

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.351.0436
Fax. 803.937.1707
robert@lominacklaw.com

April 2, 2012

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

RECEIVED

APR 02 2012

S.C. Supreme Court

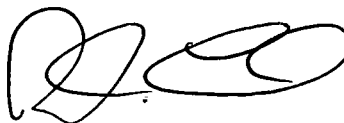
Re: *Sammie Louis Stokes v. South Carolina*

Dear Mr. Shearouse,

I am writing to report on the status of the above-referenced capital post-conviction relief case. On December 8, 2011 the PCR court heard arguments on Applicant's Motion to Alter or Amend the Judgment and requested additional briefing from both parties. On February 28, 2012, the Court held a status conference regarding this briefing.

If you have questions or require any further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

cc: Donald J. Zelenka
Keir M. Weyble

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February 1, 2012

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

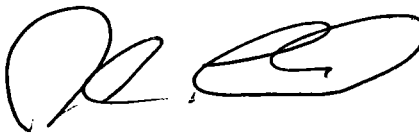
Re: *Sammie Louis Stokes v. South Carolina*

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FEB 09 2012

S.C. SUPREME COURT

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December 1, 2011

Hon. Daniel Shearouse
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Re: *Sammie Louis Stokes v. South Carolina*

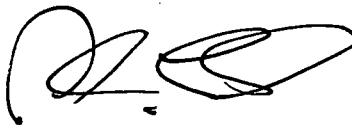
Dear Mr. Shearouse,

I am writing to report on the status of the above-referenced capital post-conviction relief case. The PCR court denied relief and a Motion to Alter or Amend the Judgment is pending with oral argument on the motion scheduled for December 8, 2011.

If you have questions or require any further information, please do not hesitate to contact me.

RECEIVED
DEC 9 2011
S.C. SUPREME COURT

Sincerely,



Robert Lominack

cc: Donald J. Zelenka
Keir M. Weyble

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

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robert@lominacklaw.com

October 2, 2011

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

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OCT 06 2011

S.C. SUPREME COURT

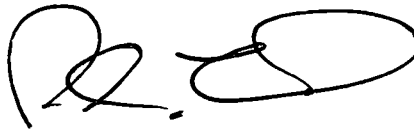
Re: *Sammie Louis Stokes v. South Carolina*

Dear Mr. Shearouse,

I am writing to report on the status of the above-referenced capital post-conviction relief case. The PCR court denied relief and a Motion to Alter or Amend the Judgment is pending with oral argument on the motion scheduled for October 7, 2011.

If you have questions or require any further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

cc: Donald J. Zelenka
Keir M. Weyble

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August 1, 2011

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

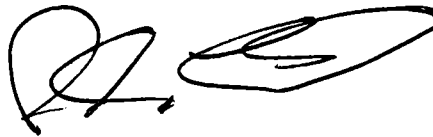
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If you have questions or require any further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to be 'R. Lominack', with a large, stylized initial 'R' and a long, sweeping horizontal stroke.

Robert Lominack

cc: Donald J. Zelenka
Keir M. Weyble

RECEIVED

AUG 03 2011

S.C. SUPREME COURT

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

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June 1, 2011

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

Re: *Sammie Louis Stokes v. South Carolina*

Dear Mr. Shearouse,

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Sincerely,



Robert Lominack

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JUN 02 2011

S.C. SUPREME COURT

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

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April 1, 2011

Hon. Daniel Shearouse
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APR 04 2011

S.C. SUPREME COURT

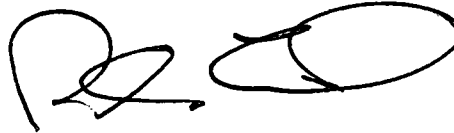
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Dear Mr. Shearouse,

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If you have questions or require any further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'RL' followed by a stylized flourish.

Robert Lominack

cc: Donald J. Zelenka
Keir M. Weyble

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February 1, 2011

Hon. Daniel Shearouse
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Columbia, SC 29211

Re: *Sammie Louis Stokes v. South Carolina*

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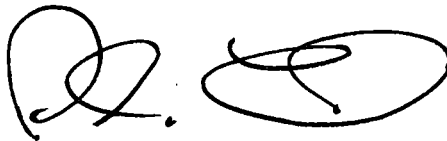
If you have questions or require any further information, please do not hesitate to contact me.

RECEIVED

FEB 02 2011

S.C. SUPREME COURT

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'R' followed by a series of loops and a final flourish.

Robert Lominack

cc: Donald J. Zelenka
Keir M. Weyble

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December 1, 2010

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

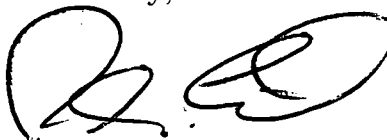
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Sincerely,

A handwritten signature in black ink, appearing to be 'R. Lominack', written over a horizontal line.

Robert Lominack

cc: Donald J. Zelenka
Keir M. Weyble

RECEIVED
DEC 02 2010
S.C. SUPREME COURT

Hopkins, Debbie

From: Don Zelenka <AGDZELENKA@scag.gov>
Sent: Thursday, November 04, 2010 12:18 PM
To: Creighton Waters; Ed Salter; Melody Brown; Anthony Mabry; Alphonso Simon; Brendan McDonald; David Pascoe
Cc: Garden Frampton; John W. McIntosh; Sandi Wofford; Trisha Allen; Bryan Stirling; Gene McCaskill; Marie Higgins; Mark Plowden; Salley Elliott; Trey Walker; Joseph Savitz; baileywalterm@yahoo.com; thomas_sims_esq@yahoo.com
Subject: Sammie Stokes - Orangeburg Death Penalty PCR Case - PCR Denied by Judge Manning- Oct. 22, 2010
Attachments: Stokes, Sammie -2010 10 22 PCR Order of Dismissal - Manning - copy received from Lominack.PDF

Attached in an Order dated October 21, 2010 and filed October 22, 2010 in which Judge Manning denied state postconviction relief to Orangeburg death row inmate Sammie Stokes. [I just received the order today from opposing PCR counsel Robert Lominack]. Stokes claimed that his trial counsel Thomas Sims had a prior conflict of interest due to his earlier prosecution of Stokes in 1991 for assault and battery when he was a prosecutor and also claimed that appellate counsel Joseph Savitz, Chief Attorney of the South Carolina Office of Appellate Defense was deficient in failing to present two separate grounds in the appeal - the alleged failure to hold a charge conference on the record and the particular failure to instruct on the statutory mitigating circumstance 16-3-20(C)(b)(3) that "the victim was a participant in the defendant's conduct or consented to the act."

Concerning the conflict of interest claim, Judge Manning concluded that he "finds as a fact, based upon the credible testimony of both Virgin Johnson and Thomas Sims, that Stokes knowing and voluntarily waived a conflict of interest and with full knowledge of the conflict and ability to have a different lawyer desired to have Thomas Sims continue to represent him in the trial. Applicant failed in their burden of proof at the PCR hearing and failed to timely call the Applicant to contradict the testimony of either Mr. Johnson or Mr. Sims. The belated presentation of a statement of Applicant after the hearing is insufficient to satisfy their burden of proof under these discrete circumstances."

"Concerning the ineffective assistance of appellate counsel claim, Judge Manning concluded the Applicant has failed to show either deficient performance or prejudice under Strickland v. Washington. Appellate counsel Savitz cannot be Strickland deficient in failing to raise these two particular issues because neither issue was presented to the trial court by a timely objection on the record. Absent a specific request by counsel to charge a mitigating circumstance at trial, the issue of whether the mitigator should have been charged is not preserved for appellate review."

This case involves the May 17, 1999, an Orangeburg County Jury indictment of Sammie Louis Stokes for murder, kidnapping, first degree criminal sexual conduct, and criminal conspiracy in the death of Connie Lee Snipes. The Petitioner received the death penalty after a trial prosecuted by then Solicitor Walter Bailey before Judge Paul Burch on October 31, 1999. The SC Supreme Court upheld the sentence in an appeal, State v. Stokes, 345 S.C. 368, 548 S.E.2d 202 (2001) on May 29, 2001.

The PCR proceeding initially included a claim that he was mentally retarded that was abandoned before the hearing after an intervening evaluation rejected concluded that he was not mentally retarded and a claim challenging lethal injection procedures which was abandoned for purposes of this action. He is presented represented by Keir Weyble of Cornell Law School and Robert Lominack of Columbia. The state was represented by Don Zelenka.

Donald J. Zelenka
Assistant Deputy Attorney General
South Carolina Attorney General's Office P.O. Box 11549 Columbia, South Carolina 29211
803-734-3601
803-734-4035(FAX)
agdzelanka@scag.gov

**THE CIRCUIT COURT OF SOUTH CAROLINA
FIFTH JUDICIAL CIRCUIT
1701 Main Street, Richland County Judicial Center
Columbia, South Carolina 29201**

**L. Casey Manning
Resident Judge
(803) 576-1773
(803) 576-1744 Fax**

Reply to :
P.O. Box 192
Columbia, S.C. 29202



October 21, 2010

The Honorable Winnifa B. Clark
Orangeburg Clerk of Court
Post Office Box 9000
Orangeburg, SC 29116

2010 OCT 22 AM 11:52
RECEIVED
CLERK OF COURT
ORANGEBURG, SC

Re: Sammie Louis Stokes vs. State of South Carolina
C/A No. 01-CP-38-1240

Dear Sirs:

Per our conversation over the phone this morning, enclosed please find the original signed Order of Dismissal pertaining to the application for post-conviction relief in Sammie Louis Stokes, #5069 v. State of South Carolina, Orangeburg County, C/A No. 01-CP-38-1240.

Thank you in advance for your courtesy and attention to this matter.

Very truly yours,

William P. Walker, III
Law Clerk to the Honorable L. Casey Manning

Enclosure

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

SAMMIE LOUIS STOKES, #5069)

C/A No. 01-CP-38-1240

Applicant,)

ORDER OF DISMISSAL

vs.)

STATE OF SOUTH CAROLINA,)

Respondent.)

This matter comes before this Court by an initial application filed October 17, 2001. An amended application was filed by his court-appointed counsel, Robert Lominack and Keir Weyble of Columbia, South Carolina. The Respondent made a Return to the initial application on July 3, 2002. The matter was initial set for a hearing on September 13, 2004. On August 9, 2004, the Applicant made an amended application. The matter was initially continued by Order of Continuance dated August 26, 2004 to allow the South Carolina Department of Disabilities and Special Needs complete an evaluation of the Applicant on whether he possessed the disability of mental retardation. On October 22, 2007, the Department submitted a report to this Court that opined the Petitioner was not mentally retarded.

On June 4, 2009 a status conference was held in Richland County. During the conference, the Applicant's counsel advised the Court that it was abandoning the issue concerning lethal injection. Upon inquiry, the Court was also advised that it was abandoning the issue concerning mental retardation raised in the amended application. The Court scheduled a hearing for August

5, 2009 in Orangeburg County. The Respondent made a Return to the Amended Application on August 5, 2009.

On August 5, 2009 a hearing was convened in Orangeburg County before this Court. The Applicant was present and represented by appointed counsel Weyble and Lominack. The Respondent was represented by Donald J. Zelenka. Testimony was received from prior appellate counsel Joseph Savitz (PCR Tr.p. 19-39), Jeffrey Bloom (PCR Tr.p. 40-48), prior trial counsel Thomas Sims (PCR Tr.p. 49-98) and Virgin Johnson (PCR Tr.p. 100-108).. The Applicant did not testify. At the conclusion of the hearing, it was agreed that simultaneous briefing would occur after receipt of the transcripts. On December 28, 2009, Applicant's counsel advised Respondent's counsel that he was abandoning allegation 9(a) and only proceeding on allegations 9(b), 9(c), and 9(d). Post hearing memorandum were prepared and sent on February 16, 2010 by both parties.

This Court has reviewed the evidence, pleadings and memorandum of law. It is constrained to make the following findings of fact and conclusions of law and dismiss and deny the application, as amended, in its entirety, pursuant to S.C. Code § 17-27-80, 160.

I.

PRIOR PROCEDURAL HISTORY

On May 17, 1999, an Orangeburg County Jury indicted Sammie Louis Stokes for murder, kidnapping, first degree criminal sexual conduct, and criminal conspiracy in the death of Connie Lee Snipes. The State sought the death penalty in the case. The Applicant was represented by Thomas R. Sims and Virgin Johnson

There were two pretrial hearings. The first, on January 19, 1999, before the Honorable Duane Shuler, concerned the qualification of defense counsel and a request for an evaluation.

ROA, p. 1500 - 1508. The second, on October 14, 1999, concerned pretrial motions before Judge Paul Burch. ROA 1510-1642.

The trial began on October 25, 1999 and ended on October 31, 1999. Judge Paul M. Burch presided at the pretrial hearings and at trial. Following the guilt phase of the trial, the jury found Mr. Stokes guilty of all charges. Following the sentencing phase, Mr. Stokes exercised his statutory right to make a closing argument. The jury found four aggravating circumstances and recommended death, which Judge Burch affirmed. He also sentenced Mr. Stokes to 30 years for first degree criminal sexual conduct, and to five years for conspiracy. Mr. Stokes later pleaded guilty to murdering Mr. Ferguson, for which he received a life sentence.

The Direct Appeal

The Applicant appealed to the South Carolina Supreme Court. On appeal, he was represented by Joseph L. Savitz of the South Carolina Office of Appellate Defense. In his Final Brief of Appellant, he asserted the issues on appeal as follows:

- I. The judge erred by refusing to allow the defense to introduce the portion of appellant's letter to the police the state had redacted, which indicated that the decedent had willingly accompanied appellant, Syphrette and Martin as the member of a conspiracy to kill Doug Ferguson.
- II. The judge erred at sentencing by refusing to allow appellant to tell the jury during allocution that he had asked God to forgive him for his crimes.

State v. Stokes, Final Brief of Appellant, p. 3. The Respondent restated the issues as:

- I. The trial judge properly denied the defense request to admit statements redacted from a letter introduced by the State because the statements were unnecessary and irrelevant to a fair and complete determination of the defendant's guilt.
- II. The trial judge properly barred the defendant from arguing religious matters during his statutory closing argument.

The South Carolina Supreme Court denied the appeal in *State v. Stokes*, 345 S.C. 368, 548 S.E.2d 202 (2001) on May 29, 2001. On July 2, 2001, a petition for rehearing was denied..

STATE'S VERSION OF THE FACTS

Not long after his arrest, Mr. Stokes wrote a letter to the police confessing his involvement in Ms. Snipes' murder. At trial, the State introduced the letter as evidence and supplemented it with other testimony, including that of Mr. Stokes' cohort, Norris Martin.

In the letter, Mr. Stokes confessed that he had agreed to kill Ms. Snipes for \$2,000 at the request of his cellmate, James Roy Toothe, and Mr. Toothe's mother, Pattie Syphrette. Ms. Snipes and her two children by Mr. Toothe, Brian and Nicole, lived with Ms. Syphrette. Apparently, the desire to have Ms. Snipes killed originated in Ms. Snipes' behavior regarding Mr. Toothe and the children, especially when she caused Nicole to be taken by the Department of Social Services. See Stokes Confession (Court's Exhibit 4), R. pp. 1658-59.

On May 22, Mr. Stokes called Ms. Syphrette. She said that Ms. Snipes "got to go and tonight." The reason she gave for the sudden urgency was that DSS had given her an ultimatum: to evict Snipes from her home or face losing the remaining grandchild, Brian. *Id.* at 1661-62. Then, as related by Mr. Stokes, the situation developed as follows:¹

I said well, I talked with Norris and everything is straight on his end. She said I'll pick you up at Woody's Pawn Shop at 9:30 P.M. She said Connie thinks we are going to kill Doug and she thinks we already got him tied up in Branchville somewhere. She said I wish that were true so we could do all both of them. She said that Connie can't stand Doug and wants to be there to help us and besides she wants to meet you anyway, I know you've been talking

¹Although the original confession was transcribed as one long non-paragraphed statement, paragraphs are asserted into this passage for ease of review.

to her on the phone when Roy calls and I wasn't home.² You just better not flip on me for her. I laughed and said see yall at 9:30 P.M.

They both showed up at 9:30 at Woody's and I went to the passenger side and Connie got out. I said what's up girl, pulled her to me and hugged her tight. She said ain't nothing. So I got in and we drove off. While riding to Branchville, Connie said Doug ain't shit and I'd love to see him get his. She said I had plans tonight but this is better.³ I just laughed and looked at Pattie.

We got to Branchville and rode straight through town and came up through shake-rag and came on a back street, but you can still see the town. I spotted Norris or thought I did, but it wasn't him. So we went to his apartment and Connie went and knocked on the door, but there wasn't no answer. We drove back down town the same back route. That's when I spotted Norris coming out the store walking over to two parked cars with a bag in his hand. So we stopped and was trying to decide who should go call him. So Connie said fuck it, I'll go get him and she got out and walked down the road and called Norris. They both came back and got in. I asked him what's up bro and he said that he came down town to get some beer.

So we went down that dirt road passed Owen's home and I told Pattie to stop. Norris and I got out and I asked him was he ready to handle the business. He said yeah, but let's go back to my apartment so I can get the pussy first. I said we can't go there because people is out walking about in the projects. I said well I know that I can get the pussy because she likes me anyway. I said you want Pattie. He said I'd rather have the other one first. Well I was thinking right there, I know she isn't going to be willing to do it with him. So I said well once you get her in your spot, handle your business. I asked him where did he want to go and he said I'll show you. So we got back in the car and he showed us the spot.

² This phrase was redacted from the Confession published to the jury during the guilt phase. See R. at 969, ll.16-17.

³This phrase also was redacted from the Confession published to the jury during the guilt phase. See R. at 969, ll.22-23.

Then once we got there I got the gun out from behind the seat and passed it to Norris. Then we all got out and Pattie opened the trunk and tried to pass me the shovel, but I wouldn't take it. Then she gave it to Norris. Then Connie say let's go and Pattie said, I'll stay here and watch the car just in case anybody comes, I'll say I'm tricking and we all laughed. Then Connie and Norris walked off and Pattie said is he going to fuck her too. I said yes. Then she said you better not.

I ran and caught up with them and we walked over some bushes and broken limbs and got to the back of the field or on the side. That's when Connie said well where is he at. I said baby, I'm sorry, but it's you that Pattie wants dead and Connie said [oh] my god, that fat bitch. She said, yall don't trust her because she will only turn on yall too. I said she is paying us \$2,000. Connie said that fat bitch hasn't got two cents. Then Connie said please don't kill me

....

Stokes Confession, R. pp. 1662-63.

Then, Mr. Martin had sex with the victim. *Id.* At trial, Mr. Martin testified that afterwards, Mr. Stokes took a knife and stabbed the victim in the chest, cut the nipple off of her right breast, then penetrated her anally while she was screaming from the injuries he inflicted on her. R. at 1155, 1.4-1157, 1.2⁴. Afterwards, Ms. Snipes was shot twice in the head; one shot struck her jaw and the other--fatal--shot struck her in the back of the head. *Id.* at 853, 1.4-854, 1.10. Although it is medically impossible to tell which shot came first, Mr. Martin testified that the defendant fired both shots, and that the victim was screaming after the first shot. *Id.* at 893, 1.5-22. Mr. Stokes stated that both he and Mr. Martin each fired one shot, but that Mr. Martin fired the first shot and he fired the second one. Stokes Confession, R. p. 1663. Mr. Martin testified that Mr. Stokes scalped the victim and tossed her hair into the woods, *id.* at 1160, 11.13-23, then cut

⁴This testimony was elicited during the sentencing phase, and not during the guilt phase.

her vagina out. *Id.* at 1160, 1.24-1161, 1.10. A pathologist confirmed these injuries. *Id.* at 1218, 1.8-1221, 1.13.

On May 28, 1998, Mr. Stokes was at Ms. Syphrette's house with Faith Lapp, Ms. Syphrette, and Brian. *Id.* at 1330, 11.20-23. Ms. Syphrette left to get Mr. Ferguson and bring him to the house. *Id.* at 1334, 11.10-19. Ms. Lapp testified that, while they waited, Mr. Stokes told her that if she said anything, he would do to her what he did to Ms. Snipes and, "if he couldn't get to [her], he was going to get to my family and then he said that he was going to have to come back in twenty years and get the baby." *Id.* at 1335, 11.6-11.

When Mr. Ferguson arrived, he sat down on the couch. *Id.* at 1340, 1.9; Stokes Confession, R. p. 1667. Mr. Stokes, who had been hiding in an adjacent bedroom, came out and asked, "[D]o you know me." R. at 1340, 1.15-1341, 1.16. Mr. Ferguson kept saying no. *Id.* at 1341, 11.16-17; Stokes Confession. Then, Mr. Stokes said, "Motherfucker, you're going to know me." *Id.* at 1341, 11.19-20. Lapp testified that, at that point, she took Brian out of the room while Mr. Stokes and Ms. Syphrette wrapped duct tape around Mr. Ferguson. *Id.* at 1342, 11.19-25. In his confession, Mr. Stokes stated that he punched Mr. Ferguson while he lay on the floor. Stokes Confession, R. p. 1668. The pathologist described how they wrapped the duct tape around Mr. Ferguson:

The unusual thing about his body was that he was wrapped in duct tape. His ankles were taped together, his wrists were taped together and his arms were taped together and then that was taped to his chest and then his face and head was [sic] fully taped.

R. at 1194, 11.4-11. Because they wrapped tape around his nose, his mouth, and his entire head, Mr. Ferguson could not breathe and he died from suffocation. *Id.* at 1206, 11.1-9.

II. Allegations

Prior to the entry of the stay and assignment order on October 17, 2001, appellate counsel for Mr. Stokes initially filed an application for post-conviction relief in Orangeburg County. In the application, it was alleged that he received “ineffective assistance of counsel” and that it was based upon a “failure to present mitigating evidence.” On May 6, 2002, the Respondent received the “First Amended Application for Post-conviction Relief.” In the 2002 Application, made by current counsel, Stokes alleged the following:

9(a) *Applicant was denied the effective assistance of counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 14 of the South Carolina Constitution. Williams v. Taylor, 529 U.S. 362 (2000); Strickland v. Washington, 466 U.S. 668 (1984).*

10(a) Trial counsel unreasonably failed to submit the autopsy data generated by the state’s medical examiner to a qualified, independent pathologist for review. As a result, counsel were unprepared and unable to challenge the state’s version of how the crime occurred, and what actions, if any, were taken by Applicant in connection with the vents surrounding the victim’s death. But for trial counsel’s deficient performance, there exists a reasonable probability that the result of Applicant’s trial would have been different.

9(b) *Applicant was denied the effective assistance of counsel during the sentencing phase of his trial in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 14 of the South Carolina Constitution.*

10(b) The facts supporting the claim are as follows:

1. Trial counsel failed to investigate and present available mitigating evidence during the sentencing phase of Applicant’s trial. Had counsel investigated and presented mitigating evidence, there is a reasonable probability that the result of Applicant’s sentencing proceeding would have been different. *Williams v. Taylor, 529 U.S. 362 (2000); Strickland v. Washington, 466 U.S. 668 (1984); Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994).*

2. During closing argument, the prosecutor argued that life in prison without parole would reward Applicant, because the prison system would exert no control over his behavior. The prosecutor inaccurately argued that the prison system could only take away canteen privileges or lock Applicant down for a short time if he misbehaved. In the end, the prosecutor, based on this inaccurate portrayal, argued that the death penalty was the only punitive sentence. Although the prosecution's argument violated Applicant's rights as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, as well as applicable state law, trial counsel raised no objection. Had counsel properly objected to the prosecution's inaccurate and prejudicial closing argument, there is a reasonable probability that the result of Applicant's sentencing proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984); *see also, e.g., Beck v. Alabama*, 447 U.S. 625 (1980); *Gardner v. Florida*, 430 U.S. 349 (1977); *State v. Plath*, 281 S.C. 1, 313 S.E.2d 619 (1984); *State v. Atkinson*, 253 S.C. 531, 172 S.E.2d 111 (1970); *State v. Reed*, 293 S.C. 515, 362 S.E.2d 13 (1987).

On August 9, 2004, Respondent received a pleading styled "Amended Application for Post-Conviction Relief" dated August 6, 2004. In the application, he raised the following:

1. *Applicant was denied the effective assistance of counsel during the sentencing phase of his trial in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 14 of the South Carolina Constitution, as a result of trial counsel's failure to object to the solicitor's mischaracterizations of life in prison during closing argument.* 9(a)
 - a. The facts supporting the claim are as follows: During closing argument, the prosecutor argued that life in prison without parole would reward applicant, because the prison system would exert no control over his behavior. The prosecutor inaccurately argued that the prison system could only take away canteen privileges or lock applicant down for a short time if he misbehaved. In the end, the prosecutor, based on this inaccurate portrayal, argued that the death penalty was the only punitive sentence. Although the prosecution's argument

violated applicant's rights as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, as well as applicable state law, trial counsel raised no objection. Had counsel properly objected to the prosecution's inaccurate and prejudicial closing argument, there is a reasonable probability that the result of applicant's sentencing proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984); *see also, e.g., Beck v. Alabama*, 447 U.S. 625 (1980); *Gardner v. Florida*, 430 U.S. 349 (1977); *State v. Plath*, 281 S.C. 1, 313 S.E.2d 619 (1984); *State v. Atkinson*, 253 S.C. 531, 172 S.E.2d 111 (1970); *State v. Reed*, 293 S.C. 414, 362 S.E.2d 13 (1987). 10(a)

2. *Applicant's right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law was denied as a result of appellate counsel's failure to raise on direct appeal the trial judge's failure to determine what statutory mitigating circumstances were supported by the evidence and his failure to hold a charge conference prior to instructing the jury in the sentencing phase of the trial.* 9(b)

- a. Prior to instructing the jury at the sentencing phase of the trial, the trial judge was required to make an initial determination of which statutory mitigating factors were supported by the evidence and then to conduct a charge conference. *State v. Victor*, 300 S.C. 220, 387 S.E.2d 248 (1989). In this case, the trial judge failed to follow the clear rule set out in *Victor*. Furthermore, this failure to apply existing state law deprived applicant of due process. *See, e.g., Vitek v. Jones*, 445 U.S. 480 (1980); *Hicks v. Oklahoma*, 447 U.S. 343 (1980); *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 7 (1979); *Morrissey v. Brewer*, 408 U.S. 471 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). Appellate counsel failed to raise this claim on direct appeal; had counsel done so, there exists a reasonable probability that the result of applicant's appeal would have been different. *Williams v. Taylor*, 120 S.Ct. 1495 (2000); *Strickland v. Washington*, 466 U.S. 668 (1984); *Douglas v. California*, 372 U.S. 353 (1963); *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999). 10(b).

3. *Applicant's right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law was denied as a result of appellate counsel's failure to raise on direct appeal the trial judge's failure to submit for the jury's consideration a statutory mitigating circumstance.* 9(c)

- a. S.C. Code § 16-3-20(C) provides that the trial judge "shall include in his instructions to the jury for it to consider...the following...mitigating circumstances which may be supported by the evidence." In this case, the trial judge failed to instruct the jury on § 16-3-20(C)(b)(3) (the victim was a participant in the defendant's conduct or consented to the act), despite the fact that there was evidentiary support for this mitigating circumstance. *See State v. Pierce*, 289 S.C.

430, 346 S.E.2d 707 (1986) (trial judge required to instruct the jury on statutory mitigating circumstances), *overruled on other grounds*, *Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991); *State v. Rogers*, 338 S.C. 435, 521 S.E.2d 101 (2000). Appellate counsel failed to include this claim on direct appeal had counsel done so, there exists a reasonable probability that the result of applicant's appeal would have been different. *See Douglas v. California*, 372 U.S. 353 (1963); *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999). 10(c)

4. *Applicant's right to counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law was violated as a result of his representation by counsel who labored under an actual conflict of interest. 9(d)*

- a. The facts supporting the claim are as follows: From approximately 1981 until 1992, Thomas Sims, who would subsequently be appointed as lead defense counsel for applicant, was employed as an assistant solicitor in the First Circuit Solicitor's Office. In his capacity as assistant solicitor, Mr. Sims prosecuted applicant for a violent offense against his ex-wife. Largely on the strength of applicant's ex-wife's testimony, elicited at the trial by Assistant Solicitor Sims, a jury found applicant guilty of aggravated assault and battery, for which he received a substantial prison sentence. Later, in the capital trial challenged in this application, the prosecution began its sentencing phase presentation with evidence, again offered by applicant's ex-wife, of the offense for which Mr. Sims had previously prosecuted applicant. On cross-examination of the complaining witness, Mr. Sims did not explore several lines of inquiry which, had they been explored, would have mitigated the seriousness of the offense described by the witness and undermined the accuracy of her account. The record of proceedings before the trial court in this case contains no discussion or waiver of the conflict of interest arising out of Mr. Sims' successive involvement as prosecutor then defender of applicant. *See, e.g., Cuyler v. Sullivan*, 466 U.S. 335 (1980); *Holloway v. Arkansas*, 435 U.S. 475 (1978); *Thomas v. State*, 346 S.C. 140, 551 S.E.2d 254 (2001); *United States v. Swartz*, 975 F.2d 1042 (4th Cir. 1992); *Hoffman v. Leeke*, 903 F.2d 280 (4th Cir. 1990); *United States v. Zeigenhagen*, 890 F.2d 937, 940-41 (7th Cir. 1989); *United States v. Kitchin*, 592 F.2d 900 (5th Cir. 1979). 10(d)

5. *Applicant's sentence of death may not be carried out consistently with the Eighth and Fourteenth Amendments to the United States Constitution because he has mental retardation. 9(e)*

- a. The facts supporting the claim are as follows: Applicant suffers from significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, as evidenced by a full scale IQ that is below the accepted threshold for mental retardation, and

by historical information indicating that his adaptive skills are deficient. *Atkins v. Virginia*, 536 U.S. 304 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003). 10(e)

6. *Pursuant to Article I § 11 of the South Carolina Constitution and the Sixth and Fourteenth Amendments to the United States Constitution, the trial court lacked jurisdiction to sentence applicant to death as a result of the omission from the indictments of the aggravating factor(s) essential to expose him to punishment greater than life in prison.* 9(f)
 - a. The facts supporting the claim are as follows: Applicant was separately indicted for murder, conspiracy, criminal sexual conduct, and kidnapping. Applicant's eligibility for a sentence of death rested on the jury's finding of four statutory aggravating circumstances: murder during the commission of kidnapping; murder during the commission of criminal sexual conduct; murder for hire; and commission of murder as the agent of another. None of the indictments alleged that the victim's murder occurred "during the commission of" either criminal sexual conduct or kidnapping. Likewise, none of the indictments made any reference to murder for hire or commission of murder as the agent of another. See S.C. Code § 16-3-20; *Ring v. Arizona*, 122 S.Ct. 2428 (2002); *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Jones v. United States*, 526 U.S. 227 (1999); *Hooks v. State*, 353 S.C. 48, 577 S.E.2d 211 (2003); *State v. Grim*, 341 S.C. 63, 66, 533 S.E.2d 329, 330 (2000); *State v. Brown*, 24 S.C. 224 (1886). 10(f)
7. *Applicant's sentence of death by lethal injection cannot be carried out because the procedures and policies for executing such a sentence presently followed by the State of South Carolina will result in unnecessary pain, torture and suffering in violation of the Eighth and Fourteenth Amendments to the United States Constitution.* 9(g)
 - a. The facts supporting the claim are as follows: The lethal injection procedures and protocols followed by the South Carolina Department of Corrections fail to ensure, *inter alia*, that qualified personnel perform the tasks necessary to carry out a lethal injection without causing unnecessary pain and suffering, or that appropriately humane chemicals are administered during the execution process. Because of these and other deficiencies, South Carolina's methods for carrying out sentences of death by lethal injection are inconsistent with evolving standards of decency. See, e.g., *Farmer v. Brennan*, 511 U.S. 825 (1994); *In re Kimmler*, 136 U.S. 436 (1890). 10(g)

During the status conference on June 4, 2009, counsel for the Applicant advised the Court and opposing counsel that he was withdrawing amended ground 7 set out as 9(g) [Applicant's

sentence of death by lethal injection cannot be carried out because the procedures and policies for executing such a sentence presently followed by the State of South Carolina will result in unnecessary pain, torture and suffering in violation of the Eighth and Fourteenth Amendments to the United States Constitution]. [The Respondent had made a motion to dismiss the allegation on August 25, 2004 under SCCP 12(b)(1) and 12(b)(6) as beyond the jurisdiction of the court in a state post-conviction relief proceeding under *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000)].

During the proceeding on June 4, 2009, counsel for the Applicant also advised the Court and opposing counsel that he was abandoning ground five - allegation 9(e) [*Applicant's sentence of death may not be carried out consistently with the Eighth and Fourteenth Amendments to the United States Constitution because he has mental retardation*]. [The October 22, 2007 submission by the South Carolina Department of Disabilities and Special Needs opined that Stokes did not meet the diagnostic criteria for mental retardation].

Finally, during post-hearing briefing, the Applicant abandoned allegation 9(a). [*counsel's failure to object to the solicitor's mischaracterizations of life in prison during closing argument*].

III.

GENERAL LAW RELATED TO INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS.

In Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show (1) that counsel's performance was deficient, and (2) that the deficient performance so prejudiced the defense as to

deprive the defendant of a fair trial. 466 U.S. at 687. Respondent submits that the Record on Appeal from the Applicant's trial and sentencing hearing conclusively demonstrate that appointed counsel were not deficient in their performance nor was the Applicant prejudiced in any way by their performance. To the contrary, the Record from each proceeding demonstrates that the Applicant's attorneys were diligent in their representation of the Applicant, performed well within the range of competence demanded of attorneys in criminal matters and performed within the wide range of reasonable professional assistance. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977); Butler v. State, 286 S.C. 441, 34 S.E.2d 813 (1985); Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

At this stage, the review of counsel's performance is quite deferential. The Supreme Court has instructed reviewing courts to "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Strickland v. Washington, 466 U.S. 668, 689, 104 S.Ct. 2052, 2065, 80 L.Ed.2d 674 (1984). Thus we ask not whether, with the benefit of hindsight, counsel would have conducted the defense differently. In the wake of a conviction and death sentence such a conclusion "is all too tempting." *Id.* Rather, the court must place itself in the shoes of Stokes' attorneys and ask only whether their choices were objectively unreasonable. We cannot say that counsel's efforts in this case failed to satisfy Strickland's standard.

The Applicant contends he was deprived of constitutionally required effective assistance of counsel during the guilt and sentencing phases of his trial. To prevail on this claim, Stokes bears the burden of demonstrating that their attorney's "representation fell below an objective standard of reasonableness" and "that there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 688, 694, 104 S.Ct. 2052, 2064-64, 2068, 80 L.Ed.2d 674 (1984). In assessing counsel's performance, courts bear in mind that the review is "highly deferential." *Id.* at 689, 104 S.Ct. at 2065. Indeed, it affords a strong presumption that counsel's performance was within the extremely wide range of professionally competent assistance. See *Id.* And, to eliminate the deceptive effects of hindsight on its consideration, the court looks to "the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Id.* at 690, 104 S.Ct. at 2066. Moreover, even those instances in which counsel's conduct fell below an objective standard of reasonableness generally will not justify setting aside a conviction unless the error affected the outcome of the proceeding. See *Id.* at 691-92, 104 S.Ct. at 2066-67. Therefore, deficiencies in the Applicant's attorney's conduct would warrant the grant of habeas relief only if Petitioners convince the court that in the absence of unprofessional errors by their attorney there is a reasonable probability--i.e., one adequate to undermine our confidence in the result-- that "the result of the proceeding would have been different." See *id.* at 694, 104 S.Ct. at 2068.

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Id.* at 691, 104 S.Ct. at 2066; see Satcher v. Pruett, 126 F.3d 561, at 572 (4th Cir 1997)(explaining that " '[i]n any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments' " (quoting Strickland, 466 U.S. at 691, 104 S.Ct. at 2066)).

9 (A) - Ineffective Assistance in Failing to Object to Penalty Phase Closing Argument .

In his first amended allegation, Stokes, through counsel, contends that counsel should have objected to the prosecution penalty phase argument about the impact of a life sentence in the Department of Corrections. This issue was specifically abandoned in the post-hearing briefing. This Court dismisses the ground for lack of prosecution.

9(b) - Ineffective Assistance of Counsel on Appeal - Failure to Hold A Charge Conference on Mitigating Circumstances.

9(c) - Ineffective Assistance of Counsel on Appeal - Failure to Brief Failure to Instruct on Statutory Mitigating Circumstance (b)(3) - the victim was a participant in the defendant's conduct or consented to the act.

In specification 9(b) and 9(c), the Applicant asserts that appellate counsel Joseph Savitz, Chief Attorney of the South Carolina Office of Appellate Defense was deficient in failing to present two separate grounds in the appeal - the alleged failure to hold a charge conference on the record and the particular failure to instruct on the statutory mitigating circumstance 16-3-20(C)(b)(3) that "the victim was a participant in the defendant's conduct or consented to the act." This Court concludes that appellate counsel cannot be found deficient because neither issue was preserved for review by objection or ruling by the trial court. He has failed in his burden of proof on the initial prong under Strickland v. Washington, 466 U.S. 668(1984). These claims must be dismissed.

Standard of Review for Ineffective Appellate Counsel Claims

A PCR applicant has the burden of proving appellate counsel's performance was deficient. Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985); Thrift v. State, 302

S.C. 535, 397 S.E.2d 523 (1990); Tisdale v. State, 357 S.C. 474, 475, 594 S.E.2d 166, 167 (2004) ; Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999).

The proper standard for assessing a claim of ineffectiveness of appellate counsel is that set forth in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Smith v. Robbins, 528 U.S. 259, 285, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000)(following Smith v. Murray, 477 U.S. 527, 535-36, 106 S.Ct. 2661, 91 L.Ed.2d 434 (1986)). The petitioner must show both (1) constitutionally deficient performance, by demonstrating that his counsel's conduct was objectively unreasonable, and (2) resulting prejudice, by demonstrating a reasonable probability that, but for counsel's unprofessional error(s), the result of the proceeding--in this case the appeal--would have been different. Id. at 285 (applying Strickland).

Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is not required to raise every nonfrivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983) (emphasis supplied). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy...." Jones, 463 U.S. at 754, 103 S.Ct. 3308. "Furthermore, to render effective assistance, an attorney is not required to raise every conceivable constitutional claim available at trial and on appeal. Holladay v. State, 629 So.2d 673 (Ala.Cr.App.1992), McCoy v. Lynaugh, 874 F.2d 954, 965-66 (5th Cir.1989). Rather, counsel must be given some discretion in determining which claims possibly have merit, and thus a better chance of success, and which claims do not have merit, and thus have little chance of success. Smith

v. Murray, 477 U.S. 527, 106 S.Ct. 2661, 91 L.Ed.2d 434 (1986); Engle v. Isaac, 456 U.S. 107, 102 S.Ct. 1558, 71 L.Ed.2d 783 (1982)." Davis v. State, 720 So.2d 1006, 1014 (Ala.Crim.App.1998).

" '[E]xperienced advocates have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues. Selecting the most promising issues for review has assumed a greater importance in an era when the time for oral argument is strictly limited in most courts and when page limits on briefs are widely imposed.'

Jones v. Barnes, 463 U.S. 745, 746, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983).⁵

In applying the [Strickland] test to claims of ineffective assistance of counsel on appeal ..., reviewing courts must accord appellate counsel the "presumption that he decided which issues were most likely to afford relief on appeal." Pruett v. Thompson, 996 F.2d 1560, 1568 (4th Cir.1993). see also Smith v. South Carolina, 882 F.2d 895, 899 (4th Cir.1989). Indeed, " '[w]innowing out weaker arguments on appeal and focusing on' those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy." Smith v. Murray, 477 U.S. 527, 536, 106 S.Ct. 2661, 91 L.Ed.2d 434 (1986) (quoting Jones, 463 U.S. at 751); see also Smith, 882 F.2d at 899 (counsel's failure to raise a weak constitutional claim may constitute an acceptable strategic decision designed "to avoid diverting the appellate court's attention from what [counsel] felt were stronger claims"). Although recognizing that "[n]otwithstanding Barnes, it is still possible to bring

⁵The purpose of ineffectiveness review is not to grade counsel's performance. See Strickland, 104 S.Ct. at 2065; see also White v. Singletary, 972 F.2d 1218, 1221 (11th Cir.1992) ('We are not interested in grading lawyers' performances; we are interested in whether the adversarial process at trial, in fact, worked adequately.'). Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another. Strickland, 104 S.Ct. at 2067. Different lawyers have different gifts; this fact, as well as differing circumstances from case to case, means the range of what might be a reasonable approach at trial must be broad. To state the obvious: the trial lawyers, in every case, could have done something more or something different. So, omissions are inevitable. But, the issue is not what is possible or 'what is prudent or appropriate, but only what is constitutionally compelled.' Burger v. Kemp, 483 U.S. 776, 107 S.Ct. 3114, 3126, 97 L.Ed.2d 638 (1987).

a Strickland claim based on counsel's failure to raise a particular claim" on direct appeal, the Supreme Court has recently reiterated that "it [will be] difficult to demonstrate that counsel was incompetent." Robbins, 120 S.Ct. at 765. "'Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.'" ' Id. (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir.1986)). Bell v. Jarvis, 236 F.3d 149, 164 (4th Cir.2000) (en banc).

Appellate counsel is not deficient for failing to raise on appeal an issue that was not preserved for review. Legge v. State, 349 S.C. 222, 562 S.E.2d 618 (2002); Gilchrist v. State, 612 S.E.2d 702, 705 (S.C. 2004) (appellate counsel not ineffective where trial counsel's submission of the request to charge, without any further explanation of his point, was insufficient to preserve for review the trial court's failure to charge the specific language regarding "a right to act on appearances."). See State v. Hicks, 330 S.C. 207, 499 S.E.2d 209, cert. denied, 525 U.S. 1022, 119 S.Ct. 552, 142 L.Ed.2d 459 (1998) (issue must be raised to and ruled upon by trial court to be preserved for review); State v. Dickman, 341 S.C. 293, 534 S.E.2d 268 (2000) (party may not argue one ground at trial and an alternate ground on appeal).

To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Strickland, supra; Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). That is, the Applicant must prove prejudice by showing he would have prevailed on appeal had a writ been filed by counsel and granted by this Court. See, Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (appellate counsel ineffective in failing to raise issue, preserved below, which would have entitled defendant to reversal on appeal).

WHAT THE RECORD SHOWED

The record reveals that at the outset of the penalty phase, Judge Burch made inquiry of the state and defense of the aggravating and mitigating factors it intended to pursue. Counsel Sims advised Judge Burch at that time that:

....under section B(3), the victim was a participant in the defendant's conduct or consented to the act, we think there is ample evidence in the record that the victim participated up to a point by being involved in the actions of the defendant at the time and we would think that it would be a mitigating circumstance. Your honor, we also intend to – what we consider to be mitigating, his adaptability to prison and there would be a third matter (which concerned the medical condition of Stokes).

ROA 1083, ll. 1-22. (Emphasis added).

In counsel Sims' opening penalty phase opening statement, he discussed their intent to present adaptability to prison evidence, but did not present any statement concerning the victim's involvement or provocation factor. ROA 1109.

Prior to the penalty phase closing arguments after the evidence was presented, Judge Burch declared that: "I'll review my checklist." ROA 1429. During the closing arguments, the solicitor made general references to evidence in mitigation concerning adaptability to prison. ROA 1446, 1451. Stokes made a personal statement of remorse. ROA 1459-1460. Counsel Sims made his argument concerning former warden James Aiken's testimony that Sims would never be a free man and in a maximum security prison and the factors for a maximum security prison. ROA 1466-1467.

Pre-charge objections were made which did not include either of the presently challenged issues. ROA 1468. During the jury charge, Judge Burch addressed mitigation circumstances. ROA 1479-1481. In particular, he stated: " Now there are such things as statutory mitigating circumstances which are not alleged or brought forth in this case and then there are what we call non-statutory mitigating circumstances ..." ROA 1480, ll. 3-6. Judge Burch did not instruct the jury to consider any specific statutory mitigating circumstance.

After the instructions, there were no objections to the failure to instruct any particular statutory mitigating factor nor the failure to hold an on the record charge conference. ROA 1486 (no objection to the charge by the defense).

During the PCR hearing, former appellate counsel Joseph Savitz declared that he reviewed the trial record, but did not highlight any portion where there was a discussion concerning whether the victim was provoked or was a participant in the crime. PCR Tr.p. 24. He concluded that he could not recall what he was thinking when he was preparing the brief, but suggested that it was something similar to what he had argued in *State v. Humphries*, *State v. Victor* and *State v. Evans*. He asserted that it was his opinion that trial judges should do more and specifically make inquiry as to each mitigating factor on the record. However, Savitz conceded that the Court ultimately said it was not required. PCR Trp. 25. He could not recall why he would not have argued to have the matters addressed on the record as he had been arguing in the same time period - albeit unsuccessfully. PCR 25.

On cross-examination, Savitz admitted that when he raised non-objected statutory mitigating factors that it was usually related to issues of intoxication. PCR 26. He admitted that he had reviewed the trial judge's instructions prior to briefing. PCR 27. He admitted that he realized that the judge did not instruct on any specific statutory factors. PCR 27, l. 13. He recognized that the trial judge further concluded that there were no mitigators in the case. PCR 27-28. Mr. Savitz further admitted that he reviewed the objections made to the jury instructions and determined that no objection had been made to the failure to give statutory mitigating circumstances. PCR 28, l. 8. He further was aware that there was no objection to the failure to have an on the record discussion concerning the mitigators. PCR 28, l. 9-12.

Counsel Savitz further admitted that he was aware of the existence of a statutory mitigating factor of the victim was a participant in the crime or consented to the act at the time of the briefing. PCR 28. Further, he acknowledged that he was aware of the existence of evidence in the record and the fact that the judge did not give the instruction. PCR 28-29.

However, Savitz questioned whether in *State v. Humphries* the Supreme Court had held that a failure to object to a trial court's failure to give an instruction did not preserve the issue for appeal. PCR 29. He felt that the Supreme Court did not resolve this procedural bar until the *Kamell Evans* case when he was arguing for a procedure to require the judge to go through each specific mitigating factor on the record. PCR 29. In admitted hindsight, Savitz stated that the judge has the discretion to hold a charge conference any time he wants to and admits that Judge Burch did hold a charge conference and mentioned the mitigator during the conference. However, Savitz stated that it was never mentioned again after the beginning of the penalty phase. Savitz suggested that he missed this issue and would have raised it had it seen it because this was an issue he was raising at the time in other cases. PCR 30. However, he recognized that he probably would not have won the issue, but thought that the law was uncertain at the time he briefed the appeal. PCR 30.

Savitz admitted that in *State v. Humphries* in 1993 the Supreme Court held that a failure to make a specific request for a statutory mitigating circumstance waived the right to raise the omission on appeal. He stated that he may have been missing the message that the Court was sending, because he still raised the issue in *Kamell Evans* contending that the law was uncertain concerning preservation of the issue. PCR 31-32. He admitted that in *Evans*, the Supreme Court made clear that a request for the factor had to be made to preserve the issue when it was not charged. PCR 33. However, he had no idea why he did not raise the issue in *Stokes* appeal brief. PCR 33, l. 5.

Counsel Sims conceded that he did not object to the failure to give the particular statutory mitigating circumstance instruction. PCR 65.

ANALYSIS

This Court concludes the Applicant has failed to show either deficient performance or prejudice under *Strickland v. Washington*. Appellate counsel Savitz cannot be *Strickland* deficient in failing to raise these two particular issues because neither issue was presented to the trial court by a timely objection on the record. Absent a specific request by counsel to charge a mitigating circumstance at trial, the issue of whether the mitigator should have been charged is not preserved for appellate review. *State v. Evans (Kamell)*, 371 S.C. 27, 32, 637 S.E.2d 313, 315 (2006).

In *State v. Victor*, 300 S.C. 220, 224, 387 S.E.2d 248, 250 (1989), the Supreme Court set forth the proper procedure for submission of statutory mitigating factors to the jury in the penalty phase of a capital case:

Once the trial judge has made an initial determination of which statutory mitigating circumstances are supported by the evidence, the defendant shall be given an opportunity on the record: (1) to waive the submission of those he does not wish considered by the jury; and (2) to request any additional mitigating statutory circumstances supported by the evidence that he wishes submitted to the jury.

See, *State v. Stanko*, 376 S.C. 571, 577-578, 658 S.E.2d 94, 97 - 98 (S.C., 2008) (not preserved).

One of the earlier cases addressing this assertion was handled by appellate counsel Savitz prior to his handling in the instant case resulted in rejection of the argument as not preserved. *State v. Humphries*, 325 S.C. 28, 36, 479 S.E.2d 52, 57 (1996). The Court has constantly rejected this claim absent request and objection , except in the intoxication evidence area which was corrected in *Evans*. The recent cases have stated that absent a request by counsel to charge a mitigating circumstance at trial, the issue whether the mitigator should have been charged is not preserved for

review. See *State v. Vazquez*, 364 S.C. 293, 301, 613 S.E.2d 359, 363 (2005); *State v. Bowman*, 366 S.C. 485, 494, 623 S.E.2d 378, 383 (2005); and *State v. Sapp*, 366 S.C. 283, 621 S.E.2d 883, n. 3 (2005).

In the instant case, trial counsel did not request an instruction on the particular statutory mitigator and did not object to the failure to give an instruction of the mitigating factors. ROA 1486-87. Since there was no objection, nothing was preserved for the appeal. Reasonable appellate counsel cannot have raised the issue on appeal since there was no objection. This Court concludes that appellate counsel Savitz was not deficient in failing to brief an unpreserved claim.

Further, there was nothing in the record to show that the trial court failed to hold a charge conference. Similarly, there was no showing that the defense objected to the lack of a charge conference to preserve the issue for an appeal. Appellate counsel cannot be found to be deficient when the issue was not raised at trial.

Since there is no showing that the trial court refused to hold a charge conference or that the defense objected to the failure to instruct on the particular mitigating factor, reasonable appellate counsel could not have been required under the Constitution to assert these unpreserved claims, particularly in 2000 when the appellant's brief was written after the decision in *Humphries*. His claims set forth in these two specifications must be dismissed. ⁶

⁶This Court does not need to address whether there was any evidence of the statutory mitigating factor that "the victim was a participant in the defendant's conduct or consented to the act" under Section 16-3-20(b)(3), because the specific request was not made by trial counsel and a Sixth Amendment claim of ineffective assistance of trial counsel is not raised. However, even if asserted as a trial counsel claim under the Sixth Amendment, the "prejudice" prong cannot be satisfied where the evidence revealed that the victim's death was the idea and the plan by the Applicant was to create a subterfuge. Simply put, Connie Snipes did not consent to the violence that was about to strike her involving the violent rape, stabbing, maiming and ultimately shooting. There is no reasonable probability that the result would have been different had request for the instruction

9(d) - Conflict of Interest - Thomas Sims as Prosecutor in 1991.

The Applicant in this specification asserts that counsel Thomas Sims had an actual conflict of interest in representing Stokes because he had previously personally prosecuted Stokes on Indictment 91-GS-38-0190 involving the December 2, 1990 incident involving the assault on Audrey Smith that resulted in a 1991 conviction for assault and battery of a high and aggravated nature and sentence of 10 years after a jury trial before Judge John H. Smith. The record also reveals that Sims signed the indictment for assault and battery with intent to kill and personally handled the trial. Further, the evidence of the 1991 conviction and sentence was introduced by the State in the penalty phase in State Exhibit One in the chart [ROA 1110-1111] and also through the penalty phase testimony of Audrey Smith. It should be noted that counsel Sims cross-examined Smith in the matter. The record reveals that there is no indication on the record before the jury that Sims had prosecuted Stokes.

This Court finds as a fact, based upon the credible testimony of both Virgin Johnson and Thomas Sims, that Stokes knowing and voluntarily waived a conflict of interest and with full knowledge of the conflict and ability to have a different lawyer desired to have Thomas Sims continue to represent him in the trial. Applicant failed in their burden of proof at the PCR hearing and failed to timely call the Applicant to contradict the testimony of either Mr. Johnson or Mr. Sims. The belated presentation of a statement of Applicant after the hearing is insufficient to satisfy their burden of proof under these discrete circumstances.

How This Issue Was Presented

been made or if the instruction had been given. Any suggestion otherwise is groundless in light of this horrific factual record of malice against the victim.

Judge Shuler appointed Thomas Sims after initially appointing Virgin Johnson. A pretrial hearing was held on January 19, 1999 in Stokes presence by Judge Shuler. During the qualification, Sims noted that he was in the Solicitors Office from 1982 -1993. ROA 1502-1504. No objection is made to the representation by either Sims or Stokes. Nothing is stated on the record about Sims prior prosecution of Stokes in the earlier matter involving Audrey Smith. A review of the trial record reveals no further on the record inquiry concerning the prior representation. In the penalty phase of the trial, the Solicitor indicates that he is presenting the chart, State Exhibit One, rather than the indictments to remove any potential prejudice. ROA 1085.

The Stokes-Audrey Smith Trial

This Court has before it the transcript of the March 12, 1991 trial of Stokes for the incident against Audrey Smith. Plaintiff Exhibit 1. The 1991 record reveals that Sims personally prosecuted the case and signed the indictment against Stokes. The victim, Audrey Smith, the ex-wife of Stokes was the primary witness. The crime involved a December 2, 1990 incident between them. At the trial, Stokes was represented by Reddick Bowman. However, Stokes chose to waive his presence in court during the trial. 1991 Tr.p. 4-14. Audrey Smith testified in the 1991 trial that Stokes had gone on a walk with her to a schoolyard and then took her clothes off and forced her to have sex with him after she refused. 1991 Tr.p. 43. She stated that he had a letter that stated he was going to kill her that night and he told her that he had changed his mind. 1991 Tr.p. 44. He later took out an extension cord and put it around her neck and held it tight until she became unconscious. 1991Tr.p. 46. She later woke up in the field and called 911 from a nearby house. 1991 Tr.p. 46-47.

During cross-examination by Mr. Bowman, Smith stated that when she woke up she reached for her shoes and hid when she saw some automobiles because she thought that Stokes was

returning. 1991 Tr.p. 48-49. She admitted that Stokes did not own an automobile, but had friends who did. She said he was supposed to arrive at 6 the evening before , but did not get there until 7 PM at Turnkey Apartments in Branchville. 1991 Tr.p. 50. She stated that they traveled across the open field. She stated that they went up there at the schoolyard swinging and two of his friends came by. 1991 Tr.p. 52-53. A little while after the friends left, she stated that they had sex. 1991 Tr.p. 53. She stated sometime after that he put the cord around her neck but she could not be definite about the time. 1991 Tr.p. 54.

Counsel Bowman then inquired of her concerning matters presented at a preliminary hearing. 1991 Tr.p. 56. Smith stated that she thought she did say to the police that Stokes took the letter back from her because he feared that she would take it to the police. 1991 Tr.p. 59. She admitted that she was afraid of Stokes who did not let her talk to his friends, however, she did not scream in fear that date nor have any conversation with his friends. 1991 Tr.p. 60-61. She stated that they would not have help her anyway because they were his friends. 1991 Tr.p. 62.

After Smith testified, Stokes remained outside of court due to his dissatisfaction with appointed counsel and the court's refusal to delay the matter to allow him to attempt to retain counsel. 1991 Tr.p. 67-68.

Solicitor Sims next asked Smith on re-direct examination concerning why she did not request help from the two men at the schoolyard when they came up. She stated that she had not seen the threatening letter yet and that they were just sitting and talking then. 1991 Tr.p. 71-72.

Audrey Smith's Testimony in the 1999 Penalty Phase

In the State's case in aggravation in 1999, Solicitor Bailey put in record the following criminal record concerning Stokes:

March 9, 1998	Assault and Battery of A High and Aggravated Nature - 8 years and 5 years probation.
August 31, 1990 -	Paroled from conviction.
March 13, 1991 -	Assault and Battery of a High and Aggravated Nature. 10 year sentence.
April 3, 1991 -	Parole from first sentence revoked.
February 11, 1993	Assault and Battery of a High and Aggravated Nature 3 years consecutive.

ROA. 1110-1111.

The state also presented the testimony of Audrey Smith, the Applicant's ex-wife who testified about incidents where Stokes assaulted her. The incidents included a November 1987 incident when Stokes held a knife to her throat which resulted in a tussle and her hands getting cut when she tried to grab the knife and held her hostage and threatened to kill her children and brother if she made a sound. ROA 1115-1117. She later attempted to call for her brother after he placed her in a ditch and Stokes stabbed her three times in the back and then he fled. ROA 1118-1119. She then stated she went to the hospital. ROA 1119. He was convicted in March due to that assault.

Ms. Smith next described an incident on December 2, 1990. ROA 1119. Stokes had gotten out on an early release program. Smith was staying at her mother's home. Stokes came by and they went for a walk up the hill implicitly to get something that a lady was making for him. However, he forced her to have intercourse with him and then went to the high school and gave her a letter that stated he was going to kill her that night. ROA 1120-21. She said they walked away and that Stokes

declared that he was looking for guns that he left in a field. Unable to find the guns, Stokes pulled out an extension cord with knots on it and put the cord around her neck and she passed out. When she awoke, she was bleeding and fled to the emergency room. ROA 1125. She stated that she was in the hospital for 3 to 4 weeks. ROA 1125. She stated that this included being in the regular part of the hospital for 8 days and then being placed in the Rose Center, a place for people with mental and emotional problems for 11 to 12 days to deal with returning to Branchville. ROA 1126. Smith testified that as a result of this assault on March 31, 1991, Stokes received a ten year sentence. Id.

Smith testified that while being locked up he wrote her a series of threatening letters towards her or anyone who may attempt to aid her. State Exhibit 2, 3, 4, 5, 6, 7, 8. ROA 1127- 1138. She denied that she had ever done anything to cause him to stab her or attempt to strangle her. ROA 1138.

On cross-examination, defense counsel Simms had her confirm that Stokes had no direct contact with her after he got out of prison and had not come around or called her in 1998. She stated that it had been a couple of years since Stokes had written her. ROA 1139-1140. She asserted that Stokes had told her when they were having problems that he was on drugs and jealous, and possessive of her. ROA 1140 - 41. She confirmed that in a number of the letters Stokes wrote that he was asking to be able to talk and write him and that he was trying to get his head straight. Id.

On re-direct examination, she stated that she had to go to Branchville Police Department and the Parole Department to get the letters stopped. ROA 1141.⁷

⁷ The State also put into evidence various prison violations. In particular, the state presented a chart [State Exhibit 9] which included the following:

July 1, 1998 - fighting without a weapon

January 4, 1992 - refusing or failing to obey promptly or properly a direct order.

January 22, 1992 - out of place, lying to employees.

ANALYSIS

This Court concludes as a matter of law that Thomas Sims's prior prosecution of Stokes does not create an actual conflict of interest and/or require a new trial. First, this Court finds as a fact based upon credible evidence presented at the hearing that counsel Sims and counsel Johnson had discussions with the Applicant about his right to have new counsel other than Sims because of the

January 26, 1992 - out of place.

February 26, 1992 - exciting or creating a disturbance, refusing or failing to obey promptly and properly a direct order.

April 11, 1992 - out of place.

July 12, 1992 - possession of a weapon.

July 29, 1992 - fighting without a weapon.

December 3, 1993 - gambling.

July 28, 1993 - lying to employees.

ROA 1142-43.

The state called Roy Stevens, a former criminal investigator at the South Carolina Department of Corrections who testified about the incident with Jackie Williams which resulted in the February 11, 1993 conviction for assault and battery of a high and aggravated nature. ROA 1144. He stated that Stokes and Jackie Williams were inmates at Allendale Correctional Institution. He described and presented photographic evidence of Jackie Williams slashed face from a box cutter used by Stokes in a restroom fight. ROA 1145 - 46. State Exhibits 10, 11, 12, 13. The photos revealed sutures and a number of cuts on Williams face. ROA 1147-49. There were 10 sutures. 1149-1150.

He stated that he was not aware of any other fights between Williams and Stokes. ROA 1151.

The state also presented testimony concerning the Orangeburg- Calhoun Regional detention Center. Evidence was presented from Keith Simmons, a former correctional officer that on July 27, 1999, after 5 PM, a fight broke out between Stokes and another inmate Shawn Windburn, a houseman with small privileges. When food was being delivered to Stokes, they had words and Stokes started hitting on Windburn. ROA 1278-79. He described seeing Stokes hitting Windburn in the head numerous times. ROA 1279. It required Windburn being sent to the hospital. ROA 1279. He said that Stokes was locked down as a result.

On cross-examination, he described that fights in the jail are not uncommon. However, Simmons stated that he personally placed Stokes in the cell, but that Stokes did not try to hit him nor be aggressive. He stated that the only thing that happened to Stokes was an incident report and that his canteen privileges and no visitations were allowed for five days. ROA 1283, l. 17-25. He stated there was nothing unusual about the punishment. ROA 1283-84.

On re-direct, this incident was described as a major infraction. ROA 1284.

earlier prosecution and Stokes advised them then and since that he desired to have Mr. Sims represent him in the matter. Further, this Court finds credible evidence that Stokes, aware of the prior involvement of Sims in the Smith prosecution wanted to have Sims continue to represent him in this matter.

Testimony of Counsel

Counsel Thomas Sims testified at the hearing that he did recall representing the state in the 1991 Stokes prosecution. PCR 51. He stated that he signed the indictment and handled the prosecution, but did not recall the details at this time. PCR 52. He stated that he subsequently entered private practice after losing his race for Solicitor against Walter Bailey. PCR 52. He stated that he had no further involvement with Audrey Smith after the 1991 prosecution in any civil matter. PCR 53-54. Sims stated that he was appointed by Judge Shuler . He stated that during the qualification hearing, his prosecution trial experience was presented, but he did not specifically state that he had previously prosecuted Stokes at that time. He stated that the question was never asked. PCR 55.

Importantly, Sims stated that he discussed his prior prosecution with Stokes:

...after going through the information we did discuss with Mr. Stokes , my role, who I was, and what my role had been in the previous matter with him. We discussed , me and Attorney Johnson. We did discuss it . He never expressed any desire not to have me as his attorney.

PCR 55. As to whether he could have another lawyer represent him, Sims stated that we talked about it, but could not state under oath that he said to Stokes: "if you want another lawyer you can get one."

PCR 55. However, he testified that the discussion was that he was told that Sims had prosecuted him and sent him to jail and "do you still want me as your lawyer , and he says yes."

Sims opined that it was clear from his discussions that Sammie could have said he didn't want you as his layer and he said he wanted him to continue. PCR 56. In support of this understanding, Sims noted that after the trial and sentencing, after the Smith testimony and death sentence, that Stokes contacted him and told him that his appellate lawyer thought that they were going to win the case and that Stokes stated that he wanted Sims as his lawyer again "because you're top flight...I want you back." PCR 57. In fact, Sims did continue to represent Stokes on the remaining charges. PCR 57.⁸

Sims was firm in his recollection that Stokes never indicated any desire to have him removed as his layer in the case. PCR 58.

Counsel Sims stated that he was aware that the prosecution was providing him information concerning the statutory aggravating circumstances. PCR 58-59. He stated that he was aware that they planned to use letters that he had written his girlfriend and Stokes prior convictions. PCR 59. Sims stated that they talked about the matters in depth. Sims stated that he would look at the issue from both sides and try to develop a defense. He stated that he anticipated that both the conviction and that Audrey Smith would testify in the penalty phase. PCR 59-60. He stated that he reviewed these matters with Stokes. PCR 60. As to the Smith incident, Sims stated that he knew it was coming in and that he needed to address it with a showing of remorse. PCR 60.

Counsel Sims stated that he cross-examined Smith in the penalty phase. PCR 60. He denied that the fact that he had previously prosecuted Stokes for the same incident affected the manner that he handled the testimony. He stated that if he thought that he could not have represented Stokes to

⁸ Counsel Sims recollection of Mr. Jeffrey Bloom's role and advice was different that Mr. Bloom's. Particularly, he recalled contacting Mr. Bloom to assist, but that he was involved in a major trial in Aiken and would not be able to assist. PCR 57. Sims had no recollection of any discussion with Bloom concerning the conflict of interest issue. PCR 58.

the best of his ability that he would not have been in the case. PCR 61. He declared that there was nothing that he learned in the earlier prosecution that inhibited his defense. PCR 61.

Counsel did not recall whether they made any formal motion about the earlier prosecution in the 1999 trial, but thinks it was more fully developed in the record in the second case. Sims asserted that Virgin Johnson, his co-counsel, never expressed any concern about Sims continuing in the case. PCR 61.

On cross-examination, Sims stated that he researched the admissibility of prior convictions prior to trial. PCR 68-69. He noted that other issues they researched concerned kidnapping, criminal sexual conduct and mitigation. PCR 71. He noted that he looked at *State v. Lyle* and Rules 404(b), 608 and 609. PCR 72. Counsel Sims stated that he attempted to present an argument in an attempt to keep out the prior convictions in the penalty phase, trying to rely upon these rules. PCR 74-80. Counsel stated that he was trying to keep out the evidence of the prior convictions. PCR 80.

Counsel Sims stated that he made sure that Stokes knew that he was the person who prosecuted him and had sent him to jail previously. PCR 83. He stated that they talked about the indictment that he had signed also. PCR 83. However, he stated that he could not state that he asked him if he still wanted him on the case. PCR 83-84.

Counsel Sims again confirmed that he had no recollection of any discussion with Jeff Bloom concerning a conflict of interest. PCR 84. However, counsel Sims thought that there was a discussion with a judge at some time concerning the prior prosecution. PCR 85.

Counsel Sims, on redirect, confirmed that he anticipated that Audrey Smith would testify in the penalty phase. PCR 87. Sims further confirmed that this concern was raised with the trial court

at the October 14 hearing because Sims's name appeared on the indictment. PCR 87, ROA 1636.⁹ It was agreed his name would be removed from any document being presented to the jury. PCR 87. See also, ROA 1085. Counsel Sims stated that he wanted to be sure that there were no slips ups in trial court concerning his name on the indictment. PCR 88.

Counsel Sims clarified that Stokes knew that he had been the one to prosecute him and his practice was to state that did he have any problems with that . Further, he recalled that after the trial Stokes wanted Sims to represent him again. Sims felt that Stokes knew that if he had any problem, he only had to speak up and let them know. PCR 88-90. He stated that Mr. Johnson was present during the discussions. PCR 89. Sims stated he knew that the state intended to introduce prior bad act evidence, that this information was included in his evidence in aggravation and that the state would try to introduce it. PCR . 89-90. Counsel stated that he expected the material to be introduced. PCR 93-94, 98. He re-confirmed that he anticipated the 1991 conviction evidence to be introduced prior to its introduction. PCR 98.

Co-counsel Virgin Johnson testified concerning his representation of Stokes in 1999. He stated that he was initially first chair, but when Mr. Sims was appointed, he became second chair. PCR 101. Johnson stated that at some point during the preparation he learned that Sims had prosecuted Stokes previously. Johnson stated that recalled Sims discussing the prior prosecution with Sammie at the beginning of his representation. He recalled Sims telling Stokes that he put him in jail and that Sammie recalled that Sims had been the prosecutor. PCR 102. Johnson stated that they went through questions of do you have a problem with me representing you, do you think - -

⁹It is therefore evident to the State and Judge, as well as Sims about the potential introduction of the Audrey Smith evidence on October 14.

you know do you want somebody else and he [Stokes] said no. PCR 102, I. 8-13. Johnson confirmed that Stokes never requested other counsel be appointed throughout the trial. To the contrary, he asserted that their relationship was good throughout both trials. He also recalled after the conviction while the matter was on appeal, Stokes expressed a desire to have Sims represent him. PCR 102.

Johnson recalled Audrey Smith testifying at the trial concerning the prior assaults. Johnson recalled the fact that Stokes was told prior to the trial that the evidence of the prior conviction could possibly be presented. PCR 103. Johnson stated that Stokes did not request that Sims be removed. Further, Johnson never saw Sims hesitate to act on Stokes behalf at any time. PCR 104. He stated that Sims did his very best. The prior prosecution did not have any effect. PCR 104.

Johnson stated that in the discussions, we discussed the fact that it could be prejudice related to Audrey Smith's testimony. PCR 105. ¹⁰

I. No Per Se Conflict of Interest.

This Court concludes, independent of the apparent waiver of the conflict of interests, there is no *per se* conflict based upon the prior prosecution involving a different crime. In *State v. Childers*, 373 S.C. 367, 645 S.E.2d 233, 235 (S.C. 2007), the Supreme Court of South Carolina

¹⁰In the PCR hearing, the Applicant called Richland County attorney Jeff Bloom to testify. Mr. Bloom described being asked to assist in the case preparation concerning jury matters. PCR 41-43. However, unlike Sims testimony, Mr. Bloom suggested that he recalled a discussion about a potential conflict of interest which Bloom was concerned about based upon the prior prosecution. PCR 43. Bloom stated that he tried to emphasize this to Mr. Sims who Bloom contended did not fully understand why it would be a problem. Bloom contended that he told Sims that at a minimum he must request a hearing before a judge on the issue in an ex parte setting and allow Stokes to express his desires to the court. PCR 44. Bloom stated that in his next telephone contact with Sims that he learned that Sims had not followed through with Bloom's suggestions. PCR 46. He stated that because of this he had to sever his professional relationship with him. PCR 46.

As stated above, counsel Sims did not recall any discussion with Bloom concerning any potential conflict of interest issue. This Court has determined that Mr. Sims testimony is credible.

affirmed the state's lower appellate court on the conflict issue concluding that defense counsel prior prosecution of the defendant did not require removal as a conflict of interest. The Court held:

Childers asked the trial judge to relieve defense counsel based on defense counsel's prior prosecution of him and his perceived lack of defense counsel's trial preparation. Defense counsel told the trial judge he was ready and prepared to go to trial and he had no independent recollection of prosecuting Childers. Childers failed to show his counsel had any divided loyalties or an actual conflict of interest. *See Gregory*, 364 S.C. [150] at 152, 612 S.E.2d [449] at 450 [2005] ("An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's."); *See also People v. Abar*, 290 A.D.2d 592, 736 N.Y.S.2d 155 (N.Y.App.Div. 2002)(finding there was no conflict of interest where defendant's public defender had previously prosecuted him on unrelated charges when she was employed as an assistant district attorney); *State v. Cobbs*, 221 Wis.2d 101, 584 N.W.2d 709 (1998)(concluding there was no actual or serious potential conflict where defendant's counsel had previously prosecuted defendant while working in the district attorney's office). The Court of Appeals correctly found the trial judge did not abuse his discretion by denying Childers' request to relieve counsel.

State v. Childers, 645 S.E.2d 233, 235 (S.C. 2007).

Given there was no evidence of conflict, or even serious potential conflict under the particular facts of this case, there could be no Sixth or Fourteenth Amendment error. *See Mickens v. Taylor*, 535 U.S. 162, 171(2002)("we think 'an actual conflict of interest' meant precisely a conflict that affected counsel's performance-as opposed to a mere theoretical division of loyalties")(emphasis in original). The record clearly shows counsel did not claim an actual conflict, or move to be relieved based on his perception of a conflict. *Compare Holloway v. Arkansas*, 435 U.S. 475 (1978)(trial counsel advised the court of an actual conflict of interest and requested different counsel be appointed for co-defendants). Moreover, the record shows Petitioner relied upon counsel, and expressed no complaint of counsel, prior to the trial. In short, neither case law nor fact support Petitioner's position.

This Court distinguishes any reliance upon *United States v. Gonzalez-Lopez*, 126 S.Ct. 2557 (2006), provides that Petitioner was not required to show prejudice where his right to choice of counsel was violated. This Court does not disagree with that reading of the case; however, this is not a choice of counsel matter, and *Gonzalez-Lopez* is neither relevant or dispositive to the issue here. Stokes was represented by an appointed counsel and did not request the services of another whom he could retain or who would waive compensation. The particular right of counsel of choice evaluated in *Gonzalez-Lopez* was not invoked in the instant case involving court appointment. “[T]he right to counsel of choice does not extend to defendants who require counsel to be appointed for them.” *Gonzalez-Lopez*, 126 S.Ct. at 2561. Clearly, the resolution of the issue in *Gonzalez-Lopez* is not applicable to the present case with its differing factual underpinning. In fact, in regard to the factual basis posed by Petitioner, this Court finds that two of Petitioner’s critical factual assertions lack support in the record.

The record is void of any attempt by the Applicant to have counsel Sims removed with the uncontradicted record that Stokes was aware of the prior prosecution by Sims. The record does not show Petitioner was “vehemently” opposed to counsel’s representation because of Sims’ former role as a prosecutor, nor does the record show an actual conflict of interest. The state supreme court in Childers adopted the logic of other jurisdictions that hold such a situation does not show “competing interests” or “divided loyalties” that could form a basis for finding an actual conflict in representation. *Childers*, 645 S.E.2d at 235. In support of its decision, the state court cited with favor *People v. Abar*, 290 A.D.2d 592 (N.Y. App. Div. 2002), *affirmed* 786 N.E.2d 1255 (N.Y. 2003), and *State v. Cobbs*, 584 N.W.2d 709 (Wis.App.1998), *review denied* 222 589 N.W.2d 629 (Wis. 1998), both of which fully support the state court’s findings. The court in *Abar* noted that

“[a]lthough the transfer of a defense attorney to a District Attorney’s office might well create a conflict of interest constituting a disqualification of the District Attorney’s staff from prosecuting the defendant previously represented by the former defense attorney” the converse situation does not provide the same opportunity for “abuse of confidence” or the appearance of conflict. 290 A.D.2d at 593. Similarly, in *Cobbs*, a former prosecutor had also been appointed defense counsel. While a prosecutor, counsel had represented the state against Cobbs. The court found that the former representation had absolutely nothing to do with the present representation, and that counsel had broken ties with the office more than five years before the instant charge. The court concluded there was no conflict of interest. Such sound logic is persuasive in evaluating when confidences are placed in counsel, and when abuse may occur.

In this case, with at least a six (6) year lapse between Sims being a prosecutor, any divided loyalties argument must fail. Additionally, there was no connection between the former offense and the instant case. The only matter was the existence of the conviction - a proven fact - as evidence in aggravation and the fact that Audrey Smith testified in the penalty phase about the circumstances of the conviction. There is no showing that the prior prosecution adversely affected his representation of Stokes based upon this state witness (Audrey Smith) - a person whom he never represented. There were no divided loyalties in the matter.

The simple fact of the former prosecution did not provide proof of a conflict of interest. Given the lack of an actual conflict, the Petitioner otherwise must show adverse effect to be entitled to relief. *Id.* This precisely follows the United States Supreme Court’s well-defined precedent:

...the possibility of conflict is insufficient to impugn a criminal conviction. In order to demonstrate a violation of his Sixth

Amendment rights, a defendant must establish that an actual conflict of interest adversely affected his lawyer's performance.

Cuyler v. Sullivan, 446 U.S. 335, 350 (1980). See also, *State v. Wareham*, 143 P. 3d 302 (Utah App. 2006) (attorney's prosecution of individual present no general bar to attorney's subsequent representation in a criminal defense capacity); *Hendricks v. State*, 128 P.3d 1017 (Mont. 2006) (per se ineffective assistance of counsel as a conflict of interest does not result when appointed counsel previously prosecuted defendant on another matter).

This Court alternately finds that there was a knowing waiver of a conflict of interest. SCACR, Rule 407, Rule 1.7(b)(1-2), wherein it essentially states that a lawyer should not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client unless:

- 1.) the lawyer reasonably believes the representation will not be adversely affected; and
- 2.) the client consents after consultation.

However, the comments to Rule 1.7 recognize that a client may consent to representation notwithstanding the conflict. However, it notes: "when a disinterested lawyer would conclude that the client should not agree to representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent." Further, the comments noted that "there may be circumstances where it is impossible to make the disclosure necessary to obtain consent."

In *United Sewerage Agency v. Jelco Inc.*, 646 F.2d 1339 (9th Cir. 1991), the court set out factors which may be used in

- 1.) the nature of the litigation;
- 2.) the type of information the lawyer may have access;
- 3.) whether the client is in a position to protect his interests or know whether he will be vulnerable to disadvantage as a result of the representation; and
- 4.) the issues in dispute.

See generally, Jarvis and Tellum, When Waiver Should Not Be Good Enough: An Analysis of Current Client Conflict, 33 Williamette L. Rev. 14t (1997).

In A.B.A. Formal Ethics Opinion, 92-367 (Oct. 16, 1992), the committee opined that cross-examination of an adverse witness who is a client creates a disqualifying conflict, in the absence of appropriate client consent, depending upon the nature and degree of the conflict. As stated above, in most cases when a defendant is faced with a situation in which his attorney has an actual or potential conflict of interest, it is possible for him to waive his right to conflict-free counsel in order to retain the attorney of his choice. U.S. v. Schwarz, supra., citing U.S. v. Kliti, 156 F.3d 150, at 153 (2d Cir. 1998) and U.S. v. Blau, 159 F.3d 68 at 7 (2d Cir. 1998). Where an actual or potential conflict has been validly waived, the waiver cannot be defeated simply because the conflict subsequently affects counsel's performance; such a result would eviscerate the very purpose of obtaining the waiver.

As stated above, in most cases when a defendant is faced with a situation in which his attorney has an actual or potential conflict of interest, it is possible for him to waive his right to conflict-free counsel in order to retain the attorney of his choice. U.S. v. Schwarz, supra., citing U.S. v. Kliti, 156 F.3d 150, at 153 (2d Cir. 1998) and U.S. v. Blau, 159 F.3d 68 at 7 (2d Cir. 1998). Where an actual or potential conflict has been validly waived, the waiver cannot be defeated simply because

the conflict subsequently affects counsel's performance; such a result would eviscerate the very purpose of obtaining the waiver.

Not all conflicts may be waived, however. An actual or potential conflict cannot be waived if, in the circumstances of the case, the conflict is of such a serious nature that no rational defendant would knowingly and intelligently desire that attorney's representation. See Kliti, 156 F.3d at 153; Levy, 25 F.3d at 153. Under such circumstances, the attorney must be disqualified, regardless of whether the defendant is willing to waive his right to conflict-free counsel. See Levy, 25 F.3d at 153.

In Schwarz, the Second Circuit described the distinction between waivable and unwaivable conflicts citing United States v. Fulton, 5 F.3d 605 (2d Cir.1993). Fulton involved the representation of a defendant by an attorney who had been accused of participating in criminal activity related to the crimes for which the defendant was on trial. See *id.* at 607-10. The district court had advised the defendant of the conflict and had obtained a waiver. See *id.* at 608. On appeal, the defendant argued that the waiver was ineffective. See *id.* at 612.

The Second Circuit agreed and noted that, "[i]n such cases, we must assume that counsel's fear of, and desire to avoid, criminal charges, or even the reputational damage from an unfounded but ostensibly plausible accusation, will affect virtually every aspect of his or her representation of the defendant." *Id.* at 613. The Court distinguished between conflicts that implicate the attorney's self-interest and those that implicate the attorney's ethical obligation to someone other than the defendant, noting that the former are "of a different character" than the latter. *Id.* The Court concluded that because the conflict at issue there resulted in counsel's "[a]dvice as well as advocacy [being] permeated by counsel's self interest, and [because] no rational defendant would knowingly

and intelligently be represented by a lawyer whose conduct was guided largely by a desire for self-preservation," the conflict was not waivable. *Id.* (Emphasis added).

Although the particular conflict at issue in Fulton belonged to that narrow category of conflicts that courts have deemed to be *per se* violations of the Sixth Amendment right to counsel, see *id.* at 611-12; Solina v. United States, 709 F.2d 160, 168-69 (2d Cir.1983), Fulton's rationale with respect to when an *attorney's self-interest* renders a conflict unwaivable is equally applicable to the unusual facts of Schwarz. The lawyers's representation of Schwarz was in conflict not only with his ethical obligation to the PBA as his client, but also with his own substantial self-interest in the two-year, \$10 million retainer agreement his newly formed firm had entered into with the PBA. Like the conflict in Fulton, Worth's conflict "so permeate[ed] the defense that no meaningful waiver could be obtained." Fulton, 5 F.3d at 613. The Court held that: "[w]e must assume that, under such circumstances, the distinct possibility existed that, at each point the conflict was felt, Worth would sacrifice Schwarz's interests for those of the PBA. Indeed, we think it likely that these very concerns motivated the government to argue to the district court at the *Curcio* hearing that the conflict created by the PBA retainer could not be waived. Thus, we conclude that the conflict between Worth's representation of Schwarz, on the one hand, and his ethical obligation to the PBA as his client and his self interest in the PBA retainer, on the other, was so severe that no rational defendant in Schwarz's position would have knowingly and intelligently desired Worth's representation. Cf. *id.* ("[N]o rational defendant would knowingly and intelligently be represented by a lawyer whose conduct was guided largely by a desire for self-preservation."); cf. also United States v. Arrington, 867 F.2d 122, 129 (2d Cir.1989) (upholding district court's disqualification of attorney "saddled" with serious conflict where allowing waiver would have required defendant to "forego[] the

presentation of ... evidence that would [have been] of great assistance")." The Schwarz court found that the conflict was unwaivable.

Schwarz is distinguishable from the present case. In Schwarz, the government charged the defendant, a police officer, with assaulting a victim in a bathroom at a police precinct. Id. at 79-80. There, the law firm of defendant's trial counsel had a \$10,000,000 retainer agreement with the police officers' union, the Patrolman's Benevolent Association (the "PBA"). Id. at 91. During the criminal proceedings, the victim filed a civil lawsuit against the PBA alleging that the PBA through its agents and its president conspired to injure him and then covered it up. Id. The Second Circuit found an actual conflict existed between trial counsel's personal interest and professional obligation to the PBA and his representation of the defendant. Id. at 91-92. In particular, the defendant's interest in making a defense that would implicate another police officer in the assault--a strong, obvious interest--diverged with trial counsel's interest in refraining from any conduct that could harm the PBA, for example--making an argument that supported the conspiracy theory in the victim's civil lawsuit. Id. at 91-92.

In Schwarz, trial counsel had a personal interest and professional obligation to another client that differed from his criminal client. Also, trial counsel refrained from making a particular defense in the criminal case because it ran counter to another client's interest.

In the instant case, Sims's earlier prosecution arose from an independent action and was unrelated to the present prosecution of Stokes. It was already a matter of record concerning the earlier conviction for the Audrey Smith incident. As such, Schwarz does not support the defendant's position. See U.S. v. Peterson, 233 F.Supp. 2d 45 (E.D.N.Y. 2002).

In clarifying the narrow approach of the unwaivable conflict issue and application of Schwarz, the Second Circuit recently stated:

As we made plain in Fulton, however, *lesser conflicts*, such as an attorney's representation of two or more defendants *or his prior representation of a trial witness, are generally waivable*. See United States v. Fulton, 5 F.3d at 613. *Although such a conflict might require a defendant to abandon a particular defense or line of questioning, he can be advised as to what he must forgo; he "can then seek the legal advice of independent counsel and make an informed judgment that balances the alteration in the trial strategy against the perceived effect of having to get a new and perhaps less effective defense counsel."* United States v. Fulton, 5 F.3d at 613. In the multiple representation situation, the defendant "can be advised by independent counsel of the dangers" of such matters as "one defendant's cooperating with the government," and make a knowing and intelligent decision that he wishes to continue to be represented by his attorney despite the attorney's representation of another accused. *Id.* Where the defendant can rationally opt to retain counsel of his choice despite a conflict, the court conducts a Curcio hearing to determine whether the defendant knowingly and intelligently waives his right to conflict-free representation. See, e.g., United States v. Leslie, 103 F.3d 1093, 1098 (2d Cir.), cert. denied, 520 U.S. 1220, 117 S.Ct. 1713, 137 L.Ed.2d 837 (1997); United States v. Levy, 25 F.3d at 153.

U.S. v. Perez, 325 F.3d 115 (2d Cir. April 4, 2003) (attorney's status as potential witness at defendant's trial was conflict of interest that was waivable).

This case is similar distinguishable from cases where conflicts have been determined when a lawyer jointly represents a witness where an immunity agreement had been made to testify against his client. See Hoffman v. Leeke, *supra*. In Perillo v Johnson, 79 F.3d 441 (5th Cir. 1996), an attorney's concurrent representation of capital murder defendant and witness who had been granted transactional immunity in murder of which defendant had been convicted necessitated evidentiary hearing to determine if conflict of interest entitled defendant to habeas corpus relief. But see, Cowell v Duckworth, 512 F Supp 371 (ND Ind 1981) where in action brought by state prisoner seeking writ of habeas corpus, writ would be granted on ground of ineffectiveness of counsel retained by

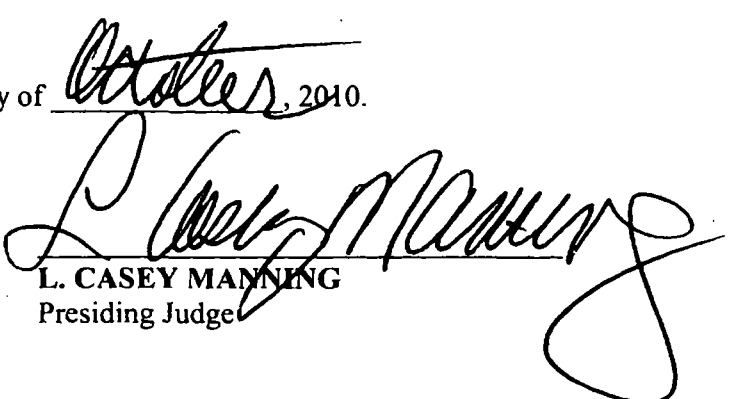
prisoner's wife to represent him where record established that defense counsel had actual conflict of interest between representation of defendant and two prosecution witnesses.

Here, Stokes was aware that Sims had prosecuted him in 1990-1991. He was aware - based upon the credible testimony of Virgin Johnson that he could have somebody else represent him and he stated no. This Court finds that the Applicant waived his right to have counsel other than Thomas Sims represent him. The claims otherwise must be dismissed. ¹¹

CONCLUSION

For all the foregoing reasons, the entire Application for Post-Conviction Relief must be denied and dismissed. This Court finds that the Applicant has failed in his burden of proof in this proceeding. Therefore, this Court is constrained to deny the application for post-conviction relief in its entirety.

AND IT IS SO ORDERED this 21 day of October, 2010.


L. CASEY MANNING
Presiding Judge

¹¹ This Court again notes that the Applicant - subsequent to the hearing and the closing of the evidentiary record - proffered an affidavit from Sammie Stokes which attempts to contradict the testimony of both Sims and Johnson. This was not newly discovered evidence. Stokes was present at the hearing, heard the testimony of counsel and could have testified before the evidentiary record was closed. The Court set aside the term solely for this hearing and the hearing was completed with the record not being left open for further evidentiary matters. The Court concludes the belated presentation of the affidavit should be struck as the record was closed. At the hearing the Applicant was presented with the opportunity to testify and be subject to cross-examination and impeachment before and after counsel testified before the evidentiary record closed. He waived his opportunity to do so at that time by his inaction with the timely opportunity to present evidence. The Applicant failed in his burden of proof at the time of the hearing by seeking to contradict the testimony of counsel Sims and Johnson.

Orangboug County South Carolina

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
robert@lominacklaw.com

October 1, 2010

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

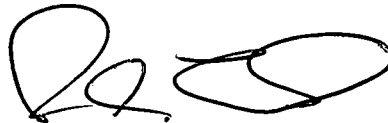
Re: *Sammie Louis Stokes v. South Carolina*

Dear Mr. Shearouse,

I am writing to report on the status of the above-referenced capital post-conviction relief case. An evidentiary hearing was held in Orangeburg on August 5, 2009 and post hearing briefs have been filed with the court. This Court issued an order requiring that the circuit judge rule on the post-conviction claims on or before October 11, 2010 and

If you have questions or require any further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

RECEIVED

OCT 04 2010

S.C. SUPREME COURT

cc: Donald J. Zelenka
Keir M. Weyble

The Supreme Court of South Carolina

The State,

Respondent

v.

Sammie Louis Stokes,

Appellant.

ORDER

Pursuant to this Court's order dated June 17, 2010, a final order is to be issued in the Post-Conviction Relief action in the above entitled matter by September 1, 2010. The Honorable L. Casey Manning is requesting an extension of forty (40) days to issue the final order in this matter. The request for an extension is granted and a final order shall be issued on or before October 11, 2010.

IT IS SO ORDERED.



FOR THE COURT C.J.

Columbia, South Carolina

August 30, 2010

cc: Keir M. Weyble, Esquire
Robert Edward Lominack, Esquire
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Tracey C. Green
The Honorable L. Casey Manning
Rosalyn W. Frierson, Director, Court Administration

Hopkins, Debbie

From: Shealy, Brenda
Sent: Monday, August 30, 2010 12:40 PM
To: Hopkins, Debbie
Subject: Judge Manning

Deb,

Judge Manning called and he needs a 40 day extension in the State v. Stokes and in State v. Shuler. Dan said this was something you had on these death penalty cases. Can you take care of these extensions, please.

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
robert@lominacklaw.com

July 31, 2010

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

Re: *Sammie Louis Stokes v. South Carolina*

Dear Mr. Shearouse,

I am writing to report on the status of the above-referenced capital post-conviction relief case. An evidentiary hearing was held in Orangeburg on August 5, 2009 and post hearing briefs have been filed with the court. This Court issued an order requiring that the circuit judge rule on the post-conviction claims on or before September 1, 2010.

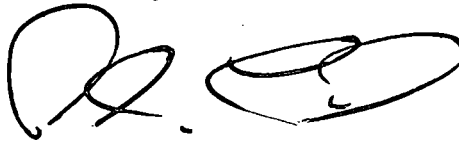
If you have questions or require any further information, please do not hesitate to contact me.

RECEIVED

AUG 08 2010

S.C. SUPREME COURT

Sincerely,



Robert Lominack

cc: Donald J. Zelenka
Keir M. Weyble

The Supreme Court of South Carolina

The State,

Respondent,

v.

Sammie Louis Stokes,

Appellant.

The Honorable Paul M. Burch
Orangeburg County
Trial Court Case No. 1998-GS-38-1245
1998-GS-38-1246
1998-GS-38-1247
1998-GS-38-1248

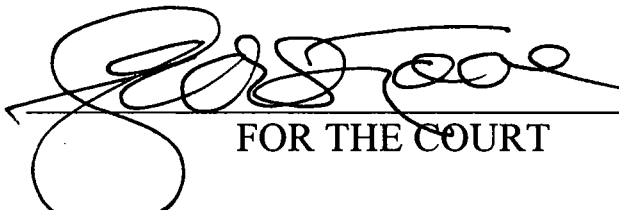
ORDER

By order dated November 14, 2001, this Court issued an order staying the execution of appellant to allow him to proceed in post-conviction relief (PCR). The PCR action was filed as Stokes v. State, 2001-CP-38-01240. Apparently, the evidentiary hearing has been held, but no final order has been issued.

A final order shall be issued in the PCR case by September 1, 2010. If the order cannot be issued within this time period, the PCR judge

shall request a continuance from this Court.

IT IS SO ORDERED.



C.J.
FOR THE COURT

Columbia, South Carolina

June 17, 2010

cc: Keir M. Weyble, Esquire
Robert Edward Lominack, Esquire
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Tracey C. Green
The Honorable L. Casey Manning

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
robert@lominacklaw.com

June 1, 2010

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

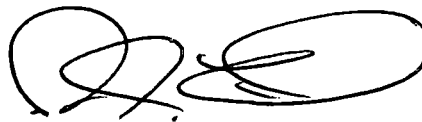
Re: *Sammie Louis Stokes v. South Carolina*

Dear Mr. Shearouse,

I am writing to report on the status of the above-referenced capital post-conviction relief case. An evidentiary hearing was held in Orangeburg on August 5, 2009 and post hearing briefs have been filed with the court.

If you have questions or require any further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

RECEIVED

JUN 02 2010

S.C. SUPREME COURT

cc: Donald J. Zelenka
Keir M. Weyble

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
rlominack@gmail.com

April 2, 2010

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APR 06 2010

S.C. SUPREME COURT

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

Re: *Sammie Louis Stokes v. South Carolina*

Dear Mr. Shearouse,

I am writing to report on the status of the above-referenced capital post-conviction relief case. An evidentiary hearing was held in Orangeburg on August 5, 2009 and post hearing briefs have been filed with the court.

If you have questions or require any further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

cc: Donald J. Zelenka
Keir M. Weyble

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
rlominack@gmail.com

January 29, 2010

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

Re: *Sammie Louis Stokes v. South Carolina*

Dear Mr. Shearouse,

I am writing to report on the status of the above-referenced capital post-conviction relief case. An evidentiary hearing was held in Orangeburg on August 5, 2009. The transcript has been prepared and the parties are currently preparing post-hearing briefs, which are due to be filed in February.

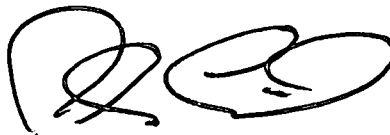
If you have questions or require any further information, please do not hesitate to contact me.

Sincerely,

RECEIVED

FEB 01 2010

S.C. SUPREME COURT



Robert Lominack

cc: Donald J. Zelenka
Keir M. Weyble

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
robertlominack@mac.com

December 4, 2009

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

Re: *Sammie Louis Stokes v. South Carolina*

Dear Mr. Shearouse,

I am writing to report on the status of the above-referenced capital post-conviction relief case. An evidentiary hearing was held in Orangeburg on August 5, 2009. The transcript has been prepared and the parties are currently preparing post-hearing briefs.

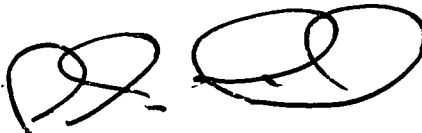
If you have questions or require any further information, please do not hesitate to contact me.

RECEIVED

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S.C. SUPREME COURT

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'R' followed by a large, loopy flourish.

Robert Lominack

cc: Donald J. Zelenka
Keir M. Weyble

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

Post Office Box 5508 • Columbia, SC 29250

Tel. 803.753.7057 • Fax 803.937.1707 • robertlominack@mac.com

September 30, 2009

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

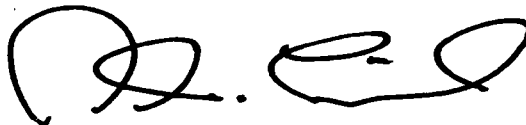
Re: *Sammie Louis Stokes v. South Carolina*

Dear Mr. Shearouse,

I am writing to report on the status of the above-referenced capital post-conviction relief case. An evidentiary hearing was held in Orangeburg on August 5, 2009. Counsel have ordered the transcript of the hearing. Once the transcript has been completed, counsel will submit post-hearing briefing as requested by Judge Manning.

If you have questions or require any further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

RECEIVED

OCT 02 2009

S.C. SUPREME COURT

cc: Donald J. Zelenka
Keir M. Weyble

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

Post Office Box 5508 • Columbia, SC 29250

RECEIVED

Tel. 803.753.7057 • Fax 803.937.1707 • robertlominack@mac.com

MAY 18 2009

S.C. SUPREME COURT

May 11, 2009

File

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

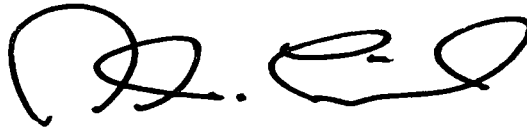
Re: *Sammie Louis Stokes v. South Carolina*

Dear Mr. Shearouse,

Pursuant to your May 4, 2009 letter and *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), I am writing to report on the status of the above-referenced capital post-conviction relief case. Mr. Stokes' amended application for post-conviction relief is pending before the Orangeburg County Court of Common Pleas. A previously-scheduled evidentiary hearing on Mr. Stokes' claims for relief had to be continued to facilitate a mental retardation evaluation by the Department of Disabilities and Special Needs. That assessment is now complete and, based on recent communications with opposing counsel, we expect that a status conference will be convened soon for the purpose of rescheduling the evidentiary hearing.

If you have questions or require any further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

cc: Honorable L. Casey Manning
Donald J. Zelenka
Keir M. Weyble



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

May 4, 2009

Keir M. Weyble, Esquire
Blume Weyble & Norris, LLC
P.O. Box 11744
Columbia, SC 29211

Robert E. Lominack, Esquire
Law Offices of Robert E. Lominack, P.C.
P.O. Box 5508
Columbia, SC 29250

Re: Stokes, Sammie Louis v. State

Dear Counsel:

As you know, the execution in this matter has been stayed pursuant to In re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E2d. 140 (1996), to allow the defendant to pursue post-conviction relief, and you represent him in that PCR action which is filed as 2001-CP-38-1240. Under In re Stays of Execution in Capital Cases, the defendant must serve and file "a letter setting forth the status of the post-conviction relief matter every sixty (60) days. . . . If the Court determines this letter fails to show that the defendant is diligently pursuing the post-conviction relief action, the Court may issue an order dissolving the stay or setting forth additional requirements the defendant must meet to maintain the stay."

In the present case, you have not filed the required status letter. Therefore, it will be necessary for you to serve and file the required status letter within ten (10) days of the date of this letter. If you fail to do so or fail to serve and file a status letter every sixty (60) days thereafter, an execution notice may be issued.

Keir M. Weyble, Esquire
Robert E. Lominack, Esquire
Page Two
May 4, 2009

Very truly yours,

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

CLERK

DES/dmh

cc: Assistant Deputy Attorney General Donald J. Zelenka
The Honorable L. Casey Manning



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

March 12, 2002

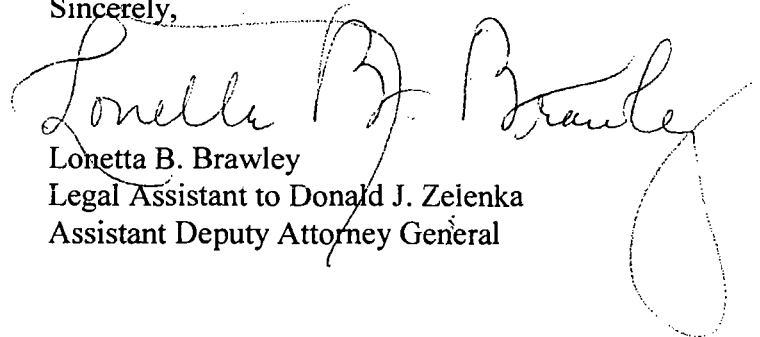
Lisa W. Mizell
Clerk of Court, Orangeburg County
Post Office Drawer 9000
Orangeburg, South Carolina 29116

Re: Sammie Louis Stokes v. State of South Carolina
01-CP-38-1240

Dear Ms. Lizell:

Enclosed please find the ***Order on Appointment of Post-Conviction Relief Counsel and Scheduling Order*** in the above-referenced matter for filing in your office. By copy of this letter I am serving all necessary parties.

Sincerely,



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

lbb
Enclosure

cc: Keir M. Weyble, Esquire
Robert Edward Lominack, Esquire
Honorable L. Casey Manning
Honorable Daniel E. Shearouse

RECEIVED

MAR 13 2002

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

SAMMIE LOUIS STOKES, #5069)

C/A No. 01-CP-38-1240

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)

Respondent.)

ORDER ON APPOINTMENT
OF POST-CONVICTION RELIEF COUNSEL
AND SCHEDULING ORDER

This matter comes before this Court pursuant to the November 14, 2001 Order of the Supreme Court of South Carolina staying the order of execution of Orangeburg County death row inmate Sammie Louis Stokes to allow him to pursue potential state post-conviction relief. The Order assigned this Court with continuing jurisdiction regardless of assignment and with the authority to schedule such hearings as may be necessary. The Order directed this Court to conduct a hearing on Mr. Stokes's desires pursuant to In Re Stays of Execution, 321 S.C.544, 471 S.E.2d 140 (1996). This Court scheduled this hearing on March 5, 2002 after consultation with various parties to resolve this issue and appoint state postconviction relief counsel, if appropriate.

On May 17, 1999, an Orangeburg County Jury indicted Sammie Louis Stokes for murder, kidnapping, first degree criminal sexual conduct, and criminal conspiracy in the death of Connie Lee Snipes. The State sought the death penalty in the case. The Applicant was represented by Thomas R. Sims and Virgin Johnson

There were two pretrial hearings: the first, on January 19, 1999, concerned the qualification of defense counsel, and the second, on October 14, 1999, concerned pretrial motions.

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30 SUPREME COURT

The trial began on October 25, 1999 and ended on October 31, 1999. Judge Paul M. Burch presided at the pretrial hearings and at trial. Following the guilt phase of the trial, the jury found Mr. Stokes guilty of all charges. Following the sentencing phase, Mr. Stokes exercised his statutory right to make a closing argument. The jury found four aggravating circumstances and recommended death, which Judge Burch affirmed. He also sentenced Mr. Stokes to 30 years for first degree criminal sexual conduct, and to five years for conspiracy. Mr. Stokes later pleaded guilty to murdering Mr. Ferguson, for which he received a life sentence.

The Applicant appealed to the South Carolina Supreme Court. On appeal, he was represented by Joseph L. Savitz of the South Carolina Office of Appellate Defense. The Respondents restated the issues as:

- I. The trial judge properly denied the defense request to admit statements redacted from a letter introduced by the State because the statements were unnecessary and irrelevant to a fair and complete determination of the defendant's guilt.
- II. The trial judge properly barred the defendant from arguing religious matters during his statutory closing argument.

The South Carolina Supreme Court denied the appeal in *State v. Stokes*, 345 S.C. 368, 548 S.E.2d 202 (2001) on May 29, 2001. On July 2, 2001, a petition for rehearing was denied..

Prior to the entry of the order on October 17, 2001, appellate counsel for Mr. Stokes filed an application for post-conviction relief in Orangeburg County. In the application, it was alleged that he received "ineffective assistance of counsel" and that it was based upon a "failure to present mitigating evidence."

On March 5, 2002, this Court convened a hearing in Columbia, South Carolina at the Richland County Courthouse pursuant to the Order of the Supreme Court to determine the desires of Sammie Louis Stokes regarding counsel. Mr. Stokes was present at the hearing. The Respondents were represented by Donald J. Zelenka, Assistant Deputy Attorney General of the South Carolina Attorney Generals Office. This Court made inquiry of Mr. Stokes and finds that he desires to have counsel appointed to represent him in the state post-conviction relief action. Present at the hearing, at this Court's request was Keir Weyble and Robert Lominack of the Richland County Bar.

A. Appointment of Qualified Counsel

Section 17-27-160 provides:

If the applicant is indigent and desires representation by counsel, two counsel shall be immediately appointed to represent the petitioner in this action. **At least one of the attorneys appointed to represent the applicant must have previously represented a death-sentenced inmate in state or federal post-conviction relief proceedings or (1) must meet the minimum qualifications set forth in Section 16-3-26(B) and Section 16-3-26(F) and (2) have successfully completed, within the previous two years, not less than twelve hours of South Carolina Bar approved continuing legal education or professional training primarily involving advocacy in the field of capital appellate and/or post-conviction defense.** The Supreme Court may promulgate additional standards for qualifications of counsel in capital post-conviction proceedings. The court may not appoint an attorney as counsel under this section if the attorney represented the applicant at trial or in a direct appeal unless the applicant and the attorney request appointment on the record or the court finds good cause to make the appointment.

395
This Court has considered the qualifications of Mr. Keir Weyble. Mr. Weyble was previously appointed as second counsel in a pending capital PCR matter involving Joseph Gardner. He has also worked extensively in other capital collateral litigation although not as named appointed counsel. He has been a member of the South Carolina Bar since 1996. This Court finds that Mr.

Weyble meets the minimum qualifications of the prior experience pursuant to §17-27-160(B), to qualify as experienced or lead counsel. This Court finds it appropriate to appoint Mr. Weyble as a qualified counsel in this matter.

This Court was also presented with the qualifications of Robert Lominack. Mr. Lominack has worked as third counsel in a number of capital PCR cases with David Bruck. He has been a member of the South Carolina Bar since November 2000. He concedes that he does not meet the minimum qualifications as lead counsel.

Therefore, it is ordered that the following be appointed to represent Mr. Stokes in the potential state post-conviction relief matter:

1. **Keir M. Weyble**
Law Offices of John H. Blume
P O Box 11744
Columbia, SC 29211
(803) 765-1044 Fax: (803) 765-0705

2. **Robert Edward Lominack**
Law Offices of David I. Bruck
1247 Sumter St., Ste. 201
Columbia, SC 29201
(803) 765-1044 Fax: (803) 765-1143

B. Scheduling Order

405
JLL

This Court further reminds newly appointed state post-conviction relief counsel of its obligation, pursuant to In Re Stays, 471 S.E.2d 140 (S.C. 1996), to provide to the Clerk of the South Carolina Supreme Court, with a copy to this Court and opposing counsel, Donald J. Zelenka of the South Carolina Attorney General's Office, a status letter every sixty (60) days to ensure the pending

stay of execution is continued during these proceedings. The Court further establishes the following *projected* schedule consistent with In Re Stays and Section 17-27-160 based on the date of the Court's order of appointment on March 5, 2002. This order is entered with the awareness that an earlier application was filed by counsel other than current appointed counsel:

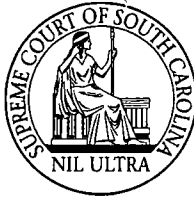
1. May 4, 2002 State PCR Amended Application due to be filed and first status letter due. (60 days after appointment).
2. June 3, 2002 Respondent's Return due to be filed (30 days after PCR).
3. July 3, 2002 Status Hearing to schedule evidentiary hearing within 180 days must be held prior to this date. §17-27-160(C). (within 30 days after return filed). (December 30, 2002).
4. July 3, 2002 Second Status Letter.
5. September 1, 2002 Third Status Letter
6. October 31, 2002 Fourth Status Letter
7. December 30, 2002 Projected 180 day date for Evidentiary Hearing to be Completed. §17-27-160(C).
8. December 30, 2002 Fifth Status Letter.
9. (Each 60 days thereafter until a final order has been entered).

WHEREAS, this Court has conducted the initial hearing of appointment as mandated by the Order of the Supreme Court and appointed the above-named counsel. This Court, consistent with the statutory law, has set forth a projected scheduling order in this matter.

IT IS SO ORDERED this 11th day of March, 2002.

545
[Signature]

[Signature: L. Casey Manning]
Honorable L. Casey Manning
Presiding Judge
Columbia, South Carolina



The Supreme Court of South Carolina

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

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
(803) 734-1080
FAX (803) 734-1499

November 14, 2001

Deputy Chief Attorney Joseph L. Savitz, III
Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

Re: The State v. Stokes, Sammie Louis

Dear Counsel:

Enclosed is the order issued in the above entitled matter.

By copy of this letter and order, we are advising all interested parties of the action by the Court.

Very truly yours,

Daniel E. Shearouse
DS

CLERK

DES/dmh

cc: Assistant Deputy Attorney General Donald J. Zelenka
The Honorable Walter M. Bailey, Jr.
The Honorable Lisa Mizell
The Honorable L. Casey Manning
Motte L. Talley, Esquire

The Supreme Court of South Carolina

The State,

Respondent,

v.

Sammie Louis Stokes,

Petitioner.

ORDER

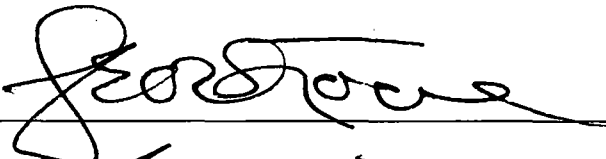
This Court affirmed petitioner's conviction and death sentence on direct appeal in State v. Stokes, 345 S.C. 368, 548 S.E.2d 202 (2001).

Petitioner seeks a stay of execution in order to pursue post-conviction relief (PCR). The State does not oppose a stay of execution.

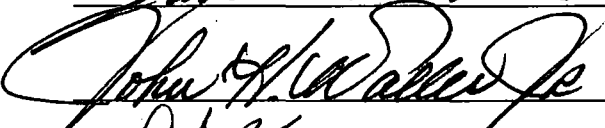
Petitioner's request for a stay of execution is granted. This stay shall remain in effect to the extent provided by this Court in In re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996).

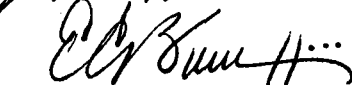
The Honorable L. Casey Manning is hereby assigned to the PCR action that petitioner proposes to file. The judge shall retain jurisdiction over

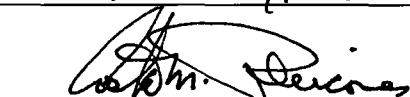
the case regardless of where he may be assigned to hold court, and he may schedule necessary hearings at any time without regard to whether there is a term of court scheduled. The judge shall conduct a hearing on petitioner's desires regarding counsel within 30 days of this order.

 C.J.

 J.

 J.

 J.

 J.

Columbia, South Carolina

November 14, 2001

ORIGINAL

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Judge Paul M. Burch

RECEIVED
OCT 01 2001
S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

SAMMIE LOUIS STOKES,

APPELLANT

PETITION FOR STAY OF EXECUTION

Counsel for Sammie Louis Stokes petitions the Court for a stay of execution to allow Mr. Stokes to pursue post-conviction relief. Counsel had initially intended to seek certiorari from the United States Supreme Court, but upon further reflection and after consultation with other attorneys, has concluded that Mr. Stokes' interest will be best served by proceeding directly to post-conviction relief.

The Court's order captioned Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140, 141 (1996), states:

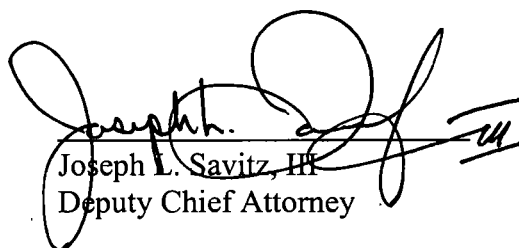
If the defendant desires a stay to pursue state post-conviction relief,

the defendant must... file a motion to stay with this Court, setting forth the issues intended to be raised in the application for post-conviction relief. This Court will assign a circuit judge to the case and issue a stay of execution.

At the very least, Mr. Stokes will allege on post-conviction relief that he did not receive effective assistance of counsel at sentencing because counsel failed to develop and present available evidence in mitigation of punishment.

WHEREFORE, counsel petitions the Court for a stay of execution to allow Sammie Louis Stokes to pursue post-conviction relief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph L. Savitz, III", is written over a horizontal line. To the right of the signature is a small, stylized mark that looks like "u".

Joseph L. Savitz, III
Deputy Chief Attorney

Attorney for Appellant

This 1st day of October, 2001

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Judge Paul M. Burch

THE STATE,

RESPONDENT,

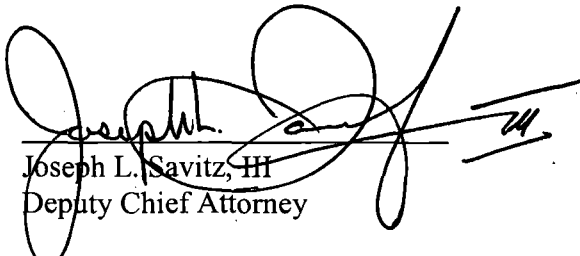
V.

SAMMIE LOUIS STOKES,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the petition for stay of execution in the above entitled case has been served upon Donald J. Zelenka, this 1st day of October, 2001.


Joseph L. Savitz, III
Deputy Chief Attorney
ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 1st day
of October, 2001.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 16, 2001

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

Re: The State v. Sammie Louis Stokes

Dear Mr. Shearouse:

Enclosed please find the original and five (5) copies of the ***Return to Petition for Stay Pending Filing of an Application for State Post-Conviction Relief*** in the above-referenced action for filing. By copy of this letter I am serving opposing counsel with this Return.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald J. Zelenka", with a long horizontal line extending to the right.

Donald J. Zelenka
Assistant Deputy Attorney General

DJZ/lbb
Enclosure

cc: Joseph L. Savitz, III

RECEIVED

OCT 17 2001

S.C. SUPREME COURT

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

Appeal from Orangeburg County
Paul E. Burch, Circuit Court Judge

THE STATE,

Respondent,

v.

SAMMIE LOUIS STOKES,

Appellant.

**Return to Petition For Stay
Pending Filing of an Application For State Postconviction Relief**

 The Respondent, through undersigned counsel, hereby make a Return to the Petition for a Stay of Execution received on October 4, 2001 to allow him to file an application for state post-conviction relief in Orangeburg County. The Court entered its opinion on May 29, 2001 and rehearing was denied on July 2, 2001. *State v Sammie Louis Stokes*, 345 S.C. 368, 548 S.E.2d 202 (2001). The Applicant, through appellate counsel Joseph L. Savitz, asserts that he intends to allege ineffective assistance of trial counsel at sentencing because counsel failed to develop and present available evidence in mitigation. For the reasons set forth below, Respondents do not oppose the request for a stay at this time pursuant to § 17-27-160 and In Re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996).

RECEIVED

OCT 17 2001

S.C. SUPREME COURT

I.

1

On May 17, 1999, an Orangeburg County Jury indicted Sammie Louis Stokes for murder, kidnapping, first degree criminal sexual conduct, and criminal conspiracy in the death of Connie Lee Snipes. The State sought the death penalty in the case.

There were two pretrial hearings: the first, on January 19, 1999, concerned the qualification of defense counsel, and the second, on October 14, 1999, concerned pretrial motions. The trial began on October 25, 1999 and ended on October 31, 1999. Judge Paul M. Burch presided at the pretrial hearings and at trial. Following the guilt phase of the trial, the jury found Mr. Stokes guilty of all charges. Following the sentencing phase, Mr. Stokes exercised his statutory right to make a closing argument. The jury found four aggravating circumstances and recommended death, which Judge Burch affirmed. He also sentenced Mr. Stokes to 30 years for first degree criminal sexual conduct, and to five years for conspiracy.

Mr. Stokes later pleaded guilty to murdering Mr. Ferguson, for which he received a life sentence.

II.

In this Court's written order in In Re Stays on April 8, 1996, this Court stated as follows:

If the defendant desires a stay to pursue state post-conviction relief, the defendant must, within ten (10) days of the date of the issuance of the execution notice, file a motion to stay with this Court, setting forth the issues intended to be raised in the application for post-conviction relief. [If the general nature of the issues are appropriate for post-conviction relief], this Court will assign a circuit judge to the case and issue a stay of execution.

In Re Stays, 321 S.C. 546 [bracketed portion not included in published order S.E.2d]. Respondents submit that the issue intended to be raised, under the prior precedent of this Court are of "the general

nature of issues appropriate for post-conviction relief,” and the entry of the stay would be appropriate. However, Respondents submit that under a Strickland v. Washington, 466 U.S. 668 (1984) and Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998) analysis, the Petitioner cannot satisfy his burden of proof.

Therefore, Respondents do not oppose the granting of a stay to allow the assignment of a state post-conviction relief judge, appointment of two (2) qualified counsel pursuant to § 17-27-160 to allow a filing of an application for post-conviction relief within sixty (60) days by the Petitioner.

III.

WHEREFORE, Respondent has made a Return to the Motion.

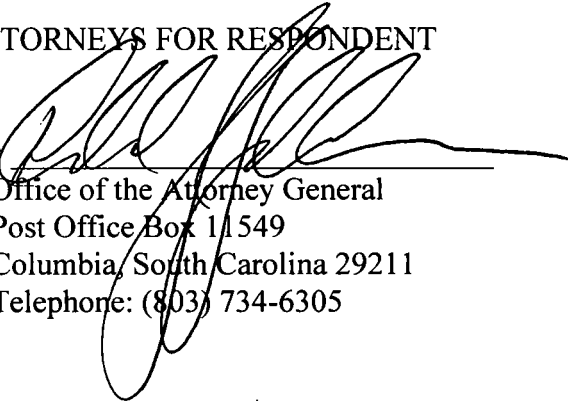
Respectfully submitted,

CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ATTORNEYS FOR RESPONDENT

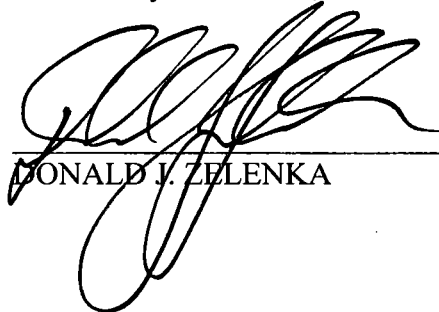
By: 

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

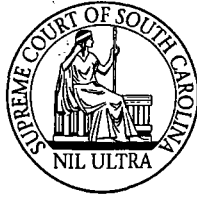
Columbia, South Carolina
October 16, 2001

CERTIFICATE OF SERVICE

I, **Donald J. Zelenka**, hereby certify that I have served the *Return to Petition for Stay of Execution* in the foregoing action by depositing copy in the United States mail to Joseph L. Savitz, III, Deputy Chief Attorney, South Carolina Office of Appellate Defense, 1122 Lady Street, Suite 940, Columbia, South Carolina 29201 this 16th day of October, 2001.



DONALD J. ZELENA



The Supreme Court of South Carolina

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

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
(803) 734-1080
FAX (803) 734-1499

July 18, 2001

Deputy Chief Attorney Joseph L. Savitz, III
Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

Re: The State v. Stokes, Sammie Louis

Dear Counsel:

Enclosed is the order issued in the above entitled matter.

By copy of this letter and order, we are advising all interested parties of the action by the Court.

Very truly yours,

CLERK

DES/dmh

Enclosure

cc: Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Tracey C. Green
The Honorable Walter M. Bailey, Jr.

The Supreme Court of South Carolina

The State,

Respondent,

v.

Sammie Louis Stokes,

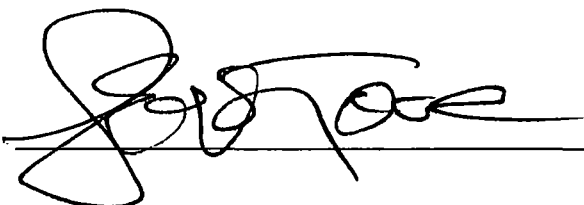
Petitioner.

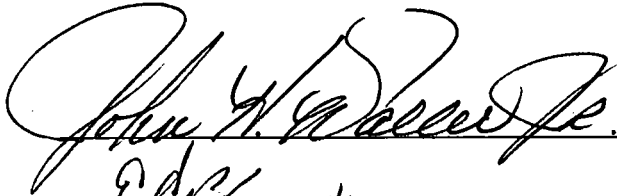
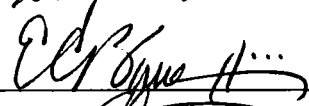
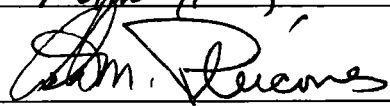
ORDER

This Court affirmed petitioner's conviction and death sentence on direct appeal in State v. Stokes, Op. No. 25298 (S.C. Sup. Ct. filed May 29, 2001) (Shearouse Adv. Sh. No. 19 at 59). His petition for rehearing was denied on July 2, 2001. Petitioner now seeks a stay of execution so that he may pursue a petition for a writ of certiorari from the United States Supreme Court. The State has taken no position on this motion.

Petitioner's request for a stay is granted. The stay shall remain in effect to the extent provided by this Court in In re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996).

IT IS SO ORDERED.


_____. C.J.


_____. J.

_____. J.

_____. J.

Moore, J., not participating.

Columbia, South Carolina

July 18, 2001

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
Judge Paul M. Burch

RECEIVED
JUN 18 2001
S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

SAMMIE LOUIS STOKES,

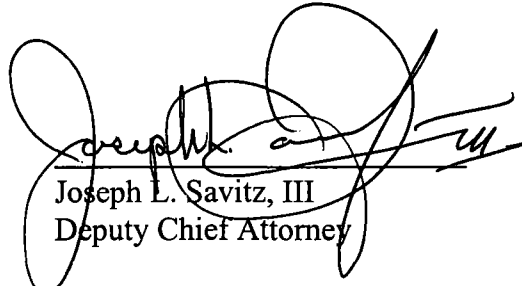
APPELLANT

PETITION FOR STAY OF EXECUTION

In the event the Court denies the petition for rehearing filed in this death penalty case, counsel would request a stay of execution to allow Mr. Stokes to seek certiorari from the United States Supreme Court to review an adverse ruling on a federal constitutional question. See Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996). Counsel intends to petition the Supreme Court to review this Court's affirmance of the trial judge's limitation of Mr. Stokes' right to meet fairly the solicitor's closing argument that the jury had sworn an oath to God they would sentence him to death in the appropriate case. Counsel believes this ruling violates United States v. Robinson, 485 U.S. 25 (1988), and Simmons v. South Carolina, 512 U.S. 154 (1994).

For this reason, counsel respectfully requests the Court to grant a stay of execution in the event it chooses to deny rehearing.

Respectfully submitted,



Joseph L. Savitz, III
Deputy Chief Attorney
Attorney for Appellant

This 18th day of June, 2001

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Judge Paul M. Burch

THE STATE,

RESPONDENT,

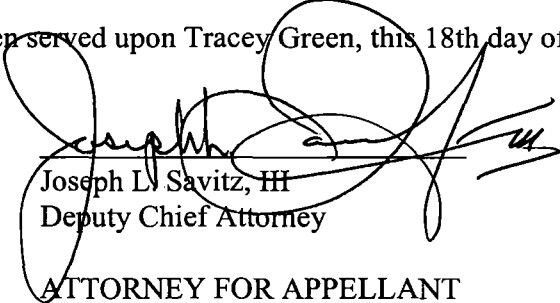
V.

SAMMIE LOUIS STOKES,

APPELLANT

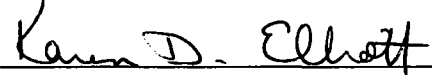
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the petition for stay of execution in the above entitled case has been served upon Tracey Green, this 18th day of June, 2001.

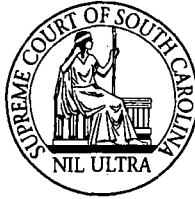

Joseph L. Savitz, III
Deputy Chief Attorney

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 18th day
of June, 2001.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007



The Supreme Court of South Carolina

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

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
(803) 734-1080
FAX (803) 734-1499

July 2, 2001

REMITTITUR

The Honorable Lisa Mizell
Post Office Box 9000
Orangeburg, SC 29116-9000

Re: The State v. Stokes, Sammie Louis
1998-GS-38-1245
1998-GS-38-1246
1998-GS-38-1247
1998-GS-38-1248

Dear Ms. Mizell:

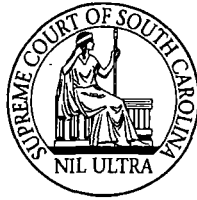
The above referenced matter is hereby remitted to the trial court. A copy of the judgment of this Court is attached.

Very truly yours,

CLERK

DES/jjp

cc: Deputy Chief Attorney Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Tracey C. Green
Solicitor Walter M. Bailey, Jr.



The Supreme Court of South Carolina

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

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
(803) 734-1080
FAX (803) 734-1499

July 2, 2001

Deputy Chief Attorney Joseph L. Savitz, III
Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

Re: The State v. Stokes, Sammie Louis

Dear Counsel:

The following Order has been endorsed on your Petition for Rehearing in the above entitled case on appeal.

"Petition for Rehearing is denied.

s/ Jean H. Toal C.J.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

Justice James E. Moore and Justice E.C. Burnett, III,
not participating.

July 02, 2001."

The remittitur in this matter will be forwarded to the Clerk of Court of Orangeburg County today.

Very truly yours,

DES/jjp

cc: Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Tracey C. Green
Solicitor Walter M. Bailey, Jr.

ORIGINAL

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

THE STATE,

V.

SAMMIE LOUIS STOKES,

RECEIVED
RESPONDENT
JUN 13 2001
S.C. SUPREME COURT

APPELLANT

Appeal from Orangeburg County

Paul M. Burch, Circuit Court Judge

Opinion No. 25298

PETITION FOR REHEARING

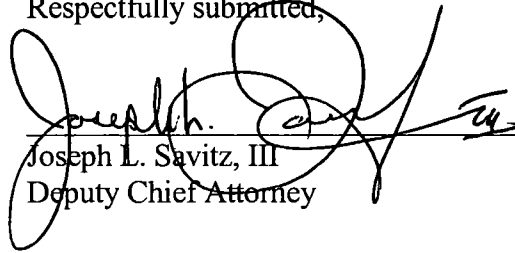
Counsel petitions for rehearing in this death penalty case pursuant to Appellate Practice Rule 221(a). The Court has misapprehended the point of his argument concerning the law of kidnapping if it understands that argument to mean that "a child molester who lures his child victim into his car with candy may be found not guilty of kidnapping simply because the child 'voluntarily' accompanied him in the hopes of receiving candy." State v. Stokes, footnote 7. Here, the victim accompanied her killers (including Stokes) as part of an actual conspiracy to murder another individual, who in fact was ultimately murdered.

Counsel did not argue that Stokes should be acquitted of kidnapping as a matter of law, just that he was entitled to present this evidence at the guilt phase since it made his guilt of that offense

less likely. The victim was a member of a conspiracy to commit murder and her coconspirators turned against her. Whether she was inveigled was an issue for the jury, but only after it heard all the evidence bearing on the matter.

For this reason, the Court should grant rehearing and reverse Stokes' convictions for kidnapping and first degree criminal sexual conduct.

Respectfully submitted,



Joseph L. Savitz, III
Deputy Chief Attorney

This 13th day of June, 2001.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

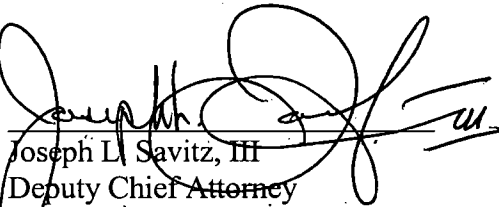
V.

SAMMIE LOUIS STOKES,

APPELLANT

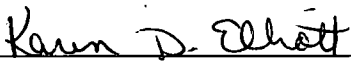
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above entitled case has been served upon Tracey C. Green, Esquire, this 13th day of June, 2001.


Joseph L. Savitz, III
Deputy Chief Attorney

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 13th day
of June, 2001.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007.

Petition for Rehearing is denied.

Justice C.J.
John H. Williams Jr. J.
Sam. Dimes J.

Justice James E. Moore and
Justice E. C. Burnett, III,
not participating

July 2, 2001.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State,

Respondent,

v.

Sammie Louis Stokes,

Appellant.

Appeal From Orangeburg County
Paul M. Burch, Circuit Court Judge

Opinion No. 25298
Heard April 4, 2001 - Filed May 29, 2001

AFFIRMED

Deputy Chief Attorney Joseph L. Savitz, III, of South Carolina Office of Appellate Defense, of Columbia, for appellant.

Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General Tracey C. Green, all of Columbia, and Solicitor Walter M. Bailey, Jr., of Summerville, for respondent.

JUSTICE WALLER: Sammie Louis Stokes was convicted of murder, kidnapping, first degree criminal sexual conduct (CSC), and criminal conspiracy. He was respectively sentenced to death, thirty years, and 5 years.¹ This appeal consolidates his direct appeal with the mandatory review provisions of S.C. Code Ann. §16-3-25 (1985). We affirm the convictions and sentences.

FACTS

Stokes was hired by Patti Syphrette to kill her daughter-in-law, 21-year-old Connie Snipes, for \$2000.00. On May 22, 1998, Syphrette called Stokes and told him Connie “got to go and tonight.” At 9:30pm that evening, Syphrette and Snipes picked up Stokes at a pawn shop, and the three of them went to Branchville and picked up Norris Martin.² The four of them then drove down a dirt road in Branchville and stopped. Syphrette remained in the car while Stokes, Martin and Snipes walked into the woods. When they got into the woods, Stokes told Snipes, “Baby, I’m sorry, but it’s you that Pattie wants dead. . .”

According to Norris Martin, Stokes forced Snipes to have sex with Martin at gunpoint. After Martin was finished, Stokes had sex with Snipes. While doing so, Stokes grabbed her breast and stabbed her in the chest, cutting both her nipples. Stokes then rolled her over and began having anal sex with her. When Stokes was finished, he and Martin each shot the victim one time in the head,³ and then dragged her body into the woods. Stokes then took Martin’s knife and scalped her, throwing her hair into the woods. According to Martin,

¹ Pursuant to S.C. Code Ann. § 16-3-910 (Supp. 2000), no sentence was imposed for the kidnapping charge as Stokes was sentenced for murder.

² Allegedly, Snipes accompanied the others on the premise that they were going to Branchville to kill a man named Doug Ferguson, whom Syphrette and Stokes had tied up in the woods.

³ Martin testified that Stokes placed the gun into his (Martin’s) hand and then pulled the trigger.

Stokes then cut Snipes' vagina out.⁴

Snipes' body was found by a farmer on May 27th, and Martin's wallet was found in the field near it. Martin was interviewed by police the following morning, after which police went to the Orangeburg home of Pattie Syphrette's husband Poncho; by the time police arrived at the home on May 28, 1998, Stokes and Syphrette had already murdered Doug Ferguson by wrapping duct tape around his body and head, suffocating him.⁵

Stokes was tried and convicted of murder, kidnapping, first degree criminal sexual conduct, and criminal conspiracy.

ISSUES

1. Did the trial court err in redacting portions of Stokes' statement to police which indicated Snipes had willingly gone to Branchville in order to kill Doug Ferguson?
2. Did the trial court err in limiting Stokes' discussion of religion in his closing statement to the jury?

1. REDACTED STATEMENT

Stokes wrote a lengthy letter to police in which he gave a detailed account of his participation in both the Snipes and Ferguson murders. Prior to trial, Stokes agreed on the record that he intended to "keep out everything as it relates to Doug Ferguson" from the guilt phase.

At trial, the solicitor moved to redact portions of Stokes' letter which

⁴ According to the pathologist, Snipes' injuries were consistent with having been scalped, had the nipple area cut from each breast, and having had the vaginal area cut out.

⁵ Stokes pleaded guilty to Ferguson's murder in a separate proceeding and was sentenced to life.

indicated Snipes had been misled into believing they were all going to Branchville that evening for the purpose of killing Doug Ferguson. Counsel for Stokes maintained this portion of Stokes' letter should not be redacted, claiming it demonstrated Snipes had voluntarily accompanied Stokes and Syphrette to Branchville and had willingly gone into the woods with Stokes, thereby rebutting the State's claim of kidnapping. He also argued this portion of the statement was admissible under Rule 106, SCRE. We find the statement was properly redacted.

Stokes sought to admit the following portions of his letter to police:

She [Syphrette] said Connie thinks we are going to kill Doug and she thinks we already got him tied up in Branchville somewhere. She [Syphrette] said I wish that were true so we could do all both of them. She said Connie can't stand Doug and wants to be there to help us and besides she wants to meet you anyway, I know you've been talking to her on the phone when Roy calls and I wasn't home. . . .

While riding to Branchville, Connie said Doug ain't shit and I'd love to see him get his. She said I had plans tonight but this is better. . . .

That's when Connie said well where is he at.

The unredacted portion of the letter continues, "I said 'Baby, I'm sorry but it's you that Pattie wants dead.'"

Contrary to Stokes' assertion, the redacted portions do not reflect that Snipes voluntarily rode to her death but, rather, serve only to demonstrate that she was, in fact, tricked into going into the woods. As such, the fact that she was "inveigled" or "decoyed"⁶ into going to Branchville negates, in legal

⁶ S.C.Code Ann. § 16-3-910 (1976) defines kidnapping as the unlawful seizure, confinement, **inveigling**, **decoying**, kidnapping, abducting or carrying away of any other person by any means whatsoever without authority of law.

contemplation, the voluntariness of her participation.⁷

Addressing analogous situations under the federal kidnapping statute, several courts have reached similar conclusions. As noted by the Fourth Circuit Court of Appeals in United States v. Hughes, 716 F.2d 234, 239 (4th Cir. 1983), "nothing in the policy of the . . . kidnapping statute justifies rewarding the kidnapper simply because he is ingenious enough to conceal his true motive from his victim until he is able to transport her . . . [to another location]." See also United States v. Atkinson, 916 F.Supp. 959 (D.S.D. 1996) (victim's voluntary presence may nonetheless amount to inveigling); United States v. Boone, 959 F.2d 1550 (11th Cir. 1992) (where kidnapper accompanies inveigled victim, victim is kept from acting in entirely voluntary manner by acts, presence, and intent of inveigling kidnapper, he is ensnared within net that kidnapper's deception has prevented him from seeing, and in such a case victim's act of accompanying kidnapper is not voluntary and does not amount to legally valid consent); United States v. Hoog, 504 F.2d 45, 51 (8th Cir.1974) (kidnapping victim who accepted a ride from someone who misled her into believing that she would be taken to her desired destination was "inveigled" or "decoyed" within the meaning of the federal kidnapping statute).⁸

Here, the undisputed evidence of record is that Snipes was successfully lured into the woods for the alleged purpose of murdering Doug Ferguson when,

The definition of "decoy" is "to lure successfully." NEW WEBSTER'S DICTIONARY AND THESAURUS 250 (1993). Inveigling has also been defined as "enticing, cajoling, or tempting the victim, usually through some deceitful means such as false promises." United States v. Macklin, 671 F.2d 60, 66 (2d Cir.1982).

⁷ Stokes' argument is akin to suggesting that a child molester who lures his child victim into his car with candy may be found not guilty of kidnapping, simply because the child "voluntarily" accompanied him in the hopes of receiving candy. We find such a position untenable.

⁸ Accord State v. Plath, 281 S.C. 1, 17, 313 S.E.2d 619, 628 (1984)(finding jury could have found victim was inveigled and decoyed to her death)

in fact, the sole purpose of Stokes, Syphrette and Martin was to murder Snipes. Accordingly, rather than negating the charge of kidnapping, the redacted portions of the statement simply bolster the State's claim that Snipes did not "voluntarily" accompany her assailants but, rather, was inveigled into the woods by them. Cf. Ray v. State, 330 S.C. 184, 498 S.E.2d 640 (1998) (inveigling victim into truck under false pretense that she was being taken to the hospital constituted kidnapping). We find the statement was properly redacted.

Moreover, even assuming *arguendo*, as Stokes claims, that the redacted portions of his statement were relevant to demonstrate the victim voluntarily accompanied them on the night of her murder, any error in the redaction is harmless. Both Stokes' letter and the testimony of Norris Martin amply demonstrate that Connie Snipes voluntarily went with Stokes and Syphrette to Branchville, and that she willingly walked into the woods with Martin and Stokes. Accordingly, the jury was well aware that she had accompanied them voluntarily, and Stokes has failed to demonstrate any prejudice from the redaction. State v. Taylor, 333 S.C. 159, 508 S.E.2d 870 (1999)(in order for this Court to reverse a case based on the erroneous exclusion of evidence, prejudice must be shown); State v. Bell, 302 S.C. 18, 393 S.E.2d 364 (1990).⁹

Finally, the redacted portions were not admissible under Rule 106, SCRE, which provides:

When a writing, or recorded statement, or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part of any other writing or recorded statement **which ought in fairness to be considered contemporaneously** with it. (Emphasis supplied).

⁹ To the extent Stokes sought admission of the redacted portions in order to demonstrate the victim's bad character, i.e., that she was willing to go along to participate in a murder, we find the evidence was properly excluded. State v. Whipple, 324 S.C. 43, 476 S.E.2d 683 (1996) (no error in refusing to admit evidence of victim's bad character where it did not tend to make more or less probable any issue at guilt phase of trial).

“Only that portion of the remainder of a statement which explains or clarifies the previously admitted portion should be introduced.” State v. Taylor, 333 S.C. 159, 171, 508 S.E.2d 870, 876 (1998). See also State v. Gay, 343 S.C. 543, 541 S.E.2d 541 (2001).

Here, the redacted excerpts do not explain or clarify the previously admitted portions but, rather, would only have confused the jury as to the identity of Doug Ferguson. Accordingly, the redacted statements need not, in fairness to Stokes, have been admitted pursuant to Rule 106, SCRE. Gay, supra.

The trial court properly redacted the statement.

2. REFERENCES TO GOD

At sentencing, Stokes elected to exercise his statutory right to make a closing statement to the jury.¹⁰ While addressing the jury, Stokes stated:

In my statement I never denied my involvement but the statement I gave was truthful and I do have a conscience, that's one of the main reasons why I gave the statement. You know, I been in trouble before but nothing like this before so I felt I had to set the record straight. But I give one statement and I give a honest one, I didn't [sic] four or five, I give one. And I'm deeply sorry that any of it ever happened and I'm also sorry for the role that I played in it.

You know, I prayed and prayed and prayed and have asked God to forgive me—

At this point, the solicitor asked to approach the bench and Stokes continued, “But I’m asking for forgiveness.” After a bench conference, Stokes continued,

¹⁰ Pursuant to S.C. Code Ann. § 16-3-20(B) (1976), “[t]he State, the defendant, and his counsel are permitted to present arguments for or against the sentence to be imposed.”

Well, I would just like to say that I will forever be sorry for the role that I played in it and most of all I truly feel for the family and if I could turn back the hand of time none of this would have occurred and I wouldn't be standing before ya'll now pleading for my life. And once again, I truly would like to say that I'm sorry and wish that you could find it in your heart to forgive me for the role that I played in this.

I would like to discuss how - - - but I can't get into that because they say I can't get into it so I would like to say that I am truly sorry, I really am.

Counsel for Stokes then gave his closing in which he referred to Stokes' letter to police, which stated, "I will say this much, God is going to bless them and help them make it through this. Without a doubt, God is going to punish me for my part and there's no excuse because we all have choices in life. . . ."

Stokes now asserts the trial court impermissibly limited the scope of his allocution under S.C. Code § 16-3-20(B) such that his death sentence should be reversed.¹¹ We disagree.

¹¹ As the State points out, the statutory right of closing argument and the right of allocution are distinguishable. Technically, "allocution" refers to the common law practice of the court "formally inquir[ing] of the defendant whether he had anything to say why sentence and judgment should not be pronounced." State v. Phillips, 215 S.C. 314, 54 S.E.2d 901 (1949); State v. Trezevant, 20 S.C. 363, (1884); see also BLACK'S LAW DICTIONARY 40 (5th Ed. 1979) (defining "allocution" as "formality of court's inquiry of prisoner as to whether he has any legal cause to show why judgment should not be pronounced against him on verdict of conviction). See also Bassett v. Commonwealth, 284 S.E.2d 844 (Va. 1981) (Allocution is the defendant's right to speak on his own behalf after the fact finder determines guilt but before the judge pronounces sentence. Defendant's closing argument is not allocution, but is his opportunity to present arguments in mitigation before the fact finder deliberates).

Stokes did assert before the jury that he had prayed and prayed and asked God to forgive him. Since Stokes made the point he intended to make, there is no reversible error. State v. Bennett, 328 S.C. 251, 493 S.E.2d 845 (1997) (capital defendant was not prejudiced by sustained objection to his religious argument where record indicates he made argument); State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (no prejudice resultant from trial court's ruling where witness is able to make point before the jury); State v. McDowell, 266 S.C. 508, 224 S.E.2d 889 (1976) (trial court's limitation of argument to jury did not deprive defendant's ability to make point). Accordingly, Stokes failed to demonstrate prejudice from the trial court's ruling.¹²

CONCLUSION

Stokes' convictions and sentences are affirmed. Imposition of the death penalty in this case was not the result of passion, prejudice, or any other arbitrary factor, and the evidence supports the aggravating circumstances. The death sentence is not excessive or disproportionate to the penalty imposed in similar cases. S.C.Code Ann. § 16-3-25(C) (1985); State v. Terry, 339 S.C. 352, 529 S.E.2d 274, cert. denied 148 L.Ed.2d 137 (2000); State v. Johnson, 338 S.C. 114, 525 S.E.2d 519, cert. denied 148 L.Ed.2d 62 (2000); State v. Southerland, 316 S.C. 377, 447 S.E.2d 862, (1994), cert. denied 513 U.S. 1166 (1995); State v. Charping, 333 S.C. 124, 508 S.E.2d 851, cert. denied 527 U.S. 1007 (1999).

AFFIRMED.

TOAL, C.J., BURNETT, PLEICONES, JJ., and Acting Justice John C. Few, concur.

¹² We have consistently held there is no fundamental unfairness when the trial judge precludes the solicitor and the defense from arguing about God or religion. State v. Shafer, 340 S.C. 291, 531 S.E.2d 524, cert. granted in part, Shafer v. South Carolina 121 S.Ct. 30 (2000); State v. Patterson, 324 S.C. 5, 482 S.E.2d 760, cert. denied 522 U.S. 853, 118 S.Ct. 146, 139 L.Ed.2d 92 (1997).

ORIGINAL

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
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Eleanor Duffy Cleary
Assistant Appellate Defenders

May 17, 2001

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S.C. SUPREME COURT

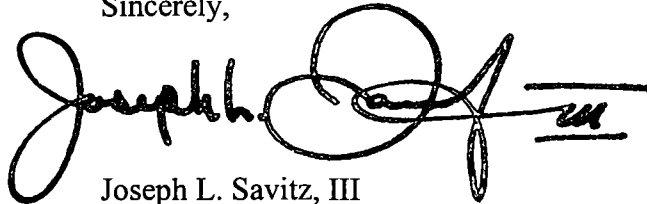
Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: The State v. Sammie Louis Stokes

Dear Mr. Shearouse:

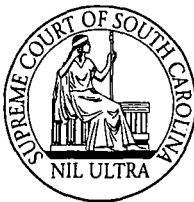
Please accept this letter as a formal request for a copy of the oral argument tape in the above case. If you need additional information, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph L. Savitz, III", with a stylized flourish at the end.

Joseph L. Savitz, III
Deputy Chief Attorney

JLS,III/kde



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
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March 28, 2001

Deputy Chief Attorney Joseph L. Savitz, III
Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Tracey C. Green
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Stokes, Sammie Louis

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 20 minutes

Respondent 20 minutes

Appellant in Reply 5 minutes

This case is scheduled for hearing at 9:30 a.m. Wednesday, April 4, 2001.

Very truly yours,

Daniel E. Shearouse, Clerk

By Jean J. Peebles

Administrative Assistant

DES/jjp

cc: Solicitor Walter M. Bailey, Jr.



The Supreme Court of South Carolina

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

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
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March 22, 2001

Deputy Chief Attorney Joseph L. Savitz, III
Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Tracey C. Green
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Stokes, Sammie Louis

Dear Counsel:

This is to confirm that the oral argument in the above case has been continued until 9:30 a.m. on Wednesday, April 4, 2001.

Very truly yours,



CLERK

DES/jjp

cc: Solicitor Walter M. Bailey, Jr.

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
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Katherine Carruth Link
Eleanor Duffy Cleary
Assistant Appellate Defenders

March 21, 2001

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

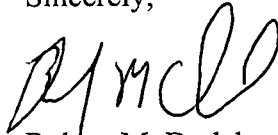
Re: The State v. Sammie Louis Stokes

Dear Mr. Shearouse:

Deputy Chief Attorney Joseph Savitz is scheduled to argue the above-captioned case tomorrow, March 22, 2001 before this Court. I spoke with him by telephone today. He presently is suffering from an acute attack of gout. He has been battling problems with gout for about three weeks. However, the present acute attack forces him to respectfully request that the oral argument tomorrow be rescheduled for the April term.

I would appreciate you bringing this request to the prompt attention of the Court. I am in the process of notifying Assistant Attorney General Tracey Green of this request by facsimile and by telephone. Thank you for your assistance with this request.

Sincerely,



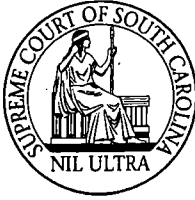
Robert M. Dudek
Assistant Appellate Defender

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MAR 21 2001

S.C. SUPREME COURT

cc: Tracey Green, Esquire



The Supreme Court of South Carolina

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

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
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FAX (803) 734-1499

March 13, 2001

Deputy Chief Attorney Joseph L. Savitz, III
Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Tracey C. Green
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Stokes, Sammie Louis

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	20 minutes
Respondent	20 minutes
Appellant in Reply	5 minutes

This case is scheduled for hearing at 10:30 a.m. Thursday, March 22, 2001.

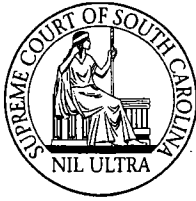
Very truly yours,

Daniel E. Shearouse, Clerk

By Jean J. Peebles
Administrative Assistant

DES/jjp

cc: Solicitor Walter M. Bailey, Jr.



The Supreme Court of South Carolina

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

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
(803) 734-1080
FAX (803) 734-1499

March 2, 2001

Deputy Chief Attorney Joseph L. Savitz, III
Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

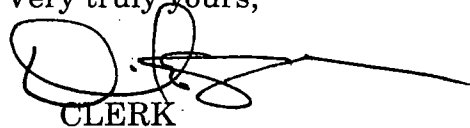
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Tracey C. Green
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Stokes, Sammie Louis

Dear Counsel:

This is to confirm that oral argument in this case has been moved from 9:30 a.m. on Tuesday, March 20, 2001 to 10:30 a.m. on Thursday, March 22, 2001.

Very truly yours,



CLERK

DES/jjp

cc: Solicitor Walter M. Bailey, Jr.

ORIGINAL

JP

South Carolina Office of Appellate Defense

Daniel T. Stacey
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Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
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Aileen P. Clare
Katherine Carruth Link
Eleanor Duffy Cleary
Assistant Appellate Defenders

January 17, 2001

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JAN 17 2001
S.C. SUPREME COURT

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

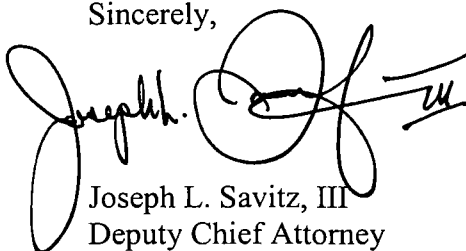
Re: State v. Sammie Stokes

Dear Mr. Shearouse:

The Court has indicated that this death penalty case will be set for oral argument during March 2001. If at all possible, I would appreciate being allowed to argue the case the latter part of the month.

Thank you for your courtesy and cooperation. Do not hesitate to contact me if I may be of further assistance.

Sincerely,


Joseph L. Savitz, III
Deputy Chief Attorney

JLS,III/kde

Cc: Sammie Stokes
Tracey C. Green



RECEIVED

DEC 15 2000

S.C. SUPREME COURT

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

December 15, 2000

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

Re: The State v. Sammie Louis Stokes

Dear Mr. Shearouse:

Enclosed please find the original and nine (9) copies of the **Final Brief of Respondent**, dated December 15, 2000, along with proof of service in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Green", written over the typed name and title.

Tracey C. Green
Assistant Attorney General

Enclosures

cc: Joseph L. Savitz, III, Esquire
Honorable Walter M. Bailey, Jr.
Sandi Wofford, Victims' Services

The Supreme Court of South Carolina

The State,

Respondent

v.

Sammie L. Stokes,

Appellant.

The Honorable Paul M. Burch
Orangeburg County
Trial Court Case No. 1998-GS-38-1245
1998-GS-38-1246
1998-GS-38-1247
1998-GS-38-1248

ORDER

For good cause having been shown, the time for serving and filing the Record on Appeal in the above entitled matter is hereby extended until November 27, 2000.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

October 26, 2000

cc: Deputy Chief Attorney Joseph L. Savitz, III
Assistant Attorney General Tracey C. Green
The Honorable Walter M. Bailey, Jr.

ORIGINAL

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
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Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Melody J. Brown
Aileen P. Clare
Katherine Carruth Link
Assistant Appellate Defenders

October 25, 2000

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

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OCT 25 2000
S.C. SUPREME COURT

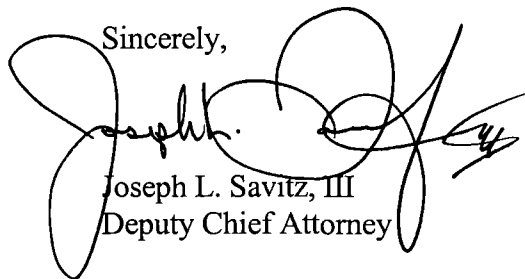
Re: State v. Sammie Louis Stokes

Dear Mr. Shearouse:

The record on appeal in this case is due to be served and filed with the Court today. However, because of my heavy caseload, the record was not put together in time for filing. Therefore, I am requesting an extension until November 24, 2000, in which to serve and file the record.

By copy of this letter, I am informing Tracey Green, of the Attorney General's Office, of my request.

Sincerely,



Joseph L. Savitz, III
Deputy Chief Attorney

JLS,III/kde

cc: Tracey Green

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Paul M. Burch, Circuit Court Judge

RECEIVED
SEP 28 2000
S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

SAMMIE LOUIS STOKES,

APPELLANT

INITIAL REPLY BRIEF

JOSEPH L. SAVITZ, III
Deputy Chief Attorney

South Carolina Office
of Appellate Defense
1122 Lady Street, Suite 940
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT

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ISSUE PRESENTED

Although the state and appellant agree that a capital defendant may express religiously based remorse at sentencing, the state incorrectly maintains that he may do so only after the jury has already imposed a death sentence, and then only to the trial judge.

ARGUMENT

Although the state and appellant agree that a capital defendant may express religiously based remorse at sentencing, the state incorrectly maintains that he may do so only after the jury has already imposed a death sentence, and then only to the trial judge.

In its brief, the state writes:

Mr. Stokes erroneously describes the statutory closing statement he made in this case as his allocution. However, allocution is a common law procedure... it is during the allocution that a defendant may make unsworn statements and discuss religion... In this instance, defendant's allocution came after the jury recommended a penalty of death and the trial court had excused the jurors from the courtroom... Mr. Stokes received the right to allocution, but did not exercise his right to make religious or other unsworn arguments at that time.

Respondent's brief, pp. 18 and 19. The state concedes, then, that a capital defendant has the right to express religiously based remorse at some point during sentencing. But, according to the state, he may do so only after the jury has already sentenced him to death, and then only before the trial judge.

S.C. Code Section 16-3-20(B) states, "The state, the defendant, and his counsel are permitted to present arguments for or against the sentence to be imposed. The defendant and his counsel shall have the closing argument regarding the sentence to be imposed." According to the state, "during closing argument, the defendant is limited to argument based on facts in evidence." Respondent's brief, p. 19.

Apart from its concession, the state's argument is simply wrong, because it ignores the established practice of this State and is based upon a faulty conception of capital sentencing. Historically, since the death penalty was reinstated in 1977, capital defendants

have never been limited to a redundant echo of defense counsel's closing argument, which of course is confined to the "facts in evidence." In addition to that, the defendant may also express remorse. The structure of capital sentencing in South Carolina itself dictates this result.

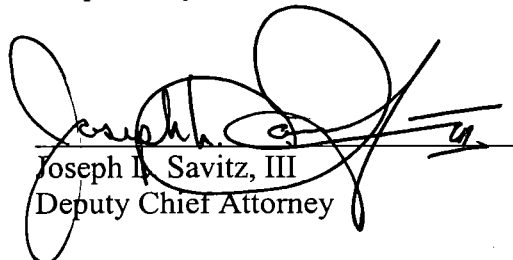
As appellant has explained in his initial brief, Section 16–3–20(B) incorporates the common-law right of allocution at capital sentencing. Allocution is, by definition, a personal plea to the sentencer occurring between conviction and the imposition of sentence. The issue here does not involve the continued existence of a common-law right of allocution before the judge after a death sentence has been imposed. Any such right would be, for all practical purposes, of severely limited utility. Contrary to other criminal jury trials, in capital cases the jury is the sentencer. "Where a statutory aggravating circumstance is found and a recommendation of death is made, the trial judge shall sentence the defendant to death." S.C. Code Section 16–3–20(C). In other words, "[w]hen the trial jury is the sentencing authority, its recommendation for punishment is binding on the court." State v. Shaw, 273 S.C. 194, 255 S.E.2d 799, 802 (1979). Beyond that point, a trial judge may undo a death sentence only if it resulted from "prejudice, passion, or any other arbitrary factor." Section 16–3–20(C). A defendant's belated expression of remorse would not appear to provide the judge with a basis for overturning a death sentence imposed by the jury.

In sum, while conceding that appellant had a "right to make religious or other unsworn arguments," the state would allow him to exercise that right only when it could do no good. Respondent's brief, p. 19. Not surprisingly, the state cannot cite a single case supporting this illogical position.

Next, the state argues that, "based on the record, Mr. Stokes was not prejudiced by the trial judge's ruling because he made the argument he intended to make." Respondent's brief p. 26. In fact, the record reflects that appellant had barely opened his mouth when the solicitor's objections and call for a bench conference abruptly cut him off. Tr. p. 1459, lines 3-24. The judge sustained the objections. After that, appellant was silent about the moral basis of his remorse because, as he told the jury, "[T]hey say I can't get into it..." Tr. p. 1460, lines 9-12. The judge's ruling essentially limited appellant to a generic, "I'm sorry." This is not the argument appellant "intended to make."

Based on the two arguments presented in appellant's brief, the Court should reverse appellant's convictions for kidnapping, first degree criminal sexual conduct and his death sentence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph L. Savitz, III", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

ATTORNEY FOR APPELLANT.

This 28th day of September, 2000

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

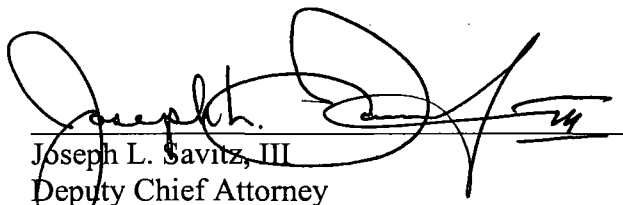
V.

SAMMIE LOUIS STOKES,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Reply Brief of Appellant in the above referenced case has been served upon Tracy Green, this 28th day of September, 2000.



Joseph L. Savitz, III
Deputy Chief Attorney

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 28th day of September, 2000.

Karen D. Elliott (L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions
Paul M. Burch, Circuit Court Judge

Indictment Nos. 98-GS-38-1245
98-GS-38-1246
98-GS-38-1247
98-GS-38-1248

THE STATE,

v.

SAMMIE LOUIS STOKES,

RESPONDENT,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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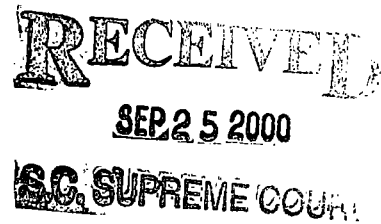


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STATEMENT OF ISSUES ON APPEAL

- I. The trial judge properly denied the defense request to admit statements redacted from a letter introduced by the State because the statements were unnecessary and irrelevant to a fair and complete determination of the defendant's guilt.
- II. The trial judge properly barred the defendant from arguing religious matters during his statutory closing argument.

STATEMENT OF THE CASE

On May 17, 1999, an Orangeburg County Jury indicted Sammie Louis Stokes for murder, kidnapping, first degree criminal sexual conduct, and criminal conspiracy in the death of Connie Lee Snipes. The State sought the death penalty in the case.

There were two pretrial hearings: the first, on January 19, 1999, concerned the qualification of defense counsel, and the second, on October 14, 1999, concerned pretrial motions. The trial began on October 25, 1999 and ended on October 31, 1999. Judge Paul M. Burch presided at the pretrial hearings and at trial. Following the guilt phase of the trial, the jury found Mr. Stokes guilty of all charges. Following the sentencing phase, Mr. Stokes exercised his statutory right to make a closing argument. The jury found four aggravating circumstances and recommended death, which Judge Burch affirmed. He also sentenced Mr. Stokes to 30 years for first degree criminal sexual conduct, and to five years for conspiracy.

Mr. Stokes later pleaded guilty to murdering Mr. Ferguson, for which he received a life sentence.

STATEMENT OF FACTS

Not long after his arrest, Mr. Stokes wrote a letter to the police confessing his involvement in Ms. Snipes' murder. At trial, the State introduced the letter as evidence and supplemented it with other testimony, including that of Mr. Stokes' cohort, Norris Martin.

In the letter, Mr. Stokes confessed that he had agreed to kill Ms. Snipes for \$2,000 at the request of his cellmate, James Roy Toothe, and Mr. Toothe's mother, Pattie Syphrette. Ms. Snipes and her two children by Mr. Toothe, Brian and Nicole, lived with Ms. Syphrette. Apparently, the desire to have Ms. Snipes killed originated in Ms. Snipes' behavior regarding Mr. Toothe and the children, especially when she caused Nicole to be taken by the Department of Social Services. See Stokes Confession (Court's Exhibit 4), pp.1-2.

On May 22, Mr. Stokes called Ms. Syphrette. She said that Ms. Snipes "got to go and tonight." The reason she gave for the sudden urgency was that DSS had given her an ultimatum: to evict Snipes from her home or face losing the remaining grandchild, Brian. *Id.* at 4-5. Then, as related by Mr. Stokes, the situation developed as follows:¹

¹Although the original confession was transcribed as one long non-paragraphed statement, respondent has inserted paragraphs into this passage for ease of review.

I said well, I talked with Norris and everything is straight on his end. She said I'll pick you up at Woody's Pawn Shop at 9:30 P.M. She said Connie thinks we are going to kill Doug and she thinks we already got him tied up in Branchville somewhere. She said I wish that were true so we could do all both of them. She said that Connie can't stand Doug and wants to be there to help us and besides she wants to meet you anyway, I know you've been talking to her on the phone when Roy calls and I wasn't home.² You just better not flip on me for her. I laughed and said see yall at 9:30 P.M.

They both showed up at 9:30 at Woody's and I went to the passenger side and Connie got out. I said what's up girl, pulled her to me and hugged her tight. She said ain't nothing. So I got in and we drove off. While riding to Branchville, Connie said Doug ain't shit and I'd love to see him get his. She said I had plans tonight but this is better.³ I just laughed and looked at Pattie.

We got to Branchville and rode straight through town and came up through shake-rag and came on a back street, but you can still see the town. I spotted Norris or thought I did, but it wasn't him. So we went to his apartment and Connie went and knocked on the door, but there wasn't no answer. We drove back down town the same back route. That's when I spotted Norris coming out the store walking over to two parked cars with a bag in his hand. So we stopped and was trying to decide who should go call him. So Connie said fuck it, I'll go get him and she got out and walked down the road and called Norris. They both

²As discussed in Argument I, *infra.*, this phrase was redacted from the Confession published to the jury during the guilt phase. See Trial Tr. at 969, 11.16-17. The reason for this redaction is explained in paragraph one on page eight of this brief.

³This phrase also was redacted from the Confession published to the jury during the guilt phase. See Trial Tr. at 969, 11.22-23.

came back and got in. I asked him what's up bro and he said that he came down town to get some beer.

So we went down that dirt road passed Owen's home and I told Pattie to stop. Norris and I got out and I asked him was he ready to handle the business. He said yeah, but let's go back to my apartment so I can get the pussy first. I said we can't go there because people is out walking about in the projects. I said well I know that I can get the pussy because she likes me anyway. I said you want Pattie. He said I'd rather have the other one first. Well I was thinking right there, I know she isn't going to be willing to do it with him. So I said well once you get her in your spot, handle your business. I asked him where did he want to go and he said I'll show you. So we got back in the car and he showed us the spot.

Then once we got there I got the gun out from behind the seat and passed it to Norris. Then we all got out and Pattie opened the trunk and tried to pass me the shovel, but I wouldn't take it. Then she gave it to Norris. Then Connie say let's go and Pattie said, I'll stay here and watch the car just in case anybody comes, I'll say I'm tricking and we all laughed. Then Connie and Norris walked off and Pattie said is he going to fuck her too. I said yes. Then she said you better not.

I ran and caught up with them and we walked over some bushes and broken limbs and got to the back of the field or on the side. That's when Connie said well where is he at. I said baby, I'm sorry, but it's you that Pattie wants dead and Connie said [oh] my god, that fat bitch. She said, yall don't trust her because she will only turn on yall too. I said she is paying us \$2,000. Connie said that fat bitch hasn't got two cents. Then Connie said please don't kill me

Stokes Confession, pp.5-6.

Then, Mr. Martin had sex with the victim. *Id.* At trial, Mr. Martin testified that afterwards, Mr. Stokes took a knife and stabbed the victim in the chest, cut the nipple off of her right breast, then penetrated her anally while she was screaming from the injuries he inflicted on her. Trial Tr. at 1155, 1.4-1157, 1.2⁴. Afterwards, Ms. Snipes was shot twice in the head; one shot struck her jaw and the other--fatal--shot struck her in the back of the head. *Id.* at 853, 1.4-854, 1.10. Although it is medically impossible to tell which shot came first, Mr. Martin testified that the defendant fired both shots, and that the victim was screaming after the first shot. *Id.* at 893, 1.5-22. Mr. Stokes stated that both he and Mr. Martin each fired one shot, but that Mr. Martin fired the first shot and he fired the second one. Stokes Confession, p.6. Mr. Martin testified that Mr. Stokes scalped the victim and tossed her hair into the woods, *id.* at 1160, 11.13-23, then cut her vagina out. *Id.* at 1160, 1.24-1161, 1.10. A pathologist confirmed these injuries. *Id.* at 1218, 1.8-1221, 1.13.

On May 28, 1998, Mr. Stokes was at Ms. Syphrette's house with Faith Lapp, Ms. Syphrette, and Brian. *Id.* at 1330, 11.20-23. Ms. Syphrette left to get Mr. Ferguson and bring him to the house. *Id.* at 1334, 11.10-19. Ms. Lapp testified that, while they waited, Mr. Stokes told her that if she said anything, he would do to her

⁴This testimony was elicited during the sentencing phase, and not during the guilt phase.

what he did to Ms. Snipes and, "if he couldn't get to [her], he was going to get to my family and then he said that he was going to have to come back in twenty years and get the baby." *Id.* at 1335, 11.6-11.

When Mr. Ferguson arrived, he sat down on the couch. *Id.* at 1340, 1.9; Stokes Confession, p.10. Mr. Stokes, who had been hiding in an adjacent bedroom, came out and asked, "[D]o you know me." Trial Tr. at 1340, 1.15-1341, 1.16. Mr. Ferguson kept saying no. *Id.* at 1341, 11.16-17; Stokes Confession. Then, Mr. Stokes said, "Motherfucker, you're going to know me." *Id.* at 1341, 11.19-20. Lapp testified that, at that point, she took Brian out of the room while Mr. Stokes and Ms. Syphrette wrapped duct tape around Mr. Ferguson. *Id.* at 1342, 11.19-25. In his confession, Mr. Stokes stated that he punched Mr. Ferguson while he lay on the floor. Stokes Confession, p.11. The pathologist described how they wrapped the duct tape around Mr. Ferguson:

The unusual thing about his body was that he was wrapped in duct tape. His ankles were taped together, his wrists were taped together and his arms were taped together and then that was taped to his chest and then his face and head was [sic] fully taped.

Trial Tr. at 1194, 11.4-11. Because they wrapped tape around his nose, his mouth, and his entire head, Mr. Ferguson could not breathe and he died from suffocation. *Id.* at 1206, 11.1-9.

ARGUMENT

- I. THE TRIAL JUDGE PROPERLY DENIED THE DEFENSE REQUEST TO ADMIT STATEMENTS REDACTED FROM A LETTER INTRODUCED BY THE STATE BECAUSE THE STATEMENTS WERE UNNECESSARY AND IRRELEVANT TO A FAIR AND COMPLETE DETERMINATION OF THE DEFENDANT'S GUILT.

At trial, the State introduced the letter written by Mr. Stokes confessing to the crime, except that it redacted portions of the confession relating to Doug Ferguson as indicated on page four of this brief. The State argued that because Ms. Snipes had been inveigled into accompanying the defendant, her purpose in making the trip was not relevant. The State also observed that the statements were neither inculpatory nor exculpatory, and that it had consistently redacted any reference to Doug Ferguson from the guilt phase of the trial. See Trial Tr. at 741, 1.20-742, 1.3; 743, 1.15-744, 1.5.

The defense moved to introduce the redacted statements under South Carolina Rule of Evidence 106, claiming that they demonstrated that Ms. Snipes willingly accompanied Mr. Stokes, Mr. Martin, and Ms. Syphrette to the place of her death and, thus, that she was not kidnapped. See also S.C. R. Evid. 803(3) (statements of declarant's then existing mental, emotional, or physical condition may be admitted into evidence). The trial judge denied the motion.

South Carolina Rule of Evidence 106 states as follows:

When a writing ... or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

This Court has explained that Rule 106 "seeks to avoid the unfairness inherent in the misleading impression created by taking matters out of context." *State v. Taylor*, 333 S.C. 159, 508 S.E.2d 870, 875 (1998). Nevertheless, the rule does not create an avenue of automatic admissibility through which an adversary may introduce evidence that otherwise would not be admissible; rather, the rule permits the introduction only of "that portion of the remainder of a statement which explains or clarifies the previously admitted portion." *Id.* at 876. If the remaining portion is not relevant or material, it is not admissible. See *id.*; see also *Merrick v. Mercantile-Safe Deposit & Trust Co.*, 855 F.2d 1095, 1104 (4th Cir. 1998) (information sought to be introduced under Rule 106 properly excluded under Rule 403). Rulings under Rule 106 are reviewed for an abuse of discretion. *E.g.*, *United States v. Wilkerson*, 84 F.3d 692, 696 (4th Cir. 1996).

To determine whether the redacted statements "ought in fairness to [have been] considered contemporaneously with" the rest of the letter, it is necessary to review the applicable law and evidence. The statutory definition of kidnapping is as follows:

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law ... is guilty of a felony

S.C. Code Ann. § 16-3-910 (Law. Co-op. Supp. 1999). The term "inveigle" means "[t]o lure or entice through deceit or insincerity." Black's Law Dictionary 829 (7th Ed. 1999).⁵ Thus, a victim is kidnapped at the moment he is inveigled--i.e., lured or enticed--into accompanying the defendant by false representations or promises, or by other deceitful means. See *State v. Amell*, 736 P.2d 561, 563-64 (Or. 1987) (*en banc*) (under kidnapping statute prohibiting deception, victim was kidnapped at the moment he was induced by means of a false statement to accompany the defendant).

This Court previously has analyzed and applied the "inveigle" prong of the statute. In *State v. Plath*, 277 S.C. 126, 284 S.E.2d 221 (1981) (*Plath I*), and 281 S.C. 1, 313 S.E.2d 619 (1984) (*Plath II*), the defendant was charged with kidnapping, even though the victim "willingly got into the car" with the defendants. See *Plath I* at 224. Although it never considered the precise reason the victim acted as she did, the Court held that the jury certainly could have found that the victim had been "lured--'inveigled' and 'decoyed'-- to her death" by the defendants because if the jury believed the witnesses proffered by the State, "the victim was

⁵Cf. Black's Law Dictionary 419 (the term "decoy" means "to entice a person without force; to inveigle").

invited into the [defendants'] car after they had formed and expressed the intention to carry away and murder her." *Plath II* at 628-29. By analyzing the case in terms of when the defendants formed their evil intent and whether they invited the victim to accompany them, the Court makes clear in *Plath II* that the precise false representation made to inveigle a victim--and, thus, the victim's intent or state of mind--is not necessary to support a finding of guilt if the evidence demonstrates that an inveiglement occurred. See also *Ray v. State*, 330 S.C. 184, 498 S.E.2d 640, 642 (1998).⁶

Viewed in this light, it is beyond question that the redacted statements need not have been admitted under Rule 106 because they did not explain or clarify whether a kidnapping occurred and therefore were neither relevant nor material in the guilt phase of the trial. The introduced portions of the letter demonstrated that Ms. Snipes was inveigled and decoyed to her death "after [Mr. Stokes, Mr. Martin, and Ms. Syphrette] had formed and expressed the intention to carry away and murder her." *Plath II* at

⁶In *Ray*, the defendant enticed the victim to get in his truck, stating that he would take her to the hospital. However, he never actually intended to take her to the hospital, because he took a rope from his barn before they departed, a rope that he ultimately used to choke the victim. *Ray*, 498 S.E.2d at 641, 642. The Court held that the victim was "inveigled into getting in the truck under the pretense she was being taken to the hospital," and that, "at the latest," the kidnapping occurred when the defendant drove past the hospital exit. *Id.* at 642. Thus, *Ray* is consistent with the analysis in *Plath II*. Compare *id.* at 641-42 with *Plath II*, 313 S.E.2d at 628-29.

628-29. Mr. Stokes' letter makes abundantly clear that he and his companions formed and expressed the intent to kill Ms. Snipes well before she was invited to accompany them on the evening of her death. Therefore, consistent with *Plath II*, 313 S.E.2d at 628-29, a kidnapping occurred when Ms. Snipes was inveigled into entering the car with the others after they had formed and expressed the intent to kill her; information about the precise misrepresentation made to her could not impact that finding in any manner and, thus, need not have been admitted under Rule 106 or Rule 403.

This conclusion is supported not only by precedent, but by reasoned analysis and by the evidence. The admitted portions of the letter certainly establish that an inveiglement occurred; otherwise, the victim would not have accompanied the other three if she had believed that they were taking her into the woods to kill her. See *Wright v. State*, 433 S.E.2d 99, 101 (Ga. Ct. App. 1993) ("Obviously, [the victim] did not voluntarily accompany Wright with the expectation that he would be shot again, dumped in the woods, and left for dead."), *overruled on other grounds by Mullins v. State*, 511 S.E.2d 165 (Ga. 1999). Mr. Stokes' own confession demonstrates that the victim was inveigled into accompanying him and his cohorts that night: when they arrived at the wooded area and he said to Ms. Snipes, "baby, I'm sorry, but it's you that Pattie wants dead," she clearly was surprised, exclaiming, "oh, my [G]od, that fat bitch." Trial Tr. at 971, 11.11-12. She also

affirmed that she did not "voluntarily [ride] to her death," see Br. of Appellant, at 13, when she said, "[P]lease don't kill me." Trial Tr. at 971, 11.15-16. Thus, the jury could--and did--conclude that an inveiglement occurred without the redacted statements.

Introduction of the redacted statements would not have made it less likely that the jury would have found an inveiglement occurred. The redacted statements would only have shown the jury that Ms. Snipes had been inveigled by a false representation that she was going on a trip for an illegal purpose, or that she had agreed to accompany the defendant and his cohorts to a place of their choosing. See p.4, *supra*. However, neither showing impacts the determination that Ms. Snipes was inveigled and, thus, kidnapped when she was invited to accompany Mr. Stokes, Mr. Martin, and Ms. Syphrette after they decided to kill her. See, e.g., *United States v. Boone*, 959 F.2d 1550, 1552-53 (11th Cir. 1992) (victim was inveigled into accompanying the defendant through misrepresentation that trip was for purpose of finding a marijuana patch); *State v. Gaskell*, C.C.A. No. 285, 1992 WL 73189 (Tenn. Crim. App. Apr. 13, 1992) (unpublished) (victim was inveigled to travel to place where, based on defendant's representations, she thought she would find her husband, but where in fact the defendant intended to rape her).

To summarize: because the redacted statements neither explain nor clarify whether Ms. Snipes was inveigled to her death, the statements need not have been admitted in the interests of

fairness and completeness and were neither relevant nor material to the finding of guilt. See *State v. Cooney*, 320 S.C. 107, 463 S.E.2d 597 (1995) ("Evidence is only relevant and admissible if it tends to establish or make more or less probable some matter in issue and bears directly or indirectly thereon."); cf. *Taylor*, 508 S.E.2d at 876 (holding certain portions of a statement should have been admitted under Rule 106 because they clarified the existence of an issue before the jury, although the error of omission was harmless beyond a reasonable doubt). Stated another way, although the redacted statements might have provided additional information regarding the precise events on the night of Ms. Snipes death, that information was not relevant to the sole issue of whether she actually was inveigled. See *Merrick*, 855 F.2d at 1104. Therefore, the trial judge did not abuse his discretion in excluding the redacted statements during the guilt phase of the trial. See S.C. R. Evid. 106, 403.⁷

In fact, fairness and proper procedure in this instance demanded that the references to Mr. Ferguson be redacted during the

⁷The statements became relevant during the sentencing phase because the State introduced evidence that Mr. Stokes murdered Mr. Ferguson as an aggravating factor. This Court repeatedly has held that evidence of other crimes is admissible in the second phase of a capital trial because the "sentencing jury is charged with considering all possible relevant information about the individual defendant whose fate it must determine." *State v. Hughes*, 336 S.C. 585, 521 S.E.2d 500, 504 (1999). Once the information about Mr. Ferguson's murder was introduced, the redacted statements became relevant because they provided further explanation of that crime.

guilt phase even if the evidence otherwise was admissible under Rule 106. During pretrial discussions, the Solicitor explained the following:

And also, the reference to Doug Ferguson, the other references have been redacted since he was the second murder victim, they have been redacted in order to protect Mr. Stokes' interest here and just have the jury concentrate on the one murder that he's being tried on.

Trial Tr. at 744, 11.6-10. Therefore, redacting the references to Mr. Ferguson was consistent with omitting all references to him during the guilt phase. To have included Mr. Ferguson's name as a potential victim without any information as to his ultimate fate likely would have raised the possibility that Mr. Stokes had considered killing others, thus prejudicing and confusing the jury against him. See S.C. R. Evid. 402, 403. Now, because the jury found him guilty in the absence of this information, it is apparent that the finding was made in the absence of any improper prejudice that could have arisen from admission of the redacted statements. At the very least, when viewed in this light, upholding the State's request to redact all references to Mr. Ferguson during this phase was not an abuse of the trial judge's broad discretion in evidentiary matters. See, e.g., S.C. R. Evid. 403 (permitting exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time); Cooney, 463 S.E.2d at 599 (noting that trial judge has broad discretion regarding questions of relevancy).

Finally, the interests of fairness and relevance did not require admission of the redacted statements during the guilt phase because--at the latest--the kidnapping occurred when Mr. Stokes told the victim that Ms. Syphrette wanted her killed. See *Plath II* at 628-29; see also *Ray*, 498 S.E.2d at 642. At that point, she knew beyond doubt that she had been tricked into accompanying Mr. Stokes, Mr. Martin, and Ms. Syphrette; that she could not leave; and, that she was confined against her will. S.C. Code Ann. § 16-3-910; *Plath II* at 628 (noting that evidence of the victim's confinement was sufficient to raise a jury question); see *Ray*, 498 S.E.2d at 642 (noting that kidnapping occurred "at the latest" when the defendant made clear by his behavior that he had falsely stated his intent to the victim); see also *Dunn v. State*, 486 N.W.2d 428, 432 (Minn. 1992) (noting that state statute did not include time or distance factors as predicate for kidnapping conviction); cf. *West v. United States*, 599 A.2d 788, 792 n.9 (D.C. 1991) (kidnapping may occur even if confinement or removal is not substantial); *State v. Osborn*, 455 N.W.2d 292, 294 (Iowa Ct. App. 1990) (same). The redacted statements were not at all relevant to this sequence of events, which occurred after the inveiglement used to obtain her false consent to accompany the defendant and, thus, provided an independent basis upon which the jury could have found Mr. Stokes guilty of kidnapping. Consequently, any claimed error in omitting the redacted statements under Rule 106 was harmless beyond a

reasonable doubt. See *State v. Mouzon*, 326 S.C. 199, 485 S.E.2d 918, 921 (1997).

II. THE TRIAL JUDGE PROPERLY BARRED THE DEFENDANT FROM ARGUING RELIGIOUS MATTERS DURING HIS STATUTORY CLOSING ARGUMENT.

Despite a prior Order by the trial judge that neither side should get into religion during closing argument, see Pretrial Hrg. Tr. at 108, 11.2-25 (Oct. 14, 1999), Mr. Stokes stated during his closing that he had "prayed and prayed and prayed and [had] asked God to forgive [him]" when the Solicitor interrupted and asked to approach. Trial Tr. at 1459, 11.12-13. Mr. Stokes then stated, "But I'm asking for forgiveness--and I believe," when the Solicitor objected. *Id.*, 11.18-20. Thereafter, the bench conference concluded and Mr. Stokes continued his closing statement, saying, "I would like to discuss how---but I can't get into that because they say I can't get into it" *Id.* at 1460, 11.9-10.

As an initial matter, Mr. Stokes erroneously describes the statutory closing statement he made in this case as his allocution. However, allocution is the common law procedure in which the trial judge asks the defendant before sentencing "if he has anything to say why judgment should not be pronounced on him." *State v. Trezevant*, 20 S.C. 363 (1884); see also *State v. Holmes*, 320 S.C. 259, 464 S.E.2d 334, 340 (1995) (Finney, C.J., dissenting). In contrast, the statutory closing statement is the defendant's right under South Carolina Code Section 16-3-20(B) (Law. Co-op. Supp. 1999) to make an argument "for or against the sentence to be imposed," and is limited to arguing about facts in evidence for the purpose of directing the jury's attention to the

circumstances of the crime or the defendant's own characteristics. *State v. Davis*, 306 S.C. 246, 411 S.E.2d 220, 222 (1991). Thus, it is during the allocution that a defendant may make unsworn statements and discuss religion; during closing argument, the defendant is limited to argument based on facts in evidence.

In this instance, defendant's allocution came after the jury recommended a penalty of death and the trial court had excused the jurors from the courtroom:

The Court: As the Trial Judge of the above entitled action, prior to the imposition of the death sentence upon the defendant, Sammie Louis Stokes, I find as an affirmative fact that the evidence in the case warrants the imposition of the death penalty and this imposition is not the result of prejudice, passion or any other arbitrary factor.

At this time, Mr. Stokes, is there anything that you would like to tell the Court?

Mr. Stokes: No, your honor.

The Court: Is there anything you have to say or would like to say why judgment should not be pronounced against you?

Mr. Stokes: No.

The Court: Anything else?

Mr. Stokes: No.

Trial Tr. at 1492, 1.13-1493, 1.3. Thus, Mr. Stokes received the right to allocution, but did not exercise his right to make religious or other unsworn arguments at that time. Consequently, the sole issue presented for review by this Court is whether Mr.

Stokes was erroneously denied the right to discuss religious matters in his statutory closing argument--not the allocution.

However, the record is void of any contemporaneous objection to the trial judge's ruling that Mr. Stokes was barred from discussing religious matters during his statutory closing statement. See *State v. Franklin*, 318 S.C. 47, 456 S.E.2d 357, 363 (S.C. 1995); see also Trial Tr. at 1459, 1.12-1460, 1.10. Nor was there any objection to the trial judge's order at the preliminary hearing, although such an objection would have been insufficient to preserve an issue for appellate review. Pretrial Hrg. Tr. at 108, 11.2-25 (Oct. 14, 2000); see *State v. Floyd*, 295 S.C. 518, 369 S.E.2d 842, 843 (1988). Therefore, this error was not preserved for appellate review.

But, even if the issue was preserved, there is no reversible error. As noted above, the closing argument is restricted to argument about facts that are in evidence. See *Davis*, 411 S.E.2d at 222. And, entirely consistent with this restriction, this Court previously has held that "there is no fundamental unfairness when the trial judge precludes the solicitor and the defense from arguing about God or religion." *State v. Shafer*, --- S.C. ---, 531 S.E.2d 524, 532 (2000); see also *State v. Bennett*, 328 S.C. 251, 493 S.E.2d 845, 852-53 n.8 (1997) (although not finally deciding whether religious arguments are ever permissible, the Court noted that a significant line of authority has "condemned

such arguments") (citing *Bennett v. Angelone*, 92 F.3d 1336 (4th Cir. 1996)). Moreover, the trial judge has "broad discretion in dealing with the range and propriety of closing arguments and ordinarily his rulings on such matters will not be disturbed." *Shafer*, 531 S.E.2d at 533. Because Mr. Stokes' statement that he had asked God to forgive him was not an argument about the evidence, the trial judge properly precluded him from continuing his religious arguments before the jury.

Nevertheless, although acknowledging that a defendant may not argue "that the death penalty is unChristian or that Jesus would give him a life sentence--just as the state cannot argue that God would surely smite the defendant dead," Init. Br. of Appellant. at 17, Mr. Stokes argues that it is permissible for a capital defendant to tell the jury that he has asked God to forgive him. He contends that the latter argument is permitted because "such a statement reflects remorse and contrition, but does not inject concepts of biblical morality into the proceeding" and does not argue "what God would do." Cf. *State v. Johnson*, 306 S.C. 119, 410 S.E.2d 547, 555 (1991) (finding no error in religious references because the solicitor did not argue "what God would do.").

Contrary to Mr. Stokes' assertions, however, the effect of his argument was to implicitly raise before the jury "what God would do"--i.e., forgive him and not impose a penalty of death--just as surely as if he had explicitly argued "what God would do."

This is the same type of argument that this Court previously and consistently has held may be barred during closing argument. And, again, the argument was not based on facts in evidence. Therefore, the trial judge properly exercised his discretion in prohibiting the argument.

Mr. Stokes claims that *State v. Woomer*, 278 S.C. 468, 299 S.E.2d 317, 321 (1982), provides an example of a religious argument that might be made before the jury. However, in *Woomer*, this Court simply observed that in addition to the mitigating circumstances available, the jurors also were presented with an "unsworn statement by the appellant in which he professed to have achieved peace of mind through religion and desired to be of future help to others." *Id.* The Court did not pass on the propriety of the argument, apparently because no objection was raised. And, since the *Woomer* decision, which was in 1982, the Court has stated that religious arguments during closing may be precluded by the trial judge. See *Shafer*, 531 S.E.2d at 532-33; *Bennett*, 493 S.E.2d at 852-53 & n.8; *State v. Patterson*, 324 S.C. 5, 482 S.E.2d 760, 766 (1997); *cf.* *Johnson*, 410 S.E.2d at 555. Consequently, *Woomer* does not mandate that defendants be permitted to argue about religious matters, nor does it even suggest such a requirement.

Furthermore, there is no merit to Mr. Stokes' contention that the State invited his religious argument by introducing evidence at sentencing that he told police, "Without a doubt, God

is going to punish me for my part." Init. Br. of Appellant at 17. A review of the pertinent portions of the record expressly demonstrates that the State moved to exclude this portion of Mr. Stokes' statement, but the defense objected and the trial judge sustained the objection:

Mr. Sims: Right after that he said,"

"Telling their family sorry would only make them hate me more. Because saying sorry want [sic] bring their loved ones back, it would only add more pain hearing it from me. I will say this much, God is going to bless them and help them make it through this. Without a doubt God is going to punish me for my part. And there's no excuse because we all have choices in life."

That was a part of that statement and we would ask that that be put in the statement.

Solicitor Bailey: Your Honor, *I deleted that in the proposed redaction because I felt like it injected religion into the case and it's self-serving to that extent and I just felt like it should be out.*

Mr. Sims: Your Honor, it shows his state of mind at the time and we've all---as part of our defense and we've already talked about the fact of him being remorseful and that he has a conscience in this matter. But this definitely shows and---it does not get into religion, it's simply a statement of what his feelings were at that time and why he was making the statement.

The Court: Detective Rush touched on that.⁸ I'm going to allow that in.

Trial Tr. at 1274, 1.22-1275, 1.20 (emphasis added). Consistent with its ongoing position during the trial and with the trial judge's order, the State sought to redact the very statement about which defendant complains. It therefore cannot be said that the State invited Mr. Stokes' religious argument because he--and not the State--caused the statement that God would punish him to be introduced into evidence.

There also is no merit to Mr. Stokes' contention that the State invited his religious argument by telling the jurors that they "had sworn an oath to God they would sentence appellant to death 'in the appropriate case.'" Init. Br. of Appellant at 17. Contrary to the impression created by this assertion, the State simply commented on the oath taken by the jurors:

Monday seems like a long time ago, last week, when ya'll were out here with the other 300 or so jurors and you were all *put under oath*, you were asked to *raise your right hand and each of you said that you swore to tell the truth, the whole truth, nothing but the truth, so help you God*. And under that oath you were asked a series of questions by Judge Burch, by me and by Mr. Sims for the defense. And each of ya'll *said under oath* that in the appropriate case, I could bring back a verdict

⁸This statement follows defense counsel's argument and references testimony by Mr. Rush during the guilt phase of the trial suggesting that the defendant had expressed some form of remorse and had "wanted to straighten things out." Trial Tr. at 957, 11.4-15. Mr. Rush did not provide any testimony that the defendant said God would punish him.

for the death penalty. Each of ya'll said under that same oath that if I vote for the death penalty and the other jurors join me in that vote, I could sign my name to that death verdict form. Each of you said that if you voted for the death penalty and you signed that paper, you could announce that decision out loud. Each of ya'll said under oath the fact that the defendant in this case is black and victim was white, that that would have absolutely no bearing on your decision in this trial. And, ladies and gentlemen, when ya'll said that, when ya'll gave those answers, I believed you or you wouldn't be on this jury.

So the issue of whether or not the death penalty is right or wrong or whether we ought to have a death penalty is not an issue, because each of ya'll said under oath that in the appropriate case, you can impose the death penalty, knowing that penalty would be carried out.

So the only issue is whether this case, this defendant, is the appropriate case for the death penalty, based on the facts that you've heard from this witness stand.

Trial Tr. at 1431, 1.1-1432, 1.6 (emphasis added). A review of this entire passage demonstrates that the State only reminded jurors of their oath, did not in any manner inject religion into this case, and thus did not at all engage in improper argument. See *Eberhardt v. State*, 359 S.E.2d 908, 909-10 (Ga. 1987) (holding that defendant was not prejudiced by reference to God by prosecutor in context of reminding jurors of their oath). To conclude otherwise would be to conclude that the mere fact that jurors--and witnesses--swear an oath injects religion into any case, a conclusion that simply cannot be supported by reasoned analysis. The basis for a

prohibition against religious arguments during closing is that such arguments are "confusing, unnecessary, and inflammatory." *Bennett*, 92 F.3d at 1346. Reminding jurors of their oaths causes none of those problems. See *Eberhardt*, 359 S.E.2d at 909-10.

Finally, based on the record, Mr. Stokes was not prejudiced by the trial judge's ruling because he made the argument he intended to make. See *Bennett*, 493 S.E.2d at 853 (holding that defendant who is able to make his desired point before the jury is not prejudiced by a contrary ruling). Before this Court, Mr. Stokes contends only that he was not allowed to tell the jury that "he has asked God to forgive him for his wrongdoing," and does not claim that he should have been permitted to make a broader religious argument. Init. Br. of Appellant at 17. But, as noted above, he expressly told the jury that, "I prayed and prayed and prayed and have asked God to forgive me." Trial Tr. at 1459, 11.12-13. When his argument was interrupted by the Solicitor, he said, "But I'm asking for forgiveness" *Id.* at 1459, 11.18-20. The trial judge did not instruct the jurors to disregard his statements. See *id.* at 1459, 1.14-1460, 1.12. Then, in concluding his argument, Mr. Stokes implicitly reminded the jurors that he had prayed for forgiveness when he said, "I would like to discuss how--but [I] can't get into that because they say I can't get into it so I would like to say that I am truly sorry, I really am." *Id.* at 1460, 11.9-12. Therefore, he made his desired statement about forgiveness before

the jury, reminded them of it when concluding his argument, and therefore suffered no prejudice. See *Bennett*, 493 S.E.2d at 853.

CONCLUSION

For these reasons, the State of South Carolina respectfully requests that this Court affirm Mr. Stokes' convictions and sentence.

Respectfully submitted,

CHARLES M. CONDON
Attorney General

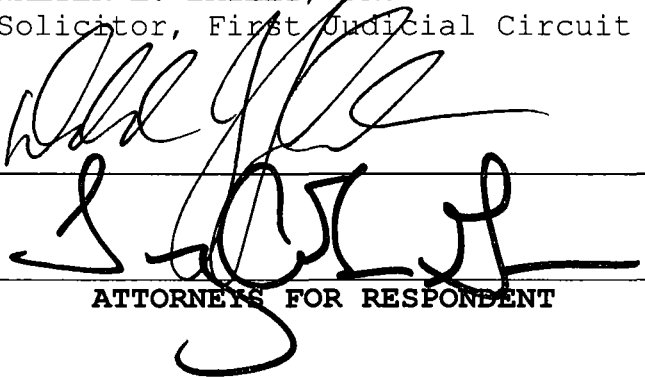
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WALTER L. BAILEY, JR.
Solicitor, First Judicial Circuit



ATTORNEYS FOR RESPONDENT

September 25, 2000

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions
Paul M. Burch, Circuit Court Judge

Indictment Nos. 98-GS-38-1245
98-GS-38-1246
98-GS-38-1247
98-GS-38-1248

THE STATE,

RESPONDENT,

v.

SAMMIE LOUIS STOKES,

APPELLANT.

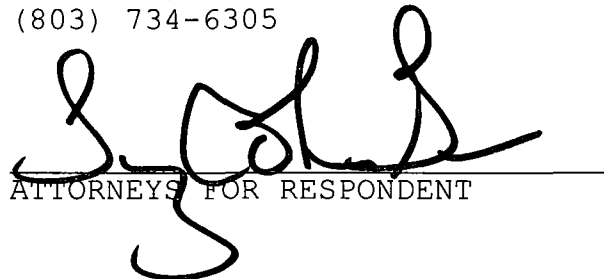
DESIGNATION OF MATTER TO BE INCLUDED
IN RECORD ON APPEAL

Appellee accepts the Designation of Matter to be Included
in the Record on Appeal filed by the Appellant.

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

TRACEY COLTON GREEN
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
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ATTORNEYS FOR RESPONDENT

September 25, 2000

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
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Paul M. Burch, Circuit Court Judge

Indictment Nos. 98-GS-38-1245
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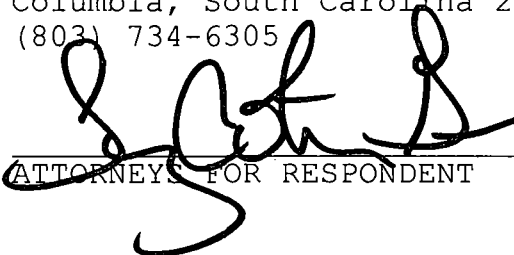
APPELLANT.

CERTIFICATE OF SERVICE

I certify that a copy of the Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal in this case has been served upon the Appellant by depositing a copy of the brief in the United States Mail, postage prepaid, on September 25, 2000, addressed to his attorney, Joseph L. Savitz, III, Deputy Chief Attorney, South Carolina Office of Appellate Defense, 1122 Lady Street, Suite 940, Columbia, South Carolina 29201.

TRACEY COLTON GREEN
Assistant Attorney General

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ATTORNEYS FOR RESPONDENT



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 25, 2000

RECEIVED

SEP 25 2000

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. Sammie Louis Stokes

Dear Mr. Shearouse:

Enclosed please find the original **Initial Brief of Respondent** and **Designation of Matter**, both dated September 25, 2000, along with proof of service in the above-referenced case.

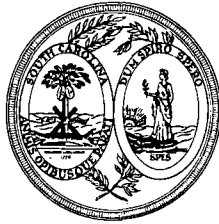
Thank you for your cooperation in this matter.

Sincerely,

Tracey C. Green
Assistant Attorney General

Enclosures

cc: Joseph L. Savitz, III, Esquire
Honorable Walter M. Bailey, Jr.
Sandi Wofford, Victims' Services



RECEIVED
AUG 28 2000

S.C. SUPREME COURT

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

August 28, 2000

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

Re: The State v. Sammie Lewis Stokes
Death Penalty Appeal From Orangeburg County

Dear Mr. Shearouse:

Assistant Deputy Attorney General Donald J. Zelenka has assigned this direct appeal to me for handling. Please enter my appearance as counsel of record, and direct all future correspondence and orders concerning this case to my attention.

Thank you for your attention to this matter. By copy of this letter to Joseph L. Savitz, III, Esquire, I am notifying him of my appearance in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "T. O. Green", with a long horizontal flourish extending to the right.

Tracey O. Green
Assistant Attorney General

/lb

cc: Joseph L. Savitz, III, Esquire
Sandi Wofford, Victims' Services

RECEIVED ORIGINAL
AUG 11 10 2000
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMMIE LOUIS STOKES,

APPELLANT

INITIAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. The judge erred by refusing to allow the defense to introduce the portion of appellant's letter to the police the state had redacted, which indicated that the decedent had willingly accompanied appellant, Syphrette and Martin as the member of a conspiracy to kill Doug Ferguson.

2. The judge erred at sentencing by refusing to allow appellant to tell the jury during allocution that he had asked God to forgive him for his crimes.

STATEMENT OF FACTS

On May 17, 1999, an Orangeburg County grand jury indicted Sammie Louis Stokes for murder, kidnapping, first degree criminal sexual conduct and conspiracy. The victim was a recent acquaintance, Connie Lee Snipes, whom he had been hired to kill. Also charged with Snipes' murder were her mother-in-law, Pattie Syphrette, and appellant's friend, Norris Martin, a Branchville maintenance worker. The state sought the death penalty. Syphrette went to trial and received a life sentence. Tr. p. 1311, line 4 – p. 1312, line 20. Martin pleaded guilty and received a life sentence in exchange for his testimony against appellant. Tr. p. 871, lines 3–6.

Judge Paul M. Burch presided at appellant's trial on January 19 (qualification of defense counsel), October 14 (pretrial motions) and October 25 through 31, 1999 (the jury trial itself). The state's case in the guilt phase relied on two primary elements: a letter appellant had written the police concerning his involvement in the crimes and Norris Martin's testimony. Appellant's letter was the principal source for details of the events leading up to the killing of Snipes. See Tr. p. 962, line 10 – p. 977, line 8; tr. p. 1288, line 7 – p. 1309, line 25; ROA p. ____ – _____. Martin's testimony and the letter overlap – with significant differences – regarding the homicide itself. See Tr. p. 878, line 23 – p. 896, line 3; tr. p. 1155, line 4 – p. 1161, line 15. The state's case at sentencing focused on the grisly details of Snipes' death and appellant's involvement in the subsequent murder of Doug Ferguson.

According to appellant's letter, he and Syphrette's son, James Roy Toothe, were cellmates at Turbeville Correctional Institution, where appellant was serving a sentence for assault and battery of a high and aggravated nature. Snipes and her two young children by

Toothe, Brian and Nicole, were living with Syphrette in Orangeburg, while Toothe served time for a second degree burglary conviction he and his mother blamed on Snipes. Her unfaithfulness and dissolute lifestyle did not help matters. (The state did not make victim impact an issue at sentencing in this case. See Tr. p. 1472, lines 10–14.) The final straw for Toothe was when the Department of Social Services took Nicole away, but for Syphrette, it was when she caught Snipes "fucking my old man on the couch." They decided to hire appellant, who was scheduled to be released from prison in several months, to kill Snipes. Appellant agreed to do the job for \$2,000.

In the months leading up to appellant's release, he and Syphrette continued to talk on the telephone and appellant eventually sent her some gold jewelry to hold until he got out. Doug Ferguson, another ex-con who had moved in with Syphrette and Snipes in the meantime, stole the jewelry and hocked it. Ferguson boasted that he knew appellant from prison and would "beat [his] ass if he didn't like it." For some undisclosed reason, Ferguson also wanted Snipes dead. The feeling was mutual, again for reasons now lost.

Appellant was released on May 5, 1998. He caught a bus to Branchville, where he sought out Martin, an old friend from high school. Soon, appellant had enlisted Martin in the plot to kill Snipes. The lure of easy sex proved too much for the simple-minded Martin, who at thirty-seven was still a virgin. Appellant assured him that both Snipes and Syphrette were available.

On May 22, DSS contacted Syphrette and told her to evict Snipes or they would have no choice but to take her remaining grandchild, Brian, into custody. Tr. p. 1005, line 23 – p. 1006, line 9. Syphrette advised the caseworker that she would kick Snipes out of the

house that very day. Tr. p. 1006, lines 10–18. Syphrette then told appellant that "Connie got to go and tonight."

Again according to appellant's letter, when Snipes got in Syphrette's car with appellant, Syphrette and Martin the night of May 22, Syphrette had convinced her they were going to kill Doug Ferguson, who she explained was already being held captive somewhere outside Branchville. Snipes said, "Doug ain't shit and I'd love to see him get his. I had plans tonight, but this is better."

The four of them drove from Orangeburg through Branchville and turned off the highway onto a private dirt road. Leaving Syphrette at the car, appellant, Martin and Snipes walked off into a wooded area. When Snipes asked where Ferguson was, appellant informed her, "Baby, I'm sorry, but it's you that Pattie wants dead." Snipes exclaimed, "Oh my God, that fat bitch," and asked them not to kill her.

At this point, the accounts contained in appellant's letter and Martin's testimony diverge on a number of significant details. They agree each had sex with Snipes, but Martin claims appellant forced him to at gunpoint. Tr. p. 891, lines 10–19. Then Snipes was shot to death. She died from a gunshot to the back of her head; another to the left jaw probably would not have been fatal by itself. Tr. p. 852, line 11 – p. 854, line 10. There is no way to tell which shot came first. Tr. p. 854, lines 12–20. Appellant's letter states that Martin shot Snipes first, then he took the gun and fired a second shot "at her head." Martin testified that appellant had fired both shots. Tr. p. 892, line 14 – p. 893, line 13. He also testified that appellant had severed Snipes' nipples with a knife while he was having sex with her and, after she was dead, had scalped her and cut out her vagina. Tr. p. 1155, line 4 – p. 1160, line 25. A pathologist corroborated these injuries. Tr. p. 1215, line 7 – p. 1221, line 13.

Martin became aware that Syphrette was standing beside him. Tr. p. 894, line 17 – p. 895, line 8. She said, "I'm glad the bitch is dead." Tr. p. 895, lines 9–12. They were dragging Snipes' body deeper into the woods when headlights suddenly flashed down the dirt road. Tr. p. 895, lines 13–23. Mark Ott was checking on his property when he noticed Syphrette's car, which was parked in front of a cable stretched across the road. Tr. p. 790, line 17 – p. 792, line 20. Ott returned twice to check on the car over the next ten minutes or so, then left to get his brother. Tr. p. 794, line 1 – p. 795, line 14. Appellant, Martin and Syphrette rushed back to the car and drove to a club. Tr. p. 895, lines 14 and 25; tr. p. 898, lines 1–6.

Several days later, Syphrette telephoned her friend Faith Lapp, a truck driver, and told her that Doug Ferguson "had to go because he knew too much" about Snipes' murder. Tr. p. 1328, lines 8–16; tr. p. 1335, lines 23–25. Also, he had stolen appellant's jewelry. On May 28, Lapp was at Syphrette's house with appellant, Syphrette and her grandson, Brian. Tr. p. 1330, lines 20–23. Syphrette said "they were going to get Doug to come up here and teach him a lesson for sure." Tr. p. 1332, line 25 – p. 1333, line 12. Lapp thought she meant "they were going to rough him up a little bit... [t]o teach him not to steal anymore." Tr. p. 1333, line 19 – p. 1334, line 1. Syphrette left and returned an hour later with Ferguson. Tr. p. 1334, lines 2–15; tr. p. 1339, lines 7–17. Appellant was hiding in the bedroom when Ferguson entered. Tr. p. 1339, lines 18–20. He stepped into the living room and asked a startled Ferguson "if he knew him." Tr. p. 1340, line 4 – p. 1341, line 17. When Ferguson said he did not, appellant responded, "Motherfucker, you're going to know me." Tr. p. 1341, lines 18–20. According to Lapp's testimony, appellant and Syphrette wrapped duct tape around Ferguson's wrists, ankles and head while she was out of the room with Brian. Tr. p.

1341, line 21 – p. 1345, line 9. According to appellant's letter, he punched and held Ferguson while Syphrette and Lapp taped him up. A pathologist offered this description:

The unusual thing about [Ferguson's] body was that he was wrapped in duct tape. His ankles were taped together, his wrists were taped together and his arms were taped together, and then that was taped to his chest, and then his face and head was (sic) fully taped.

Tr. p. 1194, lines 4–11.

Ferguson suffocated to death. Tr. p. 1206, lines 1–9.

Lapp went to a convenience store. Tr. p. 1346, lines 2–5. On the way, she passed the police, who were on their way to arrest Syphrette. Tr. p. 1347, lines 7–23. Mark Ott had written down the tag number of Syphrette's car the night of May 22. Tr. p. 792, line 21 – p. 793, line 3. A farmer found Snipes' body on May 27. Tr. p. 813, lines 7–9. Martin's identification card and a toy badge the chief of police had given him were lying nearby. Tr. p. 812, lines 17–20; tr. p. 821, line 18 – p. 822, line 5; tr. p. 875, line 3 – p. 876, line 16. Based on this evidence, police arrested Martin on May 27, but he was too drunk to interrogate. Tr. p. 840, line 21 – p. 841, line 8. The next day, Martin pinned the murder of Snipes on Syphrette. Tr. p. 842, lines 14–17.

Police entered the house and arrested Syphrette. Tr. p. 1238, line 19 – p. 1239, line 1. She and Brian were placed in a patrol car. Tr. p. 1239, lines 2–11. Syphrette told the police that "Stokes was in the house with a dead body." Tr. p. 1239, line 22 – p. 1240, line 5. They reentered the house and found Ferguson's body in a rear bedroom. Tr. p. 1242, lines 1–6. Appellant was discovered hiding underneath the bed. Tr. p. 843, line 13 – p. 844, line 6.

At the guilt phase of appellant's trial, defense counsel conceded that appellant was involved in Snipes' murder, but contended that Martin had fired the fatal shot. Tr. p. 787, lines 23 and 24; tr. p. 1041, line 24 – p. 1042, line 10. Appellant did not testify. The jury found appellant guilty of all four charges. Tr. p. 1075, line 20 – p. 1076, line 22.

At sentencing, the state relied on six aggravating circumstances:

- (1) "The murder of Connie Lee Snipes was committed while in the commission of criminal sexual conduct in any degree;"
- (2) "The murder of Connie Lee Snipes was committed while in the commission of kidnapping;"
- (3) "The offender committed the murder of Connie Lee Snipes for himself or another for the purpose of receiving money or a thing of monetary value;"
- (4) "The offender caused or directed another to commit murder or committed the murder of Connie Lee Snipes as an agent or employee of another person;"
- (5) "Two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct;" and
- (6) "The murder of Connie Lee Snipes was committed while in the commission of physical torture."

Tr. p. 1473, line 22 – p. 1476, line 7; ROA pp. ____ and ____; see S.C. Code Section 16–3–20(C)(a)(1), (4), (6) and (9). The defense did not request any statutory mitigating circumstances, relying instead on expert testimony that appellant was adaptable to prison. Tr. p. 1394, lines 14–19; tr. p. 1480, lines 3–15. Once again, appellant did not testify. He did attempt to express remorse in a closing statement. Tr. p. 1459, line 3 – p. 1460, line 12. The jury found the first four aggravating circumstances advanced by the state and recommended death. Tr. p. 1490, line 15 – p. 1491, line 8; ROA p. _____. The judge affirmed

that decision and also sentenced appellant to thirty years for first degree criminal sexual conduct and five years for conspiracy. Tr. p. 1493, line 18 – p. 1494, line 11; tr. p. 1497, line 12 – p. 1498, line 11; ROA p. ____ – _____. Appellant later pleaded guilty to the murder of Doug Ferguson and received a life sentence.

ARGUMENT

I.

The judge erred by refusing to allow the defense to introduce the portion of appellant's letter to the police the state had redacted, which indicated that the decedent had willingly accompanied appellant, Syphrette and Martin as the member of a conspiracy to kill Doug Ferguson.

Several days after his arrest, appellant gave the police a letter he had written concerning the murders of Connie Lee Snipes and Doug Ferguson. Tr. p. 946, line 4 – p. 947, line 21. In addition to implicating himself, Pattie Syphrette and Norris Martin, appellant revealed that Snipes had voluntarily accompanied them to the site of her death because she was conspiring to kill Ferguson.

At the start of trial, the solicitor moved to edit out the portion of appellant's letter "where he is addressing Connie Snipes' motives for being out in the woods with them." Tr. p. 732, line 22 – p. 736, line 21. Defense counsel responded that only the complete letter as originally written would adequately convey "what was actually going on... That [Snipes] was going out there to commit a crime herself." Tr. p. 736, line 24 – p. 737, line 24. The parties disputed the correct application of South Carolina Evidence Rule 106. Tr. p. 738, line 15 – p. 739, line 25; tr. p. 742, lines 4–22; tr. p. 743, line 15 – p. 744, line 24.

Further, the solicitor argued, "[w]hat Mrs. Snipes said, as quoted by Mr. Stokes, would be hearsay... He is saying what she said and she's dead." Tr. p. 742, line 23 – p. 743, line 1. Defense counsel countered that Snipes' statements demonstrated her then existing state of mind and were therefore admissible as an exception to the rule against hearsay under Evidence Rule 803(3). Tr. p. 744, line 25 – p. 746, line 22.

The judge ruled that only the redacted letter proffered by the state would be admissible at appellant's trial. Tr. p. 746, line 23 – p. 747, line 1. He specifically rejected defense counsel's arguments concerning Evidence Rules 106 and 803.

A detective read the edited letter to the jury to conclude the state's case in the guilt phase, carefully excluding all references to Snipes' real motive for being with appellant, Syphrette and Martin the night of her death. Tr. p. 963, line 7 – p. 977, line 21. Defense counsel renewed his objection to this omission for the reasons he had previously given. Tr. p. 983, line 18 – p. 984, line 17. The judge again overruled the objection. Tr. p. 985, lines 3–5.

Then, at sentencing, the solicitor reintroduced appellant's letter, this time in its entirety. Tr. p. 1287, line 21 – p. 1309, line 25. Defense counsel renewed his earlier objection, observing, "[T]he state is using the bits and pieces of the defendant's statement to prejudice the defendant in different parts of the trial." Tr. p. 1314, line 8 – p. 1315, line 17. The judge held that Evidence Rule 106 permitted the solicitor to do just that. Tr. p. 1315, lines 18–21.

Rule 803(3) excepts from the rule against hearsay "[a] statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health)..." Snipes' comments concerning her voluntary participation in a conspiracy to murder Doug Ferguson illustrated her then existing state of mind, particularly her intent and motive for accompanying appellant, Syphrette and Martin. See State v. Griffin, Op. No. 25082 (S.C. Sup. Ct., filed March 6, 2000).

South Carolina Evidence Rule 106 states:

When a writing, or a recorded statement, or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

The goal of Rule 106 is fairness. "[T]he Rule reduces the risk that a writing or recording will be taken out of context and that an initial misleading impression will take hold in the mind of the jury." State v. Taylor, 333 S.C. 159, 508 S.E.2d 870, 875 (1999).

The introduction at the guilt phase of the redacted letter alone was patently misleading, as it deprived the jury of the crucial knowledge that Snipes was an eager participant in a conspiracy to murder Doug Ferguson. This evidence of her state of mind was relevant to the kidnapping charge, as it showed that Snipes voluntarily rode to her death. In other words, she was not tricked or inveigled into going any place she did not wish to be. Compare Ray v. State, 330 S.C. 184, 498 S.E.2d 640 (1998), and State v. Plath, 281 S.C. 1, 313 S.E.2d 619 (1984). It was also relevant to the criminal sexual conduct charge, as kidnapping was listed as an element in aggravation. Tr. p. 1065, line 22 – p. 1068, line 2.

Of course, the solicitor's belated introduction of the entire letter at sentencing could not cure an erroneous finding of guilt, but he exploited the error at sentencing as well. There, in his opening statement, the solicitor informed the jury that they had already conclusively found the kidnapping and criminal sexual conduct aggravating circumstances during the guilt phase. Tr. p. 1103, line 10 – p. 1104, line 2. He did not introduce the unedited letter until late in the state's case. In any event, as a matter of law, the defense could not argue residual doubt at sentencing. See State v. Southerland, 316 S.C. 377, 447 S.E.2d 862 (1994). In short, the violation of Evidence Rule 106 in the guilt phase allowed the solicitor to bootstrap two unreliable convictions into an unreliable death sentence. By

the time the redacted portion was finally introduced, the state had effectively neutralized its factual and legal significance.

Rule 106 was specifically designed and adopted to end the misleading, piecemeal presentation of written statements. State v. Taylor. Appellant's case underscores the necessity and value of that rule.

The Court should reverse appellant's convictions for kidnapping, first degree criminal sexual conduct and his death sentence.

II.

The judge erred at sentencing by refusing to allow appellant to tell the jury during allocution that he had asked God to forgive him for his crimes.

At a pretrial hearing, the solicitor moved "to prohibit either side from getting into religious arguments... especially in the penalty phase of this thing." October 14 Tr. p. 108, lines 2–10. Defense counsel indicated that he had no intention of making such an argument unless the state opened the door. October 14 Tr. p. 108, lines 11–14. The judge granted the motion. October 14 Tr. p. 108, line 15.

During voir dire, the solicitor questioned seven of the twelve jurors later selected for appellant's case about their religious beliefs concerning the death penalty. Tr. p. 121, line 20 – p. 122, line 11, and tr. p. 125, line 4 – p. 126, line 17; tr. p. 146, lines 2–9; tr. p. 167, lines 1–12; tr. p. 411, lines 10–19; tr. p. 426, lines 5–11; tr. p. 534, lines 4–10; tr. p. 543, line 18 – p. 544, line 25. At sentencing, the state introduced appellant's unredacted letter, which concluded, "Without a doubt, God is going to punish me for my part." Tr. p. 1309, lines 11–17. Finally, in closing argument the solicitor reminded the jury that they had sworn an oath to God to sentence appellant to death "in the appropriate case." Tr. p. 1431, line 1 – p. 1432, line 6.

Appellant did not testify at either phase of his trial. The only time the jury heard his voice was when he stood before them to make a brief closing statement:

I do have a conscience... [A]nd I'm deeply sorry that any of it ever happened, and I'm also sorry for the role that I played in it. You know, I prayed and prayed and prayed and have asked God to forgive me –

Tr. p. 1459, lines 3–13. At this point, the solicitor objected and asked for a bench conference. Tr. p. 1459, lines 14 and 15. "But I'm asking for forgiveness –," appellant tried to explain, before the solicitor cut him off with another objection. Tr. p. 1459, lines 18 and 19. The basis of the objection was that appellant was "impermissibly injecting religion... as well as arguing factual issues that did not arise during testimony." ROA pp. ____ and ____.

The judge sustained the objection and appellant continued:

Well, I would just like to say that I will forever be sorry for the role that I played in it, and most of all I truly feel for the family (sic), and if I could turn back the hand of time none of this would have occurred and I wouldn't be standing before y'all now pleading for my life. And once again, I truly would like to say that I'm sorry and wish that you could find it in your heart (sic) to forgive me for the role that I played in this. I would like to discuss how – but I can't get into that, because they say I can't get into it – so I would like to say that I am truly sorry, I really am.

Tr. p. 1459, line 25 – p. 1460, line 12.

S.C. Code Section 16–3–20(B) provides, "The State, the defendant, and his counsel are permitted to present arguments for or against the sentence to be imposed. The defendant and his counsel shall have the closing argument regarding the sentence to be imposed." A capital defendant's right to make a final unsworn statement at sentencing has its origin in the "ancient" common-law right of allocution. State v. Phillips, 215 S.C. 314, 54 S.E.2d 901, 903 (1949); State v. Trezevant, 20 S.C. 363 (1884). It reflects a legislative determination that, as the Supreme Court noted in Green v. United States, 365 U.S. 301, 81 S.Ct. 653, 655 (1961), there are times when a plea in mitigation can best be presented by the defendant: "The most persuasive counsel may not be able to speak for a defendant as the defendant

might, with halting eloquence, speak for himself." See, also, State v. Norris, 285 S.C. 86, 328 S.E.2d 339 (1985).

In South Carolina, during allocution a capital defendant may offer his version of the facts in evidence and he may express contrition. See, for example, State v. Davis, 306 S.C. 246, 411 S.E.2d 220 (1991). With regard to religious arguments, a defendant may not argue that the death penalty is unChristian or that Jesus would give him a life sentence – just as the state cannot argue that God would surely smite the defendant dead. See State v. Shafer, Opinion No. 25120 (S.C. Sup. Ct., filed May 8, 2000), and Bennett v. Angelone, 92 F.3d 1336 (4th Cir. 1996). A capital defendant may tell the jury that he has asked God to forgive him for his wrongdoing, since such a statement reflects remorse and contrition, but does not inject concepts of biblical morality into the proceeding. Compare State v. Woomer, 278 S.C. 468, 299 S.E.2d 317 (1982), with State v. Bennett, 328 S.C. 251, 493 S.E.2d 845 (1997).

Here, appellant was simply attempting to tell the jury that he had prayed to God to forgive him for his crimes. He was not attempting to argue "what God would do." See State v. Johnson, 306 S.C. 119, 410 S.E.2d 547, 555 (1991).

In any event, the state invited appellant's response by introducing at sentencing evidence he told the police, "Without a doubt, God is going to punish me for my part," and then arguing in closing that the jury had sworn an oath to God they would sentence appellant to death "in the appropriate case." Tr. p. 1309, lines 11–17; tr. p. 1431, line 1 – p. 1432, line 6. "[I]t is important that both the defendant and the prosecutor have the opportunity to meet fairly the evidence and arguments of one another." United States v.

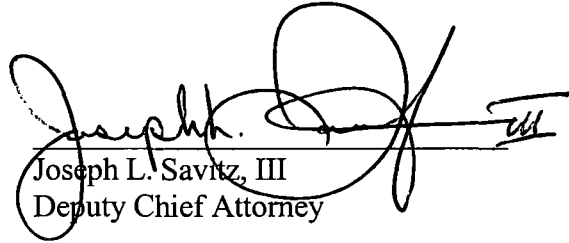
Robinson, 485 U.S. 25, 108 S.Ct. 864, 869 (1988); see, also, Simmons v. South Carolina, 512 U.S. 154, 114 S.Ct. 2187 (1994). The judge's ruling denied appellant that opportunity.

Since the judge improperly limited the scope of allocution allowed under S.C. Code Section 16-3-20(B), the Court should reverse appellant's death sentence.

CONCLUSION

Based on the foregoing arguments, the Court should reverse appellant's convictions for kidnapping, first degree criminal sexual conduct (Argument I) and his death sentence (Arguments I and II).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph L. Savitz, III", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Joseph L. Savitz, III
Deputy Chief Attorney

ATTORNEY FOR APPELLANT.

This 10th day of August, 2000.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMMIE LOUIS STOKES,

APPELLANT.

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

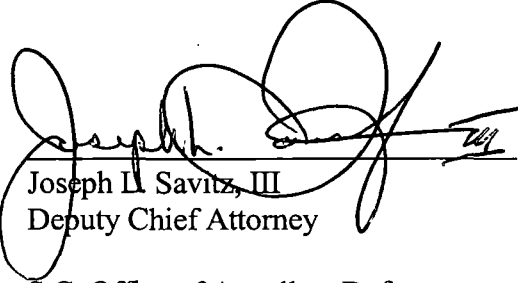
Appellant proposes the following be included in the Record on Appeal:

- (1) Trial transcript
- (2) January 19 pretrial hearing transcript
- (3) October 14 pretrial hearing transcript
- (4) April 20 letter from Mr. Savitz
- (5) May 2 letter from Solicitor Bailey
- (6) July 28 letter from Solicitor Bailey
- (7) Handwritten letter from appellant
- (8) Typed copy of letter from appellant
- (9) Redacted copy of letter from appellant
- (10) Indictment for murder
- (11) Notice of intent to seek the death penalty
- (12) Notice of evidence in aggravation
- (13) Recommendation of death sentence
- (14) Finding of no aggravating circumstances (blank)
- (15) Recommendation of life sentence (blank)
- (16) Affirmation of jury's recommendation
- (17) Death sentence
- (18) Indictment for conspiracy
- (19) Sentence for conspiracy

- (20) Indictment for kidnapping
- (21) Indictment for criminal sexual conduct
- (22) Sentence for criminal sexual conduct

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

August 10th, 2000



Joseph L. Savitz, III
Deputy Chief Attorney

S.C. Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

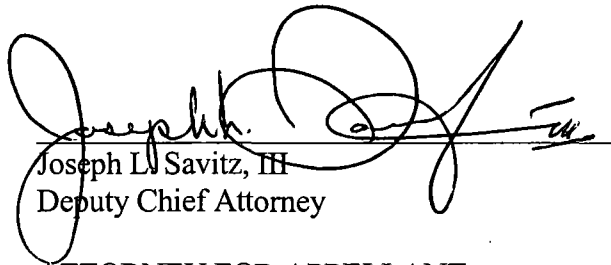
V.

SAMMIE LOUIS STOKES,

APPELLANT.

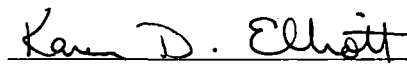
CERTIFICATE OF SERVICE

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 10th day of August, 2000.


Joseph L. Savitz, III
Deputy Chief Attorney

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 10th day of August, 2000.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007.

The Supreme Court of South Carolina

The State,

Respondent

v.

Sammie L. Stokes,

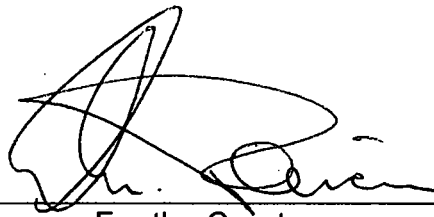
Appellant.

The Honorable Paul M. Burch
Orangeburg County
Trial Court Case No. 1998-GS-38-1245
1998-GS-38-1246
1998-GS-38-1247
1998-GS-38-1248

ORDER

For good cause having been shown, the time for serving and filing the appellant's initial brief and designation of matter in the above entitled matter is hereby extended until August 11, 2000.

IT IS SO ORDERED.



For the Court J.

Columbia, South Carolina

July 31, 2000

cc: Deputy Chief Attorney Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka
The Honorable Walter M. Bailey, Jr., Esquire

South Carolina Office of Appellate Defense

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Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Melody J. Brown
Aileen P. Clare
Katherine Carruth Link
Assistant Appellate Defenders

July 26, 2000

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S. C. SUPREME COURT

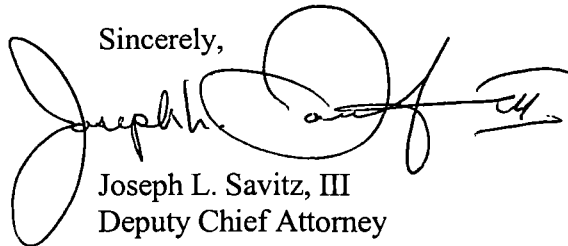
The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
PO Box 11330
Columbia, SC 29211

Re: State v. Sammie Louis Stokes

Dear Mr. Shearouse:

Enclosed is the original petition for extension of time in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph L. Savitz, III", followed by a large, stylized flourish or "S" shape.

Joseph L. Savitz, III
Deputy Chief Attorney

JLS,III/kde

Enclosure

cc: Donald J. Zelenka

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMMIE LOUIS STOKES,

APPELLANT

PETITION FOR EXTENSION OF TIME

Counsel for Sammie Louis Stokes petitions for an extension of time until August 11 in which to file the initial brief and designation of matter in this death penalty case. Counsel will request no further extensions of time in connection with this appeal. In support of this request, counsel shows:

(1) He is completing research on the issues he will raise on Mr. Stokes' behalf and expects to begin writing the initial brief on July 28. He has already compiled the materials that are to be included in the record on appeal.

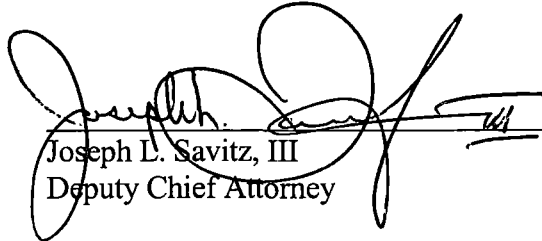
(2) Concurrently, counsel is working with Katherine Link on another death penalty appeal, State v. Freddie Owens. He is also handling other noncapital appeals and various administrative duties.

(3) Counsel has worked diligently on this appeal and does not request this extension for purposes of delay. His ultimate goal is to eliminate (at a minimum) third extensions in death penalty cases altogether.

(4) Counsel for the Attorney General's office does not oppose this request, as shown by his signature.

WHEREFORE, counsel for appellant requests an extension of time until August 11 in which to file the initial brief and designation of matter in this death penalty case.

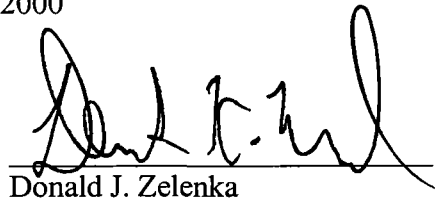
Respectfully submitted,

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

Joseph L. Savitz, III
Deputy Chief Attorney
Attorney for Appellant

This 26th day of July, 2000

I do not object:

A handwritten signature in black ink, appearing to read "Donald J. Zelenka", written over a horizontal line.

Donald J. Zelenka

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County

Honorable Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

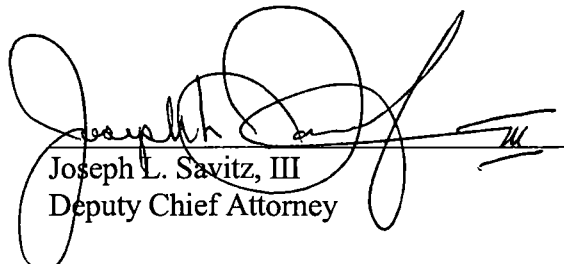
V.

SAMMIE LOUIS STOKES,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the petition for extension of time in the above referenced case has been served upon opposing counsel, Donald J. Zelenka, this 26th day of July, 2000.


Joseph L. Savitz, III
Deputy Chief Attorney
Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 26th day of July, 2000.

_____(L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007

The Supreme Court of South Carolina

The State,

Respondent

v.

Sammie L. Stokes,

Appellant.

The Honorable Paul M. Burch
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1998-GS-38-1246
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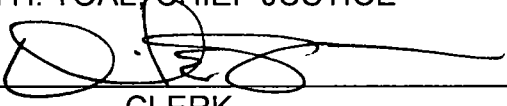
ORDER

For good cause having been shown, the time for serving and filing the Appellant's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until July 26, 2000.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY


CLERK

Columbia, South Carolina

June 27, 2000

cc: Deputy Chief Attorney Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka
The Honorable Walter M. Bailey, Jr.

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Katherine Carruth Link
Assistant Appellate Defenders

June 26, 2000

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JUN 26 2000

S.C. SUPREME COURT

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

Re: State v. Sammie Louis Stokes

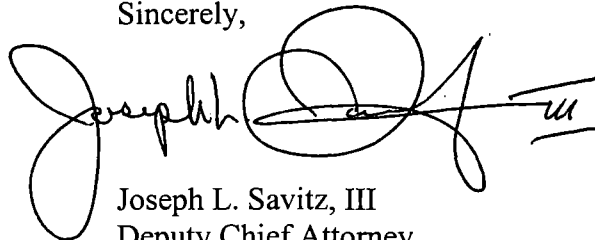
Dear Mr. Shearouse:

I am writing to request a thirty-day extension in which to file the brief and designation of matter in this death penalty case. I have finished reading the transcript but have not yet reviewed the clerk's records and exhibits in Orangeburg County. I plan on doing that next week, at which time I will complete my research and begin writing the initial brief.

As indicated by signature below, Donald J. Zelenka, of the Attorney General's Office, has no objection to my request.

Thank you and the Court for your courtesy and cooperation. Do not hesitate to contact me if you have any questions or I may be of further assistance.

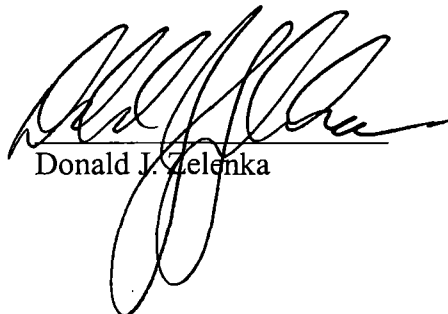
Sincerely,



Joseph L. Savitz, III
Deputy Chief Attorney

JLS,III/kde

I do not object:



Donald J. Zelenka

ORIGINAL

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, S.C. 29201-3243

Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
M. Anne Pearce
Tara S. Taggart
Melody J. Brown
Aileen P. Clare
Katherine Carruth Link
Assistant Appellate Defenders

May 26, 2000

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

RECEIVED

MAY 26 2000

S.C. SUPREME COURT

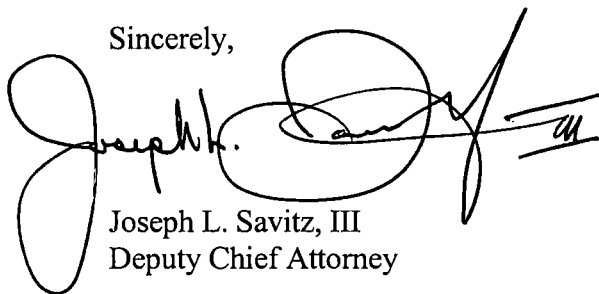
Re: The State v. Sammie Louis Stokes

Dear Mr. Shearouse:

This letter is to notify you that as of May 25, 2000, we have received all transcripts in the above titled case. Please set our time limits thirty days from May 25, 2000.

If you have any questions concerning this please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph L. Savitz, III", with a large, stylized flourish extending to the right.

Joseph L. Savitz, III
Deputy Chief Attorney

JLS,III/kde

The Supreme Court of South Carolina

The State,

Respondent

v.

Sammie L. Stokes,

Appellant.

The Honorable Paul M. Burch
Orangeburg County
Trial Court Case No. 1998-GS-38-1245
1998-GS-38-1246
1998-GS-38-1247
1998-GS-38-1248

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 thirty (30) days after receipt of all requested transcripts. Counsel is to notify this office of the status of the requests for the transcripts within thirty (30) days of the date of this Order.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY

Drenda J. Shealy
DEPUTY CLERK

Columbia, South Carolina
April 24, 2000

cc: Deputy Chief Attorney Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

343

ORIGINAL

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
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Robert M. Pachak
Robert M. Dudek
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Tara S. Taggart
Melody J. Brown
Aileen P. Clare
Assistant Appellate Defenders

April 18, 2000

RECEIVED
APR 18 2000
S. C. SUPREME COURT

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

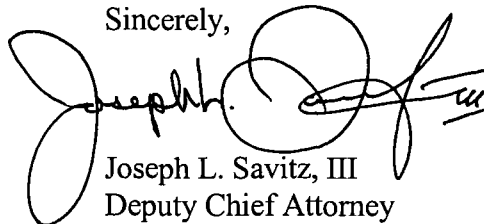
Re: The State v. Sammie Louis Stokes

Dear Mr. Shearouse:

The initial brief of appellant and designation of matter in this case are due to be served and filed with the Court today. However, while reading the transcript I discovered we were missing a pretrial hearing transcript. I am in the process of ordering this transcript and therefore, request an extension of thirty days after receipt of the transcript, in which to serve and file the 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
Deputy Chief Attorney

JLS,III/kde

cc: Donald J. Zelenka

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney
Wanda H. Haile
Senior Assistant Appellate Defender

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Aileen P. Clare
Katherine Carruth Link
Assistant Appellate Defenders

RECEIVED

APR 21 2000

April 21, 2000 **S.C. SUPREME COURT**

Ms. Jane C. Barnette
Family Court Reporter
P O Box 352
Anderson, SC 29622-0352

Dear Ms. Barnette:

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

The State v. Sammie Louis Stokes

Indictment #: 98-GS-38-1245

County: Lancaster

Date of Trial: September 3, 1999 (Motion of counsel to
depose client)

Presiding Judge: Paul M. Burch

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 DI-4 form and include the original criminal case number (Indictment number) where the space is provided.

It has been brought to our attention that the State Printing Office experiences problems when the transcript is prepared on onionskin paper. **PLEASE DO NOT USE ONIONSKIN PAPER.**

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript recorded pre-trial motions. 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.

Ms. Jane C. Barnette

April 21, 2000

Page Two

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.

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 "Karen D. Elliott". The signature is written in a cursive, flowing style.

Karen D. Elliott
Legal Assistant

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

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney
Wanda H. Haile
Senior Assistant Appellate Defender

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Melody J. Brown
Aileen P. Clare
Katherine Carruth Link
Assistant Appellate Defenders

April 21, 2000

RECEIVED
APR 21 2000
S. C. SUPREME COURT

Ms. Bettye S. Gum
Circuit Court Reporter
4458 Barcelona Lane
Little River, SC 29566-8263

Dear Ms. Gum:

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

The State v. Sammie Louis Stokes

Indictment #: 98-GS-38-1245

County: Horry

Date of Trial: January 19, 1999 (Evaluation Determination)

Presiding Judge: Paul M. Burch

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 DI-4 form and include the original criminal case number (Indictment number) where the space is provided.

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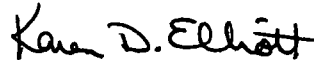
Ms. Bettye S. Gum
April 21, 2000
Page Two

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Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Karen D. Elliott". The signature is written in a cursive style with a large, stylized "K" and "E".

Karen D. Elliott
Legal Assistant

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

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney
Wanda H. Haile
Senior Assistant Appellate Defender

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Tara S. Taggart
Melody J. Brown
Alicia P. Clare
Katherine Carruth Link
Assistant Appellate Defenders

RECEIVED
APR 21 2000
S.C. SUPREME COURT

April 21, 2000

Mr. Timothy L. Nicholas
Circuit Court Reporter
P O Box 1612
Beaufort, SC 29901-1612

Dear Mr. Nicholas:

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

The State v. Sammie Louis Stokes

Indictment #: 98-GS-38-1245

County: Allendale

Date of Trial: September 10, 1999 (Motion of defense to
call client as witness)

Presiding Judge: Paul M. Burch

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 DI-4 form and include the original criminal case number (Indictment number) where the space is provided.

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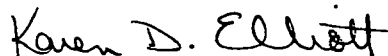
Mr. Timothy L. Nicholas
April 21, 2000
Page Two

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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 "Karen D. Elliott".

Karen D. Elliott
Legal Assistant

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

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney
Wanda H. Haile
Senior Assistant Appellate Defender

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Aileen P. Clare
Katherine Carruth Link
Assistant Appellate Defenders

April 21, 2000

Ms. Bettye S. Gum
Circuit Court Reporter
4458 Barcelona Lane
Little River, SC 29566-8263

Dear Ms. Gum:

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

The State v. Sammie Louis Stokes

Indictment #: 98-GS-38-1245

County: Horry

Date of Trial: July 21, 1999 (Re: experts)

Presiding Judge: Paul M. Burch

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 DI-4 form and include the original criminal case number (Indictment number) where the space is provided.

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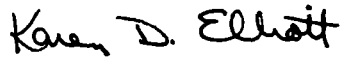
Ms. Bettye S. Gum
April 21, 2000
Page Two

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Karen D. Elliott
Legal Assistant

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

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney
Wanda H. Haile
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Robert M. Dudek
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Melody J. Brown
Aileen P. Clare
Katherine Garruth Link
Assistant Appellate Defenders

RECEIVED

APR 21 2000

S.C. SUPREME COURT

April 21, 2000

Mr. Timothy L. Nicholas
Circuit Court Reporter
P O Box 1612
Beaufort, SC 29901-1612

Dear Mr. Nicholas:

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

The State v. Sammie Louis Stokes

Indictment #: 98-GS-38-1245

County: Orangeburg

Date of Trial: October 14, 1999 (Court appearance to argue motions)

Presiding Judge: Paul M. Burch

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 DI-4 form and include the original criminal case number (Indictment number) where the space is provided.

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Mr. Timothy L. Nicholas

April 21, 2000

Page Two

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.

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Karen D. Elliott
Legal Assistant

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

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, S.C. 29201-3243

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Robert M. Pachak
Robert M. Dudek
M. Anne Pearce
Tara S. Taggart
Melody J. Brown
Aileen P. Clare
Assistant Appellate Defenders

April 20, 2000

Walter M. Bailey
Solicitor, First Judicial Circuit
140 N. Main Street
Summerville, SC 29483

Thomas Ray Sims
Attorney at Law
PO Box 2016
Orangeburg, SC 29116

RECEIVED
APR 20 2000
S. C. SUPREME COURT

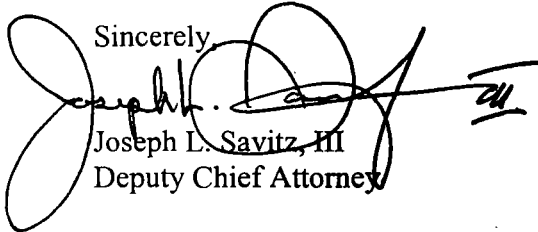
Re: State v. Sammie Louis Stokes

Gentlemen:

I am representing Sammie Stokes on appeal. One of the issues I am exploring concerns his closing argument at sentencing. Mr. Stokes stated, "I prayed and prayed and prayed and have asked God to forgive me --," at which point Solicitor Bailey objected and an unrecorded bench conference was held. I am attaching the relevant pages (1459 and 1460) to assist in refreshing your memory. If you can agree on the nature of the objection and the judge's ruling, we may be able to avoid the trouble of a hearing to reconstruct this portion of the record. A letter from one of you agreed to by the other should be sufficient. Afterwards, I will contact Judge Burch to see if his recollection matches yours.

Thank you in advance for your courtesy and cooperation. Please do not hesitate to contact me if you have any questions or I may be of further assistance.

Sincerely,



Joseph L. Savitz, III
Deputy Chief Attorney

JLS,III/kde

cc: Judge Paul M. Burch
Daniel E. Shearouse
Donald J. Zelenka
Sammie Louis Stokes

Enclosures

1 the courage to do your full duty. Remember, all twelve
2 of you must agree on your verdict. Thank you.

3 MR. STOKES: In my statement I never denied
4 my involvement but the statement I gave was truthful
5 and I do have a conscience, that's one of the main reasons
6 why I gave the statement. You know, I been in trouble
7 before but nothing like this before so I felt I had
8 to set the record straight. But I give one statement
9 and I give a honest one, I didn't four or five, I give
10 one. And I'm deeply sorry that any of it ever happened
11 and I'm also sorry for the role that I played in it.

12 You know, I prayed and prayed and prayed and
13 have asked God to forgive me ---

14 SOLICITOR: May we approach?

15 THE COURT: Yes.

16 (WHEREUPON, A bench conference was held out
17 of the hearing of the jury and the court reporter.)

18 MR. STOKES: But I'm asking for forgiveness ---

19 SOLICITOR: Objection.

20 MR. STOKES: --- and I believe ---

21 THE COURT: Wait just a second.

22 MR. SIMS: Just a minute.

23 (WHEREUPON, A bench conference was held out
24 of the hearing of the jury and the court reporter.)

25 MR. STOKES: Well, I would just like to

1 say that I will forever be sorry for the role that I
2 played in it and most of all I truly feel for the family
3 and if I could turn back the hand of time none of this
4 would have occurred and I wouldn't be standing before
5 ya'll now pleading for my life. And once again, I truly
6 would like to say that I'm sorry and wish that you could
7 find it in your heart to forgive me for the role that
8 I played in this.

9 I would like to discuss how --- but i can't
10 get into that because they say I can't get into it so
11 I would like to say that I am truly sorry, I really
12 am.

13 MR. SIMS: Madam Forelady, ladies and gentlemen
14 of the jury, I, too, want to take this opportunity to
15 thank you as Mr. Bailey has done because you've given
16 us one of the most important weeks of your life. When
17 you have been called upon to, in effect, not in effect
18 but in reality, to make a life or death decision. It's
19 not something that everybody has to do in their lifetime.
20 I would submit that it's not something that you would
21 have probably think that you would have ever gotten
22 to this point in your life, where you are going to have
23 to make that decision.

24 But when you came in here with the 300 plus
25 other jurors, and you were chosen to sit here today

ORIGINAL
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0005 0 South Carolina Office of Appellate Defense FEB 25 2000

S.C. SUPREME COURT

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney
Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, SC 29201-3243

Telephone (803) 734-1330
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Robert M. Pachak
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Aileen P. Clare
Assistant Appellate Defenders

February 25, 2000

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.

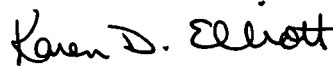
The State v. Sammie Louis Stokes

2/18/00

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,



Karen D. Elliott
Legal Assistant

ORIGINAL

RECEIVED
South Carolina Office of Appellate Defense
FEB 25 2000

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
Senior Assistant Appellate Defender

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S.C. SUPREME COURT

Robert M. Pachak
Robert M. O'Leary
M. Anne Pearce
Tara S. Taggart
Melody J. Brown
Aileen P. Clare
Assistant Appellate Defenders

February 25, 2000

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

Re: The State v. Sammie Louis Stokes

Dear Mr. Shearouse:

The above referenced case has been assigned to Joseph L. Savitz, III, Deputy Chief Attorney.

If you have any questions, please feel free to contact me.

Sincerely,

Karen D. Elliott

Karen D. Elliott
Legal Assistant

cc: Donald J. Zelenka



The Supreme Court of South Carolina

TITLE OF
CASE

(
(
(State
(
(
(vs. 1998GS381245
(
(
(Sammie L. Stokes
(
(
(

NOTICE

Upon request and for good cause shown, Annette T. Mole, Court Reporter, is hereby granted an extension up to and including March 5, 2000 to prepare and deliver the Transcript of Record in the above case.

By Cathryn R. Bullups
South Carolina
Court Administration

Columbia, South Carolina
January 11, 2000

cc: Thomas P. Culclasure, Esq.
Appellate Defense
Annette T. Mole

Supreme Court Receipt Acknowledged

Date

Ph
1/21/00

RECEIVED

JAN 21 2000

S.C. SUPREME COURT

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
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Robert M. Pachak
Robert M. Dudek
M. Anne Pearce
Melissa J. Kimbrough
Tara S. Taggart
Melody J. Brown
Aileen P. Clare
Assistant Appellate Defenders

December 1, 1999

RECEIVED

DEC 02 1999

S.C. SUPREME COURT

Thomas Ray Sims
Attorney at Law
P.O. Box 2016
Orangeburg, S.C. 29116

Re: The State v. Sammie Louis Stokes

Dear Mr. Sims:

I am in receipt of your letter and a copy of the Notice of Intention to Appeal which was filed in reference to the above captioned case. Since you were court appointed to represent Mr. Stokes, this office will handle the appeal. I have received some documents from you, however, we will need the following documents.

All pre and post-trial hearings and the presiding judge;
Copies of any requests to charge and voir dire questions that you made at the time of trial;
True copies of any and all written Exhibits introduced at trial, and any and all written motions filed by the defense or prosecution.

Because we are under strict time limits with the court, I would appreciate receiving these documents at your earliest convenience. Should you have any questions or if this request poses a problem, please do not hesitate to contact me.

Sincerely,

Karen D. Elliott

Karen D. Elliott
Legal Assistant

cc: S.C. Supreme Court

South Carolina Office of Appellate Defense

Daniel T. Stace
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney
Wanda H. Haile
Senior Assistant Appellate Defender

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Robert M. Pachak
Robert M. Dudek
M. Anne Pearce
Melissa J. Kimbrough
Tara S. Taggart
Melody J. Brown
Aileen P. Clare
Assistant Appellate Defender

November 23, 1999

Ms. Annette T. Mole
Circuit Court Reporter
P O Box 374
Varnville, SC 29944-9944

RECEIVED
NOV 23 1999
S. C. SUPREME COURT

Dear Ms. Mole:

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

The State v. Sammie Louis Stokes

Indictment #: 98-GS-38-1245

County: Orangeburg

Date of Trial: 10/25 /99 - 10/31/99

Presiding Judge: Paul M. Burch

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 DI-4 form and include the original criminal case number (Indictment number) where the space is provided.

It has been brought to our attention that the State Printing Office experiences problems when the transcript is prepared on onionskin paper. **PLEASE DO NOT USE ONIONSKIN PAPER.**

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript recorded pre-trial motions. 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.

Ms. Annette T. Mole
November 23, 1999
Page Two

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.

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 "Karen D. Elliott". The signature is written in a cursive style with a large, stylized "K" and "E".

Karen D. Elliott
Legal Assistant

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

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Paul M. Burch, Circuit Court Judge

Case Nos. 98-GS-38-1245
98-GS-38-1246
98-GS-38-1247
98-GS-38-1248

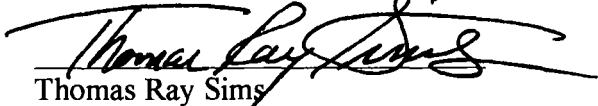
The State.....Respondent

v.

Sammie L. Stokes.....Appellant

NOTICE OF APPEAL

Sammie L. Stokes appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Paul M. Burch, on October 31, 1999.


Thomas Ray Sims
P. O. Box 2016
Orangeburg, SC 29116
(803) 533-0177
Attorney for Appellant

November 9, 1999

Other Counsel of Record:

Solicitor Walter Bailey
P. O. Box 1525
Orangeburg, SC 29116
(803) 533-6250
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Paul M. Burch, Circuit Court Judge

Case Nos. 98-GS-38-1245
98-GS-38-1246
98-GS-38-1247
98-GS-38-1248

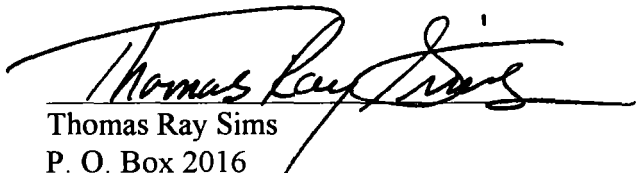
The State.....Respondent

v.

Sammie L. Stokes.....Appellant

PROOF OF SERVICE

I certify that I have served the *Notice of Appeal* on Walter Bailey, Solicitor, attorney for the Respondent by hand delivering a copy of the *Notice* on November 9, 1999, addressed to Walter Bailey, Solicitor, 190 Gibson Street, Orangeburg County Courthouse, Orangeburg, South Carolina 29115.



Thomas Ray Sims
P. O. Box 2016
Orangeburg, SC 29116
(803) 533-0177
Attorney for Appellant

November 9, 1999

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
STATE OF SOUTH CAROLINA)
PLAINTIFF)
VS)
SAMMIE LOUIS STOKES)
DEFENDANT)

IN THE COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

ACCEPTANCE OF SERVICE

INDICTMENT #S

98-GS-38-1245

98-GS-38-1246

98-GS-38-1247

98-GS-38-1248

Due and legal service of the within Notice of Intent to Appeal by the attorney for the above defendant, in the above entitled action is hereby accepted and a copy retained by Solicitor Walter Bailey, at Orangeburg, South Carolina, this 9 day of November.


Solicitor

WITNESSES

Det. E. Rush

ARREST WARRANT #:

98ORB/1

Arrested on May 29, 1998

ACTION OF GRAND JURY

MAY 17 1999

TRUE BILL

Foreman: Martha Snelgrove
Grand Jury

VERDICT

Guilty

Foreman: Donna L. Holman
Petit Jury
Date: 10/29/99

DOCKET #: 98CS38-1248

THE STATE OF SOUTH CAROLINA
County of Orangeburg

COURT OF GENERAL SESSIONS

Term: May, 1999

THE STATE

vs.

(PMB)

Samuel Louis Stokes

INDICTMENT FOR

0095

KIDNAPPING

(16-3-910)

ATTEST: TRUE COPY

Lisa W. Muzell

CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

) **INDICTMENT #98CS38-1248**

County of Orangeburg)

At a Court of General Sessions, convened on May 17, 1999,
the Grand Jurors of Orangeburg County present upon their oath:

COUNT:

KIDNAPPING

(16-3-910)

(PMB)

That Samuel Louis Stokes did in Orangeburg County on or about May 23, 1998, wilfully and unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or, carry away one Connie Lee Snipes, without authority of law and/or did aid and abet Pattie Williams Syphrett and/or Morris Allen Martin in kidnapping the said victim, Connie Lee Snipes.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

W. B. By

ATTEST: TRUE COPY

Lisa W. McGill
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

WITNESSES

Det. E. Rush

ARREST WARRANT #:

98ORB69

Arrested on June 02, 1998

ACTION OF GRAND JURY

MAY 17 1999

TRUE BILL

Foreman:

Martha Inelgrove
Grand Jury

VERDICT

Guilty

Foreman:

Donna A. Holman

Petit Jury

Date: *10/29/99*

DOCKET #: 98CS38-1245

THE STATE OF SOUTH CAROLINA
County of Orangeburg.

COURT OF GENERAL SESSIONS

Term: May, 1999

THE STATE

vs.
(pub)

Samuel Stokes

INDICTMENT FOR

0160

CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

(16-3-652)

ATTEST: TRUE COPY

Lisa W. Mize
CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

County of Orangeburg
At a Court of General Sessions, convened on May 17 1999,
the Grand Jurors of Orangeburg County present upon their oath:

COUNT: CRIMINAL SEXUAL CONDUCT - FIRST DEGREE
(16-3-652)

(pwb)
That Samuel Stokes did in Orangeburg County on or about May 23, 1998,
engage in sexual battery, to wit: vaginal and/or anal intercourse upon and with
the body of Connie Lee Snipes without her consent, and/or the victim Connie Lee
Snipes submitted to sexual battery under circumstances where she was also the
victim of forcible confinement and/or kidnapping and such sexual battery was
accomplished by the use of force of a high and aggravated nature, to wit: said
victim was forced to submit to sexual intercourse at gunpoint.

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.

SOLICITOR W. B. Ray

ATTEST: TRUE COPY

Lisa W. McGill
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

WITNESSES

Det. E. Rush

ARREST WARRANT #:

980RB70

Arrested on May 29, 1998

ACTION OF GRAND JURY

MAY 17 1999

TRUE BILL

Foreman:

Martha Subgune
Grand Jury

VERDICT

Guilty

Foreman:

Donna R. Holman
Petit Jury

Date: *10/29/99*

DOCKET #: 98CS38-1247

THE STATE OF SOUTH CAROLINA
County of Orangeburg

COURT OF GENERAL SESSIONS

Term: May, 1999

THE STATE

vs.

(pub)
Samuel Louis Stokes

INDICTMENT FOR

0049

CRIMINAL CONSPIRACY

(16-17-410)

ATTEST: TRUE COPY

Lisa W. Mize
CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
County of Orangeburg)

INDICTMENT #98CS38-1247

At a Court of General Sessions, convened on May 17, 1999,
the Grand Jurors of Orangeburg County present upon their oath:

COUNT:

CRIMINAL CONSPIRACY
(16-17-410)

(pmg)

That Samuel¹ Louis Stokes did in Orangeburg County on or about May 23, 1998
and for approximately one year prior thereto, unlawfully and wilfully unite,
combine, conspire, confederate, agree and have tacit understanding with other
persons, whose names are unknown to the Grand Jurors, for the purpose of
Kidnapping, Raping and Murdering Connie Lee Snipes.

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.

SOLICITOR

W. H. H. H.

ATTEST: TRUE COPY

Lisa W. M. M.
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

WITNESSES

Det. E. Rush

ARREST WARRANT #:

D952452

Arrested on May 29, 1998

ACTION OF GRAND JURY
MAY 17 1999

TRUE BILL

Foreman:

Martha Snelgrove
Grand Jury

VERDICT

Guilty

Foreman:

Donna S. Holman
Petit Jury
Date: *9/29/99*

DOCKET #: 98CS38-1246

THE STATE OF SOUTH CAROLINA
County of Orangeburg,

COURT OF GENERAL SESSIONS

Term: May, 1999

THE STATE

vs.
(pmb)

Samuel Louis Stokes

INDICTMENT FOR

0116

MURDER

16-3-10

ATTEST: TRUE COPY

Lois W. Mager
CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
County of Orangeburg)

INDICTMENT #98CS38-1246

At a Court of General Sessions, convened on May 17, 1999,
the Grand Jurors of Orangeburg County present upon their oath:

COUNT:

MURDER

16-3-10

(pmb)
That Samuel Louis Stokes did in Orangeburg County on or about May 23,
1998, feloniously, wilfully and with malice aforethought, kill one Connie Lee
Snipes by means of shooting her in the head with a pistol and/or that he did
aid and abet Norris Allen Martin in also shooting Connie Lee Snipes in the head
with a pistol and that the said victim died as a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.

SOLICITOR

W. B. R. G.

ATTEST: TRUE COPY

Lisa W. McGill
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF GENERAL SESSIONS

The State,)

vs.)

Sammie Louis STOKES,)

Defendant.)

SENTENCE

Ca. No. 98-65-38-1245-1251

The Defendant, Sammie Louis Stokes, has been found by the jury to be guilty of the offense of murder. The jury has recommended that the Defendant should be sentenced to death.

It is, therefore, the judgment of the law and the Sentence of the Court that the Defendant, Sammie Louis Stokes, be taken to the Orangeburg Detention Center, and thence to the State Department of Corrections, henceforth to be kept in close and safe confinement until the 15th day of December 1999 upon which day between the hours of six o'clock P.M. and six o'clock A.M., or upon an Order of Execution issued by the South Carolina Supreme Court, the Defendant, Sammie Louis Stokes, shall suffer death by electrocution or by lethal injection in the manner provided by law.

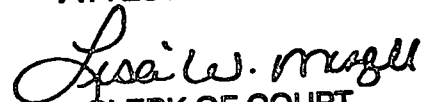


Presiding Judge

Dated: October 31, 1999

Orangeburg, South Carolina

ATTEST: TRUE COPY


CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF GENERAL SESSIONS

The State,)
)
)

VS.)
)
)

Sammie Louis STOKES,)
)
)

Defendant.)
)
)

AFFIRMATION OF DEATH SENTENCE

Case No. - 98 - GS - 38 - 1245 - 125.

As the Trial Judge in the above entitled action, and prior to the imposition of the death sentence upon the Defendant, Sammie Louis STOKES, I find as an affirmative fact that the evidence of the case warrants the imposition of the death penalty and its imposition is not a result of prejudice, passion, or any other arbitrary factor.

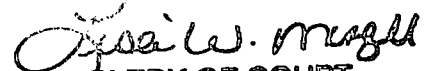


Presiding Judge

Orangenburg, South Carolina

Dated: October 31, 1999

ATTEN: TRUE COPY


CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF

STATE

AKA:

Race:

Sex:

DOB:

Age:

SSN:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

98 -GS- 38 - 1245

A/W#:

Date of Offense:

S.C. Code § :

CDR Code #:

SENTENCE

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Criminal Sexual Conduct 1st Degreein violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 01 11610☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*: the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months/jail time.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 10/31/99 98-1247

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 - Assessments 100%..... \$

§ 14-1-211 - Surcharge..... \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI)..... \$

County (3%)..... \$ 3.00TOTAL..... \$ 103.00Clerk of Court/Deputy Clerk Marcia ChellCourt Reporter: Annette Mole

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

ATTEST: TRUE COPY

CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

PRESIDING JUDGE [Signature]Judge Code: 1 14 18Sentence Date: 10/31/99

STATE OF SOUTH CAROLINA

COUNTY OF

Orangeburg

STATE

VS.

Sammie Louis Stokes

AKA:

Race:

Sex:

DOB:

Age:

SSN:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

98 -GS- 38 - 1247

A/W#:

Date of Offense:

S.C. Code § :

CDR Code #:

0101419

SENTENCE

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

Criminal Conspiracyin violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 0101419☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 10/31/99 98-1245

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:\$

§ 14-1-206 - Assessments 100%.....\$

§ 14-1-211 - Surcharge.....\$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$

County (3%).....\$ 3.00TOTAL.....\$ 103.00Clerk of Court/Deputy Clerk Marcia PhillipsCourt Reporter: Annelle Male

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

ATTEST: TRUE COPY

Lisa W. Wright
CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

PRESIDING JUDGE [Signature]Judge Code: 1418Sentence Date: 10/31/99

ARREST WARRANT

F- 408755

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

THE STATE

against

SAMMIE LOUIS STOKES

Address: NCHVILLE SC 29432
 Phone: SSN
 Sex: B Race: B Height: 5 8 Weight: 175
 DL #: DL #
 DOB: Agency ORI #
 Prosecuting Agency: SHERIFF'S DEPT
 Prosecuting Officer: DET. EMORY RUSH
 Offense: LYNCHING 1ST DEGREE
 Offense Code: 312
 Code/Ordinance Sec. 312

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of

The accused
 is to be arrested and brought before me to be
 dealt with according to law.

 Signature of Judge (L.S.)

Date _____

RETURN

A copy of this arrest warrant was delivered to
 defendant SAMMIE LOUIS STOKES

on 06-05-98
Det. R. Michelle Inell
 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
 ORANGEBURG MAGISTRATES A DAVIS
 P.O. BOX 9000
 ORANGEBURG

ATTEST: TRUE COPY
Lois W. Mize
 CLERK OF COURT
 ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 ORANGEBURG COUNTY

Personally appeared before me the affiant DET. EMORY RUSH who
 being duly sworn deposes and says that defendant SAMMIE LOUIS STOKES
 did within this county and state on 5/22/98 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)
 in the following particulars:

DESCRIPTION OF OFFENSE: LYNCHING 1ST DEGREE

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

THAT ON MAY 22, 1998, AT APPROXIMATELY 11:00 P.M., ONE SAMMIE
 LOUIS STOKES DID ALONG WITH TWO CO-DEFENDANTS COMMIT THE CRIME OF
 LYNCHING 1ST DEGREE IN VIOLATION OF SECTION 16-3-210 IN THAT HE
 CAUSED THE DEATH OF ONE CONNIE SNIPES BY COMMITTING AN ACT OF
 VIOLENCE AGAINST THE BODY OF THE SAME (I.E. GUNSHOT WOUNDS TO THE
 BACK OF HER HEAD). ALL OF WHICH OCCURED IN ORANGEBURG COUNTY,
 STATE OF SOUTH CAROLINA.

Sworn to and subscribed before me
 on 6/02/98
Peggy D. Davis (L.S.)
 Signature of Issuing Judge

Signature of Affiant

Affiant's Address P.O. BOX 9000ORANGEBURGSC 29115Affiant's Telephone 803 531-4647

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 ORANGEBURG COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
 on 5/22/98 defendant SAMMIE LOUIS STOKES
 did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of _____) as set forth

DESCRIPTION OF OFFENSE: LYNCHING 1ST DEGREE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
 defendant at the time of its execution, or as soon thereafter as is practicable.

Peggy D. Davis (L.S.)
 Signature of Issuing Judge
 Judge Code: 721

Judge's Address P.O. BOX 9000ORANGEBURGSC 29115

Judge's Telephone _____

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

98 JUN 27 AM 10:28
 FILED FOR RECORD
 CLERK OF COURT
 ORANGEBURG, S.C.

ARREST WARRANT

F- 408800

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

THE STATE

against

SAMMIE LOUIS STOKES

Address: 168 WINSOR ST.
ORANGEBURG SC 29115

Phone: _____ S: _____
Race: _____ Height: 5' 8" Weight: 175

State: _____ Agency ORI #: _____
SHERIFF'S DEPT

Prosecuting Agency: _____
Prosecuting Officer: DET. EMORY RUSH

Offense: CONSPIRACY

Offense Code: 0049
Code/Ordinance Sec. 16-17-410

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant SAMMIE LOUIS STOKES
on 06-05-98

Det. P. Michelle Snell
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
ORANGEBURG MAGISTRATES
P.O. BOX 9000
ORANGEBURG SC 29116

ATTEST: TRUE COPY
Lisa W. Mizell
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

AFFIDAVIT

S.C. Attorney General
July 26, 1990
SCCA 518

Personally appeared before me the affiant DET. EMORY RUSH who
being duly sworn deposes and says that defendant SAMMIE LOUIS STOKES
did within this county and state on 5/22/98 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)
in the following particulars:

DESCRIPTION OF OFFENSE: CONSPIRACY
CONSPIRACY

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
BASED ON AN INVESTIGATION BY O.C.S.O. THERE IS PROBABLE CAUSE
TO BELEIVE THAT ON OR ABOUT MAY 22, 1998 THE DEFENDANT SAMMIE
LOUIS STOKES DID ALONG WITH TWO CO-DEFENDANTS VIOLATE SECTION
16-17-410 OF THE SOUTH CAROLINA CODE OF LAWS IN THAT THEY DID
CONSPIRE TO KILL ONE CONNIE LEE SNIPE. ALL OF WHICH OCCURRED
IN ORANGEBURG COUNTY, STATE OF SOUTH CAROLINA.

CASE #0098796.

Sworn to and subscribed before me
on 6/05/98

Peggy L. Davis (L.S.)
Signature of Issuing Judge

Signature of Affiant: F. Emory Rush
Affiant's Address: P.O. BOX 9000
ORANGEBURG SC 29115
Affiant's Telephone: 803 531-4647

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 5/22/98 defendant SAMMIE LOUIS STOKES
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: CONSPIRACY
CONSPIRACY

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Peggy L. Davis (L.S.)
Signature of Issuing Judge
Judge's Address: P.O. BOX 9000
ORANGEBURG SC 29116
Judge's Telephone: _____
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

FILED FOR
D.C. HUBBARD
CLERK OF COURT
ORANGEBURG COUNTY, S.C.
98 JUL 27 AM 10:30

ARREST WARRANT

F- 408806

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

THE STATE

against

SAMMIE LOUIS STOKES

Address: 168 WINSOR ST.
ORANGEBURG, SC 29115

Phone: _____ SS: _____
Sex: ☒ Race: _____ Height: 5' 8" Weight: 175

Date: _____
Agency ORI#: _____

Prosecuting Agency: SHERIFF'S DEPT

Prosecuting Officer: DET. EMORY RUSH

Offense: CONSPIRACY TO KIDNAP

Offense Code: 16-3-9
Code/Ordinance Sec. 16-3-920

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant SAMMIE LOUIS STOKES

on 6-8-98

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ORANGEBURG MAGISTRATES J. DAVIS

P.O. BOX 9000

ORANGEBURG

SC 29115

ATTEST: TRUE COPY

Jesse W. Mager
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

AFFIDAVIT

Personally appeared before me the affiant DET. EMORY RUSH who
being duly sworn deposes and says that defendant SAMMIE LOUIS STOKES
did within this county and state on 5/22/98 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)
in the following particulars:

DESCRIPTION OF OFFENSE: CONSPIRACY TO KIDNAP

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
THAT AT APPROXIMATELY 11:00 P.M. ON MAY 22, 1998, THE DEFENDANT,
SAMMIE LOUIS STOKES DID VIOLATE SEC:16-3-920 OF THE S.C. CODE OF
LAWS (CONSPIRACY TO KIDNAP) IN THAT HE ALONG WITH TWO CO-DEFEN-
DANTS DID HOLD AGAINST HER WILL, ONE CONNIE LEE SNIPES WITH THE
USE AND THREAT THEREOF A HANDGUN. MS SNIPES' DEATH WAS
ULTIMATELY CAUSED BY THE DEFENDANT AND USE OF THE HANDGUN. ALL
OF WHICH OCCURRED NEAR THE TOWN OF BRNACHVILLE, ORANGEBURG,
ORANGEBURG COUNTY, S.C.

Sworn to and subscribed before me

on 6/08/98

Signature of Issuing Judge (L.S.)

Signature of Affiant

Affiant's Address: P.O. BOX 9000

ORANGEBURG SC 29115

Affiant's Telephone: 803 531-4647

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 5/22/98 defendant SAMMIE LOUIS STOKES
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of _____) as set forth below:
DESCRIPTION OF OFFENSE: CONSPIRACY TO KIDNAP

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)

Judge's Address: P.O. BOX 9000

ORANGEBURG SC 29115

Judge's Telephone: _____

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG, SC
JUL 27 AM 10:33

F- 408797

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

THE STATE

against

SAMMIE LOUIS STOKES

Address: 168 WINSOR ST.
ORANGEBURG SC 29115

Phone: _____ SSN: _____
Sex: _____ Race: _____ Height: 5' 8" Weight: 175

Date: _____
Agency ORI #: _____

Prosecuting Agency: SHERIFF'S DEPT

Prosecuting Officer: DET. EMORY RUSH

Offense: CRIMINAL SEXUAL CONDUCT

1ST DEGREE Offense Code: 160

Code/Ordinance Sec. 160

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant SAMMIE LOUIS STOKES

on 6-5-98

Signature of Constable/Law Enforcement Officer
Barbara Walters

RETURN WARRANT TO:

ORANGEBURG MAGISTRATES 1
P.O. BOX 9000
ORANGEBURG SC 29116

ATTEST: TRUE COPY

Signature of Clerk of Court
Clerk of Court

ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518

Personally appeared before me the affiant DET. EMORY RUSH who
being duly sworn deposes and says that defendant SAMMIE LOUIS STOKES
did within this county and state on 5/22/98 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)
in the following particulars:

DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT 1ST DEGREE
CRIMINAL SEXUAL CONDUCT 1ST DEGREE

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
THAT ON MAY 22, 1998, AT APPROXIMATELY 11:00 P.M. THE DEFENDANT
VIOLATED SECTION 16-3-652 IN THAT HE ALONG WITH CO-DEFENDANT DID
FORCE AT GUN POINT, ONE CONNIE LEE SNIPES TO ENGAGE IN SEXUAL
INTERCOURSE AGAINST HER WILL. THE CO-DEFENDANT, NORRIS ALLEN
MARTIN HAS GIVEN A SWORN STATEMENT TO O.C.S.O. DETECTIVES TO
SAME REGARDING THIS INCIDENT. ALL OF WHICH OCCURRED IN
ORANGEBURG COUNTY, STATE OF SOUTH CAROLINA.
CASE NUMBER 009810796

Sworn to and subscribed before me
on 6/05/98

Signature of Affiant
Signature of Issuing Judge (L.S.)
Reginald D. Harris

Signature of Affiant
Affiant's Address: P.O. BOX 9000
ORANGEBURG SC 29115
Affiant's Telephone: 803 531-4647

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 5/22/98 defendant SAMMIE LOUIS STOKES
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of _____) as set forth below:
DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT 1ST DEGREE
CRIMINAL SEXUAL CONDUCT 1ST DEGREE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge
Signature of Clerk of Court
Judge Code: 21

Judge's Address: P.O. BOX 9000
ORANGEBURG SC 29116

Judge's Telephone: _____
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

98 JUL 7 AM 10:29
FILED
CLERK OF COURT
ORANGEBURG COUNTY
SOUTH CAROLINA

Thomas Ray Sims

ATTORNEY AT LAW

POST OFFICE BOX 2016
136 CHURCH STREET, N.E.
ORANGEBURG, SOUTH CAROLINA 29116
OFFICE: (803) 533-0177 OR 533-0178
HOME: (803) 533-0727

*ALSO LICENSED IN MISSISSIPPI

99/60-CR-008

November 9, 1999

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

RE: *State of South Carolina vs Sammie Louis Stokes*
Indictment #s: 98-GS-38-1245; 98-GS-38-1246; 98-GS-38-1247; 98-GS-38-1248

Dear Mr. Shearouse:

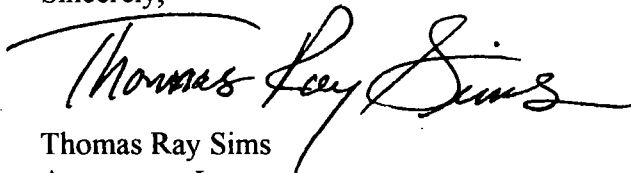
Enclosed please find the original Notice of Intent to Appeal and Proof of Service together with two copies.

Would you kindly file the original and have the copies clocked in and returned to me in the enclosed stamped, self-addressed envelope. As you can see, this is a criminal appeal and accordingly, there should be no docketing fee.

Also enclosed you find certified, true copies of the warrants, assignment sheet, sentencing sheet and the indictments in this case.

Thanking you in advance for your attention to this matter.

Sincerely,



Thomas Ray Sims
Attorney at Law

TRS/trj

Enclosures

RECEIVED

NOV 10 1999

S.C. SUPREME COURT



State of South Carolina
Circuit Court of the Fourth Judicial Circuit

PAUL M. BURCH
JUDGE

601 WEST MCGREGOR STREET
POST OFFICE BOX 276
PAGELAND, SOUTH CAROLINA 29728-0276
(843)672-3270
FAX: (843)672-5960

November 1, 1999

Chief Justice Ernest Finney
SC Supreme Court
Supreme Court Building
1231 Gervais Street
P. O. Box 11330
Columbia, SC 29211

In Re: Capital Murder Trial - State vs Sammie Louis Stokes

Dear Justice Finney:

Please find enclosed the completed Report of the Trial Judge in referenced to the above State vs Sammie Louis Stokes. If there is anything additional you should need, please advise.

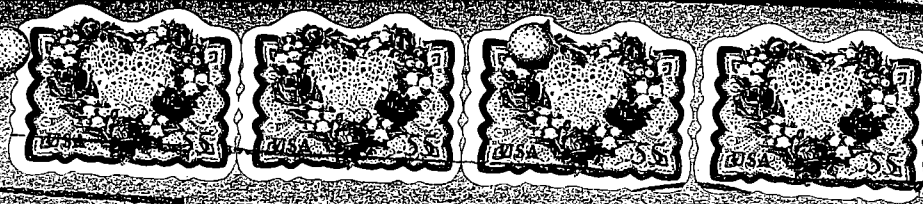
With kind personal regards, I am

Sincerely,

A handwritten signature in cursive script that reads "Paul M. Burch".

Judge Paul M. Burch

RECEIVED
NOV 03 1999
S. C. SUPREME COURT



1999

NOV 9

1999

NOV 9



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