

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 23, 2012

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

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APR 26 2012

S.C. Supreme Court

Re: William O. Dickerson
v. South Carolina
No. 11-8903
(Your No. 27048)

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

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

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

February 21, 2012

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

Re: William O. Dickerson
v. South Carolina
No. 11-8903
(Your No. 27048)

Dear Clerk:

The petition for a writ of certiorari in the above entitled case was filed on February 15, 2012 and placed on the docket February 21, 2012 as No. 11-8903.

Sincerely,

William K. Suter, Clerk

by

Melissa Blalock
Melissa Blalock
Case Analyst

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S.C. SUPREME COURT



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

February 15, 2012

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FEB 15 2012

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

S.C. Supreme Court

Re: William O. Dickerson 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: Melody J. Brown, Esquire
Kathrine Hudgins, Esquire
Jeffrey Bloom, Esquire



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February 15, 2012

S.C. Supreme Court

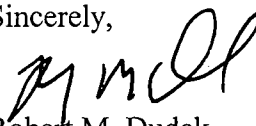
Honorable William K. Suter
Clerk, Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543

Re: William O. Dickerson 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 William O. Dickerson 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 Melody J. Brown, 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 William O. Dickerson. 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~~
Melody J. Brown, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

February 15, 2012

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

Re: William O. Dickerson 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: Melody J. Brown, Esquire
Honorable Daniel E. Shearouse, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2011

No. 11-

RECEIVED

FEB 15 2012

WILLIAM O. DICKERSON,

Petitioner,

S.C. Supreme Court

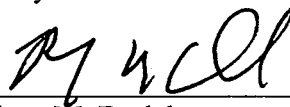
v.

STATE OF SOUTH CAROLINA,

Respondent

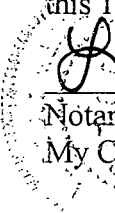
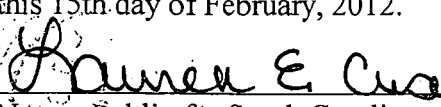
CERTIFICATE OF FILING BY MAIL

I hereby certify that I am a member of the Bar of this Court and that on February 15, 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 15th day of February, 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. 11-

RECEIVED

FEB 15 2012

WILLIAM O. DICKERSON,

Petitioner,

S.C. Supreme Court

v.

STATE OF SOUTH CAROLINA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
SOUTH CAROLINA SUPREME COURT

ROBERT M. DUDEK
Attorney at Law

Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
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(803) 734-1330

CAPITAL CASE

QUESTION PRESENTED

Whether the South Carolina Supreme Court erred by holding the trial court did not err when it refused to allow petitioner's first cousin to testify petitioner's execution would deeply hurt her because she thought of petitioner as being like a brother to her, since petitioner's ability to maintain this positive relationship with her was mitigating evidence of his good character that petitioner had the right to present to the sentencing jury pursuant to Skipper v. South Carolina, 476 U.S. 1, 4 (1986) and Lockett v. Ohio, 438 U.S. 586, 604 (1978)?

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2011

No. 11-

WILLIAM O. DICKERSON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
SOUTH CAROLINA SUPREME COURT

Counsel for William O. Dickerson petitions the Court to issue a writ of certiorari to review the decision of the South Carolina Supreme Court affirming his convictions for murder, kidnapping, and criminal sexual conduct in the first degree, and his death sentence.

CITATION TO OPINION BELOW

The South Carolina Supreme Court's opinion is reported as State v. William O. Dickerson 395 S.C. 101, 716 S.E.2d 895 (2011) and is reproduced in the Appendix to this petition at pages 1-25.

JURISDICTION

The final judgment of the South Carolina Supreme Court in this case was entered on November 17, 2011. App. 26-27.

The Court has jurisdiction pursuant to 28 U.S.C §1257(a), since petitioner Dickerson 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

Petitioner was indicted by the Charleston County grand jury for the offenses of murder, kidnapping, and criminal sexual conduct in the first degree R. 4454-4459. The state filed its notice of intent to seek the death penalty. His case came on for trial on April 17, 2009 before the Honorable R. Markley Dennis, and a jury. Jeffrey Bloom and Drew Carroll represented petitioner. Scarlett Wilson, Bruce Durant, and Rutledge Durant were the assistant solicitors. R. 193.

At the conclusion of the guilt phase the jury found petitioner guilty on all counts. R. 3527, ll. 2 – 25. After the twenty-four hour waiting period the penalty phase trial commenced. The jury recommended a sentence of death. R. 4431, ll. 13 – 19. Judge Dennis sentenced petitioner to death for murder, and he imposed thirty years concurrent sentences for the other offenses. R. 4439, l. 7 -

4440, l. 11.

Relevant trial facts

During the penalty phase the defense called Johnette Watson as a witness. Watson was petitioner's first cousin. She was "about a year younger" than petitioner and she testified "he's like a brother" to her. R. 4027, l. 18 – 4029, l. 21.

Petitioner never exhibited any violent tendencies around her, and he was also protective of her. R. 4028, l. 22 – 4029, l. 2. Watson recalled that when petitioner was released from the Department of Corrections in September 2005 that "things were good, he was around family, he got a job not too long after, he got a car, he was doing fine." R. 4029, ll. 3 – 8.

Watson related that petitioner had a positive attitude and he was motivated to do well in life. R. 4029, ll. 9 – 12. Watson said she thought petitioner got a new start in life by way of his relationship with Tierra McIntosh. However, that relationship eventually ended and petitioner stated dating Shelly Nelson. Watson opined Nelson was not "good for William." R. 4029, l. 17 – 4031, l. 3.

Watson described petitioner's transformation from being very particular about his appearance and his wardrobe "to looking like a bum." R. 4031, ll. 4 – 21. Watson suspected petitioner started doing drugs with Nelson. R. 4031, ll. 22 – 24. The following occurred on direct examination of Watson:

Q. Next let me ask you, finally, is there anything that you want to ask this jury or tell them about William?

A. He's basically a good person. He got mixed up in the wrong things and I, I beg that you have mercy on him.

Q. How would his execution impact on your family?

Solicitor Wilson: Your Honor, I object to that.

The Court: Sustained.

R. 4034, l. 16 – 4035, l. 1.

Defense counsel Bloom verbally proffered that Watson would have answered that “William’s death would have had a huge impact on the Dickerson and Watson family, Watson being the maternal side of his family, his cousins. Part of the unique reason for that is that Johnette Watson has lost a brother to homicide recently, within the last year or so, and another cousin of William Dickerson has been the victim of a homicide. I believe about three years ago. So the death of William would exacerbate that. That would have been the extent of her testimony.” R. 4079, ll. 14 – 25.

Among the cases defense counsel at trial argued in support his position that his evidence was admissible were State v. Stevens, 319 Or. 573, 879 P.2nd 162 (1994) and Richmond v. Lewis, 506 U.S. 40 (1992). R., 4080, ll. 1–13. Defense counsel added: “Not to mislead the court, the U.S. Supreme Court case doesn’t specifically allow this type of testimony, it just recognizes in the body of the opinion, but Arizona does.” R. 4080, ll. 4– 9.

After petitioner’s argument, the judge asked the solicitor if the state still objected to this line of questioning. The solicitor stated the state still objected to this testimony. R. 4080, l. 16 – 4081 l. 4. The judge then stated he did not consider the testimony relevant but he said that he recognized that the “familial relationship is so important that it speaks directly *to his character*, and to whether they are close.” The judge said the witness had testified that petitioner was like a brother to her and to his credit “how he treated her.” R. 4082, ll. 2 – 24. (emphasis added).

However, the judge ruled the proffered evidence was not relevant. R. 4083, ll. 3 – 8.

Petitioner raised this issue on his mandatory direct appeal to the South Carolina Supreme

Court. That Court noted during the sentencing phase of a capital trial, “the defense must be able to present mitigating evidence on ‘any aspect of a defendant’s character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.’” Eddings v. Oklahoma 455 U.S. 104, 110, 102 S.Ct. 869, 71 L.Ed.2d.1 (1982) (quoting Lockett v. Ohio, 438 U.S. 586, 604, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) (plurality)); Northcutt, 372 S.C. at 221, 641 S.E.1d at 880. The jury is entitled to hear this evidence so that it may “give a ‘reasoned *moral* response to the defendant’s background, character, and crime’” and prevent it from reacting out of an “unguided emotional response.” Penry v. Lynaugh, 492 U.S. 302, 328, 109 S.Ct. 2934, 106 L.Ed. 2d 256 (1989) (quoting Franklin v. Lynaugh, 487 U.S. 164, 184, 108 S.Ct. 2320, 101 L.Ed.2d 335 (2002)). However, Eddings does not limit a court’s ability to exclude evidence not bearing on the defendant’s character, his prior record, or the circumstances of the crime as being irrelevant. 438 U.S. at 604 n. 12, 98 S.Ct. 2954.” State v. Dickerson, 395 S.C. 101, 122, 716 S.E.2d 895, 906 (2012). App. 18.

The Court also wrote:

For example, ‘[a] capital defendant is prohibited from directly eliciting the opinion of family members or other penalty-phase witnesses about the appropriate penalty. Such questions go to the ultimate issue to be decided by the jury—life in prison versus the death penalty—and are properly reserved for determination by the jury.’ State v. Wise 359 S.C. 14, 27, 596 S.E.2d 475, 481 (2004). A capital defendant also cannot present witnesses who will testify as to what punishment the jury “ought” to recommend. *Id.* However, defense witnesses who know the defendant well can beg for mercy on his behalf. *Id.* Whether certain evidence is a plea for mercy versus an opinion of what is appropriate penalty can be a close call and thus is left to the discretion of the trial judge; that decision will not be disturbed absent an abuse of discretion. *Id.* At 21, 596 S.E.2d at 478.

The thrust of Dickerson’s argument is that the emotional impact an execution would have on his family members

demonstrates that he has the ability to form cohesive, lasting relationships with others, a trait that reflects positively on his character. We agree that evidence of a defendant's ability to form positive relationships with others is evidence that Eddings renders admissible. And here, Watson testified without objection to the close bond she shared with Dickerson and how he was like a brother to her. However, execution impact evidence can easily cross the line from illuminating a defendant's character or a plea for mercy to an opinion of what is the proper punishment.

Had the court permitted Watson to testify as planned, she would have testified her family lost two members to homicide: her brother as well as another cousin of Dickerson's. Dickerson's execution could therefore exacerbate the suffering her family has already endured. This evidence no longer concerns Dickerson's character but rather borders on an opinion that Dickerson should not be executed in order to spare her family the suffering. Watson's proffered testimony thus strayed from relevant considerations into the realm of an opinion regarding which punishment the jury ought to recommend. Under our standard of review, we find the circuit court did not abuse its discretion in sustaining the State's objection to this case."

State v. Dickerson, 395 S.C. 101, 122-123, 716 S.E.2d 895, 906-907 (2012). App. 19-20.

REASONS FOR GRANTING THE WRIT

The states vary on whether execution impact evidence must be admitted as evidence in mitigation. For that reason alone this Court should grant certiorari, and address this issue of some states, such as South Carolina, barring such execution impact evidence. Petitioner submits that the South Carolina Supreme Court erred by holding it was permissible to exclude petitioner's first cousin's testimony that petitioner's execution would deeply hurt her because she thought of petitioner as being like a brother to her since petitioner's ability to maintain this positive relationship with her was mitigating evidence of his good character that petitioner had the right to present to the sentencing jury pursuant to Skipper v. South Carolina, 476 U.S. 1, 4 (1986) and Lockett v. Ohio, 438 U.S. 586, 604 (1978).

Petitioner argued to the South Carolina Supreme Court that in State v. Stevens, 319 Or. 573, 879 P.2d 162 (1994), a death penalty case, the Oregon Supreme Court held that the trial

judge erred in not allowing evidence of how the defendant's daughter "may feel about him and what might be best for her in terms of this punishment." The defendant argued this testimony was admissible under an Oregon statute and required by the Eighth Amendment to the United States Constitution. Oregon v. Stevens, 319 Or. 573, 579, 879 P.2d 162, 165 (1994).

The Stevens court held that because it resolved this issue on statutory grounds, it would not reach the defendant's Eighth Amendment argument that this was admissible character evidence that was constitutionally required. State v. Stevens, 319 Or. at 585, 879 P.2d 168. The court vacated the defendant's death sentence. See also State v. Metz, 131 Or. App. 706, 887 P.2d 795 (Or. App. 1994). Brief at 27-29.

It is clear that a capital defendant is entitled to submit any relevant mitigating evidence in support of a sentence less than death. Payne v. Tennessee, 501 U.S. 808, 822 (1991); McCleskey v. Kemp, 481 U.S. 279, 304 (1987). This Court has applied a very broad relevance standard to mitigating evidence. See McKoy v. North Carolina, 494 U.S. 443, 440-441 (1990).

"In a death penalty case, the sentencer [may] not be precluded from considering as a mitigating factor, any aspect of a defendant's character or record, and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." Skipper v. South Carolina, 476 U.S. 1, 4 (1986); Lockett v. Ohio, 438 U.S. 586, 604 (1978).

Since the constitutional right of a capital defendant to present mitigating evidence includes evidence of *any aspect of his character* or record and any circumstance of the offense, the South Carolina Supreme Court erred by holding it was permissible to exclude evidence of the impact petitioner's execution would have on Johnette Watson, who considered petitioner "like a brother" because of his kindness to her.

As undersigned counsel orally argued before the South Carolina Supreme Court, the jury had the right to consider this good character evidence that showed petitioner was something other than the monster the state argued he was throughout the trial. This evidence of petitioner's good character should have been admitted.

While South Carolina bars this execution impact evidence as seen above, other states vary of such evidence. Whether such evidence is admitted depends on the state in which the capital defendant is tried. Thus, there is currently a split in authority that needs to be addressed by this Court.

Some state courts routinely admit evidence of the impact that a defendant's execution will have on third parties. See Richmond v. Rickets, 640 F.Supp. 767, 790-91 (D. Ariz. 1986)(noting that evidence of the effect of an execution on the defendant's mother was considered in mitigation); State v. Mann, 188 Ariz. 220, 934 P.2d 784 (1997)(noting that trial court weighed as a mitigating factor the defendant's relationship with his children and the effect on them if he were executed); State v. Williams, 79 Ohio St.3d 1, 679 N.E.2d 646 (1997)(noting that the defendant's daughter testified that she loved him, would maintain contact with him, and did not want anything bad to happen to him); State v. Simmons, 944 S.W.2d 165, 187 (Mo. 1997)(en banc)(noting that defense counsel argued the fact that defendant's family wanted him to stay alive was mitigating); Noel v. State, 960 S.W.2d 439, 446 (Ark. 1998)(noting that the defendant's mother testified and identified three childhood photographs of the defendant "which were offered into evidence and which were clearly an effort to emphasize the loss that would be associated with his execution"); State v. Rhines, 548 N.W.2d 415, 446-47 (S.D. 1996)(noting that victim impact evidence was proper, on a reciprocal basis, given that the defendant's sisters

had previously testified of “their love for him, and the negative effect his death would have on their family”).

Further, in State v. Mann, 934 P.2d 784, 795 (Ariz. 1997) (en banc) the Court admitted mitigating evidence of the defendant’s “relationship with his children and the effect on them if he were executed.” See, also, Lawrie v. State, 643 A.2d 1336, 1339 (Del. 1994)(noting that defendant’s “execution would have ‘a substantially adverse impact on his seven-year-old son . . . and on [defendant’s] mother”); Barnes v. State, 269 Ga. 345, 496 S.E.2d 674 (1998)(reversing death sentence because inter alia the trial court refused to admit photographs of defendant’s daughter and nephew intended to ‘show the jury that a death sentence would impact the children in his life”); State v. Stevens, 319 Or. 573, 879 P.2d 162 (1994)(trial court erred in excluding the testimony of the defendant’s wife that she believed the execution of her husband would have a negative impact on their six-year-old daughter); Cardona v. State, 641 So.2d 361, 365 (Fla. 1994)(allowing defendant to call her children in mitigation and to argue that it would be better for them were she not executed); Romine v. State, 251 Ga. 208, 205 S.E.2d 93 (1983)(reversal because defendant, who murdered his parents, was not allowed to present the testimony of his grandfather that he did not wish to see his grandson executed); State v. Cauthern, 967 S.W.2d 726, 738-39 (Tenn. 1998)(error to exclude letter from son to his father offered as mitigation by the defense, noting that “the defendant’s family and young son who expressed love and support are arguably relevant to the defendant’s background and character, and a potential basis upon which a jury could decline to impose the death penalty”); State v. Fox, 69 Ohio St. 3d 183, 631 N.E.2d 124, 127 (1994)(Court allowed admission of evidence that the defendant was a calming influence on other inmates at the jail for the purpose of allowing the

defendant to argue that executing him would have an adverse effect on the prison community and noting that the judge on the intermediate appellate court found the likely impact of the execution on the defendant's children to be a mitigating circumstance).

However, other state courts exclude execution impact evidence, including Washington and California. See State v. Stenson, 132 Wash.2d 668, 940 P.2d 1239 (1997) (en banc) (victim impact evidence and impact of execution on defendant's family were excludible); People v. Sanders, 11 Cal.4th 475, 905 P.2d 420 (1995) (trial court did not err in precluding defendant from asking his sister whether she believed that death was an appropriate sentence and about the stigma to her family that would result from a death verdict); State v. Loftin, 146 N.J. 295, 368, 680 A.2d 677, 713 (1996)(noting mitigating evidence that focuses on the potential impact on a third party is not relevant to a defendant's character, record, or the circumstances of the offense, and therefore could properly be excluded); Com. v. Harris, 572 Pa. 489, 524-25, 817 A.2d 1033, 1054 (2002)(holding that defense third party impact evidence is irrelevant under Pennsylvania's capital sentencing scheme); Burns v. State, 699 So. 2d 646, 654 (Fla. 1997)(nothing that the defendant's family relationships and the support he provided his family are admissible as non-statutory mitigation regarding his character, but holding that execution impact evidence is irrelevant to establish that death was not an appropriate penalty); State v. Roque, 213 Ariz. 193, 222, 141 P.3d 368, 397 (2006)(holding that execution impact evidence is not relevant to mitigation).

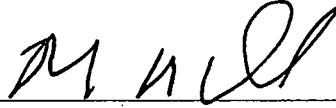
South Carolina does not allow execution impact evidence, as here, that the defendant's execution would have an adverse effect on his family or relatives. Because a capital defendant cannot be prohibited from admitting evidence of character in mitigation of capital punishment it

is, as here, not an acceptable legal retort by a State Supreme Court that the defendant can nonetheless have his family or relatives plead for mercy. See Skipper v. South Carolina, 476 U.S. 1, 4 (1986); Lockett v. Ohio, 438 U.S. 586, 604 (1978). Mercy is dependent on the giver, and is not mitigating in the same sense as evidence of good character. Because petitioner would have been allowed to admit this mitigating execution impact evidence involving his good character in other jurisdictions, this Court should grant certiorari and resolve this matter.

CONCLUSION

Based on the foregoing, a writ of certiorari should be granted to allow full briefing on this issue.

Respectfully submitted,



ROBERT M. DUDEK

Counsel of Record

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

ATTORNEY FOR PETITIONER

February 15, 2012

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2011

No. 11-

WILLIAM O. DICKERSON,

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 15th day of February, 2012.



ROBERT M. DUDEK
Counsel of Record

SWORN TO BEFORE me this 15th day
of February, 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. 11-

WILLIAM O. DICKERSON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent

A P P E N D I X

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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

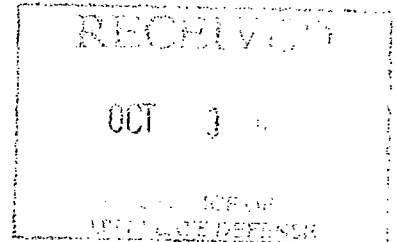
The State,

Respondent,

v.

William O. Dickerson,

Appellant.



Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 27048
Heard May 24, 2011 – Filed October 3, 2011

AFFIRMED

Chief Appellate Defender Robert M. Dudek, and
Appellate Defender Kathrine H. Hudgins, South
Carolina Commission on Indigent Defense, of
Columbia, and Jeffrey P. Bloom, of Columbia, for
Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Donald J. Zelenka, and
Senior Assistant Attorney General Melody J. Brown,

Office of the Attorney General, of Columbia, and
Solicitor Scarlett Anne Wilson, of Charleston, for
Respondent.

JUSTICE HEARN: A jury convicted William Dickerson of first degree murder, kidnapping, and criminal sexual conduct, and he was sentenced to death. Dickerson now appeals his sentence pursuant to Section 16-3-25(A) of the South Carolina Code (2003). He argues the circuit court erred: (1) in not excusing a juror for cause; (2) in limiting the cross-examination of the pathologist called by the State; (3) in not charging the jury on the law of accessory after the fact; and (4) in limiting the testimony of Dickerson's cousin during the penalty phase of his trial. We affirm and further find that Dickerson's sentence is proportional, supported by the evidence, and not the result of passion, prejudice, or any other arbitrary factor.

FACTUAL/PROCEDURAL BACKGROUND

Dickerson and Gerard Roper had been friends, even best friends, since childhood. On the morning of March 6, 2006, Roper went to his friend, Ben Drayton's, house to play video games. Around the same time, Dickerson went to his friend, Antonio Nelson's, house asking for a ride to his brother, Armon Dickerson's, house. Nelson was unable to give Dickerson a ride at that time and told him to come back later. When Dickerson returned later that afternoon, he was carrying a gun.

En route to Armon's house, however, Dickerson began calling Roper from his cell phone. After receiving no answer, Dickerson asked if they could make a stop at Drayton's house so he could "get some money." When they arrived at Drayton's home, Dickerson entered brandishing his weapon and asking for money. Roper told Dickerson "I got your money," begging "don't shoot me" and "please don't kill me." Dickerson nevertheless fired a shot at Roper but missed. He then struck Roper in the head with the gun,

dragged him out of the house, and forced him into Nelson's car. Dickerson then took Roper to Armon's house.¹

Armon and Dickerson brought Roper inside and systematically tortured him over approximately thirty-six hours. It started with Dickerson continuing to hit Roper with the gun, knocking out some of his teeth. Armon then left to retrieve Dickerson's car and some drugs, and blood covered the inside of the house when he returned. Dickerson then called another friend of his, Rashid Malik, and threatened him with death if he did not come to Armon's house.² When Malik arrived, Roper was still conscious but clothed only in his T-shirt, and Armon was attempting to clean up the blood covering the house. Malik then joined Armon and Dickerson.

Although Dickerson, Armon, and Malik all tortured Roper to varying degrees, Dickerson appeared to be the primary actor.³ Through this entire ordeal, Roper suffered the following at the hands of Dickerson alone: choking, being tied up and placed in a closet, being sodomized with a gun and a broomstick, having his scrotum burned, being hit with a heavy vase and a mirror, and generalized beating and cutting. At one point, Roper began asking that they just let him die.

All told, Roper received over 200 individual wounds to the outside of his body, including lacerations to his anus. He also received several internal injuries, including various broken bones in his face that caused it to appear misshapen, blunt force trauma to his neck resulting in the breaking of various structures, a broken tibia, broken fingers and wrist, brain swelling, and

¹ After dropping Dickerson and Roper off, Nelson left and did not return. There is no suggestion he knew of Dickerson's plans beforehand or had any involvement in the subsequent events.

² Malik attempted to bring Dickerson's mother to Armon's house to calm Dickerson down. When Dickerson learned of this, he threatened to kill Malik's mother and cut the baby out of Malik's pregnant girlfriend.

³ Armon's girlfriend, Selena Rouse, was in and out of the house during that evening, along with her young son. At some point, Dickerson asked her whether he should let Roper live or die. However, there is no evidence that she actually participated in the torture.

bleeding into the internal structures around his rectum as the result of objects being inserted into it. Although there is no definite timeline of events, Roper survived for eighteen to twenty-four hours after the sodomy occurred, and none of these wounds were inflicted post-mortem. No single wound was fatal. Instead, Roper died from the sum total of his injuries, apparently shortly after he was struck with the mirror and the vase on the morning of March 8.

As these events transpired, Dickerson made several phone calls to various people during which he discussed what he was doing to Roper. Many of them were to Dickerson's girlfriend, and she managed to record one of them containing his description of the sodomy and even Roper's own confirmation of what was happening. Dickerson also confirmed the sodomy, as well as the burning of Roper's scrotum, over the phone to another friend. In a later call to that same friend, he said that Roper was "gone." However, he told a different friend that Roper was all right but that Dickerson needed to run.

Dickerson and Armon wrapped Roper's semi-clothed body in a blanket and dumped it in the vacant townhouse next to Armon's. Dickerson then changed clothes and fled. Armon and Rouse attempted to clean Armon's house, but they abandoned it upon realizing their efforts would be futile. That same day, a woman who was planning to rent the vacant townhouse entered and discovered Roper's bloodied and mutilated body.

Dickerson was arrested on March 11, 2006, and indicted for murder, kidnapping, and criminal sexual conduct. During voir dire, Juror 370 was the second venireman to be called. He initially identified himself as the type of juror who was able to recommend a sentence of death or life without parole in the appropriate circumstances. The following exchanges then occurred between Juror 370 and the circuit judge:

- Q. I would also instruct you that the only party which has any burden of proof in this proceeding is the State. Mr. Dickerson doesn't have to prove anything, he doesn't have to -- he doesn't have to present any evidence, he has no

obligation whatsoever. Would you have any problem following that presumption?

A. No sir.

....

Q. . . . I would tell you that if the jury were to conclude beyond a reasonable doubt that there were aggravating circumstances, that does not mean that that jury has to return a death sentence, only that it is a potential sentence; do you understand that?

A. Yes, sir.

Q. Because the jury would have the right, notwithstanding the conclusion of aggravating circumstances to find that the appropriate sentence would be life imprisonment without the possibility of parole. I would give you an instruction as to that. You could make that consideration, as well; is that correct?

A. Yes, sir.

When questioned by Dickerson, Juror 370 made the following statements:

Q. Let me just kind of start off with, what is your opinion of the death penalty?

A. I am -- I think it needs to be there but there are certain situations that -- I mean, I am not too up-to-date on this whole system but I feel like a lot of people get the death penalty when it is not deserved. People die all the time, I mean get put to death, when they're innocent. So -- I don't know. It's a big thing.

.....

Q. In those types of situations, now that you know what the term "murder" is, not accident, self-defense, manslaughter or insanity, would you always automatically vote for [the death penalty] if the person who did it meant to do it and they had the right person?

.....

A. I would still have to hear all of the evidence, everything behind it.

Q. Okay.

A. When, how, where, all that stuff.

Q. Okay. So even if there is no accident, self-defense, manslaughter, insanity, the State has proved it beyond a reasonable doubt, did it, meant to do it and they had the right person; in those cases you're not going to automatically vote for the death penalty?

A. I guess -- I guess I would. If it was absolute, then definitely.

Q. When you say "absolutely", you mean ---

A. Exactly what you just said, all those.

However, in response to further questioning by Dickerson, Juror 370 stated, "That's why -- all those situations, like who he is, like -- that kinds of stuff is what I'd want to hear before I just say 'give them the death penalty.'" He then said he would "certainly" listen to mitigating evidence presented by the defense.

Before turning Juror 370 over to the State, Dickerson pressed the juror on his belief regarding the defendant's burden of proof during the sentencing phase of a capital trial:

Q. . . . [W]ould you expect the defendant or his attorney to present something to you to give you a reason not to vote for death? To kind of convince you, 'Okay, I found him guilty of murder, I've heard all this other stuff but I[']m for death.' Would you expect the defense to show, 'you need to show me stuff that would convince me otherwise, to vote for life'?

A. (No verbal response).

Q. Is that what you're telling me?

A. I -- yeah, isn't that what you've got to do?

....

Q. And all that bad stuff in there and they just argue for mercy, that is not something that is going to persuade you?

A. No.

Q. So you would be looking at the defense to kind of convince you that a death penalty wasn't the right sentence?

A. Yeah. Just to represent him, show something -- I mean, something had to happen.

During rehabilitation, the State informed Juror 370 that the judge would in fact instruct him that it was improper to hold a defendant's decision to not present any evidence against him. The following exchange then occurred:

Q. Because just a minute ago you were saying that you would expect the defendant to put something up.

A. Well, I mean -- I thought that was kind of how it worked.
But if -- (pause).

Q. Well, the Judge would tell you that it works differently and

A. If he told me that, yeah, then I wouldn't expect it.

Q. You wouldn't consider that, the fact that he didn't put
anything up -- any evidence?

A. Yeah.

Q. So you could follow the Judge's instructions?

A. Yes, ma'am.

The State then confirmed that Juror 370 would in fact be able to consider a sentence of life without parole even if the State proved aggravating circumstances.

During follow-up questioning by the court, the circuit judge repeated the State's question of whether Juror 370 would have any trouble abiding by the court's instruction that Dickerson would have nothing to prove, to which Juror 370 reiterated that he would not. However, Dickerson again asked whether Juror 370 would look to Dickerson to prove why the death penalty was not appropriate, to which Juror 370 said "yes," but Juror 370 then told the State once again that he would follow whatever the judge instructed him. Dickerson then moved to have Juror 370 disqualified because he was a "burden shifter" who would require the defense to prove that death should not be imposed. The court disagreed, finding Juror 370's statements that he would follow the law as instructed and he would want to hear all of the circumstances demonstrated he was not a burden shifter.

During the guilt phase, one of the many witnesses called by the State was Dr. Cynthia Schandl, the pathologist who performed Roper's autopsy.

On direct examination, she testified that the blood toxicology report on Roper was negative, which demonstrated he did not have any drugs in his system when he died. On cross examination, Dickerson attempted to inquire about an initial urine screen test performed by Dr. Shandl that would show whether there were drugs present in Roper's system up to two days prior to his death. The State objected under Rule 403, SCRE. In her proffer, Dr. Shandl testified that this test was "presumptively positive" for cocaine metabolites, but Dr. Schandl never ordered confirmatory testing. According to her, these initial screening tests produce a large number of false positives and are very unreliable absent any sort of confirmation. Dickerson, however, argued the State's question about the blood toxicology results opened the door for this line of questioning as it left the jury with the misleading impression that Roper had not used cocaine. Finding the proffered testimony itself was actually misleading, the possibility of prejudice from excluding it was remote, it did not challenge any of Dr. Schandl's findings, and it would only serve to confuse the jury, the court refused to permit this line of questioning.

At the close of evidence, Dickerson requested the jury be charged on the law of accessory after the fact. The court, however, denied this request because accessory after the fact is not a lesser-included offense of murder. The jury subsequently convicted Dickerson on all charges. In the sentencing phase, the State proceeded under three aggravating factors: criminal sexual conduct, kidnapping, and torture, also highlighting Dickerson's prior criminal history and adaptability to prison life. Dr. Shandl testified again during the sentencing phase, repeating much of her testimony from the guilt phase. In particular, she emphasized that none of Roper's wounds were inflicted post-mortem, and he died from the totality of his injuries rather than from any single blow.

In mitigation, Dickerson called several witnesses from the Charleston County Detention Center, where he was being held pending trial, who testified he was a model prisoner. He also called several witnesses who testified extensively regarding his drug use, childhood trauma, and mental problems. These witnesses further opined that he suffered from cocaine psychosis and attendant paranoia. Additionally, Dickerson's cousin, Johnette Watson, testified on his behalf. She stated he had always been like a brother to her, a good person who just got mixed up in the wrong things and with the

wrong people. However, the court did not permit her to testify as to what impact his execution would have on her family, chiefly that her family would be devastated as it had already lost two close members to homicide.

Ultimately, the jury recommended the court impose a sentence of death, finding the State proved all three aggravating circumstances beyond a reasonable doubt. The court followed the jury's recommendation. This appeal followed pursuant to section 16-3-25.

ISSUES PRESENTED

Dickerson raises four issues on appeal:

- I. Did the circuit court err in qualifying Juror 370?
- II. Did the circuit court err in not permitting Dickerson to cross examine Dr. Schandl regarding the urinalysis screen results?
- III. Did the circuit court err in not charging the jury on the law of accessory after the fact?
- IV. Did the circuit court err in not permitting Watson to testify regarding the impact Dickerson's potential execution would have on her family?

LAW/ANALYSIS

I. JUROR QUALIFICATION

Dickerson first argues the court erred when it found Juror 370 qualified to serve on the panel because he was a burden shifter, meaning he improperly placed the burden on the defense to show why death would not be an appropriate punishment. We disagree.

A juror must be excused from service if "the juror's views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." *Wainwright v. Witt*, 469 U.S.

412, 424 (1985) (quoting *Adams v. Texas*, 448 U.S. 38, 45 (1980)); see also *State v. Green*, 301 S.C. 347, 354, 392 S.E.2d 157, 160 (1990).

A juror who will automatically vote for the death penalty in every case will fail in good faith to consider the evidence of aggravating and mitigating circumstances as the instructions require him to do. . . . If even one such juror is empaneled and the death sentence is imposed, the state is disentitled to execute the sentence.

Morgan v. Illinois, 504 U.S. 719, 729 (1992). General protestations that the juror will follow the law, without the opportunity for further inquiry by the defendant, are not sufficient for "[i]t may be that a juror could, in good conscience, swear to uphold the law and yet be unaware that maintaining such dogmatic beliefs about the death penalty would prevent him or her from doing so." *Id.* at 734-36; see also *State v. Bennett*, 328 S.C. 251, 257-58, 493 S.E.2d 845, 848 (1997) (holding that a juror's general statements he could be fair and impartial and follow the law were not sufficient in light of his later, unequivocal statement that he would just "go with the majority").

This inquiry, however, "cannot be reduced to question-and-answer sessions which obtain results in the manner of a catechism." *Wainwright*, 469 U.S. at 424. Thus, the record may not be entirely clear to the point of "unmistakable clarity" as to the juror's views, and situations will arise where a circuit court simply is left with a "definite impression" of a juror's qualifications following voir dire. *Id.* at 425-26. "[T]his is why deference must be paid to the trial judge who sees and hears the juror." *Id.* at 426. Therefore, determinations of whether a juror is qualified to serve on a panel are left to the sole discretion of the circuit court. *Green*, 301 S.C. at 354, 392 S.E.2d at 160. In reviewing the circuit court's decision, we must examine the juror's responses in light of the entire voir dire and will not reverse the court's decision unless it is wholly unsupported by the evidence. *Id.* at 354, 392 S.E.2d at 160-61.

Although Juror 370 unquestionably displayed some equivocation on how he might vote should the State prove an aggravating circumstance, the State's rehabilitation revealed this was more the result of a misunderstanding

of the trial process than any firmly held belief that he would automatically vote for the death penalty. For example, after stating that he would expect the defense to put forth evidence in mitigation, Juror 370 stated, "isn't that what you've got to do" and "I thought that was kind of how it worked." He went on to state, however, if the court instructed him that the defense bore no burden, he "wouldn't expect it." He also stated he "would have to hear all of the evidence" before he would say "give them the death penalty." Although similar exchanges occurred throughout the voir dire, the one thing he was unequivocal about was that he would follow the law as it was instructed to him by the court. Consistent with *Morgan*, Dickerson was allowed to probe the true nature of Juror 370's beliefs, and that examination produced nothing resembling either a deep-seeded preference for the death penalty or a true belief Dickerson must prove that death is not appropriate.

After a review of the entire voir dire, the salient portions of which are reproduced above, this in-depth examination produced evidence to support the court's ruling that Juror 370 could be a fair and impartial juror, acting in accordance with the court's instructions and not merely blindly professing that he would do so. The circuit judge was more persuaded by the juror's consistent affirmation he would follow the law and wait to hear all of the evidence than by his apparent confusion over the State's burden, and we believe his ultimate determination of Juror 370's qualification to serve is supported by the record.

II. CROSS EXAMINATION OF DR. SCHANDL

Next, Dickerson argues the circuit court erred in preventing him from asking Dr. Schandl about the urine screen test she performed on Roper in conjunction with the autopsy. We disagree.

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002).

On direct examination, Dr. Schandl testified that Roper's blood toxicology report was negative, meaning there were no drugs in his system when he died. On cross examination, Dickerson attempted to elicit the results of a preliminary urinalysis test that would show whether Roper used cocaine within two days prior to his death. In her proffer in response to the State's objection under Rule 403, SCRE, Dr. Schandl stated that while the urine screen test performed was "presumptively positive," that test alone is unreliable and no confirmatory testing was done. The circuit court refused to admit this evidence, agreeing this form of testing was inherently unreliable and therefore would be misleading, would confuse the jury, and actually did not challenge any of Dr. Schandl's conclusions. We agree.

The relevance of whether the *victim* had used cocaine within the two days prior to his death is dubious, at best, under the facts of this case. Dickerson calls this presumptive test "an inconvenient truth for the [S]tate," but we fail to see in what way it is inconvenient; it does not challenge any of Dr. Schandl's findings regarding Roper's cause of death and would only have injected irrelevant considerations into the trial. Therefore, there is little, if any, probative value to this evidence, and it would only serve to confuse the jury and distract it from the case at hand.

Dickerson turns to Rule 608(c), SCRE, to supply the requisite relevance and probative value, arguing this testimony demonstrates Dr. Schandl's bias, prejudice, or motive to lie. "[A]nything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony. On cross-examination, any *fact* may be elicited which tends to show interest, bias, or partiality of the witness." *State v. Saltz*, 346 S.C. 114, 131-32, 551 S.E.2d 240, 250 (2001) (quotations omitted). However, the proffered cross examination did not elicit a single fact that might shed any light on a potential motive or bias for Dr. Schandl to misrepresent. Although Dickerson is correct that Dr. Schandl was the key witness for the State regarding cause of death and torture, that fact alone certainly does not establish a reason for her to lie, and the proffered testimony does not complete the circle.

Similarly, we reject Dickerson's argument that the evidence must be available to rebut the "false impression" created by the State when Dr. Schandl testified that Roper's blood toxicology report was negative. A defendant generally is entitled to rebut false impressions created by the State's evidence. *See State v. Northcutt*, 372 S.C. 207, 221, 641 S.E.2d 873, 880 (2007). Dickerson argues the false impression he is entitled to rebut is that Roper did not use cocaine. Even assuming Dr. Schandl's testimony did create this impression, Roper's drug use is irrelevant in this case. Therefore, this plainly is not a situation where the false impression created is at all prejudicial to the defendant. Permitting Dickerson to respond would only take her testimony further down that rabbit hole.

Accordingly, we hold the circuit court did not abuse its discretion in excluding this evidence.⁴

III. ACCESSORY AFTER THE FACT

Dickerson next argues the circuit court erred in failing to charge the jury on the law of accessory after the fact. We disagree.

In a capital case, a defendant is entitled to a charge on any lesser-included offenses of murder when supported by the evidence. *See Beck v. Alabama*, 447 U.S. 625, 635-38 (1980). A lesser-included offense is one whose elements are wholly contained within the crime charged. *Northcutt*, 372 S.C. at 215, 641 S.E.2d at 877. Stated differently, if the offense contains any elements that are not part of the crime charged, then it is not a lesser-included offense. *Id.* However, even if an offense does not meet the elements test, it will be considered a lesser-included offense if it "has traditionally been considered a lesser included offense of the greater offense charged." *Id.* at 216, 641 S.E.2d at 877-78. The Supreme Court of the United States stated the rationale for requiring charges on lesser-included offenses as follows:

⁴ We emphasize that there is absolutely no suggestion, let alone evidence, that Dr. Schandl or the State purposefully failed to run confirmatory tests in order to exclude the evidence Dickerson sought to introduce.

For when the evidence unquestionably establishes that the defendant is guilty of a serious, violent offense—but leaves some doubt with respect to an element that would justify conviction of a capital offense—the failure to give the jury the "third option" of convicting on a lesser included offense would seem inevitably to enhance the risk of an unwarranted conviction.

Beck, 447 U.S. at 637. A court must therefore charge on lesser-included offenses that are supported by the evidence in order to enhance the reliability of guilt determinations. *Id.* at 638.

It is well-settled that accessory after the fact is not a lesser-included offense of murder in this State.⁵ *State v. Fuller*, 346 S.C. 477, 481, 552 S.E.2d 282, 284 (2001). Therefore, *Beck* standing alone does not require a court to charge the jury on accessory after the fact. Dickerson, however, argues that accessory after the fact is a "lesser-related offense" of murder and *Beck*, when combined with our decision in *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005), mandates a charge on it when requested.

In *Gentry*, we held that the concepts of subject matter jurisdiction and sufficiency of an indictment are distinct. 363 S.C. at 101, 610 S.E.2d at 499. A court therefore has subject matter jurisdiction to hear cases even if the indictment fails to allege all the elements of the offense. *See id.* Accordingly, if the defendant fails to challenge the sufficiency of the indictment prior to the jury being sworn, he waives that challenge. *Id.* at 102, 610 S.E.2d at 500.

Dickerson extrapolates from this the ability to charge a lesser-related offense because the court would still have subject matter jurisdiction over the claim, and it is therefore inconsequential that he was not indicted as an accessory. Thus, a defendant should be able to request a charge on any

⁵ The elements of accessory after the fact are that the felony has been completed, the accused had knowledge that the principal felon committed the felony, and the accused harbored or assisted the principal. *Fuller*, 346 S.C. at 480, 552 S.E.2d at 283. Murder is simply defined as "the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10 (2003).

related offense supported by the evidence, regardless of whether it is included within the ones for which he was indicted.⁶ We do not read *Gentry* so

⁶ Under Dickerson's view, only the defendant would have the option of requesting this additional charge. The Supreme Court of California resoundingly rejected this very point. *Birks*, 960 P.2d at 1084-86. Following *Hopkins*, questions concerning the right to a charge on a lesser-related offense are of course questions of state law. However, we find the California court's reasoning on this point persuasive. *Birks* was re-examining the court's prior decision in *People v. Geiger*, 674 P.2d 1303 (1984), which held in part that only the defendant could request a charge on a lesser-related offense. See *Birks*, 960 P.2d at 1083. In reversing this portion of *Geiger*, the *Birks* court found that such a rule created

an unfair one-way street where lesser related offenses are at issue. On the one hand, the defendant's right to notice of the charges limits the circumstances in which a jury, over the *defendant's* objection, may receive instructions on lesser offenses which are not necessarily included in those to which a plea was entered. On the other hand, if a lesser offense is related to the charge, as *Geiger* defines that term, *Geiger* gives the *defendant* an *absolute entitlement* to such instructions on request, regardless of notice or prejudice to the People, and even over their objection.

....

Where lesser related offenses are concerned, the *Geiger* rule therefore may actually permit and encourage a one-sided use of the "gambling hall" strategies we have consistently denounced. If the evidence suggests the possibility of a related lesser offense neither charged nor tried by the prosecution, the defendant either may demand that instructions on that offense be given, or may raise notice objections which, if successful, will prevent such instructions from being given at the prosecution's behest. *Geiger* thus affords the defense a superior right at trial to determine whether the jury will consider a lesser offense alternative, or

broadly. While the circuit court may have had subject matter jurisdiction to try Dickerson as an accessory after the fact, *Gentry* merely held that a defendant must challenge an indictment prior to the swearing of the jury. Because the sufficiency of the indictment is not at issue here, *Gentry* is inapposite.

The Supreme Court of the United States has held that, unlike lesser-included offenses under *Beck*, there is no constitutional requirement to charge a jury on lesser-related offenses. *Hopkins v. Reeves*, 524 U.S. 88, 90-91 (1998); *see also* *People v. Birks*, 960 P.2d 1073, 1087-88 (Cal. 1998) (finding the analysis in *Reeves* "utterly convincing" and rejecting a charge on lesser-related offenses). Such a requirement would be "unprecedented" and "unworkable" because there would be no real basis for determining when such charges would be warranted. *Hopkins*, 524 U.S. at 97. Furthermore, charging on lesser-related offenses, which by their nature generally contain elements that are not included within the crimes for which the defendant was charged and tried, would permit the jury "to find beyond a reasonable doubt elements that the State had not attempted to prove, and indeed that it had ignored during the course of the trial. This can hardly be said to be a reliable result." *Id.* at 99.

instead will face an all-or-nothing choice between conviction of the stated charge and complete acquittal. Such a rule is neither just nor rational.

Id. at 1085. Contrary to the concurrence's view, *Gentry*'s holding—that an indictment is a notice document that must be challenged prior to the swearing of the jury—is unaffected by our decision today. *See* 363 S.C. at 102, 610 S.E.2d at 500. Here, we merely find that a defendant's ability to waive notice of a particular charge does not also grant him an unqualified, non-reciprocal right to request any charge supported by the evidence, for to do so would grant him an unfair tactical advantage that interferes with the State's prerogative of deciding on which charges to try a defendant. *See State v. Thrift*, 312 S.C. 282, 291-92, 440 S.E.2d 341, 346 (1994) ("Both the South Carolina Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands.").

We agree with the Supreme Court's reasoning in *Hopkins* that permitting such a charge does not further the policy behind charging lesser-included offenses. The core of *Beck's* requirement was to ensure reliability in the proceedings by giving the jury a third option beyond acquittal or conviction so that its verdict will better conform to the evidence presented. The *Hopkins* Court, on the other hand, believed that charging on lesser-related offenses would diminish the proceeding's reliability by permitting the jury to convict the defendant of a crime the State never even sought to prove at trial.

Therefore, we adopt the Supreme Court's holding in *Hopkins* and hold that a defendant is not entitled to a charge on lesser-related offenses. Here, permitting the jury to convict Dickerson as an accessory after the fact would permit the jury to find beyond a reasonable doubt elements of a crime the State never sought to prove and Dickerson was not on notice he had to defend against. Accordingly, we affirm the circuit court's denial of Dickerson's request to charge.

IV. EXECUTION IMPACT EVIDENCE

Finally, Dickerson argues the circuit court erred in preventing his cousin, Johnette Watson, from testifying as to what effects Dickerson's execution would have on her family. We disagree.

During the sentencing phase of a capital trial, the defense must be able to present mitigating evidence on "any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Eddings v. Oklahoma*, 455 U.S. 104, 110 (1982) (quoting *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (plurality)); *Northcutt*, 372 S.C. at 221, 641 S.E.2d at 880. The jury is entitled to hear this evidence so that it may "give a 'reasoned *moral* response to the defendant's background, character, and crime'" and prevent it from reacting out of an "unguided emotional response." *Penry v. Lynaugh*, 492 U.S. 302, 328 (1989) (quoting *Franklin v. Lynaugh*, 487 U.S. 164, 184 (O'Connor, J., concurring)), *abrogated on other grounds by Atkins v. Virginia*, 536 U.S. 304 (1989). However, *Eddings* does not limit a court's ability to exclude evidence not bearing on the defendant's character, his prior

record, or the circumstances of the crime as being irrelevant. 438 U.S. at 604 n.12.

For example, "[a] capital defendant is prohibited from directly eliciting the opinion of family members or other penalty-phase witnesses about the appropriate penalty. Such questions go to the ultimate issue to be decided by the jury—life in prison versus the death penalty—and are properly reserved for determination by the jury." *State v. Wise*, 359 S.C. 14, 27, 596 S.E.2d 475, 481 (2004). A capital defendant also cannot present witnesses who will testify as to what punishment the jury "ought" to recommend. *Id.* However, defense witnesses who know the defendant well can beg for mercy on his behalf. *Id.* Whether certain evidence is a plea for mercy versus an opinion of what is the appropriate penalty can be a close call and thus is left to the discretion of the trial judge; that decision will not be disturbed absent an abuse of discretion. *Id.* at 21, 596 S.E.2d at 478.

The thrust of Dickerson's argument is that the emotional impact an execution would have on his family members demonstrates that he has the ability to form cohesive, lasting relationships with others, a trait that reflects positively on his character. We agree that evidence of a defendant's ability to form positive relationships with others is evidence that *Eddings* renders admissible. And here, Watson testified without objection to the close bond she shared with Dickerson and how he was like a brother to her. However, execution impact evidence can easily cross the line from illuminating a defendant's character or a plea for mercy to an opinion of what is the proper punishment.

Had the court permitted Watson to testify as planned, she would have testified her family lost two members to homicide: her brother as well as another cousin of Dickerson's. Dickerson's execution would therefore exacerbate the suffering her family has already endured. This evidence no longer concerns Dickerson's character but rather borders on an opinion that Dickerson should not be executed in order to spare her family the suffering. Watson's proffered testimony thus strayed from relevant considerations into the realm of an opinion regarding which punishment the jury ought to

recommend. Under our standard of review, we find the circuit court did not abuse its discretion in sustaining the State's objection in this case.⁷

V. PROPORTIONALITY REVIEW

Pursuant to section 16-3-25(C), we must conduct a review of Dickerson's sentence. In doing so, we must determine whether the sentence was the result of passion, prejudice, or any other arbitrary factor; whether there is evidence to support the jury's findings; and whether the sentence is excessive or disproportionate to the sentences imposed in similar cases. *See id.*

First, we cannot find anything demonstrating that the sentence was the result of passion, prejudice, or any other arbitrary factor. Although Dickerson's attorneys did a commendable job representing him during both phases of trial, the gruesome nature of Dickerson's acts fits squarely within the aggravating circumstances for which the jury recommended the death penalty. Furthermore, there is no indication that the proceedings were tainted in any way or that the sentence was anything other than a rational response to the evidence presented.

⁷ We recognize that the vast majority of jurisdictions to address this issue have found execution impact evidence to be inadmissible. *See Woods v. State*, 13 So. 3d 1, 33 (Ala. Crim. App. 2007); *State v. Chappell*, 236 P.3d 1176, 1185 (Ariz. 2010); *People v. Vieira*, 106 P.3d 990, 1009 (Cal. 2005); *Bruns v. State*, 699 So. 2d 646, 654 (Fla. 1997); *People v. Armstrong*, 700 N.E.2d 960, 971 (Ill. 1998); *Ross v. State*, 954 So. 2d 968, 1013 (Miss. 2007); *Williams v. State*, 168 S.W.3d 433, 445 (Mo. 2005); *State v. Loftin*, 680 A.2d 677, 713 (N.J. 1996); *State v. Hale*, 892 N.E.2d 864, 893 (Ohio 2008); *Commonwealth v. Harris*, 817 A.2d 1033, 1054 (Pa. 2002); *Roberts v. State*, 220 S.W.3d 521, 532 (Tex. Crim. App. 2007); *State v. Stenson*, 940 P.2d 1239, 1282 (Wash. 1997). *But see State v. Stevens*, 879 P.2d 162, 168 (Or. 1994). However, we decline to adopt a categorical rule. If the proffered evidence fits within the boundaries discussed in *Wise* and goes to the defendant's character, it is admissible. While we are cognizant of the reasons why these courts declined to permit this evidence, we are confident that our existing framework is sufficient to ferret out problematic testimony.

Second, and similarly, we hold evidence exists to support the jury's finding that the State met its burden with respect to all three aggravating circumstances. The record readily demonstrates Dickerson kidnapped Roper, committed criminal sexual conduct on him, and tortured him. Indeed, the jury separately convicted Dickerson of kidnapping and criminal sexual conduct during the guilt phase of the trial. We can find nothing reflecting an absence of proof as to any of these aggravating factors.

Finally, we believe Dickerson's sentence is neither excessive nor disproportionate in light of the results in similar cases. In capital cases where the State proceeded on the aggravating circumstances of kidnapping, criminal sexual conduct, torture, or any combination thereof, this Court has routinely affirmed the sentence of death. *See State v. Stanko*, 376 S.C. 571, 573, 579, 658 S.E.2d 94, 95, 98 (2008) (affirming death penalty where defendant strangled girlfriend and attempted to murder her daughter during the course of a robbery and sexual assault); *State v. Evins*, 373 S.C. 404, 410-11, 422, 645 S.E.2d 904, 907, 913 (2007) (affirming death sentence where defendant kidnapped victim, sexually assaulted her, and stabbed her twelve times); *State v. Simmons*, 360 S.C. 33, 37, 46, 599 S.E.2d 448, 449-50, 454 (2004) (affirming death sentence where defendant robbed the victim, beat her with a stick, strangled her, and sexually assaulted her while she was "half and half" alive); *State v. Stokes*, 345 S.C. 368, 371, 377, 548 S.E.2d 202, 203, 206-07 (2001) (affirming death sentence where the defendant had sex with the victim, stabbed her, continued to have sex with her, shot her in the head, and then mutilated her body); *State v. Johnson*, 338 S.C. 114, 120-21, 130, 525 S.E.2d 519, 521-22, 527 (2000) (affirming death sentence where the defendant robbed the victim at knifepoint, kidnapped her, tied the victim up, and sliced her multiple times with a machete); *State v. Whipple*, 324 S.C. 43, 46, 54, 476 S.E.2d 683, 685, 689 (1996) (affirming death sentence where defendant stabbed victim multiple times, beat her with a lamp and an iron, strangled her with a lamp cord, stuck a dish towel in her mouth, and sexually assaulted her).⁸

⁸ Before the circuit court, Dickerson argued that our current proportionality review is deficient because it fails to examine cases where death was not imposed and cases where death was not even sought. *See State v. Copeland*,

Accordingly, we find that the death penalty was warranted in this case.

278 S.C. 572, 591, 300 S.E.2d 63, 75 (1982). He primarily relied upon Justice Stevens's statement regarding the denial of certiorari in *Walker v. Georgia*, 129 S. Ct. 453 (2008) (memorandum opinion), in which he wrote that examining similar cases "assume[s] that the court would consider whether there were 'similarly situated defendants' who had *not* been put to the death because that inquiry is an essential part of any meaningful proportionality review." *Id.* at 454. In his view, this analysis is "judicious because, quite obviously, a significant number of similar cases in which death was not imposed might well provide the most relevant evidence of arbitrariness in the sentence before the court." *Id.* Justice Stevens noted,

Had the Georgia Supreme Court looked outside the universe of cases in which the jury imposed a death sentence, it would have found numerous cases involving offenses very similar to petitioner's in which the jury imposed a sentence of life imprisonment. If the Georgia Supreme Court had expanded its inquiry still further, it would have discovered many similar cases in which the State did not even seek death. Cases in both of these categories are eminently relevant to the question of whether a death sentence in a given case is proportionate to the offense. The Georgia Supreme Court's failure to acknowledge these or any other cases outside the limited universe of cases in which the defendant was sentenced to death creates an unacceptable risk that it will overlook a sentence infected by impermissible considerations.

Id. at 455-56 (citations omitted). This issue is not before us on appeal, and it would require us to overrule our prior decision in *Copeland*. However, we note our concern that restricting our statutorily-mandated proportionality review to only similar cases where death was actually imposed is largely a self-fulfilling prophecy as simply examining similar cases where the defendant was sentenced to death will almost always lead to the conclusion that the death sentence under review is proportional.

CONCLUSION

For the foregoing reasons, we affirm Dickerson's conviction for murder and the circuit court's sentence of death.

BEATTY, KITTREDGE, JJ., and Acting Justice James E. Moore,
concur. PLEICONES, J., concurring in a separate opinion.

JUSTICE PLEICONES: I concur in the decision to affirm this capital appeal and sentence, but write separately to address both the lesser-included issue and the majority's suggestion in footnote 8 that we should consider altering our approach to proportionality review.

I agree with the majority that appellant has no constitutional right to a charge on a lesser-related offense. Hopkins v. Reeves, 524 U.S. 88 (1998). Rather, the question of a defendant's right to such a charge is a matter of state law. Id.; see e.g., Sheffield v. State, 64 So.3d 529 (Miss. Ct. App. 2011). In my opinion, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), fundamentally altered state law by converting an indictment, which theretofore had been a jurisdictional document, into a mere notice document. Id. at 102-103, 610 S.E.2d at 500. Since the notice is directed only to the defendant, in my opinion, it is within his sole prerogative to waive such notice.

Unlike the majority, I find nothing in People v. Birks, 960 P.2d 1073 (Cal. 1998) which conflicts with my view that a court may authorize a criminal defendant to request a jury charge on a lesser-related offense. In Birks, the California Supreme Court held it had created a state constitutional problem by extending to the defendant alone the right to request such a charge on state due process grounds, and reversed its earlier decision. If the Court agrees with Birks that it is a constitutional violation to give only one party in a criminal proceeding the right to request such a charge, then the problem can be remedied by overruling Gentry.

On the merits, I find no reversible error in the circuit court's decision not to charge the jury on the lesser-related offense of accessory after the fact because such a charge was not supported by the evidence. See State v. Collins, 329 S.C. 23, 495 S.E.2d 202 (1998) (elements of accessory after the fact explained).

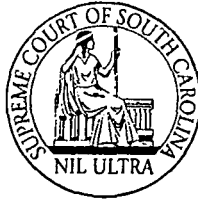
I believe that when S.C. Code Ann. § 16-3-25(C)(3) (2003) requires us to determine whether the death sentence "is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant," and to refer to the similar cases that we considered, we should confine our review to only those cases in which a death sentence was

imposed.⁹ State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982)(only review of appeals where death sentence was imposed satisfies both state statute and constitution). As Copeland explains, to include in our review cases where a capital sentence was sought but not imposed requires us to speculate on, among other things, the solicitor's decision-making process, the strength of the State's case, and/or upon the jurors' or trial judge's decision to exercise mercy. Moreover, our reference for proportionality extends only to cases which are appealed, and thus is not truly representative of all cases where the death penalty was or could have been sought. Experience teaches that many of these cases where a lesser sentence is imposed are never appealed.

On the merits, I agree that the death sentence imposed upon appellant is not disproportionate.

For the reasons given above, I concur.

⁹ Like the majority, I have enormous respect for Justice Stevens. If we were to be true to his views on capital sentencing, however, we would join his minority view that imposition of the death sentence violates the Eighth Amendment's prohibition on cruel and unusual punishment. Baze v. Rees, 553 U.S. 35 (2008) (decided the term before he issued his Walker v. Georgia statement). While perhaps Justice Stevens would find our practice of reviewing only other capital cases violative of the Eighth Amendment, the fact remains that proportionality review is a requirement only of state law, not the Constitution. Pulley v. Harris, 465 U.S. 37 (1984).



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211

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November 17, 2011

✓ Chief Appellate Defender Robert M. Dudek
Appellate Defender Kathrine H. Hudgins
South Carolina Commission on Indigent Defense
P. O. Box 11589
Columbia, SC 29211

RECEIVED

NOV 17 2011

**SC OFFICE OF
APPELLATE DEFENSE**

Re: The State v. Dickerson, William O.

Dear Counsel:

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

“Petition for Rehearing is denied.

s/ Costa M. Pleicones A.C.J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Acting Justice James E. Moore,
not participating

November 17, 2011.”

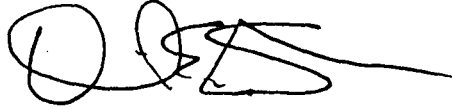
The remittitur is today being forwarded to the lower court.

The State v. Dickerson, William O.

Page Two

November 17, 2011

Very truly yours,

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

CLERK

DES/dmh

cc: Assistant Deputy Attorney General Donald J. Zelenka
Senior Assistant Attorney General Melody J. Brown
The Honorable Scarlett Anne Wilson

1 2 3 >
(3 screens)

Code 1976 § 16-3-20

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 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 nonjury 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.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2011

No. 11-

WILLIAM O. DICKERSON,

Petitioner,

v.

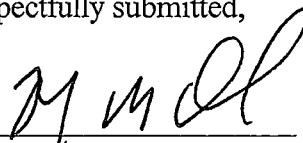
STATE OF SOUTH CAROLINA,

Respondent

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

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

Respectfully submitted,



Robert M. Dudek
Attorney at Law
South Carolina Commission
on Indigent Defense,
Division of Appellate Defense
1330 Lady Street, Fourth Floor
Columbia, SC 29201
(803) 734-1330

February 15, 2012

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2011

No. 11 - _____

WILLIAM O. DICKERSON,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

AFFIDAVIT OF WILLIAM O. DICKERSON
IN SUPPORT OF MOTION TO
PROCEED IN FORMA PAUPERIS

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

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

1. Are you presently employed? *NO*

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

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

X Sheraton Hotel \$7.25 per hr.

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

NO

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

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

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

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

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

5. List the persons who are dependent upon you for support and state your relationship to those persons.

N/A

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

X William O. Dickerson
William O. Dickerson

SWORN to and subscribed before me
this 13th day of February, 2012.

Walter T. Payne (L.S.)

Notary Public for South Carolina

My Commission Expires: Sept 22 2018

The Supreme Court of South Carolina

The State,

Respondent,

v.

William O. Dickerson,

Appellant.

ORDER

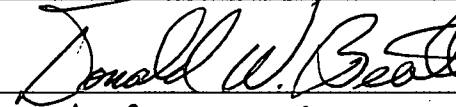
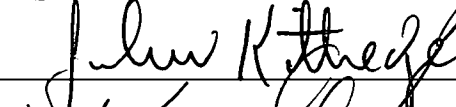
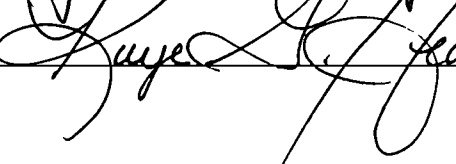
This Court recently affirmed appellant's convictions and death sentence in State v. Dickerson, Op. No. 27048 (S.C. Sup. Ct. filed Oct. 3, 2011). Appellant's petition for rehearing was denied on November 17, 2011, and the remittitur was sent to the lower court on November 28, 2011.

Appellant has now filed a petition for a stay of execution to allow him to file a petition for a writ of certiorari in the United States Supreme Court. The State has filed a return stating it does not oppose a stay of execution while appellant seeks a writ of certiorari in the United States Supreme Court.

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.

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

Columbia, South Carolina

December 14, 2011

cc: Chief Appellate Defender Robert M. Dudek
Senior Assistant Attorney General Melody J. Brown
Solicitor Scarlett Ann Wilson

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

NOV 28 2011

S.C. Supreme Court

THE STATE,

Respondent,

v.

WILLIAM O. DICKERSON,

Appellant

RETURN TO PETITION FOR STAY OF EXECUTION

Respondent, the State, through undersigned counsel, hereby makes a Return to the Petition for Stay of Execution filed by Appellant Dickerson. Appellant Dickerson asserts that he is requesting the stay in order to prepare and file a petition for writ of certiorari in the United States Supreme Court. Respondent does not oppose the stay request made pursuant to the provisions of *In Re Stays of Execution In Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996). In support of this position, Respondent would respectfully show the Court:

I.

This Court affirmed Appellant Dickerson's convictions and death sentence in *State v. Dickerson*, Op. No. 27048, 2011 WL 4550640 (S.C. Oct. 3, 2011), and denied his petition for rehearing on November 17, 2011. This Court has also issued the remittitur.

II.

On November 21, 2011, Appellant Dickerson moved for a stay of execution in order to prepare and file a petition for writ of certiorari in the United States Supreme Court. Appellant Dickerson asserts that he intends to raise the following “preliminarily framed” (Petition for Stay, p. 2), issues:

1.

Whether the South Carolina Supreme Court erred by holding the trial court did not err when it refused to allow appellant’s first counsel to testify appellant’s execution would deeply hurt her because she thought of appellant as being like a brother to her since appellant’s ability to maintain this positive relationship with her was mitigating evidence of his good character that appellant had the right to present to the sentencing jury pursuant to Skipper v. South Carolina, 476 U.S. 1, 4 (1986) and Lockett v. Ohio, 438 U.S. 586, 604 (1978).

2.

Whether the South Carolina Supreme Court erred by holding that the trial court did not err by qualifying a juror who would automatically vote for the death penalty unless the defense presented evidence that convinced him a death sentence was not warranted since shifting the burden to appellant to show why he should not be executed for his crime violated appellant’s rights under the Eighth and Fourteenth Amendments to the United States Constitution and the holding of Wainwright v. Witt, 469 U.S. 412 (1985).

(Petition for Stay, p. 2).

III.

In the order *In Re Stays of Execution In Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), this Court stated that it will issue a stay in the direct appeal setting in order to allow an appellant to seek certiorari review, if the appellant files a motion setting forth the questions to be raised, and those questions may be deemed “adequately preserved” for review on the merits. Provided the appellant complies, this Court will grant a stay of execution for ninety (90) days from the date of the remittitur.

A review of the record before this Court shows that the basic issues presented in Appellant Dickerson's petition for stay as issues to be raised in the petition for writ of certiorari were ruled upon by this Court, and not considered barred by state procedural rules; however, the issues as presently framed may rely on facts different than the facts supportive of the rulings on appeal and may be contested in the State's Brief in Opposition filed in response to the petition. Even so, 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.

IV.

WHEREFORE having made Return, Respondent respectfully requests this Court take the appropriate steps to issue a stay to allow a timely petition for writ of certiorari as the condition precedent appears to have been satisfied.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General

SCARLETT ANNE WILSON
Solicitor, Ninth Judicial Circuit

By: 
MELODY J. BROWN

Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

November 28, 2011.
Columbia, South Carolina.

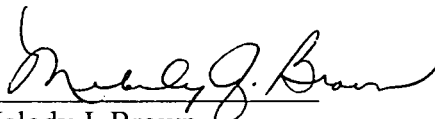
ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I, Melody J. Brown, hereby certify that I have served the *Return to Petition for Stay of Execution* on Appellant by depositing one (1) copy in the U.S. mail to his attorney of record addressed as follows:

Robert M. Dudek, Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

This 28th day of November, 2011.



Melody J. Brown

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

 ORIGINAL

RECEIVED

NOV 21 2011

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

WILLIAM O. DICKERSON,

APPELLANT

PETITION FOR STAY OF EXECUTION

Counsel for William O. Dickerson, 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. William O. Dickerson, Op. No. 27048, Shearouse's Adv. Sh. #34 at pp. 14-39 (filed October 3, 2011), 2011 WL 4550640 (S.C.). Rehearing was denied on November 17, 2011.

II.

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.

III.

Petitioner intends to raise the following federal issues, preliminarily framed, in the United States Supreme Court:

1.

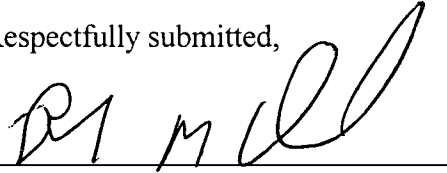
Whether the South Carolina Supreme Court erred by holding the trial court did not err when it refused to allow appellant's first counsel to testify appellant's execution would deeply hurt her because she thought of appellant as being like a brother to her since appellant's ability to maintain this positive relationship with her was mitigating evidence of his good character that appellant had the right to present to the sentencing jury pursuant to *Skipper v. South Carolina*, 476 U.S. 1, 4 (1986) and *Lockett v. Ohio*, 438 U.S. 586, 604 (1978)?

2.

Whether the South Carolina Supreme Court erred by holding that the trial court did not err by qualifying a juror who would automatically vote for the death penalty unless the defense presented evidence that convinced him a death sentence was not warranted since shifting the burden to appellant to show why he should not be executed for his crime violated appellant's rights under the Eighth and Fourteenth Amendments to the United States Constitution and the holding of *Wainwright v. Witt*, 469 U.S. 412 (1985).

WHEREFORE, counsel for William O. Dickerson, requests a ninety day stay of execution from November 17, 2011 in which to file a petition for writ of certiorari in the United States Supreme Court.

Respectfully submitted,

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

Robert M. Dudek
Chief Appellate Defender

November 21, 2011

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Diane S. Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM O. DICKERSON,

APPELLANT

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, Melody Brown, Esquire, this 21st day of November, 2011.



Robert M. Dudek
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 21st of November, 2011.

Ramen E. Cuse (L.S.)

Notary Public for South Carolina

My Commission Expires: October 2, 2013.



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

NOV 28 2011

S.C. Supreme Court

November 28, 2011

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

RE: *The State v. William O. Dickerson*
Charleston County Capital Case

Dear Mr. Shearouse:

Please find enclosed the original and six copies of the State's *Return to Petition for Stay of Execution*.

Sincerely,

Melody J. Brown
Senior Assistant Attorney General

MJB/arb

Enclosures

cc: Robert M. Dudek, Chief Appellate Defender



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

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

November 21, 2011

RECEIVED

NOV 21 2011

S.C. Supreme Court

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

Re: The State v. William O. Dickerson (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.

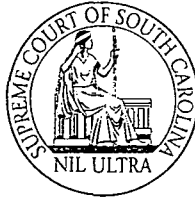
Sincerely,

Robert M. Dudek
Deputy Chief Attorney for Capital Appeals

RMD/lc

Enclosure

cc: Melody Brown, Esquire
William O. Dickerson



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

November 28, 2011

REMITTITUR

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Re: The State v. Dickerson, William O.
2006-GS-10-02981
2006-GS-10-03142
2008-GS-10-08884

Dear Ms. Armstrong:

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

The State v. Dickerson, William O.

Page Two

November 28, 2011

cc: Chief Appellate Defender Robert M. Dudek
Appellate Defender Kathrine H. Hudgins
Jeffrey P. Bloom, Esquire
Assistant Deputy Attorney General Donald J. Zelenka
Senior Assistant Attorney General Melody J. Brown
The honorable Scarlett Anne Wilson

COURT OF COMMON PLEAS
AND GENERAL SESSIONS
100 BROAD STREET, SUITE 106
CHARLESTON, S.C. 29401-2258
(843) 958-5000
(843) 958-5020 FAX
www3.charlestoncounty.org



FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY
100 BROAD STREET, SUITE 143
CHARLESTON, S.C. 29401-2265
(843) 958-4400
(843) 958-4434 FAX
www3.charlestoncounty.org

JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

RECEIVED

NOV 23 2011

From: Charleston County Clerk of Court

The enclosed document is being returned for the following reason(s):

_____ Insufficient filing fee. Correct amount: _____

_____ The document provided is a copy. This office only accepts originals.

_____ Defendant name is listed incorrectly.

_____ Defendant name does not match warrant/case number provided.

_____ Case not filed in this court.

_____ Incorrect warrant number provided _____

☒ Incorrect case number provided S/B. 2008 GS10 08884

_____ No case number or warrant number provided

_____ Document is missing required signature.

_____ Check or money order must be made payable to the Clerk of Court.

☒ Other: THE CASE NUMBER IS INCORRECT -

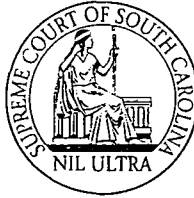
THE NUMBER SHOULD BE: 2008 GS10 08884
NOT 2006 -08884

Visit our website, www3.charlestoncounty.org, to confirm case information.

Please make necessary correction's and return to this office for filing. Thank you.

Staff initials: MAZ

Date: 18 Nov 2011



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

November 16, 2011

REMITTITUR

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Re: The State v. Dickerson, William O.
2006-GS-10-02981, 03142, and 08884

Dear Ms. Armstrong:

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

RECEIVED

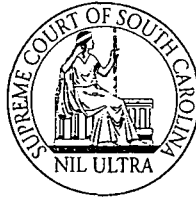
NOV 23 2011

S.C. SUPREME COURT

DES/dmh

Enclosure

cc: Chief Appellate Defender Robert M. Dudek
Appellate Defender Kathrine H. Hudgins
Assistant Deputy Attorney General Donald J. Zelenka
Senior Assistant Attorney General Melody J. Brown
The Honorable Scarlett Anne Wilson



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

November 16, 2011

REMITTITUR

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Re: The State v. Dickerson, William O.
2006-GS-10-02981, 03142, and 08884

Dear Ms. Armstrong:

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

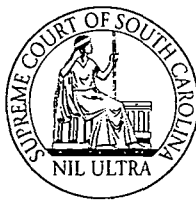
Very truly yours,

CLERK

DES/dmh

Enclosure

cc: Chief Appellate Defender Robert M. Dudek
Appellate Defender Kathrine H. Hudgins
Assistant Deputy Attorney General Donald J. Zelenka
Senior Assistant Attorney General Melody J. Brown
The Honorable Scarlett Anne Wilson



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

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FAX (803) 734-1499

November 17, 2011

Chief Appellate Defender Robert M. Dudek
Appellate Defender Kathrine H. Hudgins
South Carolina Commission on Indigent Defense
P. O. Box 11589
Columbia, SC 29211

Re: The State v. Dickerson, William O.

Dear Counsel:

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

“Petition for Rehearing is denied.

s/ Costa M. Pleicones A.C.J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

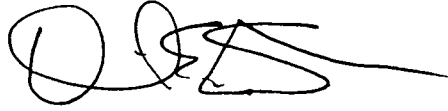
Acting Justice James E. Moore,
not participating

November 17, 2011.”

The remittitur is today being forwarded to the lower court.

The State v. Dickerson, William O.
Page Two
November 17, 2011

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
Senior Assistant Attorney General Melody J. Brown
The Honorable Scarlett Anne Wilson

 ORIGINAL

RECEIVED

OCT 19 2011

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE STATE,

S.C. Supreme Court

RESPONDENT,

V.

WILLIAM O. DICKERSON,

APPELLANT

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 27048
(Filed October 3, 2011)

AMENDED PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for William Dickerson petitions this Court to rehear this case because this Court may have overlooked the fact that Dr. Schandl's direct testimony left the jury with *the inaccurate impression* that the decedent tested negative for drugs. It was undisputed that Dr. Schandl, the pathologist, was a critical state's witness since the state's case was built on the length of the alleged "torture," and the pain the decedent suffered.

Dr. Schandl testified the decedent likely lived between eighteen to twenty-four hours with the injuries he suffered inside Armon Dickerson's apartment. R. 2971, l. 22 – 2972, l. 3. In his closing argument during the penalty phase the solicitor focused on the aggravating circumstance of physical torture and he reminded the jury of the testimony of Dr. Schandl regarding the eighteen or

more hours *the decedent suffered before he was killed*. The solicitor told the juror's appellant did not deserve any mercy given the circumstances. R. 4365, l. 17 – 4376, l. 24.

As this Court will recall, the following colloquy occurred between the solicitor and Dr. Schandl on direct examination:

Q. Did you also routinely do a toxicology screening as part of your autopsies?

A. Yes, we do. It is routine that we do send the blood that we take at the time of autopsy for toxicologic examination.

Q. And you did that in this case?

A. Yes, we did.

Q. And what were the results of the toxicology analysis?

A. A toxicologic analysis *was negative*.

R. 2962, ll. 13 – 22. (emphasis added).

Defense counsel inquired at the beginning of cross-examination of Dr. Schandl:

Q. Let me start first by asking you - - you responded to the solicitor's question about a toxicology screen that was negative.

A. (Affirmative nod).

Q. And I want to ask you first, an initial urine test - - -

Solicitor Wilson: Your Honor, may we approach?

The Court: Yes.

Bench Conference.

R. 2979, l. 25 – 2980, l. 9.

The solicitor stated her objection was that under Rule 403, SCRE that the results of the urine test were unduly prejudicial. Defense counsel responded: "Well, she asked about a toxicology

screen being negative. The urine test was positive. They did not do a confirmation urine test which would have yielded, potentially, a different result. The issue is that the blood test, as I understand it, is for if there was the presence of a substance at the time of death. The urine screen can test for a day or two before - - -” R. 2980, l. 23 – 2981, l. 7. The judge sustained the objection. R. 2980, ll. 8 – 9. Defense counsel added, “she asked the question, she asked if [about the toxicology report] and *now the jury is left with a false impression.*” The judge refused to alter his ruling. R. 2980, l. 23 – 2982, l. 14. (emphasis added).

This Court acknowledged that “[a]nything [pursuant to Rule 608(c), SCRE] having a legitimate tendency to throw light on the *accuracy, truthfulness, and* sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony. On cross-examination, any *fact* may be elicited which tends to show interest, bias, or partiality of the witness.” State v. Saltz, 346 S.C. 114, 131-132, 551 S.E.2d 240, 259 (2001).” State v. Dickerson, Op. No. 27048, Shearouse’s Adv. Sh. # 34 at p. 27 (October 3, 2011) (last emphasis this Court’s opinion).

This Court then concluded that although Dr. Schandl was the key state’s witness regarding torture that “that fact alone does not establish a reason for her to lie, and the proffered testimony does not complete the circle.” This Court also held any false impression conveyed to the jury about “Roper’s drug use is irrelevant in this case.” State v. Dickerson, Op. No. 27048, Shearouse’s Adv. Sh. # 34 at p. 27 (October 3, 2011). Respectfully, that is not correct.

The decedent’s drug use was probative of the pain he actually suffered while self-medicated on illegal drugs, and therefore direct evidence relevant to torture and to challenge Schandl’s accuracy in her testimony on the decedent’s suffering and her motive to misrepresent the truth. This Court, most respectfully, has not put forth a valid reason this cross-examination was impermissible

where the scope of cross-examination in this state has always been broad. See State v. Jones, 343 S.C. 562, 570, 541 S.E.2d 813, 817 (2009); State v. Starnes, 340 S.C. 312, 325, 531 S.E.2d 907, 914 (2004). See also, State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002) State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976). Drug use by the decedent was not irrelevant in this case and this Court should reconsider that holding.¹

Finally, in State v. McClure, 342 S.C. 403, 409, 537 S.E.2d 273, 275 (2000), this Court noted that finding the consequences of an error during the sentencing phase of a capital case is more difficult because of the discretion that is given to the sentencing jury. A capital jury can recommend a life sentence for any reason or no reason at all. See, also, Vasquez v. State, 388 S.C. 447, 463b 698 S.E.2d 561, 569 (2010). The jury in this case was misled by Dr. Schandl – her testimony was not accurate -- and her expert testimony and opinions about the extent of the torture of the decedent were critical to the jury’s deliberations. This proffered cross-examination would have graphically revealed Dr. Schandl’s *inaccuracy* in her testimony by omission, *her bias and her motive to misrepresent facts to the jury*, and that error was not harmless. State v. McClure, 342 S.C. 403, 409, 537 S.E.2d 273, 275 (2000); Vasquez v. State, 388 S.C. 447, 463b 698 S.E.2d 561, 569 (2010).

Most respectfully, this Court opinion seriously undervalues the prejudice of not allowing cross-examination that clearly – under this Court’s precedents – was proper.

¹ During the sentencing phase the judge noted that the defense again had requested to place as proffer of Dr. Schandl before the jury. The judge stated that Dr. Schandl’s guilt phase testimony and the proffer were incorporated fully into the sentencing phase. However, the judge again denied the defense request to cross-examine Dr. Schandl and have her admit the decedent’s urine tested for cocaine. R. 3898, l. 25 – 3899, l. 22.

Lesser-related offense

Appellant submits that Justice Pleicones was correct in stating that State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) “fundamentally altered state law by converting an indictment, which therefore had been a jurisdictional document, into a mere notice document.” State v. Dickerson, Op. No. 27048, Shearouse’s Adv. Sh. # 34 at p. 38 (October 3, 2011). As defense counsel wrote: “The trial courts of General Sessions now had jurisdiction to hear all classes of cases encompassed by the state constitution, statutes, and common law.” R. 4461.

Appellant continued in his new trial motion that an indictment was only a notice document after Gentry, and the court should have charged either accessory offense if there was evidence supporting that offense. R. 4461. Appellant argued that while Beck v. Alabama applied specifically to lesser-included offenses under state law, “Gentry eliminated the jurisdictional requirement previously conferred on the trial court by the indictment and thus the need for strict lesser included offenses.” R. 4461

After the judge charged the jury defense counsel renewed his requests for the judge to charge accessory after the fact and accessory before the fact “pursuant to our prior argument. This argument was narrowed to accessory after the fact *only* on appeal. The judge responded: “I ruled previously on that and he refused to alter his instructions on murder being the only offense charged. R. 3503, ll. 1 – 13.

Justice Pleicones also wrote that: “Unlike the majority, I find nothing in People v. Burks, 960 P.2d 1073 (Cal. 1998) which conflicts with my view that a court may authorize a criminal defendant to request a jury charge *on a lesser-related offense*.” State v. Dickerson, Op. No. 27048, Shearouse’s Adv. Sh. # 34 at p. 38 (October 3, 2011). (emphasis added). Appellant nonetheless

The state’s penalty phase argument focused on the torture of the decedent, and the solicitor told the

continues to submit there was evidence in this case that appellant was an accessory after the fact of the murder his brother, Armon Dickerson, committed in Armon's apartment.

As this Court will remember, Armon's girlfriend, Rouse, claimed appellant, and not Armon, "asked me if he should let him [the decedent] live or die. Rouse said she responded: "He knows who you are and he knows where you brought him." R. p. 3087, ll. 6 – 22. Rouse maintained that she only made this comment because she was scared and "he [the decedent] was in my apartment and it was my boyfriend. I was trying to cover for him [Armon]." R. 3078, ll. 1 – 15. Armon admitted he beat the decedent inside his apartment, and he acknowledged he helped wrap the decedent in a comforter, and dump his body in the vacant apartment next door, Apartment E-4. R. p. 3044, ll. 11 – 24. There was evidence appellant assisted Armon in covering up the murder Armon committed in his apartment. It was also clear Rouse wanted the decedent killed and out of her apartment to cover for Armon.

Charleston Police Department Investigator Stevens Hood responded to Apartment E-4 on March 9, 2006 at 8:10 in the morning. A prospective tenant had discovered the body and telephoned the police. R. 2568, l. 4 – 2569, l. 22. Hood also went to Armon Dickerson's next door apartment, Apartment E-3 after specks of blood were spotted on the door. R. 2570, l. 12 – 2575, l. 7. The police noticed blood splatters behind the door to Armon Dickerson's next door apartment. R. 2578, l. 7 – 2582, l. 14. After obtaining a search warrant the police entered Apartment E-3, and it was obvious from the blood inside Armon's apartment that it was a crime scene. R. 2588, l. 2 – 2593, l. 16. A video of Armon Dickerson's bloody apartment was played for the jury. R. 2591, l. 7 – 2595, l. 13.

juror's that appellant did not deserve any mercy given the extreme torture of the decedent.

Investigator Hood told the jurors: “It would be virtually impossible to swab every speck of blood [in the apartment]” R. 2598, ll. 1 – 2. Hood testified a bleach bottle with blood on it was also found inside Armon’s apartment. R. 2693, l. 14 – 2707, l. 19.

Appellant respectfully requests that this Court reconsider its landmark holding that following Gentry a defendant is not entitled to a jury instruction on a *lesser-related offense* if there is evidence supporting that jury instruction. This holding will have lasting ramifications. Finally, appellant asks that the Court reconsider the evidence in this case and confirm that there *was evidence* appellant was an accessory after the fact.

The character evidence of Johnette Watson

This Court held it was not error to exclude evidence appellant’s execution would hurt Watson because of the close bond she had formed with appellant. Appellant argued his ability to form such a bond -- where Watson considered him like a brother -- constituted evidence of his good character that the jury should have been allowed to consider.

This Court respectfully focused, and broadened the fundamental argument to include the fact Watson’s family had lost two members to homicide to make this Constitutional argument less appealing. State v. Dickerson, Op. No. 27048, Shearouse’s Adv. Sh. # 34 at p. 33 (October 3, 2011). While that evidence was part of the proffer, it was not the essence of it. The essence of the proffer was Watson’s positive relationship with appellant, her respect for him, and the hurt his execution would therefore cause her.

Watson testified appellant never exhibited any violent tendencies around her, and he was also protective of her. R. 4028, l. 22 – 4029, l. 2. Watson recalled that when appellant was released from the Department of Corrections in September 2005 that “things were good, he was around family, he got a job not too long after, he got a car, he was doing fine.” R. 4029, ll. 3 – 8.

Watson related that appellant had a positive attitude and he was motivated to do well in life. R. 4029, ll. 9 – 12. Watson said she thought appellant got a new start in life by way of his relationship with Tierra McIntosh but the relationship eventually ended and appellant stated dating Shelly Nelson. Watson opined Nelson was not “good for William.” R. 4029, l. 17 – 4031, l. 3.

Watson described appellant’s transformation from being very particular about his appearance and his wardrobe “to looking like a bum.” R. 4031, ll. 4 – 21. Watson suspected appellant started doing drugs with Nelson. R. 4031, ll. 22 – 24. The following occurred on direct examination of Watson:

Q. Next let me ask you, finally, is there anything that you want to ask this jury or tell them about William?

A. He’s basically a good person. He got mixed up in the wrong things and I, I beg that you have mercy on him.

Q. How would his execution impact on your family?

Solicitor Wilson: Your Honor, I object to that.

The Court: Sustained.

R. 4034, l. 16 – 4035, l. 1.

Defense counsel cited, in support his position that his evidence was admissible, State v. Stevens, 319 Or. 573, 879 P.2nd 162 (1994) and Richmond v. Lewis, 506 U.S. 40 (1992). R., 4080, ll. 1–13. Defense counsel added: “Not to mislead the court, that U.S. Supreme Court case doesn’t specifically allow this type of testimony, it just recognizes in the body of the opinion, but Arizona does.” R. 4080, ll. 4– 9.

After appellant’s argument, the judge asked the solicitor if the state still objected to this line of questioning. The solicitor stated the state still objected to this testimony. R. 4080, l. 16 – 4081 l. 4. The judge then stated he *did not consider the testimony relevant* but he said that he

recognized that the “*familial relationship is so important that it speaks directly to his character, and to whether they are close.*” The judge said the witness had testified that appellant was like a brother to her and to his credit “how he treated her.” R. 4082, ll. 2 – 24. (emphasis added). However, the judge ruled he did not think the evidence was relevant. R. 4083, ll. 3 – 8.

Appellant argued to this Court that in State v. Stevens, 319 Or. 573, 879 P.2d 162 (1994), a death penalty case, the Oregon Supreme Court held that the trial judge erred in not allowing evidence of how the defendant’s daughter “may feel about him and what might be best for her in terms of this punishment.” The defendant argued this testimony was admissible under an Oregon statute and required by the Eighth Amendment to the United States Constitution. Oregon v. Stevens, 319 Or. at 579, 879 P.2d 165.

The Stevens court held that because it resolved this issue on statutory grounds, it would not reach the defendant’s Eighth Amendment argument that this was admissible character evidence was constitutionally required. State v. Stevens, 319 Or. at 585, 879 P.2d 168. The court vacated the defendant’s death sentence. See also State v. Metz, 131 Or. App. 706, 887 P.2d 795 (Or. App. 1994).

It is clear that a capital defendant is entitled to submit any relevant mitigating evidence in support of a sentence less than death. Payne v. Tennessee, 501 U.S. 808, 822 (1991); McCleskey v. Kemp, 481 U.S. 279, 304 (1987). The Supreme Court applies a broad relevance standard to mitigating evidence. See McKoy v. North Carolina, 494 U.S. 443, 440 – 441 (1990). In a death penalty case, the sentencer [may] not be precluded from considering as a mitigating factor, any aspect of a defendant’s character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.” Skipper v. South Carolina, 476 U.S. 1, 4 (1986); Lockett v. Ohio, 438 U.S. 586, 604 (1978).

Since the constitutional right of a capital defendant to present mitigating evidence includes evidence of *any aspect of his character* or record and any circumstance of the offense, the trial judge erred by excluding evidence of the impact appellant's execution would have on Johnette Watson whom she considered "like a brother" because of his kindness to her. Appellant respectfully requests that this Court reconsider its holding that this evidence of appellant's good character could properly be excluded. As undersigned counsel orally argued before this Court the jury had the right to consider this good character evidence that showed appellant was something other than the monster the state argued he was throughout the trial. This evidence of appellant's good character should have been admitted.

Burden shifting juror

Appellant also requests this Court to reconsider its holding that Juror #370 was qualified to sit on Dickerson's capital jury where a fair reading of this record showed he was unable to follow the law in regard to the burden of proof at sentencing. Juror #370 was a burden shifting juror. See State v. Dickerson, Op. No. 27048, Shearouse's Adv. Sh. # 34 at pp. 25-26. (October 3, 2011) A plea for mercy was not sufficient, in this juror's mind, to avoid an automatic vote for a death sentence. R. 492, 13 – 493, l. 4. The unqualified juror was seated on the jury that sentenced Dickerson to death, R. 2016, l. 14 – 2017, l. 1; R. 2032, l. 13, and for that reason this Court was required to vacate appellant's death sentence.

As this Court will recall this juror stated: "Well, I mean if someone – *if he was defending himself* and he ended up killing, then I think maybe it is like *life imprisonment*. Okay. But if he just brutally murdered someone, then I think that might be where the death penalty should come in." R. 486, l. 23 – 487, ll. 1-3. (emphasis added).

Defense counsel defined murder for the juror and upon further questioning Juror #370 stated that if the case was “absolute” he would automatically vote for the death penalty. Defense counsel asked, “Okay. So even if there is no accident, self-defense, manslaughter, insanity, the State has proved it beyond a reasonable doubt, did it, meant to do it and they had the right person; in those cases you’re not going to automatically vote for the death penalty?” R. 488, ll. 16-21. Juror #370 responded, “I guess – I guess I would. *If it was absolute, then definitely.*” R. 488, ll. 22-23. (emphasis added). To clarify, defense counsel asked, “In that case, if the State can prove beyond a reasonable doubt and they also establish those other what we call ‘bad facts’ that supported a death sentence, are you saying again that you would automatically vote for the death penalty?” R. 490, ll. 3-8. Juror #370 responded, “Yeah.” R. 490, l. 9.

When asked about mitigating factors, the juror said, “Right. That’s why – all those situations, like who he is, like – that kinds of stuff is what I’d want to hear before I just say ‘give them the death penalty.’” R. 490, ll. 24 –491, ll. 1-2. Defense counsel then asked, “Okay. If – **would you expect**, though – and let me just back up a minute because you’ve told us that if the State proves to you that it was murder, that he did it, meant to do it, and they had the right person and they had all that other kind of stuff, you would listen to the mitigation circumstances but – and I don’t want to put words in your mouth, so I want to make sure that I am understanding you.” R. 491, ll. 13-22. Juror #370 stated, “I mean, it was – yeah, I’d go with the death penalty.” R. 491, ll. 23-24.

Defense counsel then asked the juror, “In that same line, **would you expect the defendant or his attorney to present something to you to give you a reason not to vote for death?** To kind of convince you, ‘Okay, I found him guilty of murder, I’ve heard all this other stuff but I’m for death.’ Would you expect the defense to show, ‘you need to show me stuff that

would convince me otherwise, to vote for life’?” R. 491, l. 25 –492, ll. 1-8. (emphasis added).

Juror #370 responded, “I – **yeah, isn’t that what you’ve got to do?**” R. 492, ll. 11-12.

(emphasis added). The following exchange took place between defense attorney and the juror:

Q. Both sides may or may not present evidence. I guess what I am asking is what if the defense lawyers didn’t put up any witnesses or evidence, just basically argued –

A. It’s a hundred percent proof that he did it?

Q. Yes. And all that bad stuff in there *and they just for mercy, that is not something that is going to persuade you?*

A. No.

Q. So you would be looking at the defense to kind of convince you that a death penalty wasn’t the right sentence?

A. Yeah. Just to represent him, *show something* – I mean, something had to happen.

R. 492, l. 13 –493 ll. 1-4. (emphasis added).

As appellant argued to this Court, although the juror agreed that he could follow the judge’s instruction, he admitted that he would want to hear mitigation *as to why a death sentence was not warranted*. While the juror admittedly may have been rehabilitated at times in regard to automatically voting for the death penalty if the state proved aggravators, the questioning reflects that this juror would require the defense to present mitigation evidence in order to convince him that a death sentence was not warranted. The juror’s view improperly shifted to the defendant the burden of proof in regard to mitigation evidence.

Defense counsel properly moved to disqualify Juror #370. R. 503, l. 12 – 504, ll. 1-4. Defense counsel argued that Juror #370 was not qualified because he was a “burden shifter” who expected the defense to convince him that a death sentence was not warranted. Defense counsel

argued that the juror's general statements that he could follow the instructions were not enough.

R. 503, ll. 16-20.

The judge ruled:

I think obviously he demonstrated some personal concept of what the law was but I – I believe that the young man specifically stated and unequivocally stated that he would follow the instructions. He demonstrated that in one of his answers to your question when he said, and I'm paraphrasing what he said, but he said 'that's what I mean, I would want to hear all the circumstances.' I think while he may be prone for that, I don't think that disqualifies him. He said that he would consider it and meaningful consideration that and impose the death penalty. I appreciate your position. I understand the position and I find that he is qualified.

R. 504, ll. 7-23.

The judge did not address the juror's erroneous burden shifting belief that the defense had to present mitigation evidence in order to convince him that a death sentence was not warranted. The juror maintained his erroneous position requiring the defense to present compelling mitigation evidence **after** the judge instructed him on the proper burden of proof. R. 498, l. 22 – 499, ll. 1-23; R. 501, l. 18 – 502, ll. 1 - 2. The judge did not address the juror's response that a plea for mercy was not sufficient to avoid an automatic vote for death. Juror #370 was unable to follow the law regarding burden of proof at sentencing. As appellant argued, the judge erred in finding Juror #370 qualified.

Juor #370 was not a Wainwright v. Witt, 469 U.S. 412 (1985) qualified juror. In that case the Supreme Court stated that the critical issue regarding the disqualification of a capital juror is "whether the juror's views would 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.' " Id. at 424, 105 S.Ct. 844 (quoting Adams v. Texas, 448 U.S. 38, 45 (1980)).

In State v. Mercer, 381 S.C. 149, 156, 672 S.E.2d 556, 559 (2009), this Court wrote, “The Wainwright Court observed that a juror's bias need not be “proved with ‘unmistakable clarity’ ... [because] bias cannot be reduced to question-and-answer sessions which obtain results in the manner of a catechism.” Id. at 424, 105 S.Ct. 844.”

In State v. Bennett, 328 S.C. 251, 257, 493 S.E.2d 845, 848 (1997), this Court noted, “When reviewing the trial court's qualification or disqualification of prospective jurors, the responses of the challenged jurors must be examined in light of the entire *voir dire*. State v. Green, *supra*. The ultimate consideration is that the juror be unbiased, impartial and able to carry out the law as explained to him. Id.”

A capital defendant may challenge for cause any juror who would automatically vote for a death sentence. Morgan v. Illinois, 504 U.S. 719 (1992). “If even one such juror is impaneled and the death sentence is imposed, the state is disentitled to execute sentence.” Id. at 729, 112 S.Ct. at 2230. The Morgan court rejected the state's claim that general questions of fairness and impartiality were in all cases sufficient to detect unqualified jurors, stating:

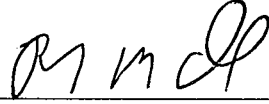
[S]uch jurors could in all truth and candor respond affirmatively, personally confident that such dogmatic views are fair and impartial, while leaving the specific concern unprobed.

504 U.S. at 735.

Appellant respectfully requests that this Court reconsider its holding that Juror #370 was qualified as a juror and rejecting appellant’s argument that “because he[Juror#370] was a burden shifter, meaning he improperly placed the burden on the defense to show why death would not be an appropriate punishment,” he was not qualified to serve as a juror in appellant’s case.

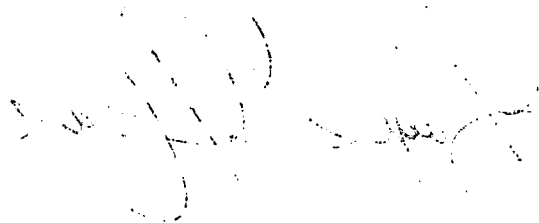
Based on all of the above, appellant respectfully requests that this Court grant rehearing.

Respectfully submitted,

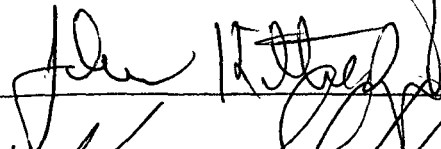
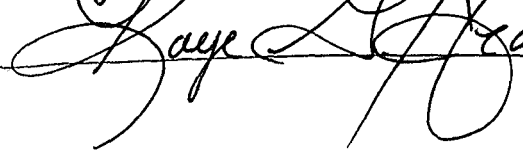


Robert M. Dudek
Chief Appellate Defender

This 19th day of October, 2011.



Petition for rehearing is denied.

	ACJ
	J.
	J.
	J.

Acting Justice James C. Moore not participating
November 17, 2011

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM O. DICKERSON,

APPELLANT

CERTIFICATE OF SERVICE

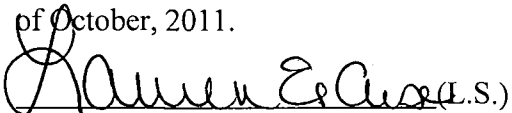
The undersigned attorney hereby certifies that a true copy of the Amended Petition for Rehearing in the above-entitled case has been served upon Donald J. Zelenka, Esquire, this 19th day of October, 2011.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 19th day
of October, 2011.



(L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State,

Respondent,

v.

William O. Dickerson,

Appellant.

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 27048
Heard May 24, 2011 – Filed October 3, 2011

AFFIRMED

Chief Appellate Defender Robert M. Dudek, and Appellate Defender Kathrine H. Hudgins, South Carolina Commission on Indigent Defense, of Columbia, and Jeffrey P. Bloom, of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, and Senior Assistant Attorney General Melody J. Brown,

Office of the Attorney General, of Columbia, and
Solicitor Scarlett Anne Wilson, of Charleston, for
Respondent.

JUSTICE HEARN: A jury convicted William Dickerson of first degree murder, kidnapping, and criminal sexual conduct, and he was sentenced to death. Dickerson now appeals his sentence pursuant to Section 16-3-25(A) of the South Carolina Code (2003). He argues the circuit court erred: (1) in not excusing a juror for cause; (2) in limiting the cross-examination of the pathologist called by the State; (3) in not charging the jury on the law of accessory after the fact; and (4) in limiting the testimony of Dickerson's cousin during the penalty phase of his trial. We affirm and further find that Dickerson's sentence is proportional, supported by the evidence, and not the result of passion, prejudice, or any other arbitrary factor.

FACTUAL/PROCEDURAL BACKGROUND

Dickerson and Gerard Roper had been friends, even best friends, since childhood. On the morning of March 6, 2006, Roper went to his friend, Ben Drayton's, house to play video games. Around the same time, Dickerson went to his friend, Antonio Nelson's, house asking for a ride to his brother, Armon Dickerson's, house. Nelson was unable to give Dickerson a ride at that time and told him to come back later. When Dickerson returned later that afternoon, he was carrying a gun.

En route to Armon's house, however, Dickerson began calling Roper from his cell phone. After receiving no answer, Dickerson asked if they could make a stop at Drayton's house so he could "get some money." When they arrived at Drayton's home, Dickerson entered brandishing his weapon and asking for money. Roper told Dickerson "I got your money," begging "don't shoot me" and "please don't kill me." Dickerson nevertheless fired a shot at Roper but missed. He then struck Roper in the head with the gun,

dragged him out of the house, and forced him into Nelson's car. Dickerson then took Roper to Armon's house.¹

Armon and Dickerson brought Roper inside and systematically tortured him over approximately thirty-six hours. It started with Dickerson continuing to hit Roper with the gun, knocking out some of his teeth. Armon then left to retrieve Dickerson's car and some drugs, and blood covered the inside of the house when he returned. Dickerson then called another friend of his, Rashid Malik, and threatened him with death if he did not come to Armon's house.² When Malik arrived, Roper was still conscious but clothed only in his T-shirt, and Armon was attempting to clean up the blood covering the house. Malik then joined Armon and Dickerson.

Although Dickerson, Armon, and Malik all tortured Roper to varying degrees, Dickerson appeared to be the primary actor.³ Through this entire ordeal, Roper suffered the following at the hands of Dickerson alone: choking, being tied up and placed in a closet, being sodomized with a gun and a broomstick, having his scrotum burned, being hit with a heavy vase and a mirror, and generalized beating and cutting. At one point, Roper began asking that they just let him die.

All told, Roper received over 200 individual wounds to the outside of his body, including lacerations to his anus. He also received several internal injuries, including various broken bones in his face that caused it to appear misshapen, blunt force trauma to his neck resulting in the breaking of various structures, a broken tibia, broken fingers and wrist, brain swelling, and

¹ After dropping Dickerson and Roper off, Nelson left and did not return. There is no suggestion he knew of Dickerson's plans beforehand or had any involvement in the subsequent events.

² Malik attempted to bring Dickerson's mother to Armon's house to calm Dickerson down. When Dickerson learned of this, he threatened to kill Malik's mother and cut the baby out of Malik's pregnant girlfriend.

³ Armon's girlfriend, Selena Rouse, was in and out of the house during that evening, along with her young son. At some point, Dickerson asked her whether he should let Roper live or die. However, there is no evidence that she actually participated in the torture.

bleeding into the internal structures around his rectum as the result of objects being inserted into it. Although there is no definite timeline of events, Roper survived for eighteen to twenty-four hours after the sodomy occurred, and none of these wounds were inflicted post-mortem. No single wound was fatal. Instead, Roper died from the sum total of his injuries, apparently shortly after he was struck with the mirror and the vase on the morning of March 8.

As these events transpired, Dickerson made several phone calls to various people during which he discussed what he was doing to Roper. Many of them were to Dickerson's girlfriend, and she managed to record one of them containing his description of the sodomy and even Roper's own confirmation of what was happening. Dickerson also confirmed the sodomy, as well as the burning of Roper's scrotum, over the phone to another friend. In a later call to that same friend, he said that Roper was "gone." However, he told a different friend that Roper was all right but that Dickerson needed to run.

Dickerson and Armon wrapped Roper's semi-clothed body in a blanket and dumped it in the vacant townhouse next to Armon's. Dickerson then changed clothes and fled. Armon and Rouse attempted to clean Armon's house, but they abandoned it upon realizing their efforts would be futile. That same day, a woman who was planning to rent the vacant townhouse entered and discovered Roper's bloodied and mutilated body.

Dickerson was arrested on March 11, 2006, and indicted for murder, kidnapping, and criminal sexual conduct. During voir dire, Juror 370 was the second venireman to be called. He initially identified himself as the type of juror who was able to recommend a sentence of death or life without parole in the appropriate circumstances. The following exchanges then occurred between Juror 370 and the circuit judge:

Q. I would also instruct you that the only party which has any burden of proof in this proceeding is the State. Mr. Dickerson doesn't have to prove anything, he doesn't have to -- he doesn't have to present any evidence, he has no

obligation whatsoever. Would you have any problem following that presumption?

A. No sir.

....

Q. . . . I would tell you that if the jury were to conclude beyond a reasonable doubt that there were aggravating circumstances, that does not mean that that jury has to return a death sentence, only that it is a potential sentence; do you understand that?

A. Yes, sir.

Q. Because the jury would have the right, notwithstanding the conclusion of aggravating circumstances to find that the appropriate sentence would be life imprisonment without the possibility of parole. I would give you an instruction as to that. You could make that consideration, as well; is that correct?

A. Yes, sir.

When questioned by Dickerson, Juror 370 made the following statements:

Q. Let me just kind of start off with, what is your opinion of the death penalty?

A. I am -- I think it needs to be there but there are certain situations that -- I mean, I am not too up-to-date on this whole system but I feel like a lot of people get the death penalty when it is not deserved. People die all the time, I mean get put to death, when they're innocent. So -- I don't know. It's a big thing.

....

Q. In those types of situations, now that you know what the term "murder" is, not accident, self-defense, manslaughter or insanity, would you always automatically vote for [the death penalty] if the person who did it meant to do it and they had the right person?

....

A. I would still have to hear all of the evidence, everything behind it.

Q. Okay.

A. When, how, where, all that stuff.

Q. Okay. So even if there is no accident, self-defense, manslaughter, insanity, the State has proved it beyond a reasonable doubt, did it, meant to do it and they had the right person; in those cases you're not going to automatically vote for the death penalty?

A. I guess -- I guess I would. If it was absolute, then definitely.

Q. When you say "absolutely", you mean ---

A. Exactly what you just said, all those.

However, in response to further questioning by Dickerson, Juror 370 stated, "That's why -- all those situations, like who he is, like -- that kinds of stuff is what I'd want to hear before I just say 'give them the death penalty.'" He then said he would "certainly" listen to mitigating evidence presented by the defense.

Before turning Juror 370 over to the State, Dickerson pressed the juror on his belief regarding the defendant's burden of proof during the sentencing phase of a capital trial:

Q. . . . [W]ould you expect the defendant or his attorney to present something to you to give you a reason not to vote for death? To kind of convince you, 'Okay, I found him guilty of murder, I've heard all this other stuff but I[']m for death.' Would you expect the defense to show, 'you need to show me stuff that would convince me otherwise, to vote for life'?

A. (No verbal response).

Q. Is that what you're telling me?

A. I -- yeah, isn't that what you've got to do?

....

Q. And all that bad stuff in there and they just argue for mercy, that is not something that is going to persuade you?

A. No.

Q. So you would be looking at the defense to kind of convince you that a death penalty wasn't the right sentence?

A. Yeah. Just to represent him, show something -- I mean, something had to happen.

During rehabilitation, the State informed Juror 370 that the judge would in fact instruct him that it was improper to hold a defendant's decision to not present any evidence against him. The following exchange then occurred:

Q. Because just a minute ago you were saying that you would expect the defendant to put something up.

A. Well, I mean -- I thought that was kind of how it worked.
But if -- (pause).

Q. Well, the Judge would tell you that it works differently and

A. If he told me that, yeah, then I wouldn't expect it.

Q. You wouldn't consider that, the fact that he didn't put
anything up -- any evidence?

A. Yeah.

Q. So you could follow the Judge's instructions?

A. Yes, ma'am.

The State then confirmed that Juror 370 would in fact be able to consider a sentence of life without parole even if the State proved aggravating circumstances.

During follow-up questioning by the court, the circuit judge repeated the State's question of whether Juror 370 would have any trouble abiding by the court's instruction that Dickerson would have nothing to prove, to which Juror 370 reiterated that he would not. However, Dickerson again asked whether Juror 370 would look to Dickerson to prove why the death penalty was not appropriate, to which Juror 370 said "yes," but Juror 370 then told the State once again that he would follow whatever the judge instructed him. Dickerson then moved to have Juror 370 disqualified because he was a "burden shifter" who would require the defense to prove that death should not be imposed. The court disagreed, finding Juror 370's statements that he would follow the law as instructed and he would want to hear all of the circumstances demonstrated he was not a burden shifter.

During the guilt phase, one of the many witnesses called by the State was Dr. Cynthia Schandl, the pathologist who performed Roper's autopsy.

On direct examination, she testified that the blood toxicology report on Roper was negative, which demonstrated he did not have any drugs in his system when he died. On cross examination, Dickerson attempted to inquire about an initial urine screen test performed by Dr. Shandl that would show whether there were drugs present in Roper's system up to two days prior to his death. The State objected under Rule 403, SCRE. In her proffer, Dr. Shandl testified that this test was "presumptively positive" for cocaine metabolites, but Dr. Schandl never ordered confirmatory testing. According to her, these initial screening tests produce a large number of false positives and are very unreliable absent any sort of confirmation. Dickerson, however, argued the State's question about the blood toxicology results opened the door for this line of questioning as it left the jury with the misleading impression that Roper had not used cocaine. Finding the proffered testimony itself was actually misleading, the possibility of prejudice from excluding it was remote, it did not challenge any of Dr. Schandl's findings, and it would only serve to confuse the jury, the court refused to permit this line of questioning.

At the close of evidence, Dickerson requested the jury be charged on the law of accessory after the fact. The court, however, denied this request because accessory after the fact is not a lesser-included offense of murder. The jury subsequently convicted Dickerson on all charges. In the sentencing phase, the State proceeded under three aggravating factors: criminal sexual conduct, kidnapping, and torture, also highlighting Dickerson's prior criminal history and adaptability to prison life. Dr. Shandl testified again during the sentencing phase, repeating much of her testimony from the guilt phase. In particular, she emphasized that none of Roper's wounds were inflicted post-mortem, and he died from the totality of his injuries rather than from any single blow.

In mitigation, Dickerson called several witnesses from the Charleston County Detention Center, where he was being held pending trial, who testified he was a model prisoner. He also called several witnesses who testified extensively regarding his drug use, childhood trauma, and mental problems. These witnesses further opined that he suffered from cocaine psychosis and attendant paranoia. Additionally, Dickerson's cousin, Johnette Watson, testified on his behalf. She stated he had always been like a brother to her, a good person who just got mixed up in the wrong things and with the

wrong people. However, the court did not permit her to testify as to what impact his execution would have on her family, chiefly that her family would be devastated as it had already lost two close members to homicide.

Ultimately, the jury recommended the court impose a sentence of death, finding the State proved all three aggravating circumstances beyond a reasonable doubt. The court followed the jury's recommendation. This appeal followed pursuant to section 16-3-25.

ISSUES PRESENTED

Dickerson raises four issues on appeal:

- I. Did the circuit court err in qualifying Juror 370?
- II. Did the circuit court err in not permitting Dickerson to cross examine Dr. Schandl regarding the urinalysis screen results?
- III. Did the circuit court err in not charging the jury on the law of accessory after the fact?
- IV. Did the circuit court err in not permitting Watson to testify regarding the impact Dickerson's potential execution would have on her family?

LAW/ANALYSIS

I. JUROR QUALIFICATION

Dickerson first argues the court erred when it found Juror 370 qualified to serve on the panel because he was a burden shifter, meaning he improperly placed the burden on the defense to show why death would not be an appropriate punishment. We disagree.

A juror must be excused from service if "the juror's views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." *Wainwright v. Witt*, 469 U.S.

412, 424 (1985) (quoting *Adams v. Texas*, 448 U.S. 38, 45 (1980)); *see also State v. Green*, 301 S.C. 347, 354, 392 S.E.2d 157, 160 (1990).

A juror who will automatically vote for the death penalty in every case will fail in good faith to consider the evidence of aggravating and mitigating circumstances as the instructions require him to do. . . . If even one such juror is empaneled and the death sentence is imposed, the state is disentitled to execute the sentence.

Morgan v. Illinois, 504 U.S. 719, 729 (1992). General protestations that the juror will follow the law, without the opportunity for further inquiry by the defendant, are not sufficient for "[i]t may be that a juror could, in good conscience, swear to uphold the law and yet be unaware that maintaining such dogmatic beliefs about the death penalty would prevent him or her from doing so." *Id.* at 734-36; *see also State v. Bennett*, 328 S.C. 251, 257-58, 493 S.E.2d 845, 848 (1997) (holding that a juror's general statements he could be fair and impartial and follow the law were not sufficient in light of his later, unequivocal statement that he would just "go with the majority").

This inquiry, however, "cannot be reduced to question-and-answer sessions which obtain results in the manner of a catechism." *Wainwright*, 469 U.S. at 424. Thus, the record may not be entirely clear to the point of "unmistakable clarity" as to the juror's views, and situations will arise where a circuit court simply is left with a "definite impression" of a juror's qualifications following voir dire. *Id.* at 425-26. "[T]his is why deference must be paid to the trial judge who sees and hears the juror." *Id.* at 426. Therefore, determinations of whether a juror is qualified to serve on a panel are left to the sole discretion of the circuit court. *Green*, 301 S.C. at 354, 392 S.E.2d at 160. In reviewing the circuit court's decision, we must examine the juror's responses in light of the entire voir dire and will not reverse the court's decision unless it is wholly unsupported by the evidence. *Id.* at 354, 392 S.E.2d at 160-61.

Although Juror 370 unquestionably displayed some equivocation on how he might vote should the State prove an aggravating circumstance, the State's rehabilitation revealed this was more the result of a misunderstanding

of the trial process than any firmly held belief that he would automatically vote for the death penalty. For example, after stating that he would expect the defense to put forth evidence in mitigation, Juror 370 stated, "isn't that what you've got to do" and "I thought that was kind of how it worked." He went on to state, however, if the court instructed him that the defense bore no burden, he "wouldn't expect it." He also stated he "would have to hear all of the evidence" before he would say "give them the death penalty." Although similar exchanges occurred throughout the voir dire, the one thing he was unequivocal about was that he would follow the law as it was instructed to him by the court. Consistent with *Morgan*, Dickerson was allowed to probe the true nature of Juror 370's beliefs, and that examination produced nothing resembling either a deep-seeded preference for the death penalty or a true belief Dickerson must prove that death is not appropriate.

After a review of the entire voir dire, the salient portions of which are reproduced above, this in-depth examination produced evidence to support the court's ruling that Juror 370 could be a fair and impartial juror, acting in accordance with the court's instructions and not merely blindly professing that he would do so. The circuit judge was more persuaded by the juror's consistent affirmation he would follow the law and wait to hear all of the evidence than by his apparent confusion over the State's burden, and we believe his ultimate determination of Juror 370's qualification to serve is supported by the record.

II. CROSS EXAMINATION OF DR. SCHANDL

Next, Dickerson argues the circuit court erred in preventing him from asking Dr. Schandl about the urine screen test she performed on Roper in conjunction with the autopsy. We disagree.

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002).

On direct examination, Dr. Schandl testified that Roper's blood toxicology report was negative, meaning there were no drugs in his system when he died. On cross examination, Dickerson attempted to elicit the results of a preliminary urinalysis test that would show whether Roper used cocaine within two days prior to his death. In her proffer in response to the State's objection under Rule 403, SCRE, Dr. Schandl stated that while the urine screen test performed was "presumptively positive," that test alone is unreliable and no confirmatory testing was done. The circuit court refused to admit this evidence, agreeing this form of testing was inherently unreliable and therefore would be misleading, would confuse the jury, and actually did not challenge any of Dr. Schandl's conclusions. We agree.

The relevance of whether the *victim* had used cocaine within the two days prior to his death is dubious, at best, under the facts of this case. Dickerson calls this presumptive test "an inconvenient truth for the [S]tate," but we fail to see in what way it is inconvenient; it does not challenge any of Dr. Schandl's findings regarding Roper's cause of death and would only have injected irrelevant considerations into the trial. Therefore, there is little, if any, probative value to this evidence, and it would only serve to confuse the jury and distract it from the case at hand.

Dickerson turns to Rule 608(c), SCRE, to supply the requisite relevance and probative value, arguing this testimony demonstrates Dr. Schandl's bias, prejudice, or motive to lie. "[A]nything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony. On cross-examination, any *fact* may be elicited which tends to show interest, bias, or partiality of the witness." *State v. Saltz*, 346 S.C. 114, 131-32, 551 S.E.2d 240, 250 (2001) (quotations omitted). However, the proffered cross examination did not elicit a single fact that might shed any light on a potential motive or bias for Dr. Schandl to misrepresent. Although Dickerson is correct that Dr. Schandl was the key witness for the State regarding cause of death and torture, that fact alone certainly does not establish a reason for her to lie, and the proffered testimony does not complete the circle.

Similarly, we reject Dickerson's argument that the evidence must be available to rebut the "false impression" created by the State when Dr. Schandl testified that Roper's blood toxicology report was negative. A defendant generally is entitled to rebut false impressions created by the State's evidence. *See State v. Northcutt*, 372 S.C. 207, 221, 641 S.E.2d 873, 880 (2007). Dickerson argues the false impression he is entitled to rebut is that Roper did not use cocaine. Even assuming Dr. Schandl's testimony did create this impression, Roper's drug use is irrelevant in this case. Therefore, this plainly is not a situation where the false impression created is at all prejudicial to the defendant. Permitting Dickerson to respond would only take her testimony further down that rabbit hole.

Accordingly, we hold the circuit court did not abuse its discretion in excluding this evidence.⁴

III. ACCESSORY AFTER THE FACT

Dickerson next argues the circuit court erred in failing to charge the jury on the law of accessory after the fact. We disagree.

In a capital case, a defendant is entitled to a charge on any lesser-included offenses of murder when supported by the evidence. *See Beck v. Alabama*, 447 U.S. 625, 635-38 (1980). A lesser-included offense is one whose elements are wholly contained within the crime charged. *Northcutt*, 372 S.C. at 215, 641 S.E.2d at 877. Stated differently, if the offense contains any elements that are not part of the crime charged, then it is not a lesser-included offense. *Id.* However, even if an offense does not meet the elements test, it will be considered a lesser-included offense if it "has traditionally been considered a lesser included offense of the greater offense charged." *Id.* at 216, 641 S.E.2d at 877-78. The Supreme Court of the United States stated the rationale for requiring charges on lesser-included offenses as follows:

⁴ We emphasize that there is absolutely no suggestion, let alone evidence, that Dr. Schandl or the State purposefully failed to run confirmatory tests in order to exclude the evidence Dickerson sought to introduce.

For when the evidence unquestionably establishes that the defendant is guilty of a serious, violent offense—but leaves some doubt with respect to an element that would justify conviction of a capital offense—the failure to give the jury the "third option" of convicting on a lesser included offense would seem inevitably to enhance the risk of an unwarranted conviction.

Beck, 447 U.S. at 637. A court must therefore charge on lesser-included offenses that are supported by the evidence in order to enhance the reliability of guilt determinations. *Id.* at 638.

It is well-settled that accessory after the fact is not a lesser-included offense of murder in this State.⁵ *State v. Fuller*, 346 S.C. 477, 481, 552 S.E.2d 282, 284 (2001). Therefore, *Beck* standing alone does not require a court to charge the jury on accessory after the fact. Dickerson, however, argues that accessory after the fact is a "lesser-related offense" of murder and *Beck*, when combined with our decision in *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005), mandates a charge on it when requested.

In *Gentry*, we held that the concepts of subject matter jurisdiction and sufficiency of an indictment are distinct. 363 S.C. at 101, 610 S.E.2d at 499. A court therefore has subject matter jurisdiction to hear cases even if the indictment fails to allege all the elements of the offense. *See id.* Accordingly, if the defendant fails to challenge the sufficiency of the indictment prior to the jury being sworn, he waives that challenge. *Id.* at 102, 610 S.E.2d at 500.

Dickerson extrapolates from this the ability to charge a lesser-related offense because the court would still have subject matter jurisdiction over the claim, and it is therefore inconsequential that he was not indicted as an accessory. Thus, a defendant should be able to request a charge on any

⁵ The elements of accessory after the fact are that the felony has been completed, the accused had knowledge that the principal felon committed the felony, and the accused harbored or assisted the principal. *Fuller*, 346 S.C. at 480, 552 S.E.2d at 283. Murder is simply defined as "the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10 (2003).

related offense supported by the evidence, regardless of whether it is included within the ones for which he was indicted.⁶ We do not read *Gentry* so

⁶ Under Dickerson's view, only the defendant would have the option of requesting this additional charge. The Supreme Court of California resoundingly rejected this very point. *Birks*, 960 P.2d at 1084-86. Following *Hopkins*, questions concerning the right to a charge on a lesser-related offense are of course questions of state law. However, we find the California court's reasoning on this point persuasive. *Birks* was re-examining the court's prior decision in *People v. Geiger*, 674 P.2d 1303 (1984), which held in part that only the defendant could request a charge on a lesser-related offense. See *Birks*, 960 P.2d at 1083. In reversing this portion of *Geiger*, the *Birks* court found that such a rule created

an unfair one-way street where lesser related offenses are at issue. On the one hand, the defendant's right to notice of the charges limits the circumstances in which a jury, over the *defendant's* objection, may receive instructions on lesser offenses which are not necessarily included in those to which a plea was entered. On the other hand, if a lesser offense is related to the charge, as *Geiger* defines that term, *Geiger* gives the *defendant* an *absolute entitlement* to such instructions on request, regardless of notice or prejudice to the People, and even over their objection.

....

Where lesser related offenses are concerned, the *Geiger* rule therefore may actually permit and encourage a one-sided use of the "gambling hall" strategies we have consistently denounced. If the evidence suggests the possibility of a related lesser offense neither charged nor tried by the prosecution, the defendant either may demand that instructions on that offense be given, or may raise notice objections which, if successful, will prevent such instructions from being given at the prosecution's behest. *Geiger* thus affords the defense a superior right at trial to determine whether the jury will consider a lesser offense alternative, or

broadly. While the circuit court may have had subject matter jurisdiction to try Dickerson as an accessory after the fact, *Gentry* merely held that a defendant must challenge an indictment prior to the swearing of the jury. Because the sufficiency of the indictment is not at issue here, *Gentry* is inapposite.

The Supreme Court of the United States has held that, unlike lesser-included offenses under *Beck*, there is no constitutional requirement to charge a jury on lesser-related offenses. *Hopkins v. Reeves*, 524 U.S. 88, 90-91 (1998); *see also People v. Birks*, 960 P.2d 1073, 1087-88 (Cal. 1998) (finding the analysis in *Reeves* "utterly convincing" and rejecting a charge on lesser-related offenses). Such a requirement would be "unprecedented" and "unworkable" because there would be no real basis for determining when such charges would be warranted. *Hopkins*, 524 U.S. at 97. Furthermore, charging on lesser-related offenses, which by their nature generally contain elements that are not included within the crimes for which the defendant was charged and tried, would permit the jury "to find beyond a reasonable doubt elements that the State had not attempted to prove, and indeed that it had ignored during the course of the trial. This can hardly be said to be a reliable result." *Id.* at 99.

instead will face an all-or-nothing choice between conviction of the stated charge and complete acquittal. Such a rule is neither just nor rational.

Id. at 1085. Contrary to the concurrence's view, *Gentry*'s holding—that an indictment is a notice document that must be challenged prior to the swearing of the jury—is unaffected by our decision today. *See* 363 S.C. at 102, 610 S.E.2d at 500. Here, we merely find that a defendant's ability to waive notice of a particular charge does not also grant him an unqualified, non-reciprocal right to request any charge supported by the evidence, for to do so would grant him an unfair tactical advantage that interferes with the State's prerogative of deciding on which charges to try a defendant. *See State v. Thrift*, 312 S.C. 282, 291-92, 440 S.E.2d 341, 346 (1994) ("Both the South Carolina Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands.").

We agree with the Supreme Court's reasoning in *Hopkins* that permitting such a charge does not further the policy behind charging lesser-included offenses. The core of *Beck's* requirement was to ensure reliability in the proceedings by giving the jury a third option beyond acquittal or conviction so that its verdict will better conform to the evidence presented. The *Hopkins* Court, on the other hand, believed that charging on lesser-related offenses would diminish the proceeding's reliability by permitting the jury to convict the defendant of a crime the State never even sought to prove at trial.

Therefore, we adopt the Supreme Court's holding in *Hopkins* and hold that a defendant is not entitled to a charge on lesser-related offenses. Here, permitting the jury to convict Dickerson as an accessory after the fact would permit the jury to find beyond a reasonable doubt elements of a crime the State never sought to prove and Dickerson was not on notice he had to defend against. Accordingly, we affirm the circuit court's denial of Dickerson's request to charge.

IV. EXECUTION IMPACT EVIDENCE

Finally, Dickerson argues the circuit court erred in preventing his cousin, Johnette Watson, from testifying as to what effects Dickerson's execution would have on her family. We disagree.

During the sentencing phase of a capital trial, the defense must be able to present mitigating evidence on "any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Eddings v. Oklahoma*, 455 U.S. 104, 110 (1982) (quoting *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (plurality)); *Northcutt*, 372 S.C. at 221, 641 S.E.2d at 880. The jury is entitled to hear this evidence so that it may "give a 'reasoned *moral* response to the defendant's background, character, and crime" and prevent it from reacting out of an "unguided emotional response." *Penry v. Lynaugh*, 492 U.S. 302, 328 (1989) (quoting *Franklin v. Lynaugh*, 487 U.S. 164, 184 (O'Connor, J., concurring)), *abrogated on other grounds by Atkins v. Virginia*, 536 U.S. 304 (1989). However, *Eddings* does not limit a court's ability to exclude evidence not bearing on the defendant's character, his prior

record, or the circumstances of the crime as being irrelevant. 438 U.S. at 604 n.12.

For example, "[a] capital defendant is prohibited from directly eliciting the opinion of family members or other penalty-phase witnesses about the appropriate penalty. Such questions go to the ultimate issue to be decided by the jury—life in prison versus the death penalty—and are properly reserved for determination by the jury." *State v. Wise*, 359 S.C. 14, 27, 596 S.E.2d 475, 481 (2004). A capital defendant also cannot present witnesses who will testify as to what punishment the jury "ought" to recommend. *Id.* However, defense witnesses who know the defendant well can beg for mercy on his behalf. *Id.* Whether certain evidence is a plea for mercy versus an opinion of what is the appropriate penalty can be a close call and thus is left to the discretion of the trial judge; that decision will not be disturbed absent an abuse of discretion. *Id.* at 21, 596 S.E.2d at 478.

The thrust of Dickerson's argument is that the emotional impact an execution would have on his family members demonstrates that he has the ability to form cohesive, lasting relationships with others, a trait that reflects positively on his character. We agree that evidence of a defendant's ability to form positive relationships with others is evidence that *Eddings* renders admissible. And here, Watson testified without objection to the close bond she shared with Dickerson and how he was like a brother to her. However, execution impact evidence can easily cross the line from illuminating a defendant's character or a plea for mercy to an opinion of what is the proper punishment.

Had the court permitted Watson to testify as planned, she would have testified her family lost two members to homicide: her brother as well as another cousin of Dickerson's. Dickerson's execution would therefore exacerbate the suffering her family has already endured. This evidence no longer concerns Dickerson's character but rather borders on an opinion that Dickerson should not be executed in order to spare her family the suffering. Watson's proffered testimony thus strayed from relevant considerations into the realm of an opinion regarding which punishment the jury ought to

recommend. Under our standard of review, we find the circuit court did not abuse its discretion in sustaining the State's objection in this case.⁷

V. PROPORTIONALITY REVIEW

Pursuant to section 16-3-25(C), we must conduct a review of Dickerson's sentence. In doing so, we must determine whether the sentence was the result of passion, prejudice, or any other arbitrary factor; whether there is evidence to support the jury's findings; and whether the sentence is excessive or disproportionate to the sentences imposed in similar cases. *See id.*

First, we cannot find anything demonstrating that the sentence was the result of passion, prejudice, or any other arbitrary factor. Although Dickerson's attorneys did a commendable job representing him during both phases of trial, the gruesome nature of Dickerson's acts fits squarely within the aggravating circumstances for which the jury recommended the death penalty. Furthermore, there is no indication that the proceedings were tainted in any way or that the sentence was anything other than a rational response to the evidence presented.

⁷ We recognize that the vast majority of jurisdictions to address this issue have found execution impact evidence to be inadmissible. *See Woods v. State*, 13 So. 3d 1, 33 (Ala. Crim. App. 2007); *State v. Chappell*, 236 P.3d 1176, 1185 (Ariz. 2010); *People v. Vieira*, 106 P.3d 990, 1009 (Cal. 2005); *Bruns v. State*, 699 So. 2d 646, 654 (Fla. 1997); *People v. Armstrong*, 700 N.E.2d 960, 971 (Ill. 1998); *Ross v. State*, 954 So. 2d 968, 1013 (Miss. 2007); *Williams v. State*, 168 S.W.3d 433, 445 (Mo. 2005); *State v. Loftin*, 680 A.2d 677, 713 (N.J. 1996); *State v. Hale*, 892 N.E.2d 864, 893 (Ohio 2008); *Commonwealth v. Harris*, 817 A.2d 1033, 1054 (Pa. 2002); *Roberts v. State*, 220 S.W.3d 521, 532 (Tex. Crim. App. 2007); *State v. Stenson*, 940 P.2d 1239, 1282 (Wash. 1997). *But see State v. Stevens*, 879 P.2d 162, 168 (Or. 1994). However, we decline to adopt a categorical rule. If the proffered evidence fits within the boundaries discussed in *Wise* and goes to the defendant's character, it is admissible. While we are cognizant of the reasons why these courts declined to permit this evidence, we are confident that our existing framework is sufficient to ferret out problematic testimony.

Second, and similarly, we hold evidence exists to support the jury's finding that the State met its burden with respect to all three aggravating circumstances. The record readily demonstrates Dickerson kidnapped Roper, committed criminal sexual conduct on him, and tortured him. Indeed, the jury separately convicted Dickerson of kidnapping and criminal sexual conduct during the guilt phase of the trial. We can find nothing reflecting an absence of proof as to any of these aggravating factors.

Finally, we believe Dickerson's sentence is neither excessive nor disproportionate in light of the results in similar cases. In capital cases where the State proceeded on the aggravating circumstances of kidnapping, criminal sexual conduct, torture, or any combination thereof, this Court has routinely affirmed the sentence of death. *See State v. Stanko*, 376 S.C. 571, 573, 579, 658 S.E.2d 94, 95, 98 (2008) (affirming death penalty where defendant strangled girlfriend and attempted to murder her daughter during the course of a robbery and sexual assault); *State v. Evins*, 373 S.C. 404, 410-11, 422, 645 S.E.2d 904, 907, 913 (2007) (affirming death sentence where defendant kidnapped victim, sexually assaulted her, and stabbed her twelve times); *State v. Simmons*, 360 S.C. 33, 37, 46, 599 S.E.2d 448, 449-50, 454 (2004) (affirming death sentence where defendant robbed the victim, beat her with a stick, strangled her, and sexually assaulted her while she was "half and half" alive); *State v. Stokes*, 345 S.C. 368, 371, 377, 548 S.E.2d 202, 203, 206-07 (2001) (affirming death sentence where the defendant had sex with the victim, stabbed her, continued to have sex with her, shot her in the head, and then mutilated her body); *State v. Johnson*, 338 S.C. 114, 120-21, 130, 525 S.E.2d 519, 521-22, 527 (2000) (affirming death sentence where the defendant robbed the victim at knifepoint, kidnapped her, tied the victim up, and sliced her multiple times with a machete); *State v. Whipple*, 324 S.C. 43, 46, 54, 476 S.E.2d 683, 685, 689 (1996) (affirming death sentence where defendant stabbed victim multiple times, beat her with a lamp and an iron, strangled her with a lamp cord, stuck a dish towel in her mouth, and sexually assaulted her).⁸

⁸ Before the circuit court, Dickerson argued that our current proportionality review is deficient because it fails to examine cases where death was not imposed and cases where death was not even sought. *See State v. Copeland*,

Accordingly, we find that the death penalty was warranted in this case.

278 S.C. 572, 591, 300 S.E.2d 63, 75 (1982). He primarily relied upon Justice Stevens's statement regarding the denial of certiorari in *Walker v. Georgia*, 129 S. Ct. 453 (2008) (memorandum opinion), in which he wrote that examining similar cases "assume[s] that the court would consider whether there were 'similarly situated defendants' who had *not* been put to the death because that inquiry is an essential part of any meaningful proportionality review." *Id.* at 454. In his view, this analysis is "judicious because, quite obviously, a significant number of similar cases in which death was not imposed might well provide the most relevant evidence of arbitrariness in the sentence before the court." *Id.* Justice Stevens noted,

Had the Georgia Supreme Court looked outside the universe of cases in which the jury imposed a death sentence, it would have found numerous cases involving offenses very similar to petitioner's in which the jury imposed a sentence of life imprisonment. If the Georgia Supreme Court had expanded its inquiry still further, it would have discovered many similar cases in which the State did not even seek death. Cases in both of these categories are eminently relevant to the question of whether a death sentence in a given case is proportionate to the offense. The Georgia Supreme Court's failure to acknowledge these or any other cases outside the limited universe of cases in which the defendant was sentenced to death creates an unacceptable risk that it will overlook a sentence infected by impermissible considerations.

Id. at 455-56 (citations omitted). This issue is not before us on appeal, and it would require us to overrule our prior decision in *Copeland*. However, we note our concern that restricting our statutorily-mandated proportionality review to only similar cases where death was actually imposed is largely a self-fulfilling prophecy as simply examining similar cases where the defendant was sentenced to death will almost always lead to the conclusion that the death sentence under review is proportional.

CONCLUSION

For the foregoing reasons, we affirm Dickerson's conviction for murder and the circuit court's sentence of death.

BEATTY, KITTREDGE, JJ., and Acting Justice James E. Moore, concur. PLEICONES, J., concurring in a separate opinion.

JUSTICE PLEICONES: I concur in the decision to affirm this capital appeal and sentence, but write separately to address both the lesser-included issue and the majority's suggestion in footnote 8 that we should consider altering our approach to proportionality review.

I agree with the majority that appellant has no constitutional right to a charge on a lesser-related offense. Hopkins v. Reeves, 524 U.S. 88 (1998). Rather, the question of a defendant's right to such a charge is a matter of state law. Id.; see e.g., Sheffield v. State, 64 So.3d 529 (Miss. Ct. App. 2011). In my opinion, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), fundamentally altered state law by converting an indictment, which theretofore had been a jurisdictional document, into a mere notice document. Id. at 102-103, 610 S.E.2d at 500. Since the notice is directed only to the defendant, in my opinion, it is within his sole prerogative to waive such notice.

Unlike the majority, I find nothing in People v. Birks, 960 P.2d 1073 (Cal. 1998) which conflicts with my view that a court may authorize a criminal defendant to request a jury charge on a lesser-related offense. In Birks, the California Supreme Court held it had created a state constitutional problem by extending to the defendant alone the right to request such a charge on state due process grounds, and reversed its earlier decision. If the Court agrees with Birks that it is a constitutional violation to give only one party in a criminal proceeding the right to request such a charge, then the problem can be remedied by overruling Gentry.

On the merits, I find no reversible error in the circuit court's decision not to charge the jury on the lesser-related offense of accessory after the fact because such a charge was not supported by the evidence. See State v. Collins, 329 S.C. 23, 495 S.E.2d 202 (1998) (elements of accessory after the fact explained).

I believe that when S.C. Code Ann. § 16-3-25(C)(3) (2003) requires us to determine whether the death sentence "is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant," and to refer to the similar cases that we considered, we should confine our review to only those cases in which a death sentence was

imposed.⁹ State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982)(only review of appeals where death sentence was imposed satisfies both state statute and constitution). As Copeland explains, to include in our review cases where a capital sentence was sought but not imposed requires us to speculate on, among other things, the solicitor's decision-making process, the strength of the State's case, and/or upon the jurors' or trial judge's decision to exercise mercy. Moreover, our reference for proportionality extends only to cases which are appealed, and thus is not truly representative of all cases where the death penalty was or could have been sought. Experience teaches that many of these cases where a lesser sentence is imposed are never appealed.

On the merits, I agree that the death sentence imposed upon appellant is not disproportionate.

For the reasons given above, I concur.

⁹ Like the majority, I have enormous respect for Justice Stevens. If we were to be true to his views on capital sentencing, however, we would join his minority view that imposition of the death sentence violates the Eighth Amendment's prohibition on cruel and unusual punishment. Baze v. Rees, 553 U.S. 35 (2008) (decided the term before he issued his Walker v. Georgia statement). While perhaps Justice Stevens would find our practice of reviewing only other capital cases violative of the Eighth Amendment, the fact remains that proportionality review is a requirement only of state law, not the Constitution. Pulley v. Harris, 465 U.S. 37 (1984).



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May 19, 2011

RECEIVED

MAY 19 2011

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

S.C. Supreme Court

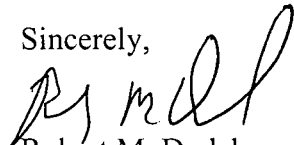
Re: State v. William Dickerson: Oral Argument May 24, 2011 at 10:00 a.m.

Dear Mr. Sherouse:

Please accept this letter as notification that I will be arguing this case for appellant Dickerson on Tuesday, May 24, 2011 at 10:00 a.m. as scheduled. However, I wanted to inform the Court that co-counsel Jeffrey Bloom will handle any reply in this case.

If you have any questions or concerns, please do not hesitate to contact me.

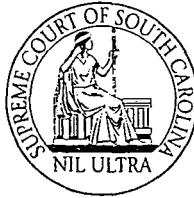
Sincerely,



Robert M. Dudek
Chief Appellate Defender

RMD:cms

cc: Donald J. Zelenka, Esquire
Melody Brown, Esquire



The Supreme Court of South Carolina

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Re: The State v. Dickerson, William O.

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	10 minutes
Respondent	10 minutes
Appellant in Reply	5 minutes

This case is scheduled for hearing on Tuesday, May 24, 2011 at 10:00 a.m.

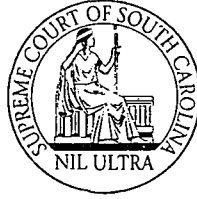
Very truly yours,

Daniel E. Shearouse, Clerk

By Debbie M. Hopkins
Administrative Assistant

DES/dmh

cc: Solicitor Scarlett Anne Wilson



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

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April 13, 2011

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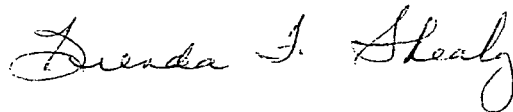
Re: The State v. Dickerson, William O.

Dear Counsel:

Please be advised the time for oral arguments in this matter has been changed from 9:30 a.m. to 10:00 a.m. on Tuesday, May 24, 2011.

The State v. Dickerson, William O.
Page Two
April 13, 2011

Very truly yours,

A handwritten signature in cursive script, reading "Linda J. Shealy". The signature is written in dark ink and is positioned above the printed name.

CHIEF DEPUTY CLERK

BFS/dmh

**JEFFREY P. BLOOM
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CELL # (803) 261-4576

March 30, 2011

Daniel Shearouse
Clerk of the S.C. Supreme Court
PO Box 11330
Columbia, S.C. 29211

RECEIVED

MAR 31 2011

RE: State v. William Dickerson
Capital Appeal

S.C. Supreme Court

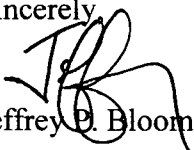
Dear Mr. Shearouse,

Please note that May 24 or 25, 2011, are most convenient to my schedule for scheduling oral argument in the above-named case, though I have no actual court conflicts with the proposed schedule.

For your reference, I am scheduled to attend, and also be a guest lecturer, at a capital defense training seminar on May 2 - 4, 2011. I had also planned to use May 5 for some related case investigation tasks since it will be in the same area as the seminar. However, I recognize that none of these constitute an actual court conflict, and thus am available at the Court's preference.

Thank you for your attention to this matter.

Sincerely,


Jeffrey P. Bloom

cc: Melody Brown, Senior Asst. Attorney General
Robert Dudek, Chief Attorney - Appellate Defense
Katherine Hudgins, Appellate Defender



ALAN WILSON
ATTORNEY GENERAL

March 25, 2011

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

RE: *The State vs. Dickerson, William O.*
Appeal from Charleston County (Capital Case)

Dear Mr. Shearouse:

I have received your letter that the above referenced case may be scheduled for oral argument during the May 2011 term of the Supreme Court of South Carolina. Please be advised that I have also received notification that another case of mine, *The State v. Christopher Commander*, Appeal from Richland County, (a non-capital murder direct appeal), may also be reached during the May term. I would respectfully request that the cases not be scheduled for the same day.

Additionally, though not a conflict, I would bring to your attention that, I am presently slated to attend a CLE course for capital litigation May 2-5, 2011. This is an in-state course and not mandatory for me. However, if one of the cases should be scheduled for that week, I would respectfully request placement on the last day so that I could attend a good portion of the course. I will, of course, defer to the schedule of the court.

RECEIVED

MAR 28 2011

S.C. SUPREME COURT

MJB/arb

cc: Robert M. Dudek, Chief Appellate Defender
Kathrine H. Hudgins, Appellate Defender
Jeffrey P. Bloom, Esq.

Sincerely,

Melody J. Brown
Senior Assistant Attorney General



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 25, 2011

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

RECEIVED

MAR 25 2011

S.C. Supreme Court

RE: State v. William O. Dickerson

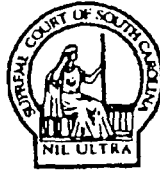
Dear Mr. Shearouse:

I received your letter indicating that the above-captioned case is preliminarily listed for the May 3, 4, 5, 24 and 25, 2011 term of this Court for oral argument. I am presenting at a death penalty seminar on May 3, 2011 at 1:45 p.m. at Litchfield Beach on error preservation. I would therefore most respectfully request that the Court not schedule the above case for May 3, 2011 if possible. However, I understand it is most difficult to put together a docket and I fully understand if the Court cannot accommodate this prior commitment. I appreciate any consideration you can give in this matter, and please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

cc: Donald J. Zelenka, Esquire



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
Appellate Defender Kathrine H. Hudgins
From: Daniel E. Shearouse
Date: March 23, 2011
RE: May 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 May 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 May 3, 4, 5, 24 and 25. Please notify this office in writing prior to March 30, 2011 as to any scheduling conflicts for the May 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. Dickerson, William O.



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
Senior Assistant Attorney General Melody J. Brown

From: Daniel E. Shearouse

Date: March 23, 2011

RE: May 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 May 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 May 3, 4, 5, 24 and 25. Please notify this office in writing prior to March 30, 2011 as to any scheduling conflicts for the May 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. Dickerson, William O.



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: Jeffrey P. Bloom, Esquire
From: Daniel E. Shearouse
Date: March 23, 2011
RE: May 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 May 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 May 3, 4, 5, 24 and 25. Please notify this office in writing prior to March 30, 2011 as to any scheduling conflicts for the May 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. Dickerson, William O.



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

MAR 16 2011

S.C. Supreme Court

March 16, 2011

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

Re: The State v. William O. Dickerson;
Appeal from Charleston County (Capital Case).

Dear Mr. Shearouse:

Enclosed please find the original and fourteen (14) of the *Final Brief of Respondent*, dated March 16, 2011, along with proof of service, in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Melody J. Brown
Senior Assistant Attorney General

Enclosures

cc: Robert M. Dudek, Chief Appellate Defender
Katherine H. Hudgins, Appellate Defender
Jeffrey P. Bloom, Esquire
Honorable Scarlett Anne Wilson
Sandi Wofford, Victims' Services

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

 ORIGINAL

RECEIVED

FEB 25 2011

THE STATE,

RESPONDENT, S.C. Supreme Court

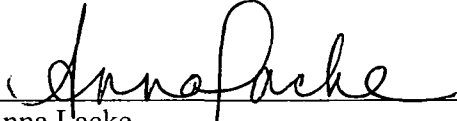
V.

WILLIAM O. DICKERSON,

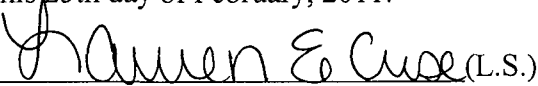
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal 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 25th day of February, 2011.


Anna Lacke
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 25th day of February, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014

The Supreme Court of South Carolina

The State,

Respondent,

v.

William O. Dickerson,

Appellant.

The Honorable R. Markley Dennis, Jr.

Charleston County

Trial Court Case No. 2006-GS-10-02981

2006-GS-10-03142

2008-GS-10-08884

ORDER

Appellant seeks a second extension of time to serve and file the record on appeal in the above entitled matter. The request for an extension is granted and extended until February 25, 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

Linda J. Shealy
CLERK
Chief Deputy

Columbia, South Carolina

February 23, 2011

cc: . Chief Appellate Defender Robert M. Dudek
Appellate Defender Kathrine H. Hudgins
Assistant Deputy Attorney General Donald J. Zelenka
Senior Assistant Attorney General Melody J. Brown

original

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

FEB 22 2011

Appeal from Charleston County
R. Markley Dennis, Jr., Circuit Court Judge S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

WILLIAM O. DICKERSON (CAPITAL CASE),

APPELLANT

PETITION FOR EXTENSION TO FILE
THE RECORD ON APPEAL

The undersigned counsel respectfully requests a **final seven day extension, until February 25, 2011** in which to file the record on appeal in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

1. The record on appeal in this case is due to be served and filed today.
2. Counsel is filing a petition for writ of certiorari in the United States Supreme Court in State v. Louis Michael Winkler on February 18, 2011. Counsel filed a petition for writ of certiorari and accompanying appendix in the United States Supreme Court in State v. Steven Bixby on February 17, 2011. On February 4, 2011, counsel filed the petition for rehearing in State v. Dominic Gallman with this Court and a stay of execution in State v. Stephen Corey Bryant with the Supreme Court. Counsel filed the initial reply brief of appellant in State v. Richard Gagnon in this Court on February 3, 2011. The initial reply brief in State v. Jerry Buck Inman was filed with the Supreme Court on January 31, 2011. Counsel filed the initial brief of appellant and designation of matter with this Court in State v. Tommy Toomer on January 26, 2011. Counsel filed the reply brief pursuant to White v. State in State v. Roger Bostick with the Supreme Court on January 26, 2011.

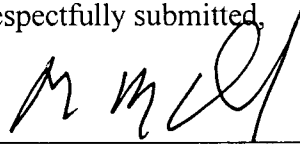
Counsel filed the initial brief of appellant and designation of matter in State v. Timothy Hayes with this Court on January 21, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Derek Maner with this Court on January 14, 2010. Counsel filed the stay for execution in State v. Andres Torres with the Supreme Court and a motion to remand for a reconstruction hearing in State v. Teddy Richardson with this Court 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.

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.

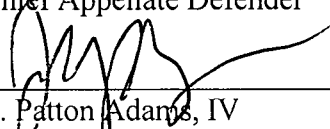
4. As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request **a final seven day extension until February 25, 2011**. Counsel respectfully requests that the time limits for filing the record on appeal be held in abeyance pending a ruling on this motion.

Respectfully submitted,



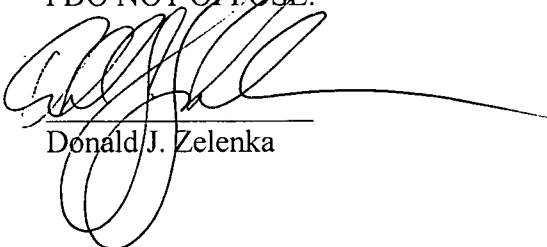
Robert M. Dudek
Chief Appellate Defender



T. Patton Adams, IV
Executive Director or
J. Hugh Ryan, III
General Counsel

February 18, 2011

I DO NOT OPPOSE:



Donald J. Zelenka

Hopkins, Debbie

From: Erin Jett <Ejett@scag.gov>
Sent: Tuesday, February 15, 2011 12:28 PM
To: Hopkins, Debbie
Subject: William O. Dickerson

Hey Debbie! We just received the signed order of transport in the Dickerson case yesterday. We have a lawyer doing PCR court in Charleston County the first week of March. I was going to get him to pick up the exhibits when he was down there in a couple of weeks. Let me know if that's okay or if you/Judges want them earlier.

Thanks!

Erin :)

*Erin P. Jett
Capital Litigation Legal Assistant
Office of the Attorney General
State of South Carolina*

*Direct line: 803-734-1722
Fax: 803-734-4035*

The Supreme Court of South Carolina

The State,

Respondent,

v.

William O. Dickerson,

Appellant.

The Honorable R. Markley Dennis, Jr.

Charleston County

Trial Court Case No. 2006-GS-10-02981

2006-GS-10-03142

2008-GS-10-08884

ORDER

The request for an extension to serve and file the record on appeal is granted and extended until February 18, 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

February 14, 2011

cc: Chief Appellate Defender Robert M. Dudek
Appellate Defender Kathrine H. Hudgins
Jeffrey P. Bloom, Esquire
Senior Assistant Attorney General Melody J. Brown



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

February 11, 2011

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

RECEIVED
FEB 11 2011
S.C. Supreme Court

Re: The State v. William O. Dickerson (capital case)

Dear Mr. Shearouse:

The record on appeal in the above referenced case is due to be served and filed today. We are missing designated matters for the record on appeal and we have requested them. Therefore, we have been unable to complete this record for service. I am requesting a one week extension in which to file and serve the brief.

By copy of this letter, I am informing Melody J. Brown, 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: Melody J. Brown, Esquire

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Honorable R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

FEB - 8 2011

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

WILLIAM O. DICKERSON,

APPELLANT

O R D E R

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

ORDERED that State's Exhibit 78 (Photograph of victim's body at discovery site); and State's Exhibits 141, 153, 160, 161, 162, 166, 171, 172, 173, 177, 178, 181, 184, 335, and 336 (Autopsy Photographs admitted during Death Penalty Phase), be released to the Office of the Attorney General, or its designee, for transporting to the Supreme Court of South Carolina for purposes of review by the Court for the above-captioned case.

JEAN H. TOAL, CHIEF JUSTICE

By _____

CLERK

Columbia, South Carolina

February 10, 2011

Copies to: The Honorable Julie J. Armstrong
Robert M. Dudek, Esquire
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
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

February 8, 2011

RECEIVED

FEB - 8 2011

S.C. Supreme Court

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

Re: The State v. William O. Dickerson

Dear Mr. Shearouse:

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

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/lec

cc: Donald J. Zelenka



HENRY McMASTER
ATTORNEY GENERAL

January 12, 2011

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

Re: The State v. William O. Dickerson;
Appeal from Charleston County (Capital Case).

Dear Mr. Shearouse:

Enclosed please find the original *Initial Brief of Respondent and Designation of Matter*, dated January 12, 2011, along with proof of service, in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Melody J. Brown
Senior Assistant Attorney General

Enclosures

cc: Robert M. Dudek, Chief Appellate Defender
Katherine H. Hudgins, Appellate Defender
Jeffrey P. Bloom, Esq.
The Honorable Scarlett Wilson
Sandi Wofford, Victims Services

RECEIVED

JAN 14 2011

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

JAN 14 2011

APPEAL FROM CHARLESTON COUNTY

Court of General Sessions

S.C. Supreme Court

R. Markley Dennis, Jr., Circuit Court Judge

The State,

Respondent,

vs.

William O. Dickerson,

Appellant.

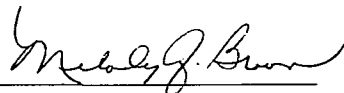
PROOF OF SERVICE

I, Melody J. Brown, Senior Assistant Attorney General, certify that I have served the Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies of same in the United States mail, postage prepaid, addressed to his attorneys of record:

Robert M. Dudek, Chief Appellate Defender
Kathrine H. Hudgins, Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

Jeffrey P. Bloom, Esq.
1911 Pickens Street
Columbia, SC 29201

This 12th day of January, 2011.



Melody J. Brown

Senior Assistant Attorney General

The Supreme Court of South Carolina

The State,

Respondent,

v.

William O. Dickerson,

Appellant.

The Honorable R. Markley Dennis, Jr.

Charleston County

Trial Court Case No. 2006-GS-10-02981

2006-GS-10-03142

2008-GS-10-08884

ORDER

Respondent seeks a fourth extension of time for an additional twelve (12) days 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 January 10, 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.



C.J.
FOR THE COURT

Columbia, South Carolina

January 4, 2011

cc: Chief Appellate Defender Robert M. Dudek
Appellate Defender Kathrine H. Hudgins
Jeffrey P. Bloom, Esquire
Assistant Attorney General Melody J. Brown



HENRY McMASTER
ATTORNEY GENERAL

December 29, 2010

RECEIVED

DEC 29 2010

S.C. Supreme Court

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

Re: The State v. William O. Dickerson;
Appeal from Charleston County (Capital Case).

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Respondent's *Motion for Fourth Extension of Time to file Initial brief of Respondent and Designation of Matter*, dated December 29, 2010, together with a *Proof of Service* in the above-referenced matter.

Thank you for your assistance in this matter. Please call this office if you need any additional information.

Sincerely,

Melody J. Brown
Senior Assistant Attorney General

MJB/epj

cc: Robert M. Dudek, Chief Appellate Defender

STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Charleston County
(Capital Case)
R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

DEC 29 2010

S.C. Supreme Court

The State of South Carolina,

Respondent,

v.

William O. Dickerson,

Appellant.

**MOTION FOR FOURTH EXTENSION OF TIME TO FILE
INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER**

Respondent, the State, moves this Court for a final additional extension of time in which to file the Initial Brief of Respondent and Designation of Matter. This is Respondent's fourth request for an extension of time in which to file the brief. Respondent is respectfully requesting a short extension of twelve (12) days in which to complete the initial brief. In support of the request, undersigned counsel would respectfully show the Court:

1. Undersigned counsel for Respondent has been scheduled for a number of state and federal matters in the last thirty (30) days, that include, but are not limited to, the following: drafted and served a second post-hearing memorandum in a capital PCR action (*Kamell Evans*); drafted and filed a Rule 59(e) motion in federal habeas action (*Jeffrey Jones*); drafted and filed a return and memorandum of law in support of motion for summary judgment in another federal habeas action (*Charles Perry*); and drafted and filed a return and motion to dismiss in another federal habeas action (*Christopher Francis*).

2. In the instant case, undersigned counsel for Respondent has a) completed review of the 4,000 plus page transcript in the instant case; b) traveled to Charleston to review exhibits; c) completed one of the four issues; and d) completed research on all four issues. Counsel is requesting only a short extension in which to complete argument on the remaining issues. Moreover, counsel has requested and received an extension from the circuit court for a proposed Order of Dismissal in another capital case, and has requested extensions in two other federal habeas actions, in an effort to clear her calendar to the extent possible to focus work on the remaining issues. Further, counsel requests only a short extension and expects to complete the brief within the time requested in this motion.

3. Pursuant to the March 18, 2009 Order of the Supreme Court of South Carolina, moving counsel's immediate supervisor and the Chief Deputy have reviewed the motion, and agree the extension request is warranted based on the foregoing.

THEREFORE, undersigned counsel for Respondent respectfully requests an additional, final extension of twelve (12) days to complete the 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

MELODY J. BROWN
Senior Assistant Attorney General

SCARLETT ANNE WILSON
Solicitor, Ninth Judicial Circuit

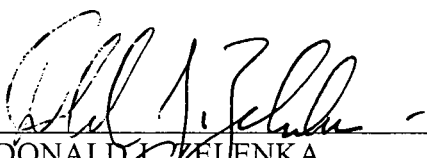
BY: 
MELODY J. BROWN

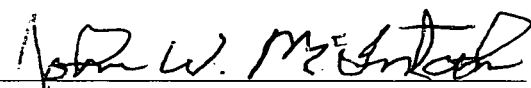
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

December 29, 2010.
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT

I have reviewed and approved this request:


DONALD J. ZELENKA
Assistant Deputy Attorney General


JOHN W. MCINTOSH
Chief Deputy Attorney General

STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Charleston County
(Capital Case)
R. Markley Dennis, Jr., Circuit Court Judge

The State of South Carolina,

Respondent,

v.

William O. Dickerson,

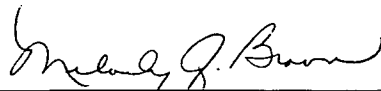
Appellant.

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served Respondent's Fourth Motion for an Extension of Time on counsel for Appellant, by depositing one copy of same in the United States mail, postage prepaid, to counsel for appellant, addressed as follows:

Robert M. Dudek, Chief Appellate Defender
South Carolina Office of Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

This 29th day of December, 2010.



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

ATTORNEY FOR RESPONDENT

The Supreme Court of South Carolina

The State,

Respondent,

v.

William O. Dickerson,

Appellant.

The Honorable R. Markley Dennis, Jr.
Charleston County

Trial Court Case No. 2006-GS-10-02981
2006-GS-10-03142
2008-GS-10-08884

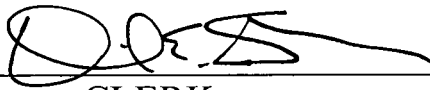
ORDER

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 to is granted and extended until December 29, 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



CLERK

Columbia, South Carolina

November 30, 2010

cc: Chief Appellate Defender Robert M. Dudek
Appellate Defender Kathrine H. Hudgins
Jeffrey P. Bloom, Esquire
Assistant Attorney General Melody J. Brown



HENRY McMASTER
ATTORNEY GENERAL

~~September 4, 2009~~

November 29, 2010

RECEIVED

NOV 29 2010

S.C. Supreme Court

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

Re: The State v. William O. Dickerson;
Appeal from Charleston County (Capital Case).

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Respondents' *Motion for Third Extension of Time to file Initial brief of Respondent and Designation of Matter*, dated November 29, 2010, together with a *Proof of Service* in the above-referenced matter.

Thank you for your assistance in this matter. Please call this office if you need any additional information.

Sincerely,

Melody J. Brown
Assistant Attorney General

MJB/epj

cc: Robert M. Dudek, Chief Appellate Defender

STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Charleston County
(Capital Case)
R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

NOV 29 2010

S.C. Supreme Court

The State of South Carolina,

Respondent,

v.

William O. Dickerson,

Appellant.

**MOTION FOR THIRD EXTENSION OF TIME TO FILE
INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER**

Respondent, the State, moves this Court for an additional thirty (30) day extension of time in which to file the Initial Brief of Respondent and Designation of Matter. This is Respondent's third request for an extension of time in which to file the brief. In support of the request, undersigned counsel would respectfully show the Court:

1. Undersigned counsel for Respondent has been scheduled for a number of state and federal matters in the last thirty (30) days, that include, but are not limited to, the following: drafted and served a 113 page post-hearing memorandum in a capital PCR action (*Kamell Evans*); drafted and filed objections to the Report and Recommendation in a federal habeas action (*Jeffrey Jones*); drafted and filed a response in opposition to a motion for expunction order in another federal habeas action (*Richard Mayfield*); and, completed review of the 4,000 plus page transcript in the instant case, and traveled to Charleston to review exhibits, in preparation for drafting the initial brief of respondent in this capital case direct appeal (*William Dickerson*). Further, counsel is presently completing a return and memorandum of law in support of motion for summary judgment in a federal habeas action

(*Charles Perry*) to be filed tomorrow.

2. Due to her heavy case load, undersigned counsel for Respondent has not been able, in a timely fashion, to complete the initial brief in this appeal. However, as noted, significant work has been completed, along with a substantial amount of legal research.

3. Pursuant to the March 18, 2009 Order of the Supreme Court of South Carolina, moving counsel's immediate supervisor has reviewed the motion, and agrees the extension request is warranted based on the foregoing.

THEREFORE, undersigned counsel for Respondent respectfully requests an additional extension of thirty (30) days to complete the Initial Brief of Respondent and Designation of Matter.

Respectfully submitted,

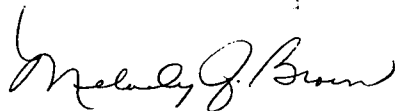
HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

MELODY J. BROWN
Assistant Attorney General

W. BARNEY GIESE
Solicitor, Fifth Judicial Circuit

BY: 
MELODY J. BROWN

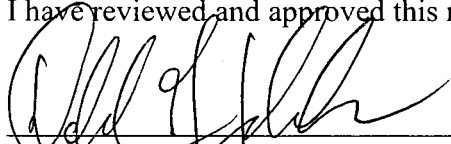
Office of the Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

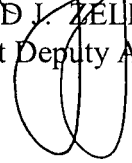
November 29, 2010.
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT

I have reviewed and approved this request.



DONALD J. ZELENKA
Assistant Deputy Attorney General



STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Charleston County
(Capital Case)
R. Markley Dennis, Jr., Circuit Court Judge

The State of South Carolina,

Respondent,

v.

William O. Dickerson,

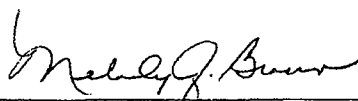
Appellant.

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served Respondent's Third Motion for an Extension of Time on counsel for Appellant, by depositing one copy of same in the United States mail, postage prepaid, to counsel for appellant, addressed as follows:

Robert M. Dudek, Chief Appellate Defender
South Carolina Office of Indigent Defense
1330 Lady Street, Ste. 401
Columbia, SC 29201

This 29th day of November, 2010.



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

ATTORNEY FOR RESPONDENT

The Supreme Court of South Carolina

The State,

Respondent,

v.

William O. Dickerson,

Appellant.

The Honorable R. Markley Dennis, Jr.

Charleston County

Trial Court Case No. 2006-GS-10-02981

2006-GS-10-03142

2008-GS-10-08884

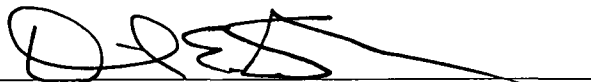
ORDER

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 is granted and extended until November 29, 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

October 28, 2010

cc: Chief Appellate Defender Robert M. Dudek
Appellate Defender Kathrine H. Hudgins
Jeffrey P. Bloom, Esquire
Assistant Attorney General Melody J. Brown

HENRY MCMASTER
ATTORNEY GENERAL



October 27, 2010

RECEIVED

OCT 27 2010

S.C. Supreme Court

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

Re: The State v. William O. Dickerson;
Appeal from Charleston County (Capital Case).

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Respondents' *Motion for Second Extension of Time to file Initial brief of Respondent and Designation of Matter*, dated October 27, 2010, together with a *Proof of Service* in the above-referenced matter.

Thank you for your assistance in this matter. Please call this office if you need any additional information.

Sincerely,

Melody J. Brown
Assistant Attorney General

MJB/epj

cc: Robert M. Dudek, Chief Appellate Defender

STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Charleston County
(Capital Case)
R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

OCT 27 2010

S.C. Supreme Court

The State of South Carolina,

Respondent,

v.

William O. Dickerson,

Appellant.

**MOTION FOR SECOND EXTENSION OF TIME TO FILE
INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER**

Respondent, the State, moves this Court for an additional thirty (30) day extension of time in which to file the Initial Brief of Respondent and Designation of Matter. This is Respondent's second request for an extension of time in which to file the brief. In support of the request, undersigned counsel would respectfully show the Court:

1. Undersigned counsel for Respondent has been scheduled for a number of state and federal matters in the last thirty (30) days, that include, but are not limited to, the following: prepared and filed a return and memorandum of law in support of motion for summary judgment in a federal habeas action (*Calvin Gaddy*); prepared and filed a response in opposition to motion for stay and abey in another federal habeas action (*Anquan Cobb*); completed and filed a Brief of Respondent, and prepared and filed a supplement to the record on appeal, in non-capital murder direct appeal (*Derrick Grant*); prepared and filed a final brief of respondent in a murder direct appeal (*William Henry*); prepared and filed a motion to dismiss in capital PCR action (*Roger Dale Johnson*); and

attended a status conference in another capital PCR action (*Quincy Allen*). In addition, counsel is presently preparing an extensive post-trial brief in a capital PCR due to be served on November 10, 2010 (*Kamell D. Evans*).

2. Due to her heavy case load, undersigned counsel for Respondent has not been able to complete review of the hefty transcript of record (over 4000 pages), review the exhibits from the trial, and research and prepare a proper brief in response.

THEREFORE, undersigned counsel for Respondent respectfully requests an additional extension of thirty (30) days to complete the Initial Brief of Respondent and Designation of Matter.

Respectfully submitted,

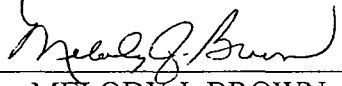
HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

MELODY J. BROWN
Assistant Attorney General

SCARLETT ANNE WILSON
Solicitor, Ninth Judicial Circuit

BY: 
MELODY J. BROWN

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

October 27, 2010.
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Charleston County
(Capital Case)
R. Markley Dennis, Jr., Circuit Court Judge

The State of South Carolina,

Respondent,

v.

William O. Dickerson,

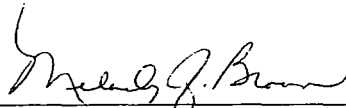
Appellant.

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served Respondent's Motion for a Second Extension of Time on counsel for Appellant, by depositing one copy of same in the United States mail, postage prepaid, to counsel for appellant, addressed as follows:

Robert M. Dudek, Chief Appellate Defender
South Carolina Office of Indigent Defense
1330 Lady Street, Ste. 401
Columbia, SC 29201

This 27th day of October, 2010.



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

ATTORNEY FOR RESPONDENT

The Supreme Court of South Carolina

The State,

Respondent,

v.

William O. Dickerson,

Appellant.

The Honorable R. Markley Dennis, Jr.

Charleston County

Trial Court Case No. 2006-GS-10-02981

2006-GS-10-03142

2008-GS-10-08884

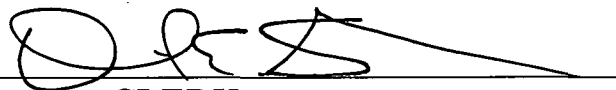
ORDER

The request for an extension to serve and file the Initial Brief of Respondent and Designation of Matter is granted and extended until October 27, 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



CLERK

Columbia, South Carolina

September 27, 2010

cc: Chief Appellate Defender Robert M. Dudek
Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Melody J. Brown



HENRY McMASTER
ATTORNEY GENERAL

September 24, 2010

RECEIVED

SEP 24 2010

S.C. SUPREME COURT

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

Re: The State v. William O. Dickerson;
Appeal from Charleston County (Capital Case).

Dear Mr. Shearouse:

The Initial Brief of Respondent in the referenced action is due to be filed and served Monday, September 27, 2010. Due to my heavy caseload, I will not be able to complete the Initial Brief in a timely fashion. For this reason, I respectfully request an extension of thirty (30) days within which to file the Initial Brief.

By copy of this letter I am informing opposing counsel of this request. Thank you for your consideration.

Sincerely,

Melody J. Brown
Assistant Attorney General

MJB/epj

cc: Robert M. Dudek, Chief Appellate Defender

**JEFFREY P. BLOOM
ATTORNEY AT LAW**

1911 PICKENS STREET
COLUMBIA, S.C., 29201-2631
OFFICE # (803) 256-7001
FAX # (803) 256-7002
TOLL FREE # 1-888-589-2046

LICENSED MEMBER OF THE
S.C. AND N.C. BAR
E-MAIL:
JPBLOOM803@AOL.COM
CELL # (803) 261-4576

August 13, 2010

Debbie M. Hopkins
South Carolina Supreme Court
P. O. Box 11330
Columbia, South Carolina 29211

RECEIVED

AUG 17 2010

S.C. SUPREME COURT

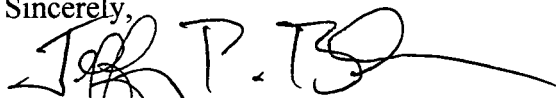
RE: State of S.C. v. William Dickerson
Direct Appeal - Capital Case

Dear Ms. Hopkins,

Please note that I have agreed to appear as pro bono counsel with Appellate Defense in this capital appeal. I will not be seeking costs or fees for this representation.

Thank you for your attention to this matter. Please feel free to contact me with any questions.

Sincerely,


Jeffrey P. Bloom

cc: Robert Dudek, Office of Appellate Defense
Donald Zelenka, Office of the Attorney General

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

AUG 11 2010

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

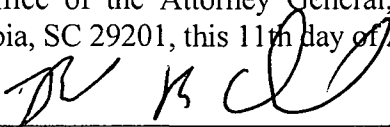
V.

WILLIAM O. DICKERSON,

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, Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 11th day of August, 2010.



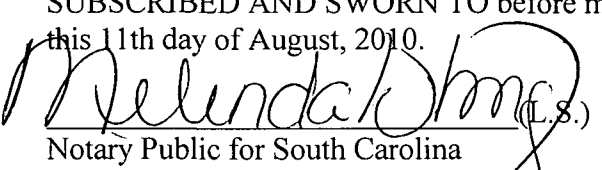
Robert M. Dudek
Chief Appellate Defender

Kathrine H. Hudgins
Appellate Defender

Jeffrey P. Bloom
Pro-Bono

ATTORNEYS FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 11th day of August, 2010.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2018.

The Supreme Court of South Carolina

The State,

Respondent,

v.

William O. Dickerson,

Appellant.

The Honorable R. Markley Dennis, Jr.

Charleston County

Trial Court Case No. 2006-GS-10-02981

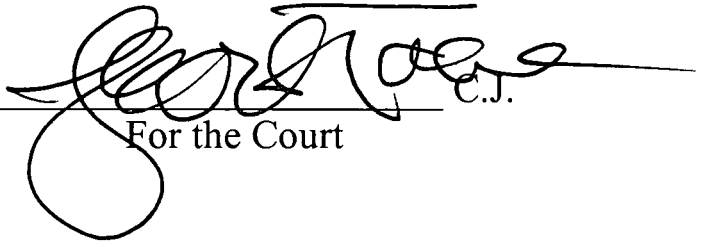
2006-GS-10-03142

2008-GS-10-08884

ORDER

Appellant seeks a fifth 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 August 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.


For the Court

Columbia, South Carolina

August 2, 2010

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Donald J. Zelenka



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Original

1330 Lady Street, Suite 401
Post Office Box 11433
Columbia, South Carolina 29211-1433
Telephone: (803) 734-1343
Facsimile: (803) 734-1345
E-Mail: executive@sccid.sc.gov

T. Patton Adams, Esq., Executive Director
Hugh Ryan, Deputy Director and General Counsel
Lisa A. Graves, Assistant Director

July 28, 2010

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

RECEIVED

JUL 28 2010

S.C. SUPREME COURT

Re: The State v. William O. Dickerson

Dear Mr. Shearouse:

In absence of Patton Adams, Executive Director of the South Carolina Commission on Indigent Defense and Hugh Ryan, Deputy Attorney and General Counsel for the South Carolina Commission on Indigent Defense and pursuant to instructions from Mr. Ryan, I ask that you accept this cover letter as an attempt to comply with the Court's order dated March 18, 2009, in regard to extension requests.

In the attached motion for an extension of time, Chief Appellate Defender, Robert M. Dudek seeks a final two week extension of time to file the initial brief of appellant and designation of matter Based on that and his extremely heavy case load, as outlined in the motion, he was unable to complete this brief.

Thank you for allowing me to bring this to your attention. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Lisa Campbell
Assistant Director
South Carolina Commission on
Indigent Defense

Original

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM O. DICKERSON,

APPELLANT

**PETITION FOR EXTENSION TO FILE
INITIAL BRIEF OF APPELLANT AND
DESIGNATION OF MATTER**

The undersigned counsel would respectfully request a **final two week extension until, August 11, 2010** in which to file the initial brief of appellant and designation of matter in the above-referenced case **death penalty case**. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. The initial brief of appellant and designation of matter in this case are due to be served and filed today, having been extended by prior orders of this Court. The transcripts in this case are in excess of 4261 pages long. The brief will consist of at least three issues, one of them a novel issue.

2. Counsel just finished the brief in opposition draft in the United States Supreme Court from the state's certiorari petition from this Court in the case of State v. Kenneth Navy, and will continue work on the case until August 2, 2010 when it will be filed. Counsel is also

working on the White v. State brief in the case of State v. Roger Bostick. In addition, counsel continues working on the brief with co-counsel Charles Grose in State v. Jimmy Paul McKerley in the Court of Appeals. This brief is presently forty-five pages long and is in the rewriting stage. Counsel filed the petition for rehearing in the murder case of State v. Darian Robinson with the Court of Appeals yesterday, Tuesday, July 27, 2010. Counsel filed a petition for rehearing in the case of State v. Brandon V. Johnson on Wednesday, July 14, 2010 with the Court of Appeals. Counsel and co-counsel filed a brief in the death penalty case of State v. Jerry Buck Inman on Monday, June 28, 2010, with this Court as well. 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 and in the murder case of State v. Damon Jones in this Court 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 has a hearing tomorrow in Lexington, and counsel also has many administrative duties as Chief Appellate Defender. In addition, counsel is working on his three part training meeting for the Appellate Defenders next Friday, August 6, 2010 in addition to his full and heavy caseload of death penalty and murder cases.

3. Co-counsel Katharine Hudgins filed the initial brief of appellant and designation of matter in State v. Lorenzo Maybin on June 8, 2010. Counsel will file the petition for writ of certiorari and accompanying appendix in Billy Maynor v. State on June 17, 2010. Counsel filed the petition for writ of certiorari and accompanying appendix in State v. Roderick Bradley on June 21, 2010. Counsel filed the petition for

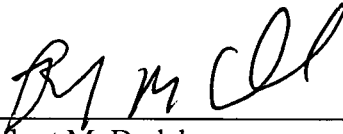
writ of certiorari and accompanying appendix in William Sims v. State and the initial brief of appellant and designation of matter in State v. Calvin Johnson on June 22, 2010. Counsel filed the brief of respondent in State v. Joseph Walker on June 30, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Charles Whetstone on July 1, 2010. Counsel filed the initial briefs of appellant and designations of matter in State v. James Thompson and State v. Phillip Turner on July 14, 2010. Counsel filed the petition for writ of certiorari and accompanying appendix in Joseph Selig v. State on July 19, 2010. The initial brief of appellant and designation of matter in State v. Peter McKee were filed on July 21, 2010.

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 more manageable in the near future, and less extensions will 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 **final two week extension until, August 11, 2010** in which to file the initial brief of appellant in this case. If this Court is not willing to grant **a two week final** extension, counsel respectfully requests such lesser time as this Court is willing to grant. Counsel 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
Deputy Chief Appellate Defender

Katherine H. Hudgins
Appellate Defender

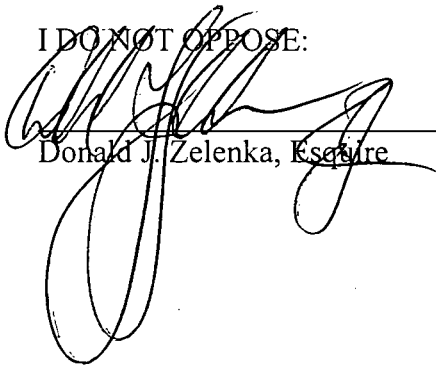
ATTORNEYS FOR APPELLANT

T. Patton Adams, IV
Executive Director or

J. Hugh Ryan, III
General Counsel

July 28, 2010

I DO NOT OPPOSE:



Donald J. Zelenka, Esquire

The Supreme Court of South Carolina

The State,

Respondent,

v.

William O. Dickerson,

Appellant.

The Honorable R. Markley Dennis, Jr.

Charleston County

Trial Court Case No. 2006-GS-10-02981

2006-GS-10-03142

2008-GS-10-08884

ORDER

Appellant seeks a fourth extension of time to serve and file the Initial Brief of Appellant and Designation of Matter in the above entitled matter and asserts that extraordinary circumstances justify this extension. The opposing party consents to the extension. The request for an extension is granted until July 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.

 C.J.
For the Court

Columbia, South Carolina

June 29, 2010

cc: Chief Appellate Defender Robert M. Dudek
Appellate Defender Kathrine H. Hudgins
Assistant Deputy Attorney General Donald J. Zelenka

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

JUN 28 2010

S.C. SUPREME COURT
RESPONDENT,

THE STATE,

V.

WILLIAM O. DICKERSON,

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 **death penalty case**. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. The initial brief of appellant and designation of matter in this case are due to be served and filed today, having been extended by prior orders of this Court. The transcripts in this case are in excess of 4261 pages long.

2. Counsel and co-counsel are filing the brief in the death penalty case of State v. Jerry Buck Inman in this Court today. Counsel and co-counsel have begun working on the brief in this case. 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

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. 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.

3. Co-counsel Katharine Hudgins filed the petition for writ of certiorari and accompanying appendix in Frank Moore v. State on May 14, 2010. Counsel had an oral argument in the Court of Appeals in State v. Mark Baker on May 18, 2010. Counsel filed

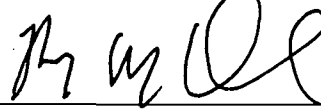
the initial brief of appellant and designation of matter in State v. John Jabbar Greene on May 20, 2010. Counsel filed the brief of petitioner in Kareen Lee v. State on May 21, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Norman Mitchell on May 26, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Henry Bradley on June 3, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Lorenzo Maybin on June 8, 2010. Counsel will file the petition for writ of certiorari and accompanying appendix in Billy Maynor v. State on June 17, 2010. Counsel filed the petition for writ of certiorari and accompanying appendix in State v. Roderick Bradley on June 21, 2010. Counsel filed the petition for writ of certiorari and accompanying appendix in William Sims v. State and the initial brief of appellant and designation of matter in State v. Calvin Johnson on June 22, 2010.

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 more manageable in the near future, and less extensions will 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 in this case. Counsel requests that the time limits for filing the initial brief of appellant be held in abeyance pending a ruling on this motion.

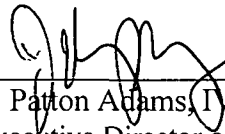
Respectfully submitted,



Robert M. Dudek
Deputy Chief Appellate Defender

Katherine H. Hudgins
Appellate Defender

ATTORNEYS FOR APPELLANT

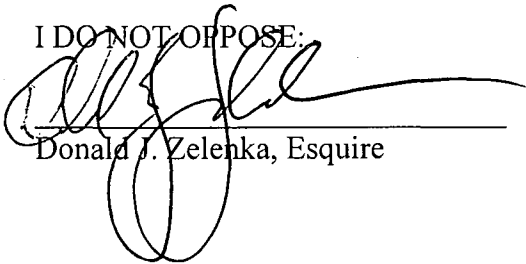


T. Patton Adams, IV
Executive Director of

J. Hugh Ryan, III
General Counsel

June 28, 2010

I DO NOT OPPOSE:



Donald J. Zelenka, Esquire

The Supreme Court of South Carolina

The State,

Respondent,

v.

William O. Dickerson,

Appellant.

The Honorable R. Markley Dennis, Jr.
Charleston County
Trial Court Case No. 2006-GS-10-02981
2006-GS-10-03142
2008-GS-10-08884

ORDER

Appellant seeks a third 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 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.

JEAN H. TOAL, CHIEF JUSTICE

BY Shanda L. Shealy
Chief Deputy CLERK

Columbia, South Carolina

May 28, 2010

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 Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

MAY 28 2010

THE STATE,

S.C. SUPREME COURT
RESPONDENT,

V.

WILLIAM O. DICKERSON,

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 **death penalty case**. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. The initial brief of appellant and designation of matter in this case are due to be served and filed today, having been extended by prior orders of this Court. The transcripts in this case are in excess of 4261 pages long.

2. 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. Further, Counsel 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. 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 in the Court of Appeals, and a merit brief in the murder case of State v. Teron Jackson with that Court on Friday, May 7, 2010. In addition, counsel filed a three issue brief of appellant with the Court of Appeals on Wednesday, May 5, 2010, in the murder case of State of Johnny Mahaffey. Moreover, counsel filed a two issue petition for writ of certiorari from the Court of Appeals to this Court on Tuesday, May 4, 2010 in the case of State v. Walter. M. Counsel also filed the brief of appellant in the murder trial case of State v. Gary Grant on April 30, 2010 with the Court of Appeals. Counsel also 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. On Friday, April 23, 2010, counsel filed the three issue petition for writ of certiorari in this 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 this Court. Finally, counsel has one oral argument before the Court of Appeals on June 8, 2010, at 12:30, in the case of State v. Perry Strickland. Counsel has three oral arguments in this Court, specifically, State v. Amos Mattison on June 8, 2010 at 10:00; State v. Louis Winkler a death penalty, on June 23, 2010 at 9:30, and State v. Damon Jones, a murder case that same day at 10:00. Counsel also has very extension 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.

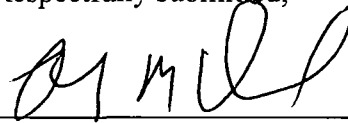
3. Co-counsel Katharine Hudgins filed the petitions for writ of certiorari and accompanying appendices in Clarence Gibbs v. State and State v. Shannon McGee on April 21, 2010. Counsel filed the petition for writ of certiorari and accompanying appendix in Steven Sabo v. State on April 23, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Lorenzo Nicholson and the petitions for writ of certiorari and accompanying appendices in Robert Simmons v. State and Albert Scruggs v. State on April 30, 2010. Counsel filed the petition for rehearing in State v. Robert Hoyt on May 6, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Mark Watson on May 7, 2010. Counsel filed the petitions for rehearing in State v. Mack Green and State v. George Senior on May 11, 2010. Counsel filed the petition for writ of certiorari and accompanying appendix in Frank Moore v. State on May 14, 2010. Counsel had an oral argument in the Court of Appeals in State v. Mark Baker on May 18, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. John Jabbar Greene on May 20, 2010. Counsel filed the brief of petitioner in Kareen Lee v. State on May 21, 2010.

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 more manageable in the near future, and less extensions will 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 in this case. Counsel 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
Deputy Chief Appellate Defender

Katherine H. Hudgins
Appellate Defender

ATTORNEYS FOR APPELLANT

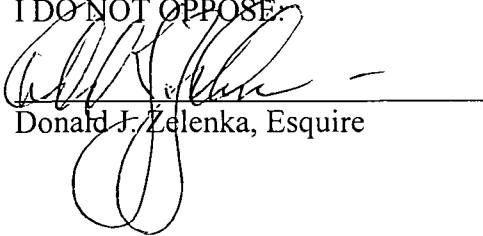


T. Patton Adams, IV
Executive Director or

J. Hugh Ryan, III
General Counsel

May 28, 2010

I DO NOT OPPOSE.



Donald J. Zelenka, Esquire

The Supreme Court of South Carolina

The State,

Respondent,

v.

William O. Dickerson,

Appellant.

The Honorable R. Markley Dennis, Jr.

Charleston County

Trial Court Case No. 2006-GS-10-02981

2006-GS-10-03142

2008-GS-10-08884

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 May 28, 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 *Shirley A. Shealy*
CHIEF DEPUTY CLERK

Columbia, South Carolina

April 29, 2010

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 Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

APR 28 2010

THE STATE,

RESPONDENT, S.C. SUPREME COURT

V.

WILLIAM O. DICKERSON,

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 exigent circumstances:

1. The initial brief of appellant and designation of matter in this case are due to be served and filed today, having been extended by one prior order of this Court. This transcript is in excess of 4261 pages long.

2. The Honorable D. Garrison Hill has scheduled a competency to waive appeals and be executed hearing for Thursday, April 29, 2010, at 10:00 a.m. in the death penalty case of The State v. Jeffrey Motts. This hearing was originally scheduled for Monday, April 23, 2010. Unfortunately, due to the death of Judge Hill's father, the hearing had to be rescheduled for this

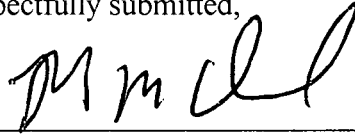
Thursday. Counsel just finished the lengthy petition for writ of certiorari in the death penalty case of Brad Sigmon v. State, with co-counsel, which was due on Wednesday, April 21, 2010 in this Court. On Thursday, April 8, 2010 counsel argued the case of State v. Marlon Rivera before this Court. On Friday, April 23, 2010, counsel filed the petition for writ of certiorari in this Court in the murder case of State v. Gene Tony Cooper. In addition, counsel filed a brief in the murder case of State v. Terrell McCoy with the Court of Appeals on April 2, 2010. Counsel also filed a brief on April 1, 2010, in the murder case of State v. Antonio Moultrie with the Court of Appeals. Further, counsel filed a brief on March 29, 2010, in the murder case of State v. Teron Jackson with the Court of Appeals. Counsel also has full time administrative duties as Chief Appellate Defender, including death penalty oversight, in addition to his caseload above.

3. Co-counsel filed the petition for writ of certiorari and accompanying appendix in George Bynum v. State on March 26, 2010. The petition for writ of certiorari and accompanying appendix were filed in Phillip Brooks v. State on March 30, 2010. The initial brief of appellant and designation of matter were filed in State v. Jacqueline Cruz on March 31, 2010. Co-counsel served the petition for writ of certiorari and accompanying appendix in Quentin Sullivan v. State on April 5, 2010. Co-Counsel filed the petitions for writ of certiorari and accompanying appendices in Phillip Hansen v. State and Jason Brown v. State on April 7, 2010. Co-counsel had an oral argument in State v. Nathan Benjamin Patrick on April 13, 2010. Co-counsel filed the petitions for writ of certiorari and accompanying appendices in Clarence Gibbs v. State and State v. Shannon McGee on April 21, 2010. Co-counsel filed the petition for writ of certiorari and accompanying appendix in Steven Sabo v. State on April 23, 2010.

4. This request is made in good faith, and not for purposes of delay.

WHEREFORE, the undersigned counsel would respectfully request a thirty-day extension in which to file the initial brief of appellant in this case. Counsel 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
Deputy Chief Appellate Defender

Katherine H. Hudgins
Appellate Defender

ATTORNEYS FOR APPELLANT

April 28, 2010

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

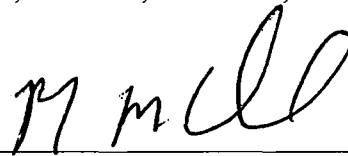
V.

WILLIAM O. DICKERSON,

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 28th day of April, 2010.

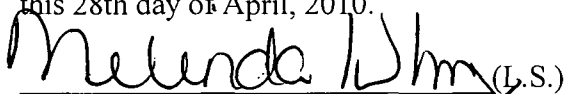


Robert M. Dudek
Deputy Chief Appellate Defender

Katherine H. Hudgins
Appellate Defender

ATTORNEYS FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of April, 2010.



(L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2018.

The Supreme Court of South Carolina

The State,

Respondent,

v.

William O. Dickerson,

Appellant.

The Honorable R. Markley Dennis, Jr.

Charleston County

Trial Court Case No. 2006-GS-10-02981

2006-GS-10-03142

2008-GS-10-08884

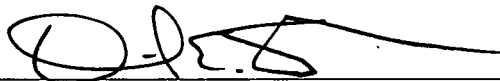
ORDER

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 April 28, 2010.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

March 30, 2010

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
Joseph L. Savitz, III, Senior Appellate Defender

March 29, 2010

RECEIVED

MAR 29 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. William O. Dickerson (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

Katherine H. Hudgins
Appellate Defender

RMD/mwl

cc: Donald J. Zelenka, Esquire

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

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. William O. Dickerson

1. July 7, 2009 (Deborah Garrison)
2. April 3, 2009 (Deborah Garrison)
3. April 17, 2009 – May 7, 2009 (Deborah Garrison)

Date: February 9, 2010

Debbie M. Hopkins
(Name)



SIGNAL

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

Robert M. Dudek, 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

January 27, 2010

RECEIVED

JAN 27 2010

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

S.C. SUPREME COURT

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. William O. Dickerson

1/26/2010

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
Legal Assistant



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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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

RECEIVED

OCT 27 2009

S.C. SUPREME COURT

October 27, 2009

Ms. Desiree Allen
S.C. Court Administration
1015 Sumter Street, 2nd Floor
Columbia, South Carolina 29201-3739

Dear Ms. Allen:

Below is a list of transcript(s) that were requested by this office. Pursuant to Supreme Court Rule 206(e), 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. Deborah Garrison	9/30/09	William O. Dickerson

Trial Date: April 20 - 22, 2009 (Jury Voir Dire)

I would appreciate your confirming in writing as to the status of the above-referenced transcript(s). 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



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
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Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

October 27, 2009

RECEIVED

OCT 27 2009

S.C. SUPREME COURT

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1015 Sumter Street, 2nd Floor
Columbia, South Carolina 29201-3739

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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Deborah Garrison	9/30/09	William O. Dickerson

Trial Date: Aril 23 - 30, 2009 (Trial Phase)

I would appreciate your confirming in writing as to the status of the above-referenced transcript(s). 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



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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Deborah Garrison	9/30/09	William O. Dickerson

Trial Date: May 1, 2009 (Motion Hearing)

I would appreciate your confirming in writing as to the status of the above-referenced transcript(s). 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



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October 27, 2009

OCT 27 2009

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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Deborah Garrison	9/30/09	William O. Dickerson

Trial Date: April 17, 2009 (Jury Qualifications)

I would appreciate your confirming in writing as to the status of the above-referenced transcript(s). 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



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

RECEIVED

OCT 27 2009

October 27, 2009

S.C. SUPREME COURT

Ms. Desiree Allen
S.C. Court Administration
1015 Sumter Street, 2nd Floor
Columbia, South Carolina 29201-3739

Dear Ms. Allen:

Below is a list of transcript(s) that were requested by this office. Pursuant to Supreme Court Rule 206(e), 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. Deborah Garrison	9/21/09	William O. Dickerson

Trial Date: May 7, 2009 (Sentence)

I would appreciate your confirming in writing as to the status of the above-referenced transcript(s). 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



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
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Wanda H. Carter, Deputy Chief Attorney

RECEIVED

OCT 27 2009

October 27, 2009

S.C. SUPREME COURT

Ms. Desiree Allen
S.C. Court Administration
1015 Sumter Street, 2nd Floor
Columbia, South Carolina 29201-3739

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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Deborah Garrison	9/21/09	William O. Dickerson

Trial Date: July 7, 2009 (Motion for a New Trial)

I would appreciate your confirming in writing as to the status of the above-referenced transcript(s). 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

Division of Appellate Defense
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Telephone: (803) 734-1343
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Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

August 3, 2009

RECEIVED
AUG 03 2009
S.C. SUPREME COURT

Ms. Deborah Garrison
Circuit Court Reporter
P O Box 901
Johns Island, SC 29457-0901

Dear Ms. Garrison:

Our office has been requested to perfect the appeal arising out of:

The State v. William O. Dickerson

Indictment #: 2006-GS-10-2981
2006-GS-10-3142
2008-GS-10-8884

County: Charleston

Date of Trial: April 17, 2009 (Jury Qualifications)

Presiding Judge: R. Markley Dennis, Jr.

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.

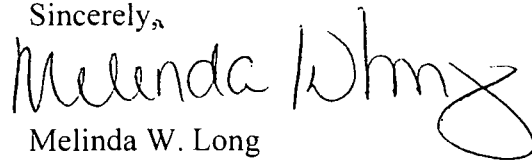
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms. Deborah Garrison
August 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 style with a large, looping "M" and a long, sweeping "L" that extends to the right.

Melinda W. Long
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



Division of Appellate Defense
1330 Lady Street, Suite 401
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Post Office Box 11589
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

August 3, 2009

Ms. Deborah Garrison
Circuit Court Reporter
P O Box 901
Johns Island, SC 29457-0901

Dear Ms. Garrison:

Our office has been requested to perfect the appeal arising out of:

The State v. William O. Dickerson

Indictment #: 2006-GS-10-2981
2006-GS-10-3142
2008-GS-10-8884

County: Charleston

Date of Trial: April 20 - 22, 2009 (Jury Voir Dire)

Presiding Judge: R. Markley Dennis, Jr.

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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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.

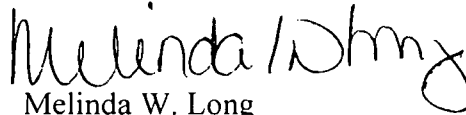
RECEIVED
AUG 03 2009
S.C. SUPREME COURT

Ms. Deborah Garrison
August 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 black 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

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 3, 2009

Ms. Deborah Garrison
Circuit Court Reporter
P O Box 901
Johns Island, SC 29457-0901

Dear Ms. Garrison:

Our office has been requested to perfect the appeal arising out of:

The State v. William O. Dickerson

Indictment #: 2006-GS-10-2981
2006-GS-10-3142
2008-GS-10-8884

County: Charleston

Date of Trial: Aril 23 - 30, 2009 (Trial Phase)

Presiding Judge: R. Markley Dennis, Jr.

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.

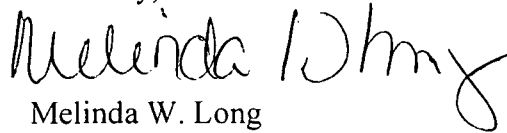
RECEIVED
AUG 03 2009
S.C. SUPREME COURT

Ms. Deborah Garrison
August 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 to the left of 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
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Telephone: (803) 734-1343
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Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

August 3, 2009

Ms. Deborah Garrison
Circuit Court Reporter
P O Box 901
Johns Island, SC 29457-0901

Dear Ms. Garrison:

RECEIVED
AUG 03 2009
S.C. SUPREME COURT

Our office has been requested to perfect the appeal arising out of:

The State v. William O. Dickerson

Indictment #: 2006-GS-10-2981
2006-GS-10-3142
2008-GS-10-8884

County: Charleston

Date of Trial: May 1, 2009 (Motion Hearing)

Presiding Judge: R. Markley Dennis, Jr.

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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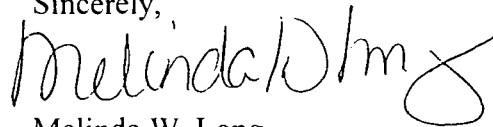
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Ms. Deborah Garrison
August 3, 2009
Page Two

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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



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

R. MARKLEY DENNIS, JR.
JUDGE

300 B CALIFORNIA AVENUE
POST OFFICE BOX 1800
MONCKS CORNER, SOUTH CAROLINA 29461-1800
TELEPHONE: (843) 719-4435
FAX: (843) 719-4599
E-MAIL: mdennisj@scjd.state.sc.us

July 27, 2009

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

RECEIVED
JUL 28 2009
S.C. SUPREME COURT

In Re: State vs. William Oliver Dickerson, Jr.
Case No. 2006-GS-10-3142

Dear Mr. Shearouse:

Please find enclosed herewith original Death Penalty Sentencing Report in connection with the captioned matter.

With kind regards, I am

Very truly yours,


R. MARKLEY DENNIS, JR.

RMD,JR/ljd

Enclosure – as stated

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS
Case No. 2006-GS-10-3142

STATE OF SOUTH CAROLINA,

vs.

DEATH PENALTY SENTENCING REPORT

WILLIAM OLIVER DICKERSON, JR.,

Defendant.

A. Name of Trial Judge: R. Markley Dennis, Jr.

B. Name of Defendant: William Oliver Dickerson, Jr.

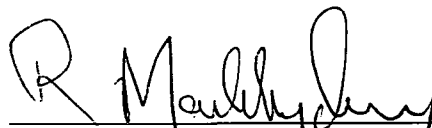
C. Names of Defense Attorneys:

1. Jeffrey P. Bloom, Esquire
2. Calvin Andrew Carroll, Esquire

D. Date Sentenced: May 7, 2009

E. Aggravating circumstance(s) found or a copy of verdict form is attached:

1. Verdict Form is attached



R. MARKLEY DENNIS, JR., Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

July 23, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

Case No. 2008-GS-10-3142

The State of South Carolina,

vs.

JURY'S VERDICT ON PROOF OF
AGGRAVATING CIRCUMSTANCES

WILLIAM OLIVER DICKERSON,

Defendant.

(a) WE, THE JURY in the above-entitled case, find no statutory
aggravating circumstances.

[Signature]
PRESIDING JUROR

✓ (b) WE, THE JURY in the above-entitled case, find beyond a
reasonable doubt the following aggravating circumstances:

CRIMINAL SEXUAL CONDUCTKIDNAPPINGTORTURE

[Signature]
PRESIDING JUROR

*[Signature]**[Signature]**[Signature]**[Signature]*

[Signature]
Lani Hankins Page

*[Signature]**[Signature]**[Signature]**[Signature]*May 7th, 2009

CHARLESTON, SOUTH CAROLINA

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.

By *[Signature]*

DEPUTY CLERK

FILED
2009 MAY -7 PM 5:02
JULIE J. ARMSTRONG
CLERK OF COURT



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

July 23, 2009

RECEIVED

JUL 23 2009

S.C. SUPREME COURT

Ms. Deborah Garrison
Circuit Court Reporter
P O Box 901
Johns Island, SC 29457-0901

Dear Ms. Garrison:

Our office has been requested to perfect the appeal arising out of:

The State v. William O. Dickerson

Indictment #: 2006-GS-10-2981
2006-GS-10-3142
2008-GS-10-8884

County: Charleston

Date of Trial: May 7, 2009 (Sentence)

Presiding Judge: R. Markley Dennis, Jr.

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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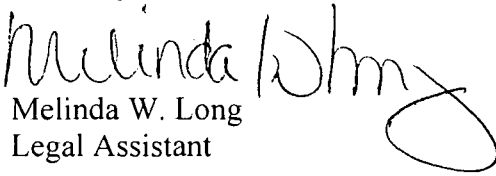
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Ms. Deborah Garrison
July 23, 2009
Page Two

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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



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

July 23, 2009

RECEIVED

JUL 23 2009

S.C. SUPREME COURT

Ms. Deborah Garrison
Circuit Court Reporter
P O Box 901
Johns Island, SC 29457-0901

Dear Ms. Garrison:

Our office has been requested to perfect the appeal arising out of:

The State v. William O. Dickerson

Indictment #: 2006-GS-10-2981
2006-GS-10-3142
2008-GS-10-8884

County: Charleston

Date of Trial: July 7, 2009 (Motion for a New Trial)

Presiding Judge: R. Markley Dennis, Jr.

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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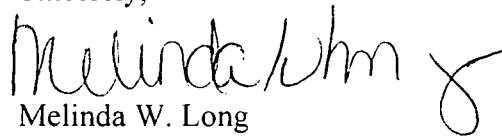
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Ms. Deborah Garrison
July 23, 2009
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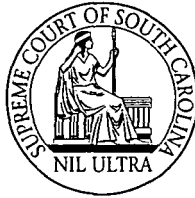
Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Melinda W. Long", followed by a large, stylized flourish or "8" shape.

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

July 17, 2009

The Honorable R. Markley Dennis, Jr.
300 B California Avenue
P O Box 1800
Moncks Corner, SC 29461-1800

Re: The State v. Dickerson, William O.

Dear Judge Dennis:

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,

CLERK

DES/dmh

Enclosure

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal From The Court Of General Sessions
For Charleston County

Honorable R. Markley Dennis, Jr. Circuit Judge

Indictment No(s): 2006-GS-10-3142; 2006-GS-10-2981;
2008-GS-10-8884

William O. Dickerson, Jr.

Appellant,

v.

State of South Carolina,

Respondent

NOTICE OF APPEAL

William O. Dickerson, Jr. appeals his conviction and death sentence in this case. The death sentence was imposed by the Honorable R. Markley Dennis on May 7, 2009. This Appeal is taken from the oral Order of the Honorable R. Markley Dennis on July 7, 2009, which denied appellant's Motion for a new trial.

By:

C. Andrew Carroll
C. Andrew Carroll, Esquire
Jeffrey P. Bloom, Esquire
5861 Rivers Avenue, Ste 101
Northgate Office Building
North Charleston, SC. 29406
Telephone: 843.554.3100
Fax: 843.554.6539

North Charleston, South Carolina
July 14, 2009

Other Counsel of Record:

Scarlett Wilson, Solicitor
The Ninth Judicial Circuit
101 Meeting Street., Ste 400
Charleston, SC 29401
Telephone: 843.958.1900
Fax: 843.958.1905
Attorney for Respondent

RECEIVED

JUL 17 2009

S.C. SUPREME COURT

BY *J. J. Armstrong*
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
DEPUTY CLERK

FILED
2009 JUL 15 AM 10:32
JULIE J. ARMSTRONG
CLERK OF COURT
BY *J. J. Armstrong*

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal From The Court Of General Sessions
For Charleston County
Honorable R. Markely Dennis, Jr. Circuit Judge

Indictment No.: 2006-GS-10-3142; 2006-GS-10-2981;
2008-GS-10-8884

William O. Dickerson, Jr.

Appellant,

v.

State of South Carolina,

Respondent.

**PROOF OF SERVICE FOR
THE NOTICE OF APPEAL**

C. Andrew Carroll, Esquire
Jeffrey P. Bloom, Esquire
5861 Rivers Avenue, Suite 101
Northgate Office Building
North Charleston, S.C. 29406
Telephone: 843.554.3100
Fax: 843.554.6539

Attorneys for the Appellant

I, RON COLLE, hereby certify that on July 15, 2009, I served a copy of the ***Notice of Appeal*** submitted by the Appellant, William O. Dickerson, Jr. on Solicitor Scarlett Wilson, counsel for the Respondent via hand delivery by placing a copy of the ***Notice of Appeal*** in the hands of Debbie Stock at the following address:

Scarlett Wilson, Solicitor
The Ninth Judicial Circuit
101 Meeting Street., Ste 400
Charleston, SC 29401

Received by: Debbie Stock of the Charleston
County Solicitor's Office for the Ninth Judicial Circuit

Charleston, South Carolina

July 15, 2009

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal From The Court Of General Sessions
For Charleston County
Honorable R. Markely Dennis, Jr. Circuit Judge

Indictment No.: 06-GS-10-3142; 06-GS-10-2981;
08-GS-10-8884; 09-GS-10-2097

William O. Dickerson, Jr.

Appellant,

v.

State of South Carolina,

Respondent.

PROOF OF SERVICE FOR
THE NOTICE OF APPEAL

C. Andrew Carroll, Esquire
Jeffrey P. Bloom, Esquire
5861 Rivers Avenue, Suite 101
Northgate Office Building
North Charleston, S.C. 29406
Telephone: 843.554.3100
Fax: 843.554.6539

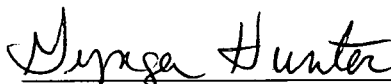
Attorneys for the Appellant

I, Gynger Hunter, hereby certify that on July 15, 2009, I served a copy of the **Notice of Appeal; Proof of Service upon Respondent; and Certificate of Mailing** submitted by the Appellant, William O. Dickerson, Jr. on the Clerk of Court for the South Carolina Supreme Court, Mr. Daniel E. Shearouse, Scarlett Wilson, Solicitor, and Hon. Henry McMaster, Attorney General via United States Mail, postage pre-paid, certified mail register return receipt requested and addressed as follows:

Mr. Daniel E. Shearouse
Clerk, The S. C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

Hon. Henry McMaster, Attorney General
Rembert Dennis Building
1000 Assembly St., Room 519
Columbia, SC 29201

Scarlett Wilson, Solicitor
The Ninth Judicial Circuit
101 Meeting Street., Ste 400
Charleston, SC 29401


Gynger Hunter

Notary Public for South Carolina


My Commission Expires: 4.1.14

Sup G.

JOYE LAW FIRM, L.L.P.

POST OFFICE BOX 62888
NORTH CHARLESTON, SC 29419-2888

REESE I. JOYE* (1938 - 2008)
MARK C. JOYE**
KEN W. HARRELL
C. ANDREW CARROLL
CHRISTOPHER J. McCOOL
MATTHEW W. JACKSON
PATRICK L. JENNINGS
R. BRADY VANNOY
JAMES F. HARTMAN

* Board Recognized by the
National College For DUI Defense
* Board Certified Criminal Trial Advocate
by the National Board of Trial Advocacy
** Board Certified Civil Trial Advocate
by the National Board of Trial Advocacy

TEL: 843-554-3100
FAX: 843-554-6539
TOLL FREE: 888-324-3100
WEB: www.joyelawfirm.com
E-mail: drewcarroll@joyelawfirm.com
OFFICE LOCATION:
NORTHGATE OFFICE BUILDING
5861 RIVERS AVENUE
NORTH CHARLESTON, SC 29406

July 15, 2009

VIA: U.S. Mail Certified Return Receipt Requested

Mr. Daniel E. Shearouse
Clerk, The S. C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

Re: State vs. William O. Dickerson, Jr.

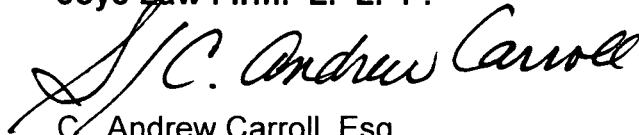
Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondent. The Notice has been filed with the Charleston County Clerk of Court.

These matters are being referred to the Office of Appellant Defense in that we were participating as court appointed counsel at trial.

Very truly yours,

Joye Law Firm. L. L. P.



C. Andrew Carroll, Esq.
Jeffrey P. Bloom, Esq.
Attorneys for Appellant

CAC/gmh
w/ Enclosure

cc: Scarlett Wilson, Solicitor
The Ninth Judicial Circuit
101 Meeting Street., Ste 400
Charleston, SC 29401
Attorney for Respondent

Hon. Henry McMaster, Attorney General
Rembert Dennis Building
1000 Assembly St., Room 519
Columbia, SC 29201
Office of the Attorney General

RECEIVED

JUL 17 2009

S.C. SUPREME COURT

JOYE LAW FIRM, L.L.P.

SUITE 101, NORTHGATE OFFICE BLDG.
5861 RIVERS AVENUE

NORTH CHARLESTON, SOUTH CAROLINA 29406-6096

PITNEY BOWE

02 1P

\$ 005.71

0004441015 JUL 15 2009

MAILED FROM ZIP CODE 29401

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