BLUME NORRIS & FRANKLIN-BEST, LLC

ATTORNEYS AT LAW

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FAX: (803) 765-1143

JOHN H. BLUME
TERESA L. NORRIS
Elizabeth Franklin-Best
KEIR M. WEYBLE *OF COUNSEL*
DAVID I. BRUCK *OF COUNSEL*

December 19, 2012

RECEIVED
DEC 27 2012
S.C. Supreme Court

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

RE: *Mar'Reece Aldean Hughes v. State*, 00-CP-46-2051 (York County Capital Post-Conviction Relief Action) – Status

Dear Mr. Shearouse:

Please be advised that this case remains pending pre-hearing and Mr. Hughes remains incompetent. *See Hughes v. State*, 367 S.C. 389, 626 S.E.2d 805 (2006).

Please do not hesitate to contact me if you have any questions in this matter or if I can provide you with any additional information.

Sincerely,

Teresa L. Norris

cc: Donald J. Zelenka
William H. Ehlies
A. Phillip Baity (Guardian Ad Litem)

1996-052140
25003

BLUME NORRIS & FRANKLIN-BEST, LLC

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DAVID I. BRUCK *OF COUNSEL*

October 24, 2012

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

RE: *Mar'Reece Aldean Hughes v. State*, 00-CP-46-2051 (York County Capital Post-Conviction Relief Action) – Status

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A. Phillip Baity (Guardian Ad Litem)

RECEIVED
OCT 25 2012
S.C. SUPREME COURT

BLUME NORRIS & FRANKLIN-BEST, LLC

ATTORNEYS AT LAW

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JOHN H. BLUME
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Elizabeth Franklin-Best
KEIR M. WEYBLE *OF COUNSEL*
DAVID I. BRUCK *OF COUNSEL*

August 27, 2012

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

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A. Phillip Baity (Guardian Ad Litem)

RECEIVED
AUG 29 2012
S.C. SUPREME COURT

BLUME WEYBLE & NORRIS, LLC

ATTORNEYS AT LAW

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JOHN H. BLUME
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DAVID I. BRUCK *OF COUNSEL*

RECEIVED
JUN 28 2012
S.C. SUPREME COURT

PHONE: (803) 765-1044
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June 27, 2012

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

RE: *Mar'Reece Aldean Hughes v. State*, 00-CP-46-2051 (York County Capital Post-Conviction Relief Action) – Status

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RECEIVED
MAY 8 2012
S.C. SUPREME COURT

BLUME WEYBLE & NORRIS, LLC
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DAVID I. BRUCK *OF COUNSEL*

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May 3, 2012

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

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PHONE: (803) 765-1044
FAX: (803) 765-1143

February 27, 2012

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

RE: *Mar'Reece Aldean Hughes v. State*, 00-CP-46-2051 (York County Capital Post-Conviction Relief Action) – Status

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RECEIVED
FEB 28 2012
SUPREME COURT

Sincerely,

Teresa L. Norris

Teresa L. Norris (pc)

cc: Donald J. Zelenka
William H. Ehlies
A. Phillip Baity (Guardian Ad Litem)

BLUME WEYBLE & NORRIS, LLC

ATTORNEYS AT LAW

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Teresa L. Norris
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RECEIVED
DEC 29 2011
S.C. SUPREME COURT

December 28, 2011

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

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Teresa L. Norris

cc: Donald J. Zelenka
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A. Phillip Baity (Guardian Ad Litem)

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August 25, 2011

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

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RECEIVED
AUG 26 2011
S.C. SUPREME COURT

BLUME WEYBLE & NORRIS, LLC

ATTORNEYS AT LAW

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June 27, 2011

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

RE: *Mar'Reece Aldean Hughes v. State*, 00-CP-46-2051 (York County Capital Post-Conviction Relief Action) – Status

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Teresa L. Norris

cc: Donald J. Zelenka
William H. Ehlies
A. Phillip Baity (Guardian Ad Litem)

RECEIVED
JUN 29 2011
S.C. SUPREME COURT

BLUME WEYBLE & NORRIS, LLC

ATTORNEYS AT LAW

JOHN H. BLUME
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April 27, 2011

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

RE: *Mar'Reece Aldean Hughes v. State*, 00-CP-46-2051 (York County Capital Post-Conviction Relief Action) – Status

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RECEIVED
APR 29 2011
S.C. SUPREME COURT

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ATTORNEYS AT LAW

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FAX: (803) 765-1143

February 28, 2011

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

RE: *Mar'Reece Aldean Hughes v. State*, 00-CP-46-2051 (York County Capital Post-Conviction Relief Action) – Status

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William H. Ehlies
A. Phillip Baity (Guardian Ad Litem)

RECEIVED
MAR 0 1 2011
S.C. SUPREME COURT

CENTER FOR CAPITAL LITIGATION
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COLUMBIA, SOUTH CAROLINA 29211-1311

VOICE: (803) 765-0630 FAX: (803) 765-0705

DATE: 9-27-02

TO: Dan Shearouse

OF: SC Supreme Court

FAX: 734-1499 PHONE: _____

FROM: Teresa Norris

OF: _____

REFERENCE: Mar: Reece Hughes order

NUMBER OF PAGES (INCLUDING COVER PAGE): 30

COMMENTS: _____

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STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
Mar-Reece Aldean Hughes, Applicant, vs. Gary D. Maynard, Commissioner, South Carolina Department of Corrections, and Charles Condon, South Carolina Attorney General, Respondent.	)	**ORDER** C.A. No.: 00-CP-46-2051

FILED-RECEIVED
SEP 23 9 30 AM '02

This matter comes before this Court by an Application for Post-Conviction Relief dated September 19, 2000, and filed in the office of the Clerk of Court for York County, South Carolina, on September 21, 2000. The Applicant, Mar-Reece Aldean Hughes, was convicted on September 18, 1995, in the Court of General Sessions for York County of Murder, Armed Robbery, Criminal Conspiracy, Possession of a Firearm During the Commission of a Crime, and Possession of a Stolen Vehicle. On September 22, 1995, following the recommendation of the jury, The Honorable John C. Hayes, III, Resident Judge of the Sixteenth Judicial Circuit, imposed a death sentence for the Murder conviction, and consecutive sentences of thirty (30) years for Armed Robbery, five (5) years for Criminal Conspiracy, five (5) years for Possession of a Firearm During the Commission of a Crime, and five (5) years for Possession of a Stolen Vehicle. The South Carolina Supreme Court confirmed the convictions and sentences on October 4, 1999, and the United States Supreme Court denied certiorari on March 20, 2000. See State v. Hughes, 336 S.C. 585,525 S.E.2d 500 (1999), cert. denied, 529 U.S. 1025 (2000).

C.A.S.

On the same date that the United States Supreme Court denied certiorari, Hughes' Oregon counsel associated Ms. Teresa L. Norris as local counsel, and filed a Motion for Stay of Execution, and also notified the South Carolina Supreme Court of Hughes' letter to the Attorney General requesting execution. Hughes' counsel asserted that he was not competent to be executed or competent to waive his right to file a post-conviction relief application. On May 11, 2000, the South Carolina Supreme Court remanded the case to Judge Hayes for a hearing on Competence and appointed Ms. Norris to represent Hughes. (Ms. Gwendlyne Young Smalls was also subsequently appointed by Judge Hayes.) Before a hearing could be held on the issue, Hughes changed his mind and withdrew his request to withdraw his Appeals and be executed. He filed a post-conviction relief application on September 21, 2000, and Judge Hayes issued a report finding that the directive of the Supreme Court to hold a competence hearing had been rendered moot. Less than a week later, on September 27, 2000, Hughes filed his own Motion in the South Carolina Supreme Court and expressed his desire to withdraw his post-conviction relief application and requested that he be executed. He also requested to have Ms. Norris and Ms. Smalls relieved as his attorneys in this case. The Applicant's attorneys responded by asking the Supreme Court to issue an Order staying his execution and requesting that a post-conviction relief Judge be appointed to determine his competency and to rule on his request to be executed. The State filed a Motion in opposition and on November 2, 2000, the Supreme Court of South Carolina entered an Order staying Hughes' execution and assigned this case to this Court and directed this Court as follows:

> The judge shall determine whether petitioner is (1) competent to waive filing of a PCR action; and (2) competent to be executed. The judge shall apply the standards

C.A.S.

> enunciated in Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993). Further, the judge shall determine whether petitioner is knowingly, intelligently and voluntarily waiving his right to counsel.

On or about September 20, 2001, this Court issued its Order directing the South Carolina Department of Mental Health (DMH) to evaluate the Applicant's competency under the standard enumerated in Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993), and followed in State v. Torrence, 317 S.C. 45, 451 S.E.2d 883 (1994). The Order further prohibited the forcible medication of the Applicant with antipsychotic medication without further order of the Court. On or about November 5, 2001, this Court received a statement dated November 1, 2001, and signed by the Applicant in which he stated that he no longer desired to waive his post-conviction relief application and be executed. He further stated that he wished to pursue post-conviction relief remedies and continue with Ms. Norris as his appointed counsel. In early February 2002, the Court was notified that the DMH evaluation had been completed and the Court scheduled a hearing for February 25, 2002, at the Union County Courthouse in Union, South Carolina. At the request of the Applicant's counsel, and without opposition from the Respondent, on February 22, 2002, this Court appointed A. Philip Baity of the York County Bar to serve as Hughes' Guardian ad Litem in these proceedings.

The first hearing in this matter was held in Union, South Carolina, on February 25, 2002. The Applicant was present and represented by Ms. Teresa L. Norris and Ms. Gwendlyne Young Smalls. The Applicant's Guardian ad Litem, Mr. Baity, was also present. The Respondent was represented by Mr. Donald J. Zelenka of the South Carolina Attorney General's Office. Solicitor Thomas Pope of the Sixteenth Judicial

Circuit also attended the hearing. The Court heard testimony from Dr. Richard Ellison, Mr. Larry Cartledge, Dr. Pamela M. Crawford, and Dr. Donna Schwartz-Watts. It was revealed at this hearing that Hughes had been inadvertently forcibly medicated by the South Carolina Department of Corrections in violation of this Court's Order of September 20, 2000. In order to resolve the concern that Hughes could be found competent due to the impact of forceful medication, this Court granted the Motion of Applicant's counsel (supported by his Guardian ad Litem) to continue the competency hearing until April 15, 2002, and this Court ordered the South Carolina Department of Mental Health to reevaluate the Applicant.

Another hearing was held in this matter in York, South Carolina, at the Moss Justice Center on April 15-17, 2002. The Applicant was represented by his attorneys, Ms. Teresa Norris and Ms. Gwendlyne Smalls. He was also represented by Mr. Jerome Nickerson, Jr., an employee of Ms. Norris' office and a member of the Maryland Bar who was admitted *pro hac vice* by this Court. Mr. Hughes' appointed Guardian ad Litem, Mr. A. Philip Baity, was also present and participated in the hearing and the Respondent was represented by Mr. Donald Zelenka. At the hearing the Court heard testimony from Dr. Donna Schwartz-Watts, Dr. Pamela M. Crawford, Mr. Jeffrey E. Musick, Ph.D., Mr. Alvin Gentry, Mrs. Melinda Gentry, Dr. Dafferlin Bernard-DuPree, and Mar-Reece Aldean Hughes. The Applicant's Guardian ad Litem, Mr. Baity, also testified. After reviewing the records and considering the testimony in this matter, this Court finds that the Applicant, Mar-Reece Aldean Hughes, is competent to waive filing of his State post-conviction relief remedy and that he is competent to be executed. The

Court further finds that the Applicant knowingly, intelligently, and voluntarily waives his right to counsel in this matter.

APPLICABLE LEGAL STANDARDS

This Court was directed to apply the standards for competency to be executed under Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993) in determining whether Mar-Reece Hughes is competent to waive the filing of his post-conviction relief action (PCR). The Singleton standard is as follows:

> The first prong is the cognitive prong which can be defined as: whether a convicted defendant can understand the nature of the proceedings, what he was tried for, the reason for the punishment, or the nature of the punishment.
>
> The second prong is the assistance prong which can be defended as: whether the convicted defendant possesses sufficient capacity or ability to rationally communicate with counsel.

The Supreme Court of South Carolina applied this standard in determining a capital defendant's capacity to waive his appeal. State v. Torrence, 317 S.C. 45, 451 S.E.2d 883 (1994). Also, State v. Torrence, 322 S.C. 475, 473 S.E.2d 703 (1996)(defendant found competent and his decision to waive his direct appeal was knowing and voluntary).

In Torrence, 322 S.C. 475 at 479, 473 S.E.2d at 706, the Court held that statutory rights, as well as constitutional rights may be waived. In Torrence, the Court found that Torrence thoroughly understood the purpose of the Court's review of a death sentence, and that the record was equally clear he knowingly wished to waive any relief which might have been afforded him by virtue of such review since it would, at best, result in the imposition of a life sentence for him. The Court therein determined the present record

sufficient to demonstrate a knowing, voluntary waiver of the direct review. The Court therein also granted Torrence's motion to relieve his lawyers.

SUMMARY OF EVIDENCE

At the hearing held in Union, South Carolina on February 25, 2002, this Court heard testimony concerning the involuntary admission of the Applicant to the Gilliam Psychiatric Institute by Order of the Richland County Probate Court on February 6, 2002. The Court also heard testimony concerning involuntary medication of the Applicant in spite of this Court's earlier Order prohibiting the same. The attorney for the South Carolina Department of Corrections conceded the violation of the Order, but asserted that it was inadvertent and not done deliberately or in bad faith. Dr. Richard Ellison, a psychiatrist at the South Carolina Department of Corrections, testified concerning Hughes' long history of mental illness and discussed his confinement in the maximum security unit. Mr. Larry Cartledge, who is a health counselor with the South Carolina Department of Corrections, also testified as to Hughes' "bizarre behavior" and his "smearing feces" while confined at the maximum security unit. The State's primary expert, Dr. Pamela M. Crawford, a board-certified psychiatrist, also testified at the hearing in Union on February 25, 2002. Pursuant to the Order of this Court dated September 20, 2001, she had examined the Applicant on several occasions and in her report dated January 28, 2002, she concluded that he was actively psychotic and that his thoughts and speech were grossly disorganized. It was her opinion, and the opinion of the other State's examiner who was present during the evaluation process, that due to the Applicant's severe disorganization and psychotic thought process that he was incompetent pursuant to the standard enumerated in Singleton v. State of South Carolina

P.G.S.

based on the cognitive and the assistant prongs elaborated in the standard. However, at the hearing Dr. Crawford testified that she had reexamined the Applicant on February 22, 2002, and filed a new report in which she found that "Mr. Hughes satisfies both the cognitive and assistance prong, of the Singleton standard and hence is presently competent pursuant to that standard." She testified that she had once again examined Hughes prior to the beginning of the hearing on February 25, 2002, and that she once again found him competent under the Singleton standard. Dr. Crawford attributed the change in the Applicant's competency to the forced medications. She further testified that without the medications Hughes may likely become incompetent. She stated that in order to be absolutely sure the medications were no longer in his system they would have to be discontinued for approximately two (2) months. The Defendant's primary expert, Dr. Donna Schwartz-Watts, a board-certified psychiatrist, also testified at the hearing in Union, South Carolina. Dr. Watts agreed with Dr. Crawford's finding of incompetence in her January 28, 2000 report, but she disagreed that the forced medications had restored the Applicant to competency. Dr. Watts testified that although Hughes may have a factual understanding of the proceedings and the punishment, he could not rationally understand these concepts because of his delusions. She further testified that in her opinion, he had had just enough medication to make him agitated and make him look much better than he actually was. It should also be noted that after a recess during the hearing in Union, the Applicant announced through his Guardian ad Litem, that he had changed his mind again and now had decided to waive his PCR and be executed.

In order to resolve the issue of the impact of medications on the Applicant's competency, the Court continued the competency hearing until April 15, 2002, and once

again directed that he be evaluated by the South Carolina Department of Mental Health examiners after his system was free of all medications.

The competency hearing was reconvened on April 15, 2002, in York, South Carolina. The Applicant's expert, Dr. Donna Schwartz-Watts testified that she had prepared a report dated April 14, 2002,concerning her evaluations of the Applicant, and said report was admitted into evidence without objection. She testified that Hughes system should now be free from the effects of any medication since none had been administered since February 2002. It was her opinion that Hughes has a factual understanding of the proceedings, but not a rational one. In her report and testimony, she was firm that Hughes understands that he is waiving PCR and requesting execution. She testified that Hughes thought he had crossed Lake Murray during the night of the incident, and that there had been evidence tampered with at his trial, and that he did not believe in the criminal justice system. She stated that Hughes indicated to her that the system was degrading. She testified that Hughes believed he was medicated during his trial in order that he could not defend himself. Concerning the judge's role, she testified that Hughes advised her he did not believe in His Honor. Concerning courtroom conduct, he had told Dr. Watts "he would never disrespect a king in his court." "If you challenge a king, you kill him." He stated to her that a jury was not of his peers because none had studied law or "pulled time." Dr. Watts testified that on one occasion, Hughes stated he had received the death penalty for killing a snitch in his cell and later said that he had been given the death penalty for murdering Officer McCants. Dr. Watts declared that Hughes was not willing to discuss his "personal beliefs" during the court-appointed evaluations. She stated he believed in a force, but would not discuss it. He suggested

that the force scared him as a child and that the force would always be with him. According to Dr. Watts, Hughes asserted he had special powers and had described an ability to digest and understand what he reads. She also stated that he used "slang"

expressions and that he described a unique belief or use of numbers.

She further testified that Hughes did not believe in any organized religion and that he had stated he did not fear death, but rather welcomed it. She further testified he told her that death is death and that there is no reincarnation. Dr. Watts based her opinion upon her conclusions that Hughes believes the system is not fair, that he had been medicated involuntarily during the trial, and that the evidence had been changed, such as Dave Lyle Boulevard and Lake Murray. She testified that Hughes was not able to hold onto his thought process, but she acknowledged he understands that he could go free or get a life sentence rather than death if his PCR application is successful. She also testified that Hughes preferred electrocution over lethal injection because of his dislike of medications. She further testified that Hughes was at peace, but she did not understand his definition of that term.

Dr. Watts opined that Hughes condition had deteriorated following the February hearing. She believes that he is in an active state of psychotic symptoms and that he endorses a number of persecutory beliefs. She stated that he has "bizarre beliefs about numbers and colors" and is so disturbed by numbers that his attorney cannot provide him copies of legal documents because it confuses and upsets him. She reported that Hughes continues to exhibit psychotic thought process, circumstantiality, and tangentiality. She further testified that although Hughes has a factual understanding of the proceedings, she believes that his dissolutive beliefs prevented him from having a rational understanding

of the reason and nature of his punishment. She further testified that his psychotic thought process diminishes his capacity or ability to communicate with his attorney to the point that he is not competent to assist her.

DR. PAMELA CRAWFORD

Dr. Crawford testified as the court ordered examiner and she testified generally consistent with her report of April 14, 2002, which was admitted into evidence without objection. She opined that Hughes still suffers from schizophrenia, undifferentiated type, and borderline intellectual function. She previously interviewed him in September 2000, with Dr. Lande and Dr. Kohanski. In April 2002, her interviews were with Dr. Jeffrey Musick. She reviewed the records and concluded he had been without antipsychotic medication for two (2) months, which should be sufficient time for his system to be free from the effects of said drugs. She described the fact that in her recent interviews, Hughes had discussed several beliefs about spirits, life after death, and powers, but she had determined from his family that some of these were shared beliefs, rather than evidence of psychosis. As with the other evaluators, Hughes had refused to discuss his beliefs in detail, but had generally mentioned the beliefs. Upon request, Hughes provided Dr. Crawford with family members names and she contacted Melinda Gentry, a sister, on April 13, 2002, who provided her with a general family background that revealed the family grew up in a household which did not believe in "voodoo" but advised that some family members do believe in "roots." Dr. Crawford further testified that she had never found Hughes' beliefs to reach delusional proportions.

Dr. Crawford summarized that in her interviews with Hughes on April 10, 11, and 12, 2002, he was alert and oriented. Although he mispronounced words, Dr. Crawford

P.B.S.

opined that it was related to his limited intellectual level and a desire to try to appear more intelligent. Similarly, he misused words, such as "privilege" which could be the opposite of the correct meaning, to suggest it is something to be shared with everyone. Again, Dr. Crawford opined in her report that this was due to his lack of education and his attempt to be more intelligent than a sign of psychosis. Dr. Crawford found that Hughes' speech patterns were not "clanging" or "word salad," but were difficult to understand and required follow-up questions to bring the information into context. She testified that by using this approach the Applicant could be understood.

Dr. Crawford described the varying patterns of inquiry they used to determine his competency by asking both broad open-ended questions and structured questions. Dr. Crawford reported that his effect varied with brief tangentiality on esoteric topics, but the examiner was able to redirect Hughes to the relevant issues. Dr. Crawford did not find evidence of auditory or visual hallucination or delusions.

Dr. Crawford explained Hughes' hostility toward his court appointed attorney, Ms. Norris, as anger over the fact that he wants to waive his PCR proceedings and be executed. She also noted that Hughes was upset with his counsel and Dr. Dupree because he had thought from the earlier evaluation that she was only an observer and that he learned she was going to testify. Dr. Crawford stated Hughes was angry and this caused him to be more tangential and follow-up questioning was required for him to be understood, however, Hughes did not show evidence of paranoid delusions.

Dr. Crawford opined, contrary to Dr. Watts, that Hughes has a factual and rational understanding of the nature of the proceedings, the crime for which he was tried, and the reason and the nature of the punishment. According to Dr. Crawford, Hughes

P.C.D.

understands that he is waiving the PCR process and as a result he will be executed, rather than receive a new trial, new sentence, or be acquitted. She opined that he understood the role of his attorneys, the opposing counsel, and the judge, and identified the parties. Hughes had indicated that certain issues may have merit in the PCR, including his representation by inexperienced counsel at trial, withheld or tampered evidence, and his forced medication at trial.

Hughes understands that he was tried for the capital murder of Officer McCants and that he received the death penalty. He indicated he understood the nature of the punishment when he stated death is death and that he understood that to mean he would no longer be here walking around. He further related that he found the entire process to be degrading and stated he would rather die than serve a life sentence.

Dr. Crawford also testified Hughes meets the second prong of the Singleton standard because he has sufficient capacity and ability to rationally communicate with his attorneys. Dr. Crawford testified that Hughes' desire to waive PCR is contrary to what his defense team wants. She further testified that during one of the recesses, she was able to observe that the Applicant was coherent and able to communicate with his Guardian ad Litem on issues he felt were relevant. She further testified that currently the Applicant has unusual beliefs, but not delusional ones. She opined that the Applicant could easily be redirected through questioning and testified that although his attorneys may have to listen more carefully and patiently, it did not prevent Hughes from rationally communicating with them.

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DR. JEFFREY MUSICK, Ph.D.

Dr. Jeffrey Musick, chief psychologist at the William Hall Institute, testified in a manner generally consistent with the April 14, 2002 report he jointly signed with Dr. Crawford. Like Dr. Crawford, it was his opinion that Hughes is competent under the Singleton standard. He described the strategy that they used in asking open-ended and closed-ended questions in order to determine Hughes' present mental status. He testified that he had met with Hughes around five (5) hours from April 10 to April 16. He had looked at the prior evaluation reports and found that Hughes' IQ was in the borderline range from testing by Dr. Brawley. Like Dr. Crawford, he found that Hughes' mispronunciation of words, incorrect use of words, and neologisms were the product of his lack of education and IQ level. He did not find that Hughes was clanging. He found Hughes' pattern of speech was significant for the use of metaphor and analogy. Dr. Musick found that Hughes does suffer from schizophrenia, but his present state does not prevent him to be competent under Singleton. He found his demeanor to be clear, coherent, and rational. Consistent with his written report, Dr. Musick found that Hughes satisfied the cognitive prong of Singleton. He testified Hughes understood the nature of the proceedings both factually and rationally. He was able to understand that he had a right to pursue PCR, the types of issues he could raise, and that by waiving PCR he could be executed. Dr. Musick further stated Hughes understood the role of his lawyers to help him present matters in PCR, the judge's role, and the prosecutor's role. Dr. Musick stated Hughes had the ability to understand what he was tried for, and related he was tried for the capital murder of an officer that occurred in September 1992. He was further able to understand the reason for his punishment. Hughes had related to Dr. Musick several

reasons why he was sentenced to death: a) because he was convicted in a capital case; b) the solicitor was more experienced than his attorneys; c) the judge erred in letting the trial proceed while he was forcibly medicated and could not contribute to his defense; d) the solicitor presented an inaccurate portrait of him during the sentencing phase; and e) he was a black male and the South Carolina system is racist.

Dr. Musick opined that Hughes had the ability to understand the punishment of death. He stated Hughes knows he was sentenced to death and it could be by electrocution or lethal injection. Hughes related the details of the manner of execution and knows he has a choice. He stated Hughes had chosen electrocution because he is against medication, which he relates to lethal injection. He understands "death means death." He declared a belief in a higher power, a belief that has been with him since childhood. He advised Dr. Musick that these are not traditional Christian beliefs, but are beliefs he developed as a child. These beliefs were equated with voodoo or roots. The belief in his after life was consistent with his family background. Hughes stated he would not choose death if he could have freedom. He stated to the examiners that he had previously changed his mind because his sister had encouraged him to do so. He advised Dr. Musick that he found the process degrading and he did not have faith in the justice system and believed he would still be wrongly convicted. He told him that he would rather die than endure life imprisonment.

Dr. Musick also opined that Hughes possesses sufficient mental capacity or ability to rationally communicate with counsel under Singleton. Dr. Musick reported that Hughes is able to rationally discuss significant elements of his case. The examiner found that he was interacting with his counsel during the evaluation to seek clarification. He

was able to provide the examiners names of possible witnesses to assist in determining the family beliefs. The examiners found that Hughes disagrees with his counsel and it leads to anger. He found that when Hughes was angry, he became more disorganized and tangential, but once it dissipated, he was able to be redirected. Dr. Musick found that although communication with Hughes was difficult because of his unusual speech patterns, he is willing and able to be redirected. Dr. Musick stated this occurred more on open-ended and philosophical discussions, but Hughes was able to be redirected to relevant issues and to respond in a rational and understanding manner. He further stated that Hughes brought up relevant objections during Dr. Watts' testimony which showed he was able to pay attention and comprehend the proceedings. He noted that during the hearing, Hughes had declared a desire to work with someone on his legal affairs, including a will, which suggest an understanding of the concept of death. He noted Hughes had related to matters going on in the courtroom which suggested his understanding of the process.

Dr. Musick stated that competency is a shifting standard and it is possible that Hughes could become incompetent in the future. He described Hughes' schizophrenia as not now being in the active phase. At this time, he did not observe any symptoms of prominent disorganization or delusions in his interviews with Hughes, therefore, he concluded that Hughes is competent under both prongs of the Singleton standard.

ALVIN GENTRY

Hughes' brother-in-law, Alvin Gentry, testified that he had received a brief fifteen (15) minute telephone call from Dr. Crawford. He stated he was a minister of the Pentecostal faith and had known Hughes while he was growing up. He testified Dr.

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Crawford asked questions about belief practices. Mr. Gentry stated that he did not believe in roots or voodoo.

MELINDA GENTRY

Hughes' sister, Melinda Gentry, testified that she spoke with Dr. Crawford on April 13, 2002, for about twenty (20) minutes. She said she told Dr. Crawford that her family did not believe in voodoo, but did believe in roots and denied telling Dr. Crawford that Hughes had special powers.

She acknowledged the fact that as children they feared being put under a spell, that food was brought in to avoid a spell, and that there was a fear about leaving bodily fluids in a toilet. She stated that her mother was a Christian, but her father was a practitioner of roots.

DR. DRAFFERLIN BARNARD-DUPREE

Dr. Dafferlin Barnard-Dupree, a forensic board-certified psychiatrist, testified for the Applicant. Dr. Dupree currently works in an inpatient facility doing competence evaluations in the State of Virginia. Dr. Dupree was originally retained by the Applicant's trial attorneys prior to his murder trial in September 1995. She had multiple contacts with the Applicant and testified for the defense in mitigation at his trial. She had available to her all of the information gathered by his defense counsel, the defense mitigation investigator, the defense social worker, and numerous interviews with members of the Hughes family. She was also present and examined Hughes daily during his trial.

Dr. Dupree first examined Hughes in July 1994, and found him to be incompetent to stand trial. Following a court appointed evaluation conducted by Dr. Morgan, a board-

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certified psychiatrist with the South Carolina Department of Mental Health, Hughes was found competent to stand trial. In order to resolve the discrepancy in their opinions, a joint evaluation was conducted with Dr. Dupree, defense counsel, Dr. Morgan, Dr. Kohanski, and at least four (4) other doctors. At the conclusion of this evaluation, Dr. Morgan agreed with Dr. Dupree that Hughes was incompetent and testified before Judge Hayes that he had made a mistake by doing a structured evaluation with closed-ended questions only. Following the hearing, Hughes was found incompetent and admitted to William S. Hall Institute for treatment. Hughes received medications from that time until his trial in September 1995. Dr. Dupree agreed that Hughes was competent during his trial and she testified at the April 2002, hearing that at that time Hughes was the most competent and stable she had ever seen him.

Following the Applicant's trial, Dr. Dupree did not see him again until March 2000, at which time she was retained by the Applicant's attorney, Ms. Norris, to conduct an evaluation. Dr. Dupree also saw Hughes in May 2000, and attended both evaluations conducted by Dr. Crawford in September 2000. She examined the Applicant again in October, 2001, for a brief period of time on March 15, 2002, and for two and one-half (2 ½) hours on April 2, 2002. Dr. Dupree observed Dr. Crawford's and Dr. Musick's evaluations on April 10 and April 14, 2002. She also observed all of the competency proceedings prior to her testimony on April 15 and 16, 2002, and was present when Dr. Crawford and Dr. Musick examined Hughes during these proceedings. Dr. Dupree described her on-going relationship with the Applicant and stated that sometimes he is angry with her and sometimes he is not. Dr. Dupree believes that she has a better relationship with Hughes because of longevity and experience with him and because of

P.G.S.

his delusional beliefs concerning race. (Dr. Dupree is also African-American.) Dr. Dupree disagrees with Dr. Crawford's conclusions that Hughes is competent under the Singleton standard. She also disagreed with Dr. Crawford's testimony that Hughes suffers from no delusions and can be understood with patience. Dr. Dupree testified that Hughes has paranoid delusions where he believes people are out to get him and he also has grandiose delusions where he believes he has superior intelligence and abilities. She testified that he also has grossly disorganized speech and often rambles and talks incoherently.

In regard to Hughes' anger toward his attorney, Ms. Norris, Dr. Dupree testified that both she and Ms. Norris had made it clear to Hughes that she (Dr. Dupree) would be called to testify if Ms. Norris believed that it was necessary. Dr. Dupree testified that Hughes had been told that she would observe some of Dr. Crawford's evaluations, but would not participate in questioning him. This Court believes this may have lead to the Applicant's confusion or misunderstanding on this matter. With respect to a letter that was written to Dr. Dupree by the Applicant on April 14, 2002, Dr. Dupree testified, contrary to Dr. Crawford, that she could not really understand the letter or discern a "consistent thing" in the letter even though it was written to her. She further testified that when Dr. Crawford was discussing voodoo and roots with Hughes, Dr. Crawford was simply going down her outline of her court testimony, and that Hughes was simply agreeing with her. Dr. Dupree opined that this was what had occurred back in 1994 when Dr. Morgan had conducted a structured interview with the Applicant. She testified that Dr. Crawford was making the same mistake that Dr. Morgan had made. She further testified, that while some of Hughes' family members may believe in roots, that she had

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never before heard Hughes ascribe to such a belief. She testified that Hughes' delusional beliefs cannot be explained away simply as being consistent with such a belief in roots.

Dr. Dupree testified that she was present during the competency hearing each time that Dr. Crawford and Dr. Musick examined Hughes. She testified that what Dr. Crawford described as only "tangential" but easily refocused conversation with Hughes was, in fact, grossly disorganized and mostly incomprehensible. Dr. Dupree concluded that on the cognitive prong of Singleton, she agrees that Hughes is factually competent, however, because of his delusional beliefs, he does not have a rational understanding of the proceedings. She further testified that Hughes does not have sufficient capacity or ability to rationally communicate with or assist his attorneys, or provide them with information which they need to properly represent him.

A. PHILIP BAITY (GAL)

Under oath Mr. Baity, the court-appointed Guardian ad Litem, declared that in his opinion, Hughes has a factual grasp about what is going on in regard to the nature of the proceedings and the punishment but he stated he had "grave doubts" about his ability to rationally understand. He stated at times Hughes was extremely rational, and at other times, irrational. He stated that Hughes is not communicating with his lawyers at the present time and he believes Hughes is incapable of rationally assisting his attorneys. Hughes stated in the middle of the hearing that he wanted the process stopped and his lawyers fired. Mr. Baity testified that Hughes told him he felt degraded and humiliated by the process and that since February 2002, he had consistently told him he wanted to end the process. He testified he could not make sense out of what Hughes was saying other than his desire to end the process.

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MAR-REECE HUGHES

Mar-Reece Hughes testified under oath. Upon his Guardian ad Litem's request, Hughes made a statement to the court introducing himself and stating that he was from Winston-Salem. He declared there was a difference between voodoo and roots. He stated he did not practice voodoo or believe in it, but the practice exists. As for roots, he declared he believed in his heritage and that he descended from slaves. He discussed Darwin, who declared we descended from apes, and Jane Goodall. Hughes stated he had never called anyone a racist and questioned how someone could say what he believed. Hughes was upset with information that he had smeared feces. As he stood up in court, he stated that at some point you have to get people's attention.

Upon questioning, Hughes stated he understood he was here to be found competent to drop his PCR. He stated he received the death penalty because of the murder of Officer McCants. When asked the meaning of death, he stated, death is death, when you die, you die. Concerning communicating with his lawyers, he said he did so only because of the order, however, he still communicates with Ms. Small who wishes he would keep fighting. He declared that if the Court finds him competent, it would allow him to withdraw the PCR application. He testified that his decision to withdraw his PCR application was freely, voluntarily, and knowingly made and that it was not induced by any promises or threats from anyone.

Upon cross-examination, he stated he had earlier wanted to pursue the appeal, but later changed his mind. He said he had not changed his mind since the Union County hearing (February 25, 2002) and that it was his understanding that if he stopped the PCR it would end the process. He stated he had earlier changed his mind because of his

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spiritual counselors and his sister, Melinda. He noted that when he decided to waive his appeals and be executed, he was represented by lawyers in Oregon. He stated that he had never asked Ms. Norris or the Center for Capital Litigation to represent him, but he understood that his out-of-state lawyers in Oregon had requested Ms. Norris to assist them, since they were not licensed in South Carolina. Hughes testified that Oregon was on the West Coast.

Hughes identified his victim and declared that he understood he was convicted of killing the officer and not a jailhouse informant. He further testified that at the time of the incident he recalled traveling over water on two occasions. He stated he asked about a large body of water and was told by an inmate that Lake Murray is the largest lake in the State, therefore, he thought it had to be Lake Murray he crossed. This Court does take judicial notice that Lake Murray is not near Rock Hill. However, it also notes the presence of Lake Wylie near the area and Lake Norman on I-77, north of Charlotte.

Upon the Court's inquiry, Hughes testified that he wanted to relieve Ms. Norris as his lawyer. He stated that there were no threats or promises made that induced this request. He once again stated it was his desire to drop the PCR.

This Court finds that Mar-Reece Hughes is competent under the standards of Singleton v. State. This conclusion is based upon the testimony of Mar-Reece Hughes, the Court's observation of his demeanor, his interaction with the Court during the proceedings, and the testimony presented. Based upon the unique facts presented, Hughes is competent to waive his right to pursue state post-conviction relief, he is competent to be executed, and he is competent to waive his statutory right to be represented by counsel in these proceedings.

B.S.S.

This Court concludes that Hughes is not presently under the influence of any forced medication. There is no evidence that he was medicated for the purpose of regaining competency in order that he could be executed. It is unchallenged that Hughes suffers from a form of schizophrenia, a mental illness that can lead to psychotic periods. However, the fact that an inmate suffers from schizophrenia does not preclude him from being competent under Singleton.

This Court finds the testimony and reports of Dr. Crawford and Dr. Musick to be the most credible expert opinion evidence in this case, and pursuant to their findings, which were corroborated by the testimony of Mr. Hughes, this Court concludes that Hughes is not in a current state of active psychosis. Contrary to the assertions of his appointed counsel, this Court does not find that Hughes is suffering from delusions about his appointed counsel or the system as a result of his mental illness that prevents his ability to factually or rationally understand the proceedings or communicate rationally with them.

Particularly probative, was the examination of Hughes before this Court. It was evident that Hughes was cooperating in his responses to his guardian, the court, and opposing counsel Zelenka. It was also evident that he was not cooperating in his responses to Ms. Norris. It cannot be neglected that Hughes has requested that counsel Norris be relieved both prior to and during the hearing process. Hughes' evident frustration was a product of the condition precedent both he and his appointed counsel were faced with in these proceedings. Based upon the testimony, the Court was aware of the opinions about Hughes' abilities with respect to structured and open-ended questions. His testimony before this Court revealed the difficulties counsel and the various

S.E.S.

examiners had in communicating with him. However, the credible opinions of Dr. Crawford and Dr. Musick indicate that Hughes has sufficient mental capacity under Singleton.

In the cross examination by the Respondent's counsel, Hughes was asked a variety of open-ended and close-ended questions. As Hughes responded, his answers would drift from the relevant to matters not responsive to the questions. When redirected to relevant areas, Hughes would effectively and rationally return to the areas of the questioning. Also probative was the Applicant's responses to attempt to clarify comments from previous witnesses he found to be either incorrect or misleading. This further reflected his capacity to understand the nature of the proceedings and to rationally communicate with counsel and the court about the proceedings. This Court recognizes that competency under Singleton is based upon his present mental state, not his prior mental state. His cogent responses to the relevant questions to the examiners and in Court produce sufficient evidence to satisfy this Court that Hughes is competent under Singleton.

This Court makes the following findings and conclusions of law:

UNDERSTANDING THE NATURE OF THE PROCEEDINGS

Hughes understands the nature of the state post-conviction relief proceedings and is aware that it is his right to challenge his conviction, death sentence, and the adequacy of his prior representation and the propriety of the actions of the prosecution and the trial judge. He has identified various issues that may be appropriately considered for post-conviction relief, and recognizes these would not be pursued if he waived his rights. This

P.G.S.

Court finds that Hughes is also aware, both factually and rationally, of the role of the judge, the Respondent's counsel, and his lawyers.

This Court must reject the assertion that Hughes does not have a rational understanding of the process. He is aware that if successful in the post-conviction relief proceeding, he could be given a new trial or new sentencing proceeding. He stated, however, that he believed it would still eventually result in his conviction. Further, the Court rejects the assertion that his beliefs are the product of "delusion." Hughes may be wrong in the claims about why changes to the area may have been made or where a certain lake may exist, but these matters do not, in combination with the other claims of less experienced counsel, experienced prosecutor, erroneous presentation of his background, and problems with his medication at trial, reflect an irrational understanding of the proceedings. Although this Court may well find his claims to lack merit, the mere stating of the claims by an inmate of borderline intelligence level does not reveal incompetency as counsel suggests. Hughes can rationally and factually understand the state post-conviction process.

UNDERSTANDING WHAT HE WAS TRIED FOR

Hughes has the capacity to understand what he was tried for and, in fact, does rationally and factually understand what he was tried for. Hughes declared to this Court, without equivocation, that he was tried for the murder of Officer McCants. He further clarified that he was not convicted and sentenced to death for the murder of the person in jail, although this information was presented at the hearing. This Court finds as a fact that Hughes is both factually and rationally aware and understands he was convicted and sentenced to death for the murder of Officer McCants in York County.

C.E.S.

UNDERSTANDING THE REASON FOR THE PUNISHMENT

As stated above, Hughes understands that he was sentenced to death for the murder of Officer McCants.

UNDERSTANDING THE NATURE OF THE PUNISHMENT

This Court finds that Hughes understands the nature of his punishment. First, this Court finds he has a factual and rational understanding of the punishment of death by electrocution and lethal injection. He has declared his desire to be electrocuted rather than subjecting himself to lethal injection because of his dislike of forced medication and the length of that process. This is an adequate factual and rational understanding.

This Court further finds that Hughes has a factual and rational understanding of death. He has declared that dead is dead, and that he will not be alive in any manner after his execution. Hughes' attorneys sought to challenge this conclusion by suggesting that Hughes' belief in an afterlife is irrational Although Hughes, over the last two (2) years, has been probed about his beliefs (or hopes) in the afterlife, this Court finds that on this date Hughes understands that if his sentence is carried out he will actually die and not return as a living being. He has both a rational and a factual belief that he will die.

This Court further finds that Hughes' cultural beliefs in roots and his denial of a belief in "organized" religion does not mandate any different finding. Those beliefs, many supported by the testimony of his sister, explain his responses to the examiners. Many of society's beliefs may appear "off" to persons of different beliefs or those who

hold no beliefs. Singleton does not require or prevent individuals from being executed because of cultural beliefs in afterlife. What it requires is for the person to rationally and factually understand he will die if executed. Hughes satisfies this condition.

SUFFICIENT CAPACITY OR ABILITY TO RATIONALLY COMMUNICATE WITH COUNSEL

This Court finds Hughes has sufficient capacity or ability to rationally communicate with counsel. His use of neologisms, misuse of words, and mispronunciation makes communication difficult. Additionally, as reflected by his testimony, without direction, it is difficult for Hughes to remain "on tract" to the relevant questions. However, the test under Singleton is not whether his ability to rationally communicate is impaired, but it is whether he lacks sufficient capacity or ability to rationally communicate. Under the appropriate standard, Hughes does have adequate capacity to communicate. Throughout the questions by the Court of Mr. Hughes, he was able to respond in a relevant manner. Highly probative of his sufficient capacity was his ability to respond to the questions of the Respondent's counsel to both open-ended and structured questions. When Hughes responded in an irrelevant manner, he was able to be redirected to the relevant area of inquiry by appropriate questioning. It is clear that such communication is both trying and difficult, but this Court was able to communicate with Hughes, and the questioning reveals Hughes was able to communicate with the Court and Respondent's counsel, and the court examiners about relevant questions. Much was made of Hughes refusal to discuss his belief system with counsel or the examiners. However, this refusal reflects a choice on his part, not a lack of sufficient capacity to rationally communicate. Further, this Court notes that Hughes' choices might not be

P. E. S.

consistent with his appointed lawyers choices or hopes, however, as with any person who desires to appear *pro se*, the mere fact that the choice may not be wise, does not make it irrational.

Hughes desires to waive his right to pursue his PCR remedies though his court-appointed counsel vehemently disagrees. It is understandable that Hughes has developed a difficult relationship with present counsel and has questioned them and been upset and angry with them. However, this Court, based upon the evidence presented to it must find that Hughes is not either actively psychotic or delusional, and possesses sufficient capacity or ability to rationally communicate with counsel. Whether he chooses to do so is not the test. He possesses the ability to do so.

In summary, this Court finds that Mar-Reece Hughes satisfies the standard of competency under Singleton v. State.

WAIVER OF HIS RIGHT TO COUNSEL

This Court further finds that Hughes has expressed a desire to waive his right to statutory counsel for the purpose of state post-conviction relief and finds that his decision is knowingly, intelligently, and voluntarily made.

For all the reasons stated above, this Court finds that Mar-Reece Hughes is competent under Singleton v. State to waive filing of his state Post-Conviction Relief action and is competent to be executed.

This Court further finds that Hughes knowingly, intelligently, and voluntarily waives his right to counsel.

E.E.S.

IT IS SO ORDERED.

Paul E. Short, Jr.

Paul E. Short, Jr., Presiding Judge

Chester, South Carolina
September 18, 2002

P.S.S.

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 7, 2001

Honorable Paul E. Short
Circuit Court Judge
Post Office Box 1006
Chester, South Carolina 29706

RECEIVED
SEP 10 2001
S.C. SUPREME COURT

Re: Mar-Reece A. Hughes v. State
York County Capital PCR
00-CP-46-2051

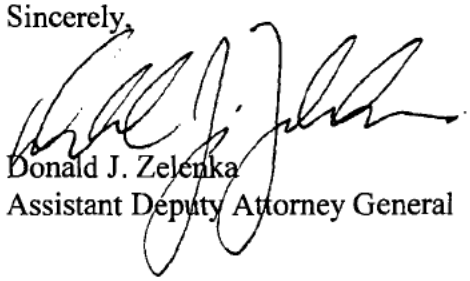
Dear Judge Short:

Please advise me of the status of this PCR case. According to my records on November 2, 2000, the South Carolina Supreme Court entered an Order that granted a stay in Mr. Hughes' case and directing that you hold a hearing to determine if (1) Hughes is competent to waive his state PCR action which had been filed on September 2, 2000; (2) whether he is competent to be executed under the standard of Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993); and (3) whether the petitioner is knowingly, intelligently, and voluntarily waiving his statutory right to counsel. On November 27, 2000, you apparently requested records from the Clerk of Court in this matter. On December 1, 2000, counsel for Mr. Hughes, Teresa Norris, provided you with contact information. Counsel for Mr. Hughes has also recently made subpoenas in this matter.

It would appear appropriate to have a status hearing to resolve the pendency in this matter and schedule a hearing on the three questions posed by the South Carolina Supreme Court. I trust that you have received our return that was filed on October 20, 2000, to the filed application for post-conviction relief. There may be a need for further evaluations by employees of the Department of Mental Health who evaluated Mr. Hughes previously when the matter was pending before Judge Hayes.

By copy of this letter, I am advising Mr. Hughes' previously appointed counsel, Teresa L. Norris and Gwendlyne Smalls, of our request. If you have any questions, please advise me.

Sincerely,



Donald J. Zelenka
Assistant Deputy Attorney General

DJZ/lb

cc: Teresa L. Norris, Esquire
Center for Capital Litigation
Post Office Box 11311
Columbia, South Carolina 29211

Gwendlyne Smalls, Esquire
115 E. Moultrie Street
Winnsboro, South Carolina 29180

Honorable Thomas E. Pope
Solicitor, Sixteenth Judicial Circuit
Suite 1-A, 1675 York Highway
York, South Carolina 29745

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

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 2, 2000

Teresa L. Norris, Esquire
Center For Capital Litigation
P O Box 11311
Columbia, SC 29211

Re: The State v. Hughes, Mar-Reece Aldean

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

Enclosure

cc: Mr. Mar-Reece Aldean Hughes
Assistant Deputy Attorney General Donald J. Zelenka
The Honorable Thomas E. Pope
The Honorable Paul E. Short, Jr.
The Honorable David Hamilton
Motte L. Talley, Esquire

The Supreme Court of South Carolina

Mar-Reese Aldean Hughes, Petitioner,

v.

State of South Carolina, Respondent.

ORDER

Previously, this Court remanded this matter to the trial judge to hold a hearing to determine whether petitioner was competent to waive further proceedings and to be executed. During the pendency of the proceedings, petitioner withdrew his request to be executed and filed an application for post-conviction relief (PCR). The trial judge therefore issued a report finding that the directive of this Court to hold a competency hearing had been rendered moot.

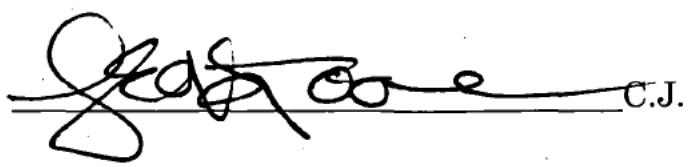
Petitioner thereafter sent the Court documents indicating his desire to withdraw his PCR application and be executed. Petitioner also seeks to have present counsel relieved as his attorneys of record. Counsel for

petitioner responded and asked the Court to issue an order staying petitioner's execution and appointing a PCR judge to determine petitioner's competency and to rule on his request to be executed. The State has filed a return in opposition.

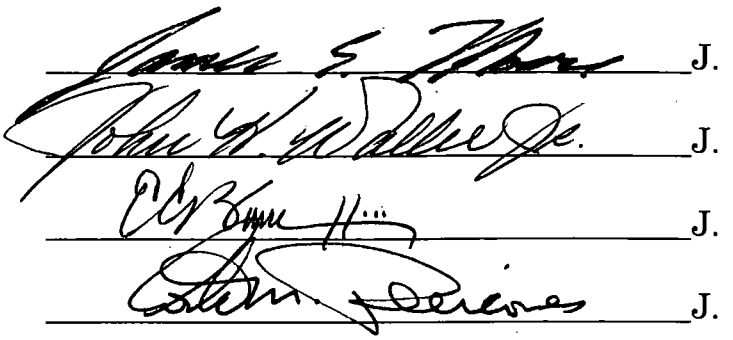
Counsel's request for a stay is granted. The stay shall remain in effect to the extent provided by this Court in In re Stays of Execution, 321 S.C. 544, 471 S.E.2d 140 (1996).

The Honorable Paul E. Short, Jr., is hereby assigned to the PCR action petitioner has filed. The judge shall have jurisdiction over this 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 determine whether petitioner is (1) competent to waive filing of a state PCR action; and (2) competent to be executed. The judge shall apply the standard enunciated in Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993). Further, the judge shall determine whether petitioner is knowingly, intelligently, and voluntarily waiving his right to counsel.

IT IS SO ORDERED.



C.J.



J.

J.

J.

J.

Columbia, South Carolina

November 2, 2000

CENTER FOR CAPITAL LITIGATION
1247 SUMTER STREET, SUITE 303 (29201)
POST OFFICE BOX 11311
COLUMBIA, SOUTH CAROLINA 29211

Teresa L. Norris
Director

Voice: (803) 765-0650
Fax: (803) 765-0705
Email: tnorris@usit.net

September 19, 2000

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

RE: State v. Mar-Reece Aldean Hughes, York County Death Penalty Appeal (Op. No. 25003)

Dear Mr. Shearouse:

Please find enclosed the original and six copies, along with proof of service, of a Motion For Stay of Execution, Assignment of a Circuit Court Judge, And Appointment of Post-Conviction Counsel. Please do not hesitate to contact me if you have any questions regarding this matter or if I can provide you with any additional information.

Sincerely,

Teresa L. Norris

Teresa L. Norris

enc.

cc: The Honorable John C. Hayes, III
David Hamilton, York County Clerk of Court
Donald J. Zelenka
Gwendlyne Young-Smalls
Mar-Reece Hughes

RECEIVED
SEP 20 2000
S.C. SUPREME COURT

ORIGINAL

IN THE SUPREME COURT

In the Original Jurisdiction

MAR-REECE ALDEAN HUGHES,

MOVANT,

v.

THE STATE,

RESPONDENT.

MOTION FOR STAY OF EXECUTION,
ASSIGNMENT OF A CIRCUIT COURT JUDGE,
AND APPOINTMENT OF POST-CONVICTION COUNSEL

Counsel for Mar-Reece Aldean Hughes request assignment of a circuit court judge to hear the post-conviction relief proceeding (PCR) filed this date and request appointment of the undersigned counsel to represent him in the PCR. In support of this motion, counsel submit the following facts and argument.

On September 18, 1995, Mr. Hughes was convicted of murder, armed robbery, criminal conspiracy, possession of a firearm during the commission of a crime, and possession of a stolen vehicle. On September 22, 1995, the Honorable John Hayes, following the recommendation of the jury, imposed a death sentence for the murder conviction, and consecutive sentences of thirty years for armed robbery, five years for criminal conspiracy, five years for possession of a firearm during the commission of a crime, and five years for possession of a stolen vehicle. This Court affirmed the convictions and sentences on October 4, 1999, and the United States Supreme Court denied certiorari on March 20, 2000.

Also on March 20, 2000, counsel filed a motion for stay of execution and notified this Court of Applicant's letter to the Attorney General requesting execution. Counsel asserted, however, that Mr.

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SEP 20 2000
S.C. SUPREME COURT

Hughes was not, however, competent to be executed or competent to waive his right to file a post-conviction relief application. On May 11, 2000, this Court remanded to the trial court for a hearing on competence and appointed the first undersigned counsel to represent Mr. Hughes.[1]

During the remand proceedings, however, Mr. Hughes changed his mind and withdrew his request to withdraw his appeals and be executed. *See* Attachment A. He has subsequently filed a post-conviction relief application. *See* Attachment B.

Applicant thus requests that this Court assign a circuit court judge to hear the post-conviction relief action, appoint the undersigned counsel to represent the Applicant in the PCR action,[2] and order a stay of execution pending completion of the state post-conviction proceedings.

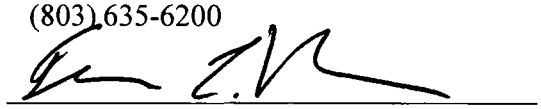
Respectfully submitted,

TERESA L. NORRIS

Center for Capital Litigation
P.O. Box 11311
Columbia, S.C. 29211
(803) 765-0650

GWENDLYNE YOUNG SMALLS

115 E. Moultrie St.
Winnsboro, SC 29180
(803) 635-6200

By: 
Counsel for Mr. Hughes

September 19, 2000.

---

[1]The second undersigned counsel was appointed by Judge Hayes following remand.

[2]Typically, the post-conviction relief judge appoints counsel prior to the filing of the PCR application. *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 546, 471 S.E.2d 140, 141 (1996). Due to the unique circumstances in this case, however, the PCR application was filed prior to the appointment of counsel.

ATTACHMENT A

9-18-00

Dear Judge Hayes,

Not from inconsistency of facts, on the merit that I'm innocent, I have yet to see Teresa Norris' failure. Therefore, I want a PCR compliance. I have changed my mind and do not want to waive my PCR and be executed.

Sworn to and subscribed before me this 18th day of September, 2000.

Teresa L. Norris

Teresa L. Norris,
Notary Public of S.C.
My Commission Expires 2/6/2005

ATTACHMENT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	00-CP-46-____
	)	
MAR-REECE ALDEAN HUGHES,	)	
Applicant,	)	
	)	
vs.	)	APPLICATION FOR
	)	POST-CONVICTION RELIEF
WILLIAM CATOE, Commissioner,	)	
S.C. Dept. of Corrections,	)	
and CHARLES CONDON, S.C.	)	
Attorney General,	)	
Respondents.	)	

[Note: This application follows SCRCP Appendix of Forms, Form 5, as required by Rule 71.1(b), SCRCP.]

1. Applicant is detained at the Maximum Security Unit, Kirkland Correctional Institution, 4344 Broad River Road, Columbia, South Carolina, 29210.

2. The sentence was imposed by the York County Court of General Sessions.

3. Applicant was indicted on December 13, 1993, as follows:

Murder 93-GS-46-4296
Possession of a Firearm During a Violent Crime 93-GS-46-4296 (Count 2)
Unlawful Carrying of Pistol 93-GS-46-4299
Possession of a Pistol By A Person Convicted of A Violent Crime 93-GS-46-4301
Possession of Stolen Vehicle 93-GS-46-4303
Criminal Conspiracy 93-GS-46-4304
Armed Robbery 93-GS-46-4305 (Count 1)
Possession of a Firearm During a Violent Crime 93-GS-46-4305 (Count 2)

Applicant was convicted of the following offenses on September 18, 1995:

Murder 93-GS-46-4296
Possession of Stolen Vehicle 93-GS-46-4303
Criminal Conspiracy 93-GS-46-4304
Armed Robbery 93-GS-46-4305 (Count 1)
Possession of a Firearm During a Violent Crime 93-GS-46-4305 (Count 2)

4. On September 22, 1995, Applicant was sentenced as follows:

Murder (Death)
Possession of a Stolen Vehicle (5 years)
Criminal Conspiracy (5 years)
Armed Robbery (30 years)
Possession of a Firearm During the Commission of a Violent Crime (5 years)

5. A finding of guilty was made after a plea of not guilty.

6. The Applicant appealed from the judgment of conviction and sentence.

7. (a) The Courts to which Applicant appealed:

(i) The South Carolina Supreme Court.

(ii) The United States Supreme Court.

(b) The result in each Court to which Applicant appealed:

(i) Convictions and sentences affirmed.

(ii) Petition for Writ of Certiorari denied.

(c) The date of each result:

(i) Convictions and sentences affirmed on October 4, 1999.

(ii) Petition for Writ of Certiorari denied on March 20, 2000.

(d) Citations of any written opinion or orders entered pursuant to such results:

(i) *State v. Hughes*, 336 S.C.585, 521 S.E.2d 500 (1999).

(ii) *Hughes v. South Carolina*, 120 S. Ct. 1434 (2000).

8. Not applicable.

9 & 10. **GROUNDS FOR RELIEF WITH SUPPORTING FACTS**

9(a) *Applicant was denied the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law during the guilt-*

or-innocence phase because counsel failed to adequately challenge the state's case and to present evidence that Applicant was innocent of the murder and other offenses related to Officer Brent McCants.

10(a) The ground for relief states the relevant facts. Counsel's conduct was both unreasonable and prejudicial. *Strickland v. Washington*, 466 U.S. 668 (1984).

9(b) *Applicant was denied the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law during the sentencing phase because counsel failed to adequately challenge the state's case and to present evidence that would have established that Mr. Hughes was not eligible for the death penalty because he lacked the requisite intent or participation in the crime under Tison v. Arizona, 481 U.S. 137 (1987), and Enmund v. Florida, 458 U.S. 782 (1982).*

10(b) The ground for relief states the relevant facts. Counsel's conduct was both unreasonable and prejudicial. *Strickland v. Washington*, 466 U.S. 668 (1984).

9(c) *Applicant was denied the effective assistance of trial counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law in that trial counsel failed to adequately object and to preserve the record for appeal during the sentencing phase.*

10(c) Trial counsels' performance was deficient and prejudicial in that counsel failed to contemporaneously object and to preserve the record for appeal with respect to:

(i) the improper admission of evidence of an alleged murder and assault while Applicant was in pretrial confinement;

(ii) an unconstitutional *Allen* charge (after four hours of deliberations) that told jurors in the minority to "reconsider" and jurors in the majority merely to "consider"; and

(iii) the judge's improper note to the jury asking whether they wanted to continue deliberations through the evening or break until morning was not preserved.

Counsel's conduct was both unreasonable and prejudicial. *Strickland v. Washington*, 466 U.S. 668 (1984).

9(d) Applicant was deprived of Due Process of law guaranteed by the U.S. Constitution (1984) because the Grand Jury indicted Applicant on Malice Aforethough + without 10(d) the ~~reasons~~ necessary basis. The ground for relief states the relevant facts.

11 & 12. Applicant appealed directly to the South Carolina Supreme Court and petitioned the United States Supreme Court for a writ of certiorari. Applicant has not previously filed an application for post-conviction relief nor a petition for a writ of habeas corpus in state or federal court from these convictions and sentences.

13. None of the grounds set forth in (9) has been previously presented to this or any other Court, State or Federal.

14. Not Applicable.

15. These grounds rely on additional facts outside the record which was before the previous courts.

16. Applicant was previously represented by counsel.

17. Applicant was represented at trial and on direct appeal by Stephen D. Schusterman, P.O. Box 4211, Rock Hill, SC 29731, and Christina Chadwick Brice, P.O. Box 300, York, SC 29745. During the petition for writ of certiorari to the United States Supreme Court, Applicant was represented by Robert L. Carey and Bradley F. Tellam, both of Barran Liebman, LLP, 601 SW Second Ave., Suite 2300, Portland, Or 97204.

18. Applicant seeks the vacation of his convictions and sentences.

19. Not applicable.

Respectfully submitted,

TERESA L. NORRIS

Center for Capital Litigation
P.O. Box 11311
Columbia, S.C. 29211
(803) 765-0650

GWENDLYNE YOUNG SMALLS

115 E. Moultrie St.
Winnsboro, SC 29180
(803) 635-6200

By: Teresa L. Norris
Counsel for Mr. Hughes

September 19, 2000.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

VERIFICATION

I, Mar-Reece Aldean Hughes, being sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the convictions and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Mar-Reece A. Hughes
MAR-REECE ALDEAN HUGHES

SWORN to and subscribed before me this
19th day of September, 2000.

Notary Public for SC

My Commission Expires: 2-6-2005

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF
COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Mar-Reece Aldean Hughes, hereby apply for leave to proceed in this action without prepayment of fees or costs or security thereof. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the Aplicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Mar-Reece A. Hughes
MAR-REECE ALDEAN HUGHES
APPLICANT

SWORN to and subscribed before me this
4th day of September, 2000.

Notary Public

My Commission Expires: 2-8-2005.

IN THE SUPREME COURT

In the Original Jurisdiction

MAR-REECE ALDEAN HUGHES,

MOVANT,

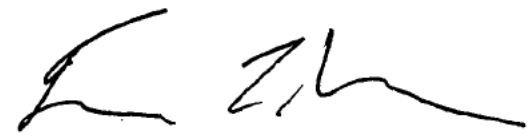
v.

THE STATE,

RESPONDENT.

CERTIFICATE OF SERVICE

I certify that I have served the Motion For Stay of Execution, Assignment of a Circuit Court Judge, And Appointment of Post-Conviction Counsel on the Respondent by depositing a copy in the United States Mail, postage prepaid, addressed to Respondent's attorney of record, Donald J. Zelenka, Assistant Deputy Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, S.C. 29211.



TERESA L. NORRIS

Center for Capital Litigation
P.O. Box 11311
Columbia, SC 29211
(803) 765-0650

ATTORNEY FOR APPELLANT.

September 15, 2000.

RECEIVED
SEP 27 2000
S.C. SUPREME COURT

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

September 27, 2000

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

Re: *The State v. Mar-Reece Aldean Hughes*

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the ***Return to Motion for Stay of Execution, Assignment of Circuit Court Judge, and Appointment of Post-Conviction Counsel*** in the above-referenced action for filing. By copy of this letter I am serving opposing counsel with this Return.

Sincerely,

Donald J. Zelenka
Assistant Deputy Attorney General

DJZ/lbb
Enclosure

cc: Teresa L. Norris, Esquire
Gwendlyne Young-Smalls, Esquire
Thomas E. Pope, Solicitor
Honorable John C. Hayes, III

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
SEP 27 2000
S.C. SUPREME COURT

Appeal from York County
The Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

MAR-REECE ALDEAN HUGHES,

Appellant.

Return to Motion For Stay Of Execution, Assignment of Circuit Court Judge, and Appointment of Post-Conviction Counsel

---

The Respondent, through undersigned counsel, hereby make **Return to Motion For Stay Of Execution, Assignment of Circuit Court Judge, and Appointment of Post-Conviction Counsel** dated September 19, 2000 and received September 20, 2000. In this motion, counsel for Mar-Reece Hughes assert that Hughes has informed them during the remand proceedings that he had changed his mind and desired to pursue state post-conviction relief and withdrew his request to abandon appeals. Pursuant to that direction, counsel for Mr. Hughes prepared the motion to stay and prepared a state post-conviction relief application that Respondents received contemporaneous with the motion before this Court.[1]

---

[1] On September 26, 2000Respondents received a letter from Mr. Hughes dated September 22, 2000 stating : "I did not mean to intentionally withdraw at the closing period. Being that you were very slow in pursuing immediate execution. I was advised about some other issues. After all I did not wish to set no precedent where law and order can hold mental ill

However, on September 27, 2000, Respondents below-signed counsel received an undated letter in an envelope with a September 26, 2000 metered stamp from Mar-Reece Hughes stating :

> " I was advised by my lawyer after the fact that I was found competent to withdraw PCR issues. It is my desire to be immediately executed. My case has been filed. Therefore, I am dropping all PCR and other court issues. State doctors do say I am competent to drop appeals... P.S. My Lawyer has said that she will do as I'.ve commanded. How about not wasting my time and settle this mess."

Letter attached to pleading as *Exhibit One*. [2]

On September 19, 2000, designated examiners from the William S. Hall Institute opined that Hughes was competent to be executed under the Singleton standard. *Exhibit Two*. On September 21, 2000, Judge Hayes entered a "Report of the Circuit Judge" opining that this Court's May 11, 2000 directive was rendered moot by the representation that he had received that Hughes desired to pursue state post-conviction relief. *Exhibit 3* It now appears that Hughes, subsequent to that Report and the receipt of a post-conviction application has changed his mind and has stated a desire to accept the judgment and sentence of the South Carolina courts.

Respondents submit that this request was done when the Applicant is competent to be waive further appellate remedies and has an expressed decision to forego further post-conviction remedies. Respondents submit the stay request must be denied under the circumstances and procedure set forth

---

patients accountable. Death comes to everyone and I am not afraid of that. We both if you have a soul. We'll meet up twice in the near future. Sincerely, Apology M. Hughes P.S. As for white folks as you know your own answers, deceits, and fears. That some true force of balance does exist." Hughes Letter of September 22, 2000.

[2] Respondents are advised that Mr. Hughes has written a similar letter to the Clerk of the South Carolina Supreme Court expressing his desire and intent to waive collateral challenges with his appeal. This response is also to the request by the Clerk to file a return to that letter and earlier motion.

in *Singleton v State*, 313 S.C. 75, 437 S.E.2d 53 (1993).

In Singleton, this Court established the procedure for resolving issues of pre-execution insanity. Particularly, this Court stated:

> Remedy and Procedures
>
> **Upon the issuance of an Order for Execution by this Court, the defendant or his/her guardian may apply for subsequent Post Conviction Relief on the basis of competency, pursuant to S.C.Code Ann. § 17-27-20(a)(6) (1985). At the evidentiary hearing, the applicant, through competent evidence or expert testimony, must show by a preponderance of the evidence that he or she lacks the requisite competency for execution. If the PCR court finds the applicant incompetent in accordance with the standard adopted in this opinion, then the appropriate remedy is to issue a temporary stay of execution pending a mandatory review by this Court.**
>
> **Once the defendant is found incompetent and the stay of execution is affirmed by this Court, the burden necessarily shifts to the State to move for a hearing upon the defendant's return to competency. At this subsequent hearing, the State must show by a preponderance of the evidence that the defendant is competent to be executed. If the State establishes competency, then the PCR court may lift the previous stay of execution subject to the review of this Court.**

Singleton, supra at 87.

Here, the issuance of a stay is premature under the *Singleton* procedure because no PCR court has determined that there is the existence of Singleton insanity by a preponderance of the evidence. As stated before to enter a stay now would turned the reasoned procedure of *Singleton* on its head. Instead, under *Singleton*, this Court must enter an execution order and then the Applicant's guardians may seek a temporary stay under the Singleton procedure before that Court subject to review by this Court.

The apparent problem may not be one of competence, but rather an intent to forego discretionary, not mandatory appellate procedures. In *State v Torrence*, 322 S.C.475, 473 S.E.2d

703 (1996), this Court recognized that a capital defendant may, constitutionally, waive the right of general statutory mandatory capital appeal so long as we first determine the defendant is competent and his decision is knowing and voluntary. Here, the Court should not entertain the stay matter at this stage because it involves the waiver of the right to pursue discretionary postconviction matters in the Circuit Court, not this Court. The reasoning of *Singleton* was sound in creating the procedure therein. Therefore, we respectfully submit that the motion to stay should be denied without prejudice.

However, in light of such assertion, this Court may wish to have Judge Hayes, the original trial judge s a special referee of this Court resolve this matter in another special report to this Court or assign another hearing judge (other than the trial judge) pursuant to In Re Stays, 321 S.C. 544, 471 S.E.2d 140(1996) and Section 17-27-160 to resolve the status of the application attached to the Applicant's motion before this Court.[3]

This Court denied the appeal on October 4, 1999. *State v Hughes*, _ S.C._, 1999 Westlaw 792550 (S.C.Sup. Ct. Oct. 4, 1999). Pursuant to this Court's Order, a date of execution set for Friday, November 19, 1999, was stayed to allow pursuit of certiorari in the United States Supreme Court. Certiorari in the Court was denied on March 20, 2000. Under this Court's procedures of *In Re Stays of Execution In Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), "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 issues are

[3] Respondents received the application in the motion before this court and a copy served upon counsel on September 19, 2000 when mailed to the Clerk of Court for York County. Respondents are not aware if the application has been filed nor has it received a copy from the Clerk pursuant to S.C. Code Section 17-27- 40. The Respondents Return would be due pursuant to Section 17-27-160 on October 20, 2000 to the Clerk of York County.

appropriate for post-conviction relief, this Court will assign a circuit judge to the case and issue a stay of execution." Here, Hughes has stated to this Court that he does not desire to pursue state postconviction relief. *Exhibit One*.

The motion for a stay must be denied. As stated above, the Court should take appropriate steps to ensure the judgment is carried out in a timely manner that complies with due process and fundamental fairness.

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
September 27, 2000

Attachment to Response

Exhibit One - September 27, 2000 Letter to Assistant Deputy Attorney General Zelenka

Exhibit Two - September 19, 2000 - Designated Examiners Report Finding Hughes Competent to to Waive PCR Action

Exhibit Three - September 21, 2000 - Report of Circuit Court

Exhibit One - September 27, 2000 Letter to Assistant Deputy Attorney General Zelenka

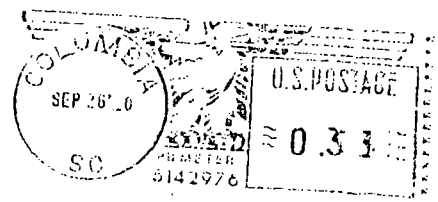
DONALD J. ZELENKA, I WAS ADVISED BY MY LAWYER AFTER THE FACT THAT I WAS FOUND COMPETENT TO WITHDRAWL PCR ISSUES. IT IS MY DESIRE TO BE IMMEDIATELY EXECUTED. MY CASE HAS BEIN FILED. THEREFORE I AM DROPPING ALL PCR AND OTHER COURT ISSUES. STATE DOCTORS DO SAY I AM COMPETENT TO DROP APPEALS.

SAFEKEEPER
Mar-Shun A. Hughe
Sept 22 / FL: / 00

P.S
MY LAWYER HAS SAID SHE WILL DO AS I'M COMMANDED. HOW ABOUT NOT WASTING MY TIME AND SETTLE THIS MESS.

ATTORNEY GENERAL'S OFFICE
RECEIVED 9-27-00
ADMINISTRATIVE INSTRUCTIONS
_____FILE_____OPEN_____END
_____HAVE_____COPIES MADE
_____ROUTE TO_____
_____ORDER:_____TRANSCRIPT
_PEN RECORDS__CLERK RECORDS
_____OTHER:_____

MAR-Bruce A. Hughes
5621 MSU/Kirkland
4344 Bluff River Rd.
Columbia, S.C 29210



Assistant Deputy Attorney General
Donald J. Zelenka
Office of Attorney General
P.O. Box 11549,
Columbia, S.C 29211

GAL LETTERS

29211+1549

Exhibit Two - September 19, 2000 - Designated Examiners Report Finding Hughes Competent to to Waive PCR Action

STATE OF SOUTH CAROLINA

COUNTY OF YORK
THE STATE
vs.
HUGHES, MAR-REECE
CH921-3493
Defendant

IN THE COURT OF GENERAL SESSION
REPORT OF FINDING MENTAL CAPACITY

TO: THE ASSISTANT DEPUTY ATTORNEY GENERAL

THE UNDERSIGNED RESPECTFULLY REPORTS TO THE COURT:

1. That the above-named defendant was evaluated on **September 7 and September 14, 2000** to determine the defendant's capacity to waive PCR and competency to be executed.

2. That after study and observation, the hospital staff submits the following report:

   a. That the above-named defendant is diagnosed **Schizophrenia, Undifferentiated Type; Episodic with Interepisode Residual Features.**

   b. That the above-named defendant presently has the capacity to waive PCR and presently is competent to be executed.

3. It is recommended that the above-named defendant be returned to the jurisdiction of the court.

C, Theresa Norris, Attorney at Law, P.O. Box 11311, Columbia, SC 29211

Columbia, South Carolina
September 19, 2000

P. Crawford
Pamela M. Crawford, M.D.
Director-WSHPI-Forensic Division

rbw

ATTORNEY GENERAL'S OFFICE
RECEIVED 9-25-00
ADMINISTRATIVE INST...
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...PT

FORENSIC EVALUATION

DATE OF EXAMINATION: September 7, 2000, and September 14, 2000

DATE OF REPORT: September 18, 2000

PRESIDING: Pamela M. Crawford, M.D.

OTHERS PRESENT: R. Gregory Lande, D.O.
Tora Brawley, Ph.D.
Dafferlin Barnard-Dupree, M.D.
Renee Kohanski, M.D.
Theresa Norris, Esq. Attorney for Mr. Hughes

DIAGNOSES:
AXIS I: Schizophrenia, Undifferentiated Type, Episodic With Interepisode Residual Features
AXIS II: Borderline Intellectual Functioning
AXIS III: No Diagnosis.

COMPETENCY TO WAIVE PCR ACTION: Yes.

COMPETENCY TO BE EXECUTED: Yes.

DISPOSITION: Mr. Hughes remains in the Department of Corrections.

PERTINENT STATEMENTS: Mar-Reece Aldean Hughes is a 34 year old male who was evaluated pursuant to a court order from the York County Court of General Sessions. This court order requests an evaluation of Mr. Hughes' competency to waive filing of a state Post Conviction Relief action and competency to be executed.

The evaluation consisted of a review of the following sources:
1. Order for Pre-execution Competency Evaluation;
2. Motion for Pre-execution Competency Evaluation;
3. Letters from Mr. Hughes to the State Attorney General's Office;
4. Reply by Mr. Hughes' attorneys, submitted April 7, 2000, to the State's Return to the Motion for a Stay of Execution on the Grounds of Incompetence;

WILLIAM S. HALL PSYCHIATRIC INSTITUTE
FORENSIC UNIT STAFFING

5. Return by the Attorney General's Office, submitted April 7, 2000, to the Motion for Stay of Execution on the Grounds of Incompetence;
6. Affidavit of Dafferlin Barnard-Dupree, M.D., on March 20, 2000;
7. Medical records from William S. Hall Psychiatric Institute;
8. Medical records from Catawba Mental Health Center;
9. Telephone interview with Richard Ellison, M.D., on September 14, 2000;
10. Discussions with forensic psychiatrists Renee Kohanski, M.D., and Dafferlin Barnard-Dupree on September 7, 2000 and September 14, 2000;
11. Medical records from the Department of Corrections;
12. Administrative records from the Department of Corrections;
13. Medical records from York County Detention Center;
14. Transcript of Court Proceedings in Mr. Hughes' 1995 murder trial;
15. Psychological testing performed by Tora Brawley, Ph.D., on September 12, 2000;
16. Meeting at request of defense counsel between Dr. Crawford, Dr. Brawley, Gwendolyne Smalls, Esq., and Theresa Norris, Esq. (with Eric Kaufmann, Esq., observing) on September 15, 2000;
17. Three and one half hours of clinical forensic interviews with Mr. Hughes conducted on September 7, 2000, and September 14, 2000.

Mr. Hughes has a well-documented history of mental illness. A review of Mr. Hughes' medical records from William S. Hall Psychiatric Institute, York County Detention Center, Catawba Mental Health Center, and the State Department of Corrections reveals a variety of differing opinions as to Mr. Hughes' psychiatric diagnosis and the degree of severity of his mental illness. Some psychiatrists and psychologists have held the opinion that Mr. Hughes has no mental illness at all and may have never had a mental illness. Most psychiatrists and psychologists, however, believe that Mr. Hughes has a mental illness, namely schizophrenia. There has been controversy among the psychiatrists regarding which of Mr. Hughes' behaviors are, or are not, a product of a mental illness. The most extensive evaluations have been conducted by psychiatrists at William S. Hall Psychiatric Institute and at the Department of Corrections, and by Dr. Dafferlin Bernard-Dupree, a forensic psychiatrist hired by Mr. Hughes' defense counsel.

Mr. Hughes was initially evaluated at William S. Hall Psychiatric Institute in October 1992. He was hospitalized at Hall Institute from October 26, 1992, through December 22, 1992, for the purpose of a court ordered evaluation of his competency to stand trial and his criminal responsibility for a murder occurring on or about September 25, 1992. Mr. Hughes was evaluated by Constance J. McKee, M.D., Geoffrey R. McKee, Ph.D., and Charles Woodard, Ph.D. (Department of Mental Retardation). The examiners diagnosed Mr. Hughes with an Adjustment Disorder with Anxious Mood, and with Borderline Intellectual Functioning. They rendered the opinion that Mr. Hughes was competent to stand trial, was criminally responsible for his actions on September 25, 1992, and had, at that time, the capacity to conform his behavior to the requirements of the law. He was discharged to the York County Detention Center on a low dose of the antidepressant Amitriptyline. He was scheduled for follow-up at Catawba Mental Health Center.

Mr. Hughes was seen on three occasions at Catawba Mental Health Center on January 21, 1993, February 16, 1993, and March 16, 1993. He was diagnosed with Adjustment Disorder with Depressed mood and continued on Amitriptyline. He was described as "mildly paranoid" and "vague as to hearing voices."

On July 7, 1993, Mr. Hughes was seen in the Department of Corrections by John DeWitt, M.D. Dr. DeWitt noted that Mr. Hughes was suffering from "probable psychosis" and recommended further psychiatric evaluation.

Mr. Hughes was hospitalized involuntarily at Gilliam Psychiatric Hospital from February 18, 1994, through February 24, 1994. This hospitalization occurred after Mr. Hughes set a fire in his cell. He was reported by Department of Corrections staff to have been experiencing auditory and visual hallucinations, expressing paranoid delusional beliefs, and threatening staff. Mr. Hughes was evaluated and treated by Raymond Kimball, M.D., and Leon J. Johnson, Ph.D. He was diagnosed with Malingering and Antisocial Personality Disorder. Drs. Kimball and Johnson related that Mr. Hughes was "extremely manipulative" and noted that he tended to "ramble incessantly." Dr. Kimball also noted that Mr. Hughes "selectively remembers details of events apparently in accord with his legal problems." Dr. Kimball found Mr. Hughes not to be mentally ill.

Dafferlin Barnard-Dupree, M.D., a forensic psychiatrist hired by Mr. Hughes' defense counsel, evaluated Mr. Hughes on July 27, 1994. In a letter to Mr. Hughes' attorney, Dr. Barnard-Dupree wrote, "It is my opinion that at the present time Mr. Hughes is exhibiting symptoms of psychosis and is in need of a more thorough psychiatric evaluation." In addition, Dr. Barnard-Dupree provided a written psychiatric evaluation in which she diagnosed Mr. Hughes with Psychotic Disorder, Not Otherwise Specified, and Borderline Intellectual Functioning. In her evaluation she noted, "His speech was rambling and disorganized. He was both tangential and circumstantial in his thought processes, expressed bizarre delusional thinking around a complicated number system and exhibits some paranoia towards his attorney."

As a result of Dr. Barnard-Dupree's evaluation, Mr. Hughes was reevaluated at William S. Hall Psychiatric Institute to determine his competency to stand trial. On August 1, 1994, Mr. Hughes was evaluated as an outpatient at Hall Institute by Donald W. Morgan, M.D., and Geoffrey R. McKee, Ph.D. Psychological testing was performed by Dr. McKee to aid in the diagnostic process. Drs. Morgan and McKee concurred that Mr. Hughes had no primary psychiatric diagnosis and that Mr. Hughes was competent to stand trial.

Immediately before the commencement of Mr. Hughes' trial on August 4, 1994, Mr. Hughes was evaluated by Drs. Morgan and Barnard-Dupree together. At that time, Mr. Hughes was noted to be "rambling, tangential, circumstantial and easily angered." The presiding judge, the Honorable John C. Hayes III, found Mr. Hughes to be incompetent to stand trial and ordered him to William S. Hall Psychiatric Institute for restoration of competence.

Mr. Hughes remained at Hall Institute from September 8, 1994, through November 11, 1994. There he was treated with the antipsychotic medication Haldol. The medical record at Hall Institute reveals that Mr. Hughes was evaluated and observed by several psychiatrists and psychologists, to include Renee Kohanski, M.D.; Larry Montgomery, M.D.; Donald Morgan, M.D.; Dafferlin Barnard-Dupree, M.D.; Geoffrey McKee, Ph.D.; and Jeffry Vidic, Ph.D.

On October 17, 1994, Dr. Barnard-Dupree reevaluated Mr. Hughes. She diagnosed him with Schizophrenia, Paranoid Type, Chronic and reported that it was her opinion that he was not competent to stand trial, but was likely to become competent with psychiatric treatment. On November 16, 1994, Mr. Hughes was evaluated by Drs. Kohanski, Morgan and Barnard-Dupree. These doctors diagnosed Mr. Hughes with Schizophrenia, Paranoid Type, and Borderline Intellectual Functioning. It was their opinion that he was competent to stand trial.

Drs. Morgan and Kohanski again evaluated Mr. Hughes on December 14, 1994. Their diagnoses were unchanged. They rendered the opinions that Mr. Hughes was competent to stand trial, had had the ability to differentiate right from wrong during the 1992 murder, and had had the capacity on that date to conform his conduct at that time to the requirements of the law. Following Mr. Hughes' discharge from Hall Institute back to the Department of Corrections, Drs. Morgan, Kohanski, and Barnard-Dupree continued to provide his psychiatric care.

Drs. Morgan and Kohanski performed an additional forensic evaluation on Mr. Hughes in March 1995. This evaluation was ordered to assess Mr. Hughes' competency to stand trial, criminal responsibility and capacity to conform his behavior for a murder that occurred on or about April 12, 1993, while Mr. Hughes was in detention. Mr. Hughes was again diagnosed with Schizophrenia, Paranoid Type. Drs. Morgan and Kohanski also rendered the opinion that while Mr. Hughes was competent to stand trial, he was not criminally responsible for his actions on April 12, 1993, under the McNaghten Standard.

Mr. Hughes' psychiatric course following the March 1995 evaluation is difficult to follow. The Department of Corrections medical record for Mr. Hughes notes that in 1997, while at Lieber Correctional Institute, he was treated by J.A. Blanton, M.D. Initially, Mr. Hughes' medication was discontinued. However, Mr. Hughes complained of "visual hallucinations" when "stressed out." He was diagnosed with Schizophrenia, Paranoid Type, and was started again on his antipsychotic medication. The records indicate that since 1995, Mr. Hughes has received antipsychotic medication intermittently and often at very low dosages.

Mr. Hughes was again hospitalized at Gilliam Psychiatric Hospital in January 2000 because corrections staff were concerned that he was not taking his medication and appeared to be deteriorating psychiatrically. He remained at Gilliam from January 6, 2000, through January 19, 2000. He was treated by Jacques Rathle, M.D., and diagnosed with Adjustment Disorder with Mixed Disturbance of Emotions and Conduct, and with Antisocial Personality Disorder. Mr. Hughes was noted to have a history of diagnosis of Schizophrenia and

Malingering, and he was discharged on Haldol. Dr. Rathle did not see evidence of active psychosis during this hospitalization.

Dr. Richard Ellison is the psychiatrist who has been treating Mr. Hughes most recently in Corrections. Dr. Ellison reports that Mr. Hughes has a "long, well documented history of mental illness." He states that Mr. Hughes has a "generally paranoid flavor" even when he is doing well. He further stated that Mr. Hughes is "angry and frustrated" and "sees no exit" now that he is confined to the maximum-security area. Dr. Ellison further notes that Mr. Hughes is "hopeless," but that this hopelessness is "reality based, not delusional." Dr. Ellison reports that Mr. Hughes has "no well defined delusional system" and has never had a well-defined delusional system to his knowledge.

Mr. Hughes is currently prescribed Haldol 5 mg each day. After a number months of not being willing to take his medicine he is now, by his own report, taking the medication "at least three days a week" and has been since approximately June 15, 2000.

Mr. Hughes has held a variety of odd beliefs over at least the past six or seven years. These beliefs have been variably interpreted as being overvalued beliefs and as being delusions. The authors of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) define a delusion as "A false belief based on incorrect inference about external reality that is firmly sustained despite what almost everyone else believes and despite what constitutes incontrovertible and obvious proof or evidence to the contrary." DSM-IV-TR goes on to say, "Delusional conviction occurs on a continuum and can sometimes be inferred from an individual's behavior. It is often difficult to distinguish between a delusion and an overvalued idea (in which case the individual has an unreasonable belief or idea but does not hold it as firmly as in the case with a delusion)."

When Mr. Hughes is in the acute phase of his illness, his beliefs can be said to reach delusional proportions. When Mr. Hughes is partially or completely treated with medication, these beliefs become less central to his thinking and he is able to concentrate his thoughts and focus on other issues. It is likely that Mr. Hughes' odd beliefs never go away completely, even when optimally treated. However, with optimal treatment these odd beliefs become much less prominent, and Mr. Hughes is able to function more adequately. The focus of Mr. Hughes' odd thinking has remained fairly constant over time. He is focused on the special meanings of numbers, shapes and colors, and the special meanings of facial and body gestures made by others around him. He also has been preoccupied at times with thoughts that people are trying to put medication in his food.

Currently, Mr. Hughes will discuss his odd beliefs if questioned about them. He is, however, able to focus on other issues, such as his present legal situation, and he is able to keep these odd beliefs from becoming his central focus. In addition, there are behavioral changes in Mr. Hughes when he is in an active, delusional phase. His hygiene frequently becomes poor. He becomes very guarded and hostile. He makes minimal or no contact with others. When his symptoms are controlled to some extent with medication, he may hold

distorted views of what is occurring in his environment, but his ability to interact with others falls much more within a normal range.

The most prominent indication of a psychotic process in Mr. Hughes is his idiosyncratic speech. Mr. Hughes' speech becomes more or less idiosyncratic depending on his phase of illness. In the most acute phase of his illness, his speech can be considered frankly disorganized. When Mr. Hughes is partially or completely treated with antipsychotic medication, his speech can be described as having a mild level of disorganization.

During the clinical forensic interview of September 7, 2000, Mr. Hughes was at times able to present his thoughts in a clear and organized fashion. However, he was more typically prone to digress substantially from the topic at hand and to become very resistant to redirection back to the topic. His responses were clearly related to the discussion but were highly idiosyncratic and difficult to follow at times. He acknowledged at times his awareness that he was difficult to follow, and he looked for reassurance that this difficulty would be not taken as a sign of mental illness. During the clinical forensic interview of September 14, 2000, Mr. Hughes was much easier to understand. He responded very directly and precisely to most questions.

A review of Mr. Hughes' medical records reveals that this tangentiality of thought and speech has been the most salient feature of his presentation resulting in his diagnosis of being psychotic. A review of Mr. Hughes' records reveals that there are times when Mr. Hughes' speech is frankly disorganized. It is apparent that Mr. Hughes' level of disorganized speech is influenced by whether or not he is treated with antipsychotic medications. Mr. Hughes becomes and less tangential and easier to understand when treated with antipsychotic medications.

Presently, Mr. Hughes is able to communicate adequately with others. He has little difficulty with direct, pointed questioning. He tends to ramble at times when asked open ended questions, particularly questions that touch on his odd belief system.

> The DSM-IV-TR sets forth the characteristic symptoms, which must be present for a diagnosis of Schizophrenia. Two or more of the following must be present for a significant portion of time during a 1-month period (or less if successfully treated).
> 1. delusions;
> 2. hallucinations;
> 3. disorganized speech (e.g., frequent derailment or incoherence);
> 4. grossly disorganized or catatonic behavior;
> 5. negative symptoms, i.e. affective flattening, alogia, or avolition

Mr. Hughes meets the DSM-IV-TR diagnostic criteria for schizophrenia based on the presence of delusions and disorganized speech at various times throughout the course of his illness. The fact that Mr. Hughes has this illness does not change. What does change for Mr. Hughes is his level of impairment. Depending largely

on whether or not Mr. Hughes is medicated with antipsychotic medication, Mr. Hughes can be extremely impaired by his illness, or only mildly impaired. After reviewing the longitudinal course of his illness, it is our opinion that Mr. Hughes' level of impairment, at the time of this evaluation, falls in the mild to moderate level.

PSYCHOLOGICAL TESTING: Mr. Hughes underwent psychological testing on September 12, 2000. During this evaluation, he was alert and fully oriented. He recalled the evaluator (Dr. Brawley) from the September 7, 2000 forensic interview. He agreed to participate with this evaluation after a full explanation of the purpose. He was reminded that he had the right to refuse or stop the evaluation at any time. He was also informed that these results could be included in the formal forensic report submitted to the court. His affect was primarily guarded, but he did show a full range of affect during this evaluation, occasionally smiling and displaying an appropriate sense of humor. His speech was fluent and coherent. There was less disorganization and tangentiality noted, likely due to the structured format of the testing session and his familiarity with the examiner. He was able to provide answers on all questions asked of him. However, there were some tasks that he refused to attempt or complete for various reasons such as characterizing them as "useless information." Mr. Hughes obtained a WAIS-3 Full Scale IQ of 77 (Verbal IQ 84, Performance IQ 74). These scores are consistent with those obtained on the 1992 and 1995 psychological evaluations, and do not reflect a decline in intellectual ability.

MENTAL STATUS EXAM: During the clinical forensic interview of September 7, 2000, Mr. Hughes was alert and oriented to person, place, date and situation. He appeared well groomed and had appropriate personal hygiene. He shook hands with the male examiner. He maintained eye contact with the interviewers throughout the interview. He was very guarded during the interview. He interacted spontaneously with his attorney and with the psychiatrists hired by his attorney. He spoke warmly of them and expressed affection for them. During the interview he would bring them into the conversation to help confirm his statements.

When the interviewers introduced a lack of structure by asking open-ended questions, Mr. Hughes' speech became idiosyncratic and tangential. He demonstrated various odd beliefs, some of which had paranoid overtones. Mr. Hughes indicated he had some understanding of the difficulty others had with following his train of thought, stating, "I ramble in a circle and hope that something will stick." However, when the examiners overtly expressed their difficulty in understanding him, he became irritable and confrontational. Despite Mr. Hughes' tendency to talk expansively and frequently off topic, he could be structured to respond appropriately to most questions asked of him.

Mr. Hughes denied auditory or visual hallucinations. Mr. Hughes was extremely guarded during the interview and did endorse a belief that people may be putting medication in his food. Mr. Hughes spoke of his superior

intelligence and knowledge; however, his grandiosity did not reach delusional proportions. He denied current suicidal or homicidal ideation. Mr. Hughes described his mood as "content." His affect was guarded.

On September 7, 2000, Mr. Hughes was very reluctant to participate in formal cognitive testing. He was able to demonstrate intact attention by repeating five numbers in sequence. He was able to recall two words after five minutes. He was able to perform simple addition and subtraction. He was able to name the capitals of South Carolina and the United States. He said he did not know who is the president of the United States. He knew the months of the year. He knew the number of days in a year. He was able to adequately interpret similarities and to perform simple mathematical problems. He was able to spell the word "world" forwards but refused to attempt to spell it backwards. Based on his vocabulary and fund of knowledge, his intelligence appeared to be in the low average range.

During the clinical forensic interview of September 14, 2000, Mr. Hughes appeared much more comfortable and relaxed with the interviewers. He was, again, well groomed and had appropriate personal hygiene. He maintained appropriate eye contact with the interviewers. His affect was broad. He used humor appropriately in the evaluation. His speech was normal in rate and tone. His thoughts were generally logical, linear and goal directed. When questioned about some of his idiosyncratic beliefs about numbers, he became tangential and difficult to follow. He was easily redirected back to topic, however. He explained in a coherent fashion his rationale behind fasting. Mr. Hughes maintained a belief that corrections staff had been putting medication in his food, at times, in the past, but he did not believe they were currently doing so.. By contrast with his behavior during the previous evaluation, during the September 14 evaluation Mr. Hughes did not become irritable when redirected.

CONCLUSION REGARDING COMPETENCY TO WAIVE PCR ACTION AND COMPETENCY TO BE EXECUTED:

In prelude to the clinical forensic interview of September 7, 2000, Mr. Hughes was able to read his Miranda warnings without difficulty. He was able to restate them in his own words, and he demonstrated that he understood their meaning. Prior to signing a paper acknowledging his understanding of his warnings, Mr. Hughes consulted with his attorney as to whether he should sign. Mr. Hughes knew the purpose of the evaluation, stating, "It's for competency, to see if I'm able to drop the appeals." When asked for his understanding of competency, he stated "to see if a person is qualified to understand, to see his reasoning, if others can understand his reasoning." He was able to discuss the offense for which he had been found guilty and sentenced to death. He discussed an offense occurring during his incarceration, saying "I was charged with another murder" and that he had been "judged to be incompetent because of the second offense." He said he didn't know what happened to the charges on the second offense but thought the State

felt it "wasn't necessary" to pursue them since "I still have the death penalty." He said that if he wanted to know more about the second murder charge he would ask his attorney.

Mr. Hughes was able to discuss the process of Post Conviction Relief . He was able to discuss the possible strategies by which his original verdict could be overturned. He said that he had talked about PCR with his attorney at length and had decided that he did not want to pursue it. He said, "I'd have to go through the whole process again. . . . If I went through the legal process of PCR I'd feel bad." He said that he felt it would hurt his family for him to go through the PCR process. He described the PCR process as a "process of humiliation." He said, "The State gave me the death penalty and I'm cutting off a few years of worry and suffering."

During the September 7, 2000, Mr. Hughes said that he would consider pursuing Post Conviction Relief only if his attorney could "guarantee" that he would win relief and would be released from prison. He said that Ms. Norris "told me she will do all in her power to help me because she believes I am innocent. She wants me to go down fighting or stand up fighting. She wants to go forward with it [PCR] and believes something will happen, but it is not 100%." He said that if she could promise him release, "We'd have to get together and renew communication."

He understood the role of his attorney in the PCR process and said he "felt comfortable" with his attorneys. He said it is his attorney's job "to represent me." He identified his attorneys as Theresa Norris and Gwendolyne Smalls. He was aware that several other defense attorneys had been involved in his case and asked his attorney "if those attorneys from Oregon" were still involved. Mr. Hughes was aware of the role of Don Zelenka, the Deputy Assistant Attorney General Office assigned to his case. He said Mr. Zelenka "is the opposition." He said that while he did not know Mr. Zelenka personally, he had communicated with Mr. Zelenka and "was told that if a person legally wants to drop his appeals, he can do so." He was able to identify the role of the Judge in the PCR process. He stated "the judge is the captain of the ship . . . the final authority."

In the September 7, 2000,Mr. Hughes said that he knows he is "faced with dying if I drop my appeals." Mr. Hughes was questioned about his concept of death. When asked what would happen after he died, he replied, "I would be dead," and stated, further, "I don't believe in reincarnation." He voiced some unusual beliefs about a process he referred to as "derancification," by which the body so deteriorates after death that the soul is unable to inhabit it. He voiced an appreciation of the finality of death. He said he would choose death by the electric chair because "I want to die sitting up." He recalled an event in his life when he had a serious allergic reaction to medication and couldn't breathe, and he was forced to lie down and have medication administered to him. He likened that experience to death by lethal injection stating, "I wouldn't want to be lying down, helpless, I'd want to die sitting up in a chair."

During the clinical forensic interview of September 14, 2000, Mr. Hughes was asked further about his understanding of the PCR process. He related that he knew he was waiving his rights to the PCR process. He said that the PCR process is the process in which "evidence or new evidence is brought before the court." He said he was aware of some of the ways in which his conviction could be overturned, but he said he had been instructed by his attorneys not to discuss the specifics of these with anyone. He said he knew the crime for which he had been tried and convicted. He named the victim of the crime. He discussed in detail his reasons for wanting to waive his rights for PCR, focusing primarily on his wanting to die rather than spend the rest of his life in prison. He detailed in an organized fashion his perceptions of having been abused in Corrections and his anticipation that this would continue.

During the September 14, 2000, interview, Mr. Hughes further said that he had received new information that day from Ms. Norris and that he was now considering pursuing PCR action further. On September 15, 2000, Drs. Crawford and Brawley met with Mr. Hughes' attorneys, Ms. Norris and Ms. Smalls. Mr. Hughes' attorneys acknowledged that they are actively engaged in discussions with Mr. Hughes to encourage him to pursue PCR action. Ms. Norris said that she was to meet with Mr. Hughes on September 18 to discuss information that might lead him to change his mind about the PCR process. She said that he was now willing to consider pursuing PCR, but that she was unsure of what his final decision would be. She indicated that if he agreed to go forward with the PCR process, there might not need to be a competency hearing. She said further that if Mr. Hughes later changed his mind again and wanted to waive the PCR process, another competency hearing would likely be scheduled.

Based on the clinical forensic evaluations of September 7 and September 14, 2000, it is well founded that Mr. Hughes can understand the nature of the proceedings, the crime that he was tried for, the reason for the punishment, and the nature of the punishment. The question of whether Mr. Hughes possesses sufficient ability to rationally communicate with counsel is more complicated. Mr. Hughes' tangential, idiosyncratic thought processes make it very difficult, at times, for one to follow his reasoning. In the interview of September 7, 2000, the forensic examiners had to employ substantial redirection to determine how well Mr. Hughes understood his legal situation. Our observation of Mr. Hughes' interaction with the interviewers and his attorneys on that date has led the examiners to conclude that his ability to communicate effectively with his counsel is impaired to some degree. During the interview of September 14, 2000, Mr. Hughes was much less tangential and much more organized, and he demonstrated a significantly improved ability to communicate. Mr. Hughes' improved ability to communicate may have been, in part, due to his increased familiarity with and hence comfort with the examiners.

Mr. Hughes values and trusts his attorneys. During the clinical forensic interview of September 7, 2000, he spontaneously sought Ms. Norris' advice. He knew that the attorneys' purpose is to assist him. He understood them to believe in his innocence and to believe that they have some viable issues that might result in his conviction being overturned if he were to proceed with the PCR process. He was able to discuss his attorneys' position on the PCR process. He indicated that he understands their motivations and their reasoning for

proceeding with PCR, but that he disagreed with them. He discussed being willing to reconsider his choice to wave PCR if his attorneys could assure him that he would be released from prison as a result of the process.

By the time of the September 14, 2000, interview, Mr. Hughes had further consulted with Ms. Norris and now was much more willing to consider pursuit of PCR. He said he had to gather some more information from her before withdrawing his request to waive his PCR action, but he indicated that there was some likelihood that he might change his mind. He is, at the time of the writing of this report, actively engaged with his attorneys in discussions about the further pursuit of the PCR process.

Mr. Hughes has a major mental illness, as a result of which his ability to communicate with others is, at times, impaired. However, it is our opinion that Mr. Hughes, at the time of this evaluation, possesses sufficient ability to communicate rationally with his attorneys. It is our opinion that Mr. Hughes, at the time of this evaluation, is competent to waive PCR action and is competent to be executed.

Pamela M. Crawford, M.D.
Director, Forensic Services
William S. Hall Psychiatric Institute

R. Gregory Lande, D.O.
Director of Professional Services
William S. Hall Psychiatric Institute

Tora Brawley, Ph.D.
Licensed Clinical Psychologist
William S. Hall Psychiatric Institute

Exhibit Three - September 21, 2000 - Report of Circuit Court

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF YORK	)	93-GS-46-4296
		93-GS-46-4299
STATE OF SOUTH CAROLINA,	)	93-GS-46-4301
	)	93-GS-46-4303
vs.	)	
	)	
MAR-REECE ALDEAN HUGHES,	)	
	)	
Defendant.	)	
	)	

Report of Circuit Court

By Order dated May 11, 2000, issued by the South Carolina Supreme Court, certain issues regarding petitioner were remanded to the Court. The order of remanded instructed the Court to conduct a full competency hearing and make factual findings as to petitioner's "competency to waive filing a PCR action," and "competence to be executed."

The undersigned issued an Order for Pre-Execution Competency Evaluation on July 31, 2000. Evaluations took place September 7th and 14th, 2000 at Kirkland Correctional Institution. The evaluations were conducted by staff members from William S. Hall Psychiatric Institute. They included two medical doctors, a Licensed Clinical Psychologist, and the director of professional service for the institute, R. Gregory Lande, D.O. Counsel for petitioner was present at each interview.

William S. Hall Psychiatric Institute Forensic Unit Staffing issued a Forensic Evaluation of Petitioner dated September 18, 2000, and received by the undersigned on that date. The report, in short, diagnosed petitioner as to AXIS I, Schizophrenia, Undifferentiated type, Episodic with Interepisode Residual Features; AXIS II, Borderline Intellectual Functioning and as to AXIS III, no diagnosis. The examiners found, and in an exhaustive and detailed eleven

page report, found petitioner competent to both waive his PCR action and to be executed.

The undersigned, by telephone, was informed by petitioner's counsel on September 19, 2000, that petitioner had changed his mind and indicated a desire to file an application for post-conviction relief. This was confirmed by receipt of petitioner's counsel's letter of September 18, 2000, received by the undersigned on September 20, 2000 (copied to Daniel E. Shearouse, South Carolina Supreme Court Clerk of Court). The letter, penned by petitioner's counsel, in petitioner's words, signed by petitioner and notarized, states that petitioner had changed his mind and that he does not want to waive his PCR, nor does he want to be executed. In the letter, petitioner maintained his innocence and confidence in his current counsel.

The undersigned, armed with the above, without the necessity of a hearing, believes petitioner is competent to exercise his right to continue with a PCR proceeding and is competent to resist his execution.

This Report is just that, a report as the undersigned has not fully complied with the Court's May 11, 2000 Order, but is convinced further action by the undersigned is rendered moot by petitioner's notarized statement of September 18, 2000. The undersigned will hold further proceedings at the Circuit Court level in abeyance pending further instructions by the Supreme Court.

John C. Hayes, III
Presiding Judge

September 21, 2000
York, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE STATE,

Respondent,

vs.

MAR-REECE ALDEAN HUGHES,

Appellant.

PROOF OF SERVICE

I, Donald J. Zelenka, Counsel for the Respondent, certify that I have served the within **Return to Motion For Stay Of Execution, Assignment of Circuit Court Judge, and Appointment of Post-Conviction Counsel** by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to his attorneys of record as follows:

Teresa L. Norris
Center for Capital Litigation
P.O. Box 11311
Columbia, South Carolina 29211

Gwendlyne Young Smalls
115 E. Moultrie Street
Winnsboro, South Carolina 29180

I further certify that all parties required by Rule to be served have been served this 27th day of September, 2000.

DONALD J. ZELENKA
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305
ATTORNEY FOR RESPONDENT

CENTER FOR CAPITAL LITIGATION
1247 SUMTER STREET, SUITE 303 (29201)
POST OFFICE BOX 11311
COLUMBIA, SOUTH CAROLINA 29211

Teresa L. Norris
Director

Voice: (803) 765-0650
Fax: (803) 765-0705
Email: tnorris@usit.net

September 29, 2000

RECEIVED
SEP 29 2000
S.C. SUPR

Via Hand-Delivery

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

RE: State v. Mar-Reece Aldean Hughes, York County Death Penalty Appeal (Op. No. 25003)

Dear Mr. Shearouse:

Please find enclosed the original and six copies, along with proof of service, of the Reply to Respondent's Return to the Motion For Stay of Execution, Assignment of a Circuit Court Judge, And Appointment of Post-Conviction Counsel. Please do not hesitate to contact me if you have any questions regarding this matter or if I can provide you with any additional information.

Sincerely,

Teresa L. Norris

enc.

cc: Donald J. Zelenka
Gwendlyne Young-Smalls
Mar-Reece Hughes

ORIGINAL

IN THE SUPREME COURT

In the Original Jurisdiction

RECEIVED
SEP 2 9 2000
S.C. SUPREME COURT

MAR-REECE ALDEAN HUGHES,

MOVANT,

v.

THE STATE,

RESPONDENT.

REPLY TO RESPONDENT'S RETURN TO
MOTION FOR STAY OF EXECUTION,
ASSIGNMENT OF A CIRCUIT COURT JUDGE,
AND APPOINTMENT OF POST-CONVICTION COUNSEL

The undersigned counsel are in receipt of Mr. Hughes's latest letters seeking execution and seeking to withdraw his PCR application filed on September 19, 2000. The undersigned counsel are also in receipt of Respondent's return seeking an execution date and asserting that Mr. Hughes is competent to waive his appeals and be executed.

First, no execution date is warranted at this time. Petitioner has properly filed a post-conviction relief application and this Court should accordingly appoint a post-conviction judge, who can then hear Mr. Hughes's request to dismiss his PCR application. *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996). In addition, the PCR judge, who can also hear Mr. Hughes's request to dismiss the application, cannot be Judge Hayes, who was the trial judge. S.C. Code § 17-27-160.

Second, while the court-appointed examiners recently found Mr. Hughes to be competent, no hearing has been held on this issue as yet. A hearing will be required, however, because the examiners retained by the undersigned counsel, Dafferlin Barnard-Dupree, M.D., Renee Kohanski, M.D., and Geoffrey McKee, Ph.D., are all of the opinion that Mr. Hughes is not competent to waive post-conviction proceedings or to be executed.

The undersigned counsel thus request that this Court assign a circuit court judge to hear the post-conviction relief action, appoint the undersigned counsel to represent Mr. Hughes in the PCR action or, at a minimum, to present the available evidence of his incompetence, and order a stay of execution pending completion of the state post-conviction proceedings or a judicial determination that Mr. Hughes is competent to waive these proceedings and be executed.

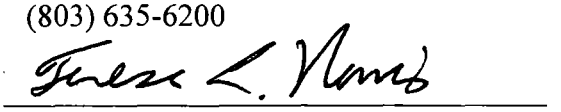
Respectfully submitted,

TERESA L. NORRIS

Center for Capital Litigation
P.O. Box 11311
Columbia, S.C. 29211
(803) 765-0650

GWENDLYNE YOUNG SMALLS

115 E. Moultrie St.
Winnsboro, SC 29180
(803) 635-6200

By: 

Counsel for Mr. Hughes

September 29, 2000.

IN THE SUPREME COURT

In the Original Jurisdiction

MAR-REECE ALDEAN HUGHES,

MOVANT,

v.

THE STATE,

RESPONDENT.

CERTIFICATE OF SERVICE

I certify that I have served the Motion For Stay of Execution, Assignment of a Circuit Court Judge, And Appointment of Post-Conviction Counsel on the Respondent by facsimile and by depositing a copy in the United States Mail, postage prepaid, addressed to Respondent's attorney of record, Donald J. Zelenka, Assistant Deputy Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, S.C. 29211.



TERESA L. NORRIS

Center for Capital Litigation
P.O. Box 11311
Columbia, SC 29211
(803) 765-0650

ATTORNEY FOR APPELLANT.

September 29, 2000.

Dear Sir, I was found guilty. My view has change since my lawyer said if I was found competent she TERESA L. MORRIS would help me drop APPEAL ISSUES.
I do not want PCR or to address courts.
I wish immediate execution by STATE.

STATE KEEPER
Jon-Erica A. Hughes
#5021 Sept. 22/FRI/00

P.S I AM EXERCISING MY LEGAL 10 "TEN" DAYS of offical notice from date of SEPTEMBER 18th Monday 2000.



RECEIVED
SEP 2 7 2000
S.C. SUPREME COURT

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

September 28, 2000

VIA FACSIMILE

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

Re: State v. Mar-Reece Hughes

Dear Mr. Shearouse:

Upon review of the attached, I have no amendments to my pleadings filed yesterday.

Sincerely,

Donald J. Zelenka
Assistant Deputy Attorney General

DJZ/lbb
Enclosure

cc: Teresa L. Norris, Esquire
Gwendlyne Young-Smalls, Esquire

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, S.C. 29211-1549 • TELEPHONE: 803-734-3970 • FACSIMILE: 803-253-6283

Dear Sir, I was found guilty. My view has change since my lawyer said if I was found competent the Federal Rules would help me drop appeal issues.
I do not want PCR or to address courts.
I wish immediate execution by STATE.

STATE REQUEST
Jonathan E. Hayes
#5001 Sept. 27/Sept/00

P.S I am exercising my legal 10 "TEN" days of official notice from date of September 13th Monday 2000.



RECEIVED
SEP 27 2000
S.C. SUPREME COURT

IN THE SUPREME COURT
IN THE ORIGINAL JURISDICTION

MAR-REECE ALDEAN HUGHES, MOVANT,

V.

THE STATE, RESPONDENT

MOTION FOR IMMEDIATE EXECUTION
TO CIRCUT COURT JUDGE DANIEL E. SHEAROUSE
AND THE REMOVEABLE of COUNSELOR'S
GWENDLYNE X. SMALLS AND TERESA L. MORRIS.
MOVANT SEEKS COUNSEL OR EITHER REPER-
SENT SELF AT COMPETENCE HEARING.

I MAR-REECE A. HUGHES REQUEST STATE
FOR IMMIDIATELY EXECUTION. AND WITH-
DRAW I FROM PCR AND FURTHER COURT APPEALS.
IN SUPPORT OF THIS MOTION "MOVANT"
I RECEIVED STATE NEUTRAL EVUATION BY
DR. CRAWFORD AND OTHERS.

SEPTEMBER 27/00
SINCERELY
Mar-Reece A. Hughes

ENC.
CC: JUDGE D.E. SHEAROUSE
DONALD J. ZELENKA
GWENDLYNE SMALLS
TERESA L. MORRIS



RECEIVED
SEP 29 2000
S.C. SUPREME COURT

Judge D.E. Shearouse,

I've effectively asked to be immidately executed by State of South Carolina. I've written Donald J. Zelenka concerning withdrawal of futher future appeals. I spoken with State Attorney Teresa L. Norris she has said she refuse to drop PCR. I was found competent from the neutral evaluation Doctors 2"two" too 3"three". I am asking Mrs. Norris removed as my lawyer because she is refusing me due process of law. I am in this letter filing a motion for execution. That I've contacted all before my 10 ten days expired. Sincerely

Jonathan A. Hughes

Sept. 27/00

IN THE SUPREME COURT
IN the Original Jurisdiction

MAR-REECE AIDEAN HUGHES, MOVANT,

V.

THE STATE of SOUTH CAROLINA

REPLY TO RESPONDENTS RETURN TO MOTION FOR STAY OF EXECUTION, ASSIGNMENT OF A CIRCUIT COURT JUDGE, AND APPOINTMENT OF POST-CONVICTION COUNSEL

WITH SANE MIND AND FULL CAPACITY of my SENSE. I MAR-REECE AIDEAN HUGHES is ASKING THE COURT to ALLOW ME drop ALL FURTHER PROCESS'S of FUTURE APPEALS, PCR MOTION WITHDRAWN AND THE REMOVAL of COUNSEL TERESA L. NORRIS AND YOUNG SMALLS AS COUNSELOR. THERE LACK of TRUST AND confidence I RESPECTIVELY ASK THE COURT TO ADDRESS ME AS MY own COUNSEL AND NOT CENTER FOR CAPITAL LITIGATION.

SINCERELY
Mar-Reece A. Hughes
October 2nd/00/mor.

C.C
THE HONORABLE
DANIEL E. SHEARHOUSE
DONALD J. ZELENKA
ASSIT. DEP.

RECEIVED
OCT 0 5 2000
S.C. SUPREME COURT

Judge Shearouse,

Your Honor I do not believe in the current system of mans law of unequal temperment. Neither the balance of a double standard. This competence issue about my intelligence is amusing in deed. However I'm not comfortable with center for capital litigation from obvious reasons.
The law of maturity states I'm over 21 years of age. That I can count, add, subtract, read etc... I know the difference from up and down. I am sending you this motion to dismiss lawyers and PCR application.

Seriously
Marcus A. Hall
October 2nd/00

P.S. Regardless of no execution date is warranted at this time. Under cruel and unusual punishment I should be able to render assistance. No law as of yet says it mandatory for "PCR". Simple put the state can use warehouse control of prisoners. Yet when I desire to die I catch all hell. But when state ready to kill me at there desire they do so.

C/o Donald J. Zelenka

Juvenile Oct. 30 2000

Per Dan

Hello seems to me you Charters
dont want to answer my letters
or legal motions.
Well I dint asked you for nothing
dont need nothing from you
or no approval. Eventually you'll
do whatever the hell you'll do.

later
Marlon C. Hoff

RECEIVED
OCT 2 6 2000
S.C. SUPREME COURT

RECEIVED
OCT 2 0 2000
S. C. SUPREME COURT

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

October 20, 2000

David Hamilton
Clerk of Court, York County
Post Office Box 649
York, South Carolina 29745

Re: Mar-Reece Aldean Hughes v. William Catoe, et al.
00-CP-46-__

Dear Mr. Hamilton:

Enclosed please find the ***Return to Application for Post-Conviction Relief*** in the above-referenced action for filing. By copy of this letter we are serving opposing counsel with this Return.

Sincerely,

Donald J. Zelenka
Assistant Deputy Attorney General

DJZ/lbb
Enclosure

cc: Teresa L. Norris, Esquire
Gwendlyne Young Smalls, Esquire
Mar-Reece Aldean Hughes, #5021
Thomas E. Pope, Solicitor
Honorable Daniel E. Shearouse

RECEIVED
OCT 2 0 2000
S. C. SUPREME COURT

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
MAR-REECE ALDEAN HUGHES,	)	00-CP-46-___
Applicant,	)	
v.	)	RETURN TO APPLICATION FOR POST-CONVICTION RELIEF
WILLIAM CATOE, Commissioner, S.C. Department of Corrections, and CHARLES CONDON, S.C. Attorney General,	)	
Respondents.	)	

The Respondents, above-named, hereby make a Return to the Application for State Post-Conviction Relief filed by Mar-Reece Hughes, through his earlier appointed counsel, Teresa Norris and Gwendlyne Young Smalls received on September 20, 2000. On September 28, 2000, Mr. Hughes moved before this Court to have his Application dismissed. Pursuant to Rule 41(a) of the South Carolina Rules of Civil Procedure, Respondents submit the Applicant has voluntarily dismissed his pending Application for State Post-Conviction Relief. The Respondents make the following Return.

RESPONDENT'S STATEMENT OF THE CASE

Applicant, Mar-Reece Aldean Hughes, is presently confined in the Maximum Security Unit of the Kirkland Correctional Institution, 4344 Broad River Road, Columbia, South Carolina 29210 pursuant to orders from the Clerk of Court for York County. Applicant was indicted in the December 1993 term of the Court of General Sessions for York County for murder; armed robbery; criminal conspiracy; possession of a stolen vehicle; and possession of firearm during the commission of a violent crime.

Applicant was represented by Stephen D. Schusterman, Esquire, and Christina C. Brice, Esquire. The State was represented by Thomas E. Pope, Solicitor for the Sixteenth Judicial Circuit, and Kevin S. Brackett, Deputy Solicitor for the Sixteenth Judicial Circuit.

The State served its notice to seek the death penalty and statutory aggravating circumstances on December 13, 1993. The State notified Applicant of the evidence in aggravation to be offered on January 20, 1994, April 27, 1994, and August 28, 1995. Pretrial motions were heard in the case on September 7-8, 1995.

Jury selection was conducted September 11-13, 1995. The case proceeded to trial September 14-22, 1995 before the Honorable John C. Hayes, III, Circuit Judge, and a jury. On September 18, 1995, Hughes was found guilty of all charges. The sentencing phase of the trial began on September 20, 1995. On September 22, 1995, the jury unanimously found the aggravating circumstance of "murder of a local law enforcement officer during or because of his official duties" and recommended that Hughes be sentenced to death. (R. p. 2458). Judge Hayes thereafter sentenced Hughes to death for murder; thirty (30) years, consecutive, for armed robbery; five (5) years, consecutive, for criminal conspiracy; five (5) years, consecutive, for possession of a stolen vehicle; and five (5) years, consecutive, for possession of firearm during the commission of a violent crime.

A timely notice of intent to appeal was filed. In the appeal, Hughes was represented by trial counsel Shusterman and Brice. The Respondents were represented by Assistant Deputy Attorney General Donald J. Zelenka and Assistant Attorney General Robert F. Daley, Jr.. Briefs were filed by counsel in the appeal on the following issues presented by counsel for the Applicant:

I.

Whether the trial court erred in admitting evidence that Appellant stabbed two of his cell mates while awaiting trial when there was clear and convincing evidence that he committed the stabbing and significant evidence that he was not insane at the time of the stabbings?

II.

Whether the trial court erred in finding that the prosecution did not violate Rule 5 of the South Carolina Rules of Civil Procedure or Brady v. Maryland when Appellant was not denied any material that would have made a difference in the outcome of the trial?

III.

Whether the trial court erred in allowing into evidence statements made by Appellant to fellow inmates that strongly suggested that Appellant had been the shooter in the murder of Officer McCants because these statements were made without any police involvement?

IV.

Whether the trial court was correct in refusing to allow into evidence as a mitigating circumstance in the sentencing phase the fact that Appellant's co-defendant Forney received a life sentence in an earlier trial? (Issue presented on certiorari)

V.

Whether Appellant's death sentence was excessive or disproportionate to the penalty imposed in similar cases, considering both the circumstances of the crime and the character of the defendant?

VI.

Whether the trial court erred or abused its discretion by refusing to grant a mistrial after the victim's mother hurriedly left the courtroom during psychiatric testimony in the sentencing phase?

VII.

Whether the trial court abused its discretion when it gave an Allen charge to the jury that was both evenhanded and not unduly coercive?

Oral argument was heard in the South Carolina Supreme Court on May 26, 1998. On October 4, 1999 the Supreme Court entered its opinion affirming the conviction and sentence of death. State v Mar-Reece Hughes, 336 S.C.585, 521 S.E.2d 500 (1999). The remittitur was entered on October 28, 1999. A stay of execution to allow the filing of a petition for writ of certiorari was entered by the South Carolina Supreme Court on November 16, 1999.

A petition for writ of certiorari was docketed in the United States Supreme Court on January 14, 2000 and filed on January 3, 2000. In the Petition, the Applicant, represented by Robert Lane Carey and Bradley F. Tellam of Barran Liebman LLP, 601 S.W. Second Avenue, Suite 2300, Portland, Oregon 97204 raised the following question:

> Does excluding a co-defendant's life sentence and jury conviction from the jury's consideration during the penalty phase of a capital case violate the Eighth and Fourteenth Amendments?

The Respondent made a brief in opposition. On March 20, 2000, the United States Supreme Court denied certiorari. Hughes v. State of South Carolina, 120 S.Ct. 1434 (March 20,2000).

On March 20, 2000, Teresa Norris filed a motion to stay the execution due to alleged incompetency. The Supreme Court subsequently assigned the Honorable John Hayes to consider the matter. Judge Hayes appointed Ms. Gwendlyne Young Smalls in addition to Ms. Norris. After court-ordered evaluations were completed where the designated examiners opined that Hughes was competent, Hughes apparently changed his mind and agreed to pursue state postconviction relief.

On September 20, 2000, Respondents counsel received a copy of the application for post-conviction relief from Hughes earlier appointed counsel. Subsequently, Mr. Hughes advised the

Supreme Court of his desire to drop the Application. At the time of this filing, a motion to assign a judge is pending along with Hughes pro se motion to drop further appeals. Further, on September 28, 2000, Hughes filed a pro se request to drop his state Post-Conviction Application in the Court of Common Pleas for York County.

STATEMENT OF FACTS

A. Factual Background From The Trial

Deputy Brent McCants was found dead after he stopped a suspicious vehicle and was shot six times around 10:40 p.m. on September 25, 1992. Earlier that evening around eight o'clock, Sean McMillan and his girlfriend Beth Ann Jayne, both students at Davidson College, pulled into the parking lot of the Bellisimo Restaurant in Charlotte, North Carolina in her grey 1986 Buick Century, New York license tag EMF 313. As they got out of the car, two black men came from behind the restaurant, walked towards their car, and split up at the front of it, one going to Sean's side and one going to Beth Ann's side. (R. p. 918, line 10 - p. 922, line 10; p. 936, lines 4-18; p. 955, line 17 - p. 960, line 8).

Applicant's co-defendant Eric Forney, who was wearing dark sweat pants and a zip-up red hooded sweat shirt, approached Sean, pulled out a gun, put it in Sean's gut region, and said, "I want your money, get on the ground." (R. p. 926, lines 15-24; p. 960, line 4 - p. 962, line 12). Forney then pinned Sean's arm behind his back, frisked him, and took his keys, a watch, and his wallet. (R. p. 926, lines 15-24; p. 941, line 3 - p. 942, line 13; p. 962, lines 12-20).

At the same time, Applicant Hughes, who was wearing dark navy or black clothing, approached Beth Ann, told her three times not to look at him, and then led her around the car to the driver's side where she saw Sean on the ground with a gun to his head, his arm pinned to his

back, and Forney going through his pockets. (R. p. 922, line 22 - p. 924, line 18; p. 938, line 20 - p. 939, line 7).

Forney then got off of Sean, telling him that if he moved he would kill him. (R. p. 963, lines 13-23). Forney then handed Beth Ann a set of keys and told her to open the door. However, they were the wrong keys and so Forney had to get the right set from Sean. When she was finally able to get the door unlocked, Forney got in the driver's side and Hughes got in the passenger side. (R. p. 924, line 22 - p. 926, line 11; p. 963, lines 3-12). Before they drove off, Forney said, "If you move, we'll kill your whore." (R. p. 943, lines 6-20; p. 972, lines 6-13). Sean and Beth Ann then immediately called the police. (R. p. 928, lines 3-5; p. 943, lines 21-24; p. 964, lines 16-18).

After the incident, Sean identified Forney and Beth Ann identified Hughes in photographic lineups. (R. p. 929, line 20 - p. 933, line 22; p. 965, line 2 - p. 968, line 2).

Around ten o'clock on the same night, Michelle and Crystal Ayres were at the Galleria Mall Cinema which is located in the area of I-77 and Dave Lyle Boulevard. (R. p. 975, line 25 - p. 976, line 13; p. 998, lines 3-13; p. 1001, lines 21-24). Crystal, who was working the concession area, testified that two black males, one wearing a red sweat suit, came into the theater and asked if it had a drink machine. After she told them no, they both left. (R. p. 979, lines 11-20; p. 979, line 24 - p. 981, line 10; p. 989, lines 4-12). However, they then came back and asked if the box office was closed. She told them it was closed but that they could go watch a movie. (R. p. 981, lines 11-24). They then walked to where the movies were, opened up the doors, looked in, walked around, and walked back out. (R. p. 982, lines 13-25). Michelle also testified that she saw two black males enter the theater and then leave about twenty minutes later.

(R. p. 1001, line 25 - p. 1002, line 15). The next day, Crystal identified Hughes as one of the men who had come in the theater. (R. p. 983, line 1 - p. 988, line 2; p. 993, line 11 - p. 997, line 3). Michelle testified that Forney was one of the men who had come in the theater that night. (R. p. 1002, line 16 - p. 1005, line 10).

That same night, Sherrie Grimmitt was driving down Dave Lyle Boulevard when she noticed a car behind her with no headlights on. (R. p. 1036, line 16 - p. 1038, line 5). As the car went by her, she saw that two black males were riding in it. The passenger was hunched over in the car. The passenger was wearing a hooded sweatshirt. Soon thereafter she saw a police car which turned around in the median and immediately went after the car that did not have its lights on. The police car pulled the other car over. (R. p. 1037, line 18 - p. 1043, line 25; p. 1044, line 12 - p. 1045, line 13).

At 10:39 p.m. that same night, Deputy Brent McCants called in to inform dispatch that he was stopping a suspicious vehicle with license tag number EMF 313 and to request a check on whether it was stolen. (R. p. 1008, line 16 - p. 1017; p. 1020, line 3 - p. 1034, line 13). (State's Exhibit 14; State's Exhibit 11 for i.d.).

Mary Grant and her sister, Kathy Pittman, were on Dave Lyle Boulevard returning from a football game when they noticed that a police car had pulled a car over. (R. p. 1048, line 2 - p. 1050, line 18; p. 1074, line 23 - p. 1075, line 19). Both testified that they slowed down when they saw something lying beside the patrol car with two people, one crouched down like he was picking something up and the other standing but slightly bent over it. At that time, the one that was bent over looked up, pointed at them, ran to the car, and got in on the passenger side. Shortly thereafter, the man who was crouched down got up, ran to the car, and got in on the

driver's side. (R. p. 1050, line 20 - p. 1051, line 12; p. 1065, line 2 - p. 1068, line 3; p. 1070, line 11 - p. 1071, line 3; p. 1071, line 16 - p. 1072, line 14; p. 1075, line 19 - p. 1076, line 13). As the sisters got parallel to the police car, they saw that it was a patrolman lying beside the car and could tell that he was hurt, so they stopped to help. Before the car pulled away, they got the 313 portion from the license plate and Mary Grant saw that it was a late model grey four door car. (R. p. 1054, line 1 - p. 1056, line 14; p. 1077, line 18 - p. 1079, line 1; p. 1081, lines 1-18). As Mary and Kathy approached the patrolman, they saw that he had been hurt and so Kathy Pittman immediately called for help on the police radio. (R. p. 1056, line 15 - p. 1057, line 22; p. 1059, lines 16-22; p. 1081, line 1 - p. 1082, line 18).

Officer McCants was shot in the head, abdomen, and under the armpit. (R. p. 1305, line 23 - p. 1386, line 3). Although Officer McCants had been shot six times, three of the gunshot wounds were non-penetrating -- they were stopped by his safety vest. One of the fatal gunshot wounds was under Officer McCants' armpit. The bullet travelled upward going through the heart. A second gunshot wound went through the kidney, pancreas, and intestine. The final gunshot wound entered the back of Officer McCants' head. The head wound was also fatal. (R. p. 1528, line 3 - p. 1535, line 21).

At 10:42 p.m., a call for help came in to dispatch from Kathy Pittman who had found Deputy McCants shot on Dave Lyle Boulevard.

Marvin Bohon, a shift lieutenant with the York County Sheriff's Department, responded to the scene after the call for help went out. (R. p. 1088, line 17 - p. 1089, line 8). As he assisted in securing the scene, he found that Deputy McCants' walkie talkie and the ammunition clip from his san brown belt was missing, although he eventually found the clip some ten feet from

McCants' body. (R. p. 1089, line 24 - p. 1099, line 6).

Timothy Sanders, a volunteer fireman with a scanner in his truck, was in the parking lot of Celebrations (a night club) that night when he heard Deputy McCants' initial radio call, which was followed by a call saying, "mayday, an officer is down on Dave Lyle." As soon as he heard the broadcast, Mr. Sanders headed toward Dave Lyle where he saw numerous blue lights and emergency officials. After deciding to go look for the suspect vehicle, he then drove to the Holiday Inn in that area where he saw two black males taking "big steps" away from the hotel parking lot. He then came upon a grey Buick with New York tag number "EMF 313" in the same parking lot, so he immediately called the police. Later, he viewed a photo lineup and identified Forney as one of the two men that he had seen walking away from the area where the car was found. (R. p. 1119, line 3 - p. 1130, line 23; p. 1134, lines 2-20).

Dan Ketchel, a reserve officer for the York County Sheriff's Department, responded to the dispatch relaying Mr. Sanders 911 call and talked with Mr. Sanders. (R. p. 1158, line 7 - p. 1160, line 20). He radioed back to the dispatcher that two black males had been seen at the Holiday Inn and identified the suspect vehicle. (R. p. 1160, line 18 - p. 1161, line 1).

At that time, Rock Hill Police Officer Craig Alexander and Officer Joe Long began searching for the suspects. Around midnight, they saw a black male with a red hooded sweat shirt and his hands in his pockets walking down the road. When they stopped in front of him, the man, who was later identified as Forney, ran. After Officer Alexander finally caught him and they were able to frisk him, they found a 9-millimeter weapon with a semi automatic clip on his lower ankle. (R. p. 1174, line 13 - p. 1184, line 20; p. 1320, line 20 - p. 1321, line 8). This gun was positively identified as the one that was used to shoot Deputy McCants. (R. p. 1467, line 23

- p. 1468, line 22). Hughes had possession of this gun in the weeks prior to the murder. (R. p. 1305, line 6 - p. 1307, line 21). The gun was loaded while in Applicant's possession. (R. p. 1308, lines 10-23). After a friend of Applicant's handled the gun in early September, 1992, Hughes wiped the friend's fingerprints off the gun because "you never know what may happen." (R. p. 1308, line 20 - p. 1309, line 10). Police did atomic absorption tests and gun powder residue tests on the hands of Applicant, Forney, and Officer McCants' body. All tests were negative. (R. pp. 1437-39).

Around the same time as Forney's arrest, Hughes was tracked down by blood hounds and the police and SLED. Hughes was found hiding behind a log on a road adjacent to where Forney was arrested. (R. p. 1201, line 1 - p. 1203, line 22). Hughes was then arrested. (R. p. 1205, line 20 - p. 1207, line 25).

Deputy McCants' walkie talkie was found in an area between the two defendants. (R. pp. 1209 - 1210). Also, a black motorolo style walkie-talkie clip which holds a policeman's walkie-talkie was recovered from underneath the driver's side of the 1986 Buick, New York license tag EMF 313. (R. p. 1410, lines 1-8; p. 1411, lines 3-12).

Applicant's right palm print and right ring finger print were found on the gear shift of grey Buick. (R. p. 1414, lines 7-22; p. 1417, lines 15-20). In order for Hughes to have left these prints, he would have had to be sitting in the driver's seat of car and grasping the gear shift. (R. p. 1419, lines 4-9). Applicant's right little fingerprint was found on the front right passenger door handle, as well. (R. p. 1417, lines 17-21). Forney's prints were not found on the gear shift. (R. p. 1418, lines 16-18).

B. Applicant's Statements

Hughes made numerous statements to the police, the media, and fellow inmates regarding his involvement in the murder of Officer McCants. A summary of the statements of Hughes introduced by the State follows:

(1) When Hughes was resisting arrest in the woods, York County Sheriff Deputy Larry T. Devinney jumped on top of Applicant. Officer Devinney shouted that he was a police officer and told Hughes to lay still. Hughes looked back up at Officer Devinney and said, "I did not shoot anybody." (R. p. 1227, line 20 - p. 1228, line 10; p. 1236, line 17 - p. 1238, line 23).

(2) After Hughes was taken to the Rock Hill Police Station (and read his Miranda rights in the police car while being transported), Hughes was placed in an interview room. Officer James Rockholt was placed in the interview room to make sure Hughes did not leave. (R. p. 1250, line 18 - p. 1251, line 14). When Hughes came into the interview room, he went to the chair, "put his hands inside his face and said, 'I'm guilty, I'm guilty.'" (R. p. 1251, lines 15-22).

(3) After being read and waiving his Miranda rights again, Hughes was questioned by Rock Hill Police Department Captain Charles Cabaniss and SLED Agent Bruce Bryant. (R. p. 1256, line 5 - p. 1258, line 3). Hughes gave several statements:

(a) First, Hughes maintained that "he was at the Holiday Inn and had been at the Holiday Inn and had never been with Mr. Forney or ever on Dave Lyle Boulevard where the shooting occurred." (R. p. 1258, lines 12-15).

(b) Next, Hughes claimed "he was with Mr. Forney in Charlotte when the car was acquired when they carjacked and robbed the two

students and acquired the car, but then Mr. Forney dropped him off at the Holiday Inn and then later came back and picked him up shortly before they were arrested." (R. p. 1258, lines 15-20).

(c) After changing his story several more times, Hughes finally gave a "more complete statement" which the police reduced to writing. This statement was as follows:

Tonight shortly after dark I was at the Revco and met up with Eric. I have known him for 3 or 4 years. He had a gun and we got a couple at the light. He told the girl to give up her money several times and she finally did. I told him that he didn't need to be pointing the gun at her. He took the wallet from the man and I thought he was going to shoot him. He was pointing the gun at him.

H 12

After we got the car he was driving and we came to S.C. We went to the Movie Theatre near the Interstate. Sneakers was playing. We stayed only 5 or 10 minutes. We went there because Eric was going to rob it. The woman let us in to watch the movie free because it had already started so we didn't rob her.

We left and Eric was still driving. Shortly after we left the police pulled us. The officer walked up to the car. He said something about the lights not being on. The gun was between Eric's legs. The officer was shining his light into the car as he was walking up to the car. I think he asked Eric to get out. The officer then said, "Buddy or Partner have you been drinking." As Eric walked toward the front of the car he turned and started shooting the officer. It seemed like he was running toward him shooting. I heard a lot of shots but I don't know how many. I jumped out of the car and ran around toward the officer. The officer was on the ground when I got there. I think the officer was face down when I got there. I went and felt his pulse at his neck and did not feel anything. While I was doing this Eric was tugging at the officer trying to get something off him. This was from around his belt area.

The officer said something to the effect of "'I've been shot" or something like that.

Eric started hollering for me to come and get in. I got in and we left. We went back toward I-77 and then Eric pulled into the

Holiday Inn. We were going to get a room but we saw all the police we ran. I hid in the woods and the police dogs later found me. I was hoping like hell they would miss me.

I not exactly sure about all the details in this statement but they are true to the best of my memory.

(State's Exhibit 56). (R. p. 1263, line 21 - p. 1265, line 5; p. 1267, line 24 - p. 1275, line 14).

(4) While being escorted into the courthouse for his bond hearing on September 29, 1992, Hughes was asked if he had anything to say. Hughes responded that the police "put this on us" and "We were ten miles away in Charlotte and they got us and brought us back." (R. p. 1485, lines 8-15; p. 1725, line 1 - 1726, line 23). (State's Exhibit 79).

(5) While in the York County Detention Center, Hughes was heard by fellow inmate Harry Jennings saying, "The best feeling I ever had is when I killed that cop." (R. p. 1510, lines 7-18).

(6) While in the York County Detention Center, Sgt. Broadus Strain overheard Hughes tell fellow inmate Bobby Holmes that "he was going to kill him another white boy." (R. p. 1520, lines 18-22). Hughes said that "when he was going to go down the road, he knew some people who could get him a gun at CCI and he was going to kill him another white boy." (R. p. 1520, line 23 - p. 1521, line 5). (See also R. p. 1907, lines 6-12).

(7) York County Detention Center inmate Richard Waldrop testified that he had a conversation with Hughes in which Hughes admitted shooting Officer McCants:

He had asked me when me and him first got to know each other he told me that -- he asked me what I was in jail for and I explained to

> him what I was in there for and I asked him what he was in jail for and he told me for shooting a police officer. I didn't ask him nothing about how he done it, but he come out and explained to me how he said the police officer pulled him over, whenever he pulled him over, he said the officer come up and got his license and whenever he got his license and started back towards his patrol car, as he started back to the patrol car he said he leaned out of his car and shot the officer. He said the officer fell and when he did, he jumps out of his car and he said he unloaded the gun in him and about the time he got that far I said, "Look, as far as I am concerned I don't even care to hear about all of this."

(R. p. 1919, lines 7-21).

C. Hughes's Testimony

Hughes testified in the guilt phase of the trial. He admitted that he had purchased the gun used to murder Officer McCants. (R. p. 1645, line 3 - p. 1646, line 19). Hughes was familiar with the gun, how it worked, and how to fire it. (R. p. 1667). Hughes claimed that he sold the gun to co-defendant Forney about a week before the murder of Officer McCants. (R. p. 1646, line 20 - p. 1647, line 11).

Applicant testified that on the night of the murder he and Forney decided to "go out and rob some people." (R. p. 1648, lines 1-2). Hughes also admitted he had another knife in his pocket that night. (R. p. 1670, lines 9-10). Hughes admitted he had a "straight razor." (R. pp. 1669, 1673-74). Hughes admitted he and Forney robbed Beth Ann Jayne and Sean McMillan at the Bellisimo Restaurant in Charlotte and stole their car. (R. p. 1648, line 8 - p. 1649, line 17). Hughes also knew Forney had the gun with him when they went out on September 25, 1992. (R. p. 1673). Hughes and Forney then drove down to Rock Hill. Hughes admitted he and Forney then went to Galleria Mall Cinemas. After leaving the cinemas, they then went to a convenience store and Hughes took over the driving of the stolen car. (R. p. 1651, lines 4-16). Hughes

testified that they left the parking lot of the convenience store with their lights off. Officer McCants then pulled their car over. (R. p. 1651, line 14 - p. 1652, line 24). Hughes testified that he got out of the car and when Forney was about to get out of the car, Forney started firing out of the vehicle. (R. pp. 1653-54). Hughes then claimed Forney got out of the car and shot Officer McCants as he stood over him. (R. p. 1658, lines 11-23). Hughes and Forney got back in the car and Hughes drove the car away from the scene. (R. pp. 1659-60). Hughes claimed he never gave or told the police "nothing." (R. p. 1679, line 19 - p. 1680, line 10; p. 1684, lines 7-21; p. 1699, lines 14-17). Hughes did admit he made a statement to the media as he came into the courthouse for his bond hearing. (R. p. 1684, line 22 - p. 1685, line 19).[1]

---

[1] In addition to the evidence submitted in the guilt phase, there was significant evidence in aggravation submitted to the jury in the sentencing phase. This included:

(1) Hughes's prior record in North Carolina which included:
   (a) two counts of breaking and entering;
   (b) discharging a firearm in occupied property;
   (c) assault with a deadly weapon with intent to kill; and
   (d) numerous other burglary and breaking and entering charges, in which Hughes stole at least seven fire-arms.

(R. pp. 1871-73; pp. 1876-81).

(2) Hughes's disciplinary records from the North Carolina Department of Corrections which included the following information:
   (a) wrongfully taking someone else's personal property;
   (b) disobeying a prison official;
   (c) cursing an officer;
   (d) assault upon another inmate;
   (e) improperly receiving property;
   (f) sexual offenses;
   (g) administrative segregation;
   (h) an attempt to escape;
   (i) damaging property;
   (j) threatening a correctional officer;
   (k) possession of a "shank" and assault of a fellow inmate with the shank; and

ALLEGATIONS IN THE APPLICATION FOR STATE POST CONVICTION RELIEF

In the application for post-conviction relief dated September 19,2000, the Applicant, through counsel, makes the following allegations:

> 9(a) *Applicant was denied the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law during the guilt-or-innocence phase because counsel failed to adequately challenge the state's case and to present evidence that Applicant was innocent of the murder and other offenses related to Officer Brent McCants.*
>
> 10(a) The ground for relief states the relevant facts. Counsels' conduct was both unreasonable and prejudicial. *Strickland v. Washington*, 466 U.S. 668 (1984).
>
> 9(b) *Applicant was denied the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United*

(l) an increase in his custody security level due to his numerous infractions and violations.

(R. pp. 1887 - 1900).

(3) Applicant's behavior in the York County Detention Center. (State's Exhibit 83).

(4) Applicant's disciplinary record while at the Broad River Correctional Institution which included the following information:

(a) pulling out a sprinkler head causing his cell to flood;
(b) possession of a handcuff key;
(c) possession of a fourteen-inch "shank";
(d) assaulting a correctional officer;
(e) possession of two razor blades; and
(f) setting his mattress on fire.

(R. pp. 2015 - 2025; pp. 2031-32).

(5) Applicant's stabbings of two of his cellmates in the York County Detention Center. As a result of the stabbings, inmate James Williamson died and inmate Chris Gorth was seriously injured. (See R. pp. 1927 - 2000).

States Constitution and South Carolina law during the sentencing phase because counsel failed to adequately challenge the state's case and to present evidence that would have established that Mr. Hughes was not eligible for the death penalty because he lacked the requisite intent or participation in the crime under Tison v. Arizon, 481 U.S. 137 (1987), and Enmund v. Florida, 458 U.S. 782 (1982).

10(b) The ground for relief states the relevant facts. Counsels' conduct was both unreasonable and prejudicial. *Strickland v. Washington*, 466 U.S. (1984).

9(c) *Applicant was denied the effective assistance of trial counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law in that trial counsel failed to adequately object and to preserve the record for appeal during the sentencing phase.*

10(c) Trial counsels' performance was deficient and prejudicial in that counsel failed to contemporaneously object and to preserve the record for appeal with respect to:

(i) the improper admission of evidence of an alleged murder and assault while Applicant was in pretrial confinement;

(ii) an unconstitutional *Allen* charge (after four hours of deliberations) that told jurors in the minority to "reconsider" and jurors in the majority merely to "consider"; and

(iii) the judge's improper note to the jury asking whether they wanted to continue deliberations through the evening or break until morning was not preserved.

Counsel's conduct was both unreasonable and prejudicial. *Strickland v. Washington*, 466 U.S. 668 (1984).

9(d) *Applicant was deprived Due Process of Law guaranteed by*

the U.S. Constitution because the Grand Jury indicted Applicant on malice aforethought and without the necessary basis.

10(d) The ground for relief states the relevant facts.

STATE POSTCONVICTION RELIEF HAS BEEN ABANDONED

On September 19, 2000, designated examiners from the William S. Hall Institute opined that Hughes was competent to be executed under the Singleton standard. Subsequent to the filing of the Application Hughes wrote the Clerk of Court for York County filed on September 28, 2000 that "I am exercising my right of ten(10) day notice to withdraw PCR and other court readdress. That I have dropped other process. My lawyer Teresa L. Norris explain to me that I am competent to drop appeal process. That she will honor my decision." Therefore it appears that this particular application for state post-conviction relief has been voluntarily abandoned by the Applicant. Pursuant to Rule 41(a)[2], Respondents submit that Hughes has voluntarily dismissed his Application for State Post-Conviction Relief prior to service of an answer by the Respondents.

---

[2] RULE 41. DISMISSAL OF ACTIONS; NON-SUIT

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff; By Stipulation. Subject to the provisions of Rule 23(c), of Rule 66(a), and of any statute, an action may be dismissed by the plaintiff without order of court (A) **by filing and serving a notice of dismissal at any time before service by the adverse party of an answer or motion for summary judgment, whichever first occurs,** or (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

CONCLUSION

Wherefore having made a Return to clarify the status of this matter, Respondents recognize that this prior action has been voluntarily dismissed pursuant to Rule 41(a) by action of Mr. Hughes. Under Rule 41(a),the dismissal is done without order of the Court.

WHEREFORE, Respondent has made a Return to the Motion.

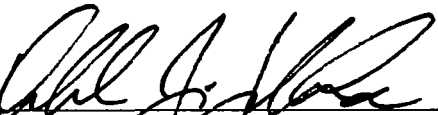
Respectfully submitted,

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 20, 2000

THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS FOR YORK COUNTY

MAR-REECE ALDEAN HUGHES,

Applicant,

vs.

WILLIAM D. CATOE, et al,

Respondent.

PROOF OF SERVICE

I, Donald J. Zelenka, Counsel for the Respondent, certify that I have served the within **Return to Motion For Stay Of Execution, Assignment of Circuit Court Judge, and Appointment of Post-Conviction Counsel** by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to his attorneys of record as follows:

Teresa L. Norris
Center for Capital Litigation
P.O. Box 11311
Columbia, South Carolina 29211

Gwendlyne Young Smalls
115 E. Moultrie Street
Winnsboro, South Carolina 29180

Mar-Reece Aldean Hughes, #5021
Maximum Security Unit
Kirkland Correctional Institution
4344 Broad River Road
Columbia, South Carolina 29210

I further certify that all parties required by Rule to be served have been served this 20th day of October, 2000.

DONALD J. ZELENKA
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305
ATTORNEY FOR RESPONDENT

CERTIFIED TRUE COPY
SEP 21 3 44 PM '00
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK)

STATE OF SOUTH CAROLINA)

vs.)

MAR-REECE ALDEAN HUGHES,)

Defendant.)

93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

RECEIVED
SEP 25 2000
S.C. SUPREME COURT

Report of Circuit Court

By Order dated May 11, 2000, issued by the South Carolina Supreme Court, certain issues regarding petitioner were remanded to the Court. The order of remanded instructed the Court to conduct a full competency hearing and make factual findings as to petitioner's "competency to waive filing a PCR action," and "competence to be executed."

The undersigned issued an Order for Pre-Execution Competency Evaluation on July 31, 2000. Evaluations took place September 7th and 14th, 2000 at Kirkland Correctional Institution. The evaluations were conducted by staff members from William S. Hall Psychiatric Institute. They included two medical doctors, a Licensed Clinical Psychologist, and the director of professional service for the institute, R. Gregory Lande, D.O. Counsel for petitioner was present at each interview.

William S. Hall Psychiatric Institute Forensic Unit Staffing issued a Forensic Evaluation of Petitioner dated September 18, 2000, and received by the undersigned on that date. The report, in short, diagnosed petitioner as to AXIS I, Schizophrenia, Undifferentiated type, Episodic with Interepisode Residual Features; AXIS II, Borderline Intellectual Functioning and as to AXIS III, no diagnosis. The examiners found, and in an exhaustive and detailed eleven

page report, found petitioner competent to both waive his PCR action and to be executed.

The undersigned, by telephone, was informed by petitioner's counsel on September 19, 2000, that petitioner had changed his mind and indicated a desire to file an application for post-conviction relief. This was confirmed by receipt of petitioner's counsel's letter of September 18, 2000, received by the undersigned on September 20, 2000 (copied to Daniel E. Shearouse, South Carolina Supreme Court Clerk of Court). The letter, penned by petitioner's counsel, in petitioner's words, signed by petitioner and notarized, states that petitioner had changed his mind and that he does not want to waive his PCR, nor does he want to be executed. In the letter, petitioner maintained his innocence and confidence in his current counsel.

The undersigned, armed with the above, without the necessity of a hearing, believes petitioner is competent to exercise his right to continue with a PCR proceeding and is competent to resist his execution.

This Report is just that, a report as the undersigned has not fully complied with the Court's May 11, 2000 Order, but is convinced further action by the undersigned is rendered moot by petitioner's notarized statement of September 18, 2000. The undersigned will hold further proceedings at the Circuit Court level in abeyance pending further instructions by the Supreme Court.

John C. Hayes, III
Presiding Judge

September 21, 2000
York, South Carolina

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

JOHN C. HAYES, III
JUDGE

MOSS JUSTICE CENTER, 2ND FLOOR
1675-1H YORK HIGHWAY
YORK, SOUTH CAROLINA 29745-7423
(803)628-3047
FAX: (803)628-3055

FACSIMILE

TO: Teresa L. Norris, Center for Capital Litigation: (803) 765-0705
Donald J. Zelenka, Office of the Attorney General: (803) 253-6283
Daniel E. Shearouse, Supreme Court Clerk of Court: (803) 734-1499

FROM: John C. Hayes III, Judge

DATE: September 21, 2000

RE: State v. Mar-Reece Aldean Hughes

NUMBER OF PAGES (INCLUDING COVER PAGE): 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF YORK	)	93-GS-46-4296
		93-GS-46-4299
STATE OF SOUTH CAROLINA,	)	93-GS-46-4301
	)	93-GS-46-4303
vs.	)	
	)	
MAR-REECE ALDEAN HUGHES,	)	
	)	
Defendant.	)	
	)	

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This Report is just that, a report as the undersigned has not fully complied with the Court's May 11, 2000 Order, but is convinced further action by the undersigned is rendered moot by petitioner's notarized statement of September 18, 2000. The undersigned will hold further proceedings at the Circuit Court level in abeyance pending further instructions by the Supreme Court.

John C. Hayes, III
Presiding Judge

September 21, 2000
York, South Carolina

CENTER FOR CAPITAL LITIGATION
1247 SUMTER STREET. SUITE 303 (29201)
POST OFFICE BOX 11311
COLUMBIA, SOUTH CAROLINA 29211

Teresa L. Norris
Director

Voice: (803) 765-0650
Fax: (803) 765-0705
Email: tnorris@usit.net

September 18, 2000

The Honorable John C. Hayes, III
Moss Justice Center
1675-1H York Highway
York, SC 29745

Re: *State v. Mar-Reece Aldean Hughes*

Dear Judge Hayes:

As you know, the South Carolina Supreme Court remanded this matter to you for a competence to be executed and competence to waive appeals evaluation because Mr. Hughes had previously indicated a desire to waive his appeals. I am writing to inform you that Mr. Hughes has changed his mind and has decided to file an application for post-conviction relief. *See* Attached Letter (my handwriting but Mr. Hughes's signature and words).[1]

The William S. Hall evaluation that you ordered has not yet been completed. At this point, I see no reason to complete that evaluation because it would not be relevant or admissible in any other proceedings.

A post-conviction relief application will be filed as soon as possible.

RECEIVED
SEP 19 2000
S.C. SUPREME COURT

[1]I am sending the original of this letter to the Clerk of the South Carolina Supreme Court.

Please do not hesitate to contact me if you have any questions regarding this matter or if I can provide you with any additional information.

Sincerely,

Teresa L. Norris

Teresa L. Norris

enc.

cc: Daniel E. Shearouse, South Carolina Supreme Court Clerk of Court
David Hamilton, York County Clerk of Court
Mark Binkley, Department of Mental Health Counsel
Donald J. Zelenka
Gwendlyne Smalls
Mar-Reece A. Hughes

RECEIVED
SEP 19 2000
S.C. SUPREME COURT

9-18-00

Dear Judge Hayes,

Not from inconsistency of facts, on the merit that I'm innocent, I have yet to see Teresa Norris failure. Therefore, I want a PCR compliance. I have changed my mind and do not want to waive my PCR and be executed.

Glen Allen Agnew

Sworn to and subscribed before me this 18th day of September, 2000

Teresa L. Norris

Teresa L. Norris,
Notary Public of S.C.
My Commission Expires 2/6/2005

RECEIVED
SEP 19 2000
S.C. SUPREME COURT

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

May 11, 2000

Teresa L. Norris, Esquire
Center For Capital Litigation
P O Box 11311
Columbia, SC 29211

Re: The State v. Hughes, Mar-Reece Aldean

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 Robert F. Daley, Jr.
The Honorable Thomas E. Pope
The Honorable David Hamilton

The Supreme Court of South Carolina

The State, Respondent,

v.

Mar-Reece Aldean Hughes, Petitioner.

ORDER

In September 1995, petitioner was convicted of murder, armed robbery, criminal conspiracy, possession of a firearm during the commission of a crime, and possession of a stolen vehicle. He was sentenced to death for the murder. This Court affirmed petitioner's convictions and sentences in State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999). The United States Supreme Court denied certiorari on March 20, 2000.

In a letter to the Attorney General dated February 25, 2000, petitioner gave notice that he "dropped all levels of appeal" and requested "immediate execution." As a result of this letter, Teresa L. Norris, Esquire,

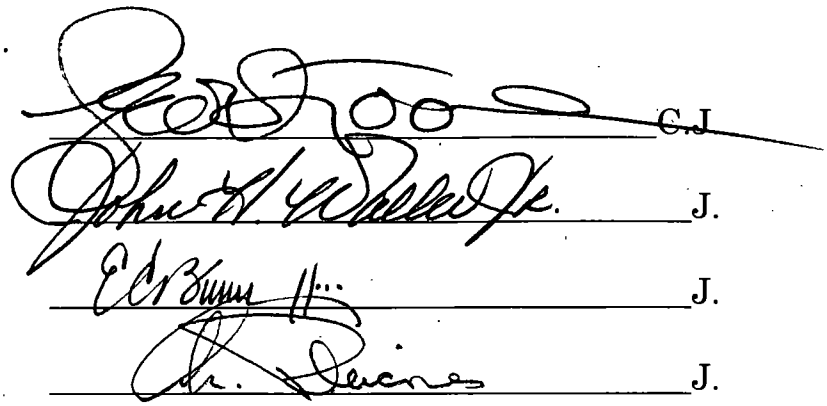
petitioner's counsel, had him evaluated by a forensic psychiatrist. Ms. Norris has now filed the instant motion arguing that petitioner is not competent to waive his right to file for post-conviction relief (PCR) or to be executed. Ms. Norris therefore requests that the Court issue a stay of execution and appoint counsel to protect petitioner's interests. Ms. Norris has expressed a willingness to continue her representation of petitioner. The State has filed a return opposing the motion.

We remand this matter to the circuit court to conduct a full competency hearing. Specifically, the circuit court shall make factual findings on the issues of whether petitioner is (1) competent to waive filing of a state PCR action; and (2) competent to be executed. In order to determine petitioner's competency to waive PCR proceedings and to be executed, the circuit court shall apply the standard enunciated in Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993). Cf. State v. Torrence, 317 S.C. 45, 451 S.E.2d 883 (1994) (applying Singleton standard to issue of defendant's competency to dismiss direct appeal). Ms. Norris shall continue to represent petitioner in that proceeding.

The issues raised by Ms. Norris on petitioner's behalf shall be

held in abeyance pending a determination of competency.

IT IS SO ORDERED.



C.J.

J.

J.

J.

Moore, J., not participating

Columbia, South Carolina

May 11, 2000

CENTER FOR CAPITAL LITIGATION
1247 SUMTER STREET, SUITE 303 (29201)
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Teresa L. Norris
Director

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Email: tnorris@usit.net

March 20, 2000

Via Hand-Delivery

RECEIVED
MAR 2 0 2000
S. C. SUPREME COURT

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

RE: State v. Mar-Reece Aldean Hughes, York County Death Penalty Appeal (Op. No. 25003)

Dear Mr. Shearouse:

Please find enclosed the original and six copies, along with proof of service, of a Motion for a Stay of Execution. Please do not hesitate to contact me if you have any questions regarding this matter or if I can provide you with any additional information.

Sincerely,

Teresa L. Norris

Teresa L. Norris

enc.

cc: Donald J. Zelenka
Robert Carey
Bradley Tellam

RECEIVED
MAR 2 0 2000
S. C. SUPREME COURT

IN THE SUPREME COURT

In the Original Jurisdiction

MAR-REECE ALDEAN HUGHES,

MOVANT,

v.

THE STATE,

RESPONDENT.

MOTION FOR A STAY OF EXECUTION
ON THE GROUND OF INCOMPETENCE

Counsel for Mar-Reece Aldean Hughes request a stay of execution because Mr. Hughes is incompetent to be executed and incompetent to waive his right to file a post-conviction relief application. In support of this motion, counsel submit the following facts and argument.

On September 18, 1995, Mr. Hughes was convicted of murder, armed robbery, criminal conspiracy, possession of a firearm during the commission of a crime, and possession of a stolen vehicle. On September 22, 1995, the Honorable John Hayes, following the recommendation of the jury, imposed a death sentence for the murder conviction, and consecutive sentences of thirty years for armed robbery, five years for criminal conspiracy, five years for possession of a firearm during the commission of a crime, and five years for possession of a stolen vehicle. This Court affirmed the convictions and sentences on October 4, 1999, and the United States Supreme Court denied certiorari on March 20, 2000.

This Court has ordered that a stay of execution shall be granted to a death-sentenced inmate who, following denial of a petition for a writ of certiorari, notifies this Court within ten days of the issuance of an execution notice of his desire to pursue post-conviction relief. *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 546, 471 S.E.2d 140, 141 (1996). The Court also requires the inmate to set forth the issues intended to be raised in a post-conviction relief application. Mr. Hughes has numerous viable issues to raise in post-conviction proceedings, including ineffective assistance of counsel in the guilt-or-innocence phase for failing to adequately present evidence that would have established that Mr. Hughes was not the actual triggerman in the murder and was not eligible for the death penalty because he lacked the requisite intent or participation in the crime under *Tison v. Arizona*, 481 U.S. 137 (1987), and *Enmund v. Florida*, 458 U.S. 782 (1982). At present, as indicated in a letter to the Attorney General (attached), Mr. Hughes has requested execution. Mr. Hughes is not, however, competent to be executed or competent to waive his right to file a post-conviction relief application.

In *Ford v. Wainwright*, 477 U.S. 399 (1986), the United States Supreme Court held that the Eighth Amendment prohibits execution of a prisoner who is incompetent. This Court subsequently held that the determination of competence includes a two-prong analysis.

> The first prong is the cognitive prong which can be defined as: whether a convicted defendant can understand the nature of the proceedings, what he or she was tried for, the reason for the punishment, or the nature of the punishment. The second prong is the assistance prong which can be defined as: whether the convicted defendant possesses sufficient capacity or ability to rationally communicate with counsel.

Singleton v. State, 313 S.C. 75, 84, 437 S.E.2d 53, 58 (1993). This same standard of competence is applicable in determining whether the defendant is competent to waive his rights to appeal. *State v. Torrence*, 317 S.C. 45, 451 S.E.2d 883 (1994).

As is set forth in the attached affidavit of Dafferlin Bernard-Dupree, M.D., Mr. Hughes has a long history of mental illness and was found to be incompetent prior to his trial. His competence was restored only after he was involuntarily, forcibly medicated.

Mr. Hughes suffers from chronic schizophrenia, paranoid type, which is a major mental illness that increases in severity over time. He is also of borderline intelligence, at best. When tested at the Hall Institute in 1995, his IQ was 79. His IQ in 1983 was 101. This significant decrease, according to the experts who testified at trial, is a result of his profound mental illness.

Following his letter to the Attorney General, at the request of the undersigned counsel,[1] Mr. Hughes was examined by Dr. Bernard-Dupree. She examined Mr. Hughes on March 18, 2000, at the Maximum Security Unit of Kirkland Correctional Institution in Columbia, South Carolina. Dr. Dupree, who has experience in performing psychiatric examinations and rendering an expert opinion regarding competence to waive appeals and competence to be executed, found that Mr. Hughes is actively psychotic at present. After a two-hour examination, Dr. Bernard-Dupree found, to a reasonable degree of medical certainty, that Mr. Hughes is not presently competent to waive his appeals and is not competent to be executed. Furthermore, without medications, which he adamantly refuses, Dr. Bernard-Dupree is of the opinion that Mr. Hughes is not likely to become competent.[2]

---

[1]Mr. Carey and Mr. Tellam served as pro bono counsel for Mr. Hughes in the United States Supreme Court. The first undersigned counsel was associated to assist Mr. Carey and Mr. Tellam after Mr. Hughes's letter to the Attorney General.

[2]Under *Singleton*, Mr. Hughes cannot be forcibly medicated for the purpose of restoring his competence to be executed.

WHEREFORE, counsel request that this Court stay Mr. Hughes's execution and appoint the undersigned counsel to protect his interests.[3]

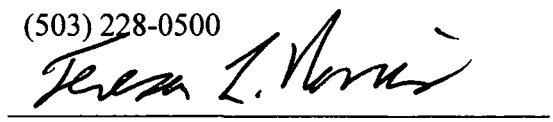
Respectfully submitted,

TERESA L. NORRIS

Center for Capital Litigation
P.O. Box 11311
Columbia, S.C. 29211
(803) 765-0650

ROBERT L. CAREY
BRADLEY F. TELLAM

Barran Liebman, LLP
601 SW Second Ave., Suite 2300
Portland, Or 97204
(503) 228-0500

By: 

March 20, 2000.

[3]Mr. Carey and Mr. Tellam are both members in good-standing of the bars of Oregon, the United States Supreme Court, and other courts. Ms. Norris hereby moves for admission pro hac vice and will follow with a formal motion, if this Court desires additional information.

ATTACHMENT 1

CHARLES. CONDON

RE. #5021 SOUTH CAROLINA
CLENTH ROW
MAX-RECE ST. HEIGHTS

THIS IS AN LEGAL OFFICIAL NOTICE THAT
ON FEBUARY 25-2000 I EXHAUSTED ALL
LEVELS OF APPEAL ISSUE AT U.S. SUPREME
COURT. THAT I'M REGISTERED IMMEDIATE
EXECUTION BY S.C. STATE LAW OF
ELECTRIC CHAIR. [illegible]
FEBUARY 25-2000

ATTORNEY GENERAL'S OFFICE
RECEIVED 3-3-00
ADMINISTRATIVE INSTRUCTIONS
FILE OPEN END
COPIES MADE

ATTACHMENT 2

COUNTY OF RICHLAND)
) AFFIDAVIT
STATE OF SOUTH CAROLINA)

Affidavit of Dafferlin Barnard-Dupree, M.D.

DAFFERLIN BERNARD-DUPREE., M.D., appeared personally before me and after being duly sworn, deposes and says:

1. I am a board-certified forensic psychiatrist. I received my M.D. in 1984 from Georgetown University School of Medicine. I then completed a residency in psychiatry at Emory University and a fellowship in forensic psychiatry at the William S. Hall Psychiatric Institute and the University of South Carolina School of Medicine. From 1988 to 1993, I served as Medical Director at the Tri-County Mental Health Center. I also served as a consultant doing court-ordered out-patient examinations and serving as a teaching psychiatrist at the Hall Institute from 1993 to 1997. I am currently a forensic psychiatrist at Liberty Forensic Unit/Central State Hospital, where I am an attending psychiatrist on an inpatient pre-trial maximum security forensic unit. I have conducted approximately 400 forensic examinations, most as a result of court-ordered examinations. I have testified as a court-appointed expert in approximately 50 cases in criminal, civil, and family courts. In approximately 50 percent of those cases, I was called as an expert by the State.

2. I first examined Mar-Reese Hughes in July 1994 at the request of his defense counsel. At that time, I found that Mr. Hughes was not competent and diagnosed psychosis not otherwise specified because I did not have sufficient information for a specific diagnosis. Subsequently, in a joint evaluation of Mr. Hughes with examiners from the Hall Institute, the examiners from Hall agreed that Mr. Hughes was not competent. As a result, the trial court ordered that Mr. Hughes be admitted to the Hall Institute for treatment and restoration of competence and appointed me and Donald

Morgan, M.D., of the Hall Institute as the treating physicians. Mr. Hughes was hospitalized at Hall from September 8 to November 18, 1994, and was then examined on a frequent basis at the Broad River Correctional Institution by me , Dr. Morgan, and Dr. Renee Kohanski, also of the Hall Institute, until the time of his trial in September 1995.

3. As I testified at trial, my diagnosis of Mr. Hughes is chronic schizophrenia, paranoid type, which is a major mental illness that becomes more severe over time. with time. In addition, at best, Mr. Hughes is of borderline intelligence. When tested at the Hall Institute in 1995, his IQ was 79. His IQ in 1983 was 101. This significant drop, in my opinion, is a result of his severe mental illness.

4. I again examined Mr. Hughes, at the request of his defense counsel, on March 18, 2000, at the Maximum Security Unit of Kirkland Correctional Institution in Columbia, South Carolina. I have reviewed a letter to the Attorney General written by Mr. Hughes to the Attorney General indicating that he "dropped all levels of appeal" and requesting execution. I was asked to examine him for competence. I have conducted such an examination previously as a court-appointed examiner in the case of Robert South. My conclusion and that of other examiners was that Mr. South was competent to waive his appeals. He was permitted to do so and was executed by the State of South Carolina in May 1996.

5. My examination of Mr. Hughes, on March 18, 2000, revealed many of the same signs and symptoms that were present in 1994 when he was found to be incompetent by the trial court, based on my findings and the findings of court-appointed examiners at the Hall Institute. At present, it is my opinion that Mr. Hughes is actively psychotic and still suffers from schizophrenia, which, untreated by appropriate medication, has become severe. Mr. Hughes is not currently medicated and

has refused medications since his trial in 1995. His borderline intelligence is a contributing factor to my conclusion that he is not competent. As noted, it is reasonably probable Mr. Hughes' his intelligence is actually lower than earlier testing indicated because he has not been tested since 1995. Given the drastic drop in IQ seen from 1983 to 1995, as a result of his untreated mental illness, his IQ may actually be lower than 79, the level found in 1995.

6. I spent approximately two hours with Mr. Hughes to determine whether he is competent to make a knowing, intelligent, and voluntary waiver of his right to file an application for post-conviction relief and whether he is competent to be executed, which requires a determination of whether he 1) can understand the nature of the proceedings, what he was tried for, the reason for the punishment, and the nature of the punishment; and 2) possesses sufficient capacity or ability to rationally communicate with counsel. In my opinion, to a reasonable degree of medical certainty, Mr. Hughes is not presently competent to waive his appeals and is not competent to be executed. Without medications, which he adamantly refuses, he is not likely to become competent.

FURTHER AFFIANT SAYETH NAUGHT.

D'Barnard-Dupree M.D.
DAFFERLIN BARNARD-DUPREE, M.D.

Sworn to and subscribed before me,
this the 20th day of March, 2000.

Teresa L. Norris
NOTARY PUBLIC FOR SOUTH CAROLINA
Teresa L. Norris
My commission Expires: 2/6/2005

IN THE SUPREME COURT

In the Original Jurisdiction

MAR-REECE ALDEAN HUGHES,

MOVANT,

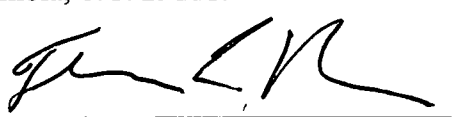
v.

THE STATE,

RESPONDENT.

CERTIFICATE OF SERVICE

I certify that I have served the Motion for a Stay of Execution on the Respondent by facsimile and by depositing a copy in the United States Mail, postage prepaid, on March 20, 1999, addressed to Respondent's attorney of record, Donald J. Zelenka, Assistant Deputy Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, S.C. 29211.



TERESA L. NORRIS

Center for Capital Litigation
P.O. Box 11311
Columbia, SC 29211
(803) 765-0650

ATTORNEY FOR APPELLANT.

March 20, 2000.

RECEIVED
APR 12 2000
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
The Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

MAR-REECE ALDEAN HUGHES,

Appellant.

Return to Motion For Stay Of Execution On The Ground Of Execution On The Ground Of Incompetence

---

The Respondent, through undersigned counsel, hereby make a Return to the Motion For Stay Of Execution On The Ground Of Execution On The Ground Of Incompetence dated March 20, 2000. In this motion, counsel for Mar-Reece Hughes assert that he is incompetent to be executed and that his expressed decision to forego further post-conviction remedies. Respondents submit the stay request must be denied under the circumstances and procedure set forth in *Singleton v State*, 313 S.C. 75, 437 S.E.2d 53 (1993). Further Respondents submit , upon information and belief, that a recent evaluation within the South Carolina Department of Corrections on January 7, 2000 and January 12, 2000 by designated examiners, a licensed social worker and medical doctor, respectively, pursuant to a Probate Court commitment who each concluded that Hughes "is not mentally ill." for purposes of the mental health commitment. (A copy of the materials are attached as Exhibit A).[1]

---

[1] Respondents also submit that the records of the South Carolina Department of Corrections further reveals a diagnosis on January 19, 2000 of adjustment disorder with mixed

In Singleton, this Court established the procedure for resolving issues of pre-execution insanity. Particularly, this Court stated:

> Remedy and Procedures
>
> **Upon the issuance of an Order for Execution by this Court, the defendant or his/her guardian may apply for subsequent Post Conviction Relief on the basis of competency, pursuant to S.C.Code Ann. § 17-27-20(a)(6) (1985). At the evidentiary hearing, the applicant, through competent evidence or expert testimony, must show by a preponderance of the evidence that he or she lacks the requisite competency for execution. If the PCR court finds the applicant incompetent in accordance with the standard adopted in this opinion, then the appropriate remedy is to issue a temporary stay of execution pending a mandatory review by this Court.**
>
> **Once the defendant is found incompetent and the stay of execution is affirmed by this Court, the burden necessarily shifts to the State to move for a hearing upon the defendant's return to competency. At this subsequent hearing, the State must show by a preponderance of the evidence that the defendant is competent to be executed. If the State establishes competency, then the PCR court may lift the previous stay of execution subject to the review of this Court.**

Singleton, supra at 87.

Here, the issuance of a stay is premature under the Singleton procedure because no PCR court has determined that there is the existence of Singleton insanity by a preponderance of the evidence. To enter a stay now would turned the reasoned procedure of *Singleton* on its head. Instead, under *Singleton*, this Court must enter an execution order and then the Applicant's guardians may seek a temporary stay under the Singleton procedure before that Court subject to review by this Court.

The apparent problem may not be one of competence, but rather an intent to forego

---

disturbance of emotion and conduct, aan April 20, 1998 diagnosis of schizophrenia paranoid (not as acute), a July 1997 diagnosis of Psychotic disorder (not otherwise specified), and on February 24, 1994 a diagnosis of antisocial personality disorder and malingering. (Exhibit B) Attached.

discretionary, not mandatory appellate procedures. In *State v Torrence*, 322 S.C.475, 473 S.E.2d 703 (1996), this Court recognized that a capital defendant may, constitutionally, waive the right of general statutory mandatory capital appeal so long as we first determine the defendant is competent and his decision is knowing and voluntary. Here, the Court should not entertain the stay matter at this stage because it involves the waiver of the right to pursue discretionary postconviction matters in the Circuit Court, not this Court. The reasoning of *Singleton* was sound in creating the procedure therein. This is particularly true where the Petitioner's counsel concedes that he wrote the Attorney General expressing his own intent to waive appeals and remedies. See *Motion*, p. 3, *Attachment 1 to Motion*. Therefore, we respectfully submit that the motion to stay should be denied without prejudice. However, in light of such assertion, this Court may wish to assign a particular trial judge in anticipation of presentation of such a claim as was done in the matter of Larry Gene Bell, the last time a similar preexecution insanity claim was presented in the Court in September 1996.

This Court denied the appeal on October 4, 1999. *State v Hughes*, _ S.C._, 1999 Westlaw 792550 (S.C.Sup. Ct. Oct. 4, 1999). Pursuant to this Court's Order, a date of execution set for Friday, November 19, 1999, was stayed to allow pursuit of certiorari in the United States Supreme Court. Certiorari in the Court was denied on March 20, 2000. Under this Court's procedures of *In Re Stays of Execution In Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), "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. I f the general issues are appropriate for post-conviction relief, this Court will assign a circuit judge to the case and issue a stay of execution." Here, Hughes has not stated his intent to pursue such relief, to the contrary, the motion states that Hughes does not intend or desire to pursue it at all. *Attachment A to the Motion*.

The motion must be denied.

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
April 7, 2000

Exhibit A

Designated Examiners Reports

January 7, 2000

January 12, 2000

South Carolina Department of Corrections

JIM HODGES, Governor
WILLIAM D. CATOE, Director

Gilliam Psychiatric Hospital
4344 Broad River Road
Columbia, South Carolina 29210
January 12, 2000

Richland County Probate Court
PO Box 192
Columbia, South Carolina 29202

ATTENTION:

Inmate Mar-Reece Hughes of Richland County was admitted to the Department of Corrections Gilliam Psychiatric Hospital on January 06, 2000 on judicial admission papers.

Enclosed herewith is the report of the designated examiners as prescribed for in the Section 44-17-410, Code of Laws of South Carolina, 1986.

Sincerely,

James E. Page

James E. Page
Hospital Administrator II
Gilliam Psychiattic Hospital

JEP/pgy
pc: GPH Client File
Medical Records
file

REPORT OF DESIGNATED EXAMINER FOR MENTAL ILLNESS PAGE 1

Name of Person Examined	Sex	County of Residence	Date of Birth	Age
MAR-REECE HUGHES	M	RICHLAND	[redacted]	33

Place of Examination	Hour and Date of Examination
GILLIAM PSYCHIATRIC HOSPITAL, SCDC	2:00PM 1-7-2000

Name of Designated Examiner	Degree	Place of Professional Employment
ERNEST SHAW	LMSW	GILLIAM PSYCHIATRIC HOSPITAL, SCDC

THE UNDERSIGNED EXAMINER, having been directed by Probate Court Order to do so, have examined the above-named person nd am of the opinion that th· said individual:
Check appropriate boxes.)

☐ IS MENTALLY ILL, NEEDS TREATMENT AND BECAUSE OF THIS MENTAL ILLNESS:

Lacks sufficient insight or capacity to make responsible decisions with respect to his/her treatment;

AND/OR

There is a likelihood of serious harm to self or others:

AND THEREFORE,

(1) ☐ INVOLUNTARY HOSPITALIZATION IS RECOMMENDED.

(2) ☐ INVOLUNTARY OUTPATIENT TREATMENT IS RECOMMENDED.

My recommendation is based on the following symptoms and specific examples of behavior:

(See reverse side which must be completed)

II. ☑ IS NOT MENTALLY ILL to such an extent that involuntary treatment is presently required.

My recommendation is based on the following observations and opinions: INMATE HUGHES WAS ADMITTED BECAUSE HE REPORTEDLY WAS EXHIBITING EVIDENCE OF DETERIORATION IN HIS MENTAL CONDITION. HE WAS DESCRIBED AS NON-RESPONSIVE AND UNCOOPERATIVE, HE HAS A HISTORY OF ASSAULTIVE AND UNCOOPERATIVE BEHAVIOR, POOR HYGIENE AND POOR COMPLIANCE WITH TREATMENT. INMATE HUGHES IS A DEATH ROW INMATE AND IT IS THOUGHT THAT A PENDING EXECUTION MIGHT BE A PRECIPITATING FACTOR IN THE DETERIORATION OF HIS CONDITION.

AT THE TIME OF MY INTERVIEW WITH INMATE HUGHES HE WAS ALERT AND ORIENTED. HE NOTED THAT IT IS DIFFICULT TO KEEP TRACK OF TIME WHEN YOU DON'T HAVE A WATCH OR CALENDAR. HE DENIED AUDITORY AND VISUAL HALLUCINATIONS AS WELL AS HOMICIDAL AND SUICIDAL IDEATIONS. INMATE HUGHES DENIED THAT HE WAS MENTALLY ILL. HE ATTRIBUTED HIS BEHAVIOR PRIOR TO ADMISSION TO HIS NEED TO DRAW ATTENTION TO THE FACT THAT HIS CELL WAS DIRTY AND NEEDED CLEANING. HE ALSO DENIED THAT HIS STATUS ON DEATH ROW WAS A FACTOR AND SAID THAT HE STILL HAD ADDITIONAL APPEALS BEFORE ANY EXECUTION.

My recommendation for additional treatment on a voluntary basis is: THERE IS NO DOUBT THAT THIS INMATE IS DANGEROUS TO OTHERS AND POSSIBLY HIMSELF DUE TO HIS HOPELESS POSITION. HOWEVER THERE IS INSUFFICIENT EVIDENCE OF MENTAL ILLNESS TO SUCH AN EXTENT THAT INVOLUNTARY HOSPITALIZATION IS NECESSARY AT THIS TIME. HIS DANGEROUSNESS SHOULD BE ADDRESSED THROUGH SECURITY MEASURES. SITUATIONAL DISTRESS RELATED TO ANY PENDING EXECUTION SHOULD BE ADDRESSED THROUGH OUTPATIENT COUNSELING.

SIGNATURE OF DESIGNATED EXAMINER	DEGREE	MEDICAL OR PROFESSIONAL LICENSE NO.
	LMSW	0788

TYPED OR PRINTED NAME OF DESIGNATED EXAMINER	PHONE NUMBER
ERNEST SHAW	803-896-2279

STREET ADDRESS	CITY	COUNTY	ZIP
4344 BROAD RIVER RD.	COLUMBIA	RICHLAND	29210

NOTE: (1) "Mentally ill person" means a person afflicted with a mental disease to such an extent that, for his own welfare or the welfare of others or of the community, he requires care, treatment or hospitalization;

(2) "Likelihood of serious harm" means because of mental illness there is (1) a substantial risk of physical harm to the person himself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm; (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior and serious harm to them or (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that the person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community;

All Information MUST be typed or clearly printed.

REPORT OF DESIGNATED EXAMINER FOR MENTAL ILLNESS PAGE 1

Name of Person Examined	Sex	County of Residence	Date of Birth	Age
MAR-Reece Hughes	M	Richland	[redacted]	33

Place of Examination	Hour and Date of Examination
St Vincent Behavioral Health Hospital	11/2/2000

Name of Designated Examiner	Degree	Place of Professional Employment
DR Jacques Bathle	M.D.	St Vincent Behavioral Health Hospital

THE UNDERSIGNED EXAMINER, having been directed by Probate Court Order to do so, have examined the above-named person nd am of the opinion that the said individual:
Check appropriate boxes.)

☐ IS MENTALLY ILL, NEEDS TREATMENT AND BECAUSE OF THIS MENTAL ILLNESS:

Lacks sufficient insight or capacity to make responsible decisions with respect to his/her treatment;

AND/OR

There is a likelihood of serious harm to self or others:

AND THEREFORE,

(1) ☐ INVOLUNTARY HOSPITALIZATION IS RECOMMENDED.

(2) ☐ INVOLUNTARY OUTPATIENT TREATMENT IS RECOMMENDED.

My recommendation is based on the following symptoms and specific examples of behavior:

(See reverse side which must be completed)

II. ☑ IS NOT MENTALLY ILL to such an extent that involuntary treatment is presently required.

My recommendation is based on the following observations and opinions:

Dangerous

My recommendation for additional treatment on a voluntary basis is:

as PRN

Vincent Rabbie — MD — 4972

SIGNATURE OF DESIGNATED EXAMINER | DEGREE | MEDICAL OR PROFESSIONAL LICENSE NO.

JACQUES RABBIE — 856-8597

TYPED OR PRINTED NAME OF DESIGNATED EXAMINER | PHONE NUMBER

[redacted] — Columbia — Richland — 29210

STREET ADDRESS | CITY | COUNTY | ZIP

NOTE: (1) "Mentally ill person" means a person afflicted with a mental disease to such an extent that, for his own welfare or the welfare of others or of the community, he requires care, treatment or hospitalization;

(2) "Likelihood of serious harm" means because of mental illness there is (1) a substantial risk of physical harm to the person himself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm; (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior and serious harm to them or (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that the person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community;

All Information MUST be typed or clearly printed.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Health Services

CONSENT FOR NEUROLEPTIC MEDICATIONS

1. I understand that neuroleptics are a group of drugs which are sometimes used to treat mental/behavioral disorders.

2. I understand that neuroleptic medications may be beneficial in that they assist in clearing thinking and in reducing impulsiveness. These medications may also prevent the recurrence of my mental symptoms. I understand that there is no guarantee as to the results that may be expected.

3. I have been informed by my attending physician, (who plans to treat) (who is treating me) with neuroleptic medications, that the use of these types of medications may cause progressive, irreversible side effects (tardive dyskinesia), consisting of involuntary movements of the mouth, tongue, limbs or body, hands or feet for which no effective treatment is available at this time. I also understand that the continuous use of these medications may hide or worsen symptoms or tardive dyskinesia. The symptoms may not appear until the medication is withdrawn. I understand that I should promptly notify my doctor or another member of the staff if there are any unexpected changes in my condition.

4. I understand that other available appropriate alternatives have been considered and I agree that neuroleptic medications are the best treatment available for my conditions.

5. I understand that any further questions will be answered and that these medications may be stopped upon request.

6. I hereby consent to the administration of neuroleptic medications to (me) (my next of kin) for treatment of (my) (his) (her) mental/behavioral symptoms.

[signature]		11/6/00
Patient	SCDC#	Date
[signature]		11/6/00
Witness		Date
Responsible Other Party/Correspondent		Date
[signature]		11/7/00
Physician/Primary Therapist		Date

SCDC# 30021 Name Hughes, Mar-Reece

SCDC M-107 (Rev. February, 1990)

Exhibit B

South Carolina Department of Corrections
Division

Division of Health Services

Problem List

SOUTH CA... ... A DEPARTMENT OF ... CTIONS
Division of Health Services

Problem List

Date of Birth: [redacted]
SS#:

Date	Problem	Comments	Date Resolved
2.24.94	Anti Social Personality	Not mentally ill	2-28-94
4	Malingering		4
10/26/95	(15) min observation Forms	Separate envelope	
6/97	Diagnosis (psychiatric) deferred		
7/97	Psychotic disorder (NOS) DSM III-R - 298.90		
4/20/98	Schizophrenia, paranoid (Not acute)		
1-19-00	Rule: Disorder w/mixed Disturbance of Emotion & Conduct.		

Tuberculin Skin Test

Date	Results	Date	Results	Date	Results	Date	Results
4/4/93	0 mm	4/28/95	0 mm	6/15/96	0 mm	6/14/98	0.0 mm
6.9.94	0 mm	10/23/95	0 mm	6/17/97	0 mm	5.6.99	0 mm

Immunizations

Date	Type	Date	Type	Date	Type	Date	Type
4/4/93	D-T						

Allergies: Benadryl Reactions SOB

Date:	Type:	

SCDC #: ~~SK4885~~ SK-5021 INMATE'S NAME: Hughes, Marcee

SCDC 24-96 (Rev. October, 1992)

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE STATE,

Respondent,

vs.

MAR-REECE ALDEAN HUGHES,

Appellant.

PROOF OF SERVICE

I, Donald J. Zelenka, Counsel for the Respondent, certify that I have served the within **Return to Motion for Stay on the ground of incompetencey** by depositing one (1) copies of the same in the United States mail, postage prepaid, addressed to his attorneys of record as follows:

Robert Lane Carey, Esquire
Barran Liebman LLP
601 S.W. Second Avenue, Suite 2300
Portland, Oregon 97204

Bradley F. Tellam, Esquire
Barran Liebman LLP
601 S.W. Second Avenue, Suite 2300
Portland, Oregon 97204

Teresa L. Norris
Center for Capital Litigation
P.O. Box 11311
Columbia, South Crolina 29211

I further certify that all parties required by Rule to be served have been served this 7th day of April, 2000.

DONALD J. ZELENKA
Office of Attorney General
Post Office Box 11549

Columbia, SC 29211
(803) 734-6305
ATTORNEY FOR RESPONDENT

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 7, 2000

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

Re: The State v. Mar-Reece Aldean Hughes

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the ***Return to Motion for Stay on the Ground of Incompetency*** in the above-entitled action for filing. By copy of this letter I am serving opposing counsel with this Return.

Sincerely,

Donald J. Zelenka
Assistant Deputy Attorney Generall

Pm 4-7-00
RECEIVED
APR 17 2000
S.C. SUPREME COURT

DJZ/lbb
Enclosures

cc: Robert Lane Carey, Esquire
Bradley F. Tellam, Esquire
Teresa L. Norris, Esquire

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
The Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

MAR-REECE ALDEAN HUGHES,

Appellant.

Return to Motion For Stay Of Execution On The Ground Of Execution On The Ground Of Incompetence

---

The Respondent, through undersigned counsel, hereby make a Return to the Motion For Stay Of Execution On The Ground Of Execution On The Ground Of Incompetence dated March 20, 2000. In this motion, counsel for Mar-Reece Hughes assert that he is incompetent to be executed and that his expressed decision to forego further post-conviction remedies. Respondents submit the stay request must be denied under the circumstances and procedure set forth in *Singleton v State*, 313 S.C. 75, 437 S.E.2d 53 (1993). Further Respondents submit , upon information and belief, that a recent evaluation within the South Carolina Department of Corrections on January 7, 2000 and January 12, 2000 by designated examiners, a licensed social worker and medical doctor, respectively, pursuant to a Probate Court commitment who each concluded that Hughes "is not mentally ill." for purposes of the mental health commitment. (A copy of the materials are attached as Exhibit A).[1]

---

[1] Respondents also submit that the records of the South Carolina Department of Corrections further reveals a diagnosis on January 19, 2000 of adjustment disorder with mixed

RECEIVED
APR 17 2000
S.C. SUPREME COURT

In Singleton, this Court established the procedure for resolving issues of pre-execution insanity. Particularly, this Court stated:

> Remedy and Procedures
>
> **Upon the issuance of an Order for Execution by this Court, the defendant or his/her guardian may apply for subsequent Post Conviction Relief on the basis of competency, pursuant to S.C.Code Ann. § 17-27-20(a)(6) (1985). At the evidentiary hearing, the applicant, through competent evidence or expert testimony, must show by a preponderance of the evidence that he or she lacks the requisite competency for execution. If the PCR court finds the applicant incompetent in accordance with the standard adopted in this opinion, then the appropriate remedy is to issue a temporary stay of execution pending a mandatory review by this Court.**
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> **Once the defendant is found incompetent and the stay of execution is affirmed by this Court, the burden necessarily shifts to the State to move for a hearing upon the defendant's return to competency. At this subsequent hearing, the State must show by a preponderance of the evidence that the defendant is competent to be executed. If the State establishes competency, then the PCR court may lift the previous stay of execution subject to the review of this Court.**

Singleton, supra at 87.

Here, the issuance of a stay is premature under the Singleton procedure because no PCR court has determined that there is the existence of Singleton insanity by a preponderance of the evidence. To enter a stay now would turned the reasoned procedure of *Singleton* on its head. Instead, under *Singleton*, this Court must enter an execution order and then the Applicant's guardians may seek a temporary stay under the Singleton procedure before that Court subject to review by this Court.

The apparent problem may not be one of competence, but rather an intent to forego discretionary, not mandatory appellate procedures. In *State v Torrence*, 322 S.C.475, 473 S.E.2d 703 (1996), this Court recognized that a capital defendant may, constitutionally, waive the right of

---

disturbance of emotion and conduct, aan April 20, 1998 diagnosis of schizophrenia paranoid (not as acute), a July 1997 diagnosis of Psychotic disorder (not otherwise specified), and on February 24, 1994 a diagnosis of antisocial personality disorder and malingering. (Exhibit B) Attached.

general statutory mandatory capital appeal so long as we first determine the defendant is competent and his decision is knowing and voluntary. Here, the Court should not entertain the stay matter at this stage because it involves the waiver of the right to pursue discretionary postconviction matters in the Circuit Court, not this Court. The reasoning of *Singleton* was sound in creating the procedure therein. This is particularly true where the Petitioner's counsel concedes that he wrote the Attorney General expressing his own intent to waive appeals and remedies. See *Motion*, p. 3, *Attachment 1 to Motion.* Therefore, we respectfully submit that the motion to stay should be denied without prejudice. However, in light of such assertion, this Court may wish to assign a particular trial judge in anticipation of presentation of such a claim as was done in the matter of Larry Gene Bell, the last time a similar preexecution insanity claim was presented in the Court in September 1996.

This Court denied the appeal on October 4, 1999. *State v Hughes*, _ S.C._, 1999 Westlaw 792550 (S.C.Sup. Ct. Oct. 4, 1999). Pursuant to this Court's Order, a date of execution set for Friday, November 19, 1999, was stayed to allow pursuit of certiorari in the United States Supreme Court. Certiorari in the Court was denied on March 20, 2000. Under this Court's procedures of *In Re Stays of Execution In Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), "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. I f the general issues are appropriate for post-conviction relief, this Court will assign a circuit judge to the case and issue a stay of execution." Here, Hughes has not stated his intent to pursue such relief, to the contrary, the motion states that Hughes does not intend or desire to pursue it at all. *Attachment A to the Motion.* The motion must be denied.

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
April 7, 2000

Exhibit A

Designated Examiners Reports

January 7, 2000

January 12, 2000

South Carolina Department of Corrections

JIM HODGES, Governor
WILLIAM D. CATOE, Director

Gilliam Psychiatric Hospital
4344 Broad River Road
Columbia, South Carolina 29210
January 12, 2000

Richland County Probate Court
PO Box 192
Columbia, South Carolina 29202

ATTENTION:

Inmate Mar-Reece Hughes of Richland County was admitted to the Department of Corrections Gilliam Psychiatric Hospital on January 06, 2000 on judicial admission papers.

Enclosed herewith is the report of the designated examiners as prescribed for in the Section 44-17-410, Code of Laws of South Carolina, 1986.

Sincerely,

James E. Page
Hospital Administrator II
Gilliam Psychiatric Hospital

JEP/pgy
pc: GPH Client File
Medical Records
file

REPORT OF DESIGNATED EXAMINER FOR MENTAL ILLNESS PAGE 1

Name of Person Examined	Sex	County of Residence	Date of Birth	Age
MAR-REECE HUGHES	M	RICHLAND	[redacted]	33
Place of Examination		**Hour and Date of Examination**		
GILLIAM PSYCHIATRIC HOSPITAL, SCDC		2:00PM 1-7-2000		
Name of Designated Examiner	**Degree**	**Place of Professional Employment**		
ERNEST SHAW	LMSW	GILLIAM PSYCHIATRIC HOSPITAL, SCDC		

THE UNDERSIGNED EXAMINER, having been directed by Probate Court Order to do so, have examined the above-named person nd am of the opinion that th· said individual:
Check appropriate boxes.)

☐ IS MENTALLY ILL, NEEDS TREATMENT AND BECAUSE OF THIS MENTAL ILLNESS:

Lacks sufficient insight or capacity to make responsible decisions with respect to his/her treatment;

AND/OR

There is a likelihood of serious harm to self or others:

AND THEREFORE,

(1) ☐ INVOLUNTARY HOSPITALIZATION IS RECOMMENDED.

(2) ☐ INVOLUNTARY OUTPATIENT TREATMENT IS RECOMMENDED.

My recommendation is based on the following symptoms and specific examples of behavior:

(See reverse side which must be completed)

II. ☑ IS NOT MENTALLY ILL to such an extent that involuntary treatment is presently required.

My recommendation is based on the following observations and opinions: INMATE HUGHES WAS ADMITTED BECAUSE HE REPORTEDLY WAS EXHIBITING EVIDENCE OF DETERIORATION IN HIS MENTAL CONDITION. HE WAS DESCRIBED AS NON-RESPONSIVE AND UNCOOPERATIVE, HE HAS A HISTORY OF ASSAULTIVE AND UNCOOPERATIVE BEHAVIOR, POOR HYGIENE AND POOR COMPLIANCE WITH TREATMENT. INMATE HUGHES IS A DEATH ROW INMATE AND IT IS THOUGHT THAT A PENDING EXECUTION MIGHT BE A PRECIPITATING FACTOR IN THE DETERIORATION OF HIS CONDITION.

AT THE TIME OF MY INTERVIEW WITH INMATE HUGHES HE WAS ALERT AND ORIENTED. HE NOTED THAT IT IS DIFFICULT TO KEEP TRACK OF TIME WHEN YOU DON'T HAVE A WATCH OR CALENDAR. HE DENIED AUDITORY AND VISUAL HALLUCINATIONS AS WELL AS HOMICIDAL AND SUICIDAL IDEATIONS. INMATE HUGHES DENIED THAT HE WAS MENTALLY ILL. HE ATTRIBUTED HIS BEHAVIOR PRIOR TO ADMISSION TO HIS NEED TO DRAW ATTENTION TO THE FACT THAT HIS CELL WAS DIRTY AND NEEDED CLEANING. HE ALSO DENIED THAT HIS STATUS ON DEATH ROW WAS A FACTOR AND SAID THAT HE STILL HAD ADDITIONAL APPEALS BEFORE ANY EXECUTION.

My recommendation for additional treatment on a voluntary basis is: THERE IS NO DOUBT THAT THIS INMATE IS DANGEROUS TO OTHERS AND POSSIBLY HIMSELF DUE TO HIS HOPELESS POSITION. HOWEVER THERE IS INSUFFICIENT EVIDENCE OF MENTAL ILLNESS TO SUCH AN EXTENT THAT INVOLUNTARY HOSPITALIZATION IS NECESSARY AT THIS TIME. HIS DANGEROUSNESS SHOULD BE ADDRESSED THROUGH SECURITY MEASURES. SITUATIONAL DISTRESS RELATED TO ANY PENDING EXECUTION SHOULD BE ADDRESSED THROUGH OUTPATIENT COUNSELING.

SIGNATURE OF DESIGNATED EXAMINER	DEGREE	MEDICAL OR PROFESSIONAL LICENSE NO.
ERNEST SHAW	803-896-2279	
TYPED OR PRINTED NAME OF DESIGNATED EXAMINER		PHONE NUMBER
4344 BROAD RIVER RD.	COLUMBIA	RICHLAND 29210
STREET ADDRESS	CITY	COUNTY ZIP

NOTE: (1) "Mentally ill person" means a person afflicted with a mental disease to such an extent that, for his own welfare or the welfare of others or of the community, he requires care, treatment or hospitalization;

(2) "Likelihood of serious harm" means because of mental illness there is (1) a substantial risk of physical harm to the person himself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm; (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior and serious harm to them or (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that the person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community;

All Information MUST be typed or clearly printed.

REPORT OF DESIGNATED EXAMINER FOR MENTAL ILLNESS PAGE 1

Name of Person Examined	Sex	County of Residence	Date of Birth	Age
MAR-Reece Hughes	M	Richland	[redacted]	33
Place of Examination		Hour and Date of Examination		
St Jean Psychiatric Hospital		11/2/2000		
Name of Designated Examiner	Degree	Place of Professional Employment		
DR. Jacques Rathle	M.D.	St de Gilles Psychiatric Hospital		

THE UNDERSIGNED EXAMINER, having been directed by Probate Court Order to do so, have examined the above-named person nd am of the opinion that the said individual:
Check appropriate boxes.)

☐ IS MENTALLY ILL, NEEDS TREATMENT AND BECAUSE OF THIS MENTAL ILLNESS:

Lacks sufficient insight or capacity to make responsible decisions with respect to his/her treatment;

AND/OR

There is a likelihood of serious harm to self or others:

AND THEREFORE,

(1) ☐ INVOLUNTARY HOSPITALIZATION IS RECOMMENDED.

(2) ☐ INVOLUNTARY OUTPATIENT TREATMENT IS RECOMMENDED.

My recommendation is based on the following symptoms and specific examples of behavior:

(See reverse side which must be completed)

REPORT OF DESIGNATED EXAMINER FOR MENTAL ILLNESS

II. ☑ IS NOT MENTALLY ILL to such an extent that involuntary treatment is presently required.

My recommendation is based on the following observations and opinions:

Danger

My recommendation for additional treatment on a voluntary basis is:

o/p Therapy

Jacques Rabbe	MD	9972
SIGNATURE OF DESIGNATED EXAMINER	DEGREE	MEDICAL OR PROFESSIONAL LICENSE NO.
JACQUES RABBE		256-8597
TYPED OR PRINTED NAME OF DESIGNATED EXAMINER		PHONE NUMBER
5 B H	Columbia	Richland 29210
STREET ADDRESS	CITY	COUNTY ZIP

NOTE: (1) "Mentally ill person" means a person afflicted with a mental disease to such an extent that, for his own welfare or the welfare of others or of the community, he requires care, treatment or hospitalization;

(2) "Likelihood of serious harm" means because of mental illness there is (1) a substantial risk of physical harm to the person himself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm; (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior and serious harm to them or (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that the person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community;

All Information MUST be typed or clearly printed.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Health Services

CONSENT FOR NEUROLEPTIC MEDICATIONS

1. I understand that neuroleptics are a group of drugs which are sometimes used to treat mental/behavioral disorders.

2. I understand that neuroleptic medications may be beneficial in that they assist in clearing thinking and in reducing impulsiveness. These medications may also prevent the recurrence of my mental symptoms. I understand that there is no guarantee as to the results that may be expected.

3. I have been informed by my attending physician, (who plans to treat) (who is treating me) with neuroleptic medications, that the use of these types of medications may cause progressive, irreversible side effects (tardive dyskinesia), consisting of involuntary movements of the mouth, tongue, limbs or body, hands or feet for which no effective treatment is available at this time. I also understand that the continuous use of these medications may hide or worsen symptoms or tardive dyskinesia. The symptoms may not appear until the medication is withdrawn. I understand that I should promptly notify my doctor or another member of the staff if there are any unexpected changes in my condition.

4. I understand that other available appropriate alternatives have been considered and I agree that neuroleptic medications are the best treatment available for my conditions.

5. I understand that any further questions will be answered and that these medications may be stopped upon request.

6. I hereby consent to the administration of neuroleptic medications to (me) (my next of kin) for treatment of (my) (his) (her) mental/behavioral symptoms.

[signature]		1/6/00
Patient	SCDC#	Date
[signature]		1/6/00
Witness		Date
Responsible Other Party/Correspondent		Date
[signature]		1/7/00
Physician/Primary Therapist		Date

SCDC# 5021 Name Hughes, Mar-Reece

SCDC M-107 (Rev. February, 1990)

Exhibit B

South Carolina Department of Corrections
Division

Division of Health Services

Problem List

SOUTH CA...NA DEPARTMENT OF C...ECTIONS
Division of Health Services

Problem List

Date of Birth: [redacted]

Date	Problem	Comments	Date Resolved
2-24-94	Anti social Personality	Not mentally ill	2-28-94
4	Malingering		4
10/26/95	(15) min consultation forms	Separate envelope	
6/97	Diagnosis (psychiatric) deferred		
7/97	Psychotic disorder (NOS)		
	DSM III-R - 298.90		
4/20/98	Schizophrenia paranoid (Not acute)		
1-19-00	Adj. Disorder w/mixed Disturbance of Emotion & Conduct.		

Tuberculin Skin Test

Date	Results	Date	Results	Date	Results	Date	Results
4/4/93	0 mm	4/26/95	0 mm	6/15/96	0 mm	6/14/98	0.0 mm
6-9-94	0 mm	9-23-95	0 mm	6/17/97	0 mm	5.6.99	0 mm

Immunizations

Date	Type	Date	Type	Date	Type	Date	Type
4/4/93	D-T						

Allergies: Benadryl Reactions SOB

Date:	Type:	

SCDC #: ~~SK4851c~~ SK5021 INMATE'S NAME: Hughes, Marcus

SCDC 24-96 (Rev. October, 1992)

8581

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE STATE,

Respondent,

vs.

MAR-REECE ALDEAN HUGHES,

Appellant.

PROOF OF SERVICE

I, Donald J. Zelenka, Counsel for the Respondent, certify that I have served the within **Return to Motion for Stay on the ground of incompetencey** by depositing one (1) copies of the same in the United States mail, postage prepaid, addressed to his attorneys of record as follows:

Robert Lane Carey, Esquire
Barran Liebman LLP
601 S.W. Second Avenue, Suite 2300
Portland, Oregon 97204

Bradley F. Tellam, Esquire
Barran Liebman LLP
601 S.W. Second Avenue, Suite 2300
Portland, Oregon 97204

Teresa L. Norris
Center for Capital Litigation
P.O. Box 11311
Columbia, South Crolina 29211

I further certify that all parties required by Rule to be served have been served this 7th day of April, 2000.

DONALD J. ZELENKA
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211

CENTER FOR CAPITAL LITIGATION
1247 SUMTER STREET, SUITE 303 (29201)
POST OFFICE BOX 11311
COLUMBIA, SOUTH CAROLINA 29211

Teresa L. Norris
Director

Voice: (803) 765-0650
Fax: (803) 765-0705
Email: tnorris@usit.net

April 11, 2000

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

RE: State v. Mar-Reece Aldean Hughes, York County Death Penalty Appeal (Op. No. 25003)

Dear Mr. Shearouse:

Please find enclosed the original and six copies, along with proof of service, of a Reply to Respondent's Return to the Motion for a Stay of Execution. Please do not hesitate to contact me if you have any questions regarding this matter or if I can provide you with any additional information.

Sincerely,

Teresa L. Norris

enc.

cc: Donald J. Zelenka
Robert Carey
Bradley Tellam

RECEIVED
APR 13 2000
S.C. SUPREME COURT

ORIGINAL

IN THE SUPREME COURT

In the Original Jurisdiction

MAR-REECE ALDEAN HUGHES,

MOVANT,

v.

THE STATE,

RESPONDENT.

REPLY TO STATE'S RETURN ON
MOTION FOR A STAY OF EXECUTION
ON THE GROUND OF INCOMPETENCE

Respondent asserts that this Court should deny a stay and require that Mr. Hughes file a post-conviction action, pursuant to *Singleton v. State*, 313 S.C. 75, 437 S.E.2d 53 (1993). Under *Singleton*, "the defendant or his/her guardian may apply for subsequent Post Conviction Relief on the basis of competency." 313 S.C. at 87, 437 S.E.2d at 60. Respondent also asserts, on the basis of a Department of Corrections evaluation that Mr. Hughes "is not mentally ill."

I. Mar-Reece Hughes is Clearly Mentally Ill.

First, in terms of whether Mr. Hughes is competent at present, Mr. Hughes has a long history of paranoid schizophrenia. *See State v. Hughes*, 336 S.C. 585, 591, 521 S.E.2d 500, 503 (1999). Prior to trial, he was found to be incompetent. *See* Attachment A (Order Aug. 10, 1994). He was treated as an in-patient at William S. Hall Psychiatric Institute for a period of approximately two months to restore competence and then treated as an out-patient treatment until the time of trial in

RECEIVED
APR 13 2000
S.C. SUPREME COURT

September 1995. *See* Attachment B (William S. Hall Report Mar. 15, 1995). Indeed, the records submitted by Respondent reflect that he has at times been diagnosed as paranoid schizophrenic by SCDC officials. Schizophrenia is a long term illness. In order to be diagnosed with schizophrenia, a person must exhibit signs of the disorder for at least six months. Diagnostic and Statistical Manual of Mental Disorders 274 (American Psychiatric Association 4th ed. 1994) (DSM-IV). In addition, schizophrenia is characterized by "exacerbations and remissions" in some individuals and a chronic deterioration in others. *Id.* at 282. Thus, an evaluation three months ago by non-forensic examiners is not determinative of whether Mr. Hughes is competent at present. Moreover, Dr. Dafferlin Bernard-Dupree, a forensic examiner, found Mr. Hughes to be incompetent only a few weeks ago. *See* Attachment to Stay Motion.

II. Because of the Importance of the Post-Conviction Process to the Integrity of the Capital Sentencing Scheme in South Carolina, This Court Should Appoint Counsel To Pursue Available Post-Conviction Remedies.

The United States Supreme Court has recognized that state post-conviction and federal habeas proceedings play an "important role . . . in promoting fundamental fairness in the imposition of the death penalty." *McFarland v. Scott*, 512 U.S. 849, 859 (1994). Likewise, this Court has recognized the importance of post-conviction proceedings in South Carolina. *State v. Torrence*, 305 S.C. 45, 63, 406 S.E.2d 315, 325 (1991) (Toal, J., concurring). Indeed, this Court has specifically deemed that the "more preferable method of exploring [trial errors not objected to by defense counsel] is via the avenue of an application for post-conviction relief." 305 S.C. at 66, 406 S.E.2d at 326.

Moreover, while PCR may not be a mandatory appellate process, Mr. Hughes clearly has a right to file a post-conviction relief application and waiver of that right requires competence to do so. South Carolina law provides that any person who has been convicted and sentenced for a crime

who claims that the conviction or sentence was in violation of the United States Constitution or South Carolina law may institute state post-conviction relief proceedings. S.C. Code § 17-27-20(a). A final judgment of a trial court in state post-conviction proceedings may be appealed, S.C. Code § 17-27-100, and "shall be reviewed by the Supreme Court upon petition by either party for a writ of certiorari." S.C. Appellate Court Rule 227; S.C. Rule of Civil Procedure 71.1(f). Whether review is granted by this Court is discretionary. *Austin v. State*, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991).

South Carolina law also provides that an applicant for state post-conviction relief is entitled to the appointment of counsel. A death-sentenced inmate is appointed counsel at the outset. *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 546, 471 S.E.2d 140, 141 (1996). Likewise, appellate counsel must be provided if the applicant is indigent and desires to appeal the denial of post-conviction relief by the trial court. S.C. Code § 17-27-160(B).

This Court has held that an applicant may not bring a successive application for post-conviction relief on the ground that the first post-conviction relief application was insufficient due to the ineffective assistance of counsel in the first post-conviction proceedings. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). On the other hand, this Court has held that a claim that post-conviction counsel was ineffective in failing to seek appellate review of the denial of post-conviction relief must be reviewed in order to determine whether a petitioner was "denied an opportunity to seek appellate review." *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. Thus, this Court has clearly recognized that post-conviction review is an important right in South Carolina.

Respondent asserts that this Court should set an execution date and require Mr. Hughes, if he chooses, to file a post-conviction relief application based on incompetence to be executed. The

problem, as Respondent sees it, is not "one of competence, but rather an intent to forego discretionary, not mandatory appellate procedures." Return at 2. The procedure proposed by Respondent is not only unnecessary but fraught with too many unanswered questions.

For example, *Singleton* allows an inmate and/or his guardian to file a PCR application asserting incompetence to be executed. *Singleton* does not, however, address this unique situation where the inmate is not only incompetent to be executed, but also incompetent to waive his appeals, yet insists on doing so. Likewise, *State v. Torrence*, 317 S.C. 45, 451 S.E.2d 883 (1994) (Order), *see also State v. Torrence*, 322 S.C. 475, 473 S.E.2d 703 (1996), does not address this unique situation where there is no pending appeal but the inmate is incompetent to waive his rights and/or be executed.

Assuming for the sake of argument, that this Court followed Respondent's request and set an execution date, what happens then? Does South Carolina execute an incompetent man because he refuses to file a post-conviction application? Or, if Mr. Hughes filed a PCR application asserting incompetence to be executed, would he also have to assert every other issue available to him at the same time? South Carolina clearly prohibits successive PCR applications. What would happen if in the midst of a PCR proceeding to determine whether he was competent to waive his rights and be executed, Mr. Hughes agreed to medication, became competent, and decided that he did not want to waive his appeals? If all issues were not asserted at the same time, he would be prejudiced by not having asserted all of his issues in his first application.

Given the importance South Carolina has placed on post-conviction review, the constitutional prohibition on executing an incompetent person, *see Ford v. Wainwright*, 477 U.S. 399 (1986), and the many unanswered procedural questions, the undersigned counsel urge this Court to stay the

execution, assign a trial judge, and appoint the undersigned counsel to represent Mr. Hughes in post-conviction proceedings. With appointed counsel working with him, Mr. Hughes, who is currently not medicated, may very well agree to medications and/or change his mind and decide he does not desire to waive his important right to post-conviction proceeding. Counsel and Mr. Hughes are subject to statute of limitations periods for both state post-conviction proceedings and federal habeas proceedings so this process would not create unnecessary delay. In the event, Mr. Hughes then chose not to file post-conviction proceedings, an execution date could be set and a *Singleton* hearing could be held.. Alternatively, if Mr. Hughes chose to file post-conviction proceedings, he would be able to do so.

If this Court is not inclined to stay the execution and appoint counsel for post-conviction proceedings, this Court should order briefing and argument in order to determine the appropriate procedure to follow in these unique circumstances.

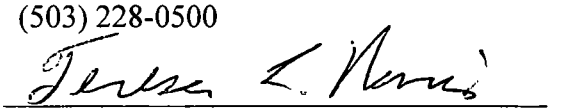
Respectfully submitted,

TERESA L. NORRIS

Center for Capital Litigation
P.O. Box 11311
Columbia, S.C. 29211
(803) 765-0650

ROBERT L. CAREY
BRADLEY F. TELLAM

Barran Liebman, LLP
601 SW Second Ave., Suite 2300
Portland, Or 97204
(503) 228-0500

By: 

April 11, 2000.

ATTACHMENT A

S-31

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK

STATE OF SOUTH CAROLINA)
)
-vs-) ORDER
)
MAR-REECE ALDEAN HUGHES,)
)
Defendant.)

This matter comes before me upon motion of the defense for an Order finding the Defendant not competent to stand trial.

IT APPEARS THAT the Defendant is being held upon charges of Murder, Armed Robbery, Possession of a Firearm During the Commission of a Violent Crime (2 Counts), Criminal Conspiracy, Possession of a Stolen Vehicle, Unlawful Carrying of a Pistol and Possession of a Pistol by Person Convicted of Crime of Violence. It further appears at this time that the Defendant is not competent to stand trial.

IT IS HEREBY ORDERED that the Defendant be admitted to the Gilliam Psychiatric Center for treatment as recommended by Dr. Dafferlin Barnard-Dupree and Dr. Donald Morgan to enable the Defendant to regain his competency to stand trial. This treatment is to occur over a period of forty-five (45) days.

IT IS FURTHER ORDERED that Dr. Dupree and Dr. Morgan be placed as co-supervisors and co-administrators of all aspects of this treatment. At the conclusion of forty-five (45) days from the date of this Order, Dr. Dupree and Dr. Morgan shall file reports with the Court as to the results of this treatment.

AND IT IS SO ORDERED.

John C. Hayes, III
Resident Judge
Sixteenth Judicial Circuit

August 10th, 1994
York, South Carolina

ATTACHMENT B

WILLIAM S. HALL
PSYCHIATRIC INSTITUTE

FORENSIC UNIT STAFFING

HUGHES, Marreece
921-3493

COPY RELEASED BY WSHPI
To Knoece & Kneece
Brian Slep
Schusterman
Kitty Atlas

March 7, 1995; March 15, 1995

PRESIDING: Renee S. Kohanski, M.D.

OTHERS PRESENT: 3/7:
Donald W. Morgan, M.D., Associate Director
Dafferlin J. Bernard-Dupree, M.D.
Stephen Schusterman, Counsel for the defendant
Christina Chadwick Brice, Co-Counsel for the defendant
Judy Skoner, MIII

3/15:
Donald W. Morgan, M.D.
Dafferlin J. Bernard-Dupree, M.D.
Stephen Schusterman, Counsel
Christina Chadwick Brice, Counsel

DIAGNOSIS: AXIS I: Schizophrenia, paranoid type
AXIS II: Borderline Intellectual Functioning
AXIS III: No Diagnosis

COMPETENCY TO STAND TRIAL: See Previous staffing Note

CRIMINAL RESPONSIBILITY: No

DISPOSITION: Return to Court

PERTINENT STATEMENTS: Previous staffings had been completed regarding Mr. Hughes' competency to stand trial, criminal responsibility and capacity to conform his behavior to the requirements of the law, regarding his actions on or about 9/25/92. Subsequent to these reports, the Honorable John C. Hays III has court ordered an evaluation of his competency to stand trial, criminal responsiblity pursuant to McNaghten standard for his actions on or about April 12, 1993 and if found responsible, a determination of his capacity to conform his conduct to the requirements of the law on that date. He is charged with Murder and Possession of a Knife During the Commission of or Attempt to Commit a Violent Crime. This evaluation consisted of the following:

1. Review of inpatient records from 10/26/92 through 12/22/92
2. Review of inpatient records from 9/8/94 through 11/18/94
3. Dr. Bernard's evaluation of 10/94, 7/29/94
4. Documents from the Office of the Solicitor regarding the investigation of this crime
5. Letters from the defendant to his father, dates reportedly prior to the charges on 4/12/93

WILLIAM S. HALL
PSYCHIATRIC INSTITUTE

7. Continued weekly evaluation of the patient at Broad River Penal Institution.
8. On 3/15/95, Mr. Hughes participated in a 90 minute forensic psychiatry interview

Mr. Hughes was initially seen on 3/7/95 for a forensic psychiatry interview. At that time he was able to read his Miranda rights and restate them in his own words. Mr. Hughes' counsel, Ms. Brice requested that we postpone further questioning until she was able to review the documents from the solicitor's office, and for this reason the staffing was postponed to and conducted on 3/15/95.

Mr. Hughes was first admitted to WSHPI 10/26/92-12/22/92, for a competency and criminal responsiblity evaluation. During that hospitalization he denied previous inpatient hospitalization as well as out patient treatment. Repeated mental status examinations revealed no evidence of a formal thought disorder. Psychological testing revealed a verbal IQ of 83, a performance IQ of 78, and a full scale IQ of 79 consistent with borderline intellectual functioning. Aphasia screaning test was unremarkable for neuropsychological deficits as well as Trail making test. Laboratory and medical work up revealed no evidence of pathology. In reviewing the chart, the only evidence of unusual behavior was a period of approximately one week, several days following the staffing of 11/23/92, where Mr. Hughes would intermittently refuse to eat, speak or bathe. At that time he reported feeling "down" and complained of difficulty sleeping. For this reason Amitriptyline, 50 mg at bedtime was started,

Mr. Hughes was discharged from our facility to jail to await disposition of his case. In reviewing the records from the jail, it appears that upon return to jail, Mr. Hughes' psychiatric condition deteriorated significantly.

We next had occasion to reexamine Mr. Hughes in July and August of 1994. He was seen in court on 8/4/94 and at that time he was noted to be rambling, tangential, circumstantial and easily angered. The Honorable John C. Hayes, III ordered Mr. Hughes admitted to WSHPI for restoration of competency. He presented to us on 9/8/94 with markedly disorganized thought processes, often not making sense when he spoke. He was extremely suspicious and guarded, his behavior demonstrating a significant change from his previous admission. We subsequently diagnosed him as suffering from Schizophrenia, paranoid type, and have been treating him since that time for this disorder.

Mr. Hughes' presentation is consistent with this diagnosis. Some individuals with Schizophrenia have lead relatively uncomplicated lives with minimal impairment, until the onset of the active phase of their illness; which for paranoid Schizophrenia is typically in the mid-twenties. Often times prior to the onset of acute psychotic symptoms, the patient will demonstrate prodromal periods that can only be clearly diagnosed in retrospect. Prodromal symptoms include the expression of odd or unusual beliefs that may

WILLIAM S. HALL
PSYCHIATRIC INSTITUTE

not be frankly psychotic. Individuals may become withdrawn, or lose interest in previously pleasurable activities. Their speech may be generally understandable but vague and digressive. During Mr. Hughes first hospitalization at WSHPI, his symptoms of not bathing or speaking for a week, may have represented the onset of the prodromal phase of his illness.

In reviewing the documents investigating the charges of April 12, 1993, there is an abundance of evidence supporting the psychiatric deterioration of Mr. Hughes. Inmate Randy Whitworth states that another inmate was afraid of MarReece and that he (MarReece) acted "very strange" at times. Inmate Felix Wimborn reports that "MarReece would talk to him (Wimborn) one day and the next day, wouldn't say a thing. He acted very strange at times". Inmate Richard Waldrup reports that he heard Mr. Hughes speaking with another inmate and stating that "he (Mar-reece) was going to hell, and that he wanted to take some more with him". Statement from John S. Walker states that "During several conversations with MarReece his mind would go and come". Statement from inmate John Patton states that MarReece "wanted to know what kind of time it would carry...and was talking in circles and wanted Harry to keep talking to him....He was saying things like they can't do nothing to me and I hate white people...Then he started saying that the green men were starting to fuck with him again. After this MarReece began to talk to himself a little. He was saying things like the little man isn't asleep, I saw his foot move down there. He's playing possum and trying to fuck with my head over there."

There are references to the "green man" from inmates Harry Jennings, Jr, and James Gaithers, Jr. Inmate Gaithers states that "MarReece said he can't rest when the little green man gets on him. Says that same thing (little green man) when he gets mad. Called him crazy because of the way he acted. MarReece ddin't like white people or policeman. In the statement by Christopher Gorth, one of the victims, he reports that MarReece assaulted him with the knife and then asked me if I was alright [sic], like nothing happened. He then went up in his bunk." Statement by inmate Patton states that after the incident MarReece said, "Damn, I am about ready for breakfast now. Then he asked about the time and wanted to know where the food was and weren't they going to bring any food back there."

There are reports of Mr. Hughes's plans of assault and escape as well as well as racial remarks. Inmate Stroud reports that MarReece didn't "like white people". Inmate Spratt stated that "I have talked one on one with MarReece. Didn't think he had a problem... He wanted you to think he is crazy." Victim Christopher Gorth stated that MarReece "talked about having a knife...and he was going to use it to escape with a hostage". Inmate Waldrup who was in the cell with the victim reports that "we all got along together. We had not argued or had a fight...MarReece was telling him (inmate in C2) that he was going to hell and that he wanted to take some more with him. Then MarReece told this other boy that if

he stabbed them in the throat would they die before they had a change [sic] to yell out for help. If they couldn't yell for help he would take his sleeping pill and be asleep when they found the bodies".

During our Forensic psychiatry staffing on 3/15/95 we asked Mr. Hughes about the events on the day of the alleged incident. He states that he has no recall of those events. At the beginning of his hospitalization to WSHPI in September of 1994 Mr. Hughes adamantly denied having a mental illness. He has since gained insight into his illness. He has stated that he might have "a little bit of that schizophrenia". When asked in retrospect to date the onset of his symptoms, he reports that they began approximately one week after he left WSHPI the first time in December 1992. When asked to describe his symptoms he reports "my body and mind goes through moods. I'd have silent fasts and then regurgitate and start to talk to people". At the Broad River facility he states that he was "eating strangely, thought the food would kill him".

MENTAL STATUS EXAMINATION: Mr. Hughes presents as a well developed, well nourished African American male, pleasant and cooperative with this evaluation process. Speech was of normal rate, rhythm, volume and latency. Thought processes were logical and goal directed. There was no evidence of auditory or visual hallucinations. With the exception of a minor error in the date (Mr. Hughes thought initial date of evaluation was 2/23/95 instead of 3/7/95), he was oriented to person, place and time. His insight into his current legal charges is appropriate.

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL: Please see our evaluation of November 16, 1994, our opinion at this time remains unchanged.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: Mr. Hughes currently suffers from Schizophrenia, paranoid-type. Based on a review of all available records and repeated psychiatric examination of Mr. Hughes, it appears the onset of the prodromal phase of this illness occurred during his initial hospitalization at WSHPI in December of 1992. The active phase of his illness manifested at some point during his incarceration prior to the events on April 12, 1993. Mr. Hughes has an excellent understanding of legal procedures and appreciates that a finding of mental illness could potentially help lesson the severity of possible penalties. He had been given numerous opportunities to describe his behavior on or about April 12, 1993 and offer explanations that would be consistent with a finding of mental illness and therefore potentially helpful to him, but he has repeatedly stated that he does not remember that day.

Reports from other inmates at the time of the actual crime are consistent with Mr. Hughes' having no recall of those events, even immediately proceeding the events. He asked one of the victims if he was all right, as if nothing happened; he asked another inmate when breakfast would be served, as if nothing happened

demonstrating that even at the time of the event, he had not registered memory for it.

In exploring a possible racial motive for these crimes, one of the victims reports that though the other inmates sharing the cell with Mr. Hughes were Caucasian, they were getting along without difficulty. During his hospitalizations at WSHPI, Mr. Hughes has interacted with other patients to the same extent whether or not they were Caucasian.

In considering all the available data, it is our opinion that on or about April 12, 1993, Mr. Hughes was suffering from Schizophrenia, parnoid-type and experiencing active, psychotic symptoms. Reports from inmates that when he spoke he didn't make sense are consistent with this diagnosis, illustrating the loosening of associations that can be a part of this debilitating illness. It is unclear what "the little green men" represent, but most probably represent a delusional form of thinking rather than true visual hallucinations. Though it appears that Mr. Hughes may have been planning this crime by procuring the weapon prior to the event, there is no clear reason for the commission of the act. There are reports from other inmates regarding Mr. Hughes' fluctuating mental status. The fact that memory for the events of that day were not coded is consistent with a grossly psychotic and disorganized state.

For the reasons stated above, it is our opinion that because of the mental illness of Schizophrenia, paranoid-type, Mr. Hughes did not recognize the wrongfullness of his actions on or about April 12, 1993. His behaviors were illogical, at times bizarre and grossly disorganized such that he could not recognize the wrongfullness of his actions. Therefore, we determine with reasonable medical certainty that he is not criminally responsible for his actions on or about that date.

RECOMMENDATIONS: We will continue our treatment of Mr. Hughes while he is awaiting trial of his case.

Renee S. Kohanski, M.D.
Fellow in Forensic Psychiatry

Donald W. Morgan, M.D.
Associate Director for Forensic Service

CONFIDENTIAL
This information has been disclosed to you from records whose confidentiality is protected by federal regulations (42 CFR Part 2) and State law which prohibit you from making any further disclosure of it without the specific written consent of the person to whom it pertains or as otherwise permitted by such regulations or law. A general authorization for the release of medical or other information is NOT sufficient for this purpose.

IN THE SUPREME COURT

In the Original Jurisdiction

MAR-REECE ALDEAN HUGHES,

MOVANT,

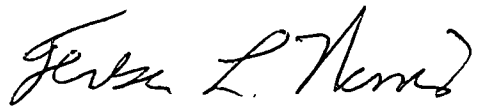
v.

THE STATE,

RESPONDENT.

CERTIFICATE OF SERVICE

I certify that I have served the Reply to the Respondent's Return to Motion for a Stay of Execution on the Respondent by depositing a copy in the United States Mail, postage prepaid, on April 11, 2000, addressed to Respondent's attorney of record, Donald J. Zelenka, Assistant Deputy Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, S.C. 29211.



TERESA L. NORRIS

Center for Capital Litigation
P.O. Box 11311
Columbia, SC 29211
(803) 765-0650

ATTORNEY FOR APPELLANT.

April 11, 2000.

The Supreme Court of South Carolina

The State, Respondent,

v.

Mar-Reece Aldean Hughes, Appellant.

The Honorable John Calvin Hayes, III
York County
Trial Court Case No. 1993-GS-46-4296
1993-GS-46-4299
1993-GS-46-4301
1993-GS-46-4303

ORDER

For good cause having been shown, the time for serving and filing the Return to the Motion for Stay of Execution on the Ground of Incompetence in the above entitled matter is hereby extended until April 7, 2000.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY _____
CLERK

Columbia, South Carolina

April 3, 2000

cc: Teresa L. Norris, Esquire
Assistant Deputy Attorney General Donald J. Zelenka
The Honorable Thomas E. Pope
Robert L. Carey, Esquire
Bradley F. Tellum, Esquire

RECEIVED
MAR 31 2000
S. C. SUPREME COURT

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

March 31, 2000

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

Re: The State v. Mar-Reece Alden Hughes
York County Death Penalty Appeal

Dear Mr. Shearouse:

I am in receipt of a petition for a stay of execution on the ground of incompetence dated March 20, 2000. For reasons unclear to me at this time, this document was not received by me until Tuesday, March 28, 2000. Upon receipt, I have requested the South Carolina Department of Corrections to provide me with information about Mr. Hughes' incarceration in order that I can respond to this motion. I would request an extension up to and including April 7, 2000, to prepare this matter.

By copy of this letter, I am providing opposing counsel with this communication.

Sincerely,

Donald J. Zelenka
Assistant Deputy Attorney General

DJZ/shb

cc: Teresa L. Norris, Esquire
Robert L. Carey, Esquire
Bradley F. Tellum, Esquire
The Honorable Thomas E. Pope

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

RECEIVED
MAR 21 2000
S.C. SUPREME COURT

March 20, 2000

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

Re: Mar-Reece Aldean Hughes
v. South Carolina
No. 99-7806
(Your No. 25003)

Dear Clerk:

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

The petition for a writ of certiorari is denied.

Sincerely,

William K. Suter

William K. Suter, Clerk

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

Robert Lane Carey, Esquire
Barran Liebman LLP
601 S.W. Second Avenue, Suite 2300
Portland, Oregon 97204

Bradley F. Tellam, Esquire
Barran Liebman LLP
601 S.W. Second Avenue, Suite 2300
Portland, Oregon 97204

Re: Letter from Mar-Reece Hughes to Attorney General Condon dated February 25, 2000
Hughes v South Carolina, 99-7806 United States Supreme Court Certiorari Proceedings.

Dear Sirs:

I am in receipt of a letter to Attorney General Condon from Mar-Reece Hughes dated February 25, 2000 and received March 3, 2000. In this letter, Mr. Hughes states:

> This is an legal official notice that on February 25,2000 I dropped all levels of Appeal issue at U.S.Supreme Court. That I'm requesting immediate execution by S.C. State law of electric chair...

I am bringing this matter to your attention to take whatever appropriate ethical steps that you are required as a matter of law to take to determine and assist your client's interests as his counsel of record in the United States Supreme Court. As you may be aware, we have filed our brief in opposition in this matter and the Clerk's Office of the United States Supreme Court has advised me that this matter is scheduled for conference on March 17, 2000.

I am providing a copy of this letter with Mr. Hughes' letter attached to the Clerk of the South Carolina Supreme Court where the current stay of execution exists.

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

Sincerely,

Donald J. Zelenka
Assistant Deputy Attorney General

Enclosure
cc: Hon. Daniel E. Shearouse, Clerk of Court w/ enclosure
Hon. Thomas E. Pope, Solicitor of the 16th Judicial Circuit w/ enclosure

RECEIVED
MAR 0 6 2000
S.C. SUPREME COURT

Charles. Condon

Re. #5021 South Carolina
v. Smith Bow
Mar-Reece N. Hughes

This is an legal official notice that on February 25-2000 I dropped all Levels of Appeal issue at U.S. Supreme Court. That is Registry Criminal-ite Execution by S.C. State Law of Electric chair. /s/ [illegible]
February 25-2000

ATTORNEY GENERAL'S OFFICE
RECEIVED 3-3-00
ADMINISTRATIVE INSTRUCTIONS
_____FILE_____OPEN_____END
_____HAVE_____COPIES MADE
_____ROUTED TO_____
_____[illegible]SCRIPT
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_____
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SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

RECEIVED
JAN 21 2000
S.C. SUPREME COURT

January 18, 2000

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

Re: Mar-Reece Aldean Hughes
v. South Carolina
No. 99-7806
(Your No. 25003)

Dear Clerk:

The petition for a writ of certiorari in the above entitled case was filed January 3, 2000 and placed on the docket January 14, 2000 as No. 99-7806.

Sincerely,

William K. Suter, Clerk

by

Clayton R. Higgins, Jr.
Assistant

The Supreme Court of South Carolina

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

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

November 16, 1999

Christina Chadwick Brice, Esquire
Brice Law Firm
P O Drawer 300
York, SC 29745

Stephen D. Schusterman, Esquire
Schusterman Law Firm
P.O. Box 4211
Rock Hill, SC 29731

Re: The State v. Hughes, Mar-Reece Aldean

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: Teresa L. Norris, Esquire
Assistant Deputy Attorney General Donald J. Zelenka
Solicitor Thomas E. Pope
The Honorable James H. Hodges
Richard P. Stroker, Esquire

The Supreme Court of South Carolina

The State, Respondent,

v.

Mar-Reese Aldean Hughes, Appellant.

ORDER

This Court affirmed appellant's conviction and death sentence on direct appeal. State v. Hughes, Op. No. 25003 (S.C. Sup. Ct. filed October 4, 1999) (Shearouse Adv. Sh. No. 31 at 7). The remittitur was sent to the circuit court on October 28, 1999. An execution notice was issued that same date. Appellant now asks this Court to stay his execution while he seeks a writ of certiorari from the United States Supreme Court.

Appellant'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).

IT IS SO ORDERED

C.J.

A.J.

A.J.

A.J.

A.J.

Columbia, South Carolina

November 16, 1999

RECEIVED
NOV 0 9 1999
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Honorable John C. Hayes, III, Judge

Opinion No. 25003

THE STATE,

RESPONDENT,

v.

MAR-REESE ALDEAN HUGHES,

APPELLANT.

MOTION FOR A STAY OF EXECUTION
PENDING THE FILING OF A PETITION FOR WRIT OF
CERTIORARI IN THE UNITED STATES SUPREME COURT

Mar-Reese Aldean Hughes, currently scheduled to be executed on November 19, 1999, requests a stay of execution in order to allow him to file a Petition for Writ of Certiorari in the United States Supreme Court. Mr. Hughes's Petition for Writ of Certiorari must be filed in the United States Supreme Court by January 2, 2000. In support of this motion, Mr. Hughes submits the following facts and argument:

I.

On September 18, 1995, Mr. Hughes was convicted of murder, armed robbery, criminal conspiracy, possession of a firearm during the commission of a crime, and possession of a stolen vehicle. On September 22, 1995, the Honorable John Hayes, following the recommendation of the

jury, imposed a death sentence for the murder conviction, and consecutive sentences of thirty years for armed robbery, five years for criminal conspiracy, five years for possession of a firearm during the commission of a crime, and five years for possession of a stolen vehicle.

II.

Mr. Hughes then argued a number of constitutional issues on appeal, including, but not limited to, whether the trial court erred in excluding mitigating evidence related to Mr. Hughes' degree of culpability as compared to that of his co-defendant, whether the trial court erred in denying a mistrial based on an outburst by a spectator which rendered petitioner's trial unfair, and whether the trial court erred under Enmund v. Florida, 458 U.S. 782 (1982) and Tison v. Arizona, 481 U.S. 137 (1987), in allowing imposition of a death sentence upon the petitioner. This Court affirmed Mr. Hughes' death sentence on October 4, 1999. State v. Hughes, ___ S.C. ___, 1999 WL 792550 (S.C. Sup. Ct. Oct. 4, 1999).

III.

Pursuant to In re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (S.C. 1996), a death-sentenced inmate may file a petition for a stay of execution of ninety days in which to file a petition for a writ of certiorari with the United States Supreme Court. The petitioner must identify the federal question(s) that he wishes to pursue. "As long as one of the federal questions asserted has been adequately preserved under state law so that it can be reviewed by the United States Supreme Court, this Court will, as it must . . . grant a stay of ninety days from the date the remittitur was sent for the defendant to file a petition for a writ of certiorari." 471 S.E.2d at 141 (cites omitted).

IV.

Petitioner intends to raise one or more of the following questions in his petition for a writ of certiorari:

A. The trial court's exclusion of mitigating evidence regarding the sentence imposed upon the petitioner's co-defendant violated petitioner's rights under the Eighth and Fourteenth Amendments.

B. The trial court's denial of petitioner's motion for mistrial after an outburst by the victim's mother violated petitioner's rights under the Sixth and Fourteenth Amendments.

C. The trial court's imposition of a death sentence upon the petitioner violated his rights under the Eighth and Fourteenth Amendments because the state failed to prove that petitioner had an intent to kill or manifested reckless indifference to the value of human life. Tison v. Arizona, 481 U.S. 137 (1987); Enmund v. Florida, 458 U.S. 782 (1982).

WHEREFORE, because Mr. Hughes intends to present one or more of the federal questions that have been preserved for review in this Court in a petition for a writ of certiorari, he respectfully requests that this Court stay his execution in order that he may file his petition with the United States Supreme Court.

Respectfully submitted,

Stephen D. Schusterman
P.O. Box 4211
Rock Hill, SC 29731
(803) 325-7788

Christina Chadwick Brice
P.O. Box 300
York, SC 29745
(803) 684-4462

By: _____
ATTORNEYS FOR APPELLANT/PETITIONER

November 9, 1999.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Honorable John C. Hayes, III, Judge

Opinion No. 25003

THE STATE,

RESPONDENT,

v.

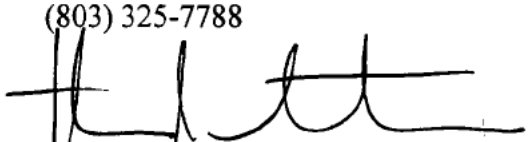
MAR-REESE ALDEAN HUGHES,

APPELLANT.

CERTIFICATE OF SERVICE

I certify that I have served the Motion for a Stay of Execution on the Respondent by facsimile and by depositing a copy in the United States Mail, postage prepaid, on November 4, 1999, addressed to Respondent's attorney of record, Donald J. Zelenka, Assistant Deputy Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, S.C. 29211.

Stephen D. Schusterman
P.O. Box 4211
Rock Hill, SC 29731
(803) 325-7788



ATTORNEY FOR APPELLANT

November 9, 1999.

RECEIVED
NOV 10 1999
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
The Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

MAR-REECE ALDEAN HUGHES,

Appellant.

Return to Petition For Stay Pending Filing of a Petition for Certiorari to the Supreme Court of the United States

---

The Respondent, through undersigned counsel, hereby make a Return to the Petition for a Stay of Execution received on November 9, 1999 to allow him to file a petition for writ of certiorari with the United States Supreme Court. This Court denied the appeal on October 4, 1999. State v Hughes, _ S.C._, 1999 Westlaw 792550 (S.C.Sup. Ct. Oct. 4, 1999). Pursuant to this Court's Order, a date of execution is set for **Friday, November 19, 1999.**

I.

The Petitioner asserts that he intends to file a petition for a writ of certiorari in the United States Supreme Court. Pursuant to the Rules of the United States Supreme Court, Rule 13, review must be sought within ninety (90) days of the denial of the appeal or **January 2, 2000.** This Court in its Order concerning capital cases, In Re Stays of Execution In Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996), stated that the Court will issue a stay in the direct appeal setting for filing certiorari, if the Petitioner files a stay motion setting forth the questions and "as long as the federal

questions asserted have been adequately preserved under state law so that it can be reviewed by the United States Supreme Court", this Court will grant a stay of execution for ninety (90) days from the date of the remittitur. In his motion before this Court, Hughes contends that he will raise thre following claims:

A. The trial court's exclusion of mitigating evidence regarding the sentence imposed upon the petitioner's co-defendant violated petitioner's rights under the Eighth and Fourteenth Amendments.

B. The trial court's denial of petitioner's motion for mistrial after an outburst by the victim's mother violated petitioner's rights under the Sixth and Fourteenth Amendments.

C. The trial court's imposition of a death sentence upon the petitioner violated his rights under the Eighth and Fourteenth Amendments because the state failed to prove that the petitioner had an intent to kill or manifested reckless indifference to the value of human life. Tison v Arizona, 481 U.S. 137 (1987); Enmund v. Florida, 458 U.S. 782 (1982).

The South Carolina Supreme Court addressed these issues in the following manner:

(A. The trial court's exclusion of mitigating evidence regarding the sentence imposed upon the petitioner's co-defendant violated petitioner's rights under the Eighth and Fourteenth Amendments.)

4) Co-defendant's life sentence as mitigating factor.

Appellant contends the trial judge erred in refusing his request to admit as mitigating evidence in the sentencing phase co-defendant Forney's life sentence. Forney received a life sentence after the jury in his own capital case found an aggravating circumstance but failed to return a unanimous verdict of death. See S.C.Code Ann. § 16-3-20(C) (Supp.1997) (defendant sentenced to life if no unanimous recommendation by jury). The trial judge found this evidence irrelevant. We agree.

In a capital case, the sentencer may not be precluded from considering as mitigating evidence (1) any aspect of the defendant's character or record and (2) any circumstances of the crime that may serve as a basis for a sentence less than death. State v. Bell, 305 S.C. 11, 406 S.E.2d 165 (1991), cert. denied, 502 U.S. 1038 (1992) (citing Hitchcock v. Dugger, 481 U.S. 393 (1987)). In Bell, we found evidence of a co-defendant's demeanor and record was properly excluded because it fit neither of these categories of mitigating evidence. Similarly, co-defendant Forney's life sentence does not qualify as mitigating evidence here. Forney's sentence does not demonstrate appellant's character or record, nor does it reveal anything about the

circumstances of McCants's murder. Accordingly, this evidence was properly excluded. State v. Charping, 333 S.C. 124, 508 S.E.2d 851 (1998).

(B. The trial court's denial of petitioner's motion for mistrial after an outburst by the victim's mother violated petitioner's rights under the Sixth and Fourteenth Amendments.)

6) Courtroom outburst

In the sentencing phase, during cross-examination of appellant's medical expert, Officer McCants's mother loudly exited the courtroom followed by her sister. Appellant moved for a mistrial which was denied. The trial judge found that although Mrs. McCants's outburst could be interpreted as "a negative comment" on the defense evidence, her conduct was only momentarily disruptive and the jury already knew how she felt since she had testified as a victim impact witness.

The decision whether to grant a mistrial because of a witness's outburst rests within the sound discretion of the trial judge and will not be reversed absent an abuse thereof or manifest prejudice to the complaining party. State v. Anderson, 322 S.C. 89, 470 S.E.2d 103 (1996). In Anderson, we found no abuse of discretion in the denial of a mistrial where the outburst was limited and the jury likely understood it as an expression of grief over the victim's death. This case is similar. As noted by the trial judge, the jury was already aware of Mrs. McCants' feelings about the death of her son and likely understood her outburst as an expression of this grief. We find the trial judge did not abuse his discretion in denying a mistrial.

(C. The trial court's imposition of a death sentence upon the petitioner violated his rights under the Eighth and Fourteenth Amendments because the state failed to prove that the petitioner had an intent to kill or manifested reckless indifference to the value of human life. Tison v Arizona, 481 U.S. 137 (1987); Enmund v. Florida, 458 U.S. 782 (1982).)

5) Proportionality

***4** After the jury returned its recommendation of death, appellant moved for imposition of a life sentence on the ground a sentence of death would be disproportionate to Forney's life sentence. On appeal, he argues the trial judge's refusal to impose a life sentence violated his constitutional and statutory rights to a proportionate sentence.*

Under State law, S.C.Code Ann. § 16-3-25(C)(3) (1985) requires this Court to determine in a death case "[w]hether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." (emphasis added). There is no requirement the sentence be proportional to any particular case. Death sentences have been imposed in other cases where, as here, the single aggravating circumstance was death of a police

officer. See State v. Johnson, 306 S.C. 119, 410 S.E.2d 547 (1991), cert. denied, 503 U.S. 993 (1992); State v. South, 285 S.C. 529, 331 S.E.2d 775 cert. denied 474 U.S. 888 (1985). Accordingly, appellant's sentence is not disproportionate under State law. Further, the Eighth Amendment requires no comparative proportionality review, Pulley v. Harris, 465 U.S. 37, 104 S.Ct. 871, 79 L.Ed.2d (1984), and hence there can be no constitutional violation from the refusal to determine proportionality to a specific case.

Appellant further contends his death sentence is disproportionate to the degree of his moral culpability under Enmund v. Florida, 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982), because he was convicted of murder on a theory of accomplice liability and there is no evidence of his intent to kill. We note the United States Supreme Court specifically modified Enmund in Tison v. Arizona, 481 U.S. 137, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987), wherein it held the Enmund culpability requirement is satisfied by major participation in the underlying felony combined with reckless indifference to human life. [FN5] See also State v. Longworth, 313 S.C. 360, 438 S.E.2d 219 (1993).

In any event, the sentence in this case does not rest on moral culpability established solely by accomplice liability. Statements by appellant admitted in the guilt and sentencing phases of trial indicated he was the triggerman. This evidence of direct moral culpability in the killing of Officer McCants supports the imposition of death based on the aggravating circumstance found by the jury.

#4.

A review of the record before this Court reveals at least one of the issues was preserved at trial and on appeal. Therefore, under In Re Stays, Respondent concedes a stay is appropriate, although there is no likelihood of success on the merits on certiorari for the reasons set forth in this Court's Order.

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
November 10, 1999

#5

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
The Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

MAR-REECE ALDEAN HUGHES,

Appellant.

PROOF OF SERVICE

I, Donald J. Zelenka, Counsel for the Respondent, certify that I have served the within **Return to Petition For Stay Pending Filing of a Petition for Certiorari to the Supreme Court of the United States** by depositing one (1) copies of the same in the United States mail, postage prepaid, addressed to his attorneys of record as follows:

Stephen D. Schusterman, Esquire
Post Office Box 4211
Rock Hill, South Carolina 29731

Christina Chadwick Brice, Esquire
Post Office Drawer 300
York, South Carolina 29745

I further certify that all parties required by Rule to be served have been served this 10th day of November 1999.

DONALD J. ZELENKA
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305
ATTORNEY FOR RESPONDENT

CENTER FOR CAPITAL LITIGATION
1247 SUMTER STREET, SUITE 303 (29201)
POST OFFICE BOX 11311
COLUMBIA, SOUTH CAROLINA 29211

Teresa L. Norris
Director

Voice: (803) 765-0650
Fax: (803) 765-0705
Email: tnorris@usit.net

November 9, 1999

Via Hand-Delivery

RECEIVED
NOV 0 9 1999
S.C. SUPREME COURT

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

RE: State v. Mar-Reese Aldean Hughes, York County Death Penalty Appeal (Op. No. 25003)

Dear Mr. Shearouse:

Please find enclosed the original and six copies, along with proof of service, of Mar-Reese Hughes's Motion for a Stay of Execution. Please do not hesitate to contact me if you have any questions regarding this matter or if I can provide you with any additional information.

Sincerely,

Teresa L. Norris

enc.

cc: Donald J. Zelenka
Stephen D. Schusterman
Christina Chadwick Brice
Mar-Reese Hughes

RECEIVED
NOV. 10 1999
S.C. SUPREME COURT

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 10, 1999

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

Re: The State v. Mar-Reece Hughes

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of Respondent's ***Return to Petition for Stay Pending Filing of a Petition for Certiorari to the Supreme Court of the United States*** in the above-referenced action for filing. By copy of this letter I am serving opposing counsel with this Return.

Sincerely,

Donald J. Zelenka
Assistant Deputy Attorney General

DJZ/lbb
Enclosure

cc: Stephen D. Schusterman, Esquire
Christina Chadwick Brice, Esquire
Sandi Wofford, Director, Victims Assistance

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, S.C. 29211-1549 • TELEPHONE: 803-734-3970 • FACSIMILE: 803-253-6283

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF PERSONAL SERVICE
COUNTY OF RICHLAND)

I, Laurie F. Bessinger, Warden at Kirkland Correctional Institution, South Carolina Department of Corrections, hereby certify that I personally served a copy of the Execution Order of The Supreme Court, dated October 28, 1999, on Mar-Reece Aldean Hughes, at 1:50 P.m. on October 28, 1999.

RECEIVED
NOV 0 1 1999
S.C. SUPREME COURT

S/ Laurie F. Bessinger

SWORN TO AND SUBSCRIBED before
me this 28 day of October, 1999

Myrtle A. Kennedy (L.S.)
Notary Public for South Carolina
My Commission Expires: October 14, 2008

ACKNOWLEDGE RECEIPT OF ORDER:

S/ Mar-Re Hughes
Mar-Reece Aldean Hughes

The Supreme Court of South Carolina

The State, Respondent

v.

Mar-Reece Aldean Hughes, Appellant

The Honorable John Calvin Hayes, III
York County
Trial Court Case No. 1993-GS-46-4296
1993-GS-46-4299
1993-GS-46-4301
1993-GS-46-4303

ORDER

TO THE HONORABLE WILLIAM D. CATOE, DIRECTOR, DEPARTMENT OF CORRECTIONS:

This is to notify you that the sentence of death imposed in the case of The State v. Mar-Reece Aldean Hughes, from which an appeal has been taken has been affirmed and finally disposed of by the Supreme Court and the remittitur has been sent down to the Clerk of the Court of General Sessions for York County.

IT IS, THEREFORE, required of you by Section 17-25-370 of the Code of Laws of South Carolina to execute the judgment and sentence of death imposed on said defendant on the fourth Friday after the service upon you or receipt of this notice.

Let a copy of this notice be served immediately upon the appellant, Mar-Reece Aldean Hughes.

CLERK

Columbia, South Carolina

October 28, 1999

cc: Christina Chadwick Brice, Esquire
Stephen D. Schusterman, Esquire
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Robert F. Daley, Jr.
The Honorable Thomas E. Pope
Richard P. Stroker, Esquire
The Honorable James H. Hodges

The Supreme Court of South Carolina

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

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

October 28, 1999

REMITTITUR

The Honorable David Hamilton
Clerk of Court, York County
P. O. Box 649
York, SC 29745-0649

Re: The State v. Hughes, Mar-Reece Aldean
93-GS-46-4296, 4299, 4301, 4303

Dear Mr. Hamilton:

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/djp

Enclosure

cc: Christina Chadwick Brice, Esquire
Stephen D. Schusterman, Esquire
Attorney General Charles M. Condon
Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Robert F. Daley, Jr.
Thomas E. Pope, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Mar-Reece Aldean Hughes, Appellant.

Appeal From York County
John C. Hayes, III, Judge

Opinion No. 25003
Heard May 26, 1998 - Filed October 4, 1999

AFFIRMED

Stephen D. Schusterman, of Rock Hill; and Christina Chadwick Brice, of York, for appellant.

Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General Robert F. Daley, Jr., all of Columbia; and Solicitor Thomas E. Pope, of York, for respondent.

MOORE, A.J.: Appellant was sentenced to death for the murder of Officer Brent McCants who was killed during a routine traffic stop. We affirm.

FACTS

On September 25, 1992, appellant and Eric Forney, armed with a gun, accosted two college students in the parking lot of a restaurant in Charlotte, North Carolina, and stole their car. The two men then drove to Rock Hill where Officer McCants stopped them for driving without headlights. McCants was shot several times and his police-issue walkie-talkie was taken from his belt as he lay on the side of the road. Appellant and Forney were apprehended shortly thereafter.

The State sought the death penalty against both appellant and Forney. They were tried separately. At his trial, Forney claimed appellant was the triggerman. Forney was convicted of murder, criminal conspiracy, and armed robbery and was acquitted of possession of a pistol during the commission of a violent crime. After the jury failed to return a unanimous verdict in the sentencing phase, he was sentenced to life imprisonment. This sentence was affirmed on appeal. State v. Forney, 321 S.C. 353, 468 S.E.2d 641 (1996).

At appellant's trial, appellant admitted he participated in the armed robbery of the vehicle and that he was driving at the time McCants stopped them, but claimed Forney shot McCants from the passenger seat and stole the officer's walkie-talkie. Appellant was convicted of murder, armed robbery, criminal conspiracy, possession of a stolen vehicle, and possession of a firearm during the commission of a crime. The jury found as an aggravating circumstance that the victim was a local law enforcement officer performing his official duties.

DISCUSSION

1) Sentencing phase admission of jailhouse crimes

During the sentencing phase, evidence was admitted that while in prison awaiting trial for the murder of Officer McCants, appellant killed a sleeping cellmate by stabbing him in the throat with a "shank." He was in the process of stabbing another cellmate when he was stopped by prison guards. These crimes occurred April 12, 1993.

In response to this evidence, appellant introduced expert testimony that he was mentally ill (paranoid schizophrenic) at the time. Appellant's expert testified appellant's actions on April 12th were not indicative of his character since he was mentally ill at the time. Further, there was evidence appellant had no further disciplinary problems once he was medicated for his mental illness. The trial judge charged the jury that the April 12th crimes should be considered only "as evidence of [appellant's] character, his characteristics, and/or his future dangerousness."

On appeal, appellant contends admission of the evidence regarding the April 12th crimes was improper because he was mentally ill at the time and therefore this evidence was not reliable character evidence.[1] We disagree.

First, there was no contemporaneous objection to the introduction of this evidence at the sentencing phase of trial. The trial judge ruled in limine that the evidence was admissible. An in limine ruling, however, is not final and does not preserve the issue for appeal. State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993). Accordingly, this issue is not preserved.

In any event, it is well-settled evidence of the defendant's behavior in prison is admissible in capital sentencing because it bears upon his character. State v. Stewart, 283 S.C. 104, 320 S.E.2d 447 (1984). The State may establish as an aggravating factor that the defendant would in the future pose a danger to others if not executed. State v. Patterson, 290 S.C. 523, 351 S.E.2d 853 (1986), *vacated on other grounds,* 111 S.Ct. 2253 (1991) *(citing* Jurek v. Texas, 428 U.S. 262 (1976) *and* Barefoot v. Estelle, 463 U.S. 880 (1983)). A defendant has the reciprocal right to present evidence he would adapt well to prison life. *Id.*

Here, the evidence appellant brutally killed one person and attempted to kill another while in prison was admissible as evidence of future dangerousness. Expert testimony appellant was mentally ill at the time and therefore acting "uncharacteristically" does not render evidence of his actions in prison inadmissible. The sentencing jury is charged with considering all

---

[1]Appellant also argues this evidence does not fit within the five exceptions to inadmissibility set forth in State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). Lyle is inapplicable here. Evidence admitted under Lyle is substantive evidence to establish guilt, not character evidence relevant to capital sentencing. State v. Middleton, 295 S.C. 318, 368 S.E.2d 457, *cert. denied,* 488 U.S. 872 (1988).

possible relevant information about the individual defendant whose fate it must determine. State v. Tucker (Tucker II), 324 S.C. 155, ___, 478 S.E.2d 260, 270 (1996), *cert. denied,* 117 S.Ct. 1561 (1997). It was for the jury to weigh all the evidence regarding appellant's behavior to assess his character and propensity or lack of propensity for violence. *See* State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998) (generally in evidentiary law character refers to an individual's propensity).[2]

2) Nondisclosure of complete SLED summary

During the sentencing phase, appellant moved for a mistrial on the ground the State had failed to disclose, in violation of Rule 5, SCrimP, part of a report by the State Law Enforcement Division (SLED) concerning the April 12th jailhouse crimes. Specifically, counsel complained she had not received the first seventeen pages of a SLED investigative summary indicating three inmates gave statements that around the time of the stabbings appellant talked about seeing "a little green man." The State contended it was not required to disclose the summary because it was work product exempt under Rule 5. The trial judge denied a mistrial finding appellant was not prejudiced by the failure to disclose.

Rule 5(a)(1)(C), SCrimP, exempts internal prosecution documents made in connection with an investigation. We need not determine here whether the report in question is exempt[3] since we agree with the trial judge's ruling that appellant has shown no prejudice from the failure to disclose. *See* State v. Trotter, 317 S.C. 411, 453 S.E.2d 905 (Ct. App. 1995) *aff'd in result* 322 S.C. 537, 473 S.E.2d 452 (1996) (violation of Rule 5 not reversible where no prejudice); State v. Thompson, 276 S.C. 616, 281 S.E.2d 216 (1981) (State's failure to disclose does not warrant reversal unless

---

[2]Appellant also relies on expert testimony he could not be held "criminally responsible" for the April 12th crimes because of his mental illness. Evidence of other crimes is admissible in sentencing to show the defendant's individual characteristics and predisposition to commit similar crimes, irrespective of conviction or a finding of criminal responsibility. State v. George, 323 S.C. 496, 476 S.E.2d 903 (1996), *cert. denied*, 117 S.Ct. 1261 (1997).

[3]*See* State v. Gill, 319 S.C. 283, 460 S.E.2d 412 (Ct. App. 1995), *vacated on other grounds*,327 S.C.253, 489 S.E.2d 478 (1997) (summary report prepared by police for use in prosecuting case not subject to disclosure under Rule 5).

defendant deprived of a fair trial).[4]

The information regarding the inmates' statements was available to the defense before trial from the report of Dr. Morgan which refers to inmates Jennings's, Walker's, and Gaithers's statements regarding the "little green man." The trial judge had these three inmates transported to court during trial to be interviewed by defense counsel. Further, appellant's experts, Drs. Kohanski and Dupree, both testified they had information appellant told fellow inmates of "a little green man" talking to him. In conclusion, appellant was not prejudiced by the partial disclosure of the SLED investigative summary since the information was available from other sources.

3) Involuntary statements

In the guilt phase of trial, State witness Jennings, an inmate, testified he heard appellant tell a group of inmates: "The best feeling I ever had is when I killed that cop." State witness Strain, a prison guard, testified he overheard appellant say to another inmate that "he was going to kill him another white boy." Appellant claims the trial judge erred in refusing to exclude these statements as involuntary because appellant was mentally ill at the time.

Absent coercive police conduct causally related to a confession, there is no basis for finding a confession constitutionally involuntary. A defendant's mental condition in and of itself does not render a statement involuntary in violation of due process. Colorado v. Connelly, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986). Further, under State law, a confession is not inadmissible because of mental deficiency alone. State v. Doby, 273 S.C. 704, 258 S.E.2d 896 (1979), *cert. denied,* 444 U.S. 1048 (1980). Here, the only factor appellant relies on as evidence of involuntariness is his mental

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[4]Appellant also claims a Brady violation but this issue was not raised below and is not preserved on appeal. State v. Tucker (Tucker I), 319 S.C. 425,462 S.E.2d 263 (1995), *cert. denied*, 516 U.S. 1080 (1996) (defendant cannot argue one ground below and another on appeal). In any event, failure to disclose Brady material is reversible error only when its omission deprives the defendant of a fair trial. State v. Gunn, 313 S.C. 124, 437 S.E.2d 75 (1993), *cert. denied,* 510 U.S. 1115 (1994). As discussed below, appellant can show no prejudice and therefore was not deprived of a fair trial.

condition. The statements in question were spontaneously made and there is no evidence of police coercion. Since mental condition alone does not support a finding of involuntariness, this issue is without merit.

Appellant further contends these statements were untrustworthy because there was no corroborating evidence. He refers to our decision in co-defendant Forney's case where Forney sought admission of appellant's statements to show appellant was the triggerman. We held the exclusion of those statements proper because there was no corroborating evidence indicating their trustworthiness. State v. Forney, *supra.*

In Forney's case, however, these statements were hearsay statements against the penal interest of an unavailable declarant (appellant) which required corroboration to be admissible to exculpate the accused (Forney). State v. Doctor, 306 S.C. 527, 413 S.E.2d. 36 (1992); *see also* Rule 804(b)(3), SCRE. In appellant's case, these statements were admissible as statements against his own interest and required no corroborating evidence. Rule 801(d)(2), SCRE.

4) Co-defendant's life sentence as mitigating factor

Appellant contends the trial judge erred in refusing his request to admit as mitigating evidence in the sentencing phase co-defendant Forney's life sentence. Forney received a life sentence after the jury in his own capital case found an aggravating circumstance but failed to return a unanimous verdict of death. *See* S.C. Code Ann. § 16-3-20(C) (Supp. 1997) (defendant sentenced to life if no unanimous recommendation by jury). The trial judge found this evidence irrelevant. We agree.

In a capital case, the sentencer may not be precluded from considering as mitigating evidence (1) any aspect of the defendant's character or record and (2) any circumstances of the crime that may serve as a basis for a sentence less than death. State v. Bell, 305 S.C. 11, 406 S.E.2d 165 (1991), *cert. denied,* 502 U.S. 1038 (1992) (*citing* Hitchcock v. Dugger, 481 U.S. 393 (1987)). In Bell, we found evidence of a co-defendant's demeanor and record was properly excluded because it fit neither of these categories of mitigating evidence. Similarly, co-defendant Forney's life sentence does not qualify as mitigating evidence here. Forney's sentence does not demonstrate appellant's character or record, nor does it reveal anything about the circumstances of McCants's murder. Accordingly, this evidence was properly

excluded. State v. Charping, 333 S.C. 124, 508 S.E.2d 851 (1998).

5) Proportionality

After the jury returned its recommendation of death, appellant moved for imposition of a life sentence on the ground a sentence of death would be disproportionate to Forney's life sentence. On appeal, he argues the trial judge's refusal to impose a life sentence violated his constitutional and statutory rights to a proportionate sentence.

Under State law, S.C. Code Ann. § 16-3-25(C)(3) (1985) requires this Court to determine in a death case "[w]hether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." (emphasis added). There is no requirement the sentence be proportional to any particular case. Death sentences have been imposed in other cases where, as here, the single aggravating circumstance was death of a police officer. *See* State v. Johnson, 306 S.C. 119, 410 S.E.2d 547 (1991), *cert. denied,* 503 U.S. 993 (1992); State v. South, 285 S.C. 529, 331 S.E.2d 775 *cert. denied* 474 U.S. 888 (1985). Accordingly, appellant's sentence is not disproportionate under State law. Further, the Eighth Amendment requires no comparative proportionality review, Pulley v. Harris, 465 U.S. 37, 104 S.Ct. 871, 79 L.Ed.2d (1984), and hence there can be no constitutional violation from the refusal to determine proportionality to a specific case.

Appellant further contends his death sentence is disproportionate to the degree of his moral culpability under Enmund v. Florida, 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982), because he was convicted of murder on a theory of accomplice liability and there is no evidence of his intent to kill. We note the United States Supreme Court specifically modified Enmund in Tison v. Arizona, 481 U.S. 137, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987), wherein it held the Enmund culpability requirement is satisfied by major participation in the underlying felony combined with reckless indifference to human life.[5] *See also* State v. Longworth, 313 S.C. 360, 438 S.E.2d 219 (1993).

In any event, the sentence in this case does not rest on moral

---

[5]The trial judge charged this language from Tison at the close of the sentencing phase.

culpability established solely by accomplice liability. Statements by appellant admitted in the guilt and sentencing phases of trial indicated he was the triggerman. This evidence of direct moral culpability in the killing of Officer McCants supports the imposition of death based on the aggravating circumstance found by the jury.

6) Courtroom outburst

In the sentencing phase, during cross-examination of appellant's medical expert, Officer McCants's mother loudly exited the courtroom followed by her sister. Appellant moved for a mistrial which was denied. The trial judge found that although Mrs. McCants's outburst could be interpreted as "a negative comment" on the defense evidence, her conduct was only momentarily disruptive and the jury already knew how she felt since she had testified as a victim impact witness.

The decision whether to grant a mistrial because of a witness's outburst rests within the sound discretion of the trial judge and will not be reversed absent an abuse thereof or manifest prejudice to the complaining party. State v. Anderson, 322 S.C. 89, 470 S.E.2d 103 (1996). In Anderson, we found no abuse of discretion in the denial of a mistrial where the outburst was limited and the jury likely understood it as an expression of grief over the victim's death. This case is similar. As noted by the trial judge, the jury was already aware of Mrs. McCants' feelings about the death of her son and likely understood her outburst as an expression of this grief. We find the trial judge did not abuse his discretion in denying a mistrial.

7) Allen charge

After deliberating at the close of the sentencing phase for four hours, the jury sent the trial judge a note stating they could not come to a unanimous decision. The trial judge gave a modified Allen charge[6] as follows:

> Well, by law I cannot tell you where to go from here, but I can ask and make a suggestion that you continue deliberations in an attempt to reach a verdict. I can tell you all of you have a duty to consult with one another and to deliberate with a view to

---

[6]Allen v. United States, 164 U.S. 492 (1896).

reaching an agreement, if this can be done without violence to any one of your individual judgments. Each of you as jurors must decide the case for yourself, but only after impartial consideration of the evidence with your fellow jurors. During the course of your continued deliberations each of you should not hesitate to re-examine your own views and change your opinion if convinced that your opinion is erroneous. Each juror who finds himself or herself to be in the minority should reconsider their views in light of the opinions of the jurors of the majority and, conversely each juror finding themselves in the majority should give equal consideration to the views of the minority. No juror, however, should surrender their honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a unanimous verdict.

On appeal, appellant complains the underscored statement was not even-handed because it directs the minority to "reconsider" and the majority merely to "consider."

First, this ground for objection to the Allen charge was not raised below and is not preserved. Tucker I, *supra* (objection to Allen charge not preserved where different objection stated below). In any event, the charge specifically instructs the majority to give "equal consideration to the views of the minority." Taken as a whole, this charge is an even-handed admonition to both the minority and majority jurors.

Appellant also complains the trial judge coerced the jury's decision by sending a note asking whether they would like to continue deliberations that evening or break until morning. There is no indication appellant objected below and this issue is not preserved. Tucker I, *supra*. Further, this note was simply an inquiry as to the jury's wishes and conveyed no admonition to reach a verdict. This argument is without merit.

PROPORTIONALITY REVIEW

We have reviewed the record and conclude imposition of death in this case was not the result of passion, prejudice, or any other arbitrary factor. Further, the evidence supports the aggravating circumstance and the death sentence is not excessive or disproportionate to the penalty imposed in

similar cases. S.C. Code Ann. § 16-3-25(C) (1985); *see* State v. Johnson, *supra*; State v. South, *supra*. Accordingly, the judgment of the circuit court is

AFFIRMED.

FINNEY, C.J., TOAL, WALLER, and BURNETT, JJ., concur.

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

May 18, 1998

Christina Chadwick Brice, Esquire
Brice Law Firm
P O Drawer 300
York, SC 29745

Stephen D. Schusterman, Esquire
Schusterman Law Firm
P.O. Box 4211
Rock Hill, SC 29731

Re: The State v. Hughes, Mar-Reece Aldean

Dear Counsel:

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

Appellant	30 minutes
Respondent	30 minutes
Appellant in Reply	10 minutes

This case is scheduled for hearing at 9:30 a.m. on Tuesday, May 26 1998.

Very truly yours,

Clyde N. Davis, Jr., Clerk

By Jean J. Peebles
Administrative Assistant

CND, Jr./jjp

cc: Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Robert F. Daley, Jr.
The Honorable Thomas E. Pope

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

April 6, 1998

RECEIVED
APR 06 1998
S.C. SUPREME COURT

The Honorable Clyde N. Davis, Jr.
Clerk
South Carolina Supreme Court
P. O. Box 11330
Columbia, South Carolina 29211

Re: The State v. Mar-Reece Aldean Hughes

Dear Mr. Davis:

Enclosed for filing please find the original and fifteen (15) copies of the Final Brief of Respondent, along with proof of service, in the above-referenced case.

Thank you for your assistance in this matter.

Sincerely,

Donald J. Zelenka
Assistant Attorney General

DJZ/lk

Enclosures

cc: Stephen D. Schusterman, Esquire (3 copies enclosed)
Christina C. Brice, Esquire (3 copies enclosed)
The Honorable Thomas E. Pope
Sandi Wofford, Victims' Services

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

March 30, 1998

Christina Chadwick Brice, Esquire
Brice Law Firm
P O Drawer 300
York, SC 29745

Re: The State v. Hughes, Mar-Reece Aldean

Dear Ms. Brice:

The above case has been docketed and assigned Supreme Court Docket No. 98-59.

The final briefs in this matter should be served and filed no later than April 6, 1998.

Very truly yours,

Clyde N. Davis, Jr., Clerk

By Jean J. Peebles
Administrative Assistant

CND, Jr./djp

cc: Stephen D. Schusterman, Esquire
Assistant Attorney General Robert F. Daley, Jr.
SC Office of Appellate Defense

97/98-CR-329

Brice & Brice, P.A.
Attorneys & Counsellors at Law
P. O. Drawer 300
York, South Carolina 29745

William M. Brice, Jr.
William M. Brice, III
Christina Chadwick Brice

9 N. Roosevelt Street
(803) 684-4462

March 20, 1998

The Supreme Court of South Carolina
Clyde N. Davis, Jr.
P.O. Box 11330
Columbia, S.C. 29211

Attn: Donna

Re: The State v. Hughes, Mar-Reece Aldean
VIA FAX AND US MAIL

Dear Donna;

I have been made aware today that the Record on Appeal was or is due today. We have today delivered to Appellate Defense the transcript our final brief and the record for printing. It was my understanding, as well as my co-counsel's Steve Schusterman, that the entire record and Final Brief was due on April 9, 1998. We were of the belief that we were well ahead of our deadline.

Please find attached a letter from the Supreme Court dated February 10, 1998 which states "According to our records, the *Record on Appeal and Final Briefs* will be due in this office approximately April 9, 1998." Everything has been delivered to Appellate Defense for printing and copying. I was under the impression based on that letter the Record on Appeal was due April 9, 1998.

I see no reason that the April 9, 1998 deadline will not be met. In fact, once the printing and copying is completed it will be ready to be delivered.

I request an extension based on this confusion in order to allow the necessary time to Appellate Defense for printing and copying. I have spoken with Bob Daly of the Attorney General's Office and he concurs with my assessment that all can be completed by the due date of April 9, 1998.

I apologize for the inconvenience and misunderstanding and would respectfully request an extension.

With kind regards, I am

Very truly yours,

Christina Chadwick Brice

cc: Steve Schusterman
Bob Daley, Attorney General's Office
Karen, Appellate Defense

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

February 10, 1998

Christina Chadwick Brice, Esquire
Brice Law Firm
P O Drawer 300
York, SC 29745

Re: The State v. Hughes, Mar-Reece Aldean

Dear Ms. Brice:

The following Order has been endorsed on your Motion for an Extension of Time in which to File Appellant's Reply Brief in the above entitled case on appeal.

"Motion granted.

Ernest A. Finney, Jr. C.J.
For the Court

By s/ Clyde N. Davis, Jr.
Clerk

February 10, 1998 ."

Please be advised that appellant's initial reply brief must be served and filed no later than February 18, 1998. I do want to call to your attention that the Notice of Appeal was filed on September 29, 1995.

I do not believe this case should be delayed into the Court's summer recess. Therefore, I intend to place this case on the May, 1998 preliminary list.

According to our records, the Record on Appeal and Final Briefs will be due in this office approximately April 9, 1998.

Once this case is on the preliminary list, it will require action by the Chief Justice to grant an extension.

Very truly yours,

CLERK

CND, Jr./djp

cc: Stephen D. Schusterman, Esquire
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Robert F. Daley, Jr.

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TO: Donna

FAX #: 1-803-734-1499

FROM: Chris Brice

DATE: March 20, 1998

SUBJECT: Mar- Reece Aldean Hughes

PAGES: 1

NOTES:

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

The State of South Carolina, ... Respondent,

v.

Mar-Reece Aldean Hughes, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Reply Brief on The State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on February 18, 1998 addressed to the attorney of record, Robert F. Daley, Jr., Post Office Box 11549, Columbia, South Carolina 29211.

February 18, 1998

Stephen D. Schusterman
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Post Office Box 4211
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STEPHEN D. SCHUSTERMAN

February 18, 1998

The Honorable Clyde N. Davis, Jr.
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

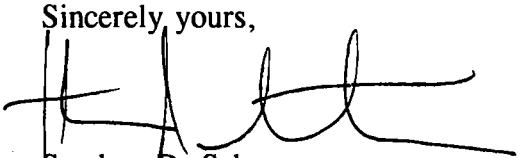
Re: The State of South Carolina v. Mar-Reece Aldean Hughes
Case No.: 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

Dear Mr. Davis,

Please find enclosed for filing the original Reply Brief of the Appellant and a Proof of Service. I am serving Assistant Attorney General Robert F. Daley, Jr. with one copy of the Reply Brief. If you have any questions, do not hesitate to contact my office.

With kind regards, I am

Sincerely yours,



Stephen D. Schusterman

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FEB 1 9 1998
S.C. SUPREME COURT

SDS/kts
Enclosure

cc: Assistant Deputy Attorney Robert F. Daley, Jr
Post Office Box 11549
Columbia, South Carolina 29211

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
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February 10, 1998

Christina Chadwick Brice, Esquire
Brice Law Firm
P O Drawer 300
York, SC 29745

Re: The State v. Hughes, Mar-Reece Aldean

Dear Ms. Brice:

The following Order has been endorsed on your Motion for an Extension of Time in which to File Appellant's Reply Brief in the above entitled case on appeal.

"Motion granted.

Ernest A. Finney, Jr. C.J.
For the Court

By s/ Clyde N. Davis, Jr.
Clerk

February 10, 1998 ."

Please be advised that appellant's initial reply brief must be served and filed no later than February 18, 1998. I do want to call to your attention that the Notice of Appeal was filed on September 29, 1995.

I do not believe this case should be delayed into the Court's summer recess. Therefore, I intend to place this case on the May, 1998 preliminary list.

According to our records, the Record on Appeal and Final Briefs will be due in this office approximately April 9, 1998.

Once this case is on the preliminary list, it will require action by the Chief Justice to grant an extension.

Very truly yours,

CLERK

CND, Jr./djp

cc: Stephen D. Schusterman, Esquire
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Robert F. Daley, Jr.

97/98-CR-257

No previous ext. for this brief. No return filed.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Ack'd Rec'd June 1-29

Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

The State,.....Respondent.
v.
Mar-Reece Aldean Hughes,.....Appellant.

NOTICE OF MOTION AND MOTION FOR AN EXTENSION OF TIME IN WHICH TO FILE APPELLANT'S REPLY TO RESPONDENT'S BRIEF

The undersigned, as attorney for the Appellant, hereby moves this Court to extend, and grant to the Appellant a Twenty (20) day extension of time in which to file the Reply Brief for the Appellant. The Brief of the Respondent was to be filed on January 19, 1998. The Appellant's counsel received the Respondent's brief by mail on January 23, 1998.

The undersigned seeks an extension of time to file a Reply Brief fro the following reasons:

(1) The Respondent's Reply Brief was received January 23, 1998 well into the ten (10) day period in which a Reply Brief was to be filed.

(2) The Respondent's Reply Brief has been reviewed by counsel. A reply argument has been outlined, however, due to constraints of time in regards to Appellant's counsel's private practice, insufficient time is available to complete the Reply Brief within the ten (10) day period of time allotted pursuant to SC Appellant Rules of Court.

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S.C. SUPREME COURT

The undersigned has consulted with opposing counsel and opposing counsel does not oppose the extension of time.

RESPECTFULLY SUBMITTED.

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York, South Carolina
January 29, 1998

Motion granted

Ernest A. Finney, Jr. CJ

For the Court

By agreement

Clerk

February 10, 1998

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

The State,.....Respondent.
v.
Mar-Reece Aldean Hughes,.....Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Notice of Motion and Motion for Extension of Time in which to file a Reply Brief** in the above referenced case along with the Certificate of Service has been furnished to: Robert F. Daley, Jr., Office of the Attorney General, P. O. Box 11549, Columbia, South Carolina, 29211; Thomas E. Pope, Solicitor, Sixteenth Judicial Circuit, 1675-A York Highway, York, South Carolina, 29745.

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January 29, 1998

The Supreme Court of South Carolina
Clyde N. Davis, Jr., Clerk of Court
P. O. Box 11330
Columbia, SC 29211

Re: The State of South Carolina v. Hughes, Mar-Reece Aldean

Dear Mr. Davis:

Please find enclosed the original and six (6) copies of a Motion For Extension of Time in Which to File Appellant's Reply to Respondent's Brief and a Certificate of Service on the above referenced matter.

If you have any questions concerning this matter, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

Christina C. Brice

Christina C. Brice

CCB/as

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

The Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

MAR-REECE ALDEAN HUGHES,

Appellant.

PROOF OF SERVICE

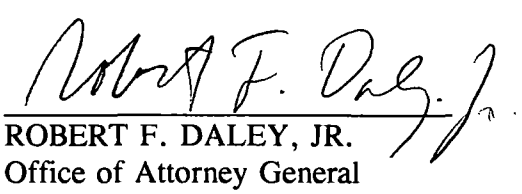
I, Robert F. Daley, Jr, Counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to his attorneys of record as follows:

Stephen D. Schusterman, Esquire
Post Office Box 4211
Rock Hill, South Carolina 29731

Christina C. Brice, Esquire
Post Office Drawer 300
York, South Carolina 29745

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

This 19th day of January, 1998.



ROBERT F. DALEY, JR.
Office of Attorney General
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Columbia, SC 29211
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ATTORNEY FOR RESPONDENT

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
The Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

MAR-REECE ALDEAN HUGHES,

Appellant.

INITIAL BRIEF OF RESPONDENT

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S. C. SUPREME COURT

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STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court erred in admitting evidence that Appellant stabbed two of his cellmates while awaiting trial when there was clear and convincing evidence that he committed the stabbing and significant evidence that he was not insane at the time of the stabbings?

II.

Whether the trial court erred in finding that the prosecution did not violate Rule 5 of the South Carolina Rules of Civil Procedure or Brady v. Maryland when Appellant was not denied any material that would have made a difference in the outcome of the trial?

III.

Whether the trial court erred in allowing into evidence statements made by Appellant to fellow inmates that strongly suggested that Appellant had been the shooter in the murder of Officer McCants because these statements were made without any police involvement?

IV.

Whether the trial court was correct in refusing to allow into evidence as a mitigating circumstance in the sentencing phase the fact that Appellant's co-defendant Forney received a life sentence in an earlier trial?

V.

Whether Appellant's death sentence was excessive or disproportionate to the penalty imposed in similar cases, considering both the circumstances of the crime and the character of the defendant?

VI.

Whether the trial court erred or abused its discretion by refusing to grant a mistrial after the victim's mother hurriedly left the courtroom during psychiatric testimony in the sentencing phase?

VII.

Whether the trial court abused its discretion when it gave an Allen charge to the jury that was both evenhanded and not unduly coercive?

STATEMENT OF THE CASE

Appellant, Mar-reece Aldean Hughes, is presently confined in the Lieber Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. Appellant was indicted in the December 1993 term of the Court of General Sessions for York County for murder; armed robbery; criminal conspiracy; possession of a stolen vehicle; and possession of firearm during the commission of a violent crime.

Appellant was represented by Stephen D. Schusterman, Esquire, and Christina C. Brice, Esquire. The State was represented by Thomas E. Pope, Solicitor for the Sixteenth Judicial Circuit, and Kevin S. Brackett, Deputy Solicitor for the Sixteenth Judicial Circuit.

The State served its notice to seek the death penalty and statutory aggravating circumstances on December 13, 1993. The State notified Appellant of the evidence in aggravation to be offered on January 20, 1994, April 27, 1994, and August 28, 1995. Pretrial motions were heard in the case on September 7-8, 1995.

Jury selection was conducted September 11-13, 1995. The case proceeded to trial September 14-22, 1995 before the Honorable John C. Hayes, III, Circuit Judge, and a jury. On September 18, 1995, Appellant was found guilty of all charges. The sentencing phase of the trial began on September 20, 1995. On September 22, 1995, the jury unanimously found the aggravating circumstance of "murder of a local law enforcement officer during or because of his official duties" and recommended that Appellant be sentenced to death. (Tr. p. 2458). Judge Hayes thereafter sentenced Appellant to death for

murder; thirty (30) years, consecutive, for armed robbery; five (5) years, consecutive, for criminal conspiracy; five (5) years, consecutive, for possession of a stolen vehicle; and five (5) years, consecutive, for possession of firearm during the commission of a violent crime.

A timely notice of intent to appeal was filed. This appeal follows.

STATEMENT OF FACTS

A. Factual Background

Deputy Brent McCants was found dead after he stopped a suspicious vehicle and was shot six times around 10:40 p.m. on September 25, 1992. Earlier that evening around eight o'clock, Sean McMillan and his girlfriend Beth Ann Jayne, both students at Davidson College, pulled into the parking lot of the Bellisimo Restaurant in Charlotte, North Carolina in her grey 1986 Buick Century, New York license tag EMF 313. As they got out of the car, two black men came from behind the restaurant, walked towards their car, and split up at the front of it, one going to Sean's side and one going to Beth Ann's side. (Tr. p. 918, line 10 - p. 922, line 10; p. 936, lines 4-18; p. 955, line 17 - p. 960, line 8).

Appellant's co-defendant Eric Forney, who was wearing dark sweat pants and a zip-up red hooded sweat shirt, approached Sean, pulled out a gun, put it in Sean's gut region, and said, "I want your money, get on the ground." (Tr. p. 926, lines 15-24; p. 960, line 4 - p. 962, line 12). Forney then pinned Sean's arm behind his back, frisked him, and took his keys, a watch, and his wallet. (Tr. p. 926, lines 15-24; p. 941, line 3 - p. 942, line 13; p. 962, lines 12-20).

At the same time, Appellant Hughes, who was wearing dark navy or black clothing, approached Beth Ann, told her three times not to look at him, and then led her around the car to the driver's side where she saw Sean on the ground with a gun to his head, his arm pinned to his back, and Appellant going through his pockets. (Tr. p. 922, line 22 - p. 924, line 18; p. 938, line 20 - p. 939, line 7).

Forney then got off of Sean, telling him that if he moved he would kill him. (Tr. p. 963, lines 13-23). Forney then handed Beth Ann a set of keys and told her to open the door. However, they were the wrong keys and so Forney had to get the right set from Sean. When she was finally able to get the door unlocked, Forney got in the driver's side and Appellant got in the passenger side. (Tr. p. 924, line 22 - p. 926, line 11; p. 963, lines 3-12). Before they drove off, Forney said, "If you move, we'll kill your whore." (Tr. p. 943, lines 6-20; p. 972, lines 6-13). Sean and Beth Ann then immediately called the police. (Tr. p. 928, lines 3-5; p. 943, lines 21-24; p. 964, lines 16-18).

After the incident, Sean identified Forney and Beth Ann identified Appellant in photographic lineups. (Tr. p. 929, line 20 - p. 933, line 22; p. 965, line 2 - p. 968, line 2).

Around ten o'clock on the same night, Michelle and Crystal Ayres were at the Galleria Mall Cinema which is located in the area of I-77 and Dave Lyle Boulevard. (Tr. p. 975, line 25 - p. 976, line 13; p. 998, lines 3-13; p. 1001, lines 21-24). Crystal, who was working the concession area, testified that two black males, one wearing a red sweat suit, came into the theater and asked if it had a drink machine. After she told them no, they both left. (Tr. p. 979, lines 11-20; p. 979, line 24 - p. 981, line 10; p. 989, lines 4-12). However, they then came back and asked if the box office was closed. She told them it was closed but that they could go watch a movie. (Tr. p. 981, lines 11-24). They then walked to where the movies were, opened up the doors, looked in, walked around, and walked back out. (Tr. p. 982, lines 13-25). Michelle also testified that she

saw two black males enter the theater and then leave about twenty minutes later. (Tr. p. 1001, line 25 - p. 1002, line 15). The next day, Crystal identified Appellant as one of the men who had come in the theater. (Tr. p. 983, line 1 - p. 988, line 2; p. 993, line 11 - p. 997, line 3). Michelle testified that Forney was one of the men who had come in the theater that night. (Tr. p. 1002, line 16 - p. 1005, line 10).

That same night, Sherrie Grimmitt was driving down Dave Lyle Boulevard when she noticed a car behind her with no headlights on. (Tr. p. 1036, line 16 - p. 1038, line 5). As the car went by her, she saw that two black males were riding in it. The passenger was hunched over in the car. The passenger was wearing a hooded sweatshirt. Soon thereafter she saw a police car which turned around in the median and immediately went after the car without its lights on. The police car pulled the other car over. (Tr. p. 1037, line 18 - p. 1043, line 25; p. 1044, line 12 - p. 1045, line 13).

At 10:39 p.m. that same night, Deputy Brent McCants called in to inform dispatch that he was stopping a suspicious vehicle with license tag number EMF 313 and to request a check on whether it was stolen. (Tr. p. 1008, line 16 - p. 1017; p. 1020, line 3 - p. 1034, line 13). (State's Exhibit 14; State's Exhibit 11 for i.d.).

Mary Grant and her sister, Kathy Pittman, were on Dave Lyle Boulevard returning from a football game when they noticed that a police car had pulled a car over. (Tr. p. 1048, line 2 - p. 1050, line 18; p. 1074, line 23 - p. 1075, line 19). Both testified that they slowed down when they saw something lying beside the patrol car with two people, one crouched down like he was picking something up and the other standing but slightly bent over it. At that time, the one that was bent over looked up, pointed at

them, ran to the car, and got in on the passenger side. Shortly thereafter, the man who was crouched down got up, ran to the car, and got in on the driver's side. (Tr. p. 1050, line 20 - p. 1051, line 12; p. 1065, line 2 - p. 1068, line 3; p. 1070, line 11 - p. 1071, line 3; p. 1071, line 16 - p. 1072, line 14; p. 1075, line 19 - p. 1076, line 13). As the sisters got parallel to the police car, they saw that it was a patrolman lying beside the car and could tell that he was hurt, so they stopped to help. Before the car pulled away, they got the 313 portion from the license plate and Mary Grant saw that it was a late model grey four door car. (Tr. p. 1054, line 1 - p. 1056, line 14; p. 1077, line 18 - p. 1079, line 1; p. 1081, lines 1-18). As Mary and Kathy approached the patrolman, they saw that he had been hurt and so Kathy Pittman immediately called for help on the police radio. (Tr. p. 1056, line 15 - p. 1057, line 22; p. 1059, lines 16-22; p. 1081, line 1 - p. 1082, line 18).

Officer McCants was shot in the head, abdomen, and under the armpit. (Tr. p. 1305, line 23 - p. 1386, line 3). Although Officer McCants had been shot six times, three of the gunshot wounds were non-penetrating -- they were stopped by his safety vest. One of the fatal gunshot wounds was under Officer McCants' armpit. The bullet travelled upward going through the heart. A second gunshot wound went through the kidney, pancreas, and intestine. The final gunshot wound entered the back of Officer McCants' head. The head wound was also fatal. (Tr. p. 1528, line 3 - p. 1535, line 21).

At 10:42 p.m., a call for help came in to dispatch from Kathy Pittman who had found Deputy McCants shot on Dave Lyle Boulevard.

Marvin Bohon, a shift lieutenant with the York County Sheriff's Department, responded to the scene after the call for help went out. (Tr. p. 1088, line 17 - p. 1089, line 8). As he assisted in securing the scene, he found that Deputy McCants' walkie talkie and the ammunition clip from his san brown belt was missing, although he eventually found the clip some ten feet from McCants' body. (Tr. p. 1089, line 24 - p. 1099, line 6).

Timothy Sanders, a volunteer fireman with a scanner in his truck, was in the parking lot of Celebrations that night when he heard Deputy McCants' initial radio call, which was followed by a call saying, "mayday, an officer is down on Dave Lyle." As soon as he heard the broadcast, Mr. Sanders headed toward Dave Lyle where he saw numerous blue lights and emergency officials. After deciding to go look for the suspect vehicle, he then drove to the Holiday Inn in that area where he saw two black males taking "big steps" away from the hotel parking lot. He then came upon a grey Buick with New York tag number EMF 313 in the same parking lot, so he immediately called the police. Later, he viewed a photo lineup and identified Forney as one of the two men that he had seen walking away from the area where the car was found. (Tr. p. 1119, line 3 - p. 1130, line 23; p. 1134, lines 2-20).

Dan Ketchel, a reserve officer for the York County Sheriff's Department, responded to the dispatch relaying Mr. Sanders 911 call and talked with Mr. Sanders. (Tr. p. 1158, line 7 - p. 1160, line 20). He radioed back to the dispatcher that two black males had been seen at the Holiday Inn and identified the suspect vehicle. (Tr. p. 1160, line 18 - p. 1161, line 1).

At that time, Rock Hill Police Officer Craig Alexander and Officer Joe Long began searching for the suspects. Around midnight, they saw a black male with a red hooded sweat shirt and his hands in his pockets walking down the road. When they stopped in front of him, the man, who was later identified as Forney, ran. After Officer Alexander finally caught him and they were able to frisk him, they found a 9-millimeter weapon with a semi automatic clip on his lower ankle. (Tr. p. 1174, line 13 - p. 1184, line 20; p. 1320, line 20 - p. 1321, line 8). This gun was positively identified as the one that was used to shoot Deputy McCants. (Tr. p. 1467, line 23 - p. 1468, line 22). Appellant had possession of this gun in the weeks prior to the murder. (Tr. p. 1305, line 6 - p. 1307, line 21). The gun was loaded while in Appellant's possession. (Tr. p. 1308, lines 10-23). After a friend of Appellant's handled the gun in early September, 1992, Appellant wiped the friend's fingerprints off the gun because "you never know what may happen." (Tr. p. 1308, line 20 - p. 1309, line 10). Police did atomic absorption tests and gun powder residue tests on the hands of Appellant, Forney, and Officer McCants' body. All tests were negative. (Tr. pp. 1437-39).

Around the same time as Forney's arrest, Appellant was tracked down by blood hounds and the police and SLED. Appellant was found hiding behind a log on a road adjacent to where Forney was arrested. (Tr. p. 1201, line 1 - p. 1203, line 22). Appellant was then arrested. (Tr. p. 1205, line 20 - p. 1207, line 25).

Deputy McCants' walkie talkie was found in an area between the two defendants. (Tr. pp. 1209 - 1210). Also, a black motorolo style walkie-talkie clip which holds a

policeman's walkie-talkie was recovered from underneath the driver's side of the 1986 Buick, New York license tag EMF 313. (Tr. p. 1410, lines 1-8; p. 1411, lines 3-12).

Appellant's right palm print and right ring finger print were found on the gear shift of grey Buick. (Tr. p. 1414, lines 7-22; p. 1417, lines 15-20). In order for Appellant to have left these prints, he would have had to be sitting in the driver's seat of car and grasping the gear shift. (Tr. p. 1419, lines 4-9). Appellant's right little fingerprint was found on the front right passenger door handle, as well. (Tr. p. 1417, lines 17-21). Forney's prints were not found on the gear shift. (Tr. p. 1418, lines 16-18).

B. Appellant's Statements

Appellant made numerous statements to the police, the media, and fellow inmates regarding his involvement in the murder of Officer McCants. A summary of the statements of Appellant introduced by the State follows:

(1) When Appellant was resisting arrest in the woods, York County Sheriff Deputy Larry T. Devinney jumped on top of Appellant. Officer Devinney shouted that he was a police officer and told Appellant to lay still. Appellant looked back up at Officer Devinney and said, "I did not shoot anybody." (Tr. p. 1227, line 20 - p. 1228, line 10; p. 1236, line 17 - p. 1238, line 23).

(2) After Appellant was taken to the Rock Hill Police Station (and read his Miranda rights in the police car while being transported), Appellant was placed in an interview room. Officer James Rockholt was placed in the

interview room to make sure Appellant did not leave. (Tr. p. 1250, line 18 - p. 1251, line 14). When Appellant came into the interview room, he went to the chair, "put his hands inside his face and said, 'I'm guilty, I'm guilty.'" (Tr. p. 1251, lines 15-22).

(3) After being read and waiving his Miranda rights again, Appellant was questioned by Rock Hill Police Department Captain Charles Cabaniss and SLED Agent Bruce Bryant. (Tr. p. 1256, line 5 - p. 1258, line 3). Appellant gave several statements:

(a) First, Appellant maintained that "he was at the Holiday Inn and had been at the Holiday Inn and had never been with Mr. Forney or ever on Dave Lyle Boulevard where the shooting occurred." (Tr. p. 1258, lines 12-15).

(b) Next, Appellant claimed "he was with Mr. Forney in Charlotte when the car was acquired when they carjacked and robbed the two students and acquired the car, but then Mr. Forney dropped him off at the Holiday Inn and then later came back and picked him up shortly before they were arrested." (Tr. p. 1258, lines 15-20).

(c) After changing his story several more times, Appellant finally gave a "more complete statement" which the police reduced to writing. This statement was as follows:

Tonight shortly after dark I was at the Revco and met up with Eric. I have known him for 3 or 4 years. He had a gun and we got a couple at the light. He told the girl to give up her money several times and she finally did. I told him that he didn't need to be pointing the gun at her. He took the wallet from the man and I thought he was going to shoot him. He was pointing the gun at him.

After we got the car he was driving and we came to S.C. We went to the Movie Theatre near the Interstate. Sneakers was playing. We stayed only 5 or 10 minutes. We went there because Eric was going to rob it. The woman

let us in to watch the movie free because it had already started so we didn't rob her.

We left and Eric was still driving. Shortly after we left the police pulled us. The officer walked up to the car. He said something about the lights not being on. The gun was between Eric's legs. The officer was shining his light into the car as he was walking up to the car. I think he asked Eric to get out. The officer then said, "Buddy or Partner have you been drinking." As Eric walked toward the front of the car he turned and started shooting the officer. It seemed like he was running toward him shooting. I heard a lot of shots but I don't know how many. I jumped out of the car and ran around toward the officer. The officer was on the ground when I got there. I think the officer was face down when I got there. I went and felt his pulse at his neck and did not feel anything. While I was doing this Eric was tugging at the officer trying to get something off him. This was from around his belt area.

The officer said something to the effect of '"I've been shot" or something like that.

Eric started hollering for me to come and get in. I got in and we left. We went back toward I-77 and then Eric pulled into the Holiday Inn. We were going to get a room but we saw all the police we ran. I hid in the woods and the police dogs later found me. I was hoping like hell they would miss me.

I not exactly sure about all the details in this statement but they are true to the best of my memory.

(State's Exhibit 56). (Tr. p. 1263, line 21 - p. 1265, line 5; p. 1267, line 24 - p. 1275, line 14).

(4) While being escorted into the courthouse for his bond hearing on September 29, 1992, Appellant was asked if he had anything to say. Appellant responded that the police "put this on us" and "We were ten

miles away in Charlotte and they got us and brought us back." (Tr. p. 1485, lines 8-15; p. 1725, line 1 - 1726, line 23). (State's Exhibit 79).

(5) While in the York County Detention Center, Appellant was heard by fellow inmate Harry Jennings saying, "The best feeling I ever had is when I killed that cop." (Tr. p. 1510, lines 7-18).

(6) While in the York County Detention Center, Sgt. Broadus Strain overheard Appellant tell fellow inmate Bobby Holmes that "he was going to kill him another white boy." (Tr. p. 1520, lines 18-22). Appellant said that "when he was going to go down the road, he knew some people who could get him a gun at CCI and he was going to kill him another white boy." (Tr. p. 1520, line 23 - p. 1521, line 5). (See also Tr. p. 1907, lines 6-12).

(7) York County Detention Center inmate Richard Waldrop testified that he had a conversation in which Appellant admitted shooting Officer McCants:

> He had asked me when me and him first got to know each other he told me that -- he asked me what I was in jail for and I explained to him what I was in there for and I asked him what he was in jail for and he told me for shooting a police officer. I didn't ask him nothing about how he done it, but he come out and explained to me how he said the police officer pulled him over, whenever he pulled him over, he said the officer come up and got his license and whenever he got his license and started back towards his patrol car, as he started back to the patrol car he said he leaned out of his car and shot the officer. He said the officer fell and when he did, he jumps out of his car and he said he unloaded the gun in him and about the time he got that far I said, "Look, as far as I am concerned I don't even care to hear about all of this."

(Tr. p. 1919, lines 7-21).

C. Appellant's Testimony

Appellant testified in the guilt phase of the trial. He admitted that he had purchased the gun used to murder Officer McCants. (Tr. p. 1645, line 3 - p. 1646, line 19). Appellant was familiar with the gun, how it worked, how to fire it. (Tr. p. 1667). Appellant claimed that he sold the gun to co-defendant Forney about a week before the murder of Officer McCants. (Tr. p. 1646, line 20 - p. 1647, line 11).

Appellant testified that on the night of the murder he and Forney decided to "go out and rob some people." (Tr. p. 1648, lines 1-2). Appellant also admitted he had another knife in his pocket that night. (Tr. p. 1670, lines 9-10). Appellant admitted he had a "straight razor." (Tr. pp. 1669, 1673-74). Appellant admitted he and Forney robbed Beth Ann Jayne and Sean McMillan at the Bellisimo Restaurant in Charlotte and stole their car. (Tr. p. 1648, line 8 - p. 1649, line 17). Appellant also knew Forney had the gun with him when they went out on September 25, 1992. (Tr. p. 1673). Appellant and Forney then drove down to Rock Hill. Appellant admitted he and Forney then went to Galleria Mall Cinemas. After leaving the cinemas, they then went to a convenience store and Appellant took over the driving of the stolen car. (Tr. p. 1651, lines 4-16). Appellant testified that they left the parking lot of the convenience store with their lights off. Officer McCants then pulled their car over. (Tr. p. 1651, line 14 - p. 1652, line 24). Appellant testified that he got out of the car and when Forney was about to get out of the car, Forney started firing out of the vehicle. (Tr. pp. 1653-54). Appellant then claimed Forney got out of the car and shot Officer McCants as he stood over him. (Tr.

p. 1658, lines 11-23). Appellant and Forney got back in the car and Appellant drove the car away from the scene. (Tr. pp. 1659-60). Appellant claimed he never gave or told the police "nothing." (Tr. p. 1679, line 19 - p. 1680, line 10; p. 1684, lines 7-21; p. 1699, lines 14-17). Appellant did admit he made a statement to the media as he came into the courthouse for his bond hearing. (Tr. p. 1684, line 22 - p. 1685, line 19).

D. Additional Evidence in Aggravation

In addition to the evidence submitted in the guilt phase, there was significant evidence in aggravation submitted to the jury in the sentencing phase. This included:

(1) Appellant's prior record in North Carolina which included:

(a) two counts of breaking and entering;

(b) discharging a firearm in occupied property;

(c) assault with a deadly weapon with intent to kill; and

(d) numerous other burglary and breaking and entering charges, in which Appellant stole at least seven fire-arms.

(Tr. pp. 1871-73; pp. 1876-81).

(2) Appellant's disciplinary records from the North Carolina Department of Corrections which included the following information:

(a) wrongfully taking someone else's personal property;

(b) disobeying a prison official;

(c) cursing an officer;

(d) assault upon another inmate;

(e) improperly receiving property;

(f) sexual offenses;

(g) administrative segregation;

(h) an attempt to escape;

(i) damaging property;

(j) threatening a correctional officer;

(k) possession of a "shank" and assault of a fellow inmate with the shank; and

(l) an increase in his custody security level due to his numerous infractions and violations.

(Tr. pp. 1887 - 1900).

(3) Appellant's behavior in the York County Detention Center. (State's Exhibit 83).

(4) Appellant's disciplinary record while at the Broad River Correctional Institution which included the following information:

(a) pulling out a sprinkler head causing his cell to flood;

(b) possession of a handcuff key;

(c) possession of a fourteen-inch "shank.";

(d) assaulting a correctional officer;

(e) possession of two razor blades; and

(f) setting his mattress on fire.

(Tr. pp. 2015 - 2025; pp. 2031-32).

(5) Appellant's stabbings of two of his cellmates in the York County Detention Center. As a result of the stabbings, inmate James Williamson

died and inmate Chris Gorth was seriously injured. (See Tr. pp. 1927 - 2000). (See also Argument I above).

ARGUMENT

I.

The trial court did not err in admitting evidence that Appellant stabbed two of his cellmates while awaiting trial when there was clear and convincing evidence that he committed the stabbing and significant evidence that he was not insane at the time of the stabbings.

In his first issue on appeal, Appellant contends that the trial judge erred in admitting into evidence in the sentencing phase Appellant's stabbings of two inmates (one which resulted in the death of the inmate) in the York County Detention Center on April 12, 1993. Appellant's primary argument is that he was allegedly psychotic at the time of the stabbings and not criminally responsible for his actions. This argument is procedurally barred and substantively without merit.

A. Factual Background

After Appellant was arrested for the murder of Officer McCants, he was housed in the York County Detention Center. On April 12, 1993, Appellant stabbed two of his cellmates, James E. Williamson and Christopher M. Gorth. Inmate Williamson died from his stab wounds.[1]

On April 27, 1994, by letter, the Solicitor notified the defense that he would introduce in the sentencing phase evidence of "the murder and assault committed in the York County Detention Center on or about April 12, 1993." (Tr. p. 2539, lines 16-17) (See also R. pp. ___ [Letter dated August 28, 1995 from Solicitor Pope to Attorney Schusterman]). On August 14, 1995, the defense filed a pre-trial "Motion to Continue,

[1] Williamson was stabbed in the throat and literally bled to death. (Tr. pp. 1998-99).

or in the alternative to Prohibit the Introduction of Evidence" in which Appellant sought to prohibit the prosecution from using evidence relating to the prison murder and assault in the murder trial relating to the murder of Officer McCants. (R. pp. ___) [Motion to Continue or in the Alternative to Prohibit the Introduction of Evidence]). This motion was based upon the alleged fact that "the Defendant has been found to have been insane at the time of the alleged crime." (R. p. ___ [Motion to Continue, or in the Alternative to Prohibit the Introduction of Evidence, at p. 2]).

Prior to trial, the trial court held an in limine hearing in which Appellant presented the testimony of three mental health experts, Drs. Donald Morgan, Renee Kohanski, and Dafferlin Dupree, who all testified that Appellant was: (1) competent to stand trial; (2) criminally responsible for the murder of Officer McCants; (3) not criminally responsible due to an alleged psychosis for the stabbings of inmates Williamson and Gorth. (Tr. pp. 2858 - 2945). In this testimony, however, it also was established through cross-examination that Appellant was found to be malingering by the staff of the Gilliam Psychiatric Hospital in February 1994. (R. pp. 2882, 2912-13, 2939; See also R. pp. ___ [Gilliam Psychiatric Hospital Discharge Summary and Gilliam Psychiatric Hospital Intake Assessment]). The primary concern of the trial judge at this in limine hearing was whether there was any evidence that Appellant was not insane at the time of the jail stabbings. (Tr. pp. 2946 - 2948). The trial court noted that the doctor's opinions were not binding and that Appellant's sanity was a fact question. (Tr. p. 2948). The trial court then noted, "I am obviously not making a ruling at this time." (Tr. p. 2948, lines 11-12). The State then put up a lieutenant with the York County

Detention Center who testified that Appellant understood the rules of the detention center and understood when he broke the rules. He also testified that during April 1993 Appellant did not appear to be crazy or insane. (Tr. pp. 2973-74). At the end of the in limine hearing, the trial court made the following ruling:

> THE COURT: All right, I find that evidence regarding the character of the defendant is relevant in a penalty phase of a capital trial and such evidence is relevant to sentencing of the defendant and is appropriately admissible for the consideration of the jury. I find there is, in fact, a three prong test as to introduction of such evidence that requires such evidence to be relevant, reliable and not prejudicial. I find that this evidence concerning the particular events meets the three prong test, it is relevant, it is reliable, and I find that it is not prejudicial, at least the prejudicial value does not outweigh the probative value. Obviously, it's prejudicial to a degree or they would not have wanted to introduce it. It wouldn't be relevant if it didn't have some prejudicial value most probably, but I don't think it is prejudicial to the defense that it outweighs the probative value and I think the subsequent conduct and the character of the defendant is very relevant, in fact, the case law says it is. The case law also says that introduction of it is not prejudicial. And I find that the evidence at least prima facie is reliable. Now the State will, of course, have to prove the events and all we have now the indictments, but if it properly provable, it would be introducable. I find that character is not a medical diagnosis. Character rather is defined by Black's as the aggregate of moral qualities which belong to and distinguish an individual. It is the general result of one's distinguishing attributes. it is the opinion generally entertained of a person derived from the common report of the people who are acquainted with him. There is a South Carolina case cited after that particular quote. I have not read it. I don't have access to it it's so old, but I do find that as we tell jurors at trial regarding expert testimony that it is to be considered as other testimony and is given for the purpose of helping the jury understand the evidence and not for the purpose of controlling their judgment. We tell the jury that no mere opinion of an expert can be accepted as in and of itself truthful or

> reliable, but it must be weighed and convince them or their judgments beyond a reasonable doubt, the same force and effect as other facts proven in the case before it can be relied on. I believe the question is whether or not this is a character trait or whether or not the psychosis or psychotic situation in which the defendant as testified to have been in override and makes such evidence or -- I think the question is a question for the jury as to whether or not the testimony proffered by the medical experts that this is not reflective of the defendant's character is a jury question.

(Tr. p, 2978, line 4 - p. 2980, line 2) (emphasis added).

In the opening statement in the sentencing phase, the assistant solicitor made the following comments:

> It's time for us to tell you about Mr. Hughes' extensive criminal record starting from when he was a young adult and when he could be charged as an adult extending through his behavior in the North Carolina Department of Corrections, where he spent a significant period of his adult life, extending up until the time that he was paroled and released in August of 1992, a month before this time was committed, extending up to the time when he was arrested, what happened out there on the side of the road, which you already know from the first phase, and what happened after Mr. Hughes was arrested and incarcerated in the York County Detention Center. There are a lot of things you don't know. You don't know about what his life was like in the North Carolina Department of Corrections and how he comported himself in the North Carolina Department of Corrections. You don't know how he comported himself in the York County Detention Center. There are many things you don't know. It was almost hinted at, but not directly, when Mr. Felix Wimborn testified that he was placed in the York County Detention Center on April 2, 1993, and released on April 26 of 1993 and I asked him, so how many days were you in the York County Detention Center with Mr. Hughes and he said, "Ten." Well he was in the Detention Center for over twenty days. How could he have only been in there for ten at the same time as Mr. Hughes? It's because, Ladies and Gentlemen, one of those things that you don't know on April 12th, ten days after

> Mr. Wimborn was put into the Detention Center, at about five o'clock in the morning, while other inmates in the same cell with Mr. Hughes were sleeping in their bunks, Mr. Hughes took a contraband knife, a lockblade knife about eleven inches long and drove it into the throat of James Earl Williamson fatally killing him, a senseless, brutal murder, while he was awaiting these charges here. We are going to tell you everything you need to know about Mr. Hughes to make the decision as to whether or not Mr. Hughes deserves to live in this society, whether he is a menace to society, whether he poses a danger in the future to other people, people in jail, guards who work there. You all have to make the decision.

(Tr. p. 1865, line 9 - p. 1866, line 24) (emphasis added).

Appellant did not object to these references to the jailhouse murder in the opening statement.

In the actual sentencing phase, the prosecution introduced significant evidence proving that Applicant stabbed inmates Williamson and Gorth. This included the testimony of Detention Center guards, a doctor who performed the autopsy of inmate Williamson, an inmate in the cell during the stabbings (Waldrop), and inmate Gorth who was stabbed by Appellant. (Tr. pp. 1903 - 2000). Once again Appellant did not state any contemporaneous objections to exclude the evidence of the jailhouse stabbings based upon any of the grounds asserted in this appeal.[2]

In closing argument, the Solicitor mentioned the jailhouse stabbings several times. (Tr. p. 2408, lines 17-19; p. 2410, lines 8-12; p. 2471, line 8 - p. 2414, line 5; p. 2415, lines 6-10). The Solicitor's argument focussed heavily upon Appellant's future

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[2]The defense, however, did present to the jury the testimony of the three doctors' opinions that Appellant was not criminally responsible for the jailhouse stabbings due to his alleged psychosis.

dangerousness in or out of prison. The defense did not object to the use of the jailhouse murder in the Solicitor's closing argument.

In the trial court's jury instructions in the sentencing phase, the trial court gave the following instructions relating to the jailhouse stabbings:

> I tell you now as to the April 12th, 1993 event in the York County Detention Center, I remind you -- I tell you first that the defendant is not on trial for those events at this time and I remind you that one is presumed innocent of a crime until a jury finds them guilty of the charge beyond a reasonable doubt. And I also tell you that as to the charge of the events of April 12, 1993 there is in law what is known as an affirmative defense that means a defense which the defendant must prove by the greater weight or the preponderance of the evidence. That defense is the defense of not guilty by reason of insanity. Now the defendant has the burden of proving this defense if he his tried or on trial for the offense, but to prove that defense by what's called the greater weight or the preponderance of the evidence. I'm telling you that in your consideration of this matter at this time you must, even though he is not on trial for that offense, you must adhere to these legal principles. As to the affirmative defense of not guilty by reason of insanity, the burden of proof is on the defendant to prove that defense and it must be done by what's called the greater weight or the preponderance of the evidence, that's a lesser standard than beyond a reasonable doubt. I can explain best to you the preponderance of the evidence by asking if you would imagine with me the scale the blindfolded justice holds. you recall they are even, but when a party has the burden of proof to prove an issue by the greater weight or the preponderance of the evidence, the weight of the evidence and you can't mechanically weigh it, you have to weigh it through mental processes, but the weight of the evidence must tip the scales in that person with the burden of proof's favor,that is, the defendant. If the scales remain even or tip back towards The State on that issue, then the defendant has failed to carry that burden of proof. Now as to this affirmative defense, it is our law that it is an affirmative defense to a prosecution for a crime that at the time of the commission of the act constituting the

offense the defendant as a result of mental disease or defect lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong. There is an additional matter, another verdict in the event one is tried and raises the issue of mental deficiency, that is not a complete defense, but that is known as a verdict of guilty but mentally ill that is in addition to not guilty by reason of insanity. Here where a defendant claims or is to be or to find a defendant guilty but mentally ill, a jury would have to find at the time of the commission of the act constituting the offense the defendant has the capacity to distinguish right from wrong or to recognize their act as being wrong as defined by law, but because of mental disease or defect they lack sufficient capacity to confirm their conduct to the requirements of the law. No as to this evidence that is the evidence of previous convictions, incarceration, infractions and offense and the events that have occurred after September 25, 1992, I charge you that this evidence should not be considered as substantive evidence of aggravating circumstances, but if you are convinced that the defendant committed those offenses, then you may consider them as evidence of his character, his characteristics, and/or his future dangerousness, but for no other purpose. These may be considered along with all the other evidence and you may give them whatever weight you deem proper and appropriate under the circumstances of this case. Evidence and testimony that the defendant committed a murder and other acts while in prison awaiting his trial on the charges before the court may be considered by you as evidence of the defendant's character and is evidence regarding the defendant's future dangerousness to society. Such testimony and evidence is not being offered as evidence of the defendant's guilt of a statutory aggravating circumstance and, therefore, such evidence is not to be considered by you as proof of a statutory aggravating circumstance. Rather, the evidence has been admitted as evidence of the defendant's character and evidence of the defendant's future dangerousness to society, therefore, you as jury are not required to find proof of these acts beyond a reasonable doubt or even by clear and convincing evidence before considering such evidence as character evidence. Rather, if you, the jury, are convinced that the defendant committed these other offenses, you may consider them as evidence of

> the defendant's characteristics and give them whatever weight that you deem appropriate under the circumstances of the case in determining the appropriate sentence to be issued in this case. The evidence and testimony has been presented to you regarding the mental condition of the defendant on April 12, 1993. Again, you may consider such evidence as evidence of defendant's characteristics and give such evidence whatever weight you deem appropriate in determining the appropriate sentence to be issued in this case.

(Tr. p. 2440, line 17 - p. 2444, line 10). The defense had no exceptions to the trial court's jury instructions. (Tr. p. 2452, lines 18-19).

B. Analysis

As an initial matter, it is clear that appellant's first issue on appeal is not properly preserved for appellate review. Although Appellant filed a pre-trial motion and the trial court held an in limine hearing, Appellant did not contemporaneously object to the mentioning of or introduction of evidence proving the April 12, 1993, jailhouse stabbings. Because Appellant did not contemporaneously object to the evidence of the jailhouse stabbings in the sentencing phase, the issue is not preserved for appellate review. See State v. Humphries, 325 S.C. 28, 479 S.E.2d 52, 56 (1996) (failure to contemporaneously object to victim impact evidence renders issue procedurally barred for appellate review); State v. Simpson, 325 S.C. 37, 479 S.E.2d 57, 60 (1996); State v. Whipple, 324 S.C. 43, 476 S.E.2d 683, 687-88 (1996); State v. Tucker, 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995)[3]; see also State v. Skillicorn, 944 S.W.2d 877, 888

[3] Additionally, a ruling on an in limine motion alone does not preserve an issue for appeal. State v. Simpson, 325 S.C. at ___, 479 S.E.2d at 59-60; State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993).

(Mo. 1997) (failure to contemporaneously object to admission of subsequent burglaries and robberies after murder).

Furthermore, assuming arguendo that this issue was properly preserved for appellate review, the trial judge did not err in allowing the admission of the jailhouse stabbings in the sentencing phase. First, it is clear that a defendant's future dangerousness is a legitimate issue at the sentencing phase of a capital case. See State v. Tucker, 324 S.C. 155, ___, 478 S.E.2d 260, 270 (1996).[4] Accordingly, it is not improper for a prosecutor to argue (if supported by the record) that if a defendant is sentenced to prison, the defendant might kill another prisoner. People v. Bradford, 15 Cal.4th 1229, 1380, 939 P.2d 259, 350 (1997). Clearly, a murder or assault committed in jail by a defendant awaiting trial is relevant to that defendant's future dangerousness. See e.g. State v. Williams, 322 Or.620, 631-32, 912 P.2d 364, 370 (1996) (evidence of defendant's fight with another inmate while he was in prison was admissible in penalty phase of a capital case because it was relevant to question of defendant's future dangerousness;[5] People v. Medina, 11 Cal.4th 694, 766-67, 906 P.2d 2, 44-45 (1995); Lane v. State, 933 S.W.2d 504, 507 (Tex. Ct.Crim. 1996); Saunders v. Comm., 242 Va. 107, 119, 406 S.E.2d 39, 46 (1991); Haberstroh v. State, 105 Nev. 739, 741, 782 P.2d 1343, 1344 (1989) (took hostages at gunpoint in prison); State v. Taylor, 304 N.C. 249,

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[4] Dawson v. Delaware, 503 U.S. 159, 166, 112 S.Ct. 1093, 1098 (1992) (noting that "showing that a defendant represents a future danger to society" is legitimate purpose to be served by evidence in sentencing phase).

[5] The Williams court also noted that "even unadjudicated bad acts" are admissible to show future dangerousness. Williams, 322 Or. at 632, 912 P.2d at 370.

281-84, 283 S.E.2d 761, 781-83 (1981). See also People v. Scott, 15 Cal.4th 1188, 1221, 939 P.W.354, 374 (1997); Fuller v. Johnson, 114 F.3d 491, 497-98 (5th Cir. 1997) (membership in prison gang), cert. denied, 118 S.Ct. 399 (1997); Comm v. Williams, 541 Pa. 85, 97-98, 660 A.2d 1316, 1322-23 (1995).

This Court has found that other unadjudicated crimes committed by the defendant are admissible in the penalty phase of a capital case. See e.g. State v. Middleton, 295 S.C. 318, 324, 368 S.E.2d 457, 460-61 (1988); State v. Stewart, 283 S.C. 104, 320 S.E.2d 447 (1984); State v. Gaskins, 284 S.C. 105, 326 S.E.2d 132 (1985); see also State v. Green, 301 S.C. 347, 392 S.E.2d 157 (1990).[6]

Second, Appellant attempts to overcome the obvious admissibility of the jailhouse stabbings by arguing that this evidence should have been prohibited because Appellant was criminally insane at the time of the stabbings. This argument must fail. Appellant places great emphasis on the fact that three doctors gave opinions that Appellant was insane at the time of the prison stabbings. The doctors' opinions, however, are not dispositive of this issue.

Even when a defendant presents expert testimony regarding his alleged insanity at the time of a crime, the State is not required to also produce expert testimony on the issue of insanity; even lay testimony may be sufficient. State v. (Perry Bush) Smith, 298 S.C. 205, 208, 379 S.E.2d 287, 288 (1989); State v. Rimert, 315 S.C. 527, 446 S.E.2d 400 (1994). Even if there is significant expert testimony on a defendant's insanity, it is

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[6]See also Hatch v. State, 58 F.3d 1447, 1465-66 (10th Cir. 1995), cert. denied, 116 S.Ct. 1881 (1996).

not error to present the case to the jury if there is lay testimony supporting a finding of sanity. State v. Poindexter, 314 S.C. 490, 431 S.E.2d 254 (1993). A jury may properly disregard expert testimony. State v. Milan-Hernandez, 287 S.C. 183, 186, 336 S.E.2d 476, 478 (1985).

The trial court clearly did not err in determining that there was sufficient conflicting evidence regarding Appellant's sanity at the time of the jailhouse stabbings to allow the jury to decide. The State elicited the following testimony to support the contention that Appellant was sane at the time of the prison stabbings:

(1) the testimony of Broadus Strain, a guard at the York County Detention Center, who testified:

   (a) In March-April, 1993, Appellant seemed to understand the rules and regulations at the detention center;

   (b) Appellant did not act out in any unusual or bizarre fashion or give any indication that he was suffering from any sort of mental illness;

   (c) He (Strain) overheard Appellant say that "when he [Appellant] got down the road that he would be able to talk to some of his buddies down the road to get a gun and kill him another white boy." (Tr. pp. 1906-07);

(2) the testimony of Richard Waldrop, an inmate in the cell when Appellant stabbed inmates, Williamson and Gorth, who testified:

   (a) Appellant told him (Waldrop) that he had a knife (Tr. pp. 1920-21);

   (b) Appellant told Waldrop "he was seeing a psychiatrist" and that "he had the system down pat that he knew he could beat the

charge." He said he "got the psychiatrist thinking he's crazy." (Tr. p. 1923);

(c) Appellant talked about killing his cellmates (Tr. p. 1927); and

(d) Appellant threw the knife used to stab Williamson and Gorth in the commode afterward (Tr. p. 1933);

(3) the testimony of Christopher Gorth, the surviving inmate Appellant stabbed in the cell, who testified:

(a) he was Appellant's cellmate for three weeks; and

(b) Appellant did not exhibit any unusual, bizarre or crazy behavior (prior to the stabbings) while in the cell with Gorth. (Tr. pp. 1965-68);

(4) testimony that while a safekeeper in April 1993 at Broad River Road, Appellant was able to:

(a) obtain part of a handcuff key at Reception and Evaluation (Tr. p. 2018); and

(b) obtained a fourteen-inch shank (Tr. p. 2019);

(5) testimony of Dr. Kohanski that:

(a) "there's data to support the fact that he [Appellant] didn't have a mental illness" and that "some of it [data] is very compelling both ways." (Tr. p. 2206);

(6) report of Dr. Kohanski noted evidence that "Mr. Hughes may have been planning this crime by securing a weapon." (Tr. p. 2243);

(7) the finding by the staff at Gilliam Psychiatric Center at the Kirkland Correctional facility that:

(a) Appellant was malingering in February 1994 (Tr. pp. 2247, 2281, 2311, 2316); and

(b) no report of mental illness from August 19, 1994 to September 7, 1994. (Tr. pp. 2318-20, 2324-25);

(8) Dr. Donald Morgan's findings in November/December 1992 and August 1994 that Appellant was criminally responsible/competent (Tr. pp. 2225-26, 2232, 2279, 2281);

(9) Dr. Donald Morgan's testimony that "there are two sides to it ... some of the inmates talked about things that he said that would look like he planned it and other inmates talked about things about how sick he was." (Tr. p. 2290);

(10) Dr. Dafferlin Dupree's testimony that Appellant tried to flush the knife down the toilet after the stabbings. (Tr. p. 2327).

(11) Dr. Dupree's admission that there is some evidence/statements that may support the theory that Appellant was criminally responsible for the stabbings. (Tr. pp. 2328-29).

This evidence and testimony clearly supports the trial court's decision to let the jury determine whether Appellant was criminally responsible for the stabbings of inmates Williamson and Gorth. As the Fourth Circuit has noted: "The question of [a defendant's] sanity at the time of the [crime is] a factual one for the jury to decide, not a legal question that would be resolved solely on the basis of psychiatric testimony." Billotti v. Leqursky, 975 F.2d 113, 118 (4th Cir. 1992), cert. denied, 507 U.S. 984 (1993).

Appellant also asserts that this evidence of the stabbings should have been excluded because it was improper Lyle evidence and was not proven by clear and

convincing evidence.[7] This identical issue was resolved against Appellant in State v. Middleton, 295 S.C. 318, 325, 368 S.E.2d 457, 461, (1988). As in Middleton, the trial court charged the jury so to ensure that the jury would not use the evidence improperly to establish guilt of aggravating circumstances. Finally, it is clear that the prosecution proved the Detention Center stabbings by at least clear and convincing evidence. (See Tr. pp. 1903 - 2000).

For all the foregoing reasons, it is clear that Appellant's first issue on appeal is not properly preserved for appellate review and substantively without merit.

[7] These issues are not properly before this Court because they were not properly preserved below.

II.

The trial court did not err in finding that the prosecution did not violate Rule 5 of the South Carolina Rules of Civil Procedure or Brady v. Maryland when Appellant was not denied any material that would have made a difference in the outcome of the trial.

In Appellant's second issue on appeal, he engages in inflammatory rhetoric[8] in arguing that the prosecution violated Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963) and Rule 5, S.C.R.Crim.P. by not turning over the SLED Summary Report of its investigation of the jailhouse stabbings until the beginning of the penalty phase. Appellant, however, fails to mention that (1) the prosecution turned over the entire SLED file on its investigation (except for the summary); and (2) prior to trial the defense was provided with the substance of the statements made by inmates to SLED investigators when the report of Dr. Donald Morgan dated April 4, 1995 was provided to the defense lawyers. This claim is without merit.

A. Factual Background

1. Pre-trial Hearings

On September 7-8, 1995, the trial court held pre-trial hearings on numerous in limine motions. In these hearings, various discovery motions were discussed.

The prosecution noted that it had complied with discovery, but had withheld "work product." (Tr. pp. 2496-97). The trial court noted that it would give Appellant additional time if additional information were to come to light. (Tr. p. 2521).

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[8] See IBOA, at p. 33 ("manipulations of a prosecutor") ("prosecutor's deception"), p. 35 ("ambushing"), p. 36 ("smacks of fraud, deceit, and misrepresentation"), p. 43 ("framed").

In the pre-trial hearing, Dr. Donald Morgan testified that in reaching his determinations regarding Appellant's competency he had considered "a large number of statements from jail personnel as well as other inmates and the summation of that." (Tr. p. 2879, lines 15-18). Dr. Morgan noted that Appellant had told inmates about a "little green man" who allegedly kept him from sleeping. (Tr. p. 2881). In this pre-trial hearing, Dr. Morgan's report dated April 4, 1995, was introduced by the defense as Defense Exhibit 2. (Tr. p. 2867, line 9). In the report (which has a stamp indicating it was received by defense counsel) the following information is recited:

> In reviewing the documents investigating the charges of April 12, 1993, there is an abundance of evidence supporting the psychiatric deterioration of Mr. Hughes. Inmate Randy Whitworth states that another inmate was afraid of MarReece and that he (MarReece) acted "very strange" at times. Inmate Felix Wimborn reports that "MarReece would talk to him (Wimborn) one day and the next day, wouldn't say a thing. He acted very strange at times." Inmate Richard Waldrup reports that he heard Mr. Hughes speaking with another inmate and stating that "he (Marreece) was going to hell, and that he wanted to take some more with him". Statement from John S. Walker states that "During several conversations with MarReece his mind would go and come". Statement from inmate John Patton states that MarReece "wanted to know what kind of time it would carry ... and was talking in circles and wanted Harry to keep talking to him ... He was saying things like they can't do nothing to me and I hate white people... Then he started saying that the green men were starting to fuck with him again. After this MarReece began to talk to himself a little. He was saying things like the little man isn't asleep, I saw his foot move down there. He's playing possum and trying to fuck with my head over there."
>
> There are references to the "green man" from inmates Harry Jennings, Jr. and James Gaithers, Jr. Inmate Gaithers states that "MarReece said he can't rest when the little green man gets on him. Says that same thing (little

> green man) when he gets mad. Called him crazy because of the way he acted. MarReece didn't like white people or policeman. In the statement by Christopher Gorth, one of the victims, he reports that MarReece assaulted him with the knife and then asked me if I was alright [sic], like nothing happened. He then went up in his bunk." Statement by inmate Patton states that after the incident MarReece said, "Damn, I am about ready for breakfast now. Then he asked about the time and wanted to know where the food was and weren't they going to bring any food back there."

(R. p. ___ [Report of Finding Mental Capacity, dated April 4, 1995].[9]

In the pre-trial hearing, Dr. Kohanski also noted that she had reviewed documents in which other inmates said Appellant spoke of "the little green man." (Tr. pp. 2912-13).[10]

Finally, in the pre-trial hearing, Dr. Dupree testified that:

> as part of Judge Hayes' Court Order Doctor Morgan and I were considered his treating physicians and I was actively involved with Doctor Kohanski. She did the day to day treatment of Mr. Hughes and Doctor Morgan and I did the overall general consultation with her and at that time when we staffed him for that evaluation I agreed with Doctor Morgan and Doctor Kohanski that he was not criminally responsible.
>
> Q And were the basis for that conclusion factual as far as the documents, the records that you have, or were your records any different than the records that had been provided to Doctor Morgan or Doctor Kohanski?

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[9] This Report dated April 4, 1995 was later introduced at trial in the sentencing phase as Defense Exhibit 9. (Tr. p. 2208, line 13).

[10] Dr. Kohanski also signed the report dated April 4, 1995. See Defense Exhibit 9.

A Only that I believe I had more social history available to me that was coming in bits and pieces. Other than that, no.

Q And you also had access to any other prior physicians who had contact with Mar-Reece Hughes, is that correct?

A That's correct.

Q And the three of you have all made the same finding, is that correct?

A That's correct.

Q And what is that finding?

A That finding is that Mr. Hughes was not responsible for his actions at the time of the alleged offense.

(Tr. p. 2931, line 15 - p. 2932, line 13).

2. Sentencing Phase

After Appellant was tried and convicted of all charges, the sentencing phase of the trial began on September 20, 1995. (Tr. p. 1854).

At the beginning of the sentencing phase, the following colloquy occurred:

MS. BRICE: Your Honor, yesterday I discovered by talking to several potential witnesses that are currently incarcerated in the York County Detention Center that especially in regards to the second murder statements were taken of all the inmates that were housed in Cell Block C during the time of that second incident and I have only been provided with I believe brief statements from the inmates that were incarcerated at that time and I have not been provided with I believe the complete statements of all the inmates that were taken by SLED back at that period of time and I am requesting at this time for all the statements that were taken subsequent to the April, 1993, incident or I want the statements of the potential witnesses to be excluded from testimony. I don't know at this time what

other inmates testified to, how it could have helped my client. I have no way of judging or cross examining based upon statements that other inmates had filed with SLED. So for those reasons, Your Honor, I would ask that all statements of the other inmates be excluded or, in the alternative, I would ask for a continuance in order to interview all the inmates of the sentencing phase in order to interview all of the inmates concerning all of the statements that were taken.

THE COURT: Does The State have any statements other than the three that have been provided?

MR. BRACKETT: I am not which three she is referring to.

MS. BRICE: I have the statements of Christopher Gore, Richard Waldrop and a John Patton, but I am of the opinion that statements were taken of Mr. Jennings who testified here before the court, Mr. Wimborn who testified previously before the court, Mr. Gaithers, Mr. Stroud. These are all statements of inmates who I am of the opinion or I am of the knowledge that did, in fact, give statements, but I have never had access to them nor have I been provided them by The State.

MR. BRACKETT: The only statements that were taken in the form of written statements are the ones that she just said except there was another statement from a Joseph Lowery, who was not incarcerated at the time of the second jail murder and I believe that was given to you as well regarding how the knife came into Mr. Hughes' custody. As far as other statements other inmates were interviewed but refused to give written statements and oral statements were taken, but there's nothing written, that they have written and signed that could be turned over to them.

MR. POPE: Your Honor, my understanding is that SLED did an investigation of the jail murder, a standard SLED investigation, and that was turned over in its entirety to the defense. Is that correct?

MS. BRICE: Well, from my knowledge at this point in time I'm not sure that is correct, Your Honor. I have been

told that everyone in Cell Block C gave a statement to SLED.

THE COURT: Did they say they gave a written statement to SLED or a taped or they did just make a statement?

MS. BRICE: I can tell you from a person that I spoke with he informed me that he gave a written statement, that each person was taken in individually and given a statement, but everyone at that time was given a deal concerning the statements that they were giving. And based on that, I think all statements in regards to inmates should be excluded.

THE COURT: The State is saying they have given you all they have. I'm going to ask them to make a diligent search of their file to make sure that they have, in fact, given all statements.

MR. POPE: Your Honor, ---

THE COURT: Wait and let me finish ---

MR. POPE: I apologize.

THE COURT: The State is saying that they have already given you everything.

All right, Mr. Pope.

MR. POPE: Your Honor, the SLED file is a bound file, a report in its entirety, if Ms. Brice wants to get it, I'll be glad to hand up the same file that was given to the defense, hand it to the court.

THE COURT: All right. I am going to deny the Motion for Continuance and I am going to look at the file myself and if you would make a short list giving me the names or just tell me right now the names of the three that you say you do have.

* * * *

MS. BRICE: What I am concerned about, Your Honor, is the fact that we have already taken testimony concerning statements of other incidence by my client, the fact that these statements were unreliable due to his mental illness and I think that it would certainly help the defense, it would make us more effective in defending Mr. Hughes to present a full picture as to whether or not he was sane at the time of the second murder.

THE COURT: Well, I understand. I am going to review the file.

* * * *

MR. POPE: May it please the court, Your Honor, I have shown Ms. Brice and I'm handing to the court this SLED Report, it even outlines - it has a table of contents - my understanding is included in there a number of inmates did not, in fact, give written statements, but did give statements that are summarized on page 7, but I'm going to hand this up to the court.

(Tr. p. 1854, line 8 - p. 1857, line 14; Tr. p. 1858, lines 7-16); Tr. p. 1859, lines 6-12).

After testimony about some of Appellant's criminal record in North Carolina, the following additional colloquy occurred regarding the SLED summary:

MS. BRICE: Yes, Your Honor, I have had during this break the opportunity to review the SLED Report that was provided prior to the jury coming in this morning. Your Honor, I have not been provided with the written Report of the SLED Department. There were, in fact, three statements that were given which all show the fact that my client was insane at the time of the offense. I don't have possession off this report. I asked our psychiatrist if she had possession of these records previous to my looking at it today. She saw it for the first time approximately five minutes ago as well, Your Honor. There are three witnesses, one being a John H. Walker, who in this report stated that during several conversations with Mar-Reece his little man would come and go. Harry Jennings, the fellow that testified earlier, talked about the little green man that Mar-Reece saw, the fact that he had told someone else about

flushing a toilet. Another person by the name of James Gaithers, also Mr. Hughes relayed information that he would talk to the little green man and everyone in the cell was calling him crazy. Your Honor, as an officer of the court, I am telling you I do not have these reports. It clearly goes to the fact that we were posing back in the Motions hearings on Thursday and Friday in regards to our client's mental capacity or lack thereof at the time of the second murder and I just think it is outrageous that we are finally seeing it for the first time before we go forward with an aggravation phase. If I could approach the bench to provide you with this report.

THE COURT: Certainly. Have you talked with these particular witnesses?

MS. BRICE: No, Your Honor. Your Honor, last week we were, in fact, looking for all of the persons who were incarcerated at the time of the second offense. In fact, the day that Mr. Jennings was present at the Detention Center we were told that he was not here. It was only when we learned after he testified that, in fact, he had been here the whole day. We were prevented from speaking with him on the day that he testified earlier in the week. As far as the other two witnesses, we do not have addresses, but we are at this point in time immediately going forward to trying to find these people and speak with them, but the fact I think I need to stress, Your Honor, is the fact that they had possession of this, it was not provided to us, it clearly goes to the insanity defense, it clearly goes to the inconsistencies and the lack of reliability of my client during the incidents that occurred on that day and I think it would be outrageous for the court to allow the testimony to come in concerning that second incident now knowing that we have not been provided with potentially exculpatory statements by other persons.

* * * *

MS. BRICE: Your Honor, if I may respond before the jury comes in? I would like the court to note that I have received a portion of that report. I have received statements. The only thing I have is the original I think the first eight pages. I submit to Your Honor as an officer of this

court I did not receive those items and my psychiatrist, who was working with The State's own doctors, never saw it.

THE COURT: Well, let me see what you have got. You have got a report that just started with page 9?

MS. BRICE: If I can look at it, I can tell you exactly which page it started with.

THE COURT: While you are coming up here to look at it, my question is did that not put somebody on notice that there were numbers before that?

MS. BRICE: My pages are not numbered, Your Honor.

Your Honor, I don't have any of this all the way through page 17. I don't have this Report of South Carolina Law Enforcement Agent Harry Benson.

THE COURT: Anything else? Can we go ahead and start with the next witness while I am reviewing this?

MS. BRICE: Yes, sir.

THE COURT: All right, bring in the jury.

MS. BRICE: I would move at this point in time for a mistrial based upon prosecutorial errors and misconduct.

THE COURT: I will take that under advisement.

MS. BRICE. Thank you.

(Tr. p. 1882, line 20 - p. 1884, line 20; Tr. p. 1885, line 21 - p. 1886, line 22).

After more testimony about Appellant's criminal record in North Carolina, one of Applicant's cellmates in the York County Detention Center, Richard Waldrop, testified. On cross-examination, he was questioned by Appellant's counsel about whether Appellant ever talked about "little green men." (Tr. pp. 1947-48). After inmate Waldrop's testimony, yet another colloquy about the SLED summary occurred:

COURT: Anything from The State? Why don't we go ahead and take a look at where we are with these SLED records. What does the receipt show having been received by the defense?

MR. POPE: Your Honor, this is a receipt that was in evidence that we also put as an addition to the evidence of aggravation. Your Honor, it's listed as the discovery material. I don't know the item that was put in evidence, the number of that exhibit. One was a SLED file on the jail murder given to Allyson Schusterman on March 8th of '95. It's my understanding it was given to Ms. Schusterman, it also was given to Ms. Brice. Your Honor, I have also reviewing the testimony through the State's witnesses this may have been in the previous hearing I believe it was one or more of the doctors that referred directly to some of the statements of Mr. Gaithers and perhaps Mr. Jennings or Mr. Wimborn, some of these about the little green man. One of the doctors had referenced some statement that I presume they are talking about the little green man that would have been covered with that. Your Honor, our records indicate we have given the SLED file at least twice. Now in looking at the file as it was handed to Ms. Brice and handed up to the court I also notice that the section she was referencing was the officer's summary and, so, I know it has been our standard procedure in the past to not necessarily give the summary. Our intention has been always to give the entire file, but in the light of fairness to the defense it cuts off at that summary and there may be an argument that part of the summary - our position has always been that was, obviously, a work product prepared for us. The other SLED file cases that may or may not have been provided. Again, it has been our intention to provide it all in this particular case and our records indicate that we have, but, again, Ms. Brice has represented to the court she didn't have it, based on the testimony of their witnesses I would say they would have to have knowledge of it, but, again, Your Honor, I am not disputing the specifics of what Ms. Brice says.

THE COURT: Ms. Brice, anything else?

MS. BRICE: Just again, Your Honor, I did not receive the first seventeen pages of that report. The reference that was

made to the little green man was evidenced in a statement made by John Patton.

* * * *

MS. BRICE: These are all records that I would say are vital to our position in regards to that second murder. i don't know how much more stress I could put on the fact that, you know, this one through seven pages would have been extremely important for us to adequately prepare the defense; these documents were not provided to us previously. It is my understanding that they have not even been presented to the State's own physician psychiatrist who evaluated that case.

MR. POPE: May it please the court, Your Honor?

THE COURT: Yes, sir.

MR. POPE: To begin with the defense has constantly characterized the doctors at the State Hospital with the exclusion of Doctor Dupree as The State's own physicians where each time they have been the ones that have called them. Your Honor, I further note that as to State's Exhibit D-2 from the prior hearings, which was a report put in by the defense, that Doctor Dupree was a party to on both dates of the evaluation, it was with Doctor Morgan and Doctor Kohansky, and I'll hand it up to the court, referring to - it doesn't have a page number, but it says, "In reviewing the documents and investigating the charge of April 12, '93 there is an abundance of evidence for the psychiatric deterioration of Mr. Hughes." It goes on then to talk about the different inmates including Mr. Gaithers, Mr. Jennings, ---

THE COURT: Let me see that.

MR. POPE: --- Mr. Stroud, and talks about the little green man. And that is a defense exhibit that was previously put in, Your Honor.

THE COURT: This directly states "John F. Walker states that 'during several conversations with Mar-Reece his mind would come and go.'" This is from Doctor Morgan with

Doctor Kohansky -- it's dated April 4, 1995. Did you receive a copy of this?

MS. BRICE: Your Honor, I have received that report, but, again, Your Honor, The State provided any and all records to the physician. I was not privy to those records and my own investigation trying to gather testimony regarding that second incident in the jail I think they would have been extremely helpful if they had provided me with these documents. The State provided the physician. I don't understand why they could not have provided them to me, which they did not do.

THE COURT: Did Doctor Dupree have -- was she given a copy of this report?

DOCTOR DUPREE: Yes, I received a copy of that report, but I didn't review the records. Doctor Morgan got that.

THE COURT: And counsel for the defense didn't get a copy?

MS. BRICE: Sir?

THE COURT: Did you get a copy of the psychiatric report of Doctor Donald Morgan dated April 4, 1995 and the attached report signed by Renee Kohansky and dated -- it's kind of hard for me to tell which was the date - it says ---

MS. BRICE: Yes, Your Honor, I did receive a copy of that report.

THE COURT: All right, well, that goes into extensive talk about just what we are talking about now, what Wimborn said, what Johnny Walker said, Harry Jennings, it talks about the little green man. Wouldn't this put the defense on notice about these witnesses these individuals having made these statements?

MS. BRICE: Your Honor, it is my position that The State has the burden to provide those documents to me. I don't know if it is incumbent upon the doctors to have to provide that information to me. Is The State not supposed to

provide me with the documents that they are going to present?

THE COURT: Well, what you are saying is that you are concerned about documents they are not presenting -- witnesses they are not presenting. We are concerned about having, as I understand it, your position is that you would have liked to have had a chance to interview and have the opportunity to call as witnesses John Walker, Harry Jennings, James Gaithers, talked about M. H. Stroud, I still can't find Stroud, but I haven't looked that thoroughly. What I am saying is would this not regardless of where it came from did this not put the defense on notice that these individuals had reported to somebody this information?

MS. BRICE: Your Honor, as far as the contents as to what they reported to other people - from what they were talking about on the report I gathered it was in a statement from Mr. Patton.

THE COURT: Well, I am going to let you look at it over lunch and we'll talk about it a little after lunch because it does not convey to me it starts in reviewing the documents and investigating the charges and then it goes over to what Randy Whitworth states, Felix Wimborn reports, Richard Waldrop reports, John S. Walker states, John Patton states, references to the green man from inmate Harry Jennings, Jr. and James Gaithers. How much more notice can you have that these two individuals said something about Mr. Hughes talking about a little green man?

MS. BRICE: Your Honor, it's still my position that it was incumbent upon The State to provide me with the statements whether or not they were actually taken by these people if they were written statements, if they were oral statements taken from these persons, these witnesses, and they wee not provided to me and they knew that they had it and they were not provided to me, Your Honor.

THE COURT: All right. Well, I understand that, but the second part of that is if you have your information from another source and they didn't give it to you, that perhaps was improper, but what prejudice is there to the defendant?

MS. BRICE: Your Honor, that report does not contain addresses, does not contain exactly what was stated to them ---

THE COURT: A lot of ---

MS. BRICE: It makes reference ---

THE COURT: It's in quotation marks.

MS. BRICE: But I don't know whether or not it was written statements, oral statements that was given, whether or not they have possession of it until I started speaking with these people individually and they tell me they gave statements, they gave written statements to people. When I first came into court this morning, that was my major concern was the fact that I was of the opinion that these persons had given statements to SLED, that led the Solicitor bringing out the first seventeen pages of the report and providing it to me this morning. I would like just the first seventeen pages to be made part of the record.

THE COURT: Certainly, we will do that. But I'm still going back to the same thing is if there is something broken, what would fix it; I don't know if you have got -- the situation is healed, if something is broken and it's fixed and it's not fixed in the way it should have been fixed, it's still nonetheless fixed.

MR. POPE: Your Honor, could I go on the record saying that our records indicate that the SLED file was provided.

THE COURT: I don't think there's any question; everybody agrees that the SLED file was, I'm certain; it's just a question of whether those seventeen page were as part of the SLED file.

(Tr. p. 1951, line 13 - p. 1953, line 5; Tr. p. 1954, line 12 - p. 1959, line 25).

During the sentencing phase, defense counsel admitted that the SLED summary would not have been beneficial to the defense social worker. (Tr. p. 2115). During the sentencing proceeding, Doctors Kohanski, Morgan, and Dupree all testified for the

defense. During their testimony, they all relied upon the fact that according to fellow inmates Appellant acted quite strange in prison around the time of the jailhouse killing. (Tr. pp. 2205, 2234, 2276, 2290-91, 2326-27). Their testimony, in part, relied upon statements of fellow inmates who said Appellant talked about "the little green man." (Tr. pp. 2234, 2327).

The trial court had inmates Walker, Jennings, and Gaithers, transported to court for the defense to question them. (Tr. pp. 2255, 2261, 2341-42).

At the end of the sentencing phase, the trial court denied Appellant's motion for a mistrial:

> THE COURT: All right, that Motion is denied and I find that under Rule 5 that whether or not the request for disclosure was or was not fully adhered to that the court has the authority under 5(b)2 to enter such Order as it deems just under the circumstances and I believe at this time that order would be one denying the Motion for a Mistrial. I have listened to the evidence. Mrs. Burry said she did not need the SLED Report, Doctor Kohanski had access to the report, Dr. Morgan had access to the Report, Doctor Barnard Dupree interviewed Mr. Patton and stuck by steadfastly to her diagnosis throughout this matter. There was the opportunity for counsel for the defense to subpoena the SLED agent. We discussed that when this came up if they wanted to render that further. The existence of this report or perhaps not the report, but the evidence of the meat of the report, that is, the gist of the report, i.e., the statements of the particular inmates regarding the April '93 incident were evidenced in an earlier report by Doctor Morgan. It appears that the counsel for the defendant requested from Doctor Kohanski access to these reports at least as early as May 7 of 1995; there has been no Motion to the court requesting further access to those records when Doctor Kohanski indicated that her superior said she could not produce them. There has been no request by counsel for defendant for The State to stipulate to those statements. There was after, at least not

to the court's knowledge, no one has called it to the court's attention, after March 7th and/or March 15th of this year, no request to the Solicitor that I am aware of for the reports Doctor Kohanski indicated she could not provide and, as I have said, no request was made to the court for an Order. I find that there is no prejudice on the failure of The State to provide the fourteen page summary of the report, that at this time the defense has had the opportunity to have available the three individuals we talked about earlier today, I believe that was Jennings, Gaithers and Walker. Additionally, Inmate Wimborn testified during the trial of this case. Additionally, at the start of this trial The State provided a list of the State's witnesses that were read into the record and a copy provided to counsel for defendant. This was in Aiken, I believe, on September 11th and thereon number 4 was Harry Anthony, number 34 was James Gaithers, number 49 was Harry C. Jennings, number 76 was John Patton, number 100 was Willie Stroud, number 106 was John Walker, number 110 was Felix Wimborn and no request was made regarding the nature of those witnesses. So I deny the Motion for a Mistrial.

* * * *

THE COURT: The whole request for this has to do with the ability of the experts to accurately diagnose Mr. Hughes, is that correct?

MS. BRICE: Your Honor, we would also submit that ---

THE COURT: Well, am I correct first, is that ---

MS. BRICE: No, sir, I don't think so and the reason why is because it is our position that they should have provided us with exculpatory evidence going to the fact that there were other persons that had given statements to the SLED Officer. We did not know about the statements that were within that summary and it is my position that it should have been provided to us by --

THE COURT: Well, now that you have them, what is exculpatory in there?

> MS. BRICE: Well, that Hughes was acting crazy at the time of the incident in the jail. There were specifically three persons who I talked to this morning who were not very willing to speak with me to be honest, but their statements that were written into the SLED Report were talking about how my client was crazy at the time of that incident and that ---
>
> THE COURT: And you have got expert testimony that says that from my understanding unless I haven't been listening to the same thing that the jury has.
>
> MS. BRICE: But it is my understanding I am entitled to exculpatory evidence by the Rules and it should have been provided to me. While I do have testimony by the psychiatrists, I don't feel that I should have been limited in my ability to speak with select persons that the Solicitor's Office is saying that I should or should not talk to. They made a decision themselves I should not talk to these people.

(Tr. p. 2342, line 18 - p. 2344, line 15; Tr. p. 2346, line 23 - p. 2348, line 4).

B. Analysis

The trial court did not err in denying Appellant's motion for a mistrial. It is clear that there was no violation of Rule 5 or Brady.

As an initial matter, it appears that Appellant did not claim a Brady violation at trial. Therefore, to the extent Appellant now relies upon Brady, this issue is not preserved.

Furthermore, it is clear that there was no violation of Rule 5 or Brady. First, it appears that the prosecution was under no duty to turn over SLED's summary of their investigation of the jailhouse stabbings. See State v. Gill, 319 S.C. 283, 292-93, 460 S.E.2d 417-18 (Ct. App. 1995), aff'd as modified 489 S.E.2d 478 (S.C. 1997). In Gill, the court ruled that the state was not required pursuant to Rule 5, S.C.R.Crim.P., to

turn over a summary report prepared by police. The court found that such a summary report is excluded from the disclosure requirement of Rule 5 by Rule 5(a)(2), S.C.R.Crim.P. (Excluding "reports, memoranda, or other internal prosecution documents made by ... prosecution agents in connection with the investigation or prosecution of the case.") Similarly, the prosecution was not required to turn over SLED's summary report pursuant to Rule 5.

Second, as noted by the trial court, it is clear that Appellant was given "the gist of the report, i.e., the statements of the particular inmates regarding the April '93 incident were evidenced in an earlier report by Doctor Morgan." (Tr. p. 2343, lines 8-11). Appellant can hardly claim any prejudice when both his counsel and all three psychiatrists who testified on his behalf had information about his fellow inmates' comments about Appellant's talking about "little green men."

Third, there was no Brady violation. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963) requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Pennsylvania v. Ritchie, 480 U.S. 39, 107 S.Ct. 9889 (1987). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375 (1985); Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); State v. Bryant, 307 S.C. 458, 461, 405 S.E.2d 806, 808 (1992). Brady requires the government disclose only evidence that is not available to the defense from other sources, either directly or through diligent investigation. Barnes v. Thompson, 58 F.3d 9971, 975 n.4

(4th Cir.), cert. denied, 116 S.Ct. 435 (1995); United States v. Clark, 928 F.2d 733, 738 (6th Cir.), cert. denied, 502 U.S. 846 (1991); United States v. Wilson, 901 F.2d 378, 380 (4th Cir. 1990) ("government has no Brady burden when the facts are available to a diligent defense attorney"). Thus, no Brady violation occurs where "a defendant knew or should have known the essential facts permitting him to take advantage of any exculpatory information or where the evidence is available to defendant from another source." United States v. Clark, 928 F.2d 733, 738 (6th Cir.), cert. denied, 502 U.S. 846 (1991); United States v. Kluger, 794 F.2d 1579, 1582-83 (10th Cir. 1986); see also Anderson v. Leeke, 271 S.C. 435, 248 S.E.2d 120 (1978); State v. Parker, 932 S.W.2d 945, 953-54 (Tn. 1996) (holding that state is not required to disclose information that defendant already possessed or is able to obtain). In the present case, not only was the information in the SLED summary available through diligent investigation, it was in the actual possession of the defense in the report of Doctor Morgan dated April 4, 1995. Therefore, there was no Brady violation.[11]

Appellant's contention at trial was that he was prejudiced because the SLED summary revealed that three inmates, John Walker, Harry Jennings, and James Gaithers, stated to SLED investigators that Appellant talked about a "little green man." (Tr. p. 1882, line 20 - p. 1883, line 23). A brief review of Doctor Morgan's Report dated April 4, 1995, however, reveals that all three of these inmates are discussed in the report. These inmates are quoted as saying that Appellant talks about the "little green man." (R.

[11] Additionally, the defense was given a copy of the SLED Summary at the beginning of the sentencing phase.

p. ___ [Defense Pre-Trial Hearing Exhibit 2, Defense Trial Exhibit 9]). Therefore, Appellant cannot claim prejudice.

More importantly, it is clear that at trial the defense had an enormous amount of material regarding Appellant's behavior in jail around the time of the jailhouse stabbings. The defense presented significant testimony regarding Appellant's mental health at the time of the stabbings. All three doctors who testified for the defense knew of the statements by Appellant's fellow inmates that Appellant talked about a "little green man." Therefore, it is clear that the SLED summary did not add any significant additional information that would have changed the result of the proceeding.

For all the foregoing reasons, it is clear that Appellant's second issue on appeal is without merit.[12]

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[12] Respondent would also note that Appellant's counsel makes several unsupported statements in the brief on this issue. The most troubling is the following:

> In an effort to circumvent SCRCrimp Rule 5, the Solicitor made a conscience decision as to whose statements would be transcribed and whose statements would not. The concern was disclosure. The Solicitor deliberately and carefully chose the witness statements to be transcribed and those selected statements were written and provided. Why, weren't all statements transcribed, particularly, those who the Solicitor knew he would call to testify? The answer rests in the Solicitor's motivation. The motivation was not to protect privacy and the integrity of their investigation. The motivation was to prevent and avoid disclosure of impeachment evidence.

(BOA, at p. 39). Respondent has been unable to find support for this contention in the record.

III.

The trial court did not err in allowing into evidence statements made by Appellant to fellow inmates that strongly suggested that Appellant had been the shooter in the murder of Officer McCants because these statements were made without any police involvement.

In Appellant's third issue on appeal, he contends that two of his statements made to fellow inmates in the York County Detention Center should have been excluded because he made these statements when he was allegedly at "the height of his [alleged] psychosis." Appellant fails to mention that trial counsel conceded at trial that Appellant's alleged psychosis affected the weight and not the admissibility of these statements. Appellant also fails to recognize that Appellant's statements to fellow inmates did not involve interrogation or coercion by anyone, including the police. Finally, Appellant ignores the fact that there was significant evidence to support a finding that Appellant was not psychotic when he made the statements. Therefore, this issue is without merit.

A. Factual Background

In the pre-trial hearing defense counsel agreed with the trial court that, absent a constitutional violation caused by police interrogation, Appellant's alleged mental problems did not prevent the admissibility of statements made by Appellant. Instead, any possible mental defects would only impact on the weight the jury would give to Appellant's statements that were not the result of any police interrogation or coercion. (Tr. pp. 2507 - 2510).

In the pre-trial hearing, the trial court heard extensive testimony about numerous statements Appellant made at various times. The trial court also heard extensive testimony regarding the fact that Appellant was read his Miranda rights at least three times and waived his rights each time. (Tr. pp. 2672-87, 2705-10, 2711-14, 2715-34, 2789-2832).

In the pre-trial hearing, the trial court heard numerous statements made by Appellant. One of these statements was made in the York County Detention Center and was overheard by Broadus Strain, a Detention Center sergeant. Sgt. Strain testified that he overheard Appellant tell inmate Bobby Lee Holmes "that when he [Appellant] gets down the road -- he knew some people that could get him a gun to the cell where he could kill him another white boy." (Tr. p. 2678, lines 7-9). Sgt. Strain testified that he did not do anything to provoke or elicit Appellant's statement to inmate Holmes. (Tr. p. 2678, line 21 - p. 2679, line 12). On cross-examination, Sgt. Strain testified that Appellant was in control and "knew what he was doing" when he made his statement to inmate Holmes. (Tr. p. 2682, line 4 - p. 2683, line 2).

During the pre-trial hearing, the trial court also heard extensive testimony about Appellant's mental health and his behavior in the detention center. (See discussion in Argument I).

Toward the end of the pre-trial hearing, the trial court asked defense about the admissibility of Appellant's statements that were not the product of police interrogation. Trial counsel responded:

> MR. SCHUSTERMAN: Your Honor, our position on all the statements are the same. They all revolve around these -- well, I shouldn't say they are the same -- you probably can divide them into two groups, one group being the custodial interrogation, another group being the spontaneous utterances.
>
> Your Honor, I think that as it relates to -- my opinion is that as it relates to those utterances, I truly as an officer of the court don't believe that they would be inadmissible. I believe that the psychological testimony that we have provided go more to the weight that a jury is to give it rather than to the admissibility of those statements. I've found nothing to indicate -- I have found no cases anywhere to indicate that those statements made, the utterances made by a defendant who is under some type of mental defect or mental illness, would be inadmissible.

(Tr. p. 2958, line 11 - p. 2959, line 2).

After hearing from the Solicitor (Tr. pp. 2960-62), the trial court made a detailed ruling on the admissibility of all of Appellant's statements. (Tr. pp. 2963-67).

At trial, the State introduced, among other statements, two statements made by Appellant to fellow inmates in the York County Detention Center. Sgt. Strain testified that Appellant told inmate Holmes that "he was going to go down the road, he knew some people who could get him a gun at the CCI and he was going to kill him another

white boy." (Tr. pp. 1520-21). Sgt. Strain testified that he was rational and "calmed down" when he was talking to Holmes. (Tr. pp. 1522-25).

The State also called Harry Jennings, a fellow inmate in the York County Detention Center, to testify. (Tr. pp. 1487-1518). Jennings testified about a statement Appellant made that "the greatest feeling he ever had was when he shot that cop." (Tr. p. 1495, lines 4-5).

After an in camera hearing, the trial court ruled that the statement was admissible. (Tr. pp. 1506-07). Jennings then testified that he heard Appellant say in jail that "the best feeling I ever had is when I killed that cop." (Tr. p. 1510, lines 14-15).

B. Analysis

In this issue, Appellant asserts that his statements to inmate Holmes (overheard by Sgt. Strain) and inmate Jennings should have been excluded as involuntary because they were allegedly "involuntary delusional verbalizations." (BOA, at pp. 46-47). This argument must fail for several reasons.

First, it is clear that Appellant is now asserting on appeal an argument with which he and the trial court agreed was not correct or even supported by legal authority. (See Tr. pp. 2507-10; pp. 2958-59). Counsel conceded in discussions with the trial court that Appellant's alleged psychosis would only affect the weight of statements that were not the product of custodial interrogation, but not affect the admissibility of these statements. Appellant should not be allowed to now assert a claim that he admitted at trial was without merit.

Second, as Appellant's counsel correctly noted, Appellant's argument must fail because it suffers from a fatal flaw. The fundamental flaw is that Appellant refers to no evidence of police interrogation or coercion resulting in "overreaching" or outrageous behavior. In fact, both of the statements to which Appellant now objects were not made to the police, but to fellow inmates. It is well settled that for a statement to be found involuntary the court must find that it was the result of coercive government misconduct which is casually related to the statement. Colorado v. Connelly, 479 U.S. 157, 163, 107 S.Ct. 515, 520 (1986) ("absent police conduct casually related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law"). While the physical or mental condition of the accused remains a pertinent concern as it relates to his vulnerability to government coercion, "mere examination of the confessant's state of mind can never conclude the due process inquiry." Colorado v. Connelly, 479 U.S. at 165, 107 S.Ct. at 521. Rather, the psychological and physical condition of the accused are significant in the "voluntariness calculus" only to the extent that the police exploit such characteristics to elicit incriminating statements from him.[13] Coercive police activity is a "necessary predicate" for a due process violation. Colorado v. Connelly, 479 U.S. at 167, 107 S.Ct. at 522. See also United States v. Rohrback, 8th Cir., 813 F.2d 142, 144, cert. denied, 482 U.S.

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[13] Courts generally have refused to consider the mental conditions of the suspect, even those which render him highly susceptible to suggestion, in the absence of either physical or psychological coercion by the government authority. See, e.g., Bell v. Lynaugh, 828 F.2d 1085 (5th Cir.), cert. denied, 484 U.S. 933, 108 S.Ct. 310 (1987); United States v. Gordon, 638 F.Supp. 1120 (W.D.La. 1986), aff'd., 812 F.2d 965 (5th Cir.), cert. denied, 483 U.S. 1009, 107 S.Ct. 3238 (1987).

909, 107 S.Ct. 2490, 96 L.Ed.2d 381 (1987) ("Connelly makes it clear that such personal characteristics of the defendant are constitutionally irrelevant absent proof of coercion brought to bear on the defendant by the State").

Numerous courts have ruled that a criminal defendant's mental state alone (absent coercive police interrogation) will not provide a basis to exclude as involuntary the defendant's statement to police or a third party. Colorado v. Connelly, supra; Nickel v. Hannigan, 97 F.3d 403, 409-411 (10th Cir. 1996) ("As Connelly makes clear, Mr. Nickel's mental condition, in the absence of any evidence of police coercion, does not alone make his statements to the police involuntary."), cert. denied, 117 S.Ct. 1112 (1997); Purvis v. Dugger, 932 F.2d 1414, 1422 (11th Cir. 1991) (holding that the defendant's confession was voluntary where defendant had a history of schizophrenia, was susceptible to authority figures, and had a childlike mentality, but where thee was no evidence of police coercion), cert. denied, 503 U.S. 940, 112 S.Ct. 1485 (1992); United States v. Machlin, 900 F.2d 948, 950-51 (6th Cir.) (holding that defendants' confessions voluntary when defendants mentally retarded, but no evidence of police coercion), cert. denied, 498 U.S. 840, 111 S.Ct. 116 (1990); Brewer v. State, 646 N.E.2d 1382, 1385

(1995); DeJesus v. State, 655 A.2d 1180, 1196-97 (Del. 1995); State v. Pleasant, 342 N.C. 366, 370-73, 464 S.E.2d 284, 286-88 (1995); State v. Knotts, 111 Ohio App.3d 753, 677 N.E.2d 358 (1995); People v. Dunn, 195 A.D.2d 240, 244-45, 607 N.Y.S.2d 689, 692-93 (1994); State v. Blackmon, 875 S.W.2d 122, 134 (Mo.Ct.App. 1994) ("A statement which is induced by psychosis or a mental disease which destroys a defendant's

volition and makes him confess is not involuntary within the meaning of the due process clause.") (citing Connelly); State v. Doby, 273 S.C. 704, 258 S.E.2d 896, 899 (1979); see also Illinois v. Perkins, 496 U.S. 292, 110 S.Ct. 2394, 110 L.Ed.2d 243 (1990) (finding admissible statements made by an inmate to a jailhouse informant without Miranda warnings, reasoning that Miranda was not meant to protect suspects from boasting about criminal activities in front of persons whom they believe are their cellmates). Because the two challenged statements were made to fellow inmates without any police interrogation, Appellant's argument must fail.[14]

Third, Appellant did not present any evidence at trial that his statements to inmates Holmes and Jennings were "involuntary delusional verbalizations." Appellant cites to nowhere in the record in which there is testimony that Appellant's statements to his fellow inmates were delusional or involuntary.[15] Importantly, it is clear from the record below that significant evidence suggests that Appellant was not mentally ill. (See Argument I above). For all the foregoing reasons, this issue is without merit.[16]

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[14] Because Appellant's two statements to inmates Holmes and Jennings were not the result of police interrogation, State v. Callahan, 263 S.C. 35, 208 S.E.2d 284 (1974), is inapplicable. In Callahan, the statement at issue was the result of interrogation by police.

[15] Although Dr. Dupree noted in her pre-trial hearing that she believed that Appellant could not give an intelligent statement because he was in a prodromal phase when arrested, she did not testify regarding any statements given by Appellant to his fellow inmates. (Tr. pp. 2836-2838). Importantly, neither of the statements given to inmates Holmes and Jennings were disorganized or bizarre. In fact, Sgt. Strain testified that Appellant "knew what he was doing" when he made the statement to inmate Holmes. (Tr. p. 2682-83).

[16] Appellant's reliance on the decision in his co-defendant's appeal, State v. Forney, 468 S.E.2d 641 (S.C. 1996), is misplaced. In Forney, several of Appellant's statements were excluded under the standards for admitting an unavailable declarant's statements

IV.

The trial court was correct in refusing to allow into evidence as a mitigating circumstance in the sentencing phase the fact that Appellant's co-defendant Forney received a life sentence in an earlier trial.

In Appellant's fourth issue on appeal, he argues that the trial court erred in refusing to allow Appellant to introduce into evidence his co-defendant, Eric Forney's sentence of life. Appellant claims that Forney's sentence of life alone should have been admitted "as a statutory mitigating circumstance to be considered by the jury in" the sentencing phase of Appellant's trial. (BOA, at p. 51). This claim is without merit.

A. Relevant Factual Background

Appellant and his co-defendant, Eric Forney, were charged with the murder of Officer McCants. Co-defendant Forney was tried prior to Appellant. Co-defendant Forney was tried and convicted of murder but was found not guilty of possession of a firearm during the commission of a violent crime.

Prior to trial, Appellant made an in limine motion to restrict the State from trying the defendant as principal actor. (Tr. p. 2549). The trial court deferred ruling on the motion. (Tr. p. 2551, lines 3-4).

At the close of Appellant's case in the sentencing phase the following colloquy occurred:

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against penal interest and evidence of third party guilt. The standards for the admission of an unavailable declarant's statements against penal interest and evidence of a third party's guilt are quite different from the requirements to allow the admission of a defendant's own statement. Therefore, the reasoning of the Court in Forney is inapplicable to the issue of the admission of Appellant's statements in Appellant's own trial.

MS. BRICE: Your Honor, that concludes the testimony. We would also seek to move the indictments, the returned indictments, on the Forney case into evidence at this time.

THE COURT: What says The State?

MR. POPE: The State would object to the relevance of it.

THE COURT: I sustain the objection.

Well, let me hear from -- he says they are not relevant. Tell me why you think they are relevant and let me look over them a little bit for a minute and let you at least tell me why you think they are relevant.

MS. BRICE: Your Honor, I would find they are directly relevant to the sentencing of Mr. Hughes. Mr. Forney, a co-defendant, certainly has no more culpability than Mr. Hughes has in the incident of the murder of Brent McCants. I think it is important for the jury to know that there was a deliberation by another jury that found that Mr. Forney got a life -- was found to be awarded a life sentence.

THE COURT: What was Mr. Forney found guilty of?

MS. BRICE: The same charges that Mr. Hughes was found guilty of, particularly, the murder, Your Honor.

THE COURT: What was he found guilty of?

MS. BRICE: He was found guilty of unlawful carrying of a pistol, of armed robbery, of criminal conspiracy, and of murder, Your Honor.

THE COURT: Was he not charged with the possession of a firearm during the commission of those?

MS. BRICE: The indictments I read was the indictments I have before me. I believe he was charged with what the court just stated for the record. I do not believe that he was found guilty by the twelve jurors in his case.

THE COURT: Was your client found guilty of possession of a handgun at the time of the armed robbery?

MS. BRICE: Yes, Your Honor, I don't know on what basis, but ---

THE COURT: I know; is that not a significant difference that they found that Mr. Forney did not have the gun at the time? I want to make sure I am right on what I am saying. Can the Solicitor help me with that?

MR. POPE: Yes, sir.

THE COURT: I don't have the indictments. It is my recollection that he was charged and the jury considered ---

MR. POPE: Considered possession of firearm during the commission of a violent crime and that's in ---

THE COURT: On both murder and armed robbery and returned verdicts of not guilty.

MR. POPE: That is correct.

MS. BRICE: Your Honor, I believe the case law and the statute is clear that anything that would tend to show a mitigating circumstance should be called to the attention of the jury and I believe that this is a mitigating circumstance that his co-defendant got a life sentence.

THE COURT: But is there not any significance in the fact that jury found that at the time of the murder and armed robbery they determined Mr. Forney did not have the gun and that they had found at the time of the armed robbery your client did have the gun or a gun?

MS. BRICE: Your Honor, it would be our position and our argument that this is a mitigating circumstance. It should be brought to the attention of the jury.

THE COURT: I deny the motion.

MR. POPE: Your Honor, for the record I would like to put in the record too that Mr. Forney's jury did not find for life. The jury deliberated an extensive period of time and were unable to return a verdict and because of that the court gave him a verdict of life. I think that should be

noted from the standpoint they did not ultimately reach a deliberation on that particular point. I would just like that in the record.

THE COURT: It is my recollection that they found on Mr. Forney also they did find some statutory aggravating circumstances, but did not give the death penalty, and I can't remember whether they found any mitigating circumstances or not.

What about that, Mr. Schusterman?

MR. SCHUSTERMAN: Your Honor, just so that the record is complete, I don't have any problem with everything Mr. Pope says is true and can be conveyed to the jury, the fact the jury did deliberate, that they returned aggravating circumstances, but then were not able to unanimously vote for death. I think that the overall concept whether or not a particular charge was found guilty or not this all comes out of this same event when we all can see that this all comes out of an event on September 25, 1992 at 10:43. One of the mitigating factors, Your Honor, is the relative culpability, one of the statutory mitigating circumstances is the relative culpability of a co-defendant. So to that degree the jury, I think, has a right to know under that concept that this man here within in the scheme of things, within this event, got a life sentence. And then if you start -- if the court begins to then say, well, isn't it true that one charge he was found guilty or not, we acknowledge the fact that they can give a life sentence for any reason or no reason at all, and we are invading their province to then begin telling them, well, isn't this an entire different situation, but what the court, in fact, is doing is saying that because they found him guilty of the unlawful carrying of a gun that somehow they must have attributed him to being the shooter or the trigger man and that's not necessarily true. So as an overall umbrella under a mitigating circumstance for the jury to know that this man received a life sentence they may categorically reject that, they may say, well, yes, Mr. Forney didn't do the shooting, we think Mr. Hughes did, and reject it, but they may not and I submit that is not for the court to determine, but for the jury to make a determination as to the total facts and situation and that they make a fully informed decision. Thank you, sir.

THE COURT: I deny the introduction of those. Please make them a part of the record as a court's exhibit so we will have those.

(Court's Exhibits 15, 16, 17, 18 marked and filed.)

(Tr. p. 2334, line 16 - p. 2339, line 6).

B. Analysis

The trial court did not err in refusing to allow into evidence the fact that Appellant's co-defendant was sentenced to life imprisonment by the trial judge after his sentencing jury could not reach a unanimous decision on his sentence. The sole function of the jury in the sentencing phase of a capital trial is to decide which sentence to impose upon the defendant. That determination must be based upon the specific circumstances of the crime and the characteristics of the individual defendant. E.g., Hitchcock v. Dugger, 481 U.S. 393, 107 S.Ct. 1821 (1987); Zant v. Stephens, 462 U.S. 862, 103 S.Ct. 2733 (1983); State v. Shaw, 273 S.C. 194, 255 S.E.2d 799 (1979). As this Court observed in State v. Bell, 302 S.C. 18, ___, 406 S.E.2d 165, 170 (1991):

> [t]he sentencing jury in a capital case may not be precluded from considering as mitigating evidence any aspect of the defendant's character or record and any circumstances of the crime that may serve as a basis for a sentence less than death. Hitchcock v. Dugger, 481 U.S. 393, 107 S.Ct. 1821, 95 L.Ed.2d 347 (1987); State v. Cooper, 291 S.C. 332, 353 S.E.2d 441 (1986).

302 S.C. at ___, 406 S.E.2d at 170. However, despite the broad latitude generally given to a capital defendant regarding the evidence he may present in the sentencing phase, the trial judge still has "the traditional authority of a court to exclude, as irrelevant, evidence not bearing on the defendant's character, prior record, or the circumstances of the offense." Lockett v. Ohio, 438 U.S. 586, 604 n. 12, 98 S.Ct. 2954, 2965 n. 12 (1978) (emphasis added); People v. Dyer, 45 Cal.3d 26, 69-71, 753 P.2d 1, 26-27 (1988). See also Walton v. Arizona, 497 U.S. 639, 652, 110 S.Ct. 3047, 3056 (1990); State v. William Bell, supra.

The decision of what factors should be deemed relevant is a matter to be determined under state law. E.g. State v. Williams, 321 S.C. 327, 337, 468 S.E.2d 626, 632 (1996) (whether parole eligibility is relevant to sentencing determination is a matter of state law). See Walton v. Arizona, supra; Boyde v. California, 494 U.S. 370, 377, 110 S.Ct. 1190, 1196 (1990); People v. Page, 156 Ill.2d 258, 271, 620 N.E.2d 339, 347 (1993); see also Gregg v. Georgia, 428 U.S. 153, 192, 96 S.Ct. 2909, 2934 (1976). This Court has held that "[e]vidence relating to the circumstances of the crime is relevant in a capital sentencing proceeding if it provides 'information relevant to the defendant's moral culpability'." State v. (William) Bell, 302 S.C. at ___, 406 S.E.2d at 170 (emphasis added) (citing South Carolina v. Gathers, 490 U.S. 805, 812, 109 S.Ct. 2207, 2211 (1989)). Applying these legal principles to the present case, it is clear that there was no error and that the trial judge's ruling must be affirmed.

Initially, the State submits that Appellant's claim must be rejected because it is not at all clear that Appellant and his co-defendant were equally culpable. To the contrary, the State's evidence clearly suggested that Appellant was the triggerman in the murder of Office McCants. Some of Appellant's own statements revealed that Appellant actually shot Officer McCants.

More importantly, assuming arguendo that Appellant and his co-defendant were equally culpable, Appellant's fourth issue on appeal must be rejected because evidence that another jury could not reach a unanimous decision regarding the sentence to impose upon Forney simply is not a relevant mitigating circumstance in Appellant's sentencing proceeding.

In William Bell, supra, this Court held that a co-defendant's demeanor was not a mitigating circumstance under Hitchcock v. Dugger, supra. The Court also upheld the trial judge's refusal to allow Bell to introduce his co-defendant's prior criminal record, which had been proffered as relevant to the statutory mitigating circumstances in § 16-3-20(C)(b)(4) & (5). In doing so, this Court held that "... the proffered evidence of [the co-defendant's] prior record, absent any evidence establishing its logical relevance to the circumstances of the crime, is not probative on the issue of Appellant's moral culpability." 302 S.C. at ___, 406 S.E.2d at 170. Although this Court in William Bell did not address the precise issue raised by Appellant, following the reasoning of that decision, it is clear that the evidence of Forney's life sentence was irrelevant to Appellant's moral culpability. Thus, this evidence was properly excluded. Id.

The overwhelming majority of courts which have considered the issue have held that evidence of a co-defendant's acquittal or sentence of life imprisonment[17] is not a relevant mitigating circumstance. See e.g., State v. Bond, 345 N.C. 1, 33-34, 478 S.E.2d 163, 180-81 (1996);[18] People v. Page, 156 Ill.2d 258, 270-72, 620 N.E.2d 339, 347-348 (1993); Com. v. Haag, 522 Pa. 388, 405-06, 562 P.2d 289, 298 (1989);[19] People v. Dyer, 45 Cal.3d 26, 69-71, 753 P.2d 1, 26-27 (1988); State v. Gerald, 113 N.J. 40, 105, 549 A.2d 792, 826 (1988); Brogden v. Blackburn, 790 F.2d 1164, 1169

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[17] Respondent has been unable to find any cases in which the co-defendant received a life sentence after the jury could not reach a sentencing decision.

[18] See also Crowder v. State, 491 S.E.2d 323, 325 (Ga. 1997).

[19] The State would note that this Court has previously found Com. v. Haag to be persuasive authority in construing a statutory mitigating circumstance. See State v. Sims, 304 S.C. 409, 405 S.E.2d 377, 385 (1991).

(5th Cir. 1986), cert. denied, 481 U.S. 1042, 107 S.Ct. 1985 (1987); Johnson v. State, 477 So.2d 196, 218 (Miss. 1985), rev'd on other grounds, 486 U.S. 578, 108 S.Ct. 198 (1988); Brogie v. State, 695 P.2d 538, 546-47 (Okl.Crim.App. 1985); State v. Brogden, 457 So.2d 616, 626 (La. 1984); Coulter v. State, 438 So.2d 336, 345 (Ala.Cr.Ap. 1982); State v. Williams, 305 N.C. 656, 686-87, 292 S.E.2d 243, 261-62 (1982);[20] but see Messer v. State, 330 So.2d 137 (Fla. 1976). There are numerous sound reasons for this Court to adopt the position of the overwhelming majority of courts and reject Appellant's argument.

First Appellant's claim fails to give jury trials the proper deference which they deserve. As the Mississippi Supreme Court observed in Johnson v. State: "[e]ach case tried by a separate jury must stand on its own. Otherwise, the jury trial is pointless." 477 So.2d at 218. Furthermore, in order to comply with the Eighth Amendment, the imposition of the death penalty requires an individualized consideration of the defendant's character and the circumstances of the crime. Walton v. Arizona, 497 U.S. at ___, 110 S.Ct. at 3056; Eddings v. Oklahoma, 455 U.S. 104, 110-112, 102 S.Ct. 869, 875 (1982); State v. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983); People v. Page, 156 Ill.2d at ___, 620 N.E.2d at 347. Moreover, "[t]he requirement of individualized sentencing in capital cases is satisfied by allowing the jury to consider all relevant mitigating evidence." Blystone v. Pennsylvania, 494 U.S. at ___, 110 S.Ct. 1083 (emphasis added). See also Walton v. Arizona, supra.

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[20] See also In Re Lord, 123 Wash.2d 296, 331-32, 868 P.2d 835, 857 (1994) (citing State v. Lord, 117 Wash.2d 829, 914, 822 P.2d 177, 225 (1992));

Yet, evidence that a co-defendant received a sentence of less than death, following a separate trial in front of a different jury, is not a relevant mitigating circumstance. It has no bearing on the defendant's character, record or the nature of his participation in the crime. Brogden v. Blackburn, 790 F.2d at 1169; People v. Dyer, 45 Cal.3d at 69-71, 753 P.2d at 27; Brogie v. State, 695 F.2d at 546-547; Coulter v. State, supra. The fact a co-defendant received a lesser sentence simply "is not a mitigating circumstance. It does not reduce the moral culpability of the killing nor make it less deserving of the penalty of death than other [capital] murderers." State v. Williams, 305 N.C. at 686, 292 S.E.2d at 261; People v. Dyer, 753 P.2d at 27. Cf. William Bell, supra.

As noted by many courts, the fact a co-defendant received a life sentence, following a separate trial in front of a different jury, is no more relevant than if he had been sentenced to death. See Coulter v. State, supra; People v. Dyer, supra; Johnson vs. State, supra; Brogden v. Blackburn, supra. Thus, in order for Forney's sentence of life imprisonment to have any meaning in Appellant's case, it would have been necessary to develop all of the facts at Forney's trial for Appellant's jury.

For instance, Appellant's jury did not know what different evidence had been presented at Forney's trial.[21] It was also unaware either of any defenses Forney may have asserted or what matters he may have offered in mitigation of sentence. "Requiring the sentencer to examine and compare the relative culpability of the defendants and the circumstances in aggravation and mitigation applicable to each would unnecessarily

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[21] One significant difference was the fact that Forney always contended that Appellant was the shooter. Also, as noted above, Forney was found not guilty of the counts of possession of a firearm during the commission or attempt to commit a violent crime.

complicate an already difficult task." People v. Page, 156 Ill.2d at 272, 620 N.E.2d at 348. See also People v. Dyer, 753 P.2d at 27. In short, Appellant has not offered any compelling reason for this Court to depart from its reasoning in State v. William Bell, supra, and hold that Appellant should have been allowed to inform the resentencing jury of Forney's life sentence, as a supposed non-statutory mitigating circumstance.

Another flaw to Appellant's argument is that if evidence of a co-defendant's lesser sentence is a relevant mitigating circumstance, the State submits it would have the right to introduce as an aggravating circumstance evidence that a co-defendant had received the death penalty. See State v. Stewart, 288 S.C. 529, 331 S.E.2d 775 (1989) (both State and defendant entitled to fair trial). Obviously, a defendant who asserts that his participation was less than that of his co-defendant, see § 16-3-20(C)(b)(4)-(5), will argue that evidence of that co-defendant's sentence is an irrelevant and arbitrary factor. Cf. People v. Dyer, supra; People v. Page, supra; Johnson v. State, supra. Thus, the position Appellant espouses would only lead to further and unnecessary litigation of this issue.

Therefore, because the Eighth Amendment does not require this Court to needlessly complicate the sentencing phase of capital trials with irrelevant evidence, see Blystone v. Pennsylvania, supra, the State would urge this Court to hold that evidence Forney had been sentenced to life imprisonment for the murder of Officer McCants was irrelevant to Appellant's moral culpability. Therefore, such evidence was not a relevant mitigating circumstance under State v. (William) Bell, supra. See Brogden v. Blackburn,

supra; People v. Dyer, supra; People v. Page, supra; Johnson v. State, supra; State v. Williams, supra; Com. v. Haag, supra.

V.

Appellant's death sentence was neither excessive nor disproportionate to the penalty imposed in similar cases, considering both the circumstances of the crime and the character of the defendant.

In Appellant's fifth issue on appeal, he contends that, pursuant to S.C. Code Ann. § 16-3-25, his "sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." (BOA, at p. 56). This claim is without merit.[22]

First, as an initial matter, it is clear that Appellant's sentence is neither excessive and disproportionate to the penalty imposed in similar cases. See, e.g., State v. Ivey, 325 S.C. 137, 481 S.E.2d 125 (1997) (murder of Orangeburg police officer while officer was attempting to arrest defendant); State v. Hudgins, 319 S.C. 233, 460 S.E.2d 388 (1995) (murder of police officer during traffic stop after defendant and co-defendant stole a truck)[23]; State v. Johnson, 306 S.C. 119, 410 S.E.2d 547 (1991) (murder of state highway trooper after trooper had stopped defendant's vehicle); State v. South, 285 S.C. 529, 331 S.E.2d 775 (1985) (murder of West Columbia police officer).

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[22] To the extent Appellant asserts a violation of the Eighth Amendment or Fourteenth Amendment, this claim is also without merit. Pulley v. Harris, 465 U.S. 37, 104 S.Ct. 871 (1984) (holding that there is no constitutional requirement to conduct comparative proportionality review); Hatch v. State, 58 F.3d at 1466-67.

[23] In Hudgins, each co-defendant claimed that the other was the triggerman. Hudgins' co-defendant, Terry Cheek, pled guilty to accessory after the fact. Hudgins was sentenced to death. This Court affirmed the conviction and found that Hudgins' sentence did not violate S.C. Code Ann. § 16-3-25. Hudgins, 319 S.C. at 239, 460 S.E.2d at 391-92.

Second, Appellant's co-defendant's sentence of life imprisonment after his jury could not reach a unanimous verdict as to his sentence does not render Appellant's death sentence excessive or disproportionate. It is clear that, contrary to Appellant's assertion, Appellant's case does not afford this Court with "the exact same set of facts and evidence" as Forney's case. (BOA, at p. 57). A brief review of the transcript of Appellant's case and Forney's case demonstrates how the jury in Appellant's case could have determined that Appellant was deserving of the death penalty. Both Appellant and Forney testified at their trials. The jury in Forney's case apparently believed that Forney was not the triggerman of the murder of Officer McCants. Unlike Appellant, Forney consistently contended that he was not the shooter. The jury found Forney not guilty of the crime of possession of a firearm during the commission of a violent crime. The jury in Appellant's case apparently determined that Appellant was the triggerman. Unlike Forney, Appellant made several statements that clearly suggest that he actually shot and killed Officer McCants. Unlike the jury in Forney's case, the jury in Appellant's case found him guilty of possession of a firearm during the commission of a violent crime. Additionally, it is clear that the evidence of aggravation in Appellant's case was more substantial than in Forney's case. In particular, Appellant had (1) a significant criminal record; (2) a long history of rules violations in prison; and (3) he stabbed two fellow inmates while awaiting trial. See Brogdon v. Blackburn, 790 F.2d at 1170 ("Sentencing hearings in capital cases focus not only upon the circumstances of the underlying crime, but also upon the personal attributes of each of the defendants."). This brief review

demonstrates that Appellant's assertion that he and Forney had "the same degree of culpability" is not supported by the record.

An acceptance of Appellant's argument would make it impossible for the State to ever obtain a death sentence when co-defendant's each claim the other was the triggerman and one of the defendants does not receive the death penalty.[24] In order to resolve such disputes, a jury has to make credibility determinations. To award Appellant a life sentence merely because his co-defendant received a life sentence would be an implicit rejection of Appellant's trial jury's credibility determinations and their evaluation of Appellant's character. Because the jury's decision was based on the observation of all the witnesses and evidence at trial, including Appellant's credibility, this Court should not overturn this informed sentence.

Appellant relies upon Enmund v. Florida, 458 U.S. 782, 102 S.Ct. 3368 (1982) which specifically forbids imposition of the death penalty on a defendant who may have aided and abetted a felony in the course of which a murder was committed by others, but who did not himself kill, attempt to kill, intend to kill or contemplate that life would be taken. Enmund is no help to Appellant. Even under Appellant's testimony, he and Forney went out with a gun and a knife and a razor blade. Appellant admitted that he knew Forney had the gun he allegedly sold to Forney. Appellant was a full participant in the robbery of Beth Ann Jayne and Sean McMillan in which Forney held a gun on Sean McMillan and forced Beth Ann to open the car at gun point. Appellant also

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[24] In fact, Appellant made a motion to prohibit the State from pursuing the death penalty against Appellant. (Tr. pp. 2533-35).

admitted driving Forney away from the scene of the murder. It is clear under Enmund that Appellant was sufficiently involved in the murder (even under his own testimony) to constitutionally authorize the application of the death penalty to him. See Hatch v. State, 835 P.2d 880, 884 (Ok.Ct.Crim. 1992); Haney v. State, 603 So.2d 368, 386-87 (Ala.Ct.Crim. 1991); White v. Wainwright, 1478, 1484 (11th Cir. 1987); Ross v. Kemp, 756 F.2d 1483, 1489 (11th Cir. 1985); Brogie v. State, 695 P.2d 538, 547-48 (Ok.Ct.Crim. 1985).

VI.

The trial court did not err or abuse its discretion by refusing to grant a mistrial after the victim's mother hurriedly left the courtroom during psychiatric testimony in the sentencing phase.

Appellant contends that the trial court erred when it failed to grant a mistrial after the mother of Trooper McCants hurriedly left the courtroom during the cross-examination of a defense psychiatrist and flung open the door in the back of the courtroom. This claim is without merit.

A. Factual Background

After forensic psychiatrist Renee S. Kohanski testified in the sentencing phase, the following matters were put on the record:

> COURT: I would like the record to reflect, and it has been called to my attention, but it didn't have to be, that about 5:04 during the testimony of Doctor Kohanski, while she was being cross examined by the Solicitor, the decedent's mother arose from her seat, walked hurriedly and deliberately to the back of the courtroom, flung open the glass panel inter-door and before they had time to close, hit the latch on the outer wooden door causing it to make a very loud sound sounding like a door was being slammed. I did observe that and as soon as that happened a Motion was timely made here at the bench by counsel for the defendant for a mistrial.
>
> Do you want to elaborate on that?
>
> MR. SCHUSTERMAN: Your Honor, I think you articulated the facts for the record as we observed. I would add that I was not participating in either the direct or cross examination. I will tell the court that as an officer of the court that when that second loud noise was heard, the second door opening, that fourteen jurors turned their heads and what I find particularly distressing about it is I think that at some point given the relationship now that Ms. McCants has thrown herself into it as being a witness, the

> emotional testimony of yesterday, and now her behavior today I think rises to a level as to commenting on the facts that are coming into the court's deliberation and that would be the basis for the mistrial. It's not merely court conduct, but at some point a person can hold such a role within a trial as she had in this particular case the court will note the emotional testimony yesterday that her behavior does rise to the level of persuading fourteen jurors as her commenting on the facts. For that reason we make a motion for a mistrial.
>
> THE COURT: Let me also say, I neglected to say, that another lady who I think was earlier identified as her sister, who has been sitting with her, a lady with silver gray hair, exited right behind her with about the same speed of exit and my thought was sort of yours it was very much it appeared to the court to be a non-verbal expression, which I characterized as quite a few things, in regards to the testimony of the witness, but suffice it to say, the implication was certainly negative. I will say no more than that about the various adjectives that come to my mind.

(Tr. p. 2250, line 17 - p. 2252, line 9). The solicitor responded by noting that he had no knowledge the victim's mother and sister would abruptly leave the courtroom and cause the back door to slam as they left. (Tr. p. 2252, line 22 - p. 2253, line 9). After hearing further argument from defense counsel, the trial court denied he mistrial motion but offered to give a curative instruction to the jury:

> THE COURT: I would like to go on the record that because of the emotional posture of any case like this and particularly this one I have had several discussions with the solicitor and they have bent over backwards to try to prevent this sort of thing. I certainly want the record to reflect that. We have discussed it and the Solicitor's Office for the record, you can't see the layout of this courthouse, but it is such that it is very difficult for the -- well, I'll put it like this, the witnesses and Mrs. McCants and the jury all have to use the same hallway for the entrance and exiting the building and the Solicitor's Office has been very cooperative in trying to make sure that those twains never

> meet and to my knowledge they have not, so I certainly find no fault with the Solicitor.
>
> I'm not going to grant the Motion for a Mistrial. I think it was a very unfortunate thing. If it were to happen again, we would have to look at it differently. If the defense wishes to prepare and you don't have to do it right now, a curative instruction of some sort, we will take a look at that before my charge and we are going to go over the charge in just a minute. I don't think that the jury could be more well aware of Mrs. McCants' emotional involvement than they were about this time yesterday when she testified, so it would appear to me even though it was uncalled for and bordered on being disruptive and it was momentarily disruptive apparently, I think that it appeared, I mean it could have been taken as frustration as much as anything, and the jury already knows how she feels about this matter, and while it was not testimonial testimony to an extent, and while it may be interpreted as it could be perhaps a negative comment on the testimony of the witness who was testifying, taking the totality of the circumstances and all the context in which we find ourselves after two weeks of trial almost, if you count the pre-trial motions, I don't find that it was prejudicial to the extent that it would warrant the granting of a mistrial.

(Tr. p. 2253, line 23 - p. 2255, line 9) (emphasis added).

Later, during the charge conference in the sentencing phase, the trial court revisited the issue of whether the defense wanted the court to give a curative instruction "regarding the episode of Mrs. McCants leaving the courtroom yesterday." (Tr. p. 2402, lines 11-14). The following colloquy then followed:

> MR. SCHUSTERMAN: Your Honor, we have talked about that and, obviously, there is a certain dilemma in curative instruction that you may be drawing more attention.
>
> THE COURT: So that's why I will not give one voluntarily, that's why I asked if you wanted one and if you drafted

> one, I would consider it, but I am not going to sui sponte give any such for that very reason.
>
> MR. SCHUSTERMAN: And we certainly appreciate that, Your Honor, and after discussing it, we have decided that it would probably be best left alone and we would ask that a curative instruction not be given.
>
> THE COURT: Does The State want anything in that regards?
>
> MR. POPE: No, sir, Your Honor.

(Tr. p. 2402, line 15 - p. 2403, line 4).

B. Analysis

Appellant's argument that the trial court erred and abused its discretion in refusing to grant the mistrial motion is both procedurally barred and substantially without merit.

As an initial matter, it is clear that this issue was waived by Appellant. After Dr. Kohanski's testimony, the court offered to give a curative instruction. Later, before the charge to the jury, the trial court again offered to give a curative instruction. This offer was refused by Appellant. Because Appellant refused the trial court's offer of the curative instruction, this issue is procedurally barred. State v. Tucker, 324 S.C. 155, ___, 478 S.E.2d 260, 267 (1996) (defendant waived issue because he refused the trial court's offer of a curative instruction); State v. South, 285 S.C. 529, 537, 331 S.E.2d 775, 780 (1985); State v. Watts, 321 S.C. 158, 164-65, 467 S.E.2d 272, 276 (Ct. App. 1996) (after making mistrial motion, defendant waived any complaint regarding challenged testimony when he rejected the trial court's offer to strike the testimony or give a curative instruction); State v. Lunsford, 318 S.C. 241, 245, 456 S.E.2d 918, 921 (Ct. App. 1995).

Assuming arguendo that this issue is not procedurally barred, the trial court did not abuse its discretion in refusing to grant a mistrial. "The decision whether to grant a mistrial because of a [victim's family member's] outburst rests within the sound discretion of the trial court and will not be reversed absent an abuse of discretion or manifest prejudice to the complaining party." State v. Anderson, 322 S.C. 89, 91-92, 470 S.E.2d 103, 105 (1996) (citing State v. Wagstaff, 202 S.C. 443, 25 S.E.2d 484 (1943)).

In Anderson, this Court found that the trial court did not abuse its discretion in denying a mistrial motion after the sister of the murder victim (while testifying) asked the defendant, "Why, Shawn? Why did you do it? ... He didn't have to take her life." Once the jury was removed, the victim's sister allegedly bawled and screamed, "He didn't have to do it. She had so much to live for." This Court found that the incident was very limited in time and scope and that the victim's sister's outburst "was, in large part, an expression of grief over the death of her sister, and the jury likely understood it as just that." Anderson, 322 S.C. at 93, 470 S.E.2d at 106. This Court held that because "the trial judge was in the best position to asses the degree to which the jury may have been prejudiced by the outburst, he did not abuse his discretion in denying Anderson's mistrial motion." Id. at 93, 470 S.E.2d at 105-06.

Similarly, in Wagstaff, this Court addressed in dicta the effect of a rape victim's mother's emotional outburst. At the end of her testimony, the victim's mother rushed toward the defendant screaming, "I could tear your eyes out." The defendant argued that the trial court erred in not granting a mistrial based on the outburst. Although the Court

found the issue was not properly preserved, the Court nevertheless considered that granting a mistrial would have been inappropriate. After noting that a mistrial should be granted when there is "manifest necessity" to do so, the Court stated:

> We believe the jury could readily understand that the witness in question might have a hostile attitude toward the accused, because of the natural effect of the circumstances on her emotions, although there was nothing whatever in her testimony tending to show his guilt, and hence her attitude was based solely upon the testimony of others.... When all the circumstances of the instant case are considered we believe it is clear that even if a motion for a mistrial had been made the trial Judge would not have been justified in granting it, in the proper exercise of his discretion. There was certainly no manifest or absolute necessity for such action.

Wagstaff, 202 S.C. at 453-54, 25 S.E.2d at 488-89.

In the present case, it is clear that the trial court did not abuse its discretion by denying the mistrial motion. As in Anderson, the incident was very limited in time and scope. More importantly, the actions were obviously expressions of grief and frustration over the death of Trooper McCants which the jury surely understood as just that. See Anderson, 322 S.C. at 93, 470 S.E.2d at 106; Wagstaff, 202 S.C. at 453-54, 25 S.E.2d at 488-89. Finally, it is clear that the trial court did not err in not giving a curative instruction after the defense requested that he not give one. See Anderson, 322 S.C. at 94, 470 S.E.2d at 106 (noting that "a curative instruction ... could have focused the jury's attention on the outburst, thus increasing the possibility of improper prejudice to the defendant.").

For all the foregoing reasons, this issue is procedurally barred and substantially without merit.

VII.

The trial court did not abuse its discretion when it gave an Allen charge to the jury that was both evenhanded and not unduly coercive.

In Appellant's last issue on appeal, he asserts that the trial court erred by giving an allegedly coercive Allen[25] charge in the sentencing phase of the trial. Specifically, by taking a myopic view of the charge, Appellant asserts the charge was not "even-handed" because it supposedly "focused on those jurors who held the minority view." (Appellant's Brief, at pp. 68 - 69). This claim is procedurally barred and substantively without merit.

A. Relevant Facts

After the conclusion of testimony, closing arguments and jury instructions in the sentencing phase, the jury began deliberations at approximately 4:25 p.m. on September 22, 1995. (Tr. p. 2452). At 8:30 p.m. the trial court received a note from the jury which read:

> We, the jury, are unable to come [to] a unanimous decision on the "sentence to be imposed" for the defendant. This being the case where do we go from here?

(Court's Exhibit 32). (Tr. p. 2453). The trial court then had a colloquy with counsel for the State and Appellant. Counsel for Appellant made a general objection to any Allen charge being given because "they are coercive in nature." (Tr. p. 2453, line 25 - p. 2454, line 1). Additionally, Appellant's trial counsel objected to the phrase in the

[25] Allen v. United States, 164 U.S. 492, 17 S.Ct. 154 (1896).

proposed Allen charge that "it is the jury's duty to agree on a verdict." (Tr. p. 2454, lines 7-21). After this colloquy, the trial court gave the following Allen charge:

> Well, by law I cannot tell you where to go from here, but I can ask and make a suggestion that you continue deliberations in an attempt to reach a verdict. I can tell you all of you have a duty to consult with one another and to deliberate with a view to reaching an agreement, if this can be done without violence to any one of your individual judgments. Each of you as jurors must decide the case for yourself, but only after impartial consideration of the evidence with your fellow jurors. During the course of your continued deliberations each of you should not hesitate to re-examine your own views and change your opinion if convinced that your opinion is erroneous. Each juror who finds himself or herself to be in the minority should reconsider their views in light of the opinions of the jurors of the majority and, conversely, each juror finding themselves in the majority should give equal consideration to the views of the minority. No juror, however, should surrender their honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a unanimous verdict.
>
> I ask you to remember that after full deliberation and consideration of the evidence it is your duty to agree upon a verdict if you can without disobeying your individual judgment and conscience.
>
> And with these instructions I am going to ask that you in response to your question "Where do we go from here." I am going to ask that you retire to your jury room and do some further deliberations.

(Tr. p. 2455, line 10 - p. 2456, line 14). The jury returned to the jury room and continued deliberations at 9:15 p.m. (Tr. p. 2456, lines 11-15). After the trial court gave the Allen charge, Appellant's trial counsel reasserted the same two objections to the

charge that he made prior to the charge. (Tr. p. 2457, lines 1-14).[26] At approximately 11:00 p.m., the trial court sent a note to the jury asking: "Would the jury like to continue to work tonight or break until in the morning?" (Court's Exhibit 34). The jury wrote back: "We will answer your note in a few minutes." (Court's Exhibit 33). Nothing in the record indicates any objection to the judge's note to the jury or the jury's response. At approximately 11:30 p.m. the jury returned to the courtroom to report its verdict. (Tr. p. 2457, line 20 - p. 2458, line 3).

B. Analysis

In this issue, Appellant raises for the first time the argument that the Allen charge was not even-handed because it allegedly "focused on those jurors who held the minority view." As an initial matter, this issue is procedurally barred. State v. Tucker, ___ S.C. ___, 462 S.E.2d 263, 264-65 (1995). In Tucker, the defendant objected generally to an Allen charge given by the trial court in the sentencing phase of a death penalty case. The defendant made a general objection that the Allen charge was coercive in nature and requested that the jury be informed of the consequences of not being able to reach a unanimous decision (i.e. the defendant would be sentenced to life). On appeal, the defendant in Tucker argued that the trial court should have told the jury not to reveal their vote and that the trial court, knowing only one juror prevented the jury from a unanimous decision, erred in giving an Allen charge. This Court found the arguments on appeal to be procedurally barred because a party cannot argue one ground below and

[26] After Appellant was sentenced to death, his trial counsel once again reasserted that the Allen charge was generally coercive. (Tr. p. 2467, line 15 - p. 2468, line 6).

then argue another ground on appeal. Tucker, ___ S.C. at ___, 462 S.E.2d at 265 (citing State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989)). Similar to the situation in Tucker, Appellant raised a general objection to the Allen charge given by the trial court. On appeal, however, in arguing that the Allen charge was improper, he raises a new ground for the first time. Accordingly, Appellant's assertion that the Allen charge improperly focused on the jurors who held the minority view[27] is procedurally barred. Tucker, supra; Bailey, supra; State v. Crowley, 226 S.C. 472, 85 S.E.2d 714 (1955) (objection must be on specific ground).[28]

Assuming arguendo that this issue were not procedurally barred, the Allen charge given was even-handed and did not focus unduly on the juror who held the minority view. Clearly, a trial court has a duty to urge the jury to reach a verdict, but he may not coerce it. State v. Pauling, 322 S.C. 95, 99, 470 S.E.2d 106, 108-09 (1996) (citing State v. Lynn, 277. S.C. 222, 284 S.E.2d 786 (1981).

The Allen charge given by the trial court required both those jurors in the majority and the minority to reconsider their views in light of the opinions of the other jurors. In fact, the language that Appellant points to in asserting that the charge focused impermissible on the jurors in the minority -- "Each juror who finds himself in the minority shall reconsider his views in the light of the opinions of the majority, and each

---

[27] The jurors in Appellant's case did not reveal to the court what their vote was. Nor did they reveal whether the majority was in favor of a death sentence or life. See State v. Jones, 320 S.C. 555, 558-59, 466 S.E.2d 733, 734-35 (Ct. App. 1996).

[28] Additionally, any assertion that the trial judge somehow coerced the jury to reach a verdict by sending a note for the jury asking whether they wanted to continue deliberating or break until the morning is procedurally barred because it was not raised at trial.

juror who finds himself in the majority shall give equal consideration to the view" -- actually has been approved by the Fourth Circuit. See United States v. Sawyers, 423 F.2d 1335, 1342-43 & n. 7. This language to which Appellant objects is actually part of the Allen charge that the Fourth Circuit offered as an example of a balanced Allen charge in Sawyers. This Allen charge was created by the Judicial Conference of the United States Courts. Sawyers, 423 F.2d at 1342 n. 7 (quoting Supplement to Report of the Committee on the Operation of the Jury System of the Judicial Conference of the United States 2 (1969)). See also United States v. Burgos, 55 F.2d 933, 936-37 (4th Cir. 1995). Importantly, the trial court in the present case also made clear that jurors should not change their minds if this does violence to any one of your individual judgments and that "no juror...should surrender their honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a unanimous verdict." (Tr. pp. 2455-56). These instructions strongly factor against a finding of coercion. See Burgos, 55 F.3d at 939 ("The most egregious mistake that can be made in the context of an Allen charge is for a [trial] court to suggest in any way, that jurors surrender their conscientious convictions."); United States v. Cropp, 127 F.3d 354, 360 (4th Cir. 1997) (same); see also State v. Jones, 320 S.C. 555, 558-59, 466 S.E.2d 733, 735 (Ct. App. 1996). Because the Allen charge clearly was directed at both the jurors in the majority and minority and because it emphasized that jurors should not surrender their conscientious convictions, the trial court did not err in giving the non-coercive Allen charge. Accordingly, because this issue is procedurally barred and substantively lacking, this issue is without merit.

CONCLUSION

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

Respectfully submitted,

CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Deputy Attorney General

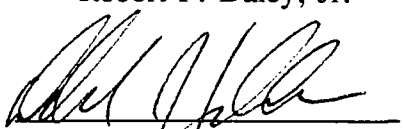
DONALD J. ZELENKA
Assistant Deputy Attorney General

ROBERT F. DALEY, JR.
Assistant Attorney General

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

THOMAS E. POPE
Solicitor, Sixteenth Judicial Circuit

BY: 
Robert F. Daley, Jr.


Donald J. Zelenka

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

ATTORNEYS FOR RESPONDENT

January 19, 1998.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
The Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

MAR-REECE ALDEAN HUGHES,

Appellant.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

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

(1) Trial Transcript, pp. 1-2985 (11 volumes) per S.C. Code Ann. § 16-3-25

(2) Defendant's Brief in Support of Motion to Suppress Indictment Nos. 93-3845 and 93-3846

(3) Brief of the State in Support of the Admission of Testimony/Evidence of the Defendant's Character During the Penalty Phase of Trial dated September 8, 1995

(4) Motion to Suppress Statements Absent Presence of Counsel dated August 28, 1995

(5) Motion to Exclude Evidence filed August 29, 1995

(6) Letter dated August 28, 1995 from Solicitor Pope to Attorney Schusterman re: notice of evidence in aggravation

(7) Motion to Continue, or in the Alternative to Prohibit the Introduction of Evidence dated August 14, 1995

(8) Report of Finding Mental Capacity dated December 9, 1992 (Pre-trial hearing Exhibit S-26 dated 9/8/95; State's Exhibit #76 (ID) dated 9/17/95

(9) Motion to Restrict the State From Trying the Defendant as Principal Actor dated August 4, 1994

(10) Motion to require the State to Withdraw the Intent to Seek the Death Penalty dated August 3, 1994

(11) Motion to Suppress Statement and for a Suppression Hearing dated August 3, 1994

(12) South Carolina Department of Corrections, Gilliam Psychiatric Hospital, Discharge Summary (Exhibit S-28 dated 9/8/95)

(13) South Carolina Department of Corrections, Gilliam Psychiatric Hospital, Intake Assessment (Exhibit S-27 dated 9/8/95)

(14) Report of Finding Mental Capacity dated April 4, 1995 (Pre-trial Hearing Exhibit D-2 dated 9/8/95; Trial Exhibit D-9 dated 9/21/95)

(15) Report of Finding Mental Capacity dated August 3, 1994 (Pre-trial Hearing Exhibit S-29 dated 9/8/95; State's Exhibit No. 78 (ID) dated 9/17/95)

(16) Report of Finding Mental Capacity (Pre-trial Hearing State's Exhibit S-25 dated 9/8/95; State's Exhibit 77 (ID) dated 9/17/95

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

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

CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ROBERT F. DALEY, JR.
Assistant Attorney General

THOMAS E. POPE
Solicitor, Sixteenth Judicial Circuit

By: Robert F. Daley, Jr.
Robert F. Daley, Jr.

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

ATTORNEYS FOR RESPONDENT

January 19, 1998

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 19, 1998

The Honorable Clyde N. Davis, Jr.
Clerk
South Carolina Supreme Court
P. O. Box 11330
Columbia, South Carolina 29211

Re: The State v. Mar-Reece Aldean Hughes

Dear Mr. Davis:

Enclosed for filing in your office please find the original Initial Brief of Respondent and Designation of Matter, along with Proof of Service. By copy of this letter I am serving two copies of the Initial Brief and Designation on counsel for the Appellant.

Thank you for your cooperation in this matter.

Sincerely,

RECEIVED
JAN 20 1998
S. C. SUPREME COURT

Robert F. Daley, Jr.
Assistant Attorney General

RFDjr/lk

Enclosures

cc: Stephen D. Schusterman, Esquire (2 copies enclosed)
Christina C. Brice, Esquire (2 copies enclosed)
The Honorable Thomas E. Pope
Sherie M. Carney, Director of Victims' Services

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

January 9, 1998

Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Robert F. Daley, Jr.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Hughes, Mar-Reece Aldean

Dear Counsel:

The following Order has been endorsed on your Motion for Third Extension of Time in the above entitled case on appeal.

"Motion granted.

s/ Ernest A. Finney, Jr. C.J.
For the Court

January 9, 1998."

Please be advised that respondent's initial brief and designation of matter must be served and filed no later than January 19, 1998.

Very truly yours,

CLERK

CND, Jr./djp

cc: Christina Chadwick Brice, Esquire
Stephen D. Schusterman, Esquire

97-CR-182

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED
DEC 17 1997
S.C. SUPREME COURT

Appeal from York County
Court of General Sessions

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

12-19-97 - Verbal 11:36 consent from Steve Schusterman

2 previous 30 day extensions have been granted.

THE STATE,

Respondent,

vs.

MAR-REECE ALDEAN HUGHES,

Appellant.

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

The State of South Carolina, by and through the undersigned counsel, hereby files this Motion requesting a third and final thirty-day extension of time in which to complete, file, and serve Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal in the above-referenced death penalty appeal.

While Respondent is aware that opposing counsel's consent to this request is not binding on the Court, we would note that we have spoken with Stephen D. Schusterman, who is lead counsel for Mr. Hughes. Mr. Schusterman has consented to this request.

This request is made in good faith and not for the purpose of delay. The grounds for this request are as follows:

1. This case involves the appeal of a murder conviction and death penalty verdict against Mar-reece Aldean Hughes in York County;

2. The Respondent's Initial Brief and Designation of Matter are currently due December 17, 1997;

3. The undersigned, Assistant Attorney General Robert F. Daley, Jr., was assigned this appeal at the end of September 1997;

4. During the end of September and October 1997, the undersigned diligently worked on several cases in both state and federal court, including preparing and filing two briefs in the Fourth Circuit Court of Appeals and the continued preparation of a post-hearing brief in a death penalty post-conviction relief action, William Bell v. Moore;

5. Due to miscommunication with the Office of Appellate Defense, the undersigned assumed that a copy of the trial transcript would be delivered to the Office of the Attorney General by the end of September 1997;

6. The undersigned did not receive a copy of the trial transcript from private counsel until October 23, 1997;

7. The undersigned was married on October 22, 1997, and was out of the country until November 10, 1997;

8. The undersigned began review of Appellant's Initial Brief, which raises seven separate issues on appeal, and the three thousand page trial transcript on November 10, 1997. Although the

undersigned began this review and research into the issues on appeal, a thirty-day extension is necessary to properly and thoroughly review the material in the record below, and to prepare a response to this appeal and a Designation of Matter to be Included in the Record on Appeal;

9. Since November 10, 1997, the undersigned has been diligently working on several cases in both state and federal court, including:

a. completing a 180-page post-hearing brief in a capital post-conviction relief action which will be argued on December 29, 1997, in Anderson County;

b. preparing for and attending three oral arguments in the Fourth Circuit Court of Appeals in Richmond, Virginia on December 1-5, 1997; and

c. participating in plea negotiations involving a significant prosecution matter concerning solicitation and the unauthorized practice of law which resulted in guilty pleas on December 15, 1997.

10. In a case of this magnitude and seriousness, a final thirty-day extension is necessary to adequately defend the trial record and jury verdict in this death penalty case;

11. The undersigned is aware of the desire of the Court and Appellant for a speedy resolution of this case, but reasonably believes this thirty-day extension is essential to allow him to thoroughly and competently represent the State in this matter.

WHEREFORE, based upon the foregoing circumstances, the undersigned prays that this Court will find good cause shown and grant a final thirty-day extension for filing the Respondent's

Initial Brief and Designation of Matter so that they will be due on or before January 17, 1998.

Respectfully submitted,

CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ROBERT F. DALEY, JR.
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211
(803) 734-6305

THOMAS E. POPE
Solicitor, Sixteenth Judicial Circuit

1675-1A York Highway
York, SC 29745
(864) 628-3020

By: Robert F. Daley, Jr.
ROBERT F. DALEY, JR.

ATTORNEYS FOR RESPONDENT

December 17, 1997.

Motion granted.

E. Thomas Gregory, Jr. C.J.
For the Court

January 9, 1998.

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County
Court of General Sessions

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

THE STATE,

Respondent,

vs.

MAR-REECE ALDEAN HUGHES,

Appellant.

CERTIFICATE OF SERVICE

I certify that a copy of the Respondent's Motion for Third Extension of Time to File Initial Brief of Respondent and Designation of Matter in the above has been served upon the following persons of record by mailing a copy of the same to them in the United States Mail, postage prepaid, addressed to them as shown below on this 17th day of December, 1997:

Stephen D. Schusterman, Esquire
P. O. Box 4211
Rock Hill, South Carolina 29731

Christina C. Brice, Esquire
P. O. Drawer 300
York, South Carolina 29745

Daniel T. Stacey, Chief Attorney
South Carolina Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, South Carolina 29201

Robert F. Daley, Jr.
ROBERT F. DALEY, JR.
Assistant Attorney General

P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

RECEIVED
DEC 17 1997
S. C. SUPREME COURT

December 17, 1997

The Honorable Clyde N. Davis, Jr.
Clerk
South Carolina Supreme Court
P. O. Box 11330
Columbia, South Carolina 29211

Re: The State v. Mar-reece Aldean Hughes

Dear Mr. Davis:

Enclosed please find the original and six copies of the Respondent's Motion for Third Extension of Time to File Initial Brief of Respondent and Designation of Matter, along with a Certificate of Service. By copy of this letter, the Motion is being served on other counsel of record.

Sincerely,

Robert F. Daley, Jr.
Assistant Attorney General

RFDjr/lk

Enclosures

cc: Stephen D. Schusterman, Esquire
Christina C. Brice, Esquire
Daniel T. Stacey, Esquire
Thomas E. Pope, Esquire
Ms. Sherie Carney

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

November 24, 1997

Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Robert F. Daley, Jr.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Hughes, Mar-Reece Aldean

Dear Counsel:

The following Order has been endorsed on your Motion for Second Extension of Time in the above entitled case on appeal.

"Granted.

s/ Jean H. Toal A.J.

November 24, 1997."

Please be advised that respondent's initial brief and designation of matter must be served and filed no later than December 17, 1997.

Very truly yours,

CLERK

CND, Jr./djp

cc: Christina Chadwick Brice, Esquire
Stephen D. Schusterman, Esquire

97/98-CR-129

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED
NOV 17 1997
S. C. SUPREME COURT

Appeal from York County
Court of General Sessions

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

THE STATE,

Respondent,

vs.

MAR-REECE ALDEAN HUGHES,

Appellant.

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

The State of South Carolina, by and through the undersigned counsel, hereby files this Motion requesting a second thirty-day extension of time in which to complete, file, and serve Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal in the above-referenced death penalty appeal.

While Respondent is aware that opposing counsel's consent to this request is not binding on the Court, we would note that we have spoken with Stephen D. Schusterman, who is lead counsel for Mr. Hughes. Mr. Schusterman has consented to this request.

This request is made in good faith and not for the purpose of delay. The grounds for this request are as follows:

1. This case involves the appeal of a murder conviction and death penalty verdict against Mar-reece Aldean Hughes in York County;

2. The Respondent's Initial Brief and Designation of Matter are currently due November 17, 1997;

3. The undersigned, Assistant Attorney General Robert F. Daley, Jr., was assigned this appeal at the end of September 1997;

4. During the end of September and October 1997, the undersigned has been diligently working on several cases in both state and federal court, including preparing and filing two briefs in the Fourth Circuit Court of Appeals and the continued preparation of a post-hearing brief in a death penalty post-conviction relief action, William Bell v. Moore;

5. Due to miscommunication with the Office of Appellate Defense, the undersigned assumed that a copy of the trial transcript would be delivered to the Office of the Attorney General by the end of September 1997;

6. The undersigned did not receive a copy of the trial transcript from private counsel until October 23, 1997;

7. The undersigned was married on October 22, 1997, and was out of the country until November 10, 1997;

8. The undersigned has begun review of Appellant's Initial Brief, which raises eight separate issues on appeal, and the three thousand page trial transcript. Although the undersigned has begun

this review and research into the issues on appeal, a thirty-day extension is necessary to properly and thoroughly review the material in the record below, and to prepare a response to this appeal and a Designation of Matter to be Included in the Record on Appeal;

9. In a case of this magnitude and seriousness, a thirty-day extension is necessary to adequately defend the trial record and jury verdict in this death penalty case;

10. The undersigned is aware of the desire of the Court and Appellant for a speedy resolution of this case, but reasonably believes this thirty-day extension is essential to allow him to thoroughly and competently represent the State in this matter.

WHEREFORE, based upon the foregoing circumstances, the undersigned prays that this Court will find good cause shown and grant a thirty-day extension for filing the Respondent's Initial Brief and Designation of Matter so that they will be due on or before December 17, 1997.

Respectfully submitted,

CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ROBERT F. DALEY, JR.
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211
(803) 734-6305

Granted

November 24, 1997

THOMAS E. POPE
Solicitor, Sixteenth Judicial
Circuit

1675-1A York Highway
York, SC 29745
(864) 628-3020

By: 

ROBERT F. DALEY, JR.

ATTORNEYS FOR RESPONDENT

November 17, 1997.

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County
Court of General Sessions

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

THE STATE,

Respondent,

vs.

MAR-REECE ALDEAN HUGHES,

Appellant.

CERTIFICATE OF SERVICE

I certify that a copy of the Respondent's Motion for Second Extension of Time to File Initial Brief of Respondent and Designation of Matter in the above has been served upon the following persons of record by mailing a copy of the same to them in the United States Mail, postage prepaid, addressed to them as shown below on this 17th day of November, 1997:

Stephen D. Schusterman, Esquire
P. O. Box 4211
Rock Hill, South Carolina 29731

Christina C. Brice, Esquire
P. O. Drawer 300
York, South Carolina 29745

Daniel T. Stacey, Chief Attorney
South Carolina Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, South Carolina 29201

ROBERT F. DALEY, JR.
Assistant Attorney General

P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

RECEIVED
NOV 17 1997
S. C. SUPREME COURT

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

129

November 17, 1997

The Honorable Clyde N. Davis, Jr.
Clerk
South Carolina Supreme Court
P. O. Box 11330
Columbia, South Carolina 29211

Re: The State v. Mar-reece Aldean Hughes

Dear Mr. Davis:

Enclosed please find the original and six copies of the Respondent's Motion for Second Extension of Time to File Initial Brief of Respondent and Designation of Matter, along with a Certificate of Service. By copy of this letter, the Motion is being served on other counsel of record.

Sincerely,

Robert F. Daley, Jr.
Assistant Attorney General

RFDjr/shb

Enclosures

cc: Stephen D. Schusterman, Esquire
Christina C. Brice, Esquire
Daniel T. Stacey, Esquire
Thomas E. Pope, Esquire
Ms. Sherie Carney

The Supreme Court of South Carolina

The State, Respondent

v.

Mar-Reece Aldean Hughes, Appellant

The Honorable John Calvin Hayes, III
York County
Trial Court Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

ORDER

For good cause having been shown, the time for serving and filing respondent's initial brief and designation of material in the above entitled matter is hereby extended until November 17, 1997.

IT IS SO ORDERED.

ERNEST A. FINNEY, JR., CHIEF JUSTICE

BY _____
CLERK

Columbia, South Carolina
October 21, 1997

cc: Christina Chadwick Brice, Esquire
Stephen D. Schusterman, Esquire
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Robert F. Daley, Jr.

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 17, 1997

RECEIVED
OCT 17 1997
S. C. SUPREME COURT

97/98-119
30 days
Nov 17

The Honorable Clyde N. Davis, Jr.
Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: The State v. Mar-reece Aldean Hughes
Nos. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

Dear Mr. Davis:

The Initial Brief of Respondent is due to be served today. However, due to my heavy workload, and the inability to obtain a complete trial transcript in a timely manner, I must ask for a thirty (30) day extension of time, up to November 17, 1997, to prepare the Initial Brief of Respondent in this matter.

Thank you for your assistance in this matter.

Sincerely,

Robert F. Daley, Jr.
Assistant Attorney General

RFDjr/vls
cc: Stephen D. Schusterman, Esquire
Christina C. Brice, Esquire

RECEIVED
OCT 0 6 1997
S. C. SUPREME COURT

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 2, 1997

The Honorable Clyde N. Davis, Jr.
Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: The State v. Mar-reece Aldean Hughes
C/A Nos. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

Dear Mr. Davis:

This is to confirm the time in which the State has to file its Initial Brief. It is my understanding that counsel for Appellant are being paid through funding allotted for the Office of Appellate Defense by S.C. Code Ann. § 16-3-26 pursuant to an Order of the Court dated April 4, 1997. Accordingly, the State has forty-five (45) days in which to file its Initial Brief of Respondent in this matter. Appellant served his Initial Brief on September 2, 1997. Therefore, by my calculations, the State's Initial Brief is due October 17, 1997. In the event my calculations are incorrect, please let me know.

Thank you for your assistance in this matter.

Sincerely,

Robert F. Daley, Jr.
Assistant Attorney General

RFDjr/vls
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ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

RECEIVED
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S.C. SUPREME COURT

Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

The State,.....Respondent.

v.

Mar-reece Aldean Hughes,.....Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL JUDGE ERR IN ADMITTING INTO EVIDENCE DURING THE SENTENCING PHASE AN UNADJUDICATED UNRELATED POST-MCCANTS MURDER AS "CHARACTER" EVIDENCE IN VIOLATION OF THE APPELLANT'S EIGHTH AMENDMENT RIGHTS?

II. DID THE TRIAL JUDGE COMMIT ERROR IN ALLOWING THE JURY TO CONSIDER INFLAMMATORY AND UNRELIABLE IMPEACHMENT EVIDENCE WHICH WAS SUPPRESSED AND NOT MADE AVAILABLE BY THE PROSECUTION ALTHOUGH SPECIFICALLY REQUESTED BY THE DEFENSE, THEREBY DENYING THE DEFENDANT MATERIAL INFORMATION IN VIOLATION OF SCRCP 5 AND BRADY V. MARYLAND, 37 U.S. 83, 83 S. CT. 1194, 10 L. ED. 2D 215 (1963)?

III. DID THE TRIAL JUDGE ERR IN FAILING TO EXCLUDE INCRIMINATING STATEMENTS OR UTTERANCES OF THE APPELLANT WHICH WERE GIVEN DURING THE HEIGHT OF HIS MENTAL ILLNESS AS THEY WERE NOT KNOWINGLY OR INTELLIGENTLY MADE?

IV. WAS ERROR COMMITTED IN FAILING TO INTRODUCE AS EVIDENCE THE LIFE SENTENCE OF THE APPELLANT'S CODEFENDANT, ERIC DWAYNE FORNEY AS A MITIGATING FACTOR?

V. IS THE DEATH PENALTY IMPOSED UPON MAR-REECE ALDEAN HUGHES IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AS DISPROPORTIONATE WITH REGARD TO THE SENTENCE IMPOSED UPON THE CODEFENDANT WHO RECEIVED A LIFE SENTENCE FOR THE SAME CRIME?

VI. DID THE TRIAL JUDGE ERR IN FAILING TO GRANT A MISTRIAL DUE TO THE PREJUDICIAL EMOTIONAL COURTROOM OUTBURST OF MYRA MCCANTS DURING THE APPELLANT'S PRESENTATION OF TESTIMONY DURING THE SENTENCING PHASE?

VII. AFTER DUE DELIBERATIONS BY THE JURY DURING THE SENTENCING PHASE, DID THE TRIAL JUDGE COMMIT ERROR BY GIVING AN UNDULY COERCIVE INSTRUCTION TO THE JURORS WHO WERE HOLDING OUT FOR A LIFE SENTENCE?

STATEMENT OF CASE

On December 13, 1993, a York County Grand Jury indicted Mar-Reece Aldean Hughes and Eric Dwayne Forney for the murder of Brent McCants. Mr. McCants, a law enforcement officer, was shot to death on September 25, 1992. On December 13, 1993, the Solicitor served the Appellant with notices of intent to seek the death penalty and of the evidence in aggravation. The Grand Jury also indicted the Appellant and Forney on December 13, 1993, for possession of a firearm during the commission of or attempt to commit a violent crime, criminal conspiracy, armed robbery and possession of a stolen vehicle.

Judge John C. Hayes presided over the Appellant's trial in York County. He heard pretrial motions on September 7 and 8 and September 14, 1995. Jury selection began on September 11, 1995, in Aiken County and lasted three days.

The guilt phase commenced on September 11, 1995. The defense told the jury, "The killer in this case was Eric Dwayne Forney. That's who murdered Brent McCants. That's who had the propensity for violence. (Tr. 916, lines 9-12). The jury found the Appellant guilty of murder, criminal conspiracy, armed robbery, possession of a firearm during

the commission of a crime, and possession of a stolen vehicle, on September 18, 1995.

The sentencing phase occurred on September 20, 1995. The judge submitted three statutory aggravating circumstances: (1) murder while in the commission of a robbery while armed with a deadly weapon, (2) murder was committed while in commissionof a larceny with the use of a deadly weapon, and (3) murder of a local law enforcement officer during or because of the performance of his official duties. (Tr. 2434, lines 8-15). The Appellant testified on his own behalf, stating that he did not shoot Officer McCants. That, in fact, Eric Forney was the triggerman. (Tr. 1654, lines 1-9 and Tr. 1658, lines 7-21).

The jury sent a note to the Judge after several hours of deliberation as to the sentence to be imposed, stating they were deadlocked. The Judge delivered an Allen charge. At approximately 11:00 p.m., the Judge sent a note to the jury inquiring as to whether they wanted to continue deliberating or continue the next morning. The jury reached a unanimous verdict approximately one half hour later.

The jury found murder of a law enforcement officer during the performance of his duties as an aggravating

factor, and sentenced the Appellant to death. The judge affirmed their decision.

Forney was found guilty at trial on March 7, 1994 of murder, criminal conspiracy, and armed robbery, before Judge Hayes, and received a life sentence.

STATEMENT OF FACTS

Mar-Reece Aldean Hughes was born on J[redacted] [redacted] Mar-Reece Hughes had 26 siblings. (Tr. page 2066, line 21) There are 16 living children remaining in the Hughes family. (Tr. page 2066, lines 22).

On August 12, 1992, Mar-Reece Aldean Hughes was released from a prison facility in Central, North Carolina. (Tr. pg. 1900, lines 15-16) He had begun serving a sentence in North Carolina in 1983. (Tr. page 1644, lines 8-10) Following his release, he resided with several family members in Winston-Salem prior to moving to Charlotte, North Carolina where he resided with his brother, Marshall Hughes. (Tr. page 1646, lines 1-2)

Prior to arriving in Charlotte, Mar-Reece, who had been in prison since 1983 and accustomed to living life with protection, purchased a handgun in Winston-Salem. (Tr. page 1645, lines 7-14). Once in Charlotte with his brother, he had to dispose of the weapon because it was against his brother's house rules. (Tr. page 1647, lines 2-5)

During the Labor Day holiday weekend of 1992, Mar Reece Hughes traveled to Franklinton, North Carolina to visit an

acquaintance from prison (Tr. page 1305, lines 6-11), a guard named, Lt. LeRoy Perry. (Tr. page 1644, lines 19-20) As he displayed the handgun to Lt. Perry, he described its operation. (Tr. page 1308, lines 3-9) This gun was particularly distinguishable due to the fact that the gun had the grips on the handle removed. (Tr. page 1308, line 5). He informed Lt. Perry that the reason the grips were removed was in case the gun jammed it could be easily manipulated to a firing position. (Tr. page 1308, lines 7-9). Mr. Hughes offered the handgun to Lt. Perry who informed Mr. Hughes that he was not interested in any "protection". (Tr. page 1314, lines 12-13). Mr. Hughes wiped the handle of the gun and put it away. (Tr. page 1308, line 20) Lt. Perry purchased a one way ticket for Mr. Hughes to Charlotte at the bus station. (Tr. page 1309, lines 5-6). Sometime later, Mr. Hughes ran into a former inmate, Eric Dwayne Forney, who was also living in Charlotte. (Tr. page 1647, lines 14-23). Mr. Hughes asked Mr. Forney if he was interested in purchasing the handgun and sold it to him for $45.00 (Tr. page 1647, lines 6-11).

Dwayne Forney asked Mar-Reece Hughes whether he wanted to make some money. (Tr. page 1648, lines 4-5). On the

evening of September 26, 1992, Mar-Reece Hughes and Eric Dwayne Forney walked up to the Bellissimo Restaurant in Charlotte, North Carolina. (Tr. page 1648, lines 10-11). Beth Ann Jayne and Sean McMillan pulled into the parking lot of the Bellissimo restaurant, (Tr. page 921, lines 8-23) and Eric Forney and Mar-Reece Hughes approached the couple and their vehicle. (Tr. page 1648, lines 13-14). Eric Dwayne Forney pulled the gun from behind his shirt and forced Sean McMillan onto the ground. (Tr. page 1649, lines 3-7). Mar-Reece Hughes approached Beth Ann Jayne who was exiting the passenger side of the vehicle. (Tr. page 922, line 21; and Tr. page 1648, line 15-16). He told her, "take your time, take your time" and escorted her to the driver side of the vehicle. (Tr. page 948, lines 16-19; Tr. page 1649, lines 13-17). Upon coming around the vehicle, Beth Ann Jayne observed Sean McMillan lying face down on the ground with Eric Forney targeting the gun to the back of his head. (Tr. page 941, lines 20-24) Eric Forney threatened them, stating, "if you move, I'll kill you," (Tr. page 942, line 4) Ms. Jayne testified that, at no time, did Mar-Reece Hughes have the gun in his possession, (Tr. page 945, lines 23-25) and made no verbal threats toward her or her

boyfriend. (Tr. page 946, line 19) She also testified that Eric Forney, in addition to threatening to kill her boyfriend, threatened to kill her: "If you move, I'll kill your whore." (Tr. page 943, lines 19-20) Mar-Reece Hughes and Eric Forney robbed Beth Ann Jayne and Sean McMillan of their 1986 Buick Century. (Tr. page 909, lines 8-11).

Mar-Reece Hughes accompanied Mr. Forney as he drove the vehicle to Rock Hill, South Carolina. (Tr. page 1649, lines 19-20). They first went to a movie theater at the Galleria Mall, off interstate 77. (Tr. page 979, lines 11-19). They entered the theater at approximately 10:10 p.m. (Tr. page 980, line 2). Leaving a short time later, they drove the vehicle down, they continued their sojourn down Dave Lyle Boulevard in Rock Hill, South Carolina, (Tr page 1650, line 22). stopping at a convenience store to purchase a drink. (Tr. page 1651, line 7) After leaving the convenience store, they switched drivers and Mar-Reece Hughes got behind the steering wheel of the Buick. (Tr. page 1651, line 9).

They continued back down Dave Lyle Boulevard towards I-77, inadvertently neglecting to turn on the headlights of the vehicle. (Tr. page 1652, lines 18-22). A sheriff's patrol car approaching in the opposite lane, spotted the

vehicle, proceeded to make a U-turn and pulled behind the Buick. (Tr. page 1040, lines 20-24)

The patrol car was driven by Deputy Sheriff, Brent McCants. Officer McCants pulled the 1986 Buick on a routine traffic stop. (Tr. page 908, lines 20-25) Prior to exiting his vehicle, Officer McCants radioed to dispatch, (Tr. page 909, lines 2-3) calling in the tag number of the 1986 Buick. (Tr. page 909, lines 4-5) Upon reaching the vehicle, Officer McCants asked Mar-Reece Hughes to stand at the front of the vehicle leaving Eric Forney seated in the Buick. (Tr. page 1653, line 14). Upon exiting the vehicle, Mar-Reece Hughes left the door to the Buick open. (Tr. page 1654, line 9). When Officer McCants returned to the vehicle for the registration, Eric Forney began firing. (Tr. page 1654, line 3). Eric Dwayne Forney's first shot was to the chest of Brent McCants' bullet proof vest. (Tr. page 1536, lines 4-6). There were two fatal shots.(Tr. page 2538, lines 6-14; Tr. page 1540, lines 6-10). The force of the initial fatal shot, resulted in Officer McCants falling to his knees, face down on the side of the road, with his head turned to the Galleria Mall on Dave Lyle Boulevard. (Tr. page 1060, lines 18-20,). While McCants

was falling, Eric Dwayne Forney slid across the bench seat of the Buick and emptied the gun by discharging eight bullets, six of which were fired into Brent McCants. (Tr. page 1658, lines 14-17). All of the bullets came from the same gun. (Tr. page 1469, lines 2-5) As Officer McCants was being shot, Mar-Reece Hughes stood at the front of the vehicle witnessing the shots being fired. (Tr. page 1658, line 21) Mr. Hughes went to the officer and felt for a pulse on his neck. (Tr. page 1659, lines 3-4). As he did so, Dwayne Forney took Officer McCants' walkie talkie. (Tr. page 1659, lines 13-15).

Mar-Reece Hughes returned to the vehicle (Tr. page 1660, lines 4-5) and they headed down Dave Lyle Boulevard onto Interstate 77, heading north toward Charlotte. (Tr. page 1660, lines 2-3). Back at the scene, some passersby had stopped in an attempt to offer assistance to Brent McCants. (Tr. page 909, lines 20-25; Tr. page 910, lines 1-3). Their actions were to no avail. (Tr. page 909, lines 21-22) Deputies arrived and began a massive man hunt for the person or persons responsible for the killing of a fellow officer. (Tr. page 910, lines 1-2)

Mar-Reece Hughes and Eric Dwayne Forney exited the

interstate, (Tr. page 1660, line 9) pulling into a Holiday Inn parking lot. (Tr. page 1128, lines 1-21). Mar-Reece Hughes knew he had to get away from Eric Dwayne Forney.(Tr. page 1660, line 17). He exited the vehicle attempting to make his escape from Forney. (Tr. page 1149, lines 5-12; page 1660, lines 17-25). Both men were spotted leaving the parking lot. (Tr. page 1131, lines 11-13)

Eric Dwayne Forney was located first. (Tr. page 1178, lines 2-14) He was found with the handgun used in the homicide in his possession. (Tr. page 1180, lines 2-8). The gun had been reloaded. (Tr. page 1472, lines 8-19). Eric Forney was attempting to remove the gun from his pant leg as he was apprehended. (Tr. page 1191, lines 10-24; Tr. page 1325, lines 1-12)) He was tackled and arrested. (Tr. page 1191, lines 4-6). His statement to police implicated Mar-Reece Hughes as the triggerman. (Tr. page 1282, lines 19-25).

Mar-Reece Hughes was tracked down with dogs and was apprehended later. (Tr. page 1202, lines 13-21). When he was found and led into the police car he stated "I did not shoot anybody." (Tr. page 1238, line 22). He was taken to the police station where he was interrogated. (Tr. page

1230, line 14). Officer Scott Rockholt was seated in an interrogation room where Mr. Hughes sat with his hands to his face and stated "I'm guilty. I'm guilty." (Tr. page 1251, lines 21-22). A statement was taken, (Tr. page 1263, line 23) wherein he implicated Eric Dwayne Forney as the triggerman. (Tr. page 1261, lines 6-7).

On December 13, 1993, the state obtained indictments against Mar-Reece Hughes for murder and armed robbery, and included in that indictment is a second count of possession of a firearm in the commission of a violent crime, conspiracy and possession of a stolen vehicle. On December 13, 1993, the Solicitor served notice of his intent to seek the death penalty, notice of statutory aggravating circumstances, and notice of evidence in aggravation of punishment.

While in jail awaiting trial, Mar-Reece Hughes underwent a series of psychiatric evaluations and observations. He was sent for observation to the William S. Hall Psychiatric Institute (hereinafter referred to as "WSHPI") from October 26, 1992 through December 22, 1992. (Tr. page 1573, lines 9-14). Upon discharge, he was diagnosed with Adjustment Disorder with Depressed Mood.

(Tr. page 1573, lines 19-20). He was released into the custody of the York County Detention Center. While in the Detention Center he began visits at Catawba Mental Health through Piedmont Medical Center. (Tr. page 1576, lines 10-14) Attempts to safekeep Mr. Hughes were unsuccessful, as his irrational and psychotic behavior intensified. He was regularly put into solitary confinement. (Tr. page 2676, lines 20-24) He complained of being spoken to by "little green men." (Tr. page 2209, lines 10-13) Others in his cell block were frightened of him and described his behavior as horrifyingly irrational. (Tr. page 2208, lines 23-25)

On April 12, 1993, at the height of his psychosis, Mar-Reece Hughes slashed the throat of a fellow inmate while he slept and attacked his other two inmates with a knife. (Tr. page 1966, lines 2-17; Tr. page 1978, lines 9-14) Inmate James Williamson died of his wounds. (Tr. page 1998, lines 22-24). Inmate Christopher Gorth was stabbed several times. (Tr. page 1966, lines 16-17). The other inmate, Richard Waldrup, was unharmed. When the prison guards arrived at the cell, Mr. Hughes asked "when breakfast would be served." (Tr. page 2899, lines 17-24) He was sent to Broad River Road Reception and Evaluation Center following

this incident. He was then placed on "Death Row" at Broad River Correctional Institute for safekeeping. (Tr. page 2267, line 17) He returned to Gilliam Psychiatric Hospital in February of 1994 due to questions as to his competence, in that, he was "rambling tangentially and easily angered." (Tr. page 2194, lines 16-23; Tr. page 2267, lines 21-24) On August 29, 1994, pursuant to Order of Judge John Hayes he was to be re-evaluated at WSHPI due to his apparent lack of competency. (Tr. page 2268, lines 8-16; Tr. page 2271, line 1-2).

After being evaluated at WSHPI, Mar-Reece Hughes was diagnosed by all three psychiatrists, two of whom represented and were retained by the state of South Carolina, as suffering from paranoid schizophrenia (Tr. page 2272, line 6-16). All three psychiatrists believed that he was not criminally responsible in the murder of Mr. Williamson in that he was insane and could not comprehend the culpability of his conduct. (Tr. page 2211, line 8-9) It was stated in their report of findings that Mr. Hughes was "beyond conforming his conduct to right or wrong due to the severity and inability to control his mental illness." (Tr. page 2275, lines 12-14)

After the appointment and release of 10 attorneys to represent Mr. Hughes from September of 1992, the trial was ready to proceed in September of 1995.[1] Judge Hayes held pretrial motions and in camera hearings on September 7, 8 and 14, 1995. There were over 50 motions filed by the defense. Judge Hayes denied the Appellant's motion to suppress the second murder. It was his finding that the second murder was evidence of the appellant's character.

Jury selection began in Aiken County on September 11, 1995 as the Appellant's prior motion for change of venue was granted by the Court. On September 8, 1995, Mar-Reece Hughes was determined to be competent to stand trial. Jury selection concluded on September 13, 1995. The guilt phase of the trial began on September 14, 1995.

In his opening statement, defense counsel told the jury, "My client has tendered a not guilty plea." (Tr. page 913, lines 22-23) "He did not murder Brent McCants." (Tr. page 913, lines 23-24)." He went on to state that the evidence would reveal that the person responsible for the murder of Brent McCants was not Mar-Reece Hughes but Eric Dwayne Forney. (Tr. page 916, lines 9-10)

The guilt phase concluded on September 18, 1995. (Tr.

1. List of Attorney's appointed to represent Mar-Reece Hughes (ROA).

page 1844, line 4). The jury having deliberated for five and one half hours entered a verdict on all charges of guilty. (Tr. page 1838, lines 11-12) Sentencing began on September 20, 1995 after a statutory twenty-four hour waiting period.(Tr. page 1862, lines 10-13)

Evidence presented during the sentencing phase included impact evidence presented by the victim's family and character evidence of the Appellant associated with the homicide of James Williamson. (Tr. page 1848, lines 5-9, Tr. page 2950, lines 18-22) The Appellant offered mitigating evidence of the early childhood death of his mother, his virtual abandonment by his father after his mother's death, the sexual abuse of his sisters, and the mental illness of several family members. This included an older and younger brother who also suffered from a form of schizophrenia and Mar-Reece's own isolation and ignorance of his own mental illness, paranoid schizophrenia. (Tr. page 1849, lines 1-25; Tr. page 1850, lines 18-23)

During the sentencing phase, the state presented a parade of former jail house acquaintances of Mr. Hughes. As testimony was being taken, it was discovered by the defense that in preparation of testimony and evidence, a report had

been prepared by the state. This report was not offered to the Appellant, despite a specific request by defense counsel for the entire report. (Tr. page 1882, lines 20-24) The first 17 pages of this SLED report was made a court exhibit. Several motions were filed by the defense requesting disclosure of evidence. The Solicitor's office maintained in pretrial motions that all discovery had been submitted to the defense. (Tr. page 2496, lines 16-25; Tr. page 2497, lines 1-19). During the sentencing phase it was discovered that there were other witnesses to the detention center assault whose names had not been provided to the defense.(Tr. page 1883, lines 2-16) Furthermore, there were findings that were made in the report that were furnished to the state's doctors, Dr. Morgan and Dr. Kohanski, but were not provided to the defense counsel or doctor. (Tr. page 2342, lines 24-25; Tr. page 2343, lines 1-2) Defense counsel again renewed its objection to the inclusion of evidence and testimony which had not been provided to them prior to trial. (Tr. page 2342, line 17). In addition, the Defense moved for a mistrial based upon prosecutorial misconduct. The motions were denied. (Tr. page 2342, line 18).

During the sentencing phase as defense counsel was

presenting compelling psychiatric testimony as to the Appellant, the mother of the victim, Myra McCants, disrupted the courtroom by abruptly and noisily arising from her chair, grunting in disgust and exiting the courtroom in an inappropriate manner by slamming the rear double doors of the courtroom. (Tr. page 2250, lines 20-25). Her conduct and exit was followed and mimicked by her sister. (Tr. page 2251, lines 24-25; Tr. page 2252, lines 1-9) The attorneys for the Appellant again, renewed their request for a mistrial due to the physical testimony given by the victim's mother and the obvious distraction and disdain impacted upon the jury. (Tr. page 2251, lines 22-23). The motion for mistrial was denied. (Tr. page 2254, line 12).

The Appellant did not testify during the sentencing phase. (Tr. page 2339, lines 15-18) The judge instructed the jury as to the aggravating circumstances, explaining them as being that the murder was committed while in the commission of a robbery while armed with a deadly weapon; that the murder was committed while in the commission of a larceny with the use of a deadly weapon; and the murder was that of a law enforcement officer during or because of the performance of his official duties. (Tr. page 2434, lines 8-15).

The defense counsel had requested that the court also enter as evidence of mitigation, the sentence of Eric Dwayne Forney. (Tr. page 2334, lines 16-19) The court denied the entry of this evidence. (Tr. page 2339, lines 3-5) The jury deliberated for approximately four hours, sending a note to the courtroom stating, "We, the jury, are unable to come to a unanimous decision on the sentence to be imposed" (Tr. page 2453, line 10-13). The judge gave an Allen charge and instructed the jurors that it was their duty to return a sentence. (Tr. pages 2455-2456)

At approximately 11:00 p.m., the Court wrote a note to the jury that read "would the jury like to continue to work tonight or break until the morning." The jury recommended death at 11:30 after receiving the note from the Court. (Tr. page 2458, lines 2-3) Before the jury, the counsel for the appellant questioned the disproportionality of the sentence in that Eric Dwayne Forney had received a life sentence. (Tr. page 2462, lines 21-25; Tr. page 2463, lines 1-6) The judge affirmed the jury's decision and sentenced the appellant to death. (Tr. page 2465; lines 1-10).

ARGUMENTS

I. THE TRIAL JUDGE ERRED IN ADMITTING DURING THE SENTENCING PHASE AS "CHARACTER" EVIDENCE AN UNADJUDICATED UNRELATED POST-MCCANTS MURDER IN VIOLATION OF THE APPELLANT'S EIGHTH AMENDMENT RIGHTS.

It was inevitable that the jury would reach an arbitrary finding of death for Mar-Reece Hughes when the unrelated unadjudicated murder was presented to the jury. The court created a means by which it would ensure the imposition of a sentence of death by opening a floodgate of evidence to be presented to the jurors under the guise that it was character evidence.

Black's law dictionary defines character as "what a man is." It defines reputation as "... what he is supposed to be in what people say he is." " 'Character' depends on attributes possessed and 'reputation' on attributes which others believe one to possess." The trial judge confused reputation with character. Character evidence is relevant to prove that the only deserving penalty is death for a defendant's heinous and atrocious behavior during the commission of the crime upon which he is on trial. The State must structure its capital sentencing procedure to

permit consideration of the *individual* characteristics of the offender and his crime. (Emphasis Added.) California v. Remos, 463 U.S. 992, 77 L. Ed. 2d 1171, 103 S. Ct. 3446 (1983); State v. Shaw, 273 S.C. 194, 206, 255 S.E. 2d 799, 805,(1979).

The trial court is to protect and ensure a fair trial to an accused. That responsibility becomes even more awesome when presiding over a capital case. There is no more important case before a court than one where the life of an individual may be taken. A capital defendant must be treated as a "'uniquely individual human being.'" Booth v. Maryland, 482 U.S. 496, 96 L. Ed. 2d 440, 107 S.Ct. 2529 (1987), (quoting Woodson v. North Carolina, 428 U.S. 280, 304 49 L.Ed. 2d 944, 96 S.Ct. 2978 (1976). "'Where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action.'" Zant v. Stephens, 462 U.S. 862, 77 L. Ed 2d 235, 103 S.Ct. 2733 (1983); Furman v. Georgia den. 501 U.S. 1277, 115 L.Ed. 2d 1110, 112 S.Ct. 29 (1991).

The court is to monitor the jury and minimize the potential risk that the imposition of a sentence of death will be the result of prejudice, passion or any other arbitrary factor. South Carolina Code of Laws, Section 16-3-20(c). "The imposition of death by public authority is so profoundly different from all other penalties, we cannot avoid the conclusion that an individualized decision is essential in capital cases." Lockett v. Ohio, 438 U.S. 586, 98 S. Ct. 2954, 57 L. Ed. 2d 973 (1978). The Eighth Amendment prohibits the arbitrary imposition of the death penalty. Payne v. Tennessee, 501 U.S. 808, 115 L. Ed. 2d 720, 111 S. Ct. 2597, reh. den. 501 US 1277, 115 L. Ed. 2d 1110, 112 S. Ct. 28. "The Constitution requires a jury to make an individualized determination as to whether the defendant should be executed based on the 'character of the individual and the circumstances of the crime.'" Payne, id.; Booth, supra; (quoting Zant v. Stephens, 462 US 862, 879, 77 L.Ed. 2d 235, 103 S.Ct. 2733 (1983).

The conclusion is unavoidable that the death sentence imposed in this case lacked not only an individualized consideration but also lacked the requisite focus on the specific circumstances of the crime.

> A defendant's "character and *immediate* characteristics of the crime may constitutionally be considered, other factors are irrelevant to the capital sentencing decision *unless* they have 'some bearing on the defendant's personal responsibility and moral guilt.'...'factors about which the defendant was unaware, and that were irrelevant to the decision to kill,' the Court concluded, it has nothing to do with the 'blameworthiness of a particular defendant...the victim impact evidence relates 'directly to the circumstances of the crime, the prosecution may not introduce such evidence at a capital sentencing hearing because it 'creates an impermissible risk that the capital sentencing decision will be made in an arbitrary manner." Zant, supra; at 505, 96 L.Ed.2d 440, 107 S.Ct. 2529.

The stabbing of James Williamson and Christopher Gorth was irrelevant to Mr. Hughes culpability, state of mind or his predisposed character at the time of the murder of Officer Brent McCants. The defense argued that the evidence to be presented was not indicative of Mar-Reece Hughes' character and therefore was unreliable. This conclusion was supported by the expert testimony of Dr. Harold Morgan, Dr. Renee Kohanski and Dr. Dafferlin Dupree who each found that Mar-Reece Hughes' psychosis was not indicative of his character.

> Q. **Christina C. Brice:** In your opinion, Doctor Morgan, was Mar-Reece Hughes' character on the night of the

murder of Mr. Williamson and the assault on Mr. Gorth, were those indications of his true character or were those indications of a character based upon psychotic episode? (Tr. Page 2868, lines 18-22)

A.: **Dr. Morgan:** I believe that at the time he was psychotic and that his behavior was under the influence of his psychosis and you have to separate out of mental illness from character, that is to say some people when they are mentally ill, particularly paranoid people, bipolar people, or manic, do extremely bizarre and often irrational and sometimes very aggressive things. But when they are, and you have to separate that from their general character, not that people with major mental illness can't have a bad character, obviously, they can have a bad character, but when they are under the influence of their illness, it is their illness that is directing their behavior, not their underlying character structure. (Tr. page 2868 lines 23-25; Tr. page 2869, lines 1-10)

Q.: **Christina Brice:** In your opinion, was the character of Mr. Hughes on that evening was that a reliable indication of his character? (Tr. Page 2869, lines 11-13)

A.: **Dr. Morgan:** His behavior on that evening really does not speak to his character at all because it was in our opinion he was frankly psychotic. (Tr. Page 2869, lines 14-16)

Q: **Christina Brice:** And when someone is acting out and delusional or in a psychotic state is that a good indication or an indication as to his character? (Tr. Page 2276, lines 18-20)

A.: **Dr. Morgan:** No. (Tr. Page 2276, lines 21)

Q.: **Christina Brice:** Could you explain why? (Tr. Page 2276, lines 22)

A.: **Dr. Morgan:** We all have character or personality and when we have an illness superimposed on that whether it is a physical illness, like a serious heart attack diabetes, or a psychiatric illness, we are trying to cope with that illness so when you are treating someone immediately after a serious heart attack, you might see a very passive, irritable individual, but as soon as he recovers from that and goes back to his normal life, he may be an overbearing, domineering boss. So during any acute stress it is not a time to talk about the person's overall character whether it is an acute stress of a loss or acute stress of a physical injury or an acute stress of a psychiatric injury. (Tr. Page 2276, lines 23-25; Tr. Page 2277, lines 1-10).

Q: **Christina Brice:** Would the incident that occurred on April of 1993 be a good indicator as to Mr. Hughes' character? Would that tend to indicate what Mr. Hughes' character is? (Tr. Page 2277, lines 11-13).

A: **Dr. Morgan:** Well, that incident was in my opinion directed by his mental illness, so I don't think that one could judge his character based on that. If you want to judge his character, you have to look at his developmental history, his work history, his adjustment, overall, not just that one point in time. (Tr. Page 2277, lines 14-19).

This diagnosis and opinion as to the incident and its correlation with character evidence was reiterated by Dr. Kohanski.

> Q.: **Christina Brice:** And based upon your diagnosis of being gross psychotic and knowing the actions and behaviors that Mr. Hughes exhibited surrounding the murder and the assault on Mr. Gorth how do you think that indicates his character? How do you think that goes to his character? (Tr. Page 2900, lines 23-25; Tr. page 2901, lines 1-2).
>
> A.: **Dr. Kohanski:** We can't speak about Mr. Hughes' character at that time character is something which is determined in the absence of psychosis. In a psychotic state if you feel that people are out to hurt you or out to kill you how you are interacting with the world is not a true representation of who you are. (Tr. Page 2901, lines 3-8)
>
> Q.: **Christina Brice:** So based on your observations and your diagnosis you would find that any character that he exhibited on that day may have been unreliable? (Tr. Page 2901, lines 9-11).
>
> A.: **Dr. Kohanski:** It was not a representation of the character; it was a representation of his psychosis. (Tr. Page 2901 lines 12-13).
>
> Q: **Christina Brice:** And when someone is having a psychotic episode is that reflective of their character? (Tr. Page 2210, lines 17-20)

> A: **Dr. Kohanski:** No, it's not reflective of their character. It's reflective of a disorganized at times incoherent state." (Tr. Page 2210, lines 19-20).

Dr. Dafferlin Dupree, who testified for the defense, concurred with Dr. Kohanski and Dr. Morgan.

> Q.: **Christina Brice:** As to Mr. Hughes behavior and actions on the night or the day of the assault on Mr. Williamson and Mr. Gorth, were those actions and behavior were those an indication as to the character of Mr. Hughes? (Tr. Page 2932, lines 14-17).
>
> A.: **Dr. Dupree:** No, those actions were a direct result of mental illness and not reflective of his character. (Tr. Page 2932, lines 18-19).

The court reasoned that the jailhouse slaying was admissible evidence to illustrate Mar-Reece Hughes' character. Insanity is not character. The Court in State v. Milian-Hernandez, 336 S.E. 2d 476, 287 S.C. 183 (1985) stated that presumption of sanity is in and of itself, insufficient to create a jury issue when the defendant has presented evidence of insanity. Psychotic behavior is an unreliable indicator of a persons character.

Even if the Court determines that the unrelated unadjudicated second murder was an indicator of character, it should have been excluded as it was not offered to show

motive, knowledge, intent, or a plan or scheme on the part of the Appellant. "It is well settled that evidence of other crimes is generally inadmissible to prove the bad character of the accused to show that he acted in conformity therewith. Such evidence is admissible, however, when it tends to establish (1)motive; (2) intent; (3) absence of mistake or accident; (4) a common scheme or plan or (5) identity." State v. Johnson, 306 S.C. 119, 125, 410 S.E. 2d 547 551 (1991) State v. Lyle, 125 S.C. 406 118 S.E. 803 (1923). The unrelated jailhouse slaying should have been excluded because it lacked conformity of the criteria set forth in Johnson, supra, to render bad character evidence admissible. The jailhouse incident occurred a year and a half later. Mar-Reece Hughes lacked the mental capacity for criminal intent to murder Williamson or to assault Gorth. There was no mistake and no common scheme. The jailhouse slaying was not an identifying murder as Mr. Hughes acted out of psychosis.

The court is to properly limit the jury's consideration of additional crimes. Additional offenses are to be solely offered as evidence of the Appellant's characteristics as they may bear logical relevance to the crime upon which he is on trial. State v. Ricky George, 1996 WL 496804 (S.C.

1996). The admission of the Williamson murder to prove Mr. Hughes' character at the time of the McCants murder, is unreliable, nebulous and far reaching.

In State v. Arthur, 290 S.C. 291, 350 S.E. 2d 187 (1986), the Court reversed the appellants sentence of death due to the improper admission of a hearsay affidavit. There, the solicitor introduced an arrest warrant on a murder charge that was subsequently dismissed. The Court has found that "a formal charge that was ultimately dismissed by the prosecutor is irrelevant." An adjudicated indictment where there is a possibility of acquittal should likewise be held inadmissible due to its unreliability and its overwhelming prejudicial affect upon a jury.

A "prior criminal ***conviction*** is admissible as additional evidence during the sentencing phase." (Emphasis Added.), id, 297, quoting State v. Gaskins, 284 S.C. 105, 326 S.E. 2d 132 (1985), State v. Plath, 281 S.C. 1, 313 S.E. 2d 619 (1984). Here, there was no criminal conviction of the jailhouse slaying. There was no predisposed characteristic to commit a crime. Rather, the evidence merely demonstrated that Mr. Hughes was predisposed to act as an untreated delusional paranoid schizophrenic.

The standard for admission of evidence of other crimes must be clear and convincing. State v. Conyers, 268 S.C. 276, 233 S.E. 2d 95 (1977); Wharton's Criminal Evidence, (13th Ed.), Section 263; 22A C.J.S. Criminal Laws 690; Lyle, supra. The admission of testimony that a defendant previously attempted a similar crime is not error when it is presented to prove the individual character and his predisposition to commit similar crimes. State v. Stewart, 320 S.E. 2d 447, 283 S.C. 104 (1984).

"It is now the overwhelming majority rule that relevant evidence may be excluded for undue prejudice even though no specific exclusionary rule requires exclusion.... We now adopt the language ...of Federal Rule of Evidence 403 that 'although relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.' FED R. EVID. 403. As noted in the comment to the Federal Rule, "'[u]nfair prejudice' within its context means an undue tendency to **suggest decision on an improper basis, commonly, not necessarily, an emotional one.**" (Emphasis Added.) State v. Alexander, 303 S.C. 377, 382, 401 S.E. 2d 146, 149 (1991).

Upon admission of the slaying of Williamson and stabbing of Gorth, the jurors focus on the McCant's murder became disoriented and the reason for the sentence clouded. Hughes was not sentenced to death for his participation in Officer McCant's murder. Rather, his death sentence was imposed due to the emotion, fear and the horror jurors felt for Mr. Hughes. The sentence reached was a result of passion and prejudice. This is further supported by the sentence of life imposed by the jurors upon Mar-Reece Hughes' co-defendant, Eric Dwayne Forney. No additional evidence was offered by the Solicitor to elevate Mar-Reece Hughes' individual culpability beyond that of Eric Forney.

II. THE TRIAL JUDGE ERRED IN NOT EXCLUDING INFLAMMATORY AND UNRELIABLE INCULPATORY AND IMPEACHMENT EVIDENCE NOT MADE AVAILABLE BY THE PROSECUTION TO THE DEFENSE, ALTHOUGH REQUESTED, THEREBY DENYING THE DEFENDANT MATERIAL INFORMATION NECESSARY TO THE PREPARATION OF HIS DEFENSE IN VIOLATION OF SCRCP 5 AND BRADY V. MARYLAND, 37 U.S. 83, 83 S.CT. 1194, 10 L. ED. 2D 215 (1963)

It is a well settled issue that an accused's rights are protected and the entitlement to a fair trial is guaranteed under the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution. Today, the notions of justice and fair play are often surrendered to the manipulations of a prosecutor whose only objective is to gain a conviction. The prosecution practiced selective discovery in deciding which evidence to provide to defense counsel based on whim and fancy. Conformity with the doctrines of fundamental fairness was not practiced by the prosecution, creating fundamental unfairness to the Appellant. The trial court failed to guarantee and safeguard Mar-Reece Hughes' constitutional right to have access to evidence, instead, it rewarded the prosecution's deception.

The state must disclose **"evidence in its possession which is favorable to the accused and material either to guilt or punishment."** (Emphasis added.) Brady v. Maryland,

373 U.S. 83, 83 S.Ct. 1194, 10 L. Ed. 2d 215(1963). Unlike Brady, supra, the evidence suppressed by the solicitor was material to guilt and punishment.

In United States v. Agurs, 427 U.S. 97, 106, 49 L.Ed. 2d 342, 351, 96 S.Ct. 2392 (1976), the court elaborated on its Brady ruling and made specific findings as to what constituted a material suppression prejudicial to an accused. It held that there is:

> "no duty to provide the defense counsel with unlimited discovery of everything known by the prosecutor, if the subject matter of a request is material, or indeed if a substantial basis for claiming materiality exits it is reasonable to require the prosecutor to respond either by furnishing the information or by submitting the problem to the trial judge. When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable."

Mar-Reece Hughes demanded disclosure in no less than five motions. The requests for disclosure were specific. Those motions included a general Brady motion, a motion for continuance for failure to provide the defense with the "substance of any oral statements allegedly made by the Defendant to any prosecution agent or any other person, a motion for a list of prosecution

witnesses, a motion for production of "all information regarding any alleged oral statement made by the Defendant including the contents of the statement, to whom the statement was made, and when the statement was made and a list of witnesses intended to be called by the Solicitor's office to testify regarding any alleged oral statement, and a motion to require SLED to provide all reports and analyses of evidence. [2]

Proper and specific notice was provided to the Solicitor. The Solicitor made a conscience and independent decision not only to deprive the defendant of his constitutional rights but also to willfully and intentionally conceal witnesses and their testimony during the in camera hearings. The Solicitor was motivated by his primary interest in ambushing the defense and obtaining a death penalty conviction.

The Solicitor made available to the defense a portion of a SLED report. The report furnished was incomplete, in that, the first 15 pages of the report were withheld. The segregated first 15 pages contained incriminating oral statements made by Mar-Reece Hughes, a list of witnesses who

2. See attached motions. (ROA)

may have heard those statements, when those statements were made, what Mar-Reece Hughes' conduct was like at the time the statements were made, and impeachment evidence. This information was vital to the defenses' ability to determine his voluntariness of the statements and to lead to new witness information.

The disclosed SLED report contained written statements of witnesses describing incidents surrounding the jailhouse assault. The undisclosed report contained additional witnesses who gave varying and comprehensive statements relevant to the Appellant's state of mind and sanity when the statements were made. This undisclosed information was material to the finding of guilt and the imposition of Mar-Reece Hughes' punishment. The undisclosed information also contained impeachment testimony consisting of evidence for those witnesses that were called and included additional witneses who the defense could have called to testify for additional impeachment evidence.

The lack of disclosure rises above harmless error and smacks of fraud, deceit and misrepresentation. The outcome of this misrepresentation is an improper sentence of death for Mar-Reece Hughes. The Solicitor repeatedly affirmed to

the defense and to the court that the entire SLED report had been furnished. This was a lie. However, the defense had no choice but to believe that the entire report had been provided based on the numerous declarations made by the prosecution that they had conformed with Brady.

This deceit handicapped the defense by effectively frustrating their ability to adequately prepare cross examination, to prepare their defense, to investigate the witnesses who did testify, to investigate those witnesses who did not testify and why, to impeach witnesses (as many were jailhouse inmates) or to determine the veracity and reliability of those who did testify. Evidence which may be used to impeach a witness's credibility is favorable to an accused under Brady. State v. Hinson, 293 S.C. 406, 361 S.E. 2d 120 (1987); Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L. Ed. 2d 104 (1972).

In United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 87 L. Ed. 2d 481, 490 (1985) the prosecutor failed to disclose evidence that the defense might have used to impeach witnesses. The undisclosed SLED report contained impeachment evidence, particularly as to Harold Jennings, with regard to Mr. Hughes' lack of sanity and reliability at

the time the incriminating statements were made. The Court in Bagley, supra, set forth a standard of materiality:

> "The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome.
>
> The Government notes that an incomplete response to a specific request not only deprives the defense of certain evidence, but also has the effect of representing to the defense that the evidence does not exist. In reliance on the misleading representation, the defense might abandon lines of independent investigation, defenses, or trial strategies that it otherwise would have pursued.
>
> And the more specifically the defense requests certain evidence, thus putting the prosecutor on notice of its value, the more reasonable it is for the defense to assume from the nondisclosure that the evidence does not exist, and to make pretrial and trial decisions on the basis of this assumption.
>
> The reviewing court should assess the possibility that such effect might have occurred in light of the totality of the circumstances and with an awareness of the difficulty of reconstructing in a post-trial proceeding the course that the defense and the trial would have taken had the defense not been misled by the prosecutor's incomplete response."

Bagley, supra., U.S., 682, L. Ed. 494. Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S.Ct. 2052 (1984).

In an effort to circumvent SCRCrimP Rule 5, the Solicitor made a conscience decision as to whose statements would be transcribed and whose statements would not. The concern was disclosure. The Solicitor deliberately and carefully chose the witness statements to be transcribed and those selected statements were written and provided. Why, weren't all statements transcribed, particularly, those who the Solicitor knew he would call to testify? The answer rests in the Solicitor's motivation. The motivation was not to protect privacy and the integrity of their investigation. The motivation was to prevent and avoid disclosure of impeachment evidence.

> A: **Mr. Pope:** Your Honor, my understanding is that SLED did an investigation of the jail murder, a standard SLED investigation, and that was turned over in its entirety to the defense. (Tr. Page 1856, lines 4-7).
>
> Q.: **The Court:** The State is saying they have given you all they have. I'm going to ask them to make a diligent search of their file to make sure that they have, in fact, given all statements. (Tr. Page 1856, lines 21-24).
>
> A.: **Mrs. Brice:** What I am concerned about Your Honor is...the fact that these statements were unreliable due to his mental

illness and I think that it would certainly help the defense, it would make us more effective in defending Mr. Hughes to present a full picture as to whether or not he was sane at the time of the second murder. (Tr. Page 1858, lines 7-14).

Q: **The Court:** The whole request for this has to do with the ability of the experts to accurately diagnose Mr. Hughes, is that correct? (Tr. page 2346, lines 23-25)

A.: **Mrs. Brice:** No sir, I don't think so and the reason why is because it is our position that they should have provided us with exculpatory evidence going to the fact that there were other persons that had given statements to the SLED Officer. We did not know about the statements that were within that summary and it is my position that it should have been provided to us....(Tr. page 2347, lines 3-9)

It is my understanding I am entitled to exculpatory evidence by the Rules and it should have been provided to me. I don't think I should have been limited in my ability to speak with select persons that the Solicitor's Office is saying that I should or should

not talk to. They made a decision themselves I should not talk to these people. (Tr. page 2347, lines 22-25; Tr. page 2348, lines 1-4)

Q. Mrs. Brice: Your Honor, I have had during this break the opportunity to review the SLED Report that was provided prior to the jury coming in this morning. Your Honor, I have not been provided with the written Report of the SLED Department. There were, in fact, three statements that were given which all show the fact that my client was insane at the time of the offense. I asked our psychiatrist if she had had possession of these records previous to my looking at it today. She saw it for the first time approximately five minutes ago. There were three witnesses, one being a John H. Walker, who in this report stated that during several conversations with Mar-Reece his little man would come and go. Harry Jennings, the fellow that testified earlier, talked about the little green man that Mar-Reece saw.. Another person by the name of James Gaithers, also relayed information that he would talk to little green man and everyone in the cell was calling him crazy. Your Honor, as an officer of the court, I am telling you I do not have these reports. It clearly goes to the fact that we were posing back in the Motion hearings on Thursday and Friday in regards to our client's mental capacity or lack thereof at the time of the second murder and ...we are finally seeing it for the first time before

> we go forward with an aggravation phase. (Tr. Page 1882, lines 20-25; Tr. Page 1883, lines 1-22).

In State v. Gill, 460 S.E. 2d 412 (S.C. 1995) the court stated that a defense was not entitled to a SLED summary as Rule 5(a)(1)(C), SCRCrimP, specifically excludes discovery or inspection of "reports, memoranda or other internal prosecution documents made by...prosecution agents in connection with the investigation or prosecution of the case." However unlike Gill, supra, Mar-Reece Hughes was given a portion of the summary report by prosecution. It is the Appellant's position that if part of a SLED report was made available then all of it should have been made available. If the appellant was not entitled to the entire report, then the prosecution should have made known to the defense that they were only receiving a portion of the report so that the matter could have been resolved by the court rather than at the discretion of the prosecution. Instead, the prosecution made the representation that the entire report had been provided knowing that to be untrue. Mr. Hughes and his counsel had every reason to believe that the report received was complete.

The SLED report which was furnished was not numbered. The defense's requests for discovery of witnesses and statements were silenced upon receipt of what the defense

believed to be a complete SLED report. The defense believed the report contained all the statements and witnesses of the prosecution. This false belief resulted in the abandonment of areas of independent investigation. It was reasonable for the defense to assume that the withheld information and witness statements did not exist. The presentation, preparation and investigation by the defense would have been substantially and materially different had they not been led to believe they had all of the information. The conclusion is inescapable that the trial, as well as the defenses' presentation, investigation and preparation, would have taken a different direction had the defense been provided with the complete report.

The fraud and misrepresentation of the State resulted in a deprivation of the appellant's right to a fair trial guaranteed under the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution. There was no fundamental notion of fair play, therefore, there was no justice. "Where there has been a suppression of evidence which results in the deprivation of the defendant's right to a fair trial a reversal will result." Hinson, supra.

III. THE TRIAL JUDGE ERRED IN FAILING TO EXCLUDE INCRIMINATING DELUSIONAL AND SPONTANEOUS STATEMENTS WHICH WERE GIVEN DURING THE HEIGHT OF APPELLANT'S PSYCHOSIS AS THEY WERE NOT CREDIBLE, VOLUNTARY OR INTELLIGENTLY MADE.

The Fourteenth Amendment forbids the use of involuntary confessions that are obtained in a coercive manner. Mar-Reece Hughes concedes that statements made at the time of his arrest were voluntary. However, the incriminating spontaneous statements made during the height of his psychosis were involuntary and unreliable, yet, they were admitted as evidence of his guilt in the murder of Brent McCants. This admission was error.

There was a specific finding that the custodial and pre-custodial confessions were voluntary. The trial judge specifically addressed why he considered those statements voluntary. However, the trial judge failed to address why the statements which were made during the height of psychosis were voluntary and reliable.

> Q: **KEVIN BRACKETT:** In the middle of February did you have occassion to hear a conversation between some inmates regarding drinking and partying and that sort of thing? (Tr. page 1494, lines 15-17)
>
> A: **HARRY LEWIS JENNINGS, JR.:** Yes, sir. (Tr. page 1494, line 18).

Q: **KEVIN BRACKETT:** And what did Mr. Hughes say? (Tr. page 1495, line 3).

A: **HARRY LEWIS JENNINGS, JR.:** He said the greatest feeling he ever had was when he shot that copy. (Tr. page 1495, lines 4-5).

Q: **KEVIN BRACKETT:** Sir, I am going to call your attention specifically to the middle of February back in 1993. Sometime in February, 1993, did you have occasion, sir, to remove Mr. Hughes from his cell. (Tr. page 1519, lines 17-20).

A: **BROADUS LEE STRAIN:** Yes, sir. (Tr. page 1519, line 21)

Q: **KEVIN BRACKETT:** All right, once he was in the cell did you have an occasion to overhear Mr. Hughes talking? (Tr. page 1520, lines 12-13).

A: **BROADUS LEE STRAIN:** Yes, sir, he said he was going to kill him another white boy. (Tr. page 1520, lines 21-22).

Once a trial judge determines that a statement is voluntary, the trial judge must support that determination by giving the basis for those findings. State v. Callahan, 263 S.C. 35, 208 S.E. 2d 284 (1974). The record is void of reasoning by the trial judge. In addressing the incriminating non-interrogational statements, the trial court held: "So as to those statements I find that they are voluntary and/or they were given as a result of a waiver of

his Miranda warnings." (Tr. page 2967, lines 14-17). The trial judge failed to state what circumstances, findings or factors he considered in rendering the jail house statements voluntarily and intelligently made.

Counsel Schusterman stated it best, "I cannot imagine that the Supreme Court said that as long as Miranda is read to somebody that, regardless of their mental condition, that obviates any need for a knowing and voluntary waiver. (Tr. page 2962, lines 22-25; Tr. page 2963, line 1). "Mental deficiency alone is not a basis for rendering a confession involuntary." State v. Tyner 273 S.C. 646, 656, 258 S.E. 2d 559, 564, (1979) citing In Re Williams, 265 S.C. 295, 217 S.E. 2d 719 (1975). However, a conviction based upon an involuntary delusional verbalization is a deprivation of due process of law. "A confession is not admissible unless it was voluntarily made." State v. von Dohlen, 471 S.E. 2d 689 (1996); State v. Childs, 299 S.C. 471, 385 S.E. 2d 839 (1989). The purpose behind excluding the admissibility of evidence obtained without regard to its probative value is to preserve the reliability of the verdicts issued by the trier of guilt or innocence. Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L. Ed 2d 908, 1 A.L.R. 3d 1205 (1964).

"A confession may be introduced into evidence upon proof of its voluntariness by a preponderance of the evidence." State v. Middleton, 295 S.C. 318, 322, 368 S.E. 2d 457, 459 (1988); Lego v. Twomey, 404 U.S. 477, 92 S.Ct. 619, 30 L.Ed. 2d 618 (1972); State v. Neeley, 271 S.C. 33, 244 S.E. 2d 522 (1978); State v. Smith, 268 S.C. 349, 234 S.E. 2d 19 (1977). No evidence was presented by the prosecution to meet its burden of finding voluntariness. No evidence was presented by the prosecution to assist the trial judge in arriving at his finding that the incriminatory delusional statements were credible and trustworthy. Insufficient evidence was presented by the state to meet its burden of showing these statements were voluntary and credible and not part of a delusional fantasy.

The trial judge entered no findings to provide any basis or reasoning as to why these psychotic utterances and declarations were knowingly, voluntarily and intelligently made. The trial judge erred in finding that delusional verbalizations are admissible voluntary statements. The trial judge also failed to provide an appropriate or complete finding. The finding entered was too general to

form a proper review. Callahan, supra.

The same trial judge who presided over the trial of Mar-Reece Hughes also presided over Eric Dwayne Forney's trial. When Forney attempted to admit these admissions the trial court properly excluded them. The trial judges exclusion was affirmed on appeal based on the following reasoning:

> "[Proffered evidence included the following statements allegedly made by Hughes to others: 1)'Hughes has said to me on more than one occasion that he was the one that shot and killed Deputy McCants.'(jailhouse informant); 2) '[Hughes] said he shot Brent McCants and that he would shoot any cracker.' (jailhouse informant); 3) '[Hughes] was just bragging about the way he shot the police, that he shot him in the chest and then he got out of the car and shot him in the back of the head'(jailhouse informant); 4) '[Hughes] just blurted out, I'm guilty, I'm guilty.' (investigating officer); 5) '[Hughes] said he was going to get him another white boy before they fried him.' (prison guard)." The Court held that these statements were properly excluded in the Forney trial due to questionable veracity. It further concluded "There is no independent evidence corroborating Hughes's statements that he killed McCants....Accordingly, the statement denying responsibility is in fact more trustworthy than the incriminating statements to jailhouse information. State v. Forney, 468 S.E. 2d 641, 644-645, (S.C. 1996);United States v. Guillette, 547 F.2d 743 (2d Cir. 1976).

Logical reasoning would dictate that if these statements were not admissible due to questionable credibility and trustworthiness during the trial of the co-defendant Eric Dwayne Forney, these statements would likewise be inadmissible for the same reasons during the trial of Mar-Reece Hughes. As in Forney's trial, there was no independent evidence corroborating that Hughes killed McCant's. On appeal, the conclusion of the trial judge as to the voluntariness of a confession will not be reviewed unless so erroneous as to show abuse of discretion." Von Dohlen, supra, 695; State v. Livingston, 223 S.C. 1, 73 S.E. 2d 850 (1952), cert. denied, 345 U.S. 959, 73 S.Ct. 944, 97 L.Ed. 1379 (1953). The lack of evidence presented to meet the standard that statements are voluntary and credible and, the trial judge's absence of any basis or reasoning as to why the declarations were knowingly, voluntary and intelligently made, coupled with this same trial judge's ruling of the inadmissibility of these statements in the trial of the codefendant, renders the ruling erroneous and a blatant abuse of discretion. Here, the determination as to voluntariness was left to the jury.

The failure by the trial judge to make a reliable finding as to voluntariness resulted in the violation of the Appellant's right to due process.

IV. THE TRIAL JUDGE ERRED IN FAILING TO INSTRUCT THE JURY AS TO THE LIFE SENTENCE OF THE APPELLANT'S CODEFENDANT, ERIC DWAYNE FORNEY, AS A MITIGATING FACTOR.

Eric Dwayne Forney was sentenced to life for the murder of Brent McCants on March 10, 1994. The defense attempted to enter into evidence, Forney's sentence of life as a statutory mitigating circumstance to be considered by the jury in evaluating the life or death sentence of Mar-Reece Hughes. (Tr. page 2334, line 17). Its admission into evidence was improperly denied. The trial judge has the duty to review all statutory mitigating circumstances and instruct the jury as to any which may be supported by the evidence and not merely those which are requested by the defendant. S.C. Code of Laws, Ann., Section 16-3-20 (c)(1976). The admission of Codefendant Eric Dwayne Forney's life sentence was supported by the evidence.

To find Mar-Reece Hughes guilty of Brent McCants' murder, the prosecution relied upon the legal theory that the "hand of one is the hand of all." (Tr.page 1746, line 16). It was the prosecution's position during the guilt phase that the actors could not be segregated based upon their individual participation and culpability during the

commission of the crime. Yet, the prosecution changed this position during the sentencing phase and argued that codefendant's participation, culpability and sentence bore no relationship to that of Mar-Reece Hughes.

While the appellant recognizes that a capital defendant must be treated as a uniquely individualized human being thereby focusing a jury's attention upon him, it is illogical and inconceivable to find it rational to exclude evidence which directly correlates to the circumstances of the crime and potential individual culpability of the accused. The trial judge should have allowed the jury to consider the codefendant's life sentence as but one factor in the totality of the circumstances to base a finding of life or death. Unlike the guilt phase of the trial, in the sentencing phase, particularly where the death penalty is being considered, each participants' individual culpability is material to the imposition of the death penalty. Justice requires a presentation of the truth to the fact finder.

In making a determination of which mitigating circumstances have evidentiary support, the statute directs the trial court not to interfere with the jury's province and is *not* to withhold aggravating or mitigating

circumstances which may be supported by the evidence. Plath, supra, Williams v. State, 237 Ga. 399, 228 S.E. 2d 806. State v. Humphries, 479 S.E. 2d 52 (1996); State v. Victor, 300 S.C. 220, 387 S.E. 2d 248 (1989). Attorney Schusterman argued:

> "...[W]e acknowledge the fact that they can give a life sentence for any reason or no reason at all, and we are invading their province to then begin telling them, well, isn't this an entire different situation...So as an overall umbrella under a mitigating circumstance for the jury to know that this man received a life sentence they may categorically reject that, they may say well, yes, Mr. Forney didn't do the shooting, we think Mr. Hughes did, and reject it, but they may not and I submit that is not for the court to determine, but for the jury to make a determination as to the total facts and situation and that they make a fully informed decision." (Tr. pg. 2338, lines 11-25; Tr. pg. 2339, lines 1-2).

In deciding which statutory mitigating circumstances may be supported, the trial judge is to be concerned with only the existence of the evidence, not its weight. State v. Bellamy, 293 S.C. 103, 359 S.E. 2d 63 (1987); State v. Pierce, 289 S.C. 430, 346 S.E. 2d 707 (1986); State v. Butler, 277 S.C. 452, 290 S.E. 2d 1 (1982). "The trial judge has a duty to review the statutory mitigating circumstances and submit any which may be supported by the

evidence. Johnson, supra. The culbablity of Eric Dwayne Forney was in evidence. His verdict, likewise should have been introduced as evidence in mitigation.

The construction of S.C.Code of Laws, Ann., Section 16-3-25 (1976) is consistent with the constitutional requirement of Eddings v. Oklahoma, 455 U.S. 104, 102 S.Ct. 869, 71 L. Ed. 2d 1 (1982) and Lockett, supra, which held:"...[T]hat the Eighth and Fourteenth Amendments require that the sentencer, in all but the rarest kind of capital case, not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." 98 S.Ct. at 2964-2965. State v. Hyman, 276 S.C. 559, 570, 281 S.E. 2d 209, 215 (1981).

The jury should have been able to consider that Mar-Reece Hughes' codefendant received a life sentence for his participation in Brent McCants' murder. For Mar-Reece Hughes, the admission of the codefendant's sentence could have been a double-edged sword. It could have been found by the jury that the life sentence of the codefendant was justification of a sentence of death for Mr. Hughes. Or, it

could have been found by the jury that the life sentence of the codefendant warranted a sentence of life for Mar-Reece Hughes due to his lesser degree of participation. When the choice is between life and death, the Eighth Amendment bars any sentencing procedure which creates a risk that the death penalty will be imposed; especially when there may be factors that call for a less severe penalty. Stewart, supra.

The weight of Mr. Forney's sentence as a factor for the imposition of the sentence of death should have been considered. The jury was prohibited during the sentencing phase from making a true choice between life and death. By excluding Eric Dwayne Forney's sentence, the trial court minimized the risk that a life sentence would be returned. The trial court violated Mar-Reece Hughes' consititutional right with that exclusion. There is a chance that the death penalty would not have been imposed had the jury been able to consider that the codefendant received a life sentence. A verdict can not speak the truth when the truth has been muted. By excluding evidence of Mar-Reece Hughes' codefendant's sentence, the trial court robbed the jury of an important mitigating factor, thus, violating his constitutional right under the Eighth Amendment.

V. THE DEATH PENALTY IMPOSED UPON MAR-REECE HUGHES VIOLATES THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AS IT IS DISPROPORTIONATE WITH REGARD TO THE SENTENCE IMPOSED UPON THE CODEFENDANT WHO RECEIVED A LIFE SENTENCE FOR THE SAME CRIME.

The Code of Laws of South Carolina, Section 16-3-20, Cum.Supp. 1978, states that the sentences of death imposed against appellants must conform to the requirements outlined in said Section. Further, the duty falls upon the Court under Section 16-3-25, Cum.Supp. 1978, to review the entire record and transcript, the report of the trial judge, and the arguments of counsel to determine (1) whether the sentences of death were imposed under the influence of passion, prejudice, or any other arbitrary factor; (2) whether the evidence supports the sentencing authority's findings of statutory aggravating circumstances; and (3) whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. The Appellant is basing his argument on the third factor.

In State v. Shaw, 255 S.E.2d 799, the Court was unable to compare the case with any other similar cases. It stated that "there will be a first case for each type or category of capital case that may appear and that first case

necessarily cannot be compared to any other similar cases. The first case must stand alone, otherwise comparative sentence review would be forever impossible." In the case at hand, the Court has the luxury of having comparable cases available to it for review. In fact, the case of the codefendant, Eric Dwayne Forney, affords the Court the exact same set of facts and evidence in which to compare the proportionality of sentences imposed on each defendant. The codefendant in Forney, supra, received a life sentence.

According to the Code of Laws of South Carolina, Section 13-3-25, whenever the death penalty is imposed, the sentence shall be reviewed. The Supreme Court of South Carolina shall consider the punishment as well as any errors and with regard to the sentence, the Court shall determine whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases. The Appellant contends that his sentence is both excessive and disproportionate in comparison to the life sentence imposed upon his Codefendant. The Appellant recognizes that the mere fact that he received a more severe sentence than did other defendants does not render the punishment cruel and unusual. For example, the Court in People v. Johnson,

47 Cal 3d 1194, 255 Cal.Rptr. 569, 767 P.2d 1047 (1989), held that the defendant's sentence was not disproportionate to that of his codefendant. However, in this case, the Defendant was found to be the actual killer, and the Codefendant, who was merely an accomplice, receiving a negotiated sentence in return for an agreement to testify. In the case at hand, the Appellant was never tried solely on his exact role in the crime; rather, he was tried under the felony murder rule under the concept of the "hand of one is the hand of all." Therefore, the jury was not asked to determine the Appellant's individual culpability. If the Codefendant received a life sentence for the same degree of culpability as that of the Appellant, the Appellant, in this case, should have received the same sentence. Furthermore, the Appellant cites State v. Gregory, 340 N.C. 365, 459 S.E.2d 638 (1995), where the Court held that the sentences of death imposed upon a defendant was not disproportionate to the penalty imposed upon the codefendant where the co-defendant pleaded guilty to noncapital offenses for his participation in the same crimes in return for his truthful testimony against the defendant. Additionally, the details of the plea bargain were before the jury and the co-

defendant was cross-examined about the sentence he would receive, enabling the jury to consider this evidence as a mitigating circumstance. The jury in Appellant's trial was not made aware of the sentence of the Codefendant and the Codefendant was not available for cross examination by defense counsel, making the ultimate sentencing of the jury in violation of the Eighth and Fourteenth Amendments as disproportionate to that of the Codefendant.

According to the opinions of Justice Brennan, Justice Marshall, Justice Blackmun, and Justice Stevens in Tison v. Arizona, 481 U.S. 137, 95 L.Ed 127, 107 S.Ct. 1676, "the Court's failure to examine the full range of relevant evidence is troubling not simply because of what that examination would have revealed, but because until today such an examination has been treated as constitutionally required whenever the Court undertakes to determine whether a given punishment is disproportionate to the severity of a given crime." They cited Solem v. Helm, 463 U.S. 277, 292, 77 L.Ed 2d 637, 103 S.Ct. 3001 (1983), where the Court summarized the essence of such an inquiry: "In sum, a court's proportionality analysis under the Eighth Amendment should be guided by objective criteria, including (i) the

gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions." South Carolina holds an individual strictly liable for killing under a felony murder rule, regardless of the actual role the defendant plays in the crime. Therefore, the Appellant's actual role in the crime was not determined, conversely, he was convicted solely on his presence at the crime. In reversing the Florida Supreme Court in Enmund v. State, 399 So.2d 1362 (1981), the Supreme Court took note of the "overwhelming evidence" of society's rejection of the death penalty for accomplice liability in felony murders." 458 U.S., at 794, 73 L.Ed 2d 1140, 102 S.Ct. 3368. The Court observed that, in imposing the death penalty upon Enmund, the Florida Supreme Court had failed to focus on "Enmunds own conduct... [and] on his culpability." Id., at 798, 73 L.Ed.2d 1140, 102 S.Ct. 3368. The Court then explained, and rejected, the felony-murder doctrine as a theory of capital culpability. "Enmund did not kill or intend to kill and thus his culpability is plainly different from that of the robbers who killed; yet the State treated them alike and

attributed to Enmund the culpability of those who killed the Kerseys. This was impermissible under the Eighth Amendment." Ibid. In the case at hand, there was no testimony proving that the Appellant was the shooter. In fact, the Appellant took the stand and testified that the Codefendant was the person responsible for the murder. Furthermore, other relevant testimony included a time line and testimony placing the weapon in the hands of the Codefendant during the hours leading up to the shooting. Therefore, the individual culpability of the Appellant was never considered. The Framers of the Constitution provided in the Eighth Amendment the limiting principles otherwise absent in the prevailing theories of punishment. One such principle is that the States may not impose punishment that is disproportionate to the severity of the offense or to the individual's own culpability. In light of this, the sentence of death is completely disproportionate to that of the Codefendant and in violation of the Eighth Amendment.

VI. THE TRIAL JUDGE ERRED IN FAILING TO GRANT A MISTRIAL DUE TO THE PREJUDICIAL EMOTIONAL COURTROOM OUTBURST PERFORMED BY THE MOTHER OF THE VICTIM DURING THE APPELLANT'S PRESENTATION OF CRITICAL AND COMPLEX PSYCHIATRIC TESTIMONY DURING THE SENTENCING PHASE.

Common sense dictates that a defendant is entitled to a calm and rational judicial atmosphere during his trial. This calm is necessary to minimize the possibility that a verdict will be rendered on emotion rather than reason. Generally, misconduct of a spectator during a criminal trial is not deemed sufficient to grant a new trial unless an accused rights are prejudiced. Mar-Reeece Hughes' rights were, indeed, prejudiced and the courtroom lost its rational and judicial integrity when it became a stage for the antics of Myra McCant's, the mother of the victim.

> **The Court:** I would like the record to reflect, and it has been called to my attention, but it didn't have to be, that about 5:04 during the testimony of Doctor Kohanski, while she was being cross examined by the Solicitor, the decedent's mother arose from her seat, walked hurriedly and deliberately to the back of the courtroom, flung open the glass panel inner door and before they had time to close, hit the latch on the outer wooden door causing it to make a very loud sound sounding like a door was being slammed. I did observe that and as soon as that happened a Motion was timely made at the bench by counsel for the defendant for a mistrial. (Tr.

Page 2250, lines 15-25; Tr. Page 2251, lines 1-3).

Mr. Schusterman: I will tell the court that as an officer of the court that when that second loud noise was heard, the second door opening, that fourteen jurors turned their heads and what I find particularly distressing about it is I think that at some point given the relationship now that Ms. McCants has thrown herself into it as being a witness, the emotional testimony of yesterday, and now her behavior today I think rises to the level as to commenting on the facts that are coming into the court's deliberation and that would be the basis for the mistrial. It's not merely court conduct, but at some point a person can hold such a role within a trial as she had in this particular case the court will note. (Tr. Page 2251, lines 5-23).

The Court: Let me also say, I neglected to say, that another lady who I think was earlier identified as her sister, who has been sitting with her, a lady with silver gray hair, exited right behind her with about the same speed of exit and my thought was sort of yours it was very much it appeared to the court to be a non-verbal expression, which I characterized as quite a few things, in regards to the testimony of the witness, but suffice it to say, the implication was certainly negative. I will say no more than that about the various adjectives that come to mind." (Tr. Page 2251 lines 24-25; Tr. Page 2252, 1-9).

Ms. McCants's contempt for the defendant became all too clear when she chose, before the jury, to abruptly vacate the courtroom during the vital psychiatric testimony of Dr. Kohanski. As the jurors turned their heads and watched Ms. McCants leave the courtroom in disgust and contempt, obviously showing her disbelief in the testimony being rendered which was a vital mitigating factor substantiated by accredited professionals, they became prejudiced. Ms. McCant's was testifying through her actions as to her opinion of Dr. Kohanski's testimony. Her physical testimony communicated that she did not approve, nor did she believe, what was being presented. The implication and impact upon the jury was negative. It is the duty of the trial judge to see that the integrity of his court is not obstructed by any person or persons whatsoever. Shearer v. Dishon, 240 S.C, 472, 126 S.E. 2d 514 (1962). Ms. McCants' actions obstructed the integrity of the courtroom, and the condonation of those actions by the trial judge prejudiced the rights of the Appellant.

This outburst was calculated by Ms. McCants to have a specific effect upon the jury. Her message was one of hate, contempt and malice. It was deliberate, not spontaneous. Ms. McCants had already participated and spectated in the previous trial of the Codefendant and, no doubt, knew that

her conduct would serve to prejudice the jury. The court even recognized the negative effect upon the jury. It was obvious that the jury did not ignore this eruption. The entire courtroom felt the impact as though it were an exclamation point at the end of a sentence. All those present sensed the contempt of Ms. McCants, not only for the testimony, but also for the entire proceeding and Mar-Reece Hughes.

It is reasonable, then, to conclude that the emotional outburst affected the jury's verdict. In State v. Stewart, 295 S.E. 2d 627, 278 S.C 296 (1982) the Court, in addressing whether an emotional outburst warranted a mistrial found that there must first be an investigation into whether or not there was a prejudicial effect upon the jury. The court concluded that there was a negative impact upon the jury due to the non-verbal testimony. The Appellant would submit that such an outburst results in not only a negative impact but also a prejudicial effect upon a jury.

Ms McCants' outburst assisted in preventing the defendant from having a fair and impartial trial. Ms. McCants diverted attention away from the sympathetic and sensitive testimony being presented in favor of the accused. Ms. McCant's behavior was angry and hostile. Her conduct deliberately served as a commentary to influence the jury

about her impression of the witness's credibility.

It appears that although the judge was aware of the prejudicial effect upon individual jurors, the return of a sentence was of more importance. The priority of delivering a potentially tainted sentence was superior to the preservation of the sanctity of the courtroom and justice for the Defendant. The right to a fair trial by an impartial jury in a criminal prosecution is guaranteed by the Sixth Amendment to the U.S. Constitution and by Article 1, Section 14, of the S.C. Constitution. While this right does not require a "perfect" trial, the very heart of a "fair trial" embodies a disciplined courtroom wherein an accused's fate is determined solely through the exercise of calm and informed judgment.", Stewart, supra, 630-631. The embodiment of calm and discipline became non-existent as Ms. McCants created a devasting disturbance by loudly and deliberately exiting the courtroom. As a result, the appellant's right to a fair trial was violated.

VII. AFTER DUE DELIBERATIONS BY THE JURY DURING THE SENTENCING PHASE, THE TRIAL JUDGE ERRED BY GIVING AN UNDULY COERCIVE INSTRUCTION TO THE JURORS WHO WERE HOLDING OUT FOR A LIFE SENTENCE.

The jury began their sentencing phase deliberations at 4:25 p.m. (Tr. 2452, page 15). The court received a letter from the jury at 8:30 p.m. stating "We, the jury, are unable to come to a unanimous decision on the 'sentence to be imposed for the defendant. This being the case, Where do we go from here?" The judge gave the following instruction:

> "I can tell you all of you have a duty to consult with one another and to deliberate with a view to reaching an agreement, if this can be done without violence to any one of your individual judgments. Each of you as jurors must decide the case for yourself, but only after impartial consideration of the evidence with your fellow jurors. During the course of your continued deliberations each of you should not hesitate to re-examine your own views and change your opinion if convinced that your opinion is erroneous. *Each juror who finds himself or herself to be in the minority should reconsider their views inlight of the opinions of the jurors of the majority and conversely, each juror finding themselves in the majority should give equal consideration to the views of the minority.*" (Tr. page 2455, lines 12-25, Tr. page 2456, lines 1-2)(Emphasis Added.)

The defense objected to the Allen charge as unduly coercive (Tr. 2467, lines 15-25). The jury reconvened at

9:15 p.m.. At approximately 11:00 p.m. the trial judge forwarded to the jury room an unsolicited letter which read "Would the jury like to continue to work tonight or break until in the morning?" Obviously, the jury was still deadlocked in their deliberations. The jury returned to the courtroom at 11:30 p.m. to report its verdict. (Tr. 2458, lines 2-3).

In Allen v. United States, 164 U.S. 492, 17 S.Ct. 154 (1896), the Supreme Court approved an instruction which required the jury to return to the jury room, reconsider their own views and those of jurors who felt differently. "Any criminal defendant, and especially any capital defendant, being tried by the jury is entitled to the uncoerced verdict of that body." Lowenfield v. Phelps, 484 U.S. 331, 108 S.Ct. 546, 552 (1988). In reviewing an Allen charge, the consideration is whether the coercive instruction by the trial judge caused a juror to abandon his or her conviction for a reason other than based on the trial or the argument of other jurors." McMillan v. State, 253 Ga. 520, 322 S.E. 2d 278 (1984); United States v. Sawyers, 423 F.2d 1335 (4th Cir. 1970).

The trial judge was not evenhanded in his charge. He

focused on those jurors who held the minority view. He directed those who were in the minority to "reconsider" their convictions to those of the majority while directing the majority to merely "consider" the views of the minority. This was error. The trial judge interjected his will upon the will of the minority jurors who were holding out for a life sentence.

The individual integrity of those minority jurors holding out for a life sentence was compromised when they were charged to "reconsider" their convictions in favor of the majority. A jury is comprised of individuals who each bring with them certain beliefs and convictions. The charge requested reconsideration of individual convictions by the minority who were holding out for a life sentence. "Without reference to both sides of the coin, a strong statement of the duty of agreement may readily be construed by those jurors in the minority as requiring a deferential surrender to the views however unreasoned they may be of the majority." United States v. Rogers, 289 F. 2d 433, 436 (4th Cir. 1961).

The individuals who were holding out for a life sentence were further pushed by the trial judge to reach a unanimous decision when he forwarded them a note inquiring

as to whether they desired to continue through the night or reconvene in the morning. This note could only serve to sway those minority jurors to the belief that they would not be able to go home or leave the jury room without first coming to some consensus with the majority. They were led to believe there would be no finality, thus, sided with the majority so as to fulfill their duties as jurors. This unsolicited communication was wrong as it influenced the minority jurors to return a verdict. A verdict was entered 30 minutes after receipt of the written communication from the trial judge. This written message failed to inquire as to whether the jury was still deadlocked. It should also be noted that upon polling the jury members, several were openly crying and one juror hesitated for quite some time before raising his hand to indicate that the death penalty was, in fact, his verdict. This emotional display by the jurors gives weight to the notion that the instructions given by the judge, coupled with his subsequent actions, served to coerce the jury into a unanimous decision.

The influence of the court upon the individuals in the minority to reconsider their convictions diminished the credibility of the unanimous verdict. The will of the

individual minority jurors who held out for a life sentence was overborne by the will of the trial judge. The coercive charge lessened the probability that the verdict returned was one based upon the evidence of trial and argument of jurors rather than the will of the trial judge. Under the circumstances of this case, the instruction given by the judge, along with the written communication two hours later, served to be unduly coercive of those minority jurors holding out for a sentence of life.

CONCLUSION

The trial judge erred in admitting evidence of an unadjudicated, unrelated murder as "character" evidence in violation of the Appellant's Eighth Amendment rights. The stabbing of James Williamson and Christopher Gorth was irrelevant to the culpability of the Appellant, as there was sufficent testimony by expert witnesses, that this crime was not indicative of the Appellant's "character", in that the Appellant was acting under a delusional and psychotic state. Psychotic behavior is an unreliable indicator of a persons character. Furthermore, this evidence was not offered to show motive, knowledge, intent, or a plan or scheme on the part of the Appellant. The unrelated murder should have been excluded as it lacked conformity to the criteria set forth by case law. Even if this murder met the criteria to render it admissible as "character evidence", the fact that it was an unadjudicated crime where there was certainly a possibility of acquittal, makes this evidence prejudicial upon its admission to the jury. The prejudicial effect resulted in a sentence of death imposed upon the Appellant. The sentence was a product of emotion, fear and horror. The admission of the unadjudicated offense resulted in a conviction void of the requisite consideration of the

individual characteristics of the Appellant.

The trial judge erred in admitting evidence not made available by the prosecution to the defense, thereby denying the Appellant material information necessary to the preparation of his defense, in direct violation of SCRCP Rule 5 and Brady. An accused's rights are protected and a fair trial guaranteed under the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution. Conformity with these rights was not practiced by the prosecution. The solicitor deliberately withheld portions of a SLED report despite numerous motions for production filed by the defense. This report contained incriminating oral statements made by the Appellant, a list of witnesses who may have heard said statements, the conduct of the Appellant at the time said statements were made and other impeachment evidence. As the defense made no less than eight motions for this material, the prosecution's conduct of withholding this information rises above harmless error. In fact, their deceit handicapped the defense to adequately prepare cross examination, to investigate those witnesses listed, to gather impeachment evidence, or to determine the veracity and reliability of those who may testify. The prosecution

explained away their failure to produce this information claiming that the Rule specifically excludes discovery of reports, memoranda or other internal prosecution documents made by prosecution agents in connection with an investigation of a case. This argument fails. The prosecution produced a portion of the report they claim they did not have to produce. If part of the SLED report was made available in discovery, then the Appellant is entitled to the entire document. Or, the prosecution should have made it known that only a portion of the report was being provided so that the matter could hav been resolved by the court as opposed to the discretion of the prosecution. The prosecution, in fact, made the representation that the entire report had been provided. This fraud and misrepresentation resulted in a deprivation of the Appellant's right to a fair trial which is guaranteed under the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution.

The trial judge erred in admitting incriminating, delusional and spontaneous statements made by the Appellant at the height of his psychosis, as they were not credible, voluntary or intelligently made. Once the trial judge made

the determination that these statements were voluntary, he must support that determination by giving the basis for his findings. There were no reasons or basis given for the admissibility of these statements, only that they were voluntary. However, no evidence was presented by the prosecution to meet its burden of finding voluntariness. No evidence was given to prove or even suggest that these statements were credible or trustworthy. In addition, these same statements were held inadmissible in the trial of Appellant's codefendant, Eric Dwayne Forney.

The trial judge erred in failing to instruct the jury that the Appellant's codefendant received a life sentence. During the guilt phase of the trial, the prosecution argued the legal theory that "the hand of one is the hand of all", claiming that the participants in a crime cannot be segregated based on their individual involvement. However, during the sentencing phase, the prosecution argued that the codefendant's participation, culpability and sentence bore no relationship to that of the Appellant. There is a duty to review all statutory mitigating circumstances and instruct the jury as to any which may be supported by the evidence. The culpability of Eric Forney was in evidence. Likewise, his verdict should have been introduced into evidence as a mitigating factor. The jury should have been

able to consider the codefendant's sentence as one factor in the totality of the evidence presented in determining a sentence of life or death. In the sentencing phase of a trial, particularly where the death penalty is an issue, each person's individual culpability is material. The life sentence of the codefendant is an important mitigating factor as the Appellant contends that his participation was that of a lesser degree.

The imposition of the death penalty is in violation of the Eighth and Fourteenth Amendments to the Constitution, if it is disproportionate. Here the sentence of death for Mar-Reece Hughes was disproportionate to the life sentence imposed upon the codefendant for the same crime. A sentence of death must be reviewed and deemed to be imposed without the influence of passion or prejudice. The evidence must support the findings of statutory aggravating circumstances. And finally, it must be determined whether the sentence is excessive to the penalties imposed in similar cases. Here, we have the sentence imposed upon the Codefendant for the same crime.

There was never a determination as to the individual culpability of the Appellant. If the codefendant received a life sentence for the same degree of culpability as the Appellant under the "hand of one is the hand of all" theory,

then the proportionality of the sentences should be the same. There is no evidence or testimony proving the Appellant to be the actual shooter. Conversely, the Appellant testified on his own behalf, stating the the codefendant was the person responsible for the death of the officer. The codefendant did not testify at his trial. Where there is evidence that the culpability of the codefendant was greater than that of the Appellant, the sentence should be reviewed as disproportionate. The sentence of death is a clear violation of the Eighth and Fourteenth Amendments to the Constitution as disproportionate to that of the the codefendant for the same crime and same degree of culpability.

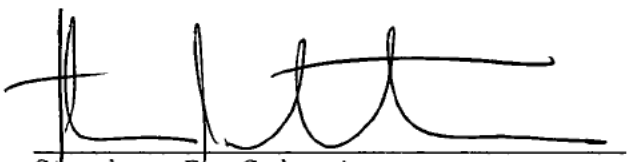
The trial judge erred in failing to declare a mistrial after a highly prejudicial, emotional outburst displayed by the victim's mother during critical and complex testimony as to the psychiatric condition of the Appellant. Ms. McCants abruptly exited the courtroom drawing the attention of the jurors away from the testimony. This outburst resulted in her communicating to the jury her disapproval and disbelief as to the evidence being presented. The implication and impact on the jury was that of prejudice. Ms. McCants' actions were calculated. The court recognized the negative effect this outburst had on the jury. The outburst had an emotional impact on the jury's verdict. This outburst

denied the Appellant from having a fair and impartial trial.

The trial judge erred by delivering an unduly coercive instruction to jurors holding out for a life sentence after they had deliberated for several hours. After sending a note to the court communicating their inability to reach a unanimous decision, over the objection of the defense, the trial judge delivered an Allen charge. The Appellant contends that this instruction was unduly coercive. The charge focused only on those jurors that were holding out for a life sentence. The charge specifically addressed the individual integrity of the minority jurors suggesting that only they should reconsider their convictions. The trial judge further pushed these minority jurors when he forwarded an unsolicited note after several more hours of deliberation asking if they wished to continue to deliberate or start again in the morning. This note, coupled with the earlier instruction swayed minority jurors away from their convictions toward the convictions held by the majority to bring some finality to the proceedings. The chain of events by the court in procuring a unanimous verdict from the jury diminished the credibility of the verdict. The convictions and beliefs of the minority jurors was overshadowed by the will of the trial judge thereby violating the rights of the Appellants to a fair, impartial and unanimous verdict.

For the reasons stated herein, this Court is respectfully requested to reverse the decisions of the Lower Court and remand this matter for further action.

Respectfully submitted,



Stephen D. Schusterman
Post Office Box 4211
Rock Hill, South Carolina 29731
(803) 325-7788



Christina C. Brice
Post Office Drawer 300
York, South Carolina 29745
(803) 684-4462

Attorneys for the Appellant

August 25, 1997

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

The State,.....Respondent.

v.

Mar-reece Aldean Hughes,.....Appellant.

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

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

1. Transcript of Record from the Court of General Sessions, County of York, dated September 11-22, 1995, pp.908-910, 913, 916, 921-922, 941-948, 979-980, 1040, 1060, 1128, 1131, 1149, 1178-1180, 1191, 1202, 1230, 1238, 1251, 1261-1263, 1282, 1305, 1308-1309, 1314, 1325, 1469, 1472, 1494-1495, 1519-1520, 1536, 1540, 1573, 1676, 1644-1654, 1658-1660, 1746, 1838, 1844, 1848-1850, 1856-1858, 1862, 1882-1883, 1900, 1966, 1978, 1998, 2194, 2208-2211, 2250-2254, 2267-2268, 2271-2272, 2275-2277, 2334, 2338-2339, 2342-2343, 2346-2348, 2432-2434, 2452-2458, 2462-2467, 2496-2497, 2676, 2868-2869, 2900-2901, 2932, 2950, 2962-2963, and 2967.

2. Motion to Supress, filed August 14, 1995.

3. Indictment of Appellant, dated December 13, 1993.

4. Notice of Intent to Seek the Death Penalty, dated December 13, 1993.

5. Notice of Evidence in Aggravation, dated January 20, 1993.

6. Jury Verdict, dated September 18 1995.

7. Jury Sentence, dated September 20, 1995.

8. SLED Report, dated February 3, 1994.

9. Sentence of Eric Dwayne Forney, Case Number 93-GS-46-4297, dated March 10, 1994.

10. Written communication from Jury to Trial Judge indicating deadlock as the the sentence to be imposed.

11. Written communication to Jury from Trial Judge.

12. Sentence of Appellant, dated September 20, 1995.

13. Brady Motion, filed August 14, 1995.

14. Motion for Continuance, filed August 14, 1995.

15. Motion for List of Prosecution's Witnesses, filed August 14, 1995.

16. Motion for Production, filed August 14, 1995.

17. Motion to Require SLED to Provide All Reports, Analyses of Evidence, etc., filed August 14, 1995.

18. List of Attorney's who had moved to be relieved.

We certify that this Designation contains no matter which is irrelevant to this Appeal. This 25th day of August, 1997.

Stephen D. Schusterman
Post Office Box 4211
Rock Hill, South Carolina 29731
(803) 325-7788

Christina C. Brice
Post Office Drawer 300
York, South Carolina 29745
(803) 684-4462
Attorneys for the Appellant

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

The State,.....Respondent.

v.

Mar-reece Aldean Hughes,.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certify that this Initial Brief complies with Rule 207(b), South Carolina Appellate Court Rules.

August 25, 1997

Stephen D. Schusterman
Post Office Box 4211
Rock Hill, South Carolina 29731
(803) 325-7788

Christina C. Brice
Post Office Drawer 300
York, South Carolina 29745
(803) 684-4462
Attorneys for the Appellant

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MAR-REECE ALDEAN HUGHES,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal in the above referenced case has been served upon opposing counsel, Donald J. Zelenka, this 2nd day of September, 1997.

Karen Elliott

Karen Elliott
Administrative Specialist

S.C. OFFICE OF APPELLATE DEFENSE.

SUBSCRIBED AND SWORN TO before me
this 2nd day of September, 1997.

Sharon A. Graham (L.S.)
Notary Public for South Carolina

My Commission Expires: April 6, 2002

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

August 8, 1997

Christina Chadwick Brice, Esquire
Brice Law Firm
P O Drawer 300
York, SC 29745

Re: The State v. Hughes, Mar-Reece Aldean

Dear Ms. Brice:

The following Order has been endorsed on your Motion for extension of time in which to file the initial brief of the appellant in the above entitled case on appeal.

"Motion for extension is granted.

s/ Ernest A. Finney, Jr. C.J.
For the Court

August 8, 1997."

Please be advised that the initial brief of appellant and designation of material should be served and filed no later than September 1, 1997.

Very truly yours,

Clyde N. Davis, Jr. s's
CLERK

CND, Jr./adm

cc: Stephen D. Schusterman, Esquire
Assistant Deputy Attorney General Donald J. Zelenka

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
JUL 18 1997
S.C. SUPREME COURT

97/98-20

APPEAL FROM YORK COUNTY

John C. Hayes, Circuit Court Judge

Case No. 93-GS-46-4296, 4299, 4301, and 4303

The State,.....Respondent
v.
Mar-Reece Aldean Hughes,.....Appellant.

MOTION FOR EXTENSION OF TIME IN WHICH TO FILE THE INITIAL BRIEF OF THE APPELLANT

The undersigned, as attorney for the Appellant, moves for the Court to grant her an extension of time in which to file the Appellants's Initial Brief. The Brief is presently due on July 21, 1997, and Appellant request an extension until September 1, 1997 at which time an Initial Brief will be submitted. The transcript has been read by both attorneys. Research is 90% complete. Drafting and preparing the Initial Brief is 60% complete. An Initial Brief should be completed and ready for submission to the Court no later than September 1, 1997. It is not feasible to have the Initial Brief completed and submitted by July 21, 1997 without a potential violations of Appellant's right to effective assistance of counsel.

The Appellant is aware that only a thirty (30) day extension will be granted, however, the attorneys for the Appellant want to inform the Court as to possible completion of the Brief for its proper filing with the Court.

An undue hardship shall be imposed upon Appellant and his Counsel if final extension until September 1, 1997 is not granted.

Motion for extension is granted.

York, South Carolina

June 17, 1997

BRICE & BRICE

Christina C. Brice

Christina C. Brice
Attorney for the Appellant
P. O. Drawer 300
York, SC 29745
(803) 684-4462

For the Court

August 8, 1997

Other Counsel of Record:

Mr. Stephen D. Schusterman, Esq.
P. O. Box 4211
Rock Hill, SC 29731

Mr. Charles Condon, Esq.
South Carolina Attorney General
Dennis Office Building
P. O. Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
JUL 18 1997
S.C. SUPREME COURT

APPEAL FROM YORK COUNTY

John C. Hayes, Circuit Court Judge

Case No. 93-GS-46-4296, 4299, 4301, and 4303 - 97/98/20

The State,.....Respondent
v.
Mar-Reece Aldean Hughes,.....Appellant.

CERTIFICATE OF SERVICE

The undersigned, as attorney, hereby certifies that true copies of the Motion For Extension of Time In Which To File The Initial Brief of the Appellant in the above referenced case have been served upon Stephen D. Schusterman, Esquire and Charles Condon, Esquire, by depositing same addressed to each recipient in the United States Mail, postage prepaid, on this date.

York, South Carolina

June 17, 1997

BRICE & BRICE

Christina C. Brice
Attorney for the Appellant
P. O. Drawer 300
York, SC 29745
(803) 684-4462

SWORN TO before me this the
17th day of July, 1997

Angela M. Smarr
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8-2-99

Brice & Brice, P.A.

Attorneys & Counsellors at Law
P. O. Drawer 300
York, South Carolina 29745

William M. Brice, Jr.
William M. Brice, III
Christina Chadwick Brice

9 N. Roosevelt Street
(803) 684-4462

July 17, 1997

VIA FEDERAL EXPRESS

Fed Ex 7-17-97

RECEIVED
JUL 18 1997
S.C. SUPREME COURT

The Supreme Court of South Carolina
Clyde N. Davis, Jr., Clerk of Court
P. O. Box 11330
Columbia, SC 29211

Re: The State v. Hughes, Mar-Reece Aldean

Dear Mr. Davis:

Please find enclosed the original and six (6) copies of a Motion For Extension of Time in Which to File the Initial Brief of the Appellant and a Certificate of Service on the above referenced matter.

If you have any questions concerning this matter, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

Christina C. Brice

CCB/as

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

July 10, 1997

Stephen D. Schusterman, Esquire
Schusterman Law Firm
P.O. Box 4211
Rock Hill, SC 29731

Re: The State v. Hughes, Mar-Reece Aldean

Dear Mr. Schusterman:

The following Order has been endorsed on your Motion for extension of time in which to file the initial brief of the appellant in the above entitled case on appeal.

"Motion for extension is granted.

s/ Ernest A. Finney, Jr. C.J.
For the Court

July 10, 1997."

Please be advised that appellant's initial brief and designation of material should be served and filed on or before July 21, 1997.

Very truly yours,
Clyde N. Davis, Jr. bs
CLERK

CND, Jr./adm

cc: Christina Chadwick Brice, Esquire
Assistant Deputy Attorney General Donald J. Zelenka

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY

John C. Hayes, Circuit Court Judge

Case No. 93-GS-46-4296, 4299, 4301, and 4303

The State,.....Respondent

v.

Mar-Reece Aldean Hughes, ...Appellant.

RECEIVED
JUN 0 4 1997
S. C. SUPREME COURT

- 290

MOTION FOR EXTENSION OF TIME IN WHICH TO FILE THE INITIAL BRIEF OF THE APPELLANT

The undersigned, as attorney for the Appellant, moves for the Court to grant him a thirty (30) day extension of time in which to file the Appellant's Initial Brief. The Brief is presently due on June 4, 1997, and Appellant requests until July 4, 1997, in which to file Appellant's Initial Brief. The transcript in this case was in excess of Twenty Five Hundred (2500) pages and needed to be read by both Counselors. Due to the extensive research on several legal issues and the Court schedules of both attorneys, the undersigned respectfully requests a thirty (30) day extension.

Rock Hill, South Carolina

June 3, 1997

SCHUSTERMAN LAW FIRM, P.A.

Stephen D. Schusterman
372 East Main Street
Post Office Box 4211
Rock Hill, South Carolina 29731
Attorney for Appellant
(803) 325-7788

Other Counsel of Record:

Ms. Christina Brice, Esq.
Brice & Brice
Post Office Drawer 300
York, South Carolina 29745

Mr. Charles Condon, Esq.
South Carolina Attorney General
Dennis Office Building
Post Office Box 11549
Columbia, South Carolina 29211

Motion for extension is granted.

C.J.
For the Court

July 10, 1997

SCHUSTERMAN LAW FIRM, P.A.

Attorney at Law

372 EAST MAIN STREET · POST OFFICE BOX 4211 · ROCK HILL, SOUTH CAROLINA 29731
TELEPHONE 803 325-7788 · FACSIMILE 803 325-7889

STEPHEN D. SCHUSTERMAN

RECEIVED
JUN 03 1997
S.C. SUPREME COURT

June 3, 1997

Mr. Clyde N. Davis, Esquire
Post Office Box 29211
Columbia, South Carolina 29211

Re: The State of South Carolina v. Mar-Reece Hughes

Dear Mr. Davis,

Please find enclosed a Motion for Extension of Time in Which to File the Initial Brief of the Appellant and a Certificate of Service for the above referenced case. Thank you for your attention to this matter. If you should have any questions, do not hesitate to call my office.

With best regards, I am

Sincerely yours,

Stephen D. Schusterman

Enclosure
SDS/kat

cc: Ms. Christina C. Brice, Esq.
Brice & Brice
Post Office Box 300
York, South Carolina 29745

Mr. Charles Condon, Esq.
South Carolina Attorney General
Dennis Office Building
Post Office Box 11549
Columbia, South Carolina 29211

FedEx 6/3/97
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JUN 04 1997
S. C. SUPREME COURT

...E STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY

John C. Hayes, Circuit Court Judge

Case No. 93-GS-46-4296, 4299, 4301, and 4303

The State,.....Respondent
v.
Mar-Reece Aldean Hughes, ...Appellant.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that true copies of the Motion For Extension Of Time In Which To File The Initial Brief Of The Appellant in the above referenced case have been served upon Christina Brice, Esquire and Charles Condon, Esquire, by depositing same addressed to each recipient in the United States Mail, postage prepaid, on this date.

Rock Hill, South Carolina

June 3, 1997

SCHUSTERMAN LAW FIRM, P.A.

Stephen D. Schusterman
372 East Main Street
Post Office Box 4211
Rock Hill, South Carolina 29731
Attorney for Appellant
(803) 325-7788

Sworn to before me this
3 day of June, 1997

Notary Public for South Carolina
My Commission Expires: 9-23-2004

The Supreme Court of South Carolina

The State, Respondent

v.

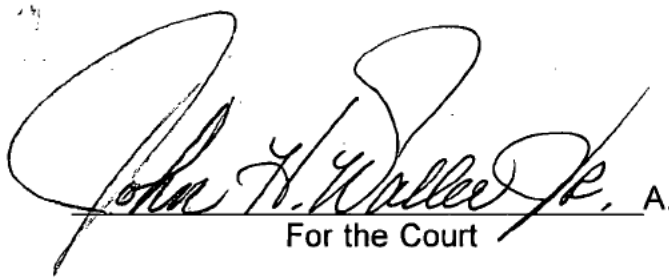
Mar-Reece Aldean Hughes, Appellant

The Honorable John Calvin Hayes, III
York County
Trial Court Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

ORDER

For good cause having been shown, the time for serving and filing Appellant's Initial Brief and Designation of Material in the above entitled matter is hereby extended until June 4, 1997.

IT IS SO ORDERED.



A.J.
For the Court

Columbia, South Carolina

May 6, 1997

cc: Christina Chadwick Brice, Esquire
Stephen D. Schusterman, Esquire
Assistant Deputy Attorney General Donald J. Zelenka

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

May 6, 1997

Christina Chadwick Brice, Esquire
Brice Law Firm
P O Drawer 300
York, SC 29745

Re: The State v. Hughes, Mar-Reece Aldean

Dear Ms. Brice:

Enclosed is Order of this Court issued pursuant to your letter Motion for extension to file appellant's initial brief and designation of material in the above entitled matter.

Also enclosed for your information is a copy of our letter dated April 16, 1997, pertaining to all pending death penalty cases.

Very truly yours,

CLERK

CND, Jr./adm

cc: Stephen D. Schusterman, Esquire
Assistant Deputy Attorney General Donald J. Zelenka

RECEIVED
MAY 2 1997
S.C. SUPREME COURT

Brice & Brice, P.A.
Attorneys & Counsellors at Law
P. O. Drawer 300
York, South Carolina 29745

William M. Brice, Jr.
William M. Brice
Christina Chadwick Brice

9 N. Roosevelt Street
(803) 684-4462

May 1, 1997

-231
30 days
June 4

South Carolina Supreme Court
Clyde N. Davis, Jr., Esquire
P.O. Box 11330
Columbia, S. C. 29211

Re: State v. Mar-Reece Aldean Hughes
Trial Case No. 93-GS-46-4296, 4299, 4301 and 4303

Dear Honorable Clerk of Court;

I have spent approximately 65 hours in reading the transcript of the above referenced case and I have completed that reading. My Co-counsel, Stephen D. Schusterman, has yet to begin reading the transcript as I have just completed it.

Legal research is commencing at this time.

The beginning stages of presenting a completed brief have commenced. However, we are unable to meet the first thirty day (30) day deadline in presenting to the Court our brief.

I respectfully request based upon the above reasoning an extension for the presentation of the initial brief in the above referenced matter.

With kind regards, I am

Very truly yours,

Christina Brice

Christina Chadwick Brice

cc: Stephen D. Schusterman
Assistant Deputy General, Donald J. Zelenka
Mar-Reece Aldean Hughes

BRICE AND BRICE
ATTORNEYS AT LAW
PO DRAWER 300
9 N. ROOSEVELT ST
YORK, SC 29745
PHONE (803) 684-4462
FAX (803) 684-3507

FAX

TO: Clyde N. Davis

FAX #: 734-1499

FROM: Christina C. Brice

DATE: 5/1/97

SUBJECT: State v. Mar. Reese Aldean Hughes

PAGES: 2 (including cover sheet)

NOTES:

Brice & Brice, P.A.
Attorneys & Counsellors at Law
P. O. Drawer 300
York, South Carolina 29745

William M. Brice, Jr.
William M. Brice, III
Christina Chadwick Brice

9 N. Roosevelt Street
(803) 684-4462

May 1, 1997

South Carolina Supreme Court
Clyde N. Davis, Jr., Esquire
P.O. Box 11330
Columbia, S. C. 29211

Re: State v. Mar-Reece Aldean Hughes
Trial Case No. 93-GS-46-4296, 4299, 4301 and 4303

Dear Honorable Clerk of Court;

I have spent approximately 65 hours in reading the transcript of the above referenced case and I have completed that reading. My Co-counsel, Stephen D. Schusterman, has yet to begin reading the transcript as I have just completed it.

Legal research is commencing at this time.

The beginning stages of presenting a completed brief have commenced. However, we are unable to meet the first thirty day (30) day deadline in presenting to the Court our brief.

I respectfully request based upon the above reasoning an extension for the presentation of the initial brief in the above referenced matter.

With kind regards, I am

Very truly yours,

Christina Brice

Christina Chadwick Brice

cc: Stephen D. Schusterman
Assistant Deputy General, Donald J. Zelenka
Mar-Reece Aldean Hughes

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

April 4, 1997

Christina Chadwick Brice, Esquire
Brice Law Firm
P O Drawer 300
York, SC 29745

Stephen D. Schusterman, Esquire
Schusterman Law Firm
P.O. Box 4211
Rock Hill, SC 29731

Re: The State v. Hughes, Mar-Reece Aldean

Dear Counsel:

Enclosed is Order of this Court issued pursuant to your Motion to be Relieved as Counsel in the above entitled matter.

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

Please be advised that appellant's initial brief and designation of material should be served and filed on or before May 5, 1997.

Very truly yours,

Brenda F. Shealy

DEPUTY CLERK

CND, Jr./adm

cc: Chief Attorney Daniel T. Stacey
Mr. Mar-Reece Aldean Hughes #SK 5021
Assistant Deputy Attorney General Donald J. Zelenka

The Supreme Court of South Carolina

The State, Respondent,

v.

Mar-Reece Aldean Hughes, Appellant.

ORDER

Court appointed counsel Christina Brice and Stephen Schusterman move to be relieved as counsel for appellant in this matter. They allege in their motions that they are not competent to represent appellant on appeal, that it would impose an unreasonable financial burden on them and that the South Carolina Office of Appellate Defense does not have a conflict of interest which prevents if from representing appellant.

By way of return, the Office of Appellate Defense reasserts the facts surrounding the conflict of interest it has in representing appellant. The Office of Appellate Defense takes no position on the competency of Ms. Brice and Mr. Schusterman to represent appellant or on the financial burden it may place upon them. The Office of Appellate Defense does state, however, that the Center for

Capital Litigation is willing to undertake representation of appellant upon appointment by this Court and with assurance of reasonable compensation.

The Office of Appellate Defense also states in its return that Tyre Lee, Director of the Office of Indigent Defense, has taken the position that due to the current wording of the indigent defense budget proviso, he does not feel the Office of Indigent Defense is authorized to pay for conflicted appeals in the absence of legislative action amending that proviso to provide specifically for payment of vouchers for appellate representation. By way of a return requested by this Court, Mr. Lee confirms this position.

The motion to be relieved as counsel is denied. The Office of Appellate Defense clearly has a conflict of interest as this Court has previously ruled. Moreover, Ms. Brice and Mr. Schusterman are certainly the two people most familiar with this case, having served as trial counsel. An appeal of this case would simply require the application of the relevant law to the facts and trial proceedings of this case in conformity with the South Carolina Appellate Court Rules. Ms. Brice and Mr. Schusterman were competent to handle the trial in this capital case and are certainly competent to handle the appeal.

With regard to the financial burden such representation may impose on Ms. Brice and Mr. Schusterman, the Office of Appellate Defense is hereby

directed to pay costs for printing the briefs and record on appeal and reasonable attorneys' fees, based on the hourly rate set in S.C. Code Ann. § 16-3-26 (Supp. 1996), which are incurred in the representation of appellant.

IT IS SO ORDERED.

s/ Ernest A. Finney, Jr. C.J.

s/ Jean Hoefer Toal A.J.

s/ James E. Moore A.J.

s/ John H. Waller, Jr. A.J.

s/ E.C. Burnett, III A.J.

Columbia, South Carolina

April 4, 1997

Copy to: Christina C. Brice, Esquire
Stephen D. Schusterman, Esquire
Daniel T. Stacey, Esquire
Donald J. Zelenka, Esquire
Mr. Mar-Reece Aldean Hughes #SK 5021

The Supreme Court of South Carolina

The State, Respondent,

v.

Mar-Reece Aldean Hughes, Appellant.

ORDER

Court appointed counsel Christina Brice and Stephen Schusterman move to be relieved as counsel for appellant in this matter. They allege in their motions that they are not competent to represent appellant on appeal, that it would impose an unreasonable financial burden on them and that the South Carolina Office of Appellate Defense does not have a conflict of interest which prevents if from representing appellant.

By way of return, the Office of Appellate Defense reasserts the facts surrounding the conflict of interest it has in representing appellant. The Office of Appellate Defense takes no position on the competency of Ms. Brice and Mr. Schusterman to represent appellant or on the financial burden it may place upon them. The Office of Appellate Defense does state, however, that the Center for

Capital Litigation is willing to undertake representation of appellant upon appointment by this Court and with assurance of reasonable compensation.

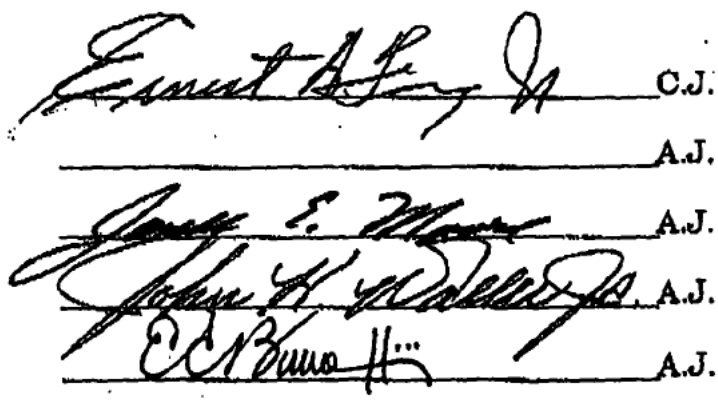
The Office of Appellate Defense also states in its return that Tyre Lee, Director of the Office of Indigent Defense, has taken the position that due to the current wording of the indigent defense budget proviso, he does not feel the Office of Indigent Defense is authorized to pay for conflicted appeals in the absence of legislative action amending that proviso to provide specifically for payment of vouchers for appellate representation. By way of a return requested by this Court, Mr. Lee confirms this position.

The motion to be relieved as counsel is denied. The Office of Appellate Defense clearly has a conflict of interest as this Court has previously ruled. Moreover, Ms. Brice and Mr. Schusterman are certainly the two people most familiar with this case, having served as trial counsel. An appeal of this case would simply require the application of the relevant law to the facts and trial proceedings of this case in conformity with the South Carolina Appellate Court Rules. Ms. Brice and Mr. Schusterman were competent to handle the trial in this capital case and are certainly competent to handle the appeal.

With regard to the financial burden such representation may impose on Ms. Brice and Mr. Schusterman, the Office of Appellate Defense is hereby

directed to pay costs for printing the briefs and record on appeal and reasonable attorneys' fees, based on the hourly rate set in S.C. Code Ann. § 16-3-26 (Supp. 1996), which are incurred in the representation of appellant.

IT IS SO ORDERED.



C.J.

A.J.

A.J.

A.J.

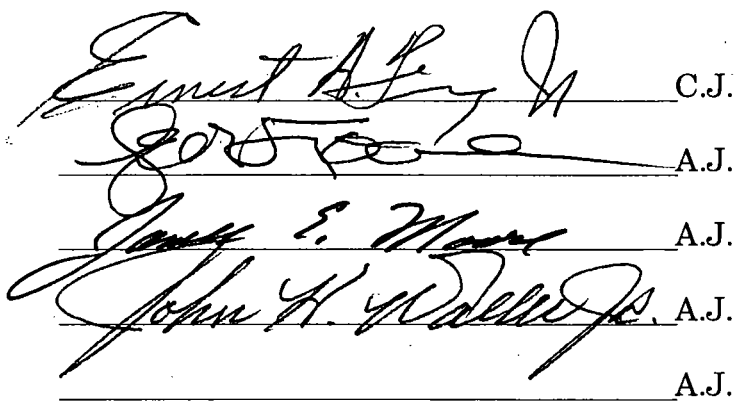
A.J.

Columbia, South Carolina

END

directed to pay costs for printing the briefs and record on appeal and reasonable attorneys' fees, based on the hourly rate set in S.C. Code Ann. § 16-3-26 (Supp. 1996), which are incurred in the representation of appellant.

IT IS SO ORDERED.



C.J.

A.J.

A.J.

A.J.

A.J.

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY

John C. Hayes, Circuit Court Judge

Case No. 93-GS-46-4296, -4299, -4301, and -4303

The State, ... Respondent
v.
Mar-Reece Aldean Hughes, ...Appellant.

RETURN TO MOTION TO BE RELIEVED AS COUNSEL

The Office of Indigent Defense, as the operational arm of the South Carolina Commission on Indigent Defense, making a return to the Motions to Be Relieved as Counsel of Stephen D. Schusterman dated January 21, 1997, and of Christina C. Brice dated January 23, 1997, respectfully shows the Court in response to the respective arguments made in support of those Motions:

(1) As to all of the arguments presented in the above Motions with the exception of any argument concerning payment by the Office of Indigent Defense for appeals, the undersigned takes no position.

(2) The Office of Indigent Defense is a State Agency charged with providing funds for the defense of indigents at the trial level.

Prior to the enactment of Act No. 164, Part II, §45, of 1993, which was effective July 1, 1993, the Legislature annually appropriated funds to pay for the expenses and fees of attorneys appointed to represent indigent persons in the criminal courts. The last amount appropriated for this activity was the sum of $325,000 in the appropriation act of 1992. This money was administered by the Office of Court Administration. The undersigned, in conversations with the persons from that Office who had previously managed this fund, Mr. Motte Talley and Mr. Terry Leverette, was told that their recollection was that payments were not made from this fund for appellate cases. This would appear to be correct for discussions the undersigned had with Mr.

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Daniel T. Stacey of the Office of Appellate Defense indicated that his agency at one time had money budgeted which was dedicated to paying for attorneys in cases in which that agency had a conflict. Over the years that money was gradually absorbed into the agency's operating expenses.

Upon the creation of the Commission on Indigent Defense and the Office of Indigent Defense, the total amount of the funds which had been previously allocated for indigent defense and administered by Court Administration was used as the basis for the operating funds of this agency. This amount has been decreasing each year.

Under Act 164, a new funding mechanism was established to fund indigent defense at the trial level. Payments were to be made from funds financed by a fine surcharge and an application fee. Originally, there were two destinations for these collections created, a Death Penalty Fund composing fifty (50%) percent of the collections and the remainder being a per capita distribution to the Public Defenders. However, in 1994, an additional fund was created, the Conflict Fund financed with fifteen (15%) percent of the collections, and the remaining thirty-five (35%) percent was distributed per capita to the Public Defenders.

The disbursement of money from the above funds is restricted. Payments are controlled by the Budget Provisos passed each year by the Legislature. Specifically, these expenditures are regulated by Proviso 14.1 which for the current year reads in part:

> **14.1.** (INDEF: Defense of Indigents Formula) . . . Within the amount of money established for indigent defense services, the State shall set aside $2,750,000 (Death Penalty Trial Fund) annually exclusively for use of the defense in capital cases pursuant to Section 16-3-26 of the 1976 Code, and for the expenses of the operation of the Commission on Indigent Defense. The State also shall set aside $1,000,000 annually to pay fees and expenses of private counsel appointed in non-capital cases pursuant to Section 17-3-50 (Conflict Fund). . . .

Section 16-3-26 of the 1972 S.C. Code of Laws, as amended, is the section of the Code which deals with the appointment of counsel and the payment of fees and expenses in capital cases at the trial level. Section 17-3-50 of the Code sets out payment of appointed counsel and payment of expenses in non capital matters at the trial level.

Appellate counsel are appointed under authority in Chapter 4. As set out in Section 17-4-70, the S.C. Office of Appellate Defense is responsible for representation of indigent criminal appellants at the appellate level. When Appellate Defense is unable to do so, counsel are

appointed under Section 17-4-80. Unfortutantly, Appellate Defense no longer has money available to pay conflict cases because of a lack of adequate funding by the legislature. However, it appears that the legislature, while not properly funding Appellate Defense, intended that a distinction be made as it provided as recently as in the South Carolina Effective Death Penalty Act of 1996, (§17-27-160 of the 1972 S.C. Code of Laws, as amended, effective July 1, 1996.), that payment at the trial level for capital Post Conviction Relief cases is to be provided by the Office of Indigent Defense while appellate expenses, including fees are to be paid by the Office of Appellate Defense. The problem being that no funds were specifically provided to Appellate Defense for these activities.

Accordingly, the undersigned is informed and believes that the Commission on Indigent Defense is without authority to pay attorneys' fees in appellate matters as the budget provisos which govern how the funds under its control are paid are limited to the payment for trial fees and expenses only.

Respectively submitted

TYRE D. LEE, JR.
Executive Director
S.C. Office of Indigent Defense
P.O. Box 11433
Columbia, South Carolina 29211-1433
Telephone: 803.734.1343

March 13, 1997

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY

John C. Hayes, Circuit Court Judge

Case No. 93-GS-46-4296, -4299, -4301, and -4303

The State, ... Respondent
v.
Mar-Reece Aldean Hughes, ...Appellant.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that true copies of the Return to Motions to be Releived as Counsel in the above referenced case have been served upon Stephen D. Schusterman, Esquire, Donald J. Zelenka, Esquire, Thomas McDow, Esquire, Teresa Norris, Esquire, Daniel T. Stacey, Esquire, and Mr. Mar-Reece Hughes, by depositing same addressed to each recipient in the United States Mail, postage prepaid, on this date.

March 13, 1997.



TYRE D. LEE, JR.
Executive Director
S.C. Office of Indigent Defense

SWORN to before me this
13th day of March, 1997

Shelley E. Stafford L.S.
Notary Public for South Carolina
My commission expires: 6-27-05

SOUTH CAROLINA OFFICE OF INDIGENT DEFENSE
1122 Lady Street, Suite 1110
Columbia, South Carolina 29201
Telephone: (803) 734-1343
Facsimile: (803) 734-1345
email: tlee@infoave.net

Tyre D. Lee, Jr., Esq., Executive Director
Lisa A. Davenport, Administrative Assistant

March 13, 1997

The Honorable Clyde N. Davis, Jr.
Clerk of the South Carolina Supreme Court
P. O. Box 11330
Columbia, South Carolina 29211

RE: The State v. Mar-Reece Aldean Hughes, Case No. 93-GS-46-4296, -4299, -4301, and -4303
Return to Motions to be Relieved as Counsel

Dear Mr. Davis:

As requested by your letter of February 27, 1997, please find enclosed the Return of the Commission on Indigent Defense to the above Motions and my Certificate of Service. I appreciate your extending the time for our reply as I told you when requesting an extension, I am the only attorney in the Office of Indigent Defense and I was tied up with the legislative budget debate the week of the third of March.

If you have any questions, or I can be of further service, please don't hesitate to contact me.

With best regards, I remain

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S. C. SUPREME COURT

Very truly yours,

TYRE D. LEE, JR.
Executive Director

TDL/cp
ENCLOSURES:
Return of the Commission on Indigent Defense
Certificate of Service

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S. C. SUPREME COURT

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 12, 1997

Honorable Clyde N. Davis, Jr.
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: State v. Mar-Reece Aldean Hughes
York County Death Penalty Direct Appeal -
Response To Motion To Be Relieved As Counsel

Dear Mr. Davis:

I am in receipt of the motion to be relieved as counsel and brief of Stephen D. Schusterman concerning this issue. Please be advised that our office takes no position as to who should be counsel in this matter, nor do we take a position on whether Mr. Schusterman is competent to handle this appeal before the Supreme Court of South Carolina. Respondent further notes that Section 17-4-80 provides for the ability of a court to appoint counsel for indigent persons where the Office of Appellate Defense is disqualified from representation for reason of a conflict, "or where the office deems it advisable that it not provide representation for such indigent person."

Respondent's below signed counsel leaves it to the discretion of this Court on how to rule upon the motion of Mr. Schusterman.

Respectfully submitted,

Donald J. Zelenka
Assistant Deputy Attorney General

bbb
cc: Daniel T. Stacey, Esquire
Christina Chadwick Brice, Esquire
Stephen D. Schusterman, Esquire

SOUTH CAROLINA OFFICE OF APPELLATE DEFENSE

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Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

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S.C. SUPREME COURT

February 11, 1997

Representative Gilda Cobb-Hunter
PO Box 11867
Columbia, SC 29211

Re: Funding for appointed counsel in indigent criminal appeals

Dear Representative Cobb-Hunter:

As you know, the South Carolina Office of Indigent Defense has been handling payments to private attorneys appointed to represent poor people in their criminal trials and post-conviction trials. Normally, this office has represented these indigent clients at the appellate level.

We are now encountering situations where outside counsel has been appointed to represent indigents at the appellate level because this office, due to a conflict of interest, is not able to represent them on appeal.

I have discussed this growing problem with Mr. Tyre Lee, director of the Office of Indigent Defense. He advises that, due to the current wording of the indigent defense budget proviso, they do not feel they are authorized to pay for conflicted appeals in the absence of legislative action amending that proviso to provide specifically for payment of vouchers for appellate representation. Obviously it is not fair for lawyers to be compensated adequately pursuant to Bailey for trial representation, and not for appellate representation on those occasional situations where this office is not able to handle the appeal. I am enclosing the order appointing outside counsel, to be relieved as counsel and our return in the case of State v. Mar-Reece Hughes which are currently pending before the Supreme Court.

In addition to this scenario, we are often unable to handle non-capital post-conviction appeals because the effectiveness of

our representation has been the subject of the post-conviction hearing. In such a case, outside counsel is appointed to pursue the post-conviction appeal. There is no funding available in this situation.

In a third category of cases, post-conviction appeals in death penalty cases, this office was last year given the statutory responsibility of paying lawyers for this service. I am enclosing correspondence from the Clerk of the Supreme Court continuing appointed counsel for appellate purposes in Mr. Southerland's post-conviction appeal. This office was alleged to have provided ineffective assistance and simply cannot handle that appeal. Funding for this sub-category of cases is the subject of our budget request priority number 3.

To summarize, an entire category of mandated indigent appeals is currently without funding. A change in the indigent defense commission budget proviso would permit that agency to pay these matters.

Additionally, post-conviction death penalty appeals where this office is not able to be involved are now coming in, and funding for Appellate Defense's statutory mandate to pay out these claims is now a necessity.

Because of the burgeoning number of cases, and capital ones in particular, we predict that these situations will arise with greater frequency in the future. I want to thank you for the opportunity to bring these matters to your attention, and if I may be of further assistance do not hesitate to contact me.

Respectfully,

Daniel T. Stacey
Chief Attorney

DTS/sag

Enclosure

cc: Tyre Lee, Esquire
Wayne Floyd, Esquire
The Honorable Clyde N. Davis, Jr.

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SCHUSTERMAN LAW FIRM, P.A.

Attorney at Law

372 EAST MAIN STREET · POST OFFICE BOX 4211 · ROCK HILL, SOUTH CAROLINA 29731
TELEPHONE 803 325-7788 · FACSIMILE 803 325-7889

STEPHEN D. SCHUSTERMAN

February 4, 1997

The Honorable Clyde N. Davis, Jr.
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: State, Respondent v. Mar-Reece Aldean Hughes, Appellant
Case No.: 93-GS-46-4296, 4299, 4301, 4303

Dear Mr. Davis:

Please find enclosed for filing the Brief of Petitioner in support of his Motion to be Relieved. Also enclosed are the following:

1. Proof of Service of the Brief on the Respondent and Office of Appellate Defense
2. Certificate of Counsel by the Petitioner

Sincerely,

Stephen D. Schusterman

cc:
Thomas E. Pope, Solicitor
1675-1A York Highway No. 5
York, South Carolina 29745
(803) 628-3020

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

Christina C. Brice, Attorney for the Appellant

South Carolina Office of the Attorney General

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S. C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

The State,.....Respondent.
v.
Mar-Reece Aldean Hughes,.....Appellant.

Brief of Petitioner

Appointed counsel for the Appellant moves to be relieved from the appeal of Mar-Reece Aldean Huges. This is based on Appellant's Sixth Amendment Constitutional Right to Effective Counsel and other arguments contained in this Brief.

February 4, 1997

Stephen D. Schusterman
Post Office Box 4211
Rock Hill, South Carolina 29731
(803) 325-7788

Other Counsel of Record:
Thomas E. Pope, Solicitor
1675-1A York Highway No. 5
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S. C. SUPREME COURT

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STATEMENT OF ISSUES OF MOTION

I. WOULD THE APPELLANT, MAR-REECE ALDEAN HUGHES, BE DENIED HIS SIXTH AMENDMENT CONSTITUTIONAL RIGHT TO EFFECTIVE COUNSEL SHOULD THE PETITIONER, STEPHEN D. SCHUSTERMAN, BE RE-APPOINTED TO REPRESENT HIM FOR THE PURPOSES OF APPEAL?

II. DOES THE REPRESENTATION BY THE SOUTH CAROLINA OFFICE OF APPELLATE DEFENSE OF A CO-DEFENDANT ON APPEAL CONSTITUTE A CONFLICT OF INTEREST?

FACTS

Mar-Reece Hughes, the Appellant, was convicted of murder and sentenced to death on September 22, 1995. At the conclusion of the trial, Stephen D. Schusterman, an appointed attorney, was relieved of his representation upon the filing of a Notice of Intent to Appeal, pursuant to Rule 235, SCACR. The Notice of Intent to Appeal was filed and forwarded to the South Carolina Office of Appellate Defense in accordance with Rule 602(e)(3), Defense of Indigents, SCACR.

Subsequent to the receipt of said Notice, the Office of Appellate Defense filed a motion to be relieved from the representation of the Appellant. The basis of their motion, upon information and belief, was due to their former representation of Eric Dwayne Forney, a co-defendant of the Appellant. They maintain that they should be relieved due to the antagonistic interests of the Appellant to their first client, Mr. Forney.

After communication with the Appellant, the Petitioner discovered that he has never been contacted by Appellate Defense, in person or otherwise. Furthermore, he does not recall being served with a copy of the motion to be relieved, filed by the Office of Appellate

Defense, in direct violation of Rule 235, SCACR. Contact with Eric Forney by Appellate Defense, for the purpose of obtaining a waiver of conflict of interest is unknown by the Petitioner at this time.

I. WOULD MAR-REECE ALDEAN HUGHES BE DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE COUNSEL IF THE PETITIONER, STEPHEN D. SCHUSTERMAN, IS RE-APPOINTED TO REPRESENT HIM FOR THE PURPOSE OF APPEAL?

The Sixth and Fourteenth Amendments of the United States Constitution compel every State to provide counsel to indigent criminal defendants. Further, the United States Supreme Court has held that the defendant must have a "fair opportunity to present his defense", thereby requiring the State to provide "basic tools" for an adequate defense to an indigent defendant. Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985). Given the State's obligation to provide effective counsel to an indigent, at both the trial and appellate levels, attention must be directed to the problem which arises when an attorney appointed to a criminal case, and specifically a capital case, has no experience in the area and therefore no expertise with capital appeals. This problem is certainly exacerbated where the attorney is charged with the responsibility of defending a person's life.

The attorney must be conversant with constantly new interpretations of law by not only the Supreme Court, but by courts in all states. In Bailey v. State, 309 S.C. 255, 424 S.E.2d 503 (S.C. 1992), an expert witness was presented by the Respondents, one Mr. Stephen Bright, an attorney who had been defense counsel in three capital cases, who testified that "the law that a lawyer must know for a capital case is completely different than any other kind of criminal practice..." He went on to outline other areas of expertise that an attorney must possess to be effective on a capital level to include writing and analytical skills, stating that "you can't have a boiler plate motions practice and be competent in a capital case. It has to be fact specific." Further he states that "certainly in a capital case

where you're dealing with the Constitution of the United States, where you're dealing with the highest stakes of any case in our legal system, a person's life..."

Such is the case at hand. The Petitioner, Stephen D. Schusterman, has no experience with capital appeals. In fact, the only capital case he has been involved in was the trial of the Appellant. In examining Rule 407, SCACR, Rules of Professional Conduct, Rule 1.1, a lawyer shall provide competent representation. In defining "competent", one would evaluate the legal knowledge and skill of the attorney as well as his thoroughness and preparation. According to Rules of Professional Conduct, Rule 1.1, relevant factors in determining the competency of a lawyer include the complexity and specialized nature of the matter, the lawyer's general experience and his training and experience in the field in question. Taking these factors and applying them to the Petitioner, that the very nature of this matter, a capital appeal, is in and of itself complex and specialized, of which the Petitioner has no general experience or training. Further, competent handling of an appeal includes inquiry into and analysis of the factual and legal elements of the problem. It is certain that a capital appeal involves many complex issues, requiring not only experience but expertise in the practice of analyzing appealable error and questions of law on an appellate level. The Petitioner has no experience in this area.

The Court in State v. Diddlemeyer, 296 S.C. 235, 371 S.E.2d 793 (1988) quoting United States v. Blankenship, 548, F.2d 1118 (4th Cir. 1976), recognized and distinguished the difference between a capital defendant's statutory right to effective assistance of counsel and a capital defendant's constitutional right to effective assistance of counsel. The

difference being, a constitutional violation shall result in an automatic reversal. The Appellant is entitled to effective assistance of counsel upon appeal as is afforded to him by the Sixth Amendment to the United States Constitution, made binding upon the States through the Fourteenth Amendment. The Petitioner contends that not only does his competency fail to rise to the level of effective assistance of counsel at the state level, but he also fails to meet such a standard on the federal level. While he would acknowledge that he meets such standards on a trial level, the Petitioner cannot in good faith or conscience, make that assertion on the appellate level. A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without proper conflict of interest and to completion. Specifically, Rule 407, SCACR, Rules of Professional Conduct, Rule 1.6(a)(1), states that "a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: the representation will result in violation of the Rules of Professional Conduct or other law..." To appoint this Petitioner to the capital appeal of the Appellant would constitute a clear violation of the Appellant's Sixth Amendment right, and an ethical violation of the Rules of Professional Conduct, as the Petitioner is not competent to handle the expertise necessary to execute an effective appeal. The effective assistance of counsel is a necessary requisite of due process of law. State v. Cowart, 251 S.C. 360, 162 S.E.2d 535.

To further support the Petitioner's motion to be relieved, examination of Rule 407, SCACR, Rules of Professional Conduct, Rule 6.2(b), shows that a lawyer should seek to avoid appointment by a tribunal if said representation is "likely to result in an unreasonable

financial burden on the lawyer." Expert witness, Mr. Bright, in Bailey, supra testified that beyond the skills and expertise necessary in capital cases, there is a responsibility to keep a private practice viable on a daily basis. The Petitioner is a sole practitioner. The income of his firm relies wholly on his ability to service a multitude of current and potential clients. The legal services needed in the filing of a capital appeal are exemplary. A gross and fundamental unfairness would be inflicted upon the Petitioner, in that, the transcript of the record for the Appellant is almost 3000 pages. Based on the time and preparation involved in the actual trying of this case, the Petitioner estimates that it will take more than 200 hours to read said transcript. Add to this, the complexity of capital appeals and the research necessary to prepare a competent appeal, some 500 hours of time would have to be dedicated to the research of potential legal issues.

The Court in Makemson v. Martin County, 491 So.2d 1109, 1114 (1986), sound that given the extraordinary time, effort and commitment required of defense counsel in capital cases, and certain pressing realities facing practitioners in today's courts can no longer be ignored. The increasing complexity of some of today's cases calls for the investment of more time and effort in order to effectively represent one's client. "The link between compensation and the quality of representation remains too clear." There is no statutory provision to compensate an attorney for the representation of an appeal. The acceptance of this appointment, coupled with the failure to compensate an attorney for his services, will impose a financial hardship and sacrifice, not only on the Petitioner, but on his employees, clients and family. This hardship would be grossly unjust and could inevitably result in a

failure to provide effective and adequate representation to the Appellant, resulting in a violation of the "taking clause" of both the United States and South Carolina Constitutions.

The Court in Bailey, supra, distinguishes between compensation for a criminal appointment and compensation for a capital criminal appointment. In making that distinction, the Court identified that it could not over emphasize the complexity of a capital case. It is the Petitioner's contention that this complexity increases at the appellate stage. It is vital to point out that the Appellant has been sentence to death and his life, literally, depends on this appeal. The Petitioner knows only too well that he was unsuccessful at the trial level, and as a result, much work needs to be done on the appellate level to ensure that any errors made at trial are reversed. The Petitioner does not take this responsibility lightly and is concerned with the hours of diligent work that lies ahead in order to provide the Appellant with that opportunity. As stated in Bailey, supra, it would be fundamentally unjust to expect the Petitioner to go uncompensated for the hours anticipated for this appeal. With regard to the Petitioner, no compensation is afforded and none is statutorily provided for appeal. On a capital appeal, an attorney cannot be expected or required to go uncompensated, for it is unrealistic to assume that no compensation should be granted. If the Court feels that compensation is necessary to preserve the rights of the attorney, it only stands to reason that lack of compensation would surely prejudice the rights of the Appellant, thus, violating his Sixth Amendment right.

Additionally, the Petitioner believes that his appointment would constitute a taking of property without just compensation under the Fifth and Fourteenth Amendments to the

United States Constitution. The Petitioner has already been appointed to represent the Appellant while he was an indigent Defendant at the trial level, resulting in financial hardship to his practice, even though, at that level, he was statutorily compensated. His re-appointment would materially affect his income, his practice, and his clientele, both current and potential, due to the time constraints that would inevitably be place upon him. This would obviously disrupt his practice and, ultimately, his livelihood. Therefore, the solvency of his practice is at risk due to the time associated with the preparation and presentation of an appeal. Due to this tremendous burden, the Court in S.C. Department of Social Services v. Tharp, 312 S.C. 243, 439 S.E.2d 854 (1994), recognized that when the pro bono burden becomes excessive, some compensation is required. This is consistent with the holding in Bailey; supra, which recognized the degree of economic pressure which would undermine the effectiveness of counsel, thereby, interfering with the administration of justice. The Court in Tharp, supra, declined to equate the practice of law as a property right, however, it did state that "at some point, the burden on particular attorneys may become so excessive as to rise to the level of a taking." The Petitioner contends that the court ordered obligation shall place an excessive burden upon his time and service, thus, arises to the claim of a taking.

This Petitioner respectfully requests that he be withdrawn from the representation of the Appellant due to the inevitable violation of the Appellant's Sixth Amendment right under the United States Constitution for the lack of effective representation, due to his lack of competency to handle said appeal and undue financial hardship it most certainly would impose upon him, should he be ordered to continue in his appointment.

II. DOES THE REPRESENTATION BY THE SOUTH CAROLINA OFFICE OF APPELLATE DEFENSE OF A CO-DEFENDANT ON APPEAL CONSTITUTE A CONFLICT OF INTEREST?

The motion filed by the Office of Appellate Defense requesting that they be relieved from the representation of Mar-Reece Hughes is based on their former representation of Eric Dwayne Forney, a co-defendant, whose defense at trial was antagonistic to that of Mr. Hughes. The Appellant did not submit a return to the Motion, in that, he denies being served with a copy of said Motion, in direct violation of Rule 235 SCACR. The Appellant also denies having any contact with Appellate Defense at any time since his sentencing in York County in September 1995. Whether Eric Forney was approached to waive any conflict of interest is unknown by the Petitioner.

South Carolina case law is clear as it relates to objections by co-defendants of the multiple representation by one attorney. The Court in Langford v. State, 310 S.C. 357, 426 S.E.2d 793, 795 (1993), citing Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980), held that "the mere possibility of a conflict of interest is insufficient to impugn a criminal conviction." The Court in Goins v. State, 281 S.C. 427, 429, 315 S.E.2d 1221, 122 (1984), found that there must be a demonstration that "an actual conflict of interest adversely affect(ing) his lawyer's performance." A lawyer is not prohibited from the representation of multiple defendants unless that representation materially affects the attorney's representation of his client's interest. Within the comments of Rule 407 SCACR, Rules of Professional Conduct 1.7, it states that "a possible conflict does not itself preclude the representation. The critical question is whether the likelihood that a conflict will

eventuate and if it does, whether it will materially interfere with the lawyer's independent professional judgement in considering alternatives or foreclosure courses of action that reasonably should be pursued on behalf of the client." Furthermore, it states that "a lawyer may represent parties having antagonistic positions on a legal question...unless representation of either client would be adversely affected."

The representation by the South Carolina Appellate Defense of Eric Forney is at a conclusion. Upon information and belief, no services are being offered to him by that office nor are their services reasonably anticipated in the future. Furthermore, while facts presented to this Court on appeal by Mr. Hughes may be antagonistic to Mr. Forney, the legal issues, which are the essence of the appeal, will have no impact on Mr. Forney, as his separate appeal has concluded. The Petitioner contends that the mere likelihood of antagonistic positions by each Appellant is insufficient to relieve the Office of Appellate Defense of their representation of Mr. Hughes. No adverse effect can be expected to arise against Mr. Forney by Appellate Defense's representation of Mr. Hughes, as representation of the facts of the case have already been presented at trial the trial level, in which, the co-defendants had separate trials. The legal issues, or appealable errors which may be presented on behalf of Mr. Hughes are significantly different from those presented on behalf of Mr. Forney, therefore, failing to surmount to a conflict of interest. Any successful appeal on behalf of Mr. Hughes can not and will not have a detrimental effect on Mr. Forney. the Petitioner denies that a sufficient conflict of interest exists to relieve the Office of Appellate Defense of their representation of an indigent appellant.

Furthermore, the court in Goins, supra stated the "a possible conflict inheres in almost every instance of multiple representation." A failure to show an actual conflict between the interests of an appellant and his co-defendant requiring counsel to choose between the two or which would adversely affect his performance, does not establish the constitutional predicate for a successful ineffective assistance argument, nor should it predicate dismissal of Appellate Defense's obligation to provide counsel under a conflict of interest argument. Multiple representation standing alone is not violative of the South Amendment. Holloway v. Arkansas, 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978).

CONCLUSION

The Petitioner respectfully requests the withdrawal or termination of his appointment based on Rule 407, SCACR, Rules of Professional Conduct 1.16(a)(1), (b)(5) and (b)(6). He seeks this withdrawal based upon his lack of compentence to handle a capital appeal, thereby, giving rise to an ehtical violatioin by the Petitioner and potential violation of the Appellant's Sixth Amendment Constitutional right to effective assistance of counsel. He also seeks withdrawal due to the unreasonable financial burden and hardship placed upon him by this appeal as well as possible violation of Fifth Amendment Rights.

Furthermore, the Petitioner seeks withdrawal for other good cause shown, including the failure of Appellate Defense to show a conflict of interest sufficient to deny an indigent capital defendant/appellant of his right to proper and effective representation.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

The State,.....Respondent.
v.
Mar-Reece Aldean Hughes,.....Appellant.

Proof of Service

I hereby certify that I have served the Brief in support of the Motion to be Relieved on the State of South Carolina and the Office of Appellate Defense by depositing a copy of it in the United States Mail, postage prepaid, on February 4, 1997, addressed to its attorney of office, Thomas E. Pope, 1675-1A York Highway No. 5, York, South Carolina 29745 and 1122 Lady Street, Suite 940, Columbia, South Carolina 29201, respectively.

February 4, 1997

Stephen D. Schusterman
Post Office Box 4211
Rock Hill, South Carolina 29731
(803) 325-7788

Other Counsel of Record:
Thomas E. Pope, Solicitor
1675-1A York Highway No. 5
York, South Carolina 29745
(803) 628-3020

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

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

The State,.....Respondent.
v.
Mar-Reece Aldean Hughes,.....Appellant.

Certificate of Counsel

The undersigned certifies that this Brief in support of the Motion to Be Relieved complies with Rule 224(c), SCACR.

February 4, 1997

Stephen D. Schusterman
Post Office Box 4211
Rock Hill, South Carolina 29731
(803) 325-7788

Other Counsel of Record:
Thomas E. Pope, Solicitor
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Original

-54

RECEIVED
FEB 0 6 1997
S. C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MAR-REECE ALDEAN HUGHES,

APPELLANT.

RETURN TO MOTION TO BE RELIEVED AS COUNSEL

South Carolina Office of Appellate Defense, making a return to the motion to be relieved of Christina C. Brice, shows the Court as follows:

(1) The undersigned takes no position on paragraph 1 of the motion.

(2) The undersigned takes no position on paragraph 2 of the motion.

(3) The undersigned takes no position on paragraph 3 of the motion.

(4) With respect to paragraph 4, arguing that "appellant himself was never given notice of the motion," this asseveration is

confuted in that Mr. Reece was served per the attached transmittal correspondence.

(5) With respect to argument 5, this Court has already ruled upon the motion for outside counsel. Contrary to the contentions in paragraph 4, this is not merely a matter of antagonistic facts, this office specifically argued the admissibility of numerous incriminating admissions by Mar-Reece Hughes in the Forney case. This office argued that the matters were "classic admissions against penal interest. They bore indicia of trustworthiness and were declarations against penal interest." A copy of appellant's Argument IV is attached as an exhibit.

This office argued, inter alia, that Mr. Hughes bragged about shooting the victim; how he was going to get him another "white guy before they fried him." Brief of Forney at p. 18. Mr. Hughes ought to have lawyers who did not argue the trustworthiness and reliability of these admissions to this Court.

(6) That the undersigned has spoken with Teresa Norris at the Center for Capital Litigation, a firm experienced in the handling of these matters. Ms. Norris indicated that that firm would be happy to undertake representation upon appointment by this Court, and with assurance of reasonable compensation.

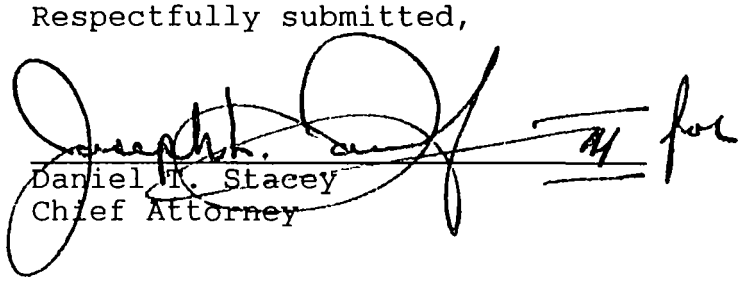
(7) Appointed counsel on appeal, just as in trial, need to be reasonably compensated in capital matters. With the avalanche of capital litigation current and to come, this issue is sure to arise again. A simple change in the Office of Indigent Defense budget proviso would then authorize payment from their conflict funds in

situations such as this one.

(8) The undersigned takes no position on argument number 6.

WHEREFORE, the interest of Mr. Hughes is submitted to the Court.

Respectfully submitted,



Daniel T. Stacey
Chief Attorney

This 6th day of February, 1997.

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
Tara D. Shurling
Robert M. Pachak
Robert M. Dudek
M. Anne Pearce
Lisa T. Gregory
Assistant Appellate Defenders

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

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

August 20, 1996

Mr. Mar-Reece Aldean Hughes #5021
Broad River Reception and Evaluation Center
4464 Broad River Road
Columbia, SC 29210

Dear Mr. Hughes:

Enclosed please find a copy of the Petition for Appointment of Outside Counsel in the above referenced case which we are filing with the South Carolina Supreme Court on today's date.

Sincerely,

DANIEL T. STACEY
Chief Attorney

Enclosure

ARGUMENT IV

The court erred when it refused to admit proffered evidence that the co-defendant Hughes had admitted killing the deceased when the evidentiary predicates of unavailability and reliability were met under State v. Doctor. This error denied appellant his right to present favorable evidence under the Sixth Amendment.

Prior to presenting the defense case, appellant proffered testimony concerning incriminating statements made by the co-defendant Mar-Reece Hughes. The state objected to this as hearsay. ROA p. 965, lines 10-19.

Michael Smith was in York jail with Mar-Reece in October through November 1992. Hughes told him:

> A. Yes, sir, he did. He said that he shot Brent McCants and that he would shoot any cracker, that's what he said, that got in his way and that he could feel a demon come into him every time he got around a white person.
>
> Q. And by cracker, did you take that reference to mean white people?
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> A. Yes, sir, I do.
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> Q. Did he also say anything about statements he made to the people at the Department of Mental Health in Columbia?
>
> A. Yes, sir, he said he had the people up there believing that he didn't do it, that the other guy, Forney, did it and that he's got it made and that he ain't going nowhere. He was just talking crazy.

ROA p. 975, lines 7-21.

Michael Quinn, was at the York jail with Mar-Reece in

October through November 1992. He bragged to Quinn about shooting the officer. ROA p. 977, lines 13-25.

Scott Rockholt, was a York Special Investigator who was told to sit with Mar-Reece Hughes when he was brought in after being arrested for killing Deputy McCants. When patrol brought him into the interview room, Hughes "just blurted out, 'I'm guilty, I'm guilty,' and placed his hands side his face and put his head down." ROA p. 980, line 2 - p. 981, line 19.

Broadus Strain is a shift leader at the York County jail. ROA p. 983, lines 18-23. In February 1993, Mar-Reece Hughes broke a TV set in his cell. Strain went to see about it, and moved Mar-Reece to a holding cell. He heard Mar-Reece say to Bobby Holmes about "how he was going to get him another white guy before they fried him." ROA p. 985, line 4 - p. 986, line 8. Counsel also proffered similar evidence by way of a statement from Richard Waldrop, who was incarcerated in North Carolina. ROA p. 987, lines 11-25. Mar-Reece Hughes was called in camera and invoked the Fifth Amendment. ROA p. 998, lines 6-11.

Counsel proffered the evidence under State v. Doctor, 306 S.C. 527, 413 S.E.2d 36 (1992). ROA p. 1001, lines 18-23. The state opposed admitting the evidence. ROA p. 1003, line 12 - p. 1005, line 17. The appellant met the State v. Doctor evidentiary predicates Mar-Reece was not available, and the statements were trustworthy. Counsel further noted that the statement to Scott Rockholt was an excited utterance. ROA p.

1006, line 20 - p. 1009, line 3. After additional colloquy, the court excluded the proffered evidence. ROA p. 1013, line 17 - p. 1015, line 23.

The proffered evidence should have been allowed. Clearly it had indicia of reliability as Mar-Reece was charged with crime at the time and had reason to keep silent. Particularly the statement to Officer Rockholt was trustworthy. Hughes knew where he was, what he was there for and admitted being the culpable party.

The exclusion violated not only State v. Doctor, but also appellant's Sixth and Fourteenth Amendment rights to present exculpatory evidence. See Chambers v. Mississippi, 410 U.S. 284 (1973)(state's "voucher" rule could not preclude third party admissions of guilt from coming before the jury.) A like scenario to Chambers applies here. The admission of the co-defendant, knowing he was under charges, not only in jail but to law enforcement, and heard by law enforcement were classic admissions argument penal interest. They bore indicia of trustworthiness and were declarations against penal interest. The court erred by not admitting them and appellant should receive a new trial.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MAR-REECE ALDEAN HUGHES,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Return to Motion to be Relieved as Counsel in the above referenced case has been served upon Stephen D. Schusterman, Esquire, Donald J. Zelenka, Esquire, Thomas McDow, Esquire, Teresa Norris, Esquire, and Mr. Mar-Reece Hughes, this 6th day of February, 1997.

Daniel T. Stacey
Chief Attorney

SUBSCRIBED AND SWORN TO before me
this 6th day of February, 1997.

Shawn A. Graham (L.S.)
Notary Public for South Carolina

My Commission Expires: April 6, 2002 .

Original

-55

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED
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SUPREME COURT

Appeal from York County

John C. Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MAR-REECE ALDEAN HUGHES,

APPELLANT.

RETURN TO MOTION TO BE RELIEVED AS COUNSEL

South Carolina Office of Appellate Defense, making a return to the motion of Stephen D. Schusterman to be relieved dated January 21, 1997, respectfully shows the Court in response to the respective arguments made in support of motion:

(1) The undersigned takes no position on Argument 1.

(2) The undersigned takes no position on Argument 2.

(3) The undersigned takes no position on Arguments 3a & 3b.

(4) With respect to Argument 3c, the undersigned has consulted with Tyre Lee, Director of the South Carolina Office of Indigent Defense, who advises that, due to the wording of that office's budget proviso, they are not authorized to pay appellate

matters out of their conflict fund.

(5) The undersigned takes no position on Argument 3d.

(6) With respect to Argument 4, this Court has already ruled upon the motion for outside counsel. Contrary to the contentions in paragraph 4, this is not merely a matter of antagonistic facts: this office specifically argued the admissibility of numerous incriminating admissions by Mar-Reece Hughes in the Forney case. This office argued that the matters were "classic admissions against penal interest. They bore indicia of trustworthiness and were declarations against penal interest." A copy of appellant's Argument IV is attached as an exhibit.

This office argued, inter alia, that Mr. Hughes bragged about shooting the victim; how he was going to get him another "white guy before they fried him." Brief of Forney at p. 18. Mr. Hughes ought to have lawyers who did not argue the trustworthiness and reliability of these admissions to this Court.

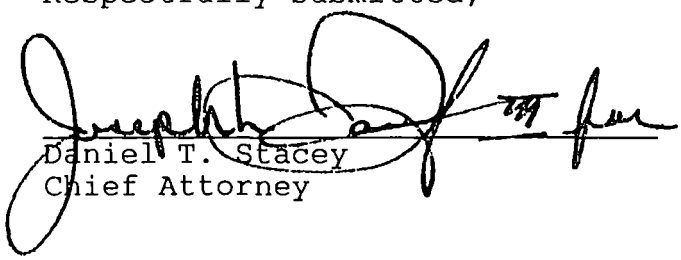
(7) That the undersigned has spoken with Teresa Norris at the Center for Capital Litigation, a firm experienced in the handling of these matters. Ms. Norris indicated that that firm would be happy to undertake representation upon appointment by this Court, and with assurance of reasonable compensation.

(8) Appointed counsel on appeal, just as in trial, need to be reasonably compensated in capital matters. With the avalanche of capital litigation current and to come, this issue is sure to arise again. A simple change in the Office of Indigent Defense budget proviso would then authorize payment from their conflict funds in

situations such as this one.

WHEREFORE, the interest of Mr. Hughes is submitted to the Court.

Respectfully submitted,



Daniel T. Stacey
Chief Attorney

This 6th day of February, 1997.

ARGUMENT IV

The court erred when it refused to admit proffered evidence that the co-defendant Hughes had admitted killing the deceased when the evidentiary predicates of unavailability and reliability were met under State v. Doctor. This error denied appellant his right to present favorable evidence under the Sixth Amendment.

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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MAR-REECE ALDEAN HUGHES,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Return to Motion to be Relieved as Counsel in the above referenced case has been served upon Stephen D. Schusterman, Esquire, Donald J. Zelenka, Esquire, Thomas McDow, Esquire, Teresa Norris, Esquire, and Mr. Mar-Reece Hughes, this 6th day of February, 1997.

Daniel T. Stacey
Chief Attorney

SUBSCRIBED AND SWORN TO before me
this 6th day of February, 1997.

Shawn A. Graham (L.S.)
Notary Public for South Carolina

My Commission Expires: April 6, 2002 .

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
Robert M. Pachak
Robert M. Dudek
M. Anne Pearce
Lisa T. Gregory
Lesley M. Coggiola
Assistant Appellate Defenders

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

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

RECEIVED
FEB 0 6 1997
S. C. SUPREME COURT

February 6, 1997

The Honorable Clyde N. Davis, Jr.
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: The State v. Mar-Reece Hughes

Dear Mr. Davis:

Enclosed please find the return to motion to be relieved as counsel in the above entitled case.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Daniel T. Stacey
Chief Attorney

DTS/sag

Enclosure

cc: Stephen D. Schusterman, Esquire
Donald J. Zelenka, Esquire
Thomas McDow, Esquire
Teresa Norris, Esquire
Mr. Mar-Reece Hughes

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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1122 Lady Street, Suite 940
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Fax: (803) 734-1397

February 6, 1997

RECEIVED
FEB 06 1997
SUPREME COURT

The Honorable Clyde N. Davis, Jr.
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: The State v. Mar-Reece Hughes

Dear Mr. Davis:

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Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Daniel T. Stacey
Chief Attorney

DTS/sag

Enclosure

cc: Stephen D. Schusterman, Esquire
Donald J. Zelenka, Esquire
Thomas McDow, Esquire
Teresa Norris, Esquire
Mr. Mar-Reece Hughes

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

January 27, 1997

Christina Chadwick Brice, Esquire
Brice Law Firm
P O Drawer 300
York, SC 29745

Stephen D. Schusterman, Esquire
P. O. Box 4211
Rock Hill, SC 29731

Re: The State v. Hughes, Mar-Reece Aldean

Dear Counsel:

This will acknowledge receipt of your Motion To Be Relieved As Counsel in the above entitled matter.

By copy of this letter, Appellate Defense, opposing counsel, and appellant are requested to file an original and six (6) copies of a Return to this Motion no later than February 6, 1997. Upon receipt of the returns, the matter will be taken under consideration and you will be notified as soon as action has been taken.

The time limits for perfecting the appeal will be held in abeyance until the Motion is decided.

Very truly yours,

CLERK

CND, Jr./adm

cc: Chief Attorney Daniel T. Stacey
Assistant Deputy Attorney General Donald J. Zelenka
Mar-Reece Aldean Hughes

SCHUSTERMAN LAW FIRM, P.A.

Attorney at Law

372 EAST MAIN STREET · POST OFFICE BOX 4211 · ROCK HILL, SOUTH CAROLINA 29731
TELEPHONE 803 325-7788 · FACSIMILE 803 325-7889

STEPHEN D. SCHUSTERMAN

January 23, 1997

The Honorable Clyde N. Davis, Jr.
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: State, Respondent, v. Mar-Reece Aldean Hughes, Appellant,
Case No.: 93-GS-46-4296, 4299, 4301, 4303

Dear Mr. Davis:

Enclosed for filing is a Motion to be Relieved in the above case. Also enclosed are the following:

1. Proof of service of the Motion on the Respondent.
2. Certificate of Counsel by the Petitioners

RECEIVED
JAN 27 1997
S. C. SUPREME COURT

Sincerely,

Stephen D. Schusterman

cc: Thomas E. Pope, Solicitor
1675-1A York Hwy No. 5
York, South Carolina 29745
Attorney of Record for Respondent

South Carolina Office of the Attorney General
South Carolina Office of Appellate Defense

PM 1-22-97

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

-055

Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

The State,.....Respondent.

v.

Mar-reece Aldean Hughes,.....Appellant.

Motion to Be Relieved

Counsel for the Appellant moves to be relieved from the appeal of Mar-reece Aldean Hughes. This is based on Appellant's Sixth Amendment Constitutional Right to Effective Counsel and other arguments contained in this Motion.

January 21, 1997

Stephen D. Schusterman
Post Office Box 4211
Rock Hill, South Carolina 29731
(803) 325-7788

Other Counsel of Record:
Thomas E. Pope, Solicitor
1675-1A York Hwy No. 5
York, South Carolina 29745
(803) 628-3020

ARGUMENTS IN SUPPORT OF MOTION

1. The Petitioner believes that the Appellant's Sixth Amendment right to effective assistance of counsel would be violated if the Petitioner were to be reappointed for the purposes of appeal, due to his lack of competency on the appellate level, specifically pertaining to capital cases. This Petitioner contends that he fails to meet the standard of competence to proceed with a capital appeal as set forth in the Rules of Professional Conduct.

2. This Petitioner believes that continued representation of the Appellant would result in an ethical violation of Rule 1.1 of the Rules of Professional Conduct, in that, he cannot, in good faith, make the assertion that he skills rise to the standards mandated to perform an effective appellate defense.

3. This Petitioner maintains that he does not have the resources available to him to properly prepare a capital appeal, based on several issues:

a. This Petitioner is a sole practitioner, providing the sole income for his firm and his family. The amount of time estimated to prepare an appeal of this magnitude would most certainly result in a loss of established clientele, a loss of potential clients, and an undue financial hardship on his practice and employees, possibly resulting in the dissolution of the practice.

b. This Petitioner does not have adequate legal information available to him. Any and all research would have to be performed from Charlotte or Columbia, as there are no complete law libraries or facilitieslin which to perform the necessary research relating to the appeal. This would cause the Petitioner many hours in travel, contributing

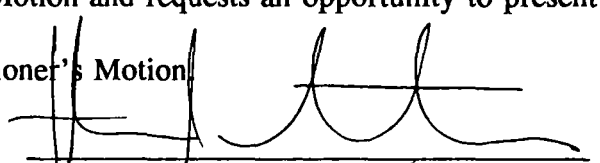
further to his time away from his practice.

c. There is no statutory compensation for an attorney in his representation with an appeal. This Petitioner knows only too well how his practice was adversely affected from the trial of this case, in which there was statutory compensation, and fears that the commitment of an appeal would destroy his practice.

d. The degree of economic pressure, as a result of the appeal, would undermine the effectiveness of counsel, thus, interfere with the administration of justice. This Petitioner believes that this particular burden would become so excessive as to rise to the level of a "taking", of which he would be receiving no compensation.

4. This Petitioner, upon information and belief, The South Carolina Office of Appellate Defense, should not be relieved of their duty to represent the Appellant. They contend that because the appeal they submitted for the co-defendant contained antagonistic issues to the Appellant, that there exists a conflict of interest. This Petitioner contends that a mere possibility of conflict is insufficient to release them of their obligation. The co-defendant in this case, has submitted his appeal and the appeal was denied. He has no further association with Appellate Defense, and while the facts presented in these cases may be antagonistic, the legal issues, which are what are to be appealed, have no impact on the co-defendant. The two defendants had separate trials with separate appealable issues. No conflict of interest exists.

This Petitioner respectfully submits this Motion and requests an opportunity to present oral arguments and/or a brief in support of Petitioner's Motion.



Stephen D. Schusterman

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

The State,.....Respondent.

v.

Mar-reece Aldean Hughes,.....Appellant.

Proof of Service

We certify that we have served the Motion to be Relieved on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on January 23, 1997, addressed to its attorney, Thomas E. Pope, 1675-1A York Hwy, No. 5, York, South Carolina 29745.

January 21, 1997

Stephen D. Schusterman
Post Office Box 4211
Rock Hill, South Carolina 29731
(803) 325-7788

RECEIVED
JAN 27 1997
S. C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

The State,.....Respondent.

v.

Mar-reece Aldean Hughes,.....Appellant.

Certificate of Counsel

The undersigned certify that this Motion to be Relieved complies with Rule 224(c), SCACR.

January 21, 1997

Stephen D. Schusterman
Post Office Box 4211
Rock Hill, South Carolina 29731
(803) 325-7788

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

AFFIDAVIT OF STEPHEN D. SCHUSTERMAN

I, Stephen D. Schusterman, hereby deposes and says the following:

I do not feel that I possess the legal knowledge, skill and preparation necessary to render effective and competent representation of Mar-Reece Aldean Hughes for the purposes of a Capital Appeal. I have been practicing law for approximately eight (8) years and in that time, I have never been involved with a criminal appeal at the Supreme Court level, let alone a Capital Appeal. My practice consists mainly of criminal law at a Magistrate and General Session Court level, as well as Family law and some Civil litigation. I feel my continued involvement with a Capital Appeal would serve to prejudice the rights and interests of Mr. Hughes, violating his Sixth Amendment rights under the Constitution.

Furthermore, I am a sole practitioner, and it is my firm belief that appointment to this appeal would result in a financial hardship. The trial itself, put undue strain on my practice. An appeal consists of pouring over more than 3000 pages of trial transcript and endless hours of research, the need for outside counsel and assistance, not to mention the preparation of the Appeal itself. Based on my knowledge of daily hourly requirements dedicated to my practice, I believe that this will consist of well over 700 hours of time. This commitment will not only affect my current clientele and staff, but will result in lost potential clients, causing financial devastation of my practice. I believe the threat of the dissolution of my law practice and livelihood, would be grossly unjust and will inevitably result in the failure to provide adequate and ultimately, effective representation to Mr. Hughes.

Additionally, after being involved in the trial of Mr. Hughes and having access to the transcripts of the trial of Mr. Forney, his co-defendant, I honestly do not believe that a conflict of interest exists on the part of the Office of Appellate Defense. Mr. Forney's appeal has been concluded, and Mr. Hughes' issues on appeal cannot adversely affect the interests of Mr. Forney. Therefore, I believe that they should proceed with the appeal on Mr. Hughes' behalf.

January 23, 1997

Stephen D. Schusterman

Sworn to before me this
23 day of January, 1997.

Notary for South Carolina

My Commission Expires: 9-23-2004

ORIGINA .

THE STATE OF SOUTH CAROLINA

In The Supreme Court

-054

APPEAL FROM YORK COUNTY

John C. Hayes, Circuit Court Judge

Case No. 93GS46-4296, 4299, 4301, 4303

State of South Carolina, Respondent,

versus

Mar-Reece Aldean Hughes, Appellant.

NOTICE OF MOTION TO BE RELIEVED AS ATTORNEY OF RECORD

Christina C. Brice, attorney for the appellant, moves to be relieved as attorney of record for the appellant upon the following grounds:

1. Christina C. Brice is not professionally competent to represent the appellant in the appeal of a case in which the death penalty was imposed.

2. Representation of the appellant by Christina C. Brice in this appeal would deprive the appellant of his right to counsel as guaranteed by

FILED
JAN 24 1997
S. C. SUPREME COURT

Article I, § 14, South Carolina Constitution, and the Sixth Amendment of the United States Constitution.

3. Representation of an appellant by Christina C. Brice in a death penalty appeal would violate Rule 407, §1.1, SCACR, regarding lawyer competency.[1]

4. The South Carolina Office of Appellate Defense was appointed as appellate counsel for the appellant on or about October __, 1995, and was never properly relieved because the appellant himself was never given notice of the motion of South Carolina Office of Appellate Defense to be relieved as attorney of record.

5. The South Carolina Office of Appellate Defense does not have a conflict of interest which prevents it from representing the appellant.

6. Christina C. Brice is entitled to withdraw as attorney of record because "representation will result in an unreasonable financial burden on the lawyer" as contemplated by Rule 407, § 1.16(b)(5), SCACR.

Christina C. Brice respectfully requests the right to present testimony and to file and serve a brief on these issues so that the Supreme Court of South Carolina will be fully aware of the operative facts and the applicable and controlling principles of law.

---

[1]A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Christina C. Brice also moves to hold all deadlines, including the filing of the initial brief of appellant and the designation of matter to be included in the record on appeal, in abeyance pending the determination of her motion to be relieved as attorney of record.

Respectfully submitted,



Thomas F. McDow
Attorney for Christina C. Brice
Suite 402 Guardian Building
Post Office Box 891
Rock Hill, SC 29731
Telephone 803-327-4151

January 23, 1997

Other counsel of record are:

Stephen D. Schusterman
Attorney for Appellant
378 East Main Street
Post Office Box 4211
Rock Hill, SC 29732
Telephone 803-325-7788

Donald J. Zelenka
Attorney for Respondent
Post Office Box 11549
Columbia, SC 29211
Telephone 803-734-3713

Daniel T. Stacy
South Carolina Office of Appellate Defense
Former Attorney for Appellant
1122 Lady Street, Suite 940
Columbia, SC 29201
Telephone 803-734-1330

C:\TFM\Brice\Motion.1

Thomas F. McDow
Lawyer
Suite 402, Guardian Building
Rock Hill, South Carolina

Telephones
803-327-4151 Lawyer
803-327-4200 Fax

Mailing Address
Post Office Box 891
Rock Hill, SC 29731

January 23, 1997

Clyde N. Davis Jr.
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RE: State of South Carolina v. Mar-Reece Aldean Hughes
File Book # 93GS46-4296, 4299, 4301, 4303

Dear Mr. Davis:

I have been retained by Christina C. Brice, attorney for appellant, for the purpose of seeking to have her relieved as attorney of record.

Enclosed for filing is the original and six copies of the notice of motion to be relieved as attorney of record along with the original affidavit of service.

Please note that the motion requests the right to file a brief on behalf of Christina C. Brice. Actually I intend to do this in any event. I simply did not have time to do it today which is the last day for the filing and service of the initial brief of appellant and designation of matter to be included in the record on appeal.

Also the motion seeks the right to introduce testimony in support of the motion.

RECEIVED
JAN 24 1997
S. C. SUPREME COURT

Respectfully,

Thomas F. McDow

C:\TFM\Brice\CND.1

cc: Mar-Reece Aldean Hughes #SK 5021
Broad River Road Correctional Institute
4460 Broad River Road
Columbia, SC 29210

cc: Stephen D. Schusterman
378 East Main Street
Post Office Box 4211
Rock Hill, SC 29732

cc: Donald J. Zelenka
Post Office Box 11549
Columbia, SC 29211

cc: Daniel T. Stacy
South Carolina Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

cc: Christina C. Brice
Post Office Box 300
York, SC 29745

RECEIVED
JAN 24 1997
S. C. SUPREME COURT

ORIGINAL

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM YORK COUNTY

John C. Hayes, Circuit Judge

Case No. 93GS46-4296, 4299, 4301, 4303

State of South Carolina, Respondent,

versus

Mar-Reece Aldean Hughes, Appellant.

PROOF OF SERVICE

I certify that I have served the notice of motion to be relieved as attorney of record Stephen D. Schusterman, Donald J. Zenlenka, Daniel T. Stacy by depositing a copy to each in the United States Mail, postage prepaid, on January 23, 1997, addressed as follows:

Mar-Reece Aldean Hughes #SK 5021
Broad River Road Correctional Institute
4460 Broad River Road
Columbia, SC 29210

Stephen D. Schusterman
378 East Main Street
Post Office Box 4211
Rock Hill, SC 29732

Donald J. Zelenka
Post Office Box 11549
Columbia, SC 29211

Daniel T. Stacy
South Carolina Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

Thomas F. McDow
Attorney for Christina C. Brice
Suite 402 Guardian Building
Post Office Box 891
Rock Hill, SC 29731
Telephone 803-327-4151

January 23, 1997
C:\TFM\Brice\PS.1

Brice & Brice, P.A.

Attorneys & Counsellors at Law
P. O. Drawer 300
York, South Carolina 29745

William M. Brice, Jr.
William M. Brice, III
Christina Chadwick Brice

9 N. Roosevelt Street
(803) 684-4462

January 3, 1997

South Carolina Supreme Court
Clyde N. Davis, Jr., Esquire
P. O. Box 11330
Columbia, SC 29211

Re: State of South Carolina vs. Mar-Reece Hughes

Dear Mr. Davis:

I received a copy of the transcript on December 23, 1996 on the above referenced matter.

With kind regards, I am

Very truly yours,

Christina C. Brice

CCB/as

RECEIVED
JAN 06 1997
S. C. SUPREME COURT

SOUTH CAROLINA OFFICE OF APPELLATE DEFENSE

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

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

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

Wanda H. Haile
Senior Assistant Appellate Defender
Tara D. Shurling
Robert M. Pachak
Robert M. Dudek
M. Anne Pearce
Lisa T. Gregory
Assistant Appellate Defenders

December 20, 1996

RECEIVED
DEC 20 1996
S. C. SUPREME COURT

Christina Chadwick Brice, Esquire
Brice & Brice, P.A.
9 N. Roosevelt Street
York, SC 29745

Re: The State v. Mar-Reece Aldean Hughes

Dear Ms. Brice:

Enclosed please find a copy of the trial transcript in reference to the above captioned case, as well as documents you provided to this office. Per the Supreme Court's Order dated September 19, 1996, this Office will associate as counsel for the costs of this appeal.

This file has been assigned to Karen Elliott of this office. Please direct all future correspondence to her.

Sincerely,

Lorlene French
Legal Services Coordinator

Enclosure

xc: Stephen D. Schusterman, Esquire

Honorable Clyde N. Davis, Jr.
Clerk, S. C. Supreme Court

SOUTH CAROLINA OFFICE OF APPELLATE DEFENSE

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

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

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

Wanda H. Haile
Senior Assistant Appellate Defender
Tara D. Shurling
Robert M. Pachak
Robert M. Dudek
M. Anne Pearce
Lisa T. Gregory
Assistant Appellate Defenders

December 20, 1996

RECEIVED
DEC 20 1996
S. C. SUPREME COURT

Christina Chadwick Brice, Esquire
Brice & Brice, P.A.
9 N. Roosevelt Street
York, SC 29745

Re: The State v. Mar-Reece Aldean Hughes

Dear Ms. Brice:

Enclosed please find a copy of the trial transcript in reference to the above captioned case, as well as documents you provided to this office. Per the Supreme Court's Order dated September 19, 1996, this Office will associate as counsel for the costs of this appeal.

This file has been assigned to Karen Elliott of this office. Please direct all future correspondence to her.

Sincerely,

Lorlene French
Legal Services Coordinator

Enclosure

xc: Stephen D. Schusterman, Esquire

Honorable Clyde N. Davis, Jr.
Clerk, S. C. Supreme Court

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

December 17, 1996

Christina Chadwick Brice, Esquire
Brice Law Firm
P O Drawer 300
York, SC 29745

Re: The State v. Hughes, Mar-Reece Aldean

Dear Ms. Brice:

Pursuant to your recent request in the above entitled matter, the time limits for perfecting the appeal will be held in abeyance until thirty (30) days after your receipt of the requested trial transcripts.

Please inform this office immediately upon receipt of the transcripts in this matter so that time limits may be set accordingly.

By copy of this letter, we hereby advise opposing counsel of this action

Very truly yours,

CLERK

CND, Jr./adm

cc: Stephen D. Schusterman, Esquire
Assistant Deputy Attorney General Donald J. Zelenka

Brice & Brice, P.A.

Attorneys & Counsellors at Law
P. O. Drawer 300
York, South Carolina 29745

William M. Brice, Jr.
William M. Brice, III
Christina Chadwick Brice

9 N. Roosevelt Street
(803) 684-4462

December 12, 1996

RECEIVED
DEC 18 1996
S.C. SUPREME COURT

South Carolina Supreme Court
Clyde N. Davis Jr., Esquire
P.O Box 11330
Columbia, SC 29211

Re: State v. Mar-Reece Aldean Hughes
Trail Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

Dear Honorable Clerk of Court:

I have been notified that I was appointed, along with Steve Schusterman, to handle the above referenced appeal. Our reappointment to the representation of Mr. Hughes occured following the release of S.C. Appellate Defense as attorneys of record.

As of this date, we have yet to receive a copy of the transcript from Appellate Defense. I am reluctant to seek an extension for the filing of our initial brief as I believe our brief is due following thirty days upon our receipt of transcript. As we have not received the transcript, it would be premature to seek an extension for the filing of our brief.

I would appreciate any considerate information you may be able to render in this matter. Please advise accordingly as we cannot begin to prepare our brief until we are in receipt of the transcript.

With kind regards, I am

Very truly yours,

Christina C. Brice

CCB/laf

cc: Stephen D. Schusterman
Assistant Deputy General, Donald J. Zelenka

12/12/1996 17:13

=== COVER PAGE ===

TO: _____

FAX: 18037341499

FROM: BRICE _____

FAX: 8036843507

TEL: 8036844462

01 PAGE[S] TO FOLLOW

COMMENT:

Brice & Brice, P.A.
Attorneys & Counsellors at Law
P. O. Drawer 300
York, South Carolina 29745

William M. Brice, Jr.
William M. Brice, III
Christina Chadwick Brice

9 N. Roosevelt Street
(803) 684-4462

December 12, 1996

South Carolina Supreme Court
Clyde N. Davis Jr., Esquire
P.O Box 11330
Columbia, SC 29211

Re: State v. Mar-Reece Aldean Hughes
Trail Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

Dear Honorable Clerk of Court:

I have been notified that I was appointed, along with Steve Schusterman, to handle the above referenced appeal. Our reappointment to the representation of Mr. Hughes occured following the release of S.C. Appellate Defense as attorneys of record.

As of this date, we have yet to receive a copy of the transcript from Appellate Defense. I am reluctant to seek an extension for the filing of our initial brief as I believe our brief is due following thirty days upon our receipt of transcript. As we have not received the transcript, it would be premature to seek an extension for the filing of our brief.

I would appreciate any considerate information you may be able to render in this matter. Please advise accordingly as we cannot begin to prepare our brief until we are in receipt of the transcript.

With kind regards, I am

Very truly yours,

Christina C. Brice

CCB/laf

cc: Stephen D. Schusterman
Assistant Deputy General, Donald J. Zelenka

12/12/1996 17:15

=== COVER PAGE ===

TO: _____

FAX: 18037341499

FROM: BRICE _____

FAX: 8036843507

TEL: 8036844462

01 PAGE[S] TO FOLLOW

COMMENT:

Brice & Brice, P.A.
Attorneys & Counsellors at Law
P. O. Drawer 300
York, South Carolina 29745

William M. Brice, Jr.
William M. Brice, III
Christina Chadwick Brice

9 N. Roosevelt Street
(803) 684-4462

December 12, 1996

South Carolina Supreme Court
Clyde N. Davis Jr., Esquire
P.O Box 11330
Columbia, SC 29211

Re: State v. Mar-Reece Aldean Hughes
Trail Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

Dear Honorable Clerk of Court:

I have been notified that I was appointed, along with Steve Schusterman, to handle the above referenced appeal. Our reappointment to the representation of Mr. Hughes occured following the release of S.C. Appellate Defense as attorneys of record.

As of this date, we have yet to receive a copy of the transcript from Appellate Defense. I am reluctant to seek an extension for the filing of our initial brief as I believe our brief is due following thirty days upon our receipt of transcript. As we have not received the transcript, it would be premature to seek an extension for the filing of our brief.

I would appreciate any considerate information you may be able to render in this matter. Please advise accordingly as we cannot begin to prepare our brief until we are in receipt of the transcript.

With kind regards, I am

Very truly yours,

Christina C. Brice

CCB/laf

cc: Stephen D. Schusterman
Assistant Deputy General, Donald J. Zelenka

The Supreme Court of South Carolina

The State, Respondent

v.

Mar-Reece Aldean Hughes, Appellant

The Honorable John Calvin Hayes, III
York County
Trial Court Case No. 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

ORDER

For good cause having been shown, the time for serving and filing Appellant's Initial Brief and Designation of Material in the above entitled matter is hereby extended until December 18, 1996.

IT IS SO ORDERED.

ERNEST A. FINNEY, JR., CHIEF JUSTICE

BY _____
CLERK

Columbia, South Carolina

December 4, 1996

cc: Christina Chadwick Brice, Esquire
Stephen D. Schusterman, Esquire
Assistant Deputy Attorney General Donald J. Zelenka

SCHUSTERMAN LAW FIRM, P.A.

Attorney at Law

372 EAST MAIN STREET · POST OFFICE BOX 4211 · ROCK HILL, SOUTH CAROLINA 29731
TELEPHONE 803 325-7788 · FACSIMILE 803 325-7889

STEPHEN D. SCHUSTERMAN

November 27, 1996

-1310
30 days
Dec 18

South Carolina Supreme Court
Clyde N. Davis, Jr., Esquire
Clerk of the South Carolina Supreme Court
P. O. Box 11330
Columbia, South Carolina 29211

Re: State of South Carolina v. Mar-Reece Hughes

Dear Mr. Davis:

I spoke with Ms. Brenda Shealy and Mr. Joe Savitz this morning and was informed that Ms. Christina Brice and myself were going to be responsible for Mr. Hughes appeal. This was news to both of us as we were informed yesterday that the Initial Brief for Appellant was due. To date, we have not even received the transcript from the trial as we were informed that Appellate Defense was lining up someone else to do the Appeal. The major problem to date has been that the State of South Carolina has no mechanism to pay an Attorney for an Appeal when they are appointed.

At this point in time, I am respectfully requesting an extension of time to file the Initial Brief. I need sufficient time to receive the transcript from Appellate Defense and prepare the necessary documents. In the meantime, I will attempt to rectify some of the other administrative problems relating to Ms. Brice and myself being uncompensated representatives.

Thank you for your consideration in this matter and if you have any questions, please do not hesitate to contact me.

With kind regards, I am

Sincerely yours,

Stephen D. Schusterman

RECEIVED
DEC 04 1996
S.C. SUPREME COURT

SDS/avs

cc: Ms. Christina Brice, Esquire
South Carolina Attorney General

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, being over eighteen (18) years of age and not an attorney or party to this action, hereby certify that I have served the Extension Letter by personally mailing a copy thereof, postage paid to:

Charles Condon
South Carolina Attorney General
Dennis Office Building
P.O. Box 11549
Columbia, South Carolina 29211

State of South Carolina v. Mar-Reece Hughes

This 27th day of November, 1996

Kelly A. Tillman

FILED
DEC 04 1996
S.C. SUPREME COURT

SCHUSTERMAN LAW FIRM, P.A.
Attorney at Law
372 EAST MAIN STREET · POST OFFICE BOX 4211 · ROCK HILL, SOUTH CAROLINA 29731
TELEPHONE 803 325-7788 · FACSIMILE 803 325-7889

STEPHEN D. SCHUSTERMAN

1310
30 days
Dec 18

November 27, 1996

South Carolina Supreme Court
Clyde N. Davis, Jr., Esquire
Clerk of the South Carolina Supreme Court
P. O. Box 11330
Columbia, South Carolina 29211

Re: State of South Carolina v. Mar-Reece Hughes

Dear Mr. Davis:

I spoke with Ms. Brenda Shealy and Mr. Joe Savitz this morning and was informed that Ms. Christina Brice and myself were going to be responsible for Mr. Hughes appeal. This was news to both of us as we were informed yesterday that the Initial Brief for Appellant was due. To date, we have not even received the transcript from the trial as we were informed that Appellate Defense was lining up someone else to do the Appeal. The major problem to date has been that the State of South Carolina has no mechanism to pay an Attorney for an Appeal when they are appointed.

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Thank you for your consideration in this matter and if you have any questions, please do not hesitate to contact me.

With kind regards, I am

Sincerely yours,

Stephen D. Schusterman

SDS/avs

cc: Ms. Christina Brice, Esquire

RECEIVED
NOV 27 1996
S.C. SUPREME COURT

STEPHEN D. SCHUSTERMAN
ATTORNEY AT LAW

372 East Main Street
Post Office Box 4211
Rock Hill, South Carolina 29731
Telephone: (803) 325-7788
Fax: (803) 325-7889

FACSIMILE COVER SHEET

TO: Ms. Brenda Shealy

FROM: Stephen D. Schusterman

DATE: November 27, 1996

RE: State of South Carolina v. Mar-Reece Hughes

NUMBER OF PAGES: 2 (INCLUDING COVER SHEET)
IF YOU DO NOT RECEIVE ALL OF THE PAGES INDICATED ABOVE, PLEASE CALL 325-7788 IMMEDIATELY.

****

1-803-734-1499

RECEIVED
NOV 27 1996
S.C. SUPREME COURT

Brice & Brice, P.A.
Attorneys & Counsellors at Law
P. O. Drawer 300
York, South Carolina 29745

William M. Brice, Jr.
William M. Brice, III
Christina Chadwick Brice

9 N. Roosevelt Street
(803) 684-4462

November 26, 1996

VIA FAX:

South Carolina Supreme Court
Clyde N. Davis, Jr., Esquire
P. O. Box 11330
Columbia, SC 29211

Re: State of South Carolina vs. Mar-Reece Hughes

Dear Mr. Davis:

I was contacted today by the Supreme Court notifying me of the failure to file an Appellate Brief on the State of South Carolina vs. Mar-Reece Hughes. I was under the impression that Appellate Defense had reconsidered their position and were going to proceed with the appeal on the above referenced case. In fact, in representations that were made to me, I understood that they were in the process of filing this Brief. I believed this assumption to be true as neither myself nor Mr. Schusterman have received the transcript in order to prepare the Brief. I believe that the transcript is within the possession of S. C. Appellate Defense.

I am in the State of Massachusetts and will not return until Monday, December 2, 1996. I am extremely concerned about the interest of my client and the possibility that there may be an oversight that could jeopardize his appeal. Please contact my office immediately if a motion for extension of time needs to be filed for the filing of the Brief.

I will be waiting to hear from you. With kind regards, I am

Very truly yours,

Christina C. Brice

Christina C. Brice

CCB/as

cc: Appellate Defense
Steve Schusterman

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
Tara D. Shurling
Robert M. Pachak
Robert M. Dudek
M. Anne Pearce
Lisa T. Gregory
Assistant Appellate Defenders

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

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

September 24, 1996

Christina Chadwick Brice, Esquire
Brice & Brice, P.A.
9 N. Roosevelt Street
York, SC 29745

Re: The State v. Mar-Reece Aldean Hughes

Dear Ms. Brice:

Enclosed please find a copy of the trial transcript in reference to the above captioned case, as well as documents you provided to this office. Per the Supreme Court's Order dated September 19, 1996, this Office will associate as counsel for the costs of this appeal.

This file has been assigned to Karen Elliott of this office. Please direct all future correspondence to her.

Sincerely,

Loriene French

Loriene French
Legal Services Coordinator

Enclosure

xc: Stephen D. Schusterman, Esquire

Honorable Clyde N. Davis, Jr.
Clerk, S. C. Supreme Court

RECEIVED
SEP 24 1996
S.C. SUPREME COURT

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

September 19, 1996

Chief Attorney Daniel T. Stacey
Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

Re: The State v. Hughes, Mar-Reece Aldean

Dear Counsel:

Enclosed is Order of this Court issued pursuant to your Petition for Appointment of Outside Counsel in the above entitled matter.

By copy of this letter and Order, we are advising all interested parties of the action by the Court. Appellant's initial brief and designation of material should be served and filed on or before November 18, 1996.

Very truly yours,

CLERK

CND, Jr./adm

cc: Christina Chadwick Brice, Esquire
Stephen D. Schusterman, Esquire
Assistant Deputy Attorney General Donald J. Zelenka

The Supreme Court of South Carolina

The State, Respondent,

v.

Mar-Reece Aldean Hughes, Appellant.

ORDER

Daniel T. Stacey, Chief Staff Attorney for the South Carolina Office of Appellate Defense, has submitted a petition to this Court asking that the Office of Appellate Defense be relieved from representing appellant on appeal because it previously represented Eric Dwayne Forney, a co-defendant of appellant whose defense was completely antagonistic to the interests of appellant. Neither the State, nor appellant, has submitted a return.

The petition is granted. Appellant's trial counsel, Christina C. Brice and Stephen D. Schusterman, are hereby appointed to represent appellant on appeal. However, the Office of Appellate Defense shall remain associated for the limited purpose of paying any costs associated with this appeal.

IT IS SO ORDERED.

_____ A.J.
FOR THE COURT

Columbia, South Carolina
September 19, 1996
Copy to: Daniel T. Stacey, Esquire
Christina Chadwick Brice, Esquire
Stephen D. Schusterman, Esquire
Donald J. Zelenka, Esquire

9602140

RECEIVED
AUG 20 1996
S.C. SUPREME COURT

-962

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Honorable John C. Hayes, III, Presiding Judge

MAR-REECE ALDEAN HUGHES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR APPOINTMENT
OF OUTSIDE COUNSEL

Petitioner respectfully shows the Court:

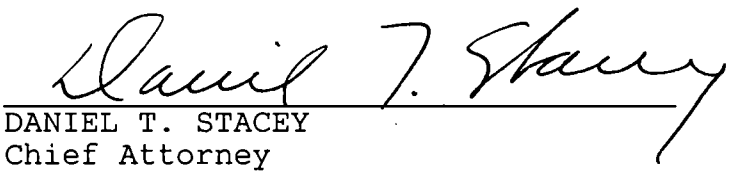
(1) A Notice of Intention to Appeal was filed with this Court by Christina C. Brice, Esquire and Stephen D. Schusterman, Esquire, counsel for Mr. Hughes. This Office is now in receipt of the reporter's transcript.

(2) Daniel T. Stacey, Chief Attorney for the South Carolina Office of Appellate Defense, represented Dwayne Forney, co-defendant of the Petitioner. State v. Forney, Op. 24393 (March 25, 1996). The defense of Forney was completely antongonistic to the interest of Mr. Hughes. See, Facts portion of State v. Forney, supra. Therefore, it is submitted that the Office of Appellate Defense is disqualified from representing appellant by reason of a conflict of interest, and that appellate counsel not associated

with this Office should be appointed to represent appellant in this Court. Rule 407, SCACR (Rule 1.7, Rules of Professional Conduct).

WHEREFORE, Petitioner requests that this Court appoint outside counsel in view of the conflict of interest. This Office can remain associated for the purpose of printing and costs.

Respectfully submitted,



DANIEL T. STACEY
Chief Attorney
South Carolina Office of Appellate Defense

This 20th day of August, 1996.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Honorable John C. Hayes, III, Judge

MAR-REECE ALDEAN HUGHES,

PETITIONER,

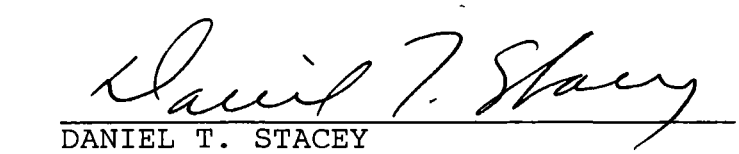
V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

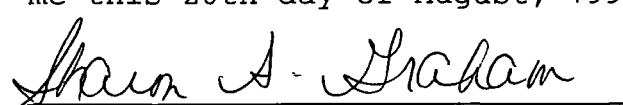
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Appointment of Outside Counsel in the above entitled case has been served upon opposing counsel, Donald J. Zelenka, Assistant Deputy Attorney General and upon the Petitioner, Mar-Reece Aldean Hughes, by mailing one copy in an envelope properly addressed with postage prepaid this 20th day of August, 1996.



DANIEL T. STACEY
Chief Attorney

SUBSCRIBED AND SWORN TO before
me this 20th day of August, 1996.


(L.S.)

Notary Public for South Carolina

My Commission Expires: APRIL 6, 2002.

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
Robert M. Pachak
Robert M. Dudek
M. Anne Pearce
Lisa T. Gregory
Lesley M. Coggiola
Assistant Appellate Defenders

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

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

August 20, 1996

RECEIVED
AUG 20 1996
S.C. SUPREME COURT

Donald J. Zelenka
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211

Re: The State v. Mar-Reece Aldean Hughes

Dear Mr. Zelenka:

Enclosed please find a copy of the Petition for Appointment of Outside Counsel in the above-referenced case which we are filing with the South Carolina Supreme Court on today's date

Sincerely,

Daniel T. Stacey
Chief Attorney

xc: 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
Senior Assistant Appellate Defender
Robert M. Pachak
Robert M. Dudek
M. Anne Pearce
Lisa T. Gregory
Lesley M. Coggiola
Assistant Appellate Defenders

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

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

9-30
10-25

August 1, 1996

RECEIVED
AUG 01 1996
S.C. SUPREME COURT

Mrs. Dianne H. Ponder
S. C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Dear Dianne:

The following list of cases fall under the 60 day rule for direct appeals, and the date we received the transcript is listed to the side.

The State v. Xavier Westerral Gadson	7/31/96
The State v. Maurice T. Moore	7/31/96
The State v. Mar-Reece Aldean Hughes	8/1/96

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 yours,

Loriene French

Loriene French
Legal Services Coordinator

The Supreme Court of South Carolina

9-24
10-25

TITLE OF CASE

The State

vs.

Mar-Reece Aldean Hughes

RECEIVED
JUL 29 1996
S. C. SUPREME COURT

ORDER

Upon request and for good cause shown, Carol G. Nicholson is hereby granted an extension up to and including August 26, 1996 to prepare and deliver the Transcript of Record in the above case.

Mary E. Spencer
Deputy Director, Court Administration

Columbia, South Carolina
July 25, 1996

cc: Appellate Defense
Carol G. Nicholson

Supreme Court Receipt Acknowledged BTS

Date 7/29/96

The Supreme Court of South Carolina

TITLE OF CASE

The State

vs.

Mar-Reece Aldean Hughes

RECEIVED
JUN 28 1996
S.C. SUPREME COURT

ORDER

Upon request and for good cause shown, Carol G. Nicholson is hereby granted an extension up to and including July 26, 1996 to prepare and deliver the Transcript of Record in the above case.

Mary E. Spencer
Deputy Director, Court Administration

Columbia, South Carolina
June 25, 1996

cc: Appellate Defense
Carol G. Nicholson

Supreme Court Receipt Acknowledged BTS

Date 6-28-96

The Supreme Court of South Carolina

TITLE OF CASE

The State

vs.

Mar-Reece Aldean Hughes

RECEIVED
MAY 30 1996
S. C. SUPREME COURT

ORDER

Upon request and for good cause shown, Carol G. Nicholson is hereby granted an extension up to and including June 26, 1996 to prepare and deliver the Transcript of Record in the above case.

Mary E. Spencer
Deputy Director, Court Administration

Columbia, South Carolina
May 29, 1996

cc: Appellate Defense
Carol G. Nicholson

Supreme Court Receipt Acknowledged BTS

Date 5-30-96

The Supreme Court of South Carolina

TITLE OF CASE

The State

vs.

Mar-Reece Aldean Hughes

RECEIVED
APR 30 1996
S. C. SUPREME COURT

ORDER

Upon request and for good cause shown, Carol G. Nicholson is hereby granted an extension up to and including May 26, 1996 to prepare and deliver the Transcript of Record in the above case.

Mary E. Spencer
Deputy Director, Court Administration

Columbia, South Carolina
April 26, 1996

cc: Appellate Defense
Carol G. Nicholson

Supreme Court Receipt Acknowledged BJF

Date 4-30-96

The Supreme Court of South Carolina

5-27
6-25

RECEIVED
MAR 28 1996
S. C. SUPREME COURT

TITLE OF CASE

The State

vs.

Mar-Reece Aldean Hughes

ORDER

Upon request and for good cause shown, Carol G. Nicholson is hereby granted an extension up to and including April 26, 1996 to prepare and deliver the Transcript of Record in the above case.

Mary E. Spencer
Deputy Director, Court Administration

Columbia, South Carolina
March 25, 1996

cc: Appellate Defense
Carol G. Nicholson

Supreme Court Receipt Acknowledged BJS

Date 3/28/96

The Supreme Court of South Carolina

4-26
5-27

TITLE OF CASE

The State

vs.

Mar-Reece Aldean Hughes

ORDER

Upon request and for good cause shown, Carol G. Nicholson is hereby granted an extension up to and including March 26, 1996 to prepare and deliver the Transcript of Record in the above case.

Mary E. Spencer
Deputy Director, Court Administration

Columbia, South Carolina
February 26, 1996

cc: Appellate Defense
Carol G. Nicholson

Supreme Court Receipt Acknowledged

Date 2-28-96

RECEIVED
FEB 2 3 1996
S. C. SUPREME COURT

The Supreme Court of South Carolina

3-24
4-26

TITLE OF CASE

The State

vs.

Mar-Reece Aldean Hughes

ORDER

Upon request and for good cause shown, Carol G. Nicholson is hereby granted an extension up to and including February 26, 1996 to prepare and deliver the Transcript of Record in the above case.

Mary E. Spencer
Deputy Director, Court Administration

Columbia, South Carolina
January 26, 1996

cc: Appellate Defense
Carol G. Nicholson

Supreme Court Receipt Acknowledged

Date 1-31-96

RECEIVED
JAN 31 1996
S.C. SUPREME COURT

The State of South Carolina
In the Supreme Court

TITLE OF CASE

The State

vs.

Mar-Reece Aldean Hughes

1-24
3-26

NOTICE

Upon request and for good cause shown, Carol G. Nicholson, Court Reporter, is hereby granted an extension up to and including January 26, 1996 to prepare and deliver the Transcript of Record in the above case.

By Angela Shuler
South Carolina
Court Administration

Columbia, South Carolina
November 22, 1995

cc: SC Appellate Defense
Carol G. Nicholson

Supreme Court Receipt Acknowledged BH

Date 11/28/95

1-2
1-24

The Circuit Court of South Carolina

Sixteenth Judicial Circuit

JOHN C. HAYES, III
JUDGE

YORK COUNTY
UNION COUNTY

Moss Justice Center
1675-1H York Highway
York, South Carolina 29745
Tel: (803) 628-3047
Fax: (803) 628-3055

November 1, 1995

Mr. Clyde N. Davis, Jr.
South Carolina Supreme Court
Post Office Box 11330
Columbia, S.C. 29211

RECEIVED
NOV 0 2 1995
S.C. SUPREME COURT

RE: Death Penalty Sentencing Report
Mar-Reece Aldean Hughes
York County

Dear Mr. Davis:

Enclosed please find the Death Penalty Sentencing Report regarding Mar-Reece Aldean Hughes.

With kind regards, I am

Sincerely,

Frances J. Kirkman

Frances J. Kirkman
Secretary

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
Robert M. Pachak
Robert M. Dudek
M. Anne Pearce
Lisa T. Gregory
Assistant Appellate Defenders

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

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

1-2
1-24

October 26, 1995

RECEIVED
OCT 26 1995
S.C. SUPREME COURT

Ms. Carol G. Nicholson
Circuit Court Reporter
P. O. Box 10502
Rock Hill, SC 29731-0502

Re: The State v. Mar-Reece Aldean Hughes

Dear Ms. Nicholson:

This is a formal request for you to transcribe the above captioned death penalty trial. Since this is a death penalty, we will need all the pre-trial motions, voir dire, opening statements, the trial, closing arguments, guilt phase, and penalty and sentencing. The trial was on September 7 & 8, ending on September 26, 1995 in York County before the Honorable John C. Hayes, III. If you were not the court reporter for all above phases of trial, please contact me immediately.

I would appreciate you transcribing the above, and forwarding the same to me. I have enclosed the DI-4 form for your bill. If you need additional information, or have any questions, please contact me.

Thank you for your assistance in this matter.

Sincerely yours,

Loriene French

Loriene French
Legal Services Coordinator

xc: S. C. Supreme Court
Office of the Attorney General

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

1-2

October 10, 1995

Ms. Loriene French
Legal Services Coordinator
South Carolina Office of Appellate Defense
1122 Lady Street - Suite 940
Columbia, South Carolina 29201

Re: The State v. Mar-Reece Aldean Hughes
York County Direct Appeal

Dear Ms. French:

The above appeal has been received by the Capital Crimes Section of this Office, and I would appreciate your staff sending any materials pertaining to this case directly to me.

Sincerely,

Donald J. Zelenka
Assistant Deputy Attorney General

RECEIVED
OCT 13 1995
S.C. SUPREME COURT

bbb
cc: Honorable Thomas E. Pope
Honorable Clyde N. Davis, Jr.
Ms. Lynn Graham, Attorney General's Office

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080
Fax (803) 734-1499

October 4, 1995

The Honorable John C. Hayes, III
1675-1H York Highway
York, SC 29745

Re: The State v. Mar-Reece Aldean Hughes

Dear Judge Hayes:

As you know, the trial judge must submit a Death Penalty Sentencing Report to the Supreme Court on all death penalty cases. Enclosed is a copy of this questionnaire for your convenience in completing the report in the above matter.

Very truly yours,

CLERK

CND,Jr./adm

Copy to: Christina C. Brice, Esquire
Stephen D. Schusterm, Esquire
The Honorable Tommy Pope
The Honorable Salley W. Elliott
Ms. Loriene French, SC Appellate Defense

DP

RECEIVED

OCT 0 2 1995

S.C. SUPREME COURT

95-CR-1689

PM 9-29-95
PDS 9-29-95

1/1

NOTICE OF INTENT TO APPEAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM YORK COUNTY

HONORABLE JOHN C. HAYES, III, JUDGE

CASE NOS.93-GS-46-4303, 4301, 4299, 4303, 4305 and 4296

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

MAR-REECE ALDEAN HUGHES, APPELLANT

NOTICE OF APPEAL

Defendant appeals from the sentence of the Honorable John C. Hayes, III, Presiding Judge of the Sixteenth Judicial Circuit, dated September 26, 1995.

Christina C. Brice
Attorney for Appellant
9 N. Roosevelt Street
York, South Carolina 29745
(803) 684-4462

Stephen D. Schusterman
Attorney for Defendant
P. O. Box 4211
Rock Hill, SC 29731

Other Counsel of record are:
Tommy Pope, Solicitor
Solicitor's Office
1675 York Hwy
York, SC 29745

Brice & Brice, P.A.

Attorneys & Counsellors at Law
P. O. Drawer 300
York, South Carolina 29745

William M. Brice, Jr.
William M. Brice, III
Christina Chadwick Brice

9 N. Roosevelt Street
(803) 684-4462

September 28, 1995

Mr. Tommy Pope, Solicitor
Moss Justice Center
1617 York Hwy
York, SC 29745

Re: State of South Carolina vs. Mar-Reece Aldean Hughes

Dear Tommy:

Please find enclosed a Notice of Appeal, A Request for Representation on Appeal and an Affidavit of Service by Hand Delivery on the above referenced matter.

If you have any questions concerning this matter, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

Christina C. Brice
Brice & Brice

CCB/as

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
State of South Carolina,	)	
	)	
vs.	)	AFFIDAVIT OF SERVICE BY HAND DELIVERY
	)	File. No. 93-GS-46-4303, 4301, 4299, 4304, 4305 and 4296
Mar-Reece Hughes,	)	
	)	
Defendant.	)	

PERSONALLY appeared before me the undersigned deponent, who, after being duly sworn, states:

1. That she is the attorney for the Defendant, Mar-Reece Hughes, in the above entitled action.

2. That a copy of the Request for Representation on Appeal and Notice of Intent to Appeal was hand delivered to Tommy Pope, Solicitor for the Sixteenth Judicial Circuit for the State of South Carolina on the 29th day of Sept, 1995.

BRICE & BRICE

Christina C. Brice

CHRISTINA C. BRICE
Attorney for the Defendant
P. O. Drawer 300
York, South Carolina 29745
(803) 684-4462

SWORN to before me this the
29th day of September 1995.

Angela M Smart

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 8/2/99

Brice & Brice, P.A.

Attorneys & Counsellors at Law
P. O. Drawer 300
York, South Carolina 29745

William M. Brice, Jr.
William M. Brice, III
Christina Chadwick Brice

9 N. Roosevelt Street
(803) 684-4462

September 28, 1995

Honorable Rod Benfield
Clerk of Court
Moss Justice Center
1617 York Hwy
York, SC 29745

Re: State of South Carolina vs. Mar-Reece Aldean Hughes

Dear Mr. Benfield:

Please find enclosed a Notice of Appeal, a Request for Representation on Appeal and Affidavits of Service by Hand Delivery and Certificates of Mailing on the above referenced matter. Please file the original documents and return a clocked copy to me within the enclosed envelope.

If you have any questions concerning this matter, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

Christina C. Brice
Brice & Brice

CCB/as
cc: Supreme Court
Solicitor's Office

STATE OF SOUTH CAROLINA) COUNTY OF YORK)	IN THE SOUTH CAROLINA SUPREME COURT Case Nos. 93-GS-46-4303, 4301, 4299, 4303, 4305 and 4296
STATE OF SOUTH CAROLINA) vs.) MAR-REECE ALDEAN HUGHES) Defendant.)	REQUEST FOR REPRESENTATION ON APPEAL

On behalf of the request of the above-named Defendant, to be represented by the South Carolina Commission of Appellate Defense, the undersigned attorney would show unto this Honorable Court that:

1. She is one of the attorneys for the defendant-appellant in the above captioned case. The defendant-appellant was placed in custody immediately following conviction and sentence and was not available to personally sign this Request.

2. The defendant-appellant was represented by Stephen D. Schusterman and Christina C. Brice pursuant to the Defense of Indigent Act.

3. The defendant-appellant has been informed that he may request assistance from the South Carolina Commission of Appellate Defense in perfecting his appeal.

4. A timely Notice of Intention to Appeal has been filed on the defendant's-appellant behalf.

5. The defendant-appellant has been informed that nothing requires that office to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the defendant-appellant requests the aid of the South Carolina Commission of Appellate Defense in perfecting his appeal to the South Carolina Supreme Court.

Christina C. Brice

STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF YORK)

Personally appeared before me the above-signed attorney, who being first duly sworn, deposes and says that she has read the foregoing Request for Representation on Appeal and knows the allegations contained therein are true, except as to those which may be alleged to be upon information and belief, and as to those he/she believes them to be true.

Christina C. Brice

SWORN to before me this the
29th day of September, 1995.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/2/99

Brice & Brice, P.A.

Attorneys & Counsellors at Law
P. O. Drawer 300
York, South Carolina 29745

William M. Brice, Jr.
William M. Brice, III
Christina Chadwick Brice

9 N. Roosevelt Street
(803) 684-4462

September 28, 1995

RECEIVED
OCT 02 1995
S.C. SUPREME COURT

The Honorable Clyde N. Davis, Jr.
Clerk, South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

Re: State of South Carolina vs. Mar-Reece Aldean Hughes
Case Nos. 93-GS-46-4303, 4301, 4299, 4304, 4305 and 4296

Dear Mr. Davis:

Enclosed is the Notice of Intent to Appeal in the above referenced case, together with appropriate Proof of Service upon the Circuit Solicitor and Proof of Filing with the local Clerk of Court. Also, enclosed is a Request for Representation on Appeal. The Defendant-Appellant was represented by us as an indigent, pursuant to the Defense of Indigents Act. By copy of this letter, I am forwarding a duplicate set of these documents to the South Carolina Commission of Appellate Defense.

The Request for Representation on Appeal, and the Affidavit in support thereof, have been signed by us as attorneys for the Defendant-Appellant. This is due to the fact that the Defendant-Appellant was in the custody of the Department of Corrections after sentencing and was not available to sign these documents.

As proof of filing for my records, I would appreciate it if one of your Clerks would clock the enclosed copy of this letter and return it to me in the envelope which I have provided.

With kind regards, I am

Very truly yours,

Christina C. Brice

Christina C. Brice

Stephen D. Schusterman

Stephen D. Schusterman

CCB/as

cc: South Carolina Commission of Appellate Defense

STATE OF SOUTH CAROLINA)	
)	IN THE SOUTH CAROLINA SUPREME COURT
COUNTY OF YORK)	Case Nos. 93-QS-46-4303, 4301, 4299, 4303, 4305 and 4296
STATE OF SOUTH CAROLINA)	
)	
vs.)	REQUEST FOR REPRESENTATION ON APPEAL
)	
MAR-REECE ALDEAN HUGHES)	
)	
Defendant.)	
)	

On behalf of the request of the above-named Defendant, to be represented by the South Carolina Commission of Appellate Defense, the undersigned attorney would show unto this Honorable Court that:

1. He is one of the attorneys for the defendant-appellant in the above captioned case. The defendant-appellant was placed in custody immediately following conviction and sentence and was not available to personally sign this Request.

2. The defendant-appellant was represented by Stephen D. Schusterman and Christina C. Brice pursuant to the Defense of Indigent Act.

3. The defendant-appellant has been informed that he may request assistance from the South Carolina Commission of Appellate Defense in perfecting his appeal.

4. A timely Notice of Intention to Appeal has been filed on the defendant's-appellant behalf.

5. The defendant-appellant has been informed that nothing requires that office to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the defendant-appellant requests the aid of the South Carolina Commission of Appellate Defense in perfecting his appeal to the South Carolina Supreme Court.

Stephen D. Schusterman

STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF YORK)

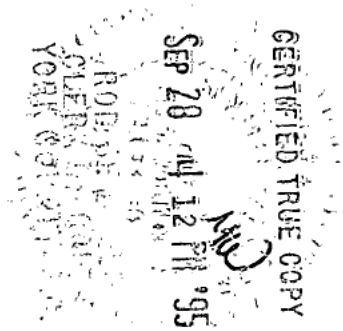
Personally appeared before me the above-signed attorney, who being first duly sworn, deposes and says that he has read the foregoing Request for Representation on Appeal and knows the allegations contained therein are true, except as to those which may be alleged to be upon information and belief, and as to those he/she believes them to be true.

Stephen D. Schusterman

SWORN to before me this the
29 day of September, 1995.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 9-23-2004

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	VERDICT FORM
vs.	)	MURDER
	)	
MAR-REECE HUGHES,	)	93-GS-46-4296
	)	
Defendant.	)	



X We find the Defendant Guilty.

_____ We find the Defendant Not Guilty.

September 18, 1995

Foreman

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK	)	93-GS-46-4296
STATE OF SOUTH CAROLINA	)	PART 1
V.	)	JURY'S VERDICT ON PROOF OF AGGRAVATING CIRCUMSTANCES
MAR-REECE HUGHES	)	
DEFENDANT.	)	

Complete either (a) or (b), as appropriate:

(a) We the jury in the above-entitled case do not unanimously find beyond a reasonable doubt the existence of any statutory aggravating circumstances.

Signed _____
Foreperson

(b) We the jury in the above-entitled case unanimously find beyond a reasonable doubt the existence of the following statutory aggravating circumstance(s):

3. Murder of a Local Law Enforcement Officer During or Because of the Performance of His Official Duties

Signed:

Foreperson

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

CERTIFIED TRUE COPY
SEP 28 4 12 PM '95

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK	)	93-GS-46-4296
STATE OF SOUTH CAROLINA	)	PART II
V.	)	JURY'S DETERMINATION OF THE SENTENCE TO BE IMPOSED
MAR-REECE HUGHES	)	
DEFENDANT.	)	

Complete either (a) or (b), as appropriate:

(a) We the jury in the above-entitled case unanimously recommend that the Defendant, Mar-Reece Hughes, be imprisoned in the state penitentiary for the balance of his natural life without parole.

Signed _____
Foreperson

(b) We the jury in the above-entitled case unanimously recommend that the Defendant, Mar-Reece Hughes, be sentenced to death.

Signed:

Foreperson

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

CERTIFIED TRUE COPY
SEP 28 4 12 PM '95

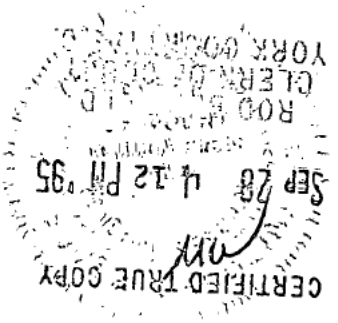
STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF YORK	)	93-GS-46-4296
THE STATE OF SOUTH CAROLINA	)	
	)	
V.	)	SENTENCE
	)	
MAR-REECE HUGHES,	)	
	)	
DEFENDANT.	)	
	)	

The Defendant, Mar-Reece Hughes, 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, Mar-Reece Hughes, be taken to the County Jail of York County, and thence to the State Penitentiary, henceforth to be kept in close and safe confinement until the 28th day of November, 1995, upon which day between the hours of six o'clock A.M., and six o'clock P.M., the Defendant, Mar-Reece Hughes, shall suffer death by electrocution or lethal injection in the manner provided by Law.

JOHN C. HAYES, III
Presiding Judge

September 22nd, 1995
York, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF YORK

COUN): _____

CASE NO: 93 GS-46- 4303

WARRANT NO: NWN

CHARGE: Larc. Stolen Vehicle

THE STATE

VS

Mar-Leece Aldean Hughes

The sentence of the Court is that Mar-Leece Aldean Hughes, the defendant named in this indictment be confined to the State Board of Corrections/ York County Detention for a term of Five (5) years

~~(and) (or) pay a fine of $ _____ : provided that upon the service of _____ (and) (or) payment of $ _____ plus (pay) (waive) cost and assessments as applicable *, the balance is suspended and the defendant is placed on probation for _____ (months) (years).~~

RESTITUTION: (Yes) (No)

HEARING HELD OR WAIVED ON: _____

PAYABLE TO CLERK FOR (VICTIM) _____

PHYSICAL INJURY $ _____

(and) (or)

PROPERTY DAMAGE $ _____

TOTAL$ _____

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: Consecutive

CERTIFIED TRUE COPY
YORK CO. CLERK
SEP 28 4 12 PM '95

DATE: 9/22/95

YORK, SOUTH CAROLINA

*COST AND ASSESSMENTS:

FINE	$_____
ACADEMY	$_____
C.C.A.	$_____
L.C.F.	$_____
C.A.T.	$_____
OTHER	$_____
GRAND TOTAL	$_____

John C. Hayes III
Presiding Judge

Lad Benfield
Clerk of Court

Date of Birth [redacted]

Social Security [redacted]

Drivers License [redacted]

ATTORNEY FOR DEF Schuckman Bice

ADDRESS: 538 Billingsley Rd
Charlotte N.C.

COPY RECEIVED BY: _____
Defendant

M/F

B/W

WHITE - Clerk PINK - Detention YELLOW - Probation Dept. BLUE - Defendant's Copy

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
THE STATE OF SOUTH CAROLINA	)	
vs.	)	VERDICT FORM POSSESSION OF STOLEN VEHICLE
MAR-REECE HUGHES,	)	93-GS-46-4303
DEFENDANT.	)	

X We find the Defendant Guilty and we find the Value of the Vehicle was:

____ A. $1,000.00 or Less

X B. More than $1,000.00, but less than $5,000.00.

____ C. $5,000.00 or More

____ We find the Defendant Not Guilty.

September 18, 1995

Foreman



STATE OF SOUTH CAROLINA

COUNTY OF YORK

COUN): _____

CASE NO: 93 GS-46- 4304

WARRANT NO: NWN

CHARGE: Criminal Conspiracy

THE STATE

VS

Mr. Leece Aldean Hughes

The sentence of the Court is that ~~Mr. Leece Aldean Hughes~~, the defendant named in this indictment be confined to the State Board of Corrections/ York County Detention for a term of Five (5) years

~~(and) (or) pay a fine of $ _____ : provided that upon the service of _____ (and) (or) payment of $ _____ plus (pay) (waive) cost and assessments as applicable *, the balance is suspended and the defendant is placed on probation for _____ (months) (years).~~

RESTITUTION: (Yes) (No)

HEARING HELD OR WAIVED ON: _____

PHYSICAL INJURY $ _____

(and) (or)

PROPERTY DAMAGE $ _____

TOTAL$ _____

PAYABLE TO CLERK FOR (VICTIM) _____

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: Consecutive

CERTIFIED TRUE COPY
SEP 20 4 12 PM '95
YORK COUNTY

DATE: 9/22/95

YORK, SOUTH CAROLINA

John C Hayes
Presiding Judge

*COST AND ASSESSMENTS:

FINE	$	
ACADEMY	$	
C.C.A.	$	
L.C.F.	$	
C.A.T.	$	
OTHER	$	
GRAND TOTAL	$	

Ted Berfield
Clerk of Court

Date of Birth [redacted]

Social Security [redacted]

Drivers License n/a

ATTORNEY FOR DEF: ~~Schuster~~ Bruce

ADDRESS: 538 Billingsley Rd
Charlotte NC

COPY RECEIVED BY: _____
Defendant

M/F
B/W

WHITE - Clerk PINK - Detention YELLOW - Probation Dept. BLUE - Defendant's Copy

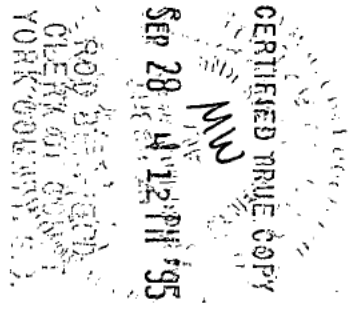
STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	
COUNTY OF YORK)	SIXTEENTH JUDICIAL CIRCUIT
)	
THE STATE OF SOUTH CAROLINA)	
)	
vs.)	VERDICT FORM
)	CRIMINAL CONSPIRACY
MAR-REECE HUGHES,)	
)	93-GS-46-4304
Defendant.)	
)	

X We find the Defendant Guilty.

_____ We find the Defendant Not Guilty.

September 18, 1995

B E Nulty
Foreman



STATE OF SOUTH CAROLINA

COUNTY OF YORK

COUN): _____

CASE NO: 93 GS-46- 4305-A

WARRANT NO: NWN

CHARGE: CT. #1
Armed Robbery

THE STATE

VS

Mr. Reece Aldean Hughes

The sentence of the Court is that Mr. Reece Aldean Hughes, the defendant named in this indictment be confined to the State Board of Corrections/ York County Detention for a term of Thirty (30) years (and) ~~(or) pay a fine of $ _____~~ ; provided that upon the service of _____ (and) (or) ~~payment of $ _____~~ plus (pay) (waive) cost and assessments as applicable *, ~~the balance~~ is ~~suspended and the defendant is placed on probation for _____ (months) (years)~~.

RESTITUTION: (Yes) (No)

HEARING HELD OR WAIVED ON: _____

PAYABLE TO CLERK FOR (VICTIM) _____

PHYSICAL INJURY $ _____

(and) (or)

PROPERTY DAMAGE $ _____

TOTAL$ _____

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: Consecutive

ROD L. CLERK YORK CO. S.C.
CERTIFIED TRUE COPY
SEP 28 11 12 PM '95

DATE: 9-22-95

YORK, SOUTH CAROLINA

*COST AND ASSESSMENTS:

FINE	$_____
ACADEMY	$_____
C.C.A.	$_____
L.C.F.	$_____
C.A.T.	$_____
OTHER	$_____
GRAND TOTAL	$_____

John O. Hayes
Presiding Judge

Rod Benfield
Clerk of Court

Date of Birth [redacted]

Social Security [redacted]

Drivers License N/A

ATTORNEY FOR DEF. ~~Schusterman~~ Bruce

ADDRESS: 538 Billingsley Rd
Charlotte NC

COPY RECEIVED BY: _____
Defendant

M/F
B/W

WHITE - Clerk PINK - Detention YELLOW - Probation Dept. BLUE - Defendant's Copy

STATE OF SOUTH CAROLINA

COUNTY OF YORK

COUN): _____

CASE NO: 93 GS-46- 4305-B

WARRANT NO: NWN

CHARGE: Ct. #2 Poss. Firearm During Comm. of Crime

THE STATE

VS

Mr. Leece Aldean Hughes

The sentence of the Court is that Mr. Leece Aldean Hughes, the defendant named in this indictment be confined to the State Board of Corrections/ York County Detention for a term of Five (5) years (and) ~~(or) pay a fine of $ _____ : provided that upon the service of _____ (and) (or) payment of $ _____ plus (pay) (waive) cost and assessments as applicable *, the balance is suspended and the defendant is placed on probation for _____ (months) (years).~~

RESTITUTION: (Yes) (No)

HEARING HELD OR WAIVED ON: _____

PHYSICAL INJURY $ _____

(and) (or)

PROPERTY DAMAGE $ _____

TOTAL$ _____

PAYABLE TO CLERK FOR (VICTIM) _____

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: Consecutive

CERTIFIED TRUE COPY
ROD
CLERK
YORK, SOUTH CAROLINA
SEP 23 4 13 PM '95

DATE: 9/22/95

YORK, SOUTH CAROLINA

John C Hayes III
Presiding Judge

*COST AND ASSESSMENTS:

FINE	$	
ACADEMY	$	
C.C.A.	$	
L.C.F.	$	
C.A.T.	$	
OTHER	$	
GRAND TOTAL	$	

Carl Benfield
Clerk of Court

Date of Birth [redacted]

Social Security [redacted]

Drivers License N/A

COPY RECEIVED BY: _____
Defendant

ATTORNEY FOR DEF: ~~Schuyler~~ Price

ADDRESS: 538 Billingsley Rd
Charlotte NC

M/F
B/W

WHITE - Clerk PINK - Detention YELLOW - Probation Dept. BLUE - Defendant's Copy

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
THE STATE OF SOUTH CAROLINA	)	VERDICT FORM ARMED ROBBERY
vs.	)	
MAR-REECE HUGHES,	)	93-GS-46-4305
DEFENDANT.	)	

CERTIFIED TRUE COPY
SEP 28 4 13 PM '95
ROD BOULWARE
CLERK OF COURT
YORK COUNTY, S.C.

X We find the Defendant Guilty.

____ We find the Defendant Not Guilty.

Possession of Firearm During Commission of or Attempt to Commit a Violent Crime

X We find the Defendant Guilty.

____ We find the Defendant Not Guilty.

September 18, 1995

B E Nicholson
Foreman

FedEx
Federal Express

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QUESTIONS? CALL 800-238-5355 TOLL FREE.

5535515683

AIRBILL
PACKAGE
TRACKING NUMBER

5535515683

Date 9/29/95

From (Your Name) Please Print

Christina C. Brice

Your Phone Number (Very Important) (803) 684-4[illegible]

Company

BRICE & BRICE ATTY'S

Department/Floor No.

Street Address

[illegible] ROOSEVELT ST

City

YORK

State

SC

ZIP Required

29745

To (Recipient's Name) Please Print

Honorable Clyde N. Davis, Jr.

Recipient's Phone Number (Very Important)

Company

South Carolina Supreme Court, Clerk

Department/Floor No.

Exact Street Address (We Cannot Deliver to P.O. Boxes or P.O. Zip Codes.)

1231 Gervais Street

City

York Columbia

State

SC

ZIP Required

29201

YO[illegible]RNAL BILLING REFERENCE INFORMATION (optional) (First 24 characters will appear on invoice.)

H IF HOLD AT FEDEX LOCATION, Print FEDEX Address Here

Street Address

City

State

ZIP Required

3 PAYMENT 1 [X] Bill Sender 2 [ ] Bill Recipient's FedEx Acct. No. 3 [ ] Bill 3rd Party FedEx Acct. No. 4 [ ] Bill Credit Card 5 [ ] Cash/Check

4 SERVICES (Check only one box)

Priority Overnight (Delivery by next business morning)	Standard Overnight (Delivery by next business afternoon. No Saturday delivery.†)
11 [ ] OTHER PACKAGING	51 [ ] OTHER PACKAGING
16 [X] FEDEX LETTER*	56 [ ] FEDEX LETTER*
12 [ ] FEDEX PAK*	52 [ ] FEDEX PAK*
13 [ ] FEDEX BOX	53 [ ] FEDEX BOX
[illegible]A TUBE	54 [ ] FEDEX TUBE
E[illegible]ny Two-Day (Delivery by second business day.†)	Government Overnight (Restricted for authorized users only)
30 [ ] ECONOMY*	46 [ ] GOVT LETTER
	41 [ ] GOVT PACKAGE

* Economy Letter Rate not available. Minimum charge: One-pound Economy rate.

Freight Service (for packages over 150 lbs.)

70 [ ] OVERNIGHT FREIGHT** (Confirmed reservation required)

80 [ ] TWO-DAY FREIGHT**

† Delivery commitment may be later in some areas.

*Declared Value Limit $500.
**Call for delivery schedule.

5 DELIVERY AND SPECIAL HANDLING (Check services required)

Weekday Service

1 [X] HOLD AT FEDEX LOCATION WEEKDAY (Fill in Section H)

2 [ ] DELIVER WEEKDAY

Saturday Service

31 [ ] HOLD AT FEDEX LOCATION SATURDAY (Fill in Section H)

3 [ ] DELIVER SATURDAY (Extra charge) (Not available to all locations)

9 [ ] SATURDAY PICK-UP (Extra charge)

Special Handling

4 [ ] DANGEROUS GOODS (Extra charge)

6 [ ] DRY ICE Dangerous Goods Shipper's Declaration not required

Dry Ice, 9, UN 1845, _____ X _____ kg, 904 III

[ ] DESCRIPTION

12 [ ] HOLIDAY DELIVERY (If offered) (Extra charge)

6

PACKAGES	WEIGHT In Pounds Only	YOUR DECLARED VALUE (See right.)
Total	Total	Total

DIM SHIPMENT (Chargeable Weight)

[ ] _____ lbs.

L x W x H

Received At

1 [ ] Regular Stop 3 [ ] Drop Box 4 [ ] B.S.C. 2 [ ] On-Call Stop 5 [ ] Station

7 Release Signature:

Emp. No. Date

[X] Cash Received

[ ] Return Shipment

[ ] Third Party [ ] Chg. To Del. [ ] Chg. To Hold

Street Address

City State Zip

Received By:

X

Date/Time Received FedEx Employee Number

Federal Express Use	
Base Charges	
Declared Value Charge	
Other 1	
Other 2	
Total Charges	

REVISION DATE 4/94
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