

Post Office Box 6454
Columbia, South Carolina 29260
Voice 803.782.1663
Fax 803.787.0374
Email: DianaHolt@DianaHoltLLC.com

March 6, 2017
The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
ATTN: Ms. Debbie Hopkins
P.O. Box 11330
Columbia, S.C. 29211-1330
Electronically and by U.S. Mail

RECEIVED

MAR -8 2017

S.C. SUPREME COURT

Re: *Norman E. Starnes v. State*, 2011-CP-32-830

Dear Ms. Hopkins:

The purpose of this letter is to provide the Court with a summary of activity in the above-mentioned case, in the last ninety (plus) days.

October 3, 2016 Update:

The Court convened a hearing on July 26, 2016. At the hearing, the Court set August 19, 2016 as the date for motions for summary judgments to be filed. In the alternative, the Court granted Applicant until October 3, 2016 to file a second amended application. Applicant is filing a significantly amended second amended application for PCR relief today. Additionally, Applicant was diagnosed with a large ocular melanoma tumor in his right eye, which is causing partial but substantial blindness in that eye. We are awaiting test results to determine whether the cancer has spread to other parts of Applicant's body. The State and the Court was made aware of the diagnosis.

March 5, 2017

In the intervening period, Mr. Starnes was treated with radiation seeds that were enclosed in a plaque, as they call it. His right eye was removed from its socket, the muscle was cut, and the plaque was placed in the bottom of his right eye. The muscle was loosely reattached and his eye was returned to its socket. The plaque remained in place for roughly 120 hours, with Mr. Starnes' required to wear a lead eye patch to protect all others who were within a few feet of him from being exposed to the radiation. The plaque was successfully removed in tact, meaning none of the radiation rice-like pieces escaped the plaque. The tumor was biopsied, and it was a couple of months before the results were returned. He has the least aggressive type of monocular melanoma. Additionally, Mr. Starnes was seen for a check up in mid-February. His oncologist reports that Mr. Starnes' tumor is shrinking, that the cancer has not spread, and that his eye sight is beginning to return somewhat. His chance of living another five years is greater than not.

Thank you for your kind patience.

With high personal regards, I remain

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Diana L. Holt

(CC recipients electronically only)

cc: The Honorable Alexander S. Macaulay, presiding Judge by special order of this
Court. (AmacaulayJ@sccourts.org) Courtesy copy by U.S. Mail
Al Simon, Jr., Esq. (Asimon@scag.gov)
Ed Salter, III, Esq. (AgedSalter@scag.gov)
J. Christopher Jensen, Esq. (JCJ@CLL.com)

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/s/Diana Holt

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I apologize for the tardy update. With highest personal regards, I remain

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Ed Salter, III, Esq. (AgedSalter@scag.gov)
J. Christopher Jensen, Esq. (JCJ@CLL.com)

The Supreme Court of South Carolina

The State, Respondent,

v.

Norman Starnes, Appellant.

Appellate Case No. 2007-073587

RECEIPT ACKNOWLEDGED

Joseph B. O.
DATE 3/10/17

Lexington County
Trial Court Case No. 1996GS3203339

ORDER

The following exhibit filed with this Court is available for transportation to the Clerk of Court's office in Lexington County.

Court's Exhibit 10 (DVD of Re-Enactment)

IT IS ORDERED that the Attorney General's office take possession of this exhibit and return it to Lexington County.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

March 2, 2017

cc:

Diana L. Holt, Esquire

Donald J. Zelenka, Esquire

The Honorable Lisa M. Comer

COUNTY OF LEXINGTON

BETH A. CARRIGG

CLERK OF COURT

IN THE COMMON PLEAS / GENERAL SESSIONS / FAMILY COURT

CASE NO. 1996-GS-32-3339JUDGE LEE S. HIFordCT. REP. MIKE WATTS DATE 11-17-07

CLOCK - IN AREA

(NOTES)

(1) _____

(2) _____

(3) _____

PLAINTIFF

VS.

DEFENDANT

South CarolinaNorman E. StarnesPro-seAtty. Trey Grandy / Bob Gler / Derrick BulAtty. M.M. Nottles / Justin Delgado

NO.	ID.	EV.	DESCRIPTION	NO.	ID.	EV.	DESCRIPTION
1	✓		Juror Type Sheet				
2	✓		Newspaper Article				
3	✓		Jury Panel Sheets				
4	✓		Selected Jury List				
5	✓		Juror Note				
6	✓		Juror Note				
7	✓		4 pages (LETTER)				
8	✓		Newspaper				
9	✓		Juror Note				
10	✓		DVD				
11	✓		DEFT'S Memo. For Request For				Imperfect SELF DEF
12	✓		DEFT. REQUEST TO charge				# A

CT. REP Michael R. WattsREC. BY Depe TruckTITLE Deputy Clerk

VERIFIED _____

TITLE _____

WHITE: COURT RECORDS * YELLOW: EVIDENCE VAULT * PINK: FILE

COUNTY OF LEXINGTON **FILED** IN THE COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA 2009 DEC -4 A 10: 36 RECEIPT OF EVIDENCE

THE STATE

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

VS

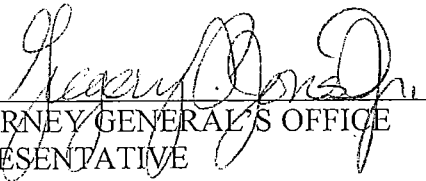
1996-GS-32-3339

NORMAN STARNES

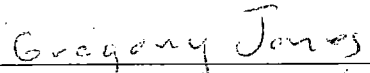
THE FOLLOWING EVIDENCE IS HEREBY RELEASED TO THE ATTORNEY GENERAL
OR HIS DESIGNEE FOR TRANSPORT TO THE SUPREME COURT OF SOUTH
CAROLINA:

COURTS EXHIBIT # 10 -- (DVD of reenactment)

RECEIVED BY:



ATTORNEY GENERAL'S OFFICE
REPRESENTATIVE

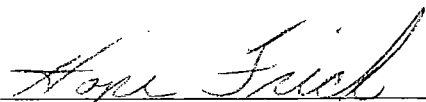


PRINT NAME

803-734-3737

DATE: Dec 4, 2009

RELEASED BY:

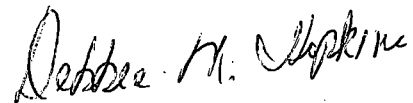


CLERK OF COURTS OFFICE
REPRESENTATIVE

RECEIVED

DEC 04 2009

S.C. SUPREME COURT



Post Office Box 6454
Columbia, South Carolina 29260
Voice 803.782.1663
Fax 803.787.0374
Email DianaHolt@utexas.edu

May 1, 2016
The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
ATTN: Ms. Debbie Hopkins
P.O. Box 11330
Columbia, S.C. 29211-1330

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MAY -4 2016

SC SUPREME COURT

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That Solicitor's office, through Mr. Bulsa, has withheld materials from the file and has refused to provide the materials to the Court or a privilege log regarding the same. We anticipate litigation regarding the materials. That office did produce ten boxes of materials that are in the process of being scanned by a Spartanburg service. The service has promised to complete the massive job by May 27, 2011.

The Court set May 21, 2011 as the date for Mr. Starnes to file his first amended application. Mr. Starnes will be forced to request an extension in order to make a meaningful amendment, considering the ten boxes of documents, the nine volumes of ROA, the other information gathered so far during the depositions.

July Update: The copy service completed the replication of over 20,000 items from the State's file. Mr. Bulsa provided the previously withheld materials to the PCR Court and the Court has those materials for assessment. Applicant filed his first amended application for post-conviction relief. At the State's request, the PCR Court held a status/scheduling conference. The PCR Court set December 26, 2011 as the deadline for discovery to conclude and ordered that the evidentiary hearing would commence on March 1, 2012.

September Update: Lead counsel has been involved in intense preparation for the retrial of the State v. Ernest Riddle. Still, we have been advancing the investigative effort, both fact and mitigation as diligently as we are able. We are also still processing the twenty thousand documents the prosecutors provided to counsel. With the *Riddle* matter resolved, primary focus will be on advancing discovery and preparing for an evidentiary hearing.

November update: Investigation is ongoing. Applicant is scheduling depositions to commence the second week in December. Former Solicitor Gowdy, who is now a U.S. Congressman, states that he is unable to make time for a deposition in this case until the end of January. The state has filed its first interrogatories and requests to produce, which are still pending. Applicant's counsel are diligently processing information and preparing his case.

January update: Investigation is actively ongoing. We deposed Congressman Gowdy, who provided a great deal of new information, which we will pursue. We have notified Judge Macaulay on behalf of Mr. Starnes that despite our best efforts, we will need to ask the Court to continue the case, with a deadline of August 1, 2012 to complete discovery and a fall merits hearing. We are of the opinion, respectfully, that those dates are very realistic and that justice will be well-served, as will Mr. Starnes. Mr. Simon, on behalf of the State, has declared that it takes no position regarding the suggested schedule. Judge Macaulay is in the process of scheduling a telephonic status conference to discuss scheduling.

April update: The parties scheduled several depositions of prosecutors from various judicial circuits who were involved in the prosecution of Mr. Starnes, which required a great deal of coordination of schedules. Two business days before the depositions were to commence, the state filed a motion to quash as to one prosecutor and a motion for protective order regarding the state's desire to block Applicant from asking questions that go to proving a pattern and practice of misconduct. The depositions had been scheduled for April 2nd and April 9th, but did not go forward. Other discovery is ongoing, as is case preparation. The Court orally set a scheduling order that discovery will commence on August 31st, amended application is due September 5th, and, the evidentiary hearing to commence on October 15, 2012

June update:

Mr. Starnes has continued to seek discovery, as authorized by the trial Court. The state has continued to resist regarding some materials. Mr. Starnes notified the state that he would be scheduling depositions for the last ten days of June and through the first ten days of July.

September Update: Multiple discovery efforts, including numerous depositions and subpoenas to obtain necessary information for preparation of Mr. Starnes' evidentiary hearing. Mr. Starnes requested an extension of time for the hearing and the remainder of the proceedings. The state did not oppose the request. Judge Macaulay submitted a request, which included Mr. Starnes' reasons for the extension, to the Supreme Court. On September 11, The Court conducted a hearing on the Attorney General's request to quash a subpoena directing that office to produce materials.

November (2012) Update: Discovery and case preparation continue with consulting experts assessments of client and issue concerning methamphetamine prevalence in Lexington County, which is unequivocally contrary to State's assertion to the jury at trial, and materials production for the same

January (2013) Update: Counsel for Starnes conducted depositions of assistant solicitors who actively participated and appealed at Mr. Starnes' retrial. The AG's office attended the same. Additional case preparation continues.

March (2013) Update: Investigation and preparation continue, including family court history and witness interviews. One of the tasks results in the realization that Counsel Leddy has a potential conflict of interest and requires substitution of mitigation investigator and attorney Kathy LaMotte to replace Mr. Leddy as counsel, who is relieved of his appointment to Mr. Starnes' case.

May (2013) Update: Intense research and development of family tree and history, including legal service to obtain family adoption records. This effort is heightened by what is believed to be the impending death of Jerry Wood, the client's only known living maternal uncle.

July (2013) Update: Discontinue services of Va family court attorney. With no mitigation investigator, I continue family history research and search to identify birth family. Counsel LaMotte passes NC bar and moves to NC. Minor complication: Maternal uncle passes away.

September (2013) Update: Litigation concerning records maintained by Lexington County Sheriff's department. Case preparation continues.

November (2013): High activity in other cases. Attempts to get K. LaMotte to engage in work.

January (2014): Intense research leads to identification of birth family at long last. Locate several members of birth family for future interviews and to collect additional information and documentation.

March (2014) Update: Hearing preparation continue with focus on state misconduct and

record citations. K. LaMotte is largely unavailable. Mitigation investigator is grounded from investigation trips due to last trimester of pregnancy.

May (2014) Update: Copying and storage issues concerning files. Research state misconduct continues.

July (2014) Update: Plan trip and travel to VA for meetings with client's mother's birth family. Mitigation investigator gives birth in June.

September (2014) Update: Request that the Court hold status conference pursuant to client's request to set PCR evidentiary hearing date. Navigate removal of LaMotte as counsel, process pro hac vice motion concerning substitution of J. Christopher Jensen as counsel, all in coordination with SCCOID. Court conducted scheduling conference concerning PCR hearing.

November (2014) Update: Parties confer on tentative mutually agreeable hearing date of May 18, 2015. Court finalizes substitution of Jensen in place of LaMotte. Hearing preparation continues.

January/February (2015) Update: Counsel Holt requests a continuance of the evidentiary hearing based on a personal matter and a hiatus. The state opposed. The Court granted the request. This impacted two other capital PCR cases, as well. Tentative PCR hearing target date is September, 2015.

June (2015) Update: Investigation. and hearing efforts reinvigorate with mitigation investigator and Holt travel extensively, developing case. Conference with expert.

August (2015) Update: Key witness contact and investigation. Preparation continues.

October (2015) Update: Mitigation travels continue at a hectic pace in three capital PCRs as mitigation investigator, who is on all three with me as well, nears the third trimester of her second pregnancy and restricted travel.

December (2015)/January(2016) Update: Sudden death of client's father necessitates numerous hours of time related to his death.

May 1, 2015 Update: State requested a status conference which the Court had scheduled for March 4, 2016 in Walhalla. The day prior to the scheduled hearing, undersigned counsel learned, while on the way to hearing in another capital PCR before Judge Macaulay, that her father was diagnosed with throat cancer. The Court continued the hearing until further notice. Mr. Zelenka and the Court have been informed of the severity of the squamous cell cancer, an ulcerated T4 tumor that involves tongue, tonsil and voice box. Undersigned has spent a great deal of time in San Antonio, Texas, navigating the the complex twists and turns of securing an accurate diagnosis, managing multiple oncologists, and making sure pain and nutrition are properly managed. Undersigned had to secure an apartment in San Antonio. Chemotherapy and radiation are finally to commence on Tuesday, May 3, 2016. The bulk of undersigned's time will be spent in Texas for the

Honorable Daniel E. Shear

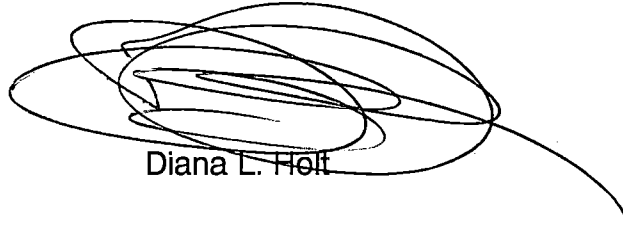
May 1, 2016

Page 5

duration, for many reasons, including that undersigned is the only family her father has.

With highest personal regards, I remain

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Diana L. Holt

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Ed Salter, III, Esq. (AgedSalter@scag.gov)
J. Christopher Jensen, Esq. (JCJ@CLL.com)

Hopkins, Debbie

From: Macaulay, Alexander S.
Sent: Monday, February 29, 2016 11:25 AM
To: 'DianaHolt@DianaHoltLLC.com'; 'JCJ@cll.com'; 'asimon@scag.gov'; Ed Salter (ESalter@scag.gov) (ESalter@scag.gov); Don Zelenka (AGDZELENKA@scag.gov); Hopkins, Debbie
Cc: Tammy Hightower (thightower@oconeesc.com)
Subject: FW: Norman Starnes v State 2011-CP-32-00830, Capital PCR

Obviously, my reference to "Pickens County" was in error and it should be the records of Lexington County (even less available to me). Necessarily, otherwise, the request for pending motions remain the same for Lexington County filings. Thank you all, again. ASM.

From: Macaulay, Alexander S.
Sent: Monday, February 29, 2016 11:13 AM
To: 'Diana Holt'
Cc: Tammy Hightower; 'JCJ@cll.com'; 'asimon@scag.gov'; 'esalter@scag.gov'; Don Zelenka (AGDZELENKA@scag.gov); Hopkins, Debbie
Subject: RE: Norman Starnes v State 2011-CP-32-00830, Capital PCR

Ladies and Gentlemen:

I trust that we are ready to proceed with the hearing in this matter, scheduled for this Friday, March 4, 2016, at 10 AM, in Courtroom 3A [not 3B] of the Oconee County Courthouse, Walhalla, SC. As for Mr. Jensen's request to proceed telephonically, please be advised that the contact number for Mr. Jensen to call will be (864) 718-1041.

Inasmuch as this is a Pickens County Case, I do not have ready access to those files. Therefore, please provide me, by e-mail, with copies of the pending motions—and any supporting memoranda—that are to be heard as well as any proposed dates for an evidentiary hearing.

Thank you all for your prompt attention to and consideration in this matter. ASM.

From: Diana Holt [<mailto:DianaHolt@dianaholtllc.com>]
Sent: Tuesday, February 23, 2016 1:08 PM
To: Macaulay, Alexander S.
Cc: Tammy Hightower; 'JCJ@cll.com'; 'asimon@scag.gov'; 'esalter@scag.gov'
Subject: RE: Norman Starnes v State 2011-CP-32-00830
Importance: High

Dear Judge Macaulay~

Mr. Jensen requests that he be allowed to participate in the status conference telephonically. Mr. Starnes suffers car sickness and reluctantly states he does not want to attend the hearing unless it will involve matters other than 6sceduling. I will be the lone ranger for the Applicant, if the Court grants the requests. I think we will all be fine. If the Court views it differently, please advise. Thank you for your time.

All my best~ dh

Diana Holt 
DianaHolt@DianaHoltLLC.com
 Diana Holt, LLC

Post Office Box 6454
Columbia, South Carolina 29260-6454
803.782.1663 (Office)
803.787.0374 (Facsimile)
803.351.8100 (Mobile)
www.dianaholtllc.com

From: Tammy Hightower [<mailto:thightower@oconeesc.com>]
Sent: Wednesday, February 10, 2016 5:01 PM
To: Diana Holt <DianaHolt@dianaholtllc.com>; 'JCJ@cll.com' <JCJ@cll.com>; 'asimon@scag.gov' <asimon@scag.gov>; 'esalter@scag.gov' <esalter@scag.gov>
Cc: 'amacaulayj@sccourts.org' <amacaulayj@sccourts.org>
Subject: Norman Starnes v State 2011-CP-32-00830
Importance: High

Please see attached hearing notification for the above listed case. Should you have any questions, please let me know.

Respectfully,

Tammy S. Hightower

Non-Jury Docket Coordinator
Oconee County Clerk of Court
P O Box 678
Walhalla, SC 29691
(864) 916-7301
thightower@oconeesc.com



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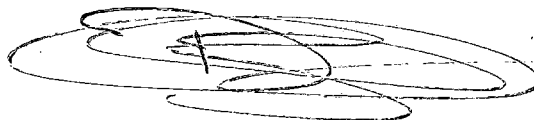
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Please again accept my apologies for neglecting this duty. On the next update, I will try to add more detail to these entries, as well as update. With highest personal regards, I remain

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Diana L. Holt

(CC recipients electronically only)

cc: Al Simon, Jr., Esq. (Asimon@scag.gov)
Ed Salter, III, Esq. (AgedSalter@scag.gov)
J. Christopher Jensen, Esq. (JCJ@cll.com)

Post Office Box 6454
Columbia, South Carolina 29260
Voice 803.782.1663
Fax 803.787.0374
Email DianaHolt@utexas.edu

February 1, 2016
The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
ATTN: Ms. Debbie Hopkins
P.O. Box 11330
Columbia, S.C. 29211-1330

RECEIVED

FEB 01 2016

Re: *Norman E. Starnes v. State*, 2011-CP-32-830

SC SUPREME COURT

Dear Ms. Hopkins:

The purpose of this letter is to provide the Court with a summary of activity in the above-mentioned case, in the last sixty days. The Court, the Honorable Alexander S. Macaulay presiding, appointed counsel to Mr. Starnes on March 21, 2011, myself and Mr. Micah Leddy. Counsel have conducted several depositions to obtain records and discovery from law enforcement, including SLED and, in Spartanburg, of the Seventh Judicial Circuit Solicitor's office, who prosecuted Mr. Starnes after Mr. Myers was recused due to a conflict.

That Solicitor's office, through Mr. Bulsa, has withheld materials from the file and has refused to provide the materials to the Court or a privilege log regarding the same. We anticipate litigation regarding the materials. That office did produce ten boxes of materials that are in the process of being scanned by a Spartanburg service. The service has promised to complete the massive job by May 27, 2011.

The Court set May 21, 2011 as the date for Mr. Starnes to file his first amended application. Mr. Starnes will be forced to request an extension in order to make a meaningful amendment, considering the ten boxes of documents, the nine volumes of ROA, the other information gathered so far during the depositions.

July Update: The copy service completed the replication of over 20,000 items from the State's file. Mr. Bulsa provided the previously withheld materials to the PCR Court and the Court has those materials for assessment. Applicant filed his first amended application for post-conviction relief. At the State's request, the PCR Court held a status/scheduling conference. The PCR Court set December 26, 2011 as the deadline for discovery to conclude and ordered that the evidentiary hearing would commence on March 1, 2012.

September Update: Lead counsel has been involved in intense preparation for the retrial of the State v. Ernest Riddle. Still, we have been advancing the investigative effort, both fact and mitigation as diligently as we are able. We are also still processing the twenty thousand documents the prosecutors provided to counsel. With the *Riddle* matter resolved, primary focus will be on advancing discovery and preparing for an evidentiary hearing.

November update: Investigation is ongoing. Applicant is scheduling depositions to commence the second week in December. Former Solicitor Gowdy, who is now a U.S. Congressman, states that he is unable to make time for a deposition in this case until the end of January. The state has filed its first interrogatories and requests to produce, which are still pending. Applicant's counsel are diligently processing information and preparing his case.

January update: Investigation is actively ongoing. We deposed Congressman Gowdy, who provided a great deal of new information, which we will pursue. We have notified Judge Macaulay on behalf of Mr. Starnes that despite our best efforts, we will need to ask the Court to continue the case, with a deadline of August 1, 2012 to complete discovery and a fall merits hearing. We are of the opinion, respectfully, that those dates are very realistic and that justice will be well-served, as will Mr. Starnes. Mr. Simon, on behalf of the State, has declared that it takes no position regarding the suggested schedule. Judge Macaulay is in the process of scheduling a telephonic status conference to discuss scheduling.

April update: The parties scheduled several depositions of prosecutors from various judicial circuits who were involved in the prosecution of Mr. Starnes, which required a great deal of coordination of schedules. Two business days before the depositions were to commence, the state filed a motion to quash as to one prosecutor and a motion for protective order regarding the state's desire to block Applicant from asking questions that go to proving a pattern and practice of misconduct. The depositions had been scheduled for April 2nd and April 9th, but did not go forward. Other discovery is ongoing, as is case preparation. The Court orally set a scheduling order that discovery will commence on August 31st, amended application is due September 5th, and, the evidentiary hearing to commence on October 15, 2012

June update:

Mr. Starnes has continued to seek discovery, as authorized by the trial Court. The state has continued to resist regarding some materials. Mr. Starnes notified the state that he would be scheduling depositions for the last ten days of June and through the first ten days of July.

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November (2012) Update: Discovery and case preparation continue with consulting experts assessments of client and issue concerning methamphetamine prevalence in Lexington County, which is unequivocally contrary to State's assertion to the jury at trial, and materials production for the same.

January (2013) Update: Counsel for Starnes conducted depositions of assistant solicitors who actively participated and appeared at Mr. Starnes' retrial. The AG's office attended the same. Additional case preparation continues.

March (2013) Update: Investigation and preparation continue, including family court history and witness interviews. One of the tasks results in the realization that Counsel Leddy has a potential conflict of interest and requires substitution of mitigation investigator and attorney Kathy LaMotte to replace Mr. Leddy as counsel, who is relieved of his appointment to Mr. Starnes' case.

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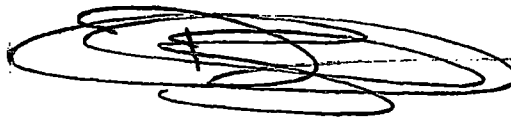
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J. Christopher Jensen, Esq. (JCJ@cjl.com)



RECEIVED

AUG 20 2014

S.C. Supreme Court

ALAN WILSON
ATTORNEY GENERAL

August 20, 2014

BY U.S. MAIL and EMAIL

The Honorable Alexander S. Macaulay
Circuit Court Judge
P.O. Drawer 428
Walhalla, SC 29691

Re: Norman Starnes, #5053 vs. The State of South Carolina
C/A No. 2011-CP-32-830

Dear Judge Macaulay:

I am writing to respectfully request a telephonic status conference to discuss scheduling matters in this capital post-conviction relief action at the Court's earliest convenience. I am notifying opposing counsel of my request by copy of this letter to Diana Holt, Esquire, Kathy LaMotte, Esquire, and Christopher Jensen, Esquire.

This morning, counsel for the Respondent received the Applicant's request for the evidentiary hearing date to be set between May 15, 2015 and June 15, 2015. In light of the amount of time that has elapsed since the Applicant's last request for a continuance in this case, and in light of the fact the last discovery related materials received by Respondent consisted of the deposition transcript of Wanda Brown (received 10-31-2012); a Motion by Applicant followed by a Response in Opposition by Respondent regarding a proposed Order seeking federal records regarding the murder victims in February 2013; and a copy of a protective order regarding a disclosure by the Lexington County Sheriff's Office (received 7-26-2013), Respondent respectfully submits that an evidentiary hearing should be convened in November or December 2014.

Sincerely,

Alphonso Simon Jr.
Assistant Attorney General

AS/dmd

cc: Diana Holt, Esquire; Kathy LaMotte, Esquire; J. Christopher Jensen, Esquire
Debbie Hopkins

Post Office Box 6454
Columbia, South Carolina 29260
Voice 803.782.1663
Fax 803.787.0374
Email DianaHolt@utexas.edu

September 22, 2012
The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
ATTN: Ms. Debbie Hopkins
P.O. Box 11330
Columbia, S.C. 29211-1330

RECEIVED

SEP 25 2012

Re: *Norman E. Starnes v. State*, 2011-CP-32-830

S.C. Supreme Court

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Honorable Daniel E. She...use

September 22, 2012

Page 3

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Diana L. Holt

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Ed Salter, III, Esq. (AgedSalter@scag.gov)
T. Micah Leddy, Esq. (Micah@LeddyLaw.com)

RECEIVED

SEP 07 2012



S.C. SUPREME COURT

**State of South Carolina
Tenth Judicial Circuit Court**

ALEXANDER S. MACAULAY
JUDGE

ROBERT B. BOWMAN
STAFF ATTORNEY

OCONEE COUNTY COURTHOUSE

POST OFFICE DRAWER 428
WALHALLA, SOUTH CAROLINA 29691-0428

TELEPHONE: (864) 638-4266
FASCIMILE: (864) 638-4267

amacaulayj@ssccourts.org

September 6, 2012

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

Re: *Norman Starnes vs. State of South Carolina; CA No.: 2011-CP-32-830*

Dear Mr. Shearouse:

Enclosed please find the Motion for Continuance Request, as well as a letter in support of this motion request, for the above-referenced matter. Diana L. Holt, Esquire, counsel for Mr. Starnes on this case, has requested this continuance as she and her team have been unable to adhere to the scheduling order due to the complex and dynamic nature of this case. As a result, Ms. Holt has sought assistance from other lawyers willing to assist on a *pro bono* basis with discrete areas of hearing preparation.

Ms. Holt has requested an extension of time until March 2013, at which time she will be ready for trial. I am scheduled to be in the 10th Circuit next year and in Anderson County all of March 2013. I trust you will find this in order, however, please do not hesitate to advise me if there are any questions.

Thanking you for your attention to and consideration in this matter, and with kind personal regards, I remain,

Sincerely,

A handwritten signature in black ink, appearing to read "A. Macaulay", with a long, sweeping underline that extends to the right.

Alexander S. Macaulay

ASM:so

Enclosures

cc: Honorable Jean H. Toal, Chief Justice
Diana L. Holt, Esquire (DianaHolt@utexas.edu)
T. Micah Leddy, Esquire (Micah@LeddyLaw.com)
Edgar Salter, III, Esquire (AGESALTER@scag.gov)
Al Simon, Jr., Esquire (ASIMON@scag.gov)

REQUEST OR MOTION AND ORDER

ATTORNEY SECTION:

Case Name Starnes v. State

Case or Indictment Number 2011-CP-32-830

I am respectfully move for a CONTINUANCE in the above-named case which is currently scheduled on the docket for the _____, 2012 Term of Court or to commence October 15, 2012 (date certain), due to

Despite epic efforts to prepare this case for evidentiary hearing for the currently scheduled date, we cannot go forward in Oct. Our discovery efforts are dynamic, in that we have conducted numerous depositions and subpoenaed a dozen plus agencies for documents, as we learn of our need for them. As these things go, the discovery of one trove of information leads to discovery of multiple other troves. We have identified the need for the assistance of two experts, about which we notified the state. A very real problem has been the lack of experience and ability on Mr. Leddy's behalf. He acknowledges his shortfalls regarding litigation of a death penalty PCR. He concedes his focus has largely remained on developing his private practice. It has hampered preparations of Mr. Starnes' case. This reason is not listed to demean Mr. Leddy. It is, however, a significant part of our inability to go forward in October. He was recruited to the case as part of an effort between SCCID and veteran capital litigators with best intentions to train younger lawyers for capital PCR work. Mr. Leddy is trying to make progress. We have sought to remedy the shortfall by engaging a veteran capital litigator, Chris Jensen, (pro bono) for the trial of the case. We will have assistance from other attorneys for discrete areas of case work, pro bono, as well.

and my signature certifies the following, pursuant to Rule 11(a), SCRCP:

(1) I have communicated with all other attorneys involved in the case and there are no objections to this request; or

If there is an objection to this request, please explain fully, using additional pages as necessary. _____; and

N/A(2) I have filed a Motion for Continuance with the Clerk of Court and paid the appropriate filing fee, or, in criminal cases, notified the appropriate representative from the Office of the Solicitor of this request and this case is not set for trial at this term of court, S.C. Code Ann. § 1-7-330.

Upon receiving the completed Request/Motion and Order, I will confirm that the original is filed with the Clerk of Court and that copies have been provided to all attorneys involved in the case.

August 31, 2012



Attorney Making Request

DIANA L. HOLT

Please Print Attorney's Name

COURT SECTION:

_____ Request for Protection **OR** _____ Motion for Continuance

_____ GRANTED

_____ DENIED

_____, 2012
RECEIVED

SEP 07 2012

S.C. SUPREME COURT

Circuit Court Judge

Post Office Box 6454
Columbia, South Carolina 29260
Voice 803.782.1663
Fax 803.787.0374
Email DianaHolt@utexas.edu

August 29, 2012
VIA Electronic and Facsimile Transmission ((864) 638-4267)
The Honorable Alexander Stephens Macaulay
P. O. Drawer 428
Oconee County Courthouse
Walhalla, SC 29691-0428
AMacaulayLC@sccourts.org

Re: *Starnes v. State*, 2011-CP-32-830- Continuance request, unopposed

Dear Judge Macaulay:

I write respectfully to request modification of the current scheduling order. Currently, discovery is scheduled to conclude on August 31st, applicant is to file an amended application on September 7th, and the evidentiary hearing is scheduled the week of October 15th. We have consulted with counsel for the state, Mr. Simon and Mr. Salter, and they allowed that the state "takes no position on the request, but does not oppose the request." The state wants the request to be put "on the record." We agree. The parties have discussed a possible January hearing date (or February, if need be), with discovery closing and an amended application scheduled for forty-five days prior to the start of the evidentiary hearing.

As for the reasons for the requested continuance, I informed the state of the following in an email (some grammatical edits have been made to the originals):

I write to ask if you would consent to a continuance until March 2013. Despite epic efforts, we cannot be prepared for a hearing in the case this year. In this case, we have encounter situations that I haven't ever encountered before in my two decades of capital work. Absolutely nothing about this case is what or how it first appeared to be. In fact, it is now different than it appeared to be three months ago. Additionally, the fact that Mr. Starnes's represented himself made our jobs as his PCR team much more difficult, instead of easier. We have a significant list of things yet to be done. The list far outstrips our ability to complete the items on it. We are taking remedial measures. Last month we filed paperwork with the Bar Admissions office to have J. Christopher Jensen admitted *Pro Hac Vice* to obtain his great trial skills (*pro bono*) on Mr. Starnes' behalf. We have also sought assistance from other lawyers who are willing to assist on a *pro bono* basis with discrete areas of hearing preparation.

We will continue with discovery at a faster pace. We will file a supplemental PCR application and will update our discovery responses by September 6th, and of

course, will continue to update between then and March.

Please consent to a continuance until March, 2013. We will not seek another continuance. We commit to filing our PCR application 45 days prior to the March hearing date. Please rest assured that we have been endeavoring to meet the current schedule, but have failed. I want to point out that there is only one veteran capital litigator, me, on a team that is comprised of a first year lawyer mitigation investigator and a lawyer who has never done any capital work, let alone capital PCR work. In saying that, I do not intend to demean them. Their inexperience is a significant fact to consider not a negative judgment of their abilities.

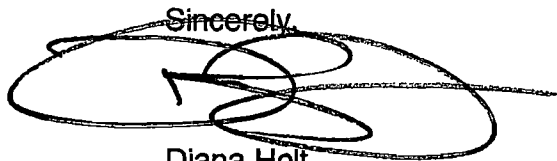
Since that communication, we have conducted a number of depositions and served numerous subpoenas *duces tecum* for materials from several agencies and the like. We also supplemented the continuance request, after the state sought more information, with the following in an email to the state:

Nothing about Mr. Jensen's appearance has anything to do with us needing more time, rest assured of that. As I said, to the contrary, adding him was to remedy acute shortfalls in experience and abilities. I thought for a while that his addition could possibly be enough, but it is not.

Subsequent to the email exchanges, I had a phone conversation with Mr. Salter and Mr. Simon about the request for continuance in which I was more pointed about the lack of experience and the impact of that on the case preparation. Let me reiterate that the issue is factual, not meant to embarrass or demean Mr. Starnes' other legal team members. I also informed Mr. Simon and Mr. Salter that we had identified the need for experts in pharmacology and in PTSD, who we have contacted. They are not able to commence work until we take care of other matters related to retaining them as experts. During that call, we also established that we all are, so far, available to have the hearing in January, if that suits the Court.

We can put all of this officially on the record when the Court convenes the hearing on the state's motion to quash our subpoena for documents from the Attorney General's Office, if that also suits the Court. With highest personal regards, I remain

Sincerely,

A handwritten signature in black ink, appearing to be "Diana Holt", written over a horizontal line.

Diana Holt

(All cc recipients electronically only)

cc: T. Micah Leddy, Esq. (Micah@LeddyLaw.com)
Edgar Salter, III, Esq. (AGESALTER@scag.gov)
Al Simon, Jr., Esq. (ASIMON@scag.gov)

Post Office Box 6454
Columbia, South Carolina 29260
Voice 803.782.1663
Fax 803.787.0374
Email DianaHolt@utexas.edu

RECEIVED

JUN 11 2012

June 8, 2012

The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court **S.C. SUPREME COURT**
ATTN: Ms. Debbie Hopkins
P.O. Box 11330
Columbia, S.C. 29211-1330

Re: *Norman E. Starnes v. State*, 2011-CP-32-830

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April update: The parties scheduled several depositions of prosecutors from various judicial circuits who were involved in the prosecution of Mr. Starnes, which required a great deal of coordination of schedules. Two business days before the depositions were to commence, the state filed a motion to quash as to one prosecutor and a motion for protective order regarding the state's desire to block Applicant from asking questions that go to proving a pattern and practice of misconduct. The depositions had been scheduled for April 2nd and April 9th, but did not go forward. Other discovery is ongoing, as is case preparation. The Court orally set a scheduling order that discovery will commence on August 31st, amended application is due September 5th, and, the evidentiary hearing to commence on October 15, 2012

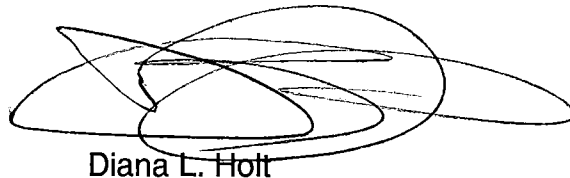
June update:

Mr. Starnes has continued to seek discovery, as authorized by the trial Court. The state has continued to resist regarding some materials. Mr. Starnes notified the state that he would be scheduling depositions for the last ten days of June and through the first ten days of July.

Honorable Daniel E. She...se
June 8, 2012
Page 3

With highest personal regards, I remain

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Diana L. Holt

(CC recipients electronically only)

cc: Al Simon, Esq. (Asimon@scag.gov)
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January 31, 2012
The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
ATTN: Ms. Debbie Hopkins
P.O. Box 11330
Columbia, S.C. 29211-1330

RECEIVED

FEB 01 2012

S.C. SUPREME COURT

Re: *Norman E. Starnes v. State*, 2011-CP-32-830

Dear Ms. Hopkins:

The purpose of this letter is to provide the Court with a summary of activity in the above-mentioned case, in the last sixty days. The Court, the Honorable Alexander S. Macaulay presiding, appointed counsel to Mr. Starnes on March 21, 2011, myself and Mr. Micah Leddy. Counsel have conducted several depositions to obtain records and discovery from law enforcement, including SLED and, in Spartanburg, of the Seventh Judicial Circuit Solicitor's office, who prosecuted Mr. Starnes after Mr. Myers was recused due to a conflict.

That Solicitor's office, through Mr. Bulsa, has withheld materials from the file and has refused to provide the materials to the Court or a privilege log regarding the same. We anticipate litigation regarding the materials. That office did produce ten boxes of materials that are in the process of being scanned by a Spartanburg service. The service has promised to complete the massive job by May 27, 2011.

The Court set May 21, 2011 as the date for Mr. Starnes to file his first amended application. Mr. Starnes will be forced to request an extension in order to make a meaningful amendment, considering the ten boxes of documents, the nine volumes of ROA, the other information gathered so far during the depositions.

July Update: The copy service completed the replication of over 20,000 items from the State's file. Mr. Bulsa provided the previously withheld materials to the PCR Court and the Court has those materials for assessment. Applicant filed his first amended application for post-conviction relief. At the State's request, the PCR Court held a status/scheduling conference. The PCR Court set December 26, 2011 as the deadline for discovery to conclude and ordered that the evidentiary hearing would commence on March 1, 2012.

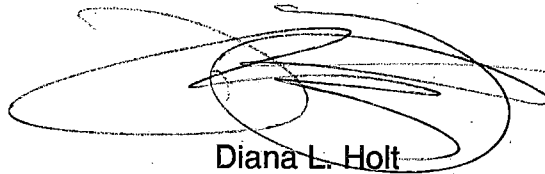
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With highest personal regards, I remain

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Diana L. Holt

(CC recipients electronically only)

cc: Al Simon, Esq. (Asimon@scag.gov)

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November 29, 2011
The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
ATTN: Ms. Debbie Hopkins
P.O. Box 11330
Columbia, S.C. 29211-1330

RECEIVED

DEC 1 2011

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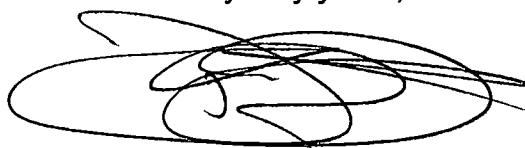
Honorable Daniel E. Sirose
November 29, 2011
Page Two

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cc: Al Simon, Esq. (Asimon@scag.gov)
T. Micah Leddy, Esq. (Micah@LeddyLaw.com)

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Lee S. Alford, Circuit Court Judge

6/3/09
RECEIVED

JUN - 3 2009

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

INITIAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Chief Appellate Defender

ELIZABETH FRANKLIN-BEST
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEYS FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. The trial judge committed reversible error in the guilt phase by refusing to instruct the jury on voluntary manslaughter.
2. This Court should overrule *State v. Reed* and *State v. Brewer* and hold that capital defendants do not have the right to represent themselves at trial.
3. Starnes did not knowingly and voluntarily waive his right to counsel during the sentencing phase of his trial.

STATEMENT OF THE CASE

On May 8, 2000, the Supreme Court reversed the two murder convictions and death sentence of Norman Starnes in this case due to a defective self-defense instruction. *State v. Starnes*, 340 S.C. 312, 531 S.E.2d 907 (2000). By his own admission, Starnes shot and killed Bill Welborn and Jared Champlin in his home the night of January 8, 1996, but maintained that he had done so in self-defense. The Court reversed because:

The facts presented at trial entitled appellant to a self-defense charge in regard to both shootings. Appellant testified Welborn pointed a gun at him and he believed Champlin was armed. Appellant did not have to wait for Welborn or Champlin to fire or aim at him before acting in self-defense. Accordingly, appellant was entitled to a charge instructing the jury he did not have to wait before acting in self-defense. Refusal to charge this request was reversible error.

531 S.E.2d at 914. The present appeal is from the retrial of that case. The only two significant differences between the two trials were that on retrial (1) Starnes was permitted to represent himself and (2) the trial judge refused to instruct the jury on voluntary manslaughter, even though manslaughter had been charged at the prior trial based on the exact same evidence.

On November 8 through 15, 2007, following extensive pretrial hearings and jury selection, Norman Starnes again stood trial in Lexington County, before Judge Lee S. Alford and a jury, on the 1996 indictment charging him with murdering Welborn and Champlin. (Judge Alford replaced Judge Marc H. Westbrook, who presided at Starnes' first trial and a number of pretrial hearings in the present case, after Judge Westbrook's tragic death in a 2005 automobile accident. In addition, the Seventh Circuit Solicitor's Office prosecuted Starnes after the Eleventh Circuit Solicitor voluntarily recused himself and his

office from the case.) The State again sought the death penalty, relying on three statutory aggravating circumstances:

- (1) “Two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct” [*S.C. Code Section 16-3-20(C)(a)(9)*];
- (2) “The murder was committed while in the commission of . . . robbery while armed with a deadly weapon” [*Section 16-3-20(C)(a)(1)(d)*]; and
- (3) “The murder was committed while in the commission of . . . larceny with the use of a deadly weapon” [*Section 16-3-20(C) (a) (1) (e)*].

Starnes advanced four statutory mitigators:

- (1) “The defendant has no significant history of prior criminal conviction involving the use of violence against another person” [*S.C. Code 16-3-20(C)(b)(1)*];
- (2) “The murder was committed while the defendant was under the influence of mental or emotional disturbance” [*Section 16-3-20(C)*];
- (3) “The victim was a participant in the defendant’s conduct or consented to the act” [*Section 16-3-20(C)(b)(3)*]; and
- (4) “The defendant was provoked by the victim into committing the murder” [*Section 16-3-20(C) (b) (8)*].

The judge also instructed the jury:

[T]he defendant has presented evidence of non-statutory mitigating circumstances concerning his adaptability to prison life. In addition to this non-statutory mitigating circumstance, you may consider any other non-statutory mitigating circumstances that you find exist.

Tr. p. 2804, lines 12-17.

Starnes once again testified that he killed Welborn and Champlin in self-defense, believing that both men were armed, wired on methamphetamine, and at that moment intended to kill both him and the drug dealer, Jody Fogle, he had summoned at their request. Tr. p. 2086, line 13 – p. 2090, line 19; tr. p. 2094, line 17 – p. 2096, line 8; tr. p. 2106, lines 1-6; tr. p. 2118, lines 9-11; tr. p. 2131, lines 4-7. “This case was a drug deal that went bad in my home,” Starnes summarized. Tr. p. 2096, lines 9 and 10. Jody Fogle largely corroborated Starnes’ account of the incident. Tr. p. 1850, line 6 – p. 1860, line 12.

The judge instructed the jury on murder and self-defense, but refused to charge voluntary manslaughter. The jury found Starnes guilty of murdering Welborn and Champlin and, at the penalty phase, recommended a sentence of death, having found the three statutory aggravators advanced by the State. The judge then sentenced Starnes accordingly.

ARGUMENT

1.

The trial judge committed reversible error in the guilt phase by refusing to instruct the jury on voluntary manslaughter.

The evidence at Norman Starnes' guilt phase retrial mirrored the evidence presented at his first trial in all significant respects. See *State v. Starnes*, 531 S.E.2d 909-911.

Starnes testified that, the evening of the incident, Bill Welborn had stuck "a metal object up to my head," which could have been a gun or a cigarette lighter, and threatened to "blow his fucking brains out." Tr. p. 2085, line 6 – p. 2086, line 8. The cashier at the bar where Starnes, Welborn and Jared Champlin were shooting pool corroborated Starnes' account of the threat. Tr. p. 1778, line 20 – p. 1779, line 7.

As to the killing of Welborn and Champlin shortly after he returned home with drug-dealer Jody Fogle, Starnes testified:

[A]s Welborn and I were in the bedroom doorway, I heard somebody cussing and said, "I'm going to kill you, you motherfucker." I turned around. And when I turned around, I saw Jared pulling his gun and pointing it at Jody's chest. At that time, I ran into the bedroom and got my pistol off the headboard of my bed. I came back out. I looked through the bedroom doorway and I did not see anybody and I did not know where they were at, so I went to the door to exit. When I went to the door to exit, I heard somebody holler, "Whoa, [where the fuck are you going?]" I turned around. When I turned around, Bill Welborn had a gun, pointing it at me. I shot Bill Welborn and then turned and shot Jared Champlin. ... [A]pparently, when Jared pulled the gun on Jody, Bill Welborn went over and got the gun from Jared. I did not see that.

Tr. p. 2086, line 13 – p. 2090, line 19; tr. p. 2093, lines 16-18. Jody Fogle largely corroborated Starnes' account of the incident. Tr. p. 1851, line 9 – p. 1857, line 8.

Starnes testified that Welborn and Champlin were “out of their minds that night” on methamphetamine. Tr. p. 2104, lines 11-15; tr. p. 2106, lines 1-6. Fogle testified that Champlin acted “[l]ike he was on crack.” Tr. p. 1852, lines 17-19. He looked “[e]vil” and had “crazy eyes,” Fogle added. Tr. p. 1858, lines 9-13. Key State’s witness Gwendolyn Bailey, Starnes’ former girlfriend and the person who turned him in to the police, testified that Welborn and Champlin appeared to be “hyper, on drugs, alcohol” earlier that night. Tr. p. 1347, line 23 – p. 1348, line 6. She told the police that the two men were “out of their minds when they came in the restaurant. ... [T]hey were hyped up, and I have never seen them like that before.” Tr. p. 1363, line 21 – p. 1364, line 8.

In its earlier opinion in this case, the Supreme Court summarized this evidence as follows:

Immediately prior to the shooting, appellant observed Champlin hold the gun to Fogle’s head and threatened to shoot him, apparently because the intended drug deal, which appellant had arranged, had gone awry. Welborn then pointed a gun at appellant and threatened to kill him as he attempted to leave. Unaware Champlin had passed his weapon to Welborn when appellant was in the bedroom, appellant erroneously believed Champlin was armed and intended to kill him.

531 S.E.2d at 912. Thus, the guilt-phase evidence presented at both trials was virtually identical. Judge Westbrook charged voluntary manslaughter, but Judge Alford did not.

At an in-chambers charge conference, Starnes unequivocally requested a jury charge on voluntary manslaughter. Tr. p. 2178, lines 16-19. He also submitted accurate written requests to charge manslaughter. ROA pp. *. The Solicitor agreed that “there is provocation is somebody pulls a gun on you in your house.” Tr. p. 2190, lines 15 and 16. He nevertheless objected to a charge on manslaughter, fearing a situation such as occurred

in *State v. Wharton*, 381 S.C. 209, 672 S.E.2d 786 (2009), where the defendant's conviction for voluntary manslaughter in a murder prosecution was found to be without evidentiary support on appeal and resulted in a complete acquittal. Tr. p. 2194, lines 8-21. (In *Wharton*, though, manslaughter was requested by the State and charged over the defendant's objection.)

The judge ultimately decided not to charge manslaughter for that reason, but added:

The defendant, Mr. Starnes, who is representing himself, does not request specifically the court to charge voluntary manslaughter, neither does he request that it not be charged [...] ... His position is basically no position, that he requests the court to charge the appropriate law based on the facts of the case. That's his position. And I have asked him two or three times what his position is. That's what he stated to the court.

Tr. p. 2239, line 25 – p. 2241, line 16. But he clearly understood Starnes' "theory of the case:"

He was trying to get away and he had no choice but to defend himself, because Welborn was pointing a pistol at him, and he thought he was going to kill him and he defended himself. He then turned and shot Champlin because he had seen Champlin with a pistol shortly before that, threatening ... and he thought that Champlin had a pistol and would shoot him, so he shot Champlin.

Tr. p. 2242, lines 10-18. He *did* misapprehend the relationship between self-defense and voluntary manslaughter:

Now, obviously, if he was angry and upset and out to get these two men, then that would negate self-defense, although it might bring into play voluntary manslaughter. It would negate the defense of self-defense, because you can't go there with the intent of hurting somebody, mad at them, and then all of a sudden claim self-defense.

Tr. p. 2243, lines 3-8. The judge reiterated, “[Starnes] has not requested that I even charge voluntary manslaughter, just to charge the law on the facts.” Tr. p. 2243, lines 10-15.

When given the chance, Starnes advised the judge, “I disagree with that, Your Honor.” Tr. p. 2250, lines 9-15. At this point, the judge became exasperated with Starnes’ insistence upon a charge on voluntary manslaughter. Tr. p. 2258, line 12 – p. 2259, line 6. He accused Starnes of “changing your position.” Tr. p. 2260, line 22 – p. 2261, line 25.

The judge instructed the jury on murder and self-defense, but not manslaughter. Tr. p. 2294, line 11 – p. 2318, line 5. Starnes took exception to the omission of voluntary manslaughter, citing (in addition to the South Carolina cases he had already cited) *Beck v. Alabama*, 447 U.S. 625, 638 (1980), which holds, “[I]f the unavailability of a lesser included offense instruction enhances the risk of an unwarranted conviction, [the State] is constitutionally prohibited from withdrawing that option from the jury in a capital case” by the Due Process Clause of the Fourteenth Amendment. Tr. p. 2318, lines 15-18. Against all evidence to the contrary, the judge continued to insist that Starnes had never even requested voluntary manslaughter. Tr. p. 2324, line 7 – p. 2326, line 1.

Voluntary manslaughter is defined as the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. *State v. Damon*, 285 S.C. 125, 328 S.E.2d 628 (1985). A refusal to charge voluntary manslaughter is justified only when there is absolutely no evidence which would tend to reduce murder to that lesser-included offense. *State v. Gilliam*, 296 S.C. 395, 373 S.E.2d 596 (1988). Moreover, as Starnes correctly indicated, *Beck v. Alabama* holds that “a jury in a capital case must be permitted to consider all lesser included non-capital offenses to the crime of capital murder when

supported by the evidence” under the Due Process Clause of the Fourteenth Amendment. *State v. Patterson*, 285 S.C. 5, 327 S.E.2d 650, 652 (1984).

In deciding whether a charge on voluntary manslaughter is required, the evidence is viewed in the light most favorable to the defendant. *State v. Byrd*, 323 S.C. 319, 474 S.E.2d 430 (1996).

In determining whether the act which caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing.

State v. Gardner, 219 S.C. 97, 64 S.E.2d 130, 134 (1951).

The provocation by the deceased must be the direct and controlling cause of the passion, and it must be such as naturally and instantly to produce in the minds of persons ordinarily constituted the highest degree of exasperation, rage, anger, sudden resentment, or terror, rendering the mind incapable of cool reflection.

State v. Davis, 50 S.C. 405, 27 S.E.2d 905, 911 (1897) (quotation marks and citation omitted).

The threat of an imminent deadly assault is sufficient to require an instruction on voluntary manslaughter. *State v. Jackson*, 301 S.C. 41, 389 S.E.2d 650 (1990). The Court has previously observed that “[t]here can be little argument” that an unprovoked attack with a deadly weapon constitutes legal provocation sufficient to warrant a charge on manslaughter. *State v. Knoten*, 347 S.C. 296, 555 S.E.2d 391, 397 (2001). This includes pointing a gun at the defendant with apparent deadly intent. *State v. Penland*, 275 S.C. 537, 273 S.E.2d 765 (1981).

Starnes testified, “I didn’t kill [Welborn and Champlin] with malice aforethought[.] ... I was scared and I was frightened.” Tr. p. 2095, line 24 – p. 2096, line 8. Fear can constitute a basis for heat of passion to support voluntary manslaughter. *State v. Wiggins*, 330 S.C. 538, 500 S.E.2d 489 (1998).

In short, the evidence presented during the guilt-phase of Starnes’ trial was more than sufficient to warrant a charge on voluntary manslaughter, as Judge Westbrook (and the Eleventh Circuit Solicitor) recognized at Starnes’ first trial. Its omission, as Starnes argued below, violated both South Carolina law and the Due Process Clause of the Fourteenth Amendment.

The error apparently stemmed from Judge Alford’s belief that the heat of passion necessary for manslaughter “would negate the defense of self-defense.” Tr. p. 2243, lines 3-

8. But in fact:

Both self-defense and the lesser included offense of voluntary manslaughter should be submitted to the jury and supported by the evidence. The rationale for this rule is that the jury may fail to find all the elements of self-defense but could find sufficient legal provocation and heat of passion to conclude the defendant was guilty of voluntary manslaughter.

State v. Gilliam, 296 S.C. 395, 373 S.E.2d 596, 597 (1988); see, also, *State v. Lowry*, 315 S.C. 396, 434 S.E.2d 272 (1993). More to the point:

The defendant may have intended to kill the deceased “because he wanted to kill him,” and yet it would not be murder if he took his life under sudden heat and passion and upon a sufficient legal provocation.

State v. Rochester, 72 S.C. 194, 51 S.E. 685, 688 (1905). Self-defense is “a justification or excuse for a homicide.” *State v. Bryant*, 336 S.C. 340, 520 S.E.2d 319, 322 (1999). In other

words, the *mens rea* for voluntary manslaughter (heat of passion) does not negate – and may even coexist with – self-defense.

In conclusion, the trial judge's refusal to instruct the jury on voluntary manslaughter as to both Welborn and Champlin was reversible error, so the Court should reverse Starnes' convictions for murder, vacate his death sentence, and remand for further proceedings.

This Court should overrule *State v. Reed*¹ and *State v. Brewer*² and hold that capital defendants do not have the right to represent themselves at trial.

At this second trial, Starnes represented himself. During a pre-trial hearing conducted on August 18, 2003, Starnes complained that (1) it was taking too long to try him again, and (2) his attorneys were not compelling the State to produce evidence to which he believed he was entitled. Starnes also informed the judge that he wanted “hybrid representation” for his trial. He wanted to conduct the *voir dire* and his own opening argument. The judge asked one of Starnes’s attorneys (the other attorney was out of the country) for his position. The attorney responded that neither hybrid nor *pro se* representation was in Starnes’s best interest. August 18, 2003 hearing, page 33, line 11 to p. 34, line 16. The judge explained that Starnes would not be allowed hybrid representation. Having denied that request, the judge then asked Starnes whether he wanted to go forward with attorneys, or represent himself. Because one of Starnes’s attorneys was unavailable, Starnes did not wish to make the decision at that time. The judge, however, engaged in the *Faretta*³ colloquy at that hearing. The court ruled that Starnes would be allowed to proceed *pro se*. August 18, 2003 hearing, p. 61, lines 1-3.

The Faretta colloquy

At this hearing on August 18, 2003, the judge asked him if he knew what he was charged with, and the sentences he faced. Tr. p. 17, line 2 – p. 18, line 1. He asked if he

¹ 332 S.C. 35, 503 S.E.2d 747 (1998).

² 328 S.C. 117, 492 S.E.2d 97 (1997).

knew the rules of evidence in South Carolina (Tr. p. 18, line 20 – p. 21); if he knew what hearsay is (Tr. p. 19, line 22 – p. 20, line 4); the rule of relevance, and did he know the South Carolina Rules of Criminal Procedure? Tr. p. 20, lines 5 – p. 21, line 18. The judge asked if he realized “in a capital case, there are some particular rules of law that apply in a capital case that may not apply otherwise?” Tr. p. 23, lines 7-11. The judge asked him if he was familiar with *voir dire* in capital cases Tr. p. 37, line 10 – p. 38, line 14; if he understood his 5th amendment rights (Tr. p. 51, line 10 – p. 52, line 13); if he knew the elements of murder (Tr. p. 52, line 14 – p. 53, line 12); if he knew what defenses he may have (Tr. p. 53, line 12 – p. 54, line 6); if he understood what lesser-included offenses were (Tr. p. 54, lines 7-22). The judge asked how old Starnes was (Tr. p. 13, lines 16-18); how far he went in school (Tr. p. 13, lines 19-22); what kind of work he had done (Tr. p. 13, line 22 – p. 14, line 1); had he ever been treated for mental illness (Tr. p. 14, lines 2-5); had he taken any medication in the previous 24 hours (Tr. p. 14, lines 6-8); was he under the influence of medications, drugs, or alcohol; (Tr. p. 14, lines 6-12); did he have any physical, emotional, nervous or mental condition that would prevent him from understanding the days events (Tr. p. 14, line 13 – p. 15, line 1); had he been examined for competency (Tr. p. 15, lines 2-14); had he ever studied the law (Tr. p. 15, line 15 – p. 16, line 2); and, had he been in criminal court before? Tr. p. 16, lines 3-25. At the March 11, 2004 hearing, the court remarked that it had gone through “all of the *Faretta* factors with him pretty thoroughly . . .” March 11, 2004 hearing, p. 3, lines 14-19. The *Faretta* colloquy failed to query Starnes regarding any capital sentencing issues.

³ *Faretta v. California*, 422 U.S. 806 (1975).

On August 27, 2003, Starnes withdrew his motion to proceed *pro se*. August 27, 2003 hearing, p. 85, line 25 – p. 86, lines 3.

At the later March 11, 2004 hearing Starnes again requested hybrid representation because his “main focus” was to *voir dire* the jury and make the opening statement, but was again denied. (March 11, 2004 hearing, p. 4, line 15 – p. 6, line 15). He also complained again that it was taking too long to try him, and that he wanted the discovery to which he believed he was entitled. March 11, 2004 hearing, p. 5, lines 10-15. Starnes informed the judge that he felt that he needed to proceed *pro se* so he could compel the State to try him and to release the evidence. March 11, 2004 hearing, p. 6, lines 10-15. Attorneys John Delgado and William Nettles (Nettles represented Starnes during his first trial) were appointed stand-by counsel. March 11, 2004 hearing, p. 22, lines 14 – p. 23, line 2. Starnes asked for, among other things, a law clerk to help him with his case. The judge denied the request. March 11, 2004 hearing, p. 20, lines 5-18.

At a later hearing, on April 29, 2005, the judge strongly suggested that Starnes reconsider his decision to proceed *pro se*. The judge, however, did not believe that he had any ability to stop him:

“I don’t know that I am in a position to do anything or change anything, but my own feeling is that I think you are in some real serious trouble in terms of preparing for this case.

There are just some things here that—and just from my experience from going from hearing to hearing to hearing, things keep popping up that you don’t seem to anticipate; and you are not supposed to anticipate them . . .

This *pro se* thing, you may need to take another look at. You may need to think about it again. I’m not telling you I

can even change it. It may be too late to change it. I don't know. . .

You are going to find yourself at some point overwhelmed. The problem is you are going to find yourself overwhelmed at a time when your head should be very clear to get ready for trial. . .

I'm not telling you what to do. It's up to you to decide how you are going to do with it. The Constitution says you have the right to do that, but I think I have a duty as the judge in this thing, just from my experience and seeing what is going to come, of just basically telling you I see some real problems coming down the line on this. . . It's up to you to make those decisions."

April 29, 2005 hearing, p. 372, line 16 – p. 374, line 24.

Even a local legislator, state Senator Jake Knotts, was concerned about *pro se* representation in this capital case, and was prepared to address it in legislation related to peremptory strikes. Senator Knotts, of Lexington County—where this case was tried—was concerned about capital defendants having access to juror questionnaires. Apparently another *pro se* litigant, in a non-capital case, wrote letters to jurors after his conviction, asking about their deliberations in his case. Having access to the questionnaires, he also had access to their personal information, including their addresses. To allay that concern, Starnes's stand-by counsel agreed to keep the juror questionnaires in their possession, and not with Starnes. April 29, 2005 hearing, p. 282, line 9 – p. 285, line 14.

Starnes represented himself during the guilt and sentencing phases of his capital trial. The testimony Starnes presented in mitigation during the penalty phase is 67 pages of transcript. Tr. pp. 2700-2767. At his first trial, and represented by lawyers, the penalty phase transcript is 245 pages long, including the testimony of an expert, Diane

Follingstad, who testified about Starnes' adaptability to prison. First trial, Tr. pp. 3138-3383. Starnes did not call any experts during his second trial. He was convicted, and again sentenced to death.

Both *Reed* and *Brewer* provide that capital defendants have the right to represent themselves at trial provided they properly waive their rights to counsel as required by *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). To waive the right to counsel, a defendant must do so "knowingly and voluntarily." Knowingly and voluntarily waiving right to counsel means that a defendant 'know[] what he is doing and his choice is made with eyes open.' *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279, 63 S.Ct. 236, 87 L.Ed. 268 (1942). To the extent that these two state cases permit *pro se* representation by a defendant on trial for his life, they should be overruled.

Faretta must now be considered in light of the significant developments in capital litigation that have occurred since *Faretta* was first decided in 1975. The capital sentencing structure of the modern day capital trial is much more complex than the *Faretta* court contemplated, and provides a reason to circumscribe the exercise of *Faretta* rights in this narrow context. See *Indiana v. Edwards*, 128 S.Ct. 2379, 2384, 171 L.Ed.2d 345 (2008) (citing other cases limiting the right to self-representation). Indeed, at the time *Faretta* was decided, the country was recognizing a moratorium on death penalty litigation. See *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972).

As the United States Supreme Court in *Faretta* concedes, the question of the right to self-representation "[i]s not an easy question." *Id.* at 807. The Court however, held that the right is necessarily implied from the structure of the Amendment ("The right to

defend is given directly to the accused; for it is he who suffers the consequences if the defense fails”). *Id.* at 819.

The right to defend is personal. The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction. It is the defendant, therefore, who must be free personally to decide whether in his particular case counsel is to his advantage. And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of “that respect for the individual which is the lifeblood of the law.” (quoting *Illinois v. Allen*, 397 U.S. 337, 350-351, 90 S.Ct. 1057, 1064, 25 L.Ed.2d 353.).

Id. at 834. See *McKaskle v. Wiggins*, 465 U.S. 168, 178, 104 S.Ct. 944 (1984) (“The defendant’s appearance in the status of one conducting his own defense is important in a criminal trial, since the right to appear *pro se* exists to affirm the accused’s individual dignity and autonomy.”)

Notably, neither *Faretta* nor *McKaskle* are capital cases.

The Court’s analysis could not have predicted the complex evolution of capital litigation in this country. While it may have been true in 1975 to hold that a defendant essentially carries the full weight of his ill-considered trial strategy, such arguments today fail to consider the resonant effects of capital litigation. In other words, a capital conviction and death sentence is not simply the concern of the condemned inmate, but implicates weighty interests of the state, and other inmates convicted of capital offenses. For these reasons, *pro se* representation in a capital case falls beyond the compass of *Faretta* and, respectfully, this Court should undertake to circumscribe the practice.

A. Weighty interests of the State

The State has significant and weighty interests in a capital conviction that are not otherwise present with the conviction of a non-capital defendant. The Due Process Clause of the Fourteenth Amendment imposes on States duties consistent with their sovereign obligation to ensure “that justice shall be done” in all criminal prosecutions.” *Cone v. Bell*, 129 S.Ct. 1769 (2009) (quoting *Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935)). See also *United States v. Agurs*, 427 U.S. 97, 111, 96 S.Ct. 2392, (1976). However, there are unique considerations for the State in the capital litigation context that states must honor to ensure the fair administration of justice in such cases. Justice Stevens, in his concurrence in *Baze v. Rees*, 128 S.Ct. 1520 (2008) particularly notes, for example, a concern about the existence of rules that deprive defendants of a trial by jurors representing a fair section of the community, a higher risk of error because of the egregious nature of capital crimes, the risk of discriminatory application of the death penalty, and the irrevocable nature of the punishment. *Id.* at 1550-1551. Also, the State has an interest in heightened procedural safeguards for insuring a fair sentencing hearing. *Lockett v. Ohio*, 438 U.S. 586, 98 S.Ct. 2954 (1978). The State has an interest in the competency of the condemned inmate. *Atkins v. Virginia*, 536 U.S. 304 (2002). Significantly, the State has an interest in the method of execution and challenges to those methods. *Baze, supra*. And, additionally, the State has an interest in the amount of time that inmates are on death row awaiting execution, and in the reversible error rate of capital trials. See *Thompson v. McNeil*, 129 S.Ct. 1299, 1300 (2009) (Stevens, J. mem.) (“[C]ondemned inmates await execution for an average of nearly 13 years.” And, “[m]ore than 30 percent of death verdicts imposed between 1973

and 2000 have been overturned, and 129 inmates sentenced to death during that time have been exonerated, often more than a decade after they were convicted”).

The State has a weighty interest in insuring that a proper mitigation case is presented to the jury. *State v. Mercer*, 381 S.C. 149, 161, 672 S.E.2d 556, 562 n.7 (2009) (“This Court reminds the bench and bar of the importance of a meaningful mitigation defense and, concomitantly, the ability of a capital defendant to fully present mitigation evidence The trial courts, vested with considerable discretion in evidentiary matters, must not neglect the due process implications involved in a capital defendant’s right to present mitigation evidence.”). See *Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527 (2003); *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008). These significant and weighty concerns give the State a heightened interest in the representation that a capital defendant receives. See *S.C. Code Ann.* §16-3-26(B) (1) (requiring the appointment of two qualified counsel in death penalty cases). Simply, a *pro se* defendant’s interest in his “individual dignity” and “autonomy” must be measured against the State’s interest in protecting against the imposition of a death sentence based on concerns other than the individual characteristics of the defendant and the crime he committed:

“[I]n capital cases the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death.”

Lockett at 604, *supra* (quoting *Woodson v. North Carolina*, 428 U.S. 280, 96 S.Ct. 2978 (1976)).

The *pro se* defendant's interests must also be measured against the State's interests in housing an inmate on death row who, but for his ill-conceived desire to represent himself, might not otherwise be there, and the potentially high costs of repeatedly litigating his case. And, axiomatically, the State has a supreme interest in not allowing its machinery to be used to execute an innocent person. A capital defendant's right to represent himself is substantially less than the State's interest in insuring that its death penalty apparatus functions conscientiously, and provides a justification for this Court to overturn *Reed* and *Brewer*.

B. Other Condemned Inmates

Another significant reason for imposing a *Faretta* limitation in the context of capital litigation involves this state's death sentence proportionality review. Pursuant to S.C. Code Ann. §16-3-25, the South Carolina Supreme Court is directed to consider the condemned defendant's sentence in relation to other "similar cases." 16-3-25 (C) (3) and further must reference those cases that it took into consideration. 16-3-25(E). A capital conviction, then, has an effect on parties aside from the defendant invoking his rights under *Faretta*. So, not only does the State have more of an interest when a capital defendant waives his right to counsel, but so do other defendants having their cases reviewed under this statute after they have been condemned. For example, James Reed's death sentence was considered in the proportionality review of the following cases: *State v. Wise*, 359 S.C. 14, 596 S.E.2d 475 (2004) and *State v. Shuler*, 353 S.C. 176, 577 S.E.2d 438 (2003). These two inmates had a direct stake in the quality of Reed's representation since, had he not received a death sentence, then perhaps their cases would

not have passed the proportionality review, and their death sentences would be abrogated. Because *pro se* representation affects other condemned inmates' death sentences, the State has a significant interest in a capital defendant's representation at trial that trumps a defendant's rights under *Faretta*. Respectfully, the Court should condemn the practice of *pro se* representation for capital litigants, and overturn *Reed* and *Brewer*.

As an additional consideration that militates in favor of eliminating the practice of *pro se* representation in capital cases is the complexity and importance of the sentencing phase. There is no question but that issues relating to capital sentencing have come to the forefront in capital litigation, acknowledging the critical importance of the issue. See *Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003), *Williams v. Taylor*, 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000), and *Rompilla v. Beard*, 545 U.S. 374, 125 S.Ct. 2456, 162 L.Ed.2d 360 (2005). While many, if not most, cases within this context address the duties and obligations of trial counsel to ensure that an appropriate mitigation case is put forward, the State should consider whether a capital defendant is even capable of putting forth his own mitigation case. In addition to the philosophical question of whether a defendant is sufficiently self-reflective to be able to cull through his life's events and provide some sort of context for them for the sake of asking the jurors to spare his life, there is a more pragmatic concern as well—his ability to simply make the case. The Lexington County Detention Center, for example, was not allowing Starnes' paralegal to come and visit him. April 29, 2005 hearing, page 386, lines 6-9. There were funding issues as well, regarding a courier service since Starnes was incarcerated and could not run any errands himself. April 29, 2005 hearing, p. 393, line 12 – p. 395, line 6. Starnes also had difficulty consulting with experts because they were

reluctant to do business with him because he was an inmate. April 29, 2005 hearing, p. 396, lines 12-23. Again, given the importance of the sentencing phase for a capital litigant and the logistical difficulties a *pro se* litigant has in mounting an adequate mitigation case, this Court should forbid the exercise of *pro se* representation for capital trials.

For this reason, the Court should reverse Starnes' murder convictions, vacate the death sentence and remand for further proceedings.

Starnes did not knowingly and voluntarily waive his right to counsel during the sentencing phase of his trial.

Starnes never knowingly and voluntarily waived his right to counsel at the sentencing phase of his trial. During the *Faretta* colloquy, he was neither questioned nor advised of the problems associated with presenting his own mitigation case. The record does not otherwise reveal that he understood the dangers of proceeding *pro se* during this part of his capital trial. For a waiver to be effective, it must be knowingly and intelligently made. *Iowa v. Tovar*, 541 U.S. 77, 88, 124 S.Ct. 1379, 158 L.Ed.2d 209 (2004). And see *Adams, supra*. (Knowingly and voluntarily waiving right to counsel means that a defendant “know[] what he is doing and his choice is made with eyes open.”) Additionally, waiver of fundamental rights cannot be presumed from a silent record. *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019 (1938). See also *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973):

“A strict standard of waiver has been applied to those rights guaranteed to a criminal defendant to insure that he will be accorded the greatest possible opportunity to utilize every facet of the constitutional model of a fair criminal trial. Any trial conducted in derogation of that model leaves open the possibility that the trial reached an unfair result precisely because all the protections specified in the Constitution were not provided. . . . The Constitution requires that every effort be made to see to it that a defendant in a criminal case has not unknowingly relinquished the basic protections that the Framers thought indispensable to a fair trial.”

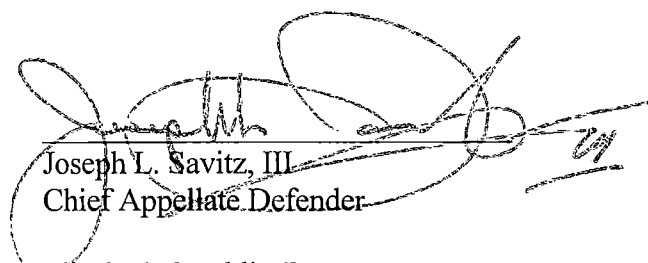
Id. At 241-242, 93 S.Ct. 2041.

Because the *Faretta* colloquy did not address the sentencing phase of his capital trial, and because it was not otherwise ascertained whether Starnes understood the dangers of proceeding with self-representation for this part of his trial, the record fails to establish that Starnes knowingly and voluntarily waived his right to counsel. Respectfully, Starnes asks this Court to direct a new sentencing hearing.

CONCLUSION

Based on the foregoing arguments, the Court should grant the relief requested therein and remand for further proceedings.

Respectfully submitted,

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

Joseph L. Savitz, III
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ATTORNEYS FOR APPELLANT

This 3rd day of June, 2009.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County

Lee S. Alford, Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

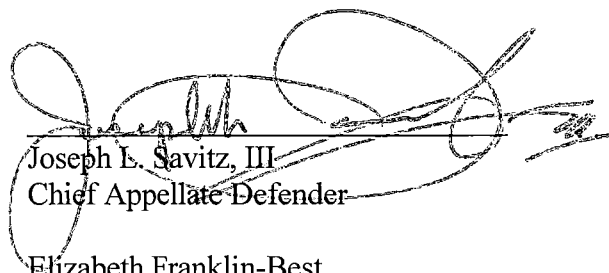
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Trial transcript
- (2) Pretrial hearings
- (3) Indictment
- (4) Requests to charge voluntary manslaughter
- (5) Sentencing forms
- (6) Court's exhibit 10 (DVD of reenactment)

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

June 3rd, 2009



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**STATE OF SOUTH CAROLINA
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Appeal from Lexington County
The Honorable Lee S. Alford, Circuit Court Judge

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Respondent,

v.

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Appellant.

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S.C. SUPREME COURT

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STATEMENT OF THE ISSUE ON APPEAL

- I. WAS APPELLANT CORRECTLY DENIED AN INSTRUCTION ON VOLUNTARY MANSLAUGHTER, WHERE MERELY BEING AFRAID IN THE CONTEXT OF A CONSCIOUS DECISION OF SELF-DEFENSE DOES NOT SHOW THE UNCONTROLLABLE IMPULSE AND CRIMINAL INTENT THAT IS NECESSARY FOR HEAT OF PASSION?
- II. DOES THE SIXTH AMENDMENT PRECLUDE A PER SE RULE PROHIBITING ANY AND ALL CAPITAL DEFENDANTS FROM REPRESENTING THEMSELVES?
- III. DID APPELLANT VOLUNTARILY AND KNOWINGLY WAIVE HIS RIGHT TO COUNSEL IN THE SENTENCING PHASE, WHERE THE RECORD IS REplete WITH EVIDENCE OF HIS UNDERSTANDING OF THAT PORTION OF THE TRIAL?

STATEMENT OF THE CASE

Appellant, Norman E. Starnes, was indicted at the November 1996 term of the Court of General Sessions for Lexington County for possession or display of a firearm or knife during the commission of a violent crime, and two counts of murder in the shooting deaths of William C. Welborn and Jared Lee Champlin. {R. p. *}. The State served notice of intent to seek the death penalty.

Appellant was initially tried, convicted, and sentenced to death when tried in April 1997 before the Honorable Marc H. Westbrook, and a jury. This Court reversed the convictions on direct appeal. State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000).

Appellant was re-tried before the Honorable Lee S. Alford and a jury from November 5th, 2007 to November 17th, 2007. Appellant represented himself at trial; however, the judge allowed Appellant William Nettles, Esquire, and John Delgado, Esquire, as standby counsel. The State was represented by Seventh Circuit Solicitor Harold "Trey" Gowdy, III, and Assistant Solicitors Robert Coler and Derrick Balsa. On November 14th, 2007, the jury found Appellant guilty as charged. {Tr. 2334}.

The sentencing phase commenced on November 16th, 2007. The jury was given the following statutory aggravating circumstances to consider:

1. The defendant committed the murders while in the commission of robbery while armed with a deadly weapon.
2. The defendant committed the murders while in the commission of larceny while armed with a deadly weapon.
3. Two or more persons were murdered by the defendant by one act or pursuant to one scheme of course of conduct.

{Tr. 2794-95}. The jury was given the following statutory mitigating circumstances:

1. The defendant has no significant history of prior criminal convictions involving the use of violence against another person.
2. The victims were participants in the defendants conduct or consented to the act.
3. The defendant acted under duress or under domination of another person.
4. The defendant was provoked by the victims into committing the murders.

{Tr. 2803}. The jury unanimously found all three aggravating circumstances, and recommended death on both murder counts. **{Tr. 2822-24}.** Accordingly, Judge Alford sentenced Appellant to death. **{Tr. 2836}.**

This appeal follows.

STATEMENT OF FACTS

Norman Starnes admitted that he shot Bill Welborn and Jared Champlain in his living room, and then buried their bodies in a shallow grave on his Uncle Charles's farm in Aiken County. The issues on appeal concern failure to charge voluntary manslaughter and Appellant's decision to represent himself.

A. Background

Appellant ran a restaurant and sub sandwich shop in Pelion, South Carolina, called "Norman's Panther Parlor." Starnes's live-in girlfriend at the time of the killings, Gwen Ott, worked for him at the restaurant.

Starnes's first victim, Bill Welborn, was a 51-year-old retiree from the Air Force, who had opened up a "jump school" at the Lexington County Airport called the "Drop Zone." {Tr. 1062-69; 1097-1105}. At the time of his death, Bill had a relationship with Dawn Holrath, who was one of his jump school pilots. {Tr. 1065-69}. Starnes's other victim, Jared Champlain, had recently developed a love for skydiving under the tutelage of Bill.

A few months before his murder, Jared and his fiancé, Karen Pratt, had moved to Lexington County where Jared was assisting Bill at the Drop Zone. Like Bill, Jared and Karen were also temporarily staying with Dawn until the three could move into a trailer near the Drop Zone. {Tr. 1068-70; 1097-1105}.

Appellant first met Bill and Jared after he observed Bill participate in a demonstration jump at a Christmas parade in December 1995. Impressed, Appellant arranged for Bill to do a demonstration jump at the Pelion Christmas Parade two weeks later. {Tr. 1068-72}. After the jump, the three men began to hang out fairly regularly.

B. January 6th, 1996: Wings and Ale

On January 6th, 1996, Bill and Dawn, Starnes and Gwen, and others went out for a Saturday night of drinking and dancing on the town. According to Dawn, Bill had \$200 in money from the Drop Zone, and \$120 or so of his own money. The night's activities began at the Wings and Ale in Irmo, where the group was shooting pool. Evidently, while Bill and Starnes were playing, Bill put \$200 in Starnes's pocket. Dawn thought Bill and Starnes were trying to induce someone into playing for money against Bill, by showing Appellant had beaten Bill. {Tr. 1074-76; 1118-31; 1139-43}.

Eventually, Bill count the money, find only \$160, and wonder why the defendant had taken \$40. Bill called Starnes the next day and talked to Gwen, asking her about "\$65 or \$85." Bill told Dawn he did so to see if the defendant recognized that \$65 or \$85 was a different amount from the \$40 the defendant had actually kept. Dawn told Bill she thought Starnes probably had just made a mistake. {Tr. 1076}.

C. January 8th, 1996: Bill and Jared disappear

On January 8th, 1996, Dawn took Bill to the Drop Zone, where he and Jared were working on the facility. They made arrangements for Bill and Jared to come by Dawn's house later. She left and never saw him again. {Tr. 1077-79}.

Dawn stated that Bill called about 9:55 p.m., saying he had not had time to come by her house. He then started whispering, asking Jared "if they could hear him". Bill was supposed to call back in ten minutes but never did. {Tr. 1079-81}.

Dawn of course became very worried when Karen contacted her at 10:20 p.m. and stated she could not find the men. She tried calling Appellant numerous times at home

and at the restaurant, but he never answered – which was unusual. She finally talked to Appellant, who stated he had no idea where they were, and that he left them at the pay phone CJ's. {Tr. 1079-85; 1147-49}. A missing person's report was eventually filed, and police began to investigate. {Tr. 1219; 1266-69}.

D. January 1996 - May 1996: the investigation goes nowhere

Since he was the last person to see the victims, the police were interested in talking to Appellant. He told police he was with the victims drinking at CJ's, and that Bill was acting hyper and threatened Appellant. Appellant claimed that he last saw them walking down Highway 302, saying they were going to see "Stan the Man". {Tr. 1270-74; 1278-81}. A week or so after the murders, Appellant approached a telephone company employee he knew and said "those guys are dead", adding that they were at his house and he was the last to see them alive. Appellant seemed nervous, and asked if the phone company could trace phone calls the victims were making from his house. Two days later, Appellant called the employee, and carried on a rambling conversation in which he asked about phone records and tracing calls. {Tr. 1290-93}.

In the months following the disappearance of Bill and Jared, Appellant would take their family members around Lexington to look for them, or would call in false leads to police. He put up a missing person's poster in his restaurant, and told newsman J.R. Berry of WLTX-TV that he thought the disappearance was drug related, and believed the victims "got on a plane and they were gone". {Tr. 1085-87; 1225-29; 1332; 1373-77; 1624-27}.

E. May 27th, 1996: Gwen tells police what she knows

Appellant eventually kicked his girlfriend Gwen out of his house, and she eventually ended up staying with the night with her friend Vickie Kaiser after an "encounter" with Appellant. Gwen confided in Vickie what she knew about the killings, and Vickie advised her to go to police. Gwen did the next day, and gave a statement. **{Tr. 1334-38; 1368; 1378-83; 1573}**.

Gwen told police, and of course testified at trial, that Bill, Jared, and Karen had come to Appellant's restaurant on the afternoon of January 8th to eat. Eventually, Bill and Jared left with Appellant in Appellant's mother's car. Appellant came back more than once to get money out of the cash register, saying they were gambling and he needed money. She did not see Bill or Jared with him. **{Tr. 1312-13}**.

Eventually, Appellant came back a third time, upset, shaking, and on the verge of tears. He had mark on temple, said had been pistol whipped in bathroom by Bill. Appellant, who often carried a gun in the small of his back, got his pistol and bullets from the kitchen and said "they will be dead tonight". Gwen did not really believe he would kill them, and went back to cleaning the restaurant. **{Tr. 1314-16}**.

After a while, Appellant came back to the restaurant with a six pack of beer, and said "let's go they are dead". Gwen was washing dishes, and did not believe him, but he repeated: "Let's go and I mean now. They are dead". Appellant told Karen Bill and Jared were still at CJ's where he left them, and she left to go get them (a fruitless wild goose chase, of course). Appellant then told Gwen to lock her son in the restaurant and come with him.

As they drove the short distance to Appellant's house, Appellant told Gwen she

would not like what she was about to see and it would not be pretty. When they arrived at Starnes's house, Gwen saw Bill and Jared's bodies laying on the floor. The defendant said that before he had left he heard Bill gurgling, so he checked Bill's pulse while holding a gun to his temple. The defendant then yelled obscenities at the corpses, and pistol-whipped the bodies, saying "now you know how it feels", and telling Jared it was all his fault. Appellant took everything from their pockets, and they cleaned the house, placing the bodies in the trunk. **{Tr. 1318-25}**.

Appellant told Gwen Jody Fogle was on phone trying to make drug deal, and Jared put pistol to his head and cussed him. When Jared lowered the pistol from Jody's head, Appellant shot Jared first, and then turned and "popped" Bill. **{Tr. 1323-24}**.

After picking up Gwen's son, they returned to the house, where Appellant called Tony Tindal to borrow his truck. He left for a while, and when he returned he told Gwen to follow Appellant out to Aiken County to his Uncle Charlie's property. There, she saw the bodies lying on the ground behind the house. Appellant told Gwen to leave her car lights on, and then he kicked one of the bodies, and urinated on them. Eventually, he put the bodies on the truck and backed it into the woods. He then pulled away, and Gwen followed him. On the way back, Appellant stopped at a bridge over the Edisto River and threw the gun out. **{Tr. 1324-32}**.

Months later, Appellant told Gwen his uncle had called and said the women were complaining about a smell like death on the property, and Appellant needed to do something. Appellant said he reburied Bill and Jared and covered them with lime. He also brought home a piece of blue jeans and a tennis shoe. Appellant smelled them and said

“yeah, that sure smells like death”. {Tr. 1332-34}.

Vickie Kaiser and Tony Tindal also testified, corroborating their portions in the information Gwen gave to police. {Tr. 1378-83; 1559-64}.

F. May 1996: The bodies, the gun, and other forensic evidence

Police of course headed out the Appellant's uncle's property, where they found a disturbed area in back corner of lot with nothing growing on it. As they dug, they eventually hit some concrete, and flipped it over to find a leg bone embedded in it. They dug further and found the victims wrapped together in a blanket and covered with a white powder. No wallets or money were found with them. {Tr. 1411-23; 1457; 1490}.

Dr. Sexton's autopsy was complicated by the advanced state of decomposition, but revealed that Bill had evidence of three missiles passing through his body: (1) one that entered near the nipple; (2) one that entered near the collar, with the bullet eventually lodging near the spine; and (3) one through the collar of the shirt, but the neck flesh was missing. Jared had one gunshot wound, which entered back near spine, and exited the front of the chest. Both died from blood loss. {Tr. 1468-99}.

Divers recovered a .38 pistol registered to Starnes from the Edisto River, but it could not be conclusively identified due to its submergence. {Tr. 1582-1619}. A hole was found in the wall in Appellant's house, and burned trash was found in the dumpster. The liner had been removed from the trunk of Appellant's mother's car. {Tr. 1428-38}. A doctor found no evidence of drug use in the toxicology report, although no test was done for methamphetamine. The blood alcohol content of Bill was only 0.09 – which could have been from decomposition. {Tr. 1650-55}.

G. The Letters

The State also introduced some letters Appellant wrote to a woman while in jail, which were inconsistent with his ultimate claim of self-defense. On August 11th, 1996, Appellant wrote:

They still have not found the murder weapon and only I know where it is. They (police) know that its an important key to this case. The motive is still a mystery to them too. One other suspect in this case knows that answer but he wouldnt tell for nothing in the world. He will have no choice one day.

On August 19th, 1996, Appellant wrote:

The possibility of me not being the person who killed the two men. There are questions pointing to my ex-girl. They want me to give a statement but I have refused to. Larry said they have way too many questions that are unanswered. That's why they are still investigating the matter. Still no weapon. No motive. No PROOF I murdered them.

* * *

The article said I dug them up and re-buried them. I don't think anyone would dig a body up five months after it was buried. This is shit that Gwen has told the police.

On August 21st, 1996, Appellant wrote:

The family doesnt know what happened on the night the two were killed. They only know what has been told to them by the police. The police don't know because they werent there when it happened. They do not know a motive, where the murder weapon is, or who pulled the trigger. Police have no witnesses to the murder. Just hearsay. Thats all. Yes they were killed in my living room. Yes, they were buried on Uncle Charlie's property, but that doesn't mean I was the one who killed them and put them there.

{Tr. 1703-07}.

H. The defense guilt phase case

The defense first called CJ's employee Claudette Harbert, who testified that when Bill, Jared, and Appellant were at the pool hall on the night of their disappearance, Bill said

to her "do you know this stupid motherfucker Norman?". Later, she heard a commotion near the bathroom, and Appellant came up to the counter with some beer. Bill came up and put arm around Appellant's neck, saying they were old Vietnam buddies. Bill added that he was going to "take Norman up to Platt Springs Road and blow his fucking brains out". {Tr. 1774-81}.

Jared's girlfriend Karen Pratt testified that when Appellant returned to his restaurant he did not have any marks on his face and was not shaken up or crying. She stated that Jared did sometimes carry a gun, and she said at the prior trial she thought he was carrying it that night. {Tr. 1818-22}. However, on cross, she noted that when Appellant came in the restaurant the last time, he offered her a beer and was acting "overly nice". She stated the guys were not wild or crazy drunk or anything that night, and that she never saw Jared pull out the gun that night. She also stated she gave Jared \$10 before he left with Appellant for CJ's. {Tr. 1829-43}.

Jody Fogle testified that Appellant showed up unexpectedly, and he went with Appellant to his house. Inside, he saw Bill and Jared. Jared approached Jody and asked "where is the dope?", and Jody responded he did not mess with dope. Jody then asked for his gun, and put it to Jody's chest. Jody responded, "look here, Norman said yall wanted some shit, Im here to get you some shit". Bill came over and talked to Jared and then took the gun from him. Suddenly, Appellant shot Bill twice, and then wheeled around and shot Jared as he tried to escape. {Tr. 1849-59}.

On cross, Jody stated there was no prior plan for him to get Bill and Jared drugs, and that Appellant just told him he needed Jody to watch his back. Appellant said

someone had been “fucking with him”, and asked Jody if he had his gun. Appellant said he had some trouble with the men in the bar, but they were going to go to Appellant’s house and “get [his] shit”. In the car, Appellant had a .38, but also had a .22, which he said was the gun the men were using to mess with Appellant. **{Tr. 1859-69}**.

Jody stated that when they entered, the victims were on the couches, and Bill was not wide-eyed. Bill even gave Jody a friendly “hey” when introduced. Appellant went into the bedroom and was fumbling with something, and then Jared asked for his pistol. Once Appellant gave Jared the pistol, Jared came at Jody, chambering a round. However, no round ejected as one would expect, as Jody noticed one was in the chamber when Appellant showed him the gun in the car (the conclusion being that Appellant unloaded Jared’s gun in the bedroom). About a minute passed before Appellant opened fire, during which neither Bill nor Jared were doing anything to threaten anyone. Outside, Appellant pulled the wires from his phone box in case the victims were still alive, and told Jody: “I knew I was going to kill them”. Indeed, on the way over, Appellant told Jody he thought he was going to kill the victims. **{Tr. 1870-92}**.

Appellant called Marion Powell, who testified he did methamphetamine with Bill in the bathroom of a biker bar on January 5th, 1996. **{Tr. 1925-28}**. He also called Donna Benson, who testified she was doing methamphetamine with Bill on January 4th and 5th, 1996. **{Tr. 1953-60}**. However, she also stated on cross that Bill would have never flown or jumped under the influence. **{Tr. 1983-85}**.

A forensic toxicologist testified that methamphetamine can lead to psychosis, emotional mobility, and violence. He stated nothing could be found in the hair samples

from the victims, which he felt was inconclusive. However, on cross he agreed if a person was a long term user he would expect to find traces of meth. **{Tr. 1988-2003}**.

Finally, Appellant testified himself. He first claimed that he introduced Bill to Fogle on new year's eve, and Bill left with Fogle after asking where an ATM was. **{Tr. 2079-81}**.

As to the Wings and Ale incident, Appellant claimed Bill gave him the \$200 and asked Appellant to go get an eightball of drugs. Appellant claimed he refused, and gave Bill back his money. He stated he must have accidentally spent the \$40. **{Tr. 2082-83}**.

Appellant claimed that on January 8th, Bill refused to come in the restaurant, and was outside still cussing about the \$40. Appellant said he paid Bill from the cash register. Bill supposedly came inside, but he was fidgety, saying "come on, Norm, let's go". After a trip to Appellant's uncle's farm, Bill, Jared, and Appellant stopped at CJ's, where they played pool. Bill went outside twice to use the phone. At one point, Appellant was using the urinal and Bill came up and grabbed him from behind. Bill put some metal object to his head and said, "you don't do your f'in friends like that." Appellant said he passed it off as a joke. Later, Bill told Claudette she better call police as he was going to take Norman on Platt Springs Road and blow his brains out. **{Tr. 2082-86}**.

Appellant claimed that when they all left, Bill wanted to go to Jody's house, but Appellant refused – instead going taking them to his house and going to pick up Jody. Appellant asserted that when they arrived, Bill ended a call and came up and put his arm around Appellant. From behind them, Appellant heard cussing, and turned to see Jared pointing a gun at Jody. Appellant claimed he ran in the bedroom and put his gun in his back pocket, and was running out the front door when he heard "whoa". Supposedly,

Appellant turned around and saw Bill pointing a gun at him, so he fired. He then turned and shot Jared. Appellant claimed he later realized he shot an unarmed man, and was scared so he did not call police. He conceded he buried the bodies and lied to everyone. **{Tr. 2086-94}**.

Appellant was cross-examined on where Jared's gun was – which he said he threw in the Black Creek. He also was examined on why if Bill was so high he took them with him from the restaurant, why he did not leave them at CJ's after the incident there, why he supposedly took these intoxicated drug-crazed men who had threatened to kill him back to his house, and why he then returned later. **{Tr. 2106-46}**.

I. State's case in reply

In reply, the State called an officer who stated Donna Benson never mentioned drug use by Bill, and a diver who searched the Black Creek area and found nothing. **{Tr. 2154-66}**. Dawn Holrath denied ever seeing Bill do drugs, and testified he had zero tolerance for booze on drop days. She stated he was fine when he came to her house on January 5th, 1996. She also stated she left with Bill to get fireworks for the New Year's Eve party, and Bill did not go with Fogle. **{Tr. 2167-72}**.

ARGUMENT

I. APPELLANT WAS CORRECTLY DENIED AN INSTRUCTION ON VOLUNTARY MANSLAUGHTER, WHERE MERELY BEING AFRAID IN THE CONTEXT OF A CONSCIOUS DECISION OF SELF-DEFENSE DOES NOT SHOW THE UNCONTROLLABLE IMPULSE AND CRIMINAL INTENT THAT IS NECESSARY FOR HEAT OF PASSION.

Appellant first contends that the trial court erred in charging voluntary manslaughter in the case, which he asserts was justified by his fear and the presence of guns. However, there was no evidence Appellant shot Bill and Jared in the heat of passion, where Appellant's fear was not an uncontrollable impulse to do violence but rather a conscious decision of self-defense.

A. Events at trial

The testimony has already been related in the Statement of Facts. After the close of evidence, Appellant requested voluntary manslaughter. When asked what justified it, he noted caselaw that violence to a friend can constitute provocation, and that heat of passion can result from a list of things including fear and terror. {Tr. 2178-79}. Standby counsel argued that terror can constitute heat of passion, and noted this was especially the case as to Bill, since Appellant's testimony was Bill pointed the gun at him. As to Jared, counsel contended that Appellant did not know he was unarmed until after he shot him. The judge decided to send the jury home so he could think about the issue. {Tr. 2182-84}. After a break, the judge noted Appellant had not testified he was under any heat of passion, but stated he was leaning towards giving the charge. As the discussion proceeded, the judge noted the real concern was what happened at the house. {Tr. 2186-93}. Contrary to Appellant's position in his brief that

the judge erroneously believed one could not have voluntary manslaughter and self-defense in the same case, the judge to the contrary clearly stated they both could be present if the facts warranted it. **{Tr. 2193 II. 14-20}**. The solicitor argued that Appellant just stated he saw Bill with the gun and instinctively fired, which was self-defense or nothing. He noted the testimony either established a premeditated desire to kill, or self-defense in a drug deal gone bad. **{Tr. 2193-94}**.

The next day, there was a further charge conference. The judge noted he had decided not to charge voluntary manslaughter, noting that in their discussions Appellant had not specifically requested voluntary manslaughter, but was simply asked the judge to charge the correct law. The judge noted there was no evidence Appellant was upset or angry – just that it was a drug deal gone bad and Appellant defended himself when Bill allegedly pointed the gun. The judge concluded it would not be fair to either side to charge it since it was not requested. **{Tr. 2240-43}**.

Indeed, the judge pointed out that it appeared Appellant's strategy was to expressly not ask for voluntary manslaughter, but merely request the correct law, in hopes that if the judge charged voluntary manslaughter and he was convicted of it, he could get relief on appeal by way of directed verdict, but if the judge did not charge it, he could get relief for failure to charge. **{Tr. 2243-45}**.

The judge reasoned that there was obviously time to cool from the incident at the bar, and no evidence Appellant was under heat of passion when was at the house. **{Tr. 2247-49}**. When Appellant contended he had made a request to charge, the judge noted that there had been no requests made, but only when the judge decide to take the night

to think about it then Appellant came forward with a number of charge requests. The judge noted he had spent hours going through them, but felt Appellant was most concerned about putting forth some charges and claiming on appeal he did not get them. {Tr. 2249-53}.

After some discussion of imperfect self-defense, which the judge refused to charge, Appellant specifically noted for the record that he was not waiving a charge on voluntary manslaughter. The judge noted that Appellant had initially taken the previously described passive approach, and was now changing his position. {Tr. 2260-61}.

After closing arguments and the charge, Appellant again stated he wanted to renew his request for voluntary manslaughter. After some discussion, the judge noted that while Appellant had changed his position from the passive approach, the record would reflect at this point that Appellant had requested voluntary manslaughter and it had been denied. {Tr. 2318-26}.

B. General Rules

It is proper for a trial court to refuse to charge voluntary manslaughter in a murder case where it very clearly appears there is no evidence whatsoever tending to reduce the crime from murder to manslaughter. State v. Locklair, 341 S.C. 352, 360, 535 S.E.2d 420, 424 (2000). "Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." Id. at 359, 535 S.E.2d at 424 (quoting State v. Johnson, 333 S.C. 62, 508 S.E.2d 29 (1998)). Both heat of passion and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter. Locklair, 341 S.C. at 359-60, 535 S.E.2d at 424; see State v. Gilliam, 296

S.C. 395, 397, 373 S.E.2d 596, 597 (1988). Sudden heat of passion upon sufficient legal provocation that mitigates a felonious killing to manslaughter must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called “an uncontrollable impulse to do violence.” Id. at 360, 535 S.E.2d at 424.

In determining whether the act that caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing. State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 565 (1969). In cases where both self-defense and voluntary manslaughter jury instructions may be involved, the court should review the facts to see if a charge on both is warranted. Gilliam, 296 S.C. at 396-7, 373 S.E.2d at 597. “Both self-defense and the lesser included offense of voluntary manslaughter should be submitted to the jury if supported by the evidence.” Id. “The rationale for this rule is that the jury may fail to find all the elements of self-defense but could find sufficient legal provocation and heat of passion to conclude the defendant was guilty of voluntary manslaughter.” Id. However, a jury instruction for a charge of voluntary manslaughter is not warranted when no evidence is presented that shows the defendant was overcome by a sudden heat of passion that would produce that uncontrollable impulse. State v. Walker, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996). Indeed, a finding that there is evidence of adequate legal provocation has no bearing on whether a defendant may have acted in a sudden heat of passion. See State v. Cole, 338 S.C. 97, 102, 525 S.E.2d 511, 513 (2000).

C. There was no evidence Appellant shot Bill and Jared in the heat of passion, where Appellant's fear was not an uncontrollable impulse to do violence but rather a conscious decision of self-defense.

Here, the judge correctly reviewed the evidence and concluded that there was no evidence Appellant shot the victims in the heat of passion.

Undoubtedly, older cases have referred to heat of passion as being "the highest degree of exasperation, rage, anger, sudden resentment or terror, rendering the mind incapable of cool reflection". State v. Davis, 50 S.C. 405, 423, 27 S.E. 905, 911 (1897). Indeed, State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998), affirmed the giving of a voluntary manslaughter charge because the defendant was in a heated argument and testified he was afraid for his life because he had been threatened. See also State v. Penland, 275 S.C. 537, 540, 273 S.E.2d 765, 766 (1981) (evidence of provocation and heat of passion from pointing of a gun at appellant and the subsequent struggle).

However, while there is no doubt voluntary manslaughter can be charged in case where self-defense is charged, it does not follow simply because a defendant claiming self-defense testifies he was afraid. If some testimony that the defendant was afraid is enough for voluntary manslaughter to be charged, it would have to be charged in every self-defense case, bar none. This is because it is hard to conceive of a case where whatever the victim did to put the defendant in reasonable fear of his or her life for self-defense would not also be sufficient legal provocation, and of course that reasonable fear of imminent bodily harm – a necessary element for self-defense – would then also constitute the passion for voluntary manslaughter. Voluntary manslaughter is more than "I was afraid" – it is the "highest degree of . . . terror" that causes a loss of control.

Chief Justice Toal elaborated on this very issue in her concurrence in State v.

Childers 373 S.C. 367, 375-376, 645 S.E.2d 233, 237-238 (2007):

This factual scenario is completely void of any evidence remotely supporting a charge of voluntary manslaughter. Voluntary manslaughter, by definition, requires a criminal intent to do harm to another. But according to the defendant's story, he had no criminal intent whatsoever.

If, as he suggests, the defendant returned fire in a panic for his life, surely the defense of self-defense would be appropriate. Notably, this was charged by the trial court. Similarly, the trial court charged the jury on the law of involuntary manslaughter; perhaps because it was possible for the jury to believe that the defendant's initial returning of fire was justified, but ultimately find that the defendant was criminally reckless in firing multiple times over his shoulder as he retreated. Without any evidence supporting the view that the defendant fired the fatal shots while under an "uncontrollable impulse to do violence," the trial court properly declined to charge the law of voluntary manslaughter to the jury.

In support of their holding that the defendant was entitled to a voluntary manslaughter charge, the court of appeals relied on this Court's holding in State v. Penland, 275 S.C. 537, 540, 273 S.E.2d 765, 766 (1981). As the court of appeals noted, that case arguably stands for the proposition that a jury issue on the voluntary manslaughter element of heat of passion can be created in a case similar to the instant case.

Penland cannot be so broad. Read literally, the opinion seems to impermissibly blend the concept of voluntary manslaughter with the defense of self-defense. The opinion provides no substantial factual background for the case, and no description of the events leading up to the apparently fatal incident. To the extent Penland stands for the proposition that a person who simply defends himself while in fear for his life is entitled to a voluntary manslaughter charge, the case should be overruled.

Here, there likewise is no evidence of criminal intent. Appellant testified he took the men to his house and then went to get Jody Fogle to get drugs for them – hardly indicative of uncontrollable fear. Indeed, he specifically testified he was not angry at them from the incident at the bar. {Tr. 2145}. He got his gun when he saw Jared put the gun to Jody's

chest, but he was heading out the door when he heard “whoa” and turned to see Bill pointing the gun at him. Appellant fired at Bill, and then shot Jared. {Tr. 2087}. Appellant stated he thought they both had a gun. While he talks about being scared on the next page, that was being scared at what he had done. {Tr. 2088}. The closest Appellant gets is at the end of his direct, when he states:

I was scared and I was frightened. When Jared pulled the gun on Jody, it scared me. And I didn't know what his intentions was, but if someone pulls a gun on another individual, its usually to shoot them.

{Tr. 2096}. Like what Chief Justice Toal described in Childers, this does not describe criminal intent, but fear of imminent bodily harm – which justifies a killing, rather than merely mitigating it. It is not uncontrollable terror.

Appellant's testimony on cross confirms this. While he later states he was afraid and terrified, this was in response to questions on why he did not call police instead of hiding the bodies and lying to everyone. {Tr. 2118}. As the cross proceeds, he again states he was scared, but notes it was because there was no police there to protect him, and “I had to protect myself and protect Jody”. {Tr. 2120-21}. Again, this is not evidence of uncontrollable passion to kill, but rather conscious self-defense.

Self-defense is a deliberate and justified action based on a valid set of existing circumstances. Voluntary manslaughter is provocation to the point of loss of control. There was no testimony here Appellant was in such uncontrollable terror that he lost control and acted with criminal intent. It is respectfully submitted that Chief Justice Toal's concurrence in Childers precisely analyzes such an issue, and Wiggins and Penland should be clarified inasmuch as they may be read too broadly. Otherwise, virtually every

self-defense case will also be a voluntary manslaughter one.¹

¹ Indeed, unlike Wiggins there was no protracted and heated argument here, appellant went back to his house neither scared nor angry. Inasmuch as Appellant asserts he must receive the lesser included offense based on Beck v. Alabama, 447 U.S. 625 (1980), Beck only requires lesser included offense instructions as a matter of due process where they are warranted under state law. Id. at 635-36.

II. THE SIXTH AMENDMENT PRECLUDES A PER SE RULE PROHIBITING ANY AND ALL CAPITAL DEFENDANTS FROM REPRESENTING THEMSELVES.

Appellant next contends this Court should overrule its caselaw and create a *per se* rule that capital defendants do not have the right to represent themselves. He asserts that since the decision affects the interests of the State and other inmates in the broader sense, the decision should not be allowed. However, the issue is not preserved. In any event, a competent defendant with no mental illnesses precluding self-representation has a Sixth Amendment right to represent himself that must be respected by the courts. This right can only be abridged where the specific circumstances of a particular case warrant it, and Appellant's suggestion of a *per se* rule cannot stand.

A. The issue is not preserved.

At no time in the trial court did Appellant or his counsel assert that this Court should completely override the federal and state constitutional right to self-representation in capital cases based on the policy arguments asserted now. As such, the issue is not preserved for appeal. State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996) (constitutional basis must be asserted at trial to be preserved for appeal).

B. Appellant, a competent defendant with no mental illnesses precluding self-representation, has a Sixth Amendment right to represent himself that must be respected by the courts.

Of course, "the Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." Faretta v. California, 422 U.S. 806, 807 (1975). However, due to our system's respect for

the individual, a person may waive the right to counsel, as long as the waiver is knowing, voluntary, and intelligent. Id. at 835; State v. Fuller, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999). Faretta allows a defendant to waive his right to counsel if the following conditions are satisfied: (1) the accused is advised of his right to counsel, and (2) he is adequately warned of the dangers of self-representation. Prince v. State, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990).

“Although a defendant's decision to proceed *pro se* may be to his own detriment, it must be honored out of that respect for the individual which is the lifeblood of the law.” Faretta. This is because a State “may [not] constitutionally hale a person into its criminal courts and there force a lawyer upon him, even when he insists that he wants to conduct his own defense”. Faretta, 422 U.S. at 807. Accordingly, there is a federal constitutional mandate requiring a knowing and voluntary desire for *pro se* representation.

The only remaining question is the existence of limits on that constitutional mandate. Prior to the United States Supreme Court's decision in Indiana v. Edwards, 128 S.Ct. 2379 (2008), it was clear that a defendant found competent to stand trial had a completely absolute right to waive counsel. First, this Court noted that there is no difference between the level of competence required to stand trial and the level required to waive the right to counsel, as long as the waiver is knowing and voluntary. Sims v. State, 313 S.C. 420, 438 S.E.2d 253 (1993) (discussing and quoting Godinez v. Moran, 509 U.S. 389 (1993)).

Moreover, in State v. Brewer, 328 S.C. 117, 492 S.E.2d 97 (1997), the South Carolina Supreme Court reversed the decision of the trial judge to prevent capital

defendant from proceeding *pro se*. In that case, the judge believed the defendant understood the dangers of self-representation, but “for whatever reason . . . failed to accept it”. The court noted that “a determination by the trial judge that the accused lacks the expertise or technical legal knowledge to proceed *pro se* does not justify a denial”, and pointed out that a “decision can be made intelligently, with an understanding of the consequences, without the decision itself being a wise one”. Thus, it concluded that the trial judge violated the defendant’s Sixth Amendment right to proceed *pro se*.

In State v. James Earl Reed, 332 S.C. 35, 503 S.E.2d 747 (1998), this Court Affirmed the decision to allow a defendant to represent himself where he was found competent to stand trial. There, the defendant who represented himself in the guilt phase asked for counsel at sentencing because he was too emotional, and standby counsel objected that defendant was not competent to represent himself there. However, this Court found the complaint to be made too late, since the defendant had made the waiver.

Brewer, Sims, and Godinez were of course all in existence at the time of Applicant’s trial and direct appeal. However, just this past year, the United States Supreme Court issued Edwards, which called into question the efficacy of the single competency standard and the absolute nature of the right of a competent defendants to represent themselves. In Edwards, an initially incompetent defendant was given mental health treatment and ultimately found competent to stand trial. He wanted to represent himself, but the trial court denied the request. The judge there found that while the defendant was competent and could cooperate with his attorney, his delusional disorder and schizophrenia precluded him from staying focused enough to represent himself. However, the Indiana

appellate courts reversed the decision, noting that they were bound by Godinez's single competency standard, and Faretta's statement that "a state may not 'constitutionally hale a person into its criminal courts and there force a lawyer upon him, even when he insists that he wants to conduct his own defense'". Edwards v. State, 854 N.E.2d 42, 46 (Ind. Ct. App. 2006) (quoting Faretta, 422 U.S. at 807). See also Edwards, 128 S.Ct. at 2382-83.

The United States Supreme Court reversed the Indiana appellate courts and upheld the trial court's ruling that the defendant was competent to stand trial but not competent to represent himself. Formulating the question before it as whether there was a "mental-illness-related limitation on the scope of the self representation right", the Court began by noting that the competence standard itself refers to the ability to consult with a lawyer, and also that Faretta did not deal with the issue of the relationship between mental competency and self-representation because the defendant there had no such issues. The Court rationalized away Godinez's expression of a single competency standard by stating:

Godinez involved a State that sought to permit a gray-area defendant to represent himself. Godinez's constitutional holding is that a State may do so. But that holding simply does not tell a State whether it may deny a gray-area defendant the right to represent himself-the matter at issue here.

Edwards, 128 S.Ct. at 2383-85. The Court concluded that there may be times where a defendant met the competency standard for going to trial but lacked the ability to "carry out the basic tasks needed to present his own defense", and noted that such situations would do nothing dignity of the individual or the right to a fair trial, and would call the integrity of the system into question. Thus, Edwards held:

We consequently conclude that the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking

whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under Dusky but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.

128 S.Ct. at 2385-88.

Thus, Edwards is properly interpreted as only *allowing* a State to force representation on a “grey area” defendant incapable of conducting trial proceedings – not as requiring the State to do so. Indeed, that is precisely what Godinez held – that a State is not required to override a defendant’s wishes. And of course, here, there is and can be no contention that Appellant is anywhere close to a “grey area” defendant. There have never been any issues raised as to his competency or mental status, and, as will be more explored in the next issue, his conduct of this trial certainly rebuts any contention he was anywhere near the “grey area”. Accordingly, Appellant had an absolute federal constitutional right to represent himself, which the trial court appropriately honored.

C. Appellant’s policy arguments are insufficient to override a clear federal constitutional right, which can only be abridged where specific circumstances of a particular case warrant it.

Appellant contends that capital cases fall out of the purview of Faretta because of the State’s interest in the fair administration of justice in its death penalty system, which he asserts overrides the defendant’s constitutional right to represent himself. However, this fails as a justification for overriding a clear constitutional mandate.

First, of course, is the fact that the United States Supreme Court obviously considers the right of self-representation to be so rooted in the Sixth Amendment – indeed,

part of the “lifeblood of the law”, that it cannot be circumscribed by a *per se* rule applicable to all capital defendants. A review of Edwards shows that the concern there was with a defendant who was otherwise competent but suffering from mental illness that would make him “unable to carry out the basic tasks needed to present his own defense without the help of counsel”. The Court noted that in such a situation, letting a mentally ill defendant defend himself does nothing for the dignity of the individual or the right to a fair trial, and would call the system into question. Ultimately, the court noted that trial courts were in the best position to make case-by-case determinations of a defendant’s mental illness and his ability to conduct the trial. The important point is that the right of self-representation is important enough that its abridgment for competent people is allowed only on a case-by-case basis where the mental illness is so bad that it is warranted – a determination which is flatly inconsistent with the *per se* prophylactic rule suggested by Appellant.

Other decisions also show the paramount importance of this right, and the fact that it may be circumscribed only on a case-by-case basis where the circumstances warrant it. For example, in McCaskle v. Wiggins, 465 U.S. 168 (1984), the Court addressed a situation where there was unsolicited participation by stand-by counsel, and held that the right was not violated by such participation as long as the defendant retained actual control over the case presented to the jury, and counsel was not able to destroy the impression before the jury that the defendant is representing himself. And, of course, many decisions have carefully dealt with situations where a defendant lost his right to self-representation by misbehavior, delay or manipulation. See, e.g. U.S. v. Frazier-El, 204 F.3d 553 (4th Cir. 2000) (affirming refusal of self-representation where manipulative); State

v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998) (while post-trial requests of a *pro se* defendant for counsel should normally be honored, request was properly denied where it was made 24 hours before the sentencing proceeding, in which the same jury was sequestered); State v. Cabrera-Pena, 350 S.C. 517, 567 S.E.2d 472 (Ct. App. 2002) (last minute letter complaining about counsel was an attempt to delay the proceedings and the trial court was within its discretion in not indulging it). A *per se* rule abrogating a right entirely for a class of defendant is simply inconsistent with the importance of this individual right and the care with which it has been treated by the courts.

Indeed, Appellant's contentions would be in many ways applicable in the non-capital setting. Fair administration of justice is important in non-capital cases as well. While certainly death penalty cases are different in procedure and in sentencing, if in fact *pro se* representation is so destructive to the reliability of the system as Appellant suggests, then there would be no basis for distinguishing between capital and non-capital cases.

Next, the concerns Appellant has about the reliability of the process can be soothed by exactly what happened in this case – the appointment of standby counsel. Faretta allows a trial court to appoint standby counsel to aid *pro se* defendants “if and when [they] request [] help, and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary.” Faretta, 422 U.S. at 834 n. 46, 95 S.Ct. 2525. While there is no requirement of standby counsel, their existence provide an important mechanism to ensure fairness and reliability. Again, though, the point is they are allowed on a case by case basis where the trial judge finds they are warranted.

Indeed, Article I, section 14 of the South Carolina Constitution specifically provides

that a defendant has the right to be heard “in his defense by himself or by his counsel or by both”. While there is no right to hybrid representation, see Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989), and State v. Sanders, 269 S.C. 215, 237 S.E.2d 53 (1977), this provision provides yet another overlay which would preclude this Court from creating a *per se* rule prohibiting all *pro se* representation.

Appellant finally contends that because of this Court’s statutory duty to review death sentences for proportionality, allowing *pro se* representation could affect other death sentenced inmates represented by counsel inasmuch as the *pro se* cases are compared to the represented cases. Of course, S.C. Code Ann. § 16-3-25(C) (Rev. 2003) requires this Court to review a death sentence to see if it is excessive or disproportionate to the penalty in other cases, considering the crime and the defendant. Of course, this Court could if it desired take such a fact into consideration in its review process, if it was concerned. But there is simply no standing here for Appellant to assert a *per se* rule after taking his chance at trial, where no specific circumstances of his case warrant trampling on the right of self-representation, simply based on the possible effect his case might have on hypothetical other people who receive death sentences in the future.

As to Appellant’s concern that a capital case is too complex and difficult to try by an incarcerated inmate, that is a concern for the waiver inquiry, and also one that is handled on a case-by-case basis by the judge’s effort to provide the defendant with reasonable resources. Standby counsel also are adequate to address this concern. Indeed, the judge here noted he did everything he could for Appellant with regard to funding, westlaw access, and getting the jail to bend or break rules so that Appellant could

make his case. **{Tr. 2835 }**. And, Appellant was specifically warned of these potential difficulties before proceeding, but elected to do so anyway. **{Westbrook Order 3/29/04}**.

While this Court obviously has the power to interpret and apply the federal constitution, it is respectfully submitted that this Court of course cannot simply and completely override for policy reasons the clear constitutional mandate from the United States Supreme Court on the sanctity of the right to represent oneself. Moreover, nothing about Indiana v. Edwards changes this conclusion – particularly for someone as clearly competent and reasonably intelligent as Appellant. The issue should be rejected.

III. APPELLANT VOLUNTARILY AND KNOWINGLY WAIVED HIS RIGHT TO COUNSEL IN THE SENTENCING PHASE, WHERE THE RECORD IS REplete WITH EVIDENCE OF HIS UNDERSTANDING OF THAT PORTION OF THE TRIAL.

Appellant finally contends that he did not knowingly and intelligently waive his right to counsel during the sentencing phase of trial. However, the record is replete with evidence that Appellant was well aware of the issues regarding a penalty phase, and regardless, even if this Court was concerned about his understanding, the issue would be for PCR.

A. General Rules

Faretta allows a defendant to **waive** his right to counsel if (1) the accused is advised of his right to counsel and (2) he is adequately warned of the dangers of self-representation.

Prince v. State, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990). In the absence of a specific inquiry by the trial judge addressing the disadvantages of a pro se defense as required by the second Faretta prong, [the appellate court] will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source." Id. (citation omitted). To determine if an accused has sufficient background to comprehend the dangers of self-representation, courts consider a variety of factors including:

(1) the accused's age, educational **background**, and physical and mental health;

(2) whether the accused was **previously involved** in criminal trials;

(3) whether the accused knew the **nature of the charge(s)**

and of the possible penalties;

(4) whether the accused was represented by counsel before trial and whether that **attorney explained to him** the dangers of self-representation;

(5) whether the accused was attempting to **delay or manipulate** the proceedings;

(6) whether the court appointed **stand-by counsel**;

(7) whether the accused knew he would be required to comply with the **rules of procedure** at trial;

(8) whether the accused knew of the **legal challenges** he could raise in defense to the charge(s) against him;

(9) whether the **exchange between the accused and the court** consisted merely of pro forma answers to pro forma questions; and

(10) whether the accused's waiver resulted from either **coercion or mistreatment**.

Gardner v. State, 351 S.C. 407, 412-13, 570 S.E.2d 184, 186-87 (2002). The ultimate test is not the trial judge's advice, but rather the defendant's understanding of the risks.

Gardner.

B. Appellant's contention that he was unaware of the danger of self representation in the penalty phase is refuted by the record.

Here, Appellant's brief sets forth part of the extensive colloquy which the late Judge Westbrook engaged in with Appellant regarding *pro se* representation. **{Brief of Appellant pp. 11-12}**. His only contention here is there was no colloquy specifically regarding the penalty phase, and thus he asserts his waiver was not knowing and voluntary.

This contention is specious. Again, the test is the defendant's understanding, not the trial judge's advice. Respondent will not attempt to cite every portion of the record, but a reading of the record as a whole more than establishes that Appellant very well knew exactly what he was entailed.

First, of course, is the fact that Appellant already had one capital trial in which he was represented by counsel.

Second is the fact that Appellant had in this trial and in all pretrial proceedings wither full counsel or standby counsel who were very experienced capital attorneys and who would have explained the process to Appellant.

Specific portions of the various pre-trial hearings are noteworthy in this regard. Appellant indicated he understood capital trials had different rules. **{Pretrial Tr. 23}**. He noted he wanted to voir dire the jury because "it's a capital case and these jurors are going to make a decision whether I am guilty or not guilty and possibly make a decision whether I live or die" – clearly showing his knowledge of the contingent nature of the penalty phase. **{Pretrial Tr. 25}**. He noted he had read a lot of death penalty opinions, and was aware of another inmate who went pro se and won the penalty phase. **{Pretrial Tr. 39}**. He noted he had read a lot of closing arguments done by David Bruck. **{Pretrial Tr. 45}**. He was told by the judge he might find himself wanting to turn the case over to attorneys in the middle and they would be unable to do that. **{Pretrial Tr. 48}**. He told the judge that if the jury came back with manslaughter they would not have to go to the penalty phase, where the State would try to put up "every bad thing that they can come up with". **{Pretrial Tr. 58-59}**. Attorney Nettles noted he had spent a lot of time talking with Appellant on his

decision to proceed pro se. {Pretrial Tr. 65}. Appellant told the judge he understood Faretta and the risks. {Pretrial Tr. 229-30}. He requested the same investigator to work on his mitigation in the penalty phase, and noted the need to get school records and medical records. {Pretrial Tr. 277-78}. He discussed the State's evidence in aggravation regarding his other bad acts. {Pretrial Tr. 299}. He was present when the judge explained the capital process to the potential jurors. {Tr. 128}. He asked potential jurors about mitigation in voir dire. {Tr. 153; 182; 272; 596; 762}. In arguing to the judge for a voir dire question, he specifically noted that he may get to the penalty phase and be too shocked to put up a case – showing he was quite aware of that risk. {Tr. 186-89}. He made a very reasonable Wainwright argument that succeeded in qualifying a juror. {Tr. 769; 881}.

Thus, the record is replete with evidence that Appellant was very familiar with capital proceedings and the penalty phase of a capital trial. His handling of this case and discussion of legal issues throughout the trial shows his capability and intelligence to be far above average for a lay person. However, even if this Court had some concern, the issue would need to be addressed in PCR, where the discussion between Appellant and others (such as standby counsel) could be explored. See Watts v. State, 347 S.C. 399, 556 S.E.2d 368 (2001). Again, the test is the defendant's ultimate understanding, not the colloquy.

The issue should be denied.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment and conviction of the trial court should be affirmed.

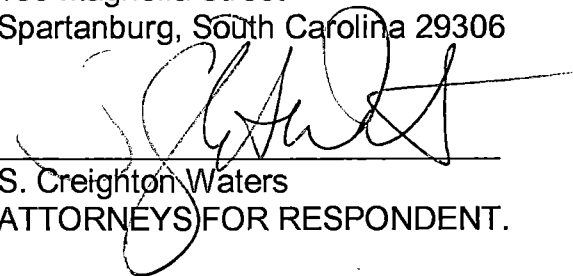
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S. Creighton Waters
ATTORNEYS FOR RESPONDENT.

November 9, 2009

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

RECEIVED

NOV 19 2009

Appeal from Lexington County
The Honorable Lee S. Alford, Circuit Court Judge

S.C. SUPREME COURT

THE STATE,

Respondent,

v.

NORMAN STARNES,

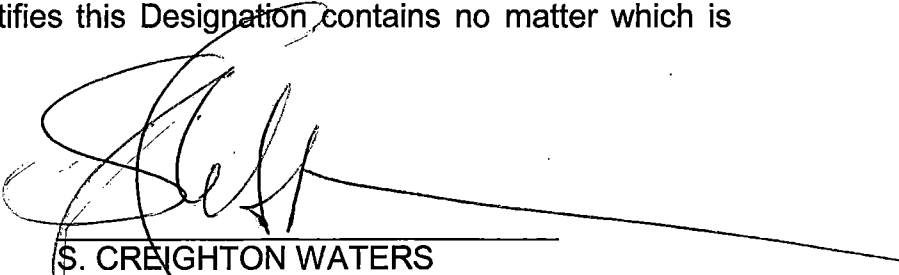
Appellant.

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

In addition to the matter designated by the Appellant, Respondent proposes the following to be included in the Record on Appeal:

Order of Judge Westbrook dated 3/29/04.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.



S. CREIGHTON WATERS
Senior Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT

November 16, 2009.

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APR 17 2012

S.C. SUPREME COURT

April 15, 2012

The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
ATTN: Ms. Debbie Hopkins
P.O. Box 11330
Columbia, S.C. 29211-1330

Re: *Norman E. Starnes v. State*, 2011-CP-32-830

Dear Ms. Hopkins:

The purpose of this letter is to provide the Court with a summary of activity in the above-mentioned case, in the last sixty days. The Court, the Honorable Alexander S. Macaulay presiding, appointed counsel to Mr. Starnes on March 21, 2011, myself and Mr. Micah Leddy. Counsel have conducted several depositions to obtain records and discovery from law enforcement, including SLED and, in Spartanburg, of the Seventh Judicial Circuit Solicitor's office, who prosecuted Mr. Starnes after Mr. Myers was recused due to a conflict.

That Solicitor's office, through Mr. Bulsa, has withheld materials from the file and has refused to provide the materials to the Court or a privilege log regarding the same. We anticipate litigation regarding the materials. That office did produce ten boxes of materials that are in the process of being scanned by a Spartanburg service. The service has promised to complete the massive job by May 27, 2011.

The Court set May 21, 2011 as the date for Mr. Starnes to file his first amended application. Mr. Starnes will be forced to request an extension in order to make a meaningful amendment, considering the ten boxes of documents, the nine volumes of ROA, the other information gathered so far during the depositions.

July Update: The copy service completed the replication of over 20,000 items from the State's file. Mr. Bulsa provided the previously withheld materials to the PCR Court and the Court has those materials for assessment. Applicant filed his first amended application for post-conviction relief. At the State's request, the PCR Court held a status/scheduling conference. The PCR Court set December 26, 2011 as the deadline for discovery to conclude and ordered that the evidentiary hearing would commence on March 1, 2012.

Honorable Daniel E. S. arouse

April 15, 2012

Page Two

September Update: Lead counsel has been involved in intense preparation for the retrial of the State v. Ernest Riddle. Still, we have been advancing the investigative effort, both fact and mitigation as diligently as we are able. We are also still processing the twenty thousand documents the prosecutors provided to counsel. With the *Riddle* matter resolved, primary focus will be on advancing discovery and preparing for an evidentiary hearing.

November update: Investigation is ongoing. Applicant is scheduling depositions to commence the second week in December. Former Solicitor Gowdy, who is now a U.S. Congressman, states that he is unable to make time for a deposition in this case until the end of January. The state has filed its first interrogatories and requests to produce, which are still pending. Applicant's counsel are diligently processing information and preparing his case.

January update: Investigation is actively ongoing. We deposed Congressman Gowdy, who provided a great deal of new information, which we will pursue. We have notified Judge Macaulay on behalf of Mr. Starnes that despite our best efforts, we will need to ask the Court to continue the case, with a deadline of August 1, 2012 to complete discovery and a fall merits hearing. We are of the opinion, respectfully, that those dates are very realistic and that justice will be well-served, as will Mr. Starnes. Mr. Simon, on behalf of the State, has declared that it takes no position regarding the suggested schedule. Judge Macaulay is in the process of scheduling a telephonic status conference to discuss scheduling.

April update: The parties scheduled several depositions of prosecutors from various judicial circuits who were involved in the prosecution of Mr. Starnes, which required a great deal of coordination of schedules. Two business days before the depositions were to commence, the state filed a motion to quash as to one prosecutor and a motion for protective order regarding the state's desire to block Applicant from asking questions that go to proving a pattern and practice of misconduct. The depositions had been scheduled for April 2nd and April 9th, but did not go forward. Other discovery is ongoing, as is case preparation. The Court orally set a scheduling order that discovery will commence on August 31st, amended application is due September 5th, and, the evidentiary hearing to commence on October 15, 2012

With highest personal regards, I remain

Very truly yours,

A handwritten signature in dark ink, appearing to read "Diana L. Holt", with a long, sweeping horizontal line extending to the right.

Diana L. Holt

(CC recipients electronically only)

cc: Al Simon, Esq. (Asimon@scag.gov)

T. Micah Leddy, Esq. (Micah@Leddylaw.com)

The Supreme Court of South Carolina

The State,

Respondent,

v.

Norman Starnes,

Petitioner.

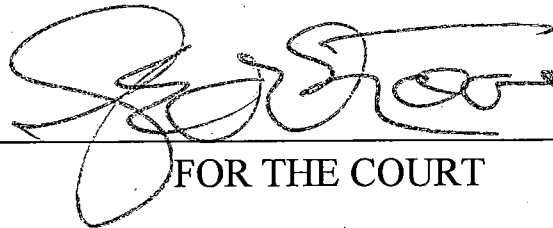
ORDER

By order dated March 1, 2011, we granted a request for a stay of execution in this matter and assigned the Honorable Alexander S. Macaulay to petitioner's post-conviction relief (PCR) action. The order stated that, absent an extension of time by this Court, a final hearing shall be held and a final order issued in this matter within one year of the date of the order.

Judge Macaulay has now submitted a letter to the Chief Justice in which he states counsel for petitioner has represented that, despite their best and diligent efforts, they are unable to complete discovery and preparation in the time prescribed by this Court's order of March 1, 2011. Judge Macaulay also reports the discovery process has yielded in excess of 20,000 pages of materials provided by the prosecutors alone. Petitioner's counsel has submitted the following schedule for Judge Macaulay's consideration: (1) discovery shall conclude by August 1, 2012; (2) an evidentiary hearing shall be held in mid-fall on a date to be determined by Judge Macaulay; (3) an amended PCR application shall be due thirty days prior to the date the evidentiary hearing is to convene; and (4) a reasonable time shall be granted to present post-hearing briefs to Judge Macaulay after the hearing transcript is complete. Judge Macaulay reports the State takes no position regarding the schedule requested by petitioner. In addition, Judge Macaulay states that he has conducted a status conference with the parties via telephone and determined the requested schedule is appropriate.

Because the delay in this case is not unreasonable, we grant Judge Macaulay

an extension of time until December 31, 2012, to hold a final hearing and issue a final order in this matter. However, because it does not appear a scheduling order has been issued in this matter despite the fact that it has been pending for more than one year, we hereby direct Judge Macaulay to issue a scheduling order, to include the date of the evidentiary hearing, within thirty days of the date of this order. A copy of the scheduling order shall be provided to counsel, this Court and Court Administration. In addition to petitioner's obligation to notify the Clerk of this Court of the status of this matter every sixty days under In re Stays of Execution in Capital Cases, supra, Judge Macaulay is requested to provide the Clerk of this Court and Court Administration with an update on the status of this matter every sixty days.


C.J.
FOR THE COURT

Columbia, South Carolina

March 7, 2012

cc: Diana L. Holt, Esquire
Assistant Attorney General Alphonso Simon, Jr.
The Honorable S. Macaulay
Motte L. Talley, Esquire



State of South Carolina
Tenth Judicial Circuit Court

*Note
So I need
to sign an
order
approving
tab 3 JBT*

ALEXANDER S. MACAULAY
JUDGE

OCONEE COUNTY COURTHOUSE

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WALHALLA, SOUTH CAROLINA 29691-0428

February 22, 2012

The Honorable Jean Hoefler Toal
Chief Justice
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211



Re: Norman Starnes v. State of South Carolina
Case No.: 2011-CP-32-830

Dear Chief Justice Toal:

This Capital PCR case was assigned to me by an order of your Court on March 1, 2011. At this time, counsel for the Applicant have represented that, despite their best and diligent efforts, they are unable to complete discovery and preparation in the time prescribed in your order. I am also informed that the discovery process has yielded in excess of 20,000 pages of materials provided by the trial prosecutors, alone. They have requested the following scheduling for the case:

1. Discovery shall conclude on August 1, 2012;
2. Evidentiary hearing date in mid-fall to be determined by the Court
3. Amended Application due thirty days prior to the date the hearing is to convene.
4. A reasonable time to present post-hearing briefs to the Court after the hearing transcription is complete.

The Attorney General's office has responded that the State takes no position regarding

the schedule requested by Mr. Starnes. After conducting a telephone status conference with the parties, I have determined that the Applicant's requested scheduling is appropriate and ask the Court to order the same.

With the kindest personal and professional regards, I am,

Sincerely,

A handwritten signature in black ink, appearing to read "A. S. Macaulay", written over a horizontal line.

ALEXANDER S. MACAULAY
Circuit Judge, Tenth Judicial Circuit

cc: Diana L. Holt, Esquire
Assistant Attorney General Alphonso Simon Jr.
Motte L. Talley, Esquire

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September 21, 2011
The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
ATTN: Ms. Debbie Hopkins
P.O. Box 11330
Columbia, S.C. 29211-1330

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SEP 22 2011

Re: *Norman E. Starnes v. State*, 2011-CP-32-830

S.C. Supreme Court

Dear Ms. Hopkins:

The purpose of this letter is to provide the Court with a summary of activity in the above-mentioned case, in the last sixty days. The Court, the Honorable Alexander S. Macaulay presiding, appointed counsel to Mr. Starnes on March 21, 2011, myself and Mr. Micah Leddy. Counsel have conducted several depositions to obtain records and discovery from law enforcement, including SLED and, in Spartanburg, of the Seventh Judicial Circuit Solicitor's office, who prosecuted Mr. Starnes after Mr. Myers was recused due to a conflict.

That Solicitor's office, through Mr. Bulsa, has withheld materials from the file and has refused to provide the materials to the Court or a privilege log regarding the same. We anticipate litigation regarding the materials. That office did produce ten boxes of materials that are in the process of being scanned by a Spartanburg service. The service has promised to complete the massive job by May 27, 2011.

The Court set May 21, 2011 as the date for Mr. Starnes to file his first amended application. Mr. Starnes will be forced to request an extension in order to make a meaningful amendment, considering the ten boxes of documents, the nine volumes of ROA, the other information gathered so far during the depositions.

July Update: The copy service completed the replication of over 20,000 items from the State's file. Mr. Bulsa provided the previously withheld materials to the PCR Court and the Court has those materials for assessment. Applicant filed his first amended application for post-conviction relief. At the State's request, the PCR Court held a status/scheduling conference. The PCR Court set December 26, 2011 as the deadline for discovery to conclude and ordered that the evidentiary hearing would commence on March 1, 2012.

Honorable Daniel E. S. arouse
September 21, 2011
Page Two

September Update: Lead counsel has been involved in intense preparation for the retrial of the State v. Ernest Riddle and under an order of protection for the trial. Still, we have been advancing the investigative effort, both fact and mitigation as diligently as we are able. We are also still processing the twenty thousand documents the prosecutors provided to counsel. With the *Riddle* matter resolved, counsel's primary focus will be on advancing discovery and preparing for an evidentiary hearing.

With highest personal regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to be "Diana L. Holt", written over a large, loopy, oval-shaped flourish.

Diana L. Holt

(CC recipients electronically only)

cc: Al Simon, Esq. (Asimon@scag.gov)
T. Micah Leddy, Esq. (Micah@LeddyLaw.com)

Post Office Box 6454
Columbia, South Carolina 29260
Voice 803.782.1663

Fax 803.787.0374
Email DianaHolt@alumni.utexas.net

July 24, 2011
The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
ATTN: Ms. Debbie Hopkins
P.O. Box 11330
Columbia, S.C. 29211-1330

RECEIVED

JUL 27 2011

S.C. SUPREME COURT

Re: *Norman E. Starnes v. State*, 2011-CP-32-830

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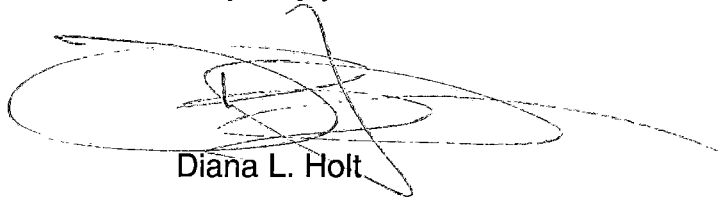
Honorable Daniel E. S. arouse

July 24, 2011

Page Two

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Very truly yours,

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Diana L. Holt

(CC recipients electronically only)

cc: Al Simon, Esq. (Asimon@scag.gov)

T. Micah Leddy, Esq. (Micah@LeddyLaw.com)

Post Office Box 6454
Columbia, South Carolina 29260
Voice 803.782.1663
Fax 803.787.0374
Email DianaHolt@alumni.utexas.net

May 20, 2011
The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
ATTN: Ms. Debbie Hopkins
P.O. Box 11330
Columbia, S.C. 29211-1330

RECEIVED

MAY 24 2011

S.C. SUPREME COURT

Re: *Norman E. Starnes v. State*, 2011-CP-32-830

Dear Ms. Hopkins:

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With highest personal regards, I remain

Very truly yours,



Diana L. Holt

(CC recipients electronically only)

cc: Al Simon, Esq. (Asimon@scag.gov)
T. Micah Leddy, Esq. (Micah@LeddyLaw.com)

The Supreme Court of South Carolina

The State,

Respondent,

v.

Norman Starnes,

Petitioner.

ORDER

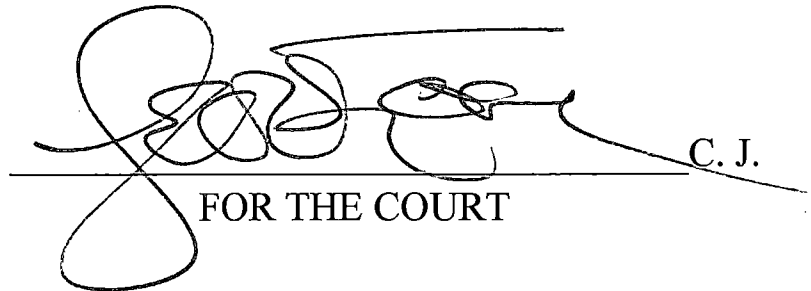
Petitioner was convicted of two counts of murder and was sentenced to death. This Court affirmed the convictions and sentence. State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010). The United States Supreme Court denied certiorari on February 22, 2011. Starnes v. South Carolina, 2011 WL 589232 (U.S.S.C. Feb. 22, 2011)(No. 10-858).

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

The request for a stay of execution is granted. The stay shall remain in effect to the extent provided by this Court in In re Stays of Execution in Capital Cases. The Honorable Alexander Macauley is hereby

assigned to the PCR action petitioner intends to file. Judge Macauley shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard to whether there is a term of court scheduled. Judge Macauley shall conduct a hearing on petitioner's desires regarding counsel within thirty days of the date of this order. In addition, absent an extension of time by this Court, a final hearing shall be held and a final order issued in this matter within one year of the date of this order.

IT IS SO ORDERED.



C. J.
FOR THE COURT

Columbia, South Carolina

March 1, 2011

cc: Appellate Defender Elizabeth A. Franklin-Best
Senior Assistant Attorney General S. Creighton Waters
The Honorable Alexander S. Macaulay
Motte L. Talley, Esquire



ALAN WILSON
ATTORNEY GENERAL

February 25, 2011

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FEB 25 2011

S.C. Supreme Court

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

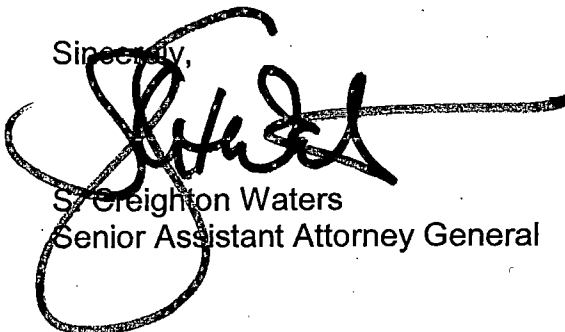
Re: State of South Carolina v. Norman Starnes
Appeal from Lexington County

Dear Mr. Shearouse:

Please accept this letter in lieu of a formal return to the Motion for a Stay of Execution and Appointment of a Post Conviction Relief Judge, received from Appellant yesterday. Since the motion identifies at least some issues of the sort appropriate for PCR, it thus appears that a stay is appropriate solely for the purpose of litigating a PCR action in a manner consistent with this Court's opinion in In re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996). The State also requests that a judge be assigned to this capital PCR action and a hearing regarding appointment of counsel be held.

Thank you for your attention to this matter. If there are any further questions or concerns, do not hesitate to contact me.

Sincerely,



S. Greighton Waters
Senior Assistant Attorney General

cc: Elizabeth A. Franklin-Best, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

February 4, 2011

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

RECEIVED

FEB 23 2011

S.C. Supreme Court

Re: The State v. Norman Starnes

Dear Mr. Shearouse:

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

Sincerely,

Elizabeth A. Franklin-Best
Appellate Defender

EAF/fkb

Enclosure

cc: Donald J. Zelenka, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

PETITIONER

ORIGINAL

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FEB 23 2011

S.C. Supreme Court

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

Counsel for Norman Starnes moves this Court for a stay of execution and to appoint a post-conviction relief judge so that post-conviction counsel can be appointed by the post-conviction relief judge.

I.

This Court affirmed petitioner's murder conviction and death sentence in State v. Norman Starnes, 388 S.C. 590, 696 S.E.2d 604 (2010). This Court denied rehearing on September 22, 2010. The United States Supreme Court denied certiorari on February 22, 2011.

II.

Petitioner now can raise numerous grounds of ineffective assistance of counsel in an application for post-conviction relief. After consulting with petitioner, it appears that that he intends to raise, at a minimum, the following issues:

- (A) Petitioner was ineffectively represented, in derogation of his rights under the 6th amendment of the United States Constitution, where appellate counsel failed to raise and argue that petitioner was entitled to a jury instruction on imperfect self-defense, and petitioner was prejudiced by his appellate counsel's substandard performance.
- (B) Petitioner was ineffectively represented, in derogation of his rights under the 6th amendment of the United States Constitution, where appellate counsel failed to argue, either in briefing or at oral argument, that Gwen Otts' testimony supported a jury charge on voluntary manslaughter.
- (C) Petitioner was ineffectively represented, in derogation of his rights under the 6th amendment of the United States Constitution, where appellate counsel failed to raise the following cases for the South Carolina Supreme Court's consideration during briefing or at oral argument: State v. Penland, 275 S.C. 537, 273 S.E.2d 765 (1981); State v. Rish, 104 S.C. 250, 88 S.E. 531 (1916); Spaziano v. Florida, 468 U.S. 447 (1984); Stevenson v. United States, 162 U.S. 313 (1896).
- (D) Petitioner may also raise issues relating to possible prosecutorial misconduct, juror issues, and Brady claims. Appellate counsel cannot be more specific regarding these grounds because no investigation was conducted on direct appeal.

III.

The above list of issues petitioner can raise is not exhaustive, and would likely expand, once appointed post-conviction counsel has had the opportunity to investigate petitioner's case. The

above grounds are merely offered to show that issues of ineffective assistance of counsel exist in this case. Neither appellate counsel nor petitioner intends to waive any aspect of the attorney-client privilege by filing this motion for a stay of execution which is mandatory pursuant to In re Stays of Execution in Capital Cases, 321 S.C. 544, 546, 471 S.E.2d 140, 141 (1996) for petitioner to obtain a stay to proceed with post-conviction relief.

IV.

Based on the above, petitioner requests that this Court issue a stay of execution and appoint a post-conviction relief judge so that the appointed post-conviction relief judge can hold a hearing to appoint post-conviction counsel. This will allow petitioner to pursue his state court post-conviction relief action in the Lexington County Court of Common Pleas.

WHEREFORE, counsel for Norman Starnes requests that this Court issue a stay of execution and appoint a post-conviction relief judge so that the appointed post-conviction relief judge can hold a hearing to appoint post-conviction counsel so that petitioner can pursue post-conviction relief with the assistance of counsel in the Lexington County Court of Common Pleas upon the grounds of ineffective assistance of counsel, and any other grounds that may arise from post-conviction counsel's investigation of this case.

Respectfully submitted,



Elizabeth A. Franklin-Best
Appellate Defender
Attorney for Petitioner

February 23, 2011

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

THE STATE,

RESPONDENT,

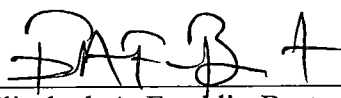
V.

NORMAN STARNES,

PETITIONER

CERTIFICATE OF SERVICE

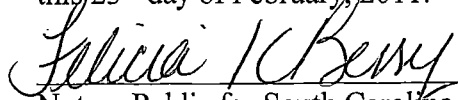
The undersigned attorney hereby certifies that a true copy of the motion for a stay of execution and to appoint a post-conviction relief judge in the above-referenced case has been served upon opposing counsel, Donald J. Zelenka, Esquire, this 23rd day of February, 2011.



Elizabeth A. Franklin-Best
Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 23rd day of February, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020.

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

February 22, 2011

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

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

RECEIVED

FEB 24 2011

S.C. SUPREME COURT

Re: Norman Starnes
v. South Carolina
No. 10-8058
(Your No. 26868)

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

December 21, 2010

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

RECEIVED
DEC 31 2010
S.C. SUPREME COURT

Re: Norman Starnes
v. South Carolina
No. 10-8058
(Your No. 26868)

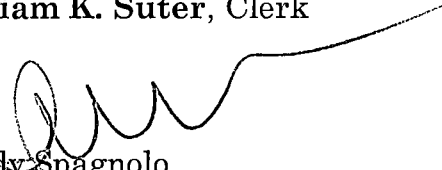
Dear Clerk:

The petition for a writ of certiorari in the above entitled case was filed on December 17, 2010 and placed on the docket December 21, 2010 as No. 10-8058.

Sincerely,

William K. Suter, Clerk

by


Sandy Spagnolo
Case Analyst



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate

December 17, 2010

RECEIVED

DEC 17 2010

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

S.C. Supreme Court

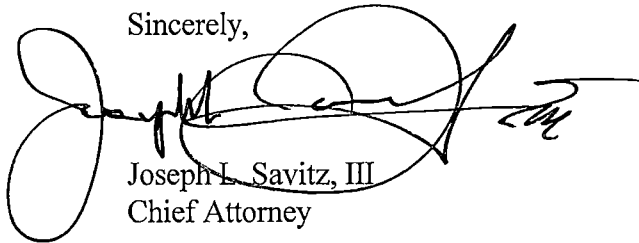
Re: Norman Starnes v. State of South Carolina

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,



Joseph L. Savitz, III
Chief Attorney

JLS,III/lec
Enclosure

cc: Donald J. Zelenka, Esquire



SCCID

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December 17, 2010

RECEIVED

DEC 17 2010

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

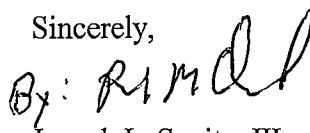
S.C. Supreme Court

Re: Norman Starnes 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 Norman Starnes 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 S. Creighton Waters, Esquire, of the Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549. His phone number is (803) 734-3727. I represent petitioner Norman Starnes. The other information required by Rule 29.5 is contained above. If additional information is desired, please contact me.

Sincerely,

By: 

Joseph L. Savitz, III
Attorney at Law

JLS,III/lec

Enclosure

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

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2010

No. A-

NORMAN STARNES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent

RECEIVED

DEC 17 2010

S.C. Supreme Court

PETITION FOR WRIT OF CERTIORARI TO THE
SOUTH CAROLINA SUPREME COURT

JOSEPH L. SAVITZ, III
Attorney at Law

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

ATTORNEYS FOR PETITIONER

QUESTION PRESENTED

Did the South Carolina Supreme Court violate the Due Process Clause of the Fourteenth Amendment by retroactively increasing the quantum of evidence required to obtain a jury instruction on voluntary manslaughter?

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TABLE OF AUTHORITIES

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<i>Bouie v. City of Columbia</i> , 378 U.S. 347 (1964)	16
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<i>Holmes v. South Carolina</i> , 547 U.S. 319 (2006)	19
<i>Rogers v. Tennessee</i> , 542 U.S. 451 (2001)	16
<i>State v. Belcher</i> , 385 S.C. 597, 685 S.E.2d 802 (2009)	17
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2010

No. A-

NORMAN STARNES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
SOUTH CAROLINA SUPREME COURT

Counsel for Norman Starnes petitions the Court to issue a writ of certiorari to review the decision of the South Carolina Supreme Court affirming his two convictions for murder and death sentence.

CITATION TO OPINION BELOW

The South Carolina Supreme Court's opinion is reported as *State v. Norman Starnes*, 388 S.C. 590, 698 S.E.2d 604 (2010), and reproduced in the Appendix to this petition at pages A1-A6 .

JURISDICTION

The final judgment of the South Carolina Supreme Court in this case was entered August 16, 2010. The Supreme Court denied rehearing September 22, 2010. (The petition for rehearing and order denying rehearing appear in the Appendix at pages A7-A11.)

The Court has jurisdiction pursuant to 28 U.S.C §1257(a), since Starnes is asserting the deprivation of a right secured by the United States Constitution.

CONSTITUTIONAL PROVISION INVOLVED

This case presents a denial of the due process guaranteed by the Fourteenth Amendment, Section I, which provides that no State “shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

STATEMENT OF THE CASE

On May 8, 2000, the South Carolina Supreme Court reversed the two murder convictions and death sentence of Norman Starnes in this case due to a defective self-defense instruction. *State v. Starnes*, 340 S.C. 312, 531 S.E.2d 907 (2000). By his own admission, Starnes shot and killed Bill Welborn and Jared Champlin in his home the night of January 8, 1996, but maintained that he had done so in self-defense. The Court reversed because:

The facts presented at trial entitled appellant to a self-defense charge in regard to both shootings. Appellant testified Welborn pointed a gun at him and he believed Champlin was armed. Appellant did not have to wait for Welborn or Champlin to fire or aim at him before acting in self-defense. Accordingly, appellant was entitled to a charge instructing the jury he did not have to wait before acting in self-defense. Refusal to charge this request was reversible error.

531 S.E.2d at 914. The present appeal is from the retrial of that case. The only two significant differences between the two trials were that on retrial (1) Starnes was permitted to represent himself and (2) the trial judge refused to instruct the jury on voluntary manslaughter, even though manslaughter had been charged at the prior trial based on the exact same evidence.

On November 8 through 15, 2007, Norman Starnes again stood trial before a jury on the 1996 indictment charging him with murdering Welborn and Champlin. The State again sought the death penalty, relying on three statutory aggravating circumstances:

- (1) “Two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct” [*S.C. Code Section 16-3-20(C)(a)(9)*];
- (2) “The murder was committed while in the commission of... robbery while armed with a deadly weapon” [*Section 16-3-20(C)(a)(1)(d)*]; and

- (3) “The murder was committed while in the commission of... larceny with the use of a deadly weapon” [*Section 16-3-20 (C)(a)(1)(e)*]

Starnes advanced four statutory mitigators:

- (1) “The defendant has no significant history of prior criminal conviction involving the use of violence against another person” [*S.C. Code 16-3-20 (C)(b)(1)*];
- (2) “The murder was committed while the defendant was under the influence of mental or emotional disturbance” [*Section 16-3-20 (C)*]
- (3) “The victim was a participant in the defendant’s conduct or consented to the act” [*Section 16-3-20(C)(b)(3)*]; and
- (4) “The defendant was provoked by the victim into committing the murder” [*Section 16-3-20 (C)(b)(8)*].

The judge also instructed the jury:

[T]he defendant has presented evidence of non-statutory mitigating circumstances concerning his adaptability to prison life. In addition to this non-statutory mitigating circumstance, you may consider any other non-statutory mitigating circumstances that you find exist.

ROA p. 3104, lines 12-17.

Starnes once again testified that he had killed Welborn and Champlin in self-defense, believing both men were armed, wired on methamphetamine, and at that precise moment intended to kill both him and the drug dealer, Jody Fogle, he had summoned at their request. ROA p. 2386, line 13- p. 2390, line 19; ROA p. 2394, line 17- p. 2396, line 8; ROA p. 2406, lines 1-6; ROA p. 2418, lines 9-11; ROA p. 2431, lines 4-. “This case was a drug deal that went bad in my home,” Starnes summarized. ROA p. 2396, lines 6- p. 2160, line 12.

The judge instructed the jury on murder and self-defense, but refused to charge voluntary manslaughter. The jury found Starnes guilty of murdering Welborn and Champlin and, at the penalty phase, recommended a sentence of death, having found the three statutory aggravators advanced by the State. The judge then sentenced Starnes accordingly.

How the federal issue was raised below

To understand the federal issue raised, it is necessary to understand the law of voluntary manslaughter in South Carolina at the time of Starnes' trial.

Starnes testified that, the evening of the incident, Bill Welborn had stuck "a metal object up to my head," which could have been a gun or a cigarette lighter, and threatened to "blow his fucking brains out." ROA p. 2385, line 6 – p. 2386, line 8. The cashier at the bar where Starnes, Welborn and Jared Champlin were shooting pool corroborated Starnes' account of the threat. ROA p. 2078, line 20 – p. 2079, line 7.

As to the killing of Welborn and Champlin shortly after he returned home with drug-dealer Jody Fogle, Starnes testified:

[A]s Welborn and I were in the bedroom doorway, I heard somebody cussing and said, "I'm going to kill you, you motherfucker." I turned around. And when I turned around, I saw Jared pulling his gun and pointing it at Jody's chest. At that time, I ran into the bedroom and got my pistol off the headboard of my bed. I came back out. I looked through the bedroom doorway and I did not see anybody and I did not know where they were at, so I went to the door to exit. When I went to the door to exit, I heard somebody holler, "Whoa, [where the fuck are you going?]" I turned around. When I turned around, Bill Welborn had a gun, pointing it at me. I shot Bill Welborn and then turned and shot Jared Champlin. ... [A]pparently, when Jared pulled the gun on Jody, Bill Welborn went over and got the gun from Jared. I did not see that.

ROA p. 2386, line 13 – p. 2390, line 19; ROA p. 2393, lines 16-18. Jody Fogle largely

corroborated Starnes' account of the incident. ROA p. 2151, line 9 – p. 2157, line 8.

Starnes testified that Welborn and Champlin were “out of their minds that night” on methamphetamine. ROA p. 2404, lines 11-15; ROA p. 2406, lines 1-6. Fogle testified that Champlin acted “[l]ike he was on crack.” ROA p. 2152, lines 17-19. He looked “[e]vil” and had “crazy eyes,” Fogle added. ROA p. 2158, lines 9-13. Key State’s witness Gwendolyn Bailey, Starnes’ former girlfriend and the person who turned him in to the police, testified that Welborn and Champlin appeared to be “hyper, on drugs, alcohol” earlier that night. ROA p. 1647, line 23 – p. 1648, line 6. She told the police that the two men were “out of their minds when they came in the restaurant. ... [T]hey were hyped up, and I have never seen them like that before.” ROA p. 1663, line 21 – p. 1664, line 8.

In its earlier opinion in this case, the Supreme Court summarized this evidence as follows:

Immediately prior to the shooting, appellant observed Champlin hold the gun to Fogle’s head and threatened to shoot him, apparently because the intended drug deal, which appellant had arranged, had gone awry. Welborn then pointed a gun at appellant and threatened to kill him as he attempted to leave. Unaware Champlin had passed his weapon to Welborn when appellant was in the bedroom, appellant erroneously believed Champlin was armed and intended to kill him. [531 S.E.2d at 912.]

Thus, the guilt-phase evidence presented at both trials was virtually identical. Starnes received a voluntary manslaughter charge at his first trial, but at his retrial did not.

At an in-chambers charge conference, Starnes unequivocally requested a jury charge on voluntary manslaughter. ROA p. 2478, lines 16-19. He also submitted accurate written requests to charge manslaughter. ROA pp. 4221. The Solicitor agreed that “there is provocation is somebody pulls a gun on you in your house.” ROA p. 2490, lines 15 and 16. He nevertheless objected to a

charge on manslaughter, fearing a situation such as occurred in *State v. Wharton*, 381 S.C. 209, 672 S.E.2d 786 (2009), where the defendant's conviction for voluntary manslaughter in a murder prosecution was found to be without evidentiary support on appeal and resulted in a complete acquittal. ROA p. 2494, lines 8-21. (In *Wharton*, though, manslaughter was requested by the State and charged over the defendant's objection.)

The judge ultimately decided not to charge manslaughter for that reason, but added:

The defendant, Mr. Starnes, who is representing himself, does not request specifically the court to charge voluntary manslaughter, neither does he request that it not be charged [...] ... His position is basically no position, that he requests the court to charge the appropriate law based on the facts of the case. That's his position. And I have asked him two or three times what his position is. That's what he stated to the court.

ROA p. 2639, line 25 – p. 2641, line 16. But he clearly understood Starnes' "theory of the case":

He was trying to get away and he had no choice but to defend himself, because Welborn was pointing a pistol at him, and he thought he was going to kill him and he defended himself. He then turned and shot Champlin because he had seen Champlin with a pistol shortly before that, threatening ... and he thought that Champlin had a pistol and would shoot him, so he shot Champlin.

ROA p. 2542, lines 10-18. He *did* misapprehend the relationship between self-defense and voluntary manslaughter:

Now, obviously, if he was angry and upset and out to get these two men, then that would negate self-defense, although it might bring into play voluntary manslaughter. It would negate the defense of self-defense, because you can't go there with the intent of hurting somebody, mad at them, and then all of a sudden claim self-defense.

ROA p. 2543, lines 3-8. The judge reiterated, "[Starnes] has not requested that I even charge voluntary manslaughter, just to charge the law on the facts." ROA p. 2543, lines 10-15.

When given the chance, Starnes advised the judge, “I disagree with that, Your Honor.” ROA p. 2550, lines 9-15. At this point, the judge became exasperated with Starnes’ insistence upon a charge on voluntary manslaughter. ROA p. 2558, line 12 – p. 2559, line 6. He accused Starnes of “changing your position.” ROA p. 2560, line 22 – p. 2561, line 25.

The judge instructed the jury on murder and self-defense, but not manslaughter. ROA p. 2594, line 11 – p. 2618, line 5. Starnes took exception to the omission of voluntary manslaughter, citing (in addition to the South Carolina cases he had already cited) *Beck v. Alabama*, 447 U.S. 625, 638 (1980), which holds, “[I]f the unavailability of a lesser included offense instruction enhances the risk of an unwarranted conviction, [the State] is constitutionally prohibited from withdrawing that option from the jury in a capital case” by the Due Process Clause of the Fourteenth Amendment. ROA p. 2618, lines 15-18. Against all evidence to the contrary, the judge continued to insist that Starnes had never requested voluntary manslaughter. ROA p. 2624, line 7 – p. 2626, line 1.

How the federal issue was decided on direct appeal

On direct appeal to the South Carolina Supreme Court, Starnes argued:

The trial judge committed reversible error in the guilt phase by refusing to instruct the jury on voluntary manslaughter.

The South Carolina Supreme Court affirmed Starnes’ murder convictions (and death sentence), holding:

[T]he mere fact that a person is afraid is not sufficient, by itself, to entitle a defendant to a voluntary manslaughter charge. ... A person may act in a deliberate, controlled manner, notwithstanding the fact that he is afraid or in fear. Conversely, a person can be acting under an uncontrollable impulse to do violence and be incapable of cool reflection as a result of fear. The latter situation constitutes sudden heat of passion, but the former does not [698 S.E.2d at 610.]

And concluding:

[T]here is no evidence [Starnes] was out of control as a result of his fear or was acting under an uncontrollable impulse to do violence. The only evidence in the record is that [Starnes] deliberately and intentionally shot [the victims] and that either he shot the men with malice aforethought or in self-defense. [Id.]

In his rehearing petition, Starnes countered:

As an initial matter, at trial and on direct appeal Starnes argued (in addition to the South Carolina law he cited) that the Due Process Clause of the Fourteenth Amendment, interpreted by *Beck v. Alabama*, 447 U.S. 625, 638 (1980), also entitled him to a voluntary manslaughter charge. ROA. p. 2618, lines 15-18. In its opinion, the Court does not address this issue. ... More profoundly, the Court's holding itself violates the Due Process Clause. Although it purports merely "to clarify the law regarding how a defendant's fear following an attack or threatening act relates to voluntary manslaughter," in actuality the opinion alters the rules of evidence to require more evidence than the law required at the time of the offense -and Starnes' trial- to obtain a charge on voluntary manslaughter.

The Court denied rehearing without comment.

WHY THE WRIT SHOULD BE GRANTED

In South Carolina, voluntary manslaughter is defined as the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. *State v. Damon*, 285 S.C. 125, 328 S.E.2d 628 (1985). Moreover, as Starnes correctly indicated, *Beck v. Alabama* holds that “a jury in a capital case must be permitted to consider all lesser included non-capital offenses to the crime of capital murder when supported by the evidence” under the Due Process Clause of the Fourteenth Amendment. *State v. Patterson*, 285 S.C. 5, 327 S.E.2d 650, 652 (1984).

In deciding whether a charge on voluntary manslaughter is required, the evidence is viewed in the light most favorable to the defendant. *State v. Byrd*, 323 S.C. 319, 474 S.E.2d 430 (1996).

In determining whether the act which caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing.

State v. Gardner, 219 S.C. 97, 64 S.E.2d 130, 134 (1951).

The provocation by the deceased must be the direct and controlling cause of the passion, and it must be such as naturally and instantly to produce in the minds of persons ordinarily constituted the highest degree of exasperation, rage, anger, sudden resentment, or terror, rendering the mind incapable of cool reflection.

State v. Davis, 50 S.C. 405, 27 S.E.2d 905, 911 (1897) (quotation marks and citation omitted).

The threat of an imminent deadly assault is sufficient to require an instruction voluntary manslaughter. *State v. Jackson*, 301 S.C. 41, 389 S.E.2d 650 (1990). The Court had previously observed that “[t]here can be little argument” that an unprovoked attack with a deadly weapon

constitutes legal provocation sufficient to warrant a charge on manslaughter. *State v. Knoten*, 347 S.C. 296, 555 S.E.2d 391, 397 (2001). This includes pointing a gun at the defendant with apparent deadly intent. *State v. Penland*, 275 S.C. 537, 273 S.E.2d 765 (1981).

Starnes testified, “I didn’t kill [Welborn and Champlin] with malice aforethought[.] ... I was scared and I was frightened.” ROA p. 2395, line 24- p. 2396, line 8. Fear can constitute a basis for heat of passion to support voluntary manslaughter. *State v. Wiggins*, 330 S.C. 538, 500 S.E.2d 489 (1998).

Again, although the South Carolina Supreme Court purported merely to “clarify” the law relating to voluntary manslaughter, its opinion alters both the quality and quantity of evidence required to obtain a jury charge on voluntary manslaughter in South Carolina, which violates the Due Process Clause of the Fourteenth Amendment. See *Rogers v. Tennessee*, 542 U.S. 451 (2001); *Carmell v. Texas*, 529 U.S. 513 (2000); and *Bouie v. City of Columbia*, 378 U.S. 347 (1964). After correctly observing that precedent would appear to support Starnes’ claim to a voluntary manslaughter charge, the Court then proceeded to overrule *sub silentio* existing precedent which permitted the jury to infer (or not) the *mens rea* (“heat of passion”) for the offense from specific types of provocation previously held legally sufficient.

The Court’s ruling simply cannot be reconciled with its precedent. For example:

The distinction between murder and manslaughter, as put in the books, and as generally understood by the profession, is not merely an arbitrary rule, but is founded on a thorough knowledge of the human heart, and framed in compassion to the passions and frailties which belongs to and are inseparable from our natures. . . . [W]hat will or will not constitute a reasonable provocation is perhaps the only difficulty in applying the otherwise well-defined distinction between the crimes of murder and manslaughter. The line which distinguishes between those provocations which will and will not extenuate the offense, is not, nor can it be, certainly defined. Those provocations which are in themselves calculated to provoke a high

degree of resentment, and which ordinarily superinduce a great degree of violence when compared with those that are slight and trivial, and from which a great degree of violence does not usually follow, may serve as a general outline to mark the distinction, and when applied with judgment and discretion, will usually lead to the correct results.

State v. Ferguson, 20 S.C.L. (2 Hill) 619, 621 – 22 (1835), also quoted in *State v. Martin*, 216 S.C. 129, 57 S.E.2d 55, 56 – 57 (1949).

Another example:

I make some physical aggression upon your person, such as to indicate a contempt for your manhood, slap you in the face with the back of my hand to indicate my contempt for your courage, spit in your face, as if you were a dog, tweak your nose, take you by the ear and lead you across the street in the presence of the people, and you strike me dead. The law says that is manslaughter. It takes a provocation something like that, not necessary confined to those things, but to some physical aggression upon the person of another, or on the person of a member of its family (somebody for whom he is responsible), or on his property, in his presence. The law says that is manslaughter.

State v. Gallman, 79 S.C. 229, 60 S.E.2d 682, 687 (1908).

Although the Court seeks to limit its precedent by characterizing it as “fact-driven,” it does not cite any case presenting substantially similar facts in which the defendant was not afforded a charge on voluntary manslaughter.

At his initial trial, based on virtually identical evidence, Starnes received a voluntary manslaughter instruction without objection. The Court reviewed that instruction on direct appeal without questioning its propriety. *State v. Starnes*, 340 S.C. 312, 531 S.E.2d 907 (2000).

Also instructive is *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802, 809 (2009), where the Court ruled, “Under our policy-making role in the common law, we hold that the ‘use of a deadly weapon’ implied malice instruction has no place in a murder . . . prosecution where evidence is

presented that would reduce, mitigate, excuse or justify the killing.” Previously, juries had been permitted to infer the necessary *mens rea* for murder (malice) from evidence the homicide was accomplished with a deadly weapon. The Court then acknowledged that its decision “represents a clear break from our modern precedent” and declined to give its ruling retroactive effect. 685 S.E.2d at 810 (footnote omitted).

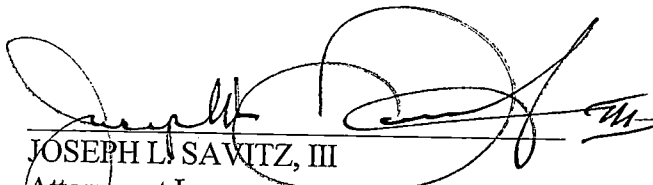
According to Starnes (and to an extent Jody Fogle and Gwen Ott), the victims, who were guests in Starnes’ home, pulled a gun on Starnes and Fogle, who was also a guest, and appeared likely to kill them. Starnes specifically testified, “[Y]ou would have to know what’s going on in an individual’s mind and their feelings when something like [this] happens, but I didn’t kill them with malice aforethought, with premeditation, just wasn’t mean and killed somebody. I was scared and I was frightened.” R. 2395, l. 24 – 2396, l. 8. He was not, as the Court suggests, “calm” and “cool” at the moment he fired the fatal shots. R. 2431, ll. 4 – 16. Starnes testified that he was not thinking clearly because he was “terrified.” R. 2143, l. 23 – 2144, l. 2. The fact that he “intentionally” shot the victims, which the Court also stresses, is legally irrelevant: “[V]oluntary manslaughter, of course, is an offense which does involve intent on the part of the perpetrator but lacks the element of malice.” *State v. Blassingame*, 271 S.C. 44, 244 S.E.2d 528, 529 (1978).

In short, there is substantial, corroborated evidence (though only *any* evidence is required) that Starnes shot Wellborn and Champlin in the heat of passion after they pulled a gun on him and threatened imminent deadly force. Previously, such evidence had *always* supported a charge on voluntary manslaughter in South Carolina.

CONCLUSION

In short, South Carolina has denied Norman Starnes due process twice over. The trial judge's refusal to instruct the jury on voluntary manslaughter was the first violation, and the second occurred when the South Carolina Supreme Court retroactively increased the quantum of evidence required to obtain a manslaughter instruction. It is time once again for the United States Supreme Court to look at due process in South Carolina by granting certiorari. See, for example, *Holmes v. South Carolina*, 547 U.S. 319 (2006).

Respectfully submitted,



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ATTORNEYS FOR PETITIONER

December 17, 2010

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2010

No. A-

NORMAN STARNES,

Petitioner,

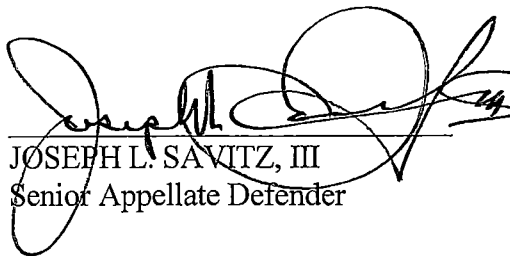
v.

STATE OF SOUTH CAROLINA,

Respondent

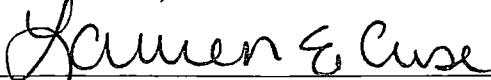
CERTIFICATE OF SERVICE

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 17th day of December, 2010.



JOSEPH L. SAVITZ, III
Senior Appellate Defender

SWORN TO BEFORE me this 17th day
of December, 2010.



Notary Public for South Carolina
My Commission Expires: August 23, 2014.

IN THE SUPREME COURT OF THE UNITED STATES

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NORMAN STARNES,

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v.

STATE OF SOUTH CAROLINA,

Respondent

A P P E N D I X

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ATTORNEY FOR PETITIONER

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

The State, Respondent,

v.

Norman Starnes, Appellant.

Appeal from Lexington County
Lee S. Alford, Circuit Court Judge

Opinion No. 26868
Heard March 4, 2010 – Filed August 16, 2010

AFFIRMED

Senior Appellate Defender Joseph L. Savitz,
III, and Appellate Defender Elizabeth Franklin-
Best, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster,
Chief Deputy Attorney General John W.
McIntosh, Assistant Deputy Attorney General
Donald J. Zelenka, Senior Assistant Attorney
General S. Creighton Waters, of Columbia, and
Solicitor Harold W. Gowdy, III, of Spartanburg,
for Respondent.

JUSTICE KITTREDGE: This is a direct appeal in a death penalty case. Appellant Norman Starnes was charged with the murder of Bill Welborn and Jared Champlain.^[1] At trial, Appellant represented himself. A jury found Appellant guilty of both murders and recommended the death penalty. In this direct appeal, Appellant argues the trial court erred in failing to give a voluntary manslaughter charge, raises issues regarding a capital defendant's right to self-representation, and asserts he did not knowingly and voluntarily waive his right to counsel. We affirm.

I.

Appellant owned a restaurant ("the restaurant") in Pelion, South Carolina. On January 8, 1996, Bill Welborn and Jared Champlain, friends of Appellant, came into the restaurant to eat and eventually left with Appellant to go to a local bar. When Bill and Jared did not return home that night, their girlfriends filed missing person reports. Police investigated the men's disappearance, but were unable to establish any leads until May 1996 when Appellant's girlfriend, Gwen Ott, contacted police and told them Appellant had killed Bill and Jared.

Gwen was working at the restaurant on January 8. After Appellant, Jared, and Bill left the restaurant, Appellant returned twice to get money out of the cash register. Appellant returned a third time with a mark on his temple and appeared very upset. He told Gwen that Bill had pistol-whipped him in the bathroom of the bar. Appellant retrieved his gun and bullets from a shelf in the kitchen and told her he was going to kill "them." When Appellant returned later, he told Gwen, "Let's go, that they were dead."

Gwen testified Appellant drove her to his house, where she saw Jared's body in the front room and Bill's body in the bedroom. Appellant told Gwen that Jody Fogle had come over to facilitate a drug transaction and he saw Jared pull a gun on Jody. Appellant admitted to Gwen that he shot Jared and Bill. Gwen testified that Appellant removed all items from the men's pockets, placed the bodies in the trunk of his car, and cleaned the blood from the house before leaving. Appellant returned later that night and asked Gwen to follow him in a separate car to his uncle's property. When they arrived at the property, Gwen saw Jared's and Bill's bodies around the back of the house. Appellant kicked and urinated on the bodies, loaded them into the back of a pickup truck, and took them to the back of the woods on the property. During the drive home, Appellant threw his gun into the Edisto River.

From January until the bodies were discovered in May, Appellant assisted law enforcement in the search for the victims, even appearing on television pleading for any evidence that would help find his friends. Also during this period, Appellant received word of a foul odor on his uncle's farm. Appellant returned to his uncle's property, dug up the graves, and covered the bodies with lime in an effort to hide the smell. As noted, Gwen's tip led to the discovery of the bodies and the charges against Appellant.

Appellant elected to represent himself at trial and to testify in his own defense. Appellant testified that after he, Jared, and Bill left the restaurant, they went to a local bar. While in the bar's restroom, Bill came up behind Appellant, grabbed his throat, put a metal object to the back of his head,^[2] and began yelling at Appellant about money Appellant allegedly stole from him. Later, Bill remarked to one of the bar's employees that she "better call the police because he was going to take [Appellant] up on Platt Springs Road and blow his F'in brains out."^[3]

After the three men left the bar, Bill told Appellant to take him to Jody's house to get drugs. Instead, Appellant dropped Bill and Jared off at Appellant's house and then picked up Jody and brought him back to the house. Appellant testified he heard Jared cussing and saw him pointing a gun at Jody. Appellant stated that he ran into the bedroom and retrieved his gun. As he exited the bedroom, Bill said "whoa" and was pointing a gun at him. Appellant testified he shot Bill, then he turned and shot Jared.

The defense called Jody to testify. On direct examination, Jody testified that Jared pulled a gun on him and asked him: "[W]here is the dope?" Jared told Jody he would kill him. Jody testified that Bill took the gun from Jared, and then Appellant shot them. On cross-examination, Jody admitted that Appellant unexpectedly arrived at his house and asked Jody to come back to his house to "watch his back" because he was having trouble with Bill and Jared. Appellant asked Jody if he had a gun with him, but Jody said he did not. Jody testified when he and Appellant arrived at the house, Appellant immediately went into the bedroom and began fumbling around. Jody maintained that Jared charged at him with the gun, but stated Bill took the gun from Jared and everyone calmed down. Jody testified Appellant came out of the bedroom and fired three shots at Bill and then fired at Jared. Jody demanded Appellant take him home.^[4]

The trial court charged the jury on murder and self-defense, but refused to charge voluntary manslaughter. The jury found Appellant guilty of both murders. In the sentencing phase, the trial court gave three statutory aggravating circumstances charges: 1) the defendant committed the murders while in the commission of robbery while armed with a deadly weapon; 2) the defendant committed the murders while in the commission of larceny while armed with a deadly weapon; and 3) two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct. Additionally, the trial court gave four statutory mitigating circumstances: 1) the defendant had no significant criminal history; 2) the victims were participants in the defendant's conduct or consented to the act; 3) the defendant acted under duress or domination of another person; and 4) the defendant was provoked by the victims into committing the murders. The jury found the existence of all three aggravating circumstances beyond a reasonable doubt and recommended the death penalty.

II.

Appellant argues the trial court erred in failing to charge the jury on the law of voluntary manslaughter. We disagree. Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. *State v. Wharton*, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009).

To warrant the court eliminating the charge of manslaughter, there must be no evidence whatsoever tending to reduce the crime from murder to manslaughter. *Id.* If there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed, the defendant is entitled to such charge. *Dempsey v. State*, 363 S.C. 365, 371, 610 S.E.2d 812, 815 (2005).

We have consistently held that both heat of passion and sufficient legal provocation must be present at the time of the killing. *Wharton*, 381 S.C. at 215, 672 S.E.2d at 788. A defendant is not entitled to a voluntary manslaughter charge merely because he was in a heat of passion. See *id.* (holding the State's request for a voluntary manslaughter charge was not warranted where there was no evidence of sufficient legal provocation, although the defendant may have been acting under heat of passion). Conversely, a defendant is not entitled to voluntary manslaughter merely because he was legally provoked. See *State v. Pittman*, 373 S.C. 527, 576, 647 S.E.2d 144, 170 (2007) (holding although sufficient legal provocation arguably existed, there was no evidence the defendant was in a heat of passion). Moreover, there must be evidence that the heat of passion was caused by sufficient legal provocation.

Appellant bases his entitlement to a voluntary manslaughter charge on his testimony that when Bill pointed a gun at him, he felt threatened and was in fear. Appellant argues the threat of an imminent deadly assault was sufficient to entitle him to a voluntary manslaughter charge. Appellant cites to several cases from this Court to support this argument.

The State, which concedes the propriety of the self-defense charge, counters that our case law should not be read so broadly as to sanction a voluntary manslaughter charge that is based upon the mere testimony that the defendant was "afraid." While acknowledging that self-defense and voluntary manslaughter are not mutually exclusive, the State asserts "it does not follow that manslaughter should be charged simply because a defendant claiming self-defense testifies he was afraid." The State claims there was no evidence Appellant shot

the victims in the heat of passion, and therefore, the trial court correctly refused to charge voluntary manslaughter.

Whether a voluntary manslaughter charge is warranted turns on the facts. If the facts disclose any basis for the charge, the charge must be given. Given Appellant's argument, which takes our case law and turns primarily fact-driven holdings into broad statements of law, we take this opportunity to clarify the law regarding how a defendant's fear following an attack or a threatening act relates to voluntary manslaughter.

Trial courts often struggle with the difficult interplay between murder and the lesser-included offense of voluntary manslaughter,^[5] especially where a defendant claims he acted in self-defense. This struggle may be due to this Court's opinions which, when taken out of the evidentiary context, appear to set no boundaries as to what circumstances give rise to "sudden heat of passion upon sufficient legal provocation." For example, in a particular fact setting, we have held an unprovoked attack with a deadly weapon or an overt threatening act can constitute sufficient legal provocation. See *State v. Knoten*, 347 S.C. 296, 307, 555 S.E.2d 391, 397 (2001) ("There can be little argument that an unprovoked knife attack constitutes sufficient legal provocation to warrant the requested [voluntary manslaughter] charge."); *Pittman*, 373 S.C. at 573, 647 S.E.2d at 168 ("This Court has previously held that an overt, threatening act or a physical encounter may constitute sufficient legal provocation.").

We also have held that fear resulting from an attack can constitute a basis for voluntary manslaughter. See *State v. Wiggins*, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) ("[F]ear can constitute a basis for voluntary manslaughter."). Yet the presence of fear does not end the inquiry regarding the propriety of a voluntary manslaughter instruction. We have consistently held that sudden heat of passion upon sufficient legal provocation is defined as an act or event that "must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." *Pittman*, 373 S.C. at 572, 647 S.E.2d at 167. While the act or event "need not dethrone the reason entirely, or shut out knowledge and volition," it must cause a person to lose control. *Id.*

We reaffirm the principle that a person's fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion. However, the mere fact that a person is afraid is not sufficient, by itself, to entitle a defendant to a voluntary manslaughter charge. Consistent with our law on voluntary manslaughter, in order to constitute "sudden heat of passion upon sufficient legal provocation," the fear must be the result of sufficient legal provocation **and** cause the defendant to lose control and create an uncontrollable impulse to do violence. Succinctly stated, to warrant a voluntary manslaughter charge, the defendant's fear must manifest itself in an uncontrollable impulse to do violence.

A person may act in a deliberate, controlled manner, notwithstanding the fact that he is afraid or in fear. Conversely, a person can be acting under an uncontrollable impulse to do violence and be incapable of cool reflection as a result of fear. The latter situation constitutes sudden heat of passion, but the former does not. Evidence that fear caused a person to kill another person in a sudden heat of passion will mitigate a homicide from murder to manslaughter – it will not justify it. This is the distinction between voluntary manslaughter and self-defense. We reiterate that evidence of self-defense and voluntary manslaughter may coexist and that a charge on self-defense **and** voluntary manslaughter

may be warranted. See *State v. Gilliam*, 296 S.C. 395, 373 S.E.2d 596 (1988) (holding the evidence supported both a self-defense charge and a voluntary manslaughter charge).

Turning to the facts of this case, viewing the evidence in the light most favorable to Appellant, there is no evidence to support a voluntary manslaughter charge. Appellant testified when he turned around and saw Bill pointing a gun at him, "I shot Bill Welborn and then turned and shot Jared Champlin." He added, "I was scared and I was frightened. When Jared pulled the gun on Jody, it scared me." While this testimony is evidence that Appellant was in fear, there is no evidence Appellant was out of control as a result of his fear or was acting under an uncontrollable impulse to do violence. The only evidence in the record is that Appellant deliberately and intentionally shot Jared and Bill and that he either shot the men with malice aforethought or in self-defense.

Again, we emphasize self-defense and voluntary manslaughter are not mutually exclusive, and had there been evidence to support a finding of heat of passion upon sufficient legal provocation, Appellant would have been entitled to a voluntary manslaughter charge. The record is simply devoid of such evidence. In our view, to hold that Appellant was entitled to a voluntary manslaughter charge under the facts of this case would impermissibly blend the elements of voluntary manslaughter and self-defense. In effect, such a holding would render voluntary manslaughter a lesser-included offense of self-defense, for where there is an intentional killing based on fear alone, a defendant would be entitled to a voluntary manslaughter charge.

For these reasons, we hold the trial court properly refused to charge voluntary manslaughter.

III.

Appellant asks this Court to create a *per se* rule prohibiting capital defendants from representing themselves and to overturn *State v. Reed*, 332 S.C. 35, 503 S.E.2d 747 (1998) and *State v. Brewer*, 328 S.C. 117, 492 S.E.2d 97 (1997) (both holding the defendant had a right to represent himself at his capital trial). We decline to do so.

The South Carolina Constitution provides that every criminal defendant has the right to represent himself and makes no distinction between capital and non-capital defendants. See S.C. Const. art. 1, § 14. Additionally, the United States Supreme Court has interpreted the United States Constitution as providing a right to self-representation. See *Farretta v. California*, 422 U.S. 806, 821 (1975) ("The Sixth Amendment, when naturally read, thus implies a right of self-representation."). The right to self-representation, however, is not absolute. The Constitution allows states to prohibit defendants from waiving their right to counsel if they are not competent to conduct trial proceedings by themselves. See *Indiana v. Edwards*, 554 U.S. 164 (2008) (holding a defendant may be competent enough to stand trial but not competent enough to waive his Sixth Amendment right to counsel and represent himself). Nevertheless, we believe a *per se* ruling forbidding capital defendants from representing themselves would violate both the South Carolina and United States Constitutions. Therefore, we decline Appellant's request to adopt such a rule in South Carolina.

IV.

Appellant argues he did not knowingly and voluntarily waive his right to counsel during the sentencing phase of his trial. We disagree.

In order to waive the right to counsel, the accused must be (1) advised of his right to counsel, and (2) adequately warned of the dangers of self-representation. *Prince v. State*, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990) (citing *Farretta*, 422 U.S. 806).

Appellant's waiver of counsel was addressed several times prior to trial. In the initial pre-trial hearing regarding Appellant's motion to proceed *pro se*, the record indicates the trial court methodically and carefully explained the dangers of self-representation and ensured that Appellant understood the various issues that would arise at trial. The trial judge inquired into Appellant's mental state and his knowledge of numerous aspects of a trial, including procedural rules, elements of the charges against him, and available defenses. After engaging in the thorough *Farretta* colloquy, the trial judge granted Appellant's request. At subsequent hearings, Appellant first withdrew his motion to proceed *pro se*, then made a motion for hybrid representation, and finally moved again to proceed *pro se*. At the third and final hearing on the motion, the trial judge again sternly warned Appellant of the dangers of self-representation.[6]

We find Appellant knowingly and voluntarily waived his right to counsel. Appellant was well aware of procedures in a death penalty case and knew he would be representing himself in both the guilt phase and the sentencing phase of trial. This was Appellant's second capital trial, and he specifically indicated to the trial court during a pre-trial hearing that he knew the trial could only proceed to the penalty phase if the jury returned a guilty verdict for murder.

Appellant thoroughly questioned potential jurors during *voir dire* and explained to them that a jury would first have to find him guilty before they reached the penalty phase. Appellant made reasonable and persuasive arguments to the trial court resulting in the qualification of several jurors, specifically citing to a United States Supreme Court opinion for support.[7] Additionally, during the State's case in chief, Appellant made proper and valid objections and conducted thorough cross-examinations of witnesses. In the presentation of his defense, Appellant called several witnesses, including the waitress who overheard Bill's threatening comments to Appellant, two witnesses who claimed they snorted methamphetamines and crystal meth with Bill three days before the killings, and Jared's fiancée who testified Bill was carrying a gun on the night of the killings.[8] Finally, in the mitigation phase of the trial, Appellant called several correctional officers to testify as to Appellant's good behavior, two ministers, several personal friends, and his mother.

We find Appellant had a clear understanding of the dangers of self-representation in the guilt phase and the sentencing phase of his trial, as the trial court repeatedly questioned him about his decision to represent himself. See *Wroten v. State*, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (citing *Fitzpatrick v. Wainwright*, 800 F.2d 1057, 1065 (11th Cir. 1986)) (recognizing that the ultimate test regarding the waiver of counsel is not the trial judge's advice; rather it is the defendant's understanding of the dangers inherent in self-representation). Accordingly, we hold Appellant knowingly and voluntarily waived his right to counsel.

V.

Pursuant to S.C. Code Ann. § 16-3-25(C) (2003), we have conducted a proportionality review. We find the death sentence was not the result of passion, prejudice, or any other

arbitrary factor. Furthermore, a review of similar cases illustrates that imposing the death sentence in this case would be neither excessive nor disproportionate in light of the crime. *See State v. Vazsquez*, 364 S.C. 293, 613 S.E.2d 359 (2005) (involving a double murder committed in the course of a robbery); *State v. Hughey*, 339 S.C. 439, 529 S.E.2d 721 (2000) *overruled on other grounds by Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009) (involving a double murder committed in the course of a burglary); *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996) (imposing the death penalty where murder was committed in the course of kidnapping, burglary, and robbery).

We affirm Appellant's convictions and sentence.

AFFIRMED.

TOAL, C.J., BEATTY and HEARN, JJ, concur. PLEICONES, J., dissenting in a separate opinion.

JUSTICE PLEICONES: I respectfully dissent. I believe the trial court erred in failing to charge the jury on voluntary manslaughter. Consequently, I would reverse and remand for a new trial.

Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. *See State v. Wharton*, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009). "In determining whether the act which caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing." *See State v. Gardner*, 219 S.C. 97, 104, 64 S.E.2d 130, 134 (1951). "To warrant the court in eliminating the offense of manslaughter it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." *Wharton*, 381 S.C. at 214, 672 S.E.2d at 788.

At trial, the following evidence was presented from which the jury might have determined that Appellant committed manslaughter: testimony that, earlier in the day, Bill approached Appellant from behind, grabbed his throat, and put a metal object to his head; testimony that Bill said in Appellant's presence that he was going to take Appellant out on Platt Springs Road "and blow his F'in brains out;" Appellant's testimony that Bill and Jared were under the influence of methamphetamine on the night in question; and Appellant's testimony that Bill pointed a gun at Appellant just before Appellant shot him. Additionally, Appellant testified that he "didn't kill [Bill and Jared] with malice aforethought, with premeditation. . . . I was scared and I was frightened."

In my view, given the above evidence, it cannot be said that there was clearly "no evidence whatsoever tending to reduce the crime from murder to manslaughter." The jury could infer from the evidence that Appellant's fear resulted in an uncontrollable impulse to do violence. *Compare State v. Wiggins*, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) (holding that judge properly charged jury on voluntary manslaughter where defendant testified he was in fear of the threat of physical assault).

The majority apparently decides that the evidence does not yield an inference that Appellant's fear resulted in an uncontrollable impulse to do violence. This is not an unreasonable conclusion but, as some evidence tending to establish the offense of

manslaughter was presented at trial, it is a conclusion that the jury, not this Court, must reach.

I do not suggest that a voluntary manslaughter instruction must be given whenever the defendant testifies that he was in fear. However, in light of all the evidence presented here, Appellant met the standard to warrant the charge. Wharton, 381 S.C. at 214, 672 S.E.2d at 788. I would reverse.

[1] This was Appellant's second trial. We reversed Appellant's convictions and death sentence from his first trial due to the trial court's failure to give certain jury instructions. *State v. Starnes*, 340 S.C. 312, 531 S.E.2d 907 (2000).

[2] Appellant testified the object could have been a gun or a cigarette lighter.

[3] This employee testified for the defense and confirmed that Bill made this remark. She further testified she had heard a scuffle in the bathroom prior to this remark, which was apparently the earlier exchange between Bill and Appellant.

[4] Jody was convicted of two counts of accessory to murder.

[5] We acknowledge courts have also struggled with the interplay of murder and involuntary manslaughter, especially when there is evidence of self-defense or accident.

[6] The trial court appointed the two lawyers who had represented Appellant at his first trial as stand-by counsel.

[7] In *Wainwright v. Witt*, the United States Supreme Court held the critical issue regarding the disqualification of a juror in a capital case 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.'" 469 U.S. 412, 433 (1985) (quoting *Adams v. Texas*, 448 U.S. 38, 45 (1980)). The State sought to disqualify those jurors who indicated they were more inclined to impose a life sentence. Appellant rebutted the State's request for disqualification by arguing, pursuant to *Wainwright*, these jurors did not say they could never give the death penalty and, therefore, should be qualified.

[8] Jared's fiancée first testified she did not remember whether Jared had a gun with him on the night of the killings. Appellant impeached her testimony by providing her with a copy of the transcript from Appellant's first trial in which she testified Jared was carrying a gun. See Rule 613(b), SCRE (providing conditions where a prior inconsistent statement may be admitted).

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

Appeal from Lexington County

Lee S. Alford, Circuit Court Judge

Opinion No. 26868

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Norman Starnes petition the Court to reconsider its holding that the evidence does not support a charge on voluntary manslaughter, for the following three reasons:

(1) As an initial matter, at trial and on direct appeal Starnes argued (in addition to the South Carolina law he cited) that the Due Process Clause of the Fourteenth Amendment, as interpreted by Beck v. Alabama, 447 U.S. 625, 638 (1980), also entitled him to a voluntary manslaughter charge. R. 2618, ll. 15 – 18. In its opinion, the Court does not address this issue. S.C. Code § 16-3-25(F) requires the Court to “render its decision on all legal errors.”

(2) More profoundly, the Court's holding itself violates the Due Process Clause. Although it purports merely "to clarify the law regarding how a defendant's fear following an attack or threatening act relates to voluntary manslaughter," in actuality the opinion alters the rules of evidence to require more evidence than the law required at the time of the offense – and Starnes' trial – to obtain a charge on voluntary manslaughter. See Rogers v. Tennessee, 542 U.S. 451 (2001); Carmell v. Texas, 529 U.S. 513 (2000); and Bouie v. City of Columbia, 378 U.S. 347 (1964). After correctly observing that precedent would appear to support Starnes' claim to a voluntary manslaughter charge, the Court proceeds to overrule *sub silentio* existing precedent which permitted the jury to infer (or not) the *mens rea* ("heat of passion") for the offense from specific types of provocation previously recognized as legally sufficient.

The Court's ruling simply cannot be reconciled with precedent. For example:

The distinction between murder and manslaughter, as put in the books, and as generally understood by the profession, is not merely an arbitrary rule, but is founded on a thorough knowledge of the human heart, and framed in compassion to the passions and frailties which belongs to and are inseparable from our natures. . . . [W]hat will or will not constitute a reasonable provocation is perhaps the only difficulty in applying the otherwise well-defined distinction between the crimes of murder and manslaughter. The line which distinguishes between those provocations which will and will not extenuate the offense, is not, nor can it be, certainly defined. Those provocations which are in themselves calculated to provoke a high degree of resentment, and which ordinarily superinduce a great degree of violence when compared with those that are slight and trivial, and from which a great degree of violence does not usually follow, may serve as a general outline to mark the distinction, and when applied with judgment and discretion, will usually lead to the correct results.

State v. Ferguson, 20 S.C.L. (2 Hill) 619, 621 – 22 (1835), also quoted in State v. Martin, 216 S.C. 129, 57 S.E.2d 55, 56 – 57 (1949).

Another example:

I make some physical aggression upon your person, such as to indicate a contempt for your manhood, slap you in the face with the back of my hand to indicate my contempt for your courage, spit in your face, as if you were a dog, tweak your nose, take you by the ear and lead you across the street in the presence of the people, and you strike me dead. The law says that is manslaughter. It takes a provocation something like that, not necessary confined to those things, but to some physical aggression upon the person of another, or on the person of a member of its family (somebody for whom he is responsible), or on his property, in his presence. The law says that is manslaughter.

State v. Gallman, 79 S.C. 229, 60 S.E.2d 682, 687 (1908).

Although the Court seeks to limit its precedent by characterizing it as “fact-driven,” it does not cite any case presenting substantially similar facts in which the defendant was not afforded a charge on voluntary manslaughter.

At his initial trial, based on virtually identical evidence, Starnes received a voluntary manslaughter instruction without objection. The Court reviewed that instruction on direct appeal without questioning its propriety. State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000).

Also instructive is State v. Belcher, 385 S.C. 597, 685 S.E.2d 802, 809 (2009), where the Court ruled, “Under our policy-making role in the common law, we hold that the ‘use of a deadly weapon’ implied malice instruction has no place in a murder . . . prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing.” Previously, juries had been permitted to infer the necessary *mens rea* for murder (malice) from evidence the homicide was accomplished with a deadly weapon. The Court then acknowledged that its decision “represents a clear break from our modern precedent” and declined to give its ruling retroactive effect. 685 S.E.2d at 810 (footnote omitted).

(3) The crux of the Court's opinion is found in the following language:

[T]he mere fact that a person is afraid is not sufficient, by itself, to entitle a defendant to a voluntary manslaughter charge. . . . A person may act in a deliberate, controlled manner, notwithstanding the fact that he is afraid or in fear. Conversely, a person can be acting under an uncontrollable impulse to do violence and be incapable of cool reflection as a result of fear. The latter situation constitutes sudden heat of passion, but the former does not.

The Court then concludes:

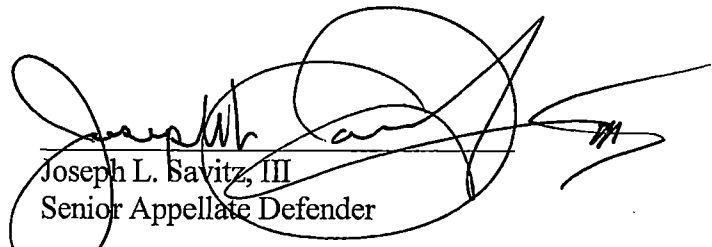
[T]here is no evidence [Starnes] was out of control as a result of his fear or was acting under an uncontrollable impulse to do violence. The only evidence in the record is that [Starnes] deliberately and intentionally shot [the victims] and that either he shot the men with malice aforethought or in self-defense.

Moving beyond the Court's departure from precedent, its opinion does not accurately reflect the evidence presented at trial.

According to Starnes (and to an extent Jody Fogle), the victims, who were guests in Starnes' home, pulled a gun on Starnes and Fogle, who was also a guest, and appeared likely to kill them. Starnes specifically testified, "[Y]ou would have to know what's going on in an individual's mind and their feelings when something like [this] happens, but I didn't kill them with malice aforethought, with premeditation, just wasn't mean and killed somebody. I was scared and I was frightened." R. 2395, l. 24 – 2396, l. 8. He was not, as the Court suggests, "calm" and "cool" at the moment he fired the fatal shots. R. 2431, ll. 4 – 16. Starnes testified that he was not thinking clearly because he was "terrified." R. 2143, l. 23 – 2144, l. 2. The fact that he "intentionally" shot the victims, which the Court also stresses, is legally irrelevant: "[V]oluntary manslaughter, of course, is an offense which does involve intent on the part of the perpetrator but lacks the element of malice." State v. Blassingame, 271 S.C. 44, 244 S.E.2d 528, 529 (1978).

In short, there is substantial, corroborated evidence (though only *any* evidence is required) that Starnes shot Wellborn and Champlin in the heat of passion after they pulled a gun on him and threatened imminent deadly force. This type of evidence has *always* supported a charge on voluntary manslaughter. The Court itself has previously observed that “[t]here can be little argument” that an unprovoked attack with a deadly weapon warrants a charge on manslaughter. State v. Knoten, 347 S.C. 296, 555 S.E.2d 391, 397 (2001).

Respectfully submitted,



Joseph L. Savitz, III
Senior Appellate Defender

Elizabeth Franklin-Best
Appellate Defender

ATTORNEYS FOR APPELLANT

This 31st day of August, 2010.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

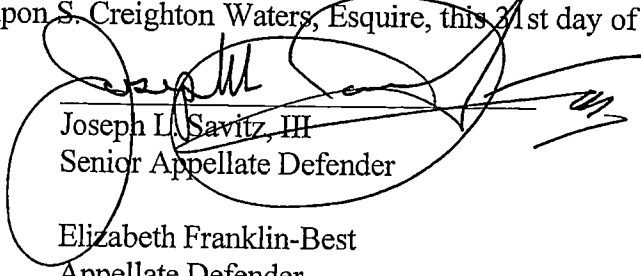
V.

NORMAN STARNES,

APPELLANT

CERTIFICATE OF SERVICE

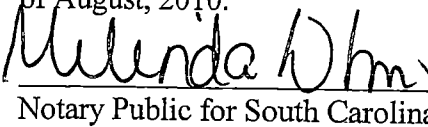
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon S. Creighton Waters, Esquire, this 31st day of August, 2010.


Joseph L. Savitz, III
Senior Appellate Defender

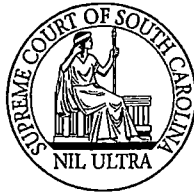
Elizabeth Franklin-Best
Appellate Defender

ATTORNEYS FOR APPELLANT

SWORN TO BEFORE ME this 31st day
of August, 2010.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2018.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

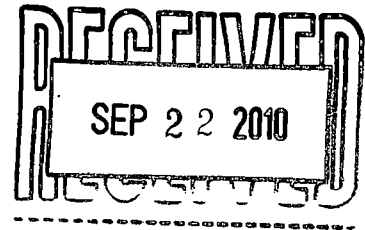
BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

September 22, 2010



Senior Appellate Defender Joseph L. Savitz, III
✓ Appellate Defender Elizabeth Franklin-Best
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Starnes, Norman

Dear Counsel:

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

“Petition for Rehearing is denied.

s/ Jean H. Toal C.J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

I would grant rehearing.

s/ Costa M. Pleicones J.

September 22, 2010.”

A15

The remittitur is today being forwarded to the lower court.

The State v. Starne , Norman

Page Two

September 22, 2010

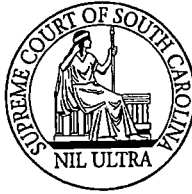
Very truly yours,



CLERK

DES/dmh

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



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

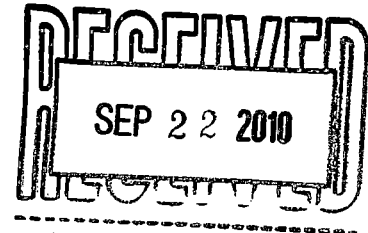
POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

September 22, 2010

REMITTITUR



The Honorable Beth Carrigg
Clerk of Court, Lexington County
205 East Main Street, Suite 146
Lexington, SC 29072-3599

Re: The State v. Starnes, Norman
1996-GS-32-03339

Dear Ms. Carrigg:

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: Senior Appellate Defender Joseph L. Savitz, III
✓ Appellate Defender Elizabeth Franklin-Best
Assistant Deputy Attorney General Donald J. Zelenka
Senior Assistant Attorney General S. Creighton Waters
The Honorable Harold W. Gowdy, III

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2010

No. A-

NORMAN STARNES,

Petitioner,

v.

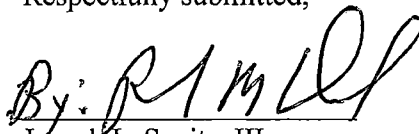
STATE OF SOUTH CAROLINA,

Respondent

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Norman Starnes 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,

By: 
Joseph L. Savitz, III
Attorney at Law

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

December 17, 2010

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2010

No. A-

NORMAN STARNES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF NORMAN STARNES
IN SUPPORT OF MOTION TO
PROCEED IN FORMA PAUPERIS

I, Norman Starnes, 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.

doesn't know

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.

N/A

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

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

N/A

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

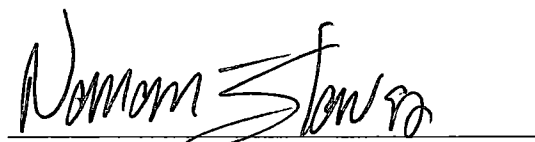
- a. If the answer is yes, describe the property and state its approximate value.

N/A

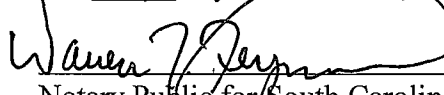
5. List the persons who are dependent upon you for support and state your relationship to those persons.

None.

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


NORMAN STARNES

SWORN to and subscribed before me
this 16th day of December, 2010.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: Sept. 27, 2018.

The Supreme Court of South Carolina

The State,

Respondent,

v.

Norman Starnes,

Appellant.

ORDER

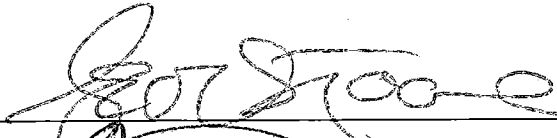
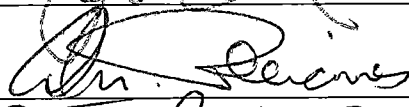
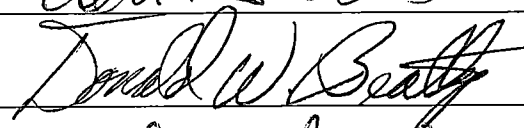
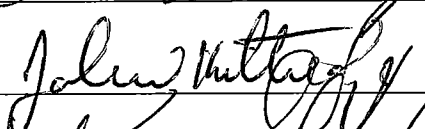
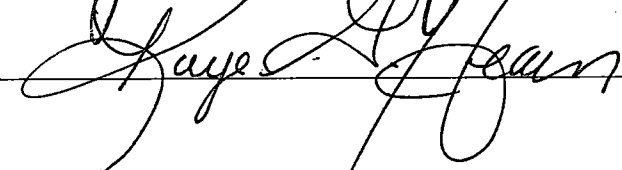
This Court recently affirmed appellant's death sentence in State v. Starnes, Op. No. 26868 (S.C. Sup. Ct. filed August 16, 2010). Appellant's petition for rehearing was denied and the remittitur sent on September 22, 2010. A notice of execution has not been issued.

Appellant now requests 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 submitted a letter in which it acknowledges appellant has identified an issue appropriate for federal review and therefore a stay is warranted for the purpose of pursuing certiorari review by 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

October 6, 2010

cc: Senior Appellate Defender Joseph L. Savitz, III
Appellate Defender Elizabeth Franklin-Best
Senior Assistant Attorney General S. Creighton Waters
The Honorable Harold W. Gowdy, III



HENRY McMASTER
ATTORNEY GENERAL

RECEIVED
SEP - 8 2010
S.C. SUPREME COURT

September 7, 2010

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

RE: The State v. Norman Starnes

Dear Mr. Shearouse:

Please accept this letter in response to the Petition for Stay of Execution filed by Appellant, Norman Starnes. Since Appellant identifies at least one federalized issue, it thus appears that if this Court denies rehearing, a stay is appropriate solely for the purpose of requesting certiorari review by the United States Supreme Court, consistent with this Court's opinion in In re: Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996).

Thank you for your attention to this matter. If there are any further questions or concerns, do not hesitate to contact me.

Sincerely,



S. Creighton Waters
Senior Assistant Attorney General

cc: Joseph L. Savitz, III, Esquire

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

RECEIVED

Appeal from Lexington County

AUG 31 2010

Lee S. Alford, Circuit Court Judge

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

PETITION FOR STAY OF EXECUTION
TO SEEK CERTIORARI

In the event the Court denies the Petition for a Rehearing (filed simultaneously), counsel for Norman Starnes petition the Court to stay his execution to allow them to petition the United States Supreme Court for Writ of Certiorari.

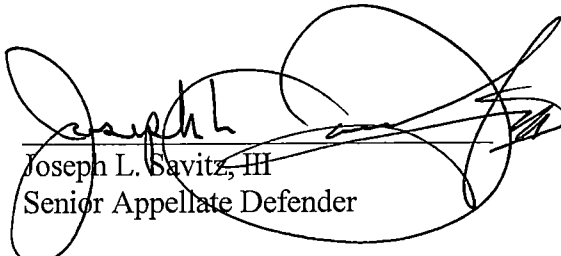
I.

This Court affirmed Starnes' two convictions for murder and death sentence in State v. Norman Starnes, Opinion No. 26868, filed August 16, 2010. Counsel have petitioned for rehearing, pointing out what they believe to be violations of the Due Process Clause, both at trial and on appeal, relating to the failure to charge voluntary manslaughter. At this point, counsel incorporates the rehearing petition.

II.

In the order entitled In Re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140, 141 (1996), the Court held that it would grant a stay of execution “[a]s long as one of the federal questions asserted as been adequately preserved under state law.” Starnes (proceeding *pro se*) alleged at trial that the judge’s refusal to charge voluntary manslaughter had violated the Due Process Clause, as applied in Beck v. Alabama, 447 U.S. 625, 638 (1980), and counsel argued this issue on direct appeal. In the rehearing petition, counsel also argues that the Court itself violated the Due Process Clause by altering the rules of evidence to require more evidence than the law required at the time of offense in order to obtain a charge on voluntary manslaughter. If the Court denies rehearing, both federal issues are preserved for review by the United States Supreme Court.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Joseph L. Savitz, III", is written over a horizontal line.

Joseph L. Savitz, III
Senior Appellate Defender

Elizabeth Franklin-Best
Appellate Defender

ATTORNEYS FOR APPELLANT

August 31, 2010

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

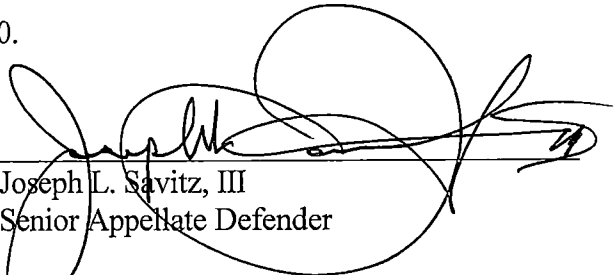
V.

NORMAN STARNES,

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, S. Creighton Waters, Esquire, this 31st day of August, 2010.

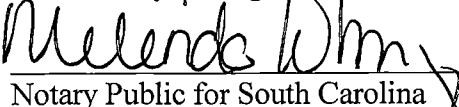


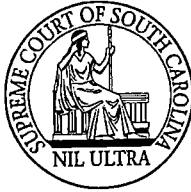
Joseph L. Savitz, III
Senior Appellate Defender

Elizabeth Franklin-Best
Appellate Defender

ATTORNEYS FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 31st day of August, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2018.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

September 22, 2010

REMITTITUR

The Honorable Beth Carrigg
Clerk of Court, Lexington County
205 East Main Street, Suite 146
Lexington, SC 29072-3599

Re: The State v. Starnes, Norman
1996-GS-32-03339

Dear Ms. Carrigg:

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

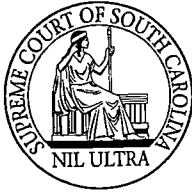
Very truly yours,

CLERK

DES/dmh

Enclosure

cc: Senior Appellate Defender Joseph L. Savitz, III
Appellate Defender Elizabeth Franklin-Best
Assistant Deputy Attorney General Donald J. Zelenka
Senior Assistant Attorney General S. Creighton Waters
The Honorable Harold W. Gowdy, III



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

September 22, 2010

Senior Appellate Defender Joseph L. Savitz, III
Appellate Defender Elizabeth Franklin-Best
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Starnes, Norman

Dear Counsel:

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

“Petition for Rehearing is denied.

s/ Jean H. Toal C.J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

I would grant rehearing.

s/ Costa M. Pleicones J.

September 22, 2010.”

The remittitur is today being forwarded to the lower court.

The State v. Starnes, Norman
Page Two
September 22, 2010

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a horizontal line and a small flourish.

CLERK

DES/dmh

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

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

2010

THE STATE,

RESPONDENT,

RECEIVED

AUG 31 2010

S.C. SUPREME COURT

V.

NORMAN STARNES,

APPELLANT

Appeal from Lexington County

Lee S. Alford, Circuit Court Judge

Opinion No. 26868

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Norman Starnes petition the Court to reconsider its holding that the evidence does not support a charge on voluntary manslaughter, for the following three reasons:

(1) As an initial matter, at trial and on direct appeal Starnes argued (in addition to the South Carolina law he cited) that the Due Process Clause of the Fourteenth Amendment, as interpreted by Beck v. Alabama, 447 U.S. 625, 638 (1980), also entitled him to a voluntary manslaughter charge. R. 2618, ll. 15 – 18. In its opinion, the Court does not address this issue. S.C. Code § 16-3-25(F) requires the Court to “render its decision on all legal errors.”

(2) More profoundly, the Court's holding itself violates the Due Process Clause. Although it purports merely "to clarify the law regarding how a defendant's fear following an attack or threatening act relates to voluntary manslaughter," in actuality the opinion alters the rules of evidence to require more evidence than the law required at the time of the offense – and Starnes' trial – to obtain a charge on voluntary manslaughter. See Rogers v. Tennessee, 542 U.S. 451 (2001); Carmell v. Texas, 529 U.S. 513 (2000); and Bouie v. City of Columbia, 378 U.S. 347 (1964). After correctly observing that precedent would appear to support Starnes' claim to a voluntary manslaughter charge, the Court proceeds to overrule *sub silentio* existing precedent which permitted the jury to infer (or not) the *mens rea* ("heat of passion") for the offense from specific types of provocation previously recognized as legally sufficient.

The Court's ruling simply cannot be reconciled with precedent. For example:

The distinction between murder and manslaughter, as put in the books, and as generally understood by the profession, is not merely an arbitrary rule, but is founded on a thorough knowledge of the human heart, and framed in compassion to the passions and frailties which belongs to and are in separable from our natures. . . . [W]hat will or will not constitute a reasonable provocation is perhaps the only difficulty in applying the otherwise well-defined distinction between the crimes of murder and manslaughter. The line which distinguishes between those provocations which will and will not extenuate the offense, is not, nor can it be, certainly defined. Those provocations which are in themselves calculated to provoke a high degree of resentment, and which ordinarily superinduce a great degree of violence when compared with those that are slight and trivial, and from which a great degree of violence does not usually follow, may serve as a general outline to mark the distinction, and when applied with judgment and discretion, will usually lead to the correct results.

State v. Ferguson, 20 S.C.L. (2 Hill) 619, 621 – 22 (1835), also quoted in State v. Martin, 216 S.C. 129, 57 S.E.2d 55, 56 – 57 (1949).

Another example:

I make some physical aggression upon your person, such as to indicate a contempt for your manhood, slap you in the face with the back of my hand to indicate my contempt for your courage, spit in your face, as if you were a dog, tweak your nose, take you by the ear and lead you across the street in the presence of the people, and you strike me dead. The law says that is manslaughter. It takes a provocation something like that, not necessary confined to those things, but to some physical aggression upon the person of another, or on the person of a member of its family (somebody for whom he is responsible), or on his property, in his presence. The law says that is manslaughter.

State v. Gallman, 79 S.C. 229, 60 S.E.2d 682, 687 (1908).

Although the Court seeks to limit its precedent by characterizing it as “fact-driven,” it does not cite any case presenting substantially similar facts in which the defendant was not afforded a charge on voluntary manslaughter.

At his initial trial, based on virtually identical evidence, Starnes received a voluntary manslaughter instruction without objection. The Court reviewed that instruction on direct appeal without questioning its propriety. State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000).

Also instructive is State v. Belcher, 385 S.C. 597, 685 S.E.2d 802, 809 (2009), where the Court ruled, “Under our policy-making role in the common law, we hold that the ‘use of a deadly weapon’ implied malice instruction has no place in a murder . . . prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing.” Previously, juries had been permitted to infer the necessary *mens rea* for murder (malice) from evidence the homicide was accomplished with a deadly weapon. The Court then acknowledged that its decision “represents a clear break from our modern precedent” and declined to give its ruling retroactive effect. 685 S.E.2d at 810 (footnote omitted).

(3) The crux of the Court's opinion is found in the following language:

[T]he mere fact that a person is afraid is not sufficient, by itself, to entitle a defendant to a voluntary manslaughter charge. . . . A person may act in a deliberate, controlled manner, notwithstanding the fact that he is afraid or in fear. Conversely, a person can be acting under an uncontrollable impulse to do violence and be incapable of cool reflection as a result of fear. The latter situation constitutes sudden heat of passion, but the former does not.

The Court then concludes:

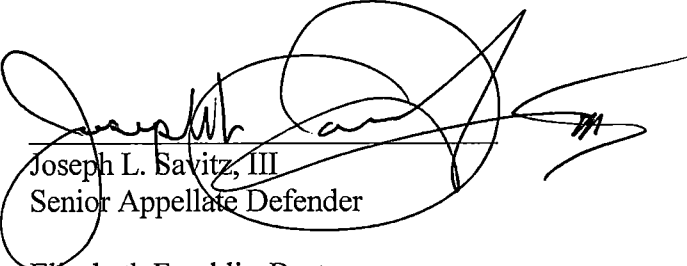
[T]here is no evidence [Starnes] was out of control as a result of his fear or was acting under an uncontrollable impulse to do violence. The only evidence in the record is that [Starnes] deliberately and intentionally shot [the victims] and that either he shot the men with malice aforethought or in self-defense.

Moving beyond the Court's departure from precedent, its opinion does not accurately reflect the evidence presented at trial.

According to Starnes (and to an extent Jody Fogle), the victims, who were guests in Starnes' home, pulled a gun on Starnes and Fogle, who was also a guest, and appeared likely to kill them. Starnes specifically testified, "[Y]ou would have to know what's going on in an individual's mind and their feelings when something like [this] happens, but I didn't kill them with malice aforethought, with premeditation, just wasn't mean and killed somebody. I was scared and I was frightened." R. 2395, l. 24 – 2396, l. 8. He was not, as the Court suggests, "calm" and "cool" at the moment he fired the fatal shots. R. 2431, ll. 4 – 16. Starnes testified that he was not thinking clearly because he was "terrified." R. 2143, l. 23 – 2144, l. 2. The fact that he "intentionally" shot the victims, which the Court also stresses, is legally irrelevant: "[V]oluntary manslaughter, of course, is an offense which does involve intent on the part of the perpetrator but lacks the element of malice." State v. Blassingame, 271 S.C. 44, 244 S.E.2d 528, 529 (1978).

In short, there is substantial, corroborated evidence (though only *any* evidence is required) that Starnes shot Wellborn and Champlin in the heat of passion after they pulled a gun on him and threatened imminent deadly force. This type of evidence has *always* supported a charge on voluntary manslaughter. The Court itself has previously observed that “[t]here can be little argument” that an unprovoked attack with a deadly weapon warrants a charge on manslaughter. State v. Knoten, 347 S.C. 296, 555 S.E.2d 391, 397 (2001).

Respectfully submitted,

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

Joseph L. Savitz, III
Senior Appellate Defender

Elizabeth Franklin-Best
Appellate Defender

ATTORNEYS FOR APPELLANT

This 31st day of August, 2010.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

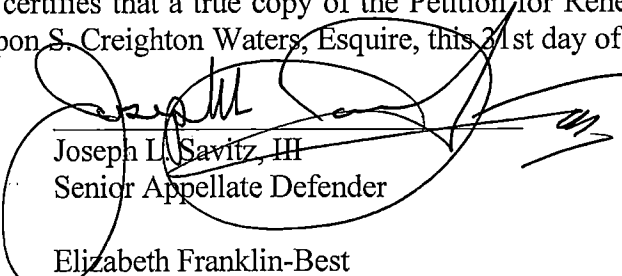
V.

NORMAN STARNES,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon S. Creighton Waters, Esquire, this 31st day of August, 2010.

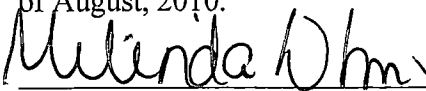


Joseph L. Savitz, III
Senior Appellate Defender

Elizabeth Franklin-Best
Appellate Defender

ATTORNEYS FOR APPELLANT

SWORN TO BEFORE ME this 31st day
of August, 2010.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2018.

Petition for rehearing is denied.

Gordon eq.
Donald Beatty J.
Jim Hittell J.
Kay Hearn J.

I would grant rehearing.

Ch. Stevens J.

September 22, 2010



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

August 31, 2010

RECEIVED

AUG 31 2010

S.C. SUPREME COURT

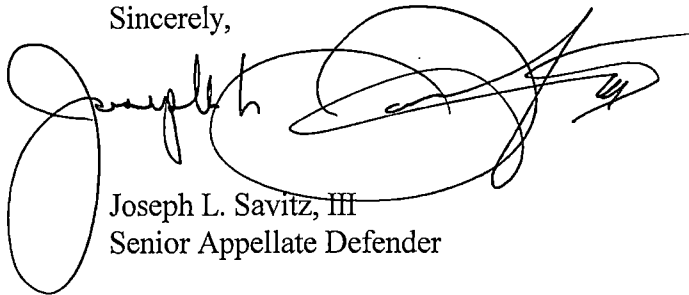
The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

Re: The State v. Norman Starnes

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,



Joseph L. Savitz, III
Senior Appellate Defender

JLS/mwl

Enclosure

cc: S. Creighton Waters, Esquire
Mr. Norman Starnes

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State,

Respondent,

v.

Norman Starnes,

Appellant.

Appeal from Lexington County
Lee S. Alford, Circuit Court Judge

Opinion No. 26868
Heard March 4, 2010 – Filed August 16, 2010

AFFIRMED

Senior Appellate Defender Joseph L. Savitz, III, and
Appellate Defender Elizabeth Franklin-Best, of Columbia,
for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Attorney General S. Creighton Waters, of Columbia, and
Solicitor Harold W. Gowdy, III, of Spartanburg, for
Respondent.

JUSTICE KITTREDGE: This is a direct appeal in a death penalty case. Appellant Norman Starnes was charged with the murder of Bill Welborn and Jared Champlain.¹ At trial, Appellant represented himself. A jury found Appellant guilty of both murders and recommended the death penalty. In this direct appeal, Appellant argues the trial court erred in failing to give a voluntary manslaughter charge, raises issues regarding a capital defendant's right to self-representation, and asserts he did not knowingly and voluntarily waive his right to counsel. We affirm.

I.

Appellant owned a restaurant ("the restaurant") in Pelion, South Carolina. On January 8, 1996, Bill Welborn and Jared Champlain, friends of Appellant, came into the restaurant to eat and eventually left with Appellant to go to a local bar. When Bill and Jared did not return home that night, their girlfriends filed missing person reports. Police investigated the men's disappearance, but were unable to establish any leads until May 1996 when Appellant's girlfriend, Gwen Ott, contacted police and told them Appellant had killed Bill and Jared.

Gwen was working at the restaurant on January 8. After Appellant, Jared, and Bill left the restaurant, Appellant returned twice to get money out of the cash register. Appellant returned a third time with a mark on his temple and appeared very upset. He told Gwen that Bill had pistol-whipped him in the bathroom of the bar. Appellant retrieved his gun and bullets from a shelf in the kitchen and told her he was going to kill "them." When Appellant returned later, he told Gwen, "Let's go, that they were dead."

¹ This was Appellant's second trial. We reversed Appellant's convictions and death sentence from his first trial due to the trial court's failure to give certain jury instructions. *State v. Starnes*, 340 S.C. 312, 531 S.E.2d 907 (2000).

Gwen testified Appellant drove her to his house, where she saw Jared's body in the front room and Bill's body in the bedroom. Appellant told Gwen that Jody Fogle had come over to facilitate a drug transaction and he saw Jared pull a gun on Jody. Appellant admitted to Gwen that he shot Jared and Bill. Gwen testified that Appellant removed all items from the men's pockets, placed the bodies in the trunk of his car, and cleaned the blood from the house before leaving. Appellant returned later that night and asked Gwen to follow him in a separate car to his uncle's property. When they arrived at the property, Gwen saw Jared's and Bill's bodies around the back of the house. Appellant kicked and urinated on the bodies, loaded them into the back of a pickup truck, and took them to the back of the woods on the property. During the drive home, Appellant threw his gun into the Edisto River.

From January until the bodies were discovered in May, Appellant assisted law enforcement in the search for the victims, even appearing on television pleading for any evidence that would help find his friends. Also during this period, Appellant received word of a foul odor on his uncle's farm. Appellant returned to his uncle's property, dug up the graves, and covered the bodies with lime in an effort to hide the smell. As noted, Gwen's tip led to the discovery of the bodies and the charges against Appellant.

Appellant elected to represent himself at trial and to testify in his own defense. Appellant testified that after he, Jared, and Bill left the restaurant, they went to a local bar. While in the bar's restroom, Bill came up behind Appellant, grabbed his throat, put a metal object to the back of his head,² and began yelling at Appellant about money Appellant allegedly stole from him. Later, Bill remarked to one of the bar's employees that she "better call the police because he was going to take [Appellant] up on Platt Springs Road and blow his F'in brains out."³

² Appellant testified the object could have been a gun or a cigarette lighter.

³ This employee testified for the defense and confirmed that Bill made this remark. She further testified she had heard a scuffle in the bathroom

After the three men left the bar, Bill told Appellant to take him to Jody's house to get drugs. Instead, Appellant dropped Bill and Jared off at Appellant's house and then picked up Jody and brought him back to the house. Appellant testified he heard Jared cussing and saw him pointing a gun at Jody. Appellant stated that he ran into the bedroom and retrieved his gun. As he exited the bedroom, Bill said "whoa" and was pointing a gun at him. Appellant testified he shot Bill, then he turned and shot Jared.

The defense called Jody to testify. On direct examination, Jody testified that Jared pulled a gun on him and asked him: "[W]here is the dope?" Jared told Jody he would kill him. Jody testified that Bill took the gun from Jared, and then Appellant shot them. On cross-examination, Jody admitted that Appellant unexpectedly arrived at his house and asked Jody to come back to his house to "watch his back" because he was having trouble with Bill and Jared. Appellant asked Jody if he had a gun with him, but Jody said he did not. Jody testified when he and Appellant arrived at the house, Appellant immediately went into the bedroom and began fumbling around. Jody maintained that Jared charged at him with the gun, but stated Bill took the gun from Jared and everyone calmed down. Jody testified Appellant came out of the bedroom and fired three shots at Bill and then fired at Jared. Jody demanded Appellant take him home.⁴

The trial court charged the jury on murder and self-defense, but refused to charge voluntary manslaughter. The jury found Appellant guilty of both murders. In the sentencing phase, the trial court gave three statutory aggravating circumstances charges: 1) the defendant committed the murders while in the commission of robbery while armed with a deadly weapon; 2) the defendant committed the murders while in the commission of larceny while armed with a deadly weapon; and 3) two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct. Additionally, the trial court gave four statutory mitigating

prior to this remark, which was apparently the earlier exchange between Bill and Appellant.

⁴ Jody was convicted of two counts of accessory to murder.

circumstances: 1) the defendant had no significant criminal history; 2) the victims were participants in the defendant's conduct or consented to the act; 3) the defendant acted under duress or domination of another person; and 4) the defendant was provoked by the victims into committing the murders. The jury found the existence of all three aggravating circumstances beyond a reasonable doubt and recommended the death penalty.

II.

Appellant argues the trial court erred in failing to charge the jury on the law of voluntary manslaughter. We disagree. Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. *State v. Wharton*, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009).

To warrant the court eliminating the charge of manslaughter, there must be no evidence whatsoever tending to reduce the crime from murder to manslaughter. *Id.* If there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed, the defendant is entitled to such charge. *Dempsey v. State*, 363 S.C. 365, 371, 610 S.E.2d 812, 815 (2005).

We have consistently held that both heat of passion and sufficient legal provocation must be present at the time of the killing. *Wharton*, 381 S.C. at 215, 672 S.E.2d at 788. A defendant is not entitled to a voluntary manslaughter charge merely because he was in a heat of passion. *See id.* (holding the State's request for a voluntary manslaughter charge was not warranted where there was no evidence of sufficient legal provocation, although the defendant may have been acting under heat of passion). Conversely, a defendant is not entitled to voluntary manslaughter merely because he was legally provoked. *See State v. Pittman*, 373 S.C. 527, 576, 647 S.E.2d 144, 170 (2007) (holding although sufficient legal provocation arguably existed, there was no evidence the defendant was in a heat of passion). Moreover, there must be evidence that the heat of passion was

caused by sufficient legal provocation.

Appellant bases his entitlement to a voluntary manslaughter charge on his testimony that when Bill pointed a gun at him, he felt threatened and was in fear. Appellant argues the threat of an imminent deadly assault was sufficient to entitle him to a voluntary manslaughter charge. Appellant cites to several cases from this Court to support this argument.

The State, which concedes the propriety of the self-defense charge, counters that our case law should not be read so broadly as to sanction a voluntary manslaughter charge that is based upon the mere testimony that the defendant was "afraid." While acknowledging that self-defense and voluntary manslaughter are not mutually exclusive, the State asserts "it does not follow that manslaughter should be charged simply because a defendant claiming self-defense testifies he was afraid." The State claims there was no evidence Appellant shot the victims in the heat of passion, and therefore, the trial court correctly refused to charge voluntary manslaughter.

Whether a voluntary manslaughter charge is warranted turns on the facts. If the facts disclose any basis for the charge, the charge must be given. Given Appellant's argument, which takes our case law and turns primarily fact-driven holdings into broad statements of law, we take this opportunity to clarify the law regarding how a defendant's fear following an attack or a threatening act relates to voluntary manslaughter.

Trial courts often struggle with the difficult interplay between murder and the lesser-included offense of voluntary manslaughter,⁵ especially where a defendant claims he acted in self-defense. This struggle may be due to this Court's opinions which, when taken out of the evidentiary context, appear to set no boundaries as to what circumstances give rise to "sudden heat of passion upon sufficient legal provocation." For example, in a particular fact setting, we have held an unprovoked attack with a deadly weapon or an overt

⁵ We acknowledge courts have also struggled with the interplay of murder and involuntary manslaughter, especially when there is evidence of self-defense or accident.

threatening act can constitute sufficient legal provocation. *See State v. Knoten*, 347 S.C. 296, 307, 555 S.E.2d 391, 397 (2001) ("There can be little argument that an unprovoked knife attack constitutes sufficient legal provocation to warrant the requested [voluntary manslaughter] charge."); *Pittman*, 373 S.C. at 573, 647 S.E.2d at 168 ("This Court has previously held that an overt, threatening act or a physical encounter may constitute sufficient legal provocation.").

We also have held that fear resulting from an attack can constitute a basis for voluntary manslaughter. *See State v. Wiggins*, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) ("[F]ear can constitute a basis for voluntary manslaughter."). Yet the presence of fear does not end the inquiry regarding the propriety of a voluntary manslaughter instruction. We have consistently held that sudden heat of passion upon sufficient legal provocation is defined as an act or event that "must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." *Pittman*, 373 S.C. at 572, 647 S.E.2d at 167. While the act or event "need not dethrone the reason entirely, or shut out knowledge and volition," it must cause a person to lose control. *Id.*

We reaffirm the principle that a person's fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion. However, the mere fact that a person is afraid is not sufficient, by itself, to entitle a defendant to a voluntary manslaughter charge. Consistent with our law on voluntary manslaughter, in order to constitute "sudden heat of passion upon sufficient legal provocation," the fear must be the result of sufficient legal provocation **and** cause the defendant to lose control and create an uncontrollable impulse to do violence. Succinctly stated, to warrant a voluntary manslaughter charge, the defendant's fear must manifest itself in an uncontrollable impulse to do violence.

A person may act in a deliberate, controlled manner, notwithstanding the fact that he is afraid or in fear. Conversely, a person can be acting under

an uncontrollable impulse to do violence and be incapable of cool reflection as a result of fear. The latter situation constitutes sudden heat of passion, but the former does not. Evidence that fear caused a person to kill another person in a sudden heat of passion will mitigate a homicide from murder to manslaughter – it will not justify it. This is the distinction between voluntary manslaughter and self-defense. We reiterate that evidence of self-defense and voluntary manslaughter may coexist and that a charge on self-defense **and** voluntary manslaughter may be warranted. *See State v. Gilliam*, 296 S.C. 395, 373 S.E.2d 596 (1988) (holding the evidence supported both a self-defense charge and a voluntary manslaughter charge).

Turning to the facts of this case, viewing the evidence in the light most favorable to Appellant, there is no evidence to support a voluntary manslaughter charge. Appellant testified when he turned around and saw Bill pointing a gun at him, "I shot Bill Welborn and then turned and shot Jared Champlin." He added, "I was scared and I was frightened. When Jared pulled the gun on Jody, it scared me." While this testimony is evidence that Appellant was in fear, there is no evidence Appellant was out of control as a result of his fear or was acting under an uncontrollable impulse to do violence. The only evidence in the record is that Appellant deliberately and intentionally shot Jared and Bill and that he either shot the men with malice aforethought or in self-defense.

Again, we emphasize self-defense and voluntary manslaughter are not mutually exclusive, and had there been evidence to support a finding of heat of passion upon sufficient legal provocation, Appellant would have been entitled to a voluntary manslaughter charge. The record is simply devoid of such evidence. In our view, to hold that Appellant was entitled to a voluntary manslaughter charge under the facts of this case would impermissibly blend the elements of voluntary manslaughter and self-defense. In effect, such a holding would render voluntary manslaughter a lesser-included offense of self-defense, for where there is an intentional killing based on fear alone, a defendant would be entitled to a voluntary manslaughter charge.

For these reasons, we hold the trial court properly refused to charge

voluntary manslaughter.

III.

Appellant asks this Court to create a *per se* rule prohibiting capital defendants from representing themselves and to overturn *State v. Reed*, 332 S.C. 35, 503 S.E.2d 747 (1998) and *State v. Brewer*, 328 S.C. 117, 492 S.E.2d 97 (1997) (both holding the defendant had a right to represent himself at his capital trial). We decline to do so.

The South Carolina Constitution provides that every criminal defendant has the right to represent himself and makes no distinction between capital and non-capital defendants. See S.C. Const. art. 1, § 14. Additionally, the United States Supreme Court has interpreted the United States Constitution as providing a right to self-representation. See *Farretta v. California*, 422 U.S. 806, 821 (1975) ("The Sixth Amendment, when naturally read, thus implies a right of self-representation."). The right to self-representation, however, is not absolute. The Constitution allows states to prohibit defendants from waiving their right to counsel if they are not competent to conduct trial proceedings by themselves. See *Indiana v. Edwards*, 554 U.S. 164 (2008) (holding a defendant may be competent enough to stand trial but not competent enough to waive his Sixth Amendment right to counsel and represent himself). Nevertheless, we believe a *per se* ruling forbidding capital defendants from representing themselves would violate both the South Carolina and United States Constitutions. Therefore, we decline Appellant's request to adopt such a rule in South Carolina.

IV.

Appellant argues he did not knowingly and voluntarily waive his right to counsel during the sentencing phase of his trial. We disagree.

In order to waive the right to counsel, the accused must be (1) advised

of his right to counsel, and (2) adequately warned of the dangers of self-representation. *Prince v. State*, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990) (citing *Faretta*, 422 U.S. 806).

Appellant's waiver of counsel was addressed several times prior to trial. In the initial pre-trial hearing regarding Appellant's motion to proceed *pro se*, the record indicates the trial court methodically and carefully explained the dangers of self-representation and ensured that Appellant understood the various issues that would arise at trial. The trial judge inquired into Appellant's mental state and his knowledge of numerous aspects of a trial, including procedural rules, elements of the charges against him, and available defenses. After engaging in the thorough *Farretta* colloquy, the trial judge granted Appellant's request. At subsequent hearings, Appellant first withdrew his motion to proceed *pro se*, then made a motion for hybrid representation, and finally moved again to proceed *pro se*. At the third and final hearing on the motion, the trial judge again sternly warned Appellant of the dangers of self-representation.⁶

We find Appellant knowingly and voluntarily waived his right to counsel. Appellant was well aware of procedures in a death penalty case and knew he would be representing himself in both the guilt phase and the sentencing phase of trial. This was Appellant's second capital trial, and he specifically indicated to the trial court during a pre-trial hearing that he knew the trial could only proceed to the penalty phase if the jury returned a guilty verdict for murder.

Appellant thoroughly questioned potential jurors during *voir dire* and explained to them that a jury would first have to find him guilty before they reached the penalty phase. Appellant made reasonable and persuasive arguments to the trial court resulting in the qualification of several jurors,

⁶ The trial court appointed the two lawyers who had represented Appellant at his first trial as stand-by counsel.

specifically citing to a United States Supreme Court opinion for support.⁷ Additionally, during the State's case in chief, Appellant made proper and valid objections and conducted thorough cross-examinations of witnesses. In the presentation of his defense, Appellant called several witnesses, including the waitress who overheard Bill's threatening comments to Appellant, two witnesses who claimed they snorted methamphetamines and crystal meth with Bill three days before the killings, and Jared's fiancée who testified Bill was carrying a gun on the night of the killings.⁸ Finally, in the mitigation phase of the trial, Appellant called several correctional officers to testify as to Appellant's good behavior, two ministers, several personal friends, and his mother.

We find Appellant had a clear understanding of the dangers of self-representation in the guilt phase and the sentencing phase of his trial, as the trial court repeatedly questioned him about his decision to represent himself. *See Wroten v. State*, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (citing *Fitzpatrick v. Wainwright*, 800 F.2d 1057, 1065 (11th Cir. 1986)) (recognizing that the ultimate test regarding the waiver of counsel is not the trial judge's advice; rather it is the defendant's understanding of the dangers inherent in self-representation). Accordingly, we hold Appellant knowingly

⁷ In *Wainwright v. Witt*, the United States Supreme Court held the critical issue regarding the disqualification of a juror in a capital case 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.'" 469 U.S. 412, 433 (1985) (quoting *Adams v. Texas*, 448 U.S. 38, 45 (1980)). The State sought to disqualify those jurors who indicated they were more inclined to impose a life sentence. Appellant rebutted the State's request for disqualification by arguing, pursuant to *Wainwright*, these jurors did not say they could never give the death penalty and, therefore, should be qualified.

⁸ Jared's fiancée first testified she did not remember whether Jared had a gun with him on the night of the killings. Appellant impeached her testimony by providing her with a copy of the transcript from Appellant's first trial in which she testified Jared was carrying a gun. *See* Rule 613(b), SCRE (providing conditions where a prior inconsistent statement may be admitted).

and voluntarily waived his right to counsel.

V.

Pursuant to S.C. Code Ann. § 16-3-25(C) (2003), we have conducted a proportionality review. We find the death sentence was not the result of passion, prejudice, or any other arbitrary factor. Furthermore, a review of similar cases illustrates that imposing the death sentence in this case would be neither excessive nor disproportionate in light of the crime. *See State v. Vazsquez*, 364 S.C. 293, 613 S.E.2d 359 (2005) (involving a double murder committed in the course of a robbery); *State v. Hughey*, 339 S.C. 439, 529 S.E.2d 721 (2000) *overruled on other grounds by Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009) (involving a double murder committed in the course of a burglary); *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996) (imposing the death penalty where murder was committed in the course of kidnapping, burglary, and robbery).

We affirm Appellant's convictions and sentence.

AFFIRMED.

**TOAL, C.J., BEATTY and HEARN, JJ, concur. PLEICONES, J.,
dissenting in a separate opinion.**

JUSTICE PLEICONES: I respectfully dissent. I believe the trial court erred in failing to charge the jury on voluntary manslaughter. Consequently, I would reverse and remand for a new trial.

Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. See State v. Wharton, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009). "In determining whether the act which caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing." See State v. Gardner, 219 S.C. 97, 104, 64 S.E.2d 130, 134 (1951). "To warrant the court in eliminating the offense of manslaughter it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." Wharton, 381 S.C. at 214, 672 S.E.2d at 788.

At trial, the following evidence was presented from which the jury might have determined that Appellant committed manslaughter: testimony that, earlier in the day, Bill approached Appellant from behind, grabbed his throat, and put a metal object to his head; testimony that Bill said in Appellant's presence that he was going to take Appellant out on Platt Springs Road "and blow his F'in brains out;" Appellant's testimony that Bill and Jared were under the influence of methamphetamine on the night in question; and Appellant's testimony that Bill pointed a gun at Appellant just before Appellant shot him. Additionally, Appellant testified that he "didn't kill [Bill and Jared] with malice aforethought, with premeditation. . . . I was scared and I was frightened."

In my view, given the above evidence, it cannot be said that there was clearly "no evidence whatsoever tending to reduce the crime from murder to manslaughter." The jury could infer from the evidence that Appellant's fear resulted in an uncontrollable impulse to do violence. Compare State v. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) (holding that judge properly charged jury on voluntary manslaughter where defendant testified he was in fear of the threat of physical assault).

The majority apparently decides that the evidence does not yield an inference that Appellant's fear resulted in an uncontrollable impulse to do violence. This is not an unreasonable conclusion but, as some evidence tending to establish the offense of manslaughter was presented at trial, it is a conclusion that the jury, not this Court, must reach.

I do not suggest that a voluntary manslaughter instruction must be given whenever the defendant testifies that he was in fear. However, in light of all the evidence presented here, Appellant met the standard to warrant the charge. Wharton, 381 S.C. at 214, 672 S.E.2d at 788. I would reverse.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

March 4, 2010

Ms. Debbie Hopkins
Administrative Assistant
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

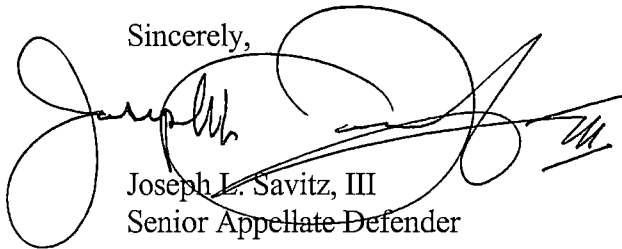
RECEIVED
MAR - 4 2010
S.C. SUPREME COURT

Re: The State v. Norman Starnes (Capital Case)

Dear Ms. Hopkins:

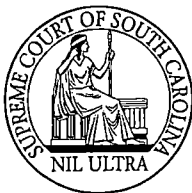
I would like to request a copy of the oral argument in the *State v. Norman Starnes* from today, March 4, 2010. If you have any questions or concerns, please feel free to contact me.

Sincerely,



Joseph L. Savitz, III
Senior Appellate Defender

JLS, III/kms



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

February 24, 2010

Senior Appellate Defender Joseph L. Savitz, III
Appellate Defender Elizabeth Franklin-Best
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Assistant Deputy Attorney General Donald J. Zelenka
Senior Assistant Attorney General S. Creighton Waters
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Starnes, Norman

Dear Counsel:

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

Appellant	30 minutes
Respondent	30 minutes
Appellant in Reply	10 minutes

Senior Appellate Defender Joseph L. Savitz, III
Re: The State v. Norman Starnes
February 24, 2010
Page two

Reminder:

This case is scheduled for hearing at 9:30 a.m. on Thursday, March 4, 2010.

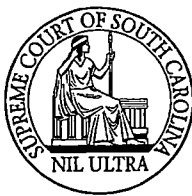
Very truly yours,

Daniel E. Shearouse, Clerk

By Jean J. Peebles
Administrative Assistant

DES/jjp

cc: Solicitor Harold W. Gowdy, III



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 5, 2010

Senior Appellate Defender Joseph L. Savitz, III
Appellate Defender Elizabeth Franklin-Best
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Starnes, Norman

Dear Counsel:

The following Order has been endorsed on the Request for Appellant to Appear at Oral Argument in the above entitled matter.

“Denied.

s/ Jean H. Toal C.J.
For the Court

February 5, 2010.”

By copy of this letter we are advising opposing counsel and Mr. Starnes of the action of the Court in this matter.

Very truly yours,

CLERK

DES/dmh

Senior Appellate Defender Joseph L. Savitz, III
Appellate Defender Elizabeth Franklin-Best
Page Two
February 5, 2010

cc: Mr. Norman Starnes
Senior Assistant Attorney General S. Creighton Waters

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

FEB - 4 2010

Appeal from Lexington County

S.C. SUPREME COURT

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

REQUEST FOR APPELLANT TO

APPEAR AT ORAL ARGUMENT

Norman Starnes, SK5053
SC Death Row Unit at
Lieber Corr. Inst.
P.O. Box 205 (RB212)
Ridgeville, SC 29472

Joseph L. Savitz, III
Chief Appellate Defender

Elizabeth Franklin-Best
Appellate Defender

SC Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

ATTORNEYS FOR APPELLANT

- a) Appellant is under a sentence of death and currently being housed on Death Row at Lieber Correctional Institute in Ridgeville, South Carolina.
- b) Appellant has been incarcerated for nearly fourteen years and has maintained an excellent disciplinary record at all times. In addition, Appellant has always used proper decorum in court and follows instructions from officers.
- c) This court has scheduled Appellant's case for oral argument on March 4, 2010 at 9:30am. Appellant is represented by Mr. Joseph L. Savitz, III and Ms. Elizabeth Franklin-Best of The South Carolina Commission on Indigent Defense, Appellate Division.
- d) Appellant would respectfully request to be present at this court when his case is argued before this court.

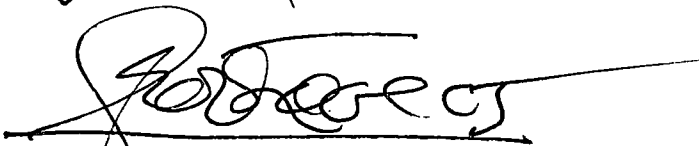
Respectfully submitted,



Norman Starnes, SK5053
SC Death Row Unit at
Lieber Corr. Inst.
POB 205 (RB212)
Ridgeville, SC 29472

This 29th day of January,
2010.

Denied


February 5, 2010



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

February 4, 2010

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FEB - 4 2010

S.C. SUPREME COURT

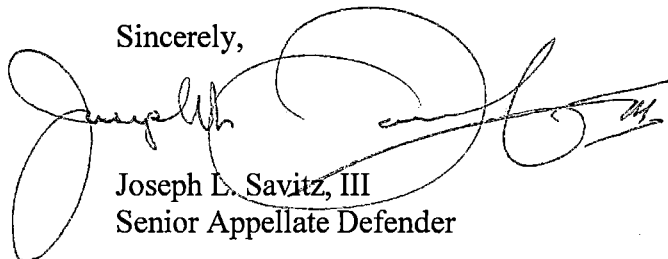
The Honorable Daniel E. Shearouse
Clerk of Court
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: *State v. Norman Starnes*

Dear Mr. Shearouse,

Please find enclosed a copy of appellant, Norman Starnes's, request to appear at his oral argument, currently scheduled for March 4th, 2010, at 9:30 am. I am filing this on behalf of my client and have no position on whether the Court should grant this motion.

Sincerely,



Joseph L. Savitz, III
Senior Appellate Defender

JLS/kms

cc: Donald J. Zelenka, Assistant Deputy Attorney General
Norman Starnes
Elizabeth Franklin-Best, Appellate Defender



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

Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

January 13, 2010

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JAN 13 2010

S.C. SUPREME COURT

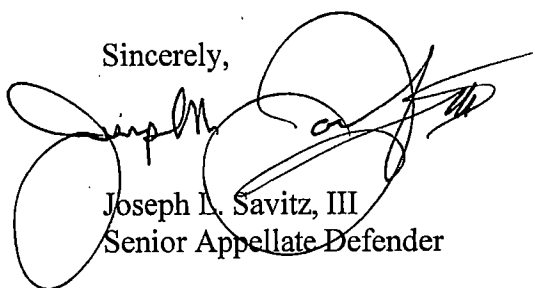
The Honorable Daniel E. Shearouse
Clerk of Court
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: *State v. Norman Starnes*

Dear Mr. Shearouse,

I am writing to request that schedule the hearing for *The State v. Norman Starnes* March 4, 2010 preferably at 9:30. If there are any questions or concerns please feel free to contact me. Thank you.

Sincerely,



Joseph L. Savitz, III
Senior Appellate Defender

JLS/kms

cc: Donald J. Zelenka, Assistant Deputy Attorney General
Norman Starnes
Elizabeth Franklin-Best, Appellate Defender



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: Senior Appellate Defender Joseph L. Savitz, III
Appellate Defender Elizabeth Franklin-Best
From: Daniel E. Shearouse
Date: January 11, 2010
RE: March Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the March 2010 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of March 2, 3, 4, 16 and 17. Please notify this office in writing prior to January 19, 2010 as to any scheduling conflicts for the March term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

The State v. Starnes, Norman



The South Carolina Supreme Court

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

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

To: Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Donald J. Zelenka
Senior Assistant Attorney General S. Creighton Waters

From: Daniel E. Shearouse

Date: January 11, 2010

RE: March Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the March 2010 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of March 2, 3, 4, 16 and 17. Please notify this office in writing prior to January 19, 2010 as to any scheduling conflicts for the March term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

The State v. Starnes, Norman



HENRY McMASTER
ATTORNEY GENERAL

December 29, 2009

RECEIVED

DEC 29 2009

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. Norman Starnes
Appeal from Lexington County

Dear Mr. Shearouse:

Enclosed please find the original and nine (9) of the ***Final Brief of Respondent***, dated December 29, 2009, along with proof of service, in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,



S. Greighton Waters
Senior Assistant Attorney General

Enclosures

cc: Joseph L. Savitz, III, Esquire
The Honorable Harold W. Gowdy, III
Sandi Wofford, Victims' Services

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

Appeal from Lexington County
Lee S. Alford, Circuit Court Judge

RECEIVED

DEC - 9 2009

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

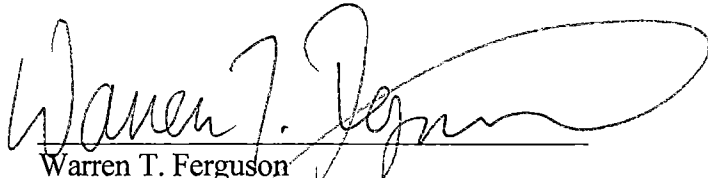
V.

NORMAN STARNES,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon S. Creighton Waters, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of December, 2009.


Warren T. Ferguson
Administrative Assistant

SUBSCRIBED AND SWORN TO before me
this 9th day of December, 2009.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 1, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Honorable Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

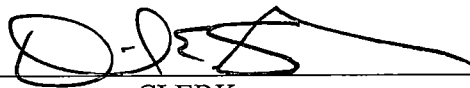
APPELLANT

O R D E R

On motion of Joseph L. Savitz, III, attorney for appellant, it is hereby

ORDERED that Court's Exhibit 10 (DVD of reenactment), 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

November 30, 2009

Copies to: Beth Carrigg, Lexington County Clerk of Court
Joseph L. Savitz, III, Esquire
Donald J. Zelenka, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

November 18, 2009

RECEIVED

NOV 18 2009

S.C. SUPREME COURT

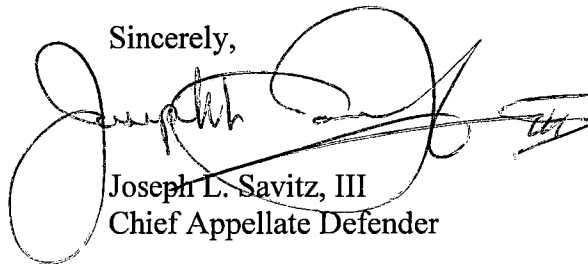
The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
PO Box 11330
Columbia, SC 29211

Re: The State v. Norman Starnes

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,



Joseph L. Savitz, III
Chief Appellate Defender

JLS,III/kms

cc: Donald J. Zelenka

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
The Honorable Lee S. Alford, Circuit Court Judge

RECEIVED

NOV. 20 2009

THE STATE,

Respondent, S.C. SUPREME COURT

v.

NORMAN STARNES,

Appellant.

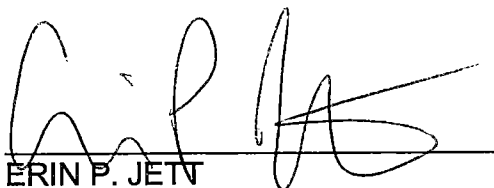
PROOF OF SERVICE

I, Erin P. Jett, Legal Assistant to S. Creighton Waters, Counsel for Respondent, certify that I have this date served the **Designation of Matter**, dated November 19, 2009, on Appellant by depositing two copies of the same in the United States mail, first class postage prepaid, addressed to his attorney of record:

Joseph L. Savitz, III
South Carolina Office of Appellate Defense
1205 Pendleton Street
Columbia, South Carolina 29201

I further certify that I have served all parties required by Rule to be served.

This 19th day of November, 2009.



ERIN P. JETT
Legal Assistant to S. Creighton Waters
Post Office Box 11549
Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT



HENRY McMASTER
ATTORNEY GENERAL

November 9, 2009

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

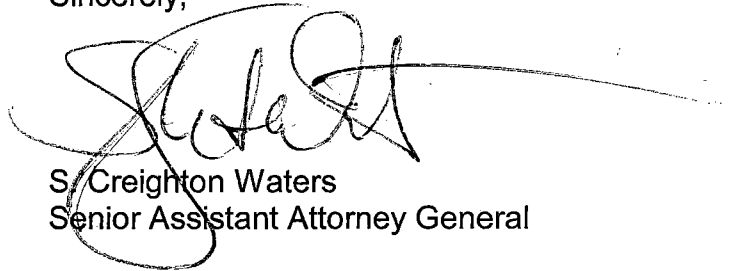
Re: The State v. Norman Starnes
Appeal from Lexington County

Dear Mr. Shearouse:

Enclosed please find the original ***Initial Brief of Respondent and Designation of Matter***, dated November 9, 2009, along with proof of service, in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,



S. Creighton Waters
Senior Assistant Attorney General

Enclosures

cc: Joseph L. Savitz, III, Esquire
Honorable Robert M. Atrial
Sandi Wofford, Victims' Services

RECEIVED

NOV 12 2009

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
The Honorable Lee S. Alford, Circuit Court Judge

THE STATE,

Respondent,

v.

NORMAN STARNES,

Appellant.

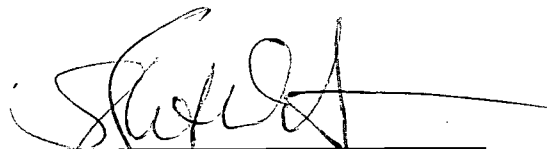
PROOF OF SERVICE

I, S. Creighton Waters, Counsel for Respondent, certify that I have this date served the ***Initial Brief of Respondent and Designation of Matter***, dated November 9, 2009, on Appellant by depositing two copies of the same in the United States mail, first class postage prepaid, addressed to his attorney of record:

Joseph L. Savitz, III
South Carolina Office of Appellate Defense
1205 Pendleton Street
Columbia, South Carolina 29201

I further certify that I have served all parties required by Rule to be served.

This 9th day of November, 2009.



S. CREIGHTON WATERS
Senior Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT

The Supreme Court of South Carolina

The State,

Respondent,

v.

Norman Starnes,

Appellant.

The Honorable Lee S. Alford
Lexington County
Trial Court Case No. 1996-GS-32-03339

ORDER

Respondent seeks a third extension of time to serve and file the Initial Brief of Respondent and Designation of Matter in the above entitled matter. The request for an extension is granted and extended until November 9, 2009. 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

October 12, 2009

cc: Chief Appellate Defender Joseph L. Savitz, III
Senior Assistant Attorney General S. Creighton Waters



HENRY McMASTER
ATTORNEY GENERAL

October 9, 2009

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OCT - 9 2009

S.C. SUPREME COURT

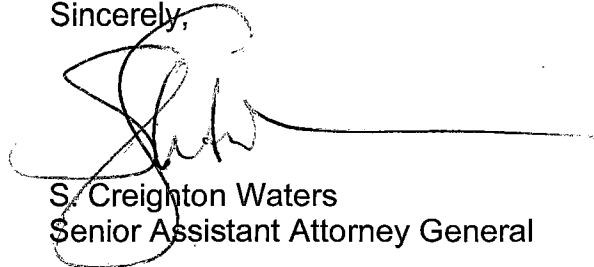
The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: The State v. Norman Starnes
Appeal from Lexington County

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the ***Motion for an Extension of Time to File the Initial Brief of Respondent and Designation of Matter***, dated October 9, 2009, together with the Certificate of Service, in the above-captioned case.

Sincerely,



S. Creighton Waters
Senior Assistant Attorney General

SCW/epj

Enclosures

cc: Joseph L. Savitz, III, Esquire

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

Appeal from Lexington County
The Honorable Lee S. Alford, Circuit Court Judge

THE STATE,

Respondent,

v.

NORMAN STARNES,

Appellant.

RECEIVED

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S.C. SUPREME COURT

**MOTION FOR AN 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. Respondent makes this motion as undersigned counsel has had a number of other commitments in state and federal court that have precluded timely completion of the brief. For example, counsel recently was lead counsel in the multi-day evidentiary hearing in the PCR case of Haselden v. State, in which multiple experts were called, then attended two days of the Solicitor's Conference, and then completed some federal pleadings which were due this week. Moreover, counsel missed the first three days of this week with an ill child, and the child eventually passed the illness onto the undersigned. Counsel is also filing a brief today before this Court which is due today in a different murder case.

While counsel had hoped to complete both briefs by today, the previous busy weeks coupled with missing time due to the illness precluded completion of both. Moreover, this case is a death penalty case which has a relatively large transcript. While counsel has another evidentiary hearing next month in addition to the normal direct appeal and federal habeas caseload, counsel has blocked

out time next month to complete this brief barring extraordinary circumstances. This is the first third extension counsel has requested since the new rules regarding extensions went into effect.

Wherefore Respondent respectfully requests an extension of a period of time of thirty (30) days to complete this brief.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

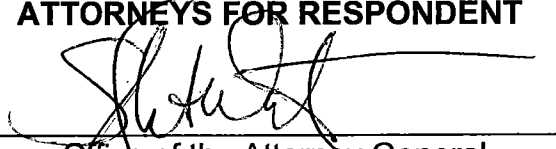
JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

S. CREIGHTON WATERS
Senior Assistant Attorney General

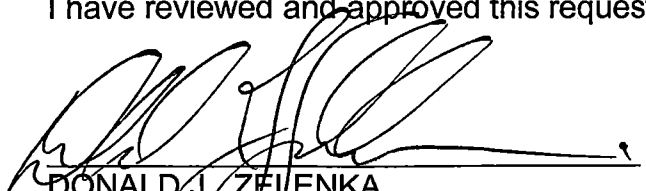
ATTORNEYS FOR RESPONDENT

BY:

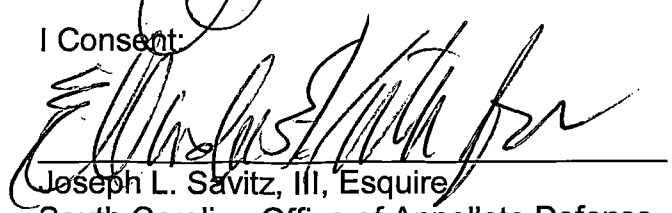

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

October 9, 2009.

I have reviewed and approved this request.


DONALD J. ZELENKA
Assistant Deputy Attorney General

I Consent:


Joseph L. Savitz, III, Esquire
South Carolina Office of Appellate Defense

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

Appeal from Lexington County
The Honorable Lee S. Alford, Circuit Court Judge

THE STATE,

Respondent,

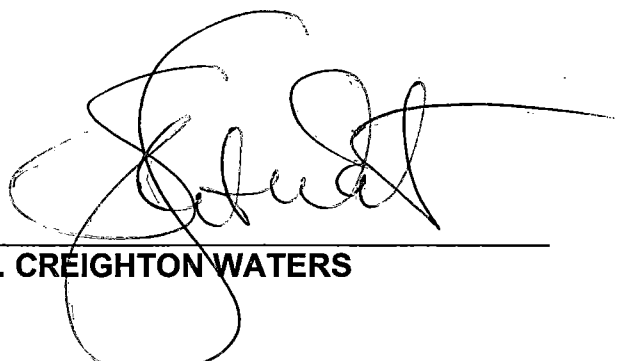
v.

NORMAN STARNES,

Appellant.

CERTIFICATE OF SERVICE

I, **S. Creighton Waters**, hereby certify that I have served Petitioner's **Motion for an Extension of Time to File Initial Brief of Respondent and Designation of Matter**, on Joseph L. Savitz, III, South Carolina Office of Appellate Defense, 1205 Pendleton Street; Columbia, South Carolina 29201 by depositing two (2) copies in the United States Mail, postage prepaid this 9th day of October, 2009.



S. CREIGHTON WATERS

The Supreme Court of South Carolina

The State,

Respondent,

v.

Norman Starnes,

Appellant.

The Honorable Lee S. Alford
Lexington County
Trial Court Case No. 1996-GS-32-03339

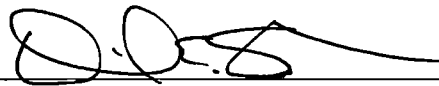
ORDER

Respondent seeks a second extension of time to serve and file the Initial Brief of Respondent and Designation of Matter in the above entitled matter. The request for an extension is granted and extended until October 9, 2009. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

September 10, 2009

cc: Chief Appellate Defender Joseph L. Savitz, III
Senior Assistant Attorney General S. Creighton Waters



HENRY McMASTER
ATTORNEY GENERAL

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SEP - 9 2009

September 9, 2009

S.C. SUPREME COURT

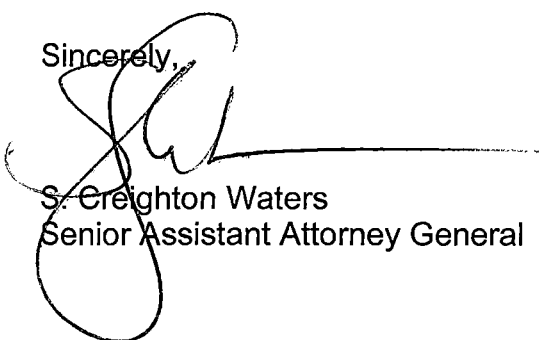
The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: The State v. Norman Starnes
Appeal from Lexington County

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the ***Motion for an Extension of Time to File the Initial Brief of Respondent and Designation of Matter***, dated September 9, 2009, together with the Certificate of Service, in the above-captioned case.

Sincerely,


S. Creighton Waters
Senior Assistant Attorney General

SCW/epj

Enclosures

cc: Joseph L. Savitz, III, Esquire

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

Appeal from Lexington County
The Honorable Lee S. Alford, Circuit Court Judge

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THE STATE,

Respondent,

S.C. SUPREME COURT

v.

NORMAN STARNES,

Appellant.

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

Respondent, above-named, hereby makes a motion to this Court to extend the time for filing the Initial Brief of Respondent and Designation of Matter from September 9, 2009, for a period of thirty (30) days. Respondent made an initial request for an extension on August 10, 2009, which this Court granted on August 11, 2009.

Respondent makes this motion as undersigned counsel has had a number of other commitments in state and federal court that have precluded timely completion of the brief. For example, counsel is presently preparing for an upcoming capital PCR hearing. Last week, counsel filed a number of federal pleadings. The week prior to that, counsel was out of the office for trying the PCR case of Christopher Pittman v. State, and the majority of the previous week was spent in preparation for the evidentiary hearing in that case. Prior to that, counsel's time was monopolized by completing a 200-page post-trial brief in the

capital PCR of Marion Bowman v. State, which was filed the second week of August.

Wherefore Respondent respectfully requests an extension of a period of time of thirty (30) days to complete this brief.

Respectfully submitted,

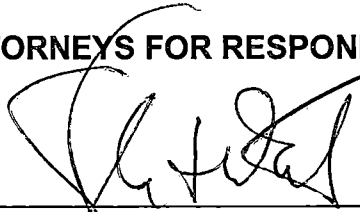
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

S. CREIGHTON WATERS
Senior Assistant Attorney General

ATTORNEYS FOR RESPONDENT

BY: 

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

September 9, 2009.

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

Appeal from Lexington County
The Honorable Lee S. Alford, Circuit Court Judge

THE STATE,

Respondent,

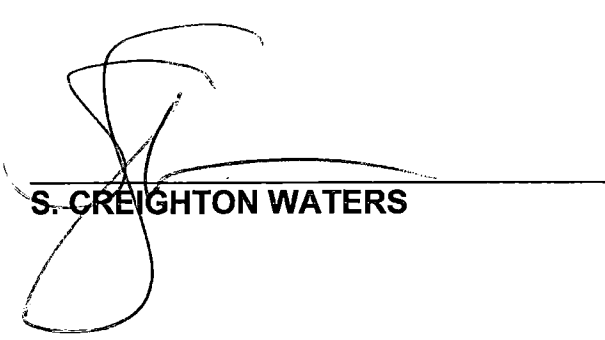
v.

NORMAN STARNES,

Appellant.

CERTIFICATE OF SERVICE

I, **S. Creighton Waters**, hereby certify that I have served Petitioner's **Motion for an Extension of Time to File Initial Brief of Respondent and Designation of Matter**, on Joseph L. Savitz, III, South Carolina Office of Appellate Defense, 1205 Pendleton Street; Columbia, South Carolina 29201 by depositing two (2) copies in the United States Mail, postage prepaid this 9th day of September, 2009.



S. CREIGHTON WATERS

The Supreme Court of South Carolina

The State,

Respondent,

v.

Norman Starnes,

Appellant.

The Honorable Lee S. Alford
Lexington County
Trial Court Case No. 1996-GS-32-03339

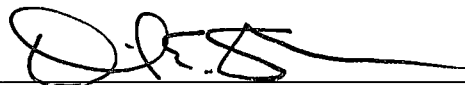
ORDER

For good cause having been shown, the time for serving and filing the Initial Brief of Respondent and Designation of Matter in the above entitled matter is hereby extended until September 9, 2009.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

August 11, 2009

cc: Chief Appellate Defender Joseph L. Savitz, III
Senior Assistant Attorney General S. Creighton Waters

HENRY McMASTER
ATTORNEY GENERAL



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AUG 10 2009

August 10, 2009

S.C. SUPREME COURT

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

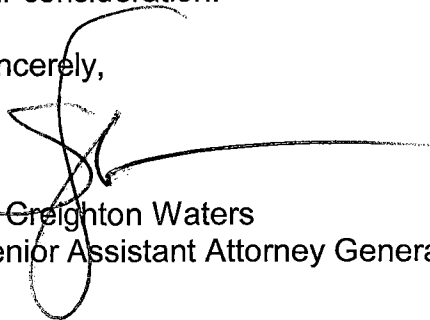
Re: The State v. Norman E. Starnes

Dear Mr. Shearouse:

The initial brief of respondent in the above-entitled action is due to be filed and served on August 10, 2009. Due to my heavy caseload, I will not be able to complete this initial brief in a timely fashion. For this reason, I respectfully request an extension of thirty (30) days in which to file the initial brief.

By copy of this letter I am informing opposing counsel, Joseph L. Savitz, III, Esquire, of this request. Thank you for your consideration.

Sincerely,


S. Greighton Waters
Senior Assistant Attorney General

SCW/epj

cc: Joseph L. Savitz, III, Esquire



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 10, 2009

Mr. Norman Starnes, SK5053
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

Re: The State v. Starnes, Norman

Dear Mr. Starnes:

The following Order has been endorsed on your pro se letter request to the Court in the above entitled matter.

“Denied.

s/ Jean H. Toal C.J.
For the Court

July 10, 2009.”

By copy of this letter we are advising opposing counsel the initial brief of respondent and designation of matter should be served and filed within thirty (30) days of the date of this letter.

Very truly yours,

CLERK

DES/dmh

Mr. Norman L. Starnes, SK5053

Page Two

July 10, 2009

cc: Chief Appellate Defender Joseph L. Savitz, III
Appellate Defender Elizabeth Franklin-Best
Assistant Deputy Attorney General Donald J. Zelenka
The Honorable Harold W. Gowdy, III

Norman Starnes SK5053
SC Death Row Unit at
Lieber Corr. Inst.
POB 205 (RB212)
Ridgeville, SC 29472

RECEIVED

JUN 22 2009

S.C. SUPREME COURT

TO: Mr. Joseph L. Savitz III
SC Commission on Indigent Defense
Division of Appellate Defense
POB 11589
Columbia, SC 29211-1589

RE: Direct Appeal

June 18, 2009

Dear Mr. Savitz:

I am asking that you only communicate with me in writing regarding this matter to avoid any further confusion. Please do not call me here on Death Row to discuss this matter. I have gave a lot of thought and research regarding my letter to The SC Supreme Court on the issue of imperfect self-defense and I am standing by my decisions in my letter to that court of which was filed on June 12, 2009. I truly believe you can ask the court to allow the imperfect self-defense issue to be argued on my direct appeal notwithstanding the Initial Brief was filed on or about June 3, 2009. At the least I would ask that the court be afforded the opportunity to decide if they want to hear the issue or not. In the event you refuse to honor my request and argue this issue on my direct appeal please accept this missive as my request to relieve you as my attorney on my direct appeal. I apologize for any inconvenience to your office or the court. I look forward to hearing from you in writing.

Thanking you in advance,

Respectfully,

cc: Attorney General
Supreme Court


Norman Starnes



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

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JUN 19 2009

June 19, 2009

S.C. SUPREME COURT

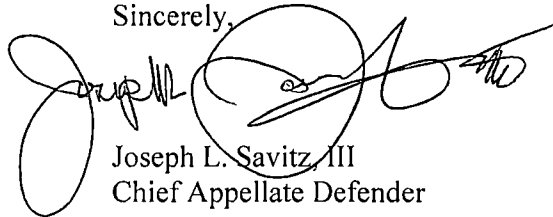
The Honorable Daniel E. Shearouse
Clerk of Court
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: State v. Norman Starnes

Dear Mr. Shearouse,

After I wrote the Court yesterday to indicate that Mr. Starnes and I had resolved our differences over the direction his appeal should take, he called me last night and informed me that he was reverting to his previous position, which is that Ms. Franklin-Best and I should be required to amend his brief to raise imperfect self-defense, an issue that we do not believe is meritorious for several reasons, or that he be appointed another attorney, who would be presumably be ordered to raise that issue. (The Court may recollect that similar difficulties arouse the last time I- successfully- represented Mr. Starnes.) We oppose Mr. Starnes motion and we also oppose the option of self-representation. We did not raise the imperfect self-defense issue because we did not feel it was meritorious, not as part of our appellate strategy. If Mr. Starnes believes this omission constitutes ineffective assistance of counsel, he would certainly be entitled to raise that issue on Post- Conviction Relief- assuming we do not win his direct appeal.

Sincerely,



Joseph L. Savitz, III
Chief Appellate Defender

JLS/kms

cc: Donald J. Zelenka, Assistant Deputy Attorney General
Norman Starnes
Elizabeth Franklin-Best, Appellate Defender



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

June 18, 2009

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JUN 18 2009

S.C. SUPREME COURT

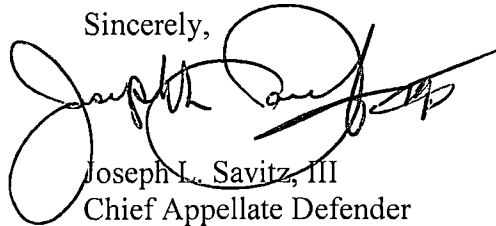
The Honorable Daniel E. Shearouse
Clerk of Court
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: State v. Norman Starnes

Dear Mr. Shearouse,

I spoke with Norman Starnes by telephone today to explain why Ms. Franklin-Best and I did not argue the Court should adopt imperfect self-defense as the law in this state. I explained that, although he had raised the issue at trial, we did not feel it was likely to prevail on appeal and because there was strong evidence of voluntary manslaughter under the existing law of this State. Norman no longer wishes us relieved as counsel if we do not amend the brief to include imperfect self-defense.

Sincerely,



Joseph L. Savitz, III
Chief Appellate Defender

JLS/kms

cc: Donald J. Zelenka, Assistant Deputy Attorney General
Norman Starnes
Elizabeth Franklin-Best, Appellate Defender

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT.

PRO SE LETTER TO THE COURT

Norman Starnes, Appellant
SC Death Row Unit at
Lieber Correctional Institute
POB 205 (RB212)
Ridgeville, SC 29472

Joseph L. Savitz, III
Chief Appellate Defender

Elizabeth Franklin-Best
Appellate Defender

SC Commission on Indigent Defense
Division of Appellate Defense
POB 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEYS FOR APPELLANT

RECEIVED

JUN 12 2009

S.C. SUPREME COURT

Denied.

[Signature]
For the Court

July 10, 2009

On November 17, 2007 Appellant received two death sentences in Lexington County, South Carolina after proceeding pro se during trial. Thereafter, Mr. Joseph L. Savitz III was appointed to represent Appellant on his direct appeal to this court. Appellant spoke to Mr. Savitz by phone before the record was transcribed in this case to discuss issues to appeal. During that phone conversation Mr. Savitz agreed to raise the issue of imperfect self-defense on direct appeal and allow Appellant the opportunity to review the Initial Brief Of Appellant before filing it with this court.

On Friday, June 5, 2009 Appellant received a copy of his Initial Brief with a letter enclosed from Mr. Savitz advising Appellant the Initial Brief had already been filed with this court. The imperfect self-defense issue was not filed with this court notwithstanding Appellant and Mr. Savitz both agreed that the issue would be filed with this court.

Prior to trial, Judge Alford allowed Appellant additional funding to upgrade his Westlaw plan to allow Appellant to conduct legal research in all fifty states and all federal circuits regarding the issue of imperfect self-defense.

On November 14, 2007 the Appellant filed a twenty-three page memorandum with the trial court regarding imperfect self-defense in addition, the trial court made it a part of the record and it was marked as court exhibit #11. (see attachment A) In addition to the memorandum the Appellant filed with the trial court four requested jury instructions regarding imperfect self-defense and those were marked as court exhibit #12, 13, 14 and 15. (see attachment B) These requested instructions were filed with the trial court on November 14, 2007 with the memorandum and other requested jury instructions.

Appellant did preserve the issue of imperfect self-defense on record however the trial court declined to charge the law regarding that issue but made it a part of the record in this case. Appellant is aware that in the 1982 decision by this court in State v. Finley, 290 S.E.2d 808 (1982) this court declined to recognize imperfect self-defense in South Carolina however in the twenty-seven years since Finley was decided by this court, this court has made several changes regarding the law of self-defense in this state. In addition our Legislature has passed laws regarding self-defense to allow certain individuals to carry concealed weapons. In addition our Legislature has passed laws regarding defense of habitation. Sixteen years after Finley was decided two opinions from this court mention imperfect self-defense. Mr. Justice Waller writing for this court in State v. Wiggins, 500 S.E.2d 489 (1998) noted that the Appellant in that case had not argued he was entitled to a jury instruction regarding imperfect self-defense. Three months after Wiggins was decided then Mrs. Justice Toal writing for this court in Douglas v. State, 504 S.E.2d 307 (1998) noted in footnote 4 of that opinion that a claim of imperfect self-defense would be unavailing because it has no application to involuntary manslaughter.

In the present case manslaughter is an issue that Appellant is arguing should have been submitted to his jury to consider. Appellant is not arguing an involuntary manslaughter instruction. Both manslaughter and imperfect self-defense were issues before the trial court and are preserved for this court to review. Appellant believes that this court should be afforded the opportunity to decide if the issue of imperfect self-defense should be heard and if the Appellant was entitled to such jury instruction at trial under the facts of this case.

On Monday, June 8, 2009 Appellant spoke to Mr. Savitz by phone concerning the imperfect self-defense issue and the fact Appellant was not afforded the opportunity to review his Initial Brief before it was filed with this court. Mr. Savitz explained that he ran out of time and could not get anymore extentions to file with this court. Prior to June 8, 2009 Appellant was not aware Mr. Savitz had received any extentions to file his brief with this court. Moreover, Mr. Savitz has had ample time to brief and file the imperfect self-defense issue with this court.

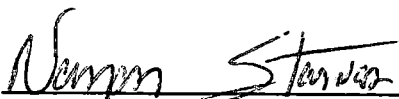
In the event Mr. Savitz can not correct this matter and file the imperfect self-defense issue with this court to be reviewed on direct appeal or if Mr. Savitz plainly refuses to file the issue with this court then the Appellant is asking this court to relieve Mr. Savitz as Appellate counsel for the Appellant and appoint another attorney to represent Appellant on his direct appeal before this court so the issue of imperfect self-defense can be raised on direct appeal before this court.

Appellant will have a copy of this letter handdelivered to The South Carolina Attorney Generals Office and Commission on Appellate Defense after it is filed with this court.

Thanking you in advance,

Respectfully submitted,

cc: Attorney General
Appellate Defense
File


Norman Starnes, SK5053
SC Death Row Unit at
Lieber Corr. Inst.
POB 205 (RB212)
Ridgeville, SC 29472

This 9TH day of June 2009.

ATTACHMENT A

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
STATE OF SOUTH CAROLINA	)	WARRANT # E682636 , E682637
	)	
v.	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANT'S REQUEST TO
NORMAN STARNES	)	CHARGE THE DOCTRINE OF
	)	"IMPERFECT SELF-DEFENSE"
DEFENDANT, <u>PRO SE</u>	)	
	)	

TABLE OF AUTHORITIES

U.S. CONST. AMEND. V, VIII, XIV

S.C. CONST. ART. I § 3

S.C. CONST. ART. V. § 21

S.C. CODE ANN. § 16-3-10 (1985)

S.C. CODE ANN. § 16-3-50 (1985)

FILED
2007 NOV 14 A 8:51
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

TABLE OF U.S. SUPREME COURT CASES

BECK V. ALABAMA, 447 U.S. 625 (1980)

MULLANEY V. WILBUR, 421 U.S. 684 (1975)

STEVENSON V. UNITED STATES, 162 U.S. 313 (1896)

UNITED STATES V. BAILEY, 444 U.S. 394 (1980)

WALLACE V. UNITED STATES, 162 U.S. 466 (1896)

TABLE OF SOUTH CAROLINA CASES

DOUGLAS V. STATE, 504 S.E.2d 307 (1998)

STATE V. ADDISON, 540 S.E.2d 449 (2000)

STATE V. BELLAMY, 359 S.E.2d 63 (1987)

STATE V. BOLTON, 223 S.E.2d 863 (1976)

STATE V. COLE, 525 S.E.2d 511 (2000)

STATE V. DAVIS, 317 S.E.2d 452 (1984)

STATE V. FINLEY, 290 S.E.2d 808 (1982)

STATE V. FULLER, 377 S.E.2d 328 (1989)

STATE V. GANDY, 324 S.E.2d 65 (1984)

STATE V. GILCHRIST, 612 S.E.2d 702 (2005)

STATE V. GILLIAM, 373 S.E.2d 596 (1988)

STATE V. GLOVER, 326 S.E.2d 150 (1985)

STATE V. HARVEY, 68 S.E.2d 409 (1951)

STATE V. JOHNSON, 352 S.E.2d 480 (1987)

STATE V. KELLY, 540 S.E.2d 851 (2001)

STATE V. LINDER, 278 S.E.2d 335 (1981)

STATE V. MARLOE, 112 S.E. 921 (1922)

STATE V. MCINTOSH, 17 S.E. 446 (1893)

STATE V. NICHOLS, 481 S.E.2d 118 (1997)

STATE V. TAYLOR, 589 S.E.2d 1 (2003)

STATE V. WIGGINS, 500 S.E.2d 489 (1998)

STATE V. WOODS, 607 S.E.2d 57 (2004)

WILLIAM S. MCANINCH & W. GASTON FAIREY, THE CRIMINAL LAW OF SOUTH CAROLINA (3 ed. 1996 P. 164)

TABLE OF OTHER STATE AUTHORITIES

COLO. REV. STAT. 18-3-105 (1)(b) (1978)

ILL. REV. STAT. ANN. Ch. 38, 9-2 (b) (1972)

18 PA. C.S.A. § 2503 (b) (1972)

WIS. STAT. ANN. 940.05 (2) (1958)

TABLE OF OTHER STATE CASES

ALLISON V. STATE, 86 S.W. 409 (ARK. (1905)

CHANDLER V. STATE, 946 SO.2d 355 (MS. (2006)

COMMONWEALTH V. CAMPBELL, 304 A.2d 121 (PA. 1973)

COMMONWEALTH V. COLANDRO, 80 A. 571 (PA. 1911)

COMMONWEALTH V. NAU, 373 A.2d 449 (PA. 1971)

COMMONWEALTH V. THOMPSON, 133 A.2d 207 (PA. 1957).

COOK V. STATE, 467 SO.2d 203 (MS. 1936)

FAULKNER V. STATE, 458 A.2d 81 (MD. APP. (1983)

HARTFIELD V. STATE, 170 SO. 531 (MS. 1936)

IN RE CHRISTIAN, 872 P.2d 574 (CA. 1994)

LANIER V. STATE, 684 SO.2d 93 (MS. 1996)

PEOPLE V. FLANNEL, 603 P.2d 1 (CA. 1979)

PEOPLE V. RANDLE, 111 P.3d 987 (CA. 2005)

PEOPLE V. WELLS, 202 P.2d 53 (CA. 1949)

REED V. STATE, 11 TEX. CRIM. APP. 509 (TX. 1882)

ROACH V. STATE, 749 A.2d 787 (MD. 2000)

STATE V. FAULKNER, 483 A.2d 759 (MD. 1984)

TICHNELL V. STATE, 415 A.2d 830 (MD. 1980)

WADE V. STATE, 748 SO.2d 771 (MS. 1999)

WOOD V. STATE, 486 P.2d 750 (OK. 1971)

PROVOKED REASONS IN MEN AND WOMEN: HEAT-OF-PASSION
MANSLAUGHTER AND IMPERFECT SELF-DEFENSE, 33 UCLA LR 1679 (1986)

SUMMARY

The defendant, Norman Starnes, would respectfully move this Honorable Court pursuant to U.S. Const. Amend. V, VIII, XIV, S.C. CONST. ART I § 3, V § 21, to instruct the jury in the above captioned capital trial on the doctrine of “an honest but unreasonable belief of imminent danger” regarding and relating to the defendant’s self-defense claim. Numerous other states recognize this doctrine as “imperfect self-defense” by either common law or statute or both. If established, the defendant remains culpable and his actions are excused only to the extent that mitigation is invoked, to effectively negate malice an element the state must prove to convict of murder and move forward with capital punishment.

Further, the defendant avers that the facts and circumstances in this case support the requested instruction. Without such instruction the defendant would suffer both federal and state constitutional violations by not fully informing the jury on legal issues regarding his defense.

Further, the defendant avers that any jury verdict less than murder is a legitimate defense when capital punishment is involved, BECK V. ALABAMA, 447 U.S. 625 (1980). Without a murder conviction the state can not successfully move forward and argue for the death penalty.

The requested instruction falls within the defendant’s due process rights under the federal constitution, MULLANEY V. WILBUR, 421 U.S. 684 (1975). The defendant’s requested jury instruction regarding “an honest but unreasonable belief of imminent danger” in a self-defense case was addressed by The United States Supreme Court in two 1896 decisions. WALLACE V. UNITED STATES, 162 U.S. 466,

STEVENSON V. UNITED STATES, 162 U.S. 313. The defendant's belief in the need to use force in this case is a factor that the court should not exclude in charging the jury. Due process requires the court to instruct the jury regarding the reasonableness of the defendant's belief that he was in imminent danger at the time of the killing. The defendant would hereby, inter alia, rely on both WALLACE and STEVENSON for the proposed jury instructions regarding the reasonableness of defendant's self-defense claim.

MALICE

South Carolina defines murder as the killing of any person with malice aforethought, either express or implied S.C. CODE ANN. § 16-3-10 (1985). STATE V. JOHNSON, 352 S.E.2d 480 (1987). Malice is a term importing wickedness and excluding a just cause or excuse STATE V. HARVEY, 68 S.E.2d 409 (1951). Malice must be shown to convict of murder.

VOLUNTARY MANSLAUGHTER

South Carolina defines voluntary manslaughter as the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. STATE V. WOODS, 607 S.E.2d 57 (2004). Heat of passion alone will not suffice to reduce murder to voluntary manslaughter. Both heat of passion and sufficient legal provocation must be present at the time of the killing, STATE V. COLE, 525 S.E.2d 511 (2000). Sudden heat of passion upon sufficient legal provocation that mitigates a felony killing to voluntary manslaughter must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what according to human experience may be called an uncontrollable impulse to do violence.

Voluntary manslaughter is the unlawful killing of another without malice S.C. CODE ANN. § 16-3-50 (1985). Voluntary manslaughter is distinguished from murder because the vital element of malice is missing in manslaughter. STATE V. GANDY, 324 S.E.2d 65 (1984), STATE V. KELLY, 540 S.E.2d 851 (2001). In determining whether the act which caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing.

Voluntary manslaughter and self-defense are not mutually exclusive and should both be submitted to the jury if supported by the evidence. STATE V. NICHOLS, 481 S.E.2d 118 (1997). The rationale for this rule is that the jury may fail to find all the elements of self-defense but could find sufficient legal provocation and heat of passion to conclude the defendant was guilty of voluntary manslaughter. STATE V. LINDER, 278 S.E.2d 335 (1981), STATE V. GILLIAM, 373 S.E.2d 596 (1988), **STATE V. WIGGINS**, 500 S.E.2d 489 (1998) AT FN. 18 (**DISCUSSING IMPERFECT SELF-DEFENSE**).

SELF-DEFENSE

To this day, there exist no state statute defining self-defense in South Carolina. The state has defined self-defense by its common law definition in STATE V. DAVIS, 317 S.E.2d 452 (1984). To establish self-defense in South Carolina, the following four elements must be present:

- (1) The defendant must be without fault in bringing on the difficulty.
- (2) The defendant must have actually believed he was in imminent danger

of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.

(3) If his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life.

(4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense.

The model self-defense jury instruction in DAVIS was made mandatory in STATE V. GLOVER, 326 S.E.2d 150 (1985). Elements two and three of the language in DAVIS is instructive on this issue.

Element two states “The defendant must have actually believed he was in imminent danger... or he actually was in such imminent danger”.

Element three states “A reasonable prudent man of ordinary firmness and courage would have entertained the same belief”.

The DAVIS instruction places the defendant’s jury in a subjective-objective position to determine if all elements of self-defense are present. i.e. (1) What the defendant’s perception was at the time of the killing; (2) What someone else looking in from the outside would have perceived. In other words, the subjective-objective inquiry

into the defendant's belief requires the jury to make two separate determinations for the defendant's claim of self-defense to succeed. First, the jury must determine whether the defendant in fact believed he needed to use deadly force. Second, whether the defendant's belief was reasonable from the perspective of a reasonable person in the defendant's circumstances. The reasonableness of the defendant's belief at the time of the killing is an important factor in determining culpability. In addition, the defendant's state of mind is an important issue that the jury must consider to determine if malice existed at the time of the shooting.

What one intends to do and what one believes, even as the precipitating predicate for one's intent, are entirely separate and distinct states of mind. A defendant may intend to kill the victim, but only because he honestly believes that he is in imminent danger of death or serious injury which can only be avoided by the use of force. Human beings often misunderstand their surroundings and the intentions of other people. A defendant confronted by a person with a gun may reasonably, even if incorrectly, believe that the gun is loaded and presents an imminent danger and shoots the person in self-defense.

The focus in deciding whether a person acted under "an honest but unreasonable belief" principally rests on internal factors. What was going through the defendant's mind at the time he acted. UNITED STATES V. BAILEY, 444 U.S. 394 (1980).

In STATE V. FULLER, 377 S.E.2d 328 (1989) the South Carolina Supreme Court held that the instruction in DAVIS was not to be given as an exclusive self-defense charge. The court went on to state "We instruct the trial court to consider the facts and circumstances of the case at bar in order to fashion an appropriate charge". The

defendant's state of mind is paramount to his defense giving all the facts and circumstances surrounding the shooting in this case.

HISTORY

The common law doctrine of self-defense in South Carolina has been through several changes within the previous twenty years. For instance, at one time South Carolina's well established rule was that self-defense was an affirmative defense and required the defendant to prove the elements of self-defense by the preponderance of the evidence STATE V. BOLTON, 223 S.E.2d 863 (1976). The Supreme Court abrogated the rule in BOLTON eleven years later in STATE V. BELLAMY, 359 S.E.2d 63 (1987) which made it clear that the defendant need not establish self-defense by the preponderance of the evidence but must merely produce evidence which causes the jury to have reasonable doubt regarding his guilt.

In STATE V. ADDISON, 540 S.E.2d 449 (2000) the South Carolina Supreme Court announced a new rule regarding the burden of proof in a self-defense case. "If requested, the state has the burden of disproving self-defense by proof beyond a reasonable doubt". Citing STATE V. WIGGINS, 500 S.E.2d 489 (1998).

The South Carolina Supreme Court again recently addressed the common law doctrine of self-defense regarding mutual combat in STATE V. TAYLOR, 589 S.E.2d 1 (2003). The TAYLOR court noted "The doctrine of mutual combat has existed in South Carolina since at least 1843, but has fallen out of common use in recent years". Mutual combat acts as a bar to self-defense because it requires mutual agreement to fight on equal terms for purposes other than protection and conflicts with the "no fault" finding to establish self-defense. In deciding TAYLOR, The South Carolina Supreme Court

applied the reasonings of three other jurisdictions. Georgia, Colorado and Texas. The TAYLOR court concluded “This court has placed great emphasis on the importance of a defendant’s right to assert self-defense when there is any evidence to support it, and has taken pains to make sure the burden to disprove self-defense remains on the state”.

In STATE V. GILCHRIST, 612 S.E.2d 702 (2005) The South Carolina Supreme Court overruled a longstanding legal principal regarding the duty to retreat when a defendant acts in self-defense while inside a private club. GILCHRIST overturned the rule announced in the 1992 decision of STATE V. MARLOWE, 112 S.E. 921 (1922) which declared a defendant attached while inside a private club was excused from the duty to retreat when acting in self-defense. The GILCHRIST court noted “this expansion of the immunity-from-retreat doctrine is not good public policy especially in the contemporary context of private clubs”.

IMPERFECT SELF-DEFENSE

The history of “an honest but unreasonable belief of imminent danger” also referred to as “imperfect self-defense”, in South Carolina, can be traced back to the 1893 Supreme Court decision titled STATE V. MCINTOSH, 17 S.E. 446 (1893). In MCINTOSH a jury was undecided whether to convict the defendant of murder or manslaughter. The trial court’s instruction in MCINTOSH was as follows: “if at the time the shooting took place the prisoner believed that he was in danger; if he believed that, although he had no right to believe it, but if he believed it, and shoots and kills, he ought not to be convicted of murder, but manslaughter. In self-defense, if a man really believes that he is in danger, the jury may think that he was not in danger, yet he thought that he was in danger, and he shot and killed, in that event it would be manslaughter. Whether with unreasonable belief through timidity or the nervous condition in which he was, and he shot and killed a man, he ought not to suffer for it is he was laboring under that great excitement”. In addition, the MCINTOSH court previously explained regarding the above charge “I have always advised the jury not to convict of murder, but to reduce it to manslaughter, because the malice and intent to take life were wanting”.

In STATE V. FINLEY, 290 S.E.2d 808 (1982) the appellant argued the trial court erred in refusing to charge the jury on the theory of “imperfect self-defense”. If believed by the jury, appellant contends an actual although unreasonable, belief that he was in imminent danger of bodily harm is a defense to the charge of murder which reduces the crime to voluntary manslaughter. The South Carolina Supreme Court rejected

appellants argument stating this is not the law in South Carolina. At the time FINLEY was decided, self-defense was an affirmative defense and had to be proved by the defendant by the preponderance of the evidence. That is no longer the law in this state. In addition, at the time FINLEY was decided the state did not have the burden of disproving self-defense beyond a reasonable doubt. STATE V. FULLER, 377 S.E.2d 328 (1989) STATE V. WIGGINS, 500 S.E.2d 489 (1998) STATE V. ADDISON, 540 S.E.2d 449 (2000). Moreover, seven years after FINLEY was decided, The South Carolina Supreme Court issued their ruling in STATE V. FULLER, 377 S.E.2d 328 (1989) which required trial courts to consider the facts and circumstances of a case to fashion an appropriate self-defense charge and not charge the DAVIS instruction exclusively.

In STATE V. WIGGINS, 500 S.E.2d 489 (1998) The South Carolina Supreme Court in affirming the appellants conviction for voluntary manslaughter noted that the appellant did not argue that he was entitled to an additional jury instruction regarding “imperfect self-defense”. The very same year that WIGGINS was decided The South Carolina Supreme Court issued their ruling in DOUGLAS V. STATE, 504 S.E.2d 307 (1998) noting a claim of “imperfect self-defense” would be unavailing because it has no application to involuntary manslaughter.

While The South Carolina Supreme Court has not explicitly recognized the doctrine of “imperfect self-defense” or “honest but unreasonable belief of imminent danger” in a self-defense case, they have indirectly recognized such a defense as noted in both of the post FINLEY cases of WIGGINS and DOUGLAS. It is hoped that The Supreme Court may reconsider STATE V. FINLEY, 290 S.E.2d 808 (1982).

WILLIAM S. MCANINCH & W. GASTON FAIREY, THE CRIMINAL LAW OF SOUTH CAROLINA (3rd ed 1996 P. 164).

Imperfect self-defense, when available offers the jury an opportunity to recognize that the defendant's circumstances at least partially determined his reaction to the victims violence, the defendant's honest, but unreasonable belief that he must react to an attack with deadly force. "Imperfect self-defense" like excuse, focuses on the actor. This doctrine may be viewed as a reaction to the emphasis that the law of self-defense places on the reasonableness of the defendant's act. The defendant's reaction to the behavior of another, although not justifiable, is at least understandable. See PROVOKED REASON IN MEN AND WOMEN: HEAT-OF-PASSION MANSLAUGHTER AND IMPERFECT SELF-DEFENSE, 33 UCLALR 1679 (1986).

MARYLAND

The state of Maryland for the first time recognized the mitigation defense of “imperfect self-defense” in STATE V. FAULKNER, 483 A.2d 759 (1984) and in doing so the court first noted that the difference between murder and manslaughter is the presence or absence of malice. It is specifically because a murder conviction is dependent upon a showing of malice that we adopted the doctrine of imperfect self-defense in this state and require that the jury be instructed on this doctrine when the evidence so dictates ROACH V. STATE, 749 A.2d 787 at 794 (2000). Self-defense operates a complete defense to either murder or manslaughter. A successful self-defense, therefore results in the acquittal of the defendant. Imperfect self-defense, by contrast, is not a complete. It’s chief characteristic is that it operates to negate malice, an element the state must prove to establish murder. As a result the successful invocation of this doctrine does not completely exonerate the defendant, but mitigates murder to voluntary manslaughter.

The Court of Special Appeals issued their opinion in the FAULKNER case prior to The Court of Appeals decision. Judge Orth writing for the majority stated “From the turbulent waters of the criminal law of Maryland, roiled by the dictates of MULLANEY V. WILBUR, 421 U.S. 684, emerged an esoteric qualification to the doctrine of self-defense, known as the imperfect right of self-defense..... the impact of MULLANEY has made the qualification viable and rendered it more than academic. There are indications that defense counsel are now invoking it, and the bench and prosecutors had best take heed”. FAULKNER V. STATE, 458 A.2d 81 at 82 (1983).

Maryland defines self-defense when all of the following four elements exist:

- (1) The accused must have had reasonable grounds to believe himself in apparent imminent or immediate danger of death or serious bodily harm from his assailant or potential assailant;
- (2) The accused must have in fact believed himself in this danger
- (3) The accused claiming the right of self-defense must not have been the aggressor or provoked the conflict; and
- (4) The force used must have not been unreasonable and excessive, that is, the force must not have been more force than the exigency demanded. TICHNELL V. STATE, 415 A.2d 830 (1980).

As the Supreme Court of Arkansas pointed out in ALLISON V. STATE, 86 S.W. 409 (1905). "It is not always necessary to show that the killing was done in the heat of passion to reduce the crime to manslaughter, for where the killing was done because the slayer believes that he is in great danger, but the facts do not warrant such a belief, it may be murder or manslaughter according to the circumstances, even though there be no passion". WALLACE V. UNITED STATES, 162 U.S.466 (1896). The intentional taking of human life to prevent crime may fall a little short of complete justification or excuse and still be without malice aforethought. The state of Maryland applied these reasons, inter alia, in there opinion in FAULKNER. The Faulkner court noted the history of imperfect self-defense as well. The rudimentary principles of imperfect self-defense appeared in a series of manslaughter statutes enacted in England

between 1496 and 1547. Out of these statutes arose the mitigation defense of imperfect self-defense. The doctrine of imperfect self-defense gained a foothold in The United States in the late 1800's. The cornerstone case for this defense is the 1882 decision by The Court of Criminal Appeals of Texas REED V. STATE, 11 TEX. CRIM. APP. 509. Shortly after REED various state courts followed the "honest but unreasonable belief" language that the defendant was about to suffer death or serious bodily harm. Maryland's review of the development of the imperfect defense doctrine and examination of jurisdictions that have followed, convinced them that the honest but unreasonable belief standard of imperfect self-defense would be the proper one to follow in Maryland. Imperfect self-defense requires no more than a subjective honest belief on the part of the killer that his actions were necessary for his safety, even though, on an objective appraisal by a reasonable man, they would not be found to be so. If established the killer remains culpable and his actions are excused only to the extent that mitigation is invoked. The defendant avers that his jury should also be instructed on the same "honest but unreasonable belief of imminent danger" standard in this South Carolina capital trial.

CALIFORNIA

In 1979 the state of California adopted the doctrine of imperfect self-defense in PEOPLE V. FLANNEL, 603 P.2d 1 (1979). One of the reasons California adopted such doctrine was the fact that as a mental state, malice can not coexist with an honest but unreasonable belief of imminent danger, PEOPLE V. WELLS, 202 P.2d 53 (1949). The FLANNEL courts reasonings, inter alia, was that the honest belief of imminent peril that negates malice in a case of complete self-defense; the reasonableness of the belief simply goes to the justification for the killing. No matter how the mistaken assessment is made, an individual can not genuinely perceive the need to repel imminent peril or bodily injury and simultaneously be aware that society expects conformity to a different standard. The FLANNEL court noted in some jurisdictions, such as California, the courts have given effect to the "lack of malice" requirement of otherwise restrictive manslaughter statutes to uphold the unreasonable belief principal, ALLISON V. STATE, 86 S.W. 409 (1904 ARKANSAS), HARTFIELD V. STATE, 170 SO. 531 (1936 MISSISSIPPI), WOOD V. STATE, 486 P.2d 750 (1971 OKLAHOMA), COMMONWEALTH V. THOMPSON, 133 A.2d 207 (1957 PENNSYLVANIA).

In other states, legislators have passed statutes specifically providing for manslaughter when an individual holds an honest but unreasonable belief in the need to defend against deadly attack. COLO. REV STAT. 18-3-105 (1) (b) (1978), ILL. REV. STAT. ANN. Ch. 38, 9-2 (b), (1972), WIS. STAT. ANN. 940.50 (2) (1958). In 1981 The California Legislature amended their penal code to eliminate the diminished capacity defense. In doing so The California Supreme Court ruled "under the doctrine of imperfect self-defense, when the trier of fact finds that a defendant killed

another person because the defendant actually but unreasonably, believed he was in imminent danger of death or great bodily injury, the defendant is deemed to have acted without malice and thus can be convicted of no crime greater than manslaughter” IN RE CHRISTIAN S, 872 P.2d 574 (1994). The peoples’ position was that the California Legislature abolished the imperfect self-defense doctrine at the same time diminished capacity was abolished. The Supreme Court however, did not agree and the doctrine is still a viable defense in California today. PEOPLE V. RANDLE, 111 P.3d 987 (2005). Finally the CHRISTIAN Court noted although FLANNEL and other opinions referred to an “honest belief” we shall use the more precise term “actual belief” because it avoids the confusing suggestion inherent in the phrase “honest belief” that a person could have a “dishonest belief”, i.e., that a person could believe something he does not believe. South Carolina follows the “actual belief” standard in cases involving self-defense. The defendant avers that he is entitled to a jury instruction regarding his defense pursuant to the California Supreme Courts reasons in both FLANNEL and CHRISTIAN because the defendant’s mental state at the time of the killing will depend on whether the killing is later determined to be unlawful. Due process requires a jury instruction on this issue.

Further, the defendant would bring to the courts attention the reasons discussed in Justice Tobriners opinion from The California Supreme Court in FLANNEL “The state has no legitimate interest in obtaining a conviction of murder when by virtue a defendant’s unreasonable belief, that the jury entertains a reasonable doubt whether defendant harbored malice. Likewise, a defendant has no legitimate interest in complete

exculpation when acting outside the range of reasonable behavior. The vice is the element of malice; in its absence the level of guilt must decline”.

MISSISSIPPI

In addition to other state jurisdictions, Mississippi recognizes the doctrine of an imperfect self-defense as well CHANDLER V. STATE, 946 SO.2d 355 (2006) LANIER V. STATE, 684 SO.2d 93 (1996). Mississippi case law recognizes this concept when the person purposely causing the death of another is found to have acted on a “bona fide” belief, though there is no reasoned bases for that belief, that his actions were necessary to prevent his own death or great bodily harm WADE V. STATE 748 SO.2d 771 (1999).

Blacks’ Law Dictionary 8th Edition defines “Bona Fide” as follows:[Latin: “in good faith”] 1. Made in good faith; without fraud or deceit. 2. Sincere; genuine.

In LANIER V. STATE, 684 SO.2d 93 (1996), The Supreme Court of Mississippi reversed a capital case for the third time. The state contended that Author Lanier killed a policeman in the city of Gulfport with malice. The court held a jury instruction regarding the imperfect self-defense theory was warranted in the case. Pursuant to Mississippi law, “imperfect self-defense” theory is that defendant killed deceased without malice, under the “bona fide belief” but without reasonable cause therefore, that it was necessary for him so to do in order to prevent the assailant from inflicting death or great bodily harm upon him. Imperfect self-defense serves as a defense in Mississippi when capital punishment is involved BECK V. ALABAMA, 447 U.S. 625 (1980), COOK V. STATE, 467 SO.2d 203 (1985). South Carolina should permit this mitigating defense as well when the death penalty is being sought by the State.

PENNSYLVANIA

The doctrine of an imperfect self-defense in Pennsylvania can be traced back to the 1911 Supreme Court decision of COMMONWEALTH V. COLANDRO, 80 A. 571 (1911). COLANDRO has been cited in numerous Pennsylvania self-defense cases and courts throughout Pennsylvania apply Colandro's ruling today. If an accused acts under fear for his own life at the time he fatally shoots another, then, even though his fear is unreasonable, his crime is voluntary manslaughter COMMONWEALTH V. NAU, 373 A.2d 449 (1977), as long as the defendant acts out of an honest and good faith belief that he was in imminent danger of death or serious bodily harm.

Pennsylvania defines voluntary manslaughter as the intentional killing of another, without malice aforethought but in the sudden heat of passion caused by adequate legal provocation before sufficient time has elapsed for the blood to cool and reason to reassume control of the actors conduct. COMMONWEALTH V. CAMPBELL, 304 A.2d 121 (1973).

Pennsylvania statute, in addition to common law, defines voluntary manslaughter. A person who intentionally or knowingly kills an individual commits voluntary manslaughter if at the time of the killing he believes the circumstances existed...., but his belief is unreasonable. 18 PA. C.S.A. § 2503 (b).

The defendant avers that he is entitled to have his capital jury instructed pursuant to COLANDRO, NAU and CAMPBELL. Without such instruction the jury will be unable to completely consider all the facts and circumstances of this case to make a just decision.

CONCLUSION

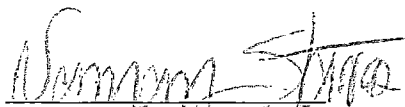
In every state of our nation the criminal law recognizes that the provoked defendant is less worthy of blame than the unprovoked defendant, but the law is unwilling to allow the provoked defendant to totally escape punishment. The act of killing, while under the influence, of heat-of-passion and sufficient provocation is not so easily excused as for example self-defense.

Few areas of criminal law pose more difficulty than the proper definition of the mens rea required for any particular crime.

Our constitutional system of trial by jury is founded upon the firm belief that the highest quality of criminal justice is achieved when the jury retains the sole power to determine both guilt or innocence and the degree of guilt if guilt is found. Definitions of crimes generally focus not only on the prohibited conduct (actus reus) but also on the defendants state of mind (mens rea). Either the defendant is guilty of being provoked into voluntary manslaughter or he is innocent because he killed in self-defense. For the aforementioned reasons above the defendant avers he is entitled to, as a matter of law, a jury instruction regarding his honest, actual, bona fide belief in the need to use force in this South Carolina Self-Defense Case.

Respectfully Submitted.

This 13th Day of November 2007
Lexington, South Carolina


Norman Starnes, Pro se

ATTACHMENT B

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,) WARRANT # E682636 , E682637
v.) DEFENDANT'S REQUEST TO CHARGE
NORMAN STARNES,) NUMBER A
DEFENDANT, PRO SE)

IMPERFECT SELF-DEFENSE

Imperfect self-defense is not a complete defense. Its chief characteristic is that it operates to negate malice, an element the state must prove to establish murder. As a result, the successful invocation of this doctrine does not completely exonerate the defendant, but mitigates murder to voluntary manslaughter. If you, the jury believe the defendant committed a homicide because of a honest but unreasonable belief that he was about to suffer death or serious bodily harm then you should find him guilty of manslaughter.

MULLANEY V. WILBUR, 421 U.S. 684 (1975)

STATE V. FAULKNER, 483 A.2d 759 (MD. APP. 1984)

ROACH V. STATE, 749A.2d 787 (MD. APP. 2000)

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

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FILED

Norman Starnes
11-13-2007

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,) WARRANT # E682636 , E682637
v.) DEFENDANT'S REQUEST TO CHARGE
NORMAN STARNES,) NUMBER B
DEFENDANT, PRO SE)

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

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IMPERFECT SELF-DEFENSE

The court instructs the jury that if a person kills another under the actual bona fide belief that such a killing is necessary in order to protect himself from great bodily harm or death, but that such belief is not reasonable under the circumstances, then there is no malice aforethought and the killing is not murder, but at most is the crime of voluntary manslaughter. Therefore, if you find from the evidence in this case that on January 8, 1996, the defendant, Norman Starnes, did shoot and take the life of William Welborn and Jarrod Champlin, acting on his actual and bona fide belief that such was necessary to protect himself from great bodily harm or death at the hands of William Welborn and Jarrod Champlin, but that such belief by the defendant was not a reasonable belief under the circumstances, then you may find the defendant guilty of the lesser included offense of voluntary manslaughter.

CHANDLER V. STATE, 946 SO.2d 355 (1996)

LANIER V. STATE, 684 SO.2d 93 (1996)

HARTFIELD V. STATE, 170 SO. 531 (1936)

Norman Starnes
11-13-2007

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,) WARRANT # E682636 , E682637
v.) DEFENDANT'S REQUEST TO CHARGE
NORMAN STARNES,) NUMBER 1
DEFENDANT, PRO SE)

IMPERFECT SELF-DEFENSE

If you the jury find that the defendant was acting under fear for his life at the time he fatally shoots another, then, even though his fear was unreasonable his crime is voluntary manslaughter not murder. Fear of an accused, even though unreasonable, may negate malice, the presence of which would make a homicide murder and not manslaughter, but the accused must have acted out of honest and good faith belief that he was in imminent danger of death or serious bodily harm, such fear must be actually entertained and the killing must be committed pursuant to a bona fide belief that it was absolutely necessary in self-defense.

COMMONWEALTH V. NAU, 373 A.2d 449 (1977)

COMMONWEALTH V. COLANDRO, 80 A 571 (1911)

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LEXINGTON SC

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Norman Starnes

11-13-2007

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
STATE OF SOUTH CAROLINA,	)	WARRANT # E682636 , E682637
	)	
v.	)	DEFENDANT'S REQUEST TO CHARGE
	)	
NORMAN STARNES,	)	NUMBER <u>D</u>
	)	
DEFENDANT, <u>PRO SE</u>	)	
	)	

IMPERFECT SELF-DEFENSE

Under the doctrine of imperfect self-defense, if you the jury find that the defendant killed another person because the defendant actually but unreasonably, believed he was in imminent danger of death or great bodily injury, the defendant is deemed to have acted without malice and thus can be convicted of no crime greater than voluntary manslaughter.

IN RE CHRISTIAN, 872 P.2d 574 (1994)

PEOPLE V. FLANNEL, 603 P.2d 1 (1979)

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LEXINGTON SC

Norman Starnes

11-13-2007

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Lee S. Alford, Circuit Court Judge

RECEIVED

JUN - 3 2009

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

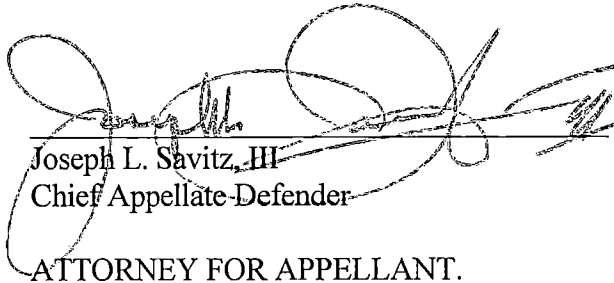
V.

NORMAN STARNES,

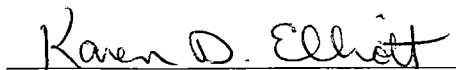
APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, this 3rd day of June, 2009.


Joseph L. Savitz, III
Chief Appellate Defender
ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 3rd day of June, 2009.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 19, 2017.

The Supreme Court of South Carolina

The State,

Respondent,

v.

Norman Starnes,

Appellant.

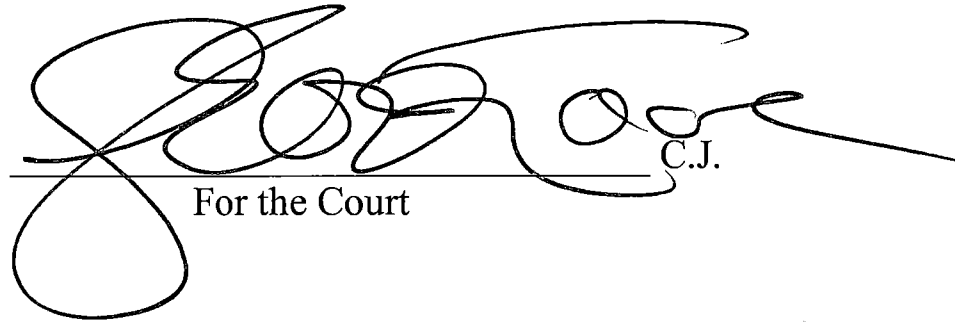
The Honorable Lee S. Alford
Lexington County
Trial Court Case No. 1996-GS-32-03339

ORDER

Appellant seeks a seventh 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 does not oppose the motion.

The request for an extension is granted until June 3, 2009. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.



C.J.
For the Court

Columbia, South Carolina

May 6, 2009

cc: Chief Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
Lee S. Alford, Circuit Court Judge

RECEIVED

MAY - 4 2009

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

The initial brief of appellant and designation of matter in this capital appeal is due to be served and filed with the Court today. Counsel respectfully requests a final extension of thirty days, until June 3, 2009, in which to file the initial brief of appellant and designation of matter in this capital case. In support of this request, counsel show:

(1) Since the Supreme Court's order regarding extensions dated March 18, 2009, Mr. Savitz has filed briefs or certiorari petitions in the following cases:

<u>CASE</u>	<u>DATE FILED</u>	<u>TRANSCRIPT PAGES</u>
<i>State v. Christopher A. Woody</i>	3/23/09	722 pages
<i>Krista McDaniel v. State</i>	3/23/09	257 pages
<i>The State v. Randall Smith</i>	3/27/09	396 pages
<i>The State v. Myra Christenbury</i>	3/30/09	408 pages
<i>The State v. Dominic Derricotte</i>	4/26/09	537 pages

<i>The State v. Tyco Tyrone Jacobs</i>	4/3/09	374 pages
<i>The State v. John Joseph Moore</i>	4/8/09	786 pages
<i>The State v. Travis Parker</i>	4/8/09	494 pages
<i>The State v. Leo Gadsden</i>	4/10/09	993 pages
<i>James Robertson v. The State</i>	4/15/09	3765 pages
<i>The State v. Terrance Jennings</i>	4/20/09	1150 pages
<i>The State v. Claude Jones</i>	4/22/09	431 pages
<i>The State v. Allan Lee Hawkins</i>	4/28/09	606 pages
<i>The State v. Christopher Bennett</i>	4/30/09	384 pages
<i>The State v. Rodney Nash</i>	4/30/09	277 pages
<i>The State v. Cornell D. Tyler</i>	5/4/09	757 pages

(2) Since returning from maternity leave on April 13, 2009, co-counsel,

Elizabeth A. Franklin-Best has completed and filed the following:

James Fred Miller v. State, filed 4/3/09
State v. Clift Grant III, filed 4/14/09
State v. Ricky B. Williams, filed 4/15/09
State v. William R. Boggs, filed 4/15/09
John W. Hayward v. State, filed 4/29/09
State v. Burnell Brock, filed 4/30/09

She also prepared for and argued *State v. Kevin D. Goodwin* before the Court of Appeals on April 21, 2009.

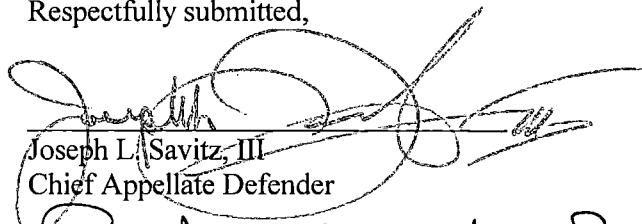
(3) Counsel believe that extraordinary circumstances warrant this extension, as required by the Supreme Court's order of March 18, 2009, concerning Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings.

(4) As indicated by signature below, Donald J. Zelenka, of the Attorney General's Office, does not object to this request.

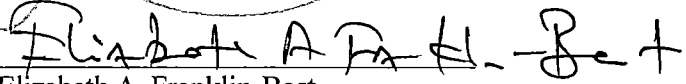
(5) Counsel make this request in the utmost good faith and not for purposes of delay.

For these reasons, counsel for Mr. Starnes petition the Court for an additional thirty days until June 3, 2009, in which to file the initial brief of appellant and designation of matter in this case.

Respectfully submitted,

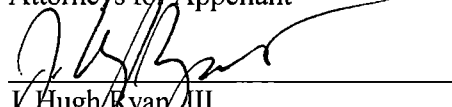


Joseph L. Savitz, III
Chief Appellate Defender



Elizabeth A. Franklin-Best
Appellate Defender

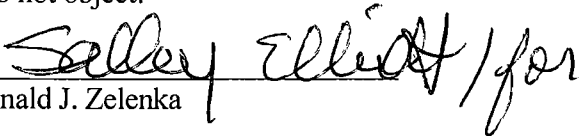
Attorneys for Appellant



J. Hugh Ryan, III
General Counsel

This 4th day of May, 2009

I do not object:



Donald J. Zelenka

The Supreme Court of South Carolina

The State,

Respondent,

v.

Norman Starnes,

Appellant.

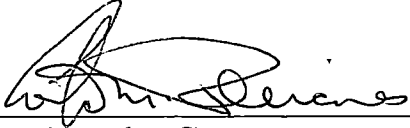
The Honorable Lee S. Alford
Lexington County
Trial Court Case No. 1996-GS-32-03339

ORDER

Appellant seeks a sixth extension of time until May 4, 2009 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. 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.



_____. J.
For the Court

Columbia, South Carolina

April 6, 2009

cc: Chief Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Lee S. Alford, Circuit Court Judge

RECEIVED

APR - 2 2009

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

The initial brief of appellant and designation of matter in this capital appeal is due to be served and filed with the Court April 3. Counsel for Norman Starnes respectfully requests a final extension of thirty days, until May 4, 2009, in which to file the initial brief of appellant and designation of matter in this capital case. Counsel has previously received five thirty-day extensions in connection with this step in the process. Counsel will request no additional extensions in connection with any step in this appeal. In support of this request, counsel shows:

(1) He was on leave November, December and most of January due to his brother's death, which meant he has requested an uncharacteristic number of extensions during that period and into 2009.

- (2) Since January 2009, counsel has filed briefs or certiorari petitions in the following

cases:

State v. Theodore David Wills
State v. Troy Lavern Pearson
Kenneth J. Butler v. State
State v. Michael Adam Bailey
State v. Reginald R. Latimore
State v. Christopher A. Woody
Krista McDaniel v. State
The State v. Randall Smith
The State v. Myra Christenbury
The State v. Dominic Derricotte

He has also orally argued the following cases:

William Rhett Snowdon
James Bodenstedt
Kevin Lamar Grant
Anthony Woods (capital appeal)
Clinton Roberson
Arthur Franklin Smith
Hernandez, Guerrero, Avila-Arjona
Larry Ferguson
Roger Johnson

- (3) In addition to filings in his non-capital caseload and administrative responsibilities, counsel has filed briefs or petitions for writ of certiorari in the following capital appeals over the past year:

State v. Anthony Woods (Initial brief filed January 25, 2008)
State v. Freddie Owens (Final brief filed March 25, 2008)
State v. Jeffrey Louis Jones (Initial brief filed May 16, 2008)
State v. Stephen C. Stanko (Cert petition to United States Supreme Court filed June 16, 2008)
State v. Angle Joe Perrie Vazquez (Cert petition filed August 22, 2008)

- (4) Counsel recently filed the initial brief and designation of matter in the capital appeal of *State v. Ron Finklea* February 27, 2009. He is also working on the capital PCR appeal in *James D. Robertson v. State*.

- (5) Elizabeth Franklin-Best is co-counsel on this appeal and is out of the office on maternity leave. She is returning to the office on or about April 13.

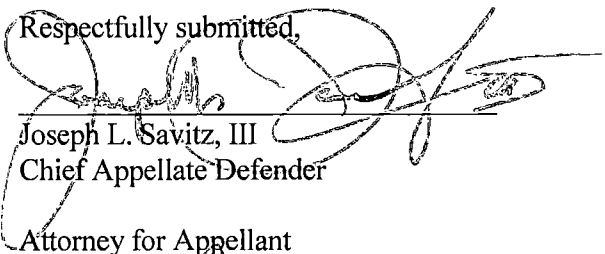
(6) Counsel believes that extraordinary circumstances warrant this extension, as required by the Supreme Court's order of March 18, 2009, concerning Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings. Appellate Defense agrees that extensions should be kept to a minimum for several reasons, not least of which is the need for finality felt by the victims, the defendants and their families. But regrettably, we only have 8 attorneys to handle approximately 1,000 appeals per year. The Spangenberg Report on Appellate Defense (February 2008) concluded, among other things, that Appellate Defense had too few attorneys handling too many cases. Counsel has brought the Supreme Court's order on extensions to the attention of the Commission on Indigent Defense and recommended that we explore the possibility of ceasing certain appeals until the Division is adequately funded. The Commission has taken these recommendations under advisement. Until then, counsel is seeking to bring Appellate Defense into compliance with the resources at hand.

(7) As indicated by signature below, Donald J. Zelenka, of the Attorney General's Office, does not object to this request.

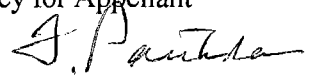
(8) Counsel makes this request in the utmost good faith and not for purposes of delay.

For these reasons, counsel for Mr. Starnes petitions the Court for an additional thirty days until May 4, 2009, in which to file the initial brief of appellant and designation of matter in this case.

Respectfully submitted,

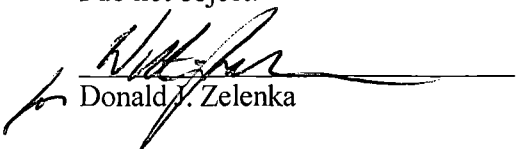

Joseph L. Savitz, III
Chief Appellate Defender

Attorney for Appellant


T. Patton Adams
Executive Director

This 2nd day of April, 2009

I do not object:


Donald J. Zelenka

The Supreme Court of South Carolina

The State,

Respondent,

v.

Norman Starnes,

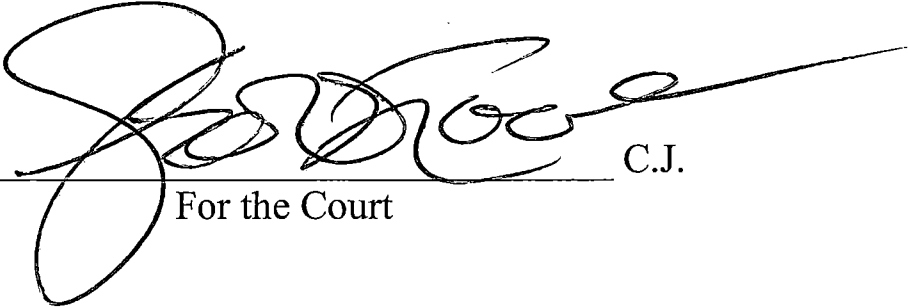
Appellant.

The Honorable Lee S. Alford
Lexington County
Trial Court Case No. 1996-GS-32-03339

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 3, 2009.

IT IS SO ORDERED.



C.J.
For the Court

Columbia, South Carolina

March 5, 2009

cc: Chief Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
Lee S. Alford, Circuit Court Judge

RECEIVED

MAR - 3 2009

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

Counsel for Norman Starnes respectfully requests an additional thirty days, until April 3, 2009, in which to file the initial brief and designation of matter in this case. In support of this request, counsel shows:

(1) Counsel was on leave November, December and most of January due to his brother's death.

(2) In addition to filings in his non-capital caseload and administrative responsibilities, counsel has filed briefs or petitions for writ of certiorari in the following capital appeals over the past year:

State v. Anthony Woods (Initial brief filed January 25, 2008)
State v. Freddie Owens (Final brief filed March 25, 2008)
State v. Jeffrey Louis Jones (Initial brief filed May 16, 2008)

State v. Stephen C. Stanko (Cert petition to United States Supreme Court
filed June 16, 2008)

State v. Angle Joe Perrie Vazquez (Cert petition filed August 22, 2008)

(3) Counsel recently filed the initial brief and designation of matter in the capital appeal of *State v. Ron Finklea* February 27, 2009.

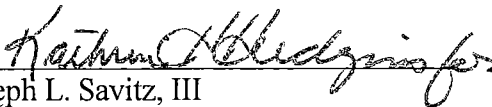
(4) Elizabeth Franklin-Best is working on this appeal with me and is out of the office on maternity leave. I will, of course, continue to work on the appeal while she is out of the office.

(5) As indicated by signature below, Donald J. Zelenka, of the Attorney General's Office, does not object to this request.

(6) Counsel makes this request in the utmost good faith and not for purposes of delay.

For these reasons, counsel for Mr. Starnes petitions the Court for an additional thirty days until April 3, 2009, in which to file the initial brief of appellant and designation of matter in this case.

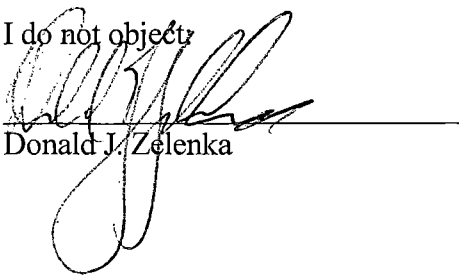
Respectfully submitted,


Joseph L. Savitz, III
Chief Appellate Defender

Attorney for Appellant

This 3rd day of March, 2009

I do not object


Donald J. Zelenka

The Supreme Court of South Carolina

The State,

Respondent,

v.

Norman Starnes,

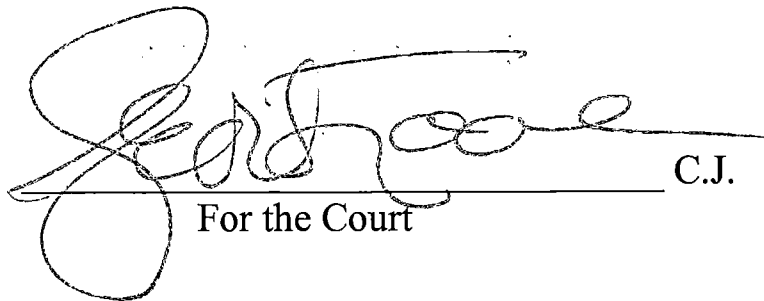
Appellant.

The Honorable Lee S. Alford
Lexington County
Trial Court Case No. 1996-GS-32-03339

ORDER

For good cause having been shown, the time for serving and filing the Initial Brief of Appellant and Designation of Matter in the above entitled matter is hereby extended until March 4, 2009.

IT IS SO ORDERED.



C.J.
For the Court

Columbia, South Carolina

February 3, 2009

cc: Chief Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
Lee S. Alford, Circuit Court Judge

RECEIVED
FEB 02 2009
S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

Counsel for Norman Starnes respectfully requests an additional thirty days, until March 4, 2009, in which to file the initial brief and designation of matter in this case. In support of this request, counsel shows:

(1) Counsel is unable to complete the initial brief of appellant and designation of matter within the allotted time because of his present workload of capital and non-capital appeals and his concurrent administrative duties.

(2) Counsel was out of the office most of November and December due to his brother's death and has only recently returned to work.

(3) Counsel also has arguments in the Supreme Court (*State v. Anthony Woods*) February 3, (*State v. Clinton Roberson*) February 5 and (*State v. Arthur Franklin Smith*) February 19.

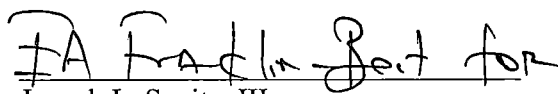
(3) Counsel anticipates that his caseload will return to a manageable level by the end of February. He sincerely appreciates the Court's cooperation and consideration during the past few months.

(4) As indicated by signature below, Donald J. Zelenka, of the Attorney General's Office, does not object to this request.

(5) Counsel makes this request in the utmost good faith and not for purposes of delay.

For these reasons, counsel for Mr. Starnes petitions the Court for an additional thirty days until March 4, 2009, in which to file the initial brief of appellant and designation of matter in this case.

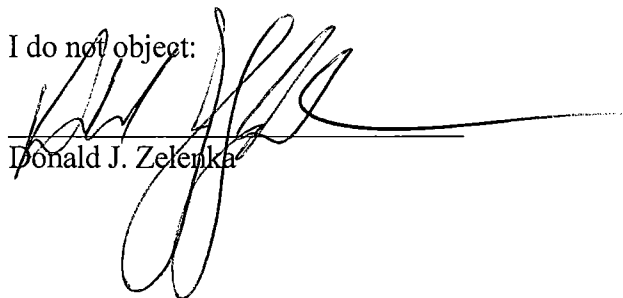
Respectfully submitted,

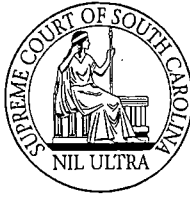

Joseph L. Savitz, III
Chief Appellate Defender

Attorney for Appellant

This 2nd day of January, 2009

I do not object:


Donald J. Zelenka



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

December 30, 2008

Chief Appellate Defender Joseph L. Savitz, III
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Starnes, Norman

Dear Counsel:

The following Order has been endorsed on your Motion for an Extension of Time in Which to File the Initial Brief of Appellant and Designation of Matter in the above entitled case on appeal.

"Granted.

s/ Costa M. Pleicones J.
For the Court

December 30, 2008."

Please be advised the Initial Brief of Appellant and Designation of Matter should be served and filed on or before February 2, 2009.

Very truly yours,

Brenda F. Shealy
CHIEF DEPUTY CLERK

Chief Appellate Defender Joseph L. Savitz, III

Page Two

December 30, 2008

cc: Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
Lee S. Alford, Circuit Court Judge

ORIGINAL

RECEIVED

DEC 29 2008

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

Counsel for Norman Starnes respectfully requests an additional thirty days, until February 2, 2009, in which to file the initial brief and designation of matter in this case. In support of this request, counsel shows:

(1) As the Court is aware, the night of November 1, 2008, counsel's youngest brother suffered a stroke and consequent head trauma and was pronounced legally dead one week later. His funeral was held on November 14. Since the beginning of November, counsel has effectively been on extended leave from Appellate Defense, helping his family face a fairly bleak holiday season. (Counsel's brother left behind a wife and two small children, as well as his mother and another brother.)

(2) Counsel also has four oral arguments scheduled for next week and has to prepare for these.

(3) As indicated by signature below, Donald J. Zelenka, of the Attorney General's Office, does not object to this request

(4) Counsel makes this request in the utmost good faith and not for purposes of delay. He would also like to thank the Court for its consideration during this difficult time.

For these reasons, counsel for Mr. Starnes petitions the Court for an additional thirty days until February 2, 2009, in which to file the initial brief of appellant and designation of matter in this case.

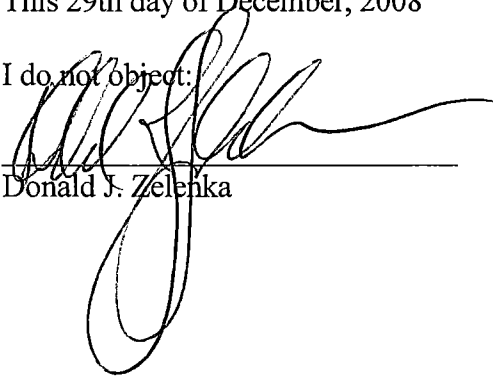
Respectfully submitted,

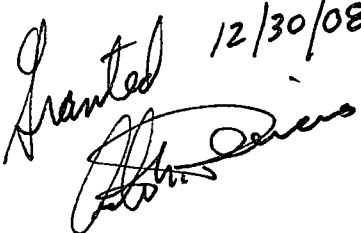

Joseph L. Savitz, III
Chief Appellate Defender

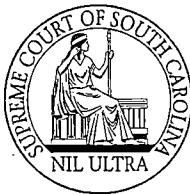
Attorney for Appellant

This 29th day of December, 2008

I do not object:


Donald J. Zelenka


Granted 12/30/08



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

December 5, 2008

Chief Appellate Defender Joseph L. Savitz, III
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Starnes, Norman

Dear Counsel:

The following Order has been endorsed on your Motion for an Extension of Time in Which to File the Initial Brief of Appellant and Designation of Matter in the above entitled case on appeal.

“Granted.

Jean H. Toal C.J.
For the Court

By s/ Daniel E. Shearouse
Clerk

December 5, 2008 .”

Please be advised that the Initial Brief of Appellant and Designation of Matter should be served and filed on or before January 2, 2009.

Chief Appellate Defer : seph L. Savitz, III
Page Two
December 5, 2008

Very truly yours,

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

CLERK

DES/dmh

cc: Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Lee S. Alford, Circuit Court Judge

RECEIVED

DEC - 3 2008

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

Counsel for Norman Starnes petitions the Court for an additional thirty days until January 2, 2009, in which to file the initial brief of appellant and designation of matter in this capital case. Counsel has previously received one thirty-day extensions in connection with this step in the process. In support of this request, counsel shows:

(1) Counsel has been unable to complete the initial brief of appellant and designation of matter within the allotted time because of his present workload of capital and non-capital appeals and his concurrent administrative duties.

(2) Counsel was out of the office most of November due to his brother's death and recently returned to work.

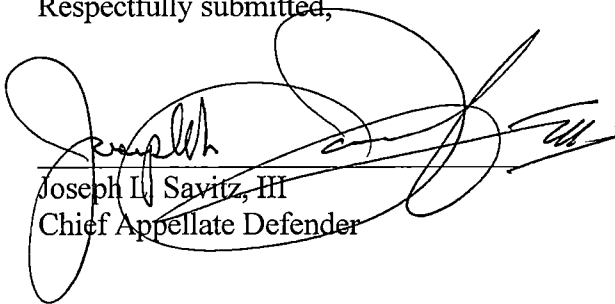
(3) Counsel believes that he has exercised due diligence in his handling of this appeal. Nevertheless, because of circumstances outside of his control, counsel has been unable to complete the petition.

(4) Several years ago, in response to a motion filed by a former attorney with this office, counsel told the Court that the appellate defense caseload was manageable through the exercise of ordinary diligence. This is no longer the case. Additional administrative responsibilities delegated to Appellate Defense – such as redaction of “sensitive information” – have only exacerbated the problem. Counsel is presently working to solve these problems, but will require the Court's assistance and patience. For example, counsel intends to ask the Commission on Indigent Defense to authorize Appellate Defense to contract with private counsel to handle PCR appeals. That alone would help to reduce our caseload to manageable levels. Counsel would ask the Court for its forbearance as he attempts to accomplish these goals. Counsel agrees that, ideally, no appeal should require more than three extensions, and he is working toward that end.

(5) As indicated by signature below, Donald J. Zelenka, of the Attorney General's Office, does not object to this request

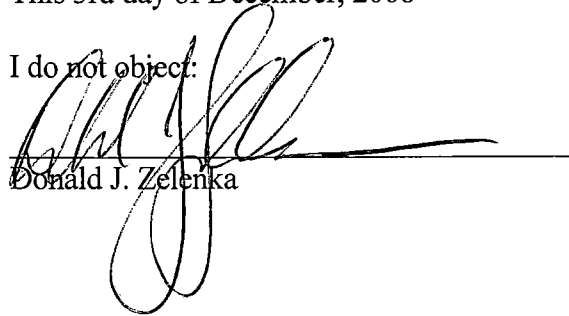
For these reasons, counsel for Mr. Starnes petitions the Court for an additional thirty days until January 2, 2009, in which to file the initial brief of appellant and designation of matter in this capital case.

Respectfully submitted,

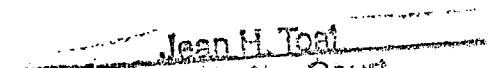
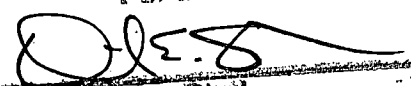

Joseph L. Savitz, III
Chief Appellate Defender

This 3rd day of December, 2008

I do not object:


Donald J. Zelenka

GRANTED.


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

December 5, 2009

The Supreme Court of South Carolina

The State,

Respondent,

v.

Norman Starnes,

Appellant.

The Honorable Lee S. Alford
Lexington County
Trial Court Case No. 1996-GS-32-03339

ORDER

For good cause having been shown, the time for serving and filing Appellant's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until December 3, 2008.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

November 4, 2008

cc: Chief Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka



ORIGINAL

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

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

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

November 3, 2008

RECEIVED

NOV 3 2008

S.C. SUPREME COURT

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

Re: The State v. Norman Starnes

Dear Mr. Shearouse:

The initial brief of appellant and designation of matter in this capital case are due to be served and filed with the Court today. However, counsel's brother had a very serious accident over the weekend and is hospitalized in critical condition in Greenville. Counsel will be out of the office this week and most likely next week. Therefore, counsel is requesting an extension of thirty days in which to file this brief.

By copy of this letter, I am informing Donald J. Zelenka, of the Attorney General's Office, of my request.

Sincerely,


Joseph L. Savitz, III
Chief Appellate Defender

JLS,III/kde

cc: Donald J. Zelenka



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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

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

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

RECEIVED

SEP 17 2008

S.C. SUPREME COURT

RECEIPT

I, Debbie M. Hopkins, of the South Carolina Supreme Court, have received the following original trial transcript(s) in the death penalty case of The State v. Norman Starnes

1. ✓ March 21, 2002 (Daphne Helms)
2. ✓ September 10, 2004 (Daphne Helms)
3. ✓ August 21, 2007 (Rema Gantt)
4. ✓ November 3, 2006 (Shannon McGilberry)
5. ✓ March 27, 2007 (Rema Gantt)
6. ✓ December 12, 2005 (Dianne Rutledge)
7. ✓ March 11, 2004 (Rema Gantt Thomas)
8. ✓ May 1, 2006 (Michael Watkins)
9. ✓ September 19, 2007 (Pamela Faucette)
10. ✓ July 13, 2007 (Stacy Sheppard)

11. August 18 and 27, 2003; September 3, 2004; January 28, 2005; March 23, 2005; April 29, 2005; June 9, 2005 (Coconut Pantsari)
12. November 1, 2007 (Michael Watts)
13. November 5, 2007 (Volume One) (Michael Watts)
14. November 6, 2007 (Volume Two) (Michael Watts)
15. November 7, 2007 (Volume Three) (Michael Watts)
16. November 8, 2007 (Volume Four) (Michael Watts)
17. November 9, 2007 (Volume Five) (Michael Watts)
18. November 12, 2007 (Volume Six) (Michael Watts)
19. November 13, 2007 (Volume Seven) (Michael Watts)
20. November 14, 2007 (Volume Eight) (Michael Watts)
21. November 15, 2007 (Volume Nine) (Michael Watts)
22. November 16, 2007 (Volume Ten) (Michael Watts)
23. November 17, 2007 (Volume Eleven) (Michael Watts)

Date: September 17, 2008

Debbie M. Hopkins
(Name)



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ORIGINAL

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Facsimile: (803) 734-1397

September 8, 2008

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SEP - 8 2008

S.C. SUPREME COURT

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

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

The State v. Norman Starnes

9/3/2008

I would appreciate you beginning our time limits from the above dates, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Melinda W. Long
Legal Assistant

ORIGINAL



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July 24, 2008

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JUL 24 2008

S.C. SUPREME COURT

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

Re: The State v. Norman Starnes (Capital Case)

Dear Mr. Shearouse:

On November 29, 2007 we requested the September 10, 2007 hearing from Daphne Helms with Judge Lee Alford. On December 10, 2007 we were notified from Ms. Helms that she was not the court reporter and the request was reordered from court reporter Shannon McGilberry. On July 3, 2008, Ms. McGilberry notified us that she was not the court reporter for this hearing. After speaking with Norman Starnes who represented himself at trial, we were informed that Daphne Helms was indeed the court reporter and the judge was Marc Westbrook. We are re-requesting the September 10, 2004 hearing from Daphne Helms today.

I will notify this Court know when this transcript has been received in our office. Please contact me if you have any questions or need any other information.

Sincerely,

Melinda W. Long
Legal Assistant

/mwl

cc: Attorney General's Office



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

July 24, 2008

Ms. Daphne D. Helms
Circuit Court Reporter
556 Heron Glen Drive
Columbia, SC 29229

Dear Ms. Helms:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: September 10, 2004

Presiding Judge: Marc H. Westbrook

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.

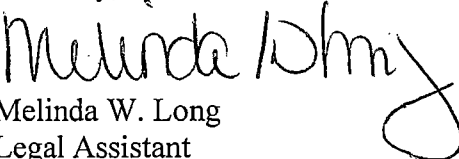
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Ms. Daphne D. Helms
July 24, 2008
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,


Melinda W. Long
Legal Assistant

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



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
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Wanda H. Carter, Deputy Chief Attorney

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Columbia, South Carolina 29211-1589
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Facsimile: (803) 734-1397

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July 21, 2008

JUL 21 2008

S.C. SUPREME COURT

Ms. L. Coconut Pantsari
Circuit Court Reporter
309 Willow Winds Dr.
Columbia, SC 29210-4459

Dear Ms. Pantsari:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: September 10, 2004

Presiding Judge: Marc H. Westbrook

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

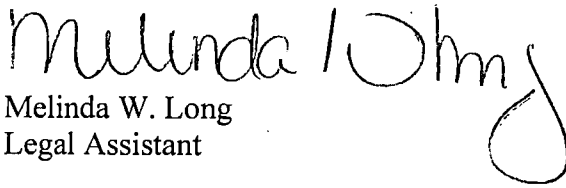
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Ms. L. Coconut Pantsari
July 21, 2008
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Melinda W. Long". The signature is fluid and extends to the right with a long, sweeping tail.

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

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

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

July 18, 2008

RECEIVED

JUL 18 2008

S.C. SUPREME COURT

Ms. Daphne D. Helms
Circuit Court Reporter
556 Heron Glen Drive
Columbia, SC 29229

Dear Ms. Helms:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: March 21, 2002

Presiding Judge: Marc H. Westbrook

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.

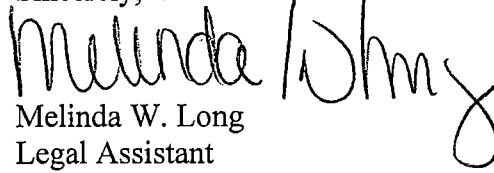
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Ms. Daphne D. Helms
July 18, 2008
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely, ,


Melinda W. Long
Legal Assistant

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

Hopkins, Debbie

From: Melinda W. Long [MLong@sccid.sc.gov]
Sent: Friday, July 18, 2008 10:16 AM
To: Hopkins, Debbie
Subject: Norman Starnes

Debbie – I am re-requesting the March 21, 2002 hearing today from Daphne Helms. We found out that the Judge was not Alford but Westbrook. I am waiting on a call from Desiree Allen about the September 10, 2004 hearing. On the court reporter list it states that no court reporter was needed, but after speaking with Starnes, he said that a court reporter was present. I will let you know something as soon as I hear from Desiree.

Thanks,

Melinda W. Long
Legal Assistant

S.C. Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211

803-734-1330

mlong@sccid.sc.gov

7/18/2008

Hopkins, Debbie

From: Bill Nettles [bill@sandersnettles.com]
Sent: Thursday, July 17, 2008 11:44 AM
To: 'Melinda W. Long'; jdelgado@bntdlaw.com
Cc: Hopkins, Debbie; 'Robert M. Dudek'
Subject: RE: Norman Starnes

Melinda,

I have checked and don't have anything. As you know Norman represented himself and often had hearing without either John or I being present.

From: Melinda W. Long [mailto:MLong@sccid.sc.gov]
Sent: Wednesday, July 16, 2008 4:26 PM
To: jdelgado@bntdlaw.com; bill@sandersnettles.com
Cc: Hopkins, Debbie; Robert M. Dudek
Subject: Norman Starnes

Gentlemen:

I am trying to obtain two hearings in the death penalty case of Norman Starnes. I am trying to locate the hearing held on September 10, 2004 and the hearing held on March 21, 2002. On the list that was provided to our office stated that Ms. Helms was the Court Reporter. We have been notified by Ms. Helms that she was not the Court Reporter and therefore the hearings were re-requested from Court Reporter Shannon McGilberry. I have now received notification that Ms. McGilberry was not the Court Reporter either.

Could you please check your records to see who the judge was and the county in which these two hearings were held so that I may continue my search for the correct court reporter so that Mr. Starnes' appeal can proceed further?

Thank you for you cooperation in this matter. Please do not hesitate to contact me if you have any questions or need any additional information.

Melinda W. Long
Legal Assistant

S.C. Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211

803-734-1330

mlong@sccid.sc.gov

7/17/2008

Hopkins, Debbie

From: Melinda W. Long [MLong@sccid.sc.gov]
Sent: Wednesday, July 16, 2008 4:26 PM
To: jdelgado@bntdlaw.com; bill@sandersnettles.com
Cc: Hopkins, Debbie; Robert M. Dudek
Subject: Norman Starnes

Gentlemen:

I am trying to obtain two hearings in the death penalty case of Norman Starnes. I am trying to locate the hearing held on September 10, 2004 and the hearing held on March 21, 2002. On the list that was provided to our office stated that Ms. Helms was the Court Reporter. We have been notified by Ms. Helms that she was not the Court Reporter and therefore the hearings were re-requested from Court Reporter Shannon McGilberry. I have now received notification that Ms. McGilberry was not the Court Reporter either.

Could you please check your records to see who the judge was and the county in which these two hearings were held so that I may continue my search for the correct court reporter so that Mr. Starnes' appeal can proceed further?

Thank you for your cooperation in this matter. Please do not hesitate to contact me if you have any questions or need any additional information.

Melinda W. Long
Legal Assistant

S.C. Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211

803-734-1330

mlong@sccid.sc.gov

7/17/2008

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JUL 11 2008

S.C. SUPREME COURT

Shannon E. McGilberry
Sixteenth Circuit Court Reporter
Post Office Box 522
Clover, South Carolina 29710

July 5, 2008

Ms. Melinda Long
State of South Carolina
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

Re: State of S.C. v. Norman Starnes
1996-GS-32-3339

Dear Ms. Long:

I am in receipt of your letter regarding the above-referenced matter. I have enclosed my letter dated December 16, 2007 informing you that I was not the court reporter for the hearing of 3/21/02 or 9/10/04. I was recently contacted by Desiree Allen at Court Administration in this regard and did thoroughly check my records to make sure I had nothing from either of these dates regarding this matter, and I did not.

I was in general sessions court with Judge Alford on both of these dates and on the March date we were in Union County in jury trials.

I do have the hearing from 11/3/06, which was requested by Mr. Starnes through his stand-by counsel at the time and I did provide same to them. As my previous letter reflects, I provided a copy of this transcript to you on that date.

Please let me know if I can be of any further assistance in this regard.

Sincerely,

Shannon E. McGilberry
Circuit Court Reporter

/sem

cc: ✓ The Honorable Daniel E. Shearouse
Ms. Desiree Allen
Ms. Sharon Vizer-Hanks

Shannon E. McGilberry
Circuit Court Reporter
Post Office Box 522
Clover, South Carolina 29710

December 16, 2007

Ms. Melinda Long
State of South Carolina
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

Re: State of S.C. v. Norman Starnes
1996-GS-32-3339

Dear Ms. Long:

Please find enclosed herewith the transcript requested in the above-referenced matter along with my invoice for same. I have received two additional requests for a transcript in this matter with different dates, one for March 21, 2002 and one for September 10, 2004, both of which I was not the court reporter for.

Sincerely,

Shannon E. McGilberry
Circuit Court Reporter

/sem

RECEIVED

JUL 14 2008

S.C. SUPREME COURT



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

July 3, 2008

RECEIVED

JUL - 3 2008

S.C. SUPREME COURT

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

Re: The State v. Norman Starnes (Capital Case)

Dear Mr. Shearouse:

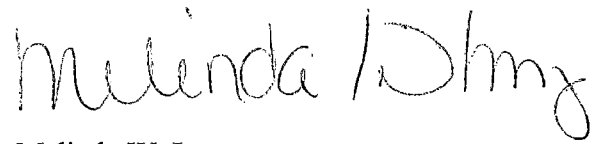
On June 16, 2008 I sent letters regarding transcripts that have not been received in our office in the above-referenced case. On Tuesday, July 1, 2008 an email was received stating that the court reporter Sharon L. Vizer-Hanks and court reporter Shannon McGilberry had not received any request in this case.

After reviewing our file I realized that on December 18, 2007 a letter was sent to this Court pertaining to the May 22, 2001 transcript that was requested by court reporter Sharon L. Vizer-Hanks and that the late letter was inadvertently sent out by mistake. A copy of this letter is enclosed.

On December 10, 2007 a request was sent to Shannon McGilberry regarding the September 10, 2004 transcript and the March 21, 2002 transcript. I am resending these requests today to Ms. McGilberry as I have not received these hearings.

Please contact me if you have any questions or need any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Melinda W. Long". The signature is written in dark ink and is positioned above the printed name and title.

Melinda W. Long
Legal Assistant

/mwl

Cc: Attorney General
Desiree Allen
Sharon L. Vizer-Hanks
Shannon McGilberry



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

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Telephone: (803) 734-1330
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Joseph L. Savitz, III, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 18, 2007

RECEIVED

DEC 18 2007

S.C. SUPREME COURT

Ms. Debbie Hopkins
Administrative Assistant
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

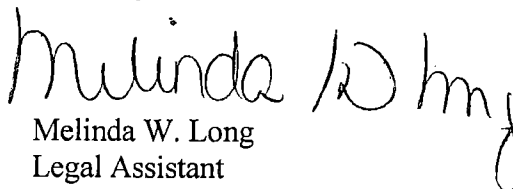
Re: The State v. Norman Starnes (Capital Case)

Dear Ms. Hopkins:

Enclosed is a letter from court reporter Sharon L. Vizer-Hanks stating that the May 22, 2001 transcript has already been destroyed. This was a bond hearing and trial attorneys tell us that this hearing will not affect Mr. Starnes' appeal.

I will let you know when I receive the other transcripts that were requested. Please contact me if you have any questions or need any other information.

Sincerely,


Melinda W. Long
Legal Assistant

/mwl

cc: Attorney General's Office

Sharon L. Vizer-Hanks
Circuit Court Reporter
PO Box 52
Honea Path, SC 29654

December 10, 2007

SCCID
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, SC 29201-3332

Attention: Melinda W. Long
Legal Assistant

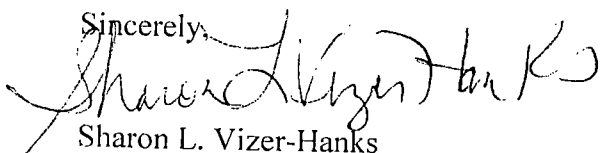
Re: Transcript Request
State vs. Norman Starnes
96-GS-32-3339
May 22, 2001 Hearing

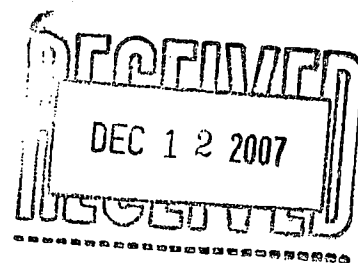
Dear Ms. Long:

I have received your letter requesting a transcript for the above-mentioned case. I am sorry to inform you that I am unable to prepare a transcript for you because I have already destroyed my 2001 court records.

If you have any further questions, please contact me.

Sincerely,


Sharon L. Vizer-Hanks
Circuit Court Reporter





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

December 10, 2007

Ms. Shannon McGilberry
Circuit Court Reporter
P O Box 522
Clover, SC 29710

Dear Ms. McGilberry:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: March 21, 2002

Presiding Judge: Lee S. Alford

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.

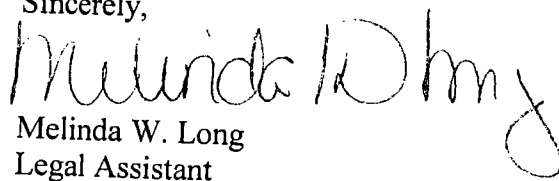
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Ms. Shannon McGilberry
December 10, 2007
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, appearing to read "Melinda W. Long".

Melinda W. Long
Legal Assistant

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



Division of Appellate Defense
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Columbia, South Carolina 29201-3332

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

December 10, 2007

Ms. Shannon McGilberry
Circuit Court Reporter
P O Box 522
Clover, SC 29710

Dear Ms. McGilberry:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: September 10, 2004

Presiding Judge: Lee S. Alford

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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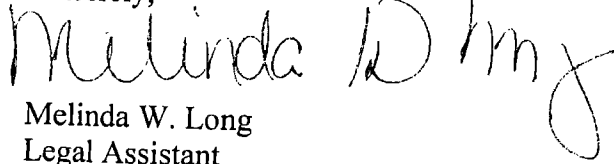
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Ms. Shannon McGilberry
December 10, 2007
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,


Melinda W. Long
Legal Assistant

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



SCCID

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

June 16, 2008

RECEIVED

JUN 16 2008

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. Sharon L. Vizer-Hanks	1/28/08	Norman Starnes

Trial Date: May 22, 2001

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

RECEIVED

JUN 16 2008

June 16, 2008

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. Shannon McGilberry	2/8/08	Norman Starnes

Trial Date: March 21, 2002

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

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

June 16, 2008

RECEIVED

JUN 16 2008

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. Shannon McGilberry	2/8/08	Norman Starnes

Trial Date: September 10, 2004

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

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ORIGINAL

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

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May 16, 2008

RECEIVED

MAY 16 2008

S.C. SUPREME COURT

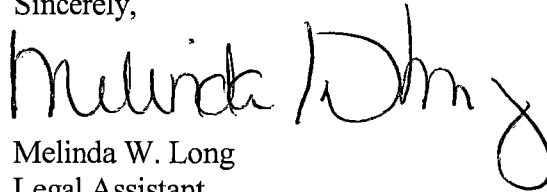
The Honorable Daniel E. Shearouse
Clerk of Court
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: The State v. Norman Starnes (Capital Case)

Dear Ms. Hopkins:

This is just to inform your office that we received the transcript from the November 1, 2007 hearing and the transcript from the November 5, 2007 – November 17, 2007 hearing today, May 16, 2007. Please contact me if you have any questions or need any other information.

Sincerely,



Melinda W. Long
Legal Assistant

/mwl

cc: Attorney General's Office



SCCID

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

RECEIVED

MAY 6 2008

S.C. SUPREME COURT

May 6, 2008

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. Shannon McGilberry	2/8/08	Norman Starnes

Trial Date: September 10, 2004

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

May 6, 2008

RECEIVED

MAY 6 2008

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. Shannon McGilberry	2/8/08	Norman Starnes

Trial Date: March 21, 2002

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
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May 6, 2008

RECEIVED

MAY 6 2008

S.C. SUPREME COURT

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

Dear Ms. Allen:

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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Mr. Michael Watts	5/1/08	Norman Starnes

Trial Date: November 17, 2007

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
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May 6, 2008

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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>
Mr. Michael Watts	5/1/08	Norman Starnes

Trial Date: November 1, 2007

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

May 6, 2008

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MAY 6 2008

S.C. SUPREME COURT

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

Dear Ms. Allen:

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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Sharon L. Vizer-Hanks	1/28/08	Norman Starnes

Trial Date: May 22, 2001

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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ORIGINAL

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

March 20, 2008

RECEIVED

MAR 20 2008

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

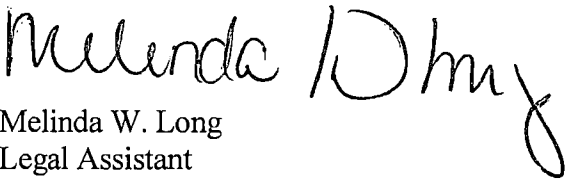
S.C. SUPREME COURT

Re: The State v. Norman Starnes (Capital Case)

Dear Mr. Shearouse:

This is just to inform your office that we received the transcript from the March 11, 2004 hearing on March 19, 2008. Please contact me if you have any questions or need any other information.

Sincerely,


Melinda W. Long
Legal Assistant

/mwl

cc: Attorney General's Office

ORIGINAL



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Division of Appellate Defense
1330 Lady Street, Suite 401
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March 12, 2008

RECEIVED

MAR 12 2008

S.C. SUPREME COURT

Ms. Debbie Hopkins
Administrative Assistant
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: The State v. Norman Starnes (Capital Case)

Dear Ms. Hopkins:

This is just to inform your office that we received the transcript from the August 21, 2007 hearing on March 10, 2008. Please contact me if you have any questions or need any other information.

Sincerely,

Melinda W. Long
Legal Assistant

/mwl

cc: Attorney General's Office



SCCID

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

March 12, 2008

RECEIVED

MAR 12 2008

S.C. SUPREME COURT

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

Dear Ms. Allen:

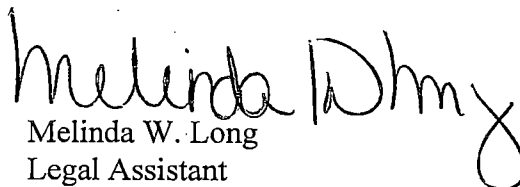
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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Sharon L. Vizer-Hanks	1/28/08	Norman Starnes

Trial Date: May 22, 2001

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

March 12, 2008

RECEIVED

MAR 12 2008

S.C. SUPREME COURT

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

Dear Ms. Allen:

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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Rema K. Gantt-Thomas	1/28/08	Norman Starnes

Trial Date: March 11, 2004

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

March 12, 2008

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MAR 12 2008

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. Rema K. Gantt-Thomas	1/28/08	Norman Starnes

Trial Date: March 27, 2007

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

March 12, 2008

RECEIVED

MAR 12 2008

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.

Court Reporter
Mr. Michael Watts

Due Date
3/1/08

Case Name
Norman Starnes

Trial Date: November 1, 2007

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

March 12, 2008

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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Shannon McGilberry	2/8/08	Norman Starnes

Trial Date: September 10, 2004

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

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

March 12, 2008

MAR 12 2008

S.C. SUPREME COURT

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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. Shannon McGilberry	2/8/08	Norman Starnes

Trial Date: March 21, 2002

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

March 12, 2008

MAR 12 2008

S.C. SUPREME COURT

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

Dear Ms. Allen:

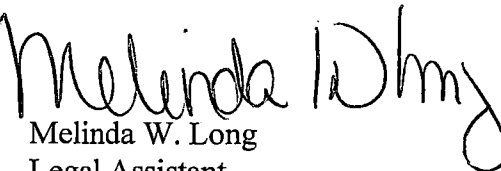
Below is a list of transcript(s) that were requested by this office. Pursuant to Supreme Court Rule 206(e), the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same.

<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Mr. Michael Watts	3/1/08	Norman Starnes

Trial Date: November 17, 2007

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

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

RECEIVED

MAR - 4 2008

S.C. SUPREME COURT

March 4, 2008

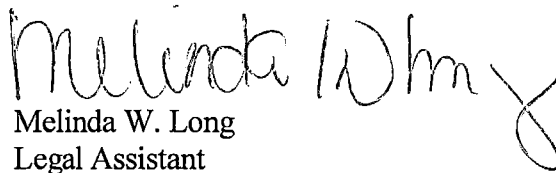
Ms. Debbie Hopkins
Administrative Assistant
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: The State v. Norman Starnes (Capital Case)

Dear Ms. Hopkins:

This is just to inform your office that we received the transcript from the September 19, 2007 hearing on March 3, 2008. Please contact me if you have any questions or need any other information.

Sincerely,


Melinda W. Long
Legal Assistant

/mwl

cc: Attorney General's Office



SCCID

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

February 4, 2008

RECEIVED

FEB - 4 2008

S.C. SUPREME COURT

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

Dear Ms. Allen:

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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Rema K. Gantt-Thomas	1/28/08	Norman Starnes

Trial Date: March 27, 2007

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

February 4, 2008

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S.C. SUPREME COURT

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1015 Sumter Street, 2nd Floor
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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Rema K. Gantt-Thomas	1/28/08	Norman Starnes

Trial Date: August 21, 2007

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

February 4, 2008

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FEB - 4 2008
S.C. SUPREME COURT

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S.C. Court Administration
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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Rema K. Gantt-Thomas	1/28/08	Norman Starnes

Trial Date: March 11, 2004

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,

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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

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FEB - 4 2008

S.C. SUPREME COURT

February 4, 2008

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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. Rema K. Gantt-Thomas	1/28/08	Norman Starnes

Trial Date: March 11, 2004

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,

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Attorney General's Office



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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

February 4, 2008

RECEIVED

FEB - 4 2008

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

S.C. SUPREME COURT

Dear Ms. Allen:

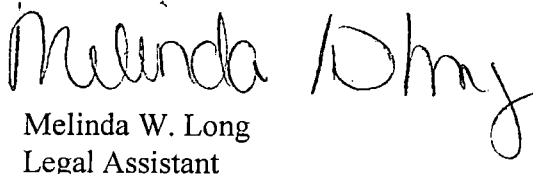
Below is a list of transcript(s) that were requested by this office. Pursuant to Supreme Court Rule 206(e), the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same.

<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Sharon L. Vizer-Hanks	1/28/08	Norman Starnes

Trial Date: May 22, 2001

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
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

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

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FEB - 4 2008

February 4, 2008

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. Pamela S. Faucette	1/28/08	Norman Starnes

Trial Date: September 19, 2007

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

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Facsimile: (803) 734-1397

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

February 4, 2008

RECEIVED

FEB - 4 2008

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>
Mr. Michael Watts	1/28/08	Norman Starnes

Trial Date: November 1, 2007

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

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

February 4, 2008

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>
Mr. Michael Watts	1/28/08	Norman Starnes

Trial Date: November 17, 2007

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

RECEIVED
FEB - 4 2008
S.C. SUPREME COURT



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
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Columbia, South Carolina 29201-3332

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

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

January 3, 2008

RECEIVED

JAN - 3 2008

S.C. SUPREME COURT

Ms. Debbie Hopkins
Administrative Assistant
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: The State v. Norman Starnes (Capital Case)

Dear Ms. Hopkins:

This is just to inform your office that we received the transcript from the November 3, 2006 hearing on December 23, 2007. Please contact me if you have any questions or need any other information.

Sincerely,

Melinda W. Long
Legal Assistant

/mwl

cc: Attorney General's Office



ORIGINAL

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

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

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

RECEIVED

December 18, 2007

DEC 18 2007

S.C. SUPREME COURT

Ms. Debbie Hopkins
Administrative Assistant
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

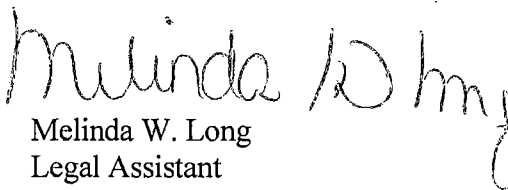
Re: The State v. Norman Starnes (Capital Case)

Dear Ms. Hopkins:

Enclosed is a letter from court reporter Sharon L. Vizer-Hanks stating that the May 22, 2001 transcript has already been destroyed. This was a bond hearing and trial attorneys tell us that this hearing will not affect Mr. Starnes' appeal.

I will let you know when I receive the other transcripts that were requested. Please contact me if you have any questions or need any other information.

Sincerely,


Melinda W. Long
Legal Assistant

/mwl

cc: Attorney General's Office

Sharon L. Vizer-Hanks
Circuit Court Reporter
PO Box 52
Honea Path, SC 29654

December 10, 2007

SCCID
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, SC 29201-3332

Attention: Melinda W. Long
Legal Assistant

Re: Transcript Request
State vs. Norman Starnes
96-GS-32-3339
May 22, 2001 Hearing

RECEIVED

DEC 18 2007

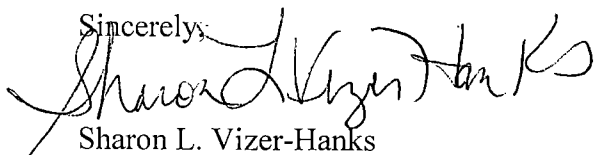
S.C. SUPREME COURT

Dear Ms. Long:

I have received your letter requesting a transcript for the above-mentioned case. I am sorry to inform you that I am unable to prepare a transcript for you because I have already destroyed my 2001 court records.

If you have any further questions, please contact me.

Sincerely,


Sharon L. Vizer-Hanks
Circuit Court Reporter

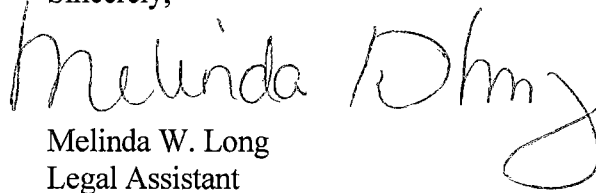
RECEIVED
DEC 12 2007

[illegible]

Ms. Debbie Hopkins
Page 2
December 11, 2007

I will let you know when I receive the other transcripts that were requested.
Please contact me if you have any questions or need any other information.

Sincerely,


Melinda W. Long
Legal Assistant

/mwl

cc: Attorney General's Office



SCCID

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

December 10, 2007

Ms. Shannon McGilberry
Circuit Court Reporter
P O Box 522
Clover, SC 29710

Dear Ms. McGilberry:

RECEIVED

DEC 10 2007

S.C. SUPREME COURT

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: September 10, 2004

Presiding Judge: Lee S. Alford

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.

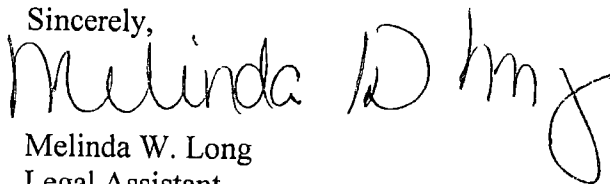
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Ms. Shannon McGilberry
December 10, 2007
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 to the right of the word "Sincerely,".

Melinda W. Long
Legal Assistant

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



SCCID

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

December 10, 2007

Ms. Shannon McGilberry
Circuit Court Reporter
P O Box 522
Clover, SC 29710

Dear Ms. McGilberry:

RECEIVED

DEC 10 2007

S.C. SUPREME COURT

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: March 21, 2002

Presiding Judge: Lee S. Alford

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.

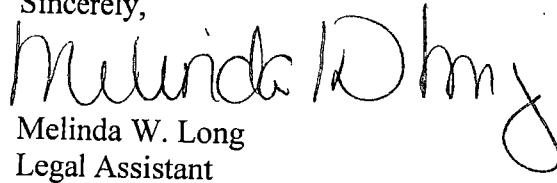
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Ms. Shannon McGilberry
December 10, 2007
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, appearing to read "Melinda W. Long".

Melinda W. Long
Legal Assistant

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

RECEIVED

DEC 03 2007

S.C. SUPREME COURT



State of South Carolina

The Circuit Court of the Sixteenth Judicial Circuit

LEE S. ALFORD
JUDGE

MOSS JUSTICE CENTER
1675-1J YORK HIGHWAY
YORK, SOUTH CAROLINA 29745-7434
TELEPHONE: (803) 628-3048
FAX: (803) 628-3139
E-MAIL: lalfordj@sccourts.org

November 29, 2007

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

RE: State v. Norman Starnes Death Penalty Sentencing Report

Dear Mr. Shearouse:

This will acknowledge receipt of your letter with sentencing sheet form enclosed regarding the above matter. I thought Chief Toal had suspended the use of the form you sent to me. Court Administration provided me with the enclosed one page report form that has been issued to replace the old form. I am enclosing the new report form. Please let me know if you need anything else to be filed in the above matter.

With kind personal regards, I am

Yours very truly,

A handwritten signature in black ink, appearing to read "Lee S. Alford", written over a horizontal line.

Lee S. Alford
Resident Judge of the 16th Judicial Circuit

2006-11-29-02

The Supreme Court of South Carolina

Re: Death Penalty Sentencing Report

ORDER

Pursuant to the provisions of S.C. Const. Art. V § 4,

IT IS ORDERED that the Supreme Court administrative order, dated November 18, 1977, is reinstated. Upon the imposition of a sentence of death, the trial judge is required to complete and submit the attached death penalty sentencing report, bearing a revision date of 11/2006, effective immediately. This order supersedes the previous order of September 7, 2006, which rescinded the 1977 order.

IT IS SO ORDERED.

s/ Jean Hoefer Toal
Jean Hoefer Toal, Chief Justice

November 29, 2006
Columbia, South Carolina

RECEIVED

DEC 03 2007

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)

IN THE COURT OF
GENERAL SESSIONS

11TH Judicial Circuit

County of LEXINGTON)

STATE OF SOUTH CAROLINA)

Death Penalty Sentencing Report

VS.)

NORMAN E. STARNES)

Indictment (s) 96-GS-32-3339

Defendant.)

 -GS- -

A. Name of Trial Judge: LEE S. ALFORD

B. Name of Defendant: NORMAN E. STARNES (PRO SE)

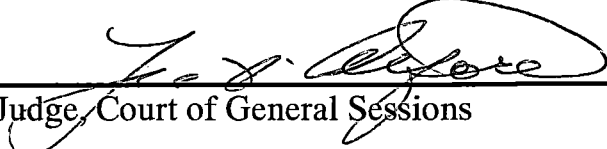
C. Names of Defense Attorneys: 1. STANDBY COUNSEL!
WILLIAM N. NETTLES, JR.

2. JOHN D. DELGADO

D. Date Sentenced: NOVEMBER 17, 2007.

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

(1) TWO OR MORE PERSONS MURDERED BY DEFENDANT PURSUANT TO ONE
SCHEME OR COURSE OF CONDUCT. (2) LARCENY WITH A DEADLY WEAPON
(3) ROBBERY WHILE ARMED WITH DEADLY WEAPON.


Judge, Court of General Sessions

November 29, 2007

York, South Carolina



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

November 29, 2007

RECEIVED

NOV 29 2007

S.C. SUPREME COURT

Ms. Daphne D. Helms
Circuit Court Reporter
556 Heron Glen Drive
Columbia, SC 29229

Dear Ms. Helms:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: September 10, 2004

Presiding Judge: Lee S. Alford

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.

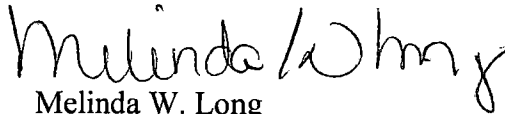
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Ms. Daphne D. Helms
November 29, 2007
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Melinda W. Long". The signature is written in a cursive, flowing style.

Melinda W. Long
Legal Assistant

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



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

RECEIVED

NOV 29 2007

S.C. SUPREME COURT

November 29, 2007

Ms. Sharon L. Vizer-Hanks
Circuit Court Reporter
P O Box 52
Honea Path, SC 29654

Dear Ms. Vizer-Hanks:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Richland

Date of Trial: May 22, 2001

Presiding Judge: Lee S. Alford

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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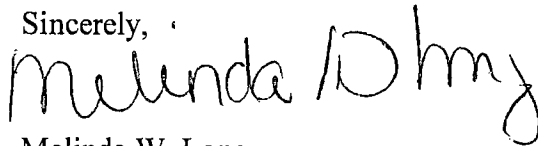
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Ms. Sharon L. Vizer-Hanks
November 29, 2007
Page Two

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 right of the word "Sincerely,".

Melinda W. Long
Legal Assistant

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



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

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

November 29, 2007

RECEIVED

NOV 29 2007

S.C. SUPREME COURT

Mr. Michael Watkins, Sr.
Circuit Court Reporter
142 Rocky Trail Court
Fort Mill, SC 29715

Dear Mr. Watkins:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: York

Date of Trial: May 1, 2006

Presiding Judge: Lee S. Alford

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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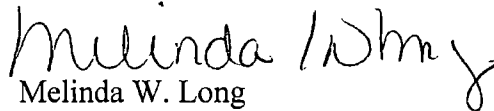
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Mr. Michael Watkins, Sr.
November 29, 2007
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,


Melinda W. Long
Legal Assistant

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



SCCID

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

RECEIVED

November 29, 2007

NOV 29 2007

S.C. SUPREME COURT

Mr. Michael Watts
Circuit Court Reporter
489 Edgewater Drive
Gaffney, SC 29340

Dear Mr. Watts:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: November 17, 2007

Presiding Judge: Lee S. Alford

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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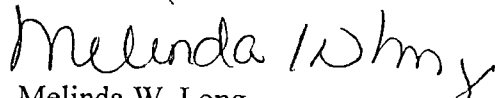
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Mr. Michael Watts
November 29, 2007
Page Two

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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



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

November 29, 2007

RECEIVED

NOV 29 2007

S.C. SUPREME COURT

Mr. Michael Watts
Circuit Court Reporter
489 Edgewater Drive
Gaffney, SC 29340

Dear Mr. Watts:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Spartanburg

Date of Trial: November 1, 2007

Presiding Judge: Lee S. Alford

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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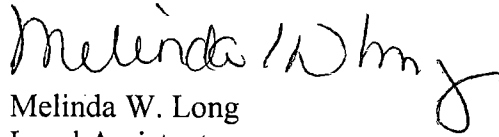
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Mr. Michael Watts
November 29, 2007
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,


Melinda W. Long
Legal Assistant

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



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

November 29, 2007

RECEIVED

NOV 29 2007

S.C. SUPREME COURT

Ms. Stacy L. Sheppard
Circuit Court Reporter
100 Lunsford Lane
Lexington, SC 29072

Dear Ms. Sheppard:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: July 13, 2007

Presiding Judge: Clifton Newman

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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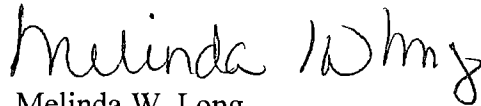
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Ms. Stacy L. Sheppard
November 29, 2007
Page Two

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Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Melinda W. Long". The signature is written in dark ink and is positioned above the printed name and title.

Melinda W. Long
Legal Assistant

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



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

November 29, 2007

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NOV 29 2007

S.C. SUPREME COURT

Ms. Dianne A. Rutledge
Circuit Court Reporter
P O Box 155
Cassatt, SC 29032-0155

Dear Ms. Rutledge:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: York

Date of Trial: December 12, 2005

Presiding Judge: Lee S. Alford

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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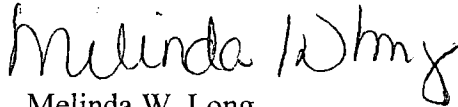
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Ms. Dianne A. Rutledge
November 29, 2007
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Melinda W. Long". The signature is written in a cursive, flowing style.

Melinda W. Long
Legal Assistant

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



SCCID

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

November 29, 2007

RECEIVED

NOV 29 2007

S.C. SUPREME COURT

Ms. Pamela S. Faucette
Circuit Court Reporter
40 Somerset Drive
Spartanburg, SC 29301

Dear Ms. Faucette:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Spartanburg

Date of Trial: September 19, 2007

Presiding Judge: Lee S. Alford

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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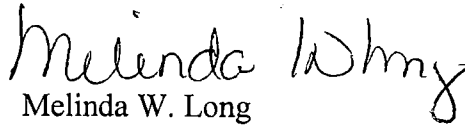
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Ms. Pamela S. Faucette
November 29, 2007
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Melinda W. Long". The signature is written in dark ink and is positioned above the printed name and title.

Melinda W. Long
Legal Assistant

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



SCCID

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

November 29, 2007

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NOV 29 2007

S.C. SUPREME COURT

Ms. Shannon McGilberry
Circuit Court Reporter
P O Box 522
Clover, SC 29710

Dear Ms. McGilberry:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: November 3, 2006

Presiding Judge: Lee S. Alford

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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Ms. Shannon McGilberry
November 29, 2007
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



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

RECEIVED

NOV 29 2007

November 29, 2007

S.C. SUPREME COURT

Ms. L. Coconut Pantsari
Circuit Court Reporter
309 Willow Winds Dr.
Columbia, SC 29210-4459

Dear Ms. Pantsari:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: August 18, 2003

Presiding Judge: Lee S. Alford

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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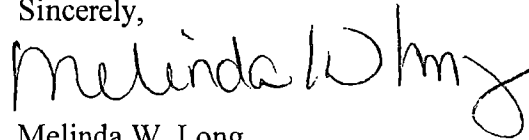
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Ms. L. Coconut Pantsari
November 29, 2007
Page Two

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



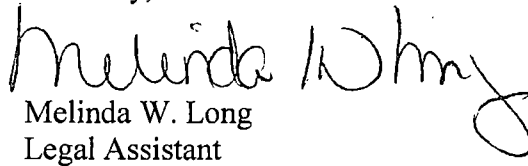
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Ms. L. Coconut Pantsari
November 29, 2007
Page Two

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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

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

November 29, 2007

RECEIVED

NOV 29 2007

S.C. SUPREME COURT

Ms. L. Coconut Pantsari
Circuit Court Reporter
309 Willow Winds Dr.
Columbia, SC 29210-4459

Dear Ms. Pantsari:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Richland

Date of Trial: September 3, 2004

Presiding Judge: Lee S. Alford

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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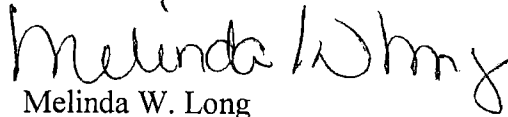
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Ms. L. Coconut Pantsari
November 29, 2007
Page Two

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Thank you for your kind cooperation in this matter.

Sincerely,

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Melinda W. Long
Legal Assistant

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



SCCID

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Columbia, South Carolina 29201-3332

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

November 29, 2007

RECEIVED
NOV 29 2007
S.C. SUPREME COURT

Ms. L. Coconut Pantsari
Circuit Court Reporter
309 Willow Winds Dr.
Columbia, SC 29210-4459

Dear Ms. Pantsari:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: January 28, 2005

Presiding Judge: Lee S. Alford

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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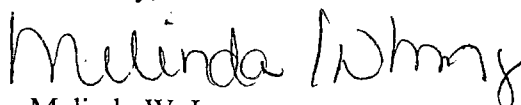
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Ms. L. Coconut Pantsari
November 29, 2007
Page Two

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Thank you for your kind cooperation in this matter.

Sincerely,

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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

November 29, 2007

RECEIVED

NOV 29 2007

S.C. SUPREME COURT

Ms. L. Coconut Pantsari
Circuit Court Reporter
309 Willow Winds Dr.
Columbia, SC 29210-4459

Dear Ms. Pantsari:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: March 23, 2005

Presiding Judge: Lee S. Alford

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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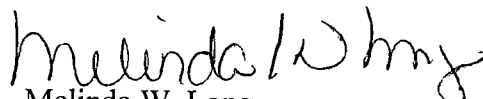
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Ms. L. Coconut Pantsari
November 29, 2007
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,


Melinda W. Long
Legal Assistant

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



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Columbia, South Carolina 29201-3332

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Facsimile: (803) 734-1397

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

November 29, 2007

RECEIVED

NOV 29 2007

S.C. SUPREME COURT

Ms. L. Coconut Pantsari
Circuit Court Reporter
309 Willow Winds Dr.
Columbia, SC 29210-4459

Dear Ms. Pantsari:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: April 29, 2005

Presiding Judge: Lee S. Alford

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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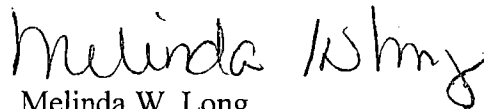
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Ms. L. Coconut Pantsari
November 29, 2007
Page Two

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 right of the typed name.

Melinda W. Long
Legal Assistant

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



SCCID

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

November 29, 2007

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NOV 29 2007

S.C. SUPREME COURT

Ms. L. Coconut Pantsari
Circuit Court Reporter
309 Willow Winds Dr.
Columbia, SC 29210-4459

Dear Ms. Pantsari:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: June 9, 2005

Presiding Judge: Lee S. Alford

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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Ms. L. Coconut Pantsari
November 29, 2007
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Thank you for your kind cooperation in this matter.

Sincerely,

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Melinda W. Long
Legal Assistant

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



SCCID

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

November 29, 2007

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NOV 29 2007

S.C. SUPREME COURT

Ms. Rema K. Gantt-Thomas
Circuit Court Reporter
806 Yacht Club Pointe
Chapin, SC 29036-9998

Dear Ms. Gantt-Thomas:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: March 11, 2004

Presiding Judge: Lee S. Alford

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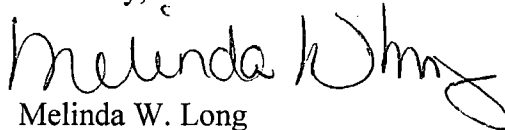
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Ms. Rema K. Gantt-Thomas
November 29, 2007
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, c

A handwritten signature in black ink, appearing to read "Melinda W. Long". The signature is fluid and cursive, with a large, stylized "M" and "L".

Melinda W. Long
Legal Assistant

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



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

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

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

November 29, 2007

RECEIVED

NOV 29 2007

S.C. SUPREME COURT

Ms. Rema K. Gantt-Thomas
Circuit Court Reporter
806 Yacht Club Pointe
Chapin, SC 29036-9998

Dear Ms. Gantt-Thomas:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: March 27, 2007

Presiding Judge: Lee S. Alford

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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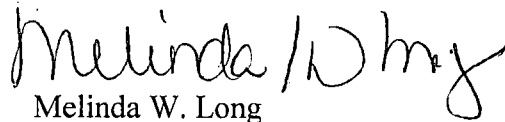
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Ms. Rema K. Gantt-Thomas
November 29, 2007
Page Two

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



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

Post Office Box 11589
Columbia, South Carolina 29211-1589
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Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

November 29, 2007

RECEIVED

NOV 29 2007

S.C. SUPREME COURT

Ms. Rema K. Gantt-Thomas
Circuit Court Reporter
806 Yacht Club Pointe
Chapin, SC 29036-9998

Dear Ms. Gantt-Thomas:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: August 21, 2007

Presiding Judge: Lee S. Alford

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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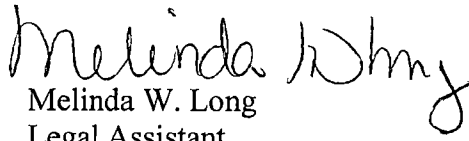
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Ms. Rema K. Gantt-Thomas
November 29, 2007
Page Two

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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
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

November 29, 2007

RECEIVED

NOV 29 2007

Ms. Daphne D. Helms
Circuit Court Reporter
556 Heron Glen Drive
Columbia, SC 29229

S.C. SUPREME COURT

Dear Ms. Helms:

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

The State v. Norman Starnes

Indictment #: 96-GS-32-3339

County: Lexington

Date of Trial: March 21, 2002

Presiding Judge: Lee S. Alford

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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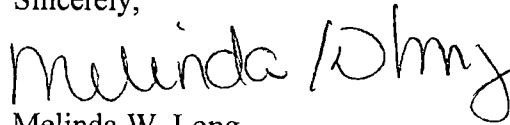
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Ms. Daphne D. Helms
November 29, 2007
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

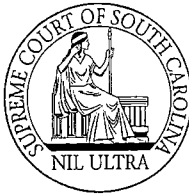
Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Melinda W. Long". The signature is written in a cursive, flowing style.

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

November 21, 2007

The Honorable Lee S. Alford
Moss Justice Center
1675-1J York Highway
York, SC 29745-7434

Re: The State v. Starnes, Norman

Dear Judge Alford:

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.

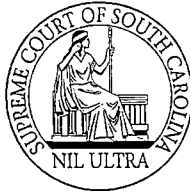
Very truly yours,

Daniel E. Shearouse
CLERK

DES/dmh

Enclosure

cc: John Dennis Delgado, Esquire
William Norman Nettles, Esquire
Assistant Deputy Attorney General Donald J. Zelenka



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 21, 2007

William Norman Nettles, Esquire
Sanders & Nettles, LLC
P.O. Box 12005
Columbia, SC 29201

John Dennis Delgado, Esquire
Bluestein & Nichols, LLC
P.O. Box 7965
Columbia, SC 29202

Re: The State v. Starnes, Norman
CT# 2007-73587

Dear Counsel:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

William Norman Nettles, Esquire
John Dennis Delgado, Esquire
Page Two
November 21, 2007

Very truly yours,

Daniel L. Shearnse
CLERK _{BS}

DES/dmh

Enclosure

cc: Assistant Deputy Attorney General Donald J. Zelenka

THE STATE OF SOUTH CAROLINA
In The Supreme Court

FILED

RECEIVED

NOV 20 2007

S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions
Lee S. Alford, Circuit Court Judge

2007 NOV 20 P 1:46

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

General Sessions Case No. 96-GS-32-3339

The State, ... Respondent

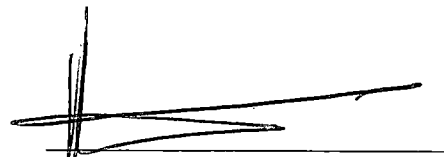
v.

Norman Starnes, ... Appellant.

NOTICE OF APPEAL

Norman Starnes appeals his convictions and sentences in this case. The Honorable Lee S. Alford imposed the sentences on November 17, 2007. Pursuant to SCACR Rule 203(d)(1)(A)(i), this appeal is to the South Carolina Supreme Court because the final judgment includes a sentence of death.

November 20, 2007



William N. Nettles, Esq.
Sanders & Nettles, LLC
P.O. Box 12005
Columbia, SC 29211
(803) 779-9966

Other Counsel of Record:

Trey Gowdy, III, Esq.
Solicitor, Seventh Judicial Circuit
180 Magnolia St., 3rd Floor
Spartanburg, SC 29306

John D. Delgado, Esq.
Bluestein, Nichols, Thompson & Delgado, LLC
1614 Taylor Street
Columbia, SC 29202
(803) 779-7599

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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NOV 20 2007

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions
Lee S. Alford, Circuit Court Judge

S.C. SUPREME COURT

General Session Case No. 96-GS-32-3339

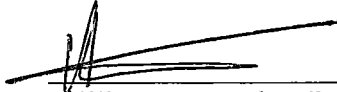
The State, ... Respondent

v.

Norman Starnes, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The State of South Carolina by depositing the same in U.S. Mail, postage paid, to the Office of the Solicitor for the Seventh Judicial Circuit, at 180 Magnolia Street, 3rd Floor, Spartanburg, SC 29306 on the date reflected below, and by filing a copy in the Lexington County Clerk of Court's Office.


William N. Nettles, Esq.
Sanders & Nettles, LLC
P.O. Box 12005
Columbia, SC 29211
(803) 779-9966

November 20, 2007

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY

Court of General Sessions

Lee S. Alford, Circuit Court Judge

RECEIVED

NOV 20 2007

General Session Case No. 96-GS-32-3339

S.C. SUPREME COURT

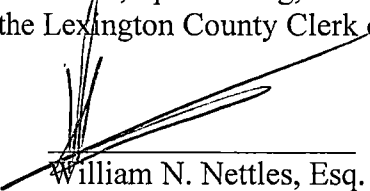
The State, ... Respondent

v.

Norman Starnes, ... Appellant.

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William N. Nettles, Esq.
Sanders & Nettles, LLC
P.O. Box 12005
Columbia, SC 29211
(803) 779-9966

November 20, 2007

SANDERS & NETTLES, LLC
ATTORNEYS AND COUNSELORS AT LAW
www.sandersnettles.com

ALEXANDER M. SANDERS, JR., ESQ.

96 BROAD STREET, SUITE 107
CHARLESTON, SOUTH CAROLINA 29401
PHONE: (843) 853-6115
FAX: (803) 753-9297

WILLIAM N. NETTLES, SR., ESQ.

email: bill@sandersnettles.com

2008 LINCOLN STREET
COLUMBIA, SOUTH CAROLINA 29201
PHONE: (803) 779-9966
FAX: (803) 753-9297

Reply to: Columbia

November 20, 2007

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

RECEIVED
NOV 20 2007
S.C. SUPREME COURT

Re: State v. Norman Starnes
Indictment Number: 96-GS-32-3339

Dear Mr. Shearouse:

This appeal is being filed directly in the Supreme Court pursuant to S.C.A.C.R. Rule 203(d)(1)(A)(i) because the final judgment includes a sentence of death.

Enclosed please find the original and two copies of the notice of appeal and proof of service. Please file the original Notice of Appeal and return the copies to me in the enclosed self-addressed, stamped envelope.

Thank you for your attention to this matter. Please contact me at 803-779-9966 if you have any questions or concerns.

With kindest regards, I am

Yours very truly,



William N. Nettles, Esq.

Cc: Mr. John Delgado, Esq.

The Honorable Trey Gowdy
Solicitor, Seventh Judicial Circuit

Beth Carrigg,
Lexington County Clerk of Court