

VOLUME FOUR OF FOUR

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JAN 30 2013

Appeal from Kershaw County
G. Thomas Cooper, Jr., Circuit Court Judge

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

CHRISTOPHER RYAN WHITEHEAD,

APPELLANT

THE STATE,

RESPONDENT,

V.

DERRICK MCDONALD,

APPELLANT

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

LANELLE CANTEY DURANT
Appellate Defender

JOHN W. MCINTOSH
Chief Deputy Attorney General

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

DONALD J. ZELENKA
Assistant Deputy Attorney General

Attorneys for Appellant

MELODY J. BROWN
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Volume 4
Pages 1501-1579

WARREN B. GIESE
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, SC 29202-0192
(803) 576-1800

Attorneys for Respondent

INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
TESTIMONY	
DAVID THOMLEY (<u>In camera</u>)	
Direct-Examination by Attorney Meadors.....	17
Cross-Examination by Attorney Whitlark	23
Cross-Examination by Attorney Kendrick.....	24
GEORGE MARTHERS (<u>In camera</u>)	
Direct-Examination by Attorney McDuffie.....	30
Cross-Examination by Attorney Whitlark	47
Cross-Examination by Attorney Kendrick.....	61
Cross-Examination by Attorney Reuwer	71
PHILLIP CRAWFORD (<u>In camera</u>)	
Direct-Examination by Attorney Meadors.....	77
Cross-Examination by Attorney Whitlark	92
Cross-Examination by Attorney Kendrick.....	95
Redirect-Examination by Attorney Meadors	101
Recross-Examination by Attorney Whitlark.....	101
JOSIE MCDONALD (<u>In camera</u>)	
Direct-Examination by Attorney Whitlark	105
JA'NARD N. MCDONALD (<u>In camera</u>)	
Direct-Examination by Attorney Whitlark	110
Cross-Examination by Attorney Meadors	113
Redirect-Examination by Attorney Whitlark.....	116
Recross-Examination by Attorney Meadors	117
DERRICK MCDONALD (<u>In camera</u>)	
Direct-Examination by Attorney Whitlark	118
Cross-Examination by Attorney Meadors	133
VERONICA A. MUNNERLYN (<u>In camera</u>)	
Direct-Examination by Attorney Kendrick.....	162
Cross-Examination by Attorney Meadors	173

MARIO G. MUNNERLYN (<u>In camera</u>)	
Direct-Examination by Attorney Kendrick.....	180
Cross-Examination by Attorney Meadors	187
ROBERT L. CANNON (<u>In camera</u>)	
Direct-Examination by Attorney Kendrick.....	191
Cross-Examination by Attorney Meadors	196
RADONNA R. WHITEHEAD (<u>In camera</u>)	
Direct-Examination by Attorney Riley	209
Cross-Examination by Attorney Meadors	217
ARGUMENT OF COUNSELS	223
RULES OF THE COURT.....	252
COLLOQUY WITH JUROR	262
OPENING CHARGE OF THE LAW	267
OPENING STATEMENT BY THE SOLICITOR.....	273
OPENING STATEMENT BY ATTORNEY WHITLARK.....	295
OPENING STATEMENT BY ATTORNEY KENDRICK	309
ALLEN C. BROWN	
Direct-Examination by Attorney Meadors.....	315
Cross-Examination by Attorney Whitlark	327
Cross-Examination by Attorney Kendrick.....	328
Cross-Examination by Attorney Riley.....	329
COSMO BACCOMO	
Direct-Examination by Attorney Meadors.....	334
Cross-Examination by Attorney Whitlark	344
Cross-Examination by Attorney Reuwer	348
Redirect-Examination by Attorney Meadors	351
CHRISTOPHER J. RUST	
Direct-Examination by Attorney Meadors.....	355
Cross-Examination by Attorney Whitlark	367
Cross-Examination by Attorney Kendrick.....	370
Cross-Examination by Attorney Riley.....	371
Redirect-Examination by Attorney Meadors	371
Recross-Examination by Attorney Whitlark.....	372
ZACHARY W. WALTEMATH	
Direct-Examination by Attorney Meadors.....	373
Cross-Examination by Attorney Whitlark	396

Cross-Examination by Attorney Kendrick.....	411
Redirect-Examination by Attorney Meadors	415
Recross-Examination by Attorney Whitlark.....	420

PATRICIA HEATHCOE

Direct-Examination by Attorney Meadors.....	435
Cross-Examination by Attorney Whitlark	454
Cross-Examination by Attorney Reuwer	457
Redirect-Examination by Attorney Meadors	462
Recross-Examination by Attorney Whitlark.....	463
Cross-Examination by Attorney Kendrick.....	465
Recross-Examination by Attorney Reuwer	466
Redirect-Examination by Attorney Meadors	467

CECILE TRAPP

Direct-Examination by Attorney Meadors.....	467
Cross-Examination by Attorney Whitlark	485
<i>In Camera</i> -Examination by Attorney Whitlark	514
Cross-Examination by Attorney Kendrick.....	518
Cross-Examination by Attorney Riley	520
Redirect-Examination by Attorney Meadors	530
Recross-Examination by Attorney Whitlark.....	534
Recross-Examination by Attorney Riley	536

MOLLY L. WALTEMATH

Direct-Examination by Attorney McDuffie.....	537
Cross-Examination by Attorney Whitlark	546
Cross-Examination by Attorney Kendrick.....	548
Cross-Examination by Attorney Reuwer	553

MELISSA DAVY

Direct-Examination by Attorney Meadors.....	557
Cross-Examination by Attorney Whitlark	580
Cross-Examination by Attorney Kendrick.....	593
Cross-Examination by Attorney Riley	609

MICHAEL SELLERS

Direct-Examination by Attorney Moak	662
Cross-Examination by Attorney Whitlark	676
Cross-Examination by Attorney Kendrick.....	680
Cross-Examination by Attorney Reuwer	682

DANNY CATOE

Direct-Examination by Attorney Meadors.....	687
Cross-Examination by Attorney Whitlark	787
Cross-Examination by Attorney Kendrick.....	850
Cross-Examination by Attorney Riley	889
Redirect-Examination by Attorney Meadors	891

Recross-Examination by Attorney Whitlark.....	894
Recross-Examination by Attorney Kendrick.....	895

GEORGE E. NICHOLSON

Direct-Examination by Attorney McDuffie.....	897
Cross-Examination by Attorney Sheldon	900
Cross-Examination by Attorney Reuwer	905
Redirect-Examination by Attorney McDuffie	907
Cross-Examination by Attorney Kendrick.....	907

DAVID THOMLEY

Direct-Examination by Attorney Meadors.....	909
Cross-Examination by Attorney Whitlark	916
Cross-Examination by Attorney Kendrick.....	917

GEORGE MARTHERS

Direct-Examination by Attorney McDuffie.....	941
Cross-Examination by Attorney Whitlark	960
Cross-Examination by Attorney Kendrick.....	977
Cross-Examination by Attorney Riley	983
Redirect-Examination by Attorney McDuffie	984
Recross-Examination by Attorney Whitlark.....	986
Recross-Examination by Attorney Kendrick.....	988

PHILLIP CRAWFORD

Direct-Examination by Attorney Meadors.....	1015
Cross-Examination by Attorney Whitlark	1028
Cross-Examination by Attorney Kendrick.....	1031
Cross-Examination by Attorney Reuwer	1036
Redirect-Examination by Attorney Meadors	1036
Recross-Examination by Attorney Whitlark.....	1036

DARLA HARRIS

Direct-Examination by Attorney McDuffie.....	1038
Cross-Examination by Attorney Kendrick.....	1043
Cross-Examination by Attorney Whitlark	1044
Cross-Examination by Attorney Reuwer	1047
Redirect-Examination by Attorney McDuffie	1048
Recross-Examination by Attorney Whitlark.....	1049
Direct-Examination by Attorney McDuffie.....	1057
Cross-Examination by Attorney Kendrick.....	1062
Cross-Examination by Attorney Reuwer	1065

DR. JOEL S. SEXTON

Direct-Examination by Attorney Meadors.....	1072
Cross-Examination by Attorney Whitlark	1079
Questions by the Court.....	1083

DR. JOEL S. SEXTON	
Direct-Examination by Attorney Meadors	1086
Cross-Examination by Attorney Whitlark	1128
Cross-Examination by Attorney Riley	1138
Redirect-Examination by Attorney Meadors	1139
MICHAEL JENKINS	
Direct-Examination by Attorney Meadors	1143
Cross-Examination by Attorney Whitlark	1154
Cross-Examination by Attorney Kendrick	1158
Cross-Examination by Attorney Reuwer	1161
Redirect-Examination by Attorney Meadors	1179
Recross-Examination by Attorney Kendrick	1181
CRAVEN HARVEY	
Direct-Examination by Attorney McDuffie	1182
Cross-Examination by Attorney Reuwer	1187
Cross-Examination by Attorney Whitlark	1190
MICHAEL JENKINS	
Direct-Examination by Attorney Meadors	1215
Cross-Examination by Attorney Whitlark	1232
Cross-Examination by Attorney Kendrick	1234
Cross-Examination by Attorney Reuwer	1240
CRAVEN HARVEY	
Direct-Examination by Attorney McDuffie	1254
Cross-Examination by Attorney Sheldon	1258
Cross-Examination by Attorney Kendrick	1260
Cross-Examination by Attorney Reuwer	1261
MARK AUSTIN	
Direct-Examination by Attorney Meadors	1265
Cross-Examination by Attorney Whitlark	1267
Redirect-Examination by Attorney Meadors	1269
HELEN ZOCH	
Direct-Examination by Attorney Meadors	1270
Cross-Examination by Attorney Whitlark	1284
Cross-Examination by Attorney Riley	1285
COLLOQUY	1287
TESTIMONY	
CHRISTOPHER WHITEHEAD	1289
MOTION FOR DIRECTED VERDICT BY ATTORNEY WHITLARK	1296

MOTION FOR DIRECTED VERDICT BY ATTORNEY KENDRICK.....	1298
ORAL ARGUMENT TO THE COURT BY ATTORNEY REUWER.....	1302
ORAL ARGUMENT BY ATTORNEY MOAK.....	1309
COLLOQUY	1314
CLOSING ARGUMENT BY ATTORNEY MEADORS	1323
CLOSING ARGUMENT BY ATTORNEY KENDRICK.....	1384
CLOSING ARGUMENT BY ATTORNEY WHITLARK	1418
JURY CHARGES	1442
JURY QUESTION	1467
SECOND JURY CHARGE	1471
VERDICT OF CHRISTOPHER WHITEHEAD	1501
VERDICT OF DERRICK MCDONALD	1502
SENTENCING OF CHRISTOPHER WHITEHEAD	1549
SENTENCING OF DERRICK MCDONALD	1550
TRUE-BILLED INDICTMENT OF DERRICK MCDONALD	1553
TRUE-BILLED INDICTMENT OF DERRICK MCDONALD	1555
TRUE-BILLED INDICTMENT OF CHRISTOPHER WHITEHEAD.....	1557
TRUE-BILLED INDICTMENT OF CHRISTOPHER WHITEHEAD.....	1559
STATE’S EXHIBIT #2 (STATEMENT OF ROBERT CANNON)	1561
STATE’S EXHIBIT #4 (STATEMENT OF DERRICK MCDONALD)	1566
STATE’S EXHIBIT #103 (REDACTED STATEMENT OF ROBERT CANNON)	1570
STATE’S EXHIBIT #104 (REDACTED STATEMENT OF DERRICK MCDONALD)	1575
CERTIFICATE OF COUNSEL.....	1579

1 that would continue. But sometimes when the cases
2 are resolved, one side or the other feels very strong
3 emotion, and I understand that. But I'm going to ask
4 you to keep your emotions as best you can under
5 control. So, thank you very much. Bring the jury,
6 please.

7 (Jury in at 4:55 p.m.)

8 **THE COURT:** All right. Madam Forelady, has the
9 jury reached a verdict on the final indictment that
10 was returned?

11 **MADAM FORELADY:** Yes, we have.

12 **THE COURT:** Would you hand it to the bailiff,
13 please.

14 (Forelady complies)

15 **THE COURT:** All right, Madam Clerk. If you'll
16 publish the verdicts, please, in that order.

17 **THE CLERK:** Thank you, Your Honor. Indictment
18 number 2007-GS-28-19, The State of South Carolina,
19 County of Kershaw, vs. Christopher R. Whitehead,
20 indictment for burglary first degree, the verdict:
21 Guilty. Signed by Colleen Beattie.

22 Indictment No. 2007-GS-28-22, The State vs.
23 Christopher Ryan Whitehead, indictment for murder,
24 verdict: Guilty.

25 **MR. WHITEHEAD:** You all know you sentenced me to

1 life without parole for nothing.

2 **THE CLERK:** Signed by Colleen Beattie,
3 Foreperson.

4 Indictment 2007-GS-28-16, The State vs. Derrick
5 McDonald, indictment for burglary first, verdict:
6 Guilty. Signed by Colleen Beattie, Foreperson.

7 Indictment 2007-GS-28-15, The State vs. Derrick
8 McDonald, indictment for murder, the verdict:
9 Guilty. Signed by Colleen Beattie.

10 Indictment number 2007-GS-28-17, The State vs.
11 Robert Cannon, indictment for burglary first degree,
12 verdict: Guilty.

13 Indictment 2007-GS-28-18, The State vs. Robert
14 Cannon, indictment for murder, the verdict: Guilty.
15 Signed by Colleen Beattie, Foreperson.

16 Madam Forelady and Ladies and Gentlemen of the
17 Jury, if these are your verdicts, please signify by
18 raising your right hand.

19 **THE COURT:** All right, Madam Clerk. Poll the
20 jury, please.

21 **THE CLERK:** Thank you, Your Honor. Rose M.
22 Seawright, was this your verdict?

23 **JUROR:** Yes, ma'am.

24 **THE CLERK:** Are these still your verdicts?

25 **JUROR:** Yes.

1 **THE CLERK:** Thank you. Paula H. Wells, were
2 these your verdicts?

3 **JUROR:** (Nods head affirmatively).

4 **THE CLERK:** Are they still your verdicts?

5 **JUROR:** Yes.

6 **THE CLERK:** Thank you. Leah R. LeCroy, were
7 these your verdicts?

8 **JUROR:** Yes, ma'am.

9 **THE CLERK:** Are they still your verdicts?

10 **JUROR:** Yes, ma'am.

11 **THE CLERK:** Thank you. Colleen A. Beattie, were
12 these your verdicts?

13 **JUROR:** Yes.

14 **THE CLERK:** Are they still your verdicts?

15 **JUROR:** Yes.

16 **THE CLERK:** Thank you. Michelle B. Watkins,
17 were these your verdicts?

18 **JUROR:** Yes.

19 **THE CLERK:** Are they still your verdicts?

20 **JUROR:** Yes.

21 **THE CLERK:** Thank you. Claude F. Jones, were
22 these your verdicts?

23 **JUROR:** Yes.

24 **THE CLERK:** Are they still your verdicts?

25 **JUROR:** Yes.

1 **THE CLERK:** Thank you. Sheila t. Brown. Sheila
2 T. Brown.

3 **THE COURT:** No. She was excused.

4 **THE CLERK:** Excuse me. I'm sorry. James A.
5 Givens, were these your verdicts?

6 **JUROR:** Yes, ma'am.

7 **THE CLERK:** Are they still your verdicts?

8 **JUROR:** Yes, ma'am.

9 **THE CLERK:** Thank you. Charles L. Pinkerton,
10 were these your verdicts?

11 **JUROR:** Yes, ma'am.

12 **THE CLERK:** Are they still your verdicts?

13 **JUROR:** Yes, ma'am.

14 **THE CLERK:** Thank you. Michael B. Ware, were
15 these your verdicts?

16 **JUROR:** Yes, ma'am.

17 **THE CLERK:** Are they still your verdicts?

18 **JUROR:** Yes, ma'am.

19 **THE CLERK:** Susan R. Cox, were these your
20 verdicts?

21 **JUROR:** Yes, ma'am.

22 **THE CLERK:** Are they still your verdicts?

23 **JUROR:** Yes, ma'am.

24 **THE CLERK:** Thank you. Lisa A. Laborne, were
25 these your verdicts?

1 **JUROR:** Yes.

2 **THE CLERK:** Are they still your verdicts?

3 **JUROR:** Yes.

4 **THE CLERK:** Thank you. Your Honor, the jury has
5 been polled.

6 **THE COURT:** Okay. Thank you. Any motions?

7 **MR. MEADORS:** Nothing from the State.

8 **MR. WHITLARK:** Your Honor, we'd ask for ten days
9 to file our motions.

10 **THE COURT:** All right. I'll do so. Other
11 defendants?

12 **MR. KENDRICK:** The same request, Your Honor.

13 **MR. RILEY:** The same, Judge.

14 **THE COURT:** All right. Thank you. Your motion
15 is granted.

16 All right, ladies and gentlemen of the jury, I
17 am certain this was a difficult task. When we
18 started over a week ago, it perhaps did not appear at
19 that time that things would be as difficult as they
20 probably were for you in the jury room. I don't know
21 that, but the length of time that you started, you
22 put in two or so hours on Friday and you've been here
23 almost all day today. So I know that you've had
24 serious discussions, difficult discussions. And I
25 know it's difficult to make these kind of decisions.

1 But as I said earlier, these decisions have to
2 be made. They don't have to be made in any
3 particular fashion. They just -- some resolution
4 needs to be made of these matters. So I want to
5 thank you for your diligence and your
6 conscientiousness in going through this process with
7 us. It's been difficult for everybody, and I
8 understand that.

9 Now, the remaining portion of this trial will
10 consist of the sentencing of the defendants. Now, we
11 don't have the luxury, as some television shows do,
12 like Law and Order, things like that, of waiting
13 several weeks and waiting and accumulating a lot of
14 data and going through another sentencing procedure.
15 We do it immediately following a trial.

16 And that process will take place in about 15
17 minutes. There is a good bit of paperwork that has
18 to be prepared before that can take place. What I'm
19 getting around to is to tell you that you're welcome
20 to stay for that. You're also free to leave. If you
21 do choose to leave, I'm sure you'll read about it in
22 the paper if you wish to do so. Or you can stay.
23 And I would assume the best place for you to stay is
24 right there in the jury box.

25 Now, I'm going to dismiss you for just a minute

1 to go back to your jury room. And if you wish to
2 come back in at the appropriate time after we get the
3 paperwork done, you're welcome to do that. Or, as I
4 say, you're also free to leave.

5 If you choose to leave, I just want to thank
6 you. It's been -- we've come down the long road
7 together. And it's been difficult and I know
8 difficult for you. These things are never -- things
9 of this import are never simple matters. So if you
10 choose to leave, I want to thank you on behalf of the
11 citizens of Kershaw County. I want to thank you on
12 behalf of these attorneys and litigants and myself,
13 the clerk, everybody that has worked with you over
14 these past six or seven days.

15 The penalties for murder are serious, and I'm
16 sure you all knew that. And it becomes now my
17 responsibility to decide how much of a penalty each
18 of the defendants will receive. They've all -- at
19 this stage they've all been treated by the same by
20 you, and there will be what's called a sentencing
21 procedure, in which case the defendants and their
22 attorneys will be able to argue what we call
23 mitigation as to what their sentences ought to be or
24 ought not to be. And that is my responsibility. It
25 now becomes my responsibility. You've handed it to

1 me, and I will do that.

2 So you are now free to go. Good luck to all of
3 you. If you wish to stay, you're welcome to do so.
4 Do you need to talk to them?

5 **THE CLERK:** If I may just a moment, sir, back
6 there.

7 **THE COURT:** The clerk would like to speak with
8 you for just a minute. And I'll be glad to -- after
9 the sentencing procedure, if you wish to stay, I will
10 be glad to speak with each of you collectively or
11 individually if you have any questions about how this
12 trial transpired.

13 Let me just say also, if any of the -- if
14 anybody wants to talk to you after this case is over,
15 you certainly are welcome to talk to them. You're
16 also welcome not to talk to them. If you would feel
17 uncomfortable talking to either members of the press
18 or any of the attorneys or anything like that, you
19 just tell them you don't care to talk to them. It's
20 something personal to you and you'd rather not talk
21 to them. Or if you feel like you can talk to them,
22 they may ask you some questions.

23 If anybody bothers you about that or persists in
24 trying to question you about that, you let me know or
25 somehow let me know and I will take care of it. You

1 have nothing to apologize for about your decision.

2 It was a hard fought case and it was a difficult case
3 and you made a difficult decision.

4 So I want to say thank you and good luck to all
5 of you. You are now free to retire to the jury room.
6 Ms. McDonald wants to speak with you for just a
7 minute after which you may leave or you may come back
8 into the jury room in about 15 or 20 minutes when we
9 reconvene for the sentencing procedure part of this
10 trial. Thank you very much, ladies and gentlemen.

11 (Jury out at 5:05 p.m.)

12 **THE COURT:** All right, counsel. We'll stand at
13 ease until we have everything in order for
14 sentencing.

15 (Whereupon, a break is taken)

16 **THE COURT:** All right, Solicitor.

17 **MR. MEADORS:** If it please, Your Honor. On
18 behalf of the Sheriff's Department and Josh Zoch and
19 the whole Zoch family, we do want to thank the jury
20 for their verdict in this case and thank them for
21 listening.

22 Judge, we have several family members, just a
23 few family members who would briefly like to briefly
24 address the Court if now would be the time you'd like
25 to do that.

1 **THE COURT:** Well, I'll do it in any order you
2 prefer.

3 **MR. MEADORS:** What do you prefer? I didn't know
4 how Your Honor wanted to --

5 **THE COURT:** I don't have strong feelings one way
6 or the other. I want to hear something about each of
7 the defendants --

8 **MR. MEADORS:** Sure.

9 **THE COURT:** -- prior to sentencing. And I'll be
10 glad -- it might be the appropriate time to hear from
11 the family now.

12 **MR. MEADORS:** Okay. Thank you. Then I'll
13 follow up with some brief comments after that.

14 **THE COURT:** Yes, sir.

15 **MR. MEADORS:** Judge, initially is Birgit Zoch.

16 **COURT REPORTER:** I need you to spell your first
17 name for me, please.

18 **MS. BIRGIT ZOCH:** B-I-R-G-I-T. Your Honor, my
19 name is Birgit Zoch. And the first statement I'd
20 like to make is on behalf of Josh's aunt who was here
21 all week and is unable to come here, and she wanted
22 me to read this to you.

23 **MR. MEADORS:** And, Your Honor, the aunt was
24 Jamie Wall Zoch.

25 **MS. BIRGIT ZOCH:** Jeanine.

1 **MR. MEADORS:** Jeanine Zoch who was here.

2 **MS. BIRGIT ZOCH:** May I begin?

3 **THE COURT:** Yes, ma'am.

4 **MS. BIRGIT ZOCH:** "Unfortunately, I cannot be
5 here today to speak about the murder of my nephew. I
6 would like to state that we loved Josh and we remain
7 heartbroken to this day with the void that will never
8 be filled even after a verdict from this court.

9 "Much was said about the word 'hero' this past
10 week. And we wanted to talk about the word 'hero'.
11 A hero is a father that was serving our country in
12 the Army working up to the rank of Sergeant Major,
13 receiving the Purple Heart and retiring after 23
14 years and now teaching teen-agers in high school in
15 Florida. That is a hero, and that was Josh's father.

16 "A hero is also our father who also served his
17 country for 21 years in the Navy and worked 20 years
18 thereafter at Dupont and cared for and loved his
19 grandson. Our father is a hero. And his birthday
20 was May 10th. That's the day he turned 77. And he
21 would have liked to celebrate his 77th birthday with
22 his grandson, Josh.

23 "In closing, as a critical care nurse for 23
24 years, I have seen and cared for patients with
25 traumatic head injuries. It is not pleasant, and it

1 is so painful to me personally to know this is how my
2 nephew died, alone, hemorrhaging and at the hands of
3 these cold-hearted cowards who dare to call
4 themselves heros.

5 "They should hang their heads in shame and
6 remember everyone how they hurt my family, how Josh
7 will never have his 20th birthday, how his family
8 will never be the same, that they took a human life
9 and how they also hurt their own families.

10 "I ask you to keep them away from society
11 forever and a day. Thank you, Mr. Meadors and Ms.
12 McDuffie, Mr. Moak and Ms. Tolkey and all law
13 enforcement officers and court personnel, and to you,
14 Judge Cooper."

15 Now I would like to say a few words on my own
16 behalf. I am Josh's step mom and I loved him. Much
17 was said about him during this trial. Now I want to
18 tell you about my Josh. He was gentle and he was
19 kind. He was funny and he was charming. There
20 wasn't anything he wouldn't do for his loved ones or
21 his friends. He never hurt anyone but himself. And
22 he was smart and full of potential. And now he will
23 never be able to reach it. And we won't be able to
24 share it with him.

25 I looked forward to just seeing him married and

1 having children of his own one day. And we will
2 never be able to hold him again or his grandchildren,
3 our grandchildren. This family has been devastated
4 by this, and we will forever be terrorized by the
5 images in our mind of how he died. So, Your Honor,
6 please keep that in mind when you pass sentence.
7 Thank you.

8 **MR. MEADORS:** Your Honor, next is father, Thomas
9 Zoch.

10 **MR. THOMAS ZOCH:** Thomas Zoch. Your Honor, I'd
11 like to start by saying Joshua, he was my first born.
12 My chosen profession took me away from him
13 frequently. I lived a hard life as an infantryman,
14 and that was my choice. Joshua was a casualty of a
15 military brat. I was not always there to give him
16 direction.

17 But he was a good boy and he'd give you the
18 shirt off of his back. He could walk into a room and
19 he would leave that room making a hundred new
20 friends. I'll tell that you Joshua cared about his
21 entire family. He veered off and he went down the
22 wrong road, but he was not a bad person.

23 Over 23 years of my career in the military I've
24 seen a lot of ugly things. And I will tell you most
25 of my career I was a hard individual. And when my

1 dad called me and told me what had happened, it
2 brought me to my knees. I've had to give many
3 speeches. I've had to speak at many of my soldier's
4 memorial services. And I'll tell that you this
5 brought me to my knees. And since this incident 17
6 months ago I have not been able to recover.

7 Joshua has a younger brother who he looked up
8 to. And because of this incident -- Jonathan, he was
9 here for one day of the trial, and I was very proud
10 of him for standing here and listening to all the
11 horrific things that were said about his brother.
12 Yes, he had some drug problems. Yes, he had some run
13 in's with the law. I think at one time he came
14 before you in juvenile court and you gave him a
15 chance. And I appreciate that.

16 And I ask you today to not have any mercy or
17 sympathy for these three individuals who have sat
18 here and attempted to get through this as a --
19 without being guilty. They deserve the max
20 punishment; and I ask you, sir, from the bottom of my
21 heart, please give it to them. Thank you, sir.

22 **THE COURT:** Thank you, Mr. Zoch.

23 **MR. MEADORS:** Your Honor, part of the reason I
24 love this job is getting to work with victims and
25 along with law enforcement helping them through what

1 is usually the most traumatic times in their lives.
2 And this gentleman coming up here now, his wife, John
3 and Helen Zoch, grandmama and granddaddy, I've just
4 gotten to know them maybe too well. But anyway, I've
5 spent a great deal of time with them in preparing for
6 this. They're wonderful people. And Mr. Zoch would
7 like to address Your Honor.

8 **THE COURT:** Yes, sir.

9 **MR. JOHN ZOCH:** Your Honor, I'm John Zoch. I'm
10 the grandfather. I don't think my wife can say
11 anything, so I'll speak for both of us. Your Honor,
12 between my son and I, we have about 45 years of
13 military service. I am retired. I'm an ex military
14 man. I'm tough. I believe in tough love.

15 When I appeared in your court last time, I
16 begged you to send my grandson back to me so that we
17 could be and try to be the parents that he did not
18 have at that time. And you released him to us under
19 house arrest, the most difficult four months of my
20 life.

21 Josh was a good kid. There is nothing my wife
22 would not have done for that boy, nor I. But I had
23 to take the hard path a lot of times. I had to turn
24 him away to try to make him understand the path that
25 he was on was wrong. I carry so much guilt in

1 myself. I now have to seek medical help to try to
2 get myself out of ruts. I wake up at night. I have
3 to go to bed by myself because my wife can't sleep.
4 When I wake up at night, she's crying. 17 months
5 worth. We loved that boy. We loved that boy so
6 much.

7 After the crimes were committed, my wife and I
8 had the responsibility of cleaning his house up. I
9 think I mentioned before, I see today here in front
10 of the jury box that carpet where he bled out, the
11 blood on the walls and the ceiling. We felt a
12 responsibility to clean it up ourselves rather than
13 somebody else to come in there. But we couldn't stay
14 in that residence over two hours at a time to see all
15 that blood.

16 Your Honor, I've seen a lot of dead people. I
17 have helped contribute to the death in combat related
18 situations and without, I have never seen as heinous
19 crime that I've seen three people completely smash a
20 body. The only thing I've ever seen it compared
21 would be Auschwitz, the pictures I've seen of that.

22 Your Honor, my wife and I would like to ask that
23 whatever sentence, hopefully life without parole. I
24 sleep with two guns because I'm afraid myself that
25 this could be related to something else. But today I

1 have a sense of relief and I can put the guns back in
2 the safe. Thank you very much, Judge. And God bless
3 you all.

4 **MR. MEADORS:** Judge, before I get to my
5 concluding remarks, I also want to -- Jackie, Melissa
6 and John Davy have been here. I want to thank them
7 for being here and the support they have given their
8 family.

9 I always do this, and I want to do it again now.
10 Special thanks out to Sheriff McCaskill, Captain
11 Thomley, Danny Catoe, Phil Crawford, and all the
12 other law enforcement involved. It's not easy being
13 law enforcement out there, especially today. I want
14 to thank them publicly for the fine work they did on
15 this case, the successful, just thank them for their
16 investigation, Judge. I want to thank you all for
17 the job you did.

18 I also want to thank our staff, Emily, Karen,
19 Leslie, Moak, Ms. McDuffie, everybody involved in
20 helping get this prosecution together.

21 Judge, you know, he almost went to Morris
22 Village that day. Helen almost had him in Morris
23 Village. And he wanted to see his girlfriend one
24 more time. I wish he had gone to Morris Village but
25 he didn't. He did have a drug problem. He was

1 trying to fight it, trying to get help for it, had
2 people that loved him.

3 For whatever reason these three defendants chose
4 to beat him to death that day. And I want to say for
5 the record, in my 21 years of prosecution this is the
6 most -- I've talked with the sheriff and I think
7 they'll agree with me -- the most brutal slaying I've
8 been involved in my 21 years, Judge, as he was
9 asleep on the couch.

10 Judge, I don't know the layout of hierarchy.
11 Mr. Moak is going to speak in a moment. We do think
12 it was Defendant Whitehead's idea to go over there.
13 We think these other two defendants went with him.
14 But then once they got there, it's the hand of one is
15 the hand all, they all participated. They all
16 participated, McDonald with the bat and then finally
17 Defendant Cannon admitting he did hit him and did
18 kick him after he grabbed his legs and went over
19 there.

20 But if we had to do a chart, if you will, I know
21 Your Honor likes to know, I think Whitehead would be
22 first, McDonald would be a close second, and then it
23 would be Cannon after that.

24 Judge, I went and met with Dr. Sexton for two
25 and a half hours. And I want to thank "Dog", "Dog"

1 Austin who everybody has talked about for what he
2 did. And Lear. We went up there and met with Dr.
3 Sexton who I've been doing cases with for years and
4 my boss has been doing cases for years. And I think
5 he's the finest forensic pathologist that I know of.

6 And we kind of laid the pictures out and went
7 over them and put them in order. And even Dr. Sexton
8 was commenting on the brutality of this. I know when
9 to shut up and let somebody talk. And I think he;
10 not that it needed it, but corroborated to a "t" what
11 happened that night with the blood spatter and where
12 the body went. It was the most powerful testimony
13 from a pathologist I've ever seen. And I think that
14 kind of summed it up. And Josh did kind of speak
15 through Dr. Sexton, and I think that kind of speaks
16 for itself. I think that's all I have. Mr. Moak.

17 **MR. MOAK:** Your Honor, as to defendant
18 Whitehead, I filed on February 12th of this year, I
19 believe served it that same day at the pre-trial
20 hearing in Columbia we had before Your Honor a notice
21 of the State's intention to seek a sentence of life
22 without parole on the two indictment numbers that he
23 was convicted of today.

24 The basis for that is his conviction under
25 indictment number 2005-GS-32-2617 for attempted armed

1 robbery in Lexington County. A certified copy of
2 that indictment and a sentencing sheet was attached
3 to what I filed. A copy of both of those were served
4 on Mr. Whitehead and Mr. Riley on February 12th, the
5 same day they were filed, which was ten days previous
6 to the original court date. I believe it's ten days
7 previous to the original court date of February 25th
8 and certainly at least ten days previous to today's
9 court date.

10 **THE COURT:** Let me see that. You didn't tell me
11 that.

12 **MR. MEADORS:** Your Honor, I thought Mr. Moak had
13 told you about it.

14 **THE COURT:** Nobody told me this.

15 **MR. MOAK:** I thought he knew about it. The
16 original is in the clerk's file, Your Honor. So the
17 State is asking for a sentence of life without
18 parole.

19 **MR. MEADORS:** Your Honor, that's been filed and
20 been in the clerk's file for a long time.

21 **THE COURT:** I didn't say it wasn't.

22 **MR. MEADORS:** I apologize. Your Honor, my
23 concluding remarks are, and I'll be through.

24 **THE COURT:** Well, let me look at this.

25 **MR. MEADORS:** Okay.

1 **MR. MOAK:** Your Honor, I mentioned this when we
2 were in your office the week before the trial on that
3 Wednesday when Mr. Meadors was not present.

4 **THE COURT:** This appears to be a sentencing
5 sheet from Lexington County for attempted armed
6 robbery for which he received time served or ninety
7 days plus probation for five years. Is that correct?

8 **MR. MOAK:** I believe that's the basis, that
9 sentence. Yes, your Honor.

10 **THE COURT:** All right.

11 **MR. MEADORS:** Your Honor, my final comments are,
12 I know the age of these gentlemen will be mentioned
13 to Your Honor in mitigation. My final comments would
14 be that Joshua Zoch was too young to die and just did
15 not deserve to die like this. And that's all we'd
16 have. Thank you.

17 **THE COURT:** Well, does anybody else have a
18 record?

19 **MR. MEADORS:** No, sir.

20 **THE COURT:** No records from any of the other
21 defendants?

22 **MR. MOAK:** Convictions, no, Your Honor.

23 **THE COURT:** No convictions of either of the
24 other two defendants.

25 **MR. MOAK:** No, Your Honor.

1 **MR. MEADORS:** No, sir. That's correct, sir.

2 **THE COURT:** All right. Mr. Reuwer or Mr. Riley.

3 **MR. RILEY:** Your Honor, as I read 17-25-45, I
4 don't think the Court has a great deal of discretion.
5 I do want to mention --

6 **THE COURT:** Bring your client around. Well,
7 that's all right. You can stay right there. Stay
8 right there. Go ahead.

9 **MR. RILEY:** I do want to mention just a few
10 things, a few key things. As you know, on Saturday,
11 May the 10th, was Mr. Whitehead's 20th birthday. He
12 and his parents are here with him and have been here
13 throughout the trial. They have two children.
14 Christopher has a sister who was here part of the
15 trial. She is not here today.

16 I want to tell you, Your Honor, that regardless
17 of the heinousness of this crime, it's been a
18 pleasure and a privilege representing this young man.
19 And I've tried to do the very best for him that I
20 possibly can.

21 I think that not only the parents may wish to
22 say a few words to the Court, but I think the
23 defendant would like to also. And I would ask the
24 Court to allow them to do that.

25 **THE COURT:** Yes, sir. I'll be glad to.

1 **MR. RILEY:** I'm sorry, sir?

2 **THE COURT:** You may proceed.

3 **MR. RILEY:** Okay.

4 **MR. WHITEHEAD:** There was a lot of pointing
5 fingers here. And, you know, the sentencing is over.
6 I've been found guilty, and there's nothing I can do
7 about that right now. I do like to say I wish your
8 souls peace for the victim's family. I don't wish no
9 bad on nobody. And I hope that you all pray for my
10 soul to have peace, too.

11 You know, since I've been here, I've given my
12 life to God and I have learned how to show mercy to
13 others when they do wrong to me and I've learned how
14 to turn the other cheek and I've learned how to put
15 my faith in God.

16 Today, on this day, I don't know why I was found
17 guilty. There is a reason. And, you know, I don't
18 know the path or what comes in the future. But like
19 I said, I pray that you all pray for my soul to have
20 a peace as I pray for you all's soul to have peace.
21 I don't wish bad on none of you all. Your son, I
22 knew, not very well. But was a good man. He didn't
23 deserve to die. Just pray for me.

24 **FATHER OF MR. WHITEHEAD:** Your Honor.

25 **THE COURT:** Yes, sir.

1 **FATHER OF MR. WHITEHEAD:** I'm Christopher's
2 father. And I do appreciate the diligent efforts of
3 this Court. I know that this was a very difficult
4 week and a half I suppose or a week and a day for all
5 of us. And everyone had a voice up until now. Of
6 course we really didn't have a voice. So I guess
7 this is just the moment that we can address the
8 Court.

9 You know, I love my son. And I know something
10 about serving my country also. I'm a third
11 generation veteran. I served honorably for 21 years.
12 My grandfather served in World War II. My father
13 served in the Army in the Vietnam era. My uncle
14 served in the Navy during the Vietnam era. And, you
15 know, it was my hope that perhaps one day my son
16 would want to follow in the same suit.

17 My deployments and the times I had to be away
18 from home, I have been there for my son and raised
19 him. And I know that's a very difficult thing. I've
20 been married to the same woman for almost 22 years
21 now. So I know a little something about dedication
22 to the family and burdens that every family faces.

23 I hate drugs. I absolutely hate them. And I
24 know the law enforcement officers and the prosecutor
25 and the people that are here deal with this probably

1 every day. I think it steals our youth and I think
2 it robs them of the lives that they could have. But
3 people use them, trade them or are involved around
4 that process.

5 My prayer is help for the Zoch family because I
6 know that they have lost something that cannot be
7 given back. And I wish to take back nothing from
8 that. I really have considered their loss and their
9 pain. The way the structure of the court is set up
10 somehow just feels, when you're on the defendant's
11 side you kind of feel ostracized and as if you're
12 outside of that. Perhaps the family would feel that
13 they were not considered by any of us, and that is
14 simply not true.

15 But I would ask for your mercy and your
16 leniency. I probably have no right to that. But my
17 son is 20 years old. And that doesn't excuse any
18 actions of what the Court has found, but I know that
19 without hope that there really would be no purpose
20 for living.

21 In the Bible one of the greatest apostles was
22 Paul. He was a murderer. Even God found mercy upon
23 him and made him one of the greatest apostles. I
24 certainly do not profess that that is my son. But
25 what I am saying is that given no opportunity, given

1 life without parole, given no opportunity to do
2 something positive with your life or look forward to
3 something, what hope does any man have?

4 My words are just simple words. I hope I'm not
5 perceived as trying to persuade the Court in any way
6 other than just ask for mercy on my son's life. Give
7 him the opportunity to make amends if that's the way
8 you would like to perceive it. I do love him and I
9 will always love him. And I know the Zoch family
10 loved Josh very much. All parents should love and
11 care, be concerned for the welfare of their children.
12 And I ask for your leniency even though I know that
13 it's been asked that there be no leniency. Thank
14 you, Your Honor.

15 **MOTHER OF MR. WHITEHEAD:** Hi, Your Honor. My
16 name is Radonna Whitehead. I'm Chris' mom. I'm
17 going to do my best to not ramble.

18 **THE COURT:** That's all right.

19 **MOTHER OF MR. WHITEHEAD:** Bear with me if I do.

20 **THE COURT:** Take your time, ma'am.

21 **MOTHER OF MR. WHITEHEAD:** Okay. Today is
22 probably one of the saddest, you know, moments that a
23 mother can have. I can feel for the family of the
24 deceased quite greatly. As our family before
25 Christopher became arrested for this charge, we in

1 turn went through a similar event. But we were on
2 the other side of the coin with our daughter who was
3 attacked by a young man.

4 So I can -- we can completely, 100 percent all
5 of us sympathize with what the family has gone
6 through. But just like in that case, we had to
7 sit -- we had to sit and listen to things. And we've
8 listened to a lot this week. I can -- I can take the
9 jury's -- what the jury found. That's the way the
10 system is set up, too. And with anybody we have to
11 go through those same things.

12 As his mom and listening to those things, I
13 don't agree with what was found. I believe as
14 Christopher stood here and said that he is innocent,
15 and I hope that one day these officers will find the
16 person that is truly guilty of this crime.

17 But regardless of that fact, right now we're
18 looking at my son's -- what you plan on sentencing my
19 son. Now, I know that the solicitor brought up a
20 charge that Christopher recently had. Okay. I hope
21 that you can look at that. And I don't understand
22 the legal matters and what you have to do as far as
23 that, but I also know that that is what you have in
24 front of you, is just a piece of paper. You weren't
25 there. You didn't know that once again Christopher

1 was with some friends, had no idea that another
2 person, another person is the one who had the weapon.
3 He is the one who held up other friends in the car.
4 But once again, the law says by the hand of one, the
5 other, however it's said.

6 And Christopher in being young and just wanting
7 to get things done had no idea of the consequences of
8 his going ahead to make a plea at the age of just
9 turning 17 without his parents present. So,
10 therefore, that charge in our eyes was something that
11 had he been given the right to counsel or been given
12 because of his age may not have been there. But
13 that's something that is there.

14 Christopher had done very well for a long time.
15 He got his G.E.D. It was probably the proudest
16 moment that we could have ever had. He has struggled
17 throughout all of his school with school and with
18 that, and we were excited and pleased that this
19 happened. He had had plans on going to school and
20 continuing. We had even talked on when he finishes
21 probation on him entering the military.

22 Now, I know that the family has already asked
23 that you not give him any consideration as far as
24 lessening his time. But from what I understood, one
25 of the one things that the criminal system says is

1 that you're supposed to try to -- try to find a way.
2 A young man at 20, to put him away for the rest of
3 his life is just to me the worst thing, I mean, that
4 you could do. You're asking citizens to pay for
5 someone to be in a facility for the rest of their
6 life when they have the family and they have the
7 intelligence to eventually be a productive citizen.

8 And Christopher has done -- he has found the
9 Lord. And whether or not that's something that comes
10 up in all trials or whatnot, I don't know. But I
11 know that through the pastor at the jail and through
12 soul searching that Christopher has decided that he
13 wants the chance to be of service to the Lord.

14 And I only hope and can beg of you to give him
15 that chance and to also -- he is my child and he's my
16 husband's child. Please don't take that away from
17 us. Thank you.

18 **THE COURT:** All right. Thank you, Mr. and Ms.
19 Whitehead. Anything further?

20 **MR. REUWER:** No, sir.

21 **THE COURT:** As to Mr. McDonald.

22 **MR. WHITLARK:** Yes, Your Honor. May it please
23 the Court. Your Honor, first of all, I will say this
24 about this whole situation here. This drug cancer
25 that covers our whole society has now harmed an

1 entire roomful of people in a terrible, terrible way.

2 And I know that my client, Mr. McDonald, he is
3 very sorry for the loss that the Zochs have suffered
4 here. And we would say that we just hope that God
5 would help them with the grief they're enduring right
6 now and that somehow over time that their hearts will
7 be healed from the pain of the loss they've suffered.

8 I will say on behalf of Mr. McDonald that
9 regardless of the sentence this Court gives, he is
10 determined, Your Honor, to have a productive and
11 positive outlook on life.

12 Mr. McDonald was in the ROTC in high school when
13 this occurred. He was in the band. And he was a
14 regular participant in the Harvest Hope Food Bank and
15 serving Thanksgiving dinners at the Oliver Gospel
16 Mission. The reason I mention this to you, Your
17 Honor, is because it's a true reflection of the
18 character of this young man. That's why it's so
19 shocking and surprising to even have him in this
20 circumstance.

21 He comes from a good family. I've gotten to
22 know his mother and his brother and his father. And
23 they are good people. They are all horrified by the
24 loss that has been suffered by the Zochs. And again,
25 Mr. McDonald wishes to speak to them if they'll hear

1 his words. But I would ask the Court to keep in mind
2 that this young man is 18 years old. And -- 19 years
3 old. I'm sorry. And when this occurred he was a
4 senior in high school, Your Honor, wanting to go into
5 the Air Force, wanting to be somebody who contributed
6 to society and was a productive participant in our
7 society.

8 Again, Your Honor, it's not an excuse to say
9 that drugs are the catalyst for this entire event.
10 But there's no escape from it, Your Honor. Drugs are
11 the cause of this thing. They're the cause of the
12 motivation to go places, caused them to be in the
13 situation they were all in.

14 And this entire Sonic, I'll call it the Sonic
15 ring of people, were all involved in drugs. And look
16 where it's got us, Your Honor. Standing before you
17 with a ruined, a deceased young man and the lives of
18 three or more ruined. And again, Your Honor, it's
19 not a crutch. But Mr. McDonald is a good young man
20 despite what the jury has found here.

21 And I'd ask the Court to consider showing some
22 sort of hope for him to be a participant in our
23 society some day. To throw his life away and to lock
24 him away forever is not what we actually believe in.
25 We believe in trying to correct people, make them do

1 the right thing. And he was well on his way, Your
2 Honor.

3 Horrible mistake, horrible results and the
4 broken hearts of their family. It's hard to be
5 objective about it. But, Your Honor, Mr. McDonald
6 can be a good member of society. He has shown that
7 through his life. And I would ask the Court to
8 please consider giving him a chance sometime after he
9 has paid his debt to the Zochs and to society to join
10 again our American Society.

11 And now he wishes to speak, Your Honor, if you
12 would allow that. And his mother.

13 **MR. MCDONALD:** Your Honor, ladies and gentlemen
14 of the courtroom, especially the Zoch family, I would
15 like to say that this is the craziest thing I've ever
16 seen in my life in the 19 years that I've been
17 living. I've been through some hard things in my
18 life, but I've never seen or never experienced
19 anything like this before. I can honestly say that I
20 am innocent of this crime.

21 And I can honestly say that even though I am
22 found guilty by a jury of my peers on these two
23 charges, every day I spend in the Department of
24 Corrections I will find out who really did this. I
25 know I was framed. I can't prove that, but I will

1 prove that if I get a chance to come of this. I can
2 honestly say that my father works at the South
3 Carolina Department of Corrections. I've been there
4 before. I've seen the outcome of things, of bad
5 mistakes. This is not a subject of a bad mistake.
6 This is a subject of me, like I said before, being
7 framed. I maintain my innocence.

8 And, yes, I was in the ROTC. Yes, I did have 18
9 days 'til I graduated. Yes, I was going to be in the
10 Air Force to become what some people call a hero. I
11 have been to the Harvest Hope Food Bank. I have been
12 to Salvation Army, served dinner at Thanksgiving. I
13 didn't do these things just because I wanted to flash
14 them in front of you in front of the courtroom, Your
15 Honor. I did it out of the kindness of my heart.

16 I didn't have any charges back then. I've never
17 had any convictions of anything. Yeah, I may have
18 got into a couple of school disciplinary problems,
19 but that was in high school, Your Honor.

20 I just ask you, please, to just have some mercy
21 on my soul, Lord. Because if I'm not mistaken, if
22 the book of Romans in the Bible says that even though
23 evil is done to you, you should not do evil for evil
24 but do good for evil. And it's like putting burning
25 ashes on your enemy's head. And I'm not going to sit

1 here and downgrade these officers of Kershaw County,
2 investigators. I'm just going to say that they did
3 their job. Whether if it was the right way or the
4 wrong way, they did their job.

5 But like I said to the Zoch family, I'm sorry
6 for your loss, specifically the Zoch family, and I
7 will try to find out who really did this every day I
8 spend at the South Carolina Department of
9 Corrections. Thank you.

10 **MR. WHITLARK:** This is Ms. Josie McDonald, Your
11 Honor, the defendant's mother.

12 **MR. MCDONALD'S MOTHER:** Your Honor, first of
13 all, I would like to say my heart goes out to the
14 Zoch family. It's hard, very hard. I can't even
15 imagine what they're going through right now. I know
16 what it feels like to lose a family member. But each
17 death is different. We have had family members who
18 were murdered. And they're cold cases. And they
19 will be because of the timeframe as to when they
20 happened.

21 I have always taught my children to respect the
22 judicial system and law enforcement. Since third
23 grade when I was a home parent, my son has had a love
24 for law enforcement. Right now my youngest child who
25 is not here is afraid of them. And I don't want that

1 to be, not at all.

2 When Derrick was in third grade, as I stated, I
3 was a home parent, I organized a literacy program for
4 his classroom. One of the distinguished guests to
5 come and read a book to him was Mr. Giese because I
6 respected him. And I respect his department and I
7 know he goes by the books. I realize it's the job of
8 the solicitor to make sure that a case is done, to
9 make sure that it's won. But we need to know that we
10 need to make sure that the right person is arrested,
11 because if they're not, then that person is out there
12 to hurt someone else.

13 When you're dealing with someone's life, you
14 can't just rush through a process. Everything, every
15 evidence, maybe I've watched too much CSI, but
16 everything needs to be introduced to the jury. I
17 would not want to make a decision based upon
18 something being taken out and something being put in.

19 No disrespect. This family needs to know what
20 happened to their grandson. They need to know. My
21 best friend died. Her son is still a cold case in
22 Richland County. She went through a very hard time
23 because she never found out who the perpetrators
24 were. She never found out. Her husband is still
25 living. He never found out.

1 Derrick's dad, as he stated, is a correctional
2 officer. He is a former Marine. He served his
3 country. My father did. My mother did. There are
4 several people in our family who were in law
5 enforcement, the military who served their country.
6 Some of them even sat on the bench which I teach my
7 children is to be highly respected.

8 As Mr. Whitlark said, this thing with the drugs,
9 I've heard these children -- and I call them
10 children. I don't care if 18 makes you an adult, if
11 my mother were still living, she'd still be calling
12 me a child. These children sit up here and admit to
13 using drugs. That's what killed this young man, a
14 drug dealer, drugs. And like he said, it's ruining
15 our society. They sat up there and admitted to this
16 without even blinking an eye.

17 But yet still these people can walk out of a
18 courtroom with a slap on the wrist, and they're
19 murdering our children, whether it be with a pipe,
20 whether it be whoever they rob, they steal; they do
21 whatever in order to get it.

22 I'm not a perfect parent. None of us in here
23 are. If there was a book out there that we could
24 pick up and say this is the instructions, this is
25 going to make your child a judge, this is going to

1 make your child a state representative, a president,
2 we would buy every copy of it. But there's not. I
3 did the best that I could as a mother.

4 I believe in my son. I believe in his
5 innocence. And I know that he did not kill Mr. Zoch.
6 I know that in my heart. And, Your Honor, I ask that
7 the Court show mercy to my child. And I ask that
8 this case not be closed. These people who were
9 brought up, who they felt were suspects, they're not
10 going to stop.

11 **THE COURT:** Thank you, Ms. McDonald.

12 **MR. MCDONALD'S MOTHER:** Thank you.

13 **MR. WHITLARK:** Thank you, Your Honor.

14 **MR. JA'NARD MCDONALD:** Ja'nard Nivek McDonald.

15 **THE COURT:** Yes, sir.

16 **MR. JA'NARD MCDONALD:** I am the defendant's
17 brother. I myself, I really don't believe he is
18 guilty of this crime. I have many reasons for that,
19 many personal reasons, you know; because we have had
20 a lot of family members on my father's side of the
21 family that are now still on crack cocaine. We had a
22 friend that we lost because of this what they call a
23 crack game. And if anybody was trying to stop that,
24 my brother would not try to stand in their way. I
25 know that for a fact.

1 I myself had a bad past myself. And, luckily,
2 it had never gotten this far. And since I stopped
3 whatever I was doing, I've been trying to better
4 myself. I've been trying to better other people. My
5 brother will tell you I've spoken to him. I've
6 actually spoken to Rob, you know, while he's been
7 locked up and everything like that.

8 And, I mean, my brother was a geek before all of
9 this happened. You know, he was on orchestra. He
10 played Pokemon, had books a million, you know. He
11 read books all the time, things like that. So I
12 don't know how it got from reading books and stuff
13 like that to being accused of murder. None of it
14 makes sense to me. None of it really makes sense to
15 me.

16 But, you know, to Zoch, to the Zoch family, you
17 know, I want to say that what Joshua was doing as far
18 as working with Richland County, he was doing the
19 right thing, but I don't believe that Richland County
20 was protecting him the right way.

21 I knew your son. I knew your grandson in high
22 school. I didn't really agree with all the things
23 that he did, but that doesn't say that he should die.
24 And I am really sorry for what happened to him. I'm
25 really sorry for what you all go through. Because I

1 know what you're going through. I have lost a lot of
2 family and friends throughout my life also.

3 I'm not going to beg for any mercy for my
4 brother because in my eyes he was already found
5 guilty before he even walked in this courtroom.
6 That's all I have to say. Thank you, Your Honor.

7 **THE COURT:** All right. Thank you.

8 **MR. WHITLARK:** Thank you, Your Honor.

9 **THE COURT:** As to Mr. Cannon.

10 **MR. KENDRICK:** Thank you, Your Honor. Your
11 Honor, I've obviously stood in the courtroom a lot of
12 times and I've been in courtrooms with you before.
13 And I don't know that there is a more difficult time
14 in fashioning a sentence than there is today. And
15 this is one of those tragic situations where no
16 matter what happens we're still all left with a loss,
17 and that can't be changed.

18 I think that when we're looking at sentencing,
19 Your Honor, we look at the strict justice that is
20 demanded whenever we're in a situation like this but
21 we also look for mercy. And I think that's been an
22 overriding concern of the sentencing as long as it's
23 been in place.

24 My client at the time this occurred was 17 years
25 old. He had absolutely no criminal record or

1 involvement with the police. You know, he has come
2 into this court and pled not guilty. I've explained
3 to him, you know, at this juncture, Your Honor, that
4 it's not appropriate to address that. We respect
5 what the jury has done here and ask Your Honor for
6 mercy.

7 I think that the murder statute has a built in
8 element of strict justice, Your Honor, that doesn't
9 leave you with discretion on that part. Even a very
10 minimal sentence is extremely high. For a young man
11 of my client's age, if you give him the lowest
12 sentence you can give him, he will be far older than
13 most of us in this courtroom when he gets out.

14 Your Honor, I think that that's the sentence
15 that he deserves today, because there is no doubt
16 this was a bad situation for all involved. It's a
17 situation where we don't necessarily get anything
18 positive out of. But I ask Your Honor to look --
19 that there is a -- we always want some retribution
20 for a situation like this. And I don't doubt that.
21 And I don't -- I understand it.

22 But, Your Honor, the murder statute of South
23 Carolina has a built in element of retribution that
24 he will have to spend the time day for day and it
25 will be a very long time. So I would say that that

1 minimum sentence on the statute is appropriate
2 because it's far, far from a minimal sentence.

3 Your Honor, I believe my client would like to
4 address you as well as his father and also his mother
5 and his stepmother here. Before I go on, Your Honor,
6 I would like to tell you that last September when the
7 Court put me on this case, I have spent a long time
8 with Mr. Cannon. You know, my job brings me into
9 contact with all kinds of people. And he has always
10 been respectful to me. He's always been very
11 involved in what was going on, very intelligent about
12 it.

13 Again, it's a tragic situation, Your Honor, but
14 I am, in represent the hundreds and hundreds of
15 people that I represent in this court and a lot of
16 other courts, Mr. Cannon is not the normal person I
17 see. He does not have that cold blooded element that
18 I think, you know, you would expect. I think he is a
19 good kid who regardless of what happened has fallen
20 into a very bad situation. I'd ask you to take that
21 into account in sentencing.

22 **MR. CANNON:** At this point in time I just want
23 to pay my respects to the victim's family and ask
24 that they understand that I had nothing to do with
25 this and ask that they just pray for me so I can make

1 it through these years.

2 At this time I would like to say I knew Josh. I
3 met him through Sonic. And he was a good kid. He
4 never gave anybody a hard time. Me and Josh got into
5 one conflict due to Melissa Davy. And Ms. Pat can
6 testify that we handled that respectfully as young
7 men and we never looked back with that. That is all
8 I have to say, Your Honor.

9 **MR. MUNNERLYN:** Your Honor, Mario Munnerlyn.
10 I'm the stepfather of Robert Cannon. And first of
11 all, given that God is first in our lives, I want to
12 explain condolences to the family because I've been
13 on both sides of the fence. Just in Georgetown
14 County within the last four years I've had two first
15 cousins brutally murdered, one by her fiance. He
16 shot her in the back of the head as she laid over her
17 daughter. That happened two and a half years ago.
18 And I also had another cousin who was murdered and
19 his body was chopped up and found in potato salad in
20 Andrews, a section of Georgetown County, South
21 Carolina.

22 And also on October the 16th of 2007, my wife
23 and I, we lost triplets during delivery. So my heart
24 goes out to you all because we've lost children also.
25 So, I mean, I can't sit here and point fingers. Just

1 like I said, we all have to give an account to God at
2 the end of the day. I want God to put mercy on your
3 family; I want God to put mercy on our family. And I
4 just pray that we all can forgive each other, we all
5 can learn from this, we all can move on.

6 To Your Honor, I would like to ask that you give
7 leniency on my son. Because I myself, I mean, I
8 graduated from South Carolina State with a degree in
9 political science, prelaw with a minor in criminal
10 justice. So I do understand the law. And I
11 understand if you do the crime you do the time.

12 But I just ask that you find it in your heart,
13 you find it in the family's heart to please forgive
14 him, forgive all of us, because we've all sinned.
15 We've all fallen short.

16 And just like I said again, I want to say I
17 apologize to all of you. Everyone that has done
18 their jobs, you do what you have to do. I can't
19 knock that. I can't judge that. I don't have any
20 pail to put anyone in. So we can't just be judged
21 just because of one incident. And everyone deserves
22 a second chance.

23 The same way I know you wish Josh would come
24 back, I wish for your sake also. I wish my triplets
25 could come back. I had to see them be burnt. I have

1 their ashes on my mantel. Those are the only
2 children I had by birth. Granted, this is my
3 stepson, and I don't believe in the word "step"
4 because I believe if you accept the calf, you accept
5 the cattle.

6 But our heart goes out also because we've been
7 there also. And I just wanted to just say that. And
8 just to God be the Glory and God bless you all.

9 **MS. DAVIS:** My name is Veronica Davis. And I do
10 apologize, Your Honor. Robert is my middle child. I
11 sat back there when Mr. Whitehead and his wife was
12 talking, and I watched Investigator Catoe, and he
13 made faces. When Mr. McDonald spoke, he made faces.
14 But these are our children, too, Your Honor.

15 To the Zoch family, I know how it feels to lose
16 a child. I carried triplets for nine months, and the
17 day they were born they were taken. So I know how it
18 feels to lose a child.

19 Your Honor, I pray and ask that you have mercy
20 on my child. Robert has never been in trouble, don't
21 have a record, don't now how all this even came
22 about. I was even told I don't even need a lawyer.
23 But I would pray that you have mercy on him. When it
24 happened he was 17 and now he is 19 years old. Allow
25 him, oh, Jesus, to be a man and to get a wife and

1 have children and be able to teach them.

2 I wouldn't wish this on my worstest (sic) enemy.
3 And I know there are obviously people who don't like
4 me, but I wouldn't wish this on anybody. As Mr. Zoch
5 said that he have trouble sleeping, I have Lupus and
6 I have aneurysm. And I've been here all week long.
7 And when I leave here, Your Honor, my head hurts so
8 bad, it feels like somebody is hitting me in the head
9 with a hammer. Don't take my child. Again I say to
10 the Zoch family I am deeply sorry. Just have mercy
11 on him. That's all I have to say.

12 **MR. CANNON, SR.:** Good afternoon, Your Honor.

13 **THE COURT:** Good afternoon, sir.

14 **MR. CANNON, SR.:** To the victim's family --

15 **COURT REPORTER:** I'm sorry. I need his name.

16 **MR. CANNON, SR.:** -- the Zochs, my name is
17 Robert Cannon. This is my son.

18 **THE COURT:** This is Robert Cannon.

19 **MR. CANNON, SR.:** And at the time this happened,
20 he was only 17 years old. I heard about it about
21 three days afterwards. And when I faced my son and
22 talked to him, I looked him in the eyes like I always
23 do and talked to him. He said, "Daddy, I did not do
24 this."

25 All I am here to do is say, all I want to do is

1 show my condolences to the Zoch family. I understand
2 their pain. I can't tell them exactly what's going
3 on in their hearts, what's going on in their minds,
4 but I know they are hurting. I know they are, to
5 lose a son.

6 At this moment the only thing I can ask you,
7 Your Honor, is to have mercy on my son. He is a good
8 boy. He doesn't deserve life in jail. Neither of
9 these boys does for a mistake that they could have
10 made or could not make. I don't know this. None of
11 us in this courtroom know this in our hearts, know
12 this to be the truth.

13 Court started on Monday, on Tuesday last week.
14 On that -- on Monday. I'm sorry -- on that Tuesday I
15 was supposed to be at jury in Federal Court. And I
16 actually had to talk to the staff of George Hardwell
17 to let them know I could not be a juror in their
18 courtroom.

19 I've had a lot of pain, a lot of discomfort, and
20 there is no way that I could try to judge somebody
21 else's life considering my situation. All I just
22 want to ask the Court, to be merciful. This boy
23 deserves a break in life. I haven't been there for
24 him all the time, as you can see. But I'm asking
25 you, I'm pleading with you, please give my son a

1 chance.

2 **THE COURT:** Thank you, Mr. Cannon.

3 **MR. KENDRICK:** That is all we have to say, Your
4 Honor. Thank you.

5 (Pause)

6 **THE COURT:** All right. Mr. Whitehead, in light
7 of some of the comments that have been made here
8 today, just to assure myself, I have gone to the
9 statutes of the state of South Carolina with regard
10 to the life without parole statute and I have
11 double-checked it; that is Section 17-25-45 which
12 provides that a person must be sentenced to a term of
13 life without the possibility of parole if that person
14 has one or more prior convictions --

15 (Defendant Whitehead falls to the floor)

16 **MOTHER OF MR. WHITEHEAD:** Get him a doctor. My
17 goodness. If you don't mind.

18 **DEPUTY:** Sit down, ma'am. Sit down, ma'am.
19 Ma'am, please sit down.

20 **MOTHER OF MR. WHITEHEAD:** He has seizures.

21 **THE COURT:** Does he have medication?

22 **MOTHER OF MR. WHITEHEAD:** He hasn't had a
23 seizure in a long time, but he's had them. And as
24 much stress as he's under, please watch him for that.
25 He has seizures. And as much stress as he's under

1 right now --

2 **THE COURT:** Medication?

3 **MOTHER OF MR. WHITEHEAD:** Medication hasn't been
4 needed because he hasn't had one in a long time.

5 **UNKNOWN PERSON:** Get him into an elevated state,
6 about two and a half inches.

7 **MOTHER OF MR. WHITEHEAD:** Excuse me, Your Honor.
8 I've taken care of his seizures before. Is there any
9 way that I can look at him? I don't see a medical
10 person.

11 (Off the record)

12 (Pause)

13 **THE COURT:** Mr. Reuwer, you ready to continue?
14 Mr. Riley? Mr. Reuwer?

15 **MR. RILEY:** I believe so, Your Honor.

16 **THE COURT:** All right. Well, I wanted to
17 explain that the statutes, the laws passed by the
18 Legislature do not allow me any variation from the
19 sentences that are mandated by that statute. The
20 State has provided a certified copy of an attempted
21 armed robbery that the defendant, Whitehead, pled
22 guilty to in 2005. That statute is a qualifying
23 statute for the life without parole statute.

24 And as much as I would feel differently or might
25 feel differently in terms of sentencing Mr.

1 Whitehead, I have no choice. If I violate the law,
2 if the solicitor violates the law, then there are --
3 the system falls apart. My responsibility is to
4 follow the law as it's written by the Legislature.

5 Therefore, on indictment 2007-GS-28-00022,
6 Christopher Whitehead, indictment for murder, the
7 sentence of the Court is you be committed to the
8 State Department of Corrections for the remainder of
9 your life without parole.

10 On indictment number 2007-GS-28-00019, the
11 offense of burglary in the first degree, the sentence
12 of the Court you is be committed to the State
13 Department of Corrections for the remainder of your
14 life without parole. Both sentences are to run
15 concurrent.

16 As to Mr. McDonald and Mr. Cannon, I feel that
17 both of these defendants should be treated in a
18 similar fashion, both of whom have -- both
19 individuals have denied being a part of these most
20 serious crimes, but the jury has found both of them
21 guilty. And despite their protestations, I must look
22 at this as a guilty plea. I am not the fact finder
23 in this case. The jury was.

24 These are unfortunate circumstances. I mean,
25 they're not unfortunate. They're tragic with regard

1 to all four of the families that are involved in this
2 case. I probably would agree with someone who said
3 that drugs are one of the -- it's been true for a
4 long time -- but one of the most serious blights on
5 this society. None of us are safe from the ravages
6 of the drug culture.

7 However, be that as it may, each of you, Mr.
8 Cannon and Mr. McDonald, are responsible for your own
9 acts, and all acts are the result of choices and
10 those choices bring about consequences. But I do
11 feel in this case that just possibly one or both of
12 you may have something worth saving. And I hope you
13 do. And, frankly, I hope everybody in this room
14 does, for the sake of humanity.

15 Therefore, the sentences as to both are as
16 follows: On indictment number 2007-GS-28-00016,
17 Derrick McDonald, charged with burglary in the first
18 degree; and 2007-GS-28-00017, Robert Cannon, the
19 charge of burglary in the first degree, the sentence
20 of the Court is you be committed to the State
21 Department of Corrections for 35 years.

22 As to indictment number 2007-GS-28-00015,
23 Derrick McDonald, indictment for murder; and
24 2007-GS-28-00018, Robert Cannon, indictment for
25 murder, the sentence of the Court as to each is that

1 you be committed to the State Department of
2 Corrections for a period of 35 years. All sentences
3 are to run concurrent. Anything further?

4 **MR. KENDRICK:** No, Your Honor.

5 **MR. MEADORS:** Thank you.

6 **MR. WHITLARK:** No, Your Honor.

7 **THE COURT:** This court stands adjourned.

8 (Whereupon, the proceedings are concluded)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Kershaw County, South Carolina, on the 6th, 7th, 8th, 9th, 13th days of May, 2008.

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

October 20, 2008

Jenny H. Williams

Jenny H. Williams, Court Reporter

WITNESSES

Bailey, KCSD

ARREST WARRANT NUMBER

K141873

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury
Date: FEB 07 2007

VERDICT

Guilty
[Signature]

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-28-0015

The State of South Carolina

County of Kershaw

COURT OF GENERAL SESSIONS

February TERM 2007

THE STATE
vs.

Derrick McDonald

Indictment for

MURDER

SC Code: 16-3-10
CDR Code: 0116
Class FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CLERK OF COURT
KERSHAW COUNTY
FEB 7 2007
11:34 AM

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

[Signature]
Clerk of Court Kershaw County
1553

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

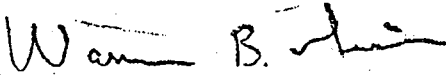
INDICTMENT

At a Court of General Sessions, convened on February 7, 2007, the Grand Jurors of Kershaw County present upon their oath:

MURDER

That Derrick McDonald did in Kershaw County on or about December 12, 2006, feloniously, willfully and with malice aforethought, kill one Joshua Zoch by means of repeatedly hitting and kicking the victim and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

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



Warren B. Giese, SOLICITOR

WITNESSES

Catoe, KCSD

ARREST WARRANT NUMBER

K142527

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: FEB 07 2007

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-28-0016

The State of South Carolina

County of Kershaw

COURT OF GENERAL SESSIONS

February TERM 2007

THE STATE

vs.

Derrick McDonald

Indictment for

BURGLARY/(AFTER 6/20/85)
1ST DEGREE

SC Code: 16-11-311

CDR Code: 079

Class FEL-EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Joyce McDonald
Clerk of Court Kershaw County

CLERK OF COURT
KERSHAW COUNTY
SOUTH CAROLINA
FEB 07 2007

07 FEB -7 PM 3:41
00000

1555

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

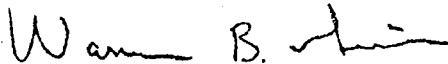
INDICTMENT

At a Court of General Sessions, convened on February 7, 2007, the Grand Jurors of Kershaw County present upon their oath:

BURGLARY/(AFTER 6/20/85) - 1ST DEG

That Derrick McDonald did in Kershaw County on or about December 12, 2006, willfully and unlawfully enter the dwelling of Joshua Zoch, without consent and with the intent to commit a crime therein and the defendant entered during the hours of darkness, in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended).

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


Warren B. Giese, SOLICITOR

WITNESSES

Catoe, KCSD

ARREST WARRANT NUMBER

K142531

ACTION OF GRAND JURY

THE BILL

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-28-0022

The State of South Carolina

County of Kershaw

COURT OF GENERAL SESSIONS

February TERM 2008

THE STATE
vs.

Christopher Ryan Whitehead

Amended Indictment for

MURDER

SC Code: 16-3-10
CDR Code: 0116
Class FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Clerk of Court Kershaw County

RECEIVED
CLERK OF COURT
KERSHAW COUNTY S.C.
FEB 20 PM 2:39
RECORD

1557

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

AMENDED INDICTMENT

At a Court of General Sessions, convened on February 20, 2008, the Grand Jurors of Kershaw County present upon their oath:

MURDER

That Christopher Ryan Whitehead did in Kershaw County on or about December 12, 2006, feloniously, willfully and with malice aforethought, kill one Joshua Zock by means of repeatedly hitting and kicking the victim and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

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



Warren B. Giese, SOLICITOR

WITNESSES

Catoe, KCSD

ARREST WARRANT NUMBER

K142529

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: FEB 07 2007

VERDICT

Guilty
Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-28-0019

The State of South Carolina
County of Kershaw

COURT OF GENERAL SESSIONS

February TERM 2007

THE STATE
vs.

Christopher R. Whitehead

Indictment for
BURGLARY/(AFTER 6/20/85)
1ST DEGREE

SC Code: 16-11-311
CDR Code: 079
Class FEL-EXM(V)

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Debra McDaniel
Clerk of Court Kershaw County

CLERK OF COURT
KERSHAW COUNTY

FEB 7 2007 1-3-17

1559

1560

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

INDICTMENT

At a Court of General Sessions, convened on February 7, 2007, the Grand Jurors of Kershaw County present upon their oath:

BURGLARY/(AFTER 6/20/85) - 1ST DEG

That Christopher R. Whitehead did in Kershaw County on or about December 12, 2006, willfully and unlawfully enter the dwelling of Joshua Zoch, without consent and with the intent to commit a crime therein and the defendant entered during the hours of darkness, in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended).

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


Warren B. Giese, SOLICITOR

1561

Name ROBERT CANNALSocial Security Number 249-77-0433Address 200 TROWBRIDGECurrent Date 12/15/06Current Time 9:20 PMCity, State, Zip Code Columbia, S.C., 29229Date of Birth 01/22/89Home Phone (803) 7884112Work Phone (803) 556-1597

On Tuesday the 12th December 2006 AT 2:00pm Chris Whitehead got OFF OF WORK AND picks me up. We go to the mall & I got a New Cell Phone & shoes. We then went to pick up (DJ) DERRICK McDonald and then we went to McDonalds in Blythwood and eat and from there we went to Sonic. I had on a ski mask and was joking around while Chris talked to a girl in the back and DJ was talking to Leroy. I don't know Leroy's last name. We then left Sonic and went to the two notch Walmart and Chris and DJ got a ski mask. So we went riding and Chris said you know we need to do something with these mask, and I ask and DJ ask like what. and Chris said like beat ~~Chris~~ ^{JOSHLY} ass. because he's a Snitch, and I told Chris I didn't think he was a snitch. He (Chris) then ask if me and DJ wanted to ride, and we said whatever.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 5 pages and a true copy has been given to me this date.

[Signature]
Signature of Individual Giving Statement

[Signature]
Witness

[Signature]
Witness

1562

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

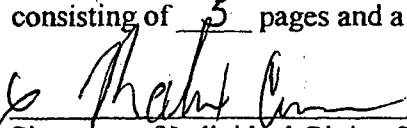
Date of Birth

Home Phone

Work Phone

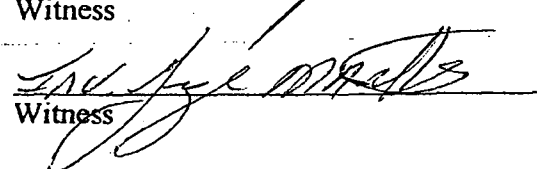
Because I had nothing else to do and no certain time to be home, THAT was about 11pm DS was Real Quiet in the car while we were going to Josh's house. We pulled up to Josh's about 11:30pm, Chris knocked on the front door and Josh didn't answer. So Chris said that he was going to pull one of my moves and kick the door. So Chris went to the side door and he (Chris) busted it in. He went in first and me + DS followed him to watch the fight. Josh was asleep on the couch and Chris yelled hey Bitch, and when Josh looked up, Chris HIT him with a glass lamp. Right AFTER THAT Josh was in a claze and Chris drags him off the couch part of the way. THEN Chris started pressuring DS to hit Josh with the bat that was in the house and DS then hit Josh in the back of

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 5 pages and a true copy has been given to me this date.


Signature of Individual Giving Statement


Witness

Page 2 of 5 Pages


Witness

1563

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

HEAD. AFTER THAT JOSH was basically crawling trying to get up. and the whole time Chris was talking SHIT to him about being a Snitch. AT that time Chris kicked Josh in the Ribs, And ask Josh where the weed was and Josh was just grunting. That when Chris Ask me to check the room and we STARTED pulling draws and Chris Slipped the mattress and DJ was just standing there. Then Josh went unconscious and I got Josh a towel and put it to his head. Chris said fuck we don't have anything and pushed the Christmas tree over on Josh. Chris then got mad again and took the house phone. But before Chris left he got some frozen chicken from the freezer and put IT on Josh's head to try and stop the Bleating. AFTER that we went BACK out the same way we came IN.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 5 pages and a true copy has been given to me this date.

[Signature]
Signature of Individual Giving Statement

[Signature]
Witness

Page 3 of 5 Pages

[Signature]
Witness

1564

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

we left and Chris dropped DJ OFF 1ST and me second and I guess he went home.

(Q) Did you Chris & DJ have on gloves? (A) Yes.

Q WHAT kind of gloves?

(A) Purple Latex, and I had on 2 PAIR. WHT and Purple ones on top.

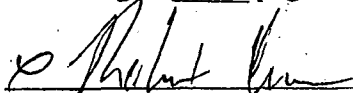
(Q) WHO'S car was you and Chris and DJ IN that night?

(A) Chris's Blue Honda Accord.

(Q) WHERE was the BAT from that was used to Hit Josh?

(A) IT was IN Josh's house, I just looked over their and DJ picked it up.

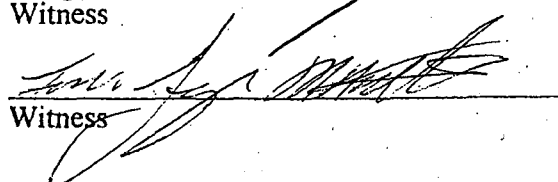
I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 5 pages and a true copy has been given to me this date.



Signature of Individual Giving Statement



Witness



Witness

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

(Q) WHAT WERE YOU, CHRIS & DJ WEARING THAT NIGHT?

(A) BLACK PANTS and SHIRTS and ski mask.

(Q) WHAT COLOR WAS THE SKI MASK?

(A) mine was black and theirs was black or dark blue.

(Q) Did yall change cloths that night AFTER the Incident?

(A) yes, and Chris done something with them.

I ASK INU DANNY CATOE TO WRITE this for me and this is in my own words AS THEY ARE WRITTEN.

X Michael C.

12-15-06 - 9:51 pm

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 5 pages and a true copy has been given to me this date.

D. Michael C.

Signature of Individual Giving Statement

Shirley Dany Catoe

Witness

Mr. J. J. M. M.

Witness

1566

Derrick McDonald
Name

249-85-6861
Social Security Number

283 Boney Rd
Address

12-16-06
Current Date

12:24am
Current Time

Blythe Wood SC 29016
City, State, Zip Code

08-08-88
Date of Birth

786-8821

Home Phone

Work Phone

About 5:30 or 6:00pm Tuesday the 12th - 2006
of December Chris Whitehead AND Robert
Came to my house. And ASK IF I WANTED TO
MAKE some money. AFTER A WHILE I DECIDED TO
go with them. We left AND WENT TO SONIC
AND I check on trying to get my JOB BACK.
AFTER we left the Sonic we went to WALMART
on two notch and bought a ski mask and some
a BOX OF purple latex gloves. WE WERE STILL
IN THE parking lot when Chris call Zack, and
ask him to see if someone was AT home.
Zack told him that he would call back in 10 min
but Chris call him back and told him the
situation was being handled.

THE THATS WHEN ~~we~~^{THEY} STARTED planning on how
we WERE going to get into the house but you
still didn't know whos house it was going to
be.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or
hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement
consisting of 04 pages and a true copy has been given to me this date

Derrick McDonald
Signature of Individual Giving Statement

Witness

1567

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

I didn't know who's house it was, until we were already there. Chris had told me that I was ~~not~~ ^{to} stay put outside to make sure no one came up. So Chris parked beside the road in front of the house and we went to the side door. THE door was sturdy and we all the kicked the door on the count of (3). Chris + Robert went in and myself and I shut the door behind me and I went to another window to watch out. THATS when my name was and I went into the living Room, dinning Room AREA. CHRIS then cut on the lights and picked up a glass bowl with Flower Pedals in it picked it up over his head a hit Josh in the head with it while Josh was asleep on the couch. THEN Chris dragged Josh out the couch. ~~and~~ But I first grabed a bat that was against the wall and I started hitting Josh in the Body.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 24 pages and a true copy has been given to me this date.

Derrick McSorals
Signature of Individual Giving Statement

Mr. Danny Cole
Witness

Page 2 of 24 Pages

Witness

1568

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

THEN Chris tried to stop me to ask Josh a Question about where the money + Dope was, And I Could stop the bat and I hit Josh in the back of THE HEAD. I also think I hit him one time in the temple AREA OF his head. Josh then STARTED Bleeding more and I got Scared. THATS when Robert + Chris started Kicking and stomping Josh. Chris then told me to go get the CAR and pull it up. THE last thing I SAW was Chris pushing the tree over on. Josh + Chris + Robert came out with Plastic bags OF STUFF and told me to pop the Trunk I did and got in the BACK Seat. Then Chris dropped me OFF AT my house a gave some DVDs and STUFF THAT I didn't want. So I burned them and my cloths in a burn Barrel AT my house. All OF my cloths + shoes and everything burned Completely up.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this date.

Derrick McDonald
Signature of Individual Giving Statement

Lawrence C. Cole
Witness

Page 3 of 9 Pages

Witness

1569

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

I Ask INV Danny Caroe to WRITE my
STATEMENT for me and this is WRITTEN
In my own words.

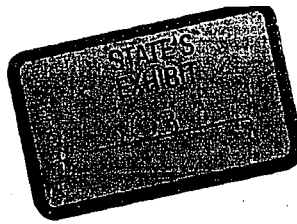
Derrick McDonald
12-16-06 -

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this date.

Derrick McDonald
Signature of Individual Giving Statement

INV Danny Caroe
Witness

1570



Name ROBERT CAAMIAN

249-77-0433
Social Security Number

200 T Bow Bridges
Address

12/15/01
Current Date

9:20 PM
Current Time

Columbia, S.C. 29229
City, State, Zip Code

01/22/89
Date of Birth

(803) 788 4112 (803) 556-1597
Home Phone Work Phone

On Tuesday the 12th December 2006 AT 2:00pm Another PERSON GOT OFF OF WORK AND picks me up. We go to the mall & I got a new Cell Phone & shoes. We then went to pick up Another PERSON and then we went to McDonalds in Blythwood and eat and From THERE WE WENT TO SONIC. I had on a ski mask and was taking around while Another PERSON talked to a girl IN the BACK AND Another PERSON was talking to Leroy. I don't know Leroy's LAST name. We then left sonic and went to the Two notch walmart AND Another PERSON got A ski mask. So we went riding and Another PERSON said you know we need to do something with These mask, And I ask and Another PERSON ask like what. and Another PERSON said like beat JOSHLY'S ass. because he's a Snitch, and I told Another PERSON I didn't think he was a snitch Another PERSON then ask if me and Another PERSON WANTED TO RIDE and we said WHATEVER.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 5 pages and a true copy has been given to me this date.

[Signature]
Signature of Individual Giving Statement

[Signature]
Witness

[Signature]
Witness

1571

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

Because I had nothing else to do and no certain time to be home, THAT was about 11pm another person was Real Quiet in the car while we were going to Josh's house. We pulled up to Josh's about 11:30pm another person knocked on the front door and Josh didn't answer. So another person said that he was going to pull one of my knives and kick the door. So another person went to the side door and another person busted it in. He went in first and me + another person followed him to watch the fight. Josh was asleep on the couch and another person yelled hey Bitch, and when Josh looked up, another person HIT him with a glass lamp. Right AFTER THAT Josh was in a daze and another person dragged him off the couch part of the way THEN another person started pressuring another person to hit Josh with the bat that was in the house and another person then hit Josh in the back of

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 5 pages and a true copy has been given to me this date.

S. Thant Am
Signature of Individual Giving Statement

Law Dany C. Lee
Witness

Page 2 of 5 Pages

Indy J. M. [Signature]
Witness

1572

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

HEAD. AFTER THAT JOSH WAS BASICLY CRAWLING
Trying to get up. and the whole time Another Person
was talking SHIT to him about being a Snitch.
AT that time Another Person Kicked Josh in the Ribs,
And ask Josh where the weed was and Josh
was just grunting. That when Another Person Ask me
to check the room and we STARTED pulling
draws and Another Person Slipped the mattress and
Another Person was just standing their. Then Josh went
unconscious and I got Josh a towel and put
it to his head. Another Person said fuck we don't have
anything and pushed the Christmas tree over
on Josh. Another Person then got mad again and took
the house phone. But before Another Person left he got
some frozen chicken from the freezer and PUT
IT ON JOSH'S HEAD to try and stop the Bleeding.
AFTER that we went BACK OUT the SAME way
WE CAME IN.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or
hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement
consisting of 5 pages and a true copy has been given to me this date.

[Signature]
Signature of Individual Giving Statement

[Signature]
Witness

[Signature]
Witness

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

we left and another person dropped ^{another} person off 1st and me second and I guess he went home.

Q) Did you ^{another} person & ^{another} person have on gloves? (A) Yes.

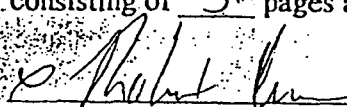
Q) WHAT KIND OF gloves?

A) Purple latex and I had on a pair white and purple ones on top.

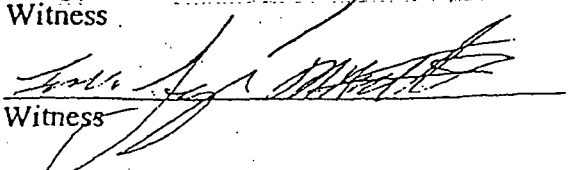
Q) WHERE was the BAT from that was used to hit Josh?

A) IT WAS IN JOSH'S house. I just looked over their and ^{another} person picked it up.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 5 pages and a true copy has been given to me this date.


Signature of Individual Giving Statement


Witness


Witness

1574

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

Q WHAT WERE YOU ^{the Person} ~~the Person~~ ^{the Person} WEARING THAT NIGHT?

A Black PANTS and shirts and ski mask.

Q WHAT color was the ski mask?

A mine was black and theirs was black or dark blue.

Q DID you Change cloths that night AFTER the Incident?

A yes and ^{another} person done something with them.

I ASK INV DANNY CATOE TO WRITE THIS FOR ME AND THIS IS IN MY OWN WORDS AS THEY ARE WRITTEN.

X *[Signature]*

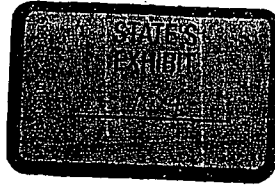
12-15-06 9:51pm

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 5 pages and a true copy has been given to me this date.

[Signature]
Signature of Individual Giving Statement

[Signature]
Witness

[Signature]
Witness



1575

Derrick McDonald

Name

249-85-6861

Social Security Number

283 Boring Rd

Address

12-16-06

Current Date

12:24am

Current Time

Blythewood SC 29016

City, State, Zip Code

08-08-88

Date of Birth

786-8821

Home Phone

Work Phone

About 5:30 or 6:00pm Tuesday the 12th - 2004
of December Another Person AND Another Person
Came to my house. And ASK IF I WANTED TO
MAKE some money AFTER A WHILE I DECIDED TO
GO WITH THEM. WE LEFT AND WENT TO SONIC
AND I CHECK ON TRYING TO GET MY JOB BACK.
AFTER WE LEFT THE SONIC WE WENT TO WALMART
ON TWO NOTCH AND BOUGHT A SKI MASK AND SOME
A BOX OF PURPLE LATEX GLOVES WE WERE STILL
IN THE PARKING LOT WHEN ANOTHER PERSON CALL ZACK, AND
ASK HIM TO SEE IF SOMEONE WAS AT HOME.
ZACK TOLD HIM THAT HE WOULD CALL BACK IN 10 MIN
BUT ANOTHER PERSON CALL HIM BACK AND TOLD HIM THE
SITUATION WAS BEING HANDLED.

THE THING WHEN ~~THEY~~ STARTED PLANNING ON HOW
WE WERE GOING TO GET INTO THE HOUSE BUT YOU
STILL DIDN'T KNOW WHO'S HOUSE IT WAS GOING TO
BE.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or
hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement
consisting of 4 pages and a true copy has been given to me this date.

Derrick McDonald

Signature of Individual Giving Statement

Witness

Witness

1576

Name _____

Social Security Number _____

Address _____

Current Date _____

Current Time _____

City, State, Zip Code _____

Date of Birth _____

Home Phone _____

Work Phone _____

I didn't know who's house it was until we were already there. Another Person had told me that I was ~~NOT~~ stay put outside to make sure no one came up. So Another Person parked beside the Road in front of THE house and we went to the side door. THE door was sturdy and we all the kicked the door on the count of (3). Another Person + Another Person went in and myself and I shut the door behind me and I went to another window to watch out. THATS when my name was and I went into the living Room, dining Room AREA. Another Person then cut on the lights and picked up a glass bowl with Flower Pedals in it picked it up over his head a hit Josh in the head with it while Josh was asleep on the Couch. THEN Another Person dragged Josh out the Couch. ~~and~~ BUT I FIRST grabed a bat that was against the wall and I started hitting Josh in the Body.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 24 pages and a true copy has been given to me this date.

Derrick McSwain
Signature of Individual Giving Statement

Mr. Danny Lee
Witness

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

THEN Another PERSON tried to stop me to ask Josh a Question about where the money + Dope was, And I could stop the bat and I hit Josh in the back of THE HEAD. I also think I hit him one time in the temple area of his head. Josh then started bleeding more and I got scared. THATS when Another PERSON + Another PERSON started kicking and stomping Josh. Another PERSON then told me to go get the car and pull it up. THE last thing I saw was Another PERSON pushing the tree over on Josh. Then Another PERSON + Another PERSON came out with plastic bags of stuff and told me to pop the trunk I did and got in the BACK seat. Then Another PERSON dropped me off at my house and gave some ADS and stuff that I didn't want, so I burned them and my cloths in a burn Barrel at my house. All of my cloths + shoes and everything burned completely up.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this date.

Derrick McDonald

Signature of Individual Giving Statement

Lawrence P. C. C.

Witness

1578

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

I Ask INV Danny Carter to write my
STATEMENT for me and this is written
in my own words.

Derrick McDonald

12-16-06 -

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this date.

Derrick McDonald

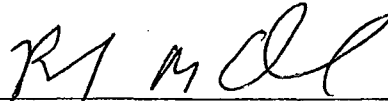
Signature of Individual Giving Statement

INV Danny Carter

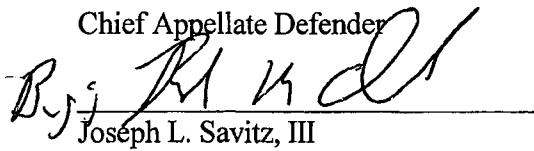
Witness

CERTIFICATE OF COUNSEL FOR APPELLANTS

Counsel for appellants certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



Robert M. Dudek
Chief Appellate Defender



Joseph L. Savitz, III
Senior Appellate Defender

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

ATTORNEYS FOR APPELLANTS

May 28, 2010

RECEIVED

JAN 30 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Kershaw County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER RYAN WHITEHEAD,

APPELLANT

APPELLATE CASE NO. 2008-103966

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CERTIFICATE OF COUNSEL	10

TABLE OF AUTHORITIES

Cases

<i>State v. Hernandez</i> , 382 S.C. 620, 677 S.E.2d 603 (2009).....	8
<i>Bruton v. United States</i> , 391 U.S. 123 (1968).....	5
<i>Gray v. Maryland</i> , 523 U.S. 185, 197 (1998).....	6, 7
<i>Richardson v. Marsh</i> , 481 U.S. 200 (1987).....	6
<i>State v. Holder</i> , 382 S.C. 278, 676 S.E.2d 690 (2009).....	7
<i>State v. LaBarge</i> , 275 S.C. 168, 268 S.E.2d 278 (1980).....	5
<i>State v. McCombs</i> , 368 S.C. 489, 629 S.E.2d 361 (2006).....	8
<i>State v. Mitchell</i> , 341 S.C. 406, 535 S.E.2d 126 (2000).....	8

STATEMENT OF ISSUES ON APPEAL

- I. The trial judge committed reversible error by allowing into evidence the statements of appellant's two non-testifying codefendants without adequately redacting their claims of appellant's involvement, as this denied his Sixth Amendment right to confront and cross-examine witnesses, as interpreted by *Bruton v. United States*, 391 U.S. 123 (1968), and its progeny.
- II. The trial judge erred by refusing to direct a verdict acquitting appellant of murder and burglary, since the State's evidence against him established nothing more than a mere suspicion of guilt.

STATEMENT OF THE CASE

On May 5 through 13, 2008, Christopher Whitehead and two co-defendants, Robert Cannon and Derrick McDonald, stood trial in Kershaw County before Judge James R. Barber III and a jury, on indictments charging them with murder and first-degree burglary. Each of the three young men and the victim, Joshua Zoch, had worked at the same Sonic restaurant at one point. At the time of his death, Zoch was also a police informant who had committed at least one first-degree burglary of his own. R. p. 619 line 19- R. p. 620 line 15; R. p. 801 lines 20-25; R. p. 1284 line 9- R. p. 1285 line 2.

Cannon and McDonald told the police that they and Whitehead had beaten Zoch to death while punishing him for being a snitch. (The introduction of these statements, even as redacted to refer to Whitehead as “another person,” is the basis of the first issue of this appeal.) Whitehead, on the other hand, told the police that he did not know “a damn thing” about Zoch’s murder. R. p. 717 line 18- R. p. 718 line 5.

A jailhouse snitch testified that he had overheard a conversation in which the participants, one of whom he later identified by his voice as Whitehead, discussed the incident and “just bragging about how they were killers now.” R. p. 1221 line 10- R. p. 1222 line 20; R. p. 1226 line 20- R. p. 1227 line 9. (The insufficiency of the State’s evidence gives rise to the second issue in this appeal.)

None of the three co-defendants testified. The jury found them guilty as charged, and the judge sentenced Whitehead to concurrent sentences to life without parole pursuant to S.C. Code section 17-25-45 and a 2005 conviction by guilty plea to attempted armed robbery. Cannon and McDonald each received concurrent sentences of thirty-five years.

ARGUMENT

I.

The trial judge committed reversible error by allowing into evidence the statements of appellant's two non-testifying codefendants without adequately redacting their claims of appellant's involvement, as this denied his Sixth Amendment right to confront and cross-examine witnesses, as interpreted by *Bruton v. United States*, 391 U.S. 123 (1968), and its progeny.

Co-defendants Cannon and McDonald gave the police statements implicating themselves and Whitehead in Zoch's killing. Neither testified at trial. The State argued that replacing Whitehead's name with "another person" in the statements would resolve any confrontation problem. R. p. 629 line 16- R. p. 630 lines 20. The defense responded that this limited redaction would not satisfy *Bruton v. United States*, 391 U.S. 123 (1968), and *State v. LaBarge*, 275 S.C. 168, 268 S.E.2d 278 (1980), "because the statement clearly implicates someone else and it's obviously prejudicial to the people who are sitting right here." R. p. 631 lines 4-17. "[T]here's an easier way to do it," counsel continued, "which is simply to not put a reference to what someone else did." R. p. 637 lines 20 -22. Ultimately, the judge ruled in favor of the State. R. p. 643 lines 12-17.

Counsel unsuccessfully renewed the objection when the State introduced Cannon and McDonald's statements into evidence. R. p. 734 lines 16-21. Cannon's statement, even as redacted, alleges that "someone else pressured another person to hit Josh with the bat, and the other person hit Josh with the bat." R. p. 738 line 22- R. p. 740 line 23; R. p. 748 line 24- R. p. 752 line 15. McDonald's statement reveals that he was the person who beat Zoch with a baseball bat. R. p. 768 lines 16-21; R. p. 775 lines 2-8. His statement also asserts that

“[a]nother person ... picked up a glass bowl with flower petals in it ... and hit Josh in the head with it while Josh was asleep on the couch.” R. p. 774 lines 22-25. After he beat Zoch with the bat, McDonald continued, “[t]hat’s when another person and another person started kicking and stomping Josh.” R. p. 775 lines 9-11.

The Confrontation Clause of the Sixth Amendment, applicable to the states under the Fourteenth Amendment, guarantees the right of a criminal defendant to confront and cross examine witnesses against him. *Richardson v. Marsh*, 481 U.S. 200 (1987). In *Bruton*, 391 U.S. at 136-37, the United States Supreme Court held that, in a joint trial, the admission of a non-testifying co-defendant’s statement that expressly incriminates the defendant violates his right under the Confrontation Clause. In *Richardson*, 481 U.S. at 207-8, the Court held that the rule announced in *Bruton* does not apply where the statement becomes incriminating only when linked to other evidence introduced at trial, such as the defendant’s own testimony. It also noted that “*Bruton* can be complied with by redaction.” *Id.*

In *Gray v. Maryland*, 523 U.S. 185, 197 (1998), the Court held that a statement which “substituted blanks and the word ‘delete’ for the petitioner’s proper name falls within the class of statements to which *Bruton*’s protections apply.”

The [*Bruton*] majority reasoned that one must look at the *kind* of inferences that are necessary to make a connection to the defendant, not the simple *fact* that there are inferences to determine the applicability of *Bruton*. *Richardson* involves statements that did not directly refer to the defendant, but which became incriminating only when linked to other evidence developed at trial. However, the *Gray* Court stated “[t]he inferences at issue here [in *Gray*] involve statements that, despite redaction, obviously refer directly to someone, often obviously the defendant, which involve inferences that a jury could ordinarily make immediately, even [if the statement was] the very first item introduced at trial.” Thus, the statements are protected under *Bruton* because in such

instances the defendant is implicated almost as if there was a direct reference, and the connection does not depend on other evidence introduced at trial. [Citations omitted.]

State v. Holder, 382 S.C. 278, 676 S.E.2d 690, 694 (2009); see, also, *State v. LaBarge* (defendant identified as “Mr. X” in co-defendant’s statement).

No rational juror who heard Cannon and McDonald’s statements to the police could have deduced anything other than that Whitehead was the third “person” who had attacked Zoch. Though *Bruton* holds that the use of a limiting instruction will not cure the error, the instruction given in this case was particularly tepid:

Now, some of the evidence in this case may have been admitted solely because of its relationship to the case against one of the defendants. This evidence can not be considered in the case of any of the other defendants.

R. p. 1449 lines 8-12. Though violations of the Confrontation Clause are subject to a harmless error analysis, *State v. Holder*, the error could not possibly have been harmless, given the paucity of evidence against Whitehead.

For this reason, the Court should reverse Whitehead’s convictions and remand for a new trial.

II.

The trial judge erred by refusing to direct a verdict acquitting appellant of murder and burglary, since the State's evidence against him established nothing more than a mere suspicion of guilt.

Under *Bruton* and its progeny, it goes without saying that the statements of Cannon and McDonald do not constitute evidence against Whitehead for the purpose of satisfying the State's burden of proof. This leaves only the testimony of the jailhouse snitch, who claimed that he had overheard a conversation in which the participants, one of whom he later identified by his voice as Whitehead, discussed Zoch's killing and "just bragging about how they were killers now." R. p. 1221 line 10- R. p. 1222 line 20; R. p. 1226 line 20- R. p. 1227 line 9. But this witness never testified that Whitehead had admitted any degree of involvement in the incident.

At the conclusion of the State's case, defense counsel moved for a directed verdict on the ground that the State's evidence did not rise above a mere suspicion that Whitehead was guilty. R. p. 1302 line 22- R. p. 1309 line 3. The judge denied the motion. R. p. 1314 line 12- R. p. 1315 line 9.

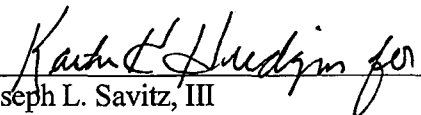
A defendant is entitled to a directed verdict when the State fails to produce any evidence of the offense charged. *State v. McCombs*, 368 S.C. 489, 629 S.E.2d 361 (2006). The defendant is entitled to a directed verdict when the evidence merely raises a suspicion he is guilty. *State v. Hernandez*, 382 S.C. 620, 677 S.E.2d 603 (2009); *State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000).

Although the snitch testified that he overheard Whitehead discussing the charges with other, unidentified inmates, he did not testify that Whitehead admitted his guilt. The

balance of the State's evidence — the fact that Whitehead was observed limping the day after Zoch's killing for example — did not satisfy the State's burden of putting forth some evidence that Whitehead is guilty of murder and burglary.

For this reason, the Court should direct a verdict acquitting Whitehead of those charges.

Respectfully submitted,



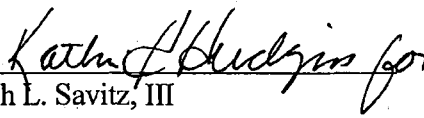
Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of June, 2010

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



Joseph L. Savitz, III
Senior Appellate Defender

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Kershaw County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

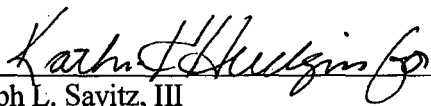
V.

CHRISTOPHER RYAN WHITEHEAD,

APPELLANT

CERTIFICATE OF SERVICE

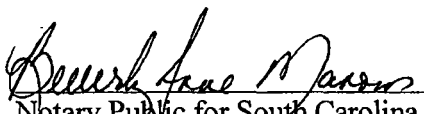
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Melody J. Brown at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 17th day of June, 2010.



Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of June, 2010



Beverly Lee Mason (L.S.)
Notary Public for South Carolina

My Commission Expires: November 9, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM KERSHAW COUNTY
Court of General Sessions
G. Thomas Cooper, Circuit Court Judge

RECEIVED

JAN 30 2013

The State,

S.C. Supreme Court

Respondent,

vs.

Christopher Ryan Whitehead,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

W. BARNEY GIESE
Solicitor, Fifth Judicial Circuit
P. O. Box 192
Columbia, SC 29202-0192
(803) 576-1800

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
APPELLANT'S STATEMENT OF ISSUE ON APPEAL	1
RESPONDENT'S STATEMENT OF THE CASE	2
RESPONDENT'S STATEMENT OF FACTS	3
ARGUMENT	11

I.

The trial judge properly admitted, in the joint trial, the statements of co-defendants Cannon and McDonald when the statements were properly redacted as to appellant's name and did not otherwise facially incriminate appellant. 11

II.

The trial judge properly denied appellant's motion for a directed verdict, when, in viewing the evidence in the light most favorable to the State, there was evidence of 1) expressed malice only hours before the murder; 2) a compressed time frame of opportunity for the murder; 3) appellant was seen in the company of co-defendants Cannon and McDonald, who confessed to their participation in the burglary and beating, a mere hour or so before the murder; 4) appellant wore scars and injuries after the vicious beating and kicking in of the door to the home the day after the murder which he did not have when last seen at Sonic approximately an hour before the murder; 5), appellant walked off his job just three days after the murder and expressed an intent to flee the county; and, finally, 6) appellant was overheard talking about the murder, and expressing pride in being "killers." 17

CONCLUSION	22
------------------	----

TABLE OF AUTHORITIES

Federal Cases:

<i>Bruton v. United States</i> , 391 U.S. 123, 88 S.Ct. 1620 (1968)	1, 7, 11, 12, 13, 14, 19
<i>Gray v. Maryland</i> , 523 U.S. 185, 118 S.Ct. 1151 (1988)	11, 13, 14
<i>Richardson v. Marsh</i> , 481 U.S. 200, 107 S.Ct. 1702 (1987)	13
<i>United States v. Akinkoye</i> , 185 F.3d 192, 198 (4 th Cir. 1999)	14

State Cases:

<i>State v. Avery</i> , 374 S.C. 524, 534, 649 S.E.2d 102, 107 (Ct.App. 2007)	13
<i>State v. Buckmon</i> , 347 S.C. 316, 321, 555 S.E.2d 402, 404 (2001)	18
<i>State v. Frazier</i> , 375 S.C. 575, 581, 654 S.E.2d 280, 283 (2007)	18, 19
<i>State v. Freiburger</i> , 366 S.C. 125, 136, 620 S.E.2d 737, 743 (2005)	18
<i>State v. Holder</i> , 382 S.C. 278, 283, 676 S.E.2d 690, 693 (2009)	13, 15, 19
<i>State v. Holmes</i> , 342 S.C. 113, 119, 536 S.E.2d 671, 674 (2000)	13
<i>State v. LaBarge</i> , 275 S.C. 168, 268 S.E.2d 278 (1980)	11, 14
<i>State v. Martin</i> , 292 S.C. 437, 439, 357 S.E.2d 21, 22 (1987)	13
<i>State v. Page</i> , 378 S.C. 476, 481, 663 S.E.2d 357, 359 (Ct.App. 2008), <i>rehearing denied</i> June 29, 2009	13
<i>State v. Singleton</i> , 303 S.C. 313, 315, 400 S.E.2d 487, 488 (1991)	14
<i>State v. Stanley</i> , 365 S.C. 24, 42, 615 S.E.2d 455, 464 (Ct. App. 2005)	19
<i>State v. Weston</i> , 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006)	18
<i>State v. Zeigler</i> , 364 S.C. 94, 102, 610 S.E.2d 859, 863 (Ct. App. 2005), <i>cert. denied</i> (Jan. 31, 2007)	18

APPELLANT'S STATE OF ISSUES ON APPEAL

I.

The trial judge committed reversible error by allowing into evidence the statements of appellant's two non-testifying codefendants without adequately redacting their claims of appellant's involvement, as this denied his Sixth Amendment right to confront and cross-examine witnesses, as interpreted by *Bruton v. United States*, 391 U.S. 124 (1968), and its progeny.

II.

The trial judge erred by refusing to direct a verdict acquitting appellant of murder and burglary, since the State's evidence against him established nothing more than a mere suspicion of guilt.

(FBOA, p. 3).

RESPONDENT'S STATEMENT OF THE CASE

A Kershaw County Grand Jury indicted appellant, Christopher Ryan Whitehead, for burglary first degree, and murder. (R. p. 1557-60). Neil Riley, Esq., and David Reuwer, Esq., represented appellant on the charges. A jury trial was held May 5-9, 2006, before the Honorable G. Thomas Cooper, Jr. Appellant was tried along with co-defendants Robert Cannon and Derrick McDonald. After a break in the proceedings, the jury continued deliberations on May 13, 2009, and returned a verdict of guilty as charged. (R. pp. 1501-1502). The judge sentenced appellant to life without the possibility of parole pursuant to the recidivist statute. (R. p. 1548, line 16 - p. 1549, line 15). This appeal follows.

RESPONDENT'S STATEMENT OF FACTS

On Tuesday, December 12, 2006, the victim, Joshua Zoch, was brutally murdered in his home. The evidence at trial established that the burglary and murder occurred at approximately 11:30 that night.

Zachary Waltemath, who, along with appellant, was then an employee at the local Sonic, testified that at approximately 7:00 or 8:00 that night, appellant called him and asked him to call the victim "and see what he's doing because he wanted to go over there and fight him or something." Waltemath decline. Appellant called back shortly after and asked if Waltemath had tried to call him. He responded he had not, and appellant indicated he wanted Waltemath to call him. Waltemath worked with appellant, and had "hung out" with him on several occasions. He was sure that it was appellant who called him that night. (R. p. 378, line 12 - p. 380, line 21; p. 384, line 11 - p. 387, line 10).

At approximately 10:00 p.m. that evening, Allen Brown, a manager at the local Sonic, testified that all three co-defendants, appellant, Derrick McDonald, and Robert Cannon, were together that evening. Appellant, who then worked at the Sonic, along with McDonald, and Cannon, both of whom had formerly worked at the Sonic, were in the kitchen area. Cannon was wearing a ski mask, and was told to take it off. Appellant, though an employee, was not working at that time. Brown told appellant that he should not be in the employee area when he was not actually working. Brown instructed all three to leave. Brown testified that he knew that appellant and Cannon "hung out together." (R. p. 319, line 12 - p. 324, line 14). Christopher Rust, also an employee at Sonic who was working that same evening, confirmed that all three left at the same time. (R. p. 361, lines 1-22). Rust also

recalled that appellant drove a car with "noticable" muffler noise. (R. p. 371, line 20 - p. 372, line 5).

At approximately 11:30 p.m., neighbor to the victim, Cosmo Baccamo, testified that he was outside with his son's dog and heard "a lot of knocking noise, loud, like somebody kicking something or slamming doors" and, "about ten minutes later," he heard "excited" and loud male voices, a door slam, a car, with a loud muffler, take off. (R. p. 337, line 25 - p. 339, line 15).

Later that same night, at approximately 1:30, McDonald went to Rust's home. He was upset and asked to stay the night at Rust's house. He claimed he had an argument with his mother. Rust allowed him to stay, then took him to his mother's home the next morning on his way to school. (R. p. 363, line 7 - p. 365, line 8).

Patricia Heathcoe, part owner of the Sonic, testified that on Wednesday, December 13, 2006, the day after the murder, appellant came to work at Sonic with a scratch under one eye, a noticeable limp, and complaining that his ankle hurt. He did not have the injuries the previous day when he had worked an early shift. Appellant told Heathcoe he had "slipped and fell." He denied needing to go the doctor. (R. p. 443, line 19 - p. 445, line 23). On Thursday, appellant demanded that a Worker's Compensation claim be filed. Because business was slow, Heathcoe had intended to let appellant go home that day, but "he got real adamant. He didn't want to leave, you know, until the Workman's Comp form was filled out on him." He wanted to report his injuries as occurring on the 12th. Heathcoe noted that appellant never went to a doctor. (R. p. 446, line 15 - p. 448, line 17). On Friday, appellant walked out of work, leaving the crew short-handed. Heathcoe called appellant on his cell phone and he became belligerent:

... the first thing he said to me was, F Sonic. I said, "Chris, what is wrong with you?" And he started just ranting. I said, "you walked out and left Cecile by herself." I said, "Why would you do that?" And he was just ranting. You know, I don't need that f'g job. I've got problems. I'm about to move to Aiken. And I was just trying to talk to him. I mean, he was just -
- I never heard him sound like that ever. ...

(R. p. 449, line 1 - p. 451, line 14).

"Cecile," as referenced in the above conversation, was Cecile Trapp. Trapp testified that she worked Tuesday morning with appellant and all was well. She went back to Sonic Tuesday night, to eat and check her scheduled, and confirmed, like Rust, that appellant and Robert Cannon came by the store that night, and that Cannon was wearing a ski mask. Appellant was not limping either that day, or when she saw him later that night. On Wednesday, however, appellant came into work "complaining that his ankle was hurting, and he had a scratch on his face." Appellant told Trapp "that he had got into like a play fight with his cousin and that he hurt his ankle and his cousin accidentally scratched him on his face." He was also limping. Further, appellant advised Trapp that he intended to "pretend that he fell on grease and hurt his ankle so that Ms. Pat could pay for the hospital bills." (R. p. 476, line 13 - p. 479, line 25; p. 484, lines 20-24). On Friday, appellant was with Trapp to open the Sonic, when appellant's mother drove up. After speaking with his mother, appellant "kind of freaked out and was just like, 'I have to go'." Appellant would not tell Trapp what was happening, but simply left immediately. (R. p. 481, line 19 - p. 483, line 1).

Victim's longtime, live-in girlfriend, Melissa Davy, was absent from the victim's home at the time of the burglary and murder, the two having had a disagreement over victim's drug use. Victim had hosted a party at their home on Friday, December 8, 2006 that lasted into the early morning hours of Saturday, December 9, 2006. At approximately 2:00 a.m. that Saturday, Davy left with friends Zachary Waltermath and his sister Molly, after a

fight about victim's drug use, specifically his smoking crack cocaine (though marijuana may also have "possibly" been used at the party), and after his request that they leave the house. (R. p. 563, line 13 - p. 565, line 17; 593, line 16 - p. 596, line 12; p. 610, line 15 - p. 611, line 2). Davy would later spend time with the victim on Monday, December 11, 2006. (R. p. 567, line 1 - p. 568, line 19). She last spoke to him when he called her at approximately 6:00 or 7:00 that night. (R. p. 569, lines 14-19). The next day, Tuesday, December 12, 2006, at approximately 5:30, p.m., after completing her work shift at Sonic, Davy went back to the victim's home with Zach and Molly. The lights were off and victim's car was backed into the garage, which was unusual for the victim and alerted Davy that things were not right. She called victim's grandmother, Helen Zoch, who had purchased the home for victim to rent, (R. p. 1271, lines 14-24), and stayed on the phone with the grandmother as she entered the home. She saw victim's lifeless body and called 911. (R. p. 572, line 9 - p. 575, line 23).

Helen Zoch testified that she had spent time with victim the day before the burglary and murder and hoped to help him with his drug problem. In fact, victim had planned to enter Morris Village but wanted to talk to Ms. Davy first. The next day, Ms. Zoch called at 7:30 in the morning, but had not gotten an answer. At approximately 2:00 p.m., she went by the home, noticed the victim's car was backed in the garage, which was unusual, but she did not try to enter the home. (R. p. 1272, line 6 - p. 1274, line 24; p. 1278, line 11 - p. 1280, line 11). She testified that she was aware that her grandson had worked with the police, making drug buys for them. (R. p. 1284, lines 9-24). (See also R. p. 619, lines 19-25).

Investigating officers found the victim's home a "complete mess" with the victim's body "in the middle of it." (R. p. 692, lines 13-17). The back door had been kicked in. (R.

detention center conversations. The physical evidence also supported the inferences of guilt from appellant's injuries, given the timing, type, and nature of the injuries.

ARGUMENT

I.

The trial judge properly admitted, in the joint trial, the statements of co-defendants Cannon and McDonald when the statements were properly redacted as to appellant's name and did not otherwise facially incriminate appellant.

Relevant Facts:

All three co-defendant, appellant, Cannon, and McDonald, were tried at the same time. The State offered to redact, and did redact, all references to the co-defendants in both the Cannon statement and the McDonald statement. (R. p. 629, line 16 - p. 630, line 20). Defense counsel objected in that the redaction "would violate Bruton because the statement clearly implicates someone else and it's obviously prejudicial to the people who are sitting right here." (R. p. 631, lines 4-17).² Defense counsel relied on *Bruton* and *State v. LaBarge*, 275 S.C. 168, 268 S.E.2d 278 (1980), and argued the offered replacement of appellant's name with the phrase "another person" was "no different than replacing the name with "Mr. X, which was criticized in *LaBarge*. (R. p. 632, line 11- p. 633, line 5). The State clarified that *LaBarge* was a 1980 case, and further case law had defined the parameters of permissible redaction, such as *Gray v. Maryland*, 523 U.S. 185, 118 S.Ct. 1151 (1988). (R. p. 635, lines 20-24). Defense counsel recognized that current law supported the redaction of appellant's name and substitution of "another guy" or "another person," as offered by the State. (R. p. 635, line 11 - p. 636, line 6; p. 638, line 4 - p. 639, line 23). Even so, defense counsel offered a redaction to change the facts of the confession to suggestion only single involvement in the burglary and murder, (for example, changing "We pulled up at Josh's house" to "I pulled up to Josh's about 11:30"). (R. p. 643, lines 2-11). After discussion on

² Counsel for Cannon, Mr. Kendrick, argued for all three defendants. (R. p. 627, lines 8-18; p. 643, lines 18-22).

the current state of the law, the trial judge allowed the redaction. (R. 633, line 25 - p. 643, line 17). Counsel objected to the statements when offered at trial. (R. p. 738, lines 20-21).

On appeal, appellant argues that “[n]o rational juror who heard Cannon and McDonald’s statements to police could have deduced anything other than that Whitehead was the third ‘person’ who had attacked Zoch,” and admission of the redacted statements offended the holding of *Bruton*. (FBOR, pp. 5-7).

Discussion:

The gist of the appellant’s argument appears to be that redaction can be made, but only if no reference to any co-defendant, either in name or action, remains in the statement. He conceded below that current precedent does not require such redaction, and specifically argued for an extension of the present rule. (R. p. 638, line 4 - p. 639, line 21). The trial judge declined to extend the redaction rules noting his concern that such redaction would “change[] the meaning of the entire statement by creating the impression that these parties acted independently.” (R. p. 639, lines 10-15; p. 643, lines 12-17). The astute trial judge correctly identified the glaring unfairness in the requested extension. Not only does appellant’s offered extension of the redaction rules exceed that which appellant is entitled to in order to protect his right to confrontation, if allowed, the result would be to tinker with the facts, creating confusion and misleading of the jury. The trial judge appropriately denied the request to extend the redaction rules, and properly allowed the co-defendants’ statements, redacted under the current rules, and without referenced to other co-defendants by name or other identifiers, to be admitted in the joint trial. There is no error.

“The constitutional right to confront and cross-examine witnesses is essential to a fair trial in that it promotes reliability in criminal trials and insures [sic] that convictions will not

result from testimony of individuals who cannot be challenged at trial.” *State v. Page*, 378 S.C. 476, 481, 663 S.E.2d 357, 359 (Ct.App. 2008), *rehearing denied* June 29, 2009, *quoting State v. Martin*, 292 S.C. 437, 439, 357 S.E.2d 21, 22 (1987). “[A] non-testifying codefendant’s statement that expressly inculcates the defendant violates the defendant’s rights under the Confrontation Clause” and is inadmissible. *State v. Holder*, 382 S.C. 278, 283, 676 S.E.2d 690, 693 (2009), *citing Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620 (1968). “Redaction has come into play as a tool to allow admission of a co-defendant’s confession *against the confessor in a joint trial*. The point of redaction is to permit the confession to be used against the non-testifying confessor, while avoiding implicating his co-defendants.” *State v. Holmes*, 342 S.C. 113, 119, 536 S.E.2d 671, 674 (2000)(emphasis in original), *citing Richardson v. Marsh*, 481 U.S. 200, 107 S.Ct. 1702 (1987); *Gray v. Maryland*, 523 U.S. 185, 118 S.Ct. 1151 (1998).

Thus, if, in a joint trial, a non-testifying co-defendant’s statement is admitted, referenced to the defendant must be redacted for the statement to be admissible. *State v. Martin*, 292 S.C. 437, 439, 357 S.E.2d 21, 22 (1987). *See also State v. Avery*, 374 S.C. 524, 534, 649 S.E.2d 102, 107 (Ct.App. 2007)(“In this case, all statements from Avery’s co-defendant that referred to Avery were redacted precisely so Avery’s right to confront his witness would not be impinged.”). Statements that connect the defendant “only when linked to other evidence introduced at trial,” do not offend the *Bruton* rule. *Holder*, 382 S.C. at 284, 676 S.E.2d at 693. However, redaction of the defendant’s name alone may not suffice to protect rights. “[O]ne must look at the *kind* of inferences that are necessary to make a connection to the defendant, not the simple *fact* that there are inferences, to determine the applicability of *Bruton*. *Holder*, 382 S.C. at 284, 676 S.E.2d at 694. For example, use of the

pronoun “she” when there is only one co-defendant, and she is female, still identifies the co-defendant and offends *Bruton*. *Id.*, 382 S.C. at 285, 676 S.E.2d at 694. Moreover, physical descriptions that identify the co-defendant are similarly unacceptable. *State v. Singleton*, 303 S.C. 313, 315, 400 S.E.2d 487, 488 (1991). The use of a phrase which reflects a pointed identification being hidden from the juror would also appear to point directly to a co-defendant and would offend *Bruton*. See, for example, *Gray v. Maryland*, 523 U.S. at 196 (referencing pointed identification of “me, *deleted*, *deleted*, and a few other guys” insufficient)(emphasis added); *State v. LaBarge*, 275 S.C. 168, 170, 268 S.E.2d 278, 280 (1980)(substitution of “Mr. X” for name likely insufficient). The Court in *Gray* expressed the preference for the use of general terms, such as changing the redaction from specific deletion, i.e. “Me, *deleted*, *deleted*, and a few other guys,” to “Me and a few other guys.” 523 U.S. at 196. The Fourth Circuit has also noted that a “neutral phrase” such as “another person” or “another individual” does not directly implicate the co-defendant. *United States v. Akinkoye*, 185 F.3d 192, 198 (4th Cir. 1999).

Here, the State used the neutral phrase, “another person,” and avoided any *Bruton* violation. Respondent notes that the trial judge carefully reviewed the breadth and context of the statements for any other indication of direct implication. For instance, the judge noted that others were referenced in the statements such as “Leroy” and the generic term “we” could apply to Leroy and the co-defendant. (R. p. 641, line 12 - p. 642, line 5). (See also R. p. 749, lines 2-10). When requested to omit the statement that referenced another’s “blue Honda Accord,” that reference was omitted as witnesses had testified that appellant drove a blue Honda. (R. p. 645, lines 7-22). (See, for example, R. p. 481, lines 4-9). When the two redacted statements are reviewed, it is very clear that the statements only directly

inculcate the statement's maker. The remainder of each statement is very generic, and, though it may certainly be one interpretation, the statements do not actually even limit participation to three, such as the three defendants then on trial. (See R. 748, line 25 - p. 752, line 15; p. 773, line 15 - p. 775, line 21). Again, the redaction was proper and protected appellant's right to confrontation by ensuring that no facially incriminating statement was evident. Moreover, as appellant notes in his brief, (FBOA, p. 7), the trial judge also instructed the jury that evidence admitted solely for its connection to one co-defendant may only be considered in connection with that co-defendant, and not against the remaining co-defendants. (R. p. 1449, lines 8-12). There is no error. However, even if the redaction was not sufficient, and this Court should find error, there is overwhelming evidence of guilt such that any error could only be harmless on this record.

"Violations of the Confrontation Clause are subject to a harmless error analysis." *Holder*, 382 S.C. at 285, 676 S.E.2d at 694. Though the considerations vary - - including overwhelming evidence of guilt absent the error, whether the evidence was cumulative to other properly admitted evidence, and the overall importance of the testimony - - to find a violation harmless, the error must be deemed harmless beyond a reasonable doubt in the context of the entire record. *Id.*, 382 S.C. at 285-286, 676 S.E.2d at 694-695. While appellant argued below that the statements were essentially the only evidence tying appellant to the burglary and murder, (R. p. 633, lines 9-15), and argues a "paucity of evidence against" appellant on appeal, (FBOA, p. 7), the record easily rebuffs such assertions. For instance, Zachary Waltemath testified that appellant called him on the night of the burglary and murder to enlist his help in determining whether the victim was home because "he wanted to go over there and fight" the victim. (R. p. 385, line 17 - p. 387, line 10). Christopher Rust

testified that appellant drove a car with a “noticable” muffler noise. (R. p. 371, line 20 - p. 372, line 5). The victim’s neighbor, Cosmo Baccamo, testified that at approximately 11:30 he heard the sounds of “somebody kicking something or slamming doors,” male voices, and then a car, with a loud muffler, take off. (R. p. 337 line 25 - p. 339, line 15). Victim was brutally beaten, kicked and bludgeoned. (R. p. 1123, line 17 - p. 1125, line 14). The back door to the home had been kicked in. (R. p. 675, lines 13-25). Appellant showed up for work the next day, suffering from injuries, specifically limping, which is, of course, consistent with a fight and or kicking in a door. (R. p. 444, line 20 - p. 445, line 23). Just three days after the murder, appellant walked off his job, and stated his intent to flee the county. (R. p. 449, line 1 - p. 451, line 14). Finally, Michael Jenkins, heard appellant twice brag about the murder, identifying the home where the murder occurred, relating how the trailer was “easy to get into,” bragging about being known as “killers,” and calling the victim’s name. (R. p. 1221, line 10 - p. 1222, line 8; p. 1224, line 19 - p. 1227, line 25). As a whole, the evidence against appellant, though in large part circumstantial, is none the less overwhelming. The co-defendants’ statements do not detract or add to these facts. Though surely the evidentiary pieces fit well to reflect a picture of guilt, the statements do not facially incriminate the appellant, and other specific and separate evidence of guilt, as shown above, including appellant’s own professed involvement in the burglary and murder, when considered as a whole, constitutes overwhelming evidence of guilt. Any error could only be harmless based on this record.

However, Respondent submits the statements were properly redacted and there is no error. Appellant’s argument to the contrary should be rejected.

II.

The trial judge properly denied appellant's motion for a directed verdict, when, in viewing the evidence in the light most favorable to the State, there was evidence of 1) expressed malice only hours before the murder; 2) a compressed time frame of opportunity for the murder; 3) appellant was seen in the company of co-defendants Cannon and McDonald, who confessed to their participation in the burglary and beating, a mere hour or so before the murder; 4) appellant wore scars and injuries after the vicious beating and kicking in of the door to the home the day after the murder which he did not have when last seen at Sonic approximately an hour before the murder; 5), appellant walked off his job just three days after the murder and expressed an intent to flee the county; and, finally, 6) appellant was overheard talking about the murder, and expressing pride in being "killers."

Relevant Facts:

At trial, defense counsel argued that the State lacked any direct or substantial circumstantial evidence as to appellant's guilt. Specifically, defense counsel argued 1) that there was "some evidence" that established appellant had "a peeve, possibly a peeve with the deceased" but that there were others who could have peevs as well; and, 2) that there was testimony from the "jail house snitch," but reliability was a factor, and, at any rate, the "statement has to do with the future... we're going to be heros when we go back to school" and "doesn't have to do with the past" and "doesn't say that Christopher Whitehead had anything to do with it." Defense counsel argued the evidence amounted only to "mere suspicion." (R. p. 1302, line 13 - p. 1309, line 3).

The State responded by reviewing more of the evidence supportive of guilt, including 1) the phone call to Waltemath; 2) that appellant was with the co-defendants the same night; 3) that appellant's car had a loud muffler and a loud muffler was identified by victim's neighbor; 4) the injuries to appellant the next day; 5) and, finally, the statement to the jailhouse informant that indicated pride in becoming killers. (R. p. 1309, line 5 - p. 1312, line 24).

The trial judge reasoned that there was both direct evidence and circumstantial evidence presented and denied the directed verdict motion. (R. p. 1312, line 25 - p. 1315, line 9).

On appeal, appellant submits that the only testimony supporting guilt is the “testimony of a jailhouse snitch,” however, that testimony does not reflect that appellant “admitted any degree of involvement in the incident.” (FBOA, p. 8). He further argues that the “balance of the State’s evidence - the fact that Whitehead was observed limping the day after Zoch’s killing, for example - did not satisfy the State’s burden” of showing evidence sufficient to defeat appellant’s directed verdict motion. (FBOA, p. 9).

Discussion:

A defendant is only entitled to a directed verdict of acquittal if the State fails to offer proof of the offense charge, or its proof merely raises a suspicion of guilt. *State v. Buckmon*, 347 S.C. 316, 321, 555 S.E.2d 402, 404 (2001). When reviewing the trial judge’s denial of a motion for a directed verdict, the appellate court will view the evidence in the light most favorable to the State. *Id.* See also *State v. Frazier*, 375 S.C. 575, 581, 654 S.E.2d 280, 283 (2007). “If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.” *State v. Freiburger*, 366 S.C. 125, 136, 620 S.E.2d 737, 743 (2005); *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); *State v. Zeigler*, 364 S.C. 94, 102, 610 S.E.2d 859, 863 (Ct. App. 2005), *cert. denied* (Jan. 31, 2007). Conversely, “[t]he court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt.” *Frazier*, 375 S.C. at 581, 654 S.E.2d at 283. “‘Suspicion’ implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” *Id.*

“[A] trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.” *Id.* (citations omitted).

“The appellate court may reverse the trial judge’s denial of a motion for a directed verdict only if there is no evidence to support the judge’s ruling.” *State v. Stanley*, 365 S.C. 24, 42, 615 S.E.2d 455, 464 (Ct. App. 2005). Here, there is ample evidence supporting the trial judge’s denial of appellant’s directed verdict motion, and his ruling should be affirmed.

Appellant contacted Waltemath on the night of the murder in an attempt to determine whether the victim was home because “he wanted to go over there and fight” the victim. (R. p. 385, line 17 - p. 387, line 10). This constitutes an expressed intent to do harm to the victim on the night of the murder. Moreover, Allen Brown, a manager of the local Sonic, testified that appellant was in the company of the co-defendants on the night of the murder, approximately one hour before the murder, and that Cannon had a ski mask, (R. p. 322, line 13 - p. 324, line 14), as confirmed by Sonic employees Christopher Rust, (R. p. 361, lines 4-22), and Cecile Trapp, (R. p. 484, lines 16-24). The co-defendants, both, confessed their participation in the burglary and beating at victim’s house at approximately 11:30.³ (R. p. 748, line 25 - p. 752, line 15; p. 773, line 15 - p. 775, line 21). Rust testified that appellant drove a car with a “noticable” muffler noise. (R. p. 371, line 20 - p. 372, line 5). The victim’s neighbor, Cosmo Baccamo, testified that he heard the sounds of “somebody kicking something or slamming doors,” male voices, and then a car, with a loud muffler, take off, at approximately 11:30 p.m. (R. p. 337 line 25 - p. 339, line 15). Victim was brutally beaten,

³ Respondent notes that reliance on this evidence is not inconsistent with *Issue I*. As noted in *Argument I*, p. 13, statements that connect the defendant “only when linked to other evidence introduced at trial,” do not offend the *Bruton* rule. *Holder*, 382 S.C. at 284, 676 S.E.2d at 693. This argument is premised precisely on the fact that the connection is possible only when “linked to other evidence introduced at trial.” *Id.*

kicked and bludgeoned. (R. p. 1123, line 17 - p. 1125, line 14). The back door to the home had been kicked in. (R. p. 675, lines 13-25). Appellant showed up for work the next day, suffering from injuries, specifically limping, which is, of course, consistent with a fight and or kicking in a door. (R. p. 444, line 20 - p. 445, line 23). Just three days after the murder, appellant walked off his job, and stated his intent to flee the county. (R. p. 449, line 1 - p. 451, line 14). Finally, Michael Jenkins, heard appellant twice brag about the murder, identifying the home where the murder occurred, relating how the trailer was "easy to get into," bragging about being known as "killers," and calling the victim's name. (R. p. 1221, line 10 - p. 1222, line 8; p. 1224, line 19 - p. 1227, line 25). Clearly, there is both direct and substantial circumstantial evidence supporting the trial judge's decision, and the motion for directed verdict was properly denied.

The major flaw in appellant's argument on appeal is that it omits reference to all the evidence of guilt as reviewed above. Moreover, appellant's argument attacking the "testimony of a jailhouse snitch" because the statement related does not reflect that appellant "admitted any degree of involvement in the incident," (FBOA, p. 8), also fails because of its insistence on only one inference, and that taken in the light most favorable *to the defendant*. First, that is not the test. Second, the import of the statement is for the jury, as it is for the jury to decide what, if any, weight to assign the evidence. Without doubt, the testimony established that appellant knew about the crime, and expressed pride in the crime. That is evidence of his involvement. Lastly, appellant's argument that the "balance of the State's evidence - the fact that Whitehead was observed limping the day after Zoch's killing, for example - did not satisfy the State's burden," (FBOA, p. 9), again rests on a myopic view,

in the light most favorable to the defendant, which, of course, is not the test. Again, the record fully supports the trial judge's ruling. There is no error.

Appellant's argument to the contrary should be rejected.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the lower court should be affirmed.

Respectfully submitted,

HENRY D. MCMASTER
Attorney General

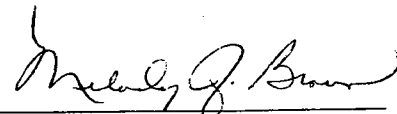
JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

MELODY J. BROWN
Assistant Attorney General

W. BARNEY GIESE
Solicitor, Fifth Judicial Circuit

BY:


MELODY J. BROWN

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

ATTORNEYS FOR RESPONDENT

June 17, 2010.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of General Sessions
G. Thomas Cooper, Jr., Circuit Court Judge

The State,

Respondent,

vs.

Christopher Ryan Whitehead,

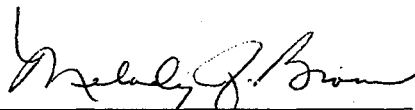
Appellant.

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the Final Brief of Respondent on Appellant by depositing a copy of same in the United States mail, postage prepaid, addressed to his attorney of record:

Joseph L. Savitz, III, Senior Appellant Defender
South Carolina Commission on Indigent Defense,
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

This 21st day of June, 2010.



MELODY J. BROWN

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

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of General Sessions
G. Thomas Cooper, Jr., Circuit Court Judge

The State,

Respondent,

vs.

Christopher Ryan Whitehead,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR. The undersigned also certifies that the Final Brief is in compliance with the South Carolina Supreme Court's Order of August 13, 2007.

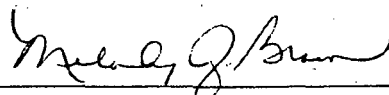
HENRY D. MCMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

MELODY J. BROWN
Assistant Attorney General

W. BARNEY GIESE
Solicitor, Fifth Judicial Circuit

By: 

MELODY J. BROWN

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305
ATTORNEYS FOR RESPONDENT

June 17, 2010.
Columbia, South Carolina.