STATE OF SOUTH CAROLINA
In the Supreme Court

ORIGINALS

3/28/98

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

State of South Carolina, ... Respondent,

v.

Mar-Reece Aldean Hughes, ... Appellant.

RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF YORK)

STATE OF SOUTH CAROLINA)
)
vs.) TRANSCRIPT OF RECORD
) (93GS46-4296; 93GS4303;
MAR-REECE ALDEAN HUGHES) 93GS46-4304; 93GS4305)

SEPTEMBER 11 - 22, 1995

BEFORE: THE HONORABLE JOHN C. HAYES, III and a Jury.

APPEARANCES:

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Leslie R. Herring				
Mr. Pope	2605			
Mr. Schusterman		2609		
Timothy Sanders				
Mr. Pope	2613		2671	
Ms. Brice		2631		
Broadus Lee Strain				
Mr. Brackett	2673		2685	
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Randy Clinton				
Mr. Brackett	2687			
Mr. Schusterman		2697		
James Scott Rockholt				
Mr. Brackett	2705			
Ms. Brice		2708		

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Mary Henry Kitts				
Mr. Brackett	2711			
Mr. Schusterman		2714		
Larry P. Devinney				
Mr. Brackett	2715			
Ms. Brice		2725		
Michelle Ayers				
Mr. Pope	2752			
Mr. Schusterman		2758		
Crystal Ayers				
Mr. Pope	2760			
Mr. Schusterman		2769		
Dafferlin Barnard Dupree				
Ms. Brice	2777		2785	
Mr. Pope		2781		2785
Charles Cabaniss				
Mr. Brackett	2789			
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Bruce Bryant				
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Mr. Schusterman		2829		
Dafferlin Barnard Dupree				
Ms. Brice	2832		2854	
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Donald William Morgan				
Ms. Brice	2858		2883	
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Renee S. Kohanski				
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Mr. Pope		2903		2924
Dafferlin Barnard Dupree				
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Beth Ann Jayne				
Mr. Pope	831		861	
Ms. Brice		844		
Sean McMillian				
Mr. Pope	863			
Ms. Brice		874		

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Beth Ann Jayne				
Mr. Pope	917		947	
Ms. Brice		937		948
Sean McMillan				
Mr. Pope	954		974	
Ms. Brice		969		
Crystal Ayers				
Mr. Pope	975		998	
Mr. Schusterman		988		1000
Michelle Ayers				
Mr. Pope	1001		1007	
Mr. Schusterman		1005		
Steven Gibson				
Mr. Pope	1008		1019	
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Lisa Simmons				
Mr. Pope	1020			
Sherrie Grimmit				
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Mary Grant				
Mr. Pope	1047		1072	
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Cathy Ann Pittman				
Mr. Pope	1074			
Mr. Schusterman		1084		
Marvin Bohon				
Mr. Brackett	1087		1109	
Mr. Schusterman		1101		
Jerry W. Waldrop				
Mr. Brackett	1110			
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Timothy Sanders				
Mr. Pope	1118		1156	
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Dan Ketchel				
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Mr. Brackett	1250			
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Charles T. Cabaniss				
Mr. Brackett	1253		1294	
Mr. Schusterman		1275		1298
Leroy Perry				
Mr. Brackett	1304			
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Kent Pruett				
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Lawrence Eugene Gainey, Jr.				
Mr. Pope	1362			
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David Black				
Mr. Pope	1398		1428	
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Joseph D. Powell				
Mr. Pope	1431		1452	
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Mr. Pope	1526			
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Felix Wimborn				
Ms. Brice	1557		1567	
Mr. Pope		1560		1569
Donald William Morgan				
Ms. Brice	1571		1594	
Mr. Pope		1579		1595
Mar-Reece Aldean Hughes				
Mr. Schusterman	1642			
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Bob Ormseth (In camera)				
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Randy Weavil				
Mr. Pope	1875			
Ms. Brice		1881		
Robert Reese				
Mr. Brackett	1887			
Ms. Brice		1901		
Broadus Strain				
Mr. Brackett	1903		1911	
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Richard Douglas Waldrop				
Mr. Brackett	1914			
Mr. Schusterman		1940		
Christopher Gorth				
Mr. Brackett	1963			
Ms. Brice		1970		
Stella Lingerfeldt				
Mr. Brackett	1975			
David Black				
Mr. Brackett	1980			
Everett Earl Jenkins				
Mr. Pope	1998			
Craig Alexander				
Mr. Pope	2000			
Kelly Carroll				
Mr. Pope	2004			
William Douglas Taylor				
Mr. Pope	2007			

TRIAL - PHASE II (CONTINUED)

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Percy Jones				
Mr. Brackett	2015		2029	
Mr. Schusterman		2025		
Sheila Mazyck				
Mr. Brackett	2030			
Mr. Schusterman		2032		
Otis Speight				
Mr. Pope	2035			
Myra McCants				
Mr. Pope	2043			
Caroline Burry				
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Peter Skidmore (In camera)				
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Renee Kohanski (In camera)				
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Donald William Morgan				
Ms. Brice	2263		2291	
Mr. Pope		2278		2294

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Dafferlin Barnard-Dupree				
Ms. Brice	2296		2331	
Mr. Pope		2314		2334

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that you said was submitted by my office.
A The files that you gave me.
Q And so you were aware that there were some people that said that Mar-Reece said "The little green man said do it" and I was trying to think --
A Not that "The little green man said to do it," but "The little green man jumped on him and kept him from sleeping."
Q Did you also take into consideration that he attempted to dispose of the knife or hide the knife?
A He was hiding the knife.
Q So he made a conscious decision to hide that knife.
A Right.
Q And that was both before and after the crime, is that correct?
A I know it was before; I'm not sure after.
Q When I say "hide," I guess before would be hiding, dispose of may be a more appropriate term afterwards.
A He attempted to flush it down the toilet.
Q And it's true then before ---
MS. BRICE: Your Honor, I am going to object, I mean, I don't know what foundation has been laid as far as where they found this knife. From the evidence that I have seen in the Solicitor's office, there is no indication that he flushed it down the toilet.

THE COURT: Well, again, when we are dealing with experts, the rules are relaxed and an expert can be examined regarding the information on which they make their opinions and that is some information that came to the doctor. Whether it is correct or incorrect, the Solicitor still has a right to delve into that. So I overrule the objection.

MS. BRICE: Thank you, sir.

Q Doctor, I think that was contained in the SLED information that you reviewed.

A Right; I know - I'm not sure whether we discussed it, you and me, or in the report, but I know that that's the case.

Q Okay, the point I am getting is there were numerous jail witnesses and jailers and various individuals some of which indicated odd behavior by Mar-Reece, some of which said he was faking or was not unusual or something of that nature, is that correct?

A That's right.

Q And you were also aware independent of this of the 1994, I think Ms. Brice had asked you about the evaluation where is was diagnosed as malingering, over at Gilliam, is that right?

A Yes, I am.

MR. POPE: I beg the court's indulgence.

Q Again, Doctor, I want to make clear the facts you said you know of the facts concerning the knife be it through the report, you have information that you took as making part of your determination.

A Yes.

MR. POPE: No further questions.

MS. BRICE: Thank you.

REDIRECT EXAMINATION

BY MS. BRICE

Q Doctor Morgan, do you have any doubt in your mind as to whether or not Mar-Reece Hughes was malingering at the time of that second murder?

A There is no doubt in my mind that Mr. Hughes does not malinger illness. Mr. Hughes malingers being well and this is one of the cases where he is not serving himself by concealing his mental illness from the evaluators. Had Mr. Hughes been malingering, he would have attempted to show Doctor Geoff McKee and myself how ill he was on the evaluation of August 1, 1994. Instead of that he denies and he keeps away from the material that would allow us to make the diagnosis at that time. So if he malingers, he malingers that he is well and denies his mental illness.

Q Thank you, sir.

MS. BRICE: Those are all the questions I have.

RECROSS EXAMINATION

BY MR. POPE

Q In other words, and I want to make sure I understand it, by malingering well or faking well that goes to show how ill he is?

A It is a way for the individual not to admit to his symptoms and to continue to believe that he is not ill.

Q Doctor, your opinion that you reduced to the report for the court that the defense has put in, you do as part of your job at William S. Hall, is that correct, and report back to the court?

A Yes.

Q As accurately as you can, is that correct?

A As accurately as I can.

Q And the type of report this is is the same type as the one that you reported with Geoff McKee that you now say was wrong, is that correct?

A I made a serious error there.

Q Thank you, sir.

THE COURT: You may step down. You can be excused. Appreciate your time.

All right, we are going to break for lunch now. I have a bond matter to take up that shouldn't take over about ten minutes. I will ask everybody to be ready to go at 2:30. It might be that we will run a minute or two late due to the fact that I have this other matter before we

break, before we actually go to lunch. Mr. Thompson, is the defendant here?

MR. THOMPSON: Yes, Your Honor.

THE COURT: All right, we will see you back at 2:30.

(Recess.)

THE COURT: Are you ready to proceed?

MS. BRICE: Yes, Your Honor.

THE COURT: All right.

MS. BRICE: I will call as my next witness Doctor Kohanski.

THE COURT: Please come around and be sworn, please, ma'am.

RENEE S. KOHANSKI, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BRICE

THE COURT: You may proceed.

MS. BRICE: Thank you, sir.

Q Doctor, would you please state your full name for the record?

A Renee S. Kohanski.

Q And where do you live?

A I am currently a resident of Georgia.

MS. BRICE: I believe The State has stipulated to her qualifications to testify as an expert, Your Honor.

THE COURT: Is that correct, Mr. Brackett?

MR. BRACKETT: That is correct, Your Honor.

Q Doctor Kohanski, how many times have you testified in court?

A Approximately fifteen times.

Q And is that in regards to matters that are criminal in nature?

A Most of the time the issue at hand was competency to stand trial and criminal responsibility.

Q And of those times how many times did you testify for The State?

A I would say approximately ninety-five percent of the time I was called as a State's witness.

Q And do you know Mar-Reece Hughes?

A Yes, I do.

Q Can you describe your initial contact with Mr. Hughes?

A I first met Mr. Hughes in August of 1994. At that time Doctor Donald Morgan had actually examined Mr. Hughes and was going to be testifying as to his competency to stand trial. What he was going to testify he had found out that there was going to be contested testimony and so he thought it would be appropriate to bring his fellows, psychiatrists who were training under him, to observe the testimony and to observe the testimony when you have differing opinions. So we went to observe this and at that

time I had occasion to meet Mr. Hughes. When we arrived, initially, as I stated, there was a discrepancy one expert felt that he was not competent and Doctor Morgan had previously felt that he was competent and so to address that issue what was done was for all the doctors present to get together with Mr. Hughes and perform an examination.

Q Who was present on that August, 1994 date?

A At that time Doctor Barnard-Dupree, Doctor Morgan, myself, Doctor Tidler and Doctor Gunter Justice, who were also fellows, Mr. Schusterman, Mr. Lewis, Doctor DeWitt, Doctor Connie McKee, who had previously evaluated Mr. Hughes, Solicitor, Mr. Tommy Pope, and the Assistant Solicitor Keith Giese.

Q And subsequent to your initial contact with Mr. Hughes what type of relationship did you have with him?

A After having met him that day and having had the opportunity to observe Mr. Hughes' thought processes, it was clear that he at that time was not competent to stand trial. The judge had ordered him to be restored to competency and I believe initially he first went to Gilliam, but ultimately he ended up at William S. Hall Psychiatric Institute. When he came to William S. Hall, I was his treating psychiatrist.

Q And explain to me what type of relationship the two of

you built from that point forward.

A As his treating psychiatrist I had a number of functions. One function was that which the court asked me to do, which was restoration of competency so that he was able to have his day in court. Another function was treatment of his mental illness. So as a treating psychiatrist I was responsible for overseeing all the care that goes into those two aspects of his treatment. What that would entail would be a combination of psychological evaluation, evaluation of his social history, evaluation of his current level of functioning, evaluation of how he was doing at the hospital and then recommendations for treatment of his symptoms of schizophrenia, which we determined him to be suffering from.

Q And what is the goal of treatment?

A Again, in the case of Mr. Hughes it was two-fold. One, to treat his symptoms of active psychosis and, two, to restore him to competency to stand trial.

Q And as his treating physician, what type of treatment occurred?

A There were a number of different modalities. When Mr. Hughes first came to our institution, he was extremely paranoid, not trusting people, suspicious, not making sense when he talked, what's known as loosening of association, so one very important aspect of treating Mr.

Hughes was the administration of medication to allow his thoughts to become more organized. This was particular difficult initially with Mr. Hughes because Mr. Hughes did not want to acknowledge that he had a mental illness. In fact, when he first came to the hospital, he would have rather had anything else in the world happen to him including possible death penalty than to be regarded as mentally ill. So he did not want to take medication and he was very suspicious about taking medication and, therefore, medication had to be administered against his will.

Q And based on your treatment did you reach a diagnosis?

A As I have said before we felt that he was suffering from schizophrenia paranoid type.

Q In reaching this conclusion did you work with any other physicians?

A I worked under the direct supervision of Doctor Morgan. I worked in consultation with Doctor Barnard-Dupree. I also worked in consultation with other staff psychiatrists. Whenever you are going to give someone medication against their will, it is required that you have the opinion of another psychiatrist that person is in deed in need of medication, so there were many psychiatrist/physicians who were on some level involved in his care.

Q And you have testified in reaching your diagnosis you use various tools, for example, gathering a social history, examining other documents that have already been prepared as far as I think in Mr. Hughes' case there were records from prior stays at William S. Hall as well as Gilliam, is that correct?

A That's correct.

Q Also based upon your own observation, is that an accurate statement?

A Is what an accurate statement?

Q That you also based upon your own observations of Mr. Hughes.

A Oh, yes.

Q Okay.

A Uh-huh.

Q And so if you would describe the contact that you had with Mr. Hughes during this period of time.

A Initially I had a great deal of contact with him and what we'll often do with somebody who is distrustful, suspicious and scared is we'll keep the individual time down to a minimum, but we will have multiple contacts. So when Mr. Hughes was first admitted to our hospital, I would see him perhaps in one day several times, maybe three, four or five times. Of course, I would observe him any time I was on the ward. And as he became more stable

the need for these frequent, but limited time interventions was lessened, so that I could see him for longer periods of time on occasion less often.

Q How long would you say it took you to build a trusting relationship with Mr. Hughes?

A It really required the medication to reach the level before we could really have any kind of trusting relationship, so there was a combination of things going on, which was that I was giving him space and respecting his autonomy at the same time observing and treating him and giving him medication. I would say probably he began to trust me more immediately after approximately four weeks, three or four weeks. And probably at some point, even from the beginning, even in his illness, he knew that my goal was to help.

Q In light of some of your previous testimony you testified to the fact that Mr. Hughes was very reluctant to admit to having a mental illness. Could you describe that a little bit further for me?

A When Mr. Hughes first came to our hospital he asserted that he did not need to be in the hospital, didn't want to be in the hospital, was not in need of treatment. He was adamant about that. When he spoke to me, he did not make sense. His sentences would come together as if they ought to make sense and you would think that they should make

sense, but when you listened to the content of what he was saying, it wasn't coherent.

Q Could you give me an example of that?

A Yeah, let me just go back to the admission. When I first met him in my interviewing him for admission, he had been on safekeeping status and so I asked Mr. Hughes what does it mean to be on safekeeping status and he replied and I quote "Requirements of isolation of self, then looking to have it to process that dictative action has always been into silence." You know, when you listen to these words, they sound like they should make sense, but they don't and that's a symptom of schizophrenia.

Q Going back you were testifying that he was adamant that he was refusing mental treatment, is that correct?

A He did refuse. He adamantly refused and, in reviewing the chart, there's numerous documentation of where I say that the medication was being administered under duress and against the wishes of Mr. Hughes. So that even in the beginning when I was -- my point before was that I was trying to explain to Mr. Hughes his symptoms of mental illness, trying to illustrate them to him, and he was not able to appreciate them or recognize them. And when we would have conversations where I would even say because I didn't want to give him his medication against his will, I wanted him to take it on his own accord and if I would say

things to him that without medication you could possibly get the death penalty, then he would say "Then I would rather have the death penalty." He did not want to be mentally ill.

Q And his lack, and I am going to say for lack of a better word, lack of cooperation with you and the very beginning, okay, as far as taking the medication and acknowledging his mental illness, how did he cooperate, for example, in psychological testing?

A Again, this was consistent with his view of himself and not wanting to be regarded as mentally ill. Testing such as IQ testing, which is a non-intrusive, non-personal kind of questions where you are determining someone's intelligence he would cooperate with. He cooperated with the IQ testing. Another examination, which is the MMPI, which is the personality inventory that attempts to elicit things in a person's character structure, he did not want to answer those questions because he said they were quote "too personal." I expect he was afraid that we might appreciate, even though we knew already, but we might have further evidence to support how psychotic he was and, in fact, the MMPI can show that.

Q So, basically, he also refused other indications that would tend to point to his mental illness?

A Correct, initially.

Q But he has completed those testings at this time?
A Subsequent to that after he received medication and treatment.
Q And were any of the results contradictory to the findings that you, Doctor Morgan, and Doctor Dupree made?
A They were not.
Q Explain to me what the purpose behind his medication is.
A Because of the medication that he is on is called anti-psychotic, the specific medicine that Mar-Reece takes is called Haldol and the form of it is a deconoate, which is a long acting injectable form. What the medication does is restore -- in schizophrenia there is an imbalance in the brain chemistry the neuro-transmitters in the brain -- put simply the medication helps to restore the balance and that is as simple as I can put it. The medication will restore that balance that the illness has produced.
Q And what type of effect has the medication had on Mr. Hughes?
A He is now coherent and he makes sense when he speaks. He has insight into his mental illness. His behavior is also dramatically different. When he first came to the hospital, depending on your perspective and how you looked at Mar-Reece, you could say that he was uncooperative. Somebody looking on the outside might say that was

uncooperative. My interpretation was that it was psychotic, so that when the medication was working, then he was cooperative. That doesn't mean he was uncooperative - he was cooperative, though I never really believed him to be uncooperative, so that's probably not a good example. It allows him to think clearly, to express himself, to receive information from his environment and interpret it appropriate and not in a paranoid or idiosyncratic fashion. It allows him to be here in court with us today.

Q And based on your observations how does that thought process differ from the thought process you observed in August of 1994?

A Again, the man in August of 1994 in my opinion was grossly disorganized and psychotic. When he spoke, he didn't make sense. He had the complex system involving numbers and colors that I could not really understand it. He was suspicious, guarded, questioning everybody's motives.

Q Once the finding or diagnosis of paranoid schizophrenia was diagnosed, did you later have to make a determination as to his criminal responsibility associated with the death of Inmate Williamson and the assault on Inmate Gorth?

A Yes, we were asked to do that by the court.

Q And what findings did you make in regards to that?
A It was our opinion that at the time of the commission of those crimes Mr. Hughes was suffering from paranoid schizophrenia and as a result of that mental illness he was unable to appreciate the wrongfulness of his actions or even recognize his behavior as wrong.
Q And explain to me, I know I may be being redundant, but, please, explain to me how you came to that determination.
A It was a complicated process and it's taking all the pieces and I'll go through them and putting them all together starting back when he was in our hospital for the first time and then going forward in time and looking at his mental status, he repeated mental status examinations, documents from the Solicitor's Office at time of the crime, documents from the Mental Health system around the time of the crime and getting into some of the specifics of what we formulated that when Mr. Hughes first came to William S. Hall Psychiatric Institute, this was back 10-26-92 through 12-22-92, he was there for an evaluation on another issue. And at that time we felt that there was no overt psychosis or no overt mental illness. What was noted in the record is that there was a period of approximately I think one week where he wasn't bathing and the behavior was not what it had been previously. We then

had him leaving our institution and going to an environment that is more stressful than the hospital, which was a jail. And the next contact we had was -- well, there were several contacts, but the next one that I thought was relevant was the contact in the Mental Health Center in December of 1992 where he's reportedly being paranoid. Again, we are not getting any gross psychotic symptoms, but we are getting a picture of perhaps somebody whose condition is deteriorating.

Q And this was in the summer of 1992?

A That's correct. So what we have, first we have him in our hospital in October of '92 with no gross psychotic symptoms for the period of one week where his behavior is odd or unusual.

Q How do you account for that?

A Now in retrospect knowing that he has paranoid schizophrenia it is consistent with that particular illness which has a fluctuating and individual course. There's something in paranoid schizophrenia called a prodromal phase of the illness. That's before the illness actually manifests with frank psychosis, but there's a decline in functioning, odd or unusual behaviors. And it's not as if a person has one prodromal symptom and then goes to an active phase or has two prodromals. There's no formula. Some people can have prodromal symptoms and never

progress to an active phase. Other individuals can have one prodromal and have an active phase and then go into what's called a residual phase. In looking at Mr. Hughes' illness, our conclusion is that when he was in the hospital that represented that one week of unusual, odd behavior representing a prodromal phase to his illness.

Q And this was back in October of 1992 through December of 1992?

A Right; I would have to get the medical records, which I don't have, Doctor Morgan has it, to find the exact date of that week, but somewhere in that time line is where that occurred.

Then we have him going back to jail, which is a more stressful environment than the hospital and why that's important that if someone has a predisposition to psychosis, if you stress them, they are likely to induce the psychosis. So if you are in a hospital which is safe, people care for you and you go some place where that's not the case, there's a possibility that that will stress you and elicit a psychotic symptom if you have vulnerability to expressing that.

We then have him in there in the prison and then the next incident that comes to our attention at Hall is the next crime, which is in April of 1993. There's a lot of documents that we received from the Solicitor's Office

concerning the events around that time. Some of the statements from some of the inmates who observed him speak to a racially motivated attack; other statements from other prisoners speak to a grossly disorganized psychotic state. And then we also have conversations with the correctional officers after later on going back and asking them about that period of time about Mar-Reece's behavior.

When we try to put together a picture of what's happening and keeping all the options open considering malingering versus psychosis versus, you know, just trying to look bad, the conclusion that we came to with a reasonable degree of medical certainty was that Mar-Reece's behavior was consistent with a grossly psychotic state. Certain pieces of particular relevance were that after he had allegedly committed the act, he turns to one of the other prisoners in the cell and said, "When's breakfast" as if nothing had occurred. When people are extremely psychotic and disorganized, it is possible and often happens that memory for events are not coded or if they are coded, then they are not coded properly. Mar-Reece's response to this other inmate or his question "When's breakfast" as if nothing happened and I think for Mar-Reece no memory was ever coded and nothing did happen there. Not to say nothing happen, the memory wasn't coded he was so disorganized, so psychotic at that

time that he wasn't able to register an accurate memory for what was happening.

Other items to support that was that Mar-Reece understood very clearly that a finding of insanity would help him and he had had numerous opportunities to paint for us a picture of an individual who is extremely crazy and we've asked him and given him opportunity to do this for us and yet he continues to say he doesn't remember. It would be more in his interest if you remembered something that we would all consider crazy like some of the statements that we read in the documents.

Other reasons why we come to this conclusion are also based on the nature of schizophrenia, the fluctuating nature and the best or rather given - let me this will be the easiest way to say it - in reviewing the documents around that time and looking at the course of Mar-Reece's specific illness and understanding the course of schizophrenia in general in trying to come up for explanations for what happened that day with a reasonable degree of medical certainty we feel at the time of the commission of this act, Mar-Reece was grossly psychotic and did not recognize right from wrong.

Q 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?

A 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.

Q So based on your observations and your diagnosis you would find that any character that he exhibited on that day may have been unreliable?

A It was not a representation of the character; it was a representation of his psychosis.

Q Going back, you were testifying as to memory, the fact that he could not log that memory, that part of the symptoms of psychosis is your thought or as I understand it your thought process is so rambled that you cannot pigeonhole a memory as, hopefully, you and I can. At the time that, from your review of the documents back in 1992, do you believe that Mr. Hughes was malingering back in 1992 or that he was in a prodromal phase based upon a review of the documents that you have?

A It is my opinion in looking back at those documents and following the course of his illness that that period back in 1992 represented a prodromal period.

Q How would prodromal stages or stage affect his thought process and perhaps memory?

A It's not -- that would vary depending on how bad the symptoms were. Often times people have prodromal symptoms and interact with the world in a way -- in fact, Mar-Reece demonstrated that in that he was not diagnosed as having a mental illness, so his interactions with the staff while unusual was still intact enough to make people think that he was doing okay. So the question as to how it would register in memory really depends on how severe the symptoms were at the time and looking at the documents back to 1992 I would say at that time he would have been able to register accurate memories perhaps with idiosyncratic interpretations, but nothing grossly psychotic at that point versus somebody who is actively disorganized, not able to form thoughts or express thoughts who can't I would say register a memory accurately.

Q And even under the medication today would he still have problems with his memory or would there be problems with his memory?

A You are talking about right now?

Q Yes.

A The problems that he would have with his memory right now would not necessarily be a function of his mental

illness.

Q Okay.

MS. BRICE: The court's indulgence.

Q That's all the questions I have for you, Doctor Kohanski.

THE COURT: Mr. Pope?

MR. POPE: Yes, sir. May it please the court?

CROSS EXAMINATION

BY MR. POPE

Q Doctor, going back to 1992 that you were just discussing you said in the prodromal stage it would be such that people would think you were doing okay, in other words, you wouldn't see the psychosis you see at a later stage, is that correct?

A That you wouldn't or you couldn't?

Q That you could not see the symptoms that you saw later in your evaluation of 1993, is that correct?

A Correct.

Q And so, in other words, law enforcement would not be tipped off that he may be psychotic when he was in prodromal stage, is that correct?

A That's correct.

Q And Ms. Brice had asked you about the '93 murder case, the jail murder case.

A Correct.

Q And you said character is determined in the absence of psychosis, is that correct?
A That's correct.
Q In other words, you would agree absence a psychosis of some sort then a person's actions would be reflective of their character, is that correct?
A And I would expand that to include not only frank psychosis, but if you are having prodromal symptoms where, when I keep talking about idiosyncratic, what I mean is you will interpret something in a way that is distinct for you with perhaps a twist that you might not otherwise have so that it is possible in a prodromal phase -- what I am trying to do is expand it, I would say, yes, in a psychotic state you would not be able to say anything about somebody's character and then I would possibly expand it to a prodromal phase, but it would depend.
Q Okay, what you are saying and I want to make sure I understand, is be it or prodromal or during the actual phase, mental illness could affect -- if I was mentally ill, I may do something unrepresentative of my character, is that correct?
A That's correct.
Q But the actions I take you could use to judge my character absent a mental illness, is that correct?
A I'm not following the difference.

Q Okay, Ms. Brice -- let me try to break it down into elements then - first, you talk about character and you had agreed that we could judge a person's character through their actions before we get into the mental illness aspect.

A Yes.

Q Okay, so you can judge one's character by their actions. Then what you have testified is once psychosis is there, then you don't feel that those actions truly reflect what may be deep inside a person.

A And I would expand it to more than just frank psychosis.

Q I'm sorry. I keep saying psychosis - various mental illnesses or prodromal stages of psychosis.

A Necessarily not in all cases, but it doesn't necessarily.

Q Okay. Then you would agree with me that if a jury were to find as a factual basis, independent of your opinion, and you said it was your opinion to a reasonable degree of medical certainty, and, certainly, that is your opinion based on what you have evaluated, just as you said he was not malingering, there were times in '94 or, yes, '94 when other doctors said he was malingering, is that correct?

A I would have to check the date lines. There are

periods of time when people felt that he was malingering when we didn't, if that's what you are getting at. I don't know the exact year.

Q Yes, ma'am, I'm sorry, I'll try to hand it up to you. State's Exhibit 28 at Gilliam.

A Yes, yes.

Q And those doctors and psychologists at that time diagnosed him as malingering and anti-social personality disorder at that point, is that correct?

A In contradiction to their own expert, yes.

Q Okay, of course, their expert, one of which is Raymond Kimball and one is Leon Johnson?

A And Doctor John DeWitt.

Q But you would agree in looking at State's Exhibit 28 The Discharge Summary that that was done by the two doctors that are assigned there to, is that correct?

A By Doctor Kimball and Doctor Leon Johnson.

Q And, of course, they are experts in their own right based on their experience, is that correct?

A That's for the court to determine.

Q Yes, ma'am, are you familiar with these doctors?

A I don't know them personally.

Q Okay, you worked with as part of your job with Doctor Morgan, who testified previously?

A Correct.

Q Okay, and so each time in your evaluations you do the best you can and, of course, you are only human, but you do the best you can to make that evaluation with a reasonable degree of medical certainty, is that correct?
A That's correct.
Q Sometimes you are right and sometimes you are wrong, is that a fair statement?
A My opinion with a reasonable degree of medical certainty and it is my opinion. Whether or not any particular individual agrees with it, like yourself, is a matter for interpretation.
Q Or some matter for a jury to determine if they agree with it? Do you agree?
A I agree.
Q And so when Doctor Morgan and Doctor Geoff McKee, who is a psychologist, is that correct --
A That's correct.
Q -- when he indicates, I apologize for not being able to find all of these, --

MR. POPE: I beg the court's indulgence.

When he indicates a document much like the ones -- I'm sorry, that's State's Exhibit 29, much like the ones that you signed when you make evaluations, based on you all's expertise and what you do is based on a reasonable degree of medical certainty?

A Absolutely.
Q And so if he makes this determination as of August 1st and then it changes, it is just that the opinion changed, is that correct?
A As opposed to what?
Q As opposed to, I guess as opposed to him maliciously doing -- I mean, this is an opinion on the same individual that both to a degree of medical certainty ---
A Uh-huh.
Q --- says two different things. So one of them has got to be wrong, is that correct?
A That's correct.
Q So, again, Doctor, I guess my question as far as your evaluation or Doctor Dupree or Doctor Morgan's based on your expertise you give the best opinion you can to a reasonable degree of medical certainty and sometimes it's correct and sometimes it's not, but you do the best you can do, is that correct?
A I did my opinion to the best degree ---
Q I mean, hopefully, you always feel like you are right, but that's not always the case with the diagnosis, but it was evident in this case where it changed half way through, is that correct?
A That's correct.
Q Doctor, we have touched on this a couple of times. One

of the things in the evaluation you say is that the defendant had an opportunity there were times he could have told you he was more insane and he didn't seize those opportunities, is that correct?

A That's correct.

Q And if I understand you use that as far as saying since he does not seize those opportunities, there was a greater likelihood that something may be wrong with him, is that correct?

A No, in trying to formulate an opinion and putting together all the pieces of a puzzle, that's just another piece. That in and of itself is nothing, but couple that with other documents, examinations, evaluations and it adds another piece to the puzzle.

Q Right; and that's a piece of the puzzle coupled with what you have seen from -- I mean, you take everything you can take in from different sources, different reports, what other doctors have said, what evaluations have been done. You just try to gather to make an opinion, is that correct?

A And you try to play both sides. You try to find arguments for all different opinions.

Q And I understand with the DSMIV this is a guide that allows you, in essence, to try to put a square peg into a round hole to try to find somewhere, I mean, everybody's

psychosis could be grouped, but it may be each individual is a unique case, is that a fair statement?

A It attempts to get people talking the same language so that there is certain criteria that you try to fulfill, though it's simply criteria.

Q But, again, bipolar disorder is a whole different ball game from schizophrenia, is that correct?

A Yeah, I was just curious if you actually discussed that document and that particular diagnosis with Doctor Morgan.

Q Yes, ma'am. He said he made a mistake and he said he made a mistake in his diagnosis. And again after the doctors getting together -- I don't mean in any conspiracy fashion -- when the doctors got together and you were present and the evaluation from that is when Doctor Barnard-Dupree was involved that day here at the courthouse and the schizophrenia began to be looked at as an option, is that correct?

A At that point what we called -- I think my admitting diagnosis was psychosis NOS and what that means is that he's got psychotic symptoms. We are not sure exactly what the diagnosis is going to be, but what we are seeing right now are psychotic symptoms.

Q And, Doctor, you became involved basically from that day back in August, I believe it was?

A That's correct.
Q You say, Doctor, at that point you started thinking of the psychotic symptoms either based on what you had seen that day and based on your research and at some later point you then received the file from SLED involving the murder of Mr. Williamson, is that correct?
A That's correct. Actually, I think we got the file from your office; I don't know if it came from SLED. I don't know if that is relevant.
Q Well, it's a SLED file that you all received.
A Okay.
Q And whether it came from my office or from SLED or from the defense, you would give it the same weight, whatever weight you deem appropriate.
A Yes, uh-huh.
Q And so in that particular document you reached at that point before you evaluated that document you had already given a preliminary diagnosis of -- what was it NOS, I'm sorry.
A Right, that document has -- the diagnosis we gave him when he came into the hospital was based on his clinical presentation when I examined him psychosis NOS means that NOS stands for not otherwise specified. It means that there are psychotic symptoms present and what I mean by psychotic symptoms is anything that impairs somebody's

ability to interact with reality. When I said that he had psychotic symptoms, in Mr. Hughes' specific case the psychotic symptoms I was referring to was the loosening of associations. The diagnosis of schizophrenia came later, but what was relevant is that at that time he was clearly psychotic we just weren't sure exactly which one.

Q Okay, so you knew something was wrong --

A Something bad was wrong. We didn't know exactly which bad thing it was.

Q And, again, that was in August of '94?

A That's correct.

Q So that would have been after the doctors at Gilliam had diagnosed him as malingering I think in February of that year, is that correct?

A Let me see.

Q I can hand it to you.

A Let me look around for a minute. That's correct.

Q And so in reviewing and I am now referring to your report that you made regarding the Williamson murder there were a number of inmates that were interviewed on that, is that correct?

A That's correct.

Q And some of them referenced the little green man and some said he was basically malingering, that wasn't the term they used, but some said he was malingering.

A Right.
Q There was information regarding how he had planned to the extent and I think you touched on it of acquiring a weapon?
A Uh-huh.
Q And ultimately attempted to dispose of that weapon, is that correct?
A I don't think I mentioned disposing of it, but I remember noting the procurement of the weapon.
Q And there were also indications of some racial motivation that, again, you noted and you explored the possibility, but you also noticed you said though the other inmates in the cell were Caucasion there were getting along without difficulty, is that correct?
A Right and then the other thing how did Mr. Hughes interact when he's not having treatment and how does he interact when he is having treatment, part of his perceptions about the world with and without treatment.
Q So by the fact that you give him treatment and he is calmer, more sedate, that increases the likelihood at this time he was psychotic?
A No. If you have a delusional belief, and I'm not saying he did I'm just -- if you have a delusional belief that white people are going to hurt you or white people are out to get you, and then you get medication and you no

longer have that belief, how you interact with the world will be different based on your belief, which is a function of mental illness or which can be a function of mental illness.

Q It can be a function of mental illness. Again, it's a matter of expert opinion.

A Correct.

Q Okay. You noted the situation --

A And it was something I wanted to consider.

Q The racial aspect.

A Absolutely.

Q And finally you had to make a call because there was certainly evidence of racism in the statements and there was evidence of psychosis, is that correct?

A Right; and is the racism a function of psychosis, is the racism a function of people interpreting what he is saying and what is your opinion regarding that.

Q And that's your opinion.

A Right and what's my opinion and then what my opinion was.

Q And by the same token when he said things like "When's breakfast," certainly, that indicated to you that that was unusual based on a man's throat had been cut, is that right?

A That's correct; and, also, again, looking at the whole

picture and knowing the illness of schizophrenia.
Q Okay, so again, you say looking at the whole picture, there were other things that at least to some extent predisposed you to believe that there was a schizophrenic situation as of '94, is that correct? As of the first time you were introduced to him.
A That's correct.
Q Okay, by the same token if somebody kills someone and says, "When's breakfast, if they are not schizophrenic, they are just mean and don't care, then that's another interpretation of the same fact situation, is that correct?
A That's correct.
Q And, again, Doctor, I know there were numerous statements. You reviewed I believe a statement of one of the cell mates where the defendant had talked about using an insanity defense or something of that nature, are you aware of that, it was Mr. Waldrop I believe it was?
A Can you just get me the statement?
Q Yes. And, again, I know you reviewed a volume of different materials, but this is the statement from Mr. Richard Waldrop.
A Yes, I do remember reviewing this document and considering this document.
Q And that was my question where the defendant has said

that the other boys made admissions, but Mar-Reece never admitted because he was going to plead insanity and that would get him off. You considered that along with everything else?

A Uh-huh. The other thing that's important to understand is that individuals who are grossly psychotic can also have moments of self-protectiveness.

Q Self-protectiveness in regards to -- I'm not sure I understand.

A In regards to how they are being perceived.

Q Okay, so, again, if I understand that statement or, for example, again, the racial statements they can be evaluated a number of ways. They can be evaluated as a psychotic being self-protective or they could be evaluated as someone malingering or announcing an intention to malinger, is that correct?

A That's correct.

Q And, again, respecting your professional opinion, based on what you've seen and decided - you have decided that it is psychosis that makes him say these racial things or commit these acts or whatever the case may be, is that correct?

A That's correct.

Q But, again, you would agree with me that that is your opinion and that is open to factual determination, is that

correct?

A That's correct.

Q Doctor, I believe I have one more question. Again, this is right on the same line of what I was just asking you. Again, it is open to interpretation, back at the beginning and Ms. Brice was talking about character. If psychosis is present, then my action, whatever it may be toward the bailiff, may not representative of my character, is that correct?

A That's correct.

Q However, if a factual determination was made that psychosis is not present, and I realize I may not be using the proper terms, but a psychotic episode or whatever the mental situation is, if a factual determination was made that that was not present, then that very may well be reflective of my character, is that correct?

A That's correct.

Q All right, thank you, ma'am.

MR. POPE: I beg the court's indulgence.

Q Doctor, you have your copy of the SLED file that came from my office?

A I do.

Q Do you remind if I review it for just one second, please?

Your Honor, if I can take two minutes to retrieve

something from the office? We could take a very brief recess and I think I can finish up on this issue.

THE COURT: All right, we will take a short break.

(Recess.)

THE COURT: You may proceed.

Q Doctor, referring back to the investigation again and I think it would be under Tab 11.

A I don't have it tabbed the way you do.

Q That would be under Mr. Patton's statement.

A My records are not, I'll have to look at your records. Mine are out of order from yours.

Q Okay. The question earlier I had was about the defendant trying to dispose of the knife by flushing it and I apologize I couldn't recall didn't you say -- in your report you talked about disposing of it or acquiring it?

A No, I believe my report talked about acquiring it.

Q Okay and you do agree that there was information about ---

A Yes.

Q --- his attempting to dispose of ---

A Uh-huh.

Q --- it too?

A Yes.

Q Okay. And can you refer to it again and I will be glad

to hand this back to you, you were talking about the defendant talking to Mr. Gaither, he said, "What have you got over there, a knife?" And Mar-Reece said, "Yeah, they've been looking for it, I guess they'll find it this time." Obviously, that would indicate an attempt to conceal it up to this point, is that correct?

A Looking at that one piece of information alone, that's correct, but, again, the point I think is important is you can take any one statement alone or any two or three statements alone and read it either way and the temptation would be to do that because when I was going through it, I could take two or three statements and make it go one way or I could take another two or three statements and make it go another way. The important thing to do in any case that you are evaluating is to look at everything from the beginning to end, all the information you have, look at the clinical picture of the person that you have known, how long have you known him, how well do you know him, look at all collateral sources of information, if possible interview people, and then come up with an opinion. So, when I put together my report, what I attempted to do rather than replicate all the documents that you had, I wanted to take pieces supporting all the different theories and then explained our theory to the best of my ability in that report. But you can pick out one

statement here and I can go through the documents and pick out another statement that would support another position and we could take the document and pick apart statement by statement and I don't think that that would be a true presentation of Mr. Hughes' mental status at the time of the crime.

Q And -- excuse me, I'm sorry. Go ahead.

A Go ahead.

Q Again, and I think you hit at exactly what I am asking under your theory there is certain things that support and certain things that refute it and, again, you said you have to look at everything, but, again, another individual or another expert for that matter could see the same facts and perhaps gain a different theory and it would be a matter of fact for determination for them -- for the jury ultimately, is that correct?

A That's correct and, perhaps, for that reason in this case it is useful that we have several experts evaluate the case.

Q But you agree you could have a hundred experts and The State could come up with one and it would still be a question for the jury or I just could come up with lay testimony, which we have from the inmates, and it would be a question for the jury, is that correct?

A If it were an issue that were going to the jury.

Q Okay, if it was before a jury.
A If it were an issue that were going to the jury. For instance, in NGRI determination my experience has been that it has been an issue before the bench.
Q In a plea situation, is that correct?
A Correct.
Q Okay, I know we are getting in a plea situation. Certainly, in a trial situation the jury will consider that information, is that correct?
A If the defendant wants to go to trial. Are we talking the same thing?
Q I think we kind of are.
A Okay.
Q And so it would be things that you could certainly present to a jury for them to make their determination, is that correct?
A If that were what was going on, yes.
Q Thank you.
REDIRECT EXAMINATION
BY MS. BRICE
Q Doctor Kohanski, of your knowledge are you aware of any of your clients who have been diagnosed as not having any criminal responsibility where it has gone before a jury for determination?
A In all of the cases that I have done, I guess that is

what I was eluding to with Mr. Pope where there was a finding of the defendant lacking criminal responsibility at the time of the crime, the defendant chose to have that before the bench rather than before a jury.

Q That is certainly the defendant's right to choose whether or not he wants a jury trial or not, is that correct?

A That's may understanding of the law.

Q Okay, okay, that's -- you ought to know that.

A Okay.

Q And you are not retained by the defense?

A No.

Q In fact, when you became involved in this case it had to do with an Order of the court, is that correct?

A That's correct.

Q And likewise you and Doctor Morgan are agents of a State Agency, is that correct?

A I received at that time -- I don't recall who I received my paycheck from, but it was either The State or either USC, but we were employed - I don't want to say by The State because that's not accurately exactly.

Q Well, certainly you were not employed by the defense.

A That's correct.

Q So we are not in cahoots with you or Doctor Morgan as far as maybe differing your opinion.

A No.
Q And are you aware of any expert witness --
A Actually, I think my check was from the State of South Carolina.
Q Okay. Are you aware of any expert witness that has been appointed or contacted by The State to dispute your findings?
A No, I'm not.
Q Now, finally, are you in your diagnosis of Mar-Reece Hughes gone through not only previous doctors' statements but you have also gone through contact with Mar-Reece and interviews with other people, is that correct?
A That's correct.
Q And describe for me based on your review of everything what kind of loss Mar-Reece has sustained as far as his intellectual functioning.
A We are actually able to put a quantitative number on that. In 1983 he had IQ testing, which put him in a full-scale IQ of 101, which is right there with the average, 105 average, and then in June of 1995 his IQ dropped to 77, which is over two standard deviations, so it is a significant drop.
Q And what do you attribute that to or do you have a theory on that?
A I would attribute that to his mental illness,

schizophrenia.

Q And are you aware of any other physician who has had more contact with Mar-Reece than you have had?

A I'm not aware of any physician that has. I saw him for the entire period that he was an in-patient, during the time numerous occasions in a single day over several months and then when he was discharged from our institution I continued to follow him on a weekly basis at Edisto.

Q And that is at Broad River Correctional Institute?

A That is correct.

Q And your opinion is not only based on your own interpretation of what you have read, but also based upon the findings of other physicians, is that correct?

A That's correct.

Q Thank you. That's all I have.

THE COURT: Recross?

RECROSS EXAMINATION

BY MR. POPE

Q Doctor, how many cases did you say you were involved in?

A How many have I evaluated or how many have I testified to?

Q Testified.

A I have testified to approximately twelve to fifteen.

Q And you said the majority of those or all of those that you found a diagnosis that the defendant chose to plead, is that correct?

A In my experience, yes.

Q That's just the case of you, your Department they handle numerous cases, is that correct?

A Yes, that's correct.

Q And you are not aware of anything that requires us to put up expert testimony, are you, any requirement of law that says I have got to -- if they put up two, I have got to put up two or anything of that nature?

A The only thing that I am aware of is that if somebody is going to maintain a defense of NGRI that it is an affirmative defense.

Q That's correct; that they would have to put something.

A Right.

MR. POPE: No further questions.

RE-REDIRECT BY

MS. BRICE

Q Doctor Kohanski, what do you understand a plea to be? Do you understand ---

THE COURT: Ms. Brice, I think we have already had ---

MS. BRICE: That's fine.

THE COURT: --- unless I have lost count, I think you have already done Redirect, is that right? Am I

miscounting?

MS. BRICE: No, sir, Your Honor.

THE COURT: All right, you may step down. Thank you. Can this witness be excused?

MS. BRICE: Yes, sir.

MR. POPE: No objection, Your Honor.

THE COURT: We appreciate your time. Feel free to leave.

DOCTOR KOHANSKI: Thank you.

MS. BRICE: I would call Doctor Dupree, Your Honor.

THE COURT: Please come around and you are still under oath.

DAFFERLIN BARNARD DUPREE, having previously been sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BRICE

Q Doctor Dupree, what was your initial contact with Mr. Hughes?

A I was initially contacted by Mr. Schusterman in July of 1994.

Q For what purpose?

A At that time Mr. Schusterman was having an extremely difficult time in working with Mr. Hughes. He had difficulty understanding him. He related to me that his observations of Mr. Hughes at different times ranged

anywhere from being disorganized to mumbling to himself, talking inappropriately and he felt that there was some question of his competency to stand trial and asked me to perform an evaluation.

Q And did you perform an evaluation?

A Yes, I did.

Q And what were the findings of that evaluation?

A My report dated July 27th I found at the time -- do you have your copy of that July 27th report? I just had some quotes I wanted to get from that. I am aware of them, but there are some direct quotes. If you don't need those, I can proceed.

MS. BRICE: I beg the court's indulgence one moment so I can look this up.

Q What was the findings of that report?

A The findings of that report at that time I diagnosed him with psychotic disorder not otherwise specified with a rule out schizophreniform disorder. Also based on his IQ level I diagnosed him with a borderline intellectual functioning. I found that he was not able to assist Mr. Schusterman at that time and felt that he was not able to go forward to help with his defense. I did not determine criminal responsibility or capacity to conform at that time.

Q And what basis did you rely on in those findings?

A On the evaluation of competency I based that on my observations of his relationship with Mr. Schusterman. Once again I reviewed the medical records to follow his course for some time period. One of the things that was extremely significant in looking at his course that was leading up to this time was the report of Doctor John DeWitt. Doctor DeWitt is a forensic psychiatrist in private practice who was a contract physician at the Broad River Road facility and had been asked to see Mr. Hughes because of his inappropriate behavior. Doctor DeWitt as early as July of 1993 in his medical notes reports and this is a direct quote "Shallow, bizarre, thought content was paranoid. Patient had poverty of thought, irritable, has no insight to the inappropriateness of his thought and behavior. Probable psychosis, needs sterile in-patient evaluation." And on more than one occasion recommended that. And as I proceeded to look through the records to see if he had changed in terms of his mental status that would lead up to this time, I saw other indications of Doctor DeWitt recommending that. He was not hospitalized at that time and appeared to continue to decompensate. His report I used, as I stated. In addition to that I also looked at his records of family history as I tried to determine whether there was some predisposition that he would possibly have a mental illness that would make him

not competent, so that was something I also reviewed as well.

Q Did you have at the time that you made that finding a complete family history?

A I had a partial family history, but I did have some information that there were several family members who were mentally ill although at that time we did not have a specific diagnosis of his family members.

Q And I assume that your findings were also based on Mr. Hughes' contact with you as well?

A That is correct. My initial contact with Mr. Hughes at the Broad River Road facility consisted of an interview that was so rambling and disorganized that I could not take notes. When I saw down in a chair, he touched my foot with his foot and I asked him why he did that and he said, "I needed to find out if I can trust you." He began to explain a very complicated and incoherent explanation of a numeric system that consisted of dates and times and birthdays that was absolutely not understandable. He would get very tangential, meaning I would ask him one question and then he would continue to go off on different topics. He would at times just stop talking and then pick up again on another subject I had asked him about previously. His mood was depressed as I spoke with him. His ability to relate to me was very non-spontaneous. If I asked him a

specific question, he would relate the answer, but he would not continuously give and flow information as you would in appropriate social contact. I also noted that he in terms of his intellectual functioning it was clear that there was a gross decline from previous levels of functioning.

Q And after, and I assume this was your initial contact with Mr. Hughes?

A That's correct.

Q And after that initial contact based upon -- what transpired as far as your subsequent contacts?

A After that initial evaluation, Doctor Morgan was subsequently contacted and in conjunction with Doctor Geoff McKee, a forensic psychologist, conducted their own independent evaluation and felt that in their opinion Mr. Hughes was responsible. Subsequent to that at the Order of the court attended a hearing in August and at that time prior to the court proceeding Doctor Kohanski, Doctor Morgan, Doctor John DeWitt, Doctor Connie McKee, the original physician who completed the evaluation, two of the forensic fellows at Hall Institute and all attorneys involved spent two hours with Mr. Hughes in this building doing a comprehensive assessment and at that time at the end of the interview it was clear that he was not competent and we proceeded from there to the judge's court

order.

Q And, finally, it was my understanding that he went to William S. Hall for treatment and evaluation?

A That's correct.

Q And the treatment was to assist him in becoming competent, is that correct?

A That is correct.

Q And I believe also at that time he was diagnosed?

A That's correct.

Q And what was his diagnosis?

A Schizophrenia chronic paranoid type.

Q And did you also reach the conclusion that Mr. Hughes was not criminally responsible of the murder and assault that occurred in April of 1993?

A Yes, 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?
A Only that I believe I had more social history available to me that was coming in 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.
Q 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?
A No, those actions were a direct result of mental illness and not reflective of his character.
MS. BRICE: I beg the court's indulgence.
Q Doctor Dupree, are you aware of the findings that were previously rendered by Doctor McKee and Doctor Morgan?
A Doctor Connie McKee or Doctor Geoff McKee?
Q I believe Doctor Geoff McKee.
A Doctor Geoff McKee, yes, right.

Q And what were their findings at that time?
A The initial evaluation?
Q Yes, ma'am.
A The initial evaluation when they saw Mr. Hughes is that he was competent to stand trial.
Q Are you aware of a change in their finding?
A Yes, I am.
Q And what is that change?
A Subsequent to the past year and treatment with Mr. Hughes Doctor Morgan now feels that he is competent to stand trial. He and Doctor Geoff McKee, who is a forensic psychologist, feels that he is competent to stand trial and, in addition, Doctor McKee in his report states that as a result of the psychological testing, which he finally agreed to do after he was medicated, that he does not want to appear mentally ill and there is no diagnosis of malingering in Doctor Geoff McKee's report.
Q Okay. And when you refer to "he," you are referring to Mr. Hughes?
A Mr. Hughes.
Q And so he did go back through a psychological exam with Doctor McKee?
A Yes, he did.
Q And Doctor McKee likewise through his findings agreed with your opinion?

A That's correct.
Q In your opinion or with your knowledge in what frequency has a person that has been found not criminally responsible?
A How prevalent is that finding?
Q Yes, yes.
A That's a very rare finding.
Q Very rare?
A Yes.
Q In that rare circumstances where it would come before the court is it equally as rare that he would be found to be criminally responsible?
A In my experience when I have gone forth with that opinion I have not had any times where he was found responsible in my experience.
Q And, finally, in regards to Mr. Hughes' intellectual functioning, please, if you would, go through what was his intellectual functioning, what is it currently and what is that attributed to?
A This is extremely dramatic because it is very unusual for us to have such a clear documentation of a person's loss of function as a result of their mental illness. This gentleman functioned at a level where he was able to obtain a GED as a teenager and tested at 101, which is average intellectual functioning. Most people walking

around the street, if you took a sample, would be of average intellectual functioning. Some eleven years later, in June of 1995 once again tested by Doctor Geoff McKee, a forensic psychologist, who has twenty-five years of experience in forensic psychology, tests him out in the seventies, 77, I believe, which places him at the borderline intellectual level of functioning. Now six more points and he would have been diagnosed mild mental retardation, which is the cut-off for that diagnosis. So, clearly, over the years if you had a thirty point drop in terms of objective testing, it would be quite apparent in your level of functioning in all areas of your life.

Q And can you attribute this decrease to anything?

A According to Doctor McKee, and I concur with his opinion, it is a result of his mental illness.

Q Thank you. That's all the questions I have, Your Honor.

CROSS EXAMINATION

BY MR. POPE

Q Doctor, is this the same Doctor McKee that first said he had bipolar disorder and was competent before you came into the case, is that correct?

A The statement of bipolar disorder evidently was an error on the front page of that report. I know what you are referring to.

Q Yes, ma'am.
A Yes, that is not his diagnosis. That is a typo.
Q Okay, it's a typo, but then ---
A But that is the same Doctor McKee.
Q Okay.
A A forensic psychologist.
Q But this is the same Doctor McKee that at the beginning of August said that the defendant was competent when you said he wasn't, so you all were testing at the same time coming up with two different answers, is that correct?
A That's the same Doctor McKee with less data available to him.
Q Okay, and you had more data and you have been retained by the defense, is that correct?
A That's correct.
Q And you talk about a drop in testing, certainly, a drop in testing can be the result of some mental deficiencies or problems that you relate, is that correct?
A That's correct.
Q Okay, likewise, a drop in testing if one chose not to apply themselves through the test they could also drop in testing, is that correct?
A Well, if you have Doctor McKee's report, I can show you where he states that this is a valid profile and a

valid testing. No, the second report, June of '95.

Q That was a different report than the --

A That was the second report issued and based on his observation that was a valid profile and there was no evidence that he was malingering or not putting forth his best efforts.

MR. POPE: Your Honor, I could continue to go forward, but I would like the opportunity to have a copy. This is a document on which she has relied to base her opinion and I would like to get a copy of it.

THE COURT: All right, is someone from your office in here that can go get a copy made?

MR. POPE: Yes, sir.

Q Before she goes, Doctor, also you said you relied on Doctor John DeWitt's notes? Do you have those with you?

A I don't think so. Those are from the extensive volume of material.

Q I can go forward. I can just get a copy from you after the testimony.

A Okay.

Q As far as Doctor DeWitt's records when you formed your report that was Doctor DeWitt I think was in you said sometime in '93?

A In July of 1993.

Q And that was the part that you referenced in your

report when you talked about that he needed to be evaluated, that Doctor DeWitt had said that several times?

A Yes, had made that recommendation as a part of his evaluation.

Q And I believe you quoted in your report and you just indicated about the shallow, bizarre, thought content that he referenced in July of '93, is that correct?

A Yes, I did.

Q Okay and then you had a paragraph referencing the Gilliam situation in February of 1994?

A That's correct.

Q And I note in there that you talked about the things that Mar-Reece Hughes had reported.

A Okay, what page are we on?

Q I'm on your report on page 2 at this point, you said he reported audio visual hallucinations -- I'm sorry, -- auditory ---

A Okay.

Q --- and he expressed these beliefs and you said he was observed six days and found not mentally ill diagnosis of malingering, is that correct?

A That is correct.

Q Okay and that was two doctors that did that evaluation?

A No, that was a M.D., a psychiatrist, and I believe

Doctor Johnson was a Phd.

Q Okay, I'm sorry, you all don't call them doctors.

A He's not a medical doctor or a psychiatrist.

Q And this, of course, you reviewed the Gilliam. I apologize I can't keep up. We had gone through these earlier as far as what you relied on.

A Yes.

Q And, of course, they weren't retained by The State or the defense?

A No, they were not.

Q Okay. The status of Mr. Hughes was by those doctors at discharge "current status at discharge was a diagnosis" --

A Do you want me to read that to you, Mr. Pope?

Q Please, ma'am, read it into the record.

A "Current status at discharge: Mr. Hughes was found not mentally ill by two designated examiners as he does not meet the criteria set forth for judicial commitment. Additionally, he appeared extremely manipulative and self-seeking and continued to be selective in response to specific questions along with selective lapses of memory as well. Diagnosis on Axis I - Malingering; Axis 2 - Anti-social personality disorder. Axis 3 - no diagnosis.

Q Again, you say this was a doctor and a Phd at Gilliam that made that determination in '94, is that correct?

A That's correct.

Q And, again, going to the whole issue and the mental evaluation I think the previous doctor had talked about a theory. A theory - this is what your opinion is based on what you have observed, is that correct?

A That's correct.

Q And so when you tell the court that that would not the night of the Williamson killing that did not show Mar-Reece Hughes' character that would be correct if the jury found factually that he was schizophrenic, is that correct?

A That's right.

Q Likewise, if they determined that he was just mean, then it would show his character, is that correct?

A That's correct.

Q Again, what I am getting at the issue is your opinion, certainly your expert opinion, but your opinion based on what you have evaluated, is that correct?

A That's correct, but I think it is important to point out when you weigh the evidence of Doctor Kimball's opinion that he only stayed in Gilliam six days and that we have already established that even at two months at the Hall Institute Doctor Morgan has admitted he missed that diagnosis and Doctor Morgan is a Board certified trained psychiatrist with twenty-five years of experience.

Q Okay, so Doctor Morgan had him two months and he has had all of that experience and how long have you been in practice?

A I have been in practice since 1988.

Q Okay, so seven years?

A Yes.

Q And, of course, you used to work with Doctor Morgan.

A Doctor Morgan trained me.

Q And so, again, he had one opinion that since changed to be in line with your opinion, is that correct?

A That's correct.

Q I think Ms. Brice had asked you about the different cases and you never had a case that was diagnosed that you said was lack of capacity that they didn't find so, is that ---

A My experience of the times I have gone to court that was by the judge I may add.

Q By the judge.

A Yes.

Q Okay. Doctor, when you mention a reasonable degree of medical certainty, that's how you express your opinion, is that correct?

A Yes.

Q Okay, and so you are not here to tell us your opinion is infallible, you are just telling us based on your

experience that that's your opinion based on what you have seen.

A I'm not saying that I am infallible, no.

Q And so you can't say beyond a reasonable doubt that he was schizophrenic at that time, you can only say that that is your opinion based on what you have seen.

A Our standard is a reasonable medical certainty.

MR. POPE: I beg the court's indulgence.

Your Honor, I would like to review the copy.

THE COURT: Go ahead. While you are doing that, would you get the exhibits?

Q Doctor, going back and talking about the testing and the doctor said he gave forth a good effort and did his best, that appeared from what the doctor observed, but, again, you said Doctor McKee has had years of experience, is that right?

A That's correct.

Q And, again, I would say that is the same Doctor McKee that had initially adhered to the competency evaluation that changed.

A That's correct.

Q So, again, the whole field, and I'm not making light of it, but it is a matter of opinions, is that correct?

A Opinions supported by all medical records and information, yes.

Q And your experience.
A That's correct.
Q And, Doctor, you are aware that in the various files, much like Gilliam, and, certainly, there is things, like you can explain, well, they didn't get to look at him as long, but there is ample evidence to the contrary of reaching these points and I realize that you have evaluated, for example, there is some evidence that he planned and got the knife and then there's some evidence that upholds your theory?
A Yes, there's statements that supports all of that, yes.
Q And, likewise, in the various evaluations there are some indications of malingering and then there is evidence that you have weighed in that feels otherwise, is that correct?
A That's correct.
Q Thank you.

REDIRECT EXAMINATION

BY MS. BRICE

Q Doctor Barnard, the two doctors that saw Mr. Hughes for the two month period of time in 1992 was Doctor Morgan and Doctor McKee, is that correct?
A Doctor Morgan and Doctor Connie McKee, who was a fellow in training at the time. Doctor Geoffrey McKee saw

him too, attempted to do psychological testing. At that time he agreed to the IQ testing, but he was paranoid and would not do the personality profile testing.

Q And Mr. Hughes finally completed that testing, is that correct?

A Yes, he did.

Q And are these the findings that you and Mr. Pope have been referring to?

A Yes, they are.

Q And, also, I am going to hand to you this statement of Doctor DeWitt and Doctor DeWitt, I believe, was the -- was he a forensic psychiatrist as well?

A Doctor DeWitt is a forensically trained psychiatrist.

Q Okay and in July of 1993 what was his pre-diagnosis of Mr. Hughes?

A You want the entire statement? Okay, here. "Probable psychosis, patient need thorough in-patient evaluation at William S. Hall Psychiatric Hospital." That was where Doctor DeWitt wanted Mr. Hughes admitted and the only reason he requested Gilliam is he could not get him admitted to Hall Institute because of his safekeeping status.

MS. BRICE: I would like to admit these documents into evidence.

MR. POPE: For the purposes of this hearing?

MS. BRICE: Yes, sir.

THE COURT: Be received.

(Defendant's Exhibits 3 and 4 marked and filed.)

RECROSS EXAMINATION

BY MR. POPE

Q I'm sorry, Doctor, is this a reference from Doctor DeWitt, is that correct?

A Yes, that's one of the forms. I believe there were some other references.

Q So, the dates, this is July --

A July of 1993.

Q Right, July of '93, five months after the February incident?

A That's correct.

Q And then this other one is, of course, June of ---

A '95.

Q --- '95.

A That's correct.

Q Thank you, ma'am.

MS. BRICE: May she be excused, Your Honor?

THE COURT: Yes, you can step down.

Are you through?

MS. BRICE: Yes, sir.

THE COURT: I appreciate your coming. All right, anything further?

MS. BRICE: Not by way of testimony, Your Honor.

THE COURT: All right.

Anything from The State, anything further? Let's just regroup and see where we are. Is that all the testimony The State intends to present other than I know we have two out-of-state witnesses involving the Lyle matter which we will take up later.

MR. BRACKETT: The Lyle matter and the identification, I believe.

THE COURT: And the ID.

MR. BRACKETT: That would be everything as far as suppression of the statements that is concerned, everything as far as the suppression of the identification that you have heard from, all the witnesses that you have heard from, and we had not intended to put up any proffer as it were in regards to the issue of the second jail murder. We had not intended on putting any witnesses to say what they would say. It's their Motion to suppress and we can proffer what the testimony or what The State would intend to show or what our witnesses would show or what we would attempt to show in the penalty phase.

THE COURT: Well, I have read the Smith case that the Solicitor eluded to and from that as I understand it, of course, I know that that's a trial and not a Motion, but it seemed to indicate that while, and, of course, we are

dealing with not the issue at hand, we are not dealing with the current indictment, we are dealing with the April '93 situation, but where the defense puts in evidence of insanity, the burden shifts back to The State to rebut that with testimony, at least that's my reading of the Smith case, so I would believe that The State needs to put up some testimony. Right now what the court has is simply an incident for which he was indicted and then testimony that he was not competent for culpability purposes at that time and that the testimony is that his actions at that time would be the psychosis and that they, therefore, are not representative of his character. That's all the evidence in the record right now.

MR. BRACKETT: Yes, sir, if they are proceeding primarily on the theory that he's insane, that is still a factual matter that has to be determined by the jury and even the cross examination of the psychiatrist who has been testifying on behalf of the defense, the cross examination itself alone is enough to raise the question of credibility of the evidence and make it a question of fact.

THE COURT: I am just telling you if that's what you all want to rely on, that's fine, I'm just telling you the Smith case, which I was aware of and I pulled it and I read it this afternoon, and I will be glad to look at it

again. It was called to my attention by the Solicitor and, of course, it does have to do with trial and it does indicate that it is a fact question, but the question then becomes is it to be resolved by the court at this time or do you have to present something other than just and maybe it's been done, maybe your argument is, well, we don't have to put up anybody else because the witnesses themselves have said that it's their opinion, which, of course, we all know that's their opinion. We know that it's not binding. But where it is the only evidence, I don't know. I am obviously not making a ruling at this time.

MR. BRACKETT: I beg the court's indulgence for one moment.

We do have, obviously, you have heard from the cross examination of The State's witnesses -- of the defense witnesses. We do have two psychiatrists at the Gilliam Institute who examined him and found him to be malingering in February of 1994, malingering a mental illness. The State does have two or at least two or possibly three witnesses, lay witnesses, who would testify that he was not insane or he was not crazy at the time of the jail murder. And The State has the evidence surrounding when you plumb the depths of the expert opinions and you find out they are based in part on the SLED report that was

done and the statements that were given in the course of that SLED investigation, you find -- and then you compare that with the technical, legal definition of what insanity is and, that is, an inability to appreciate the difference between moral and legal right and moral and legal wrong, there is a factual question that is created just by that, just by questioning the experts with that information from the SLED investigation that he did attempt to conceal, he did conceal a knife for an appreciable period of time indicating an awareness that it was wrong for him to have it in the first place and then attempted to conceal the knife and destroy the knife or ---

THE COURT: I hate to cut you short. My only question was do you have any witnesses. I am not asking for the argument on the decision right now. I just want to know where we are.

MR. BRACKETT: We don't have any right now. I can tell you that, Judge. That doesn't mean that we don't want to get some. I mean we do have them; they are just not here. The witnesses that I had, the lay witnesses, one of them was sent back to the Department of Corrections after we made the ruling on the suppression statement that the civilian witnesses wouldn't have to testify and rather than keep him here for ten days we moved him back to the Department of Corrections. He's not here.

MR. POPE: I beg the court's indulgence.

MR. BRACKETT: Your Honor, I guess the question comes down to if you are going to determine that it is a factual question for the jury based on what you heard, we don't need to -- there's a threshold question ---

THE COURT: Give you a ruling before you decide to put up any more witnesses? Is that what you are asking me to do?

MR. BRACKETT: No, sir, no, sir. THE COURT: If I rule on it, that will be the ruling, we are going to close it. I mean I'll be glad to leave this hearing open on this since we are also leaving it open on Lyle and the ID as to the two out-of-state witnesses.

MS. BRICE: Your Honor, if I am going to be forced to litigate a murder trial, we're in a murder trial, and the sentencing phase of the killing of Brent McCants, I would like some notice as of today.

THE COURT: You are on notice of today, as of right now. They are telling you they are intending to do that. You are on notice. You had better be prepared. You might not have to, but you are on notice; I can't think of any other notice, I mean.

MS. BRICE: Thank you, sir.

MR. BRACKETT: Your Honor, we will present evidence. We don't want to leave the ---

MS. BRICE: Your Honor, they knew the Motion was today. This Motion has been pending for over three weeks. They knew that this hearing was today. If they wanted to provide witnesses, I would submit that they should have had witnesses here today. They heard our testimony; they have heard our case. Why are they not prepared to go forward with their witnesses today. They knew that we were going to do this hearing today. This is essentially the crux of our case and, yet while I understand, Your Honor, that I am on notice, the basis of my preparation for the sentencing phase is going to rely heavily on the introduction of the evidence and they were on notice as well, Your Honor, that this Motion was going to be heard today.

THE COURT: That's true.

MR. BRACKETT: Well, Your Honor, the burden was on them. We did not realize that we ---

THE COURT: It shifted.

MR. BRACKETT: --- were going -- they made the Motion to Suppress. The burden was on them.

THE COURT: I'm just saying they may have carried their burden, they may not. Do you want to rule today or are you asking for some extra time and their position is correct. You were on notice that this was going to be taken up. And, again, your office was the one that brought my

attention to the Smith case.

MR. BRACKETT: Yes, sir. Let me see; we might have one witness next door. If I can have five minutes to check.

THE COURT: What's next door?

MR. BRACKETT: The Detention Center.

MR. POPE: Your Honor, the witness, -- I beg the court's indulgence -- the witness, Broadus Strain, was present and I would proffer that Mr. Strain would testify as to the defendant's actions as opposed to his understanding of the rules, in the jail at that time. Again, the reason we don't have the witnesses here and I think Mr. Brackett made it clear it is our position, it has been and it is that this is a question for the jury. Again, we can see if Mr. Strain is present out there today and we can get him and bring him back up.

THE COURT: Well, I caution everybody that any case of this type is going beyond this courtroom and regardless of what the rulings that I make, if there's an absence in the record of something, I mean, I'm just giving everybody an opportunity to make as full a record as possible because I don't think any of us wants to be looking at this case down the road again, particularly, if it has to do with a remand because of something we have overlooked at this point. I am trying not to overlook anything. I'm giving

everybody a full opportunity not to overlook anything. If you are comfortable with me ruling today, I will go ahead. If you want to get Mr. Strain over here and you can do it in just a few minutes, then we'll go ahead. That's your call not mine.

MR. POPE: Yes, sir. We would like a brief recess, please, Your Honor.

THE COURT: Well, if you can get somebody to be getting him over here, maybe we can look at the Motions that we already have completed. There are a few of those.

MR. POPE: Yes, sir, I understand. Based on this, Your Honor, if we could have five minutes, I would appreciate it.

THE COURT: That's fine, okay.

(Recess.)

MR. POPE: As to witnesses, I believe we have got one that is being brought over now and we have got one that is supposed to be at work at the City and we are trying to get him here now. Mr. Brackett will be out of the courtroom working on that, but I am ready to deal with the Motions.

THE COURT: Okay, let's then, this might be a good time to recap and see where we are. Looking briefly at the index that's sort of a guideline, the one that was handed up. Number 1 Motion for Identification. We have

had a hearing on that with the exception that we still have the two other witnesses who I believe examined and picked individuals, one or more, out of a photographic line-up, so I am not going to be able to conclude that matter until such time as we hear from those witnesses. I guess I can go ahead and rule on the one that we have heard today, but I'd rather just go ahead and do it all at one time. That's the plan.

As to the suppression of statements. Briefly, I think I know all the parameters and I've heard the evidence, but I am going to give each side maybe five minutes to kind of --

MR. POPE: Your Honor, if we could skip that one, that is one that Mr. Brackett was going to handle.

THE COURT: All right. Number 12 and 13 Motion to Quash the possession and I have looked at the statute and as to the murder count I am going to grant the Motion to quash count 2 as -- well, with this exception, let me -- not exception, let me ask counsel for defendant. I don't recall in the Forney trial and I certainly don't think it would applicable, is the defense going to ask for a lesser included charge on voluntary manslaughter?

MR. SCHUSTERMAN: No, we are not.

THE COURT: I wouldn't think so

MR. SCHUSTERMAN: I don't think that is factually

appropriate.

THE COURT: I don't either, but I wanted you on the record as to that before I made my ruling because if that were the case, then the five years could be tacked on to that.

MR. SCHUSTERMAN: I understand that, sir, and let me just make a statement to that. I am making that statement before the trial has begun, but I have read the Forney transcript, I have looked at our evidence and the strategies, what we anticipate the prosecution is presenting, what we think we will present, and I do not believe that this case would be appropriate for anything other than a murder charge to the jury.

THE COURT: Well, I am going to quash count 2 of the murder indictment, which is 93-4296, on the basis that the statutory language makes it clear that no sentence could be imposed where a life is imposed, which would be the only option in this case were the death penalty not imposed.

That precludes the Motion to elect under 13 because I find that armed robbery on that indictment, the five years, could be added in addition. There was no Motion to quash anyway as to that count and it becomes moot.

MR. POPE: May it please the court, Your Honor, as to that matter I would have basically two requests. One, we

would prepare an indictment by copying again that we, in essence, redacted that portion and I would request instructions that we will not reference it and they would not reference it, you know, in some way give weight to the judge and saying now you had eliminated the charge in that and it's only technical.

THE COURT: Certainly. I think that - I certainly can so rule and request that at least a copy, if not the original, unredacted indictment in its current form be made part of the record also.

Motion Number 44 regarding competency I find based on the testimony that the defendant, Mar-Reece Hughes, has sufficient present ability to consult with his attorney, participate in his defense with a reasonable degree -- let me back up -- he has sufficient present ability to consult with his attorneys with a reasonable degree of rational understanding and he has a rational as well as a factual understanding of the proceedings against him and that he was competent and able to assist in his own defense.

All right, now you say you want to do the statements when Mr. Brackett is here.

Now Motion to permit defendant to act as his own co-counsel. I am going to grant that Motion; however, I believe I am going to wait and do this when we get to Aiken before we start into the voir dire. No, I'd better

do it today. I want to instruct, and I'll do this in just a minute, the defendant regarding the problems he may encounter being his own counsel, but I will discuss that with him in just a minute.

Lyle will be taken up later.

All right.

Are you ready?

MR. POPE: Yes, sir.

THE COURT: I think that covers those three things, the Count 2 on possession of pistol during the commission of a violent crime, competency, and defendant acting as his own co-counsel. That takes care of those three.

All right, now, do you want to go ahead and put up your testimony or do you want to real quickly, Mr. Brackett, tell me about your position in five minutes or less regarding the issue of the statements.

MR. BRACKETT: Yes, sir, I can go through the statements. Let me just get a list of the different officers who testified. I think we can start with the first person the defendant made a statement to. That was Buddy Devinney at the time of the arrest while they were effecting the arrest and Mr. Devinney was attempting to secure his hands. Mr. Devinney testified that the defendant said, "I didn't shoot anybody." They were not attempting to elicit anything from him. They were not in a

position where they could have read him his rights prior to that because they were looking for someone who had shot a police officer and, obviously, his hands were underneath him and they were concerned about other things at that time and the defendant blurted out "I didn't shoot anybody" and that even made it more clear in Officer Devinney's mind that, in fact, this was the person that they were looking for.

THE COURT: What is the defense position on Officer Devinney's?

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. I think though that the position though is very different when it comes to the statements made while in custody and our position there is clearly that based on the psychological testimony that we have presented whether or not Mr. Hughes was either psychotic at the time or in this prodromal stage that he at that point did not have the ability to knowingly and voluntarily waive his rights to no less be in control of statements that he was making. And so I think there's a stricter standard and I don't believe that - I think that the threshold or the line that Mar-Reece falls in between the statements and utterances made and the actual statement that was taken down or testified to by law enforcement while in custody.

THE COURT: All right, let me apologize for not calling on you first. These are your Motions and I should not have called on the Solicitor; I should have heard your argument first. I apologize.

All right, Mr. Brackett, as to the voluntary statements I find and I will go over those in just a minute -- well, let me make a complete ruling first, but I find the voluntary statements, and I'll tell you in a moment which ones I feel fall into that category, -- now, real quickly on the issue of the intelligent waiver.

MR. BRACKETT: All right, the gist of the defense's position as I understand it is that he was not mentally capable of making that decision and they have made their Motion under Jackson v Denno. Colorado v Connelly cited 107 Supreme Court 515 addresses this issue specificallly. In that case the defendant in the Colorado had driven there from Boston to Denver and approached a police officer apparently on the street and told the officer "I killed a woman here some months ago in Denver and I just came here to tell you about that" and the officer backed up a step and said, "What are you talking about? Are you confessing to a murder?" And he said, "Yes, I killed a woman" and he said, "Let me tell you something" and he explained his rights to him and went through the Miranda and so forth, the long and short of it was this individual had driven from Boston apparently believed that God was commanding him to go to Denver and confess to this murder that he had, in fact, committed. He took them to the site where the body was found and gave them details about the murder that only the murderer could now. This man, in fact, was the murderer, but all the while he went there and confessed under the apprehension that God was commanding him to do so and the argument was made by Mr. Connelly's attorneys is almost identical to the argument being made here that, first, he was laboring under a

mental defect, he could not appreciate his understanding of the Miranda warnings and could not intelligently waive those rights and, therefore, his confession that ensued should be suppressed. The Supreme Court of the United States ruled that "Respondent's perception" this is from the syllabus not the actual ruling, but this is the gist of the ruling, "The Respondent's perception of coercion flowing from the voice of God is a matter to which the Federal Constitution does not speak." In other words, the Supreme Court said that "Absent any coercive police activity the fact that he was mentally ill at the time is of no consequence" and that the Federal Constitution does not address that. There has to be some coercive State action, some improper State action, in order to trigger the exclusionary rule. The exclusionary rule is designed to prevent coercive police action and punish The State by excluding that evidence which was obtained unlawfully. The State in this case and in Connelly did nothing wrong. They merely took his confession, so I am not conceding the point that he was under any psychosis at the time; I am simply saying that it is irrelevant even if the court believes that he was. It doesn't matter because The State did nothing wrong in obtaining the confession. Of course, our position is that the defendant was not under any mental duress and that the statement was not a product of

any coercion, it was freely and voluntarily given, and that the Rights were given not once, not twice, but three times, one by Officer Devinney in the car on the ride over, one by Captain Cabaniss immediately preceding the interview and once immediately prior to the typing of the statement that is now in evidence and that all three times the Captain and Agent Bryant the both times it was done in their presence testified that they did not believe that he was under any mental duress or any mental stress or suffering from any mental disorder and that he said he understood his Rights, appeared to understand his Rights, that the conversation was a natural one, that they did not perceive there be any psychological problems and that he knowingly, willingly and voluntarily waived his Rights and the statement that they obtained from him was knowingly and intelligently given after he had been properly advised of his Rights under Miranda v Arizona and we submit that those statements should come in.

THE COURT: A brief reply?

MR. SCHUSTERMAN: A brief reply, Your Honor. I have not been provided, I don't have a copy of, I have heard of Connelly v Colorado, but I do not have a copy of it. 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. It is borderline ludicrous, that we have somebody, we have testimony that he at the time, it was uncontroverted, The State didn't put up anything to indicate other than the police officer saying he appeared okay that he was going through some either psychotic or prodromal state and that his waiver, while we acknowledge it was read, may not have been knowing and voluntary, that he was under -- the same principle as the character that the person they were speaking to may well have not have been Mar-Reece Hughes in spirit so to speak, that he was operating under this psychosis that would have prevented him from knowingly and voluntarily waiving his Rights under Miranda and thus anything that he said we contend that everything he said was said involuntarily. And I think that if you are looking for evidence of his psychosis, the symptoms that the psychiatrist spoke of, you would want to look to the inconsistencies in his statement in a brief period of time which would show which one could infer was the psychosis.

THE COURT: All right, I am ready to rule. I have carefully considered all of the evidence that has been offered by The State and the defendant and I will address that offered by the defendant perhaps a little more in a moment. I, as trial judge, am convinced beyond a reasonable doubt and I find that before the alleged

incriminating statements or confessions were obtained from the defendant he was fully advised of his Rights under the Fifth and Sixth Amendments of the Constitution of the United States and that he was advised of his Constitutional safeguards required by Miranda v Arizona. I find he was advised of the following in regards to Miranda, that he was advised that he had the right to remain silent, if he waived his rights to remain silent and made a statement, the statement could and would be used against him in a court of law and that he had the right to employ or select an attorney of his own choice and that if he did not have the money, funds or resources to employ such an attorney, the court would appoint and provide him with an attorney if he so desired without cost or expense to him and that he had the right to have his attorney present with him at all times during all interviews and all interrogations and that he was advised prior to the interrogation that he had the right to consult with his attorney before interrogation and he was advised that he had the right to interrupt and terminate the interrogation at any time. He further had the right to stop answering questions at any time during the interrogation. I find that he also was, prior to interrogation, informed that if he desired an attorney, the interrogation would cease until the same was provided

and he would be given an opportunity to consult with counsel prior to further interrogation. I find that he knowingly and willfully waived, knowingly, willfully and intelligently waived his Rights under the Fifth and Sixth Amendments of the Constitution of the United States and the Constitutional safeguards required by Miranda and that the alleged incriminating statement or confession obtained from him was freely and voluntarily given without duress, without coercion, without undue influence, without reward, without promise or hope of reward, without promise of leniency, without threat of injury, without compulsion or inducement of any kind and that such alleged incriminating statement or confession was the voluntary product of the free and unconstricted will of the defendant.

As to the points raised by counsel for the defendant in Doctor Dupree's testimony quite to the contrary I find that it indicates that the defendant did act with an intellectual concern throughout the course of the evening for which we have testimony. He did those things which one who was culpable of a crime will do. He hid, he shed his shoes prior to hiding, he struggled to resist the officers once one had been handcuffed, he responded initially appropriately by putting his hands up just as he had been told and in contrast to defense argument that his inconsistencies in his story show some lack of capacity I

find quite to the contrary, changing stories, not only do I find that to be so, that was the testimony of the officers that his story changed. I find that he placed or tried to and did try to place the primary culpability on another, which shows an intellectual concern for the situation and he was very aware of his situation. He had the ability to recognize the situation he was in even to the extent of refusing to sign at the time and he also made a correction or asked that a correction be made. So I find that the defense's position that this was made with some lack of mental capacity to so do I find that not persuasive. So I find all of the conclusions, which I have just gone over, beyond a reasonable doubt and I find that the incriminating statement and confession or confession is admissible into evidence.

Now I also find that there are certain voluntary statements that were made prior to Miranda which would come in because they were, in fact, voluntary. That includes the statement to Officer Devinney that quote -- I better not quote anything because I might have taken it down wrong -- but to the effect that I didn't shoot anybody, this was in the woods, he then was given his Miranda warnings on his way to the law center in Rock Hill I believe it was, that after that, of course, there was an interrogation. I have already found that those statements

were made with a knowing and a voluntary waiver, but, in addition to having his Miranda warnings properly made and waived, he also made what I consider voluntary statements to Officer Strain or to -- actually to Bobby Holmes that was overheard by Officer Strain at the Detention Center regarding doing something to quote "another white boy"; that in the interview room he placed his face in his hands and said "I'm guilty; I'm guilty" in front of Officer Rockholt which was not in response to any interrogation and that Officer Kitts overheard him responding to some question from someone in the crowd on the way to the York County Courthouse "I don't know why I'm down here" something to the effect that it was a set-up and he was either in Charlotte or arrested in Charlotte. 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.

Anything further on that from the defense?

MR. SCHUSTERMAN: Nothing further, Your Honor.

THE COURT: From The State?

MR. BRACKETT: Nothing further.

THE COURT: All right, now, do you want to put up the other witnesses?

MR. BRACKETT: Yes, sir, I have one other individual; I have one individual here, Lt. Jerry Bailey, from the

York County Detention Center.

THE COURT: Come around and be sworn, please, sir.

JERRY KENNETH BAILEY, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRACKETT

Q Sir, would you please state your full name for us and spell your last for the court reporter?

A Jerry Kenneth Bailey.

Q And where are you employed, sir?

A At the York County Detention Center.

Q And in what capacity are you employed there?

A I am a Lieutenant and watchman.

Q And how long have you been there now?

A Three years.

Q Were you working there back in April of 1993?

A Yes, sir.

Q And were you working there throughout the early months of 1993?

A Yes, sir.

Q During that time period did you have the occasion to encounter and deal with on a daily basis the defendant in this case, Mar-Reece Hughes?

A Yes, I did.

Q And what was he doing there? He was an inmate there?

A Yes, sir, he was an inmate.
Q He was incarcerated waiting for trial?
A Yes, he was.
Q All right, did you have the opportunity during that time period to observe the defendant?
A Yes, I did.
Q And did you have the opportunity to interact with the defendant?
A Yes, I did.
Q Was that on a daily basis?
A Yes, sir, I saw him about every day. I was in and out of the blocks.
Q Okay, now in all of your dealings with the defendant during that time period and specifically focusing on the time period around April 12th do you recall the alleged murder of an inmate in there?
A Yes, I do.
Q Do you recall the incident that James Earl Williamson was killed?
A Yes, sir.
Q Specifically calling your attention to that time period of April 12th, the days preceding it as well, do you have an opinion and I recognize that you are not a psychiatrist or a psychologist and I'm not asking you for an expert or ---

MS. BRICE: Your Honor, I am going to object. I don't think he can give his opinion without being qualified as an expert.

THE COURT: In-camera?

MS. BRICE: I'm sorry I thought -- I'm sorry I did not understand his question.

THE COURT: You are not going to ask him about his psychiatric diagnosis are you?

MR. BRACKETT: I am going to ask whether in his opinion he thought that the defendant was crazy or mentally disturbed during that time period, the lay testimony --

THE COURT: I sustain the objection.

MS. BRICE: Thank you.

MR. BRACKETT: Your Honor, that would be the lay testimony that's contemplated in T. B. Smith, the testimony from lay persons as to whether or not an individual was crazy.

THE COURT: They testified as to certain conduct. I'm more concerned about the conduct than his opinions as to whether or not he's --

MR. POPE: May it please the court? I'm aware of T. B. Smith that was tried in the Eleventh Circuit.

THE COURT: Let me look at the case real quick. I have got it.

MR. POPE: The Chief of Police himself said that he wasn't -- something to the effect that he wasn't crazy, he was just mean or something to that effect.

THE COURT: All right, I am going to overrule your objection. In this case Chief Waldrop did testify, of course, it may have not been objected to, that in his opinion the defendant was not insane. Of course, one of them was a medical doctor. We are not worried about that in this situation. So I will allow the testimony.

MR. BRACKETT: Thank you, Your Honor.

MS. BRICE: Your Honor, for the record we are objecting to him making a conclusion based on any type of experience or expert testimony. I don't think it has been established.

THE COURT: All right. You are on the record.

MS. BRICE: May I also have an opportunity to look at that case?

THE COURT: It's right here.

(Ms. Brice obtains copy of case.)

Go ahead, Mr. Brackett.

MR. BRACKETT: Thank you, Your Honor.

Q Mr. Bailey, let me back up for just one moment. Are there rules and regulations that govern prisoners' conduct in the Detention Center?

A Yes, there are.

Q Are there different privileges that accrue for different prisoners? Back in the Detention Center on Cherry Road back in 1993 was there a different classification for different sections of the Detention Center for different types of prisoners?

A Yes, sir.

Q Was it possible for a prisoner to move from one section to another?

A Yes, sir.

Q And how was that based? Go over some of the factors that involved in moving say from D Block to C Block.

A Well, when they first came in, we usually put them on back side of C Block unless they were real violent or something. Due to good behavior and stuff like that they would eventually move to the front side of C Block where they had t.v. privileges and things.

Q And were there ---

A Unless they would go to A Block which was, you know, the better behavior.

Q And their movement and location within the different Blocks in the Detention Center was governed by their conduct then?

A Yes, sir.

Q And their conduct specifically in regards to the rules that were set up there ---

A That's correct.
Q --- in the Detention Center? Did Mr. Hughes, the defendant in this case, have an appreciation for those rules? Did he know what they were?
MR. SCHUSTERMAN: Objection. There is no way that someone could tell if someone else has an appreciation ---
THE COURT: Just ask him if he followed the rules.
MR. BRACKETT: I'm sorry?
THE COURT: Just ask him if he followed the rules. He might have followed them or not appreciated them, just --
MR. BRACKETT: Okay.
Q Did Mr. Hughes ever discuss with you being moved from one cell in one section of the prison to the other one section of the Detention Center to the other?
A He did.
Q Did he appear to be able to follow the rules around that time period?
A No, sir, there were times when he did break the rules.
Q There were times then he broke the rules?
A Yes, sir.
Q Were there time when he followed the rules?
A Well, I guess he followed them to an extent.
Q It varied from time to time?
A Yes, sir.
Q Do you think that in your opinion do you think he knew

when he was breaking the rules or when he was following them?

A Yes, I think he did.

Q In your opinion -- have you ever had contact with individuals in the Detention Center who you later found out or you believed to be crazy?

A Yes, I have.

Q Or insane. And is that several times or more than once?

A More than once, yes.

Q On many occasions?

A On several occasions.

Q And based on your experience with those individuals, comparing them to Mr. Hughes' behavior, do you believe that Mr. Hughes at that time was crazy or insane?

A No, sir, I don't.

Q Thank you, Lieutenant. Please answer any questions the defense counsel may have for you.

CROSS EXAMINATION

BY MS. BRICE

Q Mr. -- I'm sorry. My name is Chris Brice. I didn't catch your name.

A Jerry Bailey.

Q Mr. Bailey, how long did you know Mr. Hughes?

A Well, I knew him from when he first came in the jail

until they sent him down to Columbia.

Q And how long was that, about two months?

A No, I think it was longer than two months, but I don't remember exactly.

Q Maybe four months?

A It would be closer to four than it would be two.

Q I think your testimony was that your contact with him was in the early months of 1993.

A No, my contact with him would have been the whole time that he was incarcerated at the Detention Center.

Q But that would have been in the months that he was there in the early months of 1993 before he was moved to Columbia, is that correct?

A That's correct.

Q And how many times did you sit down with Mr. Hughes one on one face to face and conduct an in-depth conversation with him?

A Not an in-depth conversation.

Q So you never sat down with him for like, well, more in-depth than I am talking to you right now, but you never sat down with him maybe in a closed room somewhere and just talked to him, how are you doing today, Mar-Reece, how are you feeling?

A No, I just spoke to him in the Block when he was in the cell.

Q And did you know Mr. Hughes prior to him coming to the York County Detention Center?

A No, I did not.

Q So your only knowledge or contact with him was during the time that he was at the Detention Center?

A That's correct.

MS. BRICE: Your Honor, based upon my interpretation of Smart - I am going to read you my objection based upon my interpretation of the Smart case, this officer knew the appellant for fifteen years. I don't know how he can give expert testimony.

THE COURT: He is not giving expert testimony.

MS. BRICE: And he said he was insane, in his mind he was insane. I don't think it's the same thing because in the Smart case the officer who testified stated that ---

THE COURT: I just handed you the Smith case.

MS. BRICE: I'm sorry, the Smith case. The officer that testified said ---

THE COURT: Well, let's finish presenting the evidence before we go back into argument.

MS. BRICE: I am just renewing my objection, Your Honor.

THE COURT: All right, overruled.

MS. BRICE: Thank you.

MR. BRACKETT: I only have one more question.

REDIRECT EXAMINATION

BY MR. BRACKETT

Q Ms. Brice asked you if you had the opportunity to have any in-depth conversations with him. Did you have an opportunity to observe him interacting with other inmates?

A Yes, sir.

Q Thank you.

THE COURT: Recross?

MS. BRICE: No, sir.

THE COURT: You may step down and be excused. Thank you.

Do you have another witness?

MR. BRACKETT: No, sir, as I said earlier, we would have had other witnesses here. There are witnesses who could have testified to this point and at least one of them I know I could probably have in Aiken on Monday morning.

THE COURT: I think Ms. Brice is correct. I think we need to go ahead and conclude if that's the only witness today.

MR. BRACKETT: Yes, sir. Broadus Strain could have testified, he doesn't work until six, but he could have testified to substantially the same thing.

THE COURT: Okay.

All right, I find -- anything else from the defense? I have read the Briefs and I have heard the evidence.

MS. BRICE: No, sir.

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 is 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.

Anything else on that?

MS. BRICE: No, Your Honor.

THE COURT: Anything from The State?

MR. BRACKETT: Nothing from The State.

THE COURT: All right, does that conclude what we can do today?

MR. POPE: Your Honor, one of the things I can't recall if you ruled on or not was the Notice of aggravating circumstance. I am not sure you ruled on that, Your Honor.

THE COURT: I find that the Notice given by The State was sufficient. I find that it meets the requirements of the statute and that the defendant and counsel have been properly placed on notice of the aggravating circumstances on which The State relies for the death penalty.

MR. POPE: May it please the court, Your Honor, again, my understanding of the purpose of the aggravating Notice is to give them a fair apprisement. Again, we have given them written Notice the court has found appropriate. Again, I am going to give them a list now which is more clarification, more of the items that I discussed; it doesn't expand in any way, it just makes it more clear. I hand a copy to the defense. They had asked for more

clarification. I realize the court ruled in our favor, but I would just hand this up and I would stick this in the record also, but we had discussed several things orally during the week including the list of discovery, of the witness list that we would voluntary provide and, again, all this does is documents some of those items. We would move to put that in for the purposes of this hearing also.

(State's Exhibit 32 marked and filed.)

THE COURT: Anything further?

MR. BRACKETT: Nothing from The State, Your Honor.

THE COURT: All right, let me just -- Mr. Hughes, can you hear me?

MR. HUGHES: Yes, sir.

THE COURT: All right, you know that we are going to be in Aiken on Monday drawing a jury for your trial. Do you understand that?

MR. HUGHES: Yes, sir.

THE COURT: And, again, I remind you that you need not make any statements or testify against yourself, but right now I am just asking you if you understand certain things. So I'm not going to ask you anything about any involvement with anything, but I am mainly concerned at this point regarding your counselor's Motion wherein they have asked that you serve as their co-counsel. Are you aware of that Motion?

MR. HUGHES: Yes, I am.

THE COURT: And you want the court to go along with that?

MR. HUGHES: Yes, sir.

THE COURT: All right, the court has granted that and will allow you to participate as co-counsel. I do want to caution you, however, that there is a danger in acting as your own attorney even though it is in consult with other counsel. This does not affect your ability -- I'm not even addressing the statutory rights you have to address the jury. You have that regardless of this Motion, do you understand that?

MR. HUGHES: Yes, sir.

THE COURT: This has to do though with acting as co-counsel, which I presume from your attorneys, means that they would give you an opportunity to cross examine witnesses, to argue Motions before the court pro se, and doing things your counsel would normally do for you and I do want to tell you there is some -- danger may not be the right word, but I want to caution you to be in representing yourself when you do that the rules of evidence will apply to you just like they apply to your lawyer, that is, you cannot ask certain questions, you have got to follow our rules of evidence. Do you understand that?

MR. HUGHES: Yes, sir.

THE COURT: And I'm not asking you whether you understand the rules of evidence. People go to law school for quite some time to learn them, so I am not asking you to tell me you know the rules, but I am telling you that you will be bound by them. Do you understand that?

MR. HUGHES: Yes, sir.

THE COURT: You can't testify why you are asking questions. Do you understand that?

MR. HUGHES: Yes, sir.

THE COURT: You will not be under oath and your attorneys certainly couldn't testify even though with them there would be some other problems with testifying. You cannot in asking questions in effect testify. Do you understand that?

MR. HUGHES: Yes, sir.

THE COURT: Now the last thing I want to tell you unless I think off something else before we get started on Monday unless counsel for defendant have something else they wish me to address with you is there is some danger in your speaking before the jury without caution from your counsel as to what you say because I would not want you to say something that you may later wish you hadn't said or something you may regret because once it is said you can't unsay it and if you say it in the capacity as your own

attorney, there's not much the court can do to so-call correct it or cure it. By that I am saying if you slip while asking questions -- and I am not trying to talk you out of it, don't get me wrong, I just want you to have your eyes open. If you were to slip and make some statement from which a jury could infer some culpability on your behalf or some admission on your behalf or anything that would be prejudicial to you, once it is said, it is said and there is nothing anybody can do about it, so I want to caution you as to that also. Do you understand all of that?

MR. HUGHES: Yes, sir.

THE COURT: All right, Mr. Hughes, I am going to ask you now do you have any questions about that that you want to ask me?

MR. HUGHES: No, sir, I don't.

THE COURT: All right, Mr. Schusterman, Ms. Brice, anything else you want me to cover regarding that with him?

MS. BRICE: No, sir.

MR. SCHUSTERMAN: No, sir.

MS. BRICE: Thank you.

THE COURT: Thank you. All right, we will see all of you all in Aiken at ten o'clock?

MS. BRICE: I believe that's correct.

MR. POPE: You had said 9:30 previously, but I think we are to begin at 10:00.

THE COURT: I think the jury will be around 10:00. I suggest that we do that at 9:30 in case we need to chat or put something on the record, but we really will start the meat of the matter at ten o'clock. Have a pleasant weekend and we will see you.

MR. SCHUSTERMAN: Thank you, Your Honor.

MR. POPE: Your Honor, I realize you have gone over his rights, but maybe Monday if you could make a finding that he has, in fact, made a knowing and voluntary waiver, I realize ---

THE COURT: Maybe he isn't really waiving those, so --

MR. POPE: Well, I am sorry, waiving the decision to be his own counsel.

THE COURT: Okay.

MR. POPE: Thank you, sir.

****

Date: 9/13/95

County: Aiken

VOIR DIRE

Case No: _____ Judge: Hayes

Pl./State: _____ State/Pl's. Atty: Pope

Defendant: Mar-Leece Hughes Defense Atty: Schusterman/Bruce

Court Reporter: Carol B Nicholson

Juror No.	Name	Sex	Race	Strikes *Court	Plaintiff	Defense	Accept
100	William Hall	M	W			✓	
104	James Harrison	M	B				✓
225	Arnold Jenkins	M	B				✓
147	Irene Mangiante	F	W			✓	
250	Paul Zeh	M	W			✓	
249	James Youngblood	M	W			✓	
112	Lara Hodson Carter	F	W				✓
110	Dwayne Heyward	M	W				✓
156	William Mullinets	M	W			✓	
134	Willie Key	M	B		✓		
54	Robert C Revenger	M	W			✓	
241	Bobby Wylie	M	B				✓
16	Willie Bottler	M	B				✓
135	Virginia Hitchings	F	B				✓
(2) 166	Burton Teeley	M	W	- -			✓
118	Lashania Usher	F	B		✓		
116	Ruby Norris	F	W				✓
248	Timothy Wright	M	W			✓	

*For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

Date: 9/13/95

County: Aiken

VOIR DIRE

Case No: _____ Judge: Hayes

Pl./State: _____ State/Pl's. Atty: Pope / Brackett

Defendant: Mar-Lee Hughes Defense Atty: Schusterman / Brice

Court Reporter: C. Nicholson

Juror No.	Name	Sex	Race	*Court	Strikes Plaintiff	Defense	Accept
157	Judy Markland	F	W			✓	
141	Reuben Lee	M	B				✓
193	Belmont Rogers	M	W		✓		
26	T.A. Braithwaite	M	W			✓	
106	Eileen Hartman	F	W				✓
131	Richard Crafford	M	W		✓		
132	Ann Keller	F	W				✓
A-34	Ronald Brassey	M	W				✓
06	Eugene Ousley	M	W			✓	
148	Jack Martin	M	W			✓	
A-76	Lori Frazier	F	W				✓

*For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

CERTIFICATE OF REPORTER

I, the undersigned, Carol G. Nicholson, Official Court Reporter for the Sixth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the captioned cause, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 7th - 8th and 11th - 22nd days of September, 1995.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 31, 1996

Carol G. Nicholson

Court Reporter

FILED-RECEIVED
AUG 14 11 49 AM '95

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

State of South Carolina,	93-GS-46-4296,	93-GS-46-4299
	93-GS-46-4301,	93-GS-46-4303
vs	93-GS-46-4304,	93-GS-46-4305
Mar-Reece Hughes	MOTION TO SUPPRESS	

This Motion serves as a motion in the alternative if the Motion for Continuance dated August 3, 1995, is not granted.

The Defendant, Mar-Reece Hughes, moves for an Order of this Court suppressing all evidence not provided to counsel for the Defendant by August 4, 1995, pursuant to Rule 5(d)(2) of the South Carolina Rules of Criminal Procedure.

The Defendant, however, requests the immediate production of all exculpatory evidence.

Respectfully submitted,

Christina Brice

Christina C. Brice
Post Office Box 300
York, S.C. 29745
(803) 684-4462

Attorney for Defendant

Columbia, South Carolina

August 5, 1995.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT FOR

COUNT ONE - ARMED ROBBERY
COUNT TWO - POSSESSION OF FIREARM DURING COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME

At a Court of General Sessions, convened on December 13, 1993,

the Grand Jurors of York County present upon their oath:

COUNT ONE - ARMED ROBBERY

That MAR-REECE ALDEAN HUGHES did in York County on or about September 25, 1992, while armed with a deadly weapon, to wit: a firearm, feloniously take from the person or presence of James Brent McCants by means of force or intimidation goods or monies of York County, such goods or monies being described as follows: a police radio (walkie talkie).

COUNT TWO - POSSESSION OF FIREARM DURING COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME

That MAR-REECE ALDEAN HUGHES did in York County on or about September 25, 1992, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Armed Robbery, in violation of Code Section 16-23-490, Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JE Pope

SOLICITOR

sb

WITNESSES

H. Duke/RHPD

Dover/s

ARREST WARRANT NO. NWN
In reference to:
Warrant #D-655710 and Indict. #92-4036

ACTION OF GRAND JURY

Date: Dec. 13, 1993

Foreman of Grand Jury
Shirley Neal

VERDICT

DOCKET NO. 93-GS46- 04305

The State of South Carolina,

County of York

COURT OF GENERAL SESSIONS

December 13, TERM 1993

THE STATE

vs.

MAR-REECE ALDEAN HUGHES
arraigned 12-13-93

Indictment for

COUNT ONE - ARMED ROBBERY
S.C. CODE 16-11-330
COUNT TWO - POSSESSION OF FIREARM DURING COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME
S.C. CODE 16-23-490
CDR CODE 139

2990-A

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT FOR

COUNT ONE - MURDER
COUNT TWO - POSSESSION OF FIREARM DURING COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME

At a Court of General Sessions, convened on December 13, 1993,

the Grand Jurors of York County present upon their oath:

COUNT ONE - MURDER

That MAR-REECE ALDEAN HUGHES did in York County on or about September 25, 1992, feloniously, wilfully and with malice aforethought, kill one James Brent McCants by means of shooting the victim with a firearm and that the said James Brent McCants died as a proximate result thereof.

COUNT TWO - POSSESSION OF A FIREARM DURING COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME

That MAR-REECE ALDEAN HUGHES did in York County on or about September 25, 1992, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Murder, in violation of Code Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

J E Pope
SOLICITOR

sb

DOCKET NO. 93-GS46- 004296

The State of South Carolina,

County of York

COURT OF GENERAL SESSIONS

December 13, TERM 1993

THE STATE

vs.

MAR-REECE ALDEAN HUGHES
arraigned 12-13-93

Indictment for

COUNT ONE - MURDER
S.C. CODE 16-3-10
COUNT TWO - POSSESSION OF FIREARM
DURING COMMISSION OF
OR ATTEMPT TO COMMIT
A VIOLENT CRIME
S.C. CODE 16-23-490
CDR CODE 116

WITNESSES

H. C. Duke/RHPD

Dover/S

ARREST WARRANT NO. NWN
In reference to:
Warrant #D-563425 and Indict. #92-4034
Warrant #D-563430 and Indict. #92-4040

ACTION OF GRAND JURY

Date: Dec. 13, 1993

Foreman of Grand Jury

Shirley Neal

VERDICT

Foreman of Petit Jury *Date:*

2991-A

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF YORK) POSSESSION OF A PISTOL BY A PERSON CONVICTED OF A CRIME OF VIOLENCE

At a Court of General Sessions, convened on December 13, 1993, the Grand Jurors of York County present upon their oath:

That MAR-REECE ALDEAN HUGHES did in York County on or about September 25, 1992, wilfully and unlawfully have in his possession a pistol, after having been convicted of Burglary, Housebreaking and Assault with a Deadly weapon with Intent to Kill.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JE Pope
SOLICITOR

sb

02092

WITNESSES

J. Thickens/RHPD

Dover/sw

ARREST WARRANT NO. NWN
In reference to:
Warrant #D-655732 and Indict. #92-4041

ACTION OF GRAND JURY

Date: Dec. 13, 1993

Foreman of Grand Jury

Shirley Neal

VERDICT

DOCKET NO. 93-GS46-094391

The State of South Carolina,

County of York

COURT OF GENERAL SESSIONS

December 13, TERM 1993

THE STATE

vs.

MAR-REECE ALDEAN HUGHES

Arraigned 12-13-93

Indictment for

POSSESSION OF A PISTOL BY A PERSON CONVICTED OF A CRIME OF VIOLENCE

(S. C. CODE 16-23-30)(a)(i)(e)
(CDR CODE 321)

2992-A

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT FOR
UNLAWFUL CARRYING OF PISTOL

At a Court of General Sessions, convened on December 13, 1993, the Grand Jurors of York County present upon their oath:

That MAR-REECE ALDEAN HUGHES did in York County on or about September 25, 1992, unlawfully carry about the person a pistol.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

sb

J E Pope
SOLICITOR

02993

DOCKET NO. 93-GS46- 004239

The State of South Carolina,

County of York

COURT OF GENERAL SESSIONS

December 13, TERM 1993

THE STATE

vs.

MAR-REECE ALDEAN HUGHES
arraigned 12-13-93

Indictment for

UNLAWFUL CARRYING OF PISTOL
(S. C. CODE 16-23-20)
(CDR CODE 044)

WITNESSES

J. Thickens/RHPD

Dover/R

ARREST WARRANT NO. NWN
In reference to:
Warrant #D-655728 and Indict. #92-4038

ACTION OF GRAND JURY

Date: Dec. 13, 1993

Foreman of Grand Jury

Shirley Neal

VERDICT

Foreman of P. i Jury *Date:*

2993-A

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT FOR
POSSESSION OF STOLEN VEHICLE

At a Court of General Sessions, convened on December 13, 1993, the Grand Jurors of York County present upon their oath:

That MAR-REECE ALDEAN HUGHES did in York County on or about September 25, 1992, wilfully, unlawfully and knowingly have in his possession a stolen vehicle, to wit: a 1986 Buick, New York Reg. EMF 313 from the City of Charlotte, North Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

J E Pope
SOLICITOR

sb

02994

WITNESSES

J. Waldrop/RHPD

Dover PD

ARREST WARRANT NO. NWN

In reference to:
Warrant #D-563427 and Indict. #93-4037

ACTION OF GRAND JURY

Date: Dec. 13, 1993

Foreman of Grand Jury

Shirley Neal

VERDICT

DOCKET NO. 93-GS46- 004303

The State of South Carolina,

County of York

COURT OF GENERAL SESSIONS

December 13, TERM 1993

THE STATE

vs.

MAR-REECE ALDEAN HUGHES

amain. 12-13-93

Indictment for

POSSESSION OF STOLEN VEHICLE

(S. C. CODE 16-21-80)
(CDR CODE 222)

2994-A

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT FOR
CRIMINAL CONSPIRACY

At a Court of General Sessions, convened on December 13, 1993, the Grand Jurors of York County present upon their oath:

That DWAYNE ERIC FORNEY and MAR-REECE ALDEAN HUGHES did in York County on about September 25, 1992, unlawfully and wilfully unite, combine, conspire, confederate, agree and have tacit understanding with each other and/or other persons whose names are unknown to the Grand Jurors, for the purpose of committing murder and armed robbery.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

J E Pope
SOLICITOR

sb

02995

WITNESSES

Burris, Duke/RHPD

Dover/PD

ARREST WARRANT NO. NWN
In reference to:
Warrant #D-563424 and Indict. #92-3953
Warrant #D-563426 and Indict. #92-4035

ACTION OF GRAND JURY

Date: Dec. 13, 1993

Foreman of Grand Jury

Shirley Neal

VERDICT

Guilty 3/7/94

Foreman of Petit Jury *Date:*

DOCKET NO. 93-GS46- 04304

The State of South Carolina,

County of York

COURT OF GENERAL SESSIONS

December 13, TERM 1993

THE STATE

vs.

DWAYNE ERIC FORNEY

MAR-REECE ALDEAN HUGHES

Indictment for

CRIMINAL CONSPIRACY

(S. C. CODE 16-17-410)
(CDR CODE 049)

2995-A

STATE OF SOUTH CAROLINA)) COUNTY OF YORK)	IN THE COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA,)) vs.)) MAR-REECE ALDEAN HUGHES,)) DEFENDANT.)	NOTICE OF INTENT TO SEEK THE DEATH PENALTY AND STATUTORY AGGRAVATING CIRCUMSTANCES

Pursuant to Section 16-3-26(A) of the S. C. Code of Laws (1976), as amended, take notice that the State of South Carolina intends to seek the death penalty in the above captioned case wherein the Defendant Mar-Reece Aldean Hughes is charged with Murder.

The State of South Carolina pursuant to Section 16-3-20(B) of the S. C. Code of Laws (1976), as amended, hereby gives notice of the following aggravating circumstances:

The Murder was committed while in the commission of:

(1) robbery while armed with a deadly weapon 16-3-20(C)(a)(1)(d)

(2) larceny with use of a deadly weapon 16-3-20(C)(a)(1)(e)

Further, the crime involved:

(3) the murder of a local law enforcement officer during or because of the performance of his official duties 16-3-20(C)(a)(7)

Further, take notice that the State of South Carolina intends to call this case February 28, 1994.

12/13, 1993
York, South Carolina

TE Pope
Thomas E. Pope, Solicitor
Sixteenth Judicial Circuit

YORK COUNTY, S.C.
CLERK OF COURT
DEC 13 11 33 AM '93
CERTIFIED TRUE COPY
02996

State of South Carolina

Thomas E. Pope
Solicitor

Keith Giese
Deputy Solicitor

Office of the Solicitor
Sixteenth Judicial Circuit

January 20, 1994

Al Haselden, Esquire
Attorney at Law
P. O. Box 173
Clover, South Carolina 29710

Re: State vs. Mar-Reece Aldean Hughes

Pursuant to Section 16-3-20(B) of the S. C. Code of Laws (1976), as amended, the following evidence in aggravation will be offered by the State during the sentencing phase of Mar-Reece Aldean Hughes' trial.

(1) Any and all evidence relating to the killing of James Brent McCants.
(2) Any and all evidence relating to the armed robbery of James Brent McCants.
(3) Any and all evidence relating to prior bad acts and other evidence relating to the defendant's character occurring at any time prior to the conclusion of the case.
(4) Any and all evidence concerning "Victim Impact" evidence relating to James Brent McCants' personal characteristics and the emotional impact of the murder on Mr. McCants' family and friends pursuant to Payne v. Tennessee, 1991 WL 111161 (U.S.).
(5) Any and all evidence relating to James Brent McCants' status as a local law enforcement officer.

It is my understanding that all the necessary discovery material has been provided to the Mar-Reece Aldean Hughes defense team. Should you have any questions concerning any of the material provided to you, please do not hesitate to contact me.

Sincerely,

TEP

Thomas E. Pope, Solicitor
Sixteenth Judicial Circuit

TEP:sb
cc: Stephen D. Schusterman
Hand Delivered

FILED-RECEIVED
DOOR: PAGE
Jan 20 10 24 AM '94
ROD BENFIELD
YORK C.C.P.

02997

MOSS JUSTICE CENTER
1675-1A YORK HIGHWAY • YORK, SOUTH CAROLINA 29745-7422
(803)-628-3020 • FAX: (803)-628-3025
YORK AND UNION COUNTIES

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

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:

B E Medy
Foreperson

Juror

Juror

Juror

Juror

Juror

Juror

Bobby L. Wiles
Juror

Juror

Arnold Tompkins
Juror

Juror

Juror

Juror

Juror

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	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF YORK	)	93-GS-46-4296
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
V.	)	AFFIRMATION OF DEATH SENTENCE
	)	
MAR-REECE HUGHES,	)	
	)	
DEFENDANT.	)	
	)	

As the Presiding Judge in the above-entitled action, and prior to the imposition of the Death Penalty upon the Defendant, Mar-Reece Hughes, I find as an affirmative fact that the evidence of the case warrants the imposition of the Death Penalty and that its imposition is not a result of prejudice, passion, or any other arbitrary factor.

JOHN C. HAYES
Presiding Judge

September 22nd 1995
York, South Carolina

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

CARROLL A. CAMPBELL, JR.
Governor

ROBERT M. STEWART
Chief

4400 Broad River Road (J.P. Strom Boulevard) • Mail: P.O. Box 21398
Columbia, South Carolina 29221-1398 • Phone: 803/737-9000

This document contains neither recommendations nor conclusions of the South Carolina Law Enforcement Division. It is the property of the South Carolina Law Enforcement Division and is loaned to your agency; it and its contents are not to be distributed outside your agency.

February 3, 1994

TO: Case File

FROM: S/A Harry C. Benson
S/A James P. Rogers

RE: Mar-Reece Hughes (s)
James Earl Williamson (v)
Christopher M. Gorth (v)

SLED CASE NO.: S93-732

PLACE: York County

CHARACTER: 19

PENGAD-Bayonne, N. J.
C-13
CV

Pursuant to instructions from Captain James Q. Christopher, these agents conducted an investigation into the murder of **JAMES E. WILLIAMSON** and the charge of Assault & Battery with Intent to Kill on **CHRISTOPHER M. GORTH**, both inmates at the York County Detention Center in York, South Carolina, on April 12, 1993.

On April 13, 1993, Special Agents Harry C. Benson and James P. Rogers met with Chief Ervin, Administrator for the York County Detention Center. Chief Ervin related to these

agents the following facts and furnished material to assist these agents during this investigation.

Chief Ervin stated that, at approximately 5:00 a.m., inmates in "C" Block began screaming on the front side of the cell block. Officer **STELLA S. LINGERFELDT** went to see what the commotion was about in "C" Block. When she entered the cell block, she screamed for Sergeant **MICHAEL K. KIMBRELL's** assistance, and when he got there, Officer **LINGERFELDT** opened the cell door. Inmate **JAMES WILLIAMSON** ran out of the cell holding his neck and bleeding profusely. **JAMES** ran past Sergeant **KIMBRELL** and up the hall into the booking area. Inmate **MORGAN** (trustee), got a towel and assisted officers in trying to stop the bleeding by applying pressure to the throat, which had been cut, until Emergency Medical Service personnel arrived. (See Attachment #1 - York County Detention Center Events Report and Attachment #2 - York County Sheriff's Department Incident Report)

Sergeant **KIMBRELL** notified dispatch at the York County Sheriff's Department and informed them of the situation. Deputies **THOMASSON** and **BLAIR** arrived to assist them. Inmate **RICHARD WALDRUP**, who was also in "C-1" block with **WILLIAMSON** and ran out of the cell with him after officers opened the cell door, stated that inmate **CHRISTOPHER GORTH** was still in the cell, injured, and that **MAR-REECE HUGHES** was the one doing the cutting. Officers went back to "C-1" and removed inmate GORTH

from the cell. **CHRISTOPHER GORTH** had lacerations on his chest, arm, and leg, which required medical attention. (See Attachment #3 - Statement of Sergeant Michael Kimbrell and Attachment #4 - Statement of Officer Stella Lingerfeldt)

Chief Ervin stated that the following inmates were assigned to "C-1" cell block as of April 12, 1993: **RICHARD D. WALDRUP, MAR-REECE A. HUGHES, CHRISTOPHER M. GORTH,** and **JAMES E. WILLIAMSON.** (See Attachment #5 - York County Detention Center Population List and Cell Assignments & Attachment #6 - Diagram of Cell Blocks at the York County Detention Center)

The deceased, **JAMES WILLIAMSON,** was being held at the York County Detention Center for Burglary 2nd Degree. (See Attachment #7 - Criminal and Medical History of James E. Williamson)

Suspect **MAR-REECE A. HUGHES** was being held at the Detention Center on charges of Murder, Criminal Conspiracy, and Receiving & Possession of Stolen Goods Over $1,000.00 stemming from the death of a York County sheriff's deputy. (See Attachment #8 - Criminal and Medical History of Mar-Reese A. Hughes)

Chief Ervin further stated the South Carolina Law Enforcement Center's Forensic Service Laboratory was called in to process the crime scene. Special Agents David Black and John Christy conducted a search and found one lock blade knife in "C-1" cell block.

On April 13, 1993, these agents interviewed **RICHARD D. WALDRUP** at the York County Detention Center. **RICHARD WALDRUP** stated that, about three weeks ago, he was put in "C-1" cell with **CHRISTOPHER GORTH**. A couple of weeks later, **MAR-REECE HUGHES** was put in the same cell, and about a week ago, **JAMES WILLIAMSON** was put in the same cell. During this time in "C-1" they all got along together. **RICHARD** stated **MAR-REECE** had told him that he had a knife and that the guards had come into "C-5" cell block, where he was before, looking for a knife. Someone had told on him about having the knife in the cell. The guards came into the cell and did a shake-down, but they couldn't find the knife.

At approximately 3:00 a.m. on April 12, 1993, **RICHARD** stated he heard **MAR-REECE** talking with a man in "C-2". He said **MAR-REECE** was telling him that he (**MAR-REECE**) was going to hell and that he wanted to take some more with him. **MAR-REECE** asked the other inmate, if he (**MAR-REECE**) stabbed them in the throat, would they die before they had a chance to yell out for help. **MAR-REECE** told the inmate in "C-2" that he felt the urge to stab us in the throat and when the guards came down to the cell, he was going to get a couple of them, too. **WALDRUP** stated, a few minutes later, he heard a noise that sounded like a smack or something. He said **JAMES WILLIAMSON** yelled for help and jumped down from his bunk. **MAR-REECE** then came at him while he was in his bunk. He (**WALDRUP**) kicked him a couple of

times, and MAR-REECE then sat on a cooler with his feet on the commode. RICHARD WALDRUP and JAMES WILLIAMSON were yelling for help, and Detention Officer STELLA LINGERFELDT came down the cell block and saw JAMES bleeding. She then ran for help. CHRISTOPHER GORTH was in the bottom bunk and was kicking at MAR-REECE. He saw MAR-REECE strike CHRISTOPHER with the knife and cut him on the leg. The knife appeared to be about six or eight inches long and about one or two inches wide. (See Attachment #9 - Statement of Richard D. Waldrup)

These agents interviewed CHRISTOPHER M. GORTH at the York County Detention Center on April 13, 1993. CHRISTOPHER stated, on April 12, 1993, at about 4:50 a.m., he was awakened by someone screaming in his cell. He saw MAR-REECE HUGHES behind the curtain (sheet) and felt a sharp object slash his chest. CHRISTOPHER stated he started kicking MAR-REECE before he could cut him again, but before he could stop MAR-REECE, he had cut his leg twice and his arm. A guard opened the door and JIM ran out with blood all over him. After the guards left MAR-REECE asked him if he was alright, as if nothing had happened. About 20 or 30 seconds later, the guards returned and got CHRISTOPHER out of "C-1" cell. (See Attachment #10 - Statement of Christopher Gorth)

On April 13, 1993, these agents interviewed JOHN A. PATTON, an inmate at the York County Detention Center. JOHN PATTON stated, on April 12, 1993, he was in cell "C-2" with

HARRY ANTHONY and two other inmates. MAR-REECE HUGHES was talking with him (PATTON) and HARRY ANTHONY and two other inmates. MAR-REECE was asking what a pen would do to a person if they were hit in the neck. MAR-REECE went on to discuss that all he had done all his life was to "fuck up white people and do time." They kept talking, and HARRY told MAR-REECE that to "get to heaven he had to send someone to hell." He (ANTHONY) knew MAR-REECE was serious and he had the idea of killing someone on his mind. MAR-REECE then started talking about the "little green men starting to fuck with him again." He was saying things like "the little man isn't asleep, I saw his foot move down there, he's playing opossum and trying to fuck with my head over here." PATTON stated he knew MAR-REECE was talking about RICHARD, who was in the cell with him. Things got quiet and he (PATTON) heard someone move; it sounded like someone moving a mattress or something. PATTON stated he heard a sound like a slap or punch. He said he asked MAR-REECE, "What's going on over there?" JAMES GAITHERS, another inmate in "C-2" cell, asked MAR-REECE, "What's going on over there?" and MAR-REECE said, "Oh, everything's alright." PATTON stated they could hear someone gasping for breath and gagging. Someone hollered, "Get the police." We all started hollering for the guards, because we knew something bad had happened over there in "C-1." (See Attachment #11 - Statement of John A. Patton)

These agents interviewed inmates in "C-4" through "C-2" in "C" Block at the York County Detention Center on April 13, 1993.

Several inmates refused to give a formal or taped statement to these agents, but they did agree to answer questions as to what they might have heard or saw on April 12, 1993 in "C" Block.

Inmate: York County Detention Center
"C" Block (C4)
Shawn H. Sloan B/M D.O.B 12/31/70
5332 Evanshore Drive
Charlotte, North Carolina 28216

"Could not see anything from my bunk in C-4. Heard MarReece and Anthony talking. MarReece asked Anthony, 'If you stick a person in the neck, would it kill him?' Anthony said, 'yes if you do it the right way.' Never seen or heard about MarReece with a knife in "C" Block. Heard victim hollering for help. I think it was about 15 minutes before anyone came back to see what was wrong."

Inmate: York County Detention Center
"C" Block (C4)
Russell L. Holly B/M D.O.B. 4/26/68
221 Green Street
Rock Hill, South Carolina

"I heard Anthony Cell #2 talking to MarReece about cutting someone's throat. Anthony told MarReece, 'If you want to kill a mother fucker get him in the throat. He will die fast if you cut the throat.' Anthony told MarReece that he wished he could be with him when he did it and to save some action for him. Thought MarReece was playing or acting, but he wasn't acting. He stabbed that man for no reason at all."

Never seen or heard about anyone with a knife in "C" Block."

Inmate: York County Detention Center
"C" Block (C4)

John H. Walker B/M D.O.B. 9/18/63
513 Fells Street
Rock Hill, South Carolina

"On the morning of April 12, 1993, I didn't see a thing. I was asleep and did not hear the conversation between Anthony or MarReece. Heard people hollering for the guards to come back there. After officer opened the cell door I heard someone walking up the hall. He was making a gushing sound. Have never seen a knife or heard of anyone with a knife in "C" Block. I was in lockup with MarReece on the back side of "C" Block. Played checkers and cards together. During several conversations with MarReece his mind would go and come."

Inmate: York County Detention Center
"C" Block (C3)

Corey H. Fewell B/M
330 Lawrence Street
Rock Hill, South Carolina

"I heard victim or someone hollering for help, sounded like someone choking. Was asleep and heard someone hollering for help and saying, 'get the guards.' He was begging for his life and asking for help. Never seen anyone with a knife or any information about a knife in "C" block. I don't know how MarReece got a knife in his cell. Possibly got it from a drunk in lockup. Some guards didn't search down very good."

Inmate: York County Detention Center
"C" Block (C3)

Willie D. Stroud B/M D.O.B. 1/22/67
324 Berry Street
Rock Hill, South Carolina

"Didn't hear anyone talking or arguing. I was asleep and woke up after my cell-mate woke me up. MarReece once told us that he had killed three "crackers" and was going to get another one. Didn't know MarReece had a knife, never seen or heard anyone talking about a knife in "C" block. A guard told me once that an inmate said MarReece had a knife. I told him I didn't know anything about a knife, but I would tell him if I see or hear about one. The guard said that MarReece was a very dangerous person and might kill someone if he gets or has a knife in his possession. After MarReece had cut Williamson's throat, and before they removed him from his cell, he asked if someone wanted a knife. I don't think they should have put MarReece in a cell with three white boys, because MarReece don't like white people."

Inmate: York County Detention Center
"C" Block (C3)
Harry L.
Jennings, Jr. B/M D.O.B. 8/28/57
324 Sidney Street
Rock Hill, South Carolina

"Had problem sleeping that night. Heard Anthony and MarReece talking about killing someone in MarReece's cell. MarReece told Anthony to stay awake and talk to him because he had something on his mind and couldn't sleep. Someone asked MarReece 'Why did you do that to Williamson?' He said because the guy did something to him. Someone then asked, 'Why didn't you just beat him up or something like that?' MarReece said, 'I'm not going to beat 'em first...kill them. Said he hated white people. I knew MarReece had a knife somewhere in his cell. I never saw a knife, only heard about him having one. After 11:00 p.m. that night no one came back there to cell block to check on inmates until MarReece had cut Williamson. I really think Anthony knew MarReece had a knife in his cell. Anthony was the one who told MarReece to flush the knife in the commode and get rid of the knife. MarReece was always talking about

"crackers" this and "crackers" that. He didn't like white people. Don't think any of the other white guys would be alive today if we (inmates) hadn't started yelling and screaming for the guards. That night MarReece kept saying ink pen instead of knife. He never did say knife in his conversation with Anthony. Said that a little green man told him to do that."

Inmate: York County Detention Center
"C" Block (C3)
Mark E. Spratt D.O.B. 12/15/53
110 Juniper Street
Fort Mill, South Carolina

"I was asleep and woke up after hearing someone strangling and calling for help. Also heard someone calling for the guards. It took about 10 or 15 minutes for the guards to get back to C-1 cell. I never

heard arguing or anyone fighting before the cutting occurred in cell block C-1. Never heard MarReece talk about a knife while in C-6 section before he was moved to C-1 block. I have talked one on one with MarReece. Didn't think he had a problem or anything was wrong with him. He wanted you to think he is crazy."

Inmate: York County Detention Center
"C" Block - (C-2)
John A. Patton D.O.B. 7/13/60
1357 Crawford Road
Rock Hill, South Carolina

"On April 12, 1993, I was awake most of the night. MarReece was talking to myself and Anthony. He was asking us 'what would a pen do to a person if you hit him in the neck?' Around 4:30 to 4:45 a.m. heard a smacking sound and something pouring. Williamson started hollering for help. I asked MarReece, 'What the hell are you doing in there?' I didn't think MarReece had a knife because he was asking about a ink pen, and what damage a pen could do to a person. Ater guards and policemen came in and removed MarReece he said, 'Now I can go

down to Columbia (prison) and smoke some cigarettes."

(Statement Taken)

Inmate: York County Detention Center
"C"-Block (C-2)
James E.
Gaithers, Jr. D.O.B. 7/28/69
1527 Nealey Creek
Rock Hill, South Carolina

"I heard MarReece talking to Anthony` about killing people. MarReece talked about all night long. Don't think Anthony knew MarReece was that serious. Anthony hadn't been around MarReece long and didn't know him well. They talked about the quickest way to kill a person. The (guards) shouldn't have brought MarReece around to the front side. MarReece asked us once, 'How can you hide a 15-inch knife in the cell?' We thought MarReece was kidding. 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 policemen. I don't know where the knife came from. Heard a few days earlier that a dude in the back of "C"-block had a knife, white guy had the knife. When MarReece was cutting on the guys we kept asking him, 'What was happening?' He said, 'Nothing man.'"

Inmate: York County Detention Center
"C" Block (C-2)
Edward (NMN) Conner B/M

Note: Inmate refused to talk to these investigators.

Inmate: York County Detention Center
"C" Block (C-2)
Harry L. Anthony B/M

Note: Inmate refused to talk to these investigators.

The following persons were incarcerated at the York County Detention Center prior to this incident: **DAVID MARTIN**, **JOHNNY MILLWOOD**, and **RANDY WHITWORTH** at the Detention Center annex. The above-mentioned individuals were contacted in reference to any information as to how the knife could have gotten past security into "C" Block.

Johnny Millwood

"Can't remember much about the day he was locked up for Public Drunk & Disorderly Conduct. He do not own a lock blade knife, only a small pocket knife. Can remember being searched by guards and a small knife and other items removed from his person. Was locked up with two white males and two black males. Never saw anyone with a large lock blade knife while in a jail at York County Detention Center."

David Martin

"He was locked up a York County Detention Center on the 16th of March. Was locked up with a black man and a white older man. Black man looked wide eyed, crazy looking, didn't know his name. Was searched before being locked up by guards. Didn't have pocket knife on me. Can't remember white inmate's name that was locked up in same cell #6 or #8 in "C" block. Remember the black man because of the way he looked. Didn't see anyone with a knife while in cell, was in jail for about 8-10 hours."

Randy Whitworth W/M D.O.B. 4/26/53
1367 Dillworth Road
Blacksburg, South Carolina 222-1018

"During the middle of March of this year was at the York Detention Center. David Allen, inmate in Detention Center, told

me that a boy had brought a knife in lockup, also a beeper. Guards didn't shake subject down when they locked him up. MarReece got the knife and hid it in our cell somewhere. I told guards a day before that someone had a knife in the back at C-5. They searched the next day but couldn't find the knife. Saw the knife in MarReece's possession. It was about 10 or 15 inches long, looked like a buck knife with lock blade. The boy that brought the knife in the cell was released on the 11th or 12th or March. David Allen was extradited to Florida by Florida authorities. He was afraid of MarReece, acted very strange at times. MarReece told some of the other inmates about 'taking him out' because I told guards that he had a knife."

On April 13, 1993, these agents interviewed **FELIX M. WIMBORN**, an inmate at the York County Detention Center in C-4 block. **WIMBURN** stated he heard **MAR-REECE HUGHES** talking with a man named **ANTHONY** in C-2 block. He (**MAR-REECE**) asked **ANTHONY**, "What is the quickest way to kill a person?" **ANTHONY** told him that the quickest way is to cut or stab someone in the throat. **ANTHONY** told **MAR-REECE** to save somed action for him. He never saw or heard of **MAR-REECE** having a knife in his cell.

MAR-REECE would talk to him (**WIMBORN**) one day and the next day, wouldn't say a thing. He acted very strange at times.

Another inmate asked **MAR-REECE** about the cutting incident and why did he do that to **WILLIAMSON**. **MAR-REECE** said, "because he did something to me."

On April 21, 1993, these agents contacted **DAVID ALLEN's** girlfriend at Universal Knits in Clover, South

Carolina. Ms. **TAMMY** told agents **DAVID** was back in South Carolina living with her in Clover and will talk with agents.

On April 21, 1993, **DAVID ALLEN** was interviewed by these agents. Mr. **ALLEN** stated he saw a young black man give a knife to **MAR-REECE HUGHES** to keep or him (York County Detention Center) because he was going to court and was afraid someone would find the knife on him. The knife had a long blade with a brass handle.

He (**DAVID ALLEN**) told the guards about the knife. They searched the cell but could not find the knife, because **MAR-REECE** had torn strips of bed sheets and tied the knife around his leg along the crotch area where no one could find it. He (**ALLEN**) was afraid to sleep at night in the cell with **MAR-REECE** because he knew **MAR-REECE** had a knife somewhere in the cell. He stated he heard **MAR-REECE HUGHES** and the young black boy talking about trading for the knife while in the recreation area during the exercise break at the York County Detention Center. (See Attachment #12 - Statement of David Allen)

On April 21, 1993, this agent contacted **JOSEPH LOWRY** by telephone at approximately 9:30 p.m. **JOSEPH** said that he never gave **MAR-REECE HUGHES** a knife, and when he was getting out of jail he told the guards about **MAR-REECE** having a knife in his cell.

This agent also talked with JOSEPH's father, SAM LOWRY. Mr. LOWRY agreed to meet with this agent at his job at the Catawba Nuclear Station on April 22, 1993 around 11:00 p.m.

JOSEPH LOWRY is still in high school. He stated he can meet with investigators at 3:00 p.m. after school, if necessary.

On April 22, 1993, this agent met with SAM LOWRY at his job site at the Catawba Nuclear Station. Mr. LOWRY stated his son was locked up because he thought someone had taken his truck. Mr. LOWRY stated deputies stopped his son, JOSEPH LOWRY, and charged him with Failure to Stop for a Blue Light, Grand Larceny, and No Driver's License. He stated his son had taken his truck without his permission. Mr. LOWRY stated he didn't know if his son, JOSEPH, owned a knife.

JOSEPH LOWRY, black male, 17 years of age, was interviewed by these agents on the May 5, 1993. His parents, Mr. and Mrs. SAM LOWRY, were present during the interview. The interview took place in the Pre-Trial Intervention conference room in York, South Carolina.

A picture of a lock blade knife was shown to JOSEPH LOWRY. He stated that he had never seen the knife before. He said he heard about a knife and saw something that looked like a shank (knife made by inmates).

After further questioning, JOSEPH LOWRY stated, to these agents, that the knife shown in the picture, as evidence found after the homicide, belonged to him.

JOSEPH stated he was locked up, with the knife in his possession, at the York County Detention Center on April 21, 1993. He stated he was searched seven or eight times by corrections officers at the Detention Center, but the officers never found the knife. During his booking at the center, JOSEPH said the knife was located in his pocket shorts under his pants. Officers never searched the crotch area during the search down.

JOSEPH stated, while in lockup, he passed the knife to someone in cell block #6 or #7. He stated he remembered looking at his arm and noticed it was a white male's arm. He stated he didn't know how MAR-REECE got the knife; he didn't give MAR-REECE the knife.

JOSEPH LOWRY stated he talked with MAR-REECE HUGHES several times in the break area. He also traded toothpaste and hair grease with MAR-REECE.

On his release date, JOSEPH stated he told officers that someone had a knife back in "C" block.

At this time, Mr. and Mrs. LOWRY requested that agents wait before taking a statement from JOSEPH until they could talk with a lawyer.

These agents re-interviewed **JOSEPH LOWRY** at his residence on Lake Wylie Road, Lake Wylie, South Carolina. **JOSEPH** furnished these agents a signed voluntary statement indicating the knife used to kill **JAMES WILLIAMSON** is the same knife he took into the York County Detention Center. He stated it is also the same knife he gave **MAR-REECE HUGHES** (See Attachment #13 - Booking Report and Statement of Joseph Lowry)

The Autopsy Protocol Report by James L. Maynard, M. D., at AMI Piedmont Medical Center, Rock Hill, South Carolina, revealed the apparent cause of death was exsanguination due to laceration of the external and internal jugular veins. (See Attachment #14 - Autopsy Report.

On April 18, 1993, these agents obtained warrants against **MAR-REECE HUGHES** for Murder (**JAMES E. WILLIAMSON**) and Assault & Battery with Intent to Kill (**CHRISTOPHER GORTH**). (See Attachment #15 - Warrants against Mar-Reece Hughes)

The South Carolina Law Enforcement Division Forensic Laboratory Report is included as Attachment #16, and photographs are included as Attachment #17.

A copy of this report will be forwarded to the Sixteenth Circuit Solicitor, Tommy Pope, for his review and whatever action he deems appropriate.

Respectfully submitted,

Special Agent Harry C. Benson
S.C. Law Enforcement Division

HCB:gh

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT

CARROLL A. CAMPBELL, Jr.
GOVERNOR

ROBERT M. STEWART
CHIEF

Latent Print Department
April 21, 1993
SLED Lab No.: L93-5578
Your Case No.: Not Listed
Incident Date: 04-12-93
(V) James Earl Williamson
(V) Christopher M. Gorth
(S) Marreece Aldean Hughes

Investigator Eddie Thomasson
York County Sheriff's Department
529 S. Cherry Road
Rock Hill, SC 29730

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case has been or will be conducted by any other Laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEM(S) SUBMITTED:

3 One lock blade knife.

4 One set of major case inked finger and palm impressions bearing the name Marreece Aldean Hughes.

RESULTS OF EXAMINATION: The Item 3 knife was examined and processed for latent prints; however, the developed ridge detail is all insufficient for identification.

One set of crime scene photographs and one crime scene sketch are enclosed.

These examinations were conducted by S/A David Black and S/A John Christy, Examiners with this Division.

David W. Black, Special Agent

John C. Christy, Special Agent

DWB/JCC/ahj

CC: SLED Special Agent Harry Benson - Certified P 362 290 549
W. E. Ervin, York Co. Jail Admin.
Coroner Jim Chapman

Enclosures
Certified P 362 290 548

4416 Broad River Road, P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone: (803) 737-4300

93:AU000024R
WILLIAMSON,JAMES E

FINAL PATHOLOGIC DIAGNOSIS

I. Two stab wounds to left neck.

A. Laceration of external and internal jugular veins.

B. Laceration of superior epiglottis and hypopharynx.

C. Transection of left hyoid bone.

D. Marked hemorrhage with exsanguination.

E. No evidence of external defense wounds or other marks.

ned-out: James L. Maynard,M.D. 03021 04/19/93

93:AU000024R
WILLIAMSON,JAMES E

FINAL SUMMARY

The decedent was allegedly attacked in his jail cell with his throat being cut.

The autopsy revealed two stab laceration wounds of the left neck. A smaller one entered only the sternomastoid muscle. The larger transected the external and internal jugular veins on the left side and cut through the hyoid bone on the left side and extended into the hypopharynx and superior epiglottic area of the larynx. The carotid artery was intact. Extensive hemorrhage was present. The remainder of the exam was unremarkable. No defense wounds or abrasions were about the body.

The apparent cause of death was exsanguination due to laceration of the external and internal jugular veins and the manner of death was homicide.

93:AU000024R
WILLIAMSON,JAMES E

MICROSCOPIC

HEART: The myocardium is not remarkable. No atypia is present.

LUNGS: The lungs have mild edema and congestion. No foreign material or abnormalities are identified. Increased numbers of pigment laden macrophages are, however, noted.

LIVER: Unremarkable.

PANCREAS: Unremarkable.

SPLEEN: Unremarkable.

KIDNEYS: Unremarkable.

NECK: Extensive hemorrhage is in the neck along with lacerations of the hypopharynx.

93:AU000024R
WILLIAMSON,JAMES E

DESCRIPTION OF INJURIES
Disposition of evidence: Post mortem blood is obtained and given to State Law Enforcement Division officers.

INTERNAL EXAMINATION
The body is opened with a Y-shaped thoracoabdominal incision.

SEROUS CAVITIES: The serous cavities are free of significant fluid or disease.

HEART: The heart weighs 300 gms and has a smooth epicardial surface. The cut surface is unremarkable. The endocardium is unremarkable. The valves are unremarkable. The coronary arteries are not remarkable.

LUNGS: The right lung weighs 1100 gms. The left lung weighs 800 gms. Both are hyperinflated and somewhat mottled. The cut surfaces reveal congestion. No consolidation is identified. The bronchi contain frothy material. The pulmonary vessels are unremarkable. The hilar nodes are unremarkable.

LIVER: The liver weighs 1600 gms and is unremarkable. The cut surface is not remarkable. The gallbladder is present and unremarkable. The biliary tree is patent.

PANCREAS: Unremarkable.

SPLEEN: The spleen weighs 100 gms and is not remarkable.

GASTROINTESTINAL TRACT: See description of injuries. The mid and lower esophagus is unremarkable. The stomach is void of food. A small amount of clotted and non-clotted blood is in the stomach. The small and large intestines are unremarkable. The appendix is present.

ADRENALS: The adrenal glands weigh 10 gms each and are unremarkable.

KIDNEYS: The kidneys weigh 200 gms each and are unremarkable. Pelves and ureters are unremarkable. The bladder contains approximately 100 cc of clear urine.

GENITALIA: Unremarkable. The rectum and anus are unremarkable.

NECK ORGANS: See description of injuries.

SCALP: Examination of the scalp does not reveal any contusions or abrasions or abnormalities.

BRAIN: Examination of brain is not performed.

93:AU000024R

CEDENT'S NAME: WILLIAMSON,JAMES E

AGE: 31
AUTOPSY AUTHORIZED BY: JAMES H. CHAPMAN, YORK COUNTY CORONER
DATE AND TIME OF DEATH: 4/12/93 APPROXIMATELY 5:00 A.M.
DATE AND TIME OF AUTOPSY: 4/12/93 11:00 A.M.
PROSECTOR: JAMES L. MAYNARD, M.D.
ASSISTANT: WILLIE STARNES

CLINICAL SUMMARY
The decedent was allegedly attacked in his jail cell with his throat being slashed. EMS responded, but resuscitation was to no avail.

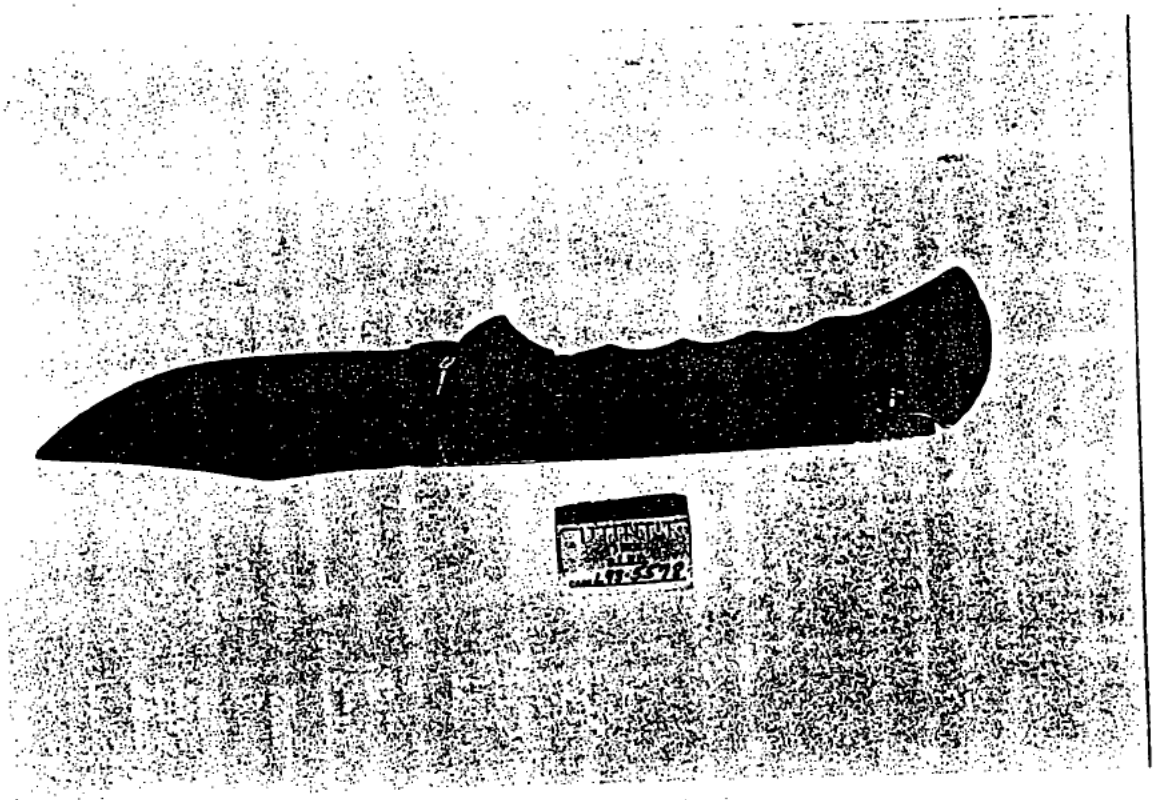
EXTERNAL EXAMINATION
The body is that of a well developed, well nourished white male appearing the stated age. The decedent measures 72 inches in length and weighs approximately 160 lbs. Hair is medium length and dark. Pupils are fixed and dilated. Sclera is clear. A 2-3 day growth of beard is present. The upper and lower front teeth are absent. No evidence of fresh injury is noted. The neck has two lacerations of the left neck. See description of injuries. The chest, abdomen, and lower extremities are unremarkable. The upper extremities are unremarkable. No lacerations, abrasions, or evidence of defense marks e noted. 3+ rigor mortis and 3+ livor mortis are present.

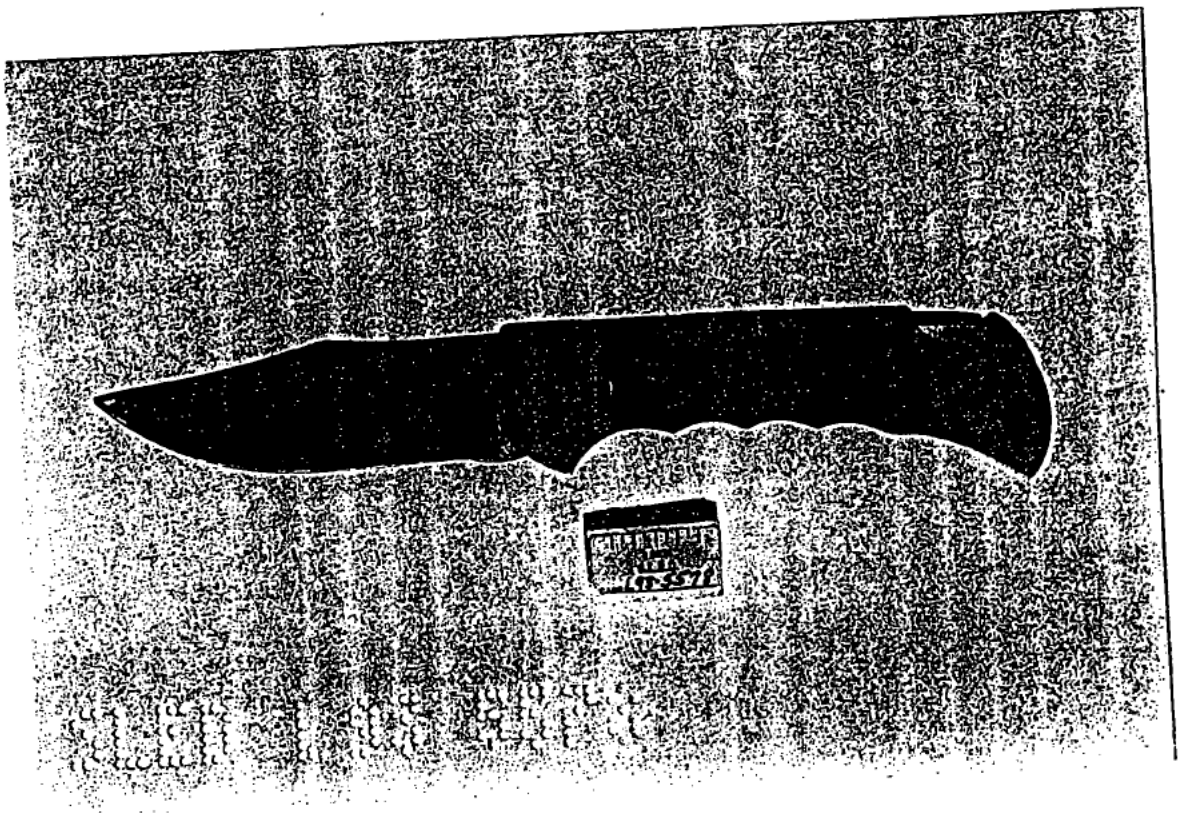
DESCRIPTION OF INJURIES
The decedent has sustained two lacerations to the left neck. The smaller laceration is 3/4 inch in length and 1/4 inch in diameter and is oblique with the wound extending from the left shoulder to the right foot. The laceration is over the mid sternoclidomastoid muscle. The laceration is 8 inches below the top of the head and 3 inches below the bottom of the ear. The wound extends into the sternomastoid muscle without damage to any underlying structures.

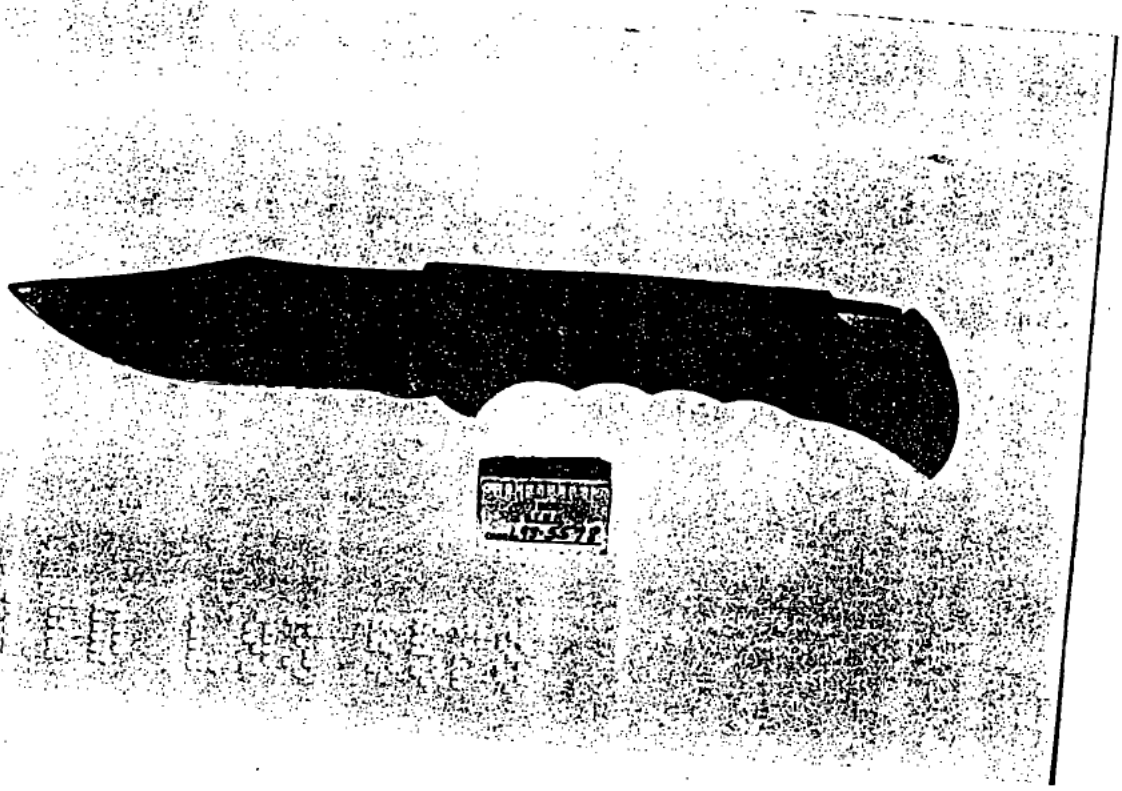
The second wound is a large gaping somewhat jagged wound 3 inches in length and 1 1/2 inches in diameter. The superior portion is 7 inches below the top of the head and the inferior portion 9 inches below the top of the head. The wound extends from the angle of the jaw medially to the mid line of the neck just superior to the thyroid cartilage. The wound has a jagged "dog ear" on the superiomedial aspect. The first portion is 1 inch in length to the dog ear and then 2 inches in length from the dog ear to the mid line. The angle changes to more vertical after the dog ear in the wound. The edges are otherwise cleanly cut. The blade lacerated the external jugular vein and lacerated the internal jugular vein. The carotid artery is intact. The blade transected the inferior aspect of the tongue just superior to the epiglottis with a gaping hole being present. The blade did cut through the left middle aspect of the hyoid bone.

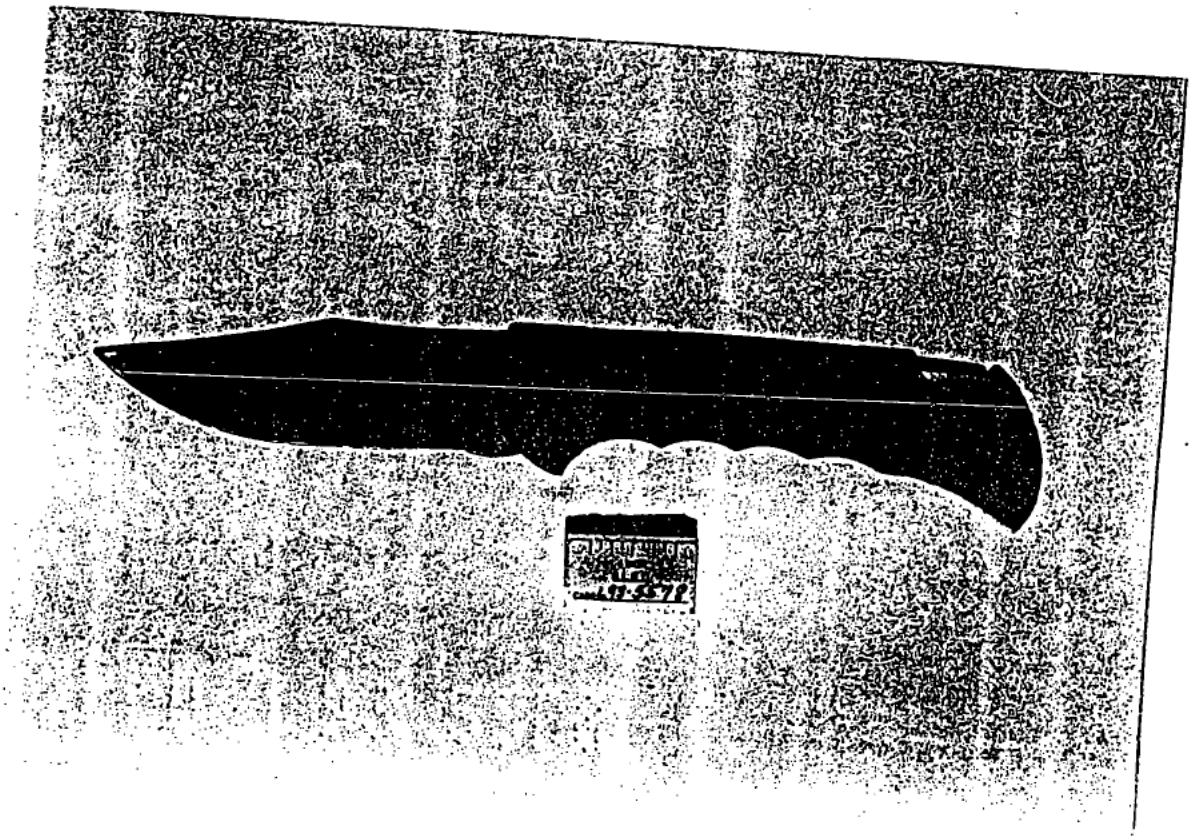
<DESCRIPTION OF INJURIES continued>

(CONTINUED)

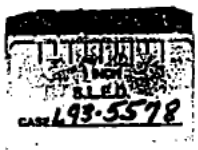


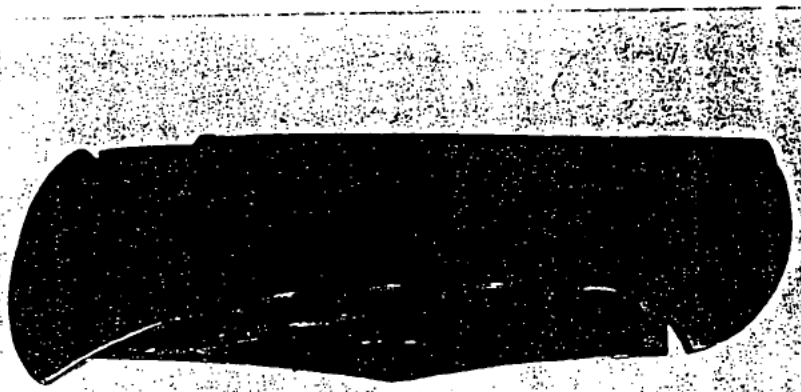


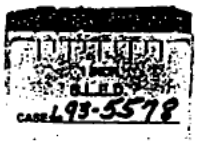


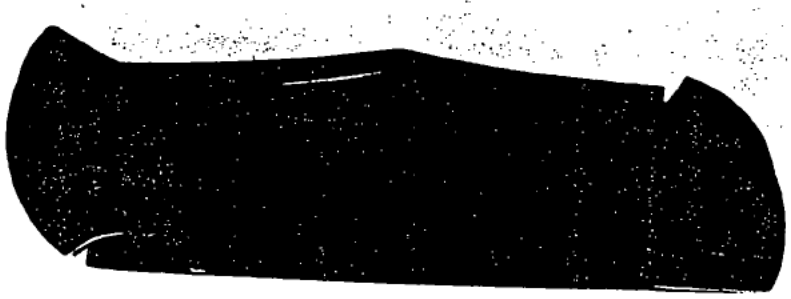




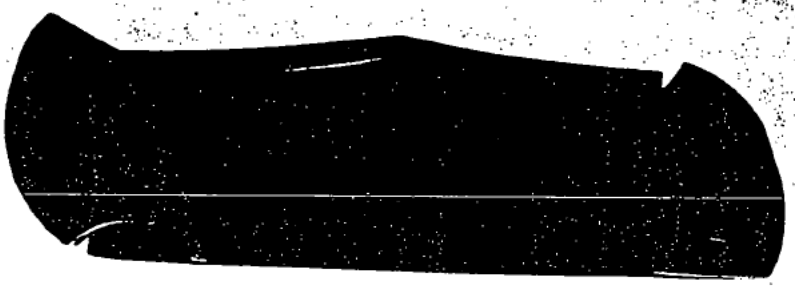

CASE L93-5578

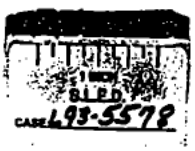


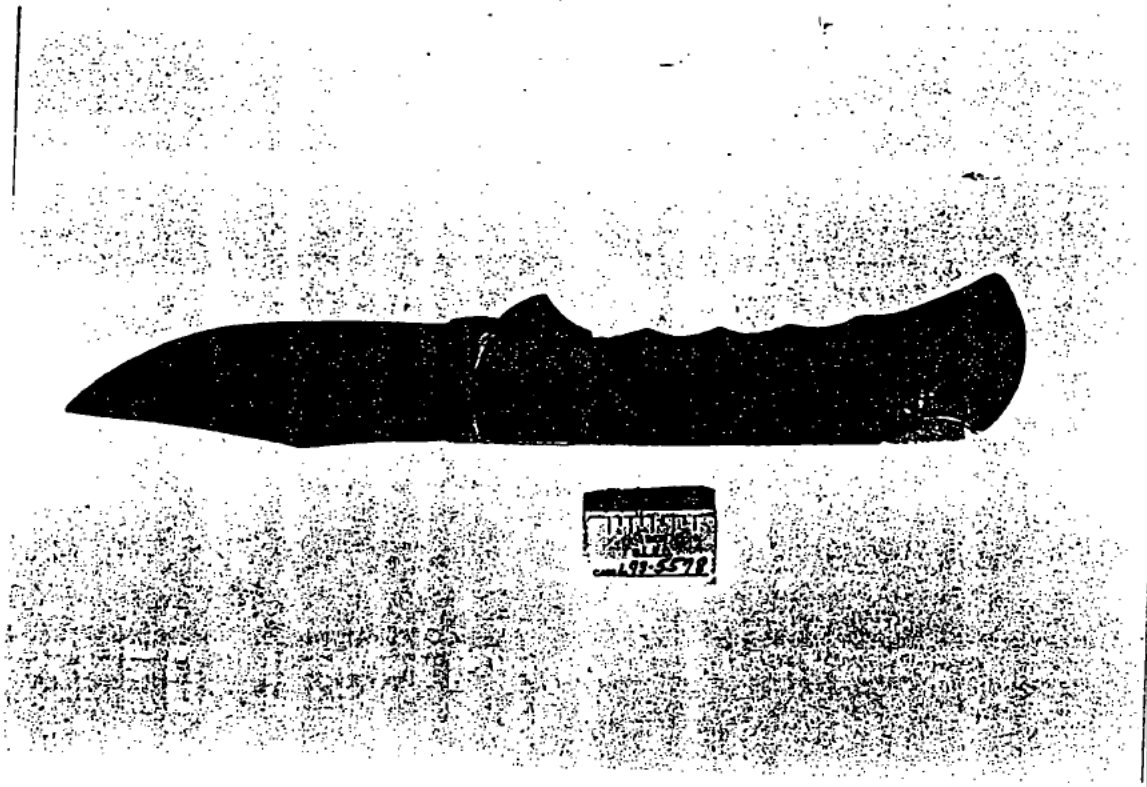

CASE L93-5578

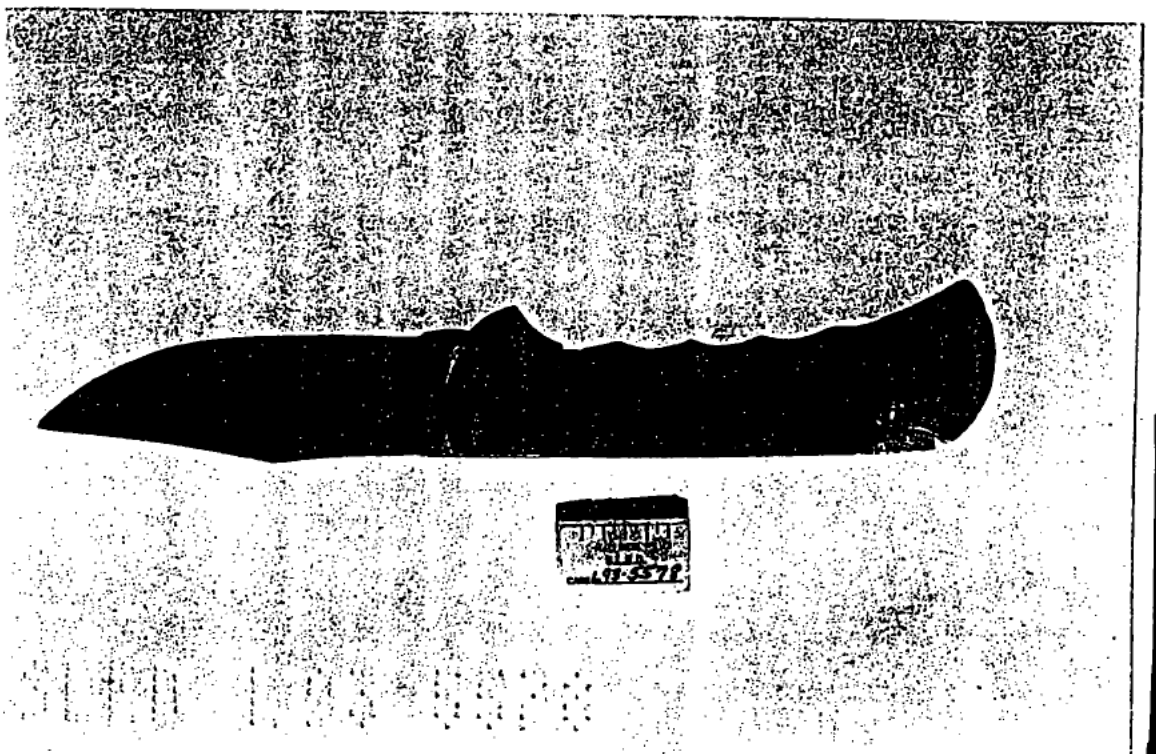


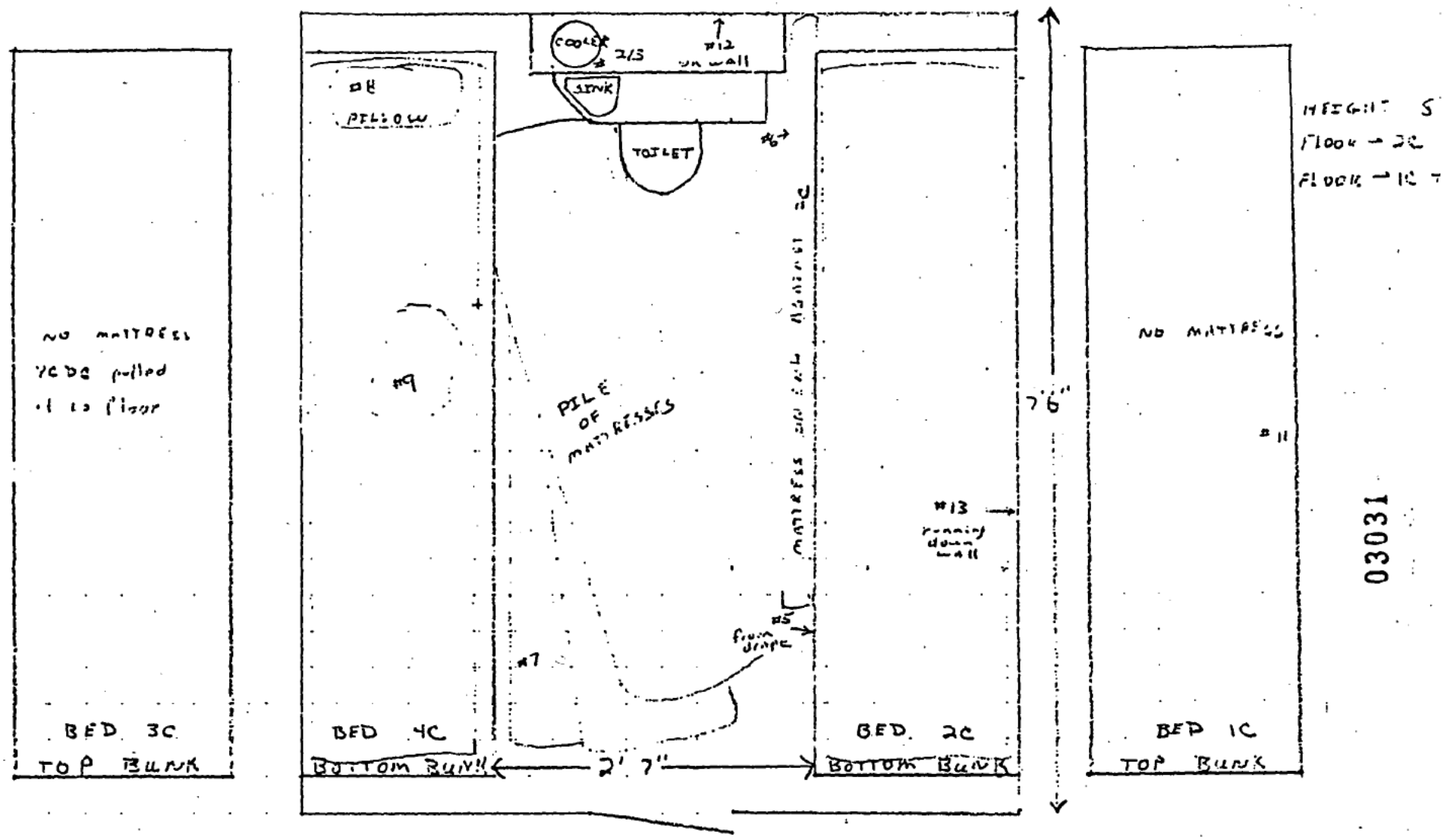

CASE L93-5578




CASE L93-5578







BED ASSIGNMENTS

1C JAMES WILLIAMSON

4C RICHARD WALDROP

2C MAURICE HUGHES

3C CHRISTOPHER SMITH

493-5578

YORK COUNTY DETENTION CENTER

JAIL BLOCK C

SCALE C-1

#93-00031

YORK COUNTY DETENTION CENTER
Inmate Accident Or Injury Report

Subjects Name: JAMES EARL WILLIAMSON HU#: C-1

Address: 5508 BETTY DR. SAVANAH GA
Number and Street City State

Time and Date of Accident/Injury: 0500 ±ON 4-12-93

Exact Location of Accident/Injury: C-1

Describe nature and location of injury to subject:
LACERATION TO NECK AREA.

Describe severity of injuries to subject (minor, severe, fatal) if treatment was required, who administered treatment, who was notified and at what time.

SUBJECT HAD A FATAL LACERATION TO THE THROAT. EMS WAS CALLED & TOWELS WAS APPLIED TO THE SUBJECTS NECK WITH PRESSURE TO STOP BLEEDING. I NOTIFIED DISPATCH AT ABOUT 0505 OF THE SITUATION AND CALLED CHIEF MANN, CAPT. SEALY & CHIEF ERVIN IMMEDIATELY.
* SEE EVENTS REPORT FOR MORE DETAILS *

Give a word picture explaining **WHO, WHAT, WHERE, WHEN, WHY, and HOW** of the accident/injury.

INMATE CAME OUT OF CELL BLEEDING FROM NECK AREA AND RAN UP THE HALL TO BOOKING AREA. THE REST IS STILL UNDER INVESTIGATION.

How could the accident/injury been prevented? N/A

Submitting Officers Signature

ACTION TAKEN: EMS REMOVED SUBJECT & TRANSPORTED TO HOSPITAL. HUGES-MAURICE WAS LATER MOVED BY DEPUTIES TO HOLDING CELL & CHAINED DOWN.

Michael Kimbrell SGT-ATE
Reviewing Officers Signature

DISTRIBUTION: Inmates File
Medical Staff
Attached Events Report

03032

YCDC/Form 013
Rev. 10/91

Use Back Of Page For Witness Information

#93-E00357

YORK COUNTY DETENTION CENTER
Inmate Accident Or Injury Report

Subjects Name: Garth, Christopher Cell ~~Unit~~: 1

Address: 529 S. Cherry Rd., Rock Hill S.C.
Number and Street City State

Time and Date of Accident/Injury: 0500 / 4-12-93

Exact Location of Accident/Injury: Cell Block - 1

Describe nature and location of injury to subject: Laceration to upper Right Chest area, left leg and Right leg.

Describe severity of injuries to subject (minor, severe, fatal) if treatment was required, who administered treatment, who was notified and at what time.

EMS Administered treatment, 911 Was notified first at 0500.

Give a word picture explaining WHO, WHAT, WHERE, WHEN, WHY, and HOW of the accident/injury.

Garth, Christopher W/M @ 0500 in Cell-1 was cut by an a ledge knife. By Another i/M Hughes, Maneece B/M ~~which was~~
Please See Events Report for More Information.

How could the accident/injury been prevented? It Couldn't!
N/A

Stella Lingefelt
Submitting Officers Signature

ACTION TAKEN: i/M Garth was taken to Hospital for Medical Treatment.

Stella Lingefelt
Reviewing Officers Signature

DISTRIBUTION: Inmates File
Medical Staff
Attached Events Report

03033

YCDC/Form 013
Rev. 10/91

Use Back Of Page For Witness Information

#93-E0035 1

YORK COUNTY DETENTION CENTER
Inmate Accident Or Injury Report

Subjects Name: JAMES EARL WILLIAMSON HU#: C-1

Address: 5508 BETTY Dr. SAVANAH GA
Number and Street City State

Time and Date of Accident/Injury: 0500 ON 4-12-93

Exact Location of Accident/Injury: C-1

Describe nature and location of injury to subject:
LACERATION TO NECK AREA.

Describe severity of injuries to subject (minor, severe, fatal) if treatment was required, who administered treatment, who was notified and at what time.

SUBJECT HAD A FATAL LACERATION TO THE THROAT, EMS WAS CALLED & TOWELS WAS APPLIED TO THE SUBJECTS NECK WITH PRESSURE TO STOP BLEEDING. I NOTIFIED DISPATCH AT ABOUT 0505 OF THE SITUATION AND CALLED CHIEF MANN, CAPT. SEALY & CHIEF ERVIN IMMEDIATELY.
* SEE EVENTS REPORT FOR MORE DETAILS *

Give a word picture explaining **WHO, WHAT, WHERE, WHEN, WHY,** and **HOW** of the accident/injury.

INMATE CAME OUT OF CELL BLEEDING FROM NECK AREA AND RAN UP THE HALL TO BOOKING AREA. THE REST IS STILL UNDER INVESTIGATION.

How could the accident/injury been prevented? N/A

Submitting Officers Signature

ACTION TAKEN: EMS REMOVED SUBJECT & TRANSPORTED TO HOSPITAL. HUGES-MAURICE WAS LATER MOVED BY DEPUTIES TO HOLDING CELL & CHAINED DOWN.

Michael Kimbrell SGT-ATT
Reviewing Officers Signature

DISTRIBUTION: Inmates File
Medical Staff
Attached Events Report

03034

YCDC/Form 013
Rev. 10/91

Use Back Of Page For Witness Information

WITNESSES:

Name:	HU#:	Age:	Sex:
Lorth, Christopher	C-1	17	M
Waldrop, Richard	C-1	25	M

YORK COUNTY DETENTION CENTER
Inmate Request

All requests by inmates will be reviewed by the Shift Supervisor which receives the initial request form. If he is unable to meet the requirements of the request it will be forwarded for additional review and action.

FROM: Hughes DATE: 1-6-93

I request that I be granted the following:

( ) Special Telephone Call
( ) Personal Talk With You
( ) Change in Visiting Time
( ) Other - Specify

REASON: Moved to A Block

( ) Approved Completed (Yes) (No) Forwarded (Y) (N) To Whom

(X) Disapproved - Reason No Space

D. Wilson
Signature of Shift Supervisor
Signature of Reviewing Officer

LEAVE BLANK

TYPE OR PRINT ALL INFORMATION IN CK

LAST NAME NAM FIRST NAME MIDDLE NAME

FBI LEAVE BLANK

SAGE

ALIASES

CONTRIBUTOR ORI SC046U23C DETENTION CENTER ROCK HILL SC

OFF FINGERPRINTED

DATE OF BIRTH DOB Month Day Year

MAY BE COMPUTERIZED IN LOCAL STATE AND NATIONAL FILES

DATE ARRESTED OR RECEIVED DOA | SEX | RACE | HGT. | WGT. | EYES | HAIR | PLACE OF BIRTH POB

SIGNATURE OF OFFICIAL TAKING FINGERPRINTS Robin Branch

YOUR NO OCA

LEAVE BLANK

FBI NO FBI

CLASS.

SID NO. SID

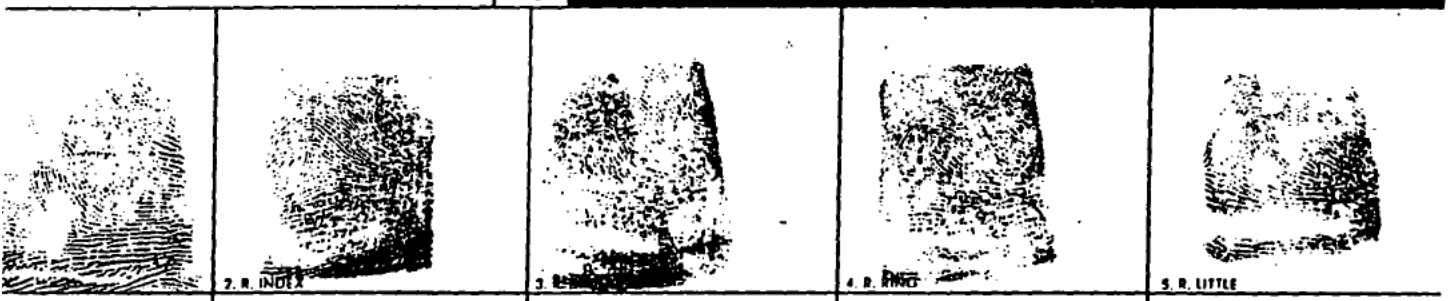
REF.

SOCIAL SECURITY NO. SOC

OSITION

NCIC CLASS - FPC

CAUTION



2. R. INDEX

3. R. [illegible]

4. R. RING

5. R. LITTLE

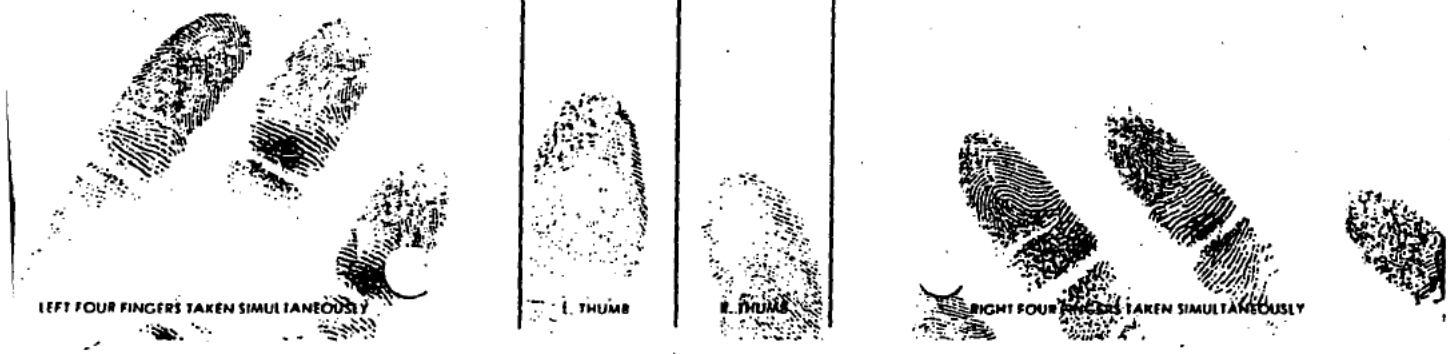


7. L. INDEX

8. L. [illegible]

9. L. RING

10. L. LITTLE



LEFT FOUR FINGERS TAKEN SIMULTANEOUSLY

L. THUMB

R. THUMB

RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY

03037

STATE OF SOUTH CAROLINA

COUNTY OF YORK

CERTIFIED TRUE COPY

SEP 22 8 23 AM '95

COUNT NO: _____

CASE NO: 93 GS-46- 46397

WARRANT NO: Redacted

CHARGE: Murder

THE STATE

VS

Dwayne Eric Forney

The sentence of the Court is that Dwayne Eric Forney, the defendant named in th indictment be confined to the State Board of Corrections/ York County Detention for a term of Life

~~(and) (or) pay a fine of $ _____ : provided that upon the service of _____ (an~~

~~(or) payment of $ _____ plus (pay) (waive) cost and assessments as applicable *, the balance 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 $ _____

PAYABLE TO CLERK FOR (VICTIM) _____

TOTAL$ _____

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: The Defendant Dwayne Eric Forney is to remain in the custody of the Department of corrections for the balance of his

PENGAD - Bayonne, N. J.

C-15

CW

DATE: 2-10-94

YORK, SOUTH CAROLINA

John C. Hungerpiller

Presiding Judge

*COST AND ASSESSMENTS:

FINE	$	
ACADEMY	$	
C.C.A.	$	
L.C.F.	$	
C.A.T.	$	
OTHER	$	
GRAND TOTAL	$	

Ed Lyerly

Clerk of Court

Date of Birth [redacted]

Social Security [redacted]

Drivers License N/A

COPY RECEIVED BY: Eric Forney

Defendant

ATTORNEY FOR DEF Blanche Bay

ADDRESS: 1012 Mc Dowell

Charlotte NC

03038

M/F

B/W

WHITE - Clerk PINK - Detention YELLOW - Probation Dept. BLUE - Defendant's Copy

8:30 pm

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?

Byron Neely
Jury foreman

PENGAD-Bayonne, N. J.
C.37
CR

Would the jury like to continue to work tonight or break until in the morning.

Tonight ——

Morning ——

——

Foreman

Jack Hays

PENGAD-Bayonne, N. J.

C-34

CN

03040

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF GENERAL SESSIONS
State of South Carolina, vs. Mar-Reece Aldean Hughes, Defendant.	)	BRADY MOTION

Defendant, by and through his counsel, moves this Court for an Order requiring that the State make available to the defense all information in the custody, possession, control or knowledge of the State or any Law Enforcement Agency involved in the investigation of the above-captioned matter in accordance with the requirements of Brady v. Maryland, 373 U.S. 83, 10 L.E.2nd 215, 83 S.C. 1194 (1963); Giglio v. United States, 405 U.S. 150, 31 L.E.2nd 104, 92 S.C. 763 (1972); Moore v. Illinois, 408 U.S. 786 (1972); Napue v. Illinois, 360 U.S. 364 (1959); Alcorta v. Texas, 355, U.S. 28 (1957); and Mooney v. Holohan, 294 U.S. 103 (1935). This information is not limited to, but should include the name(s) of any other person(s) considered to be a suspect at any time by any member of any prosecuting agency in this matter, the name(s) of any accomplice(s) the State will allege was involved in this matter or any person suspected at any time of being an accomplice, the names of all persons that are contemplated as witnesses for the State, and/or any person that was interviewed by any officer or member of any prosecuting agency involved in this matter.

Defendant further moves the Court for an Order requiring the State to make available to the Court all information or evidence in its custody, possession, control or knowledge concerning the above-

captioned matter so as to permit the Trial Judge to make an in camera inspection of any material not produced for the defense so as to insure that the State has complied completely with the requirements of Brady and the associated cases above-listed.

Respectfully submitted,

STEPHEN D. SCHUSTERMAN

CHRISTINA CHADWICK BRICE
ATTORNEYS FOR THE DEFENDANT.

York, South Carolina
This 28 Day of ~~September~~ Aug, 1995

FILED-RECEIVED
AUG 21 1 18 PM '95
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FILED-RECEIVED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK	)	
STATE OF SOUTH CAROLINA,	)	
vs.	)	MOTION FOR A CONTINUANCE
MAR-REECE HUGHES,	)	
Defendant.	)	

The Defendant, Mar-Reece Hughes, moves for an Order of this Court continuing the above-referenced matter from the trial date of September 11, 1995 based on the fact that the Sixteenth Circuit Solicitor's Office has failed to comply with the Rule 5 and Brady requests previously filed and the subsequent requests made by the Defendant for production of all discoverable materials not limited to the following:

a. Any and all photographs taken of Eric Dwayne Forney and Mar-Reece A. Hughes.

b. Any and all taped telephone conversations between Officer Perry and Mar-Reece Hughes.

c. Any and all copies of written interviews taken of Officer Perry including the dates and times of such interviews.

d. A review of all exhibits and copies of all documents admitted into evidence during Eric Forney's trial.

e. Any videotapes taken in connection with Mr. Hughes' or Mr. Forney's cases.

f. Copies of all materials in the possession of the Solicitor's Office, any law enforcement officer, or any SLED employee regarding fingerprints and palm prints taken of Mr. Hughes and Mr. Forney and the results of all comparisons.

g. Any and all photographs of any vehicle involved.

h. Copy of the death certificate on James Earl Williamson.

i. The substance of any oral statement allegedly made by the Defendant to any prosecution agent or any other person.

j. Copies of all photographs taken.

The Solicitor's Office repeated failure to comply with the Defendant's request for production has prevented the adequate preparation of Mr. Hughes' defense by September 11, 1995.

Christina C. Brice
Post Office Box 300
York, South Carolina 29745
(803) 684-4462

Attorney for Defense

York, South Carolina

August 3, 1995

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF GENERAL SESSIONS
State of South Carolina, vs. Mar-Reece Aldean Hughes Defendant.	MOTION FOR LIST OF PROSECUTION WITNESSES

Now comes the Defendant, by and through his attorneys, who moves this Court for an Order directing the Sixteenth Judicial Circuit Solicitor's Office, no later than ten days prior to trial, provide defense counsel with a complete list of the names and addresses of all witnesses the State intends to call during the guilt/innocence phase of the trial and, if necessary, during the punishment phase. In support of this motion, Defendant submits:

1. That he was indicted by the York County Grand Jury for the crime of Murder;

2. That the Sixteenth Judicial Circuit Solicitor's Office has delivered to defense counsel written notice that the State intends to seek the death penalty against Defendant;

3. That on information and belief, law enforcement authorities and staff members of the Sixteenth Judicial Circuit Solicitor's Office have interviewed numerous witnesses who may testify during the guilt/innocence or punishment phases of the trial, or both;

4. That death penalty trials are divided into two phases as mandated by the United States Supreme Court decision of Furman v.

Georgia, 408 U.S. 238 (1972);

5. That if the attorneys for Defendant are not provided, at least ten days prior to trial, with a complete list of the names of the witnesses to be used during the guilt/innocence and punishment phases of the trial, Defendant will be denied his Sixth Amendment right to effective assistance of counsel as guaranteed by the United States Constitution. Failure to require such a list would also constitute a violation of the Fourteenth Amendment of the United States Constitution. As the United States Supreme Court has recognized: "The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." Chambers v. Mississippi, 410 U.S. 284 (1973);

6. That where, as here, the trial may result in death, the State must extend to the Defendant every procedural and substantive right to which he is arguably due. "When the accused's life is at stake, technical rules of procedure must give way in order that justice may prevail." Bowman v. Commonwealth of Kentucky, 290 S.W.2d 814, 817 (Ky. 1956).

WHEREFORE, Defendant prays that this Court order that the Solicitor's Office provide, at least two weeks prior to trial, a complete list of the names and addresses of all witnesses the State intends to call during the guilt/innocence and penalty phases of the trial with a designation as to the particular phase at which they will be called to testify.

Respectfully submitted,

STEPHEN D. SCHUSTERMAN

CHRISTINA CHADWICK BRICE
ATTORNEYS FOR THE DEFENDANT.

York, South Carolina
This 28 day of Aug, 1995.

FILED-RECEIVED
AUG 29 1 05 PM '95

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF GENERAL SESSIONS
State of South Carolina, vs. Mar-Reece Aldean Hughes, Defendant.	)	MOTION FOR PRODUCTION

Now comes the Defendant, Mar-Reece Aldean Hughes, who moves for an Order of this Court requiring the Solicitor's Office to provide to the Defendant the following:

1. All information regarding any alleged oral statement made by the Defendant including the contents of the statement itself, to whom the statement was made, and when the statement was made.
2. A list of witnesses intended to be called by the Solicitor's Office to testify regarding any alleged oral statement.
3. The criminal rap sheets on all State witnesses including any witness intended to be called regarding alleged oral statement.
4. Information regarding any and all promises made, rewards given or promised, and any benefits extended to any State witnesses.

03048

WHEREFORE, the Defendant, Mar-Reece Aldean Hughes, requests an Order of the Court mandating the production of the requested information.

Respectfully Submitted,

Christina C. Brice

Christina C. Brice

Dated_____

FILED & RECEIVED
Aug 29 1 48 PM '95
JB

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF GENERAL SESSIONS
State of South Carolina, vs. Mar-Reece Aldean Hughes, Defendant.	)	MOTION TO REQUIRE STATE LAW ENFORCEMENT DIVISION TO COMPLETE ANALYSES AND PROVIDE REPORTS

Defendant, by and through his counsel, moves this Court for an Order requiring that the State Law Enforcement Division complete and provide to the defense, no later than September 1, 1995 copies of all reports and analyses of evidence in the above case. In support of this motion, counsel for Defendant submits that the failure to supply the reports of analyses performed by any personnel employed by or associated with the State Law Enforcement Division in a timely fashion, will deprive Defendant of his right to effective assistance of counsel in violation of the United States Constitution.

FILED-RECEIVED
AUG 29 1 46 PM '95
YORK

Respectfully submitted,

STEPHEN D. SCHUSTERMAN

CHRISTINA CHADWICK BRICE
ATTORNEYS FOR THE DEFENDANT.

York, South Carolina
This 28 Day of ~~September~~ Aug, 1995

DEFENSE OF INDIGENTS ACT

FORM NO. IV

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
COUNTY OF York)
DOCKET NO. _____)

STATE OF SOUTH CAROLINA)
VS.)
Mac-Reece Aldean Hughes)
DEFENDANT)
_____)

ORDER OF APPOINTMENT OF LEGAL COUNSEL OF INDIGENT DEFENDANT

The Defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, Yale Zamore(Co-Counsel), Attorney-at-Law, is appointed as Counsel for the Defendant.

Charges: Murder, et. al.

Address:
1012 McWay Rd.
Charlotte, NC 28211

Sex: M
Race: B
SS # 239-29-6537
DOB: 11-1-66

This 29th day of September,
1992, at York, S.C.
(A.M./P.M.)

Don S. Rushing
DON S. RUSHING
PRESIDING JUDGE

* The formal order to be filed at a later date by the Court. DSR

03051

DEFENSE OF INDIGENTS ACT

FORM NO. IV

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
DOCKET NO. _____)
)
STATE OF SOUTH CAROLINA) ORDER OF APPOINTMENT OF LEGAL COUNSEL OF INDIGENT DEFENDANT
)
VS.)
MAR-REECE ALDEAN HUGHES)
)
DEFENDANT)
)
_____)

The Defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, EDWARD JACKSON , Attorney-at-Law, is appointed as Counsel for the Defendant.

CHARGES:
MUDER,CONSPIRACY,REC.& POSS. STOLEN GOODS,UNL. CARRYING PISTOL , CR. CONSPIRACY, POSS. FIREARM DURING COMM. VIO. CRIME, FELON IN POSS. OF FIREARM, ARMED ROBBERY

This 20 day of OCTOBER ,
19 92 , at 4:00 P.M.
(A.M./P.M.)

_____

DEFENSE OF INDIGENTS ACT

FORM NO. IV

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
DOCKET NO. _____)
)
STATE OF SOUTH CAROLINA) ORDER OF APPOINTMENT OF LEGAL
) COUNSEL OF INDIGENT DEFENDANT
VS.)
MAR-REECE ALDEAN HUGHES)
)
DEFENDANT)
)
_____)

The Defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, TOM MCKINNEY , Attorney-at-Law, is appointed as Counsel for the Defendant.

MR. TOM MCKINNEY, ATTY. AT LAW
P.O. BOX10470
ROCK HILL, SOUTH CAROLINA 29731

328-1848

This 30th day of October ,
19 92 , at 8:00
(A.M./P.M.)

_____

03053

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS COURT
	)	
COUNTY OF YORK	)	
State of South Carolina	)	
	)	
-VS-	)	ORDER
	)	
Mar-Reece Aldean Hughes,	)	
	)	
Defendant.	)	

It appears to the Court that the name of the Petitioner, Edward M. Jackson, was mistakenly left upon the Indigent Appointment List filed with the Clerk of Court, he having previously requested exemption therefrom based upon age.

IT IS ORDERED that the Petitioner, Edward M. Jackson, be relieved as counsel for Mar-Reece Aldean Hughes and the Clerk of Court shall appoint the next Attorney upon the list.

York, South Carolina
October 29th, 1992

Don S. Rushing
Presiding Judge
Sixteenth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

GENERAL SESSIONS COURT

State of South Carolina)
)
-VS-)
)
Mar-Reece Aldean Hughes)
)
Defendant.)

PETITION FOR DISCHARGE AS COUNSEL FOR DEFENDANT

The Petitioner would respectfully show:

1. By Order of the Court dated October 20,1992, the petitioner was appointed as counsel for the defendant, Mar-Reece Aldean Hughes.

2. Petitioner is Sixty-Six (66) years of age, a sole practioner, and previously requested exemption from the indigent appointment lists of the Court.

3. Petitioner would request the Court to be relieved as Counsel for the defendant due to the undue hardship that same imposes upon the petitioner and petitioner's prior request for exemption .

WHEREFORE, Petitioner prays that he be relieved as Counsel for the Defendant.

October 28, 1992

Edward M. Jackson

Edward M. Jackson
Attorney for Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF YORK	)	
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	O R D E R
	)	
vs	)	
	)	
Mar-Reece Aldean Hughes,	)	
	)	
Defendant.	)	
	)	

IT APPEARS that the Petitioner, Thomas A. McKinney, has a clear conflict of interest in any representation of the above named Defendant in this matter.

THEREFORE, IT IS ORDERED that the Petitioner, Thomas A. McKinney, be, and hereby is, relieved as counsel for Mar-Reece Aldean Hughes and that the Clerk of Court appoint the next attorney on the list.

DON S. RUSHING
Chief Administrative Judge
Sixteenth Judicial Circuit

November 5, 1992
York, SC

McKINNEY, GIVENS & MILLAR, P.A.
ATTORNEYS AND COUNSELORS AT LAW

THOMAS A. McKINNEY
THOMAS A. GIVENS
TERRY B. MILLAR
JAMES W. TUCKER, JR.*
CHRISTOPHER A. WELLBORN

*ALSO ADMITTED IN NORTH CAROLINA

303 SALUDA STREET
P.O. BOX 10470
ROCK HILL, SOUTH CAROLINA 29731-0470
803-328-1848 FAX 803-328-8860

YORK OFFICE
4 EAST LIBERTY STREET
SUITE H
803-684-7461
OPEN BY APPOINTMENT

PLEASE REPLY TO ROCK HILL OFFICE

November 4, 1992

The Honorable Don S. Rushing
Presiding Judge
Sixteenth Judicial Circuit
P. O. Box 649
York, SC 29745

RE: State vs. Mar-Reece Aldean Hughes

Dear Judge Rushing:

Pursuant to your instructions, I have this day hand delivered and served a copy of the PETITION TO BE RELIEVED AS COUNSEL upon the Solicitor, the York County Bar, and the Public Defender.

I attempted to file the Petition with the Clerk of Court for York County, also pursuant to your instructions, but was told they could not accept the Petition until you had signed the Order. Therefore, please find enclosed the original Petition and Order in this matter. I will be happy to come pick up the Order, if you grant the Petition, and take it to be filed, or you may return it to me in the enclosed envelope for filing.

Please contact me if you have any further questions or concerns regarding this matter.

With kindest regards, I remain,

Sincerely,

Christopher A. Wellborn

CAW:prl
Enclosures: PETITION TO BE RELIEVED AS COUNSEL (original)
ORDER (original)
Return Envelope

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF YORK	)	
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	PETITION TO BE RELIEVED AS COUNSEL
	)	
vs	)	
	)	
Mar-Reece Aldean Hughes,	)	
	)	
Defendant.	)	
	)	

The Petitioner, Thomas A. McKinney, respectfully requests that this Court relieve him as counsel of record for the above named Defendant for the following reasons:

I.

FACTS

1. The Petitioner was appointed counsel for the Defendant on October 30, 1992 by Order of the Honorable Don S. Rushing, Chief Administrative Judge for the Sixteenth Judicial Circuit.

2. The Petitioner received the Order of Appointment on November 2, 1992.

3. The Defendant is charged with the armed robbery and murder of James Brent McCants, these offenses allegedly occurring on September 25, 1992.

4. The Defendant has also been charged with Felon in Possession of a Firearm, Possession of a Firearm in the Commission of a Violent Crime, two (2) counts of Criminal Conspiracy, Unlawful Carrying of a Pistol, and Receiving Stolen Goods. All these charges arise out of the same alleged transaction, occurrence or incident as the alleged robbery and murder of James Brent McCants.

5. Prior to his death on September 25, 1992, James Brent McCants had a close personal and business relationship with the Petitioner. This relationship included advice on legal matters.

6. Subsequent to his death, the surviving family of Mr. McCants has conferred with the Petitioner, in the Petitioner's capacity as an attorney, regarding the Estate of James Brent McCants.

7. The Solicitor of the Sixteenth Judicial Circuit has given notice that the State seeks the death penalty for the Defendant on the above mentioned charges.

8. The surviving family has not consented to Petitioner's representation of the Defendant.

II.

ARGUMENT

Rule 1.7 (a)(1) and (2) of the South Carolina Rules of Professional Conduct states, in pertinent part, that:

> (a) A lawyer shall not represent a client <u>if</u> the representation of that client will be directly adverse to another client,...

The only exceptions allowed to this rule are when

> (1) The lawyer <u>reasonably</u> believes the representation will not adversely <u>affect</u> the relationship with the other client; <u>and</u>
>
> (2) Each client consents after consultation.

In this case, both the client and personal relationships that the Petitioner currently enjoys with the surviving family of James Brent McCants would be affected by representation of his alleged murderer. Likewise, it is inconceivable that the family would

03059

consent to such representation or that this Defendant would want it under the above circumstances.

WHEREFORE, as a clear conflict of interest exists between the Petitioner's current clients, the alleged victim, his prior client and personal friend, and the Defendant, the Petitioner respectfully asks this Court to relieve him as counsel for the Defendant in this case.

THOMAS A. McKINNEY
McKinney, Givens & Millar, P.A.
303 Saluda Street
P. O. Box 10470
Rock Hill, SC 29731
(803) 328-1848

Petitioner

November 4th, 1992
Rock Hill, South Carolina

DEFENSE OF INDIGENTS ACT

FORM NO. IV

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
DOCKET NO. _____)
)
) ORDER OF APPOINTMENT OF LEGAL
STATE OF SOUTH CAROLINA) COUNSEL OF INDIGENT DEFENDANT
)
VS.)
)
MAR-REECE ALDEAN HUGHES)
)
DEFENDANT)
)
_____)

The Defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, KENNETH M. ROBINSON-Co-Counsel, Attorney-at-Law, is appointed as Counsel for the Defendant.

KENNETH M. ROBINSON
GUARDIAN BUILDING
ROCK HILL, SOUTH CAROLINA 29730

TELE: 328-6100

CHARGES:

This 20th day of NOVEMBER,
19 92, at 8:30 A.M.
(A.M./P.M.)

_____

MURDER, CRIMINAL CONSPIRACY, REC. & POSS. STOLEN GOODS
UNL. CARRYING PISTOL, CRIMINAL CONSPIRACY,
POSS. FIREARM DURING COMM. OF VIO. CRIME, FELON IN POSS. OF FIREARM AND
ARMED ROBBERY

DEFENSE OF INDIGENTS ACT

FORM NO. IV

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
DOCKET NO. _____)
)
STATE OF SOUTH CAROLINA)
VS.)
MAR-REECE ALDEAN HUGHES)
)
DEFENDANT)
_____)

CAPITOL CASE

CONFLICT OF INTEREST

ORDER OF APPOINTMENT OF LEGAL COUNSEL OF INDIGENT DEFENDANT

The Defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, ALFORD HASELDEN , Attorney-at-Law, is appointed as Counsel for the Defendant.

This 17th day of DECEMBER ,
19 93 , at 2:45 P.M.
(A.M./P.M.)

_____

CONFLICT OF INTEREST

ALFORD HASELDEN
P.O. BOX 173
CLOVER, S.C. 29710

TELE: 222-4783

CO-COUNSEL: DONALD M. BROWN, JR.

03062

CHARGES: MURDER (2 Counts) - CRIMINAL CONSPIRACY (2 counts) REC. & POSS. STOLEN GOODS, POSS. FIREARM DURING THE COMM. OF CRIME, FELON IN POSS. FIREARM, ARMED ROBBERY

DEFENSE OF INDIGENTS ACT

FORM NO. IV

IN THE COURT OF GENERAL SESSIONS

CAPITOL CASE

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
DOCKET NO. _____)
)
) ORDER OF APPOINTMENT OF LEGAL
STATE OF SOUTH CAROLINA) COUNSEL OF INDIGENT DEFENDANT
)
VS.)
)
MAR-REECE ALDEAN HUGHES)
)
DEFENDANT)
)
_____)

CONFLICT OF INTEREST

The Defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, DONALD M. BROWN, JR. , Attorney-at-Law, is appointed as Counsel for the Defendant.

CONFLICT OF INTEREST

This 17th day of DECEMBER ,

19 93 , at 2:25 P.M.

(A.M./P.M.)

John C. Hayes

DONALD M. BROWN, JR.
448 LAKESHORE PARKWAY SUITE 200
ROCK HILL, S.C. 29730-4264
TELE: 324-8118

CO-COUNSEL: ALFORD HASELDEN

CHARGES: MURDER, CRIMINAL CONSPIRACY, (2 COUNTS,)REC. & POSS. STOLEN GOODS, POSS.FIREARM DURING THE COMM. OF CRIME, FELON IN POSS. FIREARM, ARMED ROBBERY, ALSO ANOTHER MURDER.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

State of South Carolina,)
)
v.)
)
Mar-Reece Aldean Hughes,)

IN THE COURT OF GENERAL SESSIONS

CONSENT ORDER FOR SUBSTITUTION OF COUNSEL

This matter comes before me upon Motion of the undersigned Counsel for substitution of Stephen D. Schusterman as counsel for Defendant. The undersigned was previously appointed by this Court to represent the Defendant, as co-counsel with Alford Haselden, for charges pending against him in the County of York.

It appearing that all parties have consented to the aforementioned substitution of counsel,

IT IS HEREBY ORDERED that Stephen D. Schusterman be substituted as co-counsel, with Alford Haselden, for the Defendant for all charges now pending against him in the County of York and that Donald M. Brown, Jr. be relieved.

AND IT IS HEREBY ORDERED.

FILED-RECEIVED
JAN 10 1 15 PM '94

JOHN C. HAYES, III
RESIDENT JUDGE
SIXTEENTH JUDICIAL CIRCUIT

This the 14th day of January, 1994
York , South Carolina

I MOVE AND CONSENT:

DONALD M. BROWN, JR.
MAUPIN, TAYLOR, ELLIS & ADAMS
448 Lakeshore Parkway
Rock Hill, South Carolina 29730
(803) 324-8118

I CONSENT:

STEPHEN D. SCHUSTERMAN
Attorney at Law
Post Office Box 4211
Rock Hill, South Carolina 29731-4211
(803) 325-7788

03064

FILED-RECEIVED
BOOK ___ PAGE ___
JAN 22 9 52 AM '94

FILED-RECEIVED
BOOK (81) PAGE ___
FEB 1 10 02 AM '94

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

State of South Carolina,)

-vs-)

Mar-Reece Aldean Hughes,)

Defendant.)

MOTION TO BE RELIEVED OF COUNSEL

NOW comes the undersigned attorney for Defendant Mar-Reece Aldean Hughes, and moves for an Order of this Court to be relieved as counsel for Defendant Mar-Reece Aldean Hughes on the following grounds:

1. By Order of this Court filed December 20, 1993, the undersigned was appointed as counsel for indigent Defendant to represent Mar-Reece Aldean Hughes on all charges pending against said Defendant.

2. The charges against Mar-Reece Aldean Hughes consist of murder and related charges that arose on September 25, 1992, in which the State is seeking the death penalty, and murder and assault and battery with intent to kill that arose on April 12, 1993, in which the State would possibly seek the death penalty.

3. The time required to represent a Defendant on murder charges such as those pending against this Defendant are enormous. It is anticipated that it will take between 400 and 600 hours for the preparation and trial of the September 25, 1992, charges against this Defendant. An equal amount of time may be required to prepare and defend the April 12, 1993, charges against this Defendant.

4. Between May 7, and September 29, 1993, the undersigned expended in excess of 200 hours defending a State Grand Jury indictment to which he was appointed, and barely three months later the appointment in this case was made.

5. While the undersigned accepts his responsibility to represent indigent Defendants, it is patently unfair to appoint an attorney to a major case so soon after a major case has been completed. If appointments in general are rotated among attorneys on the appointment list, then appointment on major cases should be rotated as well.

6. While an attorney should accept and carry out the duties associated with representations of indigent Defendants, he/she

should not be required to do so to the extent that his/her private practice is endangered.

7. This case will probably go to trial prior to the end of September, 1994. If only 300 hours of the undersigned are required to assist in the preparation and defense of the September 25, 1992, charges in this case, then the undersigned will have spent over 500 hours in little over one year in the defense of two appointed cases, not counting the hours expended on other appointed cases, and not counting the hours that will be expended on the April 12, 1993, charges. That amounts to 25% of what is generally considered to be the maximum number of billable hours in a year.

8. To require one attorney to expend such a large amount of his time for indigent defense in such a short time period is unfair, unjust, and constitutes a wrongful taking of property without due process of law, and without just compensation.

By reason of the foregoing the undersigned respectfully requests that he be relieved as counsel for Defendant in this matter.

HASELDEN OWEN & BOLOYAN
303 North Main Street
P. O. Box 173
Clover, South Carolina 29710

By: _____
Alford Haselden
Attorney for Defendant

Clover, South Carolina

January 14, 1994

DEFENSE OF INDIGENTS ACT

FORM NO. IV

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
DOCKET NO. _____)

STATE OF SOUTH CAROLINA)
VS.)
MAR-REECE ALDEAN HUGHES)
DEFENDANT)

CONFLICT OF INTEREST

ORDER OF APPOINTMENT OF LEGAL COUNSEL OF INDIGENT DEFENDANT

The Defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, RICHARD C. LEWIS , Attorney-at-Law, is appointed as Counsel for the Defendant.

CONFLICT OF INTEREST

RICHARD C. LEWIS
P.O. BOX 385
ROCK HILL, S.C.
29731

TELE: 327-5831

This 2nd day of February ,
19 94 , at 11:25
(A.M.) P.M.

John C. Hayes III
J.-G.C.

THIS APPOINTMENT WILL RELIEVE AL HASELDEN DUE TO POTENTIAL CONFLICT BECAUSE HE REPRESENTS A POSSIBLE WITNESS IN 2ND MURDER CHARGE.

W. C. Lee
Clerk

* 03067

Steve Schuster Sr. Co Counsel

DEFENSE OF INDIGENTS ACT

FORM NO. IV

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
DOCKET NO. _____)
STATE OF SOUTH CAROLINA)
VS.)
MAR-REECE ALDEAN HUGHES)
DEFENDANT)

CONFLICT OF INTEREST

ORDER OF APPOINTMENT OF LEGAL COUNSEL OF INDIGENT DEFENDANT

The Defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, TERRY B. MILLAR , Attorney-at-Law, is appointed as Counsel for the Defendant.

CONFLICT OF INTEREST

TERRY B. MILLAR
McKINNEY, GIVENS AND MILLAR
P.O. BOX 10470
ROCK HILL, SC 29731
TELE: 328-1848

This 2nd day of February, 19 94, at 9:00 (A.M./P.M.)

John C. Hayes III

THIS APPOINTMENT WILL RELIEVE AL HASELDEN DUE TO POTENTIAL CONFLICT WITH REPRESENTATION OF POSSIBLE WITNESS.

Zack Rudisill
Charge
James Earle Williamson

DEFENSE OF INDIGENTS ACT

FORM NO. IV

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
DOCKET NO. _____)
)
STATE OF SOUTH CAROLINA)
VS.)
MAR-REECE ALDEAN HUGHES)
DEFENDANT)
_____)

CONFLICT OF INTEREST

ORDER OF APPOINTMENT OF LEGAL COUNSEL OF INDIGENT DEFENDANT

The Defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, BRUCE POORE , Attorney-at-Law, is appointed as Counsel for the Defendant.

CONFLICT OF INTEREST

BRUCE POORE, ATTORNEY
P.O. BOX 56
ROCK HILL, S.C. 29731

TELE: 366-6611

This 4th day of FEBRUARY ,
19 94 , at 10:45 A.M.
(A.M./P.M.)

John C. Hayes, III

THIS APPOINTMENT WILL RELIEVE TERRY MILLAR, DUE TO A CONFLICT WITH HIS FIRM.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
State of South Carolina	)	
	)	
Plaintiff,	)	BRIEF IN SUPPORT OF MOTION
vs.	)	TO SUPPRESS INDICTMENT NOS.
	)	93-3845 and 93-3846
Mar-Reece Aldean Hughes,	)	Case Nos: 93-4299; 93-4305
	)	93-4301; 93-4296
Defendant.	)	93-4304
	)	

1. ISSUE:

SHOULD UNADJUDICATED CRIMES BE ADMITTED INTO EVIDENCE DURING THE SENTENCING PHASE OF A CAPITAL CASE WHEN THE DEFENDANT HAS BEEN HELD NOT TO BE CRIMINALLY RESPONSBILE BY THREE PSYCHIATRISTS.

2. ARGUMENT:

The Defendant would argue that admissions of any and all unadjudicated offenses would violate not only his Due Process rights ensured pursuant to the U.S. Constitution and the Constitution of the State of South Carolina but also violates the standard of proof necessary for the introduction of evidence in the sentencing phase set forth pursuant to Zant vs. Stephens, 462 US 862, 77 L.Ed 235, 103 SC 2733 (1983).

A. DUE PROCESS

"The privileges and immunities of citizens of this State and of the United States under this Constitution

shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." S.C. Article I, Section 3 of the Constitution of the State of South Carolina, S. C. Code (1970, as amended). The due process clause is to ensure that there can be no proceeding against life, liberty or property which may result in a deprivation without the observances of those general rules established in our system of jurisprudence for the security of private rights. State vs. Earle, 66 S. C. 194, 44 SE 781 (1903). The Supreme Court for the United States also sets forth the constitutional requirements for a sentencing hearing in a capital case. The Court declared that the Eighth and Fourteenth Amendments require that the sentencer...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. Given that 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. It is clear that the sentencing process, as well as the trial itself, must satisfy the requirements of the Due Process Clause. Lockett vs. Ohio, 438 U.S. 586, 98 S. Ct. 2954, 57 L.Ed 2d 973 (1978).

While incarcerated and awaiting trial for the charges stemming from the murder of Brent McCants, the Defendant, Mar-Reece Aldean Hughes, in April of 1993 assaulted inmate, Christopher Gorth and murdered inmate, James Williamson. Mr. Hughes was psychiatrically evaluated concerning his criminal responsibility in regards to the incident of April of 1993. In November of 1994, Mr. Hughes was diagnoses with the mental illness, paranoia schizophrenia. In March of 1995, Mr. Hughes was found by three psychiatrists to be not competent at the time of the April 1993 murder and assault by reason of insanity. Of the three psychiatrists, Dr. Morgan, the states psychiatrist, recognized "Mr. Hughes did not recognize the wrongfullness of his actions on or about April 12, 1993. His behaviours 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."

The Zant opinion makes clear that evidence otherwise relevant under the court's definition may nonetheless be inadmissible under the Due Process Clause. For the Court to admit as evidence in the sentencing phase any and all conduct of the Defendant which arose out of indictment 93-3845 and 93-3846; his Due Process Rights, which are constitutionally protected, will be violated. This

violation stems out of the fact that the Defendant will be left with no alternative but to fully litigate the indictments which arose out of the 1993 incident at the York County Detention Center. Allowing into evidence testimony regarding the second murder and assault will twice deprive the defendant of a fair trial. If the defendant were tried on the later charges first, he would unequivocally be acquitted based on the opinion of three psychiatrists that he was insane and therefore not criminally responsible for his actions. However, to inject into this trial the fact that a second murder is involved deprives the defendant of a fair trial by unduly prejudicing the jury with informaiton that would not be allowed into evidence if the solicitor had called the second case first.

The Supreme Court of Indiana notes that evidence of another murder which has not been reduced to a conviction is contrary to the due process requirement of reliability, because the jury which has just convicted the Defendant of murder cannot fairly determine guilt of the unadjudicated crime under the required standard. State vs. McCormick 272 Ind. 272, 397 NE 2d 276 (1979). It is our position that a jury who has already found Mr. Hughes guilty of murder will be unable to make an accurate determination of his guilt on the unadjudicated offense. This is heightened by the fact that the States's use of this type of evidence may violate the requirements of due process and reliability in other ways.

Particularly, the Defendant was found by three psychiatrists, including the State's own physician, to be not guilty of the 1993 incident by reason of insanity. For the state to present this evidence based on the theory that it is admissible as proof of conduct of Mr. Hughes, such presentation would be based on unreliable evidence of this conduct. The lack of reliability is contrary to the due process clause of the Constitution of the United States and the State of South Carolina. The Supreme Court has recognized that when necessary extraordinary measures must be taken to ensure that a Defendant who may be sentenced to death is a afforded process that will guarantee, as much as is humanly possible, that the sentence was not imposed out of whim, passion, prejudice or mistake. Additionally, the Court has repeatedly recognized that due to the finality and severity of sentence, the Defendant is entitled to enhanced procedural protections and safeguards. Eddings vs. Oklahoma, 455 U.S. 104, 71 L. Ed 2d, 102 S Ct 869 (1982). Evidence of the 1993 incident will lead a jury who has already found the Defendant guilty of the murder of Brent McCants to sentence Mr. Hughes to death based on evidence that is unreliable and imposed based on whim, passion, prejudice or mistake.

In the presentation of aggravating evidence, evidence of other criminal activity by the Defendant is the strongest factor causing a jury to return a verdict of death. It is the Defendant's position that he has the right, provided to him through the due process clause of

the Constitution, to have a jury find that he committed a crime before it uses the evidence of that crime to sentence him to die. This argument is magnified by the fact that the defendant was insane at the time of the alleged second crimes. The insanity aspect of this case distinguishes it from other death penelty cases. He also has the right to an impartial jury. A jury that has already concluded unanimously that the Defendant is a murderer cannot be expected to reason and fairly evaluate and consider in the sentencing phase an unadjudicated murder and assault without bias and prejudice.

The Court in State vs. Bartholomew, 101 Wash. 2d 631i 683 P2d 1079 (1984) held that due process requires stringent procedural safeguards so that a fundamentally fair proceeding is provided. When the trial results in the imposition of the death penalty lacks fundamental fairness, the punishment violates due process. Offensive to the concept of fairness is a proceeding in which evidence is admitted which lacks reliability. The purpose of the rules of evidence is to afford a litigant a fair proceeding. To introduce evidence of a second murder and assault will place the Defendant in the perilous position of having to present technical and complex evidence to rebut potentially unreliable and/or unreasonably prejudicial evidence before a jury that has already convicted him of murder. In addition, the Defendant must be afforded the opportunity to deny and

explain all the information which may be considered by the sentencer in determining whether to impose the death penalty. As such, it would require that the sentencing hearing be transformed into a full trial. In the cases in which unadjudicated crimes were admitted into evidence in aggravation, they were done do because the circumstances and facts of the unadjudicated offenses closely resembled and were relevant to the case in question and/or were prior offenses. The issue before this court is novel because the Defendant was medically found insane at the time of the unadjudicated offense.

The Court in Bobo vs. Tennessee, 727, SW 2d 945 (1987), 952-953 cert denied, 484 U.S. 872, 108 S. ct. 204 (1987) quoting State vs. McCormick, id., states " we may assume that a conviction was obtained in a constitutionally proper manner. Proof of a conviction therefore carries with it the assurance that the facts underlying that conviction have already been fully established to an untainted, unbiased jury in a forum in which the full protections of the Constitution were afforded to the Defendant." Here, the Defendant's constitutional guarantees to due process will be violated should the state be permitted to introduce evidence of an unrelated unadjudicated murder and assault.

B. EVIDENCE ADMISSIBLE IN AGGRAVATION

The Supreme Court for the United States held in Zant vs. Stephens, 462 U.S. 862, 77 L Ed 2d 235, 103 S. Ct.

2733 (1983), that the federal constitution does not preclude the introduction of evidence in aggravation, nonstatutory as well as statutory, so long as it is relevant, reliable and not prejudicial. *emphasis added.* The Court in the Zant opinion set forth a three pronged test for the admission of evidence in aggravation or the sentencing phase of a bifurcated death penalty trial.

a. **Reliability**:

The Court has consistently recognized that there is qualitative difference between death and all other forms of punishment. Therefore, it is of vital importance that any decision to impose a sentence of death is based on valid circumstances. The Court in Zant, in a footnote, stated that a sentence must be set aside if the trial court relied at least in part on misinformation of a constitutional magnitude. The court also states that a death sentence can be impaired if a jury relies on materially inaccurate or misleading information.

It is the Defendant's position that the solicitor's desires to introduce into evidence the events and circumstances that surround the death of Janes Williamson and the assault on Christopher Gorth would result in a violation of the first prong of the Zant test. The lack of reliability arises out of the fact that not only has there not been a conviction as to those indictments but also because he has been found by three psychiatrists to lack the requisite comprehension of the nature of his

actions based upon the fact that he was suffering from acute psychosis at the time of the offense. The states own psychiatrist has found that the Defendant was not criminally responsible.

As there are no conviction of the 1993 indictments, there is a lack of reliability of evidence. The Defendant was not afforded a trial whereby he could present testimony, cross examine his witnesses and present the case to an unbiased jury that would reasonably consider his guilt or innocence to those indictments based on the facts and circumstances before it. Certainly, in no other criminal trial would there be permitted the introduction of evidence of unadjudicated offenses. The bases for such a denial is due to its lack of reliability. To introduce such unreliable evidence in a death penalty case is contradictory to case law from the Supreme Court which cautions States to take particular attention to the uniqueness of the penalty of a death sentence. A violation of the Eighth Amendment of the United States Constitution would occur where a defendant is sentanced to die based on a crime for which he was insane.

South Carolina Code Section 17-24-10 (A) (1974, as amended) States "it shall be 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." The legislature has afforded Mr. Hughes an affirmative defense based upon his mental illness at the time of the 1993 offenses. The Defendant in essence is being denied the ability to present to an impartial jury an affirmative defense to the 1993 indictments as the jury has already found him guilty of murder. It is the Defendant's position that he has a defense available to him by statute in regards to the 1993 indictments. However, the forum for the presentation of the defense diminishes its importance because the jurors are not considering his guilt or innocence of those adjudicated offenses. They are considering evidence as to the appropriateness of the death penalty. Additionally, it is also the defenses' position that the jurors would not fairly consider the affirmative defense available to him because Mr. Hughes has been found guilty of a murder to which he was determined to be sane at the time of the crime. The presentation of any and all evidence in aggravation of the 1993 indictments is unreliable as there has been no determination or adjudication as to whether an impartial jury would render a finding of not guilty by reason of insanity based upon his mental illness and his ability to distinguish between right and wrong. For the aforementioned reasons, the presentation of that evidence makes its consideration unreliable.

b. Relevance:

In State vs. Slapper, 285 S.C. 42, 328 S.E. 2d 58 (1985), rev'd on other grounds, 476 U.S. 1, 106 S. Ct. 1669, 90 L. Ed 1 (1986) the court granted wide discretion to the courts to introduce evidence in an penalty phase as it is relevant to the Defendant's character. Additionally, in State vs. Shaw, 255 S.E. 2d 799, the Court recognized "as a general proposition that the penalty of death not be imposed in an arbitrary or capricious manner... as a general proposition these concerns are best met by a system that provides for a bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposition of sentence and provided with standards to guide its use of the information. Furman vs. Georgia, 408 U.S. 238, 92 S.Ct 2726, 33 L. Ed. 2d 346 (1972). The Shaw case further states that the character and record of the offender and the circumstances of the particular offense are a constitutionally indispensable part of the process of inflicting the penalty of death. The solicitor should be prevented from introducing the unadjudicated offenses as he fails the second prong of the Zant test.

The Defendant would argue that the unadjudicated offenses do not provide reliable or accurate evidence of his character as he was diagnosed as having acute psychosis rendering him unable to appreciate the moral right or wrong of his conduct. As such presentation of this evidence is not an accurate depiction of Mr. Hughes' character not only at the present but

also in September of 1992. Evidence can be presented by the State to depict the Defendant's character. However that evidence of character has to purport to the Constitution of the United States and the State of South Carolina in that it must ensure that his constitutional guarantees are not infringed.

Also, the evidence of character has to be reliable. The character evidence is unreliable based on Mr. Hughe's psychiatric diagnosis at the time of the 1993 indictments. It is further the position of the defense that the evidence regarding the 1993 offenses are irrelevant to the charges stemming from the murder of Brent McCants. The evidence intended to be used by the State in regards to the 1993 indictments do not stem from the charges arising out of the murder of Brent McCants. In no way will the 1993 indictments reveal any evidence in regards to the circumstances of the murder of Brent McCants.

c. Prejudice:

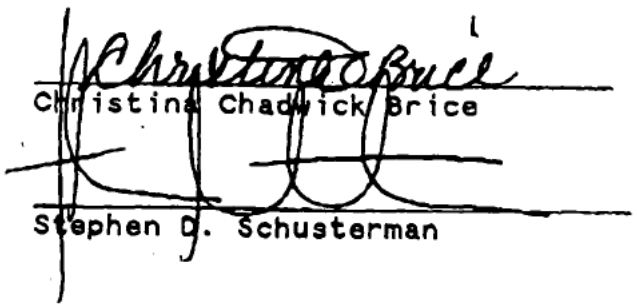
"It is of vital importance to the Defendant and to the community that any decision to impose the death sentence be and appear to be, based on reason rather than caprice or emotion." Zant vs. Stephens, id., at page 255. The Courts of the State of South Carolina further state that the Court, upon review, must determine whether "the sentence of death were imposed under the influence of passion, prejudice, or any other arbitrary factor." State vs. Shaw, id at page 806.

It is the Defendant's position that introduction of the

unadjudicated 1993 indictments would serve only to incite the jury. It would so horrify the jurors that Mr. Hughes murdered someone while awaiting trial that it would be impossible to effectively present mitigating evidence necessary for the jurors to consider life in favor of death. The murder of Williamson and assault on Gorth are wholly unrelated to the murder of Brent McCants. Introduction of the unadjudicated offenses in the penalty trial in regards to the murder of Brent McCants would unduly prejudice Mr. Hughes. The prejudicial effect of the 1993 indictment outweigh any probative value that could be offered as an aggravating circumstance. For a juror to learn the Defendant has committed a subsequent murder will result in a verdict of death for Mr. Hughes based on emotion and not reason. Evidence of the 1993 indictments would be prejudicial and no probative vale exists. For these reasons, the solicitor should be prevented from introducing evidence of the unadjudicated crimes as its introduction deprives the defendant of a fair trial.

For the forgoing reasons, the Defendant, Mar-Reece Aldean Hughes, respectfully requests that the 1993 indictments which are unadjudicated, be suppressed and excluded from evidence. The basis for the suppression is based on the evidence's lack of reliability, lack of relevance, lack of probative value and its prejudicial impact. Finally, its introduction would violate his due process rights guaranteed by the Constitution of the United States and the State of South Carolina.

Respectfully submitted,



Christina Chadwick Brice

Stephen D. Schusterman

CERTIFIED TRUE COPY

JAN 13 10 49 AM '98

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

FILED-RECEIVED
SEP 8 8 59 AM 1995

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA	)	BRIEF OF THE STATE IN SUPPORT OF
	)	THE ADMISSION OF TESTIMONY/EVIDENCE
vs.	)	OF THE DEFENDANT'S CHARACTER
	)	DURING THE PENALTY PHASE OF TRIAL
MAR-REECE ALDEAN HUGHES,	)	93-GS46-4239, 93-GS46-4296,
	)	93-GS46-4301, 93-GS46-4303,
DEFENDANT.	)	93-GS46-4304, 93-GS46-4305

The State of South Carolina, through its undersigned attorneys, respectfully submits this Brief in support of the Admission of Testimony/Evidence by the State regarding the Defendant's character during the penalty phase of this trial.

On April 12, 1993 the Defendant was incarcerated in cell C-1 at the York County Detention Center awaiting trial on capital murder charges. In the early morning hours on that date detention officers were summoned to the C Block section of the Detention Center by other inmates shouting for help. Officers arrived to find Inmate James Earl Williamson bleeding profusely from a neck wound, which later proved to be fatal, and Inmate Christopher Gorth suffering from a severe, although nonfatal, stab wound running the length of his leg. An investigation by the State Law Enforcement Division (SLED) revealed that the Defendant had been discussing stabbing someone in the throat moments before the murder of Mr. Williamson. The SLED investigation further revealed in the hours after the murder of Mr. Williamson the Defendant admitted to other inmates that he stabbed Mr. Williamson and cut Mr. Gorth. The other cellmates of the Defendant, including Mr. Gorth, gave statements to law enforcement that the Defendant had been the assailant in the murder of Mr. Williamson. Moreover, SLED officials recovered a large "lockblade" knife from the cell in which the Defendant was housed. The Defendant was subsequently

charged and indicted for the murder of Mr. Williamson and the assault of Mr. Gorth with the intent to kill him.

The State respectfully submits that evidence and testimony that the Defendant committed a murder while imprisoned awaiting this trial on the charges before the Court is testimony and evidence that is relevant and admissible during the penalty phase as evidence of the Defendant's character and as evidence regarding the Defendant's future dangerousness to society. The State submits that such testimony and evidence is not being offered as evidence of the Defendant's guilt of a statutory aggravating circumstance and, therefore, the jury is not required to find that proof of these other crimes is clear and convincing before considering such evidence as character evidence. See State v. Middleton, 295 S.C. 318, 368 S.E.2d 457 (1988). In Middleton, a death penalty case, the State presented evidence during the sentencing phase that the defendant had confessed to committing other crimes, an assault on a woman at a rest area and a rape and murder of a second woman. The defendant argued on direct appeal that the trial court erred in failing to charge the jury that it must find the proof of other crimes to be clear and convincing before considering such proof as evidence. The South Carolina Supreme Court held that the trial court did not err, and in so holding, the Supreme Court distinguished evidence submitted in the penalty phase of a death penalty trial from evidence submitted pursuant to State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) in the State's chase-in-chief during the guilt phase of the trial. The Court noted that:

> Evidence admitted under *Lyle*, however, is substantive evidence to establish guilt, not character evidence relevant to capital sentencing. *Cf. State v. Shaw*, 273 S.C. 194, 255 S.E.2d 799 (1979). The charge given in this case was sufficient under *State v. Stewart*, 283 S.C. 104, 320 S.E.2d 447 (1984) to ensure the jury did not use the evidence improperly to establish guilt of aggravating circumstances.

Id. at 461.

As noted by the Supreme Court in Middleton, under State v. Shaw, supra, evidence regarding the character of the defendant is relevant in the penalty phase of a capital trial, as such evidence is relevant to sentencing of the defendant and thus is appropriately admissible for the consideration of the jury, the sentencing authority in a capital trial. In State v. Shaw, supra, a death penalty case, the South Carolina Supreme Court held that photographs depicting postmortem abuse to the victim's body were properly admitted into evidence during the penalty phase for consideration by the sentencing authority, not as evidence in aggravation, but rather as evidence of the circumstances of the crime and the characteristics of one of the defendants. In so holding, the Supreme Court in Shaw noted that consideration of the character of the individual defendant during the penalty phase of a capital trial is mandated by the United States Supreme Court, as set forth in Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976). The South Carolina Supreme Court noted "The [United States] Supreme Court has indicated that, before a death sentence may be imposed, the attention of the sentencing authority must be directed to the specific circumstances of the crime and the characteristics of the person who committed the crime, *Gregg*, *supra*. The sentencing authority should have as much information before it as possible." Shaw at 805. Our State Supreme Court in Shaw went on to quote the United States Supreme Court on this issue as follows:

> Given that 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. at 605, 98 S.Ct. At 2965, 57 L.Ed.2d at 990.

Shaw at 805. Thus, the Supreme Court in Shaw held that the trial judge was correct in permitting the State to introduce evidence in the penalty phase to establish the

circumstances of aggravation and the characteristics of one of the defendants.

> The photographs depicting the post-mortem abuse to Ms. Hartness's (sic) body were properly admitted into evidence and considered by the sentencing authority, not as additional evidence in aggravation of punishment, but as evidence of the circumstances of the crime and the characteristics of the individual defendant Shaw.

Id. at 806.

It should be noted that in Shaw, the defendants entered a guilty plea before the trial judge, and the evidence of the victim's photographs, as noted hereinabove, was admitted upon motion by the State at the sentencing phase (referred to as a pre-sentencing hearing) before the judge, without a jury.

The South Carolina Supreme Court in Middleton also references State v. Stewart, supra, on this issue. In Stewart, a death penalty case, the South Carolina Supreme Court held that the trial court did not err in permitting the State to present evidence at the sentencing phase of the trial that the defendant had committed similar crimes before and after the murder for which the defendant was on trial. In so ruling, the Supreme Court stated:

> Section 16-3-20(B) of the Code provides in part: "In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, *or aggravation* of the punishment." (emphasis added). Before a death sentence may be imposed, the attention of the jury or judge must be directed to the specific circumstances of the crime and the characteristics of the person who committed the crime. *State v. Shaw*, 273 S.C. 194, 255 S.E.2d 799, *cert. denied*, 444 U.S. 957, 200 S.Ct 437, 62 L.Ed.2d 329 and *Roach v. South Carolina*, 444 U.S. 1026, 100 S.Ct. 690, 62 L.Ed 660 (1980). In *State v. Koon*, 278 S.C. 528, 298 S.E.2d 769 (1982) (Koon I), this Court held the admission of testimony that Koon had previously attempted a similar crime was not error as the testimony indicated Koon's individual characteristics and his predisposition to commit similar crimes. We find the admission of similar crimes allegedly committed by appellant proper under the *Koon I* decision.
>
> Appellant argues, however, that these offenses of which he has not been convicted could have been considered by the jury as evidence to prove the statutory aggravating circumstances in this case. He asserts the trial judge should have properly limited the jury's consideration of these offenses to evidence of appellant's

characteristics as they may bear logical relevance to the crime.

> We agree with appellant and hold the jury must be instructed these offenses may not be used as proof of the statutory aggravating circumstances. Here, however, the trial judge properly instructed the jury on this matter.

Stewart at 450.

Thus, the Supreme Court in Stewart held that, although the defendant had not been convicted of these other crimes, that evidence of the defendant's other crimes was admissible in the penalty phase as evidence of the defendant's character. The Court noted that the trial court should instruct the jury that the evidence is admitted for this purpose and is not to be considered by the jury as proof of the statutory aggravating circumstances. In the case at bar, the State is not submitting the evidence of the murder at the York County Detention Center while the defendant awaited trial on the current charges as evidence in proof of the statutory aggravating circumstances in this case. Thus, the evidence should be admitted as evidence of the Defendant's character and the jury should be instructed that they are to consider the evidence for this purpose. The Supreme Court in Stewart further specifically noted that "past behavior (of the defendant) in prison is relevant because it does bear upon a defendant's character." Id. at 450. (In Stewart, the defendant wanted such evidence admitted and the Supreme Court ruled the trial court erred in not admitting such evidence as it pertained to the defendant's character. Similarly, in the instant case, the State submits that such evidence is admissible as it pertains to the defendant's character.)

As cited in Stewart, supra, the South Carolina Supreme Court in State v. Koon, supra, a death penalty case, also held that the trial court did not err in permitting the State to introduce during the sentencing phase testimony to show the defendant previously had

attempted a similar crime. In holding the trial court did not err in permitting the admission of such evidence, the Supreme Court noted the testimony concerned the specific circumstances of the crime and the characteristics of the person who committed the crime and, as such, was properly admitted by the State.

See also State v. Green, 301 S.C. 347, 392 S.E.2d 157 (1990),a death penalty case, in which the South Carolina Supreme Court held that testimony and other evidence of crimes committed by the defendant prior to the crime resulting in the capital trial were properly admitted during the penalty phase as evidence of the defendants characteristics is a proper consideration for the sentencing authority in a capital trial. "Admission of testimony that a defendant has attempted a similar crime or crimes for which he is on trial is proper because such testimony indicates a defendant's individual characteristics and predisposition to commit similar crimes." Id. at 163. The Supreme Court in Green also noted that the jury is not required to find proof of these crimes beyond a reasonable doubt or even by clear and convincing evidence. Id. at 163. Rather, the jurors are instructed that, if they are convinced that the defendant committed these other crimes, they may consider them as evidence of the defendant's characteristics and give them whatever weight that they deem appropriate under the circumstances of the case. Ibid.

The United States Supreme Court has noted in other cases, as well, that the sentencing authority in a capital case should consider evidence of the character of the defendant in determining the appropriate sentence.

> Consideration of a defendant's past conduct as indicative of his probable future behavior is an inevitable and not undesirable element of criminal sentencing: "any sentencing authority must predict a convicted person's probable future conduct when it engages in the process of determining what punishment to impose." *Jurek v. Texas*, 428 U.S. 262, 275, 96 S.Ct. 2950, 2958, 49 L.Ed.2d 929 (1976) (opinion of STEWART, POWELL, and STEVENS, JJ.) The Court has therefore held that

> evidence that a defendant would in the future pose a danger to the community if he were not executed may be treated as establishing an "aggravating factor" for purposes of capital sentencing, *Jurek v. Texas, supra*; see also *Barefoot v. Estelle*, 463 U.S. 880, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983).

Skipper v. South Carolina, 476 U.S. 2 at 5, 106 S.Ct. 1669 at 1671 (1986). See also Woodson v. North Carolina, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976).

Moreover, the likelihood of the Defendant's committing further crimes is a constitutionally acceptable criterion for imposing the death penalty. Jurek v. Texas, supra; Barefoot v. Estelle, supra. The State respectfully submits that, in addition to being evidence of the Defendant's character and properly before the sentencing authority for that purpose, the evidence of the murder committed by the Defendant while he was awaiting the trial on the present charges is evidence relevant and admissible as to the future dangerousness of the Defendant and thus properly considered by the sentencing authority. See also Simmons v. South Carolina, ___ U.S. ___, 114 S.Ct. 2187 (1994), in which the United States Supreme Court held that under the circumstances (the State argued future dangerousness and the defendant was ineligible for parole due to a prior conviction for a violent crime) the jury should have been instructed as to the defendant's ineligibility for parole. In so holding, the Supreme Court again recognized that the jury's consideration of the future dangerousness of the defendant in a capital trial is permissible during the penalty phase, as "the defendant's future dangerousness bears on all sentencing determinations." The United States Supreme Court stated:

> This Court has approved the jury's consideration of future dangerousness during the penalty phase of a capital trial, recognizing that a defendant's future dangerousness bears on all sentencing determinations made in our criminal justice system. See *Jurek v. Texas*, 428 U.S. 262, 276, 96 S.Ct. 2950, 2958, 49 L.Ed.2d 929 (1976) (plurality opinion) (noting that "any sentencing authority must predict a convicted person's probable future conduct when it engages in the process of determining what punishment to impose"); *California v. Ramos*, 468 U.S. 992, 1003, n.17, 108

S.Ct. 3446, 3454, n. 17, 77 L.Ed.2d 1171 (1983) (explaining that it is proper for a sentencing jury in a capital case to consider "the" defendant's potential for reform and whether his probable future behavior counsels against the desirability of his release into society").

Although South Carolina statutes do not mandate consideration of the defendant's future dangerousness in capital sentencing, the State's evidence in aggravation is not limited to evidence relating to statutory aggravating circumstances. See *Barclay v. Florida*, 463 U.S. 939, 948-951, 103 S.Ct. 3418, 3424-3426, 77 L.Ed.2d 1134 (1983) (plurality opinion); *California v. Ramos*, 463 U.S. at 1008, 102 S.Ct. at 3457 ("Once the jury finds that the defendant falls within the legislatively defined category of persons eligible for the death penalty ... the jury then is free to consider a myriad of factors to determine whether death is the appropriate punishment").

(. . .)

(...) (W)here the jury has sentencing responsibilities in a capital trial, many issues that are irrelevant to the guilt-innocence determination step into the foreground and require consideration at the sentencing phase. The defendant's character, prior criminal history, mental capacity, background and age are just a few of the many factors, in addition to future dangerousness, that a jury may consider in fixing appropriate punishment.

Simmons at 2193 - 2194.

See also State v. Gaskins, 284 S.C. 105, 326 S.E.2d 132 (1985), holding that the trial court did not err in allowing the State to admit into evidence during the penalty phase of a capital trial evidence that the defendant had committed other crimes, for which the defendant had not yet been convicted (theft of property).

The South Carolina Supreme Court similarly held in State v. Matthews, 296 S.C. 379, 373 S.E.2d 587 (1988), that evidence of the defendant's character and future dangerousness was properly admitted during the penalty phase of a capital murder trial. In ruling admissible letters seized from the defendant's cell while he was awaiting trial, in which the defendant expressed that he was glad the victim died and that if he got out of jail he would kill the person who turned him into the police, the Supreme Court noted:

We also reject appellant's bald assertion that the letters were not relevant to any

> legitimate sentencing consideration. The very purpose of the sentencing phase is to direct the jury's attention to the specific circumstances of the crime and the characteristics of the offender. *State v. Stewart*, 283 S.C. 104, 320 S.E.2d 447 (1984). The letters gave the jury insight into both appellant's character and the nature of the crime.

Matthews at 594.

See also State v. Woomer, 278 S.C. 468, 299 S.E.2d 317 (1982), where our State Supreme Court held that the trial court did not err in permitting the State to admit evidence during the resentencing phase of that capital case that the defendant had previously escaped while in prison in another state, as such was proper reply evidence to the defendant's presentation of evidence of his good conduct while in prison in South Carolina, again noting that evidence of the defendant's character is a proper consideration for the sentencing authority in a capital murder trial during the sentencing phase. Woomer also held that it was not error to allow the testimony of a psychiatrist as to whether or not a defendant would repeat acts of violence, as such testimony dealt with the issue of the future danger to society posed by the defendant.

Moreover, in State v. Plath, 281 S.C. 1, 313 S.E.2d 619 (1984), the South Carolina Supreme Court again noted that evidence of the characteristics of the individual defendant is admissible in the penalty phase of a capital trial and is appropriate evidence for consideration by the sentencing authority in determining the appropriate punishment.

See also State v. Young, S.C.S.Ct. Op.No. 24264 (filed 66/19/95), recognizing that evidence of the defendant's character is relevant in the sentencing phase without regard to future dangerousness.)

See also Riddle v. State ___ S.C. ___, 443 S.E.2d 557 (1994), a death penalty case in which the South Carolina Supreme Court held that the photograph of the victim taken at the murder scene was properly admitted in the penalty phase (here, a resentencing trial on

remand from the Supreme Court) of the trial as it was relevant to the nature of the crime and the defendant's character.

In response to the Defendant's argument that he is "certain" to be acquitted of the murder of Mr. Williamson and the assault with intent to kill of Mr. Gorth in that he will present expert witnesses at trial to support a defense of Not Guilty by Reason of Insanity, the State contests the assertion of the defense that "if the defendant were tried on the later charges first, he would unequivocally be acquitted based on the opinion of three psychiatrists that he was insane and therefore not criminally responsible for his actions." The State submits that lay testimony may be presented by the State and may be sufficient to establish evidence that a defendant is sane, even if the defense presents expert testimony, such that a jury question is presented. See State v. Smith, 298 S.C. 205, 379 S.E.2d 287 (1989). "Even though a defendant presents expert testimony, the State is not required to also produce expert testimony; lay testimony may be sufficient." Id. at 288.

The State also submits that evidence as to the alleged insanity of the Defendant at the time of the murder of Mr. Williamson and the assault of Mr. Gorth may be presented by the defense for consideration by the jury in the penalty phase of this trial in its consideration of these incidents as to the character of the Defendant. As noted hereinabove, as this evidence is presented as evidence of the Defendant's character, the State is not required to prove these incidents beyond a reasonable doubt or even by clear and convincing evidence. See State v. Middleton, supra, and State v. Green, supra. Therefore, the jurors would be instructed that, if they are convinced that the Defendant committed these other crimes, they may consider them as evidence of the Defendant's character and give them whatever weight that they deem appropriate under the circumstances of the case. State

v. Green, supra at 163.

Our State Supreme Court has not required that evidence of prior crimes committed by a defendant admitted to show evidence of the defendant's character in the penalty phase of a capital trial be limited to convictions. See, eg., State v. Gaskins, supra. Research conducted by the undersigned attorneys for the State does not reveal any opinion of the United States Supreme Court which has held that a conviction is necessary before evidence of other crimes may be admitted for consideration by the jury in the sentencing phase as to the defendant's character.

Further, the State submits that the evidence to be presented by the State as to the actions by the Defendant in murdering Mr. Williamson and assaulting Mr. Gorth meets the standard which the defense asserts is required by Zant v. Stephens, 462 U.S. 862, 77 L.Ed.2d 235, 103 S.Ct. 2733 (1983), as such evidence is clearly relevant, reliable and not prejudicial. Such evidence is clearly relevant to the issue of the defendant's character, a issue which, as set forth herein, the courts have held is mandated to be considered by the sentencing authority in a capital trial. The State submits that, under the case law set forth hereinabove, the reliability of such evidence does not have to be proven beyond a reasonable doubt or even by clear and convincing evidence, but rather the jury is to give such evidence whatever weight which it deems appropriate in considering the defendant's character, if the jury is convinced that the defendant did commit such acts. The evidence of these actions by the Defendant is not "misinformation" as set forth by the defense. The Defendant has been arrested and indicted on these charges based upon an investigation by SLED, eyewitnesses and statements which the Defendant gave to other inmates. Further, as to the Defendant's assertion of alleged insanity, the defense will be entitled to

present this expert testimony to the jury for their consideration as to the Defendant's character. Again, case law does not require a conviction of the Defendant on these charges before such evidence is admissible in the sentencing phase as to the Defendant's character. Finally, as to the Defendant's argument that such evidence is prejudicial and therefore inadmissible, the State submits that the admission of such evidence would not "serve only to incite the jury" as argued by the defense. Again, such evidence provides the jury, the sentencing authority, with evidence regarding the Defendant's character, a mandated consideration by the jury, and with evidence regarding the Defendant's future dangerousness to society. The State submits that, as such, this evidence has probative value which is not outweighed by the prejudice asserted by the defense and thus such evidence should be admitted in the penalty phase of the trial.

For all of the foregoing reasons, the State respectfully submits that the State should be allowed to admit evidence and testimony in the penalty phase of this trial that the Defendant committed a murder in the prison while awaiting trial on the current charges, as such evidence is relevant and admissible both as evidence of the Defendant's character and as evidence of the future dangerousness of the Defendant to society.

Respectfully submitted,

T.E. Pope, Solicitor
Sixteenth Judicial Circuit

Kevin Brackett, Deputy Solicitor
Sixteenth Judicial Circuit

Lisa G. Jefferson, Assistant Solicitor
Sixteenth Judicial Circuit

York, South Carolina
September 8, 1995

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

CERTIFIED TRUE COPY
JAN 13 10 40 AM '98
CLERK OF COURT
YORK COUNTY, SC

State of South Carolina,)
vs.) MOTION TO SUPPRESS STATEMENTS
Mar-Reece Aldean Hughes,) ABSENT PRESENCE OF COUNSEL
Defendant.)

Now comes the Defendant, by and through his attorneys, who moves this Court for an Order suppressing as evidence herein all written, taped and oral statements, if any, made by him on the following grounds:

1. The statements were obtained in violation of Defendant's privilege against self-incrimination and his right to counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and the South Carolina Constitution.

2. In proving a valid waiver of the rights mandated in Miranda v. Arizona, 384 U.S. 436 (1966) the State must affirmatively demonstrate and prove both (a) voluntary waiver and (b) a knowing and intelligent waiver of said rights.

WHEREFORE, the Defendant respectfully requests this Court to suppress as evidence all written, taped, and oral statements made by him.

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YORK COUNTY, S.C.

Respectfully submitted,

STEPHEN D. SCHUSTERMAN

CHRISTINA CHAWICK BRICE
ATTORNEYS FOR THE DEFENDANT.

York, South Carolina
This 28 Day of Aug, 1995.

CERTIFIED TRUE COPY

JAN 13 10 40 AM '98

DAVID E. HILTON
CLERK OF COURT
YORK COUNTY, SC

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

State of South Carolina,)
)
vs.)
) MOTION TO EXCLUDE
Mar-Reece Aldean Hughes,) EVIDENCE
)
Defendant.)

Now comes the Defendant, Mar-Reece Aldean Hughes, by and through his undersigned counsel, who moves for an Order of this Court excluding any alleged statement of the Defendant, custodial or non-custodial, which was allegedly made prior to the Defendant's being properly medicated for his mental illness.

Respectfully Submitted,

Christina C. Brice

Christina C. Brice

Dated_____

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YORK COUNTY, S.C.

03097

State of South Carolina

Thomas E. Pope
Solicitor

Keith Giese
Deputy Solicitor

Office of the Solicitor
Sixteenth Judicial Circuit

CERTIFIED TRUE COPY
JAN 13 10 41 AM '98
DAVID [illegible]ILTON
CLERK OF COURT
YORK COUNTY, SC

Stephen D. Schusterman
PO Box 4211
Rock Hill, SC 29731

August 28, 1995

Mr. Schusterman:

I am writing to consolidate and re-emphasize the numerous previous correspondences my office has had with the various attorneys representing Mr. Hughes on his charges involving the death of Brent McCants. However, this letter in no way nullifies any of the previous notifications concerning this case.

My records indicate that this office had previously served the **Notice of Intent to Seek the Death Penalty and Statutory Aggravating Circumstances** on December 13, 1993, and that the defendant was arraigned on that date. On January 20, 1994 you were also notified of the evidence in aggravation that will be offered by the State at Mr. Hughes' trial.

Subsequently, by way of letter dated April 27, 1994 I indicated that the evidence relating to prior bad acts and character will also include any and all actions of the defendant during any incarceration including but not limited to the murder and assault committed in the York County Detention Center on or about April 12, 1993.

I want to again call your attention to language in the January 20, 1994 notice that states that we intend to use "any and all evidence relating to prior bad acts and other evidence relating to the defendant's character occurring at any time prior to the conclusion of the case". To further clarify, it is the State's intention to introduce as evidence in the penalty phase of the trial any actions by the defendant before or during the trial that reflect on the penalty decision

It is my understanding that we have now provided at least two complete copies of the discovery material to the current Hughes defense team. Please be on notice that the State would intend to introduce in the penalty phase any and all evidence provided

MOSS JUSTICE CENTER
1675-1A YORK HIGHWAY • YORK, SOUTH CAROLINA 29745-7422
(803)-628-3020 • FAX: (803)-628-3025
YORK AND UNION COUNTIES

in discovery that falls into any area delineated in the January 20, 1994 notice of evidence in aggravation. However, please also note that you have been given notice of some evidence in aggravation (i.e. Payne evidence, etc) to which there would be no discovery materials. Also please remember that, as noted in the April 27, 1994 letter, I do not intend to provide evidence which is equally available to the defense such as prison records, medical records, mental records, etc.. See State v Cox, 274 SC 624, 266 SE2d 784(1980); Anderson v Leeke, 271 SC 435, 248 SE2d 120 (1978). Regardless, I will continue to provide you with everything I already have available.

Finally, On January 20, 1994, I served upon the defense a **Reciprocal Rule 5 For Discovery and Disclosure of Evidence**. The motion also contained a request for notice as to the defense's intention to offer an insanity or alibi defense. In my April 27, 1994 letter I asked for a prompt response to these requests. From our previous conversations it is my understanding that you do not intend to offer an insanity or alibi defense. It is also my understanding that you have no reciprocal discovery materials for the guilt phase and that you only have a few items you will provide us that you intend to introduce in the penalty phase. For our records I would ask that you respond to this motion in writing. I would also like to make arrangements to view your reciprocal discovery material as soon as possible.

If you need to further review the evidence or have any further questions please contact me as soon as possible.

Sincerely,

Thomas E. Pope
Solicitor

cc: Christina Brice, Esq.
Clerk of Court, York County

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

State of South Carolina)
)
)
Plaintiff,)MOTION TO CONTINUE, OR IN THE
vs.) ALTERNATIVE TO PROHIBIT THE
) INTRODUCTION OF EVIDENCE
Mar-Reece Aldean Hughes,)Case Nos: 93-4299; 93-4305
) 93-4301; 93-4296
Defendant.) 93-4304
)

TO: THOMAS POPE, SOLICITOR, SIXTEENTH JUDICIAL CIRCUIT:

The Defendant moves this Court to postpone the trial of Case Nos. 93-4296, 93-4299, 93-4305, 93-4301, 93-4304, until the final disposition of Case Nos. 93-3845 and 93-3846. In the alternative, the Defendant would move this Court to prohibit the admission of any and all evidence pertaining to Case Nos. 93-3845 and 93-3846 in the trial of Case Nos. 93-4296, 93-4299, 93-4305, 93-4301, 93-4304.

The Defendant is charged with Murder in Case No. 4296 and Case Nos. 93-3845 and 93-3846. The Defendant has been examined in connection with both cases to determine his competency to stand trial and mental capacity. As regards Case No. 93-3845 and 93-3846, the Defendant has been found in sane at the time of the offense. As regards Case Nos. 93-4296, 93-4299, 93-4305, 93-4301, 93-4304, the Defendant has been found sane, but to be suffering from schizophrenia paranoid type and borderline intellectual functioning.

The Defendant submits that it is a violation of the Due Process and Cruel and Unusual Punishment provisions of the State and Federal Constitutions to permit the Defendant to be tried on Case No. 93-4296, 93-4299, 93-4305, 93-4301, 93-4304, prior to the trial on Case Nos. 93-3845 and 93-3846. Furthermore, if this Court permits the Defendant to be tried first on Case Nos. 93-4296, 93-4299, 93-4305, 93-4301, 93-4304, this Court should prohibit the State from using evidence pertaining to Case No. 93-3845 and 93-3846, in the trial of Case Nos. 93-4296, 93-4299, 93-4305, 93-4301, 93-4304.

Case No. 93-4296 arises out of the death of a law enforcement officer on September 25, 1992. Case Nos. 93-3845 and 93-3846 arose while the Defendant was being detained in the York County Detention Center. While so detained the death of another inmate occurred which the Defendant is alleged to have caused. It is in this second case that the Defendant has been found to have been insane at the time of the alleged crime.

The Defendant will be unable to mount an effective and adequate defense if Case Nos. 93-4296, 93-4299, 93-4305, 93-4301, 93-4304 is tried prior to Case Nos. 93-3845 and 93-3846, or if evidence from Case Nos. 93-3845 and 93-3846 is submitted in Case Nos. 93-4296, 93-4299, 93-4305, 93-4301, 93-4304. If the Defendant was insane at the time he allegedly committed the offense in Case Nos. 93-3845 and 93-3846, then he is not

guilty of the offense. To permit any evidence from Case Nos. 93-3845 and 93-3846 to be used against the Defendant in Case Nos. 93-4296, 93-4299, 93-4305, 93-4301, 93-4304 will violate the Defendant's rights under both the State and Federal Constitutions. The issue of the Defendant's guilt or innocence in Case Nos. 93-3845 and 93-3846 must be rendered prior to the trial of Case Nos. 93-4296, 93-4299, 93-4305, 93-4301, 93-4304.

For the reasons set forth above the Defendant requests that Case Nos. 93-3845 and 93-3846 be tried first, or that some final disposition of it be made prior to the trial of Case Nos. 93-4296, 93-4299, 93-4305, 93-4301, 93-4304 in the alternative, this Court should prohibit the State from using any evidence from Case Nos. 93-3845 and 93-3846 in the trial of Case Nos. 93-4296, 93-4299, 93-4305, 93-4301, 93-4304.

Respectfully submitted,

BRICE & BRICE

Christina C. Brice
Attorney for the Defendant
P. O. Drawer 300
York, South Carolina 29745
(803) 684-4462

York, South Carolina
14 August 1995

STATE OF SOUTH CAROLINA

COUNTY OF YORK

CERTIFIED TRUE COPY

IN THE COURT OF GENERAL SESSIONS

THE STATE

vs.

Hughes, Mar-Reece
CH921-3493

Defendant

Jul 19 1 15 PM '94

CLERK OF COURT
YORK COUNTY, S.C.

REPORT OF FINDING MENTAL CAPACITY

EXHIBIT
S-26
CN 9/5/95

STATE'S EXHIBIT
94-1748

TO: THE HONORABLE Don S. Rushing

SOLICITOR SIXTEENTH JUDICIAL CIRCUIT

THE UNDERSIGNED RESPECTFULLY REPORTS TO THE COURT:

1. That the above-named defendant was admitted to the hospital on October 26, 19 92, to determine the defendant's capacity to stand trial pursuant to Section 44-23-410, *et sequentia*, Code of Laws of South Carolina, 1976.

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

(a) That the above-named defendant is diagnosed adjustment disorder with anxious mood.

(b) That the above-named defendant is capable of understanding the nature of the charges, and is capable of assisting counsel in his own defense.

(c) That the above-named defendant did have the capacity or ability to differentiate right from wrong at the time of the alleged offense, on or about September 25, 1992

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

CERTIFIED TRUE COPY
JAN 13 10 41 AM '98
DAVID HILTON
CLERK OF COURT
YORK COUNTY, SC

Columbia, South Carolina

This 9TH day of December, 1992

x Donald W. Morgan, M.D.

Donald W. Morgan, M.D.

Associate Director - WSHPI

mb

SCDMH FORM H-155A

FORENSIC UNIT STAFFING

November 23, 1992

PRESIDING: Constance J. McKee, M.D.

OTHERS PRESENT: Charles Woodard, Ph.D. (Department of Mental Retardation)
Geoffrey R. McKee, Ph.D.
Gerald Smith (Mr. Hughes attorney)

DIAGNOSES: AXIS I: 309.24 Adjustment Disorder with Anxious Mood.
AXIS II: V40.00 Borderline Intellectual Functioning.
AXIS III: No Diagnosis.

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JUL 19 1 15 PM '94
YORK COUNTY, S.C.

COMPETENCY TO STAND TRIAL: Yes.

CRIMINAL RESPONSIBILITY: Yes.

CAPACITY TO CONFORM: Yes.

DISPOSITION: Return to court.

PERTINENT STATEMENTS: Mr. Hughes is a 26-year-old black male who was admitted to Forensic Services on 10/26/92 pursuant to a court order requesting determination of competency to stand trial, criminal responsibility pursuant to the McNaghten standard, and if found responsible, whether he had sufficient capacity to conform his conduct to the requirements of the law, with regard to the following charges: murder, conspiracy two counts, possession of a firearm/violent crime, receiving stolen goods, felony possession of a firearm, and unlawful pistol which allegedly occurred on 09/25/92, in York County, South Carolina.

Mr. Hughes has no history of prior psychiatric or drug treatment. He denies use of alcohol or drugs. He had a difficult childhood and was incarcerated from age 17 until three months prior to the alleged incident.

MENTAL STATUS EXAM: Mr. Hughes presented as a well-developed man who appears his age. He was always polite and displayed self-protectiveness in his uncertainty regarding answering questions. His mood was somewhat anxious, particularly regarding his safety if he should be returned to York County. However, his expression of mood was guarded. His stream of thought was logical and coherent without pressure. His content of thought revealed no evidence of hallucinations or delusions. He was oriented to person, place, time, and situation. He had some difficulty with concentration shown by his inability to spell the word "WORLD" backwards. He had difficulty computing simple math. His immediate and remote memory were intact. He was able to recall 1 out of 4 objects after 5 minutes and remembered 3 out of 4 objects with prompting. His fund of knowledge was considered to be in the low average range. His judgment is poor by history. His insight was intact regarding his admission. There was no evidence of suicidal thinking or of homicidal thinking.

HUGHES, MAR-REECE A.
921-3493
ADMITTED: 10/26/92

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL: Mr. Hughes was able to understand his Miranda Rights and was considered competent to waive them. Since his attorney was present and since his court order had a Hitopolus clause, it was only necessary for him to waive his right to be silent. He exhibited an appreciation of the charges that had been filed against him and was able to provide an appropriate assessment of the possible penalties. He demonstrated an understanding of court procedure and was able to correctly identify the roles of defense attorney, solicitor, judge, and jury. He could define the pleas of guilty and not guilty and demonstrated a basic knowledge of plea bargaining. Mr. Hughes exhibits a capacity to disclose to his attorney the pertinent facts relating to the offenses and shows an ability to understand the legal defenses available to him. He exhibits the capacity to testify relevantly and to challenge prosecution witnesses appropriately. He demonstrates an appropriate manifestation of self-protectiveness. Therefore, we determine that he is competent to stand trial.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: There is no evidence of a major mental illness or defect which would have impaired Mr. Hughes' ability to differentiate moral and legal right from wrong at the time of the alleged offenses as per the McNaghten standard. Therefore, we determine that he is criminally responsible.

CONCLUSION REGARDING CAPACITY TO CONFORM: There is no evidence of a major mental illness or defect which would have impaired Mr. Hughes' ability to conform his conduct to the requirements of the law on the date of the alleged offenses. Therefore, we determine that he did have the capacity to conform his conduct to the requirements of the law.

RECOMMENDATIONS: Return to court.

Constance J. McKee M.D.

Constance J. McKee, M.D.
Fellow In Forensic Psychiatry

CJM/jpw

D: 11/23/92
FT: 11/24/92
C: 12/04/92

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CLERK OF COURTS
YORK COUNTY, S.C.

PSYCHOLOGICAL EVALUATION

FAMILY SUPPORT

DEC 3 1992

SERVICES

Name: Mar-Reece Hughes
Unit: Cooper Building
DOB: January 27, 1966
Report Date: November 23, 1992
Report By: Charles W. Woodard, Ph.D.
Department: Psychological Services

REFERRAL:

Mr. Hughes has been charged with the crimes of Murder, Conspiracy two counts, Possession of Fire Arm/Violent Crime, Receiving Stolen Goods, Felony Possession of Fire Arm, and Unlawful Pistol. It is requested that a determination be made of his mental capacity to stand trial, his ability to assist an attorney in his own defense, and his criminal responsibility pursuant to the M'Naghten standard. A written report shall be made available to the court pursuant to Section 44-23-410 of the Code of Laws of South Carolina.

TESTS ADMINISTERED:

Clinical Interview
Competency Evaluation

BACKGROUND INFORMATION AND BEHAVIORAL OBSERVATIONS:

Mr. Hughes provided the majority of the information. According to Mr. Hughes he attended school up until the 10th grade. He received his GED while he was serving a prior prison term. Mr. Hughes also denies use of drugs or alcohol. He was oriented to person, place, time, and did not appear to have a severe thought disorder at the time of the evaluation. Speech, hearing, and vision appeared within normal limits. Mr. Hughes denies the presence of suicidal or homicidal ideations. He also denies any auditory or visual hallucinations. Mr. Hughes functions within the borderline range of intelligence and is not mentally retarded.

LEGAL COMPETENCY:

Mr. Hughes has a concrete understanding of the charges against him, court proceedings, functions of court officials, and is capable of assisting an attorney in his own defense.

(Continue on reverse side—head to toe style)

INSTRUCTIONS:	IDENTIFICATION DATA
1. Date and sign each entry.	

Philip S. Massey, Ph.D.
Commissioner

Lonnie A. Bowman, Jr.
Deputy Commissioner
Support Services

Judy E. Johnson, Ed.D.
Deputy Commissioner
Client Services

James E. Kirk
Deputy Commissioner
Fiscal Affairs

COMMISSION
Emilie A. Towler, Chairman
John S. Poole, Vice Chairman
Annabelle S. Boykin, Ph.D., Secretary
Melvin L. Burton, Jr.
Clarence H. Buurman, Ph.D.
Judy P. Fuller

South Carolina Department of Mental Retardation

3440 Harden Street Extension
P. O. Box 4706
Columbia, South Carolina 29240
803/737-6474

December 3, 1992

The Honorable Don S. Rushing
Judge of the Sixteenth Circuit
Box 1029
Rock Hill, South Carolina 29730

RE: Mar-Reece Hughes

Dear Judge Rushing:

In accordance with your court order, an evaluation of the above mentioned individual was conducted. A copy of the evaluation is enclosed for your review and use.

If additional information is needed, please call me at 737-6464.

Sincerely,

Maurice Veal
Director of Admissions

/ypg
Enclosure
cc: Jim Hill
Sharon Stokes

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ROD BENFIELD
C.C.C.P. & G.S.
YORK COUNTY, S.C.

STATE OF SOUTH CAROLINA]
] IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK]
]
STATE OF SOUTH CAROLINA,]
PLAINTIFF,]
]
-VS-]
]
MAR-REECE ALDEAN]
HUGHES,]
DEFENDANT]

MOTION TO RESTRICT THE STATE FROM TRYING THE DEFENDANT AS PRINCIPAL ACTOR

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JAN 13 10 41 AM '95
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, S.C.

The Defendant through his undersigned attorneys moves the Court to restrict the State from trying the Defendant under Indictment 93GS464296 for murder as a principal actor on the following grounds:

In a previous trial involving the same murder, Dwayne Eric Forney was convicted and sentenced to life in prison. At that time, a jury made a factual determination that Forney was the agent responsible for the murder. Therefore, to continue to pursue the Defendant on the same charge would challenge the facts established by the jury. The defendant would cite to Enmund v. Florida 458 U.S. 782 (1982) as support for this motion.

Stephen D. Schusterman
Attorney at Law
Post Office Box 4211
240 East Black Street
Rock Hill, South Carolina 29731
(803) 325-7788

ATTORNEY FOR DEFENDANT

Rock Hill, South Carolina

August 4, 1994.

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

JAN 13 | 10 41 AM '98

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

IN THE COURT OF GENERAL SESSIONS

State of South Carolina,

Plaintiff,

-vs-

Mar-Reece Aldean Hughes,
Defendant.

MOTION TO REQUIRE THE STATE TO WITHDRAW THE INTENT TO SEEK THE DEATH PENALTY

The Defendant through his undersigned attorneys moves the Court to require the State to withdraw its intent to seek the death penalty, on the following grounds:

The State seeks the death penalty under Indictment 93GS464296 for murder. In a trial involving an indictment of the same murder, with the exact same facts and circumstances, Dwayne Eric Forney was not given the penalty of death. Code Section 16-3-25 (c)(3) requires that imposition of the death penalty be neither "excessive or disproportionate to the penalty imposed in similar cases." Since the most similar case possible did not result in a penalty of death, it would be highly inappropriate for the State to continue to seek that penalty with regard to 93GS464296.

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ROD BENFIELD JR
C.C.C.P. & G.S.
YORK COUNTY, S.C.

Stephen D. Schusterman
P.O. Box 4211
Rock Hill, SC 29731
(803) 625-7788

Richard C. Lewis
137 East Main
Rock Hill, SC 29731
(803) 327-5831

ATTORNEYS FOR DEFENDANT

Rock Hill, South Carolina
August 3, 1994

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ROD BENFIELD JR
C.C.C.P. & C.S.
YORK COUNTY, S.C.

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STATE OF SOUTH CAROLINA

JAN 13 10 41 AM '98

IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

State of South Carolina,

Plaintiff,

-vs-

Mar-Reece Aldean Hughes,
Defendant.

MOTION TO SUPPRESS STATEMENT AND FOR A SUPPRESSION HEARING

The Defendant through his undersigned attorneys moves the Court for a hearing in the absence of the jury to determine if the statement given by him to law enforcement officers after his arrest was freely and voluntarily given. This Motion is made pursuant to Jackson v. Denno, 378 U.S. 368 (1964).

Stephen D. Schusterman
P.O. Box 4211
Rock Hill, SC 29731
(803) 625-7788

Richard C. Lewis
137 East Main
Rock Hill, SC 29731
(803) 327-5831

ATTORNEYS FOR DEFENDANT

Rock Hill, South Carolina
August 3, 1994

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ROD BENFIELD JR
C.C.C.P. & G.S.
YORK COUNTY, S.C.



SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
GILLIAM PSYCHIATRIC HOSPITAL
DISCHARGE SUMMARY

INMATE NAME: Hughes, Mar-reece SCDC#: SK-4856

REFERRING STAFF & INSTITUTION: BRR&E RESIDENT COUNTY: Charlotte, North Carolina

DATE OF ADMISSION: 02/18/94 DATE OF DISCHARGE: 02/24/94 (02/25/94) (BRR&E)

TYPE (Circle One) Voluntary Involuntary GBMI

DATE OF BIRTH: 01/27/66 MARITAL STATUS: Single RACE: Black

CRIME Mr. Hughes has been charged with two counts of Murder.

His trial date is pending.

SENTENCE START DATE: N/A LENGTH: N/A

PREVIOUS CONVICTIONS: None in the State of South Carolina

NUMBER OF PRIOR ADMISSIONS: None

REASON FOR REFERRAL:

The client was referred to the GPH from BRR&E by Saundra Feagin, Psychologist II. It was reported that Mr. Hughes set a fire in his cell. He also reported experiencing auditory and visual hallucinations, expressed paranoid delusional beliefs, and threatened staff.

CURRENT STATUS AT DISCHARGE:

Mr. Hughes was found not mentally ill by two Designated Examiners as he does not meet the criteria set forth for judicial commitment. Additionally, he appeared extremely manipulative and self-seeking as he tended to be selective in response to specific questions along with selective lapses of memory as well.

DIAGNOSIS:

AXIS I: Malingering

AXIS II: Antisocial Personality Disorder

AXIS III: No Diagnosis

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JAN 13 10 42 AM '98
DARLA HILTON
CLERK OF COURT
YORK COUNTY, S.C.

DISCHARGE MEDICATIONS:

None

RECOMMENDATIONS (Special Considerations):

Mr. Hughes has been minimally cooperative with staff since his admission to the GPH. Although he is alert and properly oriented, he tended to selectively respond to inquiry and to ramble on incessantly. However, when unintrusively observed, he tends to behave in a manner counterindicative of a psychotic impairment. Characteriological traits of the antisocial type were observed, however. This patient should be held accountable for any SCDC rules infractions and the appropriate sanctions applied. Further, this individual should be approached with extreme caution as he has a tendency to assault others without provocation.

Raymond Kimball, M.D.
Raymond Kimball, M.D.
Psychiatrist
Gilliam Psychiatric Hospital

Leon J. Johnson, Ph.D.
Leon J. Johnson, Ph.D.
Psychologist III
Gilliam Psychiatric Hospital

RK/LJJ/sc
pc: R. Wilson
J. Page
S. Feagins - BRR&E
G. Beaty - BRR&E
GPH Client file
file

EXHIBIT
S-27
Cr. 9/8/95

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JAN 13 10 42 AM '98
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

South Carolina Department of Corrections
Gilliam Psychiatric Hospital

INTAKE ASSESSMENT

Hughes, Mar-reece
SCDC#: SK-4856

Referred From: BRR&E
Date: 02/18/94
Evaluation Date: 02/23/94
Status: Involuntary
Report Date: 02/23/94

Identifying Information:

Mr. Hughes is a 28-year-old, Black male from Charlotte, North Carolina. This client is a Safekeeper who has yet to be tried on the charges of two counts of Murder. This client has no prior incarcerations in the state of South Carolina. This is his first admission to the Gilliam Psychiatric Hospital. Prior to his GPH admission, Mr. Hughes was on lock-up at his referring institution. He has a history of prior psychiatric treatment in North Carolina.

Reason For Referral:

The client was referred to the GPH from BRR&E by Saundra Feagin, Psychologist II. It was reported that Mr. Hughes set a fire in his cell. He also reported experiencing auditory and visual hallucinations, expressed paranoid delusional beliefs, and threatened staff.

Initial Impressions:

Upon admission, a structured intake evaluation was attempted. The psychological intake evaluation could not be completed as Mr. Hughes tended to be extremely vague and tangential. Additionally, he rambled on about "things being out of order" and that "things are not real when they are out of order". Mr. Hughes denied suicidal and homicidal ideation. He denied having any psychotic symptoms and/or symptoms of depression. Mr. Hughes was interviewed on three separate occasions by two court appointed Designated Examiners and was subsequently found to be not mentally ill. Rather, he was believed to be feigning psychotic symptoms for some undisclosed personal gain.

Summary and Recommendations:

Mr. Hughes is a 28-year-old, Black male from BRR&E. This client is a Safekeeper who has yet to be tried on the charges of two counts of Murder. Mr. Hughes was referred from BRR&E after reports

that he set a fire in his cell. He also reported experiencing auditory and visual hallucinations, expressed paranoid delusional beliefs, and threatened staff.

At the present time, he is selectively inattentive with selective lapses of memory. It is recommended that staff approach the client in a cautious manner as he has a history of unprovoked assaults on others coupled with the gesturing of violent assaults when angry (e.g., mimicking cutting an individual's throat). It is suggested that Mr. Hughes be placed on level I-R, SK, SSR status. Mr. Hughes has been found not mentally ill by two court appointed Designated Examiners. Group therapy is not recommended at this time.

Leon J. Johnson, Ph.D.
Psychologist III

LJJ/sc
c.c.
R. Wilson
Dr. Kimball
G.P.H. Client File
File

WILLIAM S. HALL
PSYCHIATRIC INSTITUTE

STATE OF SOUTH CAROLINA

COUNTY OF YORK

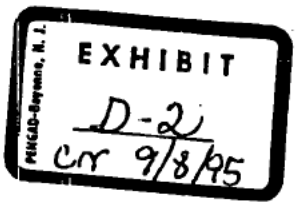
IN THE COURT OF GENERAL SESSIONS

THE STATE

REPORT OF FINDING MENTAL CAPACITY

vs.
HUGHES, MAR-REECE
CH921-3493

Defendant



TO: THE HONORABLE JOHN C. HAYES, III

THE UNDERSIGNED RESPECTFULLY REPORTS TO THE COURT:

1. That the above-named defendant was evaluated on March 7th and 15th, 1995, to determine the defendant's capacity to stand trial pursuant to Section 44-23-410, et sequentia, Code of Laws of South Carolina, 1976.

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

   a. That the above-named defendant is diagnosed schizophrenia, paranoid type and borderline intellectual functioning.

   b. See report.



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

Columbia, South Carolina
April 4, 1995

mb

X Donald W. Morgan
Donald W. Morgan, M.D.
Associate Director
WSHPI - Forensic Unit

CERTIFIED TRUE COPY
JAN 13 10 42 AM '98
DAVID M. HILTON
CLERK OF COURT
YORK COUNTY, SC

WILLIAM S. HALL
PSYCHIATRIC INSTITUTE

FORENSIC UNIT STAFFING

HUGHES, Marreece
921-3493

COPY RELEASED BY WSHPI
Kneece Kneece
To Brian Stark
Schusterman
Atty Atty

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

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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

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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

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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

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

JAN 13 10 42 AM '98
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

IN THE COURT OF GENERAL SESSIONS

THE STATE
vs.
Hughes, Mar-Reece A.
CH921-3493

Defendant

REPORT OF FINDING MENTAL CAPACITY



TO: THE HONORABLE THOMAS E. POPE

SOLICITOR/ASSISTANT SOLICITOR SIXTEENTH JUDICIAL CIRCUIT

THE UNDERSIGNED RESPECTFULLY REPORTS TO THE COURT:

1. That the above-named defendant was evaluated **August 1, 1994**, to determine the defendant's capacity to stand trial pursuant to Section 44/23/410, et sequentia, Code of Laws of South Carolina, 1976.

2. That after study and observation, the hospital staff submits the following report:
   a. That the above-named defendant is diagnosed **bipolar disorder, provisional.**

   b. That the above-named defendant is capable of understanding the nature of the charges, and is capable of assisting counsel in **his** own defense.

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

c **Steve Schusterman, Attorney at Law, 240 E. Black Street, Rock Hill, SC 29731**



Columbia, South Carolina
This 3rd day of

August 1994

mb

X Donald W. Morgan
Donald W. Morgan, M.D.
Associate Director
WSHPI - Forensic Unit

FORENSIC UNIT OUTPATIENT EVALUATION

August 1, 1994

PRESIDING: Donald W. Morgan, M.D.

OTHERS PRESENT: Geoffrey R. McKee, Ph.D.

DIAGNOSES:
AXIS I: No Diagnosis.
AXIS II: Borderline Intellectual Functioning.
AXIS III: No Diagnosis.

COMPETENCY TO STAND TRIAL: Yes.

DISPOSITION: Return to court.

PERTINENT STATEMENTS: Mr. Hughes is a 28-year-old single black male who was referred for evaluation of his competency to stand trial on a court order signed by Honorable Judge John C. Hayes III on 07/29/94.

Mr. Hughes had been evaluated at the William S. Hall Psychiatric Institute (WSHPI) on the same charges from 10/26/92 through 12/22/92. A thorough review of that inpatient record was accomplished by Dr. McKee and myself. Additionally, we are in possession of a report submitted to Attorney Schusterman dated 07/29/94 by Dr. D. J. Barnard-Dupree which she diagnosed Mr. Hughes as Psychotic Disorder, NOS and indicated that he was not competent to stand trial.

MENTAL STATUS EXAM: Mr. Hughes has a very uneven recollection of pertinent events and evaluations. For example, Mr. Hughes could remember the name of the psychologist who tested him during his evaluation two years ago, but when specifically asked whether or not he had been seen by a psychiatrist for evaluation within the past month, denied having such an evaluation. This is vaguely impossible since Dr. Barnard-Dupree's report, she clearly indicates that she identified herself to him and the reason for the evaluation.

We are also aware that Dr. Barnard-Dupree felt Mr. Hughes' thought processes were disorganized with tangential and circumstantial speech. In our 45-minute interview focusing upon his competency to stand trial, Mr. Hughes did give two answers which could be interpreted as somewhat loose, but not in our opinion, bizarre. When asked to interpret the proverb "What goes around comes around," Mr. Hughes said "What you put up above will somehow be needed to come back to you" and also when asked to describe his adaptation to his previous prison incarceration, Mr. Hughes described an analogy of his incarceration being like that of training a dog in which the dog is trained to stay within a circle and that is for the dog's own good. Throughout the entire interview, Mr. Hughes gave no other loose circumstantial or tangential productions. He was always self-serving. He exercised his Miranda Rights appropriately. He would not

specific questions which were asked of him concerning his adaptation upon return to jail and his specific charges which resulted in his incarceration at age 17 in North Carolina.

Mr. Hughes talked to us about his allegedly catching his cell on fire which he states was not the case. He stated that he had no suicidal intention, that he had asked for some coffee and had been refused, so he was heating the water himself by burning a small amount of paper. He stated clearly that if he had wanted to catch his cell on fire, he would have burned his clothes and his mattress. He had a clear recollection of his treatment at the Gilliam Center which was caused by this fire and stated that he did not talk to them because one could not trust the medical personnel at SCDC not to use the information against you in a later trial. This all appeared to be self-serving and self-protective.

Mr. Hughes has been on no medication since his release from the WSHPI. He states that the discharge medication of Elavil 50 mg was discontinued and that he saw no reason for it to be reinstituted. He specifically denied any depressive symptoms. He stated that his mood was fine and that his sleep and appetite were normal.

COMPETENCY TO STAND TRIAL: Mr. Hughes knew the charges against him. He knew his previous lawyer. He knew his current lawyer. He knew the outcome of his co-defendant's trial. He knew that he had been subpoenaed to testify in that trial and that he had exercised his right against self-incrimination. He felt that he could testify if he and his lawyer felt that it was important for him to do so. He understood the role of cross-examination. He knew the role of all the court officers. He had some knowledge of the evidence which the police had against him. He specifically denied that the statement the police was given by him, but was rather obtained illegally by monitoring a phone call to one of his lawyers. All in all, Mr. Hughes has a thorough understanding of the court procedures. He understands his role and he can relate to his lawyer in a rational and factual manner if he chooses to do so.

RECOMMENDATIONS: Since there is an apparent serious discrepancy between the evaluation of the psychiatrist obtained by the defense and the repeated evaluations within the WSHPI, we recommend that a joint evaluation of Mr. Hughes be accomplished immediately prior to the conducting of a later hearing so that this question can be adjudicated by the court.

Donald W. Morgan, M.D.
Associate Director For Forensic Services

DWM/jpw

D: 08/02/94
FT/EM: 08/02/94





STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF GENERAL SESSIONS

THE STATE

REPORT OF FINDING MENTAL CAPACITY

vs.

TRENT MAE REECE
JI921 3405

Defendant

TO: THE HONORABLE JOHN C. HAYES, III

CERTIFIED TRUE COPY
JAN 13 10 42 AM '98
DAVID E. HILTON
CLERK OF COURT
YORK COUNTY, SC

SOLICITOR/ASSISTANT SOLICITOR SIXTEENTH JUDICIAL CIRCUIT

THE UNDERSIGNED RESPECTFULLY REPORTS TO THE COURT:

1. That the above-named defendant was evaluated on December 14, 1994, to determine the defendant's capacity to stand trial pursuant to Section 44-23-410, et sequentia, Code of Laws of South Carolina, 1976.

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

   a. That the above-named defendant is diagnosed Schizophrenia paranoid type and borderline intellectual functioning.

   b. [illegible] report.

   c. That the above-named defendant did have the ability to differentiate right from wrong at the time of the alleged offense, on or about September 25, 1992.

   d. That the above-named defendant did have the capacity to conform his conduct to the requirements of the law.

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

[illegible] South Carolina
January [illegible]

Donald [illegible] Morgan, III
Associate Director
WSHFI - Forensic Unit

03125

MENTAL STATUS EXAM: Mr. Hughes presents as a well developed, well nourished African-American male who continues to be cooperative with this evaluation process. Speech was of normal rate, rhythm, volume, and latency. His thought processes were mostly goal directed and did show some periods of circumstantiality. He continues, however, to respond to structured interview. His affect was pleasant and appropriate to content. There was no evidence of any delusional thinking at the time of this interview. He was more hopeful with regard to his ultimate sentence stating that a likely sentence would be "life and 700 years." When pointed out that the last time we spoke, he was convinced the electric chair was a likely outcome, he responded this time "the chair is not a foregone conclusion." Mr. Hughes has gained some insight into his mental illness. When asked if he felt he had a mental illness, he stated "everybody can't be lying." His insight into his current legal difficulty 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: Though Mr Hughes suffers from Schizophrenia, paranoid-type, the onset of this illness occurred after the time of the alleged event. Therefore, at the time of the alleged event there is no evidence of major mental illness or defect which would have impaired Mr. Hughes' ability to distinguish legal and moral right from legal and moral wrong or impair his ability to recognize the wrongfulness of his behavior on or about 09/25/92. Therefore, we determine with reasonable medical certainty, that he is criminally responsible, pursuant to the McNaghten standard for his action on or about that date.

CONCLUSION REGARDING CAPACITY TO CONFORM: For the reasons stated above there is no evidence of a major mental illness that would have impaired Mr. Hughes ability to conform his behavior to the requirements of the law on or about 09/25/92. Therefore, we determine with reasonable medical certainty, that he did have the capacity to conform his conduct to the requirements of the law, on 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 Services

RSK/gm/hj

HUGHES, MAR-REECE
921-3493
ADMITTED: 09/08/94

D: 12/15/94
RT/EM: 12/17/94
F/EM: 01/09/95

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

Case No.: 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

State of South Carolina, ... Respondent,

v.

Mar-Reece Aldean Hughes, ... Appellant.

CERTIFICATE OF COUNSEL

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

March 20, 1998

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