

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge
Appellate Case No. 2019-002102

RECEIVED

MAR 26 2020

SC Court of Appeals
Appellant,

Bernard Bagley, #175851

v.

South Carolina Department
of Probation, Parole and
Pardon Services,

Respondent.

RECORD ON APPEAL

Bernard Bagley
#175851/HD133/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

Pro Se

Matthew C. Buchanan
SCDPPPS General Counsel
P.O. Box 207
Columbia, SC 29202
Attorney for Respondent

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Bernard Bagley, #175851,

Docket No. 19-ALJ-15-0029-AP

Appellant,

vs.

FINAL ORDER

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a notice of appeal filed by Bernard Bagley (Appellant), an inmate in the custody of the South Carolina Department of Corrections. On June 19, 2019, the South Carolina Department of Probation, Parole and Pardon Services (Department or Respondent) notified the Appellant that the Parole Board (Board) had determined that his parole must be denied. The Appellant challenges the Board's denial of parole on at least twenty-five (25) grounds that largely center around alleged arbitrary and capricious conduct by the Board in reaching its decision. After careful consideration of the parties' arguments, the Department's determination is affirmed.

BACKGROUND

On April 12, 1991, the Appellant was sentenced to life in prison for the murder of his wife. At the time, South Carolina law granted parole eligibility to a person serving a life sentence for murder upon the service of twenty (20) years. The Appellant first appeared before the Board for a parole hearing on September 8, 2010. The Board denied the Appellant parole following that hearing, as well as on four subsequent occasions. On June 19, 2019, following his most recent parole eligibility hearing, the Board unanimously voted to deny the Appellant parole due to: (a) the nature and seriousness of his current offense, (b) an indication of violence in his current or a previous offense, and (c) his use of a deadly weapon in his current or a previous offense. Thereafter, the Appellant submitted additional information to the Board for its consideration, which it declined to review since the Appellant's hearing had already occurred and because he did not file a request for reconsideration. On July 18, 2019, the Appellant timely appealed the Board's

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decision to this court alleging, broadly, that the Board acted arbitrarily and capriciously in denying him parole.^{1,2}

ISSUE ON APPEAL

Whether the Department erred in denying the Appellant parole.

STANDARD OF REVIEW

The court's jurisdiction to review this matter is derived from the South Carolina Supreme Court decisions in *Al-Shabazz* and *Furtick*. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals); see also *Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003) (incorporating final decisions of the Department into that review process). As explained by the *Al-Shabazz* Court, "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." *Wicker v. S.C. Dep't of Corrs.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted).

Since parole is a privilege, not a right, the routine denial of parole does not constitute such a liberty interest. See *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 495-96, 661 S.E.2d 106, 109-10 (2008) (citation omitted). If, however, the Board "deviates from or renders its decision without consideration of the appropriate [statutory] criteria, . . . it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest." *Id.* at 499, 661 S.E.2d at 111. Thus, this court may review decisions from the Department for violations of statutory procedure or procedural due process only, but may not review the Board's substantive decision to deny an appellant parole.

¹ Included among his extensive list of arguments on appeal, the Appellant asserted that the Department has not held his parole eligibility hearings precisely every two years, thereby placing the anticipated date of his next hearing some nine months beyond what is statutorily required, in violation of his constitutional rights. However, the Appellant's next parole hearing, and the speculative date thereof, are not properly before the court in the instant appeal. To the extent that the Appellant challenges the timeliness of his most recent parole hearing, the court finds that the issue became moot when he received his hearing before the Board. See *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) ("[An issue] becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing [c]ourt to grant effectual relief."). Nonetheless, the court encourages the Department to timely convene the Appellant's next parole review hearing in accordance with Section 24-21-645 of the South Carolina Code.

² The Appellant's remaining arguments are either outside the scope of this court's review, or were not raised to the Board below, abandoned on appeal, or unsupported by relevant legal arguments and/or citations and, thus, are not preserved for review.

In reviewing such matters, the court sits in its appellate capacity. *See id.* at 497, 661 S.E.2d at 110 (citation omitted); *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754 (citation omitted). Under the Administrative Procedures Act, the court's review in appellate matters is confined to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2019). The court may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2019). Substantial rights of the appellant are prejudiced when the agency's findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

DISCUSSION

As stated *supra*, parole is not a right, but a privilege. *State v. Dingle*, 376 S.C. 643, 649, 659 S.E.2d 101, 104 (2008) (citing *Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 n.4 (2003)). The discretion to grant parole lies solely with the Board. *Id.* at 649, 659 S.E.2d at 104-05 (citing *State v. McKay*, 300 S.C. 113, 115, 386 S.E.2d 623, 623-24 (1989)). If, in denying parole, the Board follows proper procedure, then its decision will constitute a routine denial of parole and summary dismissal of the case would be appropriate. *See Cooper*, 377 S.C. at 500, 661 S.E.2d at 112; *see also Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009). The proper procedure for the Board to follow includes considering the factors outlined in Section 24-21-640 of the South Carolina Code, as well as those listed in the Department's parole form. *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112; *Compton*, 385 S.C. at 479, 685 S.E.2d at 177; *see also* S.C. Code Ann. § 24-21-640 (Supp. 2019) (setting forth the statutory factors warranting parole). Additionally, the Board must utilize an actuarial risk and needs assessment tool, known as COMPAS, in making its parole determinations. *See* S.C. Code Ann. § 24-21-10(F) (Supp. 2019).

If the Board fails to follow proper procedure, giving due consideration to the specified factors, an appellant is denied his liberty interest in parole eligibility. *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111. If, however, the Board adheres to procedure and considers all the requisite factors, the appellant's liberty interest is protected, and the Board has the discretion to deny parole

based on any of the factors found in Section 24-21-640 or its own criteria. *See id.* at 499, 661 S.E.2d at 111-12.

Here, the Board's order plainly reflects that it considered all the appropriate factors – including those set forth in Section 24-21-640, the Department's own criteria for parole consideration, and an actuarial risk and needs assessment – before making its decision to deny the Appellant parole. Thus, as a routine denial of parole, the court's ability to further review this matter is limited:

[T]he [] Board may avoid [reversal of its parole determinations] if it clearly states in its order denying parole that it considered the factors outlined in [S]ection 24-21-640 and the fifteen factors published in its parole form. If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure. Under that scenario, the ALC can summarily dismiss the inmate's appeal.

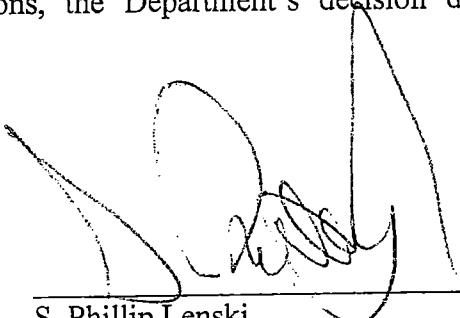
Cooper, 377 S.C. at 500, 661 S.E.2d at 112; *see Compton*, 385 S.C. at 479, 685 S.E.2d at 177. Consequently, because the record reflects that the Board routinely denied the Appellant parole after complying with the necessary procedure, the court may not interfere with the Department's determination.

ORDER

THEREFORE, for the foregoing reasons, the Department's decision denying the Appellant parole is hereby **AFFIRMED**.

AND IT IS SO ORDERED.

January 3, 2020
Columbia, South Carolina



S. Phillip Lenski
S.C. Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States Mail, postage paid, or in the interagency mail service addressed to the party(ies) or their attorney(s).

3rd Day of January 2020

Court Clerk

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JERRY B. ADGER
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
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June 19, 2019

Mr. Bernard Bagley #00175851
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, SC 29067

RE: NOTICE OF REJECTION

Dear Mr. Bagley:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Vote Count: Unanimous To Reject

Sincerely,

A handwritten signature in cursive script, appearing to read "Nettie C. Jacobs".

Nettie C. Jacobs
Board Support Services

5

6/19/2019

South Carolina Department of Probation, Parole and Pardon Services
Criteria For Parole Consideration

SC Board of Probation, Parole and Pardon Services
P.O. Box 50866
Columbia, SC 29250

Inmate Name Bernard Bagley	SCDC # 175851
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Criteria For Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. These files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating upon the reasonable probability that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate;
15. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by-case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

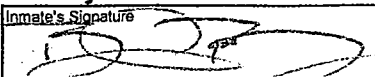
In some cases, the Board may decide that an inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges.

If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature 	Date 11-10-16	Witness 	Date 11/10/16
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State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JERRY B. ADGER
Director

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Mr. Bernard Bagley SCDC#175851
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, South Carolina 29067

RE: June 19, 2019, Parole revocation

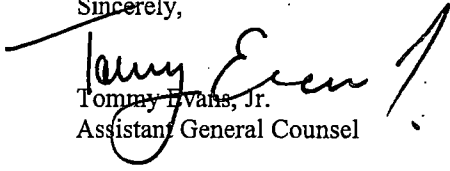
Dear Mr. Bagley:

This letter is in response to the information you presented to the Department for the Board's consideration after your June 19, 2019 denial of parole. The Board is only allowed to consider information presented during the hearing unless within fifteen days after the decision the inmate or their attorney submit a letter of reconsideration. You have not submitted a letter of reconsideration regarding your most recent hearing; therefore, the information submitted cannot be considered for your last parole hearing.

According to the letter from the Attorney General's office that you submitted with this information, the information was delivered on December 30, 2010. Since you received it prior to your hearing this cannot be considered after acquired information. Even if the Board could have reconsidered, this information could not be considered for a previous parole hearing.

The information provided would be placed within your file and would be considered by the Board during your next scheduled hearing. Good luck in all of your future endeavors. With kind regards I remain,

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

TE:te



C. RECONSIDERATIONS OF PAROLE CASES

After the Board or the panel has decided a parole case, the Board or panel may want to re-consider its decision.

Requests for reconsideration after a parole rejection will not be accepted for routine parole denials. However, if within fifteen (15) days of the date of the notice of rejection letter, the inmate or the inmate's attorney submits a letter to the Director of Board Support Services requesting a reconsideration hearing, and provides information that the Board may have based its decision on erroneous information or can provide additional information that the Board did not have during the hearing, the Board may decide to grant a reconsideration hearing. The Director of the Office of Board Support Services will make a determination as to whether or not the information provided is sufficient to grant a rehearing. If the Director of Board Support Services agrees, this information will be forwarded to the Board's Chair for a final determination. A letter will be sent to the inmate or the inmate's attorney notifying them of the decision. There is no appeal of the final decision.

1. REASONS FOR CONDUCTING A RECONSIDERATION

- a. **Subsequent Misconduct by the Inmate.** In cases where the Board has granted parole conditioned on the satisfaction of some pre-release requirement, and the inmate has committed some violation of prison rules before the actual release from prison, the case will be presented to the Board or panel in order to deal with the subsequent misconduct.
- b. **New Criminal Charges Against the Inmate.** The inmate received a new conviction after conditional parole but prior to release.
- c. **After-Acquired Information About the Inmate.** If the Board or panel acquires new information after it has made its final decision and in the Board's or panel's judgment is so important as to require an immediate reconsideration of the case, the case will be presented to the Board or panel to review its decision.
- d. **Failure of the Inmate to Meet Conditions of Release.** The Board will review cases in which the inmate has failed to meet the conditions of release.

1 2:30 I'LL BRING YOU OUT HERE AND I WILL THEN INSTRUCT YOU AND
2 TELL YOU WHAT THE LAW IS AND WHAT YOUR DUTIES AND
3 RESPONSIBILITIES ARE IN YOUR DELIBERATIONS. HAVE A NICE
4 LUNCH AND I'LL SEE YOU BACK HERE AT 2:30. THANK YOU. I WANT
5 EVERYONE ELSE TO REMAIN SEATED WHILE THE JURY LEAVES THE
6 COURTROOM.

7 (THE JURY LEAVES THE JURY BOX AT 12:43 P.M.)

8 THE COURT: COURT WILL BE ADJOURNED UNTIL 2:30. WE'VE
9 GOT A PLEA.

10 (LUNCHEON RECESS)

11 (COURT RESUMES AT 2:36 P.M.)

12 THE COURT: WOULD YOU BRING THE JURY IN, PLEASE?

13 (THE JURY RETURNS TO THE JURY BOX AT 2:37 P.M.)

14 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE
15 JURY, THE STATE OF SOUTH CAROLINA IN THIS CASE HAS ACCUSED
16 BERNARD BAGLEY OF THE CHARGE OF MURDER AND OF BURGLARY IN THE
17 FIRST DEGREE. NOW, I TELL YOU, LADIES AND GENTLEMEN OF THE
18 JURY, THAT IT'S A BASIC RULE OF LAW IN OUR COUNTRY THAT
19 EVERYONE WHO IS ACCUSED OF A CRIME REGARDLESS OF WHAT THAT
20 CRIME MIGHT BE IS PRESUMED TO BE INNOCENT UNTIL FOUND GUILTY.
21 NO ONE WHO IS ACCUSED OF A CRIME IN OUR COUNTRY IS REQUIRED
22 TO COME FORWARD AND PROVE THEIR INNOCENCE. OUR LAW SAYS THAT
23 A PERSON IS PRESUMED TO BE INNOCENT UNTIL YOU MEMBERS OF THE
24 JURY ARE CONVINCED BEYOND A REASONABLE DOUBT THAT HE IS
25 GUILTY. THE STATE OF SOUTH CAROLINA HAVING BROUGHT THESE

1 CHARGES AGAINST THIS DEFENDANT HAS THE BURDEN OF PROOF. I
2 MEAN BY THAT THE STATE OF SOUTH CAROLINA THROUGH YOUR
3 SOLICITOR'S OFFICE IS REQUIRED TO PROVE TO YOU BY EVIDENCE
4 AND TESTIMONY CONVINCING YOU THAT HE IS GUILTY AND THEY MUST
5 PROVE THAT TO YOU BEYOND A REASONABLE DOUBT. SO, THEREFORE,
6 AFTER HEARING THE TESTIMONY AND THE EVIDENCE THAT YOU HAVE
7 HEARD IF YOU HAVE A REASONABLE DOUBT IN YOUR MIND AS TO
8 WHETHER OR NOT A DEFENDANT IS GUILTY OR NOT GUILTY, YOU HAVE
9 TO RESOLVE THAT DOUBT IN HIS FAVOR AND FIND HIM NOT GUILTY.
10 ON THE OTHER HAND, IF YOU DO NOT HAVE A REASONABLE DOUBT IN
11 YOUR MIND AS TO WHETHER OR NOT HE'S GUILTY OR NOT, YOU HAVE
12 TO FIND HIM GUILTY.

13 NOW, YOU MEMBERS OF THE JURY ARE THE SOLE JUDGES OF THE
14 FACTS. I MEAN BY THAT IT'S YOUR DUTY AND RESPONSIBILITY TO
15 TAKE THE EVIDENCE AND THE TESTIMONY THAT YOU HAVE HEARD AND
16 FROM THAT EVIDENCE AND TESTIMONY OR FROM THE LACK OF CERTAIN
17 TESTIMONY DETERMINE WHAT THE TRUE FACTS ARE. I'VE HEARD
18 JURORS BEFORE TELL ME IN THE PAST I JUST CAN'T BE A JUROR, I
19 JUST CAN'T DO THIS. THIS IS NOTHING UNUSUAL FOR YOU TO DO.
20 THIS IS WHAT YOU DO EVERYDAY IN YOUR LIFE. YOU LISTEN TO
21 PEOPLE TALK TO YOU AND TELL YOU THINGS THEY'VE SEEN OR HEARD
22 AND YOU DECIDE WHAT YOU BELIEVE AND WHAT YOU DON'T BELIEVE.
23 YOU JUST USE YOUR GOOD JUDGMENT AND COMMON SENSE.

24 NOW, SINCE YOU HAVE TO DETERMINE WHAT THE FACTS ARE,
25 THEN BY NECESSITY YOU MUST WEIGH, THAT IS, DETERMINE THE

1 CREDIBILITY, THE BELIEVABILITY OF THE VARIOUS WITNESSES WHO
2 HAVE TESTIFIED. NOW, YOU MAY BELIEVE ONE WITNESS AGAINST
3 SEVERAL OR YOU MAY BELIEVE SEVERAL WITNESSES AGAINST ONE OR
4 IF YOU HAVE GOOD REASON TO YOU MAY BELIEVE PART OF WHAT ONE
5 WITNESS SAYS AND DISBELIEVE ANOTHER PART. YOU CAN TAKE INTO
6 CONSIDERATION MANY THINGS IN DETERMINING WHAT THE TRUTH IS
7 AND JUDGING THE CREDIBILITY OF A WITNESS. YOU HAVE SEEN THE
8 WITNESSES APPEAR BEFORE YOU AND TESTIFY AND YOU CAN JUDGE THE
9 DEMEANOR OF THE WITNESSES WHO TESTIFIED. ANY SPECIAL
10 KNOWLEDGE OR INFORMATION ANY WITNESS MIGHT HAVE IN TESTIFYING
11 AS HE OR SHE MIGHT HAVE TESTIFIED. ANY SPECIAL--ANYTHING TO
12 GAIN OR LOSE THAT A WITNESS MIGHT HAVE IN TESTIFYING. ANY
13 BIAS OR PREJUDICE ANY WITNESS MIGHT HAVE. BUT WHAT IT REALLY
14 BOILS DOWN TO, MR. FOREMAN AND LADIES AND GENTLEMEN OF THE
15 JURY, YOU CAN TAKE INTO CONSIDERATION ANYTHING WHICH IN YOUR
16 GOOD JUDGMENT HELPS YOU ARRIVE AT WHAT THE TRUE FACTS ARE IN
17 THIS CASE.

18 NOW, THROUGHOUT THIS TRIAL SINCE I AM THE JUDGE THAT
19 DECIDES WHAT THE LAW IS AND MAKES RULINGS OF LAW I HAVE MADE
20 VARIOUS RULINGS FOR AND AGAINST VARIOUS PARTIES IN THIS CASE.
21 I WANT TO ASSURE YOU OF ONE THING. NEVER IN THE RULINGS THAT
22 I HAVE MADE HAVE I INTENDED OR HAVE MEANT TO SUGGEST AT ALL
23 ANY OPINION I MIGHT HAVE ABOUT THE FACTS. I'M NOT ALLOWED TO
24 HAVE AN OPINION ABOUT THE FACTS. AND IF YOU THOUGHT I DID BY
25 RULING AS I DID, PLEASE DISREGARD IT BECAUSE I HAVE NO

1 OPINION BECAUSE YOU HAVE TO BE THE ONES WHO DECIDE WHAT THE
2 FACTS ARE. THEY ARE SOLELY IN YOUR BALLPARK. THAT'S SOLELY
3 YOUR PREROGATIVE. YOU CAN'T GET ANY FACTS FROM ME AND YOU
4 CAN'T GET ANY FACTS FROM THESE LAWYERS. THE LAWYERS CAN'T
5 TESTIFY AND I CAN'T TESTIFY. YOU GET YOUR FACTS FROM THE
6 WITNESSES AND THE EVIDENCE THAT'S BEEN ADMITTED INTO
7 EVIDENCE. YOU ARE THE SOLE JUDGES OF THE FACTS. YOU HAVE
8 BEEN SELECTED BY THE ATTORNEYS IN THIS CASE BY THE STATE AND
9 THE DEFENSE TO BE FAIR AND IMPARTIAL. TO BE FAIR AND
10 IMPARTIAL TO BOTH SIDES. YOU HAVE NOT BEEN SELECTED--I
11 EMPHASIZE THIS--YOU HAVE NOT BEEN SELECTED TO PUNISH ANYBODY
12 AND YOU HAVE NOT BEEN SELECTED TO REWARD ANYBODY EITHER. YOU
13 HAVE BEEN SELECTED TO LISTEN TO THE TESTIMONY AND THE
14 EVIDENCE AND DETERMINE WHAT THE TRUTH IS AND MAKE A DECISION
15 BASED UPON THAT AND THAT ALONE AND NOT BE INFLUENCED BY ANY
16 BIAS OR PREJUDICE.

17 NOW, YOU ARE THE SOLE JUDGES OF THE FACTS. SO,
18 THEREFORE, ONCE YOU GO BACK IN THAT JURY ROOM AND ONCE YOU
19 HAVE DECIDED WHAT THE FACTS ARE THEN YOUR NEXT DUTY IS TO
20 TAKE THE LAW OF THE STATE OF SOUTH CAROLINA AS I GIVE IT TO
21 YOU, APPLY THAT LAW TO THE FACTS THAT YOU HAVE DETERMINED SO
22 THAT YOU'LL RENDER A VERDICT WHICH SPEAKS THE TRUTH BOTH IN
23 FACT AND IN LAW. NOW, I SAID YOU MUST TAKE THE LAW AS I GIVE
24 IT TO YOU BECAUSE THAT'S MY PREROGATIVE. IT'S MY JOB TO TELL
25 YOU WHAT THE LAW IS AND YOU MUST TAKE IT AS I GIVE IT TO YOU,

1 NOT AS YOU THINK IT OUGHT TO BE, NOT AS YOU THINK IT SHOULD
2 BE BUT AS I EXPLAIN THE LAW TO YOU BECAUSE THAT'S MY
3 RESPONSIBILITY JUST LIKE FINDING THE FACTS ARE YOURS. YOU
4 TAKE THE FACTS THAT YOU DETERMINE, THE LAW THE I GIVE YOU,
5 PUT THEM TOGETHER, APPLY THE LAW TO THE FACTS AND THEN YOU'LL
6 RENDER A VERDICT WHICH SPEAKS THE TRUTH AND THAT'S WHAT YOUR
7 JOB IS.

8 NOW, THIS DEFENDANT IS CHARGED--WE ARE TALKING ABOUT
9 MURDER FIRST. HE IS CHARGED WITH MURDER. SINCE THE GREATER
10 ALWAYS INCLUDES THE LESSER, MURDER ALSO INCLUDES A LESSER
11 INCLUDED OFFENSE OF MANSLAUGHTER SO I'M GOING TO HAVE TO TELL
12 YOU WHAT BOTH OF THEM ARE. AND IF YOU HAVE A REASONABLE
13 DOUBT IN YOUR MIND AFTER CONSIDERING WHETHER HE'S GUILTY OF
14 MURDER OR NOT GUILTY, IF YOU HAVE A REASONABLE DOUBT AS TO
15 WHETHER HE'S GUILTY OF MURDER OR MANSLAUGHTER, YOU HAVE TO
16 RESOLVE THAT DOUBT IN HIS FAVOR AND FIND HIM GUILTY OF
17 MANSLAUGHTER AS BETWEEN THE TWO OF THEM. ANY TIME YOU HAVE
18 A REASONABLE DOUBT IN A CRIMINAL CASE YOU HAVE TO RESOLVE
19 THAT DOUBT IN FAVOR OF THE DEFENDANT. HE'S ENTITLED TO EVERY
20 REASONABLE DOUBT. MURDER IS THE KILLING OF ANY PERSON WITH
21 MALICE AFORETHOUGHT. MURDER IS THE KILLING OF ANY PERSON
22 WITH MALICE AFORETHOUGHT. IN ORDER TO CONVICT THE DEFENDANT
23 OF MURDER, THE STATE MUST NOT ONLY PROVE THAT THE DEFENDANT
24 KILLED THE DECEASED, BUT THAT THE KILLING WAS DONE WITH
25 MALICE AFORETHOUGHT AND SUCH PROOF MUST BE BEYOND A

1 REASONABLE DOUBT. WHAT IS MALICE? MALICE IS DEFINED AS A
2 TERM OF ART IMPORTING WICKEDNESS AND EXCLUDING JUST CAUSE OR
3 EXCUSE. MALICE IS SOMETHING WHICH SPRINGS FROM WICKEDNESS
4 AND FROM A DEPRAVED SPIRIT. IT IS ILL WILL, IT IS HATRED.
5 NOW, MALICE MAY BE SHOWN TO EXIST EITHER EXPRESSLY OR
6 IMPLIEDLY. I CHARGE YOU THAT THE WORDS EXPRESSED OR IMPLIED
7 MALICE DO NOT MEAN DIFFERENT KINDS OF MALICE BUT MERELY THE
8 MANNER IN WHICH MALICE IS SHOWN TO EXIST TO YOU OR ME. THAT
9 IS, BY EITHER POSITIVE EVIDENCE OR BY INFERENCE. EXPRESSED
10 MALICE IS WHERE ONE PERSON KILLS ANOTHER WITH A SEDATE,
11 DELIBERATE MIND, A FORMED DESIGN, SUCH FORMED DESIGN BEING
12 EVIDENCED BY THE EXTERNAL CIRCUMSTANCES DISCLOSING HIS INWARD
13 INTENTIONS. IT MAY BE EXPRESSED, FOR EXAMPLE, WHERE THERE
14 ARE PREVIOUS THREATS OR WHERE ONE IS LYING IN WAIT ON
15 SOMEBODY. AMBUSH. IN OTHER WORDS, EXTERNAL CIRCUMSTANCES
16 THAT YOU MAY CONSIDER. MALICE MAY BE IMPLIED FROM THE
17 WILFUL, DELIBERATE AND INTENTIONAL DOING OF AN UNLAWFUL ACT
18 WITHOUT JUST CAUSE OR EXCUSE. IT IS FOR THE JURY TO
19 DETERMINE FROM ALL THE EVIDENCE WHETHER OR NOT MALICE HAS
20 BEEN PROVEN BEYOND A REASONABLE DOUBT. I CHARGE YOU THAT THE
21 LAW SAYS IF ONE INTENTIONALLY KILLS ANOTHER WITH A DEADLY
22 WEAPON, AND A GUN IS A DEADLY WEAPON, I CHARGE YOU THAT THE
23 LAW SAYS IF ONE INTENTIONALLY KILLS ANOTHER WITH A DEADLY
24 WEAPON THE INFERENCE OF MALICE MAY ARISE. IF FACTS ARE
25 PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN

1 INFERENCE OF MALICE TO YOUR SATISFACTION, THIS INFERENCE
2 WOULD BE SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO
3 CONSIDERATION BY YOU ALONG WITH ALL THE OTHER EVIDENCE IN THE
4 CASE AND YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT
5 SHOULD RECEIVE. NOW, YOU'LL NOTICE THAT I SAID THAT MURDER
6 IS THE UNLAWFUL OR FELONIOUS KILLING OF ANOTHER PERSON WITH
7 MALICE AFORETHOUGHT. THE STATE MUST ALSO PROVE AS EVERYTHING
8 ELSE BEYOND A REASONABLE DOUBT THAT MALICE EXISTED IN THE
9 HEART OR THE MIND OF THIS DEFENDANT AFORETHOUGHT. THAT MEANS
10 THAT SOME TIME PRIOR TO THE SHOT BEING FIRED OR THE BLOW
11 BEING STRUCK THAT MALICE MUST HAVE EXISTED IN HIS MIND NOT
12 AFTERWARDS, BUT BEFORE, AND IT DOES NOT HAVE TO EXIST IN THE
13 MIND FOR ANY APPRECIABLE LENGTH OF TIME BUT AT SOME POINT IN
14 TIME NO MATTER HOW SHORT THAT MALICE MUST BE SHOWN TO HAVE
15 EXISTED. THAT ILL WILL OR HATRED MUST HAVE EXISTED AT SOME
16 TIME PRIOR TO THE ACT BEING DONE. SO, MURDER IS THE
17 FELONIOUS OR UNLAWFUL KILLING OF ANOTHER HUMAN BEING WITH
18 MALICE AFORETHOUGHT. AND I REMIND YOU AGAIN THE STATE MUST
19 PROVE ALL OF THIS TO YOU BEYOND A REASONABLE DOUBT BEFORE YOU
20 CAN FIND THE DEFENDANT GUILTY OF MURDER. IF YOU HAVE A
21 REASONABLE DOUBT IN YOUR MIND AS TO WHETHER THE STATE HAS
22 PROVEN THIS TO YOU BEYOND A REASONABLE DOUBT, THEN YOU MAY
23 THEN CONSIDER THE CRIME OF VOLUNTARY MANSLAUGHTER.

24 AS I HAVE ALREADY INDICATED TO YOU, AN INDICTMENT FOR
25 MURDER INCLUDES THE LESSER INCLUDED CRIME OF INVOLUNTARY

1 MANSLAUGHTER. A DEFENDANT INDICTED FOR MURDER MAY BE
2 CONVICTED OF MANSLAUGHTER IF THE EVIDENCE WARRANTS IT AND THE
3 STATE PROVES IT TO YOU BEYOND A REASONABLE DOUBT. VOLUNTARY
4 MANSLAUGHTER IS THE UNLAWFUL, FELONIOUS KILLING OF ANOTHER
5 PERSON WHEN THERE IS NO MALICE EITHER EXPRESSED OR IMPLIED.
6 YOU WILL NOTICE THAT THE ABSENCE OF MALICE IS WHAT
7 DISTINGUISHES MANSLAUGHTER FROM MURDER. MANSLAUGHTER IS THE
8 TAKING OF THE LIFE OF ANOTHER WHEN IT'S DONE IN SUDDEN HEAT
9 AND PASSION UPON A SUFFICIENT LEGAL PROVOCATION. THE LAW
10 RECOGNIZES THE FACT THAT SUDDEN HEAT AND PASSION MAY
11 TEMPORARILY DISTURB THE SWAY OF REASON OF AN ORDINARY,
12 REASONABLE PERSON AND, THEREFORE, IN SUCH CASES REDUCES THE
13 CRIME TO MANSLAUGHTER FROM MURDER PROVIDED THERE WAS
14 SUFFICIENT LEGAL PROVOCATION. BEFORE I GO INTO SUFFICIENT
15 LEGAL PROVOCATION I WANT TO TELL YOU THE SUDDEN HEAT AND
16 PASSION, THE SUDDEN HEAT AND PASSION I'M TALKING ABOUT WHICH
17 REDUCES A HOMICIDE, A MURDER, TO MANSLAUGHTER, WHILE THAT
18 SUDDEN HEAT AND PASSION NEED NOT DETHRONE THE REASON OR SHUT
19 OUT KNOWLEDGE AND VOLITION IT MUST BE SUCH AS WOULD NATURALLY
20 DISTURB THE SWAY OF REASON AND RENDER THE MIND OF AN
21 ORDINARY, REASONABLE PERSON INCAPABLE OF COOL REFLECTION.
22 BEAR IN MIND, LADIES AND GENTLEMEN, THAT THE HEAT AND PASSION
23 MUST BE AROUSED UPON A SUFFICIENT LEGAL PROVOCATION. A MAN
24 CANNOT FLY INTO A PASSION OVER A MERE MINOR INCIDENT OR A
25 MERE TRIFLE WHICH WAS NOT CALCULATED TO STIR THE BLOOD OF A

1 MAN OF ORDINARY FIRMNESS AND REASON AND TAKE THE LIFE OF HIS
2 FELLOW MAN AND SAY THAT IT WAS DONE IN SUDDEN HEAT AND
3 PASSION AND, THEREFORE, IT'S NOT MURDER. WHAT MAKES THE
4 SUDDEN HEAT AND PASSION LEGALLY SUFFICIENT UNDER THE LAW AND
5 UNDER THE FACTS OF THE CASE HAS TO BE DETERMINED BY THE FACTS
6 AND CIRCUMSTANCES OF EACH INDIVIDUAL CASE. IT'S UP TO YOU TO
7 DETERMINE WHETHER THIS SUDDEN HEAT AND PASSION, IF IT EXISTS,
8 WAS LEGALLY SUFFICIENT, IF IT WAS SUFFICIENT ENOUGH TO MAKE
9 AN ORDINARY, REASONABLE MAN HAVE SUDDEN HEAT AND PASSION.

10 NOW, MERELY BY WAY OF EXAMPLE AND ILLUSTRATION, AND I SAY BY
11 WAY OF EXAMPLE ONLY, IF A PERSON WOULD WALK UP TO SOMEONE IN
12 A PUBLIC PLACE AND HIT THEM IN THE FACT, SLAP THEM IN THE
13 FACE AND THAT PERSON REACTED IMMEDIATELY AND STRUCK BACK, THE
14 LAW WOULD SAY HE ACTED IN SUDDEN HEAT AND PASSION.

15 NOW, YOU MUST REMEMBER THE DEFINITION OF MANSLAUGHTER IS
16 THE UNLAWFUL KILLING OF ANOTHER PERSON WHEN IT'S DONE IN
17 SUDDEN HEAT AND PASSION AFTER HE'S BEEN PROVOKED TO DO IT.
18 AND I SAID SUDDEN HEAT AND PASSION UPON A SUFFICIENT LEGAL
19 PROVOCATION. YOU MUST NOTICE THAT I SAID SUDDEN HEAT AND
20 PASSION FOR THE LAW SAYS THAT A PERSON, AN ORDINARY,
21 REASONABLE PERSON, IF HE HAS HAD TIME TO COOL OFF, GAIN
22 CONTROL OF HIMSELF, THERE'S BEEN SUFFICIENT TIME FOR COOLING,
23 THEN YOU CANNOT SAY THAT THE KILLING WAS DONE IN SUDDEN HEAT
24 AND PASSION. THE KILLING THEN WOULD NOT BE ATTRIBUTED TO
25 SUDDEN HEAT AND PASSION BUT TO MALICE. MALICE IS WHAT

1 DIFFERENTIATES MURDER FROM MANSLAUGHTER. THE SUFFICIENCY OF
2 COOLING TIME WOULD DEPEND ON THE CIRCUMSTANCES OF THE CASE OF
3 WHETHER THERE WAS TIME ALL CIRCUMSTANCES BEING CONSIDERED FOR
4 A REASONABLE, ORDINARY MAN TO HAVE COOLED OFF.

5 NOW, LADIES AND GENTLEMEN OF THE JURY, I TELL YOU AGAIN
6 IF YOU HAVE A REASONABLE DOUBT AS TO WHETHER THE DEFENDANT IS
7 GUILTY OF MURDER OR MANSLAUGHTER YOU WOULD ALWAYS HAVE TO
8 RESOLVE THAT DOUBT IN HIS FAVOR AND FIND HIM GUILTY OF
9 MANSLAUGHTER BUT, OF COURSE, YOU COULD NOT FIND HIM GUILTY OF
10 MANSLAUGHTER UNLESS THE STATE HAS PROVEN TO YOU THAT HE
11 KILLED THE DECEASED IN SUDDEN HEAT AND PASSION UPON BEING
12 SUFFICIENTLY LEGALLY PROVOCATED AND DID IT SUDDENLY.

13 I CHARGE YOU, LADIES AND GENTLEMEN OF THE JURY, THAT THE
14 DEFENDANT HAS ALSO BEEN ACCUSED OF BURGLARY. BURGLARY IN THE
15 FIRST DEGREE. BURGLARY IN THE FIRST DEGREE. I'M READING TO
16 YOU FROM THE STATUTE ITSELF, THE LAW ITSELF. A PERSON IS
17 GUILTY OF BURGLARY IN THE FIRST DEGREE IF THE PERSON, THAT
18 IS, THE DEFENDANT, ENTERS A DWELLING--THAT MEANS WHERE
19 SOMEONE LIVES--WITHOUT CONSENT AND WITH INTENT TO COMMIT A
20 CRIME THEREIN AND EITHER WHEN EFFECTING ENTRY OR WHILE IN THE
21 DWELLING OR IN IMMEDIATE FLIGHT FROM THAT DWELLING
22 PARTICIPATES IN THE CRIME. IN OTHER WORDS, AFTER THE PERSON
23 WAS IN THE HOUSE OR LEAVING THE HOUSE OR SOMETIME WHILE HE
24 WAS IN THERE HE DID COMMIT THE CRIME OR THAT HE WAS ARMED
25 WITH A DEADLY WEAPON OR THAT HE CAUSED PHYSICAL INJURY TO ANY

1 PERSON IN THE HOUSE WHO WAS NOT A PARTICIPANT IN THE CRIME.
2 FOR EXAMPLE, A CO-DEFENDANT. THE STATE MUST PROVE TO YOU
3 THIS BEYOND A REASONABLE DOUBT FOR A PERSON TO BE FOUND
4 GUILTY OF BURGLARY IN THE FIRST DEGREE. THEY MUST PROVE TO
5 YOU THAT THE DEFENDANT ENTERED INTO THIS DWELLING HOUSE OF
6 THIS PERSON WHO OWNED IT WITHOUT THAT PERSON'S CONSENT WITH
7 THE INTENT TO COMMIT A CRIME THEREIN, AND THAT WHILE IN THERE
8 HE DID ONE OF THOSE THREE THINGS I JUST STATED TO YOU. HE
9 EITHER CAUSED INJURY TO ANOTHER PERSON IN THAT HOUSE, KILLING
10 WOULD BE AN INJURY, OF COURSE; OR THAT HE WAS ARMED WITH A
11 DEADLY WEAPON OR THAT WHILE HE WAS IN THERE HE PARTICIPATED
12 IN THE CRIME THAT HE INTENDED TO ENTER THE HOUSE FOR. I
13 CHARGE YOU THAT IT SAYS THAT HE MUST ENTER WITHOUT CONSENT.
14 IT ALSO SAYS THAT HE HAS TO DO IT WITH THE INTENT TO COMMIT
15 A CRIME THEREIN. THAT INTENT MUST BE THERE WHEN HE ENTERED
16 THE HOUSE. INTENT IS A STATE OF MIND THAT AN INDIVIDUAL HAS.
17 THAT STATE OF MIND WHICH IS SHOWN BY CIRCUMSTANCES OF THE
18 CASE. IT'S BY EXTERNAL ACTIONS OR WORDS OR WHATEVER BUT A
19 PERSON'S INTENTIONS HAS TO BE SHOWN BY THE CIRCUMSTANCES OF
20 THE CASE. SO, YOU HAVE TO LOOK AT ALL THE CIRCUMSTANCES OF
21 THE CASE WHETHER OR NOT HE'S GUILTY OF BURGLARY WITH INTENT--
22 ENTERED WITH THE INTENT TO COMMIT A CRIME THEREIN.

23 NOW, LADIES AND GENTLEMEN OF THE JURY, ANY TIME THE
24 STATE INTENDS TO PROVE A CASE IN COURT THEY MAY PROVE THAT
25 CASE IN ONE OF THREE WAYS. THEY MAY PROVE THAT CASE BY

1 DIRECT EVIDENCE. THEY MAY PROVE IT BY INDIRECT OR WHAT WE
2 CALL CIRCUMSTANTIAL EVIDENCE OR THEY MIGHT SHOW IT BY A
3 COMBINATION OF THE TWO. NOW, DIRECT EVIDENCE IS SUCH
4 EVIDENCE THAT IS SOMETHING PERCEIVED BY SOME OF YOUR FIVE
5 SENSES AND YOU COME INTO COURT AND TELL ABOUT IT. FOR
6 EXAMPLE, IF I CAME INTO COURT AND I SAID I SAW THIS MAN SHOOT
7 THIS MAN, THAT'S DIRECT EVIDENCE. SOMETHING I COULD SEE AND
8 I CAME IN AND I TOLD YOU ABOUT IT. INDIRECT EVIDENCE OR
9 CIRCUMSTANTIAL EVIDENCE IS MEANT THE PROOF OF SOME OTHER FACT
10 OR FACTS FROM WHICH TAKEN EITHER SINGLY OR COLLECTIVELY THE
11 EXISTENCE OF THE PARTICULAR FACT IN QUESTION MAY BE INFERRED
12 AS A NECESSARY CONSEQUENCE. CIRCUMSTANTIAL OR INDIRECT
13 EVIDENCE IS JUST AS GOOD AS DIRECT EVIDENCE PROVIDED IT MEETS
14 THE TEST THAT THE LAW SETS DOWN. TO THE EXTENT THAT THE
15 STATE RELIES ON CIRCUMSTANTIAL EVIDENCE, THE STATE MUST PROVE
16 ALL THE CIRCUMSTANCES RELIED ON BEYOND A REASONABLE DOUBT.
17 THEY BE WHOLLY AND IN EVERY PARTICULAR CONSISTENT WITH ONE
18 ANOTHER AND THEY MUST POINT CONCLUSIVELY, THAT IS, TO A MORAL
19 CERTAINTY, TO THE GUILT OF THE ACCUSED TO THE EXCLUSION OF
20 EVERY OTHER REASONABLE HYPOTHESIS. THAT IS THEY MUST BE
21 ABSOLUTELY INCONSISTENT WITH ANY OTHER REASONABLE HYPOTHESIS
22 OTHER THAN THE GUILT OF THE ACCUSED. IN OTHER WORDS, IN
23 CONSIDERATION OF CIRCUMSTANTIAL EVIDENCE YOU MUST SEEK SOME
24 REASONABLE EXPLANATION THEREOF OTHER THAN THE GUILT OF THE
25 ACCUSED AND IF SUCH REASONABLE EXPLANATION CAN BE FOUND, OF

1 COURSE, YOU COULD NOT CONVICT HIM ON CIRCUMSTANTIAL EVIDENCE.
2 CIRCUMSTANTIAL EVIDENCE, LADIES AND GENTLEMEN, IS LIKE A
3 CHAIN, A LINK CHAIN, AND IT HAS TO GO FROM ONE END TO THE
4 OTHER IN ORDER TO DO THE JOB OF PULLING SOMETHING AND IF ANY
5 LINK OF THAT CHAIN IS NOT PROVEN SOUND BEYOND A REASONABLE
6 DOUBT, THAT CHAIN WILL BREAK AND, THEREFORE, THE CHAIN CAN'T
7 DO ITS JOB, NOR CAN THE CIRCUMSTANTIAL EVIDENCE HOLD UP
8 BECAUSE THE CIRCUMSTANTIAL EVIDENCE MUST POINT CONCLUSIVELY
9 FROM THE BEGINNING TO THE END AND POINT CONCLUSIVELY TO THE
10 GUILT OF THE ACCUSED TO THE EXCLUSION OF EVERY OTHER
11 REASONABLE HYPOTHESIS.

12 YOU RECALL, LADIES AND GENTLEMEN OF THE JURY, I TALKED
13 TO YOU EARLIER ABOUT AN ALLEGED CONFESSION ON THE PART OF
14 THIS DEFENDANT. AS I TOLD YOU THEN AND I TELL YOU AGAIN THAT
15 BEFORE YOU CAN CONSIDER THAT CONFESSION IN ANY MANNER, BEFORE
16 YOU CAN CONSIDER IT IN ANY MANNER, THE STATE MUST PROVE TO
17 YOU BEYOND A REASONABLE DOUBT THAT IT WAS FREELY AND
18 VOLUNTARILY GIVEN, THAT IT WAS GIVEN BY THIS DEFENDANT
19 WITHOUT BEING THREATENED, WITHOUT BEING INTIMIDATED, WITHOUT
20 BEING PROMISED ANYTHING OR OFFERED A REWARD OR GIVEN ANY HOPE
21 OF REWARD. IN OTHER WORDS, JUST LIKE THE ENGLISH LANGUAGE
22 SAYS, IT WAS FREELY AND VOLUNTARILY GIVEN ON HIS PART. AND
23 THAT BEFORE HE GAVE THAT STATEMENT HE WAS WARNED OF HIS
24 CONSTITUTIONAL RIGHTS, WHAT WE CALL THE MIRANDA DECISION,
25 WHICH SAYS THAT HE HAD THE RIGHT TO REMAIN SILENT, THAT

1 ANYTHING HE SAID COULD AND WOULD BE USED AGAINST HIM IN A
2 COURT OF LAW, THAT HE HAD THE RIGHT TO TALK TO A LAWYER; IF
3 HE COULDN'T AFFORD ONE, ONE WOULD BE GIVEN TO HIM BY THE
4 COURT, THAT IF HE WANTED TO ANSWER QUESTIONS WITHOUT THAT
5 LAWYER HE COULD DO SO BUT HE HAD THE RIGHT TO STOP AT ANY
6 TIME OR IF HE HAD THE LAWYER WITH HIM HE HAD THE RIGHT TO
7 STOP AT ANY TIME AND THAT HE ACKNOWLEDGED THAT HE UNDERSTOOD
8 THOSE RIGHTS AND THAT HE VOLUNTARILY WAIVED THOSE RIGHTS.
9 AND IF THEY'VE PROVED THAT TO YOU, ALL OF THESE THINGS TO YOU
10 BEYOND A REASONABLE DOUBT, YOU CAN GIVE THAT CONFESSION
11 WHATEVER WEIGHT YOU DEEM IN YOUR MIND IS PROPER ALONG WITH
12 ALL THE OTHER EVIDENCE YOU HAVE. AND IF YOU ARE NOT SO
13 CONVINCED YOU SHOULD DISREGARD IT COMPLETELY.

14 NOW, LADIES AND GENTLEMEN OF THE JURY, YOU'VE HEARD SOME
15 TESTIMONY ABOUT THE CHARACTER OR THE REPUTATION OF THIS
16 DEFENDANT. I CHARGE YOU THAT THE STATE ALLOWS TESTIMONY
17 ABOUT GOOD REPUTATION. THE LAW PERMITS THE PROOF OF GOOD
18 REPUTATION BECAUSE UNDER CERTAIN CIRCUMSTANCES YOU, THE JURY,
19 SHOULD CONSIDER THAT BECAUSE A PERSON COULD BE ENTITLED TO A
20 VERDICT OF NOT GUILTY TAKING INTO CONSIDERATION HIS GOOD
21 REPUTATION. IN OTHER WORDS, GOOD REPUTATION GOES TO
22 CREDIBILITY AND BELIEVABILITY AND A PERSON IS ENTITLED TO
23 HAVE A GOOD REPUTATION BEFORE THE JURY FOR YOU TO CONSIDER
24 BECAUSE SOMETIMES A GOOD REPUTATION WILL MAKE THE DIFFERENCE
25 IN GUILTY OR NOT GUILTY.

1 NOW, LADIES AND GENTLEMEN OF THE JURY, I TOLD YOU
2 EARLIER THAT YOU ARE THE SOLE JUDGES OF THE FACTS AND I TELL
3 YOU AGAIN YOU ARE NOT HERE TO PUNISH ANYBODY. YOU ARE HERE
4 TO MAKE A DETERMINATION OF WHETHER THE DEFENDANT IS GUILTY OR
5 NOT GUILTY BASED UPON THE EVIDENCE AND TESTIMONY YOU HAVE AND
6 AS I TOLD YOU EARLIER I CANNOT TESTIFY FOR YOU, I CAN'T TELL
7 YOU WHAT I THINK ABOUT ANYTHING, I'M NOT ALLOWED TO. MY DUTY
8 IS TO STATE THE LAW TO YOU AND TO MAKE RULINGS OF LAW TO SEE
9 THAT THIS CASE IS RUN ACCORDING TO THE LAWS OF THE STATE OF
10 SOUTH CAROLINA. THESE ATTORNEYS CAN'T TESTIFY TO YOU EITHER.
11 YOU HAVE TO GET YOUR FACTS FROM WHAT YOU'VE HEARD. AND I'VE
12 NOTICED THROUGHOUT THIS TRIAL YOU HAVE BEEN VERY ATTENTIVE TO
13 EVERYTHING THAT'S HAPPENED IN THIS COURTROOM, YOU HAVE
14 LISTENED VERY CAREFULLY TO ALL OF THE WITNESSES WHO HAVE
15 TESTIFIED AND I APPRECIATE THAT BECAUSE THAT'S WHAT YOU ARE
16 SUPPOSED TO DO. AND YOU HAVE LISTENED TO EVERY WITNESS WHO
17 HAS TESTIFIED. NOW, MR. FOREMAN, I'M GOING TO SEND THESE
18 INDICTMENTS BACK TO YOU TO THE JURY ROOM IN A FEW MOMENTS.
19 THEY DO NOT CONTAIN EVIDENCE, THEY MERELY CONTAIN THE WRITTEN
20 CHARGES AGAINST THE DEFENDANT. I'M SENDING THEM BACK THERE
21 FOR YOU TO WRITE YOUR VERDICT ON. BACK HERE ON THE BACK OF
22 THIS INDICTMENT WHICH SAYS INDICTMENT FOR BURGLARY, FIRST
23 DEGREE OVER HERE, THERE'S A PLACE ON THE BACK THAT SAYS
24 "VERDICT." THAT'S WHERE YOU WRITE YOUR VERDICT. THERE ARE
25 SOME LINES UNDER THERE. DEPENDING UPON THE JURY'S DECISION

1 YOU WILL EITHER WRITE THE WORDS NOT GUILTY OR THE WORD GUILTY
2 DEPENDING UPON WHAT THE JURY'S VERDICT IS AND THEN YOU'LL
3 SIGN YOUR NAME ON THE BOTTOM LINE WHERE IT SAYS FOREMAN AND
4 DATE IT. DO YOU UNDERSTAND, SIR?

5 MR. FOREMAN: YES, SIR.

6 THE COURT: NOW, ON THE INDICTMENT FOR MURDER THERE ARE
7 THREE POSSIBLE VERDICTS THAT YOU COULD RENDER IN THAT CASE.
8 IF THE STATE PROVES TO YOU, IF YOU FIND HIM GUILTY OF MURDER,
9 THEN YOUR VERDICT WOULD BE GUILTY. IF THE STATE HAS NOT
10 PROVEN TO YOU THAT HE'S GUILTY OF MURDER OR IF YOU HAVE A
11 REASONABLE DOUBT AS TO WHETHER IT'S MURDER OR MANSLAUGHTER,
12 THEN YOU CONSIDER MANSLAUGHTER. IF YOU FIND HIM GUILTY OF
13 MANSLAUGHTER BEYOND A REASONABLE DOUBT, THE VERDICT WOULD BE
14 GUILTY OF VOLUNTARY MANSLAUGHTER. ON THE OTHER HAND, IF THE
15 STATE DOES NOT PROVE TO YOU EITHER ONE OF THEM BEYOND A
16 REASONABLE DOUBT, THE FORM OF YOUR VERDICT THEN WOULD BE NOT
17 GUILTY. NOW, I HAVE WRITTEN THESE THREE VERDICTS OUT ON
18 THESE YELLOW SHEETS OF PAPER. I HAVE NOT EXPLAINED THEM TO
19 YOU IN ANY PARTICULAR ORDER, NOR DO I HAND THEM TO YOU IN ANY
20 PARTICULAR ORDER. I'M GOING TO STICK THEM IN THE INDICTMENT
21 SO WHEN I SEND IT BACK TO YOU YOU'LL HAVE THEM, BUT THOSE ARE
22 THE THREE POSSIBLE VERDICTS THAT YOU CAN RENDER--EITHER
23 GUILTY WHICH MEANS GUILTY OF MURDER OR NOT GUILTY WHICH MEANS
24 NOT GUILTY OF EITHER ONE OF THEM OR GUILTY OF VOLUNTARY
25 MANSLAUGHTER. SO, WHATEVER THE VERDICT IS YOU HAVE IT IN

1 HERE. ANY VERDICT THAT THIS JURY RENDERS MUST BE A UNANIMOUS
2 VERDICT. IT TAKES ALL TWELVE OF YOU TO AGREE ON ANY VERDICT.
3 NOW, MR. FOREMAN, WHEN YOU GO BACK IN THE JURY ROOM, I'M
4 GOING TO ASK YOU TO WITHHOLD YOUR DELIBERATIONS FOR JUST A
5 MOMENT WHICH WILL GIVE ME TIME TO CHECK MY NOTES AND TALK
6 WITH THE ATTORNEYS TO SEE IF THERE IS ANYTHING THAT I HAVE
7 FORGOTTEN TO TELL YOU AND IF I DO NEED TO BRING YOU BACK OUT
8 I'LL BRING YOU DIRECTLY BACK OUT. IF NOT, I'LL SEND THESE
9 INDICTMENTS BACK IN TO YOU, MR. FOREMAN, ALONG WITH THE
10 EXHIBITS THAT HAVE BEEN OFFERED INTO EVIDENCE AND WHEN I DO
11 THAT YOU MAY START DELIBERATING. WHEN YOU HAVE REACHED A
12 VERDICT, THEN LET US KNOW AND WE'LL BRING YOU BACK IN AND LET
13 YOU PUBLISH YOUR VERDICTS IN OPEN COURT. PLEASE RETIRE TO
14 THE JURY ROOM.

15 (THE JURY LEAVES THE JURY BOX AT 3:05 P.M.)

16 THE COURT: I NEED TO SAY ONE MORE THING. MY LAW CLERK
17 REMINDED ME I FORGOT TO TELL THEM. BRING THEM BACK IN.

18 (THE JURY RETURNS TO THE JURY BOX AT 3:05 P.M.)

19 THE COURT: JUST A MOMENT. LET ME READ THE CHARGE TO
20 YOU ON BURGLARY FIRST DEGREE AGAIN BECAUSE I MIGHT HAVE READ
21 SOMETHING WRONG TO YOU. A PERSON IS GUILTY OF BURGLARY IN
22 THE FIRST DEGREE IF THE PERSON ENTERS A DWELLING HOUSE
23 WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A CRIME THEREIN
24 AND WHEN EFFECTING--AND WHEN EFFECTING ENTRY OR WHILE IN THE
25 DWELLING HOUSE OR IN IMMEDIATE FLIGHT THEREFROM HE OR ANOTHER

1 PERSON PARTICIPATES IN THE CRIME OR HE'S ARMED WITH A DEADLY
2 WEAPON OR HE CAUSES PHYSICAL INJURY TO ANY PERSON WHO IS NOT
3 A PARTICIPANT IN THE CRIME. SO, ANY OF THOSE THREE THINGS
4 THAT I READ TO YOU UNDER BURGLARY MAKES IT BURGLARY IN THE
5 FIRST DEGREE IF THAT'S PROVEN TO YOU BEYOND A REASONABLE
6 DOUBT. I TOLD YOU ABOUT INTENT, I WON'T TELL YOU THAT AGAIN.
7 I DO CHARGE YOU THIS AND I FORGOT THIS AND I MEANT TO TELL
8 YOU. I HAD A NOTE ON IT. IN MANSLAUGHTER SUDDEN HEAT AND
9 PASSION UPON SUFFICIENT LEGAL PROVOCATION, I CHARGE YOU THAT
10 WHERE A KILLING IS DONE WITH A DEADLY WEAPON WORDS AND WORDS
11 ALONE NO MATTER HOW OFFENSIVE, HOW ATROCIOUS THEY ARE, HOW
12 DEVASTATING THEY ARE TO ANOTHER PERSON, HOW BAD THOSE WORDS
13 ARE, WORDS AND WORDS ALONE ARE NOT SUFFICIENT TO BE LEGAL
14 PROVOCATION. WORDS AND WORDS ALONE ARE NOT SUFFICIENT LEGAL
15 PROVOCATION TO REDUCE A KILLING FROM MURDER TO MANSLAUGHTER
16 WHERE THE KILLING IS DONE WITH A DEADLY WEAPON SUCH AS A
17 PISTOL. NOW, YOU CAN RETIRE TO THE JURY ROOM.

18 (THE JURY LEAVES THE JURY BOX AT 3:08 P.M.)

19 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE? ANY
20 EXCEPTIONS TO THE CHARGE?

21 MR. GIESE: NO, YOUR HONOR.

22 THE COURT: ANYTHING FROM THE DEFENSE? ANY EXCEPTION TO
23 THE CHARGE?

24 MR. DELGADO: YOUR HONOR, YES, SIR. IF YOU WILL JUST
25 GIVE ME ONE MOMENT. YOUR HONOR, DID I PROPOSE TO YOU --

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAR 26 2020

APPEAL FROM ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge
Appellate Case No. 2019-002102

SC Court of Appeals

Bernard Bagley, #175851

Appellant,

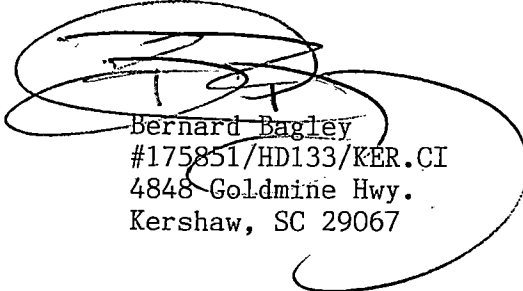
v.

South Carolina Department
of Probation, Parole and
Pardon Services,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.


Bernard Bagley
#175851/HD133/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

March 24, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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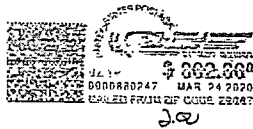
PROOF OF SERVICE

I certify that I have served the Record on Appeal, and Certificate of Counsel on the Respondent by depositing a copy of the same in the U.S. Mail, postage prepaid, on March 24, 2020, addressed to SCDPPPS, attorney of record, Matthew C. Buchanan, P.O. Box 207, Columbia, SC 29202.


s/ [Signature]
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#175851/HD133/KER.CI
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Kershaw, SC 29067

March 24, 2020

BERNARD Bagley
#175851-HD133-KER-C-1
1848 GOLDWATER HWY
PERSHAW, S.C. 29067



S.C. Court of Appeals
Jenny A. Kitchens, Clerk
1220 SENATE STREET
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