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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Court of Common Pleas

CAPITAL PCR ACTION

APPEAL FROM PICKENS COUNTY
Honorable Alexander S. Macaulay, Circuit Court Judge

Jerry Buck Inman, #5256
a/k/a Jerry Buck Inmon.....Respondent-Petitioner

v.

State of South Carolina.....Petitioner-Respondent.

Appellate Case No. 2020-000881

APPENDIX
VOLUME 4 OF 10

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[1] State's Exhibits 1-11 were previously marked and entered into evidence on August 19, 2008. They are included under the exhibits listed for that date.

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Court's Exhibit #6-9-Photos ..... (will transport)

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[2] Court's Exhibit # 1 was previously marked and entered into evidence on August 19, 2008. It is included under the exhibits listed for that date.

[3] Defense Exhibits # 32-43 were included in the Record on Appeal and are included with the Record on Appeal in this Appendix.

[4] Court's Exhibit 3 was included in the Record on Appeal and is included with the Record on Appeal in this Appendix.

to be able to remember exactly what you say. But if you say something and an innocent -- what is it, just a misstatement, it becomes a part of the record.

MS. BROWN: Your Honor, you make a good point. And I was planning on reading this into the record. And if you would give me just one moment with my team, I think we can finish up with it.

THE COURT: That will be very good.

MS. BROWN: Thank you, Your Honor.

THE COURT: That's what I was hoping.

(Pause in proceedings.)

MS. BROWN: Your Honor?

THE COURT: Yes, ma'am.

MS. BROWN: I am pleased to report that I have but one typo in my copy that I have now edited. And I would offer the three pages as an exhibit, and this would be our proffer of the questions that we would have posed to the applicant.

THE COURT: Very good. See if the applicant accepts the modification.

MR. GROSE: No objection, Your Honor.

THE COURT: All right. Very good. Does that conclude the evidentiary presentation?

MS. BROWN: Yes, sir.

THE COURT: Well, let's see. From applicant?

MR. GROSE: Yes.

THE COURT: Anything in rebuttal?

MR. GROSE: No, sir.

THE COURT: All right. So that's the case for the State -- I mean for the applicant and now the State. Is there any further evidence to be ---

MS. BROWN: No, sir. We have been completed.

THE COURT: All right. So now y'all want to take a minute and let me give you some thoughts about how you would like to proceed? Obviously, I don't think I'm going to render a decision today.

MR. GROSE: I have a suggestion.

THE COURT: That's what I'm looking for. Have you discussed it with Ms. Brown?

MR. GROSE: I have not.

THE COURT: Why don't you do that. And let's just have a little Kumbaya, see if we can't agree. I'm serious. Obviously, the Court is seeking your not only help, but which does sometimes require cooperation and understanding so that you be very considerate, if you would. I'm sure you will be. Thank you.

(WHEREUPON, Respondent's Exhibit Number 8 was marked for identification.)

(WHEREUPON, proceedings concluded at 3:11 p.m.)

Honorable Alexander S. Macaulay,
P.O. Drawer 428
Walhalla, SC. 29691

Aug, 9th, 2018

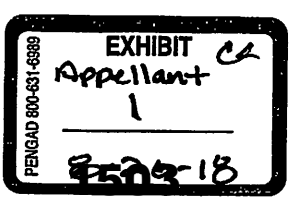
To: Judge Macaulay,

I am writing you this letter to inform you, and get on record that I have no wish to be present during my P.C.R. hearing.

I understand that this hearing has to be held to meet all legal requirements for the appeal process, but I recieved this sentence for crimes I knowingly committed, and I accept that.

I greatly appreciate your considerations and efforts in this matter, and await your decision.

Respectfully,
Jerry Inman #5256
Kirkland R+E/D.R. - Cell 24-B
4344 Broad River Rd.
Columbia, SC. 29210



Subject: RE: Inmate transport
Date: Wednesday, August 8, 2018 at 12:02:17 PM Eastern Daylight Time
From: Christina Bigelow (C057846)
To: Charles Grose
CC: Diana Holt

Dear Mr. Grose and Ms. Holt:

I just wanted to make sure you were both aware that under current practices, SCDC does not "require" or "force" inmates to attend court hearings. If an inmate is scheduled for transport, but declines/refuses to go, we make note of the refusal and then notify the party who initiated the transport request.

Just FYI.

Thanks,
Christie

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-1738

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From: Charles Grose [mailto:charles@groselawfirm.com]
Sent: Tuesday, August 07, 2018 6:22 PM
To: Christina Bigelow (C057846) <Bigelow.Christina@doc.sc.gov>
Cc: Diana Holt <DianaHolt@dianaholtllc.com>; Barton Vincent (C028988) <Vincent.Barton@doc.sc.gov>; Jensen, J. Christopher <JCJ@cll.com>
Subject: Re: Refusal to provide prescribed medicines to Death Row inmates

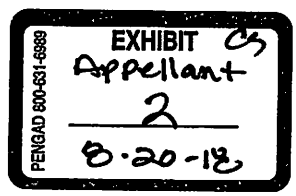
***** This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. *****

Thank you.

Best,
Charles

Sent from my iPad

E. Charles Grose, Jr.



The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
Phone: 864-538-4466
Fax: 864-538-4405
Web: GroseLawFirm.com
Email: charles@groselawfirm.com

On Aug 7, 2018, at 5:06 PM, Christina Bigelow (C057846) <Bigelow.Christina@doc.sc.gov> wrote:

Dear Ms. Holt:

I have forwarded your e-mail to the appropriate medical and other staff to ensure this issue is resolved/looked into. (NOTE: I forwarded Mr. Grose's motion regarding Mr. Inmon to medical this morning because it mentioned medical issues.)

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-1738

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From: Diana Holt [mailto:DianaHolt@dianaholtllc.com]
Sent: Tuesday, August 07, 2018 4:57 PM
To: Barton Vincent (C028988) <Vincent.Barton@doc.sc.gov>; Christina Bigelow (C057846) <Bigelow.Christina@doc.sc.gov>
Cc: charles@groselawfirm.com; Jensen, J. Christopher <JCJ@cll.com>
Subject: Refusal to provide prescribed medicines to Death Row inmates
Importance: High

***** This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. *****

Dear Mr. Vincent and all~

In the last week, both Mr. Inmon and Mr. Starnes have repeatedly requested in writing to have their medications provided as prescribed. Mr. Inmon, as reported to you and Judge Macaulay, has not received his pain meds despite all our efforts and his own to have them delivered to him. He also needs blood pressure medications. Mr. Starnes, likewise, has not received his Prilosec, Refresh eye drops prescribed for his ocular cancer, and his triamcinolone cream for his

psoriasis. Can this be resolved as soon as possible, PLEASE. The nurse, a Ms. Mitchner, is openly hostile to these two men and others. Do you guys need us to do anything to help with these ongoing and repeat problems concerning proper and timely administration of prescribed medications? We can involve presiding judges on individual client's cases, if that helps. Please advise.

Thank you. Best~ dh

Diana Holt <image001.jpg>
DianaHolt@DianaHoltLLC.com
Diana Holt, LLC
Post Office Box 6454
Columbia, South Carolina 29260-6454
803.782.1663 (Office)
803.787.0374 (Facsimile)
803.351.8100 (Mobile)
www.dianaholtllc.com

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Subject: RE: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

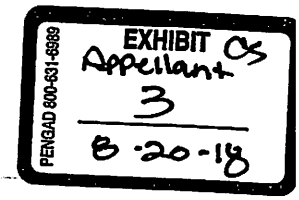
Date: Monday, August 13, 2018 at 1:23:08 PM Eastern Daylight Time

From: Macaulay, Alexander S.

To: Melody Brown

CC: Charles Grose, Diana Holt (DianaHolt@dianaholtllc.com), Sherrie Butterbaugh, Barton Vincent (C028988) (Vincent.Barton@doc.sc.gov), Dayne Haile, Christina Bigelow (C057846) (Bigelow.Christina@doc.sc.gov)

Attachments: image001.jpg, image002.jpg



Thank you! ASM

From: Melody Brown [mailto:MBrown@scag.gov]
Sent: Monday, August 13, 2018 1:03 PM
To: Macaulay, Alexander S. <AMacaulayJ@sccourts.org>
Cc: E. Charles Grose (charles@groselawfirm.com) <charles@groselawfirm.com>; Diana Holt (DianaHolt@dianaholtllc.com) <DianaHolt@dianaholtllc.com>; Sherrie Butterbaugh <SButterbaugh@scag.gov>; Barton Vincent (C028988) (Vincent.Barton@doc.sc.gov) <Vincent.Barton@doc.sc.gov>; Dayne Haile <haile.dayne@doc.sc.gov>; Christina Bigelow (C057846) <Bigelow.Christina@doc.sc.gov> (Bigelow.Christina@doc.sc.gov) <Bigelow.Christina@doc.sc.gov>
Subject: RE: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

This was inadvertently sent just to me, so I am forwarding to all. Thank you for your response. I will keep the number handy.

Melody

From: Macaulay, Alexander S. [mailto:AMacaulayJ@sccourts.org]
Sent: Monday, August 13, 2018 12:57 PM
To: Melody Brown
Subject: RE: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Ladies and Gentlemen, I will be out of my office the remainder of the week for our Judicial Conference. The best way to contact me would be my cell 864-710-9350 – if I can remember to turn it on. ASM

From: Melody Brown [mailto:MBrown@scag.gov]
Sent: Monday, August 13, 2018 12:25 PM
To: Macaulay, Alexander S. <AMacaulayJ@sccourts.org>; Charles Grose <charles@groselawfirm.com>; Sherrie Butterbaugh <SButterbaugh@scag.gov>; Diana Holt <DianaHolt@dianaholtllc.com>
Cc: Barton Vincent (C028988) <Vincent.Barton@doc.sc.gov>; Dayne Haile <haile.dayne@doc.sc.gov>; Christina Bigelow (C057846) <Bigelow.Christina@doc.sc.gov> (Bigelow.Christina@doc.sc.gov) <Bigelow.Christina@doc.sc.gov>
Subject: RE: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Dear Counsel:

Attached is the response to the motion to quash the transportation request. The original is being mailed today for filing, but I am sending this scanned courtesy copy for quicker review in case a status conference is ultimately still requested. Sherrie and I will be available at your convenience to freely discuss any aspect of

the position to resolve this as best we can. If after review you still believe a status conference is necessary, we will make ourselves available at your and the Court's convenience. Thank you.

As noted in the address, I am also providing a copy to Judge Macaulay.

Please note that I confirmed Friday that the requested transportation is still scheduled.

Sincerely,
Melody

Melody J. Brown
Senior Assistant Deputy Attorney General
Capital and Collateral Litigation Section
Office of the Attorney General, State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549
P 803-734-6305
F 803-734-4035
mbrown@scag.gov

From: Macaulay, Alexander S. [mailto:AMacaulayJ@sccourts.org]
Sent: Thursday, August 09, 2018 4:27 PM
To: Charles Grose; Sherrie Butterbaugh; Diana Holt
Cc: Melody Brown; Barton Vincent (C028988); Dayne Haile
Subject: RE: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Ladies and Gentlemen, if there is anything the Court might do to facilitate matters, to include a status conference call, please do not hesitate to advise me after your own consultation. ASM

From: Charles Grose [mailto:charles@groselawfirm.com]
Sent: Monday, August 6, 2018 5:28 PM
To: Sherrie Butterbaugh <SButterbaugh@scag.gov>; Diana Holt <DianaHolt@dianaholtllc.com>; Macaulay, Alexander S. <AMacaulayJ@sccourts.org>
Cc: Melody Brown <MBrown@scag.gov>; Barton Vincent (C028988) <Vincent.Barton@doc.sc.gov>; Dayne Haile <haile.dayne@doc.sc.gov>
Subject: Re: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Dear Judge Macaulay,

Please see the attached motion. Hard copies will be mailed tomorrow. Because of the nature of the motion, I am copying General Counsel for the Department of Corrections.

Thank you for your attention to this matter. Please let us know if you have any questions or require additional information.

Best,
Charles

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
Phone: 864-538-4466
Fax: 864-538-4405
Web: GroseLawFirm.com
Email: charles@groselawfirm.com

From: Sherrie Butterbaugh <SButterbaugh@scag.gov>
Date: Thursday, August 2, 2018 at 12:28 PM
To: Diana Holt <DianaHolt@dianaholtllc.com>, "AMacaulayJ@sccourts.org" <AMacaulayJ@sccourts.org>
Cc: Charles Grose <charles@groselawfirm.com>, Melody Brown <MBrown@scag.gov>
Subject: RE: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Dear Judge Macaulay:

Please be advised it is anticipated Mr. Inmon will likely be called as a witness and will not be merely observing the proceedings. As you will recall, Mr. Inmon pled guilty, accordingly, his knowledge and decisions are key. A transportation order is not necessary, but if you would like to hear any additional comments or concerns, such as those provided by opposing counsel in the below email, we are available for a status conference at your convenience.

Thank you,
Melody Brown and Sherrie Butterbaugh

Sherrie Butterbaugh
Assistant Attorney General
SC Attorney General's Office
Rembert C. Dennis Bldg.
1000 Assembly St.
Columbia, SC 29201
Office: (803) 734.0128

From: Diana Holt [mailto:DianaHolt@dianaholtllc.com]
Sent: Thursday, August 02, 2018 12:11 PM
To: Sherrie Butterbaugh; AMacaulayJ@sccourts.org
Cc: charles@groselawfirm.com; Melody Brown
Subject: RE: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Mr. Inmon is waiving his attendance for his PCR hearing. He has not attended any of the hearings thus far. He doesn't ***need*** a medical reason not to attend. His last transport July 2nd resulted in him being kept in full chains, including the black box, for over ten straight hours. He was not provided a lunch. When he needed to visit the gentleman's room, he was accompanied by COs who watch the entire time. This all is humiliating and painful. He has drafted his own statement about his reasons. I will provide it to all tomorrow afternoon. Respectfully, SCDC doesn't particularly know anything about Mr. Inmon's medical conditions, which is part of

the reason they are in the middle of massive litigation concerning all death sentenced human beings in SC.

We would ask you not to request his transport. Short of your agreement not to transport him, we will file a motion for the Court's consideration concerning a no-transport order.

Many thanks.

Best~ dh

Diana Holt
DianaHolt@DianaHoltLLC.com
Diana Holt, LLC
Post Office Box 6454
Columbia, South Carolina 29260-6454
803.782.1663 (Office)
803.787.0374 (Facsimile)
803.351.8100 (Mobile)
www.dianaholtllc.com

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From: Sherrie Butterbaugh <SButterbaugh@scag.gov>
Sent: Thursday, August 2, 2018 11:53 AM
To: AMacaulayJ@sccourts.org
Cc: Diana Holt <DianaHolt@dianaholtllc.com>; charles@groselawfirm.com; Melody Brown <MBrown@scag.gov>
Subject: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Dear Judge Macaulay,

Good morning. SCDC has confirmed there are no medical or security reasons why Mr. Inmon would be unable to travel to Pickens County for his upcoming PCR hearing scheduled to begin August 20, 2018. We recall there were expressed medical concerns which may have prevented transport prior to the previously scheduled hearing in November 2016. Accordingly, respondent has prepared a letter of transport and will send it to SCDC today. We will also copy you and opposing counsel on the letter. Please do not hesitate to contact me if you have any questions.

Thank you,
Sherrie Butterbaugh

Sherrie Butterbaugh
Assistant Attorney General
SC Attorney General's Office
Rembert C. Dennis Bldg.
1000 Assembly St.
Columbia, SC 29201
Office: (803) 734.0128

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STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS)	
)	Case No.: 2006-GS-39-2222-2225
State of South Carolina,)	
)	
Plaintiff,)	
)	
v.)	**Motion to Reconsider Order Dated**
)	**November 15, 2007 re: Jury Trial Sentencing**
Jerry Buck Inman,)	**After Entry of Guilty Plea**
)	
Defendant.)	
)	

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2007 AUG 25 A 9: 12

To: Solicitor, Thirteenth Judicial Circuit

The Defendant, by and through his undersigned counsel will move this Court at a time and date to be hereafter ascertained to reconsider its pre-trial Order dated November 15, 2007, wherein the Defendant requested jury trial sentencing after a guilty plea.

As the Court is aware, the Defendant has maintained throughout the proceedings that he has a 6th Amendment Constitutional Right to have a jury determine his sentence. In addition, the Defendant has a 14th, 6th , and 8th Amendment Right to present a complete defense which would include the mitigation of a guilty plea. The Defendant has been required to choose between substantial Constitutional Rights that, but for the current interpretation of South Carolina's Death Penalty Statute, can be exercised in harmony one with the other. The Defendant incorporates, as if set forth verbatim, his previous submission on this issue titled Memorandum on Motion to Determine Mode of Trial.

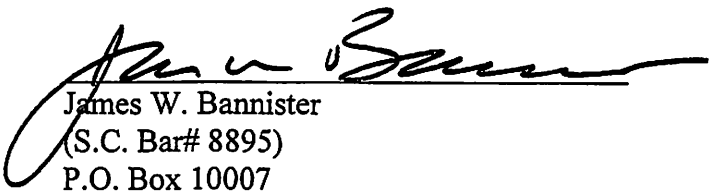
At this stage in the proceedings, a jury venire is waiting to be qualified and is available for selection. Furthermore, the issue of whether the Defendant would enter a guilty plea to the indictments is no longer a hypothetical inquiry. In addition, the State has not offered an

EXHIBIT
Appellant CS
4
PENGAD 800-631-6989

objection to allowing the Defendant to plead guilty as in the prior hearing on this issue. This Court still has an opportunity to cure the Constitutional defect that now infects this case. THEREFORE, the Defendant requests that the Court reconsider its Order dated November 15, 2007, permit selection of a jury and proceed to sentencing on September 8, 2008.

Respectfully submitted,

BANNISTER & WYATT, LLC



James W. Bannister
(S.C. Bar# 8895)
P.O. Box 10007
Greenville, SC 29603
Ph: (864) 298-0084
Fax: (864) 298-0146
ATTORNEY FOR THE DEFENDANT

August 21, 2008

12444

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS)	
)	Case No.: 2006-GS-39-2222-2225
State of South Carolina,)	
)	
Plaintiff,)	
)	
v.)	**Motion To Reconsider and for New Trial**
)	
Jerry Buck Inman,)	
)	
Defendant.)	
)	

To: Solicitor, Thirteenth Judicial Circuit

The Defendant, JERRY BUCK INMAN, moves this Court for recon-sideration on the sentence of death imposed on the Defendant on April 23, 2009, and for resentencing to Life Without Parole and, in support of such motion, asserts the following trial and sentencing errors:

A. The Court erred in denial of the Motion and Memorandum to Determine Mode of Trial filed on August 17, 2007, wherein the Defendant sought to enter a plea of guilt and demand a jury trial for sentencing and asserted that the statutory scheme under which the State of South Carolina seeks the death penalty is unconstitutional by requiring the entry of a not guilty plea by the Defendant in order to have a jury impose sentence;

B. The Court erred in denial of the Motion for Change of Venue filed on April 22, 2008, wherein the Defendant that sought jury selection pursuant to SC Code § 17-21-85 to empanel a jury venire from outside the range of the influence of local and national media;

C. The Court erred in denial of the Motion to Prohibit Victim Impact Evidence from Victim's of Prior Crimes filed on July 11, 2008, wherein the Defendant sought to exclude evidence from victims of crimes unrelated to the facts and circumstances of the indictments referenced above;

D. The Court erred in denial of the Motion to Prohibit Introduction of Un-adjudicated Criminal Conduct filed on July 11, 2008, and the oral motions made at trial regarding the same, wherein the Defendant sought to exclude evidence from victims of un-adjudicated crimes;

EXHIBIT Appellant CS 5 8-20-18
PENGAD 800-631-6989

E. The Court erred in denying the Motion to Prohibit Introduction of Defendant's Prior Convictions as Non-Statutory Aggravation filed on July 11, 2008, and the oral motions made at trial regarding the same, wherein the Defendant sought to exclude evidence of non-statutory aggravation in the form of prior convictions;

F. The Court erred in denying the Defendant's Motion to Order Independent Investigation of Dissemination of "Live Fed" by Broadcast Media at the 8/19/08 Hearing filed on August 20, 2008 wherein the Defendant sought an independent investigation into the Thirteenth Circuit Solicitor's Office regarding attorney/client privileged communications and attorney work product privileged communications;

G. The Court erred in denying the Motion to Reconsider Order Dated November 15, 2007 re: Jury Trial Sentencing After Entry of Guilty Plea filed on August 25, 2008 along with oral motions made during the guilty plea hearing wherein the Defendant sought to demand a jury trial after the entry of a guilty plea and/or find the statutory scheme of entering a guilty plea unconstitutional;

H. The Court erred by denying the Defendant's Motion to Require Members of 13th Circuit Solicitor's Office to Preserve and Produce Text Messages on 9/19/08 for In Camera Inspection and oral motions to require the Solicitor to submit to cross-examination wherein the Defendant sought to preserve and create a record regarding the dissemination of attorney/client privileged and attorney work product privileged communications;

I. The Court erred in denying the Defendant's Motion to Preserve the Record Regarding Dissemination to the Public and the 13th Circuit Solicitor's Office of Privileged Communications filed on August 25, 2008 wherein the Defendant sought to preserve and create a record regarding the dissemination of attorney/client privileged and attorney work product privileged communications;

J. The Court erred in denying the Defendant's Motion to Bar Broadcast Media from All Court Proceedings filed on August 25, 2008, wherein the Defendant sought to prohibit the broadcast media from further participation in the trial of the Defendant;

K. The Court erred in denying the Defendant's Oral Motions for Mistrial, Imposition of Life Without Parole, Recusal of the 13th Circuit Solicitor's Office and a Finding of Prosecutorial Misconduct, and renewed Motion for Jury Trial Sentencing made during the trial proceedings on or about September 10-11, 2008, wherein the Defendant sought relief from the Solicitor's substantial interference with the Defendant's expert witness through implied threats of prosecution;

L. The Court erred in denying the Defendant's Renewed Motion for Recusal of Thirteenth Circuit Solicitor's Officer filed on or about April 20, 2009, wherein the Defendant sought to recuse the 13th Circuit Solicitor's Office as they were material witnesses to the Defense;

M. The Court erred in denying the Defendant's Motion to Seek Out-of-State Witnesses Appearance in South Carolina filed on or about April 20, 2009, wherein the Defendant sought the Court's assistance in requiring material witnesses from DeKalb County Georgia to appear for testimony when the same had been done for the State;

N. The Court erred in denying the Defendant's Motion to Suspend Proceedings filed on or about April 20, 2009, wherein the Defendant sought to have the Court suspend proceedings to enable the Defendant to have time to create and preserve the record regarding the 13th Circuit Solicitor's complicity in attempting to have Dr. Loring arrested in Georgia;

O. The Court erred in denying the Defendant's Motion to Determine Role of Solicitor Ariail and Prosecution Team filed on or about April 20, 2009, wherein the Defendant sought to take the testimony of the Solicitor and other Prosecution team members to create and preserve the record regarding the 13th Circuit Solicitor's complicity in attempting to have Dr. Loring arrested in Georgia;

P. The Court erred in denying the Defendant's Renewed Motion for Mistrial, Motion to Impose Life Without Parole, and Memorandum in Support Thereof filed on April 20, 2009, wherein the Defendant sought to have the Court declare a mistrial for prosecutorial misconduct and impose a life without parole sentence based on the misconduct;

Q. The Court erred in denying the Defendant's Motion for Continuance Based Upon Duty to Present Mitigation Evidence filed on April 20, 2009, wherein the Defendant sought more time to prepare its mitigation expert pursuant to the alternatives stated on the record on September 10-11, 2008;

R. The Court erred in denying Dr. Loring's Motion for Release of Witness and Related Relief wherein Dr. Loring sought to have the Court release her as a witness based on the Solicitor's continued misconduct in attempting to have her arrested in Georgia without proper service or due process which resulted directly in prejudice to the Defendant;

S. The Court erred in denying the Defendant's oral motions made during the trial of the case held on September 8, 2008 and thereafter, and on April 20, 2009 and thereafter wherein the Defendant sought relief from the procedural due process violations, fundamental fairness violations, the prejudice inherent in the failure to

have jury trial sentencing, and the prejudice from forcing the Defendant to use Dr. Loring as his mitigation expert through the Court's interrogation;

T. The Court erred in denying the Defendant's motions both oral and written objecting and requesting relief from violations of the Defendant's 6th Amendment right to Compulsory Process, Confrontation and Right to Present a Defense, and Due Process, the Defendant's 14th Amendment Right to Due Process, Fundamental Fairness, and Right to Present a Defense, the Defendant's 8th Amendment Right to Present any and all Mitigation, the Defendant's 5th Amendment Right to be free from Double Jeopardy;

U. The Defendant incorporates herein any and all objections made a part of the record, any and all motions written or oral made a part of the record, any and all the authorities cited, and any and all the constitutional provisions cited as if set forth verbatim.

The Defendant hereby moves the Court to vacate the sentence of death and immediately sentence the Defendant to Life in Prison Without Parole or in the alternative for a New Trial.

Respectfully submitted,

BANNISTER & WYATT, LLC

James W. Bannister
(S.C. Bar# 8895)
P.O. Box 10007
Greenville, SC 29603
Ph: (864) 298-0084
Fax: (864) 298-0146
ATTORNEY FOR THE DEFENDANT

May 1, 2009

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	Case No.: 2006-GS-39-2222-2225
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Jerry Buck Inman,	)	
	)	
Defendant.	)	

AFFIDAVIT OF PERSONAL SERVICE

The undersigned certifies that a true copy of the foregoing:

1. Motion To Reconsider and for New Trial;

was this the 1st day of May, 2009 hand delivered to:

Robert M. Ariail, Esq.
13th Circuit Solicitor's Office
305 E. North Street, Suite 325
Greenville, SC 29601

SWORN TO before me this
1st day of May, 2009.
Margo S. Green
NOTARY PUBLIC for South Carolina
My Commission Expires: 01-29-2011

Cheree Aiken
Cheree Aiken
P. O. Box 10007
Greenville, SC 29603
864-298-0084

INMON 132 G 132 G 000173

1248

STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	THIRTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA	ORDER
vs.	Case Number(s): 2006-GS-39-2222 2006-GS-39-2223 2006-GS-39-2224 2006-GS-39-2225
JERRY BUCK INMAN,	
Defendant.	

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2009 JUL 28 A 10:46

LOCK IN TIME CANCELLED
7/17/09 Init.

This matter comes before the Court upon Defendant's Motion to Reconsider and For New Trial upon the conviction of Defendant on April 23, 2009 pursuant to Rule 29 of South Carolina Rules of Criminal Procedure.

The Defendant submitted various arguments to the Court and the State has responded with the same. Based on the pleadings filed and upon full consideration of the Defendant's Motion, this Court is not persuaded to reconsider its ruling in this matter, nor alter or amend the sentence.

THEREFORE, it is ORDERED ADJUDGED AND DECREED that the Defendant's Motion to Reconsider and for New Trial is DENIED.

AND IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
July 17, 2009

EXHIBIT
Appellant's
6
PENGAD 800-631-6989

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

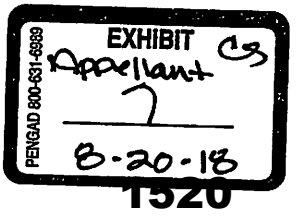
STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS 2007 SEP 04 P 12:44	
)	Case No.: 2006-GS-39-2222-2225
State of South Carolina,)	
)	
Plaintiff,)	
)	
v.)	**Motion and Memorandum To Determine Mode of Trial**
)	
Jerry Buck Inman,)	
)	
Defendant.)	
)	

To: Solicitor, Thirteenth Judicial Circuit

MOTION

The Defendant, by and through the undersigned attorneys, moves the Court for an Order to determine the mode of trial. The Defendant seeks to enter a guilty plea to all indictments. The Defendant does not wish to contest his guilt. By way of this Motion, the Defendant demands a jury trial to determine his sentence.

This Motion is made pursuant to the 6th Amendment Right to a Jury Trial as interpreted by *Ring v. Arizona*, 536 U.S. 584 (2002) and *Blakely v. Washington*, 542 U.S. 296 (2004), the 8th Amendment's Cruel and Unusual Punishment Clause as interpreted by *Eddings v. Oklahoma*, 455 U.S. 104 (1982), *Lockett v. Ohio*, 438 U.S. 586 (1984), *Skipper v. South Carolina*, 476 U.S. 1 (1986), and *Payne v. Tennessee*, 501 U.S. 808 (1991), the 14th Amendment Due Process Clause, the 6th Amendment Confrontation Clause, and the 6th Amendment Compulsory Process Clause of the U.S. Constitution as interpreted by *Holmes v. S.C.*, 547 U.S. 319 (2006).



MEMORANDUM

In summary, South Carolina's capital punishment sentencing scheme is unconstitutional because it requires a Defendant to elect between exercising his constitutional right to present mitigation as a defense (14th , 6th, and 8th Amendments)[1] or exercising his constitutional right to a jury trial (6th Amendment).

As applied in this case, these Constitutional rights overlap and are tied one with the other. Even though these rights overlap, this Memorandum will attempt to address the rights separately in order to clearly define the Defendant's position. The Memorandum is roughly divided by the two primary rights at issue, i.e. presenting a complete mitigation defense and exercising the right to a jury trial followed by a discussion of South Carolina's law and other states.

The 14th and 6th Amendment right of a Defendant to present a full and fair defense is addressed first. Within the right to present a complete defense, is the 8th Amendment Right to present mitigation as part of that defense. Within the discussion of the right to present mitigation, two analyses are made. Initially, the definition of "mitigation" is analyzed to show why a guilty plea falls within the definition of mitigation. Subsequently, the guilty plea is examined to show why it is an integral part of a valid defense strategy in capital sentencing. The former ties more closely to the 8th Amendment's right to present mitigation while the latter ties more closely to the 14th and 6th Amendment right to present a defense. Because the definition of "mitigation" and the validity of presenting a guilty plea as mitigation are inextricably intertwined, they are addressed in the discussion of the 8th Amendment in an effort not to be repetitive.

[1] These Amendments are listed in the order in which they are addressed in this Memorandum.

The 6th Amendment right of a Defendant to demand a jury trial for sentencing in a capital case after a plea of guilty is addressed second. This second section addresses the recent decisions of the United States Supreme Court including *Apprendi*, *supra*, *Ring*, *supra*, and *Blakely*.

Finally, the Memorandum addresses the current status of jury sentencing in a capital case after a guilty plea in South Carolina and other State courts. The conclusion that follows is that this issue is a "trout in the milk" that will spoil these proceedings from the guilty plea forward if it is not resolved correctly.

I. THE CONSTITUTIONAL RIGHT TO PRESENT THE DEFENSE OF A GUILTY PLEA AS MITIGATION

A defendant in a capital case has a 14th and 6th Amendment right to present a full and complete defense. As part of a full and complete defense, a Defendant has an 8th Amendment right to present any and all mitigation in a capital sentencing proceeding. The definition of "mitigation" for these purposes includes a guilty plea. In addition, it is a valid sentencing defense strategy in a capital case to enter a guilty plea for the purpose of using it as mitigation.

A. THE 14th and 6th AMENDMENT RT. TO PRESENT FULL/ COMPLETE DEFENSE

"Whether rooted directly in the *Due Process Clause of the Fourteenth Amendment* or in the *Compulsory Process* or *Confrontation Clauses of the Sixth Amendment*, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Holmes v. South Carolina*, 547 U.S. 319, 330 (2006) (quoting Crane *v. Kentucky*, 476 U.S. 683, 690 (1986)).

This right is abridged by "rules that 'infring[e] upon a weighty interest of the accused' and are 'arbitrary or disproportionate to the purposes they are designed to serve.'" *Holmes*, 547 U.S. at 330 (quoting *U.S. v. Scheffer*, 523 U.S. 303, 308 (1998)).

Therefore, any rule that affects a defendants weighty interest and is arbitrary or disproportionate to the purpose it is designed to serve, is in violation of the 14th and 6th Amendment right to present a full and complete defense. As discussed below, the weighty interest at stake in this case is both the Defendant's 8th Amendment right to present any and all mitigation and the Defendant's 6th Amendment right to a jury trial. As discussed below, either the 8th Amendment right or the 6th Amendment right will be infringed based on South Carolina's current rule mandating judge-only sentencing in a capital case after a guilty plea.

As a result, if South Carolina's current rule does not permit the Defendant to plead guilty and submit that guilty plea as a mitigation defense to a jury during his sentencing proceeding, his 14th and 6th Amendment right to present a complete defense will be violated.

B. 8th AMENDMENT RT. TO PRESENT GUILTY PLEA AS MITIGATION

A defendant has an 8th Amendment right to present any and all mitigation as a defense during the sentencing proceeding in a capital case. As such, the defendant's 8th Amendment right to present mitigation is a weighty interest of the accused that cannot be abridged. It has long been established that a guilty plea is the essence of "mitigation" in sentencing. It has more recently been established that a guilty plea is a valid sentencing defense strategy in a capital case. To deny a defendant the ability to present his guilty

plea as mitigation to sentencing infringes the 8th Amendment, as discussed below, and the 14th and 6th Amendment right to present a complete defense as discussed above.

1. 8th Amendment Requires Consideration Of Any and All Mitigation

The Eighth Amendment prohibits the State from limiting the sentencer's consideration of "any relevant mitigating evidence." *Payne v. Tennessee*, 501 U.S. 808, 822 (1991). A State cannot prevent "the consideration of . . . evidence if the sentencer could reasonably find that it warrants a sentence less than death." *McKoy v. North Carolina*, 494 U.S. 433, 441 (1990); *accord Skipper v. S.C.*, 476 U.S. 1, 4 (1986); E*ddings v. Oklahoma*, 455 U.S. 104, 110 (1982); *Lockett v.* Ohio, 438 U.S. 586, 604 (1984)). "Equally clear is the corollary rule that the sentencer may not refuse to consider or be precluded from considering 'any relevant mitigating evidence.'" *Skipper*, 476 U.S. at 4 (quoting *Eddings*, 455 U.S. at 114).

Ten mitigating circumstances are statutorily defined by South Carolina. S.C. Code § 16-3-20(C)(b)(1)-(10). For definitional purposes, other mitigating factors that can properly be considered include 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." *Skipper*, 476 U.S. at 4. Stated differently, "[r]elevant mitigating evidence is evidence which tends logically to prove or disprove some fact or circumstance which a fact-finder could reasonably deem to have mitigating value." *McKoy*, 494 U.S. at 440. South Carolina puts it this way: "[M]itigating circumstances are details specific to the character of the defendant on trial and/or the circumstances of the crime he committed which are considered in order to reduce the degree of his moral culpability or guilt." *State v. George*, 323 S.C. 496, 476 S.E.2d 903 (1996).

2. A Guilty Plea Is The Essence Of Mitigation

A guilty plea is the essence of mitigation in sentencing. It is a factor in sentencing that is considered hundreds of times a month in Courts in South Carolina and across the country. It often serves as the only factor mitigating against the harshest criminal sentences available. The U.S. Supreme Court and the South Carolina both recognize a guilty plea as mitigation in sentencing.

a. The law recognizes a guilty plea as valid mitigation to sentencing.

"[A] plea may obtain for the defendant 'the **possibility** . . . [of] a lesser penalty than the sentence that could be imposed after a trial.'" *Corbitt v. New Jersey*, 439 U.S. 212, 219 (1978) (emphasis added).

South Carolina specifically recognizes a guilty plea as constitutionally permissible mitigation. "For those that plead guilty, that fact itself is a constitutionally permissible consideration in sentencing, a consideration that is not present when one is found guilty by a jury." *State v. Brouwer*, 346 S.C. 375, 391, 550 S.E.2d 915, 924 (Ct. App. 2001).

The *Brouwer* Court went on to explain the reasons why a guilty plea is proper mitigation:

> Guilty pleas are recognized as a significant step toward rehabilitation. *Hooten v. State*, 212 Ga.App. 770, 442 S.E.2d 836 (1994). A genuine admission of guilt may properly result in a lighter sentence than would be appropriate for an intransigent and unrepentant malefactor. *United States v. Stockwell*, 472 F.2d 1186 (9th Cir.1973). *See also Hooten*, 442 S.E.2d at 840 (plea of guilty can be, and frequently is, considered in sentencing).

Id. at 391, at 925.

Therefore, South Carolina recognizes that a guilty plea is valid mitigation to sentencing.

b. The law recognizes the guilty plea in a capital case as a valid strategy for mitigation in sentencing.

Because of the unique nature of capital sentencing in our jurisprudence, a guilty plea can be a valid mitigation defense strategy for the sentencing phase trial. This statement is true even when there has been no concession from the State in exchange for the guilty plea. This mitigation defense strategy has been recognized by both the United States Supreme Court and by empirical research conducted on actual jurors in capital cases in South Carolina.

In *Florida v. Nixon* 543 US 175, 191-192 (2004), the U.S. Supreme Court dealt with a post-conviction relief proceeding wherein appellate counsel alleged that trial counsel had been ineffective, because the defendant tendered a guilty plea without any concession from the State. The Supreme Court recognized the unique nature of the capital sentencing phase and pointed out the validity of utilizing a guilty plea as mitigation at a capital sentencing trial:

> Counsel therefore may reasonably decide to focus on the trial's penalty phase, at which time counsel's mission is to persuade the trier that his client's life should be spared. Unable to negotiate a guilty plea in exchange for a life sentence, defense counsel must strive at the guilt phase to avoid a counterproductive course. *See* Lyon, Defending the Death Penalty Case: What Makes Death Different?, 42 Mercer L.Rev. 695, 708 (1991) ("It is not good to put on a 'he didn't do it' defense and a 'he is sorry he did it' mitigation. This just does not work. The jury will give the death penalty to the client and, in essence, the attorney."); Sundby, The Capital Jury and Absolution: The Intersection of Trial Strategy, Remorse, and the Death Penalty, 83 Cornell L.Rev. 1557, 1589-1591 (1998) (interviews of jurors in capital trials indicate that juries approach the sentencing phase "cynically" where counsel's sentencing-phase presentation is logically inconsistent with the guilt-phase defense); *id.*, at 1597 (in capital cases, a "run-of-the-mill strategy of challenging the

> prosecution's case for failing to prove guilt beyond a reasonable doubt" can have dire implications for the sentencing phase). In this light, counsel cannot be deemed ineffective for attempting to impress the jury with his candor and his unwillingness to engage in "a useless charade." *See Cronic*, 466 U.S. 648, 656-657, n. 19 (1984). Renowned advocate Clarence Darrow, we note, famously employed a similar strategy as counsel for the youthful, cold-blooded killers Richard Loeb and Nathan Leopold. Imploring the judge to spare the boys' lives, Darrow declared: "I do not know how much salvage there is in these two boys. . . . I will be honest with this court as I have tried to be from the beginning. I know that these boys are not fit to be at large." Attorney for the Damned: Clarence Darrow in the Courtroom 84 (A. Weinberg ed.1989); see Tr. of Oral Arg. 40-41 (Darrow's clients "did not expressly consent to what he did. But he saved their lives."); *cf. Yarborough v. Gentry*, 540 U.S. 1, 9-10 (2003) (per curiam).

The U.S. Supreme Court makes it clear that a valid mitigation defense to a capital sentencing trial includes a strategy whereby a defendant pleads guilty and presents that plea as a basis for a sentence other than death.

c. Empirical research recognizes a guilty plea in capital cases as a valid trial strategy.

In addition to the Supreme Court's recognition of the validity of using a guilty plea as a mitigation defense, empirical research proves the practical application of this strategy. The Capital Jury Project was designed to examine and systematically describe actual jurors' exercise of capital sentencing discretion. 70 Indiana Law Journal 1043, 1077 (1995). South Carolina was one of the states from which data was compiled for this research and represents the largest sample of jurors contributing to the Capital Jury Project data. Id. at 1078 n.190 and 1084 n.213.

Pertinent to this case, the empirical research finds "a highly statistically significant relationship between a defendant's remorse and a juror's first vote: the more a juror thought the defendant was sorry or remorseful, the more likely she was to cast her first vote for life; conversely, the less she thought the defendant was sorry or remorseful,

the more likely she was to cast her first vote for death." Blume, Eisenberg, and Garvey, America's Death Penalty pp. 164-165 (2003).

The empirical data led to the conclusion that "the earlier the defendant personally expresses some type of acceptance of responsibility for the killing, the greater the likelihood that the jury will be receptive to later claims of regret." 83 Cornell L. Rev. 1557, 1586 (1998). "Simply put, when it comes to accepting responsibility, the sooner the better." *Id.* On the other hand:

> Jurors are inclined to view a defendant that makes no attempt to acknowledge complicity—especially in the face of strong evidence against him—as someone likely to use every future opportunity to manipulate the system. Putting the prosecution's evidence to the test, therefore, may cause jurors to perceive the defendant as not simply exercising his due process rights, but rather as once again trying to 'beat the system'.

Id. at 1590.

"[T]he figures for the denial defense cases that reached a verdict are particularly stark--nine death sentences compared to one life sentence. This data indicate that absent a marginal case in prosecution, a defendant is essentially playing lottery odds by relying on an all-or-nothing guilt phase strategy that challenges the prosecution in the hope of producing a lingering doubt that will secure a life sentence." *Id.* at 1589-1591.

Based on the foregoing, it is not only a valid trial strategy to plead guilty in certain cases, it is suicide by State to do otherwise.

II. THE CONSTITUTIONAL RIGHT TO HAVE A JURY DECIDE SENTENCING ENHANCING FACTS AFTER A GUILTY PLEA

Having concluded that the Defendant has the 14th and 6th Amendment right to present a full and complete defense and that a full and complete defense would include the 8th Amendment right to present a guilty plea as part of that defense in a capital

sentencing trial, the second issue at stake is the Defendant's right to make this presentation to a jury instead of a judge. The U.S. Supreme Court has made it clear that the Defendant has a right to a jury for the sentencing phase of a capital case after a guilty plea.

The genesis of the foregoing began to crystallize with the Supreme Court's decision in *Apprendi*. *Apprendi* invalidated sentencing schemes that required the enhancement of a defendant's sentence on facts to be determined by a judge and not a jury. Initially, *Apprendi* was not applied to capital sentencing statutes. *Ring* eliminated the exception that had been carved out for capital sentencing trials. After *Ring*, a defendant had a right to have a jury determine the aggravators that could potentially authorize the death penalty. What remained unanswered was whether a defendant could retain the right to a jury solely for the purpose of contesting sentencing issues after entry of a guilty plea. *Blakely* put that issue to rest when the Supreme Court defined the 6th Amendment right to include the right to have a jury decide sentence enhancing issues after a guilty plea.

A. *Apprendi* And Its History

Initially, the U.S. Supreme Court did not extend the protections of the Sixth Amendment right to trial by jury to capital sentencing. The Court found that aggravating circumstances were not "element[s] of the offense of capital murder," and, thus, need not be determined by a jury. *Walton v. Arizona*, 497 U.S. 639, 649 (1990).

Starting in 1999, the U.S. Supreme Court began its re-examination of what constitutes an element of an offense because "[m]uch turns on the determination that a fact is an element of an offense rather than a sentencing consideration, given that

elements must be charged in the indictment, submitted to a jury, and proven by the Government beyond a reasonable doubt." *Jones v. United States*, 526 U.S. 227, 232 (1999). In *Jones*, the Court held that when a criminal statute provides for increased punishment if serious bodily injury is caused, the Fifth Amendment right to Due Process and the Sixth Amendment right to a jury trial require that the government include the allegation of serious bodily injury in the indictment and submit it to the jury for a finding beyond a reasonable doubt before the increased punishment may be imposed. In doing so, the Court carefully noted that aggravating factors in capital cases are "different" because *Walton* characterized aggravating factors "as a choice between a greater and a lesser penalty, not as a process of raising the ceiling of the sentencing range available." *Jones*, 526 U.S. at 251.

In *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the Supreme Court reassessed its view of the constitutional requirements to be applied in non-capital sentencing proceedings. The Court was confronted with a New Jersey sentencing statute that allowed the sentencing judge to increase a defendant's maximum possible sentence if he or she found that the defendant committed the crime in question with a biased motive. *Id.* The Court concluded that any finding of fact, other than a prior conviction, that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and found beyond a reasonable doubt. *Id.* at 490.

Apprendi held that: "[T]he relevant inquiry is one not of form, but of effect - does the required finding expose the defendant to a greater punishment than that authorized by the jury's guilty verdict?" *Id.* at 494. Based on this inquiry, the Court concluded that the statute in question was unconstitutional because: (1) it allowed the trial judge, instead of

the jury to make the finding in question, and (2) it allowed the judge to make that finding using a standard lower than beyond a reasonable doubt. *Id.* at 497. Despite the logical force of its holding, the Court again carved out an exception for capital sentencing proceedings. In doing so, the *Apprendi* Court explicitly rejected the idea that *Walton* was in conflict with *Apprendi*. *Id.* at 496-97.

B. Ring And Its Application Of *Apprendi* To Capital Sentencing

In *Ring v. Arizona*, 536 U.S. 584, 589 (2002) the U.S. Supreme Court dealt a death blow to the capital sentencing exception of the 6th Amendment's right to a jury trial. The Court recognized that the reasoning for carving out an exception for capital sentencing was "irreconcilable" with *Apprendi*'s interpretation of the 6th Amendment. *Id.*

In putting to rest the issue of the 6th Amendment's right to a jury trial for capital sentencing, *Ring* also answered the question of how the law will treat aggravating circumstances in capital cases. The Court held that "enumerated aggravating factors operate as 'the functional equivalent of an element of a greater offense,'" and, therefore, "the Sixth Amendment requires that they be found by a jury." *Id.* at 609.

Sattazahn v. Pennsylvania, 537 U.S. 101 (2003) summarized *Ring's* holding as follows:

> [F]or purposes of the Sixth Amendment's jury-trial guarantee, the underlying offense of "murder" is a distinct, lesser included offense of "murder plus one or more aggravating circumstances": Whereas the former exposes a defendant to a maximum penalty of life imprisonment, the latter increases the maximum permissible sentence to death. Accordingly, we held that **the Sixth Amendment requires that a jury, and not a judge, find the existence of any aggravating circumstances,** and that they be found, not by a mere preponderance of the evidence, but beyond a reasonable doubt.

Id., at 111 (emphasis added) (citing *Ring*, 536 U.S. at 606-09). The characterization of "murder" as a distinct lesser included offense of "murder plus one or more aggravating circumstances" is particularly noteworthy because it is this language that captures South Carolina's capital sentencing scheme. The fact that South Carolina's capital sentencing scheme is included in *Ring*'s decision is discussed more fully below, but suffice it to say that *Ring* makes it clear that a defendant has a right to have a jury decide whether aggravating circumstances exist and any other factual issues necessary to permit imposition of the death sentence. *Id.* What *Ring* did not determine is how the 6th Amendment operates for capital sentencing when a defendant pleads guilty to the underlying, "lesser included offense" of murder. In other words, *Ring* did not specifically speak to whether there is a separate right after a guilty plea to have a jury determine sentence enhancing facts.

C. Blakely And Its Application Of *Apprendi* To Guilty Pleas

As the quotations that follow illustrate, *Blakely* dealt with the question of whether a defendant who waives his right to a trial and pleads guilty to the underlying offense has also waived his right to have a jury determine facts that only impact the sentence. *Blakely* made it clear that the Defendant has a right to a jury trial on the elements of the offense and the elements that impact sentencing. *Blakely* also made it clear that the waiver of trial to procure the guilty plea to the underlying offense was not a waiver of the right to have a jury determine sentence enhancing facts. *Blakely* specifically contemplated the appropriateness of exercising the right to trial by jury on sentencing elements after a guilty plea.

Blakely v. Washington, 542 U.S. 296 (2004), involved the following factual scenario:

> Petitioner entered a guilty plea admitting the elements of second-degree kidnapping and the domestic-violence and firearm allegations, but no other relevant facts. . . . After hearing [the victim's] description of the kidnapping, however, the judge rejected the State's recommendation and imposed an exceptional sentence of 90 months --37 months beyond the standard maximum. He justified the sentence on the ground that petitioner had acted with 'deliberate cruelty,' a statutorily enumerated ground for departure in domestic-violence cases."

Id. at 298-300.

The Supreme Court stated: "Whether the judge's authority to impose an enhanced sentence depends on finding a specified fact (as in *Apprendi*), one of several specified facts (as in *Ring*), or *any* aggravating fact (as here), it remains the case that the jury's verdict alone does not authorize the sentence. The judge acquires that authority only upon finding some additional fact." *Id.* at 305. "As *Apprendi* held, every defendant has the *right* to insist that the prosecutor prove to a jury all facts legally essential **to the punishment**." *Id.* at 313 (emphasis added). "Every new element that a prosecutor can threaten to charge is also an element that a defendant can threaten to contest at trial and make the prosecutor prove beyond a reasonable doubt." *Id.* at 311.

In discussing the application of a defendant's right to a jury trial after having pled guilty, the Supreme Court made the following observation:

> But nothing prevents a defendant from waiving his *Apprendi* rights. When a defendant pleads guilty, the State is free to seek judicial sentence enhancements so long as the defendant either stipulates to the relevant facts or consents to judicial factfinding. *See Apprendi*, 530 U.S., at 488; *Duncan v. Louisiana*, 391 U.S. 145, 158 (1968). **If appropriate waivers are procured**, States may continue to offer judicial factfinding as a matter of course to all defendants who plead guilty. Even a defendant who stands trial may consent to judicial factfinding as to sentence enhancements, which may well be in his interest if relevant evidence would prejudice him at trial. We do not understand how *Apprendi* can possibly work to the detriment of those who are free, if they think its costs outweigh its benefits, to render it inapplicable.

Id. at 310 (emphasis added); *accord Cunningham*, 127 S.Ct. 856, 865 (2007) (recognizing *Blakely's* rejection of the State's argument that the Apprendi rule did not apply because the guilty plea in Blakely provided the court with discretion to impose an exceptional sentence).

Apprendi, *Ring*, and *Blakely* provide this Court with United States Supreme Court precedent for the fact that a defendant has a right to a jury trial for purposes of capital sentencing even after the entry of a guilty plea to the underlying offense.

III. SOUTH CAROLINA'S CAPITAL SENTENCING SCHEME IS UNCONSTITUTIONAL AS APPLIED IN THIS CASE

In this case, it is clear that the Defendant seeks to exercise his 14th and 6th Amendment right to present a full and complete defense. It is also clear that the Defendant seeks to exercise his 8th Amendment right to present his guilty plea as part of this complete defense during the sentencing phase of the trial. U.S. Supreme Court precedent makes it abundantly clear that the Defendant has a 6th Amendment right to present this mitigation defense to a jury if he chooses.

Whether it is the capital sentencing statute or South Carolina's interpretation of it that is unconstitutional, the fact remains that under the current statute and its interpretation, this Defendant cannot exercise all of his constitutional rights as discussed above. For this Defendant, one or more of these Constitutional rights are abridged by the rule that makes judge-only sentencing mandatory after a guilty plea. The current state of the law plays out in a Constitutional Catch-22[2] that requires the Defendant to elect

[2] Catch-22 is a term coined by Joseph Heller in his novel Catch-22, describing a paradox in a law, regulation or practice in which one is a victim regardless of the choice he makes.

between rights that are all applicable and all capable of being exercised in harmony with one another. The following discussion sets forth South Carolina's law, its current interpretation and how the Constitutional Catch-22 is created. This discussion is followed by an analysis of how other states have treated the very same issue.

A. South Carolina Statutory Law Authorizing The Death Penalty

South Carolina statutory law authorizing the death penalty is set forth at Section 16-3-20 *et. seq.* Section 16-3-20(A) of the South Carolina Code states: "A person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years."[3] However, at the trial stage, five conditions must be met to create a situation where the Defendant is eligible for death.

First, the State must formally notice the Defendant that it is seeking a death sentence. S.C. Code § 16-3-26(A) (""Whenever the solicitor seeks the death penalty he shall notify the defense attorney of his intention to seek such penalty."); and § 16-3-20(A) ("If the State seeks the death penalty"); and § 16-3-20(B) ("When the State seeks the death penalty"). This notice presumably requires the State to impose some discretion in deciding which cases that are eligible for the death penalty actually proceed as such.

Second, the fact finder must find that at least one statutory aggravating circumstance has been proven during the sentencing proceeding beyond a reasonable doubt or the death sentence is not an option. S.C. Code § 16-3-20(B) ("In the [sentencing] proceeding, if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment."); and § 16-3-20(C) ("Where a

[3] The Defendant notes that *Furman v. Georgia, 408 U.S. 238 (1972) (per curiam)* makes a statute that imposes the death penalty across the board for murder unconstitutional.

statutory aggravating circumstance is not found, the trial judge shall sentence the defendant to either life imprisonment or a mandatory minimum term of imprisonment for thirty years.").

Third, the fact finder must consider additional evidence in extenuation, mitigation or aggravation of the punishment in conjunction with its finding of statutory aggravation. S.C. Code § 16-3-20(B) ("In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment."); and § 16-3-20(C) ("The judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence.").

Fourth, the fact finder must then make a recommendation for life imprisonment or the death sentence. S.C. Code § 16-3-20(C) ("Where a statutory aggravating circumstance is found and a recommendation of death is made, the trial judge shall sentence the defendant to death. . . . Where a statutory aggravating circumstance is found and a sentence of death is not recommended by the jury, the trial judge shall sentence the defendant to life imprisonment."). The recommendation for a death sentence must be unanimous. S.C. Code § 16-3-20(C)("The jury shall not recommend the death penalty if the vote for such penalty is not unanimous.").

Finally, the trial judge must make a finding that a recommendation for death "was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor." S.C. Code § 16-3-20(C).

Therefore, it is the elements of murder coupled with the additional element of an aggravating circumstance that together constitute the aggravated crime of capital murder. *See e.g. Ring v. Arizona*, 536 U.S. 584, 609 (2002) (holding that the underlying offense of "murder" is a distinct, lesser included offense of "murder plus one or more aggravating circumstances.").

B. South Carolina's Interpretation Of The Mandatory Judge-Only Sentencing After A Guilty Plea.

South Carolina's death penalty statute states that a defendant who pleads guilty to murder "*must*" have aggravating and mitigating factors "conducted before the judge." S.C. Code §16-3-20(B). Specifically, the statute states as follows: "If trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge." S.C. Code § 16-3-20(B) "In nonjury cases the judge shall make the designation of the statutory aggravating circumstance or circumstances." S.C. Code § 16-3-20(C).

South Carolina's current interpretation of this statute does not permit a jury determination of punishment following a guilty plea. *State v. Patterson*, 278 S.C. 319, 295 S.E.2d 264 (1982). There is no wiggle room. A defendant cannot create the right to a jury determination of punishment even by making it part of his plea agreement. *Id.* In fact, it is currently South Carolina law that the sentencing of a defendant by a jury after a defendant enters a guilty plea to all charges is reversible error. *State v. Truesdale*, 278 S.C. 368, 296 S.E.2d 528 (1982).

C. South Carolina's Mandatory Judge-Only Sentencing After A Guilty Pleas As Applied In This Case Results In An Unconstitutional Catch-22.

As repeatedly pointed out throughout the discussion above, the Defendant has two Constitutional rights primarily at play in this case. The Defendant has a right to present a complete defense including all mitigation at a sentencing proceeding and he has the right to have a jury make the findings of fact at issue in that proceeding even after his guilty plea.

A defendant with two constitutional rights cannot be forced to choose between them. *See, e.g., Simmons v. United States*, 390 U.S. 377 (1968) (when a defendant must testify in suppression hearing in order to assert his rights under the Fourth Amendment, his Fifth Amendment rights prohibit the government from thereafter using the testimony against him at trial); *State v. Norris*, 285 S.C. 86, 328 S.E.2d 339 (1985) (where the defendant charged with capital murder was entitled pursuant to statute to testify and to personally present a closing argument in sentencing phase of trial, the trial court's ruling requiring him to choose between testifying or making closing argument was reversible error); *See, e.g., United States v. Jackson*, 390 U.S. 570 (1968) (federal kidnapping statute unconstitutional because it, in effect, penalized defendants that chose to plead not guilty by exposing them to a death sentence while a defendant that waived his right to trial would be assured a life sentence).

The Constitutional Catch-22 plays out as follows - The defendant who wishes to plead guilty is denied the right to a jury and, thus, cannot exercise his right to present the mitigating evidence of his plea to that jury. The defendant who pleads not guilty in order to exercise his right to a jury cannot exercise his right to present the mitigating

evidence of his plea to a jury, because his plea necessarily was not guilty. The Catch-22, therefore, is the fact that the defendant has a right to a jury trial and a right to have a jury consider the mitigating evidence of his guilty plea, but is forced by South Carolina's statute to give up one to get the other.

The problem for this Court is that there is an impossible conflict. *Compare Truesdale*, 278 S.C. at 368; *Crisp*, 362 S.C. at 419 *and Downs*, 261 S.C. at 146-147 *with Ring*, 536 U.S. at 609, *and Blakely*, 542 U.S. at 305.

Because at least one of the statutory aggravating factors listed in S.C. Code § 16-3-20(C) must be established before a defendant may be found eligible for the death penalty, such facts are "the functional equivalent of an element of a greater offense." *Apprendi*, 530 U.S. at 494 n.19. Pursuant to *Blakely*, a Defendant who pleads guilty "has the *right* to insist that the prosecutor prove to a jury all facts legally essential to the punishment." *Blakely v. Washington*, 542 U.S. 296, 313 (2004). South Carolina currently does not permit a Defendant who pleads guilty to "insist that the prosecutor prove to a jury all facts legally essential to the punishment." As such, if the Defendant is required to give up his right to a sentencing phase jury trial in order to plead to the underlying offense at issue in the guilt phase, the relinquishment of that right to a sentencing phase jury trial operates as a forfeiture and not a waiver. Forfeiture of a constitutional right results only from significant misconduct on the part of the defendant. *Illinois v. Allen*, 397 U.S. 337 (1970).

Once viewed as a forfeiture, the relinquishment of the right to a sentencing phase jury trial ceases to satisfy the requirements of "knowing, intelligent and voluntary" required to divest a defendant of his constitutional rights.

South Carolina's "rule", in this case a statute, that a judge must sentence a capital defendant who pleads guilty is arbitrary in its effect and disproportionate to its purpose. *See Holmes*, 547 U.S. at 330. The arbitrariness of the effect of mandatory judge-only sentencing after a guilty plea is inherent. The right to trial by jury guaranteed by the Sixth Amendment would be senselessly diminished if it was granted for the life or death sentencing of a defendant who plead not guilty but not the life or death sentencing of a defendant who plead guilty. The Sixth Amendment applies to both. *See, e.g. Ring,* 536 U.S. at 609 ("The right to trial by jury guaranteed by the Sixth Amendment would be senselessly diminished if it encompassed the factfinding necessary to increase a defendant's sentence by two years, but not the factfinding necessary to put him to death.").

The disproportionality of the infringement of this Defendant's Constitutional rights weighed compared to the purpose of the mandatory judge-only sentencing after a guilty plea rule requires that the "rule" have a purpose. What, if any, purpose the aforesaid rules serves is not easily discovered nor has it been addressed in cited opinions. As a result, this rule is unconstitutional on its face, and/or its interpretation, and/or its application to this Defendant. *See Holmes* v. *S.C.*, 547 U.S. 319, 330 (2006).

D. Other States Addressing This Issue Post-*Blakely* Support Defendant's Argument.

The analysis set forth in this Memorandum is not the first time these issues have been raised. Other states have had similar capital sentencing statutes to South Carolina and have had to deal with the U.S. Supreme Court's recent decisions impacting them. Viewed without context, it appears that other states provide a mixed bag. However, considered in the context of whether the decision was made before or after the U.S.

Supreme Court's decision in *Blakely*, the cases fall squarely in favor of the position set forth by this Defendant.

Prior to *Blakely* the states that have considered the issue of jury sentencing in a capital case after a guilty plea have, with one exception, found that a guilty plea resulted in a forfeiture of the right to trial on sentence enhancing elements. *Leone v. State*, 797 N.E.2d 743 (Ind.2003); *People v. Altom*, 338 Ill.App.3d 355, 272 Ill.Dec. 751, 788 N.E.2d 55 (2003); *Colwell v. State*, 118 Nev. 807, 59 P.3d 463 (2002); and *State v. Downs*, 361 S.C. 141, 604 S.E.2d 377 (2004).

The lone exception is *Louisiana v. Louviere*, 833 So.2d 885 (La. 2002). In *State v. Louviere*, 833 So.2d 885 (La. 2002), the Louisiana Supreme Court construed its capital sentencing scheme to allow for a guilty plea while requiring the "penalty issue before the jury" to prevent the " infirmity ultimately found in Ring v. Arizona, . . . as well as the infirmity recognized in *United States v. Jackson*, [390 U.S. 570 (1968)]." *State v. Louviere*, 833 So.2d 885, 895 (La. 2002). "[D]enying a defendant the choice to plead guilty arguably would impermissibly deprive the defendant, per the federal Constitution, of his strategic choice to acknowledge his crime and thereby appear remorseful before his jury." *Id.* at 894.

Post *Blakely*, every state that considered the issue of jury sentencing in a capital case after a guilty plea has, with one exception, found that a guilty plea did not effectively waive the right to trial on sentence enhancing elements.

In *State v. Piper*, 709 N.W.2d 783, 803 (S.D. 2006) and *State v. Page*, 709 N.W.2d 739, 762 (S.D. 2006), the South Dakota Supreme Court stated that, "under Ring, a capital sentencing scheme would be unconstitutional if it prevented a defendant who

pleaded guilty from having alleged aggravating circumstances found by a jury." *Page, supra* at 762; *Piper, supra* at 803.

In *Colorado v. Montour*, 157 P.3d 489 (Colo. 2007) the court stated:

> Once a capital defendant enters a guilty plea, he retains the Sixth Amendment right to jury sentencing on the facts essential to the determination of death eligibility. A court must procure the appropriate waiver after a guilty plea or finding of guilt before judicial fact-finding in sentencing is permissible. See Blakely, 542 U.S. at 310, 124 S.Ct. 2531.

The lone exception is South Carolina's decision in *State v. Crisp*, 362 S.C. 412, 608 S.E.2d 429 (2005) which is addressed in more detail below.

F. *Downs* and *Crisp* Are The Current Controlling Law In South Carolina That Address *Ring*.

The following two South Carolina cases address *Ring*. As noted above, these two cases are bookends on a time-line with *Blakely*. While *Downs* could not address *Blakely* because the authority did not exist, *Crisp* does not address *Blakely* either.

In *State v. Downs*, 261 S.C. 141, 146-147,604 S.E.2d 377, 380 (2004) the South Carolina Supreme Court held that S.C. Code § 16-3-20(B) passed 6th Amendment muster despite the ruling in *Ring v. Arizona*. The South Carolina Supreme Court distinguished *Ring* on the basis that Arizona's statute never permitted a jury to decide aggravating circumstances authorizing the death penalty. *Id.* at 146-147, *Id* at 380. In addition, the Court distinguished *Ring* on the basis that *Ring* did not involve a guilty plea. *Id.* The Court made note of the fact that the defendant Downs was "informed that by pleading guilty he waived his right to a jury trial on both guilt and sentencing." *Id.*

In *State v. Crisp*, 362 S.C. 412, 608 SE2d 429 (2005), the South Carolina Supreme Court held that S.C. Code § 16-3-20(B) did not violate the 6th Amendment despite its mandatory provision for a judicial determination of sentencing after a plea.

The Supreme Court stated: "Section 16-3-20(B) is not unconstitutional in light of *Ring*, and a capital defendant may be sentenced only by a judge pursuant to that statute after knowingly and voluntarily waiving his right to a jury trial." *Id.* at 419. The Court again made note of the fact that the defendant Crisp had repeatedly been advised that he was waiving his right to trial on both the guilt phase and the sentencing phase.

Downs and *Crisp* are distinguishable from the instant case. In both *Downs* and *Crisp*, the South Carolina Supreme Court noted that the "trial judge specifically and repeatedly informed Appellant that he would waive the right to a jury trial in not only the guilt phase, but also in the sentencing phase." The Defendant in this case does not intend to waive his right to a jury trial in the sentencing phase.

Further distinguishing this case from *Downs* and *Crisp* is the fact that the *Downs* and *Crisp* decision did not deal with a Defendant's 14th and 6th Amendment right to present a complete defense or with a Defendant's 8th Amendment right to present the mitigation of his plea as part of that defense during sentencing. To the extent that the South Carolina Supreme Court may be waiting for South Carolina's sentencing statute and/or interpretation to be challenged in the context of the 14th and 6th Amendment right to present a defense or in the context of the 8th Amendment right to present the mitigation of a plea as a defense to sentencing, this case does so.

Finally, it is worthy of note in a discussion of this case's distinguishing characteristics that the South Carolina Supreme Court has conceded in *Downs* and *Crisp* that a capital defendant has a right to a jury trial at the guilt phase and the sentencing phase. *Downs*, 261 S.C. at 146-147; *Crisp*, 362 S.C. at 412. Because *Downs* and *Crisp* recognize the fact that there is a right to a sentencing phase jury trial, these decisions are

in tension with *State v. Truesdale*, 278 S.C. 368, 296 S.E.2d 528 (1982) (holding that the sentencing of a defendant by a jury after a defendant enters a guilty plea to all charges is reversible error). To the extent that the South Carolina Supreme Court may be waiting on this issue to be presented as an argument against the precedent of *Truesdale*, the Defendant's case puts this issue squarely before the Court.

V. CONCLUSION

There is a trout in the milk that will spoil proceedings from the guilty plea forward if the problem is not resolved correctly. Therefore, the Court must grant Defendant's request that the mode of trial be such that he be allowed to enter his guilty pleas to the indictments and proceed with jury trial sentencing in accordance with *Ring/Blakely*.

WHEREFORE the Defendant seeks to enter his plea of guilt and proceed to jury trial sentencing.

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September 14, 2007

The Supreme Court of South Carolina

The State, Respondent,

v.

Jerry Buck Inman, Appellant.

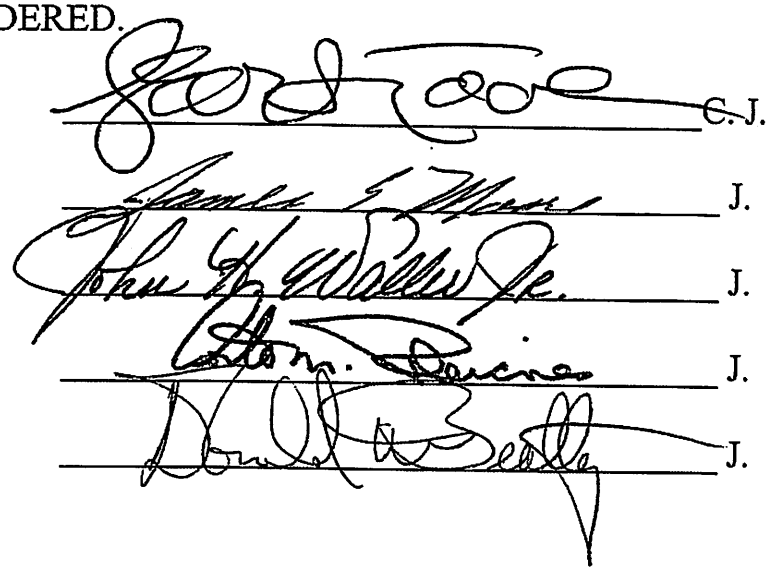
ORDER

Appellant has filed a notice of appeal from an order of the circuit court denying his Motion to Determine Mode of Trial. He has also filed a Memorandum Supporting Interlocutory Appeal. However, it has long been held in South Carolina that a criminal defendant may not appeal until sentence is imposed. State v. Miller, 289 S.C. 426, 346 S.E.2d 705 (1986)("We adhere to our view that under § 14-3-330 a criminal defendant may not appeal until after sentence has been imposed."); Parsons v. State, 289 S.C. 542, 347 S.E.2d 504 (1986); State v. Robinson, 287 S.C. 173, 337 S.E.2d 204 (1985); State v. Washington, 285 S.C. 457, 330 S.E.2d 289 (1985); State v. Hubbard, 277 S.C. 568, 290 S.E.2d 817 (1982); Ex parte Murray, 261 S.C. 255, 199 S.E.2d 718 (1973); State v. McMillan, 189 S.C. 444, 1 S.E.2d 626 (1939); State v. Gellis, 158 S.C. 471, 155 S.E. 849 (1930);



State v. Miller, 652 S.C. 444, 375 S.E.2d 370 (Ct. App. 2007); Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999). Accordingly, the notice of appeal is hereby dismissed without prejudice.

IT IS SO ORDERED.



C.J.

J.

J.

J.

J.

Columbia, South Carolina

January 9, 2008

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2007 NOV 21 P 1:02

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ~~GREENVILLE~~ PICKENS COUNTY CIRCUIT COURT
Court of General Sessions

Edward W. Miller, Circuit Court Judge

C. A. Nos. 2006-GS-39-2222-2225

State of South Carolina, ...Respondent

vs.

Jerry Buck Inman, ...Appellant

MEMORANDUM SUPPORTING INTERLOCUTORY APPEAL

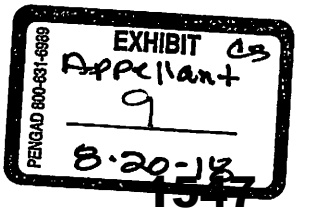
The Appellant, Jerry Buck Inman, by and through the undersigned Attorneys, submits this Memorandum Supporting Interlocutory Appeal and incorporates it into the Notice of Appeal filed in conjunction herewith.

Procedural History

On June 8, 2006, the Appellant was indicted for Murder, Criminal Sexual Conduct First Degree and Kidnapping. Also, on November 8, 2006, the Appellant was indicted for Burglary First Degree. On August 22, 2006, the Appellant was noticed for the Death Penalty.

On August 17, 2007, the Appellant, Jerry Buck Inman, filed his Motion to Determine Mode of Trial. The Motion and accompanying Memorandum set forth the Appellant's intention to enter a plea of guilty and demand a jury trial for sentencing. This Motion was made pursuant to the Appellant's 6th Amendment Right to a Jury Trial, the Appellant's 8th Amendment Right to present mitigation under the Cruel and Unusual Punishment Clause as interpreted by *Eddings v.*

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Oklahoma, 455 U.S. 104 (1982), *Lockett v. Ohio*, 438 U.S. 586 (1984), *Skipper v. South Carolina*, 476 U.S. 1 (1986), and *Payne v. Tennessee*, 501 U.S. 808 (1991), and the Appellant's 14th and 6th Amendment Right to present a defense under the Due Process Clause, the Confrontation Clause and the Compulsory Process Clause as interpreted by *Holmes v. S.C.*, 547 U.S. 319 (2006).

The Trial Court denied the Appellant's Motion in its Order dated November 15, 2007. The Order stated in pertinent part:

> Motion to determine the mode of the trial is DENIED. The defendant, in his motion, sought to enter his guilty plea and demanded a jury trial for sentencing. The Defendant's argument is based in large part on his 6th Amendment Right to a Jury and his 8th Amendment Right to present mitigating evidence. Although the procedural posture of this case and the 8th Amendment prong of this issue do not appear to have been specifically addressed in South Carolina, the Court, nevertheless, believes this matter to have already been determined by our State Supreme Court and is thereby restricted by the existing case law. *State v. Patterson*, 278 S.C. 319, 295 S.E.2d 264 (1982); *State v. Truesdale*, 278 S.C. 368, 296 S.E. 2d 528 (1982), *State v. Downs*, 361 S.C. 141, 604 S.E. 2d 377 (2004); *State v. Crisp*, 362 S.C. 412, 608 S.E. 2d 429 (2005); *State v. Wood*, 362 S.C. 135, 607 S.E. 2d 57 (2005) *compare with Blakely v. Washington*, 542 U.S. 296, 313 (2004); *contra Colorado v. Montour*, 157 P.3d 489 (Colo. 2007). Under current case law, the State asserts that the defendant must obtain the consent of the State and the court in order to plead guilty. *See State v. Burgin*, 255 S.C. 237, 178 S.E. 2d 325 (1970); *Singer v. U.S.*, 380 U.S. 24, 85 S.Ct. 783 (1965); *State v. Kerr*, 330 S. C. 132, 498 S.E. 2d 212 (1999) and Rule 14(b) of the South Carolina Rules of Criminal Procedure. Here, the State has asserted that it will not give consent to the defendant to plead guilty and be sentenced by a jury. Therefore, the defendant's motion is DENIED.

This Appeal followed pursuant to S.C. Code § 14-3-330(2) (Interlocutory Appeal).

I. INTERLOCUTORY APPEALS -- S.C. CODE § 14-3-330(2)

South Carolina Code § 14-3-330(2) governs interlocutory appeals such as this one and states in pertinent part as follows:

> The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:
>
> * * *
>
> (2) An order affecting a substantial right made in an action when such order . . . in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action

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Therefore, "[u]nder § 14-3-330(2), an order must affect a substantial right **and** prevent a judgment from which an appeal may later be taken in order to be immediately appealed." *Edwards v. SunCom*, 369 S.C. 91, 95, 631 S.E.2d 529 (2006).

In *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004), the Court of Appeals addressed whether the denial of a request for a jury trial involved a substantial right and prevented a judgment from which an appeal could be taken. The Court held as follows:

> Orders of the trial judge denying a request for a jury trial involve the mode of trial, affect substantial rights under section 14-3-330(2) of the South Carolina Code (1976 & Supp. 2003), and are immediately appealable. The failure to immediately appeal an order affecting the mode of trial constitutes a waiver of the right to appeal these issues.

Id. (citing *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997); *accord Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2004) ("[W]e repeatedly have held that the denial of a party's right to a particular mode of trial is immediately appealable as a substantial right under Section 14-3-330(2).").

These holdings are dispositive with respect to the appropriateness of this interlocutory appeal. The Trial Court's Order prohibits the Appellant from pursuing his right to a particular mode of trial. The Trial Court's Order prohibits the Appellant from exercising substantial rights that include his 6th Amendment Right to a jury trial, his 8th Amendment Right to present mitigation, and his 14th and 6th Amendment Rights to present a full and complete defense. The failure immediately appeal the Trial Court's Order constitutes a waiver of the right to appeal these issues. Furthermore, the Trial Court's Order prevents a judgment from which an appeal may be taken.

II. Substantial Rights

The particular mode of trial sought by the Appellant, guilt-phase plea / sentencing-phase jury trial, is the only mode of trial by which the Appellant can simultaneously exercise his substantial rights. These substantial rights include his 6th Amendment Right to a jury trial, his 8th Amendment Right to present any and all mitigation, and his 14th/6th Amendment Right to present a complete defense.

A. 6th Amendment Right to Jury Trial Sentencing

The Appellant has a right to a jury trial for sentencing in a death penalty case after the entry of a guilty plea. *Ring v. Arizona*, 536 U.S. 584 (2002); *Blakely v. Washington*, 542 U.S. 296, 313 (2004); *see also* S.C. Const. Art. I, § 14 (In criminal cases, "the right of trial by jury shall be preserved inviolate."); U.S. Const. Art. III, § 2, and VI Amend; Rule 14(c), SCR Crim. P. ("In all cases, the trial judge shall ensure that the defendant's rights under the state and federal constitutions to a trial by jury are preserved.").

B. 8th Amendment Right to Present Mitigation

The Appellant has the right under the Cruel and Unusual Punishment Clause of the 8th Amendment to present any all relevant mitigation to the imposition of the death penalty. *Eddings v. Oklahoma*, 455 U.S. 104 (1982); *Lockett v. Ohio*, 438 U.S. 586 (1984); *Skipper v. South Carolina*, 476 U.S. 1 (1986); *Payne v. Tennessee*, 501 U.S. 808 (1991).

A guilty plea is the essence of mitigation. "For those that plead guilty, that fact itself is a constitutionally permissible consideration in sentencing, a consideration that is not present when one is found guilty by a jury." *State v. Brouwer*, 346 S.C. 375, 391, 550 S.E.2d 915, 924 (Ct.

App. 2001). "A genuine admission of guilt may properly result in a lighter sentence than would be appropriate for an intransigent and unrepentant malefactor. *Id.* at 391, at 925.

The Appellant seeks this particular mode of trial, guilt-phase plea / sentencing-phase jury trial, to use his guilty plea as mitigation. *See e.g., State v. Louviere*, 833 So.2d 885, 895 (La. 2002); *Colorado v. Montour*, 157 P.3d 489 (Colo. 2007).

C. 14th and 6th Amendment Right to Present a Defense

The Appellant has a right under 14th and 6th Amendment to present a complete defense. "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Holmes v. South Carolina*, 547 U.S. 319, 330 (2006) (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)). The particular mode of trial the Appellant seeks to use, guilt-phase plea / sentencing-phase jury trial, is the only mode of trial by which he can present a complete defense.

III. Judgment Prevents Review On Appeal

"The failure to immediately appeal an order affecting the mode of trial constitutes a waiver of the right to appeal these issues." *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004). The issues presented in this interlocutory appeal center around the "mode of trial". Because ""mode of trial" issues are deemed waived if not appealed immediately, the Trial Court's Order prevents review on direct appeal.

Furthermore, the proverbial horse will exit the barn if the Appellant is required to go forward under the Trial Court's Order. At this stage of proceedings, the Appellant and the Court have three options regarding the particular mode of trial: (1) guilt-phase plea / sentencing-phase jury trial; (2) guilt-phase jury trial / sentencing-phase jury trial; and (3) guilt-phase plea /

sentencing-phase bench trial. The Trial Court's order prohibits the first particular mode of trial and requires the Appellant to choose between one of the remaining two. The end result is that Appellant will be faced with a Constitutional Catch-22.[1] The Appellant will be forced to elect between substantial constitutional rights that are all applicable and all capable of being exercised in harmony with one another.

Finally, the Trial Court's Order finding that the State has the ability to prevent a guilty plea in a capital case precludes appellate review on direct appeal. The State can force a guilt-phase jury trial / sentencing-phase jury trial in every case if it sees it can prevent a capital defendant from exercising all the Constitutional rights that would otherwise be available.

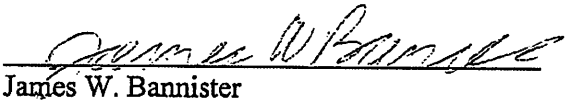
CONCLUSION

The Trial Court's Order prohibits the Appellant from exercising his right to a particular mode of trial (i.e. guilty-phase plea / sentencing-phase jury trial). The Trial Court's Order involves mode of trial issues that are deemed waived if not raised by interlocutory appeal. The Trial Court's Order involves substantial constitutional rights of the Defendant. Therefore, interlocutory appeal is appropriate under S.C. Code § 14-3-330(2) as set forth herein.

November 21, 2007

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[1] Catch-22 is a term coined by Joseph Heller in his novel Catch-22, describing a paradox in a law, regulation or practice in which one is a victim regardless of the choice he makes.

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2007 NOV 21 P 1:03

APPEAL FROM ~~GREENVILLE~~ PICKENS COUNTY CIRCUIT COURT
Court of General Sessions

Edward W. Miller, Circuit Court Judge

C. A. Nos. 2006-GS-39-2222-2225

State of South Carolina, ... Respondent

vs.

Jerry Buck Inman, ... Appellant

PROOF OF SERVICE

I certify that I have served the Notice of Appeal and Memorandum Supporting Interlocutory Appeal on November 21, 2007 by depositing a copy of it in the United States Mail, postage prepaid, November 21, 2007, to Robert M. Ariail, 13th Circuit Solicitor and Betty C. Strom, Deputy Solicitor, to the address below.

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day of November, 2007.

Notary Public for South Carolina
My Commission Expires: 5/1/08

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Honorable Edward W. Miller, Judge

Case Numbers 2006-GS-39-2222-2225

The State, ...Respondent.

v.

Jerry Buck Inman,.....Appellant.

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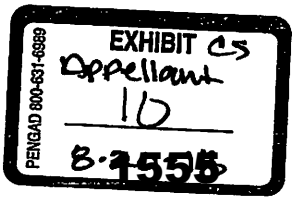


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STATEMENT OF THE CASE

On June 8, 2006, the Appellant, Jerry Buck Inman, was indicted for Murder, Criminal Sexual Conduct First Degree and Kidnapping. On November 8, 2006, the Appellant was also indicted for Burglary First Degree. On August 22, 2006, the Appellant was noticed for the Death Penalty.

On August 17, 2007, the Appellant filed his Motion to Determine Mode of Trial. The Motion and accompanying Memorandum set forth the Appellant's intention to enter a plea of guilty and demand a jury trial for sentencing. This Motion was made pursuant to the Appellant's 6th Amendment Right to a Jury Trial as interpreted by Apprendi, Ring and Blakely, the Appellant's 8th Amendment Right to present mitigation under the Cruel and Unusual Punishment Clause as interpreted by *Eddings v. Oklahoma*, 455 U.S. 104 (1982), *Lockett v. Ohio*, 438 U.S. 586 (1984), *Skipper v. South Carolina*, 476 U.S. 1 (1986), and *Payne v. Tennessee*, 501 U.S. 808 (1991), and the Appellant's 14th and 6th Amendment Right to present a defense under the Due Process Clause, the Confrontation Clause and the Compulsory Process Clause as interpreted by *Holmes v. S.C.*, 547 U.S. 319 (2006).

A hearing was held on September 14, 2007. At that hearing, the State opposed the Appellant's attempt to plead guilty. Specifically, the State cited Rule 14(b), S.C. Crim. P., as requiring the State's consent to enter a guilty plea. The State informed the Court that it would not consent to a guilty plea, and, as a result, the Appellant could not plead guilty.

The Trial Court denied the Appellant's request for a jury trial after entry of a guilty plea to the indictments and confirmed the State's refusal to consent to a guilty plea in its Order dated November 15, 2007. The Order stated in pertinent part:

> Motion to determine the mode of the trial is DENIED. The Defendant, in his motion, sought to enter his guilty plea and demanded a jury trial for

sentencing. The Defendant's argument is based in large part on his 6th Amendment Right to a Jury and his 8th Amendment Right to present mitigating evidence. Although the procedural posture of this case and the 8th Amendment prong of this issue do not appear to have been specifically addressed in South Carolina, the Court, nevertheless, believes this matter to have already been determined by our State Supreme Court and is thereby restricted by the existing case law. *State v. Patterson*, 278 S.C. 319, 295 S.E.2d 264 (1982); *State v. Truesdale*, 278 S.C. 368, 296 S.E. 2d 528 (1982), *State v. Downs*, 361 S.C. 141, 604 S.E. 2d 377 (2004); *State v. Crisp*, 362 S.C. 412, 608 S.E. 2d 429 (2005); *State v. Wood*, 362 S.C. 135, 607 S.E. 2d 57 (2005) *compare with Blakely v. Washington*, 542 U.S. 296, 313 (2004); *contra Colorado v. Montour*, 157 P.3d 489 (Colo. 2007). Under current case law, the State asserts that the Defendant must obtain the consent of the State and the court in order to plead guilty. *See State v. Burgin*, 255 S.C. 237, 178 S.E. 2d 325 (1970); *Singer v. U.S.*, 380 U.S. 24, 85 S.Ct. 783 (1965); *State v. Kerr*, 330 S. C. 132, 498 S.E. 2d 212 (1999) and Rule 14(b) of the South Carolina Rules of Criminal Procedure. Here, the State has asserted that it will not give consent to the Defendant to plead guilty and be sentenced by a jury. Therefore, the Defendant's motion is DENIED.

This Appeal followed pursuant to S.C. Code § 14-3-330(2) (Interlocutory Appeal).

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STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT'S RULING UNCONSTITUTIONALLY DEPRIVE THE APPELLANT OF HIS 8TH AMENDMENT RIGHT TO PRESENT MITIGATING EVIDENCE?

II. DID THE TRIAL COURT'S RULING UNCONSTITUTIONALLY DENY APPELLANT OF HIS 14TH AND 6TH AMENDMENT RIGHT TO PRESENT A FULL AND COMPLETE DEFENSE?

III. DID THE TRIAL COURT'S RULING UNCONSTITUTIONALLY DENY APPELLANTS 6TH AMENDMENT RIGHT TO HAVE A JURY DECIDE SENTENCE ENHANCING FACTS AFTER A GUILTY PLEA?

IV. DOES THE TRIAL COURT'S RULING UNCONSTITUTIONALLY REQUIRE THE APPELLANT ELECT BETWEEN CONSTITUTIONAL RIGHTS IN VIOLATION OF HIS 5TH AND 14TH AMENDMENT RIGHT TO DUE PROCESS OF LAW?

V. DID THE TRIAL COURT'S RULING UNCONSTITUTIONALLY APPLY RULE 14(b), S.C. CRIM. P., TO DEPRIVE APPELLANT OF HIS 5TH AND 14TH AMENDMENT RIGHTS TO A FAIR TRIAL?

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ARGUMENT

The Trial Court's Order prohibits the Appellant from pleading guilty based on two erroneous propositions. The Order finds that South Carolina's capital sentencing statute does not allow a Defendant to plead guilty and retain the right to demand a jury trial for sentence enhancing facts. In addition, the Order also finds that Rule 14(b), S.C. Crim. P., gives the State the power to prevent a guilty plea. These two findings violate the Appellant's Constitutional rights in a number of ways. These Constitutional rights overlap and are tied one with the other. Even though these rights overlap, this Brief will attempt to address the rights separately in order to clearly define the Appellant's position.

First, the Trial Court's Order denies Appellant his 8th Amendment right to present mitigation. The definition of "mitigation" is analyzed to show that a guilty plea clearly falls within that definition. Because the Trial Court's Order blocks the Appellant from pleading guilty, it unconstitutionally prevents Appellant from presenting mitigation. Standing alone, this issue requires Reversal.

Second, the Trial Court's Order denies Appellant his 14th and 6th Amendment right to present a complete defense. Within this discussion, the guilty plea is examined to show why it is an integral part of a valid defense strategy for a capital sentencing-phase trial.

Third, the Trial Court's Order denies the Appellant his 6th Amendment right to demand a jury trial for determination of sentence enhancing facts after a plea of guilty. This section addresses the recent decisions of the United States Supreme Court including *Apprendi, supra*, *Ring, supra*, and *Blakely, supra.* This section of the Brief goes on to address the current status of jury sentencing in a capital case after a guilty plea in South Carolina and other State courts.

Fourth, the Trial Court's interpretation of South Carolina's capital sentencing scheme

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requires the Appellant to elect between his 8th Amendment right to present mitigation and his 6th Amendment right to jury-trial sentencing. The election is unnecessary as the two rights can be exercised in harmony with one another, and, therefore, this required election violates Appellant's 5th and 14th Amendment rights to Due Process.

Finally, the Trial Court's Order allowing the Solicitor to use Rule 14 (b), S.C.Crim. P, to prevent a guilty plea to the indictments as charged is clear error. Rule 14(b)'s history makes it clear that it is not applicable to a guilty plea. As a result, the Solicitor's use of Rule 14(b) in this case results in a violation of Appellant's Constitutional Right to a fair trial guaranteed by the Due Process Clauses of the 5th and 14th Amendment.

I. THE TRIAL COURT'S RULING UNCONSTITUTIONALLY DENIES APPELLANT'S 8TH AMENDMENT RIGHT TO PRESENT RELEVANT MITIGATING EVIDENCE.

Appellant has an 8th Amendment right to present any and all mitigation as a defense during the sentencing proceeding in this capital case. It has long been established that a guilty plea is the essence of "mitigation" in sentencing. To deny Appellant the ability to present his guilty plea as mitigation to a death sentence infringes the 8th Amendment.

A. 8th Amendment Requires Consideration Of Any and All Mitigation.

As an initial proposition, it is clear that the Eighth Amendment prohibits the State from limiting the sentencer's consideration of "any relevant mitigating evidence." *Payne v. Tennessee*, 501 U.S. 808, 822 (1991). A State cannot prevent "the consideration of . . . evidence if the sentencer could reasonably find that it warrants a sentence less than death." *McKoy v. North Carolina*, 494 U.S. 433, 441 (1990); *accord Skipper v. S.C.*, 476 U.S. 1, 4 (1986); E*ddings v. Oklahoma*, 455 U.S. 104, 110 (1982); *Lockett v.* Ohio, 438 U.S. 586, 604 (1984)). "[T]he

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sentencer may not . . . be precluded from considering 'any relevant mitigating evidence.'" *Skipper*, 476 U.S. at 4 (quoting *Eddings*, 455 U.S. at 114). "The Constitution *requires* States to allow consideration of mitigating evidence in capital cases. Any barrier to such consideration must therefore fall." *McKoy*, 494 U.S. at 442 (emphasis in original). Consequently, any barrier to the Appellant's desire to present relevant mitigating evidence must fall.

B. The 8th Amendment's Definition Of Mitigation Includes A Guilty Plea.

Whether a fact finder could reasonably deem Appellant's guilty plea to have mitigating value determines if a guilty plea fits within the 8th Amendment's definition of mitigation.

1. The 8th Amendment's definition of mitigation is broad in scope and application.

For definitional purposes, ten mitigating circumstances are statutorily defined by South Carolina. S.C. Code § 16-3-20(C)(b)(1)-(10). South Carolina's statute, however, is not inclusive. In addition to the ten statutory mitigators, 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" is also allowed. *Skipper*, 476 U.S. at 4. South Carolina puts it this way: "[M]itigating circumstances are details specific to the character of the Defendant on trial and/or the circumstances of the crime he committed which are considered in order to reduce the degree of his moral culpability or guilt." *State v. George*, 323 S.C. 496, 476 S.E.2d 903 (1996). Therefore, "[r]elevant mitigating evidence is evidence which tends logically to prove or disprove some fact or circumstance which a fact-finder could reasonably deem to have mitigating value." *McKoy*, 494 U.S. at 440. The 8th Amendment definition of "mitigation" is broad in scope and application.

2. The law specifically defines constitutionally permissible mitigation to include a guilty plea.

"[A] plea may obtain for the Defendant 'the **possibility** . . . [of] a lesser penalty than the sentence that could be imposed after a trial.'" *Corbitt v. New Jersey*, 439 U.S. 212, 219 (1978) (emphasis added). It is the essence of sentence-mitigation. A plea, in and of itself, is constitutionally permissible consideration in sentencing. *Id.* at 223-224.

The Federal Sentencing Guidelines ("Guidelines") acknowledge the appropriateness of the sentencer's consideration of a guilty plea as mitigation in sentencing. Section 3E1.1 of the Guidelines is entitled "Acceptance of Responsibility." The commentary to section 3E1.1 outlines a set of considerations to be used by a judge in determining an appropriate and applicable decrease in sentencing for the Defendant who pleads guilty and accepts responsibility for his criminal conduct. These considerations are made in response to a Defendant pleading guilty and result in a reduction in the Defendant's sentencing.

In the case of *Bradshaw v. Stumpf*, 545 U.S. 175, 186 (2005), the U.S. Supreme Court addressed a situation in which a capital Defendant pled guilty and proceeded to a sentencing-phase trial. In addressing issues related to a claim of ineffective assistance of counsel, the Court specifically identified the Defendant's guilty plea as a valid and valuable argument in mitigation which permitted the Defendant to "assert his acceptance of responsibility."

In *State v. Brouwer*, 346 S.C. 375, 550 S.E.2d 915 (Ct. App. 2001), the Defendant received a more severe sentence than his co-defendant who pled guilty. The majority concluded that the trial judge had improperly considered the Defendant's exercise of his right to a trial by jury in determining his sentence. In his dissent, Judge Anderson concluded that the trial judge had not considered the Defendant's decision to go to trial.

Judge Anderson thoroughly discussed current case law regarding the impact of a guilty plea on sentencing as a valid basis for the disparity between the co-defendant's sentence and that which the Defendant received.

> Guilty pleas are recognized as a significant step toward rehabilitation. *Hooten v. State*, 212 Ga.App. 770, 442 S.E.2d 836 (1994). A genuine admission of guilt may properly result in a lighter sentence than would be appropriate for an intransigent and unrepentant malefactor. *United States v. Stockwell*, 472 F.2d 1186 (9th Cir.1973). *See also Hooten*, 442 S.E.2d at 840 (plea of guilty can be, and frequently is, considered in sentencing).

Id. at 391, at 925. (Anderson, J. dissenting).

In *Sanders v. Leeks*, 254 S.C. 444, 175 S.E.2d 796 (1970), the South Carolina Supreme Court discussed pleading guilty and its relationship to sentencing:

> For a defendant who sees slight possibility of acquittal, the advantages of pleading guilty and limiting the probable penalty are obvious. . . . A great many [guilty pleas] are no doubt motivated at least in part by the hope or assurance of a lesser penalty than might be imposed if there were a guilty verdict after a trial to judge or jury. . . . [A defendant] *who demonstrates by his plea that he is ready and willing to admit his crime and enter the correctional system[is] in a frame of mind that affords hope for success in rehabilitation over a shorter period of time than might otherwise be necessary.*

Id. at 453-454, at 800-801 (quoting *U.S. v. Brady*, 397 U.S. 742, 752 (1970)) (emphasis added).

Therefore, both Federal and South Carolina law recognize guilty pleas as a proper consideration in determining a sentence. Because a guilty plea can be considered as mitigation to a sentence, it falls within the 8th Amendment definition of mitigation. As 8th Amendment mitigation, any barrier to Appellant presenting this mitigation must fall. As a result, the barriers inherent in the Trial Court's Order to the presentation of Appellant's guilty plea as mitigation during the sentencing phase must be reversed by this Court. Failure to do so violates the Appellant's 8th Amendment rights.

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II. THE TRIAL COURT'S RULING UNCONSTITUTIONALLY DENIES APPELLANT'S 14TH AND 6TH AMENDMENT RIGHT TO PRESENT A COMPLETE DEFENSE.

Appellant has a 14th and 6th Amendment right to present a complete defense. As part of a complete defense, Appellant has an 8th Amendment right to present any and all mitigation in a capital sentencing proceeding. As already shown, 8th Amendment "mitigation" includes a guilty plea. Therefore, Appellant's Constitutional right to present a complete defense includes a defense utilizing his guilty plea. Because the 8th Amendment guarantees the right to present mitigation in a capital case, it is a weighty interest of the accused. This weighty interest cannot be abridged by rules or rulings that are arbitrary or disproportionate in purpose. The Trial Court's order abridges the Appellant's weighty interest to present 8th Amendment mitigation in an arbitrary and disproportionate manner in violation of the 14th and 6th Amendment right to present a complete defense.

A. The 14th and 6th Amendment Right To Present A Complete Defense.

"Whether rooted directly in the *Due Process Clause of the Fourteenth Amendment* or in the *Compulsory Process* or *Confrontation Clauses of the Sixth Amendment*, the Constitution guarantees criminal Defendants 'a meaningful opportunity to present a complete defense.'" *Holmes v. South Carolina*, 547 U.S. 319, 330 (2006) (quoting Crane *v. Kentucky*, 476 U.S. 683, 690 (1986)).

B. A Complete Defense in A Capital Case Includes Use Of A Guilty Plea As Mitigation During The Sentencing Phase Of A Trial.

Because of the unique nature of capital sentencing in our jurisprudence, a guilty plea can be a valid mitigation defense strategy for the sentencing-phase trial. This statement is true even when there has been no concession from the State in exchange for the guilty plea. This

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mitigation defense strategy has been recognized by both the United States Supreme Court and by empirical research conducted on actual jurors in capital cases in South Carolina.

1. Case law recognizes the use of a guilty plea as a valid mitigation defense strategy for the sentencing-phase of a capital case.

In *Florida v. Nixon* 543 US 175, 191-192 (2004), the U.S. Supreme Court dealt with a post-conviction relief proceeding wherein appellate counsel alleged that trial counsel had been ineffective. The allegation was that the Defendant tendered a guilty plea without any concession from the State. The Supreme Court recognized the unique nature of the capital sentencing phase and pointed out the validity of utilizing a guilty plea as mitigation at a capital sentencing trial:

> Counsel therefore may reasonably decide to focus on the trial's penalty phase, at which time counsel's mission is to persuade the trier that his client's life should be spared. Unable to negotiate a guilty plea in exchange for a life sentence, defense counsel must strive at the guilt phase to avoid a counterproductive course. *See* Lyon, Defending the Death Penalty Case: What Makes Death Different?, 42 Mercer L.Rev. 695, 708 (1991) ("It is not good to put on a 'he didn't do it' defense and a 'he is sorry he did it' mitigation. This just does not work. The jury will give the death penalty to the client and, in essence, the attorney."); Sundby, The Capital Jury and Absolution: The Intersection of Trial Strategy, Remorse, and the Death Penalty, 83 Cornell L.Rev. 1557, 1589-1591 (1998) (interviews of jurors in capital trials indicate that juries approach the sentencing phase "cynically" where counsel's sentencing-phase presentation is logically inconsistent with the guilt-phase defense); *id.*, at 1597 (in capital cases, a "run-of-the-mill strategy of challenging the prosecution's case for failing to prove guilt beyond a reasonable doubt" can have dire implications for the sentencing phase). In this light, counsel cannot be deemed ineffective for attempting to impress the jury with his candor and his unwillingness to engage in "a useless charade." *See Cronic*, 466 U.S. 648, 656-657, n. 19 (1984). Renowned advocate Clarence Darrow, we note, famously employed a similar strategy as counsel for the youthful, cold-blooded killers Richard Loeb and Nathan Leopold. Imploring the judge to spare the boys' lives, Darrow declared: "I do not know how much salvage there is in these two boys. . . . I will be honest with this court as I have tried to be from the beginning. I know that these boys are not fit to be at large." Attorney for the Damned: Clarence Darrow in the Courtroom 84 (A. Weinberg ed.1989); see Tr. of Oral Arg. 40-41 (Darrow's clients "did not expressly consent to what he did. But he saved their lives."); *cf. Yarborough v. Gentry*, 540 U.S. 1, 9-10 (2003) (per curiam).

In *Bradshaw v. Stumpf*, 545 U.S. 175 (2005), the U.S. Supreme Court again faced a scenario where trial counsel's strategy included the use of a guilty plea as mitigation for the sentencing phase of a capital trial. The Court recognized that it was a valid strategy for a Defendant to place before the sentencer mitigating issues relating to his plea of guilty. *Id.* at 186. *Bradshaw* specifically identified the fact that a guilty plea allows a defendant to "assert his acceptance of responsibility as an argument in mitigation." *Id.* Therefore, the U.S. Supreme Court has expressly recognized that in appropriate cases the presentation of a complete defense includes use of a guilty plea during the penalty phase of a capital trial.

2. Empirical research recognizes a guilty plea in capital case as a valid defense during the sentencing phase.

In addition to the Supreme Court's recognition of the validity of using a guilty plea as a mitigation defense, empirical research supports the practical application of this strategy. The Capital Jury Project was designed to examine and systematically describe actual jurors' exercise of capital sentencing discretion. 70 Indiana Law Journal 1043, 1077 (1995). South Carolina was one of the states from which data was compiled for this research and represents the largest sample of jurors contributing to the Capital Jury Project data. Id. at 1078 n.190 and 1084 n.213.

Pertinent to this case, the empirical research finds "a highly statistically significant relationship between a Defendant's remorse and a juror's first vote: the more a juror thought the Defendant was sorry or remorseful, the more likely she was to cast her first vote for life; conversely, the less she thought the Defendant was sorry or remorseful, the more likely she was to cast her first vote for death." Blume, Eisenberg, and Garvey, America's Death Penalty pp. 164-165 (2003).

The empirical data led to the conclusion that "the earlier the Defendant personally

expresses some type of acceptance of responsibility for the killing, the greater the likelihood that the jury will be receptive to later claims of regret." 83 Cornell L. Rev. 1557, 1586 (1998). "Simply put, when it comes to accepting responsibility, the sooner the better." *Id.* On the other hand:

> Jurors are inclined to view a Defendant that makes no attempt to acknowledge complicity—especially in the face of strong evidence against him—as someone likely to use every future opportunity to manipulate the system. Putting the prosecution's evidence to the test, therefore, may cause jurors to perceive the Defendant as not simply exercising his due process rights, but rather as once again trying to 'beat the system'.

Id. at 1590.

"[T]he figures for the denial defense cases that reached a verdict are particularly stark--nine death sentences compared to one life sentence. This data indicate that absent a marginal case in prosecution, a Defendant is essentially playing lottery odds by relying on an all-or-nothing guilt phase strategy that challenges the prosecution in the hope of producing a lingering doubt that will secure a life sentence." *Id.* at 1589-1591.

Based on the foregoing, it is not only a valid trial strategy to plead guilty in certain cases, it is suicide by State to do otherwise. Consequently, empirical data supports the assertion that the use of a guilty plea during the sentencing phase of a capital case is a valid defense and strategy. As such, its use necessarily falls within the protections afforded by the 14th and 6th Amendment right to present a complete defense.

C. The Right To Present A Complete Defense Cannot Be Infringed Arbitrarily.

This right to present a complete defense cannot be abridged by "rules that 'infring[e] upon a weighty interest of the accused' and are 'arbitrary or disproportionate to the purposes they are designed to serve.'" *Holmes*, 547 U.S. at 330 (quoting *U.S. v. Scheffer*, 523 U.S. 303,

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308 (1998)).

Therefore, any rule that affects Appellant's weighty interest and is arbitrary or disproportionate to the purpose it is designed to serve, is in violation of the 14th and 6th Amendment right to present a complete defense. The weighty interest at stake is the Appellant's 8th Amendment right to present mitigation against the imposition of a death sentence. *see, e.g. McKoy v. N.C.*, 494 U.S. 433, 442 (1990) ("Any barrier to consideration [of mitigating evidence] must therefore fall."). The Trial Court's Order infringes Appellant's weighty interest in presenting 8th Amendment mitigation by prohibiting a guilty plea.

The infringement of this weighty interest is arbitrary in its effect and disproportionate to its purpose. *See e.g. Holmes* v. *S.C.*, 547 U.S. at 330. The arbitrariness of the Trial Court's Order is inherent. The Appellant wants to plead guilty. The Court won't let him, and there has been no justification for it other than its not allowed. The purpose the Trial Court's Order serves is not easily discovered nor has it been addressed in cited opinions. The reality of this situation is that it is the inevitable consequence of a changing constitutional landscape that was not anticipated when South Carolina's current death penalty statute was enacted. As a result, if South Carolina's current rule does not permit the Appellant to plead guilty and submit that guilty plea as a mitigation defense to a jury during his sentencing proceeding, his 14th and 6th Amendment right to present a complete defense will be violated. *See, id.*

III. THE TRIAL COURT'S RULING UNCONSTITUTIONALLY DENIES APPELLANT'S 6TH AMENDMENT RIGHT TO HAVE A JURY DECIDE SENTENCE ENHANCING FACTS AFTER A GUILTY PLEA.

U.S. Supreme Court precedent makes it abundantly clear that the Appellant has a 6th Amendment right to demand a jury trial to decide sentence enhancing facts after a guilty plea. One of the holdings in the Trial Court's Order precludes the Appellant from having a penalty-

phase jury trial after a guilty plea. Therefore, the Trial Court Order violates the Appellant's 6th Amendment right.

A. Recent U.S. Supreme Court Precedent Requires A Defendant To Be Given The Right To Demand A Jury Trial For Determination Of Sentence Enhancing Facts After Entry Of A Guilty Plea.

The genesis of the foregoing began to crystallize with the Supreme Court's decision in *Apprendi*. *Apprendi* invalidated sentencing schemes that required the enhancement of a Defendant's sentence on facts to be determined by a judge and not a jury. Initially, *Apprendi* was not applied to capital sentencing statutes. *Ring* eliminated the exception that had been carved out for capital sentencing trials. After *Ring*, a Defendant had a right to have a jury determine the aggravators that could potentially authorize the death penalty. What remained unanswered was whether a Defendant could retain the right to a jury solely for the purpose of contesting sentencing issues after entry of a guilty plea. *Blakely* put that issue to rest when the Supreme Court defined the 6th Amendment right to include the right to have a jury decide sentence enhancing issues after a guilty plea.

1. *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and its interpretation of the 6th Amendment's application to sentence enhancing facts.

In *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the Supreme Court reassessed its view of the constitutional requirements of the 6th Amendment on fact-finding which impacted a Defendant's sentence. The Court was confronted with a New Jersey sentencing statute that allowed the sentencing judge to increase a Defendant's maximum possible sentence if he or she found that the Defendant committed the crime in question with a biased motive. *Id.* The Court concluded that the 6th Amendment required any finding of fact, (other than a prior conviction) that increases the penalty for a crime beyond the prescribed statutory maximum, must be

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submitted to a jury and found beyond a reasonable doubt. *Id.* at 490.

Apprendi held that: "[T]he relevant inquiry is one not of form, but of effect - does the required finding expose the Defendant to a greater punishment than that authorized by the jury's guilty verdict?" *Id.* at 494. Based on this inquiry, the Court concluded that the statute in question was unconstitutional because: (1) it allowed the trial judge, instead of the jury to make the finding in question, and (2) it allowed the judge to make that finding using a standard lower than beyond a reasonable doubt. *Id.* at 497.

Prior to *Apprendi*, the U.S. Supreme Court had concluded that aggravating circumstances were not "element[s] of the offense of capital murder," and, thus, need not be determined by a jury. *Walton v. Arizona*, 497 U.S. 639, 649 (1990). The *Apprendi* Court did not overturn *Walton* despite the logical force of its holding. *Apprendi* explicitly rejected the idea that *Walton* was in conflict. *Id.* at 496-97.

2. *Ring v. Arizona*, 536 U.S. 584, 589 (2002) and its application of *Apprendi* to capital sentencing.

In *Ring v. Arizona*, 536 U.S. 584, 589 (2002) the U.S. Supreme Court overturned *Walton* and eliminated the capital sentencing exception of the 6th Amendment's right to a jury trial. The Court recognized that the reasoning for carving out an exception for capital sentencing was "irreconcilable" with *Apprendi*'s interpretation of the 6th Amendment. *Id.*

In putting to rest the issue of the 6th Amendment's right to a jury trial for capital sentencing, *Ring* also answered the question of how the law will treat aggravating circumstances in capital cases. The Court held that "enumerated aggravating factors operate as 'the functional equivalent of an element of a greater offense,'" and, therefore, "the Sixth Amendment requires that they be found by a jury." *Id.* at 609.

Sattazahn v. Pennsylvania, 537 U.S. 101 (2003) summarized *Ring's* holding as follows:

> [F]or purposes of the Sixth Amendment's jury-trial guarantee, the underlying offense of "murder" is a distinct, lesser included offense of "murder plus one or more aggravating circumstances": Whereas the former exposes a Defendant to a maximum penalty of life imprisonment, the latter increases the maximum permissible sentence to death. Accordingly, we held that **the Sixth Amendment requires that a jury, and not a judge, find the existence of any aggravating circumstances**, and that they be found, not by a mere preponderance of the evidence, but beyond a reasonable doubt.

Id., at 111 (emphasis added) (citing *Ring*, 536 U.S. at 606-09). The characterization of "murder" as a distinct lesser included offense of "murder plus one or more aggravating circumstances" is particularly noteworthy because it is this language that captures South Carolina's capital sentencing scheme. The fact that South Carolina's capital sentencing scheme is included in *Ring*'s decision is discussed more fully below, but suffice it to say that *Ring* makes it clear that a Defendant has a right to have a jury decide whether aggravating circumstances exist and any other factual issues necessary to permit imposition of the death sentence. *Id.* What *Ring* did not determine is how the 6th Amendment operates for capital sentencing when a Defendant pleads guilty to the underlying "lesser included offense" of murder. In other words, *Ring* did not specifically speak to whether there is a separate right after a guilty plea to have a jury determine sentence enhancing facts.

3. *Blakely v. Washington*, 542 U.S. 296 (2004) and its application of *Apprendi* to fact finding after a guilty plea.

In *Blakely v. Washington*, 542 U.S. 296 (2004), the U.S. Supreme Court found that the 6th Amendment's right to a trial by jury for determination of sentence enhancing facts continues to exist after entry of a guilty plea. As the quotations that follow illustrate, *Blakely* dealt with the question of whether a Defendant who waives his right to a trial and pleads guilty to the underlying offense has also waived his right to have a jury determine facts that only impact the

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sentence. *Blakely* made it clear that the Defendant has a right to a jury trial on the elements of the offense and the elements that impact sentencing. *Blakely* also made it clear that a Defendant's waiver of his trial right during the guilty plea to the underlying offense was not a waiver of the right to have a jury determine sentence enhancing facts. *Blakely* specifically contemplated the appropriateness of exercising the right to trial by jury on sentencing elements after a guilty plea.

Blakely involved the following factual scenario:

> Petitioner entered a guilty plea admitting the elements of second-degree kidnapping and the domestic-violence and firearm allegations, but no other relevant facts. . . . After hearing [the victim's] description of the kidnapping, however, the judge rejected the State's recommendation and imposed an exceptional sentence of 90 months --37 months beyond the standard maximum. He justified the sentence on the ground that petitioner had acted with 'deliberate cruelty,' a statutorily enumerated ground for departure in domestic-violence cases.

Id. at 298-300.

The Supreme Court stated: "Whether the judge's authority to impose an enhanced sentence depends on finding a specified fact (as in *Apprendi*), one of several specified facts (as in *Ring*), or *any* aggravating fact (as here), it remains the case that the jury's verdict alone does not authorize the sentence. The judge acquires that authority only upon finding some additional fact." *Id.* at 305. "As *Apprendi* held, every Defendant has the *right* to insist that the prosecutor prove to a jury all facts legally essential **to the punishment**." *Id.* at 313 (emphasis added). "Every new element that a prosecutor can threaten to charge is also an element that a Defendant can threaten to contest at trial and make the prosecutor prove beyond a reasonable doubt." *Id.* at 311.

In discussing the application of a Defendant's right to a jury trial after having pled guilty,

the Supreme Court made the following observation:

> But nothing prevents a Defendant from waiving his *Apprendi* rights. **When a Defendant pleads guilty, the State is free to seek judicial sentence enhancements so long as the Defendant either stipulates to the relevant facts or consents to judicial factfinding.** *See Apprendi*, 530 U.S., at 488; *Duncan v. Louisiana*, 391 U.S. 145, 158 (1968).

Id. at 310 (emphasis added); *accord Cunningham v. California*, 127 S.Ct. 856, 865 (2007) (recognizing *Blakely's* rejection of the State's argument that the Apprendi rule did not apply because the guilty plea in Blakely provided the court with discretion to impose an exceptional sentence).

Apprendi, *Ring*, and *Blakely* provide this Court with United States Supreme Court precedent for the fact that a Defendant has a right to a jury trial for any fact finding that is necessary for the imposition of an enhanced sentence even after the entry of a guilty plea to the underlying offense. Therefore, if South Carolina's statutory law authorizing imposition of the death penalty requires fact finding necessary to impose a capital sentence, then the Appellant is entitled to demand a jury trial for that fact-finding after the entry of a guilty plea.

B. South Carolina Statutory Law Authorizing The Death Penalty Requires Additional Fact Finding To Enhance The Sentence.

South Carolina statutory law authorizing the death penalty is set forth at Section 16-3-20 *et. seq.* Section 16-3-20(A) of the South Carolina Code states: "A person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years."[1] However, at the trial stage, five conditions must be met to create a situation where the Defendant is eligible for death.

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[1] The Appellant notes that *Furman v. Georgia, 408 U.S. 238 (1972) (per curiam)* makes a statute that imposes the death penalty across the board for murder unconstitutional.

First, the State must formally notice the Defendant that it is seeking a death sentence. S.C. Code § 16-3-26(A) (""Whenever the solicitor seeks the death penalty he shall notify the defense attorney of his intention to seek such penalty."); and § 16-3-20(A) ("If the State seeks the death penalty"); and § 16-3-20(B) ("When the State seeks the death penalty"). This notice presumably requires the State to impose some discretion in deciding which murder cases that are eligible for the death penalty actually proceed as such.

Second, the fact finder must find that at least one statutory aggravating circumstance has been proven during the sentencing proceeding beyond a reasonable doubt or the death sentence is not an option. S.C. Code § 16-3-20(B) ("In the [sentencing] proceeding, if a statutory aggravating circumstance is found, the Defendant must be sentenced to either death or life imprisonment."); and § 16-3-20(C) ("Where a statutory aggravating circumstance is not found, the trial judge shall sentence the Defendant to either life imprisonment or a mandatory minimum term of imprisonment for thirty years.").

Third, the fact finder must consider additional evidence in extenuation, mitigation or aggravation of the punishment in conjunction with its finding of statutory aggravation. S.C. Code § 16-3-20(B) ("In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment."); and § 16-3-20(C) ("The judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence.").

Fourth, the fact finder must then make a recommendation for life imprisonment or the death sentence. S.C. Code § 16-3-20(C) ("Where a statutory aggravating circumstance is found and a recommendation of death is made, the trial judge shall sentence the Defendant to death. . . .

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Where a statutory aggravating circumstance is found and a sentence of death is not recommended by the jury, the trial judge shall sentence the Defendant to life imprisonment."). The recommendation for a death sentence must be unanimous. S.C. Code § 16-3-20(C)("The jury shall not recommend the death penalty if the vote for such penalty is not unanimous.").

Finally, the trial judge must make a finding that a recommendation for death "was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor." S.C. Code § 16-3-20(C).

Because at least one of the statutory aggravating factors listed in S.C. Code § 16-3-20(C) must be established before a Defendant may be found eligible for the death penalty, such facts are "the functional equivalent of an element of a greater offense." *Apprendi*, 530 U.S. at 494 n.19. Therefore, it is the elements of murder coupled with the additional element of an aggravating circumstance that together constitute the aggravated crime of capital murder. *See e.g. Ring*, 536 at 609 (2002) (holding that the underlying offense of "murder" is a distinct, lesser included offense of "murder plus one or more aggravating circumstances."). In other words, a guilty plea to murder does not authorize imposition of the death penalty.

The problem for this Court is that there is an impossible conflict. *Compare Truesdale*, 278 S.C. at 368; *Crisp*, 362 S.C. at 419 *and Downs*, 261 S.C. at 146-147 *with Ring*, 536 U.S. at 609, *and Blakely*, 542 U.S. at 305. Pursuant to *Blakely*, a Defendant who pleads guilty "has the *right* to insist that the prosecutor prove to a jury all facts legally essential to the punishment." *Blakely v. Washington*, 542 U.S. 296, 313 (2004). South Carolina currently does not permit a Defendant who pleads guilty to "insist that the prosecutor prove to a jury all facts legally essential to the punishment." As a result, the 6th Amendment, as interpreted by *Apprendi*, *Ring*, and *Blakely*, gives the Appellant the right to trial by jury for fact finding even after the entry of a

guilty plea. Because the Trial Court's Order precludes the option of jury sentencing after a guilty plea, it violates the Appellant's 6th Amendment right.

IV. THE TRIAL COURT'S RULING UNCONSTITUTIONALLY REQUIRES APPELLANT TO ELECT BETWEEN CONSTITUTIONAL RIGHTS IN VIOLATION OF APPELLANT'S 5TH AND 14TH AMENDMENT RIGHTS TO DUE PROCESS OF LAW.

As repeatedly pointed out throughout the discussion above, the Appellant has a right to present the 8th Amendment mitigation of his guilty plea and he has the right to have a jury make the findings of fact at issue in a sentencing-phase trial even after his guilty plea.

Whether it is the capital sentencing statute or South Carolina's interpretation of it that is unconstitutional, the fact remains that under the current statute and its interpretation, this Appellant cannot exercise all of his constitutional rights as discussed above. The current state of the law plays out in a Constitutional Catch-22[2] that requires the Appellant to elect between rights that are both applicable and both capable of being exercised in harmony with one another. It is this forced election which results in a violation of the Appellant's 5th and 14th Amendment right to due process. The following discussion sets forth South Carolina's law, its current interpretation and how the Constitutional Catch-22 is created. Cases are cited next to show that requiring Appellant to elect between constitutional rights that can be exercised in harmony with one another violates due process. This recitation of case law is followed by an analysis of how other states have treated the very same issue.

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[2] Catch-22 is a term coined by Joseph Heller in his novel Catch-22, describing a paradox in a law, regulation or practice in which one is a victim regardless of the choice he makes.

A. South Carolina Has Created A Constitutional Catch-22 For Capital Defendants: 8th Amendment Mitigation or 6th Amendment Jury Trial, But Not Both.

South Carolina's death penalty statute states that a Defendant who pleads guilty to murder "*must*" have aggravating and mitigating factors "conducted before the judge." S.C. Code §16-3-20(B). Specifically, the statute states as follows: "If trial by jury has been waived by the Defendant and the State, or if the Defendant pleaded guilty, the sentencing proceeding must be conducted before the judge." S.C. Code § 16-3-20(B) "In nonjury cases the judge shall make the designation of the statutory aggravating circumstance or circumstances." S.C. Code § 16-3-20(C).

South Carolina's current interpretation of this statute does not permit a jury determination of punishment following a guilty plea. *State v. Patterson*, 278 S.C. 319, 295 S.E.2d 264 (1982). There is no wiggle room. A Defendant cannot create the right to a jury determination of punishment even by making it part of his plea agreement. *Id.* In fact, it is currently South Carolina law that the sentencing of a Defendant by a jury after a Defendant enters a guilty plea to all charges is reversible error. *State v. Truesdale*, 278 S.C. 368, 296 S.E.2d 528 (1982).

The Constitutional Catch-22 plays out as follows - The Defendant who wishes to plead guilty is denied the right to a jury and, thus, cannot exercise his right to present the mitigating evidence of his plea to that jury. The Defendant who pleads not guilty in order to exercise his right to a jury cannot exercise his right to present the mitigating evidence of his plea to a jury, because his plea necessarily was not guilty. The Catch-22, therefore, is the fact that the Appellant has a right to a jury trial and a right to have a jury consider the mitigating evidence of his guilty plea, but is forced by South Carolina's statute to give up one to get the other.

B. It Is Unconstitutional To Require Election Between Constitutional Rights.

When two constitutional rights can be exercised in harmony with one another, a Defendant cannot be forced to choose between them. *See, e.g., Simmons v. United States*, 390 U.S. 377 (1968) (when a Defendant must testify in suppression hearing in order to assert his rights under the Fourth Amendment, his Fifth Amendment rights prohibit the government from thereafter using the testimony against him at trial); *State v. Norris*, 285 S.C. 86, 328 S.E.2d 339 (1985) (where the Defendant charged with capital murder was entitled pursuant to statute to testify and to personally present a closing argument in sentencing phase of trial, the trial court's ruling requiring him to choose between testifying or making closing argument was reversible error); *See, also, United States v. Jackson*, 390 U.S. 570 (1968) (federal kidnapping statute unconstitutional because it, in effect, penalized Defendants that chose to plead not guilty by exposing them to a death sentence while a Defendant that waived his right to trial would be assured a life sentence).

"[I]t would be intolerable to require that the defendant waive one constitutional right in order to assert another." *U.S. v. Ragins*, 840 F.2d 1184, 1193 (4th Cir. 1988) (holding that testimony from the defendant used to address his claim of double jeopardy was not admissible at his trial) (citing *Simmons*, 390 U.S. at 394). Consequently, it is unconstitutional to require a Defendant to elect between Constitutional rights that are both applicable and can be exercised in harmony with one another.

C. Other States Addressing This Issue Post-*Blakely* Support Appellant's Argument.

The analysis set forth in this Brief is not the first time these issues have been raised. Other states have capital sentencing statutes similar to South Carolina and have had to deal with

the impact of the U.S. Supreme Court's recent decisions in *Apprendi*, *Ring*, and *Blakely*. Viewed without context, it appears that other states provide a mixed bag. However, considered in the context of whether the decision was made before or after the U.S. Supreme Court's decision in *Blakely*, the cases fall squarely in favor of the position set forth by this Appellant.

Prior to *Blakely* the states that have considered the issue of jury sentencing in a capital case after a guilty plea have, with one exception, found that a guilty plea resulted in a waiver of the right to trial on sentence enhancing elements. *Leone v. State*, 797 N.E.2d 743 (Ind.2003); *People v. Altom*, 338 Ill.App.3d 355, 272 Ill.Dec. 751, 788 N.E.2d 55 (2003); *Colwell v. State*, 118 Nev. 807, 59 P.3d 463 (2002); and *State v. Downs*, 361 S.C. 141, 604 S.E.2d 377 (2004).

The lone exception is *Louisiana v. Louviere*, 833 So.2d 885 (La. 2002). In *State v. Louviere*, 833 So.2d 885 (La. 2002), the Louisiana Supreme Court construed its capital sentencing scheme to allow for a guilty plea while requiring the "penalty issue before the jury" to prevent the " infirmity ultimately found in Ring v. Arizona, . . . as well as the infirmity recognized in *United States v. Jackson*, [390 U.S. 570 (1968)]." *State v. Louviere*, 833 So.2d 885, 895 (La. 2002). "[D]enying a Defendant the choice to plead guilty arguably would impermissibly deprive the Defendant, per the Federal Constitution, of his strategic choice to acknowledge his crime and thereby appear remorseful before his jury." *Id.* at 894.

Post *Blakely*, every state that considered the issue of jury sentencing in a capital case after a guilty plea has, with one exception, found that a guilty plea did not effectively waive the right to trial on sentence enhancing elements.

In *State v. Piper*, 709 N.W.2d 783, 803 (S.D. 2006) and *State v. Page*, 709 N.W.2d 739, 762 (S.D. 2006), the South Dakota Supreme Court stated that, "under Ring, a capital sentencing scheme would be unconstitutional if it prevented a Defendant who pleaded guilty from having

alleged aggravating circumstances found by a jury." *Page, supra* at 762; *Piper, supra* at 803.

In *Colorado v. Montour*, 157 P.3d 489 (Colo. 2007) the court stated:

> Once a capital Defendant enters a guilty plea, he retains the Sixth Amendment right to jury sentencing on the facts essential to the determination of death eligibility. A court must procure the appropriate waiver after a guilty plea or finding of guilt before judicial fact-finding in sentencing is permissible. See *Blakely*, 542 U.S. at 310, 124 S.Ct. 2531.

The lone exception is South Carolina's decision in *State v. Crisp*, 362 S.C. 412, 608 S.E.2d 429 (2005) which is addressed in more detail below.

D. *Downs* and *Crisp* Are The Current Controlling Law In South Carolina That Address *Ring*.

The following two South Carolina cases address *Ring*. As noted above, these two cases are bookends on the time-line of *Blakely*. *Downs* came before *Blakely* and *Crisp* came after *Blakely*.

In *State v. Downs*, 261 S.C. 141, 146-147,604 S.E.2d 377, 380 (2004) the South Carolina Supreme Court held that S.C. Code § 16-3-20(B) passed 6th Amendment muster despite the ruling in *Ring v. Arizona*. The South Carolina Supreme Court distinguished *Ring* on the basis that Arizona's statute never permitted a jury to decide aggravating circumstances authorizing the death penalty. *Id.* at 146-147, *Id* at 380. In addition, the Court distinguished *Ring* on the basis that *Ring* did not involve a guilty plea. *Id.* The Court made note of the fact that the Defendant Downs was "informed that by pleading guilty he waived his right to a jury trial on both guilt and sentencing." *Id.*

In *State v. Crisp*, 362 S.C. 412, 608 SE2d 429 (2005), the South Carolina Supreme Court held that S.C. Code § 16-3-20(B) did not violate the 6th Amendment despite its mandatory provision for a judicial determination of sentencing after a plea. The Supreme Court stated:

"Section 16-3-20(B) is not unconstitutional in light of *Ring*, and a capital Defendant may be sentenced only by a judge pursuant to that statute after knowingly and voluntarily waiving his right to a jury trial." *Id.* at 419. The Court again made note of the fact that the Defendant Crisp had repeatedly been advised that he was waiving his right to trial on both the guilt phase and the sentencing phase.

Downs and *Crisp* are distinguishable from the instant case. In both *Downs* and *Crisp*, the South Carolina Supreme Court noted that the "trial judge specifically and repeatedly informed Defendant that he would waive the right to a jury trial in not only the guilt phase, but also in the sentencing phase." The Appellant in this case does not intend to waive his right to a jury trial in the sentencing phase.

As a further distinguishing factor, if the Appellant is required to give up his right to a sentencing phase jury trial in order to plead to the underlying offense, the relinquishment of the right to a sentencing phase jury trial will operate as a forfeiture and not a waiver. *Illinois v. Allen*, 397 U.S. 337 (1970) (holding that forfeiture of a constitutional right results only from significant misconduct on the part of the Defendant). Once viewed as a forfeiture, the relinquishment of the right to a sentencing phase jury trial ceases to satisfy the requirements of "knowing, intelligent and voluntary" required to divest this Appellant of his constitutional rights.

More compelling is as a distinguishing fact that the *Downs* and *Crisp* decisions did not deal with the 8th Amendment right to present the mitigation of a plea as part of a sentencing-phase defense or with the 14th and 6th Amendment right to present a complete defense. To the extent that the South Carolina Supreme Court may be waiting for South Carolina's sentencing statute and/or interpretation to be challenged in the context of the 8th Amendment right to present the mitigation of a plea as a defense to sentencing or in the context of the 14th and 6th

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Amendment right to present a defense, this case does so.

Finally, it is worthy of note in a discussion of this case's distinguishing characteristics that the South Carolina Supreme Court has conceded in *Downs* and *Crisp* that a capital Defendant has a right to a jury trial at both the guilt phase and also the sentencing phase. *Downs*, 261 S.C. at 146-147; *Crisp*, 362 S.C. at 412. Because *Downs* and *Crisp* recognize the fact that there is a right to a sentencing phase jury trial, these decisions are in tension with *State v. Truesdale*, 278 S.C. 368, 296 S.E.2d 528 (1982) (holding that the sentencing of a Defendant by a jury after a Defendant enters a guilty plea to all charges is reversible error). To the extent that the South Carolina Supreme Court may also be waiting on this issue to be presented as an argument against the precedent of *Truesdale*, the Appellant's case puts this issue squarely before the Court.

Therefore, the Trial Court's Order unconstitutionally requires the Appellant to make an election between his 8th Amendment right to present mitigation and his 6th Amendment right to a jury trial. That fact that these rights are equally applicable and can be asserted in harmony with one another makes any forced election between them unconstitutional pursuant to the 5th and 14th Amendment right to due process of law.

V. THE TRIAL COURT'S RULING UNCONSTITUONALLY APPLIES RULE 14, S.C. CRIM. P., TO DEPRIVE APPELLANT OF HIS 5TH AND 14TH AMENDMENT DUE PROCESS RIGHT TO A FAIR TRIAL.

The Trial Court's application of Rule 14, S.C. Crim. P., to permit the Solicitor to block the Appellant from pleading guilty deprives the Appellant of his 5th and 14th Amendment Due Process right to a fair trial. The Trial Court's order is violative of this right because it is contrary to the law applicable to guilty pleas, is a misapplication of Rule 14(b), allows the Solicitor to

unconstitutionally block Appellant's access to relevant mitigating evidence and permits the Solicitor to mislead the jury as to the true nature of the controversy at issue by pretending that the Appellant has pled Not Guilty.

A. Guilty Pleas Do Not Require Consent From The State.

"It is the prerogative of any person to waive his constitutional rights, confess, and plead guilty as indicted so long as there are safeguards that are both defined and adequately enforced by the trial court. *See State v. Miller*, 375 S.C. 370, 388, 652 S.E.2d 444, 453 (2007) (quoting *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E2d 396, 401 (Ct. App. 1999)). Correspondingly, it is the trial judge's prerogative—not the Solicitor's—to accept or reject a guilty plea. *Id.* A Defendant, nevertheless, cannot require the State to plea bargain with him. *Id.*

The time to enter a guilty plea is at arraignment. Only a Circuit Judge can arraign someone for murder. *State v. Bostick*, 247 S.C. 22, 33, 145 S.E.2d 439, 445 (1965). In the usual course of a trial, a Defendant is pleading not guilty and, so, waives the arraignment by (1) not requesting it and (2) allowing the case to proceed to trial without objection. *State v. Ariail*, 311 S.C. 35, 36, 426 S.E.2d 751, 752 (1993).

Upon entry of a guilty plea, the trial court must follow procedures consistent with Rule 11 of the Federal Rules of Criminal Procedure and *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969). *Armstrong, supra.* In deciding whether to accept a guilty plea, "[a]ccuracy is paramount; force, threats, or lack of knowledge and understanding by the accused deprive a guilty plea of validity." *Id.* at 597. "[T]he United States Supreme Court has recognized the finality of a guilty plea when proper safeguards have been afforded the Defendant." *Id.* A trial judge is "free to use any appropriate procedure for determining the accuracy of the guilty plea." *Id.* at 598. While there is no specific language required, the procedure must include the

following:

(1) judge must ensure that the Defendant understands the charge and consequences of a guilty plea;
(2) the record provides a factual basis for the plea; and
(3) judge must adequately warn Defendant of consequences of plea, to include explaining constitutional rights and providing a "realistic picture of all sentencing possibilities."

Id. This is the procedure carried out by trial courts thousands of times a year throughout the state. No case exists for the proposition that the plea colloquy must contain the State's consent.

B. Rule 14(b) Governs The Choice Between Trial By Jury And Trial By Judge.

Rule 14(b) has its roots in Rule 23, Fed. R. Crim. P. It is noted in Rule 14, S.C. Crim. P, that its "language is based on Rule 23, Fed. R. Crim. P." Both rules are similarly designated and structured. Their respective titles, "Trial by Jury" under Rule 14(b), S.C. Crim. P., and "Jury or Nonjury Trial" under Rule 23, Fed. R. Crim. P., plainly and unambiguously convey the purpose of the rules.[3] Both rules are designed to govern resolution of a contested issue through trial. Jurisdiction over pleas lies elsewhere than Rule 14(b), S.C. Crim. P., and Rule 23, Fed. R. Crim. P.,—for neither rule contains nor discusses the word "plea." On the other hand, Rule 11, Fed. Cr. P. which is titled "Pleas," very explicitly details the procedures for entry and acceptance of pleas. Although there is no corresponding South Carolina rule governing pleas, *Armstrong*, *supra*, held that the "essence of *Boykin* was to make the requirements of Rule 11, Fed. Crim. P. applicable to the states." *Id.* at 597. Moreover, South Carolina courts have consistently held that there is no "magic" language to a plea—only that the judge must be satisfied that the concerns of Rule 11, Fed. R. Crim. P., and *Boykin* are addressed and satisfied. *See State v. Lambert*, 266

[3] If a statute's language is plain, unambiguous, and conveys a clear meaning, then "the court has no right to impose another meaning." *Hodges v. Ramey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

S.C. 574, 225 S.E.2d 340 (1976); *State v. Lopez*, 352 S.C. 574, 225 S.E.2d 210 (2002).

Therefore, Rule 14(b), S.C. Crim. P., does not govern entry of a guilty plea. Rule 14(b), S.C. Crim. P., governs the determination of whether the method to determine contested guilt will be by jury or by judge, *i.e.*, a jury trial versus a bench trial.

"A plea of guilty is a confession of guilt, made in a formal manner and has the same effect in law as a verdict of guilty and authorizes the imposition of the punishment prescribed by law." *State v. Leek*, 254 S.C. 444, 447, 175 S.E.2d 796,797 (1970). Pleading guilty negates the need for a trial. It obviates the issue of guilt and, thus, Rule 14(b), S.C. Crim. P., is never implicated at a guilty plea.

C. Rule 14(b) Cannot Be Used By The Solicitor To Mislead The Jury To Gain An Adversarial Advantage At Trial.

Were we to assume, *arguendo*, that the Solicitor is correct and Rule 14(b), S.C. Crim. P., applies to a guilty plea—the manner in which the Solicitor is attempting to use it is unconstitutional.

The State violates a Defendants Constitutional right to a fair trial when it misleads the jury. Due Process requires that the Solicitor be more than an ordinary advocate. A Solicitor has heightened duties in this respect. By using Rule 14(b) to prohibit the Appellant from pleading guilty, the Solicitor has manufactured a procedural advantage that has the effect of misleading the jury. The Solicitor can make it appear that the Appellant has contested guilt, forced the case to trial on the merits of guilt or innocence, and present evidence that would be inadmissible during the sentencing phase of the trial. *See, e.g.* (Transcript at 46-47).

In *Caldwell v. Mississippi*, 472 U.S. 320 (1985), the U.S. Supreme Court stated: "In contrast, the argument at issue here cannot be said to be either accurate or relevant to a valid

state penological interest. The argument was inaccurate, both because it was misleading as to the nature of the appellate court's review and because it depicted the jury's role in a way fundamentally at odds with the role that a capital sentencer must perform. Similarly, the prosecutor's argument is not linked to any arguably valid sentencing consideration. That appellate review is available to a capital defendant sentenced to death is no valid basis for a jury to return such a sentence if otherwise it might not. It is simply a factor that in itself is wholly irrelevant to the determination of the appropriate sentence"

Similar to the prosecutor in *Caldwell*, the Solicitor in this case is trying to mislead the jury so that they will be more comfortable returning a death sentence. By preventing the Appellant from pleading guilty, the Solicitor will, in effect, instill in the jury the belief that Appellant is not remorseful, and, therefore, make it easier for the jury to return a death verdict.

Rule 407, SCACR, Rules of Professional Conduct, Rule 3.8 is entitled: "Special Responsibilities of a Prosecutor." The comment to Rule 3.8 states: "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice."

The Solicitor is preventing the Appellant from "being accorded procedural justice" by using Rule 14(b) to gain a tactical advantage. As a result, the application of Rule 14(b) in this case violates Appellant's Constitutional right to a fair trial.

D. Rule 14(b) Cannot Be Used By The Solicitor To Block The Appellant From Obtaining Valid And Relevant Mitigation.

When used against a Defendant seeking to enter a guilty plea in a capital case, Rule 14(b), S.C. Crim. P., acts as bar against the Defendant's right to have the sentencer consider all relevant mitigating evidence, including, Defendant's acceptance of responsibility and plea of

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guilty. Used in this way, it is a clear violation of the Due Process. See, *Brooks v. Tennessee*, 406 U.S. 605 (1972) (holding that state rule requiring a Defendant to testify first, if at all, in his defense unconstitutionally limited defense strategy).

The presentation of mitigating evidence in a capital case is essential at the sentencing trial. A death sentence is "profoundly different from all other penalties." *Lockett, supra*, at 605. It is the most severe punishment allowed in the law.

Rule 14(b), S.C. Crim. P., is intended for the protection of the integrity of the judicial process and of a Defendant's constitutional rights. Appellant has the right to enter a plea of guilty to the charge of murder with or without the consent of the State, so long as proper procedural safeguards are employed to ensure that justice is reached through a process that is fair, accurate, and respects the constitutional rights of the Appellant. There is no legitimate reason to bar Appellant from entering a guilty plea. The State's invocation of Rule 14(b), S.C. Crim. P., would be a strategic effort to prevent the presentation of relevant mitigating evidence to the sentencing jury, which is a violation of Appellant's Sixth, Eighth and Fourteenth Amendment rights. Court rules must serve a legitimate purpose. They must have a rational and non-arbitrary justification for the limitation they impose on a criminal Defendant's constitutional rights. *See Holmes, supra.* The purpose of Rule 14(b), S.C. Crim. P., is to ensure the accuracy of a conviction and to protect a Defendant's trial rights. Rule 14(b), S.C. Crim. P., was not, however, intended to provide the State with the ability to gain a strategic adversarial advantage over the Appellant or by using the rule to prevent a sentencer's consideration of relevant mitigating evidence.

Allowing the Solicitor to block the Appellant from pleading guilty as charged does not preserve a right; it impedes the right established by *Armstrong, supra*, that "it is the prerogative

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of any person to [plead guilty]." *Id.* at 597. It is pointless for the court to hold that a Defendant has the prerogative (privilege, choice) to plead guilty as charged if the court also understood Rule 14(b), S.C. Crim. P., to apply to guilty pleas. To grant a prerogative and then in the same breath say that the State has the power to block that prerogative is to grant no prerogative at all. Such nullity would render *Armstrong* meaningless. What gives *Armstrong* meaning is that a person has the prerogative to plead guilty and that the court will decide whether to accept that plea using proper safeguards and procedures.

VI. CONCLUSION

There is a trout in the milk that will spoil proceedings from this point forward if the problem is not resolved correctly. Therefore, the Court must grant Appellant's request that the mode of trial be such that he be allowed to enter his guilty pleas to the indictments and proceed with jury trial sentencing in accordance with the authority set forth in this Brief.

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The undersigned certifies that this Initial Brief complies with Rule 208(b), *SCACR*.

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The undersigned certifies that this Designation Of Matter To Be Included In The Record On Appeal complies with Rule 209(b), *SCACR*.

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM PICKENS COUNTY CIRCUIT COURT
Court of General Sessions

Edward W. Miller, Circuit Court Judge

C. A. Nos. 2006-GS-39-2222-2225

State of South Carolina, ...Respondent

vs.

Jerry Buck Inman, ...Appellant

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter To Be Included in the Record On Appeal on Robert M. Ariail and Betty C. Strom by depositing a copy of it in the United States Mail, postage prepaid, on January 2, 2008, addressed to Robert M. Ariail, 13th Circuit Solicitor and Betty C. Strom, Deputy Solicitor, 13th Circuit Solicitor's Office, 305 E. North Street, Suite 325, Greenville, South Carolina 29601.

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Docket No._____

IN THE

SUPREME COURT OF THE UNITED STATES

JERRY BUCK INMAN,

Petitioner,

versus

STATE OF SOUTH CAROLINA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE SOUTH CAROLINA SUPREME COURT

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8-20-18
PENGAD 800-631-6989

CAPITAL CASE

QUESTIONS PRESENTED

1. WHETHER A CAPITAL DEFENDANT'S 6TH AMENDMENT RIGHT INCLUDES THE RIGHT TO JURY-TRIAL SENTENCING AFTER ENTRY OF A GUILTY PLEA?

2. WHETHER A CAPITAL DEFENDANT'S 8TH AMENDMENT RIGHT TO PRESENT MITIGATION IS VIOLATED BY AN ORDER PROHIBITING THE DEFENDANT FROM PLEADING GUILTY?

3. WHETHER A CAPITAL DEFENDANT'S 14TH AND 6TH AMENDMENT RIGHT TO PRESENT A COMPLETE DEFENSE IS VIOLATED BY AN ORDER THAT PROHIBITS THE DEFENDANT FROM USING HIS GUILTY PLEA AS MITIGATION DURING THE SENTENCING PHASE OF TRIAL?

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PARTIES TO THE PROCEEDING

The State of South Carolina is represented by the Thirteenth Circuit Solicitor, Robert M. Ariail. His mailing address is: "Greenville County Court House, 305 E. North St. Suite 325, Greenville, S.C. 29601."

Jerry Buck Inman is represented by undersigned counsel. Additional trial counsel include, Symmes Culbertson and John DeJong.

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Docket No._____

IN THE

SUPREME COURT OF THE UNITED STATES

JERRY BUCK INMAN,

Petitioner,

versus

STATE OF SOUTH CAROLINA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT

Petitioner, Jerry Buck Inman, prays that a writ of certiorari issue to review the judgment of the South Carolina Supreme court.

CITATION TO OPINIONS BELOW

The order of the Pickens County Circuit Court, Court of General Sessions, denying the Petitioner's request to plead guilty and proceed to

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jury-trial sentencing is unpublished but attached as Appendix A. The South Carolina Supreme Court's dismissal of the Petitioner's Interlocutory Appeal is unpublished but attached as Appendix B.

JURISDICTION

The Pickens County Circuit Court entered an Order on November 15, 2007. State v. Jerry Buck Inman, No. 2006-GS-39-2222-2225. Petitioner filed an Interlocutory Appeal on November 21, 2007. The South Carolina Supreme Court dismissed the appeal without prejudice on January 9, 2008. This Court has jurisdiction under 28 U.S.C. § 1254.

CONSTITUTIONAL/STATUTORY PROVISIONS

This case involves the Sixth Amendment to the United States Constitution, which provides in pertinent part that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury."

This case further involves the Eighth Amendment to the United States Constitution which provides in pertinent part that no person may be subjected to "cruel and unusual punishment."

This case also involves the Fourteenth Amendment and the Sixth Amendment to the United States Constitution which guarantee a criminal defendant the right to present a complete defense in State proceedings pursuant to the Due Process Clause, the Confrontation Clause and the Compulsory Process Clause

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STATEMENT OF THE CASE

On June 8, 2006, the Petitioner, Jerry Buck Inman, was indicted for Murder, Criminal Sexual Conduct First Degree and Kidnapping. On November 8, 2006, the Petitioner was also indicted for Burglary First Degree. On August 22, 2006, the Petitioner was noticed for the Death Penalty.

On August 17, 2007, the Petitioner filed his Motion to Determine Mode of Trial. The Motion set forth the Petitioner's intention to enter a plea of guilty and demand a jury trial for sentencing. This Motion was made pursuant to the Petitioner's 6th Amendment Right to a Jury Trial as interpreted by *Apprendi*, *Ring* and *Blakely*, the Petitioner's 8th Amendment Right to present mitigation under the Cruel and Unusual Punishment Clause as interpreted by *Eddings v. Oklahoma*, 455 U.S. 104 (1982), *Lockett v. Ohio*, 438 U.S. 586 (1984), *Skipper v. S.C.*, 476 U.S. 1 (1986), and *Payne v. Tennessee*, 501 U.S. 808 (1991), and the Petitioner's 14th and 6th Amendment Right to present a defense under the Due Process Clause, the Confrontation Clause and the Compulsory Process Clause as interpreted by *Holmes v. S.C.*, 547 U.S. 319 (2006).

A hearing was held on September 14, 2007. At that hearing, the State opposed the Petitioner's attempt to plead guilty. Specifically, the State cited Rule 14(b), S.C. Crim. P., as requiring the State's consent to enter a guilty plea. The State informed the Court that it would not consent to a guilty plea, and, as a result, the Petitioner could not plead guilty.

The Trial Court denied the Petitioner's request to enter his guilty plea and proceed to jury-

trial sentencing. In its Order dated November 15, 2007, the Trial Court also confirmed the State's assertion that it has the right to prevent Petitioner from entering a guilty plea.

The Petitioner filed an Interlocutory Appeal pursuant to S.C. Code § 14-3-330(2). The Petitioner's Interlocutory Appeal was dismissed by Order of the South Carolina Supreme Court dated January 9, 2008. This Petition followed.

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REASONS THE WRIT SHOULD ISSUE

I. THE WRIT OF CERTIORARI SHOULD ISSUE IN ORDER TO RESOLVE THE CONFLICT AMONG THE STATES AS TO WHETHER A CAPITAL DEFENDANT HAS A 6TH AMENDMENT RIGHT TO JURY-TRIAL SENTENCING AFTER ENTRY OF A GUILTY PLEA.

Currently, there is a conflict amongst the States as to whether a capital defendant has a 6th Amendment right to jury-trial sentencing after the entry of a guilty plea. This conflict among the States has arisen as a result of this Court's decisions in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Ring v. Arizona*, 536 U.S. 584, 589 (2002) and *Blakely v. Washington*, 542 U.S. 296 (2004). *See, e.g. and compare Colwell v. Nevada*, 59 P.3d 463 (Nev. 2002); *Leone v. Indiana*, 797 N.E.2d 743 (Ind.2003); *S.C. v. Downs*, 604 S.E.2d 377 (S.C. 2004); *S.C. v. Crisp*, 608 SE2d 429 (S.C. 2005); *and Illinios v. Altom*, 788 N.E.2d 55 (Ill. 2003)(potential capital case) *with Louisiana v. Louviere*, 833 So.2d 885 (La. 2002); *S.D. v. Piper*, 709 N.W.2d 783, 803 (S.D. 2006) *and S.D. v. Page*, 709 N.W.2d 739, 762 (S.D. 2006); *and Colorado v. Montour*, 157 P.3d 489 (Colo. 2007).

This conflict has its genesis in State death penalty statutes that mandate judicial sentencing after the entry of a guilty plea. For those States that have upheld judge-only sentencing after entry of a guilty plea, the reasoning has been founded on the premise that the capital defendant has waived any jury-trial right by virtue of the entry of the guilty plea. *Colwell*, 59 P.3d at 473 ("We conclude that

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Ring is not applicable to Colwell's case because, unlike *Ring*, Colwell pleaded guilty and waived his right to a jury trial."); *Leone*, 797 N.E.2d at 750 ("With a plea of guilty, Leone forfeits claimed entitlement to certain rights including the right to a jury trial."); *Downs*, 604 S.E.2d at 380 ("Ring did not involve jury-trial waivers and is not implicated when a defendant pleads guilty. "); *Crisp*, 608 SE2d at 433 (affirming *Downs*); and *Altom*, 788 N.E.2d at 59 ("There is no validity to the complaint that a defendant did not 'know' that he was waiving the right to have the State prove enhancing factors beyond a reasonable doubt, because by pleading guilty the defendant releases the State from proving anything beyond a reasonable doubt.").

For those States overturning death penalty statutes that mandate judicial sentencing after the entry of a guilty plea, the reasoning has been founded on the premise that a capital defendant retains the right to a jury trial for sentencing after entry of a guilty plea and/or that a capital defendant has a right to present the guilty plea to a jury as mitigation. *Louviere*, 833 So.2d at 894 ("[D]enying a Defendant the choice to plead guilty arguably would impermissibly deprive the Defendant, per the Federal Constitution, of his strategic choice to acknowledge his crime and thereby appear remorseful before his jury."); *Piper*, 709 N.W.2d at 803 ("[U]nder *Ring*, a capital sentencing scheme would be unconstitutional if it prevented a Defendant who pleaded guilty from having alleged aggravating circumstances found by a jury."); *Page*, 709 N.W.2d at 762 (same); *Montour*, 157 P.3d at 489 ("Once a capital Defendant enters a guilty plea, he retains the Sixth Amendment right to jury

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sentencing on the facts essential to the determination of death eligibility.").

In this case, South Carolina's statutory law authorizing the death penalty is set forth at Section 16-3-20 et. seq. Section 16-3-20(B) of the South Carolina Code states as follows: "If trial by jury has been waived by the Defendant and the State, or if the Defendant pleaded guilty, the sentencing proceeding must be conducted before the judge." S.C. Code § 16-3-20(B). "In nonjury cases the judge shall make the designation of the statutory aggravating circumstance or circumstances." S.C. Code § 16-3-20(C).

South Carolina's current interpretation of its death penalty statute does not permit a jury determination of punishment following a guilty plea. *S.C. v. Patterson*, 295 S.E.2d 264 (S.C. 1982). In fact, it is currently South Carolina law that the sentencing of a capital defendant by a jury after a defendant enters a guilty plea to all charges is reversible error. *S.C. v. Truesdale*, 296 S.E.2d 528 (S.C. 1982).

Simply put, it is unconstitutional to deny a capital defendant's right to demand jury-trial sentencing after the entry of guilty plea. Sattazahn *v. Pennsylvania*, 537 U.S. 101, 111 (2003) ("[T]he Sixth Amendment requires that a jury, and not a judge, find the existence of any aggravating circumstances . . . beyond a reasonable doubt."); *Cunningham v. California*, 127 S. Ct. 856, 865 (2007) (recognizing that *Blakely v. Washington*, 542 U.S. 296, 313 (2004) rejected the argument that the *Apprendi* rule did not apply to guilty pleas).

Therefore, the writ should issue to resolve the conflict that has developed amongst the States as to

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whether a capital defendant has a right to jury-trial sentencing after the entry of a guilty plea.

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II. THE WRIT OF CERTIORARI SHOULD ISSUE TO CLARIFY WHETHER A CAPITAL DEFENDANT'S 8TH AMENDMENT RIGHT TO PRESENT MITIGATION IS VIOLATED BY AN ORDER PROHIBITING THE DEFENDANT FROM PLEADING GUILTY.

In Petitioner's case, the Trial Court entered an Order that prohibits him from pleading guilty and requesting jury-trial sentencing. The Order was based on South Carolina's case-law, South Carolina's death penalty statute, and Rule 14, S.C. R. Crim. P. "The Constitution requires States to allow consideration of mitigating evidence in capital cases. Any barrier to such consideration must therefore fall." *McKoy v. N.C.*, 494 U.S. 433, 442 (1990) (emphasis in original). "Relevant mitigating evidence is evidence which tends logically to prove or disprove some fact or circumstance which a fact-finder could reasonably deem to have mitigating value." Id. at 440.

"[A] plea may obtain for the Defendant 'the possibility . . . [of] a lesser penalty than the sentence that could be imposed after a trial.'" *Corbitt v. New Jersey*, 439 U.S. 212, 219 (1978) (emphasis added). A plea, in and of itself, is a constitutionally permissible consideration in sentencing. *Id.* at 223-224. "[A defendant] who demonstrates by his plea that he is ready and willing to admit his crime and enter the correctional system [is] in a frame of mind that affords hope for success in rehabilitation over a shorter period of time than might otherwise be necessary." *U.S. v. Brady*, 397 U.S. 742, 752 (1970).

Whether it is South Carolina's case-law, South Carolina's death penalty statute, Rule 14, S.C. Crim.

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P., or a combination thereof, the Trial Court's Order is an unconstitutional barrier to the Petitioner's 8th Amendment right to have a jury consider all relevant mitigating evidence, including, Petitioner's acceptance of responsibility and plea of guilty.

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III. THE WRIT OF CERTIORARI SHOULD ISSUE TO CLARIFY WHETHER A CAPITAL DEFENDANT'S 14TH AND 6TH AMENDMENT RIGHT TO PRESENT A COMPLETE DEFENSE IS VIOLATED BY AN ORDER THAT PROHIBITS THE DEFENDANT FROM OBTAINING A GUILTY PLEA TO USE AS MITIGATION DURING THE SENTENCING PHASE OF TRIAL.

"Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal Defendants 'a meaningful opportunity to present a complete defense.'" *Holmes v. S.C.*, 547 U.S. 319, 330 (2006) (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)). This right to present a complete defense cannot be abridged by "rules that 'infring[e] upon a weighty interest of the accused' and are 'arbitrary or disproportionate to the purposes they are designed to serve.'" *Holmes*, 547 U.S. at 330 (quoting *U.S. v. Scheffer*, 523 U.S. 303, 308 (1998)).

The weighty interest at stake is the Petitioner's 8th Amendment right to present mitigation against the imposition of a death sentence. *see, e.g. McKoy v. N.C.*, 494 U.S. 433, 442 (1990) ("Any barrier to consideration [of mitigating evidence] must therefore fall."). A guilty plea is still mitigation even when there has been no concession from the State in exchange. *See, e.g. Florida v. Nixon*, 543 US 175, 191-192 (2004) ("Counsel therefore may reasonably decide to focus on the trial's penalty phase, at which time counsel's mission is to persuade the trier that his client's life should be

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spared. Unable to negotiate a guilty plea in exchange for a life sentence, defense counsel must strive at the guilt phase to avoid a counterproductive course.")

In *Bradshaw v. Stumpf*, 545 U.S. 175, 186 (2005), the U.S. Supreme Court specifically identified the fact that a guilty plea allows a defendant to "assert his acceptance of responsibility as an argument in mitigation." *Id.*

By prohibiting the Petitioner from obtaining a guilty plea, the Trial Court's Order infringes the weighty interest of Petitioner's right to present mitigation and, thus, to present a complete defense.

The purpose the Trial Court's Order serves is not easily discovered nor has it been addressed in cited opinions. The arbitrariness of the Trial Court's Order is inherent. South Carolina's judge-only sentencing after a guilty plea results in a Constitutional Catch-22.[1] Further, the Trial Court's Order is a clear misapplication of Rule 14, S.C. Crim. P.

The Constitutional Catch-22 requires the Petitioner to elect between rights that are both applicable and both capable of being exercised in harmony with one another. The Constitutional Catch-22 plays out as follows - The Defendant who wishes to plead guilty is denied the right to jury-trial sentencing and, thus, cannot exercise his right to present the mitigating evidence of his plea to that jury. The Defendant who pleads not-guilty in order to exercise his right to jury-trial sentencing cannot exercise his right to present the mitigating evidence

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[1] Catch-22 is a term coined by Joseph Heller in his novel Catch-22, describing a paradox in a law, regulation or practice in which one is a victim regardless of the choice he makes.

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of his plea to a jury, because his plea necessarily was not-guilty. The Catch-22, therefore, is the fact that the Petitioner has a right to a jury-trial sentencing and a right to have a jury consider the mitigating evidence of his guilty plea, but is forced by South Carolina to give up one to get the other.

When two constitutional rights can be exercised in harmony with one another, a Defendant cannot be forced to choose between them. *See, e.g., Simmons v. U.S.*, 390 U.S. 377 (1968) (when a Defendant must testify in suppression hearing in order to assert his rights under the Fourth Amendment, his Fifth Amendment rights prohibit the government from thereafter using the testimony against him at trial). This forced election is an unconstitutional limit on defense strategy. *Brooks v. Tennessee*, 406 U.S. 605 (1972) (holding that state rule requiring a Defendant to testify first, if at all, in his defense unconstitutionally limited defense strategy).

The arbitrariness of the Trial Court's order is also shown by the fact that it is a clear misapplication of Rule 14(b), S.C. Crim P. As the notes to Rule 14(b) state, it is based on Rule 23, Fed. R. Crim. P. On their face, both rules are designed to govern resolution of a contested issue through trial. Jurisdiction over pleas lies elsewhere than Rule 14(b), S.C. Crim. P., and Rule 23, Fed. R. Crim. P., for neither rule contains nor discusses the word "plea."

As a result, the Order, Rule, Statute, or case-law that prohibits the Petitioner from pleading guilty and submitting that guilty plea as mitigation to a sentencing-phase jury violates the Petitioner's 14th and 6th Amendment right to present a complete

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defense.

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CONCLUSION

There is a trout in the milk. Petitioner has a right to plead guilty and demand jury-trial sentencing. The Trial Court's Order violates the Petitioner's 6th Amendment Right to jury-trial sentencing, the 8th Amendment Rights to present mitigation and the right to present a complete defense guaranteed by the 14th and 6th Amendments. The writ should issue to correct these Constitutional violations and to resolve the conflict among the States that currently exists.

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Docket No._____

IN THE

SUPREME COURT OF THE UNITED STATES

JERRY BUCK INMAN,

Petitioner,

versus

STATE OF SOUTH CAROLINA,

Respondent.

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT

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Appendix B Order from The Supreme Court of South Carolina

INMOM 128A 128A 000296

STATE OF SOUTH CAROLINA
IN THE COURT OF GENERAL SESSIONS
COUNTY OF PICKENS
THIRTEENTH JUDICICAL CIRCUIT

THE STATE	)	
	)	
VS.	)	ORDER
	)	
JERRY BUCK INMAN,	)	2006-GS-39-2222-2225
DEFENDANT	)	
	)	

These matters come before the court on various motions filed by the defendant. The State responded in writing to each of the motions and a hearing was conducted on Friday, September 14, 2007. The defendant was present at the hearing, represented by his counsel of record, James Bannister, Symmes Culbertson and John DeJong. The State was represented by Solicitor Robert M. Ariail and Betty Strom, Deputy Solicitor for the Thirteenth Judicial Circuit. Upon hearing arguments of counsel, the ruling on each of the motions is as follows:

1. Motion to close hearing on the issue of the trial mode is DENIED. The court has taken into consideration the concerns raised by Defense counsel regarding the particular motion and the fact that the defendant is not requesting that the entire hearing be closed, only as it relates to the particular motion regarding the trial mode. Furthermore, the court

INMOM 128A 128A 000297

has heard from counsel for the State and from Mr. Jay Bender, attorney for the Greenville News. It is apparent that the precedent in this state is for open and public hearings. Therefore, based upon the cases of In Re Greenville News, 505 S.E.2d 340 (1998) and Ex Parte Hearst- Argyle Television, Inc., 631 S.E.2d 86 (2006), the defendant's motion is DENIED.

2. Motion to declare the case as life without parole is GRANTED with consent of the State in that the juries will be informed that life means life without parole.

3. Motion to respond in writing to the defendant's motions is GRANTED with consent of the State. It is also ordered, with the consent of the defendant, to be reciprocal to the defendant as to any motion filed by the State.

4. Motion to provide all reports and supplemental reports to the defense is GRANTED with the consent of the State. The State has agreed to provide all reports, documents and other materials, absent work product materials, to the defense in a timely fashion. The State asserted and the defendant agreed that the State has already provided the documents it presently has in its possession regarding this case and will continue to provide them as the State receives them.

5. Motion to prohibit the placement of an undercover operative near the defendant is GRANTED with the consent of the State. However,

any statement made voluntarily by the defendant to any individual will be addressed as to its admissibility at the appropriate time.

6. Motion to require the State to provide any statements made by the public regarding the cases is GRANTED in part and DENIED in part. As to any written document received by the Solicitor's office from any member of the public, the motion is GRANTED and the State will provide the written communication to the defense. However, absent unusual or exceptional circumstances, as to any oral communication, the State asserts that it does not keep a log of this information and the court is not going to require him to do so, therefore as to any oral communication the motion is DENIED.

7. Motion to seal the visitor log at the Pickens County Detention Center is GRANTED. The State has stated to the Court that they will not attempt to view this information. Therefore, the Court directs the Pickens County Detention Center to maintain Jerry Buck Inman's visitation log separately to the extent a visitation log is maintained. Information contained in this log is to be maintained by the Pickens County Detention Center in a manner to prohibit information contained therein from being disseminated without an Order from this Court. Because no legal representative from the Pickens Detention Center was present at the hearing, the Court remains open to hear any objection they may have to this ruling.

The State requested the right of have access to the information at the time of trial. That issue will be addressed at the appropriate time if a request is made.

8. Motion to determine the mode of the trial is DENIED. The defendant, in his motion, sought to enter his guilty plea and demanded a jury trial for sentencing. The Defendant's argument is based in large part on his 6th Amendment Right to a jury and his 8th Amendment Right to present mitigating evidence. Although the procedural posture of this case and the 8th Amendment prong of this issue do not appear to have been specifically addressed in South Carolina, the Court, nevertheless, believes this matter to have already been determined by our State Supreme Court and is thereby restricted by the existing case law. State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982); State v. Truesdale, 278 S.C. 368, 296 S.E.2d 528 (1982), State v. Downs, 361 S.C. 141, 604 S.E.2d 377 (2004); State v. Crisp, 362 S.C. 412, 608 S.E.2d 429 (2005); State v. Wood, 362 S.C. 135, 607 S.E.2d 57 (2005) compare with Blakely v. Washington, 542 U.S. 296, 313 (2004); contra Colorado v. Montour, 157 P.3d 489 (Colo. 2007). Under current case law, the State asserts that the defendant must obtain the consent of the State and the court in order to plead guilty. See State v. Burgin, 255 S.C. 237, 178 S.E.2d 325 (1970); Singer v. U.S., 380 U.S. 24, 85 S.Ct. 783 (1965); State v. Kerr, 330 S.C. 132, 498 S.E.2d 212

INMOM 128A 128A 000300

(1999) and Rule 14(b) of the South Carolina Rules of Criminal Procedure. Here, the State has asserted that it will not give consent to the defendant to plead guilty and be sentenced by a jury. Therefore, the defendant's motion is DENIED.

So Ordered this 15 day of November, 2007.

s/ Edward W. Miller
Honorable Edward W. Miller
Presiding Judge

INMOM 128A 128A 000301

The Supreme Court of South Carolina

The State, Respondent,

v.

Jerry Buck Inman, Appellant.

ORDER

Appellant has filed a notice of appeal from an order of the circuit court denying his Motion to Determine Mode of Trial. He has also filed a Memorandum Supporting Interlocutory Appeal. However, it has long been held in South Carolina that a criminal defendant may not appeal until sentence is imposed. State v. Miller, 289 S.C. 426, 346 S.E.2d 705 (1986) ("We adhere to our view that under § 14-3-330 a criminal defendant may not appeal until after sentence has been imposed.") Parsons v. State, 289 S.C. 542, 347 S.E.2d 504 (1986); State v. Robinson, 287 S.C. 173, 337 S.E.2d 204 (1985); State v. Washington, 285 S.C. 457, 330 S.E.2d 289 (1985); State v. Hubbard, 277 S.C. 568, 290 S.E.2d 817 (1982); Ex parte Murray, 261 S.C. 255, 199 S.E.2d 718 (1973); State v. McMillan, 189 S.C. 444, 1 S.E.2d 626 (1939); State v. Gellis, 158 S.C. 471, 155 S.E. 849 (1930); State v. Turner, 118 S.C. 383, 110 S.E. 525 (1922); State v. Timmons, 68 S.C. 258, 47 S.E. 140 (1904); State v. Hughes, 56 S.C. 540, 35 S.E. 214 (1900); State v. Mason, 54 S.C. 240, 32 S.E. 357 (1899); State v. Burbage, 51 S.C. 284, 28 S.E. 937 (1898); State v. McKettrick, 13 S.C.

INMOM 128A 128A 000302

439 (1880); see also State v. Wood, 362 S.C. 135, 607 S.E.2d 57 (2004)(under similar circumstances defendant contested constitutionality of S.C. Code Ann. 16-3-20 (2003) *after being sentenced*). In addition, an appellate court will not make an adjudication where there remains no actual controversy. Curtis v. State, 345 S.C 557, 549 S.E.2d 591 (2001). The Court must inquire in every action whether a justiciable controversy exists. In re Care and Treatment of Luckabaugh, 351 S.C. 122, 568 S.E.2d 338 (2002). A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute. Id. In the case at hand, appellant has failed to show that a judicial controversy exists. See State v. Kerr, 330 S.C. 132, 498 S.E.2d 212 (1999); State v. Whitted, 279 S.C. 260, 305 S.E.2d 245 (1983), overruled on other grounds State v. Collins, 329 S.C. 23, 495 S.E.2d 202 (1998); State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975); State v. Burgin, supra, rec'd on other grounds 404 U.S. 806, 92 S.Ct. 46, 30 L.Ed.2d 39 (1971); State v. Miller, 652 S.C. 444, 375 S.E.2d 370 (Ct. App. 2007); Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999). Accordingly, the notice of appeal is hereby dismissed without prejudice.

IT IS SO ORDERED.

s/Jean H. Toal C.J.

s/James E. Moore J.

INMOM 128A 128A 000303

s/John H. Waller, Jr. J.

s/Costa M. Pleicones J.

s/Donald W. Beatty J.

Columbia, South Carolina
January 9, 2008

INMOM 128A 128A 000304

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	Case Nos.: 2006-GS-39-2222-2225
State of South Carolina,	)	Warrant Nos.: H-017954-56
	)	
Plaintiff,	)	
v.	)	
	)	**AFFIDAVIT OF JERRY BUCK INMAN**
Jerry Buck Inman,	)	
	)	
Defendant.	)	

The Affiant, being duly sworn, would state as follows:

1. My name is Jerry Buck Inman and I am over the age of 18 and competent to give this Affidavit.

2. I am aware of the fact that I have been charged with Burglary 1st degree, Criminal Sexual Conduct 1st degree, Kidnapping and Murder in Indictment Nos. 2006-GS-39-2222-2225.

3. I am further aware that on August 22, 2006, I was served with notice of the State's intent to seek the death penalty.

4. I have had lengthy conversations with all of my defense counsel. I have reviewed the documentary Discovery. I have discussed the independent investigation conducted by my defense counsel and my investigators.

5. I have also discussed trial procedure with my counsel. I understand that I have a right to contest my guilt. I understand that I am presumed innocent. I understand that I have a right to remain silent.

6. I have discussed the benefits to me if I were to proceed with trial regarding my guilt or innocence.

7. It is my desire and wish to waive my right to a jury trial for guilt. It is my desire and wish to enter a plea of guilty to the Indictments.

8. I do not wish to contest my guilt. I do not want to put the victim's family through the ordeal of a guilt phase trial. I do not want to put the victim's family through the ordeal of the media attention this case will generate. I do not wish to require the State to bring in witnesses to testify to the facts to prove my guilt. I want to save everybody the time and trouble of a guilt phase trial.

9. It is my desire to schedule this guilty plea at the earliest possible moment.

EXHIBIT 63
Appellant
12
1632-13
PENGAD 800-631-6989

STATE OF SOUTH CAROLINA COUNTY OF PICKENS STATE OF SOUTH CAROLINA -vs- JERRY BUCK INMAN Defendant	IN THE COURT OF GENERAL SESSIONS THIRTEENTH JUDICIAL CIRCUIT **AGREEMENT CONFIRMING THE TERMS OF SENTENCING** INDICTMENT NOS. 2006-GS-39-2222-2225

Comes now the State of South Carolina, by and through its attorney, Robert M. Ariail, Solicitor for the Thirteenth Judicial Circuit, Mr. Jim Bannister, Mr. Symmes Culbertson and Mr. John DeJong, attorneys for the defendant and the defendant, Jerry Buck Inman, and hereby enter into this agreement confirming the terms sentencing agreement.

Presently, the defendant has pled guilty on indictments #2006-GS-39-2222-2225. Furthermore, the State is currently pursuing the death penalty.

The parties have agreed to the following:

Defendant agrees and affirms that he is, in fact, guilty of all crimes to which he has pled guilty. The defendant agrees that he will receive a life sentence without parole on the count of Murder, he will receive a consecutive life sentence on the Burglary 1st degree charge, and that he will receive a consecutive 30 year sentence for Criminal Sexual Conduct 1st degree charge, and that he will receive a consecutive 30 year sentence for Possession of a Deadly Weapon During the Commission of a crime.

The defendant agrees to waive any and all appeals, PCR applications, federal habeas petitions and any and all other methods of review of this guilty plea and sentence.

Box14406_8340266

PLAINTIFF'S EXHIBIT 5 PA 8/30/16

EXHIBIT CS Appellant 13

1633

The defendant further agrees that the aggravating factor listed below exists in this case and that it is proven by the evidence.

a. Murder was committed while in the commission of a criminal sexual conduct; 16-3-20 (C)(a)(1)(a);

b. Murder was committed while in the commission of a kidnapping. 16-3-20 (C)(a)(1)(b);

c. Murder was committed while in the commission of a burglary in any degree 16-3-20 (C)(a)(1)(c);

The defendant waives any right to contest the existence of this aggravating circumstance and waives his right to have a jury determine the existence of the aggravating circumstances, his right to have a jury determine the existence of mitigating circumstances, and his right to have a jury determine his sentence.

The defendant understands and agrees that pursuant to Section 16-3-20(A), he is not eligible for parole, community supervision or any early release program, nor is he eligible to receive any work credits, education credits, good conduct credits or any other credits that would reduce the mandatory life imprisonment required by this Section.

The defendant further agrees that in the event the laws should change regarding eligibility for parole, he will not apply for or accept parole, pardon and/or commutation of this sentence, or any other form of early release from his sentences of life imprisonment.

Based upon the foregoing agreement by the defendant and his counsel, the State hereby agrees to withdraw the notice of intent to seek the death penalty and allow the defendant to proceed to sentencing as set forth in the conditions above.

The defendant hereby acknowledges that he understands that any breech or violation of any condition of this agreement by him shall, if the Solicitor of the Thirteenth Judicial Circuit so elects, constitute a nullification of his previously entered sentence of life without parole and entitle the State of South Carolina to return him to the Court of General Sessions of Greenville County for further disposition of this matter and that

the State could at that time once again under those circumstances pursue the death penalty against the defendant.

The defendant further understands that this agreement will be provided to the South Carolina Department of Corrections and the South Carolina Department of Probation, Parole and Pardon Services so that his records will reflect that he is not entitled to probation, parole or pardon and that he has irrevocably waived his rights to any consideration thereof. This agreement will constitute the basis for a finding under Section 24-21-640 of the South Carolina Code of Laws, Amended, that the defendant, Jerry Buck Inman, will NEVER have circumstances that warrant parole.

Furthermore, the defendant, Jerry Buck Inman, hereby acknowledges that

- He is mentally and legally competent.
- He has a full understanding of the terms and provisions of this agreement.
- He has read and understood the entire agreement.
- He has discussed this agreement with his counsel and has had ample opportunity to discuss this agreement with counsel.
- He is fully satisfied with his counsel and has no complaints regarding their representation of him.
- It is the purpose and intent of this agreement that he live the reminder of his natural life in a South Carolina Department of Corrections Penitentiary in secure confinement without the possibility of parole.

Counsel for the defendant, by virtue of their signatures below attest that, to the best of their knowledge, the defendant, Jerry Buck Inman, fully understands the terms of this agreement and that Jerry Buck Inman has made a knowing and intelligent and voluntary decision to enter this agreement and that they have fully discussed this agreement with the defendant and have advised him accordingly.

Box14406_8340268

Robert M. Ariail
Solicitor, Thirteenth Judicial Circuit

Jim Bannister
Attorney for Defendant

Symmes Culbertson
Attorney for Defendant

John DeJong
Attorney for the Defendant

Dated 9.15.2008, 2008

Jerry Buck Inman

Box14406_8340269

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	Case No.: 2006-GS-39-2222-2225
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**EX PARTE FUNDING ORDER**
	)	No: 11
Jerry Buck Inman,	)	
	)	
Defendant.	)	

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2007 AUG 31 P 4:49

This matter is before the Court on the Motion of the Defendant for an Ex Parte Funding Order. The matter is filed under seal. Therefore, this Order shall be filed by the Clerk of Court under seal, and the contents of this Order shall not be revealed without an Order from the Presiding Judge.

Specifically, the Defendant seeks an Order of the Court for authorization of funds to hire a Social Historian Expert. I find the Defendant has shown the services of a Social Historian Expert are reasonably necessary for the representation of the Defendant. *See South Carolina Code* § 16-3-26(C)(1). Counsel for the Defendant has indicated they would like to hire Dr. Marti Loring to perform those services, and I find that she is qualified to do so. Dr. Loring has had experience in testifying in this capacity in Capital Cases in both South Carolina and Georgia. Dr. Loring has over 20 years of experience in a number of fields involving social work and the psychological aspects of violence. Dr. Loring is authorized to bill to the Office of Indigent Defense for reasonably necessary services to the Defendant up to the amount of $5,000.00.

Counsel for the Defendant must provide Dr. Loring a copy of this Order. Both counsel and Dr. Loring should familiarize themselves with the *Office of Indigent Defense Policy Concerning Payment of Fees and Expenses of Appointed Counsel for Indigent Representation in*

EXHIBIT
1637
IGAD 800-631-6989

Counsel for the Defendant must provide Dr. Loring a copy of this Order. Both counsel and Dr. Loring should familiarize themselves with the *Office of Indigent Defense Policy Concerning Payment of Fees and Expenses of Appointed Counsel for Indigent Representation in Criminal Cases.* Both counsel and Dr. Loring should also familiarize themselves with the procedures for the processing of indigent defense vouchers, as set forth in the Supreme Court's Order of September 29, 2006. This Court will not approve payment for any services above the pre-authorized limit. If counsel believes the services above that limit are reasonably necessary, they shall petition the Court for pre-authorization of those additional services. If the Office of Indigent Defense objects to any request for funding, in resolving the objection, the Court will strictly adhere to the OID Policy unless the variation from the Policy has been approved in advance.

Defense counsel shall obtain a clocked copy of this Order and shall immediately forward a copy of the Order to the Office of Indigent Defense and to Dr. Loring. Except as just provided, the contents of this Order shall not be revealed to anyone without an Order from the Presiding Judge.

THEREFORE

IT IS ORDERED that Dr. Loring is authorized to bill the Office of Indigent Defense for reasonably necessary services of time and expenses to the Defendant up to the amount of $5,000.00 in addition to the funds authorized pursuant to Ex Parte Funding Order No. 11.

IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
6/29, 2008

I SO MOVE:

James W. Bannister

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS)
2008 JUL 17 P 4:21
State of South Carolina,) Case No.: 2006-GS-39-2222-2225
)
Plaintiff,)
)
v.) **EX PARTE FUNDING ORDER**
) No: 32
Jerry Buck Inman,)
)
Defendant.)

This matter is before the Court on the Motion of the Defendant for an Ex Parte Funding Order. The matter is filed under seal. Therefore, this Order shall be filed by the Clerk of Court under seal, and the contents of this Order shall not be revealed without an Order from the Presiding Judge.

Specifically, the Defendant seeks an Order of the Court for authorization of additional funds for Dr. Marti Loring who has been previously funded as an expert social historian. On June 30, 2007, the Court authorized funds for Dr. Loring in Ex Parte Funding Order No. 28. That Order is incorporated herein as if set forth verbatim. Between June 30, 2007 and the date of this Order, Dr. Loring has expended considerable efforts to meet with the Defendant's relatives. Dr. Loring has received and reviewed additional records regarding mental health treatment, employment, and education for the Defendant's biological mother, biological father, half-sister and step-siblings. In addition, Dr. Loring has been focusing her efforts on the Defendant's half-sister who was a household member and has the best recollection of events important in the Defendant's life history.

As a result, Dr. Loring has exhausted or is likely to exhaust the funds authorized pursuant to Ex Parte Funding Order No. 28 in the near future. I find the Defendant has shown that the additional services of Dr. Loring are reasonably necessary for the representation of the Defendant. *See South Carolina Code* § 16-3-26(C)(1). Therefore, Dr. Loring is authorized to bill the Office of Indigent Defense for reasonably necessary services of time and expenses to the Defendant up to the amount of $5,000.00 in addition to the funds authorized pursuant to Ex Parte Funding Order No. 28.

Counsel for the Defendant must provide Dr. Loring a copy of this Order. Both counsel and Dr. Loring should familiarize themselves with the *Office of Indigent Defense Policy Concerning Payment of Fees and Expenses of Appointed Counsel for Indigent Representation in Criminal Cases.* Both counsel and Dr. Loring should also familiarize themselves with the procedures for the processing of indigent defense vouchers, as set forth in the Supreme Court's Order of September 29, 2006. This Court will not approve payment for any services above the pre-authorized limit. If counsel believes the services above that limit are reasonably necessary, they shall petition the Court for pre-authorization of those additional services. If the Office of Indigent Defense objects to any request for funding, in resolving the objection, the Court will strictly adhere to the OID Policy unless the variation from the Policy has been approved in advance.

Defense counsel shall obtain a clocked copy of this Order and shall immediately forward a copy of the Order to the Office of Indigent Defense and to Dr. Loring. Except as just provided, the contents of this Order shall not be revealed to anyone without an Order from the Presiding Judge.

THEREFORE

IT IS ORDERED that Dr. Loring is authorized to bill the Office of Indigent Defense for reasonably necessary services of time and expenses to the Defendant up to the amount of $5,000.00 in addition to the funds authorized pursuant to Ex Parte Funding Order No. 28.

IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
7/14, 2008

I SO MOVE:

James W. Bannister

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	Case No.: 2006-GS-39-2222-2225
State of South Carolina, Plaintiff,	)	**EX PARTE FUNDING ORDER** No: 34
v.	)	
Jerry Buck Inman, Defendant.	)	

2008 AUG 19 A 11:01
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter is before the Court on the Motion of the Defendant for an Ex Parte Funding Order. The matter is filed under seal. Therefore, this Order shall be filed by the Clerk of Court under seal, and the contents of this Order shall not be revealed without an Order from the Presiding Judge.

Specifically, the Defendant seeks an Order of the Court for authorization of additional funds for Dr. Marti Loring who has been previously funded as an expert social historian. On June 30, 2008, the Court authorized funds for Dr. Loring in Ex Parte Funding Order No. 32. That Order is incorporated herein as if set forth verbatim. Between June 30, 2008 and the date of this Order, Dr. Loring has expended considerable efforts to meet with the Defendant's relatives. Dr. Loring has received and reviewed additional records regarding mental health treatment, employment, and education for the Defendant's biological mother, biological father, half-sister and step-siblings. In addition, Dr. Loring has been focusing her efforts on the Defendant's half-sister who was a household member and has the best recollection of events important in the Defendant's life history.

As a result, Dr. Loring has exhausted or is likely to exhaust the funds authorized pursuant to Ex Parte Funding Order No. 32 before the case will be complete. I find the Defendant has shown that the additional services of Dr. Loring are reasonably necessary for the representation of the Defendant. *See South Carolina Code* § 16-3-26(C)(1). Therefore, Dr. Loring is authorized to bill the Office of Indigent Defense for reasonably necessary services of time and expenses to the Defendant up to the amount of $5,000.00 in addition to the funds authorized pursuant to Ex Parte Funding Order No. 32.

Counsel for the Defendant must provide Dr. Loring a copy of this Order. Both counsel and Dr. Loring should familiarize themselves with the *Office of Indigent Defense Policy Concerning Payment of Fees and Expenses of Appointed Counsel for Indigent Representation in Criminal Cases.* Both counsel and Dr. Loring should also familiarize themselves with the procedures for the processing of indigent defense vouchers, as set forth in the Supreme Court's Order of September 29, 2006. This Court will not approve payment for any services above the pre-authorized limit. If counsel believes the services above that limit are reasonably necessary, they shall petition the Court for pre-authorization of those additional services. If the Office of Indigent Defense objects to any request for funding, in resolving the objection, the Court will strictly adhere to the OID Policy unless the variation from the Policy has been approved in advance.

Defense counsel shall obtain a clocked copy of this Order and shall immediately forward a copy of the Order to the Office of Indigent Defense and to Dr. Loring. Except as just provided, the contents of this Order shall not be revealed to anyone without an Order from the Presiding Judge.

THEREFORE

IT IS ORDERED that Dr. Loring is authorized to bill the Office of Indigent Defense for reasonably necessary services of time and expenses to the Defendant up to the amount of $5,000.00 in addition to the funds authorized pursuant to Ex Parte Funding Order No. 32.

IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
8/18, 2008

I SO MOVE:

James W. Bannister

The Supreme Court of South Carolina

The State of South Carolina, Prosecutor,

v.

Jerry Buck Inman, Defendant.

Pickens County

Warrant Nos. H017954, H017955 & H017956

ORDER

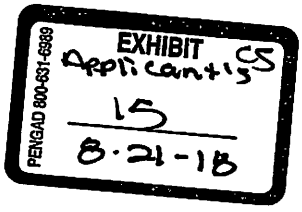
The Honorable John C. Few is vested with exclusive jurisdiction to hear and dispose of the above case. Judge Few shall decide all matters pertaining to the referenced case, including motions to appoint or relieve counsel.

IT IS SO ORDERED.

Jean Hoefer Toal
Chief Justice

June 8, 2006
Columbia, South Carolina

PENGAD 800-631-6989
EXHIBIT CS
Appl. cant
14-A
8-20-18
1040



To: "Jim Bannister" <JimB@bannisterwyatt.com>
Subject: Re: FW: Inman case

Hi Jim,

So we have left it that my attn. suggests that I cannot testify once threatened with criminal prosecution in this court or possibly in other courts if I testify in this case, since you cannot unring a bell and it was on record tha I was to be qualified as a clinical social worker (and subsequently possibly prosecuted in this or other courts).

If solicitor and judge and you agreed to qualify me as a clinical sociologist, then it might be possible for me to testify as such, but that does not meet your needs which you suggest relates to my interviewing Denise involving special interviewing skills of a clinical social worker (not therapy) so that I leave it in your hands and await your suggestions.

Thank you for understanding that The Center is not prepared to incur additional legal expenses in this matter

Thanks, Marti

At 02:39 PM 10/24/2008, you wrote:

> Marti,
> Take a look at this letter. Spoke with Bill Godfrey. Bottom line is that he doesn't want to be involved anymore. I have some ideas on legal counsel. My position is that there is certain mitigating testimony that is under the umbrella of your "social worker" expertise. If nothing else, I believe your treatment of Denise falls under that category. I don't think your testimony in Spartanburg has "solved" the problem, but we need to talk about how you feel on this issue. Everyone is pushing to get back into court on Nov. 17th. Do you have a conflict?
> Jim
>
> **From:** Pickett, Marcia [mailto:MPickett@greenvillecounty.org] **On Behalf Of** Ariail, Bob
> **Sent:** Thursday, October 23, 2008 5:32 PM
> **To:** Judge Miller
> **Cc:** Jim Bannister; John DeJong; Strom, Betty; sculbertson@culbertsonlaw.com
> **Subject:** Inman case
>
> Marcia A. Pickett
> Administrative Coordinator
> Solicitor Robert M. Ariail
> 305 East North St., Suite 325
> Greenville, SC 29601
> (864) 467-8282
> mpickett@greenvillecounty.org
>
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To: cgrahamsc@aol.com,mcnairgraham@aol.com
Subject: Re: License Issue
Cc: donna watts <donnasw1963@yahoo.com>,callen@spartanburgcounty.org,JB@BabbLaw.com,Jack Howle <jdhowlejr@yahoo.com>,"Jack Sinclaire" <jslawyer@bellsouth.net>,notguilty@hargray.com,"brian" <powell@indiana.edu,"Jerry Word" <jword@gacapdef.org>,"Jim Bannister" <JimB@bannisterwyatt.com>,"Sackheim, Michael S." <msackheim@sidley.com>,"Peter Toren" <PToren@kasowitz.com>,"Erin Murphy" <emurphy@nhpd.org>,"lauren Greenwald" <lgreenwa@nhpd.org>,"Susan Wardell" <swardell@bellsouth.net>,Sara Romano <Sara_Romano@fd.org>,"Sam Bauer" <sbauer@bauerlawfirm.com>,Denise deLaRue <denisedelarue@yahoo.com>,"Danny Hyatt" <dhyatt@bannisterwyatt.com>,Cheri Hodson <Cheri_Hodson@fd.org>,Sara Romano <Sara_Romano@fd.org>,joan.peters@emoryhealthcare.org,dudley@ruffalolaw.com,"Harrell Warren" <hmdiff@tampabay.rr.com>,"Alan Rauber" <arauber@mccurdycandler.com>,cgrahamsc@aol.com

9/14/08

TO: Bill Godfrey at Godfrey Law Firm, Greenville SC

Hi Bill,

Thanks for your support. I have conducted research into an issue: The problems of the social work boards in SC and AL seeming to differ from the laws of the states and this probably needs to be solved by professionals/lawyers in those states. SC social work licensing board says, if you testify as a expert witness and as a social worker in SC, then you have to be licensed in SC because you are practicing social work; AL licensing board says, if you call yourself a social worker in AL, then you must be licensed in AL as a social worker. Anyone quoting state law may want to take these state licensing board positions into account.

I currently plan to be offering help in SC and AL as a clinical sociologist. I am a member of the national organization of clinical sociologists and I have a PhD in sociology. I am a nationally board certified expert on traumatic stress by the national board of experts in traumatic stress. That would include causes of trauma and stress, such as family relationships. That is how I currently plan to proceed.

Caring, Marti Loring, PhD

Subject: FW: Inman case
To: "mloring" <mloring@earthlink.net>

Marti,
Take a look at this letter. Spoke with Bill Godfrey. Bottom line is that he doesn't want to be involved anymore. I have some ideas on legal counsel. My position is that there is certain mitigating testimony that is under the umbrella of your "social worker" expertise. If nothing else, I believe your treatment of Denise falls under that category. I don't think your testimony in Spartanburg has "solved" the problem, but we need to talk about how you feel on this issue. Everyone is pushing to get back into court on Nov. 17th. Do you have a conflict?
Jim

From: Pickett, Marcia [mailto:MPickett@greenvillecounty.org] **On Behalf Of** Ariail, Bob
Sent: Thursday, October 23, 2008 5:32 PM
To: Judge Miller
Cc: Jim Bannister; John DeJong; Strom, Betty; sculbertson@culbertsonlaw.com
Subject: Inman case

Marcia A. Pickett
Administrative Coordinator
Solicitor Robert M. Ariail
305 East North St., Suite 325
Greenville, SC 29601
(864) 467-8282
mpickett@greenvillecounty.org

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miller.doc

Subject: RE: Re: License Issue
To: "mloring" <mloring@earthlink.net>

Marti,
I will help in whatever way I can. Right now, it looks like we have a good shot at negotiating a LWOP deal. It looks like you have let all of the attorneys you are working for know that this issue exists. If you need me to talk to them, then let me know.
Jim

——Original Message——
From: mloring [mailto:mloring@earthlink.net]
Sent: Sunday, September 14, 2008 2:11 PM
To: bill@godfreylawfirm.com
Cc: donna watts; callen@spartanburgcounty.org; JB@BabbLaw.com; Jack Howle; Jack Sinclaire; notguilty@hargray.com; brian; Jerry Word; Jim Bannister; Sackheim, Michael S.; Peter Toren; Erin Murphy; lauren Greenwald; Susan Wardell; Sara Romano; Sam Bauer; Denise deLaRue; Danny Hyatt; Cheri Hodson; Sara Romano; joan.peters@emoryhealthcare.org; dudley@ruffalolaw.com; Harrell Warren; Alan Rauber; cgrahamsc@aol.com; Kristen K. Nettles
Subject: Fwd: Re: License Issue

>To: bill@godfreylawfirm.com
>From: mloring <mloring@earthlink.net>
>Subject: Re: License Issue
>Cc: donna watts
><donnasw1963@yahoo.com>,callen@spartanburgcounty.org,jb@babblaw.com,Jac
k
>Howle <jdhowlejr@yahoo.com>,"Jack Sinclaire"
><jslawyer@bellsouth.net>,notguilty@hargray.com,"brian"
><powell@indiana.edu>,"Jerry Word" <jword@gacapdef.org>,"Jim
>Bannister" <jimb@bannisterwyatt.com>,"Sackheim, Michael S."
><msackheim@sidley.com>,"Peter Toren" <ptoren@kasowitz.com>,"Erin
>Murphy" <emurphy@nhpd.org>,"lauren Greenwald"
><lgreenwa@nhpd.org>,"Susan Wardell" <swardell@bellsouth.net>,Sara
>Romano <sara_romano@fd.org>,"Sam Bauer"
><sbauer@bauerlawfirm.com>,Denise deLaRue
><denisedelarue@yahoo.com>,"Danny Hyatt"
><dhyatt@bannisterwyatt.com>,Cheri Hodson <cheri_hodson@fd.org>,Sara
>Romano
><sara_romano@fd.org>,joan.peters@emoryhealthcare.org,dudley@ruffalolaw.
com,"Harrell
>Warren" <hmdiff@tampabay.rr.com>,"Alan Rauber"
><arauber@mccurdycandler.com>,cgrahamsc@aol.com,"Kristen K. Nettles"
><kristen@savlaw.com>
>
>9/14/08
>

>TO: Bill Godfrey Esg. at Godfrey Law Firm, Greenville SC
>
>Hi Bill,
>
>Thanks for your support and agreement with my plan which I will
>describe to you again in the second paragraph. I have conducted
>research into an issue: The problems of the social work boards in SC
>and AL seeming to differ from the laws of the states and this
>probably needs to be solved by professionals/lawyers in those
>states. SC social work licensing board says, if you testify as a
>expert witness and as a social worker in SC, then you have to be
>licensed in SC because you are practicing social work; AL licensing
>board says, if you call yourself a social worker in AL, then you
>must be licensed in AL as a social worker. Anyone quoting state law
>may want to take these state licensing board positions into account.
>
>I currently plan to be offering help in SC and AL as a clinical
>sociologist. I am a member of the national organization of clinical
>sociologists and I have a PhD in sociology. I am a nationally board
>certified expert on traumatic stress by the national board of
>experts in traumatic stress. That would include causes of trauma and
>stress, such as family relationships. That is how I currently plan to
proceed.
>
>
>Caring, Marti Loring, PhD

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recipient is strictly prohibited. If you have received this correspondence in error, please contact the sender and delete the material from any computer.
LEGAL DISCLAIMER

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recipient is strictly prohibited. If you have received this correspondence in error, please contact the sender and delete the material from any computer.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2007 FEB -6 A 11: 21

STATE OF SOUTH CAROLINA	)
	) COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	)
	)
STATE	) 2006-GS-39-2222
	) 2006-GS-39-2223
v.	) 2006-GS-39-2224
	) 2006-GS-39-2225
Jerry Buck Inman,	)
	)
Defendant.	) **ORDER APPOINTING COUNSEL - BANNISTER**

The Defendant is charged with murder, kidnapping, and criminal sexual conduct in the first degree. The State has served Notice of Intention to Seek the Death Penalty. In response to the Court's Order Regarding Counsel of last week, Mr. DeJong has taken the position that two lawyers must be appointed. I agree. Mr. Culbertson consents to the appointment of a second lawyer. After consultation with Mr. DeJong and Mr. Culbertson, and pursuant to *South Carolina Code* § 16-3-26(B)(1), I am appointing James W. Bannister of the law firm of Bannister & Wyatt, LLC as co-counsel for the Defendant.

Mr. Bannister has been admitted to practice in this State since 1995. He has tried innumerable felony criminal cases to verdict, including many felony trials before this Judge, and many murder trials. He is widely regarded by the bench and the bar of this State as an outstanding trial lawyer. His *Curriculum Vitae* includes such accomplishments as Past-President of the South Carolina Association of Criminal Defense Lawyers (2004), and Young Lawyer of the Year, awarded by the American Board of Trial Advocates-S.C. Chapter, in 2004. He has served as attorney of record on a number of Appellate decisions. He has prior experience in death penalty trials. I find that he is imminently qualified to represent the Defendant. This appointment is in

EXHIBIT 63
Applicant
15-A
16500-15
PENGAD 800-631-6989

compliance with the requirements of *South Carolina Code* § 16-3-26(B)(1) and Rule 421(b), SCACR.

This Order does not in any way affect Mr. Culbertson's status as retained counsel.

IT IS SO ORDERED.

John C. Few
Circuit Court Judge

Greenville, South Carolina
February 5, 2007

SOLICITOR, THIRTEENTH JUDICIAL CIRCUIT

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, South Carolina 29601-2185

Robert M. Ariail
Solicitor

Telephone: (864) 467-8282
Facsimile: (864) 467-8623

October 24, 2008

The Honorable Edward W. Miller
Circuit Court
305 E. North St., Suite 219
Greenville, SC 29601

Re: State v. Jerry Inman

Dear Judge Miller:

I am in receipt of your communication that directs the restart of the Inman trial on November 17. That date is acceptable to the State and we will be prepared.

I furthermore assume that the defense will also be able to present Dr. Loring as a witness on that date as she testified on October 22 in a death penalty trial in Spartanburg. She testified as a forensic sociologist and stated that, therefore, she did not need to be licensed in this state. I assume that she could likewise qualify in Pickens County at the restart of this case.

Yours very truly,

/s/ Bob

Robert M. Ariail
Solicitor, Thirteenth Judicial Circuit

RMA:mp

cc: Jim Bannister
John DeJong
Symmes Culbertson
Betty C. Strom

PENGAD 800-631-6989
EXHIBIT CS Applicants
16
8-21-18

The Supreme Court of South Carolina

Jerry Buck Inman, Petitioner,

v.

The State of South Carolina, Respondent.

ORDER

Petitioner seeks a writ of prohibition. The circuit court judge has filed a return opposing the issuance of the writ and the State has filed a return taking no position on the petition.

While we must deny the petition because the standard for issuing a writ of prohibition has not been met,[1] we do have grave concerns over the appropriateness of the order of January 30, 2007, and the refusal of the judge issuing this order to hold a hearing or reconsider the order. Since this case is now assigned to the Honorable Edward W. Miller, we specifically direct him to reconsider the order and take such action as he deems appropriate to

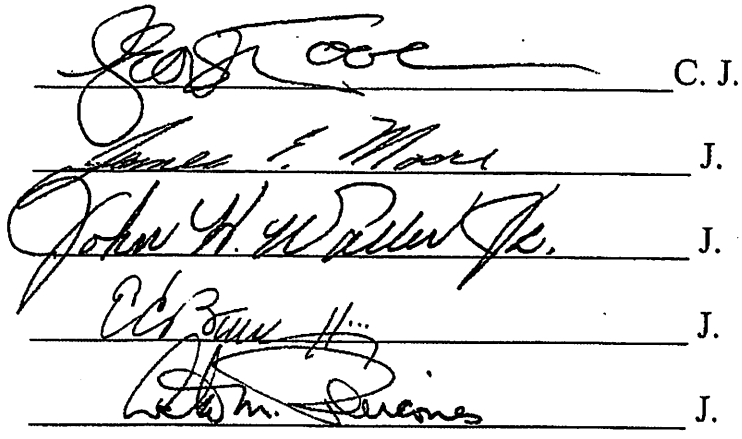
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[1] Ex Parte Jones, 160 S.C. 63d, 158 S.E. 134 (1931)(setting forth standard for the issuance of a writ of prohibition).

EXHIBIT
Applicant
14-A
1653 20-18
PENGAD 800-631-6989

include appointing Symmes Culbertson, Esquire, to represent the indigent petitioner and allowing him to seek compensation from the Office of Indigent Defense.

IT IS SO ORDERED.



C. J.

J.

J.

J.

J.

Columbia, South Carolina

March 21, 2007

SOLICITOR, THIRTEENTH JUDICIAL CIRCUIT

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, South Carolina 29601-2185

Robert M. Ariail
Solicitor

Telephone: (864) 467-8282
Facsimile: (864) 467-8623

February 6, 2009

The Honorable Edward W. Miller
Circuit Court
305 E. North St., Suite 219
Greenville, SC 29601

Dear Judge Miller:

Upon reflection of our meeting regarding the restart date of the Inman proceeding, I would like to share this possibility with the court. Mr. Bannister stated that he saw two issues remaining, the conclusion of the mitigation testimony and the supplementation of the record on the mistrial motion. Since at the time we suspended this matter in September, Mr. Bannister had only the one witness remaining, Dr. Loring, it would seem like the additional witnesses he intends to call, the other 7-11, would be on the issue of the mistrial motion.

Though possibly unorthodox, I suggest that we go forward during the week of February 23rd with the presentation of the mitigation witness, Dr. Loring or her replacement. We could at an earlier or later time address the additional witnesses regarding the mistrial motion. Although I have not checked with the victim's family, I would not be surprised if they were to forgo the testimony regarding the mistrial motion and only attend the actual testimony regarding mitigation. This way, we could still go forward during the week of February 23rd as I would anticipate that testimony taking only a day or so. This way the family would attend as previously scheduled and then the trial could conclude later in their absence.

Yours very truly,

/s/ Bob

Robert M. Ariail
Solicitor, Thirteenth Judicial Circuit

RMA:mp

cc: Jim Bannister
Symmes Culbertson
John DeJong
Betty Strom

EXHIBIT CS
Applicant's
17
6551-18

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	CA. NO.: 2006-GS-39-2222
State of South Carolina,	)	2006-GS-39-2223
	)	2006-GS-39-2224
Plaintiff,	)	2006-GS-39-2225
	)	
v.	)	
	)	**ORDER CLARIFYING APPOINTMENT**
Jerry Buck Inman,	)	**OF COUNSEL**
	)	
Defendant.	)	

CLERK OF COURT
SC
2007 NOV 15 A 10:

The Defendant is charged with murder, kidnapping and criminal sexual conduct in the first degree. The State has served Notice of Intention to Seek the Death Penalty. The undersigned was vested with exclusive jurisdiction to hear and dispose of this case by Order of Chief Justice Toal, dated March 13, 2007. In a prior Order, dated April 16, 2007, this Court appointed James W. Bannister as lead counsel. In that same Order, this Court appointed Symmes Culbertson as co-counsel pursuant to statute. Both attorneys were authorized to seek funds from the Office of Indigent Defense for their services.

John DeJong is currently the Pickens County Public Defender. When notice of the Death Penalty was served on the Defendant, John DeJong represented the Defendant because of his role as the Pickens County Public Defender. After a hearing, the Court appointed James W. Bannister and Symmes Culbertson and requested that John DeJong continue to participate in whatever capacity his limited available time would allow. The Court's ruling was based in part on the fact that John DeJong has a tremendous caseload as Public Defender of Pickens County. The Court's ruling was also based in part on directives received from the South Carolina Supreme Court in its Order dated March 13, 2007.

#1
EH

EXHIBIT CB
Applicant
17-A
8-20-18
1858
PENGAD 800-631-6989

Therefore, both James W. Bannister and Symmes Culbertson are hereby authorized to seek funds pertaining to this appointment from the South Carolina Commission on Indigent Defense. The Office of Indigent Defense is not authorized to compensate any other attorneys in this matter unless instructed to do so by further Order of the Court.

IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
November 15, 2007.

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8282
Telefax: 864-467-8582

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
Robert M. Ariail

February 13, 2009

Mr. James W. Bannister
Attorney at Law
P. O. Box 10007
Greenville, SC 29603

Dear Jim:

Please find enclosed a copy of the following pleading:

State's Motion to Compel Disclosure of Defense's Witnesses and Other Information under SCREV 102, 611, 612 and 705

Certificate of Service

Yours very truly,

Robert M. Ariail
Solicitor, Thirteenth Judicial Circuit

RMA:mp
Enclosure

cc: The Honorable Edward W. Miller

EXHIBIT 65
Applicant's
18
6-21-18
1658

Client	Trans Date	Tmkr	H P	Tcd	Stmt # Rate	Hours to Bill	Amount		Ref #
Client ID 7932.0001 Inman/Jerry Buck (Appt.)									
7932.0001	02/06/2007	5	A	27	150.00	2.00	300.00	Research Attorney Role in Guilty Plea -Ethical Rules w/ Private Co-counsel ID Potential Experts Review Forms for Indigent Fee Vouchers	ARCH
7932.0001	02/06/2007	5	A	22	150.00	0.50	75.00	Conference with John DeJong re: case.	ARCH
7932.0001	02/06/2007	5	A	22	150.00	0.25	37.50	Conference with Caroline Graham, mitigation expert.	ARCH
7932.0001	02/06/2007	5	A	22	150.00	0.50	75.00	Conference with Donna Schwartz-Watts, Forensic Psychiatrist.	ARCH
7932.0001	02/06/2007	5	A	20	150.00	0.50	75.00	Meeting with Danny Hyatt re: preliminary matter; death penalty certification; potential approach to parents; death penalty seminars.	ARCH
7932.0001	02/06/2007	5	A	23	150.00	1.00	150.00	Meeting Symmes Culbertson: Discuss strategy and status	ARCH
7932.0001	02/12/2007	5	A	22	150.00	0.75	112.50	Conference w/ Caroline Graham re: SCDC Records -upcoming meeting -Paige Tarr's previous investigation -Prior meeting w/ Defendant	ARCH
7932.0001	02/12/2007	5	A	22	150.00	1.00	150.00	Conference w/ Bob Arial and Judge Few re: Transfer Conference w/ D. Schwartz-Watts re: Transfer Conference w/ C. Graham re: Transfer Conference w/ Tora Bawley re: Neuropsych Exam Scheduling Conference w/ Judge Few re: Neuropsych Exam Scheduling for February 27	ARCH
7932.0001	02/13/2007	5	A	22	150.00	1.00	150.00	Conference w/ J Dejong re: Move to Pickens -Neuropsych Exam -Conference call w/ Judge and Ariail Conference w/ Donna Schwartz Watts re: same Conference w/ Tora Brawley re: Confirmation of Neuropsych Exam	ARCH
7932.0001	02/20/2007	5	A	20	150.00	1.00	150.00	Meeting w/ Caroline Graham Conference w/ S. Culbertson re: Motion ad Prohibitum	ARCH
7932.0001	02/22/2007	5	A	20	150.00	1.50	225.00	Meeting w/ Symmes Culbertson and John Dejong re: Strategy and Current Duties on Case -Discussed division of the work -Discussed assignment of file management -Discussed client control issues -Discussed victim impact/involvement -Discussed potential move of client to Pickens	ARCH
7932.0001	02/23/2007	5	A	8	150.00	1.00	150.00	Hearing on Move of Inman to Pickens Conference w/ Dejong and Culbertson	ARCH
7932.0001	02/23/2007	5	A	20	150.00	2.00	300.00	Meeting w/ W. Wilkins, B. Kurkendall, BJ Furchess Conference w/ Kurkendall re: Account numbers	ARCH
7932.0001	02/26/2007	5	A	22	150.00	0.25	37.50	Conference Dejong's Office re: Review of Jail facilities in Pickens	ARCH
7932.0001	02/27/2007	5	A	22	150.00	0.25	37.50	Conference w/ C. Graham re: Meeting w/ Inman's mother	ARCH
7932.0001	03/01/2007	5	A	22	150.00	0.50	75.00	Conference w/ Tora Brawley re: Neuropsyche Exam Conference w/ S. Culbertson re: Same	ARCH
7932.0001	03/02/2007	5	A	20	150.00	1.00	150.00	Meeting w/ Jerry Inman in Pickens	ARCH
7932.0001	03/02/2007	5	A	11	150.00	1.50	225.00	Travel to/from Pickens LEC to meet w/ J. Inman Conference w/ S. Culbertson in route re: same	ARCH
7932.0001	03/08/2007	5	A	22	150.00	0.25	37.50	Conference w/ S. Culbertson re: Writ filed in Supreme Court	ARCH
7932.0001	03/19/2007	5	A	22	150.00	0.50	75.00	Conference w/ S. Culbertson re: Judicial Assignment of Case -Meeting w/ Caroline Graham and Inman's Parents Conference w/ N. Miller re: Judicial Assignment of Case	ARCH
7932.0001	03/19/2007	5	A	22	150.00	0.25	37.50	Conference w/ N. Miller re: Judicial Appointment on case Conference w/ S. Culbertson re: same and scheduling attorney meeting	ARCH
7932.0001	03/21/2007	5	A	22	150.00	0.50	75.00	Conference w/ Caroline Graham re: Interviews w/ Family Current Status of Investigation	ARCH
7932.0001	03/27/2007	5	A	20	150.00	0.50	75.00	Meeting w/ N. Miller re: Status	ARCH
7932.0001	03/30/2007	5	A	21	150.00	0.75	112.50	Draft Correspondence to Co-Counsel re: Upcoming Meeting Draft Agenda #1 Draft Checklist #1 Conference w/ D. Schwartz-Watts re: Inman Status in Pickens	ARCH
7932.0001	04/05/2007	5	A	20	150.00	1.50	225.00	Meeting w/ Team: Agenda #1 and Brainstorm Checklist	ARCH
7932.0001	04/11/2007	5	A	22	150.00	0.25	37.50	Conference w/ S. Culbertson re: Follow-up on Obtaining Waiver for Court date 4/16/07	ARCH
7932.0001	04/12/2007	5	A	8	150.00	1.25	187.50	Hearing re: Ex Parte Funding Order No. 1 - Finalize Motion	ARCH

EXHIBIT 45
Applicant
18-A 1659
8-20-18
PENGAD 800-631-6989

Client	Trans Date	Tmkr	H P	Tcd	Stmt # Rate	Hours to Bill	Amount		Ref #
Client ID 7932.0001 Inman/Jerry Buck (Appt.)									
								- Preparation of Documents for Seal Finalize Affidavits for Appointment - Preparation of Documents for Seal Finalize Waiver of Rt. To Appear at 4/16/07 - Preparation of Documents for Seal Hand Delivery of Above to Judge Miller	
7932.0001	04/16/2007	5	A	21	150.00	1.00	150.00	Draft of Checklist.	ARCH
7932.0001	04/16/2007	5	A	40	150.00	1.50	225.00	Miscellaneous fee for travel time to/from Pickens for 04.16.07 hearing.	ARCH
7932.0001	04/16/2007	5	A	54	150.00	0.50	75.00	Appearance at hearing re: appointment of lawyers.	ARCH
7932.0001	04/16/2007	5	A	22	150.00	0.75	112.50	Conference w/ Caroline Graham re: Update on Family Research and certain contact information Draft Order Appointing Counsel Message to Donna Watts re: Social Historian and Prison Adaptability names	ARCH
7932.0001	04/18/2007	5	A	22	150.00	1.50	225.00	Conference w/ S. Culbertson re: Seminar in Ca. Draft Agenda #2 for April 19, 2007 Meeting Mail Letter re: Meeting on Thursday	ARCH
7932.0001	04/30/2007	5	A	1	150.00	0.25	37.50	Review Update from Caroline Graham re: Inman Family Interviews and Records Conference w/ C. Graham re: Same	ARCH
7932.0001	05/03/2007	5	A	20	150.00	0.75	112.50	Meeting w. S. Culbertson re: Victim Strategy and Capital Seminar	ARCH
7932.0001	05/08/2007	5	A	22	150.00	0.25	37.50	Conference w/ Melita Davis re: Discovery Draft Letter re: Same	ARCH
7932.0001	05/08/2007	5	A	21	150.00	0.75	112.50	Draft Checklist #3 and Agenda #3 Conference w/ Vera MacArthur Re: Meeting 5/14 Conference w/ S. Culbertson re: Same Conference w/ J. DeJong re: Same	ARCH
7932.0001	05/10/2007	5	A	22	150.00	0.25	37.50	Conference w/ C. Graham re: Meeting on Monday w/ Inmans' Family	ARCH
7932.0001	05/14/2007	5	A	1	150.00	2.50	375.00	Review of S. Culbertson File Material (Bound Volume)	ARCH
7932.0001	05/14/2007	5	A	20	150.00	2.00	300.00	Meeting w/ Vera MacArthur re: JBI -assessment of her as witness -assessment of her as advocate to convince JBI not to volunteer Meeting w/ Ken MacArthur re: JBI -assessment of him as witness -assessment of him as advocate to convince JBI not to volunteer Conference w/ Pickens LEC to set up apptmt. Travel to/from Pickens Meeting w/ J. DeJong re: Strategy on Victims.	ARCH
7932.0001	05/14/2007	5	A	22	150.00	0.25	37.50	Conference x2 w/ Melita Graham re: Victim's Computer/ Location / Ability to Copy Hard Drive	ARCH
7932.0001	05/15/2007	5	A	27	150.00	1.50	225.00	Research on Arizona v. Ring and issue on non-jury finding of Aggravating Circumstances.	ARCH
7932.0001	05/15/2007	5	A	20	150.00	2.50	375.00	Meeting w/ JBI Travel to/from Pickens LEC	ARCH
7932.0001	05/15/2007	5	A	21	150.00	1.00	150.00	Draft Memorandum On Jury Sentencing Issue	ARCH
7932.0001	05/16/2007	5	A	21	150.00	1.25	187.50	First Draft Memorandum on Jury Sentencing Issue	ARCH
7932.0001	05/16/2007	5	A	22	150.00	0.50	75.00	Conference w/ D. Watts and Caroline Graham re: Meeting w/ Inman - Guilty Plea Negotiation w/ Inman - Niece's influence - Drowning Incident - Media Coverage - Arian Brotherhood/ Tattoos Review E-mails from Graham on Prison Gangs	ARCH
7932.0001	05/16/2007	5	A	20	150.00	2.50	375.00	Meeting w/ JBI Travel to/from Pickens LEC	ARCH
7932.0001	05/17/2007	5	A	21	150.00	1.75	262.50	Second Draft Jury Trial Issue Memo	ARCH
7932.0001	05/19/2007	5	A	20	150.00	1.50	225.00	Full Team Meeting -Review of Mitigation to Date -Review of Jury Trial Issue Legal Research -Review of Stratetgy for Client Control -Set Up of Weekly meetings w/ JBI -Review of Open Items	ARCH

Client	Trans Date	Tmkr	H P	Tcd	Stmt # Rate	Hours to Bill	Amount		Ref #
Client ID 7932.0001 Inman/Jerry Buck (Appt.)									
								-Discussion of Mitigation Seminar (NACDL)	
7932.0001	05/21/2007	5	A	27	150.00	1.50	225.00	Research Interlocutory Appeals	ARCH
7932.0001	05/22/2007	5	A	27	150.00	2.50	375.00	Research on Interlocutory Appeal Research Rt. to use Guilty Plea as mitigation	ARCH
7932.0001	05/24/2007	5	A	22	150.00	0.50	75.00	Conference w/ D. Hyatt re: JBI's request for immediate meeting w/ attorneys Conference w/ Rev. Mike Smith re: Enlisting his help w/ JBI Conference w/ S. Culbertson re: same	ARCH
7932.0001	05/24/2007	5	A	20	150.00	2.00	300.00	Travel to and from Pickens for meeting with client per his request re: mother's potential testimony.	ARCH
7932.0001	06/04/2007	5	A	22	150.00	0.25	37.50	Conference w/ Caroline Graham re: Meeting w/ JBI's sister Denise -Sister is reluctant to oppose death penalty -Meeting w/ JBI and attorney's -Donna Watt's visit last week -Florida Prison Records Request forms	ARCH
7932.0001	06/05/2007	5	A	68			83.99	Miscellaneous advance Upstate Network Group - Copy hard drive of victim's computer	ARCH
7932.0001	06/12/2007	5	A	1	150.00	1.50	225.00	Review Research on ABA rules re: Clients who want death Review US Supreme Court Precedent re: Clients waiving Mitigation	ARCH
7932.0001	06/14/2007	5	A	1	150.00	1.00	150.00	Team Meeting -Update on Conversation's w/ JBI's sister and unwillingness to testify -Update on Florida Prison Records Production -Draft Letter to Records Custodians -Update on Minister's Efforts to Communicate LWOP to JBI -Review of Discovery -Initial Planning for Mitigation Seminar -Review / Discussion of Bren Souers' Interview Post-arrest JBI -Update on Legal Memorandums re: Guilty Plea	ARCH
7932.0001	06/15/2007	5	A	21	150.00	0.50	75.00	Draft of Motion for Immediate Appeal	ARCH
7932.0001	06/18/2007	5	A	27	150.00	2.50	375.00	Research Waiver of Potential Rights - those that you do not have Research Constitutional Right to Plead Guilty	ARCH
7932.0001	06/18/2007	5	A	21	150.00	1.75	262.50	Draft Decision Tree re: Guilty Plea and possible outcomes	ARCH
7932.0001	06/25/2007	5	P	1	150.00	1.00	150.00	Review Statutes on Out-Of State Subpoenas Conference w/ L. Gatlin re: Subpoena Form Conference w/ C. Graham re: NC Dept. Corrections Production of Documents	59
7932.0001	06/25/2007	5	P	21	150.00	1.00	150.00	Draft Agenda #4 Draft To Do List #4	60
7932.0001	06/28/2007	5	P	20	150.00	1.50	225.00	Meeting w/ Team. Discussion of Mitigation to Date -Father Rape -Grandfather Rape -Prison Rape -Mental Illness History -Family Relationships	62
7932.0001	06/29/2007	5	P	68			101.60	Miscellaneous advance Florida Department of Corrections - Copy of inmate Records	2
7932.0001	06/29/2007	5	P	22	150.00	0.75	112.50	Conference w/ Carolyn Graham re: Motivational Speaker for JBI Conference w/ Elsie Johnson re: NC Motion/Order to Obtain NCDC records Conference w/ D Hyatt re: Meeting w/ JBI yesterday Draft #2 Motion for Jury Sentencing	61
7932.0001	07/06/2007	5	P	20	150.00	2.00	300.00	Meeting w JBI re: Waiver of Rights on Statements and Waiver of Rights on DNA Travel to/from Pickens	63
7932.0001	07/09/2007	5	P	109			975.00	Miscellaneous expense - NACDL's Capital Defense Seminar (John DeJong, Jim Bannister, Symmes Culbertson)	3
7932.0001	07/09/2007	5	P	109			325.00	Miscellaneous expense - NACDL's Capital Defense Seminar (Danny Hyatt)	4
7932.0001	07/09/2007	5	P	109			1632.27	Miscellaneous expense - Airline tickets to Seminar in San Francisco (Jim Bannister, Symmes Culbertson, John DeJong)	5
7932.0001	07/09/2007	5	P	109			544.09	Miscellaneous expense - Airline Tickets to Seminar (Danny	6

Client	Trans Date	Tmkr	H P	Tcd	Stmt # Rate	Hours to Bill	Amount		Ref #
Client ID 7932.0001 Inman/Jerry Buck (Appt.)									
7932.0001	07/09/2007	5	P	109			1939.14	Hyatt) Miscellaneous expense - Accommodations while at San Francisco Seminar (Jim Bannister, Symmes Culbertson, John DeJong)	7
7932.0001	07/09/2007	5	P	109			646.38	Miscellaneous expense - Accommodations while at San Francisco Seminar (Danny Hyatt)	8
Total for Client ID 7932.0001					Billable	67.25	16334.97	Inman/Jerry Buck (Appt.) State v. Inman, Jerry Buck	
GRAND TOTALS									
					Billable	67.25	16334.97		

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
Client ID 7932.0001 Inman/Jerry Buck (Appt.)									
32.0001	07/25/2007	5	P	22	120.00	0.25	30.00	Conference w/ G. Bryan Collins Public Defender Wake County re: Forwarding Order to N.C. Judge for Production of Prison Records	114
7932.0001	07/25/2007	5	P	27	120.00	2.25	270.00	Research On 8th Amendment Right to Present Any Mitigation Research On 6th and 14th Amendment Right to Present a full and complete Defense.	115
7932.0001	08/01/2007	5	P	20	120.00	1.00	120.00	Meeting w/ all Attorneys and Investigator -Review of State v. Crisp -Review of State v. Downs -Discussion of distinguishing characteristics	135
7932.0001	08/01/2007	5	P	20	120.00	4.00	480.00	Meeting w/ Attorneys and Investigator -Brainstorming contingency plans after guilty plea -Jury Selection issues -Client's Rt. to Rep. Self -Counselling for Client -Review of Prison Records Mitigation	136
7932.0001	08/02/2007	5	P	20	120.00	1.50	180.00	Meeting w/ Full Team -Brainstorming Mitigation Scenarios -Guilty Plea as mitigation -Prison Abuse -Father's Abuse	137
7932.0001	08/02/2007	5	P	20	120.00	1.00	120.00	Meeting w/ Full Team -Constructing JBI's Story (summary of opening/closing) -Timeline Review from Birth to Arrest	138
7932.0001	08/02/2007	5	P	20	120.00	1.50	180.00	Meeting w/ Full team -Focus on Sexual History of Client -ID resources in other states for Docs -ID potential interviews/witnesses -Research on Attnys for JBI and Psychiatrists	139
7932.0001	08/03/2007	5	P	20	120.00	2.00	240.00	Meeting w/ Full Team -Brainstorming Trial Strategy -Brainstorming Mitigation Topics for Trial -ID all possible Mental Health Issues -Research on Potential Experts	140
7932.0001	08/03/2007	5	P	20	120.00	1.00	120.00	Meeting w/ Full Team -Brainstorming the Client -Keeping Client involved -Developing Better Relationship -Controlling his efforts to Volunteer -Controlling his efforts to dictate strategy	141
7932.0001	08/03/2007	5	P	20	120.00	2.50	300.00	Meeting w/ Full Team -Brainstorming Guilty Plea -Research on Capital Jury Project -Research Validity of Guilty plea strategy -Brainstorming Two-Jury Argument -Research on Contacts and Briefs from Az.	142
7932.0001	08/04/2007	5	P	20	120.00	3.00	360.00	Meeting w/ Atttorneys and Investigator -Organization of Case going forward -Recap of Assignments -Recap of Open Items -Recap of Research Areas -Scheduling Issues -Finalizing Experts	143
7932.0001	08/14/2007	5	P	27	120.00	1.50	180.00	Research on Lethal Injection, Process of Injection and Time Frames, Impact on Family's of Defendant -seeking information to convey to family and defendant to stop the "volunteer" mentality Review of Mitigation Seminar Notes Draft of To/Do list for next meeting.	121
7932.0001	08/16/2007	5	P	21	120.00	2.25	270.00	Draft Agenda #6 in preparation for team meeting Review Mitigation Seminar Brainstorm Draft Checklist #6 in preparation for team meeting E-mail draft Agenda #6 to defense team Conference w/ Rev. Mike Hendsley re: JBI baptism Conference w/ Rus Stetler w/ Federal Capital Pub Defender re: -lethal injection info -two jury argument used in AZ	122

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
Client ID 7932.0001 Inman/Jerry Buck (Appt.)									
								-research/resources on length of time from sentence to execution -research/resource on impact of execution on defendant's family Meeting w/ C. Aiken re: organization of file status.	
7932.0001	08/17/2007	5	P	21	120.00	1.50	180.00	Final Draft First Round of Motions -Motion to Determine Mode of Trial -Motion to Prohibit Police Operative/Jailhouse Snitch -Motion to Produce Police Reports/ Supplementals -Motion to Produce Information Provided by the Public -Motion to Seal Visitation Log -Motion to Set Pre-trial Hearing Date -Motion to Declare Case LWOP First Draft Consent Order to Produce Physical Evidence for Independent Testing	123
7932.0001	08/21/2007	5	P	27	120.00	2.50	300.00	Research -Read/Shephardize People v. Maroun (Colorado Case finding Sentencing Unconstitutional - Same statute as SC Research -New Mexico v. Stanley Bedford (Reviewed On-line Information about Judge Granting Two juries) -State v. Christopher Pittman, Op. No. 26339 (Issue Regarding Questioning Jurors-Goes to Two Jury Argument) Research -New Mexico Public Defender who handled case above to obtain Memo's, Case Law Etc. Researched Law Review Articles on SC, Death Penalty Jury data -Obtained following list: 86 Cornell L.R. 397 (SC Data); 83 Cornell L.R. 1476 (SC Data); 30 Journal Legal Studies 277 (SC Data) 44 Buff. L. Rev. 339 (SC Data); 79 Cornell L. Rev.1 (SC Data); 98 Cornell L. Rev. 1538 (SC Data); 75 N.Y.U.L. Rev. 26 (SC Data)	124
7932.0001	08/21/2007	5	P	20	120.00	1.00	120.00	Meeting w/ Judge Miller, Defense Team and Prosecutors re: Motions filed August 17, September 14 Hearing Date, and Trial Date	125
7932.0001	08/21/2007	5	P	21	120.00	1.75	210.00	Draft of Order Sealing Motion to Determine Mode of Trial Draft of Proposed Order to Close 9/14 Hearing to Public Final Draft of Motion to Close 9/14 Hearing to Public Hand Delivery to Judge E-mail Delivery to All Parties	126
7932.0001	08/22/2007	5	P	21	120.00	3.00	360.00	Draft Order of Protection for 9/14 Hearing Draft of Letter to Thomas O'Toole Attorney for Souers Draft of Funding for Dr. Bennett (Forensic Expert) Draft of Funding for Marti Loring (Social Expert) Draft of Funding for Pam Leonard (Reconciliation Expert) Draft of Funding for Jim Aiken (Adaptability) Draft of Motion to Return Inman's Vehicle E-mail Correspondence w/ Pam Leonard re: Letter to O'Toole x2	127
7932.0001	08/23/2007	5	P	22	120.00	0.50	60.00	Conference w/ Dr. Brian O'Connor re: counselling services for JBI - fees - privileged information / rules of conduct	128
7932.0001	08/23/2007	5	P	27	120.00	0.75	90.00	Research Juror Biases in S.C. -Review of Americas Death Penalty by Stephen Garvey -Copy of Empirical Data from Juror Surveys	129
7932.0001	08/24/2007	5	P	20	120.00	0.75	90.00	Meeting w/ Attorneys - Discussed Counselor for JBI - Discussed Leonard's Letters to Souer Family and Attorney - Discussed Investigation into Tiffany Souer's participation w/ on-campus ministries - Confirmed clerk for the semester from Georgia for research purposes - Discussed physical evidence to be tested and status of getting it to our expert	130

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
Client ID 7932.0001 Inman/Jerry Buck (Appt.)									
								- Discussed getting Defendant's vehicle	
7932.0001	08/24/2007	5	P	27	120.00	3.50	420.00	Research -Read State v. Bowman 623 SE2d 378 -Read Skipper v. SC 476 US 1 -Read Eddings v. Ok. 455 US 104 -Read State v. Schafer 531 SE2d 524 -Read Payne v. Tenn 501 US 808 -Read State v. George, 323 SC 496 -Read Holmes v. SC 547 US 319 Incorporated above into Memorandum on Mode of trial	131
7932.0001	08/27/2007	5	P	27	120.00	3.25	390.00	Research on Death Penalty Juries - Guilty Plea Impact/Valid Trial Strategy -Reviewed Florida v. Nixon 543 US 175 -Reviewed America's Death Penalty (2003) -Reviewed 98 Columbia Law Review 1538 -Reviewed 83 Cornell Law Review 1476 -Reviewed 83 Cornell Law Review 1557 -Incorporated Above into Memorandum on Mode of Trial	132
7932.0001	08/30/2007	5	P	27	120.00	1.50	180.00	Research Psychiatric Diagnosis from Schwartz Watts -DSM findings required	134
7932.0001	08/31/2007	5	P	27	120.00	5.00	600.00	Research On Jury Sentencing Issue -Amicus Brief in Montour -Blakely v. Washington -Colwell v. Nev. -Corbitt v. NJ. -Ill. v. Altom -La. v. Louviere -Leone v. Ind. -SC v. Brouwer -US v. Jackson -58 NYU L. Rev. 299 Draft Memo on Jury Sentencing to Include Above Re-Draft Meeting w/ N. Miller re: Funding -Reconciliation Expert -Rehabilitation Expert -Social Historian -Forensic Examination Conf. w/ Sol. re: Items for Forensic Testing E-mail to J. Mauldin re: Indictment Motion (aggravating factors)	133
7932.0001	09/10/2007	5	P	21	120.00	5.50	660.00	Rework Draft Of Memorandum to Determine Mode of Trial -Distinguish Downs -Distinguish Crisp -Incorporate Blakely v. Washington -Incorporate Apprendi -Incorporate Booker -Research other States Dealing w/ Captial Jury Sentencing -Incorporate Balkely NACDL Amicus	144
7932.0001	09/10/2007	5	P	21	120.00	6.00	720.00	Re-Draft Motion to Determine Mode of Trial -Rework South Carolina Law Section -Shephardize Crisp and Downs for Other State Law -Rework Other State Law Section -Rework Transition paragraphs throughout Brief -Rearrange Outline to Fix Transition Problems on Argument -Research 14th Am. Due Process Issue -Research "Evading Review" Argument -Research Effect of Sol's Rights under Rule 14 SC Crim Proc. -Research on Rt. to Plead Guilty	160
7932.0001	09/11/2007	5	P	21	120.00	4.00	480.00	Re-Draft Memorandum on Mode of Trial -Clean Up South Carolina Law Section -Clean Up Transition Paragraphs -Re-Work Blakely Section	161
7932.0001	09/12/2007	5	P	21	120.00	1.50	180.00	Final Draft Memorandum on Mode of Trial -Final Changes -Cover Letter -Spell Check	162
7932.0001	09/13/2007	5	P	23	120.00	2.00	240.00	Preparation for Argument on Mode of Trial	163

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
Client ID 7932.0001 Inman/Jerry Buck (Appt.)									
								-Mock Argument w/ R. Vieth, F. Eppes, B. Nettles, C. Scalzo, D. Hyatt, S. Culbertson, J. DeJong, C. Graham -Follow-up Discussion	
7932.0001	09/14/2007	5	P	23	120.00	1.50	180.00	Preparation for Argument on Mode of Trial -Dry Run -Incorporate Argument on Fed. Law -Incorporate Argument on Const. Interpretation of SC Law/Cases	164
7932.0001	09/14/2007	5	P	22	120.00	0.25	30.00	Conference w/ JBI to prepare him for hearing	165
7932.0001	09/14/2007	5	P	18	120.00	2.00	240.00	Court appearance Mode of Trial Argument -Follow-up Conference w/ JBI on what happened.	166
7932.0001	09/17/2007	5	P	22	120.00	0.25	30.00	Conference w/ P. Leonard re: Souers Update -Email correspondence x 2	167
7932.0001	09/18/2007	5	P	21	120.00	0.25	30.00	Draft Final Order of Appointment	168
Total for Client ID 7932.0001					Billable	72.00	8640.00	Inman/Jerry Buck (Appt.) State v. Inman, Jerry Buck	
GRAND TOTALS									
					Billable	72.00	8640.00		

Detail Fee Transaction File List

Bannister & Wyatt, LLC

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
Client ID 7932.0001 Inman/Jerry Buck (Appt.)									
7932.0001	10/04/2007	5	A	20	120.00	1.00	120.00	Meeting w/ Attorneys -Discussed Update on Mitigation Investigation - List of Possible Psychiatrist/Treating Physicians from NC -Discussed Proposed Language in the Order on First Motions -Discussed Filing of Notice of Appeal -Discussed Attacking Lethal Injection -New Supreme Court Case -Board of Medical Examiners	ARCH
7932.0001	10/09/2007	5	A	2	120.00	0.50	60.00	Correspondence w/ Betty Strom re: Proposed Order, Proposed Motion to turn over Inman's Vehicle, Physical Evidence Drafted Language for Order	ARCH
7932.0001	11/13/2007	5	A	22	120.00	0.25	30.00	Conference w/ Pam Blume x2 re: Souers Contact/Update	ARCH
7932.0001	11/19/2007	5	A	21	120.00	4.00	480.00	Draft Memorandum Supporting Interlocutory Appeal Research Rule 14 and cases re: Sol.' s Rt. to prohibit guilty plea.	ARCH
7932.0001	11/20/2007	5	A	21	120.00	4.00	480.00	Final Draft Memorandum Supporting Interlocutory Appeal.	ARCH
7932.0001	11/21/2007	5	A	34	120.00	1.00	120.00	Motion Filing in Pickens County- Notice of Appeal/ Memo Supporting Interlocutory Appeal -Copies to Opposing Counsel and Co-counsel.	ARCH
7932.0001	11/26/2007	5	A	20	120.00	1.00	120.00	Meeting w/ JBI re: Notice of Appeal and Memo Trial Strategy	ARCH
7932.0001	11/26/2007	5	A	108	120.00	1.00	120.00	Mileage and travel to/from Pickens	ARCH
7932.0001	12/14/2007	5	A	1	120.00	2.00	240.00	- Review of indictment for Possession of Contraband by Prisoner - Req. preliminary hearing - Notice of Representation - Rule 5 request - Conference w/ Symmes Culbertson and Danny Hyatt re: same	ARCH
7932.0001	12/14/2007	5	P	1	120.00	1.00	120.00	Cut and paste template for Brief of Appellant on Interlocutory Appeal.	296
7932.0001	12/27/2007	5	P	22	120.00	3.25	390.00	Conference w. Potential Counsellor for Inman Conference w/ PLEC re: Appointment for Counsellor tomorrow Research for Interlocutory Appeal -Bradford v. Schumpf -Due Process Election of Constitutional Choices -Organize Brief Outline	297
7932.0001	12/28/2007	5	P	21	120.00	3.00	360.00	Initial Draft Issues I-III -8th Amendment Right to Present Guilty Plea -14th Amendment Right to Complete Defense -6th Amendment Right to Jury Trial	298
7932.0001	12/29/2007	5	P	21	120.00	3.00	360.00	Initial Draft Issues IV-V -Unconstitutional Election of Rights -Rule 14(b) Misapplication	299
7932.0001	12/31/2007	5	P	21	120.00	3.00	360.00	2nd Draft Issues IV-V -Research History of Rule 14(b) -Research Citations for Unconstitutional Election	300
7932.0001	01/01/2008	5	P	21	120.00	3.00	360.00	2nd Draft Issues I-III 3rd Draft Issues IV-V	301
7932.0001	01/02/2008	5	P	21	120.00	7.00	840.00	3rd Draft Issues I-III 4th Draft Issues I-V Final Draft Initial Brief -Table of Authorities -Table of Contents -Shepherdize Citations Record on Appeal Certification Certificates of Mailing Affidavit of Service Cover Letters and Copies	302
7932.0001	01/10/2008	5	P	27	120.00	2.50	300.00	Research Harmless Error Analysis Team Meeting w/ Lawyers Review of Denial of Interlocutory Appeal	303
7932.0001	01/30/2008	5	P	22	120.00	0.50	60.00	Conference w/ J. Miller's Office re: Status Conf. -Message to co-counsel Culbertson -Message to co-counsel DeJong	312
7932.0001	01/30/2008	5	P	22	120.00	0.50	60.00	Conference w/ D. Hyatt re: Producing Copies of Prison Records to M Loring	313
7932.0001	02/04/2008	5	P	20	120.00	2.00	240.00	Meeting w/ JBI re: Status of Case -View alleged shank at PCLEC -Conference w/ Officer that confiscated same -travel to/from Pickens	314
7932.0001	02/13/2008	5	P	21	120.00	0.25	30.00	Draft Correspondence re: Juror Polling Questions Review Juror Polling Questions Conference w/ B. Strom re: same	315
7932.0001	02/21/2008	5	P	27	120.00	1.30	156.00	Research on Dissociative Fugue Research on Negative Introjects	316
7932.0001	02/21/2008	5	P	22	120.00	0.50	60.00	Conference w/ Lisa Mills re: last visit w/ JBI Conference w/ Dr. Friesen at 818/893-4463 re: dissociative	317

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
Client ID 7932.0001 Inman/Jerry Buck (Appt.)								fugues and related mental illnesses	
'932.0001	02/29/2008	5	P	22	120.00	1.00	120.00	Conference w/ Lisa Mills re: Meeting w/ JBI and Progress	318
/932.0001	03/03/2008	5	P	21	120.00	0.75	90.00	Draft Documents for Mitigation CLE -Theory of Case -Crime Scene Facts -Expert Opinions to Date	319
7932.0001	03/03/2008	5	P	22	120.00	0.25	30.00	Conference J. DeJong re: Mitigation CLE	320
7932.0001	03/14/2008	5	P	20	120.00	3.50	420.00	Travel to and from Pickens for meeting with Jerry Buck Inman and Lisa Mills regarding status of the case and update.	321
7932.0001	03/17/2008	5	P	27	120.00	2.00	240.00	Research Petition for Certiorari.	220
7932.0001	03/18/2008	5	P	21	120.00	2.50	300.00	Draft of Petition 2nd -Research Mootness/Ripeness Issue	222
7932.0001	03/21/2008	5	P	21	120.00	2.50	300.00	Draft of Petition -Split in Authority Research	221
7932.0001	03/27/2008	5	P	27	120.00	4.00	480.00	Research Draft Waiver Issue/ Harmless Error Issue	223
7932.0001	03/28/2008	5	P	27	120.00	4.50	540.00	Research Dissociative Identity Disorder Research Multiple Personality Disorder -adolescent sexual abuse -amnesia event: necessity for diagnosis Meeting w/ Lisa re: JBI meeting	224
7932.0001	03/31/2008	5	P	27	120.00	1.00	120.00	Research Religious References in Court Room	225
7932.0001	04/01/2008	5	P	20	120.00	1.00	120.00	Meeting w/ Symmes Culbertson re: Update on Lisa Mills' progress	226
7932.0001	04/07/2008	5	P	1	120.00	0.50	60.00	E-mail conversation with Dr. Friesen re: Potentially retaining as expert	227
7932.0001	04/07/2008	5	P	22	120.00	0.50	60.00	Conference w/ Dr. Bennett re: DNA testing	228
7932.0001	04/08/2008	5	P	1	120.00	1.00	120.00	Review Florida Prison Medical Records Notebook #1	229
7932.0001	04/10/2008	5	P	1	120.00	1.00	120.00	Review Florida Prison Records Vol. 1 -Completed today	230
7932.0001	04/14/2008	5	P	1	120.00	3.00	360.00	Review Florida Prison Records Notebook #2	231
7932.0001	04/15/2008	5	P	1	120.00	3.00	360.00	Review Florida Prison Record Notebook #3	232
7932.0001	04/16/2008	5	P	20	120.00	2.50	300.00	Meeting with Danny Hyatt, investigator, and Symmes Culbertson, co-counsel.	236
7932.0001	04/17/2008	5	P	1	120.00	1.75	210.00	Review of ABA Guidelines for Standard of Care in Death Penalty Cases.	237
'932.0001	04/17/2008	5	P	20	120.00	3.00	360.00	Meeting with group: Culbertson, co-counsel, Hyatt, investigator, and Carolyn Graham, mitigation investigator regarding brainstorming themes and theories of mitigation and review of bad and good facts.	238
7932.0001	04/17/2008	5	P	20	120.00	3.00	360.00	Meeting with group: Culbertson, co-counsel, , Hyatt, investigator, and Carolyn Graham, mitigation expert regarding brainstorming a plea approach to Souers' family. Brainstorming defendant's acceptance of a plea.	239
7932.0001	04/18/2008	5	P	1	120.00	3.00	360.00	Group review of Current Mental Health issues. Research other experts: Dissociative Identity Disorder, Associative Disorder and Review of psychological pathology.	240
7932.0001	04/18/2008	5	P	20	120.00	2.00	240.00	Meeting with group: Culbertson, co-counsel, Hyatt, investigator, and Graham, mitigation expert, regarding brainstorming cultural issues in case. Contract between Souer's and Inman. Brainstorm the jurors we want in Pickens.	241
7932.0001	04/18/2008	5	P	1	120.00	2.00	240.00	Group review of Law on Psychological Evaluations.	245
7932.0001	04/19/2008	5	P	1	120.00	1.00	120.00	Group review Appellate Issues/Law Governing maintenance of the objections.	242
7932.0001	04/19/2008	5	P	1	120.00	1.00	120.00	Group review of ABA Guidelines on investigating. Make To Do list for compliance.	243
7932.0001	04/19/2008	5	P	20	120.00	2.00	240.00	Meeting with group: Culbertson, co-counsel, Hyatt, investigator, and Graham, mitigation expert regarding brainstorming the integration of guilt-phase and penalty-phase.	244
7932.0001	04/21/2008	5	P	22	120.00	0.75	90.00	Conference w/ Dr. Jim Friesen re: Funding Conference w/ Dr. Jim Friesen re: Fla. Medical Records	233
7932.0001	04/21/2008	5	P	22	120.00	1.50	180.00	Draft Ex Parte Funding Order #21 Psychologist Expert Conference w/ Patton Adams Conference w/ Ned Miller Conference w/ Dr. Friesen	234
7932.0001	04/23/2008	5	P	1	120.00	2.50	300.00	Review Florida Prison Notebook #3: Completed today Correspondence w/ M. Loring, Jim Friesen, Lisa Mills re: Psychological Issues/ Mitigation Info.	235
7932.0001	04/24/2008	5	P	20	120.00	3.50	420.00	Meeting w/ Team -Update on Interview w/ JBI Sr. -Update on Catholic Church Victim Outreach -Update on Dr. Friesen's funding and upcoming Meeting -To Do List discussed -Ken and Vera background Checks -Background Check on Info from JBI Sr. -Background Check on JBI's Institutions -Change of Venue Motion Correspondence w/ Dr. Friesen and Lisa Mills x3 Arranging Meeting	262

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount	Ref #
Client ID 7932.0001 Inman/Jerry Buck (Appt.)								
							-Set Up w/ Pickens LEC -Hotel /Flight Accomodations Review of ABA Guidelines re: Lead Counsel -Interviews with all Medical Personnell -Assignment of Task -Dvision of Labor	
Total for Client ID 7932.0001					Billable	107.05	12,846.00 Inman/Jerry Buck (Appt.) State v. Inman, Jerry Buck	
GRAND TOTALS								
					Billable	107.05	12,846.00	

grown #15

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
Client ID 7932.0001 Inman/Jerry Buck (Appt.)									
7932.0001	04/25/2008	5	A	21	120.00	1.50	180.00	Draft Juror Questionnaire	ARCH
7932.0001	04/28/2008	5	A	22	120.00	1.00	120.00	Conference w/ Marti Loring re: Status	ARCH
7932.0001	05/01/2008	5	A	21	120.00	1.50	180.00	Draft #2 Juror Questionnaire	ARCH
7932.0001	05/01/2008	5	A	1	120.00	1.00	120.00	Research Jury Voir Dire -Review Memorandum of Law from Jury Voir Dire Training Seminar	ARCH
7932.0001	05/01/2008	5	A	20	120.00	1.00	120.00	Attorney Meeting: Create To/Do List -Discussion of Prosecutions Most likely Guilt Phase Witnesses -Discussion of Prosecutions Most Likely Penalty Phase Witnesses -Discussion of D. Watts Testimony -Review Neuropsyche update -Discussion of Upcoming Interviews w/ Experts	ARCH
7932.0001	05/02/2008	5	A	20	120.00	1.00	120.00	Meeting w/ Lisa Mills re: JBI Counselling Session Today	ARCH
7932.0001	05/05/2008	5	A	20	120.00	2.00	240.00	Meeting w/ Dr. Friesen and Lisa Mills -Treatment of Jerry and Progress at Meeting -Discussed New Information about past and crime -Discussed Future Meetings and Reports to be generated	ARCH
7932.0001	05/06/2008	5	A	1	120.00	0.50	60.00	Meeting Dr. Friesen and Lisa Mills -Discussed Meeting on this Date -Discussed Reports and Future Meeting -Discussed New Info about childhood and crime	ARCH
7932.0001	05/07/2008	5	A	1	120.00	2.00	240.00	Prepare for Hearing on Change of Venue Finalize Voir Dire Questionnaire	ARCH
7932.0001	05/08/2008	5	A	18	120.00	2.00	240.00	Court Appearance-Change of Venue Hearing/Juror Questionnaire To/From Pickens Travel Time	ARCH
7932.0001	05/09/2008	5	A	20	120.00	1.00	120.00	Meeting w/ JBI prior to Change of Venue Hearing -Discuss Trial Strategy -Update on Case	ARCH
7932.0001	05/09/2008	5	A	20	120.00	1.00	120.00	Meeting w/ Betty Strom to Review Questionnaire	ARCH
7932.0001	05/12/2008	5	A	20	120.00	1.50	180.00	Meeting w/ Dr. Friesen and Lisa Mills re: -interview with JBI and with Inman's Parents -discussed treatment options going forward -discussed juvenile history	ARCH
7932.0001	05/12/2008	5	A	27	120.00	1.00	120.00	Research SC Caselaw on Jury Voir Dire	ARCH
7932.0001	05/13/2008	5	A	20	120.00	1.00	120.00	Meeting w/ Dr. Friesen and Lisa Mills -Debrief on JBI meeting -Debrief on meeting w/ JBI's family -Strategy for next session	ARCH
7932.0001	05/13/2008	5	A	20	120.00	2.50	300.00	Meeting w/ Dr. Loring, Carolyn Graham, and D. Hyatt -Update on information from JBI and Family	ARCH
7932.0001	05/14/2008	5	A	20	120.00	1.00	120.00	Meeting w/ Lisa Mills re: Information on CSC	ARCH
7932.0001	05/14/2008	5	A	1	120.00	1.00	120.00	Research Jury Voir Dire -Preparation for Voir Dire Seminar	ARCH
7932.0001	05/16/2008	5	A	23	120.00	4.00	480.00	Voir Dire Draft of Initial Juror Questions Practice Voir Dire on Volunteers x2	ARCH
7932.0001	05/16/2008	5	A	108	120.00		344.45	Mileage to and from the seminar in Virginia.	ARCH
7932.0001	05/17/2008	5	A	23	120.00	4.00	480.00	Voir Dire Draft of Aggravator/Mitigator Follow-up Questions Pracitce on Volunteers x2	ARCH
7932.0001	05/18/2008	5	A	23	120.00	2.50	300.00	Voir Dire Draft Teach Respect/ Insulate and Isolate Jurors Practice on Volunteers x2	ARCH
7932.0001	05/22/2008	5	A	21	120.00	0.75	90.00	Draft Funding Order Re-authorization for Lisa Mills Dr. Friesen Costs	ARCH
7932.0001	05/23/2008	5	A	6	120.00	0.50	60.00	Ex Parte Funding Hearing	ARCH
7932.0001	05/27/2008	5	A	1	120.00	2.00	240.00	Review Objections from State re: Juror Questionnaire Draft Response Research Constitutional Law on Objectionable Portions	ARCH
7932.0001	06/02/2008	5	A	22	120.00	0.50	60.00	Conference w/ Dr. Friesen re: Scheduling Second set of Trips x2	ARCH
7932.0001	06/02/2008	5	A	1	120.00	3.50	420.00	Review and Response to Sol.'s Objections to Questionnaire Memorandum Draft #1	ARCH
7932.0001	06/05/2008	5	A	20	120.00	1.00	120.00	Meeting w/ Pathologist	ARCH
7932.0001	06/05/2008	5	A	20	120.00	1.00	120.00	Team Meeting - Updating each member on progress M. Loring, S. Culbertson, D. Hyatt, C. Graham	ARCH

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
Client ID 7932.0001 Inman/Jerry Buck (Appt.)									
7932.0001	06/09/2008	5	A	20	120.00	2.50	300.00	Meeting w/ Lisa Mills and Dr. Friesen Calendar Events for Next 3 months Review To/Do List-Update	ARCH
7932.0001	06/10/2008	5	A	21	120.00	2.00	240.00	Review and Re-Draft Memorandum for Voir Dire	ARCH
7932.0001	06/11/2008	5	A	22	120.00	1.50	180.00	Conference w/ J. Blume re: Expert for Male Survivor Sexual Trauma Conference w/ T. Norris re: Same Draft Affidavit for Marti Loring re: Same	ARCH
7932.0001	06/11/2008	5	A	22	120.00	0.25	30.00	Conference w/ S. Culbertson re: Prep for Aiken Meeting	ARCH
7932.0001	06/12/2008	5	A	20	120.00	2.50	300.00	Conference w/ J. Aiken re: Expert Testimony Meeting w/ Team: Culbertson, Graham, Hyatt	ARCH
7932.0001	06/13/2008	5	A	22	120.00	1.50	180.00	Conference w/ Marti Loring re: Male Survivors of Sexual Abuse Conference w/ C. Graham re: Meeting w/ Family Members in Tennessee Review Jury Studies on Capital Cases for Integration into Motions/Objections	ARCH
7932.0001	06/17/2008	5	A	21	120.00	2.50	300.00	Draft Comilation for 300.14 Diagnosis Criteria -Review Dr. Friesen's Notes -Conf. w/ D. Hyatt -Confr. w/ C. Aiken	ARCH
7932.0001	06/23/2008	5	A	20	120.00	7.00	840.00	Travel to Columbia Meeting w/ Dr. Watts re: Information/Treatment/Documents Travel from Columbia Meeting w/ Dr. Friesen and Lisa Mills	ARCH
7932.0001	06/24/2008	5	P	20	120.00	4.50	540.00	Meeting w/ S. Culbertson Meeting w/ Lisa Mills -Review of Meeting w/ Donna Watts -Review of Victim Impact Evidence Draft Motion in Limine re: Crime Scene Photos and Autopsy Photos	359
7932.0001	06/26/2008	5	P	20	120.00	2.00	240.00	Meeting w/ S. Culbertson re: Division of Workload -ID Likely Witnesses for State and Defense -ID and split Motions to be Made	360
7932.0001	06/27/2008	5	P	1	120.00	2.00	240.00	Meeting w/ Dr. David Price -Discussed DID diagnosis -Discussed Institutional Failure Issues -Discussed Criminal Sexual Assault Survivors	361
7932.0001	06/27/2008	5	P	27	120.00	1.50	180.00	Research Subpoena of JBI's Niece in Navy -Review of Military Regs on Subpoena of Sailors	362
7932.0001	06/28/2008	5	P	21	120.00	2.50	300.00	Draft Out of State Subpoena and Order for -Ken McArthur -Ashley Baker -Denise Inmon -Dr. Roderick Hall -Mr. and Mrs. Souers Research County Courts for -Tallahassee, Fla. -St. Louis, Mo. -Dandridge, Tenn. Research Reciprocal Witness Statutes -Fla. -Tenn. -NC -Mo.	363
7932.0001	06/30/2008	5	P	21	120.00	2.75	330.00	Draft Dr. Loring Re-authorization Order Draft Dr. Price Funding Order Final Draft Out of State Subpoena Order for Judge Review Dr. Friesen's Notes from June 23, 24th Meeting	364
7932.0001	06/30/2008	5	P	22	120.00	0.50	60.00	Conference w/ M. Loring re; Putting Denise Inmon under subpoena	365
7932.0001	07/01/2008	5	P	1	120.00	0.50	60.00	Conference w/ L. Mills re: JBI's permission to put Denise Inmon under subpoena	366
7932.0001	07/01/2008	5	P	1	120.00	0.75	90.00	Research SPECT scans as possible evidence of brain misfunction	367
7932.0001	07/02/2008	5	P	1	120.00	2.50	300.00	Reviewed Summary of All Published Capital Cases by Category; Teresa Norris	368
7932.0001	07/03/2008	5	P	1	120.00	5.00	600.00	Draft Trial Motions	369

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
Client ID 7932.0001 Inman/Jerry Buck (Appt.)									
								-Prior Unadjudicated Misconduct -Prior Crimes -Victim Impact Notice -Aggravation Notice -Victim Impact on Un-related Crimes	
7932.0001	07/07/2008	5	P	27	120.00	7.00	840.00	Summary and Review of Lisa Mills Notes Research on Interfering with witnesses Conf. with OToole's Sec. x2 Conf. w/ S. Culbertson re: above Conf. w/ C. Crantford re: voir dire practice Conf. w/ C. Graham	370
7932.0001	07/08/2008	5	P	1	120.00	7.00	840.00	Summary and Review of Dr. Friesen's Notes Left Message for Michael Truesdale re: Classification of JBI Left Message for OToole re: Meeting to discuss case issues Meeting w/ Dr. Friesen and L. Mills re: Treatment Sessions today and yesterday Meeting w/ D. Hyatt re: update / status on records, witness interviews	371
7932.0001	07/09/2008	5	P	19	120.00	8.00	960.00	Conf. w/ Tallahassee PD re: Supoena for Dr. Hall Conf. w/ Dandridge PD re: Subpoena for Family Finalize review of Summary of Dr. Friesen Meeting w/ D. Hyatt re:same Draft Rule to Show Cause re: -Dr. Hall -K. McArthur -Rev. M. Hendsley -Denise Baker Left Message w/ M. Truesdale re: Custody Status Conf. S. Culbertson re: Team Meeting Conf. C. Aiken re: Organization of Prison Records Draft Amended Gag Order Draft Amended Funding Order Dr. Price Conf. Law Clerk re: Above	372
7932.0001	07/10/2008	5	P	23	120.00	8.00	960.00	Hand Delivery of Clarification of Gag Order/ Amended Order for Dr. Price Meeting w/ S. Culbertson re: Dr. Price / Dr. Friesen and Guilty Plea Issues Meeting w/ Full Team re: Trial Strategy / Assignment of Tasks for Trial Preparation Voir Dire Practice at Crowne Plaza 5 Jurors w/ Full Team	373
7932.0001	07/11/2008	5	P	23	120.00	5.00	600.00	Final Draft of Motions -Victim Impact -Notice of Aggravation -Unadjudicated Crimes -Victims of Unadjudicated Crimes -Victim Impact of Victims of Other Crimes -Prior Crimes -Victims Rule 5 Material -Schedule a Hearing Meeting w/ Dr. Price	374
7932.0001	07/15/2008	5	P	2	120.00	5.00	600.00	Correspondence w/ clerk re: Inman orders submitted to Judge Miller Conference w/ D. Hyatt re: status of handwriting expert Conference w/ S. Culbertson re: same Research on Sol. Stats for Bob Ariail Meeting w/ J. Mauldin re: Same	375
7932.0001	07/16/2008	5	P	19	120.00	6.00	720.00	Meeting w/ JBI and Lisa Mills re: Plea/ Denise Baker/ Souers Contact Conference w/ P. Leonard Prepare Cross of State's Mental Health Expert Research Prison Classification Records Travel to/from Pickens	376
7932.0001	07/17/2008	5	P	22	120.00	3.50	420.00	Conf. Jim Aiken re: Getting Classification Regs Conf. w/ Dept. of Children/Families re: Dr. Hall Internet Research to locate Dr. Hall Conf. w/ D. Hyatt re: Locating Dr. Hall Conf. w/ Fla. Pub. Def. re: Dr. Hall Research on Witness Intimidation Cases	377

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
Client ID 7932.0001 Inman/Jerry Buck (Appt.)									
7932.0001	07/18/2008	5	P	8	120.00	5.00	600.00	Prepare for Hearing on Gag Order Hearing on Gag Order 11:00 a.m. Greenville County Ct. House Conf. w/ M. Loring re: Denise Baker as Witness -upcoming conversation between Denise and Jerry Prepare Waiver for JBI on todays hearing Conf. J. Aiken re: Classification Regs Re-Draft Letter to O'Toole re: Souers Misinformation	378
7932.0001	07/29/2008	5	P	27	120.00	8.00	960.00	Review State's Response to Defendant's Motions Review State's Motions -Reveal Expert Underlying Data -Staking Out Jurors -Witness List to Judge -Reveal Mental Retardation Research on Rule 611 and Expert Testimony Research on SC Constitutional Sections to add to Motion Research on State's Cited Cases for Motions Research on Defense Motions	379
7932.0001	07/30/2008	5	P	23	120.00	8.00	960.00	Preparation for Motions Hearing Travel To Pickens Meeting w/ JBI Motions Hearing Meeting w/ JBI Meeting w/ S. Culbertson, D. Hyatt Travel From Pickens Conf. C. Graham re: Prison Classification Conf. Dr. Bennett re: DNA Profile Review Handwriting Samples	380
7932.0001	07/31/2008	5	P	22	120.00	4.00	480.00	Conf. J. Aiken to Review Custody Criteria Conf. w/ Intern to Research Death Penalty Stats for V. Letter Review Handwriting Samples for Final Submission to M. Dawson Conf. w/ SCDC Classifications	381
7932.0001	08/11/2008	5	P	1	120.00	6.00	720.00	Schedule Phone Conf. w/ Dr. Friesen Respond to Sol.'s E-mails re: -Meeting Friday -Stipulations -Guilty Plea Schedule -Juror Requests Draft Funding Order for Lisa Mills Draft Subpoena for Dr. Tourneau Meeting w/ Symmes Culbertson Review Death Penalty Stat Research for Bob Ariail	403
7932.0001	08/12/2008	5	P	23	120.00	4.00	480.00	Meeting w/ Symmes re; Jurors to be excused / proposed stipulations Conference w/ Dr. Friesen re; Funding, testimony, phone call from Dr. Price Conference w/ P. Leonard to finalize drafts of letter to OToole Review Documents to go to P. Leonard	404
7932.0001	08/13/2008	5	P	23	120.00	8.00	960.00	Conference w/ Dr. Friesen re: JBI and upcoming plea -issues with mental health as defense is revealed -suggestions for handling divulging mental health issues to JBI Review of Handwriting samples for second submission to Mickie Dawson Research Evading Review Issues Research Constitutional Catch-22 Hobson's Choice Issues Conference w/ L. Mills Review of Letter from O'Toole Conference w/ S. Culbertson re: Same Submission of Letter to O'Toole Conference w/ D. Hyatt re: Meeting w/ JBI	405
7932.0001	08/14/2008	5	P	23	120.00	6.50	780.00	Conference w/ Dr. Price scheduling Meeting Research on Rule 611, 703, 703 for Response to State's Motion Conference w/ Dr. Bennett's Office to Retrieve Evidence Correspondence w/ B. Strom re: Evidence, Stipulations for	406

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
t ID 7932.0001 Inman/Jerry Buck (Appt.)									
								Plea Review Stipulations for Plea Meeting w/ J. Mauldin re: Plea Meeting w/ S. Culbertson and Conference w/ D. Watts re: Blair Hearing Final Draft of Response to State's Motions for Discovery and Mental Retardation Notice Correspondence w/ P. Leonard re: Victim Outreach Attempt/Failure	
7932.0001	08/15/2008	5	P	23	120.00	2.00	240.00	Final Draft of Response to State' s Motion for Discovery Conference w/ C. Graham re: JBI timeline Meeting w/ D. Hyatt and S. Culbertson re: JBI visit for plea	407
7932.0001	08/15/2008	5	P	20	120.00	1.50	180.00	Meeting w/ Dr. Price -review of findings to date -discussion of upcoming conference w/ Dr. Friesen, Dr. Loring and other defense members -scheduling for upcoming trial prep	408
7932.0001	08/15/2008	5	P	20	120.00	1.00	120.00	Meeting w/ S. Culbertson and B. Strom re: Stipulations/ Guilty Plea	409
7932.0001	08/15/2008	5	P	27	120.00	3.00	360.00	Review State's Supplemental Response to Motion to Exclude Un-adjudicated Crimes -research same	410
7932.0001	08/18/2008	5	P	23	120.00	8.00	960.00	Prep Funding Order No: 33 and 34 Prep Out of State Witness Order for Dr. Tournay Funding Meeting w/ Judge Miller Review Donn S. Watts's Report Review C. Graham's JBI History Conference w/ S. Culbertson re: Watts's Report To/From Pickens for Interview w/ JBI Meeting w/ JBI -review plea colloquy for tomorrow Meeting w/ DH, S. Culbertson re: Vera /Ken McArthur at Plea	411
7932.0001	08/19/2008	5	P	6	120.00	10.00	1200.00	Preparation for Hearing Conf. D. Watts re: head injury Conf. S. Culbertson re: Same Conf. J. Miller re: Same Conf. B. Strom re: Same Meeting w/ JBI Meeting w/ Co-Counsel Court Hearing To/From Pickens	412
Total for Client ID 7932.0001					Billable	212.00	25784.45	Inman/Jerry Buck (Appt.) State v. Inman, Jerry Buck	

GRAND TOTALS

Billable	212.00	25784.45

Actual OID ck = $25,440
(less 344.45 - mileage not reimbursable)

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
t ID 7932.0001 Inman/Jerry Buck (Appt.)									
7932.0001	08/20/2008	5	A	23	120.00	8.00	960.00	Draft Motions regarding Live Feed/Dissimination of Attorney Priveleged Communications Draft Subpoenas Meeting w/ Dr. Price Conf. Fielding Pringle re: Jury Sentencing Issue currently on appeal	ARCH
7932.0001	08/21/2008	5	A	1	120.00	6.00	720.00	Conf. w/ Dr. Friesen re: Status of Testimony Conf. w/ Ryan Smith re: meeting together Conf. w/ C. Graham re: Souers/ Florida Records on Inman Sr. Review of Inman Sr. Records Draft of Motions re: Quattlebaum Issue	ARCH
7932.0001	08/22/2008	5	A	1	120.00	4.00	480.00	Review Florida Mental Health Records	ARCH
7932.0001	08/25/2008	5	A	1	120.00	6.00	720.00	Conf. Lisa Mills re: Meeting Tomorrow Conf. S. Culbertson re: Meeting Tomorrow E-mail from Sgt. Massingale re: copy expenses Prep and Review Florida Victim's Case File Prep and Review Tenn. Victim's Case File Prep and Review Ala. Victim's Case File	ARCH
7932.0001	08/26/2008	5	A	1	120.00	9.00	1080.00	Travel to/from Dandridge, Tennessee -Meeting w/ Denise Baker -Meeting w/ Ken and Vera McArthure -Court Appearance in Newport for Judge's Signature on Out-of State Subpoena	ARCH
7932.0001	08/27/2008	5	A	6	120.00	6.00	720.00	Conf. w/ J. Friesen re: Final Report Preparation for 2:30 hearing on Independent investigation into "live feed" Hearing on Same Conf. w/ L. Mills re: Waiver of Appearance for Jerry x2	ARCH
7932.0001	09/02/2008	5	A	23	8.00		0.00	Meeting w/ Dr. Loring -Witness preparation Conf. J. Babb re: Expert Conflict Research on Tattoos Present when JBI left Fla. Prison Review JBI Timeline Review JBI Genogram Review D. Watts Preliminary Report	ARCH
7932.0001	09/03/2008	5	A	23	120.00	6.00	720.00	Meeting w/ S. Culbertson Conference w/ Dr. Watts Research on Issues raised by Dr. Watts	ARCH
7932.0001	09/04/2008	5	A	1	120.00	8.00	960.00	Preparation for Cross of Mr. Souers Preparation for Cross of Mrs. Souers Meeting w/ S. Culbertson re: same Preparation of Opening Statement -Initial Outline Conf. Jim Aiken re: Tatoos Conf. Dr. Tournay re: Testimony -sent clinical record	ARCH
7932.0001	09/05/2008	5	A	1	120.00	9.00	1080.00	Meeting w/ Dr. Price re: Trial Testimony Preparation of Outline for Dr. Price Review of Selected Mental Health Records Meeting w/ JBI Tavel to/from Pickens	ARCH
7932.0001	09/06/2008	5	A	23	120.00	7.00	840.00	Review Selected Mental Health Records -organize and tab as exhibits Conf. M. Dawson: Report for Dr. Price Meeting/ Trial Prep Denise Baker	ARCH
7932.0001	09/07/2008	5	A	23	120.00	3.50	420.00	Preparation for Opening Statement Research on Preservation of Jury Trial Issue	ARCH
7932.0001	09/08/2008	5	A	23	120.00	4.00	480.00	Preparation for Opening Statement Preparation for Pathologist Preparation for Victim Impact Witnesses	ARCH
7932.0001	09/08/2008	5	A	6	120.00	8.00	960.00	Trial -Opening -Victim Impact Witnesses -Law Enforcement	ARCH
7932.0001	09/08/2008	5	A	23	120.00	2.00	240.00	Preparation for Pathologist Conference w/ Experts re: Testimony/Scheduling	ARCH
7932.0001	09/09/2008	5	A	6	120.00	16.00	1920.00	Court Preparation -Review Direct Testimony for Experts	ARCH

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
t ID 7932.0001 Inman/Jerry Buck (Appt.)									
								-Preparation for Pathologist -Organize Closing Argument -Research Pathology Issues Court -Pathologist -Dr. Price Prep -Dr. Price Testimony Preparation of Dr. Tournay for Wednesday Preparation of Dr. Loring for Wednesday	
7932.0001	09/10/2008	5	A	6	120.00	16.00	1920.00	Court Preparation -Preparation for Dr. Loring -Preparation for Denise Baker -Preparation for Rev. Hendsley -Research Priest Pentitent Privilege Court -Dr. Loring -Dr. Tournay -Denise Baker -Rev. Hendsley -Jim Aiken Court Preparation -Research Witness Intimidation	ARCH
7932.0001	09/11/2008	5	A	6	120.00	14.00	1680.00	Court Preparation -Research Legal Malpractice for failure to research -Research ABA Guidelines -Research ABA Standards -Research Double Jeopardy -Research Witness Intimidation Court -Argument for Mistrial Meeting w/ Client Meeting w/ Representatives of Souers	ARCH
7932.0001	09/12/2008	5	A	22	120.00	4.00	480.00	Meeting w/ Lisa Mills Conference w/ J. Miller re: Jail Visits Meeting w/ J. Miller re: Funding Meeting w/ S. Culbertson re; negotiating for life Draft of Waiver of Appeals Conference w/ DeJong's office re Jail Visit	ARCH
7932.0001	09/23/2008	5	P	20	120.00	1.00	120.00	Meeting w/ Carl Muller and S. Culbertson	457
7932.0001	09/24/2008	5	P	20	120.00	0.50	60.00	Meeting w/ C. Muller and J. Mauldin	458
7932.0001	10/23/2008	5	P	22	120.00	2.00	240.00	Conf. J. Miller re: Scheduling Meeting and E-mail w/ Bill Godfrey Conference w/ J. Mauldin	459
7932.0001	10/24/2008	5	P	1	120.00	1.00	120.00	Meeting w/ J. Miller re: Schedule and Ex Parte Funding Order #41	460
7932.0001	10/27/2008	5	P	1	120.00	3.00	360.00	Conf. w/ Marti Loring re: Testimony and 5th Amendment Review of Notes for Motion for Mistrial Conf. w/ LawClerk re: Transcritp	461
7932.0001	10/28/2008	5	P	27	120.00	3.00	360.00	Research ABA Criminal Standard 3-5.7 Conf. w/ Townes Jones (former Sol.) Conf. w/ Druanne White (former Sol.)	484
Total for Client ID 7932.0001					Billable	147.00	17640.00	Inman/Jerry Buck (Appt.) State v. Inman, Jerry Buck	

GRAND TOTALS

Billable	147.00	17640.00

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
ID 7932.0001 Inman/Jerry Buck (Appt.)									
7932.0001	12/10/2008	5	U	22	120.00	0.75	90.00	Conf. Dr. Loring Conf. w Dr. Everington -witness in Laney Case Intimidated w/ Criminal Prosecution Threat by Ariaial	568
7932.0001	12/10/2008	5	U	20	120.00	1.00	120.00	Meeting w/ J. Mauldin Review of Jurors From Edens Case -Review of names and addresses to determine who Ariail took to Dinner	569
7932.0001	12/11/2008	5	U	19	120.00	2.00	240.00	Outline January 20th Argument Identify Further Areas of Research Meeting w/ D. Hyatt to locate/ talk to Edens Jurors Meeting w/ C. Aiken to obtain copies of Edens Juror Information	570
7932.0001	12/12/2008	5	U	22	120.00	0.75	90.00	Conf. w/ Desa Ballard re: update on information of Juror Dinner	571
7932.0001	12/16/2008	5	U	21	120.00	4.00	480.00	Conf. w/ B. Godfrey re: Dr. Loring's testimony Create Timeline of Significant Facts Create Outline for Trial Memorandum	507
7932.0001	12/17/2008	5	U	1	120.00	1.00	120.00	Review Motts Transcript Review Carey Transcript	508
7932.0001	12/17/2008	5	U	21	120.00	3.00	360.00	Trial Memorandum on Prosecutorial Misconduct -Case Quotes from Cases 1-15 integrated into Bried and Outline	509
7932.0001	12/22/2008	5	U	21	120.00	2.00	240.00	Create Research Issues To Do List -itemized steps to resolve legal questions Initial Outline of Cross-Exam for Solicitor	510
7932.0001	12/29/2008	5	U	21	120.00	2.50	300.00	First Draft Trial Memorandum -Insert Case Quotes 15-30 Integrate into Brief	511
7932.0001	01/05/2009	5	U	1	120.00	3.00	360.00	Draft of Facts/Evidence for Pre-trial Brief on Prosecutorial Misconduct -Conf. w/ Bill Godfrey -Conf. w/ Hand Ehlies	512
7932.0001	01/06/2009	5	U	21	120.00	3.00	360.00	Draft of Application of Law to Facts for Pre-trial Brief on Prosecutorial Misconduct -Conf. D. Hyatt -Conf. S. Culbertson -Conf. Taylor Burgess	513
7932.0001	01/07/2009	5	U	21	120.00	3.50	420.00	Second Draft of Pre-trial Brief on Prosecutorial Misconduct -Integrate Facts and Law Meeting w/ Susan Allen: Edens Juror	514
7932.0001	01/20/2009	5	U	20	120.00	1.00	120.00	Meeting w/ J. Mauldin re: Edens / Laney Docs and Testimony	515
7932.0001	01/21/2009	5	U	20	120.00	0.75	90.00	Meeting w/ J. Miller re: Trial Date/ Voglesang Funding	516
7932.0001	01/28/2009	5	U	20	120.00	3.00	360.00	Meeting w/ J. Mauldin Preparation of Research Summary Meeting w/ S. Culbertson -Review of Summary	517
7932.0001	01/29/2009	5	U	21	120.00	2.00	240.00	Draft of Letter to Ariail re: Andy Moorman Draft of Issue That Cannot Be Resolved	518
7932.0001	01/30/2009	5	U	2	120.00	1.50	180.00	E-mail Communications w/ Judge Miller, Betty Strom, and Bob Ariail Review Letter to Ariail re: Andy Moorman Review Letter from Ariail re: Trial Date Conf. L. Mills re: Status	519
7932.0001	02/04/2009	5	U	20	120.00	0.75	90.00	Meeting w/ Sol., Judge Few, S. Culbertson, John DeJong and B. Strom re: Trial Date	520
7932.0001	02/10/2009	5	U	20	120.00	1.00	120.00	Team Meeting -Jan Voglesang, C. Graham, D. Hyatt, C. Aiken, S. Culbertson -review April 20/27th trial date and strategy	521
Total for Client ID 7932.0001					Billable	60.45	7254.00	Inman/Jerry Buck (Appt.) State v. Inman, Jerry Buck	

GRAND TOTALS

Billable	60.45	7254.00

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
ID 7932.0001 Inman/Jerry Buck (Appt.)									
								-Argument on Dr. Loring -Cross of Sylvia Harrison -Cross of Bren Souers -Cross of Mr. Souers -Closing Prep Trial -Argument on Dr. Loring -Argument on Continuance Post Trial -Conf. w/ Desa Ballard re: Ethical Choices -Conf. w/ Kier Wyble re: Same -Conf. w/ O.W. Bannister re: Same -Conf. w/ Bill Nettles re: Same -Review of Ethics Opinion from Desa Ballard -Meeting w/ Co-counsel and Team	
7932.0001	04/22/2009	5	P	6	120.00	12.50	1500.00	Pre-trial Prep -Closing -Cross Dr. Loring -Direct Ken McArthur Trial -Direct K. MacArthur -Argument on Dr. Loring -Dr. Loring Direct -Argument on Brady violation -Closing -Sentencing	1153
7932.0001	04/23/2009	5	P	23	120.00	2.50	300.00	Organize File Conf. w/ Co-Counsel	1154
Total for Client ID 7932.0001					Billable	98.50	11820.00	Inman/Jerry Buck (Appt.) State v. Inman, Jerry Buck	
GRAND TOTALS									
					Billable	98.50	11820.00		

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8282
Telefax: 864-467-8582

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
Robert M. Ariail

February 13, 2009

The Honorable Edward W. Miller
Circuit Court
305 E. North St., Suite 219
Greenville, SC 29601

Dear Judge Miller:

On Friday, February 6, Mr. Bannister emailed you and me that he would provide before Wednesday of next week (February 11) "in a limited fashion" information as to evidence that would be presented at the next hearing. As of today, I have heard nothing and received no information. Accordingly, I have filed and served the attached Motion and would request that it be handled expediously.

Yours very truly,

Robert M. Ariail
Solicitor, Thirteenth Judicial Circuit

RMA:mp

cc: Jim Bannister

EXHIBIT 63
Applicant
19
1679 21-18
PENGAD 800-631-6989

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

COPY

Telephone: 864-467-8647
Telefax: 864-467-8610

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
Robert M. Ariail

March 9, 2009

The Honorable Edward Miller
Chief Administrative Judge
305 E. North Street, Suite 219
Greenville, SC 29601

RE: State v. Jerry Buck Inman

Dear Judge Miller,

In reference to the above case, I am requesting that we have a hearing on our motion, State's Motion to Compel Disclosure of Defense's Witnesses and Other Information.

As of today's date, the only information I have received from defense counsel has been a copy of nine (9) pages of the transcript (pages 99-107) from the earlier proceeding. In his email to me of February 20, 2009, Mr. Bannister states that there may be other pieces of evidence that he may choose to produce prior to the hearing. Again, as of today's date, I have received nothing further. I do not believe that this adequately addresses our request.

Please advise as to when we can have a hearing in this matter.

Sincerely,

Betty C. Strom
Deputy Solicitor

cc: Jim Bannister, Esq.

EXHIBIT
Applicant
20
8-21-18
1680
RENGAD 800-631-6989

BANNISTER & WYATT, LLC
ATTORNEYS AT LAW

O. W. BANNISTER | JOHN F. WYATT | JAMES W. BANNISTER | BRUCE W. BANNISTER | ANDREW B. MOORMAN

401 PETTIGRU STREET - 29601 | PO BOX 10007 - 29603 | GREENVILLE, SC | PHONE: (864) 298-0084 | FAX: (864) 298-0146

March 16, 2009

VIA U.S. MAIL

The Honorable Edward W. Miller
Greenville County Courthouse
305 E. North Street, Suite 219
Greenville, SC 29601

RE: State v. Jerry Buck Inman
Case Nos.: 2006-GS-39-2222-2225

Dear Judge Miller:

I am in receipt of a letter dated March 9, 2009. Deputy Solicitor Strom is correct in stating that I have provided them with nine (9) pages of a transcript from the earlier proceeding. What is not revealed in the letter is that those nine (9) pages reveal the case law, the subject of expected witnesses; the subject of the expected evidence and an outline of the argument that will be presented in the Motion for Mistrial. I would point out that I am under no obligation in the rules or the case law to provide the Solicitor with any information regarding the defendant's case.

I refer the Court to the Capital case of State v. Northcut, 372 SC 207, 641 S.E.2d 873 (2007):

> The Trial Judge erred in requiring Appellant to direct his expert witness to prepare written reports for the Prosecution.

Furthermore, with few exceptions, the witnesses I intend to produce all have had contact directly or indirectly with Solicitor Ariail, and the documents I intend to produce all come from the 13th Circuit Solicitor's office. Because of the nature of the Motion for Mistrial, Brady and Kyles actually requires the Solicitor to identify these witnesses to the defense and to turn these documents over. The Solicitor's failure to do so will be an issue we need to address at any proposed hearing.

If you have any further questions, please contact me.

Sincerely,

BANNISTER & WYATT, LLC

James W. Bannister

JWB:cpa

cc: Betty Strom, Esq.

EXHIBIT
Applicant
21
8-21-18
1681
PENGAD 800-631-6989

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
Robert M. Ariail

March 25, 2009

The Honorable Edward W. Miller
Chief Administrative Judge
305 E. North Street, Suite 219
Greenville, South Carolina 29601

Re: State v. Jerry B. Inman

Dear Judge Miller:

Previously, I had written you requesting a hearing on the issue of whether the State would be entitled to know the identity of the witnesses the defense intended to call regarding the supplementation of the record on the issue of prosecutorial misconduct and governmental interference as it related to the defense's motion for a mistrial. Mr. Bannister responded to my letter and cited State v. Northcut as authority supporting his position. I enclose for your review our position on this matter.

We are aware that this is a novel issue in this state and there is no case law directly on point. In order to avoid any possible issue regarding our request, we hereby withdraw our request to obtain in advance the names of the witnesses the defense intends to call to supplement the record.

Understand that our reason for making the request initially was to avoid any unnecessary further delay of this proceeding. We were hoping that with advance notice, we could then be better prepared for cross examination of those witnesses and be prepared to produce any rebuttal testimony that may be warranted. However, we will deal with that as it comes and will request time from the court if it is needed.

Thank you for your consideration of our request.

Sincerely,

Betty C. Strom
Deputy Solicitor

BCS/rc

cc: James Bannister, Esq.

Enclosure

EXHIBIT 3
Applicant
22
18-24-18
PENGAD 800-631-6989

SOLICITOR, THIRTEENTH JUDICIAL CIRCUIT

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, South Carolina 29601-2185

Robert M. Ariail
Solicitor

Telephone: (864) 467-8282
Facsimile: (864) 467-8623

April 1, 2009

The Honorable Edward W. Miller
Circuit Court
305 E. North St., Suite 219
Greenville, SC 29601

Re: State v. Jerry Buck Inman

Dear Judge Miller:

I have today filed and served upon defense counsel specifically, Mr. Bannister, a Motion to Serve an Out of State Subpoena for Dr. Marti Loring in the above entitled matter. I would request that you schedule a hearing on this tomorrow morning. My reasons for the hearing request are that I will be out of town from Thursday afternoon through April 12. Also, we need time to allow the authorities in Georgia to process the request through the appropriate legal channels in order to have the subpoena issued before April 20th, 2009. However, I would be willing to abandon the request for the Order and the hearing if defense counsel will assure the Court that they will produce Dr. Loring at the trial.

Thank you for your consideration.

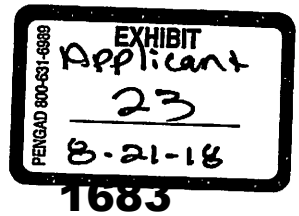
Yours very truly,

/s/ Bob

Robert M. Ariail
Solicitor, Thirteenth Judicial Circuit

RMA:mp

cc: James W. Bannister
Symmes Culbertson
John DeJong



Godfrey Law Firm L.L.C.

10 East Avenue
Greenville, SC 29601

(864) 467-9196
(864) 467-9427

E.P. "Bill" Godfrey
Attorney at Law
State & Federal Criminal Law

Mary Alice H. Godfrey
Attorney at Law
Certified Family Court Mediator

Elizabeth D. Medlin
Attorney at Law
Certified Guardian Ad Litem

April 6, 2009

TELEFAX AND HAND DELIVERY

The Honorable Edward W. Miller
305 East North Street
Greenville, South Carolina 29601

Re: *The State v. Jerry Buck Inman*
2006-GS-39-2222, 2223, 2224,2225
Request for Hearing

Dear Judge Miller:

I was advised by Jim Bannister on Thursday afternoon, April 2, 2009, that the State had filed a Petition for Attendance of Out-of-State Witness wherein the State is attempting to require my client, Dr. Marti Loring, to appear for court beginning April 20 through April 27, 2009.

I am thankful for Jim Bannister calling me and providing me with a copy of the Petition, as I would not have found out from the State. The State did not call me to determine if I was still representing Dr. Marti Loring, and as counsel for Dr. Marti Loring, I would have been left in the dark.

To eliminate any confusion, I am filing a Notice of Limited Appearance to protect the interest of Dr. Marti Loring today. I am also filing either late this afternoon or early tomorrow morning a Return to the State's Petition in this matter. I will have these documents served by hand delivery.

I respectfully request a hearing to contest the Petition for Attendance of Out-State-Witness be held one day this week. Since I am still preparing the documents, I would request that the earliest the hearing be scheduled would be Tuesday, April 7, 2009 or as soon thereafter as the hearing may be scheduled.

Respectfully submitted,

E.P. Bill Godfrey
SC Bar 13043

EPG/kh
CC: The Honorable Robert M. Ariail
Jim Bannister

EXHIBIT
Applicant
24
8-21-18
1684
PENGAD 800-631-6989

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	2006-GS-39-2222, 2223, 2224, 2225
	)	
	)	
The State of South Carolina,	)	
	)	
	)	NOTICE OF LIMITED APPEARANCE
	)	
Jerry Buck Inman,	)	
	)	
Defendant.	)	
	)	

TO THE CLERK OF THIS COURT AND ALL PARTIES OF RECORD:

Please enter my appearance as attorney of record to protect the interest of former expert witness for the Defense, Dr. Marti Loring.

I certify that I am admitted to practice in this court.

April 6, 2009

E.P. Bill Godfrey
SC Bar 13043

GODFREY LAW FIRM L.L.C.
10 East Avenue
Greenville, South Carolina 29601
Office 864.467.9196 Fax 864.467.9427

Attorney for Dr. Marti Loring

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2009 APR -7 A 10: 16

EXHIBIT
Applicant
25
8-21-18
1686

Jim Bannister

From: Bill Godfrey [bill@godfreylawfirm.com]
Sent: Thursday, April 16, 2009 6:44 PM
To: Jim Bannister
Subject: RE: State v. Sweat

You don't need to worry about me. I will let everything play out.
However, based upon Judge Miller's ruling at the motion hearing that Dr.
Loring's testimony is NOT a violation of SC law and based upon the excellently written opinion from LLR that I have, Dr. Loring will testify if the present push for life fails.

I will tell you the same thing that I told Carl. I will not let Arial, Carl, the family of the victim, you or anyone on your team try to make Dr. Loring the scape goat in a life sentence for Inman. I will do whatever I have to do to protect the reputation and good standing of my client. As I advised Carl, once the case is over, the gag order is also over. Go get your life sentence for Inman, but do not try to hurt or allow any hurt to come to Marti Loring. I remain, her lawyer.

Bill

-----Original Message-----
From: Jim Bannister [mailto:JimB@bannisterwyatt.com]
Sent: Thursday, April 16, 2009 4:16 PM
To: Bill Godfrey
Subject: FW: State v. Sweat

Caselaw on deference to an agencies interpretation of a statute.

-----Original Message-----
From: westlaw@westlaw.com [mailto:westlaw@westlaw.com]
Sent: Thursday, April 16, 2009 4:09 PM
To: Jim Bannister
Subject: State v. Sweat

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PENGAD 800-631-6989
EXHIBIT 43
Applicant
26
8-31-18

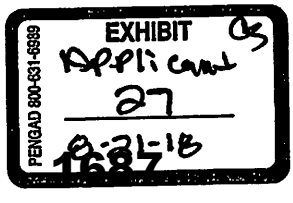
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2008 MAR 20 A 9:02

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	2006-GS-39-2222
COUNTY OF PICKENS	)	2006-GS-39-2223
	)	2006-GS-39-2224
	)	2006-GS-39-2225
State of South Carolina,	)	
	)	
v.	)	MOTION FOR RELEASE OF WITNESS
	)	AND RELATED RELIEF
Jerry Buck Inman,	)	
	)	
Defendant.	)	
	)	

PLEASE TAKE NOTICE that Dr. Marti Loring, by and through her attorney, E.P. Bill Godfrey, hereby requests and moves that this Court immediately release Dr. Marti Loring as a witness in the above-captioned case or, in the alternative, suspend the hearing as to any potential testimony of Dr. Marti Loring until an investigation can be completed to determine the complicity, if any, of the Thirteenth Circuit Solicitor's Office into the denial of Dr. Marti Loring's Due Process and Civil Rights in service of the out-of-state subpoena. Dr. Marti Loring, through counsel, would show unto the Court the following:

1. Dr. Marti Loring holds a doctorate in sociology with a major in social psychology, she is a licensed clinical social worker in Georgia, and she is a board certified expert in traumatic stress. She was originally retained to be the social historian expert in the Inman case. However certain difficulties arose during the Inman trial of September 10 and 11, 2008, and the Court allowed the defense team to obtain a new social historian. Dr. Marti Loring is no longer a member of the defense team for Inman and has had no contact with the defense team since late September 2008.

2. Solicitor Robert Ariail filed a Petition for Attendance for an Out-of-State Witness on April 1, 2008, alleging that Dr. Marti Loring is a necessary and material witness in the sentencing



phase of the Inman case. Counsel for Inman filed a Return and a hearing was held on Tuesday, April 14, 2009. The Court found that Dr. Marti Loring is a material witness and denied the request of counsel to withdraw the Court's certification of the out-of-state subpoena.

3. On Thursday, April 16, 2009, Dr. Marti Loring left her home and went to work as she always does. When she went back to her home that night, she found a paper stuck in her door. She looked at the paper and found it to be a Rule NISI requiring her appearance in the Superior Court of DeKalb County on April 16, 2009 at 3:00 p.m. to show why she should not return to Pickens County to testify in the Inman case. When she found the paper, she called counsel at 8:21 p.m. and advised the situation. Counsel advised her that nothing could be done that night and that the court would be contacted the next day. Counsel received a second phone call from Dr. Marti Loring at 9:26 p.m. Dr. Loring was very upset, as someone had been pounding on her door and yelling that there was a warrant for her arrest. Counsel advised Dr. Loring that counsel would contact Judge Edward Miller.

4. Counsel then went to his office and called Judge Edward Miller at his residence to advise of this situation. Judge Edward Miller then sent an email to both the state and defense regarding this situation and a copy to counsel. See attachment one.

5. The next day, April 17, 2009, Dr. Marti Loring was receiving phone calls wanting to know if she was in Atlanta and that there was a warrant for her arrest. Dr. Loring advised Investigator Ben Norris of the DeKalb County District Attorney's Office that he should call Judge Edward Miller in South Carolina. Subsequently, Dr. Mari Loring contacted an Georgia attorney and had him call the District Attorney's office and fax the email of Judge Edward Miller to them.

6. When the fax from Judge Edward Miller was received, the Assistant District Attorney advised that his office would put the arrest warrant in a "stand down" position and would not serve it, but that someone from the Court system in Pickens County would have to confirm on Monday, April 20, 2009 that Dr. Marti Loring did appear in court or his office would proceed with the arrest warrant of Dr. Marti Loring.

7. It is obvious from the events of Friday, April 17, 2009 that neither Solicitor Robert Ariail nor anyone else in the Thirteenth Circuit Solicitor's Office contacted the District Attorney's Office in Atlanta or the Superior Court of DeKalb County to advise of the resolution of the matter and to request the withdrawal of the action against Dr. Marti Loring, which appears to be in violation of the email sent to everyone by Judge Edward Miller.

8. Dr. Marti Loring was denied effective notice of the Rule NISI, as she was never personally served with the notice; the Rule NISI was signed by the Atlanta judge on April 15, 2009 at 2:20 p.m. and filed for record on April 16, 2009 at what appears to be 10:12 a.m. The hearing was set for April 16, 2009, and when Dr. Marti Loring found the paper stuck in her door after she got home from work on the 16th. There is no way that this could ever be considered effective notice and she was, therefore, denied her Due Process and Civil Rights in this matter. If there had been effective, actual, and timely notice, counsel for Dr. Marti Loring was going to appear to show cause in the Superior Court of DeKalb County why she should not be subject to the South Carolina subpoena, but never had the chance.

9. Copies of all of the paperwork obtained from the Clerk of Court for DeKalb County demonstrate a *prima facie* case of denial of Dr. Loring's Due Process rights and denial of her Civil Rights, to wit:

   a. Rule NISI was signed by the judge on April 15, 2009 at 2:20 p.m. and clocked for

record on April 16, 2009 at what appears to be 10:12 a.m.

b. The Order Directing Witness into Custody to Determine Material Witness Status in the State of South Carolina was signed by the judge on April 16, 2009 and clocked for record on April 16, 2009 at what appears to be 10:12 a.m.

c. The affidavit of Don Geary, Chief Assistant District Attorney, advising that on April 15, 2009 the Solicitor for the Thirteenth Judicial Circuit delivered the to Don Geary the proper paperwork to secure the attendance of Dr. Marti Loring as a witness in Pickens County at the trial of Inman. This document was clocked for record on April 16, 2009 at what appears to be 10:13 a.m.

10. All of these documents were filed the morning before the alleged Rule NISI hearing was scheduled at 3:00 p.m. At this time, we do not know if the untimely notice of the Rule NISI, improper service of the Rule NISI, and procurement of the arrest warrant was at the behest of Solicitor Arial, but this must be determined.

11. Counsel for Dr. Loring contacted investigator Laura Switzer and requested that she pull the file on Dr. Marti Loring at the DeKalb County Courthouse and copy everything that was in it. See Switzer's fax cover sheet to me along with all of the information from Dr. Loring's file in the Clerk of Court's Office at attachment two.

12. Solicitor Arial knew that counsel represented Dr. Loring at the trial in September 2008, but Solicitor Arial never contacted counsel about requesting the presence of Dr. Loring on April 20, 2009 for the continuation of the trial. Solicitor Arial did not serve counsel for Dr. Loring with the Petition for Attendance of Out-of-State Witness. Solicitor Arial did not advise counsel when he sent the request to Atlanta for consideration of the DeKalb County Superior Court of the request for service of the South Carolina subpoena, and Solicitor Arial did

nothing at all to recall or withdraw the arrest warrant in Atlanta for Dr. Loring, when he was advised by the Court that she would be present on Monday, April 20, 2009.

13. Solicitor Arial had at least six (6) months to file legal process to attempt to secure the presence of Dr. Marti Loring, but he waited until April 15, 2009 before he presented any paperwork to Georgia. Solicitor Arial's delay denied Dr. Marti Loring her Due Process rights and denied Dr. Loring her Civil Rights.

14. At the trial in September, Solicitor Arial stated to the Court

> I'm raising the issue of licensing for the purpose of voir dire. And that's as far as we've gotten. **And whether or not I present an indictment against her is a totally separate issue.** (Emphasis mine.)

Partial Transcript of Record, September 10 and 11, 2008 (hereafter designated as Tr); p. 116, ll17-19. There is only one interpretation possible of the above statement of Solicitor Arial and that is that he could and might prosecute Dr. Marti Loring. And, of course, there were other statements made during the September 2008 hearing, which threatened and intimidated Dr. Marti Loring.

15. This abuse of process in Atlanta and Solicitor Arial's actions regarding the Petition for Attendance of an Out-of-State Witness is further evidence of his continued threats and intimidation of Dr. Marti Loring. Counsel would submit that Solicitor Arial is attempting in every way possible to chill the testimony of Dr. Loring in the Inman case, which effects the reputation of Dr. Marti Loring, and the Due Process rights of Inman. The defense team for Inman has a motion pending regarding the prosecutorial misconduct and unethical behavior of Solicitor Arial regarding his treatment of Dr. Marti Loring, and counsel for Dr. Loring will say nothing further about this issue at this time.

16. Counsel for Dr. Loring would respectfully submit unto the Court that Solicitor Robert Ariail

has done everything in his power to threaten, intimidate, and chill the testimony of Dr. Marti Loring. Dr. Loring has had no contact with the defense team for Inman since late September, and the Court advised at the end of the September 2008 hearing that Dr. Loring could be released and that a new social historian could by retained. Jim Bannister has advised that he will not call Dr. Loring as a witness and will not question her, if she is called as a Court's witness. If the Court does not release Dr. Loring as a witness, then the Court is rewarding Solicitor Arial for his threats and intimidation of Dr. Marti Loring. Counsel would respectfully submit that Dr. Marti Loring should be immediately released as a witness in the Inman case.

17. In the alternative, if the Court does not release Dr. Marti Loring as a witness in the Inman case, counsel would move that the Court suspend the hearing, if Dr. Loring is to be called as a Court's witness so counsel can investigate and determine the extent of Solicitor Arial's culpability in the abuse of process regarding the Petition for Attendance of an Out-of-State Witness. This information is clearly necessary for full consideration of the defense team's motion regarding prosecutorial misconduct and unethical behavior by Solicitor Ariail.

18. Counsel for Dr. Loring would further move for an Order of Discovery not limited to but including the following:

a. the immediate production of any and all cover letters or fax transmission sheets where the Thirteenth Circuit Solicitor's Office sent the Petition for Attendance of an Out-of-State Witness to Georgia.

b. the detailed telephone log showing the dates from April 1, 2009 through April 20, 2009 for all out going and incoming calls from Georgia to the Thirteenth Circuit Solicitor's Office.

c. an Order to take depositions in a criminal case of the following people:

Solicitor Robert Mills Ariail

Deputy Solicitor Betty Strom

John Tucker of the Thirteenth Circuit Solicitor's Office

Melita Graham of the Thirteenth Circuit Solicitor's Office

Don Geary, Chief Assistant District Attorney, DeKalb County, Georgia

Investigator Ben Norris of the District Attorney's Office, DeKalb County, Georgia

The District Attorney of the District Attorney's Office, DeKalb County, Georgia.

WHEREFORE, Dr. Marti Loring, through counsel, requests that this Court immediately release her as a witness in the Inman trial or suspend the trial until a full investigation can be completed regarding the abuse of process that Dr. Marti Loring suffered in Georgia and provide a discovery Order.

Respectfully submitted,

E.P. Bill Godfrey
SC Bar 13043

Godfrey Law Firm LLC
10 East Avenue
Greenville, South Carolina 29601
Phone 864.467.9196 Fax 864.467.9427
ATTORNEY FOR DR. MARTI LORING

April 20, 2009
Greenville, South Carolina.

Bill Godfrey

Subject: FW: State v. Inman

From: Miller, Edward W. [mailto:emillerj@sccourts.org]
Sent: Fri 4/17/2009 12:15 AM
To: Ariail, Bob; bstrom@greenvillecounty.org; jbannister@bannisterwyatt.com; sculbertson@culbertsonlaw.com
Cc: Bill Godfrey
Subject: State v. Inman

I suggest everyone involved in this case take a deep breath and take a step back.

I received phone calls at 10:15 p.m. this evening regarding Georgia law enforcement officers attempting to arrest Dr. Loring for her failure to appear at a Rule to Show Cause hearing set for this afternoon, for which she was never personally served, regarding the South Carolina subpoena in this case. If all of this information is correct, and if Dr. Loring is arrested and if someone involved in this case from S.C. has pressured Georgia law enforcement to improperly expedite this matter, there will be consequences imposed by this Court for an offending participant.

Dr. Loring's S.C. attorney has assured me that Dr. Loring will be present Monday, April 20, 2009 in Pickens County for the resumption of these proceedings, and that service of a subpoena will not be necessary. I accept this assurance and expect Dr. Loring's attendence at the hearing. Whether counsel for the defendant wishes to call her as a witness in mitigation is irrelevant for purposes of this e-mail. I remind all counsel that the orderly presentation of the case in mitigation on behalf of Mr. Inman is the sole responsibility of Mr. Inman's counsel; the decision as to what relevant and competent evidence and which witnesses will be presented rests solely in their discretion and will be unmolested from any other source. However, Dr. Loring will be present on Monday. Her presence bears great weight on pending issues in this case and interference, by any party, with her appearance on Monday is unacceptable and will be regarded as wilful contempt of Court.

The machinations from all sides surrounding the defendant's motion for mistrial have gotten out of hand. Competent zealous representation is required in all capital litigation, however, over-zealous representation will not be tolerated. I remind every attorney involved in this case of their attorney oath and their ethical obligations. I have known and respected each attorney involved in this case for years and I look forward to years of continued association with each of you. Do not allow passion or pride to overwhelm dedication to the rule of law.

I respectfully request Dr. Loring's attorney to forward this e-mail to her so that she is apprised of the situation and informed of this Court's expectations. I am appreciative of her voluntary attendence and the professionalism it exhibits.

Attachment Two

Fax

To. Bill Godfrey

From: Laura Switzer
4/17/09

This is online file. Sheriff's Dept
does not record of subpoenas or
bench warrant.
Please feel free to call 4.435.0501

# of Pages: 10 + Cover

IN THE SUPERIOR COURT OF DeKalb COUNTY

STATE OF GEORGIA

STATE OF GEORGIA • CASE NO. D9CV1000

VS. •

DR. MARTI LORING •

RULE NISI

The Court having considered the foregoing Motion to Compel the Attendance of an out of state witness from the State of South Carolina, the Court hereby orders Dr. Marti Loring to appear on the 16th day of ~~August, 2009~~ April 2009 at 3:00 P.M. o'clock in Courtroom 6B, to show why she should not be ordered to return to Pickens County, South Carolina to testify in the trial of Jerry Inman. Failure to appear at the above date and time in this court could result in a bench warrant being issued for the arrest of Dr. Marti Loring.

SO ORDERED, this 15th day of April, 2009, at 2:20 p.m.

JUDGE
DEKALB SUPERIOR COURT
Senior Appellate Court Judge
Presiding by Designation

2009 APR 16 A 10:1

IN THE SUPERIOR COURT OF DEKALB COUNTY

STATE OF GEORGIA

IN RE:	
	SOUTH CAROLINA CASE NO 2006-GS-39-2222
DR. MARTI LORING,	DEKALB COUNTY CASE NO 09CV1000
	MOTION TO SECURE ATTENDANCE OF AN OUT OF STATE WITNESS

ORDER DIRECTING A WITNESS INTO CUSTODY TO DETERMINE MATERIAL WITNESS STATUS IN THE STATE OF SOUTH CAROLINA

The above matter having been heard by this Court on the 16th day of April, 2009.

It appearing to the satisfaction of this Court that the named witness, Dr. Marti Loring, is purposefully avoiding service and attendance in this Court, and that Dr. Marti Loring, who has been determined to be and material witness by Judge Edward Miller, Thirteenth Judicial Circuit, Pickens County, South Carolina, and that Dr. Marti Loring may flee if served with a Rule Nisi, it is hereby;

ORDERED, that the above named witness, be taken into custody and held by the Sheriff until she can be brought before this Court concerning her status as a material witness in the Pickens County, South Carolina, criminal case. This Court shall be notified as soon as possible that the witness is in custody.

IT IS SO ORDERED this 16th day of April, 2009.

Linda Warren Hunter, Judge
DeKalb County Superior Court

IN THE SUPERIOR COURT OF DEKALB COUNTY

STATE OF GEORGIA

IN RE: DR. MARTI LORING

- CASE NO. 09CV1000
- MOTION TO COMPEL ATTENDANCE OF OUT-OF-STATE WITNESS

Comes now Don Geary, Chief Assistant District Attorney, and shows the Court the following:

On April 15, 2009, the State of South Carolina, through the Solicitor for the 13th Judicial Circuit, Pickens County, delivered to the undersiged the proper paperwork (see attached) to secure the attendance of Dr. Marti Loring, a DeKalb County resident, at the trial of State v. Jerry Inman, in Pickens County, South Carolina, on April 20, 2009. The State respectfully moves this court to sign the attached order for said Dr. Marti Loring to attend said trial.

Respectfully submitted,

DON GEARY
CHIEF ASSISTANT D.A.

FILED IN OFFICE
2009 APR 16 A 10:1

PAGE. 4/ 11

Apr.17.2009 04:23 PM

STATE OF SOUTH CAROLINA	)	CLE... PICK... SOU...
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	)	2006-GS-39-2222, 2006-GS-23-2223
	)	2006-GS-23-2224, 2006-GS-23-2225
THE STATE	)	2009
	)	
VS.	)	**CERTIFICATE AND SUBPOENA PURSUANT TO THE UNIFORM ACT TO SECURE ATTENDANCE OF WITNESSES**
	)	
JERRY BUCK INMAN,	)	
	)	

This matter having come before me, Edward W. Miller, Chief Criminal Administrative Judge for the Thirteenth Judicial Circuit, State of South Carolina and presiding Judge in the above-captioned matter in the Court of General Sessions, being a Court of record in and for the County of Pickens, State of South Carolina, upon Petition by the State of South Carolina to issue a subpoena and certificate pursuant to Section 19-9-10, et seq. of the South Carolina Code of Laws, to secure the attendance of an out-of-state witness in this Court, after reviewing the Petition and hearing from the Solicitor from the Thirteenth Judicial Circuit, hereby certifies the following findings of fact:

1. That DR. MARTI LORING is a resident of Dekalb County, Georgia and falls within the jurisdiction of the Superior Court of the Stone Mountain Judicial Circuit of Dekalb County, Georgia.

2. That DR. MARTI LORING is a material and necessary witness in the sentencing phase of the death penalty trial of Jerry Buck Inman who has pled guilty to Murder, Criminal Sexual Conduct, First Degree, Kidnapping and Burglary, First Degree in the Court of General Sessions of Pickens County, South Carolina which is a Court of record.

#1
EM

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) 2006-GS-39-2222, 2006-GS-23-2223
COUNTY OF PICKENS) 2006-GS-23-2224, 2006-GS-23-2225
2009 APR -1 P 3:45
THE STATE)
)
VS.) **PETITION FOR ATTENDANCE FOR**
) **AN OUT-OF-STATE WITNESS**
JERRY BUCK INMAN,)

The Petitioner would respectfully allege and show unto the Court as follows:

1. The Petitioner is the Solicitor for the Thirteenth Judicial Circuit for the Counties of Greenville and Pickens, State of South Carolina.

2. That the said Jerry Buck Inman, the Defendant in this case, has pled guilty in Pickens County, South Carolina to Murder, Criminal Sexual Conduct, First Degree, Kidnapping and Burglary, First Degree. The State of South Carolina served Notice of Intent to Seek the Death Penalty in this case and the sentencing phase of this matter has been set to resume on April 20th, 2009 at the Pickens County Courthouse in the city of Pickens, State of South Carolina before the Honorable Edward W. Miller, Judge, Thirteenth Judicial Circuit.

3. That DR. MARTI LORING, 411 Claire Drive NE, Atlanta, Georgia 30307-1827, is a necessary and material witness in the sentencing phase of the death penalty trial of this case.

4. That the presence of DR. MARTI LORING will be required for the continuation of the sentencing portion of the trial of this case which will commence on Monday, April 20th, 2009 and will last for a period of up to seven days.

TRUE COPY
CLERK OF COURT
PICKENS COUNTY, S.C.

1700

5. That the Petitioner is informed and believes that pursuant to Section 19-9-10, et seq. of the South Carolina Code of Laws and Georgia Code Annotated Section 24-10-90, et seq. or "The *Uniform Act to Secure the* Attendance of Witnesses from Without the State", that a certificate and subpoena should be ordered by this Court securing the presence of this witness at the sentencing phase of the trial of Jerry Buck Inman.

6. That DR. MARTI LORING was retained by the defense to provide testimony in this capital proceeding Pursuant to South Carolina law, the fees, expenses and other costs have been approved previously by an order of this Court and the witness will, in accordance with that order, receive payment for her services and incurred expenses.

7. That the State will withdraw this Petition in the event counsel for the defense assures the witness' presence on April 20th, 2009 in the Court of General Sessions for Pickens County, South Carolina.

WHEREFORE, the State of South Carolina moves this Court to issue a subpoena and certificate pursuant to Section 19-1-10, et seq. of the South Carolina Code of Laws which certifies to the Superior Court of the Stone Mountain Judicial Circuit in Dekalb County, Georgia that DR. MARTI LORING of 411 Claire Drive NE, Atlanta, Georgia 30307-1827 is a necessary and material witness in the sentencing phase of the trial of the case of the State vs. Jerry Buck Inman and requests that a Judge presiding over the Superior Court of the Stone Mountain Judicial Circuit in Dekalb County, Georgia, issue an Order pursuant to Georgia Code Annotated Section 24-10-90, et seq. and Section 19-9-10, et seq. of the South Carolina Code of Laws requiring DR. MARTI LORING to

appear before the Court of General Sessions for Pickens County on April 20th, 2009 through April 27th, 2009 or at such time as the Court finds appropriate to testify at the sentencing phase of the trial of Jerry Buck Inman.

Robert M. Ariail, Solicitor
Thirteenth Judicial Circuit

Greenville, South Carolina

3/31, 2009

STATE OF SOUTH CAROLINA CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
COUNTY OF PICKENS)

2009 APR -1 VERIFICATION

BEFORE ME personally appeared Robert M. Ariail who on oath says that he is the Solicitor of the Thirteenth Judicial Circuit, and as such is the Petitioner in the foregoing Petition; that he has carefully read the foregoing Petition and knows of his own knowledge that the matters and things stated therein are true and correct, except those matters alleged on information and belief, as to which he verily believes the same to be true.

Robert M. Ariail, Solicitor
Thirteenth Judicial Circuit

SWORN to and subscribed before
me this 31st day of March, 2009

Maina Ann Pickett
Notary Public for South Carolina

Commission expires: June 26, 2017

TRUE COPY
CLERK OF COURT
PICKENS COUNTY, S.C.

APR.1.2009 04:24 PM

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

TO WHOM IT MAY CONCERN:

I, Edward W. Miller, Judge of the Thirteenth Judicial Circuit in and for the County of Pickens, State of South Carolina, do hereby certify that Harold P. Welborn is the duly elected, qualified and acting Clerk of Court for the County of Pickens, State of South Carolina which is a Court of record.

Witness my Hand and Seal of the Court this 2 day of April, 2009 at Pickens, South Carolina.

Edward W. Miller, Judge
Thirteenth Judicial Circuit, State of South Carolina

(SEAL)

TRUE COPY

Harold P. Welborn
CLERK OF COURT
PICKENS COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

TO WHOM IT MAY CONCERN:

CANCELLED
FAMILY COURT
PICKENS COUNTY
SOUTH CAROLINA

I, Harold P. Welborn, Clerk of Court for the County of Pickens, State of South Carolina, do hereby certify that Edward W. Miller is the duly elected, qualified and acting Judge of the Thirteenth Judicial Circuit for the County of Pickens, State of South Carolina.

Witness my Hand and Seal of the Court this 14 day of April, 2009 at Pickens, South Carolina.

Harold P. Welborn
Clerk of Court for Pickens County
State of South Carolina

(SEAL)

TRUE COPY

Harold P. Welborn
CLERK OF COURT
PICKENS COUNTY, S.C.

2009 APR 14 P 2:24

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

APR.14.2009 04:24 PM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	2006-GS-39-2222, 2223, 2224, 2225
	)	
	)	
The State of South Carolina,	)	
	)	
v.	)	AFFIDAVIT OF SERVICE
	)	(Hand Delivery)
Jerry Buck Inman,	)	
	)	
Defendant.	)	
	)	

NOW COMES E.P. Bill who certifies that he served the below listed documents upon all parties by hand delivering a copy on April 20, 2009 to the addresses listed below:

Pleadings Served: Motion to Release Dr. Marti Loring as Witness And Other Related Relief

Parties Served:

Robert M. Arial
305 East North Street, Suite 325
Greenville, South Carolina 29601-2185

James W. Bannister
401 Pettigru Street
Greenville, South Carolina 29601

E.P. Bill Godfrey
SC Bar 13043

Sent: Fri 4/17/2009 12:15 AM
To: Ariail, Bob; bstrom@greenvillecounty.org; jbannister@bannisterwyatt.com; sculbertson@culbertsonlaw.com
Cc: Bill Godfrey
Subject: State v. Inman

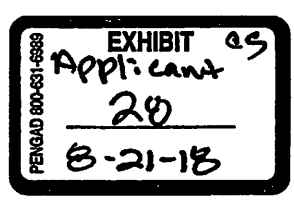
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Dr. Loring's S.C. attorney has assured me that Dr. Loring will be present Monday, April 20, 2009 in Pickens County for the resumption of these proceedings, and that service of a subpoena will not be necessary. I accept this assurance and expect Dr. Loring's attendence at the hearing. Whether counsel for the defendant wishes to call her as a witness in mitigation is irrelevant for purposes of this e-mail. I remind all counsel that the orderly presentation of the case in mitigation on behalf of Mr. Inman is the sole responsibility of Mr. Inman's counsel; the decision as to what relevant and competent evidence and which witnesses will be presented rests solely in their discretion and will be unmolested from any other source. However, Dr. Loring will be present on Monday. Her presence bears great weight on pending issues in this case and interference, by any party, with her appearance on Monday is unacceptable and will be regarded as wilful contempt of Court.

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I respectfully request Dr. Loring's attorney to forward this e-mail to her so that she is apprised of the situation and informed of this Court's expectations. I am appreciative of her voluntary attendence and the professionalism it exhibits.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	Case No.: 2006-GS-39-2222-2225
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**EX PARTE FUNDING ORDER**
	)	No: 48
Jerry Buck Inman,	)	
	)	
Defendant.	)	

2009 JAN -5 A 9:04

This matter is before the Court on the Motion of the Defendant for an Ex Parte Funding Order. The matter is filed under seal. Therefore, this Order shall be filed by the Clerk of Court under seal, and the contents of this Order shall not be revealed without an Order from the Presiding Judge.

Specifically, the Defendant seeks an Order of the Court for authorization of funds to hire a Clinical Social Work Expert who is trained to conduct a biopsychosocial assessment which includes an intergenerational social history. I find the Defendant has shown the services of a Clinical Social Work Expert are reasonably necessary for the representation of the Defendant. *See South Carolina Code* § 16-3-26(C)(1). Counsel for the Defendant has indicated they would like to hire Jan Vogelsang to perform those services, and I find that she is qualified to do so. Ms. Vogelsang has had experience in testifying in this capacity in Capital Cases in South Carolina. Ms. Vogelsang has many years of experience in the field of social work. Ms. Vogelsang is authorized to bill to the Office of Indigent Defense for reasonably necessary services to the Defendant up to the amount of $5,000.00.

Counsel for the Defendant must provide Ms. Vogelsang a copy of this Order. Both counsel and Ms. Vogelsang should familiarize themselves with the *Office of Indigent Defense*

EXHIBIT CS
Applicant
29
1708-18
PENGAD 800-631-6989

Policy Concerning Payment of Fees and Expenses of Appointed Counsel for Indigent Representation in Criminal Cases. Both counsel and Ms. Vogelsang should also familiarize themselves with the procedures for the processing of indigent defense vouchers, as set forth in the Supreme Court's Order of September 29, 2006. This Court will not approve payment for any services above the pre-authorized limit. If counsel believes the services above that limit are reasonably necessary, they shall petition the Court for pre-authorization of those additional services. If the Office of Indigent Defense objects to any request for funding, in resolving the objection, the Court will strictly adhere to the OID Policy unless the variation from the Policy has been approved in advance.

Defense counsel shall obtain a clocked copy of this Order and shall immediately forward a copy of the Order to the Office of Indigent Defense and to Ms. Vogelsang. Except as just provided, the contents of this Order shall not be revealed to anyone without an Order from the Presiding Judge.

IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
~~December~~ 1/2/09, ~~2008~~

I SO MOVE:

James W. Bannister

Janet Vogelsang, MSW, BCD
12 East Earle Street
Greenville, South Carolina 29609
(864) 271-1777 office
(864) 271-5020 fax

February 16, 2009

TO: Jim Bannister, Attorney at Law
RE: Jerry Buck Inman Invoice

2/10/09	Meeting with mitigation specialist and investigator; given overview of case; case discussion; began review of records and taking notes on the mental health records of the mother of the defendant	5.1
2/10/09	Continue review of mental health records; read medical records of father of defendant; read transcripts of testimony of experts; record notes based on these records; read incident report and handwritten statements of defendant	5.4

(The notes taken on the above records are part of the assessment of key issues that raise clinical questions and require further discussion with the investigators and attorneys)

Total hours 10.5@ $125.00 per hour

Total due $1312.50

EXHIBIT
Applicant
30
1810-18
PENGAD 800-631-6989

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	Case No.: 2006-GS-39-2222-2225
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**EX PARTE ORDER**
	)	No: 41
Jerry Buck Inman,	)	
	)	
Defendant.	)	

This matter is before the Court on the Motion of the Defendant for an Ex Parte Order. The matter is filed under seal. Therefore, this Order shall be filed by the Clerk of Court under seal, and the contents of this Order shall not be revealed without an Order from the Presiding Judge.

* * * *

IT IS SO ORDERED.

EDWARD W. MILLER

Edward W. Miller
Circuit Court Judge

2008 NOV 10 A 9:02
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Greenville, South Carolina
October 27, 2008

EXHIBIT
Applicant
31
761-11-18

Counsel for the Defendant must provide Dr. Schwartz-Watts a copy of this Order. Both counsel and Dr. Schwartz-Watts should familiarize themselves with the *Office of Indigent Defense Policy Concerning Payment of Fees and Expenses of Appointed Counsel for Indigent Representation in Criminal Cases.* Both counsel and Dr. Schwartz-Watts should also familiarize themselves with the procedures for the processing of indigent defense vouchers, as set forth in the Supreme Court's Order of September 29, 2006. This Court will not approve payment for any services above the pre-authorized limit. If counsel believes the services above that limit are reasonably necessary, they shall petition the Court for pre-authorization of those additional services. If the Office of Indigent Defense objects to any request for funding, in resolving the objection, the Court will strictly adhere to the OID Policy unless the variation from the Policy has been approved in advance.

Defense counsel shall obtain a clocked copy of this Order and shall immediately forward a copy of the Order to the Office of Indigent Defense and to Dr. Schwartz-Watts. Except as just provided, the contents of this Order shall not be revealed to anyone without an Order from the Presiding Judge.

IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
October 17, 2008

I SO MOVE:

James W. Bannister

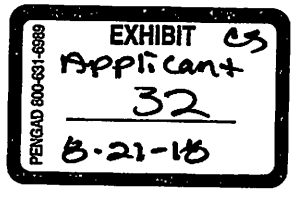
Psychiatric Evaluation
Name: Jerry Buck Inman
DOB: 12/19/70
County of Proceedings: Pickens
Dates of Evaluation: 9/15/06, 10/13/06, 11/20/06, 1/15/07, 6/15/07
Date of Report: August 16, 2008

Identifying Information: Mr. Jerry Buck Inman is a 37-year-old single Caucasian male evaluated pursuant to a request from his attorneys, Symmes Culbertson and Jim Bannister. He has been charged with Capital Murder, Kidnapping, Criminal Sexual Conduct First Degree in Pickens County, which allegedly occurred on, May 26, 2006.

Statement of Nonconfidentiality: Mr. Inman understood this examiner could be called to testify during his hearings and that his communication may not be confidential.

Sources of Information:
Florida Department of Corrections Records
North Carolina Department of Corrections Records
South Carolina Department of Corrections Records
Grace Hospital Records
CMHI Evaluation 5/13/01
Lake Correctional Institution Records 5/9/05-6/3/05
Charlotte Correctional Institution 05/02, 4/27/05
Incident reports Tampa Police 3/29/88
Discovery related to case including Case Analysis
Subject Timeline Jerry Buck Inman
SLED Supplemental report 6/9/06
Statement of Jerry Buck Inman 6/7/06 4:53am
Statement Jerry Buck Inman June ? 2006 12:32am
Statement JBI 6/7/06 9:17 am (Rainesville case) (Victim B.B.)
Statement JBI 6/7/06 10:35am (Sevier County Case) (Victim J.G.)
SLED Supplemental Report 6/30/06
Inventory of Items Collected from Vehicle
Incident report Murder 5/27/06
SLED (STR) PCR DNA profile letter 6/6/06
National Match Detail Report 6/5/06
Criminal History Record JBI
Autopsy Findings Victim 7/19/06
SLED Investigative Report 7/25/06
School Records, Lakeland Florida
Cherokee Health System Records Vera McArthur
Consultation Dr. Tora Brawley
Consultation Dr. Marti Loring 6/17/08
Laboratory Tests 8/1/07

Pertinent Statements:





Mr. Inman has been evaluated by this examiner on a number of occasions and a number of different settings including Lee Correctional Institution three times, University of South Carolina School of Medicine and the Pickens County Detention Center.

He does have a mental health history significant for treatment while confined in the North Carolina and Florida Department of Corrections from 1989 through 2005. He has been diagnosed with various mood disorders including: Dysthymia, Adjustment Disorder, Major Depression, severe without psychotic features, Major Depression with Psychotic Features, Major Depression, mild, Mood Disorder, Not Otherwise Specified, and rule out Bipolar Disorder. Mr. Inman has been prescribed various antidepressants and mood stabilizers by history including: Pamelor® 100mg, Wellbutrin®, Norpramin®, Elavil®, Prozac®, Vivactil®, Remeron®, Lithium, Valproic Acid, Sinequan®, and Seroquel®. Mr. Inman also reports taking Zoloft®, Effexor®, and Artane®.

Upon interviews, Mr. Inman does report that he ruminates daily for at least one hour and his ruminations worsen at night. He does admit to irritability and reports he loses his temper over "small things." He has chronic problems with his sleep and appetite. He frequently reports that he deserves to die for his crimes. He endorses suicidal ideation but states he will not kill himself, but would welcome the death penalty. He does report he does not want to die before his mother because she has been through enough pain.

In addition to a mood disorder, Mr. Inman has also had treatment for substance abuse while confined in the North Carolina Department of Corrections. Records confirm he attended AA and NA in North Carolina. He received an Impaired Inmate Assignment in the Florida Department of Corrections on 3/11/03. Records note the onset of his marijuana and alcohol use at age 9. He admits to using acid four to five times, cocaine, Red Rubys and Quaaludes when he was younger. He admits to continued use of marijuana and alcohol. He reports drinking up to one quart of Jim Beam daily prior to his offense. He states he would 'chase it" with Mountain Dew. He also reports drinking up to a twelve pack of beer. He denies hangovers or blackouts. He denies symptoms of withdrawal. He admitted to using an ounce of marijuana every ten days prior to his offense.

Mr. Inman has also received other diagnoses including Antisocial Personality Disorder, Antisocial traits and Avoidant traits by history.

Mr. Inman does have a history of self-mutilation while confined. He "slit his wrists" in 1988. He lacerated his right jugular vein in 2/1/89. Another attempt was recorded 10/11/89. He had abdominal surgery after swallowing fencing in 1/01. He also participated in hunger strikes in 2001 and 10/06.

Mr. Inman does have a documented family history of mental illness. His mother, Vera MacArthur has a history of inpatient and outpatient psychiatric treatment. She has been diagnosed with Schizoaffective Disorder, Bipolar Type. Her records report Mr. Inman's maternal grandmother had a history of auditory hallucinations, a maternal uncle with

depression, a maternal grandfather with alcoholism, and his father having a history of Posttraumatic stress disorder from Vietnam.

Medically, Mr. Inman has a history of abdominal surgery in 2001, and repair of a 3-4 inch laceration to neck 2/1/89. He has a documented history of right temporal headaches in 1991. He had a history of febrile seizures as a child and was placed on Phenobarbitol®. He admits to one closed head injury with a loss of consciousness before being incarcerated. He admits to being hit in the head with a log while in prison, but denies any sequelae. There is no evidence of organicity on his neuropsychological testing which was conducted in 2007. He denies any allergies. Laboratory assessment of hormones which govern sexual function were normal in 2007.

Mental Status Examinations:
Mr. Inman has always been cooperative. He maintains only minimal eye contact. His speech is soft in tone but normal in rate. His thinking is goal directed. He has not been psychotic. He has not been acutely suicidal or homicidal during interviews. His mood has ranged from normal to depressed. His affect is blunted. His cognitive functions have always been intact. His judgment is poor historically due to mental illness and drugs.

Opinion Regarding Competency To Stand Trial:
Mr. Inman has a rational and factual understanding of the proceedings and the capacity to assist in his defense if he chooses. Mr. Inman knows the charges against him, and their seriousness. He knows he is facing the death penalty. He has shown the ability to work with his attorneys, especially Mr. Culbertson. He has consistently stated he would welcome the death penalty, but more recently, he has expressed a desire to live until his mother dies, so she won't have to experience his death. He understands the importance of appropriate courtroom behavior and has used good restraint in the past hearings, even when he was in disagreement with his attorneys. He understands the roles of all officials, and concepts of self-incrimination, cross-examination and confronting witnesses.



Donna Schwartz-Watts, M.D.

STATE OF SOUTH CAROLINA)
) IN THE GENERAL SESSIONS COURT
COUNTY OF PICKENS) THIRTEENTH JUDICIAL CIRCUIT
CASE Nos. 2006-GS-39-2222-2225

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2008 AUG 26 A 9:05

Symmes W. Culbertson, Esquire,
Petitioner,

vs.

Jerry Buck Inman,
Respondent.

IN RE:
State,
Plaintiff,

vs.
Jerry Buck Inman,
Defendant.

EX PARTE ORDER

This matter is before the Court on the Motion of the Defendant for an Ex Parte Order. The matter is filed under seal. Therefore, this Order shall be filed by the Clerk of Court under seal, and the contents of this Order shall not be revealed without an Order from the Presiding Judge.

* * * *

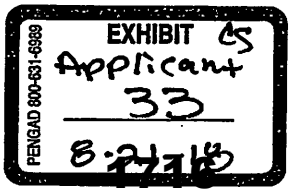
IT IS SO ORDERED!

Edward W. Miller

Circuit Court Judge

Greenville, South Carolina

August 25, 2008



STATE OF SOUTH CAROLINA)
) IN THE GENERAL SESSIONS COURT
COUNTY OF PICKENS) THIRTEENTH JUDICIAL CIRCUIT
CASE Nos.: 2006-GS-39-2222-2225

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2008 AUG 26 A 9:05

Symmes W. Culbertson, Esquire,
Petitioner,

vs.

ORDER OF TRANSPORT

Jerry Buck Inman,
Respondent.

IN RE:
State,
Plaintiff,

vs.
Jerry Buck Inman,
Defendant.

Upon Motion of Symmes W. Culbertson, Attorney for the Defendant:

IT IS, ORDERED, ADJUDGED AND DECREED that the Pickens County Detention Center is hereby ordered to transport the Defendant, Jerry Buck Inman to the office of Dr. Donna Schwartz-Watts located at MUSC 3555 Harden Street Extension Suite 104A Columbia, SC 29202 on **August 28, 2008 at 9:00 a.m** for a Psychological Evaluation.

Defendant, Jerry Buck Inman, is currently housed at the Pickens County Law Enforcement Center.

AND IT IS SO ORDERED!

Honorable Edward W. Miller
Presiding Judge

Greenville, South Carolina
~~August 21~~, 2008
8/25/08

UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE

UNIVERSITY SPECIALTY CLINICS®

STATEMENT OF CHARGES

Donna M. Schwartz-Watts, M.D.
Consulting Forensic Psychiatry

September 12, 2008

SERVICES PROVIDED FOR: Jim Bannister
401 Pettigru Street
Greenville, SC 29601
864-298-0084 (p) 864-298-0146 (f)

REF: Jerry Buck Inman

DATE(S) OF SERVICE:

09/15/06	Eval	3.0 HRS
10/13/06	EVAL	3.0 HRS
11/20/06	EVAL	3.0 HRS
1/15/07	EVAL	2.0 HRS
06/15/07	EVAL	3.0 HRS
08/19/08	COURT	8.0 HRS
08/28/08	EVAL	5.0 HRS
RECORD REVIEW/MEETINGS		20.0 HRS

HOURLY RATE: **$260**

TOTAL HOURS: **47.0 hours**

TOTAL AMOUNT DUE UPON RECEIPT: **$12,220.00**

Please make check payable to
Mail to: University Specialty Clinics #70
ATTN: Wanette Johnson
3555 Harden Street Ext. Suite 102
Columbia, SC 29203

Wanette Johnson
Administrative Assistant
Division of Forensic Services

Tax Exempt #: 57-0694746
USC SoM Dept of Neuropsychiatry

EXHIBIT
Applicant
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8-21-18

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STATEMENT OF CHARGES

Gregg Dwyer, MD
Consulting Forensic Psychiatrist

12/05/08

SERVICES PROVIDED FOR:

Jim Bannister
401 Pettigru Street
Greenville, SC 29601
864-298-0084(p) 864-298-0146(f)

REF: Jerry Inman

DATE(S) OF SERVICE:

12/05/08 Clinical Interview/Prep for interview

Hourly Rate: $320.00

TOTAL AMOUNT DUE: **$1315.20**

Thank you for this opportunity to work with you on this case.

Please make check payable to Gregg Dwyer, MD, Ed.D
Mail To: University Specialty Clinics
15 Medical Park, Suite 141
Columbia, SC 29203

Wanette Johnson
Administrative Assistant
Division of Forensic Services

Tax Exempt #: 57-0694746

NEUROPSYCHIATRY
AND BEHAVIORAL SCIENCE
15 Medical Park, Suite 141, Columbia, SC 29203
803-434-4300, FAX 803-434-4351

PENGAD 800-631-6989
EXHIBIT 65
Applicant
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12-19-18

Marti Loring
3/17/14

NOTES: INMON CASE- DR. MARTI LORING

When doing mitigation, my standard operating procedure is to interview the client and collateral witnesses, as well to review relevant records. The collateral witnesses include family members, friends, teachers, counselors/therapists/doctors, etc. I usually take notes, but am careful not to write notes under certain conditions. One of those conditions (when I do not take notes) involves a person who is hesitant to reveal important information. That hesitance can result from fear, trauma, paranoid ideation, guilt, and fear of retribution- either from law enforcement and/or from others.

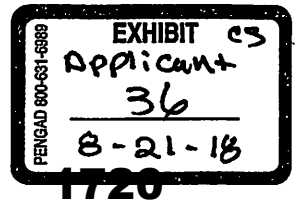
While interviewing Jerry's mother, I encountered the situation in which I did not take notes. She feared law enforcement would charge her and felt more trauma if I asked to take notes: She feared retribution, thought not always sure who she feared; she felt distrustful of anyone writing down her behavior; she was generally fearful and traumatized.

I spoke at length with her alone, as well as with her current husband at that time. She shared a great deal of information which, in keeping with my promise to her, I did not write down.

Prior to and during the trial, I was threatened with the following: My home front door being broken down to reach me (although I was not at home); my being incarcerated for lack of cooperation; my exhausting attempts to cooperate, some of which involved compiling extensive records of my previous work; threats that I would lose my professional license.

When the judge asked if I was able to testify, I followed legal advise and did so. It was an error on my part because I was impaired, traumatized, and unable to accurately represent all of the information that I had gathered on this case. I am not sure that I was aware at that time of the extent that the harassment had impacted my thinking.

Indeed, my own trauma prevented me from sharing the important information which his mother had shared with me. It was not written in the form of notes, as she had been promised by me. The impact of trauma on memory and cognitive function is well documented.



MTL and not revealed at trial due to my anxiety, poor memory + trauma

A summary of his mother's information shared with me (but not written in my notes) follows (I have remembered this information at various times since the trial).

She tried to commit suicide multiple times, sometimes in the presence of Jerry. She took an overdose of medicine, tried to hang herself, and- with Jerry in the car- attempted to kill them both by wrecking the car.

She often thought about killing Jerry. Once she had her hand squeezing his neck to help him be reunited with God, and the telephone rang, interrupting her. She said Jerry looked surprised and sad. She was unsure of his age- she thought 5-7. She tried to starve him, but he ate food from the garbage can outside. She tried to suffocate him with a pillow.

She had thoughts of castrating Jerry, so he wouldn't become like his father. She made some attempts to do this. She once saw his father go into the bedroom and climb into bed with Jerry's sister.

She discussed death with Jerry often. She talked with him about Hell and threatened that he would go to hell if he was like his father.

She was choked, raped and beaten by Jerry's father, who seemed to become more aroused when Jerry watched. His father would choke her and look up at Jerry watching from his bedroom door and laugh as if laughing at a joke. Then he would stop and repeat this action.

She was depressed and would sit staring into space all day. She did not feed or wash Jerry during these depressed times. She vaguely remembers his being hurt in the back yard, but cannot recall how or what the injury was.

She once looked into Jerry's bedroom at night and reported that she saw the father in Jerry's bed and his body was going up and down under the covers.

MTL
3/7/14

MTL * I have never had trouble with my memory while testifying before or after this trial.

Louis David Viamonte MD

PERSONAL

Current Address:
3702 Oakwood Ave
Charotte, Nc. 28205
Louis.viamonte@gmail.com
Date of Birth: 7 Sept 1975
Place of Birth: San Diego, Ca.

EDUCATION

Residency

Forensic Psychiatry Fellowship, Medical University of South Carolina, Charleston Sc. July 2017-June 2018

Greenville Health Systems/University of South Carolina Psychiatry Department
July 2013-June 2017

Honors:

Southeastern Mental Health Symposium NAMI Professional Student Award 2016

Chief Resident 2016-2017

Teaching Experiences in Residency:

Grand Round presentation at Marshall Pickens Hospital covering The Deinstitutionalization of America and the Top Ten Mental Health Frequent Flyers to the Greenville Memorial Hospital ER (2017)

Instructor in mental health diagnosis and assessment for the Community Paramedic Initiative Greenville Health Systems, Greenville, Sc. (2016)

Grand Rounds presentation at Roger C. Peace Rehabilitation Hospital covering grief and bereavement (2016).

Grand Rounds presentation at Medical University of South Carolina Department of Forensics covering expert witness (2016)

Grand Round presentations at Marshall Pickens Hospital and Patrick B. Harris Hospital covering long acting injectable antipsychotics (2015)

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8-21-18
PENGAD 800-631-6989

Lecture to patients at Pavillon Drug and Alcohol Center on how to use the twelve steps in everyday life (2015)

Resident leader of the University of South Carolina/Greenville medical student psychiatry interest group (2013-16)

Other Residency Experience:

Phoenix integrated Residency of Obstetrics and Gynecology
June 2011-June 2013

MEDICAL SCHOOL

Creighton University School of Medicine, Omaha, NE, 2007-2011

Degree: Doctor of Medicine, May 2011

Honors: Beirne Endowed Medical Scholarship, 2009-2010

University Service:

- Community Service Officer OB/GYN interest group, 2010
- Class officer (Wellness officer), 2008-2009
- Class Technical Support liaison, 2008-2009
- Class podcaster, 2007-2009

Community Service:

- Student Physician, Magis Clinic, a faculty supervised free clinic for the homeless and uninsured, 2009
- Volunteer for "TarWars" A program targeted at elementary school children that teaches them the dangers of tobacco, 2009
- Greeter during Memorial service for anatomy lab cadavers, 2008
- Greeter during White Mass, 2007

GRADUATE

University of Alabama at Birmingham 2004-2007

Degree: Master of Science, 2007

Course of Study: Biology

UNDERGRADUATE

University of Alabama at Birmingham, 2000-2004

Degree: Bachelor of Science, 2004

Major: Medical Technology

Minor: Chemistry and Biology

Auburn University, 1994-1996

RESEARCH EXPERIENCE AND PUBLICATIONS

Louis D Viamonte, Ken Marion, Scott C. Hofer, Robert A. Angus, Five Mile Creek Bioassessment Study: baseline evaluation of stream health using fish communities. Journal of the Alabama Academy of Science Vol. 78 Issue: 3-4 page: 231 (17) July 1 2007

C.D. Anthony Herndon, **Louis Viamonte**, David B. Joseph, Ureteroscopy in Children: is there a need for ureteral dilation and postoperative stenting? Journal of Pediatric Urology, Vol. 2 Issue 4 pages 290-293 August 2006

Research under the direction of Dr. Anthony Herndon, University of Alabama at Birmingham, Pediatric urology 2004-2007

TEACHING EXPERIENCE

Bible study leader for the Birmingham Southern University Cross-Country Team, 2005

MILITARY SERVICE

3rd class petty officer United States Navy, Machinist Mate, Pump Supervisor, USS Constellation CV-64, 1996-1999 Honorable Discharge

EMPLOYMENT EXPERIENCE While In College/Graduate School

Retail sales, Trak Shak running specialty store, 2005-2008

Lifeguard, University of Alabama at Birmingham, 2004

PERSONAL INTERESTS AND HOBBIES

Golf, yoga, camping, and cycling

Synopsis of Psychiatric Evaluation

I was asked by attorney Diana Holt to perform a psychiatric evaluation on Dr. Marti Loring. Specifically, I was asked to assess if Dr. Loring had experienced threats from a prosecutor that could cause Post Traumatic Stress Disorder (PTSD). I was referred to Diana Holt from my colleague Dr. Donna Maddox. Dr. Maddox was originally consulted, but due to a conflict of interest, she did not perform the evaluation.

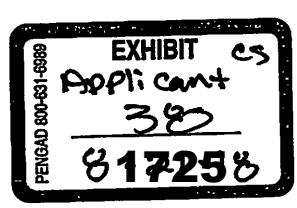
I saw Dr. Loring in Dr. Marlyne K. Israelian's office in Atlanta, Georgia for approximately one hour and thirty minutes on 08/08/18. I had previously spoken on the phone with Dr. Loring for approximately 15 minutes about two weeks prior. She verbally stated she understood the non-confidential nature of forensic psychiatric evaluations. Dr. Loring is a 74 year old Caucasian female and was polite and cooperative. She appeared younger than her stated age and had no issues concerning hygiene. Her speech was within normal limits. She described her mood as being "happy" and her affect was congruent with her stated mood. Dr. Loring reported no thoughts of suicide, homicide, or harming herself or others. She was forward thinking and found pleasure in her job. She did not appear overtly depressed and she showed an appropriate range of emotions. Dr. Loring reported increased anxiety for over a year in 2008 -2009 and appeared anxious and guarded when discussing the aforementioned prosecutor, but did not otherwise appear anxious. Dr. Loring reported no current or past history of hallucinations. All of her answers were linear and goal directed. She was not observed to be responding to internal stimuli (i.e. she did not have any signs or symptoms of psychosis). She had no delusional content to her thoughts. Her insight and judgement were both good. A brief cognitive assessment was performed and no issues were noted.

Dr. Loring reported no past psychiatric history. She reported no current or past alcohol or illicit drug use and did not appear to be under the influence of any substances. She reported no past history of abuse or trauma. She had no significant past medical history or a history of head injuries, loss of consciousness, or seizures. A copy of counseling notes for treatment for PTSD symptoms experienced during 2008-2009 was requested, but not received. Dr. Loring reported no past suicidal or homicidal thoughts. Screenings for Major Depressive Disorder, ADHD, Bipolar Disorder, Generalized Anxiety Disorder, psychosis, and delusions were all negative currently and historically.

Concerning the forensic question I was asked to opine, it is my opinion Dr. Loring suffered from PTSD in 2008-2009. In 2008 Dr. Loring lived in Atlanta, Georgia. She had been retained as a defense expert in a case located in South Carolina. During the voir dire process, the prosecutor threatened possible criminal sanctions if Dr. Loring testified. I have read the transcripts from 2008 and 2009 and it is my opinion the threat was real and constitutes a threat of serious injury. It is also my opinion the prosecutor continued to use his power as a solicitor to intimidate and threaten Dr. Loring into 2009; given he attempted to have Dr. Loring arrested. Dr. Loring's accounts of the past threats were consistent with the court transcripts. She endorsed and exhibited the following signs and a symptoms of PTSD: recurrent, involuntary, and intrusive distressing memories and dreams, flashbacks, prolonged psychological distress, marked physiological distress, avoidance of distressing memories, inability to remember important aspects of the traumatic events, persistent and exaggerated negative beliefs and expectations about oneself, distorted cognitions, persistent negative emotional state, hypervigilance, exaggerated startle response, problems with concentration, and sleep disturbance. The above symptoms persisted well after the stressor was removed and it is my opinion she is still experiencing some residual symptoms, but not to a degree that would interfere with her professional duties not involving the aforementioned prosecutor. Please feel free to contact me at any time with questions or concerns in regards to my forensic psychiatric and medical opinions. Attorney Dianna Holt has my contact information. Thank you.

LV MD

Louis Viamonte MD
Forensic Psychiatrist
08/13/2018



Jerry Buck Inmon
Date of Birth: 12/19/70
Date of offense: 5/26/06
Date of arrest: 6/8/06

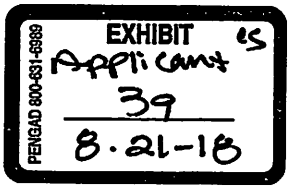
Dates of Evaluation:
9/15/06 Lee Correctional Institution 1.75 hrs
10/13/06 2 hours Lee Correctional Institution
11/20/06 Pickens County Detention Center
1/5/07 University of South Carolina Neuropsychiatry
1/15/07 Lee Correctional Institution
6/15/07 Lee Correctional Institution
8/10/08 Pickens County Jail 1 hr
8/19/08 Pickens County Courthouse
8/28/08 University of South Carolina
3/12/17 MUSC Dept Forensics 1 hr
4/27/17 Lieber Correctional Institute 2 hrs
8/3/18 Kirkland Correctional Institution 2 hrs

Date of Report: 8/8/18

Identifying Information: Jerry Buck Inmon is a 48-year-old unmarred male evaluated pursuant to a request from his attorneys, Diana Holt and E. Charles Grose.

Reason For Referral: Mr. Inmon was evaluated by the undersigned numerous times in 2006. The undersigned testified in a Blair hearing prior to his capital trial. Although willing, the undersigned was not called to testify during his capital proceedings. The undersigned was deposed regarding her findings on 11/3/16 and subsequently asked to complete her evaluation of Mr. Inmon.

Sources of Information:
Deposition Transcript 11/3/16
Consultation R. Gregg Dwyer MD, Emily Gottfried PH.D. 8/3/18 1 hr
Consultation Marti Loring 6/17/08
Austin Sixth grade yearbook (face erased and drawn over) 1982-83
Austin Seventh grade yearbook 1983-84
Indictment CSC first NC 88-CRS-12944 7/10/88
Criminal History Summary
Inmate Disciplinary History 1989-2004
Letter Phillip Welsh 11/2/90
Memo from John Hamlin 6/17/91
Letter Robert Crawford Jr 3/11/93
Affidavit for SafeKeeper status 6/8/06
Florida Disciplinary Report 12/27/89



Certificate of Parole 12/28/98
State of Florida Social History 2/1/99
Florida report of Administration Confinement 5/2/99 (tattoo paraphernalia)
Report of Administration confinement 9/4/99 smoking crack, tattoo gun
Report Administrative Confinement 1/8/00 tattoo
Possession of Weapon 8/21/00 9 inch shank
Active Rioter 10/22/92 (central prison)
Inmate Classification Sheet
Criminal History Pickens County Sheriff
Pickens County Warrant Contraband by a Prisoner 12/4/07 (sharpened lunch tray)
State of Florida report of close management 11/16/00
Inmate grievance positive UDS 9/26/99
Initial psychological Screening State of Florida 1/8/99
Letter from Chief Roesel 11/4/99
Florida Disciplinary sleeping in bed 12/27/89
Letter from JBI asking for parole 7/5/95
NCDOC memorandum 11/2/88
NCDOC medical notes 1988-
Social History Summary 10/18/88
FDOC medical records 6/20/01
Letter from Robert Schwacke psychologist 11/2/88, 2/27/90
Psychiatric Evaluation Dr. Riddle 1989, 1/31/90
Intake Summary by Robert Schwacke 2/1/89
Central Unit Hospitalization
Discharge Summary Florida DOC Inpatient care 1/23/01-2/6/01 swallowed two pieces of chain link fence. Required surgical removal six inches apiece.
Prison mental health records 1988-2005
Psychiatric records Vera MacArthur Schizoaffective, bipolar type
Psychiatric Evaluation Donna Schwartz Watts 8/16/08
Transcript of Testimony 8/19/08
Email from Denise Baker to Carolyn 5/15/07
Affidavit Thomas Amons 3/11/13
Autopsy report Tiffany Souers 7/19/06
DNA Database letter 6/6/6
Incident Report Central Police 5/26/06
Central Supplemental Incident Report 5/27/06
Supplementary Incident Report 5/27/06
Investigation into the Murder of Tiffany Souers
SLED Investigative Report 7/25/06
SLED Supplemental 6/9/06
Statement of Jerry Buck Inmon 6/7/06
SLED Supplemental 6/30/06
TBI Investigative Report
Statement regarding Alabama Incident on 5/23/06

Statement regarding Sevierville Incident 5/22/06
Incident report Murder 5/27/06
Jerry Buck Inmon Timeline
Notes from Marti Loring 3/17/14
Florida DOC record Jerry Burl Inmon 1976
Florida Prison records Jerry Burl Inmon
Notation of report from Quest Diagnostics of normal sex hormones
Grace Hospital records 2/1/89
School records Lakeland Florida 1975-1978
SCDC records (pre-trial)
Tampa Incident Report 3/29/88 (DOI 12/14/87)

Pertinent Statements:
Mr. Inman is known to this examiner from prior psychiatric evaluations. The undersigned was originally retained by Symmes Culbertson in 2006. After capital proceedings were filed, the undersigned also evaluated him at the request of Jim Bannister. The undersigned testified that Mr. Inmon was competent to stand trial in Pickens County Court of General Sessions before the Honorable Ned Miller. The undersigned was not requested to testify during his capital proceedings.

Developmental History:

1. **His father was a convicted sex offender.**
2. **A social history indicated his father raped his sister and mother in his presence.**
3. **A social history indicates Mr. Inmon may have been sexually abused by his father.**
4. **Mr. Inmon's mother has been diagnosed with a major mental illness, Schizoaffective Disorder.**

Telephone consultation with Dr. Loring on 6/17/08 revealed she interviewed Mr. Inman's mother, sister and stepfather. She reported that his sister Denise reported that their biological father would tie her to her bed, while 3-year-old Jerry slept in the bottom bunk, blindfold her and digitally penetrate her. Denise stated that Jerry heard this on one occasion and cried. She reported her father spanked him for crying. Dr. Loring also reported that his mother noted blood on his anal area on more than one occasion. She also noted redness around his anal area at age 3. Denise reported she was molested by her paternal grandfather as well.
Mr. Inmon's mother Vera MacArthur was interviewed by Marti Loring. Dr. Loring reported that his mother tried to commit suicide multiple times, sometimes in the presence of Mr. Inmon. She attempted to kill both she and Mr. Inmon by wrecking her car. She reported she once squeezed Jerry's neck to reunite him with God. She thought he was around ages 5 to 7. She tried to suffocate him with a pillow. She would starve him and he would eat food from a garbage can. She reported she tried to castrate Mr. Inmon. Mr. Inmon's father choked, raped and beat her. He engaged in these behaviors while Mr. Inmon observed. She reported she once saw Mr. Inmon's father in Jerry's bed and his body was moving up and down. Mr. Inmon reports he only learned of his abuse in his trial and does not have recollection of these events.

His father, Jerry Burl Inmon was incarcerated in Florida Department of Corrections for five years in 1976 for Assault to Rape.

School History:
Mr. Inmon reported he attended school until 9th grade. He stated he was expelled for having Quaaludes at school (2006). He stated he was "too lazy" to obtain his GED, yet prison records note he got his GED through program in Morganton Community College.
Records from Lakeland Florida indicate he was absent for 15 days in the 1975-76 school year. The record noted he failed because he did not do his work. He missed 26 days in the 1976-77 school year. He missed 28 days in the 1977-78 school years. The records noted he was on Phenobarbitol as a child for seizures. He stopped school in 1987.

Vocational History:
Mr. Inmon reported he had been confined since he was eighteen years of age. His prison records indicate he last worked for a construction company in 1988. In an email prepared by his sister, she reported that Mr. Inmon wanted to drive trucks.
He was working for a contracting company at the time of his offense and received a check on 5/19/06 and 6/2/06.

Family History:
1. **Mr. Inmon has a maternal history of Schizoaffective Disorder.**

Mr. Inmon has one full sibling, Denise Baker in Tennessee. She is 2 years older. He has a half-sister Cindy, half-sister Lynn from dad's side and a half-brother Bill who died from a Myocardial Infarct in 30s. He had a half-sister Brenda die in her 40s.
Psychiatric records indicate his mother Vera MacArthur has been diagnosed with Schizoaffective Disorder, Bipolar Type.
A timeline prepared by defense at the pre-trial level indicate his father was in Viet Nam and may have had Post traumatic stress disorder. Mr. Inmon's father was incarcerated in 1976 for a rape in Florida.
His sister, Denise Baker has been recently diagnosed with breast cancer.
Review of his mother's psychiatric records from 2003 indicate his maternal grandmother had auditory hallucinations, a maternal uncle suffered from depression and a grandfather was alcoholic.

Medical History:
1. **Mr. Inmon has hypertension.**
2. **Mr. Inmon has a long history of complaints of various joint pain.**

   He is prescribed Amlodipine for hypertension. He reported he does not consistently receive his medications while confined. He reported he has migratory joint pain, especially in his elbows, right hip, knees and left shoulder.

He had surgery for blockage secondary to swallowing steel in 2001.
He was treated for a staph infection in 2004.
He reported being hit in the head with a log and some neck stiffness.

Psychiatric History:

1. **He had a long history of psychiatric treatment while confined. He was taken to psychiatric units within the Department of Corrections. He had suicide attempts including lacerating his jugular vein and starving himself.**
2. **He has been treated for depression since 1988 and is presently prescribed Elavil.**
3. **He has been diagnosed with: Major Depression, Dysthymia, Mood Disorder Not Otherwise Specified, Major Depression with Psychotic Features, Adjustment Disorder, rule out Bipolar Dsiorder and Antisocial Personality Disorder by the mental health professionals who treated him during his confinement in North Carolina and Florida.**
4. **He has been prescribed: Elavil, Nortriptyline, Wellbutrin, Prozac, Effexor, Vivactil, Navane, Seroquel. Lithium, and Depakote while previously confined.**
5. **He was not on antidepressant medications at the time of his offense.**

On 11/2/88, he lacerated his wrists while in custody of the North Carolina Department of Corrections. The record indicated he cut himself because he could not cope with length of sentence. He received word he had pending charges in Florida. He appeared to be depressed. He was evaluated by a psychologist, Robert Schwacke. He was followed up on 2/28/89 and noted to have a much improved mood.

He had a psychiatric consultation on 3/5/89 by J Riddle. MD. after he lacerated his right external jugular vein on 2/1/89. He was seen at Grace Hospital for a three to four inch laceration and transferred back to Central Psychiatric Unit in Raleigh, North Carolina. He had been placed on Navane, an antipsychotic medication for a while. He was diagnosed with a moderate depression. He was taking a combination of antipsychotic and antidepressant, Vivactil. He was eventually titrated from the antipsychotic and maintained on Elavil in April 1989.

He transferred to Florida Department of Corrections for extradition and returned in 1990. When he was seen again by Drs. Riddle and Schwacke in the North Carolina department of Corrections, he reported he liked Florida better than North Carolina. He was placed in therapy with Suanne Hodge and group therapy. (3/29/90). She noted he had "a lot of guilt about death pf grandfather when he was 13." (7/27/90)

He was seen by Dr. Atwater in 9/90 who diagnosed him with dysthymia and prescribed Prozac. He transferred to Central Prison from 10/10/90- 11/6/90 for further treatment of his depression. He was viewed "as a lost soul that will remain lost." He was prescribed Sinequan. He requested transfer back to Blanch so he could work. He was diagnosed with Dysthymia and Personality Disorder. When followed up by Dr. Atwater 11/90, he was not taking Sinequan.

He was involved in an escape attempt on 2/5/91. He was found in the sewer system. Dr. Atwater again prescribed Prozac on 2/18/91 but stopped it on 3/4/91. He was back on Elavil by 1992 by Dr. Mason. He requested his medications be tapered on 5/27/92.

He was diagnosed with depression by Dr. Blake and prescribed Elavil on 9/28/92. He was changed to Nortriptyline in 11/2/92 and diagnosed with Dysthymia by Dr. Selvi Cheran. She prescribed Wellbutrin on 8/30/93. Pamelor as restarted in 1996 by Dr. Cheran. In 2000, his notes indicate his stepfather had Parkinson's, and Jerry was worried his stepfather would not know him when he was released.

He was hospitalized in 2001 in Florida after swallowing two six inch links of fencing which required surgical removal. He had hunger strike on 1/23/01 and another on 2/8/01. His Mother and sister had visited a week before.
He was diagnosed with recurrent major depression and antisocial personality at Zephyrillis Correctional Institution. He was placed on Lithium and Effexor on 2/16/01. He experienced spontaneous ejaculation on Effexor, so it was discontinued. He was evaluated in 2001 and found to have a Full scale IQ of 109, a Verbal IQ of 105 and a Performance IQ of 113. He was diagnosed with Antisocial and Avoidant traits.
He was prescribed Depakote in May 2002. He was diagnosed with rule out Bipolar Disorder and prescribed lithium.
He was prescribed Seroquel in 2003 by Dr. Brotman.
His Diagnosis was changed to Mood Disorder NOS and Antisocial personality disorder in March 2005. He was treated at Lake Correctional Institution. He was treated with Lithium and Wellbutrin. He was also prescribed Depakote in 2005.

Substance Use History:

1. **In his evaluation on June 2006, he admitted to drinking a pint to a quart of Jim Beam per day.**
2. **He reported a history of using marijuana, up to an ounce every ten days.**
3. **He received a disciplinary for cocaine use while confined in the Florida Department of Corrections.**

Mr. Inmon was drinking Jim Beam in the period preceding his crime. He reported he "could not remember" if he was drinking at the time of his offense. He also reported smoking marijuana. An ounce would last one and one half weeks.
He reported using LSD in his youth
While confined in 1999/2000 he had a urine drug screen positive for cocaine. He had a disciplinary where he was expected of smoking crack on 9/4/99.
He participated in AA and NA in 1998.
A note from SCDC on 6/9/06 indicated he used a lot of drugs two weeks ago.

Trauma History:
A social work investigation will detail his trauma and social history.
He reports that he learned during his pretrial preparation that he had been exposed to sexual violence in early childhood.
He does report recurrent intrusive thoughts of his victim. He reported as he strangled her, he felt his body leave him and he observed her death from above, as if watching. This is consistent with dissociation. He reported he has flashbacks of seeing the victim's pupils dilate.

Sexual History:
He began having consensual sex at age 15. Dr. Dwyer noted that he reported having sex 15 times during that developmental period.
He reported around age 12 while in Texas, he engaged in voyeuristic behaviors.
He reported undetected rapes prior to his incarceration in North Carolina and Florida.

The incident report from his Florida offense indicates on 12/14/87 Mr. Inmon made the victim's roommate tie her up with a telephone cord. The report indicates the victim was sodomized. He then purchased a bus ticket to Anderson SC. His car was found in Charlotte. Fingerprints at the scene matched Mr. Inmon's. He did admit to this offense.
His deviant arousal involves having control over a nonconsenting person. There is no evidence he suffers from sexual sadism and he denies arousal to pain, suffering or humiliation of his partner.
He reported prior to his crimes, he had not had sex in 20 years. "I thought I had beat it. I thought something was wrong with me because I didn't care if I had sex or not." He reported he was out of prison for nine months before his deviant urges returned. He reported he does not like touching people or having people touch him. "I had not had physical contact in so long. I didn't even like for my family to hug me."
According to the report from Alabama, Mr. Inmon tied the victim's hands behind her. He placed her in a closet. He did not rape her.
He admitted to raping a woman in Sevierville with her child in the room.
He admitted to raping and killing Tiffany Souers.
He reports he continues to have deviant fantasies. He reports he uses distraction as a coping mechanism. He reports a lower than normal libido.
In his third interview, he reported total control over his impulses. He did report that driving is a trigger for him.

Legal History:
At age 17, he was convicted of Burglary and Grand Theft in Charlotte, NC (3/25/88). He was convicted of a Sex Offense, second degree and escape at age 17 in Raleigh and sentenced to 20 years (9/27/88). His sexual offense involved he and codefendant sexually assaulting another inmate. Mr. Inmon has consistently denied this offense while admitting to all others and admitting to unreported rapes. This offense occurred while he was confined in Buncombe County. He was convicted of Sexual Battery with a deadly weapon, robbery with a firearm, Burglary and Grand Theft, Kidnapping X2, and Aggravated Assault at age 18 and sentenced to 30 yrs (2/1/99) in Hillsborough County, Florida. He was arrested for these offenses on 4/15/89. He was convicted of Felony Escape from Montgomery County NC and sentenced to 1 year on 2/8/91 at age 20. He was released from confinement on 9/3/05.
At the time of his release from the Florida Department of Corrections, a sexually violent predator statute was in place. Unfortunately, Florida did not refer him for long term care, control and treatment.
He was charged with Burglary first, Armed Robbery and Theft of Property for an offense involving Beth Bates on 5/23/06. He ties the victims' hands behind her back. The offense occurred around lunchtime. He did not rape the woman because she was menstruating.
The victim in Tennessee saw Mr. Inmon's picture on television. She was a 28-year-old single mother who reported Mr. Inmon raped her in front of her "little girl."

Mental Status Examination:
9/15/06 He reported a poor memory of his childhood. He denied any juvenile history. He reported he began breaking the law in his teenage years. He reported he thought his "sexual

stuff went away," He thought he "beat it." He denied criteria for the eight paraphilic disorders but did admit to some acts of voyeurism. He reported he was drinking a quart of Jim Beam per day and a 12 pack of beer. He stated he never had a hangover and would chase it with Mountain Dew. He denied any blackouts.
He reported he was using marijuana, and that an ounce would last him 10 days. He reported he used acid when younger. He reported he had forced sex nine times in his life. He denied consensual relationships as an adult and stated he was "too scared to ask." He reported the first time he forced sex he was age 17. "I didn't know the girl."

10/13/06 He denied suicidal ideation. He was upset that he was not allowed to receive pictures of his dog.

1/15/07 He denied impulses to force sex on nonconsenting persons. He stated he never had uncontrollable impulses. "I could have controlled it." He reported the week before Tuesday before the offense he drove from Tennessee to Georgia and then SC and Clemson. He stated he was out of money and was looking for a place Wednesday but didn't find it. He stated he stayed at a rest area on the interstate. He stated he drove around all day and found an apartment complex. He stated he parked and then went in the back door.

6/15/07 He reported raping the woman in Tennessee and a two-year-old baby was in the room. He reported he saw a light on at 4 am. He entered her house through her garage. He reported he raped her and made her douche afterwards. He reported he attempted to rape a woman two days prior to the rape and murder of Tiffany Souers in Alabama. He reported his impulse to rape was strong.

8/10/08 He reported he was pleading guilty. He reported he was thinking of his mother, sister and himself. He was receiving Sinequan 50 mg in the morning and 150 mg at night. He reported he was sleeping and was able to focus. He reported he received his medications.

8/28/08 He reported the onset of sexual thoughts at age 11, 12 or 13. He reported no memory of his father molesting he or his sister. He reported he began looking at magazines at ages 12 or 13. He reported his stepsister's husband had them. He reported they moved to Texas around age 12. He reported he began peeping at his next-door neighbor. He reported he would sneak out at night and peep once or twice a week. He reported he would sometimes masturbate. He stated as he got older he got braver and would peep twice a week. He reported later he would try to enter houses. If he saw a woman by herself, he would try to go into the house. He reported he would enter homes and fondle the woman while she slept. He reported he was age 13. He reported one woman awoke as he was touching her breast. He reported he got scared and put his hand over her mouth and ran. He stated her husband went to the neighbors. He stated he had to be fingerprinted. He stated his urges went away for a few months but returned. He reported he engaged in this behavior ten or twenty more times. He stated he was careful not to awaken the victim. He stated he did not have sex. He stated he would masturbate later.

He reported things changed when he moved to North Carolina at ages 14 and 15. He saw a woman get raped but was not sure if she and her partner were role playing. He reported he became aroused when he heard her say: "Don't hurt me." He reported he began fantasizing three or four times a week after that incident. He reported he also felt like no one would like him and he was "scum." He stated he felt that way even before his sexual disorder developed. He reported his first sex was at age 14 or 15. He reported his partners were the same age.

4/27/17 He did not remember previously seeing Dr. Dwyer. He did not fall asleep until 2 am and he was awakened at 4 am. He reported he was angry with the testimony of Dr. Price who said: "my mother was unfit to raise a child. He saw me one time for 30 minutes. He did not talk to my family." He was told he had been molested by his father but does not have a memory. He reported his earliest childhood memories are around ages six or seven. He can remember "Bits and pieces. Certain times in Florida and Michigan, and Texas." He liked Texas. He reported he remembered when his dad came to visit at age 7 for a day in Tennessee. When Mr. Inmon was released from prison, he had a hard time with physical contact. He did not like when his Mom hugged him. His thought content is positive for a lot of self-loathing. He said he was a "bad child." He would beat his head on the wall and throw tantrums. He likes to be by himself. He doesn't fit in. He is anhedonic. He doesn't enjoy anything but football. He does not like television and reported there is "garbage" on television. He was on Meloxicam and Prilosec for joint pains. Had Heberden's nodes on hands.

8/3/18 He did not maintain eye contact with the undersigned. He was pleasant and cooperative. He did smile at times, but mostly had a constricted affect. He was not suicidal. He was dysphoric upon recently learning his sister has breast cancer. He did report some deviant sexual fantasies but noted he used distraction to deal with them. His judgment was intact. His insight is fair. He did not have appreciable cognitive deficits. He was not psychotic. His speech was normal in rate and tone.

Consultations:
Mr. Inmon was referred to R Gregg Dwyer, MD for a psychosexual evaluation at the Medical University of South Carolina. Dr. Dwyer concluded that Mr. Inman does not have Sexual Sadism, but instead meets the criteria for Biastophilia. Biastophilia is deviant sexual arousal to nonconsenting sex with an individual. Specifically, Mr. Inman has deviant sexual arousal to nonconsenting sex with females who are strangers. He was also diagnosed with Antisocial Personality Disorder according to Emily Gottfried, Ph.D. Both Drs. Dwyer and Gottfried note that he is not psychopathic and is capable of attachment and caring for others, especially his sister and niece. They noted that Mr. Inman was reluctant to answer questions he deemed as exculpatory. He did not consent to physiologic testing. He reported to them that he had control over his behavior. He reported eight undetected rapes prior to his incarceration in Florida Department of Corrections. They did not perform laboratory testing. They reported he did not meet the criteria for Sexual Sadism. They reported that he did not strangle Ms. Souers while raping her. They noted after he raped her, he cleaned her and then strangled her. They noted he is aroused to having total physical control of the victim, not to pain and suffering. They also noted the sequence of events in the murder of Tiffany Souers was not consistent with Sexual

Sadism. They note and research confirms that Biastophilia is rare. Most rapists do not suffer from Biastophilia. They also noted during their period of evaluation, they referred him for treatment of depression. He has since been prescribed a tricyclic antidepressant from the Department of Corrections. He was administered the Multiphasic Sex Inventory, the Abel screen and the Personality Assessment Inventory in addition to numerous hours of clinical interview. Dr. Dwyer reported he interviewed him for six hours on their last visit. He noted Dr. Gottfried spent 4.5 hrs testing him. He noted they spent another three or four hours in interview times. They both opined that he is remorseful for his crime. They noted the onset of sexual activity at age 15. He did have a history of consensual sex around age 15 with a total of 15 partners. He has not had consensual sex since his confinement at the Florida Department of Corrections.
Dr. Dwyer did report he would treat Mr. Inmon if requested. Biastophilia can be controlled with medications and therapy.

Diagnoses
Other Paraphilic Disorder (Biastophilia), In a Controlled Environment
Persistent Depressive Disorder (Dysthymia)
Unspecified Trauma and other stressor related disorder
Personality Disorder with Antisocial and Schizoid Features
Unspecified joint pain
Hypertension

Discussion of Diagnoses:
Paraphilias are intense and persistent sexual interest that are not normophilic. There are eight different paraphilic disorders that are recognized by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. There are two other categories, which include for conditions which may not meet the criterion for any specific paraphilic disorder and for conditions where insufficient information is available to make a more specific diagnosis. Mr. Inmon is diagnosed with Other Paraphilic Disorder. He has a history of recurrent and intense urges to rape a nonconsenting partner. These urges have been present for 33 years. He has had marked distress, and impairment in his function because of this condition and placed others around him at risk for harm.

Mr. Inmon has suffered chronic depression since 1989. There have been periods of time where he has had a superimposed Major Depression which further decreases his ability to function.

Mr. Inmon does have recurrent intrusive thoughts about murdering his victim. He does not have a memory of his childhood abuse.

Opinions:

1. **Mr. Inmon is insistent that he had total control of his urges, although his behavior indicated his capacity to conform his impulses was diminished for his criminal sexual conduct.**

Mr. Inmon reported that after he was released from prison, he thought he had "beat" his urges to have nonconsensual sex with women. He stated he did not have urges for nine months. He reported he thought something was wrong with him because he was not interested in sex at all. He did report that the weekend before the rapes, he used alcohol and marijuana to "fight off urges" (12/06 evaluation). Mr. Inmon reported he had not had sex in 20 years before he engaged in two rapes. He described his impulses to rape as "strong"(1/15/07). Prior to raping and killing Ms. Souers, he attempted to rape a woman in Alabama two days earlier but stopped after she prayed with him and told him she was menstruating. He raped a woman in Tennessee (May 22, 2006) while her daughter was on the room. Mr. Inmon did not have any treatment of his sexual disorder. He did not know his urges to rape were a condition called Biastophilia which can be controlled and treated.

Mr. Inmon reported after the murder his car broke down. He stated he worked for two days and was eating out of garbage cans because he did not have money. He reported he did not commit any more rapes.

In his statement to police, he reported he had run out of money and was looking for something to rob. He reported he did not think anyone was there and did not mean for anyone to get hurt.

2. **Mr. Inmon has suffered from depression and has been treated since 1989. He was not on antidepressant medications at the time of his offense. Irritability, impulsivity and preoccupation with death have been some of Mr. Inmon's symptoms. Medical records for Vera MacArthur reveal she described her son as suicidal and noncompliant with his medications before the murder (6/8/06).**
3. **Mr. Inmon's long history of exposure to trauma and his long history of confinement at a young age have prevented him from engaging in emotionally intimate relationships.**
4. **Mr. Inmon is extremely remorseful for his actions.**
5. **Mr. Inmon did describe symptoms of dissociation at the time he strangled Ms. Souers. He described "being above her" and "watching in horror" as she died.**

Donna Schwartz Maddox, MD
Consulting Forensic Psychiatrist

TORA L. BRAWLEY, PH.D.
CLINICAL PSYCHOLOGY – NEUROPSYCHOLOGY
803-361-1659 803-497-3526 (FAX)

NEUROPSYCHOLOGICAL EVALUATION

Patient Name: Jerry Buck Inmon

Date of Birth: 12/19/1970

Date of Evaluation: 02/27/2007

Referral Source: Dr. Donna Schwartz-Watts

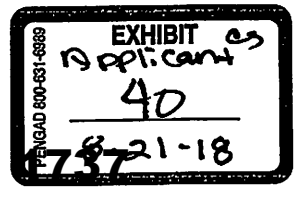
Per the request of Dr. Schwartz-Watts, an extended clinical interview and neuropsychological test battery were administered to Mr. Jerry Inmon, to assess his current level of cognition. Effort testing was also conducted to ensure the validity of these results. The following is a summary of evaluation results.

At the time of the evaluation, Mr. Inmon was a 36 year-old, right-handed, white male who reported difficulties with short-term memory. He stated he first noticed problems with his memory loss in approximately 1997. He stated there was a gradual onset and he did not know of any precipitating factors or events. He described his cognitive difficulties as inability to recall numbers, poor recall of familiar names, and forgetting recent conversations. He rated these difficulties as "mild" and said he believed they were stable.

Mr. Inmon reports a head injury as a teenager when he was hit in the back of the head. He recalls being "dazed" but does not believe he lost consciousness and did not receive medical treatment. He stated that he began using alcohol and marijuana at age 10. He described the use as regular and heavy until his arrest. He also engaged in huffing as a teen and used acid on occasion. Additionally he used IV cocaine for a 6-7 month period.

Prior to his incarceration Mr. Inmon was living with his cousin in Tennessee. He reports to have completed the 8th grade and part of the 9th until he was expelled for drug use. He states that he had to repeat the 1st grade because he "did not do the work", but adds that his grades could be average if he applied himself. Mr. Inmon reports that he was working in the construction industry prior to his arrest, and that he had worked construction "on and off" his entire adult life. He has never been married and has no children.

Psychiatric history reveals that he saw a counselor for depression when in prison from 1988 to 2005. He said he also attended Alcoholics Anonymous and Narcotics Anonymous during this time. Regarding family history he reported that his mother "hears voices and sees things".



Medical history was positive for abdominal surgery in 2003 and a broken finger and ribs. He does not take any medications.

The following tests were administered to Mr. Inmon:

Wechsler Adult Intelligence Scale- III (WAIS-III)
Wechsler Test of Adult Reading (WTAR)
Wechsler Memory Scale- Revised (WMS-R)
- Logical Memory I
- Logical Memory II
- Visual Reproduction I
- Visual Reproduction II
- Verbal Paired Associates
- Information and Orientation Questions

Verbal Series Attention Test
Controlled Verbal Fluency Test
Rey-Osterrieth Complex Figure Copy
Finger Oscillation
Grooved Pegboard
Trail Making Part A
Trail Making Part B
Test of Memory Malingering

During this evaluation Mr. Inmon was well groomed, alert, and fully ambulatory. His mood was pleasant and friendly and affect was appropriate to the situation. He exhibited good eye contact, and hearing and vision appeared to be adequate for the purposes of this evaluation. His speech was fluent, coherent and goal oriented and he had adequate vocabulary, phrasing and articulation. His attention span was intact for presentation of tasks and he exhibited intact comprehension of directions. He was cooperative to testing and persisted with little encouragement. Testing conditions were good and these test results are considered to be a valid representation of Mr. Inmon's current level of cognitive functioning.

The Wechsler Adult Intelligence Scale – Third Edition (WAIS-III) revealed Mr. Inmon to have a Full Scale IQ of 113 (Verbal IQ 107, Performance IQ 121), placing him overall in the High Average range of intellectual functioning. Subtests scores ranged from 10 to 15 (Average to Superior).

Speed of mental tracking for sustained concentration tasks was average (73rd percentile) as was accuracy (69th percentile). Immediate verbal memory for a prose passage was above average (75th percentile) and delayed recall for the same information was also above average (75th percentile). Both immediate and delayed visual memories for designs were above average (90th percentile). Ability to learn word pairs after three repetitions was average (42nd percentile). Copy of a complex figure was average. Controlled verbal fluency for letter cues was above average (83rd percentile).

Mr. Inmon is right hand dominant. Simple manual speed was below average on the right (16th percentile) and severely impaired on the left (2nd percentile). Manual dexterity was average on the right hand (62nd percentile) and above average on the left (76th percentile). On Trail Making Part A his psychomotor speed and visual scanning were superior (95th percentile), and when set shifts were required on Trail Making Part B performance was above average (87th percentile).

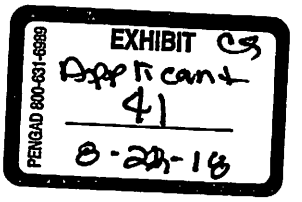
Formal effort testing was conducted with the Test of Memory Malingering. Performance was completely within normal limits, indicating no evidence of an attempt to exaggerate or malinger cognitive symptoms.

In summary, Mr. Inmon is 36 year-old, male who is reporting difficulties with short-term memory, which he states began in approximately 1997. Testing results from this evaluation revealed that Mr. Inmon is currently performing overall in the High Average range of intellectual based on his Full Scale IQ of 113. With the exception of motor slowing noted on a finger tapping test there were no significant deficits noted on the evaluation. Mr. Inmon put forth good effort and these results are considered to be an accurate representation of his current functioning.

These results are not consistent with the presence of significant organicity.

Thank you for asking me to participate in the evaluation of this patient. Please do not hesitate to contact me should you have further questions.

Tora Brawley, Ph.D.
Clinical Psychology-Neuropsychology



Curriculum Vitae

DONNA SCHWARTZ MADDOX
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POSITIONS:

Owner, Donna S. Maddox, MD LLC

Contract Forensic Psychiatrist
Department of Mental Health

Clinical Professor of Psychiatry
Medical University of South Carolina
Department of Psychiatry and Behavioral Sciences

Affiliated Clinical Associate Professor of Psychiatry
University of South Carolina School of Medicine-Greenville
Department of Psychiatry

Professor of Psychiatry
Edward Via College of Osteopathic Medicine
Carolinas Campus

PROFESSIONAL LICENSURE:

South Carolina Medical License # 16574
Georgia Medical License #74584

EDUCATION:

1981 - 1985 B.A. Psychology
Furman University
Greenville, South Carolina

1985 - 1989 Doctor of Medicine
University of South Carolina School of Medicine
Columbia, South Carolina

BOARD CERTIFICATIONS:

Diplomate, Psychiatry, (Board Certification #40726), January 1995, recertified 7/05- 12/2015
Added Qualifications in Forensic Psychiatry, July 1996 #471, recertified 7/06-12/16

POSTGRADUATE FELLOWSHIPS AND RESIDENCY POSITIONS:

1989 - 1993	Resident in General Psychiatry William S. Hall Psychiatric Institute Columbia, South Carolina
1993 - 1994	Fellowship in Forensic Psychiatry William S. Hall Psychiatric Institute Columbia, South Carolina

ACADEMIC POSITIONS/EMPLOYMENT/UNIVERSITY APPOINTMENTS:

8/2016-4/2018	Contract Psychiatrist Harris Psychiatric Hospital
8/2013-8/2016	Psychiatric Service Director(certified) Harris Psychiatric Hospital
7/2010-8/2013	Senior Psychiatrist Bryan Psychiatric Hospital
4/24/13 to present	Clinical Professor of Forensic Psychiatry Medical University of South Carolina Department of Psychiatry and Behavioral Sciences
7/2010 to 2015	DMH Professor of Psychiatry University of South Carolina School of Medicine Department of Neuropsychiatry
7/2006-7/2010	Professor of Clinical Psychiatry Director, Forensic Psychiatry Services University of South Carolina School of Medicine Department of Neuropsychiatry and Behavioral Science 3555 Harden Street Extension, Suite 102 Columbia, South Carolina 29203 (803) 434-4698(803) 434-2367 (fax)
	Consulting and Treating Forensic Psychiatrist South Carolina Department of Juvenile Justice
	Consulting and Treating Forensic Psychiatrist South Carolina Department of Corrections

11/98-6/2009	Consulting and Treating Forensic Psychiatrist Behavioral Disorders Treatment Program (Sexually Violent Predator Program: SC 44-48-110) South Carolina Department of Mental Health
6/1997- 7/2006	Associate Professor Director, Forensic Services Department of Neuropsychiatry University of South Carolina School of Medicine
1/2004-7/2004	Acting Assistant Director, Psychiatry Residency Program University of South Carolina School of Medicine Department of Neuropsychiatry and Behavioral Science
9/1995-5/1997	Forensic Residency Training Director University of South Carolina School of Medicine
7/1996 – 6/1997	Psychiatrist C William S. Hall Psychiatric Institute Residential Treatment Director of NGRI Unit
1/1995 – 6/1996	Teaching Psychiatrist II William S. Hall Psychiatric Institute Out-patient Forensic Psychiatrist
1/1995 – 12/1997	Assistant Professor University of South Carolina School of Medicine Department of Neuropsychiatry
7/1994 –6/1995	Instructor University of South Carolina School of Medicine Department of Neuropsychiatry
7/1994 – 12/1994	Teaching Psychiatrist I William S. Hall Psychiatric Institute In-patient and Out-patient Forensic Psychiatrist

MEDICAL STAFF APPOINTMENTS

Patrick B. Harris Psychiatric Hospital (current)
Bryan Psychiatric Hospital (current)

UNIVERSITY/ MEDICAL STAFF COMMITTEES:

2015-2016	Vice-President, Medical Staff Harris Psychiatric Hospital
2007-2010	Member, Appointments and Promotions Committee, USC
2002- 2009	Member, Alumni Committee, USC School of Medicine
1996- 2010	Member, Residency Selection Committee
1995- 2010	Member, Residency Training Committee
2002- 2003	Member, Search Committee, Chairman of Neuropsychiatry
2000-2001	Member, Committee on Women USC

1997	Member, Traditions Committee USCSM
1997	Member, Search Committee, Director Rehabilitation Counseling
1997	Physician Advisor, Environment of Care
1996	Member, Search Committee Chair of Department of Neuropsychiatry and Director of Hall Institute
1996	Member, Finance Committee, University Specialty Clinics
1994-1996	Member, Infection Control Committee
1993-1994	Member, Research Committee

HONORS AND AWARDS:

2017	Gold Humanism Award Greenville Hospital System
2016	Clinical Mentor Award, University of South Carolina School of Medicine, Greenville, South Carolina
2007	Outstanding Female Physician Mentor Award
2004-2005	Outstanding Forensic Teaching Award Presented by the USC SOM Forensic Fellowship Training Program
1992	Rappeport Scholarship in Forensic Psychiatry Presented by the American Academy of Psychiatry and the Law
1989	Neurology Award, School of Medicine
1985	Cum Laude Graduate, Furman University Phi Beta Kappa, Furman University Alpha Epsilon Delta, Furman University

MEMBERSHIPS AND OFFICES IN PROFESSIONAL ORGANIZATIONS:

2002-2009	American Board of Psychiatry and Neurology Forensic Certification Committee
1999-2009	American Board of Psychiatry and Neurology 1999-2010 Board Examiner
1997-2003	Group for the Advancement of Psychiatry (GAP), General Member 1999 Chair
1992- 2014	American Academy of Psychiatry and the Law (AAPL) 1995-2000 Rappeport Committee (President appointed) 1995-2000 Education Committee (President appointed) 1998-2000 Program Committee (President appointed) 1999 Program Chair 1995-97 Mentor to Rappeport Fellow
1989-1998	American Psychiatric Association, General Member
1989-1998	South Carolina Psychiatric Association

1995-1998	Federal Legislative Representative (President appointed)
1995-1999	Executive Council
1996-1998	Secretary-Treasurer

1997 NAMI Advisory Board Physician Representative

PUBLICATIONS:

Dehart, D,. Dwyer, G., Seto, M., Letourneau E., Schwartz-Watts, D. Internet solicitation of children. A proposed typology of offenders based on their chats, E-mails and social network posts. Journal of Sexual Aggression, 2016

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Schwartz-Watts DM, Frierson RL: "20: Crisis Stabilization in Correctional Settings." in Clinical Practice in Correctional Medicine , Second Edition, edited by Michael Puisis, D.O., S.C. Mosby, Inc affiliate of Elsevier, Inc 2005.

Schwartz-Watts DM. "Asperger's Disorder and Murder." Analysis & Commentary The Journal of the American Academy of Psychiatry and the Law 33:390-3, 2005.

Schwartz-Watts DM, Rowell CN. "Commentary: Update on Assessing Risk for Violence Among Stalkers." The Journal of the American Academy of Psychiatry and the Law 31:440-3, 2003.

Giorgi-Guarnieri D, Zonana HV, Schwartz-Watts DM. "Practice Guideline: Forensic Psychiatric Evaluation of Defendants Raising the Insanity Defense." Supplement to The Journal of the American Academy of Psychiatry and the Law 30:2, 2002.

Frierson R, Schwartz-Watts D, Malone T, Morgan D. "Capital Versus Noncapital Murderers" in revision The Journal of the American Academy of Psychiatry and the Law, 1998.

Schwartz-Watts D, Morgan D. "Violent Versus Nonviolent Stalkers," accepted, The Journal of the American Academy of Psychiatry and the Law, 1998.

Schwartz-Watts D, Morgan D, Barnes C. "Stalkers: The South Carolina Experience," The Journal of the American Academy of Psychiatry and the Law,1997, 24:541-545.

Schwartz-Watts D, Montgomery L, Morgan D. "Seroprevalence of Human Immunodeficiency Virus Among Pre-Trial Detainees," The Bulletin of the American Academy of Psychiatry and the Law, 1995, 23:285-289.

POSTERS:

Internet Chat Rooms: Who Solicits Children? R. Gregg Dwyer, MD, EdD, Donna Schwartz-Watts MD , William Burke, PhD, American Academy of Psychiatry and the Law 39th Annual Meeting, Seattle, WA October , 2008

PRESENTATIONS:

"Mass Murderers and Mental Illness" 5/18/18 Southeastern Symposium Mental Health, Greenville, South Carolina

"How To make Your Expert Shine" 2/7/18 Deep South Capital Defense Conference, Bay St. Louis Mississippi

"Communicating with Clients: 2/7/18 Deep South Capital Defense Conference, Bat St. Louis , Mississippi

"Truths and Myths About Mass Murder" 9/15/17, Department of Mental Health Day Long CME, Columbia SC

"How To Make Your Expert Shine" South Carolina Attorney General CLE, January 20, 2017 Columbia, SC

"Expert Testimony" Lecture to Medical University of South Carolina Forensic Residents, Charleston, SC 1/13/16

"Death Penalty and South Carolina" Lecture to Medical University of South Carolina Forensic Residents, Charleston, South Carolina, February 6, 2013

"Autistic Spectrum Disorders; What Capital Lawyers Should Know." Death Penalty 2013, Sheraton Four Seasons, Greensboro January 25, 2013

"Predators Among Us" University of South Carolina 2012 Mini Med School, October 2, 2012, Columbia, South Carolina

"How Death is Different-Using ABA Guidelines to Meet the Standard of Care in Death Penalty Cases and Social History Investigations: The team Approach" with Joe VonKallist, Capital Case Workshop, September 19, 2012, Wilmington, North Carolina

"Protecting Mental Health" South Carolina Attorney General's Continuing Legal Education Ethics Seminar, Blatt Building, Columbia, SC 12/2/11

"Autistic Spectrum Disorders and the Legal System ", DMH Annual CME, William S Hall Psychiatric Institute 9/11

"Issues of Mental Competency" South Carolina Circuit Court Judges Conference, Spartanburg, South Carolina, May 4-6, 2011

Stalking in the New Millennium": Department of Mental Health Day Long CME, Columbia SC, October 2009

"Internet Predators": South Carolina Psychiatric Association Annual Meeting, Myrtle Beach, South Carolina, 1/2009

"Internet Predators": Panel Speaker, South Carolina Bar Association Annual Meeting, Myrtle Beach South Carolina, 1/2009

Internet Predators: ICAC Quarterly Meeting, Columbia, South Carolina 11/21/2008

Project Safe Childhood, Advanced Online Child Exploitation Seminar, National Advocacy Center Columbia, SC, July 29, 2008

"Violent Crimes and the Commitment of Sexually Violent Predators, MUSC Judges and Attorneys Substance Abuse and Ethics Seminar, Charleston, South Carolina, December 7, 2007

"Autistic Spectrum Disorders and Corrections" South Carolina Department of Corrections Mental Health Seminar, Columbia, South Carolina, December, 2007

"Pitfalls in Sex offender Commitment Hearings" Panel Speaker, American Academy of Psychiatry and the Law 38th Annual meeting, Miami, Florida, October 22, 2007

"Treating the Untreatable" Panel Speaker, American Academy of Psychiatry and the Law 38th Annual Meeting, Miami, Florida, October 19, 2007

"Risk Assessment in General Psychiatry: Department of Mental Health Annual Day Long CME, Columbia, SC September 21, 2007

"Mitigation in Noncapital Cases" SC Public Defender's Conference, Myrtle Beach, SC October 2007.

"Nuts and Bolts of Sexually Violent Predator Proceedings" SC Bar CLE, Columbia, South Carolina July 27, 2007

University of South Carolina School of Medicine Founder's Day Speaker for Woman in Medicine, Columbia, South Carolina, April 2007.

"Autistic Spectrum Disorders and Mitigation," Washington DC March 2007

"Sex Crimes and their Aftermath II" Panel Discussion and Presentation, Jack Swerling Moderator, South Carolina Bar Association Conference, Charleston, SC, January 25, 2007

"Psychiatry for the Brilliant Fact Finders" Invited Speaker, South Carolina Judges Conference, Greenville, SC, May 12, 2006.

"Sex Crimes and their Aftermath" Panel Discussion and Presentation, Jack Swerling Moderator, South Carolina Bar Association Conference, Charleston, SC January 27, 2006.

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice National Institute of Trial Advocacy, Atlanta Georgia , June 4-5, 2005

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice National Institute of Trial Advocacy, Atlanta Georgia , June 5-6, 2004

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South Carolina Probation, Paroles and Pardons Annual Conference. "A State of Mind". Myrtle Beach, SC. November 11, 2002.

American Academy of Psychiatry and the Law, "Difficult Case? Consult your Colleagues." Newport Beach, California. October 26, 2002

South Carolina Public Defender's Conference, "Issues and Concerns Regarding the Sexually Violent Predator Statue" Litchfield Beach, South Carolina, September 30, 2002

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New York, New York, June 28-30-2002.

American Academy of Psychiatry and the Law, "Death Penalty" Boston, MA, October 28, 2001

American Academy of Psychiatry and the Law, "Ask the Expert" and "The Difficult Case" Panel Discussions. Boston, MA, October 28, 2001

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New York, New York, June 14-17-2001.

Annual Capital Defense Training Seminar, "The Importance of Timing in the Presentation of Your Client's Story: Frontloading Mitigation" with John Blum, Attorney, Jekyll Island, Georgia, February 9, 2001

University of Texas, Department of Psychiatry Grand Rounds "Profile of a Stalker" San Antonio, Texas, December 19, 2000

Willford Hall Medical Center, Lackland Air Force Base, Texas, "Death Penalty Evaluations," December 18, 2000.

Willford Hall Medical Center, Lackland Air Force Base, Texas, "Texas Sexually Violent Predator Statute," December 18, 2000

American Academy of Psychiatry and the Law, " Juveniles Who Carry Weapons on School Grounds" Baltimore, Maryland, October 15, 1999

American Academy of Forensic Science, Workshop Presenter, San Francisco, 1998 "Classification and Typology of Stalkers."

Kansas City, Western Missouri Forensic Department, 1997 "Evaluation of Stalking."

University of South Carolina School of Medicine Women's Month Featured Presenter, 1997 "Stalkers: The South Carolina Experience."

American Academy of Psychiatry and the Law, Denver, CO, 1997 "Psychotic versus Nonpsychotic Stalkers."

American Academy of Psychiatry and the Law, Denver, CO, 1997 "Harassing Telephone Callers."

American Academy of Psychiatry and the Law, Denver, CO, 1997 Panel on Maintaining Competence sponsored by Education Committee

American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Violent Versus Nonviolent Stalkers",

American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Capital Versus Noncapital Murderers"

American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Treatment of Insanity Acquittees Across the United States."

William S. Hall Psychiatric Institute Forensic Forum, 1996 "Evaluation and Treatment of Sexual Offenders."

Georgia Regional Forensic Forum, 1996 "Evaluation and Treatment of Sexual Offenders."

American Academy of Psychiatry and the Law, Seattle, Washington, 1995 "Stalkers: The South Carolina Experience"

South Carolina Psychiatric Association, Hilton Head Symposium, 1995 "What General Psychiatrists Need to Know About Forensic Psychiatry."

American Academy of Psychiatry and the Law Annual Conference, San Antonio, Texas 1993 "Seroprevalence of HIV Among Inpatient Pre-trial Detainees"

American Medical Association, North Carolina 1990 "Tertiary Metastases Presenting As Panhypopituitarism"

Present Grants:

Internet Chat Room Solicitation of Children: A Study of Psychosocial and Criminal Justice Factors as They Relate to Public Safety Risk; American Academy of Psychiatry and the Law Institute for Education and Research (AIER) Grant; Principal Investigator: RG Dwyer; Co-investigators: D DeHart, DM Schwartz-Watts, W Burke & R Moran; 2009 - 2010
(Revised 8/22/18)

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

CLINTON NORTHCUTT; BAYAN ALEKSEY; JAMES BRYANT; LUZENSKI COTTRELL; TAYLOR CROSS (f/k/a JONATHAN BINNEY); WILLIAM DICKERSON, JR.; RON FINKLEA; JERRY INMAN; RICHARD MOORE; JAMES ROBERTSON; BRAD SIGMON; STEPHEN STANKO; NORMAN STARNES; SAMMIE STOKES; BOBBY STONE; GARY TERRY; JOHN WEIK; and LOUIS WINKLER,

Plaintiffs,

v.

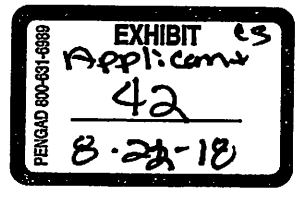
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; BRYAN P. STIRLING, Director of the South Carolina Department of Corrections; JOSEPH MCFADDEN, Former Warden of Lieber Correctional Institution; JOEL ANDERSON, Former Interim Warden of Lieber Correctional Institution; RANDALL WILLIAMS, Warden of Lieber Correctional Institution; WILLIE D. DAVIS, Warden of Kirkland Reception and Evaluation Center; and JANA HOLLIS, Unit Manager of Death Row and Maximum Security Unit at Kirkland Reception and Evaluation Center,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Case No. _____

This action challenges the policies and practices responsible for the cruel and baseless solitary confinement of prisoners who have been convicted of capital crimes by the State of South Carolina.



NATURE OF THE ACTION

1. Based solely on their death sentence, Plaintiffs have been isolated in solitary confinement for between nine and twenty years.[1] Plaintiffs have never had a meaningful opportunity to challenge this placement.

2. Plaintiffs are subjected to indefinite extreme isolation, devoid of mental stimulation, and have only sporadic human interaction. They are confined for up to twenty-four hours a day to small, windowless cells that measure approximately 10 feet by 10 feet. Plaintiffs are only permitted to leave their cell for rare instances of individual recreation in small outdoor cages, only partially open to the sky, and for periodic legal or family visits and medical treatment. Physical human contact of any kind is completely prohibited outside of very limited circumstances involving prison staff, such as when Plaintiffs are transported from their cells, and with Plaintiffs' attorneys during legal visits. Even on the occasions Plaintiffs receive family visits, they are separated from their family members by glass and can have no contact.

3. The harsh repercussions of prolonged isolation are well-known among mental health experts, physicians and human rights experts in the United States and around the world. It is agreed that solitary confinement puts prisoners at risk of substantial physical, mental, and emotional harm. Research has shown that prolonged solitary confinement results in heightened levels of anxiety, chronic depression, and sensitivity to stimuli.

4. In recent years, leaders in the United States have condemned the use of solitary confinement as inhumane. As Justice Anthony Kennedy noted: "[R]esearch still confirms what this Court suggested over a century ago: Years on end of near-total isolation exact a terrible

[1] Upon information and belief, some plaintiffs have left Death Row for short periods of time to attend judicial proceedings. During these periods, they were typically kept in isolation at county jail facilities.

price." *Davis v. Ayala*, 135 S. Ct. 2187, 2210 (2015) (Kennedy, J., concurring). In describing the *Davis* case, in which a prisoner had been held in isolation for more than twenty-five years, to the House Appropriations Subcommittee on Financial Services and General Government, Justice Kennedy stated: "This idea of total incarceration just isn't working, and it's not humane . . .. Solitary confinement literally drives men mad."[2] Similarly, Justice Stephen Breyer recently wrote that "[i]f extended solitary confinement alone raises serious constitutional questions, then 20 years of solitary confinement, all while under threat of execution, must raise similar questions, and to a rare degree, and with particular intensity." *Ruiz v. Texas*, 137 S. Ct. 1246, 1247 (2017) (Breyer, J., dissenting).

5. These dehumanizing conditions are detrimental to Plaintiffs and have caused them severe and irreversible physical and psychological harm. Over time, Plaintiffs have slowly lost their cognitive capacities and ability to communicate effectively. Additionally, Plaintiffs' pre-existing mental illnesses have been exacerbated by the isolated confinement.

6. Social interaction and meaningful activity are crucial to human well-being. By definition, solitary confinement isolates individuals and stunts any mental and emotional stimulation. Even healthy adults, if subjected to short periods of isolation, display impaired neurological functioning. Here, the prolonged nature of the confinement has had a devastating impact on Plaintiffs.

7. There is no legitimate or valid penological reason to place Plaintiffs in solitary confinement based exclusively on their sentence. Numerous corrections officials across the United States promote prison classification systems based on several objective factors, such as age and prison disciplinary history, because these factors, as opposed to a prisoner's sentence,

[2] *Supreme Court Fiscal Year 2016 Budget* at 30:42–31:22 (C-SPAN television broadcast Mar. 23, 2015), goo.gl/8Hkuvj.

are more predictive of potential security concerns. Similarly, a 2016 report conducted by the Department of Justice ("DOJ") recommends the use of solitary confinement only when it serves a specific penological purpose and when accompanied by regular review by a multi-disciplinary committee.

8. Contrary to these recommendations, Plaintiffs—irrespective of their good behavior—have been held in solitary confinement for years, and in some cases decades, without any rational justification and without being afforded any meaningful process or mechanism to address their confinement or to rectify the harm it has inflicted on them. The extreme, unusual and cruel conditions of their confinement violate the Eighth and Fourteenth Amendments of the United States Constitution.

9. Defendants, who are employed by the State of South Carolina, acted under color of law to deprive Plaintiffs of their constitutionally protected right to be free of cruel and unusual punishment, guaranteed by the Eighth Amendment of the United States Constitution, and their right to due process, guaranteed by the Fourteenth Amendment. Plaintiffs seek relief from Defendants to address these grave violations of their constitutional rights.

JURISDICTION AND VENUE

10. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 and the Eighth and Fourteenth Amendments of the United States Constitution.

11. This Court has jurisdiction over Plaintiffs' claims of violation of their federal constitutional rights pursuant to 28 U.S.C. §§ 1331 and 1343.

12. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims herein occurred in this district.

PARTIES

13. **Plaintiff BAYAN ALEKSEY** is a forty-nine-year-old prisoner who has spent the past nineteen years in solitary confinement on South Carolina's Death Row. He was sentenced to death in 1998.

14. **Plaintiff JAMES BRYANT** is a forty-six-year-old prisoner who has spent the past sixteen years in solitary confinement on South Carolina's Death Row. He was first sentenced to death in 2001.

15. **Plaintiff LUZENSKI COTTRELL** is a forty-year-old prisoner who has spent the past twelve years in solitary confinement on South Carolina's Death Row. He was first sentenced to death in 2005.

16. **Plaintiff TAYLOR CROSS (f/k/a JONATHAN BINNEY)** is a forty-three-year-old prisoner who has spent the past fifteen years in solitary confinement on South Carolina's Death Row. She was sentenced to death in 2002.

17. **Plaintiff WILLIAM DICKERSON** is a forty-one-year-old prisoner who has spent the past eight years in solitary confinement on South Carolina's Death Row. He was sentenced to death in 2009.

18. **Plaintiff RON FINKLEA** is a forty-four-year-old prisoner who has spent the past ten years in solitary confinement on South Carolina's Death Row. He was sentenced to death in 2007.

19. **Plaintiff JERRY INMAN** is a forty-six-year-old prisoner who has spent the past eleven years in solitary confinement on South Carolina's Death Row. He was sentenced to death in 2006.

20. **Plaintiff RICHARD MOORE** is a fifty-two-year-old prisoner who has spent the past sixteen years in solitary confinement on South Carolina's Death Row. He was sentenced to death in 2001.

21. **Plaintiff CLINTON NORTHCUTT** is a thirty-seven-year-old prisoner who has spent the past fourteen years in solitary confinement on South Carolina's Death Row. He was first sentenced to death in 2003.

22. **Plaintiff JAMES ROBERTSON** is a forty-four-year-old prisoner who has spent the past eighteen years in solitary confinement on South Carolina's Death Row. He was sentenced to death in 1999.

23. **Plaintiff BRAD SIGMON** is a sixty-year-old prisoner who has spent the past fifteen years in solitary confinement on South Carolina's Death Row. He was sentenced to death in 2002.

24. **Plaintiff STEPHEN STANKO** is a forty-nine-year-old prisoner who has spent the past eleven years in solitary confinement on South Carolina's Death Row. He was sentenced to death in 2006.

25. **Plaintiff NORMAN STARNES** is a fifty-two-year-old prisoner who has spent the past twenty years in solitary confinement on South Carolina's Death Row. He was sentenced to death in 1997.

26. **Plaintiff SAMMIE STOKES** is a fifty-year-old prisoner who has spent the past eighteen years in solitary confinement, on South Carolina's Death Row. He was sentenced to death in 1999.

27. **Plaintiff BOBBY STONE** is a fifty-two-year-old prisoner who has spent the past twenty years in solitary confinement on South Carolina's Death Row. He was sentenced to death in 1997.

28. **Plaintiff GARY TERRY** is a forty-nine-year-old prisoner who has spent the past twenty years in solitary confinement on South Carolina's Death Row. He was sentenced to death in 1997.

29. **Plaintiff JOHN WEIK** is a fifty-year-old prisoner who has spent the past eighteen years in solitary confinement on South Carolina's Death Row. He was sentenced to death in 1999.

30. **Plaintiff LOUIS WINKLER** is a fifty-seven-year-old prisoner who has spent the past nine years in solitary confinement, on South Carolina's Death Row. He was sentenced to death in 2008.

31. **Defendant SOUTH CAROLINA DEPARTMENT OF CORRECTIONS** ("SCDC" or the "Department") is a government agency/entity existing under the laws of the State of South Carolina. It is headquartered in Richland County, South Carolina, and has facilities located through the State. More particularly, SCDC operates Lieber Correctional Institution, located at 136 Wilborn Avenue, Ridgeville, South Carolina, and Kirkland Reception and Evaluation Center, located at 4344 Broad River Road, Columbia, South Carolina. At all times hereinafter mentioned, Defendant SCDC carried out its business by and through its agents, servants, and/or employees, including, but not limited to, those mentioned below. Additionally, these agents, servants, and/or employees were operating individually and/or within the scope of their official capacities.

32. **Defendant BRYAN P. STIRLING** is the Director of the South Carolina Department of Corrections. He became Director in 2013. In this capacity, he manages and controls the entire South Carolina prison system. Defendant Stirling is responsible for the management of the affairs of the prison system and for the proper care, treatment, feeding, clothing, and management of the prisoners confined therein. To this end, he makes and promulgates rules and regulations for the performance of the Department's functions, including rules and regulations governing the treatment, training, and discipline of prisoners and for the "separation and classification of prisoners according to sex, color, age, health, corrigibility, and character of offense upon which the conviction of the prisoner was secured." S.C. Code. § 24-1-140. As such, Defendant Stirling authorizes or condones the unconstitutional policy of housing Plaintiffs in solitary confinement indefinitely, as described herein. Therefore, he directly and proximately caused the constitutional violations set forth below. At all relevant times, Defendant Stirling was acting under color of law, and as an official representative of the South Carolina Department of Corrections. Defendant Stirling is sued in his official capacity for injunctive relief and in his personal capacity for damages.

33. **Defendant JOSEPH MCFADDEN** is the former Warden of Lieber Correctional Institution; he is still an employee of SCDC. He was Warden from October 2012 until August 2017. In this capacity, he was responsible for the planning, direction, and coordination of all activities, programs, and operations at Lieber Correctional Institution. Defendant McFadden interpreted laws, policies, and operational procedures relevant to all employees and inmates at Lieber Correctional Institution. As such, Defendant McFadden authorized or condoned the unconstitutional policy of housing Plaintiffs in solitary confinement indefinitely, as described herein. Therefore, he directly and proximately caused the constitutional violations set forth

below. At all relevant times, Defendant McFadden was acting under color of law and as an official representative of the South Carolina Department of Corrections. Defendant McFadden is sued in his personal capacity for damages.

34. **Defendant JOEL ANDERSON** was the Interim Warden of Lieber Correctional Institution; he is still an employee of SCDC. He was Interim Warden from August 2017 until October 2017. In this capacity, he was responsible for the planning, direction, and coordination of all activities, programs, and operations at Lieber Correctional Institution. Defendant Anderson interpreted laws, policies, and operational procedures relevant to all employees and inmates at Lieber Correctional Institution. As such, Defendant Anderson authorized or condoned the unconstitutional policy of housing Plaintiffs in solitary confinement indefinitely, as described herein. Therefore, he directly and proximately caused the constitutional violations set forth below. At all relevant times, Defendant Anderson was acting under color of law and as an official representative of the South Carolina Department of Corrections. Defendant Anderson is sued in his personal capacity for damages.

35. **Defendant RANDALL WILLIAMS** is the Warden of Lieber Correctional Institution. He became Warden in September 2017. In this capacity, he is responsible for the planning, direction, and coordination of all activities, programs, and operations at Lieber Correctional Institution. Defendant Williams interprets laws, policies, and operational procedures relevant to all employees and inmates at Lieber Correctional Institution. As such, Defendant Williams authorized or condoned the unconstitutional policy of housing Plaintiffs in solitary confinement indefinitely, as described herein. Therefore, he directly and proximately caused the constitutional violations set forth below. At all relevant times, Defendant Williams was acting under color of law and as an official representative of the South Carolina Department

of Corrections. Defendant Williams is sued in his official capacity for injunctive relief and in his personal capacity for damages.

36. **Defendant WILLIE D. DAVIS** is the Warden of Kirkland Reception and Evaluation Center. He became Warden in 2017. In this capacity, he is responsible for the planning, direction, and coordination of all activities, programs, and operations at Lieber Correctional Institution. Defendant Williams interprets laws, policies, and operational procedures relevant to all employees and inmates at Kirkland Reception and Evaluation Center. As such, Defendant Davis authorizes or condones the unconstitutional policy of housing Plaintiffs in solitary confinement indefinitely, as described herein. Therefore, he directly and proximately caused the constitutional violations set forth below. At all relevant times, Defendant Davis was acting under color of law and as an official representative of the South Carolina Department of Corrections. Defendant Davis is sued in his official capacity for injunctive relief and in his personal capacity for damages.

37. **Defendant JANA HOLLIS** is the Unit Manager of the Maximum Security Unit ("MSU") at Kirkland Reception and Evaluation Center. She became Unit Manager in 2017. In this capacity, she plans, coordinates, and directs the actions of the security staff at the MSU. Defendant Hollis oversees security, custody, and control of inmates in her unit, and she is responsible for the proper implementation and adherence to relevant SCDC policies and procedures. She also is responsible for investigating complaints and violations in the MSU. As such, Defendant Hollis authorizes or condones the unconstitutional policy of housing Plaintiffs in solitary confinement indefinitely, as described herein. Therefore, she directly and proximately caused the constitutional violations set forth below. At all relevant times, Defendant Hollis was acting under color of law and as an official representative of the South Carolina Department of

Corrections. Defendant Hollis is sued in her official capacity for injunctive relief and in her personal capacity for damages.

STATEMENT OF FACTS

38. Starting in 1997, Death Row inmates in South Carolina were housed at Lieber Correctional Institution ("Lieber"), a maximum-security prison facility in Ridgeville, South Carolina.

39. On or around September 26, 2017, the South Carolina Department of Corrections ("SCDC") moved Death Row to the Maximum-Security Unit ("MSU") at Kirkland Reception and Evaluation Center ("Kirkland"), a maximum-security prison facility in Columbia, South Carolina.

40. South Carolina's Death Row houses all male state prisoners sentenced to death. There are currently thirty-eight prisoners serving death sentences on Death Row.

The Death Row Facility at Lieber Correctional Institution

41. Lieber Correctional Institution is a Level 3 institution housing male inmates serving sentences in South Carolina. The facility houses approximately 1,200 inmates in multiple buildings and dorms. One of the buildings at Lieber is a Special Housing Unit ("SHU"). Half of the SHU was a maximum-security unit that housed inmates who were moved to the SHU because of disciplinary problems while incarcerated on non-death penalty sentences. The other half of the building comprised Death Row. The maximum-security unit and Death Row were separate units within the SHU and Death Row had its own unit manager, officers, and policy.[3]

[3] *See* SCDC Policy OP-22.16, attached as Exhibit A.

42. Death Row at Lieber consisted of two "sides," each of which had the same layout. Each side consisted of cells on two levels, with each level shaped like a "U" around an open area in the middle. Each level had a walkway in front of the cells to allow movement of officers and inmates—when they were allowed out of their cells—and for passing a telephone and microwave that could be used by the inmates.

43. Plaintiffs, along with all other Death Row inmates, were confined to individual cells that measured approximately six feet by nine feet. Each cell contained a bunk bed (with the bottom bunk used for sleeping and the top bunk used for storage), a desk with a chair, a toilet and sink, and a storage cubby. Each cell also had an electrical outlet that could be used by the Death Row inmates to operate the communal microwave when it came to them, or a hot pot, lamp, or other small electrical devices the inmates were authorized to purchase from the Commissary.

44. Each cell had two outside-facing windows, approximately four inches wide by four feet tall and separated by approximately six inches. From these windows, natural light entered the cells and the Death Row inmates were able to view the outside. Each cell had a single door that could be opened to allow the inmates to move in or out of their cells. The cell door also contained a window that looked out on the open area in the center of the unit. From this window, the Death Row inmates were able to see and talk to other inmates who were at their doors. The doors also contained a horizontal slot, approximately five inches tall and seventeen inches wide, through which officers could pass meals, letters and other paperwork, and the telephone. Through this slot, Death Row inmates were able to reach and use the microwave. The slots could be closed by locking a flap over the slot, but they were rarely locked. By

reaching out of this slot, Death Row inmates were able to reach the light switch outside their cells and control the lighting within their cells without having to ask an officer for assistance.

Solitary Confinement on Death Row at Lieber Correctional Institution

45. All individuals sentenced to death were automatically placed in solitary confinement on Death Row upon their arrival at Lieber. Their placement in solitary confinement was not based on SCDC classification criteria, violation of prison rules, behavioral considerations, or anything other than their death sentence.

46. In contrast to most of the prisoners at Lieber and other SCDC facilities, prisoners on Death Row were denied any meaningful opportunity to challenge their placement in solitary confinement through any administrative means, nor were they given periodic reviews to determine whether there was any legitimate penological reason for them to remain in solitary confinement.

47. SCDC conducted pro forma reviews of each Plaintiff's classification. In most instances, these reviews occurred annually. Prison officials conducting the review would bring two forms to each inmate: one was a waiver of appearance at the classification hearing, and the other was a form stating the inmate's status. As one Plaintiff said, "we all [signed the waivers] because there was no use in going" and because "no matter what, you would be in solitary."

48. There was no meaningful opportunity for prisoners on Death Row to challenge their solitary confinement, even after years of exemplary behavior, unless their conviction or sentence was reversed and they were resentenced to a sentence of less than death, in which case they were removed from Death Row and placed into general population.

49. Those on Death Row at Lieber were forced to spend between twenty-three and twenty-four hours a day isolated in cramped cells where they were deprived of almost all

intellectual and social stimulation. Physical contact was forbidden, and the absence of meaningful human interaction severely impacted their mental and physical health.

50. Death Row prisoners were allowed out of their cells in limited circumstances. Inmates were allowed non-contact visitation with family or friends who were approved as visitors by SCDC on weekends. The only contact visits allowed to Death Row inmates were with their attorneys for legal visits. During legal visits the inmates were shackled in belly- and leg-chains with one hand cuffed to the belly chain for the duration of the visit. At the beginning and end of the legal visit, the inmates were allowed a brief handshake or hug with their legal visitors; this was the only physical human contact the inmates were allowed with someone other than a correctional officer. They were also allowed out for showers on weekdays (in individual locked shower stalls outside their cells) and for sporadic visits to the law library.

51. Additionally, five times per week—if staffing and weather allowed—prisoners were allowed to go outside to recreation pens. Only one prisoner was allowed in each pen at any given time.

52. Upon information and belief, there were six outdoor pens for the Death Row inmates at Lieber. The outdoor pens resembled dog runs. They were fully enclosed by wire fence on all sides, including on the top. A dark fabric surrounded the entire recreation area on all sides and the top, barring the recreating inmates from viewing their surroundings or the sunlight. There was no equipment for the prisoners to use.

53. Unlike most other prisoners, those on Death Row at Lieber were restricted in what they could purchase at the commissary. If inmates wanted to purchase new clothing or any materials to provide distraction or stimulation while in their cells, they had to do so at the commissary or through a limited number of approved external sources. This was difficult for

most Death Row inmates since none of them are allowed to earn any money while on Death Row.

54. Other prisoners at Lieber were allowed access to employment and the ability to earn money that is, in part, deposited into their commissary accounts. However, inmates on Death Row were denied this opportunity.

55. Similarly, Death Row prisoners' activities were severely restricted at Lieber. They were not permitted to participate in any of the various classes, clubs, and trainings available to other inmates, and they were denied access to any kind of vocational, recreational, or educational programs.

56. Because they were not permitted to work or to participate in any programs, prisoners on Death Row spent almost all of their time at Lieber in their cells, idle and without any external mental or sensory stimulation.

57. Other prisoners at Lieber had access to group religious services offered on a revolving basis by various volunteers from local churches and religious organizations. Death Row inmates, on the other hand, were not allowed to participate in group religious services. The only religious services provided on Death Row were visits from "fellowship" volunteers who were allowed to walk around the unit and talk to the inmates individually through the windows of the locked cell doors. Death Row inmates were not allowed to participate in religious classes or studies or to have actual services, such as Mass or communion services.

58. Prisoners on Death Row were only allowed to be visited at Lieber by persons who had been approved to visit, which was restricted to individuals they knew before the time they were incarcerated.

59. Visitation with Death Row prisoners at Lieber took place in non-contact visiting rooms and prisoners remained shackled at the waist during visitations. Glass and mesh separated the prisoners from their visitors, and communication was by speaking loudly through the mesh portion of the barrier between the prisoners and visitors. The Death Row inmates did not have any contact with one another during these visits (even though multiple inmates had visits at the same time); they were separated from each other by steel walls and locked doors.

60. Unlike other prisoners at Lieber, who lived in a dormitory setting or in cell-blocks and were constantly interacting with one another, prisoners on Death Row were locked in their cells for upwards of twenty-three hours a day and, aside from visits, had little contact with non-prison officials. Even during visits, prisoners were denied any kind of physical contact with their family members or friends.

61. Death Row inmates were able to speak to those in nearby cells while at Lieber by shouting through their cell doors, and for many this was the only form of regular communication with anyone other than the correctional officers. Multiple Plaintiffs have described the ability to communicate with the other inmates, even with these limitations, as one of the few coping mechanisms available to alleviate some of the isolating effects of solitary confinement.

Transfer to Kirkland Reception and Evaluation Center

62. On or around September 26, 2017, the South Carolina Department of Corrections relocated the Death Row facility from Lieber to the Kirkland Maximum Security Unit.

63. Plaintiffs learned of the move through unofficial channels less than a week before the move and were officially informed they would be moving hours before the actual move. They were instructed to not to pack their belongings, but to put anything they wanted to keep on their bed and someone at Lieber would pack their belongings to be delivered to them at Kirkland.

64. Death Row inmates were forced to strip and dress in only a used t-shirt and pair of boxers given to them before transport. This was the only clothing they were allowed for the length of the move between facilities. Even prisoners' prescription eyeglasses were taken.

65. On information and belief, the inmates were forced to remain in these clothes for two days after they arrived at Kirkland. They were not given new clean clothes, even though all of their other clothes had been taken and/or packaged at Lieber, and they were denied the opportunity to wash the t-shirts and boxers that they were given before transport.

66. Prison officials told Death Row inmates that their belongings would need to be searched for contraband before it could be returned. However, as detailed below, many of these items have not yet been returned. In some cases, inmates have been told that the items will not be returned or that they went missing during the move. One inmate was told by SCDC staff that other inmates at Lieber were tasked with packing and cleaning the cells, and that these inmates had been told that they could take whatever they wanted from among the Death Row inmates' possessions.

The Death Row Facility at Kirkland Reception and Evaluation Center

67. Kirkland Reception and Evaluation Center serves as SCDC's administrative hub for all male offenders age 17 and above entering SCDC upon receiving a sentence of 91 days or more. It receives, assesses, classifies, and assigns approximately 15,000 offenders each year. Kirkland also houses SCDC's statewide protective custody unity and the State's Maximum-Security Unit.

68. SCDC describes the Maximum-Security Unit at Kirkland as "specialized housing" for "the most dangerous and violent offenders."[4]

69. There is no distinct Death Row facility at Kirkland. Instead, all Death Row inmates have been confined to the MSU. They share that space with inmates from other facilities who have been sent to the MSU because SCDC has made a determination that these inmates need to be isolated from the general population due to the threat they pose, or as punishment for specific institutional behavior. Upon information and belief, these inmates are referred to as Substantiated Security Risk ("SSR") inmates or, colloquially, as "SSRs."

70. The MSU is a stand-alone building connected to the rest of the facility by a long fenced-in walkway. It houses prisoners in four wings radiating out from a central command area. Each wing consists of two halls. For example, "A" wing is divided into "High A" hall and "Low A" hall. Each hall has approximately six cells and is separated from the central area by a solid steel door with only a small glass window.

71. On information and belief, all but one of the halls have at least one SSR inmate mixed in with the Death Row inmates.

72. MSU cells are approximately 10 feet by 10 feet. They contain a built-in shower, toilet, concrete bed slab, and desk, as well as a small television screen behind a plate glass panel. The ceiling is approximately 25 feet high. Each cell has a window that has been completely covered by metal panels and thus there is no natural light.

73. There are no chairs in the cells. Prisoners can only use the desk or watch television by perching on the edge of the concrete bed slab or standing.

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[4] South Carolina Department of Corrections, *Kirkland Correctional Institution*, http://www.doc.sc.gov/institutions/kirkland.html (last visited Nov. 27, 2017).

74. There are no electrical outlets in the cells. Prisoners cannot control the lighting in their rooms because the lights are controlled by prison officials from the central location, so prisoners must request assistance from one of the officers if they wish to turn off the lights to sleep, or turn on the lights so they can engage in any activity. The only lighting in the room is a large florescent light on the ceiling; inmates cannot use smaller lamps because there are no outlets in the cells.

75. The cells are separated from the hall by two doors. The outer door is a solid steel door with a window that looks directly across the hallway at a concrete wall. The inner door is a wire mesh door that has two openings. One opening is near the floor and can be used to shackle the inmates' legs. The other opening is about waist height and can be used to shackle the inmate's arms or to pass through food or materials. There are flaps that can be closed and locked over the waist-level opening. All of the doors and flaps are closed and locked at all times other than when an officer is giving something to an inmate or the inmate is being moved in or out of his cell.

76. The cell walls and solid doors dampen sound, making it difficult—if not impossible—for inmates to speak with those in neighboring cells. Furthermore, the two solid doors between each inmate and the prison staff in the central control area makes it very difficult for inmates to get the attention of staff.

77. Both the outer and inner doors to each cell can be opened by a single officer, but require two sets of keys kept in the possession of different officers; therefore, in practice they require multiple officers to open. The current policy at the Kirkland MSU is that officers will only open the doors when there are two officers present. This two-key system causes Death Row inmates to fear that if a fire or other emergency occurred, officers would not be able to open the

doors to aid the inmates before they were seriously harmed. The door between each hall and the central area can only be opened by the control officer sitting in the central control area pushing a button. This means that a single officer cannot respond to a request for assistance.

78. The cells also lack storage space. Clothes and other personal belonging can either be placed in bags on the floor or on the small desk. However, in order to watch TV, most items on the desk must be moved to the floor, otherwise they block the screen.

79. The design of the in-cell showers compounds the lack of storage. Prisoners cannot control the flow of water. Instead, the officers activate the showers from a central location and leave them on for 30-45 minutes on most week days. Because the showers are open to the cells on two sides, and because prisoners cannot control the flow or direction of water, the cells tend to flood. Personal belongings that are stored on the floor are thus exposed to water damage on each shower day.

80. On information and belief, prison officials at Kirkland failed to clean the cells before Death Row inmates moved in. Instead, it appears that officials painted over all the exposed surfaces. This paint began to chip within the first week, exacerbated by the damp air and standing moisture caused by the showers, and the chips clog the drain and cause further flooding.

81. Multiple inmates described significant growths of mold in their cells and showers, in some case growing beneath the paint and only revealed when the paint sloughed off the walls. One inmate described "black mold up to [his] knee" in the showers.

82. The toilets feature a timer that restricts how often they can be flushed, regardless of need or sanitation concerns.

83. On information and belief, the MSU has two recreation areas. Each area consists of three cells and only one inmate is allowed in each cell at a time. The cells are fan-shaped and approximately 18 feet by 9 feet by 19 feet by 5 feet, surrounded by approximately 13-foot high cement walls on three sides, a door from the building is on the fourth side. The first third of the cell is covered by a solid roof, while the remainder is covered by diamond-pattern steel grating and razor wire. The inmates can hear each other but they cannot see each other and cannot interact. The only view they have is to look directly up at the sky through the grate and razor wire.

Solitary Confinement on Death Row at Kirkland Reception and Evaluation Center

84. The conditions on Death Row deteriorated significantly from the already intolerable situation at Lieber when the Row was moved to Kirkland.

85. On information and belief, there is no longer an official policy governing Death Row because the policy that was in place at Lieber does not apply to Kirkland. Instead, Death Row inmates are largely subject to the rules and regulations that govern the SSR inmates who have been sent to the MSU because of their individual behavior.

86. Death Row inmates are still denied any opportunity to participate in any educational, vocational, or religious programming.

87. Death Row inmates are denied all employment opportunities, severely limiting their ability to purchase necessary products from the commissary such as medicine, cleaning supplies, and clothing.

88. For example, inmates have five dollar co-pays for prescription medication. Without any income, the cost of one or two monthly—or weekly—medications can be prohibitive.

89. Additionally, the lack of resources limits Death Row inmates' ability to clean and maintain their own cells. Prison officials have provided Death Row inmates with cleaning supplies only once since they were transferred. Death Row inmates who wish to do additional cleaning must purchase cleaning supplies from the commissary.

90. Kirkland also limits the inmates' access to their property. In preparation for transport from Lieber, prison officials confiscated all of the Death Row inmates' personal property. This included radios and televisions, as well as coffee makers, cook-pots, food coolers, books, art materials, typewriters, letters, and materials related to each inmate's legal file. Each of these items was purchased from the commissary with the inmate's own money or, in the case of letters and legal files, received from friends and family or Plaintiffs' lawyers.

91. While many of these items have since been returned, except as discussed below, SCDC has refused to return Plaintiff's electronics.

92. Even if these electronics were returned, the MSU cells have no electrical outlets and prisoners have been informed that SCDC has no intention of providing them.

93. The lack of electrical outlets also means prisoners cannot control the lights in their own rooms, making it difficult to sleep or read—if they even have access to reading material—without the direct assistance of the officers.

94. On information and belief, the MSU officers are supposed to make rounds every thirty minutes. However, the inmates report that it is sometimes hours between rounds on their halls.

95. Each room has an intercom, but it is unidirectional. There is no call button, and the inmates cannot use the intercom to communicate out in any way. They can only hear messages from prison officials. At least one inmate has an intercom that does not function at all.

96. In order to get the officers' attention, the inmates must beat on their steel doors and yell. This can take half an hour or more, and officers do not always respond—if they even hear.

97. When the officers do respond, the process is time-consuming. In practice, each door requires two or more different officers to work together.

98. This procedure complicates even simple tasks. For example, at first the entire MSU only had one phone for inmate use. There were initially two phones to cover the thirty-eight Death Row residents and approximately a dozen SSR inmates, but on information and belief an officer broke the cord for the second phone.

99. Upon information and belief, there are now four phones for the MSU, but one phone connection has been damaged multiple times, thus limiting the ability of inmates on one wing to access the phone while the connection is being repaired.

100. The MSU phones are connected to a line in the central area and can be wheeled to a given cell on a cart. This requires the control room to open the hall door, and then two officers must open the cell's outer door, and then the flap that opens in the cell's inner mesh door. The phone is left between the two cell doors and the receiver is handed to the inmate. The officers then leave, lock the doors, and return to the central area.

101. When a prisoner is done with the phone, he must get the attention of the officers, who must then go back through the doors, retrieve the phone, return to the central area, and then bring it to the next person. Inmates report the phone is often left with one person for hours at a time, even when that person only made a short call. Even with three phones, this deprives the rest of the Death Row inmates from using the phone for long periods of time, and means that on

some days only a handful of inmates, out of nearly fifty, can make calls to family, friends, or their lawyers.

102. This procedure also makes it nearly impossible for Death Row inmates to schedule communications, or to complete calls during times when recipients are likely to be available.

103. Inmates have submitted official requests regarding the lack of access to phones, but prison officials have not responded to their requests.

104. The process of opening and closing doors also causes Death Row inmates to have difficulty sleeping at night. When officers do make rounds at night they turn on the lights for the hall, waking prisoners. The hall doors also make a loud noise when they open and close, frequently waking inmates throughout the night. One inmate reported that he requested and began taking an antidepressant, which is also used as a sleep medication, to aid him in sleeping through more of the night.

105. Death Row inmates are also denied the few options for social interaction that were previously available.

106. Prison officials have not allowed many "fellowship" visits to Death Row since it moved to the MSU. It took over seven weeks for one of the fellowship volunteers who previously visited Death Row at Lieber to obtain permission to visit Death Row at Kirkland, despite the fact he had been visiting Death Row at Lieber for approximately six years, with the approval of the Lieber warden and chaplain. When fellowship volunteers were allowed to visit the Death Row inmates, it was only two of the many volunteers who were previously allowed to visit at Lieber and they were given such a short period of time to visit that they were only able to talk to each inmate for a couple of minutes at most.

107. A chaplain has visited Death Row only twice since it moved to the MSU despite written requests from multiple Death Row inmates.

108. Recreation is given very infrequently. No inmate was given recreation more than four times in the first month after they were transferred to Kirkland, and some had less opportunity. Plaintiffs report that recreation opportunities have become somewhat more frequent after the first month, but not significantly so.

109. When they are allowed recreation, inmates are not allowed to change into athletic clothing they were allowed to purchase at Lieber. Instead, they are forced to wear the full coveralls that constitutes their uniform, meaning that any significant physical activity will dirty the clothes the inmate has for the day and leave the inmate sweaty until the evening's (or next day's) shower. This is an allowance that was lost in the move from Lieber to Kirkland, for no reason other than the move itself.

110. Furthermore, Death Row inmates are also denied information about the limited administrative options that are available to them for filing grievances.

111. As detailed below, prison officials respond to inmate requests infrequently, leaving most requests unanswered.

112. Inmates have asked for clarity about visitation hours and individual visits, but have not been able to get correct and consistent answers from the officers or other officials. This has caused at least one inmate to give up on trying to schedule visits.

113. Defendant Hollis, the MSU and Death Row Unit Manager, rarely makes rounds. When she does make rounds, she is reluctant to provide information to inmates or provides incorrect information. Hollis initially refused to provide information regarding visitation times

and then provided multiple inmates with incorrect visitation times. This is particularly troubling given the amount of advance notice needed to schedule visitations.

114. Defendant Davis, the Warden of Kirkland Correctional Institution, visits the row very infrequently.

115. There have been a number of other changes since the Death Row inmates were moved to the MSU.

116. Death Row inmates no longer have access to a microwave, as they did at Lieber. At Lieber, this microwave was placed on a wheeled cart, allowing inmates to pass it back and forth along the tier. Without access to a microwave, they cannot heat food that they buy from the commissary, or cook food for each other as they once did. This change is significant because the food that inmates are given at Kirkland from the prison kitchen is almost always cold when it arrives—a problem for a menu that is largely gravy-, egg-, and grits-based.

117. In addition, commissary items that were previously available at Lieber have now been blacked out on the commissary list. These items include all electronics, despite the fact that these items were allowed at Lieber and were on SCDC's list of approved items for Death Row.

118. Some inmates had coolers for keeping food and beverages cold. Many of these coolers were not returned after the transfer to Kirkland, but even if they were, the coolers are now useless: prison officials have refused to allow the inmates to obtain ice.

119. Many additional items that made life more bearable have also been kept back. Multiple inmates report that extension cords for their headphones have not been returned, meaning they need to hunch next to their television to hear. Inmates also found that all of their previously-approved and purchased electronics were not returned after the move. SCDC

confiscated extension cords, fans, lamps, electric razors, typewriters, coffee pots, and cook pots. Prison officials also confiscated toe-nail clippers.

120. This was not due to any disciplinary infraction or other behavioral incident. There have not been any security issues with approved electronics or other property purchased through SCDC on Death Row in many years.

121. Similarly, Plaintiffs and other Death Row inmates were able to purchase certain hobby craft items for use in their cells at Lieber. These items included pipe cleaners, popsicle sticks, wood glue, drawing pens, paints, and other similar items. Many Death Row inmates used these materials to create crafts to send to their families and to help keep their minds occupied. Upon the move to Kirkland, all hobby craft items were confiscated and each inmate had to reapply for hobby craft approval. When the inmates were reapproved for hobby crafts at Kirkland, however, they were not approved for all of the items they previously had, even if they had previously purchased these items and had them in their cells at Lieber. Previously approved items that are no longer approved at Kirkland include toothpicks, popsicle sticks, wood stain, and drawing ink. There were no disciplinary problems as a result of the inmates having access to these hobby craft items at Lieber. The items have been disapproved solely as a result of the move from Lieber to Kirkland.

122. In addition, upon information and belief, the prison officials went through inmates' mail during the move—including marked legal mail. Inmates report that some legal materials were confiscated, and that SCDC has failed to return some personal letters.

123. The inmates also cannot get their clothes properly cleaned. They are required to give their dirty clothes to the officers in a tied-up laundry bag. The bag is then thrown into the washer, still tied up, which prevents the clothes from actually being cleaned.

124. Furthermore, Kirkland does not allow the inmates to clean their own sheets in the sinks within their cells. The officers collect the sheets, against the inmates' wishes, and do not always return the correct sheets to each inmate. One inmate received another inmate's still bloody sheets instead of his own. This is a particular problem because there are inmates in the MSU with significant mental illnesses who cannot take care of their own hygiene, and so those inmates with more meticulous hygiene practices fear that they will be forced to use others' filthy sheets.

125. Upon information and belief, the only reason for these changes is that the Death Row inmates are now housed in the MSU and are being treated as if they were residents of the MSU placed there for disciplinary purposes.

126. The MSU cells were constructed specifically to hold inmates who were confined to the unit based on their behavior and threat level. The policies that govern the treatment of SSR prisoners confined at the MSU are much stricter than those that governed Death Row inmates at Lieber. And because each hall has at least one SSR inmate, the officers generally treat all the inmates—Death Row and SSR—as if they were SSR prisoners.

127. Upon information and belief, one officer expressed that he did not know why the Death Row inmates were moved to the MSU especially because he and other officers understood that SCDC was attempting to close the MSU at Kirkland. He said that it did not make any sense and that he would "take them [the Death Row inmates] over the other guys [the SSR prisoners] any day." He also opined that the Death Row inmates were "not a problem" and that they were well-behaved. Indeed, there have been no documented behavior issues for Death Row inmates since the move to Kirkland. This is in sharp contrast to the observed behavior of the SSR inmates.

128. On information and belief, one of the SSR inmates is often on one-on-one security watch. This means that an officer has to stand outside his cell with the outer door open at all times. The SSR inmate yells through the door all night long, keeping the nearby Death Row inmates awake.

129. After one SSR inmate threw feces through his open door and into the hall, officers waited for eleven hours to clean it up. When the officers did finally clean the mess they did not clean it thoroughly and left some of it on the floor. The mess and the smell remained for days.

130. Another SSR inmate bangs a cup against the door for up to sixteen hours a day, trying to draw the officers' attention.

131. In every case, the SSR inmates were sent to that unit after SCDC officials determined that their past behavior, and the threat they presented, were such that solitary confinement was warranted.

132. SCDC has never made an individual determination that Plaintiffs' past behavior or the threat they pose was such that solitary confinement—let alone solitary confinement in the MSU—is warranted or appropriate.

Plaintiffs' Confinement on Death Row

133. Upon information and belief, many Death Row prisoners suffer from mental illness, which is exacerbated by being held in long-term isolated confinement. Despite the fact that Defendants are aware of the prevalence of mental illness among this population, and of the well-documented effects of solitary confinement on prisoners with mental illness, they provide inadequate mental health care to Death Row prisoners. Although a social worker visited the MSU once in the first four weeks, she moved quickly from cell to cell asking the prisoners if they needed any help. She did not pause for more than two minutes when a prisoner told her that

he was "not good." Such a visit does not provide the relief these prisoners need. To receive mental health care, prisoners must first be able to articulate a need for mental health services, which many prisoners who suffer from mental health illnesses are unable to do. An inmate must either write a coherent request for mental health services, or must ask for it by yelling through the door to an officer or social worker, which others nearby would be able to hear. Some prisoners are unwilling to ask for assistance knowing that their request will be heard by others on the hall. Even if the individual does speak up publicly, their request for help often goes unanswered.

134. The prisoners on Death Row slowly lose their ability to function normally and eventually mentally decompensate due to their solitary confinement. Plaintiff Stephen Stanko, who has been on Death Row for eleven years, has observed how prisoners change after years on the row. He has seen his and other inmates' mental functioning slow down and an exacerbation of mental illness among those inmates who already had mental health issues. Mr. Stanko feels everyone on death row suffers from a pressure as a result of being isolated and that this pressure is starting to cave in on them.

135. And every time an inmate leaves their cell, whether for recreation or a legal visit, they are handcuffed, chained, and kept on a leash. Being led by a leash through the institution has been described by the Death Row inmates as shameful and dehumanizing.

136. As a result of SCDC's blanket policy of placing all Death Row prisoners in solitary confinement, Plaintiffs spend upwards of twenty-three hours a day in complete isolation and are denied the normal human interaction that is necessary to sustain proper mental health and physical well-being. This blanket policy of placing all Death Row prisoners in permanent and

prolonged solitary confinement without the means to challenge their placement at any time violates Plaintiffs' constitutional rights.

137. Multiple Death Row inmates have said that they are so isolated, and their living conditions are so bad, that they are considering dropping their appeals.

Bayan Aleksey

138. Plaintiff Bayan Aleksey has spent the past nineteen years in solitary confinement.

139. While incarcerated at Lieber, Mr. Aleksey was at one time allowed to clean Death Row. He was also allowed to assist in the commissary area because of his lack of disciplinary problems and his good work ethic. Despite the lack of any disciplinary problems, over the past several years SCDC reduced his responsibilities so that Mr. Aleksey was not allowed to leave his cell at Lieber except for recreation time and showers.

140. Now in the MSU, Mr. Aleksey is not even allowed to leave his cell for showers. The lack of sunlight is causing him to experience depression. A social person by nature, Mr. Aleksey can feel the isolation taking a toll on him. He is unable to engage in simple conversation and basic banter with other inmates and staff because of the physical structure of the MSU. Mr. Aleksey cannot even see the outside world. This experience has left him irritable and despondent.

141. The dehumanizing conditions on Death Row are also contributing to Mr. Aleksey's deteriorating mental health. Apart from his personal experience, Mr. Aleksey also suffers from being forced to witness the suffering of other Death Row inmates—some of whom have been his only regular companions for nearly two decades.

142. While on Death Row, Mr. Aleksey has been exposed to potentially life-threatening medical crises that have been ignored and ridiculed by prison staff, and he has personally filed numerous mental health and medical requests that have been ignored.

143. When the prison returned Mr. Aleksey's property after the transfer from Lieber to Kirkland, they did not give him back multiple items, including: six new t-shirts, new thermal long underwear, extension cords, hobby craft supplies, a television, a fan, a lamp, a coffee pot, and an electric razor. Mr. Aleksey had purchased all of these items from the commissary with his own limited funds.

Taylor Cross

144. Plaintiff Taylor Cross has spent the past fifteen years in solitary confinement. She has had no disciplinary issues since at least 2009. Her death sentence was reversed in 2012 and she is not currently sentenced to death.

145. Ms. Cross is a transgender woman and recently began the process of transitioning. She has been taking estrogen for approximately a year, presents as female, and wears female undergarments. Ms. Cross is the only woman on Death Row in South Carolina, but SCDC continues to treat her like a male inmate in significant ways.

146. For example, Ms. Cross was forced to wear only a t-shirt and boxer shorts in the company of male inmates during transportation from Lieber to Kirkland. She was not allowed to dress appropriately while being transported in the company of male inmates and staff. After the transfer, it took the prison staff several days to get Ms. Cross appropriate undergarments. When she did receive her bras, the pads inside them had been removed.

147. Additionally, Ms. Cross was denied her medication for several days after being transferred to Kirkland. This deviation from her prescribed healthcare regimen caused her to

become intensely emotionally upset. She has also been denied the use of her laser hair removal equipment, which was approved by the warden at Lieber, and as a result, she is forced to wear facial hair.

148. Because of Cross's unique circumstances, solitary confinement has taken a particularly heavy toll on her. SCDC largely denies Ms. Cross's gender identity by refusing to give her accommodations that would be given to any other female Death Row inmate. This fact undermines Ms. Cross's sense of herself as a human being, which is only compounded by the dehumanizing nature of Death Row in general.

149. The current conditions of confinement have been highly detrimental to her mental health. The isolation and dehumanization contribute to her sense that she is alone, and the lack of exposure to natural light has had a depressing influence.

150. Ms. Cross's family live out of state and visits are a rare occasion. As a result, the phone has become her sole source of meaningful human interaction aside from legal visits. However, Ms. Cross's family members work during regular business hours so she can only call them in the evening or on weekends—when the phones are in the most demand by all of the inmates. As described above, Kirkland's phone policies and procedures for the MSU mean that that Ms. Cross never gets the phone at the times that she is signed up for and often goes days without being able to make even a legal call. The lack of access to a phone while at Kirkland has had a detrimental effect on Ms. Cross's mental health. And she has not seen a mental health counselor since her transfer from Lieber to Kirkland.

151. Ms. Cross has also been denied access to outside recreation. She has requested recreation time but did not receive one single recreation session during her first month at

Kirkland. There is no natural light in her cell and the only time she could get natural light is from recreation.

152. When she was finally given recreation, the space was unusable. The mesh wiring that tops the areas is an ideal place for birds to perch. The birds excrete feces all over the yard, which is never cleaned, making it unusable for Ms. Cross because she fears contracting a disease from the unsanitary conditions.

153. When SCDC transferred Ms. Cross's property to Kirkland she was not given an inventory sheet prior to the move. Then, on October 2, 2017, she was given two different property sheets listing items that were allowed in her cell while at Lieber. One of the sheets listed items that must be "sent home" and the other listed items she would be allowed to keep at Kirkland. All the items listed on both sheets were purchased while she was incarcerated and were allowed items at Lieber. None of the items caused a problem while in Ms. Cross's possession at Lieber.

154. Then, on October 15, 2017, Ms. Cross was given another two sheets documenting property to be sent home and property allowed at Kirkland. The October 15 inventory was different from the October 2 inventory.

155. And, when prison staff finally returned her property, they did not give Ms. Cross items of personal significance, including a religious necklace, tarot cards, and a wooden box. She is also missing two laser hair removal machines, hobby craft materials, a television, a fan, an electric razor, and a coffee pot. Ms. Cross is anxious to receive her hobby craft materials because they help maintain her mental health.

James Bryant

156. Plaintiff James Bryant has spent the past sixteen years in solitary confinement.

157. Mr. Bryant is a very religious man who benefits from connecting with others through his faith. The conditions on Death Row, both at Lieber and now at Kirkland, have made it difficult for him to connect with others on a spiritual level. However, at Lieber he was able to discuss his faith with fellowship volunteers and other inmates housed on the same side of the unit. This is not the case at Kirkland, and so since the move Mr. Bryant has struggled to stay positive due to the increased isolation of the MSU.

158. Mr. Bryant has tried to stay physically active during his incarceration. At Lieber, he was able to make use of the limited space in his cell and the recreation area to work out. He jogged in the recreation cages at Lieber when he was allowed recreation. But Mr. Bryant has a much harder time working out at Kirkland. Outdoor recreation is given very rarely, even less often than at Lieber, and even when he does receive outdoor recreation the space is inadequate for significant physical activity, especially jogging.

159. Mr. Bryant has also found it more difficult to sleep well at Kirkland. Loud metal doors open and close each time an officer makes rounds at night, as the officers enter and leave each hall. This wakes him almost every time. Additionally, the increased anxiety he feels in the new location have made it hard for him to sleep.

160. After SCDC transferred Mr. Bryant's property from Lieber to Kirkland, officials did not return items including a typewriter, fan, hot pot, lamp, television, and some pictures. The typewriter is an especially disheartening loss for Mr. Bryant because he used it to write religious correspondence to his friends and family to share his faith and inspire others.

Luzenski Cottrell

161. Plaintiff Luzenski Cottrell has spent the past twelve years in solitary confinement.

162. Mr. Cottrell finds solitary confinement depressing. Over the years, he has tried to counteract the effects of solitary confinement by keeping in contact with family (especially his daughter), participating in recreation, talking to his fellow inmates, and doing hobby crafts.

163. The move to Kirkland has been difficult for Mr. Cottrell. He feels more isolated than before and cannot communicate with the people he used to talk to on a regular basis. He has difficulty getting access to the phone and has only been able to talk to his daughter once in the time he has been at Kirkland, making him feel even more isolated.

164. Mr. Cottrell tries to stay active at Kirkland, but finds it difficult as his only options are to watch television and write. He is sometimes able to simulate playing chess with his neighbor by yelling moves to each other through the doors. Other times, Mr. Cottrell gets up and paces in his cell—three steps one way and then three steps back.

165. When SCDC transferred his property from Lieber to Kirkland, officials did not return his cooler, fan, hot pot, television, or many of his hobby crafts.

William Dickerson

166. Plaintiff William Dickerson has spent the past eight years in solitary confinement.

167. Although his circumstances at Lieber were isolating and harmful, Mr. Dickerson was able to partially manage the isolation by communicating with other inmates and by establishing a routine and a sense of personal space. The move to Kirkland has been devastating for Mr. Dickerson.

168. Mr. Dickerson has been struggling with anger and hopelessness since arriving at Kirkland. He feels that he is subject to dehumanizing conditions. When he needs to get the attention of the officers, he has to bang on his cell door like a "wild animal," and it can take hours for anybody to respond. The constant shouting and banging from other inmates on his

wing means that it is nearly impossible for him to communicate with other inmates. He goes several days at a time without seeing any natural light.

169. All of Mr. Dickerson's meals are cold, which is especially dehumanizing because he knows that it is intentional: he can see where the prison removed sockets from the cells to prevent inmates from using a hot pot to warm the food.

170. Mr. Dickerson feels that the officers are using the showers punitively because the inmates have no control over them. Sometimes they are left on for up to an hour and the cells flood, while other times they are not on long enough for the inmates to wash off the soap. When Mr. Dickerson has complained about the latter, the officers responded with verbal abuse.

171. Mr. Dickerson is sensitive to the unsanitary environment. Prison staff has returned his clothing and undergarments from the laundry using a cart covered with food waste and garbage, and in much worse condition then when he handed them over to be cleaned. He has only been allowed to clean his cell a few times since arriving at Kirkland—but he can smell the cleaning agents when the officers mop the hall in front of his cell and so he knows that cleaning supplies are available.

172. The officers at Kirkland do not appear to be adhering to any specific guidelines for treatment of Death Row inmates. Mr. Dickerson observes that the policies that they enforce are arbitrary and subject to change at any moment. As a result, he has been unable to establish a routine; the chaos on Death Row causes him to feel as though he is not in control of his own thought processes. He cannot sleep for more than a few hours at a time because the officers turn on all of the lights and bang on the cell doors to do inmate counts in the middle of the night, and he is experiencing uncharacteristic agitation and moodiness because of the resulting physical discomfort.

173. All of these factors contribute to Mr. Dickerson's increasing sense that he is mentally unwell.

174. When the prison returned Mr. Dickerson's property, they did not give him back several items, including one of his two religious prayer rugs, his religious oils, a toboggan, his laundry soap, an electric razor, a television, a radio, a lamp, and a hot pot. Because he has not been given his electric razor, Mr. Dickerson was forced to have the prison cut his hair before a court appearance. The person who cut his hair used a dull blade and Mr. Dickerson developed painful razor burn all over the back of his head.

Ron Finklea

175. Plaintiff Ron Finklea has spent the past ten years in solitary confinement.

176. Mr. Finklea, a medically-retired former Army Staff Sergeant, has been distraught and on the verge of a breakdown since arriving at Kirkland. Prior to the transfer, he led a somewhat regimented life and had friendships that made Death Row bearable. But he is now desperate for human contact.

177. Mr. Finklea suffers from severe post-traumatic stress disorder and since the transfer he has suffered recurring nightmares of being locked in a closet and being killed by correctional officers and his mother. For the first week at Kirkland, he was without his photos of his children and his grandparents, which was almost more than he could bear.

178. Mr. Finklea also suffers from severe obsessive-compulsive behaviors, mostly related to cleanliness. He feels tortured by the filthy conditions of his cell, which he tries to clean repeatedly using water and bar soap. The filth grates on his psyche, such that he has become hyper-vigilant and extremely disturbed.

179. Furthermore, Mr. Finklea is not housed near any of his longtime Death Row friends—individuals he became accustomed to speaking with over the course of his long confinement. He has nothing to fill the vast void that is his current day to day existence. He has thoughts of suicide that he is only able to control by thinking of his children and baby grandson.

180. After the transfer to Kirkland, prison staff have not returned a number of Mr. Finklea's possessions. He has lost of all of his electrical devices and when he received his clothes, his new long johns were not among them. Instead, the property control officer kept his new long johns and returned to him two old pairs of long johns that were riddled with holes and practically shredded. Worst of all, Mr. Finklea has not received two Bibles that he read every day first thing in the morning and before going to sleep at night.

Jerry Inman

181. Plaintiff Jerry Inman has spent the past eleven years in solitary confinement.

182. At Lieber, Mr. Inman made friendships with the other Death Row inmates and talked often with his out-of-state family members. He spent hours at a time drawing intricate works of art. Kirkland has stripped him of even these small pleasures and emotional outlets, leaving him to sit alone in the darkness and watch TV all day, every day.

183. Mr. Inman is a quiet man and so the setup of Kirkland is particularly difficult for him. Some inmates hold conversations by yelling, and—to get the officers' attention—inmates must yell and beat on their cell doors. However, Mr. Inman does not yell, so he cannot communicate with any other inmates or get the officers' attention to get his needs met. He has stopped even trying to access the phone.

184. Mr. Inman has also stopped scheduling visits because of how unpredictable and disorganized the visiting process is at Kirkland. His visitors are all from out of state, so it is a

major investment of time and money for them to come. Mr. Inman had a Saturday visit that was approved prior to the move to Kirkland. The afternoon before his scheduled visit, the officers told Mr. Inman that the visit had been moved. Mr. Inman was unable to access a phone to alert his out-of-town visitors, so they arrived on Saturday as scheduled. It turned out that the officers were incorrect, and the visit had never been moved in the first place. Mr. Inman does not want to ask visitors to travel from out of state if he does not know that he will be able to see them.

185. Mr. Inman's cell is next to one of the SSR inmates, who constantly yells and throws feces. The smell is disgusting. When the officers squeegee up the feces, it seeps under Mr. Inman's door. This is especially distressing because Mr. Inman has only been able to get cleaning supplies once, and has been forced to let the feces remain on his floor.

186. Mr. Inman is only able to sleep five or six hours a night, due to the incessant yelling of his SSR neighbor, and due to the hall gate which bangs throughout the night and wakes him up.

187. Since his arrival at Kirkland, Mr. Inman has experienced difficulties obtaining medications he was previously taking while at Lieber.

188. When SCDC transferred Mr. Inman's property to Kirkland, officials did not return the lamp, fan, coffee pot, cooler, or TV that he had purchased from the commissary at Lieber.

189. Due to the conditions at Kirkland, Mr. Inman is strongly considering waiving his appeal. He already discussed this with his family, and told them that he would wait until after the holidays. He does not want to stay alive in these conditions for the four of five years that it would take to exercise his legal rights.

Richard Moore

190. Plaintiff Richard Moore has spent the past sixteen years in solitary confinement.

191. Mr. Moore is originally from Michigan, where most of his family and friends remain, and has no family in South Carolina. Due to the distance, Mr. Moore's family rarely gets to visit him and so he almost never has a visit with anyone besides his legal team. As a result, his isolation from other inmates deprives him of virtually all human interaction.

192. The move to Kirkland has been particularly detrimental to Mr. Moore because he has had difficulty accessing the phone. His two children live out-of-state and he relies on phone calls to be able to stay in touch with them. At times, it has been over a week between instances when Mr. Moore is able to obtain the phone. When they first arrived at Kirkland, the phone was not available after 6:00 p.m. and Mr. Moore had even greater difficulty reaching his now-adult children who work during the day, especially his daughter who lives in a different time zone.

193. When SCDC transferred Mr. Moore's property to Kirkland, officials did not return the lamp, hot pot, electric hair clippers, fan, or television that he had purchased from the commissary at Lieber.

194. Mr. Moore recognizes the conditions in the MSU at Kirkland have been detrimental to him, even in the relatively short time he has been confined in the MSU. He is currently housed next to an SSR inmate who consistently seeks attention from the officers by banging on the door, yelling, and throwing feces. The combination of this inmate, who continues making noise at night, and the hall doors opening and closing has caused Mr. Moore to be unable to sleep for more than an hour or two at a time. He sought medication to help him sleep because he cannot continue to function with such limited sleep. Mr. Moore also feels the harm of increased isolation. He is an intelligent man who attempts to keep his mind sharp by

reading, writing, and interacting with his fellow inmates. Due to his inability to interact with others, he fears that his mind will slow down. Mr. Moore has stated that the isolation he is currently experiencing "is not healthy."

Clinton Northcutt

195. Plaintiff Clinton Northcutt has spent the last fourteen years in solitary confinement.

196. Over the years, Mr. Northcutt has grown close to the other inmates on death row. Yet the move to Kirkland has left him isolated. His cell is located at the end of his wing, meaning that he only has one neighbor with whom he can communicate.

197. Mr. Northcutt has also grown close with many pen pals, who help him feel a connection to the outside world. When SCDC transferred Mr. Northcutt's property from Lieber to Kirkland, officials did not return his typewriter or his many letters from his pen pals. Without the letters, Mr. Northcutt has lost the addresses for many of his pen pals and cannot write to them. Without the typewriter, Mr. Northcutt has lost the means to type his letters.

198. When SCDC transferred Mr. Northcutt's property from Lieber to Kirkland, officials also failed to return his lamp and his television.

199. Mr. Northcutt suffers from depression, and his depression has been exacerbated by the isolation of Kirkland. During his first interaction with a mental health worker at Kirkland, he said that he was "not good," but the mental health worker only gave him a cursory response and continued to move down the row. Indeed, Mr. Northcutt is often moved to tears when discussing the intense loneliness he feels at Kirkland.

James Robertson

200. Plaintiff James Robertson has spent the past eighteen years in solitary confinement.

201. Mr. Robertson suffers from bipolar disorder and has experienced periods of deep depression, including suicidal ideation. He suffered a severe bout of depression last year after another inmate committed suicide. Mr. Robertson recognizes the dehumanizing effects of solitary confinement, and he feels that SCDC is "turning us into animals."

202. After the move from Lieber to Kirkland, SCDC failed to return a significant amount of Mr. Robertson's property. Upon his arrival at Kirkland, his inventory listed 294 canteen items, of which he only received 72; 25 hygiene items, of which he only received 6; and 27 books, of which he only received 2. Mr. Robertson also did not receive any of his electronic devices, including his radio, typewriter, lamp, and television. Mr. Robertson also lost approximately 60 pictures that he had at Lieber.

203. Another inmate requested to move to the cell next to Mr. Robertson. That inmate suffers from various medical conditions, and he believed that if he became ill, his only chance of help was for Mr. Robertson to notice and alert the otherwise inattentive officers.

Brad Sigmon

204. Plaintiff Brad Sigmon has spent the past fifteen years in solitary confinement.

205. At Lieber, Mr. Sigmon was a trustee and was granted the freedom to leave his cell in order to clean death row. He lost this privilege for no reason other than the move to Kirkland.

206. Mr. Sigmon feels that his mind—especially his memory—has been negatively affected by years of solitary confinement. The transfer to Kirkland has exacerbated these effects, because the facility does not allow for him to speak with other inmates.

207. Despite taking a sleeping medication, Mr. Sigmon is unable to sleep. The door to the control area loudly opens and closes throughout the night. He is also woken every morning before 5:00 a.m. when the officers turn on his cell light for count.

208. When SCDC transferred Mr. Sigmon's property from Lieber to Kirkland, SCDC failed to return the bottom plate of his dentures, his denture cream, his tennis shoes, his address book, his lamp, his fan or his television. Mr. Sigmon's fan is necessary for medical reasons, yet he is not able to have it at Kirkland. He also had difficulty obtaining his prescription pain medication for the first couple of days at Kirkland.

209. Upon arrival at Kirkland, Mr. Sigmon engaged in a hunger strike for eighteen days. He started eating again because a prison official told him that if he needed medical care over the weekend, the prison would be unable to provide it in time to save him. Upon eating, Mr. Sigmon began suffering significant chest pains, and believed that he was having a heart attack. He attempted to alert the officers, but he was unable to see a doctor for more than five hours. He thought that he would die before the doctor arrived.

210. The inmate in the cell next to Mr. Sigmon is awake all night and shouts and screams through a vent that carries straight into Mr. Sigmon's cell. Mr. Sigmon has been unable to obtain a full night's sleep since on or about November 1, 2017. Mr. Sigmon's requests to have this inmate moved or counseled have been ignored. This inmate is an SSR inmate, sent to the MSU as a disciplinary measure.

211. In 2016, Mr. Sigmon purchased from the SCDC canteen a pair of reading eyeglasses. These eyeglasses have not been returned to him, nor replaced, since the transfer. Mr. Sigmon cannot read anything without his eyeglasses.

212. Since ending his hunger strike after eighteen days, Mr. Sigmon and all other inmates, on information and belief, have received only one hot meal. All meals are served cold.

Stephen Stanko

213. Plaintiff Stephen Stanko has spent the past eleven years in solitary confinement.

214. Mr. Stanko is an intelligent man, but as a result of solitary confinement, he has seen his mind lose its sharpness. This sense of deterioration scares him. He says that he is starting to feel the pressure of isolation caving in on him.

215. When SCDC transferred his property from Lieber to Kirkland, officials did not return Mr. Stanko's headphones and coiled extension, ink pens, medical socks, fan, electric hair clippers, lamp, and hot pot. The medical socks were issued to him at Lieber to address circulation problems he has in his feet and lower legs. They also did not return Mr. Stanko's Bible, which is important to him as a practicing Catholic.

216. The loss of Mr. Stanko's ink pens has been particularly difficult. In order to keep his mind active, he writes books and letters and tracks daily activities. At Lieber, he wrote enough to drain the ink of five pens per week. Mr. Stanko had approximately twenty ink pens at Lieber, which he purchased from the canteen, that were not returned to him. The loss of this intellectual stimulation is causing Mr. Stanko great distress.

Norman Starnes

217. Plaintiff Norman Starnes has spent the last twenty years in solitary confinement.

218. At Kirkland, Mr. Starnes is unable to communicate with the Death Row inmates who had become his friends during his decades at Lieber.

219. Mr. Starnes has made multiple requests to be seen by a mental health professional, as has his defense counsel, and has been suicidal much of the time since he has been at Kirkland.

220. Mr. Starnes is very distressed by the isolation of solitary confinement. He says that he feels lost and adrift on an uninhabited arctic island. He also describes feeling like a caged animal, abandoned by humanity.

221. In order to receive help from the officers, Mr. Starnes has to bang on his cell door and cell wall for hours before the officers will check on him.

222. Mr. Starnes' mother is on oxygen and her health is steeply declining. She has been turned away at the front gate at Kirkland because the gate officer did not have the correct paperwork and when she is able to visit, SCDC cuts her visits short. This is incredibly distressing to Mr. Starnes.

223. In the move from Lieber to Kirkland, Mr. Starnes lost his books—including a special autographed copy of a book—as well as a fan, television, typewriter, radio, ice chest, electrical cords, and sweatpants that he needs to keep warm.

Sammy Stokes

224. Plaintiff Sammy Stokes has spent the last eighteen years in solitary confinement.

225. Mr. Stokes is HIV-positive. Due to his necessary medications, he has a debt of almost $1,500 to SCDC, which prevents him from buying any food from the canteen to supplement his diet. He shivers uncontrollably at times, especially after showers.

226. The filth at Kirkland is also very distressing to Mr. Stokes. Because of his condition, he has always prized cleanliness. Yet he cannot obtain cleaning supplies to clean his cell.

227. The officers are very antagonistic towards Mr. Stokes, and he feels like he is losing his mind in solitary confinement. The combination causes him to stay in bed most of the time. He has said that death would be better than living in these conditions.

228. Mr. Stokes has also been receiving religious oils for years. However, he has been told that he cannot have his religious oils anymore because they are not allowed at Kirkland.

Bobby Stone

229. Plaintiff Bobby Stone has spent the past twenty years in solitary confinement.

230. Mr. Stone has developed positive relationships with many of the other inmates, as well as the officers, over the course of two decades. Since the move to Kirkland, however, Mr. Stone has felt completely isolated. He has been uncharacteristically irritable, withdrawn, and despondent.

231. At Lieber, for many years, Mr. Stone took care of a severely mentally ill Death Row inmate named James Wilson. Mr. Stone had an arrangement with the officers that allowed him to clean Mr. Wilson's cell, feed Mr. Wilson, and attend to Mr. Wilson's needs. Now, Mr. Stone is unable to see Mr. Wilson or communicate with him. Mr. Stone is suffering because he is unable to help his friend.

232. When Mr. Stone arrived at Kirkland, there were feces smeared on the outer door of his cell and the officers refused to clean it or to let him clean it for weeks. He still has not been able to properly clean and disinfect his cell.

233. Since the move to Kirkland, Mr. Stone has engaged in hunger strikes that have lasted close to two weeks. He was placed in the infirmary because his physical health was in danger. Mr. Stone feels that refusing to eat or drink is his sole means to call attention to the needs of the Death Row inmates.

234. When Mr. Stone needs to get the attention of the officers, he says that he needs to bang on the cell door like a wild animal. He feels that the treatment is very dehumanizing.

235. Because the officers enforce policies in an arbitrary manner, Mr. Stone has been unable to establish a routine or organize his life in order to manage his anxiety and depression.

236. Mr. Stone is a vegetarian, but he is regularly given meat dishes, or simply given less food.

237. Mr. Stone's cell has no heat, and the inmates on his wing did not receive coats.

238. Mr. Stone's laundry has been returned in such an unsanitary condition that he has refused to give his bedding to the officers for washing. When the officers forcibly removed his bedding from his cell, Mr. Stone went on a hunger strike until clean bedding was returned to him.

239. After the move from Lieber to Kirkland, SCDC failed to return much of Mr. Stone's property. The prison has not returned Mr. Stone's cooler or a coffee cup that he has had for over eighteen years that is emotionally significant to him. SCDC gave Mr. Wilson's bag to Mr. Stone but Mr. Stone's bag has not been recovered. Some of the missing items in the bag include: two new t-shirts, seven pairs of socks, seven pairs of boxers, four towels, two green jumpsuits, two new sets of sheets and pillowcases, a jar of butter, a jar of coffee, forks, spoons, bowls, and a calendar. Mr. Stone is also missing his electronic equipment, including his television, his radio, his lamp, his fan, and his hot pot.

Gary Terry

240. Plaintiff Gary Terry has spent the past twenty years in solitary confinement.

241. Mr. Terry struggles with debilitating pain. He requires a brace, has persistent weakness on one side of his body, has nerve pain, and trembles for no apparent reason.

Sometimes the pain prevents him from opening his eyes. He is prescribed pain medications, but it takes long periods of time to acquire refills. Mr. Terry is unable to communicate with the staff about his physical problems because he is too weak and in too much pain to self-advocate. He is unable to speak clearly through the doors that separate him from the staff, and the staff is unresponsive to his needs when he has been able to communicate his problems. Mr. Terry has thought of waiving his appeals so that execution would relieve him of his physical suffering.

242. Mr. Terry suffers from depression due to the lack of natural light.

243. At Lieber, Mr. Terry dealt with the isolation by writing, or by drawing elaborate portraits and making crafts for his lawyers and pen pals. However, SCDC did not return his hobby craft materials after he moved to Kirkland, and the canteen at Kirkland regularly runs out of pens. Therefore, Mr. Terry is deprived of the creative outlets that allowed him to cope with the isolation.

244. Mr. Terry's television is broken and has not been fixed. This is a particularly severe deprivation for someone in solitary confinement, as television is the primary source of mental stimulation for inmates.

245. After the move from Lieber to Kirkland, SCDC did not return many of Mr. Terry's medical belongings. He is missing an arm brace that is part of his pain management program, and he was without a cane and a leg brace that he requires for walking for several days after his arrival at Kirkland. Mr. Terry's new glasses, which he put in a hardcover case for transport to Kirkland, were returned to him with the lenses pitted and scratched to the point that they are unusable. He now has difficulty seeing and cannot read or write without significant effort.

246. SDCD also failed to return other items after the move. Mr. Terry is missing his radio, his television, his electric razor, and his typewriter. Mr. Terry's fan and lamp are not listed on his inventory accounting, and are also missing. Mr. Terry has repeatedly attempted to file property grievances, but he is unable to obtain a form.

John Weik

247. Plaintiff John Weik has spent the past eighteen years in solitary confinement. He has never had a single disciplinary charge.

248. Mr. Weik is not currently sentenced to death. After fifteen years on death row, his death sentence was reversed and a new sentencing trial was ordered. He has been kept on Death Row, and in solitary confinement, while his new trial is pending.

249. Since his move to Kirkland, Mr. Weik has been much more isolated. His family has attempted to visit him, but was turned away twice for alleged paperwork irregularities. Since his transfer, he has not been able to visit with anyone other than his legal team. Coupled with the isolation of the facility, Mr. Weik is deprived of virtually all human interaction.

250. Because his family lives out of state, Mr. Weik relies on phone calls with them to stay in touch. However, they work during regular business hours, so he can only call them in the evening or on weekends. Mr. Weik is never able to use the phone at the times he is signed up for, so he cannot maintain contact. Moreover, he often goes days without being able to make a legal call.

251. Mr. Weik suffers from schizotypal personality disorder or paranoid schizophrenia, and his isolation has caused further deterioration of his mental health status. At Lieber, his interactions with other inmates allowed him to stay in touch with reality. Now, without that

interaction, he is too disorganized to express himself. He is confused and cannot maintain a conversation; he is easily distracted and cannot focus.

252. At Lieber, Mr. Weik had regular checkups from mental health professionals, and their interaction helped his mental health status. Since his transfer to Kirkland, Mr. Weik has not seen a single mental health professional.

253. Mr. Weik's medical conditions cause him to get migraine headaches or even seizures when constantly exposed to florescent lights. At Leiber, Mr. Weik had a lamp and some access to natural light, but at Kirkland he has neither. Therefore, his cell remains dark at all time. His only light source is a small window that filters light from the hallway through his double cell doors.

254. Mr. Weik cannot sleep for more than an hour or two at a time. He is housed next to an SSR inmate who constantly bangs on the door and yells. The combination of this inmate, who makes noise all night, and the hall doors opening and closing keeps Mr. Weik awake.

255. Mr. Weik has been offered outside recreation twice, but the space was unusable. The mesh wiring that tops the areas is an ideal place for birds to perch. The birds excrete feces all over the yard, which is never cleaned, making it unusable for Mr. Weik because he fears contracting a disease from the unsanitary conditions.

256. Mr. Weik used to cope with solitary confinement by folding paper into elaborate origami shapes. However, he is no longer able to access craft materials at Kirkland, and has lost this mentally stimulating outlet.

257. When SCDC transferred Mr. Weik's property to Kirkland, they did not return his lamp, hot pot, electric hair clippers, fan, or television, which he had purchased from the

commissary at Lieber. They returned his soup cups and commissary food, but he is unable to use them without access to a microwave.

Louis Winkler

258. Plaintiff Louis Winkler has spent the past nine years in solitary confinement. He has had no disciplinary charges.

259. Mr. Winkler has significant hearing loss, which amplifies the extent of his isolation, since inmates must yell to be heard by anyone at Kirkland. Mr. Winkler also suffers from severe headaches that are triggered by loud noises and yelling, so—since getting the officers' attention requires banging on his cell door and yelling—he cannot get their attention.

260. At Kirkland, Mr. Winkler already had a medical need that went unmet. He had his hair cut, and the person cutting his hair took the safety off the razor and did not disinfect it. Mr. Winkler was cut, and the wound became infected. He developed a welt the size of a golf ball on the side of his head. Because he could not attract the attention of the officers, he waited the several days required to access a phone, at which point he called his sister and asked her to alert his attorney. Once the attorney was alerted, Kirkland took a full day and required the intervention of an administrator before providing Mr. Winkler with necessary medical care.

261. Mr. Winkler suffers from vertigo, and often loses his balance. He has already slipped on the slick floor in his cell after a shower, but luckily he caught himself and only scraped his arm. He worries that if he falls and seriously injures himself, he will not receive any aid.

262. When SCDC returned Mr. Winkler's property after the transfer, many items were missing. He has a set of false teeth that the prison did not return to him for several days after the transport, which made it difficult for him to eat. He does not have any of his toboggans, which

he has requested multiple times, and SCDC has only returned his oldest and most threadbare set of thermals, even though he had three new sets. His first inventory sheet at Kirkland indicated that he had five toboggans, but the most recent inventory sheet shows that he had none. Mr. Winkler is also missing five of his eight towels, half of his t-shirts, and his electronics, including his razor.

Prisoners Housed in Prolonged Solitary Confinement Suffer Severe Harm

263. Plaintiffs' psychological symptoms mirror those reported in the literature about individuals placed in prolonged solitary confinement.[5] Indeed, the extreme duration of Plaintiffs' confinement has meant that the effects of solitary confinement have become even more pronounced.

264. Prolonged solitary confinement indisputably causes painful, severe, and at times, irreversible harm. The physical and psychological harm of prolonged solitary confinement has been well-documented for decades. Indeed, there is a substantial body of literature that has documented distinctive and inescapable patterns of negative physiological and psychological harm when individuals are placed in long-term solitary confinement. Spanning as far back as the 1960s, studies on the effects of solitary confinement have reported observable negative effects

[5] There is consensus in the literature that prisoners subjected to solitary confinement, even for a relatively short amount of time, risk severe emotional, psychological, and physiological damage. *See, e.g.*, Alison Shames et al., *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*, Vera Inst. of Just. 17–18 (May 2015), http://archive.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report.pdf (noting that after only seven days in solitary confinement, prisoners experience a range of symptoms including "hypersensitivity to stimuli, distortions and hallucinations, increased anxiety and nervousness, diminished impulse control, severe and chronic depression, appetite loss and weight loss, heart palpitations, talking to oneself, problems sleeping, nightmares, [and] self-mutilation"); Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. UNIV. J. L. & POL'Y 325, 338 (2006) ("By now the potentially catastrophic effects of restricted environmental stimulation have been the subject of a voluminous medical literature.").

amongst prisoners subject to such conditions.[6] As stated by one prison staff psychiatrist in 2002, "[i]t's a standard psychiatric concept, if you put people in isolation, they will go insane . . . . Most people in isolation will fall apart."[7]

265. By definition, solitary confinement isolates prisoners from social interactions, restricts their environmental stimulation, and affords them no control over their daily life. This combination of factors results in a series of harmful psychiatric effects, including hypersensitivity to external stimuli, perception distortions, claustrophobia, delusions, hallucinations and panic attacks. Minimal social and environmental stimulation has serious effects on an individual's mental functioning. Prisoners housed in solitary confinement report difficulty with thinking, concentration, and memory; intrusive obsessional thoughts; increased anxiety and nervousness; overt paranoia; severe and chronic depression; and problems with impulse control.[8]

266. Researchers have found that physiological effects may be directly caused by prisoners' physical state of confinement.[9] For example, studies have reported lower levels of

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[6] *See, e.g.*, Bruno M. Cormier & Paul J. Williams, *Excessive Deprivation of Liberty,* 11 CANADIAN PSYCHIATRIC ASSOCIATION JOURNAL 470-484 (1966); Hans Toch, *Men in Crisis: Human Breakdowns in Prison* (1975); Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. REV. L. & SOC. CHANGE 477 (1997).

[7] Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, 149 & n.512 (2003), https://www.hrw.org/reports/2003/usa1003/usa1003.pdf (emphasis omitted).

[8] *See, e.g.*, Am. C. L. Union, *The Dangerous Overuse of Solitary Confinement in the United States* 4 & nn.15–25 (Aug. 2014) (citing numerous studies discussing the effects of solitary confinement), goo.gl/Iwcbq3; Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQUENCY 124, 130–132 (Jan. 2003) (referencing various studies on solitary confinement), goo.gl/0Qfp2V; Solitary Watch, *Fact Sheet: Psychological Effects of Solitary Confinement*, 1 (2011), goo.gl/NCsvHY.

[9] *See, e.g.*, Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 CRIME & JUST. 441, 502–504 (2006), goo.gl/2glujG.

brain function as a result of solitary confinement.[10] Additionally, prisoners complain of abdominal pains, as well as muscle pains in the neck and back, which may be caused by long periods of inactivity.[11] Further, many researchers conclude that some adverse consequences of solitary confinement are a direct result of sensory deprivation.[12] This sensory deprivation often times leads to an increased oversensitivity to normal stimuli; for example, a closing door could lead to sleeping difficulties for someone experiencing this kind of deprivation.[13]

267. Studies have also shown that depriving individuals of social interactions by placing them in solitary confinement over a long period of time can destroy their ability to function normally.[14] Additionally, studies have found that many individuals in solitary confinement will suffer permanent harm as a result of their confinement, even upon its termination.[15] As explained by one survivor of solitary confinement:

> "[l]ife in the vacuum of a cell is spirit-killing, mind-altering, and the zenith of human cruelty . . . Deprived of the frame of reference that social interaction provides, you lose the sense of yourself as part of a larger whole, the context in which your existence has meaning. You struggle to keep your sanity because in the vacuum of that cell, where there is no meaning, your mind tries to create meaning out of nothing, and this can lead you to confuse fantasy with reality."[16]

268. In addition to the psychiatric symptoms, the risk of self-harm, self-mutilation, and suicide is much higher for individuals in solitary confinement. A 2007 study investigating attempted suicide in six state prison facilities in Oregon identified solitary confinement as one of

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[10] Grassian, *supra* note 5, at 335–338.

[11] Smith, *supra* note 9, at 489.

[12] *See generally id.*

[13] *Id.* at 489.

[14] Haney & Lynch, *supra* note 6, at 503–506.

[15] Grassian, *supra* note 5, at 332–333.

[16] Wilbert Rideau & Linda LaBranche, *44 Years in Solitary Confinement is Even Worse Than You Can Imagine*, MOTHER JONES (Feb. 22, 2016), goo.gl/yr5X9G.

the main factors in suicidal thoughts and suicide attempts.[17] One study recently found inmates in solitary confinement in New York City jails were 6.9 times more likely to commit self-harm than those in the general population.[18] Even more tragically, approximately fifty percent of completed prisoner suicides occur among prisoners in solitary confinement.[19] One court recently noted that solitary confinement in Indiana resulted in a disproportionately higher percentage of suicides among prisoners in segregation compared with those in the general population.[20]

269. Adverse physiological effects of isolation are especially significant for persons with serious mental illness. Deprivations in solitary confinement exacerbate symptoms of mental illness or provoke a recurrence, and can cause severe impairment in one's ability to function.[21] As the DOJ noted in a 2014 investigation of the Pennsylvania Department of Corrections, isolating prisoners with serious mental illness "exacerbates their mental illness and leads to serious psychological and physiological harm . . . including severe mental deterioration, psychotic decompensation, and acts of self-harm."[22]

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[17] Ildiko Suto, Doctoral Dissertation, *Inmates Who Attempted Suicide in Prison: A Qualitative Study*, Pac. Univ. 122–123 (July 27, 2007), goo.gl/1ZGqpo; *see also* Bruno M. Cormier & Paul J. Williams, *Excessive Deprivation of Liberty,* 11 CANADIAN PSYCHIATRIC ASSOCIATION JOURNAL 470-484 (1966); Hans Toch, *Men in Crisis: Human Breakdowns in Prison* (1975).

[18] Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates,* 104 AM. J. PUB. HEALTH 442–447 (Mar. 2014), goo.gl/dma34K.

[19] Stuart Grassian & Terry Kupers, *The Colorado Study vs. the Reality of Supermax Confinement* Am. C.L. Union 11 (created Mar. 6, 2012), goo.gl/ERzw3z.

[20] *Ind. Prot. & Advocacy Servs. Comm'n v. Comm'r*, No. 1:08-CV-01317-TWP-MJD, 2012 WL 6738517, at *16 (S.D. Ind. Dec. 31, 2012).

[21] *See, e.g.*, Human Rights Watch, *Callous and Cruel: Use of Force against Inmates with Mental Disabilities in US Jails and Prisons*, (May 12, 2015), goo.gl/3n2j9S.

[22] Letter from Jocelyn Samuels, Acting Assistant Att'y Gen., Civil Rights Div., U.S. Dep't of Justice & David J. Hickton, U.S. Att'y, W.D. Pa., to Gov. Tom Corbett, 3 (Feb. 24, 2014), goo.gl/TyUZyT (Investigation of the Pennsylvania Department of Corrections' Use of Solitary Confinement on Prisoners with Serious Mental Illness and/or Intellectual Disabilities).

270. A 2016 DOJ report, aimed at offering recommendations for safely reducing the use of restrictive housing, includes guiding principles for American correctional facilities. The Guidelines state that "inmates with serious mental illness (SMI) should not be placed in restrictive housing."[23] Similarly, Human Rights Watch recommends that prisoners with mental disabilities should not be housed in solitary confinement.[24]

271. On information and belief, Defendant Stirling has admitted that SCDC is not yet in compliance with the DOJ recommendations regarding restrictive housing. He has also stated that SCDC has made efforts to reduce the number of inmates kept in solitary confinement. However, there has been no effort to reduce the use of solitary confinement with Death Row inmates.

272. Recognizing the dangers associated with prolonged solitary confinement, numerous major legal and medical organizations have issued statements opposing long-term solitary confinement. For example, the American Bar Association (ABA) mandates that "[s]egregated housing should be for the briefest term and under the least restrictive conditions practicable."[25] Similarly, a bipartisan Commission on Safety and Abuse in America's Prisons commissioned by the Vera Institute of Justice recommended that correctional facilities "[e]nd conditions of isolation," calling solitary confinement "expensive and soul-destroying."[26] Members of the Commission included a former Chief Judge of the U.S. Court of Appeals for the

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[23] U.S. Dep't Just., *Report and Recommendations Concerning the Use of Restrictive Housing*, 99 (Jan. 2016), goo.gl/ky0xEg.

[24] Human Rights Watch, Callous and Cruel, *supra* note 21.

[25] ABA Standards for Criminal Justice, *Treatment of Prisoners*, Standard 23-2.6(a) at 50 (3d ed. 2011), goo.gl/zIBJ8E.

[26] John J. Gibbons & Nicholas de B. Katzenbach, *Confronting Confinement*, The Comm'n on Safety & Abuse in America's Prisons, 52, 59 (June 2006), http://archive.vera.org/sites/default/files/resources/downloads/Confronting_Confinement.pdf.

Third Circuit, a former Attorney General of the United States, a former California Senator, a former death row prisoner, and a former federal prison warden, amongst many others.[27] In 2012, the American Psychiatric Association (APA) issued a formal policy statement against solitary confinement, noting that "[p]rolonged segregation of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential for harm to such inmates."[28]

Requiring All Death Row Prisoners to be Housed in Solitary Confinement Does Not Promote Safety and Security and is Inconsistent With Correctional Best Practices

273. As set forth above, placement in solitary confinement is due to South Carolina's blanket policy rather than the result of disciplinary violations or individualized considerations of an individual's behavior; in South Carolina, Death Row prisoners are kept in solitary confinement merely because of their criminal sentence.

274. A 2016 report by the DOJ concerning the use of restrictive housing recommends that, "[c]orrectional systems should always be able to clearly articulate the specific reason(s) for an inmate's placement and retention in restrictive housing."[29] The reason(s) should be supported by objective evidence. Additionally, the report observes that "[r]estrictive housing should always serve a specific penological purpose."[30]

275. South Carolina's current blanket policy of housing all Death Row prisoners in solitary confinement serves no penological purpose.

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[27] John E. Dannenberg, *Confronting Confinement, A Report On Safety and Abuse In America's Prisons*, Prison Legal News (Feb. 15, 2007), https://www.prisonlegalnews.org/news/2007/feb/15/confronting-confinement-a-report-on-safety-and-abuse-in-americas-prisons-vera-justice-institute-2006-118-pp/.

[28] APA, *Position Statement on Segregation of Prisoners with Mental Illness*, (Dec. 2012), http://www.dhcs.ca.gov/services/MH/Documents/2013_04_AC_06c_APA_ps2012_PrizSeg.pdf.

[29] *Report and Recommendations Concerning the Use of Restrictive Housing, supra* note 23, at 94.

[30] *Id.*

276. In its own publication issued to local detention facilities,[31] SCDC discusses "Forms Of and Limits on Disciplinary Action" in Section 2003. SCDC advises the local detention facilities that "minor infractions shall not exceed . . . [a] loss of privileges including disciplinary detention of no more than three (3) consecutive days," and further notes that inmates shall maintain their basic rights, including access to courts, counsel, legal materials, and/or medical care; they shall not be deprived of the implements necessary to maintain an acceptable level of personal hygiene; medication or the withholding of medication and/or treatment shall not be used for the purpose of discipline; "[n]o inmate shall be subjected to discipline or treatments which are dehumanizing, including but not limited to disrespect, profanity, or taunting"; and inmates shall be entitled to correspondence, visitation, and telephone privileges.

277. Additionally, SCDC provides minimum standards for detainee living arrangements. "Each facility shall provide, in addition to the fixed sleeping surface, a desk or approved writing surface; hooks or storage space; and a chair or stool for each inmate." Inmates who are confined to their rooms must "have access to natural light."[32]

278. A report by the National Institute of Justice of the DOJ found that "almost no literature documents the utility of [administrative segregation] or demonstrates that the use of [restrictive housing] has achieved specific aims in demonstrable ways . . . [I]t is virtually impossible to find empirical evidence supporting its utility or efficacy."[33]

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[31] S.C. Dep't of Corrs., *Minimum Standards for Local Detention Facilities in South Carolina*, Standard 2003 at 31 (July 26, 2013), www.sccounties.org/Data/Sites/1/media/publications/sc-jail-standards-final.pdf.

[32] *Id.* Standard 2013, at 34; Standard 2014-20 at 39.

[33] Natasha A. Frost & Carlos E. Monteiro, *Administrative Segregation in U.S. Prisons: Executive Summary*, Nat'l Inst. of Just. 4 (Mar. 2016), https://www.ncjrs.gov/pdffiles1/nij/249750.pdf.

279. South Carolina has claimed, without any justification, that Death Row prisoners are housed on Death Row "[t]o promote safety and security."[34] However, the policy does not specify that inmates on Death Row must be kept in solitary confinement.

280. South Carolina's blanket policy of housing everyone on Death Row in solitary confinement is inconsistent with accepted correctional practices. Studies show prisoners convicted of murder are not more violent and are no more of a security risk than prisoners convicted of other crimes. Additionally, their rates of "violent or assaultive rule infractions" have been found "below or near the mean for the entire inmate cohort."[35]

281. A study conducted by forensic psychologists comparing the institutional violence histories of death-sentenced prisoners with those of prisoner groups living in conditions similar to the general population at Potosoi Correctional Center, a maximum-security facility in Missouri, showed that death-sentenced individuals who are classified using the same processes as other prisoners, and are sometimes integrated into general population, have rates of institutional violence that are equivalent to prisoners sentenced to life without parole and significantly lower than parole-eligible inmates.[36]

282. In fact, death-sentenced prisoners are statistically less violent than prisoners who are eligible for parole.[37] Other prisoners in South Carolina who have been convicted of murder, including former Death Row prisoners serving life sentences, are frequently housed in

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[34] SCDC Policy OP-22.16, attached as Exhibit A.

[35] Jon Sorensen & Mark D. Cunningham, *Conviction Offense and Prison Violence: A Comparative Study of Murderers and Other Offenders*, 56 CRIME & DELINQUENCY 103, 114 (Jan. 2010), http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.899.5515&rep=rep1&type=pdf.

[36] Mark D. Cunningham et al., *Is Death Row Obsolete? A Decade of Mainstreaming Death-Sentenced Inmates in Missouri*, 23 BEHAV. SCI. LAW 307, 316–319 (2005), http://onlinelibrary.wiley.com/doi/10.1002/bsl.608/epdf.

[37] *Id.* at 316.

dormitories and general population units where they are able to participate in prison programming, and are not locked in their cells for upwards of twenty-three hours a day.

283. Best correctional practices dictate that an individualized assessment and classification is appropriate for Death Row inmates rather than a blanket assignment to the significant dangers of solitary confinement. In a brief supporting prisoners challenging an almost identical Death Row solitary confinement policy, corrections directors and administrators, including former directors of several state prison systems around the country, evidence was cited showing that individualized assessment and classification based on objective factors, such as age and disciplinary history, is more predictive for security purposes rather than classifications based on conviction status.[38] They cited the work of Dr. James Austin, who has written and researched extensively on prison classification and promotes overhauling the traditional classification system. Dr. Austin advocates introducing a classification model that focuses on objective factors that are predictive of a prisoner's behavior, such as age, recent disciplinary action, or history of violence while incarcerated rather than non-predictive factors such as the severity of the offense or sentence length.[39] The premise of reclassification is that "errors" can be made at the initial classification stage and should be fixed based on the prisoner's current behavior.

284. The Association of State Correctional Administrators issued a report calling prolonged isolation of inmates in jails and prisons "a grave problem in the United States."[40] That report analyzes the use of solitary confinement across the country and notes nationwide efforts to

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[38] Brief of Amici Curiae Corr. Experts in Supp. of Appellee at 21, *Prieto v. Clarke*, No.13-8021 (4th Cir. June 4, 2014), Doc. No. 36-1.

[39] James Austin, *Findings in Prison Classification and Risk Assessment*, Nat'l Inst. of Corrs. 5, (June 25, 2003), http://www.jfa-associates.com/publications/pcras/10_Findings_2003.pdf ("Very few persons convicted of murder, a sex offense, or with a long prison term become management problems or escape.").

[40] *Aiming to Reduce Time-In-Cell Restrictions*, *supra* note 5, at 1.

improve restrictive housing conditions, focusing specifically on jurisdictions revising the criteria for being placed in solitary confinement.[41]

285. The ABA's *Standards for Criminal Justice, Treatment of Prisoners* instructs that while death-sentenced prisoners might be separated from other inmates, they should be housed in comparable conditions to those of the general population, with solitary confinement being used only for brief periods, only when related to compelling reasons of security, crime, or discipline, and only with adequate process.[42]

286. The 2016 DOJ Guidelines state that at a minimum, restrictive housing must be "well-ventilated, adequately lighted, appropriately heated, and maintained in sanitary conditions."[43]

Solitary Confinement on Death Row Violates International Norms

287. The United States is a party to international conventions bearing on the issue of prolonged solitary confinement.[44] The United States has ratified the International Covenant on

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[41] *See generally id.*

[42] ABA Standards for Criminal Justice, *Treatment of Prisoners*, *supra* note 25, Standards 23-2.6(a), 23-2.9, at 50, 57.

[43] *Report and Recommendations Concerning the Use of Restrictive Housing*, *supra* note 23, at 29.

[44] International courts have also unanimously condemned the use of prolonged solitary confinement. The Inter-American Court of Human Rights (IACHR) has repeatedly found violations of international human rights law for prolonged solitary confinement. For example, in *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, the Court held that "solitary confinement cells must be used as disciplinary measures or for the protection of persons only during the time necessary and in strict compliance with the criteria of reasonability, necessity and legality." *Montero Aranguren et al (Detention Center of Catia) v. Venezuela*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 150, ¶ 94 (July 5, 2006) (footnote omitted), http://www.corteidh.or.cr/docs/casos/articulos/seriec_150_ing.pdf. In *Velásquez-Rodríguez v. Honduras*, the IACHR held that "prolonged isolation and deprivation of communication is in itself cruel and inhuman treatment which harms the psychological and moral integrity of the person, and violates the right of every detainee . . . to treatment respectful of his dignity." *Velásquez-Rodríguez v. Honduras,* Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 187 (July 21,

Civil and Political Rights ("ICCPR") (ratified by the United States in 1992) and the Convention Against Torture ("CAT") (ratified by the United States in 1994), both of which prohibit torture and other cruel, inhuman, or degrading treatment or punishment. Both have been interpreted to prohibit the use of prolonged solitary confinement.

288. Article 10 of the ICCPR mandates that "[t]he penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."[45] The United Nations Human Rights Committee ("UNHRC") has clarified that the ICCPR's prohibition of torture and other cruel, inhuman or degrading treatment under international law includes physical as well as mental pain and asserted "that prolonged solitary confinement" may violate this prohibition.[46]

289. Article 1 of the CAT defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . punishing him for an act he or a third person has committed . . . when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."[47]

1989), http://www.corteidh.or.cr/docs/casos/articulos/seriec_07_ing.pdf. Similarly, the European Court of Human Rights held in *A.B. v. Russia* that detaining an individual in solitary confinement for three years constituted a violation of Article 3 of the European Convention on Human Rights which prohibits "torture or inhuman or degrading treatment or punishment." *A.B. v. Russia*, App. No. 1439/06 Eur. Ct. H.R., ¶ 99 (Oct. 14, 2010), https://hudoc.echr.coe.int/eng#{"itemid":["001-100964"]}.

[45] ICCPR art. 10, Dec. 19, 1966, 999 U.N.T.S. 176.

[46] UNHRC, 44th Sess., General Comment 20, art. 7, U.N. Doc. HRI/GEN/1/Rev.7 (May 12 2004), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2FGEN%2F1%2FRev.7&Lang=en.

[47] UNHRC, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 85, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx.

290. In a 2011 report to the General Assembly, the United Nations' Special Rapporteur on torture, Juan Mendez, stated that prolonged solitary confinement was prohibited by the ICCPR and CAT. He further concluded that the assessment of whether solitary confinement amounts to torture should be conducted in light of the totality of the circumstances and on a case-by-case basis. Mr. Mendez wrote, "No prisoner, including those serving life sentence and prisoners on death row, shall be held in solitary confinement merely because of the gravity of the crime."[48]

291. On SCDC's Death Row, no factor other than the sentence of the prisoners is taken into consideration and the indefinite nature of their confinement is in direct violation of the ICCPR and CAT.

292. Additionally, in 2015, the U.N. General Assembly adopted the U.N. Standard Minimum Rules for the Treatment of Prisoners, known as the "Nelson Mandela Rules." The Rules specifically prohibit the practice of solitary confinement that is "indefinite" or "[p]rolonged," which they define as a "period in excess of [fifteen] consecutive days," and emphasize that solitary confinement should be used only as a last resort, for the shortest amount of time possible and should be subject to independent review by a competent authority.[49]

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[48] Juan E. Méndez (Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman, or degrading treatment or punishment), *Torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 61, U.N. Doc. A/68/295 (Aug. 9, 2013), https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/422/85/PDF/N1342285.pdf?OpenElement.

[49] U.N. Office on Drugs & Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners*, R. 43 at 13 &R. 44 at 14, https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf (last visited Nov. 28, 2017); *see also* Comm. against Torture on Its Fifty-Third Session, *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶ 20, U.N. Doc. CAT/C/USA/CO/3-5 (Nov. 20, 2014), https://www.state.gov/documents/organization/234772.pdf ("hereinafter U.N. Doc. CAT/C/USA/CO/3-5"); G.A. Res. 70/175, annex, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (Jan. 8, 2016), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/175.

Solitary confinement is defined by the Nelson Mandela Rules as "confinement of prisoners for 22 hours or more a day without meaningful human contact," and "prolonged solitary confinement" is defined as "a time period in excess of 15 consecutive days."[50]

293. Additionally, in its Periodic Report to the U.N. Committee Against Torture, the United States confirmed that persons with a "serious mental illness" cannot be held in solitary confinement because it violates the Eighth Amendment's right to be free from cruel and unusual punishment. It further confirmed that subjecting a prisoner to solitary confinement without an administrative hearing is a violation of the Fourteenth Amendment's guarantee of due process. As a result, the Committee Against Torture has stated, "The [United States] should . . . [l]imit the use of solitary confinement as a measure of last resort, for as short [a] time as possible, under strict supervision and with the possibility of judicial review."[51]

294. The Inter-American Commission on Human Rights (IACHR) issued a 2011 report that specifically addressed solitary confinement of death-sentenced prisoners finding that prisoners on death row should not be subjected to harsher conditions of imprisonment just because of their sentence, and more specifically, that they should not be confined to prolonged and indefinite solitary confinement. Prisoners "sentenced to death should not be subjected to harsher conditions of imprisonment."[52] The report further stated, "[i]t is not reasonable to presume that all convicts sentenced to capital punishment necessarily have to be imprisoned under maximum security."[53]

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[50] *The United Nations Standard Minimum Rules for the Treatment of Prisoners*, *supra* note 49, R. 44 at 14.

[51] U.N. Doc. CAT/C/USA/CO/3-5, *supra* note 49, at ¶ 20.

[52] IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, ¶ 517 (Dec. 31, 2011), http://www.oas.org/en/iachr/pdl/docs/pdf/ppl2011eng.pdf.

[53] *Id.*

295. Additionally, IACHR has reiterated its concerns about the use of solitary confinement by stating that "Member States must adopt strong, concrete measures to eliminate the use of prolonged or indefinite isolation under all circumstances."[54] The Commission has specifically stated that the use of solitary confinement "should be absolutely prohibited . . . for persons with mental disabilities, and for death row and life-sentenced prisoners by virtue of their sentence."[55]

FIRST CAUSE OF ACTION
Declaratory Judgment and Injunctive Relief for Violations of Eighth and Fourteenth Amendments (Cruel and Unusual Punishment)
Against All Defendants in Their Official Capacities

296. Plaintiffs incorporate by reference each and every allegation contained in Paragraphs 1–295 as if set forth fully herein.

297. At all times material to this action, defendants, in their official capacity, were responsible for promulgating and implementing policies, practices, procedures, or customs providing for the determination of inmate classification and the overall care of prisoners placed in the custody of the South Carolina Department of Corrections.

298. South Carolina's policy and practice of automatically placing all Death Row prisoners in solitary confinement have deprived, and continue to deprive, Plaintiffs of basic human needs. This practice violates their human dignity and their constitutional right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution. Specifically, Defendants' policies and practices are cruel and unusual because they deprive Plaintiffs of basic human needs, impose serious and irreparable

[54] Press Release, IACHR, IACHR Expresses Concern over Excessive Use of Solitary Confinement in the United States, No. 51/13 (July 18, 2013), http://www.oas.org/en/iachr/media_center/PReleases/2013/051.asp.

[55] *Id.*

psychological and physical injury, and violate present-day concepts and standards of human dignity.

Deprivation of Basic Human Needs

299. The physical and psychological consequences of long term isolation constitute a severe denial of human fundamental needs, including, but not limited to: lack of human interaction, sensory stimulation, sleep deprivation, and adequate outdoor physical exercise.

Imposition of Serious Psychological and Physical Injury

300. This extensive deprivation of basic human needs causes intense psychological anguish and is likely to result in lasting psychological and physical injury to Plaintiffs.

301. The indefinite and undetermined length of solitary confinement the Plaintiffs are subjected to poses significant risk of potentially incapacitating and permanent mental illness and physical harm.

Deprivation of Human Dignity in Violation of Contemporary Standards of Human Decency and Disproportionate Punishment

302. Defendants' policy and practice of indefinite and lengthy placement in solitary confinement inflicts disproportionate punishment on Plaintiffs.

303. Housing prisoners in these cruel conditions simply because they were sentenced to death serves no valid, legal purpose and lacks penological justification. This policy has no legitimate rationale and does not serve any security needs.

304. Defendants' infliction of mental and physical harm on Plaintiffs strips them of their dignity and worth, transgresses civilized society's notions of decency, and constitutes a practice that is disavowed in modern society.

305. The fact that South Carolina's practices, with respect to Plaintiffs, violate present-day society's concept and standards of human dignity is also evidenced by the international community's universal denunciation of extended solitary confinement.

Defendants' Deliberate Indifference to the Deprivations Suffered by Plaintiffs

306. The policies and practices that South Carolina applies to Death Row prisoners have been, and continue to be, implemented by Defendants.

307. Literature condemning prolonged and indefinite solitary confinement is extensive and unanimous in its conclusions on the harms of solitary confinement. Defendants have been on notice, and continue to be on notice, of all the deprivations stated above and yet have upheld the Death Row policy and practice.

308. The mental anguish and suffering arising out of the conditions that Plaintiffs are confined to and their long-term effects should be evident to Defendants and to any reasonable person. Furthermore, Defendants have frequently been made aware, through administrative grievances and written complaints, that Plaintiffs are presently suffering substantial and ongoing injury.

309. As a direct and proximate result of Defendants' constitutional violations described above, Plaintiffs will be irreparably injured. Plaintiffs would have no adequate remedy at law for Defendants' actions. Plaintiffs will suffer irreparable harm to their constitutional rights unless Defendants are enjoined from continuing their unlawful policies, practices, and customs which have directly and proximately caused these constitutional abuses.

310. Additionally, an actual controversy exists regarding the constitutionality of Defendants' practices and policies regarding the placement of all Death Row prisoners in solitary

confinement. A declaration on this issue will resolve that portion of the controversy between the parties, and the Court's determination of the issues will guide Defendants' actions.

SECOND CAUSE OF ACTION
Declaratory Judgment and Injunctive Relief for Violations of the Fourteenth Amendment (Due Process)
Against All Defendants in Their Official Capacities

311. Plaintiffs incorporate by reference each and every allegation contained in Paragraphs 1–295 as if set forth fully herein.

312. At all times material to this action, defendants, in their official capacity, were responsible for promulgating and implementing policies, practices, procedures, or customs providing for the determination of inmate classification and the overall care of prisoners placed in the custody of the South Carolina Department of Corrections.

313. By denying Plaintiffs meaningful review of their prolonged placement in solitary confinement and not giving them the ability to be removed from their complete isolation, Defendants are denying Plaintiffs liberty without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

314. The conditions and the length of confinement to which Plaintiffs are subjected constitute an atypical and significant hardship as compared with the ordinary incidents of prison life for three reasons: (1) the complete isolation on Death Row; (2) the indefinite nature of their confinement; and (3) their inability to challenge their placement in solitary confinement.

Conditions on Death Row

315. The conditions of Death Row are unjustifiably severe. Prisoners are forced to live in complete isolation in small windowless cells. Their ability to exercise is limited, and they are afforded few visits and are denied even minimal mental stimulation.

Duration of Confinement

316. Plaintiffs have been held in these devastating conditions between nine and twenty years.

Lack of Meaningful Process

317. Plaintiffs are provided no notice of what they can do to be removed from solitary confinement and their placement is not properly reevaluated at any time. While Plaintiffs may apply for reconsideration of their solitary confinement every six months, their applications are summarily denied without adequate explanation. This sham review process does not comply with Plaintiffs' due process rights under the Fourteenth Amendment.

318. Defendants violate Plaintiffs' due process rights by forcing them to live in conditions that amount to atypical and significant hardship without procedural protections. No evidence suggests that this policy promotes safety and security of the prison and its staff.

319. As a direct and proximate result of Defendants' constitutional violations described above, Plaintiffs will be irreparably injured. Plaintiffs will have no adequate remedy at law for Defendants' actions. Plaintiffs will suffer irreparable harm to their constitutional rights unless Defendants are enjoined from continuing their unlawful policies, practices, and customs that have directly and proximately caused these constitutional abuses.

320. Additionally, an actual controversy exists regarding the constitutionality of Defendants' practices and policies regarding the placement of all Death Row prisoners in solitary confinement. A declaration on this issue will resolve that portion of the controversy between the parties, and the Court's determination of the issues will guide Defendants' actions.

THIRD CAUSE OF ACTION
Damages for Violations of the Eighth and Fourteenth Amendments (Cruel and Unusual Punishment)
Against All Defendants, Except SCDC, in Their Individual Capacities

321. Plaintiffs incorporate by reference each and every allegation contained in Paragraphs 1–295 as if set forth fully herein.

322. At all times material to this action, defendants, together in their individual capacities, were responsible for promulgating and implementing policies, practices, procedures, or customs providing for the determination of inmate classification and the overall care of prisoners placed in the custody of the South Carolina Department of Corrections.

323. Plaintiffs, as SCDC prisoners confined to Death Row, were and are protected by the South Carolina Constitution and the Eighth and Fourteenth Amendments of the United States Constitution; they bring this action pursuant to 42 U.S.C. § 1983.

324. Defendants were acting under the color or pretense of State law, customs, practices, usage, or policy at all times mentioned herein as correctional officers and/or supervisors who had certain duties imposed upon them with regard to Plaintiffs' placement, care, and treatment. Additionally, during all periods in question, Defendants were well aware of the Plaintiffs' constitutional rights, including their right to be free from cruel and unusual punishment.

325. Defendants' policies and practices violate standards for human dignity and the constitutional right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments of the United States Constitution. Defendants' policies and practices are cruel and unusual because they deprive Plaintiffs of basic human needs, impose serious and irreparable psychological and physical injury, and violate present-day concepts and standards of human dignity.

326. Defendants, collectively and/or individually, refused, and continue to refuse, to provide necessary essentials to Plaintiffs and/or Death Row inmates, and failed, and continue to fail, to provide a confinement space that is free from cruel and unusual punishment to Plaintiffs. Their actions are negligent, grossly negligent, reckless, willful, wanton, consciously indifferent, and deliberately indifferent to Plaintiffs in one, more, or all of the following particulars:

a. In placing Plaintiffs and/or Death Row inmates in solitary confinement, isolation, and/or MSU cells for years without consideration to classification criteria used for general population inmates;

b. In failing to provide necessary medical care and treatment;

c. In failing to provide necessary mental health care and treatment;

d. In failing to properly evaluate the mental condition of Plaintiffs and/or Death Row inmates;

e. In failing to properly supervise and/or train personnel, agents, and/or employees so as to ensure that Plaintiffs and/or Death Row inmates are provided with basic needs so as to be free from cruel and unusual punishment;

f. In failing to draft and institute proper policies and/or procedures necessary to ensure that Plaintiffs and/or Death Row inmates are provided basic needs and care so as to be free from cruel and unusual punishment;

g. If such policies and/or procedures exist, in failing to follow the same to ensure Plaintiffs and/or Death Row inmate well-being;

h. In failing to develop, institute and/or maintain an adequate grievance and staff request policy, procedure, and/or process for Plaintiffs and/or Death Row inmates;

i. If such policies and/or procedures exists, in failing to follow the same;

j. In engaging in a pattern and practice of failing to meaningfully classify Plaintiffs and/or Death Row inmates into the respective SCDC institution;

k. In failing to maintain an effective and reasonable classification system for Plaintiffs and/or Death Row inmates;

l. In engaging in a pattern and practice of failing to provide the appropriate booking and/or screening procedures regarding Plaintiffs and/or Death Row inmates to properly determine their housing needs;

m. In engaging in a pattern and practice of failing to provide for reasonable and/or timely medical care to Plaintiffs and/or Death Row inmates;

n. In failing to maintain an adequate and reasonable medical care policy, procedure, and/or process for Plaintiffs and/or Death Row inmates;

o. If such policies and/or procedures exists, in failing to follow the same;

p. In engaging in a pattern and practice of failing to provide adequate and reasonable mental health care to Plaintiffs and/or Death Row inmates;

q. In failing to maintain an adequate and reasonable mental health care policy, procedure, and/or process for Plaintiffs and/or Death Row inmates;

r. If such policies and/or procedures exists, in failing to follow the same;

s. In confiscating, which ultimately led to a "taking," of Plaintiffs and/or Death Row inmates personal property without justification and without the intent to return said property;

t. In failing to file and/or deliver to Plaintiffs and/or Death Row inmates' grievances or staff requests to the appropriate SCDC employee and/or department for resolution;

u. In failing to respond to Plaintiffs and/or Death Row inmates' grievances and staff requests;

v. In failing to file, deliver, and/or respond to Plaintiffs and/or Death Row inmates' requests for sick call and/or medical care;

w. In engaging in a pattern and practice of failing to provide Plaintiffs and/or Death Row inmates adequate resources and facilities for reasonable personal hygiene needs;

x. In engaging in a pattern and practice of failing to provide Plaintiffs and/or Death Row inmates adequate recreation time outside of their cell, to include adequately sized outdoor areas;

y. In failing to allow Plaintiffs and/or Death Row inmates reasonable access to a law library;

z. In failing to allow Plaintiffs and/or Death Row inmates reasonable access to a library;

aa. In failing to provide reasonable cooking supplies so that Plaintiffs and/or Death Row inmates can utilize their canteen goods and consume food;

bb. In failing to provide electrical outlets and light switches in Plaintiffs and/or Death Row inmates' cells and/or dorms;

cc. In failing to provide a healthy living environment that is free from mold, mildew, and/or other toxic conditions;

dd. In failing to provide adequate and reasonable living quarters and/or cells;

ee. In failing to provide Plaintiffs and/or Death Row inmates with a chair or any other piece of furniture on which to sit;

ff. In failing to separate Plaintiffs and/or Death Row inmates and SSR isolated inmates into separate living quarters;

gg. In failing to follow and/or prescribe to the existing policy regarding the separation of living quarters and/or cells for Plaintiffs and/or Death Row inmates and other segregated groups of inmates such as SSRs; and,

hh. In failing to adequately and reasonably provide for the health and well-being of the Plaintiffs, Death Row inmates, and/or prisoners placed in their care and keeping.

327. The acts, omissions, and/or practices alleged above constitute a pattern, practice, and/or custom of conduct that violates the rights given to Plaintiffs and/or Death Row inmates by the Eighth and Fourteenth Amendments of the United States Constitution, the South Carolina Constitution, and/or all applicable state and federal laws, statutes, and/or regulations, as well as by SCDC's own policies and procedures.

328. Defendants are, have been, or should have been aware of the deficiencies alleged herein.

329. To date, Defendants have failed to take sufficient and effective measures to remedy these violations. These failures amount to deliberate indifference to the safety and health of Plaintiffs and/or Death Row inmates, and are in direct violation of the rights afforded by the Eighth and Fourteenth Amendments of the United States Constitution, the South Carolina Constitution, and/or all applicable state and federal laws, statutes, and/or regulations.

330. As a proximate result of Defendants' constitutional violations, Plaintiffs suffered, and continue to suffer, conscious pain, suffering, indignity, dehumanization, and loss of the aforementioned federal and state rights, and demand ACTUAL, CONSEQUENTIAL, and PUNITIVE DAMAGES from Defendants. In addition, Plaintiffs are entitled to COSTS and ATTORNEYS FEES pursuant to the common law of the State of South Carolina and S.C. Code § 15-33-135, as applied to 42 U.S.C. § 1988.

FOURTH CAUSE OF ACTION
Damages for Violations of the Fourteenth Amendment (Due Process)
Against All Defendants, Except SCDC, in Their Individual Capacities

331. Plaintiffs incorporate by reference each and every allegation contained in Paragraphs 1–295 as if set forth fully herein.

332. At all times material to this action, Defendants, together in their individual capacities, continuously promulgated and implemented policies, practices, procedures, or customs providing for the determination of inmate classification and the overall care of prisoners paced in the custody of the South Carolina Department of Corrections.

333. Plaintiffs, as SCDC prisoners confined to Death Row, were and are protected by the South Carolina Constitution, and the Fourteenth Amendment of the United States Constitution; they bring this action pursuant to 42 U.S.C. § 1983.

334. Defendants were acting under the color or pretense of State law, customs, practices, usage, or policy at all times mentioned herein as correctional officers and/or supervisors who had certain duties imposed upon them with regard to Plaintiffs placement, care, and treatment. Additionally, during all periods in question, Defendants were well aware of the Plaintiffs' constitutional rights, including their right to be free from cruel and unusual punishment.

335. Defendants promulgated and implemented policies, practices, and customs that have denied Plaintiffs' of their state-created, limited liberty interests without first being afforded the minimum requirements of procedural due process requirement of the Fourteenth Amendment to the United States Constitution. Plaintiffs are denied any review whatsoever of their prolonged placement in solitary confinement and are denied the ability to be removed from their complete and prolonged isolation. Their actions were negligent, grossly negligent, reckless, willful, wanton, consciously indifferent, and deliberately indifferent to Plaintiffs in one, more, or all of the following particulars:

a. In engaging in a pattern and practice of failing to meaningfully classify Plaintiffs and/or Death Row inmates into the respective SCDC institution;

b. In failing to maintain an effective and reasonable classification system for Plaintiffs and/or Death Row inmates;

c. In engaging in a pattern and practice of failing to provide the appropriate booking and/or screening procedures regarding Plaintiffs and/or Death Row inmates to properly determine their housing needs;

d. In placing Plaintiffs and/or Death Row inmates in solitary confinement, isolation, and/or MSU cells for years without consideration to classification criteria used for general population inmates;

e. In failing to provide adequate and reasonable living quarters and/or cells;

f. In failing to allow a review process for the classification, or lack thereof, of Plaintiffs and/or Death Row inmates;

g. In failing to separate Plaintiffs and/or Death Row inmates and SSR isolated inmates into separate dorms;

h. In failing to follow and/or prescribe to the existing policy regarding the separation of living quarters and/or cells for Plaintiffs and/or Death Row inmates; and,

i. In failing to adequately and reasonably provide for the due process rights of Plaintiffs, Death Row inmates, and/or prisoners placed in their care and keeping.

336. The acts, omissions, and/or practices alleged above constitute a pattern, practice, and/or custom of conduct that violates the rights given to Plaintiffs and/or Death Row inmates by Fourteenth Amendments of the United States Constitution, the South Carolina Constitution, and/or all applicable state and federal laws, statutes, and/or regulations.

337. Defendants are, have been, or should have been aware of the deficiencies alleged herein.

338. To date, Defendants have failed to take sufficient and effective measures to remedy these violations. These failures amount to deliberate indifference to the safety and health of Plaintiffs and/or Death Row inmates, and are in direct violation of the rights afforded by the

Fourteenth Amendments of the United States Constitution, the South Carolina Constitution, and/or all applicable state and federal laws, statutes, and/or regulations.

339. As a proximate result of Defendants' constitutional violations, Plaintiffs suffered, and continue to suffer, conscious pain, suffering, indignity, dehumanization, and loss of the aforementioned federal and state rights, and demands ACTUAL, CONSEQUENTIAL, and PUNITIVE DAMAGES from Defendants. In addition, Plaintiff is entitled to COSTS and ATTORNEYS FEES pursuant to the common law of the State of South Carolina, and S.C. Code § 15-33-135, as applied to 42 U.S.C. § 1988.

FIFTH CAUSE OF ACTION
Negligence and/or Gross Negligence
Against Defendant SCDC and Defendant Stirling Only

340. Plaintiffs incorporate, by reference, each and every allegation contained herein in paragraphs 1-295 as if set forth fully herein.

341. Defendants SCDC and Stirling, in their official capacities and according to the laws of the State of South Carolina, are responsible for the development and implementation of all policies and/or procedures that are germane to this suit and applicable to Plaintiffs and/or Death Row inmates.

342. The above set forth incidents and the Plaintiffs' and/or Death Row inmates' injuries and damages were proximately caused by the negligent, grossly negligent, reckless, willful, and wanton acts of the Defendants, by and through their agents, servants, and/or employees in one, more, or all of the following particulars:

a. In placing Plaintiffs and/or Death Row inmates in solitary confinement, isolation, and/or MSU cells for years without consideration to classification criteria used for general population inmates;

b. In failing to provide necessary medical care and treatment;

c. In failing to provide necessary mental health care and treatment;

d. In failing to properly evaluate the mental condition of Plaintiffs and/or Death Row inmates;

e. In failing to properly supervise and/or train personnel, agents, and/or employees so as to ensure that Plaintiffs and/or Death Row inmates are provided with basic needs so as to be free from cruel and unusual punishment;

f. In failing to draft and institute proper policies and/or procedures necessary to ensure that Plaintiffs and/or Death Row inmates are provided basic needs and care so as to be free from cruel and unusual punishment;

g. If such policies and/or procedures exist, in failing to follow the same to ensure Plaintiffs and/or Death Row inmate well-being;

h. In failing to develop, institute and/or maintain an adequate grievance and staff request policy, procedure, and/or process for Plaintiffs and/or Death Row inmates;

i. If such policies and/or procedures exists, in failing to follow the same;

j. In engaging in a pattern and practice of failing to meaningfully classify Plaintiffs and/or Death Row inmates into the respective SCDC institution;

k. In failing to maintain an effective and reasonable classification system for Plaintiffs and/or Death Row inmates;

l. In engaging in a pattern and practice of failing to provide the appropriate booking and/or screening procedures regarding Plaintiffs and/or Death Row inmates to properly determine their housing needs;

m. In engaging in a pattern and practice of failing to provide for reasonable and/or timely medical care to Plaintiffs and/or Death Row inmates;

n. In failing to maintain an adequate and reasonable medical care policy, procedure, and/or process for Plaintiffs and/or Death Row inmates;

o. If such policies and/or procedures exists, in failing to follow the same;

p. In engaging in a pattern and practice of failing to provide adequate and reasonable mental health care to Plaintiffs and/or Death Row inmates;

q. In failing to maintain an adequate and reasonable mental health care policy, procedure, and/or process for Plaintiffs and/or Death Row inmates;

r. If such policies and/or procedures exists, in failing to follow the same;

s. In confiscating, which ultimately led to a "taking," of Plaintiffs and/or Death Row inmates personal property without justification and without the intent to return said property;

t. In failing to file and/or deliver to Plaintiffs and/or Death Row inmates' grievances or staff requests to the appropriate SCDC employee and/or department for resolution;

u. In failing to respond to Plaintiffs and/or Death Row inmates' grievances and staff requests;

v. In failing to file, deliver, and/or respond to Plaintiffs and/or Death Row inmates' requests for sick call and/or medical care;

w. In engaging in a pattern and practice of failing to provide Plaintiffs and/or Death Row inmates adequate resources and facilities for reasonable personal hygiene needs;

x. In engaging in a pattern and practice of failing to provide Plaintiffs and/or Death Row inmates adequate recreation time outside of their cell, to include adequately sized outdoor areas;

y. In failing to allow Plaintiffs and/or Death Row inmates reasonable access to a law library;

z. In failing to allow Plaintiffs and/or Death Row inmates reasonable access to a library;

aa. In failing to provide reasonable cooking supplies so that Plaintiffs and/or Death Row inmates can utilize their canteen goods and consume food;

bb. In failing to provide electrical outlets and light switches in Plaintiffs and/or Death Row inmates' cells and/or dorms;

cc. In failing to provide a healthy living environment that is free from mold, mildew, and/or other toxic conditions;

dd. In failing to provide adequate and reasonable living quarters and/or cells;

ee. In failing to provide Plaintiffs and/or Death Row inmates with a chair or any other piece of furniture on which to sit;

ff. In failing to separate Plaintiffs and/or Death Row inmates and SSR isolated inmates into separate dorms;

gg. In failing to follow and/or prescribe to the existing policy regarding the separation of living quarters and/or cells for Plaintiffs and/or Death Row inmates and other segregated groups of inmates such as SSRs; and,

hh. In failing to adequately and reasonably provide for the health and well-being of the Plaintiffs, Death Row inmates, and/or prisoners placed in their care and keeping.

343. As a direct and proximate result of the aforementioned negligent, grossly negligent, and/or willful and wanton acts and/or omissions on behalf of Defendants SCDC and Stirling, Plaintiff has unjustifiably suffered, and further, was injured and damaged in ACTUAL AND CONSEQUENTIAL DAMAGES.

* * *

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendants:

(a) Declaring that Defendants' policies and practices of confining all prisoners sentenced to Death Row in indefinite solitary confinement with no opportunity for review violates the Eighth and Fourteenth Amendments of the United States Constitution;

(b) Granting permanent injunctive relief enjoining Defendants and their predecessors, successors, present or former agents, representatives, those acting in privity and concert with them, or on their behalf, from violating the Eighth and Fourteenth Amendments of the United States Constitution;

(c) Granting permanent injunctive relief requiring Defendants to present a plan to the Court within 30 days that provides for:

(i) the release from solitary confinement of Plaintiffs, whose isolation constitutes cruel and unusual punishment and whose placement in isolation lacks meaningful process and is arbitrary and capricious, and the placement of Plaintiffs in either (i) a general population unit or (ii) in a modified general population unit, in which prisoners segregated from the general population have the same privileges as do prisoners in the general population;

(ii) alleviation of the conditions of confinement of Plaintiffs so that they are no longer incarcerated under conditions of isolation, sensory deprivation, and lack of social and physical human contact;

(iii) mandatory physical exams, mental health treatment, and other necessary rehabilitation and medical treatment for Plaintiffs; and

(iv) all other relief to which Plaintiffs are entitled;

(d) Awarding Plaintiffs the compensatory damages they have sustained as a consequence of Defendants' Constitutional violations;

(e) Awarding Plaintiffs punitive and nominal damages;

(f) Awarding Plaintiffs costs and reasonable attorney's fees;

(g) Granting Plaintiffs prejudgment and post-judgment interest; and

(h) Granting such other equitable and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: December 7, 2017

Respectfully submitted,

/s/ Aaron S. Jophlin

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*Motion to appear *pro hac vice* to be filed

EXHIBIT A

OP-22.16, "DEATH ROW"

SCDC POLICY

CHANGE 1 to OP-22.16: 13.2; 13.3NUMBER: OP-22.16

TITLE: DEATH ROW

ISSUE DATE: JUNE26, 2014

RESPONSIBLE AUTHORITY: DIVISION OF OPERATIONS

OPERATIONS MANUAL: OPERATIONS

SUPERSEDES: OP-22.16 (AUGUST 1, 2007); (JANUARY 1, 2002)

RELEVANT SCDC FORMS/SUPPLIES: 2-2, 18-39, 19-7A, 19-7B, 19-11, 19-20, 19-30, 19-85, 19-127, 20-18, M-14, ATTACHMENT A

ACA/CAC STANDARDS: 4-4249, 4-4256 through 4-4272, 4-4273, 4-4284 through 4-4288, 4-4290, 4-4292 through 4-4294, 3-4336, 3-4343, 3-4345, 3-4348, 3-4349

STATE/FEDERAL STATUTES: NONE.

PURPOSE: To provide guidelines for the management of inmates assigned to the Agencys Death Row Unit at Lieber Correctional Institution.

POLICY STATEMENT: To promote safety and security, inmates assigned to the Death Ro w Unit at Lieber Correctional Institution will be housed in an area that is separate and independent from all other areas where other SCDC inmates are assigned. The Agency will ensure that any inmate assigned to the SCDCs Death Row Unit has been legally committed to Death Row. Death Row inmates will be afforded privileges/access to programs consistent with their level assignment and security requirements. The Agency will ensure that the management of the Death Row Unit is in compliance with applicable state and federal statutes, American Correctional Association Standards, and SCDC policies/procedures.

NOTE: THESE PROCEDURES APPLY ONLY TO MALE INMATES ON DEATH ROW AT LIEBER CORRECTIONAL INSTITUTION. FEMALE DEATH ROW INMATES WILL BE ASSIGNED TO A HOUSING AREA WITHIN THE SPECIAL MANAGEMENT UNIT AT CAMILLE GRIFFIN GRAHAM CORRECTIONAL INSTITUTION (CGGCI). IF A FEMALE IS ASSIGNED TO DEATH ROW AT CAMILLE GRIFFIN GRAHAM CORRECTIONAL

INSTITUTION, INSTITUTIONAL SPECIFIC PROCEDURES FOR THIS INMATE WILL BE DEVELOPED BY THE WARDEN OF CGGCI IN CONSULTATION WITH THE DEPUTY DIRECTOR OF OPERATIONS AND, AFTER PROPER STAFFING AND APPROVAL BY THE AGENCY DIRECTOR, WILL BE PUBLISHED AS A SUPPLEMENT TO THIS POLICY/PROCEDURE.

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SPECIFIC PROCEDURES:

1. RESPONSIBILITIES: The Deputy Director of Operations and the Warden at Lieber Correctional Institution will ensure compliance with this policy/procedure. (4-4249)

2. ASSIGNMENT OF INMATES TO LEVELS: Death Row inmates will be assigned to Level I, II, or III based upon their behavior/classification status. Most inmates on Death Row will be assigned to Levels II or III.

2.1 Level I - Inmates assigned to Level I include all those who have been placed in execution status. Inmates assigned to Level I require the strictest degree of custody and control. An inmate may also be assigned to Level I on Death Row if he has:

2.1.1 High escape or violence potential or serious disciplinary or management problems (included are those inmates with a history of escape, in-prison assault, gang affiliation, introduction of contraband, conspiracy to commit crimes, weapons possession and/or manufacturing, and history of medical and psychiatric problems);

2.1.2 A threat to the physical safety of other inmates or staff due to assaultive behavior (included are inmates identified and confirmed as being members of a disruptive group);

2.1.3 A refusal to comply with SCDC Policy/Procedure OP-22.13, "Inmate Grooming Standards;"

2.1.4 A need for protective custody/mental health status; or

2.1.5 Been placed on PHD and will remain on Level 1 status in the Lockup area until a change in level status by the Institutional Classification Committee.

2.2 Level I - Additional Information for Inmates on Execution Status: The following will be applicable for all Death Row inmates who are placed on execution status:

2.2.1 The inmate placed on execution status will be housed in a specific location of the B-Wing on the Death Row Unit.

2.2.2 The inmate placed on execution status will not be allowed to associate with other inmates at anytime while in execution status. Separate visiting hours will be established for these inmates.

2.2.3 Inmates placed on execution status will not be allowed out of the cell at the same time as other Death Row inmates.

2.3 Level II - Inmates assigned to Level II include those who have been involved in an incident or have received a disciplinary charge which warrants placement in a more restrictive level.

2.4 Level III - Inmates assigned to Level III include those who have maintained good behavior, demonstrated a positive attitude, and adhered to SCDC policies/procedures. Inmates in Level III are allowed more privileges than inmates in Levels I and II.

3. DEATH ROW UNIT: The U-1 housing unit will be utilized for Death Row inmates at Lieber. Death sentenced inmates will be separated from those in Security Detention as well as from inmates in the general population for the purpose of maintaining the safety, security, and order of the facility.

4. ORIENTATION FOR NEWLY RECEIVED DEATH ROW INMATES: Inmates will receive an Inmate Orientation Package which provides information regarding procedures in the Death Row Unit within five (5) working days of arrival at Lieber. This will include information on applicable SCDC policies/procedures, inmate grievances and procedures, programs and services, inmate correspondence privileges, and inmate visiting privileges. This orientation will be documented on SCDC Form 18-69, "Inmate Orientation." (4-4284, 4-4285, 4-4287, 4-4288)

5. INTAKE:

5.1 The inmate's commitment orders will be reviewed at Lieber and faxed to Central Records. Central Records staff will review the commitment orders to ensure that the inmate is legally committed to Death Row at Lieber. The inmate will be processed within one (1) day of arrival. Lieber staff will allow/assist the inmate in contacting his family or next of kin to advise them of his admission. Lieber staff will also obtain the following information: (4-4285, 4-4286)

5.1.1 Inmate's full name;

5.1.2 Date received;

5.1.3 SCDC (Death Row) number; (4-4285)

5.1.4 County of conviction;

5.1.5 Date of birth;

5.1.6 Race;

5.1.7 Information on current offense (include information pertaining to drugs, alcohol, or sex if involved in offense);

5.1.8 Any prior SCDC incarcerations and ID number;

5.1.9 Any prior SCDC offenses (include information pertaining to drugs, alcohol, or sex if involved in offense);

5.1.10 Any other state or federal incarcerations and offenses; (4-4286)

5.1.11 Any escapes on record;

5.1.12 Any possible gang tattoos (contact the gang intelligence officer if tattoo is identified as gang related); and

5.1.13 Personal data and information to be used for the inmates visiting list and correspondence. (4-4285)

5.2 Lieber staff will interview the inmate to obtain the following information:

5.2.1 Legal aspects of the case;

5.2.2 Social history;

5.2.3 Occupational experience and interests;

5.2.4 Educational experience and interests;

5.2.5 Vocational training;

5.2.6 Recreational preference (including a needs assessment);

5.2.7 Psychological evaluation; and

5.2.8 Pre-institutional assessment information. (4-4286)

5.3 Evaluation Period:

5.3.1 Each inmate will be thoroughly searched for contraband as per SCDC Policy/Procedure OP-22.19, "Searches of Inmates."

5.3.2 Each inmate will be evaluated by Medical staff, to include a mental health evaluation upon arrival. (4-4285, 3-4343)

5.3.3 Each inmate will be placed in a suicide blanket during the mental health evaluation period.

5.4 Each inmate's property and money will be processed in accordance with established SCDC Policy/Procedure OP-22.03, "Authorized Inmate Property and Unauthorized Property Disposition." Unauthorized property must be sent home or donated to charity within 30 days. See Procedure 14., below, for more information regarding authorized property for inmates on Death Row. (4-4285, 4-4291, 4-4294)

5.5 Each inmate will be afforded hair care and a shower, if necessary. (4-4285)

5.6 Each inmate will be photographed for an Identification Card which will be issued to him. Each inmate will also be fingerprinted and his vital statistics will be recorded. (4-4285)

5.7 A separate color-coded card will be completed for each inmate and affixed to his cell door. The color-coded card will indicate the inmate's assigned level, as follows:

- Level I - Gray

- Level II - Goldenrod

- Level III - Salmon.

6. IMMEDIATE MEDICAL CARE REQUIREMENT:

6.1 Each inmate will be interviewed using SCDC Supply M-14, "Medical Screen," to determine if he requires immediate medical/mental health care in compliance with SCDC Policy/Procedure HS-18.13, "Health Screening and Exams." Inmates who require immediate medical or mental health care will be referred to the appropriate health services staff for evaluation and treatment. (4-4285, 4-4286, 3-4343)

6.2 Inmate prescriptions and all medication (prescribed and over the counter) received prior to arrival at Lieber will be given to the medical staff. As soon as possible, the medical staff will review all prescriptions and medications and confer with an institutional physician to approve continuation of these medications. (4-4261)

6.3 Medical personnel will conduct a history and physical on the inmate within three (3) days of admission. This history/physical will include a thorough physical exam, a mental health assessment, and a sexually transmitted disease screening. Medical personnel will document this information in the inmates medical record and/or Automated Medical Record (AMR). (See SCDC policies and procedures regarding mental health services and SCDC Policy/Procedure HS-18.13, "Health Screening and Exams," for more information.) (4-4285, 4-4286, 3-4345, 3-4373,)

6.4 Mental Health:

6.4.1 All Death Row inmates will be assessed by a qualified mental health professional. This assessment will be documented in the inmates medical record and/or Automated Medical Record (AMR). (See SCDC policies and procedures regarding mental health for more information.)

6.4.2 After the first month, Death Row inmates will be assessed at least once every three (3) months by a mental health professional. This assessment will be documented in the inmates medical record and/or AMR.

If the inmate appears to need mental health attention between such assessments, the institutional staff will notify medical and a referral will be made from medical to mental health staff. (4-4256)

6.4.3 Mental health professionals will develop and implement mental health treatment for inmates as appropriate. (3-4349)

7. INSTITUTIONAL CLASSIFICATION COMMITTEE (ICC):

7.1 Procedures as outlined in SCDC Policy/Procedure OP-21.04, "SCDC Inmate Classification Plan," will be strictly adhered to and enforced as they pertain to the Death Row Unit at Lieber. The ICC will be composed as follows:

7.1.1 Chaired by a security representative other than the official responsible for the inmate's placement in custody reduction (For purposes of these procedures, "security representative" will be either the Warden, the Associate Warden, a Deputy Warden,or the Major);

7.1.2 Qualified medical or mental health care professional (available to the ICC as needed/required). A Mental Health Care Professional (MHCP) must attend any ICC in which an inmate with a mental health classification is being reviewed. In the absence of a MHCP, for compelling reasons, a member of the medical staff will attend.

7.1.3 Classification representative (one Classification Case Manager or Caseworker I assigned to the Death Row Unit); and

7.1.4 Other security/non-security staff members within the Death Row Unit.

7.2 The ICC will be responsible for scheduling systematic reviews of the inmates assigned to Death Row, to include:

7.2.1 30/90/Annualreview and possible change in level designation;

7.2.2 Suicide blanket restriction;

7.2.3 Property restriction;

7.2.4 Nutri-loaf restriction; and

7.2.5 Single man recreation/group.

7.3 Review Procedures for Death Row Inmates:

7.3.1 Newly received Death Row inmates will be reviewed by the ICC within 48 hours of arrival for their initial custody level assignment. New arrivals will be classified as Level I.

7.3.2 Inmates will be given written notice to appear before the ICC generally within 48 hours (excluding weekends and holidays) of the committee hearings. Inmates will be afforded the opportunity to waive their appearance at the hearings.

7.3.3 Level I - Inmates assigned to Level I will be reviewed every 30 days for behavior change and as needed for status change.

7.3.4 Level II - Inmates assigned to Level II will be reviewed for a possible change in level status every 90 days following their initial placement in Level II.

7.3.5 Level III - Inmates assigned to Level III will have an annual status review once per year, unless a change occurs (i.e., disciplinary, court decision, or another event) that would affect status.

7.3.6 Annual assessment review of status will be conducted by the ICC on all inmates on Death Row status.

7.3.7 The ICC will be required to document its review. The initial, 30, and 90 day level reviews will be documented on SCDC Form 19-30, "Special Management Institutional Classification Review," and will be filed in the inmates Institutional Record. The annual review will be documented on the CLASSP and on the SCDC Form 18-68, "Staff Memorandum" in the institutional record. The inmate can waive his/her right to appear at the classification hearing by completing SCDC Form 18-39, "Classification Waiver." In extenuating circumstances, if the inmates behavior and conduct are considered to constitute a security risk, the Warden may allow the ICC to conduct this hearing without the presence of the inmate. In such cases, the reasons for this decision must be documented by the Warden in a memorandum with a copy filed in the inmates institutional record and supporting documentation (disciplinaries, etc.) must be referenced. (NOTE: A majority vote of the ICC members will carry. A committee consists of three [3] members, to include the chairperson. However, if compelling reasons prevent the third member from attending or being polled telephonically, then two [2] members will suffice for a quorum. A unanimous vote will be necessary in any findings of a two [2] member committee. If a split decision should occur, the decision will be delayed until the third member can be contacted and polled.)

7.3.8 Record keeping - An institutional record will be maintained on each Death Row inmate by the Institutional Records Manager. Documentation will be filed in the inmates institutional file which will be maintained in the Institutional Records Office or other area designated by the Warden.

7.3.9 All mental health and medical review/screening notes will be maintained in the inmate's medical record.

7.3.10 See SCDC Policy/Procedure OP-21.04 for information regarding procedures to be followed when a Death Row inmate's death sentence is overturned.

8. CONFINEMENT PROCEDURES: Inmates confined to the Death Row Unit will be placed in segregation in accordance with prescribed confinement procedures relating to the level of segregation required. Immediate action will be taken if the inmate appears to be suicidal. (See SCDC policies/procedures related to inmate suicide prevention and intervention for more information.) The ICC may also determine any special conditions or restrictions which should be imposed on Death Row inmates for security purposes. These special conditions include, but will not be limited to:

•Level of segregation;

•Recreation/exercise precautions (single/group);

•Personal property restrictions;

•Known assault risks;

•Known enemies (by name and SCDC number);

•Disruptive group (gang) affiliations;

•Restraining requirements (for movement);

•Physical health conditions;

•Mental health conditions;

•Special diet requirements (medical and/or religious);

•Medication requirements; and

•Any other special circumstances related to the inmate's segregation. (4-4286)

9. RECREATION:

9.1 Schedule: Death Row inmates in any category of segregation will be allowed out-of-cell recreation privileges (indoor/outdoor) five (5) days a week, to exclude weekends and holidays, at least one (1) hour per day, weather permitting, unless safety and security reasons dictate otherwise. (NOTE: All Death Row inmates will be strip-searched before and strip-searched after recreation, prior to returning to their cell.) The following will apply:

9.1.1 Level I: Level I Death Row inmates will retain their restraints while they are secured within the individualized recreation area. (Only one [1] inmate at a time may be recreated in these areas.) The only exception may be those inmates in execution status or in protective custody.

9.1.2 Level II: Inmates will have general recreation with other Level II and Level III inmates. Only one (1) inmate will be allowed in recreation area.

9.1.3 Level III: Inmates will have general recreation with other Level II and Level III inmates. Recreation procedures will be the same as Level II. (4-4270)

9.2 On those days that out-of-cell recreation privileges will be provided, security staff will contact each inmate to determine if he wishes to participate in recreation. The inmates decision will be recorded on SCDC Form 19-7A, " Cell Check Log." If the inmate elects to participate, the form will be marked with a "Y" (Yes). If the inmate is denied recreation due to inappropriate behavior, the form will be marked with an I (Ineligible), and note in comment section of SCDC Form 19-7A will be completed. If outdoor recreation is not afforded due to inclement weather, then the form will be marked with the letter N (No) and the inmate may exercise in his cell. The inmate will be referred to the "Physical Fitness: An In-Cell Exercise Program (Attachment A) for this purpose. An inmates decision to/not to participate is final and may not be changed at a later time. (4-4270)

9.3 Disruptive behavior while on out-of-cell recreation will result in suspension of this privilege for the remainder of that recreation period and for the next scheduled recreation period. Documentation that an inmates recreation has been suspended will be recorded on SCDC Form 19-7A, " Cell Check Log," in the " Comments" section. (NOTE: An Officer may recommend that an inmates recreation be suspended; however, a Lieutenant or higher must approve the suspension and place his/her initials next to the remarks on the form.) Disciplinary action may be taken against an inmate in these cases as well.

9.4 Each recreational area/fence will be thoroughly inspected before and after each inmate is allowed recreation. An inspection of the entire recreational area and the fences will be conducted/documented in the Death Row Unit logbook.

9.5 Inmates will be prohibited from bringing any sheets, blankets, or pillows out of their cell. Allowed items will be determined by the Warden/Designee.

10. VISITATION:

10.1 All inmates families/visitors will be required to complete SCDC Form 19-127, "Request for Visiting Privileges." Inmates will be responsible for sending the applications to their families for completion. The completed Form 19-127 must be mailed to the Central Visitation Center at 3765-B Leeds Avenue, Charleston, South Carolina 29405, for approval. Visiting is a privilege and inmates will be expected to abide by all policies and procedures.

10.2 Death Row inmates will be allowed non-contact visitation privileges as follows:

10.2.1 All levels will be permitted to receive up to eight (8) visits per month. (NOTE: Level I inmates will have visitation held separately from other inmates on Death Row.)

10.2.2 Visitation will be held on the first and third Saturday and Sunday from 1:00 - 3:00 p.m. and 3:30 - 5:30 p.m. On the second and forth Saturday and Sunday, they will be scheduled from10:30 - 12:30 a.m., 1:00 - 3:00 p.m., and 3:30 - 5:30 p.m.(NOTE: The Warden or designee will establish separate visiting hours for Death Row inmates on Execution Status as per Procedure 10.3, below.)

10.2.3 All inmates desiring visits will be required to submit SCDC Form 19-11, "Request to Staff Member," to the Classification Caseworker/designee assigned to the Death Row Unit by 12:00 noon each Tuesday. Inmates will be advised of the date and time of each approved visit.

10.2.4 It will be the inmates responsibility to schedule the visit andnotify his visitor of the date and time of the approved visit.

10.2.5 All visits will be limited to two (2) hours.

10.2.6 Each inmate will be authorized up to four (4) visitors at a time. (4-4267)

10.3Execution Status Visitation: Non-contact visits for inmates on execution status must be approved by the Warden or designee.

Upon placement of the inmate on Execution status at Lieber, the following individuals will be authorized to participate in non-contact and contact visits with the condemned inmate provided that each visitor submits advanced written notice and is approved by the Warden/designee. The Warden/designee will maintain a

record of all visits that are approved.

10.3.1 Immediate family members (as outlined in SCDC Policy/Procedure OP-22.09, "Inmate Visitation") may be authorized only one (1) contact visit prior to the execution with the approval of the Warden/designee. On all other visits, the immediate family members will be allowed non-contact visits. Exceptions may be made to schedule as many family members as practical to visit prior to the inmates scheduled day of execution.

10.3.2 Clergy of Record - (no more than two [2]). These visits may be contact visits with the approval of the Warden/designee. The Chief of the Pastoral Care Branch will be responsible for verifying ministers credentials.

10.3.3 Attorneys- (no more than two [2] attorneys of record in any court [or a combination of one (1) attorney and one (1) authorized paralegal] may visit the inmate.) Limitations on the number of attorneys/paralegals may be placed on visitation as stipulated in SCDC Policy/Procedure SK-22.03, "Execution Directives." Attorney of Record visits may be contact visits with the approval of the Warden/designee. Paralegal visits will be non-contact. Verification of the Attorney of Record will be provided by the Office of General Counsel.

10.3.4 Contact visits will be inside the segregated, enclosed area of the Visitation Room.

10.3.5 There will be no family visitation while in the Capital Punishment Facility (CPF) at the Broad River Correctional Institution if the inmate is transported on the day of the execution. Family visitation will be allowed at the CPF only if the inmate is transported prior to the day of execution. (See SCDC Policy/Procedure SK-22.03, "Execution Directives," for more information.) (4-4267)

11. RELIGION:

11.1 The institutional Chaplain or designated volunteerwill make weekly visits to the Death Row Unit and may be called for emergencies. Individual inmate requests to see a Chaplain will receive prompt response. All religious programming will be in the cell block and all services will be conducted within the Death Row Unit of inmates at the cell door. No inmates will be allowed out of cell for religious services. Religious counseling will be provided as requested and given at the inmates cell door. Inmates assigned to Level I status will not be allowed to attend out of cell religious programming.

11.2 Ministerial/Spiritual Advisor visits for Death Row inmates (with the exception of those on Execution Status) will be conducted as scheduled by the Chaplain, with the Warden/Designee's approval.Attorney and Ministerial/Spiritual Advisor visits will not count against general visitation privileges. The inmate will forward SCDC Form 19-11, "Request to Staff Member," to the Chaplain who will schedule a time the visit will take place. (NOTE: All Ministerial/Spiritual Advisor visits will be non-contact.)

11.3 Muslim services will be conducted on Friday from 1:30 to 2:30 p.m. The number of inmates wishing a visit will have services provided to the inmate at his/her cell door during specified times. (4-4273)

12.MEALS: Death Row inmates will have access to nutritionally adequate meals. Specific dietary requirements will be met for those inmates whose medical or dental condition requires dietary management. L-Building inmate workers will carry food to the Sallyport Wing of the Death Row Unit, and food will be distributed by correctional staff.

13. CANTEEN: Death Row inmates will have access to the Canteen in accordance with their security level, as follows: (Changes in BLUE below, are amended by Change 1, dated July 15, 2016.)

13.1 Level I:

13.1.1 Execution Status - Canteen privileges will be restricted. Inmates will be allowed to buy food,candy, and hygiene items. A limit of $30.00 a week will be imposed.

13.1.2 Disciplinary: No Canteen privileges.

13.1.3 PHD inmates will be allowed to buy hygiene supplies ONLY.

13.1.4 Protective Custody (PC)/Mental Health Status - Canteen privileges will be restricted. These inmates will not be allowed to purchase any item which can be used as a weapon or used for self-mutilation. A limit of $30.00 a week will be imposed. These inmates will not be allowed to buy canned food items. They can purchase paper package items and a total of three (3) cans of soft drinks at a time.

13.1.5 Security/Escape Risk- Canteen privileges will be restricted. These inmates will not be allowed to purchase any item which can be used as a weapon or an escape tool. A limit of $15.00 per week will be imposed. These inmates will not be allowed to buy canned food items. They can purchase paper package items and a total of three (3) cans of soft drinks at a time.

13.2 Level II - Inmates in this level will be allowed to buy general purchases up to ~~$30.00~~$50.00 per week.

13.3 Level III - Inmates in this level will be allowed to buy general purchases up to ~~$100.00~~$150.00 per week.

13.4 The Canteen will be available to Death Row inmates.

14. PROPERTY:

14.1 Death Row inmates will retain personal property allowed in accordance with the Level to which they have been assigned. Unless otherwise stipulated, all property must be either state issued or purchased from the Canteen. The property of Death Row inmates who present a danger to the security of staff, the inmate, or others, or a danger of escape, may be restricted. The inmate will be required to wear a jumpsuit or recreation gear when going to and from the Recreation Field or while he is physically on the Recreation Field. (4-4261,

4-4292, 4-4293)

14.2 Level I:

Execution Status:

1 pair of tennis shoes	1 pair of clogs	1 jacket	2 jumpsuits (issued on laundry days)
one (1) pair of athletic shorts purchased from the Canteen	4 pairs of socks	4 pairs of undershorts	4 undershirts
3 sets of thermals	3 towels	3 washcloths	1 mesh bag
2 sheets	1 pillow case	1 blanket	1 tumbler (plastic)
1 8 quart ice chest	1 13" television (larger to grandfathered inmates in system prior to 1983)	1 radio and/or radio cassette (Walkman type)	1 headset
1 electric shaver	1 watch	1 ring	1 necklace (religious only must be approved by the Warden)
1 deck of playing cards	pictures (up to 8"x10") - 10 loose or number that can fit into two (2) photo album(s)	writing/legal materials (amount that can be placed in a box no larger than 15 "x 12 "x 10 ")	5 personal books/magazines (including Bible/Koran, and 2 photo album(s) (4-4269)
1 comb	toothbrush/toothpaste	soap/three in one cleanser	

Disciplinary:

1 pair of tennis shoes	1 pair of clogs	1 jacket	1 jumpsuit (issued on laundry days)
2 pairs of socks	2 pairs of undershorts	2 undershirts	1 set of thermals
1 towel	1 washcloth	2 sheets	1 pillow case

1 blanket	1 mesh bag	1 typewriter (if the inmate owns one)	1 watch
1 ring	1 necklace (religious only must beapproved by the Warden)	writing/legal materials (amount that can be placed in a box no larger than 15"x12"x10")	soap/three in one cleanser
1 comb	toothbrush/toothpaste	shaving supplies (razor retrieved after shower)	1 Bible/Koran (4-4269)

Protective Custody:

1 pair of tennis shoes	1 pair of clogs	1 toboggan hat	1 doo-rag
1 jacket	2 jumpsuits (issued on laundry days)	3 sets of thermals	6 white handkerchiefs
one (1) pair of athletic shorts	7 pairs of socks	7 pairs of undershorts	7 undershirts
2 sheets	1 pillow case	1 blanket	3 towels
3 washcloths	1 mesh bag	1 tumbler (plastic)	2 cups
1 headset	2 single outlet dropcords	1 13" television (larger grandfathered to inmates in system prior to 1983)	1 radio and/or radio cassette (Walkman type)
1 electric shaver	1 8 quart ice chest	1 typewriter	1 coffee pot
1 ring	1 watch	1 necklace (religious only must be approved by the Warden)	writing/legal materials (amount that can be placed in a box no larger than 15"x12"x10")
1 deck of playing cards	pictures (up to 8"x10") - 10 loose or number that can fit into two (2) photo albums	1 pair of sunglasses	1 lamp

toothbrush/toothpaste	shaving supplies (razor retrieved after shower)	soap/three in one cleanser	1 comb
1 brush (plastic or rubber)	10 personal books/magazines (including Bible/Koran and two (2)photo albums (4-4269)		

Security/Escape Risk:

1 pair of tennis shoes	1 pair of clogs	1 toboggan hat	1 doo-rag
1 jacket if needed	1 jumpsuits(issued on laundry days)	one (1) pair of athletic shorts	3 pairs of socks
2 sets of thermals	3 pairs of undershorts	3 undershirts	1 mesh bag
2 sheets	1 pillow case	1 blanket	3 towels
3 washcloths	1 headset	1 coffee pot	1 electric shaver
1 single outlet dropcord	1 8 quart ice chest	1 13" television (larger grandfathered to inmates in system prior to 1983)	1 radio and/or radio cassette (Walkman type)
1 typewriter	1 watch	1 ring	1 necklace (religious only must be approved by the Warden)
1 deck of playing cards	writing/legal materials (amount that can be placed in a box no larger than 15"x12 "x10")	pictures (up to 8"x10") - 10 loose or number that can fit in one (1) photo album	1 lamp
soap/three in one cleanser	1 comb	1 brush (plastic or rubber)	toothbrush/toothpaste

shaving supplies	5 personal books/magazines (including Bible/Koran and two (2) photo albums (4-4269)		

14.3 Level II:

1 pair of tennis shoes	1 pair of clogs	1 jacket	1 jumpsuit (issued on laundry days)
4 pairs of socks	4 pairs of undershorts	4undershirts	1 set of thermals
2 white handkerchiefs	1 cup (plastic)	1 towel	1 washcloth
2 sheets	1 pillow case	1 blanket	1 mesh bag
1 typewriter (if the inmate owns one)	1 watch	1 ring	1 necklace (religious only must be approved by the Warden)
writing/legal materials (amount that can be placed in a box no larger than 15"x12"x10")	pictures (up to 8"x10")-10 loose or number that can fit into two (2) photo albums	hygiene supplies	toothbrush/toothpaste
soap/three in one cleanser	shaving supplies	1 comb	4 personal books/magazines (to include Bible/Koran and two (2) photo albums (4-4269)

14.4 Level III:

1 pair of tennis shoes	1 pair of clogs	1 toboggan hat	1 doo-rag
1 jacket	2 jumpsuits (issued on laundry days)	one (1) pair of athletic shorts	3 sets of thermals
6 white handkerchiefs	7 pairs of socks	7 pairs of undershorts	7 undershirts

3 towels	3 washcloths	2 sheets	1 pillow case
1 blanket	1 mesh bag	1 tumbler (plastic)	2 cups
2 single outlet dropcords	1 8 quart ice chest	1 13" television (larger grandfathered to inmates in system prior to 1983)	1 radio and/or radio cassette (Walkman type)
1 electric shaver	1 typewriter	1 coffee pot	1 watch
1 ring	1 headset	1 necklace (religious only must be approved by the Warden)	writing/legal materials (amount that can be placed in a box no larger than 15 "x12 "x10")
1 deck of playing cards	pictures (up to 8"x10") - (10 loose or amount that can fit in two (2)photo album(s)	10 personal books/magazines (including Bible/Koran and two(2) photo album(s) (4-4269)	toothbrush/toothpaste
soap/three in one cleanser	shaving supplies	1 comb	1 brush (plastic or rubber)

14.5 Inmates will not be allowed to have metal fasteners of any type, i.e., paper clips, etc. (NOTE: SCDC Form 20-18, "Personal Equipment Order Form," should be used by inmates to request the above items from the Canteen and to authorize deductions from their E. H. Cooper Trust Fund Account.)

14.5 Property items NOT allowed to be in the inmates possession will be inventoried and disposed of pursuant to SCDC Policy/Procedure OP-22.03, "Authorized Inmate Property and Disposition of Unauthorized Property."

14.6 If the Death Row inmate requests access to legal proceedings that have not been transcribed, a staff member (Major or above) will contact the Office of the General Counsel. An attorney in the Office of the General Counsel will coordinate with appropriate staff members, and the inmate's attorney (if applicable) to make an exception such that the inmate may listen to or view such proceedings, if the proceedings have not been or cannot be transcribed. (NOTE: Excess legal material may be sent home at the inmates expense or the inmate may request to maintain these materials in the property control room through his/her respective Warden using SCDC Form 19-11, "Request to Staff Member." No legal materials will be disposed of by SCDC staff.)

15. WINDOW CLOSURE:

15.1 Level I: Window closure will be imposed.

15.2 Level II: Window closure will be imposed from 2400 hours until 0530 hours.

15.3 Level III: Window closure will be imposed from 2400 hours until 0530 hours.

16. SHOWERING: Death Row inmates will be provided the opportunity to take a shower five (5) days per week, to exclude weekends and holidays, which will be documented on SCDC Form 19-7A, Cell Check Log . If the inmate receives regular visits during the weekend, he will also be allowed to shower prior to the visit. Death Row inmates will be furnished and expected to wear clean clothes and they must adhere to the grooming standards as outlined in SCDC Policy/Procedure OP-22.13, "Inmate Grooming Standards." Inmates will not sign up for visits just to get a shower (or they could be subject to disciplinary action). (4-4262)

17. EARNED WORK CREDITS (EWCs)/INCENTIVE PAY/EARNED EDUCATIONAL CREDITS (EECs): Inmates on Death Row will not be eligible to earn EWCs, Inmate Incentive Pay, or EECs.

18. CLASSIFICATION SERVICES: The Classification Caseworker/Program Assistant assigned to Death Row will be responsible for making at least monthly visits to inmates assigned to Death Row in order to talk with inmates and respond to questions they may have regarding visits or other related questions. (4-4258)

19. LAUNDRY SERVICES: Inmates will be provided laundry services at least two (2) times per week. (4-4263)

20.RESTRAINTS: Inmates in Levels I, II, and III will be restrained with leg irons and security cuffs/belly chains whenever exiting the cell block. A Sergeant or above will escort an inmate when he is moved from the cell block. Prior to leaving or upon entering U-1 (Death Row), all inmates will be strip searched. Level I inmates will be escorted by one (1) supervisor and one (1) officer, and will be in appropriate restraints at all times. Inmates in Levels II and III will be escorted by at least one (1) supervisor and will be in appropriate restraints while under escort.

21. CORRESPONDENCE: Death Row inmates will be afforded correspondence privileges in accordance with SCDC Policy/Procedure PS-10.08, "Inmate Correspondence Privileges." Inmates will be permitted to receive personal magazines/books in accordance with this policy/procedure; however, the amount authorized will be consistent with the authorized amounts indicated in Procedure 14., above. (4-4266)

22. IN-CELL PROGRAMS:

22.1 Death Row inmates may have access to in-cell programs which are consistent with security requirements.

22.2 Death Row inmates may enroll in cell study courses furnished and supervised by the Division of Educational Services. Inmates will be provided academic support in reading and math. This is contingent upon an inmates acceptable conduct and earnestness. Tutoring will be given by instructors going from cell to

cell, issuing and grading assignments. Inmates will be allowed to participate in correspondence courses at their own expense. (4-4273)

23.TELEPHONE PRIVILEGES/CALLS: To use the telephone, each inmate must request a pin number using SCDC Form 2-2, "Inmate Telephone Privilege Request." This number will allow an inmate to make calls to his family/friends. SCDC Form 2-2 will be given to each inmate during Inmate Orientation. If an inmate experiences problems, he must send a completed SCDC Form 2-6, "Inmate Telephone Trouble Form," to the inmate telephone coordinator at Lieber. The following restrictions will apply:

23.1 Level I:

23.1.1 Execution Status: Telephone calls will not be restricted.

23.1.2 Disciplinary: Telephone calls will be restricted to legal calls only. Calls must be approved by the Captain or designee of the Death Row Unit.

23.1.3 Protective Custody: Telephone calls will not be restricted.

23.1.4 Security Risk/Escape: Telephone calls may be restricted.

23.2 Level II: Telephone calls will not be restricted.

23.3 Level III: Telephone calls will not be restricted.

23.4 Telephone calls will be limited to 15 minutes. They will be automatically disconnected one (1) minute after the 14 minute warning beep.

23.5 All telephone calls will be made from the roll-around phone and given to the inmate at his request. The Deputy Warden/Designee will have authorization to allow an additional telephone call should extenuating circumstances arise. All telephone calls will be collect.

23.6 Inmates will be allowed to place telephone calls to their legal counsel if established counsel will accept their calls. For purposes of these procedures, "legal counsel" may consist of the inmates attorney of record and/or paralegal(s). Calls between an inmate and their attorney will not be monitored. Any deviation of this procedure will be documented in the inmates record. In the event that an attorney calls the institution and requests an attorney telephone call with a Death Row inmate, the telephone call will be arranged as directed by the SCDC General Counsel's office. (4-4271)

24. HYGIENE SUPPLIES:

24.1 New inmates will be provided an initial 30 day supply of hygiene items and sufficient writing materials (pencil and/or pen, envelopes, paper).

24.2 Inmates having money in their E. H. Cooper Trust Fund Account will be allowed to buy hygiene items from the Canteen.

24.3 On a monthly basis, indigent inmates will receive a package containing a 30 day supply of hygiene items. (4-4261)

24.4 Inmates will be required to maintain compliance with SCDC policies/procedures regarding inmate grooming and attire standards. Death Row inmates will be permitted to shave a minimum of three (3) times per week. (NOTE: Razor restrictions will be imposed by the Death Row Unit Supervisor if security and/or mental health concerns should arise.) (4-4261)

25. MEDICAL: All inmates assigned to the Death Row Unit will receive health care, sick call, and/or medication as needed in accordance with Agency Health Services policies and procedures. At a minimum, qualified medical personnel will be required to visit the Death Row Unit at least daily to ensure the health and well being of inmates. (4-4258, 4-4261)

26. LIBRARY/LAW LIBRARY ACCESS:

26.1 Library: Inmates will have access to the law computer and library books in accordance with SCDC policies/procedures related to library services. The maximum number of books that an inmate may check out at one (1) time is three (3). These books are not included in the total number of authorized books/magazines outlined in Procedure 14., above. (NOTE: Inmates in disciplinary status will not be authorized to check out library books.) (4-4269)

26.2 Law Library: Inmates on Death Row may obtain law materials in accordance with SCDC Policy/Procedure GA-01.03, "Inmate Access to the Courts." Law books will not be counted against the inmates total number of authorized books. The law computer is also available. (4-4268)

27. MANAGEMENT AND SECURITY MEASURES PROCEDURES:

27.1 The following are guidelines related to the management of the Death Row Unit in the Special Management Unit:

27.1.1 Employee assignment in the Death Row Unit will comply with SCDC staffing patterns which specify the number of officers and supervisors to be placed in the Death Row Unit.

27.1.2 A sufficient number of unit staff will be deployed so that the normal eight (8) hour or 12-hour shift can be maintained.

27.2 The Warden will take all necessary steps to assure that the safety and security of inmates and staff in the Death Row Unit are maximized.

27.2.1 Written special orders specific to inmate movement within each wing in the Death Row Unit will be attached to Agencypost orders. The specifics outlined in these post orders and special orders will be followed at all times.

27.2.2 Prior to and after each use, the shower areas, rock area, and inside/outside recreation areas will be thoroughly searched.

27.2.3 Inmates will be thoroughly strip-searched before and strip-searched after recreation and prior to leaving and returning to the assigned cellblock.

27.2.4 Frequent, thorough searches of the cells, cell runs, shower areas, and other locations within the Death Row Unit will be conducted. Each cell will be thoroughly searched prior to assigning an inmate to the cell.

27.3 A Death Row inmate may be temporarily placed in a designated cell of the Death Row Unit if he is charged with, or suspected of, a disciplinary violation by the Warden, the Associate Warden, or an approved designee for up to seven (7) days if the inmate falls into one of the following categories:

27.3.1 the inmate is a current escape risk;

27.3.2 the inmate's presence would cause a threat to the safety, security, and/or order of the institution; or

27.3.3 it is necessary to maintain the integrity of an investigation, i.e., to preserve the integrity of information either in the inmate's possession or another inmate's possession.

By the end of seven (7) days, the ICC will determine the appropriate level of the inmate.

28. DEATH ROW SECURITY STAFF DUTIES:

28.1 Security Supervision:

28.1.1 Correctional officers assigned to the Death Row Unit will be required to conduct rounds and to personally observe inmates at least every 30minutes on an irregular, unannounced schedule. Rounds will be recorded in the Death Row Unit log book. (4-4257)

28.1.2 At a minimum, the Captain and Deputy Warden of the Death Row Unit will be required to make daily visits and rounds of the Death Row Unit to ensure the health and well-being of inmates assigned to the same. (4-4258)

28.1.3 The officers assigned to the Death Row Unit will be responsible for recording in the Death Row Unit permanent log book all routine and unusual events not documented on SCDC forms referenced in this policy/procedure. The log will also be used to record all visits by officials who inspect the unit or provide other program services. (4-4258, 4-4260)

28.1.4 Showers - Inmates will have the opportunityto shower five (5) times per week and to remain clean, to exclude weekends and holidays.

28.1.5 Recreation - Recreation will be conducted as noted in section 9. above,and will be documented on SCDC Form 19-7A, "Cell Check Log."

28.2 Death Row Escort Procedures: Death Row inmates will be strip-searched and placed in restraints before exiting the cell block. Death Row inmates will be escorted according to Procedure 21. above, and all applicable post orders.

28.3 Death Row Housing Procedures:

28.3.1 Each wing of the Death Row Unit will develop and implement procedures to ensure that categories and levels of segregation can be identified by the cell number and/or row of the segregation housing area. Inmates in Level I will be housed in a separate physical location. Inmates in Level II and III may be housed in the same physical location; however, an empty cell will be maintained between the two (2) levels.

- Inmates on Death Row should be assigned to housing areas that are specifically designated for their custody requirements.

- Housing recommendations of treatment professionals, as noted in each inmates Health Summary for Classification form, will be followed by Classification Committees and by both Classification and Security staff.

28.3.2 Inmates on Death Row will be single-celled. Inmates will be expected to maintain cleanliness and sanitation in accordance with institutional health standards. Inspections of living areas will be conducted at least weekly by designated employees/inspectors of the institution. Inmates will not be authorized to keep cleaning equipment and supplies in their cells.

28.3.3 Grooming- Inmates in all levels will be afforded a haircut and will be expected to maintain rigid compliance with SCDC Policy/Procedure OP-22.13, "Inmate Grooming Standards." Inmates who do not comply with the Agency grooming standards will be charged in accordance with SCDC Policy/Procedure OP-22.14, "Inmate Disciplinary System," and, if found guilty, will be placed in Level I - Disciplinary Status. (NOTE: The same review process outlined in Procedure 7.3, above, will apply.) Inmates will not be allowed to grow or style their hair in any manner other than that authorized in OP-22.13. Inmates may be given

forced haircuts or shaves if they refuse to comply with the haircut and shave policy. Forced haircuts or shaves are considered a use of force and must be videotaped pursuant to SCDC Policy/Procedure OP-22.01, "Use of Force."

28.3.4 Cell Search: Cells will be searched on a regular basis and/or at least once a week. When an inmate is moved in or out of a cell, an officer will conduct a thorough cell search. This search will include a security check of the bars, ventilators, lights, switches, fixtures, toilet and sink, mattress, blanket, and bedding. In the event that damage has been caused by the inmate, he will be charged in accordance with SCDC Policy/Procedure OP-22.14, "Inmate Disciplinary System."

28.3.5 When an inmate is initially assigned to Death Row status, he will be placed on 15 minute cell checks for a minimum of seven (7) days. At the end of seven (7) days, the inmate will be reviewed by a Mental Health Coordinator (Clinical Correctional Counselor) in order to determine his appropriate status. (4-4257)

28.3.6 All sidewalks, hallways, offices, etc., will be checked/secured by a Sergeant or above before a Death Row inmate is moved into or through these areas. The supervisor checking those areas will notify the Death Row Unit Control Room when the areas are clear and secure. At no time will Death Row inmates move until the Control Room has been notified and the area is clear and secure. The Death Row Unit Control Room Officer will then notify the L Control Room and U-2 (Security Detention) Control Room that a Death Row inmate is being moved, and all doors will be secured until the Death Row Unit Control Room Officer is further notified.

28.3.7 No one will enter the Death Row Unit except personnel assigned to this area, without a specific, legitimate purpose. Control Room employees will never open doors or allow unauthorized personnel to enter unless approved by the Shift Captain/designee or above.

28.3.8 All personnel entering the Death Row Unit will surrender all items to the Control Room Officer prior to entering the wing, i.e., keys, anymedications, etc., and each individual will be frisk-searched. All personnel entering will be logged in/out by name, date, time, etc., each time that they enter and leave the Death Row Unit.

28.3.9 Inmates will be strip-searched in the shakedown room, Cell 142, prior to leaving the cell block and will be strip searched prior to entering the cell block. They may also be strip searched any other time deemed necessary.

28.3.10 A Sergeant or above will be on the cell block of the Death Row Unit at all times. If the assigned Sergeant must leave, s/he will contact the Shift Captain/SMU Lieutenant. The Shift Captain or SMU Lieutenant will assume the Sergeants duties in the Death Row Unit prior to the sergeant departing the area.

29. DAMAGE, DESTRUCTION, AND/OR MISUSE OF PROPERTY:

29.1 Inmates housed on Death Row who damage, destroy, or misuse property may lose privileges and/or property items, and/or be decreased in their Level as deemed appropriate by the ICC according to the following procedures: (NOTE: This action can be taken in addition to formal disciplinary action being taken against the inmate pursuant to SCDC Policy/Procedure OP-22.14, "Inmate Disciplinary System." In addition, inmates may be required to make restitution for the damaged/destroyed item pursuant to SCDC Policy/Procedure ADM-15.01, "Repayment of Costs by Inmates.")

29.1.1 Anytime an inmate is found to have damaged, destroyed, or misused property, the unit supervisor may confiscate the property and will document such confiscation on SCDC Form 19-20, "Special Management Confiscation Report &Review."

29.1.2 Within three (3) working days following the confiscation of the property item, the unit supervisor will be required to make a determinationas to the continued confiscation of the property item. The unit supervisorhas the authority to continue confiscation of the property item for an additionalperiod not to exceed ten (10) days. (This 10-day period will be in addition to the three (3) days, excluding weekends and holidays following the initial confiscation of the item.) Should an item be recommended to be returned to the inmate, the destroyed item will be repaired or replaced with like items and the inmate may be held liable for repair and/or replacement costs pursuant to SCDC Policy/Procedure OP-22.14, "Inmate Disciplinary System," or SCDC Policy/Procedure ADM-15.01, "Repayment of Costs by Inmates."

29.1.3 The second occurrence of property damage, destruction, or misuse of property by the inmate may result in the confiscationof the item from the inmate for a period not to exceed 30 days. The unit supervisor and Major of Securitywill be responsible for reviewing such incidents and for making a determination as to duration of the confiscation. Recommendations will be documented on SCDC Form 19-20. The Major of Securitywill be required to review the loss of the item on a weekly basis (every seven (7) days) and may recommend that the item be returned to the inmate at any time. SCDC Form 19-20 will be used to document these reviews.

29.1.4 Security staff will be responsible for documenting any confiscated items and the duration of the confiscation in the unit log book.

29.1.5 All documented incidents of such behavior will be filed in the inmate's Institutional Record and may be used by the ICC to adjust an inmate's level assignment.

29.2 Misuse of Cups: Inmates who use cups to throw part of a meal to assault staff or other inmates will be prohibited from having cups in their cells for a period of 30 days. SCDC Form 19-20, "Special Management Confiscation Report/Review," will be used by security staff to document this restriction. During this time, s/he will be allowed to drink water out of the sink in his/her cell. The inmate's behavior will be reviewed after thirty (30) days by the ICC, and, if approved, the inmate may be allowed again to retain a cup in his/her cell. Reviews by the ICC will be documented on SCDC Form 19-20. All repeated occurrences of similar behavior by an inmate will be handled similarly and consistently.

29.2.1 All documented records concerning the misuse of property will be filed in the inmate's Institutional Record and may be used by the ICC to adjust an inmate to a more restrictive level assignment.

29.2.2 Inmates who use cups or other property items to throw other substances which constitute a health risk (e.g., feces, urine, etc.) or to assault staff or other inmates will be subject to the same restrictions as described in Procedure 32., below. In the event that substances thrown are verified to be bodily fluids, the inmate may also be criminally prosecuted pursuant to existing state statutes. In addition, such inmates may also be subject to control by utilization of the restraint chair. Refer to SCDC policies and procedures related to the use of force for additional information. (4-4265)

30. SUICIDE BLANKETRESTRICTION:

30.1 An inmate will be placed on suicide blanket restriction during processing (which usually lasts 7-14 days after his arrival in the Death Row Unit). He may also be placed on this restriction if he has demonstrated that he is a threat to the safety of the institution, himself, or other inmates. If the Mental Health Coordinator (MHC) places the inmate on crisis intervention, the inmate must be monitored every 15 minutes using SCDC Form 19-7B, Fifteen Minute Observation Log.

30.2 When it has been determined that a Death Row inmate has thrown substances or objects, has destroyed his state-issued clothing, or has utilized his clothing as a weapon, he will be subject to disciplinary action in accordance with SCDC Policy/Procedure OP-22.14, "Inmate Disciplinary System," and may be reviewed for placement on suicide blanketrestriction.

30.3 The Mental Health Coordinator (Clinical Correctional Counselor) will have the authority to place an inmate on suicide blanket restriction during in-processing. Placement of an inmate on suicide blanket restriction will be documented by the Captain/designee. The Mental Health Coordinator (Clinical Correctional Counselor) will review the placement of an inmate on such restriction within 24 hours.

30.4 Suicide blanket restriction may be continued for up to 72 hours and then the restriction will be automatically discontinued if the inmate has not exhibited any of the behavior that originally caused him to be placed on suicide blanket restriction.

30.5 If the inmate continues to throw substances or objects, destroy his state-issued clothing, or utilize his clothing as a weapon, the Captain/Deputy Warden may, with proper documentation, continue the suicide blanketrestriction with review every 72 hours until such behavior ceases or the Captain/Deputy Warden deems the restriction no longer appropriate.

30.6 When considering the continuation of the suicide blanket restriction, the Captain/Deputy Warden will take into consideration health related issues pertinent to the placement of an inmate in a suicide blanket, i.e., inmates current health status, temperature, and other environmental factors that would impact the inmates health.

30.7 The inmate will be issued only one (1) clean suicide blanket daily and may be exchanged as needed. If the inmate receives a visit during the time he is being required to wear a suicide blanket, he will be issued a set of state-issued clothing to wear during the visit. The clothing will be retrieved and the inmate will resume wearing the suicide blanket after each visit is completed.

31. ALTERNATIVE MEAL SERVICE (NUTRI-LOAF MEAL):

31.1 The nutri-loaf meal may be imposed upon the inmate for the following violations:

•Refusing to return food tray, cup, or utensils;

•Throwing food, food tray, cup, or utensils;

•Collecting or throwing human waste or any unidentified substances by way of tray, cup, or utensils;

•Refusing to return uneaten food;

•Interfering with the feeding of any meal; or

•Collecting, smearing, throwing, or otherwise exposing an employee to feces, urine, blood, or any other bodily fluid in any manner.

31.2 The use of nutri-loaf must be approved in writing by the Warden (or an approved designee at the level of Major or above) and by a qualified medical professional. The qualified medical professional will be required to review any medical condition that may preclude the inmate from being placed on nutri-loaf. Section I of SCDC Form 19-85, "Alternative Meal Service," will be provided to the inmate for this purpose.

31.3 Each inmate approved to be placed on nutri-loaf must be provided with written notification of the same. Section II of SCDC Form 19-85, "Alternative Meal Service," will be provided to the inmate for this purpose.

31.4 The use of nutri-loaf must be reviewed every 48 hours by the Major or other higher authority and by a qualified medical professional. The use of nutri-loaf cannot exceed seven (7) days. Section III of SCDC Form 19-85, "Alternative Meal Service," will be used to document these reviews. A copy of this form will be maintained in the inmates institutional record.

31.5 If the inmate engages in any of the behavior described above after being restored to regular meals, he may be returned to the nutri-loaf meal for a period not exceeding seven (7) additional days. This additional period will begin at the time of the subsequent offense.

31.6 If an inmate continues to commit any of the violations described above while he is being provided nutri-loaf meals, the inmate may be continued on nutri-loaf for an additional seven (7) days, provided that he is given regular meals for a period of 24 hours prior to the start of his next nutri-loaf period. The same procedures described above will be followed to return the inmate to a nutri-loaf meal. The 24 hour break will also be documented in the Death Row Unit log book. (4-4264)

32. INMATE GRIEVANCE PROCEDURES: Death Row inmates may file grievances in accordance with SCDC Policy/Procedure GA-01.12, "Inmate Grievance System." (4-4284)

33. STAFF TRAINING AND ASSIGNMENT: Only certified, highly motivated, and dedicated uniformed personnel will be selected to work within the Death Row Unit. The selected uniformed personnel will be trained in the essential skills needed to work in and cope with Death Row inmates. Uniformed staff will be evaluated on a daily basis by their supervisor as to their effectiveness in the Unit. Uniformed staff who are determined to be unable to handle assignment in the Death Row Unit will be removed from the Unit and assigned to an appropriate post in another area of the facility. Officers will be responsible for the security, safety, and cleanliness of the Death Row Unit. (4-4259)

34. DEFINITIONS:

Alternative Meal (Nutri-loaf) refers to a food product (in the form of a loaf) which provides and meets requisite dietary needs and requirements and is provided to inmates in place of regular meals under limited circumstances approved by the Warden and qualified medical officials. (4-4264)

Death Row Segregation refers to a security level system under which Death Row inmates may be assigned to Level I, II, or III. Inmates assigned to Levels I and II either require more intensive supervision due to poor institutional behavior or are those inmates assigned to execution status.

Execution Status refers to the status a Death Row inmate is placed on (at Lieber C.I.) from the time the execution order is received until he is transported to the Capital Punishment Facility (CPF) at Broad River Correctional Institution.

Institutional Classification Committee (ICC) refers to the decision-making body for institutional custody decisions. It is the committee that systematically reviews the behavior, programming needs, progress, and Level of inmates assigned to Death Row. The ICC will be responsible for reviewing the inmate at scheduled intervals and for determining an inmate's movement from one (1) Level to another. The ICC will be chaired by one (1) of the following: Warden, Associate Warden, orMajor.

Meaningful Program refers to organized supervised programs, including but not limited to, recreation and educational courses.

Qualified Medical Professional refers to a physician, physician's assistant, LPN, RN, nurse practitioner, or mental health care professional.

SIGNATURE ON FILE

s/Bryan P. Stirling, Director

ORIGINAL SIGNED COPY MAINTAINED IN THE OFFICE OF POLICY DEVELOPMENT.

ATTACHMENT A

PHYSICAL FITNESS:

AN IN-CELL EXERCISE PROGRAM:

The South Carolina Department of Corrections has endorsed the following exercise program for those inmates who are, for whatever reason, required to remain in their cells most of the time (i.e., institutional lockdown, Special Management Unit, Maximum Security Unit, Death Row, etc.). The program is called Physical Fitness: An In-Cell Exercise Program for Inmates. In this program, the benefits of physical fitness are discussed, along with setting a schedule and staying on it, and, most importantly, the listing and explanation of those exercises that are appropriate for both men and women. This Attachment should be disseminated to inmates whenever they are confined to their cells or housing areas and are not authorized recreation.

INTRODUCTION:

Physical fitness involves a sound program of exercise. Exercise is important in improving respiration, circulation, digestion, and many other bodily systems. A good exercise program is a type of preventive medicine against breakdown of the human machine. Included are a few basic exercises for men and women that can be done in living areas and can be effective for personal fitness.

Common sense tells us that those with medical problems of physical disabilities should have a consultation with a physician before attempting any physical exercise program. If you have not exercised for a long time, take it easy. Too active an exercise period can lead to physical set-backs. Start slowly and gradually increase the number of exercises.

Set a schedule and stick to it. Do not be rushed. Never exercise directly after meals. The best time to exercise might be in the morning when you first get up or an hour or so before you go to bed at night.

It is suggested that you gradually build up your exercise period. Do not try to do too much at first. When you first start your program, repeat each exercise only two (2) times, increasing by one (1) repetition every two (2) or three (3) days, until you reach your desired number. Space your sessions with deep breathing pauses of a few seconds. If there is not a clock available, time yourself by counting "one thousand one, one

thousand two," etc., to the number of seconds desired.

It is recommended that each participant employ the three phases of physical fitness training (warm-up, conditioning, and cool down) when using this In-Cell Exercise Program:

PHYSICAL FITNESSWARM-UP AND COOL DOWN EXERCISES:

A. Start with warming the body up by slowly walking/jogging in place for about one (1) minute, then move to rotational exercises.

1.NECK ROTATION: Rotate clockwise three (3) times, repeat in opposite direction three (3) times. (2 sets, 5 seconds each direction.)

2. ARMS AND SHOULDERS ROTATION: Rotate the shoulders forward in a large circular motion, repeat in opposite direction. (2 sets, 5 seconds each direction.)

3. HIP ROTATION: Rotate the hips clockwise while keeping the back straight, repeat in opposite direction. (2 sets, 5 seconds each direction.)

4. KNEE AND ANKLE ROTATION: With hands above the knees, rotate the legs clockwise, repeat in opposite direction. (2 sets, 5 seconds each direction.)

B. Then move to static stretches starting at the top of the body and working your way to the bottom. Hold each stretch a minimum of 20-30 seconds. In cold climate, hold stretches longer.

1. OVERHEAD ARM PULL STRETCH: (2 sets, 10 seconds each direction.)

2. CHEST STRETCH: (3 sets, 10 seconds each direction.)

3. UPPER BACK STRETCH: (3 sets, 10 seconds each direction.)

4. ABDOMINAL STRETCH: (3 sets, 10 seconds each direction.)

5. THIGH STRETCH: (2 sets, 10 seconds each direction.)

6. HAMSTRING STRETCH (STANDING): (2 sets, 20 seconds each direction.)

7. GROIN STRETCH (STANDING, SEATED, OR SEATED STRADDLE): (2 sets, 20 seconds each direction.)

8. CALF STRETCH: VARIATION: TOE PULL: (2 sets, 10 seconds each direction.)

C. EXERCISE OR CONDITIONING (SEE INSTRUCTIONS BELOW):

EXERCISES FOR MEN:

1. TOE TOUCHES: From a standing position and keeping knees straight, bend forward and touch your toes, or go as far down as possible. Do not jerk or bounce in the stretched position. Repeat this six (6) times. Now unlock your knees and bend over again, this time concentrating on a maximum stretch for the lower back muscles. Repeat this exercise six (6) times also.

2. SIT-UPS: This is the most basic of all stomach exercises. It is suggested that you do the partial sit-up, with hang time as follows: Lie down with legs together, knees bent so that your feet are flat on the floor. Clasp your hands behind neck and bring your shoulders and upper back off the floor slowly, sitting up as far as possible. As the sitting position is reached, bring your arms forward and stretch them out in front to their limit. Hold this sit-up position for 10 seconds, then slowly return back to original position. Repeat this exercise five (5) times.

3. LEG LIFT: Lying on your back, put your arms at the sides, palms down, your feet together and your legs straight. Now raise feet 18 to 24 inches, hold for five (5) seconds. Never bring your feet high enough to gain a resting position at the top of the raise. Now lower feet to within three (3) inches of the starting position. Your feet should not come to rest until the end of the exercises. Repeat this exercise five (5) times.

4. REVERSE DIPS: While lying on your back, place your hands on the edge of your bunk or some other secure furniture. With your elbows straight and in a vertical position, stretch your legs in front of you (heels down). Keep your body straight and hips up, lower yourself down until your hips are only a few inches above the floor by bending the elbows, then push up until arms are straight again. Repeat five (5) times.

5. PUSH-UPS: Lie on the floor with your legs extended straight and your stomach facing the floor. Place your hands, palms down, on the floor about shoulder width (your arms should now be bent). Extend arms to a straight position. Now bending at the elbow, lower body to a position where nose is touching the floor. Keeping legs and back straight, return to a starting position. Start with five (5) to 10 push-ups, slowly working up to 25.

6. KNEEBENDS: Stand with feet about eight (8) inches apart. Hold arms straight in front at shoulder level for balance. Keep upper body straight as you lower hips to the seat level of a chair or a bunk. Return to an upright position. Repeat six (6) times.

7. SIDE BENDS: Stand up with your left hand against your left thigh. Now bend to the left until your fingertips are just below your left knee. Return to standing position. Now switch to the right side and repeat this procedure. Repeat this exercise to left and right side five (5) times. Increase this number as you progress.

EXERCISES FOR WOMEN:

1. LEG STRETCHING EXERCISES: This exercise is very easy to do. While lying down with feet together, push one (1) leg down as though your are trying to lengthen it. Point your toes and feel the pull from your hips down to your heels. Hold this position for 10 seconds then relax. After a moments rest, repeat the exercise with your other leg. Repeat this exercise six (6) times on each side. If this exercise is done in the morning, it may be repeated at night if you wish. After finishing the leg stretching exercise, get up slowly, and stretch once more with the arms above the head.

2. KNEE BENDS: Stand with feet about eight (8) inches apart. Hold your arms straight in front at shoulder level for balance. Keep your upper body straight as you lower your hips to the seat level of a chair or a bunk. Return to an upright position. Repeat six (6) times.

3. CHEST EXERCISES: Stand with your arms raised to shoulder level, elbows bent, and the heel of one hand pressing against the other. Move your arms to the right. Keep facing forward. Still pressing one (1) hand against the other, move arms to the left.

4. HIP EXERCISE: Stand with your hands on your hips and raise your right knee. Stretch your right leg behind you. Complete your quota with your right leg, then repeat with your left leg.

5. BACK AND HIP EXERCISE: Stand with your legs apart and hands clasped behind your head. Bend forward, twist, and try to touch your right knee with your left elbow. Exhale as you bend down. As you straighten up, inhale. Repeat, trying to touch your left knee with your right elbows.

6. SUPPLENESS EXERCISE: Lie on your back, knees and arms bent, palms flat under shoulders with fingers in, feet apart. Pressing evenly with hands and feet, and moving knees forward, raise your hips, then your shoulders off the floor. In a continuous motion, raise your spine, evenly bending your shoulders and hips to a back-bend position. Avoid exaggerated bending in your lower-back region. This can be prevented by holding-in your stomach muscles in contraction.

7. BEAUTY STRETCH EXERCISE: Stand with your legs apart and your arms up over your head, with your fingers clasped and palms turned up. Stretch high and inhale. Keep stretching and slowly bend to the right, sliding against an imaginary wall. Exhale, stretch up again and inhale. Continue the motion, keep stretching, bend your body to the left, exhale. To loosen up every muscle of your body, bend forward and then relax a few seconds.

ISOMETRIC EXERCISES:

1. NECK EXERCISES:
A. Sitting or standing, with your fingers interlaced and your hands on your forehead, forcibly exert a forward push of your head while resisting equally hard with hands. B. Sitting or standing, with your fingers interlaced and your hands behind your head, push your head backward while exerting a forward pull with

your hands.
C. Sitting or standing, with the palm of your left hand on left side of your head, push with your left hand while resisting with your head and your neck. Reverse, using your right hand on the right side of your head.

2. ARM AND CHEST EXERCISES:
A. Standing with your feet slightly apart, flex your right elbow, close to your body with your palm up. Place your left hand over your right hand. Forcibly attempt to curl right arm upward, while giving equally strong resistance with the left hand. Repeat with your left arm.
B. Stand with your feet comfortably spaced, knees slightly bent. Clasp your hands, palms together, close to chest. Press your hands together and hold.
C. Stand with your feet slightly apart and your knees slightly bent. Grip your fingers with your arms close to your chest. Pull hard and hold.

CONCLUSION:

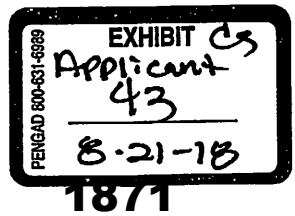
Although the exercises in this leaflet are designed for men or for women or as isometric, any or all might be beneficial to you. One should pick those exercises which can be accomplished without undue strain to your body, although your pulse and breathing rates should be increased when you are exercising. It is also important that you practice the steps involved in each exercise prior to trying to do the complete exercise or an exercise routine. "For your good health," remember that physical exercise is essential.

Psychiatric Evaluation
Name: Jerry Buck Inman
DOB: 12/19/70
County of Proceedings: Pickens
Dates of Evaluation: 9/15/06, 10/13/06, 11/20/06, 1/15/07, 6/15/07, 8/19/08, 8/28/08
Date of Report: September 2, 2008

Identifying Information: Mr. Jerry Buck Inman is a 37-year-old single Caucasian male evaluated pursuant to a request from his attorneys, Symmes Culbertson and Jim Bannister. He plead guilty to Capital Murder, Kidnapping, Criminal Sexual Conduct First Degree in Pickens County, which allegedly occurred on, May 26, 2006.

Statement of Nonconfidentiality: Mr. Inman understood this examiner could be called to testify during his hearings and that his communication may not be confidential.

Sources of Information:
Florida Department of Corrections Records
North Carolina Department of Corrections Records
South Carolina Department of Corrections Records
Grace Hospital Records
CMHI Evaluation 5/13/01
Lake Correctional Institution Records 5/9/05-6/3/05
Charlotte Correctional Institution 05/02, 4/27/05
Incident reports Tampa Police 3/29/88
Discovery related to case including Case Analysis
Subject Timeline Jerry Buck Inman
SLED Supplemental report 6/9/06
Statement of Jerry Buck Inman 6/7/06 4:53am
Statement Jerry Buck Inman June ? 2006 12:32am
Statement JBI 6/7/06 9:17 am (Rainesville case) (Victim B.B.)
Statement JBI 6/7/06 10:35am (Sevier County Case) (Victim J.G.)
SLED Supplemental Report 6/30/06
Inventory of Items Collected from Vehicle
Incident report Murder 5/27/06
SLED (STR) PCR DNA profile letter 6/6/06
National Match Detail Report 6/5/06
Criminal History Record JBI
Autopsy Findings Victim 7/19/06
SLED Investigative Report 7/25/06
School Records, Lakeland Florida
Cherokee Health System Records Vera McArthur
Consultation Dr. Tora Brawley
Consultation Dr. Marti Loring 6/17/08
Laboratory Tests 8/1/07
Interview Stepfather, 8/20/08
Consultation Dr. Gregg Dwyer 8/28/08



Developmental History:
Mr. Inman was the product of a full term delivery. He was the youngest of two children born to Vera and ??? Inman. Mr. Inman was forced to watched his sister be bound and raped by his biological father from ages two through three.

School History:

Vocational History:

Medical History:
Mr. Inman has a history of abdominal surgery in 2001, and repair of a 3-4 inch laceration to neck 2/1/89. He has a documented history of right temporal headaches in 1991. He had a history of febrile seizures as a child and was placed on Phenobarbitol®. He admits to one closed head injury with a loss of consciousness before being incarcerated. He admits to being hit in the head with a log while in prison, but denies any sequelae.

Psychiatric History:
Mr. Inman does report symptoms consistent with a mood disorder, beginning around ages 10 and 11. He did not receive treatment for his symptoms. He developed a sexual disorder around ages 11 and 12. He did not receive treatment for his sexual disorder prior to his incarcerations.
He does have a mental health history significant for treatment while confined in the North Carolina and Florida Department of Corrections from 1989 through 2005. He has been diagnosed with various mood disorders including: Dysthymia, Adjustment Disorder, Major Depression, severe without psychotic features, Major Depression with Psychotic Features, Major Depression, mild, Mood Disorder, Not Otherwise Specified, and rule out Bipolar Disorder. Mr. Inman has been prescribed various antidepressants and mood stabilizers by history including: Pamelor® 100mg, Wellbutrin®, Norpramin®, Elavil®, Prozac®, Vivactil®, Remeron®, Lithium, Valproic Acid, Sinequan®, and Seroquel®. Mr. Inman also reports taking Zoloft®, Effexor®, and Artane®.
Mr. Inman reports that he was not compliant with medications prescribed to him while in the Florida Department of Corrections. He reports that during that period, he wanted an Impaired Inmate Assignment but did not want to take medications.
Mr. Inman does have a history of self-mutilation while confined. He "slit his wrists" in 1988. He lacerated his right jugular vein in 2/1/89. Another attempt was recorded 10/11/89. He had abdominal surgery after swallowing fencing in 1/01. He also participated in hunger strikes in 2001 and 10/06.

Substance Use History:
Mr. Inman has also had treatment for substance abuse while confined in the North Carolina Department of Corrections. Records confirm he attended AA and NA in North Carolina. He received an Impaired Inmate Assignment in the Florida Department of Corrections on 3/11/03. Records note the onset of his marijuana and alcohol use at age 9. He admits to using acid four to five times, cocaine, Red Rubys and Quaaludes when he was younger. He admits to continued use of marijuana and alcohol. He reports drinking

up to one quart of Jim Beam daily prior to his offense. He states he would 'chase it" with Mountain Dew. He also reports drinking up to a twelve pack of beer. He denies hangovers or blackouts. He denies symptoms of withdrawal. He admitted to using an ounce of marijuana every ten days prior to his offense.

Family History:
Mr. Inman does have a documented family history of mental illness. His mother, Vera MacArthur has a history of inpatient and outpatient psychiatric treatment. She has been diagnosed with Schizoaffective Disorder, Bipolar Type. Her records report Mr. Inman's maternal grandmother had a history of auditory hallucinations, a maternal uncle with depression, a maternal grandfather with alcoholism, and his father having a history of Posttraumatic stress disorder from Vietnam

Legal History:

Corrections History:

Sexual History:

Mental Status Examination:
During his most recent assessment, Mr. Inman maintained better eye contact. His speech was soft in tone but normal in rate. His thinking was goal-directed. He was not psychotic, suicidal or homicidal. He continues to report that he deserves to die for what he has done. His affect was less flat than in the past, and he was able to smile at times. His judgment has been severely impaired in the past due to his sexual disorder, and his insight is fair.

Results of testing:
Mr. Inman underwent neuropsychological testing by Dr. Tora Brawley and did not show significant impairments in cognition. He also underwent laboratory assessment of hormones, which govern sexual functioning. Those tests were normal.

Diagnosis:
The fourth edition of the American Psychiatric Association's diagnostic and Statistical Manual of Mental Disorders is the official nomenclature used by psychiatrists and other physicians to diagnose mental disorders. The DSM uses a multi-axial system of assessment. There are five axes, which help clinicians plan treatments and outcomes. Axis I Disorders are for major mental illnesses and other conditions that are the focus of clinical attention. If an individual has more than one Axis I disorder, they should be recorded separately. Axis II Disorders are personality disturbances and mental Retardation. The listing of personality disorders or Mental retardation prevents these conditions from being overlooked, especially when patients suffer from Axis I disorders at the same time. Axis III is for General Medical Conditions. Medical conditions can affect the management and course of Axis I and Axis II illnesses. Axis IV codes psychosocial and environmental problems that can affect the diagnosis, treatment and prognosis of mental disorders. A psychosocial problem can be a negative life event, an

environmental difficulty, familial or interpersonal stress, or an inadequate social support. Axis V is a global assessment of functioning. The Global Assessment of Functioning (GAF) is the clinician's judgment of the patient's overall level of functioning. The GAF scale is divided into ten ranges of functioning. The scale has two components: symptom severity and level of functioning. A single value is picked that best reflects the individual's functioning. The ratings range from 0 to 100. The lower the rating, the higher levels of danger and inability to function. The higher the rating, the less likely one is to suffer any symptoms of mental illness or have impairment in functioning. A GAF of 50 represents serious symptoms of mental illness or serious impairment in functioning.

The following is a list of Mr. Inman's diagnoses:
Axis I) Voyeurism
Frotteurism, by history
Paraphilia Not Otherwise Specified (P)
Dysthymic Disorder, early onset
Major Depressive Disorder, Recurrent, Without full Interepisode Recovery
Alcohol Abuse
Marijuana Abuse
Axis II) Antisocial Personality Disorder
Avoidant Personality Disorder
Axis III) No diagnosis
Axis IV) Economic Problems, Problems Related to the Legal System, Problems related to Social Environment
Axis V) 50

Discussion of Diagnoses:
Mr. Inman suffers from three sexual disorders, which are classified as paraphilias. Paraphilias are recurrent, intense sexually arousing fantasies, sexual urges and behaviors that for Mr.. Inman involve nonconsenting adults. Mr. Inman reports the onset of his paraphilias at age 11, and has continued to have these symptoms into adulthood for a total of 26 years. For Mr. Inman, his paraphilic fantasies have been preferred for arousal and sexual activity. His illness has caused him severe difficulty in function including problems with the legal system, problems with his self-esteem and problems in consensual relationships. Mr. Inman has the associated impairment in the capacity for reciprocal, affectionate sexual activity.
The paraphilic focus of voyeurism involves the act of observing unsuspecting individuals, usually strangers, who are naked, disrobing or engaging in sexual activity. The peeping is for sexual excitement. The onset of this disorder is usually before age 15 and the course is chronic. Mr. Inman did engage in this behavior once released from the Florida Department of Corrections and prior to his charges.
The paraphilic focus of frotteurism is the touching and rubbing against a nonconsenting person. The behaviors can include rubbing genitalia or breasts with hands and recognizing he must escape detection after touching his victim. Most acts of frottage occur when the person is age 15-25 years. Mr. Inman has not engaged in this behavior since age 16.

The paraphilic focus of Mr. Inman's Paraphilia Not Otherwise Specified is nonconsenting sex with an adult female. Mr. Inman reports a 23-year history of forcing sex on adult women or fantasizing about forcing sex on adult women. Mr. Inman reports having nonconsenting sex with approximately 13 adult females, beginning at age 14. Presently, he reports a reduction in fantasies which he attributes to moral beliefs, and which this examiner attributes to confinement and improvement in his depression. Mr. Inman did report the recurrence of these fantasies six months after his release from the Florida Department of Corrections and acted upon them eight months after his release.

Additionally, Mr. Inman suffers from two mood disorders. He has a chronic depression known as Dysthymia, which is complicated at times by a superimposed Major Depression. This course of illness is referred to as "double depression" by laypersons. Dysthymic Disorder is a chronic depressed mood that occurs almost daily and lasts at least two years. Mr. Inman reports the onset of a chronic depressed mood before age 11 and before the onset of his sexual disorders. He chronically reports low self-esteem, which was worsened by his sexual disorder. Review of a yearbook picture from the sixth grade shows that Mr. Inman erased his own face. He presently refers to himself as an "animal" and "scum." He has a history of social inadequacy, feelings of guilt, and brooding about the past. Dysthymic Disorder has an early onset and a chronic course. Individuals with Dysthymic Disorder usually have superimposed major depression. He has had period of superimposed major depression over the years, which has been worsened by his sexual disorder. Mr. Inman is presently receiving antidepressants, which has improved his major depression significantly. Mr. Inman was not suffering from Major Depression at the time of his offenses, although he continued to experience Dysthymic Disorder.

Mr. Inman also meets the diagnostic criteria for Alcohol and Marijuana Abuse. Mr. Inman denies that he was intoxicated at the time of his charges. He reports he smoked marijuana a few days before the murder of Miss Souers. He did on the day of the offense but denies he was intoxicated at the time of the charges.

Mr. Inman also suffers from two personality disorders. He meets the diagnostic criteria for Antisocial Personality Disorder. Before the age of 15, he performed numerous acts that were grounds for arrest, he is impulsive, and he has a reckless disregard for the safety of self and others. He also meets the diagnostic criteria for Avoidant Personality disorder. He shows restraint within intimate relationships due to fear of being shamed, he is inhibited in new relationships due to feeling inadequate, he views himself as unappealing to others and is reluctant to engage in new activities because they may prove embarrassing.

Opinions:

1. The capacity of Mr. Inman to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired for the rape of Ms. Souers. Mr. Inman has been suffering from recurrent distressing urges to have nonconsensual sex with adult females for twenty-three years. He has acted on these fantasies at least 13 times. He reports that from ages 15 until his first confinement, he would force sex on nonconsenting adults females approximately every two months. Mr. Inman reports a brief period during his confinement in Florida that his fantasies were not

present. He attributes that period of remission to his practice of odonism. Mr. Inman reports that for the first few months after his release from Florida Department of Corrections, he did not have urges. He attempted to develop consensual relationships. He reports that he attempted to date two females but did not continue the relationships because he felt inadequate. He reports he began to have his paraphilic urges in March before his charges. He states he left and did spend times engaging in voyeurism. He denies that he forced sex on any females during that two-week period, although he was in Alabama. In May, he admits to cutting out the floor of a woman in Alabama and attempting to force sex on her. He states he did not force sex because she was menstruating. He admits to forcing sex on a female 48 hours prior to forcing sex on Miss Souers. The death of Miss Souers was not a behavior consistent with Mr. Inman's paraphilic disorders.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2008 JAN 18 A 8:

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS)
) Case No.: 2006-GS-39-2222-2225
State of South Carolina,)
)
Plaintiff,)
)
v.) **EX PARTE FUNDING ORDER**
) No: 17
Jerry Buck Inman,)
)
Defendant.)

This matter is before the Court on the Motion of the Defendant for an Ex Parte Funding Order. The matter is filed under seal. Therefore, this Order shall be filed by the Clerk of Court under seal, and the contents of this Order shall not be revealed without an Order from the Presiding Judge.

Specifically, the Defendant seeks an Order of the Court for authorization of funds to hire a mental health counselor. I find the Defendant has shown the services of a counselor are reasonably necessary for the representation of the Defendant. *See South Carolina Code* § 16-3-26(C)(1). Specifically, the Defendant's upbringing, the pending charges, his current isolated confinement and his background regarding his religious beliefs are all playing a role in his mental health and are affecting the attorney/client relationship. The Court is specifically aware of the Defendant's past attempts at suicide and the recent filing of a charge against the Defendant for possession of contraband.

Based on these facts, Counsel reasonably believes that the services of a counselor who has knowledge and expertise in the various specific issues involved would be in the Defendant's best interest. Lisa Jarman-Mills has already met with the defendant on two separate occasions to initiate and determine if a counselor/patient relationship was feasible. Ms. Mills has indicated

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through undersigned counsel that she believes she has established good repoir with the Defendant. The Defendant, through undersigned counsel, has indicated that he is desirous of continued counseling from Ms. Mills.

As a result, Counsel for the Defendant has indicated they would like to hire Ms. Mills to perform counseling services. I find that she is qualified to do so. Ms. Mills has over 10 years of experience in counseling patients with an emphasis on religious background, and has established a relationship with the Defendant. Ms. Mills is authorized to bill to the Office of Indigent Defense for reasonably necessary services to the Defendant at the rate of $65 per hour up to the amount of $5,000 inclusive of costs.

Counsel for the Defendant must provide Ms. Mills a copy of this Order. Both counsel and Ms. Mills should familiarize themselves with the *Office of Indigent Defense Policy Concerning Payment of Fees and Expenses of Appointed Counsel for Indigent Representation in Criminal Cases*. Both counsel and Ms. Mills should also familiarize themselves with the procedures for the processing of indigent defense vouchers, as set forth in the Supreme Court's Order of September 29, 2006. This Court will not approve payment for any services above the pre-authorized limit. If counsel believes the services above that limit are reasonably necessary, they shall petition the Court for pre-authorization of those additional services. If the Office of Indigent Defense objects to any request for funding, in resolving the objection, the Court will strictly adhere to the OID Policy unless the variation from the Policy has been approved in advance.

Defense counsel shall obtain a clocked copy of this Order and shall immediately forward a copy of the Order to the Office of Indigent Defense and to Ms. Mills. Except as just provided,

the contents of this Order shall not be revealed to anyone without an Order from the Presiding Judge.

IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
January 4, 2008

I SO MOVE:

James W. Bannister

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	Case No.: 2006-GS-39-2222-2225
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**EX PARTE FUNDING ORDER**
	)	No: 22
Jerry Buck Inman,	)	
	)	
Defendant.	)	

2008 MAY 27 A 9:01

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter is before the Court on the Motion of the Defendant for an Ex Parte Funding Order. The matter is filed under seal. Therefore, this Order shall be filed by the Clerk of Court under seal, and the contents of this Order shall not be revealed without an Order from the Presiding Judge.

Specifically, the Defendant seeks an Order of the Court for authorization of additional funds for the mental health counselor previously authorized by Ex Parte Funding Order No. 17. This previous order was filed on January 18, 2008. The previous Order authorized the Defendant to seek funds from the Office of Indigent Defense for the services of a mental health counselor. That Order and its findings are incorporated herein as if set forth verbatim. The Defendant has shown the services of a mental health counselor are reasonably necessary for the representation of the Defendant. *See South Carolina Code* § 16-3-26(C)(1). The Court is specifically aware of the Defendant's past attempts at suicide, filing of additional charges against the Defendant for possession of contraband, and his attempts to undermine counsel's strategy; and advice.

Based on these facts, Counsel reasonably believes that the continued services of a mental health counselor would be in the Defendant's best interest. For the past 5 months, Lisa Jarman-

Mills has met with the defendant, facilitated his cooperation with experts, and obtained information vital to the preparation for the case. The Defendant, through undersigned counsel, has indicated that he is desirous of continued counseling from Ms. Mills and has developed a repoir that has assisted counsel in maintaining a working relationship with the Defendant.

Ms. Mills has exhausted or is likely to exhaust the funds initially authorized by the Court in the near future. As a result, Counsel for the Defendant has indicated they seek additional funds for Ms. Mills to continue her services. I have previously found that she is qualified to do so and I find that her services are necessary.

Ms. Mills is authorized to bill to the Office of Indigent Defense for reasonably necessary services to the Defendant at the rate of $65 per hour in the amount of $5,000 inclusive of costs in addition to the authorization of funds pursuant to Ex Parte Funding Order No. 17.

Counsel for the Defendant must provide Ms. Mills a copy of this Order. Both counsel and Ms. Mills should familiarize themselves with the *Office of Indigent Defense Policy Concerning Payment of Fees and Expenses of Appointed Counsel for Indigent Representation in Criminal Cases.* Both counsel and Ms. Mills should also familiarize themselves with the procedures for the processing of indigent defense vouchers, as set forth in the Supreme Court's Order of September 29, 2006. This Court will not approve payment for any services above the pre-authorized limit. If counsel believes the services above that limit are reasonably necessary, they shall petition the Court for pre-authorization of those additional services. If the Office of Indigent Defense objects to any request for funding, in resolving the objection, the Court will strictly adhere to the OID Policy unless the variation from the Policy has been approved in advance.

Defense counsel shall obtain a clocked copy of this Order and shall immediately forward a copy of the Order to the Office of Indigent Defense and to Ms. Mills. Except as just provided, the contents of this Order shall not be revealed to anyone without an Order from the Presiding Judge.

THEREFORE,

IT IS ORDERED that Lisa Jarman-Mills is authorized to bill to the Office of Indigent Defense for reasonably necessary services to the Defendant at the rate of $65 per hour in the amount of $5,000 inclusive of costs. This amount shall be in addition to the authorization of funds pursuant to Ex Parte Funding Order No. 17.

IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
May 23, 2008

I SO MOVE:

James W. Bannister

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	Case No.: 2006-GS-39-2222-2225
State of South Carolina, Plaintiff,	)	
v.	)	**EX PARTE FUNDING ORDER** No: 33
Jerry Buck Inman, Defendant.	)	

2008 AUG 19 A 9:03

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter is before the Court on the Motion of the Defendant for an Ex Parte Funding Order. The matter is filed under seal. Therefore, this Order shall be filed by the Clerk of Court under seal, and the contents of this Order shall not be revealed without an Order from the Presiding Judge.

Specifically, the Defendant seeks an Order of the Court for authorization of additional funds for the mental health counselor previously authorized by Ex Parte Funding Order No. 22. This previous order was filed on May 27, 2008. The previous Order authorized the Defendant to seek funds from the Office of Indigent Defense for the services of a mental health counselor. That Order and its findings are incorporated herein as if set forth verbatim. The Defendant has shown the services of a mental health counselor are reasonably necessary for the representation of the Defendant. *See South Carolina Code* § 16-3-26(C)(1). The Court is specifically aware of the Defendant's past attempts at suicide, filing of additional charges against the Defendant for possession of contraband, and his attempts to undermine counsel's strategy; and advice.

Based on these facts, Counsel reasonably believes that the continued services of a mental health counselor would be in the Defendant's best interest. For the past 8 months, Lisa Jarman-Mills has met with the defendant, facilitated his cooperation with experts, and obtained

information vital to the preparation for the case. The Defendant, through undersigned counsel, has indicated that he is desirous of continued counseling from Ms. Mills and has developed a repoir that has assisted counsel in maintaining a working relationship with the Defendant.

Ms. Mills has exhausted or is likely to exhaust the funds initially authorized by the Court in the near future. As a result, Counsel for the Defendant has indicated they seek additional funds for Ms. Mills to continue her services. I have previously found that she is qualified to do so and I find that her services are necessary.

Ms. Mills is authorized to bill to the Office of Indigent Defense for reasonably necessary services to the Defendant at the rate of $65 per hour in the amount of $5,000 inclusive of costs in addition to the authorization of funds pursuant to Ex Parte Funding Order No. 22.

Counsel for the Defendant must provide Ms. Mills a copy of this Order. Both counsel and Ms. Mills should familiarize themselves with the *Office of Indigent Defense Policy Concerning Payment of Fees and Expenses of Appointed Counsel for Indigent Representation in Criminal Cases*. Both counsel and Ms. Mills should also familiarize themselves with the procedures for the processing of indigent defense vouchers, as set forth in the Supreme Court's Order of September 29, 2006. This Court will not approve payment for any services above the pre-authorized limit. If counsel believes the services above that limit are reasonably necessary, they shall petition the Court for pre-authorization of those additional services. If the Office of Indigent Defense objects to any request for funding, in resolving the objection, the Court will strictly adhere to the OID Policy unless the variation from the Policy has been approved in advance.

Defense counsel shall obtain a clocked copy of this Order and shall immediately forward a copy of the Order to the Office of Indigent Defense and to Ms. Mills. Except as just provided,

the contents of this Order shall not be revealed to anyone without an Order from the Presiding Judge.

THEREFORE,

IT IS ORDERED that Lisa Jarman-Mills is authorized to bill to the Office of Indigent Defense for reasonably necessary services to the Defendant at the rate of $65 per hour in the amount of $5,000 inclusive of costs. This amount shall be in addition to the authorization of funds pursuant to Ex Parte Funding Order No. 22.

IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
August 13, 2008

I SO MOVE:

James W. Bannister

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	Case No.: 2006-GS-39-2222-2225
State of South Carolina, Plaintiff,	)	
v.	)	**EX PARTE FUNDING ORDER** No: 39
Jerry Buck Inman, Defendant.	)	

2008 SEP 15 A 9:07

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter is before the Court on the Motion of the Defendant for an Ex Parte Funding Order. The matter is filed under seal. Therefore, this Order shall be filed by the Clerk of Court under seal, and the contents of this Order shall not be revealed without an Order from the Presiding Judge.

Specifically, the Defendant seeks an Order of the Court for authorization of additional funds for the mental health counselor previously authorized by Ex Parte Funding Order No. 33. This previous order was filed on August 19, 2008. The previous Order authorized the Defendant to seek funds from the Office of Indigent Defense for the services of a mental health counselor. That Order and its findings are incorporated herein as if set forth verbatim. The Defendant has shown the services of a mental health counselor are reasonably necessary for the representation of the Defendant. *See South Carolina Code* § 16-3-26(C)(1). The Court is specifically aware of the Defendant's past attempts at suicide, filing of additional charges against the Defendant for possession of contraband, and his attempts to undermine counsel's strategy; and advice.

Based on these facts, Counsel reasonably believes that the continued services of a mental health counselor would be in the Defendant's best interest. For the past 9 months, Lisa Jarman-Mills has met with the defendant, facilitated his cooperation with experts, and obtained

the contents of this Order shall not be revealed to anyone without an Order from the Presiding Judge.

THEREFORE,

IT IS ORDERED that Lisa Jarman-Mills is authorized to bill to the Office of Indigent Defense for reasonably necessary services to the Defendant at the rate of $65 per hour in the amount of $2,500 inclusive of costs. This amount shall be in addition to the authorization of funds pursuant to Ex Parte Funding Order No. 33.

IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
September 12, 2008

I SO MOVE:

James W. Bannister

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	Case No.: 2006-GS-39-2222-2225
State of South Carolina, Plaintiff,	)	
v.	)	**EX PARTE FUNDING ORDER** No: 44
Jerry Buck Inman, Defendant.	)	

2006 NOV 21 A 9:07

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter is before the Court on the Motion of the Defendant for an Ex Parte Funding Order. The matter is filed under seal. Therefore, this Order shall be filed by the Clerk of Court under seal, and the contents of this Order shall not be revealed without an Order from the Presiding Judge.

Specifically, the Defendant seeks an Order of the Court for authorization of additional funds for the mental health counselor previously authorized by Ex Parte Funding Order No. 39. The previous Order authorized the Defendant to seek funds from the Office of Indigent Defense for the services of a mental health counselor. That Order and its findings are incorporated herein as if set forth verbatim. The Defendant has shown the services of a mental health counselor are reasonably necessary for the representation of the Defendant. *See South Carolina Code* § 16-3-26(C)(1). The Court is specifically aware of the Defendant's past attempts at suicide, filing of additional charges against the Defendant for possession of contraband, and his attempts to undermine counsel's strategy; and advice.

Based on these facts, Counsel reasonably believes that the continued services of a mental health counselor would be in the Defendant's best interest. For the past several months, Lisa Jarman-Mills has met with the defendant, facilitated his cooperation with experts, and obtained

information vital to the preparation for the case. The Defendant, through undersigned counsel, has indicated that he is desirous of continued counseling from Ms. Mills and has developed a repoir that has assisted counsel in maintaining a working relationship with the Defendant.

Ms. Mills has exhausted or is likely to exhaust the funds authorized by the Court in the near future. As a result, Counsel for the Defendant has indicated they seek additional funds for Ms. Mills to continue her services. I have previously found that she is qualified to do so and I find that her services are necessary.

Ms. Mills is authorized to bill to the Office of Indigent Defense for reasonably necessary services to the Defendant at the rate of $65 per hour in the amount of $5000 inclusive of costs in addition to the authorization of funds pursuant to Ex Parte Funding Order No. 39.

Counsel for the Defendant must provide Ms. Mills a copy of this Order. Both counsel and Ms. Mills should familiarize themselves with the *Office of Indigent Defense Policy Concerning Payment of Fees and Expenses of Appointed Counsel for Indigent Representation in Criminal Cases.* Both counsel and Ms. Mills should also familiarize themselves with the procedures for the processing of indigent defense vouchers, as set forth in the Supreme Court's Order of September 29, 2006. This Court will not approve payment for any services above the pre-authorized limit. If counsel believes the services above that limit are reasonably necessary, they shall petition the Court for pre-authorization of those additional services. If the Office of Indigent Defense objects to any request for funding, in resolving the objection, the Court will strictly adhere to the OID Policy unless the variation from the Policy has been approved in advance.

Defense counsel shall obtain a clocked copy of this Order and shall immediately forward a copy of the Order to the Office of Indigent Defense and to Ms. Mills. Except as just provided,

the contents of this Order shall not be revealed to anyone without an Order from the Presiding Judge.

THEREFORE,

IT IS ORDERED that Lisa Jarman-Mills is authorized to bill to the Office of Indigent Defense for reasonably necessary services to the Defendant at the rate of $65 per hour in the amount of $5000 inclusive of costs. This amount shall be in addition to the authorization of funds pursuant to Ex Parte Funding Order No. 39.

IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
November 20, 2008

I SO MOVE:

James W. Bannister

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	Case No.: 2006-GS-39-2222-2225
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**EX PARTE FUNDING ORDER**
	)	No: 50
Jerry Buck Inman,	)	
	)	
Defendant.	)	

2007 JUN 20 P 4:20
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter is before the Court on the Motion of the Defendant for an Ex Parte Funding Order. The matter is filed under seal. Therefore, this Order shall be filed by the Clerk of Court under seal, and the contents of this Order shall not be revealed without an Order from the Presiding Judge.

Specifically, the Defendant seeks an Order of the Court for authorization of additional funds for the mental health counselor previously authorized by Ex Parte Funding Order No. 44. The previous Order authorized the Defendant to seek funds from the Office of Indigent Defense for the services of a mental health counselor. That Order and its findings are incorporated herein as if set forth verbatim. The Defendant has shown the services of a mental health counselor are reasonably necessary for the representation of the Defendant. *See South Carolina Code* § 16-3-26(C)(1). The Court is specifically aware of the Defendant's past attempts at suicide, filing of additional charges against the Defendant for possession of contraband, and his attempts to undermine counsel's strategy; and advice.

Based on these facts, Counsel reasonably believes that the continued services of a mental health counselor would be in the Defendant's best interest. For the past several months, Lisa Jarman-Mills has met with the defendant, facilitated his cooperation with experts, and obtained

information vital to the preparation for the case. The Defendant, through undersigned counsel, has indicated that he is desirous of continued counseling from Ms. Mills and has developed a repoir that has assisted counsel in maintaining a working relationship with the Defendant.

Ms. Mills has exhausted or is likely to exhaust the funds authorized by the Court in the near future. As a result, Counsel for the Defendant has indicated they seek additional funds for Ms. Mills to continue her services. I have previously found that she is qualified to do so and I find that her services are necessary.

Ms. Mills is authorized to bill to the Office of Indigent Defense for reasonably necessary services to the Defendant at the rate of $65 per hour in the amount of $5000 inclusive of costs in addition to the authorization of funds pursuant to Ex Parte Funding Order No. 44.

Counsel for the Defendant must provide Ms. Mills a copy of this Order. Both counsel and Ms. Mills should familiarize themselves with the *Office of Indigent Defense Policy Concerning Payment of Fees and Expenses of Appointed Counsel for Indigent Representation in Criminal Cases.* Both counsel and Ms. Mills should also familiarize themselves with the procedures for the processing of indigent defense vouchers, as set forth in the Supreme Court's Order of September 29, 2006. This Court will not approve payment for any services above the pre-authorized limit. If counsel believes the services above that limit are reasonably necessary, they shall petition the Court for pre-authorization of those additional services. If the Office of Indigent Defense objects to any request for funding, in resolving the objection, the Court will strictly adhere to the OID Policy unless the variation from the Policy has been approved in advance.

Defense counsel shall obtain a clocked copy of this Order and shall immediately forward a copy of the Order to the Office of Indigent Defense and to Ms. Mills. Except as just provided,

the contents of this Order shall not be revealed to anyone without an Order from the Presiding Judge.

THEREFORE,

IT IS ORDERED that Lisa Jarman-Mills is authorized to bill to the Office of Indigent Defense for reasonably necessary services to the Defendant at the rate of $65 per hour in the amount of $5000 inclusive of costs. This amount shall be in addition to the authorization of funds pursuant to Ex Parte Funding Order No. 44.

IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
April 27, 2009

I SO MOVE:

James W. Bannister

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	Case No.: 2006-GS-39-2222-2225
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**EX PARTE FUNDING ORDER**
	)	No: 21
Jerry Buck Inman,	)	
	)	
Defendant.	)	

2006 APR 22 P 4:11
COURT
COUNTY
CAROLINA

This matter is before the Court on the Motion of the Defendant for an Ex Parte Funding Order. The matter is filed under seal. Therefore, this Order shall be filed by the Clerk of Court under seal, and the contents of this Order shall not be revealed without an Order from the Presiding Judge.

Specifically, the Defendant seeks an Order of the Court for authorization of funds to hire an expert in psychology with experience in treatment and as a testifying witness sub-specializing in Dissociative Identity Disorder. In the last month, Defense Counsel received voluminous mental health records regarding mental health treatment the Defendant received during his incarceration in Florida (9/13/89-9/01/05). These documents are fairly detailed. It has been represented to the Court that these documents contain a number of different diagnoses during this 16 year period. These documents coupled with information received from Defendant's counselor have provided significant evidence of what has been described as a Dissociative Identity Disorder.

In addition to seeking expert testimony, Defense Counsel is also seeking an expert who can treat the Defendant. The ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases have been deemed by the U.S. Supreme Court as the "well-defined norms." Wiggins v. Smith 539 US 510 (2003). Guideline 10.5 governs counsel's duties with regard to the relationship with the client suspected to have mental health problems. Commentary to this guideline states: "Counsel should try to obtain treatment for the client's mental and/or emotional problems."

Based on Defense Counsel's ongoing relationship with the Defendant, the Defendant's mental health has been an issue impacting the attorney /client relationship. The Court has seen this first hand to

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some extent from letters submitted to the Solicitor and the Defendant's attempts to dictate trial strategy. In this particular case, it has been represented to the Court that a treating psychologist will help maintain the attorney /client relationship as trial approaches.

Defense Counsel has spent a significant period of time researching an appropriate expert and has identified Dr. James G. Friesen as an expert in the field of psychology sub-specializing in Dissociative Identity Disorder. Dr. Friesen is also a treating psychologist with a current and ongoing practice. Counsel for the Defendant seeks an initial funding order to seek Dr. Friesen's expertise as to both diagnosis and treatment. The Court believes that the dual role Dr. Friesen has will ultimately result in a cost-savings in addition to meeting Defense counsel's obligations pursuant to the ABA Guidelines referenced above.

I find the Defendant has shown the services of an expert in psychology with experience in treatment and as a testifying witness are reasonably necessary for the representation of the Defendant. *See South Carolina Code* § 16-3-26(C)(1). Counsel for the Defendant has indicated they would like to hire Dr. James G. Friesen to perform those services, and I find that he is qualified to do so. Dr. Friesen is a licensed psychologist in California since 1982 with experience in treatment and as a testifying witness. Dr. Friesen has over 20 years of experience in the field of Dissociative Identity Disorder which appears particularly necessary in this case. Dr. Friesen is authorized to bill to the Office of Indigent Defense for reasonably necessary services of time and expenses to the Defendant up to the amount of $10,000.00. Dr. Friesen is authorized to bill the Office of Indigent Defense at the rate of $100 per hour. Expenses shall include necessary airfare to and from his home office in California to South Carolina.

Counsel for the Defendant must provide Dr. Friesen a copy of this Order. Both counsel and Dr. Friesen should familiarize themselves with the *Office of Indigent Defense Policy Concerning Payment of Fees and Expenses of Appointed Counsel for Indigent Representation in Criminal Cases.* Both counsel and Dr. Friesen should also familiarize themselves with the procedures for the processing of indigent defense vouchers, as set forth in the Supreme Court's Order of September 29, 2006. This Court will not approve payment for any services above the pre-authorized limit. If counsel believes the services above

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	Case No.: 2006-GS-39-2222-2225
State of South Carolina, Plaintiff,	)	**EX PARTE FUNDING ORDER** No: 24
v.	)	
Jerry Buck Inman, Defendant.	)	

2008 MAY 27 A 9:30
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter is before the Court on the Motion of the Defendant for an Ex Parte Funding Order. The matter is filed under seal. Therefore, this Order shall be filed by the Clerk of Court under seal, and the contents of this Order shall not be revealed without an Order from the Presiding Judge.

Specifically, the Defendant seeks an Order of the Court for authorization of additional funds for Dr. Friesen who has been previously funded as an expert in psychology. On April 22, 2008, the Court authorized funds for Dr. Friesen in Ex Parte Funding Order No. 21. That Order is incorporated herein as if set forth verbatim. Between April 22, 2008, and the date of this Order, Dr. Friesen has expended considerable efforts to meet with the Defendant and to meet with Defendant's relatives. Dr. Friesen has received and reviewed voluminous mental health records regarding mental health treatment the Defendant received during his incarceration in Florida (9/13/89-9/01/05). These documents are detailed and necessitated meticulous review.

In addition to seeking information helpful to the defense of the case, Dr. Friesen has used his time with the Defendant to treat his illness. The ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases have been deemed by the U.S. Supreme Court as the "well-defined norms." Wiggins v. Smith 539 US 510 (2003). Guideline 10.5 governs counsel's duties with regard to the relationship with the client suspected to have mental health problems. Commentary to this guideline states: "Counsel should try to obtain treatment for the client's mental and/or emotional problems."

Based on Defense Counsel's ongoing relationship with the Defendant, the Defendant's mental health has been an issue impacting the attorney /client relationship. The Court has seen this first hand to some extent from letters submitted to the Solicitor and the Defendant's attempts to dictate trial strategy. In this particular case, it has been represented to the Court that a treating psychologist will help maintain the attorney /client relationship as trial approaches.

Dr. Friesen has exhausted or is likely to exhaust the funds authorized pursuant to Ex Parte Funding Order No. 21 in the near future. I find the Defendant has shown that the additional services of Dr. Friesen are reasonably necessary for the representation of the Defendant. *See South Carolina Code* § 16-3-26(C)(1). Therefore, Dr. Friesen is authorized to bill the Office of Indigent Defense for reasonably necessary services of time and expenses to the Defendant up to the amount of $10,000.00 in addition to the funds authorized pursuant to Ex Parte Funding Order No. 21. These expenses shall include necessary airfare to and from his home office in California to South Carolina.

Counsel for the Defendant must provide Dr. Friesen a copy of this Order. Both counsel and Dr. Friesen should familiarize themselves with the *Office of Indigent Defense Policy Concerning Payment of Fees and Expenses of Appointed Counsel for Indigent Representation in Criminal Cases.* Both counsel and Dr. Friesen should also familiarize themselves with the procedures for the processing of indigent defense vouchers, as set forth in the Supreme Court's Order of September 29, 2006. This Court will not approve payment for any services above the pre-authorized limit. If counsel believes the services above that limit are reasonably necessary, they shall petition the Court for pre-authorization of those additional services. If the Office of Indigent Defense objects to any request for funding, in resolving the objection, the Court will strictly adhere to the OID Policy unless the variation from the Policy has been approved in advance.

Defense counsel shall obtain a clocked copy of this Order and shall immediately forward a copy of the Order to the Office of Indigent Defense and to Dr. Friesen. Except as just provided, the contents of this Order shall not be revealed to anyone without an Order from the Presiding Judge.

THEREFORE

IT IS ORDERED that Dr. Friesen is authorized to bill the Office of Indigent Defense for reasonably necessary services of time and expenses to the Defendant up to the amount of $10,000.00 in addition to the funds authorized pursuant to Ex Parte Funding Order No. 21.

IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
May 23, 2008

I SO MOVE:

James W. Bannister

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

JUN 28 2010

S.C. SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

INITIAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Senior Appellate Defender

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEYS FOR APPELLANT

PENGAD 800-631-6989

EXHIBIT C5
Applicant
44
8-22-18

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2.

The judge committed reversible error at sentencing by refusing to grant a mistrial and recuse the Solicitor's Office from any further involvement in the case, despite finding prosecutorial misconduct, where the Solicitor threatened a key defense witness with a baseless criminal prosecution and then subpoenaed her as a State's witness after the judge granted the defense a continuance to obtain a new expert because of this misconduct 11

3.

The judge committed reversible error at sentencing by refusing to allow the defense to cross-examine the Solicitor and his Deputy on the issue of prosecutorial misconduct, as the Solicitor's intent was directly relevant to that issue. 23

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STATEMENT OF ISSUES ON APPEAL

1. The judge committed reversible error by accepting Inman's guilty plea, despite defense counsel insistence that the judge's refusal to allow jury sentencing was preserved for review by the Supreme Court on direct appeal, because the defense's position rendered the plea conditional and thus invalid under South Carolina law.

2. The judge committed reversible error at sentencing by refusing to grant a mistrial and recuse the Solicitor's Office from any further involvement in the case, despite finding prosecutorial misconduct, where the Solicitor threatened a key defense witness with a baseless criminal prosecution and subpoenaed her as a State's witness after the judge granted the defense a continuance to obtain a new expert because of his misconduct.

3. The judge committed reversible error at sentencing by refusing to allow the defense to cross-examine the Solicitor and his Deputy on the issue of prosecutorial misconduct, as the Solicitor's intent was directly relevant to that issue.

STATEMENT OF THE CASE

On August 19, 2008, Jerry Buck Inman pleaded guilty in Pickens County, before Judge Edward W. Miller, on indictments charging him with murder, first-degree burglary, first-degree criminal sexual conduct and kidnapping. The State was seeking the death penalty.

The victim, Tiffany Souers, a Clemson University student living off-campus, was raped and strangled sometime after midnight on May 26, 2006. The apparent randomness of this violence within the relatively insular university community, as well as the initial inability of police to apprehend the perpetrator, generated an enormous amount of publicity, both local and national.

Inman, an out-of-state drifter with prior rape convictions in Florida and North Carolina in the mid-1980s, was apprehended in Tennessee June 6, 2006. He promptly confessed not just to the rape and murder of Ms. Souers, but to burglary, kidnapping, armed robbery, and attempted rape in Alabama on May 23 and burglary, kidnapping, armed robbery and rape in Tennessee on May 22.

On September 8 through 11, 2008, the State presented its case in aggravation. Midway through the defense case in mitigation, the judge granted the defense a continuance after the Solicitor threatened a key mitigation witness with a baseless criminal prosecution. On April 20 through 22, 2009, the defense presented its evidence in mitigation.

The judge sentenced Inman to death for murder and consecutive sentences of thirty years for first-degree burglary and first-degree criminal sexual conduct. Inman and his undersigned counsel appeal his guilty plea and death sentence and ask the Supreme Court to vacate both.

ARGUMENT

1.

The judge committed reversible error by accepting Inman's guilty plea, despite defense counsel insistence that the judge's refusal to allow jury sentencing was preserved for review by the Supreme Court on direct appeal, because the defense position rendered the plea conditional and thus invalid under South Carolina law.

Prior to the guilty plea, defense counsel informed the judge that Inman planned on pleading guilty but was request in a jury sentencing. September 2007 Tr. p. 25, lines 9 – 10; Tr. p. 37, line 9 – p. 38, line 4. The Solicitor pointed out that this procedure was not an option in South Carolina. Tr. p. 41, lines 14 – 17.

> There have been three cases in which a judge did actually what they are asking you to do. And our Supreme Court has reversed that on all three occasions. Because they are asking you to accept a conditional guilty plea.

Tr. p. 47, lines 6 – 11.

The judge ruled, "I believe it is an argument that perhaps is best addressed by a Court that . . might have the final say in a matter like this." Tr. p. 54, lines 14 – 19. Nevertheless, he was "constrained by the existing case law in South Carolina and the statutes to deny your motion." Tr. p. 54, lines 20 – 21.

At the guilty plea, defense counsel reminded the judge that "the defendant sought to enter a guilty plea, as he is doing today, and then proceed to a jury trial sentencing" and maintained, "That issue has been preserved for review." August 19, 2008 Tr. p. 21, line 13 – 24. "[W]e believe it is part of this case, no matter what," he insisted. Tr. p. 21, line 24 – p.

22, line 2. "[T]hat's been part of my explanation to him about where we go." Tr. p. 22, lines 2 – 3.

The judge directed his response to Inman:

> Well, I want to tell you, Mr. Inman, that in South Carolina we do not have conditional guilty pleas. And the law is very clear about that. Whether or not this issue is preserved for appeal is not something I will address and I have no control over it. . . . I can tell you that the law is very clear. There are no conditional pleas. And if you enter a plea of guilty, you can't do it on a condition. . . [Y]ou can't hold something out in abeyance by entering this guilty plea. Do you understand that?

Tr. p. 22, lines 5 – 22.

Inman said he did. Tr. p. 22, line 23.

Before the judge accepted the guilty plea, defense counsel renewed his motion for jury sentencing "to make sure it is preserved." Tr. p. 42, line 20 – p. 43, line 13. The judge again addressed Inman:

> Now again, Mr. Inman, let me tell you that the law in South Carolina is clear that there are no conditional guilty pleas . . . and whether or not that issue is preserved for appeal is not for me to decide. . . . *An appellate court will make that determination*: the Supreme Court of the State of South Carolina.

Tr. p. 43, line 43 – p. 44, line 1 (emphasis added).

At this point, the Solicitor voiced his legitimate concern that Inman's legal strategy "borders on making this a conditional plea" and asked the judge to obtain a specific waiver of "the right to be tried by a jury in the sentencing phase" from Inman. Tr. p. 47, lines 3 – 14. Defense counsel objected, "Every defendant that appears in court still has the right to

appeal his guilty plea." Tr. p. 47, lines 15 – 22. "[T]hat's absolutely correct," the judge agreed. Tr. p. 47, lines 23. He again turned to Inman:

> Mr. Inman, I direct this to you. Because in the end, you get advice from your attorneys. But this decision is yours. . . . [T]he law is clear in South Carolina that you cannot enter a conditional guilty plea, which means you cannot plead guilty and reserve some issue with respect with the guilt phase for the appellate courts to rule on.

Tr. p. 48, lines 4 – 10.

Defense counsel reiterated, "I have advised him that I believe this issue is preserved and will survive the guilty plea." Tr. p. 48, lines 15 – 18. Once more, the judge addressed Inman:

> Mr. Inman, I want to tell you that we disagree on that . . . and, of course, I am not the final word on this issue because *the Supreme Court will be the final word.* But I believe that you are giving up that right.

Tr. p. 48, lines 17 – 22 (emphasis added).

Counsel objected, "I don't think you can give him an opinion about what an appellate court might do with that issue." Tr. p. 48, line 24 – p. 49, line 5.

Because of the general uncertainty about the matter among the participants, the judge gave Inman a fleeting opportunity to withdraw his guilty plea. Tr. p. 49, lines 6 – 14. "[Defense counsel] may be convinced that he's got an appellate issue," he added, "and I don't know whether he does or not. But I am telling you I believe the law in South Carolina is clear that guilty pleas are unconditional." Tr. p. 49, lines 17 – 21.

When defense counsel refused to abandon his position, the judge decided, "[I]f this is a big issue, then I am not about to accept the plea." Tr. p. 50, lines 18 – 19. But this moment of clarity about the situation quickly slipped away. Instead, the judge addressed Inman one last time:

> Mr. Inman, clearly there is some disagreement about the preservation of this issue that your attorneys have raised. I am not involved in it. And I don't have an opinion about it. Whether or not [defense counsel] can do that successfully is something the Supreme Court will answer. The State does not believe that he can. He believes that he can . . . . [W]hether or not that happens on appeal is really of no concern here. I want your plea to not be dependent on that issue.

Tr. p. 51, lines 1 – 12.

After another short recess, the judge continued:

> [A]ll I'm trying to determine is that your entry of this plea is not based on or predicated on some issue that you think you might prevail on or might not prevail on in an appellate court . . . [W]hether or not you can prevail on an appellate issue should have not have nothing to do with your entry of this plea . . . So whether or not you are you are successful or not successful at some higher court on some issue that might be raised should have nothing to do with why you're entering this plea.

Tr. p. 51, line 19 – p. 52, line 25.

Inman replied, "I just want to enter the plea and get it over with, just go on from here with the sentencing phase." Tr. p. 53, lines 1 – 5. The judge accepted his plea. Tr. p. 53, line 22 – p. 54, line 4.

The judge denied defense counsel's motion to reconsider. August 27, 2008 Tr. p. 38, lines 13 – 17. At the start of sentencing, he also denied counsel's "demand for a jury trial for the sentencing phase." September 2008 Tr. p. 17, lines 13 – 21. Finally, after the State had rested at sentencing, counsel again asked the judge to reconsider and requested a mistrial. Tr. p. 245, lines 6 – 12. The judge denied the motions. Tr. 245, lines 21 – 23.

In State v. Truesdale, 278 S.C. 368, 296 S.E.2d 528, 529 (1982), the Supreme Court held that conditional guilty pleas are:

> a practice not recognized in South Carolina and a practice which we expressly disapprove. *Pleas of guilty are unconditional, and if an accused attempts to attach any condition or qualifications thereto, the trial court should direct a plea of not guilty.* [Emphasis added.]

"If the trial court accepts a conditional guilty plea, then the plea will be vacated on appeal." State v. Downs, 351 S.C. 141, 604 S.E.2d 377, 380 (2004).

S.C. Code §16-3-20(B) explicitly provides, "[I]f the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge." The Court reaffirmed the constitutionality of this sentencing procedure in Downs. In Truesdale, the defense had attempted to preserve several meritless issues for direct appeal during the defendant's guilty plea. The Court held, "It was error of the trial court to accept the pleas on such terms." 296 S.E.2d at 529.

To give credit where credit is due, the Solicitor in this case was right about one thing: A capital defendant in South Carolina cannot at present plead guilty without waiving jury sentencing, even if the State were to consent. This was no longer an open question – if it ever was – at the time of Inman's guilty plea. (The Court will have noted that the undersigned do not raise this issue on appeal.)

The judge's duty was equally clear once defense counsel insisted "this issue is preserved and will survive the guilty plea" for direct appeal: He should have unequivocally rejected the plea, instead of issuing ambiguously oracular pronouncements such as, "Whether or not this issue is preserved for appeal is not something I will address and I have no control over it . . . An appellate court will make that determination: the Supreme Court of the State of South Carolina."

The judge's speculations about appealability – almost all of which were directed to Mr. Inman, – plainly suggested that the issue of jury sentencing might be preserved for direct appeal, which was an erroneous statement of existing law. See State v. Owens, 362 S.C. 175, 607 S.E.2d 78 (2004). For this reason, the Supreme Court should vacate Inman's guilty plea to murder and reverse his death sentence.

2.

The judge committed reversible error at sentencing by refusing to grant a mistrial and recuse the Solicitor's Office from any further involvement in the case, despite finding prosecutorial misconduct, where the Solicitor threatened a key defense witness with a baseless criminal prosecution and subpoenaed her as a State's witness after the judge granted the defense a continuance to obtain a new expert because of his misconduct.

It is fair to say that mitigation was the central issue at Inman's sentencing. He had, after all, admitted his guilt and pleaded guilty. A key defense witness in this regard was Dr. Marti Loring, of the Center for Mental Health and Human Development in Atlanta. September 2008 Tr. p. 324, lines 12 – 15. Loring was licensed in Georgia, but not in South Carolina, as "an expert in the field of trauma, abuse, forensic and therapeutic interviewing, and as a social historian in capital cases." Tr. p. 325, lines 20 – 22; Tr. p. 328, lines 1 – 3; Tr. p. 326, line 21 – p. 327, line 3.

The Solicitor characterized Loring's testimony in general as "a rambling recitation of rank hearsay." Tr. p. 251, lines 20 – 21. In his opinion, "[T]here's not a great deal of expertise in the field of social work." Tr. p. 253, lines 10 – 12. When given the opportunity to cross-examine Dr. Loring on *voir dire*, the Solicitor promptly accused her of violating S.C. Code § 40-63-200 which, as he announced, "deals with the unauthorized practice of social work within the State of South Carolina" and "carries . . . both civil and criminal penalties for violation." Tr. p. 328, line 1 – p. 329, line 8. Defense counsel objected to the Solicitor's "inappropriate attempt to intimidate the witness with the authority that this Solicitor has in this state to indict" and predicted that "it will infect us from this point forward." Tr. 329, line 12 – p. 330, line 22.

The Solicitor continued:

> I'm raising the issue of licensing for the purposes of *voir dire*. And that's as far as we've gotten. And whether or not I present an indictment against her is a totally separate issue.

Tr. p. 330, line 23 – p. 331, line 2.

The judge overruled the objection to Loring's qualifications and authorized her to testify. Tr. p. 331, lines 3 – 21.

Defense counsel argued that the consequences of the Solicitor's misconduct could not be so easily avoided:

> [T]he Solicitor's attempt to make the testimony that Dr. Loring may potentially give fit within a criminal statute is a due process violation. It is an attempt to improperly intimidate this witness. And it specifically violates the defendant's due process right to present his defense witnesses freely. . . . [T]he intimidation at this point amounts to a substantial government interference with this defense witness' free and unhampered choice to be able to testify unfettered.

Tr. p. 332, lines 1- 20.

The Solicitor then offered to grant Loring immunity "[a]s to the present testimony." Tr. p. 333, lines 12 – 14. But as far as her prior testimony in South Carolina was concerned:

> I can't grant her immunity for that. . . . If somebody wanted to indict her for violating the statute, they could have already done that many, many times based on her prior testimony. That's not the issue.

Tr. p. 333, lines 2 – 25.

As increasingly-apprehensive Loring informed the judge that she was "concerned" about the situation. Tr. p. 334, lines 9 – 17. The judge said, "You are granted immunity, so

you will not be indicted based on your work in this case. Now, do you feel secure?" Tr. p. 335, lines 8 – 10. No, she did not:

> I wouldn't be honest if I didn't tell you that what I have just heard alarmed and concerned me a great deal. So I will hope that I can return my attention to what I came here to do in the first place and be as effective as I would hope to be. But to tell you that I'm not alarmed and concerned at what I heard would not be truthful.

Tr. p. 335, lines 11 – 18.

The judge took a recess to allow Loring an opportunity to obtain and consult with counsel. Tr. p. 335, line 19 – p. 336, line 11.

When court reconvened, on the advice of counsel Dr. Loring invoked her privilege against self-incrimination as provided by the Fifth Amendment:

> With profound condolences to Tiffany's family and with respect to the family of Jerry Inman and with deep apologies to the court, I worked so hard to gather all this information to come here today to tell you the truth about Jerry Inman's past. I'm so sorry, Your Honor. Upon advice of counsel, I must plead the Fifth. I feel threatened as a witness in this case and in other cases in which I've testified in South Carolina.

Tr. p. 336, lines 14 – 24.

Loring's impromptu counsel explained, "The Solicitor. . . has intimidated this witness." Tr. p. 339, lines 12 – 23. He added:

> If the Solicitor was going to raise such an issue as this, it appears it should have been raised pretrial and not during *voir dire*. But what he has done now is chilled the doctor's ability to testify, which was exactly his intent.

Tr. p. 340, lines 4 - 8

The judge apologized to Loring for getting "caught in the middle of all this" but expressed his concern that if she did not testify, "the defense would feel compelled to request that this sentencing hearing be basically ended and we have to come back and do it all again." Tr. p. 342, line 2 – p. 343, line 10. After another short recess, Loring again informed the judge that she was "[f]ull of sorrow" because "I must, upon advice of counsel, tell you that I can not testify." Tr. p. 343, line 11 – p. 344, line 7. The Solicitor's threats had made her apprehensive about "my professional reputation in other jurisdictions in which I am involved currently." Tr. p. 344, lines 8 – 14.

At this point - "insofar as I am able to"- the judge attempted to grant Loring "immunity in all your prior cases that you testified in this state." Tr. p. 344, lines 17 – 19. "And while . . . judicial immunity may not be generally recognized in South Carolina," he added, "I think the fact that I'm putting it out there would carry some weight." Tr. p. 346, lines 6 – 12. Consequently, the judge concluded, "I do not believe you have a lawful ground to refuse to testify." Tr. p. 346, lines 15 – 16.

As an aside, the judge had no authority to grant Dr. Loring statewide immunity from prosecution for testifying as an expert witness in South Carolina.

> In the ordinary case, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.

State v. Needs, 333 S.C. 134, 508 S.E.2d 857, 863 (1999) (citations omitted).

And:

> [T]he South Carolina Constitution [Article V, §24] and South Carolina case law [citations omitted] place the unfettered discretion to prosecute solely in the prosecutor's hands. . .

> The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion; however, on occasion, it is necessary to review and interpret the results of the prosecutor's actions.

State v. Thrift, 312 S.C. 282, 440 S.E.2d 341, 346 (1994). "Furthermore, a trial court generally has no power to dismiss a properly-drawn indictment issued by a properly-constituted grand jury before trial unless a statute grants that power to the court." Needs, 508 S.E.2d at 863.

Defense counsel moved for a mistrial "based on prosecutorial misconduct." Tr. p. 415, line 18 – p. 417, line 25. The Solicitor's intimidation tactics, he argued, had violated Inman's right to due process, specifically his Sixth Amendment right "to present a full and complete defense" and "his Eighth Amendment right to . . . . a full and fair presentation of mitigation in this case." Tr. p. 417, line 25 – p. 418, line 13.

But counsel had also received information that, in an earlier capital case the Solicitor had threatened to prosecute another defense witness for running afoul of § 40-63-200. Tr. p. 418, line 20 – p. 419, line 25. Apart from violating Rule 407 ("Rules of Professional Conduct"), SCACR, counsel asserted, the Solicitor had quite possibly violated S.C. Code § 16-9-340, which makes it illegal to intimidate a witness "by threat or force" or to "attempt to obstruct or impede the administration of justice in any court."

In addition to requesting a mistrial, defense counsel moved to recuse the Solicitor's Office from further participation in Inman's case. Tr. p. 420, line 1 – p. 423, line 25. He also asked the judge to quash the death notice and sentence Inman to life without parole. Tr. p. 426, lines 17 – 20.

Concerning Dr. Loring, the Solicitor responded, "I have never threatened her. I have never even moved to indict her even though, theoretically, she would have violated the statute from a prior case." Tr. p. 429, lines 6 – 13. In his mind, the whole issue was "truly a red herring." Tr. p. 429, lines 14 – 15.

Counsel for Loring informed the judge that she still intended to take the Fifth. Tr. p. 430, line 20 – p. 431, line 20. The judge ruled:

> I'm not going to grant [a] mistrial. I am going to continue the case. I would instruct counsel to seek another social historian so that Dr. Loring will never have to deal with this case again.

Tr. p. 434, lines 11 – 14. But, he added, "I wouldn't rule that Dr. Loring is completely out of the case." Tr. p. 435, lines 4 – 8.

Seven months passed. As a result of Dr. Loring's continuing unease about testifying in South Carolina, she and the defense had reluctantly agreed to part ways shortly after the September 2008 hearing. April 14, 2009 Tr. p. 4, line 14 – p. 5, line 1. An already bad situation only got worse when the Solicitor then subpoenaed Loring in Georgia and nearly triggered the forced entry of her home by Georgia police with a warrant to arrest her as a fugitive. April 14, 2009 Tr. 5, lines 2 – 4; April 20 through 22, 2009 Tr. p. 8, line 14 – p. 15, line 11.

When sentencing reconvened on April 20, 2009, defense counsel renewed his motions for a mistrial and for a sentence of life without parole. April 20 through 22, 2009, Tr. p. 17, lines 2 – 11. The severity of the situation his own misconduct had created was apparently lost on the Solicitor: "[A]s you can see, the Thirteenth Circuit Solicitor's Office had nothing to do with any of this. This is just a continuation by the defense to perpetrate an

issue that is not real." Tr. p. 21, lines 21 – 25. In fact, he maintained, whatever had happened in Georgia after the subpoena left his hands was "every bit the fault of Dr. Loring, under the Georgia system." Tr. p. 21, line 16 – p. 23, line 5. As far as he was concerned, it was all "more of the tempest in the teapot over nothing." Tr. p. 23, lines 5 – 7.

Loring voluntarily attended the hearing. Tr. p. 30, line 11. If the defense did not intend to call her as a witness, though, the judge was initially inclined to "cut her loose." Tr. p. 30, lines 16 – 21.

The defense elected to call Loring as a witness "for the limited purpose of putting what we can on the record regarding what happened in Georgia." Tr. p. 32, lines 4 – 7. She testified:

> I've never had an arrest warrant or anything like that. So it was a new experience for me. So I was alarmed, concerned, frightened, especially when I found out that I had been described as a flight risk. . . . And then I really didn't know exactly what to do. I've never had an experience like this before.

Tr. p. 42, lines 4-25.

As to her ability to testify effectively on behalf of Inman, Loring admitted:

> Well, I would have to truthfully tell you that this is a very alarming experience. And I cannot assure you a hundred percent that going through all this would not have an impact on me.

Tr. p. 45, lines 7 – 14.

Nevertheless, she was prepared if required "to do my very best, to do a professional and thorough job in the role of mitigation expert." Tr. p. 45, lines 15 – 20. "[I]f you are called as a witness," the judge interjected, "I would not allow [the Solicitor] to be the attorney who handled the examination." Tr. p. 46, lines 16 – 21.

The defense renewed its motion to disqualify the entire Solicitor's Office. Tr. p. 60, lines 20 – 23. He alleged that the Solicitor had also threatened a defense psychologist for violating § 40-63-200 at capital resentencing in State v. Michael James Laney in April 2007. Tr. p. 62, line 18 – p. 64, line 6. "[I]t sounds like Grassy Knoll stuff," the judge observed, but allowed the defense to proffer its evidence. Tr. p. 64, lines 7 – 12.

Counsel for Laney testified that he had also filed a motion to quash the death notice based on the Solicitor's prosecutorial misconduct in that case. Tr. p. 78, line 7 – p. 79, line 7. As was apparently his wont, the Solicitor by sending the witness an intimidating letter requesting her attendance at a meeting to discuss her testimony. Tr. p. 87, line 5 – p.89, line 7. Counsel for Laney renewed his motion to quash the death notice, outlining this ongoing misconduct. Tr. p. 91, lines 4 – 21. The very next day, the Solicitor invited counsel to a meeting to discuss the possibility of a plea. Tr. p. 93, lines 2 – 10. As counsel put it, "[T]here was significant movement regarding the resolution of that case" at that point. Tr. p. 94, line 8 – p. 95, line 4.

As far as the Solicitor was concerned, the only sticking point preventing a life sentence in the Laney case was defense counsel's refusal to concede that their expert had violated § 40-62-200. Tr. p. 97, line 22 – p. 98, line 16. The Solicitor eventually agreed to withdraw the death notice if the defense would withdraw their prosecutorial misconduct motions. Tr. p. 107, lines 7 – 22. He later suggested that Laney's counsel needed a "political advisor." Tr. p. 146, line 20 – p. 148, line 14.

Dr. Loring had previously testified in the capital case of State v. David Edens and Jennifer Holloway in June 2006 without objection by the Solicitor. Tr. p. 109, line 1 – p. 110, line 16. His attitude changed when the jury returned life sentences for both defendants.

Tr. p. 152, line 7 – p. 153, line 6. Several weeks later, the Solicitor's Office invited the jurors to dinner at a local restaurant. Tr. p. 153, line 8 – p. 154, line 11. According to one of those jurors:

> I took it to be they wanted to know what had influenced us the most as a jury in not giving them the death penalty. And what they had done . . . wrong or what they had done right. They were just picking our brains to kind of get a general idea of how to better do it next time.

Tr. p. 154, line 12 – p. 155, line 2.

She was left with the distinct impression the Solicitor was upset with their verdict. Tr. p. 155, lines 3 – 6.

Following this testimony, counsel for Inman informed the judge that he planned to call the Solicitor and his Deputy as witnesses on the issue of the Solicitor's misconduct, especially the matter of his intent. Tr. p. 166, line 16 – p. 167, line 22. The judge summarily denied the motion. Tr. p. 167, lines 23 – 25. Counsel objected to this limitation on his ability to present Inman's defense under the Sixth and Fourteenth Amendments. Tr. p. 168, lines 1 – 6. (This issue gives rise to the next issue addressed in this brief.)

Finally, the judge decided to call Dr. Loring as a court's witness. Tr. p. 202, lines 5 – 7. He denied defense counsel's motion for a mistrial. Tr. p. 207, lines 15 – 19. In reaching this result, the judge had decided that "[t]he events in Georgia" – Loring's near-arrest thanks to the Solicitor's efforts to subpoena her – were irrelevant to the issue of prosecutorial misconduct. Tr. p. 209, lines 2 – 24.

In Loring's presence, the judge accused the defense of being "more interested in pursuing the misconduct issue than in presenting a full defense." Tr. p. 223, line 24 – p. 224, line 16. He then called Dr. Loring as his witness and questioned her himself. Loring

testified that she no longer felt threatened by the Solicitor and would try "to do my very best," although:

> I'm worried and anxious that I have not received attorney guidance for six months, have not seen Mr. Inman for that period of time, nor have I re-interviewed his family members for the last six months. . . . Had I known that I was still on the case, Your Honor, I would have been sure to have done these three things so I wouldn't leave out important information when I testified.

Tr. p. 228, line 3 – p. 229, line 17.

Loring conceded that "there is some important information that I don't have as a result of what I've just talked about." Tr. p. 229, line 21 – p. 230, line 3.

The judge ruled that the Solicitor's intimidation of Dr. Loring constituted prosecutorial misconduct but not *intentional* prosecutorial misconduct. Tr. p. 262, lines 6 – 19. He accused defense counsel of "participating in the limitation of this evidence that they intended to offer, which contributes to any constitutional violation that might exist." Tr. p. 262, lines 20 – 23.

Obviously, a Solicitor may not "lob baseless threats or charges at a potential defense witness in an effort to prevent the witness from testifying." State v. Needs, 333 S.C. 134, 508 S.E.2d 857, 863 (1999).

> Improper intimidation of a witness may violate a defendant's due process right to present his defense witnesses freely if the intimidation amounts to substantial government interference with a defense witness' free and unhampered choice to testify.

State v. Williams, 326 S.C. 130, 485 S.E.2d 99, 102 (1997) (citation and quotation marks omitted). Moreover:

> If the State seeks to compel a defendant's non-testifying consultative expert to testify on its behalf, the State must prove that it has a "substantial need" for the expert and that its inability to compel the expert to testify will present "undue hardship."

State v. Jones, 383 S.C. 535, 681 S.E.2d 580, 586 (2009); see, also, State v. Northcutt, 272 S.C. 207, 641 S.E.2d 873 (2007).

To summarize: The judge found that the Solicitor had committed prosecutorial misconduct by threatening Dr. Loring with indictment and prosecution, but that the misconduct had not been intentional. He refused to consider the consequences of the Solicitor's equally wrongheaded attempt to subpoena Loring from Georgia as a State's witness. Finally, he called Loring as his own witness.

In Jones, the Supreme Court recognized that "there is undoubtedly a potential for abuse by the prosecution to compel a non-testifying, consultative defense agent to testify." 681 S.E.2d at 585.

> Furthermore, because defense counsel will be placed in the posture of cross-examining the expert witness, we believe counsel may be reticent in pursuing certain lines of questioning in the event the responses of the witness may "open the door" to privileged information.

Id. at 586.

Add to this an atmosphere of governmental intimidation, threats and paranoia, and a judge's decision to call a defense witness as a court's witness presents additional problems: The danger the witness' testimony will become biased because she views the judge as her protector. This is not a matter of speculation in the present case. According to Dr. Loring's attorney, "She did tell me that she felt like she was protected by the court." Tr. p. 203, lines

20 - 21. "She will be," the judge replied. Tr. p. 203, line 23. Defense counsel's cross-examination of Loring was severely truncated. Tr. p. 259, line 14 – p. 261, line 3.

The judge's finding that the Solicitor's misconduct was unintentional finds no evidentiary support. The Laney case had placed the Solicitor on notice that his actions constituted prosecutorial misconduct.

The decision whether to grant or deny a mistrial is within the discretion of the judge and will not be reversed on appeal absent an abuse of discretion. State v. Sweet, 374 S.C.1, 647 S.E.2d 202 (2007). An abuse of discretion occurs when the conclusions of the judge lack evidentiary support. State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006).

The chain of events leading to this insupportable outcome began with the Solicitor's foolhardy decision to threaten a key defense witness with a baseless criminal prosecution and then subpoena her as State's witness when the judge granted the defense a continuance to obtain a new expert because of the initial misconduct.

> Prosecutors are ministers of justice and not merely advocates. [Citation omitted.] A prosecutor has special responsibilities to do justice and is held to the highest standards of professional ethics . . . . [The Supreme Court] will not tolerate deliberate prosecutorial misconduct which threatens rights fundamental to liberty and justice.

State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105, 110 (2000). The Solicitor's misconduct and the judge's rulings concerning that misconduct require the Court to vacate Inman's death sentence and remand for resentencing.

3.

The judge committed reversible error at sentencing by refusing to allow the defense to cross-examine the Solicitor and his Deputy on the issue of prosecutorial misconduct, as the Solicitor's intent was directly relevant to that issue.

As noted previously, the judge concluded that the Solicitor's intimidation of Dr. Loring, while prosecutorial misconduct, was not intentional. Tr. p. 262, lines 6 - 19. This finding of a lack of intent permitted him to deny defense counsel's mistrial motion and avoid, for the time being, the possibility that Inman might be entitled to a sentence of life without parole as a consequence of that misconduct.

The judge summarily denied defense counsel's motion to call the Solicitor and his Deputy as witnesses on the issue of the Solicitor's intent. Tr. p. 166, line 16 – p. 167, line 25. Counsel objected to this limitation on his ability to present Inman's defense under the Sixth and Fourteenth Amendments. Tr. p. 168, lines 1-6.

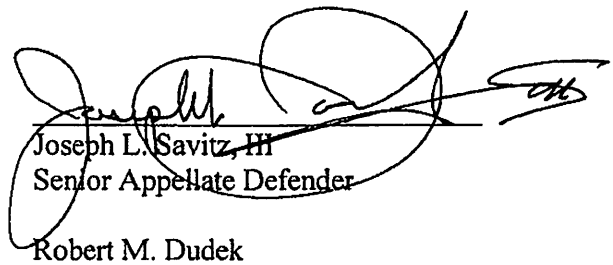
Long story short, this ruling was reversible error under State v. Quattlebaum, 527 S.E.2d at 111. As in Quattlebaum, the judge did not articulate his reasons for refusing to allow defense counsel to question the Solicitor and his Deputy. Thus, the ruling was also controlled by an error of law and was therefore an abuse of the judge's discretion.

For this reason as well, the Supreme Court should vacate Inman's death sentence and remand for resentencing.

CONCLUSION

In view of these errors, Jerry Buck Inman and his undersigned counsel ask the Supreme Court to vacate both his guilty plea to murder and death sentence.

Respectfully submitted,



Joseph L. Savitz, III
Senior Appellate Defender

Robert M. Dudek
Chief Appellate Defender

ATTORNEYS FOR APPELLANT

This 28th day of June, 2010

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

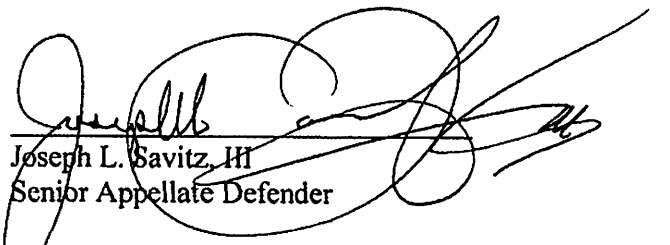
APPELLANT

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) The guilty plea and sentencing transcripts;
(2) Sentencing documents;
(3) True–billed indictments;
(4) State's Exhibits 25 – 29;
(5) Defense Exhibits 32 – 43 and 45;
(6) Court's Exhibit 3.

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



Joseph L. Savitz, III
Senior Appellate Defender

Robert M. Dudek
Chief Appellate Defender

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

June 28, 2010

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Pickens County
Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Suite 501, Columbia, S.C. 29201, this 28th day of June, 2010.

Joseph L. Savitz, III
Senior Appellate Defender

Robert M. Dudek
Chief Appellate Defender

ATTORNEYS FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of June, 2010

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

My Commission Expires: October 30, 2018

A. Okay.

Q. I'm sorry.

A. Well, somebody made a big damn deal out of it and -- just a violence tirade, but it went on in this case, but none of that was accurate.

Q. I do want to go back to one thing. In the beginning you called -- you described this case as a calamity. What did you mean?

A. Have you not read the record? The record is replete with, you know, what I call totally out-of-the-ordinary death penalty stuff. From Bannister, to begin with, you know, and give -- I give Jim lots of credit. He was very legally resourceful.

But the case proceeded from a guilty plea to still getting a jury trial, which was a huge issue. Then we proceeded to a death penalty before a judge, which was totally sort of a new thing for me, although I had done it one time before with Judge Kittredge. And then we went to a -- a staged -- that would be my word -- staged intimidation of a witness who was never intimidated. And then we went to a four-month recess or a six-month -- whatever it was -- in the middle of the death penalty trial.

And after that, then we tried to recess. The defense has done nothing to prepare for the retrial

EXHIBIT Appellant CS 55 1927 13-18

to start, apparently. That's what it seemed to indicate. And the judge orders it to start anyway.

So then we've got to deal with the issue of sabotage from the defense of not bringing this woman back and creating a huge appellate or a PCR issue. So we had to make a decision as to do we seek a subpoena of this woman from out of state? Do we ask the court for the subpoena? Well, how do we go about doing all these things?

These things I had never dealt with before. So we were -- we were sort of all going along. Then we got prosecutorial misconduct.

Then we got Judge Loeb. We got Desa Ballard up there. We got John Mauldin opining on all kinds of subjects that -- Troy Tessier, all of these people going on. And poor Dr. Loring is sitting there with all of this kind of floating around, doing her -- doing her thing.

That's why I say it's a calamity. Maybe a calamity for me, not for anybody else.

Q. Do -- did you feel like -- did you feel like -- you used the word "sabotage," that -- that Mr. Bannister -- well, hold on.

The first thing you said was that it was Jim Bannister. So why was that --

A. No. Intellectually creative in these issues.

Q. That he was?

A. Yes.

Q. Okay.

A. Don't you? I mean, that's none of my business, but I thought these were issues of first impression to me, and -- and I -- I -- I knew there was going to come a prosecutorial misconduct incident somewhere. I knew they were prepared for that. I knew that was the new mode of operation of capital defense lawyers.

So -- but I never anticipated it would be there. I thought it would be something else. So I thought Jim was extremely creative in the way he handled the case. You may disagree, but...

Q. Did you feel like he was sandbagging?

A. No. Uh-uh. No -- no -- no more than any other defense lawyer by not disclosing things.

Q. You mentioned that you felt like he was not going to bring Dr. Loring back.

A. Yeah, I definitely thought that was an option. I didn't know if he was not going to do it. I just -- I'm a fairly resourceful, intellectually creative person too, and that was an issue that Betty

agenda.

And Judge Miller had an agenda, probably one of the better agendas. And that was: Let's get through this case. You know, I know what decision -- I know what the verdict is going to be. Let's get through it and quit interrupting.

And the Supreme Court had an agenda.

Q. And what was their agenda?

A. Their agenda was Langford eventually. They did the same to me that they did to Donnie in cases that -- that was about -- I mean, Deanna, I don't mean to -- or Diana. I'm sorry.

Q. That's all right.

A. I don't mean to be -- and I do have the -- a little bit of ability now -- I'm retired -- and have discussed with -- this with lots of people.

I do -- I do have some concerns about the fact that the Supreme Court wrote with you've got to agree with me is one of the most scathing and vicious attacks on a lawyer who had an absolute pristine and well-recognized record, a public -- and then turn around and say it had no impact sufficient to reverse the sentence makes no sense. If it is what the Supreme Court said it is in their language, then the sentence should have been reversed, but they didn't because that

an any way, a life sentence.

Q. Okay.

A. So no. That was out of the question.

Q. One of your questions on direct examination suggested different folks had different agendas at the time that Mr. Inmon was being tried.

A. Sure.

Q. Did Judge Miller ever indicate to you or were you aware of anyone suggesting that Judge Miller was predisposed to any sort of sentence while this case was proceeding?

A. No. In fact -- and when I say agenda, I don't mean that it was a hidden agenda. Judge Miller had an obvious agenda that any trial judge has in any case in which there is a -- an incident occurs: Let's get through this and finish the case. Sometimes agenda carries kind of a dirty -- I don't mean -- you know, Judge Miller is a dear friend of mine, and he wanted to get this over.

I could -- it's sort of like the conversations I've had with Gene Toler before. The good guy, Bob, why would you put that evidence in the record when you had more than enough to prove your case? Well, unfortunately, I -- I don't know that we can always make that decision with a jury as to whether or not we've got

enough. So she called it -- gilding the lily, is what she would refer to the prosecutor Gillian Lily all the time. She used to fuss at me about that all the time back when we were friends. And then -- before this disaster.

And -- and then so I was very, very concerned about Miller being able to give a death sentence to this -- this man. And I'll tell you why I was concerned, and I think Betty will remember all of this too. Miller was a former assistant public defender for years, and he was a very staunch believer in -- in defendants' rights and asserting those things.

And I had tried Michael -- not Michael, but Freddie Owens for a second time in front of John Kittredge, and nobody thinks John Kittredge is soft on crime or death. And it took him four agonizing days to decide to kill Freddie Owens -- or give him the death penalty. As John Muller says, "kill him." I -- I was very concerned with Miller being able to do it.

Q. Okay.

A. So we didn't -- we didn't cut corners at all.

Q. Okay. And did that continue throughout the time of your -- up until the time of your closing arguments in the case?

EXHIBIT 63
Respondent
1
8-20-18
PENGAD 800-631-6989

Dear Mr. Bannister, 1-21-08

Hey, how are you doing? Good I hope.
I hope your back is feeling better.

I'm writing you to ask you some things and request some things and to try to help you understand some things.

From the start of all this, I wanted to plead guilty, waive mitigation and waive all appeals. You and Mr. Culbertson asked me to compromise on some things in the hopes it would maybe help someone else down the line. At this point, I have compromised so much that, when it comes down to it, I haven't been able to do anything I set out to do except to plead guilty. That's ok, it's now water under the bridge.

You are a good person and I understand everything You and Mr. Culbertson and Mr. Dejong are trying to do, and am grateful to have you as my attorney's. But you need to try to understand why I'm trying to accomplish what I'm trying to.

Nobody who has never been to prison can ever fully understand what it's like. I am 38 yrs old, and if given a life sentence, I probably will have a good 30 or 40 years left to ~~exist~~ exist in prison, because existing is all you do in prison. If given the ~~death~~ penalty, I at least know the end will be not so long and I finally have peace.

Even if she's not, it don't really matter. I have a request for you, and I respectfully ask you to do this with your most persuasive argument and put as much effort in it as I'm sure you are putting into the issue about Bob Ariel.

Please inform Judge Miller that I wish not to put up any more mitigation. Precedent has already been set on this issue in two cases, one the Passaro case, which is not really meaningful at this point, and the case of James W. Wilson, Petitioner-Appellee, V. Jon E. Ozmint, Director, South Carolina Department of Corrections; Henry Dargan McMaster, Attorney General, State of South Carolina, Respondents-Appellants.

This case has alot of similar aspects to my case as far as the mitigation and what is going on about the social worker testifying in mitigation.

Like the Wilson case, you have done a competent and thorough investigation into my past and have already had 5 people testify.

If you look on page 10, B. It talks about not having a social worker testify. On page 11, it states the Supreme Court concluded that to have a social worker testify to "explain the petitioner's history would not have minimized the risk of the death penalty."

I ask you to please inform Judge Miller of this decision as soon as you get this letter so he will be aware of this and be prepared to continue when we go back to Court.

I know representing me hasn't been easy, and I'm sorry about that, but I sincerely ask you to please do this one last thing for me.

I will try and call again next wednesday (1-28) morning and hopefully you will have spoken to the judge by then and maybe know what he has said. As soon as you are able though, I'd like to see you when your back is well enough.

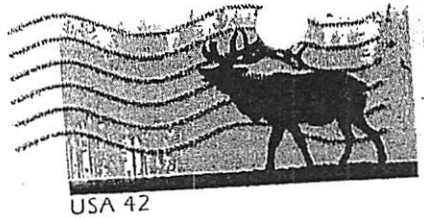
I will close for now. Once again, please give this your best effort.

Sincerely,
Jerry Inman

1936

Jerry Inman
216 LEC Rd.
Pickens, SC. 29671

GREENVILLE SC 296
22 JAN 2009 PM 3 T

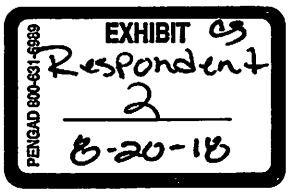


James W. Bannister
Attorney At Law
401 Pettigru Street
P.O. Box 10007
Greenville, SC. 29603

legal mail

29603+0007

INMON 132 G 132 G 000361



To: "Jim Bannister" <JimB@bannisterwyatt.com>
Subject: Re: FW: Inman case

Hi Jim,

So we have left it that my attn. suggests that I cannot testify once threatened with criminal prosecution in this court or possibly in other courts if I testify in this case, since you cannot unring a bell and it was on record tha I was to be qualified as a clinical social worker (and subsequently possibly prosecuted in this or other courts).

If solicitor and judge and you agreed to qualify me as a clinical sociologist, then it might be possible for me to testify as such, but that does not meet your needs which you suggest relates to my interviewing Denise involving special interviewing skills of a clinical social worker (not therapy) so that I leave it in your hands and await your suggestions.

Thank you for understanding that The Center is not prepared to incur additional legal expenses in this matter

Thanks, Marti

At 02:39 PM 10/24/2008, you wrote:

> Marti,
> Take a look at this letter. Spoke with Bill Godfrey. Bottom line is that he doesn't want to be involved anymore. I have some ideas on legal counsel. My position is that there is certain mitigating testimony that is under the umbrella of your "social worker" expertise. If nothing else, I believe your treatment of Denise falls under that category. I don't think your testimony in Spartanburg has "solved" the problem, but we need to talk about how you feel on this issue. Everyone is pushing to get back into court on Nov. 17th. Do you have a conflict?
> Jim
>
> **From:** Pickett, Marcia [mailto:MPickett@greenvillecounty.org] **On Behalf Of** Ariail, Bob
> **Sent:** Thursday, October 23, 2008 5:32 PM
> **To:** Judge Miller
> **Cc:** Jim Bannister; John DeJong; Strom, Betty; sculbertson@culbertsonlaw.com
> **Subject:** Inman case
>
> Marcia A. Pickett
> Administrative Coordinator
> Solicitor Robert M. Ariail
> 305 East North St., Suite 325
> Greenville, SC 29601
> (864) 467-8282
> mpickett@greenvillecounty.org
>
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To: cgrahamsc@aol.com,mcnairgraham@aol.com
Subject: Re: License Issue
Cc: donna watts <donnasw1963@yahoo.com>,callen@spartanburgcounty.org,JB@BabbLaw.com,Jack Howle <jdhowlejr@yahoo.com>,"Jack Sinclaire" <jslawyer@bellsouth.net>,notguilty@hargray.com,"brian" <powell@indiana.edu,"Jerry Word" <jword@gacapdef.org>,"Jim Bannister" <JimB@bannisterwyatt.com>,"Sackheim, Michael S." <msackheim@sidley.com>,"Peter Toren" <PToren@kasowitz.com>,"Erin Murphy" <emurphy@nhpd.org>,"lauren Greenwald" <lgreenwa@nhpd.org>,"Susan Wardell" <swardell@bellsouth.net>,Sara Romano <Sara_Romano@fd.org>,"Sam Bauer" <sbauer@bauerlawfirm.com>,Denise deLaRue <denisedelarue@yahoo.com>,"Danny Hyatt" <dhyatt@bannisterwyatt.com>,Cheri Hodson <Cheri_Hodson@fd.org>,Sara Romano <Sara_Romano@fd.org>,joan.peters@emoryhealthcare.org,dudley@ruffalolaw.com,"Harrell Warren" <hmdiff@tampabay.rr.com>,"Alan Rauber" <arauber@mccurdycandler.com>,cgrahamsc@aol.com

9/14/08

TO: Bill Godfrey at Godfrey Law Firm, Greenville SC

Hi Bill,

Thanks for your support. I have conducted research into an issue: The problems of the social work boards in SC and AL seeming to differ from the laws of the states and this probably needs to be solved by professionals/lawyers in those states. SC social work licensing board says, if you testify as a expert witness and as a social worker in SC, then you have to be licensed in SC because you are practicing social work; AL licensing board says, if you call yourself a social worker in AL, then you must be licensed in AL as a social worker. Anyone quoting state law may want to take these state licensing board positions into account.

I currently plan to be offering help in SC and AL as a clinical sociologist. I am a member of the national organization of clinical sociologists and I have a PhD in sociology. I am a nationally board certified expert on traumatic stress by the national board of experts in traumatic stress. That would include causes of trauma and stress, such as family relationships. That is how I currently plan to proceed.

Caring, Marti Loring, PhD

Subject: FW: Inman case
To: "mloring" <mloring@earthlink.net>

Marti,
Take a look at this letter. Spoke with Bill Godfrey. Bottom line is that he doesn't want to be involved anymore. I have some ideas on legal counsel. My position is that there is certain mitigating testimony that is under the umbrella of your "social worker" expertise. If nothing else, I believe your treatment of Denise falls under that category. I don't think your testimony in Spartanburg has "solved" the problem, but we need to talk about how you feel on this issue. Everyone is pushing to get back into court on Nov. 17th. Do you have a conflict?
Jim

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Sent: Thursday, October 23, 2008 5:32 PM
To: Judge Miller
Cc: Jim Bannister; John DeJong; Strom, Betty; sculbertson@culbertsonlaw.com
Subject: Inman case

Marcia A. Pickett
Administrative Coordinator
Solicitor Robert M. Ariail
305 East North St., Suite 325
Greenville, SC 29601
(864) 467-8282
mpickett@greenvillecounty.org

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miller.doc

Subject: RE: Re: License Issue
To: "mloring" <mloring@earthlink.net>

Marti,
I will help in whatever way I can. Right now, it looks like we have a good shot at negotiating a LWOP deal. It looks like you have let all of the attorneys you are working for know that this issue exists. If you need me to talk to them, then let me know.
Jim

----Original Message----
From: mloring [mailto:mloring@earthlink.net]
Sent: Sunday, September 14, 2008 2:11 PM
To: bill@godfreylawfirm.com
Cc: donna watts; callen@spartanburgcounty.org; JB@BabbLaw.com; Jack Howle; Jack Sinclaire; notguilty@hargray.com; brian; Jerry Word; Jim Bannister; Sackheim, Michael S.; Peter Toren; Erin Murphy; lauren Greenwald; Susan Wardell; Sara Romano; Sam Bauer; Denise deLaRue; Danny Hyatt; Cheri Hodson; Sara Romano; joan.peters@emoryhealthcare.org; dudley@ruffalolaw.com; Harrell Warren; Alan Rauber; cgrahamsc@aol.com; Kristen K. Nettles
Subject: Fwd: Re: License Issue

>To: bill@godfreylawfirm.com
>From: mloring <mloring@earthlink.net>
>Subject: Re: License Issue
>Cc: donna watts
><donnasw1963@yahoo.com>,callen@spartanburgcounty.org,jb@babblaw.com,Jac
k
>Howle <jdhowlejr@yahoo.com>,"Jack Sinclaire"
><jslawyer@bellsouth.net>,notguilty@hargray.com,"brian"
><powell@indiana.edu>,"Jerry Word" <jword@gacapdef.org>,"Jim
>Bannister" <jimb@bannisterwyatt.com>,"Sackheim, Michael S."
><msackheim@sidley.com>,"Peter Toren" <ptoren@kasowitz.com>,"Erin
>Murphy" <emurphy@nhpd.org>,"lauren Greenwald"
><lgreenwa@nhpd.org>,"Susan Wardell" <swardell@bellsouth.net>,Sara
>Romano <sara_romano@fd.org>,"Sam Bauer"
><sbauer@bauerlawfirm.com>,Denise deLaRue
><denisedelarue@yahoo.com>,"Danny Hyatt"
><dhyatt@bannisterwyatt.com>,Cheri Hodson <cheri_hodson@fd.org>,Sara
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com,"Harrell
>Warren" <hmdiff@tampabay.rr.com>,"Alan Rauber"
><arauber@mccurdycandler.com>,cgrahamsc@aol.com,"Kristen K. Nettles"
><kristen@savlaw.com>
>
>9/14/08
>

>TO: Bill Godfrey Esg. at Godfrey Law Firm, Greenville SC
>
>Hi Bill,
>
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>
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>Caring, Marti Loring, PhD

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SOLICITOR, THIRTEENTH JUDICIAL CIRCUIT

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, South Carolina 29601-2185

Robert M. Ariail
Solicitor

Telephone: (864) 467-8282
Facsimile: (864) 467-8623

October 24, 2008

The Honorable Edward W. Miller
Circuit Court
305 E. North St., Suite 219
Greenville, SC 29601

Re: State v. Jerry Inman

Dear Judge Miller:

I am in receipt of your communication that directs the restart of the Inman trial on November 17. That date is acceptable to the State and we will be prepared.

I furthermore assume that the defense will also be able to present Dr. Loring as a witness on that date as she testified on October 22 in a death penalty trial in Spartanburg. She testified as a forensic sociologist and stated that, therefore, she did not need to be licensed in this state. I assume that she could likewise qualify in Pickens County at the restart of this case.

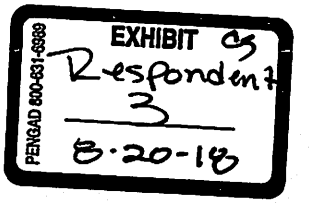
Yours very truly,

/s/ Bob

Robert M. Ariail
Solicitor, Thirteenth Judicial Circuit

RMA:mp

cc: Jim Bannister
John DeJong
Symmes Culbertson
Betty C. Strom



Cheree Aiken

From: Megan Gresham [megan@desaballard.com]
Sent: Tuesday, April 21, 2009 3:57 PM
To: Cheree Aiken
Subject: FW: Obligation regarding witness called by the Court
Attachments: Summary of Cases citing ABA Guidelines for Counsel in DP Case.pdf; ABA Guidelines for Defense Counsel in Death Penalty Cases.pdf; ABA_DP Guidelines - with commentary.pdf; Summary of Cases citing ABA Death Penalty guidelines (1989 version).pdf

I wonder if the difficulty might be in the size of the attachments...let me know if you receive this one. If you do, I have one more attachment to send you (6 mb).

Megan Gresham
Paralegal
Law Offices of Desa Ballard
226 State Street
West Columbia, South Carolina 29169
P: 803.796.9299 ext. 18
C: 803.319.2176
F: 803.796.1066
www.desaballard.com

From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Tuesday, April 21, 2009 2:54 PM
To: jbannister@bannisterwyatt.com
Cc: 'Megan Gresham'
Subject: Obligation regarding witness called by the Court

You have asked for my opinion regarding the current circumstances in which you find yourself, which I am summarizing as follows, in connection with your obligations regarding the presentation of mitigating evidence by Dr. Marti Loring when called as a witness by the Court.

The facts are summarized as follows:

- During the original sentencing phase of State v. Inman in September, 2008, the solicitor asked a series of questions of your witness, Dr. Marti Loring, which intimidated her and caused her to refuse to testify, even after she was granted immunity for her as-yet-ungiven-testimony, and even though the trial judge ruled that she had no Fifth Amendment right against self-incrimination.
- The trial judge ruled that the solicitor's conduct was improper, but denied your request for a mistrial.
- At the conclusion of the September proceedings, the trial judge indicated you could have as much time as necessary to have another social historian (replacing Dr. Loring) brought up to speed to address issues related to the defendant's background. Defense counsel is required to fully investigate and present that evidence as set forth in the ABA Guidelines for the Performance of Defense Counsel in Death Penalty Cases. See Section 10-11(f).
- You replaced Dr. Loring with a social historian from within South Carolina who, because of workload and prior commitments has not been able to adequately prepare for trial, and is now involved in another trial in Florida.
- The trial judge has required Dr. Loring to be available to testify, and is considering calling Dr. Loring as a court's witness.
- Your strategy on the defendant's behalf is that, by denying a mistrial based on the solicitor's

misconduct, you have fully preserved a reversible error that will cause the appellate court to vacate any death sentence that may be imposed, which would benefit your client, particularly with reference to the possibility of a negotiated resolution for a sentence other than death, which you are required (by the same guidelines) to do.

- The Court recessed court today, at least in part, to enable you to meet with Dr. Loring to prepare her for presentation as a Court's witness, tomorrow. It is expected that the Court will call Dr. Loring as a court's witness in an effort to rectify the prejudice that was caused by the solicitor's intimidation of Dr. Loring and the resulting necessity for retaining a new social historian. The court seems motivated by the desire to complete this sentencing proceeding, rather than permitting the defense team time to adequately prepare the successor social historian.
- If you meet with Dr. Loring and participate in the court's efforts to rehabilitate her, so as to minimize or eliminate the prejudice that was caused by the solicitor's misconduct, you will likely cause the existing reversible error in the record to be rectified, eliminating the now-preserved issue that will likely cause the appellate court to vacate any resulting death sentence.
- You are weighing your various obligations, based on ethical standards of lawyers in general and lawyers defending capital cases specifically, and anticipating that the Court may order you to provide Dr. Loring with information she has,not had for the past seven months, while she has not been the social historian of record, to erase the prejudicial effect of the solicitor's misconduct.

Having reviewed, as well as I can, the various rules, standards and guidelines, and certain cases decided in accordance with those rules, standards and guidelines, copies of which are attached to this e-mail, I believe your conundrum has to be resolved in accordance with the terms of the preamble to the Rules of Professional Conduct:

"In the nature of law practice. . . conflicting responsibilities are encountered. . . Within the framework of these Rules [of Professional Conduct], however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a clients legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system."

My advice to you is to leave the reversible issue in place; do not call Dr. Loring. If the Court calls her as a witness, preserve your objection to the Court's attempt to nullify the effect of the prejudice caused by the solicitor's misconduct. Assuming that is overruled, your examination of her should be thorough and s hould not only highlight what mitigating evidence she has gathered (which would have been your intent in the first place but for the solicitor's misconduct), but also point out that substantial developments have occurred of which Dr. Loring is unaware, such that her testimony is incomplete, stale and possibly unreliable. If the court orders you to provide Dr. Loring with the missing information, I believe you have no choice but to do so (based on existing authorities). However, you should renew your request for a continuance based on the unavailability of your present social historian (who is now your social historian of choice), the necessary time to prepare her for testifying, the court's prior agreement to provide you with the necessary time, and your inability to present a full case in mitigation at this point. You should also renew your objections to the Court's attempts to rehabilitate Dr. Loring and cure the solicitor's error.

Obviously, with more time I could give you a more thorough analysis. However, based on my experience and familiarity with the ethics obligations which you are facing, as well as my own observations of the status of the sentencing trial at this point,

Desa Ballard
Law Offices of Desa Ballard

mr. Ariail 8-9-06

Sir, I am writing you this letter concerning my case.

I would like to ask if you would be willing to allow me to enter a plea agreement?

If so, I will plead guilty to all charges against me, but only if I am assured that I will recieve the death penalty as my sentence. If I am allowed to enter this plea agreement, I will then give full details of my crime, one of which is that I knew earlier that week that whatever house, Apt, etc., I broke into, I was going to kill. It didn't matter who. There are other details you don't know.

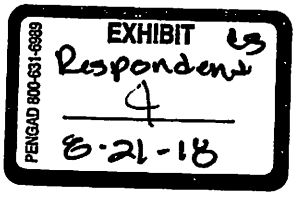
Also, After I am sentenced, and my sentence is in accordance with the plea agreement, I will give you details and locations to 5 other very serious violent crimes that are still unsolved, but only after I'm sentenced.

I know this letter is a little unorthodox, but I'm trying to put a end to this and save two families any more pain.

I appreciate your time and hope to heave your response soon. Thank you.

Respectfully

Terra Inman



Mr. Culbertson, 8-16-06

Hey, how are you doing?
I'm writing you this letter to ask If there has been any decisions yet on my case?

If not, how much longer will it be before the solicitor decides on what he's going to do?

Also, I don't know if you were told, but I sent the solicitor a letter asking him if he will accept the plea deal that we spoke of but I haven't heard anything yet.

Enclosed is a visit form. would you please send it to my parents? I am having trouble getting mail sent out
a lett
bu

ierson 8-23-06

Hi, how are you doing? Good I hope
day I recieved a response from the
licitor on the letter that I sent to
m before.

He said he had to research the
egal issues to see if we can bind the
udge to the death penalty. Why wouldn't
e be able to? I thought if the defendant
d solicitor made a plea agreement, the
udge had to honor that agreement? But
guess not.

Also, I'm sorry to keep asking you, but
nclosed is a letter to my parents. Could
you please send it to them. I will try
and make this the last time I bother
you like this. Thank You.

Sincerely
Jerry

8-27-06

There aren't any request back here so I had to use this paper.

If a defendant and solicitor are willing to make a plea agreement, and the agreement includes the death penalty, is there anyway that they can bind the judge to where he has to issue the death penalty?

Also, If a defendant goes to court and pleads guilty, and when the judge sentences him he doesn't agree with the sentence, can he immediatley right then withdraw his plea and go on to trial?

I would very much appreciate any information you can provide me on these two Questions. Thank you.

Mr: Culbertson 9-10-06

Hey, how are you doing?
Have you spoken to or heard anything from the Solicitor concerning the plea agreement I offered? Could you please get in touch with him and see what he has found out?

Also, Is it too Late to file for a fast and speedy trial? And when do we file for Motion of discovery? Please let me know.

Enclosed is a letter to my parents, could you please send it to them? Thank You.

Sincerely
Jerry Inman

Mr Culbertson, 9-24-06

Hey, how are you doing? Good I hope.

I have a favor I would like to ask of you if I may. You told me once that you kept all newspaper articles concerning my case. Is there anyway you could possibly photo copy them and send them to me? I really need to know how bad I've been made out by the media. I would very much appreciate it.

Also, the last time you were here you mentioned a second letter I supposedly wrote to the solicitor. Could you please send a copy of that letter to me because I only wrote the solicitor that one time. Thank You.

Have you recieved the stuff yet from the motion of discovery? Please let me know.

I will go now. Please respond as soon as you have time so that I will know you got this letter. Thank You.

Respectfully
Jerry Inmon

Mr. Culbertson, 10-5-06

Hey, how are you doing? Good I hope.

I am writing to ask you if you know when our next court date is? As soon as possible, on our next court date, I wish to go ahead and enter a guilty plea.

I know what you've said before about it and I know you don't agree, but this is what is best.

You told me once that no matter what, you would still be my friend. You are a good person and you came to help me when very few people ever would. You were with me at the start of all this, so I'm asking you to please be my friend and finish this with me.

Besides, regardless of what I would like to happen, I don't believe this judge will give me the death penalty. There are too many things you've told me that will dictate what his decision will be.

You have done alot for me and I will never forget your kindness, but if you don't want to enter a guilty plea for me then I'm sorry, but I will have to ask you not to be my attorney anymore and to please notify the judge of that.

I will close for now. I would very much appreciate it if you could let me know what you decide and when our next court date is. Thank You.

Respectfully,
Jerry Inman

P.S. You asked for my S.S.#. it's:
261-63-1616

Mr. Culbertson, 1-2-07

Hey, how are you doing? Good I hope.

I spoke to Mr. Dejong on Dec 22nd on the video conference, and he said him, you, and somebody else was going to come on Dec. 29th, Did something happen where you'll couldn't come? Please let me know.

Also, ~~have~~ have you heard anything about the Discovery material?

When you were here last time, I told you I would seriously consider ~~about~~ about what my decision would be. Well, I have and I still wish to plead guilty. I would very much appreciate it if you could try and get a court date as soon as possible so I can enter my plea. Thank You.

Enclosed is a letter I would like to ask if you will please send it to my parents as soon as you can. It's very important.

Well, I'll close for now. I hope to hear from you soon. Thank You.

Respectfully
Jerry

http://www.independentmail.com/and/cda/article.print/0,1983,AND_8195_4811214_ARTI... 7/6/2006

Mr. Culbertson, 1-28-07

Hey, how are you doing? I hope everything is going good for you.

Did you get an answer from Judge Few last week? I am going to try and see if I can make another call to you monday or Tuesday to see what the answer is. I know this is not want you want, but please help me to get this done as soon as possible. There is no point in this dragging on.

I would also like to ask if, when I come to court Friday, will we have a chance to talk before we go in the court room like we did last time? I would very much appreciate it.

There is also a matter I need your help with if you don't mind doing it. My mom + dad have my tax return information. Is there anyway you can give them a power of attorney for them to handle it? I need them to be able to go to H+R Block and file my taxes, recieve my check and cash my check. The reason I want them able to do it by H+R Block rapid refund is cause I am going to give them most of it, They need the money. I would very much appreciate your help in this matter.

I will go for now. I hope to talk to you on the phone, but if not, I guess I'll see you Friday. Thanks.

Respectfully,
Jerry Inman

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	C. A. NO.: 2006-GS-39-2222 2006-GS-39-2223 2006-GS-39-2224 2006-GS-39-2225
State of South Carolina,	)	
Plaintiff,	)	
v.	)	**SENTENCING ORDER**
Jerry Buck Inman,	)	
Defendant.	)	

2009 APR 22 P 6:57
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

The Pickens County Grand Jury indicted the Defendant on November 8, 2006 on charges of Murder, Burglary in the First Degree, Criminal Sexual Conduct in the First Degree, and Kidnapping. Pursuant to S.C. Code § 16-3-26(A), the State timely notified the Defendant that it intended to seek the death penalty for the murder charge on August 22, 2006. I was assigned this case by Order of the Chief Justice of the South Carolina Supreme Court dated March 13, 2007. On August 19, 2008, this court conducted a competency hearing pursuant to S.C. Code § 44-23-410 and State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), and found the Defendant competent to stand trial. This case was scheduled for a jury trial to commence on September 8, 2008. On August 19, 2008, the Defendant pled guilty to Murder, Burglary in the First Degree, Criminal Sexual Conduct in the First Degree, and Kidnapping. On September 8 - 11, 2008, this Court commenced a non-jury sentencing proceeding as a result of the guilty plea. On September 11, 2008, the Sentencing proceeding was adjourned and continued as a result of the defense witness, Dr. Marty Loring, claiming protection under the Fifth Amendment of the United States Constitution and refusing to testify after comments made by the Solicitor which the witness construed as intimidating. The hearing was resumed on April 20, 2009 and the presentation of all legal issues and testimony were concluded on April 22, 2009.

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INMON 132 G 132G 000031

EXHIBIT
Respondent
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8-21-18

PENGAD 800-631-6989

Law

S.C. Code § 16-3-20 provides, in part, that a person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years. For purposes of this statute, "life imprisonment" means until death of the offender without the possibility of parole. No person sentenced to life imprisonment pursuant to this statute is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment.

CLERK OF COURT
JASPER COUNTY, SOUTH CAROLINA
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When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court is required to conduct a separate sentencing proceeding. In such a proceeding, if a statutory aggravating circumstance is found beyond a reasonable doubt, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years. In cases like the present case, where the defendant, in the guilt phase, waives his right to a trial by jury and pleads guilty, the sentencing proceeding must also be conducted without benefit of a jury, and the sentencing decision is to be made by a judge.

In the sentencing proceeding, the judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment. The law requires the judge to consider mitigating and extenuating circumstances authorized or allowed by law, as well as certain enumerated statutory aggravating and mitigating circumstances which may be supported by the evidence, pursuant to S.C. Code § 16-3-20(C). The judge is required to examine the evidence and determine the existence of the statutory aggravating circumstance or circumstances. Unless at least one of

the statutory aggravating circumstances enumerated in this section is found beyond a reasonable doubt, the death penalty must not be imposed.

Finding and consideration of aggravating circumstances

Pursuant to S.C. Code § 16-3-20, I have carefully considered the evidence presented at the sentencing proceeding and make the following findings concerning the existence of statutory aggravating circumstances:

I find the State has proven beyond a reasonable doubt that the Defendant committed the murder for which he is charged while in the commission of the crimes of kidnapping, burglary in the first degree, and criminal sexual conduct in the first degree.

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SOUTH CAROLINA

The circumstances surrounding the murder of Tiffany Souers are savage, brutal, and unconscionable. I find that the State has proven beyond a reasonable doubt that Tiffany Souers' home was broken into in the night time by the Defendant (Burglary in the First Degree, 2006-GS-39-2222), that she was held against her will (Kidnapping, 2006-GS-39-2224), that she was the victim of forcible rape (Criminal Sexual Conduct in the First Degree, 2006-GS-39-2223), and that she was subsequently choked by the Defendant until she died (Murder, 2006-GS-39-2225). Having proven the charge of murder, accompanied by three statutory aggravating circumstances, the State is entitled to seek the death penalty for the Defendant.

Finding and consideration of mitigating circumstances

Pursuant to S.C. Code § 16-3-20, I have carefully considered the evidence presented at the sentencing proceeding and make the following findings concerning the existence of statutory mitigating circumstances:

#3

(1) The Defendant does have a significant history of prior criminal convictions involving the use of violence against another person and is therefore unable to avail himself of this mitigating factor.

(2) The murder was committed while the Defendant was under the influence of mental or emotional disturbance. It is apparent that the Defendant has and continues to suffer from several mental and emotional disturbances.

The Defendant makes no attempt to claim he was not criminally responsible for the murder of Tiffany Souers. However, there is clear evidence that the defendant suffers from numerous and long-standing mental health disorders. The Defendant's witness, Dr. David Price was qualified as an expert in the fields of Forensic Psychology, Clinical Psychology, and Neuro-Psychology. Dr. Price testified that the Defendant had been diagnosed with three Axis I Disorders: 1) Mood Disorders, consisting of Depression, Bi-Polar, Major Depression in the recurrent form, and Major Depression with Psychosis; 2) Dissociative Identity Disorder; and 3) Sexual Paraphilia. The Defendant also suffers from the Axis II disorder of Personality Disorder with Schizophrenia. Some of the effects of these diseases on the Defendant, according to this expert's testimony, were impulsivity, irritability, aggressiveness, agitation, and poor thinking, a profound impairment of ability to function in daily life, bad decisions, flat affect, slow speech, introvert behavior, not forthcoming about himself, and an inability to engage in normal heterosexual relationships. Dr. Price also describes the Defendant as a serial rapist. The Defendant has attempted to commit suicide on seven separate occasions, including cutting his wrist on two occasions, cutting his jugular vein, starvation, cutting his antecubital vein, and swallowing two six inch strands of barbed wire. Dr. Price is a nationally recognized expert on mental health malingering and

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ICKENS COUNTY
ROLINA
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#4

he opines that the Defendant is not a malingerer. The Defendant was sexually abused as a young child, and Dr. Price testified that the circumstance of this offence and several other of Mr. Inman's offences mimic the sexual abuse which he suffered as a child. Mr. Inman tries to minimize his mental illness and refuses to acknowledge the physical and sexual abuse he suffered at the hands of his parents. Mr. Inman's ability to conform his conduct to the requirements of the law is substantially impaired. On cross examination, Dr. Price testified that Mr. Inman has the ability to make choices to conform to the requirements of the law as evidenced by some of his conduct relating to other victims of his offenses who testified at this hearing. Again, I stress that the Defendant does not claim his disorders excused him from criminal responsibility for his actions, but may have contributed to them for purposes of sentencing only.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
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(3) There is no evidence the victim was a participant in the defendant's conduct or consented to the act.

(4) There is no evidence of the participation of an accomplice in this murder, and the defendant's participation was not relatively minor.

(5) There was no evidence presented that the defendant acted under duress or under the domination of another person.

(6) As stated above, the capacity of the defendant to appreciate the criminality of his conduct and to conform his conduct to the requirements of law was impaired at the time of the crime due to mental and emotional disturbances, but it did not rise to the level of excusing criminal responsibility.

(7) The Defendant was 35 years old at the time of the crime. His mental acuity is average.

#5

(8) There is no evidence the Defendant was provoked by the victim into committing the murder.

(9) As stated above, the Defendant was over the age of eighteen at the time of the crime.

(10) The Defendant showed no signs of mental retardation at the time of the crime. "Mental retardation" means significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

Finding and consideration of non-statutory mitigating circumstances

Turning to non-statutory mitigation, I have carefully considered all the evidence. The Defendant, through excellent and well prepared counsel, presented compelling mitigation evidence.

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DICKENS COUNTY
CAROLINA

There is evidence in the record that the Defendant has suffered a great amount of trauma in his life. He was exposed to violence and sexual abuse at an early age. He was exposed to violence at an early age by witnessing the sexual abuse of his sister, and experiencing physical and sexual abuse from both his biological father and from his older step-brother. He was sexualized at a young age, and has had a history of deviant sexual activity. He has a substance abuse problem that has an apparent genetic component and is also exacerbated by his underlying mental disorders. The defendant's mental disorders are documented above.

The Defendant admitted his guilt to the crime early in the criminal investigation. He made numerous confessions to law enforcement beginning on the day of his arrest, June 26, 2006, in which he confessed to murdering Tiffany Souers.

#6

The Defendant pled guilty and has acknowledged the brutality of his conduct and also acknowledges that he cannot be rehabilitated. As Dr. Price has described Mr. Inman: he grew up in prison; he is a person with a bad genetic loading of inherited mental disorders whose formative environment did him no favors; he was described as a lost soul who will remain lost. The Court views Mr. Inman as a tortured soul, whose inner demons will never leave him.

I have considerable sympathy for Mr. Inman and the lamentable circumstances of his early life; a person with no opportunity to escape his tragic circumstances. However, while his background lends itself to an understanding of who he has become, it does not excuse his longstanding pattern of violence and his sexually predatory conduct.

As stated above, the State proved beyond a reasonable doubt the existence of more than one aggravating circumstance accompanying the commission of the murder of Tiffany Souers. This crime was horrific and was perpetrated upon one of society's most valuable citizens – a young woman, full of life, energy and vitality, love for her family, with a passion for life and for people, whose own life was marked by her good deeds and generosity to others.

Jerry Buck Inman is a self-described "animal", who has acknowledged that he cannot be rehabilitated. The concept of a fair sentence includes consideration of many factors, such as the seriousness of the crime, the culpability of the offender, characteristics of the offender, need for protection of society, need for punishment and accountability. Determining the proper sentence in a case in which the death penalty is sought is especially painful and agonizing. The death penalty is the ultimate sentence which is to be imposed only in the worst cases and only after serious, deliberate and careful consideration.

FILED
2011 APR 12 P 6:58
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Regrettably, Jerry Buck Inman falls within a small group of deviant predators who exhibit in their conduct a callous disregard for society and the rights and safety of others. While this has been one of the hardest decisions of my life, I am firmly convinced that the murder and rape of Tiffany Souers and the characteristics of Jerry Buck Inman warrant the penalty of death.

I have carefully considered all relevant facts and circumstances, including the existence of statutory aggravating circumstances, as well as statutory and non-statutory mitigating circumstances. My verdict is not the result of prejudice, passion or any other arbitrary circumstance.

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PICKENS COUNTY
CAROLINA

It is therefore the judgment and sentence of this court that the Defendant Jerry Buck Inman be remanded to the South Carolina Department of Corrections, henceforth to be kept in close and safe confinement until the 27th day of July, 2009, upon which day between the hours of six o'clock p.m. and six o'clock a.m. on July 28, 2009, or upon an order of execution issued by the South Carolina Supreme Court, the Defendant Jerry Buck Inman shall suffer death by electrocution or by lethal injection in the manner provided by law.

May God have mercy on your soul.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That for Indictment 2006-GS-39-2225, Murder of Tiffany Souers, you, Jerry Buck Inman, are sentenced to death; and,
2. That for Indictment 2006-GS-39-2222, Burglary in the First Degree, you, Jerry Buck Inman, are committed to the Department of Corrections for a period of thirty years; to run consecutive to the sentence imposed above; and,
3. That for Indictment 2006-GS-39-2223, Criminal Sexual Conduct in the First Degree, you, Jerry Buck Inman, are committed to the Department of Corrections for a period of thirty years; to run consecutive to the sentence imposed above.

#8

4. That for Indictment 2006-GS-39-2224, Kidnapping, pursuant to S.C. Code § 16-3-910 and because you have been sentenced for Murder, this Court may not impose a sentence for the crime of kidnapping.

IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge
13th Judicial Circuit

April 22, 2009
Pickens, South Carolina

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2009 APR 22 P 6:58

334 Ga.App. 262
Court of Appeals of Georgia.

BROWER
v.
The STATE.

No. A15A1314.
|
Oct. 27, 2015.

Synopsis

Background: Defendant was convicted in the Superior Court, Bulloch County, Peed, J., of kidnapping, possessing a hoax device, terroristic threats, and possession of a knife during the commission of a felony. Defendant appealed.

[Holding:] The Court of Appeals, Barnes, P.J., held that expert testimony regarding defendant's post-traumatic stress disorder (PTSD) diagnosis was not relevant to the issue of her intent to commit crimes.

Affirmed.

West Headnotes (2)

[1] **Criminal Law**
⇦ Mental condition or capacity

Expert testimony regarding defendant's post-traumatic stress disorder (PTSD) diagnosis was not relevant to the issue of her intent to commit crimes, in prosecution charging her with kidnapping, possessing a hoax device, terroristic threats, and possession of a knife during the commission of a felony, where defendant did not raise defenses of insanity, delusional compulsion, or incompetency to stand trial, and defendant did not enter a plea of guilty but mentally ill or guilty but mentally retarded. West's Ga.Code Ann. §§ 16–3–2, 16–3–3, 17–7–131.

Cases that cite this headnote

[2] **Criminal Law**
⇦ Matters involving scientific or other special knowledge in general

Expert opinion testimony is admissible where the conclusion of the expert is one which jurors would not ordinarily be able to draw for themselves; i.e., the conclusion is beyond the ken of the average layman.

Cases that cite this headnote

Attorneys and Law Firms

**33 Jimmonique R.S. Rodgers, Atlanta, Kevin Alan Anderson, for Appellant.

Richard Ashley Mallard, Dist. Atty., Keith A. McIntyre, Asst. Dist. Atty., for Appellee.

Opinion

BARNES, Presiding Judge.

*262 The appellant, Connie Brower, was convicted of four counts of kidnapping, two counts of possessing a hoax device, two counts of terroristic threats and possession of a knife during the commission of a felony, following which she filed a motion for new trial, which she later amended. The trial court denied her motion and she now appeals and contends that she was prevented from fully presenting a defense because the trial court excluded the testimony of her expert witness about Brower's post-traumatic stress disorder ("PTSD").

On appeal from a criminal conviction, we view the evidence in the light most favorable to support the jury's verdict, and the appellant no longer enjoys a presumption of innocence. *Gresham v. State,* 246 Ga.App. 705, 541 S.E.2d 679 (2000). The facts, so viewed and as stated in the appeal of the appellant's husband and co-defendant, Robbie Brower, *Brower v. State,* 298 Ga.App. 699, 680 S.E.2d 859 (2009), demonstrate:

> [Robbie] Brower and [the appellant] entered the law office of the lawyer who had represented him in a previous criminal case and who [Robbie] Brower claims

was guilty of "gross misfeasance" in handling his case. They first encountered three female members of the office staff.

The receptionist was standing in the doorway of the legal assistant's office when she heard the office door open, but before she could turn to see who it was, someone grabbed her jacket, asked where the attorney was, and when she told *263 him, pushed her to the very last office where the attorney was working. When they got to the office, [Robbie Brower] had her sit in a chair inside the office door. At that point [Robbie Brower] complained that the attorney had ruined his life and he had waited 11 years for revenge. The attorney offered to pay [Robbie] Brower, but [Robbie] Brower said no, that he wanted revenge. [Robbie] Brower ordered the attorney to go stand in a corner, and when the attorney kept turning around, [he] told [the appellant] to put duct tape over the attorney's mouth, and she also taped his hands.

The legal assistant heard someone tell the receptionist to go to the back, and then [the appellant] entered the legal assistant's office and told her to go to the back of the office. When she did not comply immediately, [the appellant] grabbed the legal assistant by the arm "real hard," and said, "You better go to the back before I push you." [The appellant] had a wrapped-up package with her that the legal assistant assumed was a gun. The legal assistant then started walking to the back of the office. After [the appellant] locked the door to the office, she pushed open the door to another office and "got" another of the office staff. [The appellant] "caught" this second woman by the arm and told her to come with [her]; [the appellant] pulled and pushed her down the hall. When they arrived in the attorney's private office, they found the receptionist and the attorney with [Robbie Brower]. [He] told them to sit down. What appeared to be a bomb was on the attorney's desk.

[Robbie] Brower and [the appellant] were dressed in what appeared to be camouflage jackets and pants. The attorney attempted to find out what [Robbie] Brower **34 wanted and negotiate with him, but [he] made [the attorney] stand in a corner facing the wall. [Robbie] Brower told the office staff that he did not want them, he would not hurt them, he wanted the attorney, and he would release them in about five minutes. The women did not feel free to leave and the legal assistant did not believe that [Robbie] Brower would not hurt her; she was held against her will and she did not go to the back office of her own volition.

After holding the women for ten to thirty minutes, depending upon the staff's estimates, [Robbie] Brower opened the back door of the office and, after allowing the women to get their purses, released the women. He told them before they were released that he had a bomb and he wanted the women to tell everyone that they were armed and dangerous *264 and meant business. As they were leaving, [the appellant] asked [Robbie] Brower if he wanted to hold one of them hostage, but he said no. Two of the women went to a nearby office and called 911.

...

After this, [Robbie] Brower taped the attorney to a rolling chair and rolled him from the back to the front of the office. [The couple] and the attorney remained in the front office for most of the remainder of the day while the Browers watched the TV reports about the hostage situation, threatened revenge on the attorney, negotiated with the authorities, and sent out demands.

....

After conversations with the attorney and some of the official negotiators, the attorney convinced [Robbie] Brower to surrender. Finally, after many hours, [the couple] attempted to come out; they were directed to get on their knees, and then [Robbie] Brower became upset and, threatening to break the attorney's neck, forced him back in the building and again locked him in a room.

The next morning ... [the couple] decided to attempt to surrender again. And, this time they were able to do so successfully.

(Footnote omitted.) Id. at 699–701, 680 S.E.2d 859.

Before trial, the State filed a motion in limine to exclude testimony from the appellant's expert witness about an affirmative defense of justification, specifically claiming battered woman's syndrome and that the appellant suffered from PTSD. At the pre-trial hearing, the appellant abandoned the battered woman's syndrome defense, but argued that she was justified in committing the crimes because she suffered from PTSD which negated her intent to commit the charged crimes, essentially

EXHIBIT 05
Respondent
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8-21-18
PENGAD 800-631-6989

asserting a diminished mental capacity defense. The trial court reserved ruling on the State's motion in limine at that time.

During trial, outside the presence of the jury, the appellant proffered the testimony of her expert, Dr. Marti Loring, a PTSD specialist at the Center for Mental Health and Human Development. Dr. Loring explained that PTSD is diagnosed using four tools—the trauma symptom checklist, the clinician-administered PTSD scale, the trauma belief inventory, and the Horowitz impact of events scale. She further explained that the indicators of PTSD are often flashbacks to the traumatic events, trouble concentrating, hyper-vigilance, depression, hopelessness, and desperation. Dr. Loring *265 recalled that she had met with the appellant on three different occasions for approximately 20 hours, and after interviewing members of her family and her former therapist, diagnosed the appellant with PTSD.[1] She attributed the PTSD to several traumatic events in the appellant's life, including her father's desertion of the family when she was a child, sexual abuse by her stepfather, exacerbated by the appellant's mother being forced to watch, the verbal and physical abuse of her first husband, and his eventual suicide in 1999 while they were in bed together.

Dr. Loring explained that the PTSD was relevant to the appellant's criminal case because the appellant believed that Robbie Brower was going "into a situation where he was going to die," and that because she had lost one husband in traumatic circumstances, the appellant would act, given a traumatic trigger, to keep her current husband alive. Dr. Loring further offered that upon a triggering event, PTSD sometimes impairs judgment, **35 and that because of her PTSD, the appellant "felt like she had no other alternative" but to help Robbie Brower commit the crimes at issue.

The trial court granted the State's motion in limine to exclude the expert testimony, after concluding, among other things, that the appellant had testified to many of the same facts, Dr. Loring's testimony would invade the province of the jury, the expert testimony would provide a "cloak of validation" to the appellant's testimony, and also that, contrary to the appellant's assertion, neither the affirmative defense of justification nor of coercion applied to the facts of the case.

[1] On appeal, the appellant contends that her convictions must be set aside because she was denied the right to present a defense when the trial court refused to allow her expert to testify about her PTSD diagnosis. The appellant does not assert that it was being used as an affirmative defense, but rather that PTSD was relevant to supply an interpretation of the facts outside of the ken of the average layman, specifically the impact of PTSD on her intent to commit the crimes.

[2] "Expert opinion testimony ... is admissible where the conclusion of the expert is one which jurors would not ordinarily be able to draw for themselves; i.e., the conclusion is beyond the ken of the average layman." *Smith v. State,* 247 Ga. 612, 619, 277 S.E.2d 678 (1981). The appellant contends that the excluded testimony was relevant to her only defense, which appears to be that she could not form the *266 requisite intent to commit the crimes charged because she suffered from PTSD.[2]

> Evidence of a criminal defendant's mental disability may be presented in support of a defense of insanity or delusional compulsion (see OCGA §§ 16–3–2 and 16–3–3); a claim of incompetency to stand trial (see OCGA § 17–7–130); or, since such pleas were authorized, a plea of guilty but mentally ill or guilty but mentally retarded (see OCGA § 17–7–131)—none of which Appellant raised in this case. For more than 150 years, however, [our Courts have] consistently upheld the exclusion of evidence of a defendant's diminished mental condition when offered to support other defenses or to negate the intent element of a crime. See, e.g., *State v. Abernathy,* 289 Ga. 603, 607–608, 715 S.E.2d 48 (2011) (" '[M]ental abnormality, unless it amounts to insanity, is not a defense to a crime.' ") (quoting *Wallace v. State,* 248 Ga. 255, 262, 282 S.E.2d 325 (1981)); *Paul v. State,* 274 Ga. 601, 603, 555 S.E.2d 716 (2001) (rejecting the defendant's argument that "he was entitled to introduce expert evidence of his mental impairment tending to show his lack of intent to kill," because "the expert evidence was irrelevant to the state of mind necessary to determine guilt in light of the defendant's refusal to assert an insanity defense or that he was mentally ill at the time of the conduct in question")[.]
> (Footnote omitted.) *Thompson v. State,* 295 Ga. 96, 98–99(2), 757 S.E.2d 846 (2014). Moreover,
>
> > [i]t should be noted that Georgia takes a more restrictive

> position on this issue than many other jurisdictions, where the admission of evidence relating to a defendant's deficient mental condition to support defenses other than those based on diminished mental capacity or to negate a required element of a crime has been authorized by statute or judicial decision in at least some circumstances. Georgia, however, is not such a jurisdiction, and if the law established by our longstanding precedent is to change, it would be better *267 done as a matter of public policy legislated by the General Assembly.

(Citation omitted.) Id. at 100(2), 757 S.E.2d 846. Under these circumstances the trial court did not err in excluding the expert's testimony regarding PTSD. Accord *Thompson,* 295 Ga. at 98–99(2), 757 S.E.2d 846 (trial court did not err in excluding expert testimony that appellant has an IQ of 67, which he asserted was relevant to his defense that the shooting was accidental because his mental **36 disability prevented him from understanding how to use the crossbow properly.)

Judgment affirmed.

RAY and McMILLIAN, JJ., concur.

All Citations

334 Ga.App. 262, 779 S.E.2d 32

Footnotes

1 The appellant was apparently diagnosed with PTSD in 1999 after her first husband's suicide.

2 "[I]t has not yet been determined whether post traumatic stress disorder ... [is an] admissible scientific principle[ ] in Georgia." *Prickett v. State,* 220 Ga.App. 244, 247(3), 469 S.E.2d 371 (1996), overruled in part on other grounds, *State v. Belt,* 269 Ga. 763, 764, n. 1, 505 S.E.2d 1 (1998). See *Carter v. Glenn,* 243 Ga.App. 544, 549 n. 2, 533 S.E.2d 109 (2000).

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STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

COURT OF GENERAL SESSIONS
2005-GS-19-273
2005-GS-19-457

STATE OF SOUTH CAROLINA)
vs.)
STEVEN LOUIS BARNES,)
DEFENDANT)

TRANSCRIPT OF RECORD
VOLUME 8

November 16, 2010
Edgefield, South Carolina

B E F O R E:

THE HONORABLE R. KNOX MCMAHON, JUDGE.

A P P E A R A N C E S:

DONALD V. MYERS, SOLICITOR
ERVIN J. MAYE, ASSISTANT SOLICITOR
H. FRANKLIN YOUNG, III, ASSISTANT SOLICITOR
Attorneys for the State

ROBERT J. HARTE, ESQ.
DAVID B. TARR, ESQ.
Attorneys for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

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DR. DAVID PRICE

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EXHIBITS

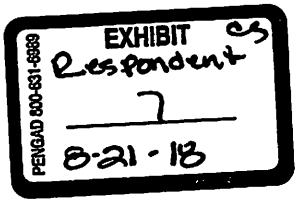
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sought and you testified, how many times did you testify for the defendant in those cases?

A In all cases when I do mitigation, I'm usually asked to tell about the life of the defendant.

Q And are you the same lady in the death penalty case in Greenville last year that you wouldn't testify, that they didn't let you testify? Is that the same one, Jerry Buck Inman?

A I chose not to testify until the -- some issues and complications that came up --



Q You weren't licensed in South Carolina?

A Could I finish?

Q Was that -- I'm sorry. Go ahead.

A I chose not to testify until some complicated issues were settled. And then when the South Carolina Licensing Board wrote me a letter saying I was freely welcomed to testify, go right ahead, I was so glad to testify at that time.

MR. TARR: I want to object on relevancy. He has stipulated that she's an expert. I don't know why --

THE COURT: Well, you objected --

MR. TARR: He had a right to voir dire.

THE COURT: You objected after the question was asked and answered. What do you want me to do?

MR. TARR: I don't want him to ask any more

questions along those lines.

THE COURT: All right.

MR. MYERS: I won't ask her any more questions. Thank you, ma'am.

THE COURT: All right. Thank you, Mr. Tarr. Thank you, Solicitor. You may ask your next question.

MR. MYERS: I don't want to ask any more questions.

THE COURT: Redirect, Mr. Tarr?

MR. TARR: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. TARR:

Q Dr. Loring, a lot's been made about this chart, or these charts. Let me ask you about this. On Defendant's Exhibit 3, 1980 to 1995, and you have "Witnessed stepfather, Joe Harris, beat, rape, hit and shoot at his mother."

Now, you didn't mean that for every second of every day for every year for 15 years that he witnessed that, did you?

A I did not mean that, no, sir.

Q No. And just like that when you say, "Exhibited aggressiveness while being incarcerated between 1997 and 2010," you didn't mean --

JERRY BUCK INMAN:

This is in regard to your post-conviction relief action;

You have submitted an application that seeks to undo your guilty plea and sentence,

We have a few questions for you

Do you recall your guilty plea before Judge Miller?

During the plea proceedings – Judge Miller explained by entering a guilty plea, you would have Judge Miller sentence you; Do you recall that?

Did you understand that if you entered a plea, Judge Miller would sentence you?

Did you understand that meant Judge Miller would determine the appropriate sentence based on what he heard at the sentencing hearing?

Did you understand that you would not have a jury determine your sentence?

Did you decide to plead guilty knowing you would not be sentenced by a jury?

So you understood that when you chose to plead, you were choosing the judge?

You were giving up the right to a trial by jury?

You would not be sentenced by a jury?

Why did you want the judge to sentence you?

Were you given the opportunity to choose a jury trial?

Do you recall Judge Miller said you could choose a jury trial?

Did you understand a jury could be selected and that jury would determine your guilt and then determine your sentence?

EXHIBIT 03
Respondent
1074 B
8-23-12

Did you understand that you could still tell a jury that you are guilty and have the jury sentence you?

Did you understand you could tell them how bad you felt about your crime; express your remorse, directly to the jury?

Did you understand that the statute in South Carolina would not allow you to plead guilty before the judge, but have a jury sentence you?

Did you understand that at the time of your plea.

Did you ever change your mind about your decision to plead guilty before Judge Miller?

Did you ever instruct counsel to withdraw your plea?

Did you want to plead guilty?

Did you want counsel to present mitigation in hope for a life sentence?

Do you recall writing a letter to Mr. Bannister indicating you did not want mitigation presented?

Why did you not want mitigation to be presented?

Did you instruct the defense team to not present testimony that put your mother in a negative light for her treatment of you?

Why did you do that?

Why did you restrict the testimony of your preacher?

Why did you want to limit mitigation evidence?

Do you want a new proceeding?

Do you recall Dr. Loring?

Do you recall telling Dr. Loring not to say things that would reflect negatively on your mother?

We are informed Dr. Loring is going to testify that she had information that your mother mistreated you – that she tried to kill you, harm you physically – do you want an opportunity for that information to be presented

Do you stand by your decision to plead guilty.

Do you stand by your decision to be sentenced by Judge Miller?

Macaulay, Alexander S.

From: Macaulay, Alexander S.
Sent: Monday, August 13, 2018 12:57 PM
To: 'Melody Brown'
Subject: RE: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Ladies and Gentlemen, I will be out of my office the remainder of the week for our Judicial Conference. The best way to contact me would be my cell 864-710-9350 – if I can remember to turn it on. ASM

From: Melody Brown [mailto:MBrown@scag.gov]
Sent: Monday, August 13, 2018 12:25 PM
To: Macaulay, Alexander S. <AMacaulayJ@sccourts.org>; Charles Grose <charles@groselawfirm.com>; Sherrie Butterbaugh <SButterbaugh@scag.gov>; Diana Holt <DianaHolt@dianaholtllc.com>
Cc: Barton Vincent (C028988) <Vincent.Barton@doc.sc.gov>; Dayne Haile <haile.dayne@doc.sc.gov>; Christina Bigelow (C057846) <Bigelow.Christina@doc.sc.gov> (Bigelow.Christina@doc.sc.gov) <Bigelow.Christina@doc.sc.gov>
Subject: RE: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Dear Counsel:

Attached is the response to the motion to quash the transportation request. The original is being mailed today for filing, but I am sending this scanned courtesy copy for quicker review in case a status conference is ultimately still requested. Sherrie and I will be available at your convenience to freely discuss any aspect of the position to resolve this as best we can. If after review you still believe a status conference is necessary, we will make ourselves available at your and the Court's convenience. Thank you.

As noted in the address, I am also providing a copy to Judge Macaulay.

Please note that I confirmed Friday that the requested transportation is still scheduled.

Sincerely,
Melody

Melody J. Brown
Senior Assistant Deputy Attorney General
Capital and Collateral Litigation Section
Office of the Attorney General, State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549
P 803-734-6305
F 803-734-4035
mbrown@scag.gov

From: Macaulay, Alexander S. [mailto:AMacaulayJ@sccourts.org]
Sent: Thursday, August 09, 2018 4:27 PM
To: Charles Grose; Sherrie Butterbaugh; Diana Holt

COURT'S EXHIBIT NO. 1 IDENTIFICATION/EVIDENCE DKT.# 2012-918 DATE 10-30-18
PENGAD 800-631-6989

Cc: Melody Brown; Barton Vincent (C028988); Dayne Haile
Subject: RE: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Ladies and Gentlemen, if there is anything the Court might do to facilitate matters, to include a status conference call, please do not hesitate to advise me after your own consultation. ASM

From: Charles Grose [mailto:charles@groselawfirm.com]
Sent: Monday, August 6, 2018 5:28 PM
To: Sherrie Butterbaugh <SButterbaugh@scag.gov>; Diana Holt <DianaHolt@dianaholtllc.com>; Macaulay, Alexander S. <AMacaulayJ@sccourts.org>
Cc: Melody Brown <MBrown@scag.gov>; Barton Vincent (C028988) <Vincent.Barton@doc.sc.gov>; Dayne Haile <haile.dayne@doc.sc.gov>
Subject: Re: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Dear Judge Macaulay,

Please see the attached motion. Hard copies will be mailed tomorrow. Because of the nature of the motion, I am copying General Counsel for the Department of Corrections.

Thank you for your attention to this matter. Please let us know if you have any questions or require additional information.

Best,
Charles

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
Phone: 864-538-4466
Fax: 864-538-4405
Web: GroseLawFirm.com
Email: charles@groselawfirm.com

From: Sherrie Butterbaugh <SButterbaugh@scag.gov>
Date: Thursday, August 2, 2018 at 12:28 PM
To: Diana Holt <DianaHolt@dianaholtllc.com>, "AMacaulayJ@sccourts.org" <AMacaulayJ@sccourts.org>
Cc: Charles Grose <charles@groselawfirm.com>, Melody Brown <MBrown@scag.gov>
Subject: RE: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Dear Judge Macaulay:

Please be advised it is anticipated Mr. Inmon will likely be called as a witness and will not be merely observing the proceedings. As you will recall, Mr. Inmon pled guilty, accordingly, his knowledge and decisions are key. A transportation order is not necessary, but if you would like to hear any additional comments or concerns, such as those provided by opposing counsel in the below email, we are available for a status conference at your convenience.

Thank you,
Melody Brown and Sherrie Butterbaugh

Sherrie Butterbaugh
Assistant Attorney General
SC Attorney General's Office
Rembert C. Dennis Bldg.
1000 Assembly St.
Columbia, SC 29201
Office: (803) 734.0128

From: Diana Holt [mailto:DianaHolt@dianaholtllc.com]
Sent: Thursday, August 02, 2018 12:11 PM
To: Sherrie Butterbaugh; AMacaulayJ@sccourts.org
Cc: charles@groselawfirm.com; Melody Brown
Subject: RE: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Mr. Inmon is waiving his attendance for his PCR hearing. He has not attended any of the hearings thus far. He doesn't ***need*** a medical reason not to attend. His last transport July 2nd resulted in him being kept in full chains, including the black box, for over ten straight hours. He was not provided a lunch. When he needed to visit the gentleman's room, he was accompanied by COs who watch the entire time. This all is humiliating and painful. He has drafted his own statement about his reasons. I will provide it to all tomorrow afternoon. Respectfully, SCDC doesn't particularly know anything about Mr. Inmon's medical conditions, which is part of the reason they are in the middle of massive litigation concerning all death sentenced human beings in SC.

We would ask you not to request his transport. Short of your agreement not to transport him, we will file a motion for the Court's consideration concerning a no-transport order.

Many thanks.

Best~ dh

Diana Holt
DianaHolt@DianaHoltLLC.com
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803.782.1663 (Office)
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From: Sherrie Butterbaugh <SButterbaugh@scag.gov>
Sent: Thursday, August 2, 2018 11:53 AM
To: AMacaulayJ@sccourts.org

Cc: Diana Holt <DianaHolt@dianaholtllc.com>; charles@groselawfirm.com; Melody Brown <MBrown@scag.gov>
Subject: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Dear Judge Macaulay,

Good morning. SCDC has confirmed there are no medical or security reasons why Mr. Inmon would be unable to travel to Pickens County for his upcoming PCR hearing scheduled to begin August 20, 2018. We recall there were expressed medical concerns which may have prevented transport prior to the previously scheduled hearing in November 2016. Accordingly, respondent has prepared a letter of transport and will send it to SCDC today. We will also copy you and opposing counsel on the letter. Please do not hesitate to contact me if you have any questions.

Thank you,
Sherrie Butterbaugh

Sherrie Butterbaugh
Assistant Attorney General
SC Attorney General's Office
Rembert C. Dennis Bldg.
1000 Assembly St.
Columbia, SC 29201
Office: (803) 734.0128

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Pickens County, South Carolina, on the 20th, 21st, 22nd and 23rd day of August, 2018.

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

November 21, 2018

_____

Cheryl A. Smith, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF PICKENS	)	
Jerry Buck Inman, #5226,	)	
	)	**C/A No.: 2012-CP-39-918**
Applicant,	)	**(Capital PCR Action)**
v.	)	
	)	**MOTION TO UNSEAL AND DISCLOSE**
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, by and through the undersigned attorneys, hereby moves this Honorable Court to issue an Order unsealing *ex parte* funding motions, requests, and orders issued until this date; ordering disclosure to Respondent the content of all *ex parte* discussions between Applicant [or his attorneys] and the Court; and, to provide Respondent with notice and an opportunity to be present and heard at any future *ex parte* funding requests or hearings. The basis of this Motion is the South Carolina Supreme Court's decision in Thames v. State, 325 S.C. 9, 478 S.E.2d 682 (1996).

This is a PCR action. In Thames v. State, *supra*, the South Carolina Supreme Court stated as follows:

> FN1. When a defendant requests expert services for a criminal trial, the request is determined by the judge in ex parte proceedings. S.C. Code Ann. Section 16-3-26(C) and Section 17-3-50(B)(Supp. 1995). Ex parte Lexington County, 314 S.C. 220, 442 S.E.2d 589 (1994). These statutory provisions are, however, inapplicable to post-conviction relief proceedings.
>
> Section 16-3-26(C), which is limited to capital cases, applies to "the representation of the defendant whether in connection with issues relating to guilt or sentence." Therefore, this provision applies only to the capital trial itself and not to post-conviction relief proceedings. While Section 17-3-50(A) mentions that the same hourly rate for appointed counsel shall apply to post-conviction proceedings, the use of the word, "defendant" throughout Section 17-3-50(B)

> indicates that it applies only to the criminal trial itself and not to post-conviction relief actions. Accordingly, the post-conviction relief judge in this case properly conducted a hearing on the motion at which counsel for the State was allowed to fully participate.

Thames v. State, 325 S.C. 9, 11, 478 S.E.2d 682, 682 n. 1 (1996). (Attachment 1). Subsequently, the South Carolina Supreme Court addressed a similar argument in a capital PCR case, State v. Stanko, Appellate Case No. 1015-000212 (Filed February 25, 2015) (Attachment 2). There, the Supreme Court noted in an unpublished Order, that "the issue of *ex parte* proceedings in PCR matters, which is at the heart of the petition currently before this Court, was addressed in Thames v. State, 325 S.C. 9, 478 S.E.2d 682 (1986) and **such proceedings were found to be improper**." State v. Stanko, Appellate Case No. 1015-000212 (Filed February 25, 2015) (emphasis added) (attached). The Supreme Court denied the petition and the State's request before it [the Supreme Court] and remanded the matter to the Circuit Court where the State had *a motion to unseal ex parte funding requests and orders* pending before the Circuit Court stating: "The State currently has such a motion pending before the circuit court, where it can be ably addressed." State v. Stanko, Appellate Case No. 1015-000212 (Filed February 25, 2015) (emphasis added), n. 1 (attached). The entire Court then noted subsequently, in the above quoted footnote that such *ex parte* proceedings in a PCR proceeding were improper citing Thames v. State, *supra*. State v. Stanko, Appellate Case No. 1015-000212 (Filed February 25, 2015) n. 2 (attached). As a result, it makes no difference whether this is a capital PCR or non-capital PCR action; *ex parte* funding requests are improper in a PCR action.

As a result, Respondent is entitled to an Order unsealing all *ex parte* funding requests, motions, or orders; ordering disclosure of the content of all prior communications between Applicant [or his PCR attorneys] and the Court; and directing Applicant and his attorneys to

provide Respondent with notice and an opportunity to be heard at any such future hearings.

RESPONDENT SO MOVES.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General

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BY: _____
ANTHONY MABRY
ATTORNEYS FOR RESPONDENTS

September 10, 2015

ATTACHMENT 1

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an election contest, irregularities that do not affect the result of the election will not be used to overturn it. *Greene v. S.C. Election Comm'n*, 314 S.C. 449, 445 S.E.2d 451 (1994). There is no evidence that had the ballot format been as Burgess wished, the result of the election would have been different. He admitted at the hearing before the Commission that he was unaware of any voter who would have voted differently. Accordingly, Burgess has failed to show reversible error.

Burgess's remaining arguments are without merit and are affirmed under Rule 220(b), SCACR.

AFFIRMED.

FINNEY, C.J., and TOAL, WALLER and BURNETT, JJ., concur.

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478 S.E.2d 682

Ruth Ann THAMES, Petitioner,

v.

STATE of South Carolina, Respondent.

No. 24535.

Supreme Court of South Carolina.

Submitted May 15, 1996.

Decided Dec. 2, 1996.

Postconviction relief petitioner filed motion seeking authorization for payment of psychiatrist fees to be used in support of her claim of mental incompetency at time of her guilty plea. The Circuit Court, Oconee County, Gerald C. Smoak, J., denied motion. On writ of certiorari, the Supreme Court held that postconviction relief judge acted within his discretion in denying petitioner's motion, given that petitioner had already been examined by two experts at time of her guilty plea.

Affirmed.

1. Costs ⇐302.4

Trial court acted within its discretion in denying postconviction relief petitioner's motion for payment of psychiatrist fees, which were to be used in support of petitioner's claim that she was mentally incompetent at time of her guilty plea, given that petitioner had already been examined by two experts at time of her plea; mere possibility that petitioner could find expert somewhere to support her claim of incompetency was insufficient to warrant authorization of funds to pay expert.

2. Costs ⇐302.2(2)

Postconviction relief judge properly conducted hearing on petitioner's motion for payment of expert witness fees at which counsel for state was allowed to fully participate, rather than holding ex parte hearing. Code 1976, §§ 16–3–26(C), 17–3–50(B).

3. Costs ⇐302.2(2)

When defendant requests expert services for criminal trial, request is determined by judge in ex parte proceedings. Code 1976, §§ 16–3–26(C), 17–3–50(B).

Assistant Appellate Defender Robert M. Dudek, of S.C. Office of Appellate Defense, Columbia, for petitioner.

Attorney General Charles Molony Condon, Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Teresa Nesbitt Cosby, and Assistant Attorney General Allen Bullard, Columbia, for respondent.

PER CURIAM:

This matter is pending before the Court on a petition for a writ of certiorari seeking review of an order denying petitioner's application for post-conviction relief. We deny the petition as to Question 2, grant the petition as to Question 1, dispense with further briefing, and affirm the order of the post-conviction relief judge.

[1] Petitioner filed a motion seeking authorization for the payment of expert witness fees in connection with her post-

conviction relief action. Sh
relief judge erred in den

[2, 3] Petitioner had bee
prior to her guilty plea, on
counsel. Both had opined t
time the crime was committ
the post-conviction relief he
that petitioner sought to be
to support her claim of ment
guilty plea. Petitioner con
who examined her prior to
time with her to adequately
post-conviction relief judge
been examined by two expe
there was no need to have a

In our opinion, the post-cc
his discretion in denying
Matthews, 291 S.C. 339, 353
been examined by two exp
possibility that petitioner c
support her claim of incom
insufficient to warrant the
expert. *See Primeaux v. L*
(in habeas proceeding, no
who would testify that pre
inadequate).

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1. When a defendant requests
request is determined by the j
Ann. § 16–3–26(C) and § 17–3
County, 314 S.C. 220, 442 S.E
sions are, however, inapplicab

Section 16–3–26(C), which is
representation of the defenda
relating to guilt or sentence."
the capital trial itself and no
While § 17–3–50(A) mentions
counsel shall apply to post-con
"defendant" throughout § 17–
the criminal trial itself and n
cordingly, the post-conviction
ed a hearing on the motion at
to fully participate.

conviction relief action. She asserts that the post-conviction relief judge erred in denying her motion. We disagree.

[2, 3] Petitioner had been examined by two psychiatrists prior to her guilty plea, one of whom was retained by trial counsel. Both had opined that she was competent both at the time the crime was committed and at the time of her plea. At the post-conviction relief hearing, counsel for petitioner stated that petitioner sought to be examined by a third psychiatrist to support her claim of mental incompetency at the time of her guilty plea. Petitioner contended that the two psychiatrists who examined her prior to her plea had not spent sufficient time with her to adequately evaluate her mental state. The post-conviction relief judge ruled that since petitioner had been examined by two experts at the time of her guilty plea there was no need to have a third examination.[1]

In our opinion, the post-conviction relief judge did not abuse his discretion in denying petitioner's motion. *Cf. State v. Matthews*, 291 S.C. 339, 353 S.E.2d 444 (1986). Petitioner had been examined by two experts prior to trial and the mere possibility that petitioner could find an expert somewhere to support her claim of incompetency at the time of her plea is insufficient to warrant the authorization of funds to pay an expert. *See Primeaux v. Leapley*, 502 N.W.2d 265 (S.D.1993) (in habeas proceeding, no error in failing to appoint expert who would testify that pretrial psychiatric examination was inadequate).

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1. When a defendant requests expert services for a criminal trial, the request is determined by the judge in *ex parte* proceedings. S.C.Code Ann. § 16–3–26(C) and § 17–3–50(B) (Supp.1995); *Ex parte Lexington County*, 314 S.C. 220, 442 S.E.2d 589 (1994). These statutory provisions are, however, inapplicable to post-conviction relief proceedings.

Section 16–3–26(C), which is limited to capital cases, applies to "the representation of the defendant whether in connection with issues relating to guilt or sentence." Therefore, this provision applies only to the capital trial itself and not to post-conviction relief proceedings. While § 17–3–50(A) mentions that the same hourly rates for appointed counsel shall apply to post-conviction proceedings, the use of the word "defendant" throughout § 17–3–50(B) indicates that it applies only to the criminal trial itself and not to post-conviction relief actions. Accordingly, the post-conviction relief judge in this case properly conducted a hearing on the motion at which counsel for the State was allowed to fully participate.

Accordingly, the order of the post-conviction relief judge is affirmed.

AFFIRMED.

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479 S.E.2d 50

The STATE, Respondent,

v.

Brad Christopher FOUST, Appellant.

No. 24534.

Supreme Court of South Carolina.

Heard Oct. 3, 1996.

Decided Dec. 2, 1996.

Defendant was convicted of assault and battery with intent to kill and other offenses following trial in the Circuit Court, Florence County, Ralph King Anderson, Jr., J., and he appealed. The Supreme Court, Waller, J., overruling prior cases, held that conviction for assault and battery with intent to kill does not require showing of specific intent to kill, and is it sufficient if there is shown some general intent such as that heretofore applied in cases of murder.

Affirmed.

1. Homicide ⇐87, 145

Specific intent to kill need not be shown to convict for assault and battery with intent to kill; it is sufficient if there is shown some general intent, such as that heretofore applied in cases of murder, which may be shown by acts and conduct from which jury may naturally and reasonably infer intent; overruling *State v. Jones*, 133 S.C. 167, 130 S.E. 747; *State v. Pilgrim*, 320 S.C. 409, 465 S.E.2d 108; *State v. Scott*, 269 S.C. 438, 237 S.E.2d 886; *State v. Hilton*, 284 S.C. 245, 325 S.E.2d 575; *State v. Self*, 225 S.C. 267, 82 S.E.2d 63. Code 1976, § 16-3-620.

2. Homicide ⇐310(1)

In charging jury on law to kill, judges should give st

3. Homicide ⇐310(1)

Charge in prosecution f to kill, instructing jury that without finding of malice, we

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Robert M. Pachak of Sc Defense, of Columbia, for ap

Attorney General Charles General John W. McIntosh, al Salley W. Elliott, Assis Callison Tiffin, Columbia, a Florence, for respondent.

WALLER, Justice:

Appellant, Brad Christoph first degree burglary, assau (ABIK), and possession of violent crime. He was resp twenty years, and five years sole issue on appeal is w refusing to charge the jury kill" before Foust could be c

F

On December 13, 1993, Je in the chest by Foust when s discovered him burglarizing introduced a letter written never intended to hurt Victin

In charging the jury, th follows: What is Assault Assault and Battery with

ATTACHMENT 2

The Supreme Court of South Carolina

Stephen C. Stanko, SK 6022, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-000212

ORDER

Counsel for petitioner have filed a "Petition for Court Oversight of Capital PCR Action" in which they essentially ask this Court to review the circuit court's rulings on *ex parte* motions regarding funding for experts filed in this matter. The State has filed a return in which it requests this Court issue an order unsealing the *ex parte* funding requests and orders so that it may properly respond to the merits of the petition before this Court.[1] The petition and the State's request are denied.[2]

C.J.

J.

J.

J.

J.

[1] The State currently has such a motion pending before the circuit court, where it can be ably addressed.

[2] We note, however, that the issue of *ex parte* proceedings in PCR matters, which is at the heart of the petition currently before this Court, was addressed in *Thames v. State*, 325 S.C. 9, 478 S.E.2d 682 (1986) and such proceedings were found to be improper.

Columbia, South Carolina

February 25, 2015

cc:
Emily C. Paavola, Esquire
Lindsey Sterling Vann, Esquire
J. Anthony Mabry, Esquire
Alan McCrory Wilson, Esquire
John W. McIntosh, Esquire
Donald J. Zelenka, Esquire

CERTIFICATE OF SERVICE

I Anthony Mabry, hereby certify that I have served the Motion to Unseal and Disclose in the foregoing action by depositing copies of same in the United States Mail to E. Charles Grose, Jr., Esquire, The Grose Law Firm. LLC, 404 Main Street, Greenwood, SC 29646 and Diana Holt, Esquire, P. O. Box 6454, Columbia, South Carolina 29260-6454 this 10th day of September, 2015.

ANTHONY MABRY
Assistant Attorney General

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2015

STATE OF SOUTH CAROLINA COUNTY OF PICKENS JERRY INMON, Applicant, vs. STATE OF SOUTH CAROLINA , Respondent.	COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT Case Number: 2012-CP-39-00918 Memorandum in Response to State's Motion to Unseal and Disclose

To: The Honorable Alexander S. Macaulay, Presiding Judge by Special Assignment of the South Carolina Supreme Court

The applicant, Jerry Inmon,[1] responds to the State's motion for this Court to issue an order unsealing *ex parte* funding motions, requests, and orders already issued, disclosing to the government the content of all *ex parte* communications between the Court and Mr. Inmon's counsel, and providing the Attorney General's Office with notice an opportunity to be present and heard at any future *ex parte* funding requests or hearings.

I. Introduction.

Ex parte and *in camera* motions to the presiding judge is the longstanding procedure in South Carolina for requesting and approving attorney fees, investigators, and expert services in capital post-conviction relief cases. Despite acquiescing to this procedure in Mr. Inmon's case for almost three years, the Attorney General's Office now asks this Court to unseal and disclose Mr. Inmon's funding requests and this Court's orders approving fees and expenses. In making this request the Attorney General's Office relies on dicta in *Thames v. State* and an unpublished

[1] The applicant's name is correctly spelled "Inmon."

order in *Stanko v. State*. These cases neither considered nor ruled on the statutory and constitutional issues presented in this pleading. The effect of granting the Attorney General's request would be to provide the prosecution arm of the state with a windfall of information that they are not entitled to know about at this stage of the litigation. By waiting until now to request this information, it appears the Attorney General's Office is more concerned with obtaining this information than it is with its duty to seek equal protection for all, including the poor, and the process followed by the Court.

II. *Thames v. State*, 325 S.C. 9, 478 S.E.2d 682 (1996) and the Unpublished Order in *Stanko v. State* (Appellate Case No. 2015-000212, Feb. 25, 2015) do not control.

The State's relies on the *Thames* decision and the *Stanko* order is misplaced for the following reasons.

A. Section 17-27-160 incorporates the *ex parte* and *in camera* funding procedures of §16-3-26.

South Carolina's capital post-conviction procedure is set forth in S.C. Code §17-27-160. This section authorizes counsel to be funded in the same "manner" as provided by S.C. Code §16-3-26. As §17-27-160 is a portion of the "Effective Death Penalty Act," the legislature certainly contemplated counsel to be funded in a "manner" that they can provide effective representation. In almost all cases of this seriousness, effective representation includes employing investigative and expert services. In fact, the plain terms of the statute support this conclusion. First, §17-27-160 does not limit funding to attorney fees. Second, §17-27-160 incorporates all of §16-3-26 by reference, except for subsection (I) that is expressly excluded.

Section 16-3-26(C)(1) provides:

> Upon a finding in *ex parte* proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant's attorneys to

> obtain such services on behalf of the defendant and shall order the payment, from funds available to the office of indigent defense, of fees and expenses not to exceed twenty thousand dollars as the court shall deem appropriate. Payment of such fees and expenses may be ordered in cases where the defendant is an indigent represented by court-appointed, private counsel or the public defender.

Section 17-27-160 requires post-conviction counsel to look to §16-3-26 for the procedure to follow in order to obtain investigative, expert or other services. The only procedure established for a capital post-conviction applicant to apply for these services is to proceed in an *ex parte* proceeding. Additionally, *ex parte funding* requests must be heard *in camera* in order to protect the equal protection rights of the indigent inmate on death row as compared to a death-sentenced inmate who had the means to employ investigators and experts. *Ex Parte Lexington County*, 314 S.C. 220, 442 S.E.2d 589 (1994). To require Mr. Inmon to proceed in any other manner violates the plain meaning of §§16-3-26 and 17-27-160.

Because §17-27-160 incorporates all of the funding provisions of §16-3-26, including the provisions for funding investigative, expert and other services, this Court should allow Mr. Inmon to make applications in an *ex parte* and *in camera* proceedings.

B. *Thames* does not control.

Footnote one of *Thames* does not support a finding that Mr. Inmon is not entitled to *ex parte* and *in camera* proceedings.

The General Assembly has acted and authorized a capital post-conviction relief applicant to apply for investigative, expert and other services in an *ex parte* proceeding. The facts in *Thames* arose ***prior to*** the enactment of §17-27-160. *Thames* was submitted to the Supreme Court on May 15, 1996 and decided on December 2, 1996. Section 17-27-160 became effective on June 18, 1996. As discussed earlier, South Carolina has adopted a specific procedure for

capital post-conviction cases. Even if footnote one in *Thames* were not *dicta*, *Thames* would not control because the legislature has acted by authorizing a capital post-conviction applicant to apply for funding of investigative, expert, and other services in the same manner as provided by §16-3-26.

Footnote one of *Thames*, however, is *dicta*. In *Thames* the non-capital post-conviction applicant did not seek *ex parte* review of her request for expert services. Neither *Thames* nor the State raised the *ex parte* issue on appeal. The briefs in *Thames* are attached. Accordingly, a non-capital, post-conviction applicant's right to *ex parte* application for investigative, expert and other services has never been considered by the South Carolina Supreme Court in a contested, adversarial proceeding. Even if it had, these capital proceedings are controlled by a different statutory provision and treated differently than non-capital proceedings.

C. The Unpublished Order in *Stanko v. State* does not control.

The unpublished order in *Stanko v. State* does not control. Only published opinions have precedential value. Rule 220(a), SCACR. Additionally, the unpublished order does not reach the merits of the issue, but rather remands the case to the Circuit Court for consideration of the State's pending motion.

Thus, neither *Thames* nor the *Stanko* order controls the issue currently before the Court.

III. PCR proceedings are criminal in nature, and Mr. Inmon is entitled under state law and the due process and equal protection requirements of the Fourteenth Amendment to proceed *ex parte* and *in camera* in making his request for expert and investigative services.

Even if this were purely a civil proceeding, a person's rights to due process and equal protection in governmental actions are not suspended by such a characterization. *See, e.g., M.L.B. v. S.L.J.*, 519 U.S. 102, 107 (1996) ("Mississippi may not deny M.L.B., because of her poverty, appellate review of the sufficiency of the evidence on which the trial court found her

unfit to remain a parent"); *Goldberg v. Kelly*, 397 U.S. 254 (1970) (due process required procedural protections and an opportunity to be adequately heard prior to termination of welfare benefits).

Four important considerations will be reviewed below. First, a capital PCR proceeding is not purely a "civil proceeding" that must be treated in the same fashion as a civil trial between two private litigants. Post-conviction relief actions are essentially criminal in nature and state law provides for greater protections for PCR applicants than for other civil litigants. Indeed, state law provides greater protections for capital post-conviction relief applicants than for defendants in capital trials. Second, these state law provisions are protected and enforceable by the Fourteenth Amendment. Third, regardless of the state law protections, Mr. Inmon is entitled to *ex parte* proceedings under federal constitutional law. Fourth, the Attorney General does not have the right to be heard on funding matters.

A. South Carolina law provides greater protections for capital PCR applicants than other civil litigants and even capital trial defendants and allows *ex parte* and *in camera* proceedings in order to seek expert and investigative services.

While capital post-conviction relief proceedings are conducted in the Court of Common Pleas and "the processes of discovery available under the South Carolina Rules of Civil Procedure" are applicable, S.C. Code §17-27-150(B), the nature of the proceeding is to challenge the criminal conviction and sentence, S.C. Code §17-27-20(A). As is reflected by the routine involvement of the Office of the Attorney General and the Office of Appellate Defense, *see Al-Shabazz v. State*, 338 S.C. 354, 363, 527 S.E.2d 742, 746 (2000), the proceedings are essentially criminal in nature and are merely a continuation of, not a substitute for, criminal appeals. *See* Rule 71.1(b), SCRCP (an applicant may not bring a PCR action while a direct appeal is pending); *Drayton v. Evatt*, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993) (issues that could have

been asserted at trial or in direct appeal cannot be asserted in PCR application absent a claim of ineffective assistance of counsel).

> While PCR action is considered a "civil case," it is, like its federal equivalent, categorized as such to differentiate it from criminal proceedings, which are intended to punish thus requiring special constitutional protections.

Wade v. State, 348 S.C. 255, 263, 559 S.E.2d 843, 846-47 (2002). Despite its categorization though, the proceedings are essentially criminal in nature. Indeed, the Uniform Post-Conviction Procedure Act is found in Title 17 of the Code, which is captioned "Criminal Procedures."

Regardless of the label, however, Mr. Inmon is entitled to due process and equal protection of the laws.

> While habeas corpus may, of course, be found to be a civil action for procedural purposes, it does not follow that its availability in testing the State's right to detain an indigent prisoner may be subject to the payment of a filing fee. . . . We shall not quibble as to whether in this context it be called a civil or criminal action. . . . The availability of a procedure to regain liberty lost through criminal process cannot be made contingent upon a choice of labels.

Smith v. Bennett, 365 U.S. 708, 712 (1961).

South Carolina law provides greater protections for PCR applicants than other civil litigants. Any person who has been convicted and sentenced for a crime who claims that the conviction or sentence was in violation of the United States Constitution or South Carolina law may institute state post-conviction relief proceedings. S.C. Code §17-27-20(a). A final judgment of a trial court in state post-conviction proceedings may be appealed, S.C. Code §17-27-100, and "shall be reviewed by the Supreme Court upon petition by either party for a writ of certiorari." S.C. Appellate Court Rule 227(a); *see also* S.C. Rule of Civil Procedure 71.1(f).

South Carolina law also provides that an applicant for state post-conviction relief is entitled to the appointment of counsel. Counsel must be appointed at the trial level when "the application presents questions of law or fact which will require a hearing." S.C. Code §17-27-60; *Whitehead v. State*, 310 S.C. 532, 426 S.E.2d 315 (1992); Rule 71.1(d), SCRCP. Counsel must also be appointed when the state moves for dismissal because an inmate failed to meet the statute of limitations and the PCR applicant raises an issue of material fact regarding the filing. *Gary v. State*, 347 S.C 627, 557 S.E.2d 662 (2001). Likewise, appellate counsel must be provided if the applicant is indigent and desires to appeal the denial of post-conviction relief by the trial court. S.C. Rule of Civil Procedure 71.1(g). The South Carolina Supreme Court also "mandates appellate counsel must brief all arguable issues, despite counsel's belief the appeal is frivolous." *Wade*, 348 S.C. at 263, 559 S.E.2d at 847. Clearly, as the Supreme Court has recognized, these are rights that do "not generally exist for plaintiffs in civil cases." *Id.*

South Carolina law actually affords greater protections to capital PCR applicants than to defendants in capital trials. For example, South Carolina law requires appointment of two lawyers in a capital post-conviction proceeding, at least one of whom is required to have special training or experience in capital PCR or federal habeas proceedings. S.C. Code §17-27-160(B).[2]

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[2] S.C. Code §17-27-160(B) provides, in pertinent part:

> If the applicant is indigent and desires representation by counsel, two counsel shall be immediately appointed to represent the petitioner in this action. At least one of the attorneys appointed to represent the applicant must have previously represented a death-sentenced inmate in state or federal post-conviction relief proceedings or (1) must meet the minimum qualifications set forth in Section 16-3-26(B) and Section 16-3-26(F) and (2) have successfully completed, within the previous two years, not less than twelve hours of South Carolina Bar approved continuing legal education or professional training primarily involving advocacy in the field of capital appellate and/or post-conviction defense.

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