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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-000610

Stephen Corey Bryant,Petitioner-Respondent,

v.

State of South Carolina,Respondent-Petitioner.

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E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)

Division of Appellate Defense
S.C. Commission on Indigent Defense
P.O. Box 11433
Columbia, SC 29211-1433

Attorneys for Petitioner-Respondent
Stephen Corey Bryant

Alan Wilson
Attorney General

Melody J. Brown
Senior Assistant Deputy Attorney General

Sherrie Butterbaugh
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970

Attorneys for Respondent-Petitioner State of
South Carolina

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1 trial setting we just renew the motion we made at the close of
2 the State's case to dismiss the matter. It's put in the nature
3 of a directed verdict motion, Your Honor.

4 THE COURT: All right. Thank you, Mr. Clark. I'm
5 going to respectfully deny those motions as earlier and for the
6 same grounds that I stated earlier.

7 State have anything in reply?

8 MR. JACKSON: Your Honor, I have nothing in reply but I
9 know they said they have rested. We ask the Court would you
10 examine the defendant notice if he is going to testify or
11 anything of that nature before we move forward.

12 MR. HOWLE: Your Honor, there is one thing that I and
13 we talked to the Solicitor about this before and apparently both
14 forgot. There's a letter that he wrote to Mrs. Tietjen and I --
15 we and Mr. Clark talked to her about it when she was on the
16 stand. We were going to submit as exhibit or as one of our.

17 THE COURT: As a defense exhibit?

18 MR. HOWLE: Yes, sir. And the Solicitor said he had no
19 objection to that.

20 THE COURT: All right. But have you discussed with
21 Mr. Bryant whether or not he is going to actually take the stand
22 to testify in his defense?

23 MR. HOWLE: We -- if we can have about five minutes.
24 Your Honor.

25 THE COURT: We're going to take a short recess and then

1 I'll get back and talk to you, we'll talk about that.

2 MR. SALEEBY: Your Honor, that would also include his
3 right to address the Court at the appropriate time.

4 THE COURT: In a closing situation as well, yes, sir.

5 MR. JACKSON: As well as to determine whether or not he
6 intends to address the Court in closing.

7 MR. HOWLE: Yes, sir.

8 THE COURT: All right.

9 (WHEREUPON, Defendant's Exhibit No. 14 was admitted into
10 evidence.)

11 (WHEREUPON, a recess was taken from the proceedings.)

12 THE COURT: All right. Mr. Clark, Mr. Howle, have
13 y'all discussed with Mr. Bryant his right to regarding whether he
14 would testify in this hearing?

15 MR. HOWELL: Yes, sir, Your Honor, we have.

16 THE COURT: And has he made a decision regarding that?

17 MR. HOWLE: He has, Your Honor.

18 THE COURT: And what is that?

19 MR. HOWLE: He does not want to testify.

20 THE COURT: Mr. Bryant, I'm going to ask you a few
21 questions, sir. If you would please, you understand, sir, that
22 you have the right to testify if you wish to testify regarding
23 matters of mitigation in your own defense. And that if you did
24 testify that obviously your lawyers would ask you questions and
25 then the State would have the opportunity to ask you questions.

1 Do you understand that, sir?

2 THE DEFENDANT: I understand that, Your Honor, sir.

3 THE COURT: All right. And you understand that if you
4 decide not to testify that that would not be held against you;
5 that you do have the constitutional right to remain silent; and
6 if you do choose to remain silent that that would not be held
7 against you in any way. You understand that, sir?

8 THE DEFENDANT: I understand, sir.

9 THE COURT: All right. And is -- am I correct that it
10 is your decision to not testify in this proceeding?

11 THE DEFENDANT: That's correct.

12 THE COURT: And has that decision been made of your own
13 free will, sir?

14 THE DEFENDANT: It has been, sir.

15 THE COURT: And has that been your decision and not the
16 the decision of your lawyers?

17 THE DEFENDANT: Has been my decision, sir.

18 THE COURT: All right, sir.

19 And Mr. Howle, with regards to addressing the Court in
20 closing has Mr. Bryant made a decision regarding that?

21 MR. HOWLE: He has, Your Honor.

22 THE COURT: And that decision?

23 MR. HOWLE: He does not want to address the Court, Your
24 Honor. He understands that we have closing arguments and he says
25 that that would be sufficient. He'd rather it be presented to

1 you in that fashion.

2 THE COURT: All right. Mr. Bryant, in a case such as
3 this it's a little different. In most -- in a typical criminal
4 trial the defendant does not have the right to personally address
5 the fact finders either whether it be a jury or whether it be the
6 Court. But in this situation you would have the right if you
7 chose to to make a closing statement to the Court. You would
8 have a right to talk with me and to discuss with me whatever you
9 would like to share with the Court regarding sentencing. You
10 understand you have that right, sir?

11 THE DEFENDANT: Yeah, I understand I have that right,
12 sir.

13 THE COURT: And am I correct that you do not wish to
14 address the Court about sentencing?

15 THE DEFENDANT: I don't wish to address the Court.

16 THE COURT: All right. And that decision to not
17 address the Court you're going to allow your lawyers to speak for
18 you; is that correct?

19 THE DEFENDANT: That's correct, sir.

20 THE COURT: Has that been your decision?

21 THE DEFENDANT: That's been my decision.

22 THE COURT: All right. Has anyone forced you into that
23 or coerced you into that?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. Thank you, sir, you may have a

1 seat.

2 Anything further from the State?

3 MR. SALEEBY: Nothing further from the State, Your
4 Honor.

5 THE COURT: Gentlemen, it's about ten minutes till.
6 We'll reconvene then at -- we'll be in recess then till 2:30. Is
7 that going to give you enough time to prepare?

8 MR. SALEEBY: Yes, sir.

9 MR. HOWLE: Yes, Your Honor.

10 THE COURT: All right. We'll then reconvene at 2:30
11 and hear from both sides regarding any closing arguments.

12 (WHEREUPON, a lunch break was taken and court resumed at 2:30
13 p.m.)

14 THE COURT: State prepared to move forward with
15 closing?

16 MR. JACKSON: Yes, we are.

17 THE COURT: Is Defense ready?

18 MR. HOWLE: Yes, Your Honor.

19 THE COURT: All right. Solicitor, I'll be happy to
20 hear from you, sir.

21 MR. JACKSON: Your Honor, may it please the Court.

22 THE COURT: Yes, sir.

23 MR. JACKSON: Your Honor, actions speak louder than
24 words. Since this sentencing hearing focuses on aggravating
25 circumstances of the crimes committed by Stephen Corey Bryant,

1 the character Stephen Corey Bryant and the loss he's caused the
2 Sumter community, there's no better way to understand him than to
3 examine the choices that he's made and the barbaric acts that
4 he's committed against the Sumter community. Let's learn about
5 his character starting on Tuesday, the 28th of September 2004,
6 the home of Barbara Ryan. Judge, he chose her secluded driveway.
7 He drove up, rang the door bell. She came to the front door and
8 opened it and she had an infant child on her shoulder. And he
9 lies to her about a phone number, plays on her good Samaritan
10 trait to help him. She (sic) says, ma'am, would you help me
11 please, I need --

12 THE DEFENDANT: Fuck you.

13 MR. JACKSON: --to know this phone number. She turns
14 to go for the phone book. Uninvited he steps in the house. She
15 has the presence of mind to tell him no. She goes and gets the
16 phone book and comes back with the construction worker. He sees
17 the construction worker. He chooses to withdraw and drive back
18 out. Well, when she later leaves he's out on [REDACTED] down from her
19 driveway observing and taking notes. Sunday, October 3rd of 2004
20 at the home of Jennifer Barnes Leroux. She's humming along on
21 [REDACTED] and he comes driving up. He parks like anyone
22 normally does. He comes up and rings the door bell a couple of
23 times. She hears him but ignores him. He goes out in the yard
24 and hollers, is anybody around, anybody home. No disturbance, no
25 sign of anybody, and he backs into the carport. Very unusual,

1 highly unusual she said. She runs downstairs making noises that
2 he can hear. He's busted and he leaves. The next day, Monday,
3 October the 4th, 2004 at the home of Debbie and Skip Durant. He
4 drives up a long, private driveway, comes up that hill, passing
5 no trespass or private drive sign, and he pulls right up to the
6 back door, right up to the back door she says, in a highly
7 unusual way and two huge dogs come out. Judge, they're the size
8 of small horses. And Debbie comes out too and she questions him.
9 He never gets out the truck because those dogs are there. He's
10 busted so he rolls out a lie: Ma'am, could you help me please,
11 I'm a contractor and I need some directions. She was uneasy; she
12 knew better. She got a description of the truck and his tag.

13 What do we learn about his character, Judge? He's a
14 meticulous planner. Picks isolated remote victims. Each one he
15 approached to the crime is similar. Each one he searched to see
16 if someone is home. Each one he had a lie ready; he used it when
17 he needed to. Preyed on victim's natural tendencies to go and
18 help others. He's a conman, clever, and calculated. He knows to
19 withdraw when he's outnumbered such as when Barbara Ryan brought
20 the man to the door and the two dogs came out. Never identified
21 himself, never offered his name, pushed the envelope, tested the
22 water like he stepped into Barbara Ryan's door uninvited to see
23 what her reaction would be. Had an exit strategy. Not looking
24 for job pursuant to probation, not following advice of those
25 willing and capable of helping him. Instead, I don't need your

1 help and advice, I choose to do it my way.

2 Monday, October the 4th, 2004, this will be after he
3 went to Debbie Durant's. He goes to Tom Dennis' place out past
4 [REDACTED] He goes to scout out Tom Dennis or to ride him; I don't
5 know which. He gets stuck trying to drive around the gate. That
6 doesn't deter him. Calculated criminal mind he has he takes
7 advantage of it, walks down the driveway, walks to the house,
8 sees a vehicle, knocks on the door. Mr. Dennis comes. Sir, can
9 you help me please, my brother stuck my truck. Tom Dennis, very
10 cautious but he says, yeah, I'll help. Well, what's the first
11 thing he does, Judge, he gets a gun. Nobody there but the two of
12 them. And then he starts giving some orders. I'll help you but
13 you get the chain and put it in the car. You put it behind the
14 back seat. You sit up here where I can keep an eye on you. And
15 he carries him down there to where the truck is stuck, and he
16 says you get out and I'll back up and you hookup to yours, I'll
17 pull you out. Once he pulls him out he says you get the chain
18 and put it back, you close the door, you open the gate and let
19 yourself out. And by the way, what's your name, and he lies and
20 gives him a false name. And where do you live. And he lies and
21 gives him a false name. Tom Dennis thought he was checking out
22 Stephen Corey Bryant. If you're Stephen Corey Bryant what did
23 you learn about Tom Dennis? You learned the layout of the land,
24 the layout of the buildings. Dennis lives by himself; there are
25 no big dogs. No lock on the chain on the gate, description of

1 Dennis' vehicle. You learn it's better to conceal a vehicle
2 outside of the gate than go in on front than to risk getting
3 stuck. He learned the fact that Tom Dennis had a gun, and that
4 gun when the two of them were equal gave Tom Dennis the upper
5 hand, gave him control. He knew where Tom Dennis kept a gun. He
6 knew if he concealed himself outside that gate some time Tom
7 Dennis would leave and his property would be ripe for picking,
8 and that's exactly what he did. The next day, Tuesday, October
9 the 5th, 2004 Tom Dennis left his place that afternoon to come
10 into town. Stephen Corey Bryant was backed up into a plum bush
11 thicket, saw Dennis leave, and once he left took advantage of it.
12 He went by foot into the property, broke into the shed, and some
13 hunters showed up and scared him off, and he took off with what
14 he could steal and carry away. What have we learned about his
15 character? He's extremely observant, well-planned, well-executed
16 burglary and theft. It's not impulsive behavior. Nothing to do
17 with trauma from sex abuse. These are choices he's making.
18 Judge, irrational decisions if I might add. Well thought-out,
19 pulling off successful criminal effects, cunning, calculated.
20 These acts are bold, intentional, and dangerous. No fear of
21 breaking the law, no respect for others and their property, all
22 about what he can take, what he can get away with. But guess
23 what, he still didn't have a gun. He still didn't have an
24 equalizer. There's only two ways for Stephen Corey Bryant to get
25 a gun. He can buy one off the black market or he can steal one.

1 He can't go apply for one like Mr. Ammons could. He's a
2 convicted felon. And in two-and-a-half days -- I don't know
3 how -- but he had located Mr. Ammon's trailer out there in the
4 back side of [REDACTED] He parked and walked through the woods to
5 the trailer. Undoubtedly and according to his statement he
6 called out to see if there was anyone there. Nobody answered.
7 Door was unlocked; he went in. There was a TV on and a radio on;
8 he turned them off. He goes outside; he cuts the phone lines
9 with his pocket knife. Now we know he's armed with a knife and
10 goes back in the trailer. T.J. Hansen walks up. He's the friend
11 that was out on the property at the deer stand, and he's calling
12 for Tex 'cause his truck really is stuck. Tex doesn't answer;
13 that's James Ammons. T.J. goes inside. No TV on, no radio on,
14 why? Bryant turned them off. He calls out for Tex. He thinks
15 he hears something on one end of that trailer. He goes to the
16 den; the phone is dead. He goes to the bedroom where Tex keeps
17 the other phone. He sits on the mattress, tries the phone, phone
18 is dead, he leaves. When he and Tex later returned the mattress
19 is sat on, is thrown across the bed, the box of bullets is gone,
20 and the pistol is gone. Judge, I submit that Stephen Corey
21 Bryant was in that house when T.J. Hansen went in there looking
22 for Tex.

23 So what do we know about his character? He'll steal a
24 gun when he can't buy one, and he can choose not to hurt somebody
25 if he wants to. In this case and the Dennis case we're confident

1 the build is for him because he didn't get caught. He showed his
2 real thought process in first insuring no one was there and
3 preparing for what to do if someone showed up. Now Judge, I add
4 in another thing for October the 4th. I'll have to come back to
5 it, but also on Friday, October 4th, we know that Stephen Corey
6 Bryant went to the Tietjen home and talked with Mr. Tietjen and
7 lied to him about a girl named Kimberly Smith. I'll come back to
8 that.

9 We know in the evening of Friday, October the 8th of
10 2004 Stephen Corey Bryant went down to the Sumter side of the
11 Wateree River, says he went to fish but he went scouting the
12 area. There was nobody on the Sumter side. You can look right
13 across the river to the boat landing. There were two vehicles
14 there. He deliberately got in his truck, drove around [REDACTED]
15 crossed the river down to the landing and he got out. And he
16 walked over and surveyed that area and he found two black men
17 fishing in the canal on the creek. And he spoke to them and they
18 told him. He went all the way on up the creek. Judge, he was
19 casing the area. And when he was convinced there wasn't anybody
20 else around on both sides he went back to his truck and he
21 waited. And he watched. And he waited and he watched. And one
22 of the black males came down that path with his fishing stuff and
23 got in his truck and he left. Now there's nobody there but
24 Stephen Corey Bryant, the stolen pistol, and Clinton Brown
25 fishing on a bucket. Stephen Corey Bryant waits to make sure

1 that nobody drives up, nobody is on the Sumter side and on the
2 Richland County side, and he begins to execute his plan.

3 Now Judge, let's walk through this. He's got a pistol
4 that he's probably never fired before, stole it that day around
5 lunch time. He's got to insure that the magazine was loaded.
6 That's deliberate. He's got the chamber round. That's
7 deliberate. He's got to take the safety off. He had to stalk up
8 the path from the parking lot under the bridge. He had to ease
9 up the little hill from the bridge to the tree line and then he
10 had to slip down into the canopy of trees and eyeball the back of
11 Clinton Brown with this pistol right here. And then he had to
12 pull it up and put it right on Clinton Brown, bam, and shoot him
13 in the back and then run and get in his truck and leave.
14 Impulsive? Not on your life. What do you know about his
15 character? He's gutless. He shot a man in the back sitting on a
16 bucket fishing in a river. Judge, if that threatens you, then
17 the fact that before there were two men sitting there fishing in
18 the river would have scared him to death. Cold blooded murder so
19 he thought. He didn't know Clinton Brown had a wife. He didn't
20 know Clinton Brown had children. He didn't know Clinton Brown
21 had grands. He didn't know he was a brother and sister. What's
22 more important, he didn't care. He was proud of what he did. He
23 returned to the scene with his girlfriend that night. It
24 bothered him none; it was an accomplishment. He bragged about it
25 the next day to Roy Lee Lambert; I shot me a damn nigger last

1 night down at the river by the creek. And he bragged he shot him
2 twice. Saturday, 9 October 2004. Stephen Corey Bryant didn't
3 know that he had botched the murder the evening before. He
4 thought he had one for his belt. When he picked up his friend
5 mind you, Judge, his friend Cliff Gainey. Picked Cliff up from
6 his house, friend he fishes with, friend he hangs out with,
7 friend he rides around with, friend whose kids he knows and
8 spends time with, friend whose wife he knows, friend he's worked
9 with. A friend who depend on Stephen Corey Bryant to pick him up
10 take him places because he doesn't have a driver's license or a
11 vehicle. He picks him up. According to his statement shows
12 Cliff the gun. Cliff's not scared. He's not worried; they're
13 friends. And they're riding around [REDACTED] till about
14 dark. Out on [REDACTED] Cliff has to take a leak. They
15 both get out. Stephen Corey Bryant has to deliberately get the
16 gun out of the holster. He has to know that it's locked and
17 loaded. He's got to get the safety off. He's got to get it out
18 of the truck. That's a pretty big pistol. Out of the truck in
19 his hand or concealed. Judge, he already has in mind he's going
20 to kill Clifton Gainey. There's -- or there's no reason to take
21 the pistol out of the truck. Let's be frank and somewhat crude.
22 When a man relieves himself, Judge, he unzips his pants, puts one
23 hand on his britches, other hand on himself. And if you're out
24 in the woods you're flat footed. There's no bowl; there's no
25 seat to mess up. And you stand there in the most relaxed

1 position a man can be in other than being in his easy chair and
2 you're not a threat in the world. You're vulnerable; you're
3 defenseless. And at that point while Cliff Gainey is doing that
4 Stephen Corey Bryant takes this damn gun and bam, bam, shoots him
5 in the back and shoots him in the arm. You can look at the
6 photograph. Cliff Gainey falls down, Judge, and when he's
7 falling down he's in a position with his left side down and he's
8 not dead yet. He holds his hand up one more time. You can see
9 the defensive wounds. And Bryant shoots one more time. It goes
10 through the fingers through the shoulder, grazes the neck, and
11 it's dug up under the blood puddle under his head where the body
12 was found laying. Stephen Corey Bryant goes through Cliff's
13 pants pocket, his friend. You remember seeing the white pocket
14 pulled out of the britches. Take his keys, admits to that in the
15 statement. Probably took his wallet. Admitted later taking the
16 keys, said he threw the wallet in the dumpster. Then Bryant went
17 straight to Cliff's house and burglarized it. Stole electronic
18 equipment, stole the aquarium, and set it on fire to cover the
19 crime scene. Then he went to his girlfriend's work, as relaxed
20 as he was, to give her the new TV as a surprise gift.

21 What did we learn about his character? Let's refer a
22 minute back to Clinton Brown, to that shooting. Judge, I said he
23 knew nothing about Clinton Brown and didn't care. This case with
24 Cliff Gainey is worse because they were friends. He knew
25 everything. He knew he was a father. He knew he was a husband.

1 He knew he was a provider. He knew that Cliff and his son were
2 trying to make it, bachelors in that mobile home. They were
3 trying to make it. And knowing all of that he still didn't care.
4 What he couldn't steal that belonged to the Gainey family he
5 tried to torch. Another shooting in the back. Judge, he's
6 showing he has no soul. Throws the wallet away. Turns the keys
7 in to Judy as lost in the parking lot, gives the TV as a gift.
8 What a true devaluation of human life. Total lack of remorse for
9 his acts as in the destructive consequences they created for
10 other.

11 Judge, the Tietjen murder and armed robbery are next;
12 but as I mentioned we need to go back to Friday, October the 8th,
13 maybe a couple of days before to begin talking about Tietjen
14 because Bryant was already stalking Willard Tietjen before he
15 shot Clinton Brown or murdered Clifton Gainey. Ms. Tietjen told
16 you that the latter part of that week of October in the evening
17 on three or four occasions Sassy, the aggressive dog, the
18 terrier, the one Troy Baker said would snap at even him and they
19 knew each other. Now that dog would alert to something out on
20 the side porch toward the tree line. And Mildred would go
21 outside, and she'd talk to the dog just like we all do, talk to
22 people. Sassy, is there a prowler out there, go get the prowler.
23 And she'd come back in. And the last time she deliberately
24 remembers doing it was Friday, October the 8th. And Judge, this
25 is either before Bryant breaks into Ammons place and steals the

1 gun or after because that occurred around midday. So either in
2 the morning Bryant came by and saw Willard Tietjen and then went
3 and did the burglary at the Ammons and came back, or he came to
4 the Tietjen home immediately after the burglary. But we know
5 this, after the burglary -- excuse me, we know one or the other.
6 We know that on Friday by his statement, Bryant's statement, by
7 what Willard T.J. told Mildred. We know that Bryant came into
8 the yard. He says he saw T.J. by the mailbox and that he pulled
9 up in his truck and he drives up to where T.J. is and he lies to
10 him. And he says, sir, could you help me please, I'm looking for
11 Kimberly Smith, would you help me find her name in the phone
12 book. And T.J. invites him. Then they go in and he gets the
13 phone book. And as Bryant says they go through it and didn't
14 find the name of course and he leaves. We know that Mildred
15 comes home a little after one, but she gets off early on Fridays
16 and when she comes home she sees Stephen Corey Bryant's truck out
17 on [REDACTED] down from the driveway. Now that's after. We know that's
18 after the Ammons burglary. He's got ammunition and a pistol.
19 And she mentioned to T.J. and tells him about the blue truck out
20 front and he says, yeah, this boy came by and I helped him look
21 for a name and we couldn't find it and he left. And he was in a
22 blue truck. And about that time Sassy alerts on the porch again.
23 And so Mildred goes out and says, Sassy, is that the prowler, get
24 the prowler. This is Friday in the p.m. after he's stolen the
25 gun but before he has shot Clinton Brown.

1 Now Stephen Corey Bryant, what have you learned about
2 the Tietjens on Friday. You've been there at least once, maybe
3 twice. You know there's an older man in bad health who's
4 vulnerable and defenseless. If he was coming from the mailbox he
5 was walking with a cane. He can easily be tricked by, Sir, will
6 you help me please. He's home by himself all day. His wife
7 works. She's gone unless her vehicle is there. If he hung
8 around much like she said he saw his truck out there he knows
9 what she's driving. He knows the victim is a mason. He knows
10 there's one aggressive dog and it can be reneutralized by putting
11 on the side porch. It can't go on and off that porch; there are
12 no steps. And it can't come back to the house. He knows the
13 layout of the property. He knows the layout of the residence and
14 parked and he knows where to park to be inconspicuous but close
15 enough to pull off a crime and get away.

16 Monday, October the 11th, of 2004 Mildred and T.J. get
17 up that morning. It's a Monday. And they have breakfast. She
18 says he's having a good day. He got up, got dressed. They had
19 breakfast and coffee together. And judge, they talked. And he
20 walked her to to the car like Nora Ann Davis, always remembered.
21 And she said I love you and he said I love you too. She left
22 work and he was home with Sassy, Paco, and Taco. Neither he nor
23 she had any idea of the wicked sinister diabolic plot that this
24 evil man Stephen Corey Bryant had planned for his entertainment
25 that day. Mid morning Troy Baker calls T.J. to check on some

1 project he supposed to be working on. T.J. gets on him about not
2 completing the task; friends do that. 11:00 Bob Summers calls to
3 share a joke; friends do that. Sometime later, but we know
4 before 1:00, was Mildred Tietjen called T.J. at one and he didn't
5 answer the phone. We know sometime later but before one there
6 was a knock at the door. T.J. went to the door and Stephen Corey
7 Bryant is back again: Sir, would you help me please, you see my
8 truck is overheated, and I need to call somebody or wait for the
9 engine to cool. He tricked T.J. into thinking his truck ran hot.
10 What an alibi if somebody would show up. Truck is out on the
11 street lying somewhere. He gets T.J. to invite him inside and
12 show off the mason and the shrine stuff while the truck engine
13 cools off. He tricks himself into the house. He has the pistol
14 with him concealed in his pants, a round already locked and
15 loaded in his chamber. He has malice in his heart and cold
16 blooded murder on his mind. He just has to get rid of Sassy.
17 Judge, dogs know. And Sassy had to be beside herself with
18 aggressiveness; and in order to accommodate his guest, his
19 thieving, murder, and robbing guest. Just like Troy Baker told
20 Your Honor, when Sassy was acting up T.J. would walk the dog
21 across through the den and put it out on the side porch and take
22 care of his guest. And I believe that's what he did here. And
23 when he put that dog out on that side porch he was vulnerable and
24 defenseless and where he would have been standing when he turned
25 around and meet a guest to put that dog out is where his body was

1 found, nine gun shot wounds through it. Right here.

2 Ira Parnell, Judge, he said one pull on the trigger,
3 one shot, it's not a repeat firing mechanism. One pull on the
4 trigger, one shot. You looking for malice aforethought; that's
5 nine right there. Judge, you've seen the rest of it. If the
6 jury were here I'd plow them through it but I don't believe
7 that's necessary today because we're here for the character of
8 Stephen Corey Bryant. What Dudley Saleeby told you in his
9 opening, what you'll discover what he did at the Tietjen home
10 will tell you more about Stephen Corey's Bryant character than
11 50,000 witnesses is correct.

12 Let's start with the control and domination and
13 dominion that he exercised over the course. Kind of individual
14 he set up adorned, the sadistic manner in which he burned the
15 beard on TJ's face and burned his eyes with either a cigar or
16 cigarette. Note the ease and comfort Stephen Corey Bryant felt
17 as he helped himself to a pepsi in the refrigerator. He needed
18 something to drink. It's like he owned the place, Judge. He
19 smoked cigars and cigarettes throughout the house, and he
20 littered them on the carpet or on the floor as though he was
21 marking his territory. The way he systematically went through
22 each room on each floor, closet by closet, drawer by drawer, tore
23 the house apart choosing what he will take. The pink footies,
24 with his DNA on them. You know, there wasn't a fingerprint in
25 the house. All the time he spent there, all the things he

1 touched, why? He had those gloves on his hand, those socks on
2 his hand, and he discarded them right where he got them but left
3 his DNA on them. He got a pen and something to write on to leave
4 notes to the family, signed it the prowler. And that was to
5 taunt them and torture them further. He pulled back TJ's shirt,
6 painted on his exposed stomach a star using TJ's blood for the
7 paint and left a note there as well. He got on their computer
8 and began to visit porn sites by his choosing, not sites from
9 T.J. and Mildred. He got the red, white, and blue pot holder
10 that Kimberly had made her with her own hands, soaked it up in
11 TJ's blood, painted messages on the wall. Victim number four
12 next week, catch me if you can. He stole more stuff than you can
13 carry out to a truck in one trip. He was there for hours,
14 enjoying his work, admiring what he had done.

15 And then the phone calls began. Judge, I'll not recant
16 them. You can imagine the horror, the unbridled horror of those
17 phone calls. There's not a devil in the bowels of hell that
18 could torment those good people like he did. And what did he
19 cackle in response? I killed your husband, I'm having a great
20 day, don't call this fucking number again.

21 Judge, you got the diagram. You'll have the exhibits.
22 And although we say a picture speaks a thousand one words
23 we'll -- one we'll put up to you, Judge, they'll speak volumes.
24 What Stephen Corey Bryant did after he murdered T.J. breaks all
25 barriers and exceeds all boundaries. It's downright inhuman and

1 indescribable.

2 Wednesday, October the 13th, 2004 is Christopher
3 Burgess. Although Bryant is a pathological liar there is one
4 truth that you can credit him to. He put on that wall that he
5 was going to kill victim number four. He kept his word. Right
6 around on the morning hours of October 13th he befriended and
7 picked up Christopher Burgess at the pantry, put his bicycle in
8 the back. They rode around. We don't know what they did, but
9 they ended up on the Foxville Road isolated, remote area of
10 Sumter County. And what again? Burgess needs to take a leak and
11 with the same deliberate acts to insure this pistol was loaded
12 one in the chamber either in the pants or hidden somewhere else.
13 Bryant gets out with him and when he drops his zipper and gets in
14 that comfortable position, bam, he shoots him in the back. He
15 falls and then he shoots him through the face and into the skull.
16 What do we know about the character? Judge, behold, a serial
17 killer who also predicted in writing at the Tietjen home a fifth
18 victim in two weeks. Because he was arrested on the 13th that
19 didn't happen, but he hadn't forgotten about it and he selected
20 Joe Jones at the Sumter Lee Regional Detention Center. And he
21 made a mistake because he tipped Joe off; he threatened Joe
22 Jones. I'm going to go to your -- I'm going to go to you. And
23 whenever he opened that door Joe came back the next time. He had
24 backup. And they opened the door and there was Bryant bode up
25 ready to carry out what he'd already said he would do. Joe Jones

1 got him to stand down. Why? He knew he was outnumbered. Larry
2 Justice wasn't as lucky. On the 26th of October, 2005 he laid in
3 ambush in Larry Justice. When Larry came to pick up those trays
4 there wasn't anybody there but Bryant and Larry Justice. And he
5 sucker punched him, beat him, and kicked him, used his own hands
6 his feet deadly weapons, unprovoked attack. Judge, Larry Justice
7 will spend the rest of his life in a prison of pain because of
8 Stephen Corey Bryant.

9 Judge, for these acts the State is seeking the ultimate
10 penalty of death for the murder and armed robbery of Willard
11 Tietjen. South Carolina Code Section 16-3-20 provides that if
12 the State of South Carolina proves beyond a reasonable doubt
13 after the crime of murder the existence of just one aggravating
14 circumstance, just one, then it's the job of the fact finder to
15 determine life or death. Judge, we've met that burden. Stephen
16 Corey Bryant plugged Willard Tietjen nine times with a stolen
17 .40-caliber pistol in his hand unlawfully with more malice
18 aforethought than words can describe. While armed. Bryant
19 admittedly robbed him of his masonic ring by slowly working it
20 off Tietjen's right hand after Bryant murdered him. The fact he
21 carried it to the sink to wash off the blood shows even more his
22 intent to rob. And the fact he forgot it and left it at the
23 scene is no legal consequence. Further evidence shows that
24 Bryant took TJ's wallet off his person from his pants pocket.
25 This is where he carried his wallet when he was dressed and up

1 and around. The wallet was discarded close proximity to the
2 body, contents strewn about, cash gone, social security card and
3 driver's license taken from the wallet were later discarded by
4 Stephen Corey Bryant away from the home. And the wallet had been
5 on the bed side table in the back room where T.J. would leave it
6 if he wasn't dressed or wasn't up and about. The evidence would
7 have been there and not by the body. Finally this was one
8 continuous chain of events. Evidence shows this was a
9 masterfully planned burglary, murder, and armed robbery and
10 although he's not indicted for burglary. This is a burglary by
11 trick where Bryant gained entry by lying, by playing on TJ's good
12 Samaritan character. He tricked his way into the home with the
13 intent of committing murder and armed robbery. Once Bryant got
14 T.J. to put Sassy outside on the porch he pulled the gun, filled
15 him with lead, and began a systematic robbing and floundering of
16 his person and his premises, one continuous chain of events. And
17 by his own admission Stephen Corey Bryant had plenty of live
18 ammunition left while he remained in the home armed with a
19 pistol. I submit that was to insure that there would be no
20 witnesses if anyone were to show up unexpectedly before the
21 completing of a robbery.

22 Bryant pled to murder. Judge, we've proven murder.
23 Bryant pled to armed robbery; we've proven armed robbery. Let's
24 look at what the expert said. Does it fall to the standard of
25 guilty but mentally ill? Absolutely not. Is he insane? No. Is

1 he retarded? No. Any brain damage? None, not even a lesion.
2 He had perfectly normal neurological examine. Does he understand
3 right from wrong? Absolutely. Does he have the capacity to
4 conform his conduct to the law? Absolutely. By his own expert
5 he's criminally responsible for all his actions. Judge, they
6 don't mitigate who he is; they define who he is. Their words,
7 everything they told you he showed you. They tell you through
8 their words that he's capable of doing such things and shows you
9 through his action. Actions in the choices that he makes.
10 Actions speak louder than words. What kind of void is left for
11 the loss of Willard Tietjen on his family, on his friends, on the
12 community he served? It's not just a void, Judge, it's a grand
13 canyon. T.J. was a father, a grandfather, a husband, a son a
14 brother, a friend. He was an unsung hero for burned and crippled
15 children. He was decorated a Vietnam war veteran, 20 years of
16 service to his country. Stephen Corey Bryant stole all that.
17 Billy Cockbill says he can't watch a parade without thoughts of
18 T.J.. Bob Summers wears the Tabasco tie he never got to give him
19 and carries it around with a pick Cadillac. Troy Baker is a
20 better husband because T.J. taught him how to show appreciation
21 for his wife. Nora Ann Davis does the Ladies of the Swamp, no
22 longer get six gallon can tabs. Nor does a little innocent child
23 with magic feet get the financial support or the love she once
24 did. Kimberly Dees no longer has coffee chats with her dad, and
25 instead she spends the time explaining to her son that everybody

1 isn't going to be murdered. And Mildred Tietjen, while the rest
2 of us look forward to Friday, dreads the day coming. It's
3 ironic, Judge, that Willard Tietjen was murdered wearing a
4 T-shirt that read God Bless America. And Stephen Corey Bryant
5 murdered a man in cold blood and was arrested in this T-shirt.
6 This says play all out or don't play at all. If you want to know
7 a sad that may be happy thought, Willard Tietjen died thinking he
8 was giving his shirt off his back to somebody that needed it.

9 What else can I offer to the Court about the character
10 of a sociopathic serial killer that hit Sumter County? I mention
11 just one thing, Judge. When we speak to juries you know we tell
12 them, folks, use your God given common sense. And I offer that
13 also to Your Honor. This sentencing hearing started last
14 Tuesday. By all practical effects it would be over this
15 afternoon into Thursday, about the same time as the crime spree
16 took off. And back in 2004 when this was going on, Judge, this
17 community was panicked and frantic. And law enforcement was
18 running around doing all they could. By this time midday on
19 Tuesday back then we had two bodies. Richland County had a
20 botched murder. We had an arson, a burglary, another burglary,
21 and several encounters. People were going crazy. They were
22 scared to death. And SLED was working and the Sheriff's
23 Department was working and the Sumter Solicitor's Office was
24 working. And the relief that went through this community on
25 Wednesday the 13th of 2004 in October I couldn't -- I couldn't

1 begin to share with you because we had worked together taking him
2 off the streets. And we thought it was over and then eight or
3 nine months later he tried to kill Larry Justice in the prison
4 system. It wasn't over. So what else can I say about his
5 character other than ask you to remember from this, if nothing
6 else, this community worked together and did a good job to do
7 their part to bring him to the course.

8 What can I tell you about more aggravating
9 circumstances? These are the absolute worse they are and I can't
10 add anything else to it. He did everything that I brought to
11 you. Impact testimony is immeasurable. The lives that T.J.
12 touched are immeasurable. And I submit all of this, the
13 aggravating circumstances, the character of Stephen Corey Bryant,
14 and the impact testimony to tell you that the sentence of death
15 is justified here. And to sum up that particular part of it,
16 Judge, if not these acts under our law then what? If not this
17 man, this evil man, then who? If not in this case this week then
18 when. Bryant's facing life sentence on four other crimes to
19 which he pled guilty. Judge, arguably speaking, if you gave him
20 a life sentence on those and one on this he'd be getting five for
21 one. A man can't serve but one life sentence. Took three lives,
22 botched taking two others. Our law says the sentence must be
23 proportionate to the crime. The proportionate sentence that
24 brings justice in this case is a sentence of death.

25 Judge Russo, I don't envy the position you're in one

1 bit; but as James Aiken said, you have to make hard decisions and
2 live with them and it takes moral courage. You represent our
3 community in the trial and it's the function of a capital
4 sentencing jury to express the conscience of the community on the
5 ultimate question of life or death. And let there be no doubt,
6 Stephen Corey Bryant through his attorneys going to present
7 himself to the Court the most pathetic manner that he possibly
8 can. And one more time, Judge, he's gonna say, sir, would you
9 help me please. And I ask you to send a message as a
10 representative of our community to Stephen Corey Bryant with what
11 you now know. Judge, tell him no. Thank you.

12 MR. HOWLE: Mr. Saleeby told the Court in opening
13 statement before the State began to present its case in the
14 sentencing phase of the trial and he made several references to
15 us being before the Court today because of the choices Stephen
16 made in October of 2004. The thing obviously Solicitor's Office
17 has picked up and wants to drive home with these choices. Well,
18 Your Honor, those terrible offense of those first two weeks in
19 October 2004 while committed by Stephen were anything but the
20 results of his choices, at least in the sense they were choices
21 he rationally decided to make and carry out. And the Solicitor
22 concludes by saying we're going to try to paint some pathetic
23 picture of him and ask for one more time. Your Honor, there's no
24 question there are going to be a lot of pathetic things you're
25 going to hear in what I say and what the expert said on the

1 stand, the impact and things that happened during this man's life
2 that made it impossible for him to make the choices that they
3 want to act like could just be made all off spur of the moment.
4 You know, it's not unusual when a defendant's pleading the family
5 will say something like, well, he wouldn't have done that if he
6 wasn't hanging around the wrong crowd. And it's not unusual for
7 a defendant or his attorney to blame his environment or some
8 other circumstance for his otherwise unexplained lapses. We
9 don't come before the Court to simply state, say Stephen is not
10 responsible. That has never been our position. He pled before
11 this Court to the charges against him. But that is not to say
12 that these were committed without any significant influences that
13 effected why these acts occurred. The State also in his opening
14 referred to the actions of Stephen as clever, calculating, and
15 cunning. Mr. Saleeby said that Stephen's actions reflected focus
16 and a purpose, and then he said what he did will tell you about
17 his character. Stephen chose to do these acts; he was simply
18 imposing his will. Well, Doctor Schwartz-Watts did not deny that
19 Stephen seemed to pick isolated areas or there was similarities
20 in some of the factual accounts. She did not deny that he hadn't
21 given conflicting statements when questioned or even Stephen's
22 broken down truck seemed to be used as a way to first approach
23 some of these victims. But she emphasized that in all of these
24 murders Stephen demonstrated paranoia, showed misperceptions, and
25 indicated he felt threatened. Now that's not trying to paint a

1 pathetic picture, but that is painting an accurate picture of the
2 effects of these things in his life. It is a case of someone who
3 had problems his whole life and in October 2004 he could no
4 longer handle them. Stephen's grandmother and his aunt told the
5 Court about his meeting with him on August the 19th, the time he
6 spoke, the anguish he was going through in trying to focus some
7 of the traumatic events that he experienced in his life. He was
8 reaching out for help. His grandmother knew the abuse the first
9 husband had committed but only now realized the horrific impact
10 that it had on Stephen. His aunt told you that she was there
11 with her mother and Stephen when he related this trauma, how he
12 shook uncontrollably. And she told Stephen they need to get him
13 help. And she called someone who she thought could help. She
14 called the sexual abuse hot line and Stephen was referred to a
15 place to get that help. Gina Creech, who was Stephen's probation
16 officer, told the Court that he came into her office on August
17 the 20th and asked for names of counselors for sexual abuse.
18 She'd been supervising the probation case since June 25th, 2003.
19 She gave the name Healthy Minds. Healthy Minds ended up calling
20 her assuming Probation/Parole was going to pay for the counseling
21 and when she told them that was not the case Stephen didn't get
22 the help because he didn't have the money. He returned to her on
23 September the 1st. She said she believed that he told her at
24 that time he was going to see a counselor at the YWCA. Stephen
25 did not show up for his appointment, Your Honor, on October the

1 6th. She said that was unusual for Stephen. During the 15
2 months she'd been his probation supervisor he had presented no
3 problems, and he showed up for his appointment.

4 Of course by October 6th, 2004 the wheels had come
5 off and Stephen was beyond the help his grandmother, aunt, or
6 anybody else included. Doctor Schwartz-Watts testified in her
7 report rendered on September 3rd, 2008. She told the Court of
8 Stephen talking with his grandmother and aunt speaking to them
9 about the sexual trauma and experience. She said the records
10 from the YWCA also reported that he told of this abuse before any
11 of his crimes were committed. Gina Creech also confirmed he
12 spoke to her of this abuse before any crimes were committed.
13 These efforts by Stephen to get some help for a problem he could
14 not understand were certainly not some made-up story given after
15 he'd been charged. Doctor Schwartz-Watts spoke with Steven's
16 school history. He repeated the first grade having not met
17 testing standards to pass. He had numerous psychological
18 evaluations while in school, was placed in self-contained classes
19 from grades four to nine. His IQ was below average. She told
20 the Court that a comment by one of his teachers was that he was
21 catastrophic reactions to minor problems, unhappy, can't control
22 behavior, very few friends. He hailed the sixth grade and by the
23 time he was -- by that time he was being treated for Attention
24 Deficit Disorder and prozac. She referred to a letter from one
25 of his teachers that was actually written to Judge McKInon to ask

1 the Court to consider serious intervention. "Corey needs
2 immediate help in order to turn himself around". Stephen was
3 evaluated by Kelly Price of vocational rehabilitation. He was
4 diagnosed with disruptive behavior, not otherwise specified.
5 When Stephen was at the Department of Juvenile Justice in 1996 he
6 was diagnosed, diagnosed with adjustment disorder, ADHD and
7 conduct disorder by Doctor Tracy Gunter. Doctor Schwartz-Watts
8 provided present diagnosis, posttraumatic stress disorder,
9 chronic. Your Honor, this is an access one disorder for major
10 mental illness. She also listed cannabis dependence,
11 hallucinogenic abuse, Attention Deficit Hyperactivity Disorder.
12 And he also had an axis two diagnosis branded social personality
13 disorder. Your Honor, in Doctor Schwartz-Watts' opinion as a
14 forensic psychiatry whether Stephen's age and mentality at the
15 time of this offense to be considered that the murders were
16 committed while the defendant was under the influence of mental
17 disorder, the capacity of the defendant to appreciate criminality
18 of his conduct to conform his conduct to the requirements of law
19 was substantially impaired, all of which are statutory mitigating
20 circumstances. And she also stated that Stephen's conduct is
21 controllable if given proper medication.

22 Doctor Alex Morton, a psychopharmacologist testified
23 about Stephen's drug use during October 6th through 13. Not the
24 State questions the source of knowing Stephen was taking drugs at
25 this time, and Doctor Morton admitted that most of this was from

1 Stephen, told him himself. The State also emphasized those
2 negative drug tests administered when Stephen was on probation.
3 Your Honor, these weren't randomly given and they were none given
4 after mid 2003. Statements given by Stephen indicated drug use
5 and on one occasion he stated that he and one of the victims were
6 doing drugs together. Now the State would like to say you can't
7 believe those statements; he gave conflicting statements. Yes,
8 he did, not unlike many defendants charged with a crime. But the
9 drug use is one of the consistent elements of those statements,
10 statements given involving Mr. Burgess, Mr. Gainey, and
11 Mr. Tietjen Stephen talks about use of drugs. Doctor Morton
12 testified that Stephen was using meth, marijuana with Raid, and
13 Benadryl during this October time frame. He began by saying that
14 no one wants to be addicted; it's simply not logical. Well,
15 logical thinking is not what Stephen was experiencing. He was
16 suffering from post trauma stress symptoms. Doctor Morton stated
17 that untreated PTSD symptoms become depressive and more severe.
18 The brain is turned on, stays on. What effects did drugs have on
19 Stephen? Doctor Morton said while this may provide some
20 temporary relief the end result is erratic behavior.

21 Your Honor, he then gave a list of the contributions
22 to Stephen's addictions: Genetics, early drug use, a permissive
23 home, psychological abuse, physical abuse, psychiatric mood,
24 anxiety symptoms, and drug use. He talked about the psychiatric
25 effects of meth on Stephen, aggressiveness, agitation, increased

1 anxiety, distorted perceptions, paranoia, many of the same
2 effects that Doctor Schwartz-Watts pointed out and Stephen
3 displayed. And Doctor Morton's expert opinion was that Stephen
4 had the disease of addiction to meth and marijuana. Doctor Marty
5 Loring testified on trauma and its effects on Stephen. She spoke
6 with Stephen on six different occasions stating to the Court how
7 important it was to get the confidence of a client before they
8 would trust you. She admitted people do lie or tell less than
9 the truth. By using certain techniques she could measure the
10 truthfulness. She felt that number of times she had spoken with
11 Stephen she felt comfortable with the overall truthfulness for
12 what he had told her. She went through the genealogy of
13 Stephen's family pointing out numerous problems with drugs,
14 physical abuse, mental abuse, sexual abuse and violence. She
15 then stated all of this would impact on Stephen.

16 The Solicitor asked, so as he reiterated in his
17 closing, if Stephen would just not freely plan A, B and C of any
18 particular acts and she said yes, he might, but that doesn't mean
19 he made choices in those actions. Doctor Loring went through a
20 time line of events in Stephen's life showing pictures that
21 showed the changes in Stephen as he went from a happy child to
22 one that became aggressive, anger, disruptive behavior. Maybe
23 the most important in observation was expressed sorrow Stephen
24 has shown for his actions. Jim Aiken testified his ability to
25 conform to prison life. He classified Stephen as disruptive

1 inmate who can be managed with appropriate measures or time. He
2 emphasized if Stephen were given a life sentence he would always
3 be in a high security setting. He was aware of Stephen's need
4 for medication and not see that as a problem. He specifically
5 stated that having reviewed juvenile prison records on Stephen he
6 had no doubt that Stephen could conform to prison life.

7 Your Honor, however you may characterize Stephen
8 Corey Bryant is not as calculated and cunning individual. Yes,
9 he committed these offenses and he's pled to them. But to say he
10 chose to do those things, to say he was imposing his will to say
11 what he did will tell you about his character, is to not
12 understand that very character lifetime of committing influences
13 that has shaped it. The Solicitor went through how he thinks the
14 events occurred and told you how this shows how premeditated and
15 planned they were. Your Honor, I do not know how any of these
16 offenses could be more bizarre, more unusual, and more unplanned.
17 Evidence was everywhere. No efforts to conceal anything. Not
18 the actions of someone making irrational choices or even trying
19 to hide what they did.

20 Maybe most importantly, Your Honor, shortly after
21 Stephen was arrested he wrote a letter to the Tietjen family.
22 Now the Solicitor may say that's self-serving. Talks about
23 problems that plague him his whole life and he may say those are
24 just excuses. He asked her for forgiveness. And the Solicitor
25 may say that's just asking for mercy. Your Honor, I think it's

1 important to realize that letter was written just a few weeks
2 after these things happened and was written before Stephen had
3 any attorneys so no one told him to write it or even suggested
4 writing such a letter might be helpful. Stephen Corey Bryant who
5 wrote that letter is the same Stephen Corey Bryant who is
6 reaching out for help in August and September of 2004. Reaching
7 out for help; it never came. Thank you, Your Honor.

8 THE COURT: All right. As I indicated to you early on
9 there's a lot of items that I need to review. There's a lot of
10 exhibits that I need to go over, and I'm going to take some time
11 to do that. What I am going to do is adjourn court for the
12 balance of today and for tomorrow, and we will reconvene on
13 Thursday the 11th and we'll reconvene at 10:30, okay? We'll
14 start back a little later than we typically do, and I will have
15 reached a decision by that time. What I -- where are the
16 indictments and the sentencing sheets? Do we have those there?
17 Okay. All right, is there anything else before we adjourn?

18 MR. JACKSON: Judge, just a couple of matters. Mr.
19 Saleeby slipped me a note. I believe it's required the defense
20 to put at least on the record the exact mitigating circumstance
21 statutory or other they're asking you to consider and would ask
22 that be put on the record. We had talked before, I believe it
23 may have been in Florence, Judge, about Your Honor using simply
24 the verdict form that normally a jury would have when you return
25 your decision to us on Thursday. And I would ask that you just

1 do that. Check whether or not there was an aggravating
2 circumstance found beyond a reasonable doubt and check what
3 sentence it is that you recommend as opposed to coming out and
4 issuing the order. And the other thing, Judge, my other victims
5 I should have in here 10:30 Thursday morning as well.

6 THE COURT: All right.

7 MR. JACKSON: All right, sir.

8 THE COURT: Now if I'm not mistaken and I tried to jot
9 some things down, I believe that Mr. Howle did put on the record.

10 MR. HOWLE: Your Honor, I specifically listed ---

11 THE COURT: Statutory mitigating circumstances.

12 MR. HOWLE: Your Honor, there was actually one more.
13 The Defendant has no history of prior criminal convictions
14 involving use of violence against another person. That one I did
15 not specifically state. The other three were stated in closing
16 argument as mitigating circumstances.

17 THE COURT: Right, I got that, okay. All right. Well,
18 now y'all are in charge of the exhibits so just take those and
19 for this afternoon you can go ahead and put those up where you
20 normally would put those. And of course I'll be back here in the
21 morning to work on that stuff, okay. Well, court will be then in
22 recess, will be adjourned for the day, will be in recess and
23 reconvene at 10:30 Thursday morning and September 11th.
24 (Whereupon, court adjourned at 3:34 p.m, the Court deliberated on
25 the 10th; and court was resumed Friday, September 11th, 2008.)

1 THE COURT: Yes, sir, Mr. Howle.

2 MR. HOWLE: Your Honor, before we begin, one thing I
3 did want to address the Court about. When I came in this morning
4 to my office there was a message on the answering machine from
5 someone who indicated that they had some information they thought
6 was really important and wanted to talk to us. Ms. Spivey, my
7 office manager, called that number that was left and the man who
8 left the message was not there, it was his wife. And she related
9 some things. I won't say what they were yet other than I guess
10 the message, you can call it after-discovered testimony. I don't
11 know why they waited till last night to call. But also related
12 that apparently she had called your home and spoken to your wife.
13 I'm not even -- I don't know if you're aware of that, Your Honor.
14 But your wife indicated well obviously I cannot talk to the judge
15 about anything you want to tell me. The circumstances of what
16 the individual related was involved in meeting him before these
17 murders happened and coming up and just want to talk to him, said
18 he needed help, and the individual -- I'll give you his name if
19 you would like me to.

20 THE COURT: Well, if you...

21 MR. HOWLE: Edwin Goss was the individual who when we
22 called the number the person who answered said she was Mrs. Goss.
23 Said he -- the police officer drove up. He went over to Mr.
24 Goss, talked to him, said this guy come up to me, he's kind of
25 rambling, he says he needs help, doesn't know what he's going to

1 do. The officer -- don't know the officer name, wife did not
2 know. She said Mr. Goss would call back and tell me. But
3 talking to the officer the officer went over to talk to Stephen,
4 came back and said he just -- I don't think, he's just kind of
5 rambling, I don't see anything. Fellow didn't pay anymore
6 attention and then apparently through seeing some of the pictures
7 in the paper or whatever, left this message last night on the
8 answering machine and we didn't see it till this morning. I have
9 certainly not talked with him. I did not talk with the wife. So
10 I can't verify all that, but obviously if he had contacted us
11 earlier and realized the incident I feel certain we would have
12 called him as a witness and present the mitigation because I
13 think it was material what he said. It would certainly go to
14 state of mind to mental condition before these offenses happened.
15 And to that extent, Your Honor, I guess we move to reopen to
16 allow that person to testify. And like I say, I haven't had the
17 opportunity to talk with him. I didn't even know his name until
18 this morning and have not been able to contact him, only had that
19 conversation with his wife.

20 THE COURT: All right. And let me address that, Mr.
21 Howle, which I was going to prior to you standing up. When I got
22 home last night my wife asked me if I knew and I could not
23 remember his first name but I do remember last name was Goss.
24 Asked me if I knew a fellow named Goss, and I told her I did not.
25 And she said, well, he called here, said he lived in Sumter and

1 that it was very urgent that he speak to you about Mr. Bryant's
2 case and he left two numbers. Right then I said, Cheryl, don't
3 tell me anything else, I don't want to hear another thing, I will
4 not be calling Mr. Goss back because that would be improper, I
5 don't want to hear anything more about what he had to say. I
6 apologized to her for being curt, but I did not want her to say
7 something that would have been inappropriate. And that was the
8 extent of our conversation. We didn't have any further
9 conversation. I was going to share that with you this morning at
10 not knowing that apparently he called your office as well. I
11 know nothing other than what I've just shared with you about
12 Mr. Goss or what he might have to say, but this case has been
13 going on for some time. Both sides have had ample opportunity to
14 present the evidence, and I appreciate your position that this is
15 evidence that was just recently discovered. But at this stage we
16 don't even know if it's evidence. We don't know if it will be
17 anything that's admissible. We don't even know what it is. And
18 I'm going to deny that request to reopen the case and certainly
19 would note any exceptions that you would have to that ruling.
20 Anything further?

21 MR. HOWLE: Your Honor, I would just ask you note the
22 objection because, like I said, specifically what was related to
23 me from the wife talking to – Ms. Spivey who then talked to me
24 was that he was seeking help when he did that and I just felt
25 that was testimony we certainly would have presented had we known

1 it.

2 THE COURT: Sure. And I certainly do note your
3 objection to that. Before going further I feel somewhat
4 compelled to thank the members of the media that have been here
5 throughout the course of the trial. They have a difficult job of
6 keeping people informed. And as we all know, the court system is
7 a public forum. I have not -- it's a little different, this
8 situation for me, because typically in a high profile case I do
9 read the papers and check 'cause I want to know what's going on
10 in the media in case I have any motions regarding those type of
11 things. In this case, however, because I serve in the unique
12 role as judge and jury I've removed myself from any media
13 coverage, and I have not read papers or seen any television
14 accounts of any of these proceedings so I don't know how well or
15 poorly you did your job out there in informing the public but I
16 did want to publicly thank all of you who have been here
17 throughout this because you have represented yourself in an
18 excellent way during these proceedings. You've not been
19 disruptive which is the concern we have oftentimes, and you've
20 been very professional in your handling of this matter so I
21 wanted to thank you for that.

22 Ladies and gentlemen, both people here regarding the
23 State and victims and with the Defense and the defendant's
24 family, we're about to proceed to the sentencing phase of this
25 case. And before that is even brought out, what the decision of

1 the Court is, I just wanted to give anyone an opportunity who
2 feels that, and of course at this point and no one knows what the
3 decision of the Court is but whatever that verdict is, if you
4 feel you will not be able to handle that in a proper way,
5 professional way, if you feel that you won't be able to handle
6 that emotionally then would ask you to remove yourself from the
7 courtroom at this time because -- and I've talked with the Clerk
8 and law enforcement. As I tell members of the public when
9 there's a jury is about to reveal a verdict you may agree or
10 disagree with the jury's verdict, but whatever you feel about the
11 verdict they are owed at least the respect of having their
12 verdict received with respect and whether you agree with it or
13 not. And that goes the same in this situation even though we
14 don't have a jury of 12. The decision of the Court deserves to
15 at least be received with respect whether you agree with it or
16 not, and so we're not going to tolerate any outbursts or any
17 disruption so if you feel that that's something that you may not
18 be able to control you may want to remove yourself at this time.

19 And having said that, is the State ready to proceed
20 with sentencing?

21 MR. JACKSON: State prepared, Your Honor.

22 THE COURT: Is Defense ready proceed?

23 MR. HOWLE: Subject to our motion, Your Honor.

24 THE COURT: Subject to your motion, yes, sir.

25 All right. At this time, Solicitor, if there's any

1 further presentation by the State regarding sentencing if there's
2 any individuals who wish to be heard I'll be happy to hear from
3 them at this time.

4 MR. JACKSON: Your Honor, there are a few individuals
5 that would like to speak on their particular cases that he pled
6 guilty to. Is that what you're referring to?

7 THE COURT: Yes, sir.

8 MR. JACKSON: I believe Mr. Ammons would like to
9 address the Court briefly.

10 THE COURT: All right.

11 MR. JACKSON: Your Honor, Mr. Ammons, I remind the
12 Court it was his mobile home that was broken into and his gun
13 that was stolen and used in these crimes.

14 THE COURT: Mr. Ammons.

15 MR. AMMONS: Your Honor, the one thing that I would
16 really like to express is my life has been changed forever.
17 There's no secret now the weapon come from my house. What used
18 to be a paradise home where I could let my children ride horses,
19 strangers come up, we meet, never no fear. Now there's fear. My
20 life has changed forever. When I see somebody I try to find a
21 gun, rifle, something, 'cause I'm scared. I'm scared to even
22 leave my -- back four years ago leave my daughter at home. I
23 learned how valuable life is, and there's no guarantees for
24 tomorrow. There's nights that I don't go to bed afraid that
25 somebody is going to get the up on me. My life has been changed

1 forever. When I come home at night I'm scared to go in my own
2 house afraid of what might be there. I'm more afraid of the
3 unknown and life has not -- life is unknown. We don't know
4 what's going to happen tomorrow. It's as if it happened
5 yesterday. And when my weapon was stole and the first night the
6 person got murdered, I got down on my knees and I wept praying
7 that it was not my weapon. And the next one, then the next one.
8 My life what used to be a paradise, if you come to my house if
9 you wanted something to drink or wanted to ride a horse or
10 something, come on, children whatever. And now when people come,
11 if I don't know you I'm scared 'cause I don't -- I'm just scared
12 of the unknown. And I have prayed for this Court. I have prayed
13 for the victims' families. And on the other side, I have prayed
14 for them 'cause life is so valuable. When my children leave I
15 knew more that I might not never see them again and try -- they
16 18, 19 I try to give them a hug. My son tried to be a young man,
17 daddy, you ain't got to hug me. But when you been there, you
18 know it. Life changes every day and it has scarred me for life.
19 And it's just -- it's just one of those things I probably won't
20 never get over. And I just pray for everybody in this courtroom
21 and I really don't know what -- what the answer is. It happened.
22 It is something bad that's happened. But we all need to pray for
23 everybody. And as I coach I try to be a positive person. I try
24 to find positive in this and the only way I can handle it is put
25 it in the Lord's hands because it's more than I can conceive,

1 more than I can handle, 'cause my life has been changed forever.

2 And I thank you for letting me come up here a minute.

3 THE COURT: Thank you, Mr. Ammons. I appreciate you
4 being here today.

5 MR. JACKSON: Your Honor, this is Mr. Chris Gainey. He
6 testified it was his father Cliff Gainey who was the victim in
7 this case.

8 THE VICTIM ADVOCATE: Christopher wanted to address the
9 Court and how he's kind of -- he doesn't know exactly how to
10 start it. But I think what he wanted to say a few minutes before
11 court he was talking to me, and he said that he as a young boy
12 grew up with his dad and they fished and did a lot things
13 together and then there became a space where the family split.
14 And then he came back to know his dad again and lived with him
15 and they were trying to make it go. And they fished and watched
16 TV and movies and had a good time, and his parents were trying to
17 get back together. And now he said he's lost. He doesn't want
18 to watch movies and just -- he doesn't -- that's missing and
19 that's some of the things he wanted me to tell you.

20 MR. GAINNEY: The only thing I really remember he used to
21 always comment on me being -- just always said I look just like
22 him. My mama still says the same thing. Really have not much
23 memories together but still cherish them.

24 THE COURT: Mr. Gainey, I'm so sorry for your loss and
25 I appreciate you being here, sir.

1 MR.GAINEY: Thank you.

2 MR. JACKSON: Robbie Burgess. Your Honor, this is Mr.
3 Robbie Burgess. He's the brother of Christopher Burgess
4 currently serving our country.

5 MR. BURGESS: Your Honor, this is from Ms. Christine
6 Burgess and my family. Christine is my mother. To the Courts
7 and the honorable judge who presides here today, I never thought
8 a day would come for me to see the death of a child of mine
9 before I left this earth. I assure you it's not a good feeling.
10 I know this because it happened to my son Christopher and my
11 family. I want the Courts to know that a father was taken away
12 from his son and his family. Christopher will never be able to
13 do all of the things a father and son would do together. A hole
14 is in my heart and my family's where my son Christopher was and
15 it hurts really bad. Not one day goes by that we don't miss him
16 tremendously. We all loved him dearly. The pain and suffering
17 of this family will never go away. We yearn for time to be with
18 us each day especially on birthdays, holidays, and family
19 gatherings. The pride and joy of our family was taken away on
20 October 13th, 2004, and can never be replaced. Your Honor, we
21 want you to know as a family that we want to see justice served
22 today, September 11th, 2008. We have waited patiently, Your
23 Honor, and now at this hour the wait is over. These are our true
24 feelings and we are still hurting inside. Just being here today
25 is very hard and painful. Being here just opens and hopefully

1 closes this matter for myself and other families involved. We
2 are counting on the justice system to come through and make the
3 proper decision today. We thank the courts for kindly listening
4 to our words, Your Honor.

5 THE COURT: Thank you very much, Mr. Burgess. Again
6 I'm very sorry for your family's loss.

7 MR. JACKSON: Your Honor. That's all the State has.
8 Thank you very much.

9 THE COURT: Thank you, Solicitor.
10 Mr. Howle, is there any further presentation by the
11 Defense regarding sentencing or if anyone wishes to address the
12 Court I'll be happy to hear from them.

13 MR. HOWLE: Your Honor, we spoke to the family before
14 they left yesterday, the grandmother and cousin who was here.
15 All of them testified before Your Honor and they just indicate
16 that they just not feel they emotionally could come here and
17 talk.

18 THE COURT: All right.

19 MR. HOWLE: Your Honor, we would just reiterate
20 mitigation we think has established through the testimony.

21 THE COURT: Mr. Bryant, is there anything you wish to
22 tell the Court or wish to discuss with the Court? You certainly
23 have that right to address the Court at this time and I'll be
24 happy to hear from you if you wish.

25 (Attorneys confer with defendant.)

1 MR. HOWLE: Your Honor, he -- like you said yesterday,
2 I just don't think he'd like to talk but on his behalf and what I
3 think he would say if he could is pretty much spelled out in the
4 letter he wrote the Tietjen family which was in evidence, Your
5 Honor.

6 THE COURT: Yes, sir, and I did review that.

7 MR. HOWLE: Thank you, sir.

8 THE COURT: Is there anything else, Mr. Bryant?

9 THE DEFENDANT: No, sir.

10 THE COURT: Anything, Mr. Howle, Mr. Clark?

11 MR. HOWLE: No, sir.

12 MR. CLARK: No, sir.

13 THE COURT: All right. Well, ladies and gentlemen, as
14 you're aware I have numerous indictments and charges and I'll
15 begin with the sentence of the Court on indictment
16 2006-GS-43-702. That is an indictment for threatening the life
17 of a public employee. The sentence of the court is that you be
18 committed to the county detention center for a period of 30 days
19 and I give you credit for the time that you have served regarding
20 that, that charge. And indictment 2004-GS-40-10096, a charge out
21 of Richland County and that being the charge of assault and
22 battery with intent to kill. The sentence of the Court is that
23 you be committed to the State Department of Corrections for a
24 period of 20 years. With regards to indictment 2006-GS-43-701,
25 and that was earlier assault and battery with intent to kill

1 charge was on the assault of Mr. Clinton Brown. In
2 2006-GS-43-701, that was the assault with intent to kill, assault
3 and battery with intent to kill on the officer Larry Justice.
4 Sentence of the court is that you be committed to the State
5 Department of Corrections for a period of 20 years. Regards to
6 indictment 2006-GS-43-700, and let me, Solicitor if I may, just
7 so that I'll be clear on the record. There were some
8 indictments, multiple count indictments and I have sentencing
9 sheets on those counts that I do not have a sentencing sheet on
10 and am I assuming that charge is being dismissed or nol prossed.

11 MR. JACKSON: That's correct, Your Honor, count two.

12 THE COURT: Count two of that indictment, possession of
13 stolen handgun is being dismissed or nol prossed. Sentence of
14 the court regarding count one of that indictment, murder, is
15 that, sir, you be committed to the State Department of
16 Corrections for the remaining term of your natural life without
17 possibility of parole. On indictment 2006-GS-43-697, that is the
18 burglary first charge for entering the dwelling of Mr. James
19 Ammons and taking of the weapon, the sentence of the Court is
20 that you be committed to the State Department of Corrections for
21 the remainder of your natural life without possibility of parole.
22 On the indictment 2006-GS-43-696, burglary in the second degree
23 for the break-in of Mr. Robert Dennis' property, the sentence of
24 the Court is that you be committed to the State Department of
25 Corrections for a period of 15 years. Regarding indictment

1 2006-GS-43-698, which is a multiple count indictment. Count four
2 of that indictment, possession of a stolen handgun is being
3 dismissed pursuant to this, your plea. But with regards to count
4 three, arson in the second degree, the sentence of the Court is
5 that you be committed to the State Department of Corrections for
6 a period of 25 years. With regards to count two of that
7 indictment, burglary in the first degree, the Court -- the
8 sentence of the Court is that you be committed to the State
9 Department of Corrections for the remainder of your natural life
10 without possibility of parole. And regarding count one of that
11 indictment which is the murder of Mr. Clifton Dale Gainey, the
12 sentence of Court is that you be committed to the State
13 Department of Corrections for the remainder of your natural life
14 without the possibility of parole. With regards to indictment
15 2006-GS-43-699, in regards to count three of that indictment,
16 possession of a stolen handgun, the sentence of the Court is that
17 you be committed to the State Department of Corrections for a
18 period of five years. Regarding count two of that indictment,
19 armed robbery, which was the armed robbery of Mr. Willard
20 Tietjen, the sentence of the Court is that you be committed to
21 the State Department of Corrections for a period of 30 years.
22 Regarding count one of that indictment 2006-GS-43-699, the charge
23 of murder, the Court does find beyond a reasonable doubt the
24 existence of the following statutory aggravating circumstance:
25 that the defendant committed murder while in the commission of a

1 robbery while armed with a deadly weapon, to wit, a Smith and
2 Wesson .40-caliber semiautomatic handgun. Now although
3 Mr. Bryant pled guilty to that charge of armed robbery the Court
4 is of the opinion and wants the record to reflect that
5 independent of that guilty plea the Court is of the opinion that
6 the State did provide substantial evidence, both direct and
7 circumstantial, that prove Mr. Bryant guilty of that charge
8 beyond a reasonable doubt. Now in addition to the evidence that
9 was presented to establish that statutory aggravating
10 circumstance of armed robbery the Court spent many hours
11 reviewing all of the other evidence submitted by both the State
12 and the Defense in establishing any nonstatutory aggravating
13 circumstances as well as the statutory and nonstatutory
14 mitigating circumstances. And after completely reviewing and
15 examining all of the evidence presented the Court has reached the
16 following verdict: The defendant, Stephen Corey Bryant entered a
17 plea of guilty to the offense of murder. The Court has
18 determined that the defendant should be sentenced today.

19 He is now asked -- and Mr. Bryant, I now ask you, is
20 there anything further that you wish to say as to why the
21 judgment of law and the sentence of this Court should not now be
22 pronounced against you?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right, sir. Then it is the judgment of
25 the law and the sentence of the Court that you, Stephen Corey

1 Bryant, prisoner at the bar, be taken to the jail here in Sumter
2 County and then to the State penitentiary henceforth to be kept
3 in close and safe confinement until the 14th day of November, 2008
4 upon which day between the hours of 12:00 noon and 11:59 p.m. you
5 shall suffer death by electrocution or lethal injection in the
6 manner provided by law. Mr. Bryant, may the Lord have mercy upon
7 your soul, sir.

8 As the trial judge in this case and in this action in
9 the prior -- and prior to the imposition of the death sentence
10 upon the defendant Stephen Corey Bryant I find as an affirmative
11 fact that the evidence of this case warrants the imposition of
12 the death penalty, and that its imposition is not a result of
13 any prejudice, passion, or any other arbitrary factor but solely
14 based on the facts and the evidence presented by both the State
15 and the Defense during the course of these proceedings. That is
16 the sentence of the Court.

17 (Defendant is removed from the courtroom.)

18 THE COURT: Mr. Clark, Mr. Howle, anything further from
19 Defense at this time?

20 MR. HOWLE: Not at this point.

21 MR. CLARK: No, sir.

22 THE COURT: All right. All right, Solicitor, does that
23 conclude any business of the -- from the Solicitor's Office?
24 This is a general session term of court. Is there anything
25 further for the Court this week?

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MR. JACKSON: Your Honor, that concludes this term of general sessions court.

THE COURT: I want to thank everyone that has been involved, the attorneys both the State and Defense, the respect you've shown the Court and the diligence by which you represented your client's interest and the professionalism that you showed it's been exemplar and I appreciate it and working with everyone in this case. I want to thank you, having said that this term of Court is adjourned and sine die.

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

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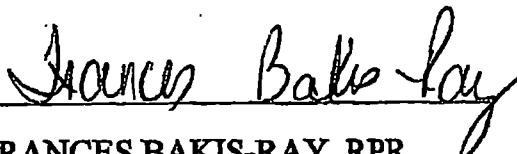
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter
(RPR), court reporter for the State of South Carolina, Twelfth
Judicial Circuit, do hereby certify that the foregoing proceeding
is a stenographic report and was transcribed through
computer-aided transcription; that the foregoing transcript
contains a true record of the proceedings.

I further certify that I am neither counsel for, nor
related to nor employed by any of the parties connected to the
action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this
9th day of April, 2009.


FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS

COUNTY OF SUMTER) C/A No. #4102660

State of South Carolina,)

Petitioner,)

v.)

Stephen C. Bryant,)

Respondent.)

COPY

HEARING

Tuesday, December 21, 2004
12:10 p.m. - 12:40 p.m.

The hearing before the Honorable Kathy L. Ward, Esquire, Chief Magistrate for Sumter County, was held at the Sumter County Summary Court, 115 North Harvin Street, Sumter, South Carolina on the 21st day of December, 2004 before Linda Y. Love, Court Reporter and Notary Public in and for the State of South Carolina.

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APPEARANCES:

Jack D. Howle, Jr., Esquire
Howle & Babb
7 East Hampton Avenue
Sumter, South Carolina 29151
Attorney for the Respondent

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EXHIBITS

(There were no Exhibits marked during the Hearing.)

STATE OF SOUTH CAROLINA VS. BRYANT

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1 THE COURT: This is the preliminary hearing regarding
2 Stephen C. Bryant. Mr. Bryant is present in
3 the courtroom with his counsel, Mr. Jack Howle.
4 Mr. Bryant is charged with two counts of
5 burglary in the first degree under warrants
6 H782547 and 549. Mr. Bryant is charged with
7 three counts of murder under warrants H782548,
8 782551 and 553. One count of first degree
9 arson under warrant H782557. One count of
10 armed robbery under 782558 and one count of
11 possession of a weapon during the commission of
12 a violent crime under 782559. Mr. Howle, do
13 you waive reading?

14 MR. HOWLE: Yes, ma'am.

15 THE COURT: All right. Sargent Turner, you have been
16 sworn earlier today and I will remind you that
17 you are still under oath and ask you to go
18 ahead, please.

19 MR. TURNER: Judge, on October the 8th of this year,
20 this day begins with a series of events
21 involving Mr. Cord Bryant, Stephen Cord Bryant.
22 On that day, sometime between the hours of
23 around 2:30 that afternoon, Mr. James Amos who
24 lives at [REDACTED] Road reports to the
25 sheriff's office that his Smith and Wesson 40

STATE OF SOUTH CAROLINA VS. BRYANT

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1 caliber hand gun was stolen from his residence.
2 He provided a serial number for that weapon
3 which we put in the NCIC as a stolen weapon.
4 Later on that same day, around 6:30 in the
5 afternoon, Mr. Clint Brown was fishing and this
6 case involves the same suspect, but actually
7 occurred in Richland County. It was a chain of
8 events done by Mr. Bryant. Mr. Brown was shot
9 in the back while fishing at the Wateree River
10 Bridge on # [REDACTED] He drove himself to Tuomey
11 Hospital where a 40 caliber projectile was
12 removed from his back. Also found at the scene
13 was a 40 caliber Winchester shell casing. The
14 next event that happened was on October the 9th
15 at around 8:00 in the evening. The body of
16 Clifton Gainey was found on Bell's Mill Road.
17 Mr. Gainey had been shot three times. At that
18 time, two Winchester 40 caliber shell casings
19 were found on the ground. On the 12th of
20 October, I went back out there with another
21 detective and found an additional 40 caliber
22 shell casing and a bullet which would have been
23 located near where the head was located from
24 the scene on October the 9th. An autopsy
25 revealed that Mr. Gainey was shot three times.

1 Once in the back, once in the right shoulder
2 which exited the right shoulder and went into
3 the jaw. I believe that was the bullet that I
4 recovered on the 12th and then once through the
5 left hand. On October the 9th at around 8:40
6 in the evening, the Sumter Fire Department
7 responded to a fire at [REDACTED] Street.
8 This is the residence of Clifton Gainey. Upon
9 their arrival, they found a fire primarily
10 confined to the living room area, actually to
11 a couch. The fire was extinguished and the
12 couch removed from that residence. Also, noted
13 at that time by the ex-wife and son was that a
14 large, a 36 inch color TV and VCR/DVD player
15 ... the DVD player and the surround sound were
16 missing from the residence. They were there at
17 around 5:00, 5:00 to 5:30 that day when they
18 were at the residence prior. Investigator
19 Bryan Horton was called in by me to investigate
20 that fire and determined that the fire was most
21 likely caused by open flames to the couch.
22 There was no other source, in other words, no
23 electrical wire, there was no ... everything
24 else was ruled out with no flammable liquids
25 found. The only way ... the only means was the

STATE OF SOUTH CAROLINA VS. BRYANT

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1 couch was set on fire and it's our belief that
2 it was set on fire to cover the stealing of the
3 TV and stuff. On October the 9th at around
4 5:44 p.m., Ms. Mildred Tietjen had been trying
5 to contact her husband during the day at their
6 residence of [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Ms.
7 Tietjen called his cell phone and a male
8 answered the phone. When she asked for her
9 husband, the male told her that he had killed
10 him. It kind of stunned her, so there was a
11 few more words and then she contacted her
12 daughter who also made a phone call to the
13 phone and the same person answered again saying
14 that he killed Mr. Willard Tietjen and her
15 husband also made a call. After that call, he
16 wouldn't answer the phone. Ms. Tietjen
17 contacted the sheriff's department who
18 responded and upon entry to the house, we found
19 the body of Mr. Willard Tietjen located between
20 the dining room and living room area. An
21 autopsy revealed that he had been shot nine
22 times. At this scene and on this date, eight
23 shell casings, 40 caliber Winchester shell
24 casings were recovered from the residence.
25 Also, several items were taken from the

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1 residence to include a Pentex camera and a jug
2 that was full of change. Some items of
3 Shriner's like jury or emblems. It's quite a
4 list. That was just some of the things that we
5 recovered in which I'll go into a little later.
6 On October the 13th at around 7:00 a.m., the
7 body of Mr. Christopher Burgess was found on
8 Foxboro Road approximately one-half a mile
9 north of [REDACTED] [REDACTED] [REDACTED] He was found and then
10 found that he was shot twice with two 40
11 caliber Winchester shell casings were located
12 at that scene. That is all the crimes that Mr.
13 Bryant has been charged with. On
14 investigation, we developed that Mr. Bryant as
15 a or I developed Mr. Bryant as a suspect
16 starting October the 11th or a potential
17 suspect. The investigation revealed that he
18 was a ... that he was a good suspect and
19 evident at the scene at Christopher Burgess'
20 murder which led us back to Mr. Bryant. Mr.
21 Bryant, two search warrants were executed on
22 Mr. Bryant's house on October the 13th. At
23 around 2:30 in the afternoon, there found in
24 Mr. Bryant's house was the missing color TV,
25 VCR of Mr. Gainey's. A 40 caliber pistol

STATE OF SOUTH CAROLINA VS. BRYANT

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1 stolen from the Amos' residence was recovered
2 from his truck. On that ... later that day or
3 the next day or two, we already had preliminary
4 results and all the shell casings up to the
5 Burgess murder, all the incidents involving
6 shootings had been matched to one gun. That
7 was a dead match to the Burgess shell casings
8 along with the other shell casings were matched
9 to the 40 caliber shell ... I mean, the 40
10 caliber Smith and Wesson that Mr. Amos had
11 reported stolen that was found in Mr. Bryant's
12 truck. He was arrested and Miranda by me, also
13 Miranda by SLED agent Bo Baldwin and Stan Smith
14 of the Richland County Sheriff's office and
15 Captain, David Caldwell of SLED, Investigator
16 Florence and Mark Treat from SLED. He then
17 gave a statement, a written statement that
18 night which he admitted to all of these crimes.
19 He was subsequently charged the next day on
20 warrants. On Friday afternoon, which would
21 have been the 15th, he made contact with myself
22 and Investigator Florence and he took us out
23 and showed us where the cell phone that he'd
24 taken from the Tietjen's house and the jug of
25 the ... the plastic jug of all the money that

1 was taken out of. He told us that he had taken
2 the money to Bi-Lo where he exchanged it for
3 currency. We then took him back to the office
4 and done another waiver of rights. He
5 understand his rights and he gave us a seven
6 page written statement written in his
7 handwriting in which he admitted again to all
8 the offenses.

9 THE COURT: Is there anything further, Sargent Turner?

10 MR. TURNER: No, ma'am.

11 THE COURT: Mr. Howle?

12 MR. HOWLE: The seven page written statement, what
13 date was that written?

14 MR. TURNER: That would be on the 15th.

15 MR. HOWLE: October 15th?

16 MR. TURNER: Yes, sir.

17 MR. HOWLE: And the first oral statement when you say
18 you went there when he admitted all the crimes,
19 that was on October the 8th?

20 MR. TURNER: In a written statement also signed by
21 him.

22 MR. HOWLE: All right. So, there was a written
23 statement also on the 8th?

24 MR. TURNER: No, sir. That would have been October
25 the 13th, the day of his arrest.

STATE OF SOUTH CAROLINA VS. BRYANT

10

- 1 MR. HOWLE: October the 13th, okay. All right. You
2 say you felt he was a suspect on the 11th, but
3 you didn't actually go and have any
4 conversation with him until the 13th?
- 5 MR. TURNER: No. I had a conversation with him on
6 the 12th.
- 7 MR. HOWLE: No statements of any kind given then?
- 8 MR. TURNER: No, sir.
- 9 MR. HOWLE: The gun that you say you found in Mr.
10 Bryant's truck, that was the same weapon that
11 was taken from Mr. Amos' house?
- 12 MR. TURNER: Yes, sir. Matched by the serial number.
- 13 MR. HOWLE: All right. Has any forensics been done
14 on that to show that was the same gun that
15 fired any of the shells that killed these other
16 individuals?
- 17 MR. TURNER: All bullets have matched and all the
18 shell casings were matched.
- 19 MR. HOWLE: They definitely were from that particular
20 weapon?
- 21 MR. TURNER: Yes, sir.
- 22 MR. HOWLE: All right. And that's a 40
- 23 MR. TURNER: It's a Smith and Wesson 40 caliber.
- 24 MR. HOWLE: Okay. Any physical evidence that you've
25 developed in the investigation to show Mr.

1 Bryant's presence at any of these scenes;
2 footprints or fingerprints or anything of that
3 nature?

4 MR. TURNER: At the Tietjen murder, there's DNA
5 evidence that conclusively says he was there
6 and being that he smoked a cigarette and a
7 cigar at that residence. We've got videotape
8 of him made that afternoon after the Tietjen
9 murder in Bi-Lo's exchanging the money and
10 having a video tape of the Gainey murder
11 earlier that day which he said he was with Mr.
12 Gainey and that video tape of him and Mr.
13 Gainey together in his vehicle prior to the
14 murder and I have a witness that on Saturday
15 afternoon of the Gainey murder, he saw two
16 white males in a blue Chevrolet pick up truck
17 turn onto Bell's Mill Road and it was like 7:00
18 that evening just prior to his body being
19 found. On Christopher Burgess, we have video
20 tape with Mr. Burgess and Mr. Bryant inside of
21 the ... it's an Exxon station located at Family
22 Livestock and # [REDACTED] west towards the Base and
23 the witness there, the cashier seen them
24 talking and shaking hands. Mr. Bryant ... Mr.
25 Burgess leaves or Mr. Bryant walks out first

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1 and then Mr. Burgess behind him and
2 approximately three hours later, Mr. Burgess
3 was found dead. Also, we recovered Mr. Burgess
4 had made a purchase at Wal-Mart for four rib-
5 eye steaks and we recovered one package of rib-
6 eye steaks from his residency. We also have
7 the matching receipt that found on Mr. Burgess'
8 person. He took the steaks from Mr. Burgess'
9 and went back home and put them in his
10 refrigerator.

11 MR. HOWLE: And those steaks were bought where?

12 MR. TURNER: At Wal-Mart at around 2:30 that morning,
13 the day he was killed and also, in reference to
14 that in 4:00 in the morning, we have video tape
15 of Mr. Bryant at McDonald's on [REDACTED] [REDACTED]
16 which is 20 minutes later or within 20 minutes,
17 he's at the next location where he had a
18 picture of Mr. Burgess and Mr. Bryant in the
19 same ... inside of that store.

20 MR. HOWLE: And you've got on these steaks, you say
21 Mr. Burgess bought these steaks at Wal-Mart ...

22 MR. TURNER: Around 2:30 that morning.

23 MR. HOWLE: And they were found at Mr. Bryant's
24 house?

25 MR. TURNER: Yes, sir.

1 MR. HOWLE: And it's the same price and everything
2 else as the ...

3 MR. TURNER: One ... two of the steaks had already
4 been eaten. I mean, and this was a couple of
5 days that we discovered this, but when we
6 questioned the girlfriend about it, she said,
7 oh, yeah, he brought some steaks home and put
8 them in the refrigerator and I still have some
9 and Investigator Clark went out there and she
10 had already opened them. She had just cooked
11 one and it was the Wal-Mart and their packaging
12 and it was the exact price. There was two
13 prices on there on the receipt and it was the
14 exact price of one of those packets.

15 MR. HOWLE: Okay. The video that you said was with
16 Mr. Gainey, where was that taken?

17 MR. TURNER: That was the Kwik-Fare.

18 MR. HOWLE: Kwik-Fare?

19 MR. TURNER: The Kwik-Fare on ...

20 MR. HOWLE: What was the DNA evidence that you say
21 was at Mr. Tietjen's?

22 MR. TURNER: His DNA was matched to a cigar that
23 found at the scene and off some cigarettes that
24 was found at the scene. The cigar was smoked.
25 There was a marijuana cigarette that was smoked

STATE OF SOUTH CAROLINA VS. BRYANT

14

1 at the Tietjen's scene. His DNA is on that
2 marijuana cigarette.

3 MR. HOWLE: You say his DNA was on a cigar and some
4 cigarettes and a marijuana cigarette?

5 MR. TURNER: Yes, sir.

6 MR. HOWLE: Okay. Was there DNA of anybody else' on
7 any of these things that y'all have there?

8 MR. TURNER: Also, there was some handwriting or a
9 handwritten note there that has been analyzed
10 and it's his handwriting. That was at the
11 Tietjen scene.

12 MR. HOWLE: Who analyzed that?

13 MR. TURNER: SLED did it.

14 MR. HOWLE: Did the ... I mean, was this just a note
15 pertaining to something else or was it a note
16 pertaining to what happened at any of these
17 places?

18 MR. TURNER: After Mr. Tietjen was killed, he left us
19 a little ... he left us a note. There was
20 quite a bit of talk about it in the community.
21 Basically, it was talking about Mr. Tietjen and
22 then challenging law enforcement to catch him.

23 MR. HOWLE: All right. And you say that note would
24 ... that kind of thing, it has been analyzed by
25 SLED?

1 MR. TURNER: Yes, sir.

2 MR. HOWLE: And it matches his?

3 MR. TURNER: Yes, sir.

4 MR. HOWLE: When was that done?

5 MR. TURNER: Within three weeks of his arrest. If
6 you can give me just a second to locate that
7 information. For information purposes, since
8 I've got it with the firearm. On November the
9 4th is when we received the report back that
10 the firearm matches all of the shell casing in
11 the case. On the handwriting, that was done
12 November the 2nd. That's when we received the
13 report back. What was the other question you
14 asked me?

15 MR. HOWLE: Did the investigation indicate any other
16 individual as a possible suspect in any of
17 these?

18 MR. TURNER: No, sir.

19 MR. HOWLE: Any other names been given to you by Mr.
20 Bryant or anybody else that would indicate that
21 anyone else was involved?

22 MR. TURNER: No, sir.

23 MR. HOWLE: Since Mr. Bryant has been in custody, do
24 you know if any drug tests that's been
25 administered to him?

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1 MR. TURNER: There was one done that ... actually, he
2 submitted a sample of urine that night which
3 was taken by Captain David Caldwell of SLED.
4 The only thing that was discovered was the
5 marijuana.

6 MR. HOWLE: And that was on October the 13th?

7 MR. TURNER: Yes, sir, or early morning hours of
8 October the 14th, but that same time.

9 MR. HOWLE: And it was a urinalysis and it did detect
10 marijuana or not?

11 MR. TURNER: Yes, sir. And he admitted it. He's
12 admitted several times that he smoked marijuana
13 pretty much before each one of these instances,
14 he would smoke marijuana.

15 MR. HOWLE: Do you know if Mr. Bryant has any
16 previous record?

17 MR. TURNER: Burglaries. He served time. I think he
18 just served four ... a little over four and a
19 half or five years on a burglary charge.

20 MR. HOWLE: When was he convicted of that?

21 MR. TURNER: on April the 12th of 1998 and he was
22 convicted of burglary, second non-violent.
23 Sentenced to SCDC ... waived, suspended upon
24 three years of probation and restitution.
25 December the 16th, 1998, he was charged with

1 petty larceny and burglary, second. On January
2 the 29th of 1999, he was convicted of burglary,
3 second non-violent. Sentenced to seven years,
4 suspended to five years with five years of
5 probation and that's it.

6 MR. HOWLE: So, there's no previous acts of violence
7 and I realize ... these burglaries were non-
8 violent, but nothing in his records to show any
9 previous violent act or any kind?

10 MR. TURNER: No, sir.

11 MR. HOWLE: You mentioned that various videos which
12 you viewed with Mr. Bryant and these victims,
13 anything the investigation would indicate that
14 he knew any of these people, ever worked for
15 them or what his relationship may have been to
16 them?

17 MR. TURNER: He knew Mr. Gainey. Mr. Gainey and him
18 ... Mr. Gainey would be his first victim as far
19 as ... there's no connection with him and Mr.
20 Bryant that's not before this court, but Mr.
21 Bryant at the bridge, there's no connection.
22 Mr. Gainey and him worked together for Terrence
23 Varner Construction.

24 MR. HOWLE: I'm sorry. He worked where?

25 MR. TURNER: Varner Construction Company.

STATE OF SOUTH CAROLINA VS. BRYANT

18

1 MR. HOWLE: Okay. Any indication that there had been
2 any problems between him and Mr. Gainey or any
3 of these other individuals?

4 MR. TURNER: No, sir. He didn't know Mr. Tietjen nor
5 did he know Mr. Burgess.

6 MR. HOWLE: But, nothing Mr. Gainey didn't tell you
7 that they they'd any arguments or any kind of
8 ...

9 MR. TURNER: Not to my knowledge.

10 MR. HOWLE: Are you aware of any kind of medication
11 that Mr. Bryant has been on?

12 MR. TURNER: I think he is on medication, but I can't
13 recall what it is.

14 MR. HOWLE: Do you know what it's for and why he's on
15 medication?

16 MR. TURNER: I believe it's depression, but I'm not
17 certain. I don't remember what it was.

18 MR. HOWLE: Do you know if he was on that prior to
19 any of these things happening?

20 MR. TURNER: I can't answer that, no.

21 MR. HOWLE: Any fingerprints been recovered from any
22 of the scenes?

23 MR. TURNER: Not to my ... I know at Gainey, I'm not
24 certain. I don't know how ... they ... I
25 haven't gotten a report back on that yet. I

1 don't know if they've said. They went after
2 the DNA which is really the critical evidence
3 and whether they had any of the rest of it, I'm
4 not certain. We get stuff back everyday from
5 SLED, so, I'm not certain about fingerprints.

6 MR. HOWLE: The stolen items, the TV and some of
7 these other items, those were found at Mr.
8 Bryant's home?

9 MR. TURNER: Yes, sir.

10 MR. HOWLE: Any indication anything was sold to a
11 pawn shop that was taken from any of these
12 homes?

13 MR. TURNER: The items were seen in Mr. Gainey's
14 house was around 5:30 by his son who stayed
15 there with him and his ex-wife who brought the
16 son by there to get some of his belongings and
17 to let Cliff know that he would be staying the
18 night at her house and with her and they hadn't
19 heard anything from him and they came back and
20 that's when they discovered the fire. They
21 were the ones that discovered the smoke coming
22 from the house and upon the fire being
23 extinguished, that's when they noticed that
24 this stuff was being missing.

25 MR. HOWLE: Okay. I realize he's given a statement

1 to the police. Is there anyone that you ... in
2 your investigation that you've talked with that
3 indicated that Mr. Bryant had stated to them
4 anything in regard to any of these events?

5 MR. TURNER: Mr. Roy Lee Lambert was fishing with him
6 on ... which would have been on the 12th I
7 believe it is and he was fishing with him at
8 the Wateree Bridge. The first indication Mr.
9 Lambert says was that on that Saturday night
10 after the shooting at the Wateree Bridge that
11 Mr. Bryant told him that he had shot him as he
12 said it, I shot me a nigger at the river. Mr.
13 Lambert said ... stated that he thought that he
14 was ... Mr. Bryant is a pathological liar
15 according to him and he said he blew it off,
16 but then on Tuesday, they were fishing at the
17 river. They met at the river, the Wateree
18 River and were fishing and Mr. Bryant then
19 pointed across the river and said, I shot him
20 ... I shot that fellow over there the other
21 night and so, Lambert was now becoming aware
22 that ... that he was aware that this guy had
23 been shot and also at that time, for the ...
24 Mr. Bryant pulled out a buck-horn, it's made in
25 Germany knife with a buck-horn handle. Mr.

1 Lambert liked it and said, you know, how much
2 do you want for it and he said, I'll take \$10
3 for it and he bought the knife for \$10. That
4 was turned over to us by Mr. Lambert and that
5 knife came from Mr. Tietjen's house the day
6 before. That's the only statements I'm aware
7 of of him admitting to anybody that he shot or
8 had anything to do with these crimes.

9 MR. HOWLE: And you say he told Mr. Lambert actually
10 twice the night of the shooting and then later
11 on

12 MR. TURNER: He told him once . . . that Saturday
13 night, he mentioned it to him on a telephone
14 conversation and then that Tuesday which would
15 have been the 12th they were fishing and he
16 made the comment and that was just about the
17 shooting. And of course, he sold the knife
18 that had been at the Tietjen's house.

19 MR. HOWLE: Your Honor, I don't have any further
20 questions at this time.

21 THE COURT: All right. There is sufficient evidence
22 to find probable cause on all charges. All
23 right. We'll be in recess until 2:00.

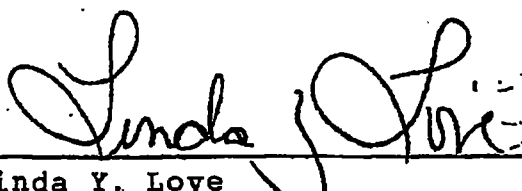
24 (There being nothing further, the hearing concluded
25 at 12:40 p.m.)

CERTIFICATE

This is to certify that the within hearing consisting of Twenty-One (21) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on November 18, 2008.



Linda Y. Love
Court Reporter

Notary Public for South Carolina
My Commission Expires: February 1, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

MAGISTRATE'S COURT
Warrant No.: H-980297

The State of South Carolina,)
Plaintiff,)
v.)
Stephen Corey Bryant,)
Defendant.)

COPY

HEARING

Tuesday, December 13, 2005
4:45 p.m. - 4:54 p.m.

The Hearing before the Honorable Kathy Ward was taken at the Sumter County Magistrate's Court, Courtroom 2, 115 North Harvin Street, Sumter, South Carolina, on the 13th day of December 2005 before Diane M. Hendricks, Court Reporter and Notary Public in and for the State of South Carolina.

CREEL COURT REPORTING, INC.
1116 Blanding Street, Suite 1B / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES:

Jack D. Howle, Jr., Esquire
Howle & Babb, LLP
P.O. Box 2685
Sumter, South Carolina 29151
Attorney for the Plaintiff

Also Present: Stephen Corey Bryant

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EXHIBITS

(There were no exhibits.)

1 D.E. FLORENCE, having been duly sworn, testified as
2 follows:

3 THE COURT: Stephen Corey Bryant is charged with
4 assault and battery with intent to kill. He is
5 present.

6 MR. FLORENCE: On 10/26/05 at about 5:15 p.m. a
7 report was -- actually the report was made at
8 6:00, the incident occurred at 5:50, where --
9 excuse me. Correctional Officer Larry Justice
10 was in the cell pod, I believe it was C-pod and
11 he was taking up the dinner trays, putting them
12 in the trash, going from cell to cell. When he
13 went to Mr. Bryant's cell, he got the dinner
14 tray. Mr. Bryant put the tray in the plastic
15 bag, the trash bag, himself and as Mr. Justice,
16 the correctional officer, was about to turn to
17 leave the cell area right at the door to shut
18 the door, according to the report, Mr. Bryant
19 hit -- and as Mr. Justice said, he blind-sided
20 him on the side of the face. He then hit him
21 again. And as he fell to the floor he hit his
22 head on the wall. At that point he said he
23 blacked out. Witnesses had indicated that he
24 was hit several times and kicked during the
25 altercation. Mr. Justice had a nosebleed,

STATE VS. BRYANT

4

1 lumps on his head, forehead and the back of his
2 head and he also had a broken eye socket bone.
3 His nose was broken in two places, his sinus
4 bones in his nose, they were crushed, and his
5 upper cheekbone below the eye socket was broke
6 as well. Mr. Justice was taken to the hospital
7 and treated for his injuries. He, on
8 December -- not December. On October the 31st,
9 2005 he had surgery to try to repair the broken
10 bones. And during the course of having been
11 going to the doctor, it was found out that he's
12 got an aneurism in the middle of his brain.
13 And according to his doctor and what he told me
14 is that the aneurism has been attributed to the
15 assault that was occurred to him on that date,
16 which was on 10/26. He is now awaiting
17 surgery, brain surgery, scheduled to occur
18 January the 18th, 2006.

19 THE COURT: Anything further?

20 MR. FLORENCE: I asked also, was there anything that
21 Mr. Bryant did to -- he did to cause Mr. Byrant
22 to attack him and he had indicated he hadn't
23 said anything to Mr. Bryant all day. And he
24 didn't know why Mr. Bryant jumped him.

25 THE COURT: Mr. Howle.

1 MR. HOWLE: Thank you, Your Honor.

2 MR. FLORENCE - EXAMINATION BY MR. HOWLE:

3 Q: You said that there were witnesses who
4 indicated that they saw or heard some of this
5 going on: Were those inmates?

6 A: No, sir. The witness that I have, this one
7 here, is a correctional officer, Officer Wanda
8 Burnelle. She was the officer in charge of
9 A-pod, which is the women's side. She was in
10 the control room, according to the
11 investigators, talking with individuals there,
12 and once she observed the assault occurring,
13 that's when she called for help to rush in to
14 break up the situation and get the officer out
15 of the pod for treatment.

16 Q: All of the other inmates that are in this pod,
17 were they all in their rooms or were they out?

18 A: As far as I can tell from the information I
19 got, everyone was in their rooms.

20 Q: So the only door open to any inmate's cell was
21 Stephen's door?

22 A: That's correct.

23 Q: Have you talked to any of the inmates on either
24 side of the cell to see what they heard or
25 anything?

STATE VS. BRYANT

6

- 1 A: No, sir. I have not.
- 2 Q: If the jail could provide me the names of who
3 could have been on either side --
- 4 A: I'm sure. Yes, sir.
- 5 Q: You said Officer Justice said there was no
6 previous conversation that day or anything.
- 7 A: That's correct.
- 8 Q: Do you know if there's been any problems
9 specifically between Stephen and Officer
10 Justice in the past?
- 11 A: No, not to my knowledge, sir.
- 12 Q: Did Stephen give any statement?
- 13 A: No.
- 14 Q: You indicated that Ms. Burnelle could see from
15 where she is in the control room. What exactly
16 could you see at that cell area?
- 17 A: I don't know exactly what she saw at that
18 point, but she said that she could see. And I
19 got a statement written by her as well and that
20 "it's indicated on the above date and time,
21 approximately, I, Correctional Officer
22 Burnelle, opened Charlie-pod door," which is
23 C-door, "where Officer Justice entered to pick
24 up the dinner tray before changing shifts.
25 When I opened the C-101, Inmate Stephen

1 Bryant's room, I observed him push Office
2 Justice to the floor. I stepped over to look
3 at Office Justice and I observed him on the
4 floor with Inmate Bryant, Stephen, and called
5 for backup. Inmate Bryant was hitting and
6 kicking Officer Justice in the face and head
7 area of the body. Inmate Bryant then ran back
8 to his cell, stepped inside and closed the
9 door. Sergeant Robinson Kelley and C/O Wilson,
10 C/O Glover, C/O Riles, C/O Milner and other
11 officers responded to the incident."

12 Q: Do you know if she actually left the control
13 room area until the other officers came or
14 did --

15 A: No. The understanding that I got, that she was
16 there and when the other officers arrived they
17 were allowed to go inside, but she went, from
18 my understanding, maintained where she was in
19 the control room.

20 Q: So she either didn't or wasn't able to go --

21 A: Right.

22 Q: -- to offer any kind of assistance?

23 A: Yes, sir. The control room sits at an angle
24 where you can see one pod and looking in the
25 other direction you can see the pod that Mr.

STATE VS. BRYANT

8

- 1 Bryant was in. It's got a clear shot of the --
- 2 Q: So where she was from she could see the door
- 3 and she could see --
- 4 A: Yes, sir.
- 5 Q: -- Officer Justice on the floor?
- 6 A: Yes. The first door, the first one.
- 7 Q: In her statement did she indicate she heard any
- 8 kind of conversation at all?
- 9 A: No, sir. She did not.
- 10 Q: How long had Stephen been in that particular
- 11 pod?
- 12 A: I don't know, but it's been a pretty good
- 13 while. I don't know exactly how long it was.
- 14 He'd been there the times I seen him going
- 15 through the jail that that was the pod he was
- 16 in, because I'd been there several times to see
- 17 other inmates and I would see him there until
- 18 they moved him to the state prison.
- 19 Q: Do you know of any other discipline problems or
- 20 anything that had come about since he had been
- 21 in C-pod?
- 22 A: No, sir.
- 23 Q: Do you know if he had filed any kind of
- 24 complaints about inmate harassment, officer
- 25 harassment or anything else that showed the he

1 was having a problem?

2 A: None that I'm aware of. And I do have some
3 photographs of --

4 Q: Thank you. You showed me those prior. The
5 judge may want to see them.

6 THE COURT: (Viewing photographs.)

7 Q: Has anybody else been interviewed that you know
8 of, other than the two officers?

9 A: No, sir. The only two I interviewed was the
10 officer who was there and viewed the assault
11 and Mr. Justice, the victim.

12 Q: Okay. Any video in the cell pod itself that
13 would have showed anything?

14 A: No, sir. None to my knowledge.

15 MR. HOWLE: Thank you. I don't have anything
16 further, Your Honor. I appreciate it.

17 (There being no further questions, the hearing
18 concluded at 4:54 p.m.)

19

20

21

22

23

24

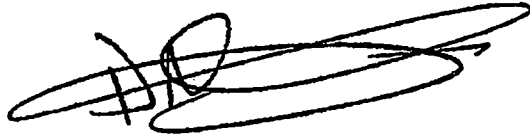
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CERTIFICATE

This is to certify that the within hearing consisting of Nine (9) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenowriter with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on November 18, 2008.



Diane M. Hendricks
Court Reporter

Notary Public for South Carolina
My Commission Expires: April 30, 2011

ORIGINAL

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF SUMTER)

State of South Carolina,)	
)	
PLAINTIFF,	)	ARRAIGNMENT
	)	(DEATH PENALTY NOTICE)
-VS-	)	2004-GS-40-10096
	)	2006-GS-43-00696
Stephen Corey Bryant,	)	2006-GS-43-00699
)	
DEFENDANT.)	
_____)	

BEFORE THE HONORABLE CLIFTON NEWMAN, JUDGE
 APRIL 27, 2007
 SUMTER, SOUTH CAROLINA

A P P E A R A N C E S:

C. Kelly Jackson, Esq.
 For the State

Jack D. Howle, Jr., Esq.
 For the Defendant

REMA K. GANTT THOMAS
 CIRCUIT COURT REPORTER

E X H I B I T S

THERE WERE NO EXHIBITS INTRODUCED AT THIS HEARING.

1 defendant, Stephen Corey Bryant, have signed the
2 acknowledgement receipts -- acknowledgement of receipt
3 of the notice and receipt of the indictments. And
4 I'll hand those to the Clerk's Office to file. And,
5 with permission of the Court, I will publish the
6 notice and indictment.

7 THE COURT: You may do so.

8 MR. JACKSON: Sir, do you answer to the name
9 of Stephen Corey Bryant? If you do, so signify by
10 saying "I do."

11 MR. BRYANT: I do.

12 MR. JACKSON: Mr. Bryant, you're charged in
13 Indictment 2006-GS-43-699 with count one murder, and
14 that Stephen Corey Bryant did, in Sumter County, on or
15 about October 11, 2004, feloniously, willfully, and
16 with malice aforethought, either expressed or implied,
17 kill one Willard Tietjen by means of shooting him with
18 a .40-caliber handgun and that the said Willard
19 Tietjen (PH) did die as a proximate result thereof.

20 You're charged in count two with armed
21 robbery, that Stephen Corey Bryant did, in Sumter
22 County, on or about October 11, 2004, violate Section
23 16-11-338 of the South Carolina Laws in that he did,
24 while armed with a deadly weapon, that being a .40-
25 caliber handgun, he did feloniously take from Willard

1 MR. BRYANT: What do you mean by God, by
2 country?

3 MR. HOWLE: That's just the response you
4 give when they ask you if you're going to receive a
5 trial, how you'll be tried.

6 MR. BRYANT: I still don't understand. I
7 don't understand.

8 MR. JACKSON: Mr. Bryant, you're further put
9 on notice that the State of South Carolina, by and
10 through the Solicitor of the Third Judicial Circuit,
11 acting pursuant to the South Carolina Code of Laws,
12 will seek the imposition of the sentence of death upon
13 you for the murder of Willard Tietjen and that the
14 murder was committed while in the commission of the
15 crime of robbery while armed with a deadly weapon.
16 And may God give you a true deliverance.

17 That's all I have at this time, Your Honor.
18 Thank you.

19 THE COURT: The Court will enter a not
20 guilty plea on behalf of the defendant. He will be
21 tried by God and his country.

22 MR. HOWLE: Thank you, Your Honor.

23 MR. JACKSON: Your Honor, we'll file the
24 proceeding by alerting the Supreme Court. They will
25 assign the Judge to that exclusive jurisdiction.


STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER,
 AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF
 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
 ABOVE-CAPTIONED CASE ON APRIL 17, 2007, IN SUMTER,
 SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
 NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION,
 NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
 AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE
 TWENTY-EIGHTH DAY OF JUNE, 2009.



REMA K. GANTT THOMAS
 OFFICIAL COURT REPORTER
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES 11/21/2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)
)
 STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 v.)
)
 STEPHEN COREY BRYANT,)
)
 DEFENDANT.)

COURT OF GENERAL SESSIONS

TRANSCRIPT OF RECORD
 C/A #: 04-GS-40-10096
 06-GS-43-00696;0699

SUMTER COUNTY COURTHOUSE
 May 14, 2007

BEFORE:

HONORABLE CLIFTON NEWMAN, PRESIDING JUDGE.

APPEARANCES:

Solicitor C. Kelly Jackson, Esquire
 Attorney Jack Howle, Esquire
 Attorney James Babb, Esquire

TAKEN BY MELISSA R. WINFIELD
 CERTIFIED VERBATIM REPORTER

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HEARING

3

1 THE COURT: Alright, this matter involves the
2 question of appointment of counsel in this case. Mr.
3 Solicitor, Mr. Howle, Mr. Babb let me hear you. Mr.
4 Howle.

5 MR. HOWLE: Your Honor in regard to complying with
6 the provisions of the code section a second attorney is
7 to be appointed. An Order was presented to Your Honor
8 asking that Mr. Babb be appointed. He has already met
9 with Mr. Bryant and gone over the matters of the case and
10 it was at that time that I heard a hearing was being
11 requested to question some aspect of that order being
12 presented. I'm not exactly sure what has caused this
13 hearing to be asked for. I spoke to the Solicitor last
14 week and I think he had some concern because of Mr.
15 Babb's Family Court at times whether that would be a
16 conflict in the future. I can certainly assure to the
17 Court that any conflict that appeared to be caused by him
18 being involved in this case would be resolved well ahead
19 of time. We certainly can have people available if there
20 is some conflict to be available to go in Family Court if
21 that is the Solicitor's concern. I'm trying to state his
22 position and I'm not exactly sure what he wants to
23 accomplish with this hearing.

24 THE COURT: Alright Solicitor.

25 THE SOLICITOR: Your Honor I appreciate you giving me

HEARING

4

1 the opportunity to be heard. When I first got the letter
2 from Mr. Babb, which I appreciate getting a copy and
3 order I believe that he sent you, my first thought was
4 this is going to kill us in Family Court. We've got
5 Family Court in Sumter County every Thursday, other than
6 the In Chambers weeks. These cases typically take two
7 weeks trial- this is going to take two weeks to try.
8 Defense attorneys typically get two weeks of protection
9 prior to the week of trial and sometimes four weeks so in
10 this particular instance if we took the public defender
11 who does the Family Court, public defender work and took
12 him out of that rotation we are talking four to six weeks
13 of not having that attorney down in Family Court, and
14 that was my first concern. I thought about it again and
15 quite frankly that leads into someone else in General
16 Sessions Court. If it was a second public defender
17 appointed that does General Sessions work up here we
18 would be in the same problem in General Sessions Court
19 getting two lawyers who are appointed to represent people
20 who have charges brought against them and deserve
21 representation. Those people would be without their
22 lawyers for a four to six week period of time, and I
23 starting thinking that could be a novel issue so I went
24 and looked at some of the appointment process, and I draw
25 the Court's attention to 16-3-26 which is the actual

THIRD JUDICIAL CIRCUIT
(803) 436-2150

HEARING

5

1 appointment statute in death penalty cases for indigent
2 defendants of which Mr. Bryant is, there is a paragraph
3 that states that only one of the attorneys to be
4 appointed shall be a public defender or member of his
5 staff, and I believe in this particular case we would be
6 appointing two. In addition Your Honor 17-3-60 which
7 area of the statutes that sets out the procedures for
8 establishing public defender systems in counties,
9 subsection E says that public defenders shall give
10 priority to their duties as they are hired and as they
11 are contracted as they are paid to do as public defenders
12 and they may engage in private practice if permitted, but
13 in any event no interference or no prevention of their
14 duties should result from any other practice, and I
15 believe if you allow in this particular instance for two
16 of the public defenders we've got in this county to be
17 appointed in this case.

18 MR. HOWLE: Your Honor I have communication from Mr.
19 Bryant. May I approach the bench and hand it up. It is
20 confidential. The Solicitor has no business ...

21 THE COURT: You need to approach in the midst of his
22 argument or---

23 MR. HOWLE: Oh I thought he was through.

24 THE COURT: He's still standing. Have a seat..

25 THE SOLICITOR: Looking at Rule 608 which talks about

HEARING

6

1 the appointment process by the Court. Paragraph F-1
2 simply talks about the appointment of lead counsel,
3 paragraph F-4 describes the way in which the Court would
4 go about appointing off the list- the alphabetical list
5 that kept in the Clerk's Office and it says the Court may
6 deviate from the list if there is reason to do so, and I
7 would ask the Court- if what the defense counsel is
8 asking you to do is appoint another public defender then
9 I would ask you to deviate from the list and not appoint
10 any of the public defenders that are on that list. The
11 only two that I am aware of are Chip Finney and Mr. Babb
12 and that's the cause of problem of judicial economy that
13 we have, either of them or any other public defender is
14 appointed to be second chair or lead counsel or second
15 lawyer in this particular case. I appreciate the Court
16 giving me an opportunity to be heard.

17 THE COURT: Alright.

18 MR. HOWLE: You know the last death penalty case I
19 tried there were two solicitors sitting at the table at
20 the trial and would certainly assume there will be two
21 solicitors sitting there now trying it and he is talking
22 about not being able to handle the case load. We can
23 only try one case at a time, who's being tied up here. I
24 don't understand that. If this Court's going for two
25 weeks trying it, nobody is going to be here trying

HEARING

7

1 anything anyway. But I totally disagree that he would
2 have standing to tell us who can be in the second chair
3 or the lead counsel in this death penalty case. I made
4 it very clear to him that we can take care of any
5 conflict between Family Court, and beyond that I don't
6 see where he would have any standing to say who should be
7 appointed to represent Mr. Bryant.

8 MR. BABB: May I approach, Your Honor. I also have a
9 Notice of ... and I think I can speak for the entire
10 defense bar in South Carolina, but we do object to the
11 Solicitor intervening and interfering in the process.
12 This is an affidavit or statement by Mr. Bryant. Mr.
13 Howle and I have read the statutes, we have read the
14 appointment process, we have discussed it. Mr. Howle is
15 a contract public defender. He is the chief contract
16 public defender. There are no formal public defenders in
17 Sumter County period. They are all contractors. I am
18 not Mr. Howle's employee. I do not work at his
19 direction. I also take issue with Mr. Jackson's point
20 that the statute is the key from having the two public
21 defenders, it's to serve judicial economy, no sir it's to
22 serve the client so that they have one counsel that is
23 experienced and is operating in a private capacity and
24 has more time to devote. You know Your Honor we have
25 rules that deal with conflicts. They deal with conflicts

THIRD JUDICIAL CIRCUIT

(803) 436-2150

1 among and between all of the Courts and they would apply
2 in this situation if and when a conflict arose. It's
3 premature at this point, as I say I'm a contractor. The
4 whole notion that there is going to be some sort of
5 conflict. First of all, I don't know when this case is
6 going to be tried. Mr. Bryant was arrested in 2004.
7 Notice of death penalty was 27th of last month. Discovery
8 wasn't received until last week. The State thought it
9 was complicated enough to hold discovery and to hold
10 notice of the death penalty for two and a half years. It
11 may be quite some time. I may not be a public defender
12 at that point. First the board would have to extend
13 additional contracts, I would have to accept, legislation
14 has to pass both bodies of our legislature to establish
15 any statewide uniform system that may eliminate contract
16 public defenders. I do the juveniles kind of as much as
17 mission as anything else. It hardly pays for the
18 secretarial staff time it takes to do them. With regard
19 to conflicts, Your Honor I have a docket for May 17th. I
20 have one client on the docket-- one. I have a docket here
21 from May 3rd. The Solicitor's Office-- every one that was
22 scheduled by the Solicitor's Office save one client in a
23 two page document had no attorney when they scheduled
24 their hearings. I have a docket for April 19th. Three
25 cases on there were mine. The circumstances in all three

HEARING

9

1 were continued. The alleged event on the first one
2 occurred on September 15, 2006. The petition was signed
3 October 12, 2006. It was held by the Solicitor's Office
4 and not filed until March 19, 2007. In the second charge
5 that I had to have continued the offense date was May 5,
6 2005. The petition was signed October 4, 2006. The
7 Solicitor's Office held it and did not file it until
8 March 19, 2007. The last case I had to continue the
9 client did not show for an appointment. The incident
10 date was November 13, 2006. The petition was signed
11 November 28, 2006. It was held by the Solicitor's Office
12 until March 19, 2007. Your Honor there is some
13 cooperation- if there is some cooperation between the
14 Solicitor's Office and the defense bar, I think all and
15 any conflicts could be taken care of. That's all it
16 takes. I would pledge to cooperate, but I'm more of the
17 tail on the dog than I am the dog. You know, it's going
18 to require the Chief Administrative Judge of Family
19 Court. It will involve the clients themselves. It may
20 involve some other attorneys. It may involve the Board
21 of Directors. We had a situation before when I was in an
22 eight week Federal trial, and we decided the best thing
23 to do at that point was to basically contract someone to
24 cover that eight week period, and if this trial turns
25 into an eight week trial I'm sure the Board would

THIRD JUDICIAL CIRCUIT
(803) 436-2150

1 consider that, but again it's all very premature. It
2 seems to me that it has more to do with whether or not
3 Mr. Jackson wants me on this case or not since he is
4 making a very unusual step of intervening- a prosecutor
5 intervening in the appointment process in a death penalty
6 case. I think we are treading on extremely serious
7 ground- extremely serious ground, and again there is a
8 rule that provides for what is to happen if there is a
9 conflict that can't be --- I will be happy to work with
10 Ms. Taylor, I'll be happy to work with Mr. Jackson. He
11 knows my phone number, he can call me, we can
12 communicate. Lastly, the prohibition that he refers to
13 as I mentioned previously Mr. Howle and I both looked at
14 that and look at it very seriously. There are provisions
15 that deal with whether public defenders can do any work
16 at all in the private sector. Here the Board has
17 determined yes they do because they don't, you know, what
18 little bit you get paid to do public defender work here
19 you hire your own staff. You do your own staff, you do
20 your own retirement program, you provide your own office
21 space, buildings and supplies. And I'm being appointed
22 in this case or I'm on that list in this case, not as a
23 public defender- not as a public defender, and I don't
24 think that is as a contract public defender in the sense
25 that we have here in Sumter County is not what the

HEARING

11

1 statute— the statute doesn't want a death penalty client
2 stuck with two public defenders that are full time doing
3 that and the call of the Solicitor by their order in
4 cases.

5 THE COURT: Mr. Babb are you a public defender or
6 not?

7 MR. BABB: I have a contract with the Defender
8 Association for Sumter County to represent certain
9 juveniles.

10 THE COURT: And you and Mr. Howle are in the same
11 firm. There is a prohibition against two attorneys from
12 the same staff being on a case if that's what it means.
13 He said they are not—

14 MR. BABB: Your Honor if I may— you talk about us
15 being in the same firm, we have a real estate practice.
16 We are in a partnership for the purpose of that real
17 estate practice.

18 THE COURT: I have no idea as to you or your firm.
19 I've never—

20 MR. BABB: We are ...

21 THE COURT: Wait until I get through. I have no
22 idea about you, your firm, or your association with Mr.
23 Howle it's just that the day after we had the --- that
24 Mr. Bryant was arraigned in this case I received a letter
25 from you saying you had already begun working on this

HEARING

12

1 case and should be appointed to be lead counsel in this
2 case. The Solicitor has notified the Court that he wants
3 to be heard and that's why we are here. I'll hear you
4 now. Go ahead sir.

5 MR. BABB: I object to him being heard.

6 THE COURT: That objection by the Court is overruled.

7 MR. BABB: Secondly, with regard to Mr. Howle and I,
8 we have a real estate practice in addition to our
9 criminal work because in our criminal work we are purely
10 independent contractors. We do not share in profit,
11 management, in any of that, and I mean I don't know what
12 more I can say about that other than our association
13 deals with real estate and real estate only. There are
14 some other matters regarding the defense and the client
15 that I would be happy to share with the court that would
16 require ex parte meeting and I would prefer that be on
17 the record as well. I have the 608 list. My name
18 appears first on it. I discussed that with Mr. Howle.
19 When I say the 608 list in other words the Supreme Court
20 of South Carolina has certified me to be qualified as
21 lead counsel in death penalty cases.

22 THE COURT: What is your understanding of the
23 language of this rule 16-3-26 that says that only one of
24 the attorneys so appointed shall be a public defender or
25 a member of his staff. The intent of that and the

HEARING

1 purpose of that is- what you understand it to be?

2 MR. BABB: The intent and purpose as I understand
3 that, it reads the public defender which usually refers
4 to in common whoever would be the chief public defender,
5 and the chief public defender has employees or operates
6 solely as their own in the smaller counties but say in
7 Richland, Lexington, and others they have employees that
8 work for them as assistant public defenders. They are
9 under their management and control. Otherwise the
10 legislature would have used the term a public defender or
11 any public defender. When you are talking about the
12 public defender or a member of his staff you are
13 referring to an office of public defenders wherein no one
14 can represent two clients even though there have been
15 some special ethic rules that they are trying to carve
16 out to do that because it would be a conflict of interest
17 and, therefore, it doesn't apply. If it were to apply,
18 it is certainly a matter that has been discussed with Mr.
19 Bryant.

20 THE COURT: All right. Mr. Howle?

21 MR. HOWLE: I just want to point out that conflict
22 matter was primarily put in there because of co-
23 defendants and staff having the same information and yet
24 they are working with the same two people. Maybe one of
25 the advantages that contract public defenders have on

1 that is since we all have our individual staffs and we
2 represent co-defendants we don't have that shared
3 information like that from the same office. Here there
4 is only one defendant, and I would also add not only is
5 Mr. Babb first on the list and qualified and besides
6 being the same physical office that would also make a
7 great deal easier to work on this case and prepare it for
8 trial.

9 THE COURT: Mr. Solicitor?

10 THE SOLICITOR: Your Honor the other thing I want to
11 add as far as the list is concerned- I'm quite frankly
12 not sure exactly how that goes but the last person
13 appointed on a death penalty case and I don't know if
14 it's off the list or because he was the public defender
15 at the time or not but Mr. Babb was the last one
16 appointed and that was on the retrial of Bobby Wayne
17 Stone. And Your Honor signed that in July of 2002
18 appointing Mr. Babb and Mr. Littlejohn.

19 MR. BABB: Your Honor, it was a remand, which my
20 position as I told you at the time was that we were
21 basically on the case but needs to have an order.
22 Secondly, that was signed before rule 608 was put into
23 effect. I believe that order is dated sometime in 2002.
24 The list under rule 608 was put into effect I think
25 October 14, 2003, here's another hand up of that. Was

HEARING

15

1 not in effect at that time and to my knowledge and belief
2 no one has been appointed from the rule 608 list period.

3 THE COURT: Is there anything else on this issue?

4 THE SOLICITOR: Nothing else from the State Your
5 Honor.

6 MR. BABB: Yes sir. I have some matters dealing with
7 the preparation of the defense that needs to be on the
8 record.

9 THE COURT: Mr. Babb you have not been appointed to
10 represent him. You are not his lawyer.

11 MR. BABB: I have talked with him Your Honor, and I'm
12 speaking for him right now and we discussed this
13 specifically.

14 THE COURT: And you have matters regarding what?

15 MR. BABB: Defense preparation.

16 THE COURT: That should be off the record?

17 MR. BABB: Yes sir.

18 THE COURT: The Court will not address any matters
19 regarding defense preparation off the record at this
20 time. I have other hearings scheduled and this matter is
21 set to address this issue only which I will take under
22 advisement.

23 THE SOLICITOR: Thank you Your Honor.

24 MR. BABB: Your Honor let me clarify that, when I say
25 ex parte I'm not saying off the record.

HEARING

16

1 THE COURT: Pardon me?

2 MR. BABB: When I'm talking about ex parte I don't
3 mean in camera. I mean ex parte, in other words, it
4 needs to be on the record but just not involving the
5 Solicitor.

6 THE COURT: So what do you want me to do?

7 MR. BABB: Either lets take the recorder down to
8 chambers or have the Solicitor, have the court room
9 cleared.

10 THE COURT: Mr. Babb come up and let me know what you
11 are talking about. Approach the bench-- and Mr. Howle.

12 **ATTORNEYS APPROACHED BENCH**

13 THE COURT: I'll take it under advisement.

14 MR. BABB: Thank you Your Honor.

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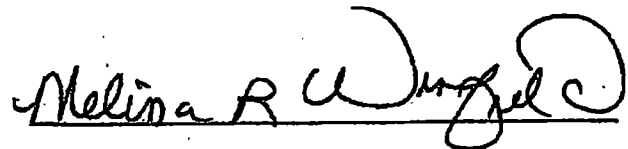
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CERTIFICATE

This is to certify that the hearing in the matter of State of South Carolina vs. Stephen Corey Bryant, consisting of ~~fifteen~~ ^{Sixteen} (16) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this ~~16th~~ ^{05th} day of November, 2008.



Melissa R. Winfield
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

v.

STEPHEN COREY BRYANT)

DEFENDANT.)

TRANSCRIPT OF RECORD
04-GS-40-10096
06-GS-43-00696
06-GS-43-00699
May 24, 2007
Florence, South Carolina

BEFORE:

THE HONORABLE THOMAS A. RUSSO , JUDGE.

APPEARANCES:

C. KELLY JACKSON, ESQ., SOLICITOR
DUDLEY SALEEBY, JR., ESQ.
Attorneys for the State

JACK D. HOWLE, JR., ESQ.
JAMES H. BABB, ESQ.
Attorneys for the Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

Y9003

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EXHIBITS

COURTS:

NO.	DESCRIPTION	I.D./EVD.
1	Affidavit	15

THE COURT: Has there been any formal motions or is there anything filed in this? Because I know that Judge Newman heard -- heard this matter prior to me being assigned the case. Is there anything -- I don't have a -- I've got one page from Court Administration assigning the case to me.

MR. JACKSON: That's about all I have, Judge. Yeah, not to my knowledge.

Nothing's been filed, has it?

MR. HOWLE: No, I think you were given this last time which was the notice of objection and objection, whatever your purposes in light in being here but. Your Honor, this is, I think Mr. Babb had one of those last time when we had the other hearing.

MR. JACKSON: I've not seen one of those yet.

MR. BABB: He was handed one in --

MR. HOWLE: Yeah, I know you were given one at the other hearing. I don't know if you have it with you.

THE COURT: Have you got anything with you, Kelly? If you don't, well I'll get you a copy.

MR. JACKSON: I'd like to have a copy. Thank you, sir.

MR. HOWLE: And that was a statement signed by Mr. Bryant in regard to some of the issues that came up at that last hearing, Your Honor.

THE COURT: Let me -- get me a copy -- get two copies for Mr. Saleeby and for Mr. Jackson.

All right. Mr. Howle, I'll be happy to hear from you, sir.

MR. HOWLE: Thank you, Your Honor. Your Honor, I don't know if this is in the form of a hearing or formal conference, or exactly what we're having. We basically had asked -- several weeks ago we were served with the, by the Solicitor's Office, with the intent to seek a death penalty. Immediately in pulling the statutes in regard to the appointment of second attorney, looking at that and Rule 608 Mr. Babb was next on the Rule 608. He's also has done a death penalty in the past, is certainly qualified. Prepared an order and sent it over to the administrative judge because the way the act reads at that point in time the administrative judge has the authority to appoint the other attorney.

THE COURT: Right.

MR. HOWLE: After a day or so of not receiving it I got a call back from the law clerk for Judge Newman that basically said Mr. Kelly had asked to have some kind of hearing in regard to it. And we actually had a hearing in which he raised some questions which I assume he may be raising again today, I don't know, as to some concern because Mr. Babb does do contract public defender work in

Family Court as a juvenile public defender. We feel the statute clearly indicates that that is not a conflict whatsoever because we're not -- we're not full time public defenders. We do not work in the same office as public defenders. Plus he's not even general sessions; he's in a different court all together. So we didn't think there was any merit in regard to that. What other issues he is raising I do not know, Your Honor. Mr. Bryant signed something which, you have before you now, that he was made aware that some of those issues were raised and he has waived anything in regard to those. Judge Newman had not issued any ruling before we received Judge Toal's order that you'd been appointed as the judge to hear the trial itself, and you are vested with all jurisdiction including the appointment of the second attorney. That's when we called your office, Your Honor, to ask about sending the order over so we could get it done; and I understood then that Mr. Jackson had called and wanted to be present when we did this.

THE COURT: Right. Well, let me -- and just for the record just so everyone will understand. The first I even heard of any of this, quite frankly, was last week at our judicial conference. My law clerk had called to indicate that I think it was your office, Mr. Howle, had called about sending over the appointment and that I

had been appointed on this death penalty case. I had not yet received the appointment from Court Administration and then just discussing that with some of the other judges sitting around, which Judge Newman was one of them, and he said I think I know exactly what you're talking about, Tommy. And he called his office and in fact then told me, he said, yes, you have been assigned this case and therefore I -- he filled me in that he'd had a hearing or had heard from you, both sides, with regards to this issue, that he had not made a ruling. And he said that based on me being assigned the case he was not going to proceed with looking into it and coming up with a decision. He was going to just allow me to do -- to take care of it since he -- according to him, and I think he's correct, that once the judge is assigned a case they have exclusive jurisdiction on that. So we're here.

And so I guess, Mr. Jackson, I'd be happy to hear from you then regarding this issue.

MR. JACKSON: Thank you, Your Honor. Your Honor, my position last week and it's still the same as today is that here in the beginning of the proceedings of a death penalty case can we simply go by what the statute requires us to go by. And in the appointment of counsel the statute is very clear, and that would be 16-3-26, that two public defenders should not be appointed. Instead

only, if it's a public defender it should just be one.

And so my point in bringing that to the Court's attention last week is the same as it is this week. We simply need to make sure that in these steps, in the early stages of a death penalty case procedurally we follow the law.

Because at the end of this case if there is a conviction and if there is a sentence of death, there's going to be an appeal. And if we know right now as attorneys and members of the bar and officer of the Court that we're doing something contrary to what the statute directs us to do then it — we're setting up for failure right now. And that's all I wanted to do was to bring it to the Court's attention last week. That's what we've done this week. It's my understanding Mr. Babb has resigned from the Public Defender's office effective last Monday; and if Mr. Bryant wants to go forward, then as long as we follow the statute I'm fine.

THE COURT: Okay, all right. Well let me say this, and I, unfortunately, the statute and the notes behind it and what research we've tried to do into it doesn't give us a whole lot of, a whole lot of guidance. But the statute, and if I take it in its plain language and clear language, seems to delineate or differentiate between full time public defenders and contract public defenders because it specifically states that only one of

the attorneys so appointed shall be the public defender or a member of his staff. And then of course it goes further and it says, that if a conflict exists the Court shall then first turn to the contract public defender attorneys if qualified before turning to the Office of Indigent Defense. You have a different situation in Sumter in my understanding is that all of the public defenders are contract. In other words, all of them have private practices to some degree and they contract with the County to do the public defender services. Here in Florence, we actually have a full time public defender. He has two, I think, full time assistants, maybe three, and then he has two contract public defenders that work for him. So it appears to me that the statute clearly makes a distinction from a public defender or member of his staff, which using Florence as an example, Michael Bell being the Public Defender and Karen Parrott being an assistant in his office that obviously Karen Parrott and Michael Bell would not be allowed to participate as co-counsel on a death penalty case. But the Court seems to be clear when it says — or the statute seems to be clear when it says that if a conflict exists, then the Court shall turn to the contract public defenders. And I think that they do not consider those as being a member of the public defender staff. Now, then you would look — you know, I

would then assume that you look to who's next on the list and my understanding is Mr. Babb is next on the list.

MR. HOWLE: Yes, Your Honor.

THE COURT: So I don't see any problem with Mr. Babb as well as Mr. Howle serving as attorneys in this case, unless there's something else that I'm unaware of.

And I don't know what the status is, Mr. Babb, with regards. I understand what Mr. Jackson has indicated that you had resigned that position with the Public Defender office. If you want to stand by that now that's fine. I'm not sure you need to do that I —

MR. BABB: Your Honor, where that stands is I sent a copy of that to the chairman Murrel Smith and to all remainder of the board. Basically they've told me to do nothing until this matter is resolved. They have not accepted the resignation and do not want to.

THE COURT: Well and I'm not — certainly not going to make the call for you as far as what you choose to do personally, but I would say that based on my reading and what I've been able to determine that if you maintained or retained that position as a contract public defender doing juvenile work it doesn't appear to me that that's a conflict to this statute.

MR. BABB: Your Honor, that was Mr. Howle and I's view from the very beginning. We discussed it among

ourselves and with others. I've met with Mr. Bryant in prison on two occasions with Mr. Howle's consent. That was one, to introduce myself once I found out I was next on the list and to explain to him how I try cases and how I deal with clients to see if he thought I would be somebody that he might want on his case. I also at that time told him about the statutory process, about the statute and Rule 608 and told him that if he wanted me as his counsel I would be asking that he sign a document stating he understands the statute and would waive any possible rights to appeal based on that. The reason I did that was to be totally up front with him and in case there were any concerns. That was done before the hearing with Judge Newman, that I just did it as a cautionary measure. I was going to leave that in the fire, or had Mr. Jackson picked up the phone and called and said he had concern about it then of course I would have told him. We received no such notice, phone call, etc., so here we are.

THE COURT: All right. Well, and you know, I appreciate that effort. I've always taken the position both when I was a defense lawyer as well as when I was a deputy solicitor and as a judge that barring some very unusual circumstance a defendant isn't allowed to choose and pick their appointed counsel so -- and I appreciate you going to that extent with Mr. Bryant and going over

that with him.

And Mr. Bryant, no disrespect to you, sir. It's not that I don't care about your opinion; you know, I do. But in all candor, the Court doesn't — doesn't appoint — appointed counsel based on a defendant's request. It's certainly, you know, the discretion of the Court based on the attorney being qualified.

MR. BABB: Yes.

THE COURT: I don't think that — there's no issue that Mr. Jackson, is there, on behalf of the State and with regards to the qualification of either —

MR. JACKSON: Oh, No, sir. No, sir. In fact, we did one of these in February of '05 I think.

THE COURT: And I'm sorry because I haven't had the pleasure of meeting either one of these gentlemen so, and I don't know your background, but I assumed that that wasn't an issue that as far as the certification, qualification.

MR. JACKSON: Not at all, Your Honor.

THE COURT: Okay, all right. Well, having addressed those issues then I, Mr. Babb, officially then, you know, the Court will appoint you on this case. Now as far as — my understanding was that was the issue we were going to deal with today. Is there anything that while we're all here we — not — maybe not resolve today but at

least anything scheduling wise or are we early on this or.

MR. JACKSON: Judge, the only thing I would mention in relation to this and I just -- just for caution because everything is going to be appealed and looked at. Do we need an affirmation from the defendant that this process is okay with him for the record, for appellate purposes? I know we've got the affidavit; I've read through that. And if that's a Court exhibit.

THE COURT: Meaning, I guess I'm not following as far as okay with him as far as the appointment of the attorneys?

MR. JACKSON: Yes, sir.

MR. BABB: Your Honor, I think he's making reference to -- and that's what I was making reference to in addition to was more whether I would be willing to take him on in that respect. But if he had me or wanted me he was going to be required to waive any objection under the code section Mr. Jackson's referring to.

THE COURT: I understand.

MR. JACKSON: Right.

MR. BABB: And I just wanted the record to reflect I had brought that up to Mr. Bryant on day one so that he was aware of those things. And I think Mr. Jackson is asking that that either be made a Court's Exhibit or the Court ask Mr. Bryant.

THE COURT: Mr. Bryant, let me ask you, sir, you're familiar with regards to the affidavit which you signed earlier; is that correct, sir?

THE DEFENDANT: Yes, sir.

THE COURT: All right. And the affidavit which contains some 12 numbered paragraphs which apparently were signed on the 8th of May bearing your signature, is the information contained in that affidavit —

MR. BABB: I have may, Your Honor, I'll provide him a copy.

THE COURT: Go ahead, Mr. Bryant, look at that copy that Mr. Babb is showing you. Is that in fact your affidavit, sir?

THE DEFENDANT: Yes, sir.

THE COURT: All right. And then — and the contents of that affidavit are — is everything that is in that correct and true and your desires and your wishes?

THE DEFENDANT: Yes, sir.

THE COURT: And you've signed that of your own free will, sir?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Were you coerced in any way or forced in any way to attest to these statements or to sign this statement?

THE DEFENDANT: No, sir.

THE COURT: All right, sir. And is it in fact your desire to have both of these gentlemen serve as your attorneys on this case?

THE DEFENDANT: Yes, sir.

THE COURT: And let me, Mr. Babb -- excuse me Mr. Bryant, I apologize. Let me review with you number 8 in this thing and it states: Even if the provisions of South Carolina code section 16-3-26 (b)(1) providing only one of the attorneys so appointed shall be the public defender or a member of his staff were to apply in this case, I hereby waive and relinquish any and all right to have anyone other than Mr. Babb appointed lead counsel in my case. I understand this waiver and relinquishment will barr me from raising the issue of whether only one of my appointed counsel was the public defender or a member of his staff." You understand that by signing this you are saying that if you had an appealable issue dealing with that issue of Mr. Babb's appointment that you are waiving that?

THE DEFENDANT: I understand that.

THE COURT: You do understand that?

THE DEFENDANT: Yeah. Yes, sir.

THE COURT: And you still wish for Mr. Babb to be your attorney along with Mr. Howle?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Thank you, Mr. Bryant, you may have a seat. I will make this affidavit a part of the Court record.

MR. BABB: Thank you, Your Honor.

THE COURT: Anything further, gentlemen?

MR. JACKSON: Nothing from the State, Your Honor.

MR. HOWLE: Your Honor, the only other matter we would have is a truly ex-parte matter that would involve some funding in regard to further matters of the case.

THE COURT: All right. Well, thank you everyone for coming over here. It's always a pleasure to see my two friends on this side.

And gentlemen, it's a pleasure to meet you and look forward to working with you.

(Court's Exhibit Number 1 was marked and made a part of the record.)

(End of motions hearing.)

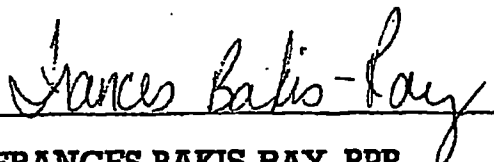
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

**Witness my hand at Florence, South Carolina,
this 27th day of March, 2009.**



**FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014**

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

v.

STEPHEN COREY BRYANT)

DEFENDANT.)

TRANSCRIPT OF RECORD

04-GS-40-10096

06-GS-43-00696

06-GS-43-00699

December 14, 2007

Florence, South Carolina

BEFORE:

THE HONORABLE THOMAS A. RUSSO, JUDGE.

APPEARANCES:

C. KELLY JACKSON, ESQ., SOLICITOR
 DUDLEY SALEEBY, JR., ESQ.
 Attorneys for the State

JACK D. HOWLE, JR., ESQ.
 JAMES H. BABB, ESQ.
 Attorneys for the Defendant

FRANCES BAKIS-RAY, RPR
 Circuit Court Reporter

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(There were no exhibits submitted.)

1 THE COURT: We need to get together and get a
2 time frame and when we can try to schedule this because
3 obviously we have a lot of factors to consider with Court
4 Administration and their scheduling and then the jury
5 notification and all of those things so even though, you
6 know, we're on the record I think it's just handle this
7 kind of informal as far just discussion. But let me, if I
8 could, get y'all to do this. So let me ask, is there --
9 has anyone got an idea regarding when, I guess let's start
10 from, you know, when we think that realistically we could
11 look to bring this case to trial.

12 MR. HOWLE: Your Honor, I think the problem is
13 we got two ideas. I was asked to speak with Mr. Jackson
14 in regard to that February date that was suggested, I
15 think February 4th, and gave him some reasons why I did
16 not think that was going to be available for us in regard
17 to continuing to do our expert witness work they needed
18 accomplished and some other things. And he basically said
19 that's the date we'd like to have it and that's the main
20 reason why we're before you today. Your Honor, we got a
21 number of reasons why that date is we think is not the
22 proper date to have this.

23 THE COURT: All right.

24 MR. HOWLE: One is, I don't know if you want to
25 call this a personal reason or logistical reason. As Your

1 Honor well knows we're going to a circuit wide system of
2 public defenders. In Sumter the panel there for the third
3 circuit submitted my name, and this Tuesday there will be
4 a vote for the commission, and I'm anticipating maybe
5 optimistically that I will be selected for that position.

6 THE COURT: I'm sure you won't have any
7 problem.

8 MR. HOWLE: The only problem that is
9 immediately connected as far as this case is that is
10 implemented January the 1st. At this time we really have
11 no room in the courthouse. We have no office. We're all
12 part-time public defenders in Sumter County and have been
13 up to this point, and my wife owns the building he's
14 paying the rent on. So that's going to change too. But
15 what's going to happen is, come that January date I've got
16 four counties 'cause our contracts end January --
17 December 31st for public defenders in Sumter County. They
18 written differently rather ending on fiscal year because
19 of anticipation of this happening. We thought this
20 election would probably be in September, October and we'd
21 have a few months to get everything straight before the
22 end of the year. As it is, we're supposed to hit the
23 ground running January the 12st. And like I say, we have
24 no space in the courthouse. We haven't even hired any
25 public defenders, no staff, bought furniture, I don't know

1 what the funding is going to be. So January is going to
2 be a logistical nightmare for me getting this system set
3 up in the third circuit and off and running. And like I
4 say, I know that's maybe a personal problem but that's
5 definitely a problem I've got to address.

6 MR. BABB: And if I may add, and again Your
7 Honor, and it's, it's purely personal. You know, I've
8 got an office and I've got a business. And if this goes
9 through I'm suddenly now without a partner so that's going
10 to create, you know, I've got to be making some moves and,
11 you know, I don't know whether he'd want to here me, I
12 don't know whether I'd want to work for him. You know, I
13 enjoy federal court a lot. And if I were full-time, let's
14 say if I were chief public defender for Sumter County I'd
15 have to give up the federal work. I don't know if I want
16 to do that. May be -- there's all kinds of options, you
17 know, but there's a lot that's got to be have staffed.

18 MR. HOWLE: We haven't even decided yet how our
19 staff -- one girl has indicated she'd like to come with
20 me, and of course, he's going to need personnel to stay
21 there. We got one who is stopping altogether 'cause she
22 just had a baby. And those are all personal but
23 unfortunately it's all happening right as this date has
24 been announced. I think the discovery matter we kind of
25 kicked around, Your Honor, but this case was about

1 two-and-a-half years old when he we got notice that they
2 wanted to seek the death penalty, and we started getting
3 some discovery. Unfortunately we had to get some orders
4 from the Court to complete that. The last bit of
5 discovery we got was only in November of this year. And
6 again, a lot of this has generated what our expert
7 witnesses need to look into and do. One of them has
8 submitted a list of about 70 something people that she is
9 in the process of interviewing now in regard to certain
10 mitigation aspects that we're looking into. So there's
11 just a lot that I don't see how possibly could be
12 completed between now and February. We just think either
13 the late spring or early summer would be a much better
14 date to allow us to do that.

15 A third thing is, Mr. Babb does do a lot of
16 federal court and appointed work. We would like a date
17 set far enough ahead that these other courts that are --
18 that he practices in as well can have some lead team.
19 He's going to talk to you about some federal cases that
20 have been scheduled and some things that are coming up
21 that may well conflict with this as well, but if we had --
22 if we knew it was five months or six months before it's
23 going to come up then all these other courts can be
24 notified and we wouldn't have the conflicts that seem to
25 be created right now. And with that I'll let Mr. Babb

1 explain what those are, Your Honor.

2 MR. BABB: Your Honor, discovery wise I don't
3 want to rehash all that. You know, if the Court needs it
4 I'll be more than happy to supply copies of letters that
5 have been exchanged where we've requested things. We
6 right now have -- 'cause I brought a copy for the
7 client -- 1495 pages. We received some audio tapes
8 recently. The same source from which I learned that those
9 audiotapes existed and had not been disclosed or divulged
10 also tells me there was a Sony video cam sitting on a
11 tripod and running. Now, that hasn't been disclosed,
12 hadn't been denied. And the Solicitor has yet to my
13 knowledge to state to me or on the record that he's
14 complied with his ethical obligations and with Kyles
15 versus Whitley, etc.

16 THE COURT: Sony video cam on a tripod set up
17 where?

18 MR. BABB: Running while he's being --

19 THE COURT: During his --

20 MR. BABB: --interrogated.

21 THE COURT: --questioning?

22 MR. BABB: Yes, sir.

23 THE COURT: Okay.

24 MR. BABB: Now I have a notice -- at least I
25 remembered to bring them this time. I have a notice that

1 I started jury selection in a case on February 7th. I
2 represent a fellow by the name of Randall Huggins. Your
3 Honor's, I understand worked in federal court.

4 THE COURT: Yes, sir.

5 MR. BABB: So you understand 1495 pages, while
6 that may sound like a lot, in a death penalty case that's
7 not a lot for a federal court case. I was appointed to
8 this case I think in November. It involves what the
9 government's alleging is that my client generated in
10 conspiracy where he scammed six million dollars from
11 thirty something different companies, you know, over a
12 period of time. So I don't know, how to be honest with
13 you, I don't know how I'm going to be ready to picking
14 that jury in doing that case February 7th, but I was told
15 when I was assigned the case there had been three
16 continuances before. The government asked for a trial
17 date certain and this was it and there'd be no more
18 continuances. Now you know, I may have to start that case
19 by saying, Your Honor, I cannot tell you now, I can't
20 proceed and provide my client effective assistance of
21 counsel. But this particular judge would in my estimation
22 and based on my experience she would probably tell me
23 we'll proceed and that'd be in consideration for 225 rule.
24 I have a jury selection set for January 14th in another
25 case. That's -- no, the January 14th case with the jury

1 selection is the case that I will then be told at what
2 date we will be going to trial. Okay, I mean, you know
3 how that works; you select a jury and then they decide.
4 But it's usually within 30 days. Sometimes I've selected
5 them and we started the trial the next week.

6 THE COURT: Now the February 7th date is the
7 the trial date on that case?

8 MR. BABB: It's -- the notice, and I'll be
9 happy to provide the Court a copy and the Solicitor.

10 THE COURT: That's okay, just you can tell me.

11 MR. BABB: It reads: A jury will be selected
12 for the trial of the case at 10 a.m. on Thursday,
13 February 7th at the United States Courthouse, Columbia,
14 South Carolina, Honorable Margaret B. Seymore presiding.
15 Parties should be present at 9:30. Defendant must be
16 present. It just says jury selection and trial.

17 THE COURT: Okay.

18 MR. BABB: Now Ms. Seymore recently because she
19 wanted something signed and the marshals failed to bring
20 my client, required me to cancel all my engagements for
21 the remainder of the day, remain in Columbia, and drive
22 out to SCDC and get my client's signature. So she isn't
23 prone to playing around let's say. So I think those are
24 going on.

25 THE COURT: And the January 14th is a different

1 case but it's a just for jury selection to be tried?

2 MR. BABB: It's for jury selection and then the
3 trial to be announced —

4 THE COURT: To be announced, right.

5 MR. HOWLE: ---at that point in time.

6 Secondly, and I'm not going to on the record put forth our
7 mitigation case for the solicitor because I'm not required
8 to. I think it would be ineffective assistance of counsel
9 for me to do so. There are additional people that we're
10 going to need to retain based on what those that I have
11 retained tell me on the basis of their findings. One I
12 have retained has a based on a case pending for trial
13 February 4th, 2007. This would be an expert that will be
14 testifying in our trial.

15 THE COURT: Already has in another county has
16 notice?

17 MR. HOWLE: Already has -- actually outside the
18 state of South Carolina.

19 THE COURT: Okay.

20 MR. BABB: The -- to put it simply I guess,
21 Your Honor, there's been a lot of death penalty cases
22 going on in the state of South Carolina recently. There
23 are only so many people that are really in the business
24 and are capable of being expert witnesses in some of these
25 cases so. A lot of people have been very busy. Let me --

1 what I'm trying to say without getting, I'll be happy in
2 ex-parte proceedings to weigh out who's doing what, where,
3 when, but I don't think it's appropriate for me to do so
4 in an open hearing for the benefit of the solicitor.

5 THE COURT: I understand.

6 MR. BABB: And so I'm just saying we can't be
7 ready. I would suggest the date of August. That gives us
8 plenty of time. The State's had more than three years to
9 prepare.

10 THE COURT: Well, I'm going to hear from
11 everybody but I'll just tell you, Mr. Babb, just talking
12 about waiting until August to do this case just doesn't --
13 it seems there's a more reasonable date that's not that
14 far out. But I'll hear -- I mean, I'm not -- we're going
15 to talk about it.

16 MR. BABB: It's Your Honor's decision.

17 THE COURT: But what I'd like and as I hear
18 from the State, if y'all would please, keeping in mind I
19 want to give you the time you need but talk about what in
20 your opinion would be the earliest time that you feel that
21 you could do the things that you need to do and have the
22 things you need to have. I, you know, because the case
23 has been going on for as long as it has been some people
24 take the opinion, well, judge, it's gone on this long,
25 what's another, you know, eight, nine months. I take the

1 opposite tack. It's gone on three years; that's long
2 enough. Let's get it ready and get it tried ---

3 MR. BABB: I would agree.

4 THE COURT: --- without prejudicing anybody.

5 You know, that's what I want to do. And so, just and I'm
6 just saying, just think in those terms. You may come back
7 after discussing and talking you may come back and say,
8 Judge, we think it's August. You know, I don't know.

9 MR. BABB: Judge, I don't think so.

10 THE COURT: But that does seem -- and also, and

11 I also would suggest this, clearly you know, y'all are
12 because of your situation because it is a contract
13 situation I understand you have obligations outside of
14 your role as, you know, Mr. Bryant's attorneys obviously.
15 So I appreciate that and understand that, and I certainly
16 will take that into consideration as well. But as we've
17 said oftentimes this case is of the ultimate importance
18 when you talk about ---

19 MR. BABB: Absolutely.

20 THE COURT: ---Mr. Bryant's situation and the
21 fact that, you know, he's facing the possibility of
22 actually literally his life is on the line and then on the
23 other side you have victims who have been affected by
24 these allegations and they are to be considered as well
25 so. Having said that, what I'm talking about is that we

1 need to start understanding and thinking too that this
2 particular case needs to become or occupy one of those
3 priority slots in y'all's schedule. And that if you have
4 to put other things aside or get considerations in other
5 courts then and asking the judges to give you those
6 considerations for this case, you know, we need to start
7 thinking in those terms as well.

8 MR. BABB: Yes. I think -- we're on the same
9 track. Defining the ointment has just been the discovery
10 issue in terms of getting ready.

11 THE COURT: Let me hear from the State with
12 regards to time frame and I understand that, you know,
13 February 4th is what you would like to see occur and but
14 let me just hear from you, Solicitor.

15 MR. JACKSON: Your Honor, we had looked at the
16 schedule in conjunction with several things, mainly the
17 age of this case, the court schedules for common plea
18 court throughout the circuit and the court schedule for
19 general sessions court throughout the circuit and the
20 court schedule for administrative weeks. We think this
21 case is going to probably take two weeks to try including
22 picking the jury. It could go into a third week so we've
23 tried to go through the winter and spring calendar and
24 pick times that would allow two weeks and maybe into a
25 third with least impact on the rest of the court schedule

1 in the third judicial circuit. And the first one that we
2 went to was February 4 and February 11th. Both of those
3 weeks that are general sessions court in the third
4 judicial circuit that I'm required to give up in order to
5 get this case tried. And we've picked an area where we
6 think we can give up with least interference with Mr. Babb
7 and Mr. Howle in their new roles in their new offices.

8 Mr. Howle and I have got the ultimate
9 responsibility for running general sessions court in
10 Sumter, and therefore, I have stayed away from the weeks
11 of general sessions court when he and I are going to be
12 responsible for making sure that it runs in Sumter County.
13 So we've gone to outside counties and the first one that
14 was most likely was February 4th and February 11th.
15 February 18 is an admin week. It's an administration
16 week. If we had to go into that then there's some time
17 there to do it. And that's what we're prepared to do,
18 Your Honor. We'd like to go forward with that. I checked
19 with the Clerk of Court. They've done some
20 back-scheduling. They know when the notices would have to
21 be sent out. They know what the paperwork trail would be
22 and we believe that we can make this work.

23 THE COURT: Did they share that information
24 with you 'cause I'm curious as to —

25 MR. JACKSON: Yes, sir.

1 THE COURT: ---what they think how long they
2 need?

3 MR. JACKSON: They did.

4 THE COURT: You know, to get those notices out
5 in sufficient time to have them be received and them be
6 returned and ---

7 MR. JACKSON: Their response to me was that
8 they would like to send the questionnaires out no later
9 than 31 December. They would send out the summons with
10 the questionnaire from the Court no later than 31
11 December. And that having this hearing today, if we
12 decided we could go forward that they gave them plenty of
13 time to include the holiday schedule and everybody's
14 downsized with manpower they could still -- they could
15 still get them drawn, get the envelopes stuffed and send
16 them out and of course whatever the Court told them. They
17 could -- they're ready to proceed with that. I've been to
18 the civil bar and talked with some lawyers in the civil
19 bar to make sure -- there's a term of civil court that
20 particular week and I think it's the week of the 11th and
21 I've talked with, I believe, it's Judge Cothran and he
22 said there was nothing date certain. I talked to Mr.
23 Brown who is kind of the informal leader of the civil
24 docket in Sumter and he says that they will have just had
25 enough court in January; that they do not need that week

1 in February and so we're covered on the civil part for
2 that week. We've checked -- we've checked every place we
3 know to check and covered all our bases and we are
4 satisfied that the civil court and criminal court can
5 handle that particular time period.

6 THE COURT: And I apologize for not knowing
7 because I just haven't traveled over there enough.

8 MR. JACKSON: Yes, sir.

9 THE COURT: What's your courtroom situation in
10 Sumter?

11 MR. JACKSON: We've got -- we've got two
12 courtrooms here, a big one, small one, very similar to
13 this except it's on the same floor. It's a three floor
14 building and a big courtroom, small courtroom.

15 THE COURT: Now ---

16 MR. JACKSON: And we've checked with everybody
17 we need to check on accurate space and that type stuff.

18 THE COURT: Have you looked at any other dates
19 if that one were not to be ---

20 MR. JACKSON: We did, Your Honor. I have
21 looked down and this is in accordance for the next six
22 months next year. Secondary date would be March 17 and
23 March 24th. And the third date which as far as which is
24 the furthest we would even hope it would be scheduled
25 out would be May 5 and May 12. And the May 5 and May 12

1 also leaves open the week of the 19th if it went into a
2 third week. There's no court scheduled, no general
3 sessions court scheduled the week of the 19th. If we had
4 to then the week of the 19th we can roll into that. I'll
5 check the civil court schedules ---

6 THE COURT: Now there's another problem,
7 gentlemen, as y'all I'm sure are aware, as we meet here
8 today we don't know, none of us know what the court
9 schedule is like for the second half of next year. And my
10 thought process is, you know, unless y'all can just
11 enlighten me I see no reason why this case can't go the
12 first part of '08.

13 MR. HOWLE: Your Honor.

14 THE COURT: Yes, sir.

15 MR. HOWLE: I don't disagree with you at all on
16 that. I would ask the Court to consider the May date.
17 One thing the Solicitor said that he's looked at the
18 impact on the res of the court schedule. Well, as public
19 defenders we handle 80 percent of what's on that docket.
20 And if I'm making this transition in January my being in
21 court and doing that and/or either working on this and not
22 doing that is going to really have a tremendous impact on
23 making that change to a circuit wide system. And March is
24 right behind it. May I think would give us some time for
25 our experts is complete what they need.

1 MR. BABB: I'm not sure, Jack.

2 MR. HOWLE: Well, from what the Court is
3 telling me if that's the time frame we have to work with
4 we may be able to squeeze things in to get it done in that
5 amount of time, you know, if the Court is not going to
6 consider the second part of the year.

7 MR. BABB: And then let me explain my comment
8 to Mr. Howle, Your Honor. If that's the Court's decision,
9 you know, that's the Court's decision. And then of course
10 if I need to move to reconsider, you know, I'll be in
11 touch with folks and I can provide both a sealed as well
12 as unsealed documents explaining why I've reconsidered. I
13 think six months at a minimum, in the meantime, at a
14 minimum, preferably eight is pretty standard in these
15 types of cases. I mean, you got --

16 THE COURT: From what date? From what?

17 MR. BABB: Well, let's take Jerry Bo Kinlan
18 (ph). In November it was decided his trial would be
19 either March or April, you know. Solicitors like to use
20 the ability to, I mean, this discovery -- you've read the
21 motion that we made. There's no reason this discovery
22 should not have been turned over two-and-a-half years ago
23 to Mr. Howle. I have not heard the Solicitor today say
24 that he has fulfilled his commitments and all the
25 discovery is there; that there is nothing. We haven't had

1 any sort of hearing on discovery and the status of it.
2 You know, I'm assuming that the police must have just been
3 hiding these tapes or the Solicitor would have turned them
4 over before I had to get a court order ordering that we
5 receive them.

6 THE COURT: Let me just say this, and I hope
7 this isn't what's going on but. I don't know if there's
8 personality conflicts, if there's actually personal
9 feelings or whatever, but you know, as we move in this
10 case this case is gonna be tried and is gonna be handled
11 professionally ---

12 MR. BABB: Exactly.

13 THE COURT: ---and ethically. And I'd like to
14 -- I'd like for the innuendos and the little side remarks
15 that someone is acting unethically to end and let's talk
16 about things as adults.

17 Solicitor, do you have any information on a
18 Sony video cam that was set up during Mr. Bryant's
19 interrogation?

20 MR. JACKSON: I don't, Your Honor, but I'll go
21 back and ask. That's the first I've heard about it.

22 THE COURT: And again, you know, you've heard
23 from a source that there was one there. I don't know what
24 that source is; I'm not asking. But the Solicitor
25 indicates to me that he's unaware of that being the case.

1 I'm asking him today and he will, will look into that.
2 You know, those -- you know, those are the things that we
3 need to do -- when did you inform the Solicitor you had
4 this information?

5 MR. BABB: I believe that was --

6 THE COURT: About the Sony video cam.

7 MR. BABB: About the Sony I just learned that
8 recently. The tapes that were received in November, that
9 goes back to June.

10 THE COURT: Okay.

11 MR. JACKSON: Judge, I can answer the question
12 about the Sony. That was when he put it on the record
13 shortly today.

14 THE COURT: So wouldn't it have been, I mean,
15 whenever you learned about that wouldn't it have been,
16 call him up, Kelly, I got this information involving a
17 Sony video cam.

18 MR. BABB: Oh, I agree, Your Honor.

19 THE COURT: I need to know and it may be that
20 you're unaware of it but how about talk to your people
21 about it.

22 MR. BABB: Maybe it would help the Court
23 understand if the Court did have the correspondence
24 because I've set out in correspondence ---

25 THE COURT: I've got some of it.

1 MR. BABB: ---with Mr. Jackson and when I make
2 five phone calls that are unreturned it's a little bit
3 difficult to pick up the phone and say, hey Kelly, where
4 is it. Okay? The only -- on the fourth or fifth phone
5 call Mr. Saleeby speaks but says he can't speak for the
6 Solicitor.

7 THE COURT: Well, what is it ---

8 MR. BABB: Now we just got -- we just got those
9 tapes that we were asking for since back in June.

10 THE COURT: Got them when?

11 MR. BABB: A couple of days after you signed
12 the order of discovery so I, you know, ---

13 THE COURT: I understand what you're saying.

14 MR. BABB: It's a -- I do take it personal from
15 the standpoint that I expect a system to respect due
16 process and constitutional rights. I just want a fair
17 playing field. That's why I like the federal system; the
18 judge is in charge of the case. There's scheduling orders
19 set out; unlike us, say, being here today where there's no
20 notice that a hearing's been requested. There's no motion
21 served on the other side.

22 THE COURT: Let me say this about today's
23 hearing. This is my request. The State didn't make this
24 request; it was my idea. And you know, I'm a little
25 different. No, I am not the federal system. And you

1 prefer the federal system, that's great; I don't. I
2 prefer -- I come from a little small community, Edgefield,
3 South Carolina, where we shake hands and we talk and we're
4 amicable. And my suggestion for this meeting was, how
5 about let's all get together and talk about this thing and
6 let's come up with a date we can hear it.

7 MR. BABB: That's fine.

8 THE COURT: I have it on the record because it
9 is a death penalty case, and I think all of this needs to
10 be on the record. But this wasn't anybody giving you a
11 short notice on this hearing. This was me asking when can
12 y'all do it. If -- I was told this was the date that
13 everybody was satisfied with doing it.

14 MR. BABB: You were told ---

15 THE COURT: I was told that ---

16 MR. BABB: (Inaudible.)

17 THE COURT: ---today was the most convenient
18 date for all of y'all to come in here and let's talk
19 about scheduling.

20 MR. BABB: That's true. And that is correct
21 'cause Mr. Howle had gone to Mr. Jackson and said, you
22 know, when can we do this and were unable to reach ---

23 THE COURT: I mean, when you start -- listen,
24 when you start talking about violating people's rights and
25 short notices on hearings like this hearing, there was no

1 short notice on this hearing. If this hearing -- if today
2 wasn't convenient for you, Mr. Babb, all you had to do was
3 say, it ain't convenient for me, I can't do it. My law
4 clerk called -- and I know him; I know he didn't call
5 saying the judge wants this done today.

6 MR. BABB: No, we --

7 THE COURT: He called saying --

8 MR. BABB: --submitted we'd be there.

9 THE COURT: So let's not characterize this
10 hearing as something you got ambushed with.

11 MR. BABB: Your Honor, I'm not trying to
12 characterize it at all that way. I'm just saying I would
13 like in a death penalty case process that we do bring a
14 little bit more order.

15 THE COURT: Okay. And --

16 MR. BABB: (Inaudible) verbal (inaudible).

17 THE COURT: What problem do you have with
18 today's hearing?

19 MR. BABB: I have no problem -- I have no
20 problem with today's hearing.

21 THE COURT: Well, why did you refer to this
22 hearing as being short-noticed?

23 MR. BABB: Well, I think we're here because the
24 Solicitor decided he wanted to try the case in February.

25 THE COURT: You're wrong. You're wrong.

1 That's not the reason you're here. The reason you're here
2 is I want us to get a date on the record for when we can
3 try this case, and that's what I conveyed to everybody.
4 In doing that, the Solicitor looked at his schedule and he
5 came up with the dates he's got. I was hoping you'd come
6 and have the dates that you feel is appropriate. So this
7 hearing wasn't called because the Solicitor said February
8 4th. My belief is the Solicitor came up with February the
9 4th because I said I want to discuss when we're going to
10 be able to try this case because we got to do that. We
11 got to set a time. We can't just float out here.

12 MR. BABB: I agree.

13 THE COURT: It's like you said, you know, you
14 know, the discovery took way too long to be received and
15 to be turned over. Part of that sometimes is because we
16 allow these things to be open-ended. I'd like for it not
17 to be open-ended. I'd like to have a date to shoot for.
18 Any time you feel that you're not getting something you
19 need you let me know and we'll make sure everything is
20 done. But it's easier to do that when we know that we're
21 shooting toward a goal so we got something were going
22 toward --

23 MR. BABB: I agree one hundred percent with
24 that.

25 THE COURT: --rather than -- rather than --

1 floating.

2 MR. BABB: One hundred percent.

3 THE COURT: And let me give y'all my thoughts
4 just in looking at my calendar too because obviously that
5 has some bearing but not as much as y'alls. I'm -- I
6 don't mind telling you I'm leaning toward the May date as
7 well, Solicitor, because if we need that third week -- and
8 I don't know that we would -- but if we do need that third
9 week, and I go back to Mr. Howle. It's a personal issue
10 with me. The week of March 31st and into April is a
11 vacation week for me and I don't usually don't go anywhere
12 so vacation weeks don't bother me. For example, next week
13 is a vacation week but I'm gonna be around and I'll hear
14 the thing. But we -- my family does have plans to go,
15 taking my kids down to Disney World that week. So I'd
16 rather not have that become an issue. The week that you
17 -- the weeks in May that you mentioned, that week of the
18 12th is a chambers week which for me, I mean, is great
19 because we're not interrupting any court in any circuit
20 because obviously chambers weeks are chambers weeks all
21 over the state. And so we -- it's probably very -- it's
22 probably less disruptive than any other time. Now having
23 said that that's my thought process, Mr. Howle, Mr. Babb,
24 May, week of May 15th, 11th, and 18th if needed, is that
25 reasonable? Does that sound reasonable?

1 MR. HOWLE: Out of the three choices it is
2 definitely the most reasonable, Your Honor, and if that's
3 your decision we'll make it work.

4 THE COURT: And that's a little shy of six
5 months from today.

6 MR. HOWLE: Yes, sir.

7 THE COURT: I don't, you know, and if issues
8 arise we'll deal with them. But assuming that discovery
9 wise you've got everything I would think that would give
10 your experts time to do whatever it is they need to do.

11 MR. HOWLE: Yes, sir.

12 MR. BABB: That's right. That's what I'm
13 saying, Your Honor. If you just pick a day we can then if
14 there's some reason we, I don't know right now, I can move
15 to reconsider try to explain that.

16 THE COURT: Sure.

17 MR. BABB: And we'll go from there. I just,
18 I'm like you, I need -- I just need certainty.

19 THE COURT: And another thing is --

20 MR. BABB: And I like when we have hearings,
21 you know, it's not just -- I'm going to make a motion that
22 when we're going to have hearings that there be, and there
23 be written motions and replies and things of that nature
24 because I think it also helps the Court --

25 THE COURT: Well --

1 MR. BABB: It builds a record and it gives the
2 Court an opportunity to have both sides.

3 THE COURT: I don't disagree with you, but I
4 just wanted to make it clear so everybody understood if
5 you didn't already understand coming in here. This, as a
6 matter of fact, we can call it a hearing but this what I
7 called is a meeting was my idea. I guess it's a motion by
8 the Court I guess 'cause I just thought we should get
9 together and talk about scheduling so we could get that
10 date out there. Another thing this does is, and I know
11 that sometimes they're not as easy going or as pliable in
12 the federal court but if you in the fu-- you know, knowing
13 that we've got a time, Mr. Babb, you can always tell the
14 the federal court, judge, if I may, we are scheduled on a
15 death penalty case in state court and usually I can't
16 imagine where they would say, well, reschedule it, 'cause
17 you're going to be here.

18 MR. BABB: Exactly. As soon as -- once we have
19 a fixed date then that ---

20 THE COURT: Then I think ---

21 MR. BABB: It helps me, it gives me ---

22 THE COURT: That helps you as much helps you.

23 MR. BABB: It helps me -- gives me the
24 opportunity to immediately move for an order of
25 protection.

1 THE COURT: Right.

2 MR. BABB: You know, during this period. And I
3 agree, I think most, I'm not sure I can say all but I
4 think most of the federal judges would clearly accommodate
5 that.

6 THE COURT: And let me say this while we're
7 here 'cause obviously all of this has to be finalized
8 through Court Administration so I guess this is tentative
9 until we get Mr. Tally's thumbs up. And I guess that is
10 ultimately to say the Chief Justice but I'm sure she
11 defers to Mott on his scheduling of all these issues.

12 Is there -- Solicitor, is there any problem May
13 5th, 12th, 19th?

14 MR. JACKSON: No, sir. I don't --

15 THE COURT: Of course the 19th is if we need
16 it.

17 MR. JACKSON: Yes, sir, right. There's to
18 my -- I have -- I tell you what my research has been. I
19 know May 5 is no problem because there's no civil court
20 scheduled in Sumter, and there's court scheduled in two
21 counties outside of Sumter that's general sessions that I
22 control. I can give up one of those so we're okay for May
23 5. May 12 is an admin week. May 19 is civil court in
24 Sumter but I have already checked; there are no date
25 certain trials scheduled for that. And there would have

1 been enough civil court before and some coming up after it
2 that they can do away with that week.

3 THE COURT: They can arrange ---

4 MR. JACKSON: Yes, sir.

5 THE COURT: ---and decide on that.

6 MR. JACKSON: Yes, sir.

7 MR. BABB: And let me say, Your Honor, just so
8 that Your Honor -- my understanding, and maybe I
9 misunderstood it from Mr. Howle was Mr. Jackson had told
10 him this is the date we're going, and you know.

11 MR. HOWLE: Well, the conversation I had was
12 when I called him I said, I understand February 4th is
13 being discussed, that's really not going to work for us.
14 and he said, well, that's the one I'd like to have. And
15 Jessie had already called me about that and we called him
16 back and basically said unfortunately we just couldn't
17 agree on that date.

18 THE COURT: Right. And so were here.

19 MR. HOWLE: And that's how this came about.

20 THE COURT: And so we're here and but I think
21 we do have at least tentative and we'll submit this to
22 Court Admin and get their approval on it and then we'll
23 have an instant -- then we can actually before you send
24 out anything to any other courts for protection let's wait
25 till we get that final word from Court Admin.

1 MR. BABB: Okay. And in the interim I will be
2 doing, you know, what I need to do which is to be getting
3 with the people we have --

4 THE COURT: Yes, sir.

5 MR. BABB: --and potentially with some people
6 we may need to talk to you about here soon. And you know,
7 start --

8 THE COURT: Focusing in.

9 MR. BABB: You know how you do cattle, yeah.

10 THE COURT: Yeah, and just focusing them on
11 that time frame.

12 MR. BABB: Get them running down the shoot
13 because they're are also involved in cases where other
14 judges are trying to deal with scheduling and Court
15 Administration and etc.

16 THE COURT: Okay, all right.

17 MR. BABB: And the further out you have to go,
18 I mean, you know, when I say further outside of South
19 Carolina you have to go you can't use locals and the more
20 expensive things begin to become...

21 THE COURT: Sure. Kelly, you'll check on that
22 information about during Mr. Bryant's questioning if there
23 was --

24 MR. JACKSON: Yes, sir.

25 THE COURT: --anything there?

1 MR. JACKSON: I'd like to know where it was so
2 I can pin somebody down. I mean, was it -- I don't know
3 where it happened.

4 THE COURT: Did you have more than one agency
5 involved?

6 MR. JACKSON: SLED and the Sheriff's Department
7 were doing the interview but.

8 THE COURT: Yes, you need a little more
9 information.

10 MR. BABB: There were I think six people in the
11 room. I, to be honest, I do not know but I can find out.
12 If Mr. Jackson will take my call I will, you know, pass
13 that information on to him and I'll find out today.

14 THE COURT: Well, find out.

15 MR. BABB: I will talk to him.

16 THE COURT: And you can do it in a letter to
17 him.

18 MR. JACKSON: Okay.

19 THE COURT: You can do it however you want to
20 communicate that and you'll check on that.

21 MR. JACKSON: Yes, sir, I will.

22 THE COURT: Anything else today that we can do
23 that would be helpful? And I know things will pop up as
24 we go down the road, but anything today?

25 Y'all are going to begin that in January 1?

1 MR. HOWLE: Yes, sir.

2 THE COURT: That's wonderful. We just found
3 out recently our committee is not even meeting until I
4 think January the 4th. They had hoped to do it before
5 then but...

6 MR. HOWLE: Eight of the circuits they want
7 have it in place by the first and the other eight by July
8 first.

9 THE COURT: This must be the July first, yeah,
10 okay.

11 MR. HOWLE: Harry Dest was sworn in yesterday
12 up in York County as the first circuit P.D.

13 THE COURT: Okay.

14 MR. BABB: Your Honor, I take that back. I do
15 know where this allegedly was in this thing. The
16 Sheriff's Office, in other words Sumter County Law
17 Enforcement Center.

18 MR. JACKSON: Okay.

19 THE COURT: All right, thank you.

20 MR. JACKSON: I'll check on that, Judge.

21 THE COURT: All right. Well, again, anything
22 else?

23 MR. JACKSON: I'll call Mott today.

24 THE COURT: Do what?

25 MR. JACKSON: I'll call Mott today.

1 THE COURT: Okay.

2 MR. HOWLE: We just appreciate the
3 consideration.

4 THE COURT: As soon as we can get that time
5 frame in stone, Guys, and then you can get your people and
6 y'all -- all your various witnesses can then be notified
7 and then they can put that on their calendars and then
8 we'll address the matter.

9

10 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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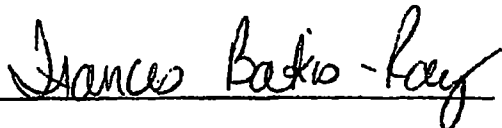
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, **FRANCES BAKIS-RAY**, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 30th day of March, 2009.



FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

CO COPY

STATE OF SOUTH CAROLINA)) <u>COUNTY OF FLORENCE</u>)	COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA)) STATE,)	
v.	
STEPHEN COREY BRYANT)) <u>DEFENDANT.</u>)	
	TRANSCRIPT OF RECORD 04-GS-40-10096 06-GS-43-00696 06-GS-43-00699 March 6, 2008 Florence, South Carolina
BEFORE:	
THE HONORABLE THOMAS A. RUSSO , JUDGE.	
APPEARANCES:	
JACK D. HOWLE, JR., ESQ. JAMES H. BABB, ESQ. Attorneys for the Defendant	
FRANCES BAKIS-RAY, RPR Circuit Court Reporter	

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Ex-parte hearing for funding 3

EXHIBITS

DEFENDANT'S:

No.	Description	ID./EVD
1	Ex-parte orders	3
2	Funding requested of experts	3
3	Memo to Judge Russo	3
4	List of experts and expenses	3

1 (WHEREUPON, Defendant's Exhibits Nos. 1
2 through 4 were marked for identification
3 only.)

4 THE COURT: Well, let me go ahead and I'll hear from
5 you, however you want to start it.

6 MR. BABB: I noted in one of the emails you sent
7 Jack you were wondering about the social worker, and Ms.
8 Graham is a mitigation investigator or, slash, specialist.

9 MR. HOWLE: That was Loring.

10 THE COURT: Right.

11 MR. BABB: Marti Loring. I think there's a case
12 that's Wiggins that would specifically say we're going to need
13 a licensed social worker. Ms. Graham is a mitigation
14 investigator. She does not testify. She is not an expert
15 witness who as a licensed social worker would be.

16 THE COURT: But I've allowed you —

17 MR. BABB: 20 thousand dollars for two people which

18 —

19 THE COURT: 10 thousand dollars —

20 MR. BABB: Each.

21 THE COURT: —for Ms. Graham.

22 MR. BABB: Right.

23 THE COURT: And that should be enough money for her
24 and for Doctor Loring.

25 MR. BABB: So you think Ms. Loring, whose rate

1 and -- I just want to be sure I understand it. Let me get
2 down to the licensed social worker. Her rate is 150-dollars
3 an hour. We're expecting ten thousand for her.

4 THE COURT: I think they are -- I think they are
5 crossing over each other. And I think that whatever you've
6 asked, I mean, I mean if -- I don't think you need a
7 mitigation expert and a mitigation investigator who are out
8 there doing essentially what appears to be some of the same
9 stuff.

10 MR. BABB: No, sir, they're not doing the same stuff
11 at all. What the mitigation investigator does in large
12 measure is she works with all of the experts and obtains the
13 information that each expert needs, the prison records for
14 James Aiken, be it things for other individuals. The social
15 worker will actually interview members of the families, and
16 she will testify in court as a licensed expert on those areas.
17 Let's see, she does the identification of emotional abuses in
18 all its forms as it affects children and adults. She conducts
19 psychosocial evaluations and prepares mitigation and expert
20 testimony -- that's meaning for herself -- related traumatic
21 emotional, physical, and sexual abuse, impact of illegal
22 behavior according to Doctor Schwartz-Watts, M.D., see number
23 one, in giving the posttraumatic stress syndrome of
24 Mr. Bryant. The above expert services of Doctor Loring are
25 necessary in order for Doctor Schwartz-Watts to perform her

1 function as an expert forensic psychiatrist. Now so I'm
2 telling you, what I'm telling the Court is our psychiatrist
3 has said we need not only a licensed social worker but this
4 one in particular given our client.

5 THE COURT: You've got 20,000-dollars for two
6 investigators that work out of the same office.

7 MR. BABB: Right.

8 THE COURT: You've got at her rate of 50-dollars an
9 hour, that's two hundred hours.

10 MR. BABB: Right. One of those investigators is a
11 fact investigator that works on the guilt phase of the trial.

12 THE COURT: And you got four hundred hours of
13 service between the two of those people.

14 MR. BABB: Uh-huh, could be.

15 THE COURT: It's not going to be.

16 MR. BABB: Well then, you tell us what the numbers
17 are, Judge, and —

18 THE COURT: I'm telling you that with that ten
19 thousand dollars that you've already been approved of for
20 Ms. Graham as your mitigation expert you can pay Doctor Loring
21 out of that. That — those two are — they can work hand in
22 hand to do the work they need. And if when they're through
23 it, Mr. Babb, if they come to you and they go, we burned every
24 bit of that ten thousand dollars, we can't go any further,
25 we're not done yet, then you can come back to the Court. They

1 can show the Court what they've done and justify their fee,
2 and if you need more money then we'll address it at that
3 point.

4 MR. BABB: Okay.

5 THE COURT: But I'm -- you got a licensed social
6 worker, family history expert, and you got a mitigation
7 investigator who as you indicate is going to go through and
8 collect family history and other -- and other things.

9 MR. BABB: And other things for the other experts.

10 THE COURT: Right.

11 MR. BABB: But she's not going to be able to
12 testify.

13 THE COURT: All-right. You want ten thousand
14 dollars for one ex-- for one investigator to gather the
15 information for another expert and give them ten thousand
16 dollars to take this information and do what they need to do
17 with it.

18 MR. BABB: No, sir. No, sir, that ten thousand
19 dollars covers Doctor Loring reviewing the records that
20 Ms. Graham gathers. And Ms. Graham will be gathering records
21 for her, for Doctor Schwartz-Watts, for James Aiken, for any
22 of the other investigators that are included as are needed.
23 The licensed social worker will then review those records,
24 conduct actual family interviews, and prepare herself for
25 in-court testimony. And I understand the way the Court is

1 looking at it. From our point of view it's apples and
2 oranges; the Court is just seeing it as apples.

3 THE COURT: All right. And I want to go ahead and
4 address this now. We're going to get something straight. I'm
5 not going to tolerate your condescending attitude. When I
6 sent you that email I certainly didn't need you to respond by
7 defining unilateral for me. I understand what the term
8 unilateral means. And here's a news flash, Mr. Babb, I will
9 make unilateral decisions 'cause that's what I'm called to do.
10 We talked about the date of this trial.

11 MR. BABB: Correct, sir.

12 THE COURT: And those dates were tentative and I
13 said that.

14 MR. BABB: Correct, sir.

15 THE COURT: They were tentative so I could verify
16 that we could actually use those dates by going through the
17 various agencies: Court Administration, Clerk's office, make
18 sure we had a courtroom, all those things. I did that. And
19 in doing that, and stressing to everybody we need these dates
20 and as close as we can poss— we need these dates; if we can't
21 have these dates we need to be right at it. We moved this
22 trial up one week and I'm getting stuff from you that you
23 possibly can't be ready, it's too short a time, and that I
24 made a unilateral decision without discussing it with you.
25 I'm not required to discuss it with you. And it wasn't

1 discussed with you and it wasn't discussed with Solicitor
2 Jackson. It was the dates that we could set this trial that
3 were as close as possible to the dates we discussed. It was
4 moved one week. And every time I get a correspondence from
5 you it's quoted as my unilateral decision. Let's make the
6 record straight. I admit it was a unilateral decision. It
7 was my call to make; I made it. We don't need to continue
8 with that. If you, like I said in my email, you -- if you had
9 an issue with that then you let me know that you've got an
10 issue with that and we'll have a hearing on it if we need to
11 do that. But all I'm getting from you is you can't possibly
12 get this case ready by that date.

13 MR. BABB: Your Honor, with all due respect what I'm
14 saying is we've -- we discussed that in December.

15 THE COURT: Right.

16 MR. BABB: December 14th. We asked in our letter of
17 December 17th could you please issue an order setting that.
18 We received your letter letting us know when the trial date
19 was February the 19th.

20 THE COURT: Okay.

21 MR. BABB: We still have funding orders pending.
22 It's difficult for us to retain experts until we know when a
23 trial -- these are busy people too.

24 THE COURT: I understand that, and on that point, I
25 did some investigation too because I want to make sure that

1 you have what you need. I want to make sure. You know, that
2 is important. So I find out, and I asked, I specifically
3 asked that to the extent they can do this, I wanted to know
4 that in other cases -- and I realize every case stands on its
5 own, absolutely understand that.

6 MR. HOWLE: Yes, sir.

7 THE COURT: But going back for Doctor Brawdy, or is
8 it Braudly?

9 MR. BABB: Brawley.

10 THE COURT: Brawley. Okay, I'm sorry, Doctor
11 Brawley. Doctor Brawley has, very qualified, has testified in
12 many death penalty cases in South Carolina. The average fee
13 for Doctor Brawley in all these other death penalty cases has
14 been anywhere from 1200 to 1,500-dollars. You're asking for
15 ten thousand. How do you justify that? I understand that if
16 I give you ten thousand you'll use what you have to and then
17 if you don't use it all you don't use it all.

18 MR. BABB: I have no intention of spending any more
19 than we have.

20 THE COURT: Oh, I understand that.

21 MR. BABB: Than we need to.

22 THE COURT: I don't ever, I mean, that hasn't even
23 popped in my head as a concern; but when you ask the Office of
24 Indigent Defense, when a judge earmarks and approves so much
25 funds they've got -- then they've got to transfer those funds

1 and have them in escrow so to speak available for meeting the
2 Court's order. I'm not going to have them tie up 130,000,
3 120,000-dollars in an escrow account when the chances are
4 we're not going to use close to all of that.

5 MR. BABB: Okay. Then —

6 THE COURT: That's my only point.

7 MR. BABB: Then can I ask let's do it this way
8 'cause I don't want to do that either. What I'm trying to
9 avoid is —

10 THE COURT: You need your people working.

11 MR. BABB: We've got like seven weeks, okay. I need
12 my people working.

13 THE COURT: Sure.

14 MR. BABB: I don't need to be spending — and again,
15 I'm not trying to be condescending but like I spent six or
16 eight hours preparing for this hearing. I need to be doing
17 other things. And I'm trying —

18 THE COURT: Well, you know what, you don't, Mr.
19 Babb. You need to be doing what it takes to get this funding
20 for your client.

21 MR. BABB: But I'm trying to avoid having to come
22 back time and time and time again. If the Court wants to give
23 me or would give me an overall figure to work within without
24 necessarily the specificity as to the precise amount as to
25 each individual then as we did in the Stone case, and we

1 adjusted at the end of the day you have some amount of
2 flexibility there.

3 THE COURT: But it's like I -- and my whole purpose
4 and my request to you was this. I want to know, I wanted to
5 know, what their hourly rate was and what they could, to the
6 best of their ability, estimate what it would take for them to
7 do it keeping in mind that they can't obviously say, oh well
8 yeah, I can do this case in 12 hours. You know, I understand
9 you can't do that.

10 MR. BABB: And I'm reporting what I got, Judge.

11 THE COURT: And so that I can approve for you
12 reasonable amounts which will get them working, get them doing
13 their thing, and then if they -- those need to be adjusted
14 then they need to be adjusted. So that was my whole point in
15 my request. For you to say, you know -- and you didn't use
16 this term, but the impression I got was you just wasted six
17 hours of your time dealing with this.

18 MR. BABB: No, that's not, I mean.

19 THE COURT: It's not a waste of time because I need
20 -- I need -- because OID is not just going to, you know, just
21 say, Judge, whatever you approve we're good for. Because
22 here's what will happen, and you know this. If I -- let's say
23 I approve just what you've asked that I just approved it, they
24 would request a hearing to be heard on it.

25 MR. BABB: Can I be perfectly candid with the Court.

1 THE COURT: Sure.

2 MR. BABB: Our letter of December 17th was never
3 responded to.

4 THE COURT: All right.

5 MR. BABB: Okay. We began filing these motions in
6 filing and the Court was busy, and I understand y'all have got
7 double the case load. So part of my concern is, we get down
8 to it's a week or two before trial, I've run out of the money,
9 and I can't get to you. And it's -- I'm not trying to
10 disparage the Court. I'm just saying --

11 THE COURT: No, I understand what you're saying.

12 MR. BABB: I'm trying to cover --

13 THE COURT: I absolutely understand.

14 MR. BABB: I'm trying to cover my basis.

15 THE COURT: I understand that. And going, you know,
16 the things that I was looking through...

17 MR. BABB: You know, if the Court would just -- we
18 got a list there with the people. We got -- we've submitted
19 our reasons.

20 THE COURT: All right.

21 MR. BABB: I'm going to the beach. I mean, I --
22 understand, I'm not, I'm not -- I do have some problems with
23 the statute in South Carolina.

24 THE COURT: I understand that.

25 MR. BABB: And I think the U. S. Supreme Court does

1 so.

2 THE COURT: And if I may say to you, just, I
3 don't -- I don't disagree with your position.

4 MR. BABB: And I understand.

5 THE COURT: Okay.

6 MR. BABB: And you're in kind of a box from what I
7 see on that.

8 THE COURT: Yeah. And but I understand that you
9 need to raise, you need to make that motion, you need to
10 preserve it.

11 MR. BABB: Right.

12 THE COURT: And that's -- that doesn't bother.

13 MR. BABB: And I, if I may, I want the Court to
14 understand this. If I'm, you know, I mean, I'm not claiming
15 this guy is innocent, and you know, this sort of stuff.

16 THE COURT: I know that.

17 MR. BABB: I have -- I have -- I flew to California
18 to San Francisco at own expense. I stayed at a high dollar
19 hotel at my own expense. I paid for my own food there in
20 order to attend a national seminar with some of the best
21 people in the country to discuss this case, okay. So I'm
22 billing like 15 hours for our discussions on this case because
23 it was a forum in which you discussed your pending death
24 penalty cases. The rest of that I'm eating out of my pocket I
25 have paid to go to a jury selection seminar out of my pocket

1 to prepare for this case.

2 THE COURT: But, but.

3 MR. BABB: I'm leaving here to go to the coast.

4 THE COURT: But in all candor though, Mr. Babb. And
5 I — listen, first of all, and I meant this sincerely when I
6 told you this. I absolutely admire your passion and your
7 dedication to Mr. Bryant's case and he's very fortunate to
8 have a lawyer like that. But here, in all candor though,
9 these seminars and these things you're doing, they benefit you
10 way beyond Mr. Bryant. The next death penalty case you got
11 you've, I mean, this is — this is knowledge and information
12 that is not —

13 MR. BABB: True.

14 THE COURT: —specific to Mr. Bryant. It's death
15 — it's making you one of the premiere death penalty defense
16 lawyers in South Carolina.

17 MR. BABB: But the last one in Sumter was in 1995.

18 THE COURT: I understand that, appointed.

19 MR. BABB: Right.

20 THE COURT: But, and again, I under— trust me when
21 I tell you this. I understand that your purpose in going to
22 these things has been because of your involvement in this
23 case. In other words, if you weren't appointed with Mr.
24 Bryant's case you wouldn't be doing this.

25 MR. BABB: No, sir.

1 THE COURT: I do understand that.

2 MR. BABB: Absolutely not.

3 THE COURT: But let's be completely candid, but it
4 also makes Jim Babb one of the most knowledgeable and
5 experienced death penalties lawyers in South Carolina.

6 MR. BABB: Oh, and there's no question. If I ring
7 the bell —

8 THE COURT: If you chose to, you know, take on a
9 retained case, you know, this is all to your benefit. But
10 again, and I don't in any way do I — I don't want to cast
11 anything disparaging on what you're doing and I do understand
12 that your motivation. You wouldn't be doing this but for
13 Mr. Bryant's case; I know that.

14 MR. BABB: The bottom line is I just — I've given
15 the Court all the information I've got. That's best I know to
16 do.

17 THE COURT: Well, let me ask you this. Then let me
18 ask some questions because there's like, for example, here's
19 an expert that in all of my research and looking into and you
20 can maybe correct me if you know of it. But I know of no
21 death penalty case since they've been keeping records on them
22 that anyone has used an interrogation, an interrogation
23 techniques expert. I don't even know what that is. I know
24 what you tell me here.

25 MR. BABB: Okay. He is — first he's an expert in

1 that. He's also a forensic psychiatrist.

2 THE COURT: Okay. But you've got one of those.

3 MR. BABB: I understand. But he was basically,
4 Judge, a spook. In other words, he worked with government
5 agencies involved in proper methods of interrogation.
6 Mr. Bryant was picked up, arrested at 9 a.m. on the morning
7 after being up all night admittedly smoking marijuana. He was
8 interrogated from 9 a.m. all through that day, taken to the
9 Sumter County Correctional Facility about 1 a.m. in the
10 morning at which time a SLED retained forensic psychiatrist
11 began to question him. And she questioned him for some two to
12 three hours. Now part of our strategy in this will then be
13 saying, in raising the issue in mitigation, because our client
14 may have some third party involvement in these cases were
15 these proper investigative techniques to get correct and
16 accurate facts or were these techniques that would elicit in
17 design to elicit a confession and not necessarily an entirely
18 accurate confession. Now I don't know if Greg will take the
19 job or not.

20 THE COURT: Well.

21 MR. BABB: But his — I know I've used him in
22 another case in juvenile court and his rate was three hundred
23 dollars an hour. But that's an inherent part. And it may
24 change; I may not need him at all. But at this point in time
25 that is part of our strategy and without that expert we're

1 precluded from following that strategy.

2 **THE COURT:** How in the world can this gentleman
3 prevent you from following a common defense strategy
4 throughout almost every criminal case that involves an
5 interrogation that the interrogation was improper and
6 violation of the defendant's constitutional rights?

7 **MR. BABB:** Because I now would have an expert giving
8 his expert opinion based on his training by the United States
9 government and other agencies that this ain't the way you do
10 it, rather than it being an argument coming from counsel.

11 **THE COURT:** What about -- all right. And I, 'cause
12 again, not knowing much about the case at all, a forensics
13 computer expert, what, how does that tie into this case?

14 **MR. BABB:** SLED did -- seized computers, ran them
15 through some kind of program, produced results. We asked how
16 to read them, and they said you got to go talk to Sumter
17 County. The guy I'm asking for charges I think sixty-five
18 dollars an hour. He uses the same programs they do. I don't
19 know how to read what their test results are. He may look at
20 it and say it means nothing and that's the end of it.

21 **THE COURT:** But I mean, is this a concern that
22 there's something that they've gotten off the computer that
23 links Mr. Bryant?

24 **MR. BABB:** They produced results. They subpoenaed
25 information from, you know, Yahoo and other places on his

1 email and I can't interpret that. It's like asking me, you
2 know, ask for DNA expert. It's the same thing. He may — he
3 may look — and I don't have a name for you yet nor an amount.

4 THE COURT: Well what, now and what —

5 MR. BABB: They may simply look at what SLED has
6 done and say they followed proper procedures, protocols, you
7 know, their findings are correct, you don't need me.

8 THE COURT: There's DNA in this case?

9 MR. BABB: Yes, sir.

10 THE COURT: 'Cause see, I don't know anything.

11 MR. BABB: Oh, yes, sir.

12 MR. HOWLE: DNA off cigarettes found at one of the
13 scenes.

14 THE COURT: Okay, all right.

15 MR. BABB: And my client says there should be DNA
16 that belongs to somebody else at that scene.

17 THE COURT: And again, I'm bringing up the questions
18 that raise a flag to me that I've not seen before. And this
19 Doctor William Morton, Jr., a psychopharmacologist and
20 addictive disorder expert.

21 MR. BABB: Oh, right. He's another one that Donna
22 Schwartz-Watts says is needed in order for her to complete her
23 evaluations. He is an expert in drugs, drug addiction, and
24 the impact on their mind. Stephen Corey Bryant was addicted
25 to drugs. He used a number of pharmaceuticals. He was

1 THE COURT: I've got it listed as Number 2 that you
2 passed up here. And it is -- it's called officer -- itemized
3 expert witnesses.

4 MR. BABB: I'm going to give you a blank one 'cause
5 I've got number 2 on this but I believe that's the same thing.

6 THE COURT: And the front page we've already
7 approved that.

8 MR. BABB: The front page is already approved.

9 THE COURT: Yeah.

10 MR. BABB: And now I will just sort of draft it and
11 then email it so if there are particular reasons for denial
12 that you need Jessie to plug in. And I mean, we've got it in
13 the record here but.

14 THE COURT: But if you would, Jim, email it, if you
15 could email it in a Word format.

16 MR. BABB: Sure.

17 THE COURT: 'Cause a lot of lawyers --

18 MR. BABB: I'm sorry.

19 THE COURT: ---I don't know what ---

20 MR. BABB: I can do that.

21 THE COURT: I've been getting a lot -- no, some of
22 the stuff that you've sent has been in Adobe which is fine
23 because it's not something I have to fool with.

24 MR. BABB: But not if you're going to change it.

25 THE COURT: But if it's something I need to -- like

1 you're going to want me to fill in something, I'm going to
2 need it in Word.

3 MR. BABB: Word. I have 3 and 12.

4 THE LAW CLERK: This is the new version of Word.

5 THE COURT: It's the newest one. I don't know.

6 THE LAW CLERK: For Vista?

7 MR. BABB: Well, actually, I have it saving so 12
8 will use it either way.

9 THE COURT: Yeah, it'll probably —

10 MR. BABB: If I mess up and send it in Adobe —

11 THE COURT: We'll just give you a holler and ask you

12 —

13 MR. BABB: Give me a holler and I'll send it because
14 the way I maintain my files I have an archives and I convert.
15 I scan and convert to Adobe. That contains signatures and it
16 can't be messed with unless I go in with my professional Adobe
17 and mess with it, which I'm not going to do, and —

18 THE COURT: Right, okay.

19 MR. BABB: —with the Word documents they can —

20 THE COURT: They're open to, yeah.

21 MR. BABB: They're open to that plus they can be in
22 two or three places in the file sometimes and not be the same.

23 THE COURT: Well, that's fine. We'll just let you
24 know if we have any problem dealing with it, whatever. Let
25 me, 'cause I want to make sure, prison adaptability expert.

1 **MR. BABB:** He is, to be honest, he is a must in this
2 case. He testifies all over the state.

3 **THE COURT:** Yeah.

4 **MR. BABB:** And Bryant is charged with assault and
5 battery with intent to kill on a correctional officer so
6 that's going to be a big issue.

7 **MR. HOWLE:** I found on my last death penalty, which
8 is almost 15 years ago now that we had in Sumter, that was one
9 thing that the Solicitor really harped on tremendously in his
10 aggravating in showing why he should get death penalty, was
11 his failure — things he had done in jail to show he couldn't
12 adapt.

13 **MR. BABB:** And when you hear Aiken he's just beyond
14 approach.

15 **THE COURT:** Okay.

16 **MR. BABB:** And Justice Toal says, mentioned how he's
17 hired in almost every one of these cases.

18 **THE COURT:** All right, help me out with this thing.

19 **MR. BABB:** Okay.

20 **THE COURT:** A neurosurgeon.

21 **MR. BABB:** Right. That may or may not be something
22 we need.

23 **THE COURT:** I just...

24 **MR. HOWLE:** That's on the aneurysm.

25 **MR. BABB:** That's the aneurysm.

1 **THE COURT:** Let me do this. And this is, I'm just
2 more comfortable with this. At this time I'm going to deny
3 that but not -- I'm not going to deny it outright. If you
4 find the need as you progress arises then you can revisit
5 that, okay?

6 **MR. BABB:** May I say this, that would help -- I've
7 been trying to think of alternatives, okay. One alternative
8 may be there is a statutory rate that doctors in places can
9 charge for medical records, okay. Of course I have to have a
10 HIPAA order against that.

11 **THE COURT:** Yeah.

12 **MR. BABB:** Our whole need here is that we believe
13 the senior investigator may have, to be frank, purgerred
14 himself at a preliminary hearing. The basis for that is I am
15 very closely related to his CRNA, who has done -- certified
16 registered nurse anesthetist -- who has been employed at
17 McLeod, Tuomey, Baptist in North Carolina, has done hearts,
18 brains, neonatals, and has done a number of head trauma cases
19 and a number of aneurysms. And she does not believe, nor
20 recall, anything that indicates the type of wounds this guy
21 had would have called an aneurysm. This officer says the
22 doctor specifically told him that was. And that's part of the
23 assault and battery with intent to kill. So if I can find out
24 who did the surgery on the aneurysm by getting hold of the
25 medical records, which I think we'd be entitled to anyway if

1 they're going to use the assault and battery with intent to
2 kill in aggravation, then I can backtrack from there and go to
3 who referred him, all right. You find the x-rays. And can
4 put subpoenas on them and say, I've got one question for you,
5 did you or did you not make this statement, all right. If
6 they didn't then I've got the man I need, and I just know when
7 to have him in court so that may be able to save us all of
8 that but it's still, you know, I've got to get.

9 MR. HOWLE: You still need ---

10 MR. BABB: It's another funding order I've got to do
11 and etc., etc., and I'll do it but.

12 THE COURT: Okay.

13 MR. BABB: You see what I'm getting at. That could
14 be -- I realize it has little to do with guilt or innocence;
15 but when you're in the mitigation phase if you can establish
16 the senior investigator wasn't truthful about something under
17 oath, what value does that have particularly in light of the
18 interrogation ---

19 THE COURT: It all goes to ---

20 MR. BABB: ---the witness got through.

21 THE COURT: ---credibility, right.

22 MR. BABB: So that was just, you know, I said who's
23 type of guy to know about this and where are they.

24 THE COURT: What will you need to get those records?

25 MR. BABB: I'm going to need a HIPAA order and I'll

1 need in many instances, or at least in some. Now I
2 underestimated in the Stone case James Aiken so that's why I
3 probably bumped him from what I initially requested. Of
4 course that was 13 years ago and I'm sure his rates have gone
5 up like everybody else's. Now Judge, on Doctor Brawley I
6 understood you to say —

7 THE COURT: That was just —

8 MR. BABB: —it's your understanding her rates have
9 never been above, was it 1900?

10 THE COURT: No. Her average rates have been running
11 between 1200 and 1500-dollars.

12 MR. BABB: 12 to 1500 dollars.

13 MR. HOWLE: That's total?

14 THE COURT: And I'm going to approve more than that
15 and like I said —

16 MR. BABB: No, I appreciate you telling me that
17 'cause —

18 THE COURT: If you need more but that's just kind of
19 what their records shows.

20 MR. BABB: 'Cause I'm relying on — I haven't used,
21 you know, I'm just relying on what I'm being told.

22 THE COURT: You know, and I just don't understand
23 someone as like Doctor Schwartz-Watts who, why she needs an
24 expert on addictive disorder. She's dealt with that. She's
25 probably one of the most qualified people I know in this whole

1 area of psychiatry and all the subareas of that. I just don't
2 understand.

3 MR. BABB: All I'm telling the Court she
4 specifically named him and we feel he's important to the
5 mitigation phase. And he's going to testify as to a statutory
6 mitigating circumstance.

7 THE COURT: I'm going to jump off the subject for
8 just a second, just y'all's opinion although it's my call but
9 y'all know the case and y'all live in the area and stuff like
10 that. I've got to tell the Clerk how many jurors I want them
11 to summon. My initial thought, you know, on a death penalty
12 case is somewhere around 300. But I'm, I don't know enough
13 about this case and the kind of notoriety it may have in the
14 area. I was thinking in this case of getting them to summon
15 maybe more like 400.

16 MR. BABB: It's an old case.

17 THE COURT: Knowing that we're not going to get
18 probably half of them to actually show up.

19 MR. BABB: Yeah. It's an old case. Now to the
20 people who live down where these were going on like one of
21 them is T. Davis, an attorney there, he said, you know, your
22 guy had us terrorized.

23 THE COURT: For him obviously.

24 MR. BABB: For him, but I mean, it was very —

25 THE COURT: Old but yet very real.

1 **MR. BABB:** Very real. For others it may not be.
2 Now then we've got the other problem is that I'm certainly not
3 going to call the press up and say I filed a motion to plead
4 guilty.

5 **THE COURT:** Right, I understand.

6 **MR. BABB:** But if that cat gets out of the box.

7 **THE COURT:** Well, God dog, you know.

8 **MR. BABB:** And I would have asked for seal but when
9 they did it in Greenville the judge said I should never have
10 done it under seal, we've got the constitutional open
11 courtroom so what was I to do.

12 **THE COURT:** Well, hopefully I'm going to try to set
13 a time where these -- we're going to hear these motions, and
14 we'll hear them, you know, over here, not in Sumter.

15 **MR. BABB:** That's a wise thing to do. I absolutely
16 agree.

17 **THE COURT:** That way, you know, it'd be a little
18 more difficult. I'd be more concerned if y'all were up in
19 Walhalla and asking you to drive across the whole state to
20 have some hearings but you're really down the road. I think
21 we should have these hearings heard here, and then, of course
22 I know I can't order but I would hope -- well, I would hope
23 that the Solicitor has as much interest in being able to
24 select a jury --

25 **MR. BABB:** In Sumter County.

1 **THE COURT:** —and try this case as we all do and so
2 therefore maybe hopefully they wouldn't even mention that this
3 motion was made.

4 **MR. HOWLE:** The paper really has not had anything on
5 it in a good while now.

6 **THE COURT:** Well, I mean, do you think I'm overkill
7 on that number then? On asking him to summon 400? I know
8 it's just really, you know, totally arbitrary how many you
9 decide to summon. I just wanted to make sure we had a big
10 enough panel that we can get a good jury there.

11 **MR. BABB:** I'd rather go — it's like asking me how
12 much to estimate. I tend to want to go over so you don't have
13 to —

14 **THE COURT:** Well, I want to go over a little bit
15 because I'm cost conscious for the county. I realize that it
16 costs them a lot of money to summon a hundred more than not
17 normal, but if it means that we can get a jury impaneled and
18 not have to do it all over again maybe it's cost worth
19 spending.

20 **MR. BABB:** Right.

21 **THE COURT:** And I don't know what — I'll have to
22 ask the Clerk. Typically what kind of response do you get to
23 your summons for jury duty? Do y'all even know?

24 **MR. BABB:** Jack would be in a position.

25 **MR. HOWLE:** We were doing jury qualifications

1 Monday.

2 THE COURT: Like if they typically summon -- here
3 we'll typically summon 125 with the belief that gets us about
4 70 that actually show up.

5 MR. HOWLE: That's probably close. We had a lot of
6 them that couldn't locate.

7 THE COURT: Right.

8 MR. HOWLE: Over 65 or whatever.

9 THE COURT: Right, I'm -- so I'm thinking if we
10 summon 400 we'll probably actually get less than a hun-- less
11 than 200 live bodies in there.

12 MR. BABB: Y'all may have more voting from the
13 graveyard than we do in --

14 THE COURT: I don't know.

15 MR. HOWLE: We'll get a few deceased.

16 MR. BABB: One thing I was going to say about that.
17 Justice Toal, at the same time she was discussing another case
18 in the context of this thing with James Aiken, she happened to
19 mention a case John Mauldin had and they had been having
20 hearings in Anderson. You know, the judge had -- she put the
21 judge had very wisely held the hearings in Anderson. But the
22 local press eventually got wind of it so.

23 MR. HOWLE: Well, the press will pick up on it and
24 do -- when I had the last one the lady and her husband at
25 Christmas, the one that was killed, did their yard with all

1 these Christmas lights. This was a previous solicitor. But
2 he called it in December, the trial. And three days before
3 the trial this huge picture on the front page of their house
4 the year before, all the Christmas lights. And then Judge
5 Cooper did, was the first thing he said was, all right, I'm
6 not going to move it but do I need to suddenly ask for
7 another. And I think we added like a 100, 150 more jurors at
8 the last minute. They went out that day serving them too
9 because he knew a lot of people were going to have seen the
10 paper and would have a problem.

11 MR. BABB: And while we're on the -- and I know
12 we're not here to talk about it. I just, you know, rulings on
13 those are going to impact our trial strategy and therefore
14 impact how we can proceed.

15 THE COURT: Right.

16 MR. BABB: I mean, I don't want to get into areas
17 we're not here to get into. I just throw that out.

18 THE COURT: Well but...

19 MR. BABB: I know you're doing the best you can with
20 it.

21 THE COURT: Let me look at the...

22 MR. BABB: And I do not have the stablest client in
23 the world to put it, let's just say that.

24 THE COURT: Listen, the week of March the 25th --
25 actually, I'm sorry, March the 24th. That's a chambers week.

1 **MR. BABB:** I'll write that down, Jack.

2 **THE COURT:** What do you think about something along
3 like somewhere around March the 27th of 28 to hear motions.

4 **MR. BABB:** And Jack, if you don't mind have the
5 girls check the schedules and let's block something off. But
6 that also, by then, this is March the 3rd, well, so that gives
7 us three weeks to work on these experts.

8 **THE COURT:** Well, why don't we —

9 **MR. BABB:** And it may be — it may be a time to —
10 if I'm running into trouble it may be also time after that
11 hearing either after, before, whatever suited y'all, that we
12 could revisit any of these issues that may or may not be
13 revisited.

14 **THE COURT:** What about April the 3rd? April the 3rd
15 which gives us a little bit more time. I've got common pleas
16 nonjury that week.

17 **MR. HOWLE:** Is that a Thursday?

18 **THE COURT:** That's a Thursday I think. And we can
19 always set time for that, but I was going to check real quick
20 and see.

21 **MR. BABB:** Let me ask, are we still looking the
22 possibility the 27th or 28th or have we scratched that and
23 move to April 3rd?

24 **THE COURT:** Give me one second. I'm going to look
25 real quick at the terms of court and see what we got. Why

1 don't we do April the 3rd. And the reason I say that is,
2 you're assigned with me that week anyway and I know we don't
3 have to have the same court reporter. It's just to the extent
4 I know that Court Administration has already got Frances
5 assigned to the case to the extent everything we can do with
6 her let's do it. But that also gives you a little bit of
7 another several days to get all that in.

8 MR. BABB: Well, I guess that order should emanate
9 from y'all.

10 THE COURT: I'll do that. Does that -- or I tell
11 you what, let me do this, let me get -- so y'all can go back
12 and look at your calendars and see and then you let me know if
13 April 3rd is a good time. Do you know about your general
14 sessions?

15 MR. HOWLE: I start on the 7th in Sumter. Now I may
16 have another week finishing up another county but, and that
17 first week in Sumter on the 7th is a plea week so I know I
18 wouldn't have a -- I wouldn't have any kind of preparation for
19 trial.

20 THE COURT: Now I got here that that week of
21 March 31st that over in the third circuit there's general
22 session in Lee County.

23 MR. HOWLE: That ends by Tuesday afternoon.

24 THE COURT: And that's all they got listed so it
25 doesn't look like you're in general sessions that week.

1 MR. HOWLE: I feel.—

2 THE COURT: Well, that might be — April 3rd might
3 be good. That's a Thursday of that week. Chances are you'll
4 be done in Lee, then you don't have anything else.

5 MR. HOWLE: I feel we will be.

6 MR. BABB: If you would, Jack, since I'm going to be
7 on the road, I'm going to another DP conference right now.

8 THE COURT: Okay.

9 MR. BABB: Check with Kimmie, tell her to go ahead
10 and get an order of protection from family court, to text
11 message me if I've got a federal conflict. And if, Judge, if
12 it's a federal conflict depending on what it is, I may need
13 your help on that. Sometimes they — I mean, you know how
14 they are.

15 THE COURT: I do, I do.

16 MR. BABB: They call — I get the notice two days
17 before, sometimes one day before.

18 THE COURT: Yeah, I know, I understand.

19 MR. BABB: Depending on the judge. Some call me and
20 ask me if it's okay; others say be here tomorrow. And Judge,
21 when you finish writing if y'all would keep a copy of, just in
22 case I do a typo, which sure would be helpful.

23 THE COURT: Sure, I'll have it.

24 MR. BABB: Or keep the original and give me a copy.
25 That would be fine. If we could get two — well, no.

1 **THE COURT:** We'll make you -- yeah, we'll make.
2 Now guys, I understand this is a real popular thing in a lot
3 of states, but I'm not aware in South Carolina that we do jury
4 selection experts.

5 **MR. BABB:** Our position is and for the record is
6 it's absolutely critical in the areas of plenty of empirical
7 evidence out there that indicates how you go about that and
8 the methodology of eliminating the killers. You've got the
9 Colorado method. You've got, you know, in Georgia since
10 they've put that office together there have been no death
11 penalty verdicts returned. There haven't been any returned in
12 Colorado in years, and it's because of the systems that these
13 experts use.

14 **MR. HOWLE:** We had a jury selection expert in one of
15 my last death penalty cases.

16 **MR. BABB:** Was that Tucker?

17 **THE COURT:** Did you find it to be helpful?

18 **MR. HOWLE:** Yes, sir.

19 **THE COURT:** Now when do they -- they come in once
20 the jury is, the pool is put out there?

21 **MR. HOWLE:** Yes, sir.

22 **THE COURT:** And when do they get involved, I guess?

23 **MR. HOWLE:** They look at -- we did some research on
24 where people worked and if they had been in Magistrate,
25 whatever it was. But they sat with us. And the way the judge

1 did then was they had ten people coming in at a time about an
2 hour apart. And they would come in and take the stand. Now
3 back then we had a list of about three hundred questions we
4 wanted to ask. Since then the Supreme Court has said that's a
5 few too many questions and they have shortened that list
6 considerably. So and sometimes based on where the person
7 worked, what their spouse did, the juror -- the expert would
8 suggest maybe some line of questioning that would go into
9 something we hadn't really thought about so.

10 THE COURT: Okay.

11 MR. HOWLE: And we found they were helpful.

12 MR. BABB: And I understand this guy takes, you
13 know, of course the questionnaires and goes through all of
14 those well ahead of time.

15 MR. HOWLE: It's about a two-and-a-half page
16 questionnaire now I think, or two pages maybe that the Court
17 came up with on its own now.

18 THE COURT: And I'll approve some for that. I'll
19 just be honest, I'm struggling a little bit with this
20 interrogation techniques expert. That just seems like a --
21 you said you've used him in another case?

22 MR. BABB: I retained him in another case. The
23 client decided to plead. It was 11 year old accused with
24 armed robbery. And I but, you know, and I was using him to
25 kind of -- what makes him so good is not only has he been

1 exposed, and I believe I'm correct, it's some sort of
2 military, you know, I don't want to say CIA, but you know,
3 some sort of entail type organization.

4 THE COURT: Some kind of covert type —

5 MR. BABB: Yeah, kind of covert sort of stuff.

6 THE COURT: —situation.

7 MR. BABB: Or, and/or, you know, how it would be
8 proper for military tribunals, etc., but I just have concerns
9 given what my client says the number of hours he was held and
10 then them bringing this forensic psychiatrist in, plus him
11 being on drugs as to how improper that was. And you know,
12 Judge, the innocence project is now over two hundred, had over
13 two hundred cases reversed on DNA. There's a book out that
14 looks at the convictions in those cases and tries to pin down
15 what it was that the jury made the jury render a conviction of
16 someone who was in fact innocent. There have been three
17 reasons, I think given, which is false co-defendant testimony,
18 sloppy or falsified lab work, you know, all do the cross-type
19 thing or the FBI thing, and thoughts, confessions. Now I'm
20 not saying I'm mounting a false confession defense
21 necessarily; but I'm saying the techniques, when you look at
22 the hours and hours and the drug use, my position is it may
23 create some sympathy for the guy with the jury particularly if
24 he's pleading and particularly if he's confessed six times
25 which I think he has in this case and particularly if he wrote

1 the family a letter of apology and if he claims that there was
2 another person with him during this murder.

3 THE COURT: Uh-huh.

4 MR. BABB: But Jack, and not trying to change gears,
5 those letters to the Item, Jamie Turner who is involved in
6 this case and he's a straight arrow as far as we're concerned.
7 He mentioned to Jack he had discovered that our client had
8 written the Item.

9 MR. HOWLE: He told me yesterday that he had — the
10 fellow at the Item called him.

11 MR. BABB: The Item being the Sumter County Paper.

12 MR. HOWLE: Called him and said he'd gotten this
13 series of letters from him but they weren't — the date on it
14 wasn't written last week. Some of them were a little older
15 but they were sent to him. And it talked about the incident
16 out at the jail where this fellow was beaten up and everything
17 else. The Item guy called Jamie Turner 'cause he said, I
18 don't know what to do, I'm certainly not going to just run an
19 article or something. So he mailed them or sent them to
20 Jamie, and Jamie said he was going to fax them over to us.
21 And I hadn't gotten them yesterday. That was just yesterday.

22 MR. BABB: I raise it not as a discover— obviously
23 if he doesn't know they had them he didn't know they had them.
24 I do raise it going back to your question about the jury.
25 Obviously it's on the Item's radar scope so they may go by the

1 courthouse and pick up on something. If they do, you know,
2 depending on your ruling and how all this goes I may be in a
3 position to where I have to make a motion to go elsewhere.

4 THE COURT: Yeah. Oh, I understand.

5 MR. BABB: Has it's own repercussions.

6 THE COURT: I understand absolutely. That's a risk
7 that you take but, and again, and I'm just -- this isn't on
8 the record.

9 (WHEREUPON, there was an off-the-record
10 discussion.)

11 THE COURT: As I said, if it comes that this funding
12 is not adequate and then I'll just, you know, I'll certainly
13 entertain any requests for an increase.

14 MR. BABB: Sure. Well, and at that point I'll try
15 and have letters from the people explaining themselves.

16 THE COURT: Yeah.

17 MR. BABB: It's not all me trying to make arguments
18 on things I don't know about.

19 THE COURT: They need to explain it. It's just
20 like, you know, for example the forensics computer guy. You
21 know, I just think he can do, especially at his hour rate, I
22 think he can do what he needs to do hopefully in what I've
23 allowed here. And again, if there's a problem with it then
24 let me know. But that's yours. I've mirrored it on mine
25 here. So I've got that.

1 MR. BABB: Thank you. And let me explain, the
2 reason I tend to go over is because, you know, if they run
3 over OID is going to take the position they're not paying.

4 THE COURT: Yeah.

5 MR. BABB: Of course, I'm going to take the position
6 if you say going over was okay, then I'm going to ask for an
7 order and rule to show cause why they should not do what you
8 told me.

9 THE COURT: Well, I'm not saying going over is okay.
10 What I'm saying is if they go over then I'm leaving the door
11 open for you to revisit to ask the Court for additional
12 funding.

13 MR. BABB: I'm — correct.

14 THE COURT: You know, I may deny it. But I'm just
15 saying, I'm not saying this is the amount come hell or high
16 water. I'm saying this is what I think is reasonable and if
17 they need to go over then you need to just go ahead and make
18 that argument.

19 MR. BABB: I just don't want there to be, let's say
20 Brawley is in the middle of interviewing the mother, goes up,
21 times up, we have to cancel, and she leaves.

22 THE COURT: Yeah. Well, I mean.

23 MR. BABB: That's a sort of —

24 THE COURT: She's got serious issues if she does
25 that.

1 MR. BABB: Well, no, that's what I'm saying -- I'm
2 saying --

3 THE COURT: I know what you're saying. You want her
4 to be able to finish what it is they're doing.

5 MR. BABB: Yeah.

6 THE COURT: But here's another thing that I think
7 helps that though. I don't know this, but you know, I think
8 if you tell any of these individuals, this is what we have to
9 work with. You know, any -- you always get concerned. It's
10 like if I'm having something done at my house. I want that
11 individual whether it's yard work or whatever, quote me a fee,
12 don't quote me an hourly rate because if you want to charge me
13 X number of dollars an hour then I'm going to feel the need to
14 stand out there and watch you work and make sure you're not
15 sitting on your rear end collecting, you know, driving up a
16 fee. And that's why, you know, it might be helpful to let
17 them know this is what we've got to work with. If it's an
18 unusual circumstance and you can justify to the Court your
19 need to go over, you know, then we'll do that but let's try to
20 operate within the parameters which we've been given.

21 MR. BABB: Okay.

22 THE COURT: I think most of them will.

23 MR. BABB: I've got no problem. And you know, maybe
24 it's just a difference in the way of doing work. Like we just
25 build courtyards at the office so we're spending money like we

1 got a printing process. You know, the guys out there
2 estimating what it's going to take to satisfy my wife on those
3 iron gates and —

4 MR. HOWLE: You have to figure that factor in.

5 MR. BABB: Well, I mean, you know, you need a
6 ballpark but he's coming represented to me — or recommended
7 to me by someone I trust.

8 THE COURT: Yeah.

9 MR. BABB: And I said, I'm not going to hold you to
10 it, just give me what you think is a ballpark figure. If
11 you're under, fine.

12 THE COURT: It just gives me an understanding where
13 we're at.

14 MR. BABB: If you're over I will cover you, okay?
15 And he was over because of — and he explained exactly he was
16 over by 300-dollars so I paid him.

17 THE COURT: Well, you know, and of course I don't
18 know any of these people other than Doctor Schwartz-Watts
19 which I have a tremendous amount of respect for. I've seen
20 her in a lot of different matters and stuff like that. But
21 anyway, that — I think if you let them know that this is,
22 this is what we've got to work with, and you know, try to get
23 your work done in that time. And if you can't then we can
24 always go to the judge and but with an explanation. You're
25 going to have to justify, but you know, and we'll see about

1 getting more but. I will tell you that, and not particularly
2 to any one person here, most people who work like at an hourly
3 rate if you tell them you've got X Number of dollars available
4 for sure enough their hourly hours end up totaling about what
5 you've got available, you know, even if they could have done
6 it in less time. But you don't tend to see that as much with
7 professionals like this. They do their job and then they're
8 done, you know.

9 MR. BABB: And that's part of the reason I rely on
10 Ms. Graham to help me pick them because she works these cases
11 all over the state, has been doing it for years, knows who to
12 pick and has said don't pick certain ones for certain reasons.

13 THE COURT: So I think I'm going to -- what I think
14 I'm probably going to do is tell them to summon 400 and then
15 I'm going to set a date, a week or so out to, just a time to
16 hear requests for excuse or transfer so that when we actually
17 get to the week of the 28th we pretty much have cleared out
18 those that are asking to be relieved for some reason other
19 than dealing with the case itself.

20 MR. BABB: Right.

21 THE COURT: And I think that would be more efficient
22 than dealing with it come the 28th 'cause then that's just
23 time we got to take up that day dealing with people who
24 simply, you know.

25 MR. BABB: Well, and there's no need for the

1 juror — it eliminates work from what, if we have a consult, I
2 haven't looked at the figure but it eliminates them having to
3 chase down red herrings.

4 THE COURT: Right, right. Okay. All right,
5 anything else that we can do today? And I know we pretty much
6 this ex-parte stuff what we need to do. You'll let me know,
7 Jack about, and Jim, you'll look at your schedules and confirm
8 April the 3rd.

9 MR. HOWLE: I don't think that's going to be a
10 problem at all.

11 THE COURT: Of course, I haven't spoken to the
12 Solicitor, but when I look on here I see that he has no court
13 other than in Lee County I can't imagine it would be a
14 difficult time for him. But I will — I'll call his office
15 just to make sure he doesn't have like vacation scheduled or
16 something like that.

17 MR. BABB: One of the things, Judge, it's not
18 particularly on this list but somewhere along the way Jack
19 still doesn't an office. He's still renting from me. All of
20 the expenses of this case is coming out of my private
21 practice.

22 THE COURT: I thought they had to —

23 MR. BABB: They got rooms but there's nothing in
24 them.

25 MR. HOWLE: I got two rooms they put carpet in

1 yesterday. There's nothing else in it but carpet so.

2 MR. BABB: So somewhere —

3 THE COURT: I remember, Jim, you had somewhere
4 talked —

5 MR. BABB: You know, my postage — I mean, it gets
6 significant after I'm —

7 THE COURT: Office and mileage expenses and, yeah.

8 MR. BABB: My position is that was covered. Of
9 course I don't know that OID agrees with me when you appointed
10 me, you know, but they may take the position that come out of
11 your hourly rate.

12 THE COURT: Why don't — wouldn't you submit that to
13 them for payment under your appointment.

14 MR. BABB: Yeah, I plan to. I just — I just wanted
15 to let you know.

16 THE COURT: Right.

17 MR. BABB: Do I need to put that in the order that,
18 you know, I'm incurring significant stuff and —

19 THE COURT: No, I wouldn't.

20 MR. BABB: I mean, it's not significant significant
21 but.

22 THE COURT: I wouldn't think you need to do that. I
23 mean, every other indigent case I've ever seen, forgetting the
24 fact it's a death penalty, but any other indigent case you're
25 entitled to your hourly rate and expenses.

1 MR. BABB: Reasonable expenses.

2 THE COURT: Reasonable expense, yeah.

3 MR. BABB: When I have to drive over here to see him
4 or when I have to drive to Columbia to meet experts.

5 THE COURT: Have they got him over here? Is that
6 where they got him?

7 MR. BABB: Yeah, he's over here.

8 THE COURT: Oh, okay.

9 MR. BABB: And what I really try to do as far as
10 that on experts, and you'll see it on the bill, is often try
11 to hookup with other things I've got in Columbia so I'm only
12 charging a one way trip.

13 THE COURT: Kill a couple of birds with one stone,
14 yeah.

15 MR. BABB: I don't play this, if I'm doing two
16 things double billing on my mileage.

17 THE COURT: Yeah, okay.

18 MR. BABB: So most of my trips to Columbia have been
19 one way, which is cheaper than them coming to me because then
20 they're will be all the way around.

21 THE COURT: Then there is a round trip and all their
22 time, travel.

23 MR. BABB: Plus their time.

24 MR. HOWLE: At least he gets to submit a voucher.

25 MR. BABB: Yeah, but damn, I'm paying —

1 **THE COURT:** That's why you get the big bucks.

2 **MR. BABB:** Excuse me, but I'm paying for all the
3 postage and, you know what I mean.

4 **THE COURT:** Well, that ought to come out of the —

5 **MR. HOWLE:** And we talked about that, and I don't
6 have any problem reimbursing for things that I think should
7 come under the —

8 **MR. BABB:** Well, it should come out of the OID in
9 Columbia.

10 **THE COURT:** Because even though as trial strategy
11 and however it is, you don't have, you know, lead counsel;
12 you're both the attorneys. But technically the Public
13 Defender was appointed and then, Jim, you were appointed as
14 the second lawyer, not second chair but second lawyer.
15 They're entitled to two. And so there's got to be some
16 liability or.

17 **MR. HOWLE:** And we're going to take care of some of
18 that.

19 **THE COURT:** Burden on the Public Defender's Office
20 to —

21 **MR. BABB:** I was trying to put it on the one in
22 Columbia rather than on —

23 **THE COURT:** I know, you're trying to save Jack's
24 budget, I know that.

25 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 27th day of March, 2009.


FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
STATE,)

v.

STEPHEN COREY BRYANT)
DEFENDANT.)

TRANSCRIPT OF RECORD
04-GS-40-10096
08-GS-43-00696
08-GS-43-00699
April 3, 2008
Florence, South Carolina

BEFORE:

THE HONORABLE THOMAS A. RUSSO , JUDGE.

APPEARANCES:

C. KELLY JACKSON, ESQ., SOLICITOR
DUDLEY SALEEBY, JR., ESQ.
Attorneys for the State

JACK D. HOWLE, JR., ESQ.
JAMES H. BABB, ESQ.
Attorneys for the Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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EXHIBITS

DEFENDANT'S:

No.	Description	ID/EVD
1	Tender of guilty plea	3

1 **THE COURT:** I've got motions that have been
2 filed by defense counsel. Then I have, let's see. These
3 ones that have been passed up, I don't have these; is that
4 correct?

5 **MR. HOWLE:** Yes, sir, there's a supplemental to
6 the order to determine mode of trial, also different
7 motions with regard to continuance.

8 **THE COURT:** All right, okay.
9 Is the State ready to proceed with regards to
10 these?

11 **MR. JACKSON:** We are. Are you talking about
12 the...

13 **THE COURT:** Whatever we have here.

14 **MR. JACKSON:** Yes, sir.

15 **THE COURT:** Okay. Mr. Howle and Mr. Babb, what
16 I'll do is I'll take these up in whatever order you wish
17 to present them, however you want to do it, okay?

18 **MR. BABB:** All right, sir. Your Honor, I guess
19 the first motion would be one we filed back on February
20 the 8th where we requested that the State be required to
21 file and serve responsive pleadings to our motion. Our
22 basic premise is set forth in that written motion, and you
23 know, I won't go through all of it but basically we're
24 just alleging for us to be effective in assisting our
25 client and to provide him effective assistance of counsel

1 and due process that we need that exchange that you have
2 with motions. Otherwise, it's like today, where you get
3 motions served and are immediately expected to respond
4 without any time to know what the other side's response is
5 which brings some uniformity into the system that we don't
6 have absent that motion. And we would — we move for that
7 first to require that they then respond to our remaining
8 motion.

9 THE COURT: All right.

10 MR. SALEEBY: Your Honor, if it please the
11 Court, I'll respond. To my knowledge the State has not
12 served any motions on the Defense today from which they
13 would have been unprepared to respond. We did receive
14 their supplements about 20 minutes ago but we're prepared
15 to go forward. Your Honor, I tried to research the law on
16 responsive pleadings. I found no United States Supreme
17 Court authority requiring that, no Federal Court
18 authority, no decisions by any Appellate Court or the
19 State of South Carolina so I thought perhaps it might be
20 governed by rule. I looked at the Rules of Criminal
21 Procedure, particularly Rule 4 which is based somewhat on
22 Rule 7(b) of the civil rules, and it states an application
23 for an order may be made by motion which in appropriate
24 language unless made during a hearing or trial in open
25 court with a court reporter present shall be made in

1 writing and shall state with particularity the grounds and
2 shall set forth the relief. So the pleading practice for
3 motions and responses in this state, both in civil and
4 criminal court is counsel is not restricted to written
5 motions at any particular time in terms being the moving
6 party. There's absolutely nothing that requires it for a
7 responsive party, and there being no law and no precedent
8 we see no need to do it.

9 THE COURT: All right.

10 MR. HOWLE: Your Honor, I'd just —

11 THE COURT: Yes, sir.

12 MR. BABB: —point out that decisions like I
13 think it's *Holmes versus South Carolina* make it very clear
14 that the rules of the state while giving deference don't
15 control; that they're larger issues at interest and that
16 the — they don't control due process rights.

17 THE COURT: All right.

18 MR. BABB: And here we're not about making
19 motions; we're asking that they simply respond. And we,
20 you know, so that it's — the issue is fully raised and
21 joined before the Court and the Court itself can make an
22 informed, rational decision.

23 THE COURT: All right, thank you, sir. I'm
24 going to respectfully deny that request. I as well have
25 looked into the South Carolina case law and looked into

1 the rules, and I don't see anything that requires that
2 those responses be done as proposed in your motion. And I
3 don't believe there's a requirement to do that, and so I'm
4 going to respectfully deny your motion regarding that.

5 MR. BABB: Thank you, Your Honor. Your Honor,
6 our next motion was basically to ~~quash the notice of~~
7 ~~intent to seek the death penalty.~~

8 THE COURT: Yes, sir.

9 MR. BABB: And again, we set forth our
10 arguments in the writing. It basically gives very little
11 notice of what facts or factors are going to be presented.
12 In other words, it's incomplete in its giving of notice,
13 and therefore we would move to quash it.

14 THE COURT: All right.

15 MR. SALEEBY: Your Honor, if it please the
16 Court, you -- does the Court have a copy of our notice in
17 front of it? If not I can hand one up.

18 THE COURT: What I do have is the, apparently
19 the, what Mr. Babb had put in his motion where he cited it
20 under Number 7.

21 MR. SALEEBY: Could I hand a copy of it to you
22 just for the record?

23 THE COURT: Yes, sir, sure.

24 MR. SALEEBY: And I read the quote as well but
25 I just think having the full notice in front of there

1 would respond appropriately. Your Honor, our response to
2 the Court would be based on some decisions in this order.
3 Of course what the statute says is that we have to cite
4 the statutory aggravating circumstance which we did in
5 paragraph, in the first paragraph, being murder while
6 committed in the commission of the crime of robbery. And
7 then out of abundance of precaution we went further to
8 specify in general terms, as I think is at most what's the
9 law requires, how we would have evidence about the
10 character of the defendant, the circumstances of the crime
11 which would include guilt phase testimony, victim impact,
12 prior criminal record, commission of other crimes, and
13 conduct during incarceration, and would include
14 specifically all that there stuff related those crimes
15 that we turned over in discovery. And we would cite as
16 authority in particular two cases if I could say, give
17 them to the Court. The first one -- they're both death
18 penalty cases -- is State versus Humphries. It's a 1996
19 decision, 325 South Carolina 78, 479 Southeast Second
20 52nd, 52. As I see how I wrote this down here it could be
21 323. But in that case what you had was victim impact
22 testimony. It was a death penalty case; Judge Floyd tried
23 it. It was affirmed. And the Court said that there was
24 no need for additional notice; that that was proper. The
25 other case which I think is probably more pointly on point

1 is the State versus Owens, 346 South Carolina 637, 552
2 Southeastern Second 745. That was a Greenville County
3 death penalty case affirmed in part and reversed in part
4 and remanded for sentencing on another point. But the
5 issue there was in the penalty phase the State introduced
6 a statement that the defendant had entered. And the basis
7 of the objection was that that had not been specifically
8 spelled out. And what the Court held was, when the State
9 notified Defense counsel it was going to have information
10 about the characteristics or character of the defendant he
11 was properly informed and that would probably include the
12 sentence of that crime so we think Owens pretty much
13 covers this.

14 THE COURT: Thank you, sir.

15 MR. SALEEBY: Thank you, sir.

16 THE COURT: Anything in response from Defense?

17 MR. BABB: Your Honor, it basically leaves us
18 not knowing.

19 THE COURT: Well, and I'm looking at the notice
20 and, and for example, it does state in the second
21 paragraph defendant's prior criminal record, which of
22 course you're got notice on, proof of commission of other
23 crimes during the period. And it specifically states
24 during the period of October 5th through the 13th of '04
25 which certainly narrows that specificity. And then proof

1 of conduct during incarceration, certainly there would
2 be — that's notice of that. And then any other matters
3 which would have been turned over pursuant to Brady and
4 Rule 5. I think the motion or — the notice, excuse me —
5 the notice is statutorily proper. It does appear to give
6 enough specificity to put the Defense on notice. I'm
7 going to deny your motion. I think the notice does meet
8 the requirements set forth by the law.

9 MR. BABB: Yes, sir, Your Honor. The next
10 motion would be to strike count three. Count three deals
11 with the possession of the stolen pistol.

12 THE COURT: Yes, sir.

13 MR. BABB: Though it may have a nexus to the
14 crime — it being the gun that was allegedly used to kill
15 Mr. Tietjen — it is outweighed, any probative value it
16 has is outweighed by its prejudicial effect because then
17 we're getting into during the trial and domain on the
18 question of guilt or innocence, a — an entirely different
19 crime than the armed robbery or murder.

20 THE COURT: All right, sir.

21 Any response from the State?

22 MR. SALEEBY: Your Honor, if it please the
23 Court, this is obviously one of those matters whereby law
24 the Court has got to assess the factors laid out. I have
25 them here; I'm sure you have them as well. Is it a single

1 Mr. Burgess, Mr. Christopher Burgess. So the possession
2 of the weapon is the enabling tool that ultimately leads
3 to Mr. Tietjen's death, and that's why we think they have
4 connection.

5 MR. BABB: Your Honor, if I may say though.

6 THE COURT: Yes, sir.

7 MR. BABB: That's all well and good in a
8 sentencing phase; but it's extremely prejudicial during a
9 phase where you're determining guilt, and hence, that's
10 our motion to strike that particular count from this
11 indictment.

12 THE COURT: With regards to the motion to
13 strike I'm going to respectfully deny that motion. I
14 don't find that the prejudicial effect of that is any
15 greater than the prejudicial effect of proving a crime of
16 armed robbery, which is one of the things that the State
17 is required to prove.

18 MR. BABB: If I may just point out, Your Honor.

19 THE COURT: Yes, sir.

20 MR. BABB: The victims are entirely different.
21 The victim of the armed robbery is the victim of murder.

22 THE COURT: Yes, sir.

23 MR. BABB: The victim of the theft of the
24 handgun is an entirely different individual I think. I
25 just wanted to make that clear for the record.

1 **THE COURT:** And so if I'm correct, Mr. Babb,
2 what you're saying is that in the guilt phase that — and
3 I'm not going to say it exactly as you said, but basically
4 your point is that in the guilt phase the prejudicial
5 effect of proving that crime is great enough or outweighs
6 any probative value involved in the murder and the armed
7 robbery.

8 **MR. BABB:** Yes, sir.

9 **THE COURT:** That it may be appropriate, would
10 be appropriate more than likely in the sentencing phase if
11 we got to that.

12 **MR. BABB:** Correct.

13 **THE COURT:** But then not appropriate in the
14 guilt phase.

15 **MR. BABB:** Yes, sir. That is our position;
16 it's entirely inappropriate.

17 **THE COURT:** Anything further from the State?

18 **MR. SALEEBY:** No, sir, we've given you
19 authority we could find. Thank you.

20 **THE COURT:** All right. Tell you what I'm going
21 to do on that. I'm going to hold that in abeyance till I
22 have an opportunity to read that case and look at that,
23 okay?

24 **MR. BABB:** Thank you, Your Honor.

25 **THE COURT:** I'll have a response for you this

1 week. I just wanted to have an opportunity to sit down
2 and look at that. All right.

3 MR. BABB: And Your Honor, you have -- with
4 this next motion Mr. Howle is going argue it. It's the
5 basic motion we had initially filed to permit the
6 defendant to plead guilty and have a jury determine
7 sentence. We had supplemented that to a 17 page
8 supplement that the Court had.

9 THE COURT: Allright. Yes, sir.

10 MR. BABB: And the Solicitor has in a tender of
11 a guilty plea signed by our client which has been marked
12 as Exhibit 1, the Court has as well.

13 THE COURT: All right, thank you, sir.

14 All right, Mr. Howle, I'll be happy to hear
15 from you regarding that.

16 MR. HOWLE: Your Honor, this kind of all fits
17 in to the emphasis that obviously we tried to make well
18 known to the Court of wanting to go directly to the
19 mitigation aspect of the case.

20 THE COURT: Yes, sir.

21 MR. HOWLE: That the tender of a guilty plea
22 reserving the right to jury determination of sentence as
23 been provided, and we did supplement the motion for the
24 order to determine mode of trial. Your Honor, obviously
25 the sentencing phase is where that mitigation and

1 aggravation aspect of it needs to be presented. We're
2 certainly aware Code Section 16-3-20(b), in the sentencing
3 phase the jury or the judge shall have additional evidence
4 in extenuation mitigation or aggravation of the punishment
5 and that recommendation, if it would be the death penalty,
6 it must be found warranted by the judge. It can't be just
7 based on prejudice or some other aspect. And 16-3-20(b)
8 says that the defendant pleads guilty sentencing must be
9 conducted before the judge. We're certainly aware of
10 that. But, Your Honor, the defendant would then be
11 precluded the right to have a jury determine those
12 additional facts prior to the imposition of a sentence.
13 In the Truesdale case, which is a 1982 case, the judge not
14 the jury, made that determination when the person pled
15 guilty. And I mean, probably the court – case law seems
16 to be opposed to me but we realize what's of record. Here
17 the defendant is asking the Court to declare that
18 statutory South Carolina death penalty scheme
19 unconstitutional or reconcile it with the Sixth Amendment
20 that says a defendant has a right to jury determination if
21 any factual predicate is necessary for imposing some
22 additional aspect of the sentence. What happens here is
23 the defendant's got to choose. He's either got to choose
24 the Sixth Amendment right to trial or the Eighth Amendment
25 right to present evidence in mitigation. It's like he

1 choice. I mean, he was told that's what he had to do. So
2 when there's no choice in it I don't see how the Court can
3 say that you're willingly and knowingly waiving that
4 right. The Blakeley case, Blakeley versus Washington, the
5 appropriateness of a defendant's right to exercise the
6 right to trial by jury of sentencing elements after a
7 guilty plea. Here Mr. Bryant just simply wishes to admit
8 his guilt and waive his right to a jury trial, but not
9 give up his right to have a jury determine those
10 additional or separate facts that impact the penalty that
11 would be imposed. This is not that conditional plea that
12 you saw in Truesdale where the defendant wanted to plead,
13 but then kind of like in a regular plea when the defendant
14 gets up there and wants to say, well yeah, I did it but,
15 and put all those other things up. That's not what
16 Mr. Bryant is trying to do. Here though the State wants
17 to condition his waiver or decision to plead guilty upon a
18 waiver of his constitutional rights to present evidence in
19 mitigation to a jury to have such a jury determine his
20 sentence. They want to take away that right. ~~Part of his~~
21 ~~defense and a great impact on the sentence he may receive~~
22 ~~is the presentation of this evidence in mitigation.~~

23 THE COURT: The taking responsibility for?

24 MR. BABB: Yes, sir, yes, sir. And ~~the right~~
25 ~~to tender that guilty plea is evidence of mitigation.~~

1 Considerable attention is given -- and we've cited this in
2 here various articles and cases with impact of a defendant
3 pleading is shown to be significant on a jury in rendering
4 a sentence. Pleading guilty is in itself a major
5 mitigating factor. It shows he takes responsibility for
6 his actions. Because Your Honor, a jury may well assume
7 that the defendant is not taking such responsibility when
8 he is forced to plead not guilty to retain his right to a
9 jury trial. I mean, it's a conundrum. And beyond that,
10 it does not deny the State from offering any evidence in
11 regard to defendant's role in the crime at sentencing. So
12 I don't see what the State is losing in regard to
13 acceptance of a plea of guilty. Then going into the
14 mitigation they're still going to present all the
15 aggravating circumstances they think exist. And we're
16 just, think that it's proper to allow him to do that, to
17 plead guilty, and not go -- be forced to go trial and then
18 not be able to, in other words, to let Your Honor take the
19 plea and the jury then hear that second phase and
20 sentencing and make an appropriate finding as to whether
21 there are aggravating, mitigating circumstances.

22 THE COURT: All right, Mr. Howle. Thank you,
23 sir.

24 MR. SALEEBY: Your Honor, if it please the
25 Court.

1 THE COURT: Yes, sir.

2 MR. SALEEBY: I guess the first thing I'm --
3 it might surprise you -- if the State could go along with
4 this and agree to this procedure it would probably be
5 beneficial because we would have the reasonable doubt part
6 of it behind. But there's no way we with good conscience
7 can urge you to go along with this motion no matter how
8 well written and innovative as it is because you'd have to
9 go against hard precedent. Most of these weren't cited in
10 their initial brief; they are here now. You know, the
11 1982 cases of Patterson and Truesdale just hit the nail
12 right on the head, and we would suggest that the two cases
13 that they have now cited and I pulled before Downes and
14 Crisp don't do anything to undercut that. What they don't
15 cite about those two cases is that in Ream versus Arizona
16 the problem there that rendered it unconstitutional was a
17 jury found the usual first phase guilty or not guilty and
18 then the judge determined the aggravating circumstances as
19 opposed to the jury. And they said that doesn't work and
20 it says, Ream -- I'm quoting our court in both Downes and
21 Crisp. Ream doesn't involve jury trial waivers. Ream is
22 not implicated when a defendant pleads guilty and it cites
23 authorities out of Indiana and Nevada and Illinois. So
24 succinctly stated, although it may be a good idea, which
25 should be the way the law is, I think there's no way the

1 Court can grant the motion without going against clear
2 authority in accepting up an automatic reversal.

3 THE COURT: Thank you, Mr. Saleeby.
4 Mr. Howle, anything further?

5 MR. HOWLE: Yeah, I think Crisp has implicitly
6 overruled those other South Carolina cases. Your Honor,
7 the odd thing about this is, it's everybody agrees this
8 either bad law, needs to be changed, but it's like our
9 hands are tied and we can't do it because just like you
10 raised the question, well, it's just going to lead the
11 reversal. Maybe this will be case when it goes up, will
12 be reversed and this will be changed. We're just trying
13 to put the horse in front of the cart if we can. It just
14 is a procedure that just seems archaic, and the other
15 states seem to realize it's archaic and they're allowing
16 if someone wants to plea and come before the Court, then
17 that aspect of the case is done and that just go straight
18 into sentencing. Like I said, it doesn't adversely affect
19 the State one bit. They still get to put up whatever
20 testimony they want to as aggravating circumstances so I
21 honestly cannot see where anything is gained. We realize
22 what the law is. We realize what has been the wording in
23 the statute. We just think it's improper, and he should
24 be allowed to do that and go straight into the sentencing
25 phase, Your Honor. Mr. Babb and I talked about this.

1 It's a matter that's the law of the case. If it's done
2 and no one objects in whatever I don't see where the
3 reversal is going to come about anyway.

4 THE COURT: All right, sir. Somewhat similar
5 to what Mr. Saleeby mentioned; I -- whether I agree with
6 you or not is not the issue that I'm dealt with or that
7 I'm faced with. I may very well agree with you that it
8 should be that way, but as the trial court I'm bound by
9 the law of this state. And the statute is clear; the case
10 law I think is clear. And I'm -- I don't think I have any
11 choice other than to deny your motion to allow the trial
12 to proceed in that fashion. I think we are -- unless
13 there comes some change through the appellate courts or
14 through the legislature -- I think we're bound by the fact
15 that Mr. Bryant in this case or any other defendant facing
16 this situation is either going to have to select a jury
17 trial both as to guilt and as well as to sentencing or a
18 bench trial with regards to either or to both. And so I'm
19 respectfully going to have to deny your motion regarding
20 that.

21 MR. HOWLE: Thank you, Your Honor. Your Honor,
22 on the motion for continuance related relief there was an
23 additional motion that's filed, it's ex-parte so I'm not
24 going to put that part on the record --

25 THE COURT: I have that, yes, sir.

1 **MR. HOWLE:** --that you're aware of. Your
2 Honor, a lot of what we have filed here in regard to the
3 motion for the relief is just some of the history of the
4 case. This is a 2004 incident. It was almost July of
5 2006 before the grand jury returned a true bill. It was
6 April 2007 when we got the notice of intent to seek the
7 death penalty. There are various dates in here with
8 regard to discovery. The last discovery we received was
9 just January 25th, 2008. One of the concerns that I would
10 raise, and this is maybe an impact in my ability to
11 prepare and do other things with this case. John knows
12 February 1st I became third circuit public defender. Our
13 office, we just got some office space moved in, still
14 haven't gotten computers or anything else. And in the
15 middle of all this one of my public defender's decided
16 they were not going to continue and we had a hearing this
17 Monday in Bishopville in regard to some cases they were
18 keeping. Probably has 160 cases. I think he said he
19 wanted to keep eight. Yesterday I hired someone to take
20 his place, but he's not going to even be available for
21 another three weeks or so 'cause he's got to move to
22 Sumter, find a place that he can actually physically move
23 here and everything else. So a lot has just been going on
24 with that office that has required me to give attention to
25 a lot of other things. We have a position that is filled

1 by the State; it had to be posted on the State. The
2 listing for that ended yesterday. When I checked it I had
3 78 people who applied so now I've got to go through 78
4 applications in essence and decide who I'm going to
5 interview and then this is the key person I'll need by the
6 time to keep my system running. It's just been a great
7 deal implementing a circuit wide public defender's system
8 as opposed to the county by county system. And we weren't
9 set up like some of the larger counties were before where
10 the public defenders were already full time so they really
11 haven't changed a lot. All of ours were independent
12 contractors, and it's been a considerable change in
13 getting all that set up. And I know the Court is aware;
14 we talked about this before. But I just wanted to restate
15 for the record a lot of the requirements on my time that
16 have been taking place the last several months and are
17 continuing to take place, Your Honor.

18 THE COURT: All right, sir.

19 MR. BABB: The remainder of course we'll have
20 to discuss outside.

21 THE COURT: Yes, sir.

22 State have any response to that?

23 MR. JACKSON: Your Honor, I don't see anything
24 new in this motion for continuance that we didn't discuss
25 when we were here before. And there's one item of

1 discovery, a letter from a newspaper, if you want to hit
2 that, Jack.

3 MR. HOWLE: Oh, okay. Yeah, there were -- last
4 term of court Jamie Turner and I happened to be talking in
5 the hall and he told me that some letters had been sent to
6 the Item. My understanding was that I was either going to
7 get copies either from him or the Solicitor's Office, and
8 we haven't gotten those. And we just are asking that we
9 be provided those to see if there's anything in there that
10 we need to be aware of prior to trial.

11 MR. JACKSON: That's the only thing that I know
12 of, Judge. Mr. Turner is here today. I asked him about
13 the letters. We were not aware of them. He says, yes,
14 something came in from the Item, I don't know the last
15 month I want to guess. And he'll have it to me in the
16 morning. We'll take a look at it and provide it to
17 Defense counsel. Some letter that purportedly that
18 defendant wrote to the Item back in '04 or '05, but we
19 certainly will get that and hand it over. Other than that
20 I don't see anything in here new. We're certainly not
21 aware of any ex-parte matters that they may have discussed
22 with you, and of course we wouldn't be made aware of that.
23 But we're ready to go forward.

24 THE COURT: All right.

25 MR. HOWLE: Mr. Jackson wasn't moving into his

1 office the last couple of weeks either but I understand
2 that, Your Honor. Your Honor, one matter that we would
3 raise that -- and it's not in the written order, because
4 we've just received an email from one of the experts that
5 we were talking with, and in looking at a, some notes from
6 a preliminary hearing December 13th, '05, I asked
7 Detective Florence for the names of the other inmates that
8 were incarcerated in the cells around where Mr. Bryant was
9 when that particular event happened out there and he
10 indicated that those would be available at the jail and
11 that he would be provided those. We never have gotten
12 those names. So I would like to have the names of the
13 inmates that were incarcerated that same time that when
14 the cell surrounding where that incident happened so that
15 we could possibly have them to interview, Your Honor.

16 THE COURT: What time frame was that,
17 Mr. Howle?

18 MR. HOWLE: This was December the 13th, 2005.

19 MR. BABB: It relates to the assault and
20 battery with intent to kill charge, Your Honor.

21 MR. HOWLE: On the officer at the jail, Your
22 Honor.

23 THE COURT: Right, right, I assume it was
24 associated with that.

25 Solicitor, any response regarding that

1 information?

2 MR. JACKSON: That's with the victim Larry
3 Justice?

4 MR. HOWLE: Yes.

5 MR. JACKSON: We can certainly inquire. I
6 don't know if they still have that information available
7 or not. When did y'all do the preliminary hearing?

8 MR. HOWLE: This was December 13th, '05.

9 MR. JACKSON: Okay.

10 THE COURT: And what you want is those
11 individuals that were incarcerated in or around where Mr.
12 Bryant was during that time frame, is that?

13 MR. HOWLE: Yes, sir, Your Honor.

14 THE COURT: Okay.

15 MR. JACKSON: I was under the impression he was
16 in his own cell but I certainly will look into that.

17 MR. HOWLE: Well, he was but I'm — we don't
18 know what people could hear or observe from those that
19 were —

20 MR. JACKSON: I'll certainly inquire.

21 THE COURT: I don't know how they have it set
22 up in Sumter. Are they in blocks or — they call it pods
23 over here. I don't —

24 MR. JACKSON: They have some of both. We will
25 inquire, Your Honor.

1 **THE COURT:** Okay. If you would, and get that
2 information if you can.

3 **MR. JACKSON:** Yes, sir. Yes, sir Your Honor.

4 **MR. HOWLE:** And Your Honor, so as part of that
5 if we could get some medical records on Mr. Justice. We
6 understand that it was a few months later a doctor someone
7 had something about a —

8 **MR. BABB:** Well Your Honor, the charge is
9 assault and battery with intent to kill, therefore, the
10 damage that was done to him would be relevant. And I
11 presume would be matters that they, prosecution may be
12 intending to introduce at trial. So we feel we certainly
13 would be entitled to those, to have a look at those and
14 understand those and —

15 **THE COURT:** Medical records on the victim in
16 that case?

17 **MR. BABB:** Medical records of the victim, yes,
18 sir.

19 **MR. HOWLE:** Yes, sir.

20 **MR. BABB:** As well as — as well as his, you
21 know, employment history, whether or not anyone had made
22 complaints about him as a correctional officer, etc.

23 **THE COURT:** Right.

24 **MR. JACKSON:** Your Honor, that's medical
25 records?

1 **THE COURT:** Medical records of the victim of
2 the assault case and then that victim's employment history
3 whether or not there have been complaints from other
4 inmates or anyone else regarding.

5 **MR. HOWLE:** Yes, sir, Your Honor. Your Honor,
6 the last matter I think we have in regard to open court
7 would be, the last letter we received you indicated SLED
8 getting involved in regard to the jury or whatever. As
9 far as the sequestering of a jury panel we're not
10 certainly asking that the jury be sequestered, and we
11 would ask that the jury not be sequestered. Along with
12 that in regard to the note taking that the jury may or may
13 not have if the Court may allow, as long as it follows the
14 APA guideline standards we have no objection to them
15 taking notes during the trial.

16 **THE COURT:** All right, sir. All right,
17 anything else?

18 **MR. JACKSON:** Nothing further, Your Honor.

19 **MR. SALEEBY:** Well, Your Honor, if we could
20 just, to make sure it's on the record, we have made
21 reciprocal Rule 5 responses. Ordinarily from Defense that
22 includes documents and tangible objects and reports of
23 examinations and tests. Likewise, we've put out a notice
24 of alibi and a notice of insanity or guilty but mentally
25 ill. There may be nothing forthcoming, and if so, that's

1 fine but it's been my experience in these cases that
2 usually an expert pops up at some stage of the trial. And
3 if we get to that point and an expert pops up and that's
4 the first we hear of it or know of it, then it could cause
5 a considerable delay in the trial and that's why we wanted
6 to be on the record as asking the Court to be attentive to
7 that. Thank you.

8 THE COURT: Yes, sir. All right, sir.

9 All right. Anything else from the Defense?
10 Now I realize that I need to have conversation regarding
11 the ex-parte portion of this motion for continuance and
12 we'll do that. Is there anything further at this time?

13 MR. HOWLE: Nothing further, Your Honor.

14 THE COURT: All right. Mr. Bryant, I don't
15 mean to ignore you, not like you're not there. Are you
16 able to communicate with your lawyers and see them and
17 assist them with your defense, sir?

18 THE DEFENDANT: Very much, sir.

19 THE COURT: Okay, sir. Is there anything you
20 need from the Court in -- to assist you with that?

21 THE DEFENDANT: Not at the moment.

22 THE COURT: All right. If there is anything
23 you be please to allow your attorneys to know that or
24 whatever requests those are so that they can communicate
25 with me, okay?

1 **THE DEFENDANT:** I will do, sir.

2 **THE COURT:** All right. Thank you, sir. All
3 right. Now I need to — and when we'll get back with you
4 with regards to that motion to strike on count three. And
5 then of course the motion for continuance I still have
6 information that I need to discuss with Defense counsel
7 before I rule on that. Now, and I don't know your
8 schedule, gentlemen, I want to give you whatever
9 opportunity you need to talk with Mr. Bryant but while
10 you're here you want to go over these matters after you
11 have had that opportunity?

12 **MR. BABB:** Actually, Your Honor, he was brought
13 here an hour early so we've gone over I think pretty much
14 everything that we needed to go over with him.

15 **THE COURT:** All right. Well then —

16 **MR. BABB:** And we appreciate the Court's
17 helping.

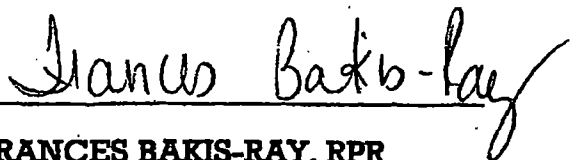
18 **THE COURT:** Sure, absolutely, anything I can
19 do. What about then going over this ex-parte information?
20 You prepared to do that this afternoon while you're here?

21 **MR. BABB:** Yes, sir, Your Honor.

22 **THE COURT:** All right. Well, if there's
23 nothing further then we'll adjourn this hearing. If I'm
24 not mistaken we tentatively — and again, I'm just talking
25 tentatively 'cause obviously I have to make decisions on

1 these motions. But I think the next thing, and if the
2 motion for continuance is not granted and we're going
3 forward, if that occurs, then the next thing I think would
4 be the 18th of this month which we're going to entertain
5 juror's requests for to be excused. And then the other --
6 then after that it was on Wednesday the 23rd, and that's
7 been changed. We initially had talked about on Thursday
8 the 24th but we're going to do that on the 23rd, which is
9 Wednesday, again, assuming that, you know, that we're
10 going forward. But I'll -- we'll make that decision here
11 within the next day or so.

12
13 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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1 **CERTIFICATE OF REPORTER**
2
34 **STATE OF SOUTH CAROLINA)**
5 **COUNTY OF FLORENCE }**
67 **I, FRANCES BAKIS-RAY, Registered Professional**
8 **Reporter (RPR), court reporter for the State of South**
9 **Carolina, Twelfth Judicial Circuit, do hereby certify that**
10 **the foregoing proceeding is a stenographic report and was**
11 **transcribed through computer-aided transcription; that the**
12 **foregoing transcript contains a true record of the**
13 **proceedings.**14 **I further certify that I am neither counsel for,**
15 **nor related to nor employed by any of the parties**
16 **connected to the action, nor am I financially interested**
17 **in the action.**18 **Witness my hand at Florence, South Carolina,**
19 **this 27th day of March, 2009.**
2021
22 23 **FRANCES BAKIS-RAY, RPR**
24 **My Commission Expires: 9-13-2014**
25

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
 STATE,)

v.

STEPHEN COREY BRYANT)
 DEFENDANT.)

TRANSCRIPT OF RECORD
 04-GS-40-10096, 06-GS-43-702
 06-GS-43-00696, 06-GS-43-701
 06-GS-43-00699, 06-GS-43-700
 06-GS-43-697, 06-GS-43-698
 April 18, 2008
 Sumter, South Carolina

BEFORE:

THE HONORABLE THOMAS A. RUSSO , JUDGE.

APPEARANCES:

C. KELLY JACKSON, ESQ., SOLICITOR
 DUDLEY SALEEBY, JR., ESQ.
 Attorneys for the State

JACK D. HOWLE, JR., ESQ.
 JAMES H. BABB, ESQ.
 Attorneys for the Defendant

FRANCES BAKIS-RAY, RPR
 Circuit Court Reporter

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Jury panel sworn

3

Examination of jurors

5

1 THE COURT: Ladies and gentlemen, I appreciate
2 you being here this morning and assisting us with this
3 process. What I'm gonna do is, and just to give you an
4 idea of the procedure we're going to follow, in just a
5 moment I'm going to recognize the Clerk to place you under
6 oath for your purposes of today's hearings. And then
7 after that I'm gonna have the Clerk take you as a group to
8 another room, and then I'm going to begin bringing you out
9 individually and then I'll listen to your reasons and your
10 needs to be excused or to be transferred. Okay? So and
11 we're going to try to make this as painless and quick for
12 you as possible so that you're not inconvenienced any more
13 than you need to be, so if you would, at this time please
14 give the Clerk your attention as he places you under oath.

15 DEPUTY CLERK OF COURT: Ladies and gentlemen of
16 the jury, please stand and raise your right hand to be
17 sworn.

18 (WHEREUPON, the potential jurors were sworn.)

19 DEPUTY CLERK OF COURT: Please respond by
20 saying I do.

21 (Jurors responded.)

22 DEPUTY CLERK OF COURT: Is there anybody of
23 this jury panel who did not receive this oath?

24 (There was no response.)

25 DEPUTY CLERK OF COURT: Thank you.

1 Your Honor, I think there's a couple of them
2 that just —

3 THE COURT: All right, that's fine.

4 DEPUTY CLERK OF COURT: Your name please.

5 THE POTENTIAL JUROR: Melissa Ward.

6 DEPUTY CLERK OF COURT: Is there anyone else
7 who just came in and didn't get their name called this
8 morning?

9 (There was no response.)

10 DEPUTY CLERK OF COURT: Thank you.

11 THE COURT: Thank you, Ms. Ward. Ms. Ward.
12 Were you present and able to take the oath that was just
13 administered?

14 THE POTENTIAL JUROR: Yes, sir.

15 THE COURT: Thank you, Ma'am.

16 THE CLERK OF COURT: Ladies and gentlemen of
17 the jury, if y'all will just come to the rail over at the
18 center aisle and then follow me please.

19 (Potential jurors were removed from the courtroom.)

20 THE COURT: I've informed Mr. Campbell that
21 about the procedure we talked about, that they'll come in
22 and we'll hear from them. If it's someone who has a
23 statutory exemption that they wish to exercise that, you
24 know, that's one thing. Those that have other reasons, I
25 told Mr. Campbell that we'll hear them out and then we'll

1 ask them to step out and Jamie will put them in a room and
2 then I'll hear from counsel on record regarding that and
3 then of course I'll have to make the decision, we'll bring
4 them back in and then give them the decision, okay? And
5 gentlemen, as I talked with the Clerk's office the list
6 that you have, we were just going to follow down that
7 list. The only exception is that juror number 75,
8 Ms. Floyd, we're going to take her out of order and take
9 her first. Then after that we should be on that list. So
10 let's get Ms. Floyd in.

11 THE CLERK OF COURT: Yes, sir.

12 EXAMINATION BY THE COURT

13 Q All right, ma'am. You're Sandra G. Floyd?

14 A Yes, sir, I am.

15 Q Ms. Floyd, I'll be happy to hear from you then with
16 regards to why you wish to be either excused or
17 transferred.

18 A Okay. I have had ovarian cancer since 2000, and
19 I've had ten pound tumor removed and two -- three
20 malignant tumors removed in 2002. And I'm currently on
21 chemo and I'm just so weak I can't -- when I leave here
22 I'm going to have to go to the hospital and take fluids
23 again. I'm just so weak.

24 Q All right. Your chemo therapy regimen, is that --

25 A It's every 28 days.

1 Q Every 28 days?

2 A Yes, sir.

3 Q And that pretty much knocks you down physically?

4 A Just wipes you out, yeah. I've been on it like
5 since 2000. I've only had nine months off of it from 2000
6 until now so I'm just totally wiped out. I'm just so
7 weak.

8 Q You feel that if you were called to serve that you
9 would not be able to give —

10 A I don't have over two good days in a row, ever. Not
11 over two days. Sometimes I'm in bed like three or four
12 days a week, just can't get up.

13 Q Okay, all right. Well, if you would, ma'am, let me
14 just briefly, let me get you to go with Mr. Campbell.
15 He's going to take you out and let me discuss matters with
16 the attorneys and then I'll — well, I'll tell you what.
17 Let me do this, I'm going to excuse you from this term of
18 court, Ms. Floyd.

19 A Thank you so much.

20 Q And want you to know that we're praying for you and
21 hope that all that works out well for you, okay?

22 A Thank you so much.

23 Q All right, you're excused.

24 A Thank you.

25 (Potential Juror Floyd is excused.)

1 DEPUTY CLERK OF COURT: Charlotte Atkinson.

2 MR. JACKSON: Judge, that one's documented.

3 MR. HOWLE: If there's documentation, if
4 they're documented, Judge, then we don't really have a
5 problem with it.

6 THE COURT: Well, we'll let them put it on the
7 record so we'll have a record of that and then we'll do
8 that.

9 (Potential Juror Atkinson is returned to the courtroom.)

10 EXAMINATION BY THE COURT

11 Q Good morning, Ms. Atkinson.

12 A Good morning.

13 Q Thank you for being here, ma'am. And I'll be more
14 than happy to hear from you with regards to your reason to
15 be excused, okay?

16 A Okay. Well, I have a critically ill husband. I do
17 work part-time or maybe more than part-time but my hours
18 are flexible. I work like from 7 to 2, but my husband's
19 health condition is very grave. We have hospice and he's
20 had two heart attacks. He's got two aneurysms; he's had a
21 stroke. You know, like I say.

22 Q How old is he?

23 A He's 72.

24 Q Okay.

25 A Yes, sir.

1 Q So you work when you can?

2 A I'm the primary caregiver.

3 Q You work when you can?

4 A Yes, sir.

5 Q But then you have to be there.

6 A Yes, sir.

7 Q All right.

8 A In other words, I have to leave at, you know, at a
9 moment's notice sometimes.

10 Q All right. Ms. Atkinson, I'm going to excuse you
11 from service this week --

12 A Okay.

13 Q --for that reason.

14 A Thank you, sir, appreciate it.

15 (Potential Juror Atkinson is excused.)

16 MR. HOWLE: We have no objection. I didn't
17 know as a matter of when you get to that point if you
18 wanted to ask if there's any objection, one that you think
19 should probably be excused then we can just respond back
20 if you -- we say no objection. Then, you know, who -- if
21 we object for some reason that would be the one to take
22 outside the room to talk about.

23 THE COURT: Well, I thought that what we wanted
24 to do is to avoid there being an objection from either
25 side so that the juror didn't feel that either side was

1 trying to keep them -- well, here's, let me tell you my
2 thought process. Those that have a statutory exemption
3 and they're asking to exercise it they're entitled to
4 that.

5 MR. HOWLE: Yes, sir.

6 THE COURT: So those like Ms. Atkinson, she's a
7 caretaker of someone over 65 who is disabled. You know, I
8 granted her request to exercise that exemption. I didn't
9 think that was anything that was -- I don't know that you
10 even have a right to object to somebody exercising an
11 exemption. But those that don't fit that statutory
12 exemption thing I was going to hear, and I appreciate and
13 thank you very much both sides for letting me know on
14 Ms. Floyd go ahead. And if we get another one like that
15 that you really feel like, Judge, we don't have an
16 objection, exception to it, let me know that and I'll rule
17 right then. But the ones that we don't we might need to
18 have discussion about. I was just going to as a matter of
19 course send them to the room and let you make your
20 comments.

21 MR. HOWLE: All right, sir.

22 THE COURT: So we got next is Ms. Blanding.

23 (Juror Annie Blanding is returned to the courtroom.)

24 EXAMINATION BY THE COURT

25

- 1 Q Ma'am, you're Annie Blanding?
- 2 A Yes, I am.
- 3 Q Ms. Blanding, I'll be more than happy to hear from
4 you with regards to your reason for requesting either a
5 transfer or excuse.
- 6 A I requested a transfer because I teach fifth grade
7 at Lamar Elementary School.
- 8 Q Yes, ma'am.
- 9 A And it's coming towards the end of the year, the
10 28th, towards standardized testing and I have fifth
11 graders and they're there coming up for graduation and I
12 don't want to miss out on—
- 13 Q I'm a former teacher myself. I understand what
14 you're going through.
- 15 A Are you?
- 16 Q You teach at Lamar you said?
- 17 A At Lamar, uh-huh.
- 18 Q Do you know so — I'm trying to think. Was Shawn
19 Hayne ever there as counselor or —
- 20 A Not —
- 21 Q How about Luke Matthews?
- 22 A Not at Lamar.
- 23 Q Okay. So anyway, you wish to transfer beyond this
24 school term so that you can finish your study then?
- 25 A Right, I selected a date in this summer.

1 Q Okay, all right. Well, that certainly does fit
2 under one of the exemptions and so therefore,
3 Ms. Blanding, I'm going to grant your request and we'll
4 transfer you to that term of court and they'll send you
5 another notice. Okay, ma'am?

6 A All right, thank you. Thank you. Have a good day.

7 (Potential juror Blanding is excused.)

8 DEPUTY CLERK OF COURT: Brandi Bozeman.

9 (Potential juror Brandi Bozeman is returned to the
10 courtroom.)

11 **EXAMINATION BY THE COURT**

12 Q Ma'am, you are Brandi Bozeman; is that correct?

13 A Yes, sir.

14 Q All right. Ms. Bozeman, I'll be more than happy to
15 hear from you regarding your request to be excused.

16 A I don't have anyone to care for my seven year old
17 before school, or after school rather. She goes from 7:15
18 to 2:10. My husband works out of town.

19 Q All right. Do you work anywhere?

20 A No, I'm unemployed.

21 Q Oh, okay. So your husband works for Duke Power,
22 works outside the —

23 A Right; Oconee County and Clemson, yes, sir.

24 Q All right. And your — is it your daughter you
25 said?

1 A Daughter.

2 Q Daughter, seven years of age?

3 A She's seven.

4 Q All right, Ms. Boseman, I'm going to grant your
5 request. That exemption for our statute has several
6 requirements, and it appears to the Court that you fit the
7 requirements. Your child has to be seven years of age.

8 Actually I think it's under the age of seven, but you have
9 a seven year old who -- and that's your own child; is that
10 correct?

11 A Yes, sir.

12 Q You do not work outside the home --

13 A No, huh-uh.

14 Q So you're there every afternoon for her seeing her
15 off in the morning and your husband works in Oconee County
16 during the week.

17 A Well, he's on shutdown so he won't be home for
18 probably a month-and-a-half now.

19 Q Okay.

20 A He's gone, nuclear plant.

21 Q Got you. Okay, all right, ma'am. I'm going to
22 grant your --

23 A Thank you.

24 (Potential juror Bozeman is excused.)

25 THE COURT: Let me mention just for the record,

1 it didn't dawn on me until that time that exemption is for
2 you have child under the age of seven. Her daughter is
3 seven. So technically she doesn't qualify under that
4 exemption. However, having said that, her husband works
5 for the nuclear power plant with Duke Power, and they are
6 on shutdown. And I have good friend that works over in
7 Hartsville with the nuclear plant and I understand what
8 shutdown means. Her husband is actually going to be gone
9 for some six weeks and will not be home. Shutdown they
10 work around the clock, and she's -- this is an only child.

11 Her mother is a stay-at-home mother and there's no one to
12 care for the child. And so I guess technically she did
13 not fit under that exemption, however, under this scenario
14 I felt it was appropriate to excuse her. If there are any
15 objections or exemptions to that ruling I'll be more than
16 happy to allow you to make a record at this point.

17 MR. JACKSON: No objection at this point, Your
18 Honor.

19 MR. HOWLE: No objection.

20 THE COURT: The next on the list then is Donna
21 Bridges and Ms. Bridges is not present. I do have a
22 letter where she has made the request to exercise an
23 exemption that she is the primary caretaker of a disabled
24 person. Her letter, which I don't know if y'all have a
25 copy of that.

1 MR. JACKSON: Yes, sir.

2 THE COURT: You do? All right. It basically
3 states that she is -- her husband is being treated for
4 stage four squamous cell carcinoma, or cancer, and due to
5 paralysis of the throat muscles he is required to be in
6 Charlotte, North Carolina three times a week for therapy
7 and it is her job to carry him there and take care of him
8 and do that. And it's my understanding, I think, from
9 talking with Mr. Campbell she's actually in North Carolina
10 today. That's why she wasn't here. So I'm going to
11 excuse Ms. Bridges based on that exemption.

12 Now we have Ms. Chestnut who will be our next
13 juror.

14 (Potential Juror Theresa Chestnut is returned to the
15 courtroom.)

16 EXAMINATION BY THE COURT

17 Q Good morning, Ms. Chestnut.

18 A Good morning.

19 Q Ma'am, I'll be happy to hear from you regarding your
20 request to be excused.

21 A I wanted to be excused because I'm supposed to be --
22 I'm on bedrest because a disk in my back is slipping and
23 causing muscle strain in my right -- in my left leg.

24 Q All right, Ms. Chestnut, and obviously it's clear
25 that you're in pain and have difficulty but who is your

- 1 doctor?
- 2 A Doctor Kate Smith in Turbeville.
- 3 Q All right. Could you get a doctor's excuse from
4 him?
- 5 A No, sir. I tried to get it yesterday but they was
6 closed yesterday.
- 7 Q But what I'm saying is, could you get a doctor's
8 excuse? In other words —
- 9 A Yeah, I can do it.
- 10 Q —this term of court actually begins April 28th.
11 Could you get us a doctor excuse prior to that?
- 12 A Yeah, they probably can fax it over today or I can
13 get someone to go get it.
- 14 Q What I'm going to need, and I again, I'm not trying
15 to be difficult. I clearly see that you've got difficult
16 moving, but the law requires that I need a doctor's excuse
17 from a physician.
- 18 A Okay.
- 19 Q If you would, and I don't have to have it today but
20 if you would get that from your doctor and get that to the
21 Clerk of Court.
- 22 A Uh-huh.
- 23 Q And then we'll consider that.
- 24 A Okay.
- 25 Q All right?

1 A Okay.

2 Q All right, thank you very much. We'll just wait and
3 get that from you, Ms. Chestnut.

4 (Potential juror Chestnut was excused and potential juror
5 Michael Coulter was returned to the courtroom.)

6 **EXAMINATION BY THE COURT**

7 Q All right, sir, you're Michael Coulter?

8 A Yes, sir.

9 Q Mr. Coulter, I'll be happy to hear from you
10 regarding your reason for being excused, sir.

11 A Well, one of them, I've already served. I called
12 the Clerk's office and talked to a lady -- I don't know
13 her name -- but she said she thought it fell in the time
14 frame where I could be excused. It was October of 2005.

15 Q Okay.

16 A Last time I served.

17 Q I'm not trying to be too technical if you --

18 A Yes, sir.

19 Q But the law says that you're not required to serve
20 more than once every three calendar years; and
21 unfortunately, it includes the calendar year we're in. So
22 if you've served in 2008, 2007, or 2006 you're not
23 required to serve.

24 A Okay.

25 Q So that would not -- but you indicated you have

1 another reason?

2 A Yes, sir. Well, I don't know if this will get me
3 excused but maybe postponed or whatever. But I got a
4 newborn baby right now. She was born June 23rd but she
5 was two months early, and I got two jobs I'm working right
6 now and a bunch of doctor bills. And if I could at least
7 get it postponed 'cause basically I live week to week. I
8 don't really need to miss a week of work from both my job
9 if I can do it right now with all those doctor bills
10 pending.

11 Q All right. If I may, sir, let me get you to do me a
12 favor. Go with Mr. Campbell who is gonna take you in
13 another room and let me look at this and then I'll bring
14 you back in and let you know.

15 A Okay.

16 (Potential juror Coulter is removed from the courtroom.)

17 THE COURT: All right. This is one of those we
18 were talking about that can't afford to do jury service.
19 I'll be happy to hear from the State.

20 MR. JACKSON: Your Honor, my thought on him and
21 probably any other like him for today at least is that
22 since we don't know the numbers that we're going to get on
23 the 28th we should play it safe, and if there's anybody
24 that meets the exemption of disqualification they clearly
25 let them go. Someone in his circumstance may have a

1 hardship, I would suggest we bring back on the 28th and
2 see how many folks have hardships at that time and you
3 might want to ask him, you know, we may need you for a
4 week, check on your hardship between now and the 28th.
5 But I would suggest we postpone someone like him until the
6 28th to see what the numbers look like.

7 THE COURT: Mr. Howle?

8 MR. HOWLE: I take opposite sides. I know
9 we've got, how many is it, on the other list? 200? Did
10 it come in?

11 DEPUTY CLERK OF COURT: I think we have 130.

12 THE COURT: Well, and that's 130 who made no
13 requests; is that correct?

14 DEPUTY CLERK OF COURT: Yes, sir.

15 MR. HOWLE: Made no requests at all. It may be
16 as we talked about earlier that once they get here and
17 they realize it's a two week term of court that many of
18 those are going to come forward and then want to.

19 MR. BABB: Your Honor, if you want to bring him
20 back the 28th that's fine. I do think his reasons are
21 fairly valid, and I would hope the Court will consider
22 that high on the list when you do decide who can be
23 excused on the 28th.

24 THE COURT: I tend to agree with you, and
25 usually what I do in a typical term of court is, as the

1 Solicitor indicated, kind of take a survey of who we got
2 left. And of course obviously this isn't a typical term
3 of court. But you know, typical term of court if we've
4 got 85 jurors and I've got this fellow and he's the only
5 one left I would excuse him. And so it probably wouldn't
6 be prudent to just ask him to return on the 28th and we'll
7 do a lay of the land and then I'll again hear from both
8 sides at that point. I'm going to let him know though
9 before he leaves here that the Court is going to consider
10 his request, but I'm going to have to inconvenience him
11 one last time and ask him to be present on the 28th, okay?

12 All right, if you would ask Mr. Coulter to come
13 back. He missed that by two months getting that exemption
14 anyway.

15 MR. JACKSON: Judge, it's three years for grand
16 jury and two years for normal service; isn't it?

17 THE COURT: It's five years for grand jury and
18 it's three years on normal service. And for whatever
19 reason, I'm told that the year that we're in counts so
20 that if this was January 6th, even though we're not even
21 in the 2008, 2008 would count so. Okay.

22 (Potential juror Coulter was returned to the courtroom.)

23 **EXAMINATION BY THE COURT**

24 Q Mr. Coulter, thank you for your patience. Let me, I
25 really hate to inconvenience you and to do anything to

1 interfere with your family and what you're having to do.

2 I want to strongly consider your request.

3 A Yes, sir.

4 Q What I -- here's what I need to do. I'm going to
5 ask you, if you would, to come back on the 28th.

6 A Okay.

7 Q Okay? Now having said that, let me get a lay of the
8 land. Let me get an idea of -- I'd like to grant your --
9 in all candor with you I don't have a legal basis in which
10 to grant your request.

11 A Yes, sir.

12 Q However, it may be that if I have enough jurors that
13 qualify and are ready and I can let you go and still have
14 enough that we can, you know, run court I will excuse you.

15 A Okay.

16 Q Okay. But I'll need to wait and look at that on the
17 28th.

18 A Okay.

19 Q So if you don't mind, I apologize for
20 inconveniencing you.

21 A I understand.

22 Q If you'll come back on the 28th I can assure you I'm
23 going to make a note and you raise that issue again on the
24 28th.

25 A You want me to remind you?

1 Q If you would, yes, sir.

2 A Okay, all right, thank you.

3 Q All right.

4 (Potential juror Coulter is removed from the courtroom and

5 Potential juror Patricia Dollard is returned to the

6 courtroom.)

7 **EXAMINATION BY THE COURT**

8 Q Ma'am, you're Patricia Dollard?

9 A Yes, sir.

10 Q Ms. Dollard, I'll be more than happy to hear from
11 you regarding your request to be excused.

12 A Okay. I'm a student and I'm in a transition
13 program. I'm a licensed practical nurse and the week that
14 court starts the 28th I have a regular test and a final
15 that week.

16 Q Oh, okay. You wouldn't want to be with us and skip
17 that final?

18 A I would love to be with y'all. I'd love to be
19 finished with school.

20 Q I'm sure you would. I don't blame you. Basically
21 you have finals that week?

22 A I do.

23 Q Okay, all right.

24 A I have a calendar. I mean, I -- I don't know if you
25 need proof.

1 Q Oh, no, ma'am, that's fine. I absolutely will take
2 you at your word on that. Ms. Dollard, I'm going to
3 transfer your service.

4 A Okay.

5 Q And we'll transfer you sometime in the summer when
6 school is not in session.

7 A That will be great.

8 Q Thank you, ma'am.

9 (Potential juror Dollard is excused.)

10 THE COURT: Let me say this, gentlemen, if at
11 any -- we're going to go to the next one. If there is any
12 objection or if either side doesn't feel that I've
13 properly granted an exemption please feel free to stand
14 and make your objection, okay? But if I don't hear
15 anything from you I'll just assume that you didn't have
16 any problem with the Court's viewing of that exemption,
17 okay?

18 MR. HOWLE: Yes, sir.

19 THE COURT: Next one, James Ellett.

20 (Potential juror James Ellett is returned to the
21 courtroom.)

22 **EXAMINATION BY THE COURT**

23 Q Sir, you're James Elliott?

24 A Yes, sir.

25 Q All right, Mr. Ellett, I'll be happy to hear from

1 you, sir, regarding your request.

2 A Okay. I'll be at my daughter's -- my niece's
3 wedding on the 26th of Saturday and my airline tickets
4 don't get me back till that Monday.

5 Q Okay. What time do you arrive back on that Monday?
6 Is it coming from Arizona?

7 A Now let me see here, 9:42 to Charlotte Monday.

8 Q P.m.?

9 A P.m.

10 Q Monday shot for you in other words?

11 A Right.

12 Q All right. Mr. Ellett, let me do this, if I may, I
13 don't mean to inconvenience you any more than you've been.
14 Let me ask you, if you would, to step out with Mr.
15 Campbell for a moment and I'll bring you back in shortly,
16 okay?

17 (Potential juror Ellett is removed from the courtroom.)

18 THE COURT: State have a position?

19 MR. JACKSON: I don't, Your Honor. I don't
20 know any way around that.

21 THE COURT: I don't know either. He's got
22 airline tickets --

23 MR. JACKSON: You can bring him in.

24 THE COURT: ---and doesn't get him back until
25 Monday night which means he's going to miss the entire day

1 of qualifications. Anyway...

2 MR. BABB: Your Honor, if you don't mind, this
3 is the Doctor Ellett who is a surgeon, also works with my
4 wife at the hospital. And my experience has been
5 many doctors have problems in a death case because of
6 their practice. So I mean, I know we're not at that point
7 but I just...

8 THE COURT: I understand. But it appears to me
9 that, I mean, he's got these long range, these long term
10 plans and he doesn't get back until Monday night and he
11 just won't be here, won't be here. And I'm sure that
12 those, I mean, I just got finished traveling with the air
13 lines. I guarantee you they're not very accommodating on
14 changing your plans at the last minute so I'm going to
15 excuse -- he's a physician; is that right?

16 MR. HOWLE: He's a surgeon.

17 THE COURT: I'm going to excuse the Doctor
18 Ellett. Ask him to come in please.

19 (Potential juror Ellett is returned to the courtroom.)

20 BY THE COURT:

21 Q Good news, Doctor Ellett. We called the air lines;
22 we worked it out for you.

23 A Oh my goodness.

24 Q I'm just kidding, sir. I completely understand and
25 trying to deal with air lines can be very frustrating.

1 even. If you wanted to change your flight I know they
2 wouldn't accommodate you so I am going to excuse you.
3 Since obviously the first day of court is an important day
4 because that's when we actually qualify the panel and do
5 all that. The fact you can't be present would really make
6 it difficult for you to be involved in this term of Court
7 so I'm going to grant your request and excuse you, sir.

8 A Thank you, Judge.

9 Q Thank you very much.

10 (Potential juror Ellett was excused and
11 potential juror Evans was returned to the courtroom.)

12 **EXAMINATION BY THE COURT**

13 BY THE COURT:

14 Q Ma'am, you're Belinda Evans?

15 A I am.

16 Q All right. Good morning, Ms. Evans.

17 A Good morning.

18 Q I'll be more than happy to hear from you regarding
19 your request.

20 A Okay. Can you hear this?

21 Q Yes, ma'am, you're good. Thank you.

22 A I asked to be not necessarily excused all together
23 but postponed to maybe —

24 Q Transferred?

25 A —this summer. I teach. If I was teaching in a

1 regular school this time of year, you know, this keeps
2 going through my head, I'd probably be begging pick me.
3 But I teach in a specialized school at Sumter Academy. I
4 brought a letter from our secretary. We work with
5 specialized learning problems. I have a student that's
6 autistic in my class, ADHD, you know, different problems.
7 It's a very strict learning environment and they don't
8 deal with change very well. We get out of school May the
9 15th. We're right at the end of our school year, and I
10 really feel like it's important to them that I not leave
11 at this time.

12 Q I un— you're talking to a former teacher. I taught
13 for years before I went to law school so I can certainly
14 appreciate that. I'm going to — and you do fit the
15 statutory exemption for a school employee so, Ms. Evans, I
16 am going to grant your request. And what we'll do, ma'am,
17 is we'll excuse you until sometime during the summer so
18 that it doesn't conflict with your school
19 responsibilities.

20 A That's fine.

21 Q And they'll send you a notice regarding that, okay?

22 A Okay.

23 Q Thank you very much. I appreciate you being here
24 today.

25 A Okay.

1 (Potential juror Belinda Evans was excused and potential
2 juror Nicole Evans was returned to the courtroom.)

3 **EXAMINATION BY THE COURT**

4 Q All right, ma'am, you're Nicole Evans; is that
5 correct?

6 A Yes, sir.

7 Q Ms. Evans, I'll be more than happy to hear from you
8 regarding your situation.

9 A I have a six month old son that has kidney condition
10 and has to go to Richland every so often, and he has an
11 appointment on the 28th to see his neurologist in
12 Columbia. That's the letter that his doctor from Sumter
13 Pediatrics wrote. And I'm a full-time stay-at-home mom.
14 My momma had to take a half a day from work today to watch
15 him.

16 Q Okay. So you -- and this is your son, correct?

17 A Yes, sir.

18 Q All right, he's six months old?

19 A Uh-huh.

20 Q You're a stay-at-home mom?

21 A Yes, sir.

22 Q Whenever you do have to do something or if you have
23 a situation that you have to be somewhere like you said
24 today your mother pinch hits for you?

25 A She took a half a work day to watch him this

1 morning.

2 Q So that ---

3 A She's supposed to be in at 12.

4 Q So if you were required to serve on jury service who
5 would watch your son?

6 A I have really nobody. I'd have to try to find
7 somebody because everybody works.

8 Q Because your mother works.

9 A Uh-huh. And his father works, my sister works,
10 everybody works.

11 Q All right. Ms. Evans, you certainly I believe fit
12 the statutory exemption for that. I'm going to grant your
13 excuse.

14 A All right, thank you.

15 Q Thank you for being here this morning and tell your
16 mom I'm sorry.

17 (Potential juror Evans was excused.)

18 THE COURT: Gentlemen, Ms. Aaron is not here
19 today. She is a no show. And then the next on your list
20 is Ms. Floyd who we've already dealt with so Mrs. Furman,
21 or Mr. Furman, will be our next person.

22 (Potential juror Frankie Furman was returned to the
23 courtroom.)

24 **EXAMINATION BY THE COURT**

25

1 BY THE COURT:

2 Q And sir, just for the record you are Frankie Furman?

3 A Yes, sir.

4 Q All right, Mr. Furman, I'll I be happy to hear from
5 you regarding your request to be excused.

6 A I'm asking to be excused because of my drug charges.

7 Q Okay. Have you got pending charges or have you been
8 convicted of a drug offense?

9 A It's over with I think.

10 Q You've already been to court on it?

11 A Yeah.

12 Q What happened with that?

13 A I just had to pay money.

14 Q Okay. Was it in circuit court or was it in
15 magistrate court or city court?

16 A I think it was —

17 Q What was the offense?

18 A Simple possession of marijuana.

19 Q All right. First offense?

20 A Second offense.

21 Q Second offense? That just carries up to a year,
22 isn't that correct?

23 MR. JACKSON: Your Honor, we would show first
24 offense, second offense, which would not disqualify him on
25 the record but we are currently prosecuting him for

1 possession of crack.

2 BY THE COURT:

3 Q Okay. So you got pending charges?

4 A I ain't got no crack charges. What you say? They
5 say I got crack charges?

6 (Attorney Jackson and Howle confer.)

7 BY THE COURT:

8 Q Let me ask you this. I'm just trying to figure it
9 out, Mr. Furman. Let me ask you, do you recall, was there
10 a lynching charge --

11 A Yes, sir.

12 Q --second degree lynching?

13 A Yes, sir.

14 Q And it was just a fine; is that correct?

15 DEPUTY CLERK OF COURT: Well, it looks like it
16 was nol prossed maybe.

17 MR. JACKSON: It looks like it was nol prossed
18 just to the right of that, Judge.

19 DEPUTY CLERK OF COURT: He went through PTL,
20 Judge.

21 THE COURT: Oh, I got you, all right. And
22 Solicitor, you indicate that you have a --

23 MR. JACKSON: Yes, sir, Your Honor.

24 THE COURT: --current charge pending on Mr.
25 Furman.

1 MR. JACKSON: We have a pending charge of
2 possession of crack cocaine and it will be indicted next
3 term. The drug analysis is in there. And I'm assuming
4 the public defender's office will be representing him.

5 THE COURT: Mr. Furman, you don't recall
6 getting a warrant for that or getting --

7 MR. JACKSON: October of 2007.

8 THE JUROR: No. Oh, I can explain that. That
9 was -- me and my uncle got the same name. It's my older
10 uncle. His name is Frankie Furman too. It's not me.

11 THE COURT: How old is your guy? Or do you
12 know?

13 THE POTENTIAL JUROR: Yeah, that what it is,
14 yeah.

15 MR. JACKSON: He don't look like he's born in
16 '51, Judge.

17 THE POTENTIAL JUROR: Naw, that my uncle.

18 THE COURT: If you were you're looking real
19 good, Mr. Furman. Mr. Furman, this may make you happy or
20 sad; I don't know. The marijuana charge, it carries, the
21 maximum penalty on that up to a year so that would not
22 disqualify you from serving.

23 THE POTENTIAL JUROR: All right.

24 THE COURT: So I'm what I'm going to do is, you
25 don't fit under that disqualification. Thank God you

1 don't have that crack charge. So that's the good side of
2 today. You just found out that that's not you. But the
3 down side, if it is a down side, but we will need you to
4 be here on the 28th for jury service, okay?

5 THE POTENTIAL JUROR: Yes, sir.

6 THE COURT: Thank you for being here today and
7 we'll see you on the 28th. Thank you very much.

8 (Potential juror Furman was removed from the courtroom and
9 potential juror Derrie Grant was returned to the
10 courtroom.)

11 **EXAMINATION BY THE COURT**

12 Q Sir, you're Derrie Grant?

13 A Yes, sir.

14 Q I'll be more than happy to hear from you regarding
15 your request.

16 A I have two or three excuses that I would like to be
17 excused. I have a three year old son. My wife is a
18 full-time student at Morris College, and I have to help
19 with him. And also her father, my father-in-law is 80
20 years old. I assist with his being ailment. And my third
21 and final one is I worked with the solicitor for 21 years
22 up until October and probably going to be biased.

23 Q That may be your best excuse.

24 A Exactly.

25 MR. JACKSON: Judge, he was working with us

1 when this happened.

2 THE COURT: I do. I do. I don't see the
3 Defense jumping up and wanting you to stay.

4 MR. HOWLE: He didn't say which way he'd be
5 biased.

6 THE COURT: Well, after working for the
7 solicitor.

8 BY THE COURT:

9 Q You've got numerous excuses. And you're a pastor?

10 A Yes, sir. And that's -- I'm really supposed to be
11 at the hospital now with a member.

12 Q And no -- and don't get me wrong when I say this, I
13 understand that's more full-time job than most people
14 have. But there's also flexibility which allows you to be
15 available for your father-in-law and things of that
16 nature; is that correct? All right. Well, sir, I'm going
17 to grant your request.

18 A Thank you, sir.

19 Q And I'm going to excuse you from this term.

20 A Thank you so much.

21 (Potential juror Grant was removed from the courtroom and
22 potential juror Kathy James was returned to the
23 courtroom.)

24 THE COURT: All right. Ms. Hopkins, this is
25 Tammy Hopkins; is that correct?

1 THE POTENTIAL JUROR: No, Kathy James.

2 THE COURT: Kathy James. What happened to
3 Tammy Hopkins?

4 MR. JACKSON: She's a no-show, Judge.

5 EXAMINATION BY THE COURT

6 Q I apologize, Ms. James.

7 A That's okay.

8 Q Ms. James, I'll be happy to hear from you, ma'am.

9 A I just started a new job on April the 7th with ATT
10 and I'm supposed to be in Atlanta the last week of April
11 and the first week of May for training for my new job.
12 And I have my offer letter here showing when I started.

13 (Document tendered to the Court.)

14 THE POTENTIAL JUROR: And I'm the only income.
15 from my household, my two children so.

16 BY THE COURT:

17 Q This training begins on the 28th?

18 A April 28th, Uh-huh, for two weeks.

19 Q If you don't mind, Ms. James, I'm going to get
20 Mr. Campbell to take you out for just a little bit, let me
21 look at this, and then I'll bring you back in. It'll just
22 be a few minutes, okay.

23 (Potential juror James was removed from the courtroom.)

24 THE COURT: It is essentially, of course it has
25 her information, or her personal information, but then it

1 as far as -- she didn't check any of the exemption or
2 disqualifications because she obviously didn't meet any of
3 those. This -- I do have this letter from ATT
4 congratulating her on her new position with the company
5 and that she does have training. Let me hear from the
6 State regarding that.

7 MR. JACKSON: Your Honor, I don't have a
8 position on her.

9 MR. HOWLE: No, we don't either.

10 THE COURT: Apparently, let me look here.
11 Apparently she is a single mother of two children,
12 teenagers, God bless her.

13 THE CLERK OF COURT: Judge, Ms. Griffin has
14 maybe a comment for you.

15 DEPUTY CLERK OF COURT: Your Honor, she did not
16 request in writing. She actually called me on the phone
17 and told me she had the, you know, that the training in
18 Atlanta and I asked her to be here. And at first she told
19 me she would not be here.

20 THE COURT: And that she could be arrested if
21 she had --

22 DEPUTY CLERK OF COURT: That they could just
23 come and arrest her. And so I thought I had held her
24 aside and I went on and highlighted it because I did send
25 her a letter that she needed to be here at the hearing and

1 I haven't heard anything since then. That may be why they
2 don't have their copies. So she didn't request it in
3 writing but she did talk to me by phone.

4 THE COURT: If we could get a copy for counsel
5 for that.

6 DEPUTY CLERK OF COURT: I'll do that.

7 THE COURT: Gentlemen, I'm inclined to not
8 necessarily excuse her but transfer her. She's a single
9 mom with a couple of teenagers and apparently this
10 training is something that's going to be important so.
11 Ask her, if you would, to come in. I'm going to transfer
12 her service rather than simply excuse her.

13 (Potential James was returned to the courtroom.)

14 THE COURT: Ms. James, thank you for your
15 patience, ma'am. I'm going to — the law doesn't provide
16 to just flat out excuse you, but I am going to transfer
17 your service. And what I'm going to do is I'm going to
18 put it either to the end of this year or maybe early of
19 next year so that you can get some time in your work and
20 not have that interfere with your job.

21 THE POTENTIAL JUROR: That's good.

22 THE COURT: But I will excuse you from this
23 term of court. And what they I'll do is, Mr. Campbell, if
24 you would, on Ms. James if you would note that I'm going
25 to transfer her to a term either at the end of this year

1 or early next year.

2 THE CLERK OF COURT: Yes, sir, I'll be glad to.

3 THE COURT: Ms. James, they'll send you another
4 notice whenever that comes up, okay?

5 THE POTENTIAL JUROR: Okay, thank you. Is that
6 it?

7 THE COURT: Thank you very much, ma'am. Thank
8 you for being here today.

9 THE POTENTIAL JUROR: Thank you.

10 (Potential juror Kathy James was excused and potential
11 juror Ian Lurke was returned to the courtroom.)

12 EXAMINATION BY THE COURT

13 Q Sir, you're Ian Lurke?

14 A Yes, sir.

15 Q Mr. Lurke, I'll be happy to hear from you regarding
16 you request, sir.

17 A Okay. It was made aware of me that I will be
18 exempted -- I'm not sure if that's the right word -- if I
19 was in school. And I'm in school right now. I'm planning
20 on going during the summer too.

21 Q All right.

22 A And I have proof of my registration if you...

23 Q Okay, if you would, let me have that. Well, you
24 know what, I may have a copy of that. Is that from
25 Midlands Tech College?

- 1 A Yes, sir.
- 2 Q I think I have that, sir, thank you.
- 3 A All right.
- 4 Q And you're currently in school; is that correct,
- 5 sir?
- 6 A Yes, sir.
- 7 Q When does that term end?
- 8 A May 7th? It should say on there.
- 9 Q Okay. And it's probably on here and I...
- 10 A May 7th.
- 11 Q May 7th, okay. And you kickoff about another
- 12 week-and-a-half later summer school; is that correct?
- 13 A Yes, sir.
- 14 Q All right. Mr. Lurke, what I can do is I can
- 15 transfer your service. And my understanding is -- do you
- 16 anticipate completing your course of study in the summer
- 17 or you'll also be going in the fall?
- 18 A I should be going in the fall then I should be
- 19 completed by then.
- 20 Q Okay. What I'm going to do is transfer your service
- 21 to the end of the year.
- 22 A Okay.
- 23 Q Give you a chance to finish your studies and then
- 24 they'll send you a notice with regards to that. All
- 25 right, sir?

1 A Okay.

2 Q So thank you for being here this morning. Go on
3 back to school and we'll see you sometime at the end of
4 the year, okay?

5 A Okay.

6 Q Thank you, sir.

7 (Potential juror Lurke was excused and potential juror
8 Joseph McCauley was returned to the courtroom.)

9 **EXAMINATION BY THE COURT**

10 Q Sir, you're Joseph McCauley?

11 A Yes, sir.

12 Q Mr. McCauley, I'll be more than happy to hear from
13 you with regards to your request.

14 A I'm a student at Central Carolina.

15 Q Central Carolina?

16 A Yes, sir.

17 Q Okay. Are you a full-time student there?

18 A No, sir, part-time.

19 Q What's your class schedule like, how does that?

20 A 5:30 to 10.

21 Q Okay. You go from 5:30 to 10, how many days a week?

22 A About four.

23 Q And how long does school go, the term? When does
24 the term end?

25 A I think it's May 11th.

1 Q All right, Mr. McCauley, I'm going to grant your
2 request and what I'm gonna do, sir, is rather than excuse
3 you outright I'm going to transfer your service and I'm
4 going to do it to a term of court later in the year and
5 hopefully be -- do you go in the summer as well?

6 A Yes, sir.

7 Q Okay. When do you anticipate?

8 A December.

9 Q Okay. So you should finish this year?

10 A Yes, sir.

11 Q All right. I'll transfer your service to sometime
12 early in '09 next year, okay? That way it won't conflict
13 with your school responsibilities. Good luck to you, sir.
14 Thank you for being here this morning.

15 (Potential juror McCauley was excused and potential juror
16 Eric Millan was returned to the courtroom.)

17 **EXAMINATION BY THE COURT**

18 Q All right, sir, you are Eric Millan?

19 A Yes, sir.

20 Q Mr. Millan, I'll be more than happy to hear from
21 you, sir, regarding your request.

22 A I have a six month old that I have full custody of
23 that I take primary care of. And also I'm in school right
24 now. I have finals all next week and the following week.
25 I go to Central Carolina. It will be a big inconvenience

1 to serve on this jury right now, I mean, all the hard work
2 I've done through the semester. I've got a A and B. And
3 I feel like I'm doing pretty good. I don't want to have
4 to miss those classes or mess up my study schedule. And
5 concerning my son, I don't have anyone, I mean, I don't
6 have him in day care or anything. He stays with me and

7 —

8 Q What do you do with him when you're in class?

9 A I go to class on Mondays, Wednesdays, and Thursdays
10 and my mother or my grandmother watches him for the hour
11 and whatever I go to class.

12 Q Okay. I'm going to transfer your service,
13 Mr. Millan. Now let me ask you this, are you in school
14 year round?

15 A Yes, sir, I got summer classes and I'm already
16 registered for the fall.

17 Q When do you anticipate graduation?

18 A It's supposed to be in 2010, spring 2010, but I
19 mean, just depending on how I do in classes. It could be
20 earlier or, I mean, hopefully not later.

21 Q Right, okay. Is there a time when you're not in
22 school?

23 A I go to school year round. I'm trying to get my —
24 I've got three years under my belt. I went to Central
25 Carolina just trying to get an associates. I'm having to

1 take time off from four year degree with my son so as
2 right now not really.

3 Q I'm going to excuse you, Mr. Millan, and wish you
4 the best in school and with your son, sir.

5 A Thank you, sir.

6 (Potential juror Millan was excused and potential juror
7 William Mims was returned to the courtroom.)

8 **EXAMINATION BY THE COURT**

9 Q All right, sir, you're William Mims; is that
10 correct, sir?

11 A Yes, sir.

12 Q Mr. Mims, I'll be happy to hear from you regarding
13 your request.

14 A I'm a self-employed as a farmer and right now is our
15 busy time, planting season. And I'd really appreciate a
16 transfer or whatever you can do for me. I really need to
17 be planting crops right now.

18 Q All right. Mr. Mims, what I'm going to ask if you
19 would do just for a moment. If you follow Mr. Campbell
20 he's going to take you out. And let me look at some
21 matters and I'll bring you back in just shortly, okay?

22 A Okay.

23 Q Thank you, sir.

24 (Potential Juror Mims was removed from the courtroom.)

25 THE COURT: All right. Does the State have any

1 position regarding Mr. Mims?

2 MR. JACKSON: None, Your Honor.

3 THE COURT: Defense?

4 MR. HOWLE: No, Your Honor.

5 THE COURT: I was looking over his paperwork.

6 Having grown up in an agricultural county such as
7 Edgefield I can certainly appreciate the request. Knowing
8 that -- in addition to knowing that, of course Mr. Mims is
9 not aware of it but being on this case is going to be, at
10 least this term is going to be a two week term. It could
11 be rather crippling to his business to be off the farm for
12 two weeks. All right. Ask him to come back in.

13 (Potential juror Mims was returned to the courtroom.)

14 BY THE COURT

15 Q Mr. Mims, what I -- I got all the lawyers in the
16 case to agree to have their children work your farm while
17 you're on jury duty so you can go take care of that. Just
18 kidding. I understand your situation. Are you related to
19 any of the Mims' out of Edgefield County?

20 A Edgefield? No, sir, not that I know of. Probably
21 somewhere along the line.

22 Q Probably. I'm from Edgefield County originally and
23 I certainly can appreciate the --

24 A Yes, sir.

25 Q --your position as a farmer 'cause we're a very

1 agricultural community as well.

2 A My uncle was the sheriff here in Sumter for a while.

3 Q I'm going to grant your request. What I'm going to
4 do, sir, I'm going to transfer your service to sometime in
5 the winter when it might be easier for you --

6 A All right.

7 Q --to do that.

8 A Thank you.

9 Q They'll send you another notice. Don't worry about
10 it till you get that next notice, okay?

11 A Thank you.

12 Q Mr. Mims, I appreciate your being here this morning.

13 (Potential juror Mims was excused and potential juror

14 Thomas Moore was returned to the courtroom.)

15 **EXAMINATION BY THE COURT**

16 Q Sir, you're Thomas Moore?

17 A Yes, Your Honor.

18 Q All right. Thank you. I'm guessing you're excused.

19 A That's up to you, sir.

20 Q Your request is based on your position with the ia
21 it sheriff's department or police department?

22 A Police department.

23 Q Police department, okay. All right. Absolutely
24 you -- and I'm sure you would like to serve.

25 A I don't have a problem serving really but...

1 Q Seriously I know you don't but, you know.

2 A Yeah.

3 Q Unfortunately it's actually a disqualification
4 because you're a commissioned law enforcement officer.

5 A I understand.

6 Q But thank you for being here this morning. I would
7 have just excused you outright and not made you come this
8 morning if I was aware. Thank you for being here. I'm
9 going to go ahead and excuse you from service.

10 A All right, thank you, sir.

11 Q Thank you very much.

12 (Potential juror Moore was excused and potential juror

13 Julia Neal was returned to the courtroom.)

14 **EXAMINATION BY THE COURT**

15 Q Ma'am, you're Julia Neal?

16 A Yes, sir.

17 Q All right. Ms. Neal, I'll be more than happy to
18 hear from you regarding your request, ma'am.

19 A Okay. The only problem that I have is my son is
20 severely mentally physically disabled and I just have no
21 one to pick him up from school.

22 Q Okay.

23 A So that's my problem. I have no one to pick him up.

24 Q And do you work anywhere, ma'am?

25 A No, I don't.

- 1 Q Okay. So he gets out of school mid afternoon?
2 A Yes, sir.
3 Q And you need to be available for that?
4 A And then I have family out of town so I would have
5 no one to, you know, pick him up after school.
6 Q Okay. Are you still in school yourself or have you
7 —
8 A Part-time, yes, sir.
9 Q Okay. Ms. Neal, I'm going to grant your request.
10 I'm going to excuse you —
11 A Okay.
12 Q —from service?
13 A Thank you.
14 Q Thank you very much for being here this morning.
15 A Thank you.

16 (Potential juror Neal was excused and potential juror
17 Gerald Niles was returned to courtroom.)

18 **EXAMINATION BY THE COURT**

- 19 Q Sir, you are Gerald Niles, Mr. Niles?
20 A That is correct.
21 Q All right, sir. And I see here that you've recently
22 had some major surgery, Doctor is it Gunter, is that
23 correct?
24 A That is correct.
25 Q All right, sir. Doctor Gunter has indicated that

1 your surgery was in February and that it is his belief
2 that you should be excused for at least the next six
3 months during that recovery time. You, I mean, and again,
4 you agree with that, you don't feel that you health-wise
5 would be in a position?

6 A I'm sorry, sir?

7 Q Health-wise do you feel that your ability to serve
8 would be compromised right now?

9 A Some of the side effects I have is some vision loss
10 and it's hard for me to retain short term memory at this
11 time when lots of information is given.

12 Q Okay. So if this were to be a lengthy trial it
13 would be difficult for you because of your temporary
14 memory loss to be able to follow that; is that —

15 A That's correct.

16 Q Okay, well Mr. Niles, I'm going to grant your
17 request and I'm going to excuse you from this term of
18 court. I want to thank you for being here this morning.

19 A Thank you, Your Honor.

20 Q Thank you very much.

21 (Potential juror Niles was excused and potential juror
22 Casey Osteen was returned to the courtroom.)

23 **EXAMINATION BY THE COURT**

24 Q Sir, you're Casey Osteen?

25 A Yes, sir.

- 1 Q Mr. Osteen, I'll be more than happy to listen to
2 your reason for being excused, sir.
- 3 A I'm a full-time student at University of South
4 Carolina and this particular week is the week of my
5 finals.
- 6 Q The week of the 28th?
- 7 A Yes, sir.
- 8 Q And, you know what, I figured we have that issue and
9 I do know that that is during finals time. What I can do,
10 Mr. Osteen, is I can transfer your service to another term
11 of court that wont conflict with school. Do you go in the
12 summer as well or do you?
- 13 A I have a summer class from June 2nd to July 3rd.
- 14 Q Okay. And then you're off until school starts back
15 in August?
- 16 A I'll be finished. I'll graduate --
- 17 Q Oh, you'll be done?
- 18 A I'll be done.
- 19 Q Congratulations. What I'll do is transfer your
20 service to later in the year.
- 21 A Okay.
- 22 Q And what they'll do, Mr. Osteen, is send you another
23 notice so you're excused from this term of court and
24 you'll just need to comply with whatever notice you get
25 later in the year. Okay. Thank you very much.

1 Appreciate you being here.

2 (Potential juror Osteen was excused and potential juror
3 Charlene Pack is returned to courtroom).

4 **EXAMINATION BY THE COURT**

5 Q Ma'am, you're Charlene Pack?

6 A Yes, sir.

7 Q All right. Ms. Pack, I'll be more than happy to
8 hear from you, ma'am.

9 A I have a doctor's note from my Sumter OBGYN doctor.
10 I just had a baby not quite three weeks ago and I don't
11 have anybody to watch him 'cause he's not old enough to go
12 in day care yet.

13 Q Well, obviously, yeah. Your husband works outside
14 the home?

15 A Yes.

16 Q All right. Ms. Pack, I'm going to grant your
17 request and excuse you from this term of court.

18 Congratulations on your child.

19 A Thank you.

20 (Potential juror Pack was excused and potential juror
21 Delaina Pinckney is returned to the courtroom.)

22 **EXAMINATION BY THE COURT**

23 Q Ma'am, you're Ms. Pinckney, right?

24 A Yes, sir.

25 Q All right. Well, let's see, I got the wrong sheet.

1 I do have Ms. Pinckney's sheet. I also have a Martha
2 Parrott. I'll just set Ms. Parrott aside and we'll talk
3 with Ms. Pinckney. Ms. Pinckney, I'll be happy to hear
4 from you, ma'am, with regards to your needs.

5 A I'm a college student, and I need to be excused
6 because of school.

7 Q Okay. Where are you a student?

8 A USC Sumter.

9 Q Okay, all right. You got finals coming up?

10 A Yes, sir.

11 Q You didn't exempt all of them?

12 A Oh, we don't do that in college. That was high
13 school. I wish we did.

14 Q All right, Ms. Pinckney, I'm going to excuse you.
15 What I'll do is I'm going to transfer your service to a
16 term of court later on that won't conflict your school
17 work, okay?

18 A Okay.

19 Q Do you -- are you going to summer school?

20 A Yes, sir.

21 Q All right. When do you anticipate graduating?

22 A 2010, yes, sir.

23 Q We'll excuse you from this term of court and we'll
24 find another term so that you can exercise your civil
25 duty, okay?

1 A Yes, sir.

2 Q Thank you very much, Ms. Pinckney.

3 A I can go home now?

4 Q Yes, ma'am.

5 (Potential juror Pinckney was excused.)

6 MR. JACKSON: Charles Pugh.

7 THE COURT: What happened to Jessica Polite?

8 THE CLERK OF COURT: She's not here. She's a
9 no-show, Judge.

10 THE COURT: All right, okay, then we got Mr.
11 Pugh.

12 MR. HOWLE: Was that Ms. Parrott?

13 THE CLERK OF COURT: Ms. Parrott -- Ms. Polite,
14 Jessica Polite did not show up this Morning. Number 211.

15 THE COURT: That's not very polite, Ms. Jessica
16 Polite.

17 THE CLERK OF COURT: The next one will be 217.

18 (Potential Juror Charles Pugh was returned to the
19 courtroom.)

20 **EXAMINATION BY THE COURT**

21 Q Sir, you're Charles Pugh?

22 A Yes, sir.

23 Q All right, Mr. Pugh, I'll be more than happy to hear
24 from you, sir, about what your reason for wanting to be
25 excused.

1 A 'Cause I got an excuse from my doctor.

2 Q Okay. If I may see that, sir. Thank you.

3 A I have -- I have liver disease and I can't stand or
4 sit down long period of time. When I want to get up, walk
5 off or do something I almost fall to the floor because my
6 legs are real weak. And my wife is real bad off in
7 health, and I'm only means of going picking up my
8 grandbaby. She goes to Pocalla Spring School.

9 Q All right, sir. Mr. Pugh, I'm, based on what your
10 physician, your doctor says, I'm going to excuse you from
11 this term of court, sir. Thank you for being here this
12 morning though.

13 A Thank you, sir.

14 (Potential juror Pugh was excused.)

15 THE COURT: This is from a Doctor H. Alton
16 Jordan, Jr. Doctor Jordan indicates that Mr. Pugh suffers
17 from severe serosis of the liver, causes him to retain
18 fluid, and therefore he is treating him with strong
19 diuretics that due to the diuretics he has to urinate
20 frequently and fearful that this would interfere with his
21 ability to sit on a jury. And so, again, I, with any case
22 but especially with a case of this magnitude I would like
23 to have jurors that aren't concerned about having to be
24 excused frequently. So I think due to the medical excuse
25 it's appropriate to excuse Mr. Pugh.

1 All right, next we got Mr. Richardson.

2 (Potential juror Bruce Richardson is returned to the

3 courtroom.)

4 **EXAMINATION BY THE COURT**

5 Q Sir, you're Bruce Richardson?

6 A I am.

7 Q Mr. Richardson, I'll be more than happy to hear from
8 you with regards to your reason for wanting to be excused.

9 A Taking care of two ailing parents and relocating to
10 Columbia, South Carolina.

11 Q Okay. When is that occurring?

12 A I just relocated about two weeks ago. As a matter
13 of fact, I wasn't able to bring the paperwork back. My
14 mother had to bring it back and forth for me because I'm
15 in Columbia now.

16 Q Okay. Have you actually moved to Columbia?

17 A I have.

18 Q I mean, you're -- in other words, your physical
19 residence is now over in Columbia?

20 A 3430 Oak Manor Drive in Columbia, South Carolina.

21 Q Okay, and that's Richland County.

22 A Richland County off of Clemson Road.

23 Q Well, I'm going to excuse you then. We'd love to
24 have you here, Mr. Richardson, but as a new resident of
25 Richland County they will be blessed to have your services

1 over there in the future.

2 A Thank you.

3 Q But thank you for being here this morning. I
4 appreciate that. I'm going to excuse you.

5 (Potential juror Bruce Richardson is excused.)

6 THE CLERK OF COURT: Mr. Roberts was a no-show.

7 THE COURT: All right. Geoffrey Roberts is not
8 present so we'll move on to our next, is Lakita Smith.

9 (Potential juror Lakita Smith is returned to the
10 courtroom.)

11 **EXAMINATION BY THE COURT**

12 Q Good morning, Ms. Smith?

13 A Good morning, how are you?

14 Q I'm doing well, ma'am. Sumter is a very educated
15 community. Ms. Smith, I'll be happy to hear from you with
16 regards to your request.

17 A I do work at Sumter High. I'm a teacher assistant
18 shadow for the Special Ed department.

19 Q Yes, ma'am.

20 A And I shadow a student that has chronic diabetes but
21 she doesn't stay the whole day. She's on half day. And
22 then I return back to my class to do the rest of, you
23 know, helping with my teacher. And I also am a caregiver
24 for my mother. She has diabetes as well and right now she
25 is under the weather and when I get a phone call I go real

1 quick. So that's my excuse.

2 Q All right. What I'm going to do, Ms. Smith, is I'm
3 going to transfer your service to another term of court.

4 A Okay, that's fine.

5 Q That is not during the school year.

6 A Yes, sir.

7 Q And then hopefully your mother will --

8 A I pray too.

9 Q --get better and --

10 A Thank you.

11 Q --that you'll be able to do it then. But mainly
12 I'm concerned, obviously concerned about your mom but --

13 A Thank you.

14 Q --also the fact that your employment is with the
15 school and that would be a difficult time for you.

16 A Yes.

17 Q I'm going to grant your request and transfer your
18 service. They'll send you a notice, ma'am.

19 A Okay, thank you.

20 Q Thank you.

21 (Potential juror Smith was excused and potential juror
22 Velisa Ward was returned to the courtroom.)

23 **EXAMINATION BY THE COURT**

24 Q Ma'am, you're Velisa Ward?

25 A Yes, sir.

1 Q All right. Ms. Ward, I'll be more than happy to
2 hear from you, ma'am.

3 A The reason why I want to be excused is because I
4 have a child that's attending Alice Drive Elementary
5 School and I have to take him to school and plus I'm on
6 medication.

7 Q Okay. And how does the medication affect you?

8 A I suffer from sickle cell disease.

9 Q Yes, ma'am.

10 A I have pain crises and I'm on narcotics around the
11 clock and sometimes I'm sleepy and sometimes, you know,
12 I'm up to par. Makes me real lazy and tired.

13 Q Yes, ma'am. Okay. And how is your child?

14 A My child is nine. He's in ---

15 Q Attends where in school you say?

16 A Alsdrive Elementary School.

17 Q All right. Ms. Ward, if I may, and it won't be but
18 for a moment. Let me ask you if you could go and step out
19 here. Let me look at some of these things and I'll bring
20 you back in just a moment, okay.

21 A Okay.

22 (Potential juror Ward was removed from the courtroom.)

23 THE COURT: Solicitor, any position from the
24 State regarding ---

25 MR. JACKSON: No, sir, Your Honor.

1 THE COURT: --about Ms. Ward? From the
2 Defense, any position regarding Ms. Ward?

3 MR. HOWLE: No, Your Honor.

4 THE COURT: I got a little concern about the --
5 I don't know Ms. Ward at all. This could just be her
6 demeanor but she does seem to be on something. And she
7 indicates narcotics. I'm sure that's probably what it is
8 for her sickle cell problem. And I'm -- I think she may
9 have a difficult time serving in any situation much less a
10 two week, possibly two week trial. I'm going to -- I
11 don't have -- I'm going to ask her if she can get us
12 something from her doctor but I'm going to excuse her.
13 And let me ask, if you would, bring Ms. Ward back in.

14 (Potential juror Ward was returned to the courtroom.)

15 BY THE COURT:

16 Q Ms. Ward, and I know this may sound like a
17 technicality and people with children have to take care of
18 their children; I understand that. Under the exemptions
19 your child is over the age of seven so that wouldn't
20 apply. But I do appreciate your physical situation, and
21 the fact that you have to take this medication for that
22 situation. I'm going to excuse you from this term of
23 court. If I may ask you though, do you think you can get
24 us a doctor excuse from your physician indicating that
25 you're on this medication that would affect your ability

1 to serve?

2 A Yes, sir, I can.

3 Q If you would do that I would appreciate that and
4 that way I can supplement the record with that. But I'm
5 going to grant your request and excuse you, and if you
6 would, just within the next week or so if you could get
7 that to the clerk, all right?

8 A Okay.

9 Q Thank you, ma'am.

10 (Potential juror Ward was excused and potential juror
11 Dionya Washington was returned to the courtroom.)

12 **EXAMINATION BY THE COURT**

13 Q Good morning, Ms. Washington.

14 A Good morning.

15 Q I'll be happy to hear from you, ma'am, with regards
16 to your request.

17 A I have two daughters at home.

18 Q Okay. What are their ages?

19 A One is 15 months and the other one is 5 months.

20 Q 15 months and 5 months?

21 A Yes, sir. Yes, sir.

22 Q You're busy. Do you work outside the home, ma'am?

23 A No, sir.

24 Q So you're the primary caretaker of those children?

25 A Yes, sir.

1 Q I'm going to excuse you, Ms. Washington, 'cause you
2 seem to fit the exemption for that and I'm going to allow
3 you to get back to your -- who's got your children this
4 morning?

5 A My grandmother.

6 Q I'm going to -- she would not be able to watch them
7 while you're --

8 A No, sir.

9 Q --the whole time your -- if you were in trial?

10 A No, sir.

11 Q I'm going to excuse you, Ms. Washington, and let you
12 get back to your children and relieve grandma.

13 A Thank you.

14 Q Thank you, ma'am, for being here this morning.

15 A Thank you.

16 (Potential juror Washington was excused and potential
17 juror Frances Wheat was returned to the courtroom.)

18 **EXAMINATION BY THE COURT**

19 Q Ma'am, you're Frances Wheat?

20 A Yes, sir.

21 Q All right. Ms. Wheat, I'll be happy to hear from
22 you regarding your excuse.

23 A I'm a high school teacher at Sumter High School and

24 —

25 Q God bless you.

1 A Thank you. I've got seniors I'm trying to get ready
2 for graduation, and you know, we have just a very few
3 weeks left if they even finish earlier than everybody
4 else and I really need to be there with them.

5 Q I taught for seven years at Strohm Thurmond High
6 School before I went to law school so I certainly
7 appreciate your position this time of the year. I'm going
8 to grant your request, ma'am, and I'm going to transfer
9 your service to a period time when you're not in school.

10 A And that's fine.

11 Q And they'll send you another notice so you're free
12 to go and you're excused from this term and just whatever
13 notice you get down the road just comply with that, okay?

14 A I certainly will.

15 (Potential juror Wheat was excused and potential juror
16 Dale Wilson was returned to the courtroom.)

17 **EXAMINATION BY THE COURT**

18 Q Mr. Wilson?

19 A Yes, sir.

20 Q The last shall be first. It gets lonely back there?

21 A No, there's one other lady in there.

22 Q All right, well, the next to the last shall be
23 first. Go ahead, I'm ready to hear from you.

24 A Yes, sir, I'm just asking to have my service
25 transferred to the summer. I'm a school administrator and

1 this is the end of the school year. It's kind of busy
2 time for us.

3 Q I understand.

4 A Yes, sir.

5 Q It's a good time but busy time.

6 A Yes, sir.

7 Q All right, Mr. Wilson, I'll be more than happy to
8 honor that request and they'll send you another notice so
9 you're excused from this term. And just, whenever you get
10 that next notice just comply with that, all right?

11 A Yes, sir, I will.

12 Q Thank you, Mr. Wilson, I appreciate your being here
13 sir.

14 (Potential juror Wilson was excused and potential juror
15 Meagan Cassidy was returned to the courtroom.)

16 **EXAMINATION BY THE COURT**

17 Q Ms. Cassidy.

18 A Yes, sir.

19 Q You get lonely back there when you were —

20 A I did. You forgot about me.

21 Q We didn't forget. I appreciate your being here. It
22 is my understanding that you live in an area, am I
23 correct, that is close to whether you live in Florence or
24 Sumter?

25 A Okay, this is what happened. I had — I lived in

- 1 Sumter and then I moved -- I bought a house in Lynchburg.
2 I sold the house in Lynchburg and now I live in Sumter
3 again. So I think whenever I had mailed my thing back it
4 was a Lynchburg address.
- 5 Q Okay.
- 6 A I think that's what the confusion was, yes, sir.
- 7 Q Let me ask you this just so we get the record
8 straight.
- 9 A Yes, sir.
- 10 Q You are currently a resident of what county now?
- 11 A Sumter.
- 12 Q Sumter?
- 13 A Yes, sir. I live in Sumter now as of last weekend.
- 14 Q Lynchburg wasn't a nice quiet place for you ---
- 15 A Oh, no, sir, huh-uh. It was --
- 16 Q It's a nice, quiet place.
- 17 A It is a very nice quiet place. Too quiet, nice for
18 me though.
- 19 Q Well, Ms. Cassidy, let me ask you this, do you have
20 any problem serving on jury duty then?
- 21 A I don't have a problem. It's just that day is the
22 grand opening of our new shop and --
- 23 Q The 28th?
- 24 A Yes, sir. The whole week is our grand opening week
25 at the new shop and I really don't want to miss it. But I

1 understand if I can't. I mean, I'll willing to do any
2 other time, whatever y'all need me to go but.

3 Q Where do you work?

4 A The work studio. We've moving our shop on Alice
5 Drive. We're going from Gillyard to Alice.

6 Q Well, I don't -- I don't want to be a bad guy here,
7 but I really don't have a legal reason --

8 A Yes, sir.

9 Q --to excuse you because of the grand opening. I'm
10 very sorry, I mean, and I don't -- I don't want you to
11 miss it, but there's really not a whole lot I can do about
12 that.

13 A Yes, sir.

14 Q But, and I'm sorry. I hope you won't hold that
15 against the Court?

16 A Oh, no, I mean...

17 Q It is important, I mean. That's important. I
18 understand that, but and I think you -- jury service is
19 very important and --

20 A Yes, sir.

21 Q --I wouldn't want to for anything in the world
22 wouldn't want you to have to miss that but I don't really
23 have a legal basis within which to excuse you. Let me do
24 this, if I may.

25 A Okay.

1 Q I know you were getting lonely back there. Let me
2 get you to step out just a minute. Let me look at some
3 matters and then I'll get back with you.

4 A Okay.

5 (Potential juror Cassidy was removed from the courtroom.)

6 THE COURT: Any position from the State?
7 Here's what I didn't get from her. I didn't get from her
8 that she had to be there, that her employment required her
9 to be there. She's at beauty salon; is that correct?

10 MR. JACKSON: Not only that, Judge, that first
11 week, we're almost finished with the voir -- Monday
12 morning with all the jurors. And once we get them locked
13 in when they report back Monday and Tuesday, Wednesday or
14 Thursday morning she'll have -- she'll probably be half
15 day Monday and she'll have to come one -- come back one
16 time between then and Thursday probably. And so she'll
17 get back there a large part of the time.

18 MR. HOWLE: I agree with that, Your Honor.

19 THE COURT: I just don't see -- I hate she's
20 going to miss the grand opening. That's just...

21 MR. JACKSON: She'll see half of it.

22 MR. BABB: I've just never researched an issue
23 of someone being drawn as part of the potential venire who
24 is not a resident at that time and then becomes a resident
25 getting here so I don't know if that's an issue or not.

1 THE COURT: Here's what -- this is what I
2 gathered from what I've heard is at the time she was
3 summoned she was. Then she moved to Lynchburg, apparently
4 found out quickly that wasn't her cup of tea and moved
5 back here.

6 MR. BABB: That solved that issue.

7 THE COURT: She's going to have to miss the
8 opening, or at least part of it.

9 MR. HOWLE: I mean, I wasn't raising that as an
10 objection. I just was raising it --

11 THE COURT: And they're open till like ten or
12 eleven at night so. All right, let's bring her back in.

13 (Potential juror Cassidy was returned to the courtroom.)

14 EXAMINATION BY THE COURT

15 Q And let me ask, is it Meagan?

16 A Yes, sir.

17 Q Has there been a name change?

18 A No, sir. No, sir.

19 Q You're still Meagan Cassidy?

20 A Yes, sir, still me.

21 Q Ms. Cassidy, I can't predict the future but you may
22 not have to miss all of Monday because -- I guess let me
23 say this, I'm going to need you to be here for court
24 Monday.

25 A Yes, sir.

1 Q But it may be that that may be a short day Monday.

2 A Okay.

3 Q So it may be that you get out of here, can be there
4 for the later half of the grand opening.

5 A Okay.

6 Q But thank you for being here this morning, and I'm
7 sorry with the confusion with the residency thing but...

8 A That's okay.

9 Q We are glad to have you with us and we'll see you on
10 the 28th day. Okay?

11 A All right.

12 Q Thank you, Ms. Cassidy.

13 (Potential juror Cassidy was excused.)

14 THE COURT: Gentlemen, I'm going to -- and I'll
15 hear from you if there's anything else you want to take up
16 at this time, but right now I'm gonna recognize Madam
17 Clerk and have her put on the record those individuals
18 that were excused for various reasons that met either the
19 disqualification or the exemptions that allowed them to be
20 -- for example those over 65. I'm going to have her list
21 those and give the reason for their being excused that we
22 did not address today.

23 All right, ma'am.

24 THE DEPUTY CLERK OF COURT: Number 1, Jonnie L.

25 Adee was excused for over 65.

1 Your Honor, do you also want me to list the
2 ones that were returned by mail? I have marked them off.
3 They were returned by mail by the post office. We
4 searched to see if we could find a new address and were
5 unable to.

6 THE COURT: Okay, just. Yeah, you can just
7 list those and indicate those were not able to be served.

8 THE DEPUTY CLERK OF COURT: Number 7, Helen P.
9 Austin, over 65; number 9, Edward Y. Baker was returned by
10 mail; number 16, Thelma Berry, over 65; number 18, Darren
11 Bivins, returned by mail; number 20, Cheryl F. Blomquist,
12 she was a resident of North Carolina; number 25, Victoria
13 R. Boyce, over 65; number 29, Daisy A. Brogdon, over 65;
14 Number 30, Fiesta Brooks, returned by mail; number 33,
15 Franky A. Brown, returned by mail; number 42, Lotus H.
16 Chandler, over 65; number 51, Mary E. Cruse, returned by
17 mail; number 52, Latraveus D. Dardy, resident of Kentucky;
18 number 53, Katherine Davis, returned by mail; number 55,
19 Diana Dicantio, over 65; number 58, Lance L. Dinkins,
20 military stationed in Virginia; number 63, Ashley D.
21 Dunham, returned by mail; number 67, Suzanne M. Ehrlich,
22 returned by mail; number 68 is James W. Ellett -- oh, no,
23 I'm sorry, you excused him, I'm sorry. Number 70,
24 Lannette R. Evans, returned by mail; number 74, Mamie D.
25 Fields, returned by mail; number 77, Mary J. Freeman,

1 returned by mail; number 80, Jonathan Gamble, over 65;
2 Number 81, Gerald L. Gardner, returned by mail; number 82,
3 Kenneth Gardner, over 65; number 84, Elnora Gathers, over
4 65; number 88, Annie M. Gilbert, returned by mail; number
5 89, Billy L. Ginn, returned by mail; number 90, Monica K.
6 Gober, over 65; number 95, Ruby H. Goodson, over 65;
7 number 97, Elbert L. Graham, over 65; number 102, Ashleigh
8 D. Green, returned by mail; number 103, Mary A. Gregg,
9 deceased; number 104, Naomi A. Griffin, over 65; 105,
10 Regina M. Hardwell, returned by mail; 107, Talibra L.
11 Harrison, returned by mail; 108, Tammy L. Harrison,
12 returned by mail; number 111, Gracie H. Haynsworth,
13 returned by mail; 113, Lowell J. Henderson, over 65; 116,
14 James C. Hiott, over 65; number 117, Myrtis H. Hodge,
15 deceased; number 118, Steven B. Hodge, Jr., returned by
16 mail; 123, Margaret House, over 65. 124 was excused per
17 you, Judge, medical reason. I contacted your, Jessie,
18 about that order coming so that was —

19 THE COURT: Let me mention to counsel. Orra
20 Hunter is — she was the one who is a cancer patient?

21 DEPUTY CLERK OF COURT: No, sir, I spoke with
22 her. She's on oxygen 24 hours day.

23 THE COURT: I'm sorry, yeah, she is on oxygen.
24 Well, you know, it might be best for you to just on the
25 record put down her reasons because they're pretty

1 substantial.

2 THE DEPUTY CLERK OF COURT: She telephoned me
3 and she said she was on oxygen 24 hours a day. She walks
4 with a walker and is most of the time bed ridden, and she
5 was not able to come to the hearing or be here on the
6 28th.

7 THE COURT: All right.

8 THE DEPUTY CLERK OF COURT: 125, Adrian F.
9 Ingram, Jr., over 65; 126, Rebecca L. Isaac, returned by
10 mail; 128, Tangel D. Jacobs, returned by mail; 138, Marie
11 J. Jones, over 65; 139, Natalie A. Jones, returned by
12 mail; Theresa Kennedy, returned by mail, 145, I'm sorry.
13 147, Gregory D. Lamb, Senior, was returned by mail; 148,
14 James D. Lane. resident of Clarendon County. 149, Ima J.
15 Langston, over 65; 150, Juanita Lawrence, returned by
16 mail; 151, Mary A. Laws, returned by mail; 159, Margaret
17 Livingston, over 65; 160, Patricia J. Longberry, over 65;
18 163, John Maharaj, returned by mail; 165, Crystal L.
19 Martin, resident of Rock Hill, South Carolina; 166, Irene
20 Masisak, over 65; 167, Queenie Mayrent, returned by mail;
21 168, William R. Mcleavey, returned by mail; 170, Rosa Lee
22 McDaniel, over 65; 171, Sarah T. McDowell, returned by
23 mail; 175, Violeta McNeil, returned by mail; 176, Daisy R.
24 McRoy, over 65. 182, Charles G. Mooneyham, returned by
25 mail; 189, Lillian E. Munoz, over 65; Cevoy, 191, Cevoy M.

1 Nelson, over 65 and medical excuse; 192, Christopher D.
2 Nelson transferred to August 11th per Judge Russo. He was
3 a full-time student I think was in Clemson I spoke with
4 you about.

5 THE COURT: Right.

6 DEPUTY CLERK OF COURT: And he was not able to
7 be here today. 195, Anna R. Nunnery, returned by mail;
8 196, Tamara Oliver, returned by mail; 199, Cora L. Pack,
9 over 65; 201, Donald R. Palmer, over 65; 204, Augustine W.
10 Peter, over 65; 212, Rachel L. Prescott, resident of
11 Simpsonville, South Carolina; 216, Charlena E. Pritchard,
12 returned by mail; 218 Debresia S. Ragin, resident of
13 Texas; 223, James T. Robertson, over 65; 225, Shannon P.
14 Robinson, returned by mail; 228, Alma J. Rose, returned by
15 mail; 231, Albertha C. Sargent. She's over 65. I did not
16 receive a summons from her but her daughter called and
17 told me she was 76 years of age; she could not serve on
18 jury duty. 232, Andre C. Schoeffler, returned by mail;
19 233, Kanika J. Scott, military stationed in Iraq; 234,
20 Marilyn K. Sears, over 65; 236, Renee W. Servance,
21 returned by mail; 238, Barbara A. Shockley, over 65; 240,
22 Elizabeth Simon, over 65; 246, Laverne D. Smith, over 65;
23 250, Clifford Taylor, over 65; 252, Stephen G. Taylor,
24 returned by mail; 255, Eartha Lee Thompson, over 65; 256,
25 George R. Thompson, the Fourth, resident of North

1 Carolina; 258, Clarence H. Turk, over 65; 260, Geoffrey E.
2 Vassey, returned by mail; 261, Demetrius A. Vaughn,
3 returned by mail; 262, Gregory Vaughn, returned by mail;
4 269, Hopkins Washington, the third, over 65; '270, Lillian
5 M. Washington, returned by mail; 277, Alexander White,
6 over 65; 278, Davie White, over 65; 279, Elizabeth S.
7 White, returned by mail; 280, Eric C. White, returned by
8 mail; 283, Jessie E. Williams, returned by mail; 284,
9 Matthew T. Williams, returned by mail; 286, Paula D.
10 Williams, returned by mail; 290, Justin Wilt was
11 transferred to May 19th per judge. He was also a
12 full-time student. 291, Brian S. Winters, returned by
13 mail; 295, Kari F. Wunderlich, returned by mail; 296, Koji
14 N. Yoda, returned by mail; 298, Mary A. Young, returned by
15 mail.

16 THE COURT: Okay. Let me also indicate,
17 gentlemen, on Juror Number 248, Susan B. Smith
18 Mr. Campbell just got a phone call as we were going
19 through this indicating that she has a bleeding tumor on
20 her uterus and is awaiting surgery to have that repaired.
21 I anticipate we won't see her on Monday but just make that
22 note. I'm sure we'll have further confirmation on that
23 come Monday.

24 All right, anything else that we can take care
25 of today?

1 MR. JACKSON: Nothing from the State, Your
2 Honor.

3 MR. HOWLE: Your Honor, and I know we got some
4 motions we'll hear next week. The only thing I mentioned
5 to the solicitor this morning the witness list and I
6 understand he's still working on it. But we really would
7 like to get that as quick as we can so some of our experts
8 that might need to look at it or see how we address that.

9 THE COURT: As quickly as you can put that
10 together for us, Solicitor. I mean, I'm not, do you have
11 any objection providing them that witness list?

12 MR. JACKSON: Judge, generally we don't give a
13 witness list until we get ready to the call the case for
14 trial. I mean, we provided I believe adequate discovery
15 to see who the potential witnesses were. And I certainly
16 don't want to be in a position to have to say look, y'all
17 need to double check this list of names right here so.

18 THE COURT: Let me ask you, Mr. Howle, or
19 Mr. Babb.

20 MR. JACKSON: I've not ever had that request at
21 trial.

22 THE COURT: I'm not aware there's any
23 requirement that the State produce a witness list require
24 to trial. Is there any -- do you have any authority to
25 support that?

1 MR. HOWLE: I just assumed for years there'd
2 been a witness list. I'm just trying to prepare as
3 quickly as we can.

4 THE COURT: Well, I'm sure there will be one,
5 but I'm not sure they're required to disclose it prior to
6 the term of the court.

7 MR. HOWLE: Your Honor, I understand they're
8 not required to. I just ask if it was available and they
9 had it we'd like to get it.

10 THE COURT: Well, I mean, if you can show me
11 some authority that it's required I will —

12 MR. BABB: I'm just saying that's whatever the
13 judge, if you — depending on the rule because you got,
14 you know, scheduling issues that the State is going put up
15 an expert and the Defense has an expert, well that defense
16 expert needs to be there at the same time as the State's
17 put up theirs.

18 THE COURT: Well, I understand. I mean, we're
19 not saying they got to give you a list of witnesses but
20 also the order in which they're to call them and when
21 they're going to call them.

22 MR. BABB: I think once we get into trial we
23 need to know who is going to be called, otherwise, our
24 witnesses would have to sit here and be running the clock
25 throughout the entire portion of the State's case.

1 THE COURT: Well, okay. You know, and that may
2 be the case once we get started but I'm not going to put
3 them on some time frame to provide a witness list prior to
4 the 24th. As long as they have complied with discovery,
5 have given you everything regarding, you know, those items
6 that are properly discoverable.

7 Now Solicitor, if you do get a list together
8 and you don't have a problem, you know, sharing it with
9 them, you know, that's fine; but we can talk about
10 scheduling but I don't think I can ask the State to tell
11 you a week prior to trial when they intend to call certain
12 witnesses so that, you know, schedules can be arranged.

13 MR. BABB: Your Honor, the question we're
14 having a motions hearing next week. If there are certain
15 witnesses they intend to call then we have -- we may have
16 motions that need to be heard prior to trial or we aren't
17 going to know until we get into the case, then we'll be
18 dealing with this type of things during the case.

19 THE COURT: Well, we can talk about that then
20 on Wednesday when we have pretrial motions. Anything
21 else?

22 MR. JACKSON: Nothing from the State, Your
23 Honor.

24 MR. HOWLE: Nothing further, Your Honor.

25 MR. JACKSON: Judge, for planning purposes I

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believe next week we'll be in the small courtroom.

THE COURT: Whatever y'all tell me.

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

**I, FRANCES BAKIS-RAY, Registered Professional
Reporter (RPR), court reporter for the State of South
Carolina, Twelfth Judicial Circuit, do hereby certify that
the foregoing proceeding is a stenographic report and was
transcribed through computer-aided transcription; that the
foregoing transcript contains a true record of the
proceedings.**

**I further certify that I am neither counsel for,
nor related to nor employed by any of the parties
connected to the action, nor am I financially interested
in the action.**

**Witness my hand at Florence, South Carolina,
this 4th day of April, 2009.**


FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

COURT OF GENERAL SESSIONS
2004-GS-40-10096
2006-GS-43-00696
2006-GS-43-00699

STATE OF SOUTH CAROLINA

vs.

STEPHEN COREY BRYANT
DEFENDANT

TRANSCRIPT OF RECORD

July 18, 2008
Lexington, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE.

A P P E A R A N C E S:

C. KELLY JACKSON, SOLICITOR
Attorney for the State

JACK HOWLE, JR., ESQ.
JOHN D. CLARK, ESQ.
Attorneys for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

(There were no witnesses produced.)

EXHIBITS

(There were no exhibits marked.)

1 THE COURT: All right. Ready to proceed?

2 MR. HOWLE: Yes, sir, your Honor.

3 THE COURT: All right. This hearing is in the
4 matter of the State of South Carolina versus Stephen Corey
5 Bryant and it's Docket No. 2006-GS-43-699, a case out of
6 the Third Judicial Circuit.

7 The purpose of today's hearing is to address the
8 issue of Mr. Bryant's counsel.

9 And at this point, Mr. Howle, I'll be happy to
10 recognize you and you can fill us in on our situation.

11 MR. HOWLE: Thank you, your Honor.

12 Your Honor, I have represented Stephen since the
13 charges were initially brought against him, and in
14 mid-2007 the notice of them seeking the death penalty was
15 served on me by the Solicitor's office. At that time Jim
16 Babb was appointed as the other counsel, and he has
17 diligently worked on this case all that period of time.

18 As your Honor is aware, he presently is
19 experiencing medical problems, and I think some
20 correspondence has been given to you to substantiate that.

21 THE COURT: Right.

22 MR. HOWLE: The Court's aware of that.

23 And unfortunately right now he is not -- the
24 doctors do not think it's best for him to be doing actual
25 trial work.

1 Mr. Bryant is aware of this and signed a consent
2 on July 11th. I think I've given the Solicitor a copy of
3 that.

4 MR. JACKSON: Yes, we've got it. Thank you,
5 Jack.

6 MR. HOWLE: And it's signed.

7 Understanding that those medical problems exist,
8 we're going to move before the Court to have Jim relieved.

9 THE COURT: All right, sir. And I am aware of,
10 Mr. Babb has been kind enough to make the Court aware of
11 his medical situation and the orders from the physicians
12 regarding him to suspend his trial practice, so I'm fully
13 aware of that and certainly would find that it is in fact
14 necessary for him to be relieved on this case.

15 And I appreciate the fact that Mr. Bryant has
16 been consulted on that and that he has, in fact, submitted
17 this consent for release, although I don't know that
18 that's required, but I do appreciate it.

19 Mr. Bryant, you understand Mr. Babb's situation,
20 sir?

21 THE DEFENDANT: Yes, sir, I do.

22 THE COURT: And the fact that because of medical
23 conditions, that he's not able to continue as trial
24 counsel in this case and that the Court is going to be
25 relieving him from his appointment as one of your trial

1 attorneys; you understand that?

2 THE DEFENDANT: I'm aware of that, sir, yes,
3 sir.

4 THE COURT: All right, sir. And you don't have
5 any opposition to that?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right. Thank you very much,
8 Mr. Bryant.

9 Now, it is my understanding that Mr. John Clark,
10 and, Mr. Clark, you're here today.

11 MR. CLARK: Good morning, your Honor.

12 THE COURT: Good morning, sir.

13 And, Mr. Clark, I know that Mr. Howle is
14 certified or qualified, death penalty qualified. Am I
15 correct, sir, you are also qualified and certified by the
16 Supreme Court to serve on death penalty cases?

17 MR. CLARK: Yes, sir.

18 THE COURT: All right. And you are on that
19 list, and so the Court is going to appoint you to assist
20 in whatever capacity, however you and Mr. Howle intend to
21 try this case, but you're going to be one of Mr. Bryant's
22 attorneys. And do you have any problem with accepting
23 that appointment, sir?

24 MR. CLARK: No, your Honor, I accept the
25 appointment.

1 THE COURT: Thank you very much. I appreciate
2 that.

3 And so, for the record, then Mr. Clark and
4 Mr. Howle will be representing Mr. Bryant from this point
5 forward regarding the matter.

6 Now, the case is currently scheduled for the
7 weeks of September 1st and September 8th; is that
8 correct, Solicitor?

9 MR. JACKSON: That's correct, your Honor.

10 THE COURT: All right. Mr. Howle and/or
11 Mr. Clark, at this time do you see any reason that we
12 cannot move forward with that schedule?

13 MR. HOWLE: Do not see any reason at this time,
14 your Honor.

15 MR. CLARK: No reason.

16 THE COURT: All right.

17 MR. HOWLE: Your Honor, one thing I did want to
18 put on the record, we consulted with the Clerk of Court
19 for the list of 608 appointees in Sumter County. It's
20 maintained alphabetically as 608 requires.

21 THE COURT: All right.

22 MR. HOWLE: It does allow us to skip somebody,
23 and we did skip an individual between Mr. Babb and
24 Mr. Clark, a fine lawyer. Mr. Babb and I talked about
25 this and I've talked to the Solicitor about it as well.

1 He has a style and a personality that we just honestly did
 2 not feel would sit well with Mr. Bryant, that that just
 3 was not going to work. Like I say, he's a very effective
 4 lawyer, but we just did not feel that that was going to
 5 work.

6 THE COURT: Sure.

7 MR. HOWLE: Mr. Clark is the very next person
 8 and he is imminently qualified, and I just wanted to put
 9 on the record that we followed the rules, but we did skip
 10 one as the rules allow.

11 THE COURT: And I think the rule does provide
 12 that we can do that, so I don't see any problem with that.

13 Now, Solicitor, I think, for the record, that
 14 you need to then proceed with serving Mr. Clark; is that
 15 correct?

16 MR. JACKSON: That's correct, your Honor. We're
 17 prepared to do that.

18 THE COURT: All right.

19 MR. JACKSON: Your Honor, we'll serve Mr. Clark
 20 the same notice of death penalty that we served upon the
 21 defendant Stephen Corey Bryant and his attorneys at a
 22 prior date. Also along with that are certified copies of
 23 the indictments. That would be 2006-GS-43-696, 697, 698,
 24 699, 700, 701, and 702.

25 Your Honor, I will provide those to him now and

1 ask him to sign an acknowledgment of receipt.

2 In addition to that, your Honor, another reason
3 that we really needed to do that is to make sure that --
4 there are lots of cases here and we need to make sure that
5 if we're going to go to trial on the 2nd of September,
6 we're going to have a full-fledged jury trial on
7 September 2nd, that Mr. Clark is aware of who the
8 parties are and what's involved to ensure that he doesn't
9 have a conflict with any of the victims' families; to make
10 sure that there aren't any reasons for continuance; that
11 once he's looked at this stuff, he then becomes aware of,
12 and I don't know how much opportunity he's had to review
13 this material before today to make representation to the
14 Court that we're good to go in six weeks. So we want to
15 get as close to that as we can.

16 THE COURT: Well, I appreciate that.

17 MR. HOWLE: I'll tell you this: We gave John a
18 disc yesterday that has everything on it. Now, I'm sure
19 Mr. Clark didn't have an opportunity to review everything
20 on the disc, but he has those materials in hand now.

21 THE COURT: What I would do is, Mr. Clark, is to
22 give you an opportunity to look through that stuff, and if
23 you would just -- if any issue does arise from your review
24 of those materials, if you would just notify the Court as
25 soon as possible.

1 MR. CLARK: Certainly, yes, sir.

2 THE COURT: So we'll give Mr. Clark that
3 opportunity to review that.

4 At this time he's not aware of anything?

5 MR. CLARK: No, sir.

6 THE COURT: We'll give him that opportunity over
7 this weekend to do that.

8 MR. HOWLE: Your Honor, I think when I was over
9 here a few days ago I left the order itself. If you don't
10 have a copy, I have another one to sign.

11 THE COURT: Go ahead and let me have that.

12 MR. HOWLE: This is the same one that I provided
13 to the Solicitor.

14 THE COURT: And, Solicitor, you have had an
15 opportunity to review that?

16 MR. JACKSON: Yes, sir, I have, your Honor.

17 THE COURT: All right. Any objection or any
18 problem with that order?

19 MR. JACKSON: I just want to reflect that the
20 order says that it's upon motion of James H. Babb. I know
21 that he did not put that on the record today, Mr. Howle
22 did, for whatever difference that makes.

23 THE COURT: Well, Mr. Babb did in fact submit a
24 written letter to the Court making the motion.

25 MR. JACKSON: Okay. I'm sorry. We were not

1 aware of that and checked with the Clerk of Court's office
2 and hadn't seen anything filed.

3 THE COURT: All right, sir.

4 Now, let me, if I may while everyone is present
5 and we're all here, if we can, if you have your calendars
6 and we can at least make some headway in getting a
7 scheduling order in place.

8 We have the proposed trial dates, but we need to
9 get together prior to those dates to handle any pretrial
10 matters and also to -- Jamie, I know you're here. We need
11 to maybe set a date that we can go through the jury venire
12 to maybe take up any excuses that we may have as we did
13 earlier.

14 THE CLERK: Judge, if I may?

15 THE COURT: Yes, sir.

16 THE CLERK: The week of August 25th in Sumter we
17 have no court, so that week is wide open for us.

18 THE COURT: All right. Let me check something
19 real quick.

20 THE CLERK: Florence Common Pleas, your Honor.

21 THE COURT: That's right. As much as it would
22 break my heart, I think I can find the time to break from
23 that.

24 MR. HOWLE: Your Honor, that's my wife's
25 birthday, but I can work it out.

1 THE COURT: And it's just that week of the
2 25th, so we'll try to avoid her actual birthday.

3 Any proposals looking at you all's calendars?

4 MR. JACKSON: Judge, for clarification, correct
5 me if I'm wrong, but I believe you all have got the
6 judicial conference on the week of the 18th.

7 THE COURT: We do. But that is actually the
8 20th, 21st and 22nd, so that's Wednesday, Thursday, and
9 Friday, so we've got Monday and Tuesday we can do
10 something.

11 MR. JACKSON: What we were thinking, Judge,
12 would be the Thursday and Friday, which would be
13 August 28th and 29th, do the pretrial motions starting on
14 the 28th.

15 THE COURT: If we needed the 29th.

16 MR. JACKSON: Yes, sir, if we need it we go into
17 the 29th, schedule the juror excusal hearings on the 29th.
18 Last time we had scheduled them a week out because the
19 Friday was available and that gave us all plenty of time
20 to react to who really was coming in, but since your Honor
21 will be at that conference, I think if we do it Monday or
22 Tuesday of that administrative week two weeks out, I don't
23 know how much juror turnaround time that gives us because
24 the orders are going out next week. The summons are going
25 to go out next week. So we were proposing that we do the

1 pretrial motions on the 28th of August, which is a
2 Thursday, juror excusals on Friday morning, and if we had
3 to run a little bit over for leftover motions from the day
4 before, we would have Friday afternoon. I don't think it
5 took us but a couple of hours in May when we exercised
6 this. That was our proposal.

7 THE COURT: All right. Mr. Howle and/or
8 Mr. Clark, how does that sound to you all?

9 MR. HOWLE: I don't see any problem with those
10 dates.

11 THE COURT: Mr. Clark?

12 MR. CLARK: I don't see a problem, your Honor.

13 THE COURT: So that what we would look at doing
14 is August 28th we would handle pretrial matters with the
15 hope of concluding those on that date, but if not, we've
16 got 29th. The 29th we'll do jury excuses and then any
17 mop-up on any pretrial matters we can take care of at that
18 time. Okay? That suits everybody then.

19 Anything else that we can do while we're here?

20 MR. JACKSON: Not that I'm aware of, your Honor.

21 MR. HOWLE: Your Honor, that covers everything
22 that we wanted to bring before the Court today.

23 THE COURT: All right. Well, Jamie, everything
24 good as far as the notices ready to go out?

25 THE CLERK: Yes, sir, we're ready.

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THE COURT: All right. And if you all need any time with Mr. Bryant while you're here --

MR. HOWLE: Yes, sir.

THE COURT: -- we'll provide you that opportunity.

MR. HOWLE: Thank you, your Honor.

THE COURT: And so if there is nothing else, then we'll go ahead and conclude this.

(The proceedings were concluded.)

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

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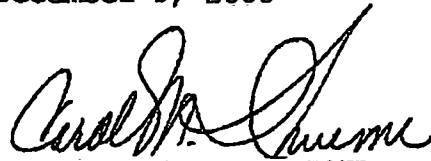
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

I, CAROL M. THUEME, RPR, Official Court Reporter for the 11th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Sumter County, South Carolina, on the 18th day of July, 2008.

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

December 9, 2008



CAROL M. THUEME, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	06-GS-43-696 through 702
COUNTY OF SUMTER	)	04-GS-40-10096
The State,)	
)	
Plaintiff,	)	Transcript of Record
)	
vs.	)	Guilty Plea
)	
Stephen Corey Bryant,	)	August 18, 2008
)	
Defendant.)	

B E F O R E :

Honorable Thomas A. Russo
Florence County Courthouse
Florence, South Carolina

A P P E A R A N C E S:

Dudley Saleeby, Esquire
Kelly Jackson, Esquire
Attorneys for Plaintiff

John Clarke, Esquire
Jack Howle, Esquire
Attorneys for Defendant

Grace L. Hurley, CVR-CM
Circuit Court Reporter

1 There were no exhibits marked during the hearing.
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State v. Bryant (8-18-08 Guilty Plea)

3

1 (On the record, August 18, 2008.)

2 THE COURT: All right, Solicitor; are you ready to
3 proceed, sir?

4 MR. JACKSON: We are, Your Honor.

5 THE COURT: All right, you may call the case.

6 MR. JACKSON: May it please the Court. Your Honor, this
7 is the State versus Stephen Corey Bryant. Your Honor, he is
8 charged with various crimes in eight different indictments.
9 Seven of them come from Sumter County. One of them comes from
10 Richland County. It's my understanding through his attorneys
11 that he wants to change his plea from not guilty to guilty on
12 all of the charges and all of these indictments, he wants to
13 waive venue or jurisdiction for those counties and enter
14 guilty pleas today in Florence County, defer any sentencing
15 proceedings until September 2nd of 2008.

16 Your Honor, as far as complying with the Victims' Rights
17 Act, Vickie Barrick [spelled phonetically] is the victim
18 advocate for the Third Circuit Solicitor's Office. She is
19 here today and she has contacted and spoken with every victim
20 in this case or family members of any victims who are
21 deceased. Several of them are here today. Some of them are
22 not, and at the appropriate time, Your Honor, I'll introduce
23 them and have them come up when their particular case is
24 explained ---

25 THE COURT: All right.

1 --- to the Court. As far as law enforcement, Sheriff
2 Anthony Dennis is here from Sumter County. Captain Stan Smith
3 is here from the Richland County Sheriff's Office and Deputy
4 Solicitor Katherine Hubbard is here representing the Fifth
5 Circuit Solicitor's Office. Your Honor, I have the
6 indictments. I'll hand those up to the Court ---

7 THE COURT: All right, sir.

8 MR. JACKSON: --- along with the plea sheets, and Your
9 Honor, we've handed you up a copy of the order of the plea.

10 THE COURT: Yes, sir.

11 MR. JACKSON: The first one is indictment 2006-696. The
12 second one is 2006-697. The third one is 2004-10096. The
13 fourth one is 2006-698. The fifth one is 2006-699.

14 THE COURT: Yes, sir.

15 MR. JACKSON: The sixth is 2006-700. The seventh is
16 2006-702 and the last one is 2006-701.

17 THE COURT: All right, thank you, sir.

18 MR. JACKSON: Your Honor, I'll be glad to address the
19 facts at the appropriate time.

20 THE COURT: Thank you very much, Solicitor.

21 Let me, let me ask now, Mr. Howle and Mr. Clarke, and
22 just for the record, all of these indictments, save indictment
23 04-GS-40-10096, are all indictments out of Sumter County and
24 that 04 indictment is out of Richland County. It is my
25 understanding that Mr. Bryant has indicated he wishes to waive

1 any jurisdictional issue by having his plea qualified here in
2 Florence County; is that correct?

3 MR. HOWLE: That is correct, Your Honor.

4 THE COURT: All right, Mr. Bryant, if I may, sir,
5 we're here in Florence County as you know. These charges,
6 sir, originated in other counties, that being Sumter County
7 and Richland County. Is that correct, sir?

8 MR. BRYANT: That's correct.

9 THE COURT: And is it my understanding that you wish
10 to waive any jurisdictional question by having the Court
11 accept your pleas here in Florence County; is that correct?

12 MR. BRYANT: That's correct.

13 THE COURT: You wish to go ahead and go forward with
14 these cases here in Florence?

15 MR. BRYANT: Yes, sir.

16 THE COURT: All right, sir, thank you very much. Mr.
17 Howle and Mr. Clarke, you represent Mr. Bryant?

18 MR. HOWLE: Yes, Your Honor.

19 MR. CLARKE: Yes, Judge.

20 THE COURT: Have you explained to him the charges that
21 are contained in these various indictments, the possible
22 punishment that is associated with each of these charges and
23 his constitutional rights regarding these matters?

24 MR. HOWLE: We have, Your Honor.

25 MR. CLARKE: Yes, sir.

1 THE COURT: All right, in your opinion does Mr. Bryant
2 understand the charges that he's before the Court on, the
3 punishment that's, the possible punishment that are associated
4 with these charges and his rights?

5 MR. HOWLE: He does, Your Honor.

6 MR. CLARKE: I believe he does, Your Honor.

7 THE COURT: All right, and has he, in fact, indicated
8 to both of you gentlemen that he wishes to enter pleas of
9 guilty to these charges?

10 MR. CLARKE: Yes, sir.

11 MR. HOWLE: Yes, sir.

12 THE COURT: All right.

13 MR. HOWLE: And Your Honor, at the appropriate time, I
14 don't know if it's a true Blair hearing but we do have two
15 psychiatrists who have been involved prior to him signing the
16 plea sheets as well as speaking with him this morning and
17 we'll put that on the record when it is appropriate.

18 THE COURT: All right, sure, let me ask both of you
19 gentlemen, though, based on your investigation into the facts
20 and the circumstances of all these cases and your looking into
21 these matters on behalf of Mr. Bryant, is it your belief the
22 State if this case were to have gone to trial would be able to
23 produce sufficient evidence to convince a jury of Mr. Bryant's
24 guilt beyond a reasonable doubt if he were to stand trial?

25 MR. CLARKE: Yes, sir.

State v. Bryant (8-18-08 Guilty Plea)

7

1 MR. HOWLE: Yes, sir.

2 THE COURT: All right, now, am I correct, Mr. Bryant
3 has not been ordered to submit to any mental evaluation or any
4 competency issues by the Court; is that correct?

5 MR. HOWLE: That is correct.

6 MR. CLARKE: That's correct, Your Honor.

7 THE COURT: All right, but you do, and my
8 understanding is is that on his behalf as his defense counsel
9 you have had him examined for those purposes.

10 MR. HOWLE: That is correct, Your Honor.

11 MR. CLARKE: Yes, sir.

12 THE COURT: And I'll let you -- and I don't think it's
13 necessary to actually put up the testimony but I will if you
14 would, Mr. Howle, recognize those physicians that are present
15 and what your understanding from their, your discussions with
16 them.

17 MR. HOWLE: Thank you, Your Honor.

18 Your Honor, Dr. Donna Schwartz-Watts and also Dr.
19 Margaret Melikian are both here and both of them have been
20 involved in evaluations. We went to Columbia on 7-31-08 and
21 Dr. Schwartz-Watts at that time spoke with him and evaluated
22 him and then on August the 9th I went with Dr. Melikian to Lee,
23 took the plea sheets Mr. Jackson had provided to me and after
24 she had spoken with him for about an hour or so those plea
25 sheets were signed by him and this morning both doctors have

1 talked with him again and it's my understanding that their
2 medical opinion in regard to his competency is that he is
3 competent, Your Honor.

4 THE COURT: All right.

5 MR. HOWLE: And I don't know whether the Court wanted
6 to inquire among them but that's their position.

7 THE COURT: Well, and I won't actually have Dr.
8 Schwartz-Watts come forward, but Dr. Schwartz-Watts, you have
9 spoken with Mr. Bryant this morning?

10 MS. SCHWARTZ-WATTS: Yes, sir, about an hour and 45
11 minutes.

12 THE COURT: Okay, do you have any concern about Mr.
13 Bryant's competence or his understanding of the proceedings
14 that we're doing here today?

15 MS. SCHWARTZ-WATTS: Not at all. He is actually doing
16 better than many of the other occasions I've seen him.

17 THE COURT: Okay, and is it Dr. ---

18 MS. MELIKIAN: Melikian.

19 THE COURT: --- Melikian, is that your opinion as
20 well, ma'am, or ---

21 MS. MELIKIAN: Yes, it is, Your Honor.

22 THE COURT: All right, okay, thank you both for being
23 here. I certainly appreciate it. There has been no formal
24 Court order to have Mr. Bryant evaluated, although I
25 appreciate the defense counsel providing that, but I don't

1 think there is any need or requirement to have a formal Blair
2 hearing and put up testimony. I think this is sufficient. I
3 think -- I don't find any concern that Mr. Bryant is, in fact,
4 competent to proceed and that he understands the proceedings
5 that he's in at this time.

6 Mr. Bryant, if I may, sir, let me get you to stand and
7 give the clerk your attention and she's going to place you
8 under oath for just purposes of this plea; okay?

9 (Whereupon, Defendant sworn by clerk.)

10 THE COURT: All right, thank you. Mr. Bryant, I'm
11 going to ask you certain questions to insure that your guilty
12 plea is knowingly, intelligently and voluntarily entered into
13 and that you have a full understanding of the nature of the
14 offenses that you're pleading guilty to and the consequences
15 of that plea.

16 Can you tell me your full name, sir?

17 MR. BRYANT: Stephen Corey Bryant.

18 THE COURT: All right, and how old are you, Mr.
19 Bryant?

20 MR. BRYANT: I'm 27.

21 THE COURT: How far did you go in school, sir?

22 MR. BRYANT: The 10th grade.

23 THE COURT: All right, did you ever complete your
24 education? Did you ever get a GED or anything of that nature,
25 sir?

1 MR. BRYANT: No.

2 THE COURT: All right, Mr. Bryant, before you were
3 locked up did you do -- what type of work did you do?

4 MR. BRYANT: Construction.

5 THE COURT: Okay, are you married or single, sir?

6 MR. BRYANT: Single.

7 THE COURT: All right, do you have any children?

8 MR. BRYANT: I ain't never seen him.

9 THE COURT: Have you -- do you know that, have you
10 fathered any children? You just haven't seen them or do you
11 have any children?

12 MR. BRYANT: I have one but I ain't never seen him.

13 THE COURT: Okay, all right, sir, before all of this,
14 Mr. Bryant, have you been in criminal court before?

15 MR. BRYANT: Yeah.

16 THE COURT: All right, and I'll go over those with
17 you, Solicitor, at the proper time if there is any prior
18 history.

19 Mr. Bryant, have you ever been treated for alcohol abuse
20 or drug abuse or for any mental illness or anything of that
21 nature?

22 MR. BRYANT: Mental illness when I was younger, sir.

23 THE COURT: When you were younger? Do you know how
24 long ago that was, sir?

25 MR. BRYANT: When I was 11, 12, 13, 14 years old.

1 THE COURT: Okay, how long were you in treatment for
2 that? Do you recall? Was it months, years?

3 MR. BRYANT: It was like three maybe four years at the
4 outpatient services.

5 THE COURT: Okay, all right, did they have you go, did
6 you successfully complete the programs that you were involved
7 in?

8 MR. BRYANT: No, my mom quit me on them.

9 THE COURT: I'm sorry. You did what?

10 MR. BRYANT: My mother quit me on the program; she
11 stopped taking me to them.

12 THE COURT: Okay, I got you. Okay, are you currently
13 on any medications or drugs?

14 MR. BRYANT: Just one, just one medication.

15 REPORTER: Judge, he's going to have to speak up.

16 THE COURT: All right, if you could speak up just a
17 little bit louder, sir. You're on one medication; is that
18 correct?

19 MR. BRYANT: Yes, sir.

20 THE COURT: All right, do you know the name of that
21 medication?

22 MR. BRYANT: Tegretol.

23 THE COURT: All right, and am I correct that that
24 medication actually helps you or assists you in understanding
25 what you're doing?

1 MR. BRYANT: Yeah, yes, sir.

2 THE COURT: Okay, all right, are you aware or do you
3 have any physical, emotional or nervous problem that would
4 stop you from understanding what you're doing?

5 MR. BRYANT: No, sir.

6 THE COURT: Okay, you understand what you're doing
7 here today?

8 MR. BRYANT: Yes, sir.

9 THE COURT: All right, sir, now, Mr. Bryant, I'm going
10 to go over with you just briefly these indictments and the
11 charges and I'm going to ask you some questions to make sure
12 you understand, sir. Indictment 2006-GS-43-696 is an
13 indictment for burglary in the second degree and that charge
14 carries a maximum penalty of up to 15 years. Do you
15 understand that, sir?

16 MR. BRYANT: Yes, sir.

17 THE COURT: Okay, sir, and indictment 2006-GS-43-697
18 is an indictment for burglary in the first degree. That
19 charge carries a penalty of not less than 15 years up to life
20 in prison. DO you understand that, sir?

21 MR. BRYANT: Yes, sir.

22 THE COURT: And Mr. Bryant, do you also understand
23 that if you were to receive a life sentence on that charge
24 that that would -- life would, in fact, mean life. In other
25 words, you would never, you would never regain your freedom.

1 Do you understand that?

2 MR. BRYANT: Yes, sir.

3 THE COURT: All right, sir, indictment 2004-GS-40-
4 10096 is an indictment for assault and battery with intent to
5 kill. That charge carries a maximum penalty of up to 20
6 years. Do you understand that, sir?

7 MR. BRYANT: Yes, sir.

8 THE COURT: All right, indictment 2006-GS-43-698 that
9 is an indictment for murder. Now, indictment 2006-GS-43-699
10 is also an indictment for murder, and indictment. 2006-GS-43-
11 700 is an indictment for murder, and the charge of murder
12 carries a maximum penalty of up to life in prison. In this
13 case, Mr. Bryant, the State has notified or has indicated that
14 they are seeking the death penalty. So, the maximum sentence
15 on these charges would be a possible sentence of the death
16 penalty or a possible sentence of life without the possibility
17 of parole, and if the State is able to show or prove an
18 aggravating circumstance then those would be your only two
19 options. If they were unable to do so then you could possibly
20 receive a sentence of not less than 30 years up to life. Do
21 you understand that?

22 MR. BRYANT: Yes, sir.

23 THE COURT: And if you were to receive a sentence of
24 the mandatory minimum of 30 years up to life, no part of those
25 sentences would be eligible for early release. You

1 understand?

2 MR. BRYANT: Yes, sir.

3 THE COURT: All right, sir, indictment 2006-GS-43-701
4 is an indictment for assault and battery with intent to kill
5 and I've already reviewed that with you. That charge carries
6 a maximum penalty of up to 20 years. You understand that?

7 MR. BRYANT: Yes, sir.

8 THE COURT: And then indictment 2006-GS-43-702 is an
9 indictment for threatening the life of a public employee,
10 which carries a maximum sentence of up to 30 days and/or a
11 fine. Do you understand that?

12 MR. BRYANT: Yes, sir.

13 THE COURT: All right, Mr. Bryant, you understand that
14 if you go forward with your plea then the Court would be
15 charged with the duty of imposing a sentence on these cases,
16 in other words, you give up the right to a jury trial, and the
17 Court would decide what the appropriate sentence was on these
18 matters. Do you understand that?

19 MR. BRYANT: Yes, sir.

20 THE COURT: All right, and also the fact that you are
21 pleading guilty to what we consider some of the aggravating
22 circumstances associated with this murder charge that you
23 would be facing a sentence of either life without parole or
24 the death sentence. Do you understand that?

25 MR. BRYANT: Yes, sir.

1 THE COURT: Now, you're pleading guilty to eight
2 different offenses, Mr. Bryant, and I've reviewed with you
3 what those charges entail. Do you understand that the Court
4 could run those sentences all concurrently or at the same time
5 or the Court could run those sentences consecutively. That is
6 -- that means, in other words, one right after the other,
7 which would make your sentence essentially be more -- I don't
8 know if this is appropriate, but in other words if you
9 received a life sentence the Court could run the assault and
10 battery charge consecutive to that so that if down the road
11 any of these charges were overturned and some of them survived
12 that those that survived would remain in effect. In other
13 words, the Court can run these all together or the Court can
14 run these one after the other. Do you understand that?

15 MR. BRYANT: Yes, sir.

16 THE COURT: You know, I have to go over some other
17 ones, too, here, because these are all together. I'm going to
18 --- I've got a couple here, Mr. Bryant, that I didn't see
19 because they're together. Also under indictment 2006-GS-43-
20 698 you are charged with arson in the second degree. That
21 charge carries a penalty of not less than five years, up to 25
22 years. Do you understand that, sir?

23 MR. BRYANT: Yes, sir.

24 THE COURT: And under indictment 2006-GS-43-699 under
25 count two you're also charged with armed robbery. That

1 carries a maximum penalty or a penalty of not less than 10
2 years, up to 30 years. Do you understand that, sir?

3 MR. BRYANT: Yes, sir.

4 THE COURT: You're also charged under that indictment
5 under count three with possession of a stolen handgun and that
6 charge carries a maximum penalty of up to five years. Do you
7 understand that?

8 MR. BRYANT: Yes, sir.

9 THE COURT: All right, now ---

10 MR. JACKSON: Your Honor, 698 also has a burglary first
11 degree.

12 THE COURT: 698?

13 MR. JACKSON: Yes, sir.

14 THE COURT: All right, and then, oh, yeah, count two
15 of indictment 06-698 is an indictment for burglary first
16 degree which carries a maximum, a mandatory minimum sentence
17 of not less than 15 years up to life in prison. You
18 understand that, Mr. Bryant?

19 MR. BRYANT: Yes, sir.

20 THE COURT: All right, sir, now, Mr. Bryant, by
21 pleading guilty to these charges, when you plead guilty to
22 these offenses you give up certain constitutional rights and
23 I'm going to review those with you. I know you've talked
24 extensively with Mr. Howle and Mr. Clarke about these rights,
25 but I'm going to review those with you, but let me ask you

1 this, Mr. Bryant, has anyone promised you or given you any
2 indication of what sentence the Court would impose by you
3 pleading guilty?

4 MR. BRYANT: None, Your Honor.

5 THE COURT: Okay, sir, and you understand that the
6 Court would make that decision after hearing from the State
7 and from your attorneys?

8 MR. BRYANT: Yes, sir.

9 THE COURT: All right, and let me ask both Mr. Howle
10 and Mr. Clarke on the record here as officers of the Court,
11 has the Court said or done anything that would cause either of
12 you gentlemen or give you any indication of what sentence the
13 Court would impose pursuant to this proceeding?

14 MR. HOWLE: None, whatsoever, your Honor.

15 MR. CLARKE: No, sir.

16 THE COURT: Okay, Solicitor, if I may ask, sir, has
17 the Court given any indication to you either through my
18 actions or anything that I may have said that I have any
19 inclination or any, given you any inclination as to how the
20 Court would decide this matter, sir?

21 MR. JACKSON: None whatsoever, Your Honor.

22 THE COURT: All right, as you may be aware, as I know
23 the attorneys are aware and, Mr. Bryant, just to make you
24 aware, any time that you -- the State proceeds in a death
25 penalty case there are three, essentially three types of

1 jurors that if you were to have a jury trial you would be
2 looking at. You have those people that would impose the death
3 sentence for anyone who has taken the life of another,
4 regardless of the facts and circumstances. Then you have
5 jurors that would not impose the death penalty at all under no
6 circumstance. Then there's a third classification of a juror
7 and that's a juror that would listen to all the testimony,
8 listen to all of the evidence, and if the law, if the evidence
9 were to support the issues of aggravation and would support
10 the issuance of the death sentence that if they felt it was
11 appropriate and followed the law they could impose that or if
12 they felt that the State did fail to meet their burden of
13 proof, if the State did not prove their case beyond a
14 reasonable doubt that they would not make that recommendation.
15 So you understand, Mr. Bryant, there are some jurors that
16 would always give the death penalty. There are some jurors
17 that would never give it and then there are jurors that would
18 weigh the evidence, listen to all the evidence and then decide
19 based on the evidence. You understand that ---

20 MR. BRYANT: Yes, sir.

21 THE COURT: --- and on, and on the law? I can tell
22 you that this Court would be in that third classification.
23 This Court would be charged with the duty to listen to all of
24 the evidence in the case, weigh that evidence and to apply the
25 law to that evidence in reaching a verdict and that is surely

1 what I would do, and I could tell you as I sit here today, Mr.
2 Bryant, that I have absolutely no idea what sentence this
3 Court would impose because I have yet to hear the evidence.
4 So, as you stand here before the Court today you understand
5 that I don't know what I would decide on this case. I would
6 have to wait until I heard all the evidence. Do you
7 understand that?

8 MR. BRYANT: Yes, sir.

9 THE COURT: All right, sir, now, what I do want you to
10 understand is that you have these constitutional rights and
11 when you plead guilty though you give them up or you waive
12 them, for example, you have the right to a jury trial. At a
13 jury trial I would instruct the jury that there is a
14 presumption that you are innocent and that the State would
15 have the burden of having to prove your guilt beyond a
16 reasonable doubt. You would have the right during a jury
17 trial to question any witnesses that the State has against
18 you. You would also have the right to present witnesses in
19 your own defense. That right of confronting the State's
20 witnesses is a constitutional right that you have, but when
21 you plead guilty you give up that right. You give up the
22 presumption of innocence, and you relieve the State of their
23 burden of having to prove your guilt. Do you understand that?

24 MR. BRYANT: Yes, sir.

25 THE COURT: Now, if you were to have a jury trial as I

1 indicated you could present witnesses in your defense or you
2 yourself could testify in your own defense, but you would not
3 be required to do that, Mr. Bryant. You don't have to do
4 anything. In this country no person charged with a criminal
5 offense is ever required to prove themselves innocent. The
6 State always has the burden of proof and if you remain silent,
7 if you exercise your right to remain silent during the trial I
8 would instruct the jury or in this case the Court would
9 understand that the fact that you've exercised your right to
10 remain silent that that could not be held against you in any
11 way, that if you had a jury trial I would instruct the jury
12 that they could not even discuss it in their deliberations the
13 fact that you decided to remain silent and that you have
14 nothing to prove and the fact that you exercise that right to
15 remain silent could not even be discussed in the jury room.
16 Do you understand that?

17 MR. BRYANT: Yeah, yes, sir.

18 THE COURT: All right, you would have the right to
19 present during the course of a trial any evidence that you
20 wish to present, any defense that you wish to present against
21 any of the charges that you face. You would have the right to
22 present all of that to a jury, but when you plead guilty you
23 waive all of those defenses, you give up these individual
24 defenses and you by pleading guilty are not allowed to go
25 forward and to present those defenses to a jury or to the

1 Court. Do you understand that?

2 MR. BRYANT: Yes, sir.

3 THE COURT: Mr. Bryant, if you -- the State in a jury
4 trial would have the obligation and the burden of proving your
5 guilt beyond a reasonable doubt and they would have to prove
6 that to a unanimous decision. In other words, all 12 members
7 of the jury would have to agree you were guilty or they could
8 not convict you, and in this particular case since the State
9 is, in fact, seeking the death penalty it would be a two-part
10 trial. The first part would be on your guilt, whether or not
11 you were guilty of these offenses. If you were to be found
12 guilty and the State would have to convince, again, the jury
13 beyond a reasonable doubt, they'd have to convince all 12
14 members, in other words, their decision has to be unanimous,
15 all 12 have to agree. You understand that?

16 MR. BRYANT: Yes, sir.

17 THE COURT: And if they did find that you were guilty
18 then you would have a second trial and that trial would be
19 based, would be to decide what sentence is appropriate, and
20 again, in that case, Mr. Bryant, the State would have to
21 convince all 12 members of the jury before the jury could
22 reach a verdict, they'd have to reach a unanimous verdict. Do
23 you understand that?

24 MR. BRYANT: Yes, sir.

25 THE COURT: In other words if during the sentencing

1 phase if you were to have a jury trial if there were 11 people
2 on the jury that would vote for the death penalty and there
3 was one person that would not vote for the death penalty then
4 the Court would be obligated and would be required to enter a
5 sentence of life without parole instead of the death penalty.
6 You understand that?

7 MR. BRYANT: Yes, sir.

8 THE COURT: It just takes one person to defeat the
9 death penalty. Now, you understand by going forward with your
10 guilty plea that you will not have a jury trial on sentencing,
11 that the Court will decide the appropriate sentence after
12 hearing all of the evidence. Do you understand that?

13 MR. BRYANT: Yes, sir, yeah.

14 THE COURT: Now, Mr. Bryant, any challenges that you
15 may have regarding the constitutionality of the State's death
16 penalty statute, any of those issues or those rights, when you
17 plead guilty you waive or you give up those challenges, in
18 other words you give up the right to challenge the
19 constitutionality of the death penalty statute in South
20 Carolina regarding this case that you're before the Court on.
21 Do you understand that?

22 MR. BRYANT: Yes, sir.

23 THE COURT: And understanding that you give up these
24 rights or that you waive all these rights, do you still wish
25 to go forward and give up these rights and plead guilty?

1 MR. BRYANT: Yes, sir.

2 THE COURT: All right, let me ask the Solicitor if I
3 may, have there been any negotiations or any plea negotiations
4 entered into in this matter?

5 MR. JACKSON: Your Honor, there's been none from the
6 Third Circuit Solicitor's Office. Ms. Hubbard is here from
7 Richland County from the Fifth Circuit Solicitor's Office.
8 That's indictment 2004-10096, and it's my understanding she
9 has had no negotiations either.

10 THE COURT: Is that correct, Ms. Hubbard?

11 MS. HUBBARD: That's correct.

12 THE COURT: All right.

13 MR. HOWLE: Your Honor, I'd also put on the record, I
14 don't know if Ms. Singletary is here or not. She indicated
15 she may try to get over from Richland ---

16 THE COURT: Okay.

17 MR. HOWLE: --- but I had spoken with her and she's
18 aware that the plea is being tendered here ---

19 THE COURT: All right.

20 MR. HOWLE: --- and was in agreement with it, Your
21 Honor.

22 THE COURT: All right, Mr. Bryant, you understand,
23 sir, that the State both for the Third Circuit and for the
24 Fifth Circuit have not made any negotiations or entered into
25 any pleas or recommendations and that your plea to these

1 charges today is without any recommendation and without any
2 negotiations and that if the Court were to accept your plea
3 then you would have a trial before the Court at a later date
4 to determine what the appropriate sentence is. You understand
5 that?

6 MR. BRYANT: Yes, sir.

7 THE COURT: All right sir, now, let me ask you if I
8 may, Mr. Bryant, are you satisfied with Mr. Howell and Mr.
9 Clarke and the representation that they have provided for you
10 in this case?

11 MR. BRYANT: Yes, sir.

12 THE COURT: Have you talked with both of your
13 attorneys as often and for as long as you feel is necessary
14 for them to properly represent you?

15 MR. BRYANT: Yes, sir.

16 THE COURT: Do you need any more time to talk with
17 them about this matter before we go any further?

18 MR. BRYANT: Not at the moment.

19 THE COURT: Okay, have you understood your talks with
20 your lawyers?

21 MR. BRYANT: Yes, sir.

22 THE COURT: Have they done everything for you you feel
23 that they could do or should have done for you in this case?

24 MR. BRYANT: Yes, sir.

25 THE COURT: Okay, have your lawyers done anything in

1 this case that you wish they would not have done or did
2 something that you didn't want them to do?

3 MR. BRYANT: No, sir.

4 THE COURT: Okay, are you completely satisfied with
5 your lawyers' services?

6 MR. BRYANT: Yes, sir.

7 THE COURT: Do you have any complaints that you want
8 to make against either one of your attorneys?

9 MR. BRYANT: No, sir.

10 THE COURT: Mr. Bryant, what I'm going to do at this
11 time I'm going to ask the Solicitor to go over and give me the
12 facts that the State has on each of these cases and I would
13 ask you and what I'm going to do I'm going to allow you to go
14 ahead and sit down because this may take a little time and --
15 but if you would, please, sir, listen carefully to what the
16 Solicitor says and then I'm going to ask you some questions
17 regarding those. Solicitor, at this time could you present
18 the Court the facts?

19 MR. JACKSON: Yes, Your Honor, if I might inquire would
20 you also ask Mr. Saleeby and Ms. Hubbard and perhaps Mr. Babb
21 whether or not anyone has given them indication that Your
22 Honor may be predisposed to sentencing?

23 THE COURT: Oh, sure, sure.

24 And I would note for the record that Mr. Jim Babb is
25 present. Mr. Babb, thank you for being here today, sir.

1 MR. BABB: Yes, sir.

2 THE COURT: Mr. Babb was one of the original attorneys
3 on the case and we had a hearing earlier regarding his need to
4 step down from the case, but if I may, Mr. Saleeby, Ms.
5 Hubbard and Mr. Babb, has the Court given, through either
6 comments I've made or through anything I may have said or any
7 actions I've done given you any indication how the Court would
8 decide this case during any sentencing phase?

9 MR. SALEEBY: Absolutely none, Your Honor.

10 THE COURT: Ms. Hubbard?

11 MS. HUBBARD: None.

12 THE COURT: Mr. Babb?

13 MR. BABB: No, sir..

14 THE COURT: All right. Thank you, sir. Thank you,
15 ma'am.

16 Solicitor.

17 MR. JACKSON: Thank you, Your Honor.

18 First of all, Your Honor, let me give you a little
19 overview of the first six crimes and we've brought a chart
20 here to assist the Court. I've got them one, two, three, 4A,
21 4B, 5 and 6. These are the first six crimes. This is the
22 western portion of Sumter County. To orient you, Your Honor,
23 this is [REDACTED] that would go from Florence to
24 Columbia if you took that route.

25 THE COURT: Uh-huh.

1 MR. JACKSON: This is the Wateree River that separates
2 Sumter County from Richland County. This road here is [REDACTED]
3 [REDACTED] that runs from Camden through Stateburg right here on down
4 through Wedgefield eventually through [REDACTED] and on to the
5 coast.

6 The first six of these cases, one, two, three, 4A, 4B, 5
7 and 6 took place over a nine-day period, Your Honor, and each
8 individual case as law enforcement went out and investigated
9 it they got a little more evidence that built on the one
10 before, and a little more evidence and built on the one
11 before, and I tell you that because the last one in sequence,
12 which is number six, which was the murder of Mr. Christopher
13 Burgess, after that law enforcement had enough probable cause
14 to gain a search warrant and they took all of the information,
15 went and got a search warrant and the search warrant was for
16 Mr. Bryant's residence and also for his truck, and I'll be
17 referring to that search warrant as I describe each particular
18 case ---

19 THE COURT: All right.

20 MR. JACKSON: --- and the items that were found there.
21 Also that particular day is when they took him into custody
22 and arrested him, mirandized him. He waived his right to an
23 attorney and spoke with law enforcement and gave them a
24 statement that day and then periodically over the next few
25 days he invited law enforcement back and gave them additional

1 statements, and I will refer to those statements, also, as we
2 go down through the individual crimes. There will also be
3 some forensics that we will need to talk about, ballistics,
4 DNA, handwriting analysis, shoe impressions, all of these
5 things, Your Honor, I will try to curtail for each individual
6 crime, refer back to the search warrant, refer back to the
7 statements so that you can question him at the end of each
8 crime and hopefully that'll help this presentation to flow
9 smoothly.

10 The statements, in large part, were somewhat evasive,
11 self-serving, with some excuses or explanations of why he did
12 things, but the important part of the statements for the
13 purposes of the plea are that he describes the crime scenes,
14 the individual victims, discusses activities that only he
15 would know about that were captured at videos at some
16 convenience stores and one at a Bi-Lo that we were able to go
17 back and get, also the weapon that was used, the theft of the
18 weapon, information about locating stolen items, and an awful
19 lot of information that only the perpetrator would know from
20 these particular crimes, and I'll be glad to present all of
21 those.

22 The last two, we talked about one through six occurring
23 the first nine days, the last two, seven and eight, both
24 occurred at the Sumter Lee Regional Detention Center and I'll
25 get to those at the end.

1 The first one, Your Honor, is a burglary of Mr. Robert
2 Dennis's home. This is pictured as number one here. Mr.
3 Robert Dennis lived at the end of what we call Sumter Landing
4 Road and [REDACTED] [REDACTED] is up in this top corner. You would
5 go up [REDACTED] into [REDACTED] and once you get through [REDACTED] about
6 a mile west of [REDACTED] paved road ends. It's one of those
7 state maintenance paved road ends and you've got nothing but a
8 dirt road that goes back into the woods, and that's where Mr.
9 Dennis lived. It was a very remote place, very isolated
10 place. He had a home back there, an office back there and
11 this particular crime occurred on October the 5th of 2004,
12 which was a Tuesday. Your Honor, Mr. Dennis is not here
13 today, but he's one of the ones that we spoke with. You go
14 past where the pavement ends, there's a, there's an iron gate
15 there, no trespassing signs there, go down his dirt road and
16 access his property. It's another quarter, half a mile down
17 the road. It's very isolated, very remote.

18 The burglary occurred on October 5th. I need to tell you
19 about the day before, which was October the 4th. That was a
20 Monday. Mr. Dennis was at home, and while he was home Stephen
21 Corey Bryant came to his house. He had walked down that long
22 dirt drive and told Mr. Dennis that he had a truck and that
23 his brother had gotten the truck stuck up at the head of Mr.
24 Dennis's drive. So, Mr. Dennis offered to help, went with Mr.
25 Bryant up to where the truck was. There was a truck stuck.

1 He helped him get the truck out of the bog, and he said he
2 felt uneasy about it and he had a bad feeling about it. So he
3 asked Mr. Bryant who he was and Mr. Bryant told him he was
4 Carlos Bryan. He asked him where he lived. He gave him a
5 false address on Screaming Eagle Road in Richland County, but
6 he wrote down a description of the truck, which was an early
7 1990 GMC two-tone blue truck, and after he helped him Mr.
8 Bryant went on his way. The next day was October 5th, which
9 was a Tuesday. Mr. Dennis left his home, came back later in
10 the day and found out that his office had been burglarized.
11 The point of entry was a window. The window had been pried
12 open. There was some computer stuff stolen, some checkbooks
13 stolen and he called 911 and reported it. Law enforcement
14 came out. They processed the scene. They found no
15 fingerprints at the point of entry or anywhere else, but they
16 found glove prints indicating that whoever came in had gloves
17 on. They didn't find any fingerprints. They did raise a
18 shoeprint outside the window. The perpetrator had stepped
19 into the window, out of the window and had a good shoeprint,
20 and they were able to lift that shoeprint and send that to
21 SLED. Corroboration of this particular plea that Mr. Bryant
22 is giving today, first of all, would be the shoeprint. Once
23 he was arrested and a search warrant was executed at his home
24 a pair of shoes were found there, Thom McAnn shoes, and the
25 right shoe for those Thom McAnn shoes could have been made or

1 the imprint could have been made by the right shoe of Stephen
2 Corey Bryant based on the comparison at SLED.

3 Also after the arrest, the victim's [sic] picture was put
4 on the news, it was on TV and also in the newspapers, and when
5 Mr. Dennis saw it he knew that's who it was, and he called law
6 enforcement, said, "That guy that came in here was not a
7 Carlos Bryant. It was the guy I've seen on TV and that's the
8 guy that came in my place," and Bryant at one point in time
9 asked law enforcement to come down to the law enforcement
10 center to give them a statement about this case, and when they
11 showed up he changed his mind and wouldn't talk to them.

12 The second case or do you want to talk with him about
13 that one, Your Honor?

14 THE COURT: All right, Mr. Bryant, the facts that the
15 Solicitor gave me on that first case are those essentially
16 correct, sir?

17 MR. BRYANT: They're correct, Your Honor.

18 THE COURT: Those facts are correct, sir?

19 MR. BRYANT: Yes, sir.

20 THE COURT: All right, thank you, sir.

21 MR. JACKSON: Your Honor, the second case involves Mr.
22 James Ammons and I told you I'd introduce you to the folks
23 that are here. Your Honor, this is Mr. James Ammons and this
24 occurred on October the 4th, which would have simply been a few
25 days -- I said October the -- I'm sorry, October the 8th of

1 2004, which was a Friday, would have been three or four days
2 after the first one. This is where the first one was. Mr.
3 Ammons lived outside of [REDACTED] which is outside of -- which
4 is in Sumter County but about 15 miles outside of Sumter.
5 This is where the second one occurred and it occurred at the
6 residence of Mr. Ammons which is [REDACTED] in
7 [REDACTED] You go about a mile and a half or two miles outside
8 of [REDACTED] You leave paved road again and there's a dirt
9 drive. He's got a dirt drive that goes way back into the
10 woods. He owns 20 acres of land and inside the middle of that
11 he's got a house, and the closest neighbor I believe is half
12 mile to three-quarters of a mile from where he lives. So,
13 again this is an isolated and remote area.

14 On October the 8th of 2004, Mr. Ammons and his 15 year old
15 daughter who lived with him at the time, it was a school day.
16 He got up and carried her to town and dropped her off at
17 school and then he went on into Sumter to run some errands.
18 Meanwhile, back on his 20 acres, he had allowed a friend to go
19 deer hunting there that morning, and the fellow had gotten his
20 truck stuck on the property. So, he walked up the road, up
21 the drive to Mr. Ammons's house at about 11:30 in the morning,
22 and when he got there he found a sliding door open and called
23 inside. He wanted to get some help or use the phone. Mr.
24 Ammons wasn't there. So, he went inside to the bedroom to use
25 the phone and the phone line was dead; and so, he left and

1 walked off of that property to the nearest neighbor and called
2 Mr. Ammons on the cell phone. He happened to be coming back
3 from downtown Sumter at the time; and so, Mr. Ammons and his
4 guest went on to Mr. Ammons's house. They would have gotten
5 there somewhere around 1, 1:30, and when they got to the
6 house, the first thing they did is they went to the outside
7 box where the phone would be connected and the wires were cut.
8 So, they went into the house. When they got to the house that
9 sliding door was open again, the sliding glass door. They
10 went in, went into the bedroom, and in the bedroom the
11 mattress had been lifted up and moved over and a 30-caliber
12 Smith and Wesson pistol had been stolen, and also it was under
13 the mattress, the box that was with it, the serial number and
14 the ownership papers and that type stuff and there was a brand
15 new box of bullets that was on the nightstand and that box of
16 bullets were stolen; and so, he called 911. Law enforcement
17 came out. They responded and processed that scene.

18 What we would have -- what we'd offer in corroboration on
19 this particular case, first of all, Your Honor, the gun, the
20 case, the ownership papers, ammunition was recovered from
21 Stephen Corey Bryant when the search warrant was executed a
22 few days later on October 13th, the same gun, the same bullets,
23 box and everything else, and Mr. Bryant's statement and I'll
24 read these first -- he gave three statements on this, Your
25 Honor, and I'm going to read them, put them in the record and

1 that'll be the only one I do, kind of give you a flavor of how
2 they flowed. They all kind of flowed generically. Some were
3 evasive, they were this, then they were that, and this one
4 kind of speaks to all of it.

5 First statement he gave was October the 13th, 2004, and
6 that was the day that he was arrested. He was asked about the
7 Ammons's burglary. He says, "I found the gun at a recycling
8 place below my house about three miles away. This was about a
9 month ago. There was also a 12-gauge pump that I left there.
10 They were in a metal bin with appliances. The gun was a 45
11 Smith and Wesson. There was a box of bullets. I think they
12 were Winchesters."

13 Second statement that he gave later that same day, "I
14 really did not find the gun in a dumpster but I got it from a
15 house near Pinewood a few weeks back. My truck was running
16 low on gas and I stopped at a house. I knocked on the door
17 and no one was there. I went to a sliding glass door that was
18 partially opened and went inside. I found a gun and took
19 it."

20 A couple of days later gives another statement. "On
21 October the 8th," which is the day this happened, "I was
22 driving around [REDACTED] Road and was running low on gas. So,
23 I pulled in this yard where someone lived, hoping they could
24 help me out with some gas. As I pulled into the yard I
25 noticed a small truck in the yard. I knocked on the front

1 door but got no answer, but thought I heard someone on the
2 inside. So, I walked around to the back door, which was a
3 sliding glass door that was slightly opened. I heard the TV
4 on and the radio playing in the background. I stuck my head
5 in the door and hollered, 'Hello, is anyone home,' but got no
6 answers. I went back in my truck and sat there for a moment.
7 I then grabbed my knife and cut the phone wires and then
8 entered the home. As I was walking around in the home I
9 noticed a box of 40-caliber bullets on the nightstand beside
10 the bed. So, I lifted up the mattress, seen the handgun there
11 with the mattress and took it and the bullets and got out of
12 the house and walked to get to my truck and left the house,
13 and my intentions from that point on was to sell the gun for
14 money.'" You can see the flavor of how the statements go, but
15 what we would corroborate in that particular case out of that
16 statement would be that he cut the phone wires, the sliding
17 glass door was open, took the gun from under the mattress, he
18 took the bullets from under the nightstand which is exactly
19 where they were located.

20 THE COURT: All right, sir.

21 Mr. Bryant, are those facts correct that Mr., that the
22 Solicitor gave me, Mr. Jackson?

23 MR. BRYANT: Yes, sir.

24 THE COURT: All right, thank you, sir.

25 MR. JACKSON: Your Honor, if I had said 30-caliber, I

1 meant 40-caliber.

2 THE COURT: 40-caliber, right.

3 MR. JACKSON: It's 40-caliber pistol. I just got three
4 notes for that. I must have done it.

5 Your Honor, may I ask Mr. Clinton Brown to come up here?
6 While he's coming up, I'll tell you where this happened.

7 THE COURT: All right, sir.

8 MR. JACKSON: This is a Richland County case by the way.

9 THE COURT: Yes, okay.

10 MR. JACKSON: And this is Mr. Clinton ---

11 THE COURT: This is indictment 04-GS-40-10096.

12 MR. JACKSON: 2004-10096.

13 Mr. Brown was 56 years of age at the time this happened.

14 Your Honor, it happened on 8 October of 2004. Like I said,

15 this was the first one. Here's the second one, and of

16 course, Mr. Ammons occurred sometime midday, and this is the

17 same day but in the evening, and this particular crime

18 occurred at the Billy Tolar boat landing on the Richland

19 County side of the Wateree River. This is [REDACTED] [REDACTED]

20 that goes from Sumter to Columbia. If you go down there

21 they've got a nice landing right underneath it. There's a

22 creek that comes in where I've got this dot noticed and right

23 where that creek comes in and hits the river a lot of people

24 like to fish there. They like to sit on buckets or on chairs,

25 lawn chairs or whatever and fish and that's exactly what he

1 was doing that day. Mr. Brown had gone down there, parked at
2 the landing, walked through a path through the wood line and
3 was sitting on that creek fishing. When he was down there
4 originally, and it was in the afternoon, there was another man
5 who was down there. So, there were two people fishing, Mr.
6 Brown and someone he didn't know who was right up the creek.
7 As they were sitting there Mr. Brown tells us that Mr. Bryant
8 comes down the path that afternoon and actually speaks to him
9 and goes on up the creek and Mr. Brown continues to fish. At
10 some point in time the second fisherman gathers his stuff,
11 goes to his truck and leaves. So, Mr. Brown is there alone,
12 and as he's sitting there fishing he doesn't see anything, he
13 doesn't hear anything, just sitting there fishing in the
14 river, and Mr. Bryant comes up behind him and shoots him in
15 the back. Mr. Bryant leaves, offers no assistance, renders no
16 aid. He leaves. Mr. Brown apparently passes out. When he
17 comes to of course he's bleeding and he gathers his stuff,
18 gets to his truck. He actually drives himself to Tuomey
19 Hospital in Sumter County and he's immediately taken into
20 surgery and he was in the hospital, I believe, nine days. It
21 went right through the side of the back here. It'd been a
22 little to the left or a little to the right he'd be dead.
23 The bullet was recovered, Your Honor, and it was sent to
24 SLED for analysis. Richland County came out and processed the
25 scene and what we would offer in corroboration here, first of

1 all the bullet that was sent to SLED that came out of his body
2 was a 40-caliber bullet and it was fired by that Smith and
3 Wesson pistol. There was a shell casing recovered out there
4 by law enforcement. It was sent to SLED and that shell casing
5 was fired by that pistol. Of course there was blood on the
6 ground. When Mr. Brown described it, he had been laying down.
7 Mr. Bryant admitted shooting Mr. Brown to a third party the
8 very next day and that person has come forward and told us
9 that Mr. Bryant confessed to him and from the statements that
10 he gave in this case he described that there were two black
11 males fishing there, that one left the area and drove off and
12 he observed that, that he shot the one that stayed behind,
13 that he shot him in the back and that he used the 40-caliber
14 Smith and Wesson pistol.

15 THE COURT: Mr. Bryant, are those facts essentially
16 correct, sir?

17 MR. BRYANT: Yes, sir.

18 THE COURT: All right, thank you, sir.

19 MR. JACKSON: Your Honor, while the next group is coming
20 up it'll be indictment 2006-698. Our victim in that case is
21 Mr. Cliff Gainey. He is deceased and we've got some members
22 of his family that will come up and sit with us.

23 THE COURT: All right.

24 MR. JACKSON: Your Honor, at the end of the row here is
25 Ms. Linda Coker. She is Mr. Gainey's ex-wife. At the time

1 they were separated. They had been trying to get back
2 together. Sitting here in the middle is his oldest son, Mr.
3 Christopher Gainey, and sitting here to my immediate right is
4 Mr. Michael Gainey, his other son. The two young ladies that
5 are with us are Carrie Pierce and Cassandra Pierce and they
6 were stepdaughters.

7 Your Honor, this occurred on October the 9th, 2004. This
8 would be a Saturday. The actual murder of Mr. Gainey and the
9 later arson and burglary of his home occurred probably between
10 7:30 and 8:30 p.m. The incident location for the first one,
11 and because these crimes happened back to back we've put them
12 4A and 4B for the Court's purposes but 4A is right here and
13 that happened on Bells Mill Road. Bells Mill Road is a dirt
14 road that connects right here we call St. Paul's Church Road
15 all the way down to [REDACTED] This entire area that I'm
16 circling is [REDACTED] State Forest, thousands of acres of
17 state forest, nothing but dirt roads there. People that use
18 that are either traveling through because they live on one end
19 or the other or they're hunters or they're loggers, and in
20 this particular spot right here is more than two miles from
21 any paved road.

22 Mr. Gainey, Your Honor needs to know, Mr. Cliff Gainey
23 and Mr. Bryant were friends. Mr. Gainey is the only victim
24 that we're aware of that Mr. Bryant knew in any of these
25 crimes. They were friends. They were co-workers, worked for

1 the same construction company. They fished together. They
2 did things together. Mr. Bryant knew Ms. Coker. Mr. Bryant
3 knew the boys, and it was, it was not unusual for them, for
4 them, them being Mr. Gainey and Mr. Bryant, to spend Saturdays
5 and sometimes Sundays together fishing or doing other things.
6 On this particular day, which was a Saturday, Mr. Bryant went
7 to Mr. Gainey's house and picked him up. Mr. Gainey's house
8 is right here, which is noted as 4B. Mr. Gainey lived in a
9 mobile home that he was actually renting from his boss. His
10 son Christopher lived there with him and had a room there, a
11 very modest accommodations. They did have TV, VCR, sound
12 system, DVD and aquarium that they just got that wasn't in use
13 yet. That'll become important later, but this is where they
14 lived.

15 Mr. Gainey and Mr. Bryant left here sometime on Saturday.
16 Mr. Gainey didn't have a driver's license, and they went
17 riding, went spending time together, went doing whatever they
18 do. They ended up at a convenience store getting some beer.
19 We've got that on video. They ended up in the Bells Mill area
20 riding around [REDACTED] Forest just hanging out together and
21 at some point in time they stopped right here where it's noted
22 on Bells Mill Road, and they both got out of the truck and Mr.
23 Bryant shot Mr. Gainey. He left his body there in the roadbed
24 and didn't try to conceal the body or anything, just left it
25 right there and took off.

1 Some passersby came, they came by and it was shortly
2 after they found Mr. Gainey in the roadbed. They called law
3 enforcement. Law enforcement came out and responded. They
4 processed the scene. They found two shell casings and after
5 they looked -- when they looked at Mr. Gainey they only
6 thought originally there were two wounds. They found two
7 shell casings that matched what they thought were two wounds.
8 They found no ID. They found no wallet on him. They found no
9 keys on him, and for a day and a half he was an unknown
10 victim, just had found this person out there, nobody knew who
11 he was, how he got there or anything like that for at least a
12 day and a half, but they sent his body to autopsy, and as a
13 result of the autopsy they found out that there were actually
14 three gunshot wounds and the three gunshot wounds the first
15 one was a graze to the middle finger which came through here,
16 through the right hand or through the right middle finger,
17 into the shoulder, out of the shoulder and into the jaw.
18 There was a second gunshot wound that came through the right
19 back, through the right lung and exited the chest. It was a
20 fatal wound and there was a third that came in the back left
21 shoulder that exited through the front of the shoulder.
22 Because they found three gunshot wounds, law enforcement went
23 back out to look for the third shell casing. They found it
24 and they also found a bullet in the dirt and they dug it up.
25 Those things were sent to SLED for analysis.

1 Moving on to 4B, and that's all I have for this. I'll
2 come back to the forensics on it. Moving to 4B, when Mr.
3 Gainey, I mean, Mr. Bryant left Bells Mill Road he went back
4 to Mr. Gainey's residence. He had the keys and he went into
5 Mr. Bryant's, Mr. Gainey's mobile home. He got the TV, the
6 VCR, the DVD, the sound system and the aquarium, loaded those
7 things up and set a couch on fire and then he then took that
8 stuff and left. About 8:30 Ms. Coker, had Christopher with
9 her, they went to the home and the door was hot to the touch
10 and they realized that it was on fire inside. They called the
11 fire department. The fire department came, put the fire out,
12 pulled the couch out and Sumter Fire Department did an
13 investigation of that particular scene and they determined
14 that it was not an accidental fire, and that the origin and
15 cause of the fire was the couch. They had -- it not been on
16 fire very long. A mobile home will burn up pretty quick and
17 this one was just getting started. There was a clock on the
18 wall that worked and it had -- he had knocked it off the wall.
19 When it hit the ground it stopped at 8:25, which was right
20 before they arrived at 8:30. Now, they had been by there
21 around 7:30 looking for him and everything was fine and the TV
22 and the VCR and all that stuff were still there; and so,
23 that's how we get the time gap narrowed down.

24 Evidence that would corroborate this, the bullets, the
25 shell casing that came back from SLED were fired by that 40-

1 caliber Smith and Wesson, mentioned there was video at a
2 convenience store showing Mr. Bryant and Mr. Gainey there
3 together in Mr. Bryant's truck, the GMC 1990 two-tone blue
4 truck. Mr. Bryant was driving his truck. Mr. Gainey was in
5 the truck. No other -- there were just the two of them. They
6 were there buying beer. The TV, DVD, VCR, sound system, the
7 aquarium were located at Mr. Bryant's residence when he was
8 arrested and when the search warrant was executed. The keys
9 to his house Mr. Bryant's girlfriend had them. He had given
10 them to his girlfriend.

11 THE COURT: To Mr. Gainey's house.

12 MR. JACKSON: To Mr. Gainey's house, yes, sir, yes, sir.

13 THE COURT: Correct.

14 MR. JACKSON: The keys to Mr. Gainey's house were
15 recovered from Mr. Bryant's girlfriend, and Mr. Bryant had
16 given them to her. From the statement he does say that he
17 shot Cliff Gainey. He says that he threw his wallet in a
18 dumpster. We were never able to confirm that but at least
19 justifies why we couldn't find his wallet, that he did have
20 his keys. He actually says that he showed the pistol to Cliff
21 Gainey, the 40-caliber pistol and he admits to taking the
22 items from the residence.

23 THE COURT: Those facts correct, Mr. Bryant?

24 MR. BRYANT: Yes, sir.

25 THE COURT: All right, thank you, sir.

1 MR. JACKSON: Your Honor, the next case that I will
2 cover is the one involving Mr. Willie Tietjen and we've got
3 some folks that are going to come up on that. I'll introduce
4 them. As Your Honor knows, the case involving Mr. Tietjen is
5 the one that we actually would be going to trial on.

6 THE COURT: Got you.

7 MR. JACKSON: This is the one that qualifies for the
8 death penalty.

9 Your Honor, here with me to my far right is Ms. Mildred
10 Tietjen. She is the wife of Mr. Willie Tietjen. To her left
11 is Kimberly Tietjen Dees, his daughter, and this is Mr. Robert
12 Dees, who would be the son-in-law and they're here.

13 THE COURT: Okay.

14 MR. JACKSON: This case occurred on October the 11th of
15 2004. This would be the Monday. We had this one on a
16 Tuesday, this one on a Friday, number three was on a Friday,
17 number 4A and 4B were on Saturday. There's nothing on Sunday
18 and we're now here at number five, which is on Monday.

19 The address here, Your Honor, is [REDACTED] Road
20 and we believe this happened sometime between 11 in the
21 morning and 5:30 in the afternoon. Let me tell you where
22 this, where this particular house is. Your Honor is familiar
23 with [REDACTED] [REDACTED] and this is [REDACTED] that intersection, we call this
24 little area Stateburg in Sumter County. It's the last red
25 light before you cross the swamp if you're going in that

1 direction and less than a quarter of a mile up [REDACTED] this house
2 sits on several acres back off of the main road. You can see
3 it if you're looking for it, but it's right back sitting in
4 the wood line. It's kind of a ranch style home. It's built
5 on the side of a hill. So, there's actually a walk-in
6 basement underneath. It's covered, but the top floor is
7 basically a ranch style home with an added basement underneath
8 and the folks that lived here were Ms. Mildred Tietjen and her
9 husband Mr. Willie Tietjen.

10 What you need to know about Mr. Tietjen, Your Honor, at
11 the time he was 62 years of age. He had a bad heart
12 condition. He had early stages of Alzheimer. He was
13 diabetic. He had digressed to the point that he no longer
14 could legally drive. He stayed around the house most of the
15 day, didn't have a lot of energy. Ms. Tietjen would get up in
16 the morning. If he was having a good day he would have
17 breakfast with her before she went off to work and friends
18 would call and check on him during the day. She would start
19 calling 4:30, five o'clock in the afternoon. She got off at
20 5:30 and check on him before she came back home and I believe
21 they had two dogs; is that right, three dogs, had one big one
22 and two little ones, but that's, that's what they did. That
23 was their daily routine. He was there by himself unless
24 someone came to get him to carry him somewhere because he
25 wasn't able to get on his own.

1 That particular day, she says they were having a good
2 day, that she got up, Mr. Tietjen got up, they had breakfast
3 together. They said their goodbyes and she went to work. She
4 works for a doctor's office in downtown Sumter and while she
5 was there he, of course, was left at home. At 11 o'clock we
6 know that he spoke with one of his friends; and so, he was
7 still fine at 11 o'clock, but sometime after that Stephen
8 Corey Bryant wound up inside the Tietjen home. According to
9 Mr. Bryant's statement he says that he knocked on the door and
10 he asked for help, that he needed some assistance, his truck
11 was broken down and that Mr. Tietjen invited him in. There's
12 no sign of forced entry. So, we take that on face value from
13 the statement that he was invited in. At some point in time
14 while he's in the house Stephen Corey Bryant shoots and kills
15 Mr. Willie Tietjen.

16 His body was found in the dining room on the floor. It
17 was next to a side door that went out onto the side porch and
18 law enforcement, of course, had come. The autopsy revealed
19 that he had been shot nine different times, were nine gunshot
20 wounds.

21 After Mr. Tietjen was killed kind of in just a continuous
22 chain of events we know that Mr. Bryant went through Mr.
23 Tietjen's wallet and took cash out of it and a couple of cards
24 and then left the wallet and he threw the cards, the credit
25 cards and that type stuff around on the living room floor

1 right there by the dining room. He pulled his Masonic ring
2 off of his head, hand after he was deceased. He ransacked the
3 house almost methodically room by room going through looking
4 for items that he could steal. He took power tools. He took
5 a knife. He took medallions. He took a jug of change. He
6 took hand tools. He stole the bag to put stuff in, walkie-
7 talkies, took his cell phone. Mr. Tietjen had some silver
8 certificates. He took those, jewelry, an ammo box, a bunch of
9 stuff, but he had, he had been through the entire house,
10 helped himself to a drink from the refrigerator, smoked
11 several cigarettes in there, smoked a cigar in there. There
12 was a hand-rolled cigarette. All those we found because he
13 just discarded them and we picked the butts up off the floor.
14 He wrote a note, which he left in the house. He got on the
15 home computer. He was still there when Ms. Mildred Tietjen
16 began attempting to call to check on her husband in the later
17 afternoon before she was coming home from work. He was also
18 still there when she gave up on the land line and started
19 using the cell phone and he actually, Stephen Corey Bryant
20 actually talked to Ms. Tietjen on the phone and admitted to
21 killing Mr. Tietjen. The daughter Kimberly called in and
22 spoke with him on her daddy's cell phone. He admitted to
23 killing Mr. Tietjen and Mr. Dees called in on the cell phone
24 and again he admitted to killing Mr. Tietjen.

25 After these phone calls, which were around 5:15, 5:30, of

1 course, they called law enforcement. That's when law
2 enforcement first responded and processed the scene.

3 As far as corroboration, Your Honor, forensics on this
4 case, all the shell casings that were recovered were fired by
5 the Smith and Wesson 40-caliber. All the bullets that were
6 recovered were fired by the Smith and Wesson 40-caliber. As
7 far as DNA there was DNA on the cigar that I mentioned. There
8 was DNA on the cigarette butt that was found. There was DNA
9 on the hand-rolled cigarette. All those were found in the
10 house. There was a pair of socks that apparently was used to
11 keep fingerprints from being put on anything that had his --
12 that had Bryant's DNA on that pair of socks. We found a --
13 for some odd reason there was a pair of pink socks in the den.

14 There was a handwriting analysis done on the note that
15 was left in the home and that was consistent with handwriting
16 samples that we submitted that came from Stephen Corey Bryant.
17 As far as the search warrant is concerned, a lot of the stolen
18 property was found at Mr. Bryant's residence. There's a video
19 at a Bi-Lo in Sumter that shows Mr. Bryant coming in with a
20 bunch of change and he goes to the change machine and gets the
21 change turned into cash.

22 We recovered some stolen property. I mentioned earlier
23 in one of the other cases that Mr. Bryant had admitted to a
24 third party that he had shot Mr. Brown. Well, that same guy
25 he sold a knife to that he had stolen from Mr. Tietjen's house

1 and we got that knife back.

2 Mr. Bryant's statements, he admits to shooting Mr.
3 Tietjen. He admits to robbing him and taking items from the
4 rest of the house while still armed. He admits to acts in the
5 house that I've not mentioned that only the perpetrator would
6 know had gone on in that house, admits to using the Smith and
7 Wesson 40-caliber pistol. He carried law enforcement to
8 several locations and helped them discover stuff that he had
9 stolen and thrown out of a window and he admits to the cell
10 phone conversations with Mr. Dees, Ms. Dees and Ms. Tietjen.

11 THE COURT: All right, Mr. Bryant, the facts that the
12 Solicitor gave me on this case are those facts correct, sir?

13 Mr. Bryant, the facts that the Solicitor gave me on this
14 case involving Mr. Tietjen, are those facts correct, sir?

15 MR. BRYANT: Yes, sir.

16 THE COURT: All right, thank you, sir.

17 MR. JACKSON: Your Honor, we've got some members of Mr.
18 Christopher Burgess's family coming up next.

19 Your Honor, let me introduce Mr. Robbie Burgess. He's
20 here in the coat and tie and that is the brother of Mr.
21 Christopher Burgess. To his right is Mr. Bostic and he is an
22 uncle of Christopher Burgess. The mother and father, the
23 mother is Christina Burgess. The father is Maynard Burgess.
24 Neither of them could be here today but we're glad that these
25 folks could join us.

1 THE COURT: Okay.

2 MR. JACKSON: Your Honor, this case occurred on October
3 the 13th of 2004, which is a Wednesday, two days after the
4 crime that involved Mr. Tietjen. It happened on what we call
5 the [REDACTED] It's in [REDACTED] Forest. Your Honor may
6 know where the park and ride is. You come through this, the
7 stoplight at Stateburg. There's a park and ride for people to
8 park and take, carpool to Columbia, and down past that before
9 you get to the swamp is one dirt road that runs all the way
10 down here parallel to [REDACTED] and again it's like the road Bells
11 Mill. You've got, you've got hunters on there and loggers on
12 there and people that are up to no good, and that's about all
13 you get on the [REDACTED]

14 This particular evening Mr. Christopher Burgess, who was
15 35 years of age, he was living in Sumter, rode a bicycle and
16 around 1:30 in the morning up in this area, Your Honor, of
17 Sumter, an officer came up on him and talked with him. He was
18 riding his bicycle and a police officer spoke with him and he
19 was actually pedaling out in this direction towards the mall.

20 About 4:20 in the morning he ends up out in a convenience
21 store in this area and it was raining, raining outside, he's
22 on a bicycle. He meets up with Stephen Corey Bryant at that
23 convenience store. They don't know each other but through
24 some conversation that we don't know about he leaves with
25 Stephen Corey Bryant, puts his bike in Mr. Bryant's truck.

1 They leave. I'm not sure where they ride around. I'm not
2 sure what they do, but I do know that here on the Foxville
3 Road they end up out there just the two of them in Mr.
4 Bryant's truck, just like Mr. Gainey and Mr. Bryant were on
5 Bells Mill Road. They both end up out of the truck and Mr.
6 Bryant shoots and kills Mr. Christopher Burgess. About 6:15
7 in the morning and Mr. Bryant leaves, doesn't try to conceal
8 the body, leaves the body right there in the roadbed.

9 About 6:15 in the morning there is a deer hunter and he's
10 going down to [REDACTED] and he pulls up and finds Mr.
11 Burgess's body in the road. He doubles back, goes to a phone
12 and calls 911, law enforcement comes down and responds, ropes
13 it off and they process that particular scene.

14 At the autopsy they determined there were two gunshot
15 wounds. One entered the left cheek, went through the brain,
16 through the skull and actually lodged between the skull and
17 the skin. The other came through the left back, through the
18 heart and exited the chest.

19 Corroboration that we have of this, the bullet that was
20 removed, the shell casing, there was a shell casing found out
21 here on the roadbed. They both sent to SLED both checked for
22 ballistics and they were both fired from that 40-caliber Smith
23 and Wesson. There's a videotape at the convenience store
24 showing Mr. Bryant and Mr. Burgess together. There were some
25 items that were dropped, that they had to have fallen out of

1 the truck when the doors were opened when the two of them got
2 out down here on the road and those items were recovered.
3 They were consistent with items seen in Mr. Bryant's truck the
4 day before and I'll cover that in a moment, but we got some
5 items at the scene that we could later tie to Mr. Bryant. The
6 bike that Mr. Burgess was driving was in the truck when they
7 served the search warrant or at the residence and from Mr.
8 Bryant's statements he admits shooting Mr. Burgess with the
9 40-caliber Smith and Wesson, knew the location and knew where
10 the body was and described the body.

11 THE COURT: Mr. Bryant, are those facts that the
12 Solicitor gave me regarding Mr. Burgess are those correct,
13 sir?

14 MR. BRYANT: Yes, sir.

15 THE COURT: All right, thank you, sir.

16 MR. JACKSON: Give me a minute and we'll bring up Mr.
17 Justice.

18 Judge, to tie up, those are the first six that I
19 mentioned. To tie those up, after, after Mr. Burgess, after
20 that scene was processed, law enforcement got together. The
21 day before, which would have been October the 12th,
22 Investigator Turner with the Sheriff's Department had actually
23 gone to Mr. Bryant's residence. He was a person of interest
24 at the time, and in talking with him, had seen his truck,
25 looked at the truck, saw some items that were in the truck and

1 those were the items that he identified having been in Mr.
2 Bryant's truck the day before that had fallen out at the scene
3 and based on that information and all of the other things that
4 they had been putting together, as all these crimes were
5 committed over a nine-day period, they developed probable
6 cause for a search warrant, got the search warrant, went to
7 Mr. Bryant's home which was here and they executed the search
8 warrant. He was there and that's when he was taken into
9 custody and later began giving statements. That's when all of
10 those things started breaking and we started getting all the
11 answers.

12 Mr. Bryant was taken to the Sumter Lee Regional Detention
13 Center for pretrial detention. While out there, and I've just
14 got those numbered seven and eight because they're over there
15 on the eastern part of Sumter County, while out there an
16 officer, Mr. Thornwell Joe Jones who would be the victim of
17 indictment 2006-702, which is a threatening the life of a
18 public employee, on March the 9th of 2005 Corporal Jones and a
19 nurse were feeding inmates and giving out medication. They
20 got down to the cell that Mr. Bryant was occupying and Mr.
21 Jones says that Mr. Bryant threatened him through the cell and
22 said, "I'm coming out of my cell when you open the door and
23 I'm going to F you up," and they didn't have any choice but
24 to open the door and feed him and he said when he opened the
25 door he had his fist up, drawn back, ready to strike and

1 although there had been jeers like this before this one was
2 different and he took it seriously. He gave him several
3 commands. Mr. Bryant finally stood down and did not strike
4 him, but he felt very different about this particular
5 confrontation; and so, the warrant was issued and that's all I
6 have on that one, Your Honor.

7 THE COURT: Those facts correct, Mr. Bryant?

8 MR. BRYANT: I threatened him but they're not correct.

9 THE COURT: You did threaten him but you didn't, you
10 didn't assault him or anything?

11 MR. CLARKE: Beg the Court's indulgence, please?

12 THE COURT: Sure.

13 (Mr. Clarke and Mr. Bryant confer.)

14 MR. CLARKE: Thank you, Your Honor.

15 THE COURT: All right, go ahead, Mr. Bryant.

16 MR. BRYANT: I threatened him but there wasn't no nurse
17 there because it wasn't during no medication, just was him and
18 two other officers there.

19 THE COURT: Okay, all right, other than the fact that
20 there was no nurse there, are the other facts correct?

21 MR. BRYANT: Yes, yes.

22 THE COURT: Okay, all right, thank you, sir.

23 MR. JACKSON: Your Honor, the last one, number eight, is
24 2006-701, that involves Mr. Larry Justice, and I'll ask Mr.
25 Justice to come up and join us.

1 Your Honor, this occurred occurred on October the 26th of
2 2005, again it's out at the Sumter Lee Regional Detention
3 Center. Mr. Justice was a corrections officer. He was going
4 cell to cell retrieving dinner trays and he got to Mr.
5 Bryant's cell. He was in the maximum security area and only
6 Mr. Bryant was in that particular cell and Mr. Bryant came
7 forward and put the tray in the trash bag and Mr. Justice
8 says, says that he says thank you to him and at that time
9 unprovoked Mr. Bryant sucker punched him, hit him two or three
10 times. He lost his balance, began stumbling backwards. He
11 knocked him into a wall, he hit his head, went to the ground.
12 He doesn't remember much after that. He was in the fetal
13 position, and was being, was being kicked and beaten in the
14 face and upper chest area. There was an officer in a tower
15 who witnessed it. She got help. Other officers came in and
16 Mr. Bryant withdrew on his own and went in the cell and closed
17 the cell door behind him. It was completely unprovoked. The
18 injuries suffered were a broken eye socket, broken nose, sinus
19 bones crushed and an aneurysm in the brain. The complications
20 that he continues to have are headaches, nosebleeds, his
21 equilibrium is now bad. He walks with a cane. None of that
22 before this and he's now disabled.

23 THE COURT: All right, sir. Mr. Bryant, are those
24 facts correct, sir?

25 MR. BRYANT: Yeah, I hit him, sir.

1 THE COURT: All right, sir. Thank you.

2 MR. JACKSON: And other than questions from the Court,
3 Your Honor, that's all I have.

4 THE COURT: Thank you, Solicitor.

5 Mr. Bryant, I'm going to and I'll tell you what. You can
6 just remain seated there while I go over these few questions
7 with you, sir. With regards to your plea, Mr. Bryant, has
8 anyone promised you anything, held out any hope of reward or
9 threatened you in any way to get you to plead guilty?

10 MR. BRYANT: No, sir.

11 THE COURT: Okay, has anyone suggested to you what
12 type of sentence you would receive in this case?

13 MR. BRYANT: Has anybody what?

14 THE COURT: Has anybody suggested to you or told you
15 what type of sentence that you would receive in this case?

16 MR. BRYANT: Oh, yeah, yeah, yeah.

17 MR. CLARKE: Beg the Court's indulgence.

18 THE COURT: Yeah.

19 (Mr. Bryant and Mr. Clarke confer.)

20 MR. BRYANT: Oh, no, they were just telling me what the
21 outcomes could be.

22 THE COURT: Right.

23 MR. BRYANT: Yes, sir.

24 THE COURT: What the possible sentences are?

25 MR. BRYANT: Yeah, what the possible sentence.

1 THE COURT: But no one has told you what you're going
2 to get.

3 MR. BRYANT: Oh, no, no, no, no.

4 THE COURT: Okay, all right, sir.

5 Has anyone pressured you or tried to intimidate you to
6 try to get you to plead, sir?

7 MR. BRYANT: No, sir.

8 THE COURT: All right, Mr. Bryant, have you had enough
9 time to make up your mind as to whether or not you want to
10 plead guilty, sir?

11 MR. BRYANT: Yes, sir.

12 THE COURT: Okay, and are you pleading guilty of your
13 own free will?

14 MR. BRYANT: Yes, sir.

15 THE COURT: Have you understood the questions that
16 I've asked you, sir?

17 MR. BRYANT: Yes, sir.

18 THE COURT: Has anyone suggested to you how to answer
19 my questions or have your answers been your answers?

20 MR. BRYANT: No, they've been my answers, sir.

21 THE COURT: Okay, and have you been absolutely
22 truthful in each and every answer that you've given to me
23 today, sir?

24 MR. BRYANT: Yes, sir.

25 THE COURT: Now, do you understand, Mr. Bryant, that

1 you have a right, well, let's see, you already have your
2 attorneys in place. Once we complete this today if I accept
3 your plea you understand that we will have a trial in a couple
4 of weeks and at that time you'll be able to present evidence
5 to the Court regarding what sentence the Court should impose.
6 Do you understand that?

7 MR. BRYANT: Yes, sir.

8 THE COURT: And that at that time you'll have a right
9 to address the Court as well as your lawyers on your behalf.

10 MR. BRYANT: Yes, sir.

11 THE COURT: All right, sir, I find that there has been
12 a substantial factual basis which has been established for
13 each of these charges that Mr. Bryant is pleading guilty to.
14 In discussing these matters with Mr. Bryant I feel that his
15 decision to enter these pleas have been done freely,
16 voluntarily, knowingly and intelligently. He's had the advice
17 and the counsel of three excellent attorneys, outstanding
18 lawyers, and Mr. Bryant has indicated, of course, he had for
19 some time Mr. Babb associated with the case and now Mr. Clarke
20 and Mr. Howle and Mr. Bryant has indicated that he is
21 satisfied with the representation and the advice that his
22 attorneys have provided. I believe he understands that he
23 waives the constitutional rights that I reviewed with him and
24 that his decision to go forward with this plea is freely,
25 voluntarily and intelligently made and I'm going to accept his

1 pleas to these various charges.

2 Now, anything further from the State, Solicitor?

3 MR. JACKSON: Two, two items, Your Honor.

4 THE COURT: All right.

5 MR. JACKSON: First, and if this is the appropriate
6 time, we want to renew our discovery motions and ask for any
7 reports or anything written that any experts may have that
8 we're entitled to.

9 Also, Your Honor, there's the issue of his custody. I
10 know that as we get closer to trial they may want him in
11 Sumter County in a room; and so, if we need to address that
12 this might be the right time to do that.

13 THE COURT: All right, Mr. Howle.

14 MR. HOWLE: Your Honor, once the -- that weekend prior
15 to the -- well, Monday is not going to be just starting,
16 Tuesday.

17 THE COURT: Right.

18 MR. HOWLE: We would certainly like him to be held in
19 the Sumter Lee because we know we'll be possibly going out
20 there every night and talking with him and that would
21 certainly make it a lot easier than having to transfer him
22 back and forth.

23 THE COURT: All right, beginning when?

24 MR. HOWLE: If we could have him there Monday evening.

25 MR. JACKSON: Your Honor, the Sheriff tells me they can

1 go ahead and take him now if that'll help.

2 MR. HOWLE: Okay, that would be wonderful. I would
3 certainly appreciate that.

4 THE COURT: All right, does that, now, does that have
5 to be resolved with the Department of Corrections, I mean, as
6 far as ---

7 MR. JACKSON: He's in safekeeping and I know they're
8 ready for him to get out of there.

9 THE COURT: Okay.

10 MR. HOWLE: Your Honor, the only thing that -- the
11 doctor has been there that has made some changes in
12 medication. We just want to make sure that they're aware at
13 Sumter what the new medications are and what's at the jail now
14 gets taken over to Sumter County so he can continue to use
15 those.

16 THE COURT: Okay, all right, I just want to address
17 the Sheriff.

18 Sheriff, when you make this transfer if you would, sir,
19 and Mr. Howle, I'm sure you and Dr. Schwartz-Watts or whoever
20 can double-check that, but if you would just make sure that
21 when he's transferred back to your facility that any
22 medications that they have Mr. Bryant on right now that those
23 get transferred as well and that the nurse at your facility or
24 whoever administers those is instructed on the proper use of
25 those medications and how they're supposed to be administered.

1 MR. HOWLE: Your Honor, he has a little bit of
2 personal property there, some papers and all associated with
3 the case. I don't know the best way to get those.

4 THE COURT: Well, I'm assuming we can just get
5 everything transferred that belongs to Mr. Bryant from the
6 department to your facility.

7 MR. DENNIS: Your Honor, would tomorrow morning be --
8 that transfer be okay tomorrow morning instead of this
9 afternoon?

10 THE COURT: Oh, yes, sir, absolutely because I know
11 you'll have to arrange all that and that's not a problem.

12 MR. DENNIS: Yes, okay.

13 MR. HOWLE: And that way he can pack up just what he
14 needs.

15 THE COURT: Okay, and then, Mr. Bryant, you'll have an
16 opportunity to get your things together that you need.

17 MR. BRYANT: Your Honor, I appreciate that, sir.

18 THE COURT: All right, sir.

19 All right.

20 MR. JACKSON: Your Honor, the written reports, experts,
21 anything like that that exists that I'm entitled to?

22 THE COURT: I don't know -- well, I'll have to talk
23 with defense counsel. I'm not aware of.

24 MR. HOWLE: If there's going to be a written report of
25 any kind I'll make sure you get it.

1 MR. JACKSON: Thank you, Your Honor.

2 THE COURT: All right, anything further, Mr. Jackson?

3 MR. JACKSON: Nothing from the State, Your Honor.

4 THE COURT: Anything further from the Defense counsel
5 at this time?

6 MR. HOWLE: Nothing further, Your Honor.

7 THE COURT: All right, I want to thank everyone for
8 being present and I know you've talked with the Solicitor's
9 office and those associated with the defense counsel that the
10 purpose of today's hearing was simply to allow Mr. Bryant to
11 enter his plea and there was no, never any intention to take
12 any testimony today, that it was just simply for the matter of
13 entering a plea. What we will do and we're scheduled for the
14 week of September the 2nd and the following week should we need
15 it. We will proceed with a trial on the sentencing phase and
16 at that time, of course, the Court will take testimony and any
17 motions or anything that we need to address at that time.
18 Okay?

19 MR. HOWLE: Thank you, Your Honor.

20 THE COURT: Thank everyone for being here and,
21 Sheriff, whenever you all are ready to make that transfer
22 that's fine.

23 MR. DENNIS: Thank you.

24 THE COURT: Thank you, sir.

25 MR. HOWLE: Thank you, Your Honor.

(Adjourned.)

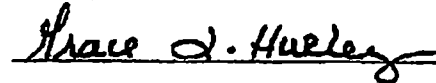
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I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the guilty plea hearing held in the case of The State versus Stephen Corey Bryant, held in the Court of General Sessions for Sumter County, Florence County Courthouse, Florence, South Carolina, on August 18, 2008.

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



Grace L. Hurley, CVR-CM

Official Reporter

October 21, 2008.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT NO.
2006-GS-43-699

STATE OF SOUTH CAROLINA)
)
V.)
)
STEPHEN COREY BRYANT)
_____)

PART I

THE COURTS VERDICT ON PROOF
OF AGGRAVATING CIRCUMSTANCES

Complete either (a) or (b), as appropriate:

(a) The Court, in the above-entitled case, does not find beyond a reasonable doubt the existence of any statutory aggravating circumstance.

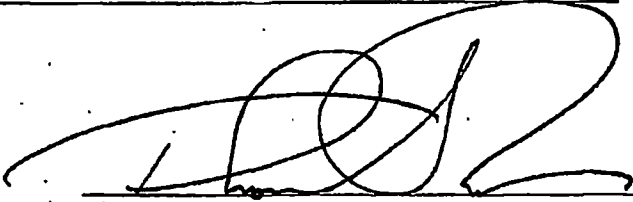
September 11, 2008

Thomas A. Russo
Circuit Court Judge

(b) The Court, in the above-entitled case, does find beyond a reasonable doubt the existence of the following statutory aggravating circumstance (s):

The Defendant committed Murder while in the commission of a Robbery while armed with a deadly weapon to wit: a Smith & Wesson .40 Caliber Semi-Automatic handgun.

September 11, 2008

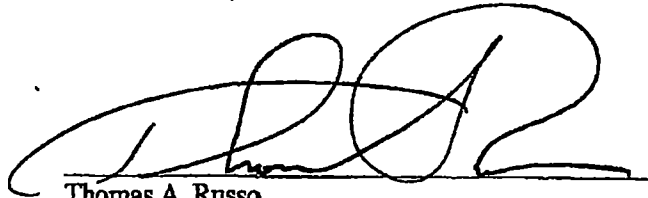

Thomas A. Russo
Circuit Court Judge

SENTENCE OF DEATH

The defendant, Stephen Corey Bryant, entered a plea of guilty to the offense of murder. The court has determined that the defendant should be sentenced to death. He is now asked if he has anything further to say as to why the judgment of law and the sentence of the court should not now be pronounced against him. [He states that he has nothing to say.] [He gives no sufficient reason why the judgment of the law and the sentence of the court should not now be pronounced.]

It is the judgment of the law and the sentence of the court that you, Stephen Corey Bryant, the prisoner at the bar, be taken to the County Jail of Sumter County and thence to the State Penitentiary henceforth to be kept in close and safe confinement until the 14th day of November, 2008, upon which day between the hours of 12 o'clock, p.m., and 11:59 o'clock, p.m., you shall suffer death by electrocution or lethal injection in the manner provided by law.

Mr. Bryant, may the Lord have mercy on your soul.

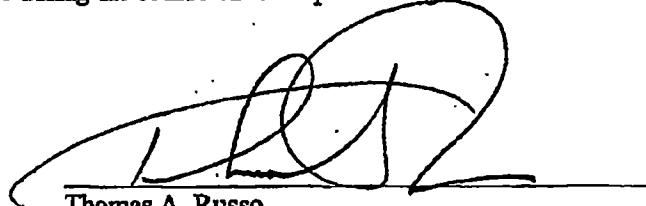
A handwritten signature in black ink, appearing to read 'T. Russo', written over a horizontal line.

Thomas A. Russo
Circuit Court Judge

September 11, 2008

Affirmation of Death Sentence

As the trial judge in the above-entitled action and prior to the imposition of the death sentence upon the defendant Stephen Corey Bryant, I find as an affirmative fact that the evidence of the case warrants the imposition of the death penalty and that its imposition is not a result of prejudice, passion, or any other arbitrary factor, but solely on the basis of the facts and evidence presented by both the State and Defense during the course of these proceedings.

A handwritten signature in black ink, appearing to read 'T. Russo', is written over a horizontal line.

Thomas A. Russo
Circuit Court Judge

September 11, 2008

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT NO.
2006-GS-43-699

STATE OF SOUTH CAROLINA)
)
V.)
)
STEPHEN COREY BRYANT)
_____)

PART II

THE COURTS DETERMINATION
OF THE SENTENCE TO BE IMPOSED

Complete either (a) or (b), as appropriate:

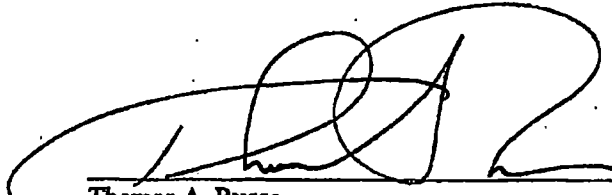
(a) The Court, in the above-entitled case, sentences the defendant, _____
to the state penitentiary for the balance of his natural life.

September 11, 2008

Thomas A. Russo
Circuit Court Judge

(b) The Court, in the above-entitled case, sentences the defendant, Stephen Corey Bryant
to death.

September 11, 2008



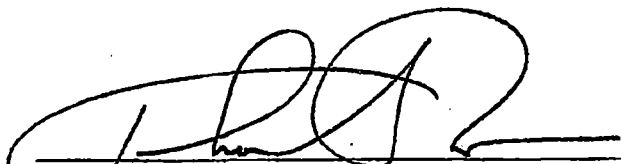
Thomas A. Russo
Circuit Court Judge

Designation by Trial Judge of
Statutory Aggravating Circumstance (s) and Conclusion
That Death Sentence Be Imposed.

From September 2, 2008 through September 9, 2008, a sentencing proceeding in the above-entitled action was conducted by me as a trial judge and was conducted without a jury. Now, having considered the evidence offered in aggravation, extenuation, and mitigation of punishment and having also considered the arguments presented for and against the imposition in this instance of a sentence of death upon the defendant Stephen Corey Bryant, I, therefore, have found beyond a reasonable doubt the existence of the following aggravating circumstance(s), to wit:

The Defendant committed Murder while in the commission of a Robbery while armed with a deadly weapon to wit: a Smith & Wesson .40 Caliber Semi-Automatic handgun.

Accordingly, I have concluded that the defendant, Stephen Corey Bryant, should be sentenced to death.



Thomas A. Russo
Circuit Court Judge

September 11, 2008

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF SUMTER) THIRD JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
)
V.) **DEATH PENALTY SENTENCING REPORT**
)
STEPHEN COREY BRYANT,) **INDICTMENT 2006-GS-43-699**
)
DEFENDANT)

A. NAME OF TRIAL JUDGE: THOMAS A. RUSSO

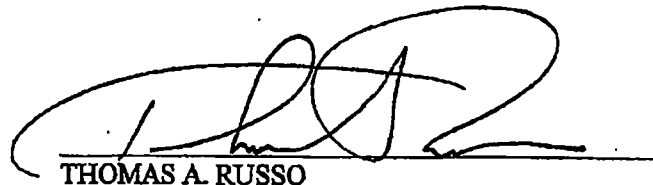
B. NAME OF DEFENDANT: STEPHEN COREY BRYANT

C. NAME OF DEFENSE ATTORNEYS: 1. JACK D. HOWLE, JR.
2. JOHN D. CLARK

D. DATE SENTENCED: SEPTEMBER 11, 2008

E. AGGRAVATING CIRCUMSTANCE(S) FOUND:

THE MURDER WAS COMMITTED WHILE IN THE COMMISSION OF A ROBBERY WHILE ARMED WITH A DEADLY WEAPON, TO WIT: A SMITH & WESSON .40 CALIBER SEMI-AUTOMATIC HANDGUN.



THOMAS A. RUSSO
CIRCUIT COURT JUDGE

SEPTEMBER 11, 2008
SUMTER, SOUTH CAROLINA

SCCA/225 (11/2006)

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEPHEN COREY BRYANT,

APPELLANT

FINAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Senior Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The sentencing judge committed reversible error by excluding testimony that Bryant's aunt had been sexually abused by her father (Bryant's paternal grandfather), who the defense alleged also began abusing Bryant at the age of seven, as this evidence was both relevant under Rules 401 and 404, SCRE, and mitigating under the Eighth and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

On July 18, 2008, Stephen Corey Bryant pleaded guilty, in Florence County before Judge Thomas A. Russo, to several criminal indictments issued by Richland and Sumter County grand juries, foremost among them (for purposes of this proceeding) a Sumter County indictment (2006-GS-43-699) charging Bryant with the October 11, 2004, murder and armed robbery of Willard Tietjen. The State had given notice it intended to seek the death penalty for that murder. There were no plea negotiations. August 18, 2008 R. p. 1345 lines, 2-11.

The indictments related to a series of crimes beginning with a burglary on October 5, 2004, and ending eight days later, October 13, with the last of three murders, which occurred in this order: Cliff Gainey (October 9), Tietjen (October 11) and Christopher Burgess (October 13). Bryant also committed three burglaries (October 4, 8 and 9), an arson (October 9) and shot another man, Clinton Brown, who survived (October 8). Finally, following his arrest, on October 26, 2005, Bryant attacked and seriously injured a guard at the Sumter County detention center. In addition to the murder and armed robbery of Tietjen, Bryant pleaded guilty to two additional counts of murder, two counts of assault and battery with intent to kill, two counts of first-degree burglary and a single counts of second-degree burglary, second-degree arson and possession of a stolen handgun.

On September 2 through 11, 2008, Judge Russo conducted a sentencing proceeding. (The parties would have consented to a guilty plea before the judge with jury sentencing had they not been constrained by SC Code Section 16-3-20 (B). April 3, 2008 R. p. 1215, line 3-R. p. 1221, line 20.) The State relied on a single statutory aggravator to obtain a death

sentence: the murder of Willard Tietjen was committed during the course of an armed robbery. Section 16-3-20 (C)(a)(1)(d).

Bryant did not testify (or offer allocution) at sentencing. The defense case in mitigation depended almost entirely upon the probability that Bryant had been sexually abused by three members of his immediate family, in particular his paternal grandfather, William Bryant, from the age of seven. This abuse, according to defense experts, manifested itself as post-traumatic stress disorder (PTSD), which in turn contributed to Tietjen's murder and the other crimes. The circumstances of Bryant's crimes -- particularly the ritualistic aspects of the Tietjen murder -- are indicative of a profoundly disturbed mind. Bryant unsuccessfully sought counseling two months prior to his spree. Then he made little effort to avoid apprehension and, in fact, appears to have welcomed it. Upon arrest Bryant told the police, "It's finally over." September 2008 R. p. 151, line 15 -- R. p. 152, line 2.

There was also evidence Bryant was intoxicated on methamphetamine and marijuana at the time of Tietjen's murder. Based on the evidence of sexual abuse, PTSD and substance abuse, defense counsel argued three statutory mitigating circumstances in closing: (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 law will substantially impaired" and (3) "The age or mentality of the defendant at the time of the crime." Section 16-3-20 (C)(b)(2), (6) and (7). Counsel also requested, but did not argue: "The defendant has no significant history of prior criminal conviction involving the use of violence against another person." Section 16-3-20 (C)(b)(1).

The judge sentenced Corey Bryant to death from the bench, having found that he murdered Tietjen while in the commission of an armed robbery. He also imposed concurrent sentences of life for the remaining two murders and first-degree burglaries, fifteen years for second-degree burglary, twenty years on each of the two assaults and batteries with intent to kill and thirty years for armed robbery.

ARGUMENT

The sentencing judge committed reversible error by excluding testimony that Bryant's aunt had been sexually abused by her father (Bryant's paternal grandfather), who the defense alleged also began abusing Bryant at the age of seven, as this evidence was both relevant under Rules 401 and 404, SCRE, and mitigating under the Eighth and Fourteenth Amendments to the United States Constitution.

At sentencing, the defense attempted to mitigate Corey Bryant's punishment by introducing evidence he had been sexually abused by three male members of his immediate family. In particular, the defense sought to focus upon Bryant's paternal grandfather, William Bryant, who they alleged began to abuse Bryant when he was seven.

Bryant first reported this abuse in August 2004, approximately two months prior to Tietjen's murder. September 2008 R. p. 736, lines 10-15. On August 19, 2004, he told his grandmother that he had been "physically abused, sexually abused" by her ex-husband, William, an uncle and an older half-brother. September 2008 R. p. 773, line 16 – R. p. 776, line 21. Bryant also told his aunt, William's daughter, about the sexual abuse on that same date. September 2008 R. p. 789, line 16 – tr. p. 790, line 10.

She understood, because William Bryant had also abused her. The issue on appeal arose during defense counsel's effort to question Bryant's aunt about the abuse she had endured:

DEFENSE COUNSEL: [W]hat is your relationship to Corey's grandfather, William Edward Bryant?

WITNESS: He's my biological father.

DEFENSE COUNSEL: And did you ever have any problems specifically with him?

WITNESS: Yes, sir.

September 2008 R. p. 790, lines 8 – 13. At this point the Solicitor objected “to the relevance of any problems she may have had with family members” because “[t]his is about Stephen Corey Bryant.” September 2008 R. p. 790, lines 14-16. The judge summarily sustained the objection. September 2008 R. p. 790, line 17.

Defense counsel responded:

DEFENSE COUNSEL: Your Honor, I think these problems are of the same nature. I think it goes to the same person committing them and--

THE COURT: It may go to this, but it has no relevance as to Mr. Bryant. I mean, you can testify as to Mr. Bryant.

DEFENSE COUNSEL: Your Honor, we feel it adds credibility to what Mr. Bryant has said about the same type molestation.

THE COURT: And she can testify as to what she may have observed, if she has any personal knowledge, about any abuse to Mr. Bryant, but I don't think it goes to -- it's not relevant to Mr. Bryant's case as to what abuse this grandfather may have inflicted on others. It's not a question of how extensive his abuse, but it's the relevancy to this defendant.

September 2008 R. p. 790, line 18 -- R. p. 791, line 5. Counsel resumed direct examination of Bryant's aunt:

DEFENSE COUNSEL: Let me ask you this. What kind of relationship did you have? Were you close to your father at all?

WITNESS: No. I was as a child for a time, and then things started happening and--

September 2008 R. p. 791, lines 8-11. The judge again summarily sustained the Solicitor's objection. September 2008 R. p. 791, lines 12-21.

A forensic psychiatrist testified for the defense that Corey Bryant was "functioning in the low-average range of intelligence." September 2008 R. p. 816, lines 1-3. "In addition, he has all the symptoms seen in post-traumatic stress disorder," she concluded. September 2008 R. p. 826, lines 5-8. The cause of his PTSD:

Mr. Bryant reported to me that during his childhood, he was sexually abused and that was very significant. He reported to me that he was abused by four people: one being his paternal grandfather, one being his half-brother, one being a paternal uncle and then his mother.

September 2008 R. p. 814, line 22 – R. p. 815, line 1. A September 2004 record from a regional mental health center indicated that "[Bryant] was seven years old when he reported he was sexually assaulted by his grandfather but he did not know what age he was when he was sexually assaulted by his mother." September 2008 R. p. 822, line 16 – R. p. 823, line 4.

Speaking with Bryant's aunt and grandmother, the psychiatrist also learned that "there had been one of the perpetrators of the sexual abuse [who] had also abused other family members." September 2008 R. p. 1816, line 20 – R. p. 1817, line 7. Bryant's post traumatic stress disorder manifested as extreme paranoia involving, among other things, "Masonic practices." September 2008 R. p. 829, line 7 – R. p. 830, line 10. (Willard Tietjen was in fact an avid Shriner. September 2008 R. p. 632, lines 12-16.) "In my opinion," the psychiatrist determined, "these murders are related to his post-traumatic stress disorder." September 2008 R. p. 831, line 22 – R. p. 835, line 19.

On cross-examination of the defense psychiatrist, the Solicitor sought to discredit Bryant's evidence in mitigation by insisting that it was all "self-reported" and claiming

"there's no independent corroboration of that whatsoever." September 2008 R. p. 847, line 21- R. p. 848, line 6; September 2008 R. p. 853, lines 3 and 4. The Solicitor exploited the very lack of corroboration his objection to the testimony of Bryant's aunt had created:

[W]hen you get somebody with his history, then it becomes that much more important for you to have to corroborate or verify what they say, because they are inherently not credible for whatever reason.

September 2008 R. p. 848, lines 7-10. The psychiatrist had to agree that defendants in Bryant's situation "have reasons not to tell the truth." September 2008 R. p. 848, lines 11-17. She believed, however, that Bryant's account of abuse was corroborated:

[O]ne of his other victims has admitted she was abused by him and I am an expert in sexual disorders, and it's not very uncommon for some - if there's abuse within a family, for other children to be abused. It's very seldom that, if you have an incest perpetrator within the family, that they confine their activity to one individual in the family.

September 2008 R. p. 853, lines 5-16. She was referring specifically to the excluded testimony of Bryant's aunt. September 2008 R. p. 853, line 17-19. On redirect she emphasized the importance of this testimony:

[F]or his aunt to further corroborate that [a] similar thing happened to her and there's proof of that ... and another person saying something similar with the same perpetrator has a lot of credibility in my opinion to [Bryant's self-reports].

September 2008 R. p. 869, line 21 - R. p. 870, line 3.

An expert in psychopharmacology and another in treating trauma and stress each echoed the testimony of the forensic psychiatrist concerning the probability that Bryant was sexually abused. September 2008 R. p. 890, line 21 - R. p. 891, line 3; September 2008 R.

p. 947, line 11 – R. p. 948, line 7. The Solicitor continued to allege that there was no way the State's experts could know the abuse Bryant reported had "happened at all." September 2008 R. p. 967, line 20 – R. p. 968, line 8. Finally, he alluded to a hearsay statement in which William Bryant had allegedly denied the allegations. September 2008 R. p. 971, lines 16-21.

* * *

"[D]uring the sentencing phase of a capital trial, a defendant has the right to present mitigating evidence indicating a dysfunctional family background." *Ex parte Roy Edward Perkins*, 941 So.2d 242, 249 (Ala. 2006), citing *Penry v. Lynaugh*, 492 U.S. 302 (1989), *Eddings v. Oklahoma*, 455 U.S. 104 (1982), and *Lockett v. Ohio*, 438 U.S. 586 (1978). "[T]he jury must be able to consider and give effect to any mitigating evidence relevant to a defendant's background and character or the circumstances of the crime." *Penry*, 492 U.S. at 328.

In *Eddings*, the sentencing judge concluded as a matter of law that he was unable to consider mitigating evidence of the defendant's troubled family history, emotional disturbance and physical abuse. "[I]t was as if," the Court concluded, "the trial judge had instructed a jury to disregard the mitigating evidence [the defendant] proffered on his behalf." 455 U.S. at 414. See, also, *State v. Stewart*, 288 S.C. 232, 341 S.E.2d 789, 790 (1986) ("When the choice is between life and death, the Eighth Amendment bars any sentencing procedure which creates a risk of the death penalty being imposed even though there may be factors that call for a less severe penalty.")

Moreover, the testimony Bryant's aunt would have provided is both relevant and admissible under South Carolina law. Rule 401, SCRE, provides that relevant evidence is

“evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence.” Rule 404 (b) allows the admission of evidence of a common scheme or plan. “Such evidence is relevant because proof of one is strong proof of the other.” *State v. Wallace*, 384 S.C. 428, 683 S.E.2d 275, 277 (2009).

The sentencing judge’s error could not have been harmless, as he concluded as a *matter of law* that he was unable to consider the testimony of Bryant’s aunt corroborating Bryant’s claim of sexual abuse by the identical family member. In addition, the Solicitor exploited the very evidentiary lacuna his objection had created by insisting that Bryant had fabricated an account of sexual abuse for purely “legal reasons.” September 2008 tr. p. 848, lines 16 and 17. See *Chaffee v. Aiken*, 294 S.C. 88, 362 S.E.2d 875 (1987).*

* *Wiggins v. Smith*, 539 U.S. 510 (2003), is interesting in this connection. *Wiggins* notes that “family and social history” are among the topics defense counsel should consider presenting in mitigation. The Supreme Court reversed because “[d]espite these well defined norms... counsel abandoned their investigation of [Wiggins’] background after having acquired only rudimentary knowledge of his history from a narrow set of sources.” 539 U.S. at 524. The dissent in *Wiggins* made essentially the same argument the Solicitor employed in Bryant’s case:

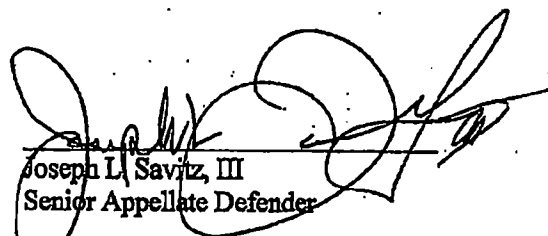
Wiggins’ accounts of his background... are the hearsay statements of a convicted murder and, as the trial testimony in this case demonstrates, a serial liar. ... And, knowing that the information he provided ... would be used to attack his death sentence, Wiggins had every incentive to lie again about the supposed abuse he suffered.

Id. at 555-6 (Justices Scalia and Thomas dissenting).

Conclusion

Based on the foregoing argument, Stephen Corey Bryant asks the Court to reverse his death sentence and remand for resentencing.

Respectfully submitted,



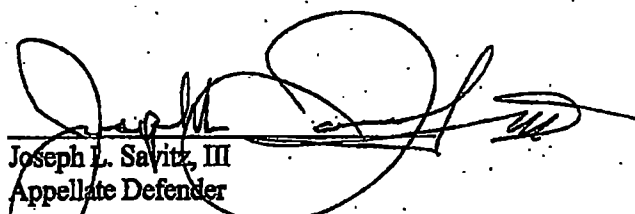
Joseph L. Savitz, III
Senior Appellate Defender
ATTORNEY FOR APPELLANT.

This 24th day of September, 2010.

CERTIFICATE OF COUNSEL

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

September 24, 2010



Joseph L. Savitz, III
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County
Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

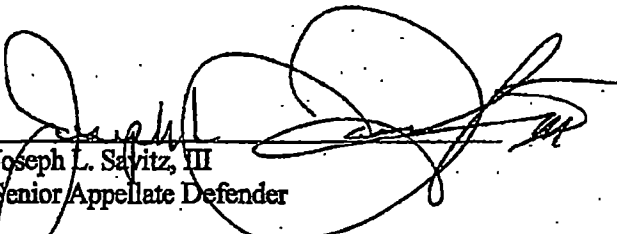
V.

STEPHEN COREY BRYANT,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 24th day of September, 2010.


Joseph L. Savitz, III
Senior Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of September, 2010.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Sumter County
Thomas A. Russo, Circuit Court Judge

2004-GS-40-10096 (Richland County)
2006-GS-43-696, 2006-GS-43-699 thru 702

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

STEPHEN COREY BRYANT,

Appellant.

FINAL BRIEF OF RESPONDENT

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, SC 29211
(803) 734-3601

C. KELLY JACKSON
Solicitor, Third Judicial Circuit

141 N. Main Street
Sumter, SC 29150
(803) 436-2185

ATTORNEYS FOR RESPONDENT

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Where testimony was admitted in mitigation that Appellant Bryant had recently claimed to have been sexually abused by his grandfather when he was a child, the trial court did not err in excluding collateral testimony from his aunt that she had problems with the same person as not relevant

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

The sentencing judge committed reversible error by excluding testimony that Bryant's aunt had been sexually abused by her father (Bryant's paternal grandfather), who the defense alleged also began abusing Bryant at the age of seven, as this evidence was both relevant under Rules 401 and 404, SCRE, and mitigating under the Eighth and Fourteenth Amendments to the United States Constitution.

RESPONDENT'S STATEMENT OF THE CASE

The Appellant, Stephen Corey Bryant, was indicted at the July 20, 2006 term of the Court of General Sessions for burglary in the second degree (2006-GS-43-696) [Oct. 5, 2004 incident involving Robert T. Dennis]; burglary in the first degree (2006-GS-43-697) [Oct. 8, 2004 incident involving James Ammons]; murder; burglary in the first degree; arson in the second degree; possession of a stolen handgun (2006-GS-43-698) [Oct. 9, 2004 incident resulting in homicide of Clifton Dale Gainey]; murder; armed robbery; possession of stolen handgun (2006-GS-43-599) [Oct. 11, 2004 incident involving death of Willard Tietjen]; murder and possession of stolen handgun (2006-GS-43-700) [Oct. 13, 2004 incident involving death of Clarence Burgess]; assault and battery with intent to kill (2006-GS-43-701) [involving Oct. 26, 2005 incident against Correctional Officer Larry Justice at Sumter-Lee Detention Center]; threatening life of public employee (2006-GS-43-702) [involving March 9, 2005 incident toward Correctional Officer Thornwell Jones of the Sumter-Lee Regional Detention Center]. ROA 1387-1400. On December 14, 2004, the Appellant was indicted at the Court of General Sessions for Richland County for Assault and battery with intent to kill (2004-GS-40-10096) [October 8, 2004 incident upon Clifton Brown]. ROA 1401-02.

The State made written notice of intent to seek the death penalty which was served on arraignment before the Honorable Clifton Newman on April 27, 2007 on the Tietjen incident, 2006-GS-43-699. R. 1088-1090, April 27, 2007 Tr. p. 4-8. The Appellant was initially represented by Jack D. Howle, Jr., Esquire, of the Sumter County Bar. He was subsequently appointed James H. Babb to represent him as second counsel. On July 8, 2008, counsel Babb was removed upon motion and replaced by John D. Clarke of the Sumter

County Bar. The notice of intent to seek the death penalty was served upon counsel Clarke at the July 18, 2008 proceeding. R. 1315, July 18, 2008 Tr. 7.

Motion hearings were held December 14, 2004, December 13, 2005, April 27, 2007, May 14, 2007, April 3, 2008, April 18, 2008, and July 18, 2008.

On April 11, 2008, the Appellant made a petition for writ of certiorari in the original jurisdiction of the South Carolina Supreme Court. On April 23, 2008, the Supreme Court of South Carolina issued an Order staying the trial, scheduled to begin April 28, 2008, pending decision on the petition for writ of certiorari. On May 1, 2008, the State opposed the petition. On May 30, 2008, the Supreme Court of South Carolina entered its Order, that "petition for writ of certiorari in the original jurisdiction is denied." Subsequently, on July 10, 2008, the Court denied a "motion for order reinstating a stay of trial."

a. The Guilty Plea

On August 18, 2008, the Appellant appeared before the Honorable Thomas A. Russo for a guilty plea. The Appellant was represented by court-appointed counsel, Jack Howle and John Clarke. The State was represented by Third Circuit Solicitor C. Kelly Jackson and Assistant Solicitor Dudley Saleeby. Counsel James H. Babb was also present. R. 1348, Plea Tr. p. 26. The record revealed that there were no plea negotiations as to sentence in the case. R. 1339, 1345-46, 1378-79, Plea Tr. 17, 23-24, 56-57. The Appellant entered guilty pleas to the following crimes:

1. burglary in the second degree [2006-GS-43-696].
2. burglary in the first degree [2006-GS-43-697].
3. assault and battery with intent to kill [2004-GS-40-

- 10096] [Richland County].
4. murder [2006-GS-43-698].
 5. murder [2006-GS-43-699].
 6. murder [2006-GS-43-700].
 7. assault and battery with intent to kill [2006-GS-43-701].
 8. threatening the life of a public employee [2006-GS-43-702].
 9. armed robbery [2006-GS-43-699].
 10. possession of stolen handgun [2006-GS-43-699].
 11. burglary first degree [2006.GS-43-698].

R. 1334-38, Plea Tr. 12-16. The plea court determined that there was a sufficient factual basis for each of the guilty pleas. R. 1348-1381, Plea Tr. 26-59. The Appellant affirmed the State's factual basis as correct as to each crime. R. 1353, 1357, 1360, 1365, 1368, 1374, 1376, 1377, Plea Tr. p. 31, p. 35, l. 23; p. 38, l. 17; p. 43, l. 23; p. 46, l. 15; p. 52, l. 14; p. 54, ll. 16-18; p. 55, l. 25. Judge Russo deferred sentencing.

b. Sentencing Proceedings - September 2-5, 8, 9, 11, 2008

On September 2, 2008 the sentencing proceeding began before Judge Russo pursuant to Sect. 16-3 20(c)(a)(d) on indictment 2006-GS-43-699 involving the murder of Willard Tietjen. The State had filed and served the Notice of Intent to seek the death penalty asserting the condition precedent of the statutory aggravating circumstances "murder was committed while in the commission of a robbery while armed with a deadly weapon." The State presented its evidence in aggravation through September 8, 2008. R. 1-730, Sentencing

Tr. pp. 1-730.

The defense presented its evidence in mitigation. R., Sentencing Tr. pp. 734-1000. The Appellant waived his right to testify.¹ R., Tr. pp. 1002-1004. The State and defense made closing arguments to the Court. R., Tr. pp. 1005-1035.

Judge Russo sentenced the Appellant on September 11, 2005. He sentenced Bryant to thirty (30) days on 2006-GS-43-702 (threatening life of a public employee); twenty (20) years on 2004-GS- 40-10096 (assault and battery with intent to kill); twenty (20) years on 2006-GS-43-701 (assault and battery with intent to kill); life imprisonment on 2006-GS-43-700 (murder); life imprisonment on 2006-GS-43-697 (burglary in the first degree); fifteen (15) years on 2006-GS-43-696 (burglary in the second degree); twenty-five (25) years on 2006-GS-43-698 (arson in the second degree); and life ((burglary in the first degree); and life (murder).

On 2006-GS-43-699, five (5) years (possession of stolen handgun); thirty (30) years (armed robbery); and life (murder). Judge Russo found beyond a reasonable doubt the existence of the statutory aggravating circumstance of "the defendant committed the murder while in the commission of a robbery while armed with a deadly weapon." R., Tr. p. 1049, l. 22 - p. 1050, l. 8. On the incident involving the death of Willard Tietjen, Judge Russo sentenced Bryant to "death by electrocution or lethal injection." R., Tr. p. 1051, l. 4-7.

The Appellant, through counsel served and filed a timely Notice of Appeal on September 19, 2008.

¹ The Appellant did make a spontaneous interruption of the State's closing argument. R., Tr. p. 1006, l. 12.

The Crimes of Stephen Corey Bryant

1. **The Burglary of the Residence of Robert Dennis on October 5, 2004 [Tuesday].**

It began on October 4, 2004. Bryant comes upon the home of Robert Dennis. It has an iron gate, no trespassing signs, and dirt road access to his property which rests in an isolated, remote area. R., Tr. pp. 186-189, 196. Bryant walks down the half mile dirt road to the Dennis home and tells Dennis that his truck was stuck at the top of his driveway. Dennis offers help and although uneasy takes him to the area and extracts the truck out of the bog. R., Tr. pp. 189-190. Dennis gets his name "Carlos Bryan" and a false address. Dennis also writes down a description of the truck - a 1990 GMC two-tone blue truck. R. 1351-52, 191, Plea Tr. pp. 29-30; Tr. p. 191, ll. 1-12.

On October 5, 2004, Dennis leaves his home and returns later that day and finds his home office burglarized. R., Tr. pp. 192-194. There was entry through a window, with computer items and checkbook stolen from his office. R., Tr. pp. 192-193. Although no fingerprints were found, with the exception of glove prints, a shoeprint was raised outside the window which was sent to SLED.

A subsequent search warrant of Bryant's home found a right shoe that matched the shoeprint. In addition, Dennis identified Bryant as the visitor from October 4th which his photograph was on television and newspaper and contacted the police. R. 1352-53, 195-96, Plea Tr. pp. 30-31; Tr. p. 195, l. 18 - p. 196, l. 9.

2. **The Burglary of James Ammons on October 8, 2004 [Friday].**

James Ammons, like Dennis lived in an isolated and remote area outside of Sumter. R., Tr. pp. 199-200. The morning of October 8th, Ammons takes his daughter to school and then travels into Sumter for errands. R., Tr. p. 204. At that time, Ammons had allowed a friend, T. J. Hansen, to go deer-hunting on his property, but he got his truck stuck in the mud.

His friend goes to Ammons' home around 11:30 a.m., notices the sliding door open and enters to seek help or use the telephone. However, he finds the telephone is dead. He walks to another neighbors house and calls Ammons on his cell phone. R., Tr. pp. 204-205, 211-216.

Ammons and his friend then returned to Ammons' home around 1:30 p.m. R., Tr. p. 205. The sliding door is open, the television is off rather than on as he left it, and Ammons goes into his bedroom and finds the mattress moved, a .40 caliber Smith and Wesson pistol stolen along with ammunition and registration papers. Ammons then calls 9-1-1. R. 1354-55, R. 205-09, Plea Tr. pp. 32-33; Tr. pp. 205-209.

Subsequently, as a result of the search on October 13th, the gun, case, ownership papers and the box of ammunition are recovered from Bryant's house. R. 1355-56, 207-210, Plea Tr. pp. 33-34; Tr. pp. 207-210. Bryant gave a series of statements just claiming the gun was found in a dumpster and then asserted he found it at a home in Pinewood where he stopped when he was low on gas, slid open the door, and took the gun. R. 1355-56, 216-17, Plea Tr. pp. 33-34; Tr. pp. 216-217. In a third statement, he admitted to

cutting the telephone wires before he entered the home. R. 1357, 217, Plea Tr. p. 35; Tr. p. 217.

3. Assault on Clinton Brown in Richland County [October 8, 2004].

Clinton Brown was fishing with an acquaintance at the Billy Tolar Boating Landing off the Wateree River, R., Tr. pp. 247-248. Brown saw Bryant come up and speak to them and then leave. The other fisherman leaves. R., Tr. pp. 250-253. At one point Bryant returns, comes from behind Brown and shoots him in the back. Bryant then leaves, offering no assistance. R., Tr. pp. 254-255.

Brown, bleeding, initially passes out. He comes to and struggles up to his truck and drives to Tuomey Hospital where he remains for over one week. R. 1357-1360, 254-56, 259-262, Plea Tr. pp. 35-38; Tr. pp. 254-256, 259-262.

The bullet recovered from Brown ultimately matches the stolen Smith and Wesson. Bryant admits the shooting to a Third-Party [Roy Lee Lambert], the next day. R., Tr. pp. 273-276. Law enforcement was then contacted by that person. R. 1360; Plea Tr. p. 38. Lambert buys a knife from Bryant and sees a Smith and Wesson that Lambert offers to find a buyer, but Bryant says "its got blood on it." R., Tr. p. 275.²

4. The murder of Cliff Gainey on October 9, 2004.

Unlike the others, Appellant and Cliff Gainey knew each other. They were co-workers in construction, went fishing together and spent weekends with each other's family. R., 1362, Plea Tr. p. 40. On October 9, 2004, Bryant picked up Gainey from the

² Bryant gave statements asserting that he pulled the trigger and the bullet hit him in the back. R., Tr. pp. 280-281. He stated the victim charged him so he fired back with a second shot, but claimed he did not know if it hit him. R., Tr. p. 281.

mobile home he rented from his boss. They end up at a convenience store buying beer. [This is seen on store's camera.] They drive off arriving on Bells Mill Road. Bryant shoots Gainey three (3) times, leaves body and drives off. A passerby, William Morton sees a truck with its lights initially off speed away and then sees the body. After checking vitals he calls 9-1-1. R., Tr. pp. 285-286. There is no identification on the body and he remains unidentified for nearly two days. R., Tr. pp. 290-291, 301.

After shooting Gainey, Bryant then returns to Gainey's mobile home. He steals a television, VCR, sound system and aquarium. R., Tr. p. 317. Upon leaving, he sets fire to the couch. R. 1362-63, Plea Tr. pp. 40-41.

At 8:30, Gainey's ex-wife Linda Coker arrives with son and calls the fire department. They determine it is not accidental and determine it began prior to 8:25 due to the damage of a clock. R., Tr. pp. 323-330. The family had been by previously at 7:30. R., Tr. pp. 307-311.

Connecting Bryant to the murder was the positive comparison of the shell casings at the scene, the video of the convenience store with Gainey, and the results of the search warrant of Bryant's home where television, DVD, VCR, sound system and aquarium were found. R., Tr. pp. 336-337. Further, Bryant's girlfriend Judy Justice, had been given a key from Bryant that was the key to Gainey's mobile home. R., Tr. pp. 337-338.

Bryant also gave a statement claiming he threw the wallet into a dumpster, showed weapon to the victim, and took the items from Gainey's home. R. 1364-65, 340-44, Guilty Plea Tr. pp. 42-43; Tr. pp. 340-344. In his last statement, he admitted shooting Gainey after he took a leak and then turned toward him when "I started freaking out." R.,

Tr. p. 344.

5. The murder of Willard Tietjen on October 11, 2004 [Monday].

Between 11:00 a.m. and 5:30 p.m., Willard Tietjen, a disabled 62 year old, was murdered in his home. He lived with his wife, Mildred in a remote and isolated ranch house. R. 1366-67, Plea Tr. pp. 44-45.

Tietjen, suffering from a bad heart condition and early onset of Alzheimer's, was a man of habit who stayed around his home due to his conditions. R., Tr. pp. 426-427, 473. His wife after leaving for work after breakfast, would begin calling on him around 4:30 p.m. R. 1367, 432, Plea Tr. p. 45; Tr. p. 432.

On October 11th, Tietjen spoke around 11:00 a.m. with a friend, Robert Summers. R. 1368, 433-34, 484-86, Plea Tr. 46; Tr. pp. 433-434, 484-486. Subsequently, without apparent forced entry, Stephen Bryant entered Tietjen's home. [In Bryant's statement, he says he knocked on Tietjen's door, asked for help because his truck had broken down and that Tietjen invited him inside]. R. 1368, Plea Tr. p. 46.

Tietjen is shot nine (9) times by Bryant in the dining room. R. 1368, Plea Tr. p. 46.

Bryant proceeds to go through Tietjen's wallet and takes cash and some cards. R. 1368, Plea Tr. p. 46. He throws cards around the living room floor. Bryant pull's Tietjen's masonic ring off his finger. Bryant methodically goes through each room in the house looking for items to steal. R. 1368-69, Plea Tr. pp. 46-47.

He takes power tools, a knife, a medallion, a jug of change, hand tools, a bag to carry them in, walkie-talkies, cell-phone, silver certificates, jewelry, an ammo box, and

other items. R. 1369, Plea Tr. p. 47, ll. 3-10.

Bryant then takes a drink from the refrigerator, smokes cigarettes, and a cigar. R. 1369, Plea Tr. p. 47. In addition, Bryant writes a note,³ goes on the computer. R. 1369, Plea Tr. p. 47.

Bryant is still in the home when Mrs. Tietjen makes her daily call to the land line to check on her husband. R., Tr. p. 435. She then calls Tietjen's cell phone and Bryant answers and says "T.J. is dead" and admits killing her husband. R. 1369, 436-37, Plea Tr. p. 47; Tr. p. 436, l. 20 - p. 437. She hangs up and calls 9-1-1. She calls again and Bryant repeats "I told you T.J. is dead, and don't call again." R., Tr. p. 438; also Tr. pp. 659-660, 698. Tietjen's daughter Kimberly Dees calls the cell phone also and Bryant again admits killing her father. R., Tr. pp. 477-668. Kimberly's husband [Robert Dees] calls, and the same sad inculpatory statement is given. R. 1369, 481-82, Plea Tr. p. 47; Tr. pp. 481-482. These calls occur between 5:15 and 5:30. Law enforcement was called after.

Forensic testing connects the shell casings and bullets from the Tietjen scene with the stolen handgun. R. 1370, Plea Tr. p. 48. Bryant's DNA is found on cigarette material within the house. One was a partially smoked cigarette retrieved from the right eye of the victim. R., Tr. pp. 594-595. It is also found on a pair of socks. R., Tr. p. 595.

Handwriting analysis finds the note consistent with Bryant's writing. R. 1370, 583, Plea Tr. p. 48; Tr. p. 583. A videotape of the Bi-Lo store shows Bryant using the change

³ The contents of the note/letter stated: "no more sick computer porn for this sick f___r. By the way, just keeping my promise to all. Good luck finding me. LMFAO." The note also stated "I find it funny, victim number five in two weeks." R., Tr. pp. 516-518.

machine. *Id.* R., Tr. pp. 562-563, 569.

Items of stolen property were recovered and connected to Bryant. R., Tr. pp. 546-552. Bryant sells the stolen knife to Roy Lambert who Bryant had admitted shooting Brown who turns it into police. R., Tr. pp. 274-276, 572-573.

Bryant also gives inculpatory statements. R., Tr. pp. 607-615. He admitted the Tietjen robbery and taking items while still armed. He described acts done within the house and laid claim as the sole perpetrator. He then carried law enforcement to locations where he had deposited items. He admitted conversations with Tietjen's family. R. 1371, Plea Tr. p. 49, ll. 2-10.

Mrs. Tietjen testified that her husband told her Friday, October 8th, a man came by the house looking for Kimberly Smith. She said her husband tried to assist the person with the use of the telephone book. R., Tr. pp. 430-431. When she had returned home on the 8th, she saw a truck in the driveway that she had assumed was a deer-hunter's truck. She recalled it to be a GMC and similar color to a photograph of the truck identified as Bryant's. R., Tr. pp. 430-431.

Dr. Joel Sexton, the forensic pathologist, testified about the extensive injuries to Mr. Tietjen. R., Tr. p. 109. The victim had nine (9) gunshot wounds and burns to the eyes and his beard. R., Tr. pp. 108-113. Two of the shots to the head were fatal. R., Tr. p. 112, ll. 1-21.

6. The murder of Christopher Burgess two days later [October 13, 2004] [Wednesday].

Thirty-five (35) year old Christopher Burgess rode a bicycle at 1:30 a.m. to the

Foxville Road area in Manchester Forest. R. 1372, Guilty Plea Tr. p. 50. He comes upon an Officer Benjamin Stiles and then continues on toward the mall. R., Tr. pp. 345-348.

Around 4:20 a.m., Burgess ends up at a convenience store, the Kangaroo Market Express [where he is seen on video with Bryant]. [R., Tr. p. 353, Exhibit 103]. Towanda Govan, an employee, knew both Burgess and Bryant by their coming into the store. R., Tr. p. 351. On that date, Govan recalled Chris coming in first and Bryant came in later and she saw them shake hands. R., Tr. p. 352. She said it was around 4:20 a.m. R., Tr. pp. 354-355.

After some conversation, Burgess leaves with Bryant after his bike is put into Bryant's truck. R. 1372, Guilty Plea Tr. p. 50. They eventually end up in the Foxville Road area. Similar to the Gainey incident, Bryant shoots Burgess and leaves the unconcealed body in the road bed.

Around 6:15 a.m., a deer hunter, Tony Jackson, sees the body in the roadway and calls 9-1-1. R., Tr. pp. 358-360, p. 365.

Burgess had two (2) gunshot wounds - one through his left cheek that entered his brain and a second through his back that went through his heart and exited. R. 1373, Plea Tr. p. 51.

The removed bullet and shell casing matched the stolen handgun. R. 1373, Plea Tr. p. 51. The videotape of the convenience store show Bryant and Burgess together. Items that had been previously seen by law enforcement in Bryant's truck during an interview before this incident are found at the scene. R. 1373-74, Guilty Plea Tr. pp. 51-52. Burgess' bicycle is recovered from the truck when the warrant is served. R. 1373,

Guilty Plea Tr. p. 51.

In Bryant's statements, he admits shooting Burgess with the Smith and Wesson, knew the location and described the body. R. 1374, 376-79, Guilty Plea Tr. p. 52; Tr. pp. 376-379. Bryant declared in his statements that Burgess started making demands where he wanted him to take him which "pissed me off" and he feared he would take his truck from him, so he reached under the seat, grabbed the gun and shot him. R., Tr. p. 378, ll. 4-9, p. 379, ll. 5-12.

7. Threatening the life of Correctional Officer Thornwell Joe Jones at the Sumter-Lee Regional Detention Center on March 9, 2005.

Subsequent to his arrest, Bryant became a pre-trial detainee at the Sumter-Lee Regional Detention Center. On March 9, 2005, Correctional Officer Cpl. Thornwell Jones and a nurse were passing out food trays and medication to the inmates. R. 1375, Guilty Plea Tr. p. 53. When they arrived at Bryant's cell, Bryant declares: "I's coming out of my cell when you open the door and I'm going to F ____ you up." R. 1373, 383, Guilty Plea Tr. p. 53; Tr. p. 383.⁴ They open the door and Bryant appears - hands balled up and ready to fight. R., Tr. pp. 383-384. The officers took it seriously and Bryant finally stood down without striking the officer. R. 1375-76, 383-84, Guilty Plea. Tr. pp. 53-54; Tr. pp. 383-384.

Jones testified that he did not have problems with him after that date. R., Tr. p. 387.

⁴ During the hearing, he testified that Appellant stated when I open his door he was "going to come out and go to my f ____ g ass because he ain't got nothing to lose." R., Tr. p. 383, ll. 14-16.

8. The assault with intent to kill Correctional Officer Larry Justice on October 26, 2005.

On October 26, 2005, Officer Larry Justice is retrieving dinner trays at the Sumter-Lee Regional Detention Center maximum security area. R., Tr. pp. 392-93. He approaches Bryant's single cell and Bryant places his tray in the bag. R., Tr. p. 392. At that point Bryant sucker punches Justice multiple times whose head is knocked against a wall and falls to the ground. R., Tr. pp. 393, 413. While in a fetal position, Bryant is kicking and beating Officer Justice on the face and chest. R. 1377, 413-14, Guilty Plea Tr. p. 55; Tr. pp. 413-414. An officer witnesses this and calls for assistance. R., Tr. pp. 413-416. Bryant then withdraws and goes into this cell. R., Tr. pp. 416-417.

Officer Justice suffers a broken eye socket, broken nose, crushed sinus bones and a brain aneurysm. R. 1377, 394-96, Guilty Plea Tr. p. 55; Tr. pp. 394-396. He has not worked since the incident. R., Tr. p. 401, l. 19. He suffers headaches, nosebleeds, and he is required to walk with a cane to control his balance. R. 1377, 395-96, Guilty Plea Tr. p. 55; Tr. pp. 395-396.

ARGUMENT

Where testimony was admitted in mitigation that Appellant Bryant had recently claimed to have been sexually abused by his grandfather when he was a child, the trial court did not err in excluding collateral testimony from his aunt that she had problems with the same person as not relevant mitigation evidence.

In his brief, Appellant asserts the sentencing judge committed error in excluding testimony from Appellant's aunt that she had problems of molestation from her father

(the Appellant's grandfather) because the Appellant had claimed in 2004 that he had been sexually abused by his grandfather and this similar alleged act added credibility to the Appellant's assertion to her. The trial court rejected the proffer upon objection, concluding the evidence had no relevance to the Petitioner. As the court stated: "its not relevant to Bryant's case as to what abuse this grandfather may have inflicted on others. Its not a question of how extensive his abuse, but is relevancy to others". R., Tr. pp. 790-791. Respondent submits the trial court did not abuse its discretion in excluding this limited evidence from Appellant's aunt as to whether she had been abused by the grandfather, but allowed evidence of Appellant's claim that he had been abused by him and her own knowledge of whether he had been abused.

STANDARD OF REVIEW

In criminal cases an appellate court sits to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Evidentiary rulings are within the sound discretion of the trial court, and such rulings will not be reversed absent an abuse of discretion or the commission of legal error that prejudices the defendant. *State v. Rice*, 375 S.C. 302, 314, 652 S.E.2d 409, 415 (Ct.App.2007). The trial court abuses its discretion when the ruling is based on an error of law or factual conclusion that is without evidentiary support. *Id.* at 315, 652 S.E.2d at 415.

First, the Constitution forbids imposition of the death penalty if the sentencing judge or jury is " "precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." " 486 U.S., at 374, 108

S.Ct. 1860 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 110, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982), in turn quoting *Lockett v. Ohio*, 438 U.S. 586, 604, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) (plurality opinion)). Second, the sentencing judge or jury “ ‘may not refuse to consider or be precluded from considering “any relevant mitigating evidence.” ’ ” *Mills v. Maryland*, 486 U.S. 367, at 374-375, 108 S.Ct. 1860 (1988) (quoting *Skipper v. South Carolina*, 476 U.S. 1, 4, 106 S.Ct. 1669, 90 L.Ed.2d 1 (1986), in turn quoting *Eddings*, *supra*, at 114, 102 S.Ct. 869). Accord *Smith v. Spisak*, 130 S.Ct. 676, 681 -682 (2010).⁵

In *Lockett*, the trial judge sentenced the defendant to death under a statute that provided for imposition of the death penalty unless the sentencer found, by a preponderance of the evidence, the existence of at least one of three enumerated mitigating factors. *Lockett*, 438 U.S. at 593-94, 98 S.Ct. 2954. *Lockett* argued her sentence was unconstitutional because the state statute prohibited the sentencer from considering other relevant mitigating factors. *Id.* at 602, 98 S.Ct. 2954. The Supreme Court agreed, holding that, in capital cases, “the Eighth and Fourteenth Amendments require that the sentencer ... not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense

⁵ Recently, this Court in *State v. Mercer*, 381 S.C. 149, 161, 672 S.E.2d 556, 562 (2009) reminded the bench and bar of the importance of a meaningful mitigation defense and, concomitantly, the ability of a capital defendant to fully present mitigation evidence. See *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008) (relying in large part upon *Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003) (counsel's failure to adequately investigate and present mitigating evidence resulted in the ineffective assistance of counsel requiring a new sentencing hearing). The Court declared that the trial courts, vested with considerable discretion in evidentiary matters, must not neglect the due process implications involved in a capital defendant's right to present mitigation evidence.

that the defendant proffers as a basis for a sentence less than death." *Id.* at 604, 98 S.Ct. 2954.

In *Eddings*, the Supreme Court reaffirmed and extended this rule. The trial judge had refused to consider mitigating evidence of a convicted murderer's unhappy and violent upbringing. The Court held, "Just as the State may not by statute preclude the sentencer from considering any mitigating factor, neither may the sentencer refuse to consider, as a matter of law, any relevant mitigating evidence." *Eddings*, 455 U.S. at 113-14, 102 S.Ct. 869. Indeed, the Court likened the situation to one, similar to that at hand, in which "the trial judge had instructed a jury to disregard the mitigating evidence ... proffered on [the defendant's] behalf," emphasizing that the sentencer may not give relevant mitigating evidence "no weight by excluding [it] from ... consideration." *Id.* at 114-15, 102 S.Ct. 869.

In *Skipper*, the trial court permitted the defendant to introduce evidence at his capital sentencing hearing of mitigating factors, such as his difficult upbringing, but excluded as irrelevant evidence of the defendant's good behavior during the seven-and-one-half months he was in jail awaiting trial. *Skipper*, 476 U.S. at 2-3, 106 S.Ct. 1669. Determining that the evidence of good behavior was, indeed, relevant, the Supreme Court held that the exclusion "impeded the sentencing jury's ability to carry out its task of considering all relevant facets of the character and record of the individual offender," and required reversal of the death sentence. *Id.* at 8-9, 106 S.Ct. 1669.

The "central requirement" of *Lockett* and its ensuing line of cases is that "a State

may not cut off in an absolute manner the presentation of mitigating evidence, either by statute or judicial instruction, or by limiting the inquiries to which it is relevant so severely that the evidence could never be part of the sentencing decision at all." *Johnson v. Texas*, 509 U.S. 350, 362, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993) (internal quotation marks and citation omitted). Nor may a court apply hearsay rules "mechanistically to defeat the ends of justice" at a capital sentencing. *Green v. Georgia*, 442 U.S. 95, 97, 99 S.Ct. 2150, 60 L.Ed.2d 738 (1979) (internal quotation marks and citation omitted).

The Supreme Court has used broad language to describe the relevance standard, observing that the meaning of relevance in the mitigation context is not unlike the meaning of relevance in other contexts; it is "evidence which tends logically to prove or disprove some fact or circumstance which a fact-finder could reasonably deem to have mitigating value." *Tennard v. Dretke*, 542 U.S. 274, 284, 124 S.Ct. 2562, 159 L.Ed.2d 384 (2004) (quoting *McKoy v. North Carolina*, 494 U.S. 433, 440, 110 S.Ct. 1227, 108 L.Ed.2d 369 (1990)).⁶ The precise application of that broad language, however, is not always clear, and courts have acknowledged that there is "little guidance on what

⁶ In *Tennard*, the Supreme Court held that "a State cannot preclude the sentencer from considering 'any relevant mitigating evidence' that the defendant proffers in support of a sentence less than death [V]irtually no limits are placed on the relevant mitigating evidence a capital defendant may introduce concerning his own circumstances." *Tennard*, 124 S.Ct. at 2570 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 114, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982)). The Court defined relevant mitigating evidence as "evidence which tends logically to prove or disprove some fact or circumstance which a fact-finder could reasonably deem to have mitigating value." *Id.* (quoting *McKoy v. North Carolina*, 494 U.S. 433, 440, 110 S.Ct. 1227, 108 L.Ed.2d 369 (1990) (defining relevant mitigating evidence in the most expansive terms)). Furthermore, the Court added that "a State cannot bar 'the consideration of ... evidence if the sentencer could reasonably find it warrants a sentence less than death.'" *Id.* (quoting *McKoy*, 494 U.S. at 440, 110 S.Ct. 1227).

constitutes relevance for *Lockett* purposes." *Sweet v. Delo*, 125 F.3d 1144, 1158 (8th Cir.1997).

In *Green v. Georgia*, the Supreme Court held that the Due Process Clause of the Fourteenth Amendment may require the admission of mitigating evidence even if state law rules of evidence would exclude it. There, the Court reversed the death sentence based upon the trial court's application of Georgia's hearsay rule to prohibit a witness's testimony that the defendant's accomplice in the capital murder had confessed to shooting and killing the victim *after* ordering the defendant to run an errand. See *Green*, 442 U.S. at 96-97, 99 S.Ct. 2150. In doing so, the Court held that "[t]he excluded testimony was highly relevant to a critical issue in the punishment phase of the trial" *and* that "substantial reasons existed to assume its reliability." *Id.* at 97, 99 S.Ct. 2150 (citing *Lockett*, 438 U.S. at 604-05, 98 S.Ct. 2954). In particular, the Court noted that:

[the accomplice] made his statement spontaneously to a close friend. The evidence corroborating the confession was ample, and indeed sufficient to procure a conviction of [the accomplice] and a capital sentence. The statement was against interest, and there was no reason to believe that [the accomplice] had any ulterior motive in making it. Perhaps most important, the State considered the testimony sufficiently reliable to use it against [the accomplice], and to base a sentence of death upon it.

Id. at 97, 99 S.Ct. 2150. In light of "these unique circumstances," the Court held, "the hearsay rule may not be applied mechanistically to defeat the ends of justice." *Id.* (internal quotation marks omitted); see also *Fullwood*, 290 F.3d at 693 (noting that "under certain circumstances, 'the Due Process Clause of the Fourteenth Amendment may require the admission of mitigating evidence even if state-law rules of evidence (e.g., hearsay) would exclude it' ") (alteration omitted) (quoting *Boyd v. French*, 147 F.3d 319, 326 (4th

Cir.1998)).

I. *Consider Relevant Mitigating Evidence, Not All Evidence.*

Although Appellant is right that these cases permit defendants to introduce any relevant mitigating evidence, he is wrong to assume that they make all evidence automatically relevant because *Lockett* “does not mean that the defense has *carte blanche* to introduce any and all evidence that it wishes.” *United States v. Purkey*, 428 F.3d 738, 756 (8th Cir.2005). Footnote 12 in *Lockett* explicitly stated that lower courts could continue to exclude as irrelevant evidence not bearing on the defendant's character, prior record, or the circumstances of the offense. *Lockett*, 438 U.S. at 604 n. 12, 98 S.Ct. 2954. The Supreme Court confirmed that *Lockett* did not make all evidence automatically relevant when it relied on this footnote to hold that courts may exclude certain evidence from capital sentencing hearings as irrelevant. For example, in *Oregon v. Guzek*, 546 U.S. 517, 126 S.Ct. 1226, 163 L.Ed.2d 1112 (2006), the Court unanimously held that a defendant has no right to present new evidence of his innocence at the sentencing hearing even though the defendant claimed that the evidence related to the “circumstances of his offense.” *Id.* at 523-24, 126 S.Ct. 1226; *see also Blystone v. Pennsylvania*, 494 U.S. 299, 306-07, 110 S.Ct. 1078, 108 L.Ed.2d 255 (1990) (no right to jury instruction encouraging jury to weigh lack of severity of aggravating factors as a mitigating circumstance); *Franklin v. Lynaugh*, 487 U.S. 164, 174, 108 S.Ct. 2320, 101 L.Ed.2d 155 (1988) (plurality opinion) (“residual doubt” as to defendant's guilt not a circumstance of the offense). Our circuit recognized that *Lockett* permits courts to exclude irrelevant evidence.

at capital sentencing hearings and quoted footnote 12 when it affirmed a Tennessee court's decision to exclude from a capital sentencing hearing videotaped interviews in which psychologists discussed the defendant's alleged multiple personality disorder. *Alley v. Bell*, 307 F.3d 380, 392, 399 (6th Cir.2002); *Owens v. Guida*, 549 F.3d 399, 419 (6th Cir. 2008).

As the Fourth Circuit has held, however, neither *Lockett* and its progeny nor *Green* compel the conclusion that a state court is required to present a capital jury (or sentencer) with *any* evidence the defendant proffers as mitigating, no matter how irrelevant, unreliable, or cumulative, or that a state's normal evidentiary rules must always yield to allow the introduction of such evidence:

[T]he principles developed in *Lockett* and *Eddings* do not eviscerate all state evidentiary rules with respect to mitigating evidence offered in capital sentencing proceedings. For example, the application of the hearsay rule to exclude evidence offered in mitigation of the death penalty is clearly not a *per se* constitutional violation. It is permissible to exclude on hearsay grounds mitigating evidence which is "only [of] cumulative probative value."

Fullwood, 290 F.3d at 693 (citations and alteration omitted) (quoting *Buchanan v. Angelone*, 103 F.3d 344, 348-49 (4th Cir.1996)); see also *Hutchins v. Garrison*, 724 F.2d 1425, 1437 (4th Cir.1983) ("We find no indication that *Eddings* and *Lockett* preempt all state rules of evidence. Both cases speak about *types* of evidence, not evidentiary rules."); cf. *Lockett*, 438 U.S. at 604 n. 12, 98 S.Ct. 2954 (noting that the opinion did not "limit[] the traditional authority of a court to exclude, as irrelevant, evidence not bearing on the defendant's character, prior record, or the circumstances of his offense"). In *Buchanan*,

the 4th Circuit explicitly rejected a defendant's claim that the trial court impermissibly excluded hearsay testimony offered by his expert mental health witness for the purpose of providing additional support for the conclusion that the defendant had acted under extreme emotional stress, because the expert's "testimony provided ample evidence to explain his opinion" and "the statements would have had only cumulative probative value." 103 F.3d at 349. The Court also noted that the excluded testimony "lack[ed] the inherent reliability of the statement excluded in *Green*," which had been "against the declarant's penal interest, made spontaneously to a close friend, and ... relied [upon by the state] to convict the declarant of capital murder." *Id. Cf., Sears v. Upton*,

2. *Lockett Error Can Be Harmless.*

Further, *Lockett* errors may be harmless. See *Sweet v. Delo*, 125 F.3d 1144, at 1158-59 (8th Cir. 1997) (concluding that *Lockett* errors may be held harmless). The excluded evidence - limited to his aunt's personal testimony of sexual abuse by Appellant's grandfather during her childhood [not Appellant's alleged abuse] - does not begin to approach the significance of the evidence in other notable cases in which the absence of mitigation testimony has been held prejudicial. See, e.g., *Rompilla v. Beard*, 545 U.S. 374, 391-92, 125 S.Ct. 2456, 162 L.Ed.2d 360 (2005) (petitioner's parents were violent alcoholics, and he was beaten regularly, locked inside an excrement-filled dog pen, and not allowed to visit other children); *Wiggins v. Smith*, 539 U.S. 510, 517, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003) (petitioner was left home alone for days, forcing him to beg for food and eat paint chips and garbage, and he was physically and sexually abused by his mother and foster parents); *Williams (Terry) v. Taylor*, 529 U.S. 362, 395-

96, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000) (petitioner had a "nightmarish childhood," during which he was forced to live in unimaginable squalor and severely and repeatedly beaten by his father). *McGehee v. Norris*, 588 F.3d 1185, 1197 (8th Cir. 2009). Any error in the limited exclusion is harmless:

ANALYSIS

Against the backdrop of Bryant's serial spree of murders and assaults, the Appellant introduced evidence related to his character, his dysfunctional family and his expert testimony concerning his adaptability to prison. As revealed, the relevant mitigating evidence concerned Stephen Corey Bryant's character and his personal family history. The mere fact that direct evidence from his aunt that she had problems with his grandfather - presumably molested according to the contemporaneous argument - was not directly relevant to Bryant's character.

However, Dr. Schwartz-Watts, the defense forensic psychiatrist, testified as an expert that Petitioner suffered from Post-Traumatic Stress Disorder as a result partially of his claimed sexual abuse as a child. R., Tr.p. 814-815, 822-823, 828-829.832-33. [Dr. Watts also testified on cross-examination, as a sexual abuse expert, that she relied in her opinion on the information she received from the aunt that she was abused by the grandfather. R., Tr.p. 853, l. 8-19, p. 854, l. 24-p. 855, l. 12. She found that his report, his behavior, his lack of reporting the abuse until 2004 was consistent with someone who had suffered with the abuse. However, she conceded that while the accounts may not be reliable, his behavior and symptoms were consistent with someone that was abused. R.,

Tr.p. 855, l. 6-12. Similarly, the judge heard testimony from Dr. Marty Loring, a social psychologist and expert in trauma and stress and its effect on adults that have been traumatized as children. R., Tr. p. 919-940. She testified about the reports of sexual abuse related to a genogram of the family history and the sexual abuse against Bryant by various family members, including anal rape. R., Tr. p. 942-944, 947-951. Dr. Loring also testified about the aunt's sexual abuse from the grandfather. R., Tr. p. 954, l. 15-23.

Therefore, the sentencing judge was not deprived of the relevant mitigating evidence related to the character of Stephen Bryant as it relates to his claimed mental health mitigation of post-traumatic stress disorder. The claim lacks merit for relief.

WHAT MITIGATION THE JUDGE HEARD

Former Probation Agent Gina Creech testified that Bryant came to her office in August 2004 seeking counseling because he had been unable to sleep due to some problems as a child. R., Tr. p. 736. She referred him to Healthy Minds. *Id.*

The Appellant's grandmother, Shirley Freeman, testified in mitigation. R., Tr. p. 770. She testified that her former husband, William Edward Bryant, physically abused her and the children. R., Tr. p. 771. She described the Appellant's relationship with his parents - Wayne Edward Bryant, Jr. And Katherine - as cold. R., Tr. p. 773.

She stated the Appellant came and talked to her on August 19, 2004 about being molested by his grandfather, her ex-husband, his mother's brother (uncle) and an older half-brother. R., Tr. p. 774, ll. 21-25. As a result, she stated they called the sexual abuse hotline. R., Tr. p. 776. This was the last time they saw him until his arrest. R., Tr. p.

776.

The Appellant's aunt testified Bryant talked to her on August 19, 2004 when her mother called her over. Bryant testified that he wanted to talk about him being sexually abused by his grandfather. R., Tr. p. 790, l. 2. She stated that she was unaware of the sexual abuse until then. R., Tr. p. 790, ll. 5-8. She described Bryant as upset and tortured which was unlike his prior demeanor. R., Tr. p. 791, also, R., Tr. p. 795. The aunt stated she made a series of calls, including a sexual abuse hotline. Bryant told her that he needed help and was trying to get help. R., Tr. p. 796.

The aunt also described Bryant's relationship with his mother as full of animosity and hatred. R., Tr. p. 793.

Dr. Donna Schwartz-Watts, a defense forensic psychiatrist, testified about her evaluation of the Appellant. She stated that she had prepared a developmental history based upon a series of interviews and information. She stated that she found significance that there were substance abuse issues within the parents. R., Tr. p. 814. Dr. Watts described that Bryant had Attention Deficit Disorder (ADD) as a child.

She also stated that Bryant had reported he was sexually abused as a child by four people: his paternal grandfather, his half-brother, his paternal uncle, and his mother. R., Tr. p. 814, l. 22 - p. 815, l. 1. She also found significant his involvement in the juvenile justice system at an early age beginning at age 11. R., Tr. p. 815. She noted his school records showed repeating first grade, many absences, and involvement with school counselors by 4th grade. R., Tr. p. 815. The records reported he was in emotionally

handicapped classes and low average intelligence, along with A.D.D. R., Tr. pp. 815-816.

She stated that in her own discussion with family members, the aunt and grandmother, she learned that one of Bryant's perpetrators had also sexually abused other family members. R., Tr. p. 817, ll. 5-7.

In reviewing his medical history, she stated that shortly before the crimes, he was at the hospital and reported two men had assaulted him. R., Tr. pp. 817-818.

In reviewing his juvenile records, she found that he had been physically assaulted and also had been placed on anti-depressants. He was determined to have A.D.D. and dysthymia (chronic depression) at the Department of Juvenile Justice. T., Tr. p. 819.

Dr. Watts opined concerning the effect of the sexual and substance abuse on his psychiatric past. She noted his history of receiving anti-depressants. She confirmed that prior to the crimes, that his aunt and grandmother, had sought out treatment for his sexual abuse resulting in a referral on September 1, 2004 at Healthy Minds. Within that report, Bryant had reported he was subject to sexual abuse where restraints and threats were made and involved intercourse and penetration. At that time, Bryant also reported abuse by his grandfather began at age 7, but did not state what age his sexual abuse by his mother began. Follow-up was also done by the agency on September 3, 7, and 10 and he reported symptoms of anger, shame and flashbacks. R., Tr. p. 823. Dr. Watts noted after his arrest, Bryant was evaluated and determined to have anti-social personality disorder with depressed mood by a doctor employed by the jail. R., Tr. p. 824.

Dr. Watts noted that Bryant had sought treatment before the crimes, had mood

disorders going to 1996, been on medication since then, and reported improvement when on the stabilizers. R., Tr. p. 824.

Dr. Watts opined that she found Bryant "was under the influence of mental or emotional disturbance at the time of the crimes" and "his capacity to appreciate the criminality of his conduct or conform his conduct to the requirements of the law was substantially impaired." R., Tr. p. 824, ll. 17-23. Dr. Watts diagnosed Bryant with "Post-Traumatic Stress Disorder." R., Tr. pp. 826-828. She opined that this was based upon his reports of childhood sexual abuse, documented through SCDC records in 1999 and the YMCA - Healthy Minds report, including the flashbacks. R., Tr. p. 826. It included his irritability and outbursts of anger. R., Tr. p. 827, ll. 3-6.

She also opined that he suffered from a number of substance abuse disorder, as well as A.D.D. and dysthymia by history. R., Tr. p. 828.

Dr. Watts noted that recent treatment with medications had caused improvement in his mood and makes him much calmer. R., Tr. p. 831.

She opined that the murders were related to his P.T.S.D. She noted that in the videos and cases he reports feeling threatened by the victims. R., Tr. pp. 833-835. She stated that they were all related because he was paranoid and misjudged people's perceptions, feeling sexually threatened by the victims. R., Tr. p. 835, ll. 14-25.

On cross-examination, Dr. Watts admitted that P.T.S.D. is a diagnosis where a lot of the symptoms have to be self-reported. R., Tr. p. 847, ll. 22-25. She acknowledged that he had reported the sexual assaults to the YWCA shortly before the crimes and he

had reported his uncle had abused him in August 2002 in the S.C.D.C. records. R., Tr. p. 852. Dr. Watts asserted that when he reported his grandfather had abused him to Dr. Crawford, it was corroborated by his aunt's admission to her that he was similarly abused. She stated: "its very seldom that if you have an incest perpetrator within the family that they confine their activity to one individual in the family." R., Tr. p. 853. She admitted that other than the aunt, there was not other corroboration. R., Tr. p. 853. She admitted that the other claims by him of his mother molesting him, his father beating him, and his uncle assaulting him were self-reports only. However, in light of his symptoms, she opined his aunt's history was sufficient for her to diagnose the P.T.S.D. R., Tr. pp. 854-855, L 9.

On re-direct, Dr. Watts noted that he had reported the abuse prior to the crime to the YWCA and his probation officer. R., Tr. p. 867. She noted that his behavior was consistent with a victim of incest. R., Tr. pp. 867-868.

Dr. Alexander Morton, an expert in psycho-pharmacology, addictions and psycho-pharmacy practice testified about Bryant's past drug-history and the affects of the drugs. R., Tr. pp. 875-901. Within his slide presentation, Dr. Morton additionally noted the history of P.T.S.D. and sexual abuse. R., Tr. p. 886, ll. 11-12. He noted that P.T.S.D. often leads to drug abuse for an attempt to self-medicate. R., Tr. pp. 887-888. He stated that Bryant was sexually abused by four different people, corroborated by other records. He included that his grandfather started out sexually abusing him and then there was inappropriate sexual behavior from his mother. R., Tr. p. 890, L 21 - p. 891, l. 9. He described abuse by an uncle and half-brother. He stated the family had a genetic

predisposition to not be able to control their drug abuse. R., Tr. p. 891, ll. 10-17. He also noted that he had attempted to get treatment for the abuse. R., Tr. p. 900, ll. 13-18.

Dr. Morton had opined that Bryant abused RAID insecticide, Benadryl, methamphetamine, marijuana, and LSD. R., Tr. pp. 881-889, 916.

Dr. Marty Loring, a social worker and social psychologist, testified about her social history of Bryant. She declared that she spoke with numerous family members, including the aunt and grandmother. R., Tr. p. 930. She also reviewed a series of records, including the "YWCA records of sexual abuse counseling." R., Tr. p. 931. Dr. Loring prepared a genogram of the family members, identifying various factors. She reported that it designated the sexual abuse reported the Appellant by the various family members. R., Tr. p. 941, ll. 10-18. She noted the abuse to Appellant by his older brother and grandfather (R., Tr. p. 941, l. 22 - p. 942, l. 4), the beatings by his father (R., Tr. p. 924, ll. 11-16). Particularly, she stated the abuse from his mother was profound and included sexual, emotional, and physical abuse. R., Tr. p. 942, ll. 21-25. Also, she related the sexual abuse of the uncle. R., Tr. p. 943, ll. 24-25.

Dr. Loring described the childhood as happy and fearless. R., Tr. pp. 946-947. However, she opined that in 1987, when he is 7, sexual abuse occurs by his grandfather and stepmother. R., Tr. p. 947, ll. 11-14. She states this creates a change.

She describes his description of anal rape. Later within the year, sexual abuse by his mother begins. This was followed by arson; explosive school behavior and lack of concentration which are signs of abuse. R., Tr. p. 948.

Dr. Loring describes the developmental path of Appellant's conduct which she described as a "psychologically battered child." R., Tr. p. 948 - p. 953, l. 20. She describes the difference between Appellant and his aunt who had "done so well, able to bounce back from her sexual abuse by grandfather..." because she had people in her life who took care of her. R., Tr. p. 954, l. 19 - p. 955, l. 7.

Dr. Loring described that counseling for sexual abuse that Appellant sought from Healthy Minds and the YWCA. R., Tr. p. 956-957.

Dr. Loring concluded that he had expressed grief and sorrow for his crimes. R., Tr. pp. 960-961.

Dr. Loring stated on cross-examination that when he has told pieces of sex abuse is "something to be believed." R., Tr. p. 971, l. 9-15. She confirmed that the allegation about the grandfather had been denied by the grandfather. R., Tr. p. 971, l. 16-21. She noted that there was conflicting evidence from the mother who stated that rather than the grandfather and grandmother being at the hospital at that alleged time of the sexual assault, Stephen and his grandfather were left alone at the house. R., Tr. p. 972, l. 1-18. As to the mother's abuse of the Appellant, Dr. Loring claimed that she, in part, denied molesting him. R., Tr. p. 972, l. 19-973, l. 9. She noted that Sgt. Jordan had confirmed that the aunt had called and told about the family member who had been sexually abused and asked for counseling. R., Tr. p. 978.

James Aiken, former Warden at the South Carolina Department of Corrections and prison administrator, testified as an expert in the field of adaptability to prison life.

R., Tr. p. 989. He opined, despite the prior fact of Appellant's assaultive behavior in a jail setting, that "we can confine him for an extended period of time in a high security setting." R., Tr. p. 992, l. 3-16. He stated that he was not a predator and can be managed in a prison setting. R., Tr. p. 994-995.

On cross-examination, it was developed, that in addition to his prior criminal record and the crimes against jail personnel that he had pled guilty, he had 40 prior prison infractions when he was incarcerated between 1999-2002. He stated that 13 were minor, but 27 were major infractions. R., Tr. p. 995-996. He noted that while he was a safekeeper from October 2004, he had 17 infractions, including striking an inmate, assault and battery on an inmate, threatening the life of a public official, assault and battery on a corrections officer. R., Tr. p. 997-998.

In the defense closing statement, Jack Howle addressed the existence of the sexual assault and reporting by the Petitioner. R., Tr. p. 1029-30. He states that it was reported, prior to the crimes, to the aunt and grandmother. He notes that the reporting was confirmed by Gina Creech, the probation officer who referred him to Healthy Minds. He spoke about Dr. Watts testimony related to the reporting and confirmation of the sexual assault. R., Tr. p. 1030, l. 7-13.

Summary

Judge Russo was not "precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death" in excluding

testimony by the aunt that she had been abused by the grandfather. Judge Russo did not abuse his discretion in assessing the mitigation evidence presented. He was able to consider evidence that Appellant was sexually abused by his grandfather - albeit disputed - through the hearsay presentation in mitigation by his self-reporting of the event to his aunt and grandmother, Dr. Watts, Dr. Loring, the YWCA, and Dr. Morton. The sexual abuse also formed the basis of the diagnosis of post-traumatic stress disorder by Dr. Watts.

The only evidence excluded was the personal testimony of the aunt that she was assaulted by the grandfather. The opinion of Dr. Watts which was formed partially based upon similar information from the aunt was not excluded. Nether was any information related to the Appellant's own reporting of the alleged abuse.

The sentencing judge "may not refuse to consider *or be precluded from* considering "any relevant mitigating evidence." *Mills v. Maryland, supra. See Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008). Judge Russo did not refuse to consider any mitigating evidence concerning Appellant's character, *only collateral evidence concerning the grandfather's character*. At the sentencing, he contended that the aunt's evidence concerning the grandfather's behavior to her would "add to the *credibility* to what Mr. Bryant said about the same type of molestation." R., Tr. p. 790, l. 23-24. In that setting, Judge Russo found it to not be relevant. In the appeal, the Appellant additionally asserts that it should be considered under SCRE Rule 404 (b) as proof of a common scheme or plan. However, the Appellant never sought to present it as a common scheme or plan toward the grandfather - he was attempting only to show that the crime in

fact happened at all. This was not presented as a Rule 404(b), but evidence solely to bolster the hearsay of the belated self-report by Appellant.

In *Tennard v. Dretke*, 542 U.S. 274, 284, 124 S.Ct. 2562, 159 L.Ed.2d 384 (2004), the Court noted that relevant mitigating evidence was "evidence which tends logically to prove or disprove some fact or circumstance which a fact-finder could reasonably deem to have mitigating value." As Judge Russo concluded there was no relevant mitigating value to whether the aunt was abused by the grandfather concerning Petitioner's character. Rather, the sentencing judge was free to consider whether the Appellant was abused by the grandfather and the existence of the opinion of Dr. Watts concerning the existence of post-traumatic stress disorder. He was free to consider the quality of the diagnosis based upon her reliance that the aunt corroborated the self-reporting by Appellant due to her own claim of similar abuse to Dr. Watts. Her professional reliance upon the evidence did not mandate the admission of the aunt earlier testimony. Rather, Dr. Watts reliance explained the testimony.

No Error Where Similar Evidence Was Admitted

Further, it must be conceded by the Appellant that similar evidence was introduced through Dr. Watts, Dr. Loring and Dr. Morton in their testimony without objection by the state or exclusion by the court. Any alleged error in failing to admit the personal testimony of the aunt could be considered cured by the subsequent testimony presented that the aunt was molested by the grandfather. The state did not object to the testimony.

Any Error In Exclusion is Harmless

This is an extraordinary case involving serial murders and assaults. The crime spree evidence by Bryant's actions are disturbing and uniquely heinous and brutal. His inability to conform to correctional rules and assaultive behavior in a structured environment placed Bryant in an appropriate case for the highest penalty. Cast against this aggravating evidence, the defense presented a mitigation presentation consisting of a uniquely dysfunctional family, a mental health history of the Appellant revealing problems dating back to 1988, including Attention Deficit Disorder, low functioning performance in school, an early history of juvenile detention and needs for medication to control and conform behavior. Importantly, evidence of the Petitioner's claim of sexual abuse at the hands of four family members was not excluded and additionally formed the basis for an opinion of Post Traumatic Stress Disorder. Assuming *arguendo* a right to present personal testimony from the aunt concerning assault against her by the grandfather - *a fact never presented as known by the Petitioner* - , the limited exclusion was harmless error because it could not have effected the verdict by Judge Russo.

The simple fact is that he had the information through the professional witnesses when they gave their opinions. Further, it was the assessment whether Appellant was molested and/or suffered from post-traumatic stress disorder which was the issue. There was additional trauma alleged by the defense - the three other family members and other assaults that he had been an alleged victim. The result would and could not have been different had the personal testimony of the aunt been admitted. The assertions otherwise are without merit on the basis of this record.

CONCLUSION

For all the foregoing reasons the appeal must be dismissed and judgment of conviction affirmed.


Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

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

By: 
DONALD J. ZELENKA
ATTORNEY FOR
RESPONDENT

September 16, 2010

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter and Richland County
Thomas Russo, Circuit Court Judge

THE STATE,

Respondent,


V.

STEPHEN COREY BRYANT,

Appellant

CERTIFICATE OF COMPLIANCE

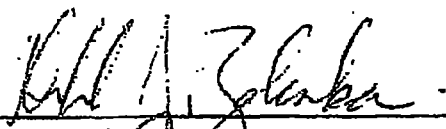
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."


DONALD J. ZELENKA
Assistant Deputy Attorney General

September 16, 2010

CERTIFICATE OF SERVICE

I, **Donald J. Zelenka**, hereby certify that I have served the *Final Brief of Respondent* in the foregoing action by depositing two (2) copies in the U.S. Mail to Joseph L. Savitz, III, Senior Appellate Defender, of the S.C. Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. 401, Columbia, SC 29201 this 16th day of September, 2010.



DONALD J. ZELENKA
Assistant Deputy Attorney General

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State,

Respondent,

v.

Stephen Corey Bryant,

Appellant.

Appeal from Sumter County
Thomas A. Russo, Circuit Court Judge

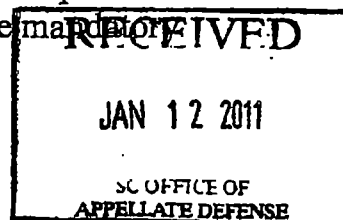
Opinion No. 26906
Heard November 30, 2010 – Filed January 7, 2011

AFFIRMED

Chief Appellate Defender Robert M. Dudek and Senior Appellate Defender Joseph L. Savitz, III, both of South Carolina Commission on Indigent Defense, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, and Assistant Deputy Attorney General Donald J. Zelenka, all of Columbia, and Solicitor Cecil Kelly Jackson, of Sumter, for Respondent.

JUSTICE PLEICONES: This is an appeal from a capital plea and sentencing. The opinion consolidates the appeal and the mandatory proportionality review. We affirm.



FACTS

Appellant began a crime spree with a first degree burglary on October 5, 2004. By the time the spree ended eight days later, appellant had committed three murders, assault and battery with intent to kill (ABIK), two more burglaries, and arson. While incarcerated awaiting trial, appellant threatened a correctional officer and subsequently attacked and seriously injured another.

Appellant "cased" isolated rural homes looking for vulnerable victims. He would appear midday at homes, claiming to be looking for someone or having car trouble. Appellant burglarized Dennis's home office a day after visiting Dennis's home. He next broke into Ammons' home while no one was there, cutting the phone wires and stealing a pistol and ammunition. Later that same day he shot victim Brown, who was fishing along the Wateree River, in the back.

On October 9, appellant killed an acquaintance (victim Gainey), leaving his body on a rural road, then stole electronics and an aquarium from Mr. Gainey's trailer before setting it on fire. Two days later, appellant went to victim Tietjen's home, shot him nine times, and looted the house. Appellant answered several calls made to Mr. Tietjen's cell phone by Mr. Tietjen's wife and daughter, telling both of them that he was the "proowler" and that Mr. Tietjen was dead. He burned Mr. Tietjen's face and eyes with a cigarette. Appellant left two notes on paper and scrawled a message on the wall: "victim number four in two weeks, catch me if you can." On another wall the word "catch" and some letters were written in blood.

Two days later appellant met victim Burgess at a convenience store around 4:30 am. They left together, and less than two hours later, a hunter found Mr. Burgess dead from gunshot wounds on a road bed in a rural area.

Appellant pled guilty to these offenses, in chronological order by date of offense:

- October 5, 2004: Second degree burglary (Dennis);
- October 8, 2004: First degree burglary (Ammons);
- October 8, 2004: ABIK (Brown);
- October 9, 2004: Murder, first degree burglary, second degree arson (Gainey);
- October 11, 2004: Murder, armed robbery, possession of a stolen handgun (Tietjen);
- October 13, 2004: Murder (Burgess);
- March 9, 2005: Threatening the life of a public employee (Correctional Officer Jones); and
- October 13, 2005: ABIK (Correctional Officer Justice).

Appellant received a death sentence for the Tietjen murder, the aggravating circumstance being armed robbery, and received concurrent life sentences for the two other murders (Gainey and Burgess) and the two first degree burglaries (Ammons and Gainey), thirty years for armed robbery (Tietjen), twenty-five years for the second degree arson (Gainey), twenty years for the two ABIKs (Brown and Justice), fifteen years for the second degree burglary (Dennis), five years for possessing a handgun (Tietjen), and thirty days for threatening (Correctional Officer Jones).

Appellant was unquestionably a deeply troubled individual who was first institutionalized in the South Carolina Department of Juvenile Justice (DJJ) when he was eleven years old, and whose elementary school records showed low intelligence and placement in emotionally handicapped classes. He had sought mental health counseling in September 2004 before beginning this crime spree. After his arrest in October 2004, he was diagnosed with Post-Traumatic Stress Disorder (PTSD) based on childhood sexual abuse by family members, Attention Deficit Disorder (ADD), and chronic depression. The ADD and depression diagnoses had first been made when appellant was incarcerated in DJJ. Appellant also regularly abused marijuana sprayed with RAID insecticide, methamphetamine, and Benadryl.

Appellant called his paternal grandmother as a mitigation witness. She testified that in August 2004 appellant, then aged twenty-three, confided to her and her daughter, Terry, appellant's aunt, that he had been sexually

abused beginning around the age of 6 or 7 by his paternal grandfather, his mother's brother, and an older half-brother. Appellant was extremely agitated, and his grandmother and Aunt Terry called a deputy and received information on getting help for appellant as a sexual abuse victim. Appellant sought help from two agencies before the spree began.

Appellant next called Aunt Terry as a witness. She confirmed her mother's testimony about appellant's August 2004 confession. During Aunt Terry's direct examination, the following exchange occurred:

Q. Okay. And what is your relationship to [appellant's] grandfather William Edward Bryant?

A. He's my biological father.

Q. Okay. And did you ever have any problems specifically with him?

A. Yes, sir.

SOLICITOR: Your Honor, I object to the relevance of any problems she may have had with family members. This is about [appellant].

THE COURT: Sustained.

MR. HOWELL: Your Honor, I think these problems are of the same nature. I think it goes to the same person committing them and —

THE COURT: It may go to this but it has no relevance as to [appellant]. I mean, you can testify as to [appellant].

MR. HOWELL: Your Honor, we feel it adds credibility to what [appellant] has said about the same type molestation.

THE COURT: And she can testify as to what she may have observed, if she has any personal knowledge, about any abuse to [appellant], but I don't think it goes to – it's not relevant to [appellant's] case as to what abuse this grandfather may have inflicted on others. It's not a question of how extensive his abuse but it's the relevancy to this defendant.

MR. HOWELL: Okay.

BY MR. HOWELL:

Q. Let me ask you this. What kind of relationship did you have? Were you close to your father at all?

A. No. I was, as a child, for a time and then things started happening and –

SOLICITOR: Your Honor, again, I –

THE COURT: Sustained.

ISSUE

Whether the trial judge erred in refusing to allow Aunt Terry to testify that she had been sexually abused by appellant's grandfather?

ANALYSIS

Appellant contends that the trial judge committed reversible error in refusing to allow Aunt Terry to testify that she was sexually abused by her

father. We find no abuse of discretion here. State v. Winkler, 388 S.C. 574, 698 S.E.2d 596 (2010).

Appellant's childhood sexual abuse, as well as that inflicted upon appellant's aunt, were part of the foundation upon which appellant's mental health expert and his social history expert based their opinions. Both experts testified, without objection, to these opinions. Accordingly, whether the aunt should have been allowed to testify directly to her abuse is irrelevant to appellant's mitigation case. The purpose of Aunt Terry's testimony was to establish intrafamilial sexual abuse. Since appellant's experts were permitted to testify to this abuse, appellant was not prejudiced by the trial court's decision to sustain the solicitor's objection. Cf. State v. Mercer, 381 S.C. 149, 672 S.E.2d 556 (2009) (no reversible error where excluded evidence was presented through other witnesses). Accordingly, even if that ruling were error, appellant could not demonstrate prejudice warranting reversal. E.g., State v. Wyatt, 317 S.C. 370, 453 S.E.2d 890 (1995).

PROPORTIONALITY REVIEW

We have conducted the proportionality review required by S.C. Code Ann. § 16-3-25(C) (2003), and find the capital sentence imposed here is not the result of passion, prejudice, or other arbitrary factor. Further, we find the sentence here is neither arbitrary nor capricious. E.g. State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001) (capital sentence for murder in commission of armed robbery).

CONCLUSION

Appellant's convictions and sentences are

AFFIRMED.

TOAL, C.J., BEATTY, KITTREDGE and HEARN, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE STATE,

RESPONDENT,

V.

STEPHEN COREY BRYANT,

APPELLANT

Appeal from Sumter County

Thomas A. Russo, Circuit Court Judge

Opinion No. 26906

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, petitioner seeks rehearing because this Court may have overlooked the fact that its holding in this case makes the background information of a mitigation specialist into substantive evidence. The hearsay information of a mitigation specialist is respectfully no substitute for the live testimony of petitioner’s aunt that she also had been sexually abused by petitioner’s paternal grandfather, William Bryant. It respectfully should have been held to be *cumulative to that testimony*.

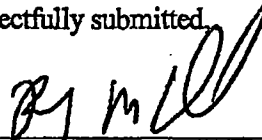
Defense experts are treated by solicitors with disdain – as hired guns – not worthy of belief. That disdain comes across to the jury. As this Court will recall the following occurred with petitioner’s aunt:

September 2008 R. p. 791, lines 8-11. The judge again summarily sustained the solicitor's objection. September 2008 R. p. 791, lines 12-21.

"[D]uring the sentencing phase of a capital trial, a defendant has the right to present mitigating evidence indicating a dysfunctional family background." *Ex parte Roy Edward Perkins*, 941 So.2d 242, 249 (Ala. 2006), citing *Penry v. Lynaugh*, 492 U.S. 302 (1989), *Eddings v. Oklahoma*, 455 U.S. 104 (1982), and *Lockett v. Ohio*, 438 U.S. 586 (1978). "[T]he jury must be able to consider and give effect to any mitigating evidence relevant to a defendant's background and character or the circumstances of the crime." *Penry*, 492 U.S. at 328.

Respectfully, the testimony of an expert about petitioner's background should not be held to be substantive evidence equal to the excluded first hand testimony of petitioner's aunt about her being sexually abused by the same person, the paternal grandfather. Mistreatment and sexually abuse of a family member has an effect on others in the family. There was no good reason in logic or law for the judge to have excluded the testimony of petitioner's aunt in this case, and its exclusion violated the holdings of *Penry v. Lynaugh*, 492 U.S. 302 (1989), *Eddings v. Oklahoma*, 455 U.S. 104 (1982), and *Lockett v. Ohio*, 438 U.S. 586 (1978). It added credibility to petitioner's assertion where anything a defendant says – particularly a defendant on trial for his life – is going to be viewed with great suspicion by the jury. Rehearing should be granted.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

This 24th day of January, 2011.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEPHEN COREY BRYANT,

APPELLANT

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 Donald J. Zelenka, Esquire, this 24th day of January, 2011.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 24th day
of January, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

ATTORNEY GENERAL'S OFFICE

RECEIVED 2-3-11

ADMINISTRATIVE INSTRUCTIONS

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FPOC(B03) 734-1496

February 2, 2011

Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Bryant, Stephen Corey

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/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

February 2, 2011."

The remittitur is today being forwarded to the lower court.

1462

The State v. Bryant, Stephen Corey
Page Two
February 2, 2011

Very truly yours,

Daniel E Shearman
ES

CLERK

DES/dmh

cc: ✓ Assistant Deputy Attorney General Donald J. Zelenka
The Honorable Cecil Kelly Jackson



ATTORNEY GENERAL'S OFFICE
RECEIVED 2-3-11

ADMINISTRATIVE INSTRUCTIONS
FILE 2011 OPEN _____ END _____
COPIES MADE _____

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

ROUTE TO _____
ORDER: _____
PEN RECORDS _____
OTHER: _____

February 2, 2011

REMITTITUR

The Honorable James C. Campbell
Clerk of Court, Sumter County
141 N. Main Street., Room 308
Sumter, SC 29150-4965

Re: The State v. Bryant, Stephen Corey
2004-GS-43-10096, 2006-GS-43-00696, 699, 700, 701 and 702

Dear Mr. Campbell:

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

Very truly yours,

Daniel E. Shearouse
DS

CLERK

DES/dmh

Enclosure

cc: Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
✓ Assistant Deputy Attorney General Donald J. Zelenka
The Honorable Cecil Kelly Jackson

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE STATE,

RESPONDENT,

v.

STEPHEN COREY BRYANT,

PETITIONER

MOTION FOR A STAY OF EXECUTION AND
FOR THE APPOINTMENT OF A
POST-CONVICTION RELIEF JUDGE

Counsel for Stephen Corey Bryant moves this Court for a stay of execution and to appoint a post-conviction relief judge so that post-conviction counsel can be appointed by the post-conviction relief judge.

I.

This Court affirmed petitioner's murder conviction and death sentence in State v. Stephen Corey Bryant, Op. No. 26906, Shearouse's Adv. Sh. No. 1 at pp. 17-23, 2011 WL 93674 (S.C.), (filed January 7, 2011).

II.

Petitioner sought rehearing in a petition dated January 24, 2011. This Court denied that petition on February 2, 2011.

III.

Petitioner now can raise numerous grounds of ineffective assistance of counsel in an application for post-conviction relief. In his application for post-conviction relief, while reserving the right to amend once counsel is appointed, petitioner can assert, at a minimum, the following grounds of ineffective assistance of counsel:

- (a) Petitioner was ineffectively represented, in derogation of his rights under the Sixth Amendment to the United States Constitution, where defense counsel failed to object, and correct the judge's misconception of the law, where the judge stating would "weigh the evidence" if petitioner pled guilty since South Carolina is not a weighing state and the judge weighing the aggravating circumstances against the mitigating circumstances when determining the sentence was highly prejudicial given the facts of this case. R. 1340-1341.
- (b) Petitioner was ineffectively represented, in derogation of his rights under the Sixth Amendment to the United States Constitution, where defense counsel failed to effectively rebut the solicitor's argument that these crimes had "nothing to do with trauma from sexual abuse" where Dr, Joel Sexton had testified about the victims pants -- "all of them" -- being unzipped since the solicitor dismissing petitioner's post-trauma stress disorder mitigating evidence of sexual abuse violated the fundamental demands of fairness. R. 130-131; r. 1009.
- (c) Petitioner was ineffectively represented, in derogation of his rights under the Sixth Amendment to the United States Constitution, where defense counsel failed to move to withdraw the entire guilty plea when the judge refused to allow the defense withdraw the guilty plea to charge of armed robbery since the request for a bench trial on the armed robbery

indictment was inconsistent with the guilty plea covering all of the charges, and the prudent course of action would have been to move to withdraw the entire plea.

- (d) Petitioner was ineffectively represented, in derogation of his rights under the Sixth Amendment to the United States Constitution, where defense counsel did not have the judge place on the record that he was a former solicitor and that he favored the death penalty in an egregious case since this was a critical fact where petitioner was waiving jury sentencing where any one juror could have prevented a death sentence from being imposed.

IV.

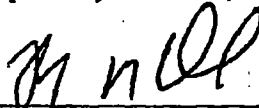
Petitioner can also raise allegations of ineffective assistance of appellate counsel if he desires after being appointed counsel during his post-conviction relief case. Further, the above list of issues petitioner can raise is not exhaustive, and would likely expand, once appointed post-conviction counsel has had the opportunity to investigate petitioner's case. The above grounds are merely offered to show that issues of ineffective assistance of counsel exist in this case. Neither appellate counsel nor petitioner intends to waive any aspect of the attorney-client privilege by filing this motion for a stay of execution which is mandatory pursuant to In re Stays of Execution in Capital Cases, 321 S.C. 544, 546, 471 S.E.2d 140, 141 (1996) for petitioner to obtain a stay to proceed with post-conviction relief.

V.

Based on the above, petitioner requests that this Court issue a stay of execution and appoint a post-conviction relief judge so that the appointed post-conviction relief judge can hold a hearing to appoint post-conviction counsel. This will allow petitioner to pursue his state court post-conviction relief action in the Sumter County Court of Common Pleas.

WHEREFORE, counsel for Stephen Corey Bryant requests that this Court issue a stay of execution and appoint a post-conviction relief judge so that the appointed post-conviction relief judge can hold a hearing to appoint post-conviction counsel so that petitioner can pursue post-conviction relief with the assistance of counsel in the Sumter County Court of Common Pleas upon the grounds of ineffective assistance of counsel, and any other grounds that may arise from post-conviction counsel's investigation of this case.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender
Attorney for Petitioner

February 4, 2011

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE STATE,

RESPONDENT,

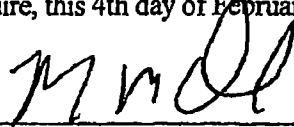
V.

STEPHEN COREY BRYANT,

PETITIONER

CERTIFICATE OF SERVICE

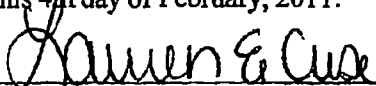
The undersigned attorney hereby certifies that a true copy of the motion for a stay of execution and to appoint a post-conviction relief judge in the above-referenced case has been served upon opposing counsel, Donald J. Zelenka, Esquire, this 4th day of February, 2011.



Robert M. Dudek
Chief Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 4th day of February, 2011.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: August 23, 2014.

STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Sumter County
 Thomas A. Russo, Circuit Court Judge

2004-GS-40-10096 (Richland County)
 2006-GS-43-696, 2006-GS-43-699 thru 702

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

STEPHEN COREY BRYANT,

Appellant.

**RETURN TO MOTION FOR STAY OF EXECUTION AND FOR APPOINTMENT OF A
 POST-CONVICTION RELIEF JUDGE**

M
 1/4

The Respondent State of South Carolina, through undersigned counsel, hereby makes a Return to the motion to allow Stephen Corey Bryant to file an application for post-conviction application and stay the execution of his Sumter County death sentence. This Court denied rehearing on February 2, 2011 from the earlier affirmance on January 7, 2011. *State v. Stephen Corey Bryant*, Op.No. 26906 (S.C.S.Ct. January 7, 2011).¹

Respondent submits that the condition precedent for the granting of a stay - "*the general*

¹The sole issue raised in the direct appeal through appointed appellate counsel Joseph Savitz was as follows:

The sentencing judge committed reversible error by excluding testimony that Bryant's aunt had been sexually abused by her father (Bryant's paternal grandfather), who the defense alleged also began abusing Bryant at the age of seven, as this evidence was both relevant under Rules 401 and 404, SCRE, and mitigating under the Eighth and Fourteenth Amendments to the United States Constitution.

nature of issues are appropriate for post-conviction relief," - has been met pursuant to § 17-27-160 and In Re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996). Pursuant to §17-27-160, Respondent would not oppose the assignment of a judge. ²

I. THE PROPOSED ALLEGATIONS

The Petitioner, through appointed appellate counsel Robert M. Dudek, asserts the following proposed grounds for post-conviction relief:

- (A) Petitioner was ineffectively represented in derogation of his rights under the Sixth Amendment to the United States Constitution, where defense counsel failed to object, and correct the judge's misconception of the law, where the judge stated that he would "weigh the evidence" if petitioner pled guilty since South Carolina is not a weighing state and the judge weighing the circumstances against the mitigating circumstances was highly prejudicial given the facts of this case. R. 1340-1341.
- (B) Petitioner was ineffectively represented in derogation of his rights under the Sixth Amendment to the United States Constitution, where defense counsel failed to effectively rebut the solicitor's argument that these crimes had nothing to do with

²§ 17-27-160. Capital case post-conviction relief procedures.

(A) If a defendant has been sentenced to death in South Carolina, he must file his application for post-conviction relief in the county in which he was indicted for the crime resulting in the sentence of death. Upon receipt of the application for post-conviction relief, the clerk of court shall forward the application to the judge who has been assigned to hear the post-conviction relief application. This judge shall maintain control over the expedited consideration of the application pursuant to this section. The judge assigned as the post-conviction relief judge must not be the original sentencing judge. A copy of the application shall be immediately provided to the solicitor of the circuit in which the applicant was convicted and a copy provided to the Attorney General. The filing of the application does not automatically stay any sentence of death.

§ 17-27-160. 1996 Acts and Joints Resolutions No. 448, § 6. (Effective June 18, 1996).

"trauma from sexual abuse" where Dr. Joel Sexton had testified about the victim's pants—"all of them"—being unzipped since the solicitor dismissing petitioner's post-trauma stress disorder mitigating evidence of sexual abuse violated the fundamental demands of fairness. R. 130-131; R. 1009.

- (C) Petitioner was ineffectively represented in derogation of his rights under the Sixth Amendment to the United States Constitution, where defense counsel failed to move to withdraw the entire guilty plea when the judge refused to allow the defense withdraw the guilty plea to charge of armed robbery since the request for a bench trial on the armed robbery indictment with the guilty plea covering all the charges, and the prudent course of action would have been to move to withdraw the entire plea.
- (D) Petitioner was ineffectively represented in derogation of his rights under the Sixth Amendment to the United States Constitution, where counsel did not have the judge place on the record that he was a former solicitor and that he favored the death penalty in an egregious case since this was a critical fact where petitioner was waiving jury sentencing where any one juror could have presented a death sentence from being imposed.

Motion for Stay, p. 2-3.

II.

In this Court's written order in In Re Stays on April 8, 1996, this Court stated as follows:

If the defendant desires a stay to pursue state post-conviction relief, the defendant must, within ten (10) days of the date of the issuance of the execution notice, file a motion to stay with this Court, setting forth the issues intended to be raised in the application for post-conviction relief. [If the general nature of the issues are appropriate for

post-conviction relief], this Court will assign a circuit judge to the case and issue a stay of execution.

In Re Stays off Execution in Capital Cases, 321 S.C. 544,546; 471 S.E.2d 140 (1996) [bracketed portion not included in published order in Westlaw, but included in April 1996 Order].

Respondent submits that the specific allegations are adequate to satisfy the conditions precedent of either "setting forth the issues intended to be raised in the application for post-conviction relief" or allowing an appropriate determination that "[I]f the general nature of the issues are appropriate for post-conviction relief, to authorize the entry of a stay. Also, §17-27-160(A).³

III.

Therefore, the discrete circumstances presented are sufficient to satisfy "*the general nature of issues are appropriate for post-conviction relief,*" to require the granting of a stay and to allow the assignment of a state post-conviction relief judge, a status hearing to determine the Petitioner's desire to proceed in a PCR action and his desire on whether counsel should be appointed, if so, the appointment of two (2) qualified counsel pursuant to § 17-27-160 and PCR proceeding to held consistent with Section 17-27-160 and In Re: Stays. Consistent with the time standards and scheduling orders.

³Respondent reminds the Court that subsequent to the April 1996 Order of In Re: Stays, the South Carolina General Assembly enacted §17-27-160. 1996 Act No. 448, effective June 18, 1996. This statutory section stated "the filing of the application does not automatically stay any sentence of death." §17-27-160.

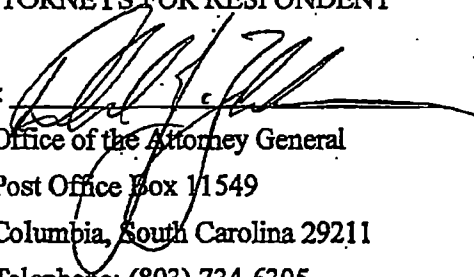
WHEREFORE, Respondent has made a Return to the Motion, does not oppose the entry of a stay and the assignment of a judge pursuant to §17-27-160.

Respectfully submitted,
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

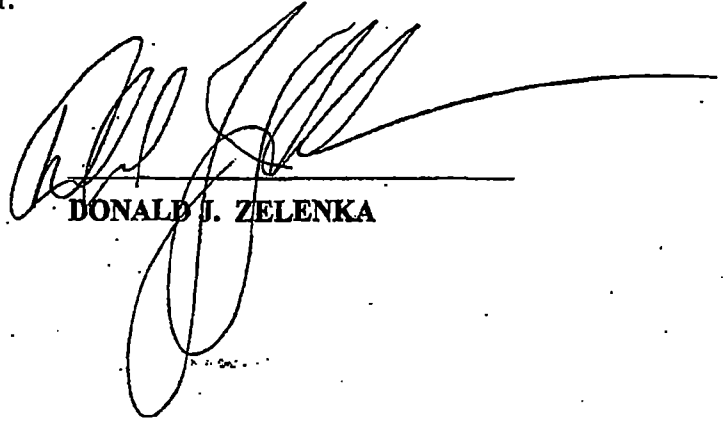
ATTORNEYS FOR RESPONDENT

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

Columbia, South Carolina
February 7, 2011.

CERTIFICATE OF SERVICE

I, Donald J. Zelenka, hereby certify that I have served the *Return to Petition for Stay of Execution* in the foregoing action on Robert M. Dudek, Appellate Defender at the South Carolina Office of Indigent Defense, 1330 Lady Street, Suite 401, Columbia, S.C. 29201 by depositing in the Inter Agency mail this 7th day of February 2011.



DONALD J. ZELENKA

The Supreme Court of South Carolina

The State, Respondent,
v.
Stephen Corey Bryant, Petitioner.

ORDER

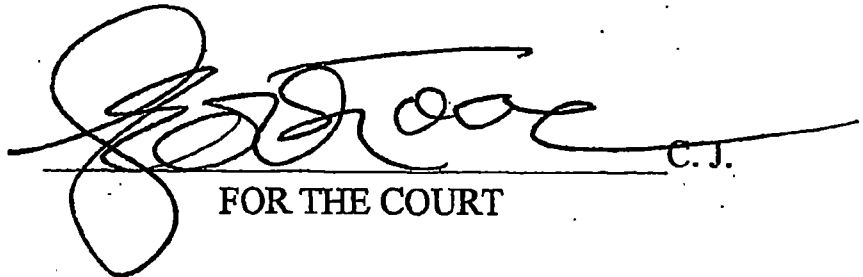
Petitioner was convicted of three murders, first and second degree burglary, assault and battery with intent to kill, and threatening the life of a public employee. He was sentenced to death on one murder, received concurrent life sentences for the other two, and terms of years for the other crimes. State v. Bryant, 390 S.C. 638, 704 S.E.2d 344 (2011). Petitioner's petition for rehearing was denied on February 2, 2011.

Petitioner now seeks a stay of execution, pursuant to In re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996), so that he can pursue post-conviction relief (PCR). The State does not contest the request for a stay.

The request for a stay of execution is granted. The stay shall remain in effect to the extent provided by this Court in In re Stays of

Execution in Capital Cases. The Honorable R. Ferrell Cothran, Jr. is hereby assigned to the PCR action petitioner intends to file. Judge Cothran shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard to whether there is a term of court scheduled. Judge Cothran shall conduct a hearing on petitioner's desires regarding counsel within thirty days of the date of this order. In addition, absent an extension of time by this Court, a final hearing shall be held and a final order issued in this matter within one year of the date of this order.

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

March 3, 2011

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF ORANGEBURG) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA)
5)
6 versus) TRANSCRIPT OF RECORD
7)
8 STEPHEN COREY BRYANT)
9 Defendant)

10
11 April 1, 2011
12

13 B E F O R E :

14 HONORABLE R. FERRELL COTHRAN, JR., Presiding Judge
15

16 A P P E A R A N C E S :

17 For the State: MELODY J. BROWN, Esq.
18 Assistant Attorney General

19 For the Defendant: MELISSA J. ARMSTRONG, Esq.
20 HEATH P. TAYLOR, Esq.

21 Reporter Present: HARRY DOT WALKER
22

23 HARRIET P. BENNETT
24 Reporter, S. C. Court Administration
46 Regency Oaks Drive
25 Summerville, S.C. 29485

1 (The within matter came before the Court on April 1,
2 2011)

3 MS. BROWN: Your Honor, we're here this morning pur-
4 suant to an Order from the State Supreme Court dated
5 March third, 2011.

6 Death Penalty Inmate, Mr. Stephen Corey Bryant,
7 wishes to file for post conviction relief, and desires
8 the Court to appoint him counsel.

9 THE COURT: You wish to file for PCR?

10 DEFENDANT: Yes, sir.

11 THE COURT: And you want me to appoint you counsel?

12 DEFENDANT: Yes, sir.

13 THE COURT: Did they explain to you that I used to
14 work for the First Circuit Solicitor's Office?

15 DEFENDANT: Yes, sir.

16 THE COURT: From 1983 until October of 2010.

17 I had no involvement in your case, and I don't know
18 anything about your case, but I wanted you to understand
19 that.

20 Do you understand that?

21 DEFENDANT: Yes, sir.

22 THE COURT: Your case went to Court in 2008, is that
23 correct?

24 DEFENDANT: I can't remember the exact date but it
25 was somewhere along that time.

2

1 THE COURT: Okay, and do you have any problem with
2 me as the Judge hearing your PCR case?

3 DEFENDANT: No, sir.

4 THE COURT: Okay, and do you have any problem with
5 me appointing these two attorneys to represent you?

6 DEFENDANT: No, sir.

7 THE COURT: And is that what you are requesting me
8 to do?

9 DEFENDANT: Yes, sir.

10 THE COURT: Do you have any questions you want to
11 ask me?

12 DEFENDANT: No, sir.

13 THE COURT: Okay. All right, is there anything
14 either of you would like to say, to bring up?

15 MS. ARMSTRONG: Not at tthis time, Your Honor. I
16 will be glad to draft an Order and submit it.

17 THE COURT: Okay. It is my understanding that no
18 application has been filed yet?

19 MS. ARMSTRONG: That's correct, Your Honor.

20 THE COURT: And it needs to be filed within sixty
21 days, I think.

22 MS. ARMSTRONG: Yes, Your Honor. Our plan is to
23 get the record on appeal and read that to figure out what
24 needs to appear in the record.

25 We will then file the application and even maybe

1 at some point revise or amend the application, depending
2 on what we find.

3 THE COURT: Anything from the State?

4 MS. BROWN: Your Honor, we have requested a copy of
5 the transcript be made and delivered to Ms. Armstrong, and
6 we anticipate that will probably be available early next
7 week. It is three volumes.

8 THE COURT: All right.

9 MS. BROWN: Your Honor, we are proceeding on the un-
10 derstanding that they will have sixty days to file the
11 application.

12 I would like to bring to the Court's attention, as
13 I'm sure the Court is aware, of the one year limitation
14 in (not audible on tape).

15 THE COURT: Are you all aware of that?

16 MS. ARMSTRONG: We are, Your Honor, and we
17 will certainly do everything that can be done to meet the
18 deadline.

19 Obviously, and I've spoken to Mr. Taylor as well, we
20 know of nothing that would suggest that our investigation
21 would cause us to fall beyond that one year limitation.

22 If it does, Your Honor, we would bring it to Your
23 Honor's attention as well as receive permission from the
24 Supreme Court. I believe that is the procedure to fol-
25 low in that event.

1 THE COURT: All right. Anything else, Ms. Brown,
2 on this case?

3 MS. BROWN: No, Your Honor, I don't believe so, at
4 this juncture.

5 THE COURT: Okay.

6 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Harry A. Walker to the best of my ability, having been heard in the Court of General Sessions for Orangeburg County on April 1, 2011.

FURTHER, I certify that I am neither of kin nor counsel to any party to this matter, nor do I have any interest therein.

This 14th day of August, 2013

Harriet P. Bennett

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RECORDED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

2011 MAY 10 AM 9:43

COUNTY OF SUMTER)

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, SC 43-*****

Stephen Corey Bryant,)

Applicant.)

INITIAL APPLICATION FOR
POST-CONVICTION RELIEF

vs.)

CERTIFIED TRUE COPY
OF ORIGINAL FILE

State of South Carolina,)

Respondent.)

Barbara Shaper
DEPUTY CLERK OF COURT

SUMTER COUNTY
SOUTH CAROLINA

1. Place of Detention:
The Applicant is currently detained at Leiber Correctional Institution.
2. Name and Location of Court which imposed sentence:
Sumter County Court of General Sessions located in Sumter, S.C.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
Three counts of murder, first-degree burglary, second-degree burglary, armed robbery, two counts of assault and battery with intent to kill, and threatening the life of a public employee.
4. The date upon which sentence was imposed and the terms of the sentence:
On *****, the Court imposed a sentence of death.
5. A finding of guilty was made after a plea of guilty.
6. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
7. If you answered "yes" to (6), list:
 - a. The name of each court to which you appealed:
The South Carolina Supreme Court.
 - b. The result in each such Court to which you appealed: Affirmed.
 - c. The date of each such result: January 7, 2011.

- d. If known, citations of any written opinion or orders entered pursuant to such results: State v. Bryant, Op. No. 26906 (2004).
8. N/A.
- 9/10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- A. Ineffective assistance of counsel in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. Counsel failed to conduct a reasonable investigation into Appellant's social history resulting in an inadequate penalty phase presentation. This dereliction was unreasonable and requires vacation of Applicant's sentence of death.
- B. Ineffective assistance of counsel in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. Counsel failed to properly advise his client as to the entry of his guilty plea such that the plea was not knowingly and voluntarily entered. Had applicant been properly advised, he would not have entered a guilty plea, but would have insisted on going to trial. This error requires that applicant's guilty plea be vacated.
11. Prior to this application, and with respect to this conviction, Applicant has not filed (a) any petition in a State Court under South Carolina Law, nor (b) any petitions in state or Federal Courts for habeas corpus or post-conviction relief, nor (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7), nor any other petitions, motions or applications in this or any other Court.
12. Not applicable.
13. No ground set forth in (9) has been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed.
14. Not applicable.
15. The grounds set forth in (9) were not previously raised because they are cognizable only in post-conviction relief.

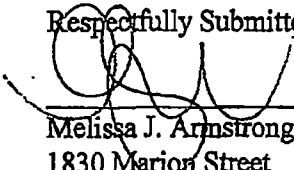
16. Applicant was represented by an attorney during his arraignment, plea, trial, sentencing and appeal.

17. Jack D. Howle, Jr. and John D. Clerk, Esquire, of the Sumter County Bar represented the applicant during his trial court proceedings. Joseph L. Savitz, III, Esquire, of the South Carolina Office of Appellate Defense, located in Columbia, South Carolina represented Applicant on his direct appeal.

18. Applicant seeks a reversal of his conviction, and vacation of his sentence.

19. Applicant is not now under sentence from any other court.

Respectfully Submitted:



Melissa J. Armstrong, Esquire
1830 Marion Street
Columbia, S.C. 29201
(803) 765-2796.

Heath P. Taylor, Esquire
3618 Sunset Blvd., Ste. D
West Columbia, S.C. 29169

ATTORNEYS FOR APPLICANT.

This 5th day of May, 2011.

Procedure, Rule 12(e), greater particularity and specificity. Respondents also request this Court to hold a status hearing within thirty (30) days pursuant to Section 17-27-160 and establish a final hearing date.

This Return follows:

I.

RESPONDENT'S STATEMENT OF THE CASE

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The Applicant, Stephen Corey Bryant, was indicted at the July 20, 2006 term of the Court of General Sessions for burglary in the second degree (2006-GS-43-696) [Oct. 5, 2004 incident involving Robert T. Dennis]; burglary in the first degree (2006-GS-43-697) [Oct. 8, 2004 incident involving James Ammons]; murder; burglary in the first degree; arson in the second degree; possession of a stolen handgun (2006-GS-43-698)[Oct. 9, 2004 incident resulting in homicide of Clifton Dale Gainey]; murder; armed robbery; possession of stolen handgun (2006-GS-43-599) [Oct. 11, 2004 incident involving death of Willard Tietjen]; murder and possession of stolen handgun (2006-GS-43-700) [Oct. 13, 2004 incident involving death of Clarence Burgess]; assault and battery with intent to kill (2006-GS-43-701 [involving Oct. 26, 2005 incident against Correctional Officer Larry Justice at Sumter-Lee Detention Center]; threatening life of public employee (2006-GS-43-702) [involving March 9, 2005 incident toward Correctional Officer Thornwell Jones of the Sumter-Lee Regional Detention Center]. ROA 1387-1400. On December 14, 2004, the Applicant was indicted at the Court of General Sessions for Richland County for Assault and battery with intent to kill (2004-GS-40-10096)[October 8, 2004 incident upon Clifton Brown]. ROA 1401-02.

The State made written notice of intent to seek the death penalty which was served on

arraignment before the Honorable Clifton Newman on April 27, 2007 on the Tietjen incident, 2006-GS-43-699. R. 1088-1090, April 27, 2007 Tr. p. 4-8. The Applicant was initially represented by Jack D. Howle, Jr., Esquire, of the Sumter County Bar. He was subsequently appointed James H. Babb to represent him as second counsel. On July 8, 2008, counsel Babb was removed upon motion and replaced by John D. Clarke of the Sumter County Bar. The notice of intent to seek the death penalty was served upon counsel Clarke at the July 18, 2008 proceeding. R. 1315, July 18, 2008 Tr. 7.

Motion hearings were held December 14, 2004, December 13, 2005, April 27, 2007, May 14, 2007, April 3, 2008, April 18, 2008, and July 18, 2008.

On April 11, 2008, the Applicant made a petition for writ of certiorari in the original jurisdiction of the South Carolina Supreme Court. On April 23, 2008, the Supreme Court of South Carolina issued an Order staying the trial, scheduled to begin April 28, 2008, pending decision on the petition for writ of certiorari. On May 1, 2008, the State opposed the petition. On May 30, 2008, the Supreme Court of South Carolina entered its Order, that "petition for writ of certiorari in the original jurisdiction is denied." Subsequently, on July 10, 2008, the Court denied a "motion for order reinstating a stay of trial."

a. The Guilty Plea

On August 18, 2008, the Applicant appeared before the Honorable Thomas A. Russo for a guilty plea. The Applicant was represented by court-appointed counsel, Jack Howle and John Clarke. The State was represented by Third Circuit Solicitor C. Kelly Jackson and Assistant Solicitor Dudley Saleeby. Counsel James H. Babb was also present. R. 1348, Plea Tr. p. 26. The record revealed that there were no plea negotiations as to sentence in the case. R. 1339,

1345-46, 1378-79, Plea Tr. 17, 23-24, 56-57. The Applicant entered guilty pleas to the following crimes:

1. burglary in the second degree [2006-GS-43-696].
2. burglary in the first degree [2006-GS-43-697].
3. assault and battery with intent to kill [2004-GS-40-10096] [Richland County].
4. murder [2006-GS-43-698].
5. murder [2006-GS-43-699].
6. murder [2006-GS-43-700].
7. assault and battery with intent to kill [2006-GS-43-701].
8. threatening the life of a public employee [2006-GS-43-702].
9. armed robbery [2006-GS-43-699].
10. possession of stolen handgun [2006-GS-43-699].
11. burglary first degree [2006.GS-43-698].

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#4.

R. 1334-38, Plea Tr. 12-16. The plea court determined that there was a sufficient factual basis for each of the guilty pleas. R. 1348-1381, Plea Tr. 26-59. The Applicant affirmed the State's factual basis as correct as to each crime. ROA. 1353, 1357, 1360, 1365, 1368, 1374, 1376, 1377, Plea Tr. p. 31, p. 35, l. 23; p. 38, l. 17; p. 43, l. 23; p. 46, l. 15; p. 52, l. 14; p. 54, ll. 16-18; p. 55, l. 25. Judge Russo deferred sentencing.

b. Sentencing Proceedings - September 2-5, 8, 9, 11, 2008

On September 2, 2008 the sentencing proceeding began before Judge Russo pursuant to Sect. 16-3 20(c)(a)(d) on indictment 2006-GS-43-699 involving the murder of Willard Tietjen.

The State had filed and served the Notice of Intent to seek the death penalty asserting the condition precedent of the statutory aggravating circumstances "murder was committed while in the commission of a robbery while armed with a deadly weapon." The State presented its evidence in aggravation through September 8, 2008. R. 1-730, Sentencing Tr. pp. 1-730.

The defense presented its evidence in mitigation. R., Sentencing Tr. pp. 734-1000. The Applicant waived his right to testify.¹ ROA pp. 1002-1004. The State and defense made closing arguments to the Court. ROA pp. 1005-1035.

Judge Russo sentenced the Applicant on September 11, 2005. He sentenced Bryant to thirty (30) days on 2006-GS-43-702 (threatening life of a public employee); twenty (20) years on 2004-GS-40-10096 (assault and battery with intent to kill); twenty (20) years on 2006-GS-43-701 (assault and battery with intent to kill); life imprisonment on 2006-GS-43-700 (murder); life imprisonment on 2006-GS-43-697 (burglary in the first degree); fifteen (15) years on 2006-GS-43-696 (burglary in the second degree); twenty-five (25) years on 2006-GS-43-698 (arson in the second degree); and life ((burglary in the first degree); and life (murder).

On 2006-GS-43-699, five (5) years (possession of stolen handgun); thirty (30) years (armed robbery); and life (murder). Judge Russo found beyond a reasonable doubt the existence of the statutory aggravating circumstance of "the defendant committed the murder while in the commission of a robbery while armed with a deadly weapon." ROA p. 1049, l. 22 - p. 1050, l. 8. On the incident involving the death of Willard Tietjen, Judge Russo sentenced Bryant to "death by electrocution or lethal injection." ROA p. 1051, l. 4-7.

¹ The Applicant did make a spontaneous interruption of the State's closing argument. ROA p. 1006, l. 12.

The Applicant, through counsel served and filed a timely Notice of Appeal on September 19, 2008. On March 23, 2010, an Initial Brief of Appellant was filed by Senior Appellate

Defender Joseph L. Savitz, asserting the following issue on appeal:

The sentencing judge committed reversible error by excluding testimony that Bryant's aunt had been sexually abused by her father (Bryant's paternal grandfather), who the defense alleged also began abusing Bryant at the age of seven, as this evidence was both relevant under Rules 401 and 404, SCRE, and mitigating under the Eighth and Fourteenth Amendments to the United States Constitution.

Initial Brief of Appellant, p. 3. The Respondent State of South Carolina, through Assistant Deputy Attorney General Donald J. Zelenka made an Initial Brief of Respondent on August 6, 2010. Final Briefs were filed on September 16, 2010. Oral argument was held before the South Carolina Supreme Court on November 30, 2010. On January 7, 2011, the South Carolina Supreme Court issued its opinion affirming the convictions and sentences. State v. Bryant (Stephen Corey), Op. No. 26906, 390 S.C. 638, 704 S.E.2d 344 (January 7, 2011). The Applicant, through appellate counsel Robert M. Dudek made a petition for rehearing. On February 2, 2011, the petition for rehearing was denied. The Applicant did not seek certiorari in the United States Supreme Court in the direct appeal.

The Remittitur was issued on February 2, 2011. On February 4, 2011, counsel Dudek made a motion for stay of execution and for the appointment of a post-conviction relief judge pursuant to In Re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996). Respondents made a Return on February 7, 2011. On March 3, 2011, the South Carolina Supreme Court issued its stay order.

Respondent attaches and incorporates herein by reference the following:

1. Final Brief of Appellant.
2. Final Brief of Respondent.
3. Record on Appeal.
4. State v. Bryant (Stephen Corey), Op. No. 26906, 390 S.C. 638, 704 S.E.2d 344 (January 7, 2011).
5. Petition for rehearing.
6. Letter Order, February 2, 2011 (petition for rehearing denied)
7. Remittitur Letter (February 2, 2011).

II.

The Crimes of Stephen Corey Bryant

1. **The Burglary of the Residence of Robert Dennis on October 5, 2004 [Tuesday].**

It began on October 4, 2004. Bryant comes upon the home of Robert Dennis. It has an iron gate, no trespassing signs, and dirt road access to his property which rests in an isolated, remote area. ROA pp. 186-189, 196. Bryant walks down the half mile dirt road to the Dennis home and tells Dennis that his truck was stuck at the top of his driveway. Dennis offers help and although uneasy takes him to the area and extracts the truck out of the bog. ROA pp. 189-190. Dennis gets his name "Carlos Bryan" and a false address. Dennis also writes down a description of the truck - a 1990 GMC two-tone blue truck. R. 1351-52, 191, Plea Tr. pp. 29-30; Tr. p. 191, II. 1-12.

On October 5, 2004, Dennis leaves his home and returns later that day and finds his home office burglarized. ROA pp. 192-194. There was entry through a window, with computer items

and checkbook stolen from his office. ROA pp. 192-193. Although no fingerprints were found, with the exception of glove prints, a shoeprint was raised outside the window which was sent to SLED.

A subsequent search warrant of Bryant's home found a right shoe that matched the shoeprint. In addition, Dennis identified Bryant as the visitor from October 4th which his photograph was on television and newspaper and contacted the police. R. 1352-53, 195-96, Plea Tr. pp. 30-31; Tr. p. 195, l. 18 - p. 196, l. 9.

2. The Burglary of James Ammons on October 8, 2004 [Friday].

James Ammons, like Dennis lived in an isolated and remote area outside of Sumter. ROA pp. 199-200. The morning of October 8th, Ammons takes his daughter to school and then travels into Sumter for errands. ROA p. 204. At that time, Ammons had allowed a friend, T. J. Hansen, to go deer-hunting on his property, but he got his truck stuck in the mud.

His friend goes to Ammons' home around 11:30 a.m., notices the sliding door open and enters to seek help or use the telephone. However, he finds the telephone is dead. He walks to another neighbors house and calls Ammons on his cell phone. ROA pp. 204-205, 211-216.

Ammons and his friend then returned to Ammons' home around 1:30 p.m. ROA p. 205. The sliding door is open, the television is off rather than on as he left it, and Ammons goes into his bedroom and finds the mattress moved, a .40 caliber Smith and Wesson pistol stolen along with ammunition and registration papers. Ammons then calls 9-1-1. R. 1354-55, R. 205-09, Plea Tr. pp. 32-33; Tr. pp. 205-209.

Subsequently, as a result of the search on October 13th, the gun, case, ownership papers and the box of ammunition are recovered from Bryant's house. R. 1355-56, 207-210, Plea Tr.

pp. 33-34; Tr. pp. 207-210. Bryant gave a series of statements just claiming the gun was found in a dumpster and then asserted he found it at a home in Pinewood where he stopped when he was low on gas, slid open the door, and took the gun. R. 1355-56, 216-17, Plea Tr. pp. 33-34; Tr. pp. 216-217. In a third statement, he admitted to cutting the telephone wires before he entered the home. R. 1357, 217, Plea Tr. p. 35; Tr. p. 217.

3. Assault on Clinton Brown in Richland County [October 8, 2004].

Clinton Brown was fishing with an acquaintance at the Billy Tolar Boating Landing off the Wateree River, ROA pp. 247-248. Brown saw Bryant come up and speak to them and then leave. The other fisherman leaves. ROA pp. 250-253. At one point Bryant returns, comes from behind Brown and shoots him in the back. Bryant then leaves, offering no assistance. ROA pp. 254-255.

Brown, bleeding, initially passes out. He comes to and struggles up to his truck and drives to Tuomey Hospital where he remains for over one week. R. 1357-1360, 254-56, 259-262, Plea Tr. pp. 35-38; Tr. pp. 254-256, 259-262.

The bullet recovered from Brown ultimately matches the stolen Smith and Wesson. Bryant admits the shooting to a Third-Party [Roy Lee Lambert], the next day. ROA pp. 273-276. Law enforcement was then contacted by that person. R. 1360, Plea Tr. p. 38. Lambert buys a knife from Bryant and sees a Smith and Wesson that Lambert offers to find a buyer, but Bryant says "its got blood on it." ROA p. 275.²

4. The murder of Cliff Gainey on October 9, 2004.

² Bryant gave statements asserting that he pulled the trigger and the bullet hit him in the back. ROA pp. 280-281. He stated the victim charged him so he fired back with a second shot, but claimed he did not know if it hit him. ROA p. 281.

Unlike the others, Applicant and Cliff Gainey knew each other. They were co-workers in construction, went fishing together and spent weekends with each other's family. R., 1362, Plea Tr. p. 40. On October 9, 2004, Bryant picked up Gainey from the mobile home he rented from his boss. They end up at a convenience store buying beer. [This is seen on store's camera.] They drive off arriving on Bells Mill Road. Bryant shoots Gainey three (3) times, leaves body and drives off. A passerby, William Morton sees a truck with its lights initially off speed away and then sees the body. After checking vitals he calls 9-1-1. ROA pp. 285-286. There is no identification on the body and he remains unidentified for nearly two days. ROA pp. 290-291, 301.

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After shooting Gainey, Bryant then returns to Gainey's mobile home. He steals a television, VCR, sound system and aquarium. ROA p. 317. Upon leaving, he sets fire to the couch. R. 1362-63, Plea Tr. pp. 40-41.

At 8:30, Gainey's ex-wife Linda Coker arrives with son and calls the fire department. They determine it is not accidental and determine it began prior to 8:25 due to the damage of a clock. ROA pp. 323-330. The family had been by previously at 7:30. ROA pp. 307-311.

Connecting Bryant to the murder was the positive comparison of the shell casings at the scene, the video of the convenience store with Gainey, and the results of the search warrant of Bryant's home where television, DVD, VCR, sound system and aquarium were found. ROA pp. 336-337. Further, Bryant's girlfriend Judy Justice, had been given a key from Bryant that was the key to Gainey's mobile home. ROA pp. 337-338.

Bryant also gave a statement claiming he threw the wallet into a dumpster, showed weapon to the victim, and took the items from Gainey's home. R. 1364-65, 340-44, Guilty Plea

Tr. pp. 42-43; Tr. pp. 340-344. In his last statement, he admitted shooting Gainey after he took a leak and then turned toward him when "I started freaking out." ROA p. 344.

5. The murder of Willard Tietjen on October 11, 2004 [Monday].

Between 11:00 a.m. and 5:30 p.m., Willard Tietjen, a disabled 62 year old, was murdered in his home. He lived with his wife, Mildred in a remote and isolated ranch house. R. 1366-67, Plea Tr. pp. 44-45.

Tietjen, suffering from a bad heart condition and early onset of Alzheimer's, was a man of habit who stayed around his home due to his conditions. ROA pp. 426-427, 473. His wife after leaving for work after breakfast, would begin calling on him around 4:30 p.m. R. 1367, 432, Plea Tr. p. 45; Tr. p. 432.

On October 11th, Tietjen spoke around 11:00 a.m. with a friend, Robert Summers. R. 1368, 433-34, 484-86, Plea Tr. 46; Tr. pp. 433-434, 484-486. Subsequently, without apparent forced entry, Stephen Bryant entered Tietjen's home. [In Bryant's statement, he says he knocked on Tietjen's door, asked for help because his truck had broken down and that Tietjen invited him inside]. R. 1368, Plea Tr. p. 46.

Tietjen is shot nine (9) times by Bryant in the dining room. R. 1368, Plea Tr. p. 46.

Bryant proceeds to go through Tietjen's wallet and takes cash and some cards. R. 1368, Plea Tr. p. 46. He throws cards around the living room floor. Bryant pull's Tietjen's masonic ring off his finger. Bryant methodically goes through each room in the house looking for items to steal. R. 1368-69; Plea Tr. pp. 46-47.

He takes power tools, a knife, a medallion, a jug of change, hand tools, a bag to carry them in, walkie-talkies, cell-phone, silver certificates, jewelry, an ammo box, and other items. R.

1369, Plea Tr. p. 47, ll. 3-10.

Bryant then takes a drink from the refrigerator, smokes cigarettes, and a cigar. R. 1369, Plea Tr. p. 47. In addition, Bryant writes a note,³ goes on the computer. R. 1369, Plea Tr. p. 47.

Bryant is still in the home when Mrs. Tietjen makes her daily call to the land line to check on her husband. ROA p. 435. She then calls Tietjen's cell phone and Bryant answers and stays "T.J. is dead" and admits killing her husband. R. 1369, 436-37, Plea Tr. p. 47; Tr. p. 436, l. 20 - p. 437. She hangs up and calls 9-1-1. She calls again and Bryant repeats "I told you T.J. is dead, and don't call again." ROA p. 438; also Tr. pp. 659-660, 698. Tietjen's daughter Kimberly Dees calls the cell phone also and Bryant again admits killing her father. ROA pp. 477-668.

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Kimberly's husband [Robert Dees] calls, and the same sad inculpatory statement is given. R. 1369, 481-82, Plea Tr. p. 47; Tr. pp. 481-482. These calls occur between 5:15 and 5:30. Law enforcement was called after.

Forensic testing connects the shell casings and bullets from the Tietjen scene with the stolen handgun. R. 1370, Plea Tr. p. 48. Bryant's DNA is found on cigarette material within the house. One was a partially smoked cigarette retrieved from the right eye of the victim. ROA pp. 594-595. It is also found on a pair of socks. ROA p. 595. Handwriting analysis finds the note consistent with Bryant's writing. R. 1370, 583, Plea Tr. p. 48; Tr. p. 583. A videotape of the Bi-Lo store shows Bryant using the change machine. *Id.* ROA pp. 562-563, 569.

Items of stolen property were recovered and connected to Bryant. ROA pp. 546-552.

Bryant sells the stolen knife to Roy Lambert who Bryant had admitted shooting Brown who turns

³ The contents of the note/letter stated: "no more sick computer porn for this sick f____r. By the way, just keeping my promise to all. Good luck finding me. LMFAO." The note also stated "I find it funny, victim number five in two weeks." ROA pp. 516-518.

it into police. ROA pp. 274-276, 572-573.

Bryant also gives inculpatory statements. ROA pp. 607-615. He admitted the Tietjen robbery and taking items while still armed. He described acts done within the house and laid claim as the sole perpetrator. He then carried law enforcement to locations where he had deposited items. He admitted conversations with Tietjen's family. R. 1371, Plea Tr. p. 49, ll. 2-10.

Mrs. Tietjen testified that her husband told her Friday, October 8th, a man came by the house looking for Kimberly Smith. She said her husband tried to assist the person with the use of the telephone book. ROA pp. 430-431. When she had returned home on the 8th, she saw a truck in the driveway that she had assumed was a deer-hunter's truck. She recalled it to be a GMC and similar color to a photograph of the truck identified as Bryant's. ROA pp. 430-431.

Dr. Joel Sexton, the forensic pathologist, testified about the extensive injuries to Mr. Tietjen. ROA p. 109. The victim had nine (9) gunshot wounds and burns to the eyes and his beard. ROA pp. 108-113. Two of the shots to the head were fatal. ROA p. 112, ll. 1-21.

6. The murder of Christopher Burgess two days later [October 13, 2004] [Wednesday].

Thirty-five (35) year old Christopher Burgess rode a bicycle at 1:30 a.m. to the Foxville Road area in Manchester Forest. R. 1372, Guilty Plea Tr. p. 50. He comes upon an Officer Benjamin Stiles and then continues on toward the mall. ROA pp. 345-348.

Around 4:20 a.m., Burgess ends up at a convenience store, the Kangaroo Market Express [where he is seen on video with Bryant]. [ROA p. 353, Exhibit 103]. Towanda Govan, an employee, knew both Burgess and Bryant by their coming into the store. ROA p. 351. On that

date, Govan recalled Chris coming in first and Bryant came in later and she saw them shake hands. ROA p. 352. She said it was around 4:20 a.m. ROA pp. 354-355.

After some conversation, Burgess leaves with Bryant after his bike is put into Bryant's truck. R. 1372, Guilty Plea Tr. p. 50. They eventually end up in the Foxville Road area. Similar to the Gainey incident, Bryant shoots Burgess and leaves the unconcealed body in the road bed.

Around 6:15 a.m., a deer hunter, Tony Jackson, sees the body in the roadway and calls 9-1-1. ROA pp. 358-360, p. 365.

Burgess had two (2) gunshot wounds - one through his left cheek that entered his brain and a second through his back that went through his heart and exited. R. 1373, Plea Tr. p. 51.

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#14
The removed bullet and shell casing matched the stolen handgun. R. 1373, Plea Tr. p. 51. The videotape of the convenience store show Bryant and Burgess together. Items that had been previously seen by law enforcement in Bryant's truck during an interview before this incident are found at the scene. R. 1373-74, Guilty Plea Tr. pp. 51-52. Burgess' bicycle is recovered from the truck when the warrant is served. R. 1373, Guilty Plea Tr. p. 51.

In Bryant's statements, he admits shooting Burgess with the Smith and Wesson, knew the location and described the body. R. 1374, 376-79, Guilty Plea Tr. p. 52; Tr. pp. 376-379. Bryant declared in his statements that Burgess started making demands where he wanted him to take him which "pissed me off" and he feared he would take his truck from him, so he reached under the seat, grabbed the gun and shot him. ROA p. 378, ll. 4-9, p. 379, ll. 5-12.

7. Threatening the life of Correctional Officer Thornwell Joe Jones at the Sumter-Lee Regional Detention Center on March 9, 2005.

Subsequent to his arrest, Bryant became a pre-trial detainee at the Sumter-Lee Regional

Detention Center. On March 9, 2005, Correctional Officer Cpl. Thornwell Jones and a nurse were passing out food trays and medication to the inmates. R. 1375, Guilty Plea Tr. p. 53. When they arrived at Bryant's cell, Bryant declares: "I's coming out of my cell when you open the door and I'm going to F____ you up." R. 1373, 383, Guilty Plea Tr. p. 53; Tr. p. 383.⁴ They open the door and Bryant appears - hands balled up and ready to fight. ROA pp. 383-384. The officers took it seriously and Bryant finally stood down without striking the officer. R. 1375-76, 383-84, Guilty Plea. Tr. pp. 53-54; Tr. pp. 383-384.

Jones testified that he did not have problems with him after that date. ROA p. 387.

8. The assault with intent to kill Correctional Officer Larry Justice on October 26, 2005.

MS
#5

On October 26, 2005, Officer Larry Justice is retrieving dinner trays at the Sumter-Lee Regional Detention Center maximum security area. ROA pp. 392-93. He approaches Bryant's single cell and Bryant places his tray in the bag. ROA p. 392. At that point Bryant sucker punches Justice multiple times whose head is knocked against a wall and falls to the ground. ROA pp. 393, 413. While in a fetal position, Bryant is kicking and beating Officer Justice on the face and chest. R. 1377, 413-14, Guilty Plea Tr. p. 55; Tr. pp. 413-414. An officer witnesses this and calls for assistance. ROA pp. 413-416. Bryant then withdraws and goes into this cell. ROA pp. 416-417.

Officer Justice suffers a broken eye socket, broken nose, crushed sinus bones and a brain aneurysm. R. 1377, 394-96, Guilty Plea Tr. p. 55; Tr. pp. 394-396. He has not worked since the

⁴ During the hearing, he testified that Applicant stated when I open his door he was "going to come out and go to my f____g ass because he ain't got nothing to lose." ROA p. 383, ll. 14-16.