

The Grose Law Firm, LLC
404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.
Phone: 864-538-4466 Fax: 864-538-4405
E-mail: chasgrose@gmail.com
Web: GroseLawFirm.com

October 31, 2016

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

RECEIVED

NOV 02 2016

S.C. SUPREME COURT

Re: *Jerry Buck Inman v. State of South Carolina*
Capital PCR, Case No. 2012-CP-39-0918
Sixty Day Status Report

Dear Mr. Shearouse:

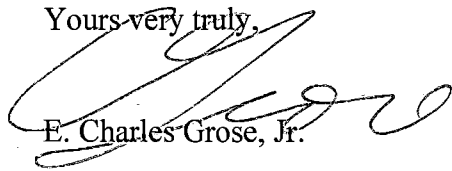
This letter is the sixty day status report pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996).

The Honorable Alexander S. Macaulay has scheduled the evidentiary hearing to begin on November 14, 2016.

Thank you for your attention to this matter. If you have any questions or require additional information, please do not hesitate to contact me.

With kindest regards, I am

Yours very truly,


E. Charles Grose, Jr.

cc: The Honorable Alexander S. Macaulay
Diana Holt, Esquire
Anthony Mabry, Esquire

The Grose Law Firm, LLC

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December 17, 2015

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

RECEIVED

DEC 21 2015

S.C. Supreme Court

Re: Jerry Buck Inman v. State of South Carolina
Capital PCR, Case No. 2012-CP-39-0918
Sixty Day Status Report

Dear Mr. Shearouse:

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By written order dated November 19, 2012, the Honorable Alexander S. Macaulay appointed me and Diana Holt to represent Mr. Inman. Our investigation is actively ongoing. Judge Macaulay convened a telephone status conference on November 23, 2015.

Thank you for your attention to this matter. If you have any questions or require additional information, please do not hesitate to contact me.

With kindest regards, I am

Yours very truly,

E. Charles Grose

E. Charles Grose, Jr.

By: Laura Wingal

cc: The Honorable Alexander S. Macaulay
Diana Holt, Esquire
Anthony Mabry, Esquire

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October 14, 2015

RECEIVED

OCT 19 2015

S.C. SUPREME COURT

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Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

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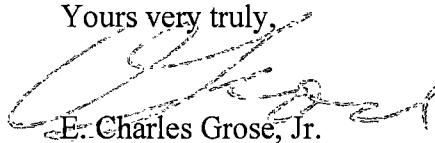
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By written order dated November 19, 2012, the Honorable Alexander S. Macaulay appointed me and Diana Holt to represent Mr. Inman. Our investigation is actively ongoing. Judge Macaulay convened a telephone status conference on August 28, 2015.

Thank you for your attention to this matter. If you have any questions or require additional information, please do not hesitate to contact me.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: The Honorable Alexander S. Macaulay
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August 18, 2015

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

Re: Jerry Buck Inman v. State of South Carolina
Capital PCR, Case No. 2012-CP-39-0918
Sixty Day Status Report

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AUG 20 2015

S.C. SUPREME COURT

Dear Mr. Shearouse:

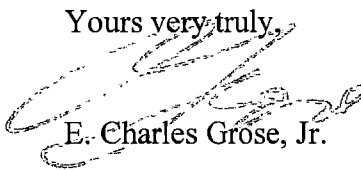
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By written order dated November 19, 2012, the Honorable Alexander S. Macaulay appointed me and Diana Holt to represent Mr. Inman. Our investigation is actively ongoing. Counsel is in the process of scheduling a status conference with Judge Macaulay.

Thank you for your attention to this matter. If you have any questions or require additional information, please do not hesitate to contact me.

With kindest regards, I am

Yours very truly,


E. Charles Grose, Jr.

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January 7, 2015

RECEIVED

JAN 09 2015

S.C. SUPREME COURT

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

Re: Jerry Buck Inman v. State of South Carolina
Capital PCR, Case No. 2012-CP-39-0918
Sixty Day Status Report

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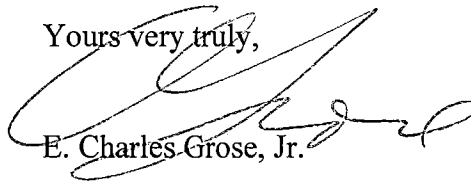
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October 17, 2014

RECEIVED

OCT 20 2014

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Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

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Capital PCR, Case No. 2012-CP-39-0918
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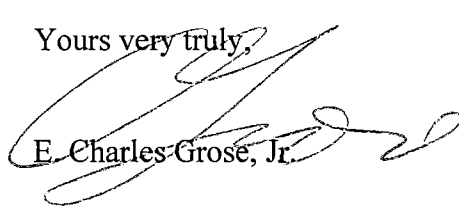
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By written order dated November 19, 2012, the Honorable Alexander S. Macaulay appointed me and Diana Holt to represent Mr. Inman. Our investigation is actively ongoing. Judge Macaulay convened a status conference on August 18, 2014 and issued a revised scheduling order.

Thank you for your attention to this matter. If you have any questions or require additional information, please do not hesitate to contact me.

With kindest regards, I am

Yours very truly,


E. Charles Grose, Jr.

cc: The Honorable Alexander S. Macaulay
Diana Holt, Esquire
Anthony Mabry, Esquire

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August 14, 2014

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

RECEIVED

AUG 18 2014

S.C. SUPREME COURT

Re: Jerry Buck Inman v. State of South Carolina
Capital PCR, Case No. 2012-CP-39-0918
Sixty Day Status Report

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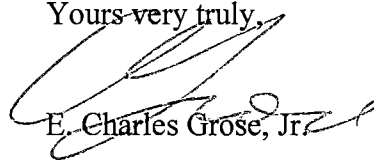
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June 18, 2014

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

RECEIVED

JUN 20 2014

S.C. Supreme Court

Re: Jerry Buck Inman v. State of South Carolina
Capital PCR, Case No. 2012-CP-39-0918
Sixty Day Status Report

Dear Mr. Shearouse:

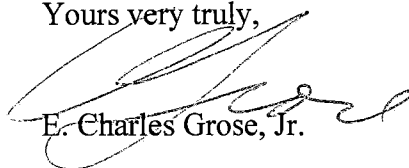
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April 22, 2014

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

Re: Jerry Buck Inman v. State of South Carolina
Capital PCR, Case No. 2012-CP-39-0918
Sixty Day Status Report

RECEIVED

APR 24 2014

S.C. SUPREME COURT

Dear Mr. Shearouse:

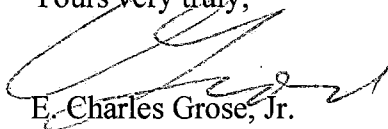
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February 14, 2014

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

RECEIVED

FEB 18 2014

Re: Jerry Buck Inman v. State of South Carolina
Capital PCR, Case No. 2012-CP-39-0918
Sixty Day Status Report

S.C. SUPREME COURT

Dear Mr. Shearouse:

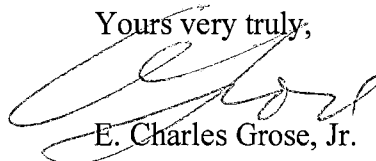
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December 17, 2013

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

RECEIVED

DEC 23 2013

S.C. Supreme Court

Re: Jerry Buck Inman v. State of South Carolina
Capital PCR, Case No. 2012-CP-39-0918
Sixty Day Status Report

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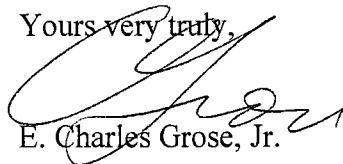
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October 14, 2013

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

RECEIVED

OCT 17 2013

Re: Jerry Buck Inman v. State of South Carolina
Capital PCR, Case No. 2012-CP-39-0918
Sixty Day Status Report

S.C. SUPREME COURT

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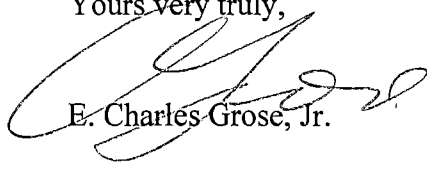
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July 15, 2013

2009-135866
Box 17
RECEIVED

JUL 18 2013

S.C. SUPREME COURT

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

Re: Jerry Buck Inman v. State of South Carolina
Capital PCR, Case No. 2012-CP-39-0918
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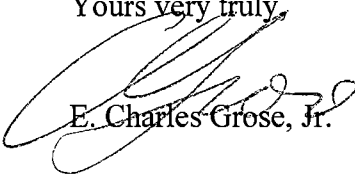
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Anthony Mabry, Esquire

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May 14, 2013

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

RECEIVED

MAY 16 2013

S.C. Supreme Court

Re: Jerry Buck Inman v. State of South Carolina
Capital PCR, Case No. 2012-CP-39-0918
Sixty Day Status Report

Dear Mr. Shearouse:

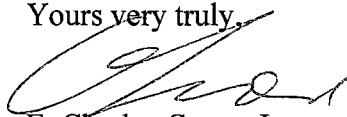
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cc: The Honorable Alexander S. Macaulay
Diana Holt, Esquire
Anthony Mabry, Esquire

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March 14, 2013

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

RECEIVED

MAR 18 2013

S.C. SUPREME COURT

Re: Jerry Buck Inman v. State of South Carolina
Capital PCR, Case No. 2012-CP-39-0918
Sixty Day Status Report

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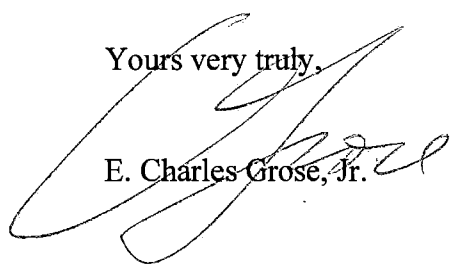
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E. Charles Grose, Jr.



cc: The Honorable Alexander S. Macaulay
Diana Holt, Esquire
Anthony Mabry, Esquire



State of South Carolina
Tenth Judicial Circuit Court

ALEXANDER S. MACAULAY
JUDGE

R. BOATNER BOWMAN
STAFF ATTORNEY

OCONEE COUNTY COURTHOUSE

POST OFFICE DRAWER 428
WALHALLA, SOUTH CAROLINA 29691-0428

TELEPHONE: (864) 638-4266
FASCIMILE: (864) 638-4267
E-MAIL: amacaulaylc@sccourts.org

January 11, 2013

The Honorable Harold P. Welborn
Clerk of Court
PO Box 215
Pickens, S.C. 29671-0215

RE: Scheduling Order in *Jerry B. Inman v. State*, 2012-CP-39-00918

Dear Mr. Welborn:

Enclosed for filing please find one copy of the original, signed Scheduling Order in the above-referenced case. A copy of this signed order is being provided to all counsel of record as well as the Supreme Court of South Carolina and South Carolina Court Administration.

I trust that you will find everything in order. However, if you have any questions, or if I may be of any further assistance in this matter, please do not hesitate to contact me.

With kindest regards I remain,

RECEIVED

JAN 14 2013

S.C. SUPREME COURT

Very truly yours,

R. Boatner Bowman
Staff Attorney

Enclosure: Scheduling Order

cc: Diana L. Holt, Esquire
E. Charles Grose, Jr., Esquire
Anthony Mabry, Esquire
The Honorable Daniel E. Shearouse, Clerk of Court, Supreme Court of South Carolina
Motte L. Talley

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
2012-CP-39-918

JERRY B. INMAN,)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)

Respondent.)

SCHEDULING ORDER

After advisement with and from the parties, the Court has set the scheduling order in this matter as follows:

1. The Court will schedule a status hearing in approximately 60 days, as the Court's schedule permits.
2. Discovery shall conclude 45 days prior to the evidentiary hearing, noting that the SCRCF allow for exceptions and noting that the duty to produce discoverable materials is ongoing.
3. An amended PRC Application is due 45 days prior to the evidentiary hearing, noting that the rules and South Carolina law provide that amendments to pleadings are allowed up until the end of any evidentiary hearing and liberally.
4. Evidentiary hearing shall convene in the Spring months of 2014, as the Court's schedule permits.
5. The parties will have a reasonable time to present post-hearing briefs simultaneously to the Court after all hearing transcriptions are complete, should the Court find post-hearing briefs useful.

AND IT IS SO ORDERED.



The Honorable Alexander Stephens Macaulay
Circuit Court Judge, Presiding by Special Order of the
Supreme Court

RECEIVED

JAN 14 2013

S.C. SUPREME COURT

 11, 2013
Walhalla, SC

The Grose Law Firm, LLC
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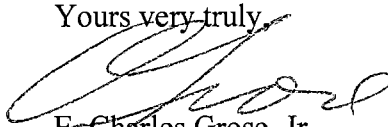
This letter is the sixty day status report pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996).

By written order dated November 19, 2012, the Honorable Alexander S. Macaulay appointed me and Diana Holt to represent Mr. Inman. On January 11, 2013, Judge Macaulay entered a scheduling order. Ms. Holt and I have begun an investigation.

Thank you for your attention to this matter. If you have any questions or require additional information, please do not hesitate to contact me.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

RECEIVED

JAN 15 2013

cc: The Honorable Alexander S. Macaulay
Diana Holt, Esquire
Anthony Mabry, Esquire

S.C. SUPREME COURT

The Supreme Court of South Carolina

The State, Respondent,

v.

Jerry Buck Inman, Appellant.

Appellate Case No. 2009-135566

ORDER

Appellant pled guilty to murder, first degree burglary, first degree criminal sexual conduct and kidnapping. He was sentenced to death and two additional thirty year terms of imprisonment. State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011). The Court denied the petition for rehearing. The United States Supreme Court denied certiorari on October 1, 2012. Inman v. South Carolina, 2012 WL 2192440 (U.S.S.C.)

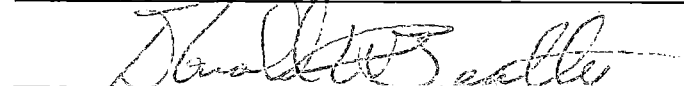
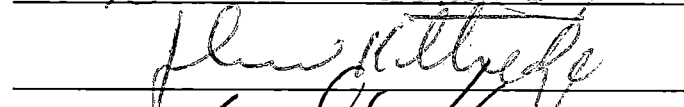
Appellant now seeks a stay of execution, pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), so that he can pursue post-conviction relief (PCR). The State does not oppose the motion.

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 Alexander S. Macauley is hereby assigned to the PCR action appellant has filed. Judge Macauley 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 Macauley shall conduct a hearing on appellant's desires regarding counsel within thirty days of the date of this order. Within sixty days of the date of this order, Judge Macauley shall issue a scheduling order setting forth the schedule that shall be followed in this matter, including the date of the hearing on the merits.

The scheduling order may be amended as necessary. A copy of the scheduling order and any amended scheduling order shall be provided to counsel, this Court and Court Administration. In addition to appellant's obligation to notify the Clerk of this Court of the status of this matter every sixty days under In re Stays of Execution in Capital Cases, supra, Judge Macauley is requested to provide the Clerk of this Court and Court Administration with an update on the status of this matter every one hundred and twenty days.

 C.J.
 J.
 J.
 J.
 J.

Columbia, South Carolina

October 31, 2012

cc:

Alan McCrory Wilson

Robert Michael Dudek

John W. McIntosh

William Walter Wilkins, III

Joseph L. Savitz, III

Donald J. Zelenka

The Honorable Alexander S. Macauley
Motte L. Talley

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

RECEIVED

OCT 10 2012

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

MOTION FOR A STAY OF EXECUTION AND
FOR THE APPOINTMENT OF A
POST-CONVICTION RELIEF JUDGE

Counsel for Jerry Buck Inman 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 that judge.

I.

This Court affirmed petitioner's convictions and death sentence in State v. Jerry Buck Inman, Op. No. 27081, Shearouse's Adv. Sh. #46 (filed December 28, 2011). This Court denied rehearing on January 25, 2012.

II.

A petition for rehearing was filed on January 11, 2012. As stated, this Court denied

rehearing on January 25, 2012.

III.

A petition for writ of certiorari to the United States Supreme Court, *Jerry Buck Inman v. South Carolina*, No. 11-10798, was then filed on June 11, 2012. The Court denied certiorari in its order dated October 1, 2012. A copy of that order is attached to this motion.

IV.

Petitioner now can and will 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 will assert, at a minimum, the following grounds:

V.

1.

Whether counsel was ineffective, in derogation of petitioner's right under the Sixth Amendment to the United States Constitution, by failing to retain another expert to continue to work on petitioner's mitigation or defense case after Dr. Marti Loring was intimidated by the solicitor and the trial judge refused to grant a mistrial?

2.

Whether counsel was ineffective, in derogation of petitioner's right under the Sixth Amendment to the United States Constitution, for assuring Dr. Loring continued working on the case after the judge recessed the case following the solicitor intimidating Dr. Loring?

3.

Whether counsel was ineffective, in derogation of petitioner's right under the Sixth Amendment to the United States Constitution, by not spending adequate time involving petitioner's family and clergy member in Tennessee especially given the long recess in his case.

This list is not exhaustive, and will likely expand, once appointed post-conviction counsel has had the opportunity to investigate. The above grounds are merely offered to show that numerous issues of ineffective assistance of counsel exist in this case.

VI.

Present counsel cannot take a position on other issues of ineffective assistance of appellate counsel. That is a matter for post-conviction counsel and the post-conviction court to determine.

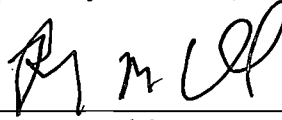
VII.

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 Pickens County Court of Common Pleas.

WHEREFORE, counsel for Jerry Buck Inman 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 Pickens 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,

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

Robert M. Dudek
Chief Appellate Defender

Attorney for Appellant

October 10, 2012

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

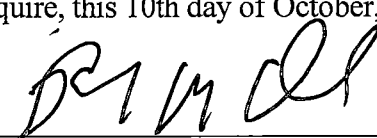
V.

JERRY BUCK INMAN,

APPELLANT

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 10th day of October, 2012.



Robert M. Dudek
Chief Appellate Defender

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 10th day of October, 2012.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

RECEIVED

OCT 10 2012

S.C. Supreme Court

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

October 10, 2012

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

Re: The State v. Jerry Buck Inman

Dear Mr. Shearouse:

Enclosed please find an original and six copies of the motion for a stay of execution and to appoint a post-conviction relief judge along with a certificate of service.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD:kam

Enclosure

cc: Donald J. Zelenka, Esquire

ALAN WILSON
ATTORNEY GENERAL



October 16, 2012

RECEIVED

OCT 16 2012

S.C. Supreme Court

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

Re: The State v. Jerry Buck Inman

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the *Return to Petition for Stay of Execution Pending Post-Conviction Relief* in the above-referenced case for filing. By copy of this letter, I am serving opposing counsel with same.

Sincerely,

Lonetta B. Brawley
Legal Assistant to Donald J. Zelenka
Senior Assistant Deputy Attorney General

/lbb
Enclosure

cc: Robert M. Dudek, Esquire
Sandi Wofford, Victims Assistance

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

RECEIVED

OCT 16 2012

S.C. Supreme Court

THE STATE,

Respondent,

v.

JERRY BUCK INMAN,

Petitioner.

RETURN TO PETITION FOR STAY OF EXECUTION
PENDING POST-CONVICTION RELIEF

61.
The Respondents, above-named, hereby make a Return to the Petition for a Stay of Execution to allow him to file a petition for a writ of certiorari in the United States Supreme Court. Respondent submits under *In Re Stays of Execution In Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), that since at least one of the three proffered issues is preserved, a stay to allow certiorari is appropriate. The Respondent would show this Court the following:

I.

The South Carolina Supreme Court affirmed the judgment of conviction and sentence of death on December 28, 2011 in State v. Inman (Jerry Buck), 395 S.C. 539, 720 S.E.2d 31 (2011). A timely petition for rehearing was filed on January 11, 2012. On January 25, 2012, the Supreme Court of South Carolina denied the petition for rehearing. The remittitur was issued on the same

date, January 25, 2012.

The direct appeal from the conviction and sentence of death was stayed pending the filing and pursuit of a petition for writ of certiorari to the United States Supreme Court in Inman v. South Carolina, No. 11-10798. The South Carolina Supreme Court entered a stay of execution on February 23, 2012 pending certiorari proceeding in the U.S. Supreme Court. Certiorari was denied by the United States Supreme Court on October 1, 2012. Inman v. South Carolina, __ U.S. __ (U.S. October 1, 2012)(cert denied).

II.

PENDING PCR PROCEEDINGS

Inman v. State, 2012-CP-39-918.

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yy.
The Petitioner made application for post-conviction relief dated June 19, 2012,¹ filed June 21, 2012 in Pickens County and received from the Clerk of Court on June 25, 2012 by the Office of the Attorney General. Inman v. State of South Carolina, 2012-CP-39-918. The application was prepared and filed by his appellate counsel, Robert M. Dudek. In the June 25, 2012 application, counsel Dudek raised the following allegations:

- I. Ineffective Assistance of Counsel
 - A. Counsel was ineffective for failing to obtain another mitigation expert after Dr. Loring no longer wished to participate because she was intimidated.
 - B. In the alternative, counsel should have continued to prepare with Dr.

¹Pursuant to § 17-27-160(A), "The filing of the application does not automatically stay any sentence of death.."

Loring in the event the judge called the case back to trial as occurred here.

Inman v. State, Application for Post-Conviction Relief, p. 3, Section 10, 11.

The Respondent State of South Carolina made a Return pursuant to § 17-27-160(B) on October 16, 2012. (Copy attached).

III.

The Petitioner, through appointed appellate counsel Robert M. Dudek, asserts in his October 10, 2012 pleading before this Court that he intends to file an application for post-conviction relief in Pickens County raising the following allegations, at a minimum:

- 
- I. Whether counsel was ineffective , in derogation of petitioner's right under the Sixth Amendment to the United States Constitution , by failing to retain another expert to continue to work on petitioner's mitigation or defense case after Dr. Marti Loring was intimidated by the solicitor and the trial judge refused to grant a mistrial?
 - II. Whether counsel was ineffective , in derogation of petitioner's right under the Sixth Amendment to the United States Constitution, for assuring Dr. Loring continued working on the case after the judge recessed the case following the solicitor intimidating Dr. Loring?
 - III. Whether counsel was ineffective , in derogation of petitioner's right under the Sixth Amendment to the United States Constitution, by not spending adequate time involving petitioner's family and clergy members in Tennessee especially given the long recess in the case.

Motion, p. 2-3.

III.

Respondent note that these claims will be evaluated in any state PCR setting under the mandates of *Strickland v. Washington*, 466 U.S. 668 (1984).

IV.

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.

Ag. xj.
In Re Stays, 321 S.C. 546 [bracketed portion not included in published order in West].

Respondents submit that the issues intended to be raised, under the prior precedent of this Court are of "the general nature of issues are appropriate for post-conviction relief," and the entry of the stay would be otherwise be appropriate. However, Respondent submits that under a Strickland v. Washington, 466 U.S. 668 (1984) and Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998) analysis, the Petitioner cannot satisfy his burden of proof on his proffered claims as set forth in the attached Return to the Application for Post-conviction relief.

V.

Therefore, Respondents leave it to this Court under the discrete circumstances presented and the meritless allegation based upon the unique record before this Court on whether this mere presentation of allegations satisfy ""the general nature of issues are appropriate for post-conviction relief," to require the granting of a stay to allow the assignment of a state post-conviction relief judge, appointment of two (2) qualified counsel pursuant to § 17-27-160 to

allow a PCR proceeding to held consistent with Section 17-27-160 and In Re: Stays.

WHEREFORE, Respondent has made a Return to the Motion.

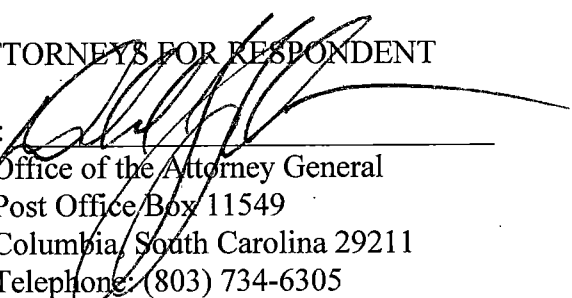
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior 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

October 16, 2012.

ATTACHMENT

RESPONDENT'S October 16, 2012 Return - Inman v. State, 2012-CP-39-918

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

JERRY BUCK INMAN, #5256)

C/A No. 2012-CP-39-918

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

RETURN OF RESPONDENTS TO
APPLICATION FOR POSTCONVICTION
RELIEF AND REQUEST FOR STATUS
CONFERENCE AND APPOINTMENT
OF COUNSEL

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H
The Respondent State of South Carolina hereby makes a Return pursuant to § 17-27-160(B) to the application for post-conviction relief dated June 19, 2012,¹ filed June 21, 2012 and received from the Clerk of Court on June 25, 2012 by the Office of the Attorney General. The application was prepared and filed by his appellate counsel, Robert M. Dudek. The Respondent will serve Mr. Dudek with this Return.

The direct appeal from the conviction and sentence of death was stayed pending the filing and pursuit of a petition for writ of certiorari to the United States Supreme Court in Inman v. South Carolina, No. 11-10798. The South Carolina Supreme Court entered a stay of execution on February 23, 2012 pending certiorari proceeding in the U.S. Supreme Court. Certiorari was denied by the United States Supreme Court on October 1, 2012. Inman v. South Carolina, __ U.S.

¹Pursuant to § 17-27-160(A), "The filing of the application does not automatically stay any sentence of death."

_(U.S. October 1, 2012)(cert denied).

On October 10, 2012, the Applicant made a motion for a stay of execution to allow assignment of a judge and pursuit of this PCR proceeding. At the time of this filing, a particular judge has not been assigned nor has counsel been appointed pursuant to Section 17-27-160 and In Re Stays of Execution, 321 S.C.544, 471 S.E.2d 140 (1996). The Respondent would show this Court the following:

I.

The Applicant, Jerry Buck Inman, #5256, is presently a safekeeper pending a sentence of death and also serving a term of years sentence pursuant to orders from the Clerk of Court for Pickens County.

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The Appellant, Jerry Buck Inman, was indicted at the November 2006 term of the Court of General Sessions for Pickens County for murder (2006-GS-39-2225), kidnapping (2006-GS-39-2224), criminal sexual conduct in the first degree (2006-GS-39-2223), and burglary in the first degree (2006-GS-39-2222). The circumstances of the charges involve the May 26, 2006 murder of Tiffany Souers.

The State, through Solicitor Robert M. Ariail of the Thirteenth Judicial Circuit timely noticed Inman of its intent to seek the death penalty on August 22, 2006 pursuant to S.C. Code, Section 16-3-26 (1976). On March 13, 2007, the Honorable Edward W. Miller was assigned by Order of the South Carolina Supreme Court to the case.²

² On August 17, 2007, Inman filed a Motion to Determine the Mode of Trial. In the motion counsel informed the judge of an intent to enter a guilty plea to murder and demand a jury trial for sentencing. ROA. 1202. The state informed the court that it did not consent to this plea in light of precedent of the South Carolina Supreme Court. ROA 1204.

A hearing was held on September 14, 2007 concerning the mode of trial motion. The

The Proceedings Prior to the Guilty Plea

On August 19, 2008, a competency hearing was held. Judge Miller was again informed that Inman sought to tender a guilty plea to murder. R. 913, August 19, 2008, Tr.p. 3, l. 20-21. The hearing initially concerned Inman's competency to stand trial was held.³ The Appellant was determined to be competent to stand trial.

Inman then entered guilty pleas to the charges on that date. ROA p. 911-975, August 19, 2008 Tr. p. 1- 65. He was represented by James W. Bannister, John W. DeJong, and Symmes W. Culbertson of the Greenville Bar. Judge Miller stated that sentencing was deferred until September 6. Id. Tr.p. 54.

As to the factual basis of the plea, the South Carolina Supreme Court described the crime in the following manner:

On the evening of May 25, 2006, Tiffany Marie Souers (the Victim), a rising junior at Clemson University, was alone in her off-campus apartment as her roommates were gone for the day. When one of her roommates returned to the

trial judge denied the request to attempt to enter a guilty plea to the charges. ROA, 830. Sept. 14, 2007 Tr.p. 54. A written order was entered on November 15, 2007. ROA _.

The Petitioner filed a notice of appeal from the November 15, 2007 Order to the South Carolina Supreme Court. On January 9, 2007, without requiring a response or pleading from the State, the South Carolina Supreme Court entered its Order dismissing the notice of appeal "without prejudice."

The Petitioner's counsel next sought certiorari to the United States Supreme Court. On June 8, 2008, the United States Supreme Court denied the petition for writ of certiorari. Inman v. State of South Carolina, No. 07-1298, 128 S.Ct. 2098 (June 8, 2008).

³Dr. Donna Schwartz-Watts testified as a defense expert at the competency portion. She stated that he was competent to understand the proceedings and had the capacity to communicate with counsel. ROA. 916, August 19, 2008 Tr.p. 6. She found he had a history of having a "mood disorder" and being treated for depression. She stated from the first time she met Inman in September 2006 he had a desire to plead guilty and knows what he is doing. She stated that he had made it clear to her that he wished to receive a death sentence and felt he deserved to die for what he had done. ROA. 920-21, August 19, 2008 Tr.p. 10-11.

apartment during the afternoon of May 26, 2006, she discovered the Victim's partially-clad body on the bedroom floor. An autopsy revealed the Victim had been sexually assaulted and died as the result of asphyxia due to ligature strangulation with a bathing suit top. Surveillance photographs taken during the early morning hours of May 26, 2006 captured a male, whose face was covered by a bandana, attempting to use the Victim's ATM card at two different bank machines in Clemson.

On June 5, 2006, law enforcement was able to identify Inman as the Victim's perpetrator based on DNA evidence obtained from the crime scene and processed through the National DNA Database, which had Inman's DNA evidence on file due to his prior out-of-state convictions for sexual offenses in 1987 and 1988. Using this information, law enforcement conducted a well-publicized nationwide search for Inman. On June 6, 2006 at approximately 11:45 p.m., law enforcement apprehended Inman in Dandridge, Tennessee.

Shortly after his arrest, Inman orally confessed to the crimes involving the Victim. Within the course of the next three hours, Inman gave separate written statements to an agent with the Tennessee Bureau of Investigation and to agents with the South Carolina Law Enforcement Division (SLED). In these two statements, Inman again confessed to the charged crimes and recounted in detail the events underlying these crimes. When asked to sign these statements, Inman declined and stated "we still have to go to court."

State v Inman (Jerry Buck), 395 S.C. 539, 720 S.E.2d 31 (2011).

The September Sentencing Proceeding

On September 8-11, 2008, Judge Miller held a non-jury sentencing proceeding as a result of the guilty plea to murder. Testimony was received from state witnesses Holly Bergman, Christina Morello, G.W. McCoig, Jeffrey Kindley, S. _____ C _____, V _____ P _____, Michael Hannon, Rhonda Jackson, J _____ G _____ and Dr. Eric Christensen. R., September 8, 2008 Tr. P. 1-243.⁴ The defense in mitigation initially presented Dr. David Price, Dr., Marti Loring and Claude Tournay, James Aiken, D _____ B _____ and Rev. David Hensley. ROA p. 255-410.

The State's Case at Sentencing.

Evidence was presented through the victim's roommate, **Holly Bergman**, that Tiffany

⁴The "September 8, 2008 Tr." encompasses the proceedings from September 8-11, 2008.

Souers was a Clemson civil engineering major and a dedicated student. ROA p. 39-40. She was described as being close to her family and would constantly be on the telephone with her mother and with her siblings. She was able to give good advice. She was described further as very outgoing and easily made friends. ROA p. 41-42. In describing how Tiffany's death affected her, it was like losing a sister. ROA p. 43. The violence of her death made it more difficult. ROA p. 43-44.

On cross-examination, it was pointed out that Tiffany was also involved in national charity organizations. She was also described as a dedicated member of the Catholic Church. ROA p. 47.

Another roommate, **Christina Morello**, similarly described Tiffany Souers. She presented photographs of school events at Clemson that they participated in. ROA p. 50-52. She described the victim's contagious laugh. ROA p. 53. She also helped in the community in addition to her school work. Her death affected Ms. Morello in many ways. ROA p. 54-55.

Ms. 85-
She noted that everyone who met Tiffany was her friend. In addition, she was the type of person that showed compassion and cared for others. ROA p. 57.

Chief Deputy G. W. McCoig of the Jefferson County Sheriff's Department in Dandridge Tennessee testified concerning the arrest of Inman on June 6, 2006. ROA p. 60. He stated he stopped after a brief car chase and placed him under arrest. ROA p. 64-65. After reading his Miranda rights, Inman spoke with the officer. During the conversation about the college student, Inman described himself: "after that shit right there, I'm a f__ing animal. ROA p. 68, ll. 21-25.

South Carolina State Law Enforcement Division Agent Jeffrey Kindley testified he

responded to Tennessee after Inman's arrest. Inman made a statement, after waiving Miranda rights. ROA p. 80-86. He described the belongings from Ms. Souers apartment being thrown out as he was driving back to Tennessee and hiding the sheets in the woods. ROA p. 90-91. In describing with Inman the extradition process and whether the charges qualified for the death penalty Inman stopped him and declared: "That's what I want. I killed a 20-year old college student with everything to live for. And he said he deserved the death penalty." ROA p. p. 94; ll. 1-5, p. 98, l. 22 - p. 99, l. 2.

S. ___ C. ___ described an event with Inman which occurred December 14, 1987. ROA p. 101. She stated that she was awakened in her apartment by a man with a revolver. She described being tied up by him and being told for her to tie up her roommate. ROA p. 103. With a gun to her head and hands tied, she was penetrated vaginally and anally. ROA p. 105. The assault lasted 20 minutes. Her roommate was forced to watch. He took money and keys, then threatened to kill them if they called the police. As a result, Inman pled guilty to the crime. ROA p. 108.

The prosecution published Inman's **prior convictions**. These included: 1). Dec. 14, 1987 - Sexual Battery - S. ___ C. ___ - 30 years (8-18-1989), 2). Robbery - 30 years, 3). Armed Burglary - 30 years, 4). Grand Theft Motor Vehicle - 5 years, 5). Kidnapping (2 counts) - 30 years, 6). Aggravated Assault - 5 years, 7). July 10, 1998 - Second Degree Sexual Assault - 20 years - (N.C.) - 9-26-88, and 80. Attempted Escape - February 5, 1991 - one year, ROA p. 112-13.

B. ___ B. ___ P. ___ testified concerning a May 23, 2006 incident with Inman. ROA p. 120. She described taking her daughter to the bus stop that morning. She described returning home at lunch when someone came from behind her, covered her mouth and put a knife to her throat.

ROA p. 122. She screamed and he placed her on the floor tying her hands behind her back. ROA p. 123. He stated he had found \$250, after she had denied having cash in the house. He then forced her into the bedroom from the kitchen. He then forced her pants and underwear down and saw she was on her period. ROA p. 126-27. At that point, he put her into a bedroom closet and told her he was going to take her car and stash it. ROA p. 127. After he left she was able to get to the phone and hit re-dial. The police determined that he had entered the house by cutting a hole in the floor. ROA p. 129. Two weeks later, she saw Inman's photo on CNN and identified him as her attacker. ROA p. 129-130.

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Michael Hannon of the Tennessee Bureau of Investigations testified that he responded to Chief McCoig on June 6, 2006 concerning Inman. ROA p. 139-140. He described getting a waiver from Inman on June 7, 2006 at 12:30 a.m. ROA p. 143-46. Subsequently, he stated he spoke with Inman concerning an incident in Rainsville, Alabama. ROA p. 151-52, 157-163. In the statement he gave concerning the May 23, 2006 incident, Inman described breaking into the house by cutting a hole in the vent. ROA p. 163. He stated he entered the house and found a blue bank bag with cash. However, once inside, the owner returned. He confirmed he intended to have sex with her, but she told him she was on her period and he put her into a closet. ROA p. p. 163, ll. 10-17. He took the money bag and her car which he drove a short distance and parked it and then switched back to his car. ROA p. 163. He described leaving Alabama and then going to South Carolina. ROA p. p. 163, ll. 22-25. He stated that when he got to South Carolina, he was not there a whole day before the incident with Tiffany in Clemson. ROA p. 163-64.

Michael Hannon testified about a subsequent statement Inman made after his arrest describing the rape of a mother with the child in the bedroom. ROA p. 214-15.

Rhonda Jackson, an investigator with the DeKalb County Sheriff's Department in 2006, testified that they developed a suspect from the interview she had with B. _ P. _ after she called when she saw the picture of Inman on CNN. ROA p. 169. After she gave Chief McCoig the details of the crime, he agreed to interview Inman about the incident. She subsequently came to Pickens County and interviewed him on June 8, 2006. ROA p. 173-181. Inman gave a detailed statement about the entry into the home and his intent to rape her and the fact he could not do so "because she told me she was on her period... she was a single mom and had a little..." ROA p. p. 183, ll. 2-5. He described leaving.

J. _ G. _ from Sevierville, Tennessee testified on May 22, 2006, she woke up and found someone on top of her with a knife to her throat around 5:00. ROA p. 193. He asked her where the money and jewelry was located and she showed him. When they returned to the bedroom, he tied her hands with her bra behind her back. ROA p. 196. Her little girl was crying. He demanded that if she cooperated no one would get hurt. ROA p. 196, ll. 19-23. With her knees on the floor, the man unsuccessfully attempted to rape her from the rear, and then turned her over, continuing to hold the knife against her neck. ROA p. p. 197, ll. 13-20. At that point, he raped her. ROA p. p. 197, l. 23 - p. 198, l. 12. He then took her to the bathroom and made her clean herself with shampoo twice. ROA p. 198. He continued to make them get items and place them on bed. He then placed her and her daughter into the bathroom. ROA p. 200. After ten (10) minutes she left the bathroom, got her purse, and then called the police. ROA p. 200. She next saw him about 2 weeks later on the evening news. ROA p. 201.

On September 9, 2008, **Dr. Eric Christiansen, the forensic pathologist**, testified about the cause and manner of death of Tiffany Souers. He certified that she died as a result of

asphyxia due to ligature strangulation. ROA p. p. 223, ll. 8-9. A bathing suit top was used. He stated she was rendered unconscious before she died. ROA p. 232. He found evidence of trauma or traumatic sexual relations in damage to her body. ROA p. 234. She had extensive bruising around both wrists which suggested a struggle while restrained and bruising above her ankles.

The Defense Case in Mitigation

Dr. David Price

Dr. David Price , an expert in forensic psychology, clinical psychology and neuropsychology, testified about an evaluation of Inman.⁵ He affirmed stated that he had an opinion that at the time of the crime, a factor in the commission of the crime, Inman was under

5 Prior to the beginning of the mitigation testimony, Solicitor Ariail returned to an earlier motion he had made concerning expert witnesses requesting the disclosure of the underlying data. ROA p. 250. In particular, he noted that the experts would be testifying about their opinions based upon underlying data that had not been provided to the State. Solicitor Ariail stated that the disclosure would speed up the process. As he stated: "if fact we don't know what it is [and] I'm not sure who their experts are." ROA p. 250, l. 8-11. He requested first, a reasonable amount of time prior to the testimony of the experts of the underlying data upon which they are going to rely, pointing out Dr. Schwartz-Watts prior disclosed report which noted data that the state did not have. He stated this was necessary for appropriate and meaningful cross-examination. Second, he requested that since they do not have the documents, that when the experts arrive that he underlying data is brought with them to court. ROA p. 251. Lastly, Solicitor Ariail stated, in a manner to give the court a heads up about the manner that some witnesses had testified in the past. In particular, he pointed out that Dr. Loring, who had a Ph. D. In social work, had a testimonial style that was a "rambling recitation of rank hearsay." ROA p. 251, l. 17-21. As such, he declared it was difficult to keep things clear on what was her opinion under SCRE Rule 703 and what was "hearsay." Solicitor Ariail noted that he was not objecting to "opinions", but did have objection to the parroting of totally uncorroborated hearsay. ROA p. 252-253.

Counsel Bannister objected to the disclosure of the reports and data, contending that would be "per se ineffective." ROA p. 253, l. 23-25. The Solicitor stated that he did not want a "report," but the data underlying the opinion, i.e, if the expert says that they looked at prison records from Florida, I want to see the prison records that they reviewed, which is allowed and required under SCRE Rule 703. ROA p. 254. The Court stated he would return to this issue later.

the influence of mental and emotional disturbance, and that his capacity to conform his conduct to the requirements of law was substantially impaired. ROA p. 258. He stated that he had reviewed 15 three to four inch thick notebooks which included records about his family, his incarceration, newspapers, and his mental health treatment records of over 3,000 pages. He confirmed Inman was the subject of mental health treatment for the 19 years he was incarcerated. ROA p. 259. He opined that Inman had a number of mood disorders, including dysthymia (sustained or intermittent depression for over 2 years), major depressive disorder - recurrent type, major depressive disorder - with psychotic features, bipolar disorder and psychorhythmic disorder. ROA p. 260. He noted that Inman had prior diagnosis of personality disorders, including schizoid personality disorder and he opined that he could also be diagnosed with dissociative identity disorder and sexual paraphilia. ROA p. 260. He noted the presence in the records of multiple suicide attempts, suicide ideation and withdrawal. ROA p. 261. He rated him of the Global Assessment of Functioning with a 30 as someone with serious impairment with the ability to communicate and with judgment and profound impairment in overall ability to function. Id. Dr. Price stated the schizoid personality disorder was illustrated by the fact he was an introvert with intermittent relationships within his family.

In the social history, Dr. Price noted that Inman had a genetic predisposition for the mental disorders because his mother had paranoid schizophrenia and father was an alcoholic. ROA p. 265. He stated Inman was raised in a turbulent and unstable environment, began using drugs at age 10, ran away at age 13, living on the streets at 15 and in jail at 17. Id. He noted that this disorder is often associated with depression.

Concerning dissociative identity disorder, he stated that Inman was not very forthcoming

about his illness. However, Dr. Price learned that in discussion with treatment providers and his pastor, Inman will assume a different effect and response which is like changing from one identity to another. He stated that the primary identity is a passive-dependant and depressed person that has difficulty with guilt. ROA p. 268-269. He stated that the evidence of depression, self-mutilation by tattooing and suicidal ideation supports the diagnosis. ROA p. 269. Also that he traveled in his series of sexual assaults is consistent. ROA p. 269.

Dr. Price describe Inman as a serial rapist. He felt it "astounded" him that he was not similarly diagnosed in Florida. He felt the Rapid Risk Assessment for Sexual Offender Recidivism (RRASOR) suggested that he clearly met that criteria. ROA p. 271-272.

Dr. Price found that Inman had significant records for being sexually abused, physically abused, living in an unstable environment with a mother with periods of anger who they thought was depressed. ROA p. 272-273. Dr. Price felt that Inman had one stable relationship - his maternal grandfather who died when he was young. He was abandoned by his father who had sexually abused him and began to act out of conflict at age 10 with drugs, failing school, and winding up on the street. ROA p. 273. In reviewing Inman's crimes, he found similarity from the victim's crimes with Inman's own experiences where his sister was also subject to bondage when she was tied up and the rapes tended to follow a certain pattern - hand tied, kneeling down, lean forward over the bed in an awkward position, suggesting that he was acting out what had happened to him. ROA p. 275. This was part of his "compulsive rape." ROA p. 275. He stated that Inman felt 'shame and loathing about this rape and murder.' ROA p. 276. This similar feeling was consistent throughout his records, noting that he had attempted suicide on 7 occasions (six while incarcerated). Id. Dr. Price described the various ways he attempted to kill

himself including slit wrist, cutting his jugular vein, swallowing barbed-wire, and trying to starve himself. ROA p. 279.

Dr. Price stated that Inman's stated that "I killed a 20 year old college student with everything to live for - I deserve to get the death penalty"⁶ statement is consistent with Inman's history and also reflected in his unhappiness and hopelessness while in prison. ROA p. 280-81.

Dr. Price opined that he is a national expert in malingering. He felt that Inman was not malingering based upon his extensive psychiatric history. He noted that Inman instead minimizes the problems and is protective of his parents failings in raising him. ROA p. 283. He felt that Inman had tried to hinder Price's effort to get a life sentence. ROA p. 283. He noted that Inman had talents in being a tattoo artist and had carpentry skills.

Concerning his interaction in prison, Dr. Price found that Inman grew up in prison and was afraid about being released. Particularly, he had stated that after release he had planned to work for a year or two give the money to his mother and then commit suicide. ROA p. 284. Dr. Price concurred with a North Carolina doctor that Inman was a lost soul who would continue to be lost based upon his bad genetic loading with the history of a paranoid schizophrenic mother and alcoholic father. He had been physically and sexually abused and abandoned by his father in the unstable environment. He began getting into trouble at age 10 with drug use, by 13 he was running away and on the streets. Inman had a long history of mood disorder and his family had never been able to teach him to develop normal heterosexual relationships. He had a schizoid personality disorder, developed a dissociative identity disorder and developed sexual paraphilia.

⁶See also, ROA p. 299, Defense exhibit 11.

ROA p. 285.⁷

On cross-examination, Dr. Price conceded that he did not bring the 15 notebooks with him that he reviewed to prepare his opinion and testimony. ROA p. 304-305. He stated that he received the material from counsel Bannister's office. Importantly, he admitted that he was influenced by every document he read. Id. At that point, Solicitor Ariail renewed his request to see all the notebooks that Dr. Price reviewed. ROA p. 306. During the questioning, Dr. Price confirmed that as to child abuse, sometimes Inman would report it happened and other times he would not report it. ROA p. 307-308. He admitted that the history showed the Inman had the ability to make choices inasmuch as he did not kill the victim in Florida, said he would not harm the child in Tennessee, did not kill the North Carolina inmate, but did kill Souers. ROA p. 308-309. Concerning death, Dr. Price stated that Inman did not want to die, but thought that the death penalty was the appropriate penalty and that he was remorseful for it, thinking of himself as "scum." ROA p. 311.

 The defense adjourned for the evening seeking to resolve the record production of material reviewed by Dr. Price and the requested disclosure to the State pursuant to SCRE Rule 705. ROA p. 320-323.

⁷ At that point, the defense proffered a series of exhibits. The Solicitor - noting that no foundation had been laid and they were not authenticated or certified - stated that the exhibits were pure hearsay. ROA p. 287.

Counsel Bannister asserted that since this was a penalty phase of a capital case "rules of evidence are more lax than they would be in the guilt phase of a trial." ROA p. 288, l. 1-4. He opined that it would be more expedient to simply mark the exhibits and have them put in the record so the judge could read them. He felt that they should come in as medical records or business records from the prison. Exhibits 3 - 20 were then marked. Dr. Price stated these exhibits were considered by him in making his opinion. ROA p. 291. See ROA p. 294-304.

Dr. Marti Loring

The testimony of **Dr. Marti Loring, a LCSW licensed clinical social worker and board certified expert in traumatic stress** is involved in arguments II and III.⁸ For purposes of this portion, on September 8, 2009, Dr. Loring was called to testify in mitigation. ROA p. 324-325. After she was initially *voir dire*d, she was qualified as an expert in areas of abuse, trauma, social histories and forensic interviewing. Id. R., P. 326. However, it was briefly developed during the state questioning that Dr. Loring had failed to comply with the state licensing law for out of state licensed social workers. ROA p. 328, l. 1-3. See S.C. Code Ann. § 40-63-200. The prosecution in making the objection to her qualification provided the statute to Judge Miller noting that it carried civil and criminal sanctions. ROA p. 328, l. 19-25. Although she was granted immunity, Dr. Loring initially invoked her Fifth Amendment and initially refused to testify after receiving advised from personal counsel Bill Godfrey, even after being granted immunity. [Dr. Loring would later testify as a Court Witness].

Mitigation Continues

Claude Tournay

The defense then called **Claude Tournay of the Florida Department of Corrections**. He testified that he had reviewed the sexual offender screening and that in 2004 it was determined that he could not find enough criteria to determine a “paraphilic sexual disorder” or diagnosis. Id ROA p. 357, l. 21-25. He testified that in January 2004, he found sadistic behavior, child molestation abnormal sexual behavior and that Inman was being treated for major depression

⁸Respondent incorporates the procedural history set out in that portion by reference to those arguments.

disorder, recurrent. ROA p. 358. Tounay stated that a April 2004 letter from the Florida Department of Corrections stating that Inman - convicted of rape - was a sexually violent predator would have required the Department of Children and Family Services to send three psychologists to review and examine the inmate and determine whether he was a threat to society. If so , he would have been civilly committed to and institution for crimes which occurred after 1993. ROA p. 360. However, Inman's crime had happened before October 1993. However, as a psychiatry inmate, the department made a referral to Tennessee and arrangements for Inman to continue his treatment for his depression. ROA p. 362-63.

James Aiken

James Aiken, an expert regarding the assessment of inmate classification and expert in prison management and prison classification, testified that based upon his record review, Inman would be automatically in a "high security status" due to the life without parole sentence he would receive, that crime he was convicted and his cumulative behavior patterns while previously confined. R. Tr.p. 369. He also noted that Inman had some security threat group and gang related issues that concerned Aiken a great deal. ROA p. 369. He noted the presence of a Swastika tattoo, which suggests in the prison setting membership in a Nazi gang and security threat group. ROA p. 371. Because Inman is a "multiple sex offender," Aiken testified that it gave him added concern because gangs and security threat groups hate them "and will kill them because they have such a distaste for them." ROA p. 371-372. This is because he has the tattoo and is a multiple sex offender. ROA p. 372.

Aiken stated that because of these factors the correctional department would have to put Inman in a security envelope of a single cell with no free movement or interaction with other

inmates since they do not know who would put a hit on him. He would have to be moved with a security escort and 23 hour lock up. ROA p. 376. He stated no other inmate could have access to him because it would violate "the duty to protect." ROA p. 377. Aiken stated that Inman's security status would be "SL-3" which is the highest level.

On cross-examination, Aiken added that his security level is also increased by the fact of publicity and that it was a high profile case that would be known within the inmate population that Inman was a multiple sex offender. Aiken also found significant in his prior prison record evidence of self-mutilation and multiple disciplinaries, including attempted suicide and attempted escapes. He noted that some of his disciplinaries included possession of weapons for either to do harm or for his own protection.

Family Member

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The **Appellant's older sister** testified about her relationship with Inman. She stated that she had a fond memory of him playing "pee-wee" football and she was a cheerleader. She described them getting ready for their roles on Saturday mornings and the family routine. ROA p. 388-89. She also testified about in winter going out from their home in the country across the street into a wooded area and sliding along a creek. She stated that one time they were out there with their cousins and Inman fell through a soft piece of ice and he cried all the way home, noting that he cried frequently as a child. ROA p. 390. She described "sibling rivalry" and fights over jeans between Inman and his sisters because he would wear their jeans and leak ink on them. She stated that he had "seizures" where he would daze, his body stiffen and shake and would sometimes be accompanied by a high fever. ROA p. 392-93. She stated this set him apart from others and prompted a lack of friends. She said that the family moved frequently and lived in

Tennessee, Florida, Texas, and North Carolina. ROA p. 393.

She said that Inman loved pets. She felt, however that Inman did not like himself. She stated that at one time Inman had to share a bedroom with his grandfather to whom he was very close and would talk together for hours. The grandfather passed away when he was 16, which was a turning point in his life. ROA p. 395. Afterwards, Inman began staying out late, became more withdrawn and once ran away from home and was found sleeping outside a church. ROA p. 396.

In describing their mother, she said that she suffered from bipolar disorder and schizophrenia. She said that the mother was affected by her medication and would hear things, talk to herself, and would freak out over the smallest thing. ROA p. 396-97.

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The sister described events when he was age three and living in a trailer in Florida. She stated that she started receiving inappropriate presents such as see through nightgowns. Later they moved to another house in Florida and she claimed that her other grandfather, Mr. Inman Sr. would come into the bedroom she shared with the Appellant [she was 5 and he was 3] and the grandfather would blindfold her and tie her hands to the bed and turn her over and she recalled that it was sexual abuse. She described that the grandfather would leave her in the top bunk and go to the bottom bunk. While she did not know what was happening to the Inman, she heard him crying and they both were threatened. Id. She stated that the step-grandfather also messed with her. ROA p. 400. She described a conversation that she once had with Inman when she stated that she had been sexually abused and he stated that he had been abused also. ROA p. 400-401.

Rev. David Hensley

Reverend David Hensley, Inman's pastor, was presented to testify. However, Inman objected to his testimony based upon the priest -penitent privilege which Inman refused to waive.

ROA p. 402-405. Rev. Hensley then only described the fact that he met with Inman the Friday before with his Bible, grape juice, wafer, and poured water over Inman's head. ROA p. 405.

April 20, 2009 Proceedings

On April 20, 2009, the matter was re-convened for the sentencing hearing. At the outset, counsel Godfrey for Dr. Loring returned with a motion requesting that she be released from her out of state subpoena or for alternate relief. **ROA, 446-47, April 20, 2009 Tr.p. 8-9.**⁹ At the hearing, Judge Miller stated that he wanted the defense to consider calling Dr. Loring as a witness in mitigation. He stated that she was ready willing and able to come testify voluntarily. Counsel Bannister stated that he had certain motions and that they were not in a position to call her as a witness.¹⁰ Counsel called Public Defender John Mauldin as a witness on the misconduct claim. Mr. Mauldin testified about the circumstances concerning the Michael Laney case. ROA 510-549, Tr.p. 72-111. It was essentially his position that the Solicitor office had agreed to a life sentence based upon a desire to have a misconduct claim dropped concerning its questioning of an expert witness, Dr. Everington on the issue of mental retardation.¹¹

Ms. Loring

⁹As set forth below in Argument One, Judge Miller had refused to vacate his certification of Dr. Loring as an material out of state witness at proceedings on April 14, 2009. See ROA 1021-1034, April 14, 2009, Tr.p. 1-14.

¹⁰The defendant made a motion to recuse the 13th Circuit Solicitors Office based upon a claimed prosecutorial misconduct based upon the incidents concerning Dr. Loring. ROA 499-501, Tr.p. 61-63, a motion to determine the role of Solicitor Ariail and the Prosecution team, and a motion to suspend proceedings. Solicitor Ariail responded in writing and orally concerning the claim that they were involved in Dr. Loring's potential arrest and included an affidavit from Mr. Geary in Georgia to support the position. ROA 506-07, Tr.p. 68-69. Response to Motion, ROA 1243.

¹¹In its response to the motion, the Solicitor's office presented a different version of the circumstances that lead up to the life sentence. *Response to Renewed Motion for Mistrial*. ROA 1207. The questioning concerning Dr. Everington was whether she had exceeded the scope of her

This was a matter that the state disputed within its questioning. ROA 549-555, Tr.p. 111-117. The record revealed that the objection to Dr. Everington's testimony in Laney was not to her qualification as an expert in mental retardation, but that she was not qualified in S.C. to administer IQ tests and that only a licensed psychologist could do that type of interpretation. ROA 556, Tr. 118. The claimed terms of a proposed agreement were set out in State Exhibit 25. ROA 565-66, Tr.p. 127-128. However, the initial negotiation was not successful and rejected by the state. ROA 566-67, Tr.p. 128-129. It was developed that the Laney motions based upon alleged prosecutorial misconduct were never ruled upon by a judge and were withdrawn after the death notice was withdrawn. Mauldin confirmed that the stated reason for the state's withdrawal was the victim's family concerns and endless litigation on mental health issues..." ROA 578-79, Tr.p. 140-141.

Laney's other lawyer, Troy Tessier also testified concerning the Laney matter. ROA 580-87, Tr.p. 142-149.

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Susan Allen, a juror in the Edens and Holloway case, testified about a dinner the Solicitor's office held for the jurors in the case after the trial was completed. ROA 588-89, Tr.p. 150-151. She stated the issues raised by the office was to seek out what factors influenced them the most in not giving the death penalty. ROA 592-93, Tr.p. 154-155. On cross-examination, the voluntary contact concerning the dinner was pointed out consistent with Judge Hayes instructions to jurors. ROA 595, Tr.p. 157.

Judge Miller again made inquiry of the defense concerning the defense of its intent to call

qualifications as an expert witness - a claim that was ultimately supported by the Board of Psychology. *Exhibit 2 to Response*. ROA. __. The pleading also addressed other collateral issues raised concerning the motions and its contested factual issues.

a social historian, noting this case is going forward. The court was concerned because Dr. Loring is present and ready to go, "but we are not going to set this case up for failure." ROA 603-04, Tr.p. 165-166.

Judge Miller then denied the defense request to call Solicitor Ariail and other prosecutors concerning the raising of an improper issue related to the lack of licensing of Dr. Loring and why the issue was not raised in the earlier trial. ROA 604-05, Tr.p. 166-167.

Desa Ballard , a lawyer who concentrates on legal ethics and professional responsibility, testified that the Solicitor had violated a number of rules of professional responsibility in connection with his earlier examination of Dr. Loring. R. 611, Tr.p. 173.

At the conclusion of the testimony, Judge Miller stated that he would not suspend the proceedings. ROA 633, Tr.p. 195. He further stated that Dr. Loring was going to come and he would not remove them as advocates in the case. ROA 633, Tr.p. 195.

The April 21, 2009 Proceeding

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On Tuesday, April 21, 2009, defense counsel Bannister again advised Judge Miller that the defense was not going to call Dr. Loring as a witness. ROA 639, April 20, Tr. p. 201. Judge Miller stated that he was considering calling Dr. Loring as a "court's witness." ROA 639, Tr. p. 201, ll. 5-6. He stated that his client had pled guilty and asked him to be the sole fact finder in the case. [Defense counsel Bannister concurred with that statement: "That's correct."]. ROA . 639, Tr. p. 201, ll. 11-14. The judge stated that Dr. Loring was the first choice by the defense and "I believe that she can testify without fear." ROA 640, Tr. p. 202, ll. 15-16. After Loring's counsel confirmed that she had gone over the subject matter the prior evening, Judge Miller stated that she had earlier spent up to 9 to 10 hours preparing. Counsel Godfrey stated that she had previously

stated she had reviewed the files 4 to 5 hours, reviewed the file yesterday, has her charts and pictures since they had talked about her testifying as a witness and she had advised him that she felt protected by the court. ROA 641, Tr. p. 203, ll. 7-21.

Counsel Bannister renewed his motion for a mistrial based upon the prosecutorial misconduct claim. ROA 642, Tr. 204. He requested that a life without parole sentence be entered under the 5th Amendment Double Jeopardy Clause. ROA 643, Tr. 205.

The State opposed the motion, citing Fields v. J. Haynes Waters Builders, 376 S.C. 545, 658 S.E.2d 80, 86 (2008), which allowed a court in qualifying an expert witness to look at the statutory requirements for licensing.¹² The State argued that there was no prejudice from the conduct. Dr. Loring is there and able to testify which shows there was no witness intimidation. She was neither threatened nor intimidated. Further, the State noted that this was a bench trial where the trial judge is presumed to be able to differentiate what it feels is improper. ROA 645, Tr. 207.

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Judge Miller initially rejected the double jeopardy motion. He concluded that there was no evidence the State deliberately goaded the defense to make the mistrial motion. ROA 645, Tr. p. 207, ll. 15-19. However, he did not accept the State's position on Fields because there is no question that whether a person is licensed in particular state is a significant factor in determining whether they should be qualified, but when the Solicitor brought up the criminal sanctions, it was improper. ROA 646, Tr. 208. However, the trial judge found it was immediately addressed and resolved with the grant of immunity. ROA 646, Tr. p. 208, ll. 4-7. Judge Miller opined in light of

¹² The State made a written "Response to Renewed Motion for Mistrial and Memorandum" which is incorporated by reference. ROA 1214-1241 "Response").

the administrative order, Baggerly and Fields, that there was no criminal conduct in the witness who arrives solely to testify as an expert witness. ROA 646, Tr. p. 208, ll. 15-18. Relying upon U.S. v. Golding, 168 F.3d 700 (4th Cir. 1999) for a reversal the remarks must be improper (which he found) and such comments or remarks must have prejudicially affected the defendant's substantial rights so as to deprive him of a fair trial.

Judge Miller noted that this was not a jury trial, but a bench trial and the result might have been different. He found that the defendant's rights were not prejudicially affected. Particularly, he found that Dr. Loring was prepared to testify before it occurred and is prepared to testify now according to her attorney. ROA 647, Tr. p. 209, ll. 21-25. Judge Miller stated that in his capacity as fact-finder he is interested in hearing everything that might bear on his decision. He does not find "deliberate prosecutorial misconduct." ROA 648, Tr. 210. Counsel Bannister asserted that had they been provided a jury with the plea, the result would have been different,

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Counsel Bannister next moved for a continuance. He stated that on September 11 when DROA Loring took the 5th, the matters were suspended and he was directed to either fix the problem with DROA Loring or find another social historian. Counsel stated that while he thought it was a red herring until the Supreme Court spoke on the issue, the issue was still decided against them on the licensing issue. The only available expert he asserted he could find was Jan Vogelsang who he sought funding for on January 2 and had less than 4 months to prepare. ROA 651-52, Tr. 213-14. As he asserted at the April 14 hearing, he declared she could not be prepared by April 20. ROA 653, Tr. 215.

Judge Miller noted that there had been discussions throughout that this case was to restart on April 20. ROA 653, Tr. p. 215, ll. 21-25. He stated that according to Ms. Vogelsang's

affidavit she would not be prepared to testify until the first quarter of 2010. ROA 654, Tr. p. 216, ll. 1-13 [It was April 2009 at that time].

Judge Miller stated that Dr. Loring was prepared to testify and had done all her work. He noted that she had been on the case a long time and the court wanted to hear from her. However, he stated that he would not allow the prosecutors to intimidate her. R. 654-55, Tr. 216-17. Judge Miller stated that this case will be finished this week and Vogelsang could be put up. R. 655, Tr. 217.

Counsel Bannister stated he needed a ruling on his continuance and thought he was being told it was denied.

Judge Miller clarified that he would break to let them meet with Dr. Loring since she was present and was prepared to go forward. R. 655, Tr. p. 217, ll. 13-19.

April 22, 2009 Proceeding

On Wednesday April 22, the defense returned to its case in mitigation. R. 656, Tr. 218.

Kenneth McArthur

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Kenneth McArthur, Inman's step-father, testified that he has known Inman since he was four years old. R. 657, Tr. 219. He stated that the September hearing was very stressful for McArthur and his wife, Vera, because of the potential sentence. He stated Vera had been hospitalized in January due to the stress. He stated they love Inman and enjoy having the opportunity to see him in prison. R. 657, Tr. p. 219, ll. 17-24.

At that point, based upon their prior motions, counsel Bannister declared that he was not calling further witnesses. R. 658, Tr. p. 220, ll. 8-12.

The Court Declares Its Intent to Call Dr. Loring

Judge Miller then declared his intent to call Dr. Loring. R. 658, Tr. p. 220, ll. 14-17. He stated that (1) she would aid the fact-finder in the resolution of the case, (2) she was the number one choice for social historian in the case, but the defense has stated it had no contact with her since September, (3) she has been rehabilitated and despite the fact that she refused to testify in September because of her feelings of intimidation (which he ruled was prosecutorial misconduct which did not rise to the level to require reversal or mistrial) which is cured in part by her presence today. "I think it's necessary to put her up to ensure that these claims of due process violations are put to rest." R. 658-59, , Tr. p. 220, l. 14 - p. 221, l. 6.

Defense counsel Bannister objected citing Riddle v. State, 314 S.C. 1, 443 S.E.2d 557 (1994) and SCRE Rule 614. While admitting the right to call a witness was within the court's discretion, he contended it was limited in State v. Anderson, 304 S.C. 551, 406 S.E.2d 152 (1991) to a situation in a criminal case where four prerequisites exist:

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(1) the prosecution must be unwilling to vouch for the veracity or integrity of the witness; (2) a close relationship must exist between the accused and the potential court's witness, *e.g.*, accomplices and family members; (3) there must be evidence that the prospective witness was an eyewitness to the transaction upon which the prosecution is based, gave a sworn statement concerning the pertinent facts, and the statement has been contradicted or it is probable that it will be contradicted; and (4) the testimony the witness is to relate must be material, such that without the testimony a miscarriage of justice would likely result.

R. 659-660, Tr. 221-22. Counsel contended that the prerequisites were not met in this case. R. 660, Tr. p. 222, ll. 15-22.

After the defense renewed its motions, the trial judge reminded the defense that Dr. Loring was here voluntarily. R. 661, Tr. p. 223, l. 13.

Judge Miller noted that the notes to SCRE Rule 614 recognize that it is different that the requirements in State v. Anderson, supra. R. 661, Tr. p. 223, ll. 20-24. Second, the trial judge noted that the defense did not contact Dr. Loring and it was not until January that the Court saws the request for funding of a different expert after three (3) months. R. 662, Tr. p. 224, ll. 1-3. Further, Judge Miller noted that he had not been informed that Ms. Vogelsang would not be prepared to testify for another year from that date. R, 662, Tr. p. 224, ll. 3-8. However, being aware of that, the defense did not re-contact Dr. Loring to see if she could be rehabilitated and if she would testify.

It leads me to the conclusion that counsel for the Defendant is more interested in pursuing the misconduct issue than in presenting a full defense. And as a result the assertion that due process is violated is disingenuous because defense counsel has perpetrated the failure to prepare for the social history.

R. 662, Tr. p. 224, ll. 11-16. At that point, Judge Miller called Dr. Loring.

Dr. Marti Loring - Court Witness

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Upon the questioning by Judge Miller, Dr. Loring initially indicated that it would not be necessary to have Solicitor Ariail removed from the courtroom to make her feel comfortable. R. 663, Tr. p. 225, ll. 9-20. After revealing her educational and employment background, Dr. Loring was qualified as an expert "in the field of social history, trauma, and abuse." R. 664-65, Tr. p. 226, l. 21 - p. 227, l. 11. After some initial questioning, Dr. Loring stated that she was willing to testify and to do her best, noting that she had not received attorney guidance [from the defense team, not her personal lawyer Mr. Godfrey], had not seen Inman nor had interviewed anyone else since the six months. She admitted she had checked on the well being of health of the step-father, mother, and sister, but had no case discussion with them. R. 667, Tr. 229.

Counsel Bannister made an objection as to “how the witness was procured” and the process as a court witness. R. 668, Tr. 230.

Dr. Loring presented a genogram [Court Exhibit 4] and described in narrative form the different types of interaction between the family members and their problems with drugs, alcohol, mental illness, sexual abuse and violence. R. 670-680, Tr. 232-242. Dr. Loring also presented a timeline of Inman’s life. [Court Exhibit 5] R. 680-82, Tr. 242-44. Dr. Loring further presented a group of photographs and material suggesting as a child that Inman was “still miserable and crying” (R. 682, Tr. p. 244, ll. 22-25) and had indicators of sexual abuser. R. 683, Tr. p. 245, ll. 2-6. She stated that he had headaches and suffered from head beatings, that he accidentally burned his genitals with spilled bleach without medical attention, that he was firmly spanked as a child, that he had seizures, that he was exposed to violence in 1980 involving a dog fight with a cat, that his leg was burned in 1981 in a motorcycle accident. R. 684-86, Tr. 246-48. He also began drug use including alcohol, huffing gas, marijuana, cocaine, and LSD beginning in 1981. R. 686, Tr. 248.

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Dr. Loring noted that around 11 or 12, Inman was asking his mother for help, but because of her problems, she could not hear it. After he was caught looking into a neighbor's window, his windows were nailed shut. R. 689-690, Tr. 251-52.

Inman's suicide attempts were again described by her. R. 690, Tr. 252.

Dr. Loring stated Inman was released in 2005 and was out 9 months before the tragedy. He was described as anxious and lost, unable to hold a job or relate to women. R. 690, Tr. 252. However, he was able to mentor his sister's son, who idolized him and was able to get him to stop huffing gas. R. 690-91, Tr. 252-53.

When the Court asked for anything else Dr. Loring might feel was important, counsel Bannister objected based upon "attorney-client" privilege. R. 691, Tr. p. 253, ll. 17-21. Judge Miller directed her to not talk about anything she talked with counsel about. R. 691-92, Tr. p. 253, l. 25 - p. 254, l. 2. A break was then taken and she was allowed to confer with counsel Godfrey. R. 692, Tr. 254.

Dr. Loring then concluded that Inman's early history revealed that he was seen in a "trance-like state" as a child, including the time period it was alleged he was abused as a child. R. 693, Tr. p. 255, ll. 4-18. This history was consistent with his later history of bipolar and having major depression with psychotic features. However, she felt the second half of her conclusions may be interwoven with attorney-client matters. R. 694, Tr. p. 256, ll. 6-14. Counsel Bannister continued his objection to potential disclosure. R. 694-95, Tr. 256-57.

Judge Miller then declared that he was concerned that he was not getting all the

information "because of legal gamesmanship." R. 696, Tr. p. 258, ll. 5-7. He noted she was no longer under "intimidation" and that because of the immunity there was no valid 5th Amendment claim. The defense had made no effort to contact her. Judge Miller repeated that he believed the defense position was disingenuous when the mistrial motion was based upon their reliance on her expertise which they had felt was significant. R. 696-97, Tr. 258-59.

The defense then briefly cross-examined Dr. Loring that it would not be uncommon for new data to become available over seven (7) months. R. 697-98, Tr. 259-60. Dr. Loring stated that she had not reviewed any psychological profile prepared by the government in the case to her recollection. R. 698-99, Tr. 260-61.

Defense counsel Bannister ended his questioning. He then re-affirmed his prior motions. R. 699-700, Tr. p. 261, l. 4 - p. 262, l. 5.

Judge Miller re-affirmed his earlier order denying the prosecutorial misconduct motion. R. 700, Tr. p. 262, ll. 6-23. Importantly, he declared: "The defense counsel now is participating in the limitation of this evidence [of Dr. Loring] that they intended to offer, which contributes to any Constitutional violation that might exist." R. 700, Tr. p. 262, ll. 20-23.

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The prosecution, through Deputy Solicitor Strom, briefly cross-examined Dr. Loring. She confirmed that the genogram and timeline were prepared by her in September for her testimony. R. 701, Tr. 263. Dr. Loring clarified her earlier testimony about Inman's father killing dogs and Jerry giving a neighbor a stray dog to care for. R. 703, Tr. 265. She confirmed that Inman experienced a bad childhood - exposure to violence, sexual abuse, and loss. Dr. Loring admitted that she had reviewed his criminal history including the assaults on females and in prison. R. 706-07, Tr. 268-69. however, she had not reviewed the particular criminal incident in this case. R.

708-09, Tr. 270-71. Dr. Loring was then released. R. 711, Tr. 273.

Counsel Bannister again closed his mitigation case and renewed his prior motions. R. 719, Tr. 281. These included his motion for jury trial sentencing and objection to the trial court calling Dr. Loring as a witness. R. 719-20, Tr. p. 281, l. 8 - p. 282, l. 4.

Closing Arguments and Inman's Request in Sentencing

Closing arguments were then made. R. 720-731, Tr. 282-293 (Solicitor Ariail). Appellant Inman made a personal statement briefly noting his prior history of possibly being molested and abuse is shared with millions, that he had been in prison his entire life, that he can't be rehabilitated and had escaped twice. R. 731, Tr. p. 293, ll. 12-22. He declared "in all reality, there's only one viable sentence to impose for someone like me. And I ask that you impose that sentence." R. 731-32, Tr. p. 293-94, l. 1. Counsel Bannister then made his argument plea in mitigation. R. 732-39, Tr. 294-301.

Judge Miller then took a recess. He then made inquiry of Inman concerning his right to testify. Inman declared he did not wish to testify. R. 740-41, Tr. 302-03. He stated he had discussed it with his lawyers earlier today. R. 741, Tr. p. 303, ll. 5-8.

Judge Miller was advised by the defense to consider statutory mitigators #2 ("the murder was committed while the defendant was under the influence of mental or emotional disturbance"), #6 ("the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired"), and #7 ("age or mentality of the defendant at the time of the crime"). R. 742, Tr. p. 304, ll. 3-4.

The Sentencing

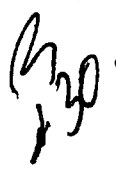
At 6:23 p.m., Judge Miller returned to the courtroom. He entered an Order sentencing the

Appellant to death finding the statutory aggravating factors of burglary in the first degree, kidnapping and criminal sexual conduct in the first degree. R. 743-755, Tr. 305-317. Judge Miller further entered a written sentencing order on April 22, 2009. R. 1045-1053. He also sentenced Inman to thirty (3) years consecutive for burglary in the first degree, 30 years consecutive for criminal sexual conduct in the first degree, and no sentence for kidnapping. R. 754-55, Tr. 316-17.

A motion to reconsider and new trial was made by counsel on jj23, 2009. ROA __. Judge Miller denied the motion on July 17, 2009 and filed July 28, 2009. R. 1248.

THE DIRECT APPEAL

A timely appeal was filed on August 4, 2009. In the direct appeal, the Petitioner asserted the following questions presented:

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1. The judge committed reversible error by accepting Inman's guilty plea, despite defense counsel insistence that the judge's refusal to allow jury sentencing was preserved for review by the Supreme Court on direct appeal, because the defense's position rendered the plea conditional and thus invalid under South Carolina law.
 2. The judge committed reversible error at sentencing by refusing to grant a mistrial and recuse the Solicitor's Office from any further involvement in the case, despite finding prosecutorial misconduct, where the Solicitor threatened a key defense witness after the judge granted the defense a continuance to obtain a new expert because of his misconduct.
 3. The judge committed reversible error at sentencing by refusing to allow the defense to cross-examine the Solicitor and his Deputy on the issue of prosecutorial misconduct, as the Solicitor's intent was directly relevant to that issue.

Final Brief of Appellant, p. 4.

The South Carolina Supreme Court affirmed the convictions and death sentence on December 28, 2011 in State v Inman (Jerry Buck), 395 S.C. 539, 720 S.E.2d 31 (2011). In its pertinent part to this proceeding, the Court held that: (1) trial court acted within its discretion in

refusing to recuse Solicitor's Office as advocates and declining defendant's request to question Solicitor for purposes of asserting prosecutorial misconduct claim;(2) manner in which State conducted voir dire of defense expert concerning her licensing status and whether she was subject to civil and criminal penalties for practicing social work without a license unequivocally constituted witness intimidation; (3) State's prosecutorial misconduct in intimidating a defense witness did not necessitate declaration of mistrial; and (4) sentence of death was appropriate punishment. A petition for rehearing was denied on February 23, 2012.

The Applicant made a Petition for Writ of Certiorari in the United States Supreme Court. It was docketed on ____ . In the petition, Inman, through counsel Dudek made the following questions presented:

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- I. Whether the South Carolina Supreme Court's holding that an irrebutable presumption of prejudice no longer applied where there is deliberate prosecutorial misconduct, since the trial judge found prosecutorial misconduct in this case, and the South Carolina Supreme Court also found such prosecutorial misconduct based on clear witness intimidation, since changing the law retroactively in this matter was fundamentally unfair and violated Due Process?
 - II. Whether the South Carolina Supreme Court's holding that petitioner did not have a right to call the prosecutors as witnesses during his bench trial to prove intentional prosecutorial misconduct violated petitioner's right to Due Process under the Fourteenth Amendment?
 - III. Whether the South Carolina Supreme Court erred by holding the prosecutorial misconduct and witness intimidation in petitioner's case did not result in a death sentence that violated Due Process rights, because the undisputed intimidation of petitioner's chief mitigation witness, Dr. Marti Loring, had an adverse effect on the ability of the defense to present its case in mitigation as guaranteed by the Eighth Amendment to the United States Constitution?

Inman v. State, petition for writ of certiorari, p. 1. The Respondent, through below-signed counsel made a Brief in Opposition on August 26, 2012. On October 1, 2012, the United States

Supreme Court denied the petition for writ of certiorari. *Inman v. South Carolina*, 11-10798, - U.S. _ (U.S. Oct. 1, 2012).

Respondent attaches and incorporates by reference the following:

DIRECT APPEAL DOCUMENTS

1. Final Brief of Appellant.
2. Final Brief of Respondent.
3. Final Reply Brief of Appellant.
4. State v Inman (Jerry Buck), 395 S.C. 539, 720 S.E.2d 31 (2011).
5. Petition for rehearing by Appellant.
6. *State v. Inman*, Order, (S.C.S.Ct. February 23, 2012) (petition for rehearing denied).
7. Record on appeal

II.

 In his application for post-conviction relief filed June 21, 2012, through his appellate counsel, Robert Dudek, the Applicant raised the following claims:

- I. Ineffective Assistance of Counsel
 - A. Counsel was ineffective for failing to obtain another mitigation expert after Dr. Loring no longer wished to participate because she was intimidated.
 - B. In the alternative, counsel should have continued to prepare with Dr. Loring in the event the judge called the case back to trial as occurred here.¹³

¹³In the motion for a stay filed in the South Carolina Supreme Court dated October 10, 2012, the Applicant asserted that he would raise at a minimum the following grounds:

- I. Whether counsel was ineffective, in derogation of petitioner's right under the

III.

Respondent respectfully submits that the Applicant will be unable to show a Sixth Amendment violation in this case on the specified issues in light of the record in this case.

On September 10, 2008, Dr. Marti Loring, a LCSW licensed clinical social worker and board certified expert in traumatic stress was called to testify. ROA p. 324-325. Evidence was presented that Dr. Loring had done research therapy focused on abuse trauma. She stated that she had a Masters degree from Bryn Mawr College School of Social Work and a PhD Sociology with a major in Social Psychology from Emory University. ROA p. 325. She stated that she had testified in South Carolina before and courts in other states. She stated that she had been previously qualified in areas of abuse, trauma, social histories and forensic interviewing. Id. R., P. 326. She declared that she had never failed to be qualified as an expert in those areas. Id. Dr. Loring was then offered as an expert in the field of trauma, abuse, forensic and therapeutic interviewing and as a social historian in capital sentencing cases. ROA p. 327, ll. 1-3.

Then Solicitor Ariail *voir dired* her on whether as part of her services in this case had she performed services under her licensed clinical social worker status, which she admitted that she

Sixth Amendment to the United States Constitution , by failing to retain another expert to continue to work on petitioner's mitigation or defense case after Dr. Marti Loring was intimidated by the solicitor and the trial judge refused to grant a mistrial?

- II. Whether counsel was ineffective , in derogation of petitioner's right under the Sixth Amendment to the United States Constitution, for assuring Dr. Loring continued working on the case after the judge recessed the case following the solicitor intimidating Dr. Loring?
- III. Whether counsel was ineffective , in derogation of petitioner's right under the Sixth Amendment to the United States Constitution, by not spending adequate time involving petitioner's family and clergy members in Tennessee especially given the long recess in the case.

Motion, p. 2-3.

did by interviewing Inman and having conversations with him. Id. Tr.p. 327, l. 9-17. She admitted that a fee for those services was being paid to the Center for Mental Health, but denied that she was getting any money for her services. ROA p. 327, ll. 18-25. She declared that she was not licensed in South Carolina. ROA p. 328, ll. 1-3. However, she stated that "custom" is that her license is honored across the country whenever she goes into different states. ROA p. 328, ll. 7-10.

Solicitor Ariail then directed Judge Miller's attention to S.C. Code Ann. § 40-63-200 which concerned the unauthorized practice of social work. ROA p. 328, l. 11-14. He next noted that a person practicing social work within the state must be licensed prior to performing the services, citing specifically S.C. Code Ann. § 40-63-30. ROA p. 328-329. He noted to Judge Miller that it carried both civil and criminal penalties for violation. He stated that based upon that, he would submit that she is "not qualified as an expert in this state to testify or render those services until she gets licensed." ROA p. 328, ll. 19-23. Judge Miller asked that he be provided with a copy of the statute after Solicitor Ariail referred to it. ROA p. 328, l. 25.

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In response to the defense argument about his comments, Solicitor Ariail stated that he was raising the licensing issue for the purpose of voir dire. He noted that whether or not he presented an indictment against her was a totally separate issue. ROA p. 331, ll. 1-2. Judge Miller opined that the intent of the statute, § 40-63-200, was to prevent unlicensed persons from opening an office and practicing social work and treatment. ROA p. 331, l. 3-16. He declared that he distinguished what Dr. Loring has done as a retained expert for the defense from that definition of the statute of § 40-63-20. He overruled the objection and concluded that Dr. Loring can testify. ROA p. 331, ll. 17-21.

After the court determined that Dr. Loring was qualified, [ROA p 331, ll. 3-21], counsel Bannister cited State v. Williams, 485 S.E.2d 99, at 102-103 referencing witness intimidation. He complained that Solicitor Ariail's attempt to make the testimony potentially fit within the criminal statute was an attempt to intimidate the witness and thereby violates the defendant's due process rights. He claimed that this was a substantial governmental interference. Counsel Bannister then declared that he did not believe that she would be able to testify absent some assertion from the Solicitor that he would either grant immunity or have some sort of protection for her for it not to be an issue. The prosecution expressly granted immunity from prosecution for her particular acts related to Mr. Inman's case since the trial judge had concluded that she was qualified as a witness that could testify in the area of social work as to the Inman case. ROA p. 333, ll. 2-23. However, he acknowledged that he did not have authority to grant immunity concerning other acts which might have already occurred. ROA p. 333-335. The Court then inquired of defense counsel Bannister if that was satisfactory, and counsel Bannister initially declared: "yes," but suggested that it was a red herring to start with. ROA p. 333, ll. 25.

After Dr. Loring consulted with her personal counsel [Bill Godfrey], she returned to court and pled the Fifth Amendment, stating that "she felt threatened as a witness in this case, and in other cases in which I've testified in South Carolina at this time." ROA p. 336, ll. 17-24. Judge Miller restated that the Solicitor had granted her immunity so that she would not be prosecuted for your work in this case. ROA p. 337, ll.1-3. She provided the court with a list of prior cases that she had testified in South Carolina and noted that this issue had been raised once before and "it was immediately put to rest." ROA p. 338, ll. 4-7. Dr. Loring, after another break, stated that she had been advised that she had been threatened in regards to her previous cases.

ROA p. 344, ll. 9-10. She stated that her (legal) advice was “that to testify when I’m told that I would be in violation of a criminal statute would affect my professional reputation in other cases and jurisdictions. ROA p. 344, ll. 9-15

On September 11, 2008, defense counsel made a motion for a mistrial based upon the Solicitor’s voir dire of Dr. Loring. Counsel Bannister referred to State v. Williams (Brad), 326 S.C. 130, 485 S.E.2d 99 (1997) and the fact that Solicitor Ariail had cited a statute that it was a crime to practice social work without a South Carolina license. ROA p. 411-12. On behalf of Dr. Loring, counsel Bill Godfrey declared that Dr. Loring sees this issue as a major storm and was upset about testifying in this case. ROA p. 431. He stated that she is licensed in Georgia and has been put on notice by the Solicitor that she was violating a criminal statute. Godfrey declared that Dr. Loring was going to take the 5th Amendment. ROA p. 431, ll. 20-21. Judge Miller then questioned how does she invoke this when she has been granted immunity. ROA p. 431-32. He stated that she had testified in other cases and that there was no statute of limitations. “No one is able to assure her that there are not similar laws in [Tennessee and Michigan]” where she had interviewed people. He stated that she has to declare each year if anything of a criminal or quasi-criminal nature comes up and it could affect her license in Georgia. ROA p. 432.

Judge Miller deferred the decision on how to handle Dr. Loring’s refusal to testify. However, he did not rule out Dr. Loring’s participation and also stated that if she determines she does not want to participate, he would allow him to show how he was prejudiced. ROA p. 435. The court then adjourned.

On April 20, 2009, the matter was re-convened for the sentencing hearing. At the outset, counsel Godfrey for Dr. Loring returned with a motion requesting that she be released or for

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alternate relief. R. 446-47, April 20, 2009 Tr.p. 8-9. He stated that trial court had previously declined to withdraw its earlier certification that she was a material witness. He described proceedings subsequent to that date in Georgia when the Georgia authorities attempted to enforce the out of state subpoena and Judge Miller intervened. He noted that the Georgia circumstances represented further intimidation of her. He urged that she was not a proper witness any more as she was no longer part of the defense team. R. 451, April 20, 2009 Tr.p. 13. If not able to release her, counsel Godfrey argued in the alternative that the matter be suspended so that he can investigate what happened in Georgia and the circumstances surrounding the circumstances of the threats. R. 452-53, Tr.p. 14-15. Counsel Bannister asserted that the defendant's right to witnesses was again chilled by these acts on the part of the state. Judge Miller, however, questioned how it would be chilled since he had declared that he did not intend to call her as his witness. R. 456-57, Tr.p. 18-19. Solicitor Ariail noted in response that the affidavit of Mr. Geary reflects that the Solicitor's Office had nothing to do with the actions in Atlanta and in fact communicated after the judge's email to have the authorities stand down, when the Atlanta authorities thought Dr. Loring was evading service of the subpoena. R. 460-61, Tr.p. 22-23.

Judge Miller subsequently stated that at the September hearing that noted that he had not completely ruled Dr. Loring out of the case. R. 467, Tr.p. 29. Counsel Bannister stated that absent the September 11, 2008 events, she would have been their witness, but in light of the Solicitor's conduct and the newer events in Georgia, they did not intend to call her as a witness. Whether she is a witness for other purposes was left to the judge. R. 468, Tr.p. 30.

Dr. Loring testified at the motion hearing concerning the events the prior week in Atlanta when she learned that a subpoena was being served at her home. R. 472-73, Tr.p. 34-35. After

getting the paperwork on her return home from writing, she contacted counsel Godfrey since the hearing date on the document in Georgia was missed. She then learned the police had been at her house, but the neighbors explained that she was not home. R. 477-78, Tr.p. 39-40.

She then stated that she had discussions with her counsel and Georgia authorities that she was glad to come to S.C. if the judge wanted her to be here. R. 479, Tr.p. 41, ll. 10-24. She stated she arrived last night to be sure to be here. R. 479-80, Tr.p. 41-42. Upon questioning from counsel Bannister, she stated that she was upset and frightened when she learned about the events in Georgia, did not purposely avoid service of the subpoena and would have been at the Georgia hearing. R. 481, Tr.p. 43. Further, while she found the chain of events alarming, she came prepared for whatever the judge asks with all her equipment and what they had done in her role as mitigation expert. R. 483-84, Tr.p. 45-46.

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Judge Miller questioned her concerning a letter that the Department of Labor Licensing and Regulation had issued dated April 16, 2009. She stated that the letter assuaged her fears before the other activities occurred. R. 495-97, Tr.p. 57-59. [Court Exhibit 3, ROA 1201]. He then asked Dr. Loring to remain. Judge Miller then addressed that he had been contacted by Bill Godfrey the evening of April 16 and advised the police in Georgia had been trying to arrest Dr. Loring. He stated he later called Ben Norris with Georgia law enforcement who advised him that he had been advised to stand down concerning the bench warrant. He then called Mr. Geary with the District Attorneys Office who advised him that he had received a call from S.C. to stand down and the problem was solved. R. 497, Tr.p. 59.

Judge Miller then stated that he wanted the defense to consider calling Dr. Loring as a witness in mitigation. He stated that she was ready willing and able to come testify voluntarily.

Counsel Bannister stated that he had certain motions and that they were not in a position to call her as a witness. Counsel then called a series of witnesses in an attempt to show the solicitors intent in questioning the Dr. Loring. Subsequently, Judge Miller again made inquiry of the defense concerning the defense of its intent to call a social historian, noting this case is going forward. The court was concerned because Dr. Loring is present and ready to go, "but we are not going to set this case up for failure." R. 603-04, Tr.p. 165-166. Judge Miller then denied the defense request to call Solicitor Ariail and other prosecutors concerning the raising of an improper issue related to the lack of licensing of Dr. Loring and why the issue was not raised in the earlier trial. R. 604-05, Tr.p. 166-167.

At the conclusion of the testimony, Judge Miller stated that he would not suspend the proceedings. 633, Tr.p. 195. He further stated that Dr. Loring was going to come and he would not remove them as advocates in the case. R. 633, Tr.p. 195.

239 - On Tuesday, April 21, 2009, defense counsel Bannister advised Judge Miller that the defense was not going to call Dr. Loring as a witness. R. 639, April 20, Tr. p. 201. Judge Miller stated that he was considering calling Dr. Loring as a "court's witness." Id. R. 639, Tr. p. 201, ll. 5-6. He stated that his client had pled guilty and asked him to be the sole fact finder in the case. [Defense counsel Bannister concurred with that statement: "That's correct."]. Id. R. 639, Tr. p. 201, ll. 11-14. The judge stated that Dr. Loring was the first choice by the defense and "I believe that she can testify without fear." R. 640, Tr. p. 202, ll. 15-16. After Loring's counsel confirmed that she had gone over the subject matter the prior evening, Judge Miller stated that she had earlier spent up to 9 to 10 hours preparing. Counsel Godfrey stated that she had previously stated she had reviewed the files 4 to 5 hours, reviewed the file yesterday, has her charts and pictures since

they had talked about her testifying as a witness and she had advised him that she felt protected by the court. Id. R. 641, Tr. p. 203, ll. 7-21. Counsel Bannister renewed his motion for a mistrial based upon the prosecutorial misconduct claim. Id. R. 642, Tr. 204. He requested that a life without parole sentence he entered under the 5th Amendment Double Jeopardy Clause. Id. R. 643, Tr. 205.

Subsequently, Dr. Loring testified as a court witness. R. 658, Tr. p. 220, ll. 14-17. After revealing her educational and employment background, Dr. Loring was qualified as an expert “in the field of social history, trauma, and abuse.” R. 664-65, Tr. p. 226, l. 21 - p. 227, l. 11. After some initial questioning, Dr. Loring stated that she was willing to testify and to do her best, noting that she had not received attorney guidance [from the defense team, not her personal lawyer Mr. Godfrey], had not seen Inman nor had interviewed anyone else since the six months. She admitted she had checked on the well being of health of the step-father, mother, and sister, but had no case discussion with them. R. 667, Tr. 229.

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Counsel Bannister made an objection as to “how the witness was procured” and the process as a court witness. R. 668, Tr. 230.

Dr. Loring presented a genogram [Court Exhibit 4] and described in narrative form the different types of interaction between the family members and their problems with drugs, alcohol, mental illness, sexual abuse and violence. R. 670-680, Tr. 232-242. Dr. Loring also presented a timeline of Inman’s life. [Court Exhibit 5] R. 680-82, Tr. 242-44. Dr. Loring further presented a group of photographs and material suggesting as a child that Inman was “still miserable and crying” (R. 682, Tr. p. 244, ll. 22-25) and had indicators of sexual abuser. R. 683, Tr. p. 245, ll. 2-6. She stated that he had headaches and suffered from head beatings, that he accidentally

burned his genitals with spilled bleach without medical attention, that he was firmly spanked as a child, that he had seizures, that he was exposed to violence in 1980 involving a dog fight with a cat, that his leg was burned in 1981 in a motorcycle accident. R. 684-86, Tr. 246-48. He also began drug use including alcohol, huffing gas, marijuana, cocaine, and LSD beginning in 1981. R. 686, Tr. 248.

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The defense then briefly cross-examined Dr. Loring that it would not be uncommon for new data to become available over seven (7) months. R. 697-98, Tr. 259-60. Dr. Loring stated that she had not reviewed any psychological profile prepared by the government in the case to her recollection. R. 698-99, Tr. 260-61. Defense counsel Bannister ended his questioning. He then re-affirmed his prior motions. R. 699-700, Tr. p. 261, l. 4 - p. 262, l. 5.

Judge Miller re-affirmed his earlier order denying the prosecutorial misconduct motion.

R. 700, Tr. p. 262, ll. 6-23. Importantly, he declared: “The defense counsel now is participating in the limitation of this evidence [of Dr. Loring] that they intended to offer, which contributes to any Constitutional violation that might exist.” R. 700, Tr. p. 262, ll. 20-23.

The Sixth Amendment to the Constitution secures to all criminal defendants “the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (citation omitted). A prisoner seeking collateral relief from his conviction or sentence under Strickland “must demonstrate both that counsel's performance was deficient, and that the defense was thereby prejudiced.” Tice v. Johnson, 647 F.3d 87, 102 (4th Cir.2011). In view of the latitude customarily afforded criminal defense lawyers in formulating strategy, deficient performance will not be adjudged unless, “in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Strickland, 466 U.S. at 690, 104 S.Ct. 2052. We are thereby constrained to “indulge a strong presumption” that counsel performed reasonably. *Id.* at 689, 104 S.Ct. 2052.

63
243.
In the event that the presumption of reasonable performance is successfully rebutted, relief remains unavailable “if the error had no effect on the judgment.” Strickland, 466 U.S. at 691, 104 S.Ct. 2052. The defendant must therefore demonstrate “a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694, 104 S.Ct. 2052. The analysis “requires the court deciding the ineffectiveness claim to ‘consider the totality of the evidence before the judge or jury.’ ” Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir.2011) (quoting Strickland at 695, 104 S.Ct. 2052). In evaluating the evidence, however, “[w]e are not bound ... to view the facts in the light most favorable to the prosecution,”

Tice, 647 F.3d at 111, and the requisite prejudice may be established short of showing that adequate performance “would have resulted ultimately in the defendant's acquittal,” *id.* (quoting Kyles v. Whitley, 514 U.S. 419, 434, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995)). As dictated by Kyles and Tice, then, Inman may prevail on the prejudice prong though he be unable to show that competent counsel would have secured for him a life sentence, rather than death. Under the discrete circumstances presented in this case, Inman will likely fail in his burden of presenting a reasonable probability that Judge Miller would have sentenced Inman to life rather than death. In determining that a new sentencing hearing was not warranted based upon the Dr. Loring issue, the Supreme Court concluded:

Here, the judge correctly considered that Dr. Loring did not have a South Carolina social worker's license merely as a factor in her qualifications as an expert witness. Having found Dr. Loring qualified as an expert witness, the judge properly called and questioned her as a court's witness. Because Dr. Loring testified, Inman cannot claim he was prejudiced as his counsel declined the opportunity to question Dr. Loring. *Williams*, 326 S.C. at 135, 485 S.E.2d at 102 (recognizing that governmental intimidation of a witness can be deemed harmless error where the witness nonetheless testifies).

Furthermore, any testimony that was potentially excluded was arguably cumulative to that of Dr. Price, who testified in detail regarding Inman's childhood, his family, his mental health disorders, and his criminal history. Finally, a review of the judge's oral and written orders establishes that he thoroughly considered all mitigating evidence.

Although we find the Solicitor committed prosecutorial misconduct, we conclude Inman's sentence of death was not imposed in violation of his due process rights. See 16C C.J.S. Constitutional Law § 1644 (Supp.2011) (“The touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, and not the culpability of the prosecutor.”). Accordingly, we find the judge did not abuse his discretion in declining to grant a mistrial.

Inman, *supra*. Further, the Supreme Court concluded that the death sentence was proportionate.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel may raise a questions of fact that

cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. CONCLUSION

Each and every allegation in the Application, not hereinabove either expressly admitted, denied, qualified or explained is hereby denied.

WHEREFORE, Respondent submits that the Application for Post-Conviction Relief should be dismissed. In the alternative, that the Court should direct the Applicant to timely serve and file a Amended Application for Post-Conviction Relief specifying all grounds for relief with particularity pursuant to Rule 12(e) within sixty(60) days of the service of this Return and/or after appointment of new counsel, consistent with the policy of In Re Stays, 321 S.C. 544, 471 S.E.2d 140 (1996) and S.C. Code § 17-27-160.

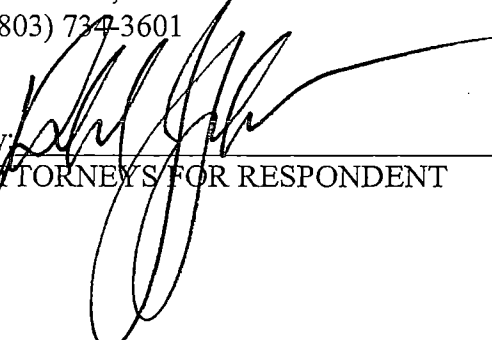
Respectfully submitted,

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By: 
ATTORNEYS FOR RESPONDENT

October 16, 2012

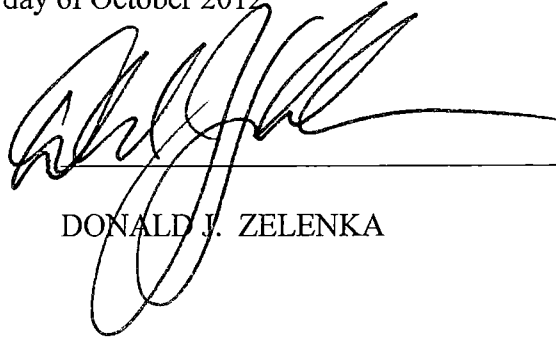
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OCT 16 2012

CERTIFICATE OF SERVICE

S.C. Supreme Court

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, Chief Appellate Defender at the South Carolina Office of Indigent Defense, P. O. Box 11330, Columbia, S.C. 29211 by depositing in the InterAgency mail, postage prepaid this 16th day of October 2012

A handwritten signature in black ink, appearing to read 'Donald J. Zelenka', is written over a horizontal line. The signature is stylized with large, sweeping loops.

DONALD J. ZELENKA

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

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

October 1, 2012

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

Re: Jerry Buck Inman
v. South Carolina
No. 11-10798
(Your No. 27081)

Dear Clerk:

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

The petition for a writ of certiorari is denied.

Sincerely,



William K. Suter, Clerk

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OCT 04 2012

S.C. SUPREME COURT

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUN 28 2010

S.C. SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

INITIAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
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TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT	
1.	
The judge committed reversible error by accepting Inman's guilty plea, despite defense counsel insistence the judge's refusal to allow jury sentencing was preserved for review by the Supreme Court on direct appeal, because the defense position rendered the plea conditional and thus invalid under South Carolina law	5
2.	
The judge committed reversible error at sentencing by refusing to grant a mistrial and recuse the Solicitor's Office from any further involvement in the case, despite finding prosecutorial misconduct, where the Solicitor threatened a key defense witness with a baseless criminal prosecution and then subpoenaed her as a State's witness after the judge granted the defense a continuance to obtain a new expert because of this misconduct.....	11
3.	
The judge committed reversible error at sentencing by refusing to allow the defense to cross-examine the Solicitor and his Deputy on the issue of prosecutorial misconduct, as the Solicitor's intent was directly relevant to that issue.	23
CONCLUSION	24

TABLE OF AUTHORITIES

Cases

<u>State v. Downs</u> , 351 S.C. 141, 604 S.E.2d 377 (2004).....	9
<u>State v. Jones</u> , 383 S.C. 535, 681 S.E.2d 580 (2009).....	21
<u>State v. Needs</u> , 333 S.C. 134, 508 S.E.2d 857 (1999).....	14, 15, 20
<u>State v. Northcutt</u> , 272 S.C. 207, 641 S.E.2d 873 (2007).....	21
<u>State v. Owens</u> , 362 S.C. 175, 607 S.E.2d 78 (2004).....	10
<u>State v. Pagan</u> , 369 S.C. 201, 631 S.E.2d 262 (2006).....	22
<u>State v. Quattlebaum</u> , 338 S.C. 441, 527 S.E.2d 105 (2000)	22, 23
<u>State v. Sweet</u> , 374 S.C.1, 647 S.E.2d 202 (2007).....	22
<u>State v. Thrift</u> , 312 S.C. 282, 440 S.E.2d 341 (1994).....	15
<u>State v. Truesdale</u> , 278 S.C. 368, 296 S.E.2d 528 (1982)	8, 9
<u>State v. Williams</u> , 326 S.C. 130, 485 S.E.2d 99 (1997)	20

Statutes

S.C. Code § 16-3-20.....	9
S.C. Code § 16-9-340.....	15
S.C. Code § 40-63-200.....	11, 18

Rules

Rule 407, SCACR.....	15

Constitutional Provisions

S.C. Const. Art. V § 24.....	14
U.S. Const. Amend V	13
U.S. Const. Amend VI.....	15, 19, 23
U.S. Const. Amend VIII.....	15
U.S. Const. Amend XIV	19, 23

STATEMENT OF ISSUES ON APPEAL

1. The judge committed reversible error by accepting Inman's guilty plea, despite defense counsel insistence that the judge's refusal to allow jury sentencing was preserved for review by the Supreme Court on direct appeal, because the defense's position rendered the plea conditional and thus invalid under South Carolina law.

2. The judge committed reversible error at sentencing by refusing to grant a mistrial and recuse the Solicitor's Office from any further involvement in the case, despite finding prosecutorial misconduct, where the Solicitor threatened a key defense witness with a baseless criminal prosecution and subpoenaed her as a State's witness after the judge granted the defense a continuance to obtain a new expert because of his misconduct.

3. The judge committed reversible error at sentencing by refusing to allow the defense to cross-examine the Solicitor and his Deputy on the issue of prosecutorial misconduct, as the Solicitor's intent was directly relevant to that issue.

STATEMENT OF THE CASE

On August 19, 2008, Jerry Buck Inman pleaded guilty in Pickens County, before Judge Edward W. Miller, on indictments charging him with murder, first-degree burglary, first-degree criminal sexual conduct and kidnapping. The State was seeking the death penalty.

The victim, Tiffany Souers, a Clemson University student living off-campus, was raped and strangled sometime after midnight on May 26, 2006. The apparent randomness of this violence within the relatively insular university community, as well as the initial inability of police to apprehend the perpetrator, generated an enormous amount of publicity, both local and national.

Inman, an out-of-state drifter with prior rape convictions in Florida and North Carolina in the mid-1980s, was apprehended in Tennessee June 6, 2006. He promptly confessed not just to the rape and murder of Ms. Souers, but to burglary, kidnapping, armed robbery, and attempted rape in Alabama on May 23 and burglary, kidnapping, armed robbery and rape in Tennessee on May 22.

On September 8 through 11, 2008, the State presented its case in aggravation. Midway through the defense case in mitigation, the judge granted the defense a continuance after the Solicitor threatened a key mitigation witness with a baseless criminal prosecution. On April 20 through 22, 2009, the defense presented its evidence in mitigation.

The judge sentenced Inman to death for murder and consecutive sentences of thirty years for first-degree burglary and first-degree criminal sexual conduct. Inman and his undersigned counsel appeal his guilty plea and death sentence and ask the Supreme Court to vacate both.

ARGUMENT

1.

The judge committed reversible error by accepting Inman's guilty plea, despite defense counsel insistence that the judge's refusal to allow jury sentencing was preserved for review by the Supreme Court on direct appeal, because the defense position rendered the plea conditional and thus invalid under South Carolina law.

Prior to the guilty plea, defense counsel informed the judge that Inman planned on pleading guilty but was request in a jury sentencing. September 2007 Tr. p. 25, lines 9 – 10; Tr. p. 37, line 9 – p. 38, line 4. The Solicitor pointed out that this procedure was not an option in South Carolina. Tr. p. 41, lines 14 – 17.

There have been three cases in which a judge did actually what they are asking you to do. And our Supreme Court has reversed that on all three occasions. Because they are asking you to accept a conditional guilty plea.

Tr. p. 47, lines 6 – 11.

The judge ruled, "I believe it is an argument that perhaps is best addressed by a Court that . . . might have the final say in a matter like this." Tr. p. 54, lines 14 – 19. Nevertheless, he was "constrained by the existing case law in South Carolina and the statutes to deny your motion." Tr. p. 54, lines 20 – 21.

At the guilty plea, defense counsel reminded the judge that "the defendant sought to enter a guilty plea, as he is doing today, and then proceed to a jury trial sentencing" and maintained, "That issue has been preserved for review." August 19, 2008 Tr. p. 21, line 13 – 24. "[W]e believe it is part of this case, no matter what," he insisted. Tr. p. 21, line 24 – p.

22, line 2. “[T]hat’s been part of my explanation to him about where we go.” Tr. p. 22, lines 2 – 3.

The judge directed his response to Inman:

Well, I want to tell you, Mr. Inman, that in South Carolina we do not have conditional guilty pleas. And the law is very clear about that. Whether or not this issue is preserved for appeal is not something I will address and I have no control over it. . . . I can tell you that the law is very clear. There are no conditional pleas. And if you enter a plea of guilty, you can’t do it on a condition. . . [Y]ou can’t hold something out in abeyance by entering this guilty plea. Do you understand that?

Tr. p. 22, lines 5 – 22.

Inman said he did. Tr. p. 22, line 23.

Before the judge accepted the guilty plea, defense counsel renewed his motion for jury sentencing “to make sure it is preserved.” Tr. p. 42, line 20 – p. 43, line 13. The judge again addressed Inman:

Now again, Mr. Inman, let me tell you that the law in South Carolina is clear that there are no conditional guilty pleas . . . and whether or not that issue is preserved for appeal is not for me to decide. . . . *An appellate court will make that determination:* the Supreme Court of the State of South Carolina.

Tr. p. 43, line 43 – p. 44, line 1 (emphasis added).

At this point, the Solicitor voiced his legitimate concern that Inman’s legal strategy “borders on making this a conditional plea” and asked the judge to obtain a specific waiver of “the right to be tried by a jury in the sentencing phase” from Inman. Tr. p. 47, lines 3 – 14. Defense counsel objected, “Every defendant that appears in court still has the right to

appeal his guilty plea.” Tr. p. 47, lines 15 – 22. “[T]hat’s absolutely correct,” the judge agreed. Tr. p. 47, lines 23. He again turned to Inman:

Mr. Inman, I direct this to you. Because in the end, you get advice from your attorneys. But this decision is yours. . . . [T]he law is clear in South Carolina that you cannot enter a conditional guilty plea, which means you cannot plead guilty and reserve some issue with respect with the guilt phase for the appellate courts to rule on.

Tr. p. 48, lines 4 – 10.

Defense counsel reiterated, “I have advised him that I believe this issue is preserved and will survive the guilty plea.” Tr. p. 48, lines 15 – 18. Once more, the judge addressed Inman:

Mr. Inman, I want to tell you that we disagree on that . . . and, of course, I am not the final word on this issue because *the Supreme Court will be the final word*. But I believe that you are giving up that right.

Tr. p. 48, lines 17 – 22 (emphasis added).

Counsel objected, “I don’t think you can give him an opinion about what an appellate court might do with that issue.” Tr. p. 48, line 24 – p. 49, line 5.

Because of the general uncertainty about the matter among the participants, the judge gave Inman a fleeting opportunity to withdraw his guilty plea. Tr. p. 49, lines 6 – 14. “[Defense counsel] may be convinced that he’s got an appellate issue,” he added, “and I don’t know whether he does or not. But I am telling you I believe the law in South Carolina is clear that guilty pleas are unconditional.” Tr. p. 49, lines 17 – 21.

When defense counsel refused to abandon his position, the judge decided, “[I]f this is a big issue, then I am not about to accept the plea.” Tr. p. 50, lines 18 – 19. But this moment of clarity about the situation quickly slipped away. Instead, the judge addressed Inman one last time:

Mr. Inman, clearly there is some disagreement about the preservation of this issue that your attorneys have raised. I am not involved in it. And I don't have an opinion about it. Whether or not [defense counsel] can do that successfully is something the Supreme Court will answer. The State does not believe that he can. He believes that he can [W]hether or not that happens on appeal is really of no concern here. I want your plea to not be dependent on that issue.

Tr. p. 51, lines 1 – 12.

After another short recess, the judge continued:

[A]ll I'm trying to determine is that your entry of this plea is not based on or predicated on some issue that you think you might prevail on or might not prevail on in an appellate court . . . [W]hether or not you can prevail on an appellate issue should have not have nothing to do with your entry of this plea . . . So whether or not you are you are successful or not successful at some higher court on some issue that might be raised should have nothing to do with why you're entering this plea.

Tr. p. 51, line 19 – p. 52, line 25.

Inman replied, "I just want to enter the plea and get it over with, just go on from here with the sentencing phase." Tr. p. 53, lines 1 – 5. The judge accepted his plea. Tr. p. 53, line 22 – p. 54, line 4.

The judge denied defense counsel's motion to reconsider. August 27, 2008 Tr. p. 38, lines 13 – 17. At the start of sentencing, he also denied counsel's "demand for a jury trial for the sentencing phase." September 2008 Tr. p. 17, lines 13 – 21. Finally, after the State had rested at sentencing, counsel again asked the judge to reconsider and requested a mistrial. Tr. p. 245, lines 6 – 12. The judge denied the motions. Tr. 245, lines 21 – 23.

In State v. Truesdale, 278 S.C. 368, 296 S.E.2d 528, 529 (1982), the Supreme Court held that conditional guilty pleas are:

a practice not recognized in South Carolina and a practice which we expressly disapprove. *Pleas of guilty are unconditional, and if an accused attempts to attach any condition or qualifications thereto, the trial court should direct a plea of not guilty.* [Emphasis added.]

“If the trial court accepts a conditional guilty plea, then the plea will be vacated on appeal.”

State v. Downs, 351 S.C. 141, 604 S.E.2d 377, 380 (2004).

S.C. Code §16-3-20(B) explicitly provides, “[I]f the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge.” The Court reaffirmed the constitutionality of this sentencing procedure in Downs. In Truesdale, the defense had attempted to preserve several meritless issues for direct appeal during the defendant’s guilty plea. The Court held, “It was error of the trial court to accept the pleas on such terms.” 296 S.E.2d at 529.

To give credit where credit is due, the Solicitor in this case was right about one thing: A capital defendant in South Carolina cannot at present plead guilty without waiving jury sentencing, even if the State were to consent. This was no longer an open question – if it ever was – at the time of Inman’s guilty plea. (The Court will have noted that the undersigned do not raise this issue on appeal.)

The judge’s duty was equally clear once defense counsel insisted “this issue is preserved and will survive the guilty plea” for direct appeal: He should have unequivocally rejected the plea, instead of issuing ambiguously oracular pronouncements such as, “Whether or not this issue is preserved for appeal is not something I will address and I have no control over it . . . An appellate court will make that determination: the Supreme Court of the State of South Carolina.”

The judge's speculations about appealability – almost all of which were directed to Mr. Inman, – plainly suggested that the issue of jury sentencing might be preserved for direct appeal, which was an erroneous statement of existing law. See State v. Owens, 362 S.C. 175, 607 S.E.2d 78 (2004). For this reason, the Supreme Court should vacate Inman's guilty plea to murder and reverse his death sentence.

The judge committed reversible error at sentencing by refusing to grant a mistrial and recuse the Solicitor's Office from any further involvement in the case, despite finding prosecutorial misconduct, where the Solicitor threatened a key defense witness with a baseless criminal prosecution and subpoenaed her as a State's witness after the judge granted the defense a continuance to obtain a new expert because of his misconduct.

It is fair to say that mitigation was the central issue at Inman's sentencing. He had, after all, admitted his guilt and pleaded guilty. A key defense witness in this regard was Dr. Marti Loring, of the Center for Mental Health and Human Development in Atlanta. September 2008 Tr. p. 324, lines 12 – 15. Loring was licensed in Georgia, but not in South Carolina, as “an expert in the field of trauma, abuse, forensic and therapeutic interviewing, and as a social historian in capital cases.” Tr. p. 325, lines 20 – 22; Tr. p. 328, lines 1 – 3; Tr. p. 326, line 21 – p. 327, line 3.

The Solicitor characterized Loring's testimony in general as “a rambling recitation of rank hearsay.” Tr. p. 251, lines 20 – 21. In his opinion, “[T]here's not a great deal of expertise in the field of social work.” Tr. p. 253, lines 10 – 12. When given the opportunity to cross-examine Dr. Loring on *voir dire*, the Solicitor promptly accused her of violating S.C. Code § 40-63-200 which, as he announced, “deals with the unauthorized practice of social work within the State of South Carolina” and “carries . . . both civil and criminal penalties for violation.” Tr. p. 328, line 1 – p. 329, line 8. Defense counsel objected to the Solicitor's “inappropriate attempt to intimidate the witness with the authority that this Solicitor has in this state to indict” and predicted that “it will infect us from this point forward.” Tr. 329, line 12 – p. 330, line 22.

The Solicitor continued:

I'm raising the issue of licensing for the purposes of *voir dire*. And that's as far as we've gotten. And whether or not I present an indictment against her is a totally separate issue.

Tr. p. 330, line 23 – p. 331, line 2.

The judge overruled the objection to Loring's qualifications and authorized her to testify.

Tr. p. 331, lines 3 – 21.

Defense counsel argued that the consequences of the Solicitor's misconduct could not be so easily avoided:

[T]he Solicitor's attempt to make the testimony that Dr. Loring may potentially give fit within a criminal statute is a due process violation. It is an attempt to improperly intimidate this witness. And it specifically violates the defendant's due process right to present his defense witnesses freely. . . . [T]he intimidation at this point amounts to a substantial government interference with this defense witness' free and unhampered choice to be able to testify unfettered.

Tr. p. 332, lines 1- 20.

The Solicitor then offered to grant Loring immunity "[a]s to the present testimony." Tr. p. 333, lines 12 – 14. But as far as her prior testimony in South Carolina was concerned:

I can't grant her immunity for that. . . . If somebody wanted to indict her for violating the statute, they could have already done that many, many times based on her prior testimony. That's not the issue.

Tr. p. 333, lines 2 – 25.

As increasingly-apprehensive Loring informed the judge that she was "concerned" about the situation. Tr. p. 334, lines 9 – 17. The judge said, "You are granted immunity, so

you will not be indicted based on your work in this case. Now, do you feel secure?" Tr. p.

335, lines 8 – 10. No, she did not:

I wouldn't be honest if I didn't tell you that what I have just heard alarmed and concerned me a great deal. So I will hope that I can return my attention to what I came here to do in the first place and be as effective as I would hope to be. But to tell you that I'm not alarmed and concerned at what I heard would not be truthful.

Tr. p. 335, lines 11 – 18.

The judge took a recess to allow Loring an opportunity to obtain and consult with counsel.

Tr. p. 335, line 19 – p. 336, line 11.

When court reconvened, on the advice of counsel Dr. Loring invoked her privilege against self-incrimination as provided by the Fifth Amendment:

With profound condolences to Tiffany's family and with respect to the family of Jerry Inman and with deep apologies to the court, I worked so hard to gather all this information to come here today to tell you the truth about Jerry Inman's past. I'm so sorry, Your Honor. Upon advice of counsel, I must plead the Fifth. I feel threatened as a witness in this case and in other cases in which I've testified in South Carolina.

Tr. p. 336, lines 14 – 24.

Loring's impromptu counsel explained, "The Solicitor. . . has intimidated this witness." Tr.

p. 339, lines 12 – 23. He added:

If the Solicitor was going to raise such an issue as this, it appears it should have been raised pretrial and not during *voir dire*. But what he has done now is chilled the doctor's ability to testify, which was exactly his intent.

Tr. p. 340, lines 4 - 8

The judge apologized to Loring for getting “caught in the middle of all this” but expressed his concern that if she did not testify, “the defense would feel compelled to request that this sentencing hearing be basically ended and we have to come back and do it all again.” Tr. p. 342, line 2 – p. 343, line 10. After another short recess, Loring again informed the judge that she was “[f]ull of sorrow” because “I must, upon advice of counsel, tell you that I can not testify.” Tr. p. 343, line 11 – p. 344, line 7. The Solicitor’s threats had made her apprehensive about “my professional reputation in other jurisdictions in which I am involved currently.” Tr. p. 344, lines 8 – 14.

At this point - “insofar as I am able to”- the judge attempted to grant Loring “immunity in all your prior cases that you testified in this state.” Tr. p. 344, lines 17 – 19. “And while . . . judicial immunity may not be generally recognized in South Carolina,” he added, “I think the fact that I’m putting it out there would carry some weight.” Tr. p. 346, lines 6– 12. Consequently, the judge concluded, “I do not believe you have a lawful ground to refuse to testify.” Tr. p. 346, lines 15 – 16.

As an aside, the judge had no authority to grant Dr. Loring statewide immunity from prosecution for testifying as an expert witness in South Carolina.

In the ordinary case, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.

State v. Needs, 333 S.C. 134, 508 S.E.2d 857, 863 (1999) (citations omitted).

And:

[T]he South Carolina Constitution [Article V, §24] and South Carolina case law [citations omitted] place the unfettered discretion to prosecute solely in the prosecutor’s hands. . .

The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion; however, on occasion, it is necessary to review and interpret the results of the prosecutor's actions.

State v. Thrift, 312 S.C. 282, 440 S.E.2d 341, 346 (1994). “Furthermore, a trial court generally has no power to dismiss a properly-drawn indictment issued by a properly-constituted grand jury before trial unless a statute grants that power to the court.” Needs, 508 S.E.2d at 863.

Defense counsel moved for a mistrial “based on prosecutorial misconduct.” Tr. p. 415, line 18 – p. 417, line 25. The Solicitor’s intimidation tactics, he argued, had violated Inman’s right to due process, specifically his Sixth Amendment right “to present a full and complete defense” and “his Eighth Amendment right to . . . a full and fair presentation of mitigation in this case.” Tr. p. 417, line 25 – p. 418, line 13.

But counsel had also received information that, in an earlier capital case the Solicitor had threatened to prosecute another defense witness for running afoul of § 40-63-200. Tr. p. 418, line 20 – p. 419, line 25. Apart from violating Rule 407 (“Rules of Professional Conduct”), SCACR, counsel asserted, the Solicitor had quite possibly violated S.C. Code § 16-9-340, which makes it illegal to intimidate a witness “by threat or force” or to “attempt to obstruct or impede the administration of justice in any court.”

In addition to requesting a mistrial, defense counsel moved to recuse the Solicitor’s Office from further participation in Inman’s case. Tr. p. 420, line 1 – p. 423, line 25. He also asked the judge to quash the death notice and sentence Inman to life without parole. Tr. p. 426, lines 17 – 20.

Concerning Dr. Loring, the Solicitor responded, “I have never threatened her. I have never even moved to indict her even though, theoretically, she would have violated the statute from a prior case.” Tr. p. 429, lines 6 – 13. In his mind, the whole issue was “truly a red herring.” Tr. p. 429, lines 14 – 15.

Counsel for Loring informed the judge that she still intended to take the Fifth. Tr. p. 430, line 20 – p. 431, line 20. The judge ruled:

I’m not going to grant [a] mistrial. I am going to continue the case. I would instruct counsel to seek another social historian so that Dr. Loring will never have to deal with this case again.

Tr. p. 434, lines 11 – 14. But, he added, “I wouldn’t rule that Dr. Loring is completely out of the case.” Tr. p. 435, lines 4 – 8.

Seven months passed. As a result of Dr. Loring’s continuing unease about testifying in South Carolina, she and the defense had reluctantly agreed to part ways shortly after the September 2008 hearing. April 14, 2009 Tr. p. 4, line 14 – p. 5, line 1. An already bad situation only got worse when the Solicitor then subpoenaed Loring in Georgia and nearly triggered the forced entry of her home by Georgia police with a warrant to arrest her as a fugitive. April 14, 2009 Tr. 5, lines 2 – 4; April 20 through 22, 2009 Tr. p. 8, line 14 – p. 15, line 11.

When sentencing reconvened on April 20, 2009, defense counsel renewed his motions for a mistrial and for a sentence of life without parole. April 20 through 22, 2009, Tr. p. 17, lines 2 – 11. The severity of the situation his own misconduct had created was apparently lost on the Solicitor: “[A]s you can see, the Thirteenth Circuit Solicitor’s Office had nothing to do with any of this. This is just a continuation by the defense to perpetrate an

issue that is not real.” Tr. p. 21, lines 21 – 25. In fact, he maintained, whatever had happened in Georgia after the subpoena left his hands was “every bit the fault of Dr. Loring, under the Georgia system.” Tr. p. 21, line 16 – p. 23, line 5. As far as he was concerned, it was all “more of the tempest in the teapot over nothing.” Tr. p. 23, lines 5 – 7.

Loring voluntarily attended the hearing. Tr. p. 30, line 11. If the defense did not intend to call her as a witness, though, the judge was initially inclined to “cut her loose.” Tr. p. 30, lines 16 – 21.

The defense elected to call Loring as a witness “for the limited purpose of putting what we can on the record regarding what happened in Georgia.” Tr. p. 32, lines 4 – 7. She testified:

I’ve never had an arrest warrant or anything like that. So it was a new experience for me. So I was alarmed, concerned, frightened, especially when I found out that I had been described as a flight risk. . . . And then I really didn’t know exactly what to do. I’ve never had an experience like this before.

Tr. p. 42, lines 4-25.

As to her ability to testify effectively on behalf of Inman, Loring admitted:

Well, I would have to truthfully tell you that this is a very alarming experience. And I cannot assure you a hundred percent that going through all this would not have an impact on me.

Tr. p. 45, lines 7 – 14.

Nevertheless, she was prepared if required “to do my very best, to do a professional and thorough job in the role of mitigation expert.” Tr. p. 45, lines 15 – 20. “[I]f you are called as a witness,” the judge interjected, “I would not allow [the Solicitor] to be the attorney who handled the examination.” Tr. p. 46, lines 16 – 21.

The defense renewed its motion to disqualify the entire Solicitor's Office. Tr. p. 60, lines 20 – 23. He alleged that the Solicitor had also threatened a defense psychologist for violating § 40-63-200 at capital resentencing in State v. Michael James Laney in April 2007. Tr. p. 62, line 18 – p. 64, line 6. “[I]t sounds like Grassy Knoll stuff,” the judge observed, but allowed the defense to proffer its evidence. Tr. p. 64, lines 7 – 12.

Counsel for Laney testified that he had also filed a motion to quash the death notice based on the Solicitor's prosecutorial misconduct in that case. Tr. p. 78, line 7 – p. 79, line 7. As was apparently his wont, the Solicitor by sending the witness an intimidating letter requesting her attendance at a meeting to discuss her testimony. Tr. p. 87, line 5 – p. 89, line 7. Counsel for Laney renewed his motion to quash the death notice, outlining this ongoing misconduct. Tr. p. 91, lines 4 – 21. The very next day, the Solicitor invited counsel to a meeting to discuss the possibility of a plea. Tr. p. 93, lines 2 – 10. As counsel put it, “[T]here was significant movement regarding the resolution of that case” at that point. Tr. p. 94, line 8 – p. 95, line 4.

As far as the Solicitor was concerned, the only sticking point preventing a life sentence in the Laney case was defense counsel's refusal to concede that their expert had violated § 40-62-200. Tr. p. 97, line 22 – p. 98, line 16. The Solicitor eventually agreed to withdraw the death notice if the defense would withdraw their prosecutorial misconduct motions. Tr. p. 107, lines 7 – 22. He later suggested that Laney's counsel needed a “political advisor.” Tr. p. 146, line 20 – p. 148, line 14.

Dr. Loring had previously testified in the capital case of State v. David Edens and Jennifer Holloway in June 2006 without objection by the Solicitor. Tr. p. 109, line 1 – p. 110, line 16. His attitude changed when the jury returned life sentences for both defendants.

Tr. p. 152, line 7 – p. 153, line 6. Several weeks later, the Solicitor's Office invited the jurors to dinner at a local restaurant. Tr. p. 153, line 8 – p. 154, line 11. According to one of those jurors:

I took it to be they wanted to know what had influenced us the most as a jury in not giving them the death penalty. And what they had done . . . wrong or what they had done right. They were just picking our brains to kind of get a general idea of how to better do it next time.

Tr. p. 154, line 12 – p. 155, line 2.

She was left with the distinct impression the Solicitor was upset with their verdict. Tr. p. 155, lines 3 – 6.

Following this testimony, counsel for Inman informed the judge that he planned to call the Solicitor and his Deputy as witnesses on the issue of the Solicitor's misconduct, especially the matter of his intent. Tr. p. 166, line 16 – p. 167, line 22. The judge summarily denied the motion. Tr. p. 167, lines 23 – 25. Counsel objected to this limitation on his ability to present Inman's defense under the Sixth and Fourteenth Amendments. Tr. p. 168, lines 1 – 6. (This issue gives rise to the next issue addressed in this brief.)

Finally, the judge decided to call Dr. Loring as a court's witness. Tr. p. 202, lines 5 – 7. He denied defense counsel's motion for a mistrial. Tr. p. 207, lines 15 – 19. In reaching this result, the judge had decided that "[t]he events in Georgia" – Loring's near-arrest thanks to the Solicitor's efforts to subpoena her – were irrelevant to the issue of prosecutorial misconduct. Tr. p. 209, lines 2 – 24.

In Loring's presence, the judge accused the defense of being "more interested in pursuing the misconduct issue than in presenting a full defense." Tr. p. 223, line 24 – p. 224, line 16. He then called Dr. Loring as his witness and questioned her himself. Loring

testified that she no longer felt threatened by the Solicitor and would try “to do my very best,” although:

I’m worried and anxious that I have not received attorney guidance for six months, have not seen Mr. Inman for that period of time, nor have I re-interviewed his family members for the last six months. . . . Had I known that I was still on the case, Your Honor, I would have been sure to have done these three things so I wouldn’t leave out important information when I testified.

Tr. p. 228, line 3 – p. 229, line 17.

Loring conceded that “there is some important information that I don’t have as a result of what I’ve just talked about.” Tr. p. 229, line 21 – p. 230, line 3.

The judge ruled that the Solicitor’s intimidation of Dr. Loring constituted prosecutorial misconduct but not *intentional* prosecutorial misconduct. Tr. p. 262, lines 6 – 19. He accused defense counsel of “participating in the limitation of this evidence that they intended to offer, which contributes to any constitutional violation that might exist.” Tr. p. 262, lines 20 – 23.

Obviously, a Solicitor may not “lob baseless threats or charges at a potential defense witness in an effort to prevent the witness from testifying.” State v. Needs, 333 S.C. 134, 508 S.E.2d 857, 863 (1999).

Improper intimidation of a witness may violate a defendant’s due process right to present his defense witnesses freely if the intimidation amounts to substantial government interference with a defense witness’ free and unhampered choice to testify.

State v. Williams, 326 S.C. 130, 485 S.E.2d 99, 102 (1997) (citation and quotation marks omitted). Moreover:

If the State seeks to compel a defendant's non-testifying consultative expert to testify on its behalf, the State must prove that it has a "substantial need" for the expert and that its inability to compel the expert to testify will present "undue hardship."

State v. Jones, 383 S.C. 535, 681 S.E.2d 580, 586 (2009); see, also, State v. Northcutt, 272 S.C. 207, 641 S.E.2d 873 (2007).

To summarize: The judge found that the Solicitor had committed prosecutorial misconduct by threatening Dr. Loring with indictment and prosecution, but that the misconduct had not been intentional. He refused to consider the consequences of the Solicitor's equally wrongheaded attempt to subpoena Loring from Georgia as a State's witness. Finally, he called Loring as his own witness.

In Jones, the Supreme Court recognized that "there is undoubtedly a potential for abuse by the prosecution to compel a non-testifying, consultative defense agent to testify." 681 S.E.2d at 585.

Furthermore, because defense counsel will be placed in the posture of cross-examining the expert witness, we believe counsel may be reticent in pursuing certain lines of questioning in the event the responses of the witness may "open the door" to privileged information.

Id. at 586.

Add to this an atmosphere of governmental intimidation, threats and paranoia, and a judge's decision to call a defense witness as a court's witness presents additional problems: The danger the witness' testimony will become biased because she views the judge as her protector. This is not a matter of speculation in the present case. According to Dr. Loring's attorney, "She did tell me that she felt like she was protected by the court." Tr. p. 203, lines

20 - 21. "She will be," the judge replied. Tr. p. 203, line 23. Defense counsel's cross-examination of Loring was severely truncated. Tr. p. 259, line 14 – p. 261, line 3.

The judge's finding that the Solicitor's misconduct was unintentional finds no evidentiary support. The Laney case had placed the Solicitor on notice that his actions constituted prosecutorial misconduct.

The decision whether to grant or deny a mistrial is within the discretion of the judge and will not be reversed on appeal absent an abuse of discretion. State v. Sweet, 374 S.C.1, 647 S.E.2d 202 (2007). An abuse of discretion occurs when the conclusions of the judge lack evidentiary support. State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006).

The chain of events leading to this insupportable outcome began with the Solicitor's foolhardy decision to threaten a key defense witness with a baseless criminal prosecution and then subpoena her as State's witness when the judge granted the defense a continuance to obtain a new expert because of the initial misconduct.

Prosecutors are ministers of justice and not merely advocates. [Citation omitted.] A prosecutor has special responsibilities to do justice and is held to the highest standards of professional ethics [The Supreme Court] will not tolerate deliberate prosecutorial misconduct which threatens rights fundamental to liberty and justice.

State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105, 110 (2000). The Solicitor's misconduct and the judge's rulings concerning that misconduct require the Court to vacate Inman's death sentence and remand for resentencing.

The judge committed reversible error at sentencing by refusing to allow the defense to cross-examine the Solicitor and his Deputy on the issue of prosecutorial misconduct, as the Solicitor's intent was directly relevant to that issue.

As noted previously, the judge concluded that the Solicitor's intimidation of Dr. Loring, while prosecutorial misconduct, was not intentional. Tr. p. 262, lines 6 - 19. This finding of a lack of intent permitted him to deny defense counsel's mistrial motion and avoid, for the time being, the possibility that Inman might be entitled to a sentence of life without parole as a consequence of that misconduct.

The judge summarily denied defense counsel's motion to call the Solicitor and his Deputy as witnesses on the issue of the Solicitor's intent. Tr. p. 166, line 16 – p. 167, line 25. Counsel objected to this limitation on his ability to present Inman's defense under the Sixth and Fourteenth Amendments. Tr. p. 168, lines 1-6.

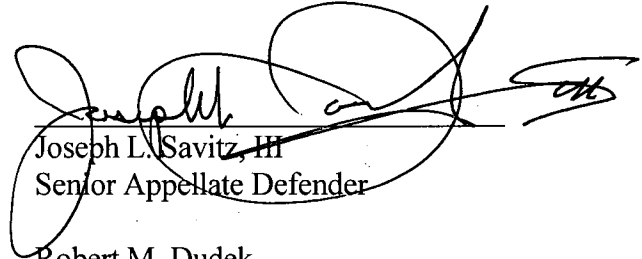
Long story short, this ruling was reversible error under State v. Quattlebaum, 527 S.E.2d at 111. As in Quattlebaum, the judge did not articulate his reasons for refusing to allow defense counsel to question the Solicitor and his Deputy. Thus, the ruling was also controlled by an error of law and was therefore an abuse of the judge's discretion.

For this reason as well, the Supreme Court should vacate Inman's death sentence and remand for resentencing.

CONCLUSION

In view of these errors, Jerry Buck Inman and his undersigned counsel ask the Supreme Court to vacate both his guilty plea to murder and death sentence.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Joseph L. Savitz, III', is written over the printed name and title.

Joseph L. Savitz, III
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Chief Appellate Defender

ATTORNEYS FOR APPELLANT

This 28th day of June, 2010

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

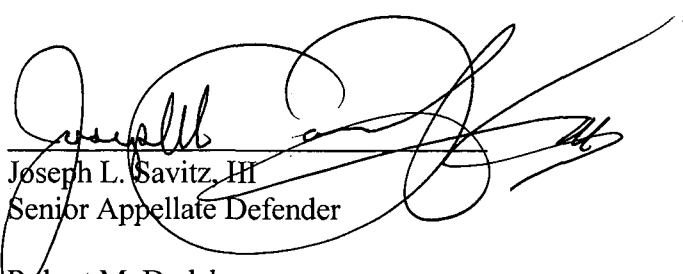
APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) The guilty plea and sentencing transcripts;
- (2) Sentencing documents;
- (3) True-billed indictments;
- (4) State's Exhibits 25 – 29;
- (5) Defense Exhibits 32 – 43 and 45;
- (6) Court's Exhibit 3.

I certify that this designation contains no matter which is irrelevant to this appeal.



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June 28, 2010

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

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

RECEIVED

DEC 23 2010

S.C. Supreme Court

THE STATE,

Respondent,

v.

JERRY BUCK INMAN,

Appellant.

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TABLE OF CONTENTS

TABLE OF CONTENTS	I
TABLE OF AUTHORITIES	ii
APPELLANT'S STATEMENT OF ISSUES ON APPEAL	1
RESPONDENT'S STATEMENT OF THE CASE	2
ARGUMENT	

- I. Where there is a mandatory appeal in death penalty cases, the entry of an unconditional guilty plea to murder by Jerry Buck Inman - consistently expressing an intent and desire to be sentenced by Judge Miller rather than a jury in a capital proceeding - is not made into a "conditional plea" by the interruptions by defense counsel during the plea process that an issue on jury sentencing was preserved for appeal - despite the trial court's refusal to conclude that it was preserved and prosecution's protestation that it was waived from appeal. When Inman ultimately declared that "I just want to enter the plea and get it over with and go on from here with the sentencing phase" after the court declared he did not want a plea dependant upon any claimed right to raise the jury issue on appeal, he entered an unconditional plea to murder. 33**
- II. A sentencing mistrial and recusal of the Solicitor's Office was not required when during voir dire concerning the qualifications of an out of state social worker, that there was a licensing statute in South Carolina that carried civil and criminal sanctions where the trial court concluded that the Solicitor comments were inappropriate but did not rise to the level of intentional and deliberate misconduct and did not prejudicially effect the substantial rights of the defendant since the witness was granted immunity immediately by the prosecutor and was willing to testify in the continued hearing and did testify. 51**
- III. Reversible error was not committed when the hearing judge refused to allow defense counsel call Solicitor Ariail or his deputies on the claim of prosecutorial misconduct on their intent in questioning Dr. Loring concerning the lack of a South Carolina social work license and its effect when qualifying Dr. Loring. 93**

CONCLUSION 97

DESIGNATION OF MATTER

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

FEDERAL CASES

Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935)	78, 79
Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)	79
Brecht v. Abrahamson, 507 U.S. 619, 638 n. 9, 113 S.Ct. 1710, 123 L.Ed.2d 353 [1993]	80
Caldwell v. Mississippi, 472 U.S. 320, 105 S.Ct. 2633, 86 L.Ed.2d 231	79
Darden v. Wainwright, 477 U.S. 168, 181, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986)	78-80
Davis v. Straub, 430 F.3d 281 (6th Cir. 2005)	54
Donnelly v. DeChristoforo, 416 U.S. 637, 642, 94 S.Ct. 1868, 1871, 40 L.Ed.2d 431 (1974) ..	78
Earp v. Ornoski, 431 F.3d 1158, 1167-1168 (9th Cir.2005)	80
Greer v. Miller, 483 U.S. 756, 765, 107 S.Ct. 3102, 97 L.Ed.2d 618 (1987)	78
Harris v. Young, 607 F.2d 1081, 1085 (4th Cir. 1979)	78, 84
Inman v. State of South Carolina, No. 07-1298, 128 S.Ct. 2098 (June 8, 2008)	6
Karis v. Calderon, 283 F.3d 1117, 1128 (9th Cir.2002)	80
Lanzetta v. U.S., 306 U.S. 451 (1939)	61, 62
Miller v. Pate, 386 U.S. 1, 87 S.Ct. 785, 17 L.Ed.2d 690 (1967)	79
Montana v. Egelhoff, 518 U.S. 37, 42, 116 S.Ct. 2013, 135 L.Ed.2d 361 (1996)	94
Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791 (1935)	79
Satterfield v. Zahradnick, 572 F.2d 443 (4th Cir. 1978)	85
Strickland v. Washington, 466 U.S. 668 (1984)	67
U.S. v. Golding, 168 F.3d 700 (4th Cir. 1999)	24, 75
U.S. v. Hooks, 848 F.2d 785 (7th Cir. 1988)	80

U.S. v. Simmons, 699 F.2d 1250 (D.C. Cir. 1983)	80
United States v. Blackwell, 694 F.2d 1325, 1334 (D.C.Cir.1982)	86
United States v. Davis, 974 F.2d 182, 187 (D.C.Cir.1992)	86
United States v. Harlin, 539 F.2d 679, 681 (9th Cir.1976)	86, 87
United States v. Pierce, 62 F.3d 818, 832 (6th Cir.1995)	87
United States v. Thomas, 488 F.2d 334, 336 (6th Cir.1973)	53, 85, 86
United States v. Viera, 839 F.2d 1113, 1115 (5th Cir.1988) (en banc)	87
United States v. Williams, 504 U.S. 36, 60, 112 S.Ct. 1735, 118 L.Ed.2d 352 (1992)	78
Webb v. Texas, 409 U.S. 95, 98, 93 S.Ct. 351, 34 L.Ed.2d 330 (1972)	52, 79
Williams v. Stewart, 441 F.3d 1030, 1042 (9th Cir.2006)	78
Wynne v. Renico, 279 F.Supp.2d 866 (E.D. Mich. 2003)	79, 88

STATE CASES

Baggerly v. CSX Transportation, Inc, 370 S.C. 362, 635 S.E.2d 97 (2006)	63, 68, 73, 74
Douglas v. Maryland, 360 A.2d 474 (1976)	85
Easter v. State, 355 S.C. 79, 584 S.E.2d 117 (2003)	46
Fields v. J. Haynes Waters Builders, 376 S.C. 545, 658 S.E.2d 80, 86 (2008)	23, 74, 81, 82
Howle v. PYA/Monarch, Inc., 344 S.E.2d 157, 161 (SC Ct. App. 1986)	83
In re Johnny Lee W., 371 S.C. 217, 220, 638 S.E.2d 682, 684 (2006)	47
Mahdi (Mikal) v. State, 383 S.C. 135, 678 S.E.2d 807 (June 15, 2009)	33
Pascua v. State, 145 P.3d 1031 (Nev. 2006)	80
People v. Hill, 952 P.2d 673 (Cal. 1978)	79, 88

Riddle v. State, 314 S.C. 1, 443 S.E.2d 557 (1994)	26
State v. Allen (Quincy Jovan), 386 S.C. 93, 687 S.E. 2d 21 (Nov. 16, 2009)	34, 50
State v. Anderson, 304 S.C. 551, 406 S.E.2d 152 (1991)	26, 27
State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999)	77
State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999)	77
State v. Crisp, 363 S.C. 412, 608 S.E.2d 429	33
State v. Downs, 361 S.C. 141, 604 S.E.2d 377 (Oct. 25, 2004)	33, 34, 38
State v. Harris, 340 S.C. 59, 530 S.E.2d 626 (2000)	76, 77
State v. Jones, 383 S.C. 535, 681 S.E.2d 580. 586 (2009)	89
State v. Koller, 274 N.W.2d 651 (Wis. 1979)	80
State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (Ct App. 2008)	94
State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998)	62, 63, 86, 87
State v. Owens, 362 S.C. 175, 607 S.E.2d 78 (2004)	50
State v. O'Leary, 302 S.C. 17, 393 S.E.2d 186 (1990)	47
State v. Passaro, 350 S.C. 499, 567 S.E.2d.862 (SCSCT July 29, 2002)	33
State v. Patterson , 278 S.C. 319, 295 S.E.2d 264 (1982)	33, 34
State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct.App.1999)	77
State v. Peppers, 346 S.C. 502, 504, 552 S.E.2d 288, 289 (2001)	47, 48
State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983)	77, 84
State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000)	64, 82, 93
State v. Ray, 310 S.C.431, 427 S.E.2d 171 (1993)	33
State v. Rowlands, 343 S.C. 454, 457, 539 S.E.2d 717, 719 (Ct.App.2000)	77

State v. Shaw, 273 S.C. 194, 255 S.E.2d 799 (1979)	33
State v. Simmons, 352 S.C. 342, 354, 573 S.E.2d 856, 862 (Ct.App.2002)	77
State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994)	62
State v. Truesdale , 278 S.C. 368, 296 S.E.2d 528 (1982)	33, 34, 47
State v. Vazquez, 364 S.C. 293, 613 S.E.2d 359 (2005)	76
State v. Williams (Brad), 326 S.C. 130, 485 S.E.2d 99 (1997)	63, 81, 84
State v. Williams, 485 S.E.2d 99, at 102-103	59-61, 81
State v. Wilson, 306 S.C. 498, 413 S.E.2d 19 (1992)	33
State v. Arnold, 266 S.C. 153, 157, 221 S.E.2d 867, 868 (1976)	77
State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998);	76

STATE STATUTES

S.C. Code Ann. § 40-63-260	65, 66
S.C. Code Ann. § 40-63-200	16-18, 20, 22, 23
S.C. Code Ann. § 16-3-25 (1976)	33
S.C. Code Ann. § 40-55-50	90
S.C. Code Ann. § 40-63-20	66
S.C. Code Ann. § 40-63-200	55, 58
S.C. Code Ann. § 40-63-210	58
S.C. Code Ann. § 40-63-260	58
S.C. Code Ann. § 40-63-30	55, 56, 58, 59
S.C. Code §40-63-200	87

STATE RULES

SCACR Rule 407	65, 96

OTHER AUTHORITIES

Annot. 88 ALR 4th. 388 (1991)	54, 55
Annot., 54 A.L.R.3d 100 (1973)	96

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1.

The judge committed reversible error by accepting Inman's guilty plea, despite defense counsel insistence that the judge's refusal to allow jury sentencing was preserved for review by the Supreme Court on direct appeal, because the defense's position rendered the plea conditional and thus invalid under South Carolina law.

2.

The judge committed reversible error at sentencing by refusing to grant a mistrial and recuse the Solicitor's Office from any further involvement in the case, despite finding prosecutorial misconduct, where the Solicitor threatened a key defense witness after the judge granted the defense a continuance to obtain a new expert because of his misconduct.

3.

The judge committed reversible error at sentencing by refusing to allow the defense to cross-examine the Solicitor and his Deputy on the issue of prosecutorial misconduct, as the Solicitor's intent was directly relevant to that issue.

RESPONDENT'S STATEMENT OF THE CASE

The Death of Tiffany Souers and Arrest of Jerry Buck Inman

During the guilty plea, the prosecution introduced a 12 page "summary of the facts supporting all charges." August 19, 2008 Tr. p. 28. [Court Exhibit One].

On May 25, 2006, Tiffany Marie Souers, a rising junior at Clemson university was living in an off-campus apartment complex called the Reserve. Tr. 28. On that date, her roommates were gone. Inman saw the victim on her outside porch.

Around 1 a.m., Inman enters the apartment by climbing over the porch rail where he had seen her standing earlier in the day. Tr. 30. He enters the victim's bedroom, wakes her, and they struggle. Inman binds the victim's hands. He then asks her for her pocketbook, ATM and credit cards. After finding the items, he sexually assaults the victim and kills her by tightening a bikini suit top around her neck. Inman then flees the apartment.

Inman stops at the SunTrust Bank in Clemson and unsuccessfully attempts to use the victim's ATM card four times; 3:22 a.m., 3:29 a.m., 3:31 a.m., and 3:32 a.m. Tr. 30-31. Next, he attempts to use the ATM card at Wachovia Bank at 3:37 and 3:38 a.m. Tr. 31.

The photographs taken by the bank machines show Inman with a bandanna over his face, but a Chevrolet Blazer or GMC Jimmy is identified in the background due to the grill work. Tr. 31.

Inman then returns to his home in Tennessee discarding items along the route.

Tiffany's body is found on May 26, 2006 at 1:30 p.m. when a roommate returns. Tr. 32. the partially clad body is in the bedroom.

An autopsy determines that the victim died as a result of asphyxia due to ligature

strangulation. Tr. 33. The bikini top was tightly twisted around her neck cutting off the blood flow. The pathologist found that the victim's wrist and hands had injuries consistent with being restrained during a struggle. Tr. 33. Thirdly, the pathologist confirmed the existence of evidence of traumatic sexual intercourse. Tr. 33.

A DNA profile was developed from the sperm fraction of the semen found on the apartment carpet. The DNA from the vaginal swabs from the autopsy matched the carpet DNA. The DNA profiles were sent to CODIS, the National DNA Database. On June 5, 2006, the profiles matched profiles from North Carolina and Florida - both belonging to Inman. Tr. 34-35.

A search for Inman located him in Dandridge, Tennessee. he was taken into custody on June 6, 2006 at 11:45 p.m. Tr. 35.

After his arrest, he orally admitted the crimes. On June 7, 2006, he next gave a written statement. Tr. 36-37. He said he killed her because he knew she could recognize him. Tr. 37-38.

Another statement was made to SLED Agents on June 7, 2006 at 3:52 a.m. Tr. 38-40. In that statement, he declared that he had ended up in Clemson looking for a place to rob. In this statement, he said that he had parked at the apartment complex and the first door he tried was opened. He said he went inside and found the girl sleeping and they started fighting. He said he then tied her hands behind her back with a piece of clothing. He asked her for money and she took her wallet out of her purse. He said he got her credit card and asked for the PIN number but he forgot it. He said he had sex with her after that. He said he put a bandanna over his face but could not get money at the AM.

Inman stated he had seen a girl on the balcony earlier that day, but then claimed when he

went back after 1 a.m. he didn't think anyone was there and did not mean for anyone to get hurt. "I was just looking for some money." Tr. 40.

After DNA samples were obtained from Inman, the profiles were all compared. It was concluded that the DNA developed from the vaginal swabs and carpet cuttings were consistent with Inman. Tr. 41. "The probability of randomly selecting an unrelated individual having a DNA profile matching is approximately one in 240 quadrillion." Tr. 41.

The Procedural History

The Appellant, Jerry Buck Inman, was indicted at the November 2006 term of the Court of General Sessions for Pickens County for murder (2006-GS-39-2225), kidnapping (2006-GS-39-2224), criminal sexual conduct in the first degree ((2006-GS-39-2223), and burglary in the first degree ((2006-GS-39-2222). The circumstances of the charges involve the May 26, 2006 murder of Tiffany Souers.

The State, through Solicitor Robert M. Ariail of the Thirteenth Judicial Circuit timely noticed Inman of its intent to seek the death penalty on August 22, 2006 pursuant to S.C. Code, Section 16-3-26 (1976). ROA, p. _.

On March 13, 2007, the Honorable Edward W. Miller was assigned by Order of the South Carolina Supreme Court to the case. On August 19, 2008, a hearing concerning Inman's competency to stand trial was held. The Appellant was determined to be competent to stand trial.

The Mode of Trial Motion and Preliminary Proceedings.

On August 17, 2007, Inman filed a Motion to Determine the Mode of Trial. In the motion counsel informed the judge of an intent to enter a guilty plea to murder and demand a jury trial for sentencing. ROA. _ . The state informed the court that it did not consent to this position in

light of precedent of this Court. ROA ____ .

A hearing was held on September 14, 2007 concerning the mode of trial motion. The State opposed the motion asserting under Rule 14 (b), South Carolina Rules of Criminal Procedure, its consent was required as a matter of state law before a plea could be entered waiving the right to a jury trial on criminal charges. The State informed Judge Miller it would not consent.

The trial judge denied the request to attempt to enter a guilty plea to the charges. Sept. 14, 2007 Tr.p. 54. A written order was entered on November 15, 2007. ROA, ____ .

The Petitioner filed a notice of appeal from the November 15, 2007 Order to the South Carolina Supreme Court. On January 9, 2007, without requiring a response or pleading from the State, the South Carolina Supreme Court entered its Order dismissing the notice of appeal “without prejudice.” In the Order dismissing the notice of appeal, the Court stated “a criminal defendant cannot appeal until sentence is imposed,” and “an appellate court will not make an adjudication where there is no actual controversy” and “in the case at hand , appellant has failed to show that a judicial controversy exists.”

The Petitioner’s counsel next sought certiorari to the United States Supreme Court. In his certiorari petition, he raised the following questions:

1. WHETHER A CAPITAL DEFENDANT’S 6th AMENDMENT RIGHT INCLUDES THE RIGHT TO JURY TRIAL SENTENCING AFTER ENTRY OF A GUILTY PLEA?
2. WHETHER A CAPITAL DEFENDANT’S 8TH AMENDMENT RIGHT TO PRESENT MITIGATION IS VIOLATED BY AN ORDER PROHIBITING THE DEFENDANT FROM PLEADING GUILTY?
3. WHETHER A CAPITAL DEFENDANT’S 14TH AND 6TH AMENDMENT

RIGHT TO PRESENT A COMPLETE DEFENSE IS VIOLATED BY AN
ORDER THAT PROHIBITS THE DEFENDANT FROM USING HIS GUILTY
PLEA AS MITIGATION DURING THE SENTENCING PHASE OF TRIAL?

The Respondent State of South Carolina made a Brief in Opposition on May 8, 2008 and asserted the following counter-statement:

1. WHERE THE STATE APPELLATE COURT WITHOUT PREJUDICE REJECTED A PREMATURE ATTEMPT TO FILE A NOTICE OF APPEAL BECAUSE THERE WAS NO FINAL JUDGEMENT WHEN NO SENTENCE HAD BEEN IMPOSED AND NO ADJUDICATION OR ACTUAL CONTROVERSY, THIS COURT LACKS JURISDICTION UNDER 28 U.S.C. SECTION 1257 BECAUSE THERE IS NO FINALITY.

On June 8, 2008, the United States Supreme Court denied the petition for writ of certiorari.

Inman v. State of South Carolina, No. 07-1298, 128 S.Ct. 2098 (June 8, 2008).

The Proceedings Prior to the Guilty Plea

On August 19, 2008, a competency hearing was held. Judge Miller was again informed that Inman sought to tender a guilty plea to murder. August 19, 2008, Tr.p. 3, l. 20-21. The hearing initially concerned Inman's competency to stand trial was held.¹ The Appellant was determined to be competent to stand trial.

Inman then entered guilty pleas to the charges on that date. August 19, 2008 Tr. P. 1- 65. He was represented by James W. Bannister, John W. DeJong, and Symmes W. Culbertson of the Greenville Bar. Judge Miller stated that sentencing was deferred until September 6. Id. Tr.p. 54.

¹Dr. Donna Schwartz-Watts testified as a defense expert at the competency portion. She stated that he was competent to understand the proceedings and had aa capacity to communicate with counsel. August 19, 2006 Tr.p. 6. She found he had a history of having a "mood disorder" and being treated for depression. She stated from the first time she met Inman in September 2006 he had a desire to plead guilty and knows what he is doing. She stated that he had made it clear to her that he wished to receive a death sentence and felt he deserved to die for what he had done. August 19, 2006 Tr.p. 10-11.

The September Sentencing Proceeding

On September 8-11, 2008, Judge Miller held a non-jury sentencing proceeding as a result of the guilty plea to murder. Testimony was received from state witnesses Holly Bergman, Christina Morello, G.W. McCoig, Jeffrey Kindley, S. _____ C _____, V _____ P _____, Michael Hannon, Rhonda Jackson, J _____ G _____ and Dr. Eric Christensen. September 8, 2008 Tr. P. 1-243.² The defense in mitigation initially presented Dr. David Price, Dr., Marti Loring and Claude Tournay, James Aiken, D _____ B _____ and Rev. David Hensley. Sept. 8, 2010 Tr.p. 255-410.

The State's Case at Sentencing.

Evidence was presented through the victim's roommate, Holly Bergman, that Tiffany Souers was a Clemson civil engineering major and a dedicated student. Tr. 39-40. She was described as being close to her family and would constantly be on the telephone with her mother and with her siblings. She was able to give good advice. She was described further as very outgoing and easily made friends. Tr. 41-42. In describing how Tiffany's death affected her, it was like losing a sister. Tr. 43. The violence of her death made it more difficult. Tr. 43-44.

On cross-examination, it was pointed out that Tiffany was also involved in national charity organizations. She was also described as a dedicated member of the Catholic Church. Tr. 47.

Another roommate, Christina Morello, similarly described Tiffany Souers. She presented photographs of school events at Clemson that they participated in. Tr. 50-52. She described the victim's contagious laugh. Tr. 53. She also helped in the community in addition to her school

²The "September 8, 2008 Tr." encompasses the proceedings from September 8-11, 2008.

work. Her death affected Ms. Morello in many ways. Tr. 54-55.

She noted that everyone who met Tiffany was her friend. In addition, she was the type of person that showed compassion and cared for others. Tr. 57.

Chief Deputy G. W. McCoig of the Jefferson County Sheriff's Department in Dandridge Tennessee testified concerning the arrest of Inman on June 6, 2006. Tr. 60. He stated he stopped after a brief car chase and placed him under arrest. Tr. 64-65. After reading his Miranda rights, Inman spoke with the officer. During the conversation about the college student, Inman described himself: "after that shit right there, I'm a f__ing animal. Tr. 68, ll. 21-25.

SLED Agent Jeffrey Kindley testified he responded to Tennessee after Inman's arrest. Inman made a statement, after waiving Miranda rights. Tr. 80-86. He described the belongings from Ms. Souers apartment being thrown out as he was driving back to Tennessee and hiding the sheets in the woods. Tr. 90-91. In describing with Inman the extradition process and whether the charges qualified for the death penalty Inman stopped him and declared: "That's what I want. I killed a 20-year old college student with everything to live for. And he said he deserved the death penalty." Tr. p. 94, ll. 1-5, p. 98, l. 22 - p. 99, l. 2.

S. ___ C. ___ described an event with Inman which occurred December 14, 1987. Tr. 101. She stated that she was awakened in her apartment by a man with a revolver. She described being tied up by him and for he to also tie up her roommate. Tr. 103. With a gun to her head and hands tied, she was penetrated vaginally and anally. Tr. 105. The assault lasted 20 minutes. Her roommate was forced to watch. He took money and keys, then threatened to kill them if they called the police. As a result, Inman pled guilty to the crime. Tr. 108.

The prosecution published Inman's prior convictions. These included:

1. Dec. 14, 1987 - Sexual Battery - S. C. - 30 years (8-18-1989)
2. Robbery - 30 years
3. Armed Burglary - 30 years
4. Grand Theft Motor Vehicle - 5 years
5. Kidnapping (2 counts) - 30 years
6. Aggravated Assault - 5 years
7. July 10, 1998 - Second Degree Sexual Assault - 20 years - (N.C.) - 9-26-88
8. Attempted Escape - February 5, 1991 - one years

Tr. 112-13.

B. B. P. testified concerning a May 23, 2006 incident with Inman. Tr. 120. She described taking her daughter to the bus stop that morning. She described returning home at lunch when someone came from behind her, covered her mouth and put a knife to her throat. Tr. 122 She screamed and he placed her on the floor tying her hands behind her back. Tr. 123. He stated he had found \$250, after she had denied having cash in the house. He then forced her into the bedroom from the kitchen. He then forced her pants and underwear down and saw she was on her period. Tr. 126-27. At that point, he put her into a bedroom closet and told her he was going to take her car and stash it. Tr. 127. After he left she was able to get to the phone and hit re-dial. The police determined that he had entered the house by cutting a hole in the floor. Tr. 129. Two weeks later, she saw Inman's photo on CNN and identified him as her attacker. Tr. 129-130.

Michael Hannon of the Tennessee Bureau of Investigations testified that he responded to

Chief McCoig on June 6, 2006 concerning Inman. Tr. 139-140. He described getting a waiver from Inman on June 7, 2006 at 12:30 a.m. Tr. 143-46. Subsequently, he stated he spoke with Inman concerning an incident in Rainsville, Alabama. Tr. 151-52, 157-163. In the statement he gave concerning the May 23, 2006 incident, Inman described breaking into the house by cutting a hole in the vent. Tr. 163. He stated he entered the house and found a blue bank bag with cash. However, once inside, the owner returned. He confirmed he intended to have sex with her, but she told him she was on her period and he put her into a closet. Tr. p. 163, ll. 10-17. He took the money bag and her car which he drove a short distance and parked it and then switched back to his car. Tr. 163. He described leaving Alabama and then going to South Carolina. Tr. p. 163, ll. 22-25. He stated that when he got to South Carolina, he was not there a whole day before the incident with Tiffany in Clemson. Tr. 163-64.

Rhonda Jackson, an investigator with the DeKalb County Sheriff's Department in 2006, testified that they developed a suspect from the interview she had with B. _ P. _ after she called when she saw the picture of Inman on CNN. Tr. 169. After she gave Chief McCoig the details of the crime, he agreed to interview Inman about the incident. She subsequently came to Pickens County and interviewed him on June 8, 2006. Tr. 173-181. Inman gave a detailed statement about the entry into the home and his intent to rape her and the fact he could not do so "because she told me she was on her period... she was a single mom and had a little..." Tr. p. 183, ll. 2-5. He described leaving.

J. _ G. _ from Sevierville, Tennessee testified on May 22, 2006, she woke up and found someone on top of her with a knife to her throat around 5:00. Tr. 193. He asked her where money and jewelry was and she showed him. When they returned to the bedroom, he tied her

hands with her bra behind her back. Tr. 196. Her little girl was crying. He demanded that if she cooperated no one would get hurt. Tr. 196, ll. 19-23. With her knees on the floor, the man unsuccessfully attempted to rape her from the rear, and then turned her over, continuing to hold the knife against her neck. Tr. p. 197, ll. 13-20. At that point, he raped her. Tr. p. 197, l. 23 - p. 198, l. 12. He then took her to the bathroom and made her clean herself with shampoo twice. Tr. 198. He continued to make them get items and place them on bed. He then placed her and her daughter into the bathroom. Tr. 200. After ten (10) minutes she left, got her purse, and called the police. Tr. 200. She next saw him about 2 weeks later on the evening news. Tr. 201.

Michael Hannon testified about a subsequent statement Inman made after his arrest describing the rape of the mother with the child in the bedroom. Tr. 214-15.

On September 9, 2008, Dr. Eric Christiansen, the forensic pathologist, testified about the cause and manner of death of Tiffany Souers. He certified that she died as a result of asphyxia due to ligature strangulation. Tr. p. 223, ll. 8-9. A bathing suit top was used. He stated she was rendered unconscious before she died. Tr. 232. He found evidence of trauma or traumatic sexual relations in damage to her body. Tr. 234. She had extensive bruising around both wrists which suggested a struggle while restrained and bruising above her ankles.

The Defense Case in Mitigation

Dr. David Price

Dr. David Price, an expert in forensic psychology, clinical psychology and neuropsychology, testified about an evaluation of Inman.³ He affirmed stated that he had an

³ Prior to the beginning of the mitigation testimony, Solicitor Ariail returned to an earlier motion he had made concerning expert witnesses requesting the disclosure of the underlying data. Id. Tr.p. 250. In particular, he noted that the experts would be testifying about

opinion that at the time of the crime, a factor in the commission of the crime, Inman was under the influence of mental and emotional disturbance, and that his capacity to conform his conduct to the requirements of law was substantially impaired. Tr.p. 258. He stated that he had reviewed 15 three to four inch thick notebooks which included records about his family, his incarceration, newspapers, and his mental health treatment records of over 3,000 pages. He confirmed Inman was the subject of mental health treatment for the 19 years he was incarcerated. TR.p. 259. He opined that Inman had a number of mood disorders, including dysthymia (sustained or intermittent depression for over 2 years), major depressive disorder - recurrent type, major depressive disorder - with psychotic features, bipolar disorder and psychorhythmic disorder. Tr.p. 260. He noted that Inman had prior diagnosis of personality disorders, including schizoid personality disorder and he opined that he could also be diagnosed with dissociative identity

their opinions based upon underlying data that had not been provided to the State. Solicitor Ariail stated that the disclosure would speed up the process. As he stated: "if fact we don't know what it is {and} I'm not sure who their experts are." Tr.p. 250, l. 8-11. He requested first, a reasonable amount of time prior to the testimony of the experts of the underlying data upon which they are going to rely, pointing out Dr. Schwartz-Watts prior disclosed report which noted data that the state did not have. He stated this was necessary for appropriate and meaningful cross-examination. Second, he requested that since they do not have the documents, that when the experts arrive that the underlying data is brought with them to court. Tr.p. 251. Lastly, Solicitor Ariail stated, in a manner to give the court a heads up about the manner that some witnesses had testified in the past. In particular, he pointed out that Dr. Loring, who had a Ph. D. In social work, had a testimonial style that was a "rambling recitation of rank hearsay." Tr.p. 251, l. 17-21. As such, he declared it was difficult to keep things clear on what was her opinion under SCRE Rule 703 and what was "hearsay." Solicitor Ariail noted that he was not objecting to "opinions", but did have objection to the parroting of totally uncorroborated hearsay. Tr.p. 252-253.

Counsel Bannister objected to the disclosure of the reports and data, contending that would be "per se ineffective." Tr.p. 253, l. 23-25. The Solicitor stated that he did not want a "report," but the data underlying the opinion, i.e, if the expert says that they looked at prison records from Florida, I want to see the prison records that they reviewed, which is allowed and required under SCRE Rule 703. Tr.p. 254. The Court stated he would return to this issue later.

disorder and sexual paraphilia. Tr.p. 260. He noted the presence in the records of multiple suicide attempts, suicide ideation and withdrawal. Tr.p. 261. He rated him of the Global Assessment of Functioning with a 30 as someone with serious impairment with the ability to communicate and with judgment and profound impairment in overall ability to function. Id.

Dr. Price stated the schizoid personality disorder was illustrated by the fact he was an introvert with intermittent relationships within his family.

In the social history, Dr. Price noted that Inman had a genetic predisposition for the mental disorders because his mother had paranoid schizophrenia and father was an alcoholic. Tr.p. 265. He stated Inman was raised in a turbulent and unstable environment, began using drugs at age 10, ran away at age 13, living on the streets at 15 and in jail at 17. Id. He noted that this disorder is often associated with depression.

Concerning dissociative identity disorder, he stated that Inman was not very forthcoming about his illness. However, Dr. Price learned that in discussion with treatment providers and his pastor, Inman will assume a different effect and response which is like changing from one identity to another. He stated that the primary identity is a passive-dependant and depressed person that has difficulty with guilt. Tr.p. 268-269. He stated that the evidence of depression , self-mutilation by tattooing and suicidal ideation supports the diagnosis. Tr.p. 269. Also that he traveled in his series of sexual-assaults is consistent. Tr.p. 269.

Dr. Price describe Inman as a serial rapists. He felt it "astounded " him that he was not similarly diagnosed in Florida. He felt the Rapid Risk Assessment for Sexual Offender Recidivism (RRASOR) suggested that he clearly met that criteria. Tr.p. 271-272.

Dr. Price found that Inman had significant records for being sexually abused, physically

abused, living in an unstable environment with a mother with periods of anger who they thought was depressed. Tr.p. 272-273. Dr. Price felt that Inman had one stable relationship - his maternal grandfather who died when he was young. He was abandoned by his father who had sexually abused him and began to act out of conflict at age 10 with drugs, failing school, and winding up on the street. Tr.p. 273. In reviewing Inman's crimes, he found similarity from the victim's with Inman's experiences where his sister was also subject to bondage when she was tied up and the rapes tended to follow a certain pattern - hand tied, kneeling down, lean forward over the bed in an awkward position, suggesting that he was acting out what had happened to him Tr.p. 275. This was part of his "compulsive rape." Tr.p. 275. He stated that Inman felt 'shame and loathing about this rape and murder." Tr.p. 276. This similar feeling was consistent throughout his records, noting that he had attempted suicide on 7 occasions (six while incarcerated). Id. Dr. Price described the various ways he attempted to kill himself including slit wrist. Cutting his jugular vein, swallowing barbed-wire, and trying to starve himself. Tr.p. 279.

Dr. Price stated that Inman's stated that "I killed a 20 year old college student with everything to live for - I deserve to get the death penalty⁴" statement is consistent with Inman's history and also reflected in his unhappiness and hopelessness while in prison. Tr.p. 280-81.

Dr. Price opined that he is a national expert in malingering. He felt that Inman was not malingering based upon his extensive psychiatric history. He noted that Inman instead minimizes the problems and is protective of his parents failings in raising him. Tr.p. 283. He felt that Inman had tried to hinder Price's effort to get a life sentence. Tr.p. 283. He noted that Inman had talents in being a tattoo artist and had carpentry skills.

⁴See also, Tr.p. 299, Defense exhibit 11.

Concerning his interaction in prison, Dr. Price found that Inman grew up in prison and was afraid about being released. Particularly, he had stated that after release he had planned to work for a year or two give the money to his mother and then commit suicide. Tr.p. 284. Dr. Price concurred with a North Carolina doctor that Inman was a lost soul who would continue to be lost based upon his bad genetic loading with the history of a paranoid schizophrenic mother alcoholic father. He had been physically and sexually abused and abandoned by his father in the unstable environment. He began getting into trouble at age 10 with drug use, by 13 he was running away and on the streets. Inman had a long history of mood disorder and his family had never been able to teach him to develop normal heterosexual relationships. He had a schizoid personality disorder, developed a dissociative identity disorder and developed sexual parafilia. Tr.p. 285.⁵

On cross-examination, Dr. Price conceded that he did not bring the 15 notebooks with him that he reviewed to prepare his opinion and testimony. Tr.p. 304-305. He stated that he received the material from counsel Bannister's office. Importantly, he admitted that he was influenced by every document he read. Id. At that point, Solicitor Ariail renewed his request to see all the notebooks that Dr. Price reviewed. Tr.p. 306. During the questioning, Dr. Price confirmed that as

⁵ At that point, the defense proffered a series of exhibits. The Solicitor - noting that no foundation had been laid and they were not authenticated or certified - noted that the exhibits were pure hearsay. Tr.p. 287.

Counsel Bannister asserted that since this was a penalty phase of a capital case "rules of evidence are more lax than they would be in the guilt phase of a trial." Tr.p. 288, l. 1-4. He opined that it would be more expedient to simply mark the exhibits and have them put in the record so the judge could read them. He felt that they should come in as medical records or business records from the prison. Exhibits 3 - 20 were then marked. Dr. Price stated these exhibits were considered by him in making his opinion. Tr.p. 291. See Tr.p. 294-304.

to child abuse, sometimes Inman would report it happened and other times he would not report it. Id. Tr.p. 307-308. He admitted that the history showed the Inman had the ability to make choices inasmuch as he did not kill the victim in Florida, said he would not harm the child in Tennessee, did not kill the North Carolina inmate, but did kill Souers. Tr.p. 308-309. Concerning death, Dr. Price stated that Inman did not want to die, but thought that the death penalty was the appropriate penalty and that he was remorseful for it, thinking of himself as "scum." Tr.p. 311.

The defense adjourned for the evening seeking to resolve the record production of material reviewed by Dr. Price and the requested disclosure to the State pursuant to SCRE Rule 705. Tr.p. 320-323.

Dr. Marti Loring

The testimony of Dr. Marti Loring, a LCSW licensed clinical social worker and board certified expert in traumatic stress is involved in arguments II and III. Respondent incorporates the procedural history set out in that portion by reference to those arguments. For purposes of this portion, on September 8, 2009, Dr. Loring was called to testify in mitigation. September 8, 2008 Tr.p. 324-325. After she was initially voir dired, she was qualified as an expert in areas of abuse, trauma, social histories and forensic interviewing. Id. P. 326. However, it was developed during the state questioning that Dr. Loring had failed to comply with the state licensing law for out of state licensed social workers. Id. Tr.p. 328, l. 1-3. See S.C. Code Ann. § 40-63-200. The prosecution in making the objection to her qualification provided the statute to Judge Miller noting that it carried civil and criminal sanctions. Sept. 8, 2008 Tr.p. 328, l. 19-25. Although she was granted immunity, Dr. Loring initially invoked her Fifth Amendment and initially refused to testify after receiving advised from personal counsel Bill Godfrey, even after being granted

immunity.

Mitigation Continues

Claude Tournay

The defense then called Claude Tournay of the Florida Department of Corrections. He testified that he had reviewed the sexual offender screening and that in 2004 it was determined that he could not find enough criteria to determine a “paraphilic sexual disorder” or diagnosis. Id Tr.p. 357, l. 21-25. He testified that in January 2004, he found sadistic behavior, child molestation abnormal sexual behavior and that Inman was being treated for major depression disorder, recurrent. Tr.p. 358. Tounay stated that a April 2004 letter from the Florida Department of Corrections stating that Inman - convicted of rape - was a sexually violent predator would have required the Department of Children and Family Services to send three psychologists to review and examine the inmate and determine whether he was a threat to society. If so , he would have been civilly committed to and institution for crimes which occurred after 1993. Id Tr.p. 360. However, Inman’s crime had happened before October 1993. However, as a psychiatry inmate, the department made a referral to Tennessee and arrangements for Inman to continue his treatment for his depression. Id. Tr.p. 362-63.

James Aiken

James Aiken, an expert regarding the assessment of inmate classification and expert in prison management and prison classification, testified that based upon his record review, Inman would be automatically in a “high security status” due to the life without parole sentence he would receive, that crime he was convicted and his cumulative behavior patterns while previously confined. Tr.p. 369. He also noted that Inman had some security threat group and gang related

issues that concerned Aiken a great deal. Id. Tr.p. 369. He noted the presence of a Swastika tattoo, which suggests in the prison setting membership in a Nazi gang and security threat group. Id. Tr.p. 371. Because Inman is a "multiple sex offender," Aiken testified that it gave him added concern because gangs and security threat groups hate them "and will kill them because they have such a distaste for them." Tr.p. 371-372. This is because he has the tattoo and is a multiple sex offender. Tr.p. 372.

Aiken stated that because of these factors the correctional department would have to put Inman in a security envelope of a single cell with no free movement or interaction with other inmates since they do not know who would put a hit on him. He would have to be moved with a security escort and 23 hour lock up. Tr.p. 376. He stated no other inmate could have access to him because it would violate "the duty to protect." Tr.p. 377. Aiken stated that Inman's security status would be "SL-3" which is the highest level.

On cross- Aiken added that his security level is also increased by the fact of publicity and that it was a high profile case that would be known within the inmate population that Inman was a multiple sex offender. Aiken also found significant in his prior prison record evidence of self-mutilation and multiple disciplinaries , including attempted suicide and attempted escapes. He noted that some of his disciplinaries included possession of weapons for either to do harm or for his own protection.

Family Member

The Appellant's older sister testified about her relationship with Inman. She stated that she had a fond memory of him playing "pee-wee" football and she was a cheerleader. She described them getting ready for their roles on Saturday mornings and the family routine. Tr.p.

388-89. She also testified about in winter going out from their home in the country across the street into a wooded area and sliding along a creek. She stated that one time they were out there with their cousins and Inman fell through a soft piece of ice and he cried all the way home, noting that he cried frequently as a child. Tr.p. 390. She described "sibling rivalry" and fights over jeans between Inman and his sisters because he would wear their jeans and leak ink on them. She stated that he had "seizures" where he would daze, his body stiffen and shake and would sometimes be accompanied by a high fever. Tr.p. 392-93. She stated this set him apart from others and prompted a lack of friends. She said that the family moved frequently and lived in Tennessee, Florida, Texas, and North Carolina. Tr.p. 393.

She said that Inman loved pets. She felt, however that Inman did not like himself. She stated that at one time Inman had to share a bedroom with his grandfather to whom he was very close and would talk together for hours. The grandfather passed away when he was 16, which was a turning point in his life. Tr.p. 395. Afterwards, Inman began staying out late, became more withdrawn and once ran away from home and was found sleeping outside a church. Tr.p. 396.

In describing their mother, she said that she suffered from bipolar disorder and schizophrenia. She said that the mother was affected by her medication and would hear things, talk to herself, and would freak out over the smallest thing. Tr.p. 396-97.

The sister described events when he was age three and living in a trailer in Florida. She stated that she started receiving inappropriate presents such as see through nightgowns. Later they moved to another house in Florida and she claimed that her other grandfather, Mr. Inman Sr. would come into the bedroom she shared with the Appellant [she was 5 and he was 3] and the grandfather would blindfold her and tie her hands to the bed and turn her over and she recalled

that it was sexual abuse. She described the grandfather then leave her in the top bunk and go to the bottom bunk. While she did not know what was happening to the Appellant, she heard him crying and they both were threatened. Id. She stated that the step-grandfather also messed with her. Tr.p. 400. She described a conversation that she once had with Inman when she stated that she had been sexually abused and Inman stated that he had been abused also. TR.p. 400-401.

Rev. David Hensley

Reverend David Hensley, Inman's pastor, was presented to testify. However, Inman objected to his testimony based upon the priest -penitent privilege which Inman refused to waive. Id. Tr.p. 402-405. Rev. Hensley then only described the fact that he met with Inman the Friday before with his Bible, grape juice, wafer, and poured water over Inman's head. Tr.p. 405.

April 20, 2009 Proceedings.

On April 20, 2009, the matter was re-convened for the sentencing hearing. At the outset, counsel Godfrey for Dr. Loring returned with a motion requesting that she be released from her out of state subpoena or for alternate relief. **April 20, 2009 Tr.p. 8-9.**⁶ At the hearing, Judge Miller stated that he wanted the defense to consider calling Dr. Loring as a witness in mitigation. He stated that she was ready willing and able to come testify voluntarily. Counsel Bannister stated that he had certain motions and that they were not in a position to call her as a witness.⁷ Counsel

⁶As set forth below in Argument One, Judge Miller had refused to vacate his certification of Dr. Loring as an material out of state witness at proceedings on April 14, 2009. See April 14, 2009, Tr.p. 1-14.

⁷The defendant made a motion to recuse the 13th Circuit Solicitors Office based upon a claimed prosecutorial misconduct based upon the incidents concerning Dr. Loring. Tr.p. 61-63., a motion to determine the role of Solicitor Ariail and the Prosecution team; and a motion to suspend proceedings. Solicitor Ariail responded in writing and orally concerning the claim that they were involved in Dr. Loring's potential arrest and included an affidavit from Mr. Geary in

called Public Defender John Mauldin as a witness on the misconduct claim. Mr. Mauldin testified about the circumstances concerning the Michael Laney case. Tr.p. 72-111. It was essentially his position that the Solicitor office had agreed to a life sentence based upon a desire to have a misconduct claim dropped concerning its questioning of an expert witness, Dr. Everington on the issue of mental retardation.⁸

This was a matter that the state disputed within its questioning. Tr.p. 111-117. The record revealed that the objection to Dr. Everington's testimony in Laney was not to her qualification as an expert in mental retardation, but that she was not qualified in S.C. to administer IQ tests and that only a licensed psychologist could do that type of interpretation. Tr.p. 118. The claimed terms of a proposed agreement were set out in State Exhibit 25. Tr.p. 127-128. However, the initial negotiation was not successful and rejected by the state. Tr.p. 128-129. It was developed that the Laney motions based upon alleged prosecutorial misconduct were never ruled upon by a judge and were withdrawn after the death notice was withdrawn. Mauldin confirmed that the stated reason for the state's withdrawal was the victim's family concerns and endless litigation on mental health issues..." Tr.p. 140-141.

Laney's other lawyer, Troy Tessier also testified concerning the Laney matter. Tr.p. 142-149.

Georgia to support the position Tr.p. 68-69. Response to Motion, ROA ____.

⁸In its response to the motion, the Solicitor's office presented a different version of the circumstances that lead up to the life sentence. *Response to Renewed Motion for Mistrial*. ROA - ---. The questioning concerning Dr. Everington was whether she had exceeded the scope of her qualifications as an expert witness - a claim that was ultimately supported by the Board of Psychology. *Exhibit 2 to Response*. ROA. __. The pleading also addressed other collateral issues raised concerning the motions and its contested factual issues.

Susan Allen, a juror in the Edens and Holloway case, testified about a dinner the Solicitor's office held for the jurors in the case after the trial was completed. Tr.p. 150-151. She stated the issues raised by the office was to seek out what factors influenced them the most in not giving the death penalty. Tr.p. 154-155. On cross-examination, the voluntary contact concerning the dinner was pointed out consistent with Judge Hayes instructions to jurors. Tr.p. 157.

Judge Miller again made inquiry of the defense concerning the defense of its intent to call a social historian, noting this case is going forward. The court was concerned because Dr. Loring is present and ready to go, "but we are not going to set this case up for failure." Tr.p. 165-166.

Judge Miller then denied the defense request to call Solicitor Ariail and other prosecutors concerning the raising of an improper issue related to the lack of licensing of Dr. Loring and why the issue was not raised in the earlier trial. Tr.p. 166-167.

Desa Ballard, a lawyer who concentrates on legal ethics and professional responsibility, testified that the Solicitor had violated a number of rules of professional responsibility in connection with his earlier examination of Dr. Loring. Tr.p. 173.

At the conclusion of the testimony, Judge Miller stated that he would not suspend the proceedings. Tr.p. 195. He further stated that Dr. Loring was going to come and he would not remove them as advocates in the case. Tr.p. 195.

The April 21, 2009 Proceeding

On Tuesday, April 21, 2009, defense counsel Bannister again advised Judge Miller that the defense was not going to call Dr. Loring as a witness. April 20, Tr. p. 201. Judge Miller stated that he was considering calling Dr. Loring as a "court's witness." Id. Tr. p. 201, ll. 5-6. He stated that his client had pled guilty and asked him to be the sole fact finder in the case. [Defense

counsel Bannister concurred with that statement: "That's correct."]. Id. Tr. p. 201, ll. 11-14. the judge stated that Dr. Loring was the first choice by the defense and "I believe that she can testify without fear." Tr. p. 202, ll. 15-16. After Loring's counsel confirmed that she had gone over the subject matter the prior evening, Judge Miller stated that she had earlier spent up to 9 to 10 hours preparing. Counsel Godfrey stated that she had previously stated she had reviewed the files 4 to 5 hours, reviewed the file yesterday, has her charts and pictures since they had talked about her testifying as a witness and she had advised him that she felt protected by the court. Id. Tr. p. 203, ll. 7-21.

Counsel Bannister renewed his motion for a mistrial based upon the prosecutorial misconduct claim. Id. Tr. 204. He requested that a life without parole sentence he entered under the 5th Amendment Double Jeopardy Clause. Id. Tr. 205.

The State opposed the motion, citing Fields v. J. Haynes Waters Builders, 376 S.C. 545, 658 S.E.2d 80, 86 (2008), which allowed a court in qualifying an expert witness to look at the statutory requirements for licensing.⁹ The State argued that there was no prejudice from the conduct. Dr. Loring is there and able to testify which shows there was no witness intimidation. She was neither threatened nor intimidated. Further, the State noted that this was a bench trial where the trial judge is presumed to be able to differentiate what it feels is improper. Tr. 207.

Judge Miller initially rejected the double jeopardy motion. He concluded that there was no evidence the State deliberately goaded the defense to make the mistrial motion. Tr. p. 207, ll. 15-19. However, he did not accept the State's position on Fields because there is no question that

⁹ The State made a written "Response to Renewed Motion for Mistrial and Memorandum" which is incorporated by reference. ROA __ ("Response").

whether a person is licensed in particular state is a significant factor in determining whether they should be qualified, but when the Solicitor brought up the criminal sanctions, it was improper. Tr. 208. However, the trial judge found it was immediately addressed and resolved with the grant of immunity. Tr. p. 208, ll. 4-7. Judge Miller opined in light of the administrative order, Baggerly and Fields, that there was no criminal conduct in the witness who arrives solely to testify as an expert witness. Tr. p. 208, ll. 15-18. Relying upon U.S. v. Golding, 168 F.3d 700 (4th Cir. 1999) for a reversal the remarks must be improper (which he found) and such comments or remarks must have prejudicially affected the defendant's substantial rights so as to deprive him of a fair trial.

Judge Miller noted that this was not a jury trial, but a bench trial and the result might have been different. He found that the defendant's rights were not prejudicially affected. Particularly, he found that Dr. Loring was prepared to testify before it occurred and is prepared to testify now according to her attorney. Tr. p. 209, ll. 21-25. Judge Miller stated that in his capacity as fact-finder he is interested in hearing everything that might bear on his decision. He does not find "deliberate prosecutorial misconduct." Tr. 210. Counsel Bannister asserted that had they been provided a jury with the plea, the result would have been different,

Counsel Bannister next moved for a continuance. He stated that on September 11 when Dr. Loring took the 5th, the matters were suspended and directed to either fix the problem with Dr. Loring or find another social historian. Counsel stated that while he thought it was a red herring until the Supreme Court spoke on the issue, the issue was still decided against them on the licensing issue. The only available expert he asserted he could find was Jan Vogelsang who he sought funding for on January 2 and had less than 4 months to prepare. Tr. 213-14. As he

asserted at the April 14 hearing, he declared she could not be prepared by April 20. Tr. 215.

Judge Miller noted that there had been discussions throughout that this case was to restart on April 20. Tr. p. 215, ll. 21-25. He stated that according to Ms. Vogelsang's affidavit, she would not be prepared to testify until the first quarter of 2010. Tr. p. 216, ll. 1-13 [It was April 2009 at that time]

Judge Miller stated that Dr. Loring was prepared to testify and had done all her work. He noted that she had been on the case a long time and the court wanted to hear from her. However, he stated that he would not allow the prosecutors to intimidate her. Tr. 216-17. Judge Miller stated that this case will be finished this week and Vogelsang could be put up. Tr. 217.

Counsel Bannister stated he needed a ruling on his continuance and thought he was being told it was denied.

Judge Miller clarified that he would break to let them meet with Dr. Loring since she was present and was prepared to go forward. Tr. p. 217, ll. 13-19.

April 22, 2009 Proceeding

On Wednesday April 22, the defense returned to its case in mitigation. Tr. 218.

Kenneth McArthur

Kenneth McArthur, Inman's step-father, testified that he has known Inman since he was four years old. Tr. 219. He stated that the September hearing was very stressful for McArthur and his wife, Vera, because of the potential sentence. He stated Vera had been hospitalized in January due to the stress. He stated they love Inman and enjoy having the opportunity to see him in prison. Tr. p. 219, ll. 17-24.

At that point, based upon their prior motions, counsel Bannister declared that he was not

calling further witnesses. Tr. p. 220, ll. 8-12.

The Court Declares Its Intent to Call Dr. Loring

Judge Miller then declared his intent to call Dr. Loring. Tr. p. 220, ll. 14-17. He stated that (1) she would aid the fact-finder in the resolution of the case, (2) she was the number one choice for social historian in the case, but the defense has stated it had no contact with her since September, (3) she has been rehabilitated and despite the fact that she refused to testify in September because of her feelings of intimidation (which he ruled was prosecutorial misconduct which did not rise to the level to require reversal or mistrial) which is cured in part by her presence today. "I think it's necessary to put her up to ensure that these claims of due process violations are put to rest." Tr. p. 220, l. 14 - p. 221, l. 6.

Defense counsel Bannister objected citing Riddle v. State, 314 S.C. 1, 443 S.E.2d 557 (1994) and SCRE Rule 614. While admitting the right to call a witness was within the court's discretion, he contended it was limited in State v. Anderson, 304 S.C. 551, 406 S.E.2d 152 (1991) to a situation in a criminal case where four prerequisites exist:

(1) the prosecution must be unwilling to vouch for the veracity or integrity of the witness; (2) a close relationship must exist between the accused and the potential court's witness, *e.g.*, accomplices and family members; (3) there must be evidence that the prospective witness was an eyewitness to the transaction upon which the prosecution is based, gave a sworn statement concerning the pertinent facts, and the statement has been contradicted or it is probable that it will be contradicted; and (4) the testimony the witness is to relate must be material, such that without the testimony a miscarriage of justice would likely result.

Tr. 221-22. Counsel contended that the prerequisites were not met in this case. Tr. p. 222, ll. 15-22.

After the defense renewed its motions, the trial judge reminded the defense that Dr. Loring was here voluntarily. Tr. p. 223, l. 13.

Judge Miller noted that the notes to SCRE Rule 614 recognize that it is different that the requirements in State v. Anderson, supra. Tr. p. 223, ll. 20-24. Second, the trial judge noted that the defense did not contact Dr. Loring and it was not until January that the Court saws the request for funding of a different expert after three (3) months. Tr. p. 224, ll. 1-3. Further, Judge Miller noted that he had not been informed that Ms. Vogelsang would not be prepared to testify for another year from that date. Tr. p. 224, ll. 3-8. However, being aware of that, the defense did not re-contact Dr. Loring to see if she could be rehabilitated and if she would testify.

It leads me to the conclusion that counsel for the Defendant is more interested in pursuing the misconduct issue than in presenting a full defense. And as a result the assertion that due process is violated is disingenuous because defense counsel has perpetrated the failure to prepare for the social history.

Tr. p. 224, ll. 11-16. At that point, Judge Miller called Dr. Loring.

Dr. Marti Loring - Court Witness

Upon the questioning by Judge Miller, Dr. Loring initially indicated that it would not be necessary to have Solicitor Ariail removed from the courtroom to make her feel comfortable. Tr. p. 225, ll. 9-20. After revealing her educational and employment background, Dr. Loring was qualified as an expert "in the field of social history, trauma, and abuse." Tr. p. 226, l. 21 - p. 227, l. 11. After some initial questioning, Dr. Loring stated that she was willing to testify and to do her best, noting that she had not received attorney guidance [from the defense team, not her personal lawyer Mr. Godfrey], had not seen Inman nor had interviewed anyone else since the six months. She admitted she had checked on the well being of health of the step-father, mother, and sister,

but had no case discussion with them. Tr. 229.

Counsel Bannister made an objection as to “how the witness was procured” and the process as a court witness. Tr. 230.

Dr. Loring presented a genogram [Court Exhibit 4] and described in narrative form the different types of interaction between the family members and their problems with drugs, alcohol, mental illness, sexual abuse and violence. Tr. 232-242. Dr. Loring also presented a timeline of Inman’s life. [Court Exhibit 5] Tr. 242-44. Dr. Loring further presented a group of photographs and material suggesting as a child that Inman was “still miserable and crying” (Tr. p. 244, ll. 22-25) and had indicators of sexual abuser. Tr. p. 245, ll. 2-6. She stated that he had headaches and suffered from head beatings, that he accidentally burned his genitals with spilled bleach without medical attention, that he was firmly spanked as a child, that he had seizures, that he was exposed to violence in 1980 involving a dog fight with a cat, that his leg was burned in 1981 in a motorcycle accident. Tr. 246-48. He also began drug use including alcohol, huffing gas, marijuana, cocaine, and LSD beginning in 1981. Tr. 248.

Inman was exposed in 1984-1986 to a sexually abusive step-brother who was later convicted as a pedophile. Tr. 248. Dr. Loring noted she was unable to locate any pictures of Jerry smiling or happy after age 7. Tr. 249. In addition, Dr. Loring found that Inman would play with matches and set fire to his step-brother’s mattress, which is a symptom of sexual abuse. Tr. 249-50. Family members gave him alcohol between 1984-1986.

Dr. Loring described while he was 15, his maternal grandfather suffered a painful and bloody death with throat cancer. Tr. 250. She described the closeness between them and apparent guilt Inman felt for his death.

His life in prison was based upon a series of thefts and behaviors and the encouraged use of alcohol lead tot he downhill path. Tr. 251.

Dr. Loring noted that around 11 or 12, Inman was asking his mother for help, but because of her problems, she could not hear it. After he was caught looking into a neighbor's window, his windows were nailed shut. Tr. 251-52.

Inman's suicide attempts were again described by her. Tr. 252.

Dr. Loring stated Inman was released in 2005 and was out 9 months before the tragedy. He was described as anxious and lost, unable to hold a job or relate to women. Tr. 252. however, he was able to mentor his sister's son, who idolized him and was able to get him to stop huffing gas. Tr. 252-53.

When the Court asked for anything else Dr. Loring might feel was important, counsel Bannister objected based upon "attorney-client" privilege. Tr. p. 253, ll. 17-21. Judge Miller directed her to not talk about anything she talked with counsel about. Tr. p. 253, l. 25 - p. 254, l. 2. A break was then taken and she was allowed to confer with counsel Godfrey. Tr. 254.

Dr. Loring then concluded that Inman's early history revealed that he was seen in a "trance-like state" as a child, including the time period it was alleged he was abused as a child. Tr. p. 255, ll. 4-18. This history was consistent with his later history of bipolar and having major depression with psychotic features. However, she felt the second half of her conclusions may be interwoven with attorney-client matters. Tr. p. 256, ll. 6-14. Counsel Bannister continued his objection to potential disclosure. Tr. 256-57.

Judge Miller then declared that he was concerned that he was not getting all the information "because of legal gamesmanship." Tr. p. 258, ll. 5-7. He noted she was no longer

under “intimidation” and that because of the immunity there was no valid 5th Amendment claim. The defense had made no effort to contact her. Judge Miller repeated that he believed the defense position was disingenuous when the mistrial motion was based upon their reliance on her expertise which they had felt was significant. Tr. 258-59.

The defense then briefly cross-examined Dr. Loring that it would not be uncommon for new data to become available over seven (7) months. Tr. 259-60. Dr. Loring stated that she had not reviewed any psychological profile prepared by the government in the case to her recollection. Tr. 260-61.

Defense counsel Bannister ended his questioning. He then re-affirmed his prior motions. Tr. p. 261, l. 4 - p. 262, l. 5.

Judge Miller re-affirmed his earlier order denying the prosecutorial misconduct motion. Tr. p. 262, ll. 6-23. Importantly, he declared: “The defense counsel now is participating in the limitation of this evidence [of Dr. Loring] that they intended to offer, which contributes to any Constitutional violation that might exist.” Tr. p. 262, ll. 20-23.

The prosecution, through Deputy Solicitor Strom, briefly cross-examined Dr. Loring. She confirmed that the genogram and timeline were prepared by her in September for her testimony. Tr. 263. Dr. Loring clarified her earlier testimony about Inman’s father killing dogs and Jerry giving a neighbor a stray dog to care for. Tr. 265. She confirmed that Inman experienced a bad childhood - exposure to violence, sexual abuse, and loss. Dr. Loring admitted that she had reviewed his criminal history including the assaults on females and in prison. Tr. 268-69. however, she had not reviewed the particular criminal incident in this case. Tr. 270-71. Dr. Loring was then released. Tr. 273.

Counsel Bannister again closed his mitigation case and renewed his prior motions. Tr. 281. These included his motion for jury trial sentencing and objection to the trial court calling Dr. Loring as a witness. Tr. p. 281, l. 8 - p. 282, l. 4.

Closing Arguments and Inman's Request in Sentencing

Closing arguments were then made. Tr. 282-293 (Solicitor Ariail). Appellant Inman made a personal statement briefly noting his prior history of possibly being molested and abuse is shared with millions, that he had been in prison his entire life, that he can't be rehabilitated and had escaped twice. Tr. p. 293, ll. 12-22. He declared "in all reality, there's only one viable sentence to impose for someone like me. And I ask that you impose that sentence." Tr. p. 293-94, l. 1. Counsel Bannister then made his argument plea in mitigation. Tr. 294-301.

Judge Miller then took a recess. He then made inquiry of Inman concerning his right to testify. Inman declared he did not wish to testify. Tr. 302-03. He stated he had discussed it with his lawyers earlier today. Tr. p. 303, ll. 5-8.

Judge Miller was advised by the defense to consider statutory mitigators #2 ("the murder was committed while the defendant was under the influence of mental or emotional disturbance"), #6 ("the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired"), and #7 ("age or mentality of the defendant at the time of the crime"). Tr. p. 304, ll. 3-4.

The Sentencing

At 6:23 p.m., Judge Miller returned to the courtroom. He entered an Order sentencing the Appellant to death finding the statutory aggravating factors of burglary in the first degree, kidnapping and criminal sexual conduct in the first degree. Tr. 305-317. Judge Miller further

entered a written sentencing order on April 22, 2009. ROA_. He also sentenced Inman to thirty (3) years consecutive for burglary in the first degree, 30 years consecutive for criminal sexual conduct in the first degree, and no sentence for kidnapping. Tr. 316-17.

A motion to reconsider and new trial was made by counsel on April 23, 2009. ROA_. Judge Miller denied the motion on July 17, 2009 and filed July 28, 2009. ROA_.

A timely appeal was filed on August 4, 2009. This appeal follows.

ARGUMENT

- I. **Where there is a mandatory appeal in death penalty cases, the entry of an unconditional guilty plea to murder by Jerry Buck Inman - consistently expressing an intent and desire to be sentenced by Judge Miller rather than a jury in a capital proceeding - is not made into a "conditional plea" by the interruptions by defense counsel during the plea process that an issue on jury sentencing was preserved for appeal - despite the trial court's refusal to conclude that it was preserved and prosecution's protestation that it was waived from appeal. When Inman ultimately declared that "I just want to enter the plea and get it over with and go on from here with the sentencing phase" after the court declared he did not want a plea dependant upon any claimed right to raise the jury issue on appeal, he entered an unconditional plea to murder.**

In his first argument, the Appellant, through appellate counsel, contends he is entitled to have his guilty plea to murder vacated because he characterizes it as a conditional guilty plea because during the plea his defense counsel declared the trial court could not give an opinion on whether the jury sentencing after a guilty plea issued was preserved for appeal or how the Supreme Court would rule. Four salient issues come into play. First, S.C. Code Ann. § 16-3-25 (1976), expressly creates a mandatory appeal in death penalty cases to the South Carolina Supreme Court, including guilty pleas. Accord, State v. Shaw, 273 S.C. 194, 255 S.E.2d 799 (1979).¹⁰ Second, this Court has held that a guilty plea waived jury sentencing as a matter of state

¹⁰ The Court has addressed appeals in the following guilty plea cases where death sentences were given. See also; State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982) (conviction and sentence reversed and case remanded); State v. Truesdale, 278 S.C. 368, 296 S.E.2d 528 (1982) (conviction and sentence reversed and case remanded); State v. Wilson, 306 S.C. 498, 413 S.E.2d 19 (1992) (sentence of death affirmed). State v. Ray, 310 S.C. 431, 427 S.E.2d 171 (1993) (conviction affirmed, sentence reversed and case remanded for new resentencing proceeding). State v. Passaro, 350 S.C. 499, 567 S.E.2d 862 (SCSCT July 29, 2002) (affirmed waiver of right to appeal and held a sentencing review). State v. Downs, 361 S.C. 141, 604 S.E.2d 377 (Oct. 25, 2004) (affirmed convictions and death sentence), rehearing denied Dec. 14, 2004. Cert not sought. State v. Crisp, 363 S.C. 412, 608 S.E.2d 429 (S.C. Jan. 24, 2005) (reversed entry of plea based upon plea judge's comments); Mahdi (Mikal) v. State, 383 S.C. 135, 678 S.E.2d 807 (June 15, 2009) (affirm conviction and sentence on writ of certiorari from

law, citing § 16-3-20(B). State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982) (conviction and sentence reversed and case remanded); State v. Truesdale, 278 S.C. 368, 296 S.E.2d 528 (1982) (conviction and sentence reversed and case remanded); State v. Downs, 361 S.C. 141, 604 S.E.2d 377 (Oct. 25, 2004)(affirmed convictions and death sentence), State v. Allen (Quincy Jovan), 386 S.C. 93, 687 S.E. 2d 21 (Nov. 16, 2009), cert den. May 24, 2010 (affirmed). Third, he abandoned the issue in the appeal that he claimed was preserved for appellate review - entitlement to jury sentencing at the entry of a guilty plea in a capital case. Finally, during the plea colloquy, despite the comments of his counsel attempting to qualify the trial judge's statement, Jerry Buck Inman ultimately made unqualified and unequivocal statements expressing both a desire to plead guilty and a desire and intent to be sentenced by the particular trial judge rather than a jury.¹¹ Because the entry of the plea was unconditional - despite the fact that an appeal exists and is mandatory in capital proceedings, the plea to murder should be affirmed.

How the Issues Were Presented Below

At the August 19, 2008 proceeding, Judge Miller questioned Inman concerning his desire to enter a guilty plea and be sentenced by Judge Miller rather than a jury. Aug. 19, 2008 Tr. p. 17. Inman declared he was there "to enter a guilty plea." Id. Tr. p. 17, l. 4. Judge Miller went through the elements and punishment for the charges of murder, criminal sexual conduct in the first degree

conviction).State v. Allen (Quincy Jovan), 386 S.C. 93, 687 S.E. 2d 21 (Nov. 16, 2009), cert den. May 24, 2010 (affirmed).

¹¹Respondent would note that the alleged "condition" was abandoned in this appeal. The Appellant is not raising a claim that he had any constitutional right to have jury sentencing from his guilty plea. To the contrary, he concedes that he is not entitled to jury sentencing. See Initial Brief of Appellant, p. 9, ¶ 2. (The court will have noted the undersigned do not raise this issue on appeal).

and kidnapping. Id. Tr. 17-19. He stated he was there to plead guilty. Id. Tr. p. 19, ll. 10-13.

Particularly, Judge Miller made the following inquiry:

[20]THE COURT: That it would be a bifurcated proceeding with a jury that would hear the guilt phase and, also, the same jury would hear then if a guilty verdict was returned, they would hear the sentencing phase and make a decision about that.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: Do you understand that if you enter a plea of guilty that you waive and give up your right to a jury trial to have a jury decide the guilt phase? And, by doing that, you give up your right to have a jury decide the sentencing phase.

Do you understand that?

MR. BANNISTER: Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: Okay. And do you understand that you could impanel a jury, and that you could get in front of that jury in the guilt phase and admit your guilt and have that jury decide your sentence?

Do you understand that?

MR. BANNISTER: Judge, I would object to that question, the way it's asked. I don't believe he's got that right, if I'm understanding it the way you're asking it.

THE COURT: Well, I don't want to be - - make it [21]confusing.

But if you were to impanel a jury in the guilt phase, you could testify and admit to your guilt in front of that jury and have that jury then in a sentencing phase sentence you.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: Okay. And do you - -

MR. BANNISTER: Judge - -

THE COURT: - - understand by doing that that you give up that right?

Yes, sir, Mr. Bannister.

MR. BANNISTER: Judge I need to, I guess at least, put on the record, at this point, that in March, we raised the issue that the Defendant sought to enter a guilty plea, as he's doing today, and then proceed to a jury trial sentencing. And we believe that that was an option that he should be entitled based on the fact of his Sixth Amendment right to a jury trial, his Eighth Amendment right to present mitigation, and his Fourteenth Amendment right to present a complete defense.

You determined, prior to this proceeding, that he did not have that option. I believe that that issue has been preserved for review. But to the extent that I need to state it again for the record, I'm saying that we raised that [22]issue and we believe it's part of this case no matter what going forward. But that's been part of my explanation to him about where we go.

So, with that on the record, go ahead.

THE COURT: Well, I want to tell you, Mr. Inman, that, in South Carolina, we do not have conditional guilty pleas. And the law is very clear about that. Whether or not this issue is preserved for appeal is not something that I will address, and I have no control over it.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: All right. Now, and I would tell you that there are - - I have no - - and I don't have an opinion about whether or not what your attorney claims - - what he thinks about the preservation of that issue for appeal is. But I can tell you

that the law is very clear. There are no conditional pleas. And if you enter a plea of guilty, you can't do it on a condition.

Do you understand that?

You can't hold something out in abeyance by entering this guilty plea.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: All right.

MR. BANNISTER: And, Judge, I guess what I want to [23]say is, I want to be sure that there's a clear distinction on the record between what you're asking him to waive, which is his ability to stand up in front of a jury and tell them he's guilty versus going through a formal guilty plea and then proceeding to a jury trial having entered the guilty plea. He cannot do that. But I think the way the question was worded to him, it sounded like that was an option. And it's simply not. I mean - -

THE COURT: Well, I don't want to get into confusing semantics. But if you enter this plea and I accept it, you are giving up your right to have a jury impaneled.

And let me tell you, there are significant rights which attach to the selection of a jury in a capital case. And part of that is already in place. A lengthy and comprehensive juror questionnaire has been sent to potential jurors. That has been provided to your counsel and to the State. They are able to learn many things about jurors. And, additionally, at the time, if you were to go forward with a jury trial, you and the State would have an opportunity to individually question potential jurors to make a - - to find out information about whether or not they could follow the law and be impartial in your case.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: And if you enter this plea and I accept this plea, you are giving that right up.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: All right. And are you doing this of your own free will?

DEFENDANT INMAN: Yes, sir.

THE COURT: Okay. Has anybody - - this is what you want to do?

DEFENDANT INMAN: Yes.

THE COURT: It's not at someone elses (sic) suggestion; is that correct?

DEFENDANT INMAN: Yes, sir.

THE COURT: It is at someone elses (sic) suggestion?

DEFENDANT INMAN: No. I mean, that's correct.

August 19, 2008 Tr. p. 20, l. 1 - p. 24, l. 15.

Judge Miller then went over the other specific constitutional rights Inman was waiving including, the burden of proof beyond a reasonable doubt, the right of confrontation and cross-examination, and the right to challenge seized evidence. Id. Tr. 24-25.

Inman then advised the Court that he still desired to enter his plea and admitted that he was guilty. Tr. p. 26, ll. 1-4.

The State, through Solicitor Ariail, next made a statement concerning the factual basis for the pleas based upon the stipulated facts. Tr. 27-41. After the recitation of facts, Inman agreed to the stipulated facts. Tr. p. 42, ll. 1-12. At that point the following occurred concerning the jury

trial issue:

[42]THE COURT: I just want to - - do you understand that if I accept this plea, you are giving up your right to have a jury make this determination on your sentence with respect to the murder case?

Do you understand that?

DEFENDANT INMAN: Yes.

THE COURT: And - -

MR. BANNISTER: Judge, for the record, since we're going back into the jury trial rights, let me just say again that we previously made a motion - -

THE COURT: It's well documented and I - -

MR. BANNISTER: I think that I have to restate it, though, just for the record.

THE COURT: All right. Go ahead.

MR. BANNISTER: He's been put in a position where he's got to make a choice between Constitutional provisions, one is the Fourteenth Amendment, Sixth Amendment, and Eighth Amendment right to present a complete defense, which would include the mitigation of his guilty plea. The other is the right to a jury trial and have a sentencer determine what sentence he would receive. He has to choose between those two.

We say the choice itself is unconstitutional. And we - - I'm just stating that again for the record. You've already decided that that's not the case. And I just want to make sure it is preserved.

Thank you, Your Honor.

THE COURT: Now, again, Mr. Inman, let me tell you that the law in South Carolina is clear that there are no conditional guilty pleas.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: And whether or not that issue is preserved for appeal is not for me to decide.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: An Appellate Court will make that determination, the Supreme Court of the State of South Carolina.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: But you understand that a jury's verdict would have to be unanimous.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: All 12 persons on the jury would have to agree to a verdict.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: And you understand that if one of the 12 people couldn't make up their mind that the law would require that the sentence would be life.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: And you're giving that right up and you're requesting that the Court be the fact finder and the determiner of the sentence; is that right?

DEFENDANT INMAN: Yes.

THE COURT: Has anybody made any promise, prediction, or prophesy to you about what they think my sentence might be?

DEFENDANT INMAN: No, sir.

THE COURT: And I want to tell you right now that this is the first time I've been exposed to these facts, and that I have not made up my mind, and that I will listen fairly and impartially to everything that's presented to me.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: But, at the same time, you don't get the right to send me a questionnaire, and you don't get the right to question me the way you would jurors.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: **And you still want to go forward?**

DEFENDANT INMAN: Yes, sir.

THE COURT: Is there any other questions that should be propounded to Mr. Inman, at this time, that anyone can think of?

MR. ARIAIL: The only thing I would suggest, Your Honor, I would like to put on the record from the State's perspective - - and I think based on the current events taking place in some related cases - - the Court has made no indication to the State of any - - any indication as to which sentence would be appropriate. Therefore, it is our understanding that we are moving forward with the Court able to conclude to impose either sentence available based upon what your determination of the facts is.

THE COURT: All right. Do you understand what he just said?

DEFENDANT INMAN: Yes, sir.

THE COURT: Is there any other questions that need to be propounded that you can think of, Mr. Bannister?

MR. BANNISTER: No, sir, Your Honor.

THE COURT: Mr. Inman, do you have any questions you want to ask of me?

DEFENDANT INMAN: No.

THE COURT: **All rights. Well, I'm going to accept this plea to these four cases as being freely, voluntarily, and intelligently made with the advice of three very competent attorneys with whom Mr. Inman states he is well satisfied. And I find there is a substantial factual basis for the plea.**

Tr. p. 42, l. 13 - p. 46, l. 15.

After the plea was entered, Solicitor Ariail expressed a concern that defense counsel's injection of his comments about preservation of an appeal was an attempt to make it a conditional plea. He asked Judge Miller to direct to Mr. Inman a specific question "does he understand by waiving and giving up those rights that he is, from the law's perspective waiving the right to be tried by a jury in the sentencing phase?" Tr. p. 47, ll. 3-14. Defense counsel Bannister objected to the question. Tr. p. 47, l. 15. The Court suggested that he had already asked that question, but not in the specific language the State requested. Tr. p. 47, ll. 16-19.

The following colloquy continued:

[47]MR. BANNISTER: Well, that's saying the condition here is that he give up an appellate right that he would have. Every defendant that appears in court still has the right to appeal his guilty plea. And so - -

THE COURT: And that's absolutely correct.

MR. BANNISTER: So the condition that they're asking to put on there is one from the State, that is that he [48] give up rights that he

would normally otherwise have.

THE COURT: That is not what they're saying. But what the law - - And, Mr. Inman, I direct this to you. Because in the end, you get advice from your attorneys. But this decision is yours. I don't - - the law is clear in South Carolina that you cannot enter a conditional guilty plea, which means you cannot plead guilty and reserve some issue with respect to the guilt phase for the Appellate Courts to rule on.

Mr. Bannister may disagree with me.

MR. BANNISTER: And I want to state, for the record, that I do.

THE COURT: Okay.

MR. BANNISTER: And I have advised him that I believe this issue is preserved and will survive the guilty plea.

THE COURT: Mr. Inman, I want to tell you that we disagree on that with respect to that, that by your entering this plea that it has - - I believe - - and, of course, I'm not the final word on this issue, because the Supreme Court will be the final word. But I believe that you're giving up that right, so.

And I'll ask you again, because if you want - -

MR. BANNISTER: I'm sorry, Your Honor. Are you giving him - - I mean, I just have to object. Because I [49]think, at this point, what you are doing is giving your opinion about what an Appellate Court might do,. And I think that's entirely inappropriate. I mean, I object to - - I don't think you can give him an opinion about what an Appellate Court might do with that issue.

THE COURT: Mr. Bannister, I've tried to be very plain that I don't have an opinion about what they would do.

But I want to tell you, Mr. Inman, and this - - without arguing legal semantics with you, South Carolina, clearly, states that they do not allow conditional guilty pleas. so if there is some question in your mind, I would - - about this issue, I would urge - - I would allow you to withdraw your

plea at this time. And we've got the jury coming. We can go forward with that. You can handle it in that fashion.

I just want - - Mr. Bannister may be convinced that he's got an appellate issue. And I don't know whether he does or not. but I'm telling you I believe the law in South Carolina is clear that guilty pleas are unconditional.

MR. BANNISTER: I guess - - what is the condition, though, that you're telling him that the - - what is the conditional part of this plea?

I mean, he has unconditionally entered his guilty [50]plea. We're having an argument with - - I guess the three of us are trying to decide whether the issue I've raised - - or that we've raised prior to this is or is not appealable. I'm trying to see what - - what is the condition exactly that you're asking him to give up?

In general, I agree with you. He can't have a conditional guilty plea. But what, specifically, is the condition that he is presently - -

THE COURT: Mr. Bannister, I'm not going to get into a legal argument with you on the record about this issue. Your client has entered the plea. I don't want him to do it - - I want him to be aware that you cannot reserve - - I mean, you can go over the law with him about what the courts review when they look at guilty please.

MR. BANNISTER: That's right.

And I think that's my province, which is why I have this - -

THE COURT: Well, if this is a big issue, then I'm about to not accept the plea.

MR. BANNISTER: Well, all I can tell you is that I believe he's entered an unconditional plea at this point. And I'm having a hard time seeing what is the condition that he's put on. I mean, I agree with you that it's - - that he cannot enter a conditional plea. So on that, we're all in agreement.

[51]THE COURT: Well, Mr. Inman, clearly, there is some disagreement about

the preservation of this issue that your attorneys have raised. I'm not involved in it. And I don't have an opinion about it. Whether or not Mr. Bannister can do that successfully is something that the Supreme Court will answer. The State does not believe that he can. He believes that he can.

But I don't want you -- I want your plea to be -- you've got to understand it's unconditional, that you enter that, and whether or not that happens on appeal is really of no concern here. I want your plea to not be dependent on that issue.

So I'd ask you now, is your plea predicated on that issue? Is it dependent on that issue?

MR. BANNISTER: If you want a moment, we can talk.

DEFENDANT INMAN: We need to talk.

Tr. p. 47, l. 19 - p. 51, l. 16.

After the break, a conference was held between Inman and his defense counsel. Tr. p. 51, ll. 17-25. The Court returned to the record. At that point, Mr. Inman declared that he wanted to continue on with the plea proceedings. Tr. p. 52, ll. 1-3.

THE COURT: And while this may not be a -- all I'm trying to determine is that your entry of this plea is not based on or predicated on some issue that you think you might prevail on or might not prevail on in an Appellate Court.

Do you understand what I'm saying to you?

DEFENDANT INMAN: Yes, Sir.

THE COURT: That the only basis for the plea should be you're knowing -- your knowledge of your rights, intelligent nature of your plea, your ability to understand what's going on, and your admission to the facts that you believe the State could prove against you. And whether or not you can prevail on an appellate issue should have nothing to do with your entry of this plea.

Do you understand that?

DEFENDANT INMAN: Yes, Sir.

THE COURT: Okay. So whether or not you're successful or not successful at some higher court on some issue that might be raised should have nothing to do with why you're entering this plea.

Is that clear?

DEFENDANT INMAN: Yes.

Tr. p. 52, ll. 4-25. More particularly, Judge Miller asked Inman the following:

THE COURT: All right. So tell me, in your own words, if you would, sir, why are you entering this plea?

DEFENDANT INMAN: I just want to enter the plea and get it over with, just go on from here with the sentencing phase.

THE COURT: All right. Do you have any questions you want to ask me about any of your rights?

DEFENDANT INMAN: No.

THE COURT: And you have had enough time to speak with your attorneys about the issue of the jury trial versus a guilty plea; is that correct?

DEFENDANT INMAN: Yes.

THE COURT: Do you think you fully comprehend and understand all the differences?

DEFENDANT INMAN: Yes.

THE COURT: And this is what you want to do?

DEFENDANT INMAN: Yes, sir.

Tr. p. 53, ll. 1-17.

ANALYSIS

To be valid, a guilty plea must be unconditional. *Easter v. State*, 355 S.C. 79, 584 S.E.2d 117 (2003). As this Court recently stated, it is axiomatic that conditional pleas may not be accepted in South Carolina. See *In re Johnny Lee W.*, 371 S.C. 217, 220, 638 S.E.2d 682, 684 (2006); see also *State v. Peppers*, 346 S.C. 502, 504, 552 S.E.2d 288, 289 (2001) (court could not accept guilty plea where appellant conditioned guilty plea upon right to appeal constitutionality of indictment); *State v. Truesdale*, 278 S.C. 368, 370, 296 S.E.2d 528, 529 (1982) (conditional plea is a practice not recognized in South Carolina and a practice of which this Court expressly disapproves). If “an accused attempts to attach any condition or qualification” to a guilty plea, then “the trial court should direct a plea of not guilty.” *Truesdale*, 278 S.C. at 370, 296 S.E.2d at 529.

As to whether a plea is conditional is a question of fact. In *Truesdale*, the Court conditional that a guilty plea was conditional where it was conditioned upon a continuing assertion made before the plea that the jury was unconstitutionally selected in an equivocating statement. The appellant in *Truesdale* sought to reserve his right to raise in the appeal issues concerning a change of venue, a limitation on the use of peremptory challenges and certain restrictions on disqualification of the jurors for cause. There, the claims were prior claims of constitutional rights or waivers which happened before the plea. The Court stated that it was improper for appellant to seek to preserve the constitutional issues set out while entering a guilty plea. It was settled law that a guilty plea acts as a waiver of all *prior* claims of constitutional rights. *Truesdale*.

In *State v. O’Leary*, 302 S.C. 17, 393 S.E.2d 186 (1990), the Court determined that an

attempt to condition a guilty plea for driving while under suspension on a reserved right to appeal the constitutionality of a statute regarding notice to drivers whose licenses are suspended was an improper conditional plea and should be vacated. The “condition” that the appellant sought to challenge undermined the factual guilt of the appellant for the crime itself. The court reasonably found this condition to the guilty plea improper.

In *State v. Peppers*, supra, the appellant after a guilty plea to child abuse and neglect sought to appeal raising constitutional challenges against the neglect statute based upon her actions concerning an unborn child. At the plea, her counsel sought to preserve a motion to quash the indictment before the plea. Therein the court claimed he was protected on the record.¹² The court rejected her plea counsel attempt to preserve claims related to the merits of her guilt based upon claims concerning notice and viability.

In *State v. Downs*, the court found that Downs had not entered a conditional plea when he deferred a decision on whether to present evidence of mental illness. The court found that this was only a sentencing issue and did not go to guilt - thus it was unconditional. In *Easter v. State*, the court similarly concluded that the guilty plea made to a series of crimes was not conditional because he sought to challenge the application of the habitual offender statute for a life without parole sentence. Finding that he did not dispute his guilt, the issue concerning a sentence enhancement was wholly separate from his guilty plea. In *State v. Johnny Lee W.*, the Court concluded that the juvenile’s plea should not have been accepted because at the plea the juvenile

¹²As shown above, Judge Miller was not declaring that Inman’s counsel was “protected” on the issue as the plea was entered. To the contrary, he consistently stated that while his counsel seemed to believe he was protected the state did not. Further, he specifically and consistently stated that Inman was not entitled to jury sentencing in a guilty plea and would be sentenced by a judge.

sought to reserve his right to appeal the denied issue of the constitutionality of whether the statute for disturbing schools was too broad which would undermine his guilt on the offense - correctly vacating the pleas as conditional.

Here, the pleas were not “conditional.” Unlike the cases where conditional pleas were found, nothing in Inman’s plea could be seen as any attempt to undermine any conclusion of factual guilt. Further, unlike other “conditional” cases, nothing was sought to be preserved concerning any claimed constitutional violation which occurred prior to the plea, such as errors in juror qualification, a denial of a change of venue, or the admissibility of inculpatory statements. The guilty plea here was freely and voluntarily entered, knowing that he was admitting the crimes unconditionally. Further, he was consistent in his affirmation that by entering his plea, he was agreeing to be sentenced by the judge, not a jury of 12.

Instead, the record reveals it was counsel’s attempt during the guilty plea to assert that an issue of jury sentencing in a guilty plea was preserved for an appeal - although the trial judge expressly asserted that there are no conditional pleas and that if he enters a plea he was giving up his right to have a jury impaneled and that he could not state that the jury issue was preserved. Tr.p. 22-23, 42-46, , 48-51. Particularly, the ultimate responses by appellant Inman, prior to the acceptance of the plea after consultation on whether the plea was predicated upon any issue seeking to preserve the jury sentencing issue - which the court stated that if it’s a big issue , then he was not about to accept the plea - reflected he was not entering a conditional plea and sought to have Judge Miller sentence him rather than a jury - an not dependant on that issue of preservation:

THE COURT:

All right. So tell me, in your own words, if you would, sir, why are you entering this plea?

DEFENDANT INMAN: I just want to enter the plea and get it over with, just go on from here with the sentencing phase.

Tr.p. 53.

Finally, it must be pointed out that the Appellant is expressly not raising any constitutional claim of a right to jury sentencing in guilty pleas. Assuming that it was an attempt to preserve the guilty plea - jury sentencing issue, it was abandoned in this appeal. Since he is not seeking to raise the issue, he was not trying to invoke the condition. This abandonment is consistent with Inman's ultimate statement to the plea judge.¹³

In conclusion, Judge Miller properly concluded that the guilty plea was not dependant or conditioned upon any asserted claimed by counsel that he could raise an issue about jury sentencing on the mandatory appeal. Instead, it was based upon Inman's desire to plead guilty and be sentenced by Judge Miller - a decision he consistently expressed during the plea process. Judge Miller did not err in accepting the guilty plea.

¹³In the appeal, appellant complains that the trial judge's failure to specifically declare that the jury sentencing issue could not be raised in an appeal amounted to an erroneous statement of existing law. He cited *State v. Owens*, 362 S.C. 175, 607 S.E.2d 78 (2004) in support of this assertion. However, in *Owens*, it addressed different comments by the sentencing judge concerning what a jury would do. Here, the judge comments were consistently that the entry of the plea waived his jury trial rights and that the issue of whether any claim was preserved was for the appellate court. Judge Miller's response was not an erroneous statement of existing law.

II. A sentencing mistrial and recusal of the Solicitor's Office was not required when during voir dire concerning the qualifications of an out of state social worker, that there was a licensing statute in South Carolina that carried civil and criminal sanctions where the trial court concluded that the Solicitor comments were inappropriate but did not rise to the level of intentional and deliberate misconduct and did not prejudicially effect the substantial rights of the defendant since the witness was granted immunity immediately by the prosecutor and was willing to testify in the continued hearing and did testify.

A new sentencing proceeding is not warranted where Dr. Marti Loring ultimately agreed to testify at the April 2009 hearing. Certain facts support the sentencing judge's rejection of the mistrial request:

- After Judge Miller qualified Dr. Loring, Solicitor Ariail *immediately* gave Dr. Loring immunity for any actions relating to the defense of Mr. Inman and her testimony. September 8, 2008 Tr.p. 328-333.
- Her initial refusal to testify decision during the September 2008 proceeding was done after she consulted with independent counsel - Bill Godfrey - and acted upon his advice concerning her potential culpability under the social worker licensing statutes and the effect it could have on her Georgia license. Sept. 8, 2008, Tr.p. 336, l. 16-24.
- Although Solicitor Arial had apprised Judge Miller of the existence of both civil and criminal sanctions for a failure to comply with the social worker licensing

requirements for out of state license, he never indicated that he *would* seek criminal sanctions. Sept. 8, 2008, Tr. P. 328, l. 11-23, p. 33, l. 24- p. 331, l. 2.

- Concerning the April 2009 material witness subpoena, Judge Miller had signed an order certifying that she was a material witness and did not revoke the order upon request during the April 2009 hearing. April 14, 2009, Tr.p. 14, l. 5-11.

The Appellant contends that the prosecution's actions during the qualification of Dr. Marti Loring, a Georgia licensed forensic social worker, by challenging her qualifications because she had not complied with the South Carolina licensing requirements for an out of state licensed social worker and advising the judge that it carried civil and criminal sanctions was prosecutorial misconduct that mandated a mistrial and recusal of the 13th Circuit Solicitor's Office. Upon review of the applicable statutes concerning the licensing of social workers and her actions in South Carolina, Dr. Loring attempted to invoke her Fifth Amendment rights *after receiving legal advice from independent counsel Bill Godfrey* - even after the State had agreed to grant immunity concerning her actions in defense of Inman. Although Judge Miller ultimately determined that Solicitor Ariail erred in his comment to the trial court concerning the potential sanctions for non-compliance with the state statutory licensing requirements, the plea judge concluded that a mistrial was not mandated nor was removal of the Solicitor's Office required.

In *Webb v. Texas*, 409 U.S. 95, 98, 93 S.Ct. 351, 34 L.Ed.2d 330 (1972), the Supreme Court established a standard for finding a constitutional violation for witness intimidation: "the unnecessarily strong terms used by the judge could well have exerted such duress on the witness' mind as to preclude him from making a free and voluntary choice whether or not to testify." Similarly, *Webb* was applied to a case where the prosecutor sent a Secret Service agent to

communicate *ex parte* with a potential witness and threaten prosecution if he testified. “[T]he Government's action here substantially interfered with any free and unhampered determination the witness might have made as to whether to testify and if so as to the content of such testimony.” *United States v. Thomas*, 488 F.2d 334, 336 (6th Cir.1973). The prosecutor's conduct in the instant case simply does not rise to the level of intimidation present in *Webb* and *Williams*. Here, the prosecutor advised the judge during the qualification of the Georgia social worker of the statutory requirements for licensing and that it carried civil and criminal sanctions. After qualification as an expert, the Solicitor then granted immunity to the witness for her actions in this case. The judge then proceeded to briefly question the witness and quickly allowed independent counsel to advise her of her rights. However, after the consultation with independent counsel, she initially asserted a Fifth Amendment claim. At that stage, since independent counsel had intervened and gave advice concerning potential criminal liabilities, the act by the prosecutor cannot be seen as constitutionally prejudicial. More powerfully, when court reconvened months later, Dr. Loring was willing to testify and did testify as a court witness.

The prosecutor's conduct was not unconstitutional, especially considering the ethical obligation, imposed on prosecutors by the ABA's model guidelines:

to advise a witness who is to be interviewed of his or her rights against self-incrimination and the right to counsel whenever the law so requires. It has been held proper for a prosecutor to so advise a witness whenever the prosecutor knows or has reason to believe that the witness may be the subject of a criminal prosecution.

ABA Standards for the Administration of Criminal Justice § 3-3.2(b).

Regardless of the prosecutor's motives or the propriety of waiting until the witness was called to the stand to inform the court of his concerns, the trial judge properly applied Supreme

Court precedent in its holding that the prosecutor did not commit error requiring a mistrial and/or recusal. Accord, *Davis v. Straub*, 430 F.3d 281 (6th Cir 2005). See also, *Annotation, Admonitions against perjury or threats to prosecute potential defense witness, inducing refusal to testify, as prejudicial error*, 88 ALR 4th. 388 (1991).¹⁴

HOW THE ISSUE WAS RAISED BELOW

On September 10, 2008, Dr. Marti Loring, a LCSW licensed clinical social worker and board certified expert in traumatic stress was called to testify. September 8, 2008 Tr.p. 324-325. Evidence was presented that Dr. Loring had done research therapy focused on abuse trauma. She stated that she had a Masters degree from Bryn Mawr College School of Social Work and a PhD Sociology with a major in Social Psychology from Emory University. Sept. 8, 2008 Tr.p. 325. She stated that she had testified in South Carolina before and courts in other states. She stated that she had been previously qualified in areas of abuse, trauma, social histories and forensic interviewing. Id. P. 326. She declared that she had never failed to be qualified as an expert in those areas. Id. Dr. Loring was then offered as an expert in the field of trauma, abuse, forensic and therapeutic interviewing and as a social historian in capital sentencing cases. Id. Tr.p. 327, l. 1-3.

Solicitor Ariail's Voir Dire of Dr. Loring.

Then Solicitor Ariail voir dired her on whether as part of her services in this case had she

¹⁴It should be noted that the annotation makes a distinction concerning prosecutorial statements contrasting statements that they *would* bring criminal charges if the witness testified contrasted with statements that they potentially *could* bring criminal charges. Here, the prosecutor granted immunity - wholly removing the possibility of prosecution in this case. In fact, he stated that he was bring the statute to the court's attention for the purpose of voir dire "and that's as far as its gotten. And whether or not I present an indictment is a totally separate issue," in response to the claim that she will need to assert the Fifth Amendment by answering the questions the defense would propound to ask. Id. Tr.p. 330-331. The prosecutor then granted immunity. Id, Tr. p. 333.

performed services under her licensed clinical social worker status, which she admitted that she did by interviewing Inman and having conversations with him. Id. Tr.p. 327, l. 9-17. She admitted that a fee for those services was being paid to the Center for Mental Health, but denied that she was getting any money for her services. Id. Tr.p. 327, l. 18-25. She declared that she was not licensed in South Carolina. Id. Tr.p. 328, l. 1-3. However, she stated that “custom” is that her license is honored across the country whenever she goes into different states. Id. Tr.p. 328, l. 7-10.

Solicitor Ariail then directed Judge Miller’s attention to S.C. Code Ann. § 40-63-200 which concerned the unauthorized practice of social work.¹⁵ Id. Tr.p. 328, l. 11-14. He next noted that a person practicing social work within the state must be licensed prior to performing the services, citing specifically S.C. Code Ann. § 40-63-30. September 8, 2008 Tr.p. 328-329. He noted to Judge Miller that it carried both civil and criminal penalties for violation. He stated that based upon that, he would submit that she is “not qualified as an expert in this state to testify or render those services until she gets licensed.” Sept. 8, 2008 Tr.p. 3287, l. 19-23. Judge Miller asked that he be provided with a copy of the statute after Solicitor Ariail referred to it. Id. Tr.p. 328, l. 25.

Defense Counsel Bannister’s Response

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§ 40-63-200. Unauthorized practice; penalty

- (A). A person who practices or offers to practice as a social worker in this State in violation of this chapter or a regulation promulgated under this chapter or who knowingly submits false information to the board for the purpose of obtaining a license is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both.
- (B). A person violating any other provision of this chapter or a regulation promulgated under this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both.

In response, defense counsel Bannister mistakenly cited S.C. Code “§ 40-63-130 (2)” asserting that it stated that “any person licensed or registered to practice social work under the laws of another state that imposes substantially the same requirements as this chapter for practicing social work on the satisfactory presentation of evidence may practice.” Sept. 8, 2008 Tr.p. 329, l. 12-13. However, defense counsel neglected to point out two salient facts - that the statute required that the out of state social work licensee to present the “evidence” to the State Board of Social Work Examiners - *which had not been done by Dr. Loring* - and that the cited § 40-63-130 had been rewritten in 2002 and the cited requirements were abrogated from what Mr. Bannister misstated to the sentencing court, likely due to an apparent failure to review the supplements to the Code and amendments and revisions to the section.¹⁶ Counsel Bannister stated

¹⁶The applicable statute in 2008 set forth the following conditions precedent concerning and out of state social worker from practicing social work in South Carolina without a South Carolina license:

§ 40-63-30. License as prerequisite to practice or offer to practice; providing social work services through telephone or electronic means.

- (A) No individual shall offer social work services or use the designation “Social Worker”, “Licensed Baccalaureate Social Worker”, “Licensed Masters Social Worker”, “Licensed Independent Social Worker--Clinical Practice”, “Licensed Independent Social Worker--Advanced Practice”, or the initials “LBSW”, “LMSW”, or “LISW” or any other designation indicating licensure status or hold themselves out as practicing social work or as a Baccalaureate Social Worker, Masters Social Worker, or Independent Social Worker unless licensed in accordance with this chapter.
- (B) A person providing social work services to a client in this State, through telephonic, electronic, or other means, regardless of the location of the social worker, who is not licensed in this State, is practicing without a license.

S.C. Code § 40-63-30. 2002 S.C Acts and Joint Resolutions, Act 189, §1. (Effective March 12, 2008).

Current South Carolina law addresses out of state licenses in § 40-63-260 and 280. In particular, in pertinent part, these state:

§ 40-63-260. Applicants licensed in another jurisdiction; licensure; equivalent

designations recognized.

- (A) In order for a social worker currently licensed in another jurisdiction to obtain a license as a social worker in this State, the applicant must:
- (1) have submitted a written application in the form prescribed by the board;
 - (2) be at least twenty-one years of age;
 - (3) be of good moral character;
 - (4) have received a baccalaureate, masters, or doctorate degree in social work from a program accredited by a nationally recognized accrediting body for social work programs, or from a social work program whose standards are at least equivalent to the minimum standards required by the nationally recognized accrediting body as approved by the board;
 - (5) have successfully passed an examination prescribed by the board;
 - (6) have presented to the board evidence that all social work licenses possessed by the applicant are current and in good standing;
 - (7) have presented to the board proof that no professional licenses granted to the applicant in any other state have been suspended, revoked, or restricted for any reason except nonrenewal or for the failure to obtain the required continuing education; and
 - (8) have paid all applicable fees specified by the board.
- (B) An applicant for licensure under this section is only eligible for licensure at the equivalent designation recognized in the jurisdiction in which he or she is currently licensed.

S.C. Code Ann, § 40-63-260(as amended March 12, 2002). Importantly, the General Assembly revised the erroneously cited §40-63-30 and addressed person exempt from licensure requirement in § 40-63-290. In particular, its states:

§ 40-63-290. Persons exempt from licensure requirement.

Nothing in this chapter prevents:

- (1) members of the clergy and licensed, registered, certified, or qualified professionals including, but not limited to, physicians, elementary or secondary teachers, nurses, psychologists, licensed professional counselors, licensed marriage and family therapists, and licensed psychoeducation specialists and attorneys from practicing their professions and delivering similar services within the scope of their respective practices *provided they do not hold themselves out to the public by any title or description as being social workers*;
- (2) employees of licensed hospitals in this State from performing services commonly within the definition of social work if the services are performed within the course of and scope of their employment as an employee of the hospital, and the employee is not identified in any way as a social worker;
- (3) persons from rendering services that are the same as or similar to those within the scope of practice provided for in this chapter **if the person receives no remuneration from any source for the rendering of the service and the person is not identified in any way as a social worker**;

that Dr. Loring was licensed in Georgia and he opined that was sufficient to qualify her. Id. Tr.p. 329, l. 19-23. Counsel made a general reference to an administrative order by the Chief Justice addressed the issue. He complained that the specter it raises by the Solicitor injecting that the witness would potentially be subject to criminal sanctions from matters she would testify about may put her in a position to assert her Fifth Amendment privilege.

Counsel Bannister complained that this was an inappropriate attempt to intimidate the witness with the authority that the Solicitor has to indict. Id. Tr.p. 330, l. 14-21.

Solicitor Arial's Reaction.

In response, Solicitor Arial stated that he was raising the licensing issue for the purpose of voir dire. He noted that whether or not he presented an indictment against her was a totally separate issue. Id. Tr.p. 331, l. 1-2.

Judge Miller's Qualification of Dr. Loring as an Expert.

Judge Miller opined that the intent of the statute, § 40-63-200, was to prevent unlicensed

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- (4) students who are engaged in field placements or other closely supervised practice while enrolled in accredited programs of study leading to social work degrees from practicing social work;
 - (5) employees of the State of South Carolina from performing services commonly within the definition of social work if the services are performed within the course of and scope of their employment with the State, and if he has been specifically trained to perform these services **and the employee is not identified in any way as a social worker;**
 - (6) **social workers so licensed in another jurisdiction may, after notice to the board, practice within the scope of their licenses during or immediately following a declared or recognized emergency for a period not to exceed sixty days.**

S.C. Code Ann. § 40-63-260(March 12, 2002). Dr. Loring never met these any of these conditions precedent prior to her testimony. As the Solicitor correctly stated the unauthorized practice of social work in South Carolina carries criminal penalties pursuant to S.C. Code Ann. § 40-63-200 and civil penalties in accordance with S.C. Code Ann. § 40-63-210 and §40-1-210. See Sept.8, 2008 Tr.p. 328, l. 15-23.

persons from opening an office and practicing social work and treatment. Id. Tr.p. 331, l. 3-16. He declared that he distinguished what Dr. Loring has done as a retained expert for the defense from that definition of the statute of § 40-63-20. He overruled the objection and concluded that Dr. Loring can testify. Tr.p. 331, l. 17-21.

The Initial Defense Objection under Williams as Prosecutorial Misconduct

After the court determined that Dr. Loring was qualified, [Sept. 8, 2008, Tr.p 331, l. 3-21], counsel Bannister took a break. Id. Tr.p. 22-23. He then returned and cited State v. Williams, 485 S.E.2d 99, at 102-103 referencing witness intimidation. He complained that Solicitor Ariail's attempt to make the testimony potentially fit within the criminal statute was an attempt to intimidate the witness and thereby violates the defendant's due process rights. He claimed that this was a substantial governmental interference. Counsel Bannister then declared that he did not believe that she would be able to testify absent some assertion from the Solicitor that he would either grant immunity or have some sort of protection for her for it not to be an issue.

Solicitor Ariail Grants Immunity to Dr. Loring Related to the Inman case.

The prosecution expressly granted immunity from prosecution for her particular acts related to Mr. Inman's case since the trial judge had concluded that she was qualified as a witness that could testify in the area of social work as to the Inman case. Sept. 8, 2008 Tr.p. 333, l. 2-23. However, he acknowledged that he did not have authority to grant immunity concerning other acts which might have already occurred. Id. Tr.p. 333-335. However, he noted that the issue he had raised was whether or not she qualifies as a witness under the laws of South Carolina - not whether she whether she should have been indicted and "if somebody wanted to indict her for violating the statute, they could have already done that many, many times based upon her prior

testimony - that's not the issue." Id Tr.p. 333, l. 12-19. As the Solicitor stated: " if the issue is now being raised that her testimony is somehow being curved because of the vast power of this office, then I'll gladly grant her immunity from whatever violations she may be ..." Id. Tr.p. 333, l. 20-23.

The Court then inquired of defense counsel Bannister if that was satisfactory, and counsel Bannister initially declared: "yes," but suggested that it was a red herring to start with. *Id.* Tr.p. 333, l. 25.

Dr. Loring's Initial Reaction to Immunity

Dr. Loring summarized her understanding of the Solicitor's grant of immunity. She stated that the State is not going to indict for giving improper information that she gathered in this case for any reason of being a social worker licensed in Georgia. Judge Miller clarified that the Solicitor as chief prosecutor has declared on the record that he will grant you immunity for the testimony and the underlying work she did to arrive at her opinions. Id. Tr.p. 334-335.

Dr. Loring then stated that she had become alarmed and concerned by what she had heard. Judge Miller then stated that he was going to take a break and allow her to consult with a lawyer. He stated : "I want you to have an opportunity to compose yourself, feel confident that ... your presentation or your testimony will not be impacted or impaired by the legal discussion..." Id Tr.p. 335, l. 19-25.

Dr. Loring's Invocation of the 5th Amendment after consultation with counsel Godfrey.

After Dr. Loring consulted with her personal counsel [Bill Godfrey], she returned to court and pled the Fifth Amendment, stating that "she felt threatened as a witness in this case, and in other cases in which I've testified in South Carolina at this time." Id. Tr.p. 336, l. 17-24.

Judge Miller restated that the Solicitor had granted her immunity so that she would not be prosecuted for your work in this case. Id. Tr.p. 337, l.1-3. She provided the court with a list of prior cases that she had testified in South Carolina and noted that this issue had been raised once before and “it was immediately put to rest. Id. Tr.p. 338, l. 4-7.

Counsel for Dr. Loring cited Lanzetta v. U.S., 306 U.S. 451 (1939)¹⁷ and asserted that the prosecution should have raised this issue pre-trial¹⁸ and not during the voir dire for the first time which chilled her right to testify and was a violation of due process. Id. Tr.p. 340. Solicitor Ariail confirmed that it was full immunity as to this case. Tr.p. 341.

Dr. Loring, after another break, stated that she had been advised that she had been

¹⁷Lanzetta concerned whether due process notice was complied with in the violation of a New Jersey statute which made it a penal offense to be a “gangster.” Counsel Godfrey cited: “persons may not be required at peril of life, liberty or property to speculate concerning meaning of penal statute, but all are entitled to be informed concerning what the state commands or forbids,” from Lanzetta. Id. Tr.p. 340, l. 1-3. The New Jersey statute making it a penal offense to be a gangster, defined as any one not engaged in any lawful occupation, known to be a member of any gang consisting of two or more persons, who has been convicted at least three times of being a disorderly person, or who has been convicted of any crime in any state, was found violative of due process clause because of its vagueness and uncertainty in regard to persons within its scope.

¹⁸Respondent would question how this particular issue on qualifications could be raised “pre-trial” in this particular non-jury setting where expert witness are done with the court ex parte and there is no discovery unless a written report is made by an expert witness - which was not done here. It only became an issue when the witness was called and advised the Court and solicitor that she was not licensed in S.C., a fact that under state law could have been remedied by compliance with the statutes. Further, Respondent questions how a solicitor in representing the sovereign could ignore the express legislative mandates set out in the licensing statutes which specifically includes the act of testifying, particularly when he became aware of them and applicability to Dr. Loring. Certainly, there can be no dispute that a party could bring out the fact that she was not licensed in S.C. also as a ground of impeachment, in addition to her failure to comply with the licensing requirements for out of state licensed social workers.

During witness Desa Ballard’s testimony, she claimed the information challenging the qualification should have been handled out of the presence of the witness where she would not be intimidated. April 20, 2009 Tr.p. 180, l. 12- 17.

threatened in regards to her previous cases. Id. Tr.p. 344, l. 9-10. She stated that her (legal) advice was “that to testify when I’m told that I would be in violation of a criminal statute would affect my professional reputation in other cases and jurisdictions. Id. Tr.p. 344, l. 9-15.

Judge Miller’s Rejection of Any Fifth Amendment Privilege after Immunity.

Judge Miller concluded that Dr. Loring had no Fifth Amendment privilege in this matter which would allow her refusal to testify. Id. Tr.p. 340-41.¹⁹ In addition, Judge Miller took the extraordinary step of granting immunity in the other cases “insofar as I am able to do.” Tr.p. 344, l. 15-22.²⁰ See also, Tr.p. 346, l. 6-12 (‘while ... judicial immunity may not be generally recognized in South Carolina, I think the fact that I’m putting it out there would carry some weight”). He opined that the statute cited by the Solicitor was not intended to prevent the testimony she had been hired to give. Particularly, Judge Miller relied upon, by analogy, the order of the South Carolina Supreme Court in *Re: Act No. 385 of 2006-relating to defining the “practice of medicine”*, Order , 2006-08-24-01 (S.C.S.Ct. August 24, 2006) (court temporarily delays judicial enforcement of Act 385 insofar as the Act requires a physician to obtain a license to practice medicine in South Carolina before offering expert medical testimony in a South

¹⁹Counsel Godfrey took the position that since Solicitor Ariail had placed her on notice of the existence of this statute and its penalties for the failure to comply, with the intent to intimidate and hinder her testimony. He stated that she was fearful “in the back of her mind” that she could be indicted for her prior testimony in other counties where she had been qualified as an expert. Id. Tr.p. 342-43.

²⁰In the *Initial Brief of Appellant*, p. 14, the Appellant asserts that the judge had no authority to grant immunity citing *State v. Needs*, 333 S.C. 134, 508 S.E.2d 857 (1999) and *State v. Thrift*, 312 S.C. 282, 440 S.E.2d 341 (1994). Respondent agrees that this is an executive function, not a judicial function.

Carolina administrative or court proceeding). Judge Miller concluded that the Supreme Court, if asked, would have issued the same order in this case related to social workers as it had previously done toward physicians. Judge Miller acknowledged that he had previously signed an *ex parte* order authorizing specific funding for Dr. Loring and concluded that he would not have signed the order if he felt her testimony was either inappropriate or illegal. Tr.p. 346. At that point he requested that she continue conferring with counsel. Tr.p. 346.²¹

Return To Dr. Loring Issue And Defense Motion for Mistrial.

On September 11, 2008, defense counsel made a motion for a mistrial based upon the Solicitor's voir dire of Dr. Loring on whether she was licensed in South Carolina as a social worker and whether she had met with Inman. Counsel Bannister referred to State v. Williams (Brad), 326 S.C. 130, 485 S.E.2d 99 (1997) and the fact that Solicitor Ariail had cited a statute that it was a crime to practice social work without a South Carolina license. He also cited to State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998), asserting it held that a "prosecutor may not lob baseless threats or charges at a potential witness. Tr.p. 411-12. After the prior proceedings with Dr. Loring were summarized by defense counsel and the trial judge, defense counsel stated that there was an attempt made to see if an administrative order from the Supreme Court could be acquired for this particular statute, but learned that it was not a possibility. Tr.p. 414, l. 8-19. He also found analogous the case of *Baggerly v. CSX Transportation, Inc*, 370 S.C. 362, 635 S.E.2d 97 (2006) where the court concluded a civil engineering expert witness was not prohibited from

²¹At that point counsel Bannister sought to get the Solicitor to state whether he actually believed that Dr. Loring had committed a criminal act pursuant to the statute he cited. He contended that the Solicitor "set up" Dr. Loring by asking predicate questions on whether she had interviewed anyone in S.C. Tr.p. 347-348.

testifying when he was not licensed in this state, consistent with the statutory requirements for practicing engineering. Tr.p. 415.

Counsel Bannister requested a mistrial contending that the proceedings were tainted to the extent they could not get a fair trial whether Dr. Loring either waives her Fifth Amendment privilege or is forced to testify under threat of contempt. He advised the Court that she had concerns about the effect on her reputation and whether it was a reportable event for malpractice purposes. Counsel stated that Dr. Loring had interviewed witnesses in Tennessee and Michigan. He asserted that the issue was whether there was governmental interference, whether it was substantial, and whether it prejudiced the defendant. Tr.p. 416, l. 19-23.

Judge Miller asserted that he did not have to make that decision. Rather, he stated there were three alter natives on how they would proceed that day. First he stated that he was not aware if Dr. Loring had a change of heart and that he had asked a certain lawyer to speak with her. He stated he could require the case to go forward without her testimony which he felt would necessitate the Supreme Court sending it right back. He stated he could declare a mistrial as requested or he could continue the case, remove Dr. Loring as a potential witness and have the defense obtain a new social historian expert and give the defense as much time as needed. Tr.p. 417, l. 3-15.

Defense counsel Bannister urged a mistrial based upon prosecutorial misconduct. He asserted it implicated the 14th Amendment right to due process, his right to a full and complete defense and compulsory process and the confrontation clause, in addition to the 6th Amendment right to competent counsel and 8th Amendment right to a full and fair presentation of mitigation. In addition to relying upon State v. William(Brad) and State v. Needs, he cited State v.

Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000) which he asserted held that deliberate prosecutorial misconduct raised a irrebuttable presumption of prejudice.

He stated that in determining whether there was prosecutorial misconduct, he noted that the prosecution had raised a similar argument about the criminality of the statute in *State v. Michael Laney* and asserted that the Solicitor was required to withdraw a similar motion in that case. He also stated that he wanted the Court to consider *State v. Cockman*, another case that Solicitor Ariail prosecuted where Dr. Loring testified, but this question was not asked concerning licensing. The defense contended that the prosecution did not want Dr. Loring to testify because he was afraid of what she would say so he used this tactic to intimidate her. Tr.p. 419.

The defense also sought support from the A.B.A. Criminal Justice Standards, The Prosecution Function, Standard 3-5.7 concerning fair treatment of witnesses and SCACR Rule 407, Rule 3.8 and 8.4. Tr.p. 420. He asserted that if the ethics were violated, then the prosecutor has intimidated a witness. Counsel Bannister asserted that § 16-9-340 makes it a felony of up to 10 years for any person to attempt to intimidate a witness. Tr.p. 421, l. 11-17. He stated that this should require a mistrial and for the Solicitor to be recused from the case. Tr.p. 15-22.

The defense further contended that this was misconduct because the solicitor had failed in a duty to know the law, citing cases that generally hold a lawyer who failed to perform minimal or adequate research may be subject to malpractice. Tr.p. 422-23. He contended that after the Laney trial, the prosecution was on notice to research the issue, aware that Dr. Loring was going to testify and should have brought it up pretrial. Tr.p. 423. Counsel questioned what research the prosecution had done since the defense had earlier (mis) quoted a statute that the defense claimed included an exemption that should have applied to Dr. Loring. Tr.p. 424, l. 1-9. But see, S.C.

Code Ann. § 40-63-260, 290. He stated that he was entitled at least to a continuance to further investigate this issue. In addition, he sought the recusal of the Solicitor and setting aside the notice of the death penalty and to sentence to life without parole in light of the intentional conduct. Tr.p. 426.

Solicitor Ariail responded that initially it must be determined if Dr. Loring will testify. Tr.p. 426. Second, he asserted that it needed to be determined why she would not testify the decision and whether it involved something outside of the case, such as whether she is concerned about her Georgia license being impacted. He stated that this could be cured by compliance by notifying the Board that she is here and going to testify and that it was an emergency situation. Tr.p. 427. Accord, § 40-63-290. Therefore, the statute would be complied with. Further, if the case is continued, Dr. Loring can become licensed. Id. He stated that Dr. Loring does not have a concern about being prosecuted because she has been given immunity. Tr.p. 428, l. 7-14. He noted that when this issue came up, they were in voir dire about her qualifications to testify. He noted that the issue was whether that licensing requirement for social workers was such that it would require the person to be licensed prior to testifying. See S.C. Code Ann. § 40-63-20 (23), (24), (25), (26) (statutory definitions of “practice of baccalaureate social work,” “practice of independent social work-advance practice,” “practice of independent social work-clinical practice” and “practice of masters social work.”).²² Solicitor Ariail sought to distinguish Baggerly because engineering was vastly different than social work and the purpose on having up the statute was to enlighten the Court with the provisions and the fact of the criminal provisions

²² “Practice of independent social work-advance practice” and “Practice of independent social work-clinical practice” include “expert testimony” in their definitions. §40-63-20 (24), (25).

designated the significance the legislature placed upon the licensing requirements. He noted that he was addressing the sanctions to the court, not to Dr. Loring. He stated that he had never moved to indict her, even though she would have violated the statute from a prior case. He asserted that this was a red herring.

He restated that they could have a continuance have her get a license, have her testify or if the delay is too long, to declare a mistrial. Tr.p. 429-430.

Counsel Bannister then stated that if it was as easy as the Solicitor stated to just make a telephone call to get a license and that he should have read the statute, then it implicates his right to have effective counsel under the 6th Amendment. Tr.p. 430.

On behalf of Dr. Loring, counsel Bill Godfrey declared that Dr. Loring sees this issue as a major storm and was upset about testifying in this case. Tr.p. 431. He stated that she is licensed in Georgia and has been put on notice by the Solicitor that she was violating a criminal statute.

Upon the Court's inquiry, Mr. Godfrey declared that Dr. Loring was going to take the 5th Amendment. Tr.p. 431, l. 20-21. Judge Miller then questioned how does she invoke this when she has been granted immunity. Tr.p. 431-32. He stated that she had testified in other cases and that there was no statute of limitations. "No one is able to assure her that there are not similar laws in [Tennessee and Michigan]" where she had interviewed people. He stated that she has to declare each year if anything of a criminal or quasi-criminal nature comes up and it could affect her license in Georgia. Tr.p. 532.

Judge Miller deferred the decision on how to handle Dr. Loring's refusal to testify. However, Judge Miller stated that counsel Bannister was not in violation of Strickland v. Washington, 466 U.S. 668 (1984) based upon the issue he raised. Judge Miller then declared that

he was not going to grant a mistrial. He requested that counsel seek another social historian. However, he did not rule out Dr. Loring's participation and also stated that if she determines she does not want to participate, he would allow him to show how he was prejudiced. Tr.p. 435. The court then adjourned.

April 14, 2009 Proceeding

On April 14, 2009, a hearing was convened. Counsel Godfrey, on behalf of Dr. Marti Loring advised the court concerning his client's being subject to out of state witness subpoena proceedings and subpoenaed for the April 20 hearings when she had been under the understanding that she had been released and the defense did not intend to call her. April 14, 2009 TR.p. 1-4. Judge Miller noted that it was his opinion that even without the immunity that had been granted, Dr. Loring had not committed any crime in her potential testimony based upon the decisions on the Supreme Court in the Administrative order and Baggerly v. CSX Transportation, Inc., 370 S.C. 362, 635 S.E.2d 97 (2006), involving physicians and engineers as expert witnesses. April 14, 2009 Tr.p. 5-6. Counsel Godfrey opined that Dr. Loring felt threatened and urged that she was not a material witness in the case. Solicitor Ariail asserted that the trial court needed this witness available for the court,. Judge Miller was advised at that point that Dr. Loring had not had any conversations with counsel. April 14, 2009 Tr.p. 12.

Counsel Bannister stated that he had sought a different mitigation expert and the court had signed an order for funding. Tr.p. 13. However, he advised the court that his expert would not be prepared to go forward on April 20 when the hearing in sentencing was scheduled. April 14, 2009 Tr.p. 14.

At that point, Judge Miller declared that the date had been pending for seven months by

agreement. He stated that he was not going to withdraw his certification that she was a material witness in this case in support of the out of state subpoena. Tr.p. 14, l. 5-11.

April 20, 2009 Proceedings.

On April 20, 2009, the matter was re-convened for the sentencing hearing. At the outset, counsel Godfrey for Dr. Loring returned with a motion requesting that she be released or for alternate relief. April 20, 2009 Tr.p. 8-9. He stated that trial court had previously declined to withdraw its earlier certification that she was a material witness. He described proceedings subsequent to that date in Georgia when the Georgia authorities attempted to enforce the out of state subpoena and Judge Miller intervened. He noted that the Georgia circumstances represented further intimidation of her. He urged that she was not a proper witness any more as she was no longer part of the defense team. April 20, 2009 Tr.p. 13. If not able to release her, counsel Godfrey argued in the alternative that the matter be suspended so that he can investigate what happened in Georgia and the circumstances surrounding the circumstances of the threats. Tr.p. 14-15.

Counsel Bannister asserted that the defendant's right to witnesses was again chilled by these acts on the part of the state. Judge Miller, however, questioned how it would be chilled since he had declared that he did not intend to call her as his witness. Tr.p. 18-19. Solicitor Ariail noted in response that the affidavit of Mr. Geary reflects that the Solicitor's Office had nothing to do with the actions in Atlanta and in fact communicated after the judge's email to have the authorities stand down, when the Atlanta authorities thought Dr. Loring was evading service of the subpoena. TR.p. 22-23.

Judge Miller subsequently stated that at the September hearing that noted that he had not

completely ruled Dr. Loring out of the case. Tr.p. 29. Counsel Bannister stated that absent the September 11, 2008 events, she would have been their witness, but in light of the Solicitor's conduct and the newer events in Georgia, they did not intend to call her as a witness. Whether she is a witness for other purposes was left to the judge. Tr.p. 30.

Dr. Loring was called and testified at the motion hearing. She described the events the prior week in Atlanta when she learned that a subpoena was being served at her home. Tr.p. 34-35. After getting the paperwork on her return home from writing, she contacted counsel Godfrey since the hearing date on the document in Georgia was missed. She then learned the police had been at her house, but the neighbors explained that she was not home. Tr.p. 39-40.

She then stated that she had discussions with her counsel and Georgia authorities that she was glad to come to S.C. if the judge wanted her to be here. Tr.p. 41, l. 10-24. She stated she arrived last night to be sure to be here. Tr.p. 41-42. Upon questioning from counsel Bannister, she stated that she was upset and frightened when she learned about the events in Georgia. And did not purposely avoid service of the subpoena and would have been at the Georgia hearing. Tr.p. 43.

Further, while she found the chain of events alarming, she came prepared for whatever the judge asks with all her equipment and what they had done in her role as mitigation expert. Tr.p. 45-46.

On cross-examination by Deputy Solicitor Strom, Dr. Loring admitted that she had been made aware that on April 14, Judge Miller had not rescinded the certification to be a material witness. Tr.p. 49-50. She stated that when she learned about the Georgia hearing when she returned on the 16th to her home, the time had already passed. Tr.p. 51-53. Ultimately, she called Mr. Godfrey who she asked to contact Judge Miller who seemed to understand "where I was

coming from and what I was willing to do.” Tr.p. 53.

Judge Miller questioned her concerning a letter that the Department of Labor Licensing and Regulation had issued dated April 16, 2009. She stated that the letter assuaged her fears before the other activities occurred. Tr.p. 57-59. [Court Exhibit 3]. He then asked Dr. Loring to remain.

Judge Miller then addressed that he had been contacted by Bill Godfrey the evening of April 16 and advised the police in Georgia had been trying to arrest Dr. Loring . He stated he later called Ben Norris with Georgia law enforcement who advised him that he had been advised to stand down concerning the bench warrant. He then called Mr. Geary with the District Attorneys Office who advised him that he had received a call from S.C. to stand down and the problem was solved. Tr.p. 59.

Judge Miller then stated that he wanted the defense to consider calling Dr. Loring as a witness in mitigation. He stated that she was ready willing and able to come testify voluntarily. Counsel Bannister stated that he had certain motions and that they were not in a position to call her as a witness.²³ Counsel called Public Defender John Mauldin as a witness on the misconduct claim. Mr. Mauldin testified about the circumstances concerning the Michael Laney case. Tr.p. 72-111. It was essentially his position that the Solicitor office had agreed to a life sentence based upon a desire to have a misconduct claim dropped concerning its questioning of an expert witness,

²³The defendant made a motion to recuse the 13th Circuit Solicitors Office based upon a claimed prosecutorial misconduct based upon the incidents concerning Dr. Loring. Tr.p. 61-63. , a motion to determine the role of Solicitor Ariail and the Prosecution team, and a Motion to Suspend Proceedings. Solicitor Ariail responded in writing and orally concerning the claim that they were involved in Dr. Loring’s potential arrest and included an affidavit from Mr. Geary in Georgia to support the position Tr.p. 68-69. Response to Motion, ROA ____ .

Dr. Everington on the issue of mental retardation.²⁴

This was a matter that the state disputed within its questioning. Tr.p. 111-117. The record revealed that the objection to Dr. Everington's testimony in Laney was not to her qualification as an expert in mental retardation, but that she was not qualified to administer IQ tests and that only a licensed psychologist could do that type of interpretation. Tr.p. 118. The terms of a proposed agreement were set out in State Exhibit 25. Tr.p. 127-128. However, the initial negotiation was not successful and rejected by the state. Tr.p. 128-129. It was developed that the Laney motions based upon alleged prosecutorial misconduct were never ruled upon by a judge and were withdrawn after the death notice was withdrawn. Mauldin confirmed that the stated reason for the state's withdrawal was the victim's family concerns and endless litigation on mental health issues..." Tr.p. 140-141.

Laney's other lawyer, Troy Tessier also testified concerning the Laney matter. Tr.p. 142-149.

Susan Allen, a juror in the Edens and Holloway case, testified about a dinner the Solicitor's office held for the jurors in the case after the trial was completed. Tr.p. 150-151. She stated the issues raised by the office was to seek out what factors influenced them the most in not giving the death penalty. Tr.p. 154-155. On cross-examination, the voluntary contact concerning the dinner was pointed out consistent with Judge Hayes instructions to jurors. Tr.p. 157.

²⁴In its response to the motion, the Solicitor's office presented a different version of the circumstances that lead up to the life sentence. *Response to Renewed Motion for Mistrial*. ROA - ---. The questioning concerning Dr. Everington was whether she had exceeded the scope of her qualification as an expert witness - a claim that was ultimately supported by the Board of Psychology. *Exhibit 2 to Response*. ROA. __. The pleading also addresses other collateral issues raised concerning the motions and its contested factual issues.

Judge Miller again made inquiry of the defense concerning the defense of its intent to call a social historian, noting this case is going forward. The court was concerned because Dr. Loring is present and ready to go, "but we are not going to set this case up for failure." Tr.p. 165-166.

Judge Miller then denied the defense request to call Solicitor Ariail and other prosecutors concerning the raising of an improper issue related to the lack of licensing of Dr. Loring and why the issue was not raised in the earlier trial. Tr.p. 166-167.

Desa Ballard , a lawyer who concentrates on legal ethics and professional responsibility, testified that the Solicitor had violated a number of rules of professional responsibility in connection with his earlier examination of Dr. Loring. Tr.p. 173.

At the conclusion of the testimony, Judge Miller stated that he would not suspend the proceedings. Tr.p. 195. He further stated that Dr. Loring was going to come and he would not remove them as advocates in the case. Tr.p. 195.

The April 21, 2009 Proceeding

On Tuesday, April 21, 2009, defense counsel Bannister advised Judge Miller that the defense was not going to call Dr. Loring as a witness. April 20, Tr. p. 201. Judge Miller stated that he was considering calling Dr. Loring as a "court's witness." Id. Tr. p. 201, ll. 5-6. He stated that his client had pled guilty and asked him to be the sole fact finder in the case. [Defense counsel Bannister concurred with that statement: "That's correct."]. Id. Tr. p. 201, ll. 11-14. the judge stated that Dr. Loring was the first choice by the defense and "I believe that she can testify without fear." Tr. p. 202, ll. 15-16. After Loring's counsel confirmed that she had gone over the subject matter the prior evening, Judge Miller stated that she had earlier spent up to 9 to 10 hours preparing. Counsel Godfrey stated that she had previously stated she had reviewed the files 4 to 5

hours, reviewed the file yesterday, has her charts and pictures since they had talked about her testifying as a witness and she had advised him that she felt protected by the court. Id. Tr. p. 203, ll. 7-21.

Counsel Bannister renewed his motion for a mistrial based upon the prosecutorial misconduct claim. Id. Tr. 204. He requested that a life without parole sentence he entered under the 5th Amendment Double Jeopardy Clause. Id. Tr. 205.

The State opposed the motion, citing Fields v. J. Haynes Waters Builders, 376 S.C. 545, 658 S.E.2d 80, 86 (2008), which allowed a court in qualifying an expert witness to look at the statutory requirements for licensing.²⁵ The State argued that there was no prejudice from the conduct. Dr. Loring is there and able to testify which shows there was no witness intimidation. She was neither threatened nor intimidated. Further, the State noted that this was a bench trial where the trial judge is presumed to be able to differentiate what it feels is improper. Tr. 207.

Judge Miller initially rejected the double jeopardy motion. He concluded that there was no evidence the State deliberately goaded the defense to make the mistrial motion. Tr. p. 207, ll. 15-19. However, he did not accept the State's position on Fields because there is no question that whether a person is licensed in particular state is a significant factor in determining whether they should be qualified, but when the Solicitor brought up the criminal sanctions, it was improper. Tr. 208. However, the trial judge found it was immediately addressed and resolved with the grant of immunity. Tr. p. 208, ll. 4-7. Judge Miller opined in light of the administrative order, Baggerly and Fields, that there was no criminal conduct in the witness who arrives solely to testify as an

²⁵ The State made a written "Response to Renewed Motion for Mistrial and Memorandum" which is incorporated by reference. ROA __ ("Response").

expert witness. Tr. p. 208, ll. 15-18. Relying upon U.S. v. Golding, 168 F.3d 700 (4th Cir. 1999) for a reversal the remarks must be improper (which he found) and such comments or remarks must have prejudicially affected the defendant's substantial rights so as to deprive him of a fair trial.

Judge Miller noted that this was not a jury trial, but a bench trial and the result might have been different. He found that the defendant's rights were not prejudicially affected. Particularly, he found that Dr. Loring was prepared to testify before it occurred and is prepared to testify now according to her attorney. Tr. p. 209, ll. 21-25. Judge Miller stated that in his capacity as fact-finder he is interested in hearing everything that might bear on his decision. He does not find "deliberate prosecutorial misconduct." Tr. 210. Counsel Bannister asserted that had they been provided a jury with the plea, the result would have been different,

Counsel Bannister next moved for a continuance. He stated that on September 11 when Dr. Loring took the 5th, the matters were suspended and directed to either fix the problem with Dr. Loring or find another social historian. Counsel stated that while he thought it was a red herring until the Supreme Court spoke on the issue, the issue was still decided against them on the licensing issue. The only available expert he asserted he could find was Jan Vogelsang who he sought funding for on January 2 and had less than 4 months to prepare. Tr. 213-14. As he asserted at the April 14 hearing, he declared she could not be prepared by April 20. Tr. 215.

Judge Miller noted that there had been discussions throughout that this case was to restart on April 20. Tr. p. 215, ll. 21-25. He stated that according to Ms. Vogelsang's affidavit she would not be prepared to testify until the first quarter of 2010. Tr. p. 216, ll. 1-13 [It was April 2009 at that time]

Judge Miller stated that Dr. Loring was prepared to testify and had done all her work. He noted that she had been on the case a long time and the court wanted to hear from her. However, he stated that he would not allow the prosecutors to intimidate her. Tr. 216-17. Judge Miller stated that this case will be finished this week and Vogelsang could be put up. Tr. 217.

Counsel Bannister stated he needed a ruling on his continuance and thought he was being told it was denied.

Judge Miller clarified that he would break to let them meet with Dr. Loring since she was present and was prepared to go forward. Tr. p. 217, ll. 13-19.

Subsequently, Dr. Loring testified as a court witness. Tr. p. 220, ll. 14-17. He stated that (1) she would aid the fact-finder in the resolution of the case, (2) she was the number one choice for social historian in the case, but the defense has stated it had no contact with her since September, (3) she has been rehabilitated and despite the fact that she refused to testify in September because of her feelings of intimidation (which he ruled was prosecutorial misconduct which did not rise to the level to require reversal or mistrial) which is cured in part by her presence today. "I think it's necessary to put her up to ensure that these claims of due process violations are put to rest." Tr. p. 220, l. 14 - p. 221, l. 6. Her testimony is summarized in this Initial Brief of Respondent at pages 26-30, *infra*.

STANDARD OF REVIEW

The decision to grant or deny a mistrial is within the sound discretion of the trial judge. *State v. Vazquez*, 364 S.C. 293, 613 S.E.2d 359 (2005). The court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law. *State v. Harris*, 340 S.C. 59, 530 S.E.2d 626 (2000); *State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998); *see also*

State v. Arnold, 266 S.C. 153, 157, 221 S.E.2d 867, 868 (1976) (noting the general rule of this State is that “the ordering of, or refusal of a motion for mistrial is within the discretion of the trial judge and such discretion will not be overturned in the absence of abuse thereof amounting to an error of law.”).

“ ‘The power of a court to declare a mistrial ought to be used with the greatest caution under urgent circumstances, and for very plain and obvious causes’ stated into the record by the trial judge.” *State v. Simmons*, 352 S.C. 342, 354, 573 S.E.2d 856, 862 (Ct.App.2002) (quoting *State v. Kirby*, 269 S.C. 25, 236 S.E.2d 33 (1977)); see also *State v. Patterson*, 337 S.C. 215, 522 S.E.2d 845 (Ct.App.1999) (stating mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons). The granting of a motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way. *State v. Beckham*, 334 S.C. 302, 513 S.E.2d 606 (1999); *Adams*, 354 S.C. at 377, 580 S.E.2d at 793.

A mistrial should only be granted when “absolutely necessary,” and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial. *Harris*, 340 S.C. at 63, 530 S.E.2d at 628; *Simmons*, 352 S.C. at 354, 573 S.E.2d at 862; see also *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999) (finding mistrial should not be granted unless absolutely necessary; to receive mistrial, defendant must show error and resulting prejudice). “The less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice.” *State v. Prince*, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983). “Whether a mistrial is manifestly necessary is a fact specific inquiry.” *State v. Rowlands*, 343 S.C. 454, 457, 539 S.E.2d 717, 719 (Ct.App.2000). Additionally, in a bench trial context, the reviewing Court must

consider whether there were less drastic alternatives available to the trial judge than declaring a mistrial. Harris v. Young, 607 F.2d 1081, 1085 (4th Cir. 1979).

In considering “prosecutorial misconduct,” the United States Supreme Court has stated that prosecutors must “refrain from improper methods calculated to produce a wrongful conviction.” *Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935). The appropriate standard of review for prosecutorial misconduct is the narrow one of due process and not the broad exercise of supervisory power. *See Darden v. Wainwright*, 477 U.S. 168, 181, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986). *See also Donnelly v. DeChristoforo*, 416 U.S. 637, 642, 94 S.Ct. 1868, 1871, 40 L.Ed.2d 431 (1974) (not every trial error which might call for supervisory power violates fundamental fairness). The Supreme Court has recognized that prosecutorial misconduct may “so infec[t] the trial with unfairness as to make the resulting conviction a denial of due process.” *Donnelly v. DeChristoforo*, 416 U.S. at 643, 94 S.Ct. 1868. A defendant's due process rights are violated when a prosecutor's misconduct renders a trial “fundamentally unfair.” *Darden v. Wainwright*, 477 U.S. at 181, 106 S.Ct. 2464. *See also Greer v. Miller*, 483 U.S. 756, 765, 107 S.Ct. 3102, 97 L.Ed.2d 618 (1987); *Williams v. Stewart*, 441 F.3d 1030, 1042 (9th Cir.2006) (*citing Donnelly v. DeChristoforo*, 416 U.S. at 643, 94 S.Ct. 1868 as articulating standard for prosecutorial misconduct).

The Supreme Court has found that prosecutorial misconduct may occur in a variety of unique factual settings. *See United States v. Williams*, 504 U.S. 36, 60, 112 S.Ct. 1735, 118 L.Ed.2d 352 (1992) (Stevens, J., concurring) (“[l]ike the Hydra slain by Hercules, prosecutorial misconduct has many heads”). Each of these settings may have its own peculiar standards for finding prosecutorial misconduct and for determining whether a constitutional violation occurred

as a result of such misconduct. Compare *Berger v. United States*, 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed. 1314 (1935) (prosecutor's improper comments during trial and closing argument constituted misconduct and prejudice was probable); *Mooney v. Holohan*, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791 (1935) (knowing use of perjured testimony was misconduct); *Miller v. Pate*, 386 U.S. 1, 87 S.Ct. 785, 17 L.Ed.2d 690 (1967) (prosecutor's knowing use of false evidence likely to have important effect on jury's determination and warrants habeas relief); *Caldwell v. Mississippi*, 472 U.S. 320, 105 S.Ct. 2633, 86 L.Ed.2d 231 (prosecutor's misstatements of law in argument to jury was misconduct); and *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) (prosecutor's withholding of relevant exculpatory evidence violates constitutional due process) with *United States v. Valenzuela-Bernal*, 458 U.S. at 860, 867, 102 S.Ct. 3440 (deportation of defense witness by government did not violate Fifth or Sixth Amendment where respondent made no showing that witness's testimony was material and favorable to defense); *Darden v. Wainwright*, 477 U.S. at 181-182 and n. 14, 106 S.Ct. 2464 (prosecutor's comments in closing argument did not so infect trial with unfairness as to violate due process, and therefore no issue of whether misconduct was harmless error). However, courts have held no prejudice is shown when the witness eventually testifies. *People v. Hill*, 952 P.2d 673 (Cal. 1978); *Wynne v. Renico*, 279 F.Supp.2d 866 (E.D. Mich. 2003).

The Supreme Court has also recognized that government interference with a defense witness's free and unhampered choice to testify may amount to a violation of due process. See *Webb v. Texas*, 409 U.S. 95, 97-98, 93 S.Ct. 351, 353-354, 34 L.Ed.2d 330 (1972) (defense witness intimidated into not testifying by remarks of trial judge); *Washington v. Texas*, 388 U.S. at 19, 87 S.Ct. 1920 (right to present witness to establish defense is fundamental to due process; and

right denied by Texas state statute prohibiting co-participants in same crime from testifying for each other when testimony was relevant and material to defense). *See Earp v. Ornoski*, 431 F.3d 1158, 1167-1168 (9th Cir.2005) (prosecutor's intimidating threats to witness to prevent witness from testifying may amount to misconduct; case remanded for evidentiary hearing) (citing *Webb v. Texas*, 409 U.S. at 98, 93 S.Ct. 351). *See also United States v. Vavages*, 151 F.3d at 1189 (prosecutor's conduct is governed by *Webb*).

Where prosecutorial misconduct has occurred, the relevant question then is whether the misconduct so infected the trial with unfairness as to make the resulting conviction a denial of due process. *See Darden v. Wainwright*, 477 U.S. at 181, 106 S.Ct. 2464. *See also Karis v. Calderon*, 283 F.3d 1117, 1128 (9th Cir.2002) (claim of prosecutorial misconduct is analyzed under prejudice standard set forth in *Brecht v. Abrahamson*, 507 U.S. 619, 638 n. 9, 113 S.Ct. 1710, 123 L.Ed.2d 353 [1993] regardless of type of harmless error review conducted by the state courts).²⁶

Witness Intimidation by Prosecutor Standards.

The South Carolina Supreme Court has held that “Improper intimidation of a witness may violate a defendant’s due process right to present his defense witnesses freely if the intimidation amounts to ‘substantial governmental influence with a defense witness’s free and unhampered choice to testify.’” A defendant must first demonstrate substantial interference with the witness’s testimony and then show a resulting prejudice to the defendant. Similar to the analysis of

²⁶Courts have held that reversible misconduct has *not* been shown when independent counsel has met with the defense witness and advised the witness to invoke the Fifth Amendment. *Accord, Pascua v. State*, 145 P.3d 1031 (Nev. 2006); *U.S. v. Simmons*, 699 F.2d 1250 (D.C. Cir. 1983); *State v. Koller*, 274 N.W.2d 651 (Wis. 1979); *U.S. v. Hooks*, 848 F.2d 785 (7th Cir. 1988) (concluding that the decision not to testify was entirely the witnesses based upon the advice of counsel).

prosecutorial misconduct, a two prong test applies to alleged governmental interference. *State v. Williams*, 326 S.C. 130, 485 S.E.2d 99 (1997) (citing *United States v. Saunders*, 943 F.2d 388, 392 (4th Cir. 1991)).

ANALYSIS

The prosecution has to make threats to a defense witness in order to prevent them from testifying at all for substantial interference to take place. *Williams*, 326 S.C. at 134, 485 S.E.2d at 101. [In this case, Solicitor Atrial did not make any threats but instead advised the Court of the witness's lack of licensing in South Carolina carried civil and criminal sanctions.²⁷] An expert witness's professional license status is appropriate for a trial judge to consider when determining whether or not the witness is qualified as an expert in the area in which he or she has been tendered. *Fields v. J. Haynes Waters Builders, Inc., et al.*, 376 S.C. 545, 556-557, 658 S.E.2d 80, 86 (2008). However, the Court has recognized that the mere possession of a license or the lack of it does not answer the question of whether the witness can be qualified as an expert witness.

The immediate grant of immunity by the Solicitor after Judge Miller declared she was a qualified witness removed any improper "government interference" concerns. Simply put the government was no longer interfering with her decision to testify. At that point, Solicitor Atrial's comment to Judge Miller about "criminal sanctions" was completely removed as a factor related to her testimony. It was not impeding or interfering in any manner with her decision. As the Court noted in *Williams*, an error of substantial interference can be "cured by subsequent governmental advice that the witness was free to talk to the defense." *Williams* at 135, 485 S.E.2d at 102 (citing

²⁷In his pleading and argument to the trial court, Solicitor Atrial stated that this was to emphasize the importance that the General Assembly had placed upon the licensing requirements.

United States v. Terzado-Madruga, 897 F.2d 1099 (11th Cir. 1990)). Solicitor Ariail explained to the witness that she would receive immunity for all aspects of her work on this case. The Court also explained to her the immunity for her testimony. Furthermore, Dr. Loring later testified during the hearing that she was concerned about her reputation, not prosecution by the State.

Respondent agrees that this case could have been much different if Solicitor Ariail had not granted her immunity for her work in Inman's case. The Appellant's problem is that he writes his argument as if immunity was not granted in a timely manner - yet it was. The interference with the decision to testify then became one of Dr. Loring's own making after discussion of the applicable licensing statutes in South Carolina with her lawyer which resulted in the erroneous decision to invoke the Fifth Amendment after immunity and initial refusal to testify. As stated above, the licensing statutes exist and require certain steps to be taken by out of state licensed social workers and Dr. Loring's apparent failure to comply previously was of her own doing - not the prosecutions - fact that independent counsel most likely advised her. However, those actions had nothing to do with the state of her testimony after the grant of immunity in Inman's case.

Nevertheless, in April, after seeking to not testify through quashing the subpoena, Judge Miller demanded that she appear as a court witness which she agreed to do. As stated below, this action supported the showing of a lack of prejudice.

The Appellant claims that *deliberate* prosecutorial misconduct raises an irrebuttable presumption of prejudice. *State v. Quattlebaum*, 338 S.C. 441, 447, 527 S.E.2d 105, 109 (2000). First, no misconduct, much less deliberate misconduct, has occurred since the South Carolina Supreme Court has held that license status is an appropriate factor for the trial judge to consider when considering the expertise of a witness. *Fields* 376 S.C. at 556-557, 658 S.E.2d at 86 (2008).

Respondent do not question that the prosecutor deliberately questioned the social worker concerning whether she was licensed in South Carolina and performed social work in S.C.

Respondent further do not question that Solicitor Arial was aware of the licensing statute when he asked these questions and sought to use the answers to challenge her qualifications and intentionally noted that it had civil and criminal sanctions - which the statutes do possess.

Respondent further note that at the time, no decision in S.C. had interpreted the requirements for the practice of social work or the applicability of the particular statutes. Nevertheless, Judge Miller qualified Dr. Loring despite Solicitor Ariail's argument. Further, Solicitor Ariail then granted immunity. This was not interference with a witness testifying, but allowance by the State at that stage. It should be noted, however, that an expert witness's lack of licensing or compliance with state rules in their profession affects his or her credibility and/or competency and is a proper subject for cross-examination and for comment during closing argument. Howle v. PYA/Monarch, Inc., 344 S.E.2d 157, 161 (SC Ct. App. 1986). Plainly, the state could have pointed out after qualification that Dr. Loring had not complied with the conditions precedent for approval to practice temporarily in S.C.

Second, Quattlebaum is hardly analogous with the facts before this Court. In Quattlebaum, the prosecutor intentionally recorded a privileged communication between a defendant and his attorney, did not timely disclose this recording to the defense for two years, and actually denied the existence of the recording in a preliminary hearing according to the decision of the Court. Here, the State has merely questioned Dr. Loring concerning her licensing status which is a valid line of question for both voir dire and ultimately impeachment. It was the comment concerning the inclusion of civil and criminal sanctions within the statute - a statement of fact supported by

the statutes themselves that the Appellant takes issue with. Furthermore, the State has also offered Dr. Loring immunity for her testimony in this case.²⁸

B. Showing of Prejudice Required But Not Met.

The second requirement to prove improper intimidation of a witness is a resulting prejudice to the defendant. *State v. Williams*, 326 S.C. 130, 485 S.E.2d 99 (1997). No prejudice exists in this case. The simple answer is the Solicitor immediately removed the potential threat or intimidation by the grant of immunity in the case. The second action is that even after the grant of immunity, upon advice of counsel, she attempted to invoke the Fifth Amendment - thus suggesting the licensing statute was more than a mere "red herring," but a matter of potential substance. However, prejudice was removed when Dr. Loring testified as a court witness after the defense refused to call her as a witness.

While the decision is vested in the discretion of the trial court, a mistrial is proper only where it is dictated by "manifest necessity" or "the public's interest in a fair trial designated to end in just judgment." *State v. Prince*, 279 S.C. 30, 301 S.E.2d 471 (1983).

The defense has failed to recognize two important distinguishing factors in this case as compared to the numerous cases that they cite for governmental interference. First, this case is in the setting of a bench trial.²⁹ Second, the witness here is an expert witness, not a fact witness with

²⁸However, Dr. Loring could have complied with the minimal reporting requirements with the licensing statute at any time.

²⁹ Two cases in which a mistrial was actually granted in a bench trial were located. In *Harris v. Young*, 607 F.2d 1081 (4th Cir. 1979), the judge, sitting as the fact finder, granted a mistrial in a criminal habeas corpus case because the Commonwealth of Virginia did not fully comply with an order compelling discovery.. The defendant was tried again before the same judge at a bench trial and was found guilty. The defendant raised the issue of double jeopardy on appeal and in his habeas corpus action. The Fourth Circuit held that jeopardy attaches in a bench

specific and unique testimony. The Fourth Circuit Court of Appeals has addressed the difference between a bench trial and a jury trial. Satterfield v. Zahradnick, 572 F.2d 443 (4th Cir. 1978).

There, a prosecutor commented on the defendant's failure to testify during a bench trial. On appeal the Fourth Circuit noted that, "while such a comment may influence a jury beyond the reach of a curative instruction, a trial judge is well aware that no inferences are to be drawn from a defendant's failure to testify and can be presumed to disregard any improper comments to the contrary." Id. Even if the Solicitor had, as the defense suggests would have been proper, raised this issue before the sentencing hearing began, the Court would have been exposed to the same information and the same argument by the State against Dr. Loring's qualification as an expert. The Court is infinitely less susceptible to prejudice if the State's *actual voir dire* of the witness was improper in some way, which the State denies that it was.

The defense below relied on cases that are simply not analogous with the present case. For example, the defense cited United States v. Thomas, 488 F.2d 334 (6th Cir. 1973) for the assertion that the government's later statement that the witness would not be prosecuted was not sufficient to overcome prejudice to the defendant. The defense failed to address the egregiousness of the misconduct in Thomas as compared to this case. The Court held in Thomas that it was not the

trial after the judge began to hear evidence. Id. at 1084. The Court also held that there were less drastic remedies for the discovery violation than declaring a mistrial. Id.

In Douglas v. Maryland, 360 A.2d 474 (1976), the trial judge presiding over a bench trial declared a mistrial on its own motion because the judge believed his objectivity had been compromised by the behavior of two prosecution witnesses in violation of an order of sequestration. The defendant was retried by a jury at a later date but the Maryland court found that double jeopardy had attached because the mistrial was improvidently granted. In that decision, the Maryland court acknowledged that a judge whose impartiality has been compromised is the same as if a juror's impartiality is injured as well. However in the Douglas case, the Court found that because the problematic witnesses were for the State, this benefitted the defendant and there was no manifest necessity for a mistrial. 360 A.2d 474, 477.

fact that the government explained potential liability while the witness was on the stand, but the fact that the government sent an agent to admonish the witness in an ex parte communication during a recess that was the actual wrongdoing by the prosecutor. *Id.* Clearly, the ex parte communication in *Thomas* is easily distinguishable from the facts present in this case.

The Appellant cites *State v. Needs*, 333 S.C. 134, 508 S.E.2d 857, 863 (1999), as standing for the proposition that a prosecutor may not “lob baseless threats or charges at a potential defense witness in an effort to prevent a defense witness from testifying.” *Initial Brief of Appellant*, p. 20. However, a prosecutor is similarly under the ethical obligation as a prosecutor:

to advise a witness who is to be interviewed of his or her rights against self-incrimination and the right to counsel whenever the law so requires. It has been held proper for a prosecutor to so advise a witness whenever the prosecutor knows or has reason to believe that the witness may be the subject of a criminal prosecution.

ABA Standards for the Administration of Criminal Justice § 3-3.2(b).³⁰

³⁰ The conduct of prosecutors, like the conduct of judges, is unquestionably governed by *Webb*. See also *United States v. Blackwell*, 694 F.2d 1325, 1334 (D.C.Cir.1982). Equally well established, however, is that perjury warnings are not improper *per se* and that “the Sixth Amendment is not implicated every time a prosecutor or trial court offers advice regarding the penalties of perjury.” *United States v. Davis*, 974 F.2d 182, 187 (D.C.Cir.1992). “Indeed, there are circumstances when warnings about the possibility and consequences of a perjury charge are warranted—even prudent.” *Id.* A defendant’s constitutional rights are implicated only where the prosecutor or trial judge employs coercive or intimidating language or tactics that substantially interfere with a defense witness’ decision whether to testify. See *United States v. Harlin*, 539 F.2d 679, 681 (9th Cir.1976); see also *Davis*, 974 F.2d at 187 (“[A defendant’s] rights are not trespassed upon by mere information or advice about the possibility of a perjury prosecution, but by deliberate and badgering threats designed to quash significant testimony.”); *Blackwell*, 694 F.2d at 1334 (“[W]arnings concerning the dangers of perjury cannot be emphasized to the point where they threaten and intimidate the witness into refusing to testify.”).

The substantial interference inquiry is extremely fact specific. Among the factors courts consider in determining the coercive impact of perjury warnings are the manner in which the prosecutor or judge raises the issue, the language of the warnings, and the prosecutor’s or judge’s basis in the record for believing the witness might lie. See, e.g., *Davis*, 974 F.2d at 187-88;

The problem with appellate review is that we view matters retrospectively through hindsight. While, we all may wish in hindsight that Solicitor Ariail would not have stated when objecting to her qualifications due to non-compliance with South Carolina licensing: “and, in addition to that it carries penalties for both civil and criminal penalties for violation.” September 8, 2008 Tr.p. 328, l. 19-20, it that not a correct statement of fact. And didn’t Solicitor Ariail state at that time ; “I would submit that she’s not qualified as an expert in this state to testify or render those services until she gets licensed.” Id. Tr.p. 328, l. 21-23. This was not a threat that there would be criminal action brought against Dr. Loring - but a request that she comply with the state law requirements.

This Court should study exactly what happened in the record at Tr.p. 327-333, what was actually said and not said as it has been paraphrased. Also, this Court should be cognizant that at the time of this colloquy by Solicitor Ariail to Judge Miller, the application of the civil and criminal sanctions for non-compliance with S.C. Code §40-63-200, 260, 290 had not been stayed by this Court. A greater question is whether Solicitor Ariail had an ethical duty to bring this to the Court’s attention or could he ignore it under those discrete circumstances.

Unfortunately, the case was diverted from its reasonable course due to the fact that Dr. Loring was not licensed in South Carolina. However, that diversion was ultimately corrected when she returned in April 2009 and offered to testify, albeit as a “court witness” since the

United States v. Viera, 839 F.2d 1113, 1115 (5th Cir.1988) (en banc). At least in the case of trial judges, we also scrutinize whether the warning indicates an expectation of perjury. *See Harlin*, 539 F.2d at 681. Where, under the totality of the circumstances, “ ‘the substance of what the prosecutor communicates to the witness is a threat over and above what the record indicates is necessary, and appropriate, the inference that the prosecutor sought to coerce a witness into silence is strong.’ ” *United States v. Pierce*, 62 F.3d 818, 832 (6th Cir.1995) (quoting *United States v. Jackson*, 935 F.2d 832, 847 (7th Cir.1991)).

defense refused to call her. See *People v. Hill*, 952 P.2d 673 (Cal. 1978)(no prejudice flows from act of misconduct where intimidated witness testifies); *Wynne v. Renico*, 279 F.Supp.2d 866 (E.D. Mich. 2003) (no prejudice where alleged “intimidated witness” testifies).

Further, after the solicitor’s comment to Judge Miller, Dr. Loring was able to consult with independent counsel - Bill Godfrey - who gave her advice on multiple occasions after reviewing the statutes and caselaw and the immunity that she had received. Since the threat of prosecution had been removed, the Solicitor’s actual comment was no longer the concern. What factors actually led to her refusal to testify subsequent to the grant of immunity can only be speculation since contempt proceedings were never pursued against her. However, she was ultimately willing to testify for the defense - and ultimately did for the court.

The Service of an Out of State Material Witness Order

The Appellant seeks to tie the fact that the State sought an out of state material witness subpoena for the April 2009 hearing as a further sign of “witness” intimidation. This is a remarkable assertion since the record reveals that Judge Miller prior to the Atlanta witness proceedings certified that she was a material out of state witness and authorized service upon her.³¹ Further, Judge Miller refused to revoke his certification of her as a witness when counsel Godfrey appeared on her behalf to quash or revoke it at the April 14, 2009 hearing. April 14, 2009 Tr.p. 1-16. Finally, when the April 20, 2009 hearing began, Judge Miller continued to request her

³¹The Appellant contends that the arrival of the Georgia police at her home attempting to secure service of the Georgia bench warrant after Dr. Loring did not apparently appear at a hearing on the out of state subpoena was a sign of intimidation. However, these matters should not be imputed to solicitor as trying to intimidate her from testifying when in fact it was to secure her attendance in S.C. Dr. Loring agreed to voluntarily return to S.C. Further, the Georgia authorities had been directed to “stand down” by South Carolina authorities.

presence - ultimately calling her as a court witness. The fact of seeking to secure a witness through the use of a subpoena can not be considered "witness intimidation."

The Appellant cites to *State v. Jones*, 383 S.C. 535, 681 S.E.2d 580. 586 (2009) suggesting that if the state seeks to compel a defendant's consultative expert to testify on its behalf, the State must prove it has a substantial need for the expert. However, the subpoena for her appearance was that she was a "material" witness - not as a state witness.³² As stated at the September hearing, the issue concerning Dr. Loring remained opened about her failure to testify and the potential prejudice arising from that failure. September 2008 Tr.p. 431-435, April 14, 2009, Tr.p. 14. Clearly, the trial court was reasonable in concluding that Dr. Loring remained a material witness in the case.

Here, the State made a motion on April 1, 2009 for attendance of an out of state witness. See *Petition for Attendance of An Out of State Witness*, filed April 1, 2009. In the motion, the State asserted that Dr. Loring was a necessary and material witness and declared in the petition that the state would withdraw the motion if the defense assures the witnesses presence and that the witness had previously been retained by the defense. Judge Miller signed the certificate and subpoena pursuant to the Uniform Act to Secure the Attendance of Witnesses. April -, 2009. ROA , p. ____ . (Certificate and Subpoena). Judge Miller refused to revoke the certificate on April 14, 2009 at the hearing.

³²Solicitor Ariail stated at the April hearing that the reason that they sought Dr. Loring with the out of state subpoena was because two issues remained opened - first the issue of Dr. Loring not testifying in an effort to preserve the prosecutorial misconduct issue because if she does testify that issue is negated and because the defense had declared that the potential replacement social worker would not be prepared by the April hearing date. The Solicitor stated that he wanted to avoid a post-conviction relief issue by insuring that the witness was present and available to testify for the defense. April 20, 2009 Tr.p. 164-165.

Dr. Loring was not called as a “state” witness. April 20, 2009 Tr.p. Judge Miller called her as a court witness - opining that her testimony was necessary for his determination - not as a state witness. April 20, Tr.p. 220–224. She testified as an expert as a court witness. Tr.p. 226-281.

Recusal of the Solicitor’s Office was Properly Denied.

The Appellant asserts that the Solicitor’s Office should have been recused because the Solicitor in the case of *State v. Michael Laney* before Judge Welmaker had made an assertion concerning the lack of a state license for an unlicensed psychology professor Dr. Caroline Everington. However, a review of the transcript attached to the Appellant’s motion concerning the Everington testimony reveals that it concerned licensing of psychologist, that Dr. Everington was not licensed and that the issue raised concerned her qualifications as a matter of state law to give certain tests and evaluations for mental retardation - not her qualifications as an expert in mental retardation. Further, there was no “finding” in *Laney* that this was “misconduct” as the Appellant suggests. *Initial Brief of Appellant*, p. 22.³³ The motions were never ruled upon in *Laney*. April

³³Dr. Everington was qualified as an expert in the field of mental retardation without objection and she testified fully on direct to the Court. However, in her testimony she interpreted the results of I.Q. tests as a part of her diagnosis. The interpretation of I.Q. tests is a function restricted by state law to licensed psychologists. The Solicitor asked her if she was a licensed psychologist and she testified no. At that point, the Solicitor objected to her testimony on the basis that she had exceeded the area of her qualification as an expert by interpreting these tests. There was no effort to prevent her testimony as an expert in the field of Mental Retardation. The issue concerned Dr. Everington’s ability to interpret the results of I.Q. tests as a part of the basis of her opinion as an expert as the State claimed only a licensed psychologist can interpret the results of I.Q. tests under S.C. law and she was not so licensed. See S.C. Code Ann. § 40-55-50 (A)(1)(a), (b),(c). See Renewed Motion for Mistrial, Exhibit C [State’s Memorandum in Opposition to Motion.]. ROA, p. __. Defense Exhibit D-37. April 20, 2009 Tr.p. 84. This was not an issue on an out of state witness being barred from rendering expert testimony in the field of her expertise as in Baggerly. This concerned a S.C. resident, duly qualified as an expert in mental retardation, and testifying to the

20, 2009 Tr.p. 138-140. The claim is without support in the record that the *Laney* case put the State "on notice that his actions constituted prosecutorial misconduct" to inquire of an expert witness concerning a lack of licensing and its ramifications.³⁴

CONCLUSION

The plea judge correctly concluded that a mistrial was not required because it was not absolutely necessary. Dr. Loring - initially concerned about the possibility that she was in violation of the law because of her failure to comply with the licensing conditions - agreed to voluntarily appear and make herself available in April 2009 to testify. While the Appellant makes much of the Solicitor's prior attempt to impeach the ability of another witness in a different case concerning the effect of her failure to satisfy licensing requirements, the failure to meet the licensing must be seen as a legitimate inquiry on the examination of any expert by either the state or defense. Similarly, when the claimed intimidation of criminal sanctions was removed by the grant of immunity, the decision not to testify at that time could not be seen as a product of the risk

Court without objection as to her licensing. April 20, 2009 Tr.p. 117-118. The objection raised as to her testimony by the State was that she used methodology that was outside the scope of her field of expertise that only a licensed psychologist could use and thus, she was testifying outside the scope of her qualification as an expert witness.

The portion of her testimony sought to be excluded was the use of her interpretation of the results of I.Q. tests that the statute prohibited her from doing. She was still available to testify as to her opinion using methodology within her qualified field of expertise. April 20 Tr.p. 114-115.

The defense in *Laney* filed motions alleging prosecutorial misconduct over those questions being asked of Dr. Everington and the State filed a response. No ruling issued on these matters.

³⁴The Respondent concedes that defense counsel in *Laney* did make a motion claiming it was misconduct to challenge the expertise of Dr. Everington to test and evaluate certain matters under S.C. law. ROA, p. ____ - ____ . Defense Exhibit 35, 43. (*Laney* transcripts) However, the motion was abandoned.

of criminal sanction. Rather, the trial judge reasonably concluded that it was not deliberate intentional misconduct and did not effect the substantial rights of Inman. To the contrary, the plea judge reasonably concluded that when the defense counsel actively sought to limit the evidence from Dr. Loring - evidence that they intended to offer in September 2008 - at the April 2009 hearing when he was available and willing to testify - their actions removed their ability to claim that they were deprived of the testimony by the action of the prosecutor.³⁵ April 20, 2009 Tr.p. 262.

His claim is without merit.

³⁵Defense counsel was advised that Dr. Loring was willing to testify without any fear or apprehension before she was aware of the subpoena. April 20, 2009 Tr.p. 161.

III. Reversible error was not committed when the hearing judge refused to allow defense counsel call Solicitor Ariail or his deputies on the claim of prosecutorial misconduct on their intent in questioning Dr. Loring concerning the lack of a South Carolina social work license and its effect when qualifying Dr. Loring.

Judge Miller did not abuse his discretion in refusing to have members of the solicitor's office testify about their "intent" in its questioning and objection to Dr. Loring's qualification as an expert witness. The Appellant contends that it was reversible error under *State v. Quattlebaum*, 338 S.C. 441, 527 S.E.2d 105 (2000) to deny the defense the right to call the solicitor or his deputies concerning whether the questioning of Dr. Loring concerning the lack of a South Carolina social work license to determine whether it was deliberate intentional prosecutorial misconduct. Particularly, in the brief, he claims that he was entitled to call Solicitor Ariail and his deputies and staff to show the Solicitor's intent in questioning Dr. Loring and advising the judge concerning the licensing statute and its sanctions. He contends that since the lower court found that the conduct was "prosecutorial misconduct" but not intentional, mistrial was not required - which deprived him of evidence.

The record reveals that during the April 2009 proceedings, defense counsel Bannister stated an intent to call Solicitor Ariail and Deputy Solicitor Strom as witnesses. April 20, 2009 Tr.p. 166-167.³⁶ He stated that the purpose was limited to the issue of prosecutorial misconduct and when they got notice of why they did not raise the same issue with respect to Dr. Loring in a trial after the Dr. Everington issue in the Laney case.

Judge Miller stated that he was going to deny the motion. He declared that he was not going to recuse them as advocates and make them witnesses in the case. April 20, 2009 Tr.p. 167.

³⁶See also April 20, 2009 Tr.p. 64-71.

When the defense further objected, Judge Miller cited *State v. Lyles*, 379 S.C. 328, 665 S.E.2d 201 (Ct App. 2008). As the Court stated therein:

However, “[i]n the exercise of this right [to present a defense], the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.” *Chambers*, 410 U.S. at 302, 93 S.Ct. 1038. “The right to present a defense is not unlimited, but must ‘bow to accommodate other legitimate interests in the criminal trial process.’ ” *Hamilton*, 344 S.C. at 359, 543 S.E.2d at 594 (quoting *Rock v. Arkansas*, 483 U.S. 44, 55, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987) (quoting *Chambers*, 410 U.S. at 295, 93 S.Ct. 1038)). “ ‘The accused does not have an unfettered right to offer [evidence] that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence.’ ” *Montana v. Egelhoff*, 518 U.S. 37, 42, 116 S.Ct. 2013, 135 L.Ed.2d 361 (1996) (quoting *Taylor v. Illinois*, 484 U.S. 400, 410, 108 S.Ct. 646, 98 L.Ed.2d 798 (1988)) (brackets in original). Defendants are entitled to a fair opportunity to present a full and complete defense, but this right does not supplant the rules of evidence and all proffered evidence or testimony must comply with any applicable evidentiary rules prior to admission. *Hamilton*, 344 S.C. at 359, 543 S.E.2d at 594.

State v. Lyles, 379 S.C. 328, 342-343, 665 S.E.2d 201, 209 (Ct. App., 2008). See . April 20, 2009 Tr.p. 168, l. 8-18.

The sentencing judge did not commit error in refusing to allow that the defense call either Solicitor Ariail or Deputy Solicitor Strom as witnesses. The Appellant claims that this act deprived him of the ability to show their “intent” in bringing up the licensing statute during Dr. Loring’s testimony. However, the lower court reasonably concluded that there was a legitimate interest in not making them witnesses on this collateral issue. Judge Miller stated that the solicitor was an advocate in this action not a witness. While the hearing judge implicitly concluded essentially that the social worker licensing statute had no effect as to sanctions when a witness who was qualified as an expert ignored the statutory requirements, testimony concerning the earlier objection to the qualification was not necessary. Simply put, the actual conduct was on the

record before the court when Solicitor Ariail actually made the comment.

In support of his claim, the defendant was able to present testimony from John Mauldin, Troy Tessier, Susan Allen and Desa Ballard in support of their misconduct and mistrial motion.

Certain salient factors were presented through that testimony on the issue:

- In the *Laney* case - Judge Welmaker had never ruled that the questioning of Dr. Everington as an unlicensed psychologist was prosecutorial misconduct and the motion was abandoned.
- The basis for the life sentence in *Laney* was contested and the reasoning on the record was not due to a claimed misconduct - but the mental status of *Laney*.
- While Dr. Loring had testified in an earlier case, no issue was presented at that time concerning the licensing statute.
- The material witness motion was made by Solicitor Ariail and certified by Judge Miller.

It is evident that Solicitor Ariail's objection to the qualification of Dr. Loring should be seen to speak for itself, but Judge Miller qualified her as an expert witness over the state's objection.

This was not similar to the *Quattlebaum* case.

In *Quattlebaum*, this Court held that the defendant should have been permitted to call solicitor and deputy solicitor to testify *in camera* regarding their use of information contained in improperly obtained videotape of defendant's conversation with his attorney, and their knowledge of circumstances surrounding use of defendant's cellmate as informant. The Court concluded that the refusal to permit the defendant to do so was not harmless, as it could not be determined whether prosecutors' testimony would have been merely cumulative.

The advocate-witness rule is codified in the Model Rules of Professional Conduct, SCACR Rule 407, Rule 3.7. The advocate-witness rule provides, with some exceptions, that an attorney should not participate in a trial as an attorney if the attorney is likely to be a necessary witness. Nothing in this section or in the commentary suggests that a defense counsel can force the disqualification of a prosecutor simply by stating that he plans to call the prosecutor as a witness or by actually calling him as a witness.

Cases dealing with the specific subject of the prosecutor as a witness in a criminal case are collected in Annot., 54 A.L.R.3d 100 (1973). It appears from this annotation that generally if a prosecutor plans to testify *for the state* in a prosecution of a defendant, the prosecutor should withdraw from the case. Courts, however, have made exceptions, as where the testimony of the prosecutor will relate only to a formal matter about which there is no dispute. As stated in the annotation, the few courts that have addressed the issue have indicated generally that a defendant may not force the disqualification or removal of a prosecutor from the case by announcing plans to call the prosecutor. Annot., 54 A.L.R.3d 100, §§ 2(a), 16 (1973).

Here, the testimony from either members of the Solicitor's office was not necessary on the issue of prosecutorial misconduct. Judge Miller did not abuse his discretion in refusing to require testimony from the Solicitor's office on their "intent" in objecting to Dr. Loring's expert testimony on the basis of the licensing statute. Accord, April 20, 2009 Tr.p. 71, l. 1-10. Similarly, inasmuch as the trial judge had approved the out of state subpoena, their testimony was not required where the certification was done based upon the pleadings before the court.³⁷ The intent

³⁷It is noted that the prosecution made a response to the claims concerning the attempt to serve Dr. Loring in Georgia and their lack of direct involvement. In particular, the April 17, 2009 Affidavit of Chief Assistant District Attorney Don Geary, Stone Mountain Judicial Circuit,

of the Solicitor was resolved when he granted immunity after the judge rejected the position that South Carolina licensing was required for her expertise. Further testimony was not required or necessary.

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

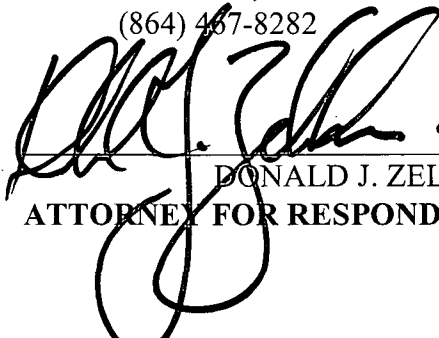
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Solicitor, Thirteenth Judicial Circuit

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December 20, 2010

By:



DONALD J. ZELENKA
ATTORNEY FOR RESPONDENT

DeKalb County Georgia was filed on April 19, 2009 with the "Response to the Renewed Motion for Recusal of the Thirteenth Circuit Solicitor's Office. ROA, _____. See also, April 20, 2009 TR.p. 68-69. Within the affidavit, Geary explains the direction in the service of the Georgia subpoena after receiving the material witness packet.

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

RECEIVED

JAN 31 2011

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

INITIAL REPLY BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
ARGUMENT IN REPLY	3
CONCLUSION.....	8

TABLE OF AUTHORITIES

Cases

<u>State v. Needs</u> , 333 S.C. 134, 508 S.E.2d 857 (1999).....	5
<u>State v. Quattlebaum</u> , 338 S.C. 441, 527 S.E.2d 105 (2000)	3, 5, 6, 7
<u>State v. Thrift</u> , 312 S.C. 282, 440 S.E.2d 341 (1994).....	5

Statutes

S.C. Code § 40-63-200.....	3, 5

Constitutional Provisions

U.S. Const. Amend V	5
U.S. Const. Amend VI	5, 6
U.S. Const. Amend VIII.....	5

ARGUMENT IN REPLY

3.

The state's contention that this case "is not similar to *Quattlebaum*" exhibits a lack of appreciation for the *intentional* prosecutorial misconduct the solicitor committed by his intimidation of critical expert mitigation witness Marti Loring. The defense, as this Court held in *Quattlebaum* had the right to call the Solicitor and Deputy Solicitor as witnesses on this issue of prosecutorial misconduct to prove it was intentional so the court would declare a mistrial.

Appellant admitted his guilt and pled guilty. Therefore the mitigation case was the key to this trial, and Dr. Marti Loring was a critical defense mitigation witness. It is clear the solicitor did not care for Dr. Loring given her effectiveness as a witness. There seemed and seems to be concerted effort to discredit Dr. Loring given this solicitor's treatment of her, what occurred in the past with this solicitor, and what occurred in Corey Stephen Bryant, another death penalty case before this Court out of Sumter County. As seen, the Solicitor characterized Loring's testimony in general as "a rambling recitation of rank hearsay." Tr. p. 251, lines 20 – 21. During *voir dire*, the solicitor accused Dr. Loring of violating S.C. Code § 40-63-200 which "deals with the unauthorized practice of social work within the State of South Carolina" and "carries . . . both civil and criminal penalties for violation." Tr. p. 328, line 1 – p. 329, line 8. Defense counsel objected to the Solicitor's "inappropriate attempt to intimidate the witness with the authority that this Solicitor has in this state to indict" and predicted that "it will infect us from this point forward." Tr. 329, line 12 – p. 330, line 22.

The state noted that the judge found prosecutorial misconduct but that he did not find “deliberate prosecutorial misconduct” in the solicitor’s intimidation of Dr. Loring. Tr. 210. Brief of respondent at 24 and 75. It was obvious that Dr. Loring was intimidated, and she had never experienced police officers showing up at her house in Georgia to arrest her until, as the state writes, they were told to “stand down.” The state also wrote that the judge called Dr. Loring as a court’s witness to “ensure that these claims of due process violations are put to rest.” Tr. 220, l. 14 – 221, l. 6; Respondent’s brief at 26.

The defense wanted to show beyond all doubt that the solicitor intentionally intimidated Dr. Loring to chill or outright prevent her testimony. The state noted that the solicitor later told Dr. Loring that he would grant her immunity for “all aspects of her work *on this case*.” Brief of Respondent at 82. However, the solicitor “acknowledged that he did not have the authority to grant immunity concerning other acts which might have already occurred.” Tr. 333-335; Respondent’s brief at 59.

The Solicitor had informed everyone of his right to seek an indictment against Dr. Loring. He was waiving as it applied to this case.¹ Tr. p. 330, line 23 – p. 331, line 2. Particularly where the judge did not find intentional prosecutorial misconduct he seriously erred by not allowing the defense to call the solicitors as witnesses *in camera*. This was not a jury case anyway and the testimony of the solicitors, under oath, about their intention to discredit, intimidate, or neutralize Dr. Loring as a defense mitigation witness was critical to the determination of whether the judge should have declared a mistrial.

¹ Dr. Loring had previously testified in the capital case of State v. David Edens and Jennifer Holloway in June 2006 without objection by the Solicitor. Tr. p. 109, line 1 – p. 110, line 16. His attitude changed when the jury returned life sentences for both defendants. Tr. p. 152, line 7 – p. 153, line 6.

As seen, Dr. Loring at one point invoked her privilege against self-incrimination. Tr. p. 336, lines 14 – 24. The judge had no authority to grant Dr. Loring statewide immunity from prosecution for testifying as an expert witness in South Carolina, and the solicitor made it apparent he would not or could not protect Loring from “consequences” of her other testimony. State v. Needs, 333 S.C. 134, 508 S.E.2d 857, 863 (1999); State v. Thrift, 312 S.C. 282, 440 S.E.2d 341, 346 (1994).

Defense counsel correctly moved for a mistrial “based on prosecutorial misconduct.” Tr. p. 415, line 18 – p. 417, line 25. The Solicitor’s intimidation tactics violated Inman’s right to due process, specifically his Sixth Amendment right “to present a full and complete defense” and “his Eighth Amendment right to . . . a full and fair presentation of mitigation in this case.” Tr. p. 417, line 25 – p. 418, line 13.

In addition to requesting a mistrial, defense counsel moved to recuse the Solicitor’s Office from further participation in Inman’s case. Tr. p. 420, line 1 – p. 423, line 25. He also asked the judge to quash the death notice and sentence Inman to life without parole. Tr. p. 426, lines 17 – 20. When sentencing reconvened on April 20, 2009, defense counsel renewed his motions for a mistrial and for a sentence of life without parole. April 20 through 22, 2009, Tr. p. 17, lines 2 – 11. The defense renewed its motion to disqualify the entire Solicitor’s Office. Tr. p. 60, lines 20 – 23. He alleged that the Solicitor had also threatened a defense psychologist for violating § 40-63-200 at capital resentencing in State v. Michael James Laney in April 2007. Tr. p. 62, line 18 – p. 64, line 6.

The state’s claim that this case is not on par with State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105, 110 (2000) is simply erroneous. The judge concluded that the

Solicitor's intimidation of Dr. Loring, while prosecutorial misconduct, was not intentional. Tr. p. 262, lines 6 - 19. The judge summarily denied defense counsel's motion to call the Solicitor and his Deputy as witnesses on the issue of the Solicitor's intent to prove what seems intuitive – that it was intentional intimidation of a key defense witness. Appellant strongly asserts that the Solicitor's *intentional prosecutorial misconduct* is apparent from this record. However, since the judge was not convinced the misconduct was intentional he unfairly ruled the Solicitor and his Deputy could not be called as witnesses to prove this fact to the court's satisfaction. Tr. p. 166, line 16 – p. 167, line 25. Counsel objected to this limitation on his ability to present Inman's defense under the Sixth and Fourteenth Amendments. Tr. p. 168, lines 1-6.

The judge's refusal to allow the defense to call the solicitors was reversible error under State v. Quattlebaum, 527 S.E.2d at 111. Despite the state's claim that this case is "not similar to the *Quattlebaum* case," as in Quattlebaum the judge here did not articulate his reasons for refusing to allow defense counsel to question the Solicitor and his Deputy. Respondent's brief at 95. As stated in appellant's brief, the ruling was controlled by an error of law and was therefore an abuse of the judge's discretion.

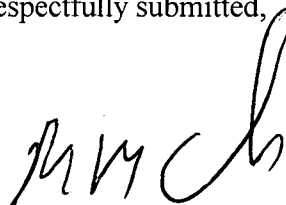
Secretly taping Quattlebaum talking to his attorney was despicable misconduct. So was the concerted effort to intimidate, chill, discredit and neutralize Dr. Loring in this case. Dr. Loring was obviously and for good reason intimidated by the solicitor's talk of indicting her. Dr. Loring would have been less than human if she did not fear what was happening in this case. An expert or other person cannot effectively do their job if they fear what the government might do to them if they effectively do their job.

Further, good mitigation specialists such as Dr. Loring are difficult to find. The other potential mitigation specialist, Ms. Vogelsang, stated she needed more time than the judge was willing to grant to be prepared. Brief of respondent at 75-76. It violates the essential demands of fairness for the solicitor, as the one did here, to intimidate a defense expert to essentially remove her as an effective defense witness. Appellant's death sentence should be vacated. State v. Quattlebaum, supra.

CONCLUSION

By reason of the arguments in appellant's brief, and this reply brief, this Court should respectfully vacate both appellant's guilty plea to murder and death sentence.

Respectfully submitted,

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

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

This 31st of January, 2011.

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

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

June 15, 2012

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

RECEIVED
JUN 18 2012
S.C. SUPREME COURT

Re: Jerry Buck Inman
v. South Carolina
No. 11-10798
(Your No. 27081)

Dear Clerk:

The petition for a writ of certiorari in the above entitled case was filed on June 11, 2012 and placed on the docket June 15, 2012 as No. 11-10798.

Sincerely,

William K. Suter, Clerk

by

Clayton Higgins
Case Analyst



SCCID

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

June 11, 2012

RECEIVED

JUN 11 2012

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

S.C. Supreme Court

Re: Jerry Buck Inman v. State of South Carolina

Dear Mr. Shearouse:

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

Please contact me if you have any questions.

Sincerely,

Robert M. Dudek
Chief Attorney

RMD/lec
Enclosure

cc: Donald J. Zelenka, Esquire



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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

June 11, 2012

RECEIVED

JUN 11 2012

S.C. Supreme Court

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

Re: Jerry Buck Inman v. South Carolina

Dear Mr. Suter:

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

Sincerely,

Robert M. Dudek
Attorney at Law

RMD:lec

Enclosure

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

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2011

No. 12-

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JUN 11 2012

JERRY BUCK INMAN,

S.C. Supreme Court

Petitioner,

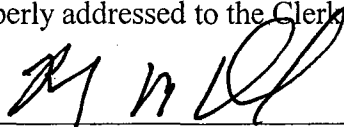
v.

STATE OF SOUTH CAROLINA,

Respondent

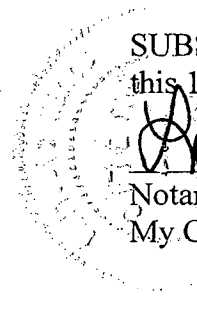
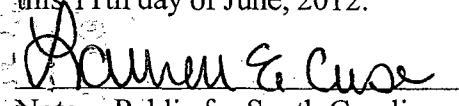
CERTIFICATE OF FILING BY MAIL

I hereby certify that I am a member of the Bar of this Court and that on June 11, 2012, I filed the petition for writ of certiorari in the above-referenced case, together with a motion for leave to proceed in forma pauperis, by causing the originals and ten copies of the same to be deposited in the United States Mail, postage prepaid, and properly addressed to the Clerk of this Court.



Robert M. Dudek
Counsel of Record

SUBSCRIBED AND SWORN TO before me
this 11th day of June, 2012.


 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.



SCCID

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

June 11, 2012

Honorable William K. Suter
Clerk, Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543

Re: Jerry Buck Inman v. State of South Carolina

Dear Mr. Suter:

Enclosed are the petition for writ of certiorari, a motion for leave to proceed *in forma pauperis*, and an affidavit of Jerry Buck Inman in support of motion to proceed *in forma pauperis*. The certificate of service is attached to the original petition. Representing the State of South Carolina is Donald J. Zelenka, Esquire, of the Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549. Her phone number is (803) 734-3727. I represent petitioner Jerry Buck Inman. The other information required by Rule 29.5 is contained above. If additional information is desired, please contact me.

Sincerely,

Robert M. Dudek
Attorney at Law

RMD\lec

Enclosure

cc: Honorable Daniel E. Shearouse
Donald Zelenka, Esquire

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2011

No. 12-

RECEIVED

JUN 11 2012

S.C. Supreme Court

JERRY BUCK INMAN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
SOUTH CAROLINA SUPREME COURT

ROBERT M. DUDEK
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Chief Appellate Defender
South Carolina Commission on Indigent Defense
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CAPITAL CASE
QUESTIONS PRESENTED

1.

Whether the South Carolina Supreme Court's holding that an irrebutable presumption of prejudice no longer applied where there is deliberate prosecutorial misconduct, since the trial judge found prosecutorial misconduct in this case, and the South Carolina Supreme Court also found such prosecutorial misconduct based on clear witness intimidation, since changing the law retroactively in this manner was fundamentally unfair and violated Due Process?

2.

Whether the South Carolina Supreme Court's holding that petitioner did not have the right to call the prosecutors as witnesses during his bench trial to prove intentional prosecutorial misconduct violated petitioner's right to Due process under the Fourteenth Amendment?

3.

Whether the South Carolina Supreme Court erred by holding the prosecutorial misconduct and witness intimidation in petitioner's case did not result in a death sentence that violated his Due Process rights, because the undisputed intimidation of petitioner's chief mitigation witness, Dr. Marti Loring, had an adverse effect on the ability of the defense to present its case in mitigation as guaranteed by the Eighth Amendment to the United States Constitution?

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
TABLE OF CONTENTS.....	ii
APPENDIX INDEX.....	iii
TABLE OF AUTHORITIES.....	iv
CITATION TO OPINION BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	2
WHY THE WRIT SHOULD BE GRANTED	

1.

It was fundamentally unfair and a violation of Due Process for the Court to hold that an irrebutable presumption of prejudice no longer applied where there is deliberate prosecutorial misconduct since the trial judge found prosecutorial misconduct in this case, and the South Carolina Supreme Court also found such prosecutorial misconduct based on clear witness intimidation. 17

2.

The South Carolina Supreme Court's holding that petitioner did not have the right to call the prosecutors as witnesses during his bench trial to prove intentional prosecutorial misconduct violated petitioner's right to Due process under the Fourteenth Amendment. 20

The South Carolina Supreme Court erred by holding the prosecutorial misconduct and witness intimidation in petitioner's case did not result in a death sentence that violated his Due Process rights, because the undisputed intimidation of petitioner's chief mitigation witness, Dr. Marti Loring, had an adverse effect on the ability of the defense to present its case in mitigation as guaranteed by the Eighth Amendment to the United States Constitution. 25

CONCLUSION.....28

APPENDIX

1.	OPINION OF SOUTH CAROLINA SUPREME COURT	A1
2.	ORDER DENYING REHEARING	A19
3.	UNITED STATES SUPREME COURT ORDER GRANTING AN EXTENSION OF TIME	A21
3.	S.C. CODE §16-3-20 (1976).....	A22

TABLE OF AUTHORITIES

CASES

<u>Bates v. Bell</u> , 402 F.3d 635 (6 th Cir. 2005).....	26
<u>Bennett v. Commonwealth</u> , 374 S.E.2d 303 (Va. 1988).....	22
<u>Berger v. United States</u> , 295 U.S. 78 (1935)	26
<u>Brooks v. Francis</u> , 716 F.2d 780 (11 th Cir. 1983).....	26
<u>Bunkley v. Florida</u> , 538 U.S. 835 (2003)	16, 18
<u>Crane v. Kentucky</u> , 476 U.S. 683 (1986)	17
<u>In re Martin</u> , 44 Cal.3d 1 Cal.Rptr. 263 P.2d 374 (1987)	23
<u>Inman v. South Carolina</u> , 553 U.S. 1094 (2008)	3
<u>Johnson v. State</u> , 326 A.2d. 38 (Md. Ct. Spec. App. 1974).....	22
<u>Lockett v. Ohio</u> , 438 U.S. 586 (1978)	25
<u>People v. Hill</u> , 952 P.2d 673 (Cal. 1998).....	15
<u>Rogers v. Tennessee</u> , 532 U.S. 451 (2001)	16, 18
<u>Sechrest v. Ignacio</u> , 549 F.3d 789 (9 th Cir. 2008).....	25
<u>State v. David Edens and Jennifer Holloway in June 2006</u>	11, 20
<u>State v. Jerry Buck Inman</u> , 395 S.C. 539, 720 S.E.2d 31 (2012)	1, 15, 16
<u>State v. Jones I.</u> , 343 S.C. 562, 541 S.E.2d 813 (2001)	16, 21
<u>State v. Lee</u> , 203 S.C. 536, 28 S.E.2d 402 (1943)	22
<u>State v. Michael James Laney in April 2007</u>	10, 13, 20, 25
<u>State v. Needs</u> , 333 S.C. 134, 508 S.E.2d 857 (1999)	7, 21
<u>State v. Northcutt</u> , 272 S.C. 207, 641 S.E.2d 873 (2007).....	21

<u>State v. Quattlebaum</u> , 338 S.C. 441, 527 S.E.2d 105 (2000).....	passim
<u>State v. Thrift</u> , 312 S.C. 282, 440 S.E.2d 341 (1994).....	7
<u>State v. Williams</u> , 326 S.C. 130, 485 S.E.2d 99 (1997).....	14, 21
<u>United States v. Morrison</u> , 535 F.2d 223 (3 rd Cir. 1976)	23
<u>United States v. Vavages</u> , 151 F.3d 1185 (9 th Cir.1998).....	23
<u>United States v. Weddell</u> , 800 F.2d 1404 (5 th Cir. 1987).....	24
<u>Washington v. Texas</u> , 388 U.S. 14 (1967)	13

STATUTES

S.C. Code § 16-9-340	7
S.C. Code § 40-63-200	4, 7, 10
S.C. Code §16-3-20 (B)	2
South Carolina Constitution Article V, §24	7

OTHER AUTHORITIES

16 C.J.S. <u>Constitutional Law</u> §1644 (Supp. 2011)	13

RULES

SCACR Rule 407	7

CONSTITUTIONAL PROVISIONS

United States Constitution 28 §1257(a)	2
United States Constitutional Amendment VIII.....	2
United States Constitutional Amendment XIV	2

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2012

No. 12-

JERRY BUCK INMAN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
SOUTH CAROLINA SUPREME COURT

Counsel for Jerry Buck Inman petitions the Court to issue a writ of certiorari to review the decision of the South Carolina Supreme Court affirming his convictions for murder, and his death sentence.

CITATION TO OPINION BELOW

The South Carolina Supreme Court's opinion is reported as State v. Jerry Buck Inman, 395 S.C. 539, 720 S.E.2d 31 (2012), and is reproduced in the Appendix to this petition at pages 1-18.

JURISDICTION

The final judgment of the South Carolina Supreme Court in this case was entered on February 23, 2012 when rehearing was denied. App. 19. Chief Justice Roberts granted Petitioner Inman a sixty day extension of time to file this petition for writ of certiorari to and including June 11, 2012. App.. 21.

The Court has jurisdiction pursuant to 28 U.S.C §1257(a), since petitioner Inman is asserting the deprivation of a right secured by the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Eighth and Fourteenth Amendments which provide, in pertinent part:

Amendment VIII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV: No State “shall ... deprive any person of life, liberty, or property, without due process of law . . .”

STATEMENT OF THE CASE

Procedural history

On August 19, 2008, Jerry Buck Inman pleaded guilty in Pickens County, South Carolina before Judge Edward W. Miller, on indictments charging him with murder, first-degree burglary, first-degree criminal sexual conduct and kidnapping. The State was seeking the death penalty. Inman made a motion to plead guilty but still have his sentence determined by a jury. The local Solicitor opposed this procedure, noting that S.C. Code §16-3-20 (B) provides if the defendant pleads guilty in a capital case he shall be sentenced by the trial judge. App. 22. Judge Miller ruled Inman was not entitled to jury sentencing, and his trial attorneys unsuccessfully sought certiorari

from this Court on the Constitutionality of this issue. See Inman v. South Carolina, 553 U.S. 1094 (2008).

The victim, Tiffany Souers, a Clemson University student living off-campus, was raped and strangled sometime after midnight on May 26, 2006. The apparent randomness of this violence within the relatively insular university community, as well as the initial inability of police to apprehend the perpetrator, generated an enormous amount of publicity, both local and national.

Inman, an out-of-state drifter with prior rape convictions in Florida and North Carolina in the mid-1980s, was apprehended in Tennessee June 6, 2006. He promptly confessed not just to the rape and murder of Ms. Souers, but to burglary, kidnapping, armed robbery, and attempted rape in Alabama on May 23 and burglary, kidnapping, armed robbery and rape in Tennessee on May 22.

On September 8 through 11, 2008, the State presented its case in aggravation. Midway through the defense case in mitigation, the judge granted the defense a continuance after the Solicitor threatened a key mitigation witness, Dr. Marti Loring, of Atlanta, Georgia, with a baseless criminal prosecution. He threatened to prosecute Dr. Loring for practicing social work in South Carolina without a license, by testifying. On April 20 through 22, 2009, the defense presented its evidence in mitigation.

The judge sentenced Inman to death for murder and consecutive sentences of thirty years for first-degree burglary and first-degree criminal sexual conduct.

Relevant facts

It is fair to say that mitigation was the central issue at Inman's sentencing. He had, after all, admitted his guilt and pleaded guilty. A key defense witness in this regard was Dr. Marti Loring, of the Center for Mental Health and Human Development in Atlanta. R. p. 324, lines 12 – 15. Loring

was a licensed social worker in Georgia, but not in South Carolina. The trial judge qualified her as “an expert in the field of trauma, abuse, forensic and therapeutic interviewing, and as a social historian in capital cases.” R. p. 325, lines 20 – 22; R. p. 328, lines 1 – 3; R. p. 326, line 21 – p. 327, line 3.

The Solicitor characterized Loring’s testimony in general as “a rambling recitation of rank hearsay.” R. p. 251, lines 20 – 21. In his opinion, “[T]here’s not a great deal of expertise in the field of social work.” R. p. 253, lines 10 – 12. When given the opportunity to cross-examine Dr. Loring on *voir dire*, the Solicitor promptly accused her of violating S.C. Code § 40-63-200 which, as he announced, “deals with the unauthorized practice of social work within the State of South Carolina” and “carries . . . both civil and criminal penalties for violation.” R. p. 328, line 1 – p. 329, line 8. Defense counsel objected to the Solicitor’s “inappropriate attempt to intimidate the witness with the authority that this Solicitor has in this state to indict” and predicted that “it will infect us from this point forward.” R. 329, line 12 – p. 330, line 22.

The Solicitor continued:

I’m raising the issue of licensing for the purposes of *voir dire*. And that’s as far as we’ve gotten. And whether or not I present an indictment against her is a totally separate issue.

R. p. 330, line 23 – p. 331, line 2.

The judge overruled the objection to Loring’s qualifications and authorized her to testify. R. p. 331, lines 3 – 21.

Defense counsel argued that the consequences of the Solicitor’s misconduct could not be so easily avoided:

[T]he Solicitor’s attempt to make the testimony that Dr. Loring may potentially give fit within a criminal statute is a due process violation. It is an attempt to improperly intimidate this witness. And

it specifically violates the defendant's due process right to present his defense witnesses freely. . . . [T]he intimidation at this point amounts to a substantial government interference with this defense witness' free and unhampered choice to be able to testify unfettered.

R. p. 332, lines 1- 20.

The Solicitor then offered to grant Loring immunity "[a]s to the present testimony." R. p. 333, lines 12 – 14. But as far as her prior testimony in other districts in South Carolina where the Solicitor had no authority was concerned:

I can't grant her immunity for that. . . . If somebody wanted to indict her for violating the statute, they could have already done that many, many times based on her prior testimony. That's not the issue.

R. p. 333, lines 2 – 25.

As increasingly-apprehensive Loring informed the judge that she was "concerned" about the situation. R. p. 334, lines 9 – 17. The judge said, "You are granted immunity, so you will not be indicted based on your work in this case. Now, do you feel secure?" R. p. 335, lines 8 – 10. No, she did not:

I wouldn't be honest if I didn't tell you that what I have just heard alarmed and concerned me a great deal. So I will hope that I can return my attention to what I came here to do in the first place and be as effective as I would hope to be. But to tell you that I'm not alarmed and concerned at what I heard would not be truthful.

R. p. 335, lines 11 – 18.

Everett Godfrey, a local attorney who happened to be in the courtroom at the time, was asked by the judge to represent and advise Dr. Loring. The judge took a recess to allow Loring an opportunity to consult with Godfrey. R. p. 335, line 19 – p. 336, line 11.

When court reconvened, on the advice of counsel Dr. Loring invoked her privilege against

self-incrimination as provided by the Fifth Amendment:

With profound condolences to Tiffany's family and with respect to the family of Jerry Inman and with deep apologies to the court, I worked so hard to gather all this information to come here today to tell you the truth about Jerry Inman's past. I'm so sorry, Your Honor. Upon advice of counsel, I must plead the Fifth. I feel threatened as a witness in this case and in other cases in which I've testified in South Carolina.

R. p. 336, lines 14 – 24.

Loring's impromptu counsel explained, "The Solicitor. . . has intimidated this witness." R. p. 339, lines 12 – 23. He added:

If the Solicitor was going to raise such an issue as this, it appears it should have been raised pretrial and not during *voir dire*. But what he has done now is chilled the doctor's ability to testify, which was exactly his intent.

R. p. 340, lines 4 - 8

The judge apologized to Loring for getting "caught in the middle of all this" but expressed his concern that if she did not testify, "the defense would feel compelled to request that this sentencing hearing be basically ended and we have to come back and do it all again." R. p. 342, line 2 – p. 343, line 10. After another short recess, Loring again informed the judge that she was "[f]ull of sorrow" because "I must, upon advice of counsel, tell you that I can not testify." R. p. 343, line 11 – p. 344, line 7. The Solicitor's threats had made her apprehensive about "my professional reputation in other jurisdictions in which I am involved currently." R. p. 344, lines 8 – 14.

At this point - "insofar as I am able to"- the judge attempted to grant Loring "immunity in all your prior cases that you testified in this state." R. p. 344, lines 17 – 19. "And while . . . judicial immunity may not be generally recognized in South Carolina," he added, "I think the fact that I'm putting it out there would carry some weight." R. p. 346, lines 6 – 12. Consequently, the judge

concluded, “I do not believe you have a lawful ground to refuse to testify.” R. p. 346, lines 15 – 16.

Indeed, the judge had no authority to grant Dr. Loring statewide immunity from prosecution for testifying as an expert witness in South Carolina.

In the ordinary case, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.

State v. Needs, 333 S.C. 134, 508 S.E.2d 857, 863 (1999) (citations omitted).

And:

[T]he South Carolina Constitution [Article V, §24] and South Carolina case law [citations omitted] place the unfettered discretion to prosecute solely in the prosecutor’s hands. . . . The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion; however, on occasion, it is necessary to review and interpret the results of the prosecutor’s actions.

State v. Thrift, 312 S.C. 282, 440 S.E.2d 341, 346 (1994). “Furthermore, a trial court generally has no power to dismiss a properly-drawn indictment issued by a properly-constituted grand jury before trial unless a statute grants that power to the court.” Needs, 508 S.E.2d at 863.

Defense counsel moved for a mistrial “based on prosecutorial misconduct.” R. p. 415, line 18 – p. 417, line 25. The Solicitor’s intimidation tactics, he argued, had violated Inman’s right to due process, specifically his Sixth Amendment right “to present a full and complete defense” and “his Eighth Amendment right to a full and fair presentation of mitigation in this case.” R. p. 417, line 25 – p. 418, line 13.

But counsel had also received information that, in an earlier capital case the Solicitor had threatened to prosecute another defense witness for running afoul of § 40-63-200.¹ R. p. 418, line 20 – p. 419, line 25. Apart from violating Rule 407 (“Rules of Professional Conduct”), SCACR,

¹ This is discussed in detail infra.

counsel asserted, the Solicitor had quite possibly violated S.C. Code § 16-9-340, which makes it illegal to intimidate a witness “by threat or force” or to “attempt to obstruct or impede the administration of justice in any court.”

In addition to requesting a mistrial, defense counsel moved to recuse the Solicitor’s Office from further participation in Inman’s case. R. p. 420, line 1 – p. 423, line 25. He also asked the judge to quash the death notice and sentence Inman to life without parole. R. p. 426, lines 17 – 20.

Concerning Dr. Loring, the Solicitor responded disingenuously: “I have never threatened her. I have never even moved to indict her even though, theoretically, she would have violated the statute from a prior case.” R. p. 429, lines 6 – 13. In his mind, the whole issue was “truly a red herring.” R. p. 429, lines 14 – 15.

Counsel for Loring informed the judge that she still intended to take the Fifth. R. p. 430, line 20 – p. 431, line 20. The judge ruled:

I’m not going to grant [a] mistrial. I am going to continue the case. I would instruct counsel to seek another social historian so that Dr. Loring will never have to deal with this case again.

R. p. 434, lines 11 – 14. But, he added, “I wouldn’t rule that Dr. Loring is completely out of the case.” R. p. 435, lines 4 – 8.

Seven months passed. As a result of Dr. Loring’s continuing unease about testifying in South Carolina, she and the defense had reluctantly agreed to part ways shortly after the September 2008 hearing. R. p. 1024, line 14 – R. 1025, line 1. An already bad situation only got worse when the Solicitor then subpoenaed Loring in Georgia and nearly triggered the forced entry of her home by Georgia police with a warrant to arrest her as a fugitive. R. 1025, lines 2 – 4; R. p. 446, line 14 – p. 15, line 11.

When sentencing reconvened on April 20, 2009, defense counsel renewed his motions for a mistrial and for a sentence of life without parole. R. p. 455, lines 2 – 11. The severity of the situation his own misconduct had created was apparently lost on the Solicitor: “[A]s you can see, the Thirteenth Circuit Solicitor’s Office had nothing to do with any of this. This is just a continuation by the defense to perpetrate an issue that is not real.” R. p. 459, lines 21 – 25. In fact, he maintained, whatever had happened in Georgia after the subpoena left his hands was “every bit the fault of Dr. Loring, under the Georgia system.” R. p. 459, line 16 – p. 23, line 5. As far as he was concerned, it was all “more of the tempest in the teapot over nothing.” R. p. 461, lines 5 – 7.

Loring voluntarily attended the hearing. R. p. 468, line 11. If the defense did not intend to call her as a witness, though, the judge was initially inclined to “cut her loose.” R. p. 468, lines 16 – 21.

The defense elected to call Loring as a witness “for the limited purpose of putting what we can on the record regarding what happened in Georgia.” R. p. 470, lines 4 – 7. She testified:

I’ve never had an arrest warrant or anything like that. So it was a new experience for me. So I was alarmed, concerned, frightened, especially when I found out that I had been described as a flight risk. . . . And then I really didn’t know exactly what to do. I’ve never had an experience like this before.

R. p. 480, lines 4-25.

As to the critical issue of her ability to testify effectively on behalf of Inman, Loring admitted:

Well, I would have to truthfully tell you that this is a very alarming experience. And I cannot assure you a hundred percent that going through all this would not have an impact on me.

R. p. 483, lines 7 – 14.

Nevertheless, she was prepared if required “to do my very best, to do a professional and

thorough job in the role of mitigation expert.” R. p. 483, lines 15 – 20. “[I]f you are called as a witness,” the judge interjected, “I would not allow [the Solicitor] to be the attorney who handled the examination.” R. p. 484, lines 16 – 21.

The defense renewed its motion to disqualify the entire Solicitor’s Office. R. p. 498, lines 20 – 23. He alleged that the Solicitor had also threatened a defense psychologist for violating § 40-63-200 at capital resentencing in State v. Michael James Laney in April 2007. R. p. 500, line 18 – p. 502, line 6. “[I]t sounds like Grassy Knoll stuff,” the judge observed, but allowed the defense to proffer its evidence. R. p. 502, lines 7 – 12.

Counsel for Laney, Chief Public Defender in Greenville, John Mauldin, testified that he had also filed a motion to quash the death notice based on the Solicitor’s prosecutorial misconduct in that case. R. p. 516, line 7 – p. 517, line 7. As was apparently his wont, the Solicitor responded by sending the witness an intimidating letter requesting her attendance at a meeting to discuss her testimony. R. p. 525, line 5 – p. 529, line 7. Counsel for Laney renewed his motion to quash the death notice, outlining this ongoing misconduct. R. p. 529, lines 4 – 21. The very next day, the Solicitor invited counsel to a meeting to discuss the possibility of a plea. R. p. 531, lines 2 – 10. As counsel put it, “[T]here was significant movement regarding the resolution of that case” at that point. R. p. 532, line 8 – p. 533, line 4.

As far as the Solicitor was concerned, the only sticking point preventing a life sentence in the Laney case was defense counsel’s refusal to concede that their expert had violated § 40-63-200. R. p. 535, line 22 – p. 536, line 16. The Solicitor eventually agreed to withdraw the death notice if the defense would withdraw their prosecutorial misconduct motions. R. p. 545, lines 7 – 22. He later suggested that Laney’s counsel needed a “political advisor.” R. p. 584, line 20 – p. 586, line

14. Laney was allowed to plead guilty and received a life sentence. There would be no such luck for Petitioner Inman.

The plot thickened: Dr. Loring had previously testified in the capital case of State v. David Edens and Jennifer Holloway in June 2006 without objection by the Solicitor. R. p. 547, line 1 – p. 548, line 16. His attitude changed when the jury returned life sentences for both defendants. R. p. 590, line 7 – p. 591, line 6. Several weeks later, the Solicitor’s Office invited the jurors to dinner at a local restaurant. R. p. 591, line 8 – p. 592, line 11. According to one of those jurors:

I took it to be they wanted to know what had influenced us the most as a jury in not giving them the death penalty. And what they had done . . . wrong or what they had done right. They were just picking our brains to kind of get a general idea of how to better do it next time.

R. p. 592, line 12 – p. 593, line 2.

She was left with the distinct impression the Solicitor was upset with their verdict. R. p. 593, lines 3 – 6.

Following this testimony, counsel for Inman informed the judge that he planned to call the Solicitor and his Deputy as witnesses on the issue of the Solicitor’s misconduct, especially the matter of their intent. R. p. 604, line 16 – p. 605, line 22. The judge summarily denied the motion. R. p. 605, lines 23 – 25. Counsel objected to this limitation on his ability to present Inman’s defense under the Sixth and Fourteenth Amendments. R. p. 606, lines 1 – 6.

Finally, the judge decided to call Dr. Loring as a court’s witness. R. p. 640, lines 5 – 7. He denied defense counsel’s motion for a mistrial. R. p. 645, lines 15 – 19. In reaching this result, the judge had decided that “[t]he events in Georgia” – Loring’s near-arrest thanks to the Solicitor’s efforts to subpoena her – were irrelevant to the issue of prosecutorial misconduct. R. p. 647, lines

2 – 24.

In Loring's presence, the judge accused the defense of being "more interested in pursuing the misconduct issue than in presenting a full defense." R. p. 661, line 24 – p. 662, line 16. He then called Dr. Loring as his witness and questioned her himself. Loring testified that she no longer felt threatened by the Solicitor and would try "to do my very best," although:

I'm worried and anxious that I have not received attorney guidance for six months, have not seen Mr. Inman for that period of time, nor have I re-interviewed his family members for the last six months. . . . Had I known that I was still on the case, Your Honor, I would have been sure to have done these three things so I wouldn't leave out important information when I testified.

R. p. 666, line 3 – p. 667, line 17.

Loring pointed out that "there is some important information that I don't have as a result of what I've just talked about." R. p. 667, line 21 – p. 668, line 3.

The judge ruled that the Solicitor's intimidation of Dr. Loring constituted prosecutorial misconduct but not *intentional* prosecutorial misconduct. R. p. 700, lines 6 – 19. He accused defense counsel, without citing to any facts, of "participating in the limitation of this evidence that they intended to offer, which contributes to any constitutional violation that might exist." R. p. 700, lines 20 – 23.

On appeal, Inman argued that the judge committed reversible error at sentencing by refusing to grant a mistrial and recuse the Solicitor's Office from any further involvement in the case, despite finding prosecutorial misconduct, where the Solicitor threatened a key defense witness with a baseless criminal prosecution and subpoenaed her as a State's witness even after the judge granted the defense a continuance to obtain a new expert because of his misconduct; and the judge committed reversible error at sentencing by refusing to allow the defense to cross-examine the

Solicitor and his Deputy on the issue of prosecutorial misconduct, as the Solicitor's intent was directly relevant to that issue.

The South Carolina Supreme Court held:

We find the Solicitor's conduct toward Dr. Loring unequivocally constituted witness intimidation. Even if the Solicitor was legitimately concerned about Dr. Loring's qualifications as an expert witness, he could have filed a motion to disqualify her, which could have been addressed in a pre-trial hearing without the presence of Dr. Loring. By challenging Dr. Loring as soon as she took the stand, the Solicitor's method of questioning can only be viewed as an intimidation tactic. The Solicitor's claimed grant of immunity to Dr. Loring did not negate the atmosphere of intimidation as Dr. Loring repeatedly testified that she felt threatened.

Secondly, based on the testimonial and documentary evidence the defense presented on this issue, it is clear the Solicitor knew this line of questioning was objectionable as it had formed the basis of a previous allegation of prosecutorial misconduct in the Laney case.

"The right to offer testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." Washington v. Texas, 388 U.S. 14, 19 (1967). "This right is a fundamental element of due process of law." Id.

Although we find the Solicitor committed prosecutorial misconduct, we conclude Inman's sentence of death was not imposed in violation of his due process rights. See 16C C.J.S. Constitutional Law §1644 (Supp. 2011) ("The touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, and not the culpability of the prosecutor."). Accordingly, we find the judge did not abuse his discretion in declining to grant a mistrial.

App. 11-12; app. 14.

The South Carolina Supreme Court also concluded that although the right to call witnesses [Dr. Loring] “[r]equires that they be called without intimidation from the State,” it added that “where substantial interference is found, the next issue is whether the error can be deemed harmless.”

The Court then held that it declined to adopt an automatic rule of reversal “[a]nd hold that in order to obtain relief, a defendant must demonstrate both substantial interference and prejudice. [internal citation deleted]. However, even if the defendant demonstrates substantial interference and prejudice, a new trial is not always the requisite remedy. Instead, ‘[t]he remedy to be afforded a defendant in this situation is determined by the facts and circumstances of each case, depending on the prejudice suffered by the defendant.’” *Citing State v. Williams*, 326 S.C. 130, 136, 485 S.E.2d 99, 103 (1997). App. 10-11. (in which the Court granted a new trial).

The Court concluded held that it was not error to deny a mistrial based on the prosecutorial misconduct because Dr. Loring ultimately testified, and the potentially excluded testimony was “arguably cumulative to that of Dr. Price, who testified in detail regarding Inman’s childhood, his family, his mental health disorders, and his criminal history.” It also concluded the judge considered all mitigating evidence. App. 14.

As to Inman’s right to call the Solicitor to prove intentional prosecutorial misconduct, and its denial of relief for the judge’s refusal to allow it in this case, the Court acknowledged its holding in *State v. Quattlebaum*, 338 S.C. 441, 453, 527 S.E.2d 105, 111 (2000) that “[a] criminal defendant has the right to call the prosecuting attorney as a witness, subject to the trial court’s usual discretion to exclude witnesses or evidence.” App. 9. In *Quattlebaum*, the South Carolina Supreme Court found that the prosecutorial misconduct in that death penalty case warranted a new trial and

the disqualification of the Solicitor's office at the retrial. Justice Pleicones in his concurring opinion wrote that he agreed with the "majority that Quattlebaum should be limited to its facts. A one-size-fits-all solution is a poor response to prosecutorial misconduct." App. 15. Justice Pleicones also wrote that "The Solicitor's conduct in this case was inexplicable and reprehensible . . . [however] whatever the appropriate response to the solicitor's conduct may be, it does not include reversal." App. 16.

The Court held that the judge did not abuse his discretion by refusing to allow the defense to call the Solicitor as a witness, and it noted that "[d]efense counsel's primary reason for calling the Solicitor as a witness was to establish that he *intentionally committed* misconduct. Because a determination of prosecutorial misconduct is not necessarily dependent upon the intent of the prosecutor, such testimony was neither relevant nor material to the defense's claim. See People v. Hill, 952 P.2d 673, 683-84 (Cal. 1998)." App. 10-11.

Inman strongly challenged these holdings on rehearing, writing that:

This Court wrote that it was "clarifying" the law from Quattlebaum that an irrebuttable presumption of prejudice applies where there is *deliberate* prosecutorial misconduct. This Court now holds that Quattlebaum was limited to its facts and only applied where the misconduct implicated the attorney-client relationship, and that it rejects a "one size fits all determination" of prejudice from prosecutorial misconduct. This Court here found the prosecutorial misconduct did not result in a death sentence that violated due process. See State v. Jerry Buck Inman, Op. No. 27081, Shearouse's Adv. Sh. No. 46 (filed December 28, 2001) at p. 33, n. 17; p. 40; pp. 43-45.

Petitioner argued during the evidentiary portion of his guilty plea that he was entitled to call the Solicitor and an assistant as witnesses on the issue of *their intent* as it pertained to the prosecutorial misconduct the trial judge ruled had occurred. As this Court will recall, the trial judge had already concluded that the Solicitor's intimidation of Dr. Loring, while prosecutorial

misconduct, was *not intentional*. R. p. 700, lines 6 - 19.

This finding of a *lack of intent* permitted the judge to deny defense counsel's mistrial motion and avoid the possibility that Inman might be entitled to a sentence of life without parole as a consequence of that misconduct. See State v. Jerry Buck Inman, Op. No. 27081, Shearouse's Adv. Sh. No. 46 (filed December 28, 2001) at p. 33, n. 17; pp. 43-45.

As this Court will also recall, the judge summarily denied defense counsel's motion to call the Solicitor and his Deputy as witnesses on the issue of the Solicitor's intent. R. p. 604, line 16 - p. 605, line 25. Counsel objected to this limitation on his ability to present Inman's defense under the Sixth and Fourteenth Amendments to the United States Constitution. R. p. 606, lines 1-6.

Petitioner argued on appeal that this ruling was reversible error under State v. Quattlebaum, 527 S.E.2d at 111. As in Quattlebaum, petitioner argued, the judge did not articulate his reasons for refusing to allow defense counsel to question the Solicitor and his Deputy. Thus, he concluded this ruling was also controlled by an error of law and was therefore an abuse of the judge's discretion. Final Brief at 24.

During oral argument at least one member of this Court noted that decisions were undoubtedly made in this case *based on strategy*. That is precisely why changing the law on the presumption of prejudice is a due process violation and fundamentally unfair under the unusual facts of this case. Petitioner submits this change in the law regarding the presumption of irrebutable prejudice from intentional prosecutorial misconduct is fundamentally unfair, not predictable, and it violates his right to due process. Therefore a new trial should be granted. State v. Jones I., 343 S.C. 562, 577-578, 541 S.E.2d 813, 821 (2001). Cf. Rogers v. Tennessee, 532 U.S. 451 (2001).

Second, and in the alternative, and at a minimum, this due process violation necessitates a remand so that a determination of intentional prosecutorial misconduct can be made under the standard the Court now adopts. That is, in short, since petitioner is required to prove both fundamental interference and prejudice, due process requires a remedy where this Court changed the law to his detriment after his strategic decisions in the court below. See Bunkley v. Florida, 538 U.S. 835 (2003). Cf. Rogers v. Tennessee, 532 U.S. 451 (2001).

Further, petitioner previously based his case on prosecutorial misconduct in reliance on this Court's opinion in Quattlebaum. "We break no new ground in observing that an essential component of procedural fairness is an opportunity to be heard." Crane v. Kentucky, 476 U.S. 683, 689 (1986). A meaningful opportunity to be heard and to present a complete defense is violated where the law is changed on a fundamental issue involved at trial – here the remedy for prosecutorial misconduct and being denied the right to call witnesses to prove the solicitor committed intentional prosecutorial misconduct. Due process and fundamental fairness dictate that petitioner be given a fair opportunity to prove prejudice, at a minimum, under the new standard. The solicitors, one would think, would have been very willing and to happy to explain themselves and their purportedly unintentional conduct. "Qui tacit, clamat." (Who keeps silent, cries out.)

Petitioner for rehearing at 1-3.

REASONS WHY CERTIORARI SHOULD BE GRANTED

1.

It was fundamentally unfair and a violation of Due Process for the Court to hold that an irrebutable presumption of prejudice no longer applied where there is deliberate prosecutorial misconduct since the trial judge found prosecutorial misconduct in this case, and the South Carolina Supreme Court also found such prosecutorial misconduct based on clear witness intimidation.

The South Carolina Supreme Court changed the law to Inman's detriment by holding that an irrebutable presumption of prejudice no longer applied where there is deliberate prosecutorial misconduct, since the trial judge found prosecutorial misconduct in this case, and the State Supreme Court also found such prosecutorial misconduct based on obvious witness intimidation which the concurrence termed "inexplicable and reprehensible." The South Carolina Supreme Court had the right to change the law on the prejudice inherent from prosecutorial misconduct, but to do so to this

Petitioner's prejudice in a case where it clearly appears the Court thought no matter how despicable the conduct of the government prosecutor was it did not entitle Inman to any relief. denied Inman his right to Due Process and fundamental fairness in our criminal justice system. See Bunkley v. Florida, 538 U.S. 835 (2003). Cf. Rogers v. Tennessee, 532 U.S. 451 (2001).

In State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000) the South Carolina Supreme Court held that the prosecutorial misconduct in that death penalty case of secretly taping a discussion between the defendant and his attorney on the night of his arrest warranted a new trial and the disqualification of the Solicitor's office at the retrial. The South Carolina Supreme Court noted various approaches to proving prejudice from prosecutorial misconduct and held: "We conclude, consistent with existing federal precedent, that a defendant must show either deliberate prosecutorial misconduct *or* prejudice to make out a violation of the Eighth Amendment, but not both. Deliberate prosecutorial misconduct raises an irrebuttable presumption of prejudice." In State v. Quattlebaum, 338 S.C. 441, 448, 527 S.E.2d 105, 109 (2000).

The South Carolina Supreme Court had the right to change that irrebuttable presumption of prejudice -- but prospectively only. See Bunkley v. Florida, 538 U.S. 835 (2003). Cf. Rogers v. Tennessee, 532 U.S. 451 (2001). It was a violation of Due Process and of the essential demands of fairness to change the law in Petitioner Inman's case on the critical issue of the remedy for the prosecutorial misconduct of witness intimidation, which every Justice on the South Carolina Supreme Court obviously considered despicable.

That Court in Quattlebaum delivered a stern warning to prosecutors that they were ministers of justice, and that such prosecutorial misconduct would not be tolerated in the state of South Carolina. Yet eleven years later, in a case involving the murder of a college student by a serial

rapist, the law had to be changed to prevent a remedy which those unschooled in the rule of law might have found hard to swallow.

Petitioner Inman argued the unfairness of this on rehearing as seen above, and since rehearing was denied Petitioner submits this Court should grant certiorari to clarify that abolishing the presumption of prejudice here can only apply prospectively.

The South Carolina Supreme Court's holding that petitioner did not have the right to call the prosecutors as witnesses during his bench trial to prove intentional prosecutorial misconduct violated petitioner's right to Due process under the Fourteenth Amendment.

As seen above, this same local prosecutor essentially allowed Michael Laney to plead guilty after his case was reversed on appeal --- in what was a double murder case where the victims were two elderly women slaughtered in their own home -- to avoid the public scrutiny of his own misconduct. R. p. 516, line 7 – p. 533, line 4.

In yet another case, State v. David Edens and Jennifer Holloway in June 2006, Dr. Loring (the witness whom the Solicitor reprehensibly intimidated in the instant case) had testified without objection by the Solicitor. R. p. 547, line 1 – p. 548, line 16. However the fallout from the life sentences following her expert testimony was obvious where several weeks later, the Solicitor's Office invited the jurors to dinner at a local restaurant. R. p. 591, line 8 – p. 592, line 11. At least one juror left with the distinct impression the Solicitor was upset with their verdict. R. p. 593, lines 3 – 6.

After this testimony regarding the Laney and David Edens and Jennifer Holloway cases, counsel for Inman informed the judge that he planned to call the Solicitor and his Deputy as witnesses on the issue of the Solicitor's misconduct, especially the matter of his intent. R. p. 604, line 16 – p. 605, line 22. The judge summarily denied the motion. R. p. 605, lines 23 – 25. Counsel objected to this limitation on his ability to present Inman's defense under the Sixth and Fourteenth Amendments. R. p. 606, lines 1 – 6.

The South Carolina Supreme Court has held that a Solicitor may not “lob baseless threats or

charges at a potential defense witness in an effort to prevent the witness from testifying.” State v. Needs, 333 S.C. 134, 508 S.E.2d 857, 863 (1999). Also,

Improper intimidation of a witness may violate a defendant’s due process right to present his defense witnesses freely if the intimidation amounts to substantial government interference with a defense witness’ free and unhampered choice to testify.

State v. Williams, 326 S.C. 130, 485 S.E.2d 99, 102 (1997) (citation and quotation marks omitted).

Moreover:

If the State seeks to compel a defendant’s non-testifying consultative expert to testify on its behalf, the State must prove that it has a “substantial need” for the expert and that its inability to compel the expert to testify will present “undue hardship.”

State v. Jones, 383 S.C. 535, 681 S.E.2d 580, 586 (2009); see, also, State v. Northcutt, 272 S.C. 207, 641 S.E.2d 873 (2007).

The judge summarily denied defense counsel’s motion to call the Solicitor and his Deputy as witnesses on the issue of the Solicitor’s intent. R. p. 604, line 16 – p. 605, line 25. Counsel objected to this limitation on his ability to present Inman’s defense under the Sixth and Fourteenth Amendments. R. p. 606, lines 1-6. The judge’s finding that the Solicitor’s misconduct was **unintentional** where he refused to allow the defense to call the Solicitor as a witness concerning his intent was an arbitrary ruling which violated Due Process under the Fourteenth Amendment to United States Constitution. R. p. 700, lines 6 - 19. This finding of a lack of intent permitted him to deny defense counsel’s mistrial motion and avoid the possibility that Inman might be entitled to a sentence of life without parole as a consequence of that misconduct.

In State v. Quattlebaum, 338 S.C. 441, 453, 527 S.E.2d 105, 110 (2000), the Court held: “Here, appellant sought to examine the solicitor and deputy solicitor *in camera*. The Court did not

articulate its reason for refusing to allow appellant to examine the solicitor and deputy solicitor. Thus it appears the decision was controlled by an error of law and was therefore an abuse of the trial court's discretion." The Court also rejected the state's argument that the testimony of the solicitor would have been cumulative to the solicitor's own statements as an officer of the court regarding his knowledge of an informant's involvement in the case because his statements did not address the critical question of when the informant became a government agent. Further, statements made as an officer of the court are no substitute for "under-oath cross-examination."

State v. Quattlebaum, 338 S.C. 441, 453, 527 S.E.2d 105, 110 (2000).

Yet in this case, the Court found no error:

Other jurisdictions have agreed with this Court's limitation on a prosecutor as a defense witness and have further clarified that the testimony "must be relevant and material to the theory of the defense... [and] it must not be privileged, repetitious, or cumulative." Johnson v. State, 326 A.2d 38, 45 (Md. Ct. Spec. App. 1974) (citing State v. Lee, 203 S.C. 536, 28 S.E.2d 402 (1943))), aff'd, 339 A.2d 289 (Md. 1975).

It is evident that this Court and courts from other jurisdictions disfavor defense counsel calling a prosecuting attorney to testify in a case in which he is participating as an advocate. See Bennett v. Commonwealth, 374 S.E.2d 303, 313 (Va. 1988) ("[I]t is not desirable for the Commonwealth's Attorney to testify as a witness on a material point in a case. The circumstances are rare indeed where any lawyer may properly testify in a case in which he is participating as an advocate."); see also Erwin S. Barbre, Annotation, Prosecuting Attorney as A Witness in Criminal Case, 54 A.L.R.3d 100 (1973 & Supp. 2011) (analyzing cases where the propriety of a prosecuting attorney's testifying in a criminal case on behalf of the prosecution or on behalf of the defendant was at issue; recognizing that such a decision is dependent upon the facts of the case, is discretionary, and generally does not require the prosecutor to withdraw or be rescued from the case when called on behalf of the defendant).

App. 9.

The central and material issue in this case was whether the prosecutorial misconduct found by the trial court and State Supreme Court was intentional. The defense strenuously argued that a mistrial had to be ordered on the sentencing phase following the guilty plea because of the witness intimidation of Dr. Marti Loring, the defense's star mitigation expert. The Court denied the mistrial motion, and also refused to recuse the Solicitor's office.

As seen, Petitioner Inman argued the Solicitor should be glad of his opportunity to withstand examination under oath about his intent to commit misconduct. It is hard to fathom that a Court would not provide a remedy if the solicitor admitted intentional witness intimidation. This was a bench trial. There existed no substantial reason to allow the Solicitor to argue his position, yet not allow him to be examined under oath about his intent when he intimidated Dr. Loring.

Regarding witness intimidation -- the issue the defense sought to examine the solicitor about under oath -- "isolating a witness" by way of subpoena or arrest can result in a Due Process violation. See United States v. Vavages, 151 F.3d 1185 (9th Cir.1998) (interference by threatening alibi witness with perjury if not believed and withdrawing from the plea agreement). United States v. Morrison, 535 F.2d 223 (3rd Cir. 1976) (reversed where prosecutor issued a subpoena for a personal interview of the defense witness); In re Martin, 44 Cal.3d 1, 241 Cal.Rptr. 263, 744 P.2d 374 (1987) (habeas relief granted where prosecution's arrest of first defense witness for perjury caused remaining defense witnesses not to testify). Here, Dr. Loring was clearly intimidated by the out-of-state subpoena that was attempted to be served at her home in Atlanta in her absence, and word from her neighbors that a fugitive warrant was out for her arrest. All of this was after she was threatened with indictment and prosecution prior to the judge ordering the continuance.

The essential questions are whether the witness was important to the defense, and, whether,

as a result of the prosecutor's action, the defendant was denied the witness' testimony or the witness changed her testimony to be less favorable to the defense. See United States v. Weddell, 800 F.2d 1404 (5th Cir. 1987). Here, Dr. Loring was obviously intimidated by the Solicitor's misconduct. As seen above, Dr. Loring and the defense agreed to part company after the solicitor's witness intimidation of her caused the judge to declare an open continuance in an attempt to "save" the case after he refused to grant a mistrial.

Dr. Loring's testimony after months in isolation without continuing to prepare for trial undoubtedly made her testimony in mitigation less effective than it would have been seven months ago --- prior to the continuance. Dr. Loring told the judge that she was "worried and anxious" because she had "not received attorney guidance for six months." Further, she "not seen Mr. Inman for that period of time, nor have I re-interviewed his family members for the last six months. . . ." She apologetically offered that: "Had I known that I was still on the case, Your Honor, I would have been sure to have done these three things so I wouldn't leave out important information when I testified." R. p. 666, line 3 – p. 667, line 17.

The Court denied Petitioner Inman his right to Due Process by refusing to allow the Solicitors to be examined under oath during this bench trial about their intent in this prosecutorial misconduct case.

The South Carolina Supreme Court erred by holding the prosecutorial misconduct and witness intimidation in petitioner's case did not result in a death sentence that violated his Due Process rights, because the undisputed intimidation of petitioner's chief mitigation witness, Dr. Marti Loring, had an adverse effect on the ability of the defense to present its case in mitigation as guaranteed by the Eighth Amendment to the United States Constitution

The defense, in a capital case, has the right to present any mitigating evidence to the judge or jury that may result in a sentence of less than death. Lockett v. Ohio, 438 U.S. 586 (1978). As seen above, Dr. Loring frankly acknowledged she was not going to be as effective as she prided herself on being, given that she had not seen Petitioner Inman nor his family for months. She also did not have the benefit of normal trial preparation with the defense since they had agreed to go separate ways after the continuance was granted, and before the solicitor tried to have her arrested in Georgia. As the South Carolina Supreme Court stated: "We believe it was disingenuous for the Solicitor to assert that there was no wrongdoing on the part of the State regarding the events that took place in Georgia. Based on Dr. Loring's testimony, it was clear that she was not attempting to abscond from Georgia and purposefully decline to appear at the sentencing hearing. Thus we find the Solicitor's initiation of the events in Georgia went beyond the necessary course of action." State v. Inman, 395 S.C. 539, 564, 720 S.E.2d 31, 44 (2011).

In Sechrest v. Ignacio, 549 F.3d 789, 807-816 (9th Cir. 2008)², the Court held that the prosecutor's argument that the defendant could be paroled where he was parole ineligible constituted prosecutorial misconduct and denied the defendant his right to Due Process. The prosecutor also called the defense a "fraud." In vacating the death sentence and remanding for

² *Certiorari denied* 130 S.Ct. 243 (2009).

resentencing, the Court rejected the state's argument that because the crime was one of "utter depravity – unthinkable to most people in the abstract," that no prejudice could be shown. The Court noted that almost all "first degree murders can be described as 'unthinkable.'" Sechrest v. Ignacio, 549 F.3d 789, 815-816 (9th Cir. 2008). The same can be said of death penalty cases, and the life sentence offered in the Laney case where the same Solicitor committed very similar prosecutorial misconduct is instructive on that point.

There comes a point -- and it was reached in this case because of the prosecutor's repeated prosecutorial misconduct in intimidating sentencing phase mitigation witnesses -- that a death sentence "won" by such misconduct cannot stand. The Solicitor in this case set out to intimidate Dr. Marti Loring because she had the reputation as an excellent mitigation witness -- he achieved his end -- all judges involved found he intimidated her. When a prosecutor's misconduct in a death penalty case is so flagrant -- and the South Carolina Supreme Court found that -- there must be a remedy. It is reversal of the death sentence. See Bates v. Bell, 402 F.3d 635 (6th Cir. 2005) (flagrant misconduct warrants reversal of the death sentence); Brooks v. Francis, 716 F.2d 780 (11th Cir. 1983) (remedy for prosecutorial misconduct is reversal of the death sentence).

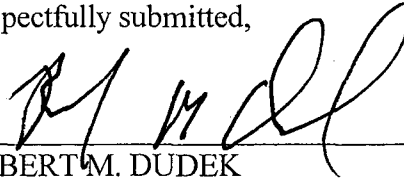
Dr. Loring was selected by the defense because of her expertise in researching a defendant's background, and eloquently relaying to the trier of fact mitigating evidence in the defendant's background. The Solicitor in this case struck foul blows in intimidating Dr. Loring -- not fair blows -- and in a death penalty case there must be a remedy aside from warning prosecutors not to do it again. See Berger v. United States, 295 U.S. 78, 88 (1935). The remedy is reversal of the death sentence. A witness or person intimidated by government threats to take away her liberty cannot effectively advocate against the government's desire for a death sentence. This Court should

address whether a death sentence can stand where a State Supreme Court -- as here -- finds flagrant, repeated, prosecutorial misconduct and yet lets the death sentence stand. Certiorari should be granted.

CONCLUSION

Based on the foregoing, a writ of certiorari should be granted to allow full briefing on these issues.

Respectfully submitted,

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

ROBERT M. DUDEK
Chief Appellate Defender

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ATTORNEY FOR PETITIONER

June 11, 2012

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2011

No. 12-

JERRY BUCK INMAN,

Petitioner,

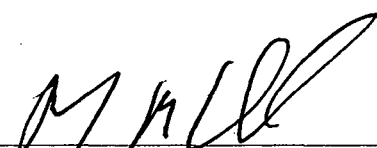
v.

STATE OF SOUTH CAROLINA,

Respondent

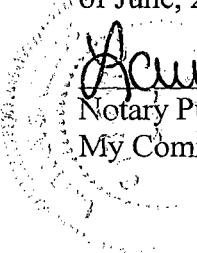
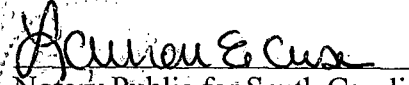
CERTIFICATE OF SERVICE

I certify that copies of the petition for writ of certiorari and appendix in this case have been served upon opposing counsel by mailing copies in envelopes properly addressed with postage prepaid on this 11th day of June, 2012.



ROBERT M. DUDEK
Counsel of Record

SWORN TO BEFORE me this 11th day
of June, 2012.


 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2011

No. 12-

JERRY BUCK INMAN,

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v.

STATE OF SOUTH CAROLINA,

Respondent

A P P E N D I X

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ATTORNEY FOR PETITIONER

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Jerry Buck Inman, Appellant.

Appeal From Pickens County
Edward W. Miller, Circuit Court Judge

Opinion No. 27081

Heard September 21, 2011 - Filed December 28, 2011

AFFIRMED

Chief Appellate Defender Robert M. Dudek,
and Senior Appellate Defender Joseph L.
Savitz, III, of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Donald J. Zelenka, of
Columbia, and Solicitor William Walter Wilkins,
III, of Greenville, for Respondent.

JUSTICE BEATTY: In this capital case, Jerry Buck Inman pleaded guilty to the murder, first-degree burglary, first-degree criminal sexual conduct, and kidnapping of a Clemson University student. The judge sentenced Inman to death for murder and two consecutive thirty-year sentences for first-degree burglary and first-degree criminal sexual conduct.^[1]

On appeal, Inman challenges the judge's acceptance of his guilty plea as he contends it was conditional in that defense counsel maintained Inman was entitled to be sentenced by a jury despite his plea of guilty.^[2] Additionally, Inman asserts the judge erred in addressing his allegations of prosecutorial misconduct arising out of the Solicitor's treatment of the defense's expert witness during the sentencing proceedings. Specifically, Inman claims the judge erred in the following respects: (1) refusing to recuse the Solicitor's Office from any further involvement in the case; (2) declining defense counsel's request to question the Solicitor on the issue of prosecutorial misconduct; and (3) declining to grant a mistrial despite a finding of prosecutorial misconduct. We affirm Inman's guilty plea and sentences.

I. Factual/Procedural Background

A.

A1

On the evening of May 25, 2006, Tiffany Marie Souers (the Victim), a rising junior at Clemson University, was alone in her off-campus apartment as her roommates were gone for the day. When one of her roommates returned to the apartment during the afternoon of May 26, 2006, she discovered the Victim's partially-clad body on the bedroom floor. An autopsy revealed the Victim had been sexually assaulted and died as the result of asphyxia due to ligature strangulation with a bathing suit top.

Surveillance photographs taken during the early morning hours of May 26, 2006 captured a male, whose face was covered by a bandana, attempting to use the Victim's ATM card at two different bank machines in Clemson.

On June 5, 2006, law enforcement was able to identify Inman as the Victim's perpetrator based on DNA evidence obtained from the crime scene and processed through the National DNA Database, which had Inman's DNA evidence on file due to his prior out-of-state convictions for sexual offenses in 1987 and 1988. Using this information, law enforcement conducted a well-publicized nationwide search for Inman. On June 6, 2006 at approximately 11:45 p.m., law enforcement apprehended Inman in Dandridge, Tennessee.

Shortly after his arrest, Inman orally confessed to the crimes involving the Victim. Within the course of the next three hours, Inman gave separate written statements to an agent with the Tennessee Bureau of Investigation and to agents with the South Carolina Law Enforcement Division (SLED). In these two statements, Inman again confessed to the charged crimes and recounted in detail the events underlying these crimes. When asked to sign these statements, Inman declined and stated "we still have to go to court."

Ultimately, Inman was extradited to South Carolina and detained in the Pickens County Detention Center where a DNA sample was taken from him and again conclusively matched to the DNA evidence recovered from the Victim and her apartment. Subsequently, a Pickens County grand jury indicted Inman for murder, kidnapping, first-degree criminal sexual conduct, and first-degree burglary. The Thirteenth Circuit Solicitor's Office timely served Inman with its intent to seek the death penalty.[3]

After a circuit court judge determined that Inman was competent to stand trial,[4] defense counsel filed a motion to determine the mode of trial. In the motion, counsel informed the judge of Inman's intent to enter a guilty plea to the crimes and demand a jury trial for sentencing. After a hearing, the judge summarily denied the motion on the ground he was "constrained by the existing case law in South Carolina and the statutes."

B.

On August 19, 2008, Inman pleaded guilty to murder, first-degree criminal sexual conduct, first-degree burglary, and kidnapping. During the plea colloquy, the judge informed Inman of the charges, the maximum possible sentences, and the constitutional rights that he was waiving by pleading guilty, including the right to a jury trial. Although Inman indicated he understood these rights, defense counsel interjected that Inman should be entitled to enter a guilty plea and then proceed to a jury trial for sentencing. In response, the judge informed Inman that he could not enter a plea "conditioned" on the preservation of the jury trial issue. Inman stated that he understood and still wished to plead guilty. Inman then admitted his guilt and expressed satisfaction with his defense counsel. Subsequently, Solicitor Robert M. Ariail (the Solicitor) presented a factual basis for the charged offenses that consisted of a stipulated summary of the facts.

When the judge resumed questioning Inman, he again inquired whether Inman understood that by pleading guilty he was waiving his right to have a jury sentence him for the murder conviction. Inman responded in the affirmative. Defense counsel, however, reiterated that Inman should not have to waive the right to have a jury determine his sentence. He emphasized that he "just want[ed] to make sure [the issue] is preserved."

In response, the judge again explained to Inman that he could not accept a "conditional guilty plea." The judge also instructed that he could not determine whether the jury sentencing issue was preserved for appellate review as it was a decision for the South Carolina Supreme Court. Inman indicated that he understood the judge's explanation and expressed his desire to continue the plea proceeding. The judge accepted Inman's plea and instructed that the sentencing proceeding would be held on September 8, 2008.

The Solicitor then expressed his concern that defense counsel's statements about the preservation of an appellate issue effectively made the plea conditional. Defense counsel disputed the conditional nature of the plea, but assured Inman that the "issue is preserved and will survive the guilty plea."

Based on this exchange, the judge debated whether to accept Inman's plea, but ultimately asked Inman whether his plea was "dependent" on the jury sentencing issue. After conferring with defense counsel, Inman acknowledged that his plea was not based on whether he would succeed on an issue raised on appeal. Inman stated, "I just want to enter the plea and get it over with, just go on from here with the sentencing phase."

At the conclusion of the plea colloquy, the judge accepted Inman's plea and found that it was freely, knowingly, voluntarily, and intelligently made.

C.

On September 8, 2008, the judge commenced the non-jury sentencing proceeding. In presenting its case for statutory aggravating circumstances, the State called two of the law enforcement officers to whom Inman confessed to the charged crimes. Additionally, Dr. Eric Dean Christensen, the forensic pathologist who conducted the Victim's autopsy, certified the Victim's death was caused by "asphyxia due to ligature strangulation." He further testified that there was "extensive bruising" on the Victim's body, which he believed was consistent with a physical struggle and the Victim being restrained. He also found physical evidence that suggested "traumatic sexual relations."

In terms of Inman's criminal history, the State offered extensive evidence of Inman's prior convictions in Florida and North Carolina as well as evidence of two unadjudicated incidents that occurred after Inman was released from the Florida Department of Corrections on September 1, 2005.

Subsequently, defense counsel initiated the case for mitigation. As the defense's first expert witness, counsel called Dr. David Richard Price, a forensic psychologist/neuropsychologist and clinical psychologist, who interviewed Inman and reviewed records regarding Inman's family, his prior crimes, his terms of incarceration, and his mental health records.

Based on these records, Dr. Price concluded that Inman suffered from the following: major depressive disorder, recurrent type; major depressive disorder with psychotic features;

bipolar disorder; psychorhythmic disorder; schizoid personality disorder; dissociative identity disorder; and sexual paraphilia. In making these diagnoses, Dr. Price took into account Inman's extensive psychiatric history and his childhood, which included "pretty significant" records indicating that Inman had been sexually abused, physically abused, grew up in a "very unstable environment," suffered with a mother who was schizophrenic and an alcoholic father, began using drugs at an early age, and was incarcerated at age seventeen. Dr. Price also testified that Inman had attempted suicide on seven occasions, six of which occurred while he was incarcerated. He further stated that Inman believed the death penalty was the appropriate punishment for the murder of the Victim. Ultimately, Dr. Price opined that Inman committed the crimes against the Victim while he was under the influence of a mental and emotional disturbance and that his capacity to conform his conduct to the requirements of the law was substantially impaired.

Defense counsel next called Dr. Marti Loring, a Georgia-licensed clinical social worker and board certified expert in traumatic stress who was employed at the Center for Mental Health and Human Development in Atlanta, Georgia. The defense offered Dr. Loring "as an expert in the field of trauma, abuse, forensic and therapeutic interviewing, and as a social historian in capital sentencing cases."

During *voir dire*, the Solicitor inquired whether Dr. Loring had "performed services under [her] licensed clinical social worker status" and whether she was licensed in South Carolina. Upon receiving Dr. Loring's response that she was not licensed in South Carolina, the Solicitor directed the judge's attention to section 40-63-200 of the South Carolina Code,^[5] which deals with the unauthorized practice of social work within the State of South Carolina. The Solicitor also pointed out that the statute "carries both civil and criminal penalties for violation." Based on this statute, the Solicitor argued that Dr. Loring was "not qualified as an expert in this state to testify or to render those services until she gets licensed."

In response, defense counsel argued that Dr. Loring's Georgia license was sufficient to qualify her as an expert witness in Inman's case. Counsel objected to the Solicitor's questioning and characterized it as "an inappropriate attempt to intimidate the witness with the authority that this Solicitor has in this state to indict." Counsel added that the Solicitor had put Dr. Loring "in a position where she may need to assert her Fifth Amendment privilege not to incriminate herself by answering the questions that I would otherwise have propounded to her."

The judge overruled the Solicitor's objection as he believed the intent of the statute was "to prevent persons from opening offices to conduct treatment in this state," which was distinguishable from Dr. Loring being retained as an expert for the defense.

After the judge determined that Dr. Loring was qualified to testify, defense counsel argued that the Solicitor's attempt to intimidate Dr. Loring constituted a violation of Inman's due process rights to present his defense. The Solicitor disputed this allegation and stated he could grant Dr. Loring immunity from prosecution in Inman's case. However, he clarified that he was not authorized to grant immunity for the other South Carolina cases in which she had testified.

Dr. Loring then expressed her concern about testifying and was granted an opportunity to consult with Bill Godfrey, an attorney who was present in the courtroom. When court reconvened, Dr. Loring stated she felt "threatened as a witness" and, as a result, invoked her Fifth Amendment right against self-incrimination upon the advice of counsel. Despite

assurances by the judge that she would be granted immunity in Inman's case and prior cases, Dr. Loring maintained that she would not testify as she believed she would be "in violation of a criminal statute [that] would affect [her] professional reputation in other cases and in other jurisdictions."

The judge then held in abeyance any motions regarding Dr. Loring's testimony and permitted defense counsel to call its remaining four witnesses in mitigation.

The next day, defense counsel moved for a mistrial based on the Solicitor's *voir dire* of Dr. Loring. Specifically, counsel characterized the Solicitor's actions as prosecutorial misconduct. As additional support for this motion, defense counsel referenced an earlier capital case where the Solicitor had confronted another defense witness with a potential violation of section 40-63-200 of the South Carolina Code. Counsel claimed that in both of these instances the Solicitor had violated the South Carolina Rules of Professional Conduct [6] and section 16-9-340[7], which makes it a crime to intimidate a witness "by threat or force" or to "attempt to obstruct or impede the administration of justice in any court." Because counsel did not believe the actions of the Solicitor could be rectified, defense counsel moved for a mistrial as well as the recusal of the Solicitor's office in the case. In addition, defense counsel requested that the judge implement a sentence of life without parole as he claimed the Solicitor's conduct was "intentional."

In response, the Solicitor contended that he had neither threatened Dr. Loring nor moved to indict her "even though, theoretically, she would have violated the statute from a prior case."

At the conclusion of these arguments, counsel for Dr. Loring informed the court that Dr. Loring would not testify and intended to invoke her Fifth Amendment privilege against self-incrimination.

The judge did not rule on the mistrial motion, but instead granted a continuance in order for defense counsel to retain another social historian. The judge, however, added that he "wouldn't rule that Dr. Loring [was] completely out of the case."

Seven months later, the judge held a hearing on April 14, 2009 to consider whether Dr. Loring should be released as a witness given the defense did not intend to call her and had retained another social historian. In his motion, counsel for Dr. Loring objected to the State's out-of-state witness subpoena of Dr. Loring as a necessary and material witness. At the conclusion of the hearing, the judge declined to withdraw his certification of the subpoena[8] and stated that the case would proceed the following week.

On April 15, 2009, a Superior Court in Atlanta, Georgia signed an order directing Dr. Loring to attend a hearing the next day at 3:00 p.m. to determine her material witness status in South Carolina. Because Dr. Loring was at work when the order was left at her residence on the morning of April 16, 2009, she did not appear at the hearing. Later that night, officers attempted to serve a warrant for her arrest. After Dr. Loring's counsel contacted the South Carolina plea judge regarding the Georgia matter, the judge intervened and persuaded the District Attorney's Office in Atlanta to "table" the warrant based on the assurance that Dr. Loring would appear at the Pickens County Courthouse on April 20, 2009.

On April 20-22, 2009, the judge reconvened the sentencing proceedings. At the beginning of the hearing, Dr. Loring's counsel recounted the events in Georgia and argued that this

constituted additional evidence of the Solicitor's attempt to intimidate Dr. Loring. As a result, he moved to have Dr. Loring immediately released as a witness in Inman's case.

Defense counsel concurred in these arguments and stated that the "sequence of events in Georgia would go directly to the motion for prosecutorial misconduct and the mistrial that we requested orally on September 11, 2008."

In response, the Solicitor denied any involvement in the Georgia events and claimed it was "every bit the fault of Dr. Loring, under the Georgia system." To counter this statement, defense counsel called Dr. Loring as a witness to testify for the limited purpose of documenting what transpired in Georgia. Although Dr. Loring came prepared to testify as a mitigation expert, she could not "assure [the court] a hundred percent that going through all this would not have an impact on [her]."

Following Dr. Loring's testimony, defense counsel renewed its motion for the "recusal of the Thirteenth Circuit Solicitor's Office." Counsel contended the Solicitor's actions were intentional in that he knew the elimination of Dr. Loring's testimony would significantly impact Inman's case. In support of this contention, defense counsel offered testimonial and documentary evidence that the Solicitor's office had been involved in a similar incident wherein the Solicitor questioned a defense expert, during the sentencing portion of a capital case, regarding a potential violation of the South Carolina psychologist licensing statutes. In that case, however, the defense withdrew the motion apparently in exchange for the State withdrawing its notice to seek the death penalty.^[9]

Additionally, defense counsel offered evidence of two other capital cases, one in 2006^[10] and another in 2007^[11], where Dr. Loring testified as an expert witness in the defense's case for mitigation. The Solicitor did not challenge Dr. Loring's qualifications in either of these cases.

Defense counsel then sought to recuse the Solicitor's office as advocates and call certain members as witnesses in order to establish the defense's claim of intentional prosecutorial misconduct.

After the judge denied this motion, defense counsel called attorney Desa Ballard as an expert in the field of legal ethics and professional responsibility in South Carolina. Based on her assessment of the Solicitor's conduct, Ballard opined that the Solicitor had violated "a number of rules of professional responsibility in connection with his examination of Dr. Loring, which occurred in September of 2008." In view of the prior allegation of prosecutorial misconduct, Ballard believed the Solicitor was clearly aware that questioning Dr. Loring regarding the potential licensing violation was "improper" and constituted intimidation of a witness.

Defense counsel then declined to call Dr. Loring as witness. Instead, counsel renewed its motion for a mistrial based on prosecutorial misconduct. Counsel reiterated that he wished to call the Solicitor and members of his office as witnesses because he believed the testimony was relevant to the motion. In terms of relief, counsel sought a mistrial and, in turn, the imposition of a life without parole sentence as the Solicitor's deliberate misconduct precipitated the mistrial motion and, thus, implicated double jeopardy.

The judge denied each of defense counsel's motions. In so ruling, the judge initially rejected counsel's argument regarding double jeopardy as the judge found the Solicitor had not

"deliberately goaded" the defense into requesting a mistrial. As to the merits of the mistrial motion, the judge concluded the Solicitor's questioning of Dr. Loring was inappropriate and constituted prosecutorial misconduct. However, the judge declined to grant a mistrial as he found the evidence did not support a finding of "deliberate" prosecutorial misconduct. Additionally, the judge concluded that Inman had not been prejudiced as the misconduct occurred during a bench trial as opposed to a jury trial and Dr. Loring had voluntarily appeared at the hearing and was willing to testify.

Immediately thereafter, defense counsel moved for a continuance in order to prepare the mitigation evidence as he had not been in contact with Dr. Loring since the September 2008 hearing and his recently-retained social historian had not completed her research and was not prepared to testify. The judge implicitly denied this motion.

Over defense counsel's objections, the judge called and questioned Dr. Loring as a "court witness." Dr. Loring testified she compiled a social history about the life and family of Inman by interviewing Inman and members of his family as well as reviewing Inman's medical history, school records, and prison records. Relying on these records and interviews, Dr. Loring chronicled in detail the physical and sexual abuse that Inman endured during his childhood. She further testified as to Inman's use of drugs at an early age, his diagnosed mental illness, his suicide attempts, and his criminal history.

Throughout the questioning, defense counsel repeatedly sought to limit the testimony of Dr. Loring as counsel believed her opinions implicated attorney-work product as they had been previously discussed amongst the defense team.

After hearing closing arguments and Inman's personal statement, the judge sentenced Inman to death for murder and imposed two consecutive thirty-year sentences for first-degree burglary and first-degree criminal sexual conduct. In reaching this decision, the judge explained in both his oral and written order that the State had proven beyond a reasonable doubt three statutory aggravating circumstances to warrant the death penalty. [12] Specifically, the judge found that Inman murdered the Victim while in the commission of kidnapping, first-degree burglary, and first-degree criminal sexual conduct.

In terms of mitigating factors, the judge found Inman committed the murder while under the influence of mental or emotional disturbances[13] as there was evidence that Inman suffered from long-term mental health disorders. Despite these mental health disorders, the judge emphasized that these disorders did not excuse Inman from criminal responsibility for his actions involving the Victim.

Following the denial of his motion to reconsider and for a new trial, Inman appealed his plea of guilty and his sentence of death.

II. Discussion

A. Validity of Guilty Plea

Inman asserts his guilty plea to murder should be vacated on the ground it constituted an invalid conditional guilty plea. In support of this assertion, Inman directs this Court's attention to the portion of the plea colloquy where the judge expressed his opinion that the preservation of the jury sentencing issue was a decision for the Supreme Court. Inman characterizes the judge's statements as erroneous "speculations about appealability."

Based on these statements and defense counsel's insistence that the issue was preserved for appeal, Inman claims the judge had a duty to reject the plea as it was conditional.

"In South Carolina, guilty pleas must be unconditional." State v. Downs, 361 S.C. 141, 145, 604 S.E.2d 377, 379 (2004). "[I]f an accused attempts to attach any condition or qualification thereto, the trial court should direct a plea of not guilty." State v. Truesdale, 278 S.C. 368, 370, 296 S.E.2d 528, 529 (1982). "If the trial court accepts a conditional guilty plea, then the plea will be vacated on appeal." Downs, 361 S.C. at 145, 604 S.E.2d at 379. "The basis for this rule is, of course, the settled doctrine that a guilty plea constitutes *waiver* of all prior claims of constitutional rights or deprivations thereof." Truesdale, 278 S.C. at 370, 296 S.E.2d at 529.

Turning to the facts of the instant case, we find that Inman's guilty plea was unconditional. Significantly, Inman never attempted to reserve the right to challenge or deny the merits of his guilt. Any condition that he sought to attach to the plea involved an appellate challenge to section 16-3-20(B), which mandates that a judge rather than a jury determine sentencing in a capital case if the defendant enters a guilty plea. Under the mandatory appeal procedures in capital cases,^[14] Inman was permitted to appeal this secondary sentencing issue; however, any decision as to this issue did not affect the entry or validity of his plea. Cf. Downs, 361 S.C. at 145-46, 604 S.E.2d at 379-80 (concluding appellant's capital guilty plea was unconditional where he never attempted to reserve the right to later deny his guilt, but instead sought to reserve the right to present evidence that he committed the crime while mentally ill, an issue that involved post-sentencing treatment).

Furthermore, even if Inman preserved his challenge to section 16-3-20(B), he specifically abandoned this issue on appeal as he correctly recognizes that this issue has been decided against his position. See State v. Allen, 386 S.C. 93, 687 S.E.2d 21 (2009), *cert. denied*, 130 S. Ct. 3329 (2010) (noting, in appeal of guilty plea and capital sentence, South Carolina precedent finding that section 16-3-20 does not violate the Sixth Amendment to the United States Constitution and concluding that it also did not violate the Eighth and Fourteenth Amendments; noting that the statute requires the sentencing judge to consider any mitigating circumstances allowed by law and that a defendant is not precluded from offering evidence of his remorse and acceptance of responsibility); State v. Crisp, 362 S.C. 412, 608 S.E.2d 429 (2005) (adhering to Downs and rejecting claims that section 16-3-20(B) was unconstitutional); State v. Wood, 362 S.C. 135, 607 S.E.2d 57 (2004) (citing Downs and concluding section 16-3-20(B) was constitutional); Downs, 361 S.C. at 146, 604 S.E.2d at 380 (discussing constitutionality of section 16-3-20(B) and finding capital defendant who pleaded guilty waived his right to jury trial on both guilt and sentencing).

Finally, a review of the plea colloquy reveals Inman entered his plea knowingly and voluntarily as he repeatedly acknowledged that he understood the charges against him, the consequences of his plea, and the rights he was waiving by pleading guilty, including the right to have a jury determine his guilt and sentence. Accordingly, we conclude Inman's plea was valid. See Hill v. Lockhart, 474 U.S. 52, 56 (1985) ("The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970))); Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000) ("To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.").

B. Sentencing Proceedings

Having found that Inman's guilty plea was valid, we must next assess Inman's issues arising out of the sentencing proceedings.

1. Recusal of Solicitor's Office/Questioning Solicitor as a Defense Witness

Inman claims the judge abused his discretion by declining to recuse the Solicitor's office as advocates^[15] and refusing to allow defense counsel to question the Solicitor and members of his staff on the claim of intentional prosecutorial misconduct.

"[A] criminal defendant has a right to call the prosecuting attorney as a witness, subject to the trial court's usual discretion to exclude witnesses or evidence." State v. Quattlebaum, 338 S.C. 441, 453, 527 S.E.2d 105, 111 (2000) (citing State v. Lee, 203 S.C. 536, 28 S.E.2d 402 (1943)). In Quattlebaum, this Court emphasized that "litigants, and especially defendants in criminal cases, should not be hampered in their choice of those by whom they choose to prove their cases." Id. However, a defendant's right to call a prosecuting attorney as a witness is not without limitation as this Court has stated:

Although a prosecuting attorney is competent to testify, his testifying is not approved by the Courts except where it is made necessary by the circumstances of the case, and, if he knows before the trial that he will be a necessary witness, he should withdraw and have other counsel prosecute the case. The propriety of allowing the prosecutor to testify is a matter largely within the trial Court's discretion.

Lee, 203 S.C. at 540, 28 S.E.2d at 403 (emphasis added). Other jurisdictions have agreed with this Court's limitation on a prosecutor as a defense witness and have further clarified that the testimony "must be relevant and material to the theory of the defense . . . [and] it must not be privileged, repetitious, or cumulative." Johnson v. State, 326 A.2d 38, 45 (Md. Ct. Spec. App. 1974) (citing State v. Lee, 203 S.C. 536, 28 S.E.2d 402 (1943)), aff'd, 339 A.2d 289 (Md. 1975).

It is evident that this Court and courts from other jurisdictions disfavor defense counsel calling a prosecuting attorney to testify in a case in which he is participating as an advocate. See Bennett v. Commonwealth, 374 S.E.2d 303, 313 (Va. 1988) ("[I]t is not desirable for the Commonwealth's Attorney to testify as a witness on a material point in a case. The circumstances are rare indeed where any lawyer may properly testify in a case in which he is participating as an advocate."); see also Erwin S. Barbre, Annotation, Prosecuting Attorney as A Witness in Criminal Case, 54 A.L.R.3d 100 (1973 & Supp. 2011) (analyzing cases where the propriety of a prosecuting attorney's testifying in a criminal case on behalf of the prosecution or on behalf of the defendant was at issue; recognizing that such a decision is dependent upon the facts of the case, is discretionary, and generally does not require the prosecutor to withdraw or be recused from the case when called on behalf of the defendant).

However, even if a prosecutor is called as a witness by the defense, it is not always necessary for a trial judge to recuse the prosecutor or the prosecuting office in its entirety. In fact, "[t]here is no inherent right to disqualification when a member of the state attorney's office is called as a witness in a case prosecuted by a state attorney in the same office, unless actual prejudice can be shown." 81 Am. Jur. 2d Witnesses § 229 (2004 & Supp.

2011); People v. Superior Court of San Luis Obispo, 148 Cal. Rptr. 704, 710 (Cal. Ct. App. 5th Dist. 1978) ("The general rule is that a district attorney's office should not be recused from a case merely because one or more of its attorneys will be called as witnesses for the defense.").

Applying the foregoing to the facts of the instant case, we find the judge did not abuse his discretion in refusing to recuse the Solicitor's office as advocates and declining defense counsel's request to question the Solicitor.

Initially, we note that the judge's determination of prosecutorial misconduct did not necessitate the recusal of the entire Solicitor's office as this allegation primarily involved the Solicitor. See State v. Doran, 731 P.2d 1344 (N.M. Ct. App. 1986) (finding no merit to defendant's contention that entire staff of district attorney's office should have been disqualified where prosecutor testified at pretrial suppression hearing that was conducted by another assistant district attorney).

Furthermore, defense counsel's primary reason for calling the Solicitor as a witness was to establish that he intentionally committed misconduct. Because a determination of prosecutorial misconduct is not necessarily dependent upon the intent of the prosecutor, such testimony was neither relevant nor material to the defense's claim. See People v. Hill, 952 P.2d 673, 683-84 (Cal. 1998) (discussing concept of prosecutorial misconduct and stating "injury to appellant is nonetheless an injury because it was committed inadvertently rather than intentionally"; recognizing that the term "prosecutorial misconduct" is a misnomer to the extent it "suggests a prosecutor must act with a culpable state of mind"); Diggs v. State, 531 N.E.2d 461, 464 (Ind. 1988) ("A prosecutor's warning of criminal charges during a personal interview with a witness improperly denies the defendant the use of that witness's testimony regardless of the prosecutor's good intentions."). We emphasize that a determination of a prosecutor's intent is applicable where the prosecutor intentionally goads the defense into moving for a mistrial^[16] or the prosecutor's actions implicate the attorney-client relationship.^[17] Neither of these situations is present in the instant case.

Finally, any testimony from the Solicitor or members of his staff would have been cumulative as defense counsel submitted significant testimonial and documentary evidence regarding the Solicitor's use of this tactic in prior capital cases. Specifically, defense counsel cited the Laney case and offered evidence in the form of a trial transcript and testimony from the Public Defender that established the Solicitor employed a line of questioning as used against Dr. Loring to a defense expert regarding a potential violation of the South Carolina psychologist licensing statutes. Defense counsel also offered evidence that the Solicitor, in two capital trials that preceded Inman's case, did not challenge Dr. Loring's lack of a South Carolina license to practice social work. Based on this evidence, defense counsel was able to support its theory that the Solicitor knew the line of questioning was objectionable and only employed it in Inman's case after he realized that jurors in the Edens/Holloway case relied heavily on Dr. Loring's testimony in sentencing the defendants to LWOP rather than death.

In view of the foregoing, we find the judge did not abuse his discretion in declining to recuse the Solicitor's office and refusing to permit defense counsel to call the Solicitor and members of his staff as witnesses. See Lee, 203 S.C. at 542, 28 S.E.2d at 404 (concluding trial judge did not err in refusing to allow defense counsel to call solicitor as witness where testimony would have been merely cumulative); see also Cooper v. State, 847 S.W.2d 521 (Tenn. Crim. App. 1992) (holding trial court did not err in refusing to allow defendant to call district

attorney general and assistant attorney general as witnesses on issue of State's abuse of discretion in pursuing death penalty where defendant did not allege facts to show how his constitutional rights were violated); Bennett v. Commonwealth, 374 S.E.2d 303 (Va. 1988) (concluding trial court did not abuse its discretion in denying defendant's request to question Commonwealth's attorney on witness stand concerning reasons for which continuance had been granted and concerning possible violations of court order).

2. Witness Intimidation

Having found the judge did not abuse his discretion in refusing to recuse the Solicitor's office as advocates and declining to permit defense counsel to question the Solicitor and members of his staff, we must determine whether the Solicitor's *voir dire* of Dr. Loring constituted witness intimidation and, in turn, prosecutorial misconduct.

Inman asserts the judge erred in refusing to grant a mistrial and recuse the Solicitor's office from any further involvement in the case despite a finding of prosecutorial misconduct arising out of the Solicitor's intimidation of Dr. Loring using "baseless criminal prosecution" and the subpoena of Dr. Loring as a State's witness.

In contrast, the State claims the judge properly denied the motion for a mistrial and recusal of the Solicitor's office. In support of this claim, the State argues that there was no misconduct as the *voir dire* was appropriate based on the applicable South Carolina licensing statute. However, even if the Solicitor committed misconduct, the State contends it was not prejudicial to Inman as the Solicitor granted Dr. Loring immunity from prosecution and she voluntarily testified during the sentencing hearing.

"The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." Washington v. Texas, 388 U.S. 14, 19 (1967). "This right is a fundamental element of due process of law." Id.

As this Court has recognized, the constitutional right of a defendant to call witnesses requires that they be called without intimidation from the State. State v. Williams, 326 S.C. 130, 485 S.E.2d 99 (1997). In Williams, this Court explained:

"Improper intimidation of a witness may violate a defendant's due process right to present his defense witnesses freely if the intimidation amounts to 'substantial government interference with a defense witness' free and unhampered choice to testify.'" . . . Where substantial interference is found, the next issue is whether the error can be deemed harmless. United States v. Saunders, *supra*. The rule in the Fourth Circuit appears to be that governmental intimidation can be deemed harmless error where the witness nonetheless testifies. Compare United States v. Teague, 737 F.2d 378 (4th Cir. 1984) (harmless where defendant was not denied either all or the helpful part of the witness' testimony as a result of the attempted intimidation) with United States v. MacCloskey, 682 F.2d 468 (4th Cir. 1982). Under this rule, the intimidation in this case could not be deemed harmless. We decline, however, to adopt such an automatic reversal rule and hold that in order to obtain relief, a defendant must demonstrate both substantial interference and prejudice.

Id. at 135, 485 S.E.2d at 102. However, even if the defendant demonstrates substantial interference and prejudice, a new trial is not always the requisite remedy. Instead, "[t]he remedy to be afforded a defendant in this situation is determined by the facts and circumstances of each case, depending on the prejudice suffered by the defendant." Id. at 136, 485 S.E.2d at 103.

In analyzing a claim of prosecutorial misconduct based on alleged witness intimidation, this Court has acknowledged the prosecutor's "fundamental power" to "bring charges against a person the prosecutor believes has committed a crime." State v. Needs, 333 S.C. 134, 145, 508 S.E.2d 857, 862 (1998). This power is, nevertheless, subject to "constitutional constraints." Id. For example, a prosecutor may not "lob baseless threats or charges at a potential defense witness in an effort to prevent the witness from testifying." Id. at 146, 508 S.E.2d at 863; see Lisa A. Wenger, Annotation, Admonitions Against Perjury or Threats to Prosecute Potential Defense Witness, Inducing Refusal to Testify, As Prejudicial Error, 88 A.L.R.4th 388 (1991 & Supp. 2011) (analyzing state and federal cases where prosecutor informs defense witness that that witness could face perjury charges or other prosecution if the witness testified).

We find the Solicitor's conduct toward Dr. Loring unequivocally constituted witness intimidation. Even if the Solicitor was legitimately concerned about Dr. Loring's qualifications as an expert witness, he could have filed a motion to disqualify her, which could have been addressed in a pre-trial hearing without the presence of Dr. Loring. By challenging Dr. Loring as soon as she took the stand, the Solicitor's method of questioning can only be viewed as an intimidation tactic. The Solicitor's claimed grant of immunity to Dr. Loring did not negate the atmosphere of intimidation as Dr. Loring repeatedly testified that she felt threatened.

Secondly, based on the testimonial and documentary evidence the defense presented on this issue, it is clear the Solicitor knew this line of questioning was objectionable as it had formed the basis of a previous allegation of prosecutorial misconduct in the Laney case.

Furthermore, at the time of the September 2008 sentencing hearing, the Solicitor was on notice from this Court that an out-of-state expert witness's failure to comply with South Carolina licensing requirements did not preclude the witness from testifying. In fact, the Court had specifically held on February 25, 2008 that the lack of a South Carolina professional license was merely a factor for the judge to consider as to the witness's qualifications as an expert. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 658 S.E.2d 80 (2008) (discussing Baggerly and finding trial judge erred in disqualifying expert witness on the basis that witness failed to comply with South Carolina's home inspection licensing requirements, but concluding the error was harmless); see Baggerly v. CSX Transp., Inc., 370 S.C. 362, 635 S.E.2d 97 (2006) (recognizing conflict between Rule 702, SCRE's qualification for experts and a statute that defined the practice of engineering to include the offering of expert technical testimony; holding non-compliance with licensing requirements or with statutory law in specialized areas does not require trial judge to automatically refuse to qualify a witness as an expert); see also RE: Act No. 385 of 2006—relating to defining the "practice of medicine", S.C. Sup. Ct. Order dated Aug. 24, 2006 (staying the application of amendment to section 40-47-20(36) of the South Carolina Code and, in turn, permitting out-of-state physicians to offer testimony without seeking a South Carolina medical license before offering the testimony). Despite this Court's clear directive, the Solicitor combatively challenged Dr. Loring's lack of a South Carolina social worker license.

Finally, the Solicitor's decision to subpoena Dr. Loring as a witness, after the defense severed its ties with her, provides additional evidence of witness intimidation. Although the judge granted the State's petition to certify Dr. Loring as a material witness, the method of procuring her appearance at the sentencing hearing supports Inman's claim of witness intimidation. We believe it was disingenuous for the Solicitor to assert that there was no wrongdoing on the part of the State regarding the events that took place in Georgia. Based on Dr. Loring's testimony, it was clear that she was not attempting to abscond from Georgia and purposefully decline to appear at the sentencing hearing. Thus, we find the Solicitor's initiation of the events in Georgia went beyond a necessary course of action. See Berger v. United States, 295 U.S. 78, 88 (1935) ("[A prosecutor] may prosecute with earnestness and vigor--indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."), overruled on other grounds by Stirone v. U.S., 361 U.S. 212 (1960).

Based on the foregoing, we find there is evidence to support the judge's finding of prosecutorial misconduct as the Solicitor's actions were done for no other purpose than to intimidate Dr. Loring.[18]

3. Mistrial

Having concluded that the Solicitor's actions constituted prosecutorial misconduct, the question becomes whether a mistrial was warranted.

"The prejudicial effect of prosecutorial misconduct is determined by (1) the cumulative effect of such misconduct; (2) the strength of the properly admitted evidence of the defendant's guilt; and (3) the curative actions taken by the court." United States v. Anwar, 428 F.3d 1102, 1112 (8th Cir. 2005) (citations omitted).

The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Cooper, 334 S.C. 540, 551; 514 S.E.2d 584, 590 (1999). The granting of a motion for a mistrial is an extreme measure that should be taken only when the incident is so grievous the prejudicial effect can be removed in no other way. State v. Beckham, 334 S.C. 302, 310; 513 S.E.2d 606, 610 (1999).

As will be discussed, we find the judge correctly denied defense counsel's motion for a mistrial trial as Inman has not established prejudice sufficient to warrant such a severe remedy.

First, any assessment of prejudice to Inman must be viewed from the posture of a bench trial as opposed to a jury trial. It is well-established that it is a near insurmountable burden for a defendant to prove prejudice in the context of a bench trial as a judge is presumed to disregard prejudicial or inadmissible evidence. See Cole v. Commonwealth, 428 S.E.2d 303, 305 (Va. Ct. App. 1993) ("A judge, unlike a juror, is uniquely suited by training, experience and judicial discipline to disregard potentially prejudicial comments and to separate, during the mental process of adjudication, the admissible from the inadmissible, even though he has heard both. Consequently, we presume that a trial judge disregards prejudicial or inadmissible evidence." (citations omitted)); see also People v. Jackson, 949 N.E.2d 215, 229 (Ill. App. Ct. 2011) ("In a bench trial, the danger of prejudice due to the trial judge's questions to a witness is lessened.").

Here, the judge correctly considered that Dr. Loring did not have a South Carolina social worker's license merely as a factor in her qualifications as an expert witness. Having found Dr. Loring qualified as an expert witness, the judge properly called and questioned her as a court's witness. Because Dr. Loring testified, Inman cannot claim he was prejudiced as his counsel declined the opportunity to question Dr. Loring. Williams, 326 S.C. at 135, 485 S.E.2d at 102 (recognizing that governmental intimidation of a witness can be deemed harmless error where the witness nonetheless testifies).

Furthermore, any testimony that was potentially excluded was arguably cumulative to that of Dr. Price, who testified in detail regarding Inman's childhood, his family, his mental health disorders, and his criminal history. Finally, a review of the judge's oral and written orders establishes that he thoroughly considered all mitigating evidence.

Although we find the Solicitor committed prosecutorial misconduct, we conclude Inman's sentence of death was not imposed in violation of his due process rights. See 16C C.J.S. Constitutional Law § 1644 (Supp. 2011) ("The touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, and not the culpability of the prosecutor."). Accordingly, we find the judge did not abuse his discretion in declining to grant a mistrial.[19]

III. Proportionality Review

Based on our decision to affirm Inman's guilty plea and the judge's rulings regarding the sentencing proceedings, we must assess Inman's sentence of death as it is this Court's duty to conduct a proportionality review of Inman's death sentence. S.C. Code Ann. § 16-3-25(C) (2003).[20]

"The United States Constitution prohibits the imposition of the death penalty when it is either excessive or disproportionate in light of the crime and the defendant." State v. Wise, 359 S.C. 14, 28, 596 S.E.2d 475, 482 (2004). In conducting a proportionality review, we search for similar cases in which the sentence of death has been upheld. Id.; S.C. Code Ann. § 16-3-25(E) (2003) (providing that in conducting a sentence review the Supreme Court "shall include in its decision a reference to those similar cases which it took into consideration").

After reviewing the entire record, we conclude the sentence of death was not the result of passion, prejudice, or any other arbitrary factor, and the judge's finding of three statutory aggravating circumstances for the murder is supported by the evidence. In its case, the State presented evidence of Inman's confessions, which detailed the events of the Victim's murder, as well as testimony from the forensic pathologist that confirmed Inman committed the murder while in the commission of kidnapping, first-degree criminal sexual conduct, and first-degree burglary.

Furthermore, a review of prior cases establishes that the death sentence in this case is proportionate to that in similar cases and is neither excessive nor disproportionate to the crime. See State v. Stanko, 376 S.C. 571, 658 S.E.2d 94 (2008) (death sentence warranted where defendant was convicted of murder, ABWIK, criminal sexual conduct, kidnapping, and armed robbery); State v. Evins, 373 S.C. 404, 645 S.E.2d 904 (2007) (death sentence warranted where defendant was convicted of murder, kidnapping, first-degree criminal sexual conduct, and grand larceny); State v. Simmons, 360 S.C. 33, 599 S.E.2d 448 (2004) (death sentence upheld where jury found aggravating circumstances of criminal sexual conduct, kidnapping, armed robbery, physical torture, and burglary); State v. Whipple, 324

S.C. 43, 476 S.E.2d 683 (1996) (death sentence upheld where defendant was convicted of murder, criminal sexual conduct, armed robbery, and grand larceny of a motor vehicle).

IV. Conclusion

In conclusion, we hold Inman entered a valid guilty plea as the entry of the plea was not conditioned on the preservation or outcome of the jury sentencing issue. Moreover, even if Inman properly preserved this issue, he has abandoned it on appeal and this Court has repeatedly rejected his argument. As to the propriety of the sentencing proceedings, we conclude the judge did not abuse his discretion in denying Inman's requests to recuse the Solicitor's office as advocates and to question members of the office. Although we find the Solicitor committed prosecutorial misconduct in his treatment of Dr. Loring, we conclude that Inman was not sufficiently prejudiced to warrant the grant of a mistrial.

AFFIRMED.

KITTREDGE, J., concurs. PLEICONES, J., concurring in a separate opinion. TOAL, C.J., and HEARN, J., concur in both opinions.

JUSTICE PLEICONES: I concur with the majority but write separately to elucidate my views of State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000), to the extent they differ from those expressed by the majority.

I agree with the majority that Quattlebaum should be limited to its facts. A one-size-fits-all solution is a poor response to prosecutorial misconduct. "The granting of a motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way." State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999) (citing State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998)). As the United States Supreme Court has noted, interests beyond the supervision of prosecutorial behavior are implicated by a decision to grant a new trial. United States v. Hasting, 461 U.S. 499, 506-507 (1983). Although the duty to curb prosecutorial misconduct is compelling, other weighty concerns are also at stake, including the need to conserve judicial resources and to avoid imposing additional burdens on victims. Id. at 509. The Hasting Court rebuked the court below for failing to "consider the trauma the victims of these particularly heinous crimes would experience in a new trial, forcing them to relive harrowing experiences now long past, or the practical problems of retrying these sensitive issues more than four years after the events." Id. at 507.

Even where constitutional protections are implicated, a new trial is called for only in situations where the defendant's right to a fair trial is fundamentally compromised. Id. at 509 ("[T]he Court has consistently made clear that it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations."). This is so because "the aim of due process 'is not punishment of society for the misdeeds of the prosecutor but avoidance of an unfair trial to the accused.'" Smith v. Phillips, 455 U.S. 209, 219 (1982) (quoting Brady v. Maryland, 373 U.S. 83, 87 (1963)). Likewise, I believe that we should seek to avoid a rule unduly punishing the citizens of this State for the misdeeds of solicitors. A rule that turns on whether the misconduct was intentional would have such an effect in some cases. As the Court notes parenthetically, "[t]he touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, and not the culpability of the prosecutor" (citing 16C C.J.S. Constitutional

Law § 1644 (Supp. 2011)). Thus, fairness should be the touchstone of the inquiry, and only in a limited set of exceptional circumstances should prejudice be presumed.

Direct intrusion into and eavesdropping on the defendant's confidential communications with counsel, as occurred in Quattlebaum, is the sort of violation that is likely to taint the entire trial, making it fundamentally unfair. But this is an exception, not the general rule. As the majority clarifies, Quattlebaum did not overrule prior case law that, under different facts, mandates an inquiry into whether the prosecutorial misconduct resulted in prejudice before a new trial is granted.

With regard to witness intimidation, the established rule in this State is that "in order to obtain relief, a defendant must demonstrate both substantial interference and prejudice." State v. Williams, 326 S.C. 130, 135, 485 S.E.2d 99, 102 (1997). In the present case, there is no claim that any substantive mitigating testimony was lost. Indeed, there is no claim that any testimony was lost. The defendant's expert witness investigated appellant's social background and was able to testify to her opinions regarding it. Appellant claims only that the effectiveness of the expert's testimony on mitigating factors pertinent to sentencing was diminished by the solicitor's misconduct.

Even assuming that the effectiveness of the testimony was reduced by the solicitor's attempts to intimidate the witness, the testimony was given before a judge, not a jury. A judge is presumed to weigh evidence properly. See Ross v. Jones, 58 S.C. 1, 35 S.E. 402, 405-406 (1900). As the majority recognizes, the record shows that the sentencing judge was fully aware of the solicitor's conduct and related events surrounding the expert's testimony, even finding that it was prosecutorial misconduct. We must presume that he took them into account in considering the testimony.

The solicitor's conduct in this case was inexplicable and reprehensible. In light of the aggravated nature of the crime and the fact that the sentencing hearing took place before a judge, it is difficult to comprehend how the solicitor believed that intimidating an expert witness would be more likely to ensure a death sentence than to create a risk of reversal. See United States v. Teague, 737 F.2d 378, 382 (4th Cir. 1984) (describing prosecutors' warnings to defense witnesses of the consequences of perjury as "dangerous and foolish . . . because they can violate a defendant's due process right to present his defense witnesses freely" and thereby risk upsetting a guilty verdict). Despite the behavior of the solicitor, I would not ascribe a uniform "attitude" to the solicitor's office. I would limit myself to the facts appearing in the record, which do not implicate the entire office. Moreover, I cannot assume without more evidence that the solicitor was responsible for the manner in which Georgia authorities handled the matter. Whatever the appropriate response to the solicitor's conduct may be, it does not include reversal.

Thus, for the reasons set forth above, I concur in the judgment of the majority.

TOAL, C.J. and HEARN, J., concur.

[1] The judge did not impose a sentence for the kidnapping charge as Inman had been sentenced for the related murder. S.C. Code Ann. § 16-3-910 (2003).

[2] See S.C. Code Ann. § 16-3-20(B) (2003) (outlining bifurcated death penalty proceedings and stating "[i]f trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge").

[3] S.C. Code Ann. § 16-3-26(A) (2003).

[4] S.C. Code Ann. § 44-23-410 (Supp. 2010).

[5] S.C. Code Ann. § 40-63-200(A) (2011) ("A person who practices or offers to practice as a social worker in this State in violation of this chapter or a regulation promulgated under this chapter . . . is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both.").

[6] South Carolina Rules of Professional Conduct, Rule 407, SCACR.

[7] S.C. Code Ann. § 16-9-340 (2003).

[8] On April 1, 2009, the judge granted the Solicitor's petition to subpoena Dr. Loring as a material witness.

[9] Because the defense withdrew its motion, prosecutorial misconduct based on witness intimidation was not an issue on appeal. State v. Laney, 367 S.C. 639, 627 S.E.2d 726 (2006). However, the pertinent portions of the Laney trial transcript and defense motions reveal the Solicitor employed an identical tactic to that used against Dr. Loring in questioning defense counsel's expert witness, Dr. Everington, with respect to the lack of a South Carolina psychologist license.

[10] In State v. David Edens and Jennifer Holloway, a 2006 capital trial, Dr. Loring testified as a social historian without any objection from the Solicitor as to her qualifications or lack of a South Carolina license to practice social work. During the jury deliberations, the jurors requested to listen to Dr. Loring's trial testimony. Because the jury could not reach a unanimous verdict as to the death penalty, the defendants were sentenced to life without the possibility of parole. Weeks after the verdict, the Solicitor requested to meet with the jurors over dinner to discuss the verdict. One juror, who attended the dinner, testified the Solicitor appeared upset with the LWOP verdict and wanted an explanation as to why the jurors had not voted for a death sentence.

[11] State v. Motts, 391 S.C. 635, 707 S.E.2d 804 (2011).

[12] S.C. Code Ann. § 16-3-20(C)(a)(1)(a), (b), (d) (2003 & Supp. 2010) (listing statutory aggravating circumstances that warrant a sentence of death).

[13] Id. § 16-3-20(C)(b)(2), (6) (listing mitigating circumstances to be considered in capital sentencing proceedings).

[14] See S.C. Code Ann. § 16-3-25(A) (2003) ("Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Supreme Court of South Carolina.").

[15] As we interpret Inman's trial and appellate arguments, we believe Inman is challenging the judge's failure to recuse the Solicitor's office in two contexts: (1) as advocates so that defense counsel could question the Solicitor and members of his staff regarding the claim of

prosecutorial misconduct, and (2) as to the entire case due to the finding of prosecutorial misconduct. Accordingly, in the interest of logical progression, we have addressed these two claims separately.

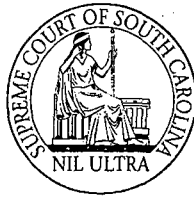
[16] See State v. Parker, 391 S.C. 606, 612, 707 S.E.2d 799, 802 (2011) (stating that "[o]nly where the governmental conduct in question is intended to 'goad' the defendant into moving for a mistrial may a defendant raise the bar of double jeopardy to a second trial after having succeeded in aborting the first on his own motion" (quoting Oregon v. Kennedy, 456 U.S. 667, 676 (1982))).

[17] Citing Quattlebaum, Inman claims that "deliberate prosecutorial misconduct raises an irrebuttable presumption of prejudice" and, thus, the determination of "intent" is necessary to establish prosecutorial misconduct. Quattlebaum, 338 S.C. at 448, 527 S.E.2d at 109. We clarify that this statement in Quattlebaum is limited to a situation where the prosecutorial misconduct implicates a criminal defendant's attorney-client relationship and does not apply to all cases of prosecutorial misconduct as we held in Williams that prosecutorial misconduct involving witness intimidation required a defendant to demonstrate "both substantial interference and prejudice." State v. Williams, 326 S.C. 130, 135, 485 S.E.2d 99, 102 (1999). Recently, we implicitly recognized the limited nature of our holding in Quattlebaum. See State v. Morris, 376 S.C. 189, 200, 656 S.E.2d 359, 365 (2008) (finding the "irrebuttable presumption of prejudice" found in Quattlebaum was inapplicable where Appellant had not shown prosecutorial misconduct and had not demonstrated his prosecution was unconstitutional, improper, or that the government pursued a civil action or investigation solely to obtain evidence for a criminal prosecution).

[18] We will not tolerate witness intimidation from anyone, including the Solicitor's office. Furthermore, we are deeply concerned that the Solicitor's behavior represents a pattern of misconduct that continues to undermine our state's system of justice. Specifically, this Court is concerned with the "win at all costs" attitude that appears to permeate the Solicitor's office. Because the plea judge determined that the Solicitor's conduct was not intentional, we reluctantly defer to that factual finding. However, we note that in the future such misconduct may result in disciplinary proceedings.

[19] In light of our decision, we need not address Inman's related issue that the Solicitor's office should have been recused due to a finding of prosecutorial misconduct.

[20] See S.C. Code Ann. § 16-3-25(C) (2003) (providing that Supreme Court shall determine whether: (1) the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor; (2) the evidence supports the jury's or judge's finding of a statutory aggravating circumstance; and (3) the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant).



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 25, 2012

✓ Chief Appellate Defender Robert M. Dudek
South Carolina Commission on Indigent Defense
P. O. Box 11589
Columbia, SC 29211

Re: The State v. Inman, Jerry Buck

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.

January 25, 2012.”

The remittitur is today being forwarded to the lower court.

The State v. Inman, Jerry Buck
Page two
January 25, 2012

Very truly yours,



CLERK

DES/dmh

cc: Assistant Deputy Attorney General Donald J. Zelenka
The Honorable William Walter Wilkins, III

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

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

April 18, 2012

Mr. Robert M. Dudek
SC Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, SC 29201-3332

Re: Jerry Buck Inman
v. South Carolina
Application No. 11A980

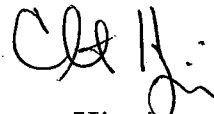
Dear Mr. Dudek:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to The Chief Justice, who on April 18, 2012 extended the time to and including June 11, 2012.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter, Clerk

by 

Clayton Higgins
Case Analyst



Code of Laws of South Carolina 1976 Annotated Currentness

Title 16. Crimes and Offenses

Chapter 3. Offenses Against the Person

Article 1. Homicide

→ § 16-3-20. Punishment for murder; separate sentencing proceeding when death penalty sought.

(A) A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life. If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. For purposes of this section, "life" or "life imprisonment" means until death of the offender without the possibility of parole, and when requested by the State or the defendant, the judge must charge the jury in his instructions that life imprisonment means until the death of the defendant without the possibility of parole. In cases where the defendant is eligible for parole, the judge must charge the applicable parole eligibility statute. No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. No person sentenced to a mandatory minimum term of imprisonment for thirty years to life pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years to life required by this section. Under no circumstances may a female who is pregnant be executed so long as she is pregnant or for a period of at least nine months after she is no longer pregnant. When the Governor commutes a sentence of death to life imprisonment under the provisions of Section 14, Article IV of the Constitution of South Carolina, 1895, the commuttee is not eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the mandatory imprisonment required by this subsection.

(B) When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding. In the proceeding, if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years to life. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant. If trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge. In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment. Only such evidence in aggravation as the State has informed the defendant in writing before the trial is admissible. This section must not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the

State of South Carolina or the applicable laws of either. The State, the defendant, and his counsel are permitted to present arguments for or against the sentence to be imposed. The defendant and his counsel shall have the closing argument regarding the sentence to be imposed.

(C) The judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence:

(a) Statutory aggravating circumstances:

(1) The murder was committed while in the commission of the following crimes or acts:

(a) criminal sexual conduct in any degree;

(b) kidnapping;

(c) trafficking in persons;

(d) burglary in any degree;

(e) robbery while armed with a deadly weapon;

(f) larceny with use of a deadly weapon;

(g) killing by poison;

(h) drug trafficking as defined in Section 44-53-370(e), 44-53-375(B), 44-53-440, or 44-53-445;

(i) physical torture;

(j) dismemberment of a person; or

(k) arson in the first degree as defined in Section 16-11-110(A).

(2) The murder was committed by a person with a prior conviction for murder.

(3) The offender by his act of murder knowingly created a great risk of death to more than one person in a

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public place by means of a weapon or device which normally would be hazardous to the lives of more than one person.

(4) The offender committed the murder for himself or another for the purpose of receiving money or a thing of monetary value.

(5) The murder of a judicial officer, former judicial officer, solicitor, former solicitor, or other officer of the court during or because of the exercise of his official duty.

(6) The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.

(7) The murder of a federal, state, or local law enforcement officer or former federal, state, or local law enforcement officer, peace officer or former peace officer, corrections officer or former corrections officer, including a county or municipal corrections officer or a former county or municipal corrections officer, a county or municipal detention facility employee or former county or municipal detention facility employee, or fireman or former fireman during or because of the performance of his official duties.

(8) The murder of a family member of an official listed in subitems (5) and (7) above with the intent to impede or retaliate against the official. "Family member" means a spouse, parent, brother, sister, child, or person to whom the official stands in the place of a parent or a person living in the official's household and related to him by blood or marriage.

(9) Two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct.

(10) The murder of a child eleven years of age or under.

(11) The murder of a witness or potential witness committed at any time during the criminal process for the purpose of impeding or deterring prosecution of any crime.

(12) The murder was committed by a person deemed a sexually violent predator pursuant to the provisions of Chapter 48, Title 44, or a person deemed a sexually violent predator who is released pursuant to Section 44-48-120.

(b) Mitigating circumstances:

(1) The defendant has no significant history of prior criminal conviction involving the use of violence against another person.

- (2) The murder was committed while the defendant was under the influence of mental or emotional disturbance.
- (3) The victim was a participant in the defendant's conduct or consented to the act.
- (4) The defendant was an accomplice in the murder committed by another person and his participation was relatively minor.
- (5) The defendant acted under duress or under the domination of another person.
- (6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.
- (7) The age or mentality of the defendant at the time of the crime.
- (8) The defendant was provoked by the victim into committing the murder.
- (9) The defendant was below the age of eighteen at the time of the crime.
- (10) The defendant had mental retardation at the time of the crime. "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

The statutory instructions as to statutory aggravating and mitigating circumstances must be given in charge and in writing to the jury for its deliberation. The jury, if its verdict is a recommendation of death, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances which it found beyond a reasonable doubt. The jury, if it does not recommend death, after finding a statutory aggravating circumstance or circumstances beyond a reasonable doubt, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances it found beyond a reasonable doubt. In non-jury cases the judge shall make the designation of the statutory aggravating circumstance or circumstances. Unless at least one of the statutory aggravating circumstances enumerated in this section is found, the death penalty must not be imposed.

Where a statutory aggravating circumstance is found and a recommendation of death is made, the trial judge shall sentence the defendant to death. The trial judge, before imposing the death penalty, shall find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor. Where a statutory aggravating circumstance is found and a sentence of death is not recommended by the jury, the trial judge shall sentence the defendant to life imprisonment as provided in subsection (A). Before dismissing the jury, the trial judge shall question the jury as to whether or not it found a statutory aggravating circumstance or circumstances beyond a reasonable doubt. If the jury does not

unanimously find any statutory aggravating circumstances or circumstances beyond a reasonable doubt, it shall not make a sentencing recommendation. Where a statutory aggravating circumstance is not found, the trial judge shall sentence the defendant to either life imprisonment or a mandatory minimum term of imprisonment for thirty years. No person sentenced to life imprisonment or a mandatory minimum term of imprisonment for thirty years under this section is eligible for parole or to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the sentence required by this section. If the jury has found a statutory aggravating circumstance or circumstances beyond a reasonable doubt, the jury shall designate this finding, in writing, signed by all the members of the jury. The jury shall not recommend the death penalty if the vote for such penalty is not unanimous as provided. If members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment as provided in subsection (A).

(D) Notwithstanding the provisions of Section 14-7-1020, in cases involving capital punishment a person called as a juror must be examined by the attorney for the defense.

(E) In a criminal action in which a defendant is charged with a crime which may be punishable by death, a person may not be disqualified, excused, or excluded from service as a juror by reason of his beliefs or attitudes against capital punishment unless such beliefs or attitudes would render him unable to return a verdict according to law.

CREDIT(S)

HISTORY: 1962 Code § 16-52; 1952 Code § 16-52; 1942 Code § 1102; 1932 Code § 1102; Cr. C. '22 § 2; Cr. C. '12 § 136; Cr. C. '02 § 109; G. S. 2454; R. S. 109; 1868 (14) 175; 1894 (21) 785; 1974 (58) 2361; 1977 Act No. 177 § 1; 1978 Act No. 555 § 1; 1985 Act No. 104, § 1; 1986 Act No. 462, § 27; 1990 Act No. 604, § 15; 1992 Act No. 488, § 1; 1995 Act No. 83, § 10; 1996 Act No. 317, § 1; 2002 Act No. 224, § 1, eff May 1, 2002 (applicable to offenses committed on or after that date); 2002 Act No. 278, § 1, eff May 28, 2002; 2006 Act No. 342, § 2, eff July 1, 2006; 2007 Act No. 101, § 1, eff June 18, 2007; 2010 Act No. 273, § 21, eff June 2, 2010; 2010 Act No. 289, § 4, eff June 11, 2010.

CODE COMMISSIONER'S NOTE

2011 Act No. 47, § 14(B), provided for the substitution of "intellectual disability" for "mental retardation" in the 1976 Code of Laws. At the Code Commissioner's discretion, the phrase "mental retardation" has been retained, as this phrase is specifically defined in this section.

EDITOR'S NOTE

2006 Act No. 342, § 1, provides as follows:

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

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

April 18, 2012

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

RECEIVED

APR 23 2012

S.C. Supreme Court

Re: Jerry Buck Inman
v. South Carolina
Application No. 11A980
(Your No. 27081)

Dear Clerk:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to The Chief Justice, who on April 18, 2012 extended the time to and including June 11, 2012.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter, Clerk

by

Clayton Higgins
Case Analyst

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

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

NOTIFICATION LIST

Mr. Robert M. Dudek
SC Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, SC 29201-3332

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

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2011

No. A-

RECEIVED

APR 12 2012

S.C. Supreme Court

JERRY BUCK INMAN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

APPLICATION FOR EXTENSION OF TIME IN WHICH
TO FILE PETITION FOR WRIT OF CERTIORARI

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice
for the Fourth Circuit:

The petitioner Jerry Buck Inman prays that an order be entered extending the time for filing a petition for a writ of certiorari for a period of sixty (60) days to and including June 11, 2012. This application is submitted more than ten days prior to the scheduled filing date for the petition. The pertinent dates are:

December 28, 2011: The South Carolina Supreme Court affirmed the judgment of conviction and sentence of death. State v. Jerry Buck Inman, 359 S.C. 539, 720 S.E.2d 31 (2012).

February 23, 2012: The South Carolina Supreme Court denied Inman's timely petition for rehearing.

The petition will present two federal constitutional issues for review:

1.

Whether the South Carolina Supreme Court's holding that an irrebutable presumption of prejudice no longer applied where there is deliberate prosecutorial misconduct constituted a Due process violation since the trial judge found prosecutorial misconduct in this case, and the South Carolina Supreme Court also found such prosecutorial misconduct based on clear witness intimidation, since changing the law retroactively in this manner was fundamentally unfair and violated Due Process?

2.

Whether the South Carolina Supreme Court's holding that petitioner did not have the right to call the prosecutors as witnesses during his bench trial to prove intentional prosecutorial misconduct and prejudice under the new law standard established in petitioner's case violated petitioner's right to Due process, and compulsory service under Sixth and Fourteenth Amendments?

The petitioner will invoke this Court's jurisdiction under 28 U.S.C. § 1257(a).

This extension of time is requested because:

(a) This is a capital case and as such requires especially complete research and careful drafting so as to properly present the petitioner's federal constitutional claims to this Court. Petitioner's counsel, Robert Dudek, is the Chief Appellate Defender for the Appellate Division of the South Carolina Office of Indigent Defense. Counsel's division normally handles between eight-hundred-and-fifty to one thousand criminal appeals a year before the South Carolina Court of Appeals and the South Carolina Supreme Court. Counsel supervises eight other Appellate Defenders and a support staff and maintains his own heavy caseload of mostly murder and death penalty cases.

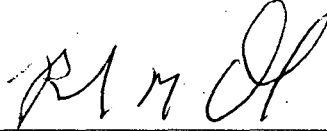
(b) In the last thirty days counsel has filed the following briefs, motions or oral arguments: Counsel filed a motion to hold the appeal in abeyance and remand for a hearing on a motion for a new trial in the murder case of State v. Richard Gagnon with the South Carolina Court of Appeals on April 10, 2012. Counsel had already filed the brief in this case. Counsel filed the initial brief of respondent in State v. Robert Jolly #2 with the South Carolina Court of Appeals on April 6, 2012. Counsel filed the brief of petitioner in State v. David M. Rocquemore with the South Carolina Supreme Court on April 4, 2012. Counsel had an oral argument on March 29, 2012, in State v. Randy Vickery before the South Carolina Court of Appeals. Counsel filed the initial reply brief in the death penalty case of State v. Stephen Christopher Stanko with the South Carolina Supreme Court on March 26, 2012. Counsel filed the initial brief of appellant and designation of matter in State v. Matthew Taylor Hinton with the South Carolina Court of Appeals on Thursday, March 22, 2012. Counsel filed the petition for writ of certiorari to the South Carolina Court of Appeals and accompanying appendix in State v. Terrell McCoy with the South Carolina Supreme Court on March 16, 2012. Counsel had an oral argument in State v. Christopher Heller before the South Carolina Supreme Court of Appeals on March 13, 2012. Counsel filed the petition for rehearing in State v. Garvin Duvall with the South Carolina Court of Appeals on March 15, 2012. Counsel also filed the initial brief of appellant and designation of matter in State v. Donald Petty with the South Carolina Court of Appeals on March 15, 2012. Counsel is currently working on the death penalty case of Richard Bernard Moore v. State with co-counsel Susan B. Hackett. Counsel also is working on the brief of petitioner with co-counsel in the death penalty case of State v. Brad Sigmon.

Counsel for the respondent State of South Carolina, Deputy Assistant Attorney General Donald J. Zelenka, has advised the undersigned that the state does not have any

opposition to this request.

WHEREFORE, petitioner requests an order extending the time for filing his petition for a writ of certiorari to and including June 11, 2012.

Respectfully submitted,

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

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEY FOR PETITIONER.

April 12, 2012

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2011

No. A -

JERRY BUCK INMAN,

Petitioner,

v.

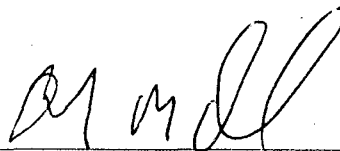
STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion for Extension in Which to File Petition for Writ of Certiorari has been served upon opposing counsel by mailing one (1) copy in an envelope properly addressed with postage prepaid this 11th day of April, 2012, to:

Donald J. Zelenka, Esquire
Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211



ROBERT M. DUDEK
Chief Appellate Defender

ATTORNEY FOR PETITIONER.

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

ORDER

This Court recently affirmed appellant's conviction and death sentence in State v. Inman, Op. No. 27081 (S.C. Sup. Ct. filed December 28, 2011). Appellant's petition for rehearing was denied and the remittitur was sent to the lower court on January 25, 2012. Appellant has now filed a petition for stay of execution to allow him to file a petition for a writ of certiorari in the United States Supreme Court (USSC).

Because appellant intends to raise to the United States Supreme Court a federal question that is preserved for review, we grant the petition for a stay of execution pursuant to In re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996), and the stay shall remain in effect to the extent provided by this Court therein.

IT IS SO ORDERED.

George C.J.
Dr. Seines J.
Donald W. Beale J.
John H. Hedges J.
Gaye L. Fearn J.

Columbia, South Carolina

February 23, 2012

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Donald J. Zelenka

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

THE STATE,

RESPONDENT,

RECEIVED

JAN 26 2012

V.

JERRY BUCK INMAN,

S.C. Supreme Court

PETITIONER

PETITION FOR STAY OF EXECUTION

Counsel for Jerry Buck Inman, petitions this Court for a stay of execution to allow him to file a petition for writ of certiorari with the United States Supreme Court.

I.

This Court affirmed petitioner's convictions and death sentence in State v. Jerry Buck Inman, Op. No. 27081, Shearouse's Adv. Sh. #46 (filed December 28, 2011). This Court denied rehearing on January 25, 2012.

II.

A petition for rehearing was filed on January 11, 2012. As stated, this Court denied rehearing on January 25, 2012.

III.

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

IV.

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

1.

Whether the South Carolina Supreme Court's holding that an irrebutable presumption of prejudice no longer applied where there is deliberate prosecutorial misconduct constituted a Due process violation since the trial judge found prosecutorial misconduct in this case, and the South Carolina Supreme Court also found such prosecutorial misconduct based on clear witness intimidation, since changing the law retroactively in this manner was fundamentally unfair and violated Due Process?

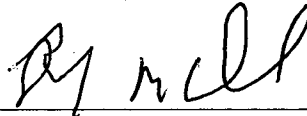
2.

Whether the South Carolina Supreme Court's holding that petitioner did not have the right to call the prosecutors as witnesses during his bench trial to prove intentional prosecutorial misconduct and prejudice under the new law standard established in petitioner's case violated petitioner's right to Due process, and compulsory service under Sixth and Fourteenth Amendments?

Whether the South Carolina Supreme Court erred by holding the prosecutorial misconduct and witness intimidation in petitioner's case did not result in a death sentence that violated his Due Process rights since the undisputed intimidation of petitioner's chief mitigation witness, Dr. Marti Loring, had an adverse effect on the ability of the defense to present its case in mitigation as guaranteed by the Eighth Amendment to the United States Constitution?

WHEREFORE, counsel for Jerry Buck Inman, requests a ninety day stay of execution from January 25, 2012, in which to file a petition for writ of certiorari in the United States Supreme Court.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

January 26, 2012

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

THE STATE,

RESPONDENT,

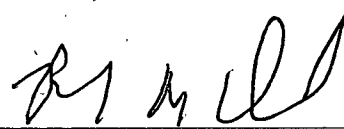
V.

JERRY BUCK INMAN,

PETITIONER

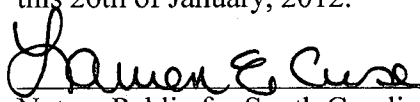
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Stay of Execution in the above-referenced case has been served upon opposing counsel, Donald Zelenka, Esquire, this 26th day of January, 2012.



Robert M. Dudek
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 26th of January, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

RECEIVED

FEB - 3 2012

THE STATE,

Respondent, S.C. Supreme Court

v.

JERRY BUCK INMAN,

Petitioner.

RETURN TO PETITION FOR STAY OF EXECUTION
TO ALLOW SEEKING CERTIORARI IN THE UNITED STATES SUPREME COURT

31
The Respondents, above-named, hereby make a Return to the Petition for a stay of execution to allow him to file a petition for a writ of certiorari in the United States Supreme Court. Respondent submits under *In Re Stays of Execution In Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), that since at least one of the three proffered issues is preserved, a stay to allow certiorari is appropriate. The Respondent would show this Court the following:

I.

The South Carolina Supreme Court affirmed the judgment of conviction and sentence of death on December 28, 2011 in State v. Inman(Jerry Buck), Op. No. 27081, 2011 WL 6821079 (S. C. S.Ct. December 28, 2011). A timely petition for rehearing was filed on January 11, 2012. On January 25, 2012, the Supreme Court of South Carolina denied the petition for rehearing. The

remittitur was issued on the same date, January 25, 2012. Pursuant to the Rules of the United States Supreme Court, Rule 13, review must be sought within ninety (90) days of the denial of the Petition for Rehearing which is by **April 24, 2012**. This Court in its Order concerning capital cases, *In Re Stays of Execution In Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), stated that the Court will issue a stay in the direct appeal setting for filing certiorari, if the Petitioner files a stay motion setting forth the questions and "as long as the federal questions asserted have been adequately preserved under state law so that it can be reviewed by the United States Supreme Court", this Court will grant a stay of execution for ninety (90) days from the date of the remittitur.

II.

On January 26, 2012, Petitioner, through appellate counsel Robert M. Dudek, made a petition for stay of execution. In the petition he states that he intends to file a petition for writ of certiorari in the United States Supreme Court pursuant to Rules of the United States Supreme Court, Rule 13.1 of the following issues:

- I. Whether the South Carolina Supreme Court's holding that a rebuttable presumption of prejudice no longer applied where there is deliberate prosecutorial misconduct constituted a Due Process violation since the trial judge found prosecutorial misconduct in this case, and the South Carolina Supreme Court also found such prosecutorial misconduct based on clear witness intimidation, since changing the law retroactively in this manner was fundamentally unfair and violated Due Process?
- II. Whether the South Carolina Supreme Court's holding that petitioner did not have the right to call the prosecutors as witnesses during his bench trial to prove intentional prosecutorial misconduct and prejudice under the new law standard established in the petitioner's case violated petitioner's right to Due Process, and compulsory service under the Sixth and Fourteenth Amendments?
- III. Whether the South Carolina Supreme Court erred by holding the prosecutorial

misconduct and witness intimidation in petitioner's case did not result in a death sentence that violated his Due Process rights since the undisputed intimidation of petitioner's chief mitigation witness, Dr. Marti Loring, had an adverse effect on the ability of the defense to present its case in mitigation as guaranteed by the Eighth Amendment to the United States Constitution?

Petition for Stay of Execution, p. 2-3.

Issue one is a claim that the decision in State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2007) concerning determining prejudice from claims of prosecutorial misconduct was retroactively changed in the Inman decision to his detriment. The Court stated that in footnote 17:

- (3)
#3.
- n. 17 Citing Quattlebaum, Inman claims that "deliberate prosecutorial misconduct raises an irrebuttable presumption of prejudice" and, thus, the determination of "intent" is necessary to establish prosecutorial misconduct. Quattlebaum, 338 S.C. at 448, 527 S.E.2d at 109. We clarify that this statement in Quattlebaum is limited to a situation where the prosecutorial misconduct implicates a criminal defendant's attorney-client relationship and does not apply to all cases of prosecutorial misconduct as we held in Williams that prosecutorial misconduct involving witness intimidation required a defendant to demonstrate "both substantial interference and prejudice." State v. Williams, 326 S.C. 130, 135, 485 S.E.2d 99, 102 (1999). Recently, we implicitly recognized the limited nature of our holding in Quattlebaum. See State v. Morris, 376 S.C. 189, 200, 656 S.E.2d 359, 365 (2008) (finding the "irrebuttable presumption of prejudice" found in Quattlebaum was inapplicable where Appellant had not shown prosecutorial misconduct and had not demonstrated his prosecution was unconstitutional, improper, or that the government pursued a civil action or investigation solely to obtain evidence for a criminal prosecution).

In his petition for rehearing, Inman claimed the a judge's reference that decision in the case were made on the basis of strategy shows that the change [clarification] on the law of a presumption of prejudice was a due process violation. *Petition for Rehearing*, p. 2, he claimed it was "fundamentally unfair, not predictable and it violates his right to due process," citing State v. Jones (I), 343 S.C. 562, 577-78, 541 S.E.2d 813, 821 (2001); cf. Rogers v. Tennessee, 532 U. S.

451 (2001).” Therefore, it appears that the issue was preserved for consideration in the petition for rehearing.

In his second claim, he complains about the portion of the opinion that stated that he did not have the right to call the trial prosecutors as witnesses. In the court’s opinion, it concluded that the judge did not abuse his discretion in denying the Petitioner the right to call members of the prosecution as witnesses. The Court stated :

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[11] Applying the foregoing to the facts of the instant case, we find the judge did not abuse his discretion in refusing to recuse the Solicitor's office as advocates and declining defense counsel's request to question the Solicitor. Initially, we note that the judge's determination of prosecutorial misconduct did not necessitate the recusal of the entire Solicitor's office as this allegation primarily involved the Solicitor. See State v. Doran, 105 N.M. 300, 731 P.2d 1344 (N.M.Ct.App.1986) (finding no merit to defendant's contention that entire staff of district attorney's office should have been disqualified where prosecutor testified at pretrial suppression hearing that was conducted by another assistant district attorney).

Furthermore, defense counsel's primary reason for calling the Solicitor as a witness was to establish that he intentionally committed misconduct. Because a determination of prosecutorial misconduct is not necessarily dependent upon the intent of the prosecutor, such testimony was neither relevant nor material to the defense's claim. See People v. Hill, 17 Cal.4th 800, 72 Cal.Rptr.2d 656, 952 P.2d 673, 683–84 (Cal.1998) (discussing concept of prosecutorial misconduct and stating “injury to appellant is nonetheless an injury because it was committed inadvertently rather than intentionally”; recognizing that the term “prosecutorial misconduct” is a misnomer to the extent it “suggests a prosecutor must act with a culpable state of mind”); Diggs v. State, 531 N.E.2d 461, 464 (Ind.1988) (“A prosecutor's warning of criminal charges during a personal interview with a witness improperly denies the defendant the use of that witness's testimony regardless of the prosecutor's good intentions.”). We emphasize that a determination of a prosecutor's intent is applicable where the prosecutor intentionally goads the defense into moving for a mistrial [ft. 16 omitted]. or the prosecutor's actions implicate the attorney-client relationship. [ft. 17 omitted] Neither of these situations is present in the instant case.

Finally, any testimony from the Solicitor or members of his staff would have been cumulative as defense counsel submitted significant testimonial and documentary evidence regarding the Solicitor's use of this tactic in prior capital cases. Specifically, defense counsel cited the Laney case and offered evidence in

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#5.

the form of a trial transcript and testimony from the Public Defender that established the Solicitor employed a line of questioning as used against Dr. Loring to a defense expert regarding a potential violation of the South Carolina psychologist licensing statutes. Defense counsel also offered evidence that the Solicitor, in two capital trials that preceded Inman's case, did not challenge Dr. Loring's lack of a South Carolina license to practice social work. Based on this evidence, defense counsel was able to support its theory that the Solicitor knew the line of questioning was objectionable and only employed it in Inman's case after he realized that jurors in the Edens/Holloway case relied heavily on Dr. Loring's testimony in sentencing the defendants to LWOP rather than death. In view of the foregoing, we find the judge did not abuse his discretion in declining to recuse the Solicitor's office and refusing to permit defense counsel to call the Solicitor and members of his staff as witnesses. See Lee, 203 S.C. at 542, 28 S.E.2d at 404 (concluding trial judge did not err in refusing to allow defense counsel to call solicitor as witness where testimony would have been merely cumulative); see also Cooper v. State, 847 S.W.2d 521 (Tenn.Crim.App.1992) (holding trial court did not err in refusing to allow defendant to call district attorney general and assistant attorney general as witnesses on issue of State's abuse of discretion in pursuing death penalty where defendant did not allege facts to show how his constitutional rights were violated); Bennett v. Commonwealth, 236 Va. 448, 374 S.E.2d 303 (Va.1988) (concluding trial court did not abuse its discretion in denying defendant's request to question Commonwealth's attorney on witness stand concerning reasons for which continuance had been granted and concerning possible violations of court order).

Inman, supra. In his petition for rehearing, Inman raised this issue at pages 3-4. It is preserved for consideration.

In his third claim, he complains that the actions with Dr. Loring had an adverse effect on the defense ability to present its case in mitigation and therefore violated due process and the Eighth Amendment. In his Final Brief of Appellant, he raised the following issues:

2.

The judge committed reversible error at sentencing by refusing to grant a mistrial and recuse the Solicitor's Office from any further involvement in the case, despite finding prosecutorial misconduct, where the Solicitor threatened a key defense witness after the judge granted the defense a continuance to obtain a new expert because of his misconduct.

3.

The judge committed reversible error at sentencing by refusing to allow the defense to

cross-examine the Solicitor and his Deputy on the issue of prosecutorial misconduct, as the Solicitor's intent was directly relevant to that issue.

Final Brief of Appellant. Neither of these issues raise an Eighth Amendment claim that it had an adverse effect on the ability of the defense to present its case in mitigation under the Eighth Amendment. At no point in the argument in his brief does the Eighth Amendment appear, except in a lengthy summary of the actual trial proceedings as a comment from defense counsel. *Final Brief of Appellant*, p. 15.

In denying relief of a mistrial, the Court concluded:

As will be discussed, we find the judge correctly denied defense counsel's motion for a mistrial trial as Inman has not established prejudice sufficient to warrant such a severe remedy.

First, any assessment of prejudice to Inman must be viewed from the posture of a bench trial as opposed to a jury trial. It is well-established that it is a near insurmountable burden for a defendant to prove prejudice in the context of a bench trial as a judge is presumed to disregard prejudicial or inadmissible evidence. See Cole v. Commonwealth, 16 Va.App. 113, 428 S.E.2d 303, 305 (Va.Ct.App.1993) ("A judge, unlike a juror, is uniquely suited by training, experience and judicial discipline to disregard potentially prejudicial comments and to separate, during the mental process of adjudication, the admissible from the inadmissible, even though he has heard both. Consequently, we presume that a trial judge disregards prejudicial or inadmissible evidence." (citations omitted)); see also People v. Jackson, 409 Ill.App.3d 631, 350 Ill.Dec. 727, 949 N.E.2d 215, 229 (Ill.App.Ct.2011) ("In a bench trial, the danger of prejudice due to the trial judge's questions to a witness is lessened.").

Here, the judge correctly considered that Dr. Loring did not have a South Carolina social worker's license merely as a factor in her qualifications as an expert witness. Having found Dr. Loring qualified as an expert witness, the judge properly called and questioned her as a court's witness. Because Dr. Loring testified, Inman cannot claim he was prejudiced as his counsel declined the opportunity to question Dr. Loring. Williams, 326 S.C. at 135, 485 S.E.2d at 102 (recognizing that governmental intimidation of a witness can be deemed harmless error where the witness nonetheless testifies).

Furthermore, any testimony that was potentially excluded was arguably

cumulative to that of Dr. Price, who testified in detail regarding Inman's childhood, his family, his mental health disorders, and his criminal history. Finally, a review of the judge's oral and written orders establishes that he thoroughly considered all mitigating evidence.

Although we find the Solicitor committed prosecutorial misconduct, we conclude Inman's sentence of death was not imposed in violation of his due process rights. See 16C C.J.S. Constitutional Law § 1644 (Supp.2011) ("The touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, and not the culpability of the prosecutor."). Accordingly, we find the judge did not abuse his discretion in declining to grant a mistrial.[ft 19 omitted].

Inman, supra. In his petition for rehearing, Inman did not address this particular matter at all.

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Since it was not raised within his Initial Brief of Appellant as the Eighth Amendment claim that he is suggesting he intends to raise on certiorari in his present petition before this Court, it may not be preserved for review.

III.

A review of the record before this Court reveals at least one of the issues was preserved at trial and on appeal. Therefore, under *In Re Stays*, Respondent concedes the stay is appropriate, although there is no likelihood of success on the merits on certiorari for the reasons set forth in this Court's Opinion.

WHEREFORE, Respondent has made a Return to the Motion.

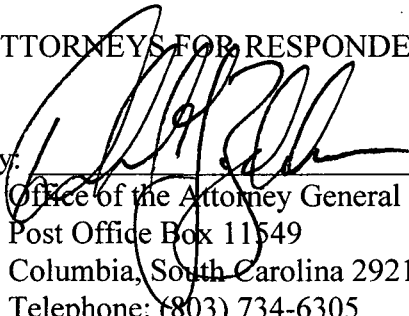
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ATTORNEYS FOR RESPONDENT

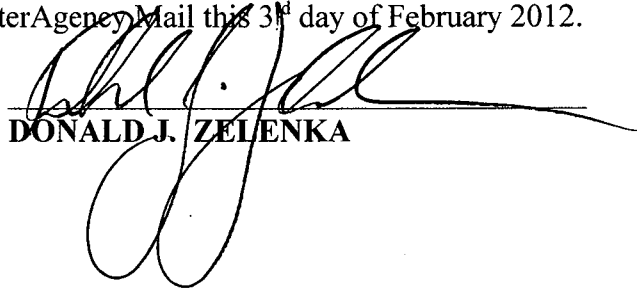
By: 

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-6305

88
Columbia, South Carolina
February 3, 2012

CERTIFICATE OF SERVICE

I, **Donald J. Zelenka**, hereby certify that the *Return to Stay Motion* has been served on opposing counsel, Robert M. Dudek, Chief Appellate Defender, of the South Carolina Office of Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211 by depositing two (2) copies in the InterAgency Mail this 31st day of February 2012.



DONALD J. ZELENA



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

February 3, 2012

FEB - 3 2012

S.C. Supreme Court

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

Re: The State v. Jerry Buck Inman

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the *Return to Petition for Stay of Execution to Allow Seeking Certiorari in the United States Supreme Court* in the above-referenced case for filing. By copy of this letter, I am serving opposing counsel with same.

Sincerely,

Lonetta B. Brawley
Legal Assistant to Donald J. Zelenka
Senior Assistant Deputy Attorney General

/lbb

Enclosure

cc: Robert M. Dudek, Esquire
W. Walter Wilkins, III, Solicitor, 13th Judicial Circuit



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 26, 2012

RECEIVED

JAN 26 2012

S.C. Supreme Court

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

Re: The State v. Jerry Buck Inman (Capital Case)

Dear Mr. Shearouse:

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

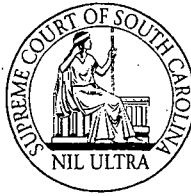
Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/lec

Enclosure

cc: Donald Zelenka, Esquire
Jerry Buck Inman



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 25, 2012

REMITTITUR

The Honorable Harold P. Welborn
Clerk of Court, Pickens County
214 E. Main Street
P. O. Box 215
Pickens, SC 29671

Re: The State v. Inman, Jerry Buck
2006-GS-39-02222, 02223, 02224, 02225

Dear Mr. Welborn:

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

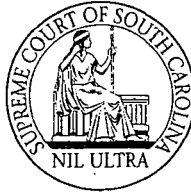
Very truly yours,

CLERK

DES/dmh

Enclosure

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Donald J. Zelenka
The Honorable William Walter Wilkins, III



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 25, 2012

Chief Appellate Defender Robert M. Dudek
South Carolina Commission on Indigent Defense
P. O. Box 11589
Columbia, SC 29211

Re: The State v. Inman, Jerry Buck

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.

January 25, 2012.”

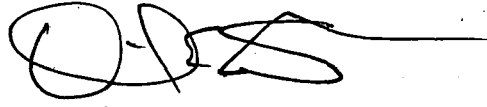
The remittitur is today being forwarded to the lower court.

The State v. Inman, Jerry Buck

Page two

January 25, 2012

Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

CLERK

DES/dmh

cc: Assistant Deputy Attorney General Donald J. Zelenka
The Honorable William Walter Wilkins, III

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

PETITIONER

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

Opinion No. 27081

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, petitioner seeks rehearing because this Court retroactively *changed* the law in this case from that mandated by State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000) to his detriment. This Court wrote that it was “clarifying” the law from Quattlebaum that an irrebuttable presumption of prejudice applies where there is *deliberate* prosecutorial misconduct. This Court now holds that Quattlebaum was limited to its facts and only applied where the misconduct implicated the attorney-client relationship, and that it rejects a “one size fits all determination” of prejudice from prosecutorial misconduct. This Court here found the prosecutorial misconduct did not result in a death sentence that violated due process. See State v. Jerry Buck

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S.C. Supreme Court

Inman, Op. No. 27081, Shearouse's Adv. Sh. No. 46 (filed December 28, 2001) at p. 33, n. 17; p. 40; pp. 43-45.

Petitioner argued during the evidentiary portion of his guilty plea that he was entitled to call the Solicitor and an assistant as witnesses on the issue *of their intent* as it pertained to the prosecutorial misconduct the trial judge ruled had occurred. As this Court will recall, the trial judge had already concluded that the Solicitor's intimidation of Dr. Loring, while prosecutorial misconduct, was *not intentional*. R. p. 700, lines 6 - 19.

This finding of a *lack of intent* permitted the judge to deny defense counsel's mistrial motion and avoid the possibility that Inman might be entitled to a sentence of life without parole as a consequence of that misconduct. See State v. Jerry Buck Inman, Op. No. 27081, Shearouse's Adv. Sh. No. 46 (filed December 28, 2001) at p. 33, n. 17; pp. 43-45.

As this Court will also recall, the judge summarily denied defense counsel's motion to call the Solicitor and his Deputy as witnesses on the issue of the Solicitor's intent. R. p. 604, line 16 – p. 605, line 25. Counsel objected to this limitation on his ability to present Inman's defense under the Sixth and Fourteenth Amendments to the United States Constitution. R. p. 606, lines 1-6.

Petitioner argued on appeal that this ruling was reversible error under State v. Quattlebaum, 527 S.E.2d at 111. As in Quattlebaum, petitioner argued, the judge did not articulate his reasons for refusing to allow defense counsel to question the Solicitor and his Deputy. Thus, he concluded this ruling was also controlled by an error of law and was therefore an abuse of the judge's discretion. Final Brief at 24.

During oral argument at least one member of this Court noted that decisions were undoubtedly made in this case *based on strategy*. That is precisely why changing the law on the presumption of prejudice is a due process violation and fundamentally unfair under the unusual

facts of this case. Petitioner submits this change in the law regarding the presumption of irrebutable prejudice from intentional prosecutorial misconduct is fundamentally unfair, not predictable, and it violates his right to due process. Therefore a new trial should be granted. State v. Jones I., 343 S.C. 562, 577-578, 541 S.E.2d 813, 821 (2001). Cf. Rogers v. Tennessee, 532 U.S. 451 (2001).

Second, and in the alternative, and at a minimum, this due process violation necessitates a remand so that a determination of intentional prosecutorial misconduct can be made under the standard the Court now adopts. That is, in short, since petitioner is required to prove both fundamental interference and prejudice, due process requires a remedy where this Court changed the law to his detriment after his strategic decisions in the court below. See Bunkley v. Florida, 538 U.S. 835 (2003). Cf. Rogers v. Tennessee, 532 U.S. 451 (2001).

Further, petitioner previously based his case on prosecutorial misconduct in reliance on this Court's opinion in Quattlebaum. "We break no new ground in observing that an essential component of procedural fairness is an opportunity to be heard." Crane v. Kentucky, 476 U.S. 683, 689 (1986). A meaningful opportunity to be heard and to present a complete defense is violated where the law is changed on a fundamental issue involved at trial – here the remedy for prosecutorial misconduct and being denied the right to call witnesses to prove the solicitor committed intentional prosecutorial misconduct. Due process and fundamental fairness dictate that petitioner be given a fair opportunity to prove prejudice, at a minimum, under the new standard. The solicitors, one would think, would have been very willing and to happy to explain themselves and their purportedly unintentional conduct. "Qui tacit, clamat." (Who keeps silent, cries out.)

Moreover, this Court's holding that any testimony from the Solicitor or members of his staff would have been cumulative to evidence of the Solicitor's use of these tactics in prior capital cases, specifically the Laney case, is also a fundamentally unfair denial of his ability to prove prejudice

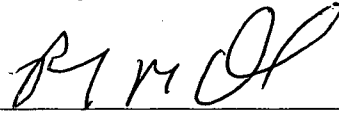
that this Court now demands. It is not “cumulative,” rather one would have thought the solicitor had “learned his lesson” and not repeated his conduct. This blatant repetition of acknowledged improper conduct is strong evidence that it was intentional and deliberate. (“There’s no education in the second kick of a mule.”) As Laney proves intentional prosecutorial misconduct, slip at 33-34, then petitioner should be granted relief even though he was prohibited from calling the Solicitor as a witness. Due process and fundamental fairness demand that this Court provide a remedy for its change in the law to his detriment where he relied on this Court’s opinion in Quattlebaum.

Additionally, petitioner asks the Court to reconsider its holding that without more evidence the solicitor was not without more evidence responsible for the matters occurring in Georgia. State v. Jerry Buck Inman, Op. No. 27081, Shearouse’s Adv. Sh. No. 46 (filed December 28, 2001) at p. 45. (concurrence of Justice Pleicones).

This holding, agreed to by a majority of the Court, is in direct conflict with the lead opinion of Justice Beatty that “it was disingenuous for the solicitor to assert that there was no wrongdoing on the part of the State regarding the events that took place in Georgia.” State v. Jerry Buck Inman, Op. No. 27081, Shearouse’s Adv. Sh. No. 46 (filed December 28, 2001) at p. 37. A remand hearing is the only practical way to address, very respectfully, this conflict.

Therefore, petitioner should be granted a new trial or in the alternative a remand to frame arguments and offer evidence under the standard the Court has now adopted and thereby changed the law. Furthermore, the Court is asked to resolve the conflict between two majority opinions concerning the responsibility of the solicitor for the Georgia fiasco. This is directly relevant to the issue of intentional solicitor misconduct. A remand hearing to obtain the evidence of the solicitors is therefore also requested in this rehearing petition.

Respectfully submitted,

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

Robert M. Dudek
Chief Appellate Defender

This 12th day of January, 2012.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

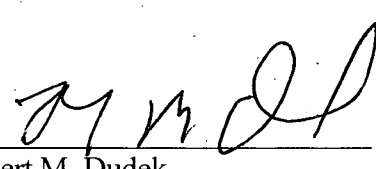
V.

JERRY BUCK INMAN,

PETITIONER

CERTIFICATE OF SERVICE

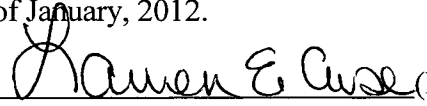
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Donald J. Zelenka, Esquire, this 12th day of January, 2012.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 12th day
of January, 2012.



(L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

Petition for rehearing is denied.

~~W. B. Rogers~~ C.J.

~~John Stevens~~ J.

~~W. B. Brady~~ J.

~~Phyllis K. Allen~~ J.

~~James G. Hearn~~ J.

January 25, 2012

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

Appeal From Pickens County
Edward W. Miller, Circuit Court Judge

Opinion No. 27081

Heard September 21, 2011 – Filed December 28, 2011

AFFIRMED

Chief Appellate Defender Robert M. Dudek, and Senior Appellate Defender Joseph L. Savitz, III, of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, of Columbia, and Solicitor William Walter Wilkins, III, of Greenville, for Respondent.

JUSTICE BEATTY: In this capital case, Jerry Buck Inman pleaded guilty to the murder, first-degree burglary, first-degree criminal sexual conduct, and kidnapping of a Clemson University student. The judge

sentenced Inman to death for murder and two consecutive thirty-year sentences for first-degree burglary and first-degree criminal sexual conduct.¹

On appeal, Inman challenges the judge's acceptance of his guilty plea as he contends it was conditional in that defense counsel maintained Inman was entitled to be sentenced by a jury despite his plea of guilty.² Additionally, Inman asserts the judge erred in addressing his allegations of prosecutorial misconduct arising out of the Solicitor's treatment of the defense's expert witness during the sentencing proceedings. Specifically, Inman claims the judge erred in the following respects: (1) refusing to recuse the Solicitor's Office from any further involvement in the case; (2) declining defense counsel's request to question the Solicitor on the issue of prosecutorial misconduct; and (3) declining to grant a mistrial despite a finding of prosecutorial misconduct. We affirm Inman's guilty plea and sentences.

I. Factual/Procedural Background

A.

On the evening of May 25, 2006, Tiffany Marie Souers (the Victim), a rising junior at Clemson University, was alone in her off-campus apartment as her roommates were gone for the day. When one of her roommates returned to the apartment during the afternoon of May 26, 2006, she discovered the Victim's partially-clad body on the bedroom floor. An autopsy revealed the Victim had been sexually assaulted and died as the result of asphyxia due to ligature strangulation with a bathing suit top.

¹ The judge did not impose a sentence for the kidnapping charge as Inman had been sentenced for the related murder. S.C. Code Ann. § 16-3-910 (2003).

² See S.C. Code Ann. § 16-3-20(B) (2003) (outlining bifurcated death penalty proceedings and stating "[i]f trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge").

Surveillance photographs taken during the early morning hours of May 26, 2006 captured a male, whose face was covered by a bandana, attempting to use the Victim's ATM card at two different bank machines in Clemson.

On June 5, 2006, law enforcement was able to identify Inman as the Victim's perpetrator based on DNA evidence obtained from the crime scene and processed through the National DNA Database, which had Inman's DNA evidence on file due to his prior out-of-state convictions for sexual offenses in 1987 and 1988. Using this information, law enforcement conducted a well-publicized nationwide search for Inman. On June 6, 2006 at approximately 11:45 p.m., law enforcement apprehended Inman in Dandridge, Tennessee.

Shortly after his arrest, Inman orally confessed to the crimes involving the Victim. Within the course of the next three hours, Inman gave separate written statements to an agent with the Tennessee Bureau of Investigation and to agents with the South Carolina Law Enforcement Division (SLED). In these two statements, Inman again confessed to the charged crimes and recounted in detail the events underlying these crimes. When asked to sign these statements, Inman declined and stated "we still have to go to court."

Ultimately, Inman was extradited to South Carolina and detained in the Pickens County Detention Center where a DNA sample was taken from him and again conclusively matched to the DNA evidence recovered from the Victim and her apartment. Subsequently, a Pickens County grand jury indicted Inman for murder, kidnapping, first-degree criminal sexual conduct, and first-degree burglary. The Thirteenth Circuit Solicitor's Office timely served Inman with its intent to seek the death penalty.³

After a circuit court judge determined that Inman was competent to stand trial,⁴ defense counsel filed a motion to determine the mode of trial. In the motion, counsel informed the judge of Inman's intent to enter a guilty plea to the crimes and demand a jury trial for sentencing. After a hearing, the

³ S.C. Code Ann. § 16-3-26(A) (2003).

⁴ S.C. Code Ann. § 44-23-410 (Supp. 2010).

judge summarily denied the motion on the ground he was "constrained by the existing case law in South Carolina and the statutes."

B.

On August 19, 2008, Inman pleaded guilty to murder, first-degree criminal sexual conduct, first-degree burglary, and kidnapping. During the plea colloquy, the judge informed Inman of the charges, the maximum possible sentences, and the constitutional rights that he was waiving by pleading guilty, including the right to a jury trial. Although Inman indicated he understood these rights, defense counsel interjected that Inman should be entitled to enter a guilty plea and then proceed to a jury trial for sentencing. In response, the judge informed Inman that he could not enter a plea "conditioned" on the preservation of the jury trial issue. Inman stated that he understood and still wished to plead guilty. Inman then admitted his guilt and expressed satisfaction with his defense counsel. Subsequently, Solicitor Robert M. Ariail (the Solicitor) presented a factual basis for the charged offenses that consisted of a stipulated summary of the facts.

When the judge resumed questioning Inman, he again inquired whether Inman understood that by pleading guilty he was waiving his right to have a jury sentence him for the murder conviction. Inman responded in the affirmative. Defense counsel, however, reiterated that Inman should not have to waive the right to have a jury determine his sentence. He emphasized that he "just want[ed] to make sure [the issue] is preserved."

In response, the judge again explained to Inman that he could not accept a "conditional guilty plea." The judge also instructed that he could not determine whether the jury sentencing issue was preserved for appellate review as it was a decision for the South Carolina Supreme Court. Inman indicated that he understood the judge's explanation and expressed his desire to continue the plea proceeding. The judge accepted Inman's plea and instructed that the sentencing proceeding would be held on September 8, 2008.

The Solicitor then expressed his concern that defense counsel's statements about the preservation of an appellate issue effectively made the

plea conditional. Defense counsel disputed the conditional nature of the plea, but assured Inman that the "issue is preserved and will survive the guilty plea."

Based on this exchange, the judge debated whether to accept Inman's plea, but ultimately asked Inman whether his plea was "dependent" on the jury sentencing issue. After conferring with defense counsel, Inman acknowledged that his plea was not based on whether he would succeed on an issue raised on appeal. Inman stated, "I just want to enter the plea and get it over with, just go on from here with the sentencing phase."

At the conclusion of the plea colloquy, the judge accepted Inman's plea and found that it was freely, knowingly, voluntarily, and intelligently made.

C.

On September 8, 2008, the judge commenced the non-jury sentencing proceeding. In presenting its case for statutory aggravating circumstances, the State called two of the law enforcement officers to whom Inman confessed to the charged crimes. Additionally, Dr. Eric Dean Christensen, the forensic pathologist who conducted the Victim's autopsy, certified the Victim's death was caused by "asphyxia due to ligature strangulation." He further testified that there was "extensive bruising" on the Victim's body, which he believed was consistent with a physical struggle and the Victim being restrained. He also found physical evidence that suggested "traumatic sexual relations."

In terms of Inman's criminal history, the State offered extensive evidence of Inman's prior convictions in Florida and North Carolina as well as evidence of two unadjudicated incidents that occurred after Inman was released from the Florida Department of Corrections on September 1, 2005.

Subsequently, defense counsel initiated the case for mitigation. As the defense's first expert witness, counsel called Dr. David Richard Price, a forensic psychologist/neuropsychologist and clinical psychologist, who interviewed Inman and reviewed records regarding Inman's family, his prior crimes, his terms of incarceration, and his mental health records.

Based on these records, Dr. Price concluded that Inman suffered from the following: major depressive disorder, recurrent type; major depressive disorder with psychotic features; bipolar disorder; psychorhythmic disorder; schizoid personality disorder; dissociative identity disorder; and sexual paraphilia. In making these diagnoses, Dr. Price took into account Inman's extensive psychiatric history and his childhood, which included "pretty significant" records indicating that Inman had been sexually abused, physically abused, grew up in a "very unstable environment," suffered with a mother who was schizophrenic and an alcoholic father, began using drugs at an early age, and was incarcerated at age seventeen. Dr. Price also testified that Inman had attempted suicide on seven occasions, six of which occurred while he was incarcerated. He further stated that Inman believed the death penalty was the appropriate punishment for the murder of the Victim. Ultimately, Dr. Price opined that Inman committed the crimes against the Victim while he was under the influence of a mental and emotional disturbance and that his capacity to conform his conduct to the requirements of the law was substantially impaired.

Defense counsel next called Dr. Marti Loring, a Georgia-licensed clinical social worker and board certified expert in traumatic stress who was employed at the Center for Mental Health and Human Development in Atlanta, Georgia. The defense offered Dr. Loring "as an expert in the field of trauma, abuse, forensic and therapeutic interviewing, and as a social historian in capital sentencing cases."

During *voir dire*, the Solicitor inquired whether Dr. Loring had "performed services under [her] licensed clinical social worker status" and whether she was licensed in South Carolina. Upon receiving Dr. Loring's response that she was not licensed in South Carolina, the Solicitor directed the judge's attention to section 40-63-200 of the South Carolina Code,⁵ which deals with the unauthorized practice of social work within the State of South

⁵ S.C. Code Ann. § 40-63-200(A) (2011) ("A person who practices or offers to practice as a social worker in this State in violation of this chapter or a regulation promulgated under this chapter . . . is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both.").

Carolina. The Solicitor also pointed out that the statute "carries both civil and criminal penalties for violation." Based on this statute, the Solicitor argued that Dr. Loring was "not qualified as an expert in this state to testify or to render those services until she gets licensed."

In response, defense counsel argued that Dr. Loring's Georgia license was sufficient to qualify her as an expert witness in Inman's case. Counsel objected to the Solicitor's questioning and characterized it as "an inappropriate attempt to intimidate the witness with the authority that this Solicitor has in this state to indict." Counsel added that the Solicitor had put Dr. Loring "in a position where she may need to assert her Fifth Amendment privilege not to incriminate herself by answering the questions that I would otherwise have propounded to her."

The judge overruled the Solicitor's objection as he believed the intent of the statute was "to prevent persons from opening offices to conduct treatment in this state," which was distinguishable from Dr. Loring being retained as an expert for the defense.

After the judge determined that Dr. Loring was qualified to testify, defense counsel argued that the Solicitor's attempt to intimidate Dr. Loring constituted a violation of Inman's due process rights to present his defense. The Solicitor disputed this allegation and stated he could grant Dr. Loring immunity from prosecution in Inman's case. However, he clarified that he was not authorized to grant immunity for the other South Carolina cases in which she had testified.

Dr. Loring then expressed her concern about testifying and was granted an opportunity to consult with Bill Godfrey, an attorney who was present in the courtroom. When court reconvened, Dr. Loring stated she felt "threatened as a witness" and, as a result, invoked her Fifth Amendment right against self-incrimination upon the advice of counsel. Despite assurances by the judge that she would be granted immunity in Inman's case and prior cases, Dr. Loring maintained that she would not testify as she believed she would be "in violation of a criminal statute [that] would affect [her] professional reputation in other cases and in other jurisdictions."

The judge then held in abeyance any motions regarding Dr. Loring's testimony and permitted defense counsel to call its remaining four witnesses in mitigation.

The next day, defense counsel moved for a mistrial based on the Solicitor's *voir dire* of Dr. Loring. Specifically, counsel characterized the Solicitor's actions as prosecutorial misconduct. As additional support for this motion, defense counsel referenced an earlier capital case where the Solicitor had confronted another defense witness with a potential violation of section 40-63-200 of the South Carolina Code. Counsel claimed that in both of these instances the Solicitor had violated the South Carolina Rules of Professional Conduct⁶ and section 16-9-340⁷, which makes it a crime to intimidate a witness "by threat or force" or to "attempt to obstruct or impede the administration of justice in any court." Because counsel did not believe the actions of the Solicitor could be rectified, defense counsel moved for a mistrial as well as the recusal of the Solicitor's office in the case. In addition, defense counsel requested that the judge implement a sentence of life without parole as he claimed the Solicitor's conduct was "intentional."

In response, the Solicitor contended that he had neither threatened Dr. Loring nor moved to indict her "even though, theoretically, she would have violated the statute from a prior case."

At the conclusion of these arguments, counsel for Dr. Loring informed the court that Dr. Loring would not testify and intended to invoke her Fifth Amendment privilege against self-incrimination.

The judge did not rule on the mistrial motion, but instead granted a continuance in order for defense counsel to retain another social historian. The judge, however, added that he "wouldn't rule that Dr. Loring [was] completely out of the case."

⁶ South Carolina Rules of Professional Conduct, Rule 407, SCACR.

⁷ S.C. Code Ann. § 16-9-340 (2003).

Seven months later, the judge held a hearing on April 14, 2009 to consider whether Dr. Loring should be released as a witness given the defense did not intend to call her and had retained another social historian. In his motion, counsel for Dr. Loring objected to the State's out-of-state witness subpoena of Dr. Loring as a necessary and material witness. At the conclusion of the hearing, the judge declined to withdraw his certification of the subpoena⁸ and stated that the case would proceed the following week.

On April 15, 2009, a Superior Court in Atlanta, Georgia signed an order directing Dr. Loring to attend a hearing the next day at 3:00 p.m. to determine her material witness status in South Carolina. Because Dr. Loring was at work when the order was left at her residence on the morning of April 16, 2009, she did not appear at the hearing. Later that night, officers attempted to serve a warrant for her arrest. After Dr. Loring's counsel contacted the South Carolina plea judge regarding the Georgia matter, the judge intervened and persuaded the District Attorney's Office in Atlanta to "table" the warrant based on the assurance that Dr. Loring would appear at the Pickens County Courthouse on April 20, 2009.

On April 20-22, 2009, the judge reconvened the sentencing proceedings. At the beginning of the hearing, Dr. Loring's counsel recounted the events in Georgia and argued that this constituted additional evidence of the Solicitor's attempt to intimidate Dr. Loring. As a result, he moved to have Dr. Loring immediately released as a witness in Inman's case.

Defense counsel concurred in these arguments and stated that the "sequence of events in Georgia would go directly to the motion for prosecutorial misconduct and the mistrial that we requested orally on September 11, 2008."

In response, the Solicitor denied any involvement in the Georgia events and claimed it was "every bit the fault of Dr. Loring, under the Georgia system." To counter this statement, defense counsel called Dr. Loring as a witness to testify for the limited purpose of documenting what transpired in

⁸ On April 1, 2009, the judge granted the Solicitor's petition to subpoena Dr. Loring as a material witness.

Georgia. Although Dr. Loring came prepared to testify as a mitigation expert, she could not "assure [the court] a hundred percent that going through all this would not have an impact on [her]."

Following Dr. Loring's testimony, defense counsel renewed its motion for the "recusal of the Thirteenth Circuit Solicitor's Office." Counsel contended the Solicitor's actions were intentional in that he knew the elimination of Dr. Loring's testimony would significantly impact Inman's case. In support of this contention, defense counsel offered testimonial and documentary evidence that the Solicitor's office had been involved in a similar incident wherein the Solicitor questioned a defense expert, during the sentencing portion of a capital case, regarding a potential violation of the South Carolina psychologist licensing statutes. In that case, however, the defense withdrew the motion apparently in exchange for the State withdrawing its notice to seek the death penalty.⁹

Additionally, defense counsel offered evidence of two other capital cases, one in 2006¹⁰ and another in 2007¹¹, where Dr. Loring testified as an

⁹ Because the defense withdrew its motion, prosecutorial misconduct based on witness intimidation was not an issue on appeal. State v. Laney, 367 S.C. 639, 627 S.E.2d 726 (2006). However, the pertinent portions of the Laney trial transcript and defense motions reveal the Solicitor employed an identical tactic to that used against Dr. Loring in questioning defense counsel's expert witness, Dr. Everington, with respect to the lack of a South Carolina psychologist license.

¹⁰ In State v. David Edens and Jennifer Holloway, a 2006 capital trial, Dr. Loring testified as a social historian without any objection from the Solicitor as to her qualifications or lack of a South Carolina license to practice social work. During the jury deliberations, the jurors requested to listen to Dr. Loring's trial testimony. Because the jury could not reach a unanimous verdict as to the death penalty, the defendants were sentenced to life without the possibility of parole. Weeks after the verdict, the Solicitor requested to meet with the jurors over dinner to discuss the verdict. One juror, who attended the dinner, testified the Solicitor appeared upset with the LWOP

expert witness in the defense's case for mitigation. The Solicitor did not challenge Dr. Loring's qualifications in either of these cases.

Defense counsel then sought to recuse the Solicitor's office as advocates and call certain members as witnesses in order to establish the defense's claim of intentional prosecutorial misconduct.

After the judge denied this motion, defense counsel called attorney Desa Ballard as an expert in the field of legal ethics and professional responsibility in South Carolina. Based on her assessment of the Solicitor's conduct, Ballard opined that the Solicitor had violated "a number of rules of professional responsibility in connection with his examination of Dr. Loring, which occurred in September of 2008." In view of the prior allegation of prosecutorial misconduct, Ballard believed the Solicitor was clearly aware that questioning Dr. Loring regarding the potential licensing violation was "improper" and constituted intimidation of a witness.

Defense counsel then declined to call Dr. Loring as witness. Instead, counsel renewed its motion for a mistrial based on prosecutorial misconduct. Counsel reiterated that he wished to call the Solicitor and members of his office as witnesses because he believed the testimony was relevant to the motion. In terms of relief, counsel sought a mistrial and, in turn, the imposition of a life without parole sentence as the Solicitor's deliberate misconduct precipitated the mistrial motion and, thus, implicated double jeopardy.

The judge denied each of defense counsel's motions. In so ruling, the judge initially rejected counsel's argument regarding double jeopardy as the judge found the Solicitor had not "deliberately goaded" the defense into requesting a mistrial. As to the merits of the mistrial motion, the judge concluded the Solicitor's questioning of Dr. Loring was inappropriate and constituted prosecutorial misconduct. However, the judge declined to grant a

verdict and wanted an explanation as to why the jurors had not voted for a death sentence.

¹¹ State v. Motts, 391 S.C. 635, 707 S.E.2d 804 (2011).

mistrial as he found the evidence did not support a finding of "deliberate" prosecutorial misconduct. Additionally, the judge concluded that Inman had not been prejudiced as the misconduct occurred during a bench trial as opposed to a jury trial and Dr. Loring had voluntarily appeared at the hearing and was willing to testify.

Immediately thereafter, defense counsel moved for a continuance in order to prepare the mitigation evidence as he had not been in contact with Dr. Loring since the September 2008 hearing and his recently-retained social historian had not completed her research and was not prepared to testify. The judge implicitly denied this motion.

Over defense counsel's objections, the judge called and questioned Dr. Loring as a "court witness." Dr. Loring testified she compiled a social history about the life and family of Inman by interviewing Inman and members of his family as well as reviewing Inman's medical history, school records, and prison records. Relying on these records and interviews, Dr. Loring chronicled in detail the physical and sexual abuse that Inman endured during his childhood. She further testified as to Inman's use of drugs at an early age, his diagnosed mental illness, his suicide attempts, and his criminal history.

Throughout the questioning, defense counsel repeatedly sought to limit the testimony of Dr. Loring as counsel believed her opinions implicated attorney-work product as they had been previously discussed amongst the defense team.

After hearing closing arguments and Inman's personal statement, the judge sentenced Inman to death for murder and imposed two consecutive thirty-year sentences for first-degree burglary and first-degree criminal sexual conduct. In reaching this decision, the judge explained in both his oral and written order that the State had proven beyond a reasonable doubt three statutory aggravating circumstances to warrant the death penalty.¹² Specifically, the judge found that Inman murdered the Victim while in the

¹² S.C. Code Ann. § 16-3-20(C)(a)(1)(a), (b), (d) (2003 & Supp. 2010) (listing statutory aggravating circumstances that warrant a sentence of death).

commission of kidnapping, first-degree burglary, and first-degree criminal sexual conduct.

In terms of mitigating factors, the judge found Inman committed the murder while under the influence of mental or emotional disturbances¹³ as there was evidence that Inman suffered from long-term mental health disorders. Despite these mental health disorders, the judge emphasized that these disorders did not excuse Inman from criminal responsibility for his actions involving the Victim.

Following the denial of his motion to reconsider and for a new trial, Inman appealed his plea of guilty and his sentence of death.

II. Discussion

A. Validity of Guilty Plea

Inman asserts his guilty plea to murder should be vacated on the ground it constituted an invalid conditional guilty plea. In support of this assertion, Inman directs this Court's attention to the portion of the plea colloquy where the judge expressed his opinion that the preservation of the jury sentencing issue was a decision for the Supreme Court. Inman characterizes the judge's statements as erroneous "speculations about appealability." Based on these statements and defense counsel's insistence that the issue was preserved for appeal, Inman claims the judge had a duty to reject the plea as it was conditional.

"In South Carolina, guilty pleas must be unconditional." State v. Downs, 361 S.C. 141, 145, 604 S.E.2d 377, 379 (2004). "[I]f an accused attempts to attach any condition or qualification thereto, the trial court should direct a plea of not guilty." State v. Truesdale, 278 S.C. 368, 370, 296 S.E.2d 528, 529 (1982). "If the trial court accepts a conditional guilty plea, then the plea will be vacated on appeal." Downs, 361 S.C. at 145, 604 S.E.2d at 379. "The basis for this rule is, of course, the settled doctrine that a guilty plea

¹³ Id. § 16-3-20(C)(b)(2), (6) (listing mitigating circumstances to be considered in capital sentencing proceedings).

constitutes *waiver* of all prior claims of constitutional rights or deprivations thereof." Truesdale, 278 S.C. at 370, 296 S.E.2d at 529.

Turning to the facts of the instant case, we find that Inman's guilty plea was unconditional. Significantly, Inman never attempted to reserve the right to challenge or deny the merits of his guilt. Any condition that he sought to attach to the plea involved an appellate challenge to section 16-3-20(B), which mandates that a judge rather than a jury determine sentencing in a capital case if the defendant enters a guilty plea. Under the mandatory appeal procedures in capital cases,¹⁴ Inman was permitted to appeal this secondary sentencing issue; however, any decision as to this issue did not affect the entry or validity of his plea. Cf. Downs, 361 S.C. at 145-46, 604 S.E.2d at 379-80 (concluding appellant's capital guilty plea was unconditional where he never attempted to reserve the right to later deny his guilt, but instead sought to reserve the right to present evidence that he committed the crime while mentally ill, an issue that involved post-sentencing treatment).

Furthermore, even if Inman preserved his challenge to section 16-3-20(B), he specifically abandoned this issue on appeal as he correctly recognizes that this issue has been decided against his position. See State v. Allen, 386 S.C. 93, 687 S.E.2d 21 (2009), cert. denied, 130 S. Ct. 3329 (2010) (noting, in appeal of guilty plea and capital sentence, South Carolina precedent finding that section 16-3-20 does not violate the Sixth Amendment to the United States Constitution and concluding that it also did not violate the Eighth and Fourteenth Amendments; noting that the statute requires the sentencing judge to consider any mitigating circumstances allowed by law and that a defendant is not precluded from offering evidence of his remorse and acceptance of responsibility); State v. Crisp, 362 S.C. 412, 608 S.E.2d 429 (2005) (adhering to Downs and rejecting claims that section 16-3-20(B) was unconstitutional); State v. Wood, 362 S.C. 135, 607 S.E.2d 57 (2004) (citing Downs and concluding section 16-3-20(B) was constitutional); Downs, 361 S.C. at 146, 604 S.E.2d at 380 (discussing constitutionality of

¹⁴ See S.C. Code Ann. § 16-3-25(A) (2003) ("Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Supreme Court of South Carolina.").

section 16-3-20(B) and finding capital defendant who pleaded guilty waived his right to jury trial on both guilt and sentencing).

Finally, a review of the plea colloquy reveals Inman entered his plea knowingly and voluntarily as he repeatedly acknowledged that he understood the charges against him, the consequences of his plea, and the rights he was waiving by pleading guilty, including the right to have a jury determine his guilt and sentence. Accordingly, we conclude Inman's plea was valid. See Hill v. Lockhart, 474 U.S. 52, 56 (1985) ("The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970))); Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000) ("To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.").

B. Sentencing Proceedings

Having found that Inman's guilty plea was valid, we must next assess Inman's issues arising out of the sentencing proceedings.

1. Recusal of Solicitor's Office/Questioning Solicitor as a Defense Witness

Inman claims the judge abused his discretion by declining to recuse the Solicitor's office as advocates¹⁵ and refusing to allow defense counsel to question the Solicitor and members of his staff on the claim of intentional prosecutorial misconduct.

¹⁵ As we interpret Inman's trial and appellate arguments, we believe Inman is challenging the judge's failure to recuse the Solicitor's office in two contexts: (1) as advocates so that defense counsel could question the Solicitor and members of his staff regarding the claim of prosecutorial misconduct, and (2) as to the entire case due to the finding of prosecutorial misconduct. Accordingly, in the interest of logical progression, we have addressed these two claims separately.

"[A] criminal defendant has a right to call the prosecuting attorney as a witness, subject to the trial court's usual discretion to exclude witnesses or evidence." State v. Quattlebaum, 338 S.C. 441, 453, 527 S.E.2d 105, 111 (2000) (citing State v. Lee, 203 S.C. 536, 28 S.E.2d 402 (1943)). In Quattlebaum, this Court emphasized that "litigants, and especially defendants in criminal cases, should not be hampered in their choice of those by whom they choose to prove their cases." Id. However, a defendant's right to call a prosecuting attorney as a witness is not without limitation as this Court has stated:

Although a prosecuting attorney is competent to testify, his testifying is not approved by the Courts except where it is made necessary by the circumstances of the case, and, if he knows before the trial that he will be a necessary witness, he should withdraw and have other counsel prosecute the case. The propriety of allowing the prosecutor to testify is a matter largely within the trial Court's discretion.

Lee, 203 S.C. at 540, 28 S.E.2d at 403 (emphasis added). Other jurisdictions have agreed with this Court's limitation on a prosecutor as a defense witness and have further clarified that the testimony "must be relevant and material to the theory of the defense . . . [and] it must not be privileged, repetitious, or cumulative." Johnson v. State, 326 A.2d 38, 45 (Md. Ct. Spec. App. 1974) (citing State v. Lee, 203 S.C. 536, 28 S.E.2d 402 (1943)), aff'd, 339 A.2d 289 (Md. 1975).

It is evident that this Court and courts from other jurisdictions disfavor defense counsel calling a prosecuting attorney to testify in a case in which he is participating as an advocate. See Bennett v. Commonwealth, 374 S.E.2d 303, 313 (Va. 1988) ("[I]t is not desirable for the Commonwealth's Attorney to testify as a witness on a material point in a case. The circumstances are rare indeed where any lawyer may properly testify in a case in which he is participating as an advocate."); see also Erwin S. Barbre, Annotation, Prosecuting Attorney as A Witness in Criminal Case, 54 A.L.R.3d 100 (1973 & Supp. 2011) (analyzing cases where the propriety of a prosecuting attorney's testifying in a criminal case on behalf of the prosecution or on behalf of the defendant was at issue; recognizing that such a decision is

dependent upon the facts of the case, is discretionary, and generally does not require the prosecutor to withdraw or be recused from the case when called on behalf of the defendant).

However, even if a prosecutor is called as a witness by the defense, it is not always necessary for a trial judge to recuse the prosecutor or the prosecuting office in its entirety. In fact, "[t]here is no inherent right to disqualification when a member of the state attorney's office is called as a witness in a case prosecuted by a state attorney in the same office, unless actual prejudice can be shown." 81 Am. Jur. 2d Witnesses § 229 (2004 & Supp. 2011); People v. Superior Court of San Luis Obispo, 148 Cal. Rptr. 704, 710 (Cal. Ct. App. 5th Dist. 1978) ("The general rule is that a district attorney's office should not be recused from a case merely because one or more of its attorneys will be called as witnesses for the defense.").

Applying the foregoing to the facts of the instant case, we find the judge did not abuse his discretion in refusing to recuse the Solicitor's office as advocates and declining defense counsel's request to question the Solicitor.

Initially, we note that the judge's determination of prosecutorial misconduct did not necessitate the recusal of the entire Solicitor's office as this allegation primarily involved the Solicitor. See State v. Doran, 731 P.2d 1344 (N.M. Ct. App. 1986) (finding no merit to defendant's contention that entire staff of district attorney's office should have been disqualified where prosecutor testified at pretrial suppression hearing that was conducted by another assistant district attorney).

Furthermore, defense counsel's primary reason for calling the Solicitor as a witness was to establish that he intentionally committed misconduct. Because a determination of prosecutorial misconduct is not necessarily dependent upon the intent of the prosecutor, such testimony was neither relevant nor material to the defense's claim. See People v. Hill, 952 P.2d 673, 683-84 (Cal. 1998) (discussing concept of prosecutorial misconduct and stating "injury to appellant is nonetheless an injury because it was committed inadvertently rather than intentionally"; recognizing that the term "prosecutorial misconduct" is a misnomer to the extent it "suggests a prosecutor must act with a culpable state of mind"); Diggs v. State, 531

N.E.2d 461, 464 (Ind. 1988) ("A prosecutor's warning of criminal charges during a personal interview with a witness improperly denies the defendant the use of that witness's testimony regardless of the prosecutor's good intentions."). We emphasize that a determination of a prosecutor's intent is applicable where the prosecutor intentionally goads the defense into moving for a mistrial¹⁶ or the prosecutor's actions implicate the attorney-client relationship.¹⁷ Neither of these situations is present in the instant case.

Finally, any testimony from the Solicitor or members of his staff would have been cumulative as defense counsel submitted significant testimonial and documentary evidence regarding the Solicitor's use of this tactic in prior capital cases. Specifically, defense counsel cited the Laney case and offered evidence in the form of a trial transcript and testimony from the Public

¹⁶ See State v. Parker, 391 S.C. 606, 612, 707 S.E.2d 799, 802 (2011) (stating that "[o]nly where the governmental conduct in question is intended to 'goad' the defendant into moving for a mistrial may a defendant raise the bar of double jeopardy to a second trial after having succeeded in aborting the first on his own motion" (quoting Oregon v. Kennedy, 456 U.S. 667, 676 (1982))).

¹⁷ Citing Quattlebaum, Inman claims that "deliberate prosecutorial misconduct raises an irrebuttable presumption of prejudice" and, thus, the determination of "intent" is necessary to establish prosecutorial misconduct. Quattlebaum, 338 S.C. at 448, 527 S.E.2d at 109. We clarify that this statement in Quattlebaum is limited to a situation where the prosecutorial misconduct implicates a criminal defendant's attorney-client relationship and does not apply to all cases of prosecutorial misconduct as we held in Williams that prosecutorial misconduct involving witness intimidation required a defendant to demonstrate "both substantial interference and prejudice." State v. Williams, 326 S.C. 130, 135, 485 S.E.2d 99, 102 (1999). Recently, we implicitly recognized the limited nature of our holding in Quattlebaum. See State v. Morris, 376 S.C. 189, 200, 656 S.E.2d 359, 365 (2008) (finding the "irrebuttable presumption of prejudice" found in Quattlebaum was inapplicable where Appellant had not shown prosecutorial misconduct and had not demonstrated his prosecution was unconstitutional, improper, or that the government pursued a civil action or investigation solely to obtain evidence for a criminal prosecution).

Defender that established the Solicitor employed a line of questioning as used against Dr. Loring to a defense expert regarding a potential violation of the South Carolina psychologist licensing statutes. Defense counsel also offered evidence that the Solicitor, in two capital trials that preceded Inman's case, did not challenge Dr. Loring's lack of a South Carolina license to practice social work. Based on this evidence, defense counsel was able to support its theory that the Solicitor knew the line of questioning was objectionable and only employed it in Inman's case after he realized that jurors in the Edens/Holloway case relied heavily on Dr. Loring's testimony in sentencing the defendants to LWOP rather than death.

In view of the foregoing, we find the judge did not abuse his discretion in declining to recuse the Solicitor's office and refusing to permit defense counsel to call the Solicitor and members of his staff as witnesses. See Lee, 203 S.C. at 542, 28 S.E.2d at 404 (concluding trial judge did not err in refusing to allow defense counsel to call solicitor as witness where testimony would have been merely cumulative); see also Cooper v. State, 847 S.W.2d 521 (Tenn. Crim. App. 1992) (holding trial court did not err in refusing to allow defendant to call district attorney general and assistant attorney general as witnesses on issue of State's abuse of discretion in pursuing death penalty where defendant did not allege facts to show how his constitutional rights were violated); Bennett v. Commonwealth, 374 S.E.2d 303 (Va. 1988) (concluding trial court did not abuse its discretion in denying defendant's request to question Commonwealth's attorney on witness stand concerning reasons for which continuance had been granted and concerning possible violations of court order).

2. Witness Intimidation

Having found the judge did not abuse his discretion in refusing to recuse the Solicitor's office as advocates and declining to permit defense counsel to question the Solicitor and members of his staff, we must determine whether the Solicitor's *voir dire* of Dr. Loring constituted witness intimidation and, in turn, prosecutorial misconduct.

Inman asserts the judge erred in refusing to grant a mistrial and recuse the Solicitor's office from any further involvement in the case despite a

finding of prosecutorial misconduct arising out of the Solicitor's intimidation of Dr. Loring using "baseless criminal prosecution" and the subpoena of Dr. Loring as a State's witness.

In contrast, the State claims the judge properly denied the motion for a mistrial and recusal of the Solicitor's office. In support of this claim, the State argues that there was no misconduct as the *voir dire* was appropriate based on the applicable South Carolina licensing statute. However, even if the Solicitor committed misconduct, the State contends it was not prejudicial to Inman as the Solicitor granted Dr. Loring immunity from prosecution and she voluntarily testified during the sentencing hearing.

"The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." Washington v. Texas, 388 U.S. 14, 19 (1967). "This right is a fundamental element of due process of law." Id.

As this Court has recognized, the constitutional right of a defendant to call witnesses requires that they be called without intimidation from the State. State v. Williams, 326 S.C. 130, 485 S.E.2d 99 (1997). In Williams, this Court explained:

"Improper intimidation of a witness may violate a defendant's due process right to present his defense witnesses freely if the intimidation amounts to 'substantial government interference with a defense witness' free and unhampered choice to testify.'" . . . Where substantial interference is found, the next issue is whether the error can be deemed harmless. United States v. Saunders, supra. The rule in the Fourth Circuit appears to be that governmental intimidation can be deemed harmless error where the witness nonetheless testifies. Compare United States v. Teague, 737 F.2d 378 (4th Cir. 1984) (harmless where defendant was not denied either all or the helpful part of the witness' testimony as a result of the attempted intimidation) with United States v. MacCloskey, 682 F.2d 468 (4th Cir. 1982). Under this

rule, the intimidation in this case could not be deemed harmless. We decline, however, to adopt such an automatic reversal rule and hold that in order to obtain relief, a defendant must demonstrate both substantial interference and prejudice.

Id. at 135, 485 S.E.2d at 102. However, even if the defendant demonstrates substantial interference and prejudice, a new trial is not always the requisite remedy. Instead, "[t]he remedy to be afforded a defendant in this situation is determined by the facts and circumstances of each case, depending on the prejudice suffered by the defendant." Id. at 136, 485 S.E.2d at 103.

In analyzing a claim of prosecutorial misconduct based on alleged witness intimidation, this Court has acknowledged the prosecutor's "fundamental power" to "bring charges against a person the prosecutor believes has committed a crime." State v. Needs, 333 S.C. 134, 145, 508 S.E.2d 857, 862 (1998). This power is, nevertheless, subject to "constitutional constraints." Id. For example, a prosecutor may not "lob baseless threats or charges at a potential defense witness in an effort to prevent the witness from testifying." Id. at 146, 508 S.E.2d at 863; see Lisa A. Wenger, Annotation, Admonitions Against Perjury or Threats to Prosecute Potential Defense Witness, Inducing Refusal to Testify, As Prejudicial Error, 88 A.L.R.4th 388 (1991 & Supp. 2011) (analyzing state and federal cases where prosecutor informs defense witness that that witness could face perjury charges or other prosecution if the witness testified).

We find the Solicitor's conduct toward Dr. Loring unequivocally constituted witness intimidation. Even if the Solicitor was legitimately concerned about Dr. Loring's qualifications as an expert witness, he could have filed a motion to disqualify her, which could have been addressed in a pre-trial hearing without the presence of Dr. Loring. By challenging Dr. Loring as soon as she took the stand, the Solicitor's method of questioning can only be viewed as an intimidation tactic. The Solicitor's claimed grant of immunity to Dr. Loring did not negate the atmosphere of intimidation as Dr. Loring repeatedly testified that she felt threatened.

Secondly, based on the testimonial and documentary evidence the defense presented on this issue, it is clear the Solicitor knew this line of

questioning was objectionable as it had formed the basis of a previous allegation of prosecutorial misconduct in the Laney case.

Furthermore, at the time of the September 2008 sentencing hearing, the Solicitor was on notice from this Court that an out-of-state expert witness's failure to comply with South Carolina licensing requirements did not preclude the witness from testifying. In fact, the Court had specifically held on February 25, 2008 that the lack of a South Carolina professional license was merely a factor for the judge to consider as to the witness's qualifications as an expert. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 658 S.E.2d 80 (2008) (discussing Baggerly and finding trial judge erred in disqualifying expert witness on the basis that witness failed to comply with South Carolina's home inspection licensing requirements, but concluding the error was harmless); see Baggerly v. CSX Transp., Inc., 370 S.C. 362, 635 S.E.2d 97 (2006) (recognizing conflict between Rule 702, SCRE's qualification for experts and a statute that defined the practice of engineering to include the offering of expert technical testimony; holding non-compliance with licensing requirements or with statutory law in specialized areas does not require trial judge to automatically refuse to qualify a witness as an expert); see also RE: Act No. 385 of 2006—relating to defining the "practice of medicine", S.C. Sup. Ct. Order dated Aug. 24, 2006 (staying the application of amendment to section 40-47-20(36) of the South Carolina Code and, in turn, permitting out-of-state physicians to offer testimony without seeking a South Carolina medical license before offering the testimony). Despite this Court's clear directive, the Solicitor combatively challenged Dr. Loring's lack of a South Carolina social worker license.

Finally, the Solicitor's decision to subpoena Dr. Loring as a witness, after the defense severed its ties with her, provides additional evidence of witness intimidation. Although the judge granted the State's petition to certify Dr. Loring as a material witness, the method of procuring her appearance at the sentencing hearing supports Inman's claim of witness intimidation. We believe it was disingenuous for the Solicitor to assert that there was no wrongdoing on the part of the State regarding the events that took place in Georgia. Based on Dr. Loring's testimony, it was clear that she was not attempting to abscond from Georgia and purposefully decline to appear at the sentencing hearing. Thus, we find the Solicitor's initiation of

the events in Georgia went beyond a necessary course of action. See Berger v. United States, 295 U.S. 78, 88 (1935) ("[A prosecutor] may prosecute with earnestness and vigor-indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."), overruled on other grounds by Stirone v. U.S., 361 U.S. 212 (1960).

Based on the foregoing, we find there is evidence to support the judge's finding of prosecutorial misconduct as the Solicitor's actions were done for no other purpose than to intimidate Dr. Loring.¹⁸

3. Mistrial

Having concluded that the Solicitor's actions constituted prosecutorial misconduct, the question becomes whether a mistrial was warranted.

"The prejudicial effect of prosecutorial misconduct is determined by (1) the cumulative effect of such misconduct; (2) the strength of the properly admitted evidence of the defendant's guilt; and (3) the curative actions taken by the court." United States v. Anwar, 428 F.3d 1102, 1112 (8th Cir. 2005) (citations omitted).

The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Cooper, 334 S.C. 540, 551, 514 S.E.2d 584, 590 (1999). The granting of a motion for a mistrial is an extreme measure that should be taken only when the incident is so grievous

¹⁸ We will not tolerate witness intimidation from anyone, including the Solicitor's office. Furthermore, we are deeply concerned that the Solicitor's behavior represents a pattern of misconduct that continues to undermine our state's system of justice. Specifically, this Court is concerned with the "win at all costs" attitude that appears to permeate the Solicitor's office. Because the plea judge determined that the Solicitor's conduct was not intentional, we reluctantly defer to that factual finding. However, we note that in the future such misconduct may result in disciplinary proceedings.

the prejudicial effect can be removed in no other way. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999).

As will be discussed, we find the judge correctly denied defense counsel's motion for a mistrial trial as Inman has not established prejudice sufficient to warrant such a severe remedy.

First, any assessment of prejudice to Inman must be viewed from the posture of a bench trial as opposed to a jury trial. It is well-established that it is a near insurmountable burden for a defendant to prove prejudice in the context of a bench trial as a judge is presumed to disregard prejudicial or inadmissible evidence. See Cole v. Commonwealth, 428 S.E.2d 303, 305 (Va. Ct. App. 1993) ("A judge, unlike a juror, is uniquely suited by training, experience and judicial discipline to disregard potentially prejudicial comments and to separate, during the mental process of adjudication, the admissible from the inadmissible, even though he has heard both. Consequently, we presume that a trial judge disregards prejudicial or inadmissible evidence." (citations omitted)); see also People v. Jackson, 949 N.E.2d 215, 229 (Ill. App. Ct. 2011) ("In a bench trial, the danger of prejudice due to the trial judge's questions to a witness is lessened.").

Here, the judge correctly considered that Dr. Loring did not have a South Carolina social worker's license merely as a factor in her qualifications as an expert witness. Having found Dr. Loring qualified as an expert witness, the judge properly called and questioned her as a court's witness. Because Dr. Loring testified, Inman cannot claim he was prejudiced as his counsel declined the opportunity to question Dr. Loring. Williams, 326 S.C. at 135, 485 S.E.2d at 102 (recognizing that governmental intimidation of a witness can be deemed harmless error where the witness nonetheless testifies).

Furthermore, any testimony that was potentially excluded was arguably cumulative to that of Dr. Price, who testified in detail regarding Inman's childhood, his family, his mental health disorders, and his criminal history. Finally, a review of the judge's oral and written orders establishes that he thoroughly considered all mitigating evidence.

Although we find the Solicitor committed prosecutorial misconduct, we conclude Inman's sentence of death was not imposed in violation of his due process rights. See 16C C.J.S. Constitutional Law § 1644 (Supp. 2011) ("The touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, and not the culpability of the prosecutor."). Accordingly, we find the judge did not abuse his discretion in declining to grant a mistrial.¹⁹

III. Proportionality Review

Based on our decision to affirm Inman's guilty plea and the judge's rulings regarding the sentencing proceedings, we must assess Inman's sentence of death as it is this Court's duty to conduct a proportionality review of Inman's death sentence. S.C. Code Ann. § 16-3-25(C) (2003).²⁰

"The United States Constitution prohibits the imposition of the death penalty when it is either excessive or disproportionate in light of the crime and the defendant." State v. Wise, 359 S.C. 14, 28, 596 S.E.2d 475, 482 (2004). In conducting a proportionality review, we search for similar cases in which the sentence of death has been upheld. Id.; S.C. Code Ann. § 16-3-25(E) (2003) (providing that in conducting a sentence review the Supreme Court "shall include in its decision a reference to those similar cases which it took into consideration").

After reviewing the entire record, we conclude the sentence of death was not the result of passion, prejudice, or any other arbitrary factor, and the

¹⁹ In light of our decision, we need not address Inman's related issue that the Solicitor's office should have been recused due to a finding of prosecutorial misconduct.

²⁰ See S.C. Code Ann. § 16-3-25(C) (2003) (providing that Supreme Court shall determine whether: (1) the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor; (2) the evidence supports the jury's or judge's finding of a statutory aggravating circumstance; and (3) the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant).

judge's finding of three statutory aggravating circumstances for the murder is supported by the evidence. In its case, the State presented evidence of Inman's confessions, which detailed the events of the Victim's murder, as well as testimony from the forensic pathologist that confirmed Inman committed the murder while in the commission of kidnapping, first-degree criminal sexual conduct, and first-degree burglary.

Furthermore, a review of prior cases establishes that the death sentence in this case is proportionate to that in similar cases and is neither excessive nor disproportionate to the crime. See State v. Stanko, 376 S.C. 571, 658 S.E.2d 94 (2008) (death sentence warranted where defendant was convicted of murder, ABWIK, criminal sexual conduct, kidnapping, and armed robbery); State v. Evins, 373 S.C. 404, 645 S.E.2d 904 (2007) (death sentence warranted where defendant was convicted of murder, kidnapping, first-degree criminal sexual conduct, and grand larceny); State v. Simmons, 360 S.C. 33, 599 S.E.2d 448 (2004) (death sentence upheld where jury found aggravating circumstances of criminal sexual conduct, kidnapping, armed robbery, physical torture, and burglary); State v. Whipple, 324 S.C. 43, 476 S.E.2d 683 (1996) (death sentence upheld where defendant was convicted of murder, criminal sexual conduct, armed robbery, and grand larceny of a motor vehicle).

IV. Conclusion

In conclusion, we hold Inman entered a valid guilty plea as the entry of the plea was not conditioned on the preservation or outcome of the jury sentencing issue. Moreover, even if Inman properly preserved this issue, he has abandoned it on appeal and this Court has repeatedly rejected his argument. As to the propriety of the sentencing proceedings, we conclude the judge did not abuse his discretion in denying Inman's requests to recuse the Solicitor's office as advocates and to question members of the office. Although we find the Solicitor committed prosecutorial misconduct in his treatment of Dr. Loring, we conclude that Inman was not sufficiently prejudiced to warrant the grant of a mistrial.

AFFIRMED.

KITTREDGE, J., concurs. PLEICONES, J., concurring in a separate opinion. TOAL, C.J., and HEARN, J., concur in both opinions.

JUSTICE PLEICONES: I concur with the majority but write separately to elucidate my views of State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000), to the extent they differ from those expressed by the majority.

I agree with the majority that Quattlebaum should be limited to its facts. A one-size-fits-all solution is a poor response to prosecutorial misconduct. “The granting of a motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way.” State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999) (citing State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998)). As the United States Supreme Court has noted, interests beyond the supervision of prosecutorial behavior are implicated by a decision to grant a new trial. United States v. Hastings, 461 U.S. 499, 506-507 (1983). Although the duty to curb prosecutorial misconduct is compelling, other weighty concerns are also at stake, including the need to conserve judicial resources and to avoid imposing additional burdens on victims. Id. at 509. The Hastings Court rebuked the court below for failing to “consider the trauma the victims of these particularly heinous crimes would experience in a new trial, forcing them to relive harrowing experiences now long past, or the practical problems of retrying these sensitive issues more than four years after the events.” Id. at 507.

Even where constitutional protections are implicated, a new trial is called for only in situations where the defendant’s right to a fair trial is fundamentally compromised. Id. at 509 (“[T]he Court has consistently made clear that it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations.”). This is so because “the aim of due process ‘is not punishment of society for the misdeeds of the prosecutor but avoidance of an unfair trial to the accused.’” Smith v. Phillips, 455 U.S. 209, 219 (1982) (quoting Brady v. Maryland, 373 U.S. 83, 87 (1963)). Likewise, I believe that we should seek to avoid a rule unduly punishing the citizens of this State for the misdeeds of solicitors. A rule that turns on whether the misconduct was intentional would have such an effect in some cases. As the Court notes parenthetically, “[t]he touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, and not the culpability of

the prosecutor” (citing 16C C.J.S. Constitutional Law § 1644 (Supp. 2011)). Thus, fairness should be the touchstone of the inquiry, and only in a limited set of exceptional circumstances should prejudice be presumed.

Direct intrusion into and eavesdropping on the defendant’s confidential communications with counsel, as occurred in Quattlebaum, is the sort of violation that is likely to taint the entire trial, making it fundamentally unfair. But this is an exception, not the general rule. As the majority clarifies, Quattlebaum did not overrule prior case law that, under different facts, mandates an inquiry into whether the prosecutorial misconduct resulted in prejudice before a new trial is granted.

With regard to witness intimidation, the established rule in this State is that “in order to obtain relief, a defendant must demonstrate both substantial interference and prejudice.” State v. Williams, 326 S.C. 130, 135, 485 S.E.2d 99, 102 (1997). In the present case, there is no claim that any substantive mitigating testimony was lost. Indeed, there is no claim that any testimony was lost. The defendant’s expert witness investigated appellant’s social background and was able to testify to her opinions regarding it. Appellant claims only that the effectiveness of the expert’s testimony on mitigating factors pertinent to sentencing was diminished by the solicitor’s misconduct.

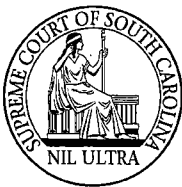
Even assuming that the effectiveness of the testimony was reduced by the solicitor’s attempts to intimidate the witness, the testimony was given before a judge, not a jury. A judge is presumed to weigh evidence properly. See Ross v. Jones, 58 S.C. 1, 35 S.E. 402, 405-406 (1900). As the majority recognizes, the record shows that the sentencing judge was fully aware of the solicitor’s conduct and related events surrounding the expert’s testimony, even finding that it was prosecutorial misconduct. We must presume that he took them into account in considering the testimony.

The solicitor’s conduct in this case was inexplicable and reprehensible. In light of the aggravated nature of the crime and the fact that the sentencing hearing took place before a judge, it is difficult to comprehend how the solicitor believed that intimidating an expert witness would be more likely to ensure a death sentence than to create a risk of reversal. See United States v. Teague, 737 F.2d 378, 382 (4th Cir. 1984) (describing prosecutors’ warnings

to defense witnesses of the consequences of perjury as “dangerous and foolish . . . because they can violate a defendant’s due process right to present his defense witnesses freely” and thereby risk upsetting a guilty verdict). Despite the behavior of the solicitor, I would not ascribe a uniform “attitude” to the solicitor’s office. I would limit myself to the facts appearing in the record, which do not implicate the entire office. Moreover, I cannot assume without more evidence that the solicitor was responsible for the manner in which Georgia authorities handled the matter. Whatever the appropriate response to the solicitor’s conduct may be, it does not include reversal.

Thus, for the reasons set forth above, I concur in the judgment of the majority.

TOAL, C.J. and HEARN, J., concur.



The Supreme Court of South Carolina

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December 19, 2011

The Honorable Daniel E. Shearouse
P.O. Box 11330
Columbia, South Carolina 29211

RECEIVED

DEC 20 2011

RE: *State v. Jerry Buck Inman*, Case No. 5138

S.C. SUPREME COURT

Dear Dan:

Enclosed for filing please find the opinion in the above-referenced case. Thank you.

Sincerely,


John W. Kittredge

JWK/dvk
Enclosure

cc: The Honorable Jean Hoefer Toal [/jtoal@sccourts.org](mailto:jtoal@sccourts.org)
The Honorable Costa M. Pleicones [/cpleicones@sccourts.org](mailto:cpleicones@sccourts.org)
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

September 20, 2011

RECEIVED

SEP 20 2011

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

S.C. Supreme Court

Re: State v. Jerry Buck Inman
Scheduled for Oral Argument September 21, 2011 at 10:30 a.m.

Dear Mr. Shearouse:

The final brief of appellant was filed and served on June 20, 2011. However, in preparing for oral argument, I discovered several citations to the record were incorrect on pages seven, eight, and nine. I have attached these pages with the corrected citations and served opposing counsel, Donald J. Zelenka by hand delivery this morning. I apologize for any confusion or inconvenience this may have caused.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD:lec

cc: Donald J. Zelenka, Esquire

Enclosure

believe it is part of this case, no matter what,” he insisted. R. p. 931, line 24 – p. 932, line 2.

“[T]hat’s been part of my explanation to him about where we go.” R. p. 932, lines 2 – 3.

The judge directed his response to Inman:

Well, I want to tell you, Mr. Inman, that in South Carolina we do not have conditional guilty pleas. And the law is very clear about that. Whether or not this issue is preserved for appeal is not something I will address and I have no control over it. . . . I can tell you that the law is very clear. There are no conditional pleas. And if you enter a plea of guilty, you can’t do it on a condition. . . [Y]ou can’t hold something out in abeyance by entering this guilty plea. Do you understand that?

R. p. 932, lines 5 – 22.

Inman said he did. R. p. 932, line 23.

Before the judge accepted the guilty plea, defense counsel renewed his motion for jury sentencing “to make sure it is preserved.” R. p. 952, line 20 – p. 953, line 13. The judge again addressed Inman:

Now again, Mr. Inman, let me tell you that the law in South Carolina is clear that there are no conditional guilty pleas . . . and whether or not that issue is preserved for appeal is not for me to decide. . . . *An appellate court will make that determination:* the Supreme Court of the State of South Carolina.

R. p. 953, line 15 – p. 954, line 1 (emphasis added).

At this point, the Solicitor voiced his legitimate concern that Inman’s legal strategy “borders on making this a conditional plea” and asked the judge to obtain a specific waiver of “the right to be tried by a jury in the sentencing phase” from Inman. R. p. 957, lines 3 – 14. Defense counsel objected, “Every defendant that appears in court still has the right to

appeal his guilty plea.” R. p. 957, lines 15 – 22. “[T]hat’s absolutely correct,” the judge agreed. R. p. 957, lines 23. He again turned to Inman:

Mr. Inman, I direct this to you. Because in the end, you get advice from your attorneys. But this decision is yours. . . . [T]he law is clear in South Carolina that you cannot enter a conditional guilty plea, which means you cannot plead guilty and reserve some issue with respect with the guilt phase for the appellate courts to rule on.

R. p. 958, lines 4 – 10.

Defense counsel reiterated, “I have advised him that I believe this issue is preserved and will survive the guilty plea.” R. p. 958, lines 15 – 18. Once more, the judge addressed Inman:

Mr. Inman, I want to tell you that we disagree on that . . . and, of course, I am not the final word on this issue because *the Supreme Court will be the final word*. But I believe that you are giving up that right.

R. p. 958, lines 17 – 22 (emphasis added).

Counsel objected, “I don’t think you can give him an opinion about what an appellate court might do with that issue.” R. p. 958, line 24 – p. 959, line 5.

Because of the general uncertainty about the matter among the participants, the judge gave Inman a fleeting opportunity to withdraw his guilty plea. R. p. 959, lines 6 – 14. “[Defense counsel] may be convinced that he’s got an appellate issue,” he added, “and I don’t know whether he does or not. But I am telling you I believe the law in South Carolina is clear that guilty pleas are unconditional.” R. p. 959, lines 17 – 21.

When defense counsel refused to abandon his position, the judge decided, “[I]f this is a big issue, then I am not about to accept the plea.” R. p. 960, lines 18 – 19. But this moment of clarity about the situation quickly slipped away. Instead, the judge addressed Inman one last time:

Mr. Inman, clearly there is some disagreement about the preservation of this issue that your attorneys have raised. I am not involved in it. And I don't have an opinion about it. Whether or not [defense counsel] can do that successfully is something the Supreme Court will answer. The State does not believe that he can. He believes that he can [W]hether or not that happens on appeal is really of no concern here. I want your plea to not be dependent on that issue.

R. p. 961, lines 1 – 12.

After another short recess, the judge continued:

[A]ll I'm trying to determine is that your entry of this plea is not based on or predicated on some issue that you think you might prevail on or might not prevail on in an appellate court . . . [W]hether or not you can prevail on an appellate issue should have not have nothing to do with your entry of this plea . . . So whether or not you are you are successful or not successful at some higher court on some issue that might be raised should have nothing to do with why you're entering this plea.

R. p. 961, line 19 – p. 962, line 25.

Inman replied, "I just want to enter the plea and get it over with, just go on from here with the sentencing phase." R. p. 963, lines 1 – 5. The judge accepted his plea. R. p. 963, line 22 – p. 964, line 4.

The judge denied defense counsel's motion to reconsider. R. p. 1014, lines 13 – 17. At the start of sentencing, he also denied counsel's "demand for a jury trial for the sentencing phase." R. p. 17, lines 13 – 21. Finally, after the State had rested at sentencing, counsel again asked the judge to reconsider and requested a mistrial. R. p. 245, lines 6 – 12. The judge denied the motions. R. 245, lines 21 – 23.

In State v. Truesdale, 278 S.C. 368, 296 S.E.2d 528, 529 (1982), the Supreme Court held that conditional guilty pleas are:

FORM 1
MEDIA COVERAGE OF COURT PROCEEDINGS

STATE OF SOUTH CAROLINA
COUNTY OF

State

vs.

Jerry Buck Inman

IN THE COURT SC Supreme Court

Request for Electronic and Photographic Coverage
Of Judicial Proceedings

Pursuant to Rule 605, South Carolina Appellate Court Rules, the undersigned hereby requests permission to use equipment in order to record, photograph or televise all or portions of the proceedings in the above captioned case.

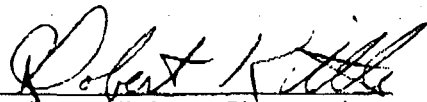
Consistent with Rule 605, the undersigned desires to use the following equipment:
Television camera, tripod, microphone.

The proceedings that the undersigned desires to record, photograph or televise commence on: Wed., Sept. 21, 2011

The personnel who will be responsible for the operation of this equipment are:
Robert Kittle or Ellen Meder

The undersigned hereby certifies that the operation of the equipment and the conduct of the personnel will be in conformity with Rule 605.

This 19th day of September, 2011.


(Individual Signature)

WSPA-TV 7
(Representing/Firm)

RECEIVED:

GRANTED

Date:

Presiding Judge

CHIEF JUSTICE

Columbia Bureau reporter/photographer
(Position)

600 Assembly St., Columbia
(Address)
(803)254-2274
(Telephone Number)

RECEIVED
SEP 19 2011
S.C. SUPREME COURT

RECEIVED

SEP 19 2011

S.C. SUPREME COURT

F A C S I M I L E C O V E R S H E E T

DATE:

9/19/11

TO: Supreme Court Clerk of Court

ATTN:

FAX NUMBER:

803-734-1499

FROM: KIM DEAL

ASSIGNMENT EDITOR



WYFF - TV - P.O. BOX 788

GREENVILLE, SC 29602

PHONE 864 / 242-4404

FAX (SWITCHBOARD) 864 / 240-5329

FAX (NEWSROOM) 864 / 240-5305

FAX (SALES DEPT.) 864 / 240-5234

FAX (BUSINESS OFFICE) 864 / 240-5337

NUMBER OF PAGES (INCLUDING COVER SHEET):

2

COMMENTS:

WSPA will be the pool camera for the Jerry Buck
Inman hearing.

RECEIVED

SEP 19 2011

S.C. SUPREME COURT

Form 1

MEDIA COVERAGE OF COURT PROCEEDINGS

STATE OF SOUTH CAROLINA)

COUNTY OF _____)

IN THE COURT _____)

-VS-)

Jerry Buck Inman hearing)Request for Electronic and Photographic Coverage Of Judicial Proceedings

Pursuant to Rule 605, the undersigned hereby requests permission to use equipment in order to record, photograph, or televise all or portions of the proceedings in the above captioned case.

Consistent with Rule 605, the undersigned desires to use the following equipment:

~~Video Camera, Tripod, Wireless Microphone~~, recording deck and cables

The proceedings that the undersigned desires to record, photograph, or televise commence on (date): 9/21/11

The personnel who will be responsible for the operation of this equipment are:

Myra Ruiz and Don Jackson

The undersigned hereby certifies that the operation of the equipment and the conduct of the personnel will be in conformity with Rule 605.

This 19th day of Sept., 20 11

Dan Whitehead

(Individual Signature)

WYFF-TV

505 Rutherford St

Greenville, SC 29609

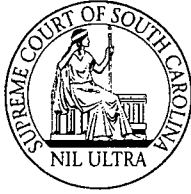
Phone 864-240-5258

Fax 864-240-5305

GRANTED BUT MUST
POLE WITH WSPA-TV
RECEIVED

Date: _____

[Signature]
Presiding Judge **CHEER JUSTICE**



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

September 9, 2011

Chief Appellate Defender Robert M. Dudek
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Assistant Deputy Attorney General Donald J. Zelenka
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Inman, Jerry Buck

Dear Counsel:

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

Appellant	15 minutes
Respondent	15 minutes
Appellant in Reply	10 minutes

This case is scheduled for hearing on Wednesday, September 21, 2011 at 10:30 a.m.

Very truly yours,

Daniel E. Shearouse, Clerk

By Debbie M. Hopkins
Administrative Assistant

DES/dmh

cc: The Honorable William Walter Wilkins, III



The South Carolina Supreme Court

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

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

To: Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
From: Daniel E. Shearouse
Date: July 18, 2011
RE: September Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the September 2011 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of September 20, 21 and 22. Please notify this office in writing prior to July 25, 2011 as to any scheduling conflicts for the September term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

The State v. Inman, Jerry Buck



The South Carolina Supreme Court

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

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

To: Attorney General Alan Wilson
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Donald J. Zelenka
From: Daniel E. Shearouse
Date: July 18, 2011
RE: September Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the September 2011 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of September 20, 21 and 22. Please notify this office in writing prior to July 25, 2011 as to any scheduling conflicts for the September term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

The State v. Inman, Jerry Buck

ALAN WILSON
ATTORNEY GENERAL



RECEIVED

JUN 21 2011

June 21, 2011

S.C. Supreme Court

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

Re: The State v. Jerry Buck Inman

Dear Mr. Shearouse:

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

Sincerely,

Lonetta B. Brawley
Legal Assistant to Donald J. Zelenka
Assistant Deputy Attorney General

/lbb
Enclosure

cc: Robert M. Dudek, Esquire
W. Walter Wilkins, III, Solicitor
Sandi Wofford, Victims Assistance

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

The Honorable Edward W. Miller
Pickens County

Trial Court Case Nos. 2006-GS-39-02222

2006-GS-39-02223

2006-GS-39-02224

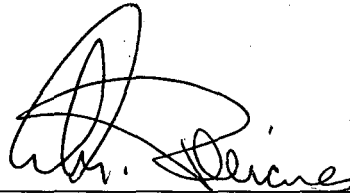
2006-GS-39-02225

ORDER

Based on the appellant's decision to withdraw this appeal and be executed, this Court held this appeal in abeyance and remanded this case to the circuit court to determine if appellant is competent, and if his decision to waive the appeal is knowing and voluntary. Appellant has now filed a motion indicating that he desires to proceed with the appeal.

The motion is granted and the remand order is rescinded. The final briefs of the parties shall be served and filed within twenty (20) days of the date of this order.

IT IS SO ORDERED.



J.

FOR THE COURT

Columbia, South Carolina

June 3, 2011

cc: Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka
The Honorable Edward W. Miller



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

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

June 3, 2011

RECEIVED

JUN 3 2011

S.C. Supreme Court

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

Re: The State v. Jerry Buck Inman

Dear Mr. Shearouse:

Enclosed are the original and six copies of the motion to resume mandatory appeal in the above-captioned case. Please let me know if you have any questions or concerns. I am notifying Judge Miller and opposing counsel of this motion as well as serving them.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/mwl

Enclosure

cc: Honorable Edward Miller
Donald J. Zelenka, Esquire
Jerry Buck Inman

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

ORIGINAL

RECEIVED

JUN - 3 2011

THE STATE,

S.C. Supreme Court
RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

MOTION TO RESUME MANDATORY APPEAL

Appellant moves that this Court issue an order resuming his mandatory direct appeal based upon the attached affidavit of appellant Jerry Buck Inman stating that he no longer wishes to waive his appeals and be executed and desires for his direct appeal to resume.

1. On August 19, 2008, appellant Inman pleaded guilty in Pickens County, before the Honorable Edward W. Miller, on indictments charging him with murder, first-degree burglary, first-degree criminal sexual conduct, and kidnapping. The state sought the death penalty. Appellant Inman was represented by James Bannister, Symmes Culbertson, and John DeJong. Sentencing was deferred until September, 2008.

2. On September 8 through 11, 2008, the state presented its case in aggravation. Midway through the defense case in mitigation, the judge granted the defense a continuance after the solicitor threatened a key mitigation witness, Dr. Marti Loring, with criminal prosecution. On April 20-22, 2009, the defense presented its evidence in mitigation.

3. The judge sentenced appellant Inman to death on April 22, 2009 for murder and consecutive sentences of thirty years for first-degree burglary and first-degree criminal sexual conduct. Appellant Inman, through trial counsel, filed a notice of intent to appeal his guilty plea and death sentence and requested that this Court vacate both.

4. After the initial brief of appellant was filed, the initial brief of respondent was filed, and the initial reply brief of appellant was filed, as well as the Record on Appeal on March 16, 2011, appellant Inman wrote the Chief Justice stating that he no longer wished to pursue his appeals and desired to be executed.

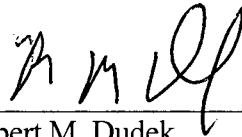
5. Based on receipt of appellant's letter this Court issued an order dated March 22, 2011 remanding appellant Inman's case for a competency to waive appeals and be executed hearing before Judge Miller pursuant to the Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993) standard. This Court appointed undersigned counsel to represent appellant Inman at the competency hearing. Among undersigned counsel's preparation for that competency hearing have been telephone discussions with appellant Inman's pastor, Pastor Mike Hensley, his sister, Denise, and his stepfather, Ken McArthur in Tennessee. Counsel also consulted with trial counsel James Bannister, and met with appellant Inman three times on death row among other preparations.

6. On undersigned counsel's third meeting with appellant Inman yesterday on death row, Thursday, June 2, 2011, appellant Inman informed counsel that he wished to reinstate his appeals. Appellant Inman executed an affidavit stating his desires and that affidavit is attached to this motion. In this affidavit appellant Inman states, *inter alia*: "[I] have decided that I do not want to go through this [competency] process, and I am respectfully requesting my attorney and this Court [the Court of General Sessions] to notify the Supreme Court that I want my direct appeal taken out of abeyance. I understand that appeal will then proceed in the normal fashion . . . I make this

decision after much thought and reflection.” Affidavit of Jerry Buck Inman at paragraphs three and four.

WHEREFORE, counsel for appellant Inman would respectfully request that this Court issue an order resuming his mandatory direct appeal.

Respectfully submitted,

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

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

June 3, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS

THE STATE,)

Respondent)

v.)

JERRY BUCK INMAN,)

Appellant)

AFFIDAVIT OF
JERRY BUCK INMAN

PERSONALLY APPEARED BEFORE ME Jerry Buck Inman, who being duly sworn, deposes and says that:

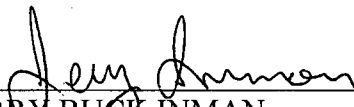
1. The appeal from my murder conviction and death sentence in Greenville County was held in abeyance and this case remanded for competency to waive appeals proceedings.

2. I understand the first competency evaluation is scheduled for Monday, June 6, 2011 at 8:30 a.m. at Crafts-Farrow Hospital, Psychiatric Building #6. I further understand that Dr. Richard Frierson is the head of the evaluation team for the Department of Mental Health.

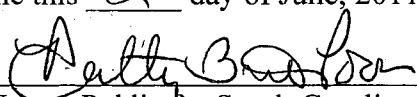
3. I have today informed my attorney, Robert M. Dudek, that I have decided that I do not want to go through this process, and I am respectfully requesting my attorney and this Court to notify the Supreme Court that I want my direct appeal taken out of abeyance. I understand that appeal will then proceed in the normal fashion.

4. I make this decision after much thought and reflection.

FURTHER AFFIANT SAYETH NOT.


JERRY BUCK INMAN

SUBSCRIBED AND SWORN TO before
me this 2 day of June, 2011


Notary Public for South Carolina (L.S.)

My Commission Expires: 5/1/2018

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

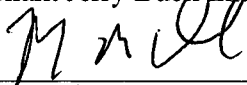
V.

JERRY BUCK INMAN,

APPELLANT

CERTIFICATE OF SERVICE

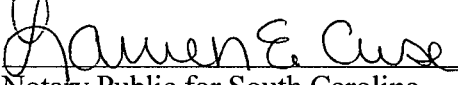
The undersigned attorney hereby certifies that a true copy of the Motion to Resume Mandatory Appeal in the above-referenced case has been served upon the Honorable Edward W. Miller, Donald J. Zelenka, Esquire, and appellant Jerry Buck Inman this 3rd day of June, 2011



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 3rd day of June, 2011

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 23, 2014.

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

ORDER

By order dated March 22, 2011, this matter was remanded to the Honorable Edward W. Miller to determine whether appellant is competent and his decision to waive his right to a direct appeal is knowing and voluntary. Judge Miller was ordered to conduct a hearing within sixty days of the date of the order.

Judge Miller has now requested an extension of time in which to hold a hearing in this matter based on a request by appellant's counsel for a four month extension to have an evaluation of appellant completed by the Department of Mental Health. Judge Miller indicates he does not believe there has been any intentional effort to delay resolution of this matter and the extension request appears to be reasonable.

The request for an extension of time in which to conduct the hearing in this matter is granted. Judge Miller shall conduct a hearing within thirty (30) days after completion of appellant's evaluation by the Department of Mental Health.

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

May 23, 2011

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General
Donald J. Zelenka
Solicitor Robert Mills Ariail
The Honorable Edward W. Miller

Shearouse, Daniel

From: Miller, Edward W.
Sent: Wednesday, May 18, 2011 9:26 AM
To: Shearouse, Daniel
Subject: Jerry Buck Inman - Waiver of Appeal Competency Hearing

Mr. Shearouse,

I have forwarded to you an e-mail chain relating to the Order issued by Chief Justice Toal requiring me to hold a hearing in the Jerry Buck Inman waiver of appeal matter by May 21, 2011. Clearly this deadline will not be met and I am requesting an extension of time to hold this hearing. An extension of four months has been requested to allow a thorough evaluation of Mr. Inman. I do not believe there has been any intentional effort to delay the case and an extension appears reasonable. Please let me know how I am to proceed.

Thank you in advance. Ned Miller

From: Robert M. Dudek [mailto:RDudek@sccid.sc.gov]
Sent: Tuesday, May 17, 2011 10:50 AM
To: Miller, Edward W.
Cc: jemillerlc@sccourts.org; Don Zelenka; Mark Binkley
Subject: FW: request for an update -- Jerry Buck Inman

Judge Miller:

As you can see below Mark Binkley recommends a four month extension based in part on the time frame in State v. Jeffrey Motts who was executed on Friday, May 6, 2011. I was the attorney for Mr. Motts and I attended two of the evaluations sessions and Betsy Franklin-Best covered the third evaluation session for me. Dr. Frierson is a very meticulous psychiatrist and he again heads the DMH evaluation session in this case. DMH notified me that the first evaluation session will begin on June 6, 2011 at 8:30 a.m. I will attend that session.

I have met with Jerry Buck Inman twice on death row since this process began. I have talked to both of his attorneys, and Jim Bannister talked with Mr. Inman in person also. Jim reported to me his recommendations. I

I have also talked several times with Mr. Inman's family members and his pastor – all in Tennessee. **I have no interest in delay.** I hope to meet with Mr. Inman again next week. However, it is obvious that this deadline cannot be met. I have worked on this case in good faith, and I have no reason to believe that Dr. Frierson has not been doing anything other than his usual thorough job in good faith and as quickly as his conscience will allow in a capital competency matter. I hate to be the one asking for a continuance but please let me know if a formal motion needs to be filed or whether you will just communicate with the Supreme Court directly. Please let me know what is required at this time from me, Don Zelenka and Mark Binkley. Thank you –

Robert M. Dudek
Chief Appellate Defender
803-734-1955

From: Mark Binkley [mailto:MWB86@SCDMH.ORG]
Sent: Tuesday, May 17, 2011 10:06 AM
To: Robert M. Dudek
Subject: FW: request for an update

Bob—
I'm resending as I indicated.

Please confirm receipt.

Thanks.

--Mark

From: Mark Binkley
Sent: Tuesday, May 03, 2011 10:09 AM
To: rdudek@sccid.sc.gov
Cc: 'Don Zelenka'
Subject: FW: request for an update

Bob—

Tamika Lee, the paralegal in FES, will be contacting you to coordinate the interview date with Dr. Frierson, but he has availability the first week in June.

As we discussed, estimating a completion date for the evaluation is difficult in these types of cases.

You have had first-hand experience with Singleton v. State Competency to Waive Death Penalty Appeals cases, and with Dr. Frierson serving as an examiner in such cases, so you can speak to that issue with the Court yourself.

Also the recently reported case of State v.

Motts, <http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=26947> recited this timeline:

"The court-appointed examiners included: Dr. Richard Frierson, a Professor of Clinical Psychiatry for the University of South Carolina School of Medicine (USCSM); Dr. Amanda (Gowans) Salas, Fellow in Forensic Psychiatry for the USCSM; and Dr. Michael Gassen, Chief Psychologist for the Department of Mental Health. The examiners evaluated thirty-four-year old Motts on October 8, 2009, November 12, 2009, and December 16, 2009.

On January 5, 2010, the court-appointed examiners submitted a joint, fifteen-page report explaining their ultimate conclusion that Motts was competent to waive his direct appeal under the standard set forth in Singleton and followed in Torrence. "

I recommend requesting a four month extension.

--Mark

From: Mark Binkley
Sent: Monday, May 02, 2011 11:43 AM
To: 'Don Zelenka'; 'rdudek@sccid.sc.gov'
Cc: Tamika Lee
Subject: RE: request for an update

Bob, Don—

Dr. Frierson has not yet seen the inmate so there is not any prospect of his evaluation being completed by May 21st.

In terms of moving the evaluation along, we need your assistance.

1. Attached is the standard forensic evaluation information sheet, which among other things asks for Next-of-Kin contact information. The Forensic Evaluation Service (FES) would like the form filled out, but what staff really need ASAP is the Next-of-Kin information, logically from Bob.
2. The standard list of documents required for all Forensic evaluations and listed on the standard form for orders for evaluations is as follows:

"The following documents must be attached to this order upon submission to the Department of Mental Health or to the Department of Disabilities and Special Needs whichever is applicable:

1. Completed DMH/DDSN Outpatient Information Appointment Sheet
2. Copy of the indictment(s) (if issued)
3. Copy of the arresting agency's incident report
4. Copy of the warrant(s)
5. Law enforcement investigative reports
6. Defendant statements to law enforcement, written or electronically recorded
7. Witness statements to law enforcement
Autopsy reports (if applicable)"

Thanks

--Mark

From: Mark Binkley
Sent: Wednesday, April 13, 2011 1:52 PM
To: 'Don Zelenka'; 'rdudek@sccid.sc.gov'
Subject: FW: request for an update

Bob, Don—

Bob called asking for a status report on the evaluation.

This is the message back from the Forensic Evaluation Service paralegal, below.

Anything you can do to assist in getting FES the necessary signed Order and documents would be appreciated.

Let me know if you have any questions.

--Mark

From: Tamika Lee
Sent: Wednesday, April 13, 2011 10:06 AM
To: Mark Binkley; Jeffrey Musick
Subject: RE: request for an update

Our efforts:

3/28/11: Rec'd "Revised Proposed court order and Motion"

3/28/11: Dr. Musick ordered all DMH records for Inman (Rec'd)

3/31/11: Email from Defense to AG regarding status of signed order (ETA: 4/1/11)

3/31/11: Case assigned to DMH examiners (Dr. Frierson and Dr. Law)

3/31/11: Email to request to AG (Zelenka) for completed info sheet. (He responded)

To date: FES has not received a signed order nor any of the corresponding documents in reference to this order.

Hope this helps.

Tamika

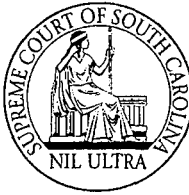
From: Mark Binkley
Sent: Wednesday, April 13, 2011 9:06 AM
To: Tamika Lee; Jeffrey Musick
Subject: request for an update

Recall the competency to waive appeals in the Death Penalty case of Jerry Buck Inman. His appellate counsel, Bob Dudek, is requesting the status of our efforts to complete the evaluation. He probably suspects, as do I, that the examiners are going to experience difficulty in meeting the deadline (Week of May 16). Please advise me how it's going.

Thanks.

--Mark

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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 22, 2011

Mr. Jerry Buck Inman, #5256
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

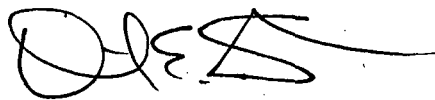
Re: The State v. Inman, Jerry Buck

Dear Mr. Inman:

Enclosed is the order issued in the above entitled matter.

By copy of this letter and order, we are advising all interested parties of the action by the Court.

Very truly yours,



CLERK

DES/dmh

Enclosure

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Donald J. Zelenka
The Honorable Robert Mills Arian
The Honorable Edward W. Miller

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

ORDER

Appellant pled guilty to murder, kidnapping, first degree burglary, and first degree criminal sexual conduct and was sentenced to death. A Notice of Appeal and the parties' initial briefs have been filed for appellant's direct appeal. Petitioner has now written to the Chief Justice indicating he wishes to waive his direct appeal and sentence review and accept his death sentence.

This matter is remanded to the Honorable Edward W. Miller for a determination of whether appellant is competent and his decision to waive his right to a direct appeal is knowing and voluntary. Robert M. Dudek shall represent appellant at the competency hearing.

Judge Miller shall, within sixty (60) days of the date of this order, conduct a full hearing allowing the introduction of testimony, exhibits, and evidence to provide a full record for this Court's evaluation. In determining

appellant's competency to waive his right to a direct appeal, Judge Miller shall apply the standard set forth in *Singleton v. State*, 313 S.C. 75, 437 S.E.2d 53 (1993). Further, Judge Miller shall conduct an in depth inquiry to ensure that appellant persists in his desire to abandon his direct appeal. *Id.*

IT IS SO ORDERED.



FOR THE COURT C. J.

Columbia, South Carolina

March 22, 2011



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 15, 2011

RECEIVED

MAR 15 2011

S.C. Supreme Court

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

Re: State v. Jerry Buck Inman (update on his letter to the Court)

Dear Mr. Shearouse:

Please accept this letter as the promised update on this case. I met with Mr. Inman personally on death row before my last letter to this Court, and obtained some more background information. I followed up that interview by talking to his sister, Denise Baker, his Pastor, Mike Hensley, his stepfather since a young age, Ken McArthur, and trial counsel, Symmes Culbertson. All of this was with Mr. Inman's permission.

I spoke to Mr. Inman again today, and he expressed that there has not been a change in his desire to waive his appeals and to be executed despite "understanding opposition" from his family and pastor. I informed Mr. Inman that the Record on Appeal would be filed tomorrow so his appeal was not delayed but that I would communicate his continued desire to waive his appeals to this Court and await guidance from this Court. Please contact me if I can provide the Court with any further information.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

cc: Donald Zelenka, Esquire
Jerry Inman

RMD:lec



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 5, 2011

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

RECEIVED

MAR 04 2011

S.C. Supreme Court

Re: State v. Jerry Buck Inman (desire to drop appeals letter to the Chief Justice)

Dear Mr. Shearouse:

I discussed in person today Mr. Inman's letter to the Chief Justice pertaining to his desire to drop his appeals and be executed. After discussing the mechanics of the competency to be executed process Mr. Inman said out of respect for my work as his attorney he would allow me to discuss the competency to be executed process with his family also. He provided me with the means to reach his family members. However, Mr. Inman did want me to communicate to this Court that he is resolute in his desire to drop his appeals, and be executed.

I informed Mr. Inman we would proceed with the Record on Appeal and the Final Brief so that his appeal was not delayed in any manner in the event it went forward. Given the onerous nature of the competency to be executed procedure, and its expense, I would request that the Court allow me ten days to communicate again with Mr. Inman and for the first time with his family before remanding this case for a competency to be executed proceeding. I will, as an officer of this Court, report back to this Court within ten days. Should you have questions or concerns, please do not hesitate to contact me.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD:lec

cc: Jerry Buck Inman
Donald J. Zelenka, Esquire



ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 1, 2011

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

RECEIVED

MAR 01 2011

S.C. Supreme Court

Re: State v. Jerry Buck Inman

Dear Mr. Shearouse:

I am in receipt of a copy of the letter from the above-referenced client to Chief Justice Toal. I am going to explain to him again -- in greater detail -- the competency remand process that is likely to follow if he is serious with about going down this path. I will report back to this Court his official position on Friday, March 4, 2011.

Should you need anything further from our office, please do not hesitate to contact me.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD:lec

cc: Donald J. Zelenka, Esquire

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

The Honorable Edward W. Miller
Pickens County

Trial Court Case No. 2006-GS-39-02222

2006-GS-39-02223

2006-GS-39-02224

2006-GS-39-02225

ORDER

The request for an extension to serve and file the record on appeal is granted and extended until March 16, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

March 3, 2011

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Donald J. Zelenka



ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

RECEIVED

MAR 02 2011

March 2, 2011

S.C. Supreme Court

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

Re: State v. Jerry Buck Inman

Dear Mr. Shearouse:

The record on appeal in the above-referenced case is due to be served and filed today. Since we are still missing four documents, and given counsel's caseload, I am requesting a one-time only two week extension to compile and file the record on appeal with this Court. This request is not made for purposes of delay and is made in good faith. Counsel will file the record on appeal earlier than in the next two weeks if possible, and depending on how events transpire in the next couple of weeks in this case.

By copy of this letter, I am informing Donald J. Zelenka, Esquire, of the Attorney General's Office, of my request.

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

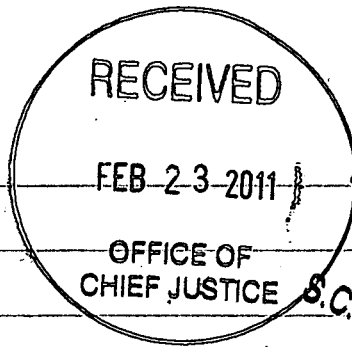
Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD:lec

cc: Donald J. Zelenka, Esquire

Chief Justice Toal,



RECEIVED
FEB 23 2011
S.C. SUPREME COURT

I am an inmate on death row at
Leiber Correctional.

On April 22nd, 2008, I was sentenced
to death for murder, Burglary, Criminal
sexual conduct and Kidnapping.

I am guilty of these crimes, and
believe I recieved the correct sentence
for them, as did the judge who sentenced
me.

Therefore, at this time I would
like to waive my sentence review and
direct appeals, and accept my sentence.

I would like to ask that this
process begin now, so that I may
drop my appeals.

I very much appreciate your
assistance and consideration in this
matter. Thank You.

Respectfully,
Jerry Inman #5256-RB206
Leiber Correctional Institution

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

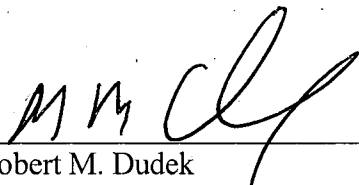
V.

JERRY BUCK INMAN,

APPELLANT

CERTIFICATE OF SERVICE

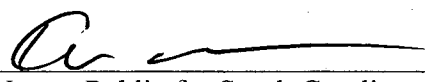
The undersigned attorney hereby certifies that a true copy of the Initial Reply Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 31st of January, 2011.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 31st of January, 2011.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

The Honorable Edward W. Miller
Pickens County

Trial Court Case No. 2006-GS-39-02222
2006-GS-39-02223
2006-GS-39-02224
2006-GS-39-02225

ORDER

Appellant seeks a third extension of time to serve and file the Initial Reply Brief in the above entitled matter. The request for an extension is granted and extended until January 31, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

January 21, 2011

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Donald J. Zelenka

original

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

RECEIVED

JAN 20 2011

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

**PETITION FOR EXTENSION TO FILE
INITIAL REPLY BRIEF**

The undersigned counsel respectfully requests a ten day extension in which to file the initial reply brief in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

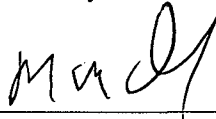
1. The initial reply brief in this case is due to be served and filed today.
2. Counsel plans to file the initial brief of appellant and designation of matter in State v. Timothy Hayes with the Court of Appeals tomorrow, January 21, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Derek Maner with the Court of Appeals on January 14, 2010. Counsel filed the stay for execution in State v. Andres Torres with this Court and a motion to remand for a reconstruction hearing in State v. Teddy Richardson with the Court of Appeals on January 12, 2010. Counsel argued Jack Parker v. State for Joseph L. Savitz, III in the Supreme Court Wednesday, January 4, 2011. On the same day, counsel argued the death penalty case of State v. Jeffrey Motts in the Supreme Court. Counsel filed the petition for rehearing in State v. Darrell Burgess with this Court yesterday, December 30, 2010. Counsel filed the petition for writ of certiorari to the Court of Appeals and accompanying

appendix in the Supreme Court in State v. Roger Parker the day before, Wednesday, December 29, 2010. Counsel filed the initial reply brief in State v. Jimmy McKerley with this Court on Wednesday, December 22, 2010. Counsel also filed the brief of petitioner in Roy Tennant v. State with the Supreme Court that same day, December 22, 2010. Counsel filed the initial brief of appellant and designation of matter with this Court in the murder case of State v. Kendrick Taylor on December 17, 2010. Counsel filed the petition for writ of certiorari to the Court of Appeals in State v. Brandon Johnson with the Supreme Court on December 9, 2010. Counsel filed the petitions for writ of certiorari in the Supreme Court to the Court of Appeals and accompanying appendices in the murder case of State v. Darian Robinson and the murder case of State v. Cameron Brown which ended in a verdict of voluntary manslaughter on, December 6, 2010 with the Supreme Court. Counsel filed the petition for writ of certiorari to the Court of Appeals and accompanying appendix in the Supreme Court in the murder case of State v. Perry Strickland on Friday, December 3, 2010.

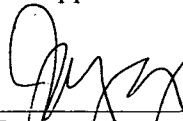
3. This request is made in good faith, and not for purposes of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become more manageable in the near future, and less extensions will need to be requested.

WHEREFORE, the undersigned counsel would respectfully request a ten day extension in which to file the initial reply brief. Counsel respectfully requests that the time limits for filing the initial reply brief be held in abeyance pending a ruling on this motion.

Respectfully submitted,

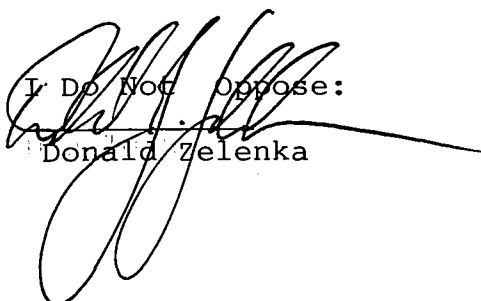


Robert M. Dudek
Chief Appellate Defender



T. Patton Adams
Executive Director
J. Hugh Ryan, III
General Counsel

I Do Not Oppose:



Donald Zelenka

January 20, 2011

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

The Honorable Edward W. Miller

Pickens County

Trial Court Case No. 2006-GS-39-02222

2006-GS-39-02223

2006-GS-39-02224

2006-GS-39-02225

ORDER

Appellant seeks a second extension of time to serve and file the Initial Reply Brief in the above entitled matter. The request for an extension is granted and extended until January 20, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

January 18, 2011

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Donald J. Zelenka

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

RECEIVED

JAN 13 2011

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

**PETITION FOR EXTENSION TO FILE
INITIAL REPLY BRIEF**

The undersigned counsel respectfully requests a ten day extension in which to file the initial reply brief in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

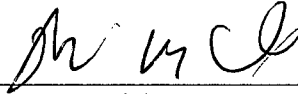
1. The initial reply brief in this case is due to be served and filed today.
2. Due to inclement weather, our office was closed both Monday, January 10, 2011 and Tuesday, January 11, 2011 during the time that counsel had reserved to work on this initial brief of appellant and designation of matter. Counsel is working to file today, the stay for execution in State v. Andres Torres and a motion to dismiss or in the alternative for a reconstruction hearing in State v. Teddy Richardson. Counsel argued Jack Parker v. State for Joseph L. Savitz, III in the Supreme Court Wednesday, January 4, 2011. On the same day, counsel argued the death penalty case of State v. Jeffrey Motts

in the Supreme Court. Counsel filed the petition for rehearing in State v. Darrell Burgess with this Court yesterday, December 30, 2010. Counsel filed the petition for writ of certiorari to the Court of Appeals and accompanying appendix in the Supreme Court in State v. Roger Parker the day before, Wednesday, December 29, 2010. Counsel filed the initial reply brief in State v. Jimmy McKerley with this Court on Wednesday, December 22, 2010. Counsel also filed the brief of petitioner in Roy Tennant v. State with the Supreme Court that same day, December 22, 2010. Counsel filed the initial brief of appellant and designation of matter with this Court in the murder case of State v. Kendrick Taylor on December 17, 2010. Counsel filed the petition for writ of certiorari to the Court of Appeals in State v. Brandon Johnson with the Supreme Court on December 9, 2010. Counsel filed the petitions for writ of certiorari in the Supreme Court to the Court of Appeals and accompanying appendices in the murder case of State v. Darian Robinson and the murder case of State v. Cameron Brown which ended in a verdict of voluntary manslaughter on, December 6, 2010 with the Supreme Court. Counsel filed the petition for writ of certiorari to the Court of Appeals and accompanying appendix in the Supreme Court in the murder case of State v. Perry Strickland on Friday, December 3, 2010.

3. This request is made in good faith, and not for purposes of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become more manageable in the near future, and less extensions will need to be requested.

WHEREFORE, the undersigned counsel would respectfully request a ten day extension in which to file the initial reply brief. Counsel respectfully requests that the time limits for filing the initial reply brief be held in abeyance pending a ruling on this motion.

Respectfully submitted,

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

Robert M. Dudek
Chief Appellate Defender

January 12, 2011

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

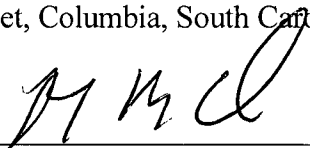
V.

JERRY BUCK INMAN,

APPELLANT

CERTIFICATE OF SERVICE

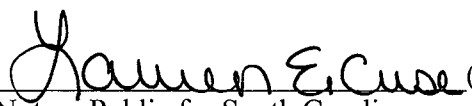
The undersigned attorney hereby certifies that a true copy of the petition for extension of time in which to file the petition for writ of certiorari and accompanying appendix in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 12th day of January, 2011.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 12th day of January, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

The Honorable Edward W. Miller

Pickens County

Trial Court Case No. 2006-GS-39-02222

2006-GS-39-02223; 2006-GS-39-02224

2006-GS-39-02225

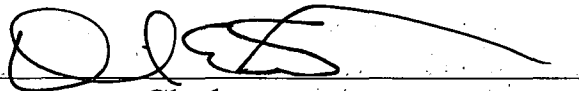
ORDER

The request for an extension to serve and file the appellant's initial reply brief is granted and extended until January 10, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

January 4, 2011

cc: Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka
Robert Mills Ariail, Esquire



ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

December 30, 2010

RECEIVED

DEC 30 2010

S.C. Supreme Court

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

Re: The State v. Jerry Buck Inman (Capital Case)

Dear Mr. Shearouse:

The reply brief to the initial brief of respondent and designation of matter is due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting a ten day extension in which to serve and file the reply brief.

By copy of this letter, I am informing Donald J. Zelenka, Esquire, of the Attorney General's Office, of my request.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD:lec

cc: Donald J. Zelenka, Esquire



HENRY McMASTER
ATTORNEY GENERAL

RECEIVED

DEC 23 2010

December 20, 2010

S.C. Supreme Court
pm 12-20-10

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

Re: The State v. Jerry Buck Inman

Dear Mr. Shearhouse:

Enclosed please find the *Initial Brief of Respondent and Designation of Matter* in the above-referenced case for filing. By copy of this letter, I am serving opposing counsel with same.

Sincerely,

Donald J. Zelenka
Assistant Deputy Attorney General

DJZ/lbb
Enclosure

cc: Joseph L. Savitz, III, Esquire
Robert M. Ariail, Solicitor
Sandi Wofford, Victims Assistance

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

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

THE STATE,

Respondent,

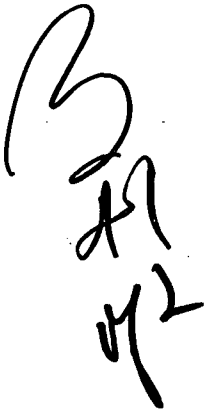
v.

JERRY BUCK INMAN,

Appellant.

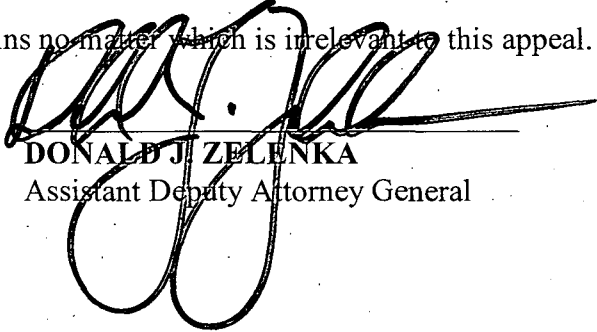
**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Respondent proposes the following to be included in the Record on Appeal:

- 
1. Motion hearing transcripts -
 - January 8, 2007
 - April 16, 2007
 - September 14, 2007
 - May 8, 2008
 - July 18, 2008
 - July 30, 2008
 - August 19, 2008
 - August 27, 2008
 - September 8,9,10,11, 2008
 - April 14, 2009
 - April 20, 21, 22, 2009
 2. Sentencing Order - April 22, 2010.
 3. Motions and Responses:
 - Defendant's Motion to Determine Mode of Trial
 - State's Response to Defendant's Motion to Determine Mode of Trial
 - Motion for Recusal of Thirteenth Circuit Solicitor's Office
 - Renewed Motion for Recusal of Thirteenth Circuit Solicitor's Office

- Response to Renewed Motion for Recusal of Thirteenth Circuit Solicitor's Office , dated April 19, 2009.
- State's Response to defendant's Motion to Reconsider Order Dated November 15, 2007 RE: Jury Trial Sentencing After Entry of Guilty Plea.
- Motion to Suspend Proceedings, April 21, 2009
- Motion to Determine Role of Solicitor and Prosecution Team, April 20, 2009.
- Renewed Motion for Mistrial
- Response to Renewed Motion for Mistrial.
- Response to Motion to Suspend
- Motion to Reconsider and Motion for New Trial filed May 1, 2009.
- Motion for Continuance Based Upon Duty To Present Mitigation Evidence.
- Response to Motion to Reconsider and Motion for Mistrial,
- State's Response to Motion to Reconsider and For New Trial dated June 4, 2009.
- Order , denying motion to reconsider and new trial, dated July 17, 2009.

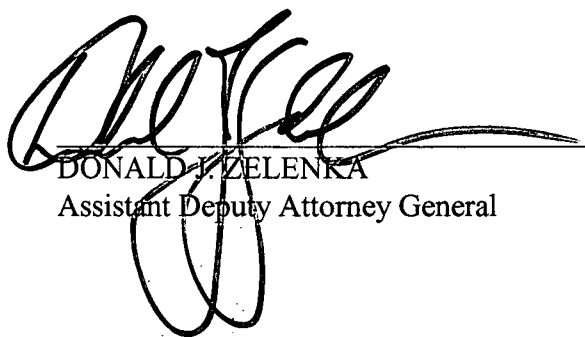
I certify that this Designation contains no matter which is irrelevant to this appeal.


DONALD J. ZELENKA
Assistant Deputy Attorney General

December 20, 2010

CERTIFICATE OF SERVICE

I, **Donald J. Zelenka**, hereby certify that I have served the *Initial Brief of Respondent and Designation of Matter* in the foregoing action by depositing copies in the InterAgency Mail to Joseph L. Savitz, III, Senior Appellate Defender, Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, SC 29201 this 20th day of December, 2010.



DONALD J. ZELENKA
Assistant Deputy Attorney General

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

The Honorable Edward W. Miller

Pickens County

Trial Court Case No. 2006-GS-39-02222

2006-GS-39-02223

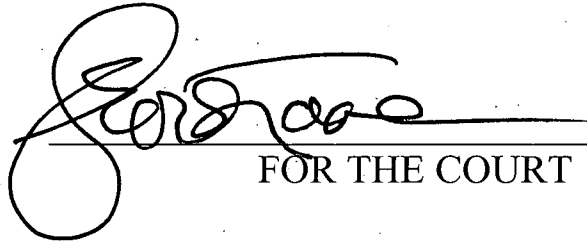
2006-GS-39-02224

2006-GS-39-02225

ORDER

Respondent seeks a fifth extension of time for one week to serve and file the Initial Brief of Respondent and Designation of Matter in the above entitled matter, and asserts that extraordinary circumstances justify this extension. The opposing party does not oppose the motion. The request for an extension is granted until December 20, 2010. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.



FOR THE COURT C.J.

Columbia, South Carolina

December 15, 2010

cc: Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

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

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

RECEIVED

DEC 14 2010

S.C. Supreme Court

THE STATE,

Respondent,

v.

JERRY BUCK INMAN,

Appellant.

**MOTION TO ENLARGE TIME FOR
FILING INITIAL BRIEF OF RESPONDENT
AND DESIGNATION OF MATTER FOR ONE WEEK**

The Respondents, above-named, hereby make a motion to this Court to extend the time for filing the Initial Brief of Respondent and Designation of Matter from December 13, 2010 for a period of seven (7) days up to and including Monday December 20, 2010. This is Respondents final request for an extension. This request is due to the length of the record on appeal, intervening business events in state and federal court, and a desire to have the death penalty appellate brief matter also reviewed by co-counsel in the Solicitor's office in Greenville prior to filing in this Court due to the particular issues raised. Respondents current brief is over 80 pages in length. Respondent counsel is further traveling to Pickens County on December 16, 2010 and will review the records within the clerks office concerning issues raised in the brief.

Respondent submits that good cause has been shown.

Respondent counsel has been primarily involved in the review and preparation of the brief since the last request. The following action had been taken to avoid further extensions. Counsel has cleared and re-assigned other matters through the next month to ensure no further extensions will be necessitated in this matter. The matters remaining on the counsel's personal calendar that could not be re-assigned due to prior work involvement include a deposition in *Kenneth Simmons v. State* PCR action, a Petition for Certiorari and Appendix in the death penalty PCR appeal in *John Hughey v State*, due December 29, the Initial Brief of Respondent in *State v. Garvin DuVall* due on December 29, a post-hearing memorandum in the death penalty PCR matter of *Marion Lindsey v. State* due on December 29, 2010, an oral argument in the death penalty case of *State v. Stephan Bryant* on November 30, 2010 in the Court, and an oral argument in Richmond in the habeas corpus appeal in *Donald Brandt v. South Carolina* on December 7, 2010.

This particular appeal consists of three issues and numerous transcripts and pleadings and exhibits involving the claims of prosecutorial misconduct. Below-signed counsel has written over 80 pages of the partial draft *Initial Brief of Respondent* at the time of this filing. Counsel has worked primarily on the matter through the weekend and beyond midnight last evening and will continue to do so until completion. However, counsel will be on medical leave from the afternoon of December 14 and all day December 15, 2010 due to a medical procedure.

Counsel contacted opposing counsel Joseph Savitz, who advised counsel that he had no opposition to the request in Mr. Inman's appeal.

Wherefore Respondents respectfully request an extension of a period of time of seven(7)

days up to and including December 20, 2010 to complete this initial brief of respondent and designation of matter.

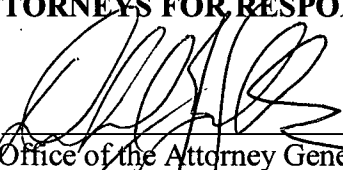
Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

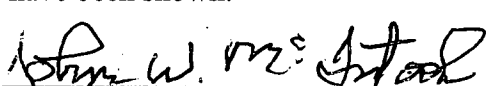
DONALD J. ZELENKA
Assistant Deputy Attorney General

ATTORNEYS FOR RESPONDENT

By: 
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

December 13, 2010.

I concur that extraordinary circumstances and good cause have been shown.

BY: 
JOHN W. McINTOSH

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

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

THE STATE,

Respondent,

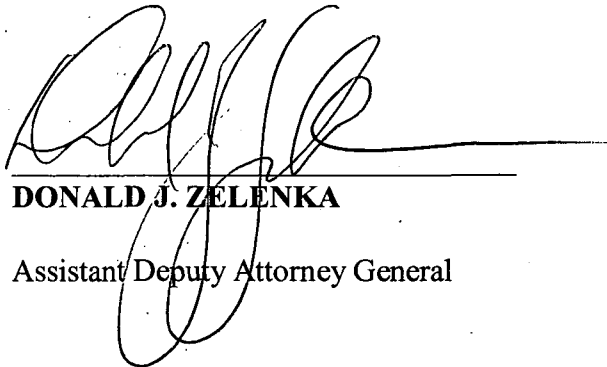
v.

JERRY BUCK INMAN,

Appellant.

CERTIFICATE OF SERVICE

*I, Donald J. Zelenka, hereby certify that I have served Respondents **Motion to Enlarge Time for Filing Initial Brief of Respondent** on Robert M. Dudek and Joseph L. Savitz, Esquires, 1330 Lady Street, Suite 401, Columbia, South Carolina 29201 by depositing copies in the InterAgency Mail this 13th day of December 2010.*



DONALD J. ZELENKA
Assistant Deputy Attorney General

Hopkins, Debbie

From: Robert M. Dudek <RDudek@sccid.sc.gov>
Sent: Wednesday, December 15, 2010 3:21 PM
To: Hopkins, Debbie
Cc: Don Zelenka; Lauren E. Cruse
Subject: State v. Jerry Buck Inman

Debbie:

I understand that opposing counsel, Don Zelenka, has requested a one week extension in this capital case. I consent to this extension request.

Robert M. Dudek
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Appellate Division
PO Box 11549
Columbia, SC 29211
(803) 734-1330
(803) 734-1397 (fax)
rdudek@sccid.sc.gov

RECEIVED

DEC 15 2010

S.C. Supreme Court

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

The Honorable Edward W. Miller

Pickens County

Trial Court Case No. 2006-GS-39-02222

2006-GS-39-02223

2006-GS-39-02224

2006-GS-39-02225

ORDER

Respondent seeks a fourth extension of time to serve and file the Initial Brief of Respondent and Designation of Matter, and asserts that extraordinary circumstances justify this extension. The request for an extension is granted until December 13, 2010. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.


C.J.
FOR THE COURT

Columbia, South Carolina

November 15, 2010

cc: Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

HENRY MCMASTER
ATTORNEY GENERAL

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NOV 15 2010

S.C. SUPREME COURT



November 12, 2010

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

Re: The State v. Jerry Buck Inman

Dear Mr. Shearouse:

Enclosed please find a Motion to Enlarge Time to File Initial Brief of Respondent and Designation of Matter in the above-referenced case. By copy of this letter, I am serving opposing counsel with same.

Sincerely,

Lonetta B. Brawley
Legal Assistant to Donald J. Zelenka
Assistant Deputy Attorney General

/lbb

Enclosure

cc: Robert M. Dudek, Esquire
Joseph L. Savitz, III, Esquire

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

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

THE STATE,

Respondent,

v.

JERRY BUCK INMAN,

Appellant.

**MOTION TO ENLARGE TIME FOR
FILING INITIAL BRIEF OF RESPONDENT
AND DESIGNATION OF MATTER**

6
#1

The Respondents, above-named, hereby make a motion to this Court to extend the time for filing the Initial Brief of Respondent and Designation of Matter from November 12, 2010 for a period of thirty (30) days up to and including December 13, 2010. This is Respondents fourth and final request for an extension. This request is due to the length of the record on appeal, intervening business events in state and federal court, and a desire to have the death penalty appellate brief matter also reviewed by co-counsel in the Solicitor's office in Greenville prior to filing in this Court due to the particular issues raised. Respondent submits that good cause has been shown.

Respondents' below-signed counsel have been involved in numerous litigation in both

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NOV 15 2010

state and federal court during this time period which has prevented the completion of this brief in a sufficient and timely manner. Respondents' counsel made an Initial Brief of Respondent Respondent's counsel in *State v. Frances Moore* in the South Carolina Court of Appeals on October 13, 2010. That case had been re-assigned to below-signed counsel on September 19 to avoid further extensions due to Mr. Salter's other briefing responsibilities after he had acquired five (5) extensions on the particular case. In light of the extension policy of the appellate courts, the Moore brief has the highest priority within the office. The Moore trial involving a joint trial and consists of 726 pages.

Below-signed counsel also assumed the responsibility for the co-defendant's Initial Brief of Respondent in *State v. Garvin DuVall* which involves different briefed issues than the Moore case which is due November 24. On October 14, 2010, counsel was at a status conference in the death penalty PCR case in Saluda County before Judge Keesley in *Ron Finklea v. State* and prepared a proposed order in the matter on October 15. On October 18, counsel made a Return and Memorandum of Law in the federal habeas matter of *Terry Pressley v. Warden*, 6:10-1804-CMC-KFM, on October 22, a Return and Memorandum in Support (50 pages) in *Christopher Ramsey v. Warden*, 1:10-1538-HFF-SVH on October 20, a Return to Stay of Execution Motion in the death penalty case of *James Robertson* on November 1, a federal habeas Return and Memorandum of Law in *Jerome Owens v. Thompson*, 4:10-1821-JFA-TER Warden on October 28, a Return and Memorandum of Law in *Raquib Al-Amin v. Warden*, 0:10-2023-CMC-PJG (76 pages) on November 8, 2010.

The following action has been taken to avoid further extensions. Respondent's counsel has been working solely on the Inman appeal since the filing of the Al-Amin pleading on

November 8, other than medical leave due to an illness. Counsel has cleared and re-assigned other matters through the next month to ensure no further extensions will be necessitated in this matter. The matters remaining on the counsel's personal calendar that cannot be re-assigned due to prior work involvement include a deposition in *Kenneth Simmons v. State* PCR action, a Petition for Certiorari and Appendix in the death penalty PCR appeal in *John Hughey v State*, due November 24, the Initial Brief of Respondent in *State v. Garvin DuVall* due November 24, a post-hearing memorandum in the death penalty PCR matter of *Marion Lindsey v. State* due on Nov. 29, 2010 and an oral argument in Richmond in the habeas corpus appeal in *Donald Brandt v. South Carolina* on December 7, 2010.

W
X 3.
This particular appeal consists of three issues and numerous transcripts and pleadings and exhibits involving the claims of prosecutorial misconduct. Below-signed counsel has 31 written pages of the partial draft *Initial Brief of Respondent* at the time of this filing. Counsel has worked exclusively on the matter through the weekend and the federal holiday and will continue to do so until completion.

Counsel contacted opposing counsel Robert Dudek, who advised counsel that he had no opposition to the request in Mr. Inman's appeal.

Wherefore Respondents respectfully request an extension of a period of time of thirty (30) days up to and including December 12, 2010 to complete this initial brief of respondent and designation of matter.

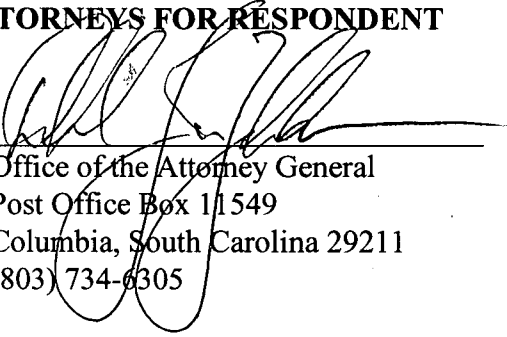
Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

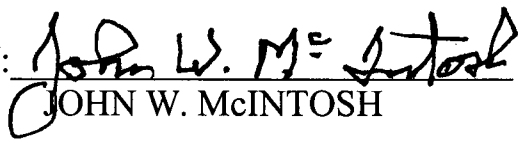
ATTORNEYS FOR RESPONDENT

By: 

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

November 12, 2010.

I concur that extraordinary circumstances and good cause have been shown.

BY: 

JOHN W. McINTOSH

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

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

THE STATE,

Respondent,

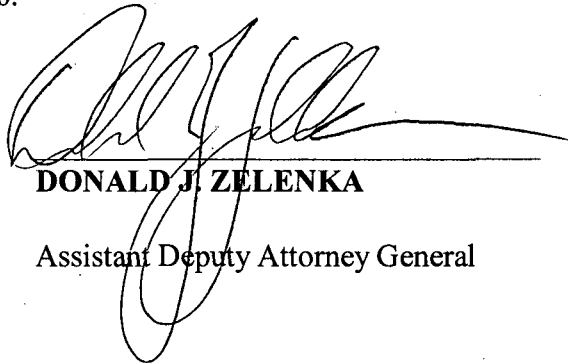
v.

JERRY BUCK INMAN,

Appellant.

CERTIFICATE OF SERVICE

*I, Donald J. Zelenka, hereby certify that I have served Respondents **Motion to Enlarge Time for Filing Initial Brief of Respondent** on Robert M. Dudek and Joseph L. Savitz, Esquires, 1330 Lady Street, Suite 401, Columbia, South Carolina 29201 by depositing copies in the InterAgency Mail this 12th day of November, 2010.*



DONALD J. ZELENKA
Assistant Deputy Attorney General

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

The Honorable Edward W. Miller

Pickens County

Trial Court Case No. 2006-GS-39-02222

2006-GS-39-02223

2006-GS-39-02224

2006-GS-39-02225

ORDER

Respondent seeks a third extension of time to serve and file the Initial Brief of Respondent and Designation of Matter in the above entitled matter. The request for an extension is granted and extended until November 12, 2010. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Aronda J. Shealy
Chief Deputy CLERK

25 301/11/10
Columbia, South Carolina

10/15/10
October 15, 2010

cc: Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

OCT 13 2010

S.C. SUPREME COURT

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

THE STATE,

Respondent,

v.

JERRY BUCK INMAN,

Appellant.

MOTION TO ENLARGE TIME FOR
FILING INITIAL BRIEF OF RESPONDENT
AND DESIGNATION OF MATTER

The Respondents, above-named, hereby make a motion to this Court to extend the time for filing the Initial Brief of Respondent and Designation of Matter from October 13, 2010 for a period of thirty (30) days up to and including November 12, 2010. This is Respondents *third* request for an extension. This request is due to the length of the record on appeal, intervening business events in state and federal court, and a desire to have the death penalty appellate brief matter also reviewed by co-counsel in the Solicitor's office in Greenville prior to filing in this Court due to the particular issues raised. Respondent submits that good cause has been shown.

Respondents' below-signed counsel have been involved in numerous litigation in both state and federal court during this time period which has prevented the completion of this brief in

a sufficient and timely manner. Respondents' counsel made Response to Motion to Remand in *State v. Jeremy McMillian* in the Court of Appeals, a Final Brief of Respondent in *State v. Stephen Bryant* on Sept. 16, an oral argument before the S.C. Court of Appeals on Sept. 16 in *In Re Tracey B.*, travel to Richmond and preparation for oral argument on September 21-22 in *Edward Elmore v. Ozmint*, 07-14 involving a 5000 record and multiple briefs, travel to Summerville on September 23 and meeting with Deputy Solicitor Bell concerning the death penalty PCR involving *Kenneth Simmons* and preparation for scheduled out of state video conference depositions de bene esse, deposition on September 24 in *Kenneth Simmons v. State of Dr. Michael Baird* in Ohio concerning DNA testing and reports made in 1998-1999, status conference in death penalty PCR in *Quincy Allen v. State* before Judge Newman on Sept. 29, return to stay in *State v. Stephen Bixby* on Sept. 30, preparation and oral argument in *State v. LaQuint Johnson* on October 5, 2010, brief before the US District Court on remand in *Clifford Thompson v. Ozmint* on October 8, 2010.

Respondent's counsel is presently working and completing an Initial Brief of Respondent in *State v. Frances Moore* due this date in the South Carolina Court of Appeals. The case was re-assigned to below-signed counsel on September 19 to avoid further extensions due to Mr. Salter's other briefing responsibilities after he had acquired five (5) extensions. In light of the extension policy of the appellate courts, the Moore brief has the highest priority. The Moore trial involving a joint trial and consists of 726 pages. Counsel is preparing the brief in *State v. Moore* for filing this date without further extensions.

Counsel contacted opposing counsel Joseph Savitz, who advised counsel that he had no opposition to the request in Mr. Inman's appeal.

Wherefore Respondents respectfully request an extension of a period of time of thirty (30) days up to and including November 12, 2010 to complete this initial brief of respondent and designation of matter.

Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

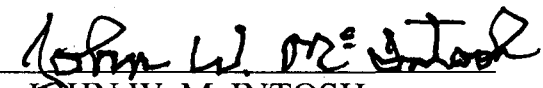
DONALD J. ZELENKA
Assistant Deputy Attorney General

ATTORNEYS FOR RESPONDENT

By: 
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

October 13, 2010.

I concur that good cause has been shown.

BY: 
JOHN W. McINTOSH

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

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

THE STATE,

Respondent,

v.

JERRY BUCK INMAN,

Appellant.

CERTIFICATE OF SERVICE

*I, Donald J. Zelenka, hereby certify that I have served Respondents **Motion to Enlarge Time for Filing Initial Brief of Respondent** on Robert M. Dudek and Joseph L. Savitz, Esquires, 1330 Lady Street, Suite 401, Columbia, South Carolina 29201 by depositing copies in the InterAgency Mail this 13th day of October, 2010.*



DONALD J. ZELENKA

Assistant Deputy Attorney General

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

The Honorable Edward W. Miller

Pickens County

Trial Court Case No. 2006-GS-39-02222

2006-GS-39-02223

2006-GS-39-02224

2006-GS-39-02225

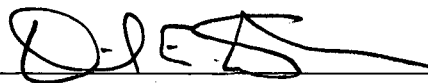
ORDER

Respondent seeks a second extension of time to serve and file the Initial Brief of Respondent and Designation of Matter in the above entitled matter. The request for an extension is granted and extended until October 13, 2010. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

September 14, 2010

cc: Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka



HENRY McMASTER
ATTORNEY GENERAL

September 13, 2010

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SEP 13 2010

S.C. SUPREME COURT

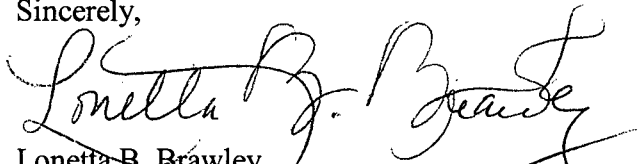
Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

Re: The State v. Jerry Buck Inman

Dear Mr. Shearouse:

Enclosed please find Respondent's *Motion to Enlarge Time for Filing Initial Brief of Respondent* in the above-referenced case for filing. By copy of this letter, I am serving opposing counsel with same.

Sincerely,


Lonetta B. Brawley
Legal Assistant to Donald J. Zelenka
Assistant Deputy Attorney General

/lbb
Enclosure

cc: Robert M. Dudek, Esquire
Joseph L. Savitz, Esquire

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

RECEIVED

SEP 13 2010

S.C. SUPREME COURT

THE STATE,

Respondent,

v.

JERRY BUCK INMAN,

Appellant.

MOTION TO ENLARGE TIME FOR
FILING INITIAL BRIEF OF RESPONDENT
AND DESIGNATION OF MATTER

13
#1

The Respondents, above-named, hereby make a motion to this Court to extend the time for filing the Initial Brief of Respondent and Designation of Matter from September 13, 2010 for a period of thirty (30) days up to and including October 13, 2010. This is Respondents *second* request for an extension. This request is due to the length of the record on appeal, intervening business events in state and federal court, and a desire to have the death penalty appellate brief matter also reviewed by co-counsel in the Solicitor's office in Greenville prior to filing in this Court due to the particular issues raised.

Respondents have been involved in numerous litigation in both state and federal court during this time period which has prevented the completion of this brief in a sufficient and timely

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#2-
manner. Respondents counsel filed a 68 page Brief of Respondent in the Fourth Circuit involving former death row inmate *Edward Elmore v. Ozmint*, 07-14 on August 11, 2010, filed a habeas corpus Return and Memorandum of Law in *Fredrick Culp v. Warden* (3:10-946-HFF-JRM) on August 16, 2010, made a petition for rehearing in this Court in the capital case of *State v. Angel Vasquez*, made a Return and Memorandum of law in the federal habeas corpus matter of *Alonzo Baldwin v. McCall* (9:10-1115-MBS-BM) , reviewed and prepared a notice of appeal in the capital PCR matter of *John Hughey v. State* on August 25, 2010, made a Return to stay in *State v. Ron Finklea* on August 26, 2010, made a Brief in opposition to summary judgement in the federal habeas matter of *John Ridgeway v. Stevenson* (3:10-490-RBH-JRM) on August 27, 2010, made a Return and Memorandum of Law in *Michael Cunningham v. Padula* (2:10-1027-MJP-RSC) on September 8, 2010. Respondent's counsel had also prepared and provided a 46 page proposed order in *Sammie Stokes v. State* on August 29, 2010 for Judge Manning.

Respondent's below signed counsel is also preparing for oral arguments on September 16 (*In Re: Tracey B.*) and September 22 (*Elmore v. Ozmint* - Richmond, Virginia).

Counsel left messages with the offices of opposing counsel Joseph L. Savitz and Robert Dudek but were not aware of their position on this request at the time of the filing.

Wherefore Respondents respectfully request an extension of a period of time of thirty (30) days up to and including October 13, 2010 to complete this initial brief of respondent and designation of matter.

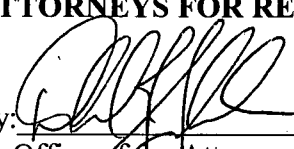
Respectfully submitted,

HENRY D. McMASTER
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
(803) 734-6305

September 13, 2010.

By
#3

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

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

THE STATE,

Respondent,

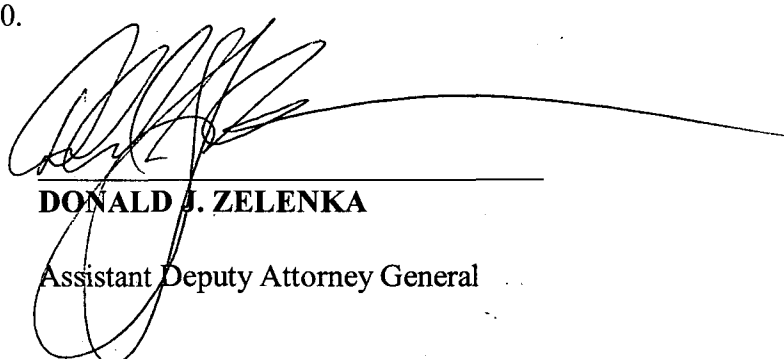
v.

JERRY BUCK INMAN,

Appellant.

CERTIFICATE OF SERVICE

*I, Donald J. Zelenka, hereby certify that I have served Respondents **Motion to Enlarge Time for Filing Initial Brief of Respondent** on Robert M. Dudek and Joseph L. Savitz, Esquires, 1330 Lady Street, Suite 401, Columbia, South Carolina 29201 by depositing copies in the InterAgency Mail this 13th day of September, 2010.*



DONALD J. ZELENKA

Assistant Deputy Attorney General

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

The Honorable Edward W. Miller

Pickens County

Trial Court Case No. 2006-GS-39-02222

2006-GS-39-02223

2006-GS-39-02224

2006-GS-39-02225

ORDER

The request for an extension to serve and file the Initial Brief of Respondent and Designation of Matter is granted and extended until September 13, 2010. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Shirley L. Healy*
CHIEF DEPUTY CLERK

Columbia, South Carolina

August 13, 2010

cc: Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka



HENRY McMASTER
ATTORNEY GENERAL

August 12, 2010

RECEIVED
AUG 12 2010
S.C. SUPREME COURT

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

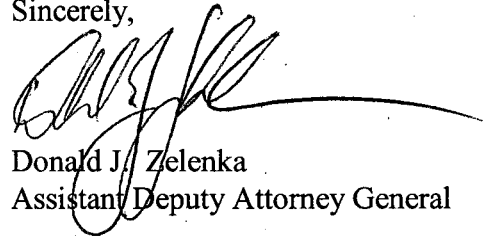
Re: The State v. Jerry Buck Inman

Dear Mr. Shearouse:

The initial brief of respondent in the above-entitled action is due to be filed and served on the above date. Due to my heavy caseload, I will not be able to complete this initial brief in a timely fashion. For this reason, I respectfully request an extension for thirty (30) days in which to file the initial brief.

By copy of this letter I am informing opposing counsel, Joseph L. Savitz, of this request. Thank you for your consideration.

Sincerely,



Donald J. Zelenka
Assistant Deputy Attorney General

DJZ/lbb

cc: Joseph L. Savitz, Esquire

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

The Honorable Edward W. Miller

Pickens County

Trial Court Case No. 2006-GS-39-02222

2006-GS-39-02223

2006-GS-39-02224

2006-GS-39-02225

ORDER

Appellant seeks a sixth extension for one additional day to serve and file the Initial Brief of Appellant and Designation of Matter, and asserts that extraordinary circumstances justify this extension. The opposing party consents to the extension. The request for an extension is granted until June 28, 2010. ~~Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.~~

IT IS SO ORDERED.


C.J.
For the Court

Columbia, South Carolina

June 28, 2010

cc: Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

THE STATE,

RESPONDENT,

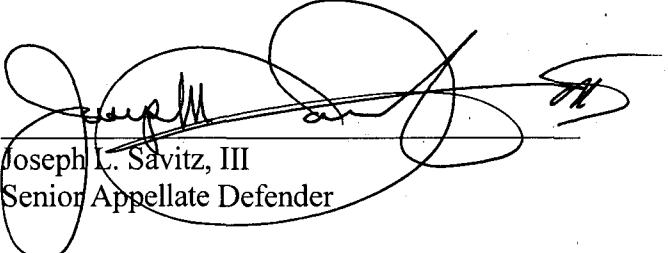
V.

JERRY BUCK INMAN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Suite 501, Columbia, S.C. 29201, this 28th day of June, 2010.



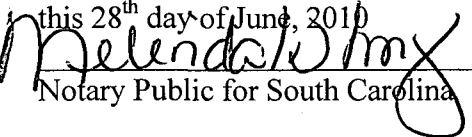
Joseph L. Savitz, III
Senior Appellate Defender

Robert M. Dudek
Chief Appellate Defender

ATTORNEYS FOR APPELLANT

SUBSCRIBED AND SWORN TO before me

this 28th day of June, 2010



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2018

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

RECEIVED

JUN 25 2010

THE STATE,

S.C. SUPREME COURT

RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

**PETITION FOR EXTENSION TO FILE
INITIAL BRIEF OF APPELLANT AND
DESIGNATION OF MATTER**

The undersigned counsel would respectfully request a **final 1-day extension, until June 28, 2010**, in which to file the initial brief of appellant and designation of matter in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

1. The initial brief of appellant and designation of matter in this case is due to be served and filed today, **in this death penalty case**, having been extended by prior orders of this Court.

2. Work has diligently progressed on the two issues in this case. However, a third issue has developed and is being briefed. The third issue is also critical to appellant's appeal. Counsel filed a petition for writ of certiorari in the United States Supreme Court in the death penalty case of State v. Charles Christopher Williams on Wednesday, June 23, 2010. Counsel had an oral argument in the death penalty case of State v. Louis Winkler

before this Court and an oral argument in the murder case of State v. Damon Jones in this Court both on Thursday, June 24, 2010. Counsel filed a merit brief in the murder case of State v. William J. Henry on Friday, June 18, 2010 with the Court of Appeals. On Wednesday, June 16, 2010, counsel filed a merit brief in the homicide by child abuse case of State v. Kathy Salley with the Court of Appeals. Counsel filed a merit brief in the murder case of State v. Harold Lee Jackson on June 10, 2010 with the Court of Appeals. Counsel had an oral argument before this Court in the case of State v. Amos Mattison on June 8, 2010. Counsel then argued the murder case of State v. Perry Strickland before the Court of Appeals at 12:30 p.m. that same day. Counsel also filed a stay of execution with this Court in the death penalty case of State v. Quincy Allen on June 2, 2010. Counsel also assisted the client, Quincy Allen, with filing an application for post conviction relief in the Richland County Court of Common Pleas that same day, June 2, 2010. Further, counsel filed a two issue merit brief in the murder case of State v. Christopher Stephens with the Court of Appeals on Wednesday, May 26, 2010. The transcript in that case exceeded 1,300 pages. Counsel also filed a two issue petition for writ of certiorari from the Court of Appeals with this Court in the case of State v. Florence Evans on Friday, May 21, 2010. Counsel also must work on the death penalty case of State v. William Dickerson. In addition, counsel has an abundance of administrative duties as Chief Attorney in addition to his extremely heavy caseload of mostly murder and death penalty cases.

2. Co-counsel is presently working on the death penalty case:

State v. Roger Dale Johnson (6835 pages).

In the past month, co-counsel has filed briefs or certiorari in the following cases:

State v. Russell Lee Sims (431 Pages)
State v. Phillip Tapp (459 pages)
State v. Bobby Alexander Gilbert (557 pages)
Chris Anthony Liverman v. The State (1586 pages)
State v. Stephen Corey Bryant (1395 pages)
State v. Jimmy Lee Sessions (1040 pages)
State v. Amber Portwood (407 pages)
State v. William Andrew Lee (327 pages)
State v. James W. Bodenstedt (30 pages)
State v. Terrell Antonio Addison (1246 pages)
State v. Joshua Lee Phillips (848 pages)

During that time period, co-counsel has also orally argued the following cases:

State v. James W. Bodenstedt
State v. Charles Lawrimore
State v. Norman Starnes (death penalty)
State v. Angle Vasquez (death penalty)
State v. Jason Black
State v. David Rocquemore
State v. Jason Buncum

6. Counsel makes this request in the utmost good faith and not for purposes of delay. Co-counsel is working to lessen the number of extensions requested by working on the cases with three or more extensions first. The issues in this case have been identified, and this **one day final extension** will absolutely be the last extension request in this case unless something totally unforeseen occurs.

7. As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final 1-day business day extension, until June 28, 2010**, in which to file the initial brief of appellant and designation of matter in this death penalty case. Counsel respectfully requests that the

time limits for filing the initial brief of appellant be held in abeyance pending a ruling on this motion.

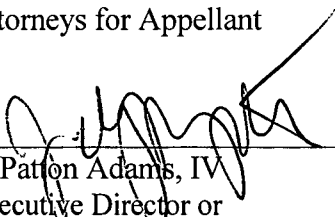
Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

Joseph L. Savitz, III
Senior Appellate Defender

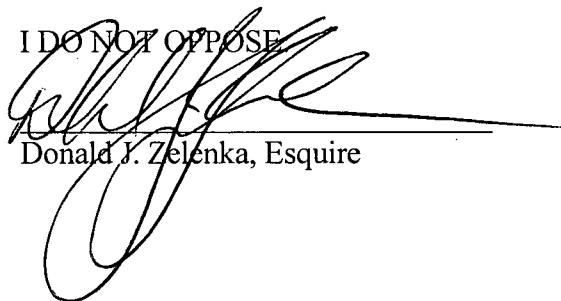
Attorneys for Appellant



T. Patton Adams, IV
Executive Director or
J. Hugh Ryan, III
General Counsel

June 25, 2010

I DO NOT OPPOSE



Donald J. Zelenka, Esquire

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

The Honorable Edward W. Miller

Pickens County

Trial Court Case No. 2006-GS-39-02222

2006-GS-39-02223

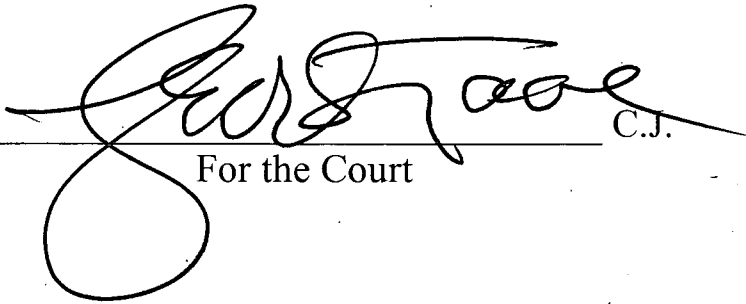
2006-GS-39-02224

2006-GS-39-02225

ORDER

Appellant seeks a fifth and final extension for an additional fourteen (14) days to serve and file the Initial Brief of Appellant and Designation of Matter. The opposing party consents to the extension. The request for an extension is granted until June 25, 2010. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.


For the Court C.J.

Columbia, South Carolina

June 14, 2010

cc: Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

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

JUN 11 2010

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

**PETITION FOR EXTENSION TO FILE
INITIAL BRIEF OF APPELLANT AND
DESIGNATION OF MATTER**

The undersigned counsel would respectfully request a **final 14-day extension, until June 25, 2010**, in which to file the initial brief of appellant and designation of matter in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

1. The initial brief of appellant and designation of matter in this case is due to be served and filed today, in this death penalty case, having been extended by prior orders of this Court.

2. Counsel is today, June 11, 2010, filing a merit brief in the murder trial case of State v. Harold Lee Jackson in the Court of Appeals. Counsel on Tuesday, June 8, 2010 argued the murder case of State v. Amos Mattison before this Court at 10:00 a.m. Counsel then argued the murder case of State v. Perry Strickland before the South

Carolina Court of Appeals at 12:30 p.m. In addition, counsel filed a two issue merit brief in the murder case of State v. Richard Gagnon on Friday, June 4, 2010 with the Court of Appeals. Counsel also filed a stay of execution with this Court in the death penalty case of State v. Quincy Allen on June 2, 2010. Counsel also assisted the client, Quincy Allen, with filing an application for post conviction relief in the Richland County Court of Common Pleas that same day, June 2, 2010. Further, counsel filed a two issue merit brief in the murder case of State v. Christopher Stephens with the Court of Appeals on Wednesday, May 26, 2010. The transcript in that case exceeded 1,300 pages. Counsel also filed a two issue petition for writ of certiorari with this Court in the case of State v. Florence Evans on Friday, May 21, 2010. In addition, counsel had two oral arguments before the Court of Appeals on Wednesday, May 19, 2010, in the murder cases of State v. Darrell Burgess and State v. Adams Gibson. Counsel filed a two issue merit brief in the case of State v. Rodney Galimore on Monday, May 17, 2010 and a merit brief in the murder case of State v. Teron Jackson on Friday, May 7, 2010 with the Court of Appeals. Following the filing of the above-captioned death penalty case, counsel next has the death penalty case of State v. William Dickerson with co-counsel Katharine Hudgins. Counsel will also file the notice of intent to appeal and will also handle the appeal in the death penalty remand competency to be executed case of State v. Jeffrey Motts from the order of the Honorable Garrison Hill. Counsel also has very extensive administrative duties as the Chief Appellate Defender irrespective of his extensive caseload of mostly murder and death penalty cases with very long transcripts as briefly outlined above. Counsel is first working on cases with three or more extensions in an effort to lessen extension requests in the future.

3. Co-counsel is working on the death penalty case of *State v. Roger Dale Johnson* (6835 pages), as well as this death penalty case.

4. In the past month, co-counsel has filed briefs or certiorari in the following cases:

State v. Phillip Tapp (459 pages)
State v. Bobby Alexander Gilbert (557 pages)
Chris Anthony Liverman v. The State (1586 pages)
State v. Stephen Corey Bryant (1395 pages)
State v. Jimmy Lee Sessions (1040 pages)
State v. Amber Portwood (407 pages)
State v. William Andrew Lee (327 pages)
State v. James W. Bodenstein (30 pages)
State v. Terrell Antonio Addison (1246 pages)
State v. Joshua Lee Phillips (848 pages)

5. During that time period, co-counsel has also orally argued the following cases:

State v. Norman Starnes (death penalty)
State v. Angle Vasquez (death penalty)
State v. Jason Black
State v. David Rocquemore
State v. Jason Buncum

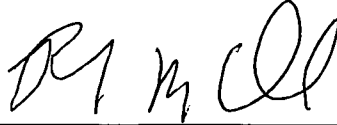
6. Counsel makes this request in the utmost good faith and not for purposes of delay. Co-counsel is working to lessen the number of extensions requested by working on the cases with three or more extensions first. The issues in this case have been identified, and this will absolutely be the last extension request in this case unless something totally unforeseen occurs.

7. As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final 14-day extension, until June 25, 2010**, in which to file the initial brief of appellant and designation

of matter in this death penalty case. Counsel respectfully requests that the time limits for filing the initial brief of appellant be held in abeyance pending a ruling on this motion.

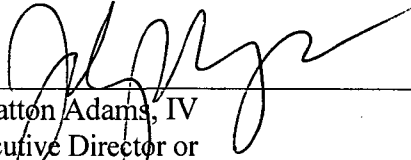
Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

Joseph L. Savitz, III
Senior Appellate Defender

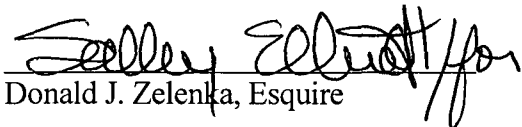
Attorneys for Appellant



T. Patton Adams, IV
Executive Director or
J. Hugh Ryan, III
General Counsel

June 11, 2010

I DO NOT OPPOSE:



Donald J. Zelenka, Esquire

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

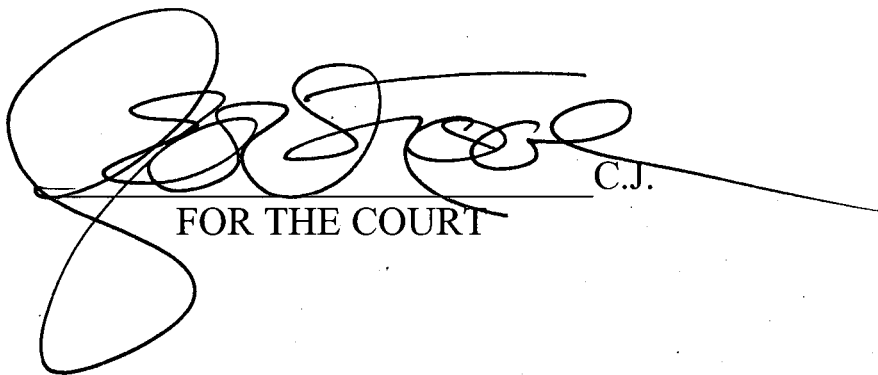
The Honorable Edward W. Miller
Pickens County

Trial Court Case No. 2006-GS-39-02222
2006-GS-39-02223
2006-GS-39-02224
2006-GS-39-02225

ORDER

Appellant seeks a fourth extension of time to serve and file the Initial Brief of Appellant and Designation of Matter, and asserts that extraordinary circumstances justify this extension. The opposing party consents to the extension. The request for an extension is granted until June 11, 2010. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.



C.J.
FOR THE COURT

Columbia, South Carolina

May 13, 2010

cc: Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

RECEIVED

MAY 12 2010

THE STATE,

S.C. SUPREME COURT

RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

**PETITION FOR EXTENSION TO FILE
INITIAL BRIEF OF APPELLANT AND
DESIGNATION OF MATTER**

The undersigned counsel would respectfully request a thirty day extension, in which to file the initial brief of appellant and designation of matter in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

1. The initial brief of appellant and designation of matter in this case is due to be served and filed today, in this murder case, having been extended by prior order of this Court.
2. Counsel is working on the brief in the case of State v. Richard Deas which is due by Friday, May 14, 2010. Counsel prepared a merits brief in the murder case of State v. Teron Jackson which was filed on Friday, May 7, 2010, with this Court. Counsel filed a three issue brief of appellant on Wednesday, May 5, 2010, in the murder case of State of Johnny Mahaffey with this Court. Counsel filed a two issue petition for writ of certiorari

from the Court of Appeals on Tuesday, May 4, 2010, in the case of State v. McCray, with the South Carolina Supreme Court. Further, counsel had a day long competency to waive appeals and be executed remand hearing, Thursday, April 29, 2010 before the Honorable D. Garrison Hill in the death penalty case of State v. Jeffrey Motts in Greenville. Counsel also filed the brief of appellant in the murder trial case of State v. Gary Grant, on April 30, 2010. On Friday, April 23, 2010, counsel filed the three issue petition for writ of certiorari in the Supreme Court in the murder case of State v. Gene Tony Cooper. In addition, counsel also filed a lengthy 45 page petition for writ of certiorari in the death penalty case of Brad Sigmon v. State, with co-counsel, on Wednesday, April 21, 2010 in the Supreme Court. On Friday, April 16, 2010 counsel filed a two issue brief in the case of State v. Richard Bill Niles with this Court. On Tuesday, April 13, 2010 counsel filed a merit brief in the murder trial case of State v. Brandon Johnson. Counsel also has extension administrative duties as Chief Appellate Defender, including oversight of the death penalty cases. Further, counsel held a staff meeting in his office on Thursday, May 6, 2010.

3. In the past two months, co-counsel, Joseph L. Savitz, III filed briefs in the following cases:

State v. Wayne Darnell Cooper (818 pages)
State v. Bobby Alexander Gilbert (557 pages)
Chris Anthony Liverman v. The State (1586 pages)
State v. Stephen Corey Bryant (1395 pages)
State v. Jimmy Lee Sessions (1040 pages)
State v. Amber Portwood (407 pages)
State v. William Andrew Lee (327 pages)
State v. James W. Bodенstedt (30 pages)
State v. Terrell Antonio Addison (1246 pages)
State v. Joshua Lee Phillips (848 pages)

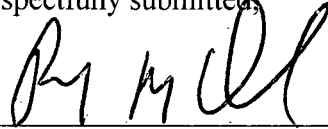
Co-counsel also had an oral argument in the death penalty case of State v. Norman Starnes Thursday, March 4, 2010, and an oral argument in the death penalty case State v. Angle Vasquez within this time in addition to a normal caseload. Co-counsel is working on the death penalty case of State v. Kenneth Justus.

4. This request is made in good faith, and not for purposes of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become manageable in the near future, and less extensions need to be requested.

5. As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a thirty day extension in which to file the initial brief of appellant and designation of matter in this case. Counsel respectfully requests that the time limits for filing the initial brief of appellant be held in abeyance pending a ruling on this motion.

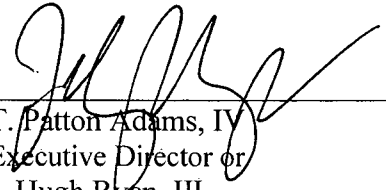
Respectfully submitted,

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

Robert M. Dudek
Chief Appellate Defender

Joseph L. Savitz, III
Senior Appellate Defender

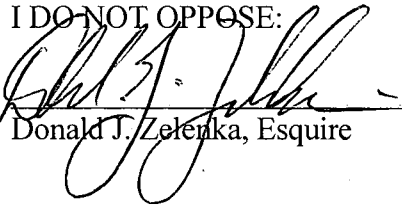
Attorneys for Appellant



T. Patton Adams, IV
Executive Director or
J. Hugh Ryan, III
General Counsel

May 12, 2010

I DO NOT OPPOSE:



Donald J. Zelenka, Esquire

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

The Honorable Edward W. Miller

Pickens County

Trial Court Case No. 2006-GS-39-02222

2006-GS-39-02223

2006-GS-39-02224

2006-GS-39-02225

ORDER

Appellant seeks a third extension of time to serve and file the Initial Brief of Appellant and Designation of Matter . The request for an extension is granted and extended until May 12, 2010. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Brenda J. Shealy*
Chief Deputy CLERK

Columbia, South Carolina

April 13, 2010

cc: Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

RECEIVED

APR 12 2010

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

**PETITION FOR EXTENSION TO FILE
INITIAL BRIEF OF APPELLANT AND
DESIGNATION OF MATTER**

The undersigned counsel would respectfully request a thirty day extension, in which to file the initial brief of appellant and designation of matter in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

1. The initial brief of appellant and designation of matter in this case is due to be served and filed today, in this murder case, having been extended by prior order of this Court.
2. Counsel argued the case of State v. Marlon Rivera before this Court on Thursday, April 8, 2010. Counsel is now working on the case of State v. Brandon Johnson wherein the transcript is 857 pages long and the brief is due tomorrow, April 13, 2010. Counsel also is working on the petition for writ of certiorari in the death penalty

case of State v. Brad Sigmon which is due with this Court on Wednesday, April 21, 2010. Counsel filed a brief in the murder case of State v. Terrell McCoy on Friday, April 2, 2010 in the Court of Appeals. Counsel also filed a brief on Thursday, April 1, 2010, in the murder case of State v. Antonio Moultrie in the Court of Appeals. In addition, counsel filed a brief on Monday, March 29, 2010, in the murder case of State v. Teron Jackson in the Court of Appeals. Counsel also filed a brief on Thursday, March 18, 2010, in the murder case of State v. Shawn Williams in the Court of Appeals. In addition, counsel filed a merit brief on Thursday, March 11, 2010, in the case of State v. Aurelio Vincent Ottey in the Court of Appeals. Counsel filed a petition for writ of certiorari on Wednesday, March 10, 2010 in the case of State v. Miama Kromah with this Court. In addition, counsel filed a petition for a writ of certiorari in the case of State v. Christopher Pride on Monday, March 15, 2010 in the United States Supreme Court and a petition for writ of certiorari in the death penalty case of State v. Quincy Allen on Tuesday, March 16, 2010 in the United States Supreme Court. Counsel also had an oral argument in the case of State v. Ricky Brannon with this Court on Wednesday, March 17, 2010. Counsel filed a brief in the murder case of State v. Kassem Stephens on Tuesday, March 9, 2010, with the Court of Appeals. Further, counsel filed a brief on Monday, March 8, 2010 in the case of State v. Brian Amburgey with the Court of Appeals. Counsel also has numerous administrative duties as the Chief Appellate Defender, including death penalty oversight.

3. In the past two months, co-counsel, Joseph L. Savitz, III filed briefs in the following cases:

The State v. Bentley Collins (660 transcript pages)
The State v. Joshua Lamar Forrest (266 transcript pages)
The State v. Richard Simmons (452 transcript pages)

The State v. Mokeia Hammond (762 transcript pages)
The State v. Devodus Rouse (675 transcript pages)
The State v. Jake Antonio Wilson (1111 transcript pages)
The State v. Joel Antawan Robinson (866 transcript pages)
The State v. Billy Jo Shirar (1146 transcript pages)
The State v. Stephen Cory Bryant (1395 transcript pages)
The State v. Amber Portwood (407 transcript pages)

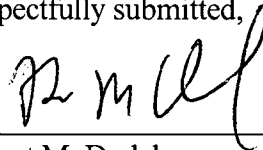
Co-counsel also had an oral argument in the death penalty case of State v. Norman Starnes Thursday, March 4, 2010, and an oral argument in the death penalty case State v. Angle Vasquez within this time in addition to a normal caseload.

4. This request is made in good faith, and not for purposes of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become manageable in the near future, and less extensions need to be requested.

5. As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a thirty day extension in which to file the initial brief of appellant and designation of matter in this case. Counsel respectfully requests that the time limits for filing the initial brief of appellant be held in abeyance pending a ruling on this motion.

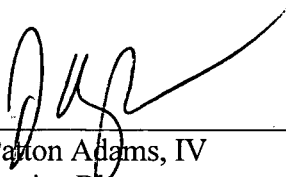
Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

Joseph L. Savitz, III
Senior Appellate Defender

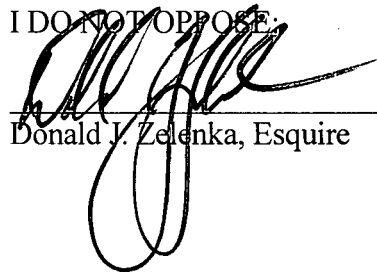
Attorneys for Appellant



T. Patton Adams, IV
Executive Director or
J. Hugh Ryan, III
General Counsel

April 12, 2010

I DO NOT OPPOSE.



Donald J. Zelenka, Esquire

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

The Honorable Edward W. Miller

Pickens County

Trial Court Case No. 2006-GS-39-02222

2006-GS-39-02223

2006-GS-39-02224

2006-GS-39-02225

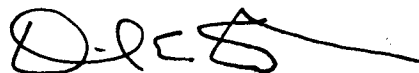
ORDER

Appellant seeks a second extension of time to serve and file the Initial Brief of Appellant and Designation of Matter in the above entitled matter. The request for an extension is granted and extended until April 12, 2010. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

March 12, 2010

cc: Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

ORIGINAL

RECEIVED

MAR 11 2010

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

**PETITION FOR EXTENSION TO FILE
INITIAL BRIEF OF APPELLANT AND
DESIGNATION OF MATTER**

The undersigned counsel would respectfully request a thirty day extension, in which to file the initial brief of appellant and designation of matter in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

1. The initial brief of appellant and designation of matter in this case is due to be served and filed today, in this murder case, having been extended by an order of this Court.
2. Counsel is working on the brief in the case of The State v. Aurelio Vincent Ottey which is due in the Court of Appeals tomorrow, March 12, 2010. The transcript in this murder case is **1069 pages long**. Counsel filed a petition for writ of certiorari yesterday, March 10, 2010 in the case of State v. Miama Kromah with this Court. Counsel filed a merit brief in the murder case of State v. Kassem Stephens Tuesday,

March 9, 2010 with the Court of Appeals. Counsel filed a merit brief March 8, 2010 in the case of State v. Brain Amburgey with the Court of Appeals. In addition, counsel has a **United States certiorari petition due in the State v. Christopher Pride on March 15, 2010 and a United States certiorari petition due in the State v. Quincy Allen on March 16, 2010. Counsel also has an oral argument in the case of State v. Ricky Brannon with the Supreme Court Wednesday, March 17, 2010.** Counsel also has a death penalty remand competency hearing in Jeffrey Motts in Greenville before Judge Garrison Hill on March 23, 2010. Counsel filed the brief in the case State v. Ranger Alvizures on Friday, March 5, 2010 with the Court of Appeals. Counsel filed the brief of petitioner in murder the case of State v Damon Jones on March 3, 2010 with this Court. Counsel also filed the brief in the murder case of State v. Jamal Gathers with the Court of Appeals on Friday, February 26, 2010 and the transcript was 643 pages long. Counsel filed the initial three issue merit brief in the murder case of State v. Sammy Scott with the Court of Appeals on Monday, February 22, 2010. The transcript was 570 pages long. Counsel also gave a presentation for the Best Practices CLE seminar in Charleston on Friday, February 19, 2010. Counsel filed the petition for rehearing with this Court in the death penalty case of State v. Charles Christopher Williams Tuesday, February 23, 2010. Counsel filed the reply brief Tuesday, February 16, 2010, in the death penalty case of State v. Louis Winkler with this Court. Counsel filed the initial brief in the murder case of State v. Derrick McDonald Friday, February 12, 2010 with the Court of Appeals and the transcript was 1771 pages long. Counsel also filed the initial brief in the murder case of State v. Christopher Heller Thursday, February 11, 2010 with the Court of Appeals and the

transcript in this case was 1021 pages long. In addition, counsel has many administrative duties as Chief Appellate Defender, including death penalty oversight.

3. In the past two months, co-counsel has filed briefs or certiorari petitions in the following cases:

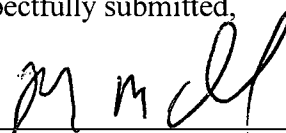
The State v. Bentley Collins (660 transcript pages)
The State v. Joshua Lamar Forrest (266 transcript pages)
The State v. Richard Simmons (452 transcript pages)
The State v. Mokeia Hammond (762 transcript pages)
The State v. Devodus Rouse (675 transcript pages)
The State v. Jake Antonio Wilson (1111 transcript pages)
The State v. Joel Antawan Robinson (866 transcript pages)
The State v. Billy Jo Shirar (1146 transcript pages)

Co-counsel also had an oral argument in the death penalty case of State v. Norman Starnes Thursday, March 4, 2010, and an oral argument in the death penalty case State v. Angle Vasquez within this time in addition to a normal caseload.

4. This request is made in good faith, and not for purposes of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become manageable in the near future, and less extensions need to be requested.

WHEREFORE, the undersigned counsel would respectfully request a thirty day extension in which to file the initial brief of appellant and designation of matter in this case. Counsel respectfully requests that the time limits for filing the initial brief of appellant be held in abeyance pending a ruling on this motion.

Respectfully submitted,

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

Robert M. Dudek
Chief Appellate Defender

Joseph L. Savitz, III
Senior Appellate Defender

Attorneys for Appellant

March 11, 2010

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

THE STATE,

RESPONDENT,

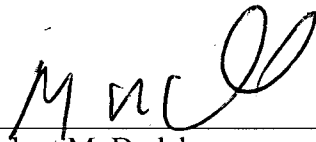
V.

JERRY BUCK INMAN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the petition in which to file the initial brief of appellant and designation of matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, Deputy Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 11th day of March, 2010.

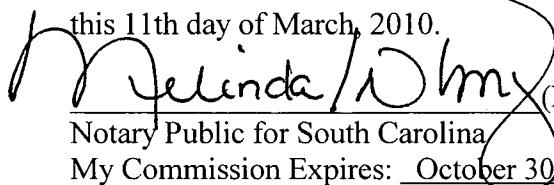


Robert M. Dudek
Chief Appellate Defender

Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEYS FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of March, 2010.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2018

The Supreme Court of South Carolina

The State,

Respondent,

v.

Jerry Buck Inman,

Appellant.

The Honorable Edward W. Miller
Pickens County

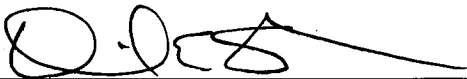
Trial Court Case No. 2006-GS-39-02222
2006-GS-39-02223
2006-GS-39-02224
2006-GS-39-02225

ORDER

For good cause having been shown, the time for serving and filing the Initial Brief of Appellant and Designation of Matter in the above entitled matter is hereby extended until March 11, 2010.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY 
CLERK

Columbia, South Carolina

February 10, 2010

cc: Deputy Chief Appellate Defender Robert M. Dudek
Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

February 9, 2010

RECEIVED

FEB - 9 2010

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

S.C. SUPREME COURT

Re: The State v. Jerry Buck Inman (capital case)

Dear Mr. Shearouse:

The initial brief of appellant and designation of matter in the above referenced case is due to be served and filed today. However, because of my current caseload, I have been unable to complete this brief for service. Therefore, I am requesting a thirty day extension in which to file and serve the brief.

By copy of this letter, I am informing Donald J. Zelenka, Esquire, of the Attorney General's Office, of my request.

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

Sincerely,

Robert M. Dudek
Deputy Chief Appellate Defender

Joseph L. Savitz, III
Senior Appellate Defender

RMD/mwl

cc: Donald J. Zelenka, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

RECEIVED

DEC 23 2009

S.C. SUPREME COURT

RECEIPT

I, Debbie M. Hopkins, of the South Carolina Supreme Court, have received the following original trial transcript(s) in the death penalty case of The State v. Jerry Buck Inman

1. ✓ APRIL 14, 2009 (APRIL HERRON)
2. ✓ JANUARY 8, 2007 (TERESA B. JOHNSON)
3. ✓ APRIL 16, 2007 (APRIL HERRON)
4. ✓ AUGUST 27, 2008 (SUSAN W. HUDGINS)
5. ✓ JULY 30, 2008 (SUSAN W. HUDGINS)
6. ✓ MAY 8, 2008 (HOLLIE M. JENKINS)
7. ✓ JULY 18, 2008 (HOLLIE M. JENKINS)
8. ✓ SEPTEMBER 14, 2007 (HOLLIE M. JENKINS)
9. ✓ AUGUST 19, 2008 (HOLLIE M. JENKINS)
10. ✓ APRIL 20, 21, AND 22, 2009 (HOLLIE M. JENKINS)

11. ✓ SEPTEMBER 8, 9, 10, AND 11, 2008 (HOLLIE M. JENKINS)

Date: December 23, 2009

Hollie M. Jenkins
(Name)



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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

Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

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

RECEIVED

December 16, 2009

DEC 16 2009

S.C. SUPREME COURT

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

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

The State v. Jerry Buck Inman

12/11/2009

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Melinda W. Long

Melinda W. Long
Legal Assistant



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

RECEIVED

DEC - 8 2009

S.C. SUPREME COURT

December 8, 2009

Ms. Desiree Allen
S.C. Court Administration
1015 Sumter Street, 2nd Floor
Columbia, South Carolina 29201-3739

Dear Ms. Allen:

The transcript listed below was requested by this office. Pursuant to Rule 207(a)(2), SCACR, the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same.

<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. April P. Herron	11/30/09	Jerry Buck Inman

Trial Date: April 16, 2007

I would appreciate your confirming in writing as to the status of the above-referenced transcript. If you should have any questions, please do not hesitate to contact me.

Sincerely,

Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
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Defender
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Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate

November 18, 2009

RECEIVED

NOV 18 2009

S.C. SUPREME COURT

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

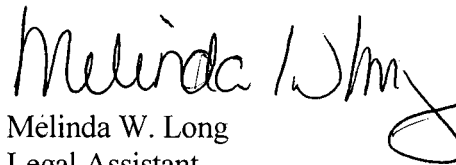
Re: The State v. Jerry Buck Inman (Capital Case)

Dear Mr. Shearouse:

This is just to inform your office that we received the January 8, 2007 hearing on Tuesday, November 17, 2009.

Please contact me if you have any questions or need any other information.

Sincerely,


Melinda W. Long
Legal Assistant

/mwl

cc: Donald J. Zelenka, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
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Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

November 18, 2009

RECEIVED

NOV 18 2009

S.C. SUPREME COURT

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

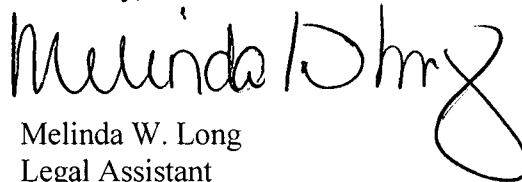
Re: The State v. Jerry Buck Inman (Capital Case)

Dear Mr. Shearouse:

The above-referenced capital case is on appeal with this office. I have been informed by trial attorney, Jim Bannister, and court reporter, Susan W. Hudgins, that there was not a hearing held on February 1, 2008.

I will inform the Court when I have received all of the hearings in this case. Please do not hesitate to contact me if you have any questions.

Sincerely,



Melinda W. Long
Legal Assistant

/mwl

cc: Donald J. Zelenka, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

 ORIGINAL

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

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

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

October 1, 2009

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

RECEIVED
OCT 01 2009
S.C. SUPREME COURT

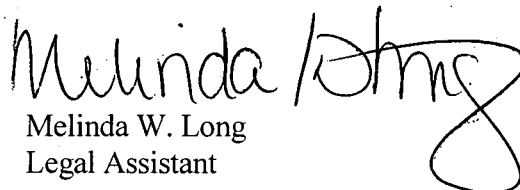
Re: The State v. Jerry Buck Inman (Capital Case)

Dear Mr. Shearouse:

The above-referenced capital case is on appeal with this office. I ordered the transcript from the April 16, 2007 hearing and the February 1, 2008 hearing from court reporter Hollie Jenkins. Ms. Jenkins has notified our office that she was not the court reporter for these two hearings. I have found the court reporter for these hearing and they have been requested from the correct court reporters so that we may perfect Mr. Inman's case.

I will inform the Court when these transcripts have been delivered to our office. Please do not hesitate to contact me if you have any questions.

Sincerely,


Melinda W. Long
Legal Assistant

/mwl

cc: Donald J. Zelenka, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
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Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

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Telephone: (803) 734-1343
Facsimile: (803) 734-1397

September 30, 2009

RECEIVED

SEP 30 2009

S.C. SUPREME COURT

Ms. Susan W. Hudgins
Circuit Court Reporter
P O Box 273
Moore, SC 29369

Dear Ms. Hudgins:

Our office has been requested to perfect the appeal arising out of:

The State v. Jerry Buck Inman

Indictment #: 06-GS-39-2222-2225.

County: Pickens

Date of Trial: February 1, 2008

Presiding Judge: Edward W. Miller

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

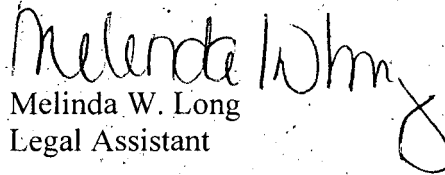
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms. Susan W. Hudgins
September 30, 2009
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,


Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

September 30, 2009

RECEIVED

SEP 30 2009

S.C. SUPREME COURT

Ms. April P. Herron
Circuit Court Reporter
P O Box 17675
Greenville, SC 29606

Dear Ms. Herron:

Our office has been requested to perfect the appeal arising out of:

The State v. Jerry Buck Inman

Indictment #: 06-GS-39-2222-2225.

County: Pickens

Date of Trial: April 16, 2007

Presiding Judge: Edward W. Miller

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms. April P. Herron
September 30, 2009
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda W. Long". The signature is fluid and cursive, with the first name "Melinda" being more prominent and the last name "Long" written in a more compact, stylized manner.

Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



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

September 29, 2009

RECEIVED

SEP 29 2009

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

S.C. SUPREME COURT

Re: The State v. Jerry Buck Inman (Capital Case)

Dear Mr. Shearouse:

This is just to inform your office that we have received the following transcripts in the above-captioned case.

August 27, 2008
July 30, 2008

Received September 18, 2009
Received September 18, 2009

I will let you know when I receive the other transcripts that were requested. Please contact me if you have any questions or need any other information.

Sincerely,

Melinda W. Long
Legal Assistant

/mwl

cc: Donald J. Zelenka, Esquire



SCCID

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Facsimile: (803) 734-1397

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

RECEIVED

SEP 18 2009

SC Court of Appeals

September 18, 2009

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

RECEIVED

SEP 21 2009

Re: The State v. Jerry Buck Inman (Capital Case)

S.C. SUPREME COURT

Dear Mr. Shearouse:

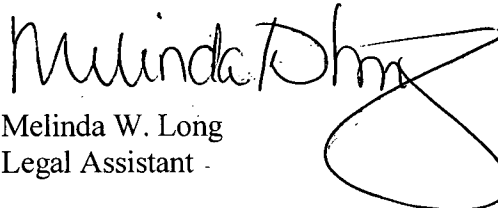
This is just to inform your office that we have received the following transcripts in the above-captioned case.

July 18, 2008
May 8, 2008
August 19, 2008
April 20, 21, and 22, 2009
September 8, 9, 10, 11, 2008

Received September 15, 2009
Received September 15, 2009
Received September 15, 2009
Received September 15, 2009
Received September 15, 2009

I will let you know when I receive the other transcripts that were requested. Please contact me if you have any questions or need any other information.

Sincerely,


Melinda W. Long
Legal Assistant

/mwl

cc: Donald J. Zelenka, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
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Wanda H. Carter, Deputy Chief Appellate Defender

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

September 3, 2009

RECEIVED

SEP - 3 2009

S.C. SUPREME COURT

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

Re: The State v. Jerry Buck Inman (Capital Case)

Dear Mr. Shearouse:

The above-referenced capital case is on appeal with this office. I have ordered the transcript from the September 8, 2008 – September 11, 2008 hearing and the transcript from the April 20, 2009 – April 22, 2009 hearing.

The trial attorney has informed our office that there were more pre-trial hearings in the case. I am ordering these hearings today from the court reporters so that we may perfect Mr. Inman's case.

I will inform the Court when these transcripts have been delivered to our office. Please do not hesitate to contact me if you have any questions.

Sincerely,

Melinda W. Long
Legal Assistant

/mwl

cc: Donald J. Zelenka, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Columbia, South Carolina 29211-1589
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Facsimile: (803) 734-1397

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

September 3, 2009

Ms. Hollie M. Jenkins
Circuit Court Reporter
P O Box 16506
Greenville, SC 29606

Dear Ms. Jenkins:

RECEIVED

SEP - 3 2009

S.C. SUPREME COURT

Our office has been requested to perfect the appeal arising out of:

The State v. Jerry Buck Inman

Indictment #: 06-GS-39-2222-2225.

County: Pickens

Date of Trial: April 16, 2007

Presiding Judge: Edward W. Miller

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

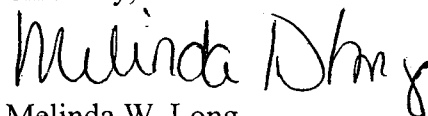
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms. Hollie M. Jenkins
September 3, 2009
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda W. Long". The signature is fluid and cursive, with the first name "Melinda" being more prominent and the last name "Long" written in a more compact, stylized manner.

Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

Post Office Box 11589
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Telephone: (803) 734-1343
Facsimile: (803) 734-1397

September 3, 2009

Ms. Hollie M. Jenkins
Circuit Court Reporter
P O Box 16506
Greenville, SC 29606

RECEIVED

SEP - 3 2009

S.C. SUPREME COURT

Dear Ms. Jenkins:

Our office has been requested to perfect the appeal arising out of:

The State v. Jerry Buck Inman

Indictment #: 06-GS-39-2222-2225.

County: Pickens

Date of Trial: February 1, 2008

Presiding Judge: Edward W. Miller

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

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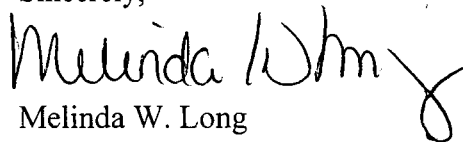
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Ms. Hollie M. Jenkins
September 3, 2009
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda W. Long", with a stylized flourish at the end.

Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
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Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

September 3, 2009

RECEIVED

SEP - 3 2009

S.C. SUPREME COURT

Ms. Hollie M. Jenkins
Circuit Court Reporter
P O Box 16506
Greenville, SC 29606

Dear Ms. Jenkins:

Our office has been requested to perfect the appeal arising out of:

The State v. Jerry Buck Inman

Indictment #: 06-GS-39-2222-2225.

County: Pickens

Date of Trial: May 8, 2008

Presiding Judge: Edward W. Miller

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

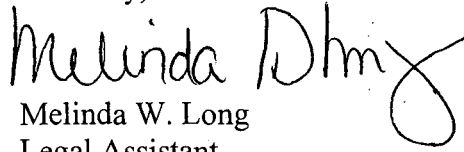
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Ms. Hollie M. Jenkins
September 3, 2009
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Melinda W. Long". The signature is fluid and stylized, with a large, sweeping "M" and a long, trailing "g" at the end.

Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



SCCID

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

September 3, 2009

RECEIVED

SEP - 3 2009

S.C. SUPREME COURT

Ms. Hollie M. Jenkins
Circuit Court Reporter
P O Box 16506
Greenville, SC 29606

Dear Ms. Jenkins:

Our office has been requested to perfect the appeal arising out of:

The State v. Jerry Buck Inman

Indictment #: 06-GS-39-2222-2225.

County: Pickens

Date of Trial: July 18, 2008

Presiding Judge: Edward W. Miller

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

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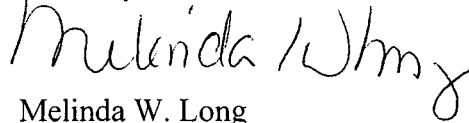
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Ms. Hollie M. Jenkins
September 3, 2009
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Melinda W. Long". The signature is written in dark ink and is positioned above the printed name and title.

Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



SCCID

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

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

September 3, 2009

Ms. Hollie M. Jenkins
Circuit Court Reporter
P O Box 16506
Greenville, SC 29606

Dear Ms. Jenkins:

RECEIVED

SEP - 3 2009

S.C. SUPREME COURT

Our office has been requested to perfect the appeal arising out of:

The State v. Jerry Buck Inman

Indictment #: 06-GS-39-2222-2225.

County: Pickens

Date of Trial: August 19, 2008

Presiding Judge: Edward W. Miller

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

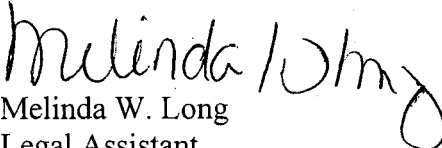
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms. Hollie M. Jenkins
September 3, 2009
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,


Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

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

September 3, 2009

RECEIVED

SEP - 3 2009

S.C. SUPREME COURT

Ms. Susan W. Hudgins
Circuit Court Reporter
P O Box 273
Moore, SC 29369

Dear Ms. Hudgins:

Our office has been requested to perfect the appeal arising out of:

The State v. Jerry Buck Inman

Indictment #: 06-GS-39-2222-2225.

County: Pickens

Date of Trial: July 30, 2008

Presiding Judge: Edward W. Miller

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

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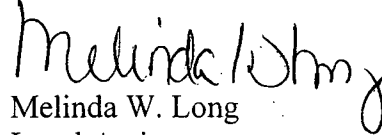
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Ms. Susan W. Hudgins
September 3, 2009
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Melinda W. Long". The signature is written in a cursive, flowing style. The first name "Melinda" is written in a larger, more prominent script, and the last name "W. Long" is written in a smaller, more compact script.

Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

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

September 3, 2009

RECEIVED

SEP - 3 2009

S.C. SUPREME COURT

Ms. Susan W. Hudgins
Circuit Court Reporter
P O Box 273
Moore, SC 29369

Dear Ms. Hudgins:

Our office has been requested to perfect the appeal arising out of:

The State v. Jerry Buck Inman

Indictment #: 06-GS-39-2222-2225.

County: Pickens

Date of Trial: August 27, 2008

Presiding Judge: Edward W. Miller

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

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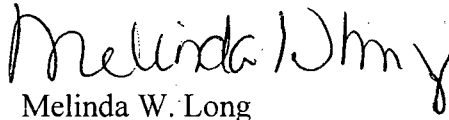
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Ms. Susan W. Hudgins
September 3, 2009
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Melinda W. Long". The signature is written in dark ink and is positioned above the printed name and title.

Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



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

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

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

September 3, 2009

RECEIVED

SEP - 3 2009

S.C. SUPREME COURT

Ms. Theresa Johnson
Circuit Court Reporter
Post Office Box 2812
Greenville, SC 29602

Dear Ms. Johnson:

Our office has been requested to perfect the appeal arising out of:

The State v. Jerry Buck Inman

Indictment #: 06-GS-39-2222-2225.

County: Pickens

Date of Trial: January 8, 2007

Presiding Judge: John C. Few

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

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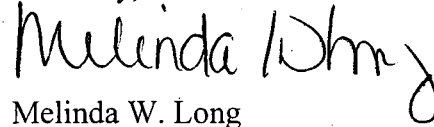
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Ms. Theresa Johnson
September 3, 2009
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Melinda W. Long". The signature is written in a cursive, flowing style. The first name "Melinda" is clearly legible, followed by "W." and "Long". The signature extends to the right with a long, sweeping tail.

Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

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

September 3, 2009

RECEIVED

SEP - 3 2009

S.C. SUPREME COURT

Ms. Theresa Johnson
Circuit Court Reporter
Post Office Box 2812
Greenville, SC 29602

Dear Ms. Johnson:

Our office has been requested to perfect the appeal arising out of:

The State v. Jerry Buck Inman

Indictment #: 06-GS-39-2222-2225.

County: Pickens

Date of Trial: February 2, 2007

Presiding Judge: John C. Few

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

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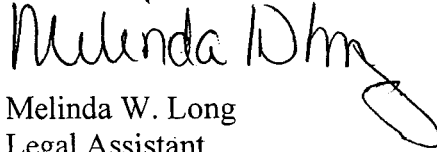
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Ms. Theresa Johnson
September 3, 2009
Page Two

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Thank you for your kind cooperation in this matter.

Sincerely,


Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



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

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Wanda H. Carter, Deputy Chief Attorney

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Telephone: (803) 734-1343
Facsimile: (803) 734-1397

September 3, 2009

RECEIVED

SEP - 3 2009

S.C. SUPREME COURT

Ms. April P. Herron
Circuit Court Reporter
P O Box 17675
Greenville, SC 29606

Dear Ms. Herron:

Our office has been requested to perfect the appeal arising out of:

The State v. Jerry Buck Inman

Indictment #: 06-GS-39-2222-2225.

County: Pickens

Date of Trial: April 14, 2009

Presiding Judge: Edward W. Miller

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

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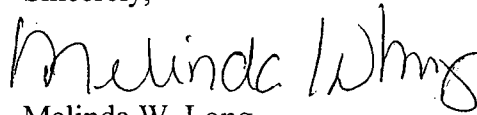
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Ms. April P. Herron
September 3, 2009
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Melinda W. Long". The signature is written in dark ink and is positioned above the printed name and title.

Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



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

Edward W. Miller
Judge

Greenville County Courthouse
305 E. North Street, Suite 219
Greenville, SC 29609-4751
Phone: (864) 467-8559
Fax: (864) 233-4173

August 24, 2009

Brenda F. Shealy
Chief Deputy Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

AUG 25 2009

Re: The State v. Inman, Jerry Buck

S.C. SUPREME COURT

Dear Ms. Shealy:

Please find enclosed the Death Penalty Sentencing Report for the above-referenced matter. As always, please do not hesitate to contact me should you require anything further.

With kind regards, I am

Very truly yours,

A handwritten signature in dark ink, appearing to read "E. W. Miller", written over a horizontal line.

Edward W. Miller

EWM/taj

Enclosures

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS)

THIRTEENTH JUDICIAL CIRCUIT

State of South Carolina,)

Plaintiff,)

vs.)

Jerry Buck Inman,)

Defendant.)

DEATH PENALTY SENTENCING REPORT

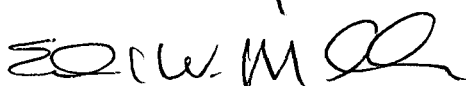
Indictment(s): 2006-GS-39-2222

2006-GS-39-2223

2006-GS-39-2224

2006-GS-39-2225

- A. Name of Trial Judge: Edward W. Miller
- B. Name of Defendant: Jerry Buck Inman
- C. Names of Defense Attorneys: 1. James W. Bannister;
2. Symmes W. Culbertson; and 3. John W. DeJong
- D. Date Sentenced: April 22, 2009
- E. Aggravating circumstance(s) found or a copy of the verdict form is attached:
See attached.



Judge, Court of General Sessions

August 24, 2009
Greenville, South Carolina

RECEIVED

AUG 25 2009

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	C. A. NO.: 2006-GS-39-2222
State of South Carolina,	)	2006-GS-39-2223
	)	2006-GS-39-2224
Plaintiff,	)	2006-GS-39-2225
	)	
v.	)	
	)	SENTENCING ORDER
Jerry Buck Inman,	)	
	)	
Defendant.	)	

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA
 APR 22 P 6:57

The Pickens County Grand Jury indicted the Defendant on November 8, 2006 on charges of Murder, Burglary in the First Degree, Criminal Sexual Conduct in the First Degree, and Kidnapping. Pursuant to S.C. Code § 16-3-26(A), the State timely notified the Defendant that it intended to seek the death penalty for the murder charge on August 22, 2006. I was assigned this case by Order of the Chief Justice of the South Carolina Supreme Court dated March 13, 2007. On August 19, 2008, this court conducted a competency hearing pursuant to S.C. Code § 44-23-410 and State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), and found the Defendant competent to stand trial. This case was scheduled for a jury trial to commence on September 8, 2008. On August 19, 2008, the Defendant pled guilty to Murder, Burglary in the First Degree, Criminal Sexual Conduct in the First Degree, and Kidnapping. On September 8 - 11, 2008, this Court commenced a non-jury sentencing proceeding as a result of the guilty plea. On September 11, 2008, the Sentencing proceeding was adjourned and continued as a result of the defense witness, Dr. Marty Loring, claiming protection under the Fifth Amendment of the United States Constitution and refusing to testify after comments made by the Solicitor which the witness construed as intimidating. The hearing was resumed on April 20, 2009 and the presentation of all legal issues and testimony were concluded on April 22, 2009.

AF1
 EJ

Law

S.C. Code § 16-3-20 provides, in part, that a person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years. For purposes of this statute, "life imprisonment" means until death of the offender without the possibility of parole. No person sentenced to life imprisonment pursuant to this statute is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment.

When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court is required to conduct a separate sentencing proceeding. In such a proceeding, if a statutory aggravating circumstance is found beyond a reasonable doubt, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years. In cases like the present case, where the defendant, in the guilt phase, waives his right to a trial by jury and pleads guilty, the sentencing proceeding must also be conducted without benefit of a jury, and the sentencing decision is to be made by a judge.

In the sentencing proceeding, the judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment. The law requires the judge to consider mitigating and extenuating circumstances authorized or allowed by law, as well as certain enumerated statutory aggravating and mitigating circumstances which may be supported by the evidence, pursuant to S.C. Code § 16-3-20(C). The judge is required to examine the evidence and determine the existence of the statutory aggravating circumstance or circumstances. Unless at least one of

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the statutory aggravating circumstances enumerated in this section is found beyond a reasonable doubt, the death penalty must not be imposed.

Finding and consideration of aggravating circumstances

Pursuant to S.C. Code § 16-3-20, I have carefully considered the evidence presented at the sentencing proceeding and make the following findings concerning the existence of statutory aggravating circumstances:

I find the State has proven beyond a reasonable doubt that the Defendant committed the murder for which he is charged while in the commission of the crimes of kidnapping, burglary in the first degree, and criminal sexual conduct in the first degree.

The circumstances surrounding the murder of Tiffany Souers are savage, brutal, and unconscionable. I find that the State has proven beyond a reasonable doubt that Tiffany Souers' home was broken into in the night time by the Defendant (Burglary in the First Degree, 2006-GS-39-2222), that she was held against her will (Kidnapping, 2006-GS-39-2224), that she was the victim of forcible rape (Criminal Sexual Conduct in the First Degree, 2006-GS-39-2223), and that she was subsequently choked by the Defendant until she died (Murder, 2006-GS-39-2225). Having proven the charge of murder, accompanied by three statutory aggravating circumstances, the State is entitled to seek the death penalty for the Defendant.

Finding and consideration of mitigating circumstances

Pursuant to S.C. Code § 16-3-20, I have carefully considered the evidence presented at the sentencing proceeding and make the following findings concerning the existence of statutory mitigating circumstances:

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CLERK OF COURT
JOHNS COUNTY
GEORGIA
MAR 22 PM 6:58

(1) The Defendant does have a significant history of prior criminal convictions involving the use of violence against another person and is therefore unable to avail himself of this mitigating factor.

(2) The murder was committed while the Defendant was under the influence of mental or emotional disturbance. It is apparent that the Defendant has and continues to suffer from several mental and emotional disturbances.

The Defendant makes no attempt to claim he was not criminally responsible for the murder of Tiffany Souers. However, there is clear evidence that the defendant suffers from numerous and long-standing mental health disorders. The Defendant's witness, Dr. David Price was qualified as an expert in the fields of Forensic Psychology, Clinical Psychology, and Neuro-Psychology. Dr. Price testified that the Defendant had been diagnosed with three Axis I Disorders: 1) Mood Disorders, consisting of Depression, Bi-Polar, Major Depression in the recurrent form, and Major Depression with Psychosis; 2) Dissociative Identity Disorder; and 3) Sexual Paraphilia. The Defendant also suffers from the Axis II disorder of Personality Disorder with Schizophrenia. Some of the effects of these diseases on the Defendant, according to this expert's testimony, were impulsivity, irritability, aggressiveness, agitation, and poor thinking, a profound impairment of ability to function in daily life, bad decisions, flat affect, slow speech, introvert behavior, not forthcoming about himself, and an inability to engage in normal heterosexual relationships. Dr. Price also describes the Defendant as a serial rapist. The Defendant has attempted to commit suicide on seven separate occasions, including cutting his wrist on two occasions, cutting his jugular vein, starvation, cutting his antecubital vein, and swallowing two six inch strands of barbed wire. Dr. Price is a nationally recognized expert on mental health malingering and

CLERK OF COURT
JACKSON COUNTY
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2009 APR 28
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he opines that the Defendant is not a malingerer. The Defendant was sexually abused as a young child, and Dr. Price testified that the circumstance of this offence and several other of Mr. Inman's offences mimic the sexual abuse which he suffered as a child. Mr. Inman tries to minimize his mental illness and refuses to acknowledge the physical and sexual abuse he suffered at the hands of his parents. Mr. Inman's ability to conform his conduct to the requirements of the law is substantially impaired. On cross examination, Dr. Price testified that Mr. Inman has the ability to make choices to conform to the requirements of the law as evidenced by some of his conduct relating to other victims of his offenses who testified at this hearing. Again, I stress that the Defendant does not claim his disorders excused him from criminal responsibility for his actions, but may have contributed to them for purposes of sentencing only.

(3) There is no evidence the victim was a participant in the defendant's conduct or consented to the act.

(4) There is no evidence of the participation of an accomplice in this murder, and the defendant's participation was not relatively minor.

(5) There was no evidence presented that the defendant acted under duress or under the domination of another person.

(6) As stated above, the capacity of the defendant to appreciate the criminality of his conduct and to conform his conduct to the requirements of law was impaired at the time of the crime due to mental and emotional disturbances, but it did not rise to the level of excusing criminal responsibility.

(7) The Defendant was 35 years old at the time of the crime. His mental acuity is average.

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CLERK OF COURT
JACKSON COUNTY
MISSISSIPPI
JAN 2 2011
10:58

(8) There is no evidence the Defendant was provoked by the victim into committing the murder.

(9) As stated above, the Defendant was over the age of eighteen at the time of the crime.

(10) The Defendant showed no signs of mental retardation at the time of the crime. "Mental retardation" means significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

Finding and consideration of non-statutory mitigating circumstances

Turning to non-statutory mitigation, I have carefully considered all the evidence. The Defendant, through excellent and well prepared counsel, presented compelling mitigation evidence.

There is evidence in the record that the Defendant has suffered a great amount of trauma in his life. He was exposed to violence and sexual abuse at an early age. He was exposed to violence at an early age by witnessing the sexual abuse of his sister, and experiencing physical and sexual abuse from both his biological father and from his older step-brother. He was sexualized at a young age, and has had a history of deviant sexual activity. He has a substance abuse problem that has an apparent genetic component and is also exacerbated by his underlying mental disorders. The defendant's mental disorders are documented above.

The Defendant admitted his guilt to the crime early in the criminal investigation. He made numerous confessions to law enforcement beginning on the day of his arrest, June 26, 2006, in which he confessed to murdering Tiffany Souers.

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CLERK OF COURT
JOHN H. COOK
JUL 11 AM 2:22 P 6:50 PM

The Defendant pled guilty and has acknowledged the brutality of his conduct and also acknowledges that he cannot be rehabilitated. As Dr. Price has described Mr. Inman: he grew up in prison; he is a person with a bad genetic loading of inherited mental disorders whose formative environment did him no favors; he was described as a lost soul who will remain lost. The Court views Mr. Inman as a tortured soul, whose inner demons will never leave him.

I have considerable sympathy for Mr. Inman and the lamentable circumstances of his early life; a person with no opportunity to escape his tragic circumstances. However, while his background lends itself to an understanding of who he has become, it does not excuse his longstanding pattern of violence and his sexually predatory conduct.

As stated above, the State proved beyond a reasonable doubt the existence of more than one aggravating circumstance accompanying the commission of the murder of Tiffany Souers. This crime was horrific and was perpetrated upon one of society's most valuable citizens – a young woman, full of life, energy and vitality, love for her family, with passion for life and for people, whose own life was marked by her good deeds and generosity to others.

Jerry Buck Inman is a self-described "animal", who has acknowledged that he cannot be rehabilitated. The concept of a fair sentence includes consideration of many factors, such as the seriousness of the crime, the culpability of the offender, characteristics of the offender, need for protection of society, need for punishment and accountability. Determining the proper sentence in a case in which the death penalty is sought is especially painful and agonizing. The death penalty is the ultimate sentence which is to be imposed only in the worst cases and only after serious, deliberate and careful consideration.

CLERK OF COURT
JOHNS COUNTY
MISSISSIPPI

2008 APR 22 6:58

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Regrettably, Jerry Buck Inman falls within a small group of deviant predators who exhibit in their conduct a callous disregard for society and the rights and safety of others. While this has been one of the hardest decisions of my life, I am firmly convinced that the murder and rape of Tiffany Souers and the characteristics of Jerry Buck Inman warrant the penalty of death.

I have carefully considered all relevant facts and circumstances, including the existence of statutory aggravating circumstances, as well as statutory and non-statutory mitigating circumstances. My verdict is not the result of prejudice, passion or any other arbitrary circumstance.

It is therefore the judgment and sentence of this court that the Defendant Jerry Buck Inman be remanded to the South Carolina Department of Corrections, henceforth to be kept in close and safe confinement until the 27th day of July, 2009, upon which day between the hours of six o'clock p.m. and six o'clock a.m. on July 28, 2009, or upon an order of execution issued by the South Carolina Supreme Court, the Defendant Jerry Buck Inman shall suffer death by electrocution or by lethal injection in the manner provided by law.

May God have mercy on your soul.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That for Indictment 2006-GS-39-2225, Murder of Tiffany Souers, you, Jerry Buck Inman, are sentenced to death; and,
2. That for Indictment 2006-GS-39-2222, Burglary in the First Degree, you, Jerry Buck Inman, are committed to the Department of Corrections for a period of thirty years; to run consecutive to the sentence imposed above; and,
3. That for Indictment 2006-GS-39-2223, Criminal Sexual Conduct in the First Degree, you, Jerry Buck Inman, are committed to the Department of Corrections for a period of thirty years; to run consecutive to the sentence imposed above.

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5

CLERK OF COURT
JACKSON COUNTY
SOUTH CAROLINA
2009 APR 23 PM 6:58

4. That for Indictment 2006-GS-39-2224, Kidnapping, pursuant to S.C. Code § 16-3-910 and because you have been sentenced for Murder, this Court may not impose a sentence for the crime of kidnapping.

IT IS SO ORDERED.



Edward W. Miller
Circuit Court Judge
13th Judicial Circuit

April 22, 2009
Pickens, South Carolina

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2009 APR 22 P 6:58



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

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

August 13, 2009

RECEIVED

AUG 13 2009

S.C. SUPREME COURT

Ms. Hollie M. Jenkins
Circuit Court Reporter
P O Box 16506
Greenville, SC 29606

Dear Ms. Jenkins:

Our office has been requested to perfect the appeal arising out of:

The State v. Jerry Buck Inman

Indictment #: 06-GS-39-2222-2225.

County: Pickens

Date of Trial: April 20 - 22, 2009

Presiding Judge: Edward W. Miller

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

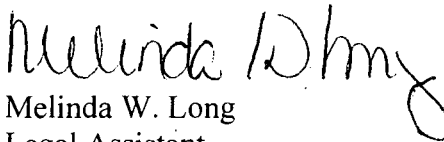
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms. Hollie M. Jenkins
August 13, 2009
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,


Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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1330 Lady Street, Suite 401
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Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

August 13, 2009

RECEIVED

AUG 13 2009

S.C. SUPREME COURT

Ms. Hollie M. Jenkins
Circuit Court Reporter
P O Box 16506
Greenville, SC 29606

Dear Ms. Jenkins:

Our office has been requested to perfect the appeal arising out of:

The State v. Jerry Buck Inman

Indictment #: 06-GS-39-2222-2225.

County: Pickens

Date of Trial: September 8 - 11, 2008

Presiding Judge: Edward W. Miller

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

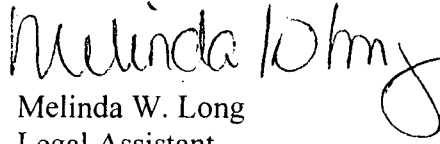
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms. Hollie M. Jenkins
August 13, 2009
Page Two

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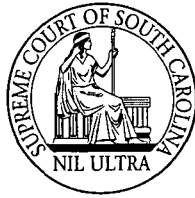
Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Melinda W. Long". The signature is written in a cursive, flowing style. The first name "Melinda" is written in a larger, more prominent script, and the last name "Long" is written in a slightly smaller, more compact script. The signature is positioned to the right of the typed name and title.

Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

August 7, 2009

The Honorable Edward W. Miller
305 E. North Street, Suite 219
Greenville, SC 29601

Re: The State v. Inman, Jerry Buck

Dear Judge Miller:

As you know, the trial judge must submit a Death Penalty Sentencing Report to the Supreme Court on all death penalty cases. Please find enclosed a copy of this questionnaire for your convenience in completing the report in the above matter.

Very truly yours,

Brenda F. Shealy
CHIEF DEPUTY CLERK

BFS/dmh

Enclosure

RECEIVED

AUG 06 2009

S.C. SUPREME COURT

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2009 AUG -4 P 4:47

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Edward W. Miller, Circuit Court Judge

Case Nos.: 2006-GS-39-2222
2006-GS-39-2223
2006-GS-39-2224
2006-GS-39-2225

The State, ... Respondent.

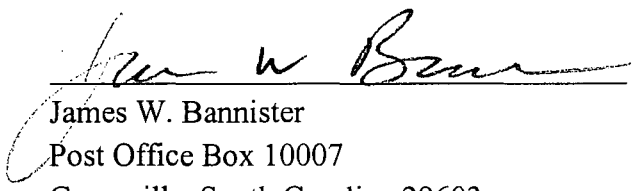
v.

Jerry Buck Inman, ... Appellant.

NOTICE OF APPEAL

Jerry Buck Inman appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Edward W. Miller dated July 17, 2009 and recorded on July 28, 2009. [This appeal is taken from the order of the Honorable Edward W. Miller dated April 22, 2009 and filed on April 22, 2009 and the order dated July 17, 2009 and filed July 28, 2009, which the latter denied Appellant's Motion to Reconsider and For New Trial. Appellant received written notice of entry of this order on July 30, 2009.

August 4, 2009


James W. Bannister
Post Office Box 10007
Greenville, South Carolina 29603
(864) 298-0084
Attorney for Appellant

Other Counsel of Record:
Robert M. Ariail, Esq.
13th Judicial Circuit Solicitor
305 E. North Street, Suite 325
Greenville, South Carolina 29601
(864) 467-8647
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Edward W. Miller, Circuit Court Judge

Case Nos.: 2006-GS-39-2222
2006-GS-39-2223
2006-GS-39-2224
2006-GS-39-2225

The State, ... Respondent.

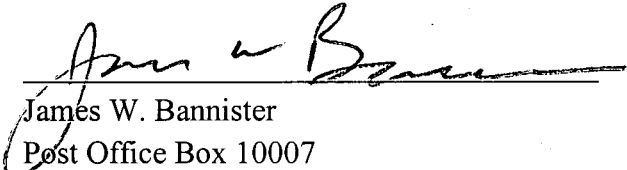
v.

Jerry Buck Inman, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Robert M. Ariail by personally delivering a copy of it to the attorney of record, Robert M. Ariail, at his office at 305 E. North Street, Suite 325, Greenville, South Carolina 29601 on August 4, 2009.

August 4, 2009


James W. Bannister
Post Office Box 10007
Greenville, South Carolina 29603
(864) 298-0084
Attorney for Appellant

RECEIVED

AUG 06 2009

S.C. SUPREME COURT

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2009 AUG -4 P 4:47

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	C. A. NO.: 2006-GS-39-2222
State of South Carolina,	)	2006-GS-39-2223
	)	2006-GS-39-2224
Plaintiff,	)	2006-GS-39-2225
	)	
v.	)	
	)	SENTENCING ORDER
Jerry Buck Inman,	)	
	)	
Defendant.	)	

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA
 APR 22 P 6:57

The Pickens County Grand Jury indicted the Defendant on November 8, 2006 on charges of Murder, Burglary in the First Degree, Criminal Sexual Conduct in the First Degree, and Kidnapping. Pursuant to S.C. Code § 16-3-26(A), the State timely notified the Defendant that it intended to seek the death penalty for the murder charge on August 22, 2006. I was assigned this case by Order of the Chief Justice of the South Carolina Supreme Court dated March 13, 2007. On August 19, 2008, this court conducted a competency hearing pursuant to S.C. Code § 44-23-410 and State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), and found the Defendant competent to stand trial. This case was scheduled for a jury trial to commence on September 8, 2008. On August 19, 2008, the Defendant pled guilty to Murder, Burglary in the First Degree, Criminal Sexual Conduct in the First Degree, and Kidnapping. On September 8 - 11, 2008, this Court commenced a non-jury sentencing proceeding as a result of the guilty plea. On September 11, 2008, the Sentencing proceeding was adjourned and continued as a result of the defense witness, Dr. Marty Loring, claiming protection under the Fifth Amendment of the United States Constitution and refusing to testify after comments made by the Solicitor which the witness construed as intimidating. The hearing was resumed on April 20, 2009 and the presentation of all legal issues and testimony were concluded on April 22, 2009.

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Law

S.C. Code § 16-3-20 provides, in part, that a person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years. For purposes of this statute, "life imprisonment" means until death of the offender without the possibility of parole. No person sentenced to life imprisonment pursuant to this statute is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment.

When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court is required to conduct a separate sentencing proceeding. In such a proceeding, if a statutory aggravating circumstance is found beyond a reasonable doubt, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years. In cases like the present case, where the defendant, in the guilt phase, waives his right to a trial by jury and pleads guilty, the sentencing proceeding must also be conducted without benefit of a jury, and the sentencing decision is to be made by a judge.

In the sentencing proceeding, the judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment. The law requires the judge to consider mitigating and extenuating circumstances authorized or allowed by law, as well as certain enumerated statutory aggravating and mitigating circumstances which may be supported by the evidence, pursuant to S.C. Code § 16-3-20(C). The judge is required to examine the evidence and determine the existence of the statutory aggravating circumstance or circumstances. Unless at least one of

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the statutory aggravating circumstances enumerated in this section is found beyond a reasonable doubt, the death penalty must not be imposed.

Finding and consideration of aggravating circumstances

Pursuant to S.C. Code § 16-3-20, I have carefully considered the evidence presented at the sentencing proceeding and make the following findings concerning the existence of statutory aggravating circumstances:

I find the State has proven beyond a reasonable doubt that the Defendant committed the murder for which he is charged while in the commission of the crimes of kidnapping, burglary in the first degree, and criminal sexual conduct in the first degree.

The circumstances surrounding the murder of Tiffany Souers are savage, brutal, and unconscionable. I find that the State has proven beyond a reasonable doubt that Tiffany Souers' home was broken into in the night time by the Defendant (Burglary in the First Degree, 2006-GS-39-2222), that she was held against her will (Kidnapping, 2006-GS-39-2224), that she was the victim of forcible rape (Criminal Sexual Conduct in the First Degree, 2006-GS-39-2223), and that she was subsequently choked by the Defendant until she died (Murder, 2006-GS-39-2225). Having proven the charge of murder, accompanied by three statutory aggravating circumstances, the State is entitled to seek the death penalty for the Defendant.

Finding and consideration of mitigating circumstances

Pursuant to S.C. Code § 16-3-20, I have carefully considered the evidence presented at the sentencing proceeding and make the following findings concerning the existence of statutory mitigating circumstances:

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CLERK OF COURT
HICKENS COUNTY
SOUTH CAROLINA
MAR 22 10:58 AM

(1) The Defendant does have a significant history of prior criminal convictions involving the use of violence against another person and is therefore unable to avail himself of this mitigating factor.

(2) The murder was committed while the Defendant was under the influence of mental or emotional disturbance. It is apparent that the Defendant has and continues to suffer from several mental and emotional disturbances.

The Defendant makes no attempt to claim he was not criminally responsible for the murder of Tiffany Souers. However, there is clear evidence that the defendant suffers from numerous and long-standing mental health disorders. The Defendant's witness, Dr. David Price was qualified as an expert in the fields of Forensic Psychology, Clinical Psychology, and Neuro-Psychology. Dr. Price testified that the Defendant had been diagnosed with three Axis I Disorders: 1) Mood Disorders, consisting of Depression, Bi-Polar, Major Depression in the recurrent form, and Major Depression with Psychosis; 2) Dissociative Identity Disorder; and 3) Sexual Paraphilia. The Defendant also suffers from the Axis II disorder of Personality Disorder with Schizophrenia. Some of the effects of these diseases on the Defendant, according to this expert's testimony, were impulsivity, irritability, aggressiveness, agitation, and poor thinking, a profound impairment of ability to function in daily life, bad decisions, flat affect, slow speech, introvert behavior, not forthcoming about himself, and an inability to engage in normal heterosexual relationships. Dr. Price also describes the Defendant as a serial rapist. The Defendant has attempted to commit suicide on seven separate occasions, including cutting his wrist on two occasions, cutting his jugular vein, starvation, cutting his antecubital vein, and swallowing two six inch strands of barbed wire. Dr. Price is a nationally recognized expert on mental health malingering and

CLERK OF COURT
WICKENS COUNTY
NORTH CAROLINA
2009 APR 29 PM 6:55

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CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

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DB: 58

he opines that the Defendant is not a malingerer. The Defendant was sexually abused as a young child, and Dr. Price testified that the circumstance of this offence and several other of Mr. Inman's offences mimic the sexual abuse which he suffered as a child. Mr. Inman tries to minimize his mental illness and refuses to acknowledge the physical and sexual abuse he suffered at the hands of his parents. Mr. Inman's ability to conform his conduct to the requirements of the law is substantially impaired. On cross examination, Dr. Price testified that Mr. Inman has the ability to make choices to conform to the requirements of the law as evidenced by some of his conduct relating to other victims of his offenses who testified at this hearing. Again, I stress that the Defendant does not claim his disorders excused him from criminal responsibility for his actions, but may have contributed to them for purposes of sentencing only.

(3) There is no evidence the victim was a participant in the defendant's conduct or consented to the act.

(4) There is no evidence of the participation of an accomplice in this murder, and the defendant's participation was not relatively minor.

(5) There was no evidence presented that the defendant acted under duress or under the domination of another person.

(6) As stated above, the capacity of the defendant to appreciate the criminality of his conduct and to conform his conduct to the requirements of law was impaired at the time of the crime due to mental and emotional disturbances, but it did not rise to the level of excusing criminal responsibility.

(7) The Defendant was 35 years old at the time of the crime. His mental acuity is average.

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(8) There is no evidence the Defendant was provoked by the victim into committing the murder.

(9) As stated above, the Defendant was over the age of eighteen at the time of the crime.

(10) The Defendant showed no signs of mental retardation at the time of the crime. "Mental retardation" means significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

Finding and consideration of non-statutory mitigating circumstances

Turning to non-statutory mitigation, I have carefully considered all the evidence. The Defendant, through excellent and well prepared counsel, presented compelling mitigation evidence.

There is evidence in the record that the Defendant has suffered a great amount of trauma in his life. He was exposed to violence and sexual abuse at an early age. He was exposed to violence at an early age by witnessing the sexual abuse of his sister, and experiencing physical and sexual abuse from both his biological father and from his older step-brother. He was sexualized at a young age, and has had a history of deviant sexual activity. He has a substance abuse problem that has an apparent genetic component and is also exacerbated by his underlying mental disorders. The defendant's mental disorders are documented above.

The Defendant admitted his guilt to the crime early in the criminal investigation. He made numerous confessions to law enforcement beginning on the day of his arrest, June 26, 2006, in which he confessed to murdering Tiffany Souers.

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2009 APR 22 P 6:58
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

The Defendant pled guilty and has acknowledged the brutality of his conduct and also acknowledges that he cannot be rehabilitated. As Dr. Price has described Mr. Inman: he grew up in prison; he is a person with a bad genetic loading of inherited mental disorders whose formative environment did him no favors; he was described as a lost soul who will remain lost. The Court views Mr. Inman as a tortured soul, whose inner demons will never leave him.

I have considerable sympathy for Mr. Inman and the lamentable circumstances of his early life; a person with no opportunity to escape his tragic circumstances. However, while his background lends itself to an understanding of who he has become, it does not excuse his longstanding pattern of violence and his sexually predatory conduct.

As stated above, the State proved beyond a reasonable doubt the existence of more than one aggravating circumstance accompanying the commission of the murder of Tiffany Souers. This crime was horrific and was perpetrated upon one of society's most valuable citizens – a young woman, full of life, energy and vitality, love for her family, with a passion for life and for people, whose own life was marked by her good deeds and generosity to others.

CLERK OF COURT
PICKENS COUNTY
CAROLINA

APR 22 6:58

Jerry Buck Inman is a self-described "animal", who has acknowledged that he cannot be rehabilitated. The concept of a fair sentence includes consideration of many factors, such as the seriousness of the crime, the culpability of the offender, characteristics of the offender, need for protection of society, need for punishment and accountability. Determining the proper sentence in a case in which the death penalty is sought is especially painful and agonizing. The death penalty is the ultimate sentence which is to be imposed only in the worst cases and only after serious, deliberate and careful consideration.

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Regrettably, Jerry Buck Inman falls within a small group of deviant predators who exhibit in their conduct a callous disregard for society and the rights and safety of others. While this has been one of the hardest decisions of my life, I am firmly convinced that the murder and rape of Tiffany Souers and the characteristics of Jerry Buck Inman warrant the penalty of death.

I have carefully considered all relevant facts and circumstances, including the existence of statutory aggravating circumstances, as well as statutory and non-statutory mitigating circumstances. My verdict is not the result of prejudice, passion or any other arbitrary circumstance.

CLERK OF COURT
JACKSON COUNTY
SOUTH CAROLINA

2009 APR 27 PM 6:58

It is therefore the judgment and sentence of this court that the Defendant Jerry Buck Inman be remanded to the South Carolina Department of Corrections, henceforth to be kept in close and safe confinement until the 27th day of July, 2009, upon which day between the hours of six o'clock p.m. and six o'clock a.m. on July 28, 2009, or upon an order of execution issued by the South Carolina Supreme Court, the Defendant Jerry Buck Inman shall suffer death by electrocution or by lethal injection in the manner provided by law.

May God have mercy on your soul.

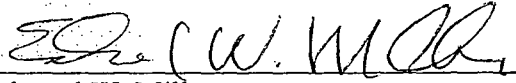
THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That for Indictment 2006-GS-39-2225, Murder of Tiffany Souers, you, Jerry Buck Inman, are sentenced to death; and,
2. That for Indictment 2006-GS-39-2222, Burglary in the First Degree, you, Jerry Buck Inman, are committed to the Department of Corrections for a period of thirty years; to run consecutive to the sentence imposed above; and,
3. That for Indictment 2006-GS-39-2223, Criminal Sexual Conduct in the First Degree, you, Jerry Buck Inman, are committed to the Department of Corrections for a period of thirty years; to run consecutive to the sentence imposed above.

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4. That for Indictment 2006-GS-39-2224, Kidnapping, pursuant to S.C. Code § 16-3-910 and because you have been sentenced for Murder, this Court may not impose a sentence for the crime of kidnapping.

IT IS SO ORDERED.



Edward W. Miller
Circuit Court Judge
13th Judicial Circuit

April 22, 2009
Pickens, South Carolina

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2009 APR 22 P 6:58

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
IN THE COURT OF GENERAL SESSIONS
PICKENS COUNTY
SOUTH CAROLINA
THIRTEENTH JUDICIAL CIRCUIT

2009 JUL 28 A 10:46

STATE OF SOUTH CAROLINA)

ORDER

Case Number(s): 2006-GS-39-2222

vs.)

2006-GS-39-2223

2006-GS-39-2224

JERRY BUCK INMAN,)

2006-GS-39-2225

Defendant.)

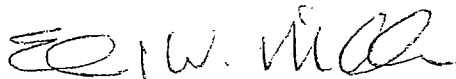
LOCK IN TIME CANCELLED
2009 JUL 28 10:46 AM
FILED IN COURT

This matter comes before the Court upon Defendant's Motion to Reconsider and For New Trial upon the conviction of Defendant on April 23, 2009 pursuant to Rule 29 of South Carolina Rules of Criminal Procedure.

The Defendant submitted various arguments to the Court and the State has responded with the same. Based on the pleadings filed and upon full consideration of the Defendant's Motion, this Court is not persuaded to reconsider its ruling in this matter, nor alter or amend the sentence.

THEREFORE, it is ORDERED ADJUDGED AND DECREED that the Defendant's Motion to Reconsider and for New Trial is DENIED.

AND IT IS SO ORDERED.


Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
July 17, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

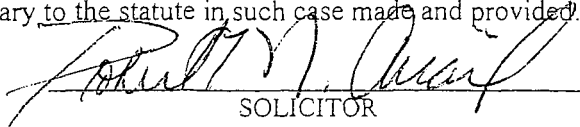
INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on November 8, 2006 the Grand Jurors of Pickens

County present upon their oath:

That JERRY BUCK INMAN did in Pickens County, on or about the 26th day of May 2006, willfully and unlawfully enter the dwelling of TIFFANY SOUERS located at 118-CC Sumter Lane Central, South Carolina, without consent and with the intent to commit a crime therein and the entering did occur during the nighttime. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

Kenneth H. Kirby

Central Police Department

5/26/2006

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

ACTION OF GRAND JURY

TRUE BILL

Date NOV 08 2006

Rebecca Long
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-39-2222

RMA

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2006

THE STATE

vs.

JERRY BUCK INMAN

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

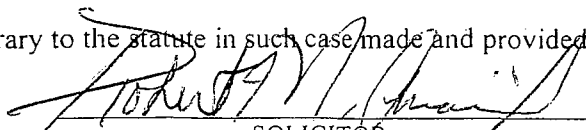
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

AMENDED INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT FIRST DEGREE

At a Court of General Sessions, convened on AUGUST 19, 2008 the Grand Jurors of Pickens
County present upon their oath:

That JERRY BUCK INMAN did in Pickens County, on or about the 26th day of May, 2006, engage in sexual
battery, with TIFFANY SOURERS, and used aggravated force to accomplish this sexual battery. This is in
violation of South Carolina Code of Laws Section 16-3-0652 of the South Carolina Code of Laws (1976) as
amended.

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


SOLICITOR

WITNESSES

Kenneth H. Kirby

Clemson Police Department

5/26/2006

ARREST WARRANT NUMBER

H017956

ACTION OF GRAND JURY

TRUE BILL

AUG 19 2008

Date


Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-39-02223

RMA

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

AUGUST TERM 2008

THE STATE

vs.

JERRY BUCK INMAN

AMENDED INDICTMENT FOR

0160

CRIMINAL SEXUAL CONDUCT FIRST DEGREE

VIOLATION § 16-03-0652

INDICTMENT FOR
KIDNAPPING

County present upon their oath:

That JERRY BUCK INMAN did in Pickens County, on or about the 26th day of May 2006, unlawfully seize, abduct, confine, inveigle, decoy or carry away TIFFANY SOUERS, without the authority of law. This is in violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

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

SOLICITOR

WITNESSES

Kenneth H. Kirby

Central Police Department

5/26/2006

ARREST WARRANT NUMBER

H017955

ACTION OF GRAND JURY

TRUE BILL

Date

NOV 08 2006

Rebecca Logan
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-39-2224
RMA

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2006

THE STATE

vs.

JERRY BUCK INMAN

Indictment for

0095

KIDNAPPING

VIOLATION § 16-03-0910

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

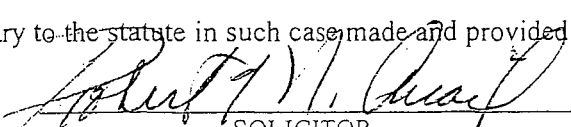
INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on November 8, 2006 the Grand Jurors of Pickens

County present upon their oath:

That JERRY BUCK INMAN did in Pickens County, on or about the 26th day of May 2006, unlawfully and with malice aforethought kill TIFFANY SOUERS by means of strangulation, and that TIFFANY SOUERS died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

Kenneth H. Kirby

Central Police Department

5/26/2006

ARREST WARRANT NUMBER

H017954

ACTION OF GRAND JURY

TRUE BILL
Date NOV 08 2006

Rebecca Longen
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-39-2225

RMA

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2006

THE STATE

vs.

JERRY BUCK INMAN

Indictment for

0116

MURDER

VIOLATION § 16-03-0010, 0020

BANNISTER & WYATT, LLC
ATTORNEYS AT LAW

O.W. BANNISTER | JOHN F. WYATT | JAMES W. BANNISTER | BRUCE W. BANNISTER | ANDREW B. MOORMAN
401 PETTIGRU STREET - 29601 | PO BOX 10007 - 29603 | GREENVILLE, SC | PHONE: (864) 298-0084 | FAX: (864) 298-0146

August 4, 2009

RECEIVED

AUG 06 2009

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

S.C. SUPREME COURT

RE: The State, Respondent v. Jerry Buck Inman, Appellant
Case Nos.: 2006-GS-39-2222-2225

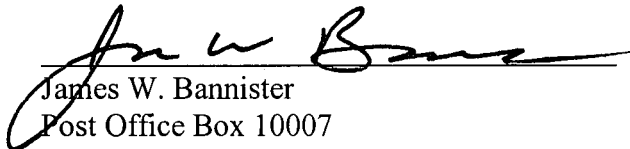
Dear Mr. Shearouse:

Enclosed for filing is a Notice of Appeal in the above case. Also, enclosed are the following:

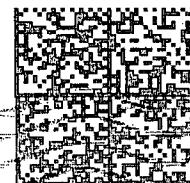
- (1) Proof of Service of the Notice of Appeal on the Respondent.
- (2) A copy of the order which is to be challenged on appeal.
- (3) This appeal is being filed with the Supreme Court because the final judgment in this case included a sentence of death (see SCACR, Rule 203(d)).

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

Sincerely,


James W. Bannister
Post Office Box 10007
Greenville, South Carolina 29603
(864) 298-0084
Attorney for Appellant

Cc: Robert M. Ariail, Esq.
305 E. North Street, Suite 325
Greenville, South Carolina 29601
(864) 467-8647
Attorney for Respondent



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The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
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