

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Jul 27 2021

Petition for Writ of Certiorari to South Carolina Court of Appeals S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Honorable Edward W. Miller, Circuit Court Judge

Opinion No. 5820 (S.C. Ct.App. Filed May 12, 2021)
Court of Appeals Appellate Case No. 2018-001468

Eric Dale Morgan.....Respondent,

v.

State of South Carolina Petitioner.

Appellate Case No. 2021-

APPENDIX

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INDEX

INDEX	i
RECORD ON APPEAL	1
Order Granting Motion to Dismiss (March 5, 2018)	1
Order to Deny Defendant’s Motion to Alter or Amend Judgment (August 3, 2018)	7
Sentencing Sheets (March 9, 2004)	8
Sentencing Sheet (March 17, 2006)	10
Motion for Resentencing (July 7, 2016)	11
State’s Motion to Dismiss Defendant’s Motion for Resentencing (April 12, 2007)	15
Response in Opposition to Motion to Dismiss Defendant’s Motion for Resentencing (April 19, 2017)	25
Motion to Alter or Amend Judgment (March 15, 2018)	29
Response to Defendant’s Motion to Alter or Amend Sentence (April 9, 2018)	35
Transcript of Hearing on State’s Motion to Dismiss (November 15, 2017)	39
Testimony	
Honorable J. Derham Cole	49
Direct Examination	49
Cross Examination	62
Transcript of Sentencing Phase (February 28 to March 9, 2004)	82
Opening Statement (State)	86
Testimony	
Neal Urch	92
Direct Examination	92
Cross Examination	104
Mirya Duncan	108
Direct Examination	109
Cross Examination	116
Redirect Examination	123
Recross Examination	124

Jason K. Burbage	126
Direct Examination	126
Cross Examination	128
Jimmy Sligh	129
Direct Examination	129
Cross Examination	134
Redirect Examination.....	141
Michael Cromer	142
Direct Examination	143
Cross Examination	144
Cleveland Smith.....	147
Direct Examination	147
Cross Examination	148
Dianne Lestage.....	151
Direct Examination	151
Julie Rosario.....	152
Direct Examination	152
Jonathan David Smith.....	154
Direct Examination	155
James Smith	161
Direct Examination	161
Curran Smith.....	178
Direct Examination	178
Opening Statement (Defense).....	190
Testimony	
Loraine Fortner	193
Direct Examination	193
Cross Examination	206
Iris Corn	208
Direct Examination	208
Cross Examination	214
Mildred Morgan.....	216
Direct Examination	216

Annette Harriston Boette	222
Direct Examination	222
Cross Examination	244
Redirect Examination.....	260
Recross Examination	262
Cynthia Templeton.....	264
Direct Examination	264
Cross Examination.....	279
Redirect Examination.....	281
Robert Simmons.....	282
Direct Examination	282
Cross Examination	285
Dennis Cothran	287
Direct Examination	287
Cross Examination	291
Tina Hunt	293
Direct Examination	293
Cross Examination.....	296
Bobby Richards.....	298
Direct Examination	298
Cross Examination	302
Paul Gilliam	305
Direct Examination	305
Cross Examination	310
William Gregory	313
Direct Examination	313
Cross Examination	317
Closing Arguments	327
Jury Charge	359
Verdict.....	379
Sentence	387
Statement by Appellant.....	390
Certificate of Counsel	425

FINAL BRIEF OF APPELLANT	426
FINAL BRIEF OF RESPONDENT	445
FINAL REPLY BRIEF OF APPELLANT.....	475
SOUTH CAROLINA COURT OF APPEALS OPINION NO. 5820 FILED MAY 12, 2021....	481
PETITION FOR REHEARING.....	489
ORDER DENYING PETITION FOR REHEARING	499

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	
The State,	)	Case No.: 2000-GS-42-02680
	)	
	)	
vs.	)	ORDER
	)	
Eric Dale Morgan,	)	
	)	
Defendant.	)	
_____	)	

This case is initiated on Defendant Eric Dale Morgan's ("Morgan") Motion for Resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (S.C. 2014). On November 15, 2017, the Court heard the State's Motion to Dismiss his Motion for Resentencing. After taking the Motion to Dismiss under advisement, this Court concludes that it should be granted.

Facts and Procedural History

Morgan is presently confined in the South Carolina Department of Corrections. He was indicted at the June and July 2000 terms of Spartanburg County Grand Jury for murder (00-GS-42-2680), armed robbery (00-GS-42-2681), and possession of an explosive device (00-GS-42-3165). These charges resulted from the murder and armed robbery of a convenience store employee on May 3, 2000. Morgan admitted to shooting the victim once in the head as the victim was closing the store and then stealing a bag that the victim was carrying which contained more than \$7,000.00. Morgan and his accomplice, who had been hired at the store a week before the incident, had originally planned to blow a hole in the back wall of the store with a pipe bomb after the convenience store closed.

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CLERK OF COURT
SPARTANBURG COUNTY

Clay T. Allen, James R. Poole, and Karen Quimby represented Morgan at trial and sentencing. He was tried before the Honorable J. Derham Cole and a jury February 28 – March 9, 2004. The jury found Morgan guilty on all counts. Judge Cole sentenced him to 15 years for possession of an explosive device to be run consecutively with 30 years for the armed robbery conviction. Additionally, Judge Cole approved the jury's recommendation of the death sentence for the murder charge.

A timely notice of appeal was filed on Morgan's behalf. Pursuant to the U.S. Supreme Court decision in *Roper v. Simmons*, 543 U.S. 551 (2005), the S.C. Supreme Court vacated Morgan's death sentence and remanded the case to circuit court for resentencing due to the fact that Morgan was just shy of his 18th birthday when the murder was committed. *State v. Morgan*, 367 S.C. 615, 626 S.E.2d 888 (S.C. 2006). On March 17, 2006, Judge Cole conducted a resentencing hearing pursuant to the Supreme Court's decision in *State v. Morgan*. Judge Cole resentenced Morgan to life without parole. Morgan did not appeal this sentence. The record from the 2006 resentencing hearing was destroyed because Morgan did not appeal or make a motion to preserve the transcript. Morgan filed his first application for PCR on February 15, 2007. By written order filed October 23, 2008, Judge Goode denied and dismissed the application. Morgan did not appeal. He filed a motion on July 12, 2016 for resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (SC 2014). On July 18, 2016, this Court was granted exclusive jurisdiction over Morgan's motion for resentencing.

In *Aiken v. Byars*, the Supreme Court of South Carolina held that life without parole for juveniles, without consideration of youth, constituted cruel and unusual punishment, and such juveniles are entitled to a resentencing hearing at which certain enumerated factors must be considered when deciding the appropriate sentence. The Supreme Court then listed the factors to be considered when sentencing a juvenile to life without parole. The factors include:

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MAIJOPE BLAONLEY

(1) [T]he chronological age of the offender and the hallmark features of youth, including “immaturity, impetuosity, and failure to appreciate the risks and consequence”; (2) the “family and home environment” that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender’s participation in the conduct and how familial and peer pressures may have affected him; (4) the “incompetencies associated with youth – for example, [the offender’s] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender’s] incapacity to assist his own attorneys”; and (5) the “possibility of rehabilitation.”

Aiken v. Byars, 410 S.C. 534, 544, 765 S.E.2d 572, 577 (S.C. 2014) (holding none of the hearings at issue therein approached the sort of hearing mandated by *Miller v. Alabama*, 567 U.S. 460 (2012), where the factors of youth should be carefully and thoughtfully considered).

On November 15, 2007, this Court conducted a hearing on the State’s Motion to Dismiss. The State called the Honorable J. Derham Cole as a witness. Judge Cole testified that at the March 17, 2006 resentencing hearing he relied on the entire trial record as well as his independent memory of Morgan. He testified that he considered Morgan’s youth at the time of the murder and specifically took into account each of the five *Aiken v. Byars* factors. The State specifically asked him if he considered the age of the defendant, premeditation of the crime, the defendant’s thought process given his age, the defendant’s immaturity, the way the defendant interacted with his peers, the circumstance of the crime, the defendant’s participation in the crime, the way the defendant interacted with police officers and his own attorneys, and the possibility of rehabilitation. Judge Cole testified he considered each of the above factors in reaching to his decision to resentence Morgan to life without parole.

Further, the original trial court record supports his testimony and contains a sufficient basis for considering all of the *Aiken v. Byars* factors. For example, the sentencing hearing consisted of testimony from Morgan’s family, friends, and a sociologist. These witnesses described Morgan’s childhood, home environment, and maturity among other aspects of his life. The record showed that Morgan did not have a father figure, moved around as a child, had little ability to read, and was on drugs and alcohol from an early age. A social worker also testified as to Morgan’s childhood, life,

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CLERK OF COURT
JANET L. HAYLEY

and his incarceration record. Her testimony as to the incarceration record illustrated his good behavior in prison. The testimony also described Morgan as being respectful to adults and a good friend. Morgan's voluntary statement to police is also a part of the trial record giving Judge Cole insight into how he interacted with authority figures. Not only does the trial record form a basis from which the five *Aiken v. Byars* factors could be considered, Judge Cole also testified that he considered all of the factors. Therefore, there is no legal basis for an additional resentencing hearing.

Further, the rule of comity stands for the proposition that, absent a significant and substantial change in circumstances, judges at the same jurisdictional level cannot overrule each other. *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 603, 340 S.E.2d 546, 547 (S.C. 1986) (holding that one circuit court judge does not have the authority to set aside the order of another). Judge Cole properly analyzed and considered the necessary youth characteristics when resentencing Morgan to life without parole. Therefore, the 2006 resentencing hearing conforms to *Aiken v. Byars* and there is no evidence to suggest it was improperly conducted. As such, this Court finds it would be improper to have another resentencing hearing with the objective to either affirm or set aside Judge Cole's 2006 ruling.

This Court has also considered the potential types of evidence that would be presented at a future *Aiken v. Byars* resentencing hearing. Defense counsel asserts that Morgan's incarceration record would be presented at a subsequent hearing. However, this court finds evidence of his incarceration record since he was resentenced in 2006 to the present would be inappropriate for consideration as evidence of any of the *Aiken v. Byars* factors. *Aiken v. Byars* provides five factors that must be considered when sentencing a juvenile to life without parole. This Court's function is to determine whether those factors were considered at the 2006 resentencing hearing and the Court finds that they were considered. Therefore, it would be inappropriate for this Court to consider Morgan's incarceration record from the 2006 resentencing hearing to the present. Consideration of

Morgan's incarceration record since resentencing would only be appropriate for a clemency hearing. Clemency is a function of the executive branch and not of this Court. The separation of powers doctrine requires that "in the government of this state, the legislative, executive, and judicial power of the government shall forever be separate and distinct from each other." S.C. Const. art. 1, § 8. "The operational effect of this doctrine is to prevent one branch of government from usurping the power and authority of another." *Harleysville Mut. Ins. Co. v. State*, 401 S.C. 15, 24, 736 S.E.2d 651, 651 (S.C. 2012). As a result, it would be improper for the court to consider any evidence of Morgan's actions or behavior that occurred after he was resentenced in 2006.

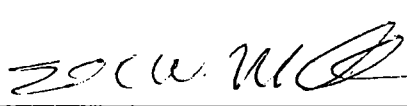
It is also unclear what evidence Defense counsel would present in addition to that contained in the original trial record. There is competent and sufficient evidence in the trial record from which Judge Cole considered the five *Aiken v. Byars* factors. Unlike the hearings at issue in *Aiken v. Byars*, where age was only mentioned as a "vague plea for mercy," Judge Cole carefully and thoughtfully considered Morgan's youth at the time of the murder. Moreover, Morgan's original sentencing hearing was a death penalty hearing. The Court in *Aiken v. Byars* concluded that while they "do not go so far as some commentators who suggest that the sentencing of a juvenile offender subject to a life without parole sentence should mirror the penalty phase of a capital case [.] . . . the type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance to life without parole sentencing hearings." *Id.* Sentencing hearings in capital litigation demand a thorough presentation of mitigating evidence that meets the highest standard. In fact, "the Eighth Amendment demands that a capital defendant be given wide latitude to present any relevant evidence of potentially mitigating value that might convince the jury to impose a sentence of life in prison instead of death." *Bowman v. State*, Opinion No. 27761 (S.C. Jan. 1, 2018). Judge Cole had the benefit of the trial court record complete with the death penalty sentencing hearing when resentencing Morgan in 2006. There is nothing to suggest the original sentencing hearing was

defective. This conclusion bolsters the Court's ruling that an additional resentencing hearing is unnecessary.

Morgan has had the benefit of three hearings relevant to the issues addressed herein. Initially, he had a full capital case sentencing hearing. The case was then appealed and remanded for resentencing. In 2006, Judge Cole, taking into account the entire trial record, and mitigation allocution at that hearing, resentedenced Morgan to life without parole. In addition, Morgan had the benefit of a PCR hearing. In a PCR hearing, "[t]he United State Supreme Court has set forth a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defense." *McHam v. State*, 404 S.C. 465, 473-74, 746 S.E.2d 41, 46 (2013) (citing *Strickland v. Washington*, 466 U.S. 668, 687 ('984); *Holden v. State*, 393 S.C. 565, 713 S.E.2d 611 (2011)). The result of Morgan's PCR was that he failed to satisfy the *Strickland* test. Morgan did not appeal that decision, and therefore, it becomes the law of the case. There is nothing to suggest the mitigation evidence presented at the original sentencing hearing was deficient or that a deficiency prejudiced the defendant. In all litigation, at some point, for the benefit of interested persons there needs to be finality as to the judicial decisions made.

THEREFORE, the Motion to Dismiss is granted.

IT IS SO ORDERED.


EDWARD W. MILLER
Presiding Judge
Seventh Judicial Circuit

3/2
February ____, 2018
Spartanburg, South Carolina

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N. HOPE BLANKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	)	
	)	
v.	)	ORDER TO DENY DEFENDANT'S MOTION
	)	TO ALTER OR AMEND JUDGMENT
Eric Dale Morgan,	)	
	)	
	)	
	)	
DEFENDANT.	)	Indictment Nos.: 2000-GS-42-2680
	)	

The Court has reviewed the Defendant's Motion to Alter and Amend Judgement on the Court's Order dated March 3, 2018 and filed on March 5, 2018, and the State's Response to Defendant's Motion to Alter or Amended Sentence, as well as the record of the motion hearing on November 15, 2017 along with any filings and exhibits filed or entered for the hearing on November 15, 2017, as well as the Court's Order in this matter dated March 3, 2018. The Court is unpersuaded by the motion and denies the Defendant's Motion to Alter and Amend Judgment in this matter based in consideration of materials submitted on the record on its entirety.

IT IS SO ORDERED!



The Honorable Edward W. Miller
Presiding Judge for
The Seventh Judicial Circuit

Spartanburg, South Carolina
Dated: July 30, 2018

2018 AUG -3 PM 12:21
M. HOPE BLANCHLEY
CLERK OF COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATESpartanburg**Computer**

INDICTMENT/CASE#:

-GS- 42 - 2681

AKA:

Race:

DOB:

Address:

City, State, Zip

DL#

Eric Dale MorganW Sex: M Age: 21

= SS#:

Address:

City, State, Zip

DL#

SID#

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

-GS-

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

in violation of §

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable, the balance is suspended with probation for months/years and is subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: any other

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter: Trada Platt

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender/Road

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATESpartanburg
VS.Eric Dale Morgan

INDICTMENT/CASE#:

-GS- 42 - 3165AW#: 6488998Date of Offense: 5/3/00S.C. Code §: 16-23-720CDR Code #: 2 1 7 1 7 1 6☐ CASE RESTORED
SENTENCE☐ PLEA ☒ TRIALAKA:
Race: W Sex: M Age: 21
DOB: 1-1-79
Address:
City, State, Zip: Durham, NC 27704
DL# 3 SID# 29334In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Possession Explosive Devicein violation of § 16-23-720 of the S.C. Code of Laws, bearing CDR Code # 2 1 7 1 7 1 6☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$, provided that upon the service of days/months/years and/or payment of \$ plus costs and assessments as applicable, the Defendant is committed with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114 (BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

Marc Kitchens
Clerk of Court/Deputy Clerk

Court Reporter: Linda Heffitt

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

March 9 2004

White - Clerk Green - Corrections Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	THE SEVENTH JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	Case No. 2000-GS-42-2680
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION FOR RESENTENCING
	)	
Eric Dale Morgan,	)	
	)	
Defendant.	)	

Defendant, Eric Dale Morgan, by and through undersigned counsel, hereby moves for a new sentencing proceeding pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), *cert. denied*, ___, U.S. ___, 135 S. Ct. 2379 (2015).

In *Aiken v. Byars*, the Supreme Court of South Carolina determined that *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012) (holding that imposing a life without parole sentence on a juvenile offender without considering the hallmark characteristics of juveniles in general and the particular mitigating circumstances in the defendant's individual case in particular violated the Eighth Amendment), applied retroactively in South Carolina. 410 S.C. at 540, 765 S.E. 2d at 575. The Court next opined that applying the constitutional principles articulated in *Miller* to South Carolina's pre-*Miller* sentencing practices, all life without parole sentences imposed on juveniles in this State prior to *Miller* and *Aiken* constituted cruel and unusual punishment. *Aiken*, 410 S.C. at 545, 765 S.E. 2d at 577. For that reason, the Court ordered that all juveniles sentenced to life without parole in South Carolina prior to *Aiken* were "entitled to resentencing to allow the inmates to present evidence specific to their attributes of youth and allow the judge to consider such evidence in the light of its constitutional weight." *Id.* at 544; 765 S.E.2d at 577. On July 23, 2015,

following the United States Supreme Court's denial of the Attorney General's petition for writ of certiorari, the South Carolina Supreme Court entered an order permitting any individual "affected by our holding in *Aiken* [to] file a motion for resentencing within one year of the date of this order in the court of general sessions where he or she was originally sentenced." *Aiken v. Byars*, Appellate Case No. 2012-213286 (July 23, 2015) (copy of order attached).

The defendant in this case is eligible for the benefit of *Aiken v. Byars*, because he was sentenced to life without parole for an offense committed when he was seventeen (17) years old, and this motion is timely filed. Therefore, he is entitled to a new sentencing proceeding conducted in conformity with the state and federal constitutional principles set forth in *Miller* and *Aiken v. Byars*.

For the foregoing reasons, the defendant requests, that after allowing counsel adequate time to conduct an appropriate investigation to gather, marshal and present all evidence relevant to the determination of the appropriate sentence, this Court conduct a new sentencing hearing conducted in conformity with *Aiken v. Byars*.

Respectfully Submitted,

By: 
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 SC Bar # 101408
 Justice 360
 900 Elmwood Ave., Suite 200
 Columbia, SC 29201
 (803) 765-1044
 lindsey@justice360sc.org

July 7, 2016

The Supreme Court of South Carolina

Tyrone Aiken, Matthew Clark, Eric Graham, Bradford M. Haigler, Angelo Ham, J'Corey S. Hull-Kilgore, Damian Inman, Roger Legette, Terriel Mack, Jennifer L. McSharry, Wallace Priester, Davon Reed, Dondre M. Scott, Edgar L. Thomas, James Van, et al., Petitioners,

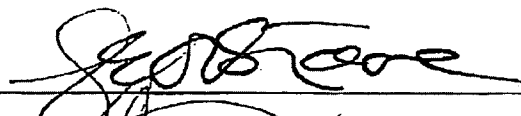
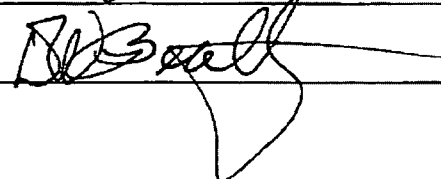
v.

William R. Byars, Jr., Director, South Carolina Department of Corrections, and Alan Wilson, Attorney General of South Carolina, Respondents.

Appellate Case No. 2012-213286

ORDER

Petitioners move this Court to vacate the stay of our opinion issued in this case. Petitioners also request they and others similarly situated be given one year from the date the stay is vacated by order of this Court to file a motion for resentencing. The State opposes the motion on the ground that the stay was effectively lifted when the United States Supreme Court issued its final decision in the matter; therefore, an order vacating the stay is unnecessary. The motion is granted and the stay is hereby lifted. Petitioners and any other individuals affected by our holding in *Aiken* may file a motion for resentencing *within one year of the date of this order* in the court of general sessions where he or she was originally sentenced. There the matters shall proceed pursuant to the guidance provided in *Aiken*.

	C.J.
	J.
	J.

Kaye L. Heam

J.

Kittredge, J., not participating

Columbia, South Carolina

July 23, 2015

cc:

John H. Blume, III, Esquire
Keir M. Weyble, Esquire
Elizabeth Anne Franklin-Best, Esquire
Joshua A. Bailey, Esquire
Diana L. Holt, Esquire
Robert Michael Dudek, Esquire
Ernest Charles Grose, Jr., Esquire
Alan McCrory Wilson, Esquire
Sheri L. Johnson, Esquire
John Benjamin Aplin, Esquire
Donald J. Zelenka, Esquire
Christopher D. Scalzo, Esquire
Joseph M. McCulloch, Jr., Esquire
Abby C. Johnston, Esquire
Abby F. Rudzin, Esquire
John S. Nichols, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
The State,	)	
	)	
v.	)	STATE'S MOTION TO DISMISS THE
	)	DEFENDANT'S MOTION FOR RESENTENCING
Eric Dale Morgan,	)	
	)	Indictment No.: 2000-GS-42-3165
Defendant.	)	Warrant No.: G487949

TO: LINDSEY S. VANN, ESQ., ATTORNEY FOR THE DEFENDANT, AND THE
DEFENDANT, ERIC DALE MORGAN:

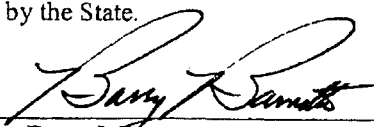
The State, by way of the State's Motion to Dismiss Defendant's Motion for Resentencing, would submit the following in response to Defendant's Motion for Resentencing and hereby moves to fully develop the record of the proceedings in this case, should there be an appeal from this matter:

1. The Defendant received the following sentences on each charge after having been found guilty by a jury: on his Murder charge (Ind. No.: 2000-GS-42-2680) the Defendant received a Death Sentence after a jury gave a verdict for the death sentence (see attachment #1); on his Armed Robbery charge (Ind. No.: 2000-GS-42-2681) the Defendant received a thirty (30) year sentence to run consecutive to his sentence on the Murder charge (see attachment #2); and on his Possession of Explosive Device charge (Ind. No.: 2000-GS-42-3165) the Defendant received a fifteen (15) year sentence to run concurrent with his other sentences (see attachment #3). The State presented two aggravating statutory circumstances: (1) the murder occurred during the commission of an armed robbery and (2) the murder occurred during the commission of larceny while armed with a deadly weapon. The jury found both statutory aggravators to support the death verdict. In the sentencing phase, the defense relied on three mitigating circumstances: (1) the defendant had no significant history of prior criminal conviction involving the use of violence against another person; (2) the age or mentality of the defendant at the time of the crime; and (3) the defendant was below the age of eighteen at the time of the crime. (The Defendant was born on May 19, 1982 and the Murder occurred on May 3, 2000). The Defendant was sentenced on all three (3) counts on March 9, 2004 by the Honorable J. Derham Cole in Spartanburg County General Sessions Court.
2. The United States Supreme Court in Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183 (2005), held that it is unconstitutional to impose capital punishment for crimes committed while under the age of 18. The South Carolina Supreme Court in State v. Morgan, 367 S.C. 615, 626 S.E.2d 888 (2006) vacated and remanded Morgan's death sentence based on Roper v. Simmons and also held that Morgan was entitled to a new trial.

present evidence on remand for re-sentencing that he was entitled to a sentence less than life imprisonment. (Please see copy of the South Carolina Supreme Court opinion State v. Morgan, 367 S.C. 615, 626 S.E.2d 888 marked as Exhibit #4).

3. A resentencing hearing was held for the Defendant in front of Judge J. Derham Cole on March 17, 2006. Judge Cole heard from the State and from the Defendant and his attorneys. Judge Cole sentenced the defendant to a Life Sentence without parole, after hearing and considering mitigation evidence presented by the defense. Judge Cole was also present during the guilt and sentencing phases of the jury trial as the trial judge when the aggravating and mitigating circumstances were presented (see attachment #5).
4. The State would move into the record all of the evidence and exhibits that were entered into evidence in the trial of this case as well as the sentencing phase of the trial and the resentencing of the defendant. The State would also move into evidence the finding of aggravated circumstance by the jury in the trial of this case as part of the record. The State would also move into evidence any statements made in the sentencing of the Defendant to be part of the record for State's Motion to Dismiss the Defendant's Motion for Resentencing.
5. The State would argue to this Court that the Defendant has already had a resentencing hearing that has met the requirements set out in Aiken v. Byars, 410 S.C. 534, 765 S.C. 572 (2014) before Honorable J. Derham Cole. The South Carolina Supreme Court as held in State v. Eric Dale Morgan, 367 S.C. 615, 626 S.E.2d 888 (2006) allowed Morgan to present evidence on re-sentencing that he was entitled to a sentence less than life imprisonment. Judge Cole heard the matter on two different occasions in the trial as well as the resentencing hearing and was in the best position to know the facts and circumstances about this defendant and the victim. Morgan and his attorneys were given the opportunity to present evidence for re-sentencing that he was entitled to a sentence less than life imprisonment. Judge Cole decided the appropriate sentence in this case in the resentencing of this Defendant after hearing and seeing all of the facts, circumstances, and evidence in this case during the trial and the resentencing hearing.

The State would respectfully ask the Court to deny the Defendant's Motion for Resentencing in this case for the above-mentioned reasons as well as additional information at the Motion Hearing that may be presented by the State.

By: 

Barry J. Barnette
Solicitor
Seventh Judicial Circuit

April 12, 2017
Spartanburg, South Carolina

2017 APR 12 PM 12:37
M. NOPE CLACKLEY

EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

THE STATE,

vs.

ERIC DALE MORGAN,

DEFENDANT.

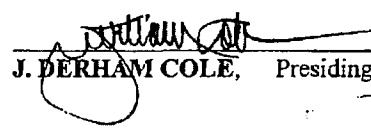
IN THE COURT OF GENERAL SESSIONS

SENTENCE

CASE NO.: 00-GS-42-2680

The Defendant, Eric Dale Morgan, has been found by the jury to be guilty of the offense of murder. The jury has recommended that the defendant should be sentenced to death.

It is, therefore, the judgment of the law and the Sentence of the Court that the defendant, Eric Dale Morgan, be taken to the County Jail of Spartanburg County, and thence to the State Department of Corrections, henceforth to be kept in close and safe confinement until the ___9th___ day of ___May___, ___2004___, upon which day between the hours of six o'clock A.M. and six o'clock P.M. the defendant, **Eric Dale Morgan**, shall suffer death in the manner provided by law.


J. DERHAM COLE, Presiding Judge

March ___9___, 2004.
Spartanburg, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2004 MAR -9 PM 5:15
MARC KITCHENS

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

THE STATE,

vs.

ERIC DALE MORGAN,

DEFENDANT.

)
) IN THE COURT OF GENERAL SESSIONS
)

)
) AFFIRMATION OF SENTENCE
)

)
) CASE NO.: 00-GS-42-2680
)
)

As the trial judge in the above-entitled case, and prior to the imposition of the death sentence upon the defendant, Eric Dale Morgan, for having been convicted by a jury of the crime of murder, I find as an affirmative fact that the evidence of the case warrants the imposition of the death penalty and its imposition is not a result of prejudice, passion, caprice, or any other arbitrary factor.


J. DERHAM COLE, Presiding Judge

March 9, 2004.

Spartanburg, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2004 MAR -9 PM 5:15
MARC KITCHENS

EXHIBIT 2

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATESpartanburg

AKA:

Race:

DOB:

Address:

City, State, Zip

DL#

vs.

Sex:

SS#:

Age:

SID#

Computer

Eric Dale Morgan

3206 Computer Lane

Duncan, SC 29334

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INDICTMENT/CASE#: 00 -GS- 42 - 2681
 A/W#: G-487952
 Date of Offense: 5/3/00
 S.C. Code §: 16-11-330 A
 CDR Code #: 0 1 1 3 1 9
☐ CASE RESTORED
☒ SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: Armed Robbery

in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 01 11 31 9
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Eric Dale Morgan
Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*, the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: any other
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
 Total: \$ plus 20% fee: \$
 Payment Terms:
☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court Deputy Clerk

Court Reporter:

PTUP

days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol Testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other:

☐ Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

March 9, 2004

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

EXHIBIT 3

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATESpartanburg

VS.

Erik Dale Morgan

INDICTMENT/CASE#:

-GS- 42 - 3165

A/W#:

6488998

Date of Offense:

5/3/00

S.C. Code §:

11-23-720

CDR Code #:

2 1 7 1 7 1 6☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIAL

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Possession Explosive DeviceIn violation of § 11-23-720 of the S.C. Code of Laws, bearing CDR Code # 2 1 7 1 7 1 6☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$ plus costs and assessments as applicable, the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114 (BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Theresa Kitchens
Clerk of Court/Deputy Clerk

Court Reporter: Linda Moffitt

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

March 9 2004

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

State v. Morgan, 367 S.C. 615 (2006)
626 S.E.2d 888

EXHIBIT 4

Original Image of 626 S.E.2d 888 (PDF)

367 S.C. 615
Supreme Court of South Carolina.

The **STATE**, Respondent,
v.
Eric Dale MORGAN, Appellant.

No. 26116.

|
Heard Jan. 17, 2006.

|
Decided Feb. 21, 2006.

Synopsis

Background: Defendant was convicted in the Circuit Court, Spartanburg County, J. Derham Colc, J., of murder, armed robbery, and possession of an explosive device, and he was sentenced to death on the murder charge. Defendant appealed.

Holding: The Supreme Court, Moore, Acting C.J., held that defendant, whose death sentence had to be vacated under *Roper v. Simmons*, was entitled to present evidence on remand for re-sentencing that he was entitled to sentence less than life imprisonment.

Vacated and remanded.

West Headnotes (1)

[1] Sentencing and Punishment

Determination and Disposition

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(G) Proceedings
350HVIII(G)4 Determination and Disposition
350Hk1789 Review of Proceedings to Impose
Death Sentence
350Hk1789(10) Determination and Disposition
(Formerly 110k1181.5(8))

Defendant, whose death sentence had to be vacated under *Roper v. Simmons*, which held that execution of individuals who were under

age of 18 at time of their capital crimes was prohibited by Eighth and Fourteenth Amendments to Federal Constitution, was entitled to present evidence on remand for re-sentencing that he was entitled to sentence less than life imprisonment; fact that jury had found two aggravating circumstances at initial sentencing proceeding was irrelevant because discussion of aggravators arose only when state sought death penalty, and sentencing statute provided that person convicted of murder who was not subject to death penalty had to be punished by imprisonment for life, or by a mandatory minimum term of imprisonment for 30 years. U.S.C.A. Const.Amends. 8, 14; Code 1976, § 16-3-20(A).

3 Cases that cite this headnote

Attorneys and Law Firms

****888** Acting Chief Attorney Joseph L. Savitz, III, of the South Carolina Office of Appellate Defense, of Columbia, for appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, all of Columbia; and Harold W. Gowdy, III, of Spartanburg, for respondent.

Opinion

Acting Chief Justice MOORE:

***616** Pursuant to *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), we vacate appellant's sentence of death and remand to the trial court for re-sentencing.

***617 FACTS**

Appellant was charged with murder, armed robbery, and possession of an explosive device. The charges resulted from the murder and armed robbery of a convenience store employee on May 3, 2000. Appellant admitted shooting the victim once in the head as the victim was

State v. Morgan, 367 S.C. 615 (2006)

626 S.E.2d 888

closing the store and then stealing a bag the victim was carrying that contained more than \$7000. Appellant and his accomplice, who had been hired at the store a week before the incident, had originally planned to blow a hole in the back wall of the store with a pipe-bomb after it closed. Following a trial, appellant was found guilty as charged.

The State sought the death penalty, relying on two aggravating statutory circumstances: (1) the murder occurred during the commission of an armed robbery, and (2) the murder occurred during the commission of larceny while armed with a deadly weapon. See S.C.Code Ann. §§ 16-3-20(C)(a)(1)(d) **889 and (e) (2003). At sentencing, the defense relied on three mitigating circumstances: (1) the defendant had no significant history of prior criminal conviction involving the use of violence against another person; (2) the age or mentality of the defendant at the time of the crime; and (3) the defendant was below the age of eighteen at the time of the crime. See §§ 16-3-20(C)(b) (1), (7), and (9) (2003).

The jury found both statutory aggravators and appellant was sentenced to death on the murder charge. On the charge of armed robbery, appellant was sentenced to an imprisonment term of thirty years. On the charge of possession of an explosive device, he was sentenced to an imprisonment term of fifteen years to be served consecutively to the armed robbery sentence.¹

Subsequently, the United States Supreme Court decided *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). The *Roper* court held that the execution of individuals who were under eighteen years of age at the time of their capital crimes is prohibited by the Eighth and Fourteenth *618 Amendments of the United States Constitution.² Accordingly, appellant's sentence of death is vacated.

ISSUE

Should appellant be allowed to present evidence on a remand for re-sentencing that he is entitled to a sentence less than life imprisonment?

DISCUSSION

The parties disagree on the appropriate procedure on a remand for re-sentencing. The State argues the matter should be remanded to the trial court for the sole purpose of sentencing appellant to life imprisonment without the possibility of parole. The State contends life without parole is the only alternate sentence because the jury found two aggravating circumstances. The State bases its argument on the portion of S.C.Code Ann. § 16-3-20(A) (Supp.2005) which states, "If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt ..., and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment." The State argues that where it has sought the death penalty and the jury has found aggravating circumstances, the only available sentence other than death is life imprisonment.

Appellant, however, contends that, on remand, he should be allowed to argue that he should be sentenced to something less than life imprisonment without parole. Appellant is correct. Pursuant to *Roper v. Simmons*, *supra*, appellant's death sentence is prohibited. The portion of § 16-3-20(A) cited by the State does not apply to appellant. Further, on remand, whether the jury found certain aggravating circumstances at his sentencing proceeding is irrelevant because the discussion of aggravators arises only when the State seeks the death penalty, which the State cannot do in this case.

We therefore look to § 16-3-20(A) for guidance on how a person convicted of murder and who is not subject to the *619 death penalty should be sentenced. Section 16-3-20(A) provides that "[a] person who is convicted of ... murder must be punished by ... imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years." Therefore, on remand, the trial court may receive additional evidence on the question of whether appellant is entitled to receive a sentence less than life imprisonment and decide on a sentence that ranges from a mandatory minimum imprisonment term of thirty years to life imprisonment.

VACATED AND REMANDED.

BURNETT, PLEICONES, JJ., Acting Justice CLYDE N. DAVIS, JR., and Acting Justice EDWARD B. COTTINGHAM, concur.

State v. Morgan, 367 S.C. 615 (2006)

626 S.E.2d 888

All Citations

367 S.C. 615, 626 S.E.2d 888

Footnotes

- 1 Appellant's sentences on the charges of armed robbery and possession of an explosive device are unaffected by this decision.
- 2 Both the **State** and appellant agree that appellant was seventeen years old at the time of the murder. The record indicates appellant's birthday is May 19, 1982.

End of Document

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EXHIBIT 5

Computer

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Spartanburg

VS.

Eric Dale Morgan

AKA:

Race:

Sex:

Age:

DOB:

SS#: 249-75-4014

Address:

3206 CULPEPPER LN

City, State, Zip

DURHAM, SC

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2000 -GS- 42 - 2680

A/W#:

6487949

Date of Offense:

5/4/00

S.C. Code §:

16-3-10

CDR Code #:

0 1 1 1 1 1 6

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: MURDERin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 6☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 112 days/months/years or 1 year under the Youthful Offender Act not to exceed 1 years
and/or to pay a fine of \$ 100; provided that upon the service of 1 days/months/years and/or payment
of \$ 100; plus costs and assessments as applicable; the balance is suspended with probation for 1
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ 100 plus 20% fee: \$ 20

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(B)(1) Breath Test Fee

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

PTUP

112 days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ 100 beginning\$ 100 paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

3 0 1 5 1 3
March 17, 2006

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	THE SEVENTH JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	Case No. 2000-GS-42-2680
	)	
Plaintiff,	)	
	)	RESPONSE IN OPPOSITION TO
vs.	)	MOTION TO DISMISS DEFENDANT'S
	)	MOTION FOR RESENTENCING
Eric Dale Morgan,	)	
	)	
Defendant.	)	

Defendant, Eric Dale Morgan, by and through undersigned counsel, submits the following response in opposition to the State's Motion to Dismiss the Defendant's Motion for Resentencing. The State's arguments in support of dismissal have been addressed and rejected by the South Carolina Supreme Court in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). This Court must, therefore, deny the State's Motion to Dismiss.

In *Aiken*, the South Carolina Supreme Court recognized the United States Supreme Court's decision in *Miller v. Alabama*, 132 S. Ct. 2455 (2012) found "youth has constitutional dimension when determining the appropriateness of a lifetime of incarceration with no possibility of parole." *Id.* at 542, 765 S.E.2d at 576 (citing *Miller v. Alabama*, 132 S. Ct. 2455 (2012)). This constitutional dimension of youth must be taken into account by a sentencing judge when considering a sentence of life imprisonment without the possibility of parole for an offense committed by the defendant as a juvenile. *Id.* at 544, 765 S.E.2d at 577. In accordance with *Miller*, the South Carolina Supreme Court articulated relevant factors that must be considered by a sentencing judge facing such a sentencing decision:

(1) the chronological age of the offender and the hallmark features of youth, including “immaturity, impetuosity, and failure to appreciate the risks and consequence”;

(2) the “family and home environment” that surrounded the offender;

(3) the circumstances of the homicide offense, including the extent of the offender’s participation in the conduct and how familial and peer pressures may have affected him;

(4) the incompetencies associated with youth—for example, [the offender’s] in ability to deal with police officers or prosecutors (including on a plea agreement) or [the offender’s] incapacity to assist his own attorneys”; and

(5) the “possibility of rehabilitation.”

Id. (quoting *Miller*, 132 S. Ct. at 2468) (alterations in original). Because sentencing courts had not previously addressed these factors and the constitutionally important dimensions of youth in cases imposing life without parole sentences for juvenile offenders, the court held that inmates in those circumstances are “entitled to resentencing to allow the inmates to present evidence specific to their attributes of youth and allow the judge to consider such evidence in the light of its constitutional weight.” *Id.*

The State now relies on the fact that, in 2006, the South Carolina Supreme Court ordered the trial court in resentencing Morgan to “receive additional evidence on the question of whether [Morgan] is entitled to receive a sentence less than life imprisonment” to assert that Morgan has had an *Aiken*-complaint sentencing hearing. Motion to Dismiss, at 2 ¶ 5. The 2006 resentencing court, however, “did not have the benefit of *Miller* to share [its] inquir[y]” because the resentencing occurred prior to the Supreme Court’s decision in *Miller* and the South Carolina Supreme Court’s decision in *Aiken*. *Id.* at 543 n.8, 765 S.E.2d at 577 n.8. Thus, the resentencing court could not have “afforded youth and its attendant characteristics constitutional meaning” as required by those cases. *Id.*

The South Carolina Supreme Court directly addressed this issue, recognizing that even though some of the cases it considered in *Aiken*¹ involved sentencing hearings that touched on youth, “none of them approach the sort of hearing envisioned by *Miller*.” *Id.* at 543, 765 S.E.2d 577. The court found that each of the “sentencing hearings in [those] cases suffer from a constitutional defect—the failure to examine the youth of the offender through the lens mandated by *Miller*.” *Id.* at 543 n.8, 765 S.E.2d at 577 n.8. Morgan’s resentencing hearing is no different. The resentencing court had no opportunity to assess Morgan’s youth through the lens mandated by *Miller* because *Miller* had not yet been decided. Even if youth was mentioned at Morgan’s resentencing,² the resentencing court could not have addressed the factors set out in *Aiken*, which did not yet exist. Like all of the other juveniles in the state who were sentenced to life without parole prior to *Aiken*, Morgan is entitled to a new sentencing hearing in which the Court considers the constitutional dimensions of his youth at the time of the offense and the factors articulated in *Miller* and *Aiken*.

Because no court has ever addressed Morgan’s youth in the manner mandated by *Miller* and *Aiken*, and because the South Carolina Supreme Court mandated that all juveniles sentenced to life without parole prior to *Aiken* receive a new sentencing hearing, this Court must deny the State’s Motion to Dismiss and allow Morgan to prepare for, and present evidence at, a new sentencing hearing in compliance with *Aiken*.

¹ The *Aiken* case was a state habeas action filed in the South Carolina Supreme Court’s original jurisdiction on behalf of fifteen individuals who were sentenced to life without parole for offenses committed when they were juveniles.

² To undersigned counsel’s knowledge, no transcript of Morgan’s 2006 resentencing was ever created because the sentence was not appealed at the time. The State did not submit the transcript for this Court’s consideration, instead asking the Court to rely on its assertion that the resentencing complied with *Aiken*. Such reliance would be inappropriate, especially in light of the fact that the resentencing took place well before *Aiken* was decided.

Respectfully Submitted,

By: 

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April 19, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	THE SEVENTH JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	Case No. 2000-GS-42-2680
	)	
vs.	)	
	)	
Eric Dale Morgan,	)	
	)	
Defendant.	)	
_____	)	

MOTION TO ALTER OR AMEND JUDGMENT

Pursuant to Rule 59(e), S.C. R. Civ. P., Defendant, Eric Dale Morgan, respectfully moves this Court to alter or amend the judgment contained in the Court's Order granting the State's Motion to Dismiss Morgan's Motion for Resentencing [hereinafter "the Order" or "Order"], dated March 3, 2018 and filed on March 5, 2018.¹ The Order dismissing Morgan's Motion for Resentencing is contrary to the holding and mandate of the South Carolina Supreme Court in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), and should be amended to deny the State's Motion to Dismiss.

The Order improperly denies Morgan a resentencing hearing as mandated by the South Carolina Supreme Court in *Aiken* and fundamentally misinterprets this Court's role in the post-*Aiken* juvenile sentencing era. The Order found this "Court's function is to determine whether [the *Aiken*] factors were considered at the 2006 resentencing hearing." To the contrary, the *Aiken* Court ordered that all juveniles sentenced to life without parole under the then-existing sentencing

¹ Undersigned counsel received an electronic copy of the signed order via email on March 5, 2018 with a message that the Order was sent to Seventh Circuit Solicitor Barry Barnette for filing. The Order was filed in Spartanburg County on March 5, 2018. Counsel received a filed version of the Order from the Spartanburg County Clerk of Court via email on March 14, 2018.

procedures be resentenced “to allow the inmates to present evidence specific to their attributes of youth and to allow the judge to consider such evidence in light of its constitutional weight.” *Id.* at 544, 765 S.E.2d at 577. *Aiken*’s holding, therefore, requires the resentencing court to conduct a sentencing hearing *de novo* and consider the factors enumerated by the Court based on its interpretation of *Miller v. Alabama*, 567 U.S. 460 (2012).² The previously imposed life without parole sentence has been deemed unconstitutional and is null and void. This Court, therefore, is not being asked to overrule another judge at the same jurisdictional level, Order at 4, the South Carolina Supreme Court has already done that. Rather, this Court is required to conduct a new sentencing because *Aiken* vacated Morgan’s sentence.³

By relying on the 2006 resentencing, the Order incorrectly found Morgan is not entitled to resentencing, reasoning that the 2006 resentencing judge considered the factors set forth in *Aiken* despite the fact the factors did not exist at the time of the hearing. Based on the testimony from the Honorable J. Derham Cole, the Order found the resentencing hearing included evidence related to Morgan’s youth at the time of the crime and that Judge Cole considered his youth in sentencing

² As the Order recognized, the resentencing court must consider:

- (1) the chronological age of the offender and the hallmark features of youth, including “immaturity, impetuosity, and failure to appreciate the risks and consequence”; (2) the “family and home environment” that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender’s participation in the conduct and how familial and peer pressures may have affected him; (4) the “incompetencies associated with youth—for example, [the offender’s] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender’s] incapacity to assist his own attorneys”; and (5) the “possibility of rehabilitation.”

Id. (citing *Miller*, 567 U.S. at 477-78).

³ The procedure is similar to that used when the Supreme Court finds error at the penalty phase of a capital trial. When the case returns for a new capital sentencing hearing, the sentencing jury (or resentencing judge) does not determine whether the prior death sentence was appropriate; rather the case proceeds as if the initial sentencing hearing never occurred.

Morgan to life without parole. While Judge Cole testified that he considered Morgan's youth in 2006,⁴ he could not have done so in compliance with the constitutional imperatives that developed in the eight years between the 2006 resentencing in the *Aiken* decision.

As the Supreme Court of the United States recognized in *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016), “*Miller* requires that before sentencing a juvenile to life without parole, the sentencing judge take into account ‘how children are different, and how those differences counsel against irrevocably sentencing the to a lifetime in prison.’” *Id.* at 733 (citing *Miller*, 567 U.S. 460).⁵ In order to give constitutionally required consideration to youth, “*Miller* requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored.” *Aiken*, 410 S.C. at 545, 765 S.E.2d at 578.

Despite the fact that Judge Cole was presented with some evidence of Morgan's youth,⁶ he did not have the benefit of the Court's rulings on the constitutional importance of youth in

⁴ For the reasons stated at the hearing on the Motion to Dismiss, Morgan objects to this Court's admission of, and reliance on, Judge Cole's testimony. As discussed above, the South Carolina Supreme Court vacated the sentence imposed by Judge Cole and this Court is not sitting in the position of reviewing Judge Cole's sentencing determination. Further, Judge Cole's testimony regarding his sentencing determination should be barred under Rule 606(b), SCRE, because his testimony is no different from a juror being asked to testify about matters occurring during deliberations, “the effect of anything upon” the sentencing deliberations, or the fact finder's “mental processes.” *Id.* (“[A] juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith.”).

⁵ See also *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577 (“*Miller* requires the sentencing authority ‘take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.’”) (internal citation omitted).

⁶ There is no way to know exactly what was said about Morgan's youth given that there is no transcript of the resentencing hearing and Judge Cole testified that he did not remember exactly what was presented at the resentencing hearing. Nevertheless, because *Miller* and *Aiken* had not

sentencing a juvenile to life without parole and he did not make any findings regarding the factors set forth in *Aiken* and *Miller*. The *Aiken* Court recognized this problem, finding that though some of the previous juvenile sentencing hearings touched on the youth of the defendant, they were conducted “according to existing sentencing procedures, which made no distinction between defendants whose crimes were committed as an adult and those whose crimes were committed as a juvenile,” and that all “sentencing hearings in [those] cases suffer from a constitutional defect—the failure to examine the youth of the offender through the lens mandated by *Miller*.” *Id.* at 537, 543 n.8, 765 S.E.2d at 573, 577 n.8.

In addition to the judge being without the guidance of *Miller* and *Aiken* during the 2006 resentencing, Morgan’s counsel similarly did not have the guidance of these decisions while investigating and presenting the case for the 2006 resentencing. The Order indicates it is “unclear what evidence Defense counsel would present in addition to that contained in the original trial record,” Order, at 5, but that is true in all of the cases set for resentencing under *Aiken*. When prior counsel had no reason, or mandate, to investigate or present evidence on the *Aiken* factors, there is no way to know what evidence is relevant to an *Aiken* resentencing hearing without allowing counsel to conduct an investigation and present evidence on those factors.⁷ *Aiken* recognized this

been decided, the procedures and evidence presented at the resentencing hearing could not have been compliant with current constitutional requirements. *See Aiken*, 410 S.C. at 543, 765 S.E.2d at 576 (recognizing that “although some of the hearings touch on the issues of youth, none of them approach the sort of hearing envisioned by *Miller*”).

⁷ Undersigned counsel recognizes that Morgan had two sentencing hearings, including an individualized death penalty sentencing hearing. As counsel stated at the hearing on the Motion to Dismiss, preparation for an *Aiken* resentencing hearing would include review of the evidence presented at the death penalty sentencing proceeding to avoid needless duplication of efforts, but the inquiry would be different in preparation for an *Aiken* resentencing. In Morgan’s death penalty case, his counsel were presenting evidence in hopes of obtaining a life without parole sentence given that, at the time of the hearing, the alternative was Morgan being sentenced to death. While Morgan’s youth was relevant to the life or death determination, the sentencing presentation was

by finding that juveniles sentenced to life without parole before *Aiken*, even when youth was mentioned in sentencing, are “entitled to resentencing to allow the inmates to present evidence specific to their attributes of youth and to allow the judge to consider such evidence in light of its constitutional weight.” *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577.

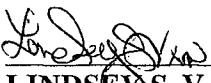
The bottom line is that Morgan is no different than other cases affected by *Aiken* and this court’s rejection of his motion for resentencing is inconsistent with the clear holding and mandate of the South Carolina Supreme Court. *Aiken* held that juveniles sentenced to life without parole without examination of their youth “through the lens mandated by *Miller*” were entitled to resentencing. *Id.* at 543, 765 S.E.2d 577. Because the “lens mandated by *Miller*” did not exist at Morgan’s original sentencing or his 2006 resentencing, he is similarly situated to all other juveniles sentence to life without parole prior to *Aiken* and is entitled to a resentencing hearing at which “the mitigating hallmark features of youth are fully explored.” *Id.* at 545, 765 S.E.2d at 578.

made before *Roper v. Simmons*, 543 U.S. 551 (2005), ruled it was unconstitutional to execute juveniles and began the line of cases culminating in *Aiken*, which determined the specific considerations youth should be given in sentencing juveniles to life without parole. Thus, undersigned counsel must review the evidence and conduct investigation through the new lens developed in *Roper*, *Miller*, and *Aiken* in order to present the Court with sufficient evidence to evaluate the *Aiken* factors and determine the appropriate sentence.

CONCLUSION

For the reasons stated above and in Morgan's Response in Opposition to Motion to Dismiss Defendant's Motion for Resentencing, this Court should amend its Order, deny the State's Motion to Dismiss, and allow Morgan to proceed to resentencing in accordance with the constitutional requirements set forth in *Aiken* and *Miller*.

Respectfully Submitted,

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March 15, 2018.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
State of South Carolina,	)	
	)	
v.	)	RESPONSE TO DEFENDANT'S MOTION
	)	TO ALTER OR AMEND SENTENCE
Eric Dale Morgan,	)	2000-GS-42-2680
	)	
Defendant.	)	

Counsel for Defendant Eric Dale Morgan seeks a rehearing to alter or amend his sentence. The State requests the Defendant's Motion be denied.

The Defendant has had a sentence of death reversed previously as a result of the Supreme Court's ruling in *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183 (2005), which invalidated the death penalty for all juvenile offenders. *Roper* vitiated the death penalty as of the time of the Defendant's original conviction after a murder committed in 2000. (See Order of Hon. Edward W. Miller, dated March 2, 2018, filed March 5, 2018). Thereafter in *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011 (2010), the Supreme Court held that sentences of life without parole for juvenile non-homicide offenders violated the Eighth Amendment of the United States Constitution, applied via due process under the Fourteenth Amendment, and in turn under *Miller v. Alabama*, 132 S. Ct. 2455 (2012). The Supreme Court's ruling in *Graham* also vitiated Morgan's original sentence for his crimes. *State v. Morgan*, 367 S.C. 615, 626 S.E.2d 888 (2006) (entitled to present evidence on remand for re-sentencing that he was entitled to a sentence less than life imprisonment).

As stated by our own Supreme Court in *Aiken v. Byars*, 410 S.C. 534, 765 S. E.2d 572(SC 2014), "[t]he *Miller* Court noted that *Graham* equated life without parole sentences for juveniles to the death penalty, invoking a second line of cases that require sentencing authorities to consider the individual characteristics of a defendant and the details of his offense prior to imposing a sentence of death."

In March 2006 the Defendant was sentenced to life without parole after yet another sentencing hearing due to the fact that he was less than 18 years of age at the time of the offense. The March 2006 sentencing hearing was presided over by the Hon. J. Derham Cole. Judge Cole

also had presided over the original trial and sentencing of Mr. Morgan in 2004. Judge Cole's decision in March 2006 was not appealed by the Defendant. "The record from the 2006 resentencing hearing was destroyed because Morgan did not appeal or make a motion to preserve the transcript. Morgan filed his first application for PCR on February 15, 2007. By written order filed October 23, 2008, Judge Kenneth Goode denied and dismissed the application. Morgan did not appeal. He filed a motion on July 18, 2016, for resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E. 2nd 572 (SC 2014). On July 18, [Judge Miller] was granted exclusive jurisdiction over Morgan's motion for resentencing." (Order, p. 2.)

On November 15, 2017, Judge Miller conducted a hearing on the State's Motion to Dismiss at which Judge Cole testified and gave particulars of his consideration of Morgan's youth, relying "on the entire trial record as well as his independent memory of Morgan." He further testified that he considered Morgan's youth at the time of the murder and specifically took into account each of the five factors which were later set forth in *Aiken v. Byars* and in *Miller v. Alabama*. Those factors as set forth under both Judge Miller's Order and those cases are as follows:

"(1) (T)he chronological age of the offender and hallmark features of youth, including 'immaturity, impetuosity, and failure to appreciate the risks and consequence; (2) the family and home environment that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the incompetencies associated with youth - for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] capacities to assist his own attorneys'; and (5) the 'possibility of rehabilitation.'"

Order of Judge Miller, p. 3; *Aiken v. Byars*, 410 S.C. 534, 544, 765 S.E. 2nd 572, 577 (SC 2014).

These points were covered by Judge Miller in his March 2, 2018 Order. Furthermore, it is relevant and was clearly within the ken of Judge Miller, a contemporary of Judge Cole from an adjacent Circuit, to have noted that Judge Cole served for years as an Assistant Solicitor in the 7th Circuit under Solicitor Claude Taylor, a matter of especial significance given that treatment of juveniles as opposed to adults would have been acquired as a part of his training, knowledge base, reasoning and experience in considering sentencing, offender histories and experiences

with same. See Rule 201 (c), (f), South Carolina Rules of Evidence; *In the Matter of David Lawson*, 273 S.C. 560, 562, 257 S.E. 2nd 745 (SC 1979) (under circumstances where judge sits as both trier of fact and law, a court may look to the record to affirm his having considered evidence clearly before him in its proper context and his having properly balanced potential prejudice against probative worth.) Judge Cole also served as a defense attorney in the 7th Circuit, a legislator in the General Assembly during the period when much of the work on capital legislation was a continuing matter for consideration after *Furman v. Georgia*, and also testified that he is the father of and has helped raise three children. Although the five factors set forth in *Aiken v. Byars* had yet to be concisely committed to paper and explicitly set forth in caselaw, Judge Cole's background both on and off the bench provided him with the insight to conduct "the sort of hearing envisioned by *Miller* where the factors of youth are carefully and thoughtfully considered." *Aiken v. Byars*, 410 S.C. 534, 543, 765 S.E. 2nd 572, 577 (SC 2014). In short, in every way possible it is clear that his considerations would have and did reflect matters of a "child" and "juvenility."

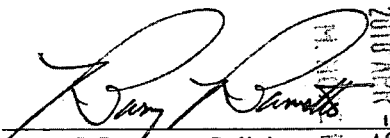
The record demonstrates that as a judge of the Circuit Court for decades, Judge Cole is experienced in matters of capital litigation and would be aware of such mitigating factors under South Carolina law, factors specifically bearing upon "[t]he capacity of the defendant to appreciate the criminality of his conduct to conform his conduct to the requirements of law was substantially impaired... [t]he age or mentality of the defendant at the time of the crime... [t]he defendant had mental retardation at the time of the crime." S.C. Code Ann. Sec. 16-3-20 (C) (b) (6), (7), and (10).

The Defendant's case started as a death penalty case and one in which, as every member of the Capital Litigation Group reminds their adversary in every filing, "a man's life is at stake." Due to the nature of this case, it was and is one in which all of the above provisions of law would be examined and considered by judges, defenders and prosecutors alike. The age of this Defendant would have been a point of contemplation for all involved; it especially would have been given particular attention by someone with Judge Cole's knowledge of South Carolina law. Even the provisions of South Carolina's own constitution would have been a matter for consideration, and our own unique provisions require that correctional facilities "shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates." S.C. Const. Art. XII, Sec. 2 (Institutions for Confinement of persons convicted of crimes).

The Defendant Morgan committed these crimes on May 3 and May 4, 2000. Morgan's acts reflected planning, ruthlessness, and a totally adult scale of violence and malice aforethought. He and his accomplice had briefly worked for the victim they shot and killed. The victim's death was not so much a murder as it was an execution; Morgan and his accomplice left a dead man since a living one could have identified them as the thieves who stole \$7,000 dollars at the point of a gun. From their curiously brief employment, they had learned much about the amounts of money that might easily be stolen, security measures in place, and the vulnerabilities of their intended target.

Morgan turned 18 years old on May 19, 2002, just two weeks after he committed murder. His birthday followed almost immediately on the heels of his offense. Within two weeks of the offense he would have been of voting age, of an age to serve in the armed forces, and of an age to lawfully take up arms in defense of his country and constitution. Instead Morgan took a job, sized up his victim and with an accomplice murdered a man who had hired him and given him gainful employment. To refer to him and others of his age as a "child" for constitutional purposes when they commit premeditated murder as he did is constitutionally abhorrent to the rights of victims. S.C. Const. Art. I, Sec.24 (A). These rights, too, are part of "the evolving standards of decency that mark the progress of a maturing society." *Miller v. Alabama*, 567 U.S. 460, 470, 132 S. Ct. 24 (2012) quoting *Trop v. Dulles*, 356 U.S. 86, 101, 78 S. Ct. 590 (1958); *Aiken v. Byars*, 410 S.C. 534, 538, 765 S.E. 572 (SC 2014).

The motion should be denied.


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2018 APR -9 PM 4:28
 CLERK OF COURT
 SPARTANBURG COUNTY

Spartanburg, SC
 April 9, 2018

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2) GENERAL SESSIONS
3 COUNTY OF SPARTANBURG) OF THE SEVENTH
4) JUDICIAL CIRCUIT
5)
6 STATE OF SOUTH CAROLINA,)
7 Plaintiff,) TRANSCRIPT OF RECORD
8 vs.) 2000-GS-42-2680
9 ERIC DALE MORGAN,)
10 Defendant.)
11)
12)
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25)

November 15, 2017
Spartanburg, South Carolina

B E F O R E:

HONORABLE EDWARD W. MILLER, Judge.

A P P E A R A N C E S:

BARRY BARNETTE, SOLICITOR
For The State

DERRICK BULSA, DEPUTY SOLICITOR
For The State

LINDSEY S. VANN, ESQUIRE
For Defendant

Julie A. Cendroski,
Circuit Court Reporter
Seventh Judicial Circuit

I N D E X

<u>WITNESS</u>	<u>PAGE</u>
ANNOUNCEMENT OF CASE By Mr. Barnette	4
MOTION TO DISMISS By Mr. Barnette	5
<u>THE HONORABLE JOSEPH DERHAM COLE</u>	
DIRECT EXAMINATION By Mr. BARNETTE	12
CROSS-EXAMINATION By Ms. VANN	24
ARGUMENT By Mr. Barnette	26
REPLY ARGUMENT By Ms. Vann	28
FURTHER ARGUMENT By Mr. Barnette	40
CERTIFICATE OF REPORTER	43

	EXHIBITS		
		<u>MARKED</u>	<u>ENTERED</u>
1			
2			
3			
4	COURT'S EXHIBIT NO. 1		
5	CD Record On Appeal	4	26
6			
7	COURT'S EXHIBIT NO. 2		
8	Evidence Log	4	26
9			
10	COURT'S EXHIBIT NO. 3		
11	Waiver and Statements		
12	From Defendant	4	26
13			
14	COURT'S EXHIBIT NO. 4		
15	Packet of Photos Introduced		
16	At Previous Trial	4	26
17			
18	COURT'S EXHIBIT NO. 5		
19	Defense Presentation From		
20	Previous Trial	4	26
21			
22			
23			
24			
25			

1 THE STATE VERSUS ERIC DALE MORGAN

2 (Whereupon, Court's Exhibit No. 1, CD of Record
3 on Appeal, was marked for identification.)

4 (Whereupon, Court's Exhibit No. 2, Evidence Log,
5 was marked for identification.)

6 (Whereupon, Court's Exhibit No. 3, Waiver and
7 Statements By Defendant, was marked for identification.)

8 (Whereupon, Court's Exhibit No. 4, Photos
9 Introduced During Previous Trial, was marked for
10 identification.)

11 (Whereupon, Court's Exhibit No. 5, Defense
12 Presentation, was marked for identification.)

13 THE COURT: All right.

14 MR. BARNETTE: May it please the Court, Your
15 Honor. This is State's Motion to Dismiss the defense
16 motion for resentencing in this case, Your Honor. I
17 know you received my motion, Your Honor, as well as the
18 Defendant's return in this case.

19 There is some exhibits I'd like to enter in the
20 record at this time. I've shared them with Ms. Vann.
21 And, Your Honor, I do have an extra copy of the matter.
22 We briefly talked in chambers.

23 THE COURT: Okay.

24 MR. BARNETTE: It's about the hearing. State's
25 Exhibit -- or Court's Exhibit 1, Your Honor, is actually

1 the record on appeal, volumes one through five from the
2 death penalty trial in this case, Your Honor. Court
3 Exhibit Number 2, Your Honor, is actually the exhibits
4 that was introduced in that trial, Your Honor.

5 Court Exhibit Number 3, Your Honor, is actually
6 the waiver, as well as the statements given by the
7 defendant in this case, Your Honor. I'd like to make
8 that part of the record too.

9 Court Exhibit 4, Your Honor, is the pictures that
10 was entered in during the trial, Your Honor. It's the
11 guilt phase, as well as the sentencing phase, Your
12 Honor.

13 And Court Exhibit 5, Your Honor, is actually the
14 copy of the defense presentation in the death penalty
15 case and the sentencing phase. And what I've done, Your
16 Honor, there is some points I'd like to make at the
17 appropriate time, but I've marked them with yellow
18 marker. And the points I'd like to make in the -- I'm
19 not gonna have enough time to do that, but make sure
20 it's part of the record, Your Honor --

21 THE COURT: All right.

22 MR. BARNETTE: -- in that case. And I do have an
23 extra copy. I know, briefly, for the Court on the
24 record of appeal for the Court also. I'd like to hand
25 that up. And I'd also like to make the exhibits from

1 the previous trial that was entered in the death penalty
2 trial, make that part of this hearing, as well as any
3 future hearings for resentencing, Your Honor.

4 THE COURT: Okay.

5 MR. BARNETTE: May I approach for a minute, Your
6 Honor?

7 THE COURT: Yes.

8 (Whereupon, Mr. Barnette hands documents to the
9 Court.)

10 MR. BARNETTE: And, Your Honor, we do have one
11 witness here to testify.

12 THE COURT: Okay.

13 MR. BARNETTE: We have Judge Derham Cole. He is
14 the one that presided over the actual trial of this
15 case, as well as the resentencing, Your Honor.

16 And what happened in this case, just for -- just
17 briefly. I know the Court's probably aware of it. Back
18 in 2004, Your Honor, the Defendant was tried and was
19 convicted and was given the death sentence, Your Honor,
20 by the recommendation of the jury. Judge Cole presided
21 over that, Your Honor.

22 In the meantime, a sentence came out from the
23 U.S. Supreme Court, Your Honor, vacated the death
24 sentence, said nobody under the age of 18 can be given a
25 death sentence in this situation.

1 Our Supreme Court, and I do have a copy of that,
2 Your Honor. *State versus Morgan*, Your Honor, 367 S.C.
3 615, Your Honor. They sent it back, remanded it back in
4 front of Judge Cole, Your Honor, and basically said that
5 we may have to resentence. He's entitled to a sentence
6 less than life in prison in this case. Do you have a
7 copy of this, Your Honor?

8 THE COURT: Not right in front of me, but...

9 MR. BARNETTE: I'll pass up the court finding.

10 THE COURT: Okay.

11 MR. BARNETTE: I'll also give a copy to -- and I
12 do have *Aiken versus Byars*, Your Honor. Would you like
13 a copy of that?

14 MS. VANN: I have that.

15 MR. BARNETTE: You have that? Okay.

16 May I approach, Your Honor?

17 THE COURT: Yep.

18 (Whereupon, Mr. Barnette hands documents to the
19 Court.)

20 All right. Thank you, sir.

21 MR. BARNETTE: You're welcome. Your Honor,
22 before I call Judge Cole, Your Honor, one thing I
23 noticed about *Aiken versus Byars* in this case. It's a
24 three-two decision, Your Honor.

25 THE COURT: Uh-huh.

1 MR. BARNETTE: We're the only state -- our state
2 has a non-mandatory scheme. You know, basically right
3 now it's 30 to life with murder unless it's a death
4 penalty case. In that decision they expanded *Miller*
5 *versus Alabama*, U.S. Supreme Court decision. And I
6 believe, and looking at this end, doing the research,
7 and Ms. Vann can probably correct me if I'm wrong, we're
8 the only state that allows these type hearings to go on
9 in cases where it's not mandatory life.

10 And they list the factors or whatever. And what
11 I'm gonna ask Judge Cole about is obviously what factors
12 he considered. He actually sat over the whole trial.
13 And I believe he's got a lot of information to share
14 with the Court, as well as the resentencing part.

15 So our argument is really two-fold. Our first
16 argument is obviously that was covered. Anything -- and
17 I know *Aiken versus Byars* came out obviously eight years
18 after the fact, but that it's already been covered.
19 Judge Cole considered these factors, looked at them and
20 so forth.

21 And the second thing, too, I think -- I know our
22 Supreme Court's ruled, but I don't think they meant for
23 these type cases to be heard like this. Unfortunately
24 this is not the only one we're dealing with in our
25 circuit. We're having numerous cases from 1983 and 1984

1 when they were life with parole cases, so we're having
2 all these hearings concerning these cases. And it's a
3 concern to me because, like I said, the victim's
4 family's here. They're not gonna speak today,
5 obviously, because this is a Motion to Dismiss, but it's
6 a situation where we're hearing cases over and over and
7 over again.

8 And it used to be on death penalty cases I'd warn
9 people ahead of time and Solicitor Gowdy before me. A
10 death penalty case you knew that was a part of the risk
11 going into it. Now we're talking about life without
12 parole cases. When will it stop? When will it stop for
13 folks like this?

14 I appreciate you letting me put that on the
15 record, Your Honor.

16 THE COURT: Certainly.

17 MR. BARNETTE: I call Judge Cole to the ---

18 MS. VANN: Your Honor, I object to calling Judge
19 Cole at this point as a witness.

20 THE COURT: Okay.

21 MS. VANN: I think that a judge should not be
22 called to impeach or vouch for his own verdict. It's
23 much like 606, not calling a juror to testify for those
24 types of reasons. And also, an *Aiken versus Byars*
25 resentencing hearing is a de novo resentencing. And so

1 you would be considering the evidence and you would be
2 considering the factors de novo without having consider
3 -- you don't need to consider and it's not relevant to
4 consider what Judge Cole determined at the prior
5 sentencing hearing.

6 THE COURT: Okay. Well, what has not been stated
7 is that the record from the -- when was the -- we're
8 missing a transcript, correct?

9 MR. BARNETTE: Yes, sir, on the 2006 resentencing
10 hearing.

11 THE COURT: Okay. So this judge, Judge Cole's
12 testimony would be directed at a reconstruction of the
13 record, okay? And so I'm going to allow it over your
14 objection. And we will keep it confined to those
15 parameters. Just what he considered and not, okay?

16 MR. BARNETTE: Yes, sir. One thing I just want
17 to put on the record too, Your Honor, is I know Justice
18 Hearn was the majority in *Aiken versus Byars*. She said
19 she didn't mean for these to be like death penalty
20 sentences. This was a death penalty case. I mean,
21 Judge Cole, obviously I wasn't just asking about what
22 she considered obviously, but I think reconstructing the
23 record would also -- it just becomes a factor from that
24 because he is the sentencing judge and he -- one of the
25 factors he took in play should be what's in front of the

1 Court today concerning this motion.

2 THE COURT: Okay. Well...

3 MR. BARNETTE: You go through that opinion, Your
4 Honor, and it does concern -- brings that up in *Aiken*
5 *versus Byars*.

6 THE COURT: All right.

7 MR. BARNETTE: So, like I said, we had a hearing
8 -- had a mitigation hearing concerning this, so... And
9 I believe if you look at her opinion she wrote that in
10 there, so...

11 THE COURT: Okay.

12 MR. BARNETTE: And I just put that as part of the
13 record, Your Honor.

14 THE COURT: All right.

15 MR. BARNETTE: I appreciate you working with me.

16 THE COURT: Okay. All right.

17 MR. BARNETTE: I call Judge Cole to the stand,
18 Your Honor.

19 (Whereupon, witness comes forward.)

20 THE CLERK: Raise your right hand, place your
21 left hand on the Bible. (Complies.)

22 Do you solemnly swear or affirm the testimony
23 you're about to give will be the truth, the whole truth
24 and nothing but the truth?

25 THE WITNESS: I do.

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J. DERHAM COLE,
having been duly sworn, testified as follows:
DIRECT EXAMINATION
BY MR. BARNETTE:
Q. Judge, if you would, state your full name for the
record, sir.
A. Joseph Derham Cole.
Q. And what is your current position, sir?
A. Circuit Court judge.
Q. And how long have you been in that position, sir?
A. Twenty-five years.
Q. And have you heard all kinds of matters, I guess
from civil to criminal and all the way across the board
in your career as a circuit judge?
A. I have.
Q. I can't imagine, I know it's numerous trials.
Any idea how many trials that you've heard in your
lifetime?
A. I don't keep track of that.
Q. I can imagine. And you've heard obviously death,
and this was a death penalty cases that you heard?
A. It was.
Q. And you've heard other death penalty cases?
A. I have.
Q. Yes, sir. In this case do you keep a notebook

1 and things about the case as you're going through it?

2 A. When the, when the case is assigned?

3 Q. Yes, sir.

4 A. I do.

5 Q. And in that notebook do you keep -- or could you
6 tell us what you keep in that notebook?

7 A. Well, I keep everything that's provided that the
8 lawyers have in discovery, everything that's going to be
9 presented in court. And then I keep my own notes as to
10 what witnesses testify to and what occurs during the
11 trial.

12 Q. And obviously you presided over the death penalty
13 part of this trial. It lasted, I believe it was two
14 weeks; is that correct?

15 A. I think that's correct, yes. Close to it.

16 Q. Yes, sir. And in, in that case did you hear both
17 from the State and the defense, the guilt and the
18 sentencing phase?

19 A. I did.

20 Q. And all the witnesses that you heard -- and like
21 I said, I know this has been a long time ago. I know
22 the actual trial was in '04 and the sentencing was in --
23 resentencing was in '06. In listening to that
24 testimony, did you make notes or remember basically what
25 was talked about in those cases when you go through your

1 notebook and so forth?

2 A. Well, you're talking about for today or for the
3 resentencing?

4 Q. For both. For resentencing and the trial.

5 A. Well, the notebook that I, I had for Mr. Morgan's
6 case has been shredded after the resentencing in 2006
7 because while I keep the notebooks on death penalty
8 cases, I didn't keep that one because it was no longer a
9 death penalty case. And after resentencing I didn't
10 think that there would be any purpose in, in preserving
11 it.

12 Q. And one reason why I believe we don't have a
13 transcript is because there was never a motion or
14 anything found after those six hearings, to your
15 knowledge, from that standpoint?

16 A. Well, I'm not sure why there was not a
17 transcript. I assume that it was destroyed after five
18 years..

19 Q. Yes, sir. And I guess there was never a motion
20 or anything made for a transcript?

21 A. Oh, to preserve it?

22 Q. Uh-huh.

23 A. Not that I'm aware of.

24 Q. Yes, sir. In listening to the testimony and
25 everything, obviously the statements of Mr. Morgan was

1 brought in front of Your Honor at that time.

2 A. Yes.

3 Q. And have you had a chance to review those since
4 then?

5 A. I have.

6 Q. And in those statements he talks about the crime
7 he did and so forth and how he did it.

8 A. He did.

9 Q. And obviously him being 17 years old, was he
10 16 days short of being 18 years old?

11 A. That's true.

12 Q. From there? And in looking at the statements and
13 everything, reviewing them, did you notice the
14 premeditation and things like that and the thinking that
15 he used at that time based off those statements?

16 A. I did.

17 Q. And was that part of what you used in your
18 sentencing from that standpoint?

19 A. The premeditation?

20 Q. Yes, sir.

21 A. It certainly was.

22 Q. And I believe he talked about planning for --
23 actually they thought about doing the crime three days
24 earlier, I think, when other people told the story?

25 A. I think that's correct.

1 Q. And they backed off of that and then replanned it
2 and did it three days later?

3 A. That's true.

4 Q. And one of the things he took was latex gloves;
5 is that correct?

6 A. That's correct.

7 Q. And was there any finger -- was that because of
8 fingerprints, they didn't want to leave any
9 fingerprints?

10 A. Well, that's what, that's what he said in the
11 statement.

12 Q. Uh-huh.

13 A. He didn't want to leave fingerprints.

14 Q. And obviously you got to see from the statement
15 how he was thinking and what the -- for his age and
16 everything, taking those into considerations there?

17 A. Well, I could read and interpret what I thought
18 he was thinking.

19 Q. And obviously you had the guilt phase. But you
20 also listened to the defense side, and especially the
21 mitigation part of the sentencing phase part.

22 A. I did.

23 Q. And you heard the witnesses that testified. I
24 think his mother, a school teacher, friends, people of
25 that nature.

1 A. I did.

2 Q. And did they give you a picture of his, his youth
3 when you heard all the mitigation testimony that was
4 presented?

5 A. I thought it was a relatively complete picture.

6 Q. And I think Annette Body (phonetic) was qualified
7 as an expert and testified in the trial.

8 A. As a sociologist, a mitigation expert, I think
9 that's correct.

10 Q. Yes, sir. And I think she was qualified for a
11 psycho social assessment, is what she was qualified for.

12 A. That's true.

13 Q. And she went through the whole history of Mr.
14 Morgan.

15 MS. VANN: Objection, Your Honor, leading. I
16 think we should hear from Judge Cole, what he
17 considered.

18 MR. BARNETTE: I'll rephrase, Your Honor.

19 THE COURT: Okay. All right.

20 THE WITNESS: Well, can I say this? I mean, the
21 record speaks for itself, as far as that goes. I mean,
22 I consider what's in the record. I don't recall that I
23 considered anything outside of the record.

24 MR. BARNETTE: And let me show you -- Your Honor,
25 may I approach the bench to get this one ---

1 THE COURT: Sure.

2 MR. BARNETTE: (Handing.) My I approach the
3 witness, Your Honor?

4 THE COURT: Certainly.

5 BY MR. BARNETTE:

6 Q. Judge Cole, let me show you what's been marked as
7 State exhibits or Court's Exhibits 3, 4 and 5. I
8 believe these present, five is obviously the transcript.
9 Four is the pictures. And three is his waiver as well
10 as his statement. Were these items that you considered?
11 Obviously saw them in the trial. Did you use those in
12 2006, Your Honor?

13 A. I did. Yes, I reviewed everything that was in
14 the record from the 2004 trial at the 2006 sentencing.

15 Q. And in looking at that -- and how many children
16 do you have, Judge Cole?

17 A. I have three.

18 Q. And did -- and obviously you've raised children
19 and been around children.

20 A. I have. I've been one before.

21 Q. And you've been one before, yes, sir. And
22 obviously you understand. You've been a youth before,
23 you've had children that's been youth. Have you dealt
24 with youth issues before?

25 A. Yes, I have. Out of court and in court.

1 Q. And basically you've seen the immaturity of kids,
2 you see, you know, the way they act, the way they do
3 things?

4 A. I see immaturity in children and adults.

5 Q. And do they always understand the risks and
6 consequences of their actions?

7 A. They apparently do not.

8 Q. Uh-huh. And obviously, looking at the evidence
9 and everything, is that something that you saw or looked
10 at when you looked at this case?

11 A. That's something I always look at. That's
12 something I always consider.

13 Q. And obviously in the transcript and everything it
14 looks from the hearing, his family was discussed in
15 detail. Was that something that you took into
16 consideration?

17 A. I did.

18 Q. And did you see the home environment and things
19 surrounding Mr. Morgan at that time?

20 A. I saw what was presented by way of the testimony.

21 Q. Yes, sir. And did you see the facts of how his
22 peers, how he interacted with peers of people his age
23 and things like that?

24 A. Well, from what was contained in the record I
25 did, and what was represented by way of his statement,

1 in his interaction with the co-defendant who I think was
2 16.

3 Q. And, of course, you took in the circumstances of
4 the events and everything involved with your sentencing?

5 A. I absolutely took into consideration the
6 circumstances relating to the crime itself.

7 Q. And did you look at the participation of the
8 crime, Mr. Morgan's?

9 A. I did.

10 Q. And, obviously, through the statements did you
11 get to see how he interacted with the police officers
12 and things of that nature?

13 A. Well, from what's in the record I did, yes.

14 Q. Yes, sir. And I believe also that these were
15 tape recordings that were taken also of these
16 statements. I don't think they were transcribed.

17 A. They weren't.

18 Q. So obviously there was no other evidence showing
19 how he interacted with the police and so forth from that
20 standpoint.

21 A. That's true.

22 Q. And obviously you got to see how he interacted
23 with his attorneys during the trial and obviously at the
24 resentencing.

25 A. I did observe that during the trial, yes.

1 Q. And was he able to assist his attorneys from what
2 you could tell from what you saw in court?

3 A. As far as I could observe. No one ever informed
4 me that there was a problem.

5 Q. And obviously in the resentencing and everything,
6 was rehabilitation brought up from the standpoint from
7 with the defense and so forth?

8 A. I'm certain that it was.

9 Q. And were these all considerations that you took
10 in effect when you resentenced Mr. Morgan in 2006?

11 A. I did. If it was in the record I considered it.

12 Q. Yes, sir. And did you -- obviously you knew at
13 the time that he could get less than a life sentence?
14 He could get, in our scheme, it's 30, 30 to life.

15 A. I was aware of that.

16 Q. And did you take that into consideration?

17 A. I did.

18 Q. And in looking at the sentence back in '06, is
19 there any other factors that you took in effect or
20 anything from there?

21 A. Well, nothing other than what was in the record.
22 And I know that there is no transcript of the 2006
23 hearing, so I can't tell you what specifically was
24 presented other than the fact that I know that the
25 entire record from the trial was made a part of that

1 record.

2 Q. Uh-huh. And obviously, Ms. Body, for example,
3 she went through different things. Talked about his
4 I.Q. and things of that nature also in his
5 psychological.

6 A. She, she discussed all the records and
7 information she had gathered from a variety of sources
8 which included school records.

9 Q. And also he had, like I say, his school teachers,
10 his friends, they all testified about how he interacted
11 with them and how he did in school and that nature and
12 you heard all that also.

13 A. I did.

14 Q. So the question I asked you, you felt like you
15 did consider all those factors before you rendered the
16 sentences?

17 A. I considered everything that was presented, and I
18 certainly considered the circumstances relating to the
19 crime and the circumstances relating to the defendant
20 that was presented and considered his culpability and
21 his participation. And, of course, I didn't ignore the
22 fact that 12 randomly chosen citizens thought that he
23 should be sentenced to death based upon the nature of
24 the crime and his particular circumstances. That, of
25 course, is not constitutionally permitted now, but it's

1 not something that should be ignored upon the fact that
2 those selected to hear the facts and apply the law
3 thought he should be put to death. And had he been 16,
4 if the crime had happened 16 days later we wouldn't be
5 sitting here today.

6 Q. Yes, sir. And um ---

7 A. So I thought the sentence of life in prison that
8 I imposed was completely proportional to the crime that
9 was committed.

10 Q. And those jurors knew he was 17 years old.

11 A. Oh, they absolutely knew that.

12 Q. And I believe you in voir dire that was a
13 question that was allowed, was asked of them about.

14 A. Well, that was -- I'm fairly certain that that
15 was asked in collective voir dire as well as individual
16 voir dire.

17 Q. And also they heard the same evidence that you
18 heard, obviously, during the trial.

19 A. They did.

20 MR. BARNETTE: One moment, Your Honor, please.

21 THE COURT: Okay.

22 BY MR. BARNETTE:

23 Q. Just to followup, you also considered he could
24 potentially get a less than a life sentence when you did
25 the resentencing.

1 A. Oh, absolutely. I mean, it depends on the review
2 of the record for sure.

3 Q. Yes, sir. Thank you, Your Honor, for answering
4 my questions.

5 THE COURT: Okay, cross.

6 CROSS-EXAMINATION

7 BY MS. VANN:

8 Q. Just a few brief questions of clarification. The
9 resentencing happened after Roper versus Simmons
10 invalidated the death penalty for juveniles; is that
11 correct?

12 A. True.

13 Q. And at the time of the resentencing ---

14 A. That's why we were there.

15 Q. Yes, sir. At the time you did the resentencing
16 you didn't have an opportunity to review the later
17 decision by the U.S. Supreme Court in Miller versus
18 Alabama which came out in 2012.

19 A. Obviously I did not.

20 Q. And similarly you didn't have Aiken versus Byars
21 from the South Carolina Supreme Court available?

22 A. No, I did not.

23 Q. And, therefore, you didn't have the benefit of
24 the factors that were laid out specifically in Miller
25 and Aiken.

1 A. Well, I didn't have a court's instructions on
2 those factors, but that doesn't mean I didn't consider
3 those factors.

4 Q. Did you make any specific findings relevant to
5 those factors?

6 A. No, ma'am, I'm not required to.

7 MS. VANN: Thank you, Your Honor.

8 THE COURT: Any redirect?

9 MR. BARNETTE: No further questions, Your Honor.
10 We'd ask the witness be excused.

11 THE COURT: Okay. Thank you very much Judge
12 Cole.

13 THE WITNESS: Thank you.

14 (Whereupon, witness leaves the witness stand and
15 the courtroom.)

16 THE COURT: Okay.

17 MR. BARNETTE: That would be the State's showing
18 in this case. Obvious we have argument and everything,
19 Your Honor, but I'd like to move all these exhibits in
20 as well as part of the evidence from the -- or all the
21 evidence from the trial into the record also, Your
22 Honor.

23 THE COURT: All right. Any objection to that?

24 MS. VANN: No, Your Honor.

25 THE COURT: Okay. All right.

1 (Whereupon, Court's Exhibit Numbers 1-5 were
2 entered into the record.)

3 MR. BARNETTE: Your Honor, what's interesting,
4 like I say, I don't think the Supreme Court when they
5 ruled -- and what's funny about -- she asked about
6 *Alabama versus Miller*. This case wouldn't even be
7 considered under that scheme. And, obviously, our
8 Supreme Court's expanded beyond that.

9 But in answering all the questions that went
10 through there, he considered everything in *Aiken versus*
11 *Byars*. If you listen to his questions and his answers
12 and his responses, he went through basically was there
13 evidence of chronological age of the offender and the
14 hallmark features of youth, immaturity, impetuosity,
15 failure to appreciate risks and consequence in trial.
16 He did consider that, and through his questions and
17 everything.

18 Was there evidence of the family and home
19 environment that surrounded the offender presented in
20 trial? Yes, he considered that. And you can look in
21 the record, and this is all shown by the record through
22 the witnesses that was presented, essentially it'd be
23 all the parts I did. The circumstances of homicide
24 offense, including the extent of the offender's
25 participation and conduct, how familial and peer

1 pressure may have affected him at the trial. He
2 considered that.

3 The -- basically associate youth like offender's
4 ability to deal with police officers, prosecutors and is
5 capable of assisting his own attorney presented in
6 trial. He saw that. You also have those notes in front
7 of you. He had the same evidence.

8 You can go through the statement. Mr. Morgan is
9 very detailed in what he does. He talks about how he
10 planned it. Talks about everything and how he and Mr.
11 Duncan -- Mr. Duncan's actually a 16-year-old, his
12 co-defendant -- was. And basically used that in
13 determining the sentence, Your Honor.

14 And the possibility of rehabilitation was
15 obviously brought up. I mean, from the standpoint
16 through the evidence presented at trial, as well as the
17 resentencing. So he's already considered the *Aiken*
18 *versus Byars* factors already.

19 And to have another re-hearing concerning this I
20 think would be obviously what the Court did not want.
21 And like I said, Justice Hearn said in *Aiken versus*
22 *Byars* she did not want this to be a death sentence,
23 death penalty sentencing by hearing. We've already had
24 one. And Judge Cole, fortunately he was the same judge
25 who did the resentencing, so he considered that.

1 And I know Your Honor has done death penalty
2 cases and been on the bench for a long time and you know
3 the factors that's used in that and he considered all
4 those factors. And I feel like the motion should be
5 granted in the case and the resentencing should be
6 dismissed at this point.

7 I could go through the record, Your Honor, and
8 show but I think that would be -- whatever you want me
9 to point on the record I'll be glad to pull the
10 transcript. I brought them out, but obviously Ms.
11 Body's testimony.

12 One interesting thing is that his school teacher,
13 Paul Gain, was very enlightening in there. And you'll
14 see from there where he talks about his interaction, how
15 he did things, how things happened. So, like I said,
16 the jury, as well as just going at a very good pace with
17 his, the whole spectrum has been talked about in *Aiken*
18 *versus Byars* in there. Thank you for letting me speak.

19 THE COURT: All right, thank you.

20 Yes, ma'am.

21 MS. VANN: Your Honor, I think the important part
22 of this case is that juvenile sentencing has evolved
23 since Eric Morgan's first sentencing came out and since
24 his resentencing trial. Obviously in *Graham versus*
25 *Florida* in 2010, the Supreme Court invalidated life

1 without parole for non-homicide sentences. That's not
2 relevant here, but that kind of started the shift.

3 In *Miller versus Alabama* in 2012 the Supreme
4 Court of the United States barred life without parole
5 sentences for all but the rarest of offenders, of
6 juvenile offenders whose crimes reflected permanent
7 encourage ability. That was a big shift in sentencing
8 for juvenile offenders even when they were suspended for
9 homicide crimes.

10 And then in *Aiken versus Byars* in 2014, the
11 Supreme Court recognized that shift that happened in
12 *Miller versus Alabama*, and they said that Miller held a
13 youthful but constitutional dimension that has to be
14 considered when a crime or when determining whether a
15 life without parole sentence was appropriate for a
16 juvenile offender.

17 So the South Carolina Supreme Court looked at the
18 cases where juveniles have been previously sentenced to
19 life without parole and recognized that they had not
20 considered what Miller was requiring and hadn't
21 considered the constitutional significance of youth.
22 And Aiken recognized five factors, that Mr. Barnette has
23 gone through, and said that those must specifically be
24 considered in order to determine what an appropriate
25 sentence for a juvenile is.

1 And so Aiken found that all juveniles who are
2 sentenced with life without parole should get
3 resentencing hearings. And the argument that Mr. Morgan
4 has had Aiken compliance sentencing hearing just doesn't
5 stand because Aiken didn't exist then. Miller didn't
6 exist then. Nobody knew what factors should be
7 considered. Nobody knew exactly what constitutional
8 dimensions youth carried, and so that couldn't have been
9 considered in 2006.

10 THE COURT: Well, let me interrupt you just a
11 second.

12 MS. VANN: Okay.

13 THE COURT: Just because they wrote it down in a
14 case, you're saying that mandates another sentencing
15 hearing; is that right?

16 MS. VANN: Uh, well ---

17 THE COURT: Whether or not -- whether or not the
18 sentencing judge considered the factors at the original
19 hearing.

20 MS. VANN: Well, Aiken, in Aiken, the Supreme
21 Court actually considered that because, as Mr. Barnette
22 pointed out, in South Carolina we don't have mandatory
23 life without parole sentences. And so some of the cases
24 that were presented in Aiken, it wasn't just Mr. Aiken's
25 case, there were a number of juvenile offenders that

1 were involved with that. And they said that some of
2 those sentencing hearings they actually put on
3 testimony. They've mentioned the youth of the offender.
4 They brought up some of this information. Obviously the
5 circumstances of the offense would have been considered
6 in all these sentencing hearings.

7 But they said, but the nonetheless, each of those
8 hearings had a constitutional defect because they had
9 the failure to examine the youth of the offender through
10 the lens that was mandated by Miller. Judge Cole
11 couldn't have known what the lens of Miller was because
12 it didn't exist at the time.

13 And as for Justice Hearn saying that these are
14 not death penalty cases, she declined to hold that the
15 sentencing hearing used to be exactly like a death
16 penalty case, but said that they were mindful that the
17 Miller Court required an individualized sentencing
18 hearing that is similar to a capital sentencing hearing
19 because this is the ultimate punishment for a juvenile.
20 And so we have to have a hearing that considers all of
21 these factors and considers the juvenility of the
22 offender. And for those reasons I believe that the
23 Motion to Dismiss should be denied.

24 THE COURT: Footnote 10 from *Aiken v. Byars*, in
25 which I think Mr. Barnette has referred to, the last

1 sentence: (Reading.) We have the utmost competence in
2 the trial judges to weigh the factors discussed herein
3 and then to sentence juveniles in light of the new
4 constitutional jurisprudence. (Ends reading.)

5 So if Judge Cole considered those factors in
6 2006, what is different today?

7 MS. VANN: Well, I think the point that the
8 footnote tends in this that this new constitutional
9 jurisprudence that says it recognizes the importance of
10 youth in a way that it was not recognized prior to 2012.
11 And Miller specifically says that all but the rarest of
12 juvenile offenders should not be sentenced to life
13 without parole. That was never stated before. That was
14 never something that was in the consideration of judges
15 before. And so I think that it is required under this
16 new constitutional dimension of juvenile sentencing that
17 he receive a new hearing.

18 THE COURT: And how do you -- what do you
19 envision that hearing to be?

20 MS. VANN: Uh, I -- obviously we would need to go
21 through the five factors that are set forth in Aiken, so
22 there needs to be evidence and information about his
23 youth, about his home environment, obviously the
24 circumstances of the offense, the incompetencies
25 associated with youth that are pointed out in all of the

1 juvenile sentencing cases. And also the possibility of
2 rehabilitation, so that would encompass evidence of what
3 Mr. Morgan has done since then.

4 THE COURT: And the first four factors all of
5 that is already in the record, correct?

6 MS. VANN: I think it's -- it could be in the
7 record. Again, we don't know exactly what is in the
8 resentencing record. We do not have a transcript from
9 that hearing. We don't know what was presented while
10 the judge was considering.

11 THE COURT: Well, all the material from the
12 original trial was incorporated as an exhibit.

13 MS. VANN: Well, I think that was presented by
14 defense attorneys who were trying to avoid the death
15 penalty, which is a different type of information, a
16 different type of investigation. And the ---

17 THE COURT: That, that was off the table at that
18 time, was it not?

19 MS. VANN: Well, at the original trial. The only
20 trial that we have a transcript for.

21 THE COURT: Okay.

22 MS. VANN: They were trying to avoid the death
23 penalty.

24 THE COURT: Okay. And so wouldn't that be a
25 heightened standard of material that was presented?

1 MS. VANN: Well, I think we're talking about two
2 different things. You know, here we're talking about a
3 chance for Mr. Morgan to have an opportunity to re-enter
4 society. And so that is a different investigation and
5 different consideration. If they're just trying to
6 avoid the death penalty, the focus is why -- what would
7 be ---

8 THE COURT: Okay. What's different?

9 MS. VANN: To be honest, Your Honor, I haven't
10 done much investigation in this case because -- well, I
11 mean, in avoiding the death penalty and what you've
12 described as the new standard, where ---

13 THE COURT: What's gonna be different with what
14 was presented?

15 MS. VANN: Well, I think youth has a much greater
16 significance now. It was something that the jury could
17 consider at the time of the death penalty trial, but it
18 wasn't something that would help him avoid the death
19 penalty necessarily. They weren't instructed in the
20 same way that they would have been under the new
21 sentencing phase ---

22 THE COURT: Well, it wouldn't have -- it wouldn't
23 have been a death penalty trial.

24 MS. VANN: Right. That's true. It just would be
25 a different case, a different investigation, a different

1 presentation by the defense attorneys and different
2 considerations by the sentencer.

3 THE COURT: Well, here's a consideration from a
4 systemic point of our justice system is, and that's why
5 I asked what you envisioned this hearing to be, the cost
6 of -- I don't know what you -- what would you want to do
7 to present -- what new material is there to present, on
8 what issue?

9 MS. VANN: Well, I'm -- Your Honor, we have not
10 gotten to the stage where we've investigated this case.
11 We have, you know, everything's been pending this Motion
12 to Dismiss hearing.

13 THE COURT: Who were the original attorneys on
14 it?

15 MR. BARNETTE: Your Honor, it's Clay Allen, Roger
16 Poole and Karen Poinevak (phonetic.)

17 THE COURT: Okay.

18 MR. BARNETTE: Karen was a third. She just was
19 sitting in on it. The other two was actually the actual
20 attorneys.

21 THE COURT: Okay.

22 MS. VANN: And I think the Supreme Court of South
23 Carolina did consider that. They recognize that there
24 are about 40 people, 40 juveniles who were previously
25 sentenced to life without parole and they said that the

1 sentencing hearings that they've received at the time
2 that they were sentenced to life without parole were not
3 sufficient to comply with Miller and that they needed to
4 have an individualized sentencing hearing that was
5 compliant with Miller that did consider the
6 constitutional dimensions of youth.

7 And so the Supreme Court has recognized that that
8 would require new hearings in all of these cases. And
9 so I think that they have contemplated that and has said
10 that that is ---

11 THE COURT: Well, and that's why I asked what you
12 envision you think the hearing should be.

13 MS. VANN: Well, I know that in some of the other
14 hearings that have happened in these resentencing cases,
15 some witnesses have been called. There has been some
16 expert testimony about how youth impacted the crime.
17 And any new evidence that has come to light in the new
18 investigation would be presented at that hearing.

19 THE COURT: New, new material that's come to
20 light since when?

21 MS. VANN: Since the original --

22 THE COURT: Sentencing.

23 MS. VANN: -- sentencing. Uh-huh.

24 THE COURT: Which would just pertain to what, his
25 history or his history in the, in the prison?

1 MS. VANN: Mainly, yes, unless there was
2 something that the original attorneys didn't, you know,
3 didn't uncover in their original investigation.

4 THE COURT: So you would anticipate going back
5 and re-plowing the whole field?

6 MS. VANN: Yeah. It would be an investigation
7 into the information that's required to be considered
8 under the factors, Your Honor.

9 THE COURT: Would that be re-plowing the whole
10 field?

11 MS. VANN: I mean, we obviously have, I would get
12 Mr. Allen's files that would have that information, so
13 it's not like we're starting from scratch. It would
14 just be making sure that we have the information that is
15 relevant to these factors to be able to present that.

16 THE COURT: Well, at some point there's got to be
17 closure. And he's had a trial, he's had an appeal, he's
18 had a resentencing. I presume there was a
19 postconviction relief. Was there anything in the file
20 has that?

21 MS. VANN: I believe there was, yes, Your Honor.

22 THE COURT: And at what point does this end?

23 MS. VANN: I understand the concern, but I don't
24 know how to get around the Supreme Court has basically
25 invalidated all of these juvenile sentences and said

1 that there needs to be a new hearing.

2 THE COURT: Okay. Well, the content of the
3 hearing it, assuming you're correct about -- I mean, you
4 are correct in that statement, but what -- how much more
5 material is there to be presented? It's -- you know,
6 how much Monday morning quarterbacking is there gonna
7 be?

8 MS. VANN: It's hard to tell immediate -- you
9 know, early on, but I'm sure there is gonna be some
10 information from his institutional history. And, you
11 know, obviously I keep going back to these factors but
12 that's what we have to present and that's what we have
13 to be able to consider. So anything that hasn't
14 previously been presented in the record certainly has to
15 be ---

16 THE COURT: Well, what was the status of the post
17 -- did you have the postconviction record with you?

18 MS. VANN: I do, but it's not with me.

19 THE COURT: Okay.

20 MS. VANN: And I believe it's mostly focused on
21 the guilt issues, not the sentencing.

22 THE COURT: So when was the postconviction
23 relief?

24 MS. VANN: It was after the resentencing.

25 THE COURT: Okay. And they had an opportunity to

1 review the whole record, right?

2 MS. VANN: Right. But that was also before ---

3 THE COURT: Who did that, Bloom?

4 MS. VANN: No, Your Honor, it was Graham
5 Campbell, Shawn Campbell.

6 THE COURT: Okay. Well, one concern that, that I
7 have is that we open up the entire case. I mean, the
8 work done by the original trial lawyers was examined by
9 the Supreme Court and by the postconviction relief
10 attorneys and apparently deemed appropriate, right?

11 MS. VANN: With, with respect to Mr. Morgan's
12 guilt, which is not at issue here and not with respect
13 to the sentencing.

14 THE COURT: Well, what did they ---

15 MS. VANN: Sentence -- the life without parole
16 sentence was never appealed.

17 THE COURT: Well, I think that what you've
18 narrowed this down to in my mind -- I mean, I guess you
19 want to go back and examine what Mr. Allen did
20 originally and what the postconviction relief attorneys
21 did, but the only new material likely to be presented
22 would just be his institutional record. Am I right
23 about that? Realistically speaking.

24 MS. VANN: I don't know what -- how much was --
25 you know, I know that there was mitigation presented. I

1 don't know that that is the full scope of the mitigation
2 that would be relevant to the sentencing consideration.
3 So, yes, I would like to go back and review that.

4 I think it's required in order to complete a
5 resentencing and consider these factors, but I don't
6 think it's gonna be exactly like a PCR where you're
7 examining every single decision that prior counsel made.
8 I'm going to be using that information to kind of
9 complete the picture of the mitigation.

10 THE COURT: Well, and my concern is we've got
11 he's had the benefit of a lot of resources in his
12 defense. And there are a lot of other people that need
13 those resources as well, and there's only so much, so
14 many pieces in the pie. So I'm just trying to decide
15 how much more development this case needs.

16 And, you know, there are parties on all sides.
17 The victim's family certainly have the rights, our
18 legislature has determined. So I do need to kind of
19 review what's being presented to me, so I'm not gonna
20 tell you today what I'm gonna do. Anything else?

21 MR. BARNETTE: Your Honor, one thing I just
22 wanted to add to the record, Your Honor. I think each
23 individual case is different. I've been dealing with
24 *Aiken versus Byars*. Mr. Bulsa has been dealing with
25 *Aiken versus Byars*. We've had several in our circuit.

1 And I've had one dismissed. I've had one that's
2 probably gonna go to hearing and each one of them are
3 different.

4 This one is very different because I don't know
5 if there's any other death penalty cases out there. I
6 don't know, but this may be the only one. And, like I
7 said, we went through -- and, of course, you heard Judge
8 Cole and I don't want to keep beating the drum, but I
9 think that's -- and I think you've hit the nail on the
10 head. I think basically he's already considered all
11 these things.

12 And why should we go through it? The only thing
13 would be is his institutional time. But, like I said,
14 to me it's been heard. And he made a ruling based off
15 all the factors they consider in *Aiken versus Byars*.
16 And his institutional history is not one of those
17 factors that's mandatory from that standpoint. You go
18 looking for it there. Those things were considered by
19 him in '04 and in '06.

20 THE COURT: Well, you know -- okay, anything
21 else?

22 MS. VANN: No, Your Honor.

23 THE COURT: All right. Well, let me kind of talk
24 to the lawyers up here for a second.

25 MR. BARNETTE: Yes, sir.

1 (Whereupon, a bench conference was held off the
2 record.)

3 (Whereupon, hearing concluded at 11:23 a.m.)
4
5

6 --- THIS ENDS REQUESTED TRANSCRIPT ---
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1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Cendroski, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a transcript of record of the proceedings
7 and evidence introduced in the hearing and/or trial of
8 the captioned case, relative to appeal, in the Court of
9 General Sessions for Spartanburg County, South Carolina,
10 on the 15th day of November, 2017.

11 I do further certify that I am neither of kin,
12 counsel, nor interest to any party hereto.
13
14
15
16

17 s/Julie A Cendroski
18 Julie A. Cendroski
19 Circuit Court Reporter
20 Seventh Judicial Circuit
21
22
23
24
25

VOL IV

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Eric Dale Morgan,) 2000-GS-42-2680;2681;2682
6 Defendant.) 2000-GS-42-3165
7) February 28 - March 9, 2004
8) Spartanburg, South Carolina
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12

13 A P P E A R A N C E S:

14 HAROLD W. GOWDY, III, ESQUIRE
15 JAMES DONALD WILLINGHAM, ESQUIRE
16 DERRICK BULSA, ESQUIRE
Attorneys for the State

17 CLAY T. ALLEN, ESQUIRE
18 JAMES R. POOLE, ESQUIRE
KAREN QUIMBY, ESQUIRE
Attorneys for the Defendant
19
20
21
22

23
24 Linda D. Moffitt
Circuit Court Reporter
25

1 (The following takes place in the presence of the
2 jury.)

3 THE COURT: Good morning, ladies and gentlemen.

4 I trust that you did have a good end to your week, and
5 we are now ready to continue with the trial of the case.

6 The defendant, Eric Dale Morgan, having been convicted
7 of the crime of murder by the unanimous decision of you 12
8 jurors, we shall conduct this additional separate proceeding
9 to determine what punishment the Court shall impose upon the
10 defendant for having committed the crime of murder.

11 Now, Section 16-3-20, Subsection A, of the Code of Laws
12 of South Carolina provides that where a person is convicted
13 of murder he or she shall be punished by death or by
14 imprisonment for life.

15 Section 16-3-20, Subsection B, provides that upon
16 conviction of a defendant of the crime of murder the Court
17 shall conduct a separate sentencing proceeding to determine
18 whether the defendant shall be sentenced to death or to a
19 sentence of life imprisonment.

20 Section 16-3-20, Subsection C, provides that the jury
21 in such a case shall consider certain statutory aggravating
22 circumstances, as well as certain statutory mitigating
23 circumstances, as well as any other nonstatutory mitigating
24 circumstances that are supported by the evidence in the case
25 in arriving at your ultimate decision as to what punishment

1 is to be imposed in this case.

2 Now, an aggravating circumstance is a fact or an
3 incident, a detail or an occurrence which might aggravate or
4 make worse the severity of the crime of murder. It is
5 something which may increase the enormity of or add to the
6 injurious consequences of the crime of murder and which
7 might support the imposition of a death sentence as the
8 appropriate punishment for the crime of murder.

9 A mitigating circumstance is a fact, an incident, a
10 detail or an occurrence which might lessen or tend to reduce
11 the severity of the crime of murder. It is something that
12 may be considered as mitigating or extenuating or otherwise
13 lessening the degree of moral culpability and responsibility
14 for the commission of the crime of murder.

15 It is not a justification for the crime of murder, but
16 it is a fact that may lessen the degree of guilt or
17 responsibility of the defendant and support the imposition
18 of a less severe form of punishment for that crime of
19 murder, that is to say by a sentence of life imprisonment.

20 Now, during the course of this sentencing proceeding
21 you will hear testimony relating to the existence of
22 aggravating circumstances surrounding the murder and you
23 will hear testimony by way of mitigation or extenuation.

24 You may also hear testimony or be shown other evidence
25 relating to the individual characteristics of the defendant.

1 Now, when this presentation is concluded you will again
2 hear argument from each side after which I will again give
3 you certain applicable instructions as to the law. And then
4 you'll be asked to retire to the jury room and to again
5 begin with your deliberations in the case.

6 And you will be called upon to return a decision as to
7 what sentence should be imposed in this case on the
8 defendant, whether that be a sentence of death or a sentence
9 of life imprisonment.

10 Now, the way this hearing will be conducted is that the
11 state will go forward first with its presentation of
12 evidence in aggravation, and then the defendant will be able
13 to go forward with a presentation of evidence in mitigation
14 or extenuation.

15 So the first thing to be accomplished is that the
16 lawyers for the state will address you who in opening
17 statement. Followed by that they will present their
18 evidence.

19 The defendant's counsel will then be able to present
20 their argument or opening statement, and then they will be
21 permitted to present evidence in mitigation or extenuation,
22 after which you will again hear from both sides in the case
23 as to argument. And then you will also hear my instruction
24 as to the law and then begin with your deliberations.

25 So please give the state your attention for the

1 present.

2 MR. WILLINGHAM: May it please the Court, Your Honor.

3 THE COURT: Mr. Willingham.

4 MR. WILLINGHAM: Your Honor, at this time the state
5 would move to have all of the physical exhibits as well as
6 the testimony from the first guilt phase of the trial
7 incorporated into the penalty phase.

8 THE COURT: It is admit.

9 MR. WILLINGHAM: Ladies and gentlemen, I know a month
10 ago none of y'all expected, could imagine sitting where you
11 are today, having to sit in judgment of the facts, in
12 judgment of that man's actions.

13 But for your verdicts from Saturday I want to thank
14 you. I want to thank you on behalf of the State of South
15 Carolina and I want to thank you on behalf of Jerry Smith's
16 family. That's the first step toward seeing that the person
17 responsible for Jerry Smith's murder is held accountable.

18 This is the next. And over the next several days we
19 will talk about choices, choices that you as a jury have
20 and, I believe y'all are keenly aware of what your two
21 options are. And we will talk about that shortly. And
22 we'll talk about the choice that Eric Dale Morgan had and
23 we'll talk about choices that Jerry Smith made along the
24 way.

25 Starting out with your choice, in South Carolina a

Opening statements

1 murder committed along with an aggravating factor is death
2 eligible. We went over that with each one of you during
3 your qualification.

4 An aggravating factor is something that makes a murder
5 worse. Murder, the law says, committed during the
6 commission of an armed robbery is worse. It's an
7 aggravating factor. The death penalty may be imposed.
8 Murder committed during a larceny the law says is worse, is
9 aggravated. Larceny is stealing. Murder committed for
10 money is worse, is aggravated. The death penalty would be
11 appropriate.

12 Ladies and gentlemen, when you returned your verdict on
13 Saturday of murder you also found him guilty of armed
14 robbery, that aggravating factor that the statute says makes
15 him death eligible.

16 But I suspect, ladies and gentlemen, that y'all want to
17 know more than what you know already. I think it's only
18 right that you know more than what you know already. So
19 that's what we are going to do starting in the next several
20 hours and over the next day. We are going to give you more.
21 We are going to give you so much more.

22 We're going to give you the facts to show that this was
23 a cold, calloused, calculated premeditated, cold-blooded
24 murder. We're going to show you about choices that Eric
25 Morgan made.

Opening statements

1 You will have the evidence from the first trial. You
2 will have those same images that the solicitor mentioned in
3 his closing to you, the images of Jerry Smith being left out
4 in the field hidden, the images of Jerry Smith locking up
5 that store when he turned around and was shot. You will
6 still have the gun, the gloves, the pictures, but you'll
7 have more.

8 You've heard a little bit about the choice that Eric
9 Morgan made of not working, of needing money and about how
10 he came up with a plan weeks ahead of time to build a pipe
11 bomb and blow the back of that building out.

12 You will hear how they learned that the money went home
13 at night. There's no point in blowing holes in the building
14 if nobody is there. You will learn how that plan changed
15 from storebreaking and stealing to armed robbery and murder.

16 This was no accident; this was no robbery gone bad.
17 This was no spur-of-the-moment action. This was
18 premeditated murder.

19 You will learn that May the 3rd of 2000 was on a
20 Wednesday. That Wednesday night at ten o'clock Jerry Smith
21 died. We all know that.

22 What you don't know is that Saturday before, they were
23 going to do it then. Eric Morgan was going to kill him
24 then.

25 You will learn that that Saturday Eric Morgan went up

Opening statements

1 to pick up Brandon Duncan at the store as he got off work
2 that night. You will learn that Eric Morgan was expecting
3 to find Jerry Smith there, that he took this same rifle with
4 him. And that Saturday was going to be the day that Jerry
5 Smith died.

6 But when he got up there Jerry Smith wasn't working,
7 and instead his brother, Curran Smith, was there. Curran
8 Smith was there that night closing the store. He wasn't
9 there long. He was with his brother, James. That Saturday
10 they were there they were closing the store.

11 Eric Morgan sat and waited, sat and waited in the
12 parking lot, waiting for that store to close, waiting for
13 his opportunity to kill, waiting for his opportunity to take
14 the money from Jerry Smith.

15 And you will hear how Curran and James left the store
16 that night, locked it up and how they saw Eric Morgan
17 sitting out in the car in the parking lot and thought it was
18 strange. But they got in their car and they drove home;
19 Curran in his car and James following behind him.

20 And what happens then? He follows them. This man
21 follows them with that gun, followed them a good ways and
22 then decides not to do it, decided not to do it.

23 Why? Because he had a change of heart? Why? Because
24 he said this is a bad thing to do? Uh-uh. He didn't do it
25 because that would be two bodies to have to get rid of, that

Opening statements

1 would be two cars that he would have to hide.

2 So they would wait. Eric Morgan would wait until his
3 original target returned to work. He would wait until that
4 Wednesday. And on that Wednesday Jerry Smith took the place
5 of his two brothers.

6 How do we know that? Well, if you'll remember from the
7 statement that Eric Dale Morgan gave to Dan Jeter on May the
8 4th, he says in there, "A couple of weeks ago Chubby,"
9 that's Curran's nickname, the one, "another owner, part
10 owner of it, of the, of the store was offered, offered
11 Brandon a job there working there from 5:00 until 10:00.
12 The night of the 3rd, no, I don't want to say that. Well,
13 it doesn't have to hook on that, the, that, the night of the
14 3rd, that's when we planned it."

15 He almost told Dan Jeter about what they did Saturday,
16 about his actions on Saturday. But he stops. Investigators
17 saw that and wondered what that meant. And on May the
18 8th they went back and talked to him again.

19 In the next several hours you're going to hear what
20 Eric Morgan had to say about what he did on May the 3rd and
21 what he did on the Saturday before.

22 We all know what happened on May the 3rd. He went up
23 there with a gun, with bullets, with gloves, dressed in
24 black ready to carry out the deed that he didn't get to
25 carry out on Saturday. And why? All because of money, all

Opening statements

1 because Eric Morgan didn't want to work.

2 The next day or so you are going to hear things about
3 Eric Morgan. You're going to hear that he grew up poor and
4 that he didn't have a father in his life, that he didn't do
5 well in school, that he had tragedy in his life.

6 But you know what, ladies and gentlemen? You're going
7 to learn about Jerry Smith. Everybody has referred to him
8 as Jerry Smith or the victim. You're going to find out who
9 Jerry Smith really was and that he meant something to
10 somebody, to a lot of people.

11 You're going to learn that Jerry Smith grew up poor.
12 You're going to learn that Jerry Smith lost his father at an
13 early age. And he had to assume as the oldest male son, he
14 had to assume somewhat the-man-of-the-household role.

15 You will hear that, you know, he might not have done
16 that well in school either. And you will find out that
17 Jerry Smith had tragedy in his life too.

18 But it's about choices. Eric Morgan chose to steal,
19 chose to kill. Those are the choices that that man made,
20 and that's why we are here today, because of what he decided
21 to do.

22 But, ladies and gentlemen, Jerry Smith made choices
23 too. Similar background. He chose to make an honest
24 living. He chose to work, to provide for his family. It's
25 because he made that choice to do the right thing that he's

Neal Urch
Direct examination by Mr. Bulsa

1 dead today. It's kind of ironic, it's kind of sad that
2 because you choose to do the right thing it costs you your
3 life.

4 So, ladies and gentlemen, that brings us full circle
5 right back to the choices y'all got to make. And we're
6 going to give you everything that we can to help you make
7 that right choice.

8 And what we will do at the end is going to ask you to
9 make a choice that serves justice for the State of South
10 Carolina and Spartanburg County and for Jerry Smith's family
11 and the likes of Eric Dale Morgan. Thank you.

12 MR. BULSA: The state calls Neal Urch.

13 NEAL URCH, having been first
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. BULSA

16 Q Good morning, Detective Urch.

17 A Good morning.

18 Q Let's talk a little bit more about this case.

19 We've learned that you spoke with Mr. Morgan on the
20 morning of May the 4th --

21 A Yes, sir.

22 Q -- several times.

23 A Yes, sir.

24 Q And he lied to you each time.

25 A Yes, sir.

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Neal Urch
Direct examination by Mr. Bulsa

- 1 Q And it was Sergeant Jeter that he gave the statement
2 to.
- 3 A Yes, sir.
- 4 Q Did you have an opportunity to review that statement
5 during your investigation?
- 6 A Yes, sir, I did. Also, I spoke with Sergeant Jeter
7 about what had been said at a later time.
- 8 Q And you also spoke with Brandon Duncan.
- 9 A Yes, I did.
- 10 Q Did you later take a second opportunity to speak with
11 Mr. Morgan?
- 12 A Yes, I did. It would have been on the 8th of May.
- 13 Q That would have been a Monday?
- 14 A I believe it was. I know it was in the afternoon-time
15 after 5:00 p.m. when we spoke with him.
- 16 Q Where was he when you went to speak with him?
- 17 A At the county jail.
- 18 Q From May the 4th until May the 8th was he separated
19 from Brandon Duncan?
- 20 A I know both, yes, because one was at the county jail
21 annex and one was at the main county jail. So, yes, sir,
22 that would have been the case.
- 23 Q So any opportunity they would have had to --
- 24 MR. ALLEN: Objection to his leading the witness, Your
25 Honor.

Neal Urch
Direct examination by Mr. Bulsa

1 THE COURT: Let me hear the question first.

2 Q Let me put it this way.

3 Would they have an opportunity to speak to each other
4 at any point once the police became involved?

5 THE COURT: You can answer it.

6 THE WITNESS: Thank you, sir.

7 A None that I know of, no, sir.

8 Q And we have learned through this trial that they went
9 up to the Max Saver together that evening, May the 3rd.

10 A Yes.

11 Q And then they were separated.

12 A Yes. After the time they were brought back to the Max
13 Saver they were separated, yes, sir.

14 Q And then we learned about the investigation and the
15 arrest. Then I believe we left Mr. Morgan being transported
16 out to the bomb site.

17 A Yes, sir.

18 Q Now, when you went to speak with him on May the 8th,
19 why did you go do that?

20 A I had learned through Mr. Duncan's mother that he
21 wanted to speak with me some more. After speaking with him,
22 I felt it important to go speak with Mr. Morgan.

23 Q So Mr. Duncan's mother said Brandon Duncan wants to
24 speak with you.

25 A Yes.

Neal Urch
Direct examination by Mr. Bulsa

1 Q Then you got more information and you wanted to speak
2 to Mr. Morgan.

3 A That's correct.

4 Q Did anyone go with you on this occasion to speak to Mr.
5 Morgan?

6 A Yes. Detective Steve Denton.

7 Q And where did you meet with Mr. Morgan?

8 A We went to the county jail into the booking area at
9 first. It's a large, open area, and they have some sunken
10 pits where people sit while they're waiting arraignment.

11 Off to the side is a room. I am really not sure what
12 they use it for, but I think it has got a counter with a
13 sink and a small table and some chairs and things in there.

14 He was brought to us in the booking area, and we all
15 walked into the room.

16 Q And did you take anything with you?

17 A Yes. I had -- there's a lot of paperwork that's --
18 after a while you get a lot of paperwork in a case like
19 this, and I had a Manila folder with some of my paperwork in
20 it, also probably along with some various statement forms,
21 that type of thing.

22 Q And tell the jury if you would what took place when
23 y'all entered the room.

24 A We walked into the room. Mr. Morgan sat down in a
25 chair, and myself and Detective Denton sat in two separate

Neal Urch
Direct examination by Mr. Bulsa

- 1 chairs. And I told him that there were some things that had
2 come up that we would like to get cleared up.
- 3 Q And what was his response?
- 4 A He made the comment that I've got a lawyer and my
5 lawyer told me not to talk to you.
- 6 Q And with that information, what are you trained to do
7 as a police officer when someone makes a statement like
8 that?
- 9 A To stop answering any questions or asking any
10 questions. I am sorry.
- 11 Q And did you stop asking questions?
- 12 A Yes. Detective Denton stood up, opened the door. I
13 was standing up and closing up my folder. I told him that
14 was fine, that was his right. And he made a comment after
15 that.
- 16 Q And what comment did he make?
- 17 A He leaned back in his chair, and he said, "Ah, fuck it,
18 I'm never getting out of here again. Give me the lethal
19 injection. I don't care. I'll talk to you."
- 20 Q Did you prompt him in any way to make that statement?
- 21 A No, sir.
- 22 Q How was he acting when he made that statement?
- 23 A In my opinion it was cocky.
- 24 Q And what did you and Detective Denton do at that point?
- 25 A We turned around and sat back down and readvised him of

Neal Urch

Direct examination by Mr. Bulsa

1 his rights or his Miranda warning. We began, I began an
2 audio tape readvising him of his rights. And I also had a
3 Miranda form that we filled out during the time that we were
4 doing the tape.

5 Q I show you what has been marked State's Exhibit Number
6 One. Do you recognize that form?

7 A Yes, sir. This is the form that we completed on May
8 the 8th at the county jail. It was done at 1809, which is
9 6:09 p.m., and has my signature along with Eric Morgan's,
10 and Detective Denton notarized the form.

11 Q Is that essentially the same form that we learned that
12 Sergeant Jeter used?

13 A Yes. It's a standardized form used by our office.
14 This would have been blank before we started, but it was
15 completed that day.

16 Q And this was a second, or at least second, written
17 reading of his rights to him.

18 A Yes.

19 Q And did he also sign this, his name on the side of
20 those rights?

21 A Yes. As he did in the first one, he signed his name
22 next to the numbers one through five.

23 MR. BULSA: Your Honor, I would move this into
24 evidence.

25 MR. ALLEN: Renew my earlier objections.

1990

Neal Urch
Direct examination by Mr. Bulsa

1 THE COURT: It is admitted.

2 (Pre-interrogation waiver form dated May 8, 2000,
3 marked State's Exhibit Number One.)

4 MR. BULSA: State's Exhibit Number One, Your Honor.

5 Q So let's go ahead and show this to the jury. While
6 this is warming up let me ask you --

7 THE COURT: Do you have a copy of that for him to look
8 at so he doesn't have to look at that screen?

9 MR. BULSA: Yes, sir.

10 Q When you were reading him these rights after he made
11 that comment about his lawyer, the only reason you stayed to
12 talk to him is when he -- is why?

13 A Because he said he would talk to us. In my opinion he
14 waived his right to an attorney at that time. Even though
15 he advised us he had had an attorney, he told us he didn't
16 need that attorney there, he would still talk to us.

17 Q And not only did you do that, but you also went over
18 this form with him --

19 A Yes, sir.

20 Q -- which, once again, told him of his rights --

21 A Yes.

22 Q -- that he signed in at least three places.

23 A Yes. Again, this form is basically divided up into two
24 parts. The first part is to advise someone of their rights;
25 the second part, which is a paragraph down towards the

Neal Urch
Direct examination by Mr. Bulsa

1 bottom, that says that they would waive or give up their
2 rights.

3 First of all, they sign that they understand what their
4 rights are and then they sign at the bottom stating that
5 they waive and give up rights and agree to talk us.

6 Q Was it clear that he understood those rights?

7 A Yes, sir.

8 Q Was it clear that he decided to give those rights up?

9 A Yes, sir.

10 Q Did you or Detective Denton at any point make any
11 promises to him?

12 A No, sir.

13 Q Did you threaten him in any way?

14 A No, sir.

15 Q Coerce him in any fashion?

16 A No, sir.

17 Q Did he freely and voluntarily agree to speak with you?

18 A Yes, he did.

19 Q In fact, you documented that conversation by audio
20 tape.

21 A Yes, sir. Soon after we sat back down I started the
22 audio tape. And I believe Detective Denton's voice is on
23 there first where he first explains the rights to Mr. Morgan
24 again.

25 The tape was shut off for a brief period to complete

Neal Urch
Direct examination by Mr. Bulsa

1 this form. It was started back up again, and then we spoke
2 to him after that.

3 Q I show you what's been marked as State's Exhibit Number
4 Four. Does that bag contain the tape of that interview at
5 the jail?

6 A Yes, sir, it does.

7 Q Have you listened to it prior to this hearing?

8 A Yes, I have.

9 Q Is it accurate? Does it accurately reflect what took
10 place that day?

11 A It does.

12 Q Has it been altered in any way?

13 A No, sir I don't.

14 MR. BULSA: We move State's Exhibit Number Four into
15 evidence.

16 THE COURT: It is admitted subject to any objection.

17 (Cassette tape marked State's Exhibit Number Four.)

18 MR. BULSA: Your Honor, I would like to publish this to
19 the jury. We have transcripts, as we did of the first
20 statement, that we would like for the jury to use while they
21 listen.

22 THE COURT: Okay.

23 Now, again, ladies and gentlemen, these transcripts are
24 transcripts which were prepared at the instance of the
25 solicitor, and they represent that it's an accurate

Neal Urch
Direct examination by Mr. Bulsa

1 reflection of the content of the tape itself. But in the
2 event that you hear some discrepancy between the transcript
3 and the tape, the tape is the evidence in the case. That
4 transcript is simply an aid to assist you as you listen to
5 the tape.

6 Again, the transcripts will not be in the jury room
7 when you go back to begin deliberations. You will however
8 have the tape, and you may listen to it as often as you
9 determine it to be necessary.

10 (Whereupon, the tape was played for the jury.)

11 Q Detective Urch, did anything else happen in that room
12 after this tape was finished?

13 A No, sir. When we finished the tape we gathered our
14 things and made sure that the jailers knew we were through
15 so they could return him to where he was, and then we left.

16 Q Now, Detective, from what we learned you were the first
17 law enforcement officer to find Mr. Smith.

18 A Yes, sir. That's correct.

19 Q And that was on Sawpit Trace Road.

20 A Yes.

21 Q State's Exhibit Nineteen. This was the view from the
22 road.

23 A When I originally pulled up I stopped up beyond this
24 point, so I could not even see any part of the car. But
25 this would be on down the road a short ways looking back

Neal Urch
Direct examination by Mr. Bulsa

1 towards where the car is. All I could see was the
2 impressions in the grass that the tire tracks or the tires
3 had left.

4 Q And that is shown on this aerial photo, State's Exhibit
5 Eighteen.

6 A Yes, sir. It's sort of circular coming up behind where
7 where the car is parked, the tire impressions I was
8 referring to.

9 Q As you walked up to the car, showing you State's
10 Exhibit Number Twenty, was that the condition you found it?

11 A Yes. I approached the car from the back end. I
12 noticed the weed shut in the back driver's-side door and the
13 window down. I thought it was strange the window was down
14 because it had been raining and it was wet.

15 Q Did you at any point open the door behind the driver's
16 door?

17 A No. After I noticed Mr. Smith's body in the car I went
18 back out to call for the medical personnel to confirm that
19 he was deceased. And when they got there we, myself and a
20 paramedic, walked back in. He entered the car from the
21 other side, the back door, from the passenger's side.

22 Q So when you first walked up and saw Mr. Smith's body it
23 was through this window we are seeing here?

24 A Yes, sir. It would be through this back, this back
25 passenger, I'm sorry, back driver's window.

1995

Neal Urch
Direct examination by Mr. Bulsa

1 Q I show you State' Exhibit Number Sixty-eight. Is that
2 a view of Mr. Smith's body?

3 A Yes, sir. This is looking down through the window.
4 You can see the seat is this blue part here. His knees are
5 somewhat up on the seat. These are his feet, which would be
6 sticking up towards the roof of the car. He is wearing a
7 tan pair of jeans and white tennis shoes.

8 There's some sort of napkin or piece of paper or
9 something right there on his pants; and then multicolored
10 striped shirt, and his head and arms are all folded up down
11 in the floorboard. And the driver's seat would be up here.

12 Q Did you disturb the body in any way?

13 A No, sir. I never touched the body. That was done by
14 the E. M. T. or the paramedic and then by the crime scene
15 unit.

16 Q So anything we see here is how you found it.

17 A Exactly.

18 Q And when you came back with the medical personnel, you
19 tell us you went through the other door.

20 A Yes. I was trying to protect the crime scene as much
21 as possible, and I asked that he come in from the other
22 side, which he did. He donned a pair of rubber gloves and
23 reached across the seat, and Mr. Smith was cold to the
24 touch, and he could not find a pulse and determined that he
25 was dead.

Neal Urch
Cross-examination by Mr. Allen

1 Q Showing you State's Exhibit Number Sixty-nine, would
2 that be the view?

3 A Yes, sir, this is the view with the other side of the
4 car with the door open.

5 You can see Mr. Smith's feet are up in the air or on
6 the back of the seat, and his head. And this is an amount
7 of blood that had drained down on his shirt and into the
8 floorboard. His arms are folded up around his head.

9 Q Thank you, Detective Urch. Answer any questions
10 defense counsel has.

11 A Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. ALLEN

14 Q The signing of the preinterrogation waiver form on the
15 8th, was that done during the approximately two minutes that
16 the tape was turned off?

17 A Yes, sir. As Detective Denton was telling Mr. Morgan
18 his rights I was filling out that form. And we stopped the
19 tape to allow him to look over it and agree to sign it,
20 which he did.

21 Q And it took approximately what, 15 seconds or so, to
22 read him his rights on that day?

23 A I don't know the length of time.

24 Q But the way in which -- after you filled the form out
25 and you presented it to Eric and asked him to sign it, that

Neal Urch
Cross-examination by Mr. Allen

1 was when the tape was turned off, correct?

2 A Yes.

3 Q And you asked him to initial beside it.

4 A I don't recall exactly how I asked him. Normally I ask
5 someone to initial beside the numbers.

6 Q But yet that must have been asked when the tape was
7 turned off, correct?

8 A Yes, sir. I believe it was.

9 Q And you normally ask people to initial.

10 A Yes, sir, next to each one of the numbers to make sure
11 that they understand what those are indicating, that they
12 understand that's what those are.

13 Q And to the best of your knowledge you did that on this
14 occasion.

15 A I normally do, yes, sir.

16 Q No reason for you to ask Eric to sign his name
17 sideways, would there have been?

18 A No, sir.

19 Q Yet on this occasion when you asked Eric to initial
20 beside each of these rights, he signed his name, is that
21 correct?

22 A That's correct, sir.

23 Q Okay. You wrote a report about the events of the 8th,
24 specifically talking to Eric, correct?

25 A Yes. I did investigator's notes, yes, sir.

1998

Neal Urch
Cross-examination by Mr. Allen

1 Q And, of course, in those notes you try to be as
2 accurate as possible.

3 A I do. There is no way to include everything that you
4 have done. I mean, it would just be volumes if you tried to
5 write everything you did down, but I try and put the key
6 points down, yes, sir.

7 Q You wrote, I believe it was, a typed 33-page report on
8 the events from the time you got involved up to and through
9 the 8th, correct?

10 A That sounds right, yes, sir.

11 Q So you were trying to be as detailed in this case as
12 possible.

13 A I do. But, again, there is no way to put everything
14 down.

15 Q You didn't put -- when you were talking about your talk
16 with Eric on the 8th you didn't write anything in the report
17 about the expletive that you've earlier testify that you
18 used, correct?

19 A That's correct. I don't like using those words.

20 Q But you didn't even mention in the report that he used
21 an expletive.

22 A No, I did not.

23 Q You just simply said in the report that his public
24 defender had been to him and told him not to speak with
25 y'all.

Neal Urch
Cross-examination by Mr. Allen

- 1 A That's correct.
- 2 Q Of course that part of the conversation was not taped
- 3 either --
- 4 A No, sir.
- 5 Q -- on any tape.
- 6 A No, sir.
- 7 Q Not just the one we heard but any other tape.
- 8 A No, sir.
- 9 Q Now, on the 4th of May after Eric had spoken to
- 10 Sergeant Jeter you came back and spoke briefly with Eric,
- 11 did you not?
- 12 A On the 4th of May, sir?
- 13 Q Yes, sir.
- 14 A I believe he called me into the room as I was walking
- 15 by, yes, sir.
- 16 Q And he apologized to you.
- 17 A He apologized to me for lying to me.
- 18 Q And you told him that you understood.
- 19 A I understand I expect it. I normally get lied to,
- 20 especially the first several times you talk to someone
- 21 that's a possible suspect in a crime.
- 22 Q And you understood he was scared at the time.
- 23 A I'm sure he was.
- 24 Q I mean, that's what you told, is what I'm getting at.
- 25 A Yes, sir.

Neal Urch
Cross-examination by Mr. Allen

- 1 Q And you didn't take it personally.
- 2 A I don't.
- 3 Q And you understood that he was scared at the time.
- 4 A Yes, sir.
- 5 Q And he appeared scared at the time.
- 6 A I can't answer that. I don't remember him appearing
- 7 scared, but I understand that he was.
- 8 MR. ALLEN: One second, please, Your Honor.
- 9 (Pause.)
- 10 Q Was it your understanding that on the 8th that Eric was
- 11 trying to tell you that he was the only one that put
- 12 Mr. Smith in the car?
- 13 A That's my understanding of the statement he made on the
- 14 8th, yes, sir.
- 15 Q Yet you saw blood on Brandon's clothes too.
- 16 A I don't remember seeing blood on Brandon's clothes. I
- 17 believe there was blood found when they were more closely
- 18 examined, but I didn't see it.
- 19 Q One second, please.
- 20 (Pause.)
- 21 MR. ALLEN: Nothing further, Your Honor. Thank you.
- 22 MR. BULSA: No further questions.
- 23 THE COURT: You may step down.
- 24 THE WITNESS: Thank you.
- 25 MR. WILLINGHAM: Your Honor, we call Mirya Duncan.

Mirya Duncan
Direct examination by Mr. Willingham

- 1 A Yeah.
- 2 Q Okay. How long had he lived with you in May of 2000?
- 3 A I ain't real sure; uh, I ain't real sure.
- 4 Q Okay. Do you remember the night that Jerry Smith was
5 killed?
- 6 A Yes, I do.
- 7 Q Do you remember wanting to go take a ride with Eric
8 Morgan that night?
- 9 A Yes, I do.
- 10 Q Where were y'all supposed to go?
- 11 A We was supposed to have went and got my brother from
12 work.
- 13 Q Your brother being Brandon?
- 14 A Yes, sir.
- 15 Q Where did Brandon work?
- 16 A Up at the Max Saver Store.
- 17 Q Okay. Had you gone up there before to pick up Brandon?
- 18 A A couple of times, yes.
- 19 Q Who would go with?
- 20 A I went with Eric if he drove up there to get him if
21 Brandon didn't drive.
- 22 Q Brandon didn't drive? I can't hear you. I am sorry.
- 23 A Sometimes he would drive hisself and sometimes we would
24 have to go and get him.
- 25 Q Okay. But on May the 3rd somebody was to have to go

Mirya Duncan
Direct examination by Mr. Willingham

- 1 get him.
- 2 A Yes.
- 3 Q And did you want to ride up there?
- 4 A Yes, I did.
- 5 Q Did you get to go up there?
- 6 A No, sir.
- 7 Q Why not?
- 8 A Because I had to go to school the next day.
- 9 Q Okay. Did you ask Mr. Morgan if you could ride with
- 10 him?
- 11 A Yes. He said I needed to stay at home because I had to
- 12 go to school.
- 13 Q Had he ever told you before that you couldn't ride up
- 14 there with him?
- 15 A No, sir.
- 16 Q The fact that you had to go to school on other days,
- 17 had that ever made a difference before?
- 18 A No, sir.
- 19 Q Showing you what's introduced as State's Exhibit
- 20 Twenty-nine, a photograph, do you recognize those?
- 21 A Yes, sir, I do.
- 22 Q And I need for you to speak up for me.
- 23 A Yes, sir.
- 24 Q And what are they?
- 25 A They're latex gloves.

Mirya Duncan
Direct examination by Mr. Willingham

- 1 Q Okay. Had you ever seen those gloves or gloves like
2 that before?
- 3 A Yes, I have. Actually they was mine.
- 4 Q Those gloves were yours?
- 5 A Yeah.
- 6 Q If you would, tell me what an 18-year-old, or
7 14-year-old at the time, needed with rubber gloves.
- 8 A I dyed my hair a lot. I used to dye it completely
9 blonde.
- 10 Q So you used gloves to help you do that?
- 11 A Yes, sir, so the dye wouldn't get all over my hands.
- 12 Q Who asked you for these gloves?
- 13 A Eric did.
- 14 Q Did you give them to him?
- 15 A Yes, I did.
- 16 Q Did he say why he wanted them?
- 17 A No.
- 18 Q When did he ask you for them?
- 19 A If I ain't mistaken, it was, I think it was, like a
20 couple of months before that.
- 21 Q Ms. Duncan, showing you State's Exhibit Number
22 Thirty-six, this .22 rifle, have you ever seen this gun
23 before?
- 24 A I think that's -- it's the .22, ain't it? I don't --
25 if that's Brandon's gun, I have seen it. It's been a long

Mirya Duncan
Direct examination by Mr. Willingham

1 time since I have seen them.

2 Q Okay. That's fair. But Brandon had a .22.

3 A Yes, sir.

4 Q Had you shot a .22 before?

5 A Yes, I had.

6 Q On May the 3rd, the day that Jerry died, had you seen a
7 .22 rifle that day?

8 A Yes.

9 Q I need for you to answer out loud:

10 A Yes.

11 Q Where did you normally keep that gun?

12 A We usually kept in it the living room beside the chest
13 of drawers at the front door.

14 Q Okay. And on that day did it stay behind that dresser
15 or the door?

16 A Not all day.

17 Q Okay. What happened to it?

18 A Eric had come up to the house and said he had needed it
19 because there was a snake down in the building that we kept
20 our stuff in.

21 Q He said there was a snake. This fellow said he wanted
22 to shoot a snake. I need for you to answer out loud for me.

23 A Yes.

24 Q Okay. Now, how far is this building away from your
25 house, from where you were staying?

Mirya Duncan
Direct examination by Mr. Willingham

- 1 A It was probably about a couple of hundred feet.
- 2 Q Okay.
- 3 A It wasn't far.
- 4 Q It wasn't far. Now, what time of day or night was this
- 5 that he asked for it?
- 6 A It was right after it had turned dark.
- 7 Q Okay. And he took the gun to go shoot a snake down in
- 8 a building a hundred feet away.
- 9 A Yes, sir.
- 10 Q Did you ever hear a gunshot?
- 11 A I never did.
- 12 Q Did that gun ever make it back to your house?
- 13 A Not, not in the house.
- 14 Q Did it make it back behind that door next to the
- 15 dresser where y'all kept it?
- 16 A No.
- 17 Q So after Eric Morgan took it you didn't see it again.
- 18 A No, sir.
- 19 Q Is that fair? Mirya, you had been to the Max Saver
- 20 before.
- 21 A Yes, I had.
- 22 Q How many times?
- 23 A I had been up there a bunch.
- 24 Q Did you ever know Jerry Smith?
- 25 A Yeah.

Mirya Duncan
Direct examination by Mr. Willingham

1 Q Tell me about Jerry Smith.

2 A He was kind. I liked him. He seemed to get along with
3 just about everybody.

4 Q You say he was kind.

5 A Yeah.

6 Q Tell me why you say that.

7 A Well, I would go in there and I would want something to
8 drink or a hot dog or something, and I would get me one.
9 And I would go up to the cash register to pay for it and he
10 would be like you can have it, you can just take it on with
11 you.

12 Q Mirya, you never gave a statement to the police.

13 A No, sir.

14 Q Why not?

15 A Nobody ever come. I figured that if y'all wanted to
16 talk to me that they would come to me.

17 Q You were 14 years old when this happened, right?

18 A I think I had just turned 13.

19 Q Thirteen. And you did actually come and talk to us,
20 right --

21 A Yeah.

22 Q -- a couple of weeks ago?

23 A Yes.

24 Q And before you came and talked to us, you came and
25 talked with Mr. Morgan's lawyers, right?

2008

Mirya Duncan
Cross-examination by Mr. Allen

1 A Yes, I did.

2 Q Thank you. Answer any questions Mr. Allen has for you.

3 CROSS-EXAMINATION

4 BY MR. ALLEN

5 Q Ms. Duncan, you were 13 then --

6 A Yes, sir.

7 Q -- back in May of 2000, to the best of your
8 recollection, right?

9 A Yes, sir.

10 Q And you were in what grade?

11 A I think I was in the eighth grade.

12 Q Eighth grade. And you were planning on going to school
13 the next day?

14 A Yes.

15 Q You normally went to bed at what time on a school
16 night?

17 A It was -- I usually went to bed between 10:30 and
18 11:00 most of the time.

19 Q Most of the time?

20 A Most of the time.

21 Q Between 10:30 and 11:00. And can you describe the home
22 in which you and your mother and brother were living at that
23 time?

24 A Do you mean the layout of it?

25 Q What kind of home was it? Was it a 2-story house or a

Mirya Duncan
Cross-examination by Mr. Allen

- 1 1-story?
- 2 A It was a mobile home.
- 3 Q Mobile home?
- 4 A It had a bedroom and a bathroom built on it at the
- 5 front.
- 6 Q Was it a single-wide or a double-wide?
- 7 A It was a single-wide.
- 8 Q A single-wide mobile home with another bedroom and
- 9 bathroom built on the side of it?
- 10 A Yes, sir.
- 11 Q And whose home was that?
- 12 A It belonged to Wayne Matthews.
- 13 Q Wayne Matthews.
- 14 A We called him Smooth.
- 15 Q And your mom was staying there, right?
- 16 A Yes, sir.
- 17 Q And I think you heard the other day that her name is
- 18 Frances Lou --
- 19 A Kinup.
- 20 Q Louise Kinup.
- 21 A Yes, sir.
- 22 Q And how many bedrooms were in this house then?
- 23 A Two bedrooms.
- 24 Q Two bedrooms.
- 25 A Two bedrooms.

Mirya Duncan
Cross-examination by Mr. Allen

- 1 Q And so Mr. Matthews was staying there too.
- 2 A Uh-huh.
- 3 Q And your mom and you and Eric, correct?
- 4 A And my brother.
- 5 Q And your brother.
- 6 A Yeah.
- 7 Q And what about anybody else -- James Ward?
- 8 A Yeah. He was staying there.
- 9 Q Okay. He was a friend of Mr. Matthews.
- 10 A Yeah.
- 11 Q How long had you, your mother and your brother been
- 12 staying there with Mr. Matthews?
- 13 A A couple of years.
- 14 Q And during that time y'all stayed right there at that
- 15 home.
- 16 A Yes, sir.
- 17 Q And how about Mr. Ward? How long had he been staying
- 18 there?
- 19 A He had been there a couple of months.
- 20 Q And what about Eric? How long had he been there?
- 21 A Well, I guess about, I know he had been there about six
- 22 months.
- 23 Q About six months? I'm sorry?
- 24 A I think about six months. It might have been a little
- 25 more or a little less.

Mirya Duncan
Cross-examination by Mr. Allen

- 1 Q Six months, give or take a little bit?
- 2 A Yeah.
- 3 Q He and your brother got along?
- 4 A Yeah, they got along.
- 5 Q Did things together?
- 6 A Yeah.
- 7 Q Now, Eric -- did he like to work on cars?
- 8 A Yeah. Eric and Brandon would go down to the shop and
- 9 work on Brandon's truck a lot.
- 10 Q When you say they went down to the shop, where was the
- 11 shop?
- 12 A It was about 50 feet to the left of the building that
- 13 we kept our stuff in.
- 14 Q Okay. That won't be the building that y'all lived in,
- 15 or the home, right?
- 16 A It was a couple of hundred feet behind the home we
- 17 lived in.
- 18 Q Okay. So there was a separate building where y'all
- 19 kept your stuff, right?
- 20 A Yes, sir.
- 21 Q And there was a shop that was even separate from that,
- 22 correct?
- 23 A Yes, sir.
- 24 Q And the building where you kept your stuff, was someone
- 25 making a room for someone else?

Mirya Duncan
Cross-examination by Mr. Allen

- 1 A The boys was making them a little kind of like place to
2 hang out down where we kept our stuff at.
- 3 Q By the boys, you mean Brandon and Eric.
- 4 A Yes, sir.
- 5 Q You used rubber gloves to keep your hands clean when
6 you dyed your hair, I take it.
- 7 A Yes.
- 8 Q And Eric had asked for some gloves a couple of months
9 before he was arrested, right?
- 10 A Yes.
- 11 Q When you remembered Eric asking or getting the gun, did
12 he ask for it? Did he ask to get the gun?
- 13 A He said that there was a snake down in the building,
14 and he wanted to get the gun so he could shoot it. And he
15 went back and asked mama, and mama said that he could take
16 it down there.
- 17 Q You didn't go with Eric, did you?
- 18 A What do you mean?
- 19 Q You didn't go down to the building with him, did you?
- 20 A No. I am afraid of snakes.
- 21 Q That's all you needed to hear, and you said, no, I
22 ain't going, right?
- 23 A I ain't going near them.
- 24 Q You stayed in the house, right? You weren't really
25 paying attention as to whether or not Eric shot a snake or

Mirya Duncan
Cross-examination by Mr. Allen

1 not, were you?

2 A Well, it kind of echoes where we was, but I wasn't
3 really, I wasn't listening for it, but you can hear it in
4 the house.

5 Q And what were you doing in the house?

6 A I was watching the news with Smooth.

7 Q Watching the news with Smooth?

8 A Yeah.

9 Q Now, Smooth is Mr. Matthews, right?

10 A Yeah, Wayne Matthews. I'm sorry.

11 Q Okay. That's a nickname.

12 A Yeah.

13 Q Right?

14 A Everybody called him that.

15 Q You remember the night that Eric and your brother got
16 arrested. You remember Eric came back to the house, right?

17 A Yeah. They come back to the house, and I woke up. I
18 hadn't been long went to sleep, about 15 minutes.

19 Q And when they -- and this would be after Eric went up
20 to the store to get Brandon.

21 A Yes, sir.

22 Q When you woke up you asked your brother to come to you.

23 A Well, he was, he was already inside sitting on my
24 mama's bed. And they give me hugs and kisses before I went
25 to bed. So Brandon was sitting there, and he gave me a hug

Mirya Duncan
Cross-examination by Mr. Allen

1 and a kiss. And then I told him to go get Eric so he could
2 give me a hug and a kiss before I went to sleep.

3 Q And did Eric come to you to give you a hug and a kiss
4 before you went to sleep?

5 A Yes.

6 Q But you noticed something about Eric, didn't you? What
7 did you notice?

8 A He, he didn't look like hisself. He just, he was pale.

9 Q Pale?

10 A He was, yeah, he was a little pale when he come in the
11 house.

12 Q Did he look like he was scared?

13 A I don't know. I hadn't really never seen Eric scared
14 before.

15 Q Nervous?

16 A He looked like he was a little nervous, but I didn't
17 really pay no attention to it.

18 Q Wasn't acting himself though, was he?

19 A Not really.

20 Q Your brother had been working at the store, right?

21 A Yes, sir.

22 Q How long before this happened?

23 A I think he started Saturday filling in for Smooth,
24 Wayne, bagging ice and ringing the beer. And I think he
25 filled in for him for like two or three days, and then

Mirya Duncan
Redirect examination by Mr. Willingham

1 Brandon went to work up there.

2 Q But he just started the Saturday before, right?

3 A Yes, sir.

4 MR. ALLEN: One second, please.

5 (Pause.)

6 Q If you could in this -- I think you said it was a
7 2-bedroom home, right?

8 A Yes, sir.

9 Q Where was Eric sleeping in the home?

10 A He slept in the living room in a La-Z-Boy recliner. It
11 laid out basically like a bed.

12 Q For the whole time that he stayed there with y'all,
13 that's where he slept?

14 A Yes, sir.

15 Q Do you know why Eric was staying there?

16 A I figured because he liked it better there.

17 Q Never really talked about it?

18 A No, not really.

19 MR. ALLEN: Nothing further, Your Honor. Thank you.

20 REDIRECT EXAMINATION

21 BY MR. WILLINGHAM

22 Q Mirya, you said he liked it better there. He had a
23 home of his own, didn't he?

24 A Yes.

25 Q Where was that?

Mirya Duncan
Recross-examination by Mr. Allen

- 1 A It was in Duncan with his mother.
2 Q In the town of Duncan?
3 A Yes.
4 Q How did you know that?
5 A We had been over there several times.
6 Q In fact, you had taken him home there several times.
7 A Yes.
8 Q But he came back to y'all.
9 A Yeah.
10 Q And y'all were kind enough to give him a place to stay.
11 A Yes.
12 Q Thank you.
13 THE COURT: Have you got something else you want to
14 ask?
15 MR. ALLEN: Yes, sir, on that subject.
16 THE COURT: Okay.
17 RECROSS-EXAMINATION
18 BY MR. ALLEN
19 Q On the night he was arrested do you know whether or not
20 his mother was at home or somewhere else?
21 A I don't know where she was that night.
22 Q Okay. Thank you.
23 THE COURT: You may step down.
24 MR. BULSA: The state calls Officer Burbage.
25 THE COURT: We are going to take a break.

1 MR. BULSA: Yes, sir.

2 THE COURT: Ladies and gentlemen, we will take a break
3 before we go further.

4 Please retire to your jury room. Do not talk about the
5 case.

6 You can just lay those on the witness box there as you
7 leave, the transcripts, and the bailiff will pick them up.
8 Thank you.

9 (The following takes place outside the presence of the
10 jury.)

11 THE COURT: Court is in recess for 15 minutes.

12 (Whereupon, a recess was taken.)

13 THE COURT: Are we ready for the jury?

14 MR. GOWDY: The state is.

15 THE COURT: Bring them in. Just a minute.

16 MR. ALLEN: I think the record is clear. I want to
17 make sure for the record that we restate that we object to
18 the admission of that tape from -- may we simply renew our
19 objection from May 8th of 2000?

20 I think the Court understood that we had an objection
21 when the Court commented that it was subject to the
22 objection. But I just wanted to make sure that it was put
23 on the record that we did renew our objections to that. I
24 just wanted to state that we renew our objection subject to
25 the grounds stated in our motion and earlier objection that

Jason K. Burbage
Direct examination by Mr. Bulsa

1 has been ruled on by the Court.

2 THE COURT: All right. Your objection is preserved.

3 MR. ALLEN: Thank you.

4 THE COURT: Bring the jury in, please.

5 (The following takes place in the presence of the
6 jury.)

7 MR. BULSA: The state calls Officer Burbage.

8 JASON K. BURBAGE, having been
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. BULSA

11 Q Officer, please introduce yourself to the jury.

12 A I'm Jason Burbage.

13 Q And who are you employed by?

14 A Lexington County Sheriff's Office.

15 Q And were you once employed by Spartanburg County?

16 A Yes, sir, I was until December of 2000.

17 Q And what were your duties with Spartanburg County?

18 A I was a patrol officer.

19 Q Back on May the 4th of 2000 do you recall transporting
20 Eric Dale Morgan to a location?

21 A Yes, sir. I was contacted by dispatch and advised to
22 respond to the sheriff's office in order to do a prisoner
23 transport.

24 Q And where exactly did you pick him up?

25 A At the sheriff's office.

Jason K. Burbage
Direct examination by Mr. Bulsa

1 Q And did you take him out to your patrol car?

2 A Yes sir. After placing him in the handcuffs, I
3 transported him. I walked him up to my patrol car which was
4 in the parking lot.

5 Q Were there members of the press outside?

6 A Yes, sir. There were various members of the press.

7 Q And were there video cameras?

8 A Yes, sir.

9 Q You previously reviewed the video, what's been marked
10 State's Exhibit Number Sixty-six. Was that a video of you
11 and Mr. Morgan?

12 A Yes, sir, it was.

13 Q Specifically, it shows you placing him into the car.

14 A Yes, sir.

15 Q And does that accurately represent that day as you
16 recall it?

17 A Yes, sir, it does.

18 MR. BULSA: Your Honor, I would move this into
19 evidence, State's Exhibit Sixty-six.

20 THE COURT: It is admitted subject to objection.

21 (Video tape marked State's Exhibit Number Sixty-six.)

22 MR. BULSA: At this time I would publish this to the
23 jury, Your Honor.

24 THE COURT: You may.

25 (Whereupon, the tape was played for the jury.)

Jason K. Burbage
Cross-examination by Mr. Allen

1 Q Officer Burbage, upon placing him in your car did you
2 ask Mr. Morgan any questions?

3 A No, sir, not at any time.

4 Q Did he on his own speak to you?

5 A Yes, sir.

6 Q What kind of comments did he make?

7 A In route to our location he stated to me that he and
8 someone else had planned the incident, what occurred. They
9 had planned it for some time, and they had at one time
10 backed out. And he further stated to me that he was really
11 low and needed the money very badly.

12 Q Thank you, Officer. Answer any questions defense
13 counsel may have.

14 CROSS-EXAMINATION

15 BY MR. ALLEN

16 Q During the time that he was saying these things in the
17 back of your car you were not asking him anything?

18 A No, sir.

19 Q What were you doing besides driving?

20 A I was driving.

21 Q You weren't making any contact with him through the
22 rear-view mirror?

23 A I observed him in my rear-view mirror.

24 MR. ALLEN: Nothing further.

25 MR. BULSA: Nothing further.

Jimmy Sligh
Direct examination by Mr. Willingham

1 THE COURT: You may step down.

2 MR. BULSA: Your Honor, we would ask that Officer
3 Burbage be excused.

4 THE COURT: You may be.

5 (Whereupon, the witness was excused.)

6 MR. WILLINGHAM: Your Honor, we call Jimmy Sligh.

7 JIMMY SLIGH, having been first
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. WILLINGHAM

10 Q Tell the jury who you are.

11 A I'm Jimmy Sligh. I am the division director of
12 classification inmate records for the South Carolina
13 Department of Corrections.

14 Q How long have you been with the Department of
15 Corrections, Mr. Sligh?

16 A A little over 22 years.

17 Q And during that 22-year period have you become familiar
18 with the difference between someone housed on death row and
19 someone housed in the general population?

20 A Yes, sir.

21 Q If someone were housed -- if someone were to receive a
22 life-without-parole sentence would they be housed in the
23 general population?

24 A Yes, sir.

25 Q If you would for the jury, explain the difference

Jimmy Sligh
Direct examination by Mr. Willingham

1 between living conditions and privileges someone would have
2 in the general population versus someone on death row.

3 MR. ALLEN: Your Honor, if it please the Court, we
4 object on the grounds of relevance at this time.

5 THE COURT: Let me see y'all just a minute.

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 THE COURT: You may continue.

9 MR. WILLINGHAM: Thank you, Your Honor.

10 Q Mr. Sligh, if you would, tell the jury how a person in
11 the general population of the Department of Corrections is
12 housed.

13 A Cells are anywhere from 75 to a hundred square feet.
14 In the general population there are going to be either two
15 or three males to a cell.

16 Q So there would be no situation of isolation normally.

17 A Not in the general population.

18 Q Okay. Now, he would have access to the yard.

19 A Yes, sir. We have a controlled movement schedule. But
20 as long as you have full privileges you have access under
21 controlled movement to any area inside the inner-perimeter
22 fence.

23 Q And what would be a person's daily schedule in the
24 general population?

25 A Roughly wake-up is somewhere in the neighborhood of

Jimmy Sligh
Direct examination by Mr. Willingham

1 5:30 in the morning. There is usually a standing count at
2 that time.

3 The inmates at that point then would be released by
4 their living unit to go and eat breakfast, return to their
5 living unit. Once breakfast is fed they're released to
6 either go to school or work or whatever their outside
7 activity might be.

8 We move folks on the hour, so there is not coming and
9 going. You're either in your living area or where you're
10 assigned; bring them back for lunch, repeat that process.
11 They're released again in the afternoon for work or school;
12 bring them back in the evening.

13 Once they are brought back after supper, they're
14 generally confined to their living unit at that point. And
15 then we normally lock down at ten o'clock or so at night,
16 which means they're confined to their cells at that point.

17 Q And you mentioned they have work or school. What type
18 of jobs are available to them?

19 A Generally the inmates do all of the work in the
20 institution. Cafeteria is probably generally the largest
21 employer because we do -- some of our institutions have as
22 many as 1,500 inmates, and we feed three meals a day, so
23 that's a lot of activity. But they do all of the
24 maintenance work, the cleaning, the grounds-keeping, you
25 know, basically whatever is needed in the institution.

Jimmy Sligh

Direct examination by Mr. Willingham

1 Q Do they get paid?

2 A We stopped inmate pay back in the late 90's. Any
3 inmate who was receiving pay and is still in the system at
4 that point still receives pay. But anyone who has come in
5 since then does not.

6 Q You said schooling. What type of schooling is
7 available to someone?

8 A We have pre-G. E. D. and basic education, some
9 vocational opportunities and some very limited postsecondary
10 opportunities that are at the inmate's expense. We put a
11 great deal of emphasize on education and try to get as many
12 G. E. D.'s as we can.

13 Q And what is your canteen?

14 A Canteen is basically like a small store. It provides
15 personal hygiene items, some snack type foods, cigarettes,
16 those type of items that the inmates if they have money in
17 their account can purchase.

18 Q Would people in the general population have access to a
19 telephone to call people?

20 A Yes. In the living areas there are telephone rooms.
21 Basically an inmate has to submit a telephone list which is
22 ultimately going to be approved by the person he's put on
23 his list.

24 All of the calls are collect calls, so the person has
25 got to agree to accept collect calls. We have a system that

Jimmy Sligh
Direct examination by Mr. Willingham

- 1 cuts off the call after 15 minutes, but basically the
2 availability of the telephone. They can be on the phone.
- 3 Q Does the Department of Corrections have a library?
- 4 A Our larger institutions have both a library and a law
5 library.
- 6 Q Oaky. And would a person in the general population
7 have access to that library?
- 8 A Yes, sir.
- 9 Q How about recreation?
- 10 A Each unit has a fenced recreation area. It's probably
11 about 50 by 50. It generally has a cement pad and maybe a
12 basketball goal and a handball wall. The inmate, if he's
13 not working and not restricted to his cell, has access to
14 that during the daylight hours. We also have some
15 institution-wide areas both indoor and outdoor that on a
16 limited basis can be used also.
- 17 Q You said already he gets to use the telephone. Can he
18 receive mail?
- 19 A Oh, yes, yes.
- 20 Q Can he send mail?
- 21 A Yes.
- 22 Q Can he go to church?
- 23 A We have nondenominational services on Sunday and then
24 generally numerous volunteer activities during the week.
- 25 Q Can he watch television?

Jimmy Sligh
Cross-examination by Mr. Allen

1 A We have televisions.

2 Well, let me back up. Inmates could have personal
3 televisions up until the late 90's. Then we basically
4 grandfathered them. Anybody who came in after that point
5 couldn't have a personal television.

6 So at that time we put up televisions in the common
7 areas on each wing of the living units that the inmates can
8 go out and watch while they have access out of the cell.

9 Q And how about visitors? Can people come and see them?

10 A Yes.

11 Q And how is that controlled?

12 A Inmates, basically fills out a visiting list. He can
13 have to up to 15 people on that list.

14 General population visits Fridays, Saturdays and
15 Sundays. And it's what we call contact visitation, which
16 means there's no barrier between the inmate and visitor,
17 although we do have some regulations dealing with females.
18 We do make the inmates sit across from females. No hugging,
19 kissing and that type of thing during visitation.

20 Q If you would, answer questions they have. Thank you.

21 CROSS-EXAMINATION

22 BY MR. ALLEN

23 Q Mr. Sligh, you're talking about the life of an inmate
24 in prison, correct?

25 A Yes, sir.

Jimmy Sligh
Cross-examination by Mr. Allen

- 1 Q And these prisons are, of course, they are surrounded
2 by big fences, tall, right --
- 3 A Yes.
- 4 Q -- around the whole grounds?
- 5 A Correct.
- 6 Q And there's concertina wire over the tops of these
7 fences, correct?
- 8 A Correct. And up and down the outside fence to the
9 ground.
- 10 Q And up and down the outside fence. Of course by
11 concertina wire I'm talking about that razor-sharp barbed
12 wire.
- 13 A Razor wire is another name for it, yes, sir.
- 14 Q The inmates are not allowed to call anyone, correct?
- 15 A No, sir. Only the folks that are on their approved
16 telephone list.
- 17 Q They're not allowed just to make collect calls to
18 anyone unless they're on that list.
- 19 A Correct.
- 20 Q That's got to be approved by the warden?
- 21 A No, sir. It generally has to be approved by the person
22 who the inmate has indicated he wants to call. They've got
23 to approve. You know, they've got to indicate to us that
24 they have no problem receiving a collect call in that
25 manner.

Jimmy Sligh
Cross-examination by Mr. Allen

- 1 Q Okay. So the inmate says I want to be able to call,
2 make collect calls, to this person or that person or another
3 person, right?
- 4 A Right.
- 5 Q And then before they are allowed to do that one of the
6 officers or employees of the prison calls those individuals.
- 7 A No, sir. Actually a form is mailed to them --
- 8 Q A form is mailed?
- 9 A -- that they have to complete and sign, and I believe
10 include a phone bill also. Part of the issue obviously is
11 fraud, just failure to pay, that our company that contracts
12 with us is concerned about obviously.
- 13 Q So you want to make sure that people who will be
14 receiving these don't have a bad history of not paying phone
15 bills?
- 16 A Well, it's two issues obviously; they don't have an
17 inherent problem with receiving the call to begin with, but
18 also that they can prove, you know, that they have got a
19 history of paying their phone bills, yes, sir.
- 20 Q So if someone has no problem receiving a call from
21 inmate but doesn't have very good history of paying the
22 phone bills, then they probably won't be allowed for -- the
23 inmate may not be allowed to make a phone call.
- 24 A It's possible. That would be up to the outside
25 provider at that point.

Jimmy Sligh
Cross-examination by Mr. Allen

- 1 Q Now, you mentioned jobs within the prison. The inmates
2 do a good bit of the work, correct?
- 3 A Yes, sir.
- 4 Q But if someone goes into prison now they won't get
5 paid.
- 6 A For the most part, no. We do have some specific type
7 of jobs that just by the nature of those prison industry
8 type jobs where there are some limited opportunities to be
9 paid, regardless of when you came into the system, but by
10 and large, no. For normal activity in the institution you
11 would not be paid.
- 12 Q Cafeteria jobs are not paid any more.
- 13 A No, sir.
- 14 Q Some prison have farms where they grow some of the
15 food?
- 16 A Yes, sir.
- 17 Q Those aren't paid.
- 18 A No, sir.
- 19 Q The maintenance is not paid.
- 20 A No, sir.
- 21 Q The cleaning is not paid.
- 22 A No, sir.
- 23 Q The grounds-keeping is not paid.
- 24 A No, sir.
- 25 Q When you say controlled movement, do you mean a

Jimmy Sligh
Cross-examination by Mr. Allen

- 1 movement that is supervised by a correctional officer?
- 2 A That's correct.
- 3 Q You talked about a daily schedule. There is a time
- 4 that they have to wake up.
- 5 A Right.
- 6 Q That is not an option.
- 7 A No, sir.
- 8 Q Isn't that correct?
- 9 A No, sir.
- 10 Q A prisoner can't say I don't want to wake up this
- 11 early. They have to get up when y'all say get up, right?
- 12 A Correct, or there's consequences obviously.
- 13 Q There's punishment --
- 14 A Yes, sir.
- 15 Q -- and loss of some privileges, right?
- 16 A Potentially, yes, sir.
- 17 Q Possibly even further lock-down or something of that
- 18 sort?
- 19 A Depending upon how serious the infraction would be,
- 20 yes, sir. That's a potential.
- 21 Q They can't skip breakfast.
- 22 A No, sir. They don't have to.
- 23 Q They don't have to eat.
- 24 A No, sir.
- 25 Q But they have to go.

Jimmy Sligh
Cross-examination by Mr. Allen

1 A No, sir. They don't have to go.

2 Q Okay. Excuse me. How about the activities like school
3 or the work? They have to do that too.

4 A We require everybody to be involved unless there is
5 some physical or mental issue that would prevent them from
6 being able to actively participate.

7 Q And, of course, when it's time to go to meals if they
8 want to eat, they have to go to meals at that time, correct?

9 A That's correct.

10 Q And you said that, I think, after supper they are
11 confined to their living area, correct?

12 A Correct.

13 Q And they don't have a choice about going anywhere else.
14 They have to stay there.

15 A That's correct.

16 Q Did I hear you right, that being confined to the living
17 unit was different from the lock-down for the night?

18 A Yeah, yeah. You can move about, come out and watch T.
19 V. in the common area or visit someone in a room, another
20 room, or whatever until the lock-down time.

21 Q So essentially a prisoner in the general population is
22 supervised by correctional officers, correct?

23 A Supervised by all employees, yes, sir.

24 Q By all employees of the Department of Corrections. And
25 they have to follow the schedule that the Department of

Jimmy Sligh
Cross-examination by Mr. Allen

- 1 Corrections sets.
- 2 A Correct.
- 3 Q And do what the correctional officers and all other
- 4 employees of the Department of Corrections say they can do.
- 5 A Correct.
- 6 Q And when they can do it.
- 7 A Correct.
- 8 Q When you said contact visits, you meant simply that
- 9 there was no wall or wire or glass between the visitor and
- 10 the prisoner.
- 11 A That's correct.
- 12 Q They can't kiss.
- 13 A Coming and going but not throughout the visit.
- 14 Q Right. Can't hug throughout the visit.
- 15 A Right.
- 16 Q If they don't do what they are supposed to do, there
- 17 can be consequences, correct?
- 18 A Correct.
- 19 Q And one of the consequences, they won't get their
- 20 visit, right?
- 21 A That is one potential consequence, yes, sir.
- 22 Q Another consequence is that that visitor won't be
- 23 allowed to come back potentially.
- 24 A Potentially.
- 25 Q In short, the Department of Corrections has a say in

Jimmy Sligh
Redirect examination by Mr. Willingham

1 everything the prisoner does.

2 A That's correct.

3 Q And when the prisoner does it.

4 A Correct.

5 MR. ALLEN: One second, please, Your Honor.

6 (Pause.)

7 Q Thank you, Mr. Sligh.

8 REDIRECT EXAMINATION

9 BY MR. WILLINGHAM

10 Q Mr. Sligh, you testified that the person would be in a
11 cell with two or three other people.

12 A Up to three.

13 Q Up to three? ✓

14 A Yes, sir.

15 Q Now, is that the only people they're going to have
16 contact with during the day?

17 A No, sir; no, sir. I mean, once we let them out in the
18 morning for breakfast, they've got access within their
19 building to come and go as they please, and then obviously
20 if they're working or going to school or whatever the other
21 activity might be they're going to be doing that with other
22 inmates.

23 Q And if they have free access to the yard, how many
24 other people could they be around potentially?

25 A Well, as I said earlier, they really don't have free

Jimmy Sligh
Redirect examination by Mr. Willingham

1 access to the yard, but under controlled movement depending
2 upon, you know, what their work or school situation is. You
3 know, it could be any number of folks. You know, we may
4 have -- If they work in the cafeteria we may have as many as
5 60 or 70 inmates on one shift, along with the food service
6 supervisors.

7 Q When they're eating how many people are in the
8 cafeteria at a time?

9 A 125 or 150, somewhere in that neighborhood.

10 Q Thank you.

11 THE COURT: You may step down.

12 Did you have anything else?

13 MR. ALLEN: No, Your Honor. I was shaking my head.

14 MR. WILLINGHAM: We ask that he be excused, Your Honor.

15 THE COURT: He may be.

16 (Whereupon, the witness was excused.)

17 MR. WILLINGHAM: Your Honor, we call Mike Cromer.

18 MR. ALLEN: Your Honor, may we approach the bench?

19 THE COURT: Yes, sir.

20 (Bench conference held off the record in the presence
21 of the jury but out of the hearing of the jury.)

22 THE COURT: You may swear the witness.
23
24
25

Michael Cromer
Cross-examination by Mr. Allen

1 Q If you will, tell the jury what you saw happen.

2 A I'm thinking this was a Sunday morning. I was coming
3 out. I'm thinking we were going to Sunday school. And I
4 noticed three individuals -- I couldn't tell who they were
5 at the time -- go in an alleyway. It's in the back of the
6 pharmacy. And at that time I called Lieutenant Cleveland
7 Smith who was on duty at the time to come and assist me to
8 find out what was going on over there.

9 Q Okay. And did all three of the juveniles go in the
10 building?

11 A They went into the -- it's a little alleyway that goes
12 in behind the building. They all three went in there.
13 Whether they all three actually went in the storage room, I
14 couldn't tell you.

15 Q Okay. And can you tell me who the three people were?
16 Did you get back there to look at them?

17 A Yes, I did. I don't have the report. I don't remember
18 their names. It was a brief encounter before Lieutenant
19 Smith got there and took charge of them.

20 Q Okay. Thank you. Answer any questions they have.

21 A Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. ALLEN

24 Q Mr. Cromer, that was the extent of your involvement, is
25 that correct?

Michael Cromer
Cross-examination by Mr. Allen

1 A That was my encounter, yes, sir.

2 Q And it was my understanding that you did not get close
3 enough to identify anybody.

4 A Yes, sir. I did. But I don't remember who they were.
5 From sitting here I couldn't tell you if that was him or not
6 other than what my report said, you know. My encounter with
7 the three was very brief.

8 Q Okay. So it was so brief that you couldn't tell us
9 anything about any of the three.

10 A All I remember is them coming out of the little
11 alleyway, the little storage area. And one of them was
12 carrying a trash can, excuse me, an ashtray, a stand-up
13 ashtray.

14 Q A stand-up ashtray?

15 A Yes, sir.

16 Q But you couldn't identify anybody today because your
17 encounter was so brief. Is that a fair statement?

18 A That and the time, yes, sir.

19 Q That and the time.

20 A And the time. It's been a while back.

21 Q Oh, okay. This was back in, I think you said, March,
22 right?

23 A I think the report did say March, yes, sir.

24 Q Do you recall what year, or was it 1998?

25 A I don't remember the year. Unless I had my report I

Michael Cromer
Cross-examination by Mr. Allen

- 1 couldn't tell you.
- 2 Q It was quite sometime ago.
- 3 A It's been sometime back.
- 4 Q And you said it was in the morning, correct?
- 5 A I am thinking it was early Sunday morning.
- 6 Q Do you know how early?
- 7 A I'm going to guess around 9:30. And the reason I say
- 8 that was Anthony's Pharmacy was closed. Any other day they
- 9 would be open, so.
- 10 Q I didn't catch the last part of that.
- 11 A Any other day they would have been open. That's why
- 12 I'm saying it was probably a Sunday morning.
- 13 Q Okay. They were open six days a week at that time,
- 14 right?
- 15 A Yes, sir.
- 16 Q When you say that you only saw this for a brief period
- 17 of time, can you give us an idea about how much time went
- 18 by?
- 19 A As far as what?
- 20 Q For this whole incident.
- 21 A From the time I saw them until the time Lieutenant
- 22 Smith took charge of them?
- 23 Q Yes, sir.
- 24 A Probably less than ten minutes.
- 25 Q Less than ten minutes?

Cleveland Smith
Direct examination by Mr. Willingham

1 A I'm sure.

2 Q Thank you, Mr. Cromer.

3 MR. WILLINGHAM: Your Honor, we would ask he be
4 excused.

5 THE COURT: You may be.

6 (Whereupon, the witness was excused.)

7 MR. WILLINGHAM: We would call Cleveland Smith.

8 CLEVELAND SMITH, having been
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. WILLINGHAM

11 Q Tell the jury who you are.

12 A Cleveland Smith.

13 Q Mr. Smith, where do you work?

14 A I'm retired.

15 Q Did you used to work for the Woodruff Police
16 Department?

17 A Yes, sir.

18 Q What was your position with them?

19 A I was a lieutenant.

20 Q And how long had you been in law enforcement?

21 A Twenty-seven years altogether.

22 Q And were you working back in March of 1998?

23 A Yes, sir.

24 Q And do you remember getting that call from Chief Cromer
25 to go down to Anthony's Pharmacy?

Cleveland Smith
Cross-examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q And did you do so?
- 3 A Yes, sir.
- 4 Q What did you find when you got down there?
- 5 A When I got the call to go to Anthony's Pharmacy I
- 6 pulled my car right beside the Anthony's Pharmacy, which is
- 7 a drug store. And I met three males coming from around the
- 8 side of the building. One of them was carrying a, I believe
- 9 was a, seemed like to be about a five-foot ashtray. It was
- 10 aluminum type.
- 11 Q And what did you do when you found these three males?
- 12 A I placed them under arrest. And I got to checking and
- 13 went around to where they supposedly had went in at.
- 14 The building had a lock, like a dummy lock, on it. And
- 15 they took the lock off and went inside and retrieved the
- 16 ashtray and brought the ashtray out.
- 17 Q Was one of the folks you arrested Brandon Duncan?
- 18 A Yes, sir.
- 19 Q Was the other person you arrested Eric Morgan?
- 20 A Yes, sir.
- 21 Q Thank you.
- 22 CROSS-EXAMINATION
- 23 BY MR. ALLEN
- 24 Q Do you recall which one of these three were carrying
- 25 the ashtray?

Cleveland Smith
Cross-examination by Mr. Allen

- 1 A Not right off, I don't.
- 2 Q Okay. Did you make an incident report about this
- 3 matter?
- 4 A Yes, sir.
- 5 Q Is this a copy of your incident report?
- 6 A That's a copy but it don't have the --
- 7 Q You say you met number one suspect carrying aluminum
- 8 ashtray.
- 9 A Yes, sir.
- 10 Q Suspect.
- 11 A Yes, sir.
- 12 Q And number one is who?
- 13 A That would be Duncan. I don't have my report with me.
- 14 Q Okay. Well, that's why I'm showing it to you.
- 15 A Yes, sir.
- 16 Q So you reported at that time that it was Duncan that
- 17 had the ashtray.
- 18 A Yes.
- 19 Q Brandon Duncan.
- 20 A Right.
- 21 Q Do you recall how old Eric was at this time?
- 22 A I believe he was 15. I'm not for sure.
- 23 Q You think he was 15.
- 24 MR. ALLEN: May I approach the bench before I --
- 25 (Bench conference held off the record in the presence

Cleveland Smith
Cross-examination by Mr. Allen

1 of the jury but out of the hearing of the jury.)

2 Q Do you know if this case was prosecuted in family court
3 or any other court?

4 A No, sir.

5 Q No, you don't know or --

6 A I do not know.

7 Q You do not.

8 A No.

9 Q You were never called to testify about this case before
10 today, right?

11 A No, sir. I wasn't called. I wasn't called before
12 today.

13 MR. ALLEN: Nothing further, Your Honor.

14 MR. WILLINGHAM: I have no other questions.

15 I ask he be excused.

16 THE COURT: You may step down. Thank you.

17 (Whereupon, the witness was excused.)

18 MR. WILLINGHAM: If the Court will, give me just one
19 second.

20 (Pause.)

21 MR. GOWDY: Judge, can we approach for just one moment?

22 (Bench conference held off the record in the presence
23 of the jury but out of the hearing of the jury.)

24 THE COURT: You may swear the witness.
25

Dianne Lestage
Direct examination by Mr. Willingham

1 DIANNE LESTAGE, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. WILLINGHAM

4 Q Tell the jury who you are.

5 A My name is Diane Lestage. I am an investigator for
6 Spartanburg County Sheriff's Office.

7 Q And how long have you worked for the sheriff's office?

8 A Since 1987.

9 Q And were you working for the sheriff's office back in
10 May of 2000?

11 A Yes, I was.

12 Q As an investigator is it one of your jobs to attend
13 autopsies if requested?

14 A Yes, it is.

15 Q And did you, in fact, on May the 4th of 2000 attend the
16 autopsy of the victim in this case, Jerry Smith?

17 A Yes, I did.

18 Q Can you tell the jury what type of injuries you saw on
19 the victim?

20 A When I attended the autopsy I noticed a hole on the
21 left side of the head of the victim which appeared to be a
22 gunshot wound. There were abrasions on his forehead and the
23 bridge of his nose.

24 Q I want to show you State's Exhibit Sixty-seven and ask
25 if you recognize that.

Dianne Lestage
Direct examination by Mr. Willingham

- 1 A Yes, I do.
- 2 Q What is it?
- 3 A That is the victim, Jerry Smith.
- 4 Q Is that how he appeared at the autopsy?
- 5 A Yes, sir, it is.
- 6 MR. WILLINGHAM: Your Honor, at this time I move
- 7 State's Exhibit Number Sixty-seven into evidence.
- 8 THE COURT: It's admitted subject to any objection.
- 9 (Photograph marked State's Exhibit Number Sixty-seven.)
- 10 Q I will give you this pointer, Investigator Lestage.
- 11 Show the jury where you saw a gunshot wound. You have to
- 12 push that -- no.
- 13 A This right here?
- 14 Q Yes.
- 15 A Right here is where the round hole was, and then, of
- 16 course, the abrasion on the forehead and also on the bridge
- 17 of the nose.
- 18 Q If you would, answer any questions the defense may
- 19 have.
- 20 MR. ALLEN: No questions.
- 21 THE COURT: You may step down.
- 22 MR. WILLINGHAM: We call Julie Rosario.
- 23
- 24
- 25

Julie Rosario
Direct examination by Mr. Willingham

1 JULIE ROSARIO, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. WILLINGHAM

4 Q Tell the jury who you are.

5 A My name is Julie Rosario and I work for the Spartanburg
6 County Magistrate Court.

7 Q And how long have you worked for the magistrate court?

8 A Probably about three years now.

9 Q What do you do for them?

10 A I am one of the clerks.

11 Q Is one of your jobs to keep up with warrants and the
12 disposition of warrants signed?

13 A At the time I type warrants, but that is part of my job
14 also.

15 Q Did you at the request of the solicitor's office check
16 to see if there were any warrants on an Eric Dale Morgan
17 disposed of in magistrate's court?

18 A I am sorry?

19 Q At the request of the solicitor's office did you look
20 and check to see if there were any warrants that were
21 disposed of in magistrate's court concerning Eric Dale
22 Morgan?

23 A Yes, sir.

24 Q And was one of those warrants Number 47448-B-E?

25 A Yes.

Julie Rosario
Direct examination by Mr. Willingham

1 Q And what was that warrant for?

2 A That warrant was for possession of marijuana.

3 Q And when did that occur?

4 A It looks like -- did you want the issue date or the
5 disposition date?

6 Q Start with the issue date.

7 A 2/1/2002.

8 Q And when was it disposed of?

9 A 3/7. I am sorry. 2/1. The issue date was
10 2/1/2000 and the disposition date was 3/7/2000.

11 Q And what was the disposition of that warrant?

12 A Guilty.

13 Q And what was the sentence?

14 A I don't actually have the sentence from my printout
15 because this case was done in Woodruff Magistrate Court, and
16 their sentences sometimes don't show on our computer.

17 Q Okay. But he was convicted of that charge.

18 A Yes.

19 Q If you would, answer any questions that the defense
20 lawyers have. Thank you.

21 MR. ALLEN: No questions.

22 THE COURT: You may step down. You may also be
23 excused.

24 (Whereupon, the witness was excused.)

25 MR. GOWDY: Your Honor, the state would call Jonathan

Jonathan David Smith
Direct examination by Mr. Gowdy

1 Smith.

2 JONATHAN DAVID SMITH, having
3 been first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. GOWDY

5 Q Good afternoon.

6 A Good afternoon.

7 Q Would you tell the jury what your name is? And tell
8 them how old you are.

9 A My name is Jonathan David Smith. I am 18 years old.

10 Q Jonathan, where do you live?

11 A Fountain Inn, South Carolina.

12 Q And who do you live with?

13 A My father.

14 Q What's his name?

15 A Randy Smith.

16 THE COURT: You don't have to lean into the microphone.
17 It will pick you up.

18 THE WITNESS: Yes, sir.

19 Q Are you in school, Jonathan?

20 A No, sir. I graduated in May.

21 Q What are you doing for a living?

22 A Nothing right now.

23 Q Are you hunting a job?

24 A I'm in the process after this is over.

25 Q Okay. Did you have an uncle named Jerry Smith?

Jonathan David Smith
Direct examination by Mr. Gowdy

- 1 A I did.
- 2 Q How many aunts and uncles have you got?
- 3 A On both sides or just the Smith side?
- 4 Q Just tell us on the Smith side.
- 5 A I had in the start six uncles and two aunts.
- 6 Q How many have you got now?
- 7 A Three uncles and two aunts.
- 8 Q You lost three uncles?
- 9 A Yes, sir.
- 10 Q Were you close to Jerry Smith?
- 11 A Extremely.
- 12 Q Tell the jury about Jerry Smith.
- 13 A Good man. Didn't have one single enemy. Everyone
- 14 loved him. I loved him. His whole family loved him. You
- 15 couldn't find a better man on this earth than Jerry Smith.
- 16 Q How close did you live to him, Jonathan?
- 17 A I could walk to his house in a minute or two, no more
- 18 than two minutes. I could walk, and that was when I was
- 19 five.
- 20 Q How often did you see your uncle?
- 21 A I would say on the average three or four times a week.
- 22 Q Tell the jury some of the things you would do with your
- 23 Uncle Jerry.
- 24 A We'd talk. You know, we loved history. We would look
- 25 for arrowheads together from Indians and just talk. That's

Jonathan David Smith
Direct examination by Mr. Gowdy

1 what I miss most about it, just talking to him.

2 Q If you could talk to him today, Jonathan, what would
3 you tell him?

4 A Well, I would tell him what I never had a chance to
5 tell him before he died. I'd tell him I loved him and that
6 I miss him and that I just hated what happened to him.

7 Q Did he get to watch you graduate from high school?

8 A No, sir.

9 Q Are there things that you would like to talk to him
10 about now that you can't?

11 A There has been a lot of things happening in the last
12 couple of years that I would have liked to talk to him
13 about, yes, sir.

14 Q Personal things in your own life?

15 A Yes, sir.

16 Q Without going into the details about it, Jonathan, did
17 you have an uncle killed before Jerry was killed?

18 MR. ALLEN: Your Honor, if it please the Court.

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 Q Again, Jonathan, without going into the details of it,
22 did you lose an uncle? Did you lose an uncle prior to
23 losing Jerry?

24 A I lost two. One, yes, sir.

25 Q When did you lose -- did you call him Dicky, Uncle

Jonathan David Smith
Direct examination by Mr. Gowdy

1 Dicky?

2 A Yes, sir. Just Dicky. I never did the uncle in front
3 of it. I just always would call him -- yes, sir. I'd call
4 him Dicky.

5 Q When did you lose him?

6 A New Year's Day of 1994.

7 Q Was that hard on you?

8 A Devastating.

9 Q Did you have to get some help to deal with that?

10 A Yes, sir.

11 Q Were you dealing with it okay up until May of 2000?

12 A Up right into the spring I was getting better. I mean,
13 after that happened I became, I was just real reclusive,
14 real shy. It just, I was always just nervous, and that was
15 especially after my parents went in the store business
16 themselves. And I was always scared that it would happen
17 again, because it tore me up so much when it happened the
18 first time. And right up into the spring of 2000 I was
19 starting to get better, yes, sir. I was starting to get
20 better.

21 Q Jonathan, do you remember where you were and how you
22 found out that your second uncle had been killed?

23 A The night of May the 3rd me, my mother and father
24 closed our store on Fairview Road at around ten o'clock,
25 because I always went with them to close. I wouldn't let

Jonathan David Smith
Direct examination by Mr. Gowdy

1 them go by theirselves because I was scared for them.

2 And the night of May the 3rd when we closed our store
3 there were two police officers sitting in our store trying
4 to catch speeders, and that haunted me afterward because I
5 always said why couldn't it have been vice versa.

6 And we went home. And around -- I had actually stayed
7 at school that day because I had been working on a dairy
8 farm. And that afternoon Bob Jones University had
9 diminished their agriculture program. And I went to a
10 cattle auction and bought two dairy cows for myself.

11 And I hadn't really slept. I was tired. And we got
12 home at about probably 15 after 10:00. And I'm going to
13 guess around 10:30 or 10:35 my Uncle Chubby called and said
14 Jerry isn't here, have you seen him.

15 My mother answered the phone. And she told Chubby, no,
16 we hadn't seen him, he is not here, because he lived so
17 close to us. And my father walked to where he was living at
18 the time to see if he was there, and he wasn't.

19 So he came back and told my mother to tell my Uncle
20 Chubby that, no, he's not here. And Chubby said, well, I'm
21 going to run over to the store to make sure everything is
22 okay, to make sure he didn't have car trouble or something.
23 So he did.

24 And to my recollection, the way I remember it, my
25 mother started calling my Uncle Jerry's cell phone to see if

Jonathan David Smith
Direct examination by Mr. Gowdy

1 she could get him, and she couldn't for, I'm going to say,
2 one or two times she tried to call. She just couldn't get
3 him.

4 So she tried again, and it rang. And my Uncle Chubby
5 answered it. And my mother was like, Jerry, are you okay,
6 and he was like, no, this isn't Jerry, this is Chubby. And
7 he said I'm at the store and everything looks all right.
8 The doors were locked.

9 And as he walked to the door he looked and he saw a
10 puddle of blood just where, almost where, his car was. And
11 he told us, he said, y'all get here quick, something has
12 happened. And we got in our car and drove over there.

13 Q This was on May the 3rd. At that time your Uncle Jerry
14 was missing. Do you remember finding out from your mama or
15 your daddy or both that he had actually been killed?

16 A It was the next morning when I woke up.

17 Q Do you miss your uncle?

18 A Every day.

19 Q Jonathan, this is State's Exhibit Seven. Is that your
20 Uncle Jerry?

21 A Yes, sir.

22 MR. GOWDY: Your Honor, we would move this into
23 evidence.

24 THE COURT: It is admitted.

25 (Photograph marked State's Exhibit Number Seven.)

James Smith
Direct examination by Mr. Gowdy

1 Q Thank you, Jonathan.

2 MR. POOLE: No questions of this young man, Your Honor.

3 THE COURT: Thank you, Jonathan. You may step down.

4 MR. GOWDY: May we approach, Your Honor?

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 MR. GOWDY: Your Honor, the state would call James
8 Smith.

9 JAMES SMITH, having been first
10 duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. GOWDY

12 Q Good afternoon, sir.

13 A Good afternoon.

14 Q I'm going to get you to keep your voice up good and
15 loud where the last lady and the last gentleman in the jury
16 box can hear you. Okay. Tell them your name.

17 A My name is James Smith.

18 Q What do you do for a living, Mr. Smith?

19 A I'm a mathematics instructor at Columbus Technical
20 College in Columbus, Georgia.

21 Q Have you got any brothers and sisters?

22 A Yes, sir.

23 Q How many?

24 A I have two brothers and two sisters.

25 Q Originally how many of them were you -- how many of

James Smith
Direct examination by Mr. Gowdy

- 1 y'all were there?
- 2 A There were eight in my family.
- 3 Q Is your mama still living?
- 4 A Yes, sir.
- 5 Q Can you point her out to the jury?
- 6 A She is sitting in the courtroom beside my brother,
- 7 Curran.
- 8 Q Well, if you will say it low where she can't hear you,
- 9 would you tell the jury how old she is?
- 10 A She is 87.
- 11 Q When did your daddy die?
- 12 A My daddy died on Thanksgiving Day 1959.
- 13 Q How old were you?
- 14 A I was in the eleventh grade of high school and Jerry
- 15 was in the twelfth grade and Curran was in the tenth, and
- 16 everyone else was in school except Donnie who was only four
- 17 years old at the time.
- 18 Q And how did y'all grow up, Mr. Smith?
- 19 A Extremely hard. It's hard to even try to describe. I
- 20 mean, we were extremely poor.
- 21 Q What line of work was your daddy in before he died?
- 22 A We were farmers. We were trying to farm and make a
- 23 living at farming, growing cotton and corn; and of course we
- 24 had our, had some cows and some horses and, but --
- 25 Q Where did Jerry fall in the pecking order of the

James Smith
Direct examination by Mr. Gowdy

1 children?

2 A He is the oldest. He's 16 months older than I am, so.

3 Q How old was he when your daddy died?

4 A He was a senior in high school, so I'm assuming he was
5 probably 17 or 18.

6 Q Did you boys have to go to work when your daddy died?

7 A Yes, sir. Of course we worked anyway. We worked on
8 the farm, and we also worked on the weekends for Mr. Furman
9 Smith and Mr. Jim Payden and Mr. Johnny Payden at the dairy
10 farms, and whatever work we would get. You know, we worked
11 our own chores on the farm. And if they needed help, we
12 worked there also.

13 But Jerry went to work in the mill in 1960 right after
14 the first of the year when my daddy died.

15 Q Did your mama go to work?

16 A Yes, sir, my mother went to work. She worked on the
17 farm and took care of the children. And she realized that
18 we were going to have to have some money or something to
19 support eight children.

20 And she called us together and said, you know, if we
21 just pray that God will give me health, she said we will
22 make this, and we will make it okay.

23 No one would hire her, you know, because it was at the
24 end of the year. And so it was January the following year
25 that she found work. And she could have gone to work in a

James Smith
Direct examination by Mr. Gowdy

1 cotton mill or some other industry, but it would require her
2 to work second or third shift. And she told them that that
3 was not possible because she had small children, that she
4 had to be home.

5 And my mother took a job at the Palmetto Greenhouses in
6 Simpsonville, South Carolina. She worked ten hours a day.
7 And, of course, back in those days it was like a minimum
8 wage or something like a dollar, but that was considered
9 agricultural work, and they didn't fall under the
10 guidelines. So she worked for fifty cents an hour and
11 worked ten hours a day.

12 She worked that job until my youngest brother completed
13 high school, and then she after he got out of the house, and
14 she went to work for Union Carbide Electronics on the second
15 shift.

16 Q Did you say your mama worked for fifty cents an hour?

17 A Yes, sir, fifty cents an hour.

18 Q And how many children did she have at home?

19 A All eight of us were at home.

20 Q Was Jerry the first one of your brothers to pass away?

21 A No, sir. I lost my youngest brother from a kidney and
22 liver problem that he had, and then I lost my brother
23 Mendell, the one we call Dicky, in 1994, New Year's Day.

24 Q I want you to give the jury your sense of what Jerry
25 Smith was like both as a brother growing up and also when

James Smith
Direct examination by Mr. Gowdy

1 y'all became men.

2 A He was somebody I looked up to. Everyone liked him.
3 He would never forget anything. And if I had to say that
4 the thing I remember him most for, is the fact that I was,
5 my brothers were trying to get the family all in the
6 business. And I was at the point where I could retire from
7 teaching. And they asked me to come home. And I had an
8 opportunity to go into the store business. And my brother
9 Curran saw to it that he found this other store.

10 And I actually came up a short time prior to that. And
11 I worked two weeks, and I almost came unraveled. I just
12 couldn't do it. And I knew that I had to go back home. And
13 I felt terrible. And I never will forget, because my
14 brother Jerry, he had his own business. He had a business
15 that cleared land for builders when they got ready to build
16 houses.

17 He came to me, and he said don't you worry about things
18 here if you feel like you need to go home, because in sort
19 of his foxy kind of way he said to me, he said, besides,
20 you've got those young'uns to look after, because I had
21 three children of my own. And that's the way he said it.
22 He said you have those three young'uns to look after, you go
23 home. And he said I'll take care of this end of the store
24 business up here.

25 Q Were you worried about letting down your family by not

James Smith
Direct examination by Mr. Gowdy

1 going into the store business?

2 A Extremely. I felt like that they had gone the extra
3 mile to get me involved in the business, and I realized
4 after two weeks it was just not for me.

5 Q And Jerry played the role of big brother and told you
6 not to worry about it.

7 A He told me not to worry. Jerry took my place. I will
8 remember that always. I will always think that he took my
9 place.

10 I have to say that I was in the store on Saturday
11 night. I had driven up to Curran's house. And I brought
12 with me a little small trailer to pick up a little small
13 dorm-room refrigerator that he was going to give my son to
14 take off to college.

15 And I would always come up on Friday after school,
16 because I put my nine-year-old son in the bed on Thursday
17 night and, as always, we always said prayers. But I
18 remember this so distinctly that my nine-year-old son put
19 his hands up and he said, please, Dear God, take care of my
20 daddy this weekend. Whatever others may say about why my
21 life was not taken, Jerry took my place. But it was the
22 prayer of a nine-year-old that saved my life.

23 This is very difficult for me to talk about, very, very
24 difficult.

25 Q I know it is, Mr. Smith. I'm going to just ask you --

James Smith
Direct examination by Mr. Gowdy

1 A And I loved my brother. I miss him.

2 Q I will ask you a couple of more questions about your
3 brother, and then I want you to talk about that Saturday
4 that your nine-year-old prayed about. Did Jerry go to
5 college?

6 A No, sir, he did not. He attended Columbus Technical
7 School back when it was just Columbus Tech -- I mean, I'm
8 sorry, Greenville Tech.

9 Q Did you still consider him to be an educated man about
10 the ways of the world despite perhaps his lack of formal
11 education?

12 A He could do anything. He could read blueprints. He
13 could build anything. He could always, he remembered
14 everything. He never forgot anything.

15 And I sometimes find myself thinking today when I am
16 trying to think of some particular term that we used in
17 farming or when something was supposed to have been planted,
18 I'll think about just briefly and momentarily, think about,
19 well, I will ask Jerry the next time I see him. And it is
20 sort of, it is shocking to realize, no, I won't either. I
21 will never be able to ask him. But I find myself a lot of
22 times just thinking about maybe I could ask him this,
23 because I knew he would know the answer.

24 Q Let me ask you this. You made reference, I believe, to
25 leaving Georgia on a Thursday or Friday and coming back up

James Smith
Direct examination by Mr. Gowdy

1 here as was your tradition. I want to talk to you for a
2 second about the Saturday night before your brother died.
3 Did you go to the Max Saver in Woodruff?

4 A Yes, sir I did.

5 Q Who were you with?

6 A I was alone. I was with my brother earlier in the day,
7 and we had driven around to the different stores. And we
8 normally would go out to eat every time I came up.

9 And he made mention that, you know, Jerry was off, and
10 he said, well, we'll go out to eat later because I am going
11 to go over and work store number five. And I told him, I
12 said, I am going to go with you, because I knew that
13 everyone else -- he was going to be there alone. And he
14 said, no, you don't have to do that. I said, no, I'm just
15 going to anyway.

16 So he left in his car and I drove my car. I drove
17 past, went to my mother's house for a second and drove from
18 there over to Woodruff, and so I got there an hour after he
19 arrived, probably 30 minutes maybe. I'm not sure but --

20 Q Can you gives a sense of what time you would have
21 gotten to store number five, the Max Saver in Woodruff, on
22 that Saturday night?

23 A I would say it was probably 3:30 or 4:00, somewhere in
24 that neighborhood. I think Curran went over there at about
25 2:00 or 2:30 somewhere. I was there just shortly

James Smith
Direct examination by Mr. Gowdy

1 afterwards.

2 Q Mr. Smith, do you recall seeing Eric Morgan on Saturday
3 prior to May the 3rd?

4 A Yes, sir, I do.

5 Q Did you have any interaction with Eric Morgan on
6 Saturday prior to May the 3rd?

7 A No, sir.

8 Q Did you say anything to him?

9 A When he came in the store, I just remember him coming
10 over and sitting down on the stools where the restaurant
11 part was at. And I guess what I noticed, that he had put a
12 tattoo on or did something with his arm. And it was all
13 sort of swollen, and I said that was dangerous. I said I
14 don't think you should do that, you could get blood
15 poisoning, and I said you shouldn't do that.

16 Q Is that the first time you had ever met him?

17 A Yes, sir.

18 Q What time does Max Saver Number Five in Woodruff close
19 on Saturday nights?

20 A 10:00 p.m.

21 Q Was there a Brandon Duncan in the store Saturday night?

22 A Yes, sir. As a matter of fact, he came in because my
23 brother Curran was going to need someone. He hired him that
24 night to work in the evening to help my brother Jerry bag
25 ice and stock the cooler. And he said when can I start, and

James Smith
Direct examination by Mr. Gowdy

1 he said, well, you can start now if you like.

2 Q And this was Saturday.

3 A This was on Saturday night.

4 So he worked, I don't know exactly, for a few hours.
5 I'm not sure exactly how many.

6 And I remember my brother giving him \$50 for the
7 Saturday-night work, and he told him to come back Monday and
8 just sort of make up your own hours but just be here from
9 around five o'clock until closing time to be with Jerry when
10 he closed, so.

11 Q Do you recall when Eric Morgan and Brandon Duncan left
12 on that Saturday night before May the 3rd?

13 A Yes, sir. I remember Eric came in the store. Brandon
14 was sort of picking things up. And they sort of hung
15 together throughout the store. I mean, he was like sort of
16 following him around in the store.

17 They had a conversation, but I didn't pay any attention
18 to what they were saying or whatever. They were talking
19 sort of quietly anyway, so I didn't really think too much
20 about it. He was just sort of placing little things up
21 around the store, putting the chairs up on the tables in the
22 kitchen area part, you know, so.

23 Q Do you recall what time you or Curran would have told
24 Brandon he could leave for the night?

25 A It was shortly before 10:00 as well as I remember, and

James Smith
Direct examination by Mr. Gowdy

1 I didn't work there all of the time. I was just there, you
2 know, one time. I know that the lights usually are turned
3 off on the outside, pump lights, out-under-the-canopy
4 lights. I was outside, and I think Curran turned off the
5 lights or whatever. I can't remember. But he told him that
6 he could leave, you know.

7 And so Curran and I stayed in the store for a short
8 while. I don't know -- my brother Curran. And I walked
9 over and locked the front door just to lock us inside
10 because Curran told me, you know, to go over and lock the
11 front door. And I remember turning the lock on the front
12 door and locking it.

13 And he proceeded to do things that he normally went
14 through, the routine of taking the money out of the cash
15 register and putting it in a brown paper bag, whatever
16 couple of other things he had to do.

17 But we then walked to the front door. That's when I
18 unlocked the door. And I walked outside. And I noticed
19 their car was setting outside in the parking lot.

20 Q Now, when you say their car, I want you to be clear
21 with the jury. Who are you talking about?

22 A It was Brandon Duncan, and Eric was in the car outside.

23 Q I thought they had already left.

24 A Well, we did too. We actually couldn't see the car,
25 but it was sort of down to the side. And looking out the

James Smith
Direct examination by Mr. Gowdy

1 window there at the door, I assumed that they had already
2 left, and so did Curran.

3 And it wasn't until we started to the car that as I
4 was -- my car was parked a ways away because it had a
5 trailer hooked to it. And I was parked on the other side of
6 the store. And as I was walking my brother Curran looked at
7 me, he said to me as he walked by, he said sort of in a low
8 tone, said what are they still doing here. And I could tell
9 he was uneasy. And I walked quickly to my car at that
10 point.

11 And then afterwards we went to dinner. From that point
12 we went to dinner. I don't remember exactly where we went
13 to dinner, but it was some restaurant. We went to eat. And
14 he made mention again about the uneasiness he felt. He
15 said, well, what were they doing still in the parking lot.
16 That's all that was said. So I don't remember.

17 Q Mr. Smith, were you in the courtroom this morning when
18 a video, excuse me, an audio tape was played and Eric Morgan
19 described his plot to kill the man who has got long, white
20 hair on a Saturday night before May the 3rd?

21 A No, sir.

22 Q Have you got any idea who he might have been talking
23 about?

24 A Well, I have long, white hair.

25 Q Were you there the Saturday night before your brother

James Smith
Direct examination by Mr. Gowdy

1 Jerry was killed?

2 A Yes, sir; yes, sir. I was in the store.

3 Q Do you ever get the feeling that it could have been you
4 and not him?

5 A Every day. My brother took my place.

6 Q What does that do to you, Mr. Smith?

7 A I wish I could tell him how much I thank him and how
8 brave he was, you know. That's what I think he knew in a
9 way from what he told me.

10 I never. Those words ring in my ears all of the time
11 that he said you just go back home and go back to teaching
12 because you have those young'uns to look after, because my
13 children, my oldest, was, I don't know, eleventh grade and
14 my daughter was in ninth grade and Walker was in like
15 fifth grade.

16 Those words ring every day. I don't think a day goes
17 by that I don't think about them. And I know that he,
18 inside here I know he, took my place because it would have
19 been me if he had not told me to go back home.

20 Q Thank you, Mr. Smith.

21 MR. POOLE: There are no questions for Mr. Smith.

22 THE COURT: Thank you, Mr. Smith. You may step down.

23 Ladies and gentlemen, we are going to recess at this
24 time for lunch.

25 Keep in mind the caution I have previously given you.

James Smith
Direct examination by Mr. Gowdy

1 That is you can't talk about the case while you are at
2 lunch.

3 You will be going out for lunch today. They will take
4 you somewhere. That might be a surprise right now, but it
5 will be something that will satisfy your appetite, I am
6 sure.

7 Please go with the bailiff to your jury room. We will
8 see you after lunch.

9 (The following takes place outside the presence of the
10 jury.)

11 THE COURT: All right. Any matters to address before
12 we recess?

13 MR. ALLEN: No, Your Honor.

14 THE COURT: Court is in recess until 2:30.

15 (Whereupon, a recess was taken.)

16 THE COURT: All right. Are we ready for the jury?

17 MR. GOWDY: Yes, sir, Your Honor.

18 MR. POOLE: Yes, sir, Your Honor.

19 THE COURT: Okay. Bring them in.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: Good afternoon, ladies and gentlemen.

23 We are going to continue with the state's presentation
24 this afternoon.

25 MR. GOWDY: May it please the Court. Your Honor, the

Curran Smith
Direct examination by Mr. Gowdy

1 state would call Mr. Curran Smith.

2 CURRAN SMITH, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. GOWDY

5 Q Good afternoon, Mr. Smith.

6 A Good afternoon.

7 Q I'm going to get you to keep your voice up good and
8 loud like you did a couple of days ago so the last lady and
9 gentleman can hear you. Okay? Fair enough?

10 A That's fair enough.

11 Q Thank you.

12 The jury is already a little bit familiar with you, but
13 I didn't ask you what your nickname is. What does everybody
14 call you?

15 A They call me Chubby, and I've had it all of my life.

16 Q I won't ask you how you got it. Are you married?

17 A Yes, I am.

18 Q Got children?

19 A I have two children.

20 Q You almost weren't going to be able to be here, were
21 you?

22 A That's correct. My daughter's in the hospital in
23 Greenville Memorial right now fixing to have my first
24 grandchild. I need to be there.

25 Q I'm going to let you go as quick as I can. Okay?

Curran Smith
Direct examination by Mr. Gowdy

1 A Thank you.

2 Q I am going to ask you a couple of questions about
3 Jerry. All right?

4 A Okay.

5 Q Before we get to that though I want the jury to have an
6 idea about growing up, so I'm going to show you State's
7 Exhibit Seventy-one and ask you whether or not you recognize
8 that picture.

9 A This is a picture of my family. This is not all of
10 them because all of them at this time hadn't been born.
11 There was two. This is only --

12 Q I'm going to put it on the overhead. So let me just
13 ask you for now whether or not that indeed is your family.

14 A That's my family.

15 Q Okay. I am going to take it back from you.
16 How many brothers and sisters did you have?

17 A I have five brothers and two sisters. Myself counting
18 would be six all total, and then two sisters.

19 Q Where do you fall in the line?

20 A I'm the third one down.

21 Q Third oldest?

22 A Yeah, the third. My brother Jerry and my brother Jim
23 and myself. That's the way it was in the order.

24 Q Jim was the gentleman the jury heard from earlier this
25 morning?

Curran Smith
Direct examination by Mr. Gowdy

1 A That's correct.

2 Q You were the second oldest, and Jerry was the oldest.

3 A That's correct.

4 Q I'm going to get one of my deputies to maybe reduce
5 that a little bit so we can get the whole. There we go.
6 Thank you.

7 THE COURT: Mr. Smith, be careful of the microphone.
8 You can push it away if you need to.

9 Q I am going to take this down in just a second so you
10 won't have to crane your neck. Where did y'all grow up?

11 A We grew up in Greenville County in a place called
12 Hillside Community.

13 Q What am I looking at in the background back there?

14 A This is a house that we lived in.

15 Q What is that I am looking at, those rocks?

16 A That was a porch. It's just a rock type porch. Later
17 on it was finished out and concrete. But at that picture it
18 was still under construction type.

19 Q I want you to introduce to the jury. Let's start on
20 our left.

21 A That's myself right there on the left-hand side.

22 Q Okay. Who is that?

23 A That's my brother Jim.

24 Q The math teacher with the long, white hair.

25 A That's correct.

Curran Smith
Direct examination by Mr. Gowdy

- 1 Q All right. Who is that little fellow?
- 2 A That's my brother Mendle.
- 3 Q Now, Mendle, is that the one we've heard referred to as
- 4 Dicky?
- 5 A That's correct.
- 6 Q Mr. Smith, am I correct that Dicky is no longer with
- 7 us, he died due to a criminal act?
- 8 A That's correct.
- 9 Q When did he die?
- 10 A On New Year's Day of 1994.
- 11 Q Who is that young lady?
- 12 A That's my sister Carol.
- 13 Q Is she in the courtroom?
- 14 A She is in the courtroom, and she is a C. P. A.
- 15 Q Who is that?
- 16 A That's my brother Jerry, the one that's deceased. My
- 17 brother Randy. That's Jonathan's father.
- 18 Q Randy right there?
- 19 A Uh-huh.
- 20 Q You have more brothers and sisters than that, don't
- 21 you? They are not all in the picture, are they?
- 22 A My youngest brother wasn't born at this time.
- 23 Q Okay. And how about another sister?
- 24 A And another sister wasn't at this time.
- 25 Q And who is the other sister?

Curran Smith
Direct examination by Mr. Gowdy

- 1 A Kathy Smith Carpenter. She is in the courtroom.
- 2 Q Sitting right next to your mama?
- 3 A That's correct.
- 4 Q Any idea what year this picture was taken?
- 5 A I believe 1953 if I am not mistaken.
- 6 Q Is that the home that you grew up in? Had your daddy
- 7 died yet?
- 8 A No, no. He died in 1959. But this is the house that
- 9 the community actually built for us. Everybody kind of
- 10 chipped in back then. It wasn't -- it was just kind of a
- 11 basic house.
- 12 Q Were y'all rich or poor growing up?
- 13 A We were poor.
- 14 Q How poor were you?
- 15 A It's hard to imagine. I mean, I really don't even like
- 16 to think about it now because now I have so much stuff that
- 17 it's hard to think back then when you didn't have anything.
- 18 Q What did your daddy do for a living before he died?
- 19 A He was a farmer and he did some painting of houses on
- 20 the side.
- 21 Q And he died in what year?
- 22 A In 1959.
- 23 Q Do you remember the day?
- 24 A Thanksgiving Day.
- 25 Q What did your mama have to do after your daddy died?

Curran Smith
Direct examination by Mr. Gowdy

1 A She had to go to work. But, like I say, it was a
2 couple of months before she could actually get a job, but
3 she found one.

4 Q How about Jerry? Where was Jerry when your daddy died?

5 A We were all at home.

6 Q Did he go to work too?

7 A He went to work. He went to work in a mill.

8 Q Did Jerry ever have a chance to go to college?

9 A No, he didn't.

10 Q Did he ever have a chance to go to technical school?

11 A Jerry went to Greenville Tech and took heavy equipment,
12 and that's later on, you know. That's later on in life when
13 he decided to do that to be a heavy equipment operator,
14 which he passed the course and he was qualified for
15 bulldozers or whatever, you know.

16 Q I want you to give the jury a sense of what kind of
17 person Jerry was.

18 A Jerry was -- he would do anything for you, and
19 everybody that he met liked him. It's hard to find an
20 individual that everybody likes. I mean, somebody is not
21 going to like everybody. But Jerry was like a unique person
22 that -- I mean, when he started working in the store, I
23 mean, you could ask anybody. You know, he was a very
24 likeable person.

25 Q Your daddy died before either one of your sisters were

Curran Smith
Direct examination by Mr. Gowdy

- 1 married, is that right?
- 2 A That's correct.
- 3 Q Who walked your sisters down the aisle?
- 4 A My oldest brother Jerry walked my sister Kathy down the
5 aisle.
- 6 Q Your daddy died before you finished high school?
- 7 A That's correct.
- 8 Q Were you able to buy a high school ring?
- 9 A At the time in 1961 when it come time to buy the ring I
10 didn't have any money. My mother didn't have any money.
11 But Jerry was working in Wadesboro, North Carolina, in a
12 mill in Wadesboro. And he wrote me a check for \$22.50 to
13 get my high school ring with. When the return check came
14 back he left it at the house, and I kept it in my wallet all
15 of those years until finally when my brother got killed, I
16 had it framed for my mother.
- 17 Q Do you recognize that?
- 18 A That's the check.
- 19 Q That's the check your brother sent you and said you
20 could buy your high school ring.
- 21 A That's correct.
- 22 Q Would you have been able to buy it otherwise?
- 23 A No way.
- 24 Q Was it a loan or a gift?
- 25 A It's a gift. I had no way of paying it back.

Curran Smith
Direct examination by Mr. Gowdy

1 Q You're in the convenience store business.

2 A Yes, sir.

3 Q How many stores do you own?

4 A At one time I had four, including the one where my
5 brother got killed.

6 Q I want to talk about the Max Saver which I think you
7 referred to as store number five.

8 A That's correct.

9 Q Did Jerry work there?

10 A He worked there.

11 Q How did he come to work there?

12 A When I purchased the store I had actually purchased it
13 for another brother because he wanted to come into the
14 business with the family because we were running like a
15 family type convenience store business. He wanted to come
16 into the business.

17 So when I found one that was for sale I went and got
18 the money and paid on it, and Jim came up. After a couple
19 of weeks -- I guess some people are not cut out for some
20 things. He just couldn't handle the convenience store
21 business. I don't know why. I think he was a teacher from
22 the beginning, and that's what he really wanted to do in
23 life.

24 So when he decided to go back I was kind of in a hard
25 place because I didn't know what to do with this store. And

Curran Smith
Direct examination by Mr. Gowdy

1 so Jerry came to me. And I guess after he had done talked
2 with my brother, Jim, he came to me and he said, you know,
3 said I'll help you out. I said, man, I sure do need it.
4 And that's when he --

5 Q How long before May the 3rd of 2000 did Jerry start
6 helping you out at your store?

7 A I'm guessing eight or nine months before that. I'm
8 guessing. I'm not for sure. I could probably look back and
9 find out for sure. But he was there for quite some time.

10 Q Did you ever work with him?

11 A Yes, I would. Many times, especially when he was just
12 starting out to help me, that I would be there with him to
13 help him with anything like running credit cards. Anything
14 he needed to know I was there with him until he felt
15 comfortable with running it himself.

16 Q Did you hire somebody to help Jerry close up?

17 A Yes, I did. I hired Brandon Duncan.

18 Q Do you know when you hired him?

19 A The Saturday night prior to the Wednesday night when my
20 brother was killed.

21 Q Had you ever seen Eric Morgan before?

22 A If I did it was probably the Saturday night. That's
23 probably the only time I can ever remember seeing him.

24 Q Do you remember seeing him that night?

25 A Yes. I did. He came to pick Brandon up.

Curran Smith
Direct examination by Mr. Gowdy

1 Q Do you recall about what time that would have been?

2 A Probably a quarter till 10:00, something like that,
3 because he knew we closed at ten o'clock.

4 Q Was that Brandon's first day on the job?

5 A That was Brandon's first day.

6 Q There was some earlier testimony that you or somebody
7 paid him \$50 for his work that day.

8 A Well, he had worked from five o'clock that afternoon
9 until ten o'clock at night. And when I got ready to leave,
10 I knew he needed money because I knew when I was growing up,
11 you know, especially on a Saturday night, you know, you
12 probably like to have a little money maybe to go get
13 something to eat with. And so I just reached in my pocket,
14 and I said here, I said, take \$50, you know, and I'll see
15 you Monday, you know.

16 Q Did he and Eric Morgan leave together?

17 A Well, when they left, you know, they knew we were
18 closing the store up.

19 But when we close the store, we don't like anybody in
20 there except the people that needed to be inside the
21 building. We need everybody to leave. And then we go
22 through the process of setting the video tapes, taking the
23 money out, doing everything we need to do before we go out
24 for the night.

25 But when we, when I, walked out the door and locked the

Curran Smith
Direct examination by Mr. Gowdy

1 door, here the car that they were in is setting beside my
2 car. And I'm going, I can't quite understand, because every
3 employee I've ever had when you said you could go home, they
4 would be out the front door as fast as they could go and was
5 gone.

6 Well, I get to my car and I open the door. And my
7 brother, he's walking away to his car because it's parked
8 quite a distance away.

9 Q Your brother Jim?

10 A My brother Jim.

11 I turned and looked to the side of me, and they are
12 both looking at me. And I am going, you know, what in the
13 world, I mean, why are they looking at me, you know? And
14 both of them is staring at me, and I am thinking, well, why
15 ain't they already gone, you know, because, you know, you
16 should be out of this parking lot, you're off work.

17 But, anyway, I just cranked my car up. Brother got his
18 started and we -- I went on out. And we were headed home.

19 Q Can you give the jury a sense of how many minutes, if
20 you know, before you walked into the parking lot Eric Morgan
21 and Brandon Duncan walked into that parking lot? How long
22 before you left did they leave?

23 A I'm sure it's probably close to five minutes by the
24 time I could clear everything out inside the store, by the
25 time I could get everything done. Five minutes might be

Curran Smith
Direct examination by Mr. Gowdy

1 rushing it, because you have to, you know, make sure
2 everything is off and everything. It could have been more
3 than five minutes that they sat out there.

4 Q I believe you were in the courtroom this morning,
5 Mr. Smith. But you get the sense that it could have been
6 you that was killed instead of Jerry? Do you know that?

7 A Well, I wasn't in the courtroom to hear anything.

8 Q But you had heard it before, right?

9 A Right.

10 Q Do you get the sense it could have just as easily been
11 you and Jim as Jerry?

12 A I tell you, when you think somebody is trying to kill
13 you, it really has a chilling effect on you. I really
14 meant, I believe they meant to kill both of us.

15 MR. POOLE: Your Honor, I object to the question and
16 the answer, do you get the sense that someone is trying to
17 kill you.

18 THE COURT: All right. I sustain the objection.

19 The jury is asked to disregard the last question and
20 response by the witness. Do not consider it in any fashion
21 whatsoever. It is not relevant to this particular
22 proceeding.

23 Q Curran, did you look over at Eric Morgan and Brandon
24 Duncan before you started up your car?

25 A Yeah, before I started it up I --

Curran Smith
Direct examination by Mr. Gowdy

1 Q Were they still in the parking lot?

2 A They were still in the parking lot sitting right beside
3 my car.

4 Q All right. I want to fast forward to when you found
5 out that your brother had been killed. Who had to go tell
6 your mother?

7 A My sisters and my brothers, we all. We found out in
8 the early morning hours. They had contacted us that they
9 had found Jerry and he was dead at the time.

10 So we knew our mother always gets up at five o'clock in
11 the morning. You know, she stays alone, but she gets up at
12 five o'clock every morning.

13 So we waited out in the yard with the lights off on the
14 car so nobody would know we were there until she turned the
15 lights on. And then we had to go inside and tell her that
16 Jerry was dead. And that's the awfulest thing I've ever had
17 to do. I could imagine someone coming to tell me that my
18 son was killed.

19 Q Curran, had there been any discussions between you and
20 Jerry about Jerry taking over that store?

21 A Yes, about two weeks before that. He enjoyed working
22 there. And I said, man, we will sit down and talk this
23 thing over and figure out how we can, you know, we can turn
24 this thing over to you, you know, I really don't need it, I
25 have got three other stores to run, I don't need this one,

Curran Smith
Direct examination by Mr. Gowdy

1 and I'll be glad if you could just work out a deal and you
2 take it off my hands.

3 Q Did he seem excited about that?

4 A He certainly did, I mean, really.

5 Q Do you know if at the time of his death there were any
6 new people in his life, any relationships?

7 A Yeah. He had met another girl, and she worked in a
8 restaurant in Fountain Inn.

9 He would go by there and have lunch before he would go
10 to work at two o'clock in the afternoon. He would go by
11 there every day, and he would have lunch and talk with her a
12 little bit and then go on to work.

13 Q What do you miss most about your brother, Curran?

14 A I miss asking him things.

15 Q If you could say one more thing to him, what would you
16 say?

17 A You was a great brother, proud of you.

18 Q Thank you, Mr. Smith.

19 MR. POOLE: I have no questions of Mr. Smith.

20 THE COURT: Thank you. You may step down.

21 MR. GOWDY: Your Honor, could I ask that Mr. Smith be
22 allowed to leave, be excused?

23 THE COURT: He may. You may be excused.

24 (Whereupon, the witness was excused.)

25 MR. GOWDY: Your Honor, the state rests.

1 THE COURT: All right. Ladies and gentlemen, that is
2 all of the evidence to be presented by the state, at least
3 in their case in chief.

4 Before we go any further I have some matters to
5 address, so I will ask you to please go to your jury room.
6 Do not yet discuss the case in any fashion.

7 We will bring you back shortly.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: Let me see y'all one minute about the
11 schedule for this afternoon.

12 (Bench conference held off the record.)

13 THE COURT: We will be at ease for just a few minutes.

14 (Whereupon, a recess was taken.)

15 THE COURT: Are we ready for the jury?

16 MR. GOWDY: The state is.

17 MR. ALLEN: Yes, Your Honor.

18 THE COURT: Are y'all going to make an opening
19 statement?

20 MR. ALLEN: Yes, sir.

21 THE COURT: All right. Bring the jury in.

22 (The following takes place in the presence of the
23 jury.)

24 THE COURT: Ladies and gentlemen, we are going to
25 proceed now with the defense's presentation.

Opening statement

1 MR. POOLE: May it please the Court.

2 THE COURT: Mr. Poole.

3 MR. POOLE: Good afternoon, madam forelady and ladies
4 and gentlemen of the jury. I hope you are doing okay under
5 the circumstances.

6 A lot of what I'm going to say right now is going to be
7 echoing what Deputy Solicitor Donnie Willingham said earlier
8 this morning, and it's basically because what we have here
9 are two sides to every story.

10 And I believe that if you remember when you were asked
11 by everybody as you qualified for your individual voir dire,
12 you were asked primarily to keep an open mind, and I am sure
13 that you have kept it and you have not made up your mind yet
14 because you haven't heard the whole story.

15 It's not over. You're in the second phase of the
16 second phase. It's our chance to go forward and show to you
17 what you have heard about mitigating circumstances.

18 But before we talk about that let me thank you, and
19 every one of you, for the attention that you have given
20 during this entire proceeding from way back. I forgot when
21 we all first came to the court. I really have. But from
22 way back then right up until now, thanks a lot. Thanks for
23 your attention during the guilt phase.

24 I appreciate your attention right now, what you are
25 going to be showing through tomorrow, and hopefully this

Opening statement

1 will be over tomorrow or the next day. So thanks, and I
2 appreciate everything, and Eric Dale Morgan does too.

3 You know, Deputy Willingham, he said that what will be
4 carried over into this phase will be the evidence that has
5 been presented in the guilt phase, because that's part and
6 parcel of the whole thing.

7 And I want you to remember that. I want you to
8 remember about the testimony, about the involvement of two
9 people in this awful, awful crime. Keep that in mind.

10 And Deputy Willingham told you that we're going to put
11 up evidence that will show that Eric Dale Morgan is poor.
12 Yes, we will, and more.

13 We're going to put up evidence that Eric Dale Morgan
14 had a tragic life, has a tragic life. Yes, we will, and
15 more.

16 Eric Dale Morgan lost his father. Yes, he did, and we
17 will show that, and we will put up more.

18 We're going to put up evidence that he did not do well
19 in school. Yes, we will, and more.

20 And over and above all of that we're going to put up
21 more, because we're going to be bringing in here witnesses
22 just like the state has that know him, have known him, will
23 tell you about what kind of fellow he is, tell you about
24 their experiences with him and who he is.

25 You will know more about him in the next few hours of

Opening statement

1 the remaining remnants of this day and the beginning of
2 tomorrow. And then after that there will be closing
3 arguments and the judge will charge.

4 Now, the mitigating circumstances, I had to bring it
5 over here because I don't want to misquote it, but as the
6 state has enumerated their aggravating circumstances, that
7 is Deputy Willingham when he told you what aggravating
8 circumstances they were going to show, I want to make sure
9 that -- I have to bring it over here and just read it to
10 you. But these are the mitigating circumstances that we
11 think that we will be able to show on behalf of Eric Dale
12 Morgan.

13 A mitigating circumstance, number one, the defendant,
14 Eric Dale Morgan, has no significant history of prior
15 criminal conviction involving the use of violence against
16 another person.

17 Another one is the age or mentality of the defendant,
18 Eric Dale Morgan, at the time of the crime; another one,
19 that the defendant, Eric Dale Morgan, was below the age of
20 18 at the time of the crime.

21 It's already, it's been mentioned by the state during
22 this phase that a lot of this is about choice, choices. We
23 all have to be held accountable for the choices we make and
24 the consequences of our actions. And, yeah, it is all about
25 choice. It is a great deal about choice.

Loraine Fortner
Direct examination by Mr. Allen

1 But it's about people too. It's about everybody
2 involved in this entire process, including you all who are
3 discharging your civic duty in sitting where you are,
4 because you will be asked to make a choice too. You will be
5 able -- you will be asked to make an ultimate choice.

6 And I'll tell you this. In a democratic society there
7 is no more serious place to be than where everybody is
8 sitting right now. When the state has the power to take an
9 individual's life, nowhere in the world where there is a
10 democratic society is there more responsibility than within
11 the confines of this box right here. Y'all will be asked to
12 make a choice. I don't envy your positions.

13 Thank you so much. I appreciate it. And I think in
14 the end y'all will make the right one. Thank you.

15 MR. ALLEN: Call Loraine Fortner to the stand.

16 LORAIN FORTNER, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. ALLEN

19 Q You are Loraine Fortner.

20 A Yes, I am.

21 Q I can hardly hear you way back here. So will you
22 please speak up?

23 A Yes, I am.

24 Q Thank you.

25 Are you related to Eric Dale Morgan?

Lorraine Fortner
Direct examination by Mr. Allen

- 1 A Yes, I am.
- 2 Q How are you related to Eric?
- 3 A Eric is my cousin's son.
- 4 Q Who is your cousin?
- 5 A Cindy Templeton.
- 6 Q That's his mother, I think you said, right?
- 7 A Yes.
- 8 Q Have you had contact with Eric throughout his life?
- 9 A Yes, I have.
- 10 Q And how much contact would you say you've had?
- 11 A A pretty good bit off and on. I have several children
- 12 of my own, and so it's sort of difficult to keep up with
- 13 everybody in the family.
- 14 Q How many children do you have?
- 15 A I have four boys.
- 16 Q What are their ages?
- 17 A Eighteen, 16, 14 and five.
- 18 Q Are you married?
- 19 A Yes, I am.
- 20 Q And your husband is --
- 21 A Dennis Fortner.
- 22 Q You live in --
- 23 A Duncan.
- 24 Q You live in Duncan?
- 25 A Yes, sir.

Loraine Fortner
Direct examination by Mr. Allen

- 1 Q Where does Cynthia now live?
- 2 A She lives in Duncan behind me on our piece of property
3 in a single-wide trailer.
- 4 Q Did you say behind a piece of property?
- 5 A Behind our property. She lives on our property behind
6 my house.
- 7 Q Would that be property you and your husband own?
- 8 A Yes.
- 9 Q How long has Ms. Templeton lived there?
- 10 A Since my grandmother passed away, probably about a year
11 and a half to two years. Maybe it has been three years.
12 It's been quite a while since my grandmother passed away.
- 13 Q When you say maybe three years, are you talking about
14 three years ago from today or are you talking about or are
15 you relating it to the arrest of Eric?
- 16 A Probably, my grandmother passed away probably about a
17 year after Eric was arrested. And Cindy lived in my
18 grandmother's trailer for a couple of weeks and then moved
19 into a trailer on our property, a single-wide trailer on our
20 property, so that she would have somewhere to go.
- 21 Q With whom does Cindy live now or Cynthia live now?
- 22 A She has Mike living with her now. He's a friend. He's
23 a friend, well, a brother of one of my friends.
- 24 Q And his last name is?
- 25 A Actually I can't think of his last name at this point.

Loraine Fortner
Direct examination by Mr. Allen

1 I'm nervous.

2 Q You are a little nervous?

3 A Yes.

4 Q Now, are you familiar with Eric's upbringing and with
5 what's happened in Eric's life?

6 A Yes, I am.

7 Q Now, Eric is currently 21 years old?

8 A Yes.

9 Q When he was -- how old was he when he was arrested, do
10 you know?

11 A He was 17.

12 Q Can you tell us a little bit about when he was born,
13 the situation in which he was born into like where his
14 mother was living?

15 A When Eric was born Cindy and Randy, Eric's father,
16 lived probably about a mile up the road from my house. And
17 it wasn't long after -- he wasn't born long after Danny was
18 killed, which is, would be Eric's older brother.

19 Q Was he born, you said, after Danny was killed?

20 A No. He would -- I'm sorry. He was born before Danny
21 was killed. It was just in that timeframe that they lived
22 up the street from me. Eric was a small child. I didn't
23 have, you know, a lot of contact with Eric. I had more
24 contact with Danny at that time than I did Eric.

25 Q At the time of Eric's birth were his mother and his

Loraine Fortner
Direct examination by Mr. Allen

- 1 father living together?
- 2 A Yes, they were.
- 3 Q Were they married?
- 4 A I don't think they were.
- 5 Q Now, you said that he had an older brother named Danny.
- 6 A Yes. He did.
- 7 Q What was Danny's last name?
- 8 A Amick. His name was Robert Daniel Amick actually.
- 9 Q So this was a child of Cynthia's and another gentleman?
- 10 A Yes. His father's name was Dan Amick. He was in the
- 11 military.
- 12 Q You mentioned that when Eric was small that his brother
- 13 was killed. Can you tell us what happened?
- 14 A He was ran over by three teenagers in Woodruff, South
- 15 Carolina, and he was seven or eight years old at the time
- 16 that he was killed.
- 17 Q Who?
- 18 A Danny was seven or eight years old.
- 19 Q Danny was seven or eight years old?
- 20 A Yes.
- 21 Q Do you know approximately how old Eric was at the time?
- 22 A I'm going to say probably two, maybe two.
- 23 Q Would Eric have any memory of this?
- 24 A Eric knew who Danny was. Whether he actually had, you
- 25 know, growing up a lot of contact with him or not, Cindy

Loraine Fortner
Direct examination by Mr. Allen

1 always kept pictures of Danny on the wall. And she did, you
2 know, try to continue, you know, his life and, you know, let
3 Eric know he did have a brother, you know, at one point in
4 time because it was, you know, important that he know.

5 Q Okay. You said there were three teenagers.

6 A Yes.

7 Q Can you tell us how long after this occurred that other
8 people were arrested?

9 A A year. It was a year after it happened that anybody
10 was arrested.

11 MR. WILLINGHAM: Your Honor, I have an objection at
12 this time if I could approach.

13 THE COURT: Okay.

14 (Bench conference held off the record in the presence
15 of the jury but out of the hearing of the jury.)

16 Q How long -- okay. At that time were Eric's father and
17 mother still living together?

18 A Yes, they were.

19 Q Did they ever break up?

20 A Yes, they did.

21 Q Did they ever get married to each other? Did Randall
22 marry Cynthia?

23 A I believe they did get married. I'm not quite positive
24 on the marriage.

25 Q You are not positive?

Lorraine Fortner
Direct examination by Mr. Allen

1 A Yeah.

2 Q But at some point they broke up.

3 A Yes, they did.

4 Q Can you tell me approximately when? How old was Eric
5 when they broke up?

6 A Eric was under the age of five. I'm not sure exactly
7 what age he was. But I know he was just a small child, a
8 small toddler.

9 Q And do you know at what point or who initially got
10 custody of Eric?

11 A I know the last I heard Randy, Eric's father, had
12 custody of Eric.

13 Q Do you know who initially got custody of Eric?

14 A I believe Cindy had him when they first split up,
15 because, you know, they had split up. I think there was a
16 lot of stress between the two of them over Danny's death,
17 and Cindy had Eric at first.

18 Q Do you know how long it was before, I think you said,
19 Randy got custody at some point?

20 A Yeah. I am not sure exactly how long Cindy had had
21 Eric before Randy took custody of him.

22 Q And did he continue with custody for the rest of Eric's
23 growing up years?

24 A Yes. Randy had custody of Eric, but Cindy at some
25 point in time went and picked Eric up for a visitation and

Loraine Fortner
Direct examination by Mr. Allen

1 never took Eric back.

2 I think she went to North Carolina and lived for maybe
3 a month or two and then moved back to Woodruff, South
4 Carolina. And she lived there, you know, with Eric, and no
5 one ever questioned it or said anything to her about it.

6 Q Do you know how much contact Eric had with his father
7 after that point?

8 A None. No contact that I know of.

9 Q That you know of. And how about the contact with his
10 mother?

11 A None that I know of. With Cindy? He lived with Cindy.
12 Eric as far as I know had no contact with his father's side
13 of the family.

14 Q Maybe I didn't ask my question properly.

15 How much contact did Eric have with his mother, meaning
16 Cindy, after that?

17 A Well, Cindy worked, and she sort of moved around a lot
18 to try to find jobs to help, you know, take care of Eric.
19 But, you know, my grandmother, he stayed a lot with my
20 grandmother during his childhood.

21 Q And who is your grandmother, please?

22 A Minni Bell Standridge.

23 Q And when you say he a stayed a lot with your
24 grandmother, do you know how much he stayed with her?

25 A The majority of the day and sometimes at night.

Loraine Fortner
Direct examination by Mr. Allen

1 Depending on what job Cindy was working, she would -- my
2 grandmother would let Eric stay with her at night or during
3 the day.

4 Q Now, what type of work did Cindy do?

5 A Cindy had several different jobs. She worked in a
6 mill; she worked for the flower man to deliver flowers to
7 convenience stores. She drove a transfer truck at one point
8 in time of her life. She has worked in convenience stores,
9 I believe. I mean, just anything she could find. So she
10 was a -- at one point in time she was a psychic telephone
11 operator, so just anything that she could do.

12 Q You mentioned your grandmother, Ms. Standridge. Is she
13 still alive?

14 A No. She passed away.

15 Q Now, did Eric go to school?

16 A Yes, he did.

17 Q And do you know how he did in school?

18 A Not very well at all. He had a hard time paying
19 attention and he didn't understand and does not understand a
20 lot of things when you talk with him. So he --

21 Q Now, how do you know that, that he does not understand?

22 A I've talked with him a lot, and Eric has came to my
23 house on several occasions and spent the night with my boys.

24 And, you know, if he were going to cook something in
25 the microwave or in the oven, he would ask me how do I cook

Lorraine Fortner
Direct examination by Mr. Allen

1 this, and I would tell him read the directions, and he could
2 not read them. I would have to tell him how, you know, to
3 prepare this food that he wanted for a snack or whatever
4 because he didn't know. He couldn't understand it.

5 Q How was he -- was he able to work with his hands?

6 A Yes. He was very good at working his hands.

7 Q And how do you know that?

8 A I had a friend who owned a hardwood floor business.

9 And when Eric and Cindy moved to Duncan, Eric was in need of
10 a job. And I asked my friend if he would hire Eric to, you
11 know, work with him, give him a chance, you know, to get a
12 job and do something. And I talked. He did give him a job.
13 And I talked with him several times. And they, you know,
14 said he was really good with laying the hardwood floors and
15 he, you know, would pay attention and he was a fast learner
16 with that.

17 Q About how old was Eric when he got that job?

18 A Sixteen.

19 Q Was -- how was Eric -- was he able to follow directions
20 very well?

21 A If you told him maybe two or three things to do at one
22 time he could probably get through the first one, depending
23 on what task it was or how long it would take him to perform
24 that job.

25 You know, you may have to go back and remind him sort

Loraine Fortner
Direct examination by Mr. Allen

1 of like, you know, I would say, you know, off the top of my
2 mind with, you know, having children of my own, you know,
3 maybe a 12-year-old. You have to tell him go clean your
4 room. Then you have to go back and tell them cleaning your
5 room, you know, you have to pick your clothes up out of your
6 floor also. You know, that's part of your cleaning your
7 room.

8 There's not a direct understanding. You can't tell him
9 go clean your room, pick your clothes up in the floor, clean
10 the bathroom and clean the kitchen. He may get finished
11 with his room. And then you have to start all over again
12 and say, you know, do this and clean the bathroom and clean
13 the kitchen also. And you have to give simple, specific
14 directions as to what you want done in order for him to
15 carry it out.

16 Q And how was he when you did give him the simple
17 directions?

18 A He could get it done, and get it done quickly, and
19 promptly and not give you a problem with it.

20 Q Would he argue with you about doing things like that?

21 A No.

22 Q How was he around adults? Was he --

23 A He was always very polite with adults. He, you know,
24 respected anything they told him to do, you know, and always
25 spoke very respectable to them. I never heard him be

Loraine Fortner
Direct examination by Mr. Allen

1 disrespectable to an adult.

2 Q During the time that Eric was growing up did he have a
3 father figure?

4 A You may would call him that.

5 Q Well, who would that be?

6 A Eddie Godfrey, Charles Eddie Godfrey, would have been
7 his father figure.

8 Q And, I mean, was he in the household or is he a
9 relative? Who is he?

10 A He was in the household, and he was sort of in and out.
11 Occasionally he would, you know, forget to come home and go
12 out and get drunk or messed up on drugs and forget to come
13 home. He was not a very good role model for anybody.

14 Q When you say he was in and out of the household, whose
15 household would that be?

16 A In Cindy and Eric's. So he had drugs in the house and
17 alcohol in the house at times, and I know on different
18 occasions that Eric was exposed to drugs and alcohol, and
19 several times I had heard he had been given --

20 MR. WILLINGHAM: Objection, Your Honor, to anything she
21 heard.

22 THE COURT: Sustained.

23 MR. WILLINGHAM: Thank you.

24 Q You can't go into anything you heard but anything you
25 observed.

Loraine Fortner
Direct examination by Mr. Allen

1 Did you see Eric at any time? Did he look like he was
2 under the influence of any intoxicant, be it alcohol or
3 drugs or anything like that?

4 A Other than on the T. V. screen, the news video that
5 they showed of when Eric was arrested, knowing Eric as I do,
6 he was on some type of drug or alcohol at that time.

7 Q Now, have you seen that before today?

8 A Yes, I have.

9 Q Okay. Would that have been when it was first aired?

10 A Yes.

11 Q How do you feel about Eric? In other words, do you
12 love him?

13 A Yes, I do.

14 Q And his mother, how do you feel about her?

15 A I love her too. It's been a difficult time.

16 Q Do you know if his mother still is employed or still
17 works at an income-making job?

18 A No. She is on disability at this time.

19 Q Was she on disability at the time Eric was arrested?

20 A No. She was in the hospital having surgery when Eric
21 was arrested.

22 Q Do you know how long she had been in the hospital prior
23 to Eric's arrest?

24 A A day, maybe two days.

25 Q Do you know where Eric had been living prior to his

Loraine Fortner
Cross-examination by Mr. Willingham

1 arrest?

2 A They lived in Culpepper Landing in Duncan, but Eric was
3 at Brandon Duncan's house working on a vehicle they were
4 trying to get running, was my understanding.

5 MR. ALLEN: One second, please, Your Honor.

6 (Pause.)

7 Q Do you know if Eric has been in trouble before or if
8 he's not in trouble before but if he has got any convictions
9 in court before this for acts of violence?

10 A No acts of violence, no, sir.

11 Q Thank you, Ms. Fortner. Please answer any questions.

12 CROSS-EXAMINATION

13 BY MR. WILLINGHAM

14 Q Ms. Fortner, what's Mr. Morgan's birthdate?

15 A His birthday is May the 17th.

16 Q What year?

17 A Honestly, I couldn't tell you.

18 Q Okay. Would you say he was 17 in the year 2000?

19 A Yes.

20 Q And that was on May the 3rd, so on May 17th he would
21 turn 18 in 2000, is that right?

22 A Yes.

23 Q Now, I understand you told the jury about his brother.
24 But Eric didn't witness that, did he?

25 A No.

Loraine Fortner
Cross-examination by Mr. Willingham

- 1 Q And you said Eric didn't do good, do very well in
2 school but he did well at laying hardwood floors.
- 3 A Yes.
- 4 Q He did very well at that when he applied himself to it.
- 5 A Yes.
- 6 Q And you actually were the one that got him the job.
- 7 A Yes.
- 8 Q He could work.
- 9 A Yes.
- 10 Q There is nothing physically wrong with him to keep him
11 from working.
- 12 A No. He had his job up until, I guess, right before,
13 even the day, I think it was the day, before this happened.
14 So I know it was during that week. He still had his job
15 with American Hardwood Floors. The only thing he was told
16 by Blake was he was to come back alone and not around
17 Brandon to work.
- 18 Q That was Blake Alverson that gave him the job?
- 19 A Yes.
- 20 Q He was a friend of yours.
- 21 A Yes.
- 22 Q And he give him work.
- 23 A Yes.
- 24 Q So he could get work if he needed it.
- 25 A Yes.

Iris Corn
Direct examination by Mr. Allen

- 1 Q You said his mom was in the hospital having surgery.
2 A Yes.
3 Q And he could have stayed with you, couldn't he?
4 A Yes.
5 Q And you would have given him a place to stay if he
6 needed it.
7 A Yes.
8 Q You got him a job.
9 A Yes.
10 Q You would give him food if he's hungry.
11 A Yes, I would have.
12 Q And a roof over his head if he needed it.
13 A Yes.
14 Q Thank you.
15 THE COURT: You may step down.
16 MR. ALLEN: Call Iris Corn to the stand.
17 IRIS CORN, having been first
18 duly sworn, testified as follows:
19 DIRECT EXAMINATION BY MR. ALLEN
20 Q Ms. Corn, I want you to speak up loud enough so I can
21 hear you way over here.
22 A I think you will be able to hear me. Is that good?
23 Q That's good so far.
24 A Okay.
25 Q You are Iris Corn.

2101

Iris Corn
Direct examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q Do you know Eric Morgan?
- 3 A Yes, I do.
- 4 Q How is it that you know Eric?
- 5 A My husband is, was Eric's father, my first husband.
- 6 Q And his name, of course, is?
- 7 A Randy Morgan.
- 8 Q Randy Morgan?
- 9 A Uh-huh.
- 10 Q How long were you married to Randy Morgan?
- 11 A Six years.
- 12 Q Okay. And do you and Randy Morgan have any children
- 13 together?
- 14 A Yes, we do. We have a son and a daughter.
- 15 Q What are their ages now?
- 16 A Twenty-eight and 25.
- 17 Q You and Mr. Morgan were divorced.
- 18 A Yeah. After, after him and Cindy were having an
- 19 affair, yes.
- 20 Q Did you stay in touch with Randy Morgan?
- 21 A Yes, yes, sure, on account of our own children.
- 22 Q Did you have contact with Eric Morgan?
- 23 A When he was a child, yes. He would come with Randy to
- 24 pick up my children when he would have his visitation with
- 25 them or whatever. Yeah. I saw him on quite a few occasions

Iris Corn
Direct examination by Mr. Allen

1 as a small child. And then after that I didn't see him as
2 often because Randy didn't come and pick up his own kids to
3 see them very often after that, so.

4 Q Now, Randy is now deceased.

5 A Yes, he is.

6 Q Do you know when he died?

7 A 2001, I think. He's been dead about three years.

8 Q About three years.

9 During the time -- would you see even after the divorce
10 between you and Randy, would you see Eric's mother from time
11 to time?

12 A From time to time.

13 Q Describe those occasions when you would see her.

14 A There wasn't really much. You know, there was
15 animosity between -- you know, I felt like she had broken up
16 my home and, you know, so there was some animosity as far as
17 I was concerned at that time. But I got over that and, you
18 know, as time went on she called. And she came in to where
19 I worked in Woodruff later on when Eric got, was maybe nine
20 or ten years old. And he wanted to see his brother and
21 sister. And I told them sure, you know, bring him on down.
22 But she never did.

23 Q Do you know if Eric got to see his brother and sister,
24 your children, on occasion at family get-togethers or
25 anything?

Iris Corn
Direct examination by Mr. Allen

1 A Not after her oldest child died and after they split
2 up. And when Randy had custody of him for those couple of
3 years, they saw them, you know. But after Cindy came back
4 and took him back, they didn't see him at all. In fact, we
5 didn't even know where they were until she happened to walk
6 in to where I was working in Woodruff one day and entered --
7 I wouldn't, didn't even know the child when she brought him
8 in because he had grown so much since the last time I had
9 seen him, you know, because he was nine. And I think the
10 last time I had seen him at that time was probably four or
11 five years old.

12 Q Did you have or did you see Eric at times when he was
13 with his father? Let's say when his father had custody of
14 him for a while.

15 A Yes, he did.

16 Q How long did he have custody if you can recall?

17 A I know he had him probably -- he started him in school,
18 so I know he had him a couple of years up until he had
19 started him in school. And then she wanted visitation, and
20 I think she got her visitation. And then the first
21 visitation she got she carried him and they never saw him
22 again.

23 Q How did Eric seem to do in the custody of his father?

24 A He seemed to be thriving what time I saw, you know,
25 what time I saw him.

Iris Corn
Direct examination by Mr. Allen

1 He was remarried to another lady at that time. And he
2 seemed to be doing fine when he was in the care of his dad.
3 And his grandmother, of course, was always there to make
4 sure that everything was, was good, but he seemed to be
5 doing fine. You know, he was a happy little child.

6 Q And how did Eric seem around you?

7 A Well, I mean, he was just as a little baby and child,
8 he was just, he was shy. He was kind of shy around me, but,
9 you know, he didn't know me that well, so, of course, he
10 wouldn't, you know, say too much. But he was always sweet
11 and nice. And, I mean, you know, he never, he wasn't a
12 rambunctious child. He was kind of quiet for a small child.

13 Q Did you -- I think you said, what, what kind of contact
14 have you had with Eric after he got a little bit older back
15 in the custody of his mother?

16 A After he got back in the custody of his mother, when
17 she brought him, when she came into my place of work when I
18 was working in Woodruff, she came in. And when she realized
19 who I was she brought Eric back at a later date and wanted
20 to know if, of course, if Eric could come or if the kids
21 could get together, that he wanted to see my son and my
22 daughter. And I said, sure, any time, just call me or bring
23 him on down, you know where we live, you know, because we
24 were living in the same place that we lived when Randy and I
25 were married, and she said she would.

Iris Corn
Direct examination by Mr. Allen

1 And she came in every month, and she would bring Eric
2 in with her, and we would speak, you know, and be cordial,
3 and he was always nice and polite and, you know, never had,
4 you know, he was always nice to me. Never had a -- minded
5 his mom pretty well at that time, you know. But, like I
6 say, he was still maybe eight or nine years old at that
7 time, so.

8 Q Was that about the last time you saw Eric?

9 A Yeah. I would say so. If it was, it would be just in
10 passing, you know, not to stop and speak or anything.

11 Q So you didn't have much contact with him?

12 A No. After that, after that she, I think, I was under
13 the impression that she had moved to Duncan and then she had
14 moved to the lower part of the state. She moved around a
15 lot.

16 I know in the time that, between the time she was with
17 Randy, there were several men in between that and the time
18 that she came back to Woodruff. And then she was with the
19 Godfrey boy when she came to Woodruff, back to Woodruff, and
20 they lived together there in Woodruff.

21 Q Now, you lived where, in what town?

22 A I live in Enoree.

23 Q In Enoree?

24 A Uh-huh, which is about eight miles from Woodruff.

25 Q Thank you, Ms. Corn.

Iris Corn
Cross-examination by Mr. Bulsa

1 CROSS-EXAMINATION

2 BY MR. BULSA

3 Q Hello, Ms. Corn.

4 A Hello.

5 Q If I understood your testimony right, your interactions
6 with Mr. Morgan were when he was a young child, preschool
7 age --

8 A Pretty much so.

9 Q -- and when he started into school.

10 A First into school, yes.

11 Q And your exhusband actually got him started in school.

12 A Right.

13 Q And the times you saw him you thought he was a good
14 child.

15 A Yeah.

16 Q So he was living with his father during his formative
17 years.

18 A Right.

19 Q And he understood --

20 A Well, no. Wait a minute. Not in his formative. Now,
21 she had him then first three years, in the first three or
22 four.

23 Q It wasn't your husband.

24 A No. They weren't together. See, after that child, her
25 oldest child, got killed, she ran Randy off --

2107

Iris Corn
Cross-examination by Mr. Bulsa

1 Q Okay.

2 A -- and told him that she didn't want to have anything
3 else to do with him. And she wouldn't let him come around
4 Eric for a long time. And then he, Eric, got sick and she
5 was out of work. And she called his grandmother to come and
6 get him. And she went and got him. And when Randy came in
7 off of his truck run he took him home with him. And he got
8 custody of him after that.

9 Q Okay. And how old was he?

10 A Probably four.

11 Q Four. That's part of his formative years.

12 A Part of his formative years. Well, part of his
13 formative years, but not his early, I mean, you know, not
14 his real early years.

15 Q Well, how old was he when his brother died?

16 A He was just a baby when his brother died.

17 Q Was he a couple of years old?

18 A Well, I would say 18 months old. He was a baby, I
19 mean, you know. He was a --

20 Q So there was a year or a year and a half in there --

21 A Yeah.

22 Q -- that he had his mother home.

23 A Uh-huh.

24 Q And then his dad got him.

25 A Uh-huh.

Mildred Morgan
Direct examination by Mr. Allen

1 Q And kept him for a while and got him started in school.

2 A And she came and got him that first, her first,
3 visitation and never brought him back.

4 Q And he was respectful to you when you saw him.

5 A Yeah. When I saw him in Woodruff he was respectful to
6 me.

7 Q So he knew the difference between right and wrong.

8 A Now, I can't tell you whether he did or not.

9 Q He appeared to you when you saw him.

10 A I can say he was respectful of his mother. He, you
11 know, he did what she told him to do.

12 Q Okay. And you've got two children, I believe you said.

13 A Yes, I do.

14 Q What do they do now?

15 A What do they do?

16 Q Yes, ma'am.

17 A One works for Bi-Lo and one works for a video store.

18 Q Thank you, ma'am. That's all I have.

19 MR. ALLEN: Call Mildred Morgan to the stand.

20 MILDRED MORGAN, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. ALLEN

23 Q Ms. Morgan, can you hear me well?

24 A Well, I'm hard of hearing. Please speak up.

25 Q I am going to do the best I can. Okay?

Mildred Morgan
Direct examination by Mr. Allen

- 1 A All right.
- 2 Q If you can't hear me, would you let me know, please?
- 3 And it sounds like I am yelling at you, and I am not trying
- 4 to yell at you.
- 5 You are Mildred Morgan, right? Are you Mildred Morgan?
- 6 A I'm not getting it all.
- 7 Q You are not? Okay. I am going to get a little closer
- 8 to you.
- 9 A Yeah. Do.
- 10 Q You are Mildred Morgan, right?
- 11 A Right.
- 12 Q And you are related to Eric Morgan?
- 13 A I'm Eric's grandmother.
- 14 Q You are the mother of his father.
- 15 A His father.
- 16 Q His father is who?
- 17 A Was Randall Morgan.
- 18 Q Now, your son died a little while ago, correct?
- 19 Randall Morgan, is he deceased?
- 20 A Yes, he is.
- 21 Q When did he die?
- 22 A September the 4th of 2001.
- 23 Q And you knew Cynthia Templeton as well. Did you know
- 24 Eric's mother as well?
- 25 A Yes.

Mildred Morgan
Direct examination by Mr. Allen

- 1 Q Okay. How long, I mean, do you live here in
2 Spartanburg County?
- 3 A Yes, I do.
- 4 Q Okay. Where do you live? Not the street address, but
5 what town do you live in?
- 6 A What county did I live in?
- 7 Q What town do you live in?
- 8 A Oh, Spartanburg.
- 9 Q Okay. Did you see before Eric's mother and father
10 split up, did you see them together with Eric?
- 11 A Oh, yes, quite often.
- 12 Q Quite often. Was Randall and Cynthia Templeton ever
13 married to each other?
- 14 A No.
- 15 Q How long did they live together?
- 16 A About two years, I think. I am not certain.
- 17 Q Okay. After they split up who got custody first?
- 18 A Well, when my son came home he left Eric with his
19 mother. And I asked him why didn't he bring Eric home with
20 him. And he said, well, his mother had just lost another
21 child, and he said she had been hurt so much he just
22 couldn't hurt her any more. So he didn't take Eric.
- 23 Q So when they separated, Randall Morgan came to live
24 with you?
- 25 A Yes. She asked Randy to leave, and he did. He came

Mildred Morgan
Direct examination by Mr. Allen

1 home to my house.

2 Q Okay. How long did he live with you after that?

3 A I am not certain of the time. Maybe six months,
4 something like that.

5 Q Okay. At some point did Eric begin to live with you?

6 A Eric was about, I would think, five years old. I am
7 not certain.

8 But his mother called me one morning and asked me would
9 I take Eric and keep him a while for her, that she had lost
10 her job, that Eric was sick. And she said I've took him to
11 the doctor and/but I don't have the money to buy his
12 medication, if you'll take him and get his medication I'll
13 appreciate it. I said I certainly will.

14 I went to Woodruff to get Eric. He came home with me.
15 And I guess I had him about two weeks, something like that.
16 And his daddy came in. I was still working at that time,
17 and I had gone to work. And my husband said his daddy came
18 in and asked him what was Eric doing there, because none of
19 us, you know, had really seen much of him. And he said,
20 well, his mama said she didn't have a job and he was sick
21 and wants us to keep him a while. And he said, well, Eric
22 is my responsibility, he's not mama's, so I'm taking him
23 home with me.

24 When I got home from work that day Eric was gone, and I
25 didn't put up no fuss about it. I knew he would be taken

Mildred Morgan
Direct examination by Mr. Allen

1 care of, and he was. And at my house there was nobody there
2 but me and him, but at his daddy's house they was two
3 children there he had to play with, and Eric really liked to
4 have somebody to play with. He was a very lonesome child.

5 Q How could you tell he was a lonesome child?

6 A Well, because it took a lot to entertain him. And he
7 just, the way I entertained him, I had a little record
8 player, and I let him play the records. And he really
9 enjoyed that.

10 Q At some point did Eric go back to live with his mother?
11 Did you hear me?

12 A Yeah.

13 Q Okay.

14 A There was, there was after they took Eric home with
15 them his mother wanted to see him. And, well, my son's wife
16 didn't want her to come and get Eric. So there was a lot of
17 mouthing about it.

18 And Cindy took my son to court to get visitation
19 rights. And he, she got the visitation rights.

20 The first weekend that she came and got Eric, she never
21 brought him back. We never seen him after that. Somebody
22 told my son that they was living down in the country. I
23 don't even know where we went. But he come and asked me to
24 go with him, and we went down to see. And when we knocked
25 on the door Eric was inside and he started screaming. And I

Mildred Morgan
Direct examination by Mr. Allen

1 told my son, I said stop right now, don't upset this child,
2 it's not worth tearing him up, just come on and let's go
3 home.

4 And we stopped. My son stopped hunting him right then,
5 and we didn't see him no more until he must have been about
6 nine years old.

7 One Sunday afternoon he called me, and we didn't know
8 where he was. And I just didn't let them hunt him. He
9 called me and said he wanted to see me, and I said you want
10 to see me, where are you. And he said he was at Grandma
11 Standridge's. So I said, well, I will be down there as soon
12 as I can get there.

13 So I left my house and went to Woodruff and visited
14 Eric. And it was right before Christmas. And he wanted me
15 to bring the record that he loved so much at my house when
16 he was at my house. He liked Rudolph the Red Nosed
17 Reindeer. And I said, well, I'll bring you the record. I
18 took him the record and a little record player and give it
19 to him. And that's the last time I seen Eric.

20 Q Is that the last time you spoke with Eric? Did he ever
21 call you again? Did Eric ever call you again after that?

22 A I'm not understanding you.

23 Q Oh, no. Did Eric call you on the telephone after that?

24 A No, he didn't call me.

25 Right after that I remarried, and I wasn't much in

Annette Harriston Boette
Direct examination by Mr. Allen

1 Spartanburg. So I didn't have much opportunity to get in
2 touch with him. But I never heard from anything about Eric
3 any more until I read in the paper when all of this
4 happened.

5 Q Okay. Thank you, Ms. Morgan.

6 MR. BULSA: We have no questions of Ms. Morgan.

7 MR. ALLEN: Call Annette Boette to the stand.

8 ANNETTE HARRISTON BOETTE,
9 having been first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. ALLEN

11 Q Would you please tell us your name?

12 A Annette Harriston Boette.

13 Q If I'm talking too loud, let me know.

14 A I can hear you. Thank you.

15 Q Where do you live?

16 A I live in Columbia.

17 Q South Carolina?

18 A Yes, sir.

19 Q Tell us about your education, please.

20 A My background is I was educated prior to college, and
21 mostly in Orangeburg and Charleston counties; went to U. S.
22 C. back in the 60's, graduated, majored in sociology. I
23 have an undergraduate degree from U. S. C.

24 After, I began work as a caseworker in public
25 assistance at the old department of public welfare, which is

Annette Harriston Boette
Direct examination by Mr. Allen

1 a predecessor to the department of social services in
2 Charleston County.

3 After being home with my family for a few years, I went
4 back to graduate school and studied social work. I have a
5 master's in social work from U. S. C. from 1979.

6 Q How are you currently employed?

7 A I have a salaried position with the department of
8 social services. Our division serves emotionally and
9 behaviorally disturbed children. I have a small private
10 practice and do some consultation with legal teams from time
11 to time.

12 Q Are you on annual leave today?

13 A I am, yes, sir.

14 Q Do you have a license to practice social work in South
15 Carolina?

16 A Yes, sir, I do, and in Georgia and Alabama also.

17 Q Do you hold any certifications in your field?

18 A I'm a member of the academy of certified social workers
19 and have been since 1981.

20 Q Are you active in any community or professional
21 organizations?

22 A I have been over the years, a number of community
23 organizations, a variety of type. My professional
24 association is the National Association of Social Workers.
25 I am also a member of the National Network for Social Work

Annette Harriston Boette
Direct examination by Mr. Allen

1 Managers.

2 Q Have you held any leadership positions in the National
3 Association of Social Workers?

4 A Yes, sir, on the local and state level, and I have done
5 some work as a volunteer with the national association.

6 Q Tell us a little bit about your work experience as a
7 social worker, please.

8 A Since my master's most of my work has been in child
9 welfare and working with families and children.

10 I've also done some work as a social work consultant
11 with county departments of social services. And, let's see,
12 one of -- over 20 something years a number of different
13 experiences.

14 I worked as a staff person for the committee that
15 studied child maltreatment fatalities, the deaths of
16 children who are killed at the hands of their primary
17 caregivers.

18 My private work has been from time to time I have done
19 consultations with county coroners, with other types of
20 legal teams. Since 1995 I've done some work for capital
21 defense teams.

22 Q Okay. Have you taught social work courses?

23 A I have. I don't currently. I have on the
24 undergraduate level for Western Carolina University, and one
25 graduate course at Case Western when I was studying social

Annette Harriston Boette
Direct examination by Mr. Allen

1 welfare research at Case Western in Cleveland.

2 Q Have you testified in cases in family courts and
3 circuit courts?

4 A Yes, sir.

5 Q Have they been in state courts, federal courts?

6 A I've testified in state courts. I've worked on one
7 federal case, but I didn't testify.

8 Q Today you're here as a consultant to the defense team?

9 A That's correct.

10 Q Have you ever worked with the prosecution on any cases
11 in South Carolina?

12 A Not in capital defense. I've worked with -- when we
13 did the work with the child maltreatment fatalities, I had
14 occasion from time to time to work with solicitors and
15 coroners and state and local law enforcement.

16 Q Would you say that you have worked on more cases for
17 the defense or the prosecution?

18 A I don't have the numbers in my head. I've done some of
19 both, and more recent years it has been more defense work,
20 and earlier it was with, I would say, working on cases with
21 the prosecution. But not in -- I haven't done that much
22 very recently.

23 Q Okay. Do you participate regularly in continuing
24 education?

25 A Yes, sir. I'm required to maintain my license in all

Annette Harriston Boette
Direct examination by Mr. Allen

1 three states.

2 Q Now, as a master's level social worker has your
3 education included procedure referred to as a psychosocial
4 assessment?

5 A Yes, sir.

6 Q What is that?

7 A Psychosocial assessment is a universally accepted
8 social work method whereby we gather a great deal of
9 information from interviews, from records, from the
10 literature and, if available, other experts; and it is -- it
11 goes to a psychosocial history.

12 In more recent years we have begun to refer to it as a
13 biopsychosocial assessment because it's important to include
14 also the health situation.

15 So it includes the logical background, the
16 psychological, emotional and also what people can tell us.
17 It's a way to put together a great deal of information to
18 try to determine how somebody could get in the current
19 situation, or it could also be done on the family too,
20 individuals or families.

21 Q What is the purpose of a psychosocial assessment in a
22 capital trial?

23 A Well, for over 20 years now there's been a mechanism
24 within the courts where the -- there's special protections
25 in a capital trial.

Annette Harriston Boette
Direct examination by Mr. Allen

1 And in the penalty phase from time to time a defense
2 team might ask a social worker or someone else with
3 specialty training to gather a lot of information and to
4 help with the social history and to help the defense team
5 understand some of how somebody could have gotten, to put it
6 very crudely, somebody could have gotten in the mess that
7 they're in to be charged with a capital crime. And then if
8 the person testifies, then it's in the penalty phase
9 typically. So the decision about the guilt or innocence has
10 already been made. So it's a way to present to the
11 sentencer in South Carolina, that's the jury, the sentencer,
12 to help understand how somebody could have gotten in the
13 situation that they are in.

14 Q Okay.

15 MR. ALLEN: Your Honor, at this time I would ask that
16 Ms. Boette be qualified as an expert in conducting
17 psychosocial assessments and offering opinions based on her
18 findings from these assessments.

19 MR. GOWDY: I have no questions about Ms. Boette's
20 qualifications.

21 THE COURT: She is so qualified without objection.

22 MR. ALLEN: Thank you, Your Honor.

23 Q Ms. Boette, were you asked to conduct a psychosocial
24 assessment in Eric Morgan's case?

25 A Yes, sir.

Annette Harriston Boette
Direct examination by Mr. Allen

1 Q And did you conduct interviews, review records and
2 consult other experts?

3 A I conducted interviews; I reviewed the records
4 presented by the defense; and I looked at some of the
5 literature, yes, sir.

6 Q And in general can you tell us who was interviewed; not
7 every particular person but just in general?

8 A Well, the kinds of people that I want to talk with are
9 the people who have known him the longest and known him the
10 best.

11 So, of course, I talk with the defendant, and I've met
12 with him a few times; with the defense team that have
13 been -- the persons have been working with him for a while.

14 I talk with his immediate family, anybody that will
15 talk with me.

16 In this instance I talked with, met with, his mother on
17 a couple of occasions, and we had some other telephone
18 conferences; some of his cousins; some of his extended
19 family. I spoke with his paternal grandmother by telephone.

20 I have met with one of his teachers; I met with one of
21 the people who was a supervisor on his job.

22 I met with some friends of his, some who had known him
23 since he was, I believe, in kindergarten, others who knew
24 him more in the year or so that he went to high school.

25 I also met with some of their families. You know, I

Annette Harriston Boette
Direct examination by Mr. Allen

1 want to know how the person interacted with his peers, with
2 authority figures and with other people, adults.

3 And so those, I think those, are the categories of
4 people that I talked with.

5 Q Why is it important to talk to other people when you
6 are conducting a psychosocial assessment?

7 A The major thing that I am asked to do and was asked to
8 do by this defense team are what are the themes in this
9 young fellow's life, you know, what. And what I want to do
10 is not to talk with just one or two people. I want to talk
11 with a number of people.

12 I want to know how people saw him and what were the
13 similarities and what were the differences.

14 When I then look at records, I want to see how that
15 fits with what people have told me. I want to have as clear
16 a picture as I can about his upbringing, the kind of family
17 he was born into, the kind of family he grew up in, what
18 were his successes, what were his challenges.

19 Q In general, what kind of records did you review?
20 Again, not each one, but what kind of records did you
21 review?

22 A Okay. The defense team gave me records from his
23 hospital records from his birth and one other
24 hospitalization.

25 I was provided records from the, some of the schools he

Annette Harriston Boette
Direct examination by Mr. Allen

1 went to, not all of the schools, but some of them.

2 I reviewed some vital statistics records they gave me,
3 some birth certificates, death certificates.

4 I reviewed some newspaper articles on his brother's
5 death.

6 I reviewed some information. Let me think just a
7 minute now.

8 I looked at some of his medical records while he has
9 been incarcerated. Prior to the crime he had not been seen
10 by mental health.

11 There was one section in the school-of-special-
12 education records, one section.

13 I believe I've covered the categories of records.

14 Q Did you review any literature concerning this
15 particular case?

16 A Well, the defense team asked me to suggest maybe
17 something that would help put a framework around how we
18 could look at this young fellow's background. And I used
19 mostly William Pollack and James Garbarino's work on
20 adolescent boys. The Garbarino work is probably the most
21 applicable, and that's -- the title of that is "Lost Boys."
22 Garbarino has done a good bit of work. He is at the Ericson
23 Institute, and I have been in some training with him in
24 Greenville just a few years ago.

25 Q Now, in, concerning this psychosocial assessment, is

Annette Harriston Boette
Direct examination by Mr. Allen

1 that intended to be used as or intending to excuse a
2 defendant from his actions?

3 A No, sir. No, absolutely not. There's, there's no
4 excuse for a crime like this.

5 A defendant, at least as I have been taught, has a
6 right to present his background for consideration by the
7 sentencer, but/and, and a sentencer may find some
8 explanation in that, but there is no excuse.

9 Now, I don't mean for my tone to be disrespectful, but
10 there is no excuse for it.

11 Q Okay. I just want to make sure we understand what we
12 are doing.

13 A Okay.

14 Q Let's start at the beginning about Eric.

15 A Okay.

16 Q What can you tell us about his early history?

17 A The first thing I'm looking for is some health issues.

18 Eric was born prematurely according to the hospital
19 records, 32-week gestation with no prenatal care. He was in
20 the hospital for about four and a half or five weeks fairly
21 uneventful. You know, he made progress fairly quickly,
22 began to gain weight. The respiratory syndrome was
23 resolved, and he was discharged.

24 He weighed a little over three pounds when he was born,
25 and he weighed four-ten, I believe the records you gave me,

Annette Harriston Boette
Direct examination by Mr. Allen

1 four-ten when he was discharged, fairly uneventful.

2 There is one admission for major illness when he was
3 about 20 months old. But effectively past two or three
4 years old he really was essentially a physically healthy
5 young fellow.

6 There is a note in the record that immunizations were
7 kept up with, that kind of thing. So once he had this
8 little -- had a rough start, there appeared to be no lasting
9 effects.

10 I think two or three people mentioned to me that by the
11 time he was four, and I don't know why four, but by the time
12 he was four he was pretty much with his peers, that he was
13 about the same size. He was healthy, you know, making
14 progress. So essentially a healthy person after that kind
15 of a rocky start.

16 Q How about the family in which he was born?

17 A The records that I have, he was born to Cynthia Gentry
18 Amick. She still went by her former husband's name at that
19 time. And Randall Morgan.

20 And then later Eric's birth certificate was amended to,
21 as Eric Dale Morgan. That's the way his birth certificate
22 was, was written.

23 His mother worked in textiles and various kinds of
24 jobs.

25 Both times that he was admitted to the hospital, when

Annette Harriston Boette
Direct examination by Mr. Allen

1 he was born as well as the other time, she was working and
2 there was health insurance associated with her work.

3 He, and -- his mother and father, as far as I was told,
4 were never married. And they were together for about two
5 and a half years after Eric was born.

6 Q Okay.

7 A Is that the kind of information you were needing there?

8 Q Yes, ma'am.

9 Were there any custody issues between Eric's mother and
10 father from what you could tell from the records and your
11 interviews?

12 A Well, most everybody talked about the disorganization
13 in the household and the various ways in which Eric was
14 provided care.

15 Probably the consistent person in his life was his
16 maternal grandmother. She was kinda of the, I guess we
17 would say now, go-to person when something was going on.

18 Eric's mother didn't have high school education so
19 pretty much had to work however she could work. She did
20 file -- in fact, I forgot to mention that she had given me
21 some records on child support, and she did file for child
22 support when Eric was about two and a half; was in October,
23 and he had been two, he had become two in May, filed for
24 child support from his father. And the Court awarded her
25 child support.

Annette Harriston Boette
Direct examination by Mr. Allen

1 Q Do you recall how much? Excuse me. Did you recall how
2 much?

3 A You know, I don't. I'm sorry. I don't recall how much
4 the child support was. I just recall that it was never
5 paid. The records that you gave me indicated that the child
6 support was never paid. And then when his father got
7 custody of the child, he went back.

8 There's one piece of paper I think that you gave me
9 that indicated that when he got custody of him that the
10 child support requirement was suspended because he had the
11 child.

12 Q Are there any other custody issues after his father, or
13 after the child support stopped because the father indicated
14 he had custody at that time?

15 A Well, there was a lot of back-and-forth. And when I
16 say back and forth, I'm not implying that there was no
17 evidence that these people didn't love their child, that
18 they didn't care about him. But there was a lot of chaos
19 going on, a lot of responsibilities, a lot -- chronic
20 unemployment or underemployment.

21 So, you know, Eric would tell me that by the time he
22 was old enough to make a decision his mother would say,
23 well, where do you want to stay, and he would say with her.

24 Clearly, his grandmother Ms. Standridge was a key
25 factor in his life during that time.

Annette Harriston Boette
Direct examination by Mr. Allen

1 So there was a lot of back-and-forth, and his mother
2 and his father thought they could do the best. And they
3 would go back and forth with him.

4 Q What about his schooling? Did Eric attend school?

5 A I have, I have several school records. There, there
6 are some gaps in the records, but there -- in what I was
7 told by several people, is that there was a lot of moving
8 around in the first and second grade.

9 He did not succeed in school. He was promoted up until
10 the ninth grade, but he really didn't have any major school
11 success.

12 He, the special education records are from the
13 ninth grade, and he repeated the ninth grade and then left
14 school sometime early in the ninth grade.

15 There was a lot of evidence that he had not learned to
16 read, certainly not on grade level, and to some extent maybe
17 not at all.

18 Q Okay. Any other particular problems he had at school?

19 A It's really, I mentioned earlier, and I was going to
20 talk about both the strengths and the challenges. It's
21 really fairly remarkable that there aren't any behavioral
22 issues recorded in the records.

23 Now, I can't say that I absolutely have every record,
24 but there were not behavioral, major behavioral, issues
25 there; a fairly typical, you know, Eric talks to much, he

Annette Harriston Boette
Direct examination by Mr. Allen

1 needs to pay attention more, but there are not major
2 write-ups for behavioral problems.

3 I guess that really struck me given his poor school
4 performance because that's the way some kids cover up for
5 school perfor -- for school failure is by acting out, and
6 then when he left school in the ninth grade.

7 Q What about his test scores? Did you get any records
8 from his test scores?

9 A There are very few test scores in there. There
10 actually are two kinda puzzling psychologicals. When I say
11 puzzling, in that the first one that's in the record
12 indicates that his full-scale I. Q. is around 90 or 91, I
13 think.

14 The second one, it's lower than that, about eight
15 points lower. And so, in fact, I asked the teacher that I
16 talked with how he would account for that, and he said,
17 well, that, that doesn't usually happen. And he really
18 didn't have any suggestions how that happened. But I was
19 not able to talk with a psychologist who, who did the
20 second, the second test.

21 Q Did you arrive at any findings or conclusions about
22 Eric?

23 A Well, there, there certainly are three things in his
24 life, and these are not, they are not all negative.

25 I mean, they are both strengths-and-challenges side of

Annette Harriston Boette
Direct examination by Mr. Allen

1 these things. The first one is a lot of loss and
2 abandonment, a sense of being shifted around a great deal.

3 He was only, let's see, he would have been two in May
4 when his brother was killed, and a few months later, so he
5 was an only child to a great extent.

6 His mother and father were intermittently in his life
7 early on. The, he knew that his maternal grandfather had
8 been killed when his mother was four. That was a feature of
9 their life. His mother's father had been killed when he was
10 28, and so that was, he was not around. Mr. Gentry was not
11 around. His maternal grandmother was not around. His
12 maternal stepgrandmother was not around.

13 So, again, Ms. Standridge was a key figure from the
14 maternal side of his family.

15 He, the loss and abandonment issues, the theme in his
16 life, the one thing that is kind of remarkable is he never
17 gave up on trying to connect with people.

18 Now, he didn't use very good judgment about who he
19 connected with, but that's a feature of many young people's
20 lives who get left behind, is that they really give up
21 trying to connect. And he didn't.

22 That was something. One of the questions that I asked
23 of people who were in, say, authority positions,
24 grandmothers of his friends or grandfathers of his friends
25 or, you know, adult cousins, aunts, et cetera, is what

Annette Harriston Boette
Direct examination by Mr. Allen

1 happened when he was acting out, what happened when he
2 misbehaved, what did he do. And they would say, well, I
3 would tell him to stop it and he would. So he never gave up
4 trying to connect with people.

5 There were a number of people who said he was
6 indiscriminate about who he would connect with. And so if
7 they had his best interest, then he would connect with that.
8 If they had his worst interest, he seemed to connect with
9 that.

10 The other thing was his limited intellectual ability
11 and his school failure. That's devastating for most young
12 people who find themselves in that situation. And the
13 school for whatever reason couldn't connect with him or get
14 him to experience any success.

15 He expressed to me that he was just utterly miserable
16 trying to write anything or trying to read anything, though
17 he would try. You know, if I showed him something and asked
18 him to read it, he would try for me. If I asked him to
19 write something down for me, he would try. So the theme of
20 limited intellectual ability and school failure really
21 creates limits.

22 The other side of that was people would tell me when he
23 was given physical tasks to do, and if he had close
24 supervision, he could do that. I mean, they would describe
25 to me that he could follow as long as he wasn't distracted

Annette Harriston Boette
Direct examination by Mr. Allen

1 by his friends or whatever, that he could do physical labor.
2 So that's the other side of success. So he experienced some
3 success in some limited ways as long as it was physical
4 labor.

5 The other theme in his life was an early introduction
6 to alcohol and other drugs. It was part of the milieu. It
7 was part of the households that he lived in. Whether any of
8 the adults ever intended for him to get into it or not, he
9 did.

10 There were a couple of people who I really wanted to
11 talk with to see if they would own up to their
12 responsibilities, but I was not able to make connections
13 with those. So I cannot tell you independently.

14 I mean, obviously, I saw Eric when he was incarcerated,
15 so I did not see him on alcohol or other drugs. So I cannot
16 describe that to you independently. I can tell you that
17 there were numerous reports about that.

18 One person who spoke with me, just was still pretty
19 devastated about one time that she saw him and she thought
20 that he was, that he was on something, and she said maybe if
21 I had done something different at the time. And so that was
22 a theme, but it is not something that I can. You know, I
23 don't have anybody who said, yeah, I was a real, you know, I
24 let him get into the alcohol and drugs.

25 Is that kind of what you were wanting the themes that

Annette Harriston Boette
Direct examination by Mr. Allen

1 are going on in his life?

2 Q Yes, ma'am. These are your findings, correct?

3 A Right.

4 Q And do you have any explanations about these findings?

5 A Well, I mentioned to you before that the things in his
6 life were both strengths and challenges. And that's for
7 somebody to be convicted of such a hideous crime, that is
8 kind of unusual for me, that I can see the strength side of
9 him.

10 The fact that there were adults who had his best
11 interest at heart, I think his mother's abilities were, and
12 it's been clear from my conversations with her. She had
13 some of the same limitations that he does.

14 It doesn't mean that she didn't love him, doesn't mean
15 that his dad didn't love him, doesn't mean that a lot of
16 people didn't love him, but her ability to deal with these
17 kinds of issues, and she would try to make it better.

18 I mean, for instance, when he dropped out of school he
19 was involved with a church group. And through that church
20 group there was a correspondence course where somebody could
21 get a diploma. And he couldn't read the questions, so she
22 them read to him. It was just, it's a very poignant story
23 because she didn't make any connections with how that didn't
24 accomplish anything for him. But it was what she wanted to
25 do, just like, you know, he would tell me all I can do is

Annette Harriston Boette
Direct examination by Mr. Allen

1 smile and try to make her say I'm going to be okay. So he
2 can only smile for his mother. And his mother could read
3 questions to him thinking that that was going to help.

4 The people who took him to Sunday school. He was very
5 involved with a chapel with a number of his other friends,
6 and they would talk about his limited ability to read. And
7 they would read things for him so that he could have some
8 success. So, again, those are kind of two sides of these
9 themes.

10 The alcohol and other drugs are a way that many young
11 people effectively self-medicate. It's a way to deal with
12 the fact that they can't be part of the group.

13 You know, Eric was smart enough if this I. Q. is
14 correct, and there's a lot of reason to believe that it is,
15 he is smart enough to know that he doesn't fit in, but he so
16 desperately wants to fit in, so he will seek the people that
17 he can fit in with. And, again, he could comport his
18 behavior when people were around him who had his best
19 interest.

20 I said to one lady who was the grandmother of one of --
21 I said what happened. I mean, teenagers horse around. They
22 misbehave. And she said, well, I'd tell him to stop him and
23 he's stop.

24 Well, what about, did he eat with you? Well, yes. But
25 he wouldn't sit down until I invited him to. You know,

Annette Harriston Boette
Direct examination by Mr. Allen

1 there were things like that that he could comport his
2 behavior in that he would follow whatever the behavior was,
3 whether it was for good or ill.

4 Q Do you have any other conclusions about this case?

5 A I think those, those three really, those things really
6 sum it up fairly well.

7 Q One second, please.

8 A Yes, sir.

9 (Pause.)

10 Q Did you review any of his write-ups from the detention
11 center, say disciplinary type write-ups?

12 A I think there were three that they gave me, three
13 write-ups that he had. And it was something that I asked
14 him about. I asked him about his behavior in jail.

15 Q What were those three write-ups about if you recall?

16 A One of them was, had to do with putting clothes or
17 something in the toilet, stopping up the toilet and creating
18 a flooding situation. One of them was climbing up on a
19 fence. And I'm sorry. Right now they were relatively
20 unremarkable from what I was hearing otherwise, so I really,
21 I mean, I apologize. I don't remember the nature of all, of
22 all of them.

23 Q Did any of them have to do with harming other people?

24 A I have no recollection of that.

25 Q That's something you would normally look for.

Annette Harriston Boette
Direct examination by Mr. Allen

1 A Yes, I would. And I think I asked about that. Thank
2 you.

3 Q Any of them dealing with violence to other people?

4 A I have no recollection of any.

5 Q Was that something you normally look for?

6 A Yes, I do.

7 Q Is that something you'd normally take note of?

8 A Yes. I would.

9 Q Thank you, Ms. Boette.

10 A Yes, sir.

11 THE COURT: Let me see y'all just a minute.

12 (Bench conference held off the record in the presence
13 of the jury but out of the hearing of the jury.)

14 THE COURT: Ladies and gentlemen, we need to take just
15 a short break before we go any further.

16 So I'm going to ask you to go to your jury room. It
17 will only take five minutes. Please go to your jury room.

18 Don't talk about the case. We'll bring you back to
19 continue with the examination.

20 (The following takes place outside the presence of the
21 jury.)

22 THE COURT: Ms. Boette, you can step down.

23 Your examination is not complete, but you can step down
24 during the break. You cannot discuss your testimony during
25 the break.

Annette Harriston Boette
Cross-examination by Mr. Gowdy

1 We will start back at 5:30. Ten minutes. Court is in
2 recess for ten minutes.

3 THE WITNESS: Thank you.

4 (Whereupon, a recess was taken.)

5 THE COURT: Are we ready for the jury?

6 MR. GOWDY: Yes, sir, Your Honor.

7 MR. ALLEN: Yes, sir.

8 THE COURT: Bring them in. While they're coming in let
9 me talk to y'all a minute.

10 (Bench conference held off the record.)

11 (The following takes place in the presence of the
12 jury.)

13 THE COURT: Okay.

14 MR. GOWDY: May it please the Court, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. GOWDY

17 Q Good afternoon, ma'am.

18 A Good afternoon.

19 Q My name is Trey Gowdy. I'm one of the prosecutors in
20 this case. I'm going to ask you a couple of questions if I
21 can.

22 A Certainly.

23 Q Before I do that though I want to make sure the jury
24 has the right impression.

25 When you say that you used to work with prosecutors,

Annette Harriston Boette
Cross-examination by Mr. Gowdy

- 1 that has never been in a death penalty case.
- 2 A Correct, correct. I've never worked with the
- 3 prosecution on a death penalty case. That's correct.
- 4 Q I know you worked on the defense team in Jeffrey Motts,
- 5 which I think was a Spartanburg County murder.
- 6 A I remember that case, yes.
- 7 Q And I think you worked with the defense team in Benjie
- 8 Stevens, Benjie Powers. It may have been a Lexington County
- 9 murder with Donnie Myers.
- 10 A Powers, uh-huh.
- 11 Q Powers?
- 12 A Uh-huh.
- 13 Q Byram, State vs. Byram.
- 14 A Correct.
- 15 Q And, of course, Eric Morgan. That's four. Am I
- 16 forgetting any?
- 17 A And Byram was a P. C. R., post conviction relief.
- 18 Q Right. But you didn't testify for the prosecution, I
- 19 guess is my point.
- 20 A Yes. That's correct.
- 21 Q You have always been on the defense team.
- 22 A For capital defense cases.
- 23 Q Right.
- 24 A Correct.
- 25 Q Okay.

Annette Harriston Boette
Cross-examination by Mr. Gowdy

- 1 A Correct.
- 2 Q Have I forgotten any other than those four?
- 3 A I have worked on a couple of cases that I haven't
- 4 testified on.
- 5 Q Always for the defense?
- 6 A Yes, yes.
- 7 Q Okay. I made a note that early on in your testimony
- 8 you said that there is no excuse for a crime like this.
- 9 What have you been told about the crime?
- 10 A Okay. What I was told about the crime was that there
- 11 was a killing and armed robbery, and I believe the defendant
- 12 was charged and convicted of another crime also.
- 13 Q Do you remember what that other crime was? I'm not
- 14 trying to trick you. I mean, it was possession of a bomb.
- 15 Does that help?
- 16 A That's, that's what I remember. I was trying to
- 17 remember whether it was an incendiary device generally or a
- 18 pipe bomb.
- 19 Q Were you told any of the facts that led up to the
- 20 murder? Were you told anything about the premeditation?
- 21 A Yes.
- 22 Q Were you told anything about the disposal of the body?
- 23 A Yes.
- 24 Q You were?
- 25 A Yes.

Annette Harriston Boette
Cross-examination by Mr. Gowdy

- 1 Q When did you join the defense team?
- 2 A I started working on this case December the 30th.
- 3 Q How many times have you met with the defendant?
- 4 A I have to correct that. It was December the 22nd.
- 5 I've met with him three times.
- 6 Q And for what length of time have you met with him?
- 7 A An hour to two hours each time.
- 8 Q So let's take the most liberal view of that. Two hours
- 9 per time, three times, total of six hours.
- 10 A Yes, sir. Probably a little less than that.
- 11 Q Who gave you the list of people to talk to?
- 12 A The way I work is that they tell me, the people that I
- 13 talk with tell me, who knows the defendant best. That
- 14 usually starts with the defendant. He tells me some people
- 15 who know him best, and I talk to some of those people.
- 16 The defense team will tell me who they think I need to
- 17 talk with. And then I may ask them to seek out additional
- 18 people. So it's really, I guess, a team effort.
- 19 Q So Eric Morgan told you who to talk to.
- 20 A He gave me some ideas, yes. And I talked to some of
- 21 them, not all of them.
- 22 Q And his defense lawyers told had you who to talk to.
- 23 A Yes, sir.
- 24 Q You said that, I made another note, and if I misquote
- 25 you, I want to apologize right now, because I don't always

Annette Harriston Boette
Cross-examination by Mr. Gowdy

1 write things down right and don't always read them right
2 when I do write them down. But I have a note here where you
3 had on several occasions said that some things were clear,
4 and you used the word clear.

5 I guess I just will ask you. How do, how do you know
6 they are clear? I mean, if you only talked to the defendant
7 and the list of folks that he tells you, how do you know
8 something is clear that happened ten years ago if you
9 weren't there to watch it?

10 A That, that's really a very good question because I, and
11 I, put together the information from individuals, from the
12 records, and from my own experience.

13 And, again, I'm looking for themes. That's why I said,
14 for instance, there were some things that I could not be
15 certain about. There were other things that I did find
16 myself being clear about. Was there a particular quote that
17 you wanted me to comment on in regard to clarity?

18 Q No, ma'am. You just mentioned your own experience.

19 A Yes.

20 Q But we can kind of take that out of the equation
21 because you haven't had any experience with Eric Dale Morgan
22 or his family, I presume. So we can take that part of it
23 out of the equation.

24 What I'm trying to get at is if you can represent to
25 this jury that something is clear. How do you know it's

Annette Harriston Boette
Cross-examination by Mr. Gowdy

- 1 clear? I mean, you talked to folks that are his friends and
2 family and him, right?
- 3 A Well, and others, yes, sir.
- 4 Q Well, I mean, when you say others, tell me how many
5 folks that weren't his friends or are not connected with the
6 defense that you talked to.
- 7 A Okay. I mentioned that I talked to one of his teachers
8 and I mentioned that I talked to one of his supervisors.
- 9 Q Well, now, that supervisor is Mr. Alverson, right?
- 10 A No. I didn't speak with a Mr. Alverson.
- 11 Q Which teacher did you talk to?
- 12 A A Mr. Gillam. He's a middle-school social studies
13 teacher.
- 14 Q Who gave you his name?
- 15 A The defense team mentioned him, and I met with him.
- 16 Q Now, what you provided for the jury, I believe you
17 said, is a psychosocial evaluation. Is that -- do I have
18 that phrased right?
- 19 A You do.
- 20 Q Did you prepare a report?
- 21 A No, I didn't.
- 22 Q Why not?
- 23 A Because I wasn't asked to.
- 24 Q The defense didn't ask you to prepare a report?
- 25 A Correct.

Annette Harriston Boette
Cross-examination by Mr. Gowdy

1 Q Would you have if they had asked you to?

2 A Yes.

3 Q Could you -- it wouldn't have been hard, right? I
4 mean, you could have put it -- I mean, somebody with as much
5 experience and background as you, it would not have been
6 hard to prepare a report, I would imagine.

7 A That's correct.

8 Q Have you done it in the past?

9 A Yes. I have a great deal of experience in the field of
10 social work, 20 something years post-master's, and there are
11 times when I'm asked to prepare reports, and I do. And I do
12 bring that experience to the, the table. But if I'm not
13 asked to --

14 Q I appreciate that, and I'm not disputing your
15 experience one bit, Ms. Boette.

16 A Okay.

17 Q I'm just asking.

18 A I was a little confused by that. Okay.

19 Q No. I'm not. And if you took it that way, I'm going
20 to apologize. It has got nothing to do with your
21 experience.

22 I'm more getting at how come you didn't prepare a
23 report which the defense would have gotten and the
24 prosecution would have gotten.

25 A Because I wasn't asked by the defense team to prepare a

Annette Harriston Boette
Cross-examination by Mr. Gowdy

1 report. But I could do that if I needed to, if they asked
2 me to.

3 Q I want to start with his birth records. You said he
4 had low birth weight.

5 A That's correct.

6 Q Did you talk to Dr. Elisony who treated him?

7 A No, no. I didn't.

8 Q And you're not -- and I don't think you did, so, again,
9 this is not by any means a trick question. You're not
10 suggesting to this jury that his low birth rate had any role
11 to play in this crime, are you?

12 A No, no.

13 Q Okay. And then you looked at some school records.

14 A Yes, I did.

15 Q Who gave you those school records?

16 A The defense did.

17 Q Did you see the records from 1991? Do you remember
18 those?

19 A Could you tell me a little bit more specifically --

20 Q Sure.

21 A -- about which ones?

22 Q Certainly.

23 A Or if you want to show them to me, I'll be glad to tell
24 you whether I saw them.

25 Q Well, I got all of this from Mr. Allen, so.

Annette Harriston Boette
Cross-examination by Mr. Gowdy

1 A If the copier was working, we saw the same ones. This
2 is the first psychological, correct?

3 Q 1991. I don't know whether it's the first or not.

4 A Could you just give me a second and let me make sure?

5 Q Sure.

6 (Pause.)

7 A I want to say the best answer that I can give you to
8 your question is this doesn't look familiar, but I believe
9 that they gave me all of the records that they had. So I
10 must have seen it. Okay. That's just the best answer I can
11 give you and I don't --

12 Q I appreciate that. It raises an interesting problem
13 for me, because if you didn't rely upon it, it's not fair
14 for me to ask you about it. But if you did rely upon it, it
15 kind of makes me wonder why the defense didn't send it to
16 you, because on this test of the 14 factors they tested him
17 on he was outside the average range on 11 of the 14. He was
18 above average on 11 of the 14. Do you remember that?

19 A And the full scale is 88.

20 Q Right.

21 A The full scale I. Q. is 88 on that one.

22 Q So you remember him being described as warm and
23 outgoing and deliberate and obedient and enthusiastic and
24 all good things.

25 A I am trying to be just as honest as I can.

Annette Harriston Boette
Cross-examination by Mr. Gowdy

1 Q I appreciate that.

2 A I can't recall that, although that's what I've heard
3 about him.

4 Q Okay. Did you interview Dr. Joseph Harris who was the
5 psychologist who performed this test on him?

6 A No, I didn't interview Dr. Harris or the psychologist
7 of the later one, Ms. Schultz.

8 Q Do you mind if I ask why you did not interview Dr.
9 Harris?

10 A I didn't ask to interview Dr. Harris. I did ask to
11 interview Ms. Schultz, and I was told that connections could
12 not be made on a timely fashion.

13 Q Did you do any psychological testing on this defendant
14 yourself?

15 A No. I am not qualified to do psychological testing.

16 Q Okay. You didn't ask to speak with Dr. Harris who did
17 do some psychological testing on him as far back as 1991.

18 A That's correct.

19 Q Okay. Look at the 1992 school record, again,
20 Dr. Joseph Harris. But you did not talk to Dr. Joseph
21 Harris, right?

22 A That's correct.

23 Q Okay. Did you look at his 1995 school record?

24 A Would you mind letting me see it so I can be sure of
25 that?

Annette Harriston Boette
Cross-examination by Mr. Gowdy

1 Q Not at all.

2 A Yeah. This is, this is the one that I did ask to meet
3 with this person on, and, so, yes, I have looked at this.
4 This is out of his special education records.

5 Q And when you say special education, he was in what us
6 in Spartanburg call resource classes, right?

7 A That's correct. It requires an individual education
8 plan for the resource class, and that was the only special
9 education class that he was in, was in resource.

10 Q You keep looking at that. I will let you.

11 According to this, Ms. Boette, he gets along well with
12 peers, very motivated to learn and succeed and has an A
13 average in resource. That's from 1995. Do you remember
14 that?

15 A That's what I recall, yes, sir.

16 Q And this was prepared by a Ms. Constance Schultz. Did
17 you talk to her?

18 A I did not.

19 Q Do you think it would have been good to talk to her?

20 A Yes, sir.

21 Q Okay. How about a Ms. Connie McClain? Did you talk to
22 Ms. Connie McClain?

23 A No, I didn't talk to Ms. McClain.

24 Q Did you review the school records that said that there
25 was no evidence of any physical, emotional or economic

Annette Harriston Boette
Cross-examination by Mr. Gowdy

- 1 disadvantage?
- 2 A Yes, I did.
- 3 Q Well, wouldn't it have been good to talk to the lady
- 4 that found there was no evidence of any of those things?
- 5 A Yes, sir, it would have.
- 6 Q Did you talk to Ms. Gina Bailey from Woodruff?
- 7 A No.
- 8 Q She was his resource teacher. Would you agree with me
- 9 that would have been a good person to talk to?
- 10 A Yes, sir.
- 11 Q How about Ms. Neala Locklear? Did you talk to her?
- 12 A No, I didn't.
- 13 Q She was his counselor. Would you agree with me that
- 14 that would have been a good person to talk to?
- 15 A Yes, sir.
- 16 Q Do you recall the test scores that show that he is
- 17 achieving passing grades in regular education program, not
- 18 special education but regular education program?
- 19 A Yes, I do.
- 20 Q That he is meeting the objectives of the independent
- 21 educational plan.
- 22 A Correct, if that's from the ninth grade.
- 23 Q 1996.
- 24 A Okay. I recall that, yes.
- 25 Q Does the student routinely display a loss of critical

Annette Harriston Boette
Cross-examination by Mr. Gowdy

- 1 skills following interruptions. The answer is no.
- 2 A Uh-huh.
- 3 Q And I think you have already agreed with me it would
- 4 have been good to talk to the person that made all of those
- 5 findings, would it not?
- 6 A Yes. It would have.
- 7 Q Moving to 1997. Did you talk to a Ms. Kim Brown?
- 8 A No.
- 9 Q She was his resource teacher. Would you agree with me
- 10 that that would have been a good person to talk to?
- 11 A Sure.
- 12 Q Because if you had you might have asked her about the
- 13 note where after graduation Eric plans to go to technical
- 14 school or be in the military. Do you remember that note?
- 15 A Yes, I do.
- 16 Q That was in 1997, wasn't it?
- 17 A Correct.
- 18 Q 1998. Did you talk to Mr. Ernest Holiday?
- 19 A No, I didn't.
- 20 Q He was a resource teacher for Eric back in 1998. Would
- 21 you agree with me that that would have been a good person
- 22 for you to talk to?
- 23 A Yes, sir.
- 24 Q Did you talk to a Ms. Beth Grant?
- 25 A No.

Annette Harriston Boette
Cross-examination by Mr. Gowdy

- 1 Q She would have been his guidance counselor back in
2 1998. Would you agree with me that that would have been a
3 good person to talk to?
- 4 A Is that the year that he dropped out of school?
- 5 Q I just can tell you it's just about two years before he
6 murdered somebody, ma'am. I don't know what year he dropped
7 out of school.
- 8 A Okay. He dropped out of school the second time. He
9 went through the ninth grade.
- 10 Q This was 1998.
- 11 A Okay.
- 12 Q Would you agree with me that Beth Grant would have been
13 a good person to talk to?
- 14 A She could have probably helped me get a picture of him,
15 yes.
- 16 Q How about Karen Edwards?
- 17 A I didn't talk with Karen Edwards.
- 18 Q They were all committee members on Eric's educational
19 plan.
- 20 A Right.
- 21 Q Did you see the record where he was achieving passing
22 grades in his regular education program?
- 23 A Yes, I did.
- 24 Q That he was meeting the objectives of his independent
25 educational plan.

Annette Harriston Boette
Cross-examination by Mr. Gowdy

- 1 A Correct.
- 2 Q Did you see the goals and objectives that they had for
3 this defendant in 1998?
- 4 A Yes.
- 5 Q You said he dropped out in the ninth grade, right?
- 6 A That's my understanding, yes, sir.
- 7 Q They had him reading on a seventh-grade level in the
8 ninth grade, which is two years below. But being two years
9 below, there is no study that says if you are two years
10 below on your reading level that you're going to immediately
11 digress into a life of crime, is there?
- 12 A Absolutely not.
- 13 Q You mentioned that he had had three infractions or that
14 the defense team had sent you three infractions that he had
15 committed since he has been in custody, is that right?
- 16 A I recall at least three, Mr. Gowdy, and I am not being
17 deliberately unresponsive to your question.
- 18 Q I am not accusing you --
- 19 A It might have been more than that.
- 20 Q I'm not accusing you of refusing.
- 21 A I just remember the discussion of at least three.
- 22 Q I'm just, I'm not accusing you of being deliberately or
23 undeliberately evasive. I'm just wondering why the defense
24 team didn't send you records on all ten of the violations.
- 25 A Okay. And, you know, they might, they might have. I'm

Annette Harriston Boette
Cross-examination by Mr. Gowdy

1 sorry. Did you put them here for me to look at?

2 Q No, ma'am. And I will get them out of your way if you
3 would like for me to.

4 A I don't mind at all. I just want to follow the
5 instructions.

6 Q I will be happy to get those out of your way.

7 I believe you told me you did not talk to Constance
8 Schultz.

9 A Correct. I did not.

10 Q Or Jena Bailey.

11 A Correct.

12 Q Or Neala Loflin.

13 A Correct.

14 Q Did you talk to Myra Duncan?

15 A No.

16 Q I want to make sure that I understand. I think I
17 understand what you told this jury, but I also want to make
18 sure what you are not telling the jury.

19 A Okay.

20 Q You are not telling the jury that there is anything in
21 Eric Morgan's background that forced him to shoot Jerry
22 Smith in the head, are you?

23 A Absolutely not.

24 Q There is nothing about growing up poor that would have
25 made Eric Morgan kill somebody, is there?

Annette Harriston Boette
Redirect examination by Mr. Allen

1 A Correct.

2 Q There's nothing about bouncing from one home to another
3 that would make you grow up to kill somebody, is there?

4 A Most people don't.

5 Q Thank you, Ms. Boette.

6 A Yes, sir.

7 REDIRECT EXAMINATION

8 BY MR. ALLEN

9 Q The things that the solicitor showed you --

10 A Yes, sir.

11 Q -- and the school records, is there anything in there
12 that would have changed, that could change your opinions and
13 your conclusions and your explanations?

14 A Well, as I mentioned to, I believe, Mr. Gowdy, and is
15 that I would really have liked to have talked with the
16 psychologist, the second psychologist. I was particularly
17 interested in the change in scores.

18 I don't think as far as his functioning I looked at the
19 records in the context, the I. A. P.'s and the resource
20 reports and the grades and the context of his larger
21 functioning.

22 Q What was it that interested you about the I. Q. test
23 scores?

24 A Well, I was just particularly interested in the fact
25 that they had changed, and I was very interested in talking

Annette Harriston Boette
Redirect examination by Mr. Allen

1 with her, but I also like to talk to anybody that I can talk
2 with who has direct information about a crime.

3 Q When you say they changed, they changed. Did they go
4 down; they go up?

5 MR. GOWDY: Your Honor, I think this is beyond the
6 scope of my cross-examination.

7 THE COURT: Go ahead. You may respond to that
8 question.

9 A There was a 4-point change, and we just don't usually
10 see a change, and that's, that's the focus of my inquiry,
11 not so much how it, how it changed but the fact that there
12 was a change.

13 And when I asked a teacher about that he indicated to
14 me that we needed further explanation, and that's why I
15 asked to make contact with Ms. Schultz, and I was
16 unsuccessful or we were unsuccessful with doing that.
17 That's not her fault. It is just that we were unsuccessful.

18 MR. ALLEN: One second, please, Your Honor.

19 (Pause.)

20 Q Do you have a psychologist's name? Do you have the
21 psychologist's name, the school psychologist's name?

22 A The one that I particularly asked for was Constance
23 Schultz, and it's recorded as school psychologist.

24 Q Were you prevented from talking to her?

25 A No, I wasn't. I just wasn't able to get in contact

Annette Harriston Boette
Recross-examination by Mr. Gowdy

1 with her.

2 Q Thank you.

3 A Yes, sir.

4 MR. GOWDY: One question, Your Honor.

5 RECROSS-EXAMINATION

6 BY MR. GOWDY

7 Q Ms. Boette, are you aware of any -- you mentioned a
8 study earlier. Are you aware of any studies that indicated
9 that a 4-point deviation in an I. Q. test is causally linked
10 to premeditated murder?

11 A Absolutely not.

12 Q Thank you, Ms. Boette.

13 A Yes, sir.

14 THE COURT: Thank you, ma'am. You may step down.

15 THE WITNESS: Yes, sir.

16 THE COURT: Ladies and gentlemen, we are going to
17 recess for the evening.

18 So as you leave remember my caution. You still can't
19 discuss the case in any fashion.

20 Have a good evening. We will see you at nine o'clock
21 in the morning; nine o'clock in the morning. Have a good
22 evening.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: Any matters before we recess?

1 MR. ALLEN: We would ask Ms. Boette be excused.

2 THE COURT: She may be.

3 MR. GOWDY: No objection from the state, Your Honor.

4 (Whereupon, the witness was excused.)

5 THE COURT: All right. Court is in recess until nine
6 o'clock in the morning.

7 END OF PROCEEDINGS MARCH 8, 2004

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Cynthia Templeton
Direct examination by Mr. Allen

1 (Proceedings March 9, 2004)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Any matters to address before the jury is
5 brought in?

6 MR. GOWDY: Not by the state, Your Honor.

7 MR. ALLEN: No, Your Honor.

8 THE COURT: Bring them in.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Good morning, ladies and gentlemen. I hope
12 you had a good evening.

13 As you know, when we recessed yesterday the defense was
14 still in the midst of their presentation, so we will
15 continue with that presentation this morning.

16 Mr. Allen.

17 MR. ALLEN: Thank you, Your Honor. I would call
18 Cynthia Templeton to the stand.

19 CYNTHIA TEMPLETON, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. ALLEN

22 Q You are Cynthia Templeton.

23 A Yes.

24 Q And you are Eric's mother.

25 A Yes, sir.

Cynthia Templeton
Direct examination by Mr. Allen

- 1 Q Eric is how old?
- 2 A He is 21.
- 3 Q Ms. Templeton, I want to talk a little bit about Eric's
- 4 background today. Eric was born in what year?
- 5 A He was born May the 19th, 1985, I think, '82, '82.
- 6 Q You are a little nervous today?
- 7 A A lot.
- 8 Q Ms. Templeton, can you describe the household in which
- 9 Eric was born? In other words, who all lived in the
- 10 household at the time Eric was born?
- 11 A I had another son.
- 12 Q And his name is what?
- 13 A Robert Daniel Amick. I called him Danny.
- 14 Q Was there someone else in the household?
- 15 A Eric's dad. We lived together for about five years.
- 16 Q His name is Randall Morgan?
- 17 A Randall Dale Morgan.
- 18 Q How many years were y'all living together before Eric
- 19 was born? How long were you living before Eric was born?
- 20 A Close to three years, approximately. I don't know
- 21 exactly.
- 22 Q Okay. Now, you are going to have keep your voice up so
- 23 I can hear you way over here.
- 24 A Okay.
- 25 Q Okay. Now, were you and Mr. Morgan ever married?

Cynthia Templeton
Direct examination by Mr. Allen

- 1 A No, sir.
- 2 Q You had a son, you said, Robert Daniel Amick, right?
- 3 A Yes, sir.
- 4 Q And you called him Danny.
- 5 A Yes, sir.
- 6 Q And how old was Danny when Eric was born?
- 7 A Six.
- 8 Q Did Danny die?
- 9 A Yes, sir.
- 10 Q And what effect did his death have on the family? In
- 11 other words, did that have an effect between you and Randall
- 12 Morgan?
- 13 A Yes, sir.
- 14 Q What effect did that have?
- 15 A I couldn't handle it and I run him off.
- 16 Q You ran who off?
- 17 A Randy. We split up, ever how you want to say it. We
- 18 just split up because my nerves went really bad, and I
- 19 didn't want to be around nobody.
- 20 Q After you and Randall split up did you take a court
- 21 action to get custody or child support?
- 22 A For Eric?
- 23 Q Yes, ma'am, for Eric.
- 24 A Yes, sir.
- 25 Q Did you get custody of Eric?

Cynthia Templeton
Direct examination by Mr. Allen

1 A Yes, I did.

2 Q Did you get child support or were you ordered to
3 receive child support from Randall?

4 A Yes, sir.

5 Q Do you recall how much you were supposed to receive?

6 A I think it was about like \$35 a week. It wasn't a
7 whole lot.

8 Q Did Randall Morgan pay child support?

9 A I don't think he paid it very much. Maybe one or two
10 times is all he ever paid, and that was at the start of it.

11 Q Okay. Did you try to do anything to get child
12 support --

13 A Yes, sir.

14 Q -- from Randall? But just were not successful?

15 A No, sir.

16 Q Was there a time in which you left Eric with his
17 grandmother, Mildred Morgan?

18 A Yes, sir.

19 Q Tell us about that, please.

20 A I had an opportunity to go to trucking school and I had
21 my -- my grandma was real sick. And I had asked Randy's
22 mother could she watch him. It was like a 4-week course.
23 And she said, sure, she would watch him.

24 So I took him up there and told her I would call every
25 day, which I did the first two days. And then she told me

Cynthia Templeton
Direct examination by Mr. Allen

1 that he was gone with his daddy.

2 When I went to go get him they had done left with him.

3 I think they went to Virginia. And while I was gone they
4 went back to court and said I abandoned Eric, but I didn't.

5 I didn't abandon him.

6 Q When you were at trucking school, where was that?

7 A In Pensacola, Florida.

8 Q Did you stay out of the Spartanburg area for some time?

9 A It was only four weeks.

10 Q Did you come back to live in Spartanburg County?

11 A Yes, sir.

12 Q Did you ever try to get custody or visitation or
13 anything of Eric after that?

14 A Yes, I did.

15 Q What happened?

16 A I went up. They told me that they had custody of Eric
17 and that I was not allowed to see him because of what they
18 did in court. And I went to the clerk of court up here in
19 Spartanburg and asked them to give me another court hearing,
20 and they did. They give me another one.

21 Q And what happened? Did you get custody?

22 A No, sir. The judge told me I could see him every other
23 weekend from like 6:00 in the afternoon on Friday until
24 6:00 in the afternoon on Sunday.

25 Q Did you ever see him on the visitation?

Cynthia Templeton
Direct examination by Mr. Allen

- 1 A Yes, sir. I went and picked him up that first day.
2 And when I did, I left with him.
- 3 Q Why did you do that?
- 4 A Because I didn't want him to go back there. They was
5 beating on Eric and they was mean to him, and I seen that.
6 I seen bruises on the back of his legs where they had
7 whipped him. And that was not right. And I could not see
8 me giving my son back to somebody that was going to be mean.
9 He never asked me if he could see Eric the whole time we was
10 separated. I would call up there and say do you want to see
11 your son. Well, I ain't got time, I'm busy.
- 12 Q When you say he, who are you talking about?
- 13 A Randy, his daddy.
- 14 Q Now, and when you say they were beating on him, who are
15 you talking about?
- 16 A Apparently Lori too, which was his new wife, Lori,
17 because when I picked Eric up he clung to me. He says,
18 mama, please don't let me ever go back there. I asked him.
19 I questioned him thoroughly. And he said they were beating
20 on him.
- 21 Q When you -- and you said you never took him back after
22 that visitation.
- 23 A No, sir. I didn't.
- 24 Q Where did you go with Eric?
- 25 A I went to my grandma's in Woodruff. I stayed down

Cynthia Templeton
Direct examination by Mr. Allen

1 there maybe a day and a half. Then I went to my brother's
2 in Columbia and stayed. And then, I don't know. It just
3 felt like in my heart that if they was going to anything,
4 they was going to do it, but I was coming back home. I was
5 going to make my home back where I was raised.

6 Q And when you say you went to your grandma's in
7 Woodruff, who? What was her name?

8 A Ms. Minni Bell Standridge. She's the lady that raised
9 me. My grandmother raised me.

10 Q Your grandmother raised you?

11 A Yeah.

12 Q And she has since passed away, is that correct?

13 A Yes, sir.

14 Q Did you come -- when did you come back to Spartanburg
15 County to live?

16 A Maybe a couple of months later. It wasn't that long.
17 I bought a trailer, and I moved it over not far from my
18 grandma, where she lived.

19 Q When you came back to Spartanburg County did you come
20 back with Eric?

21 A Yes, I did.

22 Q And did you go back to court to get any kind of order
23 of custody or support from Randy?

24 A No, sir, I didn't. As a matter of fact, I even called
25 Randy and asked him. I said are you going to prosecute me.

Cynthia Templeton
Direct examination by Mr. Allen

1 He says no. He said you got what you wanted.

2 MR. WILLINGHAM: Your Honor, I hate to object, but, if
3 you would, instruct the witness that she can testify to
4 things she said and not hearsay what other people may have
5 told her.

6 THE COURT: Mr. Allen, be sure that the questions you
7 ask her call for information that she knows of her own
8 personal knowledge and not what somebody else may have told
9 her.

10 Ms. Templeton, you understand that you can testify to
11 what you know or you saw, you heard, you experienced. But
12 under most circumstances you can't testify as to what
13 somebody else might have said. They can be called as a
14 witness if they want to testify about what they observed or
15 what they heard.

16 THE WITNESS: Okay.

17 Q Anyway, without going to specifics of what Randy said,
18 did you take him or did you go back to court to get an order
19 of custody or support or anything like that?

20 A No, sir.

21 Q Did you after you came back to Spartanburg County, did
22 you receive any support even on a voluntary basis from
23 Randall Morgan?

24 A No, sir.

25 Q Do you know if he visited Eric during this period of

Cynthia Templeton
Direct examination by Mr. Allen

1 time after you came back to Spartanburg County?

2 A No, sir.

3 Q You don't know or --

4 A No, sir. He never came around.

5 Q Let's go back a little bit.

6 At the time of Eric's birth were you employed?

7 A Yes, sir.

8 Q Where?

9 A Tietex.

10 Q Tell me about that. What did you do? What kind of job
11 was that?

12 A Tietex is a nonwoven company that makes material. And
13 I ran the blending room, which I had to bring the bales in
14 out of the warehouse, open them up and put them in the
15 hoppers and make sure all of the machines run properly.

16 Q And did you have any other jobs during the time that
17 Eric was growing up?

18 A Other than Tietex?

19 Q Yes, ma'am.

20 A I had a security job once. I can't think. I worked in
21 the mill for about five years. That's just a regular cotton
22 mill in the spinning room. I worked there for right at five
23 years.

24 Q You mentioned you went to trucking school. Did you
25 learn to become a trucker driver?

Cynthia Templeton
Direct examination by Mr. Allen

- 1 A I went to trucking school and got my license, and they
2 were transferring it over. At that point in time when I
3 come back, I didn't have Eric. You know, I couldn't get
4 Eric. And I never pursued it any more. I felt, you know, I
5 had to find my son first. My son come before going to work
6 or anything. So I stayed at my grandmother's.
- 7 Q The time in which you did not have Eric and that he was
8 apparently with his father, how long of a period of time was
9 that?
- 10 A Close to a year.
- 11 Q Were you married to any other -- were you ever married?
- 12 A Yes, sir.
- 13 Q To whom?
- 14 A Charles Wood and David Templeton.
- 15 Q Were you married before Eric was born?
- 16 A Yes.
- 17 Q And that was to Mr. Wood?
- 18 A Yeah. To Charles Wood.
- 19 Q And when in the life of Eric, either before or after he
20 was born, were you married to Mr. Templeton?
- 21 A It was right after. Let's see. Right after I came
22 back from trucking school, not long after that.
- 23 Q Were you divorced from Mr. Templeton?
- 24 A No. I'm still currently, I'm still currently married
25 to him. We just haven't been together in years.

Cynthia Templeton
Direct examination by Mr. Allen

- 1 Q Approximately how many years? Do you know?
- 2 A I'm saying 12 to 13 years, somewhere in there. I am
- 3 not really sure at this moment.
- 4 Q While Eric was growing up were there any other men in
- 5 his life as far as father figures?
- 6 A Eddie Godfrey. I was with him for 12 years.
- 7 Q And he lived in the household then for that period of
- 8 time?
- 9 A Eddie?
- 10 Q Yes, ma'am.
- 11 A Yes. We were together for about 12 years, around 12
- 12 years.
- 13 Q Any other men in Eric's life as a father figure?
- 14 A The guy across the street we call Papa Larry. It is
- 15 Larry Eubanks. He was more like a grandfather to Eric,
- 16 because he would get out there and work in the yard, and
- 17 Eric would go over and help him and sit and talk to Eric and
- 18 stuff like that.
- 19 Q Do you know where Mr. Eubanks is today?
- 20 A Yes, sir. He died.
- 21 Q Approximately when did he die?
- 22 A Last year.
- 23 Q Did Eric go to school?
- 24 A Yes, sir.
- 25 Q And what schools did he attend as far as you know?

Cynthia Templeton
Direct examination by Mr. Allen

- 1 A Elementary, Woodruff Elementary, Woodruff Middle School
2 and just a little bit of Woodruff High School.
- 3 Q Did he have any particular problems in school?
- 4 A Yes, sir.
- 5 Q What were those problems?
- 6 A He couldn't read and write.
- 7 Q Can he read at all?
- 8 A First grade and second grade levels. He's not -- he
9 can't read that well. He was premature when he was born,
10 and the doctors told me that he may have --
- 11 Q I don't think you can get into what the doctors told
12 you.
- 13 A Okay.
- 14 Q I am going to interrupt you there. But he can read
15 some. Is that what you are saying?
- 16 A Yes, sir.
- 17 Q Did he, was he in regular courses?
- 18 A Mostly he was. He was in some resource classes to help
19 him along.
- 20 Q Did you attend conferences with his teachers?
- 21 A Yes, sir.
- 22 Q What were the purpose of the resource classes?
- 23 A Well, to assess his study skills and see how far he had
24 come along from one point in time to another.
- 25 Q Other than those problems, did he have any other

Cynthia Templeton
Direct examination by Mr. Allen

1 problems in school?

2 A No, sir.

3 Q Did you, were you called to the school because of
4 behavioral problems with Eric?

5 A No, sir.

6 Q Do you know why Eric stopped attending school in about
7 the ninth grade?

8 A Yes, sir.

9 Q Tell me about that.

10 A Eric come home upset one day, and he said the principal
11 was upset with him.

12 Q I don't think you can get into what the principal said
13 or what Eric said the principal said.

14 A Okay. I went up there. And I had talked to the
15 principal. And they had put him in a class. I guess it's
16 some kind of resource class. And he had fell asleep. And I
17 wanted to know why he was falling asleep. And they said
18 because he's not doing anything. And it was to my
19 understanding that he goes to these special classes to
20 learn, to study, you know, not just sit there and not do
21 anything. And apparently he had fell asleep because he
22 didn't have anything to do. And I told the principal that I
23 was wanting to take him out of school if they wasn't going
24 to help him any more.

25 Q Well, did they? Was it your understanding they were

Cynthia Templeton
Direct examination by Mr. Allen

- 1 going to help him?
- 2 A No, sir.
- 3 Q So you took him out?
- 4 A Yes, sir.
- 5 Q Did you do anything about Eric's education after that?
- 6 A Yes, sir.
- 7 Q What did you do?
- 8 A They's a program called Cornerstone Christian School
9 where you can take a test. They see how much you know. And
10 then you have to write an essay. And then they will grade
11 you. And it's sort of like a high school diploma. And I
12 give him that test. I sent off for it.
- 13 Q How did you give him the test?
- 14 A Orally. I would read it off to him, and then he would
15 answer the questions.
- 16 Q And how would the questions be recorded?
- 17 A Excuse me?
- 18 Q How would the questions, or how would the answers to
19 the questions? Were they written down?
- 20 A You had like A, B, C, D. And I'd read the question
21 out, and then I would tell him the answers of what they make
22 like A, B, C and D and let him choose, and then he would
23 circle them.
- 24 Q Can you describe Eric's personality? What's Eric like?
- 25 A Eric's a quiet type. He don't get rowdy. He doesn't

Cynthia Templeton
Direct examination by Mr. Allen

1 get ill. And then ill as I'm saying, he doesn't get mad
2 real easy.

3 He takes a lot of things in stride, you know, just goes
4 along with. He don't bug you. Do you understand what I am
5 saying? He don't, he's not, he's not a child that is, how
6 do I want to say this? He minds very well. I mean, I never
7 had any discipline problems out of him.

8 He smarted off to me one time in his entire life and
9 got a spanking for it. And other than that he has never had
10 a spanking, I mean, because he never needed one. He would
11 always mind me.

12 I taught him manners and I taught him to be respectful.
13 I think those are important.

14 Q Do you love your son?

15 A Very much.

16 Q Do you know if Eric ever had a job?

17 A Yes, sir.

18 Q Where?

19 A He had one at the convenience store in Woodruff, I
20 think it's called Li'L Cricket, in the forks. He had a job
21 there stocking for a little while. I couldn't tell you
22 about, approximately, how long, maybe a couple of months.

23 And then he had a job with Blake Alverson, which is
24 American Hardwood Floors. He worked there for a time with
25 him.

Cynthia Templeton
Cross-examination by Mr. Willingham

1 Q One second, please.

2 (Pause.)

3 Q Ms. Templeton, just a few more questions.

4 Do you know if Eric has been in or has any convictions
5 in court for violent crimes?

6 A No, sir.

7 Q Did he get in fights as a teenager or as a child?

8 A No, sir.

9 Q Do you know if he was exposed to alcohol or drug use?

10 A Well, he wasn't exposed to it, but some friends of ours
11 would do, you know, a little bit of drinking and stuff like
12 that. But I tried to keep him away from stuff like that,
13 because that's not good for kids. You know, stuff like that
14 is just not good. I mean, it just, it warps their minds, is
15 what it does. You just don't need to be having kids in that
16 kind of situation. And I always tried to keep him from
17 that.

18 Q Would you like to see your son live?

19 A Yes. He's all I've got.

20 Q No other questions, Ms. Templeton.

21 CROSS-EXAMINATION

22 BY MR. WILLINGHAM

23 Q Ms. Templeton, you let me know when you are ready.

24 Okay?

25 A I'm ready.

Cynthia Templeton
Cross-examination by Mr. Willingham

- 1 Q I want to ask you a little bit about Mr. Morgan in
2 school. You indicated that he didn't read very well.
- 3 A Yes, sir.
- 4 Q Now, did you ever go see his resource teacher?
- 5 A Yes, sir.
- 6 Q I think that was Mr. Ernest Holiday, is that right?
- 7 A I don't remember. I don't remember his name.
- 8 Q Okay. Do you remember talking to his resource teacher?
- 9 A Somebody, yes, sir.
- 10 Q Do you remember talking to him about Eric's reading
11 level being on the seventh-grade equivalent?
- 12 A Possibly, but I don't remember at the moment.
- 13 Q Okay. And you said that Eric Morgan never gave you any
14 trouble.
- 15 A No, sir.
- 16 Q Well, how about the entering that store building at
17 Anthony's Pharmacy? Did you talk to him about that?
- 18 A Yes, sir.
- 19 Q And did you discipline him in any way about that?
- 20 A I grounded him.
- 21 Q Okay. How about from that time he got caught with
22 marijuana?
- 23 A That was just before all of this happened.
- 24 Q Right. I think he was in your car when he got
25 arrested.

Cynthia Templeton
Redirect examination by Mr. Allen

1 A Yes, sir.

2 Q Did you do anything at that point about that trouble?

3 A Yes.

4 Q Did you think he was entitled to a spanking for that,
5 ma'am?

6 A I didn't spank him.

7 Q What did you do then?

8 A I grounded him. When you get to a certain age I feel
9 like instead of spanking them you've got to ground them,
10 discipline in other areas, take certain things away from
11 them and show them that it's not right.

12 Q Thank you.

13 REDIRECT EXAMINATION

14 BY MR. ALLEN

15 Q Concerning the time that he was charged with that drug
16 store, do you know what happened to that case?

17 A No, sir.

18 Q Did you go, did you and Eric go to family court in
19 connection with that case?

20 A No, sir, we didn't go to family court as I can
21 remember. He had a fine to pay. I think that's what it
22 was. But I don't even remember if it was even about the pot
23 or whatever. I think it was because of his speeding. I'm
24 pretty sure.

25 Q I'm talking about the drug store.

Robert Simmons
Direct examination by Mr. Allen

- 1 A Oh, the drug store?
- 2 Q Yes, ma'am.
- 3 A That was in Woodruff.
- 4 Q Right.
- 5 A And we went to a little court thing, hearing, but I
- 6 don't remember what happened after that.
- 7 Q Thank you.
- 8 THE COURT: You may step down.
- 9 MR. ALLEN: Call Robert Simmons to the stand.
- 10 ROBERT SIMMONS, having been
- 11 first duly sworn, testified as follows:
- 12 DIRECT EXAMINATION BY MR. ALLEN
- 13 Q I'm going to ask you to speak up loud enough so that I
- 14 can hear way back here. All right?
- 15 A Yes, sir.
- 16 Q You are Robert Simmons.
- 17 A Yes, sir.
- 18 Q How old are you, Robert?
- 19 A Twenty-one.
- 20 Q And are you currently employed?
- 21 A Yes, sir.
- 22 Q Where are you employed?
- 23 A I'm in the Marine Corps Reserves and I work with Duke
- 24 Power. I mean, Davey Tree contracted to Duke Power.
- 25 Q You work with who, now?

Robert Simmons
Direct examination by Mr. Allen

- 1 A Davey Tree.
- 2 Q Davey Tree?
- 3 A Yes, sir.
- 4 Q What do you do for Davey tree?
- 5 A I am hired as a groundman and climber.
- 6 Q How long have you been in the Marine Corps Reserve?
- 7 A Going on about three years.
- 8 Q Do you have a rank or --
- 9 A Yes, sir, E-3, lance corporal.
- 10 Q Lance corporal, E-3?
- 11 A Yes, sir.
- 12 Q Do you know Eric Morgan?
- 13 A Yes, sir.
- 14 Q How do you know Eric Morgan?
- 15 A My mother and his mother worked together. And we went
- 16 to school together from probably about kindergarten. And we
- 17 were friends in and out of school all the way through
- 18 school.
- 19 Q Did you know him up to the time that he stopped going
- 20 to school?
- 21 A Yes, sir. I even knew him after he quit going to
- 22 school.
- 23 Q Even after that?
- 24 A Yes, sir.
- 25 Q So you stayed friends with him all the way up to the

Robert Simmons
Direct examination by Mr. Allen

1 time he was arrested?

2 A Yes, sir. I didn't see him for a few months before
3 that but maybe one time, but I was still friends with him.

4 Q Describe Eric as you know him.

5 A He was always a good friend for me. And any time I
6 needed help with anything, he would always be there to help
7 me.

8 If I needed to do some work on a car or needed help
9 just doing anything, really, all I had to do was ask him,
10 and he would be more than happy to come and help me.

11 And really that's it, I mean. He was just always
12 around for me if I ever needed anything.

13 Q Growing up did you know if Eric got into fights with
14 other people?

15 A I never really seen him get into any fights, so.

16 Q Was he -- what about his demeanor, the way, the manner
17 that he acts?

18 A He was always quiet. I mean, he would in school or out
19 of school if me or some of his other closer friends were
20 around, he would talk to us; or outside of school we stuck
21 around and played around. But if he was around somebody he
22 didn't know or something like that, he was just quiet. He
23 was shy.

24 Q Do you know anything about Eric's abilities with his
25 subjects at school? I am not asking you as a teacher. I am

Robert Simmons
Cross-examination by Mr. Willingham

1 just asking you as an observer.

2 A He couldn't really read real well. He needed help
3 reading like taking tests and things like that. He would
4 try. He just couldn't comprehend it, I guess. But it was
5 like if he was doing something, a physical task, it was no
6 problem for him if you told him specifically what needed to
7 be done.

8 Q How was he around adults?

9 A Every time I was around him or he came over to my house
10 or we was at one of our other friend's house, he was always
11 yes, ma'am, no, ma'am, yes, sir, no, sir. He was real
12 polite. He never caused any problems or anything.

13 Q Did he ever need to be corrected around adults when you
14 were with him?

15 A No, sir. Sometimes it would be him correcting us.
16 Like if we were told to do something, we would say, well, we
17 would get it in a minute. He would say, he would tell us,
18 to come on and go ahead and do it and get it done. So if he
19 was told to do anything, he did it right then instead of
20 just waiting around.

21 Q Thank you, Robert.

22 CROSS-EXAMINATION

23 BY MR. WILLINGHAM

24 Q Mr. Simmons, you said you are in the Marine Corps
25 Reserve.

Robert Simmons
Cross-examination by Mr. Willingham

- 1 A Yes, sir.
- 2 Q And you work at Davey Tree.
- 3 A Yes, sir.
- 4 Q How long have you worked at Davey Tree?
- 5 A Probably going on about eight months now.
- 6 Q Where did you work before that?
- 7 A I worked at, I think it was called Spartan Buff for a
8 couple of months before that. And then for probably a
9 little over a year I worked at the Michelin plant through
10 Pindrum in Spartanburg when I got home from training in the
11 Marines.
- 12 Q So you went into the Marines right after high school?
- 13 A Yes, sir.
- 14 Q How long were you gone to the Marines?
- 15 A I was probably gone through boot camp training and
16 school for about eight months on active duty.
- 17 Q And when you came back you got a job.
- 18 A Yes, sir.
- 19 Q And you had some form of work ever since then.
- 20 A Yes, sir.
- 21 Q Okay. You said Eric Morgan helped you.
- 22 A Yes, sir.
- 23 Q Y'all were friends.
- 24 A Yes, sir.
- 25 Q Is it fair to say that you would have helped him too --

Dennis Cothran
Direct examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q -- if he would have needed money?
- 3 A Yes, sir.
- 4 Q If you had a job you would have helped him.
- 5 A Yes, sir.
- 6 Q If he needed somewhere to stay --
- 7 A Yes, sir.
- 8 Q -- you would helped him with that, wouldn't you?
- 9 A Yes, sir.
- 10 Q You would have done anything you could to have helped
- 11 him.
- 12 A Yes, sir. He was the same way.
- 13 Q Thank you.
- 14 MR. ALLEN: No other questions.
- 15 THE COURT: You map step down.
- 16 MR. ALLEN: Call Dennis Cothran to the stand.
- 17 DENNIS COTHAN, having been
- 18 first duly sworn, testified as follows:
- 19 DIRECT EXAMINATION BY MR. ALLEN
- 20 Q You are Dennis Cothran.
- 21 A Yeah.
- 22 Q If you would, speak up loudly so I can hear you.
- 23 A Yeah. I am Dennis.
- 24 Q Yes. You are Dennis. How old are you, Dennis?
- 25 A Nineteen.

Dennis Cothran
Direct examination by Mr. Allen

- 1 Q Nineteen. Do you know Eric Morgan?
- 2 A Yeah.
- 3 Q How do you know Eric Morgan?
- 4 A He was one of my friends from the time I moved from
- 5 Laurens County over to Woodruff.
- 6 Q And how long would that have been? Do you remember how
- 7 old you were when you moved?
- 8 A I was 12. It was almost eight years ago.
- 9 Q When you moved from Laurens County, you said you moved
- 10 to Woodruff.
- 11 A Yeah.
- 12 Q And how did you get to know Eric?
- 13 A A couple of my cousins lived back behind him, and he
- 14 rode the bus I did and he talked to me when I got on the
- 15 bus. He was like you are the guy that just moved up the
- 16 road. And ever since then we have been friends.
- 17 Q Did he come and visit you at your home?
- 18 A He stayed at my house seven days a week, or I was over
- 19 at his.
- 20 Q When you stay stayed, you mean slept over too?
- 21 A He would sleep over or I would sleep over at his house.
- 22 It didn't matter.
- 23 Q Now, how well did you get to know Eric?
- 24 A Pretty well. I mean, he was my best friend.
- 25 Q Have you stayed in pretty much daily contact with him

Dennis Cothran
Direct examination by Mr. Allen

1 up until the time he was arrested?

2 A I talked to him every now and then, because when they
3 moved to Duncan, I didn't see him as much because I couldn't
4 drive or anything. So I was pretty much in Woodruff.
5 Whenever he came down, he would come by the house. Other
6 than that, I didn't see him all of the time. Maybe once or
7 twice a week.

8 Q When did they move to Duncan in connection with this
9 case, in other words, like when he was arrested?

10 A I don't know. He might have lived there maybe a year
11 or a year and a half, I guess, before this. I am not sure.

12 Q Okay. Probably a year or a year and a half, you say,
13 before he was arrested you think you moved to Duncan.

14 A Probably.

15 Q Now, describe Eric for us.

16 A What do you mean? How do you want me to describe him?
17 What kind of person he was?

18 Q What kind of person was Eric?

19 A He was probably the nicest person I had ever met. I
20 mean, I was always told to say yes, ma'am and no, ma'am, but
21 I never did it, and he always rode my case about it until I
22 would. He always told me not to be disrespectful to my mom,
23 because I always talked back. He always got on me about
24 that. He was basically like a big brother.

25 Q Is Eric -- what about his manner or his demeanor?

Dennis Cothran
Direct examination by Mr. Allen

1 A What do you --

2 Q Is he loud; is he quiet?

3 A Quiet. He keeps to himself most of the time. I mean,
4 he didn't start no problems with anybody. If you talked to
5 him, he would talk back.

6 Q Were you and Eric, did you attend the same schools?

7 A Yeah. He was a grade above me. Up until I went to the
8 ninth grade we were in one class together.

9 Q Do you recall which class that was?

10 A Freshman focus.

11 Q Freshman focus?

12 A Yeah. Where like when you take -- they have PACT tests
13 and stuff. If you don't do so well on them, they put you in
14 a class where they just teach you math and English. Me and
15 him and Robert, as a matter of fact, were all in the same
16 class.

17 Q Did you notice, and I'm not talking as a qualified
18 teacher or anything, but did you notice if Eric had any
19 particular difficulties with the subjects?

20 A He wasn't the best at it. I mean, he can't read well
21 enough to understand the questions.

22 Like if you wrote him a note, you'd have to read it to
23 him, because he's not going to understand what you wrote.

24 Like I read the driver's manual to him so he could get his
25 license because he couldn't understand it.

Dennis Cothran
Cross-examination by Mr. Bulsa

- 1 Q When did you do that?
- 2 A When?
- 3 Q Yes, sir.
- 4 A He was probably 15 because he was going for his permit.
- 5 Q Was this during the time that he was living in Duncan?
- 6 A No. This was during the time he was living in
- 7 Woodruff.
- 8 Q How was his mechanical ability or his ability with his
- 9 hands?
- 10 A If you showed him how to do it he could pretty much do
- 11 it. He built the building beside his house that we always
- 12 hung out in. I mean, as long as he knew how to do it, he
- 13 was fine.
- 14 He just, the only problem he had, he wasn't that great
- 15 academically. If he had to build it or anything, there
- 16 wasn't nothing to it as long as you showed him how to do it.
- 17 Q Mr. Cothran, one other thing. Would you like to see
- 18 Eric live?
- 19 A Yeah.
- 20 Q No other questions, Mr. Cothran.
- 21 CROSS-EXAMINATION
- 22 BY MR. BULSA
- 23 Q You say you went to school with Eric.
- 24 A Yeah. He was a grade above me.
- 25 Q And how far did he go in school?

Dennis Cothran
Cross-examination by Mr. Bulsa

- 1 A How far did he go in school?
- 2 Q Yes, sir.
- 3 A Ninth grade.
- 4 Q He got through nine grades of school.
- 5 A He dropped out in the ninth grade.
- 6 Q You weren't in his classes to read for him then, were
7 you?
- 8 A Say that again.
- 9 Q You weren't in his classes to read for him, were you?
- 10 A We sat beside each other in freshman focus. I'd read
11 some of the questions to him if he couldn't understand them.
- 12 Q And how about other classes?
- 13 A No. I wasn't in any of his other classes.
- 14 Q And you didn't stand beside him when he got his
15 driver's license, did you?
- 16 A No.
- 17 Q Did you graduate?
- 18 A No. I dropped out in the eleventh grade.
- 19 Q What are you doing now?
- 20 A I'm working with my grandfather.
- 21 Q What do you do?
- 22 A I labor for him and help him lay rock.
- 23 Q Lay rock?
- 24 A Yeah, a rockmason.
- 25 Q Did you know Mr. Morgan when he got caught with

Tina Hunt
Direct examination by Mr. Allen

1 marijuana?

2 A Yeah, because it was after the time I was 12 years old.

3 So, yeah, I knew him.

4 Q And you knew him when he got arrested for burglary.

5 A I didn't know he got arrested for burglary, not unless
6 you're talking about what's happening now.

7 Q This is the pharmacy in Woodruff.

8 A Nah. I didn't know that even happened. But, yeah, I
9 knew him.

10 Q Thank you.

11 MR. ALLEN: No other questions.

12 THE COURT: You may step down.

13 MR. ALLEN: Call Tina Hunt to the stand.

14 TINA HUNT, having been first
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. ALLEN

17 Q You are Tina Hunt.

18 A Yes, sir.

19 Q Are you Dennis Cothran's mother?

20 A Yes, sir.

21 Q Do you know Eric Morgan?

22 A Yes, sir.

23 Q How is it that you got acquainted with Eric Morgan?

24 A When we moved to Woodruff he started coming over and
25 hanging out with Dennis, and they would stay together most

Tina Hunt
Direct examination by Mr. Allen

1 of the time.

2 He would spend the night over at my house. Dennis
3 would stay over at his house. We would take him on vacation
4 with us. And he was just around most of the time.

5 Q Was there a period of time that he stopped coming
6 around?

7 A After they moved out of Woodruff he didn't come to my
8 house a lot, but he did stop by a couple of times during the
9 week. And he would on Sunday mornings or Wednesday nights
10 while we were at church, he would come to church and visit
11 with us after the service.

12 Q Did he do that on a regular basis?

13 A He did it about two or three times a month.

14 Q And did he do that up until the time that you heard
15 that he was arrested for this charge --

16 A Yes, sir.

17 Q -- or these charges rather?

18 A Yes, sir.

19 Q So how long do you think prior to his arrest, how long
20 do you think you had an opportunity to get to know Eric? In
21 other words, when did you move? Let me just ask you. How
22 long have you known Eric?

23 A I've known Eric since Dennis was about 12 or 13 years
24 old.

25 Q You said 12 or 13?

Tina Hunt
Direct examination by Mr. Allen

1 A Uh-huh.

2 Q Since Dennis was 12 or 13?

3 A Since Dennis was 12 or 13.

4 Q And he is 19 now.

5 A Right.

6 Q Could you describe Eric Morgan for us, please?

7 A Every time I was around Eric he was real polite. He
8 was always, yes, ma'am, no, ma'am. He respected anything I
9 said. Like I knew, I knew he smoked cigarettes, and my son
10 did. And he knew I didn't allow it in my home, and he
11 wouldn't smoke around my house. He wouldn't smoke in my
12 home. He would go out to the road and smoke. He wouldn't
13 do it around me.

14 He respected my wishes, and any time I would ask him to
15 do something, he would do it. If I'd ask Dennis to do
16 something, Dennis would wait around, I'll do it later. Eric
17 would tell him come on, man, let's get up and go do it and
18 get it done and get it over with.

19 Q What kind of stuff would you ask him to do?

20 A Like clean his room, take the trash out, just pick up
21 stuff around the house.

22 Q Did Eric stay with you or live with y'all for a period
23 of time?

24 A He didn't actually live with us, but he was there a
25 lot. He would spend the night a couple of days a week, and

Tina Hunt
Cross-examination by Mr. Willingham

1 then Dennis would go stay with him a day or two.

2 Q What about Eric's demeanor, the manner in which he
3 acts? Is he loud?

4 A No. Eric was always real quiet. I mean, he didn't
5 really talk out or anything. Dennis would be the one I
6 would have to call down.

7 Q Did you have any problems out of Eric?

8 A No, sir.

9 Q Do you know if Eric, and if you don't know that's fine,
10 do you know if Eric got into any fights as he was younger?

11 A None that I am aware of.

12 Q Would you like to see Eric live?

13 A Yes, I would.

14 Q Thank you, Ms. Hunt.

15 CROSS-EXAMINATION

16 BY MR. WILLINGHAM

17 Q Ms. Hunt, did you know Mr. Morgan right up to May 3rd
18 of 2000?

19 A Yes, sir.

20 Q Did you have the contact that you are testifying to the
21 jury about, daily contact, with Eric Morgan up to May of
22 2000?

23 A No, sir, not a daily contact after they moved to
24 Duncan.

25 Q And when did that stop? When did the daily contact

Tina Hunt
Cross-examination by Mr. Willingham

- 1 stop?
- 2 A I think it was like about two years before this
- 3 happened.
- 4 Q Okay. During that two years before that happened how
- 5 often would you see Eric Morgan?
- 6 A Probably about two or three times a month.
- 7 Q Did he still ever stay at your house?
- 8 A No, sir.
- 9 Q Why not?
- 10 A I'm not sure.
- 11 Q Okay. If he had needed to stay at your house, you
- 12 would have let him.
- 13 A Yes, sir.
- 14 Q And if he had needed money in May of 2000 you would
- 15 have helped him.
- 16 A Yes, sir.
- 17 Q So you have been in Woodruff since '82.
- 18 A I have been in Woodruff all of my life.
- 19 Q You been in Woodruff all of your life.
- 20 A Yeah.
- 21 Q You ever been to the Max Saver on 101?
- 22 A Yes, sir.
- 23 Q Did you ever meet Jerry Smith?
- 24 A No, sir. If I did, I don't know I did.
- 25 Q Thank you.

Bobby Richards
Direct examination by Mr. Allen

1 MR. ALLEN: No other questions of Ms. Hunt.

2 Call Bobby Richards.

3 BOBBY RICHARDS, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. ALLEN

6 Q You are Bobby Richards.

7 A Yes, sir.

8 Q And are you related to Dennis Cothran?

9 A Yes, sir. He is my grandson.

10 Q And Tina Hunt is your --

11 A Daughter.

12 Q How are you employed, Mr. Richards?

13 A I am a stonemason.

14 Q How long have you done that work?

15 A Off and on ever since 1981.

16 Q Did you -- how were you employed before that?

17 A Well, I worked in textile as a loom fixer, and I sold
18 insurance for Atlantic Coast Life and Liberty Life.

19 Q Do you know Eric Morgan?

20 A Yes, sir.

21 Q How is it that you got to know Eric Morgan?

22 A Through my grandson, Dennis.

23 Q What do you mean by that?

24 A Well, they stayed together a lot. They come to my
25 house. They used to spend the weekends at my house. We

Bobby Richards
Direct examination by Mr. Allen

1 would go to church on Sunday. Eric would go to church with
2 us on Sunday. I was over the youth group at the church and
3 I was their Sunday school teacher. And they was always,
4 they was always there on Sunday morning and Sunday night.

5 Q You say that they came over to your house. What
6 community do you live in?

7 A I live in Youngs Community.

8 Q Is that part of --

9 A Over in Laurens County right across the Enoree River,
10 as soon as you cross the river.

11 Q How long have you known Eric?

12 A Well, when him and Dennis started running around
13 together when they moved over, when Dennis and them moved in
14 Woodruff. And they have been coming to my house ever since,
15 you know, up until he moved out of town.

16 Q Until who moved out of town?

17 A Eric.

18 Q And you say he moved out of town. He moved out of what
19 town?

20 A Moved out of Woodruff.

21 Q Well, approximately how old do you think Dennis was
22 when they started running around together?

23 A He was somewhere 11 or 12 years old, somewhere in that
24 neighborhood.

25 Q Dennis was?

Bobby Richards
Direct examination by Mr. Allen

1 A Yes, sir.

2 Q All right. Did you stop? Was there a period of time
3 you had stopped seeing Eric, or Eric did not come over as
4 often?

5 A Well, you know, as long as him and Dennis run around
6 together and Dennis come to the house, he come with him.
7 But, you know, I can't tell you no specific times. You
8 know, I just know when they was running around together they
9 spent the night at our house on the weekends.

10 And we carried Eric and Dennis to the beach. We always
11 carried the grandkids to the beach before they started back
12 to school. And we always allowed the grandkids to invite
13 one friend. And one year Dennis invited Eric, and we
14 carried Eric to the beach with us.

15 Q Do you know what year that was or about how old Dennis
16 was?

17 A Sir, I wish I could say what year it was, but I can't
18 remember what year it was.

19 Q Can you tell me approximately how old you think Dennis
20 was when that happened? If you can't, that's fine.

21 A Approximately 13 or 14, something like that.

22 Q Okay. Describe Eric Morgan for us. What kind of kid
23 was he?

24 A Well, as long as he was around my house he was as
25 polite as anybody could be. I mean, it was all -- every

Bobby Richards
Direct examination by Mr. Allen

1 time I said something to him or something it was always yes,
2 sir and no, sir. He never did have a whole lot to say
3 unless you said something to him. But he was always as
4 polite to me as he could be.

5 Q Was there a time that you had to either discipline or
6 correct him while he was over at your house or at the beach
7 or anything like that?

8 A No, sir. I never had to discipline him, no, sir. He
9 never caused no trouble at my house.

10 Q Have you ever -- do you know whether or not that he had
11 fights? If you don't know, that's fine.

12 A No, sir. I don't know of any he ever got in that I
13 know of.

14 Q How long was it that Eric would go to church with y'all
15 or attend the youth group with you?

16 A It was usually about every week.

17 Q Did he do that all of the way up to the time he was
18 arrested?

19 A Well, now, I don't -- no, sir. As long as he run
20 around with Dennis is when he come. When he come to my
21 house is when he went to church. Approximately how long, I
22 can't tell you. I don't, I don't really know.

23 Q Was there a period of time before you heard he was
24 arrested that he had stopped doing that on a weekly basis?

25 A Yes, sir.

Bobby Richards
Cross-examination by Mr. Bulsa

1 Q Do you know approximately how long he had stopped going
2 there on a weekly basis before you heard he was arrested?

3 A No, sir, I don't.

4 Q Did you -- how did you become aware Eric was arrested
5 and charged with these very serious charges?

6 A I just seen his picture on the news. That's when I
7 found out about it.

8 Q Did you see a news clip where he said something to the
9 cameras?

10 A No, sir. I just seen his, I just seen his picture, and
11 it didn't, you know, the appearance he had didn't act like
12 the Eric I knew. I mean, you know, just appearance. That's
13 all I can say. I don't know.

14 Q Would you like to see Eric live?

15 A Yes, sir, I would.

16 Q Thank you, Mr. Richards.

17 CROSS-EXAMINATION

18 BY MR. BULSA

19 Q Mr. Richards --

20 A Yes, sir.

21 Q -- had you ever been in the Max Saver?

22 A Yes, sir.

23 Q Did you know Mr. Smith?

24 A If I knew him, you know, I just, I might have seen him,
25 I've been there. I bought stuff there. And I used to --

Bobby Richards
Cross-examination by Mr. Bulsa

- 1 they used to have a restaurant in there. I used to go in
2 there and eat a lot.
- 3 Q Friendly people?
- 4 A To me they was fine people, yes, sir.
- 5 Q I think you testified that you welcomed Mr. Morgan into
6 your home.
- 7 A Yes, sir. I did.
- 8 Q Took him to the beach.
- 9 A Yes, sir.
- 10 Q Took him to the beach; took him to church.
- 11 A No. It wasn't with the church, just with my family.
- 12 Q But you took him when he would visit.
- 13 A When he visited my home, yes, sir.
- 14 Q So it's safe to say you would have welcomed him into
15 your home if he needed a place to stay.
- 16 A Yes, sir. I would have.
- 17 Q Did he ever come and ask you for a place to stay?
- 18 A No, sir, he didn't.
- 19 Q And you have been employed in the same business for
20 over 20 years.
- 21 A Yes, sir.
- 22 Q And is it safe to say you would have given Mr. Morgan a
23 job if he had asked for one?
- 24 A Yes, sir. If I needed anybody, I would have, yes, sir.
- 25 Q If he had come to you asking for work --

Bobby Richards
Cross-examination by Mr. Bulsa

- 1 A Yes, sir. I would have.
- 2 Q -- would you have helped him out?
- 3 A Yes, sir, I would have.
- 4 Q I think you said it was about two years before this
- 5 happened, this incident happened, that you kind of lost
- 6 touch with him.
- 7 A Yes, sir.
- 8 Q He moved to Duncan.
- 9 A Yes, sir.
- 10 Q He moved to Duncan with his mother.
- 11 A Well, I reckon. I don't know. I can't answer that
- 12 because I don't know.
- 13 Q And in those two years you didn't have much contact
- 14 with him.
- 15 A No, sir. I didn't.
- 16 Q And then you saw him on the video and you said he had
- 17 changed.
- 18 A Yes, sir. Well, I didn't, I didn't say he had changed.
- 19 I said he didn't have the appearance of the Eric that I
- 20 knew, you know.
- 21 Q Well, is it safe to say that he did change in those two
- 22 years?
- 23 A Well, I don't -- you know, I didn't have any contact
- 24 with him, so I don't know.
- 25 Q Okay. Thank you.

Paul Gilliam
Direct examination by Mr. Allen

1 MR. ALLEN: No other questions, Your Honor.

2 THE COURT: You may step down.

3 MR. ALLEN: Call Paul Gilliam to the stand.

4 PAUL GILLIAM, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. ALLEN

7 Q You are Paul Gilliam.

8 A Yes.

9 Q Mr. Gilliam, how are you employed?

10 A I am a teacher in Spartanburg District Four.

11 Q And specifically what school are you a teacher?

12 A Woodruff Middle.

13 Q Do you know Eric Morgan?

14 A Yes.

15 Q How did you get to know Mr. Morgan?

16 A He was a student in my class several years ago.

17 Q In what grade was he when you taught him?

18 A I believe it was the eighth grade, and I say I believe
19 because there was a point that we were in junior high school
20 and we were swapping over into a middle school. So I
21 believe it was in the eighth grade.

22 Q At the time that he was in your classes what school
23 would that have been?

24 A That would have been Woodruff Middle School, not the
25 junior high school.

Paul Gilliam
Direct examination by Mr. Allen

- 1 Q Is Woodruff Middle and Woodruff Junior High School
2 essentially the same school or the same physical location?
- 3 A Yes.
- 4 Q Just changed the name a little bit?
- 5 A Yes, sir.
- 6 Q And what subjects did you teach Eric Morgan?
- 7 A The majority of the time I teach social studies. So I
8 believe when I had Eric it would have been social studies,
9 but it could have been for a short period of time language
10 arts.
- 11 Q And you are not sure which one today?
- 12 A I'm certain of the social studies, but he could have
13 also been in my language arts class.
- 14 Q But you're not sure about that. Is that what you are
15 saying?
- 16 A No.
- 17 Q Even though you taught him in one social studies class
18 and possibly even language arts, did you have an occasion,
19 or as a teacher at that school would you see or observe Eric
20 Morgan on other occasions?
- 21 A In the hallways and at different functions or
22 activities in the school building, yes.
- 23 Q Can you describe Eric Morgan for us as far as what you
24 could observe?
- 25 A As a teacher or -- Eric had difficulties with reading

Paul Gilliam
Direct examination by Mr. Allen

1 as has already been established.

2 He would often find the subject matter difficult to
3 understand, and I believe at the time he had access to a
4 resource teacher, so that if anything he didn't understand
5 in class, he could get extra help with the resource teacher
6 if I was unavailable or if I could not attend to him at the
7 time.

8 Q You indicated he had problems with reading. What kind
9 of problems did you notice that he had with reading?

10 A Well, our textbooks are written at a certain grade
11 level, eighth grade. And sometimes the language -- the text
12 of the material is difficult to understand. And if you
13 initially have a problem with the just reading, it becomes
14 more difficult. So, you know, those were the things that I
15 could observe or that I could say stand out in my mind as a
16 teacher.

17 Q What about his ability to take tests in your class,
18 specifically?

19 A Same thing. The tests should have been or were
20 designed for the grade level.

21 There were times though that material was difficult to
22 understand. And knowing this after some time with him, you
23 know, certain tests were made that were, had multiple
24 responses or where you could just choose A through E or on a
25 number of occasions, or true or false, because an extended

Paul Gilliam
Direct examination by Mr. Allen

1 response answer wasn't something that you were going to get
2 out of him if you wanted to cover an entire concept.

3 Q When you say extended answers, is that what some people
4 may call a discussion question?

5 A Yes, yes.

6 Q Why would you not want to do that with someone like
7 Eric?

8 A Well, you would like for them to meet certain degrees
9 of success before they become frustrated and just turn off
10 to the learning; and therefore it's in your best interest to
11 design tests that the majority of your students can take,
12 and that would be inclusive of Eric.

13 Q Now, when you taught him in social studies, was that a
14 regular source? In other words, was he also with regular
15 students?

16 A Yes.

17 Q Was his class not full of or was it -- every student
18 was not a resource student, in other words?

19 A That's correct.

20 Q Did you assign projects for Eric and any of the other
21 students to do as well?

22 A Yes.

23 Q How did he do on the projects?

24 A The projects would prove to be difficult if they
25 involved a lot of written reading, writing material. But if

Paul Gilliam
Direct examination by Mr. Allen

1 it was something that could -- he could understand like math
2 and measurements and other things that were pretty easy to
3 connect to, general knowledge things, he could perform
4 pretty much as average as anyone else in the class.

5 Q What about his demeanor in class? Did you, do you have
6 any memory of that?

7 A Very quiet most of the time. But, as any other student
8 in a classroom, sometimes, you know, they will step out of
9 that role and play another role as far as sometimes
10 clowning, and that didn't happen often. If he was talking
11 and I needed his attention, I would say Eric, and he would
12 say yes, sir, and he would be quiet and settle down.

13 Q So when you would talk to him what would happen then?

14 A He would say yes, sir. And then I would generally say
15 whatever it is I wanted him to do, and he would say yes,
16 sir. And then he would do it.

17 Q Would he then immediately return to that clowning role
18 or messing around or would he --

19 A No. He would settle down.

20 Q How would that compare to other students?

21 A That's pretty much above average.

22 Q What do you mean by pretty much above average?

23 A If you have not been in a classroom recently, then you
24 don't understand that pretty much the average is to talk
25 while the teacher is talking or try to outtalk a teacher.

Paul Gilliam
Cross-examination by Mr. Bulsa

1 And that's today. But, you know, even a little bit of that
2 was exhibited when Eric was one of my students. But he
3 would settle down.

4 Q Do you have any opinion about like his demeanor as far
5 as manners or rudeness or anything like that?

6 A He was very respectful, very respectful, quiet for the
7 most part. And I would even say shy at times.

8 Q Mr. Gilliam, would you like to see Eric live?

9 A I would.

10 Q Thank you, sir.

11 CROSS-EXAMINATION

12 BY MR. BULSA

13 Q Mr. Gilliam, do you recall when you taught Mr. Morgan,
14 what year?

15 A No.

16 Q Did you go back and refresh your memory with any
17 records?

18 A No. I made the attempt, but the records were not
19 available.

20 Q Okay. But it was the eighth grade?

21 A It was the eighth grade.

22 Q Now, how many students were in your class?

23 A At that time probably close to 30.

24 Q And Woodruff had some resource classes.

25 A Yes.

Paul Gilliam
Cross-examination by Mr. Bulsa

- 1 Q Okay. Safe to say that they didn't have these resource
2 classes for just one student?
- 3 A That's correct.
- 4 Q So there were more students than just Mr. Morgan that
5 had trouble.
- 6 A Right.
- 7 Q Would that be safe to say that in your class there were
8 more students than just Mr. Morgan that had trouble?
- 9 A That fluctuates from year to year. Because of the
10 teaming that we do in schools, sometimes one team has more
11 resource students than the other.
- 12 Q Is it safe to say you usually had more than just one?
- 13 A Yes.
- 14 Q You certainly wouldn't design a test around one
15 student.
- 16 A No.
- 17 Q And I think you testified about designing tests for
18 multiple choice and true-false answers --
- 19 A Right.
- 20 Q -- versus discussion type questions.
- 21 A Right.
- 22 Q Students still have to read the questions and answers,
23 don't they --
- 24 A Right.
- 25 Q -- to take the test? Did Mr. Morgan pass your class?

Paul Gilliam
Cross-examination by Mr. Bulsa

- 1 A I didn't see Eric the next year, so he probably did.
- 2 Q So he did well enough to make it from at least your
- 3 eighth grade class to another class.
- 4 A Right.
- 5 Q And I believe you said that the books were written on
- 6 an eighth grade level.
- 7 A Correct.
- 8 Q We've heard testimony that we know he at least had a
- 9 seventh grade reading level.
- 10 A Correct.
- 11 Q That's not uncommon, is it --
- 12 A No.
- 13 Q -- for students these days?
- 14 A Right.
- 15 Q So there are more students than just Mr. Morgan that
- 16 have lower than grade-level reading levels.
- 17 A That's correct.
- 18 Q I've got some records that date back to the
- 19 seventh grade that talk about his aptitude and talk about
- 20 his need to apply himself. How did Mr. Morgan apply himself
- 21 in your class?
- 22 A He attempted to work. He would attempt to do anything
- 23 that I assigned in the classroom, and I would say that's a
- 24 great part of applying himself.
- 25 Q And as long as he applied himself, he did reasonably

William Gregory
Direct examination by Mr. Allen

1 well, didn't he?

2 A Yes, sir.

3 Q Certainly well enough to move on to the next grade
4 level.

5 A Correct.

6 Q Were you disappointed to hear he left school?

7 A Yes.

8 Q Because if he had stayed in, he probably could have
9 finished.

10 A Possibly.

11 Q Thank you, Mr. Gilliam.

12 MR. ALLEN: No other questions of Mr. Gilliam, Your
13 Honor.

14 We call William Gregory to the stand.

15 WILLIAM GREGORY, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. ALLEN

18 Q You are William Gregory.

19 A Yes, sir.

20 Q Mr. Gregory, in what community do you live?

21 A Greer.

22 Q Greer, South Carolina?

23 A Yes.

24 Q I want you to make sure you keep your voice up so I can
25 hear you way over here.

William Gregory
Direct examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q How are you currently employed?
- 3 A Sand hardwood floors, Action Flooring.
- 4 Q You sand hardwood floors?
- 5 A Yes, sir, install and sand hardwood floors.
- 6 Q And you do that for Action?
- 7 A Action Flooring, Powdersville.
- 8 Q Did you once work at American Hardwood Floors?
- 9 A Yes, sir.
- 10 Q Do you recall when you worked for them?
- 11 A Well, I've been with Action Flooring five years, and
- 12 two years previous.
- 13 Q Was with American?
- 14 A American Hardwood Floors, yes, sir.
- 15 Q And do you know who owned or ran American Hardwood
- 16 Floors?
- 17 A Blake Alverson.
- 18 Q Blake Alverson. Do you know where Mr. Alverson is now?
- 19 A I think he lives in Panama City, Florida.
- 20 Q So you heard that he left the area?
- 21 A Yes, sir.
- 22 Q Do you know Eric Morgan?
- 23 A Yes, sir.
- 24 Q How did you get to know Mr. Morgan?
- 25 A He worked with me and Blake. He was an employee for

William Gregory
Direct examination by Mr. Allen

1 American Hardwood Floors.

2 Q He was employed at American?

3 A Yes, sir.

4 Q You say he worked with you and Blake. How much would
5 he actually work with you?

6 A He worked with me a lot. We would go off on other jobs
7 and install the floors, and then the other guys would come
8 back and sand them.

9 Q So at that time you were installing?

10 A Well, we were doing both, installing and finishing,
11 whatever came up.

12 Q And how was Eric as a worker?

13 A He was a great worker. I'd tell him what he had to do,
14 and he would do it. Very skilled. You know, he knew how to
15 cut boards and run tape measure and sand with equipment. He
16 did it all.

17 Q Do you know whether or not he was willing to learn this
18 work?

19 A Oh, yeah, yeah. He was very willing to learn,
20 definitely.

21 Q How do you know that?

22 A Just by him standing there with me, and, you know, I
23 would tell him what to do, and he would do it, and no
24 questions asked. He was a very good worker.

25 Q How long did he work with you at American Hardwood

William Gregory
Direct examination by Mr. Allen

1 Floors?

2 A I am not sure. At least four or five or six months or
3 something like that.

4 Q While he was working at American Hardwood Floors, what
5 was his demeanor like?

6 A He was very respectful. We would tell him something to
7 do. He would do it and never gave us any problems. He was
8 a hard worker.

9 Q Were you still working at American Hardwood Floors when
10 Eric Morgan was arrested or when you heard that he --

11 A Oh, no, sir; no, sir.

12 Q So you had -- were you, well, let me ask you this.
13 When you left American Hardwood Floors was Eric still
14 working?

15 A No, sir.

16 Q Okay. What happened there?

17 A With?

18 Q With Eric.

19 A I'm not sure. He just, you know, he didn't show up a
20 couple of days and we had a lot to do, and that was the end
21 of it.

22 Q Do you mean his employment was terminated?

23 A Yeah. That was between him and Blake, yeah. I'm not
24 sure what the reasons -- just he didn't -- he wasn't at one
25 of the jobs. And Blake was very strict. And, you know, he

William Gregory
Cross-examination by Mr. Willingham

1 just, he didn't put up with much. And he wanted us to be
2 there when we were there. And if we weren't, then we didn't
3 have a job as with any other company.

4 Q But when Eric was there working did he follow
5 directions?

6 A Yes, very well.

7 Q When you say very well, I mean, is there anything that
8 stands out in your mind?

9 A You know, he would measure a board. And you tell him
10 to go cut it, he would cut it. He'd come back. He'd put it
11 in, install it. Just whatever we had him do, we would do
12 it.

13 Q And you indicated that he was polite. Is there
14 anything else about his demeanor that you noticed while he
15 worked there?

16 A He just followed directions. He was very polite and
17 never gave us a bad time, never badmouthed. He just did
18 what he had to do to make the day go a lot faster.

19 Q Mr. Gregory, would you like to see Eric live?

20 A Yes, very much.

21 Q Thank you, Mr. Gregory.

22 CROSS-EXAMINATION

23 BY MR. WILLINGHAM

24 Q Mr. Gregory, you said you were not working for American
25 Hardwood in May of 2000, is that right?

William Gregory
Cross-examination by Mr. Willingham

- 1 A No, sir.
- 2 Q When did you leave American Hardwood?
- 3 A Let's see. I've been with Action Flooring five years.
- 4 Five years ago. I'm not sure.
- 5 Q May of 2000, four years ago. You would have gone a
- 6 year before May of 2000.
- 7 A Yeah.
- 8 Q And Eric Morgan was gone before you --
- 9 A Yes, sir.
- 10 Q -- because he didn't show up for work.
- 11 A Yes, sir.
- 12 Q So within a year of May of 2000 he wasn't working.
- 13 A Not with us. I'm not sure what he was doing, but not
- 14 with us.
- 15 Q All right. How much did y'all get paid?
- 16 A By the hour. I was \$10. Eric was eight, seven, eight,
- 17 nine. I am not sure.
- 18 Q Okay. And I know that putting down hardwood floors is
- 19 not the easiest work to do.
- 20 A No, sir. Very physical.
- 21 Q And he could do it.
- 22 A Yes, sir. Very physical. Yes, sir.
- 23 Q Very physical. Nothing wrong with him --
- 24 A No. He's very strong.
- 25 Q -- physically from getting a job.

William Gregory
Cross-examination by Mr. Willingham

1 A Yeah. He can run the equipment.

2 Q Thank you.

3 A Yes, sir.

4 MR. ALLEN: No other questions, Your Honor.

5 THE COURT: You may step down.

6 THE WITNESS: Yes, sir.

7 MR. ALLEN: May we approach, Your Honor?

8 THE COURT: Yes, sir.

9 (Bench conference held off the record in the presence
10 of the jury but out of the hearing of the jury.)

11 THE COURT: Ladies and gentlemen, we are going to take
12 a short break before we go any further.

13 So I will ask you to please go to your jury room. Do
14 not discuss the case. We will bring you back shortly.

15 (The following takes place outside the presence of the
16 jury.)

17 THE COURT: Mr. Allen, have you talked to Mr. Morgan
18 about his right to testify during this particular
19 proceeding?

20 MR. ALLEN: I have, Your Honor.

21 THE COURT: Has he indicated to you whether that he's
22 reached a decision about whether or not he will testify?

23 MR. ALLEN: I believe he has reached a decision, yes,
24 Your Honor.

25 THE COURT: What does he indicate to you that he wishes

1 to do?

2 MR. ALLEN: It's my understanding he does not wish to
3 testify at this proceeding.

4 THE COURT: Mr. Morgan, you heard what Mr. Allen told
5 me.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that you also have the
8 absolute right to testify or not to testify at this
9 particular stage of the trial also?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that if you want to
12 testify that this is the only opportunity that you will have
13 to do so? You can't wait until later and change your
14 decision after the jury has been given the case for their
15 consideration.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have your lawyers discussed with you the
18 advantages and disadvantages of your testifying and of your
19 not testifying?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And do you understand what those advantages
22 and disadvantages are?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you had time to think about your
25 decision as to whether or not you will testify?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And have you reached a decision?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: What is it?

5 THE DEFENDANT: Not to testify.

6 THE COURT: Has anybody forced you into that decision?

7 THE DEFENDANT: No, sir.

8 THE COURT: Has anybody pressured you into that
9 decision?

10 THE DEFENDANT: No, sir.

11 THE COURT: Is that a decision that you've made of your
12 own free will and accord?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You are satisfied with it?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right, sir.

17 Now, when the time comes for final argument to be made
18 before the jury the defense also has the final argument.

19 And, Mr. Morgan, that includes your right to address
20 the jury if you wish to. Have you also talked with your
21 lawyers about your right to address the jury in closing
22 argument?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And have they explained to you the
25 limitations on that argument that you can make?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you discussed with them whether or not
3 you'll make an argument before the jury?

4 THE DEFENDANT: I would like to discuss it a little
5 more with them.

6 THE COURT: All right. Court is going to be in recess
7 for 15 minutes.

8 You talk with your lawyers about your right to make a
9 final argument, and you let me know when we come back
10 whether you wish to make one or not.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Let me see y'all before you go.

13 (Bench conference held off the record.)

14 (Whereupon, a recess was taken.)

15 THE COURT: All right. Mr. Allen, have you had a
16 chance to talk with Mr. Morgan about his right to make a
17 final statement to the jury?

18 MR. ALLEN: Yes, sir, Your Honor, we have. We have
19 discussed this several times and most recently during the
20 break.

21 THE COURT: And what does he indicate to you that he
22 wishes to do?

23 MR. ALLEN: I understand he wishes to address the jury.

24 THE COURT: All right. Mr. Morgan, is that correct,
25 what your lawyer has told me?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You wish to address the jury in a final
3 statement?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have your lawyers discussed with you the
6 limitations on that statement?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand it is not a substitute
9 for your testifying? You may not testify during that final
10 statement.

11 THE DEFENDANT: I understand.

12 THE COURT: All right. Now, each of you have had an
13 opportunity to review the instructions that I propose to
14 give the jury.

15 Are there any exceptions or requests for additions to
16 that instruction?

17 MR. ALLEN: May we approach the bench, Your Honor?

18 THE COURT: Yes, sir.

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 THE COURT: All right. Any exceptions or requests for
22 additions to the instruction?

23 MR. ALLEN: No exceptions.

24 However, Your Honor, we request that the Court charge
25 the mitigating circumstance under Section 16-3-20(c)(b). I

1 believe it is four that the defendant was an accomplice in
2 the murder committed by another person and his participation
3 was relatively minor.

4 We make this request considering the evidence that
5 there was a fatal shot, that the way the evidence could be
6 viewed by a reasonable juror is that considering the gunshot
7 residue testimony, specifically the one of Mr. Hollifield in
8 which he concluded that at some time prior to the taking of
9 the test, within the perimeters of the test, that the
10 gunshot residue test on Brandon Duncan was consistent with
11 that of having shot a weapon, while he also concluded that
12 the test was inconclusive as to the, as to whether or not
13 Eric Morgan shot.

14 I believe that that testimony could lead a reasonable
15 juror to believe that Eric was not the shooter and therefore
16 he might have played a relatively minor role in the
17 participation of the offense. And that's the basis of my
18 request for that specific mitigating circumstance.

19 THE COURT: Does the state wish to be heard?

20 MR. WILLINGHAM: Your Honor, we believe there is ample
21 evidence that he was not only an accomplice. He was a
22 principal. He was actively involved and he had a major role
23 in this.

24 I don't believe there is any testimony or any evidence
25 that Brandon Duncan was the shooter in this case.

1 Even assuming that fact to be true, Eric Morgan still
2 had the gloves, still drove over there. He still had a pipe
3 bomb, had a gun, still disposed of the body, still hid the
4 body. His participation, even taking out him pulling the
5 trigger, is still more than a minor, minor role.

6 THE COURT: Well, I believe the evidence in the case is
7 overwhelming. It is also undisputed. It is also not
8 contradicted; and that is that Mr. Morgan was the individual
9 who fired the shot that killed Mr. Smith.

10 Therefore he would not be considered an accomplice
11 under the provision that has been requested to be
12 instructed; and he certainly -- his participation was much
13 more than relatively minor. It was substantial; it was
14 significant; and it was major.

15 So based upon the evidence in the case, I find that
16 16-3-20, Subsection B(4), mitigating circumstance, should
17 not be instructed to the jury.

18 Any additional statutory mitigating circumstances that
19 you would like for the jury to be instructed as to?

20 MR. ALLEN: Your Honor, I understand the Court is going
21 to instruct as to, under that same section that the Court
22 will be instructing under one, seven and nine. And other
23 than -- and other than the one the Court's ruled upon
24 previously, I think that's all the specific ones we ask.

25 THE COURT: All right. One, seven and nine. I might

1 have misstated the section number. It's 16-3-20, Subsection
2 C(b). Four was the mitigating circumstance that I declined
3 to instruct. Statutory mitigating circumstances set forth
4 in that same section under one, seven and nine are
5 appropriate in the case.

6 Does the state wish to be heard on those?

7 MR. WILLINGHAM: No, sir.

8 THE COURT: Okay. Any other mitigating, statutory
9 mitigating, circumstance that you would like for me to
10 instruct, Mr. Allen?

11 MR. ALLEN: No, Your Honor.

12 THE COURT: Okay. Let me see y'all one second before
13 we bring the jury back.

14 (Bench conference held off the record.)

15 THE COURT: All right. Are we ready for the jury?

16 MR. GOWDY: Yes, sir, Your Honor.

17 MR. ALLEN: Yes, Your Honor.

18 THE COURT: Okay. Bring them in.

19 (The following takes place in the presence of the
20 jury.)

21 THE COURT: Does the defense have any additional
22 testimony or evidence to be offered?

23 MR. ALLEN: No, Your Honor. We rest.

24 THE COURT: All right. Ladies and gentlemen, that is
25 all of the testimony or evidence to be offered at this stage

Closing arguments

1 of the proceeding.

2 What remains to be done are the lawyers' final
3 summations, after which I will instruct you on the law, and
4 then you will be asked to go back and begin with your
5 deliberations.

6 The way that's concluded is that the state will go
7 forward first in their summation, followed by the defense,
8 and the defendant may wish to make a statement before the
9 jury.

10 Following that, I will instruct you on the law, and
11 then you'll go back to make your decision.

12 So please give the lawyers your attention now as they
13 give you their final summations.

14 MR. GOWDY: May it please the Court.

15 THE COURT: Mr. Gowdy.

16 MR. GOWDY: Good morning, madam forelady and ladies and
17 gentlemen of the jury.

18 This will be the last time that anybody representing
19 the State of South Carolina will stand in front of you in
20 this case. And I would be remiss if the very first thing
21 that I did not do was to thank each of you again for your
22 service.

23 February 23rd we all actually gathered in this
24 courtroom for the first time, although it looked bigger
25 because it was bigger. And then because of setbacks and

Closing arguments

1 other issues outside of our control, it was about ten days
2 ago that we began the qualification process.

3 For at least four or five days, I suppose, you have
4 been away from your family and friends. That's a sacrifice.
5 It's a sacrifice that jurors are not often called upon to
6 make. And I feel certain I speak for Mr. Poole and
7 Mr. Allen, as well as my prosecutors, to thank you for your
8 service.

9 It is not easy to sit in judgment of our fellow human
10 beings. It's not easy. It's hard for me. I know it's hard
11 for you.

12 But each one of you at some point in this process sat
13 in this very chair, and His Honor asked you if you could in
14 the appropriate circumstance give life, and you said yes;
15 and he asked if you could in the appropriate circumstance
16 give death, and you said yes. And then both sides asked you
17 again, and that's how you find yourself on this jury,
18 because you told both sides and you told the Court that you
19 could give life or death based on what was appropriate in
20 this case. Now, accepting you knew nothing about this case
21 when you said that, now you do.

22 There are three things that I'm going to talk to you
23 about this morning. I'm going to talk to you about the
24 characteristics of this crime; I'm going to talk to you a
25 little bit about the character of the defendant; and I'm

Closing arguments

1 going to talk to you a little bit about the character of
2 Jerry Smith.

3 Deputy Willingham yesterday morning told you that all
4 murders in this state aren't treated the same. They're not.
5 To be death-penalty eligible there has to be an aggravating
6 factor or an aggravating circumstance. There has to be one,
7 at least one. One is sufficient. In this case we have
8 alleged and we have proven, I would submit to you, two.

9 The Court will tell you at the end that the state has
10 alleged this murder was committed during the commission of
11 an armed robbery and that this murder was committed during
12 the commission of a robbery, of a larceny, excuse me.

13 A couple of days ago you returned your verdict, and you
14 found this defendant guilty of murder. So that takes care
15 of that part of it. And you found this defendant guilty of
16 armed robbery where he shot Jerry Smith and took his money.

17 And I submit to you that he's guilty of larceny,
18 because after he shot Jerry Smith he took Jerry's car, he
19 took Jerry's pistols. He even took Jerry's car keys.
20 That's larceny.

21 The state has alleged, and I'll submit to you, ladies
22 and gentlemen, the state has proven two aggravating
23 circumstances. And I'm not going to dwell on that any more.
24 I'm not going to talk about the law any more.

25 I'm going to talk to you about the context of this

Closing arguments

1 crime, the circumstances of this crime, and I'm going to
2 talk to you about the character of Eric Dale Morgan, because
3 the two in this case are inextricably linked.

4 Let's go back to May 3rd just for a moment. Eric
5 Morgan is two weeks shy of his eighteenth birthday and Jerry
6 Smith is two steps shy of making it to his car.

7 And a shot rings out, at least one shot, perhaps two.
8 And Jerry Smith's lifeless body falls to the asphalt in his
9 little brother's convenience store parking lot.

10 And this defendant puts on the latex gloves that he
11 brought up there, and he dumps his body in the back of a
12 car. And I described it for you a couple of days ago, but
13 there is no way to describe it. You have to see the
14 picture, and you have seen the picture.

15 And he drives and he drives and he drives for
16 nine miles until he parks it behind a hedge row and he opens
17 the back door. For what purpose, I can't tell you, and I'm
18 not going to speculate. But we know he opens the back door
19 because the only thing left alive inside that car was the
20 very tip end of a vine that Neal Urch found. That's the
21 only thing left alive inside that car when he got through
22 with it, was a weed.

23 And he closes it up and he heads home. And a call
24 comes from Curran Smith that something's happened to Jerry,
25 has anybody down there at the Duncan house seen him. And

Closing arguments

1 they began to hide the evidence. And the police come. The
2 police are called. And they begin to hide the truth.

3 For seven hours Eric Dale Morgan says, nay, officer, he
4 was fine when I last saw him; nay, officer, he was fine when
5 I last saw him.

6 The lies begin, and they persist until his younger
7 friend, Brandon Duncan, begins to take Neal Urch out to the
8 crime scene where the body is. And Detective Urch has seen
9 the blood on Eric Morgan's pants legs. And finally Eric
10 Morgan begins to tell part of the truth.

11 And I say part, ladies and gentlemen, because we
12 learned yesterday that the murder of Jerry Smith on May the
13 3rd was not the beginning of this crime. It was the
14 culmination of the crime.

15 There are times in our lives where passion drives us to
16 do things, the passion of seeing an injustice, the passion
17 of love, of anger. Passion sometimes drives and dictates
18 our lives, but this was not a crime of passion. This was a
19 crime of premeditation.

20 If you remember in that first taped confession where he
21 first says I shot Jerry Smith, there's a little hiccup in
22 the beginning where he starts to say something, and then he
23 doesn't finish it. And he says, ah, and he stutters and he
24 says, well, that can wait. It does wait.

25 It waits until May the 8th and that's when we hear the

Closing arguments

1 rest of the story. This plot wasn't hatched May the 3rd.

2 This plot was hatched weeks before.

3 It started with a bomb. They built a bomb to blow a
4 hole in the back of Jerry Smith's store or Curran Smith's
5 store. But, you know, if the money ain't staying there,
6 there's really no reason to blow up the building. And then
7 they figured out the money was going home at night.

8 And you and I both listened to the tape where Eric
9 Morgan said we were going to kill him Saturday night. We
10 were going to kill that man and that man.

11 That is a calloused total disregard for human life.
12 That is not an ordinary murder. That is not a crime of
13 passion. That is a crime of premeditation.

14 They didn't kill these two. Two bodies would be too
15 much to dispose of. Two cars would be too much to dispose
16 of. So Saturday night, even though they were very clear,
17 Eric Morgan was very clear, they were prepared fully to take
18 human beings' lives on Saturday night.

19 He decided he would wait, but not very long. Because
20 three nights later -- you know, before I go to the
21 three-nights-later I've got to stop because if you are like
22 me, you were struck by Curran Smith's testimony that the man
23 whose mama grew up making fifty cents an hour just gave a
24 kid \$50 for working a couple of hours. He just gave
25 somebody \$50 for his part-time day on the job, and he came

Closing arguments

1 within a whisper of being shot and killed like his brother
2 was.

3 If Curran Smith and Jim Smith think their brother took
4 their place, they're right, because he did, because we see
5 on May the 3rd and we heard from the quiet muted tongues of
6 Mirya Duncan who was living in the same house with this
7 defendant. And she told you with no motive to fabricate it
8 whatsoever. She told you that he came to her and asked for
9 the gloves that she used to color her hair. And that was in
10 the weeks before May the 3rd.

11 And then we heard on May the 3rd about the gun that
12 stays up at the front door and how Eric Morgan came and got
13 the gun and said he was going to kill a snake but Mirya
14 Duncan never heard a shot go off, because there wasn't a
15 snake killed that night. There was a 57-year-old man killed
16 that night, and he wasn't a snake. And then the part that
17 got me the most is when she said she wanted to go pick up
18 her brother from work and Eric Morgan for the first time
19 said no.

20 Ladies and gentlemen, I told you a couple of days ago
21 that this was not a robbery gone wrong, this was a murder
22 gone right. And I think you have seen from the evidence
23 that this murder, this planned murder, was hatched at least
24 Saturday night, that Eric Morgan brought the gun, that Eric
25 Morgan made up the story to get the gun out of the house,

Closing arguments

1 that Eric Morgan brought the gloves, that Eric Morgan raised
2 the gun and he pulled the trigger, and then he put the body
3 back in the car and he drove it after he put on the latex
4 gloves he brought. This was premeditated, cold-blooded,
5 calloused murder.

6 And, you know, ladies and gentlemen, common sense kind
7 of tells us again that it had to be. I told you in my last
8 closing the best characteristic that any juror can have is
9 the one you have, which is life experience and common sense.

10 If you listen to that tape, they weren't going to kill
11 Curran Smith and Jim Smith because they didn't want two
12 witnesses. And they expect us to believe that they were
13 ever going to leave Jerry Smith alive? Common sense tells
14 us this was not a robbery that got out of hand. This was a
15 murder that happened exactly as they intended it to happen.

16 I want to talk to you for a minute about Eric Morgan.
17 He needed money, and so do a lot of people. Jonathan Smith
18 needs money. He's 18 year old and doesn't have a job.
19 Jerry Smith's mama needed money.

20 Can you imagine having your husband die and leaving you
21 with eight children and making fifty cents an hour, fifty
22 cents an hour?

23 There are a bunch of folks that need money, and there
24 are ways to get money. Eric Morgan had jobs. He had a job
25 making seven or eight dollars an hour. But there are a lot

Closing arguments

1 of hours you have got to work to get up to \$7,000. And he
2 just wasn't willing to do it.

3 This murder was about greed. And the thing that
4 grieves me the most, if he had taken the time to talk to
5 Jerry Smith he would have found out they had an awful lot in
6 common.

7 You know, it grieves my heart to hear of people growing
8 up tough. It grieves my heart to hear of people who grow up
9 in less than idealic circumstances who have lost a parent,
10 who have lost a sibling.

11 But you can go one mile in any direction of this
12 courthouse and you can find children that are growing up in
13 less than idealic circumstances, and not a one of you would
14 give them a pass right now to commit murder, not one of you.

15 You know, if Eric Morgan had asked, the Jerry Smith
16 that I had described to me yesterday would have given him
17 some money. If he had asked, Jerry Smith would have said,
18 you know, Eric, I know what it's like to lose a brother,
19 because I've lost two; I know what it's like to not have a
20 father around, because mine died when I was 17 years old; I
21 know what it's like to grow up poor; let me show you a
22 picture of the house I grew up in.

23 They can call that a front porch, and to them I'm sure
24 it was, but, ladies and gentlemen, I have never seen a front
25 porch like that with one rock stacked on top of another.

Closing arguments

1 You want to talk about growing up poor. Jerry Smith
2 grew up poor. Everybody needs money. That is not a license
3 to shoot a man. These are the circumstances and the context
4 of the crime. This is the character of Eric Morgan.

5 He needed money. We all need money. We do not lay and
6 wait and plot to kill two people. We do not lay and wait
7 and shoot one in the head.

8 You know, yesterday afternoon and a little bit this
9 morning I was struck by how many people care about Eric
10 Morgan. They started off with his aunt. And as I listened
11 to her, I thought to myself how lucky you are to have an
12 aunt who cares that much for you.

13 And then we've got the grandparents and the friends and
14 the people who took him on family vacation and the teacher
15 who was willing to come out of school and come and sit in
16 front of you this morning. And I think to myself of the
17 kids all across this county that they couldn't scrape
18 together two people to come and say something for them. And
19 he had ten or 12.

20 We live in a culture where people want to make excuses
21 for why they do things. There are scores of people that
22 have learning disabilities, and they do not commit
23 premeditated murder. There are scores of people who grew up
24 poor, and most of them are sitting on the front row right
25 there. And they do not grow up to commit premeditated

Closing arguments

1 murder. There are people who have suffered tragedies in
2 their life and they do not grow up to commit premeditated
3 murder. So I ask you not to excuse the murder of Jerry
4 Smith because somebody grew up poor. That is not an excuse.

5 Through the guilt phase of any criminal trial the focus
6 is on the defendant. That's the way it is. Those are the
7 rules. For the last 24 hours, I guess, starting Monday
8 morning we got just a glimpse of Jerry Smith, just a
9 glimpse.

10 We now know what he looks like. In the guilt phase you
11 had no idea of what he looked like, hadn't seen a picture of
12 him yet. You know that he was a man that was in the prime
13 years of his life. You know that he was talking to his
14 brother about buying the store; and you know that he had a
15 new love in his life; and you now know that he's got a mama
16 that's still living; that he suffered the tragedy of losing
17 two brothers. You know he came from a happy but poor home.

18 And you know this too, ladies and gentlemen. You know
19 that he did not do one single thing to bring about his
20 death. What did he do to cause Eric Morgan to shoot him?
21 What crime did he commit? Walking to his car? Working?
22 What did Jerry Smith do? That is what is so unfair about
23 this case.

24 Jerry Smith was two steps away from his car, two steps
25 away from the rest of his life. And that's the thing about

Closing arguments

1 death, is there is just no retreat from it. You don't get a
2 dual.

3 Whatever Jerry Smith said to his mama, Ms. Smith,
4 that's the last thing he's going to say to you. Whatever
5 his brothers and sisters said to him, that's the last thing
6 he's going to ever hear. Curran, that was beautiful, which
7 he told the jury yesterday. You want to thank him for the
8 kind of brother he was. It's a shame that he's not here to
9 hear it. It's a shame that he doesn't know that you kept
10 the check that Jerry sent you for your class ring.

11 Death will visit every one of us. It is no
12 discrimination. It doesn't discriminate based on race or
13 age. Death will visit all of us.

14 That's not what scares us. What scares us is how death
15 comes. Does it knock gently on the front door of our life
16 and wait patiently for us to get our lives in order and let
17 it in? Does it give us a chance to say good-by? Does it
18 give us a chance to get our souls in order, or does it come
19 as a violent intruder and kick in the front door of our
20 lives with absolutely no warning? Death is not what scares
21 us. What scares us is not being able to prepare for it.

22 My wife gets upset with me sometimes because I have
23 been known to bring people to the house to watch a race or
24 watch a golf tournament, and I don't tell her I'm doing it.
25 I just show up with a friend. And she says, honey, if you

Closing arguments

1 could just call me ahead of time and let me know that you're
2 coming I could get ready. I can clean up. I can get the
3 kids' toys put up. Just give me an hour's notice. That's
4 for a house.

5 How much notice do you want when you know that death is
6 coming? Wouldn't Jerry Smith loved to have an hour to tell
7 folks good-by?

8 Eric Morgan saw his mother this morning. Eric Morgan
9 can tell whoever he wants to tell good-by. Eric Morgan can
10 write it down for them. He can call them. He can say
11 whatever he wants to say to any of the people he wants to
12 say it to. But for Jerry Smith whatever the last thing he
13 said was the last thing he said. There is no retreat from
14 death.

15 In a few minutes the defense attorney is going to stand
16 in front of you, and he's going to ask you for mercy. I'm
17 not going to ask you for vengeance. If you can view life on
18 this spectrum you have a vengeance on one hand. And
19 vengeance says I want an eye for an eye and I want a tooth
20 for a tooth. And vengeance says I'm going to kill somebody
21 the way they killed that other person.

22 I'm not asking you for vengeance. I'm not asking
23 anybody to lay in wait with a .22 rifle and shoot this
24 defendant in the head and stuff his body in the back of a
25 car and drive him for nine miles and leave him head first in

Closing arguments

1 a pool of his own blood. I am not asking anybody for
2 vengeance because that's on this end of the spectrum.

3 And on the other end of the spectrum you have got
4 mercy. And there are times in our lives when all of us need
5 mercy. I have benefited from mercy and you have probably
6 benefited from mercy. But mercy comes in so many different
7 forms.

8 It comes in the form of an aunt that cares about you;
9 it comes in the form of grandparents who care about you; it
10 comes in the form of teachers that care about you; it comes
11 in the form of second chances when you interact with police
12 officers and you're arrested; it comes in the chance of
13 probation; it comes in the chance of family and friends that
14 will take you to church and treat you like you are their
15 own.

16 Mercy has been shown to this defendant. I am not going
17 to ask you for mercy. I am going to stand in the middle on
18 a rock called justice, and I'm going to tell you that
19 justice does not always mean you sacrifice your life when
20 you take another. But I will tell you that justice says
21 this, that this community cannot tolerate it when you lay in
22 wait and kill somebody for money. It cannot tolerate it
23 when you sit in a parking lot on a Saturday night and debate
24 whether to take two lives or wait three nights and take one.

25 Justice is a strong, proud woman. She says that there

Closing arguments

1 are times when the circumstances of a crime and the
2 character of the defendant are such that this community,
3 this jury has got to say we're not going to tolerate it.

4 Circumstances of a crime, the character of the
5 defendant. There will be those that ask you for mercy, but,
6 ladies and gentlemen, I want you to ask yourselves this.
7 Why is it that the people that will stand up and ask you for
8 mercy are never willing to show it to anybody else?

9 Where was the mercy for Jerry Smith? Don't you know he
10 would have loved to have had a jury in the parking lot of
11 the Max Saver on May the 3rd to decide his fate? Don't you
12 know he would loved to have had 12 of his fellow citizens to
13 decide whether or not he should live or die that night?
14 Jerry Smith didn't get justice. He didn't even get mercy,
15 although I think he deserved it.

16 I'm not asking you for vengeance. I am not asking you
17 to treat him the way he treated Jerry Smith. But I am not
18 asking you for mercy because it has been shown and it didn't
19 take. And the people that stand in front of you and ask you
20 for mercy are not willing to show it to other people.

21 I am standing on a rock called justice. And I tell you
22 that justice says when you plot and you plan and you
23 premeditate the murder of another human being for something
24 like money that you have forfeited your right to live.

25 It is time for me to sit down. But I don't want to sit

Closing arguments

1 down because when I sit down I'm afraid that the voice of
2 Jerry Smith is going to sit down with me and that I ain't
3 done good enough job telling y'all what he was like. I'm
4 afraid that when I sit down, like Jerry Smith, that I ain't
5 done good enough job telling you what kind of brother he
6 was, what kind of father he was, what kind of son he was.

7 So I'm going to ask y'all. My voice is going to grow
8 silent here in just a minute. And when you hear the
9 defense, I want you to ask yourself how come it is that
10 folks keep asking for mercy time and time again because
11 they're never willing to show it to anybody else.

12 You ask yourself where the mercy was for Jerry Smith on
13 May 3rd. You ask where the humanity, where the due process
14 was for Jerry Smith on May the 3rd.

15 I ask you to let the voice of justice ring out through
16 your verdict. I ask you to in a clear, unmistakable way
17 tell people that when you plot and plan and premeditate to
18 murder somebody in Spartanburg County that a jury ain't
19 going to give you a sentence of death, that you have earned
20 a sentence of death.

21 And I'm asking you, I'm telling you, that the
22 circumstances of this crime and the character of this
23 defendant and the character of Jerry Smith require the
24 strongest form of punishment that this society has, and I
25 ask you to impose that.

Closing arguments

1 MR. POOLE: Your Honor, at this time I believe Mr.
2 Morgan has something to say to the jury.

3 THE COURT: Mr. Morgan.

4 THE DEFENDANT: My name is Eric Dale Morgan. And I'm
5 asking everybody to forgive me for what has happened and the
6 part of the role that I played in it. But I am not asking
7 you to make the decision on what I am sitting here talking
8 about. I'm asking you to make the decision of what's in
9 your heart, what you think I should get. It's up to y'all.

10 I am sorry for everybody sitting here tonight, this
11 afternoon, I mean. I'm sorry for the people that loves me
12 and sorry for the people that hate me. I don't know. I'm
13 sorry I can't sit here, I'm sorry I'm not sitting here
14 crying. I don't know how to show these feelings around
15 people any more.

16 I just hope y'all show me a little mercy. I know one
17 day I won't ever go home, I die slow or die fast. I ain't
18 seen the streets in over four years. I don't know what it's
19 like. I forgot about the streets. I have been in solitary
20 confinement for the last four years. I've had various cell
21 roommates. I am sorry. I'm sorry for everything. I just
22 beg for y'all's mercy. And may God be with me.

23 I appreciate you letting me talk, and I'm sorry I
24 didn't testify earlier.

25 MR. POOLE: May it please the Court.

Closing arguments

1 THE COURT: Mr. Poole.

2 MR. POOLE: Madam forelady, ladies and gentlemen of the
3 jury, again I thank you as Solicitor Gowdy thanked you a
4 moment ago for your attention, for your time, for your
5 caring and for your presence.

6 Yeah, you're right, he's right. I'm going to be asking
7 and saying some things about mercy. That's what the job
8 that's placed upon us requires. And I have been shown mercy
9 in my life. I've been blessed. I've asked for mercy from
10 others, and I'm asking for mercy on behalf of Eric Dale
11 Morgan. We will talk a little more about that, but in a
12 case like this it's necessary to talk about it. There ain't
13 no way around it.

14 So let me begin with where I began -- well, these days
15 runs together. I think it was yesterday. I still have to
16 bring it up here so I can get it right.

17 We're relying on three statutory mitigating
18 circumstances in this case. Number one, the defendant, Eric
19 Dale Morgan, has no significant history of prior criminal
20 conviction involving the use of violence against another
21 person; number two, we're asking that you rely on the age
22 and mentality of the defendant, Eric Dale Morgan, at the
23 time of the crime; number three, the defendant, Eric Dale
24 Morgan, was below the age of 18 at the time of the crime.
25 He was 17 years old. And as he sits over there right now

Closing arguments

1 and as he stood a moment ago is 21 years of age, and he has
2 not seen the streets or outside of a detention facility,
3 which is another name for a jail.

4 I'm going to have to go back over some of the
5 testimony. I'm going to have to rely on some notes, so I've
6 got to look down here because I can't remember off the top
7 of my head. So forgive me when I'm not looking at you and
8 I'm trying to remember what was stated and what was said by
9 certain witnesses that took the witness stand between the
10 last time y'all made a decision and between now when you're
11 getting ready to make one, and make a choice.

12 Bear with me. I may say something that may be a little
13 irrelevant, but I'm going to try to say those things that I
14 think are important.

15 Again, I want you to -- and I'm not going to dwell on
16 this, but I'm going to say it and just get it out of the way
17 that in this case there were two people involved. There was
18 a Brandon boy and there was an Eric Dale Morgan. There were
19 two people involved in this case.

20 And we know the extent to which Eric Morgan says that
21 he was involved and we do know that Brandon Duncan was
22 involved, because there was blood on his clothes. There was
23 blood on Eric Dale Morgan's clothes. That's right. There
24 was -- there's guilt. There's culpability on two people,
25 but the one sitting here today is the one we are concerned

Closing arguments

1 about, about what you are going to do with him, what is
2 going to happen to him.

3 And, finally, in connection with Eric Dale Morgan, one
4 of the things that you heard was a statement from Neal Urch
5 when he was up here prior to the second statement that was
6 introduced into evidence. He stated that, and I think he
7 stated, that is Eric Dale Morgan, stated that the reason
8 they were going, they were going to do this, was to pay
9 Brandon's bill off. There was some sort of bill they were
10 going to pay off, and buy a house, and buy a house; and that
11 they thought there was like \$25,000 that was available when
12 they committed the armed robbery, when they would commit the
13 armed robbery.

14 And so what they did, they go out and get these cone
15 firecrackers and go to the hardware store, and they get
16 these very stupid rudimentary pieces and put them together
17 to make a pipe bomb that at one time -- the first statement
18 Eric Dale Morgan said it's a foot and a half long. It was
19 seven inches.

20 Eric Dale Morgan's world could be circumscribed by the
21 limits of Spartanburg County, folks. It was small. It was
22 a 17-year-old world, a 17-year-old universe that was limited
23 by certain things that he had been exposed to in his past
24 and the chances that he had coming up.

25 Now, we have got to talk about background just like we

Closing arguments

1 have got to talk about mercy. It's part of the thing.
2 You've got to know who you're talking about when you're
3 making your choice about his fate. So let me start going
4 down what some of these folks said.

5 Mirya Duncan who is 18 years old, who was 11 years old
6 when she first met Eric Dale Morgan, living down in
7 Woodruff, living in a single-wide trailer where she, her
8 mother, that is Lou Kinup, Wayne Matthews who apparently was
9 the landlord charging people to live there, Brandon and Eric
10 lived together in this single-wide trailer where Eric had
11 lived there for about six months according to Mirya's
12 recollection. And Eric slept in that mobile home on the
13 La-Z-Boy recliner.

14 And why was he living there? Mirya didn't even really
15 know. She had no idea why he was living there. He was just
16 there, along with the others.

17 The state then brought up a witness who testified about
18 a burglary that occurred, or attempted burglary or something
19 that occurred, in 1998. Now, obviously that was to show his
20 character, but it did not show a conviction, ladies and
21 gentlemen. There's no conviction in the record about him
22 being convicted of this. That was down when he was 14 or 15
23 years old and somebody saw some suspicious activity around a
24 drug store. And they found Brandon Duncan carrying an
25 ashtray out. That case has not been shown to have any

Closing arguments

1 conviction, although, you know, Eric Dale Morgan probably
2 was with Brandon on that occasion. And that was, if Eric
3 was 14 or 15 years old, that was two or three years before
4 May of 2000.

5 Possession of marijuana, guilty. I guess that's
6 important, in 2000. That's when the magistrate's court lady
7 testified. She is over the warrants, over all of the
8 warrants. And she testified that, you know, there was a
9 disposition on the marijuana. That's not a violent act
10 against anybody.

11 Okay. Now, when Eric's witnesses, when Eric's
12 witnesses, that is his family members and his friends,
13 started taking the stand his first witness was Loraine
14 Fortner, a good girl, a good woman. She, she named how many
15 children she had. I think they ranged from 16 to five. And
16 obviously a real good, caring person.

17 And she testified about how there was a death of a
18 brother before Eric was cognizant, able to understand what's
19 going on in this world, when Eric just like everybody else
20 was a little boy who had a mother, who had family members
21 who loved him but there was a cloud. There was a cloud over
22 that family.

23 There were pictures kept up of Danny, up on the wall.
24 And his mother talked to Eric and said you've got a brother
25 but he is lost, he's gone.

Closing arguments

1 Maybe some of you people with your life experiences
2 know about clouds like that. And I tell you what. They are
3 there, and it can hurt.

4 When he was about five years of age his mother and
5 father broke up. And the testimony indicates that it was
6 because of this cloud, because of this tragedy that occurred
7 with little Danny.

8 And then Cindy had Eric when they first split up, and
9 then Mr. Randy Morgan got custody. And then there was no
10 contact with the father after a certain period of time.

11 He stayed a lot with his grandmother, Ms. Standerfore
12 (sic), I do believe, who was maybe one wabbling pivot in
13 this chaotic upbringing that he's got. There was another
14 couple of people that were important to him.

15 He stayed a lot with his grandmother, the majority of
16 the day and sometimes at night while Cindy worked in a mill.
17 She drove a transfer truck. She worked at convenience
18 stores. She worked for a flower man and had some sort of
19 strange job as a psychic telephone person, you know, doing
20 anything she could to put things together, herself dealing
21 with tragedy and problems.

22 He went to school, Eric went to school. He didn't do
23 well. He didn't and does not understand how to do things in
24 succession according to Loraine Fortner. He had to be told
25 over and over. When he was told to do two or three things,

Closing arguments

1 he would stay with you. He'd get one or two done, and then
2 he'd finally go ahead and complete the task if somebody was
3 with him.

4 Then she testified that how Cindy got on disability,
5 and that at the time, even at the time, that he was arrested
6 she was in the hospital. She wasn't around at the time of
7 May 3 of 2000.

8 Iris Corn, next witness, the lady, that dear lady, had
9 contact with Eric when he was a child. She testified that
10 Eric's father died in 2001. His father died while he was
11 over here in jail.

12 She, she was one of -- you know, to forgive is a
13 virtue. And she had the ability to forgive Cindy Templeton
14 for her adulterous conduct and became a friend and grew to
15 like Eric. But that was her grandson, but she extended to
16 Cindy Templeton concern, and she seen that even when Eric
17 was with his father for a while that he seemed to thrive for
18 about a year when all of this pulling and tugging, pulling
19 and tugging was going on, back and forth. But Randy seemed
20 to show a good aspect in that he would have Eric playing
21 with some half siblings. They would play together. They
22 would come together and play.

23 And then another move came when Cindy came and acted
24 like she was going to visit and then got Eric and took him
25 away from that environment.

Closing arguments

1 I'm not saying anybody's doing bad things here. I'm
2 just saying what I heard and what I wrote down. And the
3 bottom line is that Cindy had him about the first three or
4 four years, and then Randy got him and got him in school,
5 and then Cindy got him.

6 Mildred Morgan. She testified that -- I believe that
7 was Randy's mother. Yeah. That's Randy's mother, I do
8 believe, testified that after, after Randy's death things
9 went sour between Cindy and Randy. Randy came to live with
10 her, and Randy took Eric home with him.

11 Cindy wanted to see Eric, but that was never followed
12 up. I think Cindy came down to where she was working and
13 said, yeah, you can come and see him any time you want to.
14 But Cindy didn't do that for whatever reason.

15 And then when he was nine years old, and that was who
16 knows where Eric was at that time, where he was lost between
17 the cracks, I don't know. But he was somewhere, and he
18 called her up and said he wanted to see his grandmother. He
19 said, look, I miss you, I want to see you. I want you to
20 come. I want you to come and bring me my record, my
21 favorite record, Rudolph the Red Nosed Reindeer. And she
22 did, and took a record player to him because she didn't know
23 if he had one that he would be able to listen to it. This
24 young man right over here was once a boy.

25 Ms. Boette was the next witness. She did some tests,

Closing arguments

1 and I don't think that there was anything that was
2 remarkable out of her testimony other than what other people
3 had testified to.

4 She just put some tests together, came up with some
5 conclusions. And there is nothing surprising there. But
6 let me tell you this. Right off the bat when she was asked
7 questions by, I think, Mr. Allen she said, he said, asked
8 her, are you saying anything in here that is excusing his
9 behavior. She said absolutely not. No excuse. There is no
10 excuse for a crime like this.

11 Okay. So at no point in time during this proceeding
12 has anybody tried to say that there is an excuse for the
13 crime. I want everybody to understand that.

14 You know, I mean, we're not standing here and never
15 have held up to be saying that there is an excuse for this
16 crime. Y'all have made the decision there, and I think you
17 made the right decision. There was criminal activity.
18 Y'all found him guilty. We all know that.

19 We're past all of that. We're talking about not making
20 excuses but what to do. What are you going to do? So
21 forget about anything you've heard about us trying to make
22 excuses. We're showing you something about this young man
23 over here who was a teenager in May of 2000.

24 She talked about disorganization in the household.
25 Well, we had already heard a lot about that. She talked

Closing arguments

1 about the most consistent person was her maternal
2 grandmother, and we've heard about that. There was lots of
3 problems, chronic unemployment. We heard about that through
4 other witnesses.

5 We heard about low I. Q., low I. Q. That's going to go
6 directly to one of our points on mitigation. It was
7 somewhere between 90 and 82. So we're talking about the age
8 and mentality of the defendant, Eric Dale Morgan, in this
9 case.

10 And then she went on to talk about the three things in
11 his life -- love, loss and abandonment, a lost child.
12 Number two, the limited intellectual ability. We knew a
13 little bit about that. You knew a little bit about the
14 first one -- love, loss and abandonment. And early
15 introduction to alcohol and drugs, which she said was part
16 of the milieu, part of the atmosphere that he was constantly
17 exposed to. So what you are going to do?

18 On cross-examination Ms. Boette was asked about, you
19 know, did you see all of the infractions that, you know, he
20 had incurred. She talked about three specifically,
21 infractions that is, occurred at the jail. And the
22 solicitor asked her, said have you seen all ten of them.
23 Well, she said, no, I can't, I can't say that I have. And
24 maybe she didn't. But did, was it brought out that any one
25 of those ten infractions involved violent acts, of violence,

Closing arguments

1 against another person? I bet you if they did you would
2 have heard about it. You certainly would have heard about
3 it.

4 And then on today we have got Cynthia Templeton who I
5 think has done the best she could under the circumstances
6 that she has had. She said that Danny's death had an effect
7 on her relationship between her and Randy. We already knew
8 that. But she got up on the witness stand and she said it
9 herself.

10 This is the mother. She went to court and tried to get
11 child support. Apparently there was some deadbeatness there
12 and she couldn't get any child support from Randy.

13 Then we start the custody thing. I don't know if any
14 of you are familiar with that family court business, but
15 that goes on a whole lot, you know, nonpayment of child
16 support, raise the issue of custody, pull the child back and
17 forth, money, kid and all of that sort of thing. It's
18 tragic.

19 She had a chance to go to trucking school, so she did.
20 And she left the child with Ms. Morgan. And then that's
21 when I heard her say that Randy got him and went off to
22 Virginia while she's down in Pensacola, Florida.

23 She comes back and says that she cannot do her job as a
24 trucker because her first and foremost concern was Eric, and
25 I don't doubt her sincerity for a bit. And she's further

Closing arguments

1 testified that Randy had Eric close to a year.

2 Now, who was the father figures in this case? I think
3 that Randy was a father figure to a certain extent when he
4 had him maybe. I don't know what was going on in that
5 trailer when they came up one time to get him and he was
6 screaming inside and saying no, no, no, just don't get him
7 right now. Something's going on and we don't want to upset
8 him any more. Maybe he had seen his mama coming. I don't
9 know.

10 But his father figures included one Eddie Godfrey with
11 whom Cindy lived for about 12 years. You hear about him.
12 You know, he was there sometimes, and sometimes he would
13 forget to come home because he was out drunk or he was on
14 drugs.

15 There was also a Larry Eubanks lived across the street.
16 He was like a grandfather figure. When he was a little boy
17 he would go over there and help him, and help him in the
18 yard, but he is dead now.

19 During the course of the presentation of these
20 witnesses you kept hearing them say they want to see him
21 live. That's a request for mercy. Every one of these
22 witnesses, except the mother. You know what she wants to
23 see him do? She wants to see him live. Loraine wants to
24 see him live.

25 Then the other witnesses -- Fred Simmons, Dennis --

Closing arguments

1 Robert Simmons, Dennis Cothran, Tina Hunt, Bobby Richards,
2 Paul Gilliam, William Gregory -- respectful, did the best he
3 could, do what he was told to do, limited, challenged.

4 That's the general background on him there. They all
5 said basically the same things, and I'm afraid I'm losing
6 your attention if I keep on going through each and every one
7 of these details.

8 The stonemason, Mr. Richards, I mean, Eric would go to
9 church on Sunday along with Dennis who was his grandson when
10 he was about 12 years old.

11 The last witness worked with him at American Hardwood
12 Floors, worked with him a lot. He was a great worker, very
13 skilled, cut boards, on and on and on. Always respectful,
14 never gave anybody a problem. None of those folks, you
15 didn't hear anything about it.

16 Now, what you've got right there is a showing of a
17 little boy who is not much more than a little boy right now
18 and who was not much more than a little boy on May 3 of
19 2000..

20 Nothing is offered in excuse. Those are just things
21 you can consider. And I think each and every one of you
22 would agree that you need to know these things before you
23 make a decision. You've got to know them, and there's no
24 way to do it, no way to get to it until you hear it stated.

25 Eric Morgan has been in jail since May 3, May 4 of

Closing arguments

1 2000. As he said, I ain't seen the streets.

2 He has had some infractions. The ones that I heard
3 about were relatively minor. If he had been a problem,
4 especially if he had exhibited violence against others, you
5 would have heard about that.

6 He's doing the best he can in there. He's doing the
7 best he can just like he did the best he could except for
8 this terrible thing that I cannot make an excuse of for him,
9 this horrible, horrible thing. And there is no words that I
10 can say that would fall short, because my heart goes out to
11 this good family. Nothing I can say except I'm sorry.

12 I heard Solicitor Gowdy say that death will visit all
13 of us. And if there's one true fact in life, that is the
14 biggest one. And it knocks on our door. See, what the
15 state wants is for you to open that door and let death in.

16 There's no killing, there's no murder that when you
17 start describing it in minute detail or in detail that is
18 not shocking, that isn't bothersome. And do you know why?
19 It's because we all love life and we instinctively draw back
20 from death. That's our nature. So whenever death does come
21 knocking or whenever the door is opened by death or the help
22 of others, there's nothing pretty about it.

23 The theme is that we are asking for mercy. Of course
24 we are. And, you know, the mercy we are asking for here is
25 to take a 21-year-old, a 17-year-old at the time of the

Closing arguments

1 commission of the crime, and put him in prison for the rest
2 of his life.

3 Is that a whole lot to ask, put him in prison for the
4 rest of his life, day in and day out, year after year?
5 That's not too much to ask in the name of mercy.

6 Mr. Gowdy said that there's a spectrum, there's mercy
7 over here and then there's vengeance over here. No. I
8 don't. I disagree. There's vengeance over here. There's
9 mercy right here, and there's exoneration over here. That's
10 complete exoneration.

11 We don't have that option, because this man, he has
12 committed the crimes that you found him guilty of. What
13 we've got is mercy and the other option.

14 Mr. Gowdy states that he stands on the firm rock of
15 justice, on the proud, the woman, you know, we have all seen
16 that, and I respect his argument and I respect Solicitor
17 Gowdy to the greatest degree.

18 But, you know, like I said, there are two sides to the
19 story. There is always another side of the coin. He stands
20 on that proud rock of justice and asks that you kill him.

21 Well, let me show you another lady. Up there above the
22 threshold, the court comes in and out, there is another
23 lady. That's our state seal. And I don't know if you can
24 read it or not. I can't, but I've just seen it before. But
25 over the top it says seems dum spiro, spero. That says

Jury charge

1 while I breathe, I hope. And underneath that lady it says
2 spes, S-P-E-S. That means hope.

3 And I submit that that lady has a message too because
4 if somebody is breathing, there's hope. If somebody's
5 breathing, there's a chance. And I'm asking you not to
6 extinguish that breath. Don't do it. Because as long as
7 there is breath, there's hope. Thank you, each and every
8 one.

9 THE COURT: Madam Forelady and members of the jury, the
10 defendant having been guilty of the crime of murder, it now
11 becomes your duty to decide what sentence or what punishment
12 that you will recommend that this Court shall impose upon
13 the defendant, Eric Dale Morgan, for his commission of the
14 crime of murder.

15 There are two possible verdicts that you will consider
16 as punishment. One is a sentence of death; the other is a
17 sentence of life imprisonment.

18 Under the law the term life imprisonment means until
19 the death of the defendant without the possibility of
20 parole. You will make your determination as to the
21 appropriate sentence based upon your consideration of all of
22 the evidence presented in this case, including that evidence
23 in aggravation of punishment and that evidence in mitigation
24 of punishment. And then you will apply the law as I will
25 have provided it to you.

Jury charge

1 Now, while the sentence that you recommend is referred
2 to in the law as a recommendation, it is a recommendation
3 that must be followed by the Court. And therefore whatever
4 sentence that you recommend, that sentence will be imposed
5 by this Court on the defendant.

6 Now, there are certain forms which I have prepared and
7 that you will have in the jury room with you during your
8 deliberations relating to this instruction and relating to
9 your duties in the case. You will be requested to complete
10 the appropriate forms depending upon your unanimous findings
11 resulting from your deliberations.

12 Now, the law provides that before you are permitted to
13 make any recommendation as to punishment, whether it be a
14 sentence of death or a sentence of life imprisonment, it
15 would be necessary that the jury has unanimously found the
16 existence of at least one statutory aggravating circumstance
17 beyond a reasonable doubt.

18 A statutory aggravating circumstance, as I have
19 previously instructed you, is a fact, an incident, a detail
20 or an occurrence that the state legislature has declared by
21 statute to be a circumstance that may make worse or
22 aggravate the crime of murder when it accompanies that
23 offense.

24 It is a fact that may increase the enormity of or add
25 to the injurious consequences of the crime of murder. Now,

Jury charge

1 as is reflected in the statutory instruction form, and
2 that's the first form that you will have in the jury room,
3 Madam Forelady, in making your determination as to whether
4 to recommend a sentence of death or to recommend a sentence
5 of life imprisonment, you may consider the following two
6 aggravating circumstances: Number one, that the murder of
7 Jerry Allen Smith was committed while in the commission of
8 the crime or act of robbery while armed with a deadly
9 weapon. And I have previously instructed you on the law as
10 it relates to that particular definition as to that
11 particular charge.

12 The second statutory aggravating circumstance which you
13 may consider is that the murder of Jerry Allen Smith was
14 committed while in the commission of the crime or act of
15 larceny with the use of a deadly weapon.

16 Now, as I have previously stated, larceny is the taking
17 and the stealing and the carrying away of personal property
18 belonging to another with the intention of permanently
19 depriving the owner of use and possession of that property
20 and converting that property to the taker's own use. And
21 that larceny would be accomplished with the use of a deadly
22 weapon, which I have previously defined for you as including
23 all types of firearms.

24 And, again, robbery is a forcible larceny. It is the
25 taking and the stealing and the carrying away of personal

Jury charge

1 property of another, that is a larceny, accompanied by the
2 use of force or violence and with the use of a deadly
3 weapon.

4 Now, in this particular hearing, the sentencing phase
5 of this trial, there has been an additional statement which
6 was introduced into evidence. That statement is alleged to
7 have been made by the defendant subsequent to his arrest and
8 pursuant to interrogation by law enforcement officers.

9 Now, as I instructed you previously, you may consider
10 that statement if you are determined -- if you determine
11 beyond a reasonable doubt that it was freely and voluntarily
12 made, considering a totality of the circumstances that
13 surround the giving of that particular statement.

14 In making your determination as to the voluntariness of
15 that statement you must consider a number of factors
16 relating to the characteristics of the accused, as well as
17 the circumstances that surrounded the interrogation which
18 resulted in the giving of that statement.

19 And some of the factors that you must consider are
20 whether or not the accused was advised of and understood his
21 constitutional right to remain silent; that anything he said
22 may be used against him in court; that he had the right to
23 have a lawyer and the presence of a lawyer before any
24 questioning would be conducted; and that if he could not
25 afford a lawyer one would be appointed before any

Jury charge

1 questioning was undertaken; and further that if he wished to
2 answer any questions he could stop that questioning at any
3 time.

4 You must also consider evidence relating to the age,
5 the intelligence, the education, capacity and experience of
6 the defendant as well as the nature of the interrogation
7 including whether or not there were any threats or coercion
8 or promises made.

9 If, after your consideration of the totality of the
10 circumstances surrounding the making of that particular
11 statement, you are not satisfied beyond a reasonable doubt
12 that that statement was freely and voluntarily made by the
13 defendant, then you would not be able to consider that
14 statement in any fashion whatsoever as evidence against the
15 defendant. Should you find beyond a reasonable doubt that
16 the statement made by the defendant was given freely and
17 voluntarily, then you may consider that statement just as
18 you do any other evidence in the case.

19 You will determine what weight, value and effect, if
20 any, to give to that statement or any portion of it. And
21 therefore you may accept it, you may reject it in whole or
22 in part based upon your own determination as to what
23 consideration should be given to it.

24 So, again, the two statutory aggravating circumstances
25 that may be considered by the jury are that the murder was

Jury charge

1 committed by the defendant while in the commission of the
2 crime or act of robbery while armed with a deadly weapon;
3 the second circumstance, that the murder was committed by
4 the defendant while in the commission of the crime or act of
5 larceny with the use of a deadly weapon.

6 Now, these are the only circumstances that you may
7 consider as a statutory aggravating circumstance in your
8 determination as to what sentence shall be imposed upon the
9 defendant.

10 Should you 12 jurors unanimously find the existence of
11 at least one of the statutory aggravating circumstances
12 which are set forth on that statutory instruction form
13 beyond a reasonable doubt, then you are permitted to make a
14 recommendation as to what sentence the Court shall impose,
15 whether it be a sentence of death or a sentence of life
16 imprisonment.

17 You are not authorized nor permitted under the law to
18 return a recommendation for the imposition of any sentence,
19 whether it be one of death or one of life, unless you have
20 unanimously found the exitance of at least one of the
21 statutory aggravating circumstances beyond a reasonable
22 doubt. And as I have previously instructed you, a
23 reasonable doubt is the kind of doubt that would cause a
24 reasonable person to hesitate to act.

25 Now, should you unanimously find that the state has

Jury charge

1 proven the existence of at least one statutory aggravating
2 circumstance beyond a reasonable doubt, then you would
3 complete the form indicating that unanimous finding. And
4 then you would continue with your deliberations and your
5 determination as to what sentence shall be imposed by the
6 Court.

7 Now, before arriving at your decision as to what the
8 appropriate sentence shall be in the case you are instructed
9 that you must consider in addition to the statutory
10 aggravating circumstances that I have listed the following
11 statutory mitigating circumstances.

12 Now, a statutory mitigating circumstance is a fact, an
13 incident or a detail or an occurrence which the state
14 legislature has declared by statute to be a circumstance
15 which may make less or reduce the severity of the crime of
16 murder.

17 It is a circumstance that may be considered as
18 mitigating or extenuating, that is lessening of the degree
19 of moral culpability for the commission of the crime of
20 murder.

21 A mitigating circumstance is neither a justification
22 for nor an excuse for the crime of murder. It is simply a
23 fact or circumstance which may lessen the degree of the
24 defendant's guilt or make the defendant less blameworthy or
25 less culpable than he might otherwise be.

Jury charge

1 Now, as is reflected in the statutory instruction form
2 which you will have in the jury room with you, in making
3 your determination as to whether or not to recommend a
4 sentence of death or a sentence of life imprisonment you
5 shall consider the following statutory mitigating
6 circumstances: Number one, that the defendant has no
7 significant history or convictions for crimes involving the
8 use of violence against any person; secondly, you must
9 consider the age or mentality of the defendant at the time
10 of the crime; and, thirdly, you shall consider that the
11 defendant was below the age of 18 years at the time of the
12 commission of the crime. And, as I say, each of those
13 statutory mitigating circumstances are also set forth on the
14 statutory instruction form.

15 Now, in addition to those statutory mitigating
16 circumstances you shall also consider any nonstatutory
17 mitigating circumstance or circumstances that you find have
18 been shown to exist by the evidence in the case.

19 A nonstatutory mitigating circumstance is one that may
20 serve the same purpose as a statutory mitigating
21 circumstance, that is to lessen or reduce the degree of the
22 defendant's guilt in the commission of the crime of murder.

23 Now, while there must be some evidence which supports a
24 finding by you of the existence of any statutory or
25 nonstatutory mitigating circumstance, it is not necessary

Jury charge

1 that you find the existence of any such circumstance beyond
2 a reasonable doubt. You must simply find that in your view
3 any such mitigating circumstance is supported by the
4 evidence in the case.

5 You are instructed however that you are permitted to
6 impose a sentence of life imprisonment whether or not you
7 find the existence of any statutory or nonstatutory
8 mitigating circumstance.

9 In making your determination as to which sentence to
10 recommend in this case you shall consider the statutory
11 aggravating circumstances as I have listed those for you as
12 well as the statutory and nonstatutory mitigating
13 circumstances in arriving at your decision.

14 Now, you will also have in addition to the statutory
15 instruction form, you'll have the form where you would
16 indicate the finding beyond a reasonable doubt of the
17 existence of a statutory aggravating circumstance.

18 If you unanimously determine the existence of a
19 statutory aggravating circumstance, then the form entitled
20 finding of the existence of statutory aggravating
21 circumstance or circumstances would be completed. And on
22 that form you would simply list the aggravating or those
23 aggravating circumstances that you have found beyond a
24 reasonable doubt. And beneath that writing you would also
25 place the signatures of each of the 12 jurors indicating

Jury charge

1 that unanimous finding.

2 In addition to those two forms there are also two
3 recommendation-as-to-sentence forms. Now, one relates to
4 the recommendation of a death sentence; the other relates to
5 the recommendation of a life sentence.

6 Now, by the recommendation-of-a-death-sentence form
7 you, the jury, may recommend that the defendant be sentenced
8 to death. Please note that immediately below the
9 recommendation language are 12 lines where each of you
10 jurors would sign your name if you determine that a sentence
11 of death shall be imposed. As I have stated, the law
12 requires that a recommendation for the imposition of a death
13 sentence be a unanimous recommendation by the jury, and each
14 juror must sign his or her name to the form reflecting that
15 unanimous decision.

16 Now, before you are permitted to return a
17 recommendation of the imposition of a death sentence it
18 would be necessary that all 12 jurors had unanimously found
19 the existence of a statutory aggravating circumstance beyond
20 a reasonable doubt, and that statutory aggravating
21 circumstance, or circumstances where more than one is found,
22 would be written in the space provided on the
23 recommendation-of-death-sentence form located directly above
24 the juror signature lines.

25 Should the jury unanimously find beyond a reasonable

Jury charge

1 doubt the existence of a statutory aggravating circumstance
2 or circumstances accompanying the murder and should you
3 further unanimously find that the defendant should be
4 sentenced to death after having considered the evidence in
5 favor of a recommendation of a life sentence, then it would
6 be your duty, Madam Forelady, to write out on the
7 recommendation-of-death-sentence form the statutory
8 aggravating circumstance or circumstances which have been
9 found by the jury. And then below that each juror would
10 sign his or her name in the space provided indicating their
11 unanimous recommendation as to the imposition of the death
12 sentence.

13 As I have previously stated, while you must find the
14 existence of a statutory aggravating circumstance beyond a
15 reasonable doubt before you are permitted to make any
16 recommendation as to sentence, once such a finding is made
17 you are permitted to recommend a sentence of death even
18 though you may also find the existence of one or more
19 statutory or nonstatutory mitigating circumstances.

20 The existence of any statutory or nonstatutory
21 mitigating circumstance is not a bar to the recommendation
22 of a death sentence so long as you have found the existence
23 of a statutory aggravating circumstance beyond a reasonable
24 doubt and your decision to impose a death sentence is
25 unanimous.

Jury charge

1 Now, you will also have a recommendation-as-to-a-life-
2 sentence form. And by the recommendation-of-a-life-sentence
3 form the jury may recommend that the defendant be sentenced
4 to life imprisonment. And, as I have stated, pursuant to
5 16-3-20, Subsection A, of the South Carolina Code of Laws,
6 that section provides that a sentence of life imprisonment
7 means until the death of the defendant without the
8 possibility of parole.

9 You are also permitted to recommend a sentence of life
10 imprisonment even though you find the existence of one or
11 more statutory aggravating circumstances beyond a reasonable
12 doubt and you find no mitigating circumstances to be
13 supported by the evidence in this case. You may recommend a
14 sentence of life imprisonment for any reason or for no
15 reason at all other than as an act of mercy.

16 Now, while all jurors are required to sign the form
17 recommending a sentence of death, you will notice, Madam
18 Forelady, that in the event the jury's unanimous
19 recommendation is as to a life sentence, only the foreperson
20 would be required to sign that recommendation form.

21 Now, as I have previously instructed you, whatever your
22 decision may be regarding a recommendation as to sentence,
23 the decision of the jury must be unanimous. All 12 of you
24 must be in agreement in order to return any recommendation
25 as to sentence.

Jury charge

1 Now, during the trial of this case you have heard
2 evidence as to some criminal history of the defendant prior
3 to May the 3rd of 2000, and that evidence has been
4 introduced in the case as evidence relating to the
5 characteristics of the defendant.

6 You may consider such evidence for that purpose should
7 you determine it to be relevant and probative on that
8 particular point, but it may not be considered by you for
9 any other purpose. You may not consider such evidence as
10 proof of any statutory aggravating circumstance that is
11 alleged by the state in this case.

12 Now, Madam Forelady and ladies and gentlemen of the
13 jury, as I indicated to you, you will have four forms in the
14 jury room with you. And by the use of those forms you will
15 indicate the jury's unanimous decision.

16 In summary, the statutory instruction form sets forth
17 the statutory aggravating circumstances that the jury may
18 consider in arriving at your decision. Those are the only
19 statutory aggravating circumstances that the jury may
20 consider in arriving at a recommendation as to punishment.

21 Also, on the same form you will see the statutory
22 mitigating circumstances that the jury is required to
23 consider before arriving at any decision as to punishment in
24 this case. And also you will see on the form that you shall
25 also consider any nonstatutory mitigating circumstances that

Jury charge

1 you find to have been established by the evidence in the
2 case.

3 There's a form wherein the jury is to indicate its
4 finding of the evidence of a statutory aggravating
5 circumstance.

6 Whatever that finding is, Madam Forelady, I would ask
7 that you indicate on the form what statutory aggravating
8 circumstance, if any, has been found by the jury beyond a
9 reasonable doubt. There must be at least one.

10 Whatever the finding is, indicate that finding in the
11 space provided, and then, as I've stated, it must be
12 unanimous. And each juror will sign his or her name to that
13 form to indicate that unanimous finding of the jury.

14 Now, in the event that the jury does make a finding
15 unanimously as to the existence of a statutory aggravating
16 circumstance, then the jury would continue deliberations and
17 would determine what sentence should be recommended to the
18 Court, whether that be a recommendation of a death sentence
19 or a recommendation of a life sentence.

20 If the jury makes a recommendation as to a death
21 sentence, again, the statutory aggravating circumstance or
22 circumstances found by the jury beyond a reasonable doubt
23 would be written on that form. Beneath that each of the
24 jurors would again sign your name indicating your unanimous
25 decision as to the recommendation of a death sentence.

Jury charge

1 If the jury unanimously determines that a life sentence
2 is the appropriate sentence to impose in the case, then in
3 that event only the foreperson would need to sign the
4 recommendation-as-to-a-life-sentence form.

5 Now, as I say, you'll have each of these forms in the
6 jury room with you. And if there is some issue or some
7 question about these forms, Madam Forelady, simply indicate
8 that question by writing a note, give it to the bailiff.
9 He'll provide it to me. And I will address any question
10 that you might have as it relates to those forms.

11 As these forms are completed if, for some reason, you
12 make a mistake in completing a form, don't worry about it.
13 Tell the bailiff that you need a new set of forms. Don't
14 ask for a particular form. Just tell the bailiff that you
15 need a new set of forms. I will provide those forms to you.
16 That's just in the event that for some reason you make a
17 mistake in the completion of the form.

18 Now, during your deliberations you may find it
19 appropriate while in the jury room to take a poll or to take
20 a vote of the individual jurors in order to determine where
21 each stands with respect to a particular issue or decision.

22 Now, while you may employ such a method if you
23 determine it to be appropriate to do so, you should at no
24 time however indicate to anyone outside the jury room,
25 including this Court, the result of any vote that might be

Jury charge

1 taken until and unless you have arrived a unanimous vote as
2 to any decision that you have been called upon to make.

3 Now, as I have previously indicated to you, I cannot
4 answer any questions as they relate to issues of fact. You
5 determine any issue of fact from the evidence in the case.

6 In the event however you should have any question about
7 the law that's applicable as it relates to this particular
8 proceeding, simply make -- write a note to me to that
9 effect, give it to the bailiff, and then I'll bring you back
10 to clarify the law or to reinstruct you as to any law that
11 you need clarification as to. And, of course, as I've
12 stated, whatever decision you reach has to be unanimous.
13 All 12 have to be in agreement.

14 Madam Forelady, when you and your fellow jurors have
15 reached that unanimous decision, please indicate it by
16 completion of the verdict forms. And where all jurors'
17 signatures are required, all jurors will need to sign that
18 particular form.

19 Now, during deliberations, again, your lunch has been
20 ordered. It should be here shortly if it's not here when
21 you go back.

22 There are some smokers on the jury, I know. You are
23 permitted to smoke during deliberations, but, as I have
24 previously stated, deliberations of the jury may not take
25 place unless all 12 jurors are present in the jury room so

Jury charge

1 that all may participate in those deliberations.

2 Now, at the present I will ask you to please retire to
3 your jury room, but do not yet begin your deliberations.

4 I've got some matters I'll need to address with the lawyers.

5 If I do not need to bring you back for any reason, I'll
6 simply send word by way of the bailiff that you may begin
7 your deliberations. In that event, again, the bailiff will
8 bring to the jury room all of the exhibits which have been
9 admitted during the trial of the case.

10 And to you, Madam Forelady, he will also bring the
11 forms that you will use during the course of your
12 deliberations.

13 So please retire to your jury room, but do not begin
14 your deliberations until I send you word to do so.

15 (Whereupon, the jury retired from the courtroom at
16 12:34 p.m.)

17 THE COURT: Are there any exceptions taken to the
18 instruction or requests for additions to the instruction by
19 the state?

20 MR. GOWDY: Your Honor, the only thing that I would
21 respectfully ask the Court to consider, and the Court knows
22 better than I do whether or not it's necessary at this time,
23 the defendant's failure to testify.

24 I saw the alternates go out. I assume the bailiffs are
25 going to keep the alternates.

Jury charge

1 THE COURT: They will be separated.

2 MR. GOWDY: And note-taking, again, if an instruction
3 on that would be appropriate.

4 THE COURT: Okay. Any additions or exceptions by the
5 defense?

6 MR. ALLEN: In addition to that which the solicitor has
7 mentioned, I'm not sure if it's clear to the jurors that any
8 decision concerning mitigating circumstances need not be
9 unanimous.

10 I ask the Court to please give them that instruction,
11 that any decision concerning a mitigating circumstance need
12 not be a unanimous decision.

13 THE COURT: Well, let's see. Well, in the event that's
14 not clear, I'll tell them that's not necessary to be found.

15 MR. ALLEN: Yes, sir.

16 THE COURT: Okay. Bring all 15 jurors back, please.

17 (Whereupon, the jury returned to the courtroom at
18 12:35 p.m.)

19 THE COURT: Ladies and gentlemen, in addition to what I
20 have already instructed you, let me instruct you that while
21 it is required that any statutory aggravating circumstance
22 be proved beyond a reasonable doubt and that that decision
23 be unanimous, there is no requirement that any mitigating
24 circumstance finding be unanimous.

25 The jury will simply determine whether or not there is

Jury charge

1 the existence of any mitigating circumstance. There is no
2 requirement that the jury unanimously find or make any
3 indication of the finding of any mitigating circumstance,
4 and any decision in that regard would not have to be
5 unanimous.

6 As I've stated, you can impose a life sentence even if
7 no mitigating circumstance were established in the case. So
8 long as there was at least one aggravating circumstance
9 found in the case, you would be able to make a decision as
10 to punishment, whether it be a death sentence or a life
11 sentence. But there is no requirement that the jury
12 unanimously find any mitigating circumstance to exist before
13 a life sentence could be imposed, because as I've stated,
14 you can impose a life sentence for any reason or for no
15 reason at all other than as an act of mercy.

16 Also, as was the case in the first part, the first
17 phase of the trial, the fact that a defendant does not take
18 the witness stand and testify during the sentencing phase of
19 a trial such as this may not be considered by the jury in
20 any fashion whatsoever during your deliberations or in your
21 determination as to what the appropriate sentence should be
22 in the case.

23 So you may not consider the fact that a defendant does
24 not take the witness stand in any fashion whatsoever in your
25 determination as to the appropriate punishment, nor may that

Jury charge

1 fact be held against him in any way whatsoever, nor may it
2 even be discussed while you are in the jury room.

3 All right. With that, you may retire to your jury
4 room. And when you receive the evidence and receive the
5 forms, you may begin with your deliberations.

6 So please take the 12 primary jurors to the primary
7 jury room and take the three alternates to a separate
8 facility.

9 (Whereupon, the jury retired to deliberate at
10 12:40 p.m.)

11 THE COURT: Any other exceptions or additions by the
12 state?

13 MR. GOWDY: Not from state, Your Honor.

14 THE COURT: By the defendant?

15 MR. POOLE: Judge, I will leave it up to the judge's
16 discretion, but I think Mr. Gowdy had -- might have
17 mentioned something about the note-taking.

18 THE COURT: Well, are they still taking notes?

19 MR. POOLE: Yes, sir.

20 THE COURT: I didn't notice that they had notes. Okay.

21 MR. POOLE: Yes, sir.

22 THE COURT: Bring them back.

23 (Whereupon, the jury returned to the courtroom at
24 12:42 p.m.)

25 THE COURT: One brief additional comment as to

Verdict

1 note-taking.

2 Again, understand that if anyone took notes during this
3 particular proceeding those notes are for the benefit of
4 that juror alone. They are not to be relied upon by any
5 other juror in making your decision in this case. So any
6 notes that were taken by a juror are solely for the personal
7 benefit of that juror. They are not to be considered by any
8 other juror in any way.

9 Now, with that you may retire and begin your
10 deliberations when you receive the exhibits and the forms.

11 (Whereupon, the jury retired to deliberate at
12 12:43 p.m.)

13 THE COURT: Let me ask y'all to verify the exhibits,
14 please.

15 (Pause.)

16 THE COURT: Are they all accounted for?

17 MR. BULSA: Yes, sir.

18 MR. ALLEN: Yes, sir.

19 THE COURT: Tell them to begin deliberating. We will
20 be at ease while the jury is deliberating.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right. They tell me the jury has
23 reached a verdict. Are we ready to receive the verdict?

24 MR. GOWDY: The state is, Your Honor.

25 MR. ALLEN: Yes, sir.

Verdict

1 THE COURT: All right. Bring them in.

2 (Whereupon, the jury returned to the courtroom at
3 3:42 p.m.)

4 THE COURT: Madam forelady, have you and your fellow
5 jurors reached a unanimous decision as to the punishment
6 that is to be imposed in this case?

7 THE FORELADY: We have, Your Honor.

8 THE COURT: Have you indicated that decision on the
9 verdict forms as requested?

10 THE FORELADY: Yes, sir.

11 THE COURT: If you will, please hand those up by way of
12 the bailiff.

13 Madam forelady, let me -- I want you and your fellow
14 jurors to go back into the jury room. Whatever aggravating
15 circumstance might be found by the jury, it must be those or
16 only one or both of those that are set forth on the
17 statutory instruction form. And whichever it be, whether it
18 be one or both, it must be stated as it is stated on the
19 statutory instruction form.

20 THE FORELADY: Okay.

21 THE COURT: In other words, it must be identical to the
22 wording that's on that form if that be your finding in the
23 case.

24 So I'll ask you to please, you and your fellow jurors,
25 with the exception of the three alternates -- they'll be

Verdict

1 taken back to their own location -- please retire again to
2 the jury room and complete the form as requested.

3 (Whereupon, the jury retired to the jury room at
4 3:45 p.m.)

5 THE COURT: We will be at ease for just a few minutes.

6 (Whereupon, a recess was taken.)

7 THE COURT: All right. Bring the jury in, please, sir.

8 (Whereupon, the jury returned to the courtroom at
9 4:15 p.m.)

10 THE COURT: Madam forelady, have you now completed the
11 verdict form?

12 THE FORELADY: Yes, sir.

13 THE COURT: If you will, hand those up by way of the
14 bailiff.

15 All right. In Case Number 00-GS-42-2680, the State vs.
16 Eric Dale Morgan, we, the jury, in the above entitled case,
17 having unanimously found beyond a reasonable doubt the
18 existence of the following statutory aggravating
19 circumstance: To wit, one, that the murder was committed by
20 the defendant while in the commission of the crime or act of
21 robbery while armed with a deadly weapon, and, two, that the
22 murder was committed by the defendant while in the
23 commission of the crime or act of larceny with the use of a
24 deadly weapon, now unanimously recommend to the Court that
25 the defendant, Eric Dale Morgan, be sentenced to death.

Verdict

1 The verdict form is signed by each of the 12 jurors.

2 Madam Clerk, if you will, please poll the jury as to
3 their verdicts.

4 THE CLERK: Ladies and gentlemen of the jury, I will
5 ask you a question, after which I will ask you to stand
6 individually and answer my question, the question being is
7 this your verdict and still your verdict.

8 Mr. Greer.

9 THE JUROR: Yes.

10 THE CLERK: Mr. Fisher.

11 THE JUROR: Yes.

12 THE CLERK: Mr. Jones.

13 THE JUROR: Yes.

14 THE CLERK: Mr. Bishop.

15 THE JUROR: Yes.

16 THE CLERK: Ms. Owens.

17 THE JUROR: Yes.

18 THE CLERK: Ms. Jackson.

19 THE JUROR: Yes.

20 THE CLERK: Mr. Swinford.

21 THE JUROR: Yes.

22 THE CLERK: Ms. Shafer.

23 THE JUROR: Yes.

24 THE CLERK: Ms. Long.

25 THE JUROR: Yes.

Verdict

1 THE CLERK: Ms. Dobson.

2 THE JUROR: Yes.

3 THE CLERK: Mr. Covil.

4 THE JUROR: Yes.

5 THE CLERK: Ms. Kendall.

6 THE JUROR: Yes.

7 THE CLERK: The jury has been polled.

8 THE COURT: All right. Ladies and gentlemen, if you
9 will go back to your jury room one more time -- don't
10 discuss anything related to the case. I will bring you back
11 in just a few minutes.

12 (Whereupon, the jury retired from the courtroom at
13 4:19 p.m.)

14 THE COURT: Let me see the lawyers, please.

15 (Bench conference held off the record.)

16 THE COURT: All right. Gentlemen and ladies, have you
17 had an opportunity to review the jury's verdict form?

18 MR. ALLEN: Yes, sir, Your Honor, we have.

19 THE COURT: And do they appear to be in order?

20 MR. ALLEN: They do, Your Honor.

21 THE COURT: Any matters you would like to address
22 before the jury is excused?

23 MR. ALLEN: No, Your Honor.

24 THE COURT: Okay. Bring the jury back.

25 (Whereupon, the jury returned to the courtroom at

Verdict

1 4:21 p.m.)

2 THE COURT: Thank you for your patience, ladies and
3 gentlemen.

4 I have got one other instruction I need to provide you
5 before you are excused.

6 After your service in this trial has concluded you have
7 the right to either refuse to discuss this case and/or the
8 verdict you have rendered or to discuss this case and/or the
9 verdict that you have rendered to the extent that you
10 desire.

11 If you choose to discuss your service in this case or
12 your verdict, you are free to terminate any such discussion
13 at any point. If the person with whom you are speaking
14 continues to pursue a discussion of the case or your verdict
15 with you after you have communicated your desire to
16 terminate that discussion or if the person continues to
17 harass you after you have refused to discuss the case or
18 your verdict, you may report that person to the sheriff of
19 Spartanburg County or to the clerk of court for Spartanburg
20 County or to the chief of police of the town or municipality
21 where you are residing in Spartanburg County in order that
22 they may take the appropriate action to inform this Court of
23 this inappropriate contact with you.

24 Now, each of you will receive a copy of that
25 instruction before you are excused. On that instruction

Verdict

1 sheet is a telephone number for the sheriff's department and
2 also for the clerk of court's office.

3 Simply what I mean by that is you are free to discuss
4 the case as much or as little as you would like to as many
5 or as few as you would like. So you discuss it if you wish
6 to. If you don't wish to discuss it, you do not have to.

7 If anyone insists on discussing the case with you that
8 you do not wish to discuss it with, then please call the
9 clerk's office or the sheriff's department. And we will
10 assist you in resolving that difficulty.

11 Now, I do want to take this opportunity to sincerely
12 thank you for your service in this case. I know that jury
13 service in any case during any week is a difficult process.
14 It's inconvenient; it poses a hardship.

15 In a case of this nature that inconvenience, that
16 hardship and that difficulty is often multiplied many times.
17 So you are to be commended for the service that you have
18 performed in this case. You are also to be commended for
19 the manner in which you have carried out your service.

20 If at any time any juror has any question that I can
21 answer, you please contact me. I'll be happy to talk with
22 you about the case or any question or concern that you might
23 have.

24 So, again, I do want to sincerely thank you for your
25 service in the case. We do appreciate the fashion in which

Motions

1 you have carried it out.

2 The custodians will be taking you back to the hotel
3 shortly after the clerk sees you before you go. You'll
4 receive your things there and pack your things.

5 I assume everybody's car is still here, or is somebody
6 going to pick you up?

7 JURY CUSTODIAN: At the motel.

8 THE COURT: All the cars are at the motel? Okay.

9 Well, once you gather your things, you can leave.
10 Again, please accept our thanks for your willingness to
11 serve and for your actual service in the case.

12 If you'll go back to the jury room one more time the
13 clerk will see you there.

14 Once she provides you with some information, then you
15 may be excused to be taken back to the hotel to gather your
16 things.

17 Please let us know if you have any difficulty of any
18 type. Thank you again for your help.

19 (Whereupon, the trial jury was excused at 4:25 p.m.)

20 THE COURT: All right. Any matters to be addressed
21 prior to sentencing?

22 MR. GOWDY: Not from the state, Your Honor.

23 MR. ALLEN: Your Honor, I simply renew motions and
24 objections that I made earlier in the course of the trial,
25 not only the grounds for the motions I made, earlier motions

Sentence

1 for a directed verdict and a new trial, but also renew my
2 motions and objections to certain questions conducted by the
3 state during the course of the voir dire concerning the age,
4 the objections to the disqualification of three potential
5 jurors that were previously put on the record, and also
6 renew my motions concerning the statement and the
7 preinterrogation waiver form of May 8th. Thank you.

8 THE COURT: All right. Well, each of those motions are
9 denied based upon the reasons as previously stated in the
10 record.

11 MR. ALLEN: Yes, sir.

12 THE COURT: All right. Bring the defendant around.

13 (Pause.)

14 THE COURT: Mr. Allen, anything you would like to say
15 on behalf of the defendant?

16 MR. ALLEN: Your Honor, if it please the Court, I
17 believe you've heard just about everything that we can
18 present about Eric Morgan from all of the sources that we
19 knew about and from which we can derive. I don't know if
20 there is anything else I can add at this time.

21 THE COURT: Mr. Poole.

22 MR. POOLE: Not really, sir. We know what the Court
23 must do.

24 THE COURT: All right. Mr. Morgan, is there anything
25 you would like to tell me before I impose sentence?

Sentence

1 THE DEFENDANT: No, sir.

2 THE COURT: In Case Number 2000-GS-42-2680, that's the
3 indictment for murder, as the trial judge in this case and
4 prior to the imposition of the death sentence upon the
5 defendant, Eric Dale Morgan, for having committed the crime
6 of murder, I find as an affirmative fact that the evidence
7 of the case warrants the imposition of the death penalty;
8 and its imposition is not a result of prejudice, passion or
9 any other arbitrary factor.

10 Therefore on Indictment 2680 the defendant, Eric Dale
11 Morgan, has been found guilty by the jury of the offense of
12 murder, and the jury has recommended that the defendant
13 should be sentenced to death.

14 It is therefore the judgment of the law and the
15 sentence of this court that the defendant, Eric Dale Morgan,
16 shall be taken to the Spartanburg County Detention Facility
17 and thence to the State Department of Corrections henceforth
18 where he is to be kept in close and safe confinement until
19 the 9th day of May 2004 upon which day between the hours of
20 six o'clock a.m. and six o'clock p.m. the defendant, Eric
21 Dale Morgan, shall suffer death in the manner as provided
22 for by law.

23 On Indictment 2000-2681, an indictment for armed
24 robbery, wherein you have found guilty by the jury, the
25 sentence of the court is you, Eric Dale Morgan, be confined

Sentence

1 to the South Carolina Department of Corrections for a period
2 of 30 years.

3 Indictment 2000-3165, possession of an explosive
4 device, wherein you have been found guilty by a jury of that
5 offense, the sentence of the court is you, Eric Dale Morgan,
6 be confined to the South Carolina Department of Corrections
7 for a period of 15 years. The indictment -- or excuse me.
8 The sentence imposed in 2681 is consecutive to that imposed
9 in 3165.

10 All right. All remain seated while the defendant is
11 removed from the courtroom.

12 (Whereupon, the defendant was removed from the
13 courtroom.)

14 THE COURT: All right. Anything further before we
15 recess?

16 MR. ALLEN: No, Your Honor.

17 MR. GOWDY: No, sir.

18 THE COURT: All right. Court is in recess.

19 END OF REQUESTED TRANSCRIPT OF RECORD
20
21
22
23
24
25

VOLUNTARY STATEMENT

PAGE 1

STATEMENT OF: Eric Dale Morgan AGE 17 DATE 5-4-00
 ADDRESS: 3206 Culppepper landing Duncan, S.C.
 PHONE # 486-8657 CASE: 00050247

At about ten o'clock pulled in the parking lot to pick up Brandon. I cut the car off and went inside. Brandon threw me a carton of Marlboro Reds, and I put them in the car. Jerry and Brandon started cutting off the lights. Jerry and Brandon came out the store. Brandon got in the car. Jerry was having a hard time locking the door. Then Jerry went to the alarm. Jerry came back outside with a red rag with something rolled up in it, it might have been that little .25 he bought today. He also had a little yellow box, it might have been bullets, I don't know. Then Jerry locked the door. I asked Jerry did he have it taken care of, and I said we go. By the time I pulled out he had the Iron gate locked and was getting in the car.

END OF STATEMENT

Due to the lack of ability to write legibly, I Officer Genicarelli wrote this statement.

I have read this statement consisting of 1 page(s), and I certify that the facts contained therein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 0151 A.M. on the 4th day of May, 2000.

WITNESS:

John B. Genicarelli

WITNESS:

Eric Morgan

Signature of person giving voluntary statement

VOLUNTARY STATEMENT 307

PAGE

Page 1 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX

CASE: _____

This is a statement taken at the Spartanburg County Sheriff's Office by Sergeant Dan Jeter, statement taken from Eric Dale Morgan. Time: 8:03 a.m. on May 4, 2000. (Eric is a W/M, 47-yr-old, resides at 3206 Culpepper Landing, Duncan, S.C.) This interview is in regards to a Homicide, death of Jerry Smith, who was the convenient store clerk at the Max Saver, a convenient store located on Highway 101 in Woodruff, South Carolina. Mr. Eric Dale Morgan has been developed as a suspect in this case.

Q At this time what I would like to do first of all is read him his Miranda Rights, I read them one through five, (1-5). Mr. Morgan, first of all you have the right to remain silent, anything you say can and will be used against you in a court of law. You have the right to talk to an attorney and have him present with you while you are being questioned. If you cannot afford to hire an attorney one will be appointed to represent you before any questions if you wish so. You have the right to stop answering any questions at any point and time during the questioning, and the above rights have been read to you by me, and again I'm Sergeant Dan Jeter, and it says you have read the same and you fully understand your rights, and below one through five you have indicated by writing your signature, Eric Dale Morgan. The second portion of the waiver states, "I waive and give up my right as explained above and agree to talk to Sgt. Jeter in reference to a Homicide Investigation, and any statement that I may make is of my own free will, without fear.

I have read this statement consisting of 20 page(s), and I certify that the facts contained therein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 3:15 PM on the 4th day of MAY, 1900.

WITNESS:

WITNESS:

Signature of person giving voluntary statement

R.391

VOLUNTARY STATEMENT 2308

PAGE

Page 2 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX CASE: _____

threat, promise, or favor or reward of any kind. I'm able to read and write the English language, and I finished nine (9) years of school, and again you've signed your name indicating that you do wish to talk me by indicating Eric Dale Morgan, is that correct?

A. Yes sir.Q. You understand your rights fully?A. Yes sir.Q. And you haven't been forced, coerced, or promised anything in regards to giving a statement?A. No sir.

Q. Mr. Morgan, first of all, you have given me a full confession in regards to the shooting of Mr. Jerry Smith, last evening on the 3rd day of May, year of 2000, and what you've told me basically is that you and a friend of your's by the name of Brandon, conspired/planned to rob the convenient store clerk which is Jerry Smith, W/M, age approximately 57, that currently lives in Greenville. Is that correct?

A. Yes sir.

Q. What I would like for you to do first of all Mr. Morgan is basically to start out giving me a synopsis as to when you first met Mr. Smith, how you and Brandon came to conspire to commit the robbery, what actually occurred during the robbery, and what happened after the robbery, and also where did you take the body and what did you do with the property that was taken as a result of

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This statement was completed at 3:15 P.M. on the 4th day of May, 19 00.

WITNESS

[Signature]
[Signature]

[Signature]

Signature of person giving voluntary statement

VOLUNTARY STATEMENT 2309

PAGE _____

Page 3 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX CASE: _____

the robbery. So take your time, speak up loud and just give me a full synopsis and I'll probably ask you questions at different points during the interview.

A. Alright, first of all, alright, I went and got in the car to pick up Brandon from work at the Max Saver. I pulled up in the parking lot. I parked right beside Mr. Smith's car. I get out, walk up in the store. Brandon hands me a carton of Marlboro's and tells me to put them back in the car so I turn around and put them in the car, walked outside, put em' in the car. By that time they're walking out the door so I run back to the car, hop in the, inside the driver's seat car, Brandon comes around on the passenger side and gets in while Jerry is closing on up and locking the doors. Alright, Brandon, he loads the gun, 22 rifle, I aim it out the dog gone, the window, I aim it out the window, and I told Jerry, "Freeze! Give me your money." He shuffled around a little bit and started to pull out a gun so I shot em'. Then I panicked, I jumped out of the car, me and Brandon both, grabbed Mr. Jerry up, put him in the back seat, in the back driver's seat, shut the door and leave. We take Mr. Jerry's car, we took Mr. Jerry's car to uh, Switzer beside of Dick Brook's house and ditched the car and the body, and then later on as we was coming home, we empty out a few rounds of the guns, and went on to this dud's, Cliff, this boy named Cliff's house, and then we left Cliff's and went to Brandon's house, hid the money, the guns, and everything, hid them in a car

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This statement was completed at 3:15 PM, on the 4th day of May, 1900.

WITNESS:

WITNESS:

Signature of person giving voluntary statement

R.393

VOLUNTARY STATEMENT 2310 PAGE _____

Page 4 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX CASE: _____

in the junk yard in a green Geo Storm with no wheels on it. The
money, the guns, and the pipe bomb is all in gray army box,
ammunition box under the hood of the green Geo. The rifle is
sittin in a trailer under several, several different outfits and
bags of cloth. And that's when the Cop come down there.

Q. Now basically you've given a synopsis as to the actual robbery and
the murder of Mr. Smith that occurred last evening.

A. Yes sir.

Q. Now when you referred to Brandon, what's Brandon's last name or
what's his relationship to you?

A. Brandon Duncan, he's my best friend ever since the middle school,
ever since we was in the middle school.

Q. Approximately how old is he?

A. He is sixteen now. He was about twelve (12) and I was about
thirteen (13) when we first met, there's somewhere about a years
difference, and we been buddies together ever since then, but this
is the first time me and him's ever done something like this.

Q. Now Brandon is currently sixteen (16) and you're currently
seventeen (17) is that correct?

A. Yes sir.

Q. Now, where does Brandon live? What's his address?

A. I have no earthly idea.

Q. Now, are you and Brandon currently living together?

A. Yes sir.

* have read this statement consisting of 20 page(s), and I certify that the facts contained therein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 3:15 P.M. on the 4th day of May, 19 00

WITNESS: Daniel G. [Signature]

WITNESS: Neal [Signature]

Eric Morgan

Signature of person giving voluntary statement

VOLUNTARY STATEMENT 311

PAGE
Page 5 of 20STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00
Spartanburg County Sheriff's Office

ADDRESS: XXX-XXXX

PHONE # CASE:

Q. Is that at his residence?

A. Yes sir.

Q. Is that with his parents?

A. Yes sir.

Q. But you don't know the address?

A. No sir.

Q. Now, again you told me that Brandon is a close friend of yours and has been for ten years, is that correct?

A. Yes sir.

Q. Now, what's the relationship with you and Brandon and Mr. Jerry Smith which is the clerk of the Max Saver Convenient Store. How did you know Jerry, how did Brandon know Jerry, and what was that relationship?

A. Well, we've been going up to the Max Saver that use to be Gibson's. The dud that Brandon was staying with, him and his mama, and his sister, he use to go up there all the time. And when Mr. Gibson sold the store to Mr. Smith and the rest of them, that's when I met him for the first time, then a couple of weeks ago, Chubby, another owner, part owner of the other store, offered Brandon a job working there from 5 to 10. Alright, the night of the 3rd, I don't want to say that, well, it doesn't actually come to the night of the 3rd, that's when we planned it.

Q. Ok, well just give me a synopsis, tell us how you planned it, what communication was said, why you planned it, and how it was carried

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This statement was completed at 3:15 PM on the 4th day of May, 1900.

WITNESS:

WITNESS:

Signature of person giving voluntary statement

VOLUNTARY STATEMENT 2312

PAGE

Page 6 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX CASE: _____

out.

A. Alright, the first thing that was said about it, everybody was broke and everybody, his family, my family was broke, we had to come up with something. We was going to blow the store up, blow the wall back of the store, but we said that would be too stupid, silly.

Q. How were you going to blow the store up?

A. With uh, um, a foot and half, foot and half, pipe bomb, homemade pipe bomb. So we decided on that plan. On the 3rd, while I was at the store, we decided on robing it because it was the 3rd and everybody got their check.

Q. Now when you say we, are you referring to you and Brandon?

A. Yes sir.

Q. You decided that you were going to rob Mr. Smith?

A. Yes sir.

Q. Because that's the day that everyone got their check and you felt like he would have a lot of money in the store.

A. Yes sir.

Q. Tell me about what your communication was with Brandon.

A. What do you mean by that?

Q. What did exactly you and Brandon talk about?

A. First of all Brandon, I come in, I come into the store around 8, 8:30 or 9:00 to help clean up uh, 25 pistol.

Q. Is that 8:30 9:00 p.m.?

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This statement was completed at 3:15 P.M. on the 4th day of MAY, 19 00.

WITNESS:

WITNESS:

Signature of person giving voluntary statement

VOLUNTARY STATEMENT 2313

PAGE _____

Page 7 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX CASE: _____A. P.M. Yes sir.

Q. Brandon says that there was a lot of cash going to come through today and it got me to thinking, "Ok, well, that could solve my problem, I could rob em' and he'd never know it. So we wasn't planning on hurting them or nothing, or nothing like that. We wasn't planning to do nothin harmful. We was just planning on getting the money and bail, but things just went "haywire." Now, you and Brandon communicated about robbing Mr. Smith?

A. Yes sir.

Q. And you told me earlier that Brandon and your communication was that times were hard?

A. Um hum.Q. Tell me a little bit about that.

A. Right now times is hard right now cause, me and my family we're at rock bottom, I thought this would be a way to get out. We lost everything, the apartments lost, we evicted, my step dad just wrecked my mama's car. She's in the hospital, she can't do it and she can't pay none of the bills now, she's not working, I'm not working, and I figured that I guess I, through this little bit and get back on my feet without hurting anybody but it didn't work.

Q. So after the planning to rob Mr. Smith, when Mr. Smith closed the store, is it correct, is it my understanding that you and Brandon had already left the store, walked outside the store?

A. Yes.

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This statement was completed at 3:15 P.M. on the 4th day of MAY, 1900.

WITNESS: Daniel G. O'LearyWITNESS: Neal Uch

Signature of person giving voluntary statement

VOLUNTARY STATEMENT

2314 PAGE 8 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # xxx-xxxx CASE: _____

Q. And Mr. Smith was setting the alarm, shutting the door, that type thing?

A. Yes.

Q. Take me from that point, is it correct that the store closes about 10:00 p.m.?

A. Yes sir.

Q. Take me from 10:00 p.m. in your best details, everything that happened word for word from the time that Mr. Smith closed the store until the police came to your residence.

A. Alright, Mr. Smith had close up the doors, he had all of them locked, started walking to his car, I said, "Freeze, give me your money," and he reached in his pocket, pulled out a gun and was starting to raise it up, so I just shot.

Q. When you shot him did you hit him?

A. Yes sir.

Q. Where did you strike him at?

A. On the left side of, on the left, the left side of his head, about, I'm not for sure where, but in his head, on the left side.

Q. So it is your testimony that you shot him.

A. Yes sir.

Q. In the head,

A. Yes sir,

Q. And you had the weapon, you shot him, and not Brandon?

A. That's correct.

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WITNESS:

Daniel G. Jett
Noel I. HulseEric Morgan

Signature of person giving voluntary statement

VOLUNTARY STATEMENT

2315

PAGE

Page 9 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX CASE: _____Q. What occurred after that?

A. Everything paused for a second, and then it's like, "Uh oh," me and Brandon both jumped out of the car, grabbed Mr. Smith, opened the driver's side, the back driver's side door, rolled him in the back driver's side floor board, shut the door, got in the car, I shut the door, run over to the other car, throwed on some latex gloves, and hopped in the car and took off. Took off down to Switzer. We ditched the body, and the car and then as we was discussing on our way back what if we get caught, and we was for sure, "Naah, we wouldn't get caught, we wouldn't get caught." So, so as we rode a little bit more, we took it and decided to stop by this dud's named Cliff's house to see if he wanted to come over and help us on the trailer. He said, "No," he was too messed up on LSD. I said, we said, "Okay," and left, and after we left we went straight to Brandon's house, hid the money in the boxes put em' in the cars and everything, had everything hid. By the time we start to sit down, the phone rings and it was somebody in Jerry's family calling saying that there was a puddle of blood and Jerry was missing from the store. He hadn't come home yet. Then that got us worrying, so we rushed down there to the trailer, unloaded the gun, took it out, took all the bullets out and went and buried them, took the firing pin, sawed it different. Then we hid the gun up under several clothes and several bags of cloth. Then we come up to the store, I mean not to the store, to the house, and about that time we got up

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This statement was completed at 3:15 P.M. on the 4th day of MAY, 1900.

WITNESS:

WITNESS:

Signature of person giving voluntary statement

R.399

VOLUNTARY STATEMENT

2316

PAGE

Page 10 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX CASE: _____

to the house, Brandon's mama had already left to go to the Max Saver to find out what was going on. Alright, by the time she come back, we was sittin out in the yard and about ten or fifteen minutes later, here comes the police, Spartanburg County up asking us could we come down to the store, we need a statement and all. And then, that's it from there.

Q. Let me back up just a little bit. At about 10:00 p.m. you told me in your statement that Jerry closed the store, he set the alarm and then he walked, he locked the door and then he walked to his vehicle.

A. Yes sir.

When he walked to his vehicle, it's your testimony that you said, "Give me your money."

A. Yeah, I said, I told him, "Give me any of your money."

Q. And he tried, he went for his weapon.

A. Yes sir.

Q. Then you shot him once which struck him, it's your belief to the left side of his head.

A. Yes sir.

Q. At the point where you did the shooting, where was Brandon?

A. Sittin in the passenger seat.

Q. Of his car.

A. Yes sir.

Q. Describe Brandon's car to me.

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This statement was completed at 3:15 P.M. on the 4th day of MAY, 1900.

WITNESS:

WITNESS:

Signature of person giving voluntary statement

VOLUNTARY STATEMENT

PAGE

2317

Page 11 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX CASE:

A. It is uh, uh, little two door Datsun, it's kind of a goldish, silver, kind of gold with a hatchback. That's about it.

Q. You don't happen to know the tag number do you?

A. No sir.

Q. So you do the shooting,

A. Yes,

Q. And instantly Mr. Smith falls to the ground

A. Yes.

Q. You grab the money, the money bag,

A. No sir. We grab Mr. Smith. The money and everything, it was already in the car because he had to go back inside for that little 25. I believe that's what it was, I'm not for sure. So actually Mr. Smith came out once, and then he went back inside the store?

A. Yes sir.

Q. And the second time that he came out, and started walking toward his vehicle is when you shot him?

A. Yes.

Q. So the money was already in Mr. Smith's car?

A. Yes.

Q. So you shoot him, is that correct?

A. Yes.

Q. He falls to the ground.

A. Yes.

Q. Brandon exits his car, you and Brandon grab him and put Mr.

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This statement was completed at 3:15 P.M. on the 4th day of may, 1900.

WITNESS:

WITNESS:

Signature of person giving voluntary statement

R.401

VOLUNTARY STATEMENT

PAGE

2318

Page 12 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX CASE: _____Smith's body back in his car,A. Yes.Q. On the passenger side.A. On the driver's side.Q. On the driver's side,A. Yes,Q. In the back seat,A. Yes,Q. Is that correct?A. Yes sir.Q. And what happens after that?A. Brandon hops up in his car, I hop up in Mr. Smith's car, and took off to Switzer, and ditched the car and the body.Q. Now you also stated that you, once you had shot Mr. Smith, that you went back to Brandon's car to get some latex gloves.A. Yes.Q. What purpose did you have the latex gloves?A. No fingerprints.Q. So you had thought about this plan,A. Yeah,Q. And you and Brandon had planned this carefully before you got there.A. Pretty much.Q. Pretty much, that's the reason that you had the latex glove. Se

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WITNESS:

WITNESS:

Signature of person giving voluntary statement

VOLUNTARY STATEMENT

2319

PAGE

Page 13 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX CASE: _____

after you get the body loaded in the car, and the money was already
in his car,

A. Yes sir.

Q. So, was the money just in a bag or was it in a box?

A. It was in a brown, it was in a medium size brown paper bag.

Q. So you drove the body in Mr. Smith's car and ditched it?

A. Yes sir.

Q. Describe Mr. Smith's car and describe the route that you took to
get to where you ditched the car.

A. Ok, Mr. Smith's car, I'm not for sure if it's a dark blue or a
black, it's one of them two colors, I think it's a Lincoln
Continental, but I'm not for sure. It's one of them, uh, it's
either a Lincoln or a Crown, and uh, as I pulled off I took a right
out of the parking lot. On uh, four or five hundred yards I took a
left. About two or three hundred yards I took another left. Kept
going straight until there was a fork in the road, I took that
right. Stayed straight until I hit Old Spartanburg Highway. I
took another left, stayed straight until I, until I found, there
was a road to the right, I can't place that road, but it goes to
the right, you take a right, it goes across 221 into Switzer.
Alright, after we crossed 221 it is the first or second road, I'm
not for sure, second road, count, the second road to the right,
down on Dick Brook's old road, went down it a little bit. I was

looking around where the ditch is, I was just going to ditch it in
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WITNESS

WITNESS:

Signature of person giving voluntary statement

R.403

VOLUNTARY STATEMENT 2320

PAGE _____

Page 14 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX CASE: _____

the, in the river, but naah, I stopped, I turned around told
 Brandon that I was going to ditch it back here in these woods back
 here, in the pasture. So I turned it around, found the pasture,
 drove up in it so you couldn't hardly see it from the, from the
 road, you might not even be able to see it from the road, I'm not
 for sure. I grabbed the money and the guns, I grabbed the money
 and the guns and the keys. The keys had my fingerprints on em.
 And I was running fast as I could to get out of the pasture.
 Alright, then I hopped in Brandon's car and we took off from there.
 Then the rest of its on tape from where we took off from there.

Q. Ok, you stated that you took the keys out of the car.

A. Yes sir.

Q. What did you do with the keys?

A. The keys are in the brown paper bag with the latex gloves.

Q. Is that also where the money is?

A. Yes sir.

Q. Ok, now, again, once you ditched the car, you get the money, you
 get the keys, basically everything. You go around and you get in
 Brandon's car with them.

A. Yes sir, on the passenger side.

Q. At this time, Brandon's doing the driving.

A. Yes sir.

Q. Where did you go once you left there?

A. Uh, we turned around and went the same way that we came. The same

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WITNESS: Daniel G. OlesWITNESS: Neal HunkEric Morgan

Signature of person giving voluntary statement

VOLUNTARY STATEMENT

2321

PAGE

Page 15 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX CASE: _____

exact way on Old Spartanburg Highway. We took the same route back, it's the third road on the left, no the second road on the left is where Cliff lives. Take a right then the second road on the left. Cliff lives down that road. We went down that little side road and uh, stopped by Cliff's. He was too strung out on LSD to go anywhere. He was tripping too much.

Q. Now again, this gentleman named Cliff's house that you went to visit, did he have anything to do with the robbery, the conspiring to commit robbery or the murder of Mr. Smith on the 3rd day of May, 2000?

A. No sir. He had no earthly idea what was going on. Then we talked him and Brandon talked for a few minutes, oh back that up. I have no earthly idea if he knows anything about this. I don't know if he knows about it but he did not help on none of the crimes.

Q. Tell me a little bit about where the money is now, what kind of container its in, what kind of objects, weapons, guns, money, etc. is inside box, and where we can find it.

A. Ok, I'm going to tell you the easiest way. When you first going down Brandon's driveway, it's a long dirt driveway, it's a long gravel driveway, alright, you go straight down, you just keep going straight all the way into the woods. Alright, when you get down to the bottom where it starts to curve, around where it goes back up the hill, you stop right there where it starts to curve, you look straight. There's a green Geo Storm with no wheels on it. It's

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WITNESS:

WITNESS:

Signature of person giving voluntary statement.

VOLUNTARY STATEMENT 2322

PAGE

Page 16 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX CASE: _____

just sitting on the ground. All you got to do is walk out there and pop the hood open. Its right there in the gray ammunition box sittin, sittin right there where the battery, where the battery's suppose to be. That's where it's sittin at.

Q. Now what exactly is inside this box?

A. There's a pipe bomb, two pistols, a 380. and a 25. A bag full of money, bullets for a 25, latex gloves, keys, keys to Mr. Smith's car, there's a bottle of gun powder laying in there.

Q. Now, what's the gun powder in this for?

A. Making pipe bombs.

Q. And was that your pipe bomb or was it Brandon's pipe bomb?

A. It was both of ours.

Q. And what was the purpose for the pipe bomb?

A. We was going to blow up the building, the back of the wall off, but we scratched that idea out. That was out of the picture, we was just going to stick it in the ground and run a longer fuse to it and light it and see how much it would blow up, but we scratched that idea out. We said, "Naah, that would bring in the Feds." The FBI if we used a pipeline. So we didn't use it.

Q. But it is your testimony today that you shot Mr. Smith once in the head and it's probably the fatal wound that killed him. Is that your testimony?

A. Yes sir.

Q. It's also your testimony and your statement today that Brandon was

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WITNESS:

Daniel G. Dele
N. D. Phil

Eric Morgan

Signature of person giving voluntary statement

VOLUNTARY STATEMENT

PAGE

2323

Page 17 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX CASE: _____

with you?

A. Yes sir.

Q. Is it also your testimony that it was free, voluntarily, you wasn't coerced, and nobody forced you with that. You and Brandon conspired to commit murder, well basically to commit the robbery which ultimately led to the murder of Mr. Smith, and having done so because times was hard, because you needed money because your family was having some financial problems, and because you seen it as your "only out," in terms of getting back on top. Is that correct?

A. Yes sir.

Q. Is there anything that we missed or anything that you want to say that you haven't said so far?

A. That should be about it.

Q. (tape ended, beginning of side B) anybody else that was involved in the actual shooting, the actual conspiring to commit robbery, the actual robbery itself, and then the actual disposing of the body other than you and Brandon?

A. No sir.

Q. Again, the trailer where the weapon that was used in the shooting, is that at Brandon's residence?

A. It's a storage trailer, and we're cleaning it out to make a bedroom.

Q. Is that on Brandon's property?

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WITNESS: Danilo G. [Signature]WITNESS: Neal [Signature][Signature]

Signature of person giving voluntary statement

VOLUNTARY STATEMENT

PAGE

2324 Page 18 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00

ADDRESS: Spartanburg County Sheriff's Office

PHONE # XXX-XXXX CASE:

A. Yes sir.

Q. Again, the vehicle that was used to dispose of the body was the victim's car, Mr. Jerry Smith?

A. Yes sir.

Q. And the person that picked you up was Brandon, and he was driving his vehicle. Is that correct?

A. Yes sir.

Q. The weapon that was used to shoot Mr. Smith, was that your weapon?

A. No sir.

Q. Tell me what kind of weapon it was, where you got the ammunition from, and also if it wasn't your weapon, where you got the weapon. Who purchased the weapon?

A. It was Brandon's 22, it's a 22 long, it's a 22 long rifle. I got the bullets from Patton's, several weeks, several weeks back. I'm not for sure of what the name of it is, of the 22, but it is a semi-automatic. It holds fourteen (14) shots, it holds twenty (20) but fourteen at the best.

Q. Again, one of my final questions, the latex gloves that you described that was inside of Brandon's car. Where did you get those from, again why did you have em' inside of the car, why did you use them, and what was the purpose for them?

A. Well, I got them from up at my house and I all round, different places because we work on cars and there's some parts you need your hands clean, you got, you know what I'm talking about.

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VOLUNTARY STATEMENT

2325

PAGE

Page 19 of 20

STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # XXX-XXXX CASE: _____

Um, I got the latex gloves for no fingerprints to be found, and for no evidence to be found.

Q. And at that time did you know you were going to shoot Jerry, or the gloves was just for the purpose of the police not finding your latent prints?

A. Um, at that time I did not know I was going to commit murder, shoot Jerry and all, I just brought them along just in case of anything. If I had to go back in the store for anything or anything, you know my prints wouldn't be up on there.

Q. Now you weren't working at the store, it was Brandon that actually had a job, Brandon that was actually employed there, is that correct?

A. Yes sir.

Q. Having giving your statement freely and voluntarily, is it your statement and your testimony right now that your statement is given without fear, without coercion, and nobody promised you anything, and nobody threatened you. Is that correct?

A. That is correct.

Q. You understand your rights that's been read to you by me, Sergeant Jeter?

A. Yes.

Q. And again, I've explained them to you fully, and if you understand your rights again I'm going to have you to put your initials here,

1-5.

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This statement was completed at 3:15 P.M. on the 19th day of MAY, 19 00.

WITNESS:

WITNESS:

Signature of person giving voluntary statement

R.409

VOLUNTARY STATEMENT 2326

PAGE
Page 20 of 20STATEMENT OF: ERIC DALE MORGAN AGE 00 DATE 05/04/00ADDRESS: Spartanburg County Sheriff's OfficePHONE # xxx-xxxx CASE: _____A. Sign that way?Q. That's correct. Do you have anything else to say?A. No sir.

Q. The time now is 8:39 a.m. and today's date is the 4th date of May,
2000. This interview is being concluded at this time with Eric
Dale Morgan in reference to the murder of Jerry Smith and also the
Armed Robbery.

Suspect Actually
 Signed & typed
 statement
 at 3:15 p.m. BUT
 the statement
 was completed
 at 8:39 a.m.

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This statement was completed at 8:30 a.m. M. on the 4th day of May 2000, 19 .

WITNESS: DGtyped by: D. Hipp

Signature of person giving voluntary statement

VOLUNTARY STATEMENT

PAGE _____

2327

PAGE 1 OF 14

STATEMENT OF: Eric Dale Morgan AGE xxx DATE 05/08/00ADDRESS: Spartanburg County Detention Ctr.PHONE # xxxxxxx CASE: _____

It is May 8, 2000 and we are at the Spartanburg County Detention Center
at 06:03 pm. This interview will be between myself, Detective Steven
Denton with the Sheriff's Office of Spartanburg and Detective Neil
Urch, Sheriff's Office Spartanburg and -

Q. What is your full name?A. Eric Dale Morgan.

Q. O.K., Eric, just a few questions and I want to read you your
rights that you are familiar with. I want to read them to you
again. Do you understand that No. 1. You have the right to remain
silent and anything you say can be used against you in court. You
have the right to talk to a lawyer and have him present while you
are being questioned. If you can not afford one, one will be
appointed to represent you. You have the right to stop answering
questions at any point. Do you understand that?

A. Yes, sir.

Q. O.K. Has anybody coerced you or made any promises or threats to
you to get another statement from you?

A. No, sir.

Q. Are you giving this statement because it is the truth, the whole
truth, everything? Is that why you are giving it?

A. Yes, sir.

Q. Has anybody, in this department here in the jail, have they made

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WITNESS: _____

Signature of person giving voluntary statement

WITNESS: _____

VOLUNTARY STATEMENT 2328

PAGE _____
PAGE 2 OF 14STATEMENT OF: Eric Dale Morgan AGE XXX DATE 05/08/00ADDRESS: Spartanburg County Detention Ctr.PHONE # XXXXXXXX CASE: _____

any threats to you to talk to law enforcement? Has anybody,
anywhere told you that you have to talk to us? Do you understand
that you do not have to talk to us?

A. Yes, sir.

Q. And you want to talk to us?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And why is that? Why do you want to talk to us, why do you want
to -

A. To get this thing straightened out.

Q. O.K. And you are talking about what thing? This case?

A. You know, m-m-m-, the killing of Mr. Smith.

Q. O.K. I am going to have Detective Urch, he is filling out this
waiver form I just read from, and we will have you look it over
again and if you wish to sign it and talk to us and we will go
forward. I am going to cut the tape off right now it is 06:07 pm
and is still the 8th of May, 2000.

Alright the tape is back on and it is still the fifth of May, 2000
P.M.

609280. Mr. Morgan signed his Miranda Waiver waiver form. He
initialed his name beside all five elements of the Miranda and
wishes to talk to Detective Urch and myself. Is that correct
Eric?

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WITNESS: _____

Signature of person giving voluntary statement

WITNESS: _____

VOLUNTARY STATEMENT

2329 PAGE 3 OF 14

STATEMENT OF: Eric Dale Morgan AGE xxx DATE 05/08/00ADDRESS: Spartanburg County Detention Ctr.PHONE # xxxxxxx CASE: _____A. O.K.Q. Eric, all we really would really like to do is to try to clarify a couple of things that you had already given a statement to Sgt.Jeter. That is the black fellow that you talked to, right?A. Yes, sir.Q. And there was a couple of things in this statement that you kind of said but did not expand on and that is what we are here tonight to talk about. Pretty much this thing about the robbery and all that stuff - Whose idea was it? Was it yours or was it -?A. It was mine and Brandon's.Q. And why did you want to do that?A. Lack of money. Problems.Q. What were you going to do with the money?A. Well, first of all we were going to pay Brandon's bill off and second of all I was going to buy a house.Q. What kind of bill did Brandon have?A. A pot bill.Q. From who?A. PaulQ. Paul who?A. I don't know his last name.Q. Where does he live.

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WITNESS: _____

VOLUNTARY STATEMENT

PAGE _____

2330 PAGE 4 OF 14

STATEMENT OF: Eric Dale Morgan AGE xxx DATE 05/08/00ADDRESS: Spartanburg County Detention Ctr.PHONE # xxxxxxx CASE: _____A. Somewhere in Enoree.QD. O.K. How much did he owe him?A. Not much, about two or three hundred dollars.QD. O.K.QU. How much money did you think you could get from doing this?A. I don't know, about twentyfive hundred thousand, somewhere, about
twentyfive hundred somewhere around there.QU. Twentyfive Thousand?A. Yeah, about twentyfive thousand.QU. O.K. we know you guys had talked about it and Brandon said that
bought the materials for the pipe bomb, is that correct?A. No, sir. First of all we went to True ? Tru--Hardware? Where's
that place now?QU. Where is that at now?A. in Woodruff right beside -QU. True Value Hardware?A. Yes, True Value. We went there and got the pipe bomb and the two
caps to go on the end of it and then later on about 30 minutes
from there and we went to the Galaxy and dropped me off, got this
other dude named Ronnie went to Pattons and got two shotgun
shells, bullets, (2) box -QU. Ronnie bought the boxes of shotgun shells. Is that the same

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WITNESS: _____

Signature of person giving voluntary statement

WITNESS: _____

VOLUNTARY STATEMENT

PAGE _____

2331 PAGE 5 OF 14

STATEMENT OF: Eric Dale Morgan AGE XXX DATE 05/08/00ADDRESS: Spartanburg County Detention Ctr.PHONE # XXXXXXX CASE: _____Ronnie that sold the 25 to Jerry that day?A. No, that is a different Ronnie.QU. Do you know Ronnie's last name.A. This dude is retarded.QU. Alright.

A. Then we went back to Brandon's house and put it together, the gun powder, and later about 2 or 3 hours later on that day we went to Zippedy and got two cones, two cone firecrackers and took the fuses out of'em and drilled a hole and used one'em for a fuse for a pipe bomb. See, that's how we make'em.

QU. So you had this pipe bomb put together - When did you realize that that wasn't going to work. What happened that made you understand - something occurred---

QU. In other words, what I think he is getting at - Why did ya'll not use that to carry out your original plan of blowing the back of the door off?

A. Long pause - I believe because we found out that he was carrying out the money instead of leaving it.

QU. How did you find that out?

A. I believe we waited up that one night or went up there one --went up there - no we went up for five packs of cigarettes and they were closing right then and that is how we found out. We wasn't

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Signature of person giving voluntary statement

WITNESS: _____

VOLUNTARY STATEMENT

2332

PAGE

PAGE 6 OF 14

STATEMENT OF: Eric Dale Morgan AGE xxx DATE 05/08/00ADDRESS: Spartanburg County Detention Ctr.PHONE # XXXXXXX

CASE: _____

for sure then but we were pretty close being sure until he worked
up there that first night.

QD. Talking about Brandon? Worked up there the first time?A. Yes.QU. Did you ever follow Jerry?A. Yes, we followed him a good while.QU. Why did you follow Jerry?A. We was going to find out where he lived at and then rob him there.QU. Did you have the gun with you when you followed him then.A. Yes, sir.QU. Alright.A. A twentytwo rifle.

QU. The first night that Brandon worked up there, you were going to do
that, going to rob the place then, right?

A. Yes, sir.QU. Who was up there working.A. Chubby and his brother.QU. Which brother, do you know the name?A. No, sir.QU. What does he look like?

A. He's got long white hair - that's about it, I don't know - he
keeps it up in a pony tail all the time.

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VOLUNTARY STATEMENT

PAGE

2333

PAGE 7 OF 14

STATEMENT OF: Eric Dale Morgan AGE xxx DATE 05/08/00ADDRESS: Spartanburg County Detention Ctr.PHONE # xxxxxxx CASE: _____

QU. Did something happen? Did you have the gun that time?

A. Yes, sir.

QU. How were you going to do it?

A. I was just going to shoot them both and then take the money and run.

QU. But what happened?

A. Gut instinct - not sure - We just got up in the car and left.

QU. So, Brandon was there and he was -

A. Yes, sir, he was there.

QU. He was also aware of what was going on.

A. Yes, sir. But that night he was in the drivers seat and I was in the passenger seat.

QU. O.K.

A. Of the Datsun.

QU. So a few nights later, did you guys talk about it? Change of plans, how to do things?

A. Uh, I----

QU. But a few nights later, would have been Wednesday night.

A. Yes, sir.

QU. You came up there, right?

A. Yes, sir, the twenty-two.

QU. And what were you going to do?

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WITNESS: _____

WITNESS: _____

Signature of person giving voluntary statement

R.417

VOLUNTARY STATEMENT

2334

PAGE

PAGE 8 OF 14

STATEMENT OF: Eric Dale Morgan AGE XXX DATE 05/08/00ADDRESS: Spartanburg County Detention Ctr.PHONE # XXXXXXX CASE: _____

A. I was just going to rob him but it turns out I shot him.

QU. Why did you shoot him

A. For the money.

QD. Did you want to kill him?

A. No, sir.

QD. Had you planned to kill him?

A. Once before, I had.

QD. That night, did you plan to kill him?

A. No, sir.

QD. What night had you planned to kill him?

A. That night that Chubby and his brother was up there.

He was uh - Mr. Smith was supposed to have been up there.

QD. Right, you had planned to kill him that night?

A. Yes, sir.

QD. For what?

A. Money.

QD. O.K.

QU. Then what is the difference between that night and the night this happened?

A. Well, there was supposed to be two guys there instead of Brandon
What is the other dude - uh, the guy ---

QU. Sam?

I have read this statement consisting of _____ page(s), and I certify that the facts contained therein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at _____ M. on the _____ day of _____, 19____.

WITNESS: _____

Signature of person giving voluntary statement

WITNESS: _____

R.418

VOLUNTARY STATEMENT 2335

PAGE

PAGE 9 OF 14

STATEMENT OF: Eric Dale Morgan AGE XXX DATE 05/08/00ADDRESS: Spartanburg County Detention Ctr.PHONE # XXXXXXX CASE: _____

A. Sam, yeah, he was supposed to been there but he wasn't that is why Brandon went in. That is why I was going to kill him because there was two people instead of one.

QU. O.K.

A. And then the other night, Wednesday night, I wasn't going to kill him because they wasn't but him and they wasn't no other witnesses.

QU. But you did take the gun up there with you.

A. Yes, sir.

QU. And you are still sticking to the story that you pointed the gun and pulled the trigger and shot Jerry Smith.

A. Yes, sir.

QU. Why did you do that?

A. To get the money.

QU. O.K. Did you in fact, get his money?

A. Yes, sir.

QU. How much was it?

A. I have no earthly idea. I didn't get to count it.

QU. Is that the same money that the next day you instructed the police where to find.

A. Yes, sir.

QU. In the army box - the ammo box?

I have read this statement consisting of _____ page(s), and I certify that the facts contained therein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

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WITNESS: _____

WITNESS: _____

Signature of person giving voluntary statement

R.419

VOLUNTARY STATEMENT

PAGE

2336 PAGE 10 OF 14

STATEMENT OF: Eric Dale Morgan AGE xxx DATE 05/08/00ADDRESS: Spartanburg County Detention Ctr.PHONE # xxxxxxx

CASE:

A. Yes, sir.

QU. And that was the one with the two small handguns in it?

A. Yes, sir.

QU. 380 and a 25.

A. Yes, sir.

QU. The gloves that were there, why did you have those?

A. For no finger prints.

QU. So, you planned this thing out?

A. inaudible

QU. You thought about it and tried not to leave fingerprints.

Where did you get the gloves at?

Couple of pair was from my house, the hospital, all around.

QU. How many pairs did you have?

A. Uh, I couldn't actually tell you.

QU. Did you have more than two?

A. Yes, sir.

QU. Did you have more than three?

A. It was a pocketful.

QU. A pocket full of rubber type gloves?

A. Latex.

QU. The cream colored gloves.

A. Yeah.

I have read this statement consisting of _____ page(s), and I certify that the facts contained therein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

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Signature of person giving voluntary statement

WITNESS: _____

R.420

VOLUNTARY STATEMENT

PAGE _____

2337 PAGE 11 OF 14

STATEMENT OF: Eric Dale Morgan AGE xxx DATE 05/08/00ADDRESS: Spartanburg County Detention Ctr.PHONE # xxxxxxx CASE: _____

QD. You figured if you use those you wouldn't leave any fingerprints,
is that right? Is that what you said?

A. Yes, sir.

QU. Did Brandon wear gloves?

A. No, sir.

QD. Why didn't he wear gloves?

A. Because he did not get into the car - Cadillac.

QU. Did he help you load Jerry's body into the-

A. No, sir.

QU. You did that on your own.

A. Yes, sir.

QD. What you just said, is something you wanted to clear up from your
first statement that you did that by yourself?

QU. That is why we are hear, go ahead.

A. Yes, sir. I wanted to clear it up from the first thing that I did
put Jerry's body in the car.

QD. Was that hard to do by yourself? Are you pretty strong, I mean
is he a pretty big guy or small guy?

A. Small like.

QD. About Neil's size, Detective Urchs size

A. A little bit skinnier.

QD. A little bit skinnier then him? O.K.

I have read this statement consisting of _____ page(s), and I certify that the facts contained therein are true and correct. I further certify that I
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WITNESS: _____

Signature of person giving voluntary statement

WITNESS: _____

VOLUNTARY STATEMENT

2338 PAGE 12 OF 14

STATEMENT OF Eric Dale Morgan AGE xxx DATE 05/08/00ADDRESS: Spartanburg County Detention Ctr.PHONE # XXXXXXXX CASE: _____

A. Yes, sir.

QD. O.K. How did you do it?

A. Grabbed him right here - what do you call that ----

QU. Sleeves.

A. Grabbed him up, through him in the back seat and grabbed his pants
leg and through'em up over him. Shut the door.

QU. When did you get the 380 out of his car.

A. I didn't, it was laying on the ground.

QU. O.K. then where was the 25 at?

A. The 25 was laying in the front passenger seat.

Q. And you put both of these with the money in the bag.

... Yes, sir.

QD. Where is the money located that he had?

A. It was like in the front seat.

QU. Had he already made it to the car door and put the money in then?

A. Yes, sir.

QD. When did you shoot him? When he turned around or?

A. When he was coming back. First of all I didn't know that he
already put he money up in there until afterwards

QD. Did you hear him breathe or say anything after you shot him.

A. No sir.

I have read this statement consisting of _____ page(s), and I certify that the facts contained therein are true and correct. I further certify that I
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WITNESS: _____

WITNESS: _____

Signature of person giving voluntary statement

VOLUNTARY STATEMENT

2339

PAGE

PAGE 13 OF 14

STATEMENT OF Eric Dale Morgan AGE XXX DATE 05/08/00ADDRESS: Spartanburg County Detention Ctr.PHONE # XXXXXXX CASE: _____

QU. This is the question that his family wanted to know if it was quick or if he suffered any.

A. It was quick. I don't know how in the world I made that lucky shot in the head but it was quick. I thought I hit him in the body somewhere.

QU. Did you aim?

A. No, sir.

QU. Just pointed and shot?

A. yes, sir.

QU. Do you know where you hit him at?

A. When I looked at him it was in the left side of the head.

V Side like in his head ?

A. No, sir, somewhere right in here.

QU. Somewhere in front of his ear.

A. Yes, somewhere on the side of his head. I'm not sure where at.

QU. O.K.

QU. Is there anything else you want to tell us at all?

A. No, sir.

QU. And you are giving this statement because you want to clear this thing up and make it as right as you can. Is that correct?

A. Yes, sir.

QU. And nobody's has promised you anything to make it or threatened

I have read this statement consisting of _____ page(s), and I certify that the facts contained therein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

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WITNESS: _____

Signature of person giving voluntary statement

R.423

VOLUNTARY STATEMENT

2340

PAGE

PAGE 13 OF 14

STATEMENT OF: Eric Dale Morgan AGE xxx DATE 05/08/00ADDRESS: Spartanburg County Detention Ctr.PHONE # xxxxxxx CASE: _____you or beaten you or done anything.A. No, sir.QD. Is that pretty much it?A. Yes, sir.QD. This will be the end of this interview, May 8, 06:22 p.m.

I have read this statement consisting of _____ page(s), and I certify that the facts contained therein are true and correct. I further certify that I have no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

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WITNESS: _____

Signature of person giving voluntary statement

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Certificate of Counsel

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



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SPARTANBURG COUNTY
Court of General Sessions

Honorable Edward W. Miller, Circuit Court Judge

Appellate Case Number: 2018-001465

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SC Court of Appeals

THE STATE RESPONDENT.

v.

ERIC DALE MORGAN APPELLANT.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	1
ARGUMENT	6
I. Morgan Is Entitled to a <i>De Novo</i> Sentencing Hearing to Consider the <i>Aiken</i> Factors for the First Time.	6
A. Morgan Is a “Similarly Situated” Individual under <i>Aiken</i>	7
B. Morgan’s 2006 Sentencing Hearing Could Not Have Complied with <i>Aiken</i> and Denying Him a Resentencing Would Circumvent the South Carolina Supreme Court’s Mandate.	8
II. The Trial Court Erred When It Permitted Judge Cole to Testify.....	11
A. Judge Cole’s Testimony Is Not Relevant and Unduly Prejudicial.	11
B. The State Has Not Met Its Burden under <i>Whetstone</i>	13
CONCLUSION.....	15

TABLE OF AUTHORITIES**Federal Cases**

<i>Miller v. Alabama</i> , 567 U.S. 460 (2012).....	<i>passim</i>
<i>Montgomery v. Louisiana</i> , 136 S. Ct. 718 (2016).....	8
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	1, 2, 4
<i>Saffle v. Parks</i> , 494 U.S. 484 (1990).....	3
<i>Simmons v. Roper</i> , 112 S.W.3d 397 (Mo. 2003), <i>cert. granted</i> , <i>Roper v. Simmons</i> , 540 U.S. 1160 (Jan. 26, 2004)	1
<i>Terrell v. United States</i> , 6 F.2d 498 (4th Cir. 1925)	13

State Cases

<i>Aiken v. Byars</i> , 410 S.C. 534, 765 S.E.2d 572 (2014).....	<i>passim</i>
<i>Harris v. State</i> , 377 S.C. 66, 659 S.E.2d 140 (2008).....	14
<i>In re Whetstone</i> , 354 S.C. 213, 580 S.E.2d 447 (2003).....	1, 13, 14
<i>Morgan v. State</i> , 417 S.C. 69, 789 S.E.2d 41 (mem.) (2016).....	4
<i>State v. Lyles</i> , 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008)	11, 12
<i>State v. Morgan</i> , 367 S.C. 615, 626 S.E.2d 888 (2006).....	2, 7
<i>Smalls v. State</i> , 422 S.C. 174, 810 S.E.2d 836 (2018).....	14
<i>State v. Spears</i> , 403 S.C. 247, 742 S.E.2d 878 (Ct. App. 2013).....	9
<i>State v. Tillman</i> , 320 S.C. 61, 463 S.E.2d 94 (Ct. App. 1995)	9

Other

86 A.L.R.3d 633, § 2(a) (1978)	13
Br. for The S.C. Pub. Def. Ass’n as <i>Amicus Curiae</i> in Support of Pets., <i>Aiken</i> , 410 S.C. 534, 765 S.E.2d 572, No. 2012-213286 (July 30, 2013)	10

Petition for Writ of Certiorari, <i>Byars v. Aiken</i> , 135 S. Ct. 2379 (2015), 2015 WL 738556 (Feb. 9, 2015).....	8
South Carolina Appellate Court Rule 607	2, 14
South Carolina Rule of Evidence 401	12
South Carolina Rule of Evidence 403	12
South Carolina Rule of Evidence 606	13

STATEMENT OF ISSUES ON APPEAL

(1) Did the trial court err when it denied Appellant—a juvenile offender serving a life without parole sentence imposed in 2006—a resentencing hearing pursuant to the South Carolina Supreme Court’s decision in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), which granted new sentencing hearings to all juveniles offenders serving previously imposed life without parole sentences?

(2) Did the trial court err in admitting Judge J. Derham Cole’s testimony regarding his 2006 decision to sentence Appellant to life without parole, where the testimony was not relevant to the question of Appellant’s entitlement to a resentencing hearing and where the State cannot satisfy its burden under *In re Whetstone*, 354 S.C. 213, 580 S.E.2d 447 (2003), to establish the testimony was “critical” to address the question of Appellant’s entitlement to a resentencing hearing?

STATEMENT OF THE CASE

When Appellant Eric Dale Morgan was seventeen (17) years old, the State charged him and a teenaged co-defendant with murder and armed robbery. *See* R. p. 2 . Judge J. Derham Cole presided over Morgan’s trial. Despite the fact that at the time of Morgan’s trial, the United States Supreme Court had already granted certiorari in *Roper v. Simmons* to decide whether the death penalty was categorically disproportionate punishment for juvenile offenders, the State sought the death penalty. *See Simmons v. Roper*, 112 S.W.3d 397 (Mo. 2003), *cert. granted*, *Roper v. Simmons*, 540 U.S. 1160 (Jan. 26, 2004). Judge Cole summarily denied Morgan’s request to stay the case pending the outcome in *Roper*, and the case proceeded to trial. In March 2004, a Spartanburg County jury sentenced Morgan to death. R. p. 17.

Less than a year later, *Roper* announced a categorical ban on the execution of juveniles who were under eighteen (18) at the time of their crime. *Roper v. Simmons*, 543 U.S. 551 (2005). Morgan—because he was under eighteen (18) at the time of his crime—timely requested a new sentencing hearing. The State opposed Morgan’s request, arguing a hearing was not necessary because there was only one punishment now available for Morgan: life imprisonment without the possibility of parole. *See State v. Morgan*, 367 S.C. 615, 618, 626 S.E.2d 888, 889 (2006). The South Carolina Supreme Court disagreed, explaining that Morgan was categorically shielded from a death sentence (the only instance in which aggravating factors are relevant pursuant to the statute) and was, therefore, allowed to argue he was entitled to a sentence of less than life without parole. *Id.* Following the ruling, Judge Cole held a resentencing hearing and, relying on the “trial record as well as his independent memory of Morgan,” imposed a sentence of life without the possibility of parole. *See* R. pp. 2–3. The transcript and record from that sentencing hearing has since been destroyed.¹ R. p. 2.

Beginning in 2012, the legal landscape changed for a second time in a way that impacted Morgan’s sentence. First, the United States Supreme Court held that juveniles are protected from mandatory life without parole sentences and, except for “the rare juvenile offender whose crime reflects irreparable corruption,” must be given a meaningful opportunity for release. *Miller v. Alabama*, 567 U.S. 460, 479–80 (2012) (quoting *Roper*, 543 U.S. at 573). This is because, the

¹ The March 2018 Order states that the transcript “was destroyed because Morgan did not appeal or make a motion to preserve the transcript.” *Id.* South Carolina Appellate Court Rule 607(i) provides that a court reporter “shall retain the primary and backup tapes of a proceeding for a period of at least five (5) years after the date of the proceeding.” Rule 607(i), SCACR. The “proceeding” at issue here ended on March 17, 2006, meaning the court reporter likely destroyed the transcript some time after March 17, 2011. Morgan filed a post-conviction petition challenging issues related to his guilt or innocence; the court denied his petition in 2008. March 2018 Order at 2.

Court explained, “children are different”: their “immaturity, impetuosity, and failure to appreciate risks and consequences” make them less culpable and more open to rehabilitation, as a class, than adults. *Id.* at 478, 481. Two years later, the South Carolina Supreme Court held that *Miller* applies retroactively in South Carolina, not only to juveniles serving mandatory sentences of life without parole, but to *all* juveniles serving sentences of life without parole. *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

Aiken flowed from the well-established principle that a new rule of criminal procedure must apply retroactively if it “prohibits ‘a certain category of punishment for a class of defendants because of their status or offense.’” *Id.* at 540, 765 S.E.2d at 575 (quoting *Saffle v. Parks*, 494 U.S. 484, 494 (1990)). *Miller* “create[d] a new, substantive rule” because it “plainly excludes a certain class of defendants—juveniles—from specific punishment—life without parole absent individualized considerations of youth.” *Id.* at 540–41, 765 S.E.2d at 575. And that new rule applied in South Carolina to all juveniles serving sentences of life without parole because *Miller* “establish[ed] an affirmative requirement that courts fully explore the impact of the defendant’s juvenility on the sentence rendered.” *Id.* at 543, 765 S.E.2d at 577.

Although our Supreme Court did not categorically bar the imposition of life without parole for juveniles, it held that all juveniles sentenced to life without parole prior to *Miller* were entitled to new, individualized sentencing hearings “where the mitigating hallmark features of youth are fully explored.” *Id.* at 545, 765 S.E.2d at 578. Specifically, a sentencing court “must” consider:

(1) the chronological age of the offender and the hallmark features of youth, including “immaturity, impetuosity, and failure to appreciate the risks and consequences”; (2) the “family and home environment” that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender’s participation in the conduct and how familial and peer pressures may have affected him; (4) the “incompetencies associated with youth—for example, [the offender’s] inability to deal with police officers or

prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys"; and (5) the "possibility of rehabilitation."

Id. at 544, 765 S.E.2d at 577 (quoting *Miller*, 567 U.S. at 477–78) (alterations in original). The Court held new sentencing hearing were required for consideration of these factors even if their prior sentencing hearing addresses the issue of youth because "although some of the [prior sentencing] hearings touch[ed] on the issue of youth, none of them approach[ed] the sort of hearing envisioned by *Miller*." *Id.* at 543, 765 S.E.2d at 577.

As he did in the wake of *Roper*, Morgan filed a motion for resentencing, this time pursuant to *Aiken*, and the Supreme Court vested jurisdiction with Judge Edward W. Miller. *Morgan v. State*, 417 S.C. 69, 789 S.E.2d 41 (mem.) (2016). Again, the Solicitor's Office opposed Morgan's motion. R. p. 15 (State's Mot. to Dismiss Def.'s Mot. for Resentencing (April 12, 2017) ("Motion to Dismiss")). The Motion to Dismiss argued that, though Morgan's resentencing occurred six years prior to *Miller*, Morgan was not entitled to resentencing because he "already had a resentencing hearing [in 2006] that has met the requirements set out in [*Aiken*]." R. p. 16 ¶ 5.

Judge Miller held a hearing on the State's Motion to Dismiss. Over Morgan's objections, Judge Miller permitted the State to call Judge Cole as a witness.² See R. pp. 47–49. In support of calling the judge, Solicitor Barnette explained that he intended to ask Judge Cole "obviously what factors he considered" when he sentenced Morgan to life without parole in 2006. R. p. 46, lines 11–12. According to the State, eight years before *Aiken* was decided, without the benefit of a full presentation from Morgan's counsel and without guidance from *Aiken*, *Miller*, or any of their

² Morgan's counsel objected to Judge Cole's testimony on two independent bases. First, counsel argued that calling a judge as a witness regarding a case in which the judge previously presided is impermissible absent extenuating circumstances not present here. R. p. 47, lines 21–24. Second, counsel argued that Judge Cole's testimony was not relevant to the question before Judge Miller in 2017 because *Aiken* mandated *de novo* sentencing hearings for all affected juveniles. R. p. 47, lines 24–25, p. 48 lines 1–5.

progeny, “Judge Cole considered [the *Aiken*] factors, looked at them and so forth,” and Morgan should therefore be barred from resentencing. R. p. 46, lines 19–20.

Consistent with that line of reasoning, Solicitor Barnette asked Judge Cole to recall his decision-making process in 2006 when he sentenced Morgan to life without parole. R. pp. 49–56. The Solicitor asked Judge Cole about his experience with children and asked him if he had “been a youth before” or “had children that’s been youth.” R. p. 56, lines 21–24. Judge Cole then testified as follows:

I considered everything that was presented, and I certainly considered the circumstances relating to the crime and the circumstances relating to the defendant that was presented and considered his culpability and his participation. And, of course, I didn’t ignore the fact that 12 randomly chosen citizens thought that he should be sentenced to death based upon the nature of the crime and his particular circumstances. That, of course, is not constitutionally permitted now, but it’s not something that should be ignored upon the fact that those selected to hear the facts and apply the law thought he should be put to death. And had he been 16, if the crime had happened 16 days later we wouldn’t be sitting here today. . . . So I thought the sentence of life in prison that I imposed was completely proportional to the crime that was committed.

R. p. 60, lines 17–25, p. 61 lines 1–5, 7–9. On cross examination, Judge Cole acknowledged that he did not “have a court’s instructions on [the *Aiken*] factors” and did not make any specific findings relevant to the factors because, he explained, “I’m not required to.” R. p. 63, lines 1–6.

The court granted the State’s Motion to Dismiss, adopting the State’s reasoning: Morgan has already been given enough process and “[i]n all litigation, at some point, for the benefit of interested persons there needs to be finality as to the judicial decisions made.” R. p. 6. Judge Cole’s testimony that he had anticipated and considered the *Aiken* factors in 2006, eight years before *Aiken* was decided, was central to the court’s decision: because “Judge Cole properly analyzed and considered the necessary youth characteristics when resentencing Morgan to life without parole,”

“it would be improper to have another resentencing hearing with the objective to either affirm or set aside Judge Cole’s 2006 ruling.” R. p. 4. Morgan filed a motion pursuant to South Carolina Rule of Civil Procedure 59(e), which the court denied.³ R. p. 7. This appeal followed.

ARGUMENT

I. MORGAN IS ENTITLED TO A *DE NOVO* SENTENCING HEARING TO CONSIDER THE AIKEN FACTORS FOR THE FIRST TIME.

Like all the other juveniles sentenced to life without parole before *Aiken*, Morgan is entitled to a new sentencing hearing to present evidence and have a judge formally consider the factors set forth by the Supreme Court. *Aiken* mandated that all juvenile offenders serving life without parole sentences in South Carolina receive new sentencing hearings. Morgan is a juvenile offender serving a life without parole sentence and is entitled to a new sentencing hearing.

In holding to the contrary, the trial court misconstrued *Aiken*’s mandate. *Aiken* did not hold that juvenile offenders are entitled to a review of their prior sentencing hearing to determine if the prior hearings considered youth (the review conducted in the court below). Rather, *Aiken* unambiguously held that, as a matter of law, all juveniles sentenced to life without parole prior to the Court’s decision were entitled to new sentencing hearings. 410 S.C. at 545, 765 S.E.2d at 578 (“We hold the principles enunciated in *Miller v. Alabama* apply retroactively to these petitioners, to those similarly situated, and prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole. Accordingly, any individual affected by our holding may file a motion for resentencing.”). The remedy *Aiken* announced is

³ The Rule 59(e) motion raised the same arguments that Morgan now raises on appeal: (1) *Aiken* “requires the resentencing court to conduct a sentencing hearing *de novo* and consider the factors enumerated by the Court based on its interpretation of *Miller*,” R. p. 30; and (2) Judge Miller improperly allowed Judge Cole to testify, when his testimony was irrelevant and prejudicial, R. p. 31 n.4.

categorical, meaning that all juveniles who were serving life without parole in South Carolina at the time *Aiken* issued are entitled to new, *Aiken*-compliant sentencing hearings, regardless of what kind of hearing they previously received. *See id.* at 543–44, 765 S.E.2d at 577. Simply put, if Morgan fits within the category of people covered by *Aiken*, he is entitled to the form of procedural relief described by *Aiken*.

A. Morgan Is a “Similarly Situated” Individual under *Aiken*.

Aiken defined the class of people to whom it applied as being composed of individuals who shared two common criteria: (1) they were “convicted for homicide offenses while they were juveniles”; and (2) they “were sentenced to life without parole according to existing sentencing procedures, which made no distinction between defendants whose crimes were committed as an adult and those whose crimes were committed as a juvenile.” *Aiken*, 410 S.C. at 537, 765 S.E.2d at 573. The State does not appear to dispute that Morgan satisfies both of those criteria: (1) he was convicted of the offense of murder committed at age seventeen (17); and (2) he was sentenced to life without parole under the sentencing procedures in place in 2006 (eight years prior to *Aiken*). *See R.* pp. 3, 15. *See also Morgan*, 367 S.C. at 618 n.2, 626 S.E.2d at 889 n.2 (“Both the state and appellant agree that appellant was seventeen years old at the time of the murder.”).

In addition, the State itself recognized in its filings to the U.S. Supreme Court in *Aiken* that *Aiken* defined its class members as “shar[ing] two important characteristics”:

First, each Respondent was given the opportunity to present evidence in mitigation without any apparent restrictions. Second, the life without parole sentences imposed were not mandatory. Instead, the sentencing judge in each case had discretion to impose something less than life without parole for the relevant convictions.

Petition for Writ of Certiorari, *Byars v. Aiken*, 135 S. Ct. 2379 (2015), 2015 WL 738556, at *5 (Feb. 9, 2015). The fact that at Morgan’s 2006 sentencing he had an opportunity to present evidence in mitigation and the life without parole sentence he received was not mandatory

therefore is irrelevant; by the State's own account of *Aiken*, Morgan fits within the class of people affected by the decision. As the State explained, *Aiken* held that juvenile homicide offenders sentenced to life without parole in South Carolina are serving "sentences [that] violate the Eighth Amendment under *Miller*" and therefore "Respondents and those similarly situated are entitled to resentencing pursuant to the United States Constitution." *Id.* at *7.

This is enough to resolve the present appeal: Morgan is "similarly situated" to *Aiken*'s named petitioners. He—like every other juvenile in South Carolina who was sentenced to life without parole before *Aiken*—is entitled to a resentencing hearing.

B. Morgan's 2006 Sentencing Hearing Could Not Have Complied with *Aiken* and Denying Him a Resentencing Would Circumvent the South Carolina Supreme Court's Mandate.

Judge Cole could not have complied with *Aiken* in 2006 because *Aiken* was not decided for another eight years and *Miller* for another six. Moreover, *Aiken*'s relief is categorical; it does not distinguish between pre-*Aiken* hearings that considered youth and those that did not. Thus, the fact that Morgan had a sentencing hearing in 2006 cannot supplant the constitutional necessity for a new sentencing hearing now.

As the United States Supreme Court explained in *Montgomery v. Louisiana*, "*Miller* requires that before sentencing a juvenile to life without parole, the sentencing judge must take into account 'how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.'" 136 S. Ct. 718, 733 (2016) (quoting *Miller*, 567 U.S. at 480). Based on the same reasoning from *Miller*, *Aiken* mandated that when a juvenile faces a sentence of life without parole, "he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored." *Aiken*, 410 S.C. at 545, 765 S.E.2d at 578 (citing *Miller*, 567 U.S. at 469). Because Morgan was sentenced prior to the decisions in *Miller* and *Aiken*, no judge has ever "fully explored" the "hallmark features of youth" as required under the Eighth

Amendment and Morgan is entitled to resentencing under *Aiken*. That Judge Cole may have considered Morgan's youth when he gave him life without parole in 2006 is of no significance because he could not have "fully explored" Morgan's youth to ensure that he was giving it the constitutionally appropriate weight required by *Miller* and *Aiken*, which had not yet been decided. *Id.* Those cases lay out the required procedure for a sentencing hearing when the person being sentenced was a juvenile at the time of the offense and is facing life without parole. *See id.* at 544, 765 S.E.2d at 577 (detailing the five *Aiken* factors). Neither Judge Cole nor Judge Miller gave Morgan that process.

The record below makes this clear. Judge Cole explained at the hearing on the State's Motion to Dismiss that he did not make any findings on the *Aiken* factors. R. p. 63, lines 4–6. Moreover, given that *Aiken* was not part of the legal framework in 2006, Morgan's attorneys did not present evidence related to the *Aiken* factors and the hallmarks of youth at Morgan's 2006 sentencing.⁴ As the Public Defender Association of South Carolina explained to our Supreme Court in an amicus brief in *Aiken*, "because the sentencing judge [prior to *Miller*] wasn't required to consider the mitigating evidence of youth, defense attorneys were not presenting that evidence."⁵ Br. for The S.C. Pub. Def. Ass'n as *Amicus Curiae* in Support of Pets., *Aiken*, 410 S.C.

⁴ Even if Judge Cole had clairvoyantly anticipated and applied *Aiken*, Morgan would still be entitled to a remand for a new hearing because an appellate court cannot review a record that is silent with respect to the *Aiken* factors. *See State v. Spears*, 403 S.C. 247, 256–57, 742 S.E.2d 878, 883 (Ct. App. 2013) ("[R]emand is appropriate when the appellate court is unable to determine from the record [how the trial court applied the facts]."); *State v. Tillman*, 320 S.C. 61, 64, 463 S.E.2d 94, 96 (Ct. App. 1995) (remanding for fact-finding "[i]n view of the shared responsibility of the court, the solicitor, and defendant to make an adequate record for appellate review").

⁵ Specifically, pre-*Miller* and *Aiken*, "there were no mitigation training programs designed for the development of mitigation evidence in juvenile LWOP cases"; "mitigation investigations did not substantially meet the standard of a capital mitigation investigation"; and the mitigation presentations that did happen in cases involving juveniles facing the possibility of a life without parole sentence "correspondingly, were *not* substantially at the same level of a capital mitigation

534, 765 S.E.2d 572, No. 2012-213286, at *18–19 (July 30, 2013). This is because “[u]ntil *Miller*, the standard of practice for defense attorneys was conducted under the legal assumption that LWOP sentences for juveniles were constitutionally permissible.” *Id.* at *18. Thus, before *Miller* and *Aiken*, defense attorneys representing individuals like Morgan did not investigate, prepare, or present juvenile mitigation cases that are constitutionally sound under the standard in place today. Even if Judge Cole had predicted *Miller* and *Aiken* as a matter of law, he could not have interpreted them in the context of salient facts in Morgan’s case because Morgan’s attorneys (by no fault of their own) did not present that information to the court. In short, when Judge Cole sentenced Morgan to life without parole, he did so without the benefit of the legal framework or constitutionally relevant facts. Such a hearing cannot be considered consistent with *Aiken*.

The *Aiken* Court took exactly this situation into account when making its remedy categorical. The Court was aware that some of the individuals who would be affected by the opinion had been sentenced to life without parole after hearings that took youth into account. *Aiken*, 410 S.C. at 543, 765 S.E.2d at 577 (“some of the hearings [for the named petitioners] touch[ed] on the issues of youth”); *see also id.* at 549–51, 765 S.E.2d at 580–81 (Toal, C.J., dissenting) (detailing all of Angelo Ham’s sentencing hearing, including evidence that a doctor recommended that he remain in juvenile court; that he was “easily influenced by others” and succumbed to peer pressure; that he had a broken family structure; and that he was the victim of various forms of abuse). Indeed, the categorical nature of the majority’s rule was the dissent’s primary target: “[I]t strikes me as absurd that the majority orders resentencing for *all* petitioners

presentation, because the pre-sentence investigation was itself not at that same (or at least substantially the same) level.” *Id.* at *19. *See also Aiken*, 410 S.C. at 544–54, 765 S.E.2d at 577 (recognizing “the type of mitigation evidence permitted in death penalty sentencing hearings unquestionably has relevance to juvenile life without parole sentencing hearings, in addition to the factors illustrated above”).

without considering the adequacy of the original hearings.” *Id.* at 552, 765 S.E.2d at 581–82 (Toal, C.J., dissenting). Nevertheless, the majority found that “although some of the hearings touch[ed] on the issue of youth, none of them approach[ed] the sort of hearing envisioned by *Miller*.” *Id.* at 543, 765 S.E.2d at 577. Regardless of the evidence related to youth presented at pre-*Aiken* sentencing hearings, “the sentencing hearings . . . suffer[ed] from a constitutional defect—the failure to examine the youth of the offender through the lens mandated by *Miller*.” *Id.* at 552, n.8, 765 S.E.2d at 577, n.8. Because Judge Cole did not have the benefit of the “lens mandated by *Miller*,” any hearing held in 2006 was constitutionally deficient.⁶

II. THE TRIAL COURT ERRED WHEN IT PERMITTED JUDGE COLE TO TESTIFY.

A. Judge Cole’s Testimony Is Not Relevant and Unduly Prejudicial.

The court below erred in permitting Judge Cole to testify because his testimony is not relevant to the sole legal question at issue in this case: whether Morgan is entitled to a new sentencing hearing. “Under Rule 401, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy.” *State v. Lyles*, 379 S.C. 328, 337, 665 S.E.2d 201, 206 (Ct. App. 2008) (internal quotation marks omitted). As explained above, whether Morgan is entitled to resentencing is a pure question of law whose answer depends only on the mandate from *Aiken* and Morgan’s status as a juvenile offender serving a life without parole sentence. What Judge Cole thought about Morgan’s sentence, how he arrived at his decision to issue that sentence, and what evidence he may or may not have considered in reaching that decision are not “fact[s] of consequence to the determination of the action.” Rule 401, SCRE. Those

⁶ This fact refutes Judge Miller’s reasoning that Morgan is not entitled to a new hearing because “[u]nlike the hearings at issue in *Aiken v. Byars*, where age was only mentioned as a ‘vague plea for mercy,’ Judge Cole carefully and thoughtfully considered Morgan’s youth at the time of the murder.” R. p. 5. Even if Judge Cole had given Morgan a full death penalty-like sentencing hearing where he put on the record the substantial weight he was affording Morgan’s youth, Morgan would *still* be entitled to a new hearing post-*Aiken*.

considerations do not “tend[] to establish or make more or less probable” Morgan’s legal entitlement to a new sentencing hearing. *See Lyles*, 379 S.C. at 337, 665 S.E.2d at 206.

Moreover, “[w]hen evidence’s prejudicial effect outweighs its probative value, it should be excluded, even if otherwise relevant.” *Id.* at 338, 665 S.E.2d at 206 (citing Rule 403, SCRE). “Unfair prejudice means an undue tendency to suggest a decision on an improper basis.” *Id.* (internal quotation marks omitted). Judge Cole’s testimony is precisely the kind of unduly prejudicial evidence contemplated by Rule 403 because the determination of whether *Aiken* requires that Morgan be resentenced is Judge Miller’s to make, not Judge Cole’s. That is a pure question of law, and Judge Cole’s opinion should have played no role in Judge Miller’s legal analysis. Nevertheless, Judge Miller deferred to Judge Cole’s determination. *See* R. p. 4 (declining to revisit Morgan’s 2006 sentence because it was not “improperly conducted” and “the rule of comity stands for the proposition that, absent a significant and substantial change in circumstances, judge at the same jurisdictional level cannot overrule each other”). It is clear, then, that Judge Cole’s testimony “suggest[ed] a decision on an improper basis,” namely, Judge Cole’s prior determination about what sentence was proper for Morgan (as opposed to whether Morgan is entitled to resentencing). On either evidentiary ground—relevance or prejudice—Judge Miller erred in admitting Judge Cole’s testimony.

B. The State Has Not Met Its Burden under *Whetstone*.

Judge Cole’s testimony was inadmissible for second, independent reason because, as a general rule, a judge should not testify “as a witness concerning actions taken in his official capacity.”⁷ *See In re Whetstone*, 354 S.C. 213, 215–16, 580 S.E.2d 447, 448 (2003); *see also*

⁷ This rule stems from two common-sense intuitions about the role of judges. First, as Judge Miller’s decision demonstrates, a judge’s testimony is likely to be prejudicial and thereby undermine the appearance of impartiality. Second, a judge’s belief about the propriety of actions he or she has taken in his or her official capacity is almost never relevant to a later in time legal issue;

Terrell v. United States, 6 F.2d 498, 499 (4th Cir. 1925) (“The danger to the dignity of the bench, of subjecting its impartiality to doubt and of placing the defendant at an unfair disadvantage by admitting the presiding judge as a witness is very obvious.”). *Whetstone*’s rule—applicable only to the testimony of a judge—is the common-law counterpart to Rule 606(b), which prohibits jurors from “testify[ing] as to any matter or statement occurring during the course of the jury’s deliberations” except where the juror has been influenced by “extraneous prejudicial information.” Rule 606(b), SCRE. There is an exception where a judge’s testimony is “critical” and “can be obtained by no other means.” *Whetstone*, 354 S.C. at 216, 580 S.E.2d at 448. However, no published case from South Carolina has ever recognized a situation in which a judge’s testimony satisfies that exception. This is at least in part because under *Whetstone*, the party proffering a judge’s testimony must meet an extremely high evidentiary standard. *See id.* at 217, 580 S.E.2d at 449 (quashing a post-conviction petitioner’s subpoena directed at his trial judge because “[n]o relevant need for [the judge’s] testimony [could] overcome[] the presumption judges should not be called to testify regarding matters from a case over which they previously presided”). The State cannot meet that standard here.

Judge Cole’s testimony is not “critical” to the issue of whether Morgan is entitled to a resentencing hearing. Judge Cole’s testimony regarding the 2006 resentencing hearing is not relevant to the purely legal question of Morgan’s entitlement to a new sentencing hearing under *Aiken*. Additionally, the State, as the party proffering testimony of a judge regarding a case over which the judge presided, bears the burden of establishing that there is no alternate means of obtaining the information they seek to put before the court now. *Id.*; *see also Harris v. State*, 377

whether or not the judge believes that he or she applied the law correctly is not the same as whether he or she in fact applied the law correctly. *See generally* 86 A.L.R.3d 633, § 2(a) (1978).

S.C. 66, 77, 659 S.E.2d 140, 146 (2008) (concluding that the party who carried the burden of proving up a claim could not satisfy that burden where he failed to move to preserve the transcript under Rule 607(i)), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). A transcript of the record existed as recently as 2011 but the State did not move to preserve it. A party cannot assert that a piece of evidence is critical, allow that piece of evidence to be destroyed, and then argue that the evidence is unavailable and the trial judge must therefore testify about it. *See Harris*, 377 S.C. at 77, 659 S.E.2d at 146. After all, it is the State and not Morgan—an indigent criminal defendant who has been incarcerated since he was a minor—who seeks to introduce Judge Cole’s testimony in lieu of a transcript. The State here has offered “[n]o relevant need” for Judge Cole’s testimony that could “overcome[] the presumption judges should not be called to testify regarding matters from a case over which they previously presided.” *Whetstone*, 217, 580 S.E.2d at 449.

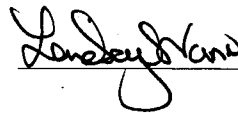
CONCLUSION

Aiken mandates that juveniles who received life without parole sentences pre-*Aiken* are entitled to a new sentencing hearing where their youth can be considered within the *Miller* and *Aiken* framework. Its relief is categorical, such that any juvenile offender serving a life without parole sentence in South Carolina is entitled to a new hearing. Morgan satisfies those two criteria and he is therefore entitled to an *Aiken*-compliant sentencing hearing. This Court should remand to the trial court with instructions to conduct such a hearing.

Respectfully submitted,

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November 21, 2019.

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

Appeal from Spartanburg County
Edward W. Miller, Circuit Court Judge

THE STATE,

Respondent,

v.

ERIC DALE MORGAN,

Appellant.

Appellate Case No. 2018-001465

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
APPELLANT'S STATEMENT OF ISSUES ON APPEAL	1
RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2

ARGUMENT

I.

The circuit court did not err in dismissing appellant's motion for resentencing because appellant already received the relief contemplated in <i>Aiken v. Byars</i> , 410 S.C. 534, 765 S.E.2d 572 (2014), where the previous sentencing judge expressly examined, although not articulated at the time, the factors set out in <i>Miller v. Alabama</i> , 567 U.S. 460 (2012), and <i>Aiken</i> during the resentencing hearing, and gave due consideration to the mitigating hallmark features of youth.	4
Motion for Resentencing and Response	4
<i>Aiken</i> Hearing.....	5
Order Denying Resentencing.....	8
Motion to Reconsider and Subsequent Order	10
Analysis	
Standard of review	11
When resentencing is warranted in juvenile cases.....	11
History of <i>Miller</i> and its progeny.....	11
Factors to be considered.....	12
New resentencing hearing not warranted.....	14
Hallmark features of youth already considered	14
Appellant already received relief contemplated	17

II.

Whether the State met its burden of demonstrating Judge Cole’s testimony was critical evidence is not preserved for this Court’s review because the argument was not advanced below. Regardless, the circuit court did not err in admitting evidence of the factors of youth considered in appellant’s previous resentencing because it was relevant to determining the limited issue of whether he was entitled to another resentencing hearing. 20

Analysis

Standard of review 20

Whether testimony was “critical” is not preserved for appellate review 20

Evidence relevant to the issue before the circuit court 22

CONCLUSION.....24

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES**Cases**

<i>Aiken v. Byars</i> , 410 S.C. 534, 765 S.E.2d 572 (2014).....	Passim
<i>Bear Cloud v. State</i> , 294 P.3d 36 (Wyo. 2013)	13
<i>Conley v. State</i> , 972 N.E.2d 864 (Ind. 2012).....	13
<i>Harmelin v. Michigan</i> , 501 U.S. 957 (1991)	23
<i>In re Whetstone</i> , 354 S.C. 213, 580 S.E.2d 447 (2003).....	21
<i>Miller v. Alabama</i> , 567 U.S. 460 (2012)	Passim
<i>Montgomery v. Louisiana</i> , 136 S.Ct. 718 (2016)	13, 14
<i>People v. Gutierrez</i> , 324 P.3d 245 (Cal. 2014)	13
<i>People v. Holman</i> , 58 N.E.3d 632 (Ill. App. Mar. 3, 2016).....	13
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005)	2
<i>Solem v. Helm</i> , 463 U.S. 277 (1983)	23
<i>State v. Ali</i> , 855 N.W.2d 235 (Minn. 2014).....	13
<i>State v. Davis</i> , 306 S.C. 246, 411 S.E.2d 220 (1991).....	2
<i>State v. Douglas</i> , 369 S.C. 424, 632 S.E.2d 845 (2006).....	20
<i>State v. Freiburger</i> , 366 S.C. 125, 620 S.E.2d 737 (2005).....	21
<i>State v. Gamble</i> , 405 S.C. 409, 747 S.E.2d 784 (2013).....	11
<i>State v. Jacobs</i> , 393 S.C. 584, 713 S.E.2d 621 (2011).....	11
<i>State v. Ladson</i> , 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007)	22
<i>State v. Long</i> , 8 N.E.3d 890 (Oh. 2014)	13
<i>State v. Morgan</i> , 367 S.C. 615, 626 S.E.2d 888 (2006).....	2, 14
<i>State v. Riley</i> , 110 A.3d 1205 (Conn. 2015).....	13

<i>State v. Rogers</i> , 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004)	21
<i>State v. Whitner</i> , 399 S.C. 547, 732 S.E.2d 861 (2012)	11
<i>State v. Wilson</i> , 345 S.C. 1, 545 S.E.2d 827 (2001)	11
<i>Wasman v. United States</i> , 468 U.S. 559 (1984)	13
<i>Whitehead v. State</i> , 352 S.C. 215, 574 S.E.2d 200 (2002)	22

Rules

Rule 59, SCRCR	3, 10, 21
Rule 401, SCRE	22
Rule 606, SCRE	5, 10, 21
Rule 607, SCACR	5

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I.

Did the trial court err when it denied appellant—a juvenile offender serving a life without parole sentence imposed in 200[6]—a resentencing hearing pursuant to the South Carolina Supreme Court's decision in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), which granted new sentencing hearings to all juvenile offenders serving previously imposed life without parole sentences?

II.

Did the trial court err in admitting Judge J. Derham Cole's testimony regarding his 200[6] decision to sentence appellant to life without parole, where the testimony was not relevant to the question of appellant's entitlement to a resentencing hearing and where the State cannot satisfy its burden under *In re Whetstone*, 354 S.C. 213, 580 S.E.2d 447 (2003), to establish the testimony was "critical" to address the question of appellant's entitlement to a resentencing hearing?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I.

Did the circuit court err in dismissing appellant's motion for resentencing where appellant already received the relief contemplated in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), at which time the previous sentencing judge had expressly examined, although not articulated at the time, the factors set out in *Miller v. Alabama*, 567 U.S. 460 (2012), and *Aiken* during the resentencing hearing, and gave due consideration to the mitigating hallmark features of youth?

II.

Is the argument the State failed to meet its burden of demonstrating Judge J. Derham Cole's testimony was critical evidence preserved for appellate review where the assertion was not advanced below? Further, did the circuit court err in admitting evidence of the factors of youth considered in appellant's previous resentencing where it was relevant to determining the limited issue of whether he was entitled to another resentencing hearing?

STATEMENT OF THE CASE

A Spartanburg jury convicted appellant of murder, armed robbery, and possession of an explosive device on March 9, 2004. (R. pp.1-2). Appellant was seventeen-years old at the time of the crime, and sixteen days away from turning eighteen. (R. p.53, lines 9-11). Clay T. Allen, James R. Poole, and Karen Quimby represented appellant at trial. (R. p.2). The Honorable J. Derham Cole on return of the jury's recommendation¹ of a death sentence imposed the sentence, and sentenced appellant to a consecutive thirty years for armed robbery and a concurrent fifteen years for possession of an explosive device.² (R. pp.8-10 (sentencing sheets); R. p.2).

During appellant's direct appeal, the Supreme Court vacated his sentence of death pursuant to *Roper* based on appellant's age at the time he committed the murder. *State v. Morgan*, 367 S.C. 615, 626 S.E.2d 888 (2006). The Court remanded the case to Judge Cole for resentencing and held appellant could present evidence that he was entitled to a sentence less than life imprisonment. *Id.* at 618-19, 626 S.E.2d at 889. Following a resentencing hearing on March 17, 2006, Judge Cole sentenced appellant to life without the possibility of parole. (R. p.2). Appellant did not appeal the sentencing determination.

Appellant moved for resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), on July 12, 2016, because he was seventeen-years-old at the time of the crime. (R. pp. 11-1). The State moved to dismiss the action arguing appellant already had the benefit of a resentencing hearing meeting the requirements of *Aiken* when Judge Cole heard evidence

¹ Although termed recommendation, a death sentence is mandatory and the jury must be instructed the recommendation will be followed. *State v. Davis*, 306 S.C. 246, 250, 411 S.E.2d 220, 222 (1991).

² Appellant was tried prior to the United States Supreme Court's decision holding the Eighth Amendment barred capital punishment for juvenile offenders. *See Roper v. Simmons*, 543 U.S. 551 (2005).

appellant should be sentenced to less than life. (R.pp.15-16 mot.). A hearing was held on November 15, 2017, before the Honorable Edward W. Miller. (R. p.39). Lindsey S. Vann represented appellant and Barry Barnette and Derrick Bulsa represented the State. (R. p.39). At the end of the hearing, Judge Miller announced he would take the matter under advisement. (R. p.78, lines 18-20). On March 2, 2018, the judge ordered the State's motion to dismiss be granted. (R. p.1; p.6). Judge Miller found relief was not warranted because "Judge Cole properly analyzed and considered the necessary youth characteristics when sentencing [appellant] to life without parole. Therefore, the 2006 resentencing hearing conforms to *Aiken v. Byars* and there is no evidence to suggest it was improperly conducted." (R. p.4).

Appellant filed a Rule 59(e), SCRCP, motion to alter or amend the ruling, and the State opposed the motion in a written response. (R. pp. 29-38). By order filed August 3, 2018, Judge Miller denied the motion to alter or amend the judgment. (R. p. 7).

This appeal follows.

I.

The circuit court did not err in ruling appellant is not entitled to resentencing as he already received the relief contemplated in *Aiken*, and the court properly found the previous sentencing judge had expressly examined, although not articulated at the time, the factors set out in *Miller* and *Aiken* during the resentencing hearing, and gave due consideration to the mitigating hallmark features of youth.

The circuit court did not abuse its discretion in finding appellant was not entitled to resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), as appellant already received a new sentencing proceeding in which the mitigating factors of youth were fully explored. Neither *Aiken* nor *Miller v. Alabama*, 567 U.S. 460 (2012), mandate a certain procedure be followed prior to resentencing. The only requirement is an examination by the sentencer of factors related to youth and the record demonstrates Judge Cole considered the necessary information prior to sentencing appellant. Critically, the judge testified he received a “relatively complete picture” of appellant’s youth from testimony presented at the resentencing hearing, a review of the death penalty trial and sentencing transcripts, and statements made by appellant. Life was not a foregone conclusion during the resentencing hearing. Judge Cole explicitly stated he considered all possible sentences for murder, including a term-of-years. It was only after a full examination of the factors, although not articulated as such at the time, set out in *Miller* and *Aiken* that the judge sentenced appellant to life without parole. Accordingly, appellant is not entitled to a new resentencing hearing because the first one comported with *Miller* and its progeny.

Motion for Resentencing and Response

On July 12, 2016, appellant moved for resentencing pursuant to *Aiken*, and submitted a motion through counsel. (R. pp.11-12). Appellant asserted he was entitled to a new sentencing

p.48, lines 6-10). Judge Miller allowed Judge Cole's testimony over defense counsel's objection, and ruled it would be "directed at a reconstruction of the record" and confined to what he considered during sentencing. (R. p.48, lines 11-15).

Judge Cole testified he had been a circuit court judge for twenty-five years and indicated he presided over previous death penalty cases, including appellant's trial. (R. p.50, lines 8-24). The judge testified he recalled appellant's age, evidence of premeditation and planning, and indicated those were factors he considered before resentencing appellant. (R. p.52, line 24-p.54, line 3). The judge also recalled appellant wore latex gloves during the robbery because he did not want to leave fingerprints at the scene and admitted it during his statement to law enforcement. (R. p.54, lines 4-13).

Judge Cole also testified about the sentencing phase of the trial. The judge stated the defense presented witnesses such as appellant's mother, a teacher, and friends which gave him a "relatively complete picture" of appellant's youth. (R. p.54, line 19-p.55, line 5; p.60, lines 9-13). An expert also testified who provided a social history for appellant. (R. p.55, lines 6-12; p.55, lines 20-23).

Judge Cole testified he reviewed everything from the death penalty trial prior to the resentencing hearing in 2006. (R. p.56, lines 6-14). The judge acknowledged he dealt with issues related to youth in and out of the courtroom whether it was from defendants or his own children, and young defendants do not always understand the risks and consequences of their actions, and that is something he "always" considers during trial. (R. p.56, line 15-p.57, line 12). The judge testified he considered appellant's family life and home life prior to resentencing appellant. (R.p.57, lines 13-20). Judge Cole also considered appellant's interactions with his peers which revealed itself in his statement and his interactions with police and attorneys from

hearing because he received a life sentence for a murder he committed when he was seventeen years old. (R. p.2).

The State moved to dismiss the motion and argued *Aiken* did not apply to appellant's case. (R. p.16). The State asserted appellant had the benefit of a resentencing hearing meeting the requirements of *Aiken* in 2006 when Judge Cole heard evidence appellant should be sentenced to less than life. (R. pp.1-2). The State argued appellant already had the opportunity to present mitigating evidence of the factors of youth. (R. p.16).

Aiken Hearing

A hearing on appellant's motion was held on November 15, 2017, before Judge Miller. (R. p.39). The State first moved into evidence without objection all five volumes of the Record on Appeal in appellant's direct appeal following his death penalty trial. (R. p.42, line 19-p.43, line 2). The State then argued for dismissal because appellant was not entitled to relief pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), given his second sentencing hearing when evidence was considered he was entitled to a sentence of less than life. (R. p.46, line 15-p.47, line 2). The State called Judge Cole to the stand and defense counsel objected. (R. p.47, lines 17-19). Counsel argued "a judge should not be called to impeach or vouch for his own verdict" and it was similar to Rule 606, SCRE, which limits when a juror can be called to testify. (R. p.47, lines 21-24). Counsel also asserted an *Aiken* resentencing was a "de novo resentencing," and it was "not relevant to consider what Judge Cole determined at the prior sentencing hearing." (R. p.47, line 24-p.48, line 5).

The parties acknowledged the transcript from the 2006 hearing was not available.³ (R.

³ The transcript is not available because appellant did not appeal the ruling from the 2006 resentencing and any court reporter tapes have been destroyed. (R.p.77); *see also* Rule 607(i), SCACR (providing for court reporters to retain records for a period of five years).

his statement and actions at trial. (R. p.57, line 21-p.58, line 2; p.58, line 10-p.59, line 4). The judge also considered the circumstances of the crime when determining the proper sentence for appellant. (R.p.58, lines 3-9). Finally, Judge Cole testified evidence of appellant's rehabilitation was presented and considered in 2006. (R. p.59, lines 5-11). The judge acknowledged he considered a sentence of less than life for appellant, but believed a term of life was proportional to the crime even given the mitigating factors he considered. (R. p.59, line 12-p.62, line 2).

On cross-examination, Judge Cole admitted *Miller* and *Aiken* had not been decided at the time of appellant's resentencing, but testified he considered the same factors contemplated in those decisions. (R. p.62, line 15-p.63, line 3). The judge stated he did not make any specific fact-findings regarding the factors, but such a requirement was not necessary. (R. p.63, lines 4-6).

Following the testimony, the solicitor argued resentencing was not warranted because Judge Cole considered the same factors contemplated in *Miller* and *Aiken*, including the possibility of rehabilitation. (R. p.64, line 3-p.65, line 18). The solicitor maintained a third sentencing hearing was not necessary, particularly given the evidence presented from the expert, school teacher, and other mitigating factors. (R. p.65, line 19-p.66, line 8). Defense counsel countered juvenile sentencing had evolved since 2006 and *Aiken* recognized the shift by finding judges previously were not considering the constitutional significance of youth and they must do so. (R. p.66, line 21-p.67, line 25). Counsel asserted the *Miller* factors did not exist at the time of resentencing so appellant's sentence could not be constitutional. (R.p.68, lines 1-9).

The court questioned whether the Supreme Court articulation of the factors in *Aiken* mandated a new sentencing hearing when "the sentencing judge considered the factors at the original hearing." (R.p.68, lines 13-19). Defense counsel argued *Aiken* contemplated that

scenario and the Court determined, even when testimony about youth was presented, it was still constitutionally defective because it was not examined through the lens of *Miller*. (R.p.68, line 20-p.69, line 12). Counsel asserted youth had more significance now and life without parole could only be considered for the rarest of juveniles. (R.p.70, line 7-p.71, line 3; p.73, line 22-p.75, line 15). Counsel also maintained it was not clear what was considered in 2006 because of the lack of a transcript. (R.p.71, line 4-p.72, line 7). Counsel stated the investigation and presentation would be different at an *Aiken* resentencing hearing than during a death penalty trial, but she was not sure what evidence that would be presented because the case had not yet been investigated fully. (R.p.72, line 13-p.73 line 12).

The solicitor countered appellant's case was different because he had the benefit of a death penalty sentencing hearing, a resentencing hearing in 2006, and testimony the factors of youth were considered by the judge even if they were not articulated as such. (R.p.79, lines 4-19). The circuit court took the matter under advisement. (R.p.78).

Order Denying Resentencing

By order dated March 2, 2018, Judge Miller denied appellant's petition for a resentencing hearing and granted the State's motion to dismiss, finding *Aiken* did not apply to appellant's case because "Judge Cole properly analyzed and considered the necessary youth characteristics when sentencing [appellant] to life without parole. Therefore, the 2006 resentencing hearing conforms to *Aiken v. Byars* and there is no evidence to suggest it was improperly conducted." (R. p.4; p. 6). The judge first explained the case arose from the armed robbery and shooting death of a convenience store employee on May 3, 2000. (R. p.1). Appellant admitted he shot the victim once in the head as he closed the store, stole a bag of money, and he and his co-defendant originally planned to blow a hole in the back of the store with a pipe bomb. (R, p.1; R. pp.391-

394).

Judge Miller next detailed the history of juvenile sentencing cases. He explained they forbid sentencing schemes that mandate life without parole for juvenile offenders and require a sentencing judge to fully consider the mitigating hallmark features of youth. (R. pp.2-3). The judge discussed Judge Cole's testimony and found he considered appellant's age, premeditation of the crime, appellant's "thought process given his age," his immaturity, the way appellant interacted with his peers, appellant's "participation in the crime," the way he interacted with police officers and his own attorneys, and the possibility of rehabilitation. (R. p.3). Judge Miller found the record supported Judge Cole's testimony given the evidence presented at the sentencing hearing of the death penalty trial which included numerous witnesses in mitigation, such as a social worker who testified about appellant's childhood, his performance in school, and incarceration record. (R. pp.3-4). The judge found the evidence presented examined appellant's home environment and "maturity among other aspects of his life." (R. p.3). Ultimately, Judge Miller found no legal basis for an additional resentencing hearing because the "trial record form[s] a basis from which the five *Aiken v. Byars*, factors could be considered" and "Judge Cole also testified he considered all of the factors." (R. p.4).

Judge Miller went on to find he could not overrule another judge "absent a significant and substantial change in circumstances," and Judge Cole "properly analyzed and considered the necessary youth characteristics" when resentencing appellant in 2006. (R. p.4). The judge found the resentencing hearing conformed to *Aiken* and "it would be improper to have another sentencing hearing with the objective to either affirm or set aside Judge Cole's 2006 ruling." (R. p.4). Judge Miller also noted, unlike the hearings at issue in *Aiken* where age was only mentioned as a "vague plea for mercy," appellant had the benefit of a death penalty sentencing

which demanded “a thorough presentation of mitigating evidence that meets the highest standard.” (R. p.5). Judge Miller found Judge Cole had the benefit of the complete trial record including the sentencing hearing when resentencing appellant to life in 2006 and there was nothing to suggest the sentencing hearing was defective. (R. pp.5-6). The judge denied relief and granted the State’s motion to dismiss the resentencing motion. (R. pp.5-6).

Motion to Reconsider and Subsequent Order

Appellant filed a Rule 59(e), SCRCP, motion to alter or amend the ruling. (59(e) mot.). Appellant asserted the judge “fundamentally misinterprets” his role in the “post-*Aiken* juvenile sentencing era.” (R. p. 29). Appellant argued he should be allowed to present evidence specific to the attributes of youth at a de novo hearing “to allow the judge to consider such evidence in light of its constitutional significance.” (R. pp.29-30). Appellant argued the judge incorrectly relied on the 2006 resentencing hearing to find Judge Cole considered appellant’s youth prior to resentencing “despite the fact the factors [in *Aiken*] did not exist at the time of the hearing.” (R. pp.30-31). Appellant reiterated his objection to Judge Cole’s testimony and asserted it should be barred under Rule 606(b), SCRE, because it was “no different from a juror being asked to testify about matters occurring during deliberations.” (R. p.31 n. 4).

The State opposed the motion in a written response. (R. pp.35-38.). The State reasserted its argument appellant already had a resentencing hearing as contemplated by *Aiken* demonstrated by Judge Cole’s testimony in which he “gave particulars of his consideration of [appellant’s] youth, relying ‘on the entire trial record as well as his independent memory of [appellant].’” (R. p.36). The State maintained the nature of appellant’s case, given it began as a death penalty trial, was one in which all mitigating factors were considered by and appellant’s age “would have been a point of contemplation for all involved” and “given particular attention

by someone with Judge Cole's knowledge of South Carolina law." (R. p.37).

By order filed August 3, 2018, Judge Miller denied the motion to alter or amend the judgment. (R. p.7).

Analysis

Standard of Review

In criminal cases, appellate courts review errors of law only. *State v. Gamble*, 405 S.C. 409, 415, 747 S.E.2d 784, 787 (2013) (citing *State v. Jacobs*, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011)). The appellate court is bound by the lower court's factual findings unless they are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). This Court reviews questions of law *de novo*. *State v. Whitner*, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012) (citations omitted).

When Resentencing is Warranted in Juvenile Cases

In *Miller v. Alabama*, 567 U.S. 460 (2012), the United States Supreme Court held mandatory life without parole sentences for juvenile homicide offenders violated the Eighth Amendment. 567 U.S. at 465, 470. *Miller* did not categorically bar life sentences for juvenile murderers; rather, the Court held a sentencing court must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480. The Court noted the difficulty of distinguishing "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Id.* at 479-80. Yet, the Court did not articulate or require any specific factual findings.

In expressing the factors that must be examined prior to sentencing a juvenile to life, the *Miller* Court held a sentencing authority must consider youth a "more than a chronological fact,"

but also a circumstance which carries with it immaturity, irresponsibility, and recklessness. *Id.* at 476. Further, the defendant's family background, mental and emotional development, and the possibility of rehabilitation must be considered in assessing his culpability. *Id.* The Court held a juvenile convicted of murder could still be sentenced to life without parole, but only after an individualized hearing in which the various mitigating factors were considered. *Id.* at 479-80. In other words, *Miller* mandated only that a sentencing court follow a certain process before imposing a particular penalty and did not require specific words be used. *Id.* at 483.

Likewise, our Supreme Court explicitly declined any "invitation to set out a specific process for trial court judges to follow when considering whether to sentence a juvenile to life without parole." *Aiken*, 410 S.C. at 545 n.10, 765 S.E.2d at 578 n.10. The Court held *Miller* applied to a discretionary sentencing scheme such as ours, and juveniles previously sentenced to life without parole were entitled to resentencing to allow them "to present evidence specific to their attributes of youth and allow the judge to consider such evidence in light of its constitutional weight." *Id.* at 544, 765 S.E.2d at 577. The Court determined the factors in *Miller* were those which must be considered during resentencing, such as the offender's age and other features of youth, family life, circumstances of the crime, understanding of the legal process, and possibility of rehabilitation. *Id.* at 544-45, 765 S.E.2d at 577-78. Critically, the *Aiken* majority noted, "The United States Supreme Court did not establish a definite resentencing procedure and we likewise see no reason to do so," and explained it trusted trial courts to exercise their discretion wisely to sentence juveniles. *Id.* at 545 n.10, 765 S.E.2d at 578 n.10; *see also Wasman v. United States*, 468 U.S. 559, 563 (1984) (holding a sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular

defendant, given the crime committed). The Court also explained it was not going “so far” as to hold a juvenile’s individualized sentencing hearing “should mirror the penalty phase of a capital case,” but “the type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance to juvenile life without parole sentencing hearings.”⁴ *Aiken*, 410 S.C. at 544-45, 765 S.E.2d at 577.

In 2016, the United States Supreme Court held its rule in *Miller* was retroactive on state collateral review. *Montgomery v. Louisiana*, 136 S.Ct. 718, 736 (2016). It is notable the Court, when revisiting its holding in *Miller*, did not take the opportunity to constitutionally require judges to make any specific or formal factual findings when imposing sentences in juvenile homicide cases. *See id.* at 735 (explaining a sentencing court is not constitutionally required to make any specific findings of fact on the record when sentencing a juvenile offender pursuant to the guidelines of *Miller*). The Court explained the decision not to require specific findings spoke “to the degree of procedure *Miller* mandated in order to implement its substantive guarantee.”

⁴ “[S]tate courts that have addressed the question of how to apply *Miller* in the context of discretionary natural-life sentences have reached differing conclusions.” *People v. Holman*, 58 N.E.3d 632, 641 (Ill. App. Mar. 3, 2016); *see State v. Riley*, 110 A.3d 1205, 1214 n.5 (Conn. 2015) (noting “there is no clear consensus”). Some courts, like our own, have found *Miller* requires consideration of factors associated with youth. *See e.g., Riley*, 110 A.3d at 1216; *People v. Gutierrez*, 324 P.3d 245, 268-69 (Cal. 2014) (describing five factors courts must consider before sentencing juvenile defendants to life in prison without parole); *Bear Cloud v. State*, 294 P.3d 36, 47 (Wyo. 2013) (setting forth seven factors courts must consider in sentencing juveniles to life in prison without parole (quoting *Miller*, 567 U.S. at 476-77)). Yet other courts have found, while *Miller* requires the sentencing authority to consider mitigating circumstances related to youth, *Miller* does not bind the court to consider a predetermined list of particular factors. *Holman*, 58 N.E.3d at 642; *State v. Ali*, 855 N.W.2d 235, 256-57 (Minn. 2014) (explaining sentencing courts must consider “any mitigating circumstances,” including those discussed by the *Miller* Court); *State v. Long*, 8 N.E.3d 890, 895 (Oh. 2014) (finding the factors adopted by the Wyoming Supreme Court in *Bear Cloud*, *supra*, “may prove helpful” to courts sentencing juvenile defendants, but refusing to require sentencing courts to make explicit findings with respect to any enumerated factors); *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012) (holding the sentencing court complied with the requirements of *Miller* by taking into account how juveniles are different from adults “and how those differences counsel against irrevocably sentencing them to a lifetime in prison”).

Id. Nothing in *Miller* suggests the judge use any particular verbiage or recite any phrase prior to imposing a sentence. Therefore, a closing reading of *Miller* requires an examination of certain factors prior to sentencing a juvenile to life without parole, but neither the United States Supreme Court nor our Supreme Court requires formal fact findings or a specific procedure.

New Resentencing Not Warranted Because Appellant Already Received Relief

The circuit court did not err in its application of *Miller* or *Aiken* because the record demonstrates appellant already received the relief contemplated in both cases. Judge Cole proceeded over appellant's death penalty trial and the 2006 resentencing in which he explicitly testified he considered all possible sentences for murder, including less than life, and he considered factors similar to those set out in *Miller* and *Aiken*. (R. p.50; p.52; pp.19-24); *see also Morgan*, 367 S.C. at 618-19, 626 S.E.2d at 889 (remanding appellant's case for resentencing and holding appellant could present evidence that he was entitled to a sentence less than life imprisonment). Judge Cole testified he reviewed the previous penalty phase transcript and relevant statements made by appellant to refresh his memory, and recalled appellant's age, details of his home environment, history in school, evidence of premeditation and planning, and indicated those were factors he considered before resentencing appellant. (R. pp.52-54; pp.57-59). During the first trial, an expert testified about the psychosocial assessment she conducted to determine how appellant grew up, what his home life was like, and to identify successes. (R.p.222, line 19-p.227, line 21; p.228, line 6-p.229, line 18). Judge Cole and the jury heard appellant had a disorganized home life, his parents were not together, both parents were absent a lot, his mother was chronically unemployed or underemployed, appellant did not do well in school, was in some special education classes, and dropped out in the ninth grade. (R. p.233, lines 9-25; p.235, line 4-p.236, line 6). The expert testified the overarching themes in appellant's

life included loss and abandonment issues, he lacked good judgment about friendships, had limited intellectual ability, and he was introduced early to drugs and alcohol. (R. p.236, line 21-p.239, line 24).

In addition, family and friends testified on appellant's behalf. A cousin discussed appellant's home life, including the death of his brother when appellant was young and the custody struggles he endured following his parents' break-up, including an absent father after his mother regained custody. (R. p.193, line 25-p.194, line 3; p.196, lines 12-24; p.199, line 2-p.200, line 13). The cousin also testified about appellant's struggles in school, but stated he was "very good at working with his hands." (R. p.201, line 15-p.202, line 18). Appellant's mother and grandmother testified about the difficulties appellant faced, such as the lack of a consistent father figure, appellant could not read or write well, his mother's constant struggle to find employment, but appellant was a quiet child who minded adults well. (R. p.217, lines 12-13; p.218, line 23-p.222, line 4; p.264, lines 24-25; p.266, line 25-p.268, line 7; p.271, line 21-p.272, line 4; p.274, lines 4-18; p.275, lines 3-24; p.277, line 24-p.278, line 13). Others reiterated the general themes of appellant's life, including a friend, teacher, and employer. (R. p.283, line 14-p.284, line 23; p.289, lines 16-24; p.305, lines 9-21; p.306, line 17-p.308, line 12; p.314, line 22-p.315, line 8). Appellant's previous employer testified appellant was a great worker who was willing to learn, but he was fired after failing to show up for a couple of days. (R. p.315, lines 12-24; p.316, line 4-p.317, line 3).

Judge Cole and the jury also heard about the circumstances of the crime and from the family of the victim. An investigator testified appellant gave three statements in which he admitted to killing the convenience store worker. (R. p.92, line 18-p.93, line 22). In the first statement, appellant denied any involvement. (R. p.390). Following that, appellant apologized

for previously lying to investigators. (R. p.107, lines 9-25). In the second statement, appellant admitted he and friend planned the robbery and described loading the .22 rifle, seeing the worker come out of the store, and appellant shot him because it looked like he was trying to grab a gun. (R. pp.391-393). Appellant and his co-defendant put the body in the victim's car, hid the gun and stolen money in a car in a junkyard, and "ditched" the body and victim's car. (R. pp.393; 394; p.403). Appellant said he committed the crime because he was broke. (R. pp.396-397). Appellant also described the robbery plan, which originally included the use of a pipe bomb to blow a hole in the store's wall, but he and his friend decided that was "stupid." (R. p.396; p.402). Appellant did not think he would get caught and used latex gloves so he would not leave fingerprints while driving the victim's car. (R. p.397; p.399). Appellant stated he did not mean to hurt anyone, but things went "haywire." (R. p.397). In the third statement, appellant clarified for investigators where he got the rifle shells and how he built the pipe bomb. (R. pp.411-416).

The co-defendant's sister testified about the night of the murder. She stated appellant would not let her go with him to pick up her brother from the convenience store, and she gave appellant latex gloves she used to bleach her hair after he asked for them. (R. p.109, lines 11-24; p.110, line 4-p.112, line 20). The sister testified her brother took a .22 rifle, but she did not see or hear him use it. (R.p.112, line 21-p.114, line 18). She also stated appellant, who lived with them at the time, was pale after returning home later that night, and he was not acting like himself. (R. p.109; p.121, line 15-p.122, line 19).

The victim's nephew told the jury his uncle was a good man and everyone loved him, was easy to talk to, and he was missed. (R. p.151, lines 4-23). Two of the victim's brothers also testified. One stated the victim was good at running businesses and he looked up to him. (R. p.155, line 25-p.157, line 6). He testified he saw appellant and his co-defendant in the store the

night of the murder and saw them leave, but later saw them sitting in a car outside and he did not know why they were still there. (R. p.169, line 2-p.172, line 16). The other brother testified about the family's early life. He said they grew up poor and the victim went to work in a mill after their father died to help make ends meet. (R. p.176, lines 19-23; p.179, lines 12-17; p.180, lines 4-9). The brother testified everyone like the victim, and appellant's co-defendant had been hired to help the victim look up the convenience store, which was one of several in the family-owned business. (R. p.180, lines 16-24; p.182, line 1-p.183, line 20).

The testimony and appellant's statements to law enforcement were all considered by Judge Cole prior to resentencing in 2006. Judge Cole recalled the detail about the latex gloves and appellant's statement he wore them so he would not leave fingerprints. (R. p.54). The judge also stated testimony from people who knew appellant and the expert gave him a "relatively complete picture" of appellant's youth. (R. pp.54-55; p.60). Also during resentencing, the judge testified he considered appellant's family life and home life prior to resentencing appellant; his interactions with his peers, police, and his attorneys. (R. pp.57-59). Judge Cole also considered the circumstances of the crime and heard evidence about appellant's rehabilitation. (R. pp.58-59). While not articulated as such at the time, Judge Cole considered factors that mirror those set out in *Miller* and *Aiken*. See *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577 (citing *Miller*, 567 U.S. at 477-78) (explaining the factors to be considered by a sentencing court are (1) the hallmark features of youth; (2) the family and home environment; (3) circumstances of the homicide; (4) incompetency associated with youth and how they navigate the legal system; and; (5) the possibility of rehabilitation). In addition, the judge considered a term-of-years sentence as a possibility for appellant, exactly the relief contemplated in *Miller* and its progeny.

Aiken mandates no more than the procedure taken by appellant's sentencer, who took due

care to consider all the information before him. *See Aiken*, 410 S.C. at 545 n.10, 765 S.E.2d at 578 n.10 (noting “[t]he United States Supreme Court did not establish a definite resentencing procedure and we likewise see no reason to do so,” and explaining it trusted trial courts to exercise their discretion wisely to sentence juveniles). Appellant was sentenced to death, resentencing was ordered, and a new sentencing hearing was held. Judge Cole considered mitigating factors presented by the defense, evidence from the previous proceeding, and then exercised his discretion in sentencing appellant. Judge Cole specifically considered the exact type of information required in *Aiken* and *Miller*, and testified he believed life was the appropriate sentence. (R. pp.59-62); *see also Miller*, 567 U.S. at 483 (mandating only that a sentencing court follow a certain process before imposing a particular penalty and did not require specific words be used). Before the judge’s consideration at the time of resentencing were facts related to appellant’s age, education level, his family and home environment leading up to and at the time of the offense, the circumstances of the offense including the involvement of a co-defendant, his inexperience with the criminal justice system, and other hallmarks of youth and maturity developed throughout the duration of appellant’s trial and first sentencing proceeding, as well as that developed at the 2006 hearing. But Judge Cole also had before him the details of a cold-blooded robbery-turned-murder, the planning involved in the crime, and appellant’s initial hesitancy to take responsibility for it. The information presented to Judge Cole was more than the “vague plea for mercy” referenced in *Aiken*, and the circuit court properly found the judge’s analysis comported with *Aiken*. (R. pp.3-4).

Our courts have found the trial court’s reflection of relevant circumstances attendant to the youth of a defendant under the age of eighteen necessary in sentencing. Judge Cole heard the evidence twice—in 2004 and in 2006—and the circuit court did not abuse its discretion in

denying appellant a third chance at sentencing. The judge also expressly relied on evidence of the factors in 2006 when determining a new sentence for appellant. Therefore, because appellant's sentencer considered the hallmark features of appellant's youth at sentencing, the circuit court properly dismissed his petition for resentencing pursuant to *Aiken*. This Court should affirm the circuit court's ruling.

II.

Whether the State met its burden of demonstrating Judge Cole's testimony was critical evidence is not preserved for this Court's review because the argument was not advanced below. Regardless, the circuit court did not err in admitting evidence of the factors of youth considered in appellant's previous resentencing because it was relevant to determining the limited issue of whether he was entitled to another resentencing hearing.

The circuit court did not abuse its discretion in admitting testimony from Judge Cole who previously sentenced appellant. The testimony was relevant and necessary for the limited issue before the court—whether appellant's life sentence entitled him to a third sentencing hearing. Judge Cole's testimony provided details about the information he considered, which included the mitigating characteristics of youth we now consider the *Miller* factors. Notably, the argument that the State failed to meet its burden of demonstrating Judge Cole's testimony was critical to the hearing was never raised to the circuit court. Accordingly, the circuit court did not err in admitting the evidence.

Analysis

Standard of Review

The admission or exclusion of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion “accompanied by probable prejudice.” *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Id.* at 429-30, 632 S.E.2d at 848.

Argument on Appeal is Not Preserved for Review

Part of the argument appellant raises in his brief regarding Judge Cole's testimony is not preserved for this Court's review. Appellant argues the judge's “testimony was inadmissible for

- [a] second, independent reason” because a judge should not testify as a witness about actions he took in his official capacity. (FBOA, p.13). Appellant cites to *In re Whetstone*, 354 S.C. 213, 580 S.E.2d 447 (2003), to contend the State cannot meet its burden of demonstrating the judge’s testimony was critical. (FBOA, pp.13-14).

Appellant did not raise this argument during the hearing before the circuit court or in the Rule 59(e), SCRCP, motion. *See State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004) (explaining for an issue to be preserved for appellate review, it must have been: (1) raised to and ruled upon by the trial court; (2) raised by appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity). The issue raised below was limited to whether Judge Cole “should not be called to impeach or vouch for his own verdict” because it was similar to Rule 606, SCRE, which provides when a juror can be called to testify. (R. p.47). Appellant also asserted it was not relevant what Judge Cole considered at the prior sentencing hearing. (R. pp.47-48). Appellant reiterated the argument in the motion to amend the ruling. (59(e) R. p.41 n.4). Appellant never sought, from the State or the circuit court, an argument or determination of whether Judge Cole’s testimony was critical to the issue of whether appellant was entitled to a resentencing hearing, or whether it could be obtained by other means. *See State v. Freiburger*, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005) (holding if an issue is not presented to and ruled upon by the circuit court, it cannot be raised for the first time to the appellate court). Because this issue was never raised, the circuit court was denied an opportunity to consider, address, or rule upon the argument. Importantly, appellant concedes the issue was not raised below because he asserts this is a “second, independent reason” to find Judge Cole’s testimony should have been excluded. As a result, the claim is not properly presented for appellate review to this Court.

Evidence Relevant to Issue Before the Court

On the merits, Judge Cole’s testimony was relevant because it allowed the parties to better understand what was presented during the 2006 resentencing hearing and what he considered prior to determining the appropriate sentence for appellant. As all parties acknowledged, the transcript from the new sentencing hearing was destroyed because the ruling was not appealed. Judge Miller allowed Judge Cole’s testimony because it aided in a reconstruction of the record. (R. p.48); *see also Whitehead v. State*, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002) (finding when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed); *State v. Ladson*, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007) (recognizing the authority of the trial court to reconstruct the record for appellate purposes and holding “the inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal”) (citations omitted). It was not known at the time the transcript was destroyed, likely in 2011, it would be needed as part of a record for a second resentencing request, particularly given appellant’s failure to file a direct appeal or otherwise make a motion to preserve the transcript.

The State presented the testimony of Judge Cole because it was relevant to the question before Judge Miller—i.e. whether appellant was entitled to a third sentencing hearing. *See* Rule 401, SCRE (“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”). Judge Miller was not tasked with determining the appropriate sentence for appellant. He was charged with conducting a de novo hearing to determine whether appellant should receive relief pursuant to *Aiken*. In other words, Judge Miller reviewed appellant’s existing sentence to determine whether it comported with the Eighth

Amendment's prohibition against cruel and unusual punishment. *See Harmelin v. Michigan*, 501 U.S. 957, 1001, 1004-05 (1991) (forbidding only extreme sentences grossly disproportionate to the crime and holding the appropriate analysis involving a case-specific challenge to a sentence involves comparing the gravity of the offense to the severity of the sentence imposed).

Importantly, no single factor is dispositive in the proportionality analysis. *See Solem v. Helm*, 463 U.S. 277, 291, n. 17 (1983) (“[N]o single criterion can identify when a sentence is so grossly disproportionate that it violates the Eighth Amendment.”). Relevant to the determination were the factors considered during the previous sentencing hearings. It was important to know Judge Cole considered appellant’s home environment, the circumstances of the crime, how appellant interacted with peers or law enforcement, and other factors relevant to appellant’s youth. As Judge Miller properly found, “the trial record form[s] a basis from which the five *Aiken v. Byars* factors could be considered.” (R. p.4). Judge Cole’s testimony was relevant and necessary to Judge Miller’s analysis.

Therefore, because the evidence of the factors considered previously was relevant to the issue before the circuit court, it did not abuse its discretion in admitting and considering Judge Cole’s testimony.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment of the trial court as to both issues should be affirmed.

Respectfully submitted,

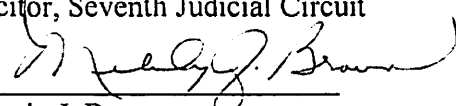
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November 14, 2019.

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

Appeal from Spartanburg County
Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

Respondent,

v.

ERIC DALE MORGAN,

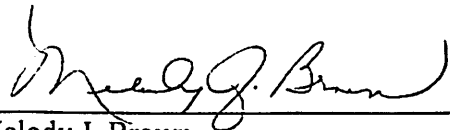
Appellant.

Appellate Case No. 2018-001465

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 14th day of November, 2019.



Melody J. Brown
Senior Assistant Deputy Attorney General

ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SPARTANBURG COUNTY
Court of General Sessions

Honorable Edward W. Miller, Circuit Court Judge

Appellate Case Number: 2018-001465

RECEIVED
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SC Court of Appeals

THE STATE RESPONDENT.

v.

ERIC DALE MORGAN APPELLANT.

FINAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

ARGUMENT IN REPLY 1

TABLE OF AUTHORITIES

Federal Cases

<i>Miller v. Alabama</i> , 567 U.S. 460 (2012).....	1, 2, 3
<i>Montgomery v. Louisiana</i> , 136 S. Ct. 718 (2016).....	2

State Cases

<i>Aiken v. Byars</i> , 410 S.C. 534, 765 S.E.2d 572 (2014).....	1, 2, 3

ARGUMENT IN REPLY

The Respondent's brief advances a falsely limited view of the holding in *Aiken v. Byars* and the underlying Eighth Amendment jurisprudence that gave new constitutional dimension to the principle that "children are different" for sentencing purposes. *See Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014); *Miller v. Alabama*, 567 U.S. 460 (2012). According to Respondent, Morgan's sentencing hearing (proceeding *Aiken* by eight years) precludes relief "because the record demonstrates [he] already received the relief contemplated" in *Aiken* and *Miller*. Initial Br. of Res'p at 14. However, the South Carolina Supreme Court explicitly instructed that *Aiken* applies retroactively to all individuals "similarly situated" to the named petitioners who brought the *Aiken* action, defined as "inmates who were sentenced to life without parole as juveniles" with no exceptions. *Id.* By its explicit terms, Morgan falls within the category eligible for resentencing.

The majority in *Aiken* already considered and rejected Respondent's proposed culling of the group of juveniles eligible for resentencing in response to the dissent's discussion of the Ham case, one of the nineteen cases that made up the *Aiken* petitioners. According to the dissent, Ham's sentencing hearing included a defense mitigation presentation that provided the sentencing court with information regarding Ham's youth, his borderline IQ, records indicating he was susceptible to peer pressures, and Ham's abusive stepfather. *Id.* at 550, 765 S.E.2d at 580 (Toal, J. dissenting). The dissent went on to state "I applaud the sentencing court in conducting such a thorough hearing, one in which it already considered each of the five *Miller* factors." *Id.* at 552, 765 S.E.2d at 581. In rejecting the dissent's invocation of the Ham case, the majority recognized that the *Miller* decision "command[s] that courts afford youth and its attendant characteristics constitutional meaning" and that all pre-*Miller* sentencing hearings suffer from the same "constitutional defect—the failure to examine the youth of the offender through the lens mandated by *Miller*." *Id.* n.8; *see*

also id. at 543-44, 765 S.E.2d at 577 (requiring “universal application” of *Miller*’s command that sentencers “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison”). This language is dispositive in Morgan’s case—no matter how much evidence was presented at Morgan’s 2006 sentencing hearing and no matter how many of the *Miller* factors Judge Cole recalls considering (before they were announced), Morgan’s sentencing hearing still suffers from the “constitutional defect” that Judge Cole did not consider Morgan’s “youth and its attendant characteristics . . . through the lens mandated by *Miller*.”¹ Accordingly, *Aiken* demands that Morgan be resentenced under current juvenile sentencing laws.²

Considering the language in *Aiken*, it is clear the supreme court would reject Respondent’s assertion that the fact *Aiken* and *Miller* did not define the exact procedures to be used in conducting juvenile sentencing hearings somehow means a pre-*Miller* sentencing hearing could comply with the new requirements. On the contrary, the *Aiken* court clearly envisioned new sentencing hearings taking place for all juveniles previously sentenced to life without parole, stating the sentences of “inmates who were sentenced to life without parole as juveniles . . . violate the Eighth Amendment

¹ Respondent’s argument further fails because even if Judge Cole did consider all the evidence presented to him relevant to Morgan’s youth, Morgan’s 2006 sentencing counsel were operating without the benefit of *Miller* and *Aiken* and did not have the same opportunity or incentive to investigate and present evidence relevant to the *Miller* and *Aiken* factors, especially Morgan’s youth. Accordingly, there is no way to know what relevant information Judge Cole did not know at the time of the 2006 sentencing hearing and Morgan is entitled to prepare and present evidence relevant to the factors that must now be considered before sentencing him to life without parole.

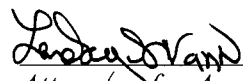
² The Supreme Court of the United States’ decision in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), further supports this finding by emphasizing that the only juveniles who may be sentenced to life without parole after *Miller* are juveniles whose crimes are determined to be the result of “irreparable corruption” as opposed to transient immaturity. *Id.* at 736-37. Judge Cole did not make a finding of irreparable corruption (because no such finding was required in 2006) and Morgan is serving an illegal life without parole sentence as a result of the lack of judicial consideration of his youth.

under *Miller* and [they] . . . are entitled to resentencing.” *Aiken*, 410 S.C. at 536, 765 S.E.2d at 573. Those resentencing hearings require “trial judges to weigh the factors discussed [in *Aiken*] and to sentence juveniles in light of this *new constitutional jurisprudence*.” *Id.* at 543 n.8, 765 S.E.2d at 577 n.8 (emphasis added). There is simply no way for a prior sentencing hearing to comply with the “new constitutional jurisprudence” without allowing for resentencing.

This Court should therefore remand with instructions to conduct an *Aiken*-compliant sentencing hearing.

Respectfully submitted,

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Attorneys for Appellant

November 21, 2019.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Eric Dale Morgan, Appellant.

Appellate Case No. 2018-001465

Appeal From Spartanburg County
Edward W. Miller, Circuit Court Judge

Opinion No. 5820
Heard March 2, 2021 – Filed May 12, 2021

REVERSED AND REMANDED

Lindsey Sterling Vann and Hannah Lyon Freedman, both
of Justice 360, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
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Assistant Attorney General Sherrie Butterbaugh, and
Assistant Attorney General Michael Douglas Ross, all of
Columbia; and Solicitor Barry Joe Barnette, of
Spartanburg, for Respondent.

HEWITT, J.: Eric Morgan was sentenced to death for a murder he committed roughly two weeks before he turned eighteen. He was resentenced and given life without parole (LWOP) after the U.S. Supreme Court ruled the death penalty unconstitutional for crimes committed while the offenders were juveniles.

This appeal arises out of Morgan's request for an additional resentencing. He brought that request years after his first resentencing, but shortly after our supreme court's decision in *Aiken v. Byars* invited new proceedings for certain people with LWOP sentences. *See* 410 S.C. 534, 765 S.E.2d 572 (2014).

The circuit court dismissed Morgan's request on the grounds the mitigating features of Morgan's youth had already been explored in Morgan's death penalty trial and in the resentencing when Morgan received LWOP; years before *Aiken* was decided. We reverse because Morgan falls within the class entitled to relief under *Aiken*.

FACTS

Morgan went to trial in March 2004 on charges for murder, armed robbery, and possessing an explosive device. The crime was senseless and tragic. Morgan shot and killed a convenience store clerk as Morgan and a friend attempted to rob the store.

The jury found Morgan guilty of all charges. Based on the jury's recommendation, Judge J. Derham Cole sentenced Morgan to death for the murder, a consecutive sentence of thirty years for armed robbery, and a concurrent sentence of fifteen years for possessing an explosive device.

Our supreme court vacated Morgan's death sentence in 2006 pursuant to the U.S. Supreme Court's decision in *Roper v. Simmons* because Morgan was seventeen at the time he committed the murder. *State v. Morgan*, 367 S.C. 615, 626 S.E.2d 888 (2006); *see also Roper*, 543 U.S. 551 (2005) (holding that sentencing individuals who were minors when they committed a crime was cruel and unusual punishment under the U.S. Constitution). Judge Cole held a resentencing hearing later that year and sentenced Morgan to LWOP. Morgan did not appeal. The transcript from the resentencing hearing was not preserved.

Ten years later—in July 2016—Morgan moved for a second resentencing and argued he fell within *Aiken's* mandate because he was seventeen at the time he committed his crimes. The State moved to dismiss, arguing Morgan already had the benefit of a resentencing hearing meeting *Aiken's* requirements when he was resentenced in 2006. Morgan disagreed, arguing it was not possible for the court to have sufficiently considered the *Aiken* factors in 2006 because *Aiken* was not decided until 2014.

The State called Judge Cole as a witness at the hearing on the State's motion to dismiss. This was over Morgan's objection. As already noted, Judge Cole presided over Morgan's capital proceedings and his 2006 resentencing. Judge Cole testified he considered several factors at Morgan's 2006 resentencing, including the circumstances of the murder, aggravating and mitigating factors, and testimony from Morgan's friends and family. Judge Cole testified he also considered factors related to youth, including Morgan's age at the time of the crimes, Morgan's maturity level, and other youth-related characteristics. Judge Cole additionally said:

I didn't ignore the fact that 12 randomly chosen citizens thought that [Morgan] should be sentenced to death based upon the nature of the crime and his particular circumstances. That, of course, is not constitutionally permitted now, but it's not something that should be ignored upon the fact that those selected to hear the facts and apply the law thought he should be put to death. And . . . if the crime happened 16 days later, we wouldn't be sitting here today.

The circuit court ruled Morgan's 2006 resentencing hearing sufficiently considered the factors related to Morgan's youth and therefore satisfied *Aiken's* requirements. Morgan filed a motion for reconsideration which the circuit court denied. This appeal followed.

ISSUES

Did the circuit court err by dismissing Morgan's motion for an *Aiken* resentencing hearing?

Did the circuit court err by allowing Judge Cole to testify?

ANALYSIS

The arguments here are the same arguments summarized above: Morgan contends he falls within the class of individuals identified in *Aiken* and is entitled to a *de novo* sentencing hearing to consider the factors of youth the opinion identified. He claims his 2006 resentencing hearing did not comply with *Aiken* and could not have complied with *Aiken* because *Aiken* was not decided until 2014.

The State argues the circuit court did not err because Morgan received a full mitigation investigation before his 2004 death penalty trial plus an individualized sentencing hearing when he was resentenced in 2006. The State contends Judge Cole's testimony demonstrates he considered Morgan's youth, satisfying *Aiken's* requirements.

There is no question Judge Cole considered Morgan's youth when resentencing Morgan in 2006. Even so, we are convinced this was not sufficient to satisfy *Aiken's* requirements for the reasons given below.

"When considering whether a sentence violates the Eighth Amendment's prohibition on cruel and unusual punishments, the appellate court's standard of review extends only to the correction of errors of law." *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019). "Therefore, this court will not disturb the circuit court's findings absent a manifest abuse of discretion." *Id.* "An abuse of discretion occurs when the circuit court's finding is based on an error of law or grounded in factual conclusions without evidentiary support." *Id.*

In *Aiken*, our supreme court held the U.S. Supreme Court's decision in *Miller v. Alabama*, 567 U.S. 460 (2012), applied retroactively. *See Aiken*, 410 S.C. at 534, 765 S.E.2d at 572. *Miller* held that mandatory imposition of LWOP sentences on juveniles was cruel and unusual punishment. *See Miller*, 567 U.S. at 489. *Aiken* held that juvenile offenders were entitled to an individualized sentencing hearing if they were "convicted for homicides committed while they were juveniles" and "were sentenced to [LWOP] according to existing sentencing procedures, which made no distinction between defendants whose crimes were committed as an adult and those whose crimes were committed as a juvenile." 410 S.C. at 537, 765 S.E.2d at 573.

The *Aiken* majority¹ explained that *Miller* established "an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered." *Id.* at 543, 765 S.E.2d at 577. *Aiken* also held "any juvenile offender who receives a sentence of [LWOP] is entitled to the same constitutional protections afforded by the Eighth Amendment's guarantee against cruel and unusual punishment[.]" regardless of whether it had been mandatory for the circuit

¹ Because Justice Pleicones stated he would reach the same result as the lead opinion under the South Carolina Constitution, we refer to the lead opinion (authored by Justice Hearn) as "the majority." *See Aiken*, 410 S.C. at 545–46, 765 S.E.2d at 578 (Pleicones, J., concurring).

court to impose an LWOP sentence. *Id.* at 544, 765 S.E.2d at 577. *Aiken* specifically required South Carolina courts to consider the following factors of youth when sentencing juveniles:

(1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequence"; (2) the "family and home environment" that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the "incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys"; and (5) the "possibility of rehabilitation."

Id. at 544, 765 S.E.2d at 577 (quoting *Miller*, 567 U.S. at 477–78). These factors "require[] the sentencing authority 'take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.'" *Id.* (quoting *Miller*, 567 U.S. at 480).

There have only been a few published cases in this area after *Aiken*. Those cases all involved individuals who were not similarly situated to the *Aiken* petitioners—none of those individuals received LWOP sentences. See *State v. Smith*, 428 S.C. 417, 836 S.E.2d 348 (2019) (finding a mandatory minimum sentence of thirty years' imprisonment for murder did not violate the Eighth Amendment or *Miller*); *State v. Slocumb*, 426 S.C. 297, 827 S.E.2d 148 (2019) (finding an eighty year aggregate sentence for multiple crimes committed as a juvenile did not violate the Eighth Amendment pursuant to *Miller*, *Graham v. Florida*,² or *Aiken*); *Finley*, 427 S.C. at 419, 831 S.E.2d at 158 (finding the defendant's mandatory sentence for life imprisonment but *with* the possibility of parole did not violate the Eighth Amendment and that the defendant was not entitled to resentencing).

Morgan's case cannot be meaningfully distinguished from *Aiken* in that same way. Morgan plainly falls within the class *Aiken* identified: he was under the age of eighteen at the time he committed the murder and was sentenced to LWOP at his

² 560 U.S. 48 (2010).

2006 resentencing hearing. *See Aiken*, 410 S.C. at 537, 765 S.E.2d at 573 (declaring juvenile offenders were entitled to an individualized sentencing hearing if they were (1) convicted for homicide offenses while they were juveniles and (2) were sentenced to LWOP according to existing sentencing procedures that made no distinction between defendants whose crimes were committed as an adult and those whose crimes were committed as a juvenile).

We agree with the State that the record contains evidence that Judge Cole considered Morgan's youth. We also acknowledge Morgan's first sentencing proceeding was a death penalty proceeding. Still, we cannot agree that adding these past hearings together produces a hearing that complied with *Aiken*. *Aiken* clearly states that even though some of the sentencing proceedings for the petitioners in that case "touch[ed] on the issues of youth," none approached the sort of hearing envisioned by *Miller* where the factors of youth were "carefully and thoughtfully considered." 410 S.C. at 543, 765 S.E.2d at 577.

First, there is a problem of timing. *Miller*—the key U.S. Supreme Court case that led to *Aiken*—was not decided until 2012. *Aiken* was not decided until 2014. We do not doubt the sentencing judge diligently considered Morgan's age and other factors associated with youth. Still, it was not possible for the court in 2006 to *fully* consider the factors identified in *Miller* and *Aiken*. Those cases did not exist yet.

Second, there is no getting around the fact that *Aiken* added new things for the sentencing court to consider. Some of the *Aiken* and *Miller* factors have a degree of overlap with the statutory mitigating factors that would have been the focus of Morgan's capital sentencing proceeding. *See* S.C. Code Ann. § 16-3-20(C)(b) (2015) (listing age, mentality, and being under eighteen as mitigating circumstances). Yet, there is plainly a difference between those factors and the more extensive ones identified in *Aiken* that are specifically targeted at youth. For example, although the sentencing court was free to consider the possibility of rehabilitation prior to *Aiken*, it did so without the analytical framework from *Aiken*. And nothing before *Aiken* put extra weight on the opposite side of the scale from LWOP—*Aiken* requires the sentencing court to consider how the differences between youth and adults counsel against an irrevocable lifetime sentence. Even if we pretended these differences did not exist, a sentencing hearing where youth is but one of many considerations is different than conducting a sentencing proceeding where youth is a special consideration and where specific factors related to youth are mandatory guideposts.

Finally, our decision is driven by our reading of the *Aiken* dissent. The dissent noted South Carolina's discretionary sentencing scheme already allowed courts to consider the hallmark features of youth in sentencing. *Id.* at 547, 765 S.E.2d at 579 (Toal, C.J., dissenting). Of particular note, the dissent analyzed one of the *Aiken* petitioners—Angelo Ham—who received an LWOP sentence after a lengthy sentencing hearing in which many factors were considered, including factors related to youth. *Id.* at 547–52, 765 S.E.2d at 579–81. In applauding the sentencing court's diligent work in conducting the hearing, the dissenters wrote it was "absurd that the majority orders resentencing for *all* petitioners without considering the adequacy of the original hearings." *Id.* at 552, 765 S.E.2d at 581–82.

The majority did not let the point go unanswered. The lead opinion explained that "although some of the hearings touch[ed] on the issues of youth, none of them approach[ed] the sort of hearing envisioned by *Miller* where the factors of youth [were] carefully and thoughtfully considered." *Id.* at 543, 765 S.E.2d at 577. The majority directly addressed the dissent's criticisms, explaining:

The dissent's discussion of the individual sentencing hearings—in particular its recitation of Angelo Ham's—does not dissuade us of the accuracy of this statement. Instead it highlights the distinction between its reading of *Miller* and ours—we recognize and give credence to the decision's command that courts afford youth and its attendant characteristics constitutional meaning. The dissent would simply continue to treat the characteristics of youth as any other fact.

We are likewise unfazed by the dissent's criticism that we have failed to pinpoint an abuse of discretion; that admonition appears to arise from a fundamental misunderstanding of our holding. We have determined that the sentencing hearings in these cases suffer from a constitutional defect—the failure to examine the youth of the offender through the lens mandated by *Miller*. We decline to denominate the error an abuse of discretion because the sentencing courts in these instances did not have the benefit of *Miller* to shape their inquiries. Those courts will have the opportunity on resentencing to

exercise their discretion within the proper framework as outlined by the United States Supreme Court.

Id. at 543 n.8, 765 S.E.2d at 577 n.8.

We believe Morgan's case is not meaningfully different from Angelo Ham's and that we are bound by the *Aiken* majority's reasoning that the degree to which youth was considered in this case could not satisfy the requirements of *Miller* or *Aiken* because the "constitutional meaning" afforded to youth and its attendant characteristics require a sentencing hearing tailored to those characteristics.

In reaching this conclusion, we note that we are not expanding any constitutional protections, but rather are finding Morgan falls within the protections prescribed under *Miller* and *Aiken*. See *Slocumb*, 426 S.C. at 306, 827 S.E.2d at 153 (stating both federal and South Carolina "precedent prohibits us from extending federal constitutional protections beyond the boundaries the Supreme Court itself has set").

Because this issue is dispositive, we decline to address Morgan's remaining issue. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

CONCLUSION

We reverse the circuit court's order denying Morgan's request for an *Aiken* resentencing hearing and remand this case to the circuit court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

LOCKEMY, C.J., and HUFF, J., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable Edward W. Miller, Circuit Court Judge
Appellate Case No. 2018-001465

Opinion No. 5820 (S.C.Ct.App. filed May 12, 2021)

THE STATE,

RESPONDENT,

v.

ERIC DALE MORGAN,

APPELLANT.

PETITION FOR REHEARING

On May 12, 2021, this Court issued an opinion in the captioned case that reversed the lower court's dismissal, and remanded the matter for another resentencing hearing. Pursuant to South Carolina Appellate Court Rules 221 and 240, Respondent, the State of South Carolina, petitions for rehearing and asks the Court to consider the following points that Respondent submits the Court misapprehended or overlooked.

Summary of Argument

In essence, Respondent submits that this Court failed to consider the quality of the review provided in the prior resentencing which incorporated Morgan's prior capital sentencing hearing. Youth was in sharp focus in the capital proceeding – a wealth of evidence and argument had been presented touching not just on age, but on background, upbringing, supports, risks, and a bevy of other factors that accompany individualized capital sentencing. Judge Cole confirmed that the capital sentencing hearing evidence – which he heard as the judge assigned the capital case – was

reviewed and considered for resentencing. This is critical as it is, after all, the process of individual sentencing that is protected; a process specifically derived from capital sentencing protections. Further, this Court erred in its interpretation of the “constitutional meaning” of mitigation based on youth. There is no constitutional guarantee for weight of the evidence – if it had been so, the Supreme Court would have found an exemption, which it did not. In sum, Morgan failed to show a deprivation or violation of any constitutional right. The grant of a second resentencing is not constitutionally mandated. This Court should grant rehearing, reverse, and affirm the ruling of the lower court.

Relevant History

Appellant, Eric Dale Morgan, murdered convenience store clerk, Jerry Smith, on May 3, 2000. Morgan shot Mr. Smith in the head, then took a bag from him that held over \$7,000.00. At the time, Morgan was “16 days short of being 18 years old.” (R. p. 15, lines 9-11). The murder was carefully planned with his sixteen-year-old co-defendant: “Appellant and his accomplice, who had been hired at the store a week before the incident, had originally planned to blow a hole in the back wall of the store with a pipe-bomb after it closed.” *State v. Morgan*, 367 S.C. 615, 617, 626 S.E.2d 888, 888 (2006). As this Court found, “[t]his crime was senseless and tragic.” (Opinion, p. 2).

The State noticed the case for capital proceedings. Jury trial proceedings began on February 28, 2004. On Saturday, March 6, 2004, the jury convicted Morgan of murder, armed robbery, and possession of an explosive device. An individual sentencing proceeding began on Monday, March 8, 2004. At sentencing, the defense relied on three statutory mitigating circumstances, and the judge instructed that those three statutory mitigating circumstances “shall” be considered:

- (1) that the defendant has no significant history or convictions for crimes involving the use of violence against any person;

- (2) the age or mentality of the defendant at the time of the crime; and,
- (3) that the defendant was below the age of 18 years at the time of the commission of the crime.

(R. p. 366).

The defense presented evidence related to Morgan's youth, including, specifically, a background review and assessment by an expert in social work – one with experience working with “emotionally and behaviorally disturbed children,” with an emphasis on “child welfare and working with families and children,” and “child maltreatment” – who presented a “psychosocial assessment” which attempted to explain “how somebody could get in the current situation.” (R. p. 222-27). Defense counsel also argued youth and immaturity. (See, for example, R. p. 346 (“a 17-year-old universe that was limited by certain things that he had been exposed to in his past and the chances that he had coming up”)). On March 9, 2004, a Spartanburg County jury resolved that death was the appropriate sentence for this defendant and his crimes. (R. p. 381). The Honorable J. Derham Cole imposed a death sentence pursuant to the jury's determination. (R. p. 17).

On March 1, 2005, the Supreme Court of the United States decided *Roper v. Simmons*, 543 U.S. 551 (2005), holding that the Eighth and Fourteenth Amendments prohibit the execution of defendants who were under eighteen years old at the time of the crime. 543 U.S. at 578-79. Of note, the Court in *Roper* reasoned, “[t]he differences between juvenile and adult offenders *are too marked and well understood* to risk allowing a youthful person to receive the death penalty despite insufficient culpability.” *Id.*, at 572-73 (emphasis added).

By Opinion published on February 21, 2006, the Supreme Court of South Carolina vacated Morgan's death sentence pursuant to *Roper*. Rejecting the State's argument that Morgan should be sentenced to life imprisonment given the jury had previously found statutory aggravating

circumstances, the Court remanded to the circuit court for resentencing. The Court provided that “the trial court may receive additional evidence on the question of whether appellant is entitled to receive a sentence less than life imprisonment,” and directed that the circuit court “decide on a sentence that ranges from a mandatory imprisonment term of thirty years to life imprisonment,” consistent with the non-capital sentencing range. *Morgan*, 367 S.C. at 618–19, 626 S.E.2d at 889. The Court left undisturbed the sentences for armed robbery (thirty years) and possession of an explosive device (fifteen years consecutive to the armed robbery sentence). *Id.*, at 617, 629 S.E.2d at 889.

Judge Cole heard the resentencing for the murder conviction. On March 17, 2006, at the conclusion of the hearing, Judge Cole sentenced Morgan to life imprisonment. (R. p. 24). Morgan did not appeal and it appears that a transcript was not generated and is no longer available. (Opinion, p. 2).

Morgan sought resentencing again following *Miller v. Alabama*, 567 U.S. 460 (2012). The Supreme Court of South Carolina appointed the Honorable Edward W. Miller to hear additional proceedings. *Morgan v. State*, 417 S.C. 69, 70, 789 S.E.2d 41 (2016). The State moved to dismiss in these discrete circumstances given that Judge Cole not only considered all the evidence presented at the former individualized sentencing process, he also considered, per the Supreme Court’s direction, “a sentence that range[d] from a mandatory imprisonment term of thirty years to life imprisonment.” *Morgan*, 367 S.C. at 618–19, 626 S.E.2d at 889. The State called Judge Cole to review the evidence before him at resentencing, and the areas of consideration¹ in the court’s analysis. Judge Cole testified that he reviewed the evidence that was presented to him regarding

¹ The State did not ask, nor did Judge Cole testify, regarding the actual deliberative process.

the youth and background, noted that the “entire record” of the prior individualized sentencing preceding was entered, and also noted that he was “certain” that the prospect of rehabilitation was considered. (See R. pp. 54-61).

Judge Miller granted the State’s motion to dismiss finding that the facts contemplated by *Miller and Aiken v. Byars*, 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014) (recognizing *Miller*), “were considered” and to hold another resentencing would be inappropriate. (R. p. 4).

This Court’s Opinion

In reversing the lower court, this Court looked to *Miller* and *Aiken* for the law that recognized the importance of the facets of youth in sentencing, but failed to consider the intent of the relief secured: individualized sentencing. *Aiken*, 410 S.C. at 545, 765 S.E.2d at 578 (“*Miller* requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored.”). This court also overlooked that *Miller* relied upon and looked to capital sentencing as an example of how to conceptualize the consideration of youth:

...*Miller* repeatedly described youth as a sentencing factor akin to a mitigating circumstance. And *Miller* in turn required a sentencing procedure similar to the procedure that this Court has required for the individualized consideration of mitigating circumstances in capital cases such as *Woodson v. North Carolina*, 428 U.S. 280, 303–305, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976) (plurality opinion), *Lockett v. Ohio*, 438 U.S. 586, 597–609, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) (plurality opinion), and *Eddings v. Oklahoma*, 455 U.S. 104, 113–115, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982).

Jones v. Mississippi, 141 S. Ct. 1307, 1315–16 (2021).

In fact, even while embracing *Miller*, our Supreme Court still expressly declined to order similarly exhaustive proceedings as those required in capital cases: “While we do not go so far as some commentators who suggest that the sentencing of a juvenile offender subject to a life without parole sentence should mirror the penalty phase of a capital case, we are mindful that

the *Miller* Court specifically linked the individualized sentencing requirements of capital sentencing to juvenile life without parole sentences.” *Id.*, 410 S.C. at 544–45, 765 S.E.2d at 577.

This Court further overlooked, that “individualized sentencing” does not mean that individual findings are necessary. In recent precedent, the Supreme Court of the United States has clarified:

...*Miller* followed the Court’s many death penalty cases and required that a sentencer consider youth as a mitigating factor when deciding whether to impose a life-without-parole sentence. *Miller* did not require the sentencer to make a separate finding of permanent incorrigibility before imposing such a sentence.

Jones, 141 S. Ct. at 1316. The Supreme Court explained:

First, and most fundamentally, an on-the-record sentencing explanation is not necessary to ensure that a sentencer considers a defendant’s youth. Jones’s argument to the contrary rests on the assumption that meaningful daylight exists between (i) a sentencer’s discretion to consider youth, and (ii) the sentencer’s actual consideration of youth. But if the sentencer has discretion to consider the defendant’s youth, the sentencer necessarily *will* consider the defendant’s youth, especially if defense counsel advances an argument based on the defendant’s youth. Faced with a convicted murderer who was under 18 at the time of the offense and with defense arguments focused on the defendant’s youth, it would be all but impossible for a sentencer to avoid considering that mitigating factor.

Id., at 1319.

Respondent submits that these overlooked, critical points, led the Court to an incorrect conclusion.

This Court is correct that *Miller* and *Aiken* did not exist at the time of the resentencing. (Opinion, p. 6). However, this Court is incorrect in its conclusion that “*Aiken* added new things for the sentencing court to consider.” (Opinion, p. 6). The quality of youth has not changed. The acknowledgement of differences is not new. The Supreme Court, in banning capital punishment for juveniles in 2005, spoke in terms of established factors: “The differences between juvenile and adult offenders *are too marked and well understood* to risk allowing a youthful person to

receive the death penalty despite insufficient culpability.” *Roper*, 543 U.S. at 572–73 (emphasis added). In *Miller*, the Court relied on the protections afforded the presentation and consideration of the “ ‘mitigating qualities of youth’ ” in its capital jurisprudence. *Miller*, 567 U.S. at 477 (“In meting out the death penalty, the elision of all these differences would be strictly forbidden. And once again, *Graham* indicates that a similar rule should apply when a juvenile confronts a sentence of life (and death) in prison.”).

Additionally, while Respondent agrees with this Court’s observation that the majority in *Aiken* made reference to the “constitutional weight” of the evidence, (Opinion, p. 8, referencing *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577), Respondent disagrees with the sway afforded that phrasing. Our Supreme Court was expressly placing the term in context of giving effect to *Miller*. Consequently, this, too, goes back to procedure and allowing a more expanded view of the hallmarks of youth, *i.e.*, individualized sentencing. Indeed, if the weight of youth was “constitutionally protected,” *Miller* and *Aiken* would have required exemption, not consideration. The Court misapprehended the protections and requirements of *Miller* and *Aiken*.

Further, the Court failed to appreciate the extent and focus of the evidence of youth, background, functioning, development, and requests for mercy in Morgan’s capital sentencing proceeding, which became part of the resentencing, all of which is directly relevant to the issue presented. In fact, as Judge Miller found, it is dispositive.

Judge Cole testified he recalled having before him evidence of appellant’s age, evidence of his premeditation and planning (which spanned days and included preparations so he would not be identified), and indicated those were factors he considered before resentencing. (R. pp. 52 - 54). Judge Cole also testified he recalled the defense presentation of witnesses (from the capital sentencing proceeding) such as appellant’s mother, a teacher, and others that gave him a “relatively

complete picture” of appellant’s youth, including a presentation of social history by a “sociologist, a mitigation expert.” (R. pp. 54-55 and 60). Judge Cole acknowledged he dealt with issues related to youth in and out of the courtroom whether it was from defendants or his own children, that young defendants do not always understand the risks and consequences of their actions, and that is something he “always” considers during trial. (R. pp. 56-57). The judge testified he considered appellant’s family life and home life prior to resentencing appellant. (R. p.57). Judge Cole also considered appellant’s interactions with his peers which revealed itself in his statement and his interactions with police and attorneys from his statement and actions at trial. (R. pp. 57-59). The judge also considered the circumstances of the crime when determining the proper sentence for appellant. (R. p. 58). The judge recalled he was “certain” that the defense in resentencing “brought up” rehabilitation prospects. (R. p. 59).

This Court drew a distinction, though, finding that another resentencing was warranted even if there are no actual significant differences in the evidence and arguments, because “a sentencing hearing where youth is but one of the many considerations is different than conducting a sentencing proceeding where youth is a special consideration and where specific factors related to youth are mandatory guideposts.” (Opinion, p. 6). While agreeing with the State that “[t]here is no questions Judge Cole considered Morgan’s youth when resentencing Morgan in 2006,” this Court resolved that the prior resentencing was insufficient largely based on what it perceived to be the alignment of facts from the rejected position in the *Aiken* dissent. (Opinion, pp. 7-8). A clear distinction is that the dissent was not referencing a capital procedure. *Id.*, at 550, 765 S.E.2d at 580. In contrast, the record here soundly shows *youth was a special consideration*. Indeed, it was a *focus* of the capital sentencing proceeding. Further, resentencing occurred because of *Roper* which was premised *solely on defendant differences stemming from youth*. While true Morgan may

constitute a universe of one, that singular position does not deny him any protection that the Eighth Amendment affords.

It is undeniable that youth and background were the focus of the capital sentencing mitigation presentation; it is undeniable that the prior resentencing was only ordered *because* of youth; and, it is undeniable that Judge Cole, with the evidence from the capital sentencing proceeding, carefully considered the mitigating weight of the defendant's youth, in context and not as a mere passing factor, in individualized sentencing. Morgan is entitled to no more.

Conclusion

For all the foregoing reasons, Respondent respectfully requests this Court grant rehearing, reconsider and reverse its ruling, and affirm the lower court.

Respectfully submitted,

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s/Melody J. Brown

By: _____

May 27, 2021
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable Edward W. Miller, Circuit Court Judge

Appellate Case No. 2018-001465

Opinion No. 5820 (S.C.Ct.App. filed May 12, 2021)

THE STATE,

RESPONDENT,

v.

ERIC DALE MORGAN,

APPELLANT.

CERTIFICATE OF SERVICE

I, Angela Brown, am an employee of the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Petition for Rehearing, and Certificate of Service has been forwarded to Appellant's counsel, Lindsey S. Vann, Esquire and Hannah L. Freeman, Esquire via email today, May 27, 2021 to lindsey@justice360sc.org and hannah@justice360sc.org.

I further certify that all parties required by Rule to be served have been served.

This 27th day of May, 2021.

s/ Angela Brown

Angela Brown
Legal Assistant to Melody J. Brown
Senior Assistant Deputy Attorney General

The South Carolina Court of Appeals

The State, Respondent,

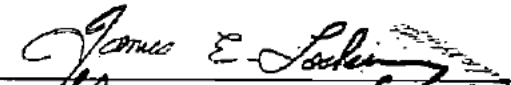
v.

Eric Dale Morgan, Appellant.

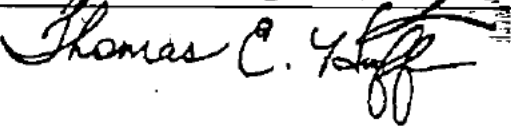
Appellate Case No. 2018-001465

ORDER

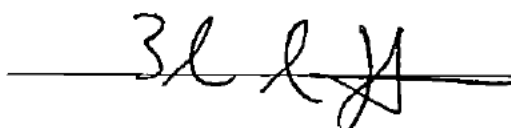
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



J.

Columbia, South Carolina

cc:

Lindsey Sterling Vann, Esquire
Barry Joe Barnette, Esquire
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Hannah Lyon Freedman, Esquire

FILED
Jun 25 2021

Sherrie Butterbaugh, Esquire
Donald J. Zelenka, Esquire
Michael Douglas Ross, Esquire
The Honorable Edward W. Miller