

South Carolina Supreme Court Grant/Deny Exercise

Overview

This exercise uses background information from real petitions to the South Carolina Supreme Court to help students understand how to apply the criteria justices use to determine which cases to review.

Objectives

As a result of this activity, students will be able to:

- Identify the main issues of the exercise cases.
- Explain the criteria used to determine which cases the Supreme Court reviews.
- Comprehend the different paths cases take to get to the Supreme Court.

Standards

This lesson meets the following **South Carolina Social Studies Academic Standards**:

8-3.3 Explain the basic principles of government as established in the United States Constitution.

USHC-8.1 Analyze the African American Civil Rights Movement, including initial strategies, landmark court cases and legislation, the roles of key civil rights advocates and the media, and the influence of the Civil Rights Movement on other groups seeking equality.

USG-1.2 Analyze components of government and the governing process, including politics, power, authority, sovereignty, legitimacy, public institutions, efficacy, and civic life.

USG-1.4 Analyze the institutional and organizational structure of government that allows it to carry out its purpose and function effectively, including the branches of government and legitimate bureaucratic institutions.

USG-3.2 Evaluate the formal and informal structure, role, responsibilities, and authority of the legislative, executive, and judicial branches of the national government as the embodiments of constitutional principles.

USG-3.4 Analyze the organization and responsibilities of local and state governments in the United States federal system, including the role of state **constitutions**, the limitations on state governments, the typical organization of state governments, the relationship between state and local governments, and the major responsibilities of state governments.

Materials

All pages included in this pdf document.

Procedures

1. Present a lecture on the criteria justices use to determine which cases are appropriate for Supreme Court review.
2. Divide the class into two to three groups. Ask the students to read each case summary and determine which, if any, criteria are met. Distribute Grant/Deny worksheet.
3. Have a student from each group report the group's recommendation in CASE 1. Then tell the students what the South Carolina Supreme Court decided in that case (see Grant/Deny Exercise Teacher's Guide). Use the same reporting procedure for each case, with a different student speaking each time.
4. As a follow-up activity, students may find the Court's opinion in one of the cases that was accepted for review. With your help, have them review the opinion to learn how the Court resolved the questions raised in the petition.

CASE 1

In the Interest of Jeremiah W.

Jeremiah W. was charged, by way of juvenile petition, with threatening a public official and committing a breach of the peace. At trial in the Family Court, Officer Cooke testified that he and Officer Howard, both City of Florence police officers, were working off duty at an apartment. While sitting in their patrol cars in front of the complex, the officers observed Jeremiah walking along the sidewalk towards the front entrance of the complex. There were ten to fifteen children and adults standing in front of the complex. The officers were under the impression Jeremiah was under a trespass warning.

Cooke called Jeremiah to the patrol car and Jeremiah responded, “F___ you, man. I ain’t got to come over there.” Jeremiah kept walking towards the entrance and Cooke got out of his car and “intercepted” Jeremiah. Jeremiah turned around to face Cooke, pulled up his pants, and, with his arms bowed out, said, “What?” in Cooke’s face. Cooke then told Jeremiah to place his hands behind his back. Cooke placed Jeremiah under arrest “for being loud and boisterous and using profanity in public.”

On cross-examination, Cooke testified that Jeremiah, in fact, did not have a trespass order against him. Cooke further testified that he was aware Jeremiah’s father lived within the complex. Cooke testified Jeremiah was not violent, but was “just in front of a bunch of people trying to make a show basically.” Cooke stated Jeremiah did not address the crowd in any way and that the crowd did not acknowledge the conflict until Cooke “got out of the car and started walking after [Jeremiah].”

Officer Howard testified she saw Jeremiah walking towards the complex and she informed Cooke that Jeremiah was under a trespass order. She testified that both she and Cooke called Jeremiah over to their patrol cars, but Jeremiah kept walking. Howard testified she heard Jeremiah talking loud and using profanity and that is when Cooke approached Jeremiah. While Cooke was talking to Jeremiah, Howard had her back turned to them and was focusing on the bystanders. Howard testified she did not see what took place between Cooke and Jeremiah; she just heard Jeremiah talking loud and using profanity. Howard did not observe Jeremiah bowing up at Cooke. On cross-examination, Howard testified the crowd was just watching and did not become involved in the situation.

Cooke testified that after he handcuffed Jeremiah and placed him under arrest, Jeremiah was placed in Cooke’s patrol car and transported to the police station. Cooke did not seatbelt Jeremiah into the backseat. Cooke testified that while transporting Jeremiah to the station, Jeremiah became very irate and started using profanity. Jeremiah then leaned forward through the opening of the plexi-glass separating the front from the rear of the patrol car and continued yelling. Cooke told Jeremiah to sit back in the rear seat. After being told to sit back, Cooke testified that Jeremiah “made a gesture and puckered his lips up like he was fixing to spit at me. At that time I took my cap stun (i.e., mace) loose which was on my side . . . and I stuck the nozzle in the window and just sprayed the can in the back. I missed him of course. He was back over behind me. But he felt the effects of it, and I closed the glass and took him to the [station]. At the time he got sprayed he started to make verbal threats towards me about what he was going to do when he got out He said he had a gun, and he was going to come blow my ‘f-ing’ head off.” Cooke stated he took Jeremiah’s threat seriously.

Jeremiah testified he did not use “the ‘F’ word,” but did use profanity and was belligerent when asked questions. Jeremiah testified that he was talking through the opening of the plexi-glass and Cooke must have misinterpreted his body language when it appeared he was about to spit on Cooke. Jeremiah testified that he finally calmed down after being sprayed with the mace.

At the conclusion of the State’s case, counsel for Jeremiah W. moved for the charges to be

dismissed, or for a directed verdict,¹ because the State had failed in its burden of proof. The Family Court judge denied the motion. He found further that Jeremiah committed the offenses charged and he adjudicated Jeremiah delinquent. Jeremiah was committed to the Midlands Evaluation Center for an evaluation. Upon final disposition, Jeremiah was committed to the Department of Juvenile Justice for an indeterminate period not to exceed his twenty-first birthday.

The Court of Appeals reversed on both charges. The Court of Appeals concluded Jeremiah's conduct did not constitute a breach of the peace and, thus, his arrest was unlawful.² The Court of Appeals found that the crowd was not affected by Jeremiah's behavior and the officers' testimony amounted to evidence of their own fear of a potential for a breach of the peace. The Court of Appeals further found the arrest was not warranted based on Jeremiah's bowing up at Cooke. It found Jeremiah's actions were not hostile in nature as his arms were behind his back and his palms were facing upwards, in an inquisitive, rather than hostile, manner.

The Court of Appeals found Jeremiah's arrest was based on nothing more than his use of profane language, which did not fall within the "fighting words" exception to the First Amendment, and his loud and boisterous behavior. The Court of Appeals held that probable cause to arrest an individual requires more than profanity or loud and boisterous behavior directed at the officers and that the State failed to produce evidence of the effect of Jeremiah's behavior on the bystanders.

With regard to the charge of threatening a public official,³ the Court of Appeals, relying on State v. Burton,⁴ and distinguishing this case from a prior opinion of the Supreme Court, State v. Nelson, 336 S.C. 186, 519 S.E.2d 786 (1999), stated, "we believe the actions that led to Jeremiah's charge for threatening a public official were part of a continuous flow of action and conduct emanating directly from his unlawful arrest for breach of the peace." The Court of Appeals reversed Jeremiah's conviction.

Judge Goolsby, by way of dissent, felt the Family Court judge was correct in denying Jeremiah's request for a directed verdict. He pointed out that Jeremiah's barrage of profanity was performed in front of a number of children and adults and that there was evidence of Jeremiah's hostile and threatening demeanor. Judge Goolsby concluded Jeremiah did not simply curse Cooke, but acted belligerently and aggressively towards Cooke in a public place while others looked on.

Petitioner's (State of SC) Petition for Review: The State argued the Court of Appeals erred in reversing the Family Court judge's denial of Jeremiah's motion for a directed verdict because, when viewed in the light most favorable to the State, the evidence reasonably tended to establish Jeremiah committed an unlawful act tending to breach the peace. With regard to the charge of threatening a public official, the State argued the Court of Appeals should not have

¹ A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001). On a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Pinckney, 339 S.C. 346, 529 S.E.2d 526 (2000). On appeal from the denial of a directed verdict, an Appellate Court must view the evidence in the light most favorable to the State. McHoney, supra.

² Breach of the peace is a common law offense. Generally, the disturbance of public tranquility should be by an act or conduct inciting to violence. State v. Randolph, 239 S.C. 79, 121 S.E.2d 349 (1961). In general terms, a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence, which includes any violation of any law enacted to preserve peace and good order. State v. Poinsett, 250 S.C. 293, 157 S.E.2d 570 (1967). Breach of the peace includes not only violent acts, but acts and words likely to produce violence in others. State v. Brown, 240 S.C. 357, 126 S.E.2d 1 (1962). Although it includes acts likely to produce violence in others, actual violence is not an element of breach of the peace. State v. Peer, 320 S.C. 546, 466 S.E.2d 375 (Ct. App. 1996). The State may not punish a person for voicing an objection to a police officer where no "fighting words" are used. Norwell v. Cincinnati, 414 U.S. 14, 94 S.Ct. 187, 38 L.Ed.2d 170 (1973).

³ S.C. Code Ann. § 16-3-1040 (2003) states, in part, "It is unlawful for a person knowingly and wilfully to deliver or convey to a public official . . . any . . . verbal . . . communication which contains a threat to take the life of or to inflict bodily harm upon the public official . . . if the threat is directly related to the public official's . . . professional responsibilities."

⁴ 349 S.C. 430, 562 S.E.2d 668 (Ct. App. 2002) rev'd on procedural grounds by 356 S.C. 259, 589 S.E.2d 6 (2003).

characterized the threatening of a public official as a continuous flow of action stemming from the unlawful arrest for breach of the peace.

Petitioner's Bottom Line: The Court of Appeals erred in reversing the case and thus the Supreme Court should grant a Writ of Certiorari.

Respondent's (Jeremiah W.) Opposition to Review: Jeremiah W. should never have been arrested in the first place because he did nothing wrong. He might have been belligerent, but his actions were not threatening. The Court of Appeals was correct to reverse the decision of the Circuit Court because Jeremiah W. had not disturbed the peace nor threatened the police officer.

Respondent's Bottom Line: Deny a Writ of Certiorari.

CASE 2
Mary Lucille Bonte v. Greenbrier Restoration Specialists, Inc.,
Finley Siding, Inc. and Finley Gutter Service, Inc.

Petitioner, Ms. Bonte, brought this action against respondents alleging fraudulent inducement to enter into a contract,⁵ breach of contract,⁶ and breach of contract accompanied by a fraudulent act.⁷

In 1998, petitioner purchased a 2,000 square foot home located on 13 acres in rural Spartanburg County. The house was approximately 60 years old and was originally clad with wood, but later bricked over. Prior to petitioner's purchase, the house had been partially damaged by fire and there was smoke damage throughout the entire house. Petitioner wanted a complete gutting and restoration of the house.

This is petitioner's first home and she had never built or remodeled a home prior to the purchase. Petitioner testified she had no construction education, experience, or training. Despite her lack of experience, petitioner did not hire a professional architect or engineer to develop plans and specifications for the gutting and restoration project. Instead, petitioner had her retired neighbor, who is neither an architect nor an engineer, draw up an elementary floor plan for the house.

Petitioner testified she acted as her own general contractor, managing the construction by making phone calls during her lunch break or other breaks from her full-time job as an administrative assistant. Petitioner began the work by hiring an unlicensed contractor to perform certain demolition. She subsequently fired her first contractor and hired one of his employees, who was also unlicensed, to continue the demolition work.

After seeing their advertisement in the yellow pages of the phone book, petitioner contacted Greenbrier to make a proposal to complete the restoration work. After lengthy negotiations and discussions, petitioner hired Greenbrier to begin the restoration process. The parties could not agree on the scope of a complete restoration contract, so a more limited scope of work was agreed upon which included preparing frames for the replacement windows. The parties continued to negotiate for the remainder of the restoration work. The contract price was \$10,580.

Ms. Robinson, Greenbrier's general manager, entered into the contract on behalf of Greenbrier. Petitioner testified Ms. Robinson represented that Greenbrier "could do the work and that they had subcontractors available."

Greenbrier contacted respondent Finley to provide certain work, which included installing windows for the project, as a subcontractor to Greenbrier. Greenbrier completed its contract and left the job after it was unsuccessful in reaching a contract for the remaining work after lengthy negotiations with petitioner.

⁵ To recover in an action for fraud and deceit, based upon misrepresentation, the following elements must be shown by clear, cogent, and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury. M.B. Kahn Const. Co. v. S.C. Nat'l Bank of Charleston, 275 S.C. 381, 271 S.E.2d 414 (1980); Parker v. Shecut, 340 S.C. 460, 531 S.E.2d 546 (Ct. App. 2000) (applying the Kahn test to claims for fraudulent inducement to enter into a contract).

⁶ There must be a contract and a breach for a plaintiff to be able to recover damages in a breach of contract claim. Tidewater Supply Co. v. Indus. Elec. Co., 253 S.C. 483, 171 S.E.2d 607 (1969).

⁷ To have a claim for breach of contract accompanied by a fraudulent act, the plaintiff must establish three elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach. Conner v. City of Forest Acres, 348 S.C. 454, 560 S.E.2d 606 (2002). If a breach of contract cannot be proven, then a claim for breach of contract accompanied by a fraudulent act will not be successful. Lister v. NationsBank of Del., 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997).

Petitioner testified Ms. Robinson called petitioner at work and said that because petitioner had not signed the second proposal to continue and finish the house, Greenbrier was pulling off of the job. Petitioner stated that she “tried to reason with Ms. Robinson, but got nowhere.” Petitioner admitted that up until that point she was generally satisfied with Greenbrier’s work and she did not like the fact that they were not going to continue to do work on her house. Petitioner testified that she paid the entire amount of the contract on September 9, 1998. Petitioner admitted that, as of October 1, 1998, there was no enforceable contract between the parties. By mid-October, petitioner hired a lawyer, Mr. Dudley, to write a letter to Greenbrier, which outlined four of petitioner’s concerns. Greenbrier came back to the project to perform the additional work that was requested by petitioner in her letter. Those items were memorialized in the letter agreement of November 19, 1998, signed by petitioner on December 8, 1998. Petitioner admitted she had the opportunity to write in this letter that she was unsatisfied as to the condition of the windows; however, she chose not to do so.

Petitioner subsequently contacted Finley to perform the same scope of work, which included installing windows, directly for petitioner, rather than as a subcontractor to Greenbrier. Petitioner testified Finley came out to her house and did the work, but everything stopped at that point because she was not happy with the fitting of the windows. Petitioner testified she was so unhappy with the fitting of the windows that she asked for a meeting with both Greenbrier and Finley to go over the different items she did not feel had been completed by the original contract. Petitioner testified there were gaps of at least a half-inch to three-quarters of an inch between the window and the wooden framing around the window. She stated that both Greenbrier and Finley representatives assured her that the windows would be fixed.

When asked what petitioner felt respondents completed incorrectly, petitioner stated, “I don’t feel that Greenbrier correctly framed the windows, completed demolition around the windows. Twenty-five percent of the window openings were to the brick openings. They never contacted me to find out if I wanted all the window openings to go to the brick, which was my intention and would have been requested had they spoken with me. I don’t feel that Finley correctly measured the windows. And, ... the substantial workmanship that Finley promised in their contract was not fulfilled.” Petitioner testified that both Greenbrier and Finley “represented” to her when she entered into the contract that the windows “would be completed in a workmanlike manner.”

She admitted; however, that the framing provided by Greenbrier passed the County’s inspection. Petitioner also admitted that a representative of the window supplier gave her a letter, which stated the windows were properly installed. She testified that respondents reinstalled the windows where they would have the same appearance as the original windows in the house. She further testified that she never told Greenbrier that she wanted to change the window openings, but she instead relied upon them to contact her with any questions about the work. Petitioner hired another replacement vinyl window contractor, Southern Vinyl Window Manufacturing Company, to remove the windows installed by Finley and install a different brand of windows at more than double the cost. Mr. William Gillespie, owner of the company, testified on behalf of petitioner. Mr. Gillespie testified that Finley had placed the windows back into the house so that the windows would have the same appearance as the original windows. Mr. Gillespie further testified that because of the age of the house the window frames were out of plumb and thus there was no way to avoid an inconsistent gap forming around the window because the window must be set in the frame so that it would work properly. An inconsistent gap between the window and the frame is standard in the industry and the vast majority of windows require insulation to be packed in around them to fill the gaps. Mr. Gillespie’s windows are unique in that they have expandable foam built in which does not require the use of insulation and putty knives to pack the insulation into the uneven gap around the window. However, Mr. Gillespie testified the windows installed by Finley were a good builder’s grade window and their installation was typical for replacement window construction.

At the end of petitioner's case, respondents moved for a directed verdict. The trial judge granted both respondents' motions for a directed verdict. As to Greenbrier, the trial judge stated that Greenbrier not only "performed their contract and were paid for it and inspections were made, nothing in those inspections nor Mr. Dudley's letter complained about the particular aspect of work for which [petitioner] now complains." He also stated that there was no testimony that Greenbrier did not complete their work in a workmanlike manner. As to Finley, the trial judge stated that Finley was hired to put in vinyl replacement windows, which Finley did. He noted that a letter from the window supplier of the windows put in by petitioner, indicated the windows were put in correctly and they only needed to be wrapped to prevent water from entering. The judge held Finley did not commit fraud.

The Court of Appeals affirmed the Circuit Court's decision in a memorandum opinion pursuant to Rule 220(b)(2), SCACR.⁸

Petitioner's (Mrs. Bonte) Petition for Review: The contractor committed fraud by installing the vinyl windows incorrectly and not making the necessary corrections as requested. Ms. Bonte argued that the Court of Appeals erred in affirming the trial court's grant of a directed verdict. Referring to her trial testimony, she maintained she clearly met all of the elements of each of the causes of action.

Petitioner's Bottom Line: The Court of Appeals erred by affirming the decision of the trial court; a Writ of Certiorari should be granted.

Respondent's (Greenbriar, et. al.) Opposition to Review: The windows were installed correctly. The age of the house caused the problems that occurred. No fraud was committed.

Respondent's Bottom Line: The Court of Appeals made the correct decision to affirm the trial court's verdict; deny a Writ of Certiorari.

⁸ The Supreme Court may file a memorandum opinion dismissing an appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, the Supreme Court determines that a published opinion would have no precedential value and any one or more of the following circumstances exists and is dispositive of issues submitted to the Court for decision: (A) that a judgment of the trial court is based on findings of fact which are or are not clearly erroneous; (B) that the evidence to support a jury verdict is or is not insufficient; (C) that the order of an administrative agency is or is not supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; or (D) that no error of law appears.

Case 3
Loren John Murphy v. Nationsbank, N.A.

Respondent served notice that it intended to take petitioner's deposition. Petitioner's counsel responded with a letter stating petitioner expected payment of \$29.14 for a witness fee and mileage pursuant to Rule 30(a)(2), SCRCP. Respondent filed a motion to enforce discovery in which it maintained it was entitled to have petitioner's deposition taken without payment of a witness fee or mileage. Following a hearing, the Circuit Court judge issued an order granting the motion and instructing petitioner to appear at a properly scheduled deposition without payment to him of fees or costs. Petitioner's motion for reconsideration was denied.

Rule 30(a)(1) and (2), SCRCP, states the following:

(a)(1) When Depositions May Be Taken. After commencement of an action any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of summons and complaint upon any defendant, except that leave is not required if a defendant has served a notice of taking depositions or otherwise sought discovery as provided in these Rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(a)(2) Limitations. A witness (excluding a party) may be compelled to attend only in the county in which he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of the court. The deposition of any party or witness may only be taken one time in any case except by agreement of the parties through their counsel or by order of the court for good cause shown. A witness attending any deposition held pursuant to these rules shall receive for each day's attendance and for the time necessarily occupied in going to and returning from the same, \$25.00 per day, and mileage for going from and returning to his place of residence, in the same amounts as provided by law for official travel of state officers and employees.

(Emphasis added) The Court of Appeals, relying on the emphasized language, found that Rule 30(a)(2) treats witnesses and parties differently. The Court of Appeals found the first paragraph of (a)(2) deals with witnesses and specifically excludes parties, the second paragraph applies to both parties and witnesses, and the third paragraph, which is at issue in this case, is limited to a witness. The Court of Appeals concluded that, by its plain language, the paragraph concerning witness fees and mileage applies only to witnesses.

The Court of Appeals also found that Perry v. Minit Saver Food Stores of South Carolina, Inc., 255 S.C. 42, 177 S.E.2d 4 (1970),⁹ which petitioner relied on for support, is inapposite because it pre-dates the adoption of the South Carolina Rules of Civil Procedure.

Petitioner's (Murphy) Petition for Review: The petitioner was entitled to reimbursement and should not have been compelled to give the deposition without reimbursement. Petitioner argued the language of former Circuit Court Rule 87 and the language of Rule 30(a)(2) is nearly identical; therefore, Perry is controlling. Petitioner argued the only distinction the rule makes between a non-party and a party pertains to where a non-party witness may be compelled to attend a deposition.

Petitioner's Bottom Line: The Court of Appeals erred in upholding the trial court's decision; grant a Writ of Certiorari.

Respondent's (Nationsbank) Opposition to Review: The petitioner was not entitled to reimbursement because of the administrative rules governing the deposition.

Respondent's Bottom Line: The Court of Appeals was correct to affirm the decision to of the trial judge. Do not grant a Writ of Certiorari.

⁹ In Perry, the Court construed the language of former Circuit Court Rule 87, which is substantially similar to that of Rule 30(a). Former Circuit Court Rule 87(j) contained the exact language at issue in this case. The Court, in Perry found that former Circuit Court Rule 87 provided for the taking of the testimony by deposition "of any person, including a party, . . ." The Court found further that when a party's deposition is taken, he is, of course, for the purpose thereof, a witness as well as a party. Relying on settled law that where the terms of a statute are clear and free of ambiguity there is no room for construction and the courts are required to apply such according to their literal meaning, the Court found that there was no ambiguity in Rule 87 as to the meaning of the word "witness", as used in Section I thereof, and that the word 'witness' was intended to mean all witnesses whose depositions are taken pursuant to the rule, whether or not the witness was a party. The Court found further that the word "witness" was used at various other places in Rule 87 to denote all witnesses, including parties, without making any distinction between witnesses who happen to be parties and those who are not.

CASE 4

State v. Gerrod Lewis

Respondent, Gerrod Lewis, was convicted of criminal sexual conduct, two counts of kidnapping, grand larceny of a vehicle, and armed robbery. He was sentenced to concurrent terms of thirty years for criminal sexual conduct, thirty years for each kidnapping charge, five years for grand larceny, and thirty years for armed robbery.

Gill Armstrong and Jane Doe were driving from Virginia to their home in Florida with their young child when they stopped at a motel off of I-95 in St. George. Gill went to the Huddle House to get some food and when he got back to the motel he noticed three black males hanging around the breezeway of the motel. Gill then went to the vending machines and when he came back the men robbed him at gunpoint and forced him into the motel room, where Jane was getting out of the shower. The two men then took turns sexually assaulting Jane while holding Gill in the bathtub at gunpoint. They then took Jane back into the bathroom and raped her again while forcing Gill to watch. As they left, one of the men told Gill “Happy Father’s Day.”

The men then took Gill and Jane’s car and burned it. The car was found several days later. Jane was not able to give a description of the attackers, but Gill told the police that the men were black males and he gave general descriptions of their height, facial hair, and clothing. A few days later, a black male named Elmore informed the police that he was at the crime scene and that he was the lookout. Elmore told the police that Washington and Lewis were the two men who raped Jane. Gill confirmed at trial that Elmore had no involvement in the sexual assault but that Elmore kept telling him to do what they told him and everything would be fine.

At trial, Gill identified Washington and Lewis as the perpetrators. Counsel objected and requested an in camera hearing to determine the reliability of his identification. The trial judge denied the request, and ruled that Gill could identify the defendants in court, even though Gill had never previously identified them.

The Court of Appeals held that, since Gill had never previously identified the defendants, no hearing to determine the reliability of the identification was necessary. The Court further held that the reliability of Gill’s identification was a question for the jury and that Lewis’ counsel extensively cross-examined Gill regarding the identification. Finally, the Court found that Gill testified as to the amount of time he had to view the defendants and the degree of attention he paid to them.¹⁰ By way of dissent, Judge Anderson concurred in the result but found that the trial judge should have held an in camera hearing to determine the reliability of Gill’s identification.

Petitioner was tried with his codefendant, Washington. During the jury selection process, each of them struck nine jurors. After a Batson hearing, the trial judge determined that Juror 304, who was struck by Washington, was struck for discriminatory reasons. During the second jury selection, Juror 304 was again called. Washington seated the juror but Lewis attempted to strike her. The trial judge informed Lewis that he could not strike the juror. At the end of the jury selection, Lewis moved to strike the jury, stating that he would have struck Juror 304 because of the way she looked at the defense table when she came forward. The motion was denied.

¹⁰ Gill stated at trial in response to whether he was sure about his identification: “Yeah. With the glasses off 100 percent positive. Just like if - - I don’t know if you had something bad happen to you, but it gets kind of burned in your memory. You get burned by fire, you know not to touch it. This happened to me, it ruined my life . . . And the individuals that did this, they’re stuck in my mind.”

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a venire person on the basis of race. State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001); Batson v. Kentucky, *supra*. Whether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record. Riddle v. State, 314 S.C. 1, 443 S.E.2d 557 (1994). The opponent of the strike carries the ultimate burden of persuading the trial court the challenged party exercised strikes in a discriminatory manner. State v. Adams, 322 S.C. 114, 470 S.E.2d 366(1996). Appellate Courts give the trial judge's finding great deference on appeal, and the ruling will be upheld unless it was clearly erroneous. State v. Dyar, 317 S.C. 77, 452 S.E.2d 603 (1994); State v. Shuler, *supra*.

In State v. Franklin, 318 S.C. 47, 456 S.E.2d 357 (1995), this Court held that the trial judge properly seated a juror who had previously been improperly excluded by defense counsel because of a Batson violation. The Court additionally held that the trial judge properly prohibited defense counsel from reasserting his Batson defense because counsel conceded there were no new facts supporting the constitutionality of his second attempt to strike. Id.

The Court of Appeals held that Franklin was not controlling because in this case Lewis had not previously attempted to strike the juror, only Washington had. Additionally, the Court held that Lewis gave a race-neutral reason for striking the juror that was different from Washington's reason. By way of dissent, Judge Anderson found Lewis was not prejudiced because he was not denied the opportunity to exercise a peremptory challenge, but was merely denied the opportunity to exercise that challenge in a racially discriminatory manner.

Both Lewis and the State filed a petition for a writ of certiorari.

Petitioner's (State of SC) Petition for Review: The State argued that the Court of Appeals erred in holding the trial judge improperly disallowed Lewis's attempt to strike a juror who had previously been struck for discriminatory reasons in violation of Batson. The State maintained the Court of Appeals should not have ruled on the issue because Lewis's argument in the Circuit Court regarding the issue had not been placed on the record for an Appellate Court to review. The State also argued that it was clear from the record that Washington and Lewis were acting together in that they each asserted nine strikes against eighteen white jurors and because they each used the same reasons in striking jurors. Accordingly, the State maintained Lewis should not have been allowed to challenge the juror. Finally, the State argued the trial judge considered Lewis's race-neutral reason for striking the juror and implicitly rejected the reason by denying Lewis' motion to strike the jury.

Petitioner's Bottom Line: The Court erred in allowing the juror to be stricken; grant a Writ of Certiorari.

Respondent's (Lewis) Opposition to Review: The Court of Appeals erred in affirming the trial judge's ruling not to suppress the identification of Lewis because it was unduly suggestive and unreliable.

Respondent's Bottom Line: The selection of the jury was flawed; grant a Writ of Certiorari.

CASE 5

The State v. Larry Dean McCluney

McCluney was convicted of trafficking in over 400 grams of cocaine and was sentenced to imprisonment for twenty-five years. The Court of Appeals reversed his conviction and sentence.

The substance McCluney purchased in this reverse sting operation was packaged like cocaine, but was actually a mixture of salt, flour, caffeine, lidocaine, and benzocaine. The Court of Appeals held that, because the substance was imitation cocaine, the State failed to prove the offense of trafficking in cocaine and, therefore, the trial judge should have granted respondent's motion for a directed verdict.

Trafficking in cocaine is committed when a person "knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or . . . provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or . . . is knowingly in actual or constructive possession or . . . knowingly attempts to become in actual or constructive possession of . . . cocaine or any mixtures containing cocaine." S.C. Code Ann. § 44-53-370(e)(2) (2002). Section 44-53-370(a) prohibits transactions involving controlled substances, controlled substance analogues, and counterfeit substances. No mention is made of prohibiting transactions involving imitation substances.

In Murdock v. State, 311 S.C. 16, 426 S.E.2d 740 (1992), the Supreme Court distinguished counterfeit substances and imitation substances. A counterfeit substance is "a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispenses such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser." S.C. Code Ann. § 44-53-110 (2002). An imitation controlled substance is "a noncontrolled substance which is represented to be a controlled substance and is packaged in a manner normally used for the distribution or delivery of an illegal controlled substance." Id.

The Court of Appeals held that, because there is no reference to imitation cocaine in § 44-53-370, and the substance used in this case was not counterfeit cocaine, McCluney was improperly indicted under the trafficking statute.

Petitioner's (State of SC) Petition for Review: The State argued that McCluney attempted to purchase real cocaine, and the fact that he did not accomplish this objective because the substance given to him by law enforcement in the reverse sting operation was not real cocaine does not negate the fact that McCluney committed the crimes of attempt and conspiracy to purchase cocaine. The State also asked the Court to expedite the matter, arguing the Court of Appeals' holding would cause confusion as to law enforcement's ability to use imitation substances in reverse sting operations. The State argued that if the Court of Appeals' decision was allowed to stand, law enforcement would be required to introduce real controlled substances into the community.

Petitioner's Bottom Line: The Court of Appeals erred in ruling that the purchase of fake cocaine was not a criminal act; grant a Writ of Certiorari.

Respondent's (Lewis) Opposition to Review: The Court of Appeals was correct because no crime was committed. The purchase of fake cocaine is not the same as purchasing the real thing.

Respondent's Bottom Line: There was no crime committed. The Court of Appeals decision should stand; deny the Writ of Certiorari .

CASE 6

Gay Ellen Coon v. James Moore Coon

Petitioner (James Moore Coon) and respondent entered into a settlement agreement resolving their marital litigation. The agreement, which was approved by an order of the Family Court, awarded 100% of petitioner's military retirement pay to respondent for a period of nine years, after which petitioner and respondent would divide the proceeds equally. Petitioner and respondent operated under the agreement without incident for roughly eighteen months until respondent brought a rule to show cause against petitioner. Petitioner countered with a Rule 60(b)(4), SCRCF, motion to vacate the order approving the settlement agreement, arguing the Family Court lacked subject matter jurisdiction to award greater than 50% of his military retirement pay to respondent pursuant to the Uniformed Services Former Spouses Protection Act (USFSPA). 10 U.S.C.A. § 1408 (2004). Agreeing with petitioner, the Family Court vacated the prior order.

The sole issue on appeal was whether the Family Court had subject matter jurisdiction to make the award concerning petitioner's military retirement pay. The Court of Appeals answered this question in the affirmative, reversed the decision of the Family Court, and reinstated the prior order.

In South Carolina, the Family Court has subject matter jurisdiction to hear and decide divorce actions and divide marital property, both real and personal. S.C. Code Ann. § 20-7-420(2) (Supp. 2003). Generally, state courts have subject matter jurisdiction over federal causes of action absent provision by Congress to the contrary or disabling incompatibility between the federal claim and state court adjudication. Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 101 S.Ct. 2870, 69 L.Ed.2d 784 (1981). Further, domestic relations are predominately matters of state law, and Congress rarely intends to displace state authority in this area. Mansell v. Mansell, 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989). However, the USFSPA is "one of those rare instances where Congress has directly and specifically legislated in the area of domestic relations." Id.

Prior to the passage of the USFSPA, state courts were completely pre-empted from including military retirement pay as marital property subject to division in divorce proceedings by virtue of the Supremacy Clause of the U.S. Constitution. McCarty v. McCarty, 453 U.S. 210, 101 S.Ct. 2728, 69 L.Ed.2d 589 (1981). Mindful of the potentially difficult situation this presented for ex-spouses of retired military personnel, Congress passed the USFSPA allowing states to determine for themselves, subject to certain limitations, whether they would treat military retirement pay as marital property subject to division under their respective domestic relations laws. 10 U.S.C.A. § 1408(c) (2004). In Tiffault v. Tiffault, this Court held that military retirement payments "constitute an earned property right which, if accrued during the marriage, is subject to equitable distribution." 303 S.C. 391, 401 S.E.2d 157 (1991).

Petitioner's (James Coon) Petition for Review: Petitioner argued that the Court of Appeals erred in finding the Family Court had subject matter jurisdiction to make an award in excess of 50% of his military retirement pay, despite the fact that the award was contrary to the limitations of the USFSPA. Petitioner argued that subsection (e)(1), which provides, "[t]he total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay," imposes a limit on state court subject matter jurisdiction. To support this argument petitioner relied on the House Armed Services Committee report accompanying the 1990 amendment to subsection (e)(1), which states:

. . . [the USFSPA] was the product of substantial compromise among a wide diversity of opinions about the extent to which state courts ought to be able to divide military retired pay upon the divorce of a military

member entitled to such pay. The legislation walks a narrow line between the rights of the states and the interests of the federal government in dealing with military retired pay in divorce settlements. The two modifications to current law the committee would make this year reflect a public policy judgment on the appropriate role of the federal government in limiting state court jurisdiction in divorce cases involving military retired pay that is consistent with the balancing of state and federal interests that has been the hallmark of this law since its inception . . . The law would be clarified to ensure that regardless of the number of former spouses, the aggregate amount of retired pay that would be payable to them would not exceed 50 percent of the service member's disposable retired pay.

H.R. Rep. No. 101-665, at 3005 (1990) (emphasis added). Petitioner argued, pursuant to McCarty, military retirement payments are the exclusive domain of the federal government, and as such, Congress, and Congress alone, may confer as much, or as little, jurisdiction over them to state courts as it sees fit. According to petitioner, this report indicates a clear choice by Congress to only confer “jurisdiction” to the states over 50% of military retirement benefits. Thus, the Family Court was without subject matter jurisdiction to issue an order awarding greater than 50% of petitioner’s military retirement benefits to respondent, and, to that extent, the order is void.

Petitioner argued that the next sentence in subsection (e)(5), which was not addressed by the Court of Appeals, supports his contention that the Family Court is without subject matter jurisdiction to issue the order awarding respondent in excess of fifty percent of his military retirement pay. This sentence provides:

. . . However, such order shall be considered to be fully satisfied for purposes of this section by the payment to the spouse or former spouse of the maximum amount of disposable retired pay permitted under paragraph (1) . . .

10 U.S.C.A. § 1408(e)(5) (2004). Petitioner argued that this sentence indicates a clear intent by Congress “to forbear voiding divorce judgments based solely on the fact that they purported to award more than 50 percent of disposable retired pay while at the same time making it clear that such judgments are in fact void and of no effect to the extent that they do purport to do so.”

Petitioner’s Bottom Line: The Court of Appeals and the Family Court did not have the jurisdiction to act as it did; grant a Writ of Certiorari.

Respondent’s (Gay Ellen Coon) Opposition to Review: The courts had the jurisdiction to rule in the matter as they did and the ruling should stand.

Respondent’s Bottom Line: The Court should deny the petition for Writ of Certiorari.

CASE 7
Debordieu Colony Community Association, Inc. v.
Furman D. Wingate

By a vote of the majority of property owners present at the annual meeting, respondent amended its bylaws in 1996 to allow for special assessments for beach stabilization, canal dredging, and drainage. When petitioner failed to pay the assessments, respondent placed a lien on petitioner's property and brought this action to foreclose the lien. Petitioner filed several counterclaims. The master-in-equity granted respondent's motion for summary judgment, and the Court of Appeals affirmed.

Respondent's bylaws provide that they may be altered, amended, or repealed by a majority of the members voting at the annual members' meeting. The 1996 amendment to the bylaws for the special assessments for beach stabilization, canal dredging, and drainage states that the assessments would be secured by a lien on the property as set forth in Section 1 of the Article. Pursuant to Section 1 of Article VI of the bylaws, a lien for the assessments may be foreclosed as provided by law for the foreclosure of real estate mortgages. Petitioner admitted in his deposition that he assumed the 1996 amendment was properly adopted by the membership as required by the bylaws.

Petitioner's (Wingate) Petition for Review: Petitioner contends that the Court of Appeals erred in holding that he was contractually liable to pay the special assessments levied by respondent because the bylaws specifically prohibited special assessments.

Petitioner's Bottom Line: The Supreme Court should grant a Writ of Certiorari because he was not liable for the assessments.

Respondent's (Debordieu) Opposition to Review: The Court of Appeals was correct to affirm the decision of the master-in-equity. Furman was liable for the assessments.

Respondent's Bottom Line: A Writ of Certiorari should be denied.

CASE 8
Joseph H. Panther v. Catto Enterprises, Inc.

After conveying a piece of property to respondent (Catto), allegedly in trust, petitioner (Panther) brought this action alleging breach of a trust agreement and fraud against respondent. Respondent counterclaimed for past due rent and eviction. The master found that no trust was created. He evicted petitioner from the property and ordered petitioner to pay respondent \$10,350 in past due rent. The Court of Appeals affirmed the master's order.

The testimony presented by petitioner in this case indicated that petitioner conveyed the property to respondent so that the property would not be sold if his wife went through with her plans for a divorce. Petitioner wanted to stay on the property and ensure that his daughter would have a place to live. No mention of a trust agreement was made at the closing on the property. According to petitioner and Ronald Avinger, Michael Catto, respondent's president, indicated that he would prepare a trust agreement after the closing; however, Catto failed to do so. Although petitioner presented a trust agreement prepared by his attorney to Catto after the closing, Catto refused to sign the agreement. Neither party ever signed the agreement.

Petitioner's (Panther) Petition for Review: Petitioner argued the Court of Appeals erred in failing to find that the parties entered into a trust agreement concerning the property.

Petitioner's Bottom Line: A Writ of Certiorari should be granted.

Respondent's (Catto) Opposition to Review: The Court should deny the Writ of Certiorari because a trust had not been established and Panther owed Catto the money.

Respondent's Bottom Line: A Writ of Certiorari should be denied.

Respondent's Return to the Petition for a Writ of Certiorari:
Respondent argued the family court properly found the ruling petitioner sought was a modification of the order and she did not follow the proper procedure for seeking such relief.

Respondent's Bottom Line:
The Court should deny the petition for a writ of certiorari.

CASE 9:
Jane Doe v. Baby Boy Roe, South Carolina
Dep't of Soc. Serv., et al

This is an action seeking termination of parental rights and to adopt Baby Boy Roe. The Family Court terminated the mother's parental rights based on Baby having remained in foster care for fifteen of the most recent twenty-two months and on additional grounds of abandonment, failure to rehabilitate, failure to support, failure to visit, and a diagnosable condition. The Family Court also found termination of parental rights was in the baby's best interest and granted Doe's request for adoption. The Court of Appeals affirmed.

Mother gave birth to Baby on November 17, 1998. Mother admitted using heroine during her pregnancy with Baby and, thus, Baby was born with illegal drugs in his system. Mother was on probation for prior drug and shoplifting offenses. Giving birth to a drug-addicted baby violated her probation, and she was incarcerated from the time of Baby's birth until July 1999.

Following Baby's birth, the Department of Social Services (DSS) performed an assessment and found that Mother posed a high risk of causing harm or physical neglect to Baby. Based on this assessment, DSS and Mother entered into a safety plan in which Mother agreed to seek substance abuse treatment and cooperate with all DSS recommendations. Eight days after Baby's birth, DSS placed him in emergency protective custody and he remained hospitalized until placed in a foster home on December 8, 1998.¹¹ Due to her incarceration, Mother did not visit Baby nor did she support Baby from the time of Baby's birth until July 1999.¹²

Mother was out of prison from July to October 1999, when she was arrested for shoplifting, tenth offense. During this time period outside of prison, Mother did visit with Baby occasionally, but failed to attend the recommended drug program or parenting classes. She was transferred to an inpatient drug program in January 2000, where she remained until December 2000, when Baby was two years old.¹³ Mother successfully completed the inpatient drug program and completed a six-week parenting class during this period. After her release, she immediately enrolled in a drug addiction recovery program, joined a church, reunited with Baby's father, gained permanent employment, started work to obtain her GED, and set up house for herself and her two children.¹⁴ Mother did not provide financial support for Baby until the Family Court ordered her to do so in June 2000.

Doe filed this suit on July 21, 2000,¹⁵ seeking termination of the parental rights of both parents and adoption. A hearing was held on April 4, 2001.¹⁶ As stated earlier, the Family Court terminated both

¹¹ Baby was placed with Doe, a neonatal nurse practitioner, and remained with her until the time of the hearing.

¹² Mother did write Doe and DSS caseworkers to inquire about Baby. She also asked for pictures of Baby, which Doe provided.

¹³ There were several visits between Mother and Baby between January and July 2000. After Doe filed this action in July 2000, Mother visited with Baby one or two times a month. Doe transported Baby to see Mother for all visits prior to July 2000; other arrangements were made after the filing of this action.

¹⁴ All of the improvements Mother made to her life were started and/or achieved during mid-2000, the same time period that DSS was recommending TPR and Doe was filing this action. It was brought out at the hearing that by the time Baby was twelve months old, both parents were in jail and had done nothing to address the DSS and Family Court treatment plan.

¹⁵ Baby was twenty months old at this time. Mother served her answer and counterclaim in September 2000, when Baby was twenty-two months old.

parents' rights based on several statutory grounds. In her order, the Family Court judge commended the parents on their involvement with Narcotics Anonymous and their local church, their positive parenting skills, and their positive work habits. Yet, the Family Court judge found that these improvements were judicially motivated. Thus, the Family Court terminated the parental rights of both natural parents and granted the adoption of Baby to Doe, finding the adoption in the best interests of Baby.

The Court of Appeals, in affirming the Family Court, found statutory grounds existed that warranted termination of Mother's parental rights. The Court of Appeals focused their decision on only one ground, the child having lived in foster care for fifteen out of the most recent twenty-two months.¹⁷ The court held that once a child has been in foster care for fifteen months, whether those months are consecutive or within the last twenty-two months, the parental rights of that child's parents may be terminated upon a showing that termination of parental rights (TPR) is in the child's best interest. The court further held that the child need not be in foster care for fifteen consecutive months, but rather, a ground for TPR exists once a child has been in foster care any fifteen months within the most recent twenty-two month period. Because it was undisputed that Baby was in foster care for twenty months prior to the filing of this action, the Court of Appeals found the necessary statutory ground for terminating Mother's parental rights and also found TPR and adoption were in the best interests of Baby.

Petitioner's (the mother) Petition for Review: Mother now argues both the Family Court and the Court of Appeals erred in their interpretation of §20-7-1572(8). She argues that twenty-two months must pass before a TPR action may be filed. She also argues that she was entitled to work in good faith toward her treatment objectives during the entire twenty-two month period.

Petitioner's Bottom Line: Grant a Writ of Certiorari.

Respondent's (the state) Opposition to Review: The mother is unfit and her parental rights should be terminated.

Respondent's Bottom Line: Deny the Writ of Certiorari.

¹⁶ Baby was twenty-eight months old at the time of the hearing.

¹⁷ The Court of Appeals did not discuss any of the other statutory grounds relied upon by the Family Court because S.C. Code Ann. §20-7-1572 (Supp. 2003) dictates that only one statutory ground is necessarily needed to terminate parental rights.

CASE 10: The State v. Hoyt Morris

Petitioner was convicted of fourteen counts of second degree criminal sexual conduct (CSC) with a minor, three counts of contributing to the delinquency of a minor, and two counts of disseminating obscene material to a minor. He was sentenced to a total of forty years in prison. The Court of Appeals affirmed petitioner's convictions and sentences. Judge Shuler dissented.

On *voir dire*, the judge advised the jurors of the names of the victims in the case. No jurors responded when the judge later asked if anyone was aware of any bias or prejudice they might have against petitioner or the "nature of these cases."

Petitioner admitted that he was a homosexual and argued that he was not on trial for being a homosexual. During his testimony, petitioner stated, "I have a strong belief in my Jesus Christ because my Saint [sic] James version Bible is laying right there where I've been sitting the whole time with my name in it."

After petitioner's testimony, defense counsel advised the trial judge that one of the jurors stated to another that if petitioner had read the Bible, he would know that homosexuality was a sin. Two men testified that they heard a juror make the statement. The juror; however, denied making the statement. Counsel moved for a mistrial or, in the alternative, for the alternate juror to be placed on the jury. The trial judge denied the motion for a mistrial, stating that the juror denied making the statement.

In his closing, counsel for petitioner admitted that petitioner was a homosexual, but argued that the jury should not consider that fact in reaching a verdict. The trial judge charged the jury that petitioner was "not on trial for a lifestyle. That is not the issue in this case. The issue in this case is whether he committed these offenses [sic]."

After trial, a local reporter received an anonymous message from a juror in petitioner's case indicating that the statement concerning homosexuality had been made by a juror. The trial judge sent a letter to all the jurors asking whether they heard the statement and, if so, whether it affected their consideration of the case. Four jurors responded that they had heard the statement, but that it did not affect their decision in the case. Petitioner then moved for a new trial on the ground that the juror's misconduct denied petitioner a fair and impartial jury. The trial judge denied the motion for a new trial, finding that the juror did make the statement that petitioner should know that homosexuality is a sin, but that the jury verdict was not tainted by the juror's comment.

The Court of Appeals held that the trial judge did not abuse his discretion in denying the motion for a new trial based on the allegation of juror misconduct. The majority found that the juror did not intentionally conceal any information and that petitioner was not prejudiced by the comment made by the juror since no juror indicated that their vote was affected by the juror's comment. Judge Shuler indicated he would find that the juror did intentionally conceal her bias towards homosexuality and that petitioner was entitled to a new trial because the juror's bias would have been grounds for a challenge for cause or the use of peremptory strike.

Petitioner's (Morris) Petition for Review: Petitioner contends the majority of the Court of Appeals erred in upholding the trial judge's denial of petitioner's motion for a new trial based on juror misconduct.

Petitioner's Bottom Line: Grant a Writ of Certiorari.

Respondent's (State of SC) Opposition to Review: No error was made during the trial; juror misconduct did not occur.

Respondent's Bottom Line: A Writ of Certiorari should be denied.

Grant/Deny Worksheet

A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

- where there are novel questions of law; or
- where there is a dissent in the decision of the Court of Appeals; or
- when the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; or
- where substantial constitutional issues are directly involved; or
- where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Case	Grant or Deny	Why
<u>In the Matter of Jeremiah W.</u>		
<u>Mary Lucille Bonte v. Greenbrier Restoration Specialists, Inc., Finley Siding, Inc. and Finley Gutter Service, Inc.</u>		
<u>Loren John Murphy v. Nationsbank, N.A.</u>		
<u>State v. Gerrod Lewis</u>		
<u>State v. Larry Dean McCluney</u>		
<u>Gay Ellen Coon v. James Moore Coon</u>		
<u>Debordieu Colony Community Association, Inc. v. Furman D. Wingate</u>		
<u>Joseph H. Panther v. Catto Enterprises, Inc.</u>		
<u>Jane Doe v. Baby Boy Roe, South Carolina Department of Social Services</u>		
<u>State v. Hoyt Morris</u>		

Grant/Deny Exercise Teacher's Guide

CASE 1 In the Interest of Jeremiah W.

The Supreme Court granted review of this case. The case met two of the criteria the Court has adopted for granting review:

1. There is a dissent in the decision of the Court of Appeals.
2. The decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

The oral argument was held in November 2004. The Supreme Court released its opinion in this case in December 2004. The Court, in an opinion written by Justice James E. Moore, concluded the Court of Appeals properly held the trial court should have granted a directed verdict in respondent's favor on the breach of peace charge. However, relying on its opinion in State v. Nelson, 336 S.C. 186, 519 S.E.2d 7786 (1999), the Court found the Court of Appeals erred in finding respondent's threat to Officer Cooke, although made after he was unlawfully arrested for breach of peace, was not a new and distinct crime for which he could be arrested. In the Interest of Jeremiah W., 361 S.C. 620, 606 S.E.2d 766 (2004).

To access the opinion, go to <http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=25906>

CASE 2: Mary Lucille Bonte v. Greenbrier Restoration Specialists, Inc., Finley Siding, Inc. and Finley Gutter Service, Inc.

The Court denied review of this case.

CASE 3: Loren John Murphy v. Nationsbank, N.A.

The Supreme Court granted review of this case. The case met one of the criteria the Court has adopted for granting review:

1. The decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

The oral argument was held in November 2004. The Supreme Court released its opinion in this case in December 2004. The Court, in an opinion written by Justice John H. Waller, Jr., found it had answered this precise question in Perry v. Minit Saver Food Stores, 255 S.C. 42, 177 S.E.2d 4 (1970). The Court found that the Court of Appeals overlooked the fact that former Circuit Court Rule 87, upon which the Court relied in Perry, contained the identical provisions of Rule 30(a)(2).

In Perry, the Court held that a party witness is entitled to mileage and a witness fee. Murphy v. Nationsbank, N.A., 362 S.C. 179, 607 S.E.2d 80 (2004).

To access the opinion, go to www.sccourts.org/opinions/displayOpinion.cfm?caseNo=25913

CASE 4: **State v. Gerrod Lewis**

The Supreme Court granted review of this case. The case met three of the criteria the Court has adopted for granting review:

1. A novel question of law is involved.
2. There is a dissent in the decision of the Court of Appeals.
3. Substantial constitutional issues are directly involved.

The oral argument was held in November 2004. The Supreme Court released its opinion in this case in February 2005. The Court, in an opinion written by Justice James E. Moore, found that the Court of Appeals properly held that the usual analysis for determining whether an identification is reliable does not apply to in-court identifications and that the remedy for any alleged suggestiveness of an in-court identification is cross-examination and argument. In sum, the Court held that the United States Supreme Court has not extended its exclusionary rule to in-court identification procedures that are suggestive because of the trial setting. With regard to the issue of jury strikes, the Court held that the Court of Appeals erred in reversing the trial court's decision not to allow Lewis to strike a juror who had previously been stricken in violation of Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). The Court concluded that once a juror has been unconstitutionally stricken, the jury selection process relative to that juror is tainted and if the trial court chooses to reseal the improperly stricken juror, the striking party may not use a peremptory strike to remove that juror from the panel a second time. State v. Lewis, 363 S.C. 37, 609 S.E.2d 515 (2005).

To access the opinion, go to <http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=25943>

CASE 5: **State v. Larry Dean McCluney**

The Supreme Court granted review of this case. The case met one of the criteria the Court has adopted for granting review:

1. A novel question of law is involved.

The oral argument was held in November 2004. The Supreme Court released its opinion in this case in December 2004. The Court, in an opinion written by Acting Justice Marion D. Myers (Family Court Judge - Third Circuit), found that the Court of Appeals errantly focused on the facts that only imitation cocaine was present at the transaction and that purchasing imitation cocaine does not constitute trafficking. The Court also found Murdock v. State, 311 S.C. 16, 426 S.E.2d 740 (1992), upon which the Court of Appeals relied heavily, was irrelevant. Instead, the Court found, the Court of Appeals should have focused on the State's evidence that respondent conspired and attempted to purchase real cocaine. The Court found S.C. Code Ann. § 44-53-370(e)(2) plainly states that

conspiring and attempting to purchase ten grams or more of real cocaine constitute trafficking; therefore, the presence of only imitation cocaine at the transaction is irrelevant to respondent's intent and thus irrelevant to the State's conspiracy and attempt arguments. State v. McCluney, 361 S.C. 607, 606 S.E.2d 485 (2005).

To access the opinion, go to <http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=25909>

CASE 6:
Gay Ellen Coon v. James Moore Coon

The Supreme Court granted review of this case. The case met two of the criteria the Court has adopted for granting review:

1. A novel question of law is involved
2. A federal question is involved

The oral argument was held in May 2005. The Supreme Court released its opinion in this case on May 31, 2005. The Court, in an opinion written by Justice Costa M. Pleicones, agreed with the Court of Appeals' holding that the USFSPA did not deprive the Family Court of subject matter jurisdiction, but that the Family Court did not have the authority to award respondent more than 50% of petitioner's disposable retired pay. The Court held that the Family Court's jurisdiction is strictly a matter of South Carolina law. It concluded the Family Court in this case did not exceed its jurisdiction and the fact that it erred in failing to follow the USFSPA did not change that result. Coon v. Coon, Op. No. 25991 (S.C. Sup. Ct. filed May 31, 2005).

To access the opinion, go to <http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=25991>

CASE 7:
Debordieu Colony Community Association, Inc. v. Furman D. Wingate

The Court denied review of this case.

CASE 8:
Joseph H. Panther v. Catto Enterprises, Inc.

The Court denied review of this case.

CASE 9:
**Jane Doe v. Baby Boy Roe, South Carolina Dep't of Soc.
Serv., et al**

The Court denied review of this case.

CASE 10:
State v. Hoyt Morris

The Supreme Court initially granted review of this case. The case met one of the criteria the Court has adopted for granting review:

1. There is a dissent in the decision of the Court of Appeals.

After oral argument, the Court dismissed the writ of certiorari as improvidently granted, finding post-conviction relief is petitioner's proper avenue to pursue relief. Post-conviction relief is a collateral attack on a conviction wherein a defendant generally alleges ineffective assistance of counsel at trial.

To access the opinion, go to

<http://www.sccourts.org/opinions/displayUnPubOpinion.cfm?caseNo=2005-MO-003>