THE FOLLOWING
12 TAKES PLACE OUT OF THE
13 PRESENCE OF THE JURY.)

14 THE COURT: Any additions on behalf of the State?

15 SOLICITOR SIMS: None on behalf of the State, Your
16 Honor.

17 THE COURT: On behalf of the Defendant?

18 MR. BOWMAN: Your Honor, if I might inquire, did
19 you -- I know that you mentioned reasonable doubt. Did
20 you give your usual definition of reasonable doubt?

21 THE COURT: What are you thinking about with that?

22 MR. BOWMAN: The language that it's a doubt for
23 which you can give a reason. It's nothing whimsical, or-
24 --

25 THE COURT: No, I quit doing that, really, sometime

1 ago. Really, several years ago. I quit trying to define
2 reasonable doubt, the usual instruction as to doubt for
3 which you can give a reason, a substantial doubt, not a
4 weak doubt. The Fourth Circuit Court of Appeals has
5 ruled that the Federal Judges should not try to define a
6 reasonable doubt, and so we have -- several State Judges
7 have started following that, that same instruction, and
8 we've been -- we follow that provision of not trying to
9 define a reasonable doubt.

10 MR. BOWMAN: I see. The other thing is, earlier in
11 your charge you talked that the jury should not even
12 consider the fact that my client is not in the courtroom.

13 THE COURT: That's right.

14 MR. BOWMAN: Did you intend for that to replace
15 your standard charge about no adverse inference from his
16 failure to testify?

17 THE COURT: No. That's the same thing I -- I told
18 them before that that they shouldn't hold it against him
19 in any way, the fact he was not here in the courtroom, or
20 that he did not testify.

21 MR. BOWMAN: Oh, you did?

22 THE COURT: Yeah. I covered that, I think, pretty
23 thoroughly.

24 MR. BOWMAN: Thank you.

25 THE COURT: All right, then. Let me write out

1 those verdicts and then bring the alternate out and send
2 in the indictment, tell the jury to begin their
3 deliberations.

4 (WHEREUPON, THE JURY
5 BEGINS ITS DELIBERATIONS
6 AT 3:40 P.M.)

7 THE COURT: We have a verdict and I need to receive
8 that and then we will get back underway with this case.

9 MR. BOWMAN: Your Honor, I talked with my client
10 about the fact that the jury has reached a verdict, and
11 asked him if he wished to be here when it was delivered
12 and he didn't want to.

13 THE COURT: Whether he wants to be or not, I want
14 you to go and tell him he's got to come in. If he doesn't
15 we're going to impose a contempt of court charge on him
16 in addition to whatever else may be lurking. Tell him I
17 want him to come on in here.

18 MR. BOWMAN: Did I misunderstand you the first
19 time?

20 THE COURT: No, you didn't. I thought we would
21 invite him first, and then the second time we would tell
22 him he's got to come in.

23 OFFICER: You want us to bring him out or just ---

24 THE COURT: No, I don't want you to have to use force.
25 But I am going to ask you if you feel like force would be

1 necessary and you all would have to do it.

2 (WHEREUPON A BENCH

3 CONFERENCE IS HELD

4 OFF THE RECORD.)

5 THE COURT: All right, let's go back on the record
6 here. I have asked the Defense attorney to first ask the
7 Defendant to come in. He refuses to do so. Then I asked
8 Defense counsel to tell him he had to come in, and I've
9 asked the officers to tell him likewise, and he still
10 refuses to come in. One of the officers who is back
11 there, if you will just come around and let me -- raise
12 your right hand, please, sir.

13 JERRY R. BENTON, being first duly
14 sworn, testifies, in camera, as follows:

15 EXAMINATION BY

16 THE COURT:

17 Q. All right, sir, state your name for the record.

18 A. Terry R. Benton.

19 Q. Mr. Benton, pursuant to my instructions, did you go
20 back and make an attempt to bring the Defendant in?

21 A. Yes, sir. I did.

22 Q. And are you of the opinion that he could be brought
23 in without force, or do you feel that it would take
24 force?

25 A. It would take force to bring him into the

1 courtroom.

2 (THE COURT PROCEEDS WITHOUT THE PRESENCE
3 OF THE DEFENDANT.)

4 THE COURT: All right, then. Thank you very much.
5 Let's go ahead and bring in our jury.

6 (WHEREUPON, THE JURY
7 RETURNS TO OPEN COURT WITH THEIR
8 VERDICT. TIME: 4:08 P.M.)

9 CLERK: Madam Forelady, have you reached a verdict?

10 FORELADY: Yes, sir.

11 CLERK: Do not publish it, but pass it up by the
12 bailiff, please.

13 VERDICT OF THE JURY

14 I bring the Court's attention to Indictment Number
15 91-GS-38-190 "The State vs. Sammie Lewis Stokes" assault
16 and battery with intent to kill. The verdict is guilty
17 of aggravated assault and battery. Signed: Ida Tennett,
18 Forelady.

19 Was this your verdict, and is it still your
20 verdict?

21 FORELADY: Yes.

22 THE COURT: All right, then. Madam Forelady, and
23 ladies and gentlemen of the jury panel, thank you for
24 your assistance in this case. I will excuse you at this
25 time until ten in the morning. If you will please report

1 back in at that time. Thank you very much.

2 (THE FOLLOWING TAKES PLACE
3 OUTSIDE THE PRESENCE OF THE
4 JURY.)

5 THE COURT: All right, then, Solicitor, if you
6 would please read me his prior record.

7 SOLICITOR SIMS: He has a prior record 11//3/87
8 of assault and battery of a high and aggravated nature,
9 ten years, suspended upon eight years confinement, five
10 years probation.

11 THE COURT: And that was involving this same
12 lady?

13 SOLICITOR SIMS: Yes, sir. That was
14 involving this same victim.

15 MR. BOWMAN: Your Honor, may we approach?

16 (WHEREUPON, COUNSEL APPROACH THE BENCH

17 AND A CONFERENCE WAS HELD OFF THE RECORD.)

18 THE COURT: All right, then. Any motions, sir?

19 MR. BOWMAN: Yes, sir. I would at this time move
20 for a judgment notwithstanding the jury's verdict or, in
21 the alternative, for a new trial. I think that the--
22 again, the only testi -- the only evidence against my
23 client was the word of one person, and her credibility
24 having been attacked and, I think, successfully impeached
25 several times, I think that you should grant a new trial.

1 THE COURT: All right, then. That's -- I deny that
2 motion. All right, then. Anything you'd like to tell me
3 on the Defendant's behalf?

4 MR. BOWMAN: Well, Your Honor, up until today my
5 client has been very cooperative with me. In fact, as I
6 related earlier today before we started the trial, we've
7 had many conferences, telephone calls between each other,
8 he cooperated and helped me in the preliminary hearing,
9 and only today has he indicated that he wanted to find
10 other counsel, and I think his record is, I think it's a
11 previous conviction for assault and battery of a high and
12 aggravated nature, and I would ask the Court to be as
13 lenient as possible in the sentencing.

14 THE COURT: All right, then.

15 SENTENCE OF THE COURT

16 The sentence of the Court is that the Defendant be
17 in the custody of the Board of Corrections for a period of
18 ten years.

19 Thank you very much.
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CERTIFICATE

1
2 I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF
3 ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR
4 THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH
5 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
6 ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
7 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL IN
8 THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF
9 GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA,
10 ON THE TWELFTH DAY OF MARCH, 1991.

11 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
12 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

13
14 DATE: MAY 13, 1991

15
16 
17 (MRS.) HARRY A. WALKER
18

DATE: March 12, 1991COUNTY: OrangeburgVOIR DIRE (PAGE 1 OF 2 PAGES)

Case No.: 91-GS-38-190

Judge: John H. Smith

Pl./State:

State/Pl's. Atty: Thomas Sims
Assistant SolicitorTHE STATE

Defendant:

Defense Atty: Reddick Bowman
Public DefenderSammie Lewis StokesCourt Reporter: (Mrs.) Harry A. Walker

Juror No.	Name	Sex	Race	Strikes:		
				*Court	Pl.	Def. Accept
54	PATRICIA MARTIN	F	W			X
74	FRANK SHAW	M	B			X
83	ADA TENNET Forelady	F	B			X
10	ALICE BLUME NELSON	F	B			X
84	DOROTHY THOMAS	F	W			X
11	LACONYA BONEPARTE	F	B			X
80	KIM SMOAK	F	W			X
21	JULIUS DAVIS	M	B			X
87	MARTHA THOMPSON	F	B			X
95	GEORGE ZEIGLER	M	B			X
13	ALFUNZA BROOKS	M	B		X	
27	EMMETT FIELDS, JR.	M	W			X
07	JOHN BAXTER	M	B			X
71	JACK ROYAL, JR.	M	W			X

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DATE: March 12, 1991

COUNTY: Orangeburg

VOIR DIRE (PAGE 2 OF 2 PAGES)

Case No.: 91-GS-38-190

Judge: John H. Smith

Pl./State:
THE STATE

State/Pl's.Atty: Thomas Sims
Assistant Solicitor

Defendant:
Sammie Lewis Stokes

Defense Atty: Reddick Bowman
Public Defender

Court Reporter: (Mrs.) Harry A. Walker

Juror No.	Name	Sex	Race	Strikes:		
				*Court	Pl.	Def. Accept
40	BETTY JAMISON	F	B			X
45	LULA JOHNSON	F	B			X
56	JIMMY McCOLLUM (Alternate)	M	W			X
91	HORACE WHITE	M	B			X

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STATE OF SOUTH CAROLINA)
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 COUNTY OF ORANGEBURG)
)
 STATE OF SOUTH CAROLINA)
)
 PLAINTIFF)
)
 VS)
)
 SAMMIE LOUIS STOKES)
)
 DEFENDANT)

IN THE COURT OF GENERAL SESSIONS
 FIRST JUDICIAL CIRCUIT

**MOTION TO PREVENT USE OF
 PRIOR BAD ACT**

Motion # 30
98-GS-38-1245
98-GS-38-1246
98-GS-38-1247
98-GS-38-1248

FILED FOR RECORD
 LISA W. MIZELL
 CLERK OF COURT
 ORANGEBURG, S.C.

99 SEP 20 AM 11:32

NOW COMES THE DEFENDANT, Sammie Louis Stokes, by and through his undersigned attorneys, who respectfully moves this Court for an Order to exclude proof of prior bad acts from penalty phase of the trial herein.

1. Where evidence of prior bad acts has traditionally been admitted – to impeach the Defendant who has elected to testify – such proof has been limited to evidence of convictions. The facts underlying such convictions, not to mention facts which have been alleged but never proven, have been excluded from evidence.

2. The Defendant is called upon to make critical decisions concerning the exercise of his rights to testify and to present evidence during the penalty phase. However, such decisions become untenable if the State is permitted, in effect, to try the Defendant for other unconvicted acts.

3. The governing statutes provide no guidance whatsoever to the jury in weighing the evidence of prior “bad acts” during the penalty phase. The introduction of such evidence invites unbridled discretion on the part of the jury in settling upon a penalty.

Respectfully submitted,

BY: Thomas Ray Sims
Thomas Ray Sims, Esquire
Attorney for the Defendant

Virgin Johnson, Jr., Esquire
Attorney for the Defendant

Orangeburg, South Carolina
9-11, 1999

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County
L. Casey Manning, Circuit Court Judge

SAMMIE LOUIS STOKES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000635

MOTION FOR A TRANSPORTATION ORDER FOR MISSING DOCUMENTS
OR, IN THE ALTERNATIVE, TO REMAND
FOR A RECONSTRUCTION HEARING

Undersigned counsel moves this Court to issue a transportation order, or, in the alternative, to remand this case to the Orangeburg County Court of Common Pleas for a reconstruction hearing, due to several exhibits and documents that have not been located by the Orangeburg Clerk of Court despite repeated attempts.

1. Counsel has attempted to collect all of the essential relevant documents for the Appendix in this case. Counsel has been in contact with PCR trial counsel Keir Weyble in an effort to ensure that all necessary documents have been ordered and obtained for the Appendix. On July

30, 2013 Mr. Weyble, in a return email confirmed that all of the necessary documents and exhibits were filed with the Orangeburg County Clerk of Court.

2. A written request -- with attachments -- was made to the Orangeburg County Clerk of Court on September 18, 2013 by Jared Lamprey of the Appellate Division for the PCR documents that this office still had outstanding for the Appendix. The same request was made to the Attorney General's Office.

3. The Attorney General's Office responded by email to Mr. Lamprey on September 26, 2013 that the documents were not available. On September 30, 2013 the Orangeburg County Clerk of Court mailed what it described in an email to Mr. Lamprey as "a big envelope" of the requested documents and exhibits. That package was received by this office on October 3, 2013.

4. After all of the documents were reviewed, it was determined that two exhibits and approximately six other documents were still missing that are needed for the Appendix. Undersigned counsel then instructed Mr. Lamprey to travel to the Clerk of Court's Office in Orangeburg to obtain the remaining missing documents and two exhibits. The Clerk of Court's Office cooperated although it stated in an October 16, 2013 email that it thought the entire file had been copied and mailed to this office. As stated above, that was not the case.

5. On October 17, 2013 Mr. Lamprey traveled to the Orangeburg County Clerk of Court's Office to obtain the missing documents. He was given what was purported to be the *entire file* in this case to copy. Mr. Lamprey copied this file and returned it to our office.

6. After all of this material was reviewed, it was ascertained that this office still was missing the remaining requested documents. This office emailed the Clerk of Court in Orangeburg with a list of the remaining missing documents and two exhibits. This office also requested the Clerk's Office to check and ascertain whether another "box" of documents for this case file may exist.

(That email is attached as Exhibit A and the markings on it were made by the Clerk of Court's office).

Specifically, this office requested the following still missing documents:

Exhibits from PCR hearing: Plaintiff's #2 & #3 (Volumes 1 and 2, respectively, of Thomas Sims' pre-trial research documents)

Memorandum Clarifying Ground 9(d) and Motion to Supplement the Record with Affidavit of Sammie Stokes (filed in August, 2009)

Post Hearing Memorandum (filed in March, 2010)

Reply to Post Hearing Memorandum (filed in March, 2010)

Respondent's proposed order

Letter from Keir Weyble dated December 6, 2010 requesting oral argument

Applicant's Post Rule 59 Brief/Memorandum

7. On or about November 1, 2013 the Clerk's Office in Orangeburg left a voice message for Kimberly McCall of this office stating that "another box" of documents in this case had been located. On November 7, 2013 this office received copies of all of the documents in the "second previously missing box." Upon reviewing all of these documents it was ascertained that the enclosed documents were duplicates of what this office already in its possession, and not what was requested.

8. Undersigned counsel also emailed the court reporter, Hilda Jordan, to ascertain whether she had possibly retained certain exhibits and documents. The Clerk of Court had suggested that Plaintiff's exhibits 2 & 4 (the Thomas Sims' pre-trial research files) may still be in the possession of Ms. Jordan. Ms. Jordan emphatically stated that she had not retained possession of any exhibits and agreed to sign an affidavit attesting to that fact if necessary. Attached as Exhibit B is the portion of the transcript where Plaintiff's Exhibits 2 and 3 were introduced.

WHEREFORE, counsel for Petitioner Sammie Louis Stokes respectfully moves this Court to issue a transportation order for the Orangeburg County of Court to deliver the above-mentioned documents to this Court for copying for the Appendix:

Exhibits from PCR hearing: Plaintiff's #2 and #3 (Volumes 1 and 2, respectively, of Thomas Sims' pre-trial research documents)

Memorandum Clarifying Ground 9(d) and Motion to Supplement the Record with Affidavit of Sammie Stokes (filed in August, 2009)

Post Hearing Memorandum (filed in March, 2010)

Reply to Post Hearing Memorandum (filed in March, 2010)

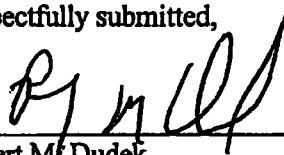
Respondent's proposed order

Letter from Keir Weyble dated December 6, 2010 requesting oral argument

Applicant's Post Rule 59 Brief/Memorandum

In the alternative counsel for Petitioner moves that this Court remand this case to the Orangeburg County Court of Common Pleas for a reconstruction rehearing. Counsel also respectfully requests that the time for filing the petition for writ of certiorari in this case be held in abeyance pending the disposition of this motion.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

Attorney for Petitioner

November 19, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County

L. Casey Manning, Circuit Court Judge

SAMMIE LOUIS STOKES,

PETITIONER,

v.

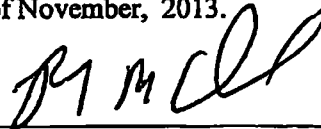
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000635

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion for a transportation order, or, in the alternative to remand for a reconstruction hearing in the above-referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of November, 2013.



Robert M. Dudek
Chief Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 19th day of November, 2013.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: August 21, 2023

The Supreme Court of South Carolina

Sammie Louis Stokes, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-000635

RECEIVED

MAR 19 2014

SC OFFICE OF
APPELLATE DEFENSE

ORDER

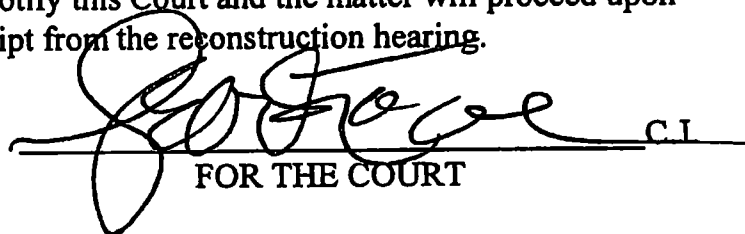
Robert Dudek, counsel for petitioner, states he has been unable to obtain two exhibits and "filed copies" of several documents from petitioner's post-conviction relief (PCR) action. Mr. Dudek moves this Court to issue a transportation order or, in the alternative, remand the case to the circuit court for a hearing to reconstruct the exhibits and documents.

Donald Zelenka has filed a return on behalf of the State in which he indicates he has copies of the documents Mr. Dudek seeks, but does not have copies of any of the exhibits from the PCR hearing. Mr. Zelenka submits that while reconstruction of the documents Mr. Dudek requests is not necessary, it may be necessary to conduct a reconstruction hearing with regard to the exhibits.

By way of reply, Mr. Dudek continues to submit that an order directing the Orangeburg County Clerk of Court to produce all of the missing exhibits and documents for transportation to this Court is the best course of action. He asserts that although Mr. Zelenka may have many of the missing documents, he believes "filed copies" are preferable and that the Clerk of Court's Office should locate them. In the alternative, Mr. Dudek moves the Court to remand the case to the circuit court for a reconstruction hearing.

We find the copies of the documents Mr. Zelenka has in his possession, which he shall provide to Mr. Dudek, although not "filed copies," will suffice for the record in this matter given the fact that "filed copies" are not available. However, we find a remand is necessary solely for the purpose of reconstructing Exhibits 2 and 3

from petitioner's post-conviction relief hearing (Volumes 1 and 2, respectively, of Thomas Sims' pre-trial research documents), as no copies of those exhibits can be located. We remand this matter to the Honorable L. Casey Manning for that purpose. See *Koon v. State*, 358 S.C. 359, 595 S.E.2d 456 (2004), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200 (2002); *China v. Parrott*, 251 S.C. 329, 162 S.E.2d 276 (1968); *State v. Ladson*, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007). A hearing should be held within 45 days of the date of this order. If Judge Manning determines reconstruction is not possible, he shall notify this Court and the parties within 15 days of the reconstruction hearing. If the record is reconstructed, the parties shall notify this Court and the matter will proceed upon petitioner's receipt of the transcript from the reconstruction hearing.


C.I.
FOR THE COURT

Columbia, South Carolina

March 19, 2014

cc:

Keir M. Weyble, Esquire
Robert Edward Lominack, Esquire
Robert Michael Dudek, Esquire
Donald J. Zelenka, Esquire
Alan McCrory Wilson, Esquire
The Honorable L. Casey Manning
The Honorable Winnifa Brown-Clark


STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 SAMMIE STOKES,)
)
 Applicant,)
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 v.)
)
 STATE OF SOUTH CAROLINA)
)
 Respondent.)
 _____)

IN THE COURT OF GENERAL SESSIONS
 C/A NO. 01-CP-38-1240

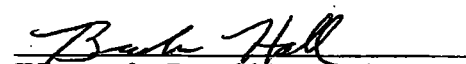
STIPULATION

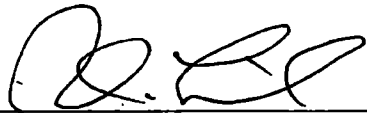
It is stipulated by each of the attorneys signed below, that to the best of memory of each of them, the attached scanned document they have reviewed, and which is being introduced as Defendant's Exhibit 1 at the reconstruction hearing ordered by the South Carolina Supreme Court, constitutes a full and complete copy of Applicant's Exhibits 2 and 3 (the research notebooks of Thomas Sims) that were introduced by the Applicant during the August 5, 2009 post-conviction hearing.


 Keir Weyble, Esquire



 Donald J. Zelenka Esquire


 Witness for Mr. Weyble


 Witness for Donald J. Zelenka



Robert Lominack, Esquire



Witness for Mr. Lominack

(Page two of two pages)