

WILLIAM H. EHLIES, P.A.
ATTORNEY-AT-LAW
BUILDING A, SUITE 201
310 MILLS AVENUE
GREENVILLE, SOUTH CAROLINA 29605
864-232-3503
FACSIMILE NUMBER 864-232-4854
EIN: 57-0703576

2004-031011
OP 26329

December 10, 2012

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: *Fredrick Antonio Evins #6017 vs. The State of South Carolina*
C. A. No.: 07-CP-42-2849

Dear Mr. Shearouse:

Mr. Evins is a death sentenced individual who has a pending application for post-conviction relief. Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), please be advised that the court has ordered that the applicant be evaluated for mental retardation by the South Carolina Department of Disabilities and Special Needs. We are awaiting DDSN's compliance.

Sincerely yours,



WILLIAM H. EHLIES, II

/he

cc: Honorable D. Garrison Hill
Jeffrey P. Bloom, Esq.
Donald J. Zelenka, Assistant Deputy Attorney General
J. Anthony Mabry, Assistant Attorney General

RECEIVED

DEC 12 2012

S.C. SUPREME COURT

WILLIAM H. EHLIES, P.A.
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October 11, 2012

RECEIVED

OCT 15 2012

S.C. Supreme Court

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: *Fredrick Antonio Evins #6017 vs. The State of South Carolina*
C. A. No.: 07-CP-42-2849

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AUG 13 2012

S.C. SUPREME COURT

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August 10, 2012

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: *Fredrick Antonio Evins #6017 vs. The State of South Carolina*
C. A. No.: 07-CP-42-2849

Dear Mr. Shearouse:

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Sincerely yours,



WILLIAM H. EHLIES, II

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JUN 14 2012

S.C. SUPREME COURT

June 12, 2012

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: *Fredrick Antonio Evins #6017 vs. The State of South Carolina*,
C. A. No.: 07-CP-42-2849

Dear Mr. Shearouse:

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Sincerely yours,



WILLIAM H. EHLIES, II

/he

cc: Robert Matthew Sneed, Esq.
Donald J. Zelenka, Assistant Deputy Attorney General
J. Anthony Mabry, Assistant Attorney General

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April 14, 2012

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: *Fredrick Antonio Evins #6017 vs. The State of South Carolina*
C. A. No.: 07-CP42-2849

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APR 17 2012

S.C. SUPREME COURT

Sincerely yours,



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cc: Robert Matthew Sneed, Esq.
Donald J. Zelenka, Assistant Deputy Attorney General
J. Anthony Mabry, Assistant Attorney General

NOTED: [illegible]
[illegible]
[illegible]
[illegible]

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January 9, 2012

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
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Re: *Fredrick Antonio Evins #6017 vs. The State of South Carolina*
C. A. No.: 07-CP-42-2849

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JAN 12 2012

S.C. SUPREME COURT

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OCT 28 2011

S.C. SUPREME COURT

October 27, 2011

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: Fredrick Antonio Evins #6017 vs. The State of South Carolina
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August 30, 2011

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
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AUG 31 2011

S.C. SUPREME COURT

Re: *Fredrick Antonio Evins #6017 vs. The State of South Carolina*
C. A. No.: 07-CP-42-2849

Dear Mr. Shearouse:

Mr. Evins is a death sentenced individual who has a pending application for post-conviction relief. Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), please be advised that the applicant has been ordered to submit to a medical evaluation by South Carolina Department of Disabilities and Special Needs to determine whether, in the view of DDSN, the applicant is mentally retarded. We await that determination.

Sincerely yours,



WILLIAM H. EHLIES, II

/he

cc: Robert Matthew Sneed, Esq.
Donald J. Zelenka, Assistant Deputy Attorney General
J. Anthony Mabry, Assistant Attorney General

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July 1, 2011

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JUL - 5 2011

S.C. Supreme Court

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: Fredrick Antonio Evins #6017 vs. The State of South Carolina
C. A. No.: 07-CP-42-2849

Dear Mr. Shearouse:

Mr. Evins is a death sentenced individual who has a pending application for post-conviction relief. Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), please be advised that the court is to expected to order a mental evaluation of Mr. Evins at the South Carolina Department of Disabilities and Special Needs.

Sincerely yours,



WILLIAM H. EHLIES, II

/he

cc: Robert Matthew Sneed, Esq.
Donald J. Zelenka, Assistant Deputy Attorney General
J. Anthony Mabry, Assistant Attorney General

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Maay 12, 2011

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Re: Fredrick Antonio Evins #6017 vs. The State of South Carolina
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MAY 16 2011

S.C. SUPREME COURT

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Donald J. Zelenka, Assistant Deputy Attorney General

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March 1, 2011

Honorable Daniel E. Shearouse
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Re: *Fredrick Antonio Evins #6017 vs. The State of South Carolina*
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MAR 03 2011

S.C. SUPREME COURT

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January 3, 2011

Honorable Daniel E. Shearouse
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Post Office Box 11330
Columbia, South Carolina 29211

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C. A. No.: 07-CP-42-2849

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cc: Robert Matthew Sneed, Esq.
Assistant Deputy Attorney General
Donald J. Zelenka

RECEIVED

JAN 05 2011

11-01-2011

2011 JAN 05 10:21 AM
S.C. Supreme Court
CLERK OF THE COURT
POST OFFICE BOX 11330
COLUMBIA, SC 29211
864-232-3503

WILLIAM H. EHLIES, P.A.

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November 3, 2010

Honorable Daniel E. Shearouse
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Re: *Fredrick Antonio Evins #6017 vs. The State of South Carolina*
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NOV 05 2010

S.C. SUPREME COURT

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Assistant Deputy Attorney General
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SEP 07 2010
S.C. SUPREME COURT

September 3, 2010

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
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July 2, 2010

RECEIVED
JUL 06 2010
S.C. SUPREME COURT

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MAY 06 2010

May 4, 2010

S.C. SUPREME COURT

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

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March 4, 2010

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MAR 05 2010
S.C. SUPREME COURT

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ENCLOSURE

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1. The first step in the process of identifying a problem is to define the problem. This involves identifying the symptoms of the problem and determining the scope of the problem. Once the problem has been defined, the next step is to identify the causes of the problem. This involves identifying the factors that are contributing to the problem and determining the root cause of the problem. Once the causes of the problem have been identified, the next step is to develop a plan to address the problem. This involves identifying the actions that need to be taken to address the problem and determining the resources that will be needed to implement the plan. Once a plan has been developed, the next step is to implement the plan. This involves carrying out the actions that have been identified in the plan and monitoring the progress of the implementation. Finally, the last step in the process is to evaluate the results of the implementation. This involves determining whether the problem has been solved and whether the resources have been used effectively.

WILLIAM H. EHLIES, P.A.

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November 4, 2009

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NOV - 6 2009

S.C. SUPREME COURT

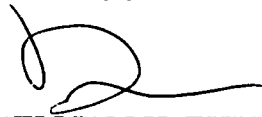
Honorable Daniel E. Shearouse
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WILLIAM H. EHLIES, II

/he

cc: Robert Matthew Sneed, Esq.
Assistant Deputy Attorney General
Donald J. Zelenka

sup. bench. 11/11/09
11/11/09 11:11 AM
11/11/09 11:11 AM

WILLIAM H. EHLIES, P.A.

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September 10, 2009

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S.C. SUPREME COURT

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JUL 07 2009
S.C. SUPREME COURT

1970-1971

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May 6, 2009

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MAY - 8 2009

S.C. SUPREME COURT

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March 9, 2009

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EIN 57-0703576

November 18, 2008

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: *Fredrick Antonio Evins #6017 vs. The State of South Carolina*
C. A. No.: 07-CP-42-2849

Dear Mr. Shearouse:

Mr. Evins is a death sentenced individual who has a pending application for post-conviction relief. Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), please be advised that the PCR case is active and pending a hearing on the merits.

Sincerely yours,



WILLIAM H. EHLIES, II

/he

cc: Robert Matthew Sneed, Esq.
Assistant Deputy Attorney General
Donald J. Zelenka

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NOV 20 2008

S.C. SUPREME COURT

WILLIAM H. EHLIES, P.A.
ATTORNEY-AT-LAW
BUILDING A, SUITE 201
310 MILLS AVENUE
GREENVILLE, SOUTH CAROLINA 29605
864-232-3503
FACSIMILE NUMBER 864-232-4854
EIN 57-0703576

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September 17, 2008

SEP 29 2008

S.C. SUPREME COURT

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: *Fredrick Antonio Evins #6017 vs. The State of South Carolina*
C. A. No.: 07-CP-42-2849

Dear Mr. Shearouse:

Mr. Evins is a death sentenced individual who has a pending application for post-conviction relief. Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), please be advised that the PCR case is active and pending a hearing on the merits.

Sincerely yours,

WILLIAM H. EHLIES, II

/he

cc: Robert Matthew Sneed, Esq.
Assistant Deputy Attorney General
Donald J. Zelenka

WILLIAM H. EHLIES, P.A.
ATTORNEY AT LAW
BUILDING A, SUITE 201
310 MILLS AVENUE
GREENVILLE, SOUTH CAROLINA 29605
864-232-3503
FACSIMILE NUMBER 864-232-4854
EIN 57-0703576

July 11, 2008

Honorable Daniel E. Shearouse, Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia,, South Carolina 29211

Re: *Fredrick Antonio Evins #6017 vs. The State of South Carolina*
C.A. No. 07-CP-42-2849

Dear Mr. Shearouse:

Mr. Evins is a death sentenced individual who has a pending application for post-conviction relief pending. Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), please be advised that the PCR case is active and pending discovery.

Sincerely yours,



WILLIAM H. EHLIES, II

/he

cc: Robert Matthew Sneed, Esq.
Assistant Deputy Attorney General
Donald J. Zelenka

RECEIVED

JUL 14 2008

S.C. SUPREME COURT

CLERK OF COURT

WILLIAM H. EHLIES, P.A.
ATTORNEY-AT-LAW
BUILDING A, SUITE 201
310 MILLS AVENUE
GREENVILLE, SOUTH CAROLINA 29605
864-232-3503
FACSIMILE NUMBER 864-232-4854
EIN 57-0703576

May 09, 2008

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MAY 12 2008
S.C. SUPREME COURT

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: *Fredrick Antonio Evins #6017 vs. The State of South Carolina*
C. A. No.: 07-CP-42-2849

Dear Mr. Shearouse:

Mr. Evins is a death sentenced individual who has a pending application for post-conviction relief pending. Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), please be advised that the PCR case is active and pending discovery.

Sincerely yours,



WILLIAM H. EHLIES, II

/he

cc: Robert Matthew Sneed, Esq.
Assistant Deputy Attorney General
Donald J. Zelenka

RECEIVED

MAR 10 2008

WILLIAM H. EHLIES, P.A.
ATTORNEY-AT-LAW
BUILDING A, SUITE 201
310 MILLS AVENUE
GREENVILLE, SOUTH CAROLINA 29605
864-232-3503
FACSIMILE NUMBER 864-232-4854
EIN 57-0703576

S.C. SUPREME COURT

March 07, 2008

Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: *Fredrick Antonio Evans #6017 vs. The State of South Carolina*
C. A. No: 07-CP-42-2849

Dear Mr. Shearouse:

Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996) please be advised that this case is pending discovery on an application for post-conviction relief in a capital case.

Sincerely yours,



WILLIAM H. EHLIES, II

/he

cc: Robert Matthew Sneed, Esq.
Donald J. Zelenka, Asst. Deputy Att Gen

ATTORNEY-AT-LAW
BUILDING A, SUITE 201
310 MILLS AVENUE
GREENVILLE, SOUTH CAROLINA 29605
864-232-3503
FACSIMILE NUMBER 864-232-4854
EIN 57-0703576

JAN 14 2008

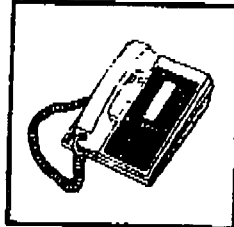
SECRET - EYES ONLY

1. The first step is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL



**CAPITAL LITIGATION, HOMICIDE APPEALS
FEDERAL HABEAS CORPUS SECTION**

FAX TRANSMISSION FORM

TO:

Debbie

**FAX
NUMBER:**

734-1499

DATE:

1-2-08

FROM:

Lonnie

OFFICE: (803) 734-6305

FAX: (803) 734-4035

MESSAGE:

Re: Fredrick Erins

TOTAL NUMBER OF PAGES IN TRANSMISSION INCLUDING COVER:

NOTICE OF CONFIDENTIALITY: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual(s) or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please notify us immediately by telephone at (803) 734-6305 and return the original message to us at the address below via the United States Postal Service. Thank you.

order was signed and filed of record on June 7, 2007 and is incorporated herein by reference.

NOW THEREFORE, upon good and just cause shown:

IT IS ORDERED, ADJUDGED AND DECREED, that William H. Ehliens, II is appointed as lead counsel and Robert Matthew Sneed as second counsel for Applicant in this post-conviction relief action.

FURTHER, the Court sets out the following schedule in this capital post-conviction relief action:

1. Applicant shall notify this court within ten (10) days of any action taken by the United States Supreme Court on his Petition for Writ of Certiorari;
2. A status conference to address additional scheduling matters shall be held in January 2008;
3. The State's motion to have notice and an opportunity to be heard regarding any funding requests submitted by the Applicant is denied for the reasons stated in the June 7, 2007 order in *Kamell Delshawn Evans v. State of South Carolina*, 06-CP-23-7719.

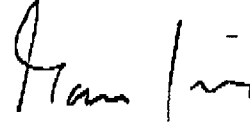
Status Letter Requirement

In addition to the above scheduled dates, this Court notes, and reminds the parties, that Applicant's first status letter, directed to the Clerk of the Supreme Court with a copy to opposing counsel, pursuant to the provisions of *In re Stays, supra*, is due 60 days from

office of indigent defense, of fees and expenses not to exceed twenty thousand dollars as the court shall deem appropriate. Payment of such fees and expenses may be ordered in cases where the defendant is an indigent represented by court-appointed, private counsel or the public defender."

the hearing wherein counsel was appointed, with subsequent letters required every sixty (60) days thereafter.

IT IS SO ORDERED.



D. Garrison Hill, Judge
Thirteenth Judicial Circuit

December 5
November __, 2007.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Fredrick Antonio Evins, 006017,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

C. A. No. 07-CP-42-2849
 Capital Murder PCR

ORDER APPOINTING COUNSEL AND SCHEDULING PROCEEDINGS

By order of the Supreme Court of South Carolina, dated October 12, 2007, this court has exclusive jurisdiction over the above captioned capital post-conviction relief action. On November 19, 2007, pursuant to *S.C. Code Ann.* § 17-27-160 (B), and *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), a status conference hearing¹ was held in the Greenville County Courthouse regarding Applicant's intention to pursue a post-conviction relief action and whether he desired appointment of counsel. The Applicant, J. Anthony Mabry, Assistant Attorney General for the State of South Carolina, William H. Ehlires, II, and Robert Matthew Sneed both of the Greenville

¹ § 17-27-160. Capital case post-conviction relief procedures.

(C) Not later than thirty days after the filing of the state's return, the judge shall convene a status conference to schedule a hearing on the merits of the application for post-conviction relief. The hearing must be scheduled within one hundred eighty days from the date of the status conference, unless good cause is shown to justify a continuance.

Bar were present. In response to the Court's questioning on the record, the Applicant advised that he wished to pursue his post-conviction relief remedies and that counsel be appointed to represent him. The Applicant is indigent and without funds to retain an attorney. The State asked for certain affirmative relief, specifically that a scheduling order be entered and that the State be given notice of, and allowed to respond to, any funding requests made by the Applicant. The Court now issues this order reflecting the findings made and rulings entered as a result of the referenced hearing.

Appointment of Counsel

Applicant was present and initially appeared *pro se*. The Applicant informed the Court that he did, in fact, wish to pursue his state post-conviction relief remedies, that he is indigent, and he requested the appointment of counsel. This Court had previously requested attorneys William H. "Hank" Ehlires, II and Robert Matthew Sneed to prepare for and attend this hearing. As a consequence, Mr. Ehlires met with the Applicant at Lieber Correctional Facility in Ridgeville, South Carolina on November 9, 2007; he spoke with trial counsel and the Applicant's mother; and he explained the nature of this proceeding to the Applicant. Mr. Ehlires has determined that he has no current apparent conflict that would prevent him from undertaking the representation of the Applicant. This is a Spartanburg County case; however, pursuant to the Administrative Order assigning the case to the undersigned, venue is proper statewide.

Mr. Ehlires summarized his qualifications for appointment, which included not only representation of other death-sentenced inmates on collateral challenges to their convictions and sentences of death, but he has also represented defendants in death penalty jury trials. He has completed continuing education courses designed specifically

2016

7/12

for capital PCR and appellate litigation. Mr. Ehliès included for the record a written history of the capital murder cases he has handled including PCR and federal Habeas cases. He also included the South Carolina Bar's interim report regarding his CLE credits for the year 2007 and it verified 53.50 hours of credits of which 39.50 are dedicated hours to representing death sentenced individuals in PCR and Habeas proceedings.

Robert Matthew Sneed summarized his experience as including more than five years of active practice including a period as assistant public defender and trying violent criminal felony cases. This Court finds both counsel qualified under the provision of S.C. Code Ann. § 17-27-160; there was no objection from the Respondent regarding qualification of counsel. Neither attorney has represented the Applicant in any other matter. Moreover, the Applicant was present and heard the qualifications of counsel; he expressed his satisfaction with counsel; and he specifically requested the named attorneys be appointed to represent him in his capital post-conviction relief action.

THEREFORE, William H. Ehliès, II is appointed as lead counsel and Robert Matthew Sneed as second counsel for Applicant in this post-conviction relief action.

Scheduling

Pursuant to S.C. Code Ann. § 17-27-160 (c), within 30 days of the filing of the State's return, a status conference hearing must be held and a merits hearing must be scheduled within 180 days of the status conference hearing unless good cause is shown to justify a continuance. It appears that the Applicant, Frederick Antonio Evins, #006017, filed a *pro se* Application for Post-Conviction Relief on August 14, 2007 and the State filed its Return on September 22, 2007. Therefore, the Court scheduled the evidentiary hearing for April 22, 2008, at a location to be determined at a later time. Mr. Ehliès then

moved to continue the April 22, 2008 merits hearing and advised the Court that the direct appeal in the Applicant's case is actually pending on a Writ of Certiorari before the United States Supreme Court.² Mr. Ehli's also summarized issues known to exist in this case which are very time intensive and time demanding to investigate and prepare for trial. Those issues include, but are not limited to, mental retardation; DNA testing allegedly linking the applicant to another killing; multiple killings as an aggravator; and *voir dire* related to a second killing. This Court finds these issues mandate further consideration at a scheduling conference which shall be set for a January 2008 status conference.

FUNDING REQUEST

The State orally moved to be given notice and an opportunity to participate in any funding requests submitted by the Applicant. This Court has ruled on this precise issue in *Kamell Delshawn Evans v State of South Carolina*, 06-CP-23-7719, and issued a detailed order denying the State's request. That order was based upon Applicant's due process and equal protection rights guaranteed by both the United States Constitution and the South Carolina Constitution and upon *S.C. Code Ann.*, §§ 17-3-50(B) and 17-27-160.³ That

² Applicant's petition for writ of certiorari to the United States Supreme Court was denied on November 26, 2007. *Frederick A. Evins v. State of South Carolina*, 2007 U.S. Lexis 12406 (2007).

³ The following is the operative reasoning of the *Evans* order denying the State's motion to participate in the *ex parte* funding process:

"Section 17-27-160 incorporates all of § 16-3-26 by specific reference, except for subsection (1) that is expressly excluded. Section 16-3-26(C)(1) provides:

Upon a finding in *ex parte* proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant's attorneys to obtain such services on behalf of the defendant and shall order the payment, from funds available to the

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DEC 17 2007

SC SUPREME COURT

WILLIAM H. EHLIES, P.A.
ATTORNEY AT LAW
BUILDING A, SUITE 201
310 MILLS AVENUE
GREENVILLE, SOUTH CAROLINA 29605
864- 232-3503
FACSIMILE NUMBER 864- 232-4854
EIN 57-0703576

December 12, 2007

Honorable Daniel E. Shearouse
South Carolina Supreme Court
Post Office Box 11330
Columbia,, South Carolina 29211

Re: *Fredrick Antonio Evans #6017 vs. The State of South Carolina*
C.A. No. 07-CP-42-2849

Dear Mr. Shearouse:

Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996) please be advised that on December 5, 2007 Mr. Robert Matthew Sneed and myself were appointed counsel for the Applicant. The United States Supreme Court denied Certiorari on the Applicant's direct appeal on November 26, 2007 (No. 07-6693). A status conference hearing was held on November 19, 2007 and an additional scheduling conference will be held in January, 2008.

Sincerely yours,



WILLIAM H. EHLIES, II

/he

cc: Honorable D. Garrison Hill
Robert Matthew Sneed, Esq.

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

William K. Suter
Clerk of the Court
(202) 479-3011

November 26, 2007

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NOV 30 2007

Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

Re: Fredrick Antonio Evins
v. South Carolina
No. 07-6693
(Your No. 26329)

Dear Clerk:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



William K. Suter, Clerk



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Joseph L. Savitz, III, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone (803) 734-1330
Facsimile (803) 734-1397

November 1, 2007

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S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Fredrick Antonio Evins v. State of South Carolina

Dear Mr. Shearouse:

Please be advised that I have filed a reply to brief in opposition to petition for writ of certiorari in this case with the United States Supreme Court today. I have attached a copy of that petition.

Please contact me if you have any questions.

Sincerely,

Robert M. Dudek
Deputy Chief Attorney for Capital Appeals

RMD/mwl

Enclosure

cc: Donald J. Zelenka, Esquire

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2007

07-6693

RECEIVED

NOV 1 2007

S.C. SUPREME COURT

FREDRICK ANTONIO EVINS,

PETITIONER

versus

STATE OF SOUTH CAROLINA,

RESPONDENT

REPLY TO BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

ROBERT M. DUDEK
Attorney at Law

South Carolina Commission
on Indigent Defense,
Division of Appellate Defense
1330 Lady Street, Fourth Floor
Columbia, SC 29201
(803) 734-1330

ATTORNEY FOR PETITIONER.

ARGUMENT IN REPLY

1. Defense counsel objected to Juror Sabrina Jenkins being removed for cause. The state asserts that “while a defense counsel may declare it to be a strategic reason to do so [allowing a juror who appears pro-state to remain on the jury], injecting such error in a case is not a sound strategic decision that would withstand any reasoned analyses under Strickland v. Washington, 466 U.S. 668 (1984) if the client is sentenced to death by similarly predisposed juror.” Brief in Opposition (hereinafter BIO) at 16-17.

2. Petitioner maintains that is simply not true. It is apparent defense counsel had a strategic reason for wanting Sabrina Jenkins on petitioner’s jury. The post-conviction relief or habeas red herring was easily resolved by having defense counsel state on the record he had a strategic reason for not wanting Sabrina Jenkins struck for cause. Counsel strongly wanted Jenkins as a juror. The state’s injection of Strickland v. Washington, 466 U.S. 668 (1984) and its denial of the strong defense challenge to the racially based challenge of Jenkins at trial is the real “folly” in this case. See BIO at 17.

3. The state also alleges that “The Petitioner asserts that where a prosecutor, as a minister of justice, wisely asserts or concurs that a juror is disqualified under Wainwright due to predisposition to sentence a murderer to death (rather than naively asserting the juror was qualified) and recommends that the juror be removed for cause is a matter that must be ignored by the trial court.” BIO at 16.

4. Again, that is not true, and that was not what Petitioner has been asserting. Defense counsel strongly urged to the trial court that it was “strange” that the solicitor would challenge such a “pro-state” juror. R. 526, ll. 21 – 23. Defense counsel disdainfully referred to the judge’s

language that the solicitor had been “masterful” in examining, and thereby removing “two black females,” Jenkins and Murphy. That defense counsel thought the state’s motivations for wanting Jenkins removed for cause were racial could not have been more apparent. R. 527, ll. 2 – 11.

5. Despite the trial judge’s apparent praise of the solicitor’s skill in this regard, the state maintains the solicitor was fair and balanced. “No attempt was made to box her [Jenkins] into this view. Also, the solicitor attempted to turn her attention away from unintentional killings. Still, Jenkins maintained the death penalty should be the punishment for any murder.” BIO at 15.

6. The solicitor confused Jenkins by injecting self-defense in the equation where self-defense was clearly not an issue in this case. This was a rape and murder case. A self-defense claim was impossible under the circumstances. Besides, as counsel told the court: “[We] wouldn’t even get to a sentencing phase on that situation.” Counsel argued that Jenkins “said she would follow your charge on the law if she received it, which means when you explain what the law is, then she’s willing to apply it and she has an open mind based on the circumstances and can give life or the death penalty.” R. 524, l. 24 – 525, l. 19. This case involved a skilled prosecutor and he was not attempting to help Petitioner, and protect him from his attorneys as the state urges. Pet. for Cert. at 12.

7. The state asserts that for Petitioner “to suggest, for the first time in an appeal, that exclusion was solely racially based, without support in the record turns appellate review on its head with such speculation.” BIO at 17.

8. The state’s submission totally ignores the record in this case. Defense counsel asserted the solicitor’s skills “just happens to have been [with] two black females that this occurred on.” Pet. for Cert. at 12. Further, the state’s assertion also ignores the fact that only one black juror

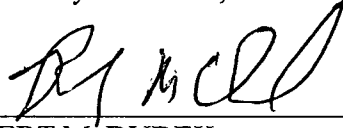
remained on the black Petitioner's jury after the state successfully withstood a Batson v. Kentucky, 476 U.S. 79 (1986) challenge at trial as to black jurors #178 and #399. The state struck three black jurors during jury selection. Pet. for Cert. at 7; A. 6-9. Jenkins and two other black jurors were removed, over objection, for cause prior to jury selection. All of this was argued at trial, and again on appeal before the state supreme court. Pet. for Cert. at A. 9-12.

In sum, the state again, as it did at trial and before the South Carolina Supreme Court, asserts its right to protect petitioner's from his own attorneys, who have all acted in his best interests, at the same time it seeks to execute him. This result could not have been intended by Wainwright v. Witt, 469 U.S. 412 (1985).

CONCLUSION

For the foregoing reasons and those contained in the petition for writ of certiorari, the writ should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

ROBERT M. DUDEK
Attorney at Law

South Carolina Commission
on Indigent Defense,
Division of Appellate Defense
1330 Lady Street, Fourth Floor
Columbia, SC 29201
(803) 734-1330

ATTORNEY FOR PETITIONER.

November 1, 2007

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2007

07-6693

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NOV 1 2007

S.C. SUPREME COURT

FREDRICK ANTONIO EVINS,

PETITIONER

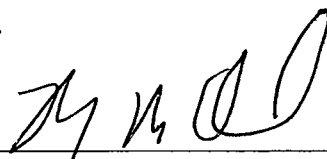
versus

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

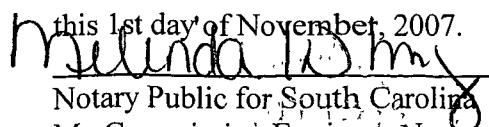
I certify that copies of the reply to brief in opposition to petition for writ of certiorari in this case have been served upon opposing counsel by mailing copies in envelopes properly addressed with postage prepaid on this 1st day of November, 2007.


ROBERT M. DUDEK
Attorney at Law

South Carolina Commission
on Indigent Defense,
Division of Appellate Defense
1330 Lady Street, Fourth Floor
Columbia, SC 29201
(803) 734-1330

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me
this 1st day of November, 2007.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: November 16, 2008



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Joseph L. Savitz, III, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

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NOV 1 2007

S.C. SUPREME COURT

November 1, 2007

Honorable William K. Suter
Clerk
Supreme Court of the United States
Washington, DC 20543

Re: Fredrick Antonio Evins v. State of South Carolina

Dear Mr. Suter:

Enclosed is Petitioner's Certificate of Filing by Mail for the reply to brief in opposition to petition for writ of certiorari in the above-referenced case.

Sincerely,

Robert M. Dudek
Attorney at Law

RMD\mwl
Enclosure

cc: Honorable Daniel E. Shearouse, Clerk
Donald J. Zelenka, Esquire

IN THE
SUPREME COURT OF THE UNITED STATES

RECEIVED

October Term, 2007

NOV 1 2007

07-6693

S.C. SUPREME COURT

FREDRICK ANTONIO EVINS,

PETITIONER

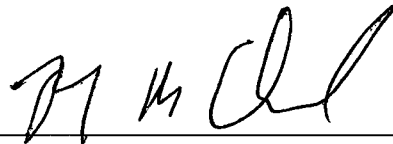
versus

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF FILING BY MAIL

I hereby certify that I am a member of the Bar of this Court and that on November 1, 2007, I filed the reply to the brief in opposition in the above-referenced case, by causing the originals and ten copies of the same to be deposited in the United States Mail, postage prepaid, and properly addressed to the Clerk of this Court.

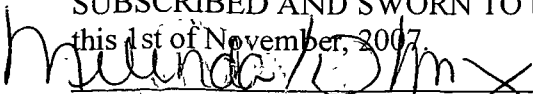


ROBERT M. DUDEK
Attorney at Law

South Carolina Commission
on Indigent Defense,
Division of Appellate Defense
1330 Lady Street, Fourth Floor
Columbia, SC 29201
(803) 734-1330

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me
this 1st of November, 2007.



(L.S.)

Notary Public for South Carolina

My Commission Expires: November 16, 2008.



HENRY McMASTER
ATTORNEY GENERAL

RECEIVED

OCT 18 2007

S.C. SUPREME COURT

October 17, 2007

Honorable D. Garrison Hill
305 E. North Street, Suite 213
Greenville, SC 29602

Re: Fredrick Evins v. State - 2007-CP-42-2849
Death Penalty PCR
Request for Status Conference

Dear Judge Hill:

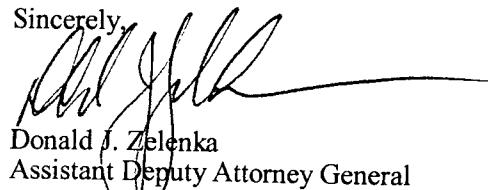
I am in receipt of the October 12, 2007 Order assigning exclusive jurisdiction of the death penalty post-conviction relief action in the above-referenced matter to you. Please be advised that the South Carolina Supreme Court denied the direct appeal in State v. Evins, 373 S.C. 404, 645 S.E.2d 904 (May 14, 2007). Certiorari to the United States Supreme Court has been sought by appellate counsel Robert Dudek and is presently pending. A Stay of Execution is currently in effect.

On August 14, 2007, appellate defender Dudek made an Application for Post-Conviction Relief in Spartanburg County. On September 20, 2007, Respondents made a Return in the matter. A copy of both are attached.

Please hold a status hearing in this matter to resolve the Applicant's desires and for the appointment of two (2) qualified counsel consistent with § 17-27-160. Evins was represented by Thomas A.M. Boggs, Karen Quimby, and Christopher Brough at trial. By copy of this letter, I am advising Dudek of the request.

If you have any questions please contact me.

Sincerely,


Donald J. Zelenka
Assistant Deputy Attorney General

DJZ/lbb
Enclosures: Application for Post-Conviction Relief
Return
October 12, 2007 Order

cc: Honorable Daniel E. Shearouse
Harold "Trey" Gowdy, Solicitor

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

William K. Suter
Clerk of the Court
(202) 479-3011

September 24, 2007

Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RECEIVED

SEP 28 2007

S.C. SUPREME COURT

Re: Frederick Antonio Evins
v. South Carolina
No. 07-6693
(Your No. 26329)

Dear Clerk:

The petition for a writ of certiorari in the above entitled case was filed on September 19, 2007 and placed on the docket September 24, 2007 as No. 07-6693.

Sincerely,

William K. Suter, Clerk

by

Melissa Blalock
Melissa Blalock
Case Analyst



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

September 19, 2007

Honorable William K. Suter
Clerk
Supreme Court of the United States
Washington, DC 20543

Re: Fredrick Antonio Evins v. State of South Carolina

Dear Mr. Suter:

Enclosed is Petitioner's Certificate of Filing by Mail in the above-referenced case.

Sincerely,

Robert M. Dudek
Attorney at Law

RMD\mwl
Enclosure

cc: Honorable Daniel E. Shearouse, Clerk
Donald J. Zelenka, Esquire

RECEIVED

SEP 20 2007

S.C. SUPREME COURT

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2006

No. 2006-_____

FREDRICK ANTONIO EVINS,

PETITIONER

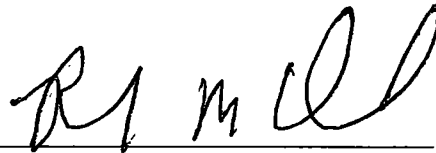
versus

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF FILING BY MAIL

I hereby certify that I am a member of the Bar of this Court and that on September 19, 2007, I filed the petition for writ of certiorari in the above-referenced case, together with a motion for leave to proceed in forma pauperis, by causing the originals and ten copies of the same to be deposited in the United States Mail, postage prepaid, and properly addressed to the Clerk of this Court.

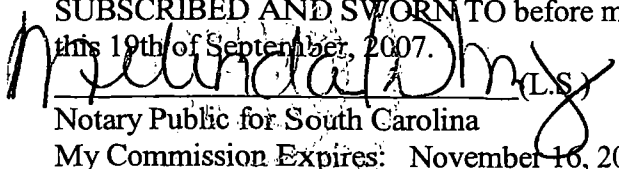


ROBERT M. DUDEK
Attorney at Law

South Carolina Commission
on Indigent Defense,
Division of Appellate Defense
1330 Lady Street, Fourth Floor
Columbia, SC 29201
(803) 734-1330

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me
this 19th of September, 2007.


Notary Public for South Carolina

My Commission Expires: November 16, 2008

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2006

No. 2006-_____

FREDRICK ANTONIO EVINS,

PETITIONER

versus

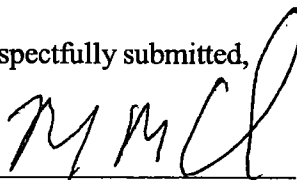
STATE OF SOUTH CAROLINA,

RESPONDENT

**MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS**

Fredrick Antonio Evins requests leave to proceed in forma pauperis, in accordance with the provisions of Title 28 U.S.C. §1915. The affidavit of Petitioner in support of this motion is attached, along with the petition for writ of certiorari.

Respectfully submitted,



ROBERT M. DUDEK
Attorney at Law

South Carolina Commission
on Indigent Defense,
Division of Appellate Defense
1330 Lady Street, Fourth Floor
Columbia, SC 29201
(803) 734-1330

September 19, 2007

RECEIVED

SEP 20 2007

S.C. SUPREME COURT

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2006

No. 06 - _____

FREDRICK ANTONIO EVINS,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

AFFIDAVIT OF FREDRICK ANTONIO EVINS
IN SUPPORT OF MOTION TO
PROCEED IN FORMA PAUPERIS

I, Fredrick Antonio Evins, being duly sworn, state that I am the petitioner in this case; that because of my poverty I am unable to pay the costs of or give security for this proceeding; that I believe I am entitled to redress.

The responses to the questions and instructions below relating to my ability to pay costs or give security are true.

1. Are you presently employed? *NO*

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

- b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

NO

2. Have you received within the past twelve months any income from a business, progression or other form of self-employment, or in the form of rent payments, interest, dividends, or other sources?

NO

- a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? NO

- a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? NO

- a. If the answer is yes, describe the property and state its approximate value.

No

The Duck-A-Quiss
FREDRICK ANTONIO EVINS

Notary Public for South Carolina (L.S.)

My Commission Expires: 4/4/2017

68); State v. Sapp, 366 S.C. 283, 621 S.E.2d 883 (2005) (citing Wainwright v. Witt, 469 U.S. 412 (1985)). When reviewing the trial court's qualification or disqualification of prospective jurors, the responses of the challenged juror must be examined in light of the entire *voir dire*. Id. The determination whether a juror is qualified to serve in a capital case is within the sole discretion of the trial judge and is not reversible on appeal unless wholly unsupported by the evidence. Id. A juror's disqualification will not be disturbed on appeal if there is a reasonable basis from which the trial court could have concluded that the juror would not have been able to faithfully discharge his responsibilities as a juror under the law. State v. Green, 301 S.C. 347, 392 S.E.2d 157 (1990). Deference must be paid to the trial court who sees and hears the juror. Id. There will be situations where a trial court is left with definite impression that prospective juror would be unable to faithfully and impartially apply the law and this is why deference must be paid to a trial court who sees and hears the juror. Wainwright v. Witt, 469 U.S. 412 (1985).

As discussed below, we find the trial court properly disqualified these jurors under Wainwright.

A. Juror # 258

Juror #258 originally testified that she could not give the death penalty because she did not feel that it was her right to give a man death. Juror #258 then indicated she could impose a sentence of death under certain circumstances. When asked thereafter if she could sign her name to a verdict form imposing a sentence of death, Juror #258 replied, "No." She explained the reason for this as being that given her job in the public, she could be a target for anybody, so she wouldn't want to sign her name. When the trial court indicated her name would be protected, she indicated she could sign a verdict form for death. When questioned by the solicitor, Juror #258 vacillated between being opposed to the death penalty, and appearing to believe it would be appropriate for most murders. Ultimately, however, when asked by the solicitor if she had a choice between life in prison or death, the juror answered that she would always pick life in prison.

Given the variations in Juror #258's responses and statement that she would *always* pick life in prison over death, the trial court did not abuse its discretion in disqualifying her because it appears she could not have discharged her duties in accordance with the law. Id.

B. Juror #182

During *voir dire*, Juror #182 stated she was a Type 3 juror who would hear all the evidence before deciding upon an appropriate sentence. On examination by the solicitor, however, Juror #182 strongly indicated that she would always give the death penalty to anyone who intentionally kills another. Upon further examination, Juror #182 explained that she would give life only to someone who unintentionally kills another, like self-defense. Juror #182 ultimately concluded that "if you intentionally kill somebody, you know what you were doing, death penalty, but self-defense, life sentence."

Again, it is clear this juror was predisposed to recommend a sentence of death in the case of an intentional killing such that there is a reasonable basis from which the trial court could have concluded she would not have been able to faithfully discharge her responsibilities as a juror under the law. We find she was properly disqualified under Wainwright. See also State v. Sapp, 366 S.C. at 283, 621 S.E.2d at 883.

C. Juror # 134

When asked whether, after considering all of the aggravating and mitigating circumstances, he could return a sentence of death, Juror #134 testified that he was not in favor of the death penalty and that he "really would have to be persuaded" to give the death penalty. Thereafter, when asked if he could sign his name to a death verdict, Juror #134 responded that, depending on the facts, he could sign a death verdict form. However, he subsequently described himself as a Number 2 juror – a juror who would not give the death penalty. Upon further inquiry by the solicitor regarding the death penalty, Juror #134 responded: "I've just always been the type that when I see it on TV or something about the death penalty, I'm always against it. There hasn't been one case yet where I said he deserves it."

We find the record supports the trial court's disqualification of Juror #134.⁴ Wainwright, 469 U.S. at 412 (holding that where trial court is left with definite impression that prospective juror would be unable to faithfully and impartially apply the law, it is within his discretion to disqualify a potential juror); see also State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) (ultimate consideration of the judge concerning juror qualification is that the juror be unbiased, impartial and able to carry out the law as explained to him).

IV. Sentencing Phase Photographs

Lastly, Evins asserts the trial court committed error at sentencing in admitting seven photographs of the victim, contending they served no legitimate purpose and served only to inflame the jury. In particular, Evins contests the admission of Exhibit numbers 70 and 71, which reveal that the victim had defecated on herself. We find the photographs were properly admitted.

The relevance, materiality and admissibility of photographs are matters within the sound discretion of the trial court, and the trial court's ruling on such issues will be disturbed only upon a showing of an abuse of discretion. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996), cert. denied, 520 U.S. 1200 (1997). The purpose of the sentencing phase in a capital trial is to "direct the jury's attention to the specific circumstances of the crime and the characteristics of the offender." State v. Matthews, 296 S.C. 379, 373 S.E.2d 587 (1988), cert. denied, 489 U.S. 1091 (1989). Photographs may be offered as evidence in extenuation, mitigation, or aggravation. State v. Haselden,

⁴ In addition to Juror #134's views on the death penalty, the solicitor also explained to the court that Juror #134 had charges pending against him for which he was being prosecuted by the solicitor's office and represented by the public defender's office. The solicitor argued that the combination of the juror's views on the death penalty and the pending charges disqualified Juror #134. Because we find that Juror #134 was properly disqualified on the basis of his views on the death penalty, we decline to address the issue of whether he was properly disqualified because of the pending charges.

353 S.C. 190, 577 S.E.2d 445 (2003). In the sentencing phase, the scope of the probative value of such photos is much broader than at the guilt or innocence phase. *Id.* See also State v. Weik, 356 S.C. 76, 587 S.E.2d 683 (2002); State v. Franklin, 318 S.C. 47, 456 S.E.2d 357 (1995). In determining whether to recommend a sentence of death, the jury may be permitted to see photographs which depict the bodies of the murder victims in substantially the same condition in which the defendant left them. State v. Kornahrens, 290 S.C. 281, 350 S.E.2d 180 (1986). There is no abuse of discretion if the offered photograph serves to corroborate testimony. State v. Johnson, 338 S.C. 114, 525 S.E.2d 519 (2000).

Exhibit 70 is a 4" x 6" photograph of the victim's body, taken from a distance of several feet away. It reveals the victim lying in a grassy field, naked and face down, with her right arm stretched up over her head, and her left arm bent and stretched out to the left. Upon close inspection, a small amount of feces is visible. Exhibit 71 is a photograph of victim's body taken from a further distance away, and was taken from an angle above the victim's head. The feces is not clearly visible in Exhibit 71. We find the photographs were properly admitted to show the victim in substantially the same condition as Evins left her, and to corroborate the testimony that the victim had defecated on herself. The photographs are not unnecessarily gruesome or disturbing. Accordingly, the trial court did not abuse its discretion in admitting the photographs.

PROPORTIONALITY REVIEW

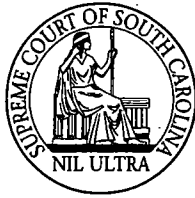
We have conducted the proportionality review as required by S.C. Code Ann. § 16-3-25(C), and we find the sentence in this case was not the result of passion, prejudice, or any other arbitrary factor. Furthermore, a review of similar cases illustrates that imposing the death sentence in this case would be neither excessive nor disproportionate in light of the crime and the defendant. State v. Downs, 361 S.C. 141, 604 S.E.2d 377 (2004) (death sentence warranted where defendant was convicted of murder, kidnapping, and first-degree criminal sexual conduct with a minor); State v. Stokes, 345 S.C. 368, 548 S.E.2d 202 (2001); State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) *cert. denied* 528 U.S. 1050 (1999); State v. Tucker, 319 S.C. 425, 462 S.E.2d 263 (1995) *cert. denied* 516 U.S. 1080 (1996).

CONCLUSION

For the foregoing reasons, we affirm Evins' convictions and sentences.

AFFIRMED.

**MOORE, BURNETT, PLEICONES, JJ., and Acting Justice
Edward B. Cottingham, concur.**



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

June 21, 2007

✓ Deputy Chief Attorney for Capital Appeals Robert M. Dudek
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Evins, Fredrick Antonio

Dear Counsel:

The Court has issued the following Order on your Petition for Rehearing in the above matter:

“Petition for Rehearing is denied.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ E.C. Burnett, III J.

s/ Costa M. Pleicones J.

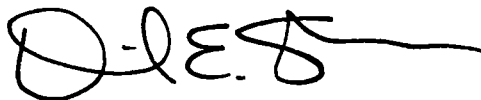
Justice John H. Waller, Jr.,
not participating

June 21, 2007.”

The remittitur is today being forwarded to the lower court.

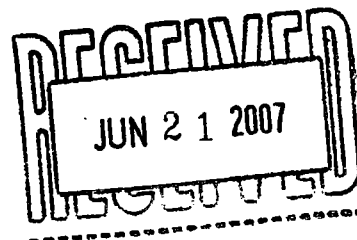
Deputy Chief Attorney for Capital Appeals
Robert M. Dudek
Page Two
June 21, 2007

Very truly yours,


CLERK

DES/dmh

cc: Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Derrick K. McFarland
The Honorable Harold W. Gowdy, III



C

Code of Laws of South Carolina 1976 Annotated Currentness

Title 16. Crimes and Offenses

Chapter 3. Offenses Against The Person

Article 1. Homicide

→ § 16-3-26. Punishment for murder: notice to defense attorney of solicitor's intention to seek death penalty; appointment of attorneys for indigent; investigative, expert or other services.

(A) Whenever the solicitor seeks the death penalty he shall notify the defense attorney of his intention to seek such penalty at least thirty days prior to the trial of the case. At the request of the defense attorney, the defense attorney shall be excused from all other trial duties ten days prior to the term of court in which the trial is to be held.

(B)(1) Whenever any person is charged with murder and the death penalty is sought, the court, upon determining that such person is unable financially to retain adequate legal counsel, shall appoint two attorneys to defend such person in the trial of the action. One of the attorneys so appointed shall have at least five years' experience as a licensed attorney and at least three years' experience in the actual trial of felony cases, and only one of the attorneys so appointed shall be the Public Defender or a member of his staff. In all cases where no conflict exists, the public defender or member of his staff shall be appointed if qualified. If a conflict exists, the court shall then turn first to the contract public defender attorneys, if qualified, before turning to the Office of Indigent Defense.

(2) Notwithstanding any other provision of law, the court shall order payment of all fees and costs from funds available to the Office of Indigent Defense for the defense of indigent. Any attorney appointed shall be compensated at a rate not to exceed fifty dollars per hour for time expended out of court and seventy-five dollars per hour for time expended in court. Compensation shall not exceed twenty-five thousand dollars and shall be paid from funds available to the Office of Indigent Defense for the defense of indigent represented by court-appointed, private counsel.

(C)(1) Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant's attorneys to obtain such services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses not to exceed twenty thousand dollars as the court shall deem appropriate. Payment of such fees and expenses may be ordered in cases where the defendant is an indigent represented by either court-appointed, private counsel or the public defender.

(2) Court-appointed counsel seeking payment for fees and expenses shall request these payments from the Office of Indigent Defense within thirty days after the completion of the case. For the purposes of this statute, exhaustion of the funds shall occur if the funds administered by the Office of Indigent Defense and reserved for death penalty fees and expenses have been reduced to zero. If either the Death Penalty Trial Fund or the Conflict Fund has been exhausted in a month and the other fund contains money not scheduled to be disbursed in that month, then the Indigent Defense Commission must transfer a sufficient amount from the fund with the positive fund balance to the fund with no balance and pay the obligation to the extent possible.

(D) Payment in excess of the hourly rates and limit in subsection (B) or (C) is authorized only if the court certifies, in a written order with specific findings of fact, that payment in excess of the rates is necessary to provide compensation adequate to ensure effective assistance of counsel and payment in excess of the limit is appropriate because the services provided were reasonably and necessarily incurred. Upon a finding that timely procurement of such services cannot await prior authorization, the court may authorize the provision of and payment for such services nunc pro tunc.

(E) After completion of the trial, the court shall conduct a hearing to review and validate the fees, costs, and other expenditures on behalf of the defendant.

(F) The Supreme Court shall promulgate guidelines on the expertise and qualifications necessary for attorneys to be certified as competent to handle death penalty cases.

(G) The Office of Indigent Defense shall maintain a list of death penalty qualified attorneys who have applied for and received certification by the Supreme Court as provided for herein. In the event the court appointed counsel notifies the chief administrative judge in writing that he or she does not wish to provide representation in a death penalty case the chief administrative judge shall advise the Office of Indigent Defense which shall forward a name or names to the chief administrative judge for consideration. The appointment power is vested in the chief administrative judge. The Office of Indigent Defense shall establish guidelines as are necessary to ensure that attorneys' names are presented to the judges on a fair and equitable basis taking into account geography and previous assignments from the list. Efforts shall be made to present an attorney from the area or region where the action is initiated.

(H) The payment schedule set forth herein, as amended by Act 164 of 1993, shall apply to any case for which trial occurs on or after July 1, 1993.

(I) Notwithstanding another provision of law, only attorneys who are licensed to practice in this State and residents of this State may be appointed by the Court and compensated with funds appropriated to the Death Penalty Trial Fund in the Office of Indigent Defense. This proviso shall not pertain to any case in which council has been appointed on the effective date of this Act.

(J) The Judicial Department biennially shall develop and make available to the public a list of standard fees and expenses associated with the defense of an indigent person in a death penalty case.

HISTORY: 1962 Code § 16-52.2; 1977 Act No. 177 § 3; 1978 Act No. 555 § 2; 1986 Act No. 462, § 26; 1993 Act No. 164, Part II, § 45D; 1994 Act No. 497, Part I, E23-§ 14; 1995 Act No. 145, Part I, § 14; 1996 Act No. 458, Part II, § 26A.

CROSS REFERENCES

Office of Indigent Defense to perform functions provided for in this section, see § 17-3-330.

LIBRARY REFERENCES

Costs ⌘302.3, 302.4.

Criminal Law ⌘641.7(1).

Sentencing Guidelines ⌘350H1741.

WESTLAW Topic Nos. 102, 110.

C.J.S. Criminal Law §§ 277 to 278, 280, 295, 297 to 299, 318 to 319, 1748 to 1750.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2006

No. 2006 -

FREDRICK ANTONIO EVINS,

PETITIONER

versus

STATE OF SOUTH CAROLINA,

RESPONDENT

A P P E N D I X

ROBERT M. DUDEK
Attorney at Law

South Carolina Commission
on Indigent Defense,
Division of Appellate Defense
1330 Lady Street, Fourth Floor
Columbia, SC 29201
(803) 734-1330

ATTORNEY FOR PETITIONER.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State,

Respondent,

v.

Fredrick Antonio Evins,

Appellant.

Appeal from Spartanburg County
Edward W. Miller, Circuit Court Judge

Opinion No. 26329
Heard March 8, 2007 – Filed May 14, 2007

AFFIRMED

Deputy Chief Attorney for Capital Appeals Robert M. Dudek,
and Appellate Defender Aileen P. Clare, both of Columbia, for
Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy Attorney
General Donald J. Zelenka, Assistant Attorney General Derrick
K. McFarland, all of Columbia, and Solicitor Harold W. Gowdy,
III, of Spartanburg, for Respondent.

CHIEF JUSTICE TOAL: Appellant Fredrick Antonio Evins
("Evins") was convicted of murder, first degree criminal sexual conduct
(CSC), and grand larceny. He was sentenced to death for the murder, thirty
years imprisonment for CSC, and five years for grand larceny. This appeal

consolidates his direct appeal with the mandatory review provisions of S.C. Code Ann. §16-3-25 (1985). We affirm the convictions and sentences.

FACTUAL/PROCEDURAL BACKGROUND

The victim in this case, Rhonda Ward (“Ward”), was the manager of a convenience store in Spartanburg. One early morning in February 2003, Evins approached Ward in the parking lot of the store on her way into work. Ward spoke to Evins briefly before he lead her back to her car where she got in the driver’s side and he got into the passenger side. Surveillance cameras at the store captured the exchange between Ward and Evins. Two days later, Ward’s naked body was found face down in an apple orchard. She had been sexually assaulted and stabbed twelve times.

After police discovered Evins had been driving Ward’s car on the day of the murder, he was arrested and subsequently confessed to Ward’s murder. Initially, Evins denied having had sex with Ward; instead, he claimed another man was with him in the woods and insisted that Evins kill Ward. However, upon being taken to the hospital for DNA testing, Evins admitted he had had sex with Ward on the day of her death. At trial, Evins claimed he and Ward had been engaged a long-term, consensual sexual relationship. He testified that on the day of her death, he and Ward were engaged in sexual intercourse outside in an apple field, when Ward became angry with him for refusing to leave his girlfriend. According to Evins, Ward wielded a knife, and wound up getting stabbed.

The jury convicted Evins of murder, kidnapping, first degree CSC, and grand larceny. After a separate sentencing phase, Evins was sentenced to death for murder, thirty years for CSC and five years for grand larceny. Evins raises the following issues for this Court’s review:¹

I. Did the trial court err in denying Evins’ motion for a change of venue based on pre-trial publicity?

¹ We have re-framed the seven issues raised by Evins.

II. Did the trial court err in ruling the state's exercise of peremptory challenges did not violate Batson v. Kentucky?

III. Did the trial court err in excusing three African-American potential jurors for cause?

IV. Did the trial court err in admitting certain photographs of the victim's body at sentencing?

LAW/ANALYSIS

I. Pre-trial Publicity- Change of Venue

In September 2002, approximately five months prior to the murder in this case, the body of a woman named Demaris Huff was found near a creek beside a walking trail near a park in Spartanburg. She had been strangled and was nude except for a pair of socks. DNA testing revealed that semen found on Huff matched that of Evins. The case remained unsolved until Evins' subsequent arrest for the February 2003 murder of Ward. At that time, after DNA testing, authorities also charged Evins with Huff's murder. The Huff murder charges were pending at the time of Evins' trial for the murder of Ward.

Evins moved for a change of venue based upon extensive pre-trial publicity, much of which linked Evins to both murders. The trial court ruled in a pre-trial hearing that it would allow Evins latitude in the *voir dire* of potential jurors to determine if they had any prior knowledge of Evins and/or the Huff murder. At the conclusion of *voir dire*, the defense renewed its motion for a change of venue, indicating that a total of thirty-nine people out of the jury pool of sixty-eight had heard something about the case. By defense counsel's count, seven of the twelve jurors seated had some knowledge of the case. The trial court declined to change venue, concluding that all of the jurors who had any prior knowledge of the case had indicated they could set aside any information and would not consider it. The court also noted the defense had used only nine of its ten peremptory challenges to remove potential jurors. Evins now contends the denial of his motion to change venue constituted an abuse of discretion. We disagree.

A motion to change venue is addressed to the sound discretion of the trial judge and will not be disturbed on appeal absent an abuse of discretion. Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004); State v. Manning, 329 S.C. 1, 495 S.E.2d 191 (1997) (finding trial court abused discretion by granting the State's motion to change venue based on pretrial publicity because no evidentiary facts supported finding of actual juror prejudice towards the State). When a trial judge bases the denial of a motion for a change of venue because of pretrial publicity upon an adequate *voir dire* examination of the jurors, his decision will not be disturbed absent extraordinary circumstances. State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990). When jurors have been exposed to pretrial publicity, a denial of a change of venue is not error where the jurors are found to have the ability to set aside any impressions or opinions and render a verdict based on the evidence presented at trial. State v. Tucker, 334 S.C. 1, 512 S.E.2d 99 (1999); Manning, 329 S.C. at 1, 495 S.E.2d at 191. Therefore, mere exposure to pretrial publicity does not automatically disqualify a prospective juror. Id. The relevant question is not whether the community remembered the case, but whether the jurors had such fixed opinions that they could not judge impartially the guilt of the defendant. Id. It is the defendant's burden to demonstrate actual juror prejudice as a result of such publicity. Caldwell, 300 S.C. at 494, 388 S.E.2d at 816.

In Rideau v. Louisiana, 373 U.S. 723 (1963), the United States Supreme Court found reversible error in a trial court's refusal to grant a motion for a change of venue due to the effect of pretrial publicity. There, the Court found that the people of Calcasieu Parish in Lake Charles, Louisiana, were "exposed repeatedly and in depth to the spectacle of Rideau personally confessing in detail to the crimes with which he was later to be charged." Id. The Court noted that three members of the jury which convicted Rideau had seen and heard Rideau's televised "interview" in which he confessed to the sheriff, and that two members of the jury were deputy sheriffs of Calcasieu Parish. Id. The Court found Rideau's due process rights had been compromised by such a procedure. Id. The present case is clearly inapposite.

We find Evins has demonstrated no prejudice from the denial of his motion. Both the trial court and defense counsel conducted a thorough *voir dire* of the jury pool. Additionally, all members of the jury who had any knowledge of Evins or the Huff murder due to pre-trial publicity indicated they could put that knowledge aside. Further, the defense used only nine of its peremptory challenges. Evins contends, however, that one juror had read about both crimes and connected them mentally such that “she could not be expected to disregard the image created by the articles.” Evins’ depiction of the juror’s response is overstated. The juror testified on *voir dire* that the only thing she had heard was that the crime had taken place; she specifically testified that she knew no details, did not know the location, she had formed no opinion, could put aside what she had heard, and could be fair and impartial. This is simply not akin to the situation in Rideau.

We find this case more akin to Sheppard, 357 S.C. at 646, 594 S.E.2d at 462, in which the defendant claimed he was entitled to a change of venue due to extensive pretrial publicity where, out of eighty-seven potential jurors, all but five had been exposed to pretrial publicity. Noting our holdings in Manning and Caldwell, we found the defendant had not met his burden of demonstrating actual juror prejudice as a result of the publicity. Sheppard, 357 S.C. at 655, 597 S.E.2d at 468. We held, “[m]ere exposure to pretrial publicity does not automatically disqualify a prospective juror. Instead, the relevant question is not whether the community remembered the case, but whether the jurors had such fixed opinions that they could not judge impartially the guilt of the defendant.” Id.

Moreover, Evins concedes that evidence of the Huff murder was properly admitted at the sentencing phase of trial. Accordingly, Evins’ complaint regarding pretrial publicity is necessarily limited to the guilt phase of his trial. Given the overwhelming evidence presented during that phase of trial, and the fact that Evins actually admitted to stabbing Ward, we find Evins has suffered no prejudice. Accordingly, the trial court’s denial of the motion to change venue is affirmed.

II. Batson Motion

Evins next asserts the trial court erred in denying his Batson² motion and ruling that two of the State's peremptory challenges were not racially motivated. We disagree. We find the solicitor's stated reasons for striking the jurors were race-neutral.

There were a total of twelve African-American venire members out of the pool of sixty-three potential jurors. During jury selection, the state exercised a total of seven peremptory challenges, striking three African American and four white potential jurors. The jury was ultimately comprised of eleven white jurors, one black juror, and one each white and black alternate. Evins complains that two of the African-Americans were struck in violation of Batson.³ We disagree.

In response to Evins' Batson motion, the solicitor explained that he struck Juror #78 because she had recently lost two sons in a felony DUI, for which the perpetrator had received only a six-year sentence. The solicitor was concerned that the juror would weigh the sentence given to the defendant of a felony DUI in which her sons were killed with the potential death sentence she would be considering in Evins' case. Additionally, he addressed the fact that the solicitor's office prosecuted the case and the public defender's office defended the defendant. The trial court ruled the solicitor's explanation satisfied the test required in Batson.

As to the other juror, Juror #399, the solicitor argued that the juror was "beyond vacillation on the death penalty. He is clearly life prone. And that's why we struck him." The trial court ruled the solicitor's reason was race-neutral, specifically stating, "I do agree with his assessment that [the juror] did appear to have – was one of the jurors with the largest problems with finding – would have one of the hardest times finding death. So I do agree with that."

² Batson v. Kentucky, 476 U.S. 79 (1986).

³ Evins does not contest the strike of Juror # 154 on appeal.

Evins asserts the solicitor's stated reasons were mere pretext. We disagree.

The Equal Protection Clause of the Fourteenth Amendment to the Constitution prohibits the striking of a venire person on the basis of race or gender. State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006); State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001). The proper procedure for a Batson hearing is set forth in State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996) (citing Purkett v. Elem, 514 U.S. 765 (1995)). After a party objects to a jury strike, the proponent of the strike must offer a facially race-neutral explanation. Once the proponent states a reason that is race-neutral, the burden is on the party challenging the strike to show the explanation is mere pretext, either by showing similarly situated members of another race were seated on the jury or that the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment. Adams, 322 S.C. at 123-24, 470 S.E.2d at 371-72. The burden of persuading the court that a Batson violation has occurred remains at all times on the opponent of the strike. State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999).

"Typically, the decisive question becomes whether counsel's race-neutral explanation for a peremptory challenge should be believed. . . . [T]here is seldom much evidence in the record bearing on that issue, and the trial court's findings regarding purposeful discrimination necessarily will rest largely on the evaluation of demeanor and credibility of counsel. Therefore, those findings are given great deference and will not be set aside unless clearly erroneous." State v. Cochran, 369 S.C. 308, 631 S.E.2d 294 (Ct. App. 2006) *citing* State v. Guess, 318 S.C. 269, 457 S.E.2d 6 (Ct.App. 1995).

As this Court held in Payton v. Kears, 329 S.C. 51, 495 S.E.2d 205 (1998), the right to serve on a jury and not to be discriminated against because of race or gender belongs to the potential juror, not a litigant. This is so because a defendant has no right to trial by a particular jury. Adams, 322 S.C. at 126, 470 S.E.2d at 373.

We find the record supports the trial court's finding that the state's explanation for its peremptory challenges of these two jurors were race-

neutral. The fact that Juror #78 had had two sons killed in a felony DUI, and the perpetrator had received only six years imprisonment was sufficient reason for the solicitor to believe that this juror might be reluctant to impose a death sentence. Moreover, when initially questioned by the trial court as to whether she could be a fair and impartial juror, she responded, "well, your Honor, I done been through this before, so it would be kind of hard for me to, you know. . . ." When questioned further as to whether she could find a defendant either guilty or not guilty depending on what she heard, she went on to state, "Well, to be truthful, I don't know. . . . Your Honor, I still – I can't make up my mind. I don't know what happened to my two sons, and I haven't got over it yet." Although she ultimately testified that she would honor her oath if selected to be a fair and impartial juror, she nonetheless maintained when asked if she knew any reason why she could not serve on this jury that serving would be difficult for her. In sum, although her answers varied somewhat, we simply cannot say the solicitor's proffered reason for striking Juror #78 was not race-neutral or that the solicitor's stated reasons were pretext.

As for Juror #399, the solicitor's stated reason for striking him was that he was likely the most pro-life person in the jury venire. When asked whether he could serve as a fair and impartial juror, he responded, "Possibly, I could, but I don't know." When questioned about whether he could sentence someone to death, he repeatedly stated, "That's a tough one. . . . Well, like I said, I never really thought about it, but that would still be just like killing somebody. I mean, that's basically, the same thing to me. . . . That's just what I – that's just the way I feel right now, you know. Like I say, I never really thought about it. . . . So, I mean, death is death. . . ." When the trial court asked, "So, are – you don't – what you're telling me is that you don't believe in killing; is that right?," the juror responded, "Well, I like life better than death. That's a tough one, I'm going to tell you." When told by the trial court that they need to know where he stood, the juror concluded, "I probably could. But then again, I hear this little voice saying, you know, it's not right, but I probably could."

Vacillating responses to *voir dire* questions regarding the death penalty will support the use of a peremptory strike against a Batson challenge. State v. Bell, 305 S.C. 11, 406 S.E.2d 165 (1991); State v. Green, 301 S.C. 347,

392 S.E.2d 157 (1990); State v. Elmore, 300 S.C. 130, 386 S.E.2d 769 (1989). Where the Solicitor perceives a person will have difficulty imposing the death penalty, he may exercise a peremptory challenge against that juror upon this ground as a racially neutral reason. Bell, 305 S.C. at 15, 406 S.E.2d at 168.

Here, the juror's vacillation and reluctance to impose a death sentence is quite evident. Further, although Evins now points to several white jurors who were seated on the jury who also vacillated in their responses regarding a sentence of death, Evins did not raise this point at the time of his Batson challenge during the trial and therefore failed to meet his burden of demonstrating pretext to the trial court. In any event, the four white jurors cited by Evins on appeal simply did not vacillate in their responses to the same degree as Juror #399. None of these jurors were nearly as equivocal in their responses concerning the death penalty. Accordingly, the trial court properly ruled the solicitor's stated reason for striking him was race-neutral, and Evins' Batson motion was properly denied.

III. Juror Disqualification

Evins next contends the trial court erred in disqualifying three African American venire members from serving on the jury. Juror #258 was disqualified because of her reluctance to impose a sentence of death; Juror #182 was disqualified due to her predisposition to impose a sentence of death; and Juror #134 was disqualified due to both his reluctance to impose a death sentence and the fact that he had charges pending against him for which he was being prosecuted by the solicitor, and represented by the Public Defender's office (which also represented Evins). Evins asserts these jurors were improperly disqualified. We disagree.

A prospective juror may be excluded for cause when his or her views on capital punishment would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath. S.C.Code Ann. § 16-3-20(E) (2003) (juror may not be excused in a death penalty case unless his beliefs or attitudes against capital punishment would render him unable to return a verdict according to law); State v. Lindsey, Op. No. 26268, (S.C. Sup. Ct. filed Feb. 20, 2007) (Shearouse Adv. Sh. No. 6 at

Miller, and a jury. Karen M. Quimby, Thomas A.M. Boggs, and Christopher Brough represented Petitioner. R. 1. At the conclusion of the guilt phase the jury found Petitioner guilty of each offense. R. 2042, ll. 6 – 18.

At the conclusion of the penalty phase on November 19, 2004 the jury returned a sentence of death. R. 2583, l. 22 – 2584, l. 13. Judge Miller then sentenced Petitioner to death for murder, thirty years imprisonment for criminal sexual conduct in the first degree and five years imprisonment for grand larceny. R. 2587, l. 9 – 2588, l. 8.

HOW THE FEDERAL ISSUE WAS RAISED BELOW

Petitioner is African-American. Twelve of his sixty-three potential jurors also were black. Two of these were disqualified because they refused to impose the death penalty: John Foster, # 102, and Mary James, # 180. R. 132, l. 20 - 144, l. 8; R. 839, l. 11 - 849, l. 11.

Two more black venire members were disqualified without objection because prior convictions made them ineligible to serve: Rita Pearson, # 281, and Shelton Benjamin, # 11. R. 653, l. 3 - 655, l. 24; R. 1202, l. 3 - 1206, l. 10. The state successfully moved to disqualify three more blacks, over Petitioner's objections: Patricia Murphy, # 258, Sabrina Jenkins, # 182, and Aaron Gray, # 134. R. 368, l. 17 - 385, l. 5; R. 507, l. 12 - 528, l. 10; R. 769, l. 21 - 792, l. 7. The state exercised peremptory strikes against three of the five remaining black venire members: Annie Davis, # 78, Rosetta Higgins, # 154, and Johnny Young, # 399. R. 1333, ll. 18-21; R. 1335, l. 25 - 1337, l. 2. In the end only one African-American venire member, Lizzie Frawley, # 108, was seated on the petit jury, and one, Linda Means, # 246, was seated as an alternate. R. 1333, ll. 12-17; R. 1338, ll. 3-8.

Sabrina Jenkins was an African-American venire member. During the court's *voir dire*,

Jenkins said that she had heard about the case on the news, but that she could disregard what she had seen about it. R. 509, l. 5 - 510, l. 7. She said that she had not formed any opinion about Petitioner's guilt. She stated that she could serve as a fair and impartial juror and reach a verdict based solely on the facts and law presented in court. R. 510, ll. 11-25.

Jenkins said that she could find the defendant guilty or not guilty depending on the evidence. She stated that, if the case reached the penalty phase, she could return either a life sentence or a death sentence after considering all of the aggravating and mitigating circumstances. R. 511, l. 15 - 17. She said that she was a "type three" juror who would "listen to all the facts and circumstances" before reaching a verdict. A "type one" juror was one who would always vote for death when a murder conviction was returned. A "type two" juror was one that would always vote for life imprisonment without parole if the defendant was convicted of murder regardless of how heinous the crime or record of the defendant was in the case. R. 513, ll 3-25.

During the solicitor's *voir dire*, Jenkins was asked an open-ended question about the death penalty, as follows:

Q. What are your beliefs or views on capital punishment.

A. Well, what I believe is to give someone the death penalty, if you purposely kill somebody -- you know, it could have been another situation that could have handled it. Then I see it as if -- I could see the death penalty. But for life, I say that if there wasn't no way out, you had to do what you had to do, you know. You had to kill -- you had to murder someone right then, you know, if you had to do it right then. And then you had to do what you had to do. There wasn't no way out of it, you know.

Q. Like self-defense or something.

A. Like self-defense, that's what I say, life. But I say death penalty, if you purposely did it and you know what you was

doing and could have avoided it, then I think you deserve the death penalty.

R. 517, l. 18 – 518, l. 10.

The solicitor's remaining questions couched the penalty phase solely in terms of unintentional or intentional behavior, rather than aggravation and mitigation. He gave Jenkins those two choices -- intentional killing or not -- and asked her what the punishment should be:

Q. Let me ask, you, understanding that murder is intentionally killing another person, do you think that the death penalty should always be imposed in that case?

A. Yeah.

Q. So laying aside the self-defense or involuntary manslaughter or vehicular manslaughter, if you intentionally killed somebody with malice aforethought, which is an evil or depraved or wicked spirit, the death penalty should be the punishment?

A. Yeah.

R. 518, l. 14 - 519, l. 5.

The court asked several follow-up questions:

Q. Not every case in South Carolina that is murder is a capital case. You cannot -- the state may not pursue the death penalty in every murder case. Do you understand that?

A. Uh-huh.

Q. Now -- so what I'm asking you is, do -- you told the Solicitor that you thought that every time somebody committed murder, they should get the death penalty.

A. Well --

Q. You're in a tough place and you've got some -- go ahead and tell me what you're thinking.

A. Let me rephrase that. See, I told him what I thought about

intentionally doing it and defending yourself.

Q. Okay. Well, let me just explain just a little something to you, and then I'll let you get out of here. If you act in self-defense, you are not guilty of murder. Okay.

A. Yeah, you're right.

Q. And there are cases where there can be the intentional and wrongful killing of another person with malice aforethought, which is murder, but [that] doesn't have an aggravating circumstance attached to it. So they cannot seek the death penalty. And then there's a capital case where there must be an aggravating circumstance . . .

Do you mean to tell me -- you told me before that you could consider all the aggravating and mitigating circumstances and return a verdict of life in prison. . . . In that circumstance, after considering all of the evidence, could you return a verdict of life in prison or . . . could you only give the death sentence?

A. I could give life in prison

Q. Okay. Just tell me briefly a little bit about that so I know understand. And it's a complicated issue, no question about it.

A. I don't understand the answer you're looking for.

Q. I'm not looking for an answer. I want to know how you feel. And the reason I'm curious about that, you told me when I was questioning you that you could give a life sentence and then later, you said that you would always give death.

A. I'd always give death?

Q. Yes. So I'm just trying to clear that up and find out which is true.

A. Well, see, like I said, the only -- it depends on life or death in the situation of self-defense or intentionally -- you know, if you intentionally kill somebody, you know what you were doing, death penalty, but self-defense, life sentence.

Q. All right. So every time, if you intentionally kill somebody, the death sentence? I'm just asking.

A. (Juror nodded).

Q. And you say "yes"?

A. Yes.

R. 521, l. 4 - 524.

Defense counsel did not object to Jenkins' qualifications. However, the solicitor said, "Regrettably, I think she's unqualified." R. 524, ll. 12-26.

Defense counsel argued in response that Jenkins had consistently and correctly answered the court's questions on whether she could give life or death based on the circumstances. He argued that self-defense was injected in the equation by the solicitor. Counsel noted that self-defense was an absolute defense and that "[We] wouldn't even get to a sentencing phase on that situation." Counsel told the court that Jenkins "said she would follow your charge on the law if she received it, which means when you explain what the law is, then she's willing to apply it to it and that she has an open mind based on the circumstances and can either give life or the death penalty. R. 524, l. 22 - 525, l. 19.

The solicitor argued that once he explained the definition of murder to Jenkins, she was "unequivocal" that "death is automatic." R. 525, l. 21 - 526, l. 2. He said, "I almost cannot believe my ears that they want to qualify a juror who says . . murder automatically equals the death penalty." In reply, defense counsel noted that it was "strange" that the solicitor would challenge such a "pro-state" juror. R. 526, ll. 3-12. The court conceded that the solicitor had been "masterful, in his fair seeking of a qualified juror" and he granted the state's motion to

disqualify Jenkins. R. 526, ll. 21-23.

Defense counsel objected to Jenkins' disqualification, and he picked up on the "masterful" theme by stating that the solicitor had been masterful in what "just happens to have been two black females that this occurred on." Counsel was referring to both potential jurors Murphy and Jenkins, and counsel said that the solicitor had established a pattern of manipulating qualified African-American venire members into contradicting their initial qualifying statements that they could "go either way" based on the circumstances. Counsel added, "It's clear that we feel like she's qualified." The court overruled the defense objection and removed Jenkins from the venire. R. 527, ll. 2-11.

On appeal to the South Carolina Supreme Court Petitioner argued that Jenkins, Juror #182, was a death penalty qualified juror under Wainwright v. Witt, 469 U.S. 412 (1985), and that her removal for cause upon the State's motion violated this Court's holding in Gray v. Mississippi, 481 U.S. 648 (1987). The South Carolina Supreme Court held "it is clear this juror was predisposed to recommend a sentence of death in the case of an intentional killing such that there is a reasonable basis from which the trial court could have concluded she would not have been able to faithfully discharge her responsibilities as a juror under the law. We find she was properly disqualified under *Wainwright*. State v. Evins, 645 S.E.2d 904, 912 (2007). App. 11.

On rehearing Petitioner wrote:

As counsel argued before this Court, it is the duty of defense counsel to make strategic decisions during jury selection and at trial. The judge here accepting the counterintuitive position of the solicitor, who is seeking the death penalty, and is supposedly looking out for the defense where Petitioner had three qualified attorneys to do so is as disturbing as forcing a lawyer upon a defendant who knowingly and intelligently wishes to represent himself against the mistrust of the system seeking to take his life or liberty. See Faretta v. California, 422 U.S. 806 (1975).

The “criminal justice system” is more than adequately protected in the Sabrina Jenkins situation for PCR by the trial judge merely having defense counsel agree on-the-record that its argument that Jenkins is qualified is a strategic decision. “Lawyers experienced in the trial of capital cases have widely varying views about addressing the delicate balance between the disqualification of jurors whose personal beliefs prevent them from ever imposing the penalty of death under Witherspoon v. Illinois, 391 U.S. 510, 520-23, 8 S.Ct. 1770, 20 L.Ed.2d 776 (1968), and those who would automatically recommend that sentence if they found the defendant guilty. Morgan, 504 U.S. 719, 112 S.Ct. 2222, 119 L.Ed.2d 492.... The difficulty of the task is greater where[,as here,] there has been widespread publicity and public comment about the crime, the investigation and pre-trial proceedings....” United States v. McVeigh, 118 F.Supp.2d 1137, 1152 (D. Colo. 2000).

Petition for rehearing at 2-3.

Petitioner concluded: “The only viable reason for the state’s motion to disqualify Jenkins was racial. Petitioner asks this Court to reconsider its holding that the trial judge did not err by allowing the state’s manipulation of the *voir dire* of Jenkins, #182, and the state’s cynical argument – including on appeal – that it was protecting Petitioner from his own defense attorneys as it prepared to ask the jury and now this Court to approve his execution. In the final analysis, Jenkins was qualified, and the defense did not think she was so unyielding in her opinions that she could not be fair.” Petition for rehearing at 8.

WHY THE WRIT SHOULD BE GRANTED

Wainwright v. Witt was used in this case by the State to remove a death qualified African-American juror. The State should not be allowed to remove a qualified juror under the guise of protecting the defendant from himself. The defense obviously thought Jenkins in the final analysis may have voted their way, and Petitioner was entitled to qualified jurors being left in the venire, and not being removed for cause under Uttecht v. Brown, 127 S.Ct. 2218 (2007) and Gray v. Mississippi, 481 U.S. 648 (1987).

Jenkins was a qualified juror under Wainwright v. Witt, 469 U.S. 412 (1985). Her replies to the court during its initial examination were certain and affirmative.

This Court recently reiterated that a juror must be excused only if her opinions will prevent or substantially impair the performance of her duties as a juror in accordance with her oath and instructions. Uttecht v. Brown, ___ U.S. ___, 127 S.Ct. 2218 (2007) citing Wainwright v. Witt, 469 U.S. 412 (1985). The defense here was clearly concerned with an African-American defendant allegedly linked to raping and killing two white women being tried before an all-white or nearly all-white jury in the most conservative Christian part of upstate South Carolina – Spartanburg County. See Miller-El v. Dretke, 545 U.S. 231 (2005).

The State's "I almost cannot believe my ears that they want to qualify a juror" who appeared so pro-State should not stand under this Court's death penalty juror qualification jurisprudence. "It invites cynicism respecting the jury's neutrality," and it "undermines public confidence in the adjudication." Powers v. Ohio, 499 U.S. 400, 412 (1991); Georgia v.

McCollum, 505 U.S. 42, 49 (1992). Jenkins was qualified to serve, and the State should not be allowed to insist on the removal of a qualified juror under the guise of protecting a criminal defendant, represented by statutorily death penalty attorneys, from himself.¹

The potential juror's views here only appeared to change after the solicitor purposely confused her by injecting self-defense into the case. His questions suggested that there were only two possible verdicts, murder or self-defense, and he asked Jenkins to assign a penalty for each. With the understanding that there were only two possible crimes and two possible penalties, Jenkins naturally assigned the harsher penalty to the more serious offense. She was using self-defense hypothetically, as an example, after having told the court that she would consider both mitigating and aggravating factors in sentencing. Self-defense was not an issue in this case. Moreover, defense counsel properly argued self-defense was an absolute defense, and not a "lesser-included offense" the questions to Jenkins implied.

The solicitor's treatment of Jenkins, especially considering his peremptory strikes show a systematic attempt to eliminate as many African-Americans from the jury as possible. Judging by her *voir dire* answers, Jenkins' presence on the jury would have benefited the state, if anybody. The only viable reason for the state's motion to disqualify her was racial.

Uttecht v. Brown, ___ U.S. ___, 127 S.Ct. 2218 (2007) was a federal habeas relief action where this Court, 5-4, found the Ninth Circuit Court of Appeals failed to respect the limited role of federal habeas relief. This is a direct appeal, and if ever the State's right to control death penalty jury selection was starkly at issue it was here. "[A] criminal defendant has the right to an

¹ S.C. Code §16-3-26(b) provides in a death penalty case one of the attorneys appointed shall have at least five years experience as a licensed attorney and at least three years experience in the actual trial of felony cases. The statute also provides that only one of the attorneys appointed shall be the Public Defender or a member of his staff. App. 17-18.

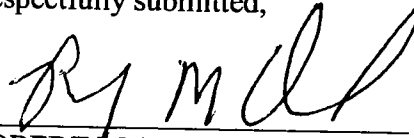
impartial jury drawn from a venire that has not been tilted in favor of capital punishment by selective prosecutorial challenges for cause.” Uttecht v. Brown, 127 S.Ct. at 2224 *citing* Witherspoon v. Illinois, 391 U.S. 510, 521 (1968). Defense counsel strenuously objected to Juror Jenkins being excused for cause.

The South Carolina Supreme Court erred by affirming the trial court’s excusal of Juror Jenkins for cause. The defense attorneys for Petitioner believed there was nothing that indicated Jenkins would not conscientiously apply the law to the facts adduced at trial. Lockhart v. McCree, 476 U.S. 162, 176 (1986). This Court should respectfully grant certiorari and order a new trial. See Gray v. Mississippi, 481 U.S. 648, 658 (1987), *reaffirming* Davis v. Georgia, 429 U.S. 122 (1976) (the erroneous exclusion for cause of a qualified juror in a capital case cannot be harmless error).

CONCLUSION

A writ of certiorari to the Supreme Court of South Carolina should be issued.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ry M Dudek', written over a horizontal line.

ROBERT M. DUDEK
Attorney at Law

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ATTORNEY FOR PETITIONER.

September 19, 2007

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2006

No. 2006-_____

FREDRICK ANTONIO EVINS,

PETITIONER

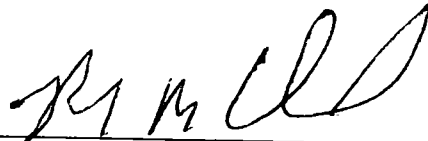
versus

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that copies of the petition for writ of certiorari and appendix in this case have been served upon opposing counsel by mailing copies in envelopes properly addressed with postage prepaid on this 19th day of September, 2007.

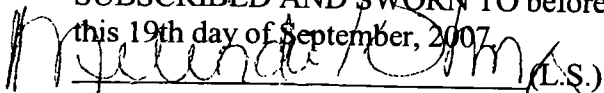


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SUBSCRIBED AND SWORN TO before me
this 19th day of September, 2007



(L.S.)

Notary Public for South Carolina

My Commission Expires: November 16, 2008



SCCID

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September 19, 2007

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Fredrick Antonio Evins v. State of South Carolina

Dear Mr. Shearouse:

Please be advised that I have filed a petition for writ of certiorari and appendix in this case with the United States Supreme Court today. I have attached a copy of that petition.

Please contact me if you have any questions.

Sincerely,

Robert M. Dudek
Deputy Chief Attorney for Capital Appeals

RMD/mwl

Enclosure

cc: Donald J. Zelenka, Esquire

RECEIVED

SEP 20 2007

S.C. SUPREME COURT

**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 2006

No. 2006-_____

FREDRICK ANTONIO EVINS,

PETITIONER

versus

STATE OF SOUTH CAROLINA,

RESPONDENT

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF SOUTH CAROLINA**

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ATTORNEY FOR PETITIONER.

QUESTION PRESENTED
Capital case

Whether the court erred by disqualifying African-American potential juror Sabrina Jenkins for cause under the Wainwright v. Witt, 469 U.S. 412 (1985) standard where the State even acknowledged Jenkins had strong pro-death penalty views, since defense counsel correctly noted a pattern of striking African-American jurors had developed, and using Wainwright v. Witt in this manner by the government was fundamentally unfair?

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SUPREME COURT OF THE UNITED STATES

October Term, 2006

No. 20-_____

FREDRICK ANTONIO EVINS,

PETITIONER

versus

STATE OF SOUTH CAROLINA,

RESPONDENT

**PETITION FOR WRIT OF CERTIORARI TO THE
SOUTH CAROLINA SUPREME COURT**

Fredrick Antonio Evins asks this Court to issue a writ of certiorari to review the decision of the South Carolina Supreme Court in this case.

CITATION TO OPINION BELOW

The opinion of the South Carolina Supreme Court affirming Petitioner's murder conviction and death sentence is reported as State v. Fredrick Antonio Evins, 645 S.E.2d 904 (2007). App. 1-14.

JURISDICTION

The judgment of the South Carolina Supreme Court was entered on May 14, 2007. The

petition for rehearing was denied on June 21, 2007. App. 15.. This Court's jurisdiction is invoked pursuant to 28 U.S.C §1257(a), Petitioner having asserted below and asserting herein the deprivation of rights secured by the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Sixth Amendment to the United States Constitution, which provides in pertinent part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . ."

This case involves the Eighth Amendment to the United States Constitution, which provides in pertinent part, "Excessive bails shall not be required . . . nor cruel and unusual punishments inflicted."

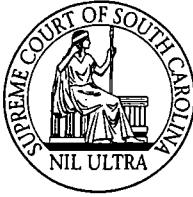
This case also involves the Fourteenth Amendment to the Constitution of the United States, which provides in pertinent part, "[N]or shall any state deprive any person of life, liberty . . . without due process of law"

STATEMENT OF FACTS

Procedural history

Petitioner was indicted by the Spartanburg County grand jury for offenses of murder, kidnapping, criminal sexual conduct in the first degree and grand larceny. R. 2766 - 2771. The defense moved for a change of venue on the basis that Petitioner could not get a fair trial in Spartanburg County, South Carolina because of extensive pre-trial publicity, and the fact Petitioner had graphically been linked in the media to an unrelated rape and murder of another white woman - "the Huff murder." That motion was ultimately denied. R. 2065, l. 2 – 2069, l. 11.

Petitioner's case came on for trial on November 8, 2004 before the Honorable Edward W.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

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July 19, 2007

Deputy Chief Attorney for Capital Appeals Robert M. Dudek
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Evins, Fredrick Antonio

Dear Counsel:

Enclosed is the order issued in the above entitled matter.

Very truly yours,

CLERK

DES/dmh

Enclosure

cc: Assistant Deputy Attorney General Donald J. Zelenka
The Honorable Harold W. Gowdy, III

The Supreme Court of South Carolina

The State,

Respondent,

v.

Fredrick Antonio Evins,

Petitioner.

ORDER

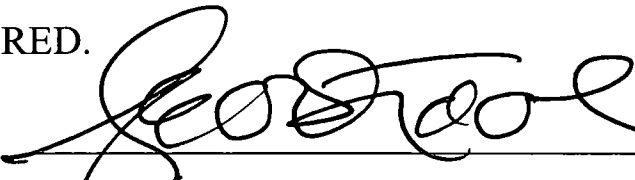
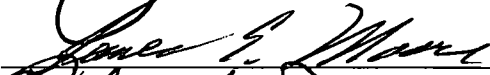
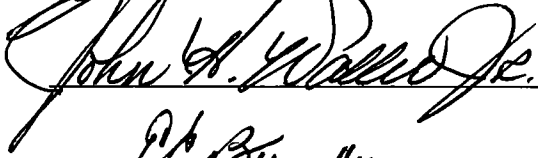
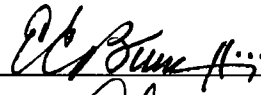
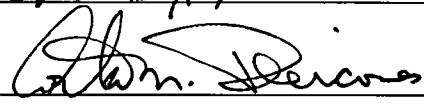
This Court recently affirmed petitioner's convictions and death sentence. State v. Evins, Op. No. 26329 (S.C. Sup. Ct. filed May 14, 2007). On June 21, 2007, the petition for rehearing was denied and the remittitur was sent to the lower court. A notice of execution has not been issued.

Petitioner now requests a ninety day stay of execution, from the date rehearing was denied, in which to file a petition for a writ of certiorari in the United States Supreme Court. The State has submitted a letter in which it acknowledges at least one of the issues petitioner presents raises a preserved federal question.

Because petitioner intends to raise to the United States Supreme Court a federal question that is preserved for review, we grant the petition for a stay of execution pursuant to In re Stays of Execution in Capital Cases,

supra, 321 S.C. 544, 471 S.E.2d 140 (1996), and the stay shall remain in effect to the extent provided by this Court therein.

IT IS SO ORDERED.


C. J.

J.

J.

J.

J.

Columbia, South Carolina

July 19, 2007



HENRY McMASTER
ATTORNEY GENERAL

RECEIVED

JUL - 5 2007

July 5, 2007

S.C. SUPREME COURT

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

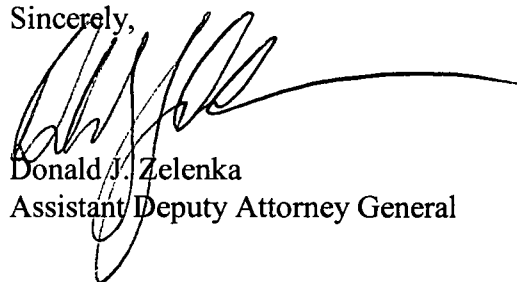
Re: The State v. Fredrick Antonio Evins
Petition for Stay of Execution to Seek Certiorari

Dear Mr. Shearouse:

I am in receipt of the Motion by counsel Robert Dudek requesting a stay of execution to seek certiorari in the United States Supreme Court. Upon review of the proposed questions presented, it appears that at least one of the questions presented raises a preserved federal question. Consistent with In Re Stays, 321 S.C. 544, 471 S.E.2d 544 (1996), there appears to be a basis for the granting of the temporary stay, even though we assert the grounds asserted are not worthy of certiorari.

By copy of this letter, we are advising counsel Dudek of our position.

Sincerely,



Donald J. Zelenka
Assistant Deputy Attorney General

DJZ/lbb

cc: Robert M. Dudek, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

June 22, 2007

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

RECEIVED

JUN 22 2007

S.C. SUPREME COURT

Re: The State v. Fredrick Antonio Evins

Dear Mr. Shearouse:

Enclosed please find an original and six copies of the petition for stay of execution along with a certificate of service.

Sincerely,

Robert M. Dudek
Deputy Chief Attorney for Capital Appeals

RMD/mwl

Enclosure

cc: Derrick K. McFarland, Esquire
Fredrick Antonio Evins

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Edward W. Miller, Circuit Court Judge

ORIGINAL
RECEIVED

JUN 22 2007

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

FREDRICK ANTONIO EVINS,

PETITIONER

PETITION FOR STAY OF EXECUTION

Counsel for Fredrick Antonio Evins petitions this Court for a stay of execution to allow him to file a petition for writ of certiorari with the United States Supreme Court. This Court denied rehearing on June 21, 2007.

I.

This Court affirmed petitioner's convictions and death sentence in State v. Fredrick Antonio Evins, Opinion No. 26329 (filed May 14, 2007); 2007 WL 1412278 (S.C.).

II.

A petition for rehearing was filed on May 29, 2007. As stated, this Court denied rehearing on June 21, 2007.

III.

A petition for writ of certiorari to the United States Supreme Court is petitioner's proper avenue for relief from the judgment of this Court affirming his murder conviction, and sentence of death. Supreme Court Rule 13.1. Pursuant to *In re STAYS OF EXECUTION IN CAPITAL CASES*, 321 S.C. 544, 471 S.E.2d 544 (1996), this Court is the proper Court to issue the stay pending the disposition of petitioner's case in the United States Supreme Court.

IV.

Petitioner can or will raise the following federal issues, preliminarily framed, in the United States Supreme Court:

1.

Whether the South Carolina Supreme Court erred by holding the disqualification of African-American potential juror Sabrina Jenkins for cause under the Wainwright v. Witt, 469 U.S. 412 (1985) standard was not error where solicitor even acknowledged it appeared Jenkins had strong pro-death penalty views, since defense counsel correctly noted a pattern of striking African-American jurors had developed, and the solicitor's "concern" that Jenkins may be too strongly in favor of the death penalty was an apparent subterfuge to remove a qualified potential juror?

2.

Whether the South Carolina Supreme Court erred by holding it was not error for the trial court to excuse African-American potential juror Patricia Murphy for cause where Murphy strongly testified that she could impose the death penalty upon a murderer, since she was a qualified juror under the Wainwright v. Witt, 469 U.S. 412 (1985) standard?

3.

Whether the South Carolina Supreme Court erred by holding the denial of petitioner's motion for a change of venue was not a denial of due process under United States Supreme Court precedent where the majority of potential jurors had been exposed to extensive pretrial publicity, and where the news media had linked petitioner's current murder charges to another unrelated murder?

4.

Whether the South Carolina Supreme Court erred by holding that the state's preemptory strike against African-American potential juror Annie Davis did not violate Batson v. Kentucky, 476 U.S. 79 (1986), because Davis was a death penalty qualified juror, and the solicitor's purported explanation that she would be adversely affected and unable to be impartial because two of her sons were killed in a DUI traffic accident was not supported by the record, and was a subterfuge to remove an African-American potential juror?

5.

Whether the South Carolina Supreme Court erred by holding the solicitor's preemptory challenge against African-American potential juror Johnny Young did not violate Batson v. Kentucky, 476 U.S. 79 (1986), where the solicitor explanation that Young was a "life-prone juror" was not supported by the record, and was a subterfuge to remove an African-American potential juror?

6.

Whether the South Carolina Supreme Court erred by holding the trial court did not err by

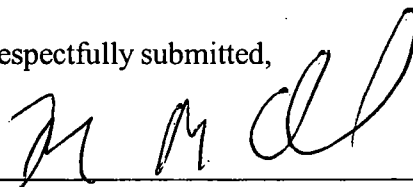
disqualifying potential African-American juror Aaron Gray for cause where Gray testified he could impose the death penalty and sign the verdict form, and where he also testified he did not have any bias against the police, the state or for attorneys from the Public Defender's Office that he did not even know, since Gray was a death qualified juror under the Wainwright v. Witt, 469 U.S. 412 (1985) standard?

7.

Whether the South Carolina Supreme Court erred by holding the admission of highly inflammatory crime scene photographs, 70, 71, 72, 74, 75, 76, 77, and 80, particularly the photographs showing the nude victim had defecated on herself was not error since these photographs strongly invited a verdict based upon passion, and therefore an arbitrary factor in violation of the Eighth Amendment to the United States Constitution?

WHEREFORE, counsel for petitioner Fredrick Antonio Evins requests a ninety day stay of execution from June 21, 2007, in which to file a petition for writ of certiorari in the United States Supreme Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Deputy Chief Attorney for Capital Appeals

June 22, 2007

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

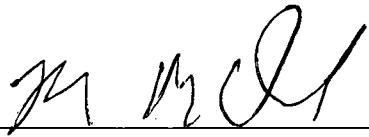
V.

FREDRICK ANTONIO EVINS,

PETITIONER

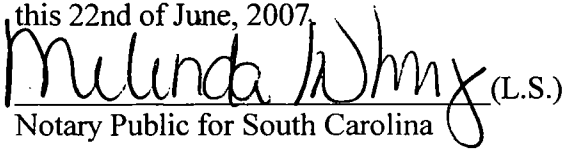
CERTIFICATE OF SERVICE

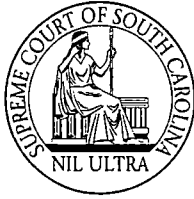
The undersigned attorney hereby certifies that a true copy of the Petition for Stay of Execution in the above referenced case has been served upon opposing counsel, Derrick K. McFarland, Esquire, this 22nd day of June, 2007.



ROBERT M. DUDEK
Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 22nd of June, 2007.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: November 16, 2008.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

June 21, 2007

REMITTITUR

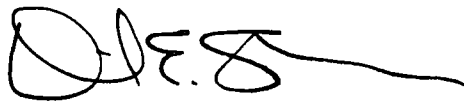
The Honorable Marcus W. Kitchens
Clerk of Court, Spartanburg County
180 Magnolia Street
PO Box 3483
Spartanburg, SC 29304-3483

Re: The State v. Evins, Fredrick Antonio
2003-GS-42-02532, 02533 and 02534

Dear Mr. Kitchens:

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

Very truly yours,

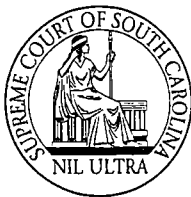


CLERK

DES/dmh

Enclosure

cc: Deputy Chief Attorney for Capital Appeals Robert M. Dudek
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Derrick K. McFarland
The Honorable Harold W. Gowdy, III



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

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June 21, 2007

Deputy Chief Attorney for Capital Appeals Robert M. Dudek
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Evins, Fredrick Antonio

Dear Counsel:

The Court has issued the following Order on your Petition for Rehearing in the above matter:

“Petition for Rehearing is denied.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ E.C. Burnett, III J.

s/ Costa M. Pleicones J.

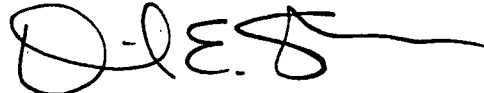
Justice John H. Waller, Jr.,
not participating

June 21, 2007.”

The remittitur is today being forwarded to the lower court.

Deputy Chief Attorney for Capital Appeals
Robert M. Dudek
Page Two
June 21, 2007

Very truly yours,



CLERK

DES/dmh

cc: Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Derrick K. McFarland
The Honorable Harold W. Gowdy, III

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

THE STATE,

RECEIVED

RESPONDENT MAY 29 2007

V.

S.C. SUPREME COURT

FREDRICK ANTONIO EVINS,

PETITIONER

Appeal from Spartanburg County

Edward W. Miller, Circuit Court Judge

Opinion No. 26329

PETITION FOR REHEARING

Pursuant to Rule 221 (a), SCACR, petitioner requests rehearing because this Court may have overlooked the fact that black venire member Sabrina Jenkins, #182, expressed a strong belief in the death penalty, and that S.C. Code §16-3-20 (E) states “In a criminal action in which a defendant is charged with a crime which may be punishable by death, a person may not be disqualified, excused, or excluded from service as a juror by reason of his beliefs or attitudes *against capital punishment* unless such beliefs or attitudes would render him unable to return a verdict according to the law.” Petitioner was also black, and the victim was white. See, also, Wainwright v. Witt, 469 U.S. 412 (1985).

Defense counsel argued Jenkins was qualified to serve when the state ironically argued Jenkins was too predisposed to recommend a sentence of death, and the state moved to disqualify Jenkins. The trial court disqualified Jenkins at the state's request or defense objections.

The defense here was making a strategic decision that it could turn Jenkins when the facts as it knew them to be were revealed during the trial. There is no other logical explanation, and the backdrop of this case is very instructive:

Twelve of petitioner's sixty-three potential jurors also were black. Two of these were disqualified because they refused to impose the death penalty: John Foster, # 102, and Mary James, # 180. R. 132, l. 20 - 144, l. 8; R. 839, l. 11 - 849, l. 11.

Two more black venire members were disqualified without objection because prior convictions made them ineligible to serve: Rita Pearson, # 281, and Shelton Benjamin, # 11. R. 653, l. 3 - 655, l. 24; R. 1202, l. 3 - 1206, l. 10. The state successfully moved to disqualify three more blacks, over appellant's objections: Patricia Murphy, # 258, Sabrina Jenkins, # 182, and Aaron Gray, # 134. R. 368, l. 17 - 385, l. 5; R. 507, l. 12 - 528, l. 10; R. 769, l. 21 - 792, l. 7. (All three purported disqualifications continued to be challenged on appeal).

The state then exercised peremptory strikes against three of the five remaining black venire members: Annie Davis, # 78, Rosetta Higgins, # 154, and Johnny Young, # 399. R. 1333, ll. 18-21; R. 1335, l. 25 - 1337, l. 2 (#78 and #399, as this Court is aware, were also strongly challenged on appeal). After the state removed half of the African-American venire members, only one, Lizzie Frawley, # 108, was seated on the petit jury, and one, Linda Means, # 246, was seated as an alternate. R. 1333, ll. 12-17; R. 1338, ll. 3-8.

As counsel argued before this Court, it is the duty of defense counsel to make strategic decisions during jury selection and at trial. The judge here accepting the counter-intuitive

position of the solicitor, who is seeking the death penalty, and is supposedly looking out for the defense where petitioner had three qualified attorneys to do so is as disturbing as forcing a lawyer upon a defendant who knowingly and intelligently wishes to represent himself against the mistrust of the system seeking to take his life or liberty. See Faretta v. California, 422 U.S. 806 (1975).

The “criminal justice system” is more than adequately protected in the Sabrina Jenkins situation for PCR by the trial judge merely having defense counsel agree on-the-record that its argument that Jenkins is qualified is a strategic decision. “Lawyers experienced in the trial of capital cases have widely varying views about addressing the delicate balance between the disqualification of jurors whose personal beliefs prevent them from ever imposing the penalty of death under Witherspoon v. Illinois, 391U.S. 510, 520-23, 8 S.Ct. 1770, 20 L.Ed.2d 776 (1968), and those who would automatically recommend that sentence if they found the defendant guilty. Morgan, 504 U.S. 719, 112 S.Ct. 2222, 119 L.Ed.2d 492.... The difficulty of the task is greater where[,as here,] there has been widespread publicity and public comment about the crime, the investigation and pre-trial proceedings....” United States v. McVeigh, 118 F.Supp.2d 1137, 1152 (D. Colo. 2000)

A brief review of the *voir dire* of Jenkins is instructive regarding why the defense correctly thought she was a qualified juror, and why the state’s purported reason of protecting petitioner from his own lawyers should have been rejected, and Jenkins qualified. Jenkins said that she had heard about the case on the news, but that she could disregard what she had seen about it. R. 509, l. 5 - 510, l. 7. She said that she had not formed any opinion about petitioner’s guilt. She stated that she could serve as a fair and impartial juror and reach a verdict based solely on the facts and law presented in court. R. 510, ll. 11-25.

Jenkins stated that she could find the defendant guilty or not guilty depending on the evidence. She stated that, if the case reached the penalty phase, she could return either a life sentence or a death sentence after considering all of the aggravating and mitigating circumstances. R. 511, l. 15 - 17. She said that she was a "type three" juror who would "listen to all the facts and circumstances" before reaching a verdict. r. 513, ll 3-25.

During the solicitor's *voir dire*, Jenkins was asked an open-ended question about the death penalty, as follows:

Q. What are your beliefs or views on capital punishment.

A. Well, what I believe is to give someone the death penalty, if you purposely kill somebody -- you know, it could have been another situation that could have handled it. Than I see it as if -- I could see the death penalty. But for life, I say that if there wasn't no way out, you had to do what you had to do, you know. You had to kill -- you had to murder someone right then, you know, if you had to do it right then. And then you had to do what you had to do. There wasn't no way out of it, you know.

Q. Like self-defense or something.

A. Like self-defense, that's what I say, life. But I say death penalty, if you purposely did it and you know what you was doing and could have avoided it, then I think you deserve the death penalty.

The solicitor's remaining questions couched the penalty phase solely in terms of unintentional or intentional behavior, rather than aggravation and mitigation. He gave Jenkins those two choices -- intentional killing or not -- and asked her what the punishment should be:

Q. Let me ask, you, understanding that murder is intentionally killing another person, do you think that the death penalty should always be imposed in that case?

A. Yeah.

Q. So laying aside the self-defense or involuntary manslaughter or vehicular manslaughter, if you intentionally killed somebody with malice aforethought, which is an evil or depraved or wicked spirit, the death penalty should be the punishment?

A. Yeah.

R. 518, l. 14 - 519, l. 5.

The court asked several follow-up questions:

Q. Not ever case in South Carolina that is murder is a capital case. You cannot -- the state may not pursue the death penalty in every murder case. Do you understand that?

A. Uh-huh.

Q. Now -- so what I'm asking you is, do -- you told the Solicitor that you thought that every time somebody committed murder, they should get the death penalty.

A. Well -- . . . Let me rephrase that. Se, I told him what I thought about intentionally doing it and defending yourself.

Q. Okay. Well . . . If you act in self-defense, you are not guilty of murder. Okay.

A. Yeah, you're right.

Q. And there are cases where there can be the intentional and wrongful killing of another person with malice aforethought, which is murder, but doesn't have an aggravating circumstance attached to it. So they cannot seek the death penalty. And then there's a capital case where there must be an aggravating circumstance . . .

Do you mean to tell me -- you told me before that you could consider all the aggravating and mitigating circumstances and return a verdict of life in prison. . . . In that circumstance, after considering all of the evidence, could you return a verdict of life in prison or . . . could you only give the death sentence.

A. I could give life in prison. . . . *I don't understand the answer you're looking for.*

Q. [Y]ou told me . . . that you could give a life sentence and then later, you said that you would always give death.

A. *I'd always give death?*

Q. Yes. So I'm just trying to clear that up . . .

A. Well, see, like I said . . . You know, if you intentionally kill somebody, you know what you were doing, death penalty, but self-defense, life sentence.

Q. All right. So every time, if you intentionally kill somebody, the death sentence? I'm just asking . . .

A. . . . Yes.

R. 521, l. 4 - 524. (emphasis added).

Defense counsel did not object to Jenkins' qualifications. However, the solicitor said, "Regrettably, I think she's unqualified." R. 524, ll. 12-26.

Defense counsel argued in response that Jenkins had consistently and correctly answered the court's questions on whether she could give life or death based on the circumstances. He argued that *the solicitor injected the issue of self-defense*, which is not a factor in capital sentencing, *in order to purposely confuse Jenkins about the law and make her appear unqualified* to serve. He said that Jenkins was using self-defense as an example only, and that she "said she would follow your charge on the law if she received it, which means when you explain what the law is, then she's willing to apply it." R. 524, l. 22 - 525, l. 19.

The solicitor argued that once he explained the definition of murder to Jenkins, she was "unequivocal" that "death is automatic." R. 525, l. 21 - 526, l. 2. He said, "I almost cannot believe my ears that they want to qualify a juror who says . . . murder automatically equals the

death penalty." In reply, defense counsel noted that it was "strange" that the solicitor would challenge a "pro-state" juror. R. 526, ll. 3-12. The court conceded that the solicitor had been "masterful, in his fair seeking of a qualified juror " but nevertheless granted the state's motion to disqualify Jenkins. R. 526, ll. 21-23.

Defense counsel objected to Jenkins' disqualification, and argued that the solicitor had established a pattern of manipulating qualified black venire members into contradicting their initial qualifying statements that they could "go either way" based on the circumstances they would hear. As is not unusual during capital *voir dire*, some potential jurors try to please sides if possible. The court overruled the defense's objection and removed Jenkins from the venire. R. 527, ll. 2-11.

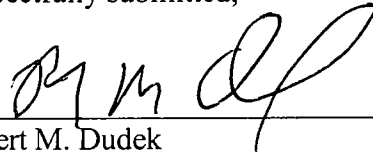
Petitioner continues to maintain that Jenkins was a qualified juror under S.C. Code § 16-3-20(E) and Wainwright v. Witt, 469 U.S. 412 (1985). Her replies to the court during its initial examination were certain and affirmative. Her views only *appeared* to change after the solicitor purposely confused her with an inaccurate statement of the law. His questions suggested that there were only two possible verdicts, murder or self-defense, and he asked Jenkins to assign a penalty for each. With the understanding that there were only two possible crimes and two possible penalties, Jenkins naturally assigned the harsher penalty to the more serious offense. She was using self-defense hypothetically, as an example, after having told the court that she would consider both mitigating and aggravating factors in sentencing.

The solicitor's treatment of Jenkins and also venire person Murphy, especially when considering his peremptory strikes show a systematic attempt to eliminate as many blacks from the jury as possible. Judging just by her *voir dire* answers, Jenkins' presence on the jury would

have benefited the state, but the salient point is that the defense did not believe that would ultimately be the case as they fought valiantly for a life sentence in this case.

The only viable reason for the state's motion to disqualify Jenkins was racial. Petitioner asks this Court to reconsider its holding that the trial judge did not err by allowing the state's manipulation of the *voir dire* of Jenkins, #182, and the state's cynical argument – including on appeal – that it was protecting petitioner from his own defense attorneys as it prepared to ask the jury and now this Court to approve his execution. In the final analysis, Jenkins was qualified, and the defense did not think she was so unyielding in her opinions that she could not be fair. Rehearing should respectfully be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER.

This 29th day of May, 2007.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

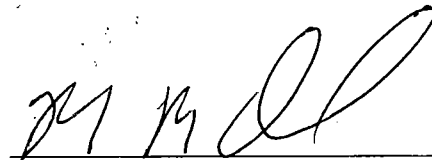
V.

FREDRICK ANTONIO EVINS,

PETITIONER

CERTIFICATE OF SERVICE

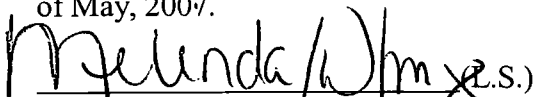
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Derrick K. McFarland, Esquire, this 29th day of May, 2007.



Robert M. Dudek
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

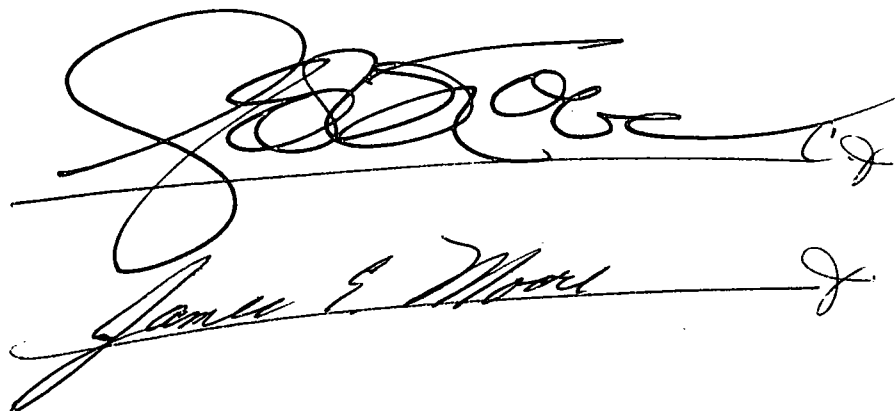
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of May, 2007.

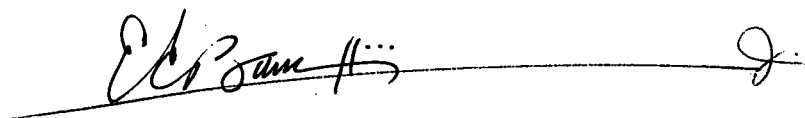


Notary Public for South Carolina

My Commission Expires: November 16, 2008.

Petition for rehearing is denied.

C.J.
James E. Moore J.

J.

J.

Justice John H. Waller, Jr., not participating
June 21, 2007



'The Supreme Court of South Carolina

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May 24, 2007

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RE: The State v. Fredrick Antonio Evins, Opinion No. 26329 (Filed May 14,
2007, Advance Sheet #20)

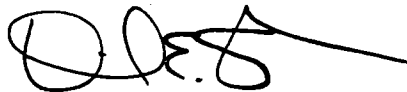
Dear Sir or Madam:

This is to advise you that two corrections have been made in the above opinion. Enclosed are copies of the pages with the corrections. Under the heading "Factual/Procedural Background", second paragraph, the sentence now reads: "At trial, Evins claimed he and Ward had been engaged **in** a long-term consensual relationship." The word "in" has been added.

Under the heading "Law/Analysis", sub-heading "Pre-trial Publicity – Change of Venue", first paragraph, the first sentence now reads: "In September 2002, approximately five months prior to the murder in this case, the body of a woman named Demaris Huff was found near a creek beside a walking **trail** near a park in Spartanburg." The word "trial" has been replaced with "trail".

I ask that it be changed in any electronic versions of this opinion. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be "DES", with a long horizontal line extending to the right.

CLERK

DES/klb

Enclosure

cc: Thom Neal, Esquire

consolidates his direct appeal with the mandatory review provisions of S.C. Code Ann. §16-3-25 (1985). We affirm the convictions and sentences.

FACTUAL/PROCEDURAL BACKGROUND

The victim in this case, Rhonda Ward (“Ward”), was the manager of a convenience store in Spartanburg. One early morning in February 2003, Evins approached Ward in the parking lot of the store on her way into work. Ward spoke to Evins briefly before he lead her back to her car where she got in the driver’s side and he got into the passenger side. Surveillance cameras at the store captured the exchange between Ward and Evins. Two days later, Ward’s naked body was found face down in an apple orchard. She had been sexually assaulted and stabbed twelve times.

After police discovered Evins had been driving Ward’s car on the day of the murder, he was arrested and subsequently confessed to Ward’s murder. Initially, Evins denied having had sex with Ward; instead, he claimed another man was with him in the woods and insisted that Evins kill Ward. However, upon being taken to the hospital for DNA testing, Evins admitted he had had sex with Ward on the day of her death. At trial, Evins claimed he and Ward had been engaged in a long-term, consensual sexual relationship. He testified that on the day of her death, he and Ward were engaged in sexual intercourse outside in an apple field, when Ward became angry with him for refusing to leave his girlfriend. According to Evins, Ward wielded a knife, and wound up getting stabbed.

The jury convicted Evins of murder, kidnapping, first degree CSC, and grand larceny. After a separate sentencing phase, Evins was sentenced to death for murder, thirty years for CSC and five years for grand larceny. Evins raises the following issues for this Court’s review:¹

I. Did the trial court err in denying Evins’ motion for a change of venue based on pre-trial publicity?

¹ We have re-framed the seven issues raised by Evins.

II. Did the trial court err in ruling the state's exercise of peremptory challenges did not violate Batson v. Kentucky?

III. Did the trial court err in excusing three African-American potential jurors for cause?

IV. Did the trial court err in admitting certain photographs of the victim's body at sentencing?

LAW/ANALYSIS

I. Pre-trial Publicity- Change of Venue

In September 2002, approximately five months prior to the murder in this case, the body of a woman named Demaris Huff was found near a creek beside a walking trail near a park in Spartanburg. She had been strangled and was nude except for a pair of socks. DNA testing revealed that semen found on Huff matched that of Evins. The case remained unsolved until Evins' subsequent arrest for the February 2003 murder of Ward. At that time, after DNA testing, authorities also charged Evins with Huff's murder. The Huff murder charges were pending at the time of Evins' trial for the murder of Ward.

Evins moved for a change of venue based upon extensive pre-trial publicity, much of which linked Evins to both murders. The trial court ruled in a pre-trial hearing that it would allow Evins latitude in the *voir dire* of potential jurors to determine if they had any prior knowledge of Evins and/or the Huff murder. At the conclusion of *voir dire*, the defense renewed its motion for a change of venue, indicating that a total of thirty-nine people out of the jury pool of sixty-eight had heard something about the case. By defense counsel's count, seven of the twelve jurors seated had some knowledge of the case. The trial court declined to change venue, concluding that all of the jurors who had any prior knowledge of the case had indicated they could set aside any information and would not consider it. The court also noted the defense had used only nine of its ten peremptory challenges to

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State,

Respondent,

v.

Fredrick Antonio Evins,

Appellant.

Appeal from Spartanburg County
Edward W. Miller, Circuit Court Judge

Opinion No. 26329
Heard March 8, 2007 – Filed May 14, 2007

AFFIRMED

Deputy Chief Attorney for Capital Appeals Robert M. Dudek,
and Appellate Defender Aileen P. Clare, both of Columbia, for
Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy Attorney
General Donald J. Zelenka, Assistant Attorney General Derrick
K. McFarland, all of Columbia, and Solicitor Harold W. Gowdy,
III, of Spartanburg, for Respondent.

CHIEF JUSTICE TOAL: Appellant Fredrick Antonio Evins
("Evins") was convicted of murder, first degree criminal sexual conduct
(CSC), and grand larceny. He was sentenced to death for the murder, thirty
years imprisonment for CSC, and five years for grand larceny. This appeal

consolidates his direct appeal with the mandatory review provisions of S.C. Code Ann. §16-3-25 (1985). We affirm the convictions and sentences.

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A motion to change venue is addressed to the sound discretion of the trial judge and will not be disturbed on appeal absent an abuse of discretion. Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004); State v. Manning, 329 S.C. 1, 495 S.E.2d 191 (1997) (finding trial court abused discretion by granting the State's motion to change venue based on pretrial publicity because no evidentiary facts supported finding of actual juror prejudice towards the State). When a trial judge bases the denial of a motion for a change of venue because of pretrial publicity upon an adequate *voir dire* examination of the jurors, his decision will not be disturbed absent extraordinary circumstances. State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990). When jurors have been exposed to pretrial publicity, a denial of a change of venue is not error where the jurors are found to have the ability to set aside any impressions or opinions and render a verdict based on the evidence presented at trial. State v. Tucker, 334 S.C. 1, 512 S.E.2d 99 (1999); Manning, 329 S.C. at 1, 495 S.E.2d at 191. Therefore, mere exposure to pretrial publicity does not automatically disqualify a prospective juror. Id. The relevant question is not whether the community remembered the case, but whether the jurors had such fixed opinions that they could not judge impartially the guilt of the defendant. Id. It is the defendant's burden to demonstrate actual juror prejudice as a result of such publicity. Caldwell, 300 S.C. at 494, 388 S.E.2d at 816.

In Rideau v. Louisiana, 373 U.S. 723 (1963), the United States Supreme Court found reversible error in a trial court's refusal to grant a motion for a change of venue due to the effect of pretrial publicity. There, the Court found that the people of Calcasieu Parish in Lake Charles, Louisiana, were "exposed repeatedly and in depth to the spectacle of Rideau personally confessing in detail to the crimes with which he was later to be charged." Id. The Court noted that three members of the jury which convicted Rideau had seen and heard Rideau's televised "interview" in which he confessed to the sheriff, and that two members of the jury were deputy sheriffs of Calcasieu Parish. Id. The Court found Rideau's due process rights had been compromised by such a procedure. Id. The present case is clearly inapposite.

We find Evins has demonstrated no prejudice from the denial of his motion. Both the trial court and defense counsel conducted a thorough *voir dire* of the jury pool. Additionally, all members of the jury who had any knowledge of Evins or the Huff murder due to pre-trial publicity indicated they could put that knowledge aside. Further, the defense used only nine of its peremptory challenges. Evins contends, however, that one juror had read about both crimes and connected them mentally such that “she could not be expected to disregard the image created by the articles.” Evins’ depiction of the juror’s response is overstated. The juror testified on *voir dire* that the only thing she had heard was that the crime had taken place; she specifically testified that she knew no details, did not know the location, she had formed no opinion, could put aside what she had heard, and could be fair and impartial. This is simply not akin to the situation in Rideau.

We find this case more akin to Sheppard, 357 S.C. at 646, 594 S.E.2d at 462, in which the defendant claimed he was entitled to a change of venue due to extensive pretrial publicity where, out of eighty-seven potential jurors, all but five had been exposed to pretrial publicity. Noting our holdings in Manning and Caldwell, we found the defendant had not met his burden of demonstrating actual juror prejudice as a result of the publicity. Sheppard, 357 S.C. at 655, 597 S.E.2d at 468. We held, “[m]ere exposure to pretrial publicity does not automatically disqualify a prospective juror. Instead, the relevant question is not whether the community remembered the case, but whether the jurors had such fixed opinions that they could not judge impartially the guilt of the defendant.” Id.

Moreover, Evins concedes that evidence of the Huff murder was properly admitted at the sentencing phase of trial. Accordingly, Evins’ complaint regarding pretrial publicity is necessarily limited to the guilt phase of his trial. Given the overwhelming evidence presented during that phase of trial, and the fact that Evins actually admitted to stabbing Ward, we find Evins has suffered no prejudice. Accordingly, the trial court’s denial of the motion to change venue is affirmed.

II. Batson Motion

Evins next asserts the trial court erred in denying his Batson² motion and ruling that two of the State's peremptory challenges were not racially motivated. We disagree. We find the solicitor's stated reasons for striking the jurors were race-neutral.

There were a total of twelve African-American venire members out of the pool of sixty-three potential jurors. During jury selection, the state exercised a total of seven peremptory challenges, striking three African American and four white potential jurors. The jury was ultimately comprised of eleven white jurors, one black juror, and one each white and black alternate. Evins complains that two of the African-Americans were struck in violation of Batson.³ We disagree.

In response to Evins' Batson motion, the solicitor explained that he struck Juror #78 because she had recently lost two sons in a felony DUI, for which the perpetrator had received only a six-year sentence. The solicitor was concerned that the juror would weigh the sentence given to the defendant of a felony DUI in which her sons were killed with the potential death sentence she would be considering in Evins' case. Additionally, he addressed the fact that the solicitor's office prosecuted the case and the public defender's office defended the defendant. The trial court ruled the solicitor's explanation satisfied the test required in Batson.

As to the other juror, Juror #399, the solicitor argued that the juror was "beyond vacillation on the death penalty. He is clearly life prone. And that's why we struck him." The trial court ruled the solicitor's reason was race-neutral, specifically stating, "I do agree with his assessment that [the juror] did appear to have – was one of the jurors with the largest problems with finding – would have one of the hardest times finding death. So I do agree with that."

² Batson v. Kentucky, 476 U.S. 79 (1986).

³ Evins does not contest the strike of Juror # 154 on appeal.

Evins asserts the solicitor's stated reasons were mere pretext. We disagree.

The Equal Protection Clause of the Fourteenth Amendment to the Constitution prohibits the striking of a venire person on the basis of race or gender. State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006); State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001). The proper procedure for a Batson hearing is set forth in State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996) (citing Purkett v. Elem, 514 U.S. 765 (1995)). After a party objects to a jury strike, the proponent of the strike must offer a facially race-neutral explanation. Once the proponent states a reason that is race-neutral, the burden is on the party challenging the strike to show the explanation is mere pretext, either by showing similarly situated members of another race were seated on the jury or that the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment. Adams, 322 S.C. at 123-24, 470 S.E.2d at 371-72. The burden of persuading the court that a Batson violation has occurred remains at all times on the opponent of the strike. State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999).

"Typically, the decisive question becomes whether counsel's race-neutral explanation for a peremptory challenge should be believed. . . . [T]here is seldom much evidence in the record bearing on that issue, and the trial court's findings regarding purposeful discrimination necessarily will rest largely on the evaluation of demeanor and credibility of counsel. Therefore, those findings are given great deference and will not be set aside unless clearly erroneous." State v. Cochran, 369 S.C. 308, 631 S.E.2d 294 (Ct. App. 2006) *citing* State v. Guess, 318 S.C. 269, 457 S.E.2d 6 (Ct.App. 1995).

As this Court held in Payton v. Kearse, 329 S.C. 51, 495 S.E.2d 205 (1998), the right to serve on a jury and not to be discriminated against because of race or gender belongs to the potential juror, not a litigant. This is so because a defendant has no right to trial by a particular jury. Adams, 322 S.C. at 126, 470 S.E.2d at 373.

We find the record supports the trial court's finding that the state's explanation for its peremptory challenges of these two jurors were race-

neutral. The fact that Juror #78 had had two sons killed in a felony DUI, and the perpetrator had received only six years imprisonment was sufficient reason for the solicitor to believe that this juror might be reluctant to impose a death sentence. Moreover, when initially questioned by the trial court as to whether she could be a fair and impartial juror, she responded, “well, your Honor, I done been through this before, so it would be kind of hard for me to, you know. . .” When questioned further as to whether she could find a defendant either guilty or not guilty depending on what she heard, she went on to state, “Well, to be truthful, I don’t know. . . . Your Honor, I still – I can’t make up my mind. I don’t know what happened to my two sons, and I haven’t got over it yet.” Although she ultimately testified that she would honor her oath if selected to be a fair and impartial juror, she nonetheless maintained when asked if she knew any reason why she could not serve on this jury that serving would be difficult for her. In sum, although her answers varied somewhat, we simply cannot say the solicitor’s proffered reason for striking Juror #78 was not race-neutral or that the solicitor’s stated reasons were pretext.

As for Juror #399, the solicitor’s stated reason for striking him was that he was likely the most pro-life person in the jury venire. When asked whether he could serve as a fair and impartial juror, he responded, “Possibly, I could, but I don’t know.” When questioned about whether he could sentence someone to death, he repeatedly stated, “That’s a tough one. . . . Well, like I said, I never really thought about it, but that would still be just like killing somebody. I mean, that’s basically, the same thing to me. . . . That’s just what I – that’s just the way I feel right now, you know. Like I say, I never really thought about it. . . . So, I mean, death is death. . . .” When the trial court asked, “So, are – you don’t – what you’re telling me is that you don’t believe in killing; is that right?” the juror responded, “Well, I like life better than death. That’s a tough one, I’m going to tell you.” When told by the trial court that they need to know where he stood, the juror concluded, “I probably could. But then again, I hear this little voice saying, you know, it’s not right, but I probably could.”

Vacillating responses to *voir dire* questions regarding the death penalty will support the use of a peremptory strike against a Batson challenge. State v. Bell, 305 S.C. 11, 406 S.E.2d 165 (1991); State v. Green, 301 S.C. 347,

392 S.E.2d 157 (1990); State v. Elmore, 300 S.C. 130, 386 S.E.2d 769 (1989). Where the Solicitor perceives a person will have difficulty imposing the death penalty, he may exercise a peremptory challenge against that juror upon this ground as a racially neutral reason. Bell, 305 S.C. at 15, 406 S.E.2d at 168.

Here, the juror's vacillation and reluctance to impose a death sentence is quite evident. Further, although Evins now points to several white jurors who were seated on the jury who also vacillated in their responses regarding a sentence of death, Evins did not raise this point at the time of his Batson challenge during the trial and therefore failed to meet his burden of demonstrating pretext to the trial court. In any event, the four white jurors cited by Evins on appeal simply did not vacillate in their responses to the same degree as Juror #399. None of these jurors were nearly as equivocal in their responses concerning the death penalty. Accordingly, the trial court properly ruled the solicitor's stated reason for striking him was race-neutral, and Evins' Batson motion was properly denied.

III. Juror Disqualification

Evins next contends the trial court erred in disqualifying three African American venire members from serving on the jury. Juror #258 was disqualified because of her reluctance to impose a sentence of death; Juror #182 was disqualified due to her predisposition to impose a sentence of death; and Juror #134 was disqualified due to both his reluctance to impose a death sentence and the fact that he had charges pending against him for which he was being prosecuted by the solicitor, and represented by the Public Defender's office (which also represented Evins). Evins asserts these jurors were improperly disqualified. We disagree.

A prospective juror may be excluded for cause when his or her views on capital punishment would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath. S.C.Code Ann. § 16-3-20(E) (2003) (juror may not be excused in a death penalty case unless his beliefs or attitudes against capital punishment would render him unable to return a verdict according to law); State v. Lindsey, Op. No. 26268, (S.C. Sup. Ct. filed Feb. 20, 2007) (Shearouse Adv. Sh. No. 6 at

68); State v. Sapp, 366 S.C. 283, 621 S.E.2d 883 (2005) (citing Wainwright v. Witt, 469 U.S. 412 (1985)). When reviewing the trial court's qualification or disqualification of prospective jurors, the responses of the challenged juror must be examined in light of the entire *voir dire*. Id. The determination whether a juror is qualified to serve in a capital case is within the sole discretion of the trial judge and is not reversible on appeal unless wholly unsupported by the evidence. Id. A juror's disqualification will not be disturbed on appeal if there is a reasonable basis from which the trial court could have concluded that the juror would not have been able to faithfully discharge his responsibilities as a juror under the law. State v. Green, 301 S.C. 347, 392 S.E.2d 157 (1990). Deference must be paid to the trial court who sees and hears the juror. Id. There will be situations where a trial court is left with definite impression that prospective juror would be unable to faithfully and impartially apply the law and this is why deference must be paid to a trial court who sees and hears the juror. Wainwright v. Witt, 469 U.S. 412 (1985).

As discussed below, we find the trial court properly disqualified these jurors under Wainwright.

A. Juror # 258

Juror #258 originally testified that she could not give the death penalty because she did not feel that it was her right to give a man death. Juror #258 then indicated she could impose a sentence of death under certain circumstances. When asked thereafter if she could sign her name to a verdict form imposing a sentence of death, Juror #258 replied, "No." She explained the reason for this as being that given her job in the public, she could be a target for anybody, so she wouldn't want to sign her name. When the trial court indicated her name would be protected, she indicated she could sign a verdict form for death. When questioned by the solicitor, Juror #258 vacillated between being opposed to the death penalty, and appearing to believe it would be appropriate for most murders. Ultimately, however, when asked by the solicitor if she had a choice between life in prison or death, the juror answered that she would always pick life in prison.

Given the variations in Juror #258's responses and statement that she would *always* pick life in prison over death, the trial court did not abuse its discretion in disqualifying her because it appears she could not have discharged her duties in accordance with the law. Id.

B. Juror #182

During *voir dire*, Juror #182 stated she was a Type 3 juror who would hear all the evidence before deciding upon an appropriate sentence. On examination by the solicitor, however, Juror #182 strongly indicated that she would always give the death penalty to anyone who intentionally kills another. Upon further examination, Juror #182 explained that she would give life only to someone who unintentionally kills another, like self-defense. Juror #182 ultimately concluded that "if you intentionally kill somebody, you know what you were doing, death penalty, but self-defense, life sentence."

Again, it is clear this juror was predisposed to recommend a sentence of death in the case of an intentional killing such that there is a reasonable basis from which the trial court could have concluded she would not have been able to faithfully discharge her responsibilities as a juror under the law. We find she was properly disqualified under Wainwright. See also State v. Sapp, 366 S.C. at 283, 621 S.E.2d at 883.

C. Juror # 134

When asked whether, after considering all of the aggravating and mitigating circumstances, he could return a sentence of death, Juror #134 testified that he was not in favor of the death penalty and that he "really would have to be persuaded" to give the death penalty. Thereafter, when asked if he could sign his name to a death verdict, Juror #134 responded that, depending on the facts, he could sign a death verdict form. However, he subsequently described himself as a Number 2 juror – a juror who would not give the death penalty. Upon further inquiry by the solicitor regarding the death penalty, Juror #134 responded: "I've just always been the type that when I see it on TV or something about the death penalty, I'm always against it. There hasn't been one case yet where I said he deserves it."

We find the record supports the trial court's disqualification of Juror #134.⁴ Wainwright, 469 U.S. at 412 (holding that where trial court is left with definite impression that prospective juror would be unable to faithfully and impartially apply the law, it is within his discretion to disqualify a potential juror); see also State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) (ultimate consideration of the judge concerning juror qualification is that the juror be unbiased, impartial and able to carry out the law as explained to him).

IV. Sentencing Phase Photographs

Lastly, Evins asserts the trial court committed error at sentencing in admitting seven photographs of the victim, contending they served no legitimate purpose and served only to inflame the jury. In particular, Evins contests the admission of Exhibit numbers 70 and 71, which reveal that the victim had defecated on herself. We find the photographs were properly admitted.

The relevance, materiality and admissibility of photographs are matters within the sound discretion of the trial court, and the trial court's ruling on such issues will be disturbed only upon a showing of an abuse of discretion. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996), cert. denied, 520 U.S. 1200 (1997). The purpose of the sentencing phase in a capital trial is to "direct the jury's attention to the specific circumstances of the crime and the characteristics of the offender." State v. Matthews, 296 S.C. 379, 373 S.E.2d 587 (1988), cert. denied, 489 U.S. 1091 (1989). Photographs may be offered as evidence in extenuation, mitigation, or aggravation. State v. Haselden,

⁴ In addition to Juror #134's views on the death penalty, the solicitor also explained to the court that Juror #134 had charges pending against him for which he was being prosecuted by the solicitor's office and represented by the public defender's office. The solicitor argued that the combination of the juror's views on the death penalty and the pending charges disqualified Juror #134. Because we find that Juror #134 was properly disqualified on the basis of his views on the death penalty, we decline to address the issue of whether he was properly disqualified because of the pending charges.

353 S.C. 190, 577 S.E.2d 445 (2003). In the sentencing phase, the scope of the probative value of such photos is much broader than at the guilt or innocence phase. Id. See also State v. Weik, 356 S.C. 76, 587 S.E.2d 683 (2002); State v. Franklin, 318 S.C. 47, 456 S.E.2d 357 (1995). In determining whether to recommend a sentence of death, the jury may be permitted to see photographs which depict the bodies of the murder victims in substantially the same condition in which the defendant left them. State v. Kornahrens, 290 S.C. 281, 350 S.E.2d 180 (1986). There is no abuse of discretion if the offered photograph serves to corroborate testimony. State v. Johnson, 338 S.C. 114, 525 S.E.2d 519 (2000).

Exhibit 70 is a 4" x 6" photograph of the victim's body, taken from a distance of several feet away. It reveals the victim lying in a grassy field, naked and face down, with her right arm stretched up over her head, and her left arm bent and stretched out to the left. Upon close inspection, a small amount of feces is visible. Exhibit 71 is a photograph of victim's body taken from a further distance away, and was taken from an angle above the victim's head. The feces is not clearly visible in Exhibit 71. We find the photographs were properly admitted to show the victim in substantially the same condition as Evins left her, and to corroborate the testimony that the victim had defecated on herself. The photographs are not unnecessarily gruesome or disturbing. Accordingly, the trial court did not abuse its discretion in admitting the photographs.

PROPORTIONALITY REVIEW

We have conducted the proportionality review as required by S.C. Code Ann. § 16-3-25(C), and we find the sentence in this case was not the result of passion, prejudice, or any other arbitrary factor. Furthermore, a review of similar cases illustrates that imposing the death sentence in this case would be neither excessive nor disproportionate in light of the crime and the defendant. State v. Downs, 361 S.C. 141, 604 S.E.2d 377 (2004) (death sentence warranted where defendant was convicted of murder, kidnapping, and first-degree criminal sexual conduct with a minor); State v. Stokes, 345 S.C. 368, 548 S.E.2d 202 (2001); State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) *cert. denied* 528 U.S. 1050 (1999); State v. Tucker, 319 S.C. 425, 462 S.E.2d 263 (1995) *cert. denied* 516 U.S. 1080 (1996).

CONCLUSION

For the foregoing reasons, we affirm Evins' convictions and sentences.

AFFIRMED.

**MOORE, BURNETT, PLEICONES, JJ., and Acting Justice
Edward B. Cottingham, concur.**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State,

Respondent,

v.

Fredrick Antonio Evins,

Appellant.

Appeal from Spartanburg County
Edward W. Miller, Circuit Court Judge

Opinion No. 26329
Heard March 8, 2007 – Filed May 14, 2007

AFFIRMED

Deputy Chief Attorney for Capital Appeals Robert M. Dudek,
and Appellate Defender Aileen P. Clare, both of Columbia, for
Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy Attorney
General Donald J. Zelenka, Assistant Attorney General Derrick
K. McFarland, all of Columbia, and Solicitor Harold W. Gowdy,
III, of Spartanburg, for Respondent.

CHIEF JUSTICE TOAL: Appellant Fredrick Antonio Evins
("Evins") was convicted of murder, first degree criminal sexual conduct
(CSC), and grand larceny. He was sentenced to death for the murder, thirty
years imprisonment for CSC, and five years for grand larceny. This appeal

consolidates his direct appeal with the mandatory review provisions of S.C. Code Ann. §16-3-25 (1985). We affirm the convictions and sentences.

FACTUAL/PROCEDURAL BACKGROUND

The victim in this case, Rhonda Ward (“Ward”), was the manager of a convenience store in Spartanburg. One early morning in February 2003, Evins approached Ward in the parking lot of the store on her way into work. Ward spoke to Evins briefly before he lead her back to her car where she got in the driver’s side and he got into the passenger side. Surveillance cameras at the store captured the exchange between Ward and Evins. Two days later, Ward’s naked body was found face down in an apple orchard. She had been sexually assaulted and stabbed twelve times.

After police discovered Evins had been driving Ward’s car on the day of the murder, he was arrested and subsequently confessed to Ward’s murder. Initially, Evins denied having had sex with Ward; instead, he claimed another man was with him in the woods and insisted that Evins kill Ward. However, upon being taken to the hospital for DNA testing, Evins admitted he had had sex with Ward on the day of her death. At trial, Evins claimed he and Ward had been engaged a long-term, consensual sexual relationship. He testified that on the day of her death, he and Ward were engaged in sexual intercourse outside in an apple field, when Ward became angry with him for refusing to leave his girlfriend. According to Evins, Ward wielded a knife, and wound up getting stabbed.

The jury convicted Evins of murder, kidnapping, first degree CSC, and grand larceny. After a separate sentencing phase, Evins was sentenced to death for murder, thirty years for CSC and five years for grand larceny. Evins raises the following issues for this Court’s review:¹

I. Did the trial court err in denying Evins’ motion for a change of venue based on pre-trial publicity?

¹ We have re-framed the seven issues raised by Evins.

II. Did the trial court err in ruling the state's exercise of peremptory challenges did not violate Batson v. Kentucky?

III. Did the trial court err in excusing three African-American potential jurors for cause?

IV. Did the trial court err in admitting certain photographs of the victim's body at sentencing?

LAW/ANALYSIS

I. Pre-trial Publicity- Change of Venue

In September 2002, approximately five months prior to the murder in this case, the body of a woman named Demaris Huff was found near a creek beside a walking trail near a park in Spartanburg. She had been strangled and was nude except for a pair of socks. DNA testing revealed that semen found on Huff matched that of Evins. The case remained unsolved until Evins' subsequent arrest for the February 2003 murder of Ward. At that time, after DNA testing, authorities also charged Evins with Huff's murder. The Huff murder charges were pending at the time of Evins' trial for the murder of Ward.

Evins moved for a change of venue based upon extensive pre-trial publicity, much of which linked Evins to both murders. The trial court ruled in a pre-trial hearing that it would allow Evins latitude in the *voir dire* of potential jurors to determine if they had any prior knowledge of Evins and/or the Huff murder. At the conclusion of *voir dire*, the defense renewed its motion for a change of venue, indicating that a total of thirty-nine people out of the jury pool of sixty-eight had heard something about the case. By defense counsel's count, seven of the twelve jurors seated had some knowledge of the case. The trial court declined to change venue, concluding that all of the jurors who had any prior knowledge of the case had indicated they could set aside any information and would not consider it. The court also noted the defense had used only nine of its ten peremptory challenges to remove potential jurors. Evins now contends the denial of his motion to change venue constituted an abuse of discretion. We disagree.

A motion to change venue is addressed to the sound discretion of the trial judge and will not be disturbed on appeal absent an abuse of discretion. Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004); State v. Manning, 329 S.C. 1, 495 S.E.2d 191 (1997) (finding trial court abused discretion by granting the State's motion to change venue based on pretrial publicity because no evidentiary facts supported finding of actual juror prejudice towards the State). When a trial judge bases the denial of a motion for a change of venue because of pretrial publicity upon an adequate *voir dire* examination of the jurors, his decision will not be disturbed absent extraordinary circumstances. State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990). When jurors have been exposed to pretrial publicity, a denial of a change of venue is not error where the jurors are found to have the ability to set aside any impressions or opinions and render a verdict based on the evidence presented at trial. State v. Tucker, 334 S.C. 1, 512 S.E.2d 99 (1999); Manning, 329 S.C. at 1, 495 S.E.2d at 191. Therefore, mere exposure to pretrial publicity does not automatically disqualify a prospective juror. Id. The relevant question is not whether the community remembered the case, but whether the jurors had such fixed opinions that they could not judge impartially the guilt of the defendant. Id. It is the defendant's burden to demonstrate actual juror prejudice as a result of such publicity. Caldwell, 300 S.C. at 494, 388 S.E.2d at 816.

In Rideau v. Louisiana, 373 U.S. 723 (1963), the United States Supreme Court found reversible error in a trial court's refusal to grant a motion for a change of venue due to the effect of pretrial publicity. There, the Court found that the people of Calcasieu Parish in Lake Charles, Louisiana, were "exposed repeatedly and in depth to the spectacle of Rideau personally confessing in detail to the crimes with which he was later to be charged." Id. The Court noted that three members of the jury which convicted Rideau had seen and heard Rideau's televised "interview" in which he confessed to the sheriff, and that two members of the jury were deputy sheriffs of Calcasieu Parish. Id. The Court found Rideau's due process rights had been compromised by such a procedure. Id. The present case is clearly inapposite.

We find Evins has demonstrated no prejudice from the denial of his motion. Both the trial court and defense counsel conducted a thorough *voir dire* of the jury pool. Additionally, all members of the jury who had any knowledge of Evins or the Huff murder due to pre-trial publicity indicated they could put that knowledge aside. Further, the defense used only nine of its peremptory challenges. Evins contends, however, that one juror had read about both crimes and connected them mentally such that “she could not be expected to disregard the image created by the articles.” Evins’ depiction of the juror’s response is overstated. The juror testified on *voir dire* that the only thing she had heard was that the crime had taken place; she specifically testified that she knew no details, did not know the location, she had formed no opinion, could put aside what she had heard, and could be fair and impartial. This is simply not akin to the situation in Rideau.

We find this case more akin to Sheppard, 357 S.C. at 646, 594 S.E.2d at 462, in which the defendant claimed he was entitled to a change of venue due to extensive pretrial publicity where, out of eighty-seven potential jurors, all but five had been exposed to pretrial publicity. Noting our holdings in Manning and Caldwell, we found the defendant had not met his burden of demonstrating actual juror prejudice as a result of the publicity. Sheppard, 357 S.C. at 655, 597 S.E.2d at 468. We held, “[m]ere exposure to pretrial publicity does not automatically disqualify a prospective juror. Instead, the relevant question is not whether the community remembered the case, but whether the jurors had such fixed opinions that they could not judge impartially the guilt of the defendant.” Id.

Moreover, Evins concedes that evidence of the Huff murder was properly admitted at the sentencing phase of trial. Accordingly, Evins’ complaint regarding pretrial publicity is necessarily limited to the guilt phase of his trial. Given the overwhelming evidence presented during that phase of trial, and the fact that Evins actually admitted to stabbing Ward, we find Evins has suffered no prejudice. Accordingly, the trial court’s denial of the motion to change venue is affirmed.

II. Batson Motion

Evins next asserts the trial court erred in denying his Batson² motion and ruling that two of the State's peremptory challenges were not racially motivated. We disagree. We find the solicitor's stated reasons for striking the jurors were race-neutral.

There were a total of twelve African-American venire members out of the pool of sixty-three potential jurors. During jury selection, the state exercised a total of seven peremptory challenges, striking three African American and four white potential jurors. The jury was ultimately comprised of eleven white jurors, one black juror, and one each white and black alternate. Evins complains that two of the African-Americans were struck in violation of Batson.³ We disagree.

In response to Evins' Batson motion, the solicitor explained that he struck Juror #78 because she had recently lost two sons in a felony DUI, for which the perpetrator had received only a six-year sentence. The solicitor was concerned that the juror would weigh the sentence given to the defendant of a felony DUI in which her sons were killed with the potential death sentence she would be considering in Evins' case. Additionally, he addressed the fact that the solicitor's office prosecuted the case and the public defender's office defended the defendant. The trial court ruled the solicitor's explanation satisfied the test required in Batson.

As to the other juror, Juror #399, the solicitor argued that the juror was "beyond vacillation on the death penalty. He is clearly life prone. And that's why we struck him." The trial court ruled the solicitor's reason was race-neutral, specifically stating, "I do agree with his assessment that [the juror] did appear to have – was one of the jurors with the largest problems with finding – would have one of the hardest times finding death. So I do agree with that."

² Batson v. Kentucky, 476 U.S. 79 (1986).

³ Evins does not contest the strike of Juror # 154 on appeal.

Evins asserts the solicitor's stated reasons were mere pretext. We disagree.

The Equal Protection Clause of the Fourteenth Amendment to the Constitution prohibits the striking of a venire person on the basis of race or gender. State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006); State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001). The proper procedure for a Batson hearing is set forth in State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996) (citing Purkett v. Elem, 514 U.S. 765 (1995)). After a party objects to a jury strike, the proponent of the strike must offer a facially race-neutral explanation. Once the proponent states a reason that is race-neutral, the burden is on the party challenging the strike to show the explanation is mere pretext, either by showing similarly situated members of another race were seated on the jury or that the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment. Adams, 322 S.C. at 123-24, 470 S.E.2d at 371-72. The burden of persuading the court that a Batson violation has occurred remains at all times on the opponent of the strike. State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999).

"Typically, the decisive question becomes whether counsel's race-neutral explanation for a peremptory challenge should be believed. . . . [T]here is seldom much evidence in the record bearing on that issue, and the trial court's findings regarding purposeful discrimination necessarily will rest largely on the evaluation of demeanor and credibility of counsel. Therefore, those findings are given great deference and will not be set aside unless clearly erroneous." State v. Cochran, 369 S.C. 308, 631 S.E.2d 294 (Ct. App. 2006) *citing* State v. Guess, 318 S.C. 269, 457 S.E.2d 6 (Ct.App. 1995).

As this Court held in Payton v. Kearse, 329 S.C. 51, 495 S.E.2d 205 (1998), the right to serve on a jury and not to be discriminated against because of race or gender belongs to the potential juror, not a litigant. This is so because a defendant has no right to trial by a particular jury. Adams, 322 S.C. at 126, 470 S.E.2d at 373.

We find the record supports the trial court's finding that the state's explanation for its peremptory challenges of these two jurors were race-

neutral. The fact that Juror #78 had had two sons killed in a felony DUI, and the perpetrator had received only six years imprisonment was sufficient reason for the solicitor to believe that this juror might be reluctant to impose a death sentence. Moreover, when initially questioned by the trial court as to whether she could be a fair and impartial juror, she responded, “well, your Honor, I done been through this before, so it would be kind of hard for me to, you know. . .” When questioned further as to whether she could find a defendant either guilty or not guilty depending on what she heard, she went on to state, “Well, to be truthful, I don’t know. . . .Your Honor, I still – I can’t make up my mind. I don’t know what happened to my two sons, and I haven’t got over it yet.” Although she ultimately testified that she would honor her oath if selected to be a fair and impartial juror, she nonetheless maintained when asked if she knew any reason why she could not serve on this jury that serving would be difficult for her. In sum, although her answers varied somewhat, we simply cannot say the solicitor’s proffered reason for striking Juror #78 was not race-neutral or that the solicitor’s stated reasons were pretext.

As for Juror #399, the solicitor’s stated reason for striking him was that he was likely the most pro-life person in the jury venire. When asked whether he could serve as a fair and impartial juror, he responded, “Possibly, I could, but I don’t know.” When questioned about whether he could sentence someone to death, he repeatedly stated, “That’s a tough one. . . . Well, like I said, I never really thought about it, but that would still be just like killing somebody. I mean, that’s basically, the same thing to me. . . . That’s just what I – that’s just the way I feel right now, you know. Like I say, I never really thought about it. . . . So, I mean, death is death. . . .” When the trial court asked, “So, are – you don’t – what you’re telling me is that you don’t believe in killing; is that right?” the juror responded, “Well, I like life better than death. That’s a tough one, I’m going to tell you.” When told by the trial court that they need to know where he stood, the juror concluded, “I probably could. But then again, I hear this little voice saying, you know, it’s not right, but I probably could.”

Vacillating responses to *voir dire* questions regarding the death penalty will support the use of a peremptory strike against a Batson challenge. State v. Bell, 305 S.C. 11, 406 S.E.2d 165 (1991); State v. Green, 301 S.C. 347,

392 S.E.2d 157 (1990); State v. Elmore, 300 S.C. 130, 386 S.E.2d 769 (1989). Where the Solicitor perceives a person will have difficulty imposing the death penalty, he may exercise a peremptory challenge against that juror upon this ground as a racially neutral reason. Bell, 305 S.C. at 15, 406 S.E.2d at 168.

Here, the juror's vacillation and reluctance to impose a death sentence is quite evident. Further, although Evins now points to several white jurors who were seated on the jury who also vacillated in their responses regarding a sentence of death, Evins did not raise this point at the time of his Batson challenge during the trial and therefore failed to meet his burden of demonstrating pretext to the trial court. In any event, the four white jurors cited by Evins on appeal simply did not vacillate in their responses to the same degree as Juror #399. None of these jurors were nearly as equivocal in their responses concerning the death penalty. Accordingly, the trial court properly ruled the solicitor's stated reason for striking him was race-neutral, and Evins' Batson motion was properly denied.

III. Juror Disqualification

Evins next contends the trial court erred in disqualifying three African American venire members from serving on the jury. Juror #258 was disqualified because of her reluctance to impose a sentence of death; Juror #182 was disqualified due to her predisposition to impose a sentence of death; and Juror #134 was disqualified due to both his reluctance to impose a death sentence and the fact that he had charges pending against him for which he was being prosecuted by the solicitor, and represented by the Public Defender's office (which also represented Evins). Evins asserts these jurors were improperly disqualified. We disagree.

A prospective juror may be excluded for cause when his or her views on capital punishment would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath. S.C.Code Ann. § 16-3-20(E) (2003) (juror may not be excused in a death penalty case unless his beliefs or attitudes against capital punishment would render him unable to return a verdict according to law); State v. Lindsey, Op. No. 26268, (S.C. Sup. Ct. filed Feb. 20, 2007) (Shearouse Adv. Sh. No. 6 at

68); State v. Sapp, 366 S.C. 283, 621 S.E.2d 883 (2005) (citing Wainwright v. Witt, 469 U.S. 412 (1985)). When reviewing the trial court's qualification or disqualification of prospective jurors, the responses of the challenged juror must be examined in light of the entire *voir dire*. Id. The determination whether a juror is qualified to serve in a capital case is within the sole discretion of the trial judge and is not reversible on appeal unless wholly unsupported by the evidence. Id. A juror's disqualification will not be disturbed on appeal if there is a reasonable basis from which the trial court could have concluded that the juror would not have been able to faithfully discharge his responsibilities as a juror under the law. State v. Green, 301 S.C. 347, 392 S.E.2d 157 (1990). Deference must be paid to the trial court who sees and hears the juror. Id. There will be situations where a trial court is left with definite impression that prospective juror would be unable to faithfully and impartially apply the law and this is why deference must be paid to a trial court who sees and hears the juror. Wainwright v. Witt, 469 U.S. 412 (1985).

As discussed below, we find the trial court properly disqualified these jurors under Wainwright.

A. Juror # 258

Juror #258 originally testified that she could not give the death penalty because she did not feel that it was her right to give a man death. Juror #258 then indicated she could impose a sentence of death under certain circumstances. When asked thereafter if she could sign her name to a verdict form imposing a sentence of death, Juror #258 replied, "No." She explained the reason for this as being that given her job in the public, she could be a target for anybody, so she wouldn't want to sign her name. When the trial court indicated her name would be protected, she indicated she could sign a verdict form for death. When questioned by the solicitor, Juror #258 vacillated between being opposed to the death penalty, and appearing to believe it would be appropriate for most murders. Ultimately, however, when asked by the solicitor if she had a choice between life in prison or death, the juror answered that she would always pick life in prison.

Given the variations in Juror #258's responses and statement that she would *always* pick life in prison over death, the trial court did not abuse its discretion in disqualifying her because it appears she could not have discharged her duties in accordance with the law. Id.

B. Juror #182

During *voir dire*, Juror #182 stated she was a Type 3 juror who would hear all the evidence before deciding upon an appropriate sentence. On examination by the solicitor, however, Juror #182 strongly indicated that she would always give the death penalty to anyone who intentionally kills another. Upon further examination, Juror #182 explained that she would give life only to someone who unintentionally kills another, like self-defense. Juror #182 ultimately concluded that "if you intentionally kill somebody, you know what you were doing, death penalty, but self-defense, life sentence."

Again, it is clear this juror was predisposed to recommend a sentence of death in the case of an intentional killing such that there is a reasonable basis from which the trial court could have concluded she would not have been able to faithfully discharge her responsibilities as a juror under the law. We find she was properly disqualified under Wainwright. See also State v. Sapp, 366 S.C. at 283, 621 S.E.2d at 883.

C. Juror # 134

When asked whether, after considering all of the aggravating and mitigating circumstances, he could return a sentence of death, Juror #134 testified that he was not in favor of the death penalty and that he "really would have to be persuaded" to give the death penalty. Thereafter, when asked if he could sign his name to a death verdict, Juror #134 responded that, depending on the facts, he could sign a death verdict form. However, he subsequently described himself as a Number 2 juror – a juror who would not give the death penalty. Upon further inquiry by the solicitor regarding the death penalty, Juror #134 responded: "I've just always been the type that when I see it on TV or something about the death penalty, I'm always against it. There hasn't been one case yet where I said he deserves it."

We find the record supports the trial court's disqualification of Juror #134.⁴ Wainwright, 469 U.S. at 412 (holding that where trial court is left with definite impression that prospective juror would be unable to faithfully and impartially apply the law, it is within his discretion to disqualify a potential juror); see also State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) (ultimate consideration of the judge concerning juror qualification is that the juror be unbiased, impartial and able to carry out the law as explained to him).

IV. Sentencing Phase Photographs

Lastly, Evins asserts the trial court committed error at sentencing in admitting seven photographs of the victim, contending they served no legitimate purpose and served only to inflame the jury. In particular, Evins contests the admission of Exhibit numbers 70 and 71, which reveal that the victim had defecated on herself. We find the photographs were properly admitted.

The relevance, materiality and admissibility of photographs are matters within the sound discretion of the trial court, and the trial court's ruling on such issues will be disturbed only upon a showing of an abuse of discretion. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996), cert. denied, 520 U.S. 1200 (1997). The purpose of the sentencing phase in a capital trial is to "direct the jury's attention to the specific circumstances of the crime and the characteristics of the offender." State v. Matthews, 296 S.C. 379, 373 S.E.2d 587 (1988), cert. denied, 489 U.S. 1091 (1989). Photographs may be offered as evidence in extenuation, mitigation, or aggravation. State v. Haselden,

⁴ In addition to Juror #134's views on the death penalty, the solicitor also explained to the court that Juror #134 had charges pending against him for which he was being prosecuted by the solicitor's office and represented by the public defender's office. The solicitor argued that the combination of the juror's views on the death penalty and the pending charges disqualified Juror #134. Because we find that Juror #134 was properly disqualified on the basis of his views on the death penalty, we decline to address the issue of whether he was properly disqualified because of the pending charges.

353 S.C. 190, 577 S.E.2d 445 (2003). In the sentencing phase, the scope of the probative value of such photos is much broader than at the guilt or innocence phase. Id. See also State v. Weik, 356 S.C. 76, 587 S.E.2d 683 (2002); State v. Franklin, 318 S.C. 47, 456 S.E.2d 357 (1995). In determining whether to recommend a sentence of death, the jury may be permitted to see photographs which depict the bodies of the murder victims in substantially the same condition in which the defendant left them. State v. Kornahrens, 290 S.C. 281, 350 S.E.2d 180 (1986). There is no abuse of discretion if the offered photograph serves to corroborate testimony. State v. Johnson, 338 S.C. 114, 525 S.E.2d 519 (2000).

Exhibit 70 is a 4" x 6" photograph of the victim's body, taken from a distance of several feet away. It reveals the victim lying in a grassy field, naked and face down, with her right arm stretched up over her head, and her left arm bent and stretched out to the left. Upon close inspection, a small amount of feces is visible. Exhibit 71 is a photograph of victim's body taken from a further distance away, and was taken from an angle above the victim's head. The feces is not clearly visible in Exhibit 71. We find the photographs were properly admitted to show the victim in substantially the same condition as Evins left her, and to corroborate the testimony that the victim had defecated on herself. The photographs are not unnecessarily gruesome or disturbing. Accordingly, the trial court did not abuse its discretion in admitting the photographs.

PROPORTIONALITY REVIEW

We have conducted the proportionality review as required by S.C. Code Ann. § 16-3-25(C), and we find the sentence in this case was not the result of passion, prejudice, or any other arbitrary factor. Furthermore, a review of similar cases illustrates that imposing the death sentence in this case would be neither excessive nor disproportionate in light of the crime and the defendant. State v. Downs, 361 S.C. 141, 604 S.E.2d 377 (2004) (death sentence warranted where defendant was convicted of murder, kidnapping, and first-degree criminal sexual conduct with a minor); State v. Stokes, 345 S.C. 368, 548 S.E.2d 202 (2001); State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) *cert. denied* 528 U.S. 1050 (1999); State v. Tucker, 319 S.C. 425, 462 S.E.2d 263 (1995) *cert. denied* 516 U.S. 1080 (1996).

CONCLUSION

For the foregoing reasons, we affirm Evins' convictions and sentences.

AFFIRMED.

**MOORE, BURNETT, PLEICONES, JJ., and Acting Justice
Edward B. Cottingham, concur.**



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

ORIGINAL
~~NON-DENIED~~

Division of Appellate Defense
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RECEIVED

MAR 22 2007

S.C. SUPREME COURT

March 22, 2007

The Honorable Daniel E. Shearouse
Clerk of Court
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: The State v. Frederick Evins

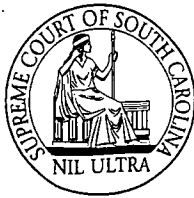
Dear Mr. Shearouse:

Please accept this letter as a request for a tape of the oral argument that was held in the above death penalty case. State v. Frederick Evins was argued on Thursday, March 8, 2007 at 9:30 a.m. I thank you in advance for your assistance.

Sincerely,

Robert M. Dudek
Deputy Chief Attorney for Capital Appeals

RMD/mwl



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
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March 1, 2007

Robert M. Dudek, Esquire
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P O Box 11589
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Derrick K. McFarland, Esquire
Assistant Attorney General
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Columbia, SC 29211

Re: The State v. Evins, Fredrick Antonio

Dear Counsel:

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows:

Appellant	30 minutes
Respondent	30 minutes
Appellant in Reply	10 minutes

Robert M. Dudek, Esquire
Re: The State v. Evins, Fredrick Antonio
March 1, 2007
Page two

Reminder:

This case is scheduled for hearing at 9:30 a.m. on Thursday, March 8, 2007.

Very truly yours,

Daniel E. Shearouse, Clerk

By Jean J. Peebles
Administrative Assistant

DES/jjp

cc: Solicitor Harold W. Gowdy, III



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Deputy Chief Attorney for Capital Appeals Robert M. Dudek
Appellate Defender Aileen P. Clare

From: Daniel E. Shearouse

Date: January 11, 2007

RE: March Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the March 2007 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of March 6, 7, 8, 20 and 21, 2007. Please notify this office in writing prior to January 18, 2007 as to any scheduling conflicts for the March term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

The State v. Evins, Fredrick Antonio



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Derrick K. McFarland

From: Daniel E. Shearouse

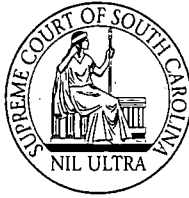
Date: January 11, 2007

RE: March Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the March 2007 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of March 6, 7, 8, 20 and 21, 2007. Please notify this office in writing prior to January 18, 2007 as to any scheduling conflicts for the March term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

The State v. Evins, Fredrick Antonio



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

December 1, 2006

Assistant Attorney General Derrick K. McFarland
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Evins, Fredrick Antonio

Dear Counsel:

The following Order has been endorsed on your Request for an Additional Extension of Time to Serve and File the Final Brief of Respondent in the above entitled case on appeal.

“Granted.

Jean H. Toal C.J.
For the Court

By s/ Daniel E. Shearouse
Clerk

December 1, 2006.”

Please be advised that the brief received in this office on November 30, 2006 is being filed as of the date of this order.

Assistant Attorney General Derrick K. McFarland

Page Two

December 1, 2006

Very truly yours,

Daniel J. Shearouse
65

CLERK

DES/dmh

cc: Deputy Chief Attorney for Capital Appeals Robert M. Dudek
Appellate Defender Aileen P. Clare



HENRY McMASTER
ATTORNEY GENERAL

November 29, 2006

RECEIVED

NOV 29 2006

S.C. SUPREME COURT

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

Re: The State v. Fredrick Antonio Evins

Dear Mr. Shearouse:

The final brief of respondent in this case was due to be served and filed with the Court on the November 26, 2006. However, the due date was inadvertently miscalendarred for 30 days and should have been for 20 days. As a result of this miscalculation, and my heavy caseload, I am requesting an extension of one week in which to serve and file the brief. By copy of this letter I am informing opposing counsel, Robert M. Dudek, of this request.

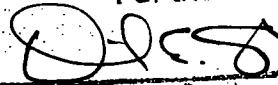
Sincerely,

Derrick K. McFarland
Assistant Attorney General

DKM/lbb

cc: Robert M. Dudek, Esquire

GRANTED.

Jean H. Toal C.J.
For the Court
By 
Clerk

December 1, 2006

HENRY McMASTER
ATTORNEY GENERAL



RECEIVED

NOV 30 2006

S.C. SUPREME COURT

November 30, 2006

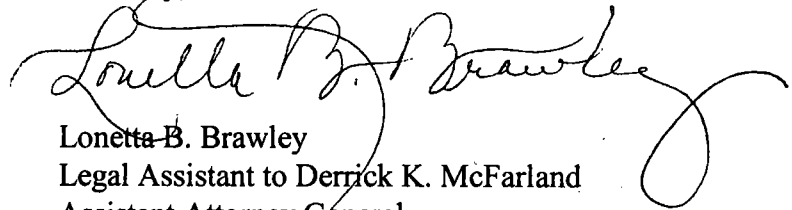
Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: The State v. Fredrick Antonio Evins

Dear Mr. Shearouse:

Enclosed please find the original and fourteen (14) copies of the ***Final Brief of Respondent*** in the above-referenced matter for filing. By copy of this letter I am serving opposing counsel with same.

Sincerely,



Lonetta B. Brawley
Legal Assistant to Derrick K. McFarland
Assistant Attorney General

/lbb
Enclosures

cc: Robert M. Dudek, Esquire
Harold "Trey" Gowdy, III, Solicitor
Sandi Wofford, Victims Assistance

The Supreme Court of South Carolina

The State,

Respondent

v.

Fredrick Antonio Evins,

Appellant.

The Honorable Edward W. Miller
Spartanburg County

Trial Court Case No. 2003-GS-42-02532
2003-GS-42-02533
2003-GS-42-02534

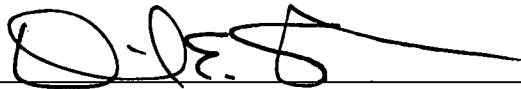
ORDER

For good cause having been shown, the time for serving and filing the final brief of appellant and final reply brief in the above entitled matter is hereby extended until December 18, 2006.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

November 28, 2006

cc: Deputy Chief Attorney for Capital Appeals Robert M. Dudek
Assistant Attorney General Derrick K. McFarland

ORIGINAL



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

November 27, 2006

RECEIVED

NOV 27 2006

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

S.C. SUPREME COURT

Re: The State v. Fredrick Antonio Evins (capital case)

Dear Mr. Shearouse:

The final brief of appellant and the final reply brief in the above referenced case are due to be served and filed today. However, because of my current caseload, I have been unable to complete these brief for service. For that reason, I would respectfully request an extension of twenty days in which to serve and file these briefs.

By copy of this letter, I am informing Derrick K. McFarland, Esquire, of the Attorney General's Office, of my request.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Robert M. Dudek
Deputy Chief Attorney for Capital Appeals

RMD/mwl

cc: Derrick K. McFarland, Esquire

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Appeal from Spartanburg County

Edward W. Miller, Circuit Court Judge

RECEIVED

NOV 06 2006

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

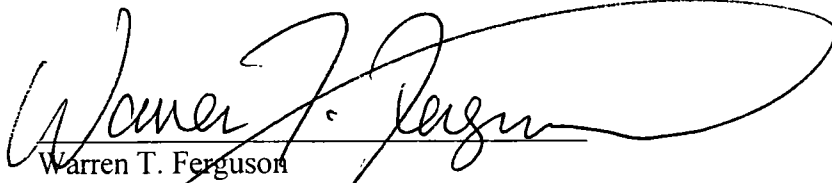
V.

FREDRICK ANTONIO EVINS,

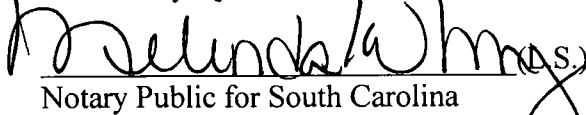
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Derrick K. McFarland, Esquire, this 6th day of November, 2006.


Warren T. Ferguson
Administrative Assistant

SUBSCRIBED AND SWORN TO before me
this 6th day of November, 2006.


Notary Public for South Carolina

My Commission Expires: November 16, 2008.

The Supreme Court of South Carolina

The State,

Respondent

v.

Fredrick Antonio Evins,

Appellant.

The Honorable Edward W. Miller
Spartanburg County

Trial Court Case No. 2003-GS-42-02532
2003-GS-42-02533
2003-GS-42-02534

ORDER

For good cause having been shown, the time for serving and filing the Record on Appeal in the above entitled matter is hereby extended until November 6, 2006.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Shirley S. Shealy*
CHIEF DEPUTY CLERK

Columbia, South Carolina

October 6, 2006

cc: Deputy Chief Attorney for Capital Appeals Robert M. Dudek
Assistant Attorney General Derrick K. McFarland



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

October 5, 2006

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

OCT 05 2006

S.C. SUPREME COURT

Re: The State v. Fredrick Antonio Evins (capital case)

Dear Mr. Shearouse:

The record on appeal in the above referenced case is due to be served and filed today. We are still trying to obtain documents for the record and because of my current caseload; I have been unable to complete this record for service. For that reason, I would respectfully request an extension of thirty days in which to serve and file this record.

By copy of this letter, I am informing Derrick K. McFarland, Esquire, of the Attorney General's Office, of my request.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Robert M. Dudek
Deputy Chief Attorney for Capital Appeals

RMD/mwl

cc: Derrick K. McFarland, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

September 6, 2006

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
PO Box 11330
Columbia, SC 29211

RECEIVED

SEP 6 2006

S.C. SUPREME COURT

Re: The State v. Fredrick Antonio Evins

Dear Mr. Shearouse:

Enclosed is a proposed order in the above case. By copy of this letter, we are also forwarding a copy of this proposed order to Derrick K. McFarland. Thank you for your assistance in this matter.

Sincerely,

Robert M. Dudek
Appellate Defender

RMD/mwl

cc: Derrick K. McFarland

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FREDRICK ANTONIO EVINS,

APPELLANT

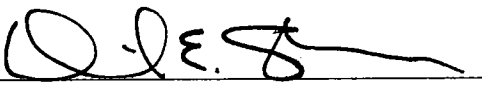
ORDER

On motion of Robert M. Dudek, attorney for appellant, it is hereby

ORDERED that State's Exhibit 70 (Picture of the Back of Rhonda Ward at the Crime Scene on Gano Road), State's Exhibit 71 (Photo of the Top of Rhonda Ward at the Crime Scene on Gano Road), State's Exhibit 72 (Picture of the Star of David near the Head of Rhonda Ward at the Crime Scene on Gano Road), State's Exhibit 74 (Close-Up Picture of Stab Wound on the Right Side of Rhonda Ward's Chest), State's Exhibit 75 (Picture of the hand of Rhonda Ward at the Crime Scene on Gano Road Showing Defense Wounds), State's Exhibit 76 (Picture of Defense Wounds on the Arm of Rhonda Ward at the Autopsy Room), State's Exhibit 77 (Picture of Stab Wound in the Left Shoulder and back of the Left Arm on Rhonda Ward at the Crime Scene on Gano Road, State's Exhibit 80 (Picture of Knife Handle at the Walker Road Scene). All Court's Exhibit pertaining to Media Coverage (the original newspaper articles and the Clerk's file copy) including Court's Exhibit 3 (Newspaper Article – November 8 2004), Court's Exhibit 4 (Affidavit of Judy R. Bogan), Court's Exhibit 14 (WSPA Television Broadcast Transcripts), Court's Exhibit 15 (Newspaper

Article – 9/18/02), Court's Exhibit 16 (Newspaper Article – 2/15/03), Court's Exhibit 17 (Newspaper Article – 2/16/03), Court's Exhibit 18 (Newspaper Article 2/17/03), Court's Exhibit 19 (Newspaper Article – 2/18/03), Court's Exhibit 20 (Newspaper Article – 2/19/03), Court's Exhibit 21 (Newspaper Article – 2/19/03), Court's Exhibit 22 (Newspaper Article – 3/01/03), Court's Exhibit 23 (Newspaper Article – 3/22/03), Court's Exhibit 24 (Newspaper Article – 3/22/03), Court's Exhibit 25 (Three Newspaper Articles), Court's Exhibit 26 (Newspaper Article – 4/13/03), Court's Exhibit 27 (Newspaper Article – 6/22/03), Court's Exhibit 28 (Newspaper Article – 6/22/03), Court's Exhibit 29 (Newspaper Article – 7/11/03), Court's Exhibit 30 (Newspaper Article 8/30/03), Court's Exhibit 31 (Newspaper Article – 11/8/04), be released to the Office of the Attorney General, or its designee, for transporting to the Supreme Court of South Carolina for purposes of review by the Court for the above-captioned case.

JEAN H. TOAL, CHIEF JUSTICE

By 
CLERK

Columbia, South Carolina

September 7, 2006

Copies to: The Honorable Marc Kitchens
Robert M. Dudek, Esquire
Derrick K. McFarland, Esquire

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Edward W. Miller, Circuit Court Judge

RECEIVED

SEP 5 2006

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

FREDRICK ANTONIO EVINS,

APPELLANT

INITIAL REPLY BRIEF OF APPELLANT

ROBERT M. DUDEK
Appellate Defender

AILEEN P. CLARE
Appellate Defender

South Carolina Office
of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, S. C. 29201
(803) 734-1330

ATTORNEYS FOR APPELLANT.

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ARGUMENT IN REPLY

1.

Appellant has shown at length in his initial brief how the extraordinary amount of publicity, including the media coverage linking appellant to the unrelated Huff murder, affected the venire. The judge abused his discretion by denying a change of venue under the highly unusual facts of this case.

The state notes that the trial judge stated on-the-record, after hearing appellant's presentation on the very recent and extensive media coverage of both the Ward and Huff murders, as well as the other coverage, that the constant media coverage in this case amounted to "irresponsible journalism." Respondent's Brief at 4. Tr. 119, l. 5- 124, l. 19. The state then makes the generalized conclusion that the judge did a thorough *voir dire* and therefore he did not abuse his discretion by failing to avail himself of the readily available method of ensuring appellant a fair trial under these unusual circumstances - - a change of venue.

Further, S.C. Code § 17-21-85 now provides that a circuit judge, in a criminal case, can order jury selection to go forward in some other county and the jury, once selected, can be transported back into the county where the crime was committed – Spartanburg. There was, obviously, also the other remedy of just moving the trial to another county.

First, it is clear that under the First Amendment to the United States Constitution, that efforts by the trial court to control the media to protect a criminal defendant often will be labeled misguided, incorrect procedurally, and reversible when they are, as usual, challenged by the media on appeal. See e.g., Ex Parte Hearst- Argyle Television, Inc., et al. v. Williams, 369 S.C. 69, 631 S.E.2d 86 (2006). The fact the trial judge thought the media

in this case was irresponsible should have made the granting of the motion for a change of venue in this case all the more palpable since that duty to provide a fair trial by changing venue was within the trial judge's control. The newspaper articles (if better quality ones can be obtained) are reprinted in the Record at pp. **, and the originals are on file with this Court.

Regardless of irresponsible journalism or just extensive journalism, including that linking appellant to the unrelated Huff murder, appellant in his initial brief showed the pervasive newspaper and television coverage that existed in this case, and how it was recalled by members of the venire. For example, in an article subtitled "Capital Case: Juror selection starts today, in the Monday, November 9, 2004 edition of the Spartanburg Herald-Journal, it states that "Evins also has been charged with killing Darmaris Huff, whose body was found in a wooded area in Duncan Park in September, 2002. Gowdy has decided to try Evins on the Goodwin case first." See, also Court's exhibit 29.

Further, seven of the final twelve petit jurors had been exposed to pretrial publicity. One juror (Betty Kirby, No. 204) and one alternate, (Linda Means, No. 246) also recalled coverage of this case in connection to the Demaris Huff/Duncan Park case.

The other exposed petit jurors were Mark Roller, # 316; Donald Bower # 19; Neddie Richards, # 306; Pamela Ridings # 309; Michael Henline # 149; Betty Kirby # 204; Susan Kanipe # 194; and Linda Means, # 246 (alternate). Tr. 1322, l. 2 - 1323, l. 5; Tr. 1331, l. 1 - 1338, l. 25. See Appellant's brief at 9-14.

In the final analysis it was the trial judge's duty to ensure the jury was fair and unbiased and free of passion, prejudice, and excitement. Chambers v. Florida, 309 U.S. 227 - 236, 237, 60 S.Ct. 472, 476 - 477 (1940); Ristaino v. Ross, 424 U.S. 589, 96 S.Ct.

1017 (1976). This was a highly unusual case and special case given the extensive media coverage recalled by members of the venire and seven of twelve petit jurors seated, and given the Huff murder appellant was linked to in this case.

It was also very unusual given that this case and the Huff murder apparently sparked debate wherein appellant became a poster boy over whether the sex offender registry was effective, about “lenient treatment” by the criminal justice system of sex offenders, and appellant’s alleged link to unsolved cases. That was all the more true since Mrs. Huff came from an upscale neighborhood. Headline: “Neighbor saw beauty in all things” . . . “Clemson lured the honors student back to her South” . . . “Mommy believes that education never ended.” See Articles on file with this Court, including Teresa Killian article. R. p. *.

Further, “the Evins case prompted Spartanburg County Sheriff Bill Coffey to order his deputies to find the more than 200 people on the (sex offender) list to make sure their address were correct.” Sunday edition of the Herald-Journal on file with this Court. (Court’s exhibit 26); Suellen E. Dean article R. p. *.

“The crimes against women of which Fredrick Evins has been accused throughout his adult life, both proven and unproven, are consistent in one regard, their brutality.” This article by Tom Langhorne article also notes cases dismissed, and “the time Evins has served has been relatively short the gravity of his proven offenses.” R. p. *; and on file with this Court.

This was therefore one of those most unusual cases where juror bias could be expected as a matter of human nature and common sense even where prospective jurors and actual jurors exposed to the extensive media coverage stated they could be fair, or

would make every effort to be fair, and would make every effort to disavow themselves of what they have already read in the newspaper or seen on television. See Rideau v. Louisiana, 373 U.S. 723, 83 S.Ct. 1417 (1963).¹

The judge abused his discretion by not ordering a change of venue in this case. That is true regardless of whether the Rideau standard controls this case. Given the trial judge's abuse of discretion in refusing to grant the motion for a change of venue, appellant should be granted a new trial.

¹ The state's attempt in its brief to twist appellant's position into relying solely on the Rideau standard is a totally unfair reading of appellant's position that this case must also be analyzed under that standard.

The sentencing phase photographs – particularly those showing that the decedent had defecated upon herself -- went beyond any legitimate purpose during the sentencing phase and invited a verdict based on passion and prejudice or arbitrary factors.

The state cites State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003) as justifying the admission of the objectionable photographs in this case. Respondent's Brief at 33. Respectfully, the photographs showing that the decedent had defecated upon herself differ qualitatively from photographs showing stab wounds, gunshot wounds or blood in other death penalty cases. As in Haselden, where the photograph of the child's anus was used to insinuate Haselden was responsible for the child's enlarged anus had the tendency to inflame the jury, the objectionable defecation photographs in this case were sure to sicken and inflame the jury, and thereby invite a verdict on an improper basis.²

Appellant fully recognizes this Court has allowed wide latitude in the admission of sentencing phase photographs. However, and respectfully, the defecation photographs here were inflammatory, and, although appellant understands this is a delicate matter, they depicted something seemingly beyond the defendant's ability to control or foresee, and they invited a death verdict based upon an improper basis.

For that reason, they are qualitatively different than "normal" penalty phase photographs or even graphic bloody photographs, and this Court respectfully should hold at a minimum that the defecation photographs, and state's #74, the staged photograph,

² Appellant in this reply brief has focused almost solely on the defecation photographs. Appellant obviously reiterates his objections to the other photographs argued in his initial brief, including that at least one, State's #74, appears to be staged beyond dispute since

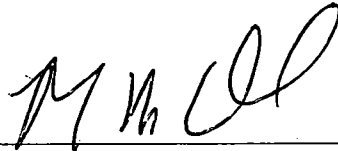
should not have been admitted because they invited a death verdict upon an improper basis.

the victim is laying face up. The defecation photographs depict the victim laying face down in the dirt.

CONCLUSION

By reason of the arguments in appellant's brief, and in this reply brief, appellant's conviction should be reversed, and this case remanded to the Spartanburg County Court of General Sessions for a new trial. In the alternative, a new sentencing phase trial should be granted.

Respectfully submitted,



ROBERT M. DUDEK
Appellate Defender

AILEEN P. CLARE
Appellate Defender

South Carolina Office
of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, S. C. 29201
(803) 734-1330

ATTORNEYS FOR APPELLANT.

This 5th day of September, 2006.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

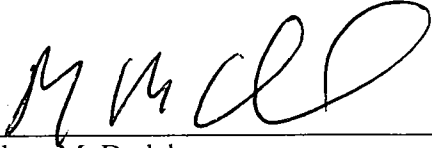
V.

FREDRICK ANTONIO EVINS,

APPELLANT

CERTIFICATE OF SERVICE

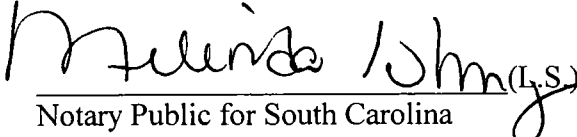
The undersigned attorney hereby certifies that a true copy of the Initial Reply Brief of Appellant in the above referenced case has been served upon Derrick K. McFarland, Esquire, this 5th day of September, 2006.



Robert M. Dudek
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 5th day of September, 2006.



Notary Public for South Carolina

My Commission Expires: November 16, 2008.

The Supreme Court of South Carolina

The State,

Respondent

v.

Fredrick Antonio Evins,

Appellant.

The Honorable Edward W. Miller
Spartanburg County

Trial Court Case No. 2003-GS-42-02532
2003-GS-42-02533
2003-GS-42-02534

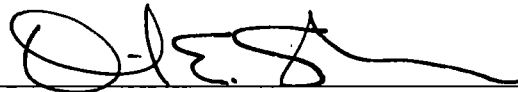
ORDER

For good cause having been shown, the time for serving and filing the Initial Reply Brief in the above entitled matter is hereby extended until September 5, 2006.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

August 25, 2006

cc: Assistant Appellate Defender Robert M. Dudek
Assistant Attorney General Derrick K. McFarland

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Edward W. Miller, Circuit Court Judge

RECEIVED

AUG 24 2006

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

FREDRICK ANTONIO EVINS,

APPELLANT

PETITION FOR EXTENSION TO FILE
THE INITIAL REPLY BRIEF

In support of the petition for extension to file the initial reply brief of appellant, counsel for appellant would respectfully show this Court the following to justify a ten day extension:

1. Appellant was convicted of murder in Spartanburg County and sentenced to death. His motion for a new trial was denied, and his conviction and sentence are on appeal with this Court.

2. The initial reply brief of appellant is due to be served and file with this Court on Thursday, August 24, 2006, having been previously extended by two prior orders of this Court.

3. Counsel will be out of town attending a National habeas corpus conference in Pittsburg beginning Thursday, August 24, 2006 and will return very late Sunday, August 27, 2006 or early morning, August 28, 2006. In addition, counsel filed a brief of respondent in State v. Lord Byron Slater with this Court on Tuesday, August 22, 2006. Counsel is also filing an initial brief with the Court of Appeals today in the case of State v. Steven McClain. Counsel also has an extremely heavy caseload of mostly murder and death penalty cases.

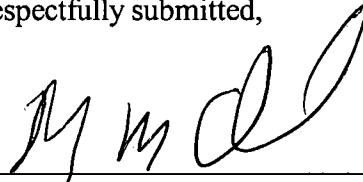
4. Counsel is keenly aware of Justice Waller's order on extensions in death penalty cases. However, due to counsel's present heavy caseload as partly listed above, this request is made out of necessity, and not for purposes of delay.

5. Counsel for appellant would respectfully request an extension of ten days in which to serve and file the initial reply brief of appellant.

6. As indicated by signature below, counsel for the state graciously does not oppose this request.

WHEREFORE, counsel for appellant would respectfully request an extension of ten days in which to serve and file the initial reply brief of appellant in the above-referenced capital case.

Respectfully submitted,

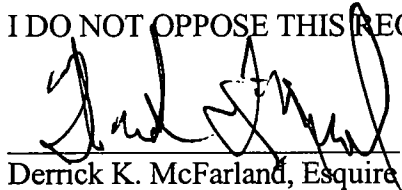


Robert M. Dudek
Assistant Appellate Defender

Attorney for Appellant

August 23, 2006

I DO NOT OPPOSE THIS REQUEST:



Derrick K. McFarland, Esquire

The Supreme Court of South Carolina

The State,

Respondent

v.

Fredrick Antonio Evins,

Appellant.

The Honorable Edward W. Miller
Spartanburg County

Trial Court Case No. 2003-GS-42-02532
2003-GS-42-02533
2003-GS-42-02534

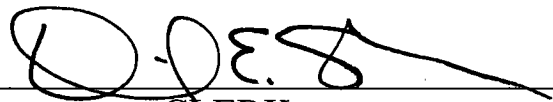
ORDER

For good cause having been shown, the time for serving and filing the Initial Reply Brief in the above entitled matter is hereby extended until August 24, 2006.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY


CLERK

Columbia, South Carolina

August 16, 2006

cc: Assistant Appellate Defender Robert M. Dudek
Assistant Attorney General Derrick K. McFarland

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Edward W. Miller, Circuit Court Judge

RECEIVED
AUG 14 2006
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

FREDRICK ANTONIO EVINS,

APPELLANT

RECEIVED
AUG 15 2006
S.C. SUPREME COURT

PETITION FOR EXTENSION TO FILE
THE INITIAL REPLY BRIEF

In support of the petition for extension to file the initial reply brief of appellant, counsel for appellant would respectfully show this Court the following to justify a ten day extension:

1. Appellant was convicted of murder in Spartanburg County and sentenced to death. His motion for a new trial was denied, and his conviction and sentence are on appeal with this Court.
2. The initial reply brief of appellant is due to be served and file with this Court on today's date, having been previously extended by one prior order of this Court.
3. Counsel is filing today an initial brief in the case of State v. Daniel Cook and an initial brief in the case of State v. Dawn Tucker with the Court of Appeals. Counsel also filed an initial brief in the case of State v. Ronald Jacobs and an initial brief in case of State v. Leroy Francis in the Court of Appeals on Friday, August 11, 2006. Counsel also has an extremely heavy caseload of mostly murder and death penalty cases.

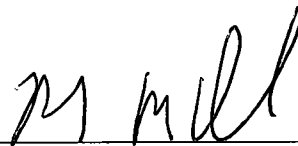
4. Counsel is keenly aware of Justice Waller's order on extensions in death penalty cases. However, due to counsel's present heavy caseload as partly listed above, this request is made out of necessity, and not for purposes of delay.

5. Counsel for appellant would respectfully request an extension of ten days in which to serve and file the initial reply brief of appellant.

6. As indicated by signature below, counsel for the state graciously does not oppose this request.

WHEREFORE, counsel for appellant would respectfully request an extension of ten days in which to serve and file the initial reply brief of appellant in the above-referenced capital case.

Respectfully submitted,

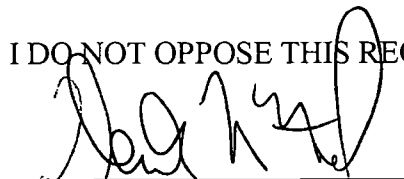


Robert M. Dudek
Assistant Appellate Defender

Attorney for Appellant

August 14, 2006

I DO NOT OPPOSE THIS REQUEST:



Derrick K. McFarland, Esquire

The Supreme Court of South Carolina

The State,

Respondent

v.

Fredrick Antonio Evins,

Appellant.

The Honorable Edward W. Miller
Spartanburg County
Trial Court Case No. 2003-GS-42-02532
2003-GS-42-02533
2003-GS-42-02534

ORDER

For good cause having been shown, the time for serving and filing the Initial Reply Brief in the above entitled matter is hereby extended until August 14, 2006.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Dorinda I. Shealy*
CHIEF DEPUTY CLERK

Columbia, South Carolina

August 4, 2006

cc: Assistant Appellate Defender Robert M. Dudek
Assistant Attorney General Derrick K. McFarland

ORIGINAL



SCCID

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RECEIVED

AUG 3 2006

S.C. SUPREME COURT

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: The State v. Fredrick Antonio Evins (capital case)

Dear Mr. Shearouse:

The initial reply brief of appellant in the above referenced case is due to be served and filed today. However, because of my current caseload, I have been unable to complete this brief for service. For that reason, I would respectfully request an extension of ten days in which to serve and file this initial reply brief.

By copy of this letter, I am informing Derrick K. McFarland, Esquire, of the Attorney General's Office, of my request.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

Robert M. Dudek
Assistant Appellate Defender

RMD/mwl

cc: Derrick K. McFarland, Esquire

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**Appeal from Spartanburg County
Edward W. Miller, Circuit Court Judge**

RECEIVED

JUL 24 2006

S.C. SUPREME COURT

THE STATE,

Respondent,

v.

FREDRICK ANTONIO EVINS,

Appellant.

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the court erred by denying appellant's motion for a change of venue when the majority potential jurors had been exposed to extensive pretrial publicity, and where the news media had linked appellant's current murder charges to another, unrelated murder?
2. Whether the court erred by ruling that the state's preemptory strike against African-American potential juror Annie Davis was racially neutral, and did not violate Batson v. Kentucky, since Davis was a death penalty qualified juror, and the solicitor's purported explanation that she would be adversely affected and unable to be impartial because two of her sons were killed in a DUI traffic accident was not supported by the record?
3. Whether the court erred by ruling the solicitor's preemptory challenge against African-American potential juror Johnny Young was racially neutral, and did not violate Batson v. Kentucky, where the solicitor explanation that Young was a "life-prone juror" was not supported by the record?
4. Whether the court erred by excusing African-American potential juror Patricia Murphy for cause where Murphy strongly testified that she could impose the death penalty upon a murderer, since she was a qualified juror under the Wainwright v. Witt standard?
5. Whether the court erred by disqualifying African-American potential juror Sabrina Jenkins for cause under the Wainwright v. Witt standard where solicitor even acknowledged it appeared Jenkins had strong pro-death penalty views, since defense counsel correctly noted a pattern of striking African-American jurors had developed, and the solicitor's "concern" that Jenkins may be too strongly in favor of the death penalty was an apparent subterfuge?
6. Whether the court erred by disqualifying potential African-American juror Aaron Gray for cause where Gray testified he could impose the death penalty and sign the verdict form, where that he did not have any bias against the police, the state or for attorneys from the Public Defender's Office that he did not know, since Gray was a death qualified juror under the Wainwright v. Witt standard, and he was otherwise a qualified juror against any allegation of bias?
7. Whether the court erred by admitting highly inflammatory crime scene photographs, 70, 71, 72, 74, 75, 76, 77 and 80, particularly the photographs showing the nude victim had defecated on herself since this strongly invited a verdict based upon passion?

RESPONDENT'S STATEMENT OF THE CASE

a. Court Proceedings

The Appellant, Fredrick Antonio Evins, was indicted at the July 14th, 2003 term of the Spartanburg County Court of General Sessions for murder; kidnapping; criminal sexual conduct, first degree; and grand larceny. The charges arose from the February 13th, 2003 abduction and death of Rhonda Marie Ward. The state served a notice of intent to seek the death penalty.

Thomas A.M. Boggs, Karen M. Quimby and Christopher Brough, were appointed to represent Appellant. The case began at trial on November 8th, 2004 before the Honorable Edward W. Miller, Presiding Judge. The matter was prosecuted by Seventh Circuit Solicitor Harold W. Gowdy, III, Deputy Solicitors Barry J. Barnette and J. Donald Willingham, and Assistant Solicitor John C. Anthony. On November 15th, 2004, the jury found Appellant guilty of each offense.

The penalty phase began on November 16th, 2004. After hearing evidence in aggravation and mitigation, the jury was instructed on determining the existence of the following statutory aggravating circumstances:

1. The murder was committed while in the commission of a kidnapping.
2. The murder was committed while in the commission of criminal sexual conduct, first degree.
3. The murder was committed while in the commission of larceny with the use of a deadly weapon.
4. The defendant committed the murder for himself or another for the purpose of receiving money or a thing of monetary value.

The jury was advised to consider the following statutory mitigating circumstances:

1. The murder was committed while the defendant was under the influence of mental or emotional disturbance.
2. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired.
3. The mentality of the defendant at the time of the crime.

The jury found the existence of each aggravating factor. The jury unanimously recommended a sentence of death. On that date, Judge Miller sentenced Evins to death for murder, thirty (30) years for criminal sexual conduct, first degree, and five (5) years for grand larceny.

b. Factual Summary

On February 13th, 2003, at approximately 7:00 am Rhonda Ward reported to work as manager of a Cigarettes 4 Less store. Surveillance tapes showed a man walked up to Ward, while still in the parking lot of the store. After talking for forty-five seconds, the man walked Ward backed to her car. After Ward got in the driver's side of the car, the man got in the passenger's side and Ward drove away. (Tr. pp. 1392-1403). Friends and family never saw Ward again.

Later than morning, a car fitting the description of Ward's was seen by various people on the side of the road in front of an old apple orchard. (Tr. pp 1424-1429; pp. 1440-1444). After reports of Ward's disappearance began, a father and son who saw what appeared to be Ward's car by the apple orchard on the morning of the 13th, decided to investigate that area themselves. On February 15th, 2003, her body was found faced in the orchard, nude and face down. (Tr. pp. 1450-1465). Ward had been sexually assaulted and stabbed to death.

ARGUMENT

I. The trial court did not abuse his discretion by denying Appellant's motion for a change of venue based upon pre-trial publicity linking Appellant to an additional, prior murder.

Appellant's first contention is the trial judge erroneously denied his motion for a change of venue based upon pre-trial publicity. He claims that the newspaper articles and television news features which reported his connection to the unrelated murder of Demaris Huff prejudiced him to the point that he could not receive a fair trial in Spartanburg County. Specifically, Appellant alleges the "sheer pervasiveness of the coverage, together with the public connection to an unrelated murder, is sufficient . . . to create a presumption of prejudice." (Brief of Appellant at p. 15). The State disagrees and submits the trial judge did not abuse his discretion, which was supported by the thorough *voir dire* examination of the qualified jurors, and because Appellant has failed to demonstrate any actual prejudice.

During Appellant's first motion for a change of venue prior to *voir dire* the trial judge noted that the constant media coverage in the case amounted to "irresponsible journalism." However, the court also found that Appellant had not made a sufficient showing that it would be impossible to obtain an untainted jury. (Tr. pp. 118-124).

After the *venire* had been sworn the trial judge made his opening remarks to the *venire* in which he explained the procedure followed in a death penalty trial, as well as the nature and purpose of individual *voir dire*. He assured the jurors there was no need to worry about having been exposed to media coverage of the case, but he needed to know what each juror recalled and whether they had formed an opinion of the case based on the coverage. He further instructed the jurors not to discuss

the case with anyone under any circumstances, including other jurors or family members; and, he instructed them not to read any newspaper, watch any television news or listen to any radio news. (Tr. pp. 98-105). He then conducted individual *voir dire* of sixty-two members of the *venire* panel before qualifying forty-one jurors. (Tr. pp. 132-1298).

In the course of qualifying these jurors, thirty-six *venire* members indicated on individual *voir dire* that they had either seen, read, heard or discussed the case in some manner. Four *venire* members could not recall if they knew something about the case. However, only one of these jurors indicated that they had formed an inalterable opinion as to Appellant's guilt or innocence, or the punishment to be imposed, based upon their exposure to extrajudicial information¹. (Tr. pp. 311-315). Twenty other jurors were excused because of their views on capital punishment or for some reason unrelated to exposure to media coverage.

Each juror who was qualified first stated that he or she could set aside any information which they may have received and base a decision solely on the evidence presented and the law as charged. Each qualified juror further stated that he or she was not aware of any bias or prejudice for or against either the State or Appellant; that the juror could give both parties a fair and impartial trial; and, that he or she would be open-minded as to the punishment to be imposed. Further, none of the twelve seated jurors in this case had knowledge of Appellant's connection in the murder of Demaris Huff.²

The change of venue motion was again discussed following *voir dire*, after which the trial

¹This juror, Michael McGrath, informed the Court that he was related to James Huff. Huff was the husband of Demaris Huff, the victim of the unrelated murder for which Appellant was convicted. Huff testified briefly in the penalty phase of trial. (Tr. pp. 2225-2227).

²Betty Kirby indicated knowledge of the Huff murder, but believed a suspect had not yet been arrested for the murder. (Tr. pp. 933-934).

judge indicated:

I don't think, based on the extensive questioning and the interviewing of prospective jurors, that any juror was allowed on the panel who could not set aside their views. And there was a fairly limited number of people who could, actually, give details about . . . I would have expected more people to know more about it is the way I would put it.

(Tr. pp. 1322-1326; p. 1325, lines 11-19).

There was no error. A motion for a change of venue is addressed to the sound discretion of the trial judge and will not be disturbed absent an abuse of discretion. *State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998); *State v. Manning*, 329 S.C. 1, 495 S.E.2d 191 (1997). When trial judge bases ruling denying motion for change of venue upon adequate voir dire of jurors who have been exposed to pretrial publicity, conclusion that objectivity of jury panel has not been polluted by outside influence will not be disturbed absent extraordinary circumstances. *State v. Patterson*, 324 S.C. 5, 482 S.E.2d 760 (1997).

Here, the trial judge and the parties engaged in extensive individual *voir dire* of the jury pool. As noted, each qualified juror stated that he or she could set aside any extrajudicial information the juror may have acquired, either through media exposure or otherwise, and render a decision based solely upon the evidence presented at trial and the trial judge's charge on the law. Each qualified juror also indicated he or she was not biased for or prejudiced against either party. Thus, there was no abuse of discretion under *Irvin v. Dowd*, 366 U.S. 717, 81 S.Ct. 1639 (1961); *Kelsey* and *Patterson*, *supra*.

Moreover, and assuming without conceding that Appellant is correct in his claim that the *venire* was "saturated with" media coverage of this case, his motion was still properly denied because

he failed to demonstrate *actual* prejudice. His naked assertion that pre-trial publicity in this case was so extensive that the concept of "presumed prejudice" required a change of venue has been rejected by this Court in *State v. Patterson*, *supra*; and *State v. Truesdale*, 278 S.C. 368, 296 S.E.2d 528 (1982). Mere exposure to pre-trial publicity does not automatically disqualify a prospective juror. *See Sheppard v. State*, 357 S.C. 646, 594 S.E.2d 462 (2004).

Here, twenty-two of the sixty-two *venire* members had no knowledge of this case. This alone undermines Appellant's claim concerning the extraordinary volume and saturation of media coverage. Of the remaining forty *venire* members, the vast majority had at most a cursory familiarity with some of the locations and fact of the case. Fewer still had any knowledge of Appellant's connection to the Huff murder, and as noted earlier, no member of the seated jury was aware of any connection between the two murders.

When jurors have been exposed to pre-trial publicity, a denial of a change of venue motion is not error when jurors are found to have the ability to lay aside any impressions or opinions and render a verdict based on the evidence presented at trial. *Irvin v. Dowd*, *supra*; *State v. Fowler*, 266 S.C. 203, 222 S.E.2d 497 (1976). It is the defendant's burden to demonstrate *actual* juror prejudice as a result of such publicity. *Sheppard v. State*; *supra*.; *State v. Longworth*, 313 S.C. 360, 438 S.E.2d 219 (1993). Here, Appellant has not met that burden.

The present case simply does not involve a massive "wave of public passion" caused by prejudicial pre-trial publicity, such as that presented in *Irvin v. Dowd*, *supra*. Unlike the present case, the trial court in *Dowd* excused over one-half of a panel of 430 *venire* members because their opinions of the defendant's guilt were so fixed that they could not be impartial and two-thirds of the petit jurors (8 of 12) had formed an opinion as to guilt. 366 U.S. at 728, 81 S.Ct. at 1645.

Here, some potential jurors knew some of the facts of this case – the unavoidable consequence of media coverage of murders and murder trials. However, jurors need not be ignorant of the case. It is sufficient if a juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. *Dowd*, 366 U.S. at 723, 81 S.Ct. at 1642-1643. This Court has noted in numerous cases that jurors with extensive knowledge of the facts of a case, or even a prior death sentence imposed upon a defendant, may be properly qualified if they can lay aside this knowledge and be fair and impartial. *See, e.g., Sheppard supra.; Patterson, supra; State v. Atkins*, 303 S.C. 214, 399 S.E.2d 760 (1990); *State v. Bell*, 302 S.C. 18, 393 S.E.2d 364 (1990); *State v. Gaskins*, 284 S.C. 105, 326 S.E.2d 132 (1985).

The State submits that the trial judge properly denied Appellant's motion for change of venue.

II. The trial judge did not err in finding no *Batson* error occurred in the solicitor's use of peremptory strikes against venire members Annie Davis and Johnny Young.

Appellant next contends that the trial court erred by finding that peremptory strikes used against black venire members Annie Davis and Johnny Young were not racially and did not violate *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986). Respondents submit that the trial court did not err and reasonably applied the precedent of the United States Supreme Court in *Batson*.

A. Events at Trial

Appellant, was sentenced to death by a Spartanburg County jury that consisted of eleven (11) white jurors, one black juror, and one white and black alternate. The record reveals that the solicitor exercised seven peremptory challenges during the jury selection process to strike three black and four white jurors from consideration. (Tr. p. 1314). After the strikes, Appellant's counsel objected, stating simply "we'd like to know race neutral reasons for #78 [Annie Davis], #399 [Johnny Young], and #154 [Rosetta Higgins]; the three black *venire* members struck by the state³. The trial court, while not finding that a *prima facie* case had been made, asked the solicitor to present a neutral explanation for his exclusion of the three black jurors. The solicitor advised the court:

#78, Juror Annie Davis, we struck her. Mr. Barnette prosecuted a felony DUI in which her two sons were killed. Mr. Boggs, actually defended the Defendant. Ms. Davis didn't remember either one of those facts. What she did remember is the person that killed her two sons – and she used the word "killed" – received six years in prison.

My concern is, why should a mother who lost two sons to somebody that got six years be asked to give death to Ms. Tessier's daughter who lost one life. That is our concern with Ms. Davis. The fact that she didn't remember meeting or talking to Barry Barnette who

³On appeal, Appellant does not challenge the strike of juror #154, Rosetta Higgins.

prosecuted the case, doesn't remember the fact that Mr. Boggs defended the guy who got six years, and the fact that she used the words, I have two son that were killed. I don't want her weighing and balancing why my son's life was worth six years and the State is trying to put Fredrick Evins to death. . . .

With respect to #399 [Young] . . . I'm not disputing he was qualified, but we may not have qualified more of a life pro juror that Mr. Young. He was – this morning, he initially began the *voir dire* process by saying, death is death. It's just killing somebody. We, as the Court remembers, argued that he was unqualified. We respect and accept the Judge's finding that he was, but he is beyond vacillation on death penalty. He is clearly life prone. And that's why we struck him.

(Tr. p. 1315, lines 9-25; p. 1316, line 20 - p. 1317, line 4).

The trial court ruled that the solicitor had offered a non-discriminatory neutral reason for excusing Davis and Young. As to Young, the trial judge stated:

I do agree with [the solicitor's] assessment that Mr. Young did appear to have – was one of the jurors with one of the largest problems with finding – would have one of the hardest times finding death. So I do agree with that.

(Tr. p. 1317, line 22 - p. 1318, line 1).

the State to state for the record the reasons for striking two black jurors. I found that they have offered a neutral explanation, a non-discriminatory reason for excusing those two jurors particularly taking into consideration the responses given by the jurors with respect to imposition of capital punishment.

In summary, the defense struck twelve (12) white *venire* members and no black *venire* members. The State struck four (4) white *venire* members and three (3) black *venire* members. Further, the State seated one black *venire* member, Lizzie Frawley⁴, and seated another black *venire*

⁴Ms. Frawley was chosen foreperson of the jury.

member, Linda Means, as an alternate.

In *Batson v. Kentucky*, the Court held that a defendant has no right to a petit jury composed in whole or in part of persons of his own race. However, the Court held that the equal protection clause of the Fourteenth Amendment to the United States Constitution guarantees a defendant that the State will not exclude members of his race from the jury *venire* solely on account of race or on the false assumption that members of his race as a group are not qualified to serve as jurors, *Id.* Under *Batson* jurisprudence, once the opponent of a peremptory challenge has made out a *prima facie* case of racial discrimination (step one), the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step two). *Purkett v. Elem*, 514 U.S. 765, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995) If a race-neutral explanation is tendered, the trial court must then decide (step three) whether the opponent of the strike has proved purposeful racial discrimination. *Id.*; *Hernandez v. New York*, 500 U.S. 352, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991). The second step of this process does not demand an explanation that is persuasive, or even plausible. "At this [second] step of the inquiry, the issue is the facial validity of the prosecutor's explanation. Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral." *Id.*

Here, no *prima facie* case of racial discrimination was made at trial. On appeal, Appellant compares Ms. Davis with *venire* member #137, Charley Gwinn. Upon questioning by the State, Gwinn, a white male, testified that two years before trial he had been "beat up" by a drunk. Gwinn further stated he showed up for court, and found out the case had been disposed of the previous day.⁵ (Tr. p. 1007). Defense counsel did not question Gwinn about the incident.

⁵Gwinn was unsure if this was a magistrate court or circuit court offense.

Clearly, the incident involving Gwinn is dissimilar to Davis' experience. Davis had two sons killed as a result of a felony DUI. The perpetrator was represented by lead counsel Boggs and Assistant Solicitor Barnette, who participated in this trial, prosecuted. (Tr. p. 1315). Although Davis eventually responded to questioning in a manner which qualified her as a potential juror, her initial colloquy with the court indicated the profound impact her sons deaths could have on her service as a juror:

The Court . . . Would you serve as a fair and impartial juror and reach a verdict based on the facts presented at trial in accordance with my instructions on the law?

Davis Well, your Honor, I done been through this before, so it would be kind of hard for me . . .

The Court When have you been through this before?

Davis Well, I had two sons to get killed at one time. . . back in 2001. . .

The Court . . . [K]eeping in mind the legal principles I've talked to you about, the presumption of innocence and the State's obligation to prove guilt beyond a reasonable doubt, could you, depending on the facts and the evidence presented at trial and the law that I would give you, could you find a defendant either guilty or not guilty depending on what you heard?

Davis Well, to be truthful, I don't know

The Court Okay, Well, what would your inclination be? What are you thinking? That's all we want to find out.

Davis Well, right now, I don't have no idea.

The Court Okay, would you have to hear the facts and the evidence before you made a decision about this case?

Davis Your Honor, I still – I can't make up my mind. I don't know what happened to my two sons, and I haven't got over it yet.

(Tr. p. 274, line 13 - p. 276, line 12).

The comparison of Gwinn and Davis indicates far different situations. Davis' emotions concerning the deaths of her sons were still raw. It would be impossible to know how these emotions could manifest themselves during the course of a death penalty trial. Particularly when the attorney's involved in her sons' case were active in this case.

Clearly, an inference of discriminatory exclusion was not raised under *Batson* where there was obviously no showing of a pattern of strikes. Further, no showing was alleged or presented that the solicitor's questions or statements during *voir dire* raised this inference. There was therefore no inference of purposeful discrimination on the basis of race because it did not establish a pattern of strikes against black jurors. His bare assertion to the contrary is without merit.

Assuming *arguendo* that this Court should find that a *prima facie* case existed, the trial court properly concluded that the State had come forward with racially neutral reasons for striking the black *venire* members. In *Batson*, the Supreme Court stated that the prosecutor's obligation is to articulate a "clear and reasonably specific" non-discriminatory explanation of why he struck the black jurors. *Id.* 106 S.Ct. at 1723-24 n.20. When that has been done, the ultimate question is one of credibility, *Id.* at 1724. The Supreme Court has made it clear that "unless a discriminatory intent is inherent in the explanation offered to defend the peremptory challenge, the reason offered will be race neutral." *Matthews v. Evatt*, 105 F.3d at 917.

In this case, the trial court contemporaneously found the State had offered neutral, non-discriminatory explanations for excusing the two jurors. While the disparate treatment of similarly situated prospective jurors of different races can be used to establish pretext, *Miller-El v. Cockrell*, 537 U.S. 322, 343-44, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003), Appellant's trial counsel did not

point to any jurors similarly situated to those struck by the state that the State accepted, until the appeal.

Appellant notes on appeal that several white *venire* members were equivocal when initially asked whether they could render a death verdict. Young, however, equivocated throughout the entirety of his testimony:

-On whether he could be a fair and impartial juror:

“Possibly I could, but I don’t know.” (Tr. p. 1273, line 25 - p. 1274, line 8).

-On whether he could put aside anything he may have read or heard regarding the case:

“I probably could.” (Tr. p. 1274, line 9 - p. 1275, line 13).

-On whether he could consider the evidence and return a sentence of life without parole:

“I probably could.” (Tr. p. 1277, lines 5-21).

-On whether he could consider the evidence and return a sentence of death:

That’s a tough one. . . I’m not sure about that one. . . I really don’t know. I don’t know if I could or not. . . It’s possible that I could, but I don’t know.” (Tr. p. 1278, lines 5-20).

“. . . I never really thought about it, but that would still be just like killing somebody. I mean, that’s basically, the same to me . . . So, I mean, death is death. . . I like life better than death. . . (Tr. p. 1279, lines 5-20).”

“I probably could. But then again, I hear this little voice saying, you know, it’s not right, but I probably could.” (Tr. p. 1280, lines 13-15).

“Could I go ahead and give them the death penalty knowing I could give them life? . . . Yeah, probably. If all the evidence was there to prove it, yeah.” (Tr. p. 1292, lines 6-10).

“I probably could do it if I had to, yeah. But you still have to think about it.” (Tr. p. 1293, lines 13-14).

“I mean, the death penalty means killing somebody; right? Sooner or later, somebody is going to die. Well, death is death. I mean, that’s the way I look at it, death is death. (Tr. p. 1295, lines 21-24).

-On whether he could sign a death sentence verdict form:

“Yeah. I mean, if I said it, I guess I could, yeah.” (Tr. p. 1280, lines 24-25).

“I suppose, yeah. I mean, yeah.” (Tr. p. 1297, line 23).

Appellant’s responses exhibited the potential ability to serve fairly and impartially in the case to be tried so as to deny exclusion for cause pursuant to *Wainwright v. Witt*, 469 U.S. 412 (1985). However, juror Young was extremely unsure and hesitant about his ability to give the death penalty from beginning to end of *voir dire*. The neutral reason of being a life prone juror is supported by the record. The trial court also noted that Young would have “one of the hardest times finding death.” The record plainly contradicts then position espoused by Appellant that Davis and Young were struck merely because of their race.

The trial court did not abuse its discretion in finding no *Batson* error.

III. The trial judge did not abuse his discretion in disqualifying venire members Patricia Murphy and Sabrina Jenkins where their responses indicated an inability to perform their duties as jurors in accordance with the law.

In his next argument, Petitioner asserts the trial court erred in excusing *venire* members Patricia Murphy and Sabrina Jenkins based upon their views of the death penalty. Respondents submit the trial court did not abuse its discretion in granting the state's motion to disqualify either juror.

STANDARD OF REVIEW

In a capital case, the proper standard in determining the qualification of a prospective juror is whether the jurors' views on capital punishment would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath. *State v. Wood*, 362 S.C. 135, 140, 607 S.E.2d 57, 59 (2005); S.C. Code Ann. § 16-3-20(E)(in capital case, juror may not be excluded for her attitude against capital punishment unless it would render juror unable to return a verdict according to law). When reviewing the trial court's qualification or disqualification of prospective jurors, the responses of the challenged jurors must be examined in light of the entire voir dire. *Id.* The ultimate consideration is that the juror be unbiased, impartial, and able to carry out the law as explained to him. *Id.* On appellate review, the trial court's disqualification of a prospective juror will not be disturbed where there is a reasonable basis from which the trial court could have concluded that the juror would not have been able to faithfully discharge his responsibilities as a juror under law. *Id.*, citing *State v. Green*, 301 S.C. 347, 392 S.E.2d 157 (1990). See *Wainwright v. Witt*, 469 U.S. 412 (1985)(there will be situations where the trial court is left with the definite impression that a prospective juror would be unable to faithfully and impartially apply

the law and this is why deference must be paid to trial court who sees and hears the juror).

Patricia Murphy

HOW THE ISSUE WAS RAISED BELOW

A. The Voir Dire

During the voir dire of Patricia Murphy the following occurred:

The Court . . . Could you, depending on the particular facts and circumstances of the case and considering all the mitigating factors and all the aggravating factors and the law as I instruct it, could you return a sentence of death?

Murphy No.

The Court How firm are you in that belief?

Murphy Well, I just don't think . . . that a man should be punished for his crime, but it's just not up to me as an individual to give a man death.
..

The Court Okay. Is there any circumstance at all where you think you could give the death penalty?

Murphy It depends on what the severity of the case is, it depends on it.

The Court . . . Are you telling me that there are cases where you could return a verdict of death?

Murphy Yes, there are.

The Court Okay, now, I'll tell you this, in the event of a death sentence or the verdict of death, South Carolina law requires every juror to sign their name to the verdict form. . . Could you sign your name to the verdict form?

Murphy No. . . The reason for that is because I didn't know that occurred until you told me about your name being signed to that. I work with the public and I could be a target for anybody with the job that I have. So on that note, I would say, no.

The Court . . . There may be cameras in the courtroom during all this, but they're not allowed to take pictures of the jury. Your name is not allowed to appear in print. . .

Murphy My name and address – is my name and address allowed to be given to anyone.

The Court No, ma'am. We're going to protect the jurors. . . Could you sign your name to the verdict form?

Murphy If I'm protected as a juror, yes.

(Tr. p. 372, line 7 - p. 376, line 24).

Murphy then identified herself as a type three juror (Tr. p. 377). Despite Murphy's vacillation regarding the death penalty, defense counsel never broached the issue in its very brief examination (Tr. p. 379). During the voir dire questioning of Murphy by the solicitor, her view of the death penalty was further developed:

Solicitor . . . When the Judge first asked you about the death penalty, you seemed very clear and very resolute that you do not believe in the death penalty. And then he asked again and you said, yes, and then you said maybe. Whatever your position is, nobody is going to challenge it. . . But we just have to know what they are. So what are your views on the death penalty?

Murphy Well, I fell like to me – and this might be a bad choice of words, but if you've got a psycho running around here killing people, I don't think they deserve to live. I mean, of course, I'm not supposed to be judgmental, but that's just my feeling. You know, you don't kill a lot of people and then expect to live.

Solicitor Do you believe that the death penalty is appropriate in all cases where there's premeditated murder?

Murphy Not all cases, no.

Solicitor What made you tell the Judge initially that you did not believe in the death penalty?

Murphy	I guess, basically, my religion, thinking – you know, weighing the pro’s and con’s of it, I guess.
Solicitor	What made you change your answer the second time he asked?
Murphy	I don’t know. I guess with the information he told me about being protected and all that. . . Sometimes things are scary, you hear a lot of things and you think people are going to maybe come after you because you’re a juror.
Solicitor	Would that be in the back of your mind if your served on this jury?
Murphy	I think it would be.
Solicitor	Do you think that it being in the back of your mind would impact your service as a juror?
Murphy	No. It wouldn’t impact my service. But it would have some thought to the back of my mind as to, you know, this is a small town and people can find you quickly.
Solicitor	If I were to tell you that you always have a choice of life in prison, never get out, spend the rest of your life in prison or death, would you pick life in prison?
Murphy	Uh-huh.
Solicitor	Always?
Murphy	Uh-huh.
Solicitor	If you’ve always got that, you’ll always pick life in prison?
Murphy	Uh-huh.

(Tr. p. 380 line 24 - p. 383, line 8).

B. The Motion to Exclude

Solicitor Gowdy asserted that Murphy’s vacillation should disqualify her for service in a death penalty trial. Trial counsel stated Murphy did vacillate, but her main concern was whether she

would be protected as a juror, not her concerns about the death penalty. (Tr. pp. 383-384).

The trial judge noted that after Murphy's fears of her identity becoming public if she served were assuaged, he felt she would be qualified. However because she affirmatively stated to the solicitor that she would always choose life imprisonment over the death penalty, the judge disqualified Murphy. (Tr. p. 384).

Sabrina Jenkins

HOW THE ISSUE WAS RAISED BELOW

A. The Voir Dire

Upon *voir dire* by the court, Sabrina Jenkins unequivocally stated she could render either a sentence of life imprisonment or a sentence of death. She also indicated she was a type three juror who would listen to the facts and circumstances before reaching a verdict. (Tr. pp. 512-513).

During the voir dire of Jenkins by the solicitor, the following occurred:

Solicitor . . . What are your beliefs and views on capital punishment?

Jenkins Well, what I believe is to give someone the death penalty, if you purposely kill somebody – you know, it could have been another situation that they could have handled it. Then I see it as if – I could see the death penalty. But for life, I say that if there wasn't no way out, you had to do what you had to do, you know. You had to kill – you had to murder someone right then . . . if you had to do it right then. And then you had to do what you had to do. There wasn't no way out of it, you know.

Solicitor Like self-defense or something?

Jenkins Like self-defense, that's what I say, life. But I say death penalty, if you purposely did it and you know what you was doing and could have avoided it, then I think you deserve the death penalty.

Solicitor Let me ask you this, lawyers have a way of sometimes complicating things. Let's assume that murder – when we hear the term murder,

the legal definition is the intentional killing of another person with malice aforethought. So it's not an accident. It's not self-defense. You intentionally killed somebody.

Jenkins Yeah.

Solicitor Let me ask you, understanding that murder is intentionally killing another person, do you think that the death penalty should always be imposed in that case?

Jenkins Yeah.

Solicitor So laying aside the self-defense or involuntary manslaughter or voluntary manslaughter, if you intentionally killed somebody with malice aforethought, which is an evil or depraved or wicked spirit, the death penalty should be the punishment?

Jenkins Yeah.

(Tr. p. 517, line 19 - p. 519, line 5).

The trial court then further questioned Jenkins:

The Court . . . Not every case in South Carolina that is a murder is a capital case. . . The State may not pursue the death penalty in every murder case. Do you understand that?

Jenkins Uh-huh.

The Court . . . You told the Solicitor that you thought that every time somebody committed murder, they should get the death penalty.

Jenkins . . . Let me rephrase that. See, I told him what I thought about intentionally doing it and defending yourself.

The Court . . . Well, let me explain just a little something to you . . . If you act in self defense, you are not guilty of murder. Okay.

Jenkins Yeah, you're right.

The Court And there are cases where there can be the intentional and wrongful killing of another person with malice aforethought, which is murder, but doesn't have an aggravating circumstance attached to it. So they

cannot seek the death penalty. And then there's a capital case where there must be an aggravating circumstance attached to the murder conviction. . . And then and only then can the State seek the death penalty. Now what I'm getting at is, I want to – because after what you had told me, it sounded a little different than what you had said later. So is it – are there instances in cases where . . . as I asked you before, I'm going to re-ask the same question, basically, where you've committed – where you are on the jury in the second phase, which means you've already convicted a person of murder, you're on the jury and that same jury convicts, okay, and then decides the appropriate sentence. Do you mean to tell me now . . . you told me before that you could consider all the aggravating and mitigating circumstances and return a verdict of life in prison. . . I'm not trying to persuade you one way or the other. I just need to know the accurate answer, what you really feel. And don't be intimidated by me or anyone else. There's no consequences to the answer, we just need the truth. In that circumstance, after considering all of the evidence, could you return a verdict of life in prison or do you think that you had – or could you only give the death sentence?

Jenkins I could give life in prison.

The Court . . . Just tell me briefly a little bit about that so I know – understand. And it's a complicated issue, no question about it.

Jenkins I don't understand the answer you're looking for.

The Court I'm not looking for an answer. I want to know how you feel. And the reason I'm curious about that, you told me when I was questioning you that you could give a life sentence and then later, you said that you would always give death.

Jenkins I'd always give death?

The Court Yes. So I'm just trying to clear that up and find out which is true.

Jenkins . . . It depends on life or death in the situation of self-defense or intentionally – you know, if you intentionally kill somebody, you know what you were doing, death penalty, but self-defense, life sentence.

The Court All right. So every time, if you intentionally kill somebody, the death sentence? I'm just asking.

Jenkins . . . Yes.

(Tr. p. 521 line 5 - p. 524, line 7).

B. The Motion to Exclude

After Solicitor Gowdy's objection to the qualification of Murphy, Counsel Boggs asserted that she answered the court's questions satisfactorily and was "boxed" in to a self-defense or murder scenario by the solicitor. Solicitor Gowdy noted that "Once Ms. Jenkins understood what murder was, she was unequivocal both to Your Honor and to me that death is automatic." (Tr. pp. 525-526).

The trial judge found Murphy disqualified as a juror, finding:

Well, I had thought originally that she was qualified after I finished questioning her. When Mr. Gowdy got her in his – and he was masterful, in his fair seeking of the qualified juror here, I requestioned her to find out. *And I think I gave her every opportunity to change her mind, but I'm afraid she did not do it.* And I'm going to find that she's not qualified. (Emphasis added).

(Tr. p. 526, line 20 - p. 527, line 1).

After jury selection was completed, Judge Miller inquired of the State and defense if there was any objections or exceptions to the composition or manner of selection of the jury. The State had no objections while defense counsel objected, pursuant to *Batson v. Kentucky*, to three jurors other than Patricia Murphy or Sabrina Jenkins. (Tr. p. 1315).

LAW/ANALYSIS

Initially, the disqualification of *venire* members Murphy and Jenkins is not properly before this Court because defense counsel did not object to the disqualification.

A view of the entire *voir dire* process surrounding Murphy and Jenkins reveals that no objection was raised by defense counsel to either the disqualification of either *venire* member or the

process of jury selection. (Tr. p. 384; p. 527; p. 1315). Although trial counsel stated his opinion that the solicitor had unfairly “boxed in” both Murphy and Jenkins through his questioning (Tr. p. 527), the record is silent concerning any defense objection.

Respondents submit that the issue raised herein is barred from appellate consideration since the defense never objected to the disqualification of either *venire* member. *See, State v. Speights*, 263 S.C. 127, 208 S.E.2d. 43 (1974) (Court would not consider argument that trial court improperly disqualified a member of the panel as a result of *voir dire* interrogation, where such an objection was not submitted to the trial court). For this reason, Petitioner is procedurally barred from raising this claim at this time.

However, if not procedurally barred, the exclusion of Murphy and Jenkins was appropriate where their responses indicated an inability to perform their duties as jurors in accordance with the instructions and oath.

In her *voir dire* Patricia Murphy immediately stated she could not return a sentence of death because “it’s just not up to me as an individual to give a man death.” Although she eventually answered the trial court’s questions in a manner to qualify as a juror in a death penalty case, she came full circle during *voir dire* by the solicitor. Murphy clearly indicated to the solicitor that when given an option between life imprisonment or the death penalty, she would always choose life imprisonment.

Appellant contends the solicitor exploited Murphy’s fears for her safety. However, those fears arose from signing a verdict form. Whatever concerns she had were seemingly allayed by the trial court’s explanation of protection jurors would receive. Upon questioning by the solicitor, Murphy stated she initially told the judge she did not believe in the death penalty based upon her

religious principles. Further, she indicated her fears would not impact her service as a juror. There is no evidence to support Appellant's allegation that "the solicitor exploited Murphy's fears in order to remove her from the jury because of her race." (Appellant's brief at 29). Murphy clearly and unambiguously indicated if given an option between life imprisonment and the death penalty, she would *always* choose life imprisonment. Based on this response, there was a reasonable basis for the trial court to conclude that Murphy could not faithfully discharge his responsibilities as a juror under the law. The court's decision to disqualify her from service was not an abuse of discretion.

In her *voir dire*, Sabrina Jenkins was headed for qualification as a juror until she was simply asked by the solicitor "what are your views on capital punishment." When given the opportunity to fully expound her view of capital punishment, it became clear Jenkins had an "intentional vs. non-intentional" view of the subject matter. No attempt was made to box her into this view. Also, the solicitor attempting to turn her attention away from unintentional killings. Still, Jenkins maintained the death penalty should be the punishment for any murder.

Additionally, the trial judge's *voir dire* following the solicitor's questioning, showed that Jenkins was firmly anchored into her position. As he had in his initial *voir dire*, the trial judge extensively explained that every murder is not a death penalty case, and the consideration of aggravating and mitigating circumstances in the penalty phase. Still, ultimately, Jenkins maintained that the death penalty is the only appropriate punishment for an intentional killing.

Upon a proper motion, a juror should be excused based on his or her views on the death penalty, life imprisonment without parole, or life imprisonment with the possibility of parole if "the juror's views would 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.'" *Wainwright v. Witt, supra*. See also *Andrews v.*

Collins, 810 F. Supp. 759, 769 (E.D. Tex. 1992) (trial court is in the best position to rule on prospective juror's qualification because the court views the juror's demeanor and credibility, and as here, participates in the *voir dire* examination to clarify any ambiguities.") (citing *Wainwright v. Witt*, *supra*. (noting that the judge's qualification decision is finding of fact subject to the presumption of correctness, because such a finding "is based upon determinations of demeanor and credibility that are peculiarly within a trial judge's province"))). This Court reviews a trial court's decision regarding a juror's qualification with deference to the trial court's application of these standards to the juror's *voir dire* responses.

Appellant alleges Jenkins views only appeared to change after the solicitor purposefully confused her. As stated above, the evidence does not support this conclusion. The trial court cannot ignore Jenkins' clear assertions. Here, it is evident that her view that an intentional killing should always be punished by a death sentence "would 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.'" The *vernire* member was properly disqualified. The trial judge's decision to exclude must be upheld.

IV. The trial court did not abuse its discretion in disqualifying a juror where pending charges can support disqualification for cause, and the juror strongly disfavored the death penalty.

Appellant next contends the trial court erred in disqualifying venire member Aaron Gray during capital *voir dire* because his pending charges created an overwhelming potential for bias. Appellant contends that pending charges might be appropriate for use of a peremptory challenge, but is not enough to disqualify a juror under *Wainwright v. Witt, supra*. Inasmuch as Appellant contends the trial court applied the wrong standard, this argument is not preserved for appeal because it was not made at trial. In any event, pending charges can be appropriate bases for disqualification in capital *voir dire*. Here, Gray's answers on his ability to consider a death sentence, when combined with his pending charges to be prosecuted by the Seventh circuit solicitor's office, were sufficient to support the trial court's disqualification decision under the highly deferential standard of review.

A. Events at trial

Upon *voir dire* by the trial court, Gray revealed an immediate and consistent predisposition against the death penalty:

The Court . . . Guilt of murder is already established, could you, depending on the particular facts and circumstances of that case, including considering all the aggravating and all of the mitigating circumstances, could you return a sentence of death?

Aaron Gray I really would have to be persuaded, you know, because I'm really not for the death penalty. I really don't think it should be up to a citizen to decide if a person should live or die, but maybe by the facts I could be persuaded and I maybe could.

The Court So what you're telling me is that depending on the particular facts and circumstances of the case and the law after considering the aggravating circumstances . . . and the mitigating circumstances. . . you could return a verdict of death; is that right?

Aaron Gray Yes.

The Court . . . Could you sign your name to a death verdict.

Aaron Gray I really don't know, sir. . . It would have to be the facts. Because right now, I would probably say no. Just without hearing the facts, I would say, no, I couldn't sign it.

The Court So assume for this next question that that's where you are, that you have listened to all the facts and circumstances and the mitigating and aggravating circumstances and the law and you . . . felt that it . . . was a case where you could return a sentence of death. . . Could you sign your name to a death verdict form.

Aaron Gray Yes.

The Court . . . Do you recall the sheet that had . . . the three types of jurors on it?

Aaron Gray Yes, sir.

The Court How would you classify yourself? Where would you put yourself on that list?

Aaron Gray Right now, I would probably be Number 2..

The Court Number 2. Okay. And that is the juror who would not give the death penalty?

Aaron Gray Not – you know, no, I wouldn't

(Tr. p. 775, line 3 - p. 777, line 8).

Upon questioning by the solicitor, Gray reaffirmed he was a type two juror whose opposition to the death penalty was based upon his religious views. Gray further stated he could return a death verdict but would have to be “really persuaded to go against what I believe.” Gray also noted he had never seen a case where he believed the death penalty was appropriate. (Tr. pp. 778-783).

The solicitor also developed that Gray had a pending charge in the Seventh Circuit and would be represented by the Public Defender's Office. Gray stated he would have no bias or prejudice

against the Sheriff's Department. (Tr. pp. 784-785).

Upon questioning by the defense, Gray once again affirmed he was against the death penalty, but indicated he could vote for death in certain heinous situations. Gray added he had no animosity towards anyone regarding his pending charges. (Tr. p. 788).

The state argued Gray was disqualified under *Wainwright v. Witt*, and because of his pending charges. Defense counsel argued Gray indicated he could support a death verdict if the facts warranted and also stated he could be fair. (Tr. pp. 789-790).

The trial court noted that Gray was "very pleasant," but was in an awkward situation because of the pending charges. The court then found:

I am going to find that the potentials for him – for his bias is too overwhelming to put him on the jury. And I find he is disqualified. He is represented by the same law office that represents Mr. Evins in this case. And I think that – I hadn't thought it all the way through, but if there's not a conflict there, it's dancing on the line. And it certainly has the appearance of an impropriety. I am going to disqualify him.

(Tr. p. 790, line 25 - p. 791, line 8).

B. The issue is not preserved.

Inasmuch as Appellant contends on appeal that pending charges for a juror also represented by the public defender's office is an improper standard for determining disqualification for cause in capital *voir dire*, this argument is not preserved for appeal because it was not made to the trial court. While counsel argued to the trial court that Gray should be qualified, he did not object to the court's ruling. *See generally State v. Silver*, 314 S.C. 483, 431 S.E.2d 250 (1993) (ground asserted on appeal must be supported by objection raised at trial).

C. Pending Charges.

It is permissible to excuse potential jurors if circumstances would “prevent or substantially impair” the performance of their duties as a juror. *State v. George*, 323 S.C. 496, 476 S.E.2d 903 (1996) (citing *Wainwright v. Witt*, *supra*). The determination of whether a juror is qualified to serve in a death penalty case is within the sole discretion of the trial judge and is not reviewable on appeal unless wholly unsupported by the evidence. *George*, *supra*. When reviewing the trial court’s decision as to qualification, the responses must be considered in light of the entire voir dire. *Id.*

Although Gray indicated he could be unbiased despite his pending charges, the trial court felt the “awkward” situation could substantially impair his service on the jury. This provided the court a “reasonable basis to conclude that a prospective juror would be unable to faithfully discharge his responsibilities as a juror under the law.” *See State v. Gaskins*, 284 S.C. 105, 326 S.E.2d 132 (1985). This decision should not be disturbed on appeal.

D. Disfavoring death penalty.

The solicitor’s motion to disqualify was two fold. He asserted Gray was disqualified under *Wainwright v. Witt* and because of his pending charges. The trial court disqualified Gray without commenting upon his *Wainwright* standing. However, this Court has repeatedly affirmed disqualification of a juror based on difficulty in considering the death penalty, even where that difficulty was not absolute. *See, e.g. State v. George*, 323 S.C. 496, 476 S.E.2d 903 (1996) (rejecting allegation that juror should have been qualified because she was not “emphatically opposed” to the death penalty, where juror said she did not “think” she could vote for death or sign the form, and it was apparent that imposing death would “extremely difficult” for the juror); *State v. Riddle*, 314 S.C. 1, 443 S.E.2d 557 (1994) (no error in disqualifying Reverend who said her Christian beliefs would “hinder” her, who said she could not give death, and who was unable to say otherwise); *State v.*

Green, 301 S.C. 347, 392 S.E.2d 157 (1990) (no error in disqualifying juror who said his bias might affect his partiality, even though juror said he would try not to be prejudiced); *State v. Gaskins*, 284 S.C. 105, 326 S.E.2d 132 (1985) (trial court had reasonable basis for excluding juror where he consistently maintained his opposition to the death penalty and did not believe he could consider it); *State v. Chaffee*, 285 S.C. 21, 328 S.E.2d 464 (1984) (considering questioning in entirety, reasonable basis existed for trial court to exclude juror for cause).

Here, Gray's responses indicated he could not impose the death penalty, but was open enough to never say never. Gray was clear about being a type two juror who was against the death penalty. Absent some extraordinary circumstances which he had never seen, it is apparent Gray would not impose a sentence of death. There is support in the record for a determination that the totality of Gray's answers indicated he would be "substantially impaired" in fairly considering a death sentence.

There was no abuse of discretion.

V. The trial court did not abuse its discretion by allowing the State to introduce photographs of the victim in the sentencing phase of Appellant's trial.

In the sentencing phase the trial judge allowed the prosecution to introduce a series of photographs of the victim at the crime scene, as well as a photograph depicting the black knife handle, over Appellant's objection. The State withdrew three photographs (State's Exhibits 73, 78, and 79) because they were duplicative. (Tr. pp. 2328-2330). On appeal, Appellant claims the trial judge erred by allowing the State to introduce State's Exhibits 70⁶, 71, 72, 74, 75, 76, 77, which he characterizes as "gruesome," "nauseating," "sickening," "inflammatory," and "grotesque." The State submits the trial judge did not abuse his discretion.

There was no error. The purpose of the sentencing phase in a capital trial is to direct the jury's attention to the specific circumstances of the crime and the characteristics of the offender. *State v. Matthews*, 296 S.C. 379, 390, 373 S.E.2d 587, 594 (1988), *cert. denied*, 489 U.S. 1091, 109 S.Ct. 1559, 103 L.Ed.2d 861 (1989). In *State v. Kornahrens*, 290 S.C. 281, 289, 350 S.E.2d 180, 185-186 (1986), this Court held that:

In determining whether to recommend a sentence of death, the jury may be permitted to see photographs which depict the bodies of the murder victims in substantially the same condition in which the defendant left them. . . . The trial judge is still required to balance the prejudicial effect of the photographs against their probative value. However, in the sentencing phase, the scope of the probative value is much broader.

(Citations omitted). *See also State v. Powers*, 331 S.C. 37, 501 S.E.2d 116 (1998); *State v. Shaw*, 277 S.C. 194, 255 S.E.2d 799 (1979). As the Court has more recently made clear, the criteria for admissibility is not

⁶It appears trial counsel did not object to State's Exhibit 70. (Tr. p. 2330).

that the photographs become inadmissible because they graphically depict a gruesome scene. Rather, the question is whether the photographs are unfairly prejudicial so as to outweigh the probative value. . . . To constitute unfair prejudice, the photographs must create a 'tenancy to suggest a decision on an improper basis, commonly, though not necessarily an emotional one.'

State v. Franklin, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995).

In the verdict phase, the pathologist, Dr. John Wren testified that the victim had "12 either stab or incised wounds" on her body. Wren testified in detail about multiple stab wounds on the victim's upper torso as well as defensive wounds. He opined the fatal wound was in the left chest area. This wound penetrated the victim's lungs and forced her to bleed to death (App. pp. 1794-1798). Dr. Wren's testimony was also incorporated into the penalty phase. (Tr. p. 2261). Randy Eugene Bogan of the Spartanburg County Sheriff's Office testified in the penalty phase as to the locations and settings in which the photographs of the victim were taken. The photos were then admitted into evidence. (Tr. pp. 2331-2336).

As with the photographs in *Powers*, *Kornahrens* and *Shaw*, *supra*, these photographs were probative of the circumstances of the crime and Appellant's character. Moreover, it was used to corroborate and illustrate previous testimony concerning autopsy findings. Therefore, the photographs were admissible. *Id.* See *State v. Haselden*, 353 S.C. 190, 577 S.E.2d 445 (2003)(if photograph offered for admission during sentencing phase of capital prosecution serves to corroborate testimony, there is no abuse of discretion in admitting photograph).

Further, the probative value of the photographs were not substantially outweighed by their prejudicial value. *Franklin*, *supra*. State's Exhibits 70, 71 and 72 depict the victim in substantially the same condition as Appellant left her: nude and lifeless from being sexually assaulted and stabbed

multiple times. State's Exhibits 74,75, 76 and 77 depict various stab wounds to the left and right sides of the victim's torso, as well as defensive wounds to her hands. Therefore, these photographs depict what Appellant did and nothing more. *Powers, supra*.

While it is true that Appellant left the victim in a horrible and tragic condition, it *IS* how he left her. The prosecution is not required to sanitize a senseless and brutally malicious crime scene which a defendant has chosen to create, so as to make the crime appear less than what it was. This is precisely the type of evidence which is appropriate in the sentencing phase of a bifurcated capital trial. *Kornahrens and Powers, supra*. Significantly, under Appellant's analysis, no post mortem pictures should have been admitted into evidence in the penalty phase of trial.

This Court has rejected the suggestion that photographs of the victim, depicting her in substantially the same condition as the defendant left her, were inadmissible where their relevance and probative value outweigh their prejudicial impact. *State v. Weik*, 356 S.C. 76, 587 S.E.2d 683, (2002). Therefore, Appellant's argument is without merit and the trial judge's ruling must be affirmed.

CONCLUSION

For all the foregoing reasons, the appeal should be dismissed and judgment of conviction affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

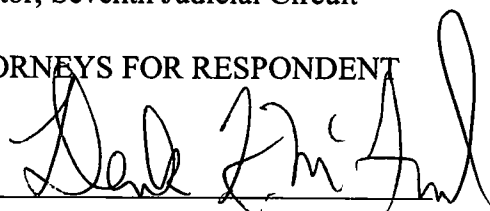
JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

DERRICK K. McFARLAND
Assistant Attorney General

HAROLD W. GOWDY, III
Solicitor, Seventh Judicial Circuit

ATTORNEYS FOR RESPONDENT

By: 

Columbia, South Carolina
July 24, 2006

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**Appeal from Spartanburg County
Edward W. Miller, Circuit Court Judge**

RECEIVED

JUL 24 2006

S.C. SUPREME COURT

THE STATE,

Respondent,

v.

FREDRICK ANTONIO EVINS,

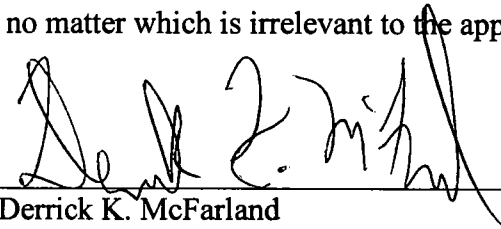
Appellant.

**DESIGNATION OF MATTERS TO BE
INCLUDED IN THE RECORD ON APPEAL**

Respondent proposes the following to be included in the Record on Appeal:

I have no additions to the designated matter of Appellant.

I certify that the Designation contains no matter which is irrelevant to the appeal.


Derrick K. McFarland

July 24, 2006



HENRY MCMASTER
ATTORNEY GENERAL

RECEIVED

JUL 24 2006

S.C. SUPREME COURT

July 24, 2006

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, South Carolina 29211

Re: *The State v. Fredrick Antonio Evins*

Dear Mr. Shearouse:

Enclosed please find the ***Initial Brief of Respondent and Designation of Matter*** in the above-referenced matter for filing. By copy of this letter I am serving opposing counsel with same.

Sincerely,

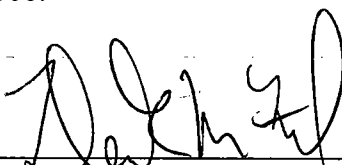
Lonetta B. Brawley
Legal Assistant to Derrick K. McFarland
Assistant Attorney General

/lbb
Enclosure

cc: Robert M. Dudek, Esquire
Harold W. Gowdy, III, Solicitor
Sandi Wofford, Victims Assistance

CERTIFICATE OF SERVICE

I, **Derrick K. McFarland**, hereby certify that I have served the **Initial Brief of Respondent and Designation of Matter** in the foregoing action by depositing two (2) copies in the Interagency Mail to Robert M. Dudek, Assistant Appellate Defender, South Carolina Commission of Indigent Defense, Appellate Defense Division, 1330 Lady Street, Suite 401, Columbia, South Carolina 29201 this 24th day of July, 2006.



DERRICK K. McFARLAND

RECEIVED
JUL 24 2006
S.C. SUPREME COURT

The Supreme Court of South Carolina

The State,

Respondent

v.

Fredrick Antonio Evins,

Appellant.

The Honorable Edward W. Miller
Spartanburg County

Trial Court Case No. 2003-GS-42-02532
2003-GS-42-02533
2003-GS-42-02534

ORDER

For good cause having been shown, the time for serving and filing the Initial Brief of Respondent and Designation of Matter in the above entitled matter is hereby extended until July 24, 2006.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

June 27, 2006

cc: Assistant Appellate Defender Robert M. Dudek
Assistant Attorney General Derrick K. McFarland

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Spartanburg County
Edward W. Miller, Circuit Court Judge

RECEIVED

JUN 26 2006

S.C. SUPREME COURT

THE STATE,

Respondent,

v.

FREDRICK ANTONIO EVINS,

Appellant.

**MOTION FOR EXTENSION OF TIME TO
FILE INITIAL BRIEF OF RESPONDENT
AND DESIGNATION OF MATTER**

The Respondent above-named hereby makes a motion to this Court to extend the time for filing the Initial Brief of Respondent and Designation of Matter from June 23rd, 2006 for a period of thirty (30) days up to and including July 24th, 2006. This is Respondent's third request for an extension.

This request is made because Respondent has only recently obtained the correct and complete transcript. This request is also due to the extensive record on appeal and complexity of the issues currently raised before this Court in this death penalty case. Respondent's counsel are cognizant of this Court's policy on extensions in capital cases. Respondent's counsel has spoken to opposing counsel, Robert M. Dudek, who does not object and consents to said extension request.

Wherefore Respondent respectfully requests an extension of a period of time of thirty (30) days up to and including July 24th, 2006 to complete this brief.

Respectfully submitted,

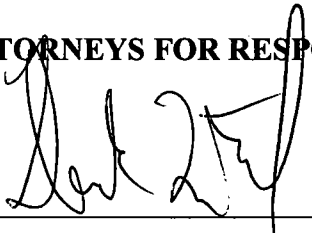
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

DERRICK K. McFARLAND
Assistant Attorney General

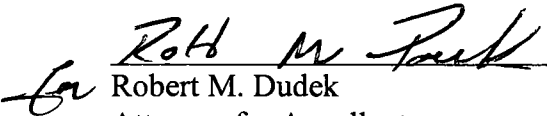
ATTORNEYS FOR RESPONDENT

By: 

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

June 26, 2006

I CONSENT:


Robert M. Dudek
Attorney for Appellant

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Spartanburg County
Edward W. Miller, Circuit Court Judge

THE STATE,

Respondent,

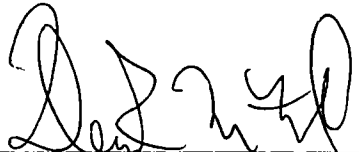
v.

FREDRICK ANTONIO EVINS,

Appellant.

CERTIFICATE OF SERVICE

I, Derrick K. McFarland, hereby certify that I have served Respondent's Motion for Extension of Time to File Initial Brief of Respondent and Designation of Matter, on Robert M. Dudek, Esquire, South Carolina Office of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211, by depositing a copy in the United States Mail, postage prepaid this 26th, day of June, 2006.



DERRICK K. McFARLAND

The Supreme Court of South Carolina

The State,

Respondent

v.

Fredrick Antonio Evins,

Appellant.

The Honorable Edward W. Miller
Spartanburg County

Trial Court Case No. 2003-GS-42-02532
2003-GS-42-02533
2003-GS-42-02534

ORDER

For good cause having been shown, the time for serving and filing the Initial Brief of Respondent and Designation of Matter in the above entitled matter is hereby extended until June 23, 2006.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

May 25, 2006

cc: Assistant Appellate Defender Robert M. Dudek
Assistant Attorney General Derrick K. McFarland



HENRY McMASTER
ATTORNEY GENERAL

RECEIVED

May 24, 2006

MAY 24 2006

S.C. SUPREME COURT

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

Re: The State v. Fredrick Antonio Evins

Dear Mr. Shearouse:

Enclosed please find a motion to enlarge time in the above-referenced matter for filing in your office. By copy of this letter I am serving opposing counsel with same.

Sincerely,

Derrick K. McFarland
Assistant Attorney General

DKM/lbb
Enclosure

cc: Robert M. Dudek, Esquire

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Spartanburg County
Edward W. Miller, Circuit Court Judge

RECEIVED

MAY 24 2006

THE STATE,

Respondent,

S.C. SUPREME COURT

v.

FREDRICK ANTONIO EVINS,

Appellant.

**MOTION FOR EXTENSION OF TIME TO
FILE INITIAL BRIEF OF RESPONDENT
AND DESIGNATION OF MATTER**

The Respondent above-named hereby makes a motion to this Court to extend the time for filing the Initial Brief of Respondent and Designation of Matter from May 24th, 2006 for a period of thirty (30) days up to and including June 23rd, 2006. The Respondent had made an initial request on April 24th, 2006, which this Court granted on April 25th, 2006.

This request is due to internal irregularities in the printing of the transcript and the complexity of the issues currently raised before this Court in this death penalty case. Respondent has been involved in numerous litigations in both state and federal court during this time period which has prevented the completion of this brief in a sufficient and timely manner.

Respondent's counsel are cognizant of this Court's policy on extensions in capital cases.

Wherefore Respondent respectfully requests an extension of a period of time of thirty (30) days up to and including June 23rd, 2006 to complete this brief.

Respectfully submitted,

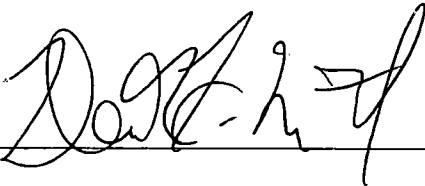
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

DERRICK K. McFARLAND
Assistant Attorney General

ATTORNEYS FOR RESPONDENT

By: 

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

May 24, 2006

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Spartanburg County
Edward W. Miller, Circuit Court Judge

THE STATE,

Respondent,

v.

FREDRICK ANTONIO EVINS,

Appellant.

CERTIFICATE OF SERVICE

I, Derrick K. McFarland, hereby certify that I have served Respondent's Motion for Extension of Time to File Initial Brief of Respondent and Designation of Matter, on Robert M. Dudek, Esquire, South Carolina Office of Appellate Defense, P.O. Box 11589, Suite 401, Columbia, South Carolina 29201, by depositing a copy in the United States Mail, postage prepaid this 24th, day of May, 2006.



DERRICK K. McFARLAND

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Spartanburg County
Edward W. Miller, Circuit Court Judge

THE STATE,

Respondent,

v.

FREDRICK ANTONIO EVINS,

Appellant.

**MOTION FOR EXTENSION OF TIME TO
FILE INITIAL BRIEF OF RESPONDENT
AND DESIGNATION OF MATTER**

The Respondent above-named hereby makes a motion to this Court to extend the time for filing the Initial Brief of Respondent and Designation of Matter from May 24th, 2006 for a period of thirty (30) days up to and including June 23rd, 2006. The Respondent had made an initial request on April 24th, 2006, which this Court granted on April 25th, 2006.

This request is due to internal irregularities in the printing of the transcript and the complexity of the issues currently raised before this Court in this death penalty case. Respondent has been involved in numerous litigations in both state and federal court during this time period which has prevented the completion of this brief in a sufficient and timely manner.

Respondent's counsel are cognizant of this Court's policy on extensions in capital cases.

Wherefore Respondent respectfully requests an extension of a period of time of thirty (30) days up to and including June 23rd, 2006 to complete this brief.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

DERRICK K. McFARLAND
Assistant Attorney General

ATTORNEYS FOR RESPONDENT

By: _____

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

May 24, 2006

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Spartanburg County
Edward W. Miller, Circuit Court Judge

THE STATE,

Respondent,

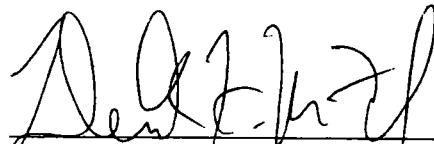
v.

FREDRICK ANTONIO EVINS,

Appellant.

CERTIFICATE OF SERVICE

I, Derrick K. McFarland, hereby certify that I have served Respondent's Motion for Extension of Time to File Initial Brief of Respondent and Designation of Matter, on Robert M. Dudek, Esquire, South Carolina Office of Appellate Defense, P.O. Box 11589, Suite 401, Columbia, South Carolina 29201, by depositing a copy in the United States Mail, postage prepaid this 24th, day of May, 2006.


DERRICK K. McFARLAND

The Supreme Court of South Carolina

The State,

Respondent

v.

Fredrick Antonio Evins,

Appellant.

The Honorable Edward W. Miller
Spartanburg County

Trial Court Case No. 2003-GS-42-02532
2003-GS-42-02533
2003-GS-42-02534

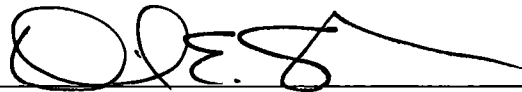
ORDER

For good cause having been shown, the time for serving and filing the Initial Brief of Respondent and Designation of Matter in the above entitled matter is hereby extended until May 24, 2006.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

April 25, 2006

cc: Assistant Appellate Defender Robert M. Dudek
Assistant Attorney General Derrick K. McFarland



HENRY McMASTER
ATTORNEY GENERAL

April 24, 2006

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APR 24 2006

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

Re: The State v. Fredrick Antonio Evins

Dear Mr. Shearouse:

The initial brief of respondent in this case is due to be served and filed with the Court on the above date. However, because of my heavy caseload, I am requesting an extension of thirty (30) days until May 24, 2006 in which to serve and file the brief. By copy of this letter I am informing opposing counsel, Robert M. Dudek, of this request.

Sincerely,

Derrick K. McFarland
Assistant Attorney General

DKM/lbb

cc: Bob Dudek, Esq.

ORIGINAL

RECEIVED

MAR 10 2006

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FREDRICK ANTONIO EVINS,

APPELLANT

INITIAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Assistant Appellate Defender

AILEEN P. CLARE
Assistant Appellate Defender

South Carolina Office
of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, S. C. 29201
(803) 734-1330

ATTORNEYS FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by denying appellant's motion for a change of venue when the majority potential jurors had been exposed to extensive pretrial publicity, and where the news media had linked appellant's current murder charges to another, unrelated murder?

2

Whether the court erred by ruling that the state's preemptory strike against African-American potential juror Annie Davis was racially neutral, and did not violate Batson v. Kentucky, since Davis was a death penalty qualified juror, and the solicitor's purported explanation that she would be adversely affected and unable to be impartial because two of her sons were killed in a DUI traffic accident was not supported by the record?

3.

Whether the court erred by ruling the solicitor's preemptory challenge against African-American potential juror Johnny Young was racially neutral, and did not violate Batson v. Kentucky, where the solicitor explanation that Young was a "life-prone juror" was not supported by the record?

4.

Whether the court erred by excusing African-American potential juror Patricia Murphy for cause where Murphy strongly testified that she could impose the death penalty upon a murderer, since she was a qualified juror under the Wainwright v. Witt standard?

5.

Whether the court erred by disqualifying African-American potential juror Sabrina Jenkins for cause under the Wainwright v. Witt standard where solicitor even acknowledged

it appeared Jenkins had strong pro-death penalty views, since defense counsel correctly noted a pattern of striking African-American jurors had developed, and the solicitor's "concern" that Jenkins may be too strongly in favor of the death penalty was an apparent subterfuge?

6.

Whether the court erred by disqualifying potential African-American juror Aaron Gray for cause where Gray testified he could impose the death penalty and sign the verdict form, where that he did not have any bias against the police, the state or for attorneys from the Public Defender's Office that he did not know, since Gray was a death qualified juror under the Wainwright v. Witt standard, and he was otherwise a qualified juror against any allegation of bias?

7.

Whether the court erred by admitting highly inflammatory crime scene photographs, 70, 71, 72, 74, 75, 76, 77, and 80, particularly the photographs showing the nude victim had defecated on herself since this strongly invited a verdict based upon passion?

STATEMENT OF THE CASE

Appellant was indicted by the Spartanburg County grand jury for offenses of murder, kidnapping, criminal sexual conduct in the first degree and grand larceny. R. *. As will be seen infra, the defense moved for a change of venue arguing they could not get a fair trial in Spartanburg County, because of extensive pre-trial publicity, and the fact appellant had graphically been linked in the media to another unrelated murder -- "the Huff murder." Tr. 2065, l. 2 – 2069, l. 11.

Appellant's case came on for trial on November 8, 2004 before the Honorable Edward W. Miller, and a jury. Karen M. Quimby, Thomas A.M. Boggs, and Christopher Brough represented appellant. Tr. 1.

At the conclusion of the guilt phase the jury found appellant guilty of each offense. Tr. 2042, ll. 6 – 18.

At the conclusion of the penalty phase on November 19, 2004 the jury returned a sentence of death. Tr. 2583, l. 22 – 2584, l. 13. Judge Miller then sentenced appellant to death for murder, thirty years imprisonment for criminal sexual conduct in the first degree and five years imprisonment for grand larceny. Tr. 2587, l. 9 – 2588, l. 8.

This appeal follows.

ARGUMENT

1.

The court erred by denying appellant's motion for a change of venue, when the majority of potential jurors had been exposed to extensive pretrial publicity, and where the news media had linked appellant's current charges to another, unrelated murder.

The state's case was that the decedent, Rhonda Ward, was kidnapped from her place of business, Cigarette's 4 Less, on Drayton Road at about 6:50 a.m. on February 13, 2003. Tr. 1393, l. 9 1403, l. 20. Her nude body was found on February 15, 2003 off of Gano Road. Tr. 1464, l. 7 – 1465, l. 22.

Appellant moved for a change of venue because of extensive and inflammatory pretrial publicity, noting particularly an article published in the local newspaper on the first morning of jury selection and a television broadcast on the previous evening. Tr. 118, l. 10 - 123, l. 24; Court's Exhibits 3-4, R. *. The court received an additional eighteen newspaper articles dated between September 2002 and August 2003 in support of the motion to change venue. Court's Exhibits 4, 14-30, R. *. Several of the articles connected the case, and appellant by extension, to the September 2002 murder of Demaris Huff in nearby Duncan Park. Court's Exhibit 26, R. *.

The Huff murder was first reported in the Spartanburg newspaper during September 2002. Court's Exhibit 15, R. *. On February 15, 2003, the paper reported that Ms. Ward was missing and feared abducted. Court's Exhibit 16, R. *. The following day, an article reported that Ms. Ward's body may had been located. Court's Exhibit 17, R. *. Prominently headlined articles appeared on February 17 and 18 confirming Ms. Ward's identity and cause of death. Court's Exhibits 18-19, R. *. On February 19, the

paper reported that Ms. Ward's car had been found. Court's Exhibit 20, R. *. Appellant's arrest was reported in an article dated March 1, 2003, under the headline, "Murder suspect had already been jailed" referring to the Huff murder. Articles on March 22 and April 6 also connected the Huff and Ward cases. Tr. 119, l. 20 - 120, l. 25.

The March 22, 2003, article ran under the headline, "Huff's neighbors, colleagues feel a sense of relief." The article reported that Huff's neighbors and co-workers were relieved when appellant, having been arrested for the Ward murder, was also charged in the Huff case. Court's Exhibit 24, R. *. A separate article on the same day ran under the prominent headlines, "Man charged in killing of Duncan Park woman," and "SECOND MURDER CHARGE: Evins is already jailed in store worker's death." Court's Exhibit 23, R. *. An internal headline in that article read, "Suspect's record includes several sex offenses." R. *.

The article published April 6, 2003, included a general discussion of sexual predators that focused on appellant, with prominent photographs of both Ms. Huff and Ms. Ward and detailed discussions of each case. Tr. 121, ll. 13-19; Court's Exhibit 25, R. *. The article was the lead local story with the headline, "Suspected Huff killer has long, brutal past." The first paragraph read as follows:

Fredrick Antonio Evins, the man accused of murdering library worker Damaris Huff and cigarette store manager Rhonda Ward Goodwin, cut a brutal swath across Spartanburg County for literally his entire life.

The article continued with detailed accounts of appellant's history since the age of 19, when he was accused of sexually assaulting a girl in DSS custody. It included a map

and diagram of the areas where Huff's and Ward's bodies were located, with inserts of the victims' photographs.

Companion pieces to the April 6, 2003, article memorialized Damaris Huff and Rhonda Ward Goodwin in detail. Internal headlines included, "Goodwin's [Ward's] dreams cut short," and "Goodwin's love, generosity and drive toward a better life brought families together." Court's Exhibit 25, R. *.

On April 13, 2003, the newspaper implicated appellant in a *third* murder in the area. Court's Exhibit 26, R. *. This article reported that Margaret Shands' body had been discovered, partially disrobed, face down in some roadside brush. The coroner reported that there was no evidence of strangulation, stabbing, or violent sexual assault. Despite the evidentiary differences between the Shands, Huff, and Ward murders, the newspaper reminded the public that appellant had lived near Shands and was charged for killing Huff and Ward.

An article published June 22, 2003, again, generally discussed sex offenders but focused on appellant and his arrest for the Huff and Ward murders. Tr. 121, ll. 1-7; Court's Exhibits 27 - 28, R. *.

Appellant's indictment was reported on July 11, 2003, under the prominent headline, "Grand jury indicts murder suspect," as follows:

Frederick Evins, the man accused of murdering library worker Damaris Huff and cigarette store manager Rhonda Ward Goodwin, was indicted by a grand jury Thursday on charges related to both crimes."

Court's Exhibit 29, R. *.

The article recounted the facts of both the Ward and Huff murders. Under the internal headline, "Gowdy weighs whether to seek death penalty," the solicitor was quoted as saying, "These are a couple of crimes that shocked the conscience of the community," and "We feel like the evidence will clearly show Mr. Evins committed these crimes." Court's Exhibit 29, R. *.

An article published August 30, 2003, reported that the solicitor intended to seek the death penalty in the Ward case and repeated that appellant was accused of both murders. Tr. 122, ll. 5-15. It was the lead local story, with the prominent headline, "Gowdy seeks death penalty for Evins," above a photograph of appellant. Court's Exhibit 30, R. *. The first paragraph connected the Ward and Huff murders:

Prosecutors will seek the death penalty against Spartanburg resident Fredrick Antonio Evins, the man accused of murdering library worker Demaris Huff and cigarette store manager Rhonda Ward Goodwin.

R. *

This article included a graphic, detailed factual account of each crime, with quotes from Rhonda Ward's mother.

In his venue motion, defense counsel reminded the court that the Huff case was widely reported because of Ms. Huff's standing in the community as a librarian and resident of an upscale neighborhood. Tr. 119, ll. 5-12. The primary suspect in Ms. Huff's murder had been her husband until appellant was arrested for the Ward murder. As shown by the news clippings submitted by counsel, appellant's arrest for the Huff murder, after being charged in the Ward murder, was widely and sensationally reported. Tr. 119, ll. 13-20. Counsel stated that "for a long period of time, to live in this county . . .

you either never watched TV or read the paper if you did not know about either one of these cases." Tr. 122, ll. 12-15.

A new article describing the cases appeared on November 8, 2004, the first morning of jury selection. Under the headline, "Evins facing murder trial," the article reported that a jury would be selected in the Ward case. In the fourth paragraph, the article reminded the public that appellant faced similar charges in the Huff case. Court's Exhibit 31, R. *. Defense counsel argued that the new article was particularly prejudicial, since "if a juror knew about these cases through the extensive publicity back in February, March, April, May, June, July, and August of 2003, even if it had been pushed in the back of their mind, it has been resurrected by the article today." Tr. 123, ll. 6-12. Counsel argued that evidence from the Huff case that would not be admissible in the guilt phase of this trial had been "interjected" into the case by the articles. He concluded that the paper has "actually, done what the law would not allow any of the participants to do." Tr. 123, ll. 13-20.

The trial court agreed that the news articles were "irresponsible journalism" but ruled that appellant had not made a "sufficient showing that we can't get an untainted jury to try this case." Tr. 123, l. 25 - 124, l. 16.

Of the sixty-three potential jurors interviewed during voir dire, thirty-seven were exposed to pretrial publicity. Eight of them spontaneously associated, or confused, this case with the Demaris Huff case during voir dire. Only two -- Barbara Brendle, # 24, and John Williamson, juror # 389 -- were excused because of their exposure to pretrial publicity. The following venire members were exposed to pretrial publicity through television, radio, or print news outlets:

Susan Kanipe, juror # 194, heard news accounts about the case when it happened. She heard that a person met the victim in the parking lot of her workplace, that both of them left in the victim's car, and that her body was found in an apple orchard. She later heard that a suspect had been arrested. Tr. 1135, l. 16 - 1136, l. 25. Ms. Kanipe was seated on the jury.

Michael Henline, juror # 149, was familiar with the charges, including "that it happened, where it happened," from newspaper articles. He remembered the Drayton location because he formerly worked at Drayton Mills. Tr. 706, ll. 7-25; Tr. 715, l. 5 - 718, l. 3. Mr. Henline was seated on the jury.

Mark Roller, juror # 316, recalled television and news coverage from the time of the incident. Tr. 355, l. 23 - 356, l. 20. Mr. Roller was seated on the jury.

Donald Bower, juror # 19, heard about the case when it happened, and he heard that the court was calling a jury for "murder case in Spartanburg." Tr. 387, l. 21 - 388, l. 7. Mr. Bower was seated on the jury.

Neddie Richards, juror # 306, heard from a radio broadcast on the morning of trial that the court was calling jurors for a case involving a food mart. Tr. 423, l. 20 - 424, l. 24. Mr. Richards was seated on the jury.

Pamela Ridings, juror # 309, heard on radio or television that a jury was to be selected but did not recall coverage from the time of the incident. Tr. 624, ll. 6-20. Ms. Ridings was seated on the jury.

Betty Kirby, juror # 204, heard about the case from television when it happened, and recalled that it involved "the murder of a lady." She remembered that a "lady was found in Cleveland Park back a couple of years ago." Tr. 923, l. 14 - 924, l. 7; Tr. 931, l. 24 - 934, l. 11. Ms. Kirby was seated on the jury.

Linda Means, juror # 246 (seated as alternate), told the court that she reads the paper every day. She recalled specific facts including the location, the abduction and later recovery of a body. She had read about this case and about

"another incident in Duncan Park (the Huff murder)." Tr. 892, l. 9 - 894, l. 8.

Myra Nichols, juror # 268, heard about the charges from television news broadcasts. She told the court that she "guessed" she could set aside her exposure "if she had to." Tr. 253, l. 18 - 254, l. 16; Tr. 260, l. 11 - 261, l. 5.

James Foster, Jr., juror # 105, heard about the case through news media when it happened. On the day before jury selection, he had briefly seen a television news broadcast showing appellant's picture. Questioned by the court, he recited facts pertaining to the Duncan Park murder, not the present case. He said that it was "his understanding" that the trial would involve "the Duncan Park murder." Tr. 871, l. 24 - 873, l. 2; Tr. 881, l. 9 - 882, l. 15.

Rosetta Higgins, juror # 154, heard television reports and beauty-shop gossip about the case. She heard that the police looking for the victim's body. She later heard that the body had been located and that an arrest had been made. She confused the two cases during her interview: "I might be talking about two different things. I thought it was in Duncan. They said the lady was in Drayton and one was in Duncan Park or something. I don't know" Tr. 1036, ll. 3-24; Tr. 1044, l. 23 - 1045, l. 18; Tr. 1050, ll. 2-21.

Emily Bivens, juror # 14, heard about this case when it happened. She saw appellant's picture in the newspaper and remembered the Cigarettes 4 Less location. She also recalled reading about a librarian who was killed in Duncan Park. She was disqualified because of a former working relationship with appellant. Tr. 973, l. 12 - 977, l. 24.

Norma McMakin, juror # 244, read an entire newspaper article about the upcoming trial. The article named the attorneys and defendant and mentioned "the two cases" in Duncan Park and at a convenience store. Tr. 659, l. 10 - 660, l. 1; Tr. 669, l. 19 - 670, l. 9.

Beverly Shulte, juror # 210, read newspaper articles about an abduction in Drayton and the recovery of a body. She recalled that the articles connected this case to a case involving "another female" who was jogging in a park. Tr. 1054, l. 19 - 1055, l. 20; Tr. 1060, l. 19 - 1062, l. 2.

Carole Hightower, juror # 155, heard news accounts and workplace gossip about the case, specifically that "they were able to connect [the defendant] to another case" involving a librarian. She saw a television broadcast about the arrest. Tr. 1152, l. 11 - 1053, l. 21.

Cynthia McCrary, juror # 237, heard from television news coverage that "the defendant was caught on surveillance tape" at a cigarette store "forcing Ms. Ward into her car" and that her body was found in a peach orchard. She recalled hearing that a suspect had been arrested. Tr. 1026, l. 9 - 1028, l. 6.

Katherine Dunleavy, juror # 86, read in the newspaper that a woman who worked at the Cigarettes 4 Less store "was kidnapped and they found her . . . body in a peach orchard." She had also read a recent article stating that a jury would be selected. Tr. 501, l. 15 - 502, l. 21.

William Horton, juror # 163, recalled factual specifics from the incident, including the cigarette store location and that it involved an alleged abduction, from both television and print news media. Tr. 294, l. 8 - 295, l. 11.

Patricia Murphy, juror # 258, saw on television that "they had him in custody" and that "he" had murdered a lady from "Cigarettes 4 less place." Tr. 370, l. 10 - 371, l. 7.

Sabrina Jenkins, juror # 182, saw a television broadcast about the case when it happened. She recalled that a woman was kidnapped from Cigarettes 4 Less, and that her body was later found in an apple or peach orchard. Tr. 509, l. 5 - 510, l. 7.

Leslie Putze, juror # 296, read in the newspaper that a lady who worked at Cigarettes 4 Less in Drayton "went missing and then her body was later found." She heard from television that the trial was scheduled to begin. Tr. 585, l. 17 - 586, l. 11.

Sandra Chapman, juror # 56, watched a television broadcast at the time of the incident showing photographs of the crime scene and the victim. Tr. 478, l. 21 - 479, l. 22; Tr. 487, l. 13 - 488, l. 7.

Annie Davis, juror # 78, heard about the charges and saw appellant's photograph on television. Tr. 273, l. 5 - 275, l. 3.

Joel Williams, juror # 388, read in the newspaper on the morning of trial that the court was calling jurors for a "murder over by Drayton Mills." Tr. 318, l. 5 - 319, l. 24.

Joann Ertzberger, juror # 91, heard news accounts of the general facts of the case when it happened. Tr. 1074, ll. 1-20.

Douglas Fowler, juror # 107, heard talk and read newspaper articles about the case when it happened. He read an entire recent newspaper article discussing the upcoming trial. Tr. 1087, l. 3 - 1088, l. 18.

Jimmy Norman, juror # 269, vaguely recalled news reports at the time of the incident and about an arrest. He read the recent newspaper article about the upcoming trial, including the general facts of the case. Tr. 1096, ll. 3-23; Tr. 1105, l. 10 - 1106, l. 8.

Tina Godfrey, juror # 118, heard a radio broadcast about the upcoming trial and jury selection. She told the court that she "may have" heard something about the facts. She recognized appellant when she saw him in the courtroom. She mistook him for a news reporter because she had seen him on the news. Tr. 1163, l. 7 - 1165, l. 3.

Jackie Hostetler, juror # 165, heard television broadcasts "talking about Mr. Evins and that he's the one they are saying . . . done the crime." Tr. 1208, l. 13 - 1209, l. 6.

P.S. Cecil, juror # 54, read the headlines from the article that appeared the day before trial. He knew that he had been summoned for jury selection in a death penalty trial. Tr. 549, ll. 2-21; Tr. 557, l. 10 - Tr. 558, l. 21.

Aaron Gray, juror # 124, heard about the case on television when it happened. The broadcast showed appellant "in handcuffs" following his arrest. Tr. 771, l. 20 - 772, l. 10.

Larry Ford, juror # 101, heard about "the abduction" through the news media when it happened. Tr. 801, ll. 2-8.

Elizabeth Hill, juror # 156, told the court that she had heard about the case "on the news" but erroneously thought that the victim had been "gunned down" rather than stabbed. Tr. 823, l. 10 - 824, l. 1.

John Williamson, juror # 389, heard about the case through print and television news. He heard that a lady who worked at a cigarette store had been kidnapped and murdered. He also heard "about a lady in Cleveland Park, about the same -- basically, it somehow got twisted in that." He said that it would "be hard" to base his decision on the evidence because of his media exposure and was disqualified without objection. Tr. 980, l. 9 - 981, l. 21; Tr. 988, l. 3 - 993, l. 6; Tr. 996, l. 10 - 999, l. 19.

Michael McGrath, juror # 241, also recalled specific details from news media coverage; the court disqualified him because he was related to the Demaris Huff family. Tr. 312, l. 24 - 316, l. 5.

Barbara Brendle, juror # 24, heard about the case through the newspaper and television. What she "remembered the most" was the Huff murder in Duncan Park, near her home. She was frightened after the Huff murder because of its close proximity. She was relieved when a news reporter approached her at Duncan Park and informed her about appellant's arrest in the Huff case. R. p. 729, l. 25 - 732, l. 4; Tr. 739, l. 23 - 740, l. 17. The court disqualified Ms. Brendle over the state's objection. Tr. 747, l. 24 - 748, l. 12.

Of the twelve final petit jurors, seven had been exposed to pretrial publicity. One juror (Betty Kirby, # 204) and one alternate (Linda Means, # 246) also recalled coverage of this case in connection to the Demaris Huff / Duncan Park case. The exposed petit jurors were Mark Roller, # 316; Donald Bower # 19; Neddie Richards, # 306; Pamela Ridings # 309; Michael Henline # 149; Betty Kirby # 204; Susan Kanipe # 194; and Linda Means, # 246 (alternate). Tr. 1322, l. 2 - 1323, l. 5; Tr. 1331, l. 1 - 1338, l. 25.

Appellant renewed the motion to change venue motion after jury selection but before the jury was seated, noting that more than half of the venire and nearly two-thirds of the petit jury had been exposed to publicity. The court denied the motion. Tr. 1321, l. 13 - 1325, l. 20. This was an abuse of discretion.

A criminal defendant is entitled to an impartial jury, "free of prejudice, passion, excitement, and tyrannical power." Chambers v. Florida, 309 U.S. 227, 236-237, 60 S.Ct. 472, 476-477 (1940); Ristaino v. Ross, 424 U.S. 589, 96 S.Ct. 1017 (1976); State v. Gaskins, 284 S.C. 105, 326 S.E.2d 132 (1985). It is the trial judge's duty to ensure that the jury is fair and unbiased. Gaskins. The failure to ensure juror impartiality "violates even the minimal standards of due process." Irvin v. Dowd, 366 U.S. 717, 722, 81 S.Ct. 1639 (1961).

The denial of a motion to change venue based on pretrial publicity may violate due process. Patton v. Yount, 467 U.S. 1025, 104 S.Ct. 2885 (1984); Murphy v. Florida, 421 U.S. 794, 95 S.Ct. 2031 (1975); Irvin v. Dowd, supra; Rideau v. Louisiana, 373 U.S. 723, 83 S.Ct. 1417 (1963). To establish such a violation, the defendant must either demonstrate "identifiable prejudice" or circumstances that involved "such a probability that prejudice will result that that [the trial] is deemed inherently lacking in due process." Estes v. Texas, 381 U.S. 532, 542-543, 85 S.Ct. 1628, 1632-1633 (1965); Rideau, supra.

A motion to change venue is within the sound discretion of the trial court. State v. Manning, 329 S.C. 1, 495 S.E.2d 191 (1997); Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004). There is no error if the jurors "had the ability to set aside any impressions or opinions" created by the publicity and to make their decision based on the evidence presented at trial. Sheppard; Manning. However, the jurors' own assurances

that they are "equal to the task cannot be dispositive of the accused's rights." Murphy v. Florida, supra, at 421 U.S. 800, 95 S.Ct. 2036. In certain cases, exposure to inflammatory pretrial publicity creates such a presumption of prejudice "the jurors' claims that they can be impartial should not be believed." Patton v. Yount, supra, at 476 U.S. 1031, 104 S.Ct. 2889.

This Court has held that when jurors have been exposed to pretrial publicity, the trial court's denial of a change of venue is not reversible absent extraordinary circumstances. State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990); Sheppard, supra; Manning, supra. Appellant's case is extraordinary because the pretrial publicity connected the current offense to a separate local murder and portrayed appellant as a serial killer. At least one petit juror, Betty Kirby, had read about both crimes and connected them mentally. Tr. 920 - 938. She could not be expected to disregard the image created by the articles of appellant as a sexual predator and serial killer. As noted above, other venire persons also connected or confused the two cases.

Appellant's case also is extraordinary because of the volume and saturation of the news coverage. Nearly two-thirds of the jury pool and the resulting petit jury had heard about the case through regular coverage, from every local news outlet, spanning many months between the incident date until the morning of trial. The sheer pervasiveness of the coverage, together with the public connection to an unrelated murder, is sufficient, in this case, to create a presumption of prejudice. See Irvin v. Dowd; Rideau v. Louisiana; Patton v. Yount, all supra. Appellant should receive a new trial before an impartial tribunal.

The court erred by ruling that the state's two peremptory strikes against African-Americans were not racially motivated. These strikes violated the core precepts of *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986). (Issues 2 and 3).

Annie Davis, # 78, was one of the twelve African-American venire members. During the court's *voire dire* examination, Davis said that two of her sons had been killed in an automobile accident. She said that she had not formed any opinion about appellant's guilt or innocence, although she had heard about the case. Tr. 272, l. 16 - 274, l. 2. Davis initially vacillated about whether she could be objective, since she hadn't "got over" the memory of her sons' deaths. Tr. 274, l. 3 - 276, l. 12. As to sentencing, Davis told the court that she would listen to both sides and could impose a life sentence or the death penalty, depending on the circumstances. Tr. 277, l. 3 - 279, l. 20. Finally, she agreed that she could "honor [her] oath and serve as a fair and impartial juror," and that she would "approach jury service with an open mind to find the truth from the evidence and apply the law as . . . instructed." Tr. 279, l. 21 - 280, l. 3. She said that it would be "hard" to serve on the jury, but she would do her best. Tr. 280, ll. 7 - 8.

During defense counsel's *voir dire*, Davis said that she remembered Solicitor Barnette from her sons' case. She said that she was not biased in Solicitor Barnette's favor because he prosecuted the person who has caused her sons' deaths. Tr. 281, l. 1 - 282, l. 19. She said that, in her opinion, "most" killings were murder, but she that she could follow the law as instructed by the judge. She said that she could disregard what she'd heard about the case and base her decision solely on the evidence presented. Tr. 285, l. 1 - 287, l. 24.

During the solicitor's *voir dire*, Davis said that it used to "bother" her to return to the courthouse. She said that it "brought memories back" but that she "can deal with it." Tr. 288, l. 16 - 289, l. 1. She said that Solicitors Barnette and Crooks' association with her sons' case would not influence her. Tr. 289, ll. 2-5. She said that she "wouldn't want to pick" the death penalty, "but if it was the right sentence, [she] could do it." Tr. 290, ll. 9-15. Davis was qualified for service without objection. Tr. 290, l. 20 - 291, l. 1.

Johnny Young, # 399, was one of the African-American venire members. During the court's *voir dire*, he said that he had heard some talk about the case when it happened but had not seen any news reports about it. Young told the court that he would probably not be influenced by what he had heard. He said that he had not formed an opinion about appellant's guilt or innocence. Tr. 1272, l. 6 - 1275, l. 16. Young told the court that he could probably impose a life sentence under the appropriate circumstances. He initially hesitated when asked about the death penalty, stating, "that's a tough one . . . I've never really thought about it . . . I don't know." Tr. 1276, l. 7 - 1278, l. 23. He said that although he "like[d] life better than death," he could impose a death sentence under some circumstances and sign the verdict form if that was his decision. Tr. 1278, l. 24 - 1280, l. 25.

Young said that he was a "type three" juror who would not automatically vote for life or death, but would consider all of the evidence before making a decision. He agreed that he could "follow [his] oath to serve as a fair and impartial juror and approach jury service with an open mind." Tr. 1281, l. 1 - 1282, l. 4. When the court asked Young if there was any reason that he could not serve, he said that it was "a bad time" because he had recently started a new job. Tr. 1282, ll. 10-23.

During defense counsel's *voir dire*, Young repeated that he could impose a death sentence under some circumstances and would not automatically choose life over death. Tr. 1283, l. 1 - 1286, l. 22. During the solicitor's *voir dire*, Young said that he had started the new job after a long period of unemployment. He said, however, that he would think about the case, and not his job situation, in the courtroom. Tr. 1288, l. 8 - 1290, l. 23. Regarding the death penalty, Young said:

I never really thought about it until I got here. And when I got here, all this just jumped out at me. I mean, you know, I hadn't never thought about the fact of killing somebody.

Tr. 1279, ll. 5 - 6.

He immediately said that his conscience would not prevent him from imposing death "if I thought that's what I needed to do." Tr. 1293, ll. 21 - 24. The state objected to Young's qualification on the basis that his opinions on capital punishment were "couched in a provisional way." The court qualified Young over the state's objection. Tr. 1298, ll. 6 - 23. The state later conceded that Young was qualified to serve under Wainwright v. Witt.

Seven of the original twelve African-American venire members remained after two were excluded for prior convictions and three were removed on the state's motions during *voire dire*. The state exercised a total of five peremptory strikes during petit jury selection. Two of the state's five strikes removed African-Americans Annie Davis and Johnny Young from the jury. Tr. 1308, l. 21 - 1309, ll. 21-23; Tr. 1310, ll. 19-21; Tr. 1311; ll. 14-16; Tr. 1333, ll. 18-21; Tr. 1335, l. 25 - 1336, l. 3; Tr. 1336, l. 24 - 1337, l. 2.

After jury selection but before the jury was seated, appellant challenged the strikes against Davis and Young, and requested race-neutral justifications pursuant to Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712 (1986). Tr. 1315, ll. 6-7.

The solicitor did not argue that Annie Davis was not qualified under Wainwright v. Witt, 469 U.S. 412, 105 S.Ct. 844 (1985). He stated that Davis' sons had been killed in a felony DUI accident. He said that Davis had remembered that the person who "killed" her sons had received only six years in prison. Tr. 1315, ll. 8-14. He argued, "why should a mother who lost two sons to somebody who got six years be asked to give death to [another daughter] who lost one life." He struck Davis because he didn't "want her weighing and balancing why [her] son's life was worth six years and the state is trying to put Fredrick Evins to death." Tr. 1315, ll. 9-15. The court ruled that this was a race-neutral reason to strike Davis.

The solicitor *conceded* that Johnny Young was qualified to serve under Wainwright v. Witt, *supra*, but argued that Young was still a "life-prone juror," since he had said that imposing the death penalty would be "killing somebody." The solicitor said that Young "is clearly life prone [and] that's whey we struck him." Tr. 1316, l. 20 - 1317, l. 4. Defense counsel responded that Young had answered all of the questions posed by the court. Even after the solicitor's "pounding," Young had consistently stated that he could impose death under the appropriate circumstances, which was the appropriate standard by which to measure his fitness to serve. Tr. 1317, ll. 5-19. The court ruled that the solicitor's justification for the strike against Young was race-neutral. Tr. 1317, ll. 18-19.

The court abused its discretion by ruling that the state's reasons for striking Davis and Young were race-neutral.

The Equal Protection Clause of the Fourteenth Amendment prohibits the striking of a potential juror on the basis of race or sex. Batson, supra; J.E.B. v. Alabama Ex Rel. T.B., 511 U.S. 127, 114 S.Ct. 1419 (1994). The purposes of Batson and its progeny are to ensure the defendant a fair trial before a jury of his peers; to protect potential jurors from discrimination; and to safeguard public confidence in the court system. State v. Haigler, 334 S.C. 623, 515 S.E.2d 88, 90 (1999).

When a party challenges jury composition under Batson, the court must hold a hearing. The proponent of the strike must submit a race- or gender-neutral explanation. State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999). Then, the opponent of the strike must show that the explanation was a "mere pretext" to conceal a racist or sexist motive. State v. Adams, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996); Purkett v. Elem, 514 U.S. 765, 115 S.Ct. 1769 (1995). As stated in Payton v. Kears, 329 S.C. 51, 55, 495 S.E.2d 205, 207 (1998):

Pretext generally will be established by showing that similarly situated members of another race were seated on the jury. Under some circumstances, the race-neutral explanation given by the proponent may be so fundamentally implausible that the judge may determine... that the explanation was mere pretext even without a showing of disparate treatment." accord State v. Adams, supra, at 322 S.C. 124, 470 S.E.2d 372.

Although one African-American juror and one African-American alternate were seated, the solicitor's reasons for striking Annie Davis and Johnny Young were pretexts to conceal his intent to eliminate African-Americans from the jury.

The solicitor's assertion that **Annie Davis** was biased because of the six-year sentence imposed on in her sons' case is not supported by the record. At no time during her *voir dire* did Davis mention the sentence received by the person who "killed" her sons. She said that she had attended the sentencing hearing, and she recalled the solicitor's involvement, but there was no discussion about the nature of the charges or the length of the sentence. Tr. 271, l. 13 - 291, l. 25. Davis never suggested that she would compare the value of the victims' lives. Rather, she affirmatively and repeatedly stated that the solicitor's involvement in her sons' case would not affect her judgment. Tr. 281, l. 1 - 282, l. 16; Tr. 288, l. 4 - 289, l. 5. Moreover, a tragic traffic accident, even a felony DUI, is hardly comparable to what the state contended was a kidnapping, rape, and deliberate murder, for sentencing purposes.

Charlie Gwinn, a white man seated as an alternate, had recently been "beat up by a drunk." He received notice of the trial date, but when he arrived for the trial, he was told that the case had been resolved on the previous day. Tr. 1007, l. 1 - 1008, l. 1. The solicitor did not strike Mr. Gwinn based on his potential bias as a crime victim whom the solicitor's office had neglected or mistreated. The solicitor's justification for striking Davis was a pretext to remove her from the jury because of her race. It violated Batson v. Kentucky, *supra*.

Johnny Young's initial responses to questions about the death penalty were guarded and thoughtful because it was a serious topic that he had never confronted. As any rational person would, Young considered the issue "a tough one." However, after explanations and questions from the court and both parties, he affirmatively stated that he could impose death in the right circumstances and that he could sign his name to a death

verdict. Tr. 1277, l. 15 - 1282, l. 4; Tr. 1283, l. 11 - 1286, l. 5; Tr. 1287, l. 8 - 1288, l. 1; Tr. 1290, l. 25 - 1293, l. 24.

Young's initial *voir dire* responses were not substantially more hesitant or life-prone than several white jurors. For example, Michael Henline, # 149, a white man who was seated on the petit jury without objection, also stated that it would be "difficult" to impose the death penalty, and that the crime would have to be "extremely heinous" to warrant death. He said that "it should be difficult for anybody to be a part of putting another person to death." Tr. 718, l. 13 - 719, l. 24; Tr. 723, ll. 4-6. When the solicitor asked Henline if, knowing that life was always an option, he could ever impose death, he replied, "I think so," then, "Yes, I could," and finally, "It's possible." Tr. 725, ll. 6-15.

Similarly, when Pamela Ridings, # 309, a white woman who was seated on the jury, was first asked if she could impose death, she replied, "I don't know." Tr. 627, ll. 18-25. She later explained, "If I understand everything that has happened and without a shadow of a doubt, you know, I could say, you know, yes, you deserve the death penalty." Tr. 633, ll. 21-24.

Another white juror, Susan Kanipe, replied, "I don't know . . . I mean, I just don't know" when first asked if she could impose death. Tr. 1139, ll. 12-20. When asked the same question, Robert Perry, # 284, a white man who was seated on the jury, also replied, "I don't know . . . I'm not sure." Tr. 147, ll. 12-25. Perry later explained that he "believed in" capital punishment "but only in certain cases." Tr. 153, ll. 16-25. The solicitor asked Perry, "knowing you've always got the option of giving somebody life, would you ever choose death?" Perry replied, "See, that's what I'm saying. It's not a very light thing to walk into." Tr. 158, ll. 14-24.

A number of potential jurors were guarded in their initial opinions on capital punishment, finally agreeing that they could impose death. Only venireman Johnny Young was struck on this basis. Young told the court that he could fulfill his duties as a juror. The solicitor's justification for striking him was pretext to remove him because of his race. The prejudice to appellant was compounded because Young was the only African-American man presented for jury selection, thus the only potential juror who resembled appellant in both race and gender.

The solicitor's peremptory strikes against Annie Davis and Johnny Young were racially motivated. His explanations for the strikes were pretextual and invalid. Appellant should receive a new trial before an impartial jury of his peers.

The court erred by granting the state's motions to exclude African-American venire members Patricia Murphy and Sabrina Jenkins, when they were qualified to serve. (Issues 4 and 5).

Appellant is African-American. Twelve of his sixty-three potential jurors also were black. Two of these were disqualified because they refused to impose the death penalty: John Foster, # 102, and Mary James, # 180. Tr. 132, l. 20 - 144, l. 8; Tr. 839, l. 11 - Tr. 849, l. 11.

Two more black venire members were disqualified without objection because prior convictions made them ineligible to serve: Rita Pearson, # 281, and Shelton Benjamin, # 11. Tr. 653, l. 3 - 655, l. 24; Tr. 1202, l. 3 - 1206, l. 10. The state successfully moved to disqualify three more blacks, over appellant's objections: Patricia Murphy, # 258, Sabrina Jenkins, # 182, and Aaron Gray, # 134. Tr. 368, l. 17 - 385, l. 5; Tr. 507, l. 12 - 528, l. 10; Tr. 769, l. 21 - 792, l. 7. The state exercised peremptory strikes against three of the five remaining black venire members: Annie Davis, # 78, Rosetta Higgins, # 154, and Johnny Young, # 399. Tr. 1333, ll. 18-21; Tr. 1335, l. 25 - 1337, l. 2 (See argument 2, below). After the state removed half of the African-American venire members, only one, Lizzie Frawley, # 108, was seated on the petit jury, and one, Linda Means, # 246, was seated as an alternate. Tr. 1333, ll. 12-17; Tr. 1338, ll. 3-8.

Patricia Murphy, # 258, was an African-American venire member. During the court's *voir dire*, Murphy said that she had seen news reports about the incident. She said that she had not formed an opinion about appellant's guilt and could disregard what she had heard about the case. Tr. 379, l. 10 - 372, l. 22. She said that she could impose a life

sentence on a defendant guilty of murder after considering aggravating and mitigating circumstances. Initially, Murphy said that she would not impose the death penalty. Tr.

374, ll. 1-12. The following colloquy between Murphy and the court ensued:

Q. Okay. Is there any circumstance at all where you think you could give the death penalty?

A. It depends on what the severity of the case is, it depends on it.

Q. Well, would you, after listening to all the facts and circumstances . . . could you return -- are you telling me that there are cases where you could return a verdict of death?

A. Yes, there are.

Tr. 374, l. 23 - 375, l. 12.

Murphy initially said that she could not sign a death verdict because she feared her name would be publicized. When the court assured her that her name and address would not be conveyed to the public, she said that she could sign a death verdict if the circumstances warranted it. Tr. 375, l. 2 - 376, l. 24. The court asked her which of the three types of jurors she considered herself, as follows:

Q. All right. Now, do you recall the sheet of the three jurors that I asked y'all to review, the three types of jurors?

A. Yes.

Q. Can you just tell me where you would classify yourself in the list?

A. Probably the second one.

Q. Now, the second one is someone who could never -

A. Wait a minute.

Q. Do you want to take a look at it?

A. I would be the third one.

Q. The third one, which indicates that before you would make a decision with respect to that, you would want to hear all the facts and circumstances.

A. *Absolutely.*

Tr. 376, l. 25 - 377, l. 18 (emphasis added).

Murphy stated that she could "honor [her] oath and serve as a fair and impartial juror . . . and . . . approach jury service with an open mind to find the truth from the evidence and apply the law as . . . instructed." Tr. 377, l. 20 - 378, l. 2. Her only reservation was that other people might perceive her as biased because of her past work-related association with some potential witnesses. She insisted that she could be fair and impartial despite her past relationships. Tr. 378, ll. 5-20.

During the solicitor's *voir dire*, Murphy was asked to clarify her views on capital punishment, as follows:

Q. When the judge first asked you about the death penalty, you seemed very clear and very resolute that you do not believe in the death penalty. And then he asked you again and you said, yes, and then you said, maybe. . . . So what are your views on the death penalty?

A. Well, I feel like to me . . . if you've got a psycho running around here killing people, I don't think they deserve to live. I mean, of course, I'm not supposed to be judgmental, but that's just my feeling. You know, you don't kill a lot of people and then expect to live

Q. You mentioned a serial killer . . . Is that the only circumstance under which you could see yourself giving the death penalty, if someone killed more than one person or were a serial killer.

A. Basically, no . . .

Tr. 380, l. 7 - 381, l. 24.

The solicitor continued to ask Murphy about her initial response to the court:

Q. What made you tell the judge initially that you did not believe in the death penalty?

A. I guess, basically, my religion, thinking -- you know, weighing the pro's and con's of it, I guess.

Q. What made you change your answer the second time he asked?

A. I don't know. I guess with the information he told me about being protected and all that, you know. Sometimes things are scary, you hear a lot of things and you think people are going to maybe come after you because you're a juror.

Tr. 382, ll. 3-16.

Murphy said her concerns about her personal safety would be "in the back of her mind" during jury service, because "this is a small town and people can find you quickly," but she said her concerns would not affect her jury service. Tr. 382, ll. 12-24.

The solicitor did not assure Murphy that she would be protected but immediately asked the following question:

Q. If I were to tell you that you would always have a choice of life in prison, never get out, spend the rest of your life in prison or death, would you pick life in prison?

A. Uh-huh.

Q. Always?

A. Uh-huh.

Q. If you've always got that, you'll always pick life in prison?

A. Uh-huh.

Tr. 382, l. 25 - 383, l. 8.

The state moved to disqualify Murphy based on these questions. Appellant argued that Murphy was qualified. She stated that she could vote for either life or death, depending on the circumstances, and that she could honor her oath. The court granted the state's motion and disqualified Murphy over appellant's objection. Tr. 383, l. 19 - 384, l. 23. This ruling was error.

Murphy was fully qualified to serve as a juror under S.C. Code § 16-3-20(E) and Wainwright v. Witt, 469 U.S. 412, 105 S.Ct. 844 (1985). Under S.C. Code § 16-3-20(E), a juror may not be excused in a death penalty case unless his beliefs or attitudes against capital punishment would render him unable to return a verdict according to law. And, under Wainwright v. Witt, “a prospective juror may be excluded for cause when his views on capital punishment are such as would ‘prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.’” State v. Sapp, 366 S.C. 290-291, 621 S.E.2d 883, 886 (2005), citing Wainwright v. Witt. The “ultimate consideration is that the juror be unbiased, impartial, and able to carry out the law as explained to him.” State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992), cert. denied, 508 U.S. 915, 113 S.Ct. 2355 (1993), overruled on other grounds, Brightman v.

State, 336 S.C. 348, 520 S.E.2d 614 (1999), cited in Sapp at 366 S.C. 291, 621 S.E.2d 887.

Murphy's qualms about imposing death arose only from concern about her personal safety and not her impartiality or ability to follow the law. Rather than assuring her safety as a member of the executive branch with the police at his disposal, the solicitor exploited Murphy's fears in order to remove her from the jury because of her race. She had affirmatively stated that she could follow the law as instructed and could return a death-sentence under the appropriate circumstances. See Davis and Sapp, supra. She was qualified to serve under the Wainwright standard, and the court abused its discretion by excluding her. See Gray v. Mississippi, 481 U.S. 648, 107 S.Ct. 2045 (1987).

Sabrina Jenkins was another African-American venire member. During the court's *voir dire*, Jenkins said that she had heard about the case on the news, but that she could disregard what she had seen about it. Tr. 509, l. 5 - 510, l. 7. She said that she had not formed any opinion about appellant's guilt. She stated that she could serve as a fair and impartial juror and reach a verdict based solely on the facts and law presented in court. Tr. 510, ll. 11-25. She stated that she could find the defendant guilty or not guilty depending on the evidence. She stated that, if the case reached the penalty phase, she could return either a life sentence or a death sentence after considering all of the aggravating and mitigating circumstances. Tr. 511, l. 15 - 17. She said that she was a "type three" juror who would "listen to all the facts and circumstances" before reaching a verdict. Tr. 513, ll 3-25.

During the solicitor's *voir dire*, Jenkins was asked an open-ended question about the death penalty, as follows:

Q. What are your beliefs or views on capital punishment.

A. Well, what I believe is to give someone the death penalty, if you purposely kill somebody -- you know, it could have been another situation that could have handled it. Than I see it as if -- I could see the death penalty. But for life, I say that if there wasn't no way out, you had to do what you had to do, you know. You had to kill -- you had to murder someone right then, you know, if you had to do it right then. And then you had to do what you had to do. There wasn't no way out of it, you know.

Q. Like self-defense or something.

A. Like self-defense, that's what I say, life. But I say death penalty, if you purposely did it and you know what you was doing and could have avoided it, then I think you deserve the death penalty.

The solicitor's remaining questions couched the penalty phase solely in terms of unintentional or intentional behavior, rather than aggravation and mitigation. He gave Jenkins those two choices -- intentional killing or not -- and asked her what the punishment should be:

Q. Let me ask, you, understanding that murder is intentionally killing another person, do you think that the death penalty should always be imposed in that case?

A. Yeah.

Q. So laying aside the self-defense or involuntary manslaughter or vehicular manslaughter, if you intentionally killed somebody with malice aforethought, which is an evil or depraved or

wicked spirit, the death penalty should be the punishment?

A. Yeah.

Tr. 518, l. 14 - 519, l. 5.

The court asked several follow-up questions:

Q. Not ever case in South Carolina that is murder is a capital case. You cannot -- the state may not pursue the death penalty in every murder case. Do you understand that?

A. Uh-huh.

Q. Now -- so what I'm asking you is, do -- you told the Solicitor that you thought that every time somebody committed murder, they should get the death penalty.

A. Well -- . . . Let me rephrase that. Se, I told him what I thought about intentionally doing it and defending yourself.

Q. Okay. Well . . . If you act in self-defense, you are not guilty of murder. Okay.

A. Yeah, you're right.

Q. And there are cases where there can be the intentional and wrongful killing of another person with malice aforethought, which is murder, but doesn't have an aggravating circumstance attached to it. So they cannot seek the death penalty. And then there's a capital case where there must be an aggravating circumstance . . .

Do you mean to tell me -- you told me before that you could consider all the aggravating and mitigating circumstances and return a verdict of life in prison. . . . In that circumstance, after considering all of the evidence, could you return a verdict of life in prison or . . . could you only give the death sentence.

A. I could give life in prison. . . . I don't understand the answer you're looking for.

Q. [Y]ou told me . . . that you could give a life sentence and then later, you said that you would always give death.

A. I'd always give death?

Q. Yes. So I'm just trying to clear that up . . .

A. Well, see, like I said . . . You know, if you intentionally kill somebody, you know what you were doing, death penalty, but self-defense, life sentence.

Q. All right. So every time, if you intentionally kill somebody, the death sentence? I'm just asking . . .

A. . . . Yes.

Tr. 521, l. 4 - 524.

Defense counsel did not object to Jenkins' qualifications. However, the solicitor said, "Regrettably, I think she's unqualified." Tr. 524, ll. 12-26.

Defense counsel argued in response that Jenkins had consistently and correctly answered the court's questions on whether she could give life or death based on the circumstances. He argued that the solicitor injected the issue of self-defense, which is not a factor in capital sentencing, in order to purposely confuse Jenkins about the law and make her appear unqualified to serve. He said that Jenkins was using self-defense as an example only, and that she "said she would follow your charge on the law if she received it, which means when you explain what the law is, then she's willing to apply it." Tr.. 524, l. 22 - 525, l. 19.

The solicitor argued that once he explained the definition of murder to Jenkins, she was "unequivocal" that "death is automatic." Tr. 525, l. 21 - 526, l. 2. He said, "I almost cannot believe my ears that they want to qualify a juror who says . . . murder automatically equals the death penalty." In reply, defense counsel noted that it was "strange" that the solicitor would challenge a "pro-state" juror. Tr. 526, ll. 3-12. The court conceded that the solicitor had been "masterful, in his fair seeking of a qualified juror " but nevertheless granted the state's motion to disqualify Jenkins. Tr. 526, ll. 21-23.

Defense counsel objected to Jenkins' disqualification. Referring to both Murphy and Jenkins, counsel said that the solicitor had established a pattern of manipulating qualified African-American venire members into contradicting their initial qualifying statements that they could "go either way" based on the circumstances. The court overruled his objection and removed Jenkins from the venire. Tr. 527, ll. 2-11. This ruling was error.

Jenkins was a qualified juror under S.C. Code § 16-3-20(E) and Wainwright v. Witt, 469 U.S. 412, 105 S.Ct. 844 (1985). Her replies to the court during its initial examination were certain and affirmative. Her views only *appeared* to change after the solicitor purposely confused her with an inaccurate statement of the law. His questions suggested that there were only two possible verdicts, murder or self-defense, and he asked Jenkins to assign a penalty for each. With the understanding that there were only two possible crimes and two possible penalties, Jenkins naturally assigned the harsher penalty to the more serious offense. She was using self-defense hypothetically, as an

example, after having told the court that she would consider both mitigating and aggravating factors in sentencing.

The solicitor's treatment of Murphy and Jenkins, especially considering his peremptory strikes (discussed infra), show a systematic attempt to eliminate as many African-Americans from the jury as possible. Judging by her *voir dire* answers, Jenkins' presence on the jury would have benefited the state, if anybody. The only viable reason for the state's motion to disqualify her was racial. The court abused its discretion by removing her from the jury. She was qualified under the Wainwright standard, and the court committed reversible error by disqualifying her for cause. Appellant should receive a new trial before an impartial jury of his peers.

African-American potential juror Aaron Gray testified he could impose the death penalty and sign his name to a jury verdict. The fact Gray had pending charges was grounds for a preemptory challenge by the solicitor, but it was not grounds for disqualification where Gray said he could impose the death penalty, and that his pending charge would not cause him to favor either side.

Relevant Facts

Gray testified during *voir dire* that he had seen appellant “in handcuffs on the news” but that he did not remember anything else about the case. Tr. 771, l. 5 – 772, l. 10. Gray said he could be a fair and impartial juror. Tr. 772, ll. 11 – 17.

Gray admitted that he was not in general in favor of the death penalty, but that he could return a verdict of death. Tr. 775, ll. 8 – 23. Gray also said that he could sign his name to the death verdict form. Tr. 776, ll. 11 – 22.

On cross-examination by the solicitor Gray acknowledged that he had reservations about the death penalty. He acknowledged that he was twenty-three years old, and that he could not think of a case that he knew of where he thought the death penalty should be imposed. Tr. 779, l. 8 – 780, l. 24. Gray said his beliefs are spiritual.

However, on continued questioning by the solicitor Gray said he was “[o]pen, you know, that I could give the death.” Gray flatly stated, “I can give the death penalty.” Tr. 781, l. 2 – 782, l. 24. Gray told the solicitor that the “heinousness of the crime” and the “seriousness” of the crime would control his decision whether to give “the death penalty.” Tr. 782, l. 21 – 784, l. 12.

Gray admitted he had a pending charge against him in Spartanburg. Mr. Bartosh of the Public Defender's Office represented him. Tr. 784, l. 4 – 785, l. 1. Gray said he knew appellant's present attorneys – of whom Bartosh was not one -- worked for the Public Defender's Office. However, he did not know before that there was any connection between Bartosh and the defense attorneys in this case. Tr. 785, ll. 2 – 7.

Gray also said he did not have any animosity towards the sheriff's department who made the arrest in his own case. Tr. 785, ll. 1- 23.

When questioning by the defense counsel Boggs, Gray repeated that he could vote for the death penalty. Gray said he did not have any animosity towards anybody involved in this case, and he promised that he could be a fair and open-minded juror. Tr. 788, ll. 6 – 25.

The solicitor argued that he did not think Gray was qualified under the Wainwright v. Witt, supra, standard. The solicitor also said that when combined with the fact Gray had a pending charge against him that he should be disqualified for cause. Tr. 789, l. 8 – 790, l. 6.

Defense counsel Boggs argued that Gray was qualified to serve on the jury. Gray had said "if the facts warrant it, I can pass on the death penalty." Gray had also testified under oath that he can be fair. Tr. 790, ll. 7 – 14.

The following then occurred:

The Court: [W]ell, I agree with - - and I personally liked him and thought he was a very pleasant young man. I just think it puts him in a very awkward position because of his situation. And I may be making an error here, but I am going to disqualify him.

Mr. Boggs: I'd ask the court to inquire into that. If you would just ask him questions and whatever the court feels after that. But he said he could put that aside. Every juror

that's going to serve is going to have to have something he puts aside.

The Court: I am going to find that the potentials for him - for his bias is too overwhelming to put him on the jury. And I find he is disqualified. He is represented by the same law office that represents Mr. Evins in this case. And I think that - I hadn't thought it all the way through, but if there's not a conflict there, it's all the way through, but if there's not a conflict there, it's dancing on the line. And it certainly has the appearance of an impropriety. I am going to disqualify him.

Is there anything else you want to put on the record with respect to that?

I fully appreciate your position on this.

Mr. Boggs: I think I've pretty well covered it.

Tr. 790, l. 15 – Tr. 791, l. 12.

The judge then disqualified Gray as a juror. Tr. 791, l. 20 – 792, l. 4.

Discussion

Appellant understands that in Wainwright v. Witt, 469 U.S. 412, 105 S.Ct. 844 (1985), the court noted that deference must be given to the trial court who sees and hears the juror. However, as seen above, the judge seemed more concerned about the fact appellant was represented by the public defender's office, and that appellant also had an attorney from that office.

First, as to death penalty qualifications, since that was part of the motion to excuse Gray for cause, Gray said that he could impose the death penalty, and that he could sign his name to the death penalty verdict form. Gray said the "heinousness" or "seriousness of the crime" would govern his decision whether to vote for the death penalty.

Gray was a qualified juror under the Wainwright v. Witt standard. Gray could not be excused for cause unless his attitude against capital punishment would render him unable to return a verdict according to the law, or would substantially impair the performance of his duties as a juror in accordance with his instructions and his oath. See State v. Counsel, 335 S.C. 1, 515 S.E.2d 508 (1998); State v. Longworth, 313 S.C. 360, 438 S.E.2d 219 (1993); S.C. Code §16-3-20 (E) (2003).

Further, this is not a case where the trial judge could sense Gray was crafting his answers to get on the jury because he was an African-American. Cf. State v. Wood, 362 S.C. 135, 607 S.E.2d 57 (2004). The judge said he “personally liked him and thought he was a very pleasant young me.” The judge also acknowledged, “[I] may be making a error here, but I am going to disqualify him.” Tr. 790, ll.7-19. There was not any indication in this record that Gray was anything other than genuine.

As seen, the judge also took into strong consideration the fact Gray had a pending charge against him. Again, however, Gray did not know that appellant’s attorneys were associated with his attorney, Michael Bartosh. Gray testified that he did not have any animosity towards the police department that arrested him, and the judge’s concern about a “conflict” does not seem justified just because two totally unrelated men had been arrested, on unrelated charges, and both had attorneys – different attorneys – from the public defender’s office. See, Rule 407, SCACR, Rules of Prof. Conduct, Rule 1. 10 (e).

The fact of an arrest is not “for cause” disqualifying. It may well have justified a preemptory challenge from the solicitor, but it should have not been a grounds for disqualification as a juror for cause. The solicitor was not entitled to that kind of assistance from the trial court.

Moreover, it would seem intuitive that a juror with pending charges would be more likely to curry favor with the solicitor than a juror without pending charges. Regardless, that was a judgement call for the solicitor and defense counsel, and not a proper reason for the trial court to disqualify for cause.

Considering this record as a whole, Gray was a qualified juror by his answers under Wainwright v. Witt and State v. Counsel. He was also qualified as an unbiased juror. The judge stated he “liked” Gray, and this certainly means he found him sincere. As stated, the judge acknowledged he might be making an error by excluding Gray for cause, and respectfully the trial judge should have left any lingering doubt to the attorneys as a matter for exercising a peremptory challenge.

Appellant should be granted a new trial and because Gray was erroneously excused where he was a death qualified juror. See Gray v. Mississippi, 481 U.S. 648, 107 S.Ct. 2045 (1987). Appellant had the right to an impartial jury of his peers, and the disqualification of Gray for cause must be considered in light of the fact that appellant strongly argues above that five African-American jurors were wrongfully removed under Batson v. Kentucky, Wainwright v. Witt and Gray v. Mississippi, *supra*. This record shows appellant was denied a fair and impartial jury of his peers. See State v. Warren, 273 S.C. 159, 255 S.E.2d 668 (1979) (right to a fair and impartial jury by a cross-section of the population is among the most basic of rights).

The defense correctly argued the nude photographs of the victim being introduced during the sentencing phase were going to inflame the passions of the jury. A death sentence should not be returned on the basis of passion. The photographs, particularly the nude photographs showing that the victim had defecated on herself went beyond any legitimate purpose in this case.

During the penalty phase the following occurred:

Mr. Gowdy: We would be intending to submit State's Exhibit Nos. 71, 72, 74, 75, 76, 77, and 80.

Mr. Boggs: We object to simply this as being over - - there's no reason to put that in other than to inflame the jury.

Mr. Gowdy: That's how he left her.

Mr. Boggs: It's the same body connotation in here.

Mr. Gowdy: *You can't see the fact that a women died with feces on her because of what he did.*

Mr. Boggs: *I object to that one, and the only reason would be to inflame the jury.*

The Court: *You're generally objection to all of them?*

Mr. Boggs: *Yes, because of the same purpose. If it's an odd location, it's okay. I mean, I know they can put how the body was found. That's the same reason for this, State's Exhibit No. 71.*

The Court: Well, the state agrees that she's - -

Mr. Gowdy: But you can also see the stab wound on the back of the arm.

The Court: Oh, okay.

Well, over the defense's objection, I'm going to let it in.

Mr. Gowdy: Thank you, Your Honor.

(Whereupon, the bench conference was concluded.)

Mr. Barnette: Your Honor, the state would call Randy Bogan to the stand.

Tr. 2330, l. 1 – 2331, l. 5.

Bogan then testified and identified the photographs of the victim taken on Gano Road where her body was found. Tr. 2332, l. 15 – 2333, l. 3. Over defense objection, State's Exhibit 70, 71 72, 74, 75, 76, 77, and 80 were all admitted into evidence. Tr. 2333, ll. 6 – 9. Those photographs are on file for this Court to review.

The following then occurred with Bogan:

Q. Okay. I'm showing you State's Exhibit no. 71, can you tell us what this is a picture of, sir?

A. That's the body of Rhonda Ward as we found it on Gano Road. She was laying face down, as I stated a few days ago. She was nude and had defecated on herself.

Q. Okay. Let me show you what's been marked as State's Exhibit No. 72, can you describe what this picture is, sir?

A. Yes, sir. That's just another angle of Rhonda War's body from just a different view.

Tr. 2333, l. 21 – 2334, l. 5.

* * *

Q. Let me show you State's Exhibit No. 70?

A. That's just another angle of Rhonda Ward as we found her on Gano Road laying face down.

Q. And what had she done to herself?

A. She had defecated on herself, and you can see that in the photograph.

Mr. Gowdy: Thank you, sir.

Please answer any questions the defense may have for you.

Ms. Quimby: No questions, Your Honor.

The Court: All right. Officer, you may stand down.

Mr. Gowdy: Your Honor, the state rests in the sentencing phase.

Tr. 2335, l. 24 – 2336, l. 11.

State's Exhibit 70 and 71 show the victim's nude body laying face down in the dirt, and they clearly show that she had defecated on herself. State's Exhibit 72 was also a photographic of the nude victim. State's Exhibit 74 appears to be a photograph of the victim laying face up which would mean it was staged. State's Exhibit 75 and 76 show injuries to the victim's hand and arm and State's Exhibit 77 and 80 are equally nauseating and inflammatory. Again, those photographs are on file before this Court's consideration.

Appellant recognizes that during the sentencing phase the scope of probative value of evidence is much broader. See State v. Rosemond, 335 S.C. 593, 518 S.E.2d 588 (1999). Photographs of the victim's body during the sentencing phase are admissible to demonstrate (1) the circumstance of the crime; and (2) the character of the defendant. See State v. Tucker, 324 S.C. 155, 168, 478 S.E.2d 260, 267 (1996).

However, gruesome or grotesque photographs which are going to inflame or impassion the jury are not admissible. They invite a death sentence upon an improper basis. See State v. Patrick, 289 S.C. 301, 345 S.E.2d 481 (1986).

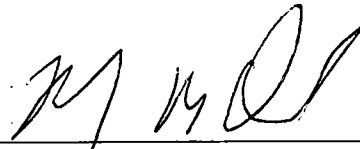
Photographs showing the decedent had defecated upon herself went well beyond any legitimate purpose during the sentencing phase. C.f. State v. Hughey, 339 S.C. 439, 529 S.E.2d 721, 733 (2000). A death sentence must be based on “reason rather than caprice or emotion.” Gardner v. Florida, 430 U.S. 349, 357 – 358, 97 S.Ct. 1197, 1204 (1977). Further, this Court’s mandatory review pursuant to S.C. Code § 16-3-25 (1985), also mandates that this Court must conclude a death sentence was not the result of passion, prejudice, or any other arbitrary factor.

Defense counsel correctly objected to the photographs, particularly those nude photographs depicting the fact the victim had defecated upon herself, because they were going to inflame the jury. This Court rejected the state’s argument in State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003) that a photograph of the victim’s dilated anus was properly admitted. Appellant should be granted a new sentencing hearing.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed in this case remanded to the Spartanburg County Court of General Sessions with an order to change venue. In the alternative, appellant's conviction should be reversed and this case remanded to the Spartanburg County Court of General Sessions for a new trial. In the second alternative, appellant's death sentence should be vacated and a new sentencing trial ordered.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Assistant Appellate Defender

Aileen P. Clare
Assistant Appellate Defender

ATTORNEYS FOR APPELLANT.

This 10th day of March, 2006.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Edward W. Miller, Circuit Court Judge

RECEIVED

MAR 10 2006

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

FREDRICK ANTONIO EVINS,

APPELLANT

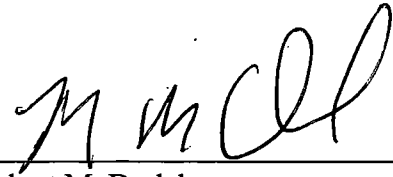
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) State's Exhibit 70, 71 72, 74, 75, 76, 77, and 80 ;
- (3) Memorandum in Support of the State's Introduction of Evidence in the Sentencing Phase of the defendant's commission of another murder;
- (4) Order re-media coverage filed November 8, 2004;
- (5) All Court's exhibits pertaining to media coverage including Court's #3-4; Court's # 14-31
- (6) Entire Trial Transcript;
- (7) All Pre-Trial Transcripts;
- (8) All Motions and Memorandum pertaining to Venue and the Huff Murder

I certify that this designation contains no matter which is irrelevant to this appeal.

March 10th, 2006

A handwritten signature in black ink, appearing to read 'M M Cl', is written over a horizontal line.

Robert M. Dudek
Assistant Appellate Defender

Aileen P. Clare
Assistant Appellate Defender

S.C. Office of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, SC 29201
(803) 734-1330

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

MAR 10 2006

S.C. SUPREME COURT

Appeal from Spartanburg County
Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

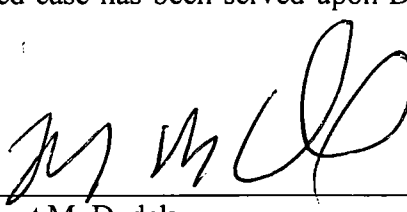
V.

FREDRICK ANTONIO EVINS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, this 10th day of March, 2006.



Robert M. Dudek
Assistant Appellate Defender

Aileen P. Clare
Assistant Appellate Defender

ATTORNEYS FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 10th day of March, 2006.

Mulinda W/mg (L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2008 .

The Supreme Court of South Carolina

The State,

Respondent

v.

Fredrick Antonio Evins,

Appellant.

The Honorable Edward W. Miller
Spartanburg County

Trial Court Case No. 2003-GS-42-02532

2003-GS-42-02533

2003-GS-42-02534

ORDER

For good cause having been shown, the time for serving and filing the Initial Brief of Appellant and Designation of Matter in the above entitled matter is hereby extended until March 10, 2006.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

February 9, 2006

cc: Assistant Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Donald J. Zelenka

Original

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Edward W. Miller, Circuit Court Judge

RECEIVED

FEB 08 2006

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

FREDRICK ANTONIO EVINS,

APPELLANT

PETITION FOR EXTENSION TO FILE
THE INITIAL BRIEF AND DESIGNATION
OF MATTER

In support of the petition for extension to file the initial brief of appellant, counsel for appellant would respectfully show this Court the following circumstances to justify a thirty day extension:

1. Appellant was convicted of murder in Spartanburg County and sentenced to death. His motion for a new trial was denied, and his conviction and sentence are on appeal with this Court.
2. The initial brief of appellant is due to be served and file with this Court on today's date, having been previously extended by three prior orders of this Court.
3. Counsel is presently working on the time consuming death penalty competency to waive appeals, and to be executed case of State v. Quincy Allen. Counsel also must travel to the Spartanburg County Courthouse to review penalty stage photographs in the present case that were the subject of an objection, as well as the other trial exhibits. Counsel is working on this case with

co-counsel Aileen Clare. In addition, counsel filed an initial brief with the Court of Appeals in State v. Christopher A. James on Monday, February 6, 2005, as well as a lengthy petition for rehearing with that Court in the murder case of State v. Otis Compton, on Friday, February 3, 2006. Counsel also filed a reply brief with this Court in the death penalty remand case of State v. William Downs, Jr on February 1, 2006, and counsel has continued his work on the death penalty case of State v. Christopher Williams following the briefing of the media case. Finally, counsel has an unprecedented caseload of mostly murder and death penalty cases at this time.

4. Counsel is keenly aware of Justice Waller's order on extensions in death penalty cases. However, due to counsel's present heavy caseload as listed partly above, this request is made out of necessity, and not for purposes of delay. Counsel anticipates this being the last extension request in this case unless something totally beyond counsel's anticipation and control emerges.

5. Counsel for appellant would respectfully request an extension of thirty days in which to serve and file the initial brief of appellant.

6. As indicated by his signature below, counsel for the state graciously does not oppose this request.

WHEREFORE, counsel for appellant would respectfully request an extension of thirty days in which to serve and file the initial brief of appellant in the above-referenced capital case.

Respectfully submitted,

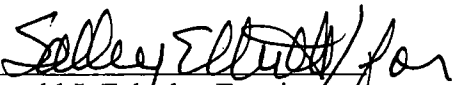
A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Assistant Appellate Defender

Attorney for Appellant

February 8, 2006

I DO NOT OPPOSE THIS REQUEST:


Donald J. Zelenka, Esquire

The Supreme Court of South Carolina

The State,

Respondent

v.

Fredrick Antonio Evins,

Appellant.

The Honorable Edward W. Miller
Spartanburg County

Trial Court Case No. 2003-GS-42-02532
2003-GS-42-02533
2003-GS-42-02534

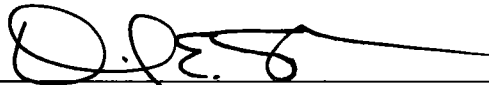
ORDER

For good cause having been shown, the time for serving and filing the Appellant's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until February 8, 2006.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

January 10, 2006

cc: Assistant Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Edward W. Miller, Circuit Court Judge

RECEIVED
2006 JAN -9 AM 10:00
SC SUPREME COURT

THE STATE,

RESPONDENT,

V.

FREDRICK ANTONIO EVINS,

APPELLANT

PETITION FOR EXTENSION TO FILE
THE INITIAL BRIEF AND DESIGNATION
OF MATTER

In support of the petition for extension to file the initial brief of appellant, counsel for appellant would respectfully show this Court the following special circumstances to justify a thirty day extension:

1. Appellant was convicted of murder in Spartanburg County and sentenced to death. His motion for a new trial was denied, and his conviction and sentence are on appeal with this Court.
2. The initial brief of appellant is due to be served and file with this Court on today's date, having been previously extended by two prior orders of this Court.
3. Counsel is presently working on the remand competency to be executed case of State v. Quincy Allen which is scheduled for a status issues hearing before the Honorable John Kittredge next week. Counsel is also preparing for his oral argument tomorrow, January 10, 2006, in the Court of Appeals in the case of State v. William Douglas. Counsel also had an oral argument

before this Court on Thursday, January 5, 2006 in the death penalty case of State v. Michael Laney. Counsel also filed a brief with the Court of Appeals Friday, January 6, 2006 in the murder case of State v. Travis Brown. In addition, counsel also will file a brief on Wednesday, January 11, 2006 with the Court of Appeals in State v. George Ramantanin. Finally, counsel has an unprecedented caseload of mostly murder and death penalty cases at this time, and he is also working on this case with Assistant Appellate Defender Aileen Clare.

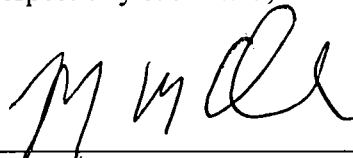
4. Counsel is keenly aware of Justice Waller's order on extensions in death penalty cases. However, due to counsel's present heavy caseload as listed partly above, this request is made out of necessity, and not for purposes of delay. Counsel is working on this case, and he most respectfully would ask this Court to consider not making this a final extension given his present caseload, the caseload of co-counsel, and the required work in State v. Quincy Allen, which will include attending evaluation sessions.

5. Counsel for appellant would respectfully request an extension of thirty days in which to serve and file the initial brief of appellant.

6. As indicated by signature below, counsel for the state graciously does not oppose this request.

WHEREFORE, counsel for appellant would respectfully request an extension of thirty days in which to serve and file the initial brief of appellant in the above-referenced capital case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Assistant Appellate Defender

Attorney for Appellant

January 9, 2006

I DO NOT OPPOSE THIS REQUEST:


Donald J. Zelenka, Esquire

The Supreme Court of South Carolina

The State,

Respondent

v.

Fredrick Antonio Evins,

Appellant.

The Honorable Edward W. Miller
Spartanburg County

Trial Court Case No. 2003-GS-42-02532
2003-GS-42-02533
2003-GS-42-02534

ORDER

For good cause having been shown, the time for serving and filing Appellant's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until January 9, 2006.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Drenda J. Shealy*
CHIEF DEPUTY CLERK

Columbia, South Carolina

December 9, 2005

cc: Assistant Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FREDRICK ANTONIO EVINS,

APPELLANT

PETITION FOR EXTENSION TO FILE
THE INITIAL BRIEF AND DESIGNATION
OF MATTER

RECEIVED
2005 DEC -8 PM 4:17
SC SUPREME COURT

In support of the petition for extension to file the initial brief of appellant, counsel for appellant would respectfully show this Court the following special circumstances to justify a thirty day extension:

1. Appellant was convicted of murder in Spartanburg County and sentenced to death. His motion for a new trial was denied, and his conviction and sentence are on appeal with this Court.
2. The initial brief of appellant is due to be served and file with this Court on today's date, having been previously extended by one prior order of this Court.
3. Counsel represents death row inmate Marion Alexander Lindsey in his competency to be executed hearing to be held before the Honorable John C. Few. This case has recently involved a considerable expenditure of time, and it is scheduled for a hearing at the beginning of January, 2005. Counsel has also been working on the competency to be executed case of State v.

Quincy Allen. Counsel had two oral arguments before the Court of Appeals over the last two days: State v. Frank Patterson (Tuesday, December 6, 2005) and State v. Henry Poplin (Wednesday, December 7, 2005). In addition, counsel has filed nine petitions for a writ of certiorari from the Court of Appeals with this Court recently. They are as follows: On Wednesday, December 7, 2005 counsel filed a petition for a writ of certiorari from the Court of Appeals in State v. Latoya Deveau. On Monday, November 28, 2005 a petition for writ of certiorari was filed with this Court in State v. Terrence Edwards. On Wednesday, November 23, 2005, counsel filed petitions for writ of certiorari with this Court in State v. Eric Rieb and State v. Landricus Cowan. On Tuesday, November 22, 2005 petitions for writ of certiorari were filed with this Court in State v. Dushun Staton, State v. Lucius Staton, and State v. Randall Scott Tyler. Counsel also filed petitions for a writ of certiorari with this Court on Monday, November 21, 2005 in State v. Antwan Zeigler and State v. Troy Zeigler. Counsel also filed a petition for rehearing with the Court of Appeals on Thursday, December 1, 2005 with the Court of Appeals in the murder case of State v. Cornelius Washington. Finally, counsel has an unprecedented caseload of mostly murder and death penalty cases at this time, and he is also working on this case with Assistant Appellate Defender Aileen Clare.

4. Counsel is keenly aware of Justice Waller's order on extensions in death penalty cases. However, due to counsel's present heavy caseload as partly listed above, this request is made out of necessity, and not for purposes of delay.

5. Counsel for appellant would respectfully request an extension of thirty days in which to serve and file the initial brief of appellant.

6. As indicated by signature below, counsel for the state graciously does not oppose this request.

WHEREFORE, counsel for appellant would respectfully request an extension of thirty days in which to serve and file the initial brief of appellant in the above-referenced capital case.

Respectfully submitted,

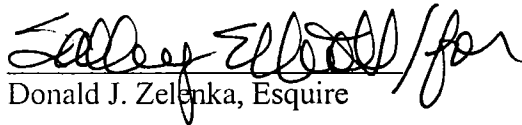
A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Assistant Appellate Defender

Attorney for Appellant

December 8, 2005

I DO NOT OPPOSE THIS REQUEST:

A handwritten signature in black ink, appearing to read 'Donald J. Zelenka', written over a horizontal line.

Donald J. Zelenka, Esquire

The Supreme Court of South Carolina

The State,

Respondent

v.

Fredrick Antonio Evins,

Appellant.

The Honorable Edward W. Miller

Spartanburg County

Trial Court Case No. 2003-GS-42-02532

2003-GS-42-02533

2003-GS-42-02534

ORDER

For good cause having been shown, the time for serving and filing the Appellant's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until December 8, 2005.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Shenda J. Shealy
CHIEF DEPUTY CLERK

Columbia, South Carolina

November 9, 2005

cc: Assistant Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Donald J. Zelenka

South Carolina Office of Appellate Defense

ORIGINAL

Joseph L. Savitz, III
Acting Chief Attorney

Wanda H. Carter
Acting Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, S.C. 29201

Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

November 8, 2005

RECEIVED
NOV 09 2005
S.C. SUPREME COURT

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: The State v. Fredrick Antonio Evins (capital case)

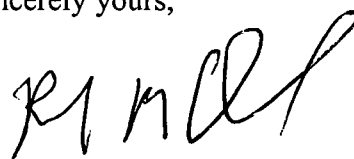
Dear Mr. Shearouse:

The initial brief of appellant and designation of matter in the above referenced case is due to be served and filed today. However, because of my current caseload, I have been unable to complete this brief for service. For that reason, I would respectfully request an extension of thirty days in which to serve and file this initial brief.

By copy of this letter, I am informing Donald J. Zelenka, Esquire, of the Attorney General's Office, of my request.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,



Robert M. Dudek
Assistant Appellate Defender

RMD/mwl

cc: Donald J. Zelenka, Esquire

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
Acting Chief Attorney

Wanda H. Carter
Acting Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, S.C. 29201

Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

November 1, 2005

Hollie M. Jenkins
Circuit Court Reporter
PO Box 16506
Greenville, SC 29606

RECEIVED
2005 NOV - 1 PM 4:22
SC SUPREME COURT

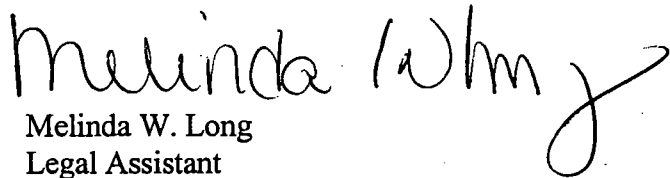
Re: The State v. Fredrick Antonio Evins (Death Penalty)

Dear Ms. Jenkins:

The Supreme Court notified us this morning about the October 27, 2004 transcript in the above-referenced case. The transcript that was delivered to us has "copy" stamped on it and it does not appear to have a true signature. We have checked all of the copies and it does not seem that we have a true signature on the October 27, 2004 transcript. We are asking if you could send us an original copy of the signature page of the October 27, 2004 transcript.

Thank you for your help in this matter. Please contact me if you have any questions.

Sincerely,


Melinda W. Long
Legal Assistant

/mwl

cc: Supreme Court

ORIGINAL

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
Acting Chief Attorney

1205 Pendleton Street, Room 306
Columbia, SC 29201

Robert M. Pachak
Robert M. Dudek
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

Wanda H. Carter
Acting Deputy Chief Attorney

Telephone (803) 734-1330
Fax: (803) 734-1397

October 24, 2005

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

The State v. Fredrick Antonio Evins

9/ 9/05

I would appreciate you beginning our time limits from the above dates, and if you need additional information, or have any questions please contact me.

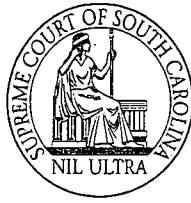
Thank you for your assistance in this matter.

Sincerely,



Karen D. Elliott
Legal Assistant

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2005 OCT 24 PM 4:22
SC SUPREME COURT



The Supreme Court of South Carolina

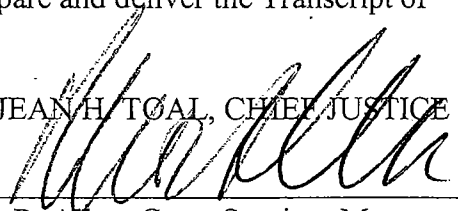
TITLE OF
CASE

(
(The State
(
(
(V. 2003GS4202532;02533;02534
(
(
(Fredrick Antonio Evins
(
(
(

ORDER

Upon request and for good cause shown, Hollie Jenkins, Court Reporter, is hereby granted an extension up to and including July 11, 2005 to prepare and deliver the Transcript of Record in the above case.

JEAN H. TOAL, CHIEF JUSTICE

By: 
Desiree R. Allen, Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
6/14/2005

cc: Office of Appellate Defense
Office of Attorney General
Hollie Jenkins

RECEIVED
JUN 17 2005
SC Court of Appeals

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
Acting Chief Attorney

Wanda P. Hagler
Acting Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, SC 29201

Telephone (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

January 11, 2005

Ms. Hollie M. Jenkins
Circuit Court Reporter
P O Box 16506
Greenville, SC 29606

Dear Ms. Jenkins:

Our office has been requested to perfect the appeal arising out of:

The State v. Fredrick Antonio Evins

Indictment #: 03-GS-42-2532 to 2534

County: Spartanburg

Date of Trial: November 8-19, 2004 (Trial Transcript)

Presiding Judge: Edward W. Miller

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

It has been brought to our attention that the State Printing Office experiences problems when the transcript is prepared on onionskin paper. **PLEASE DO NOT USE ONIONSKIN PAPER.**

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

RECEIVED
2005 JAN 11 PM 4:21
SC SUPREME COURT

Ms. Hollie M. Jenkins

January 11, 2005

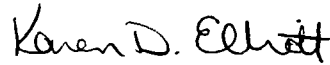
Page Two

If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Karen D. Elliott".

Karen D. Elliott
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
Acting Chief Attorney

Wanda P. Hagler
Acting Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, SC 29201

Telephone (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

January 11, 2005

Ms. Hollie M. Jenkins
Circuit Court Reporter
P O Box 16506
Greenville, SC 29606

Dear Ms. Jenkins:

Our office has been requested to perfect the appeal arising out of:

The State v. Fredrick Antonio Evins

Indictment #: 03-GS-42-2532 to 2534

County: Spartanburg

Date of Trial: October 27, 2004 (Pretrial Motion Hearings -
Greenville, SC)

Presiding Judge: Edward W. Miller

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

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We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

RECEIVED
2005 JAN 11 PM 4:21
SC SUPREME COURT

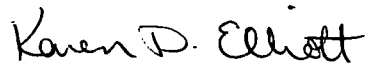
Ms. Hollie M. Jenkins
January 11, 2005
Page Two

If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Karen D. Elliott".

Karen D. Elliott
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
Acting Chief Attorney

Wanda P. Hagler
Acting Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, SC 29201

Telephone (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

January 11, 2005

Ms. Hollie M. Jenkins
Circuit Court Reporter
P O Box 16506
Greenville, SC 29606

Dear Ms. Jenkins:

Our office has been requested to perfect the appeal arising out of:

The State v. Fredrick Antonio Evins

Indictment #: 03-GS-42-2532 to 2534

County: Spartanburg

Date of Trial: March 30, 2004 (Status Conference in
Greenville, SC)

Presiding Judge: Edward W. Miller

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

It has been brought to our attention that the State Printing Office experiences problems when the transcript is prepared on onionskin paper. **PLEASE DO NOT USE ONIONSKIN PAPER.**

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

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2005 JAN 11 PM 4:21
SC SUPREME COURT

Ms. Hollie M. Jenkins

January 11, 2005

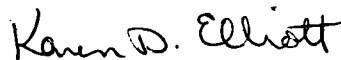
Page Two

If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Karen D. Elliott".

Karen D. Elliott
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

December 13, 2004

Karen Michelle Quimby, Esquire
Spartanburg County Public Defender's Office
258 N. Church St.
Spartanburg, SC 29306

Thomas A. M. Boggs, Esquire
147 E. St. John St.
Spartanburg, SC 29306

Re: The State v. Evins, Fredrick Antonio

Dear Counsel:

The following Order has been endorsed on your Motion for Leave to File Notice of Appeal in Capital Case Outside of Time Limit in the above entitled case on appeal.

"Granted.

Jean H. Toal C.J.
For the Court

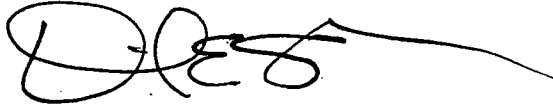
By s/ Daniel E. Shearouse
Clerk

December 13, 2004."

Please be advised that the time limits for perfecting this appeal will begin as of the date of this order.

Karen Michelle Quimby, Esquire
Thomas A. M. Boggs, Esquire
Page Two
December 13, 2004

Very truly yours,



CLERK

DES/dmh

cc: Assistant Deputy Attorney General Donald J. Zelenka
South Carolina Office of Appellate Defense

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Edward W. Miller, Circuit Court Judge

Case No. 03-GS-42-2532, 03-GS-42-2533, 03-GS-42-2534

The State Respondent

v.

Fredrick Antonio Evins Appellant

**MOTION FOR LEAVE TO FILE NOTICE OF APPEAL IN CAPITAL CASE
OUTSIDE OF TIME LIMIT**

The Appellant, by and through his undersigned attorney of record Karen M. Quimby, respectfully moves this Honorable Court pursuant to Rules **224** and **231** of the South Carolina Appellate Court Rules for leave to file the Notice of Appeal in the above-cited case outside the statutory time frame as set forth in Rule **203**, SCACR based on the following ground(s):

1. The Appellant was sentenced to death on November 19, 2004 by the Honorable Edward W. Miller based on the jury's recommendation;
2. The undersigned timely served the Notice of Appeal and Proof of Service on the State (hereinafter "Respondent") pursuant to Rule 203(b)(2) on November 24, 2004, the fifth day after sentencing, conferring jurisdiction of the appeal on this Court;
3. This Motion is being filed just one day after the expiration of the ten-day

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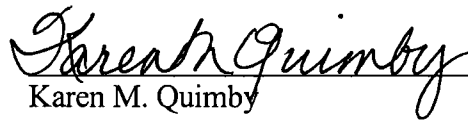
DEC 08 2004

S.C. SUPREME COURT

window, as calculated from the date of service;

4. Had the Notice of Appeal been served on the Respondent on the tenth day following sentencing, rather than on the fifth day, then the expiration of the ten-day window for filing the Notice of Appeal would have fallen on December 9, 2004; and therefore, today being December 7, 2004, the Respondent would not be prejudiced by the granting of this motion.

December 7, 2004



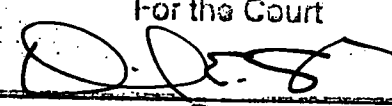
Karen M. Quimby
Assistant Public Defender
Spartanburg County Public Defender's Office
258 North Church Street
Spartanburg SC 29306
Phone: (864) 596-2561 / Fax: (864) 596-2284
Attorney for Appellant

Other Counsel of Record:

Harold W. (Trey) Gowdy, III, Esquire
Solicitor, Seventh Judicial Circuit Solicitor's Office
180 Magnolia Street
Spartanburg SC 29306
(864) 596-2575
Attorney for Respondent

Thomas A.M. Boggs, Esquire
147 E. St. John Street
Spartanburg SC 29306
(864) 597-0990
Attorney for Appellant

GRANTED.

Jean H. Toal C.J.
For the Court
By 
Clerk

December 13, 2004

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Edward W. Miller, Circuit Court Judge

Case No. 03-GS-42-2532, 03-GS-42-2533, 03-GS-42-2534

The State Respondent

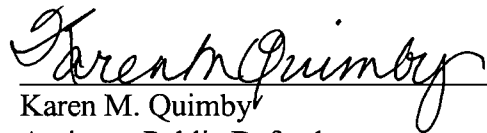
v.

Fredrick Antonio Evins Appellant

PROOF OF SERVICE

I certify that I served the Motion for Leave to File Notice of Appeal in Capital Case Outside Time Limit on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on December 7, 2004, addressed to its attorney of record, Howard W. (Trey) Gowdy, III, Esq., Solicitor, Seventh Judicial Circuit, 180 Magnolia Street, Spartanburg SC 29306, and to the Appellant's co-counsel of record, Thomas A.M. Boggs, Esquire, 147 E. St. John Street, Spartanburg SC 29306.

December 7, 2004



Karen M. Quimby
Assistant Public Defender
Spartanburg County Public Defender's Office
258 North Church Street
Spartanburg SC 29306
Phone: (864) 596-2561 / Fax: (864) 596-2284
Attorney for Appellant



RECEIVED

2004 DEC -9 PM 4:42

SC SUPREME COURT

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

December 9, 2004

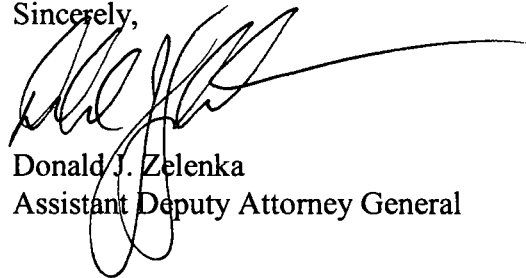
Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: *The State v. Fredrick Antonio Evins*

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the ***Return to Motion for Leave to File Notice of Appeal in Capital Case Outside of Time Limit*** in the above-referenced matter for filing. By copy of this letter all interested parties have been served with same.

Sincerely,



Donald J. Zelenka
Assistant Deputy Attorney General

DJZ/lbb
Enclosures

cc: Karen M. Quimby, Esquire
Thomas A.M. Boggs, Esquire
Joseph L. Savitz, III, Esquire
Harold "Trey" Gowdy, III, Solicitor

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Court of General Sessions
Edward W. Miller, Circuit Court Judge

Case Nos. 03-GS-42-2532; -2533; -2534

RECEIVED

2004 DEC -9 PM 4:42

SC SUPREME COURT

THE STATE,

Respondent,

v.

FREDRICK ANTONIO EVINS,

Appellant

RETURN TO MOTION FOR LEAVE TO FILE
NOTICE OF APPEAL IN CAPITAL CASE
OUTSIDE OF TIME LIMIT

 Respondents, above-named, hereby make a Return to Motion of Fredrick A. Evins to allow filing of the notice of appeal outside of the ten (10) day time limit.

Respondent have no objection to this request pursuant to SCACR Rules 224 and 231. Under SCACR Rule 234(b), the act of filing the notice of appeal may be extended by the Court, but not by agreement of the parties.

The Appellant was sentenced on November 19, 2004 by the Honorable Edward W. Miller, including a death sentence for the crime of murder.

On November 24, 2004, Evins, through counsel Quimby, timely served a notice of appeal on the Solicitor of the Seventh Judicial Circuit. The service of this notice creates jurisdiction in

this Court pursuant to SCACR Rule 203 (b)(2) and 205.

Respondents are not aware if the notice had been served within the ten (10) day period up and including December 3, 2004. Upon information and belief, it has not been filed within the time period established by SCACR Rule 203 (d)(2) and 234.

Respondents have no objection to the request to allow untimely filing of the notice of appeal with this Court and the Clerk of the Court of General Sessions for Spartanburg County.

WHEREFORE, Respondents have made a Return to the Motion.

Respectfully submitted,

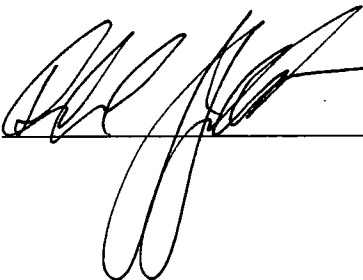
HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3601

ATTORNEYS FOR RESPONDENT

By:  _____

December 9, 2004

CERTIFICATE OF SERVICE

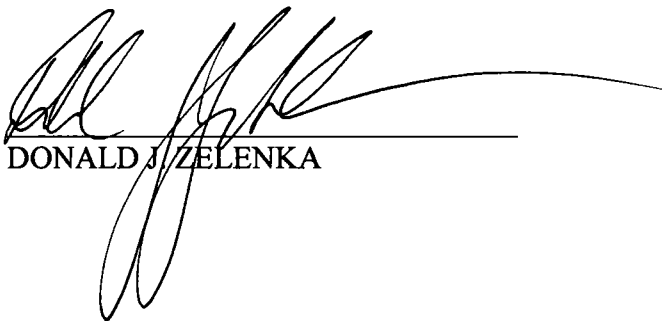
I, **Donald J. Zelenka**, hereby certify that I have served *Return to Motion for Leave to File Notice of Appeal in Capital Case Outside of Time Limit* in the foregoing action by depositing copies in the United States mail, postage prepaid, to the following:

Karen M. Quimby
Assistant Public Defender
258 North Church Street
Spartanburg, South Carolina 29306

Thomas A.M. Boggs, Esquire
147 E. St. John Street
Spartanburg, South Carolina 29306

Joseph L. Savitz, III
Acting Chief Attorney
SC Office of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, South Carolina 29201

This 9th day of December, 2004.



DONALD J. ZELENIKA

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

DEC 08 2004

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

S.C. SUPREME COURT

Edward W. Miller, Circuit Court Judge

Case No. 03-GS-42-2532, 03-GS-42-2533, 03-GS-42-2534

The State Respondent

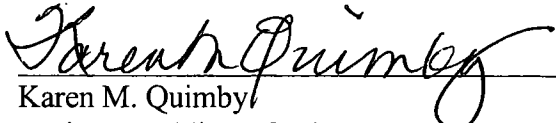
v.

Fredrick Antonio Evins Appellant

NOTICE OF APPEAL

Fredrick Antonio Evins appeals his conviction and death sentence in this case. The Defendant was convicted of Murder, Kidnapping, 1st Degree Criminal Sexual Conduct, and Grand Larceny on or about November 15, 2004, and then on November 19, 2004 the Defendant was sentenced to death by the Honorable Edward W. Miller following the jury's recommendation. This appeal is taken from the above convictions and death sentence, and the order of the Honorable Edward W. Miller which denied Appellant's motion for a new trial.

November 24, 2004


Karen M. Quimby
Assistant Public Defender
Spartanburg County Public Defender's Office
258 North Church Street
Spartanburg SC 29306
Phone: (864) 596-2561 / Fax: (864) 596-2284
Attorney for Appellant

Other Counsel of Record:

Harold W. (Trey) Gowdy, III, Esquire
Solicitor, Seventh Judicial Circuit Solicitor's Office
180 Magnolia Street
Spartanburg SC 29306
(864) 596-2575
Attorney for Respondent

Thomas A.M. Boggs, Esquire
147 E. St. John Street
Spartanburg SC 29306
(864) 597-0990
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Edward W. Miller, Circuit Court Judge

Case No. 03-GS-42-2532, 03-GS-42-2533, 03-GS-42-2534

The State Respondent

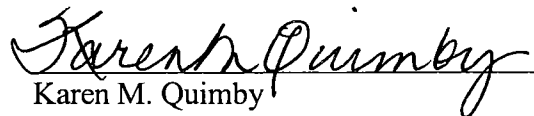
v.

Fredrick Antonio Evins Appellant

PROOF OF SERVICE

I certify that I served the Notice of Intent to Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on November 24, 2004, addressed to its attorney of record, Howard W. (Trey) Gowdy, III, Esq., Solicitor, Seventh Judicial Circuit, 180 Magnolia Street, Spartanburg SC 29306, and to the Appellant's co-counsel of record, Thomas A.M. Boggs, Esquire, 147 E. St. John Street, Spartanburg SC 29306.

November 24, 2004



Karen M. Quimby
Assistant Public Defender
Spartanburg County Public Defender's Office
258 North Church Street
Spartanburg SC 29306
Phone: (864) 596-2561 / Fax: (864) 596-2284
Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

State of South Carolina)

vs.)

Fredrick Antonio Evins, a/k/a)
Fredrick Antonio Evans)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

SENTENCE

Case Number(s): 03-GS-42-2532
03-GS-42-2533
03-GS-42-2534

Defendant has been found by the jury to be guilty of the offense of murder. The jury has recommended that Defendant should be sentenced to death.

It is, therefore, the judgment and sentence of the court that Defendant, Fredrick Antonio Evins, be taken to the Spartanburg County Detention Center, and thence to be State Department of Corrections, henceforth to be kept in close and safe confinement until the 19 day of JANUARY, 2005, upon which day between the hours of six o'clock P.M. and six o'clock A.M. on JANUARY 20, 2005, or upon an Order of Execution issued by the South Carolina Supreme Court, Defendant, Fredrick Antonio Evins, shall suffer death in the manner provided by law.

AND IT IS SO ORDERED.

Edward W. Miller
Edward W. Miller
Circuit Court Judge

Spartanburg, South Carolina
November 19, 2004

A CERTIFIED COPY
Clarence R. Hester
CLERK OF COURT
SPARTANBURG COUNTY
BY [Signature] D.C.
DATED 11/24/04

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

State of South Carolina)

vs.)

Fredrick Antonio Evins, a/k/a)

Fredrick Antonio Evans)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

AFFIRMATION OF DEATH SENTENCE

Case Number(s): 03-GS-42-2532

03-GS-42-2533

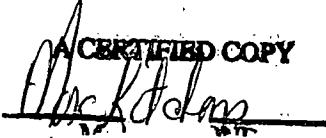
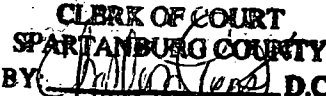
03-GS-42-2534

As the trial judge in the above-entitled action, and prior to the imposition of the death sentence upon Defendant, I find as an affirmative fact that the evidence of this case warrants the imposition of the death penalty and its imposition is not a result of prejudice, passion, or any other arbitrary factor.

AND IT IS SO ORDERED.


Edward W. Miller

Spartanburg, South Carolina
November 19, 2004

A CERTIFIED COPY

CLERK OF COURT
SPARTANBURG COUNTY
BY:  D.C.
DATED: 11/24/04

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

State of South Carolina)

vs.)

Fredrick Antonio Evins, a/k/a)
Fredrick Antonio Evans)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

ORDER

Case Number(s): 03-GS-42-2532
03-GS-42-2533
03-GS-42-2534

UNANIMOUS FINDING OF AN AGGRAVATING CIRCUMSTANCE

We, the jury, find beyond a reasonable doubt the following statutory aggravating
circumstance: 1. Murder was committed while in the commission of Kidnapping
2. Murder was committed while in the commission of criminal sexual conduct 1st degree

Foreperson

Lizzie Hawley

Juror

Allen B. Cook

Juror

Betty Kirby

Juror

Neddie Richards

Juror

Pamela J. Brinson

Juror

Donald A. Bower

Juror

Juan B. Kanipe

Juror

Mark A. Roller

Juror

Phyllis Higgins

Juror

Robert A. Gentry

Juror

Linda Means

Juror

Michael E. Dealing

Spartanburg, South Carolina
November 19, 2004

A CERTIFIED COPY

Marc K. DeLong

CLERK OF COURT
SPARTANBURG COUNTY

BY: Marc K. DeLong

DATED: 11/29/04

**IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT**

State of South Carolina

Case Number(s): 03-GS-42-2532

vs.

VERDICT

Fredrick Antonio Evins, a/k/a
Fredrick Antonio Evans

Defendant.)

As to the charge of Murder, we the Jury find the Defendant

Not Guilty

Guilty.

If you find that the State has failed to prove beyond a reasonable doubt that the Defendant committed murder, you may consider whether the State has proved beyond a reasonable doubt that the Defendant committed voluntary manslaughter.

As to the charge of Voluntary Manslaughter, we the Jury find the Defendant

Not Guilty

Guilty.

Dated:

FOREPERSON

A CERTIFIED COPY

CLERK OF COURT

SPARTANBURG COUNTY

BY: William J. [illegible] D.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

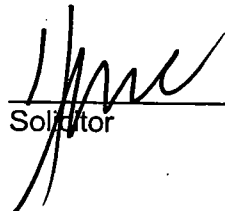
INDICTMENT

At a Court of General Sessions, convened on JUL 10 2003, the
Grand Jurors of Spartanburg County present upon their oath:

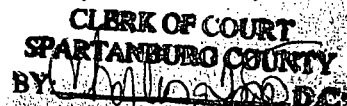
MURDER

The Defendant, Fredrick Antonio Evans, did in Spartanburg County on or about February 13, 2003, feloniously, willfully, and with malice aforethought, kill one Rhonda Marie Ward, by stabbing the victim multiple times in the chest, and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, 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.


Solicitor

A CERTIFIED COPY


CLERK OF COURT
SPARTANBURG COUNTY
BY 
DATED 11/29/07

WITNESSES

J. R. Yown

Spartanburg Co. Sheriff Dept.

CLERK OF COURT
SPARTANBURG COUNTY
BY: [Signature]
DATED: 7/10/03

ORIGINAL COPY

ARREST WARRANT NUMBER

H397327

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

Date: 7/10/03

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date: 11-15-2004

DOCKET NO. 03-GS-42-2532

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 14 2003

TERM

THE STATE

vs.

Frederick Antonio Evans

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

FILED
CLERK OF COURT
SPARTANBURG CO
2003 SEP 23 PM 1
MARC KITCHER

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

State of South Carolina)

vs.)

Fredrick Antonio Evins, a/k/a)
Fredrick Antonio Evans)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

Case Number(s): 03-GS-42-2533

VERDICT

As to the charge of Kidnapping, we the jury find the Defendant

_____ Not Guilty

☒ Guilty.

As to the charge of Criminal Sexual Conduct, we the Jury find the Defendant

_____ Not Guilty

☒ Guilty.

Dated: 11-15-2004

A CERTIFIED COPY
FOREPERSON
CLERK OF COURT
SPARTANBURG COUNTY
BY: [Signature]
DATED 11/24/04

E OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
 STATE VS.
FREDRICK ANTONIO EVINS
 AKA: AKA FREDRICK ANTONIO EVANS
 Race: B Sex: M Age: 36
 DOB: SS#:
 Address: 950 CALIFORNIA AVE.
 City, State, Zip SPARTANBURG SC 29303
 DL# SID#

INDICTMENT/CASE#: 2003 -GS- 42 - 2533
 A/W#: DIRECT INDICTMENT - COUNT 2
 Date of Offense: 2/13/2003
 S.C. Code §: 16-3-652
 CDR Code #: 0 1 1 1 6 1 0
☐ CASE RESTORED
☐ SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: CRIMINAL SEXUAL CONDUCT 1ST (FIRST) DEGREE - COUNT TWO
 in violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 6 1 0
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] Solicitor Fredrick A. Evans Defendant Sharen M. Quimby Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ set by SCDPPPS _____

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

Recipient: _____
 *Fine: \$ _____
 §14-1-206 (Assessments 107.5%) \$ _____
 §14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____
 §14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 §56-5-2995 (DUI Assessment) \$12 \$ _____
 § 35.13 (Public Def/Prob) \$500 \$ _____
 §73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
 §33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
 §50-21-114(BUI Breath Test Fee) \$50 \$ _____
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ _____
 TOTAL \$ _____

[Signature] Clerk of Court/ Deputy Clerk
 Court Reporter: Hollie Perkins

PRESIDING JUDGE [Signature]
 Judge Code: 2 1 1 1 3 1 0
 Sentence Date: 11-19-04

CLERK OF COURT
SPARTANBURG COUNTY
 BY: [Signature]
 DATED: 11/20/04

SCCA/217 (7/2003)

White - Clerk Green - Corrections Canary - Probation

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUL 10 2003 the
Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE - KIDNAPPING

The Defendant, Fredrick Antonio Evans, did in Spartanburg County, on or about February 13, 2003, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Rhonda Marie Ward, without authority of law, all in violation of Section 16-3-910, Code of Laws of South Carolina (1976, as amended).

COUNT TWO - CRIMINAL SEXUAL CONDUCT

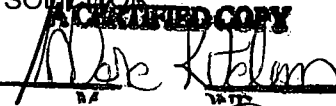
The Defendant, Fredrick Antonio Evans, did in Spartanburg County, on or about February 13, 2003, willfully and unlawfully commit a sexual battery upon the Victim, Rhonda Marie Ward, and either

- (1) the Defendant used aggravated force to accomplish the sexual battery; or
- (2) the Victim submitted to the sexual battery by the Defendant under circumstances where the victim was also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act,

in violation of Section 16-3-652, 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.



CLERK OF COURT
SPARTANBURG COUNTY
BY: 
DATED 11/24/04

WITNESSES

J.R. Yown

Spartanburg Co. Sheriff Dept.

CLERK OF COURT
SPARTANBURG COUNTY
BY: [Signature]
DATED: [Signature]
H397328 and

Direct Indictment

ACTION OF GRAND JURY

True Bill
[Signature]
Foreperson of Grand Jury
Date: 7/10/03

VERDICT

Count one - guilty
Count two - guilty

[Signature] 11-15-04
Foreperson of Petit Jury
Date: 11-15-2004

DOCKET NO.

03-GS-42-2533

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 14 2003

TERM

THE STATE
VS.

Fredrick Antonio Evans

Indictment for

COUNT ONE - KIDNAPPING
COUNT TWO - CRIMINAL SEXUAL
CONDUCT, FIRST DEGREE

SC Code: 16-03-910; 16-3-652

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2003 SEP 23 PM 4:12
MARC KITCHENS

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE VS.)
FREDRICK ANTONIO EVINS)
AKA: FREDRICK ANTONIO EVANS)
Race: B. Sex: M Age: 36)
DOB: SS#: 70)
Address: 950 CALIFORNIA AVE.)
City, State, Zip SPARTANBURG SC 29303)
DL# SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2003 -GS- 42 - 2534
A/W#: H397329
Date of Offense: 2/13/2003
S.C. Code §: 16-13-30(B)(1)
CDR Code #: 0 1 4 1 7 1 8
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

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

TO: GRAND LARCENY \$1,000 TO \$5,000

in violation of §16-13-30(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0 1 4 1 7 1 8

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§ 35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

Clerk of Court/Deputy Clerk
Court Reporter: Hollie

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE 20c112.MC

Judge Code: 2 1 1 1 3 10

Sentence Date: 11-19-04

ACERTIFIED COPY

CLERK OF COURT

Pink - Defendant SPARTANBURG COUNTY SC CA/217 (7/2003)

BY: Hollie

DATED: 11/30/04

White - Clerk

Green - Corrections

Canary - Probation

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

State of South Carolina)

Case Number(s): 03-GS-42-2534

vs.)

VERDICT

Fredrick Antonio Evins, a/k/a)
Fredrick Antonio Evans)

Defendant.)

As to the charge of Grand Larceny, we the jury find the Defendant

_____ Not Guilty

☒ Guilty.

Dated: 11-15-2004

Lissi Hawley
CLERK OF COURT
SPARTANBURG COUNTY
BY: *[Signature]*
DATED 11-29-04

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

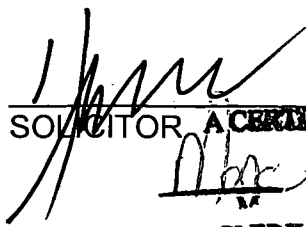
INDICTMENT

At a Court of General Sessions, convened on JUL 10 2003 the
Grand Jurors of Spartanburg County present upon their oath:

GRAND LARCENY

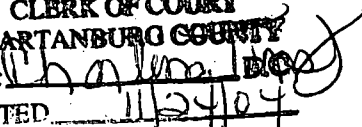
The defendant, Fredrick Antonio Evans, did in Spartanburg County on or about February 13, 2003, feloniously take and carry away the personal goods of Rhonda Marie Ward, of the value of more than Five Thousand Dollars, described as follows: 1993 Nissan Sentra and its contents belonging to Rhonda Marie Ward, with the intent to deprive the owner permanently of such property, in violation of Section 16-13-30 (B) (2), 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.


SOLICITOR

A CERTIFIED COPY

CLERK OF COURT
SPARTANBURG COUNTY

BY: 

DATED 11/24/04

WITNESSES

J.R. Yown

Spartanburg Co. Sheriff Dept.

CLERK OF COURT
SPARTANBURG COUNTY
Spartanburg County
H397329

ARREST WARRANT

H397329

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 7/10/03

VERDICT

Guilty

Foreperson of Petit Jury

Date: 11-15-2004

03-GS-42-2534

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 14 2003

TERM

THE STATE
vs.

Fredrick Antonio Evans

Indictment for

GRAND LARCENY

SC Code: 16-13-30(B) (2)

CDR Code: 479

Class FEL-E

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2003 SEP 23 PM 4:12
MARC KITCHENS

SPARTANBURG COUNTY PUBLIC DEFENDER OFFICE

MICHAEL BARTOSH
CHIEF PUBLIC DEFENDER

Sup G.

258 NORTH CHURCH STREET
SPARTANBURG SC 29306



TELEPHONE (864) 596-2561
FAX (864) 596-2284

December 7, 2004

The Hon. Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

Re: State v. Fredrick Antonio Evins
Case No. 03-GS-42-2532, 03-GS-42-2533, 03-GS-42-2534
Death Penalty Case

Dear Mr. Shearouse:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondent made November 24, 2004; and
2. Copy of the indictments, verdicts/judgment, and sentences to be challenged on appeal.

Because Mr. Evins was convicted and sentenced to death, I am filing this Notice of Appeal in the Supreme Court pursuant to Rule 203(d)(1)(A), SCACR.

Sincerely yours,

Karen M. Quimby
Assistant Public Defender

RECEIVED

KMQ:

DEC 08 2004

Encl: Notice of Appeal
Proof of Service
Copy of Indictments, Verdicts/Judgment, and Sentences

S.C. SUPREME COURT

cc: Harold W. (Trey) Gowdy
Solicitor
Seventh Judicial Circuit Solicitor's Office
180 Magnolia Street
Spartanburg, S.C. 29306
(864) 596-2575
Attorney for Respondent

Thomas A.M. Boggs, Esquire
147 E. St. John Street
Spartanburg SC 29306
(864) 597-0990
Attorney for Appellant



State of South Carolina
The Circuit Court of the Thirteenth Judicial Circuit

EDWARD W. MILLER
JUDGE

GREENVILLE COUNTY COURTHOUSE, SUITE 219
305 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601-2100
TELEPHONE: (864) 467-8560
FAX: (864) 233-4173
E-MAIL: emillerj@scjd.state.sc.us

November 23, 2004

Daniel E. Sherouse
Clerk of Supreme Court
P. O. Box 11330
Columbia, SC 29211

Re: Report of Capital Case
State of South Carolina vs Frederick Antonio Evans
03-GS-42-2532, 03-GS-42-2533, 03-GS-42-2534

Dear Mr. Sherouse:

Please find enclosed the Report of the Trial Judge in the above captioned case. If there is anything else that needs to be completed, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Pitts", written over a horizontal line.

Karen Pitts
Administrative Assistant

cc: file

RECEIVED

NOV 29 2004

S.C. SUPREME COURT

REPORT OF THE TRIAL JUDGE
IN THE COURT OF GENERAL SESSIONS
SPARTANBURG COUNTY, SOUTH CAROLINA

NOV 29 2004

THE STATE

VS

S.C. SUPREME COURT

FREDERICK ANTONIO EVANS

Case No. 03-GS-42-2532

03-GS-42-2533

03-GS-42-2534

S.C. SUPREME COURT

A. DATA CONCERNING THE DEFENDANT

1. Name FREDRICK ANTONIO EVANS

2. Date of Birth

Month

Day

Year

3. Social Security Number

[] Unknown

4. Sex: MALE ☒

5. Race: White ☐

FEMALE ☐

Black ☒

Other ☐

6. Education – Highest Grade Completed:

1 2 3 4 5 6 7 8 9 10 11 12

(Circle One)

13 14 15 16

(College)

7. Do you have an opinion as to the Defendant's intelligence level?

Yes ☒

No ☐

If so, is it

a. Below Average ☒

b. Average ☐

c. Above Average ☐

8. Was a psychiatric evaluation performed? Yes ☒ No ☐

a. If performed, by whom: Dr. Thomas Martin and Dr. Pam Crawford

b. If performed, is defendant

1. Able to distinguish right from wrong? Yes ☒ No ☐

2. Able to cooperate intelligently in his own defense? Yes ☒ No ☐

c. If performed, were character or behavior disorders found? Yes ☒ No ☐

(If yes, please elaborate)

Anti-Social Personality Disorder

9. Does the Defendant have a record of prior convictions?

Yes ☒ No ☐

a. If so, either attach hereto a record manifesting such prior conviction(s) or list the offense(s), the date(s) of such offense(s) and the sentence(s) imposed:

<u>Offense(s)</u>	<u>Date of Offense</u>	<u>Sentence Imposed</u>
		YOA Suspended 2 Years
Failure To Stop	03/14/86	Probation
		1 Year Suspended 2 Years
Resisting Arrest	03/14/86	Probation
		15 Years Suspended 3 Years
CSC 2 nd	11/22/86	and 3 Years Probation
Violation of Probation	12/17/86	
Strong Armed Robbery	05/02/91	8 Years
Strong Armed Robbery	03/08/95	8 Years
CDV	03/26/01	30 Days or \$1025
CDV	02/16/02	Time Served

10. Was the defendant a resident or non-resident of the county in which the trial was held?

Resident ☒ Non-Resident ☐

B. DATA CONCERNING PRE-TRIAL MATTERS

1. The defendant was arrested on February 27, 2003
2. Was a preliminary hearing requested? Yes ☒ No ☐
3. Was a preliminary hearing conducted? Yes ☐ No ☒
4. The defendant was indicted at the July 10, 2003 term of the Court of General Sessions for Spartanburg County, South Carolina.
5. List each charge alleged in the indictment.
- a. Murder 03-GS-42-4232
 - b. Kidnapping 03-GS-42-2533 - Count One
 - c. CSC 1st 03-GS-42-2533 - Count Two
 - d. Grand Larceny 03-GS-42-2534
6. The defendant was arraigned on March 1, 2003.
- a. If not arraigned, did the defendant waive arraignment?
- Yes ☐ No ☐
7. Was the defendant provided with a true copy of the whole indictment at least three days prior to his trial thereupon?
- Yes ☒ No ☐
- a. If not, did the defendant waive this right to a three day sight of the indictment?
- Yes ☐ No ☐
8. Did the solicitor notify the defendant at least thirty days before trial that the State would seek imposition of the death penalty upon the defendant?
- Yes ☒ No ☐

9. Did the solicitor make known to the defendant in writing prior to trial the evidence in aggravation of punishment thereafter introduced by the State during the trial or during the sentencing proceeding?

Yes ☒ No ☐

10. Did the defendant move for a change of venue?

Yes ☒ No ☐

- a. If so, was the venue changed?

Yes ☐ No ☒

- (1) If so, designate County. _____

C. DATA CONCERNING THE TRIAL

1. The defendant was brought to trial in the Court of General Sessions for Spartanburg County, South Carolina on November 8, 2004, during the November 8, 2004 term of that Court.

2. How did the defendant plead? GUILTY ☐

NOT GUILTY ☒

3. List each offense of which the defendant was convicted and each offense of which the defendant was acquitted:

- a. The offense(s) of which the defendant was convicted:

1. Murder
2. Kidnapping
3. Criminal Sexual Conduct 1st
4. Grand Larceny
- 5.

- b. The offense(s) of which the defendant was acquitted:

1. N/A
- 2.
- 3.
- 4.

4. On what date and at what time did the conviction(s) occur?
November 15,2004, at 1:00 o'clock P. M.

D. DATA RELATING TO SENTENCING PROCEEDING

1. Before whom was the defendant's sentencing proceeding conducted?

the trial jury ☒ the trial judge ☐
a new jury ☐ a new trial judge ☐

- a. If conducted before the trial jury,

1. On what date and at what time was the sentencing proceeding held?
November 16, 2004, at 2:00o'clock P.M.

- a. If such proceeding was conducted less than twenty- four hours after the defendant's conviction, did the defendant waive the twenty-four hour waiting period?

Yes ☐ No ☒

- b. If conducted before the trial judge or a new trial judge,

1. And if the defendant was convicted by a jury,

- a. Did the defendant and the State waive having the trial jury recommend sentence?

Yes ☐ No ☐

If not, was the sentencing proceeding conducted by the trial judge because the case, due to non-prejudicial error, has been remanded to the trial court for re-sentencing based upon the record and argument of counsel?

Yes ☐ No ☐

- b. On what date and what time was the sentencing proceeding held?

, 200 at o'clock M.

If such proceeding was conducted less than twenty four hours after the defendant's conviction, did the defendant waive the twenty four hour waiting period.

Yes ☐ No ☐

And if the defendant was convicted upon a plea of guilty, on what date was the sentencing proceeding held?

, 200

- c. If conducted before a new jury,

1. On what date was the sentencing proceeding held?

, 200

2. Was such a proceeding conducted by the same judge who presided over the defendant's trial.

Yes ☐ No ☐

2. Which of the following statutory aggravating circumstances were instructed, if the sentencing proceeding was conducted before a jury, and which of those circumstances were found irrespective of whether or not that proceeding was conducted before a jury or a trial judge?

(A)	Murder was committed while in the commission of	<u>Instructed</u>	<u>Found</u>
1.	Criminal sexual conduct, 1 st degree,	☒	☒
2.	Kidnapping	☒	☒
3.	Burglar, 1st degree	☐	☐

4. Robbery while armed with a deadly weapon.	☐	☐
5. Larceny with use of a deadly weapon.	☒	☐
6. Killing by poison.	☐	☐
7. Physical torture	☐	☐
(B) Murder was committed by a person with a prior record of conviction for murder.	☐	☐
(C) The offender by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person.	☐	☐
(D) The offender committed the offense of murder for himself or another for the purpose of receiving money or any other thing of monetary value.	☐	☐
(E) The murder of a judicial officer, former judicial officer, solicitor, former solicitor, or other officer of the court during or because of the exercise of his official duty.	☐	☐
(F) The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.	☐	☐
(G) The offense of murder was committed against any peace officer, corrections employee, fireman while engaged in the	☐	☐

performance of his official duties.

(H) Murder wherein two or more persons are murdered by the defendant by one act or pursuant to one scheme or course of conduct.

☐☐

(I) The murder of a child eleven years of age or under.

☐☐

3. Was (were) the aggravating circumstance(s) found supported by the evidence?

Yes

☒

No

☐

4. Was there evidence of mitigating circumstances found supported by the evidence?

Yes

☐

No

☐

5. If so, which of the following mitigating circumstances was in evidence?

☐

1. The defendant has no significant history of prior criminal conviction involving the use of violence against another person.

☒

2. The murder was committed while the defendant was under the influence of mental or emotional disturbance.

☐

3. The victim was a participant in the defendant's conduct or consented to the act.

☐

4. The defendant was an accomplice in the murder committed by another person and his participation was relatively minor.

☐

5. The defendant acted under duress or under the domination of another person.

☒

6. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

☒

7. The age or mentality of the defendant at the time of the crime(s).

☐

8. The defendant was provoked by the victim into committing murder.

☐ 9. The defendant was below the age of eighteen at the time of the crime(s).

☐ 10. Other. Please explain if 10 is checked.

6. If tried with a jury, was the jury instructed to consider the circumstances in number 5 as mitigating circumstances?

Yes ☒

No ☐

7. Was the jury provided in writing for its deliberation the statutory instructions as to aggravating and mitigating circumstances?

Yes ☒

No ☐

8. As a trial judge, did you, prior to imposing the sentence of death upon the defendant, find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion or any other arbitrary factor?

Yes ☒

No ☐

E. DATA RELATING TO OFFENSE(S)

1. Was there evidence that the defendant, at the time the offense(s) was (were) committed, was

a. Under the influence of alcohol? Yes ☐ No ☒

b. Under the influence of narcotics or other dangerous drugs? Yes ☐ No ☒

2. Was (were) any weapon(s) used in the commission of the crime of murder?

Yes ☒

No ☐

a. If so, check each weapon used

1. Poison ☐

2. Pistol ☐
3. Rifle ☐
4. Shotgun ☐
5. Blunt Instrument ☐
Describe - _____
6. Sharp Instrument ☒
Describe - Black Handled Knife
7. Motor Vehicle ☐
8. Other ☐
Describe - _____

3. Cause of death Stab Wounds
4. County in which the body was found. Spartanburg
5. County in which the murder occurred if different from county in which the body was found. _____

F. DATA RELATING TO VICTIM

1. What was the victim's age? 34 Years Of Age
2. Was the victim related by blood or marriage to the defendant?
Yes ☐ No ☒
- a. If so, what was the relationship? _____
3. Was the victim the same race as the defendant? Yes ☐ No ☒
4. Was the victim the same sex as the defendant? Yes ☐ No ☒
5. Was the victim physically harmed or tortured? Yes ☒ No ☐

If yes, state nature of harm or extent of torture.
12 Knife Wounds, Sexual Assault

G. DATA CONCERNING DEFENSE COUNSEL

1. Who was (were) the defendant's attorney(s) and what was (were his (their) mailing address(es).

	<u>Name</u>	<u>Mailing Address</u>
a.	<u>Karen Quimby</u>	<u>258 N. Church Street, Spartanburg, SC 29306</u>
b.	<u>Thoms Boggs</u>	<u>147 E. St. Johns Street, Spartanburg, SC 29306</u>
c.	<u>Chris Brough</u>	<u>258 N. Church Street, Spartanburg, SC 29305</u>
d.	<u></u>	<u></u>

2. Did the defendant retain his own counsel or did the court appoint defense counsel?

Retained by Defendant ☐

Appointed by Court ☒

- a. Specify for each such counsel, the date retained or appointed, the number of years as a licensed attorney and the number of years of actual felony trial experience.

	<u>Name</u>	<u>Date Retained or Appointed</u>	<u>Years Experience as Attorney</u>	<u>Years Felony Trial Experience</u>
1.	<u>Karen Quimby</u>	<u>04/20/04</u>	<u>7 Years</u>	<u>4 Years</u>
2.	<u>Thoms Boggs</u>	<u>04/20/04</u>	<u>28 Years</u>	<u>25 Years</u>
3.	<u>Chris Brough (Voluntary Assistance)</u>		<u>1 Year</u>	
4.	<u></u>			

3. Identify by name each attorney who, at the time of his appointment, was employed by the Public Defender's Office.

Karen Quimby

Chris Brough

4. Did each counsel serve throughout the trial?

Yes



No



a. If not, explain in detail. _____

H. GENERAL CONSIDERATIONS

1. Was race raised by the defense as an issue in the trial? Yes ☐ No ☒
2. Did race otherwise appear as an issue in the trial? Yes ☐ No ☒
3. Were members of the defendant's race represented on the petit jury? Yes ☒ No ☐
4. Were members of the defendant's race represented on the jury venire? Yes ☒ No ☐
5. Was there any evidence that members of the defendant's race were systematically excluded from the jury? Yes ☐ No ☒
6. Was the jury instructed to exclude race as an issue? Yes ☐ No ☒
7. Was there extensive publicity in the community concerning this case? Yes ☒ No ☐
8. Was the jury instructed to disregard such publicity? Yes ☒ No ☐
9. Was the jury sequestered? Yes ☒ No ☐
10. Was the jury instructed to avoid any influence of passion, prejudice or any other arbitrary factor when recommending sentence? Yes ☒ No ☐
11. Your general comments concerning the appropriateness of the sentence imposed in this case.
Based on the nature of the offense, the Defendant's prior record of similar offenses, the strong evidence that Defendant committed a very similar pending case, the sentence was warranted.
12. If the defendant is a female, is she currently pregnant? Yes ☐ No ☒

a. If so, the anticipated delivery date is _____

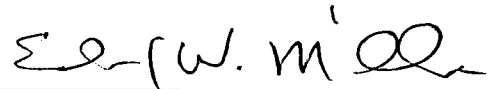
13. This report was submitted to the defendant's counsel for such comments as he (they) desired to make concerning the factual accuracy of the report and:

- a. His (their) comments are attached ☐
- b. He (they) stated he (they had no comments ☐
- c. He has (they have) not responded ☐

I. CHRONOLOGY OF CASE

		<u>Elapsed Days</u>
1. Date Of Offense	02/13/03	
2. Date Of Arrest	02/27/03	14 Days
		618 From
3. Date Trial Began	11/08/04	Offense
4. Date Sentence Imposed	11/19/04	12 Days
5. Date Post Trial Motions Ruled On	11/19/04	0 Days
6. Date Trial Judge's Report Completed	11/23/04	4 Days
7. *Date Received By Supreme Court		
8. *Date Sentence Review Completed		
9. *Total Elapsed Days		

*To be completed by Supreme Court



Edward W. Miller, Presiding Judge

DATE: November 23, 2004