

STATE OF SOUTH CAROLINA

COUNTY OF Williamsburg
STATE VS.

Anthony Anderson

AKA:

Race: 2 Sex: M Age: 43

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-430146

A/W#: M685999

Date of Offense: 6/5/2011

S.C. Code §: 16-03-0010

CDR Code #: 0116

RECEIVED AUG 21 2019 SC Court of Appeals

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Kimberley V. Barr, 8443 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 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.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

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:

Table with 2 columns: Description and Amount. Includes items like § 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, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$

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

Clerk of Court/ Deputy Clerk: Sharon W. Stagner
Court Reporter: Francis Delo-roy
SCCA/217 (03/2011)

Presiding Judge: C. Weir
Judge Code: 7127
Sentence Date: May 14, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF Williamsburg)
STATE VS.)

Anthony Anderson)

AKA:)

Race: 2 Sex: M Age: 43)

DOB: SS#:)

Address:)

City, State, Zip:)

DL#: SID#:)

*CDL Yes No CMV Yes No Hazmat Yes No

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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-08-45-0140

A/W#: M 690007

Date of Offense: 6/5/2011

S.C. Code §: 16-03-0010

CDR Code #: 0116

RECEIVED

AUG 21 2019

SC Court of Appeals

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

Attorney: James V. Barr 8443
Barr, Kimberly V SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 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.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

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	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

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

Clerk of Court/ Deputy Clerk: Sharon W. Stagg
Court Reporter: Sharon Sabie-Ray
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 7127
Sentence Date: 11/17/2014

STATE OF SOUTH CAROLINA)
 COUNTY OF Williamsburg)
 STATE VS.)
 Anthony Anderson)
 AKA:)
 Race: 2 Sex: M Age: 43)
 DOB: SS#)
 Address:)
 City, State, Zip:)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-45-0140
 A/W#: M 690008
 Date of Offense: 6/5/2011
 S.C. Code § : 16-23-0490
 CDR Code #: 0549

RECEIVED
AUG 21 2019
SC Court of Appeals

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

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

CONVICTED OF or PLEADS

in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Kimberly V. Barr 8443
 Barr, Kimberly V. Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 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: Count one and Count two
 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.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

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	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
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§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

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

Clerk of Court/ Deputy Clerk Sharon W. Stagers
 Court Reporter: Tranah Latis-Bay
 SCCA/217 (03/2011)

Presiding Judge C. W. Wain
 Judge Code: 2127
 Sentence Date: May 14, 2019

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG)	
)	
State of South Carolina,)	DEFENDANT'S MOTION FOR NEW TRIAL
)	WITH INCORPORATED MEMORANDUM
vs.)	
)	
Anthony Anderson,)	
)	
<u>Defendant.</u>)	

Attorneys for the Defendant, Anthony Anderson, would hereby move this Honorable Court to order a new trial, based on the errors of law described herein.

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i. Defendant, mentally ill, did not comprehend events discussed, did not understand adversarial nature of interrogation.

ii. Investigator, aware of Defendant's condition, did not consult medical personnel prior to interrogation, ignored delusional speech of Defendant.

B. Court Erred in Denying Defendant's Motion for Compulsory Process.

C. Court Erred in Suppressing Confession of Unavailable Witness.

i. Witness was unavailable.

ii. Statement was against pecuniary interest.

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FACTS, PROCEDURAL HISTORY

In 1995, Defendant Anthony Anderson was involved in a single-car accident. Defendant Anderson suffered significant frontal lobe brain damage. Defendant has a history of psychological impairment that includes hallucinations, delusions, paranoia, visions and hysteria.

On June 5, 2011, Defendant Anthony Anderson was detained in Horry County as a suspect following a double homicide, in which the Defendant's grandmother, Rosa Lee McCray, and the Defendant's uncle, Theward McCray ("Victims"), were murdered in Williamsburg County. Before conducting an interrogation of Defendant in the early morning hours following the murders, Investigator Neil Frebowitz ("Investigator") interviewed Defendant's mother, Shoani Burroughs, at which point he was repeatedly made aware of Defendant's mental illness. Investigator interrogated Defendant thereafter, at roughly 6:45 A.M. No medical personnel were notified of the situation, nor were they consulted in order to tend to Defendant's condition, or provide an assessment in regard to the Defendant's capacity to make a valid *Miranda* waiver. In regard to forensic evidence, no murder weapon was recovered. Furthermore, the State's investigation- specifically, through tests performed by SLED- revealed that there was no gunshot residue ("GSR") present on Defendant Anderson.

Roughly 18 months following the incident, David Hedman confessed to the murders ("Confession") in a statement to law enforcement in New York, upon being detained for an unrelated offense. Law enforcement officials in New York contacted the Williamsburg County Sheriff's Office and provided a copy of the arrest report ("Arrest Report"), which detailed the confession. Later, Assistant Solicitor Kimberly Barr ("Opposing Counsel")

provided a copy to the Defense. On August 29, 2013, nearly a year before Defendant's trial, which took place June 12-14, 2014, the Defense filed and served a Motion for Compulsory Process ("Motion for Compulsory Process") for the out-of-state witness.

The Defense submitted to the Court and Opposing Counsel a pre-trial motion to suppress ("Motion to Suppress") the Defendant's statements to Investigator. In a pre-trial Jackson-Denno Hearing ("Hearing"), the Court heard Defendant's Motion to Suppress. The State's expert witness, Dr. Frierson, testified that many of the comments made by Defendant Anderson in his statement to Investigator were indicative of delusional thinking. However, the Court denied Defendant's Motion.

During the trial, it became known to the Defense that the Honorable Clifton Newman ("Trial Judge") had previously been employed by Victim Rosa Lee McCray and her family. Shoani Burrough's, the Defendant's mother, produced the will of her mother, Victim Rosa Lee McCray. The will was witnessed and signed by Trial Judge.

The State rested on June 13, at which point the Defense renewed its previously-made motions and objections, including the Defendant's Motion for Compulsory Process for the unavailable witness. The Court denied the Motion. In response, the Defense sought to admit the arrest report containing the confession of the out-of-state, unavailable witness. The State objected to the introduction of the confession. The Court sustained the State's objection, suppressing the confession.

Defendant Anderson was convicted for the murders on June 14, 2014, and sentenced to 35 years in prison.

ARGUMENT

The law of our State establishes that post-trial motions shall be made within 10 days following the imposition of the sentence. The time within which to make the motion shall not be affected by the ending of a term of court or departure of the judge from the circuit, and the presiding judge shall retain jurisdiction of the action for the purpose of hearing and disposing of the motion, if not heard and disposed of during the term. Except by consent of the parties, argument on the motion shall be heard in the circuit where the trial or hearing was held. All the circuit courts of this State shall have power to grant new trials in cases in which there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law of the United States Code 1976 § 17-23-110. However, the trial judge's conclusion as to new trial is not final when founded on error of law. *State v. David*, 14 S.C. 428 (1881). The time for appeal for all parties shall be stayed by a timely post-trial motion and shall run from a ruling on the record or the receipt of written notice of entry of the order granting or denying such motion.

Here, Defendant was sentenced on June 14, 2014. The Motion contained herein was timely filed and served, on June 23, 2014.

I. DEFENDANT IS ENTITLED TO A NEW TRIAL.

Defendant is entitled, first and foremost, to a new trial, based on the following legal errors: (A) the Court erred in admitting Defendant's statements to law enforcement; (B) the Court erred in denying Defendant's Motion for Compulsory Process; (C) the Court erred in suppressing the confession of an out-of-state, unavailable witness; and, (D) the Trial Judge erred in failing to recuse himself for a conflict of interest.

A. Court Erred in Admitting Defendant's Alleged Confession.

In *Jackson v. Denno*, the United States Supreme Court held that the Due Process Clause of the Fourteenth Amendment requires the trial judge to determine the voluntariness of a confession before permitting the jury to hear it. *Jackson v. Denno*, 378 U.S. 368 (1964). At the hearing, the State first introduces its evidence to show voluntariness. The defendant, then, is entitled to introduce rebuttal evidence. Where *Miranda* applies, the trial judge must be satisfied that the defendant knowingly and intelligently waived his *Miranda* rights.

The functions that an individual must be able to perform in order to waive his *Miranda* rights include, for example, his understanding of the words and phrases in the *Miranda* warning, as well as accurate perception of the intended purposes of the *Miranda* rights, such as the suspect's accurate perception of the nature of interrogation, the suspect's accurate perception of the attorney-client relationship, and the suspect's accurate perception of the irrevocable protection from self-incrimination. If the suspect being "Mirandized" is retarded, cognitively impaired, confused, intoxicated, or otherwise possibly not fully mental competent to process information and make an informed decision about the waiver, then the issue is raised of the knowing and intelligent aspects of the waiver. Courts follow a "totality of the circumstances" approach, in which each case is evaluated on its own merits, with a consideration of all (1) aspects of the individual's capacity and the (2) police interrogation procedures.

In this case, the (i) Defendant, mentally ill, did not comprehend events discussed, nor understand adversarial nature of interrogation, and (ii) Investigator, aware of Defendant's condition, did not consult medical personnel prior to interrogation, and

ignored the delusional speech of Defendant.

i. Defendant, mentally ill, did not comprehend events discussed, did not understand adversarial nature of interrogation.

On the night of the murders for which Defendant was recently convicted, Investigator obtained statements from Joani Burroughs, the Defendant's mother, and, subsequently, the Defendant. Although the Defendant's previously-filed Motion to Suppress details more thoroughly the contents of each statement, it is necessary for this Memorandum to review briefly a few of the interactions recorded in those statements.

Prior to Investigator's interrogation of the Defendant, Defendant's mother made Investigator aware of Defendant's mental illness. Recorded in her statement, she detailed the extent of Defendant's condition repeatedly, as recorded in the following interaction:

- A. I said I'm going to call the police, I said maybe they can get you some mental help tonight because I said you're hallucinating. In 1995 or 1996 he had a brain injury and he never was the same. He sees things that's not there.
- Q. Right, how was the brain injury, how did that happen?
- A. An auto accident, and he was in a coma for a while but he never came back to himself.
- Q. Right.
- A. Because he just had this mental thing and he always feel like people are following him.
- Q. Where was this accident?
- A. I think in Andrews, South Carolina, and he was in Charleston Hospital, and I forgot the name of the hospital, for a while.
- Q. Is he under a physician's care now. Do you know his doctor's name?
- A. I don't know the doctor's name. I think he moved from here. He goes to [Waccamaw] Mental Health now.

Burroughs, Page 5.

Thereafter, at roughly 6:45 A.M., Investigator interrogated the Defendant. Prior to conducting the interrogation, Investigator acknowledges on the record Defendant's condition and the fact that Defendant is required to be medicated. The transcript of the

interrogation is characterized by the Defendant's multiple references to an insurance policy through inconsistent and incomprehensible attempts at complete sentences, as the Investigator puts forth an effort to rehabilitate any perceived sanity in the Defendant's incoherent rambling. The Defendant, himself, even draws the Investigator's attention to the Defendant's mental condition during the Interrogation, only for the Investigator to quickly change direction:

- A. I don't know how long it's going to take to get therapy or counseling.
- Q. Uh-huh.
- A. How long will that take?
- Q. I don't know. I can't diagnose you. I took some psychology classes in college, but I'm not capable of telling you that. People I know have counseling and then sometimes it goes on a long time. It's up to the doctors. That's the most important thing.
- A. My doctors are in Kingstree.
- Q. In Kingstree?
- A. Yeah.
- Q. Okay.
- A. It's like Dr. Ellis this month I'm supposed to go in, oh, boy. I'm not going in.
- Q. I'll be happy to give him a call for you and tell him what's going on.
- A. I can't see him. It's the medical building.
- Q. Okay. I need to get some background information on grandma and stuff. Rosa Lee, how old is she?

Anderson, 21.

While Defendant's statements during the interrogation are difficult to follow in their entirety and seemingly indicate that Defendant possessed a very skewed perception of reality, several of the comments in the transcript, in particular, raise issues concerning the Defendant's mental capacity and understanding of the disputed events. For the sake of brevity, this Memorandum will review two such interactions. First, despite allegedly shooting his grandmother and having been informed by Investigator that his grandmother had been killed, Defendant makes the following comments to Investigator:

- Q. Why did you throw it in a wooded area instead of maybe just some place else?
- A. I don't know.
- Q. You were just trying to hide it, and you know you needed to get rid of that gun?
- A. No, but-
- Q. You watch TV, and you know how it goes?
- A. No, but my grandma, I miss her but she forced that. She—her and my uncle. She may be asleep now.

Anderson, 31. Secondly, upon being informed by Investigator that Defendant will face criminal liability and be required to attend court proceedings, the following interaction took place:

- A. Huh, do I have to get a lawyer?
- Q. You're going to have to have a lawyer. As I read to you earlier, if you can't afford one, one will be appointed a public defender will be assigned. They do that in Horry County and I think they probably do it in Williamsburg County too. One will be appointed.
- A. Is it in Williamsburg County court?
- Q. Yeah, Court has got to be up there.
- A. I'm going to be up there?
- Q. Uh-huh.
- A. How am I going to get there?
- Q. How are you going to get there?
- A. Yeah.

~~X~~ Anderson, 29. It is important to note, also, that the State called upon Dr. Frierson, who was qualified as an expert witness, to testify in the Jackson-Denno Hearing. Dr. Frierson testified that many of the comments made by Defendant Anderson in his statement to Investigator were indicative of delusional thinking.

Again, in determining whether or not Defendant possessed the requisite capacity in order to waive these rights, the functions that an individual must be able to perform in order to waive his *Miranda* rights include his understanding of the words and phrases in the *Miranda* warning, as well as accurate perception of the intended purposes of the *Miranda* rights, such as the suspect's accurate perception of the nature of interrogation, the

suspect's accurate perception of the attorney-client relationship, and the suspects accurate perception of the irrevocable protection from self-incrimination. If the suspect being "Mirandized" is retarded, cognitively impaired, confused, intoxicated, or otherwise possibly not fully mental competent to process information and make an informed decision about the waiver, then the issue is raised of the knowing and intelligent aspects of the waiver.

In this case, Defendant did not knowingly and intelligently waive *Miranda*.

Defendant suffers from what the State's witness, Dr. Frierson, later characterized as "severe mental illness." Defendant could not have accurately perceived the nature of the proceedings, as he asked the Investigator during the interrogation how he would get to court. Defendant could not have accurately perceived the irrevocable protection from self-incrimination, as he reasons during the interrogation- after being informed by Investigator that she had been killed- that his grandmother is "probably asleep."

ii. Investigator, aware of Defendant's affliction, did not consult medical personnel prior to interrogation, ignored delusional speech of Defendant.

In determining whether or not a waiver of *Miranda* was made "voluntarily, knowingly and intelligently," the courts will, secondly, evaluate the conduct of the law enforcement officials present and involved. In *U.S. v. Cristobal*, the defendant's *Miranda* waiver and subsequent confession were deemed to have been made "voluntarily, knowingly and intelligently" because (1) there was no evidence that the defendant was incapable of thinking rationally, (2) the investigator consulted a nurse before questioning the defendant, in order to make sure he was alert, and because (3) the defendant's answers to questions were lucid and detailed:

Defendant's waiver of his *Miranda* rights, prior to police officers conducting interrogation while defendant was hospitalized, was voluntary, even though

defendant had been given pain killers and narcotics prior to waiver, where defendant never requested not to be interviewed, no officer harmed or threatened defendant if he did not waive his rights, **officer who conducted interrogation checked with nurse to make certain defendant was alert before investigation, and officer fully advised defendant of the nature of the investigation**, read defendant his *Miranda* rights, and made sure defendant was willing participant in interview. . . Defendant's waiver of his *Miranda* rights, prior to police officers conducting interrogation while defendant was hospitalized, was **knowing and intelligent where. . . there was no evidence that defendant was incapable of thinking rationally**, or that medication effected defendant's ability to make informed decision. . . Defendant's confession given after valid waiver of his *Miranda* rights, was voluntary, under the Fifth Amendment, even though defendant was hospitalized and on pain killers and narcotics at time of confession, where defendant waived his rights before police officer began interrogation, there was no intervening coercion by interrogating officer following waiver, since defendant never asked for questioning to stop, no officer harmed or threatened defendant, defendant was given breaks, and interrogations lasted approximately one hour, **and defendant's answers to questions were lucid and detailed.**

U.S. v. Cristobal, 293 F.3d 134 (4th Cir. 2002).

In this case, despite knowledge of the Defendant's mental illness, Investigator neglected to take any of these steps. At the time of the interrogation by the law enforcement officer, Defendant was suffering from fatigue, mental illness, emotional turmoil and psychological instability. However, Investigator neglected to consult medical personnel prior to conducting the interview, despite the fact, also, that each of Defendant's answers were suggestive of his delusional state- anything but "lucid and detailed."

For these reasons, the Court erred in ruling that the Defendant had provided a valid *Miranda* waiver and, thus, Defendant is entitled to a new trial.

B. Court Erred in Denying Defendant's Motion for Compulsory Process.

Upon learning from the State of the confession by David Hedman in New York, the Defense filed a Motion for Compulsory Process, nearly a year preceding Defendant's trial and conviction for the double homicide, pursuant to the following procedural rule of our

State:

Upon the request of any party, the clerk of court shall issue subpoenas or subpoenas *duces tecum* for any person or persons to attend as witnesses in any cause or matter in the General Sessions Court. The subpoena shall state the name of the court, the title of the action, and shall command each person to whom it is directed to attend and give testimony, or otherwise produce documentary evidence at time and place therein specified. The subpoena shall also set forth the name of the party requesting the appearance of such witness and the name of counsel for the party, if any.

S.C.R.Crim.P. 13.

In this case, it is unclear what steps, if any, were taken by the State to secure Hedman. However, it is clear that the State carried that burden. The Defense knew nothing about the witness- nothing in regard to the witness's whereabouts, or how he might be reached. It is clear, also, that the State failed to produce Hedman for the Defendant's trial.

For this reason, the Court erred in failing to produce an exculpatory witness whose trial testimony likely could have exonerated Defendant, despite Defendant's timely-filed Motion for Compulsory Process, and the Defendant is entitled to a new trial.

C. Court Erred in Suppressing Confession of Unavailable Witness.

There exist several exceptions to the hearsay rule, for the statements of unavailable witnesses. A witness is unavailable under any of the following circumstances:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or (2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or (3) testifies to a lack of memory of the subject matter of the declarant's statement; or (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or (5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

S.C.R.E. 804(a). In *State v. Steadman*, a witness who was absent from the jurisdiction and

could not be found was held to be unavailable. *State v. Steadman*, 216 SC 579, 59 S.E.2d 168, certiorari denied, 340 US 850, 71 S.Ct. 78, 95 L.Ed. 623 (1950). A statement made contrary to the declarant's pecuniary interest will not be excluded by the hearsay rule if the declarant is unavailable as a witness. Such statements are defined in the following manner:

A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

S.C.R.E. 804(b)(3). Thus, the declarant must be (1) unavailable, (2) the statement must be made contrary to the declarant's pecuniary interest, and (3) supported by corroborating circumstances in order to be deemed admissible. In *State v. Doctor*, Defendant was convicted in the Court of General Sessions of armed robbery. Defendant appealed. The Supreme Court reversed the decision and held that the out-of-court confession of an unavailable witness was sufficiently corroborated and improperly excluded. *State v. Doctor*, 306 SC 527, 413 S.E.2d 36 (1992).

In this case, the confession by Hedman, contained in the arrest report, should have been admitted into evidence, as each of the three requirements set forth in the paragraph above were met:

i. Witness was unavailable.

In this case, Defendant moved nearly a year before trial for the State to produce the witness. As previously stated, the State failed to produce the witness. The witness was absent from the jurisdiction and the Defense lacked subpoena power over the witness. Thus, the witness was unavailable.

ii. Statement was against declarant's interest.

Here, the unavailable witness, in assuming culpability for a double homicide, was opening himself to criminal liability and likely incarceration, both of which were against the declarant's interest.

iii. Corroborating circumstances indicated reliability in the confession.

The contents of the statements made by the unavailable witness to law enforcement were, like in *Doctor*, sufficiently supported by corroborating circumstances. The witness was able to accurately describe the scene of the murders (the Victims' home). The witness accurately provided the names those present when the crimes were committed (Rosa Lee McCray, Theward McCray, and Anthony Anderson). The witness was able to provide details of the incident which would be available only to someone possessing firsthand knowledge of the encounter, and were consistent with the results of the State's investigation. For example, forensic evidence indicated that the victims were killed by use of a shot gun. In his confession, Hedman stated that- on the night of the incident- he carried a handgun, with which he intended to kill Anthony Anderson. However, he stated, he never fired the handgun, but murdered the victims with a shotgun he found inside the victims' home. Taking into consideration the facts that a murder weapon was never recovered by law enforcement and SLED test results indicated the absence of gunshot residue on Defendant Anderson, the confession of Hedman, the unavailable witness, actually makes more factual sense than statements made by Defendant Anderson.

For these reasons, the Court erred in suppressing the confession of David Hedman and, thus, Defendant is entitled to a new trial.

D. Trial Judge Erred in Failing to Recuse Himself for Conflict of Interest.

Rule 501, SCACR, Code of Judicial Conduct, Canon 2 states the following: "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Thus, a judge should disqualify himself if his impartiality might reasonably be questioned. *Ellis v. Procter and Gamble Distributing Co.*, 315 S.C. 283 (1993), rehearing denied.

At the trial, the Defense presented Victim's will, which was previously witnessed and signed by Trial Judge. Although this Memorandum does not allege that Trial Judge engaged in impropriety or partiality, his name on the will certainly casts an "appearance of impropriety," especially in the eyes of Defendant's family. However, Trial Judge refused to recuse himself.

CONCLUSION

Based on the foregoing, Attorneys for the Defendant, Anthony Anderson, would respectfully ask this Court to order a new trial.

Respectfully Submitted,

COFFEY, CHANDLER & MCKENZIE, P.A.

By Steven S. McKenzie
Steven S. McKenzie, Esquire

By Matthew J. Burgess
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Manning, SC 29102
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May 23, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)
)
State of South Carolina,)
)
vs.)
)
Anthony Anderson,)
)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

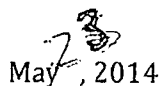
I, an employee of Coffey, Chandler & McKenzie, P.A., certify that I have filed and served personally or by mail Defendant's Motion for New Trial on attorneys and parties set forth below:

Clerk of Court
125 West Main Street,
Kingstree, SC 29556

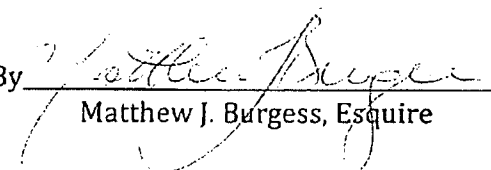
The Honorable Clifton Newman
P.O. Box 516
Kingstree, SC 29556-0516

Kimberly Barr, Assistant Solicitor
125 West Main Street
Kingstree, South Carolina 29556

Respectfully Submitted,


May 7, 2014

COFFEY, CHANDLER & MCKENZIE, P.A.

By 
Matthew J. Burgess, Esquire

Attorneys for the Defendants
P.O. Box 1292
Manning, SC 29102



State of South Carolina
The Circuit Court of the Third Judicial Circuit

Clifton Newman
Judge

Post Office Box 516
Kingstree, SC 29556-0516

August 14, 2019

Sharon W. Stagers
Clerk of Court
125 W Main Street
Kingstree, SC 29556-3343

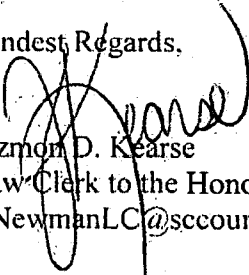
RE: State v. Anthony Anderson
Case Numbers: 2011-GS-45-140

Dear Ms. Stagers:

Please find enclosed the Order Denying Motion for New Trial in the above referenced case, to be filed with your office. Please forward a copy of the clocked and filed Order to Asst. Solicitor Warren Anderson and Defense Attorney, Steve McKenzie.

If you may have any questions or concerns, please feel free to contact me via email at cnewmanlc@sccourts.org. I thank you in advance for your assistance in this matter.

Kindest Regards,


Jazmon D. Kearse
Law Clerk to the Honorable Clifton Newman
CNewmanLC@sccourts.org

Enclosure

2019 AUG 16 PM 2:08
CLERK OF COURT
KINGSTREE, S.C.