



# South Carolina Bar

Continuing Legal Education Division

## **2020 Criminal Law Practice Essentials**

20-32

**Thursday, September 24, 2020**

*presented by*  
**The South Carolina Bar**  
**Continuing Legal Education Division**

<http://www.scbar.org/CLE>

*SC Supreme Court Commission on CLE Course No. 205235EADO*

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# LIVE WEBCAST

## 2020 Criminal Law Practice Essentials

Thursday, September 24, 2020

This program qualifies for 5.75 MCLE credit hours, including up to 1.0 LEPR credit hour.  
SC Supreme Commission on CLE Course #: 205235EADO

### PROGRAM AGENDA

- 9:20 a.m. Welcome and Overview**  
*April Sampson, Deputy Solicitor*  
Fifth Circuit Solicitor's Office
- 9:30 a.m. Defense Ethics**  
*E. Fielding Pringle*  
Fifth Circuit Public Defender
- 10 a.m. Prosecution Ethics**  
*Dan Goldberg*  
Fifth Circuit Solicitor's Office
- 10:30 a.m. Pending Case Matters: Bond Hearings/Preliminary Hearings/Indictments**  
*Dayne C. Phillips*  
Price Benowitz LLP
- 11 a.m. Plea Negotiations: Diversion Programs**  
*Brooke Lewis Velazquez, Director of Diversion Programs*  
*Connie Garner*  
Eleventh Circuit Solicitor's Office
- 11:45 a.m. Lunch Break**
- 12:45 p.m. Plea Negotiations: Probation/Collateral Consequences**  
*Nicole L. Singletary*  
The Law Office of Nicole Singletary
- 1:45 p.m. Guilty Pleas**  
*Bennett E. Casto*  
Eleventh Circuit Tri-County Public Defender
- 2:05 p.m. Discovery, Pre-Trial and Trial Motions**  
*Shaun C. Kent*  
Kent Law Firm, LLC
- 2:50 p.m. Panel: Questions & Answers**  
Moderator: April W. Sampson
- 3:05 p.m. Break**
- 3:20 p.m. Practical Trial Advocacy Tips**  
*April W. Sampson*  
*Shaun C. Kent*
- 4 p.m. Straight from the Bench - What Judges Want from Lawyers**  
*Hon. Roger M. Young*  
S.C. Circuit Court
- 4:30 p.m. Adjourn**

# 2020 Criminal Law Practice Essentials

## SPEAKER BIOGRAPHIES

(by order of presentation)

### **April W. Sampson**

*Circuit Deputy Solicitor, Fifth Circuit Solicitor's Office  
(course planner)*

Circuit Deputy Solicitor April Sampson graduated from Washington University in St. Louis in 1995 and from the University of South Carolina School of Law in 1998. She became a member of the South Carolina Bar in November of 1998. Mrs. Sampson began her legal career with Protection and Advocacy for People with Disabilities where she handled legal matters for those with physical and mental disabilities.

In the summer of 1999, Mrs. Sampson became an Assistant Public Defender with the Richland County Public Defender's Office. She worked there for 6 years and rose to Deputy Chief Public Defender before entering private practice. In private practice, Mrs. Sampson worked for Duff, White, & Turner handling special education matters and civil litigation for school districts. While working for the Law Office of Richard Beinart, she handled both civil and criminal matters.

In 2003, Mrs. Sampson became an adjunct professor for University of South Carolina in the Department of Criminal Justice, and in 2007, she became an associate professor for South University in the Legal Studies Department.

In 2011, Mrs. Sampson joined the Fifth Circuit Solicitor's Office, where she worked as an Assistant Solicitor and Team Leader handling the prosecution of defendants charged with major felonies. In January of 2019, she was promoted to Circuit Deputy Solicitor, where, along with handling her own caseload, she assists the Solicitor with managing and overseeing the office and training new assistant solicitors.

During her career, Mrs. Sampson has been a presenter and faculty member for training seminars offered by the National Advocacy Center, the National Criminal Defense College, Georgia Association of Criminal Defense Lawyers, the Summary Court Judges' Association, the South Carolina Black Lawyers' Association, the South Carolina Bar, the South Carolina Solicitor's Association, and the South Carolina Prosecution Commission.

She also participates in the South Carolina Bar's Mentoring Program as a mentor and helps coach mock trial teams at Dutch Fork High School and the University of South Carolina School of Law.

### **E. Feilding Pringle**

*Fifth Circuit Public Defender*

Fielding grew up in Greenville, South Carolina. She attended the College of Charleston and graduated cum laude with a major in Philosophy in 1992. Fielding was a member of the equestrian team for the College of Charleston and competed throughout her college career throughout the Southeast as well as at the national level.

After college she attended law school and in 1996, she graduated from the University of South Carolina School of Law. After law school, Fielding worked as a staff attorney at the South Carolina Supreme Court for two years. She then entered practice as an assistant public defender with the Richland County Public Defender's office where she has since worked the better part of her entire career as a lawyer representing the interests of indigent defendants in Richland County. Her interest in criminal defense began as a law clerk working for the Death Penalty Resource Center in law school in the early 90's. Since that time, she has handled capital cases at all levels of the process from trial to clemency proceedings. She has represented numerous defendants in high profile cases capital and non-capital during her career. In 2009, The Honorable Douglas Strickler appointed her Chief Public Defender for Richland County. In April of 2018, she was appointed Fifth Circuit Public Defender by the South Carolina Office on Indigent Defense. On April 19, 2018 she was sworn into office by the Honorable Clifton Newman at the Richland County Judicial Center. Fielding is the Public Defender Representative for the South Carolina Association of Criminal Defense Lawyers. She is also a board member for the Public Defender Association of South Carolina.

**Daniel R. Goldberg**  
*Fifth Circuit Solicitor's Office*

Dan Goldberg is a Deputy Solicitor for the Fifth Judicial Circuit, which covers Richland and Kershaw Counties. He earned a B.A. degree from the University of Florida in 2000 and received his Juris Doctor degree from the University Of South Carolina School Of Law in 2004.

In the fall of 2003, he joined the Fifth Circuit as a law clerk and has been working there ever since.

Throughout that time, he has served as an Assistant Solicitor and later as a Team Leader assigned to prosecute an assortment of violent crimes to include Murder, Armed Robbery, Sexual Assault and Burglary. In January of 2011, Mr. Goldberg was appointed to the position of Deputy Solicitor, where he was tasked with a variety of additional management and administrative responsibilities. He continues to serve in that role today along with being the Violent Crime Team Leader for the Richland County Office.

Mr. Goldberg has previously spoken at numerous training seminars presented by, among others, the South Carolina Bar, the Magistrates Advisory Council, the South Carolina Solicitor's Association, the South Carolina Commission on Prosecution Coordination, and the University of South Carolina. Additionally, he has made it a regular practice during his career to take part in various law enforcement, educational, and community outreach programs.

**Dayne Phillips**  
*Price Benowitz LLP*

Dayne Phillips is a graduate of the University of South Carolina School of Law, the National Criminal Defense College, and the NACDL Forensic College. Dayne has successfully defended the accused in felony jury trials and has successfully argued before both appellate courts in South Carolina. He is a past President and former Board Member of the South Carolina Association of Criminal Defense Lawyers, former Eleventh Circuit Representative in the SC Bar's House of Delegates, and current State Delegate for the National College for DUI Defense. He has also been recognized as a Rising Star by Super Lawyers, Legal Elite (criminal law) by Columbia Business Monthly, and an AV Preeminent Peer Rating by Martindale-Hubbe. Notably, his cases and quotes on legal matters have been featured in the SC Lawyers Weekly Newspaper and is a co-host on the Direct Examination Podcast.

**Brooke L. Velazquez**

*Director of Diversion Programs, Eleventh Circuit Solicitor's Office*

Brooke Lewis Velazquez, is the Director of Diversion Programs for the 11th Judicial Circuit Solicitor's Office. Responsibilities include overseeing the daily operation of the Pre-Trial Intervention program, both the Lexington and Tri County 11th Circuit Solicitor's Drug Court programs, the Alcohol Education Program, the Traffic Education Program, Expungement Services, Juvenile Arbitration Program and the Worthless Check Unit.

Mrs. Velazquez attended the University of South Carolina for undergraduate and graduate studies graduating with a Bachelor of Arts and a Masters of Criminal Justice. She completed training at the South Carolina Criminal Justice Academy and currently holds a commission as a S.C. Law Enforcement Officer. Mrs. Velazquez has served on the South Carolina Association of Pre-Trial Intervention Programs Board. Mrs. Velazquez has completed numerous professional development courses including Treatment of Alcohol and Drug Dependant Offenders, Management of Alcohol and Drug Treatment Courts, Identifying and Treating Clients with Dual Diagnosis, and Prosecution of Drug Offenders.

## **Connie Garner**

*Eleventh Circuit Solicitor's Office*

Connie Shockley Garner is employed as a Case Manager II with the Pretrial Intervention Program for the 11th Judicial Circuit Solicitor's Office. Duties include case management services in the Pretrial Intervention Program Division of the Solicitor's Office, while ensuring compliance with state law and established regulations, policies and procedures. She conducts application and orientation group meetings with program participants; explains each process in accordance with policy.

Mrs. Garner attended the University of South Carolina Aiken where she obtained a Bachelor of Arts degree in Sociology. Upon graduation, she started her professional career with the 11th Judicial Circuit Solicitor's Office as a Pretrial Intervention Case Manager I in August of 1990. Connie was promoted to Case Manager II where she continues her duties with the Pretrial Intervention program. Her career affiliations include membership with the South Carolina Association of Pretrial Intervention Programs, serving on this board in different positions to include President 1994-96.

Mrs. Garner has been married for 29 years and has one son who attends Newberry College. She is a member of Convent Baptist Church.

## **Nicole L. Singletary**

*The Law Office of Nicole Singletary*

Nicole Singletary graduated from the University of South Carolina in 2000 with a degree in Liberal Arts. She Graduated from the Appalachian School of Law in Grundy, VA in 2005. She is a member of the Richland County Bar. She worked for the Richland County Public Defender's Office from August 2005 to April 2010. She is currently in private practice at The Law Office of Nicole L. Singletary.

## **Bennett E. Casto**

*Eleventh Circuit Tri-County Public Defender*

Bennett graduated from the Charleston School of Law in 2007. While in law school, Bennett worked as a law clerk at the Charleston County Public Defenders Office. Upon graduating from law school, Bennett relocated to Lexington, South Carolina, and joined the Eleventh Circuit Public Defenders Office. This office serves the Counties of Lexington, Saluda, Edgefield, and McCormick. Bennett currently serves as one of the Deputy Public Defenders with the office and he is primarily assigned to serve indigent clients in Saluda, Edgefield, and McCormick Counties. During his time with the public defenders office, his work has included the representation of adult and juvenile clients facing some of the most serious possible penalties. His current memberships include the South Carolina Bar, the Lexington County Bar Association, the Public Defenders Association, and the South Carolina Association of Criminal Defense Lawyers.

## **Shaun C. Kent**

*Kent Law Firm, LLC*

Shaun Kent has been practicing law in the State of South Carolina for the preceding 20 years. From simple Assault and Battery to Murder, Shaun has defended and tried almost every type of case imaginable.

A scholarship soccer player, Shaun graduated from the University of South Carolina Aiken in 1996 with a Bachelor of Arts Degree with a dual major in Political Science and Speech Communication. Thereafter, he attended the Thomas M. Cooley School of Law in Lansing, Michigan where he graduated Cum Laude and received his Juris Doctorate in 2000. While in law school, Shaun was editor of the Law Review and participated in and won numerous national Moot Court competitions.

After graduating from law school, Kent returned to Aiken, South Carolina and taught criminal law at a local university. He served as a Public Defender for Aiken before leaving and going to Charleston, South Carolina to serve as Assistant Solicitor under the late Ralph Hoisington. As a prosecutor, Kent was tasked with the responsibility of overseeing and training young prosecutors, as well as handling complex murder and high profile drug cases. Since leaving the prosecutor's office, Kent has primarily practiced in Manning, South

Carolina focusing primarily on criminal defense as well as some personal injury work. Shaun has been invited by many attorneys all over the country to help try complex criminal cases. In 2012, Kent opened his own law firm, Kent Law Firm. Shaun married the love of his life, Xeniya, in 2017. The two are blessed with two Pomeranians, Clark and Sparty.

## **The Honorable Roger M. Young, Sr.**

*S.C. Circuit Court*

Judge Roger Young has been a circuit court judge for the Ninth Judicial Circuit of South Carolina since July 1, 2003. Prior to that he was the Master-in-Equity for Charleston County from 1996-2003. He was in private practice after graduating from the University of South Carolina School of Law in 1983. He also received a Masters in Judicial Studies degree from the University of Nevada-Reno in 2000.

While in private practice, he also served as a Municipal Judge for the City of North Charleston from 1988-90 and served two terms in the South Carolina House of Representatives from 1990-94.

He was the President of the South Carolina Circuit Judges Association from 2012-2014 and has served concurrently as a Business Court Judge for South Carolina since its inception in 2007. He is currently the Chief Business Court Judge for Administrative Purposes.



# South Carolina Bar

Continuing Legal Education Division

## Defense Ethics

*Fielding Pringle*



# South Carolina Bar

Continuing Legal Education Division

## Prosecution Ethics

*Dan Goldberg*

2020 Criminal Law Practice Essentials  
Presents

# PROSECUTION ETHICS

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Dan Goldberg  
Deputy Solicitor  
Fifth Judicial Circuit

Thursday, September 24, 2020

# Agenda

DISCOVERY

RULE 3.8, SCRPC

SUPERVISORY LIABILITY

PROSECUTORIAL DECISIONS

CONSEQUENCES



# DISCOVERY

1

# DISCOVERY

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Rule 3.4 (a), (d), and (f)

Rule 3.8 (d)

Rule 3.8, Comment [1]

Rule 8.4 (b) and (e)

\*No request by D necessary to trigger obligations\*

# Rule 3.4 (a), (d), (f)



## Fairness to Opposing Party and Counsel

A lawyer shall not.....

(a) unlawfully either *obstruct access to evidence or alter/destroy/conceal material having potential evidentiary value*; or

(d) in pretrial procedure, make a frivolous discovery request or *fail to make a reasonably diligent effort* to comply with a legally proper discovery request by an opposing party

(f) request someone other a client to refrain from voluntarily giving relevant information to another party

# Rule 3.8 (d)

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## Special Responsibilities of a Prosecutor

A prosecutor shall... (d) make *timely* disclosure to the defense of all evidence or information known to the prosecutor

that tends to negate the guilt of the accused or mitigates the offense,

and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor,

except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

# Rule 3.8 (d)

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In general, “timely” is defined as “occurring at a suitable or opportune time” or “coming early or at the right time.”

“made as soon as practicable considering all the facts and circumstances”

Duty is violated when prosecutor “*intentionally delays* making the disclosure without lawful justification or good cause”

Va. Legal Eth. Op. 1862 (July 23, 2012). See also ABA Formal Op. 09-454

See also: In the Matter of Humphries, 354 SC 567 (2003) where prosecutor was disciplined for failure to timely respond to discovery request

# Rule 3.8

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## COMMENT [1]

“A prosecutor has the responsibility of a *minister of justice* and not simply that of an advocate.

This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice

and that guilt is decided upon the basis of sufficient evidence.”

Rule 3.8 Special Responsibilities of a Prosecutor

# Rule 3.8

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“A prosecutor's failure to comply with the duties imposed by Rule 3.8(d) should not be excused merely because,

based upon the other evidence presented at trial, the result in the case would have been the same.

A prosecutor's ethical duty to disclose all exculpatory evidence to the defense does not vary

depending upon the strength of the other evidence in the case.”

(Emphasis added.) In the Matter of Disciplinary Action against Feland, 820 N.W.2d 672, 678 (ND 2012).

# Rule 8.4

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## Rule 8.4 Professional Misconduct

It is professional misconduct for a lawyer to...

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;...

(e) Engage in conduct that is prejudicial to the administration of justice;...

# Rule 8.4

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SC Bar Ethics Advisory Opinion 03-11

prosecutor required to reveal that Law Enforcement Officer has failed to disclose the truth to superiors during Law Enforcement Agency internal investigations

# **RULE 3.8, SCRPC**

**Special Responsibilities of a Prosecutor**

**2**

## 3.8, SCRPC

**DISMISSED**

### 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) Refrain from prosecuting a charge

That the prosecutor knows is not supported by probable cause

## 3.8, SCRPC



(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client

## 3.8, SCRPC



(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action

and that serve a legitimate law enforcement purpose

refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused

and exercise reasonable care to prevent LE, etc from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6\* or this Rule

*\*3.6 = prohibition against extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding; i.e. creating public condemnation of the accused*

# SUPERVISORY LIABILITY

3

# Supervisory Liability

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In the Matter of Myers, 355 S.C. 1, 584 S.E.2d 357 (2003)

“We hold a Solicitor in this State to the highest ethical standards, for his actions determine a criminal’s fate.

We understand that the pressures of the position, as well as imperfect communication procedures with the county sheriff’s office,

may impede the solicitor in exercising his supervisory authority,

but no excuse can justify actions which prejudice the defendant in a capital case.”



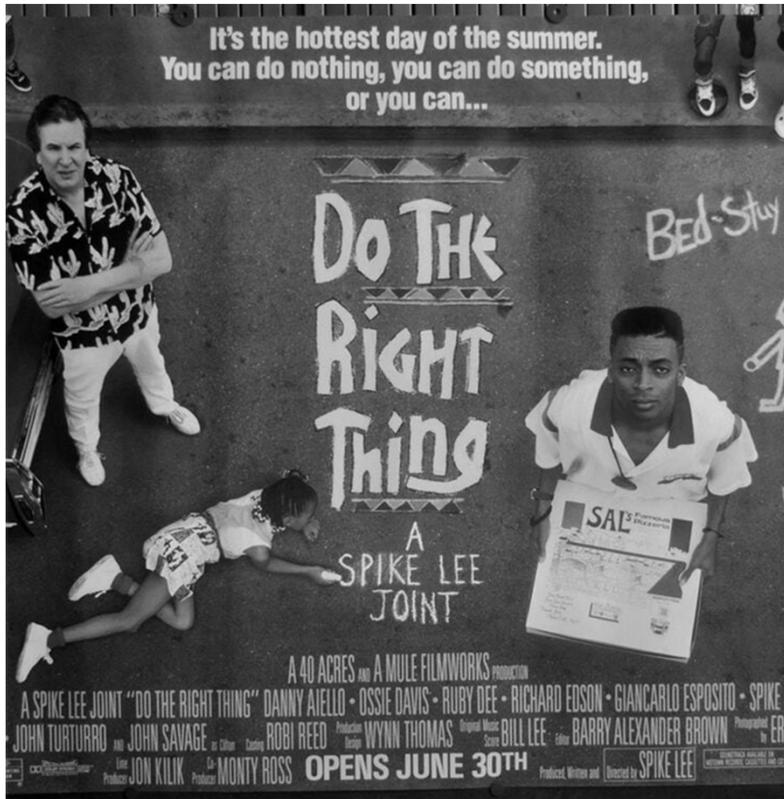
SUPERVISOR'S TOOLKIT

# PROSECUTORIAL DECISIONS

4

# Decisions

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Do the Right Thing (for the Right reasons)

Prosecutors have the power to alter the lives of:

the accused

victims

family/friends of each

the community at large

# Decisions

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Just because you can, that doesn't mean you should

Not every suspect should be arrested

Not every arrestee should be prosecuted

Not every case should be tried

Not every trial should be won

# CONSEQUENCES

5

# Consequences

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Censure/Suspension/Disbarment

Reprimanded/Demoted/Fired

Civil Liability

Criminal Liability

Loss of Reputation



## ***Berger v. United States, 295 US 78, 88 (1935)***



The prosecutor “is the representative not of an ordinary party to a controversy, but of a sovereignty...whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor – indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.”

# Daniel R. Goldberg

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Fifth Judicial Circuit Solicitor's Office  
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**South Carolina Bar**

Continuing Legal Education Division

Pending Case Matters: Bond Hearings/  
Preliminary Hearings/Indictments

*Dayne Phillips*

# Bond Hearings, Preliminary Hearings, and Indictments

DAYNE PHILLIPS, ESQ.

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Cell: (803) 807-0234  
dayne@pricebenowitz.com  
www.SCCriminalLaws.com

1

## BAIL AND RECOGNIZANCES

### ◎ **FEDERAL:**

- Eighth and Fourteenth Amendments

### ◎ **STATE:**

- Article I, section 15 of the South Carolina Constitution
- S.C. Code §§ 17-15-10 through 60
- S.C. Code § 22-5-510

2

## S.C. CONST. ART. I § 15

- ⦿ All persons shall be, before conviction, bailable by sufficient sureties, but **bail may be denied** to persons charged with **capital offenses** or **offenses punishable by life imprisonment**, or with **violent offenses** defined by the General Assembly, giving due weight to the evidence and to the nature and circumstances of the event.

3

## S.C. CONST. ART. I § 15

- ⦿ Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained.

4

## S.C. CODE § 17-15-10

- ⊙ (A) A person **charged with a noncapital offense** triable in either the magistrates, county or circuit court, shall, at his appearance before any of such courts, be ordered **released** pending trial **on his own recognizance without surety** in an amount specified by the court, UNLESS...

5

## S.C. CODE § 17-15-10

- ⊙ . . . unless the court determines in its discretion that such a release will not **reasonably assure the appearance of the person as required,**
- ⊙ **or unreasonable danger to the community or an individual will result.**

6

## S.C. CODE § 17-15-10

If such a determination is made by the court, it may **impose any one or more** of the following **conditions of release**:

(1) require the execution of an appearance bond in a specified amount with good and **sufficient surety** or sureties approved by the court;

(2) place the person in the **custody of a designated person or organization** agreeing to supervise him;

7

## S.C. CODE § 17-15-10

(3) place restrictions on the **travel, association, or place of abode** of the person during the period of release;

(4) impose any other conditions deemed **reasonably necessary to assure appearance** as required, including a condition that the person return to custody after specified hours.

8

## S.C. CODE § 17-15-10

- © (B) A person charged with the offense of burglary in the first degree pursuant to Section 16-11-311 **may** have his bond hearing for that charge in summary court **unless** the solicitor objects.

9

## S.C. CODE § 17-15-30

- (A) In **determining conditions of release** that will **reasonably assure appearance**, or if **release would constitute an unreasonable danger to the community or an individual**, a court **may**, on the basis of the following information, consider the nature and circumstances of an offense charged and the charged person's:

10

## S.C. CODE § 17-15-30

- (1) family ties;
- (2) employment;
- (3) financial resources;
- (4) character and mental condition;
- (5) length of residence in the community;
- (6) record of convictions; and
- (7) record of flight to avoid prosecution or failure to appear at other court proceedings.

11

## S.C. CODE § 17-15-30

**(B) A court shall consider:**

- (1) a person's criminal record;
- (2) any charges pending against a person at the time release is requested;
- (3) all incident reports generated as a result of an offense charged;
- (4) whether a person is an alien unlawfully present in the United States, and poses a substantial flight risk due to this status; and
- (5) whether the charged person appears in the state gang database maintained at the State Law Enforcement Division.

12

## S.C. CODE § 17-15-55

(A)(1) The **circuit courts**, at their discretion, may review and **reconsider bond for general sessions offenses** set by summary court judges. Also, the circuit courts may consider motions regarding reconsideration of bond for general sessions offenses set by summary court judges upon motions filed with the clerks of court.

13

## S.C. CODE § 17-15-55

- ⦿ Hearings on these motions **must** be scheduled.
  
- ⦿ The rules of evidence **do not apply** to bond hearings.

14

## S.C. CODE § 17-15-55

(2) After a circuit court judge has heard and ruled upon a defendant's motion to reconsider a bond set by a summary court judge, further defense motions to reconsider may be heard by the circuit court only upon the defendant's **prima facie showing of a material change in circumstances** which relate to the factors provided in Section 17-15-30, and which have arisen since the prior motion to reconsider.

15

## S.C. CODE § 17-15-55

- ⦿ In addition, the circuit court **may hear further defense motions** to reconsider based on the length of time the defendant has been held for trial **after six months**.
- ⦿ The chief judge shall schedule a hearing or if such showing is not set forth in the written motion, deny the motion for failure to make a prima facie showing of a material change in circumstances.

16

## S.C. CODE § 17-15-55

- ⦿ Information regarding the defendant's guilt or innocence does not qualify as a change in circumstances for purposes of reconsidering bond absent the solicitor's consent.

17

## S.C. CODE § 17-15-55

- ⦿ (B)(1) Motions by the State to revoke or modify a bond must be made in writing, state with particularity the grounds for revocation or modification, and set forth the relief or order sought. The motions must be filed with the clerks of court, and a copy must be served on the chief judge, defense counsel of record, and bond surety, if any.

18

## S.C. CODE § 17-15-55

- ⊙ (C) If a person commits a violent crime, as defined in Section 16-1-60, which was committed when the person was already out on bond for a previous violent crime and the subsequent violent crime did not arise out of the same series of events as the previous violent crime, then the bond hearing for the subsequent violent crime must be held in the circuit court within thirty days.

19

## S.C. CODE § 22-5-510

- ⊙ (A) **Magistrates** may admit to bail a person charged with an offense, the punishment of which is **not death or imprisonment for life**; provided, however, with respect to **violent offenses** as defined by the General Assembly pursuant to Section 15, Article I of the Constitution of South Carolina, 1895, . . .

20

## S.C. CODE § 22-5-510

- ⊙ Magistrates **may deny bail** giving due weight to the evidence and to the nature and circumstances of the event, including, but not limited to, any charges pending against the person requesting bail.
- ⊙ "**Violent offenses**" as used in this section means the offenses contained in **Section 16-1-60**.

21

## S.C. CODE § 22-5-510

- ⊙ (B) A person charged with a bailable offense must have a **bond hearing within twenty-four hours of his arrest** and
- ⊙ must be **released** within a reasonable time, **not to exceed four hours**, after the bond is delivered to the incarcerating facility.

22

## BOND HEARING REVIEW

- **Non-Capital Offense requires PR bond, unless . . .**
  - Bond does not reasonably assure appearance in court, or
  - Release poses an unreasonable danger to a specific person or the community.

23

## PRELIMINARY HEARING

S.C. Code § 17-23-160 and 162

- Notice of right to preliminary hearing
- Presence of affiant or arresting officer to testify at preliminary hearing

S.C. Code § 22-5-320

- Defendant's demand for preliminary investigation

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## PRELIMINARY HEARING

- ⦿ The purpose of a preliminary hearing is to determine whether the State can prove the existence of probable cause for arrest.
- ⦿ Defendant or his Counsel can cross-examine the State's witnesses.

25

## PRELIMINARY HEARING

- ⦿ Dismissed vs. Direct Indictment
- ⦿ Grand Jury Indictment

26

## S.C. CODE § 17-23-162

- ⦿ The **affiant** listed on an arrest warrant or the **chief investigating officer** for the case **must be present** to testify at the preliminary hearing of the person arrested pursuant to the warrant.

27

## S.C. CODE § 17-23-165

- ⦿ The appearance by an attorney on behalf of a defendant in a preliminary hearing shall not in and of itself obligate that attorney to continue the representation of that defendant beyond the preliminary hearing.

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## **S.C. CODE § 22-5-320**

- ⦿ Any magistrate who issues a warrant charging a crime beyond his jurisdiction shall grant and hold a preliminary hearing of it upon the demand in writing of the defendant made within twenty days of the hearing to set bond for such charge;

29

## **S.C. CODE § 22-5-320**

- ⦿ provided, however, that if such twenty-day period expires on a date prior to the convening of the next term of General Sessions Court having jurisdiction then the defendant may wait to make such request until a date at least ten days before the next term of General Sessions Court convenes.

30

## S.C. CODE § 22-5-320

- ⦿ **At the preliminary hearing**, the defendant **may cross-examine** the state's witnesses in person or by counsel, have the reply in argument if there be counsel for the State, and
- ⦿ be **heard in argument** in person or by counsel as to **whether a probable case has been made out** and as to whether the case ought to be dismissed by the magistrate and the defendant discharged without delay.

31

## S.C. CODE § 22-5-320

- ⦿ When such a hearing has been so demanded the case **shall not** be transmitted to the court of general sessions or submitted to the grand jury until the preliminary hearing shall have been had, the magistrate to retain jurisdiction and the court of general sessions not to acquire jurisdiction until after such preliminary hearing.

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## INDICTMENTS

- ⦿ S.C. Const. art. I, § 11
- ⦿ S.C. Code § 17-19-10
- ⦿ Notice Document
- ⦿ Necessary to bring Defendant to trial for General Sessions cases
- ⦿ Defense challenge is a Motion to Quash or to Amend Indictment

33

## S.C. CONST. ART. I, § 11

No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed....

34

## S.C. CODE § 17-19-10

No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury, **except in the following cases:**

- (1) when a prosecution by information is expressly authorized by statute;
- (2) in proceedings before a police court or magistrate; and
- (3) in proceedings before courts martial.

35

## S.C. CODE § 17-19-20

Every indictment shall be deemed and judged sufficient and good in law which, in addition to **allegations as to time and place**, as required by law, charges the crime substantially in the **language of the common law or of the statute prohibiting the crime** or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.

36

## NOTICE DOCUMENT

“The primary purpose[ ] of an indictment [is] to put the defendant on notice of what he is called upon to answer, *i.e.*, to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted.” *Edwards v. State*, 372 S.C. 493, 642 S.E.2d 738 (2007) (citing *State v. Gentry*, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005)).

37

## S.C. CODE § 17-19-90

- ⦿ Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards.

38

## OBJECTION TO INDICTMENT

- ◎ A defendant must challenge the sufficiency of an indictment **before** the jury is sworn. See *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005).

39

## SUFFICIENCY OF INDICTMENT

If a defendant raises a timely challenge to the sufficiency of an indictment, the reviewing court must determine whether:

(1) ***the offense is stated with sufficient certainty and particularity*** to enable the court to know what judgment to pronounce, and ***the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon***; and

(2) whether it apprises the defendant of the elements of the offense that is intended to be charged.

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## OVERBROAD

- © The indictments are unconstitutionally overbroad and are unduly prejudicial to the Defendant because the lack of specificity and the expansive time range “significantly limit[s] his ability to combat the charges against him.” *State v. Baker*, Op. No. 27497 (SC. Ct. filed February 11, 2015).

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## QUESTIONS?

**DAYNE PHILLIPS, ESQ.**

Price Benowitz LLP

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**South Carolina Bar**

Continuing Legal Education Division

## Plea Negotiations: Diversion Programs

*Brooke L. Velazquez*  
*Connie Garner*



**PLEA NEGOTIATIONS:**  
**Diversion Programs**  
**SC Code of Laws**  
**Title 17 – Criminal Procedures Chapter 22**

Brooke Lewis Velazquez, Director  
Connie S. Garner, Case Manager II  
Eleventh Circuit Solicitor's Office

1



**INTERVENTION PROGRAMS**  
**Article 1:**  
**Pretrial Intervention**

2

## INTERVENTION PROGRAMS

### ARTICLE 1: PRETRIAL INTERVENTION

- 17-22-30: Prosecutorial Discretion
- 17-22-50: Persons Not To Be Considered
  - Previously Been Accepted into a PTI program
  - Served Time In Prison
  - Been On Probation
  - Certain Crimes
    - However, This Section Does Not Apply If The Solicitor Determines The Elements Of The Crime Do Not Fit The Charge.

3

## INTERVENTION PROGRAMS

### ARTICLE 1: PRETRIAL INTERVENTION

- 17-22-60: Standards Of Eligibility
  - Likelihood That Justice Will Be Served If The Offender Is Placed In An Intervention Program
  - Needs Of The Offender & The State Can Better Be Met Outside The Traditional Criminal Justice Process
  - The Offender:
    - Poses No Threat To Community
    - Unlikely To Be Involved In Further Criminal Activity
    - Likely To Respond To Rehabilitative Treatment
    - No Significant History Of Prior Delinquency/Criminal Activity
    - Not Previously Been Accepted In A PTI Program

4

## INTERVENTION PROGRAMS

### ARTICLE 1: PRETRIAL INTERVENTION

- 17-22-80: Recommendations
  - By Law PTI Must Notify Victims & Law Enforcement Officers Of An Offender's Application To The Program
- 17-22-90: Agreements Required Of An Offender
  - Must Sign A Contract To Waive Certain Rights
  - Agree To The Conditions Of The Program Established By The Solicitor
  - Sign A Restitution Contract If A Victim Is Requesting Restitution
  - Participation Or Information Obtained Through PTI Is Not Admissible As Evidence In Subsequent Proceedings, Criminal Or Civil, And Communication Shall Remain As Privileged Communication

5

## INTERVENTION PROGRAMS

### ARTICLE 1: PRETRIAL INTERVENTION

- 17-22-90: Agreements (Continued)
  - Written Admission of Guilt May **Not** Be Required Of An Offender
  - CSC With A Minor 3<sup>rd</sup> Degree - Offender Agrees To Allow Information About The Offense To Be Made Available To Day Care Centers & Other Facilities Providing Care To Children
  - Domestic Violence Charges Require 26 Weeks Of A Batterer's Treatment Program
- 17-22-110: Fees
  - \$100 (Nonrefundable) Application Fee
  - \$250 (Nonrefundable) Participation Fee
    - In Cases Of Indigence The Solicitor May Waive Partial Or Total Program Fees

6

**INTERVENTION PROGRAMS**  
**ARTICLE 1: PRETRIAL INTERVENTION**

- Requirements & Standards
  - Law Report
  - Counseling
  - Community Service
  - Drug Testing
  - Restitution (17-22-140)
  - Forfeiture Agreement
- Any Other Requirements As Directed By The Solicitor's Office
  - Maintain Monthly Contact
  - Designed As A 90 Day Program
  - Criminal Investigation (NCIC/SLED)

7

**INTERVENTION PROGRAMS**  
**ARTICLE 1: PRETRIAL INTERVENTION**

<p style="text-align: center;"><b>Disposition of Charge(s)</b> <b>17-22-150 (a)</b> <b>Successful Completion</b></p> <ul style="list-style-type: none"> <li>○ Noncriminal Disposition Of Charge(s)</li> <li>○ Eligible For Expungement                             <ul style="list-style-type: none"> <li>• Expungement Fees                                     <ul style="list-style-type: none"> <li>○ \$250 Administrative</li> <li>○ \$ 35 Filing</li> </ul> </li> </ul> </li> </ul>	<p style="text-align: center;"><b>Disposition of Charge(s)</b> <b>17-22-150 (b)</b> <b>Unsuccessful Completion</b></p> <ul style="list-style-type: none"> <li>○ Prosecution Of The Pending Charge(s) Shall Resume</li> <li>○ Case Returned to General Sessions Court And/Or Magistrate/Municipal Court</li> </ul>
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## INTERVENTION PROGRAMS

### ARTICLE 1: PRETRIAL INTERVENTION

- Reasons For Termination
  - Failure To Complete Requirements In A Timely Fashion
  - Re-Arrest
  - Continued Use Of Illegal Drugs
  - Failure To Maintain Contact
    - “Fall Off The Face Of The Earth”

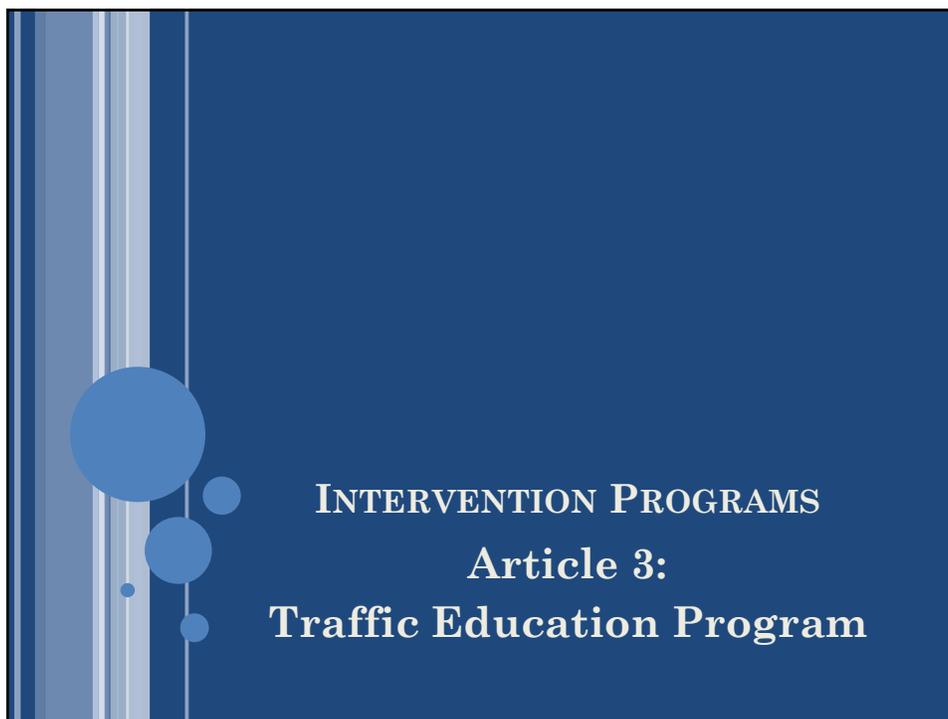
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## INTERVENTION PROGRAMS

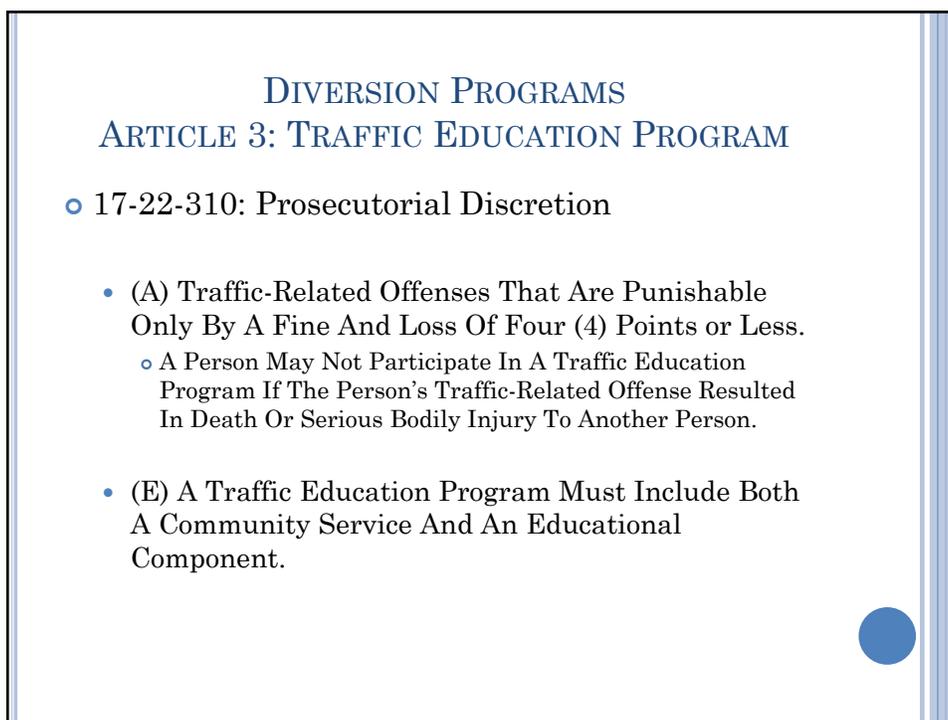
### ARTICLE 1: PRETRIAL INTERVENTION

- 17-22-170: Unlawful Retention or Release of Information Regarding Participation (Referral to Final Conclusion – Rejection, Termination or Successful Completion) in Intervention Program; Penalty
  - Any Municipal, County Or State Entity Or Any Individual Who Unlawfully Retains Or Releases Information On An Offender’s Participation In A PTI Program Is Guilty Of A Misdemeanor And, Upon Conviction, Must Be Punished By A Fine Not Exceeding \$2,000 Or By Imprisonment Not To Exceed 1 Year.
  - The Provisions Of This Section Do Not Apply To Circuit Solicitors Or Their Staff In The Performance Of Their Official Duties.

10



11



12

## DIVERSION PROGRAMS

### ARTICLE 3: TRAFFIC EDUCATION PROGRAM

- 17-22-320: Eligibility
  - No Significant History Of Traffic Violations
    - Four (4) Points Or Less
  - Cannot Participate In TEP More Than Once
  - Participating In TEP Does Not Prevent Participation In A PTI Program



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## INTERVENTION PROGRAMS

### ARTICLE 3: TRAFFIC EDUCATION PROGRAM

<div style="background-color: #4a7ebb; color: white; padding: 5px; text-align: center; border-radius: 10px; margin-bottom: 10px;">                 Disposition of Charge(s)                  17-22-330 (A) (B)                  Successful Completion             </div> <ul style="list-style-type: none"> <li>○ Noncriminal Disposition Of Charge(s)</li> <li>○ Eligible For Expungement                     <ul style="list-style-type: none"> <li>• Expungement Fees                             <ul style="list-style-type: none"> <li>○ \$250 Administrative</li> <li>○ \$ 35 Filing</li> </ul> </li> </ul> </li> </ul>	<div style="background-color: #4a7ebb; color: white; padding: 5px; text-align: center; border-radius: 10px; margin-bottom: 10px;">                 Disposition of Charge(s)                  17-22-330 (C) (D)                  Unsuccessful Completion             </div> <ul style="list-style-type: none"> <li>○ Subsequent Traffic Violation During Six (6) Months Following The Issuance Of The TEP Ticket- The Person Must Be Terminated</li> <li>○ Traffic-Related Offense Reinstated In Appropriate Court</li> </ul>
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INTERVENTION PROGRAMS  
ARTICLE 3: TRAFFIC EDUCATION PROGRAM

- 17-22-350: Fees
  - \$140 (Nonrefundable) Application Fee
    - Application Fees Are Submitted To The County Or City Treasurer
  - \$140 (Nonrefundable) Participation Fee
    - The Program Shall Retain The Participation Fee To Support The Program
  - If A Person Is Deemed Unable To Pay, Both The Application Fee And The Participation Fee Must Be Waived



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INTERVENTION PROGRAMS  
Article 5:  
Alcohol Education Program

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INTERVENTION PROGRAMS  
ARTICLE 5: ALCOHOL EDUCATION PROGRAM

- 17-22-510: Prosecutorial Discretion
- 17-22-510 (E): Must Include An Educational Component & Community Service Component
- 17-22-520 (A): Eligibility
  - (1) Seventeen Years Of Age, But Less Than Twenty-One
  - (2) No Prior Alcohol-Related Offenses
  - (3) No Significant History
- 17-22-520 (B): Ineligibility
  - Participate In An AEP Program More Than Once
- 17-22-520 (C): Eligible Charges
  - Purchase/Possession Beer Or Wine Under 21
  - Purchase/Possession Alcoholic Liquors Under 21
  - Open Container
  - Public Disorderly Conduct

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INTERVENTION PROGRAMS  
ARTICLE 5: ALCOHOL EDUCATION PROGRAM

- 17-22-520 (C): Eligible Charges (Continued)
  - Littering
  - Providing False Information Concerning Age
  - Transfer Beer/Wine Or Alcoholic Liquors
  - Possession Altered Driver's License
- 17-22-520 (D): A Person's Participation In An Alcohol Education Program Does Not Prevent Participation In A Pretrial Intervention Program

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**INTERVENTION PROGRAMS**  
**ARTICLE 5: ALCOHOL EDUCATION PROGRAM**

<p style="text-align: center;"><b>Disposition of Charge(s)</b> <b>17-22-530 (A) (B)</b> <b>Successful Completion</b></p> <ul style="list-style-type: none"> <li>○ Noncriminal Disposition Of Charge(s)</li> <li>○ Eligible For Expungement             <ul style="list-style-type: none"> <li>• Expungement Fees                 <ul style="list-style-type: none"> <li>○ \$250 Administrative</li> <li>○ \$ 35 Filing</li> </ul> </li> </ul> </li> </ul>	<p style="text-align: center;"><b>Disposition of Charge(s)</b> <b>17-22-330 (C)</b> <b>Unsuccessful Completion</b></p> <ul style="list-style-type: none"> <li>○ Prosecution Of The Pending Charge(s) Shall Resume</li> <li>○ Case Returned to Magistrate Or Municipal Court</li> </ul>
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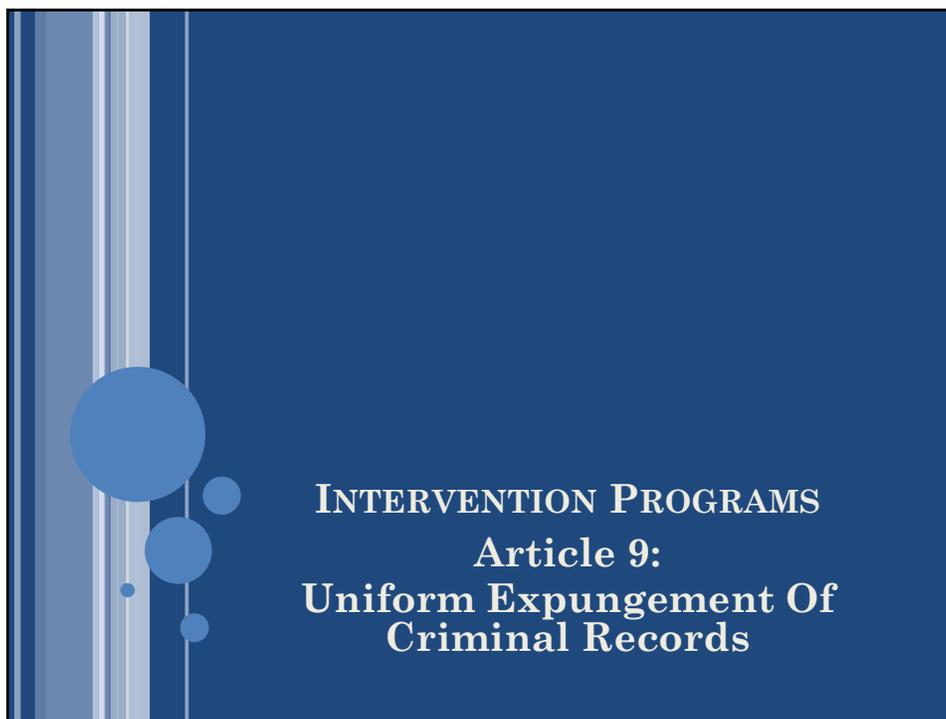
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**INTERVENTION PROGRAMS**  
**ARTICLE 5: ALCOHOL EDUCATION PROGRAM**

- 17-22-550: Fees
  - \$250 (Nonrefundable) Enrollment Fee
  - Contract Educational Services, The Person Also May Be Subject To Additional Fees Payable To The Provider
  - If A Person Is Deemed Unable To Pay, The Fees For Enrollment, Education And Supervision Services May Be Waived Or Reduced At The Discretion Of Each Solicitor.



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**INTERVENTION PROGRAMS**  
**ARTICLE 9: UNIFORM EXPUNGEMENT OF**  
**CRIMINAL RECORDS**

- §17-22-910: Applications For Expungement
  - *Applications for expungement of all criminal records must be administrated by the Solicitor's Office in each Jurisdictional Circuit, however, **if the charge is dismissed in summary court, then the jurisdictional Summary Court will handle the expungement (§17-22-950).** The Solicitors Office shall implement policies and procedures consistent with §17-22-940 to ensure that the expungement process is properly conducted.*

**§17-22-940 Expungement Fees: (When Applicable)**

- Solicitor Office Administrative Fee: \$250
- Clerk of Court Filing Fee: \$35
- SLED Verification Fee: \$25

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INTERVENTION PROGRAMS  
ARTICLE 9: UNIFORM EXPUNGEMENT OF  
CRIMINAL RECORDS

**What is Eligible for Expungement?**

**Summary**

- Dismissed, no-billed, or nol prossed charges, and not guilty verdicts
- PTI, AEP or TEP-- Successful Completion
- Fraudulent Check – First Offense misdemeanor conviction
- Conditional Discharge (drug)– First Offense Successful Completion
- Charge which carries a maximum penalty of up to 30 days and/or a fine of up to \$1,000–Conviction (includes DV 3<sup>rd</sup> and CDV conviction)
- Simple Possession Controlled Substance OR Possession with Intent to Distribute-- First Offense drug conviction
- SC Youth Challenge Academy AND SC Jobs Challenge Program – Successful Completion
- Failure to Stop Motor Vehicle – First Offense misdemeanor conviction
- Youthful Offender Act – First Offense conviction
- Juvenile Records (includes Arbitration and DJJ completion)

**All Expungement Statutes may be used only once in a lifetime as long as statutorily eligible except §17-1-40 and §63-9-2050, which can be used multiple times.**

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INTERVENTION PROGRAMS  
ARTICLE 9: UNIFORM EXPUNGEMENT OF  
CRIMINAL RECORDS

- **17-1-40 Dismissed, Nol Prossed or Not Guilty may be expunged. §17-1-40**
  - Non conviction Magistrate/Municipal Expungements are completed by the Jurisdictional Summary Court for FREE (§17-22-950)
  - Non conviction General Session's expungements are completed by the respective Solicitor's Expungement Services Office at no cost UNLESS the dismissed GSC charge was part of a plea agreement then the \$250 fee would apply. Defendant must apply for expungement.
- \*Conditional Discharge (*drug*) completions, Preliminary Hearings dismissals and Diversion completions must be expunged at the jurisdictional Solicitors Office Expungement Services. Defendant must apply.

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INTERVENTION PROGRAMS  
ARTICLE 9: UNIFORM EXPUNGEMENT OF  
CRIMINAL RECORDS

- **PTI/TEP/AEP** – §17-22-150(a), §17-22-330(A), §17-22-530(A)
  - Follows the law outlined for the expungement process for each diversion program
  - Participant must apply for expungement to the respective Diversion Program
  - Each statute can only be used ONCE
  - Expungement Fees: \$250 & \$35

25

INTERVENTION PROGRAMS  
ARTICLE 9: UNIFORM EXPUNGEMENT OF  
CRIMINAL RECORDS

- **Fraudulent Check – First Offense misdemeanor conviction.** §34-11-90(e)
- A first offense misdemeanor conviction for (1)Fraudulent Check may be expunged after one (1) year, provided that NO additional convictions have taken place, except minor traffic-related offense that is not related in any way to driving under the influence of alcohol or other drugs, within one (1) year from the **date of conviction**.
- This statute can only be used once in a lifetime.
- Expungement Fees: \$250, \$35 & \$25

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INTERVENTION PROGRAMS  
ARTICLE 9: UNIFORM EXPUNGEMENT OF  
CRIMINAL RECORDS

- **Conditional Discharge – First Offense** §44-53-450(b)
- For a first offense Conditional Discharge under Sections 44-53-370(c), (d) and 44-53-375(a), following successful completion of all terms and conditions of the conditional discharge, application may be made for an expungement. The person **cannot previously have been convicted** of any offense under this article or any offense under any state or federal statute relating to marijuana, or stimulant, depressant, or hallucinogenic drugs.
  - This statute can only be used once in a lifetime.
  - Expungement Fees: \$250 & \$35

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INTERVENTION PROGRAMS  
ARTICLE 9: UNIFORM EXPUNGEMENT OF  
CRIMINAL RECORDS

- **Conviction of a Crime which carries a maximum penalty of up to 30 days and/or a fine of up to \$1,000** §22-5-910, (includes DV 3<sup>rd</sup> and CDV)
- Following a Conviction for a crime(s) which carries a maximum penalty of up to 30 days and/ \$1,000 fine, expungement application may be made after three (3) years from the date of the conviction. Provided there are **NO** additional convictions, including out-of-state, except minor traffic-related offense that is not related in any way to driving under the influence of alcohol or other drugs, for three (3) years from the **date of the conviction**. To include any number of offenses, which the individual received sentences at a single sentencing proceeding that are closely connected and arose out of the same incident.
  - However, this section does not apply to an offense involving the operation of a motor vehicle.

**OR**

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INTERVENTION PROGRAMS  
ARTICLE 9: UNIFORM EXPUNGEMENT OF  
CRIMINAL RECORDS

- **§22-5-910 (continued)**
- Following a conviction for **Domestic Violence in the Third Degree** pursuant to Section 16-25-20(D) of the Code of Laws of South Carolina (1976, as amended), or **Criminal Domestic Violent** under the old law (prior to June 4, 2015), expungement application may be made after five (5) years from the date of the conviction. Provided there are NO additional convictions including out-of-state, except minor traffic-related offense that is not related in any way to driving under the influence of alcohol or other drugs, within five (5) years from the **date of the conviction**.
- Defendant cannot have any pending charges within 5 years at time of expungement and must supply dispositions for all pending charges as requested.
- This statute can only be used once in a lifetime.
- Expungement Fees: \$250, \$35 & \$25

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INTERVENTION PROGRAMS  
ARTICLE 9: UNIFORM EXPUNGEMENT OF  
CRIMINAL RECORDS

- **First Offense Simple Possession Controlled Substance OR Possession with Intent to Distribute §22-5-930**
- Following a first offense conviction for either simple possession of a controlled substance or unlawful possession of a prescription drug, the defendant may apply to get his record expunged if the defendant has had no other convictions, to include out-of-state convictions, within three (3) years after the date of **completion of the sentence**, including probation and parole. Defendant cannot have a conditional discharge within 5 years prior to the date of arrest of SPMJ or 10 years prior to the date of arrest of simple possession of any other controlled substance or unlawful possession of a prescription drug.

**OR**

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INTERVENTION PROGRAMS  
ARTICLE 9: UNIFORM EXPUNGEMENT OF  
CRIMINAL RECORDS

**§22-5-930 (continued)**

- Following a first offense conviction for possession with intent to distribute a controlled substance, the defendant may apply to get his record expunged, if the defendant has no drug or felony convictions within 20 years after **completion of sentence**, to include probation and parole, including out of state convictions.
- Defendant cannot have any pending charges within 5 years at time of expungement and must supply dispositions for all pending charges as requested.
- To include any number of offenses, which the individual received sentences at a single sentencing proceeding that are closely connected and arose out of the same incident.
- This statute can only be used once in a lifetime.
- Expungement Fees: \$250, \$35 & \$25

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INTERVENTION PROGRAMS  
ARTICLE 9: UNIFORM EXPUNGEMENT OF  
CRIMINAL RECORDS

- **Completion of SC Youth Challenge Academy AND SC Jobs Challenge Program §17-22-1010**
- A person who is eligible for expungement of his criminal record pursuant to the provisions of Sections 22-5-910, 22-5-920, 34-11-90(e), and 56-5-750(F) may apply to have his record expunged under this statute if he **graduates and successfully completes** the South Carolina Youth Challenge Academy **and** the South Carolina Jobs Challenge Program administered by the South Carolina Army National Guard. Such person may apply for expungement, with no additional convictions during the participation of the programs, immediately upon graduation and successful completion of the South Carolina Youth Challenge Academy and the South Carolina Jobs Challenge Program.
- This statute can only be used once in a lifetime.
- Expungement Fees: \$250, \$35 & \$25

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INTERVENTION PROGRAMS  
ARTICLE 9: UNIFORM EXPUNGEMENT OF  
CRIMINAL RECORDS

- **Failure to Stop Motor Vehicle – First Offense.**  
*§56-5-750(f)*
- Following a first offense misdemeanor conviction for Failure to Stop Motor Vehicle, the defendant may apply for expungement. Provided there are NO additional convictions, except minor traffic-related offense that is not related in any way to driving under the influence of alcohol or other drugs, within three (3) years after the date of **completion of the sentence**.
  - This statute can only be used once in a lifetime.
  - Expungement Fees: \$250, \$35 & \$25

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INTERVENTION PROGRAMS  
ARTICLE 9: UNIFORM EXPUNGEMENT OF  
CRIMINAL RECORDS

- **Youthful Offender Act (YOA).** *§22-5-920.*
- Following a first offense conviction as a youthful offender for which a defendant is sentenced pursuant to the provisions of Youthful Offender Act, the defendant, who has not been convicted of any offense, including an out-of-state offense, while serving the youthful offender sentence, including probation and parole, and for a period of five (5) years from the **date of completion** of the defendant's sentence, including probation and parole, may apply for an expungement. **Also**, a person who was convicted prior to June 2, 2010, and was a youthful offender, as defined, (17-24 years old) is eligible to apply to have his record expunged pursuant to the provisions of this section.
  - However, this section does not apply to: (a) an offense involving the operation of a motor vehicle; (b) an offense classified as a violent crime in Section 16-1-60; (c) an offense contained in Chapter 25, Title 16, except as otherwise provided in Section 16-25-30; or (d) an offense for which the individual is required to register in accordance with the South Carolina Sex Offender Registry Act.
  - This statute can only be used once in a lifetime.
  - Expungement Fees: \$250, \$35 & \$25

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INTERVENTION PROGRAMS  
ARTICLE 9: UNIFORM EXPUNGEMENT OF  
CRIMINAL RECORDS

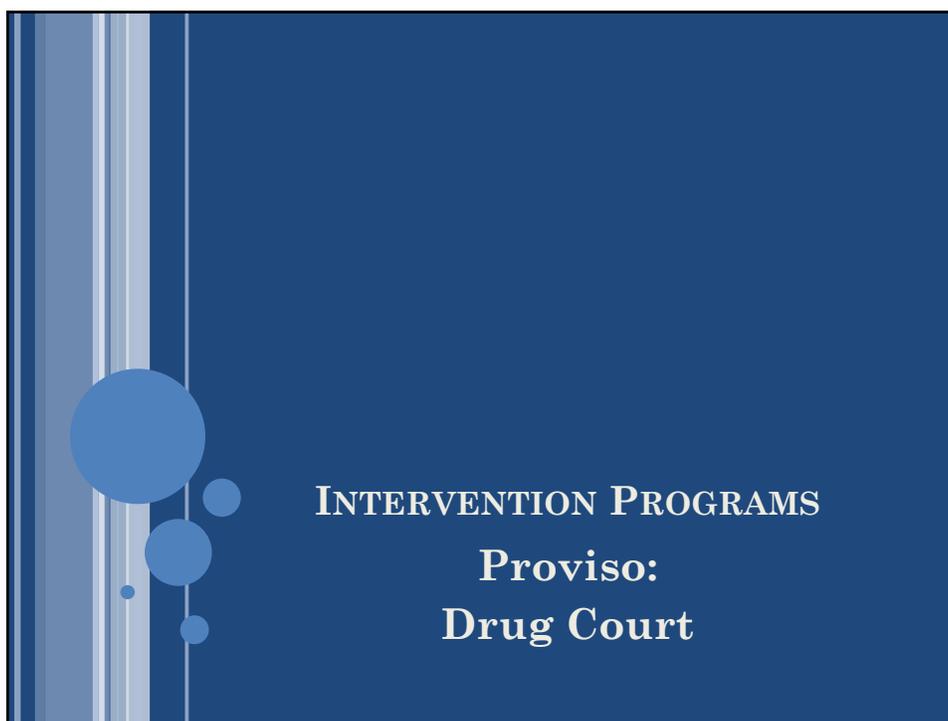
- **Destruction of Juvenile Records. §63-9-2050**
- Expungement allowed for:
  - Juveniles taken into custody and/or charged with, but not adjudicated for, a delinquent act, and
  - Juvenile offenders adjudicated delinquent for a status offense or non-violent crime.
- The granting of the expungement is at the court’s discretion.
- In order to expunge a person’s juvenile records, the Court must find that:
  - The person is 18 years of age or older, and
  - The person does not have a prior adjudication for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult; and
  - If adjudicated, the juvenile has successfully completed any dispositional sentence imposed by the Court; and
  - The person has not been subsequently adjudicated for or convicted of any criminal offense; and
  - The person does not have any criminal charges pending in Family Court or General Sessions.
- If the person was found **not guilty** in family court, the court shall grant the expungement order regardless of the person’s age and the person must not be charged a fee for the expungement.
- Except minor traffic-related offense that is not related in any way to driving under the influence of alcohol or other drugs will not be considered as a bar to expungement.
- To include any number of offenses, which the individual received sentences at a single sentencing proceeding that are closely connected and arose out of the same incident.
  - Expungement Fees: \$250, \$35 & \$25, unless dismissed by the Family Court Judge.

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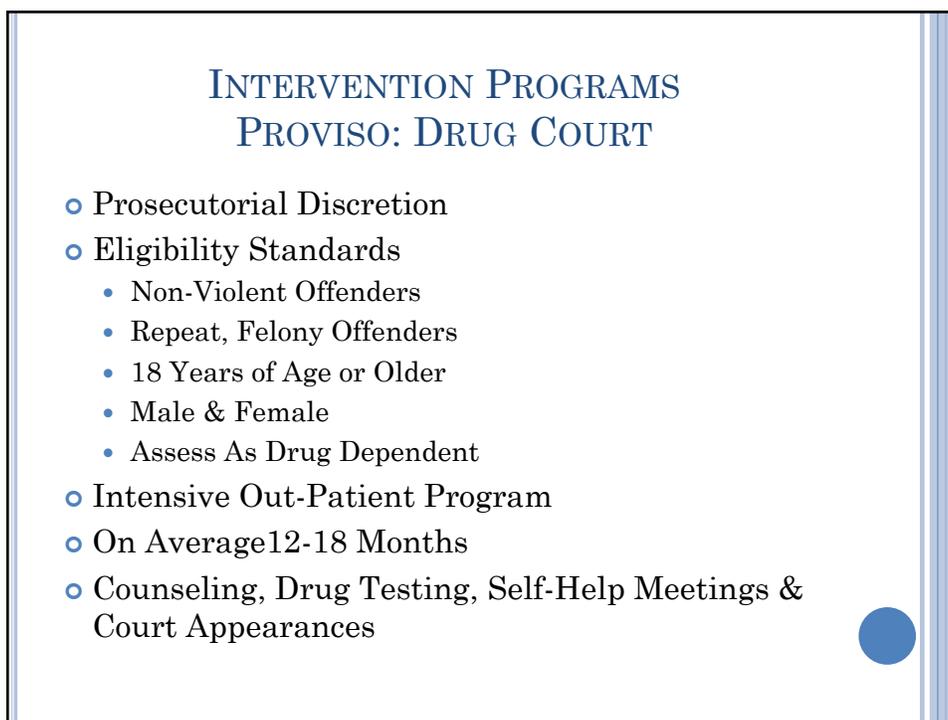
INTERVENTION PROGRAMS  
ARTICLE 9: UNIFORM EXPUNGEMENT OF  
CRIMINAL RECORDS

Statutes from the Code of Laws of South Carolina	Disposition	Administrative Fee	Verification Fee	Filing Fee
Section 17-1-40	Dismissed, Nol Prossed (not prosecuted), No-billed, or Not Guilty Verdicts	NONE *Unless GSC dismissal is part of plea agreement; then \$250	NONE	NONE
Sections 17-22-150, 17-22-330, 17-22-530	Successful Completion Diversion Programs—PTI, AEP, TEP	\$250	NONE	\$35
Section 34-11-90(e)	Fraudulent Check – First Offense Misdemeanor conviction	\$250	\$25	\$35
Section 44-53-450(b)	Conditional Discharge – First Offense conviction	\$250	NONE	\$35
Section 22-5-910	Misdemeanor which carries up to 30 days and/or up to \$1000 fine – includes DV 3 <sup>rd</sup> and CDV	\$250	\$25	\$35
Section 22-5-920	Youthful Offender Act – First Offense conviction	\$250	\$25	\$35
Section 22-5-930	First Offense Simple Possession Controlled Substance OR Possession with Intent to Distribute	\$250	\$25	\$35
Section 56-5-750(f)	Failure to Stop Motor Vehicle – First Offense conviction	\$250	\$25	\$35
Section 17-22-1010	SC Youth Challenge and SC Jobs Challenge Program Completion	\$250	\$25	\$35
Section 63-19-2050	Destruction of Juvenile Record- includes Arbitration and DJJ Contract completion	\$250	\$25	\$35

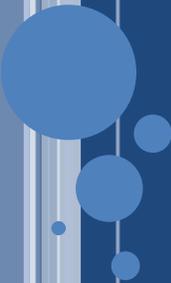
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**RICHLAND COUNTY  
VETERANS COURT**

Fifth Judicial Circuit Solicitor's Office  
803-576-1800 Richland  
803-425-7672 Kershaw  
[www.scsolicitor5.org](http://www.scsolicitor5.org)

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## VETERANS COURT PROGRAM

- 5<sup>th</sup> Circuit Solicitor's Office (Richland/Kershaw)
- Created November 2011
- 1<sup>st</sup> of its kind in South Carolina
- Designed to assist veterans who have pending charges
- Purpose is to divert veterans from the traditional criminal justice system and provide them with tools to lead productive lives.
- Consists of veteran mentors, U.S. Dept. of Veterans Affairs and other Veteran service organizations (American Legion, Disabled American Veterans)

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## VETERANS COURT PROGRAMS

- Goal of Veterans Court is to provide substance abuse counseling, mental health treatment and assist with other needs.
- Eligibility
  - Charged with non-violent misdemeanor and/or felony offense(s)
  - Eligible for veterans benefits
  - Have a diagnosis of a treatable behavioral, mental health and/or chemical dependency problem
    - Treatment may include Anger Management, Domestic Abuse, Family/Marriage, Substance Abuse, Mental Health and PTSD
  - Successful Completion – Conditional Discharge, which will result in the dismissal of charge(s) & eligible for Expungement

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## VETERANS COURT PROGRAM

- Required
  - Must admit guilt
  - Jurisdiction of charges transferred to Veterans Court
  - At least 12 months participation
  - Sanctions can be issued for non-compliance
    - Community service, additional counseling, increased drug testing, jail time and termination from the program
- Program Requirements:
  - Assessment to determine eligibility & Screening by VA
  - Court Appearance three (3) times per week
  - Attend NA/AA
  - Random Drug Testing
  - Compliance with treatment, habilitation services (job training, employment and/or medical)
  - Contact with assigned Veteran Mentor

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**RICHLAND COUNTY  
MENTAL HEALTH COURT**

Richland County Probate Court  
803-576-1964  
[www.state.sc.us/dmh/forensic/mhc](http://www.state.sc.us/dmh/forensic/mhc)

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## MENTAL HEALTH COURT

- Administrative Order signed November 21, 2005 by Chief Justice Jean H. Toal, SC Supreme Court
- Richland County Probate Court administers the program
- Involvement of mentally ill individuals in the criminal justice system
- Charged with misdemeanor and/or non-violent felony offenses resulting from untreated symptoms of psychiatric and co-occurring disorders
- Treatment is a collaboration among judicial, mental health and substance abuse.

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## MENTAL HEALTH COURT

### o Eligibility

- Have an identifiable mental illness with or without a co-occurring disorder of substance abuse
- Able to understand terms and conditions of program
- Committed a misdemeanor and/or non-violent felony offense
- Reside in Richland County
- Have no pending cases to prevent completing the program
- Sign a release of information

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## MENTAL HEALTH COURT

### o The Program:

- Identified at time of arrest at bond hearing or trial
- Clinical assessment by Mental Health
- Jurisdiction of charges transferred to Mental Health Court
- 3 to 12 months – Magistrate Court
- 12 months to a maximum of the time equal to the length of sentence or probation - General Sessions
- Intensive case management
- Individuals who unsuccessfully complete are referred back to the original court for adjudication.

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## MENTAL HEALTH COURT

- Goals
  - Decrease reoccurring arrests
  - Decrease length of jail stay
  - Increase access, coordination, cooperation and consistency of mental health substance abuse services
  - Increase accountability
  - Address public safety issues



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### Diversion Programs

### SC Code Of Laws

### Title 17 – Criminal Procedures Chapter 22

- State Directory Of Diversion Programs Offices At The End Of The Materials In Your Manual
- If You Have Specific Program Questions Please Contact The Program In Your Area.

### PLEA NEGOTIATIONS:

If You Have Any Questions About The Presentation, Please Feel Free To Contact Us At:

11<sup>th</sup> Circuit  
Solicitor's Office  
205 E. Main Street  
Suite 105  
Lexington, SC  
29072

803-785-8197

[bvelazquez@lex-co.com](mailto:bvelazquez@lex-co.com)

[csgarner@lex-co.com](mailto:csgarner@lex-co.com)



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# SOUTH CAROLINA JUDICIAL CIRCUIT DIVERSION DIRECTORY

## 1<sup>st</sup> Judicial Circuit - Calhoun, Dorchester, Orangeburg

Solicitor's Office	Alcohol Education	Drug Court	Expungements
<p><b>David M. Pascoe, Jr.</b>                      140 N. Main Street, Suite 102                      Summerville, SC 29483                      (843) 871-2640                      (843) 871-2643 (Fax)</p>	<p><b>Donna Cuttino</b>                      (Calhoun, Orangeburg)                      Alcohol Education Program                      Post Office Box 1525                      Orangeburg, SC 29116                      (803) 533-6252                      (803) 533-6004 (Fax)  <a href="mailto:duttino@scsolicitor1.org">duttino@scsolicitor1.org</a></p> <p><b>Jenny Russ</b> (Dorchester)                      Alcohol Education Program                      140 North Main Street, Suite 102                      Summerville, SC 29483                      (843) 871-2640                      (843) 871-2643 (Fax)  <a href="mailto:jruss@scsolicitor1.org">jruss@scsolicitor1.org</a></p>	<p><b>Darlene Simmons</b> (Juvenile)                      Drug Court Treatment Program                      Post Office Box 1525                      Orangeburg, SC 29116                      (803) 533-6252 (Ext.16)                      (803) 533-6004 (Fax)  <a href="mailto:dsimmons@scsolicitor1.org">dsimmons@scsolicitor1.org</a></p> <p><b>Jenny Russ</b> (Dorchester)                      Drug Court Treatment Program                      140 North Main Street, Suite 102                      Summerville, SC 29116                      (843) 871-2640                      (843) 871-2643 (Fax)  <a href="mailto:jruss@scsolicitor1.org">jruss@scsolicitor1.org</a></p>	<p><b>Donna Cuttino</b>                      (Calhoun, Orangeburg)                      Expungements                      Post Office Box 1525                      Orangeburg, SC 29116                      (803) 533-6115                      (803) 533-6004 (Fax)  <a href="mailto:duttino@scsolicitor1.org">duttino@scsolicitor1.org</a></p> <p><b>Stacey Cook</b> (Dorchester)                      Expungements                      140 North Main Street, Suite 102                      Summerville, SC 29483                      (843) 871-2640                      (843) 871-2643 (Fax)  <a href="mailto:scook@scsolicitor1.org">scook@scsolicitor1.org</a></p>
Juvenile Arbitration	Pretrial Intervention	Traffic Education	Worthless Check Units
<p><b>Carolyn Middleton</b>                      Juvenile Arbitration Program                      Post Office Box 1525                      Orangeburg, SC 29116                      (803) 533-6252                      (803) 533-6004 (Fax)  <a href="mailto:cmiddleton@scsolicitor1.org">cmiddleton@scsolicitor1.org</a></p>	<p><b>Donna Cuttino</b>                      (Calhoun, Orangeburg)                      Pretrial Intervention Program                      Post Office Box 1525                      Orangeburg, SC 29116                      (803) 533-6137                      (803) 533-6004 (Fax)  <a href="mailto:wcarraway@scsolicitor1.org">wcarraway@scsolicitor1.org</a></p> <p><b>Jenny Russ</b> (Dorchester)                      Pretrial Intervention Program                      140 North Main Street, Suite 102                      Summerville, SC 29483                      (843) 871-2640                      (843) 871-2643 (Fax)  <a href="mailto:jruss@scsolicitor1.org">jruss@scsolicitor1.org</a></p>	<p><b>Donna Cuttino</b>                      (Calhoun, Orangeburg)                      Traffic Education Program                      Post Office Box 1525                      Orangeburg, SC 29116                      (803) 533-6252                      (803) 533-6004 (Fax)  <a href="mailto:dcuttino@scsolicitor1.org">dcuttino@scsolicitor1.org</a></p> <p><b>Jenny Russ</b> (Dorchester)                      Traffic Education Program                      140 North Main Street, Suite 102                      Summerville, SC 29483                      (843) 871-2640                      (843) 871-2643 (Fax)  <a href="mailto:jruss@scsolicitor1.org">jruss@scsolicitor1.org</a></p>	<p><b>Donna Cuttino</b>                      (Calhoun, Orangeburg)                      Worthless Check Unit                      Post Office Box 1525                      Orangeburg, SC 29116                      (803) 533-6252                      (803) 533-6004 (Fax)  <a href="mailto:dcuttino@scsolicitor1.org">dcuttino@scsolicitor1.org</a></p> <p><b>Stacey Cook</b> (Dorchester)                      Worthless Check Unit                      140 North Main Street, Suite 102                      Summerville, SC 29483                      (843) 871-2640                      (843) 871-2643 (Fax)  <a href="mailto:scook@scsolicitor1.org">scook@scsolicitor1.org</a></p>

**2<sup>nd</sup> Judicial Circuit – Aiken, Bamberg, Barnwell**

<b>Solicitor's Office</b>	<b>Alcohol Education</b>	<b>Drug Court</b>	<b>Expungements</b>
<p><b>J. Strom Thurmond, Jr.</b>                      Post Office Drawer 3368                      Aiken, SC 29802                      (803) 642-1557                      (803) 642-7530 (Fax)</p>	<p><b>Felicia Lewis</b>                      Alcohol Education Program                      Aiken County Judicial Center                      109 Park Avenue                      Aiken, SC 29801                      (803) 642-1557, Press 1                      (803) 642-1556 (Fax)  <a href="mailto:jjenkins@aikencountysc.gov">jjenkins@aikencountysc.gov</a></p>	<p><b>Dr. An-Na Ousley</b>                      Drug Court Treatment Program                      Post Office Box 3368                      Aiken, SC 29802                      (803) 642-1575 (ext 1)                      (803) 642-1566 (Fax)  <a href="mailto:ausley@aikencountysc.gov">ausley@aikencountysc.gov</a></p>	<p><b>Marty Rivers</b>                      Expungements                      Post Office Box 3368                      Aiken, SC 29802                      (803) 642-1557                      (803) 642-7530 (Fax)  <a href="mailto:mrivers@aikencountysc.gov">mrivers@aikencountysc.gov</a></p> <p><b>Sylvette Holston</b>                      Expungements                      208 Newberry Street, NW                      Aiken, SC 29802                      (803) 642-1512                      (803) 648-2346 (Fax)  <a href="mailto:sholston@aikencountysc.gov">sholston@aikencountysc.gov</a></p>
<b>Juvenile Arbitration</b>	<b>Pretrial Intervention</b>	<b>Traffic Education</b>	<b>Worthless Check Units</b>
<p><b>Serena McDaniel</b>                      Juvenile Arbitration Program                      237 Barnwell Ave                      Aiken, SC 29802                      (803) 642-1512                      (803) 648-2346 (Fax)  <a href="mailto:smcdaniel@aikencountysc.gov">smcdaniel@aikencountysc.gov</a></p>	<p><b>Felicia Lewis</b>                      Pretrial Intervention Program                      Aiken County Judicial Center                      109 Park Avenue                      Aiken, SC 29801                      (803) 642-1557, Press 1                      (803) 642-1566 (Fax)  <a href="mailto:jjenkins@aikencountysc.gov">jjenkins@aikencountysc.gov</a></p>	<p><b>Felicia Lewis</b>                      Traffic Education Program                      Post Office Drawer 3368                      Aiken, SC 29802                      (803) 642-1557, Press 1                      (803) 642-1566 (Fax)  <a href="mailto:jjenkins@aikencountysc.gov">jjenkins@aikencountysc.gov</a></p>	<p><b>Stacey Coleman</b>                      Worthless Check Unit                      P.O. Box 3368                      Aiken, SC 29802                      (803) 648-8638                      (803) 648-8636 (Fax)  <a href="mailto:scoleman@solicitorscheckunit.net">scoleman@solicitorscheckunit.net</a></p>

### 3<sup>rd</sup> Judicial Circuit – Clarendon, Lee, Sumter, Williamsburg

Solicitor's Office	Alcohol Education	Drug Court	Expungements
<b>Ernest A. Finney III</b> 141 N. Main St. Sumter, SC 29150 (803) 436-2185 (803) 436-2236 (Fax)	<b>Carol B. Gailliard</b> Alcohol Education Program 141 North Main Street Sumter County Courthouse, Rm 201 Sumter, SC 29150 (803) 436-2198 (803) 436-2236 (Fax) <a href="mailto:cgailliard@sumercountysc.org">cgailliard@sumercountysc.org</a>	<b>Amy Land (Adult)</b> Drug Court Treatment Program Post Office Box 396 Manning, SC 29102 (803) 435-4254 (803) 435-0885 (Fax) <a href="mailto:aland@clarendoncountygov.org">aland@clarendoncountygov.org</a>	<b>Mechelle S. Potts</b> Expungements 141 North Main Street Sumter, SC 29150 (803) 436-2192 (803) 436-2236 (Fax) <a href="mailto:mpotts@sumtercountysc.org">mpotts@sumtercountysc.org</a>
Juvenile Arbitration	Pretrial Intervention	Traffic Education	Worthless Check Units
<b>Ralston Mathews</b> Juvenile Arbitration Program Sumter County Courthouse 141 North Main Street, Room 200 Sumter, SC 29150 (803) 436-2195 (803)436-2236 (Fax) <a href="mailto:rmathews@sumtercountysc.org">rmathews@sumtercountysc.org</a>	<b>Carol Gailliard</b> Pretrial Intervention Program 141 North Main Street Sumter County Courthouse, Room 201 Sumter, SC 29150 (803) 436-2193 (803) 436-2236 (Fax) <a href="mailto:cgailliard@sumtercountysc.org">cgailliard@sumtercountysc.org</a>	<b>Carol Gailliard</b> Traffic Education Program 141 North Main Street Sumter County Courthouse, Room 201 Sumter, SC 29150 (803) 436-2193 (803) 436-2236 (Fax) <a href="mailto:cgailliard@sumtercountysc.org">cgailliard@sumtercountysc.org</a>	<b>Bobbie C. Reaves</b> Worthless Check Unit Liberty Center 12 W. Liberty Street Sumter, SC 29151 (803) 774-1655 (803) 774-1693 (Fax) <a href="mailto:breaaves@sumtercountysc.org">breaaves@sumtercountysc.org</a>

### 4<sup>th</sup> Judicial Circuit – Chesterfield, Darlington, Marlboro, Dillon

Solicitor's Office	Alcohol Education	Drug Court	Expungements
<b>William B. Rogers, Jr.</b> Post Office Box 616 Bennettsville, SC 29512 (843) 479-6516 (843) 479-6519 (Fax)	<b>Reneka McCoy</b> Alcohol Education Program Post Office Box 616 Bennettsville, SC 29512 (843) 479-6520 (843) 479-6519 (Fax) <a href="mailto:renekamcqueen@solicitor4.com">renekamcqueen@solicitor4.com</a>	<b>Morris Harrington (Adult)</b> Drug Court Treatment Program Post Office Box 616 Bennettsville, SC 29512 (843) 479-6516 (843) 479-6519 (Fax) <a href="mailto:morrisharrington@solicitor4.com">morrisharrington@solicitor4.com</a>	<b>Christine Hailey</b> Expungements 110 Liberty Street Bennettsville, SC 29512 (843) 479-6516 (843) 479-6519 (Fax) <a href="mailto:christinehailey@solicitor4.com">christinehailey@solicitor4.com</a>
Juvenile Arbitration	Pretrial Intervention	Traffic Education	Worthless Check Units
<b>Loriane Shumate Griggs</b> Juvenile Arbitration Program 137 Main Street Chesterfield, SC 29709 (843) 623-3265 (843) 623-5330 (Fax) <a href="mailto:lorianeshumate@solicitor4.com">lorianeshumate@solicitor4.com</a>	<b>Reneka McCoy</b> Pretrial Intervention Program Post Office Box 616 Bennettsville, SC 29512 (843) 479-6516 (843) 479-6519 (Fax) <a href="mailto:renekamcqueen@solicitor4.com">renekamcqueen@solicitor4.com</a>	<b>Casey Moore</b> Traffic Education Program Post Office Box 616 Bennettsville, SC 29512 (843) 479-6516 (843) 479-6519 (Fax) <a href="mailto:caseym@solicitor4.com">caseym@solicitor4.com</a>	<b>Juanita Riley</b> Worthless Check Unit Post Office Box 616 Bennettsville, SC 29512 (843) 479-6516 (843) 479-6519 (Fax) <a href="mailto:juanitariley@solicitor4.com">juanitariley@solicitor4.com</a>

**5<sup>th</sup> Judicial Circuit – Kershaw, Richland**

Solicitor's Office	Alcohol Education	Drug Court	Expungements
<p><b>Byron Gipson</b>                      Post Office Box 192                      Columbia, SC 29202                      (803) 576-1800                      (803) 576-1718 (Fax)</p>	<p><b>William Bilton</b>                      Alcohol Education Program                      Post Office Box 192                      Columbia, SC 29202                      (803) 576-1850                      (803) 576-1866 (Fax)  <a href="mailto:washingtond@rcgov.us">washingtond@rcgov.us</a></p>	<p><b>Gaye Lois Siddon-McKeiver</b>                      (Adult and Juvenile)                      Drug Court Treatment Program                      Post Office Box 192                      Columbia, SC 29202                      (803) 576-1857                      (803) 576-1592 (Fax)  <a href="mailto:siddong@rcgov.us">siddong@rcgov.us</a></p>	<p><b>Dawn Sloan</b>                      Expungements                      Post Office Box 192                      Columbia, SC 29202                      (803) 576-1824                      (803) 576-1866 (Fax)  <a href="mailto:sloand@rcgov.us">sloand@rcgov.us</a></p>
Juvenile Arbitration	Pretrial Intervention	Traffic Education	Worthless Check Units
<p><b>Colette Andrews</b>                      Juvenile Court Alternative Program                      Post Office Box 192                      Columbia, SC 29202                      (803) 576-1854                      (803) 576-1866 (Fax)  <a href="mailto:andrewsc@rcgov.us">andrewsc@rcgov.us</a></p> <p><b>Chiquita Singletary, Corporal</b>                      Youth Arbitration Program                      5623 Two Notch Road                      Columbia, SC 29223                      (803) 736-0429                      (803) 419-4816 (Fax)  <a href="mailto:csingletary@rcsd.net">csingletary@rcsd.net</a></p>	<p><b>William Bilton</b>                      Pretrial Intervention Program                      Post Office Box 192                      Columbia, SC 29202                      (803) 576-1850                      (803) 576-1866 (Fax)  <a href="mailto:masellam@rcgov.us">masellam@rcgov.us</a></p>	<p><b>William Bilton</b>                      Traffic Education Program                      Post Office Box 192                      Columbia, SC 29202                      (803) 576-1850                      (803) 576-1866 (Fax)  <a href="mailto:andrewsc@rcgov.us">andrewsc@rcgov.us</a></p>	<p><b>Phyllis Hooper</b>                      Worthless Check Unit                      1701 Main Street, Suite 408                      Columbia, SC 29201                      (803) 576-1860                      (803) 929-6166 (Fax)  <a href="mailto:hopperp@rcgov.us">hopperp@rcgov.us</a></p>

**6<sup>th</sup> Judicial Circuit – Chester, Lancaster, Fairfield**

Solicitor's Office	Alcohol Education	Drug Court	Expungements
<p><b>Randy E. Newman, Jr.</b>                      Post Office Box 607                      Lancaster, SC 29721                      (803) 416-9367                      (803) 286-7776 (Fax)</p>	<p><b>Terrie Frost</b>                      Alcohol Education Program                      Post Office Box 728                      Chester, SC 29706                      (803) 377-1141 (Chester)                      (803) 712-1735 (Fairfield)                      (803) 416-9367 (Lancaster)                      (803) 581-2242 (Fax)  <a href="mailto:terrie.frost@scsolicitor6.org">terrie.frost@scsolicitor6.org</a></p>	<p><b>Jeffrey L. Phillips</b> (Juvenile)                      Drug Court Treatment Program                      100 North Catawba Street                      Lancaster, SC 29720                      (803) 285-9447                      (803) 285-4375 (Fax)  <a href="mailto:jphillips@lancastercountysc.net">jphillips@lancastercountysc.net</a></p>	<p><b>Ann Hardee</b> (Chester, Fairfield)                      Expungements                      Post Office Box 728                      Chester, SC 29706                      (864) 562-4498                      (864) 596-2268 (Fax)  <a href="mailto:ann.hardee@scsolicitor6.org">ann.hardee@scsolicitor6.org</a></p> <p><b>Julie Small</b> (Lancaster)                      Expungements                      Post Office Box 607                      Lancaster, SC 29720                      (803) 416-9391                      (803) 286-7776 (Fax)  <a href="mailto:julie.small@scsolicitor6.org">julie.small@scsolicitor6.org</a></p>
Juvenile Arbitration	Pretrial Intervention	Traffic Education	Worthless Check Units
<p><b>Amy Moss</b>                      Juvenile Arbitration Program                      Post Office Box 607                      Lancaster, SC 29721                      (803) 416-9375                      (803) 285-4375 (Fax)  <a href="mailto:amos@comporium.net">amos@comporium.net</a></p>	<p><b>Terrie Frost</b>                      Pretrial Intervention Program                      Post Office Box 728                      Chester, SC 29706                      (803) 377-1141 (Chester)                      (803) 712-1735 (Fairfield)                      (803) 416-9367 (Lancaster)                      (803) 581-2242 (Fax)  <a href="mailto:terrie.frost@scsolicitor6.org">terrie.frost@scsolicitor6.org</a></p>	<p><b>Terrie Frost</b>                      Traffic Education Program                      Post Office Box 728                      Chester, SC 29706                      (803) 377-1141 (Chester)                      (803) 712-1735 (Fairfield)                      (803) 416-9367 (Lancaster)                      (803) 581-2242 (Fax)  <a href="mailto:terrie.frost@scsolicitor6.org">terrie.frost@scsolicitor6.org</a></p>	<p><b>Terrie Frost</b> (Chester)                      Worthless Check Unit                      Post Office Box 728                      Chester, SC 29706                      (803) 377-1141                      (803) 712-1735  <a href="mailto:terrie.frost@scsolicitor6.org">terrie.frost@scsolicitor6.org</a></p> <p><b>Julie Small</b> (Lancaster)                      Expungements                      Post Office Box 607                      Lancaster, SC 29720                      (803) 416-9391                      (803) 286-7776 (Fax)  <a href="mailto:julie.small@scsolicitor6.org">julie.small@scsolicitor6.org</a></p> <p><b>Jequitta Lynn</b> (Fairfield)                      (803) 712-1735</p>

**7<sup>th</sup> Judicial Circuit – Cherokee, Spartanburg**

Solicitor's Office	Alcohol Education	Drug Court	Expungements
<b>Barry J. Barnette</b> 180 Magnolia Street Spartanburg County Courthouse Spartanburg, SC 29306 (864) 596-2575 (864) 596-2959 (Fax)	<b>Amanda Walker</b> Alcohol Education Program Post Office Box 5666 Spartanburg, SC 29304 (864) 596-2630 (864) 596-2268 (Fax) <a href="mailto:awalker@spartanburgcounty.org">awalker@spartanburgcounty.org</a>	<b>Patty Wheatly (Adult)</b> Drug Court Treatment Program Post Office Box 1252 Spartanburg, SC 29304 (864) 707-2843 (864) 582-0431 (Fax) <a href="mailto:pwheatly@theforrestercenter.org">pwheatly@theforrestercenter.org</a>	<b>Amanda Walker</b> Expungements Post Office Box 5666 Spartanburg, SC 29304 (864) 596-2630 (864) 596-2268 (Fax) <a href="mailto:awalker@sparanburgcounty.org">awalker@sparanburgcounty.org</a>
Juvenile Arbitration	Pretrial Intervention	Traffic Education	Worthless Check Units
<b>Valerie Sullivan</b> Juvenile Arbitration Program Spartanburg County Courthouse 180 Magnolia Street, Third Floor Spartanburg, SC 29306 (864) 562-4351 (864) 596-2386 (Fax) <a href="mailto:vsullivan@spartanburgcounty.org">vsullivan@spartanburgcounty.org</a>	<b>Amanda Walker</b> Pretrial Intervention Program Post Office Box 5666 Spartanburg, SC 29304 (864) 596-2630 (864) 596-2268 (Fax) <a href="mailto:awalker@spartanburgcounty.org">awalker@spartanburgcounty.org</a>	<b>Irvin Jenkins</b> Traffic Education Program Post Office Box 5666 Spartanburg, SC 29304 (864) 596-2420 (864) 596-2268 (Fax) <a href="mailto:ijenkins@spartanburgcounty.org">ijenkins@spartanburgcounty.org</a>	<b>Murray Glenn</b> Worthless Check Unit Spartanburg County Courthouse 180 Magnolia Street Spartanburg, SC 29306 (864) 562-4248 (864) 596-2386 (Fax) <a href="mailto:mglenn@spartanburgcounty.org">mglenn@spartanburgcounty.org</a>

**8<sup>th</sup> Judicial Circuit – Abbeville, Greenwood, Laurens, Newberry**

Solicitor's Office	Alcohol Education	Drug Court	Expungements
<b>David M. Stumbo</b> Post Office Box 516 Greenwood, SC 29648 (864) 942-8800 (864) 942-8830 (Fax)	<b>Jami Steifle</b> Alcohol Education Program Post Office Box 516 Greenwood, SC 29648 (864) 942-8826 (864) 942-8830 (Fax) <a href="mailto:jsteifle@greenwoodsc.gov">jsteifle@greenwoodsc.gov</a>	<b>Bryan Campbell (Adult)</b> Drug Court Treatment Program Post Office Box 516 Greenwood, SC 29648 (864) 942-8825 (864) 942-8830 (Fax) <a href="mailto:bcampbell@greenwoodsc.gov">bcampbell@greenwoodsc.gov</a>	<b>Angela Rowland</b> Expungements Post Office Box 516 Greenwood, SC 29648 (864) 942-8813 (864) 942-8830 (Fax) <a href="mailto:arowland@greenwoodsc.gov">arowland@greenwoodsc.gov</a>
Juvenile Arbitration	Pretrial Intervention	Traffic Education	Worthless Check Units
<b>Julie Bledsoe</b> Juvenile Arbitration Program Post Office Box 516 Greenwood, SC 29648 (864) 942-8843 (864) 942-8830 (Fax) <a href="mailto:jbledsoe@greenwoodsc.gov">jbledsoe@greenwoodsc.gov</a>	<b>Dale Allen</b> Pretrial Intervention Program Post Office Box 516 Greenwood, SC 29648 (864) 942-8841 (864) 942-8830 (Fax) <a href="mailto:dallen@greenwoodsc.gov">dallen@greenwoodsc.gov</a>	<b>Jami Steifle</b> Traffic Education Program Post Office Box 516 Greenwood, SC 29648 (864) 942-8826 (864) 942-8830 (Fax) <a href="mailto:jsteifle@greenwoodsc.gov">jsteifle@greenwoodsc.gov</a>	<b>Beth Bentley</b> Worthless Check Unit Post Office Box 516 Greenwood, SC 29648 (864) 942-8812 (864) 942-8830 (Fax) <a href="mailto:bkarle@greenwoodsc.gov">bkarle@greenwoodsc.gov</a>

**9<sup>th</sup> Judicial Circuit – Berkeley, Charleston**

Solicitor's Office	Alcohol Education	Drug Court	Expungements
<p><b>Scarlett A. Wilson</b>                      OT Wallace Building                      101 Meeting Street, Suite 400                      Charleston, SC 29401                      (843) 958-1900                      (843) 958-1905 (Fax)</p>	<p><b>Ty Falconer, Director</b>                      Alcohol Education Program                      101 Meeting Street Suite 230                      Charleston, SC 29401                      (843) 958-1930                      (843) 958-1931 (Fax)  <a href="mailto:kat@scsolicitor9.org">kat@scsolicitor9.org</a></p> <p><b>Ty Falconer</b> (Berkeley)                      300-B California Ave                      Moncks Corner, SC 29461                      (843) 719-4387                      (843) 719-4588  <a href="mailto:falconert@scsolicitor9.org">falconert@scsolicitor9.org</a></p>	<p><b>Debbie Walker</b> (Adult and Juvenile)                      Drug Court Treatment Program                      100 Broad Street, Suite 469                      Charleston, SC 29401                      (843) 958-5189                      (843) 958-5177 (Fax)  <a href="mailto:dwalker@charlestoncounty.org">dwalker@charlestoncounty.org</a></p>	<p><b>Charles Young</b> (Charleston)                      Expungements                      101 Meeting Street, Suite 400                      Charleston, SC 29401                      (843) 958-2023                      (843) 958-1905 (Fax)  <a href="mailto:youngc@scsolicitor9.org">youngc@scsolicitor9.org</a></p> <p><b>Tamra Gentry</b> (Berkeley)                      Expungements                      300-B California Avenue                      Moncks Corner SC 29461                      (843) 719-4529                      (843) 719-4588 (Fax)  <a href="mailto:gentryt@scsolicitor9.org">gentryt@scsolicitor9.org</a></p>
Juvenile Arbitration	Pretrial Intervention	Traffic Education	Worthless Check Units
<p><b>Christine Kinney</b>                      Juvenile Arbitration Program                      101 Meeting Street, Suite 330                      Charleston, SC 29401                      (843) 958-5150                      (843) 958-5160 (Fax)  <a href="mailto:kinneyc@scsolicitor9.org">kinneyc@scsolicitor9.org</a></p>	<p><b>Ty Falconer</b>                      Pretrial Intervention Program                      101 Meeting Street Suite 230                      Charleston, SC 29401                      (843) 958-1930                      (843) 958-1931 (Fax)  <a href="mailto:kat@scsolicitor9.org">kat@scsolicitor9.org</a></p> <p><b>Ty Falconer</b> (Berkeley)                      300-B California Ave                      Moncks Corner, SC 29461                      (843) 719-4387                      (843) 719-4588  <a href="mailto:falconert@scsolicitor9.org">falconert@scsolicitor9.org</a></p>	<p><b>Ty Falconer</b>                      Traffic Education Program                      101 Meeting Street, Suite 230                      Charleston, SC 29401                      (843) 958-1930                      (843) 958-1931 (Fax)  <a href="mailto:kat@scsolicitor9.org">kat@scsolicitor9.org</a></p> <p><b>Ty Falconer</b> (Berkeley)                      300-B California Ave                      Moncks Corner, SC 29461                      (843) 719-4387                      (843) 719-4588  <a href="mailto:falconert@scsolicitor9.org">falconert@scsolicitor9.org</a></p>	<p><b>Ty Falconer</b>                      Worthless Check Unit                      101 Meeting Street, Suite 230                      Charleston, SC 29401                      (843)958-2040                      (843)958-1931(fax)  <a href="mailto:kat@scsolicitor9.org">kat@scsolicitor9.org</a></p> <p><b>Ty Falconer</b>, (Berkeley)                      300-B California Ave                      Moncks Corner, SC 29461                      (843) 719-4387                      (843) 719-4588  <a href="mailto:falconert@scsolicitor9.org">falconert@scsolicitor9.org</a></p>

**10<sup>th</sup> Judicial Circuit – Anderson, Oconee**

Solicitor's Office	Alcohol Education	Drug Court	Expungements
<p><b>David R. Wagner</b>                      100 South Main Street                      Anderson, SC 29624                      (864) 260-4046                      (864) 260-4187 (Fax)</p>	<p><b>Kristen Sullivan</b>                      Alcohol Education Program                      Post Office Box 8002                      Anderson, SC 29622                      (864) 716-3689                      (864) 260-1030 (Fax)  <a href="mailto:kristen.sullivan@solicitor10.org">kristen.sullivan@solicitor10.org</a></p>	<p><b>Ulysses Rogers (Adult)</b>                      Drug Court Treatment Program                      Post Office Box 8002                      Anderson, SC 29622                      (864) 260-1027                      (864) 260-1030 (Fax)  <a href="mailto:ulysses.rogers@solicitor10.org">ulysses.rogers@solicitor10.org</a></p> <p><b>Nikki Lindsey</b>                      (Adult &amp; Juvenile)                      Drug Court Treatment Program                      Post Office Box 8002                      Anderson, SC 29622                      (864) 713-3688                      (864) 260-1030 (Fax)  <a href="mailto:Nikki.lindsey@solicitor10.org">Nikki.lindsey@solicitor10.org</a></p>	<p><b>Kristen Sullivan</b>                      Expungements                      Post Office Box 8002                      Anderson, SC 29622                      (864) 716-3689                      (864) 260-1030 (Fax)  <a href="mailto:kristen.sullivan@solicitor10.org">kristen.sullivan@solicitor10.org</a></p>
Juvenile Arbitration	Pretrial Intervention	Traffic Education	Worthless Check Units
<p><b>Sandra White (Oconee/Anderson)</b>                      Juvenile Arbitration Program                      Post Office Box 8002                      Anderson, SC 29622                      (864) 222-6694                      (864) 260-1030 (Fax)  <a href="mailto:sandra.white@solicitor10.org">sandra.white@solicitor10.org</a></p>	<p><b>Kristen Sullivan</b>                      Pretrial Intervention Program                      Post Office Box 8002                      Anderson, SC 29622                      (864) 716-3689                      (864) 260-1030 (Fax)  <a href="mailto:kristen.sullivan@solicitor10.org">kristen.sullivan@solicitor10.org</a></p>	<p><b>Kristen Sullivan</b>                      Traffic Education Program                      Post Office Box 8002                      Anderson, SC 29622                      (864) 716-3689                      (864) 260-1030 (Fax)  <a href="mailto:kristen.sullivan@solicitor10.org">kristen.sullivan@solicitor10.org</a></p>	<p><b>Susann Hunter</b>                      Worthless Check Unit                      Post Office Box 8002                      Anderson, SC 29622                      (864) 260-4339                      (864) 260-1030 (Fax)  <a href="mailto:susann.hunter@solicitor10.org">susann.hunter@solicitor10.org</a></p> <p><b>Marla Thomas (Oconee)</b>                      415 S. Pine Street                      Walhalla, SC 29691                      (864) 718-1065                      (864) 638-4295 (Fax)  <a href="mailto:Marla.thomas@aolicitor10.org">Marla.thomas@aolicitor10.org</a></p>

**11<sup>th</sup> Judicial Circuit – Edgefield, Lexington, McCormick, Saluda**

<b>Solicitor's Office</b>	<b>Alcohol Education</b>	<b>Drug Court</b>	<b>Expungements</b>
<p><b>S. R. Hubbard III</b> Lexington Judicial Center 205 E. Main Street Lexington, SC 29072 (803) 785-8352 (803) 785-8255 (Fax)</p>	<p><b>April Snipes</b> Alcohol Education Program Marc H. Westbrook Judicial Center 205 East Main Street, Suite 105 Lexington, SC 29072 (803) 785-8433 (803) 785-8229 (Fax) <a href="mailto:asnipes@lex-co.com">asnipes@lex-co.com</a></p>	<p><b>April Snipes (Adult)</b> Drug Court Treatment Program Marc H. Westbrook Judicial Center 205 East Main Street, Suite 105 Lexington, SC 29072 (803) 785-8433 (803) 785-8229 (Fax) <a href="mailto:asnipes@lex-co.com">asnipes@lex-co.com</a></p>	<p><b>Davant Keenan</b> Expungements Marc H. Westbrook Judicial Center 205 East Main Street, Suite 105 Lexington, SC 29072 (803) 785-8037 (803) 785-8229 (Fax) <a href="mailto:dkeen@lex-co.com">dkeen@lex-co.com</a></p>
<b>Juvenile Arbitration</b>	<b>Pretrial Intervention</b>	<b>Traffic Education</b>	<b>Worthless Check Units</b>
<p><b>Kathryn Barton</b> Juvenile Arbitration Program Marc H. Westbrook Judicial Center 205 East Main Street, Room 211 Lexington, SC 29072 (803) 785-8355 (803) 785-8810 (Fax) <a href="mailto:kbarton@lex-co.com">kbarton@lex-co.com</a></p>	<p><b>Brooke L. Velazquez, Director</b> <b>Diversion Programs</b> Marc H. Westbrook Judicial Center 205 East Main Street, Suite 105 Lexington, SC 29072 (803) 785-8569 (803) 785-8229 (Fax) <a href="mailto:bvelazquez@lex-co.com">bvelazquez@lex-co.com</a></p>	<p><b>April Snipes</b> Traffic Education Program Marc H. Westbrook Judicial Center 205 East Main Street, Suite 105 Lexington, SC 29072 (803) 785-8433 (803) 785-8229 (Fax) <a href="mailto:asnipes@lex-co.com">asnipes@lex-co.com</a></p>	<p><b>Debbie R. Hester</b> Worthless Check Unit Marc H. Westbrook Judicial Center 205 East Main Street Lexington, SC 29072 (803) 785-8142 (803) 785-5042 (Fax) <a href="mailto:dhester@lex-co.com">dhester@lex-co.com</a></p>

**12<sup>th</sup> Judicial Circuit – Florence, Marion**

<b>Solicitor's Office</b>	<b>Alcohol Education</b>	<b>Drug Court</b>	<b>Expungements</b>
<p><b>E.L. (Ed) Clements III</b> 201 West Evans Street Florence, SC 29501 (843) 665-3091 (843) 669-3947 (Fax)</p>	<p><b>Bill Flynn</b> Alcohol Education Program 201 West Evans Street Florence, SC 29501 (843) 292-1632 (843) 292-1634 (Fax) <a href="mailto:bflynn@florenceco.org">bflynn@florenceco.org</a></p>	<p><b>Tim Suggs (Juvenile)</b> Drug Court Treatment Program 201 West Evans Street Florence, SC 29501 (843) 676-1250 (843) 676-1243 (Fax) <a href="mailto:tsuggs@florenceco.org">tsuggs@florenceco.org</a></p>	<p><b>Candy Rogers</b> Expungements 201 West Evans Street Florence, SC 29501 (843) 665-3091 (843) 292-1589 (Fax) <a href="mailto:chrogers@florenceco.org">chrogers@florenceco.org</a></p>
<b>Juvenile Arbitration</b>	<b>Pretrial Intervention</b>	<b>Traffic Education</b>	<b>Worthless Check Units</b>
<p><b>Robin Hewitt</b> Juvenile Arbitration Program 201 West Evans Street Florence, SC 29501 (843) 292-1630 (843) 292-7430 (Fax) <a href="mailto:rhewitt@florenceco.org">rhewitt@florenceco.org</a></p>	<p><b>Bill Flynn</b> Pretrial Intervention Program 201 West Evans Street Florence, SC 29501 (843) 292-1632 (843) 292-1634 (Fax) <a href="mailto:bflynn@florenceco.org">bflynn@florenceco.org</a></p>	<p><b>Bill Flynn</b> Traffic Education Program 201 West Evans Street Florence, SC 29501 (843) 292-1632 (843) 292-1634 (Fax) <a href="mailto:bflynn@florenceco.org">bflynn@florenceco.org</a></p>	<p><b>Allen Gibson (Florence)</b> Worthless Check Unit 201 West Evan Street Florence, SC 29501 (843) 292-1586 (843) 292-7430 (Fax) <a href="mailto:agibson@florenceco.org">agibson@florenceco.org</a></p>

**13<sup>th</sup> Judicial Circuit – Greenville, Pickens**

Solicitor's Office	Alcohol Education	Drug Court	Expungements
<p><b>William W. Wilkins III</b>  Greenville County Courthouse  305 East North Street, Suite 325  Greenville, SC 29601  (864) 467-8282  (864) 467-8270 (Fax)</p>	<p><b>Judy Steadman</b>  Alcohol Education Program  Greenville County Courthouse  305 East North Street, Suite 115  Greenville, SC 29601  (864) 467-8717  (864) 467-8695 (Fax)  <a href="mailto:jsteadman@greenvillecounty.org">jsteadman@greenvillecounty.org</a></p> <p><b>Teresa Maw (Pickens)</b>  Alcohol Education Program  113 Court Street  Pickens, SC 29671  (864) 898-5628  (864) 898-5632 (Fax)  <a href="mailto:tm@greenvillecounty.org">tm@greenvillecounty.org</a></p>	<p><b>Patricia Edwards (Adult)</b>  Drug Court Treatment Program  Greenville County Courthouse  305 East North Street, Suite 119  Greenville, SC 29601  (864) 467-8134  (864) 467-8699 (Fax)  <a href="mailto:paedwards@greenvillecounty.org">paedwards@greenvillecounty.org</a></p> <p><b>Jamila Lockhart (Juvenile)</b>  Drug Court Treatment Program  Greenville County Square  301 University Ridge, Suite 5300  Greenville, SC 29601  (864) 467-5961  (864) 467-4906 (Fax)  <a href="mailto:jlockhart@greenvillecounty.org">jlockhart@greenvillecounty.org</a></p>	<p><b>Tracy Starkes (Greenville)</b>  Expungements  Greenville County Courthouse  305 East Main Street, Suite 115  Greenville, SC 29601  (864) 467-8723  (864) 467-8695 (Fax)  <a href="mailto:tstarkes@greenvillecounty.org">tstarkes@greenvillecounty.org</a></p> <p><b>Jeannie Abercrombie (Pickens)</b>  Expungements  113 Court Street  Pickens, SC 29671  (864) 898-5628  (864) 898-5632 (Fax)  <a href="mailto:labercrombie@greenvillecounty.org">labercrombie@greenvillecounty.org</a></p>
Juvenile Arbitration	Pretrial Intervention	Traffic Education	Worthless Check Units
<p><b>Leisa Shea (Greenville)</b>  Juvenile Pretrial Intervention  Greenville County Square  301 University Ridge, Suite 5300  Greenville, SC 29601  (864) 467-5902  (864) 467-5905 (Fax)  <a href="mailto:lshea@greenvillecounty.org">lshea@greenvillecounty.org</a></p> <p><b>Jennifer Campbell (Pickens)</b>  Juvenile Arbitration Program  113 Court Street  Pickens, SC 29671  (864) 898-5628  (864) 898-5632 (Fax)  <a href="mailto:jecampbell@greenvillecounty.org">jecampbell@greenvillecounty.org</a></p>	<p><b>Judy Steadman</b>  Pretrial Intervention Program  Greenville County Courthouse  305 East North Street, Suite 115  Greenville, SC 29601  (864) 467-8717  (864) 467-8695 (Fax)  <a href="mailto:jsteadman@greenvillecounty.org">jsteadman@greenvillecounty.org</a></p> <p><b>Teresa Maw (Pickens)</b>  Pretrial Intervention Program  113 Court Street  Pickens, SC 29671  (864) 898-5628  (864) 898-5632 (Fax)  <a href="mailto:tm@greenvillecounty.org">tm@greenvillecounty.org</a></p>	<p><b>Judy Steadman</b>  Traffic Education Program  Greenville County Courthouse  305 East North Street, Suite 115  Greenville, SC 29601  (864) 467-8717  (864) 467-8695 (Fax)  <a href="mailto:jsteadman@greenvillecounty.org">jsteadman@greenvillecounty.org</a></p> <p><b>Teresa Maw (Pickens)</b>  Traffic Education Program  113 Court Street  Pickens, SC 29671  (864) 898-5628  (864) 898-5632 (Fax)  <a href="mailto:tm@greenvillecounty.org">tm@greenvillecounty.org</a></p>	<p><b>Sylvia Harrison</b>  Worthless Check Unit  Greenville County Courthouse  305 East North Street, Suite 115  Greenville, SC 29601  (864) 467-8647  (864) 467-8270 (Fax)  <a href="mailto:Sharrison#@greenvillecounty.org">Sharrison#@greenvillecounty.org</a></p>

**14<sup>th</sup> Judicial Circuit – Allendale, Beaufort, Colleton, Hampton, Jasper**

Solicitor's Office	Alcohol Education	Drug Court	Expungements
<p><b>Isaac McDuffie Stone III</b>                      Post Office Box 1880                      Bluffton, SC 29910                      (843) 255-5880                      (843) 255-9512 (Fax)</p>	<p><b>Krystal Johnson</b>                      (Allendale, Colleton, Hampton, Jasper)                      Alcohol Education Program                      Post Office Box 187                      Ridgeland, SC 29936                      (843) 771-4061                      (843) 726-7942 (Fax)  <a href="mailto:kjohnson@bcgov.net">kjohnson@bcgov.net</a></p> <p><b>Shannon Horton</b> (Beaufort)                      Alcohol Education Program                      Post Office Box 1880                      Bluffton, SC 29910                      (843) 255-5880                      (843) 255-9512 (Fax)  <a href="mailto:s.ferrill@bcgov.net">s.ferrill@bcgov.net</a></p>	<p><b>Michael Lee</b> (Adult)                      Drug Court Treatment Program                      Post Office Drawer 1880                      Bluffton, SC 29910                      (843) 255-5908                      (843) 815-2002 (Fax)  <a href="mailto:mlee@bcgov.net">mlee@bcgov.net</a></p>	<p><b>Linda Delahunty</b> (Beaufort)                      Expungements                      Post Office Box 1880                      Bluffton, SC 29910                      (843) 255-5880                      (843) 255-9515 (Fax)  <a href="mailto:l.delahunty@bcgov.net">l.delahunty@bcgov.net</a></p>
Juvenile Arbitration	Pretrial Intervention	Traffic Education	Worthless Check Units
<p><b>Leonard Risher</b>                      Juvenile Arbitration Program                      Post Office Box 546                      Hampton, SC 29924                      (803) 914-2182  <a href="mailto:Coachrish33@yahoo.com">Coachrish33@yahoo.com</a></p>	<p><b>Krystal Johnson</b>                      (Allendale, Colleton, Hampton, Jasper)                      Alcohol Education Program                      Post Office Box 187                      Ridgeland, SC 29936                      (843) 771-4061                      (843) 726-7942 (Fax)  <a href="mailto:kjohnson@bcgov.net">kjohnson@bcgov.net</a></p> <p><b>Shannon Horton</b> (Beaufort)                      Pretrial Intervention Program                      Post Office Box 1880                      Bluffton, SC 29910                      (843) 255-5880                      (843) 255-9512 (Fax)  <a href="mailto:s.ferrill@bcgov.net">s.ferrill@bcgov.net</a></p>	<p><b>Krystal Johnson</b>                      (Allendale, Colleton, Hampton, Jasper)                      Alcohol Education Program                      Post Office Box 187                      Ridgeland, SC 29936                      (843) 771-4061                      (843) 726-7942 (Fax)  <a href="mailto:kjohnson@bcgov.net">kjohnson@bcgov.net</a></p> <p><b>Shannon Horton</b> (Beaufort)                      Traffic Education Program                      Post Office Box 1880                      Bluffton, SC 29910                      (843) 255-5880                      (843) 255-9512 (Fax)  <a href="mailto:s.ferrill@bcgov.net">s.ferrill@bcgov.net</a></p>	<p><b>Linda Delahunty</b>                      Worthless Check Unit                      Post Office Box 1880                      Bluffton, SC 29910                      (843) 255-5880                      (843) 255-9515 (Fax)  <a href="mailto:l.delahunty@bcgov.net">l.delahunty@bcgov.net</a></p> <p><b>Kathy Zahn</b>                      Worthless Check Unit                      Post Office Box 1880                      Bluffton, SC 29910                      (843) 255-5880                      (843) 255-9515 (Fax)  <a href="mailto:k.zahn@bcgov.net">k.zahn@bcgov.net</a></p>

**15<sup>th</sup> Judicial Circuit – Georgetown, Horry**

Solicitor's Office	Alcohol Education	Drug Court	Expungements
<p><b>Jimmy A. Richardson</b>                      Post Office Drawer 1276                      Conway, SC 29526                      (843) 915-5460                      (843) 915-6460 (Fax)</p>	<p><b>Hope Lupo</b> (Horry &amp; Georgetown)                      Alcohol Education Program                      1005 2<sup>nd</sup> Avenue                      Conway, SC 29526                      (843) 915-5365                      (843) 915-6360 (Fax)</p>	<p><b>Candy Townsend</b> (Horry &amp; Georgetown)                      Drug Court Treatment Program                      1005 2<sup>nd</sup> Avenue                      Conway, SC 29526                      (843) 915-8358                      (843) 915-6360 (Fax)  <a href="mailto:townsendc@horrycounty.org">townsendc@horrycounty.org</a></p>	<p><b>Melissa Cox</b> (Horry)                      Expungements                      1005 2<sup>nd</sup> Avenue                      Conway, SC 29526                      (843) 915-5365                      (843) 915-6360 (Fax)</p> <p><b>Ciara L. Wilson</b> (Georgetown)                      Georgetown County Office                      401 Cleland Street                      Georgetown, SC 29440                      (843) 545-3171                      (843) 545-3268 (Fax)  <a href="mailto:cwilson@gtcounty.org">cwilson@gtcounty.org</a></p>
Juvenile Arbitration	Pretrial Intervention	Traffic Education	Worthless Check Units
<p><b>Tara Pellerin</b> (Horry)                      Juvenile Arbitration Program                      1005 2<sup>nd</sup> Avenue                      Conway, SC 29526                      (843) 915-5691                      (843) 915-6360 (Fax)  <a href="mailto:pellerint@horrycounty.org">pellerint@horrycounty.org</a></p> <p><b>Ciara L. Wilson</b> (Georgetown)                      Georgetown County Office                      401 Cleland Street                      Georgetown, SC 29440                      (843) 545-3171                      (843) 545-3268 (Fax)  <a href="mailto:cwilson@gtcounty.org">cwilson@gtcounty.org</a></p>	<p><b>Tiffany Lee, Director</b>                      Diversion Programs                      1005 2<sup>nd</sup> Avenue                      Conway, SC 29526                      (843) 915-5365                      (843) 915-6360  <a href="mailto:powellm@horrycounty.org">powellm@horrycounty.org</a></p> <p><b>Tiffany Lee</b> (Horry)                      Pretrial Intervention Program                      1005 2<sup>nd</sup> Avenue                      Conway, SC 29526                      (843) 915-5365                      (843) 915-6360 (Fax)  <a href="mailto:leetif@horrycounty.org">leetif@horrycounty.org</a></p> <p><b>Ciara L. Wilson</b> (Georgetown)                      Georgetown County Office                      401 Cleland Street                      Georgetown, SC 29440                      (843) 545-3171                      (843) 545-3268 (Fax)  <a href="mailto:cwilson@gtcounty.org">cwilson@gtcounty.org</a></p>	<p><b>Hope Lupo</b> (Horry &amp; Georgetown)                      Traffic Education Program                      1005 2<sup>nd</sup> Avenue                      Conway, SC 29526                      (843) 915-5693                      (843) 915-6360 (Fax)</p>	<p><b>Shelley Anderson</b>                      Worthless Check Unit                      Post Office Box 1276                      Conway, SC 29528                      (843) 915-8615                      (843) 915-6464 (Fax)  <a href="mailto:andersos@horrycounty.org">andersos@horrycounty.org</a></p>

**16<sup>th</sup> Judicial Circuit – Union, York**

Solicitor's Office	Alcohol Education	Drug Court	Expungements
<p><b>Kevin S. Brackett</b>                      Moss Justice Center                      1675-1A York Hwy                      York, SC 29745                      (803) 628-3020                      (803) 628-3025 (Fax)</p>	<p><b>Ann Melton</b>                      Alcohol Education Program                      1514 E. Alexander Highway,                      Suite 112                      York, SC 29745-7770                      (803) 628-3028                      (803) 628-3116 (Fax)  <a href="mailto:Ann.melton@yorkcountygov.com">Ann.melton@yorkcountygov.com</a></p> <p><b>Holly Blackwell (Union)</b>                      Pretrial Intervention Program                      Post Office Box 60                      Union, SC 29379                      (864) 429-1639                      (864) 429-2803(Fax)  <a href="mailto:Holly.blackwell@solicitor16.org">Holly.blackwell@solicitor16.org</a></p>	<p><b>Ann Melton</b>                      Drug Court Treatment Program                      1514 E. Alexander Highway, Suite                      112                      York, SC 29745-7770                      (803) 628-3028                      (803) 628-3116 (Fax)  <a href="mailto:Ann.melton@yorkcountygov.com">Ann.melton@yorkcountygov.com</a></p> <p><b>Denise Stinson</b>                      Juvenile Drug Court                      529 S. Cherry Road                      Rock Hill, SC 29730                      (803) 909-7556                      (803) 909-7577 (Fax)  <a href="mailto:Denise.stinson@yorkcountygov.com">Denise.stinson@yorkcountygov.com</a></p>	<p><b>Ann Melton</b>                      Expungements                      1514 E. Alexander Highway, Suite                      112                      York, SC 29745-7770                      (803) 628-3028                      (803) 628-3116 (Fax)  <a href="mailto:Ann.melton@yorkcountygov.com">Ann.melton@yorkcountygov.com</a></p>
Juvenile Arbitration	Pretrial Intervention	Traffic Education	Worthless Check Units
<p><b>Ray Moore (York)</b>                      Juvenile Arbitration Program                      529 S. Cherry Road,                      Rock Hill, SC 29732                      (803) 909-7557                      (803) 909-7577 (Fax)  <a href="mailto:ray.moore@yorkcountygov.com">ray.moore@yorkcountygov.com</a></p> <p><b>Nadie Gault (Union)</b>                      Post Office Box 60                      Union, SC 29379                      (864) 429-1639                      (864) 429-2803(Fax)  <a href="mailto:Gaultn_1@bellsouth.net">Gaultn_1@bellsouth.net</a></p>	<p><b>Ann Melton</b>                      Pretrial Intervention Program                      1514 E. Alexander Highway,                      Suite 112                      York, SC 29745-7770                      (803) 628-3028                      (803) 628-3116 (Fax)  <a href="mailto:Ann.melton@yorkcountygov.com">Ann.melton@yorkcountygov.com</a></p> <p><b>Holly Blackwell (Union)</b>                      Pretrial Intervention Program                      Post Office Box 60                      Union, SC 29379                      (864) 429-1639                      (864) 429-2803(Fax)  <a href="mailto:Holly.blackwell@solicitor16.org">Holly.blackwell@solicitor16.org</a></p>	<p><b>Ann Melton</b>                      Traffic Education Program                      1514 E. Alexander Highway, Suite                      112                      York, SC 29745-7770                      (803) 628-3028                      (803) 628-3116 (Fax)  <a href="mailto:Ann.melton@yorkcountygov.com">Ann.melton@yorkcountygov.com</a></p>	<p><b>Maria Cabrera</b>                      Worthless Check Unit                      529 S. Cherry Road                      Rock Hill, SC 29732                      (843) 909-7585                      (843) 909-7576 (Fax)  <a href="mailto:Maria.cabrera@yorkcountygov.com">Maria.cabrera@yorkcountygov.com</a></p>



**South Carolina Bar**

Continuing Legal Education Division

Plea Negotiations: Probation/Collateral  
Consequences

*Nicole L. Singletary*

# PROBATION AND COLLATERAL CONSEQUENCES

# Overview:

- Probation
- Collateral Consequences
  - Enhancement Statutes
  - Housing Exclusion
  - Employment
  - Student Aid
  - Sexual Assault Cases
  - Social Security Benefits
  - Military Benefits
  - Immigration Issues
  - Driver License Issues

## **Standard Conditions of Supervision**

- I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services' office on the day of my release or not later than 8:30 a.m. on the next business day, and as instructed by the Department; and I shall make complete and truthful reports to the Agent.
- I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere at any time.
- I shall not use controlled substances, except when properly prescribed by a licensed physician, not consume alcoholic beverages to excess nor visit establishments whose primary business is the sale and drinking of alcoholic beverages. Furthermore, I shall submit to a urinalysis or a blood test when requested by an Agent of the Department, and I agree that any of these test results may be used as evidence in any hearing.
- I shall not possess or purchase any firearms, knives, or other dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.

**Standard Conditions of Supervision CONTINUED**

- I shall work diligently at a lawful occupation, furthermore, I shall notify my Agent if I become unemployed.
- I shall not violate any federal, state, or local laws, and shall contact my supervising agent if I am ever arrested or questioned by a law enforcement officer for any reason whatsoever.
- I shall pay supervision fees as determined by the department.
- I shall not leave the state without permission from my Agent. Furthermore, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise have been entitled to and agree to return to South Carolina when directed by my Agent, the Court, Board or by a warrant.

**Standard Conditions of Supervision CONTINUED**

- I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution, or other payments, and the services of any period of incarceration. I will make all child support payments as ordered by the courts.
- I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its Agent.

Persons on probation, who are ordered to pay restitution to a victim, are also subject to a 20 percent collection fee added to any amount they are ordered to pay. The collection fee does not apply to parole cases where restitution is required.

## **Standard Sex Offender Conditions**

1. I will register as a sex offender as required by the Code of Laws of South Carolina and as described in the Department's Notice of Sex Offender Registry.
2. I will attend, actively participate in, not give cause to be terminated from, and successfully complete any counseling/treatment program, to which I am referred by my agent, which may include polygraph or other treatment related testing, all at my own expense. I waive all rights to confidentiality between myself and my treatment provider, and authorize my treatment provider to disclose to my agent, the Court, the Parole Board, the releasing authority, and/or the hearing officer, information about my attendance and participation in the program. (Must complete Referral Form 1054).
3. I will not have any contact with the victim(s) of my crime, directly or indirectly. This includes but is not limited to physical or face to face contact, contact through letters or written notes, telephone calls, or electronic mail (e-mail), or any contact through a third party, unless such contact is approved in writing by the Court, the Parole Board, or the releasing authority, or the hearing officer. I also will not enter into, travel past, or loiter near a victim's residence or workplace.

### **Standard Sex Offender Conditions**

3. I will not have any contact with the victim(s) of my crime, directly or indirectly. This includes but is not limited to physical or face to face contact, contact through letters or written notes, telephone calls, or electronic mail (e-mail), or any contact through a third party, unless such contact is approved in writing by the Court, the Parole Board, or the releasing authority, or the hearing officer. I also will not enter into, travel past, or loiter near a victim's residence or workplace.

### **Standard Sex Offender Conditions**

4. I will not have any contact with a person under the age of 18, with the exception of my immediate family members and then may only have such contact if approved in advance under conditions set by my treatment provider and my agent. If I have incidental contact with any child, I will be civil and courteous and immediately remove myself from the situation. I will discuss the contact at my next treatment session and will immediately report this contact to my agent.

5. I will not enter into, loiter or work within one thousand (1,000) feet of any area or event frequented by people under the age of 18 including but not limited to: schools, day care centers, playgrounds, arcades, public swimming pools or beaches, shopping malls, theaters, or and festivals, unless approved in advance by my agent.

# What are collateral consequences?

Are those consequences that occur as a direct result of a person being convicted of a criminal offense.

## After the plea has been entered, now what's next??????

- Enhancement Statutes
- Housing Exclusions
- Employment
- Student Aid
- Civil Commitments (Sexually Violent Predator)
- Social Security Benefits/SSI Benefits
- Military Benefits
- Deportation

# ENHANCEMENT STATUTES:

## DRUG OFFENSES

- Clients need to know that a previous drug conviction for another type of drug can be used for enhancement purposes for a current drug arrest. Therefore the client could possibly be facing second or third offense as a result of the new arrest.

## ENHANCEMENT STATUTES:

### PROPERTY OFFENSES

- Just as with drug offenses the client must know that based on their prior convictions for charges such as shoplifting, burglary, larcenies can be used for enhancement purposes and they could possibly be looking at a stricter penalties

# Federally Assisted Housing

## Two Mandatory Lifetime Exclusions

- Production of meth on federally funded public housing and
- Those individuals who are convicted of sexual assault charges and must register as a sex offender for a lifetime period.

Summary of Federal Drug- and Other Crime-Related Restrictions in Federal Housing Assistance Programs			
(denial=denial of admission to applications; termination=termination of assistance and/			
Activity	Public Housing	Section 8 Vouchers	Project Section 8
Drug-related criminal activity	Grounds for denial; grounds for termination	Grounds for denial; grounds for termination	Grounds for denial; grounds for termination
Violent criminal activity	Grounds for denial	Grounds for denial; grounds for termination	Grounds for denial
Criminal activity that interferes with health, safety, peaceful enjoyment of other residents	Grounds for denial; grounds for termination	Grounds for denial; grounds for termination	Grounds for denial; grounds for termination
Determined to be currently using illegal drugs	Mandatory denial; grounds for termination	Mandatory denial; grounds for termination	Mandatory denial; grounds for termination
Abuse of drugs or alcohol that interferes with health, safety, peaceful enjoyment of other residents	Grounds for denial; grounds for termination	Grounds for denial; grounds for termination	Grounds for denial; grounds for termination
Subject to lifetime registration on a state sex-offender registry	Mandatory denial	Mandatory denial	Mandatory denial

# EMPLOYMENT

I CAN'T FIND A JOB BECAUSE I GOT A  
CRIMINAL RECORD AND I NEED  
MONEY?

**“AINT NOBODY GOT TIME FOR THAT”**

A student who is receiving federal student aid and is convicted for the possession or sale of illegal drugs while receiving federal student aid will have their aid suspended. Student loan eligibility may be suspended for an amount of time depending on the nature of the conviction.

	Possession of Drugs	Sale of Drugs
First Offense	One Year	Two Year
Second Offense	Two Year	Indefinite
Third Offense	Indefinite	

If a student is disqualified due to such a drug conviction, there are three methods for a student to regain eligibility:

- 1) If the conviction is reversed or set aside; or
- 2) If the student successfully passes two unannounced drug tests; or
- 3) If the student successfully completes a drug rehabilitation program that includes two unannounced drug tests.

# PELL GRANTS

- In 1965, Congress passed Title IV of the Higher Education Act, which permitted incarcerated persons to apply for Pell Grants to finance their education. In 1994, Congress eliminated Pell Grant eligibility for incarcerated persons pursuant to the Violent Crimes Control and Law Enforcement Act, signed into law by President Clinton. Once released from incarceration, individuals will re-gain Pell Grant eligibility subject to the drug conviction ban and time limits listed in the above chart.
- In addition to the above criteria relating to drug convictions, students subject to an involuntary civil commitment (Sexual Violent Predator) after completing a period of incarceration for forcible or non-forcible sexual offense are ineligible to receive a Federal Pell Grant.

## S.C. Student Aid Exclusions

- **LIFE Scholarship:** any felony convictions, or second or subsequent alcohol or other drug related misdemeanor conviction within the past academic year.
- **SC Hope Scholarship:** any felony conviction, or a second alcohol or drug related misdemeanor within the past academic year.
- **Palmetto Fellows:** any felony conviction or juvenile adjudication, or any second or subsequent alcohol or other drug-related misdemeanor offense within the past academic year.
- **Lottery Tuition:** the regulations do not specifically enumerate eligibility requirement relating to criminal records, though students must first determine eligibility for federal student aid.
- **SC National Guard College Assistance Program:** no specific mention of criminal record eligibility requirements, though applicant must be in good standing with the National Guard.
- **Free Tuition for Residents Sixty Years of Age:** no enumerated eligibility requirements relating to criminal records.

# Sexual Assault Cases

- Civil Commitments
- Community Supervision
- Lifetime Sex Offender Registry
- GPS Monitoring for Life
- Housing Issues

## Social Security Benefits/SSI Benefits

- Social Security benefits are not payable to an individual who is convicted of a criminal offense and confined for more than 30 days. Benefits to a spouse or children will continue as long as they remain eligible. There are a few specific federal offenses which would disqualify an individual from benefits. These are: espionage, sabotage, treason, sedition, or subversive activities.
- There is a prerelease procedure in place to ensure that an individual's benefits will resume upon release, usually within 30 days. The inmate should check with their institution to begin processing the inmate's paper work. Alternatively, the inmate could write their local Social Security Office about setting up a pre-release agreement. Social Security and/or Supplemental Security Income (SSI) benefits are suspended when individuals are in jail or prison.
- For Social Security Beneficiaries, benefits remain suspended until the inmate is released.
- For SSI beneficiaries, benefits are suspended during the first year of incarceration, and benefits are terminated when the individual is incarcerated for a year or more.

## Disability Compensation

- VA disability compensation payments are *reduced* if a veteran is convicted of a felony and imprisoned for more than 60 days. The monthly payment will be reduced beginning with the 61st day of imprisonment. If the payment before incarceration was greater than 10%, the reduced payment will be the 10% rate. If the payment before incarceration was 10% rate, the reduced payment will be half the 10% rate. Payments are not reduced for recipients participating in work release programs, residing in halfway houses (also known as "residential re-entry centers"), or under community control.

## Disability Pension

- Veterans in receipt of VA pension will have payments *terminated* effective the 61st day after imprisonment in a Federal, State, or local penal institution for conviction of a *felony or misdemeanor*. Payments may be resumed upon release from prison if the veteran meets VA eligibility requirements.

# IMMIGRATION ISSUES

- It is important for criminal defense attorneys to be reminded that in 2010 the Supreme Court in *Padilla v. Kentucky* held that criminal defense attorneys must advise non-citizen clients of the potential deportation risks of a guilty plea. While criminal defense attorneys are not expected to become experts in immigration law, they are required to inform their clients of potentially adverse collateral consequences of their criminal charge, at least in terms of immigration issues.
- Criminal defense attorneys may want to look into this issue further as it may better inform plea negotiations that will eliminate deportation risk. It is also important to note that this case, though it deals solely with immigration issues, may provide important insight for challenges to other collateral consequences.

Can a Guilty Plea Affect a Client's Driver's License??

SC Code 56-1-148 (2012)

(A) As used in this chapter "identifying code" means a symbol, number, or letter of the alphabet developed by the department to identify a person convicted of or pleading guilty or nolo contendere to a crime of violence as defined in Section 16-23-10(3) on or after July 1, 2011. The symbol, number, or letter of the alphabet shall not be defined on the driver's license or special identification card.

(B) In addition to the contents of a driver's license provided for in Section 56-1-140 or a special identification card provided for in Section 56-1-3350, a person who has been convicted of or pled guilty or nolo contendere to a crime of violence as defined in Section 16-23-10(3) on or after July 1, 2011, must have an identifying code determined by the department affixed to the reverse side of his driver's license or special identification card. The code must identify the person as having been convicted of a violent crime. The code must be developed by the department and made known to the appropriate law enforcement officers and judicial officials of this State.

## SC Code Section 16-23 (3) states:

"Crime of violence" means murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape, or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.

## Personal Collateral Consequences:

The practice of criminal law from the Defense and Prosecution Side can be extremely grueling... So always remember to do the following:

Stay in the fight...

Take care of yourself....

Take time for yourself....

# QUESTIONS

??????????



# South Carolina Bar

Continuing Legal Education Division

## Guilt Pleas

*Bennett E. Casto*

# **PLEA BARGAINS**

Prosecutors have broad powers in the plea bargain process:

Under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case. Both the South Carolina Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands. The Attorney General as the State's chief prosecutor may decide when and where to present an indictment, and may even decide whether an indictment should be sought. Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety. The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion; however, on occasion, it is necessary to review and interpret the results of the prosecutor's actions. *State v. Thrift*, 312 S.C. 282, 291-92, 440 S.E.2d 341, 346-47 (1994)

## **PLEA AGREEMENTS**

It is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *State v. Armstrong*, 263 S.C. 594, 597, 211 S.E.2d 889, 890 (1975).

However, a defendant has no constitutional right to plea bargain. *State v. Easler*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *aff'd as modified*, 327 S.C. 121, 489 S.E.2d 617 (1997). Furthermore, a trial judge is not required to accept a plea. *Id.* See also *Santobello v. New York*, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971) (defendant has no absolute right to have guilty plea accepted; court may reject plea in exercise of sound judicial discretion).

Once a defendant enters a guilty plea and the plea is accepted by the court, due process requires the plea bargain be honored. *Santobello v. New York*, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971)

## **ENFORCING PLEA AGREEMENTS**

### **CONTRACT PRINCIPLES**

While plea agreements are a matter of criminal jurisprudence, most courts have held they are subject to contract principles. See *United States v. Ringling*, 988 F.2d 504 (4th Cir. 1993); *State v. Crockett*, 110 Nev. 838, 877 P.2d 1077 (Nev. 1994). Applying general contract principles, the First Circuit Court of Appeals, in *United States v.*

*Papaleo*, 853 F.2d 16 (1st Cir. 1988), held a plea agreement is nothing more than an offer until it is approved by the court:

The plea agreement here at issue stated in pertinent part that "in exchange for defendant's . . . plea of guilty as to count one of the indictment, the Government at the time of sentencing will move for the dismissal of counts two and three." *Papaleo* argues that these somewhat ambiguous words constitute a bilateral contract and not merely an offer. We thus must determine whether the agreement is an exchange of promises or only an offer by the government for a unilateral contract -- an offer which the government could withdraw any time before *Papaleo* started to perform by pleading guilty.

We note that nowhere in the plea agreement is there an explicit promise by *Papaleo* to do anything. This is understandable in light of the fact that a court cannot force a defendant to plead guilty because of a promise in a plea agreement. Unless and until a court accepts a guilty plea, a defendant is free to renege on a promise to so plead.

. . . Absent more explicit promissory language, we will not read the ambiguous language of the "agreement" as containing bilateral promises such as to bind the government to a contract unenforceable against the other party. Thus, pursuant to general contract principles, we hold that a plea agreement of this type is no more than an offer by the government: if the defendant pleads guilty and if that plea is accepted by the court, then the government will perform as stipulated in the agreement. Until performance took place by *Papaleo*, the government was free to withdraw its offer.

A majority of courts addressing the issue at bar have concluded that neither a defendant nor the government is bound by a plea offer until it is approved by the court. These jurisdictions permit the prosecution to withdraw a plea offer or agreement if the defendant has not yet pled guilty. *See State v. Reasbeck*, 359 So. 2d 564 (Fla. Dist. Ct. App. 1978) (either party may withdraw its offer up until formal acceptance of plea; offer may be withdrawn without any necessary justification); *State v. Copeland*, 928 S.W.2d 828 (Mo. 1996) (general rule is that unless plea agreement is embodied in judgment of court, breach of such agreement by state does not deprive accused of liberty or any other constitutionally protected interest; it is only after plea agreement is accepted by court that it must be enforced); *State v. Marlow*, 334 N.C. 273, 432 S.E.2d 275 (N.C. 1993) (prosecutor may rescind his offer of proposed plea arrangement at any time before it is consummated by actual entry of guilty plea and acceptance and approval of proposed sentence by trial judge); *State ex rel. Stout v. Craytor*, 753 P.2d 1365 (Okla. Crim. App. 1988) (as plea bargaining is discretionary matter with district attorney, trial court was without authority to direct district attorney to amend homicide information to conform with terms of plea bargain agreement, initially offered to defendant under former district attorney's administration, but later withdrawn by newly elected district attorney prior to

acceptance); *State v. Trepanier*, 600 A.2d 1311 (R.I. 1991) (defendant was not entitled to specific performance of plea agreement that he serve 25 years in exchange for guilty plea, when prosecutor withdrew offer after it was accepted but before plea was entered, on ground her superior would not accept it; either State or defendant may withdraw from plea agreement unless and until defendant's plea is actually entered; prior to that time, plea agreement should not be enforceable against either party); *Purser v. State*, 902 S.W.2d 641 (Tex. Ct. App. 1995) (defendant who has agreed to terms of plea bargain does not have constitutionally protected right to enforce performance of that plea bargain if it is subsequently withdrawn by prosecution; plea bargain is executory contract and does not become operative until plea has been entered and court has announced it will be bound by plea agreement). In adopting this view, the Ninth Circuit Court of Appeals, in *United States v. Savage*, 978 F.2d 1136 (9th Cir. 1992), agreed with the Fifth Circuit's reasoning that:

"the realization of whatever expectations the prosecutor and defendant have as a result of their bargain depends entirely on the approval of the trial court. Surely neither party contemplates any benefit from the agreement unless and until the trial judge approves the bargain and accepts the guilty plea. Neither party is justified in relying substantially on the bargain until the trial court approves it. We are therefore reluctant to bind them to the agreement until that time. As a general rule, then, we think that either party should be entitled to modify its position and even withdraw its consent to the bargain until the plea is tendered and the bargain as it then exists is accepted by the court."

*Savage*, 978 F.2d at 1138 (quoting *United States v. Ocanas*, 628 F.2d 353, 358 (5th Cir. 1980)).

A plea agreement is only an "offer" until the defendant enters a court-approved guilty plea. A defendant accepts the "offer" by pleading guilty. Thus, until formal acceptance of the plea by the court has occurred, the plea binds no one, not the defendant, the State, or the court. *See Harden v. State*, 453 So. 2d 550 (Fla. Dist. Ct. App. 1984) (until formal acceptance of plea has occurred, plea binds no one, not defendant, prosecutor, or court; formal acceptance of plea occurs when trial court affirmatively states to parties, in open court and for the record, court accepts the plea).

### **Detrimental Reliance**

This general rule is subject to a detrimental reliance exception. Absent a plea of guilt, a defendant may only enforce an oral plea agreement upon a showing of detrimental reliance. Even if the agreement has not been finalized by the court, a defendant's detrimental reliance on a prosecutorial promise in plea bargaining could make a plea agreement binding. *United States v. Savage*, 978 F.2d 1136 (9th Cir. 1992). *See also Caldwell v. State*, 295 Ark. 149, 747 S.W.2d 99 (Ark. 1988) (absent showing of

acceptance of plea of guilty based upon agreement and absent showing of other detrimental reliance upon agreement, defendant is not entitled to enforcement of it); *Shields v. State*, 374 A.2d 816 (Del. 1977) (holding State may withdraw from plea bargain agreement at any time prior to, but not after, actual entry of guilty plea by defendant or other action by him constituting detrimental reliance upon agreement); *People v. Boyt*, 109 Ill. 2d 403, 488 N.E.2d 264, 94 Ill. Dec. 438 (Ill. 1985) (due process did not require specific enforcement of plea agreement, as State's refusal to abide by agreement did not deprive defendant of liberty or any other constitutionally protected interest, even if it was assumed State had accepted defendant's plea proposal, where defendant did not plead guilty to any charge in reliance on agreement and defendant was not prejudiced by State's refusal to consummate agreement); *State v. Therriault*, 485 A.2d 986 (Me. 1984) (holding trial court committed no error when it denied defendant's motion for specific performance of plea agreement because defendant had no enforceable right to plead guilty, despite fact that State had made such offer, where defendant never pleaded guilty or in any other way relied on offer to his detriment); *Commonwealth v. Smith*, 384 Mass. 519, 427 N.E.2d 739 (Mass. 1981) (where there is no detrimental reliance and prosecutor's offer to accept plea is withdrawn, defendant is left with adequate remedy of having trial; defendant is in no worse position than he would have been if prosecutor had made no plea bargain offer at all; defendant has no right to insist prosecutor participate in plea bargaining); *State v. Dillon*, 224 Neb. 503, 398 N.W.2d 718, 720 (Neb. 1987) (state may withdraw from plea arrangement at any time prior to, but not after, actual entry of defendant's guilty plea or before defendant's other action constituting detrimental reliance on plea arrangement); *State v. O'Leary*, 128 N.H. 661, 517 A.2d 1174 (N.H. 1986) (prosecution could withdraw from plea agreement where defendant had not yet pleaded guilty or had not taken any steps which prejudiced his right to a fair trial).

A defendant relies upon a solicitor's plea offer by taking some substantial step or accepting serious risk of an adverse result following acceptance of the plea offer. *See State v. Vixamar*, 687 So. 2d 300 (Fla. Dist. Ct. App. 1997). Detrimental reliance may be demonstrated where the defendant performed some part of the bargain. *O'Leary, supra*. For example, a defendant who provides beneficial information to law enforcement can be said to have relied to his detriment. *State v. Crockett*, 110 Nev. 838, 877 P.2d 1077 (Nev. 1994). Reliance may not be shown "by the mere passage of time." *Therriault*, 485 A.2d at 991 n.7. Also, it may not be shown where the defendant stopped preparing his defense, absent a showing of specific prejudice. *Caldwell, supra*. Nor may detrimental reliance be shown by the prospect of a longer sentence. *Cope v. Kentucky*, 645 S.W.2d 703 (Ky. 1983).

*Custodio v. State*, 373 S.C.4, 644 S.E.2d 36 (2007). At the post conviction relief hearing, the inmate testified that two members of the sheriff's department and two assistant solicitors offered him a 15-year cap on the sentence if he would cooperate and return items he had stolen. After the inmate accepted the deal, he showed officers homes

which he had burglarized or attempted to burglarize. After counsel was appointed, he told her about the oral agreement and that he wanted the State of South Carolina to honor the agreement. Defense counsel testified that she met with the assistant solicitors and others who confirmed the agreement, but informed her that the solicitor had decided not to honor the agreement. She also testified that, when the inmate pleaded guilty, she did not believe he had the ability to force the State to honor the plea agreement. On appeal, the court found that the inmate could have enforced the plea agreement because of his detrimental reliance on the agreement. Accordingly, defense counsel was ineffective in failing to have the plea agreement enforced under the detrimental reliance exception, and counsel's defective performance prejudiced the inmate.

**OUTCOME:** The judgment of the post conviction relief court was reversed, and the case was remanded for the specific performance of the plea agreement.

### **WAIVER OF PCR/APPEAL**

*Sanders v. State*, 773 S.E.2d 580, 412 S.C. 611 (2015). A defendant who waives his right to collateral review is still entitled to challenge whether advice he received in agreeing to that waiver was constitutionally defective.

### **COMMUNICATING PLEA OFFERS**

*Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009). The inmate contended that the PCR judge erred in ruling that plea counsel was not ineffective for failing to communicate a 15- year plea offer made by the State. Because he would have accepted the offer, the inmate asserted that he was prejudiced by counsel's deficient performance. The supreme court agreed that counsel was deficient for failing to communicate the State's 15-year plea offer to the inmate. Even if counsel was given the benefit of the doubt that he was not aware of the plea offer until after its expiration, the supreme court found that counsel was deficient in not objecting at the plea hearing. Had counsel done so, he might have been able to convince the solicitor to reinstate the plea offer or persuade the trial court judge to impose a 15-year sentence. The supreme court further concluded that the inmate proved he was prejudiced by counsel's deficient performance given the difference in the sentence received and the plea offer. The supreme court concluded that resentencing, rather than a new trial or specific performance, was the appropriate remedy.

### **SPECIFIC PERFORMANCE**

Remedies for ineffective assistance of counsel "should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing

interests." *Turner v. Tennessee*, 858 F.2d 1201, 1207 (6th Cir. 1988), *cert. denied*, 502 U.S. 1050, 112 S. Ct. 915, 116 L. Ed. 2d 815 (1992) (quoting *United States v. Morrison*, 449 U.S. 361, 364, 101 S. Ct. 665, 66 L. Ed. 2d 564 (1981)) . . . "Indeed, the only way to neutralize the constitutional deprivation suffered by [a defendant] would seem to be to provide [the defendant] with an opportunity to consider the [Commonwealth's initial] plea offer with the effective assistance of counsel." *Turner*, 858 F.2d at 1208.

The United States Supreme Court has expressed that specific performance of a plea agreement is an allowable remedy where one has been denied constitutionally-guaranteed effective assistance of counsel. *Id.* (Citations omitted). On the other hand, specific performance is not warranted where it might unnecessarily infringe on the state's competing interests. *Id.* at 1208-09. In some circumstances, the state may withdraw its original plea proposal, yet, in order to effectively do so the state must show the "withdrawal is free of a reasonable apprehension of vindictiveness." *Id.* at 1208. (Citation omitted).

It has been clearly established that when a criminal defendant successfully achieves relief, either through a direct or collateral attack to the conviction, he "may not be subjected to greater punishment for exercising that right." *Id.* at 1208 (Citing *Blackledge v. Perry*, 417 U.S. 21, 94 S. Ct. 2098, 40 L.Ed.2d 628 (1974)). The rebuttable presumption of vindictiveness is valid where there is a "realistic likelihood" of prosecutorial retaliation. In ascertaining the existence of a realistic likelihood, the "courts should focus on 'the nature of the right asserted' and 'the timing of the prosecutor's action.'" *Turner*, 858 F.2d at 1208 (quoting *United States v. Goodwin*, 457 U.S. 368, 381-82, 102 S. Ct. 2485, 73 L.Ed.2d 74 (1982)).

## **INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS, AND RELATED STATEMENTS RULE 410 SOUTH CAROLINA RULES OF EVIDENCE**

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions :

- (1) a plea of guilty which was later withdrawn;  
-a plea of nolo contendere;
  
- (2) any statement made in the course of any court proceedings regarding either of the foregoing pleas; or

(3) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

## **PRE-TRIAL DISCOVERY**

The purpose of pre-trial discovery is to provide information for informed pleas and expedited trials. Discovery also minimizes surprise and affords the defendant the opportunity for effective cross-examination.

## **TWO WAYS TO RECEIVE DISCOVERY**

Rule 5, South Carolina Rules of Criminal Procedure

*Brady v. Maryland* 373 U.S. 83, 83 S.Ct. 1194 (1963).

A *Brady* violation requires three things :

Evidence must be favorable to the accused because it is exculpatory or impeaching.

Evidence must have been suppressed by the State. Prejudice must have ensued.

*c/c  
to every judge  
TCK*



# The Supreme Court of South Carolina

JEAN HOEFER TOAL  
CHIEF JUSTICE

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## MEMORANDUM

TO: All Solicitors.

FROM: Chief Justice Jean Hofer Toal

RE: Plea Agreements and Discovery

DATE: March 1, 2004

It has come to my attention that solicitors in some circuits are offering plea agreements to defendants on the condition that they forgo discovery. This practice is going to have adverse consequences in the future with claims of ineffective assistance of counsel based on a claim that the plea was not voluntary because the applicant did not have access to the solicitor's file.

Furthermore, I believe it is unethical to premise a plea agreement on the defendant relinquishing the right to discovery in criminal cases. See Rule 3.4, R.I.D.E, Rule 407, SCACR. I ask that any solicitors who are currently pursuing this practice to stop immediately.

On a separate issue, apparently some magistrates are setting bonds a fier *ex parte* meetings with a llegend v ictims. T his i s a lso u nethical and, although I will be communicating directly with the magistrates regarding the issue, I ask for any assistance you might be able to provide if you are aware that this is happening in magistrates courts in your area.

# Sentencing Sheet Cases

*State v. Smalls*, 364 S.C. 343, 613 S.E. 2d 754 (2005)

Signing a sentencing sheet for a charge to which a defendant has pled guilty constitutes a written waiver of presentment.

A signed document that informs a defendant of the charges against him, such as a sentencing sheet, gives rise to a presumed regularity in the proceedings and signifies that the defendant has been notified of the charges to which he has pled guilty.

*Tant v. South Carolina Dept. of Corrections*, 395 S.C. 446, 718 S.E.2d 753 (Ct. App. 2011)

In determining trial court's intent in sentencing the defendant...Department of Corrections (DOC) was limited to considering sentencing sheets, and not transcript of sentencing hearing, where there was no ambiguity in sentencing sheets.

Under ordinary circumstances, the Department of Corrections must determine the sentence imposed by the trial court from the sentencing sheets, but if there is some ambiguity in the sentencing sheets, DOC may examine the transcript of record to determine the intent of the sentencing judge.

*Boan v. State*, 388 S.C. 272, 695 S.E.2d 850 (2010)

This case was distinguished by *Tant v. South Carolina Dept. of Corrections*.

"We ...find a trial's fairness is compromised when a trial judge increases a defendant's sentence outside his presence. Accordingly, in a situation such as the one on appeal, due process requires the judge's oral pronouncement control over a conflicting written sentencing order. Here, the trial judge announced one sentence from the bench in the presence of the defendant, but later increased that sentence in his written order. If trial counsel had made the appropriate motion regarding the sentencing discrepancy, the oral pronouncement would have controlled and Petitioner would have received the twenty-year sentence."

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF \_\_\_\_\_

STATE \_\_\_\_\_

VS.

INDICTMENT/CASE#: \_\_\_\_\_-GS-\_\_\_\_\_-\_\_\_\_\_

AW#: \_\_\_\_\_

Date of Offense: \_\_\_\_\_

S.C. Code §: \_\_\_\_\_

CDR Code #: \_\_\_\_\_

AKA: \_\_\_\_\_

Race: \_\_\_\_\_ Sex: \_\_\_\_\_ Age: \_\_\_\_\_

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL# \_\_\_\_\_ \* SID# \_\_\_\_\_

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: \_\_\_\_\_ of the S.C. Code of Laws, bearing CDR Code # \_\_\_\_\_

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45

(CSC w/minor 1<sup>st</sup> or CSC w/minor 3<sup>rd</sup>)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

Solicitor \_\_\_\_\_ SC Bar # \_\_\_\_\_ Defendant \_\_\_\_\_ Attorney for Defendant \_\_\_\_\_ SC Bar # \_\_\_\_\_

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of \_\_\_\_\_ 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 SCDOC.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered

PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_

Set by SCDPPPS

Obtain GED

Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

\*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 \_\_\_\_\_ \$ \_\_\_\_\_

§56-1-288 (DUI Breath Test) \$25 \_\_\_\_\_ \$ \_\_\_\_\_

Proviso (Public Def/Probation) \$500 \_\_\_\_\_ \$ \_\_\_\_\_

§14-1-212 (Law Enforce. Funding) \$25 \_\_\_\_\_ \$ \_\_\_\_\_

§14-1-213 (Drug Court Surcharge) \$150 \_\_\_\_\_ \$ \_\_\_\_\_

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

§56-5-2942(J) (Vehicle Assessment) \$40/ea \_\_\_\_\_ \$ \_\_\_\_\_

3% to County (if paid in installments) \_\_\_\_\_ \$ \_\_\_\_\_

TOTAL \_\_\_\_\_ \$ \_\_\_\_\_

Clerk of Court/Deputy Clerk \_\_\_\_\_

Court Reporter: \_\_\_\_\_

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

prmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

\$ \_\_\_\_\_ Paid to Public Defender Fund

Other: \_\_\_\_\_

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge \_\_\_\_\_

Judge Code: \_\_\_\_\_

Sentence Date \_\_\_\_\_

SCCA/217 (04/2018)

Date Visited: \_\_\_\_\_  
Trial/Plea

In Since: \_\_\_\_\_  
Days in Jail: \_\_\_\_\_  
Probation/Parole?  
Bond Amt: \$ \_\_\_\_\_

INITIAL CLIENT INTERVIEW

Name: \_\_\_\_\_ Charge(s): \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_  
Other possible aspects of charge(s)

- 
- 
- 
- 

Background Info:

Age:

Education:

Work History:

Residence:

Lives with:

# of children and ages:

Military History:

Physical Health:

Mental Health:

Rx:

Alcohol:

Drugs:

Prior Record (?):

Goals/Lessons Learned/Future Plan:

Other Redeeming Factors/Notes About Client:

What Happened?



STATE OF SOUTH CAROLINA )  
 COUNTY OF \_\_\_\_\_ )  
 STATE \_\_\_\_\_ )  
 VS. \_\_\_\_\_ )  
 AKA: \_\_\_\_\_ )  
 Race: \_\_\_\_\_ Sex: \_\_\_\_\_ Age: \_\_\_\_\_ )  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_ )  
 Address: \_\_\_\_\_ )  
 City, State, Zip: \_\_\_\_\_ )  
 DLA \_\_\_\_\_ SID# \_\_\_\_\_ )  
 \*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT/CASE#: \_\_\_\_\_-GS-\_\_\_\_\_  
 A/W#: \_\_\_\_\_  
 Date of Offense: \_\_\_\_\_  
 S.C. Code §: \_\_\_\_\_  
 CDR Code #: \_\_\_\_\_

SENTENCE SHEET  
 CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was  
 TO: \_\_\_\_\_  
 In violation of § \_\_\_\_\_ of the S.C. Code of Laws, bearing CDR Code # \_\_\_\_\_  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS §17-25-45  
 (CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury, (def.'s initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTESST: \_\_\_\_\_  
 Solicitor SC Bar # \_\_\_\_\_ Defendant \_\_\_\_\_ Attorney for Defendant SC Bar # \_\_\_\_\_

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
 for a determinate term of \_\_\_\_\_ 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  
 month/year 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.  
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.  
 Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:  
 RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_ days/hours Public Service Employment  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_ Obtain GED   
 Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_  
 Recipient: \_\_\_\_\_ May serve W/E beginning  
 Substance Abuse Counseling   
 \*Fine: \_\_\_\_\_ \$ \_\_\_\_\_ Random Drug/Alcohol Testing   
 \$14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_ Fine may be pd. in equal consecutive weekly/monthly  
 \$14-1-211 (A1)(Conv. Surcharge) \$100 \$ \_\_\_\_\_ pmts. of \$ \_\_\_\_\_ beginning  
 \$14-1-211 (A2)(DUI Surcharge) \$100 \$ \_\_\_\_\_ Paid to Public Defender Fund  
 \$56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
 \$56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_  
 Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_  
 \$14-1-212 (Law Enforce. Funding) \$25 \$ \_\_\_\_\_  
 \$14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_  
 \$50-21-114 (BUJ Breath Test Fee) \$50 \$ \_\_\_\_\_  
 \$56-5-2942(L) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ \_\_\_\_\_  
 3% to County (if paid in installments) \$ \_\_\_\_\_  
 TOTAL \$ \_\_\_\_\_  
 Appointed PD or appointed other counsel,  
 \$47.12 requires \$500 be paid to Clerk  
 during probation.  
 Presiding Judge \_\_\_\_\_  
 Judge Code: \_\_\_\_\_  
 Sentence Date \_\_\_\_\_

Clerk of Court/Deputy Clerk \_\_\_\_\_  
 Court Reporter: \_\_\_\_\_  
 SCCA217 (03/2011)

STATE OF SOUTH CAROLINA )  
 COUNTY OF \_\_\_\_\_ )  
 STATE \_\_\_\_\_ )  
 VS. \_\_\_\_\_ )  
 AKA: \_\_\_\_\_ )  
 Race: \_\_\_\_\_ Sex: \_\_\_\_\_ Age: \_\_\_\_\_ )  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_ )  
 Address: \_\_\_\_\_ )  
 City, State, Zip: \_\_\_\_\_ )  
 DLA \_\_\_\_\_ SID# \_\_\_\_\_ )  
 \*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT/CASE#: \_\_\_\_\_-GS-\_\_\_\_\_  
 A/W#: \_\_\_\_\_  
 Date of Offense: \_\_\_\_\_  
 S.C. Code §: \_\_\_\_\_  
 CDR Code #: \_\_\_\_\_

SENTENCE SHEET  
 CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was  
 TO: \_\_\_\_\_  
 In violation of § \_\_\_\_\_ of the S.C. Code of Laws, bearing CDR Code # \_\_\_\_\_  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS §17-25-45  
 (CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury, (def.'s initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTESST: \_\_\_\_\_  
 Solicitor SC Bar # \_\_\_\_\_ Defendant \_\_\_\_\_ Attorney for Defendant SC Bar # \_\_\_\_\_

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
 for a determinate term of \_\_\_\_\_ 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  
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 Department of Corrections.  
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.  
 Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:  
 RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_ days/hours Public Service Employment  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_ Obtain GED   
 Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_  
 Recipient: \_\_\_\_\_ May serve W/E beginning  
 Substance Abuse Counseling   
 \*Fine: \_\_\_\_\_ \$ \_\_\_\_\_ Random Drug/Alcohol Testing   
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 \$47.12 requires \$500 be paid to Clerk  
 during probation.  
 Presiding Judge \_\_\_\_\_  
 Judge Code: \_\_\_\_\_  
 Sentence Date \_\_\_\_\_

Clerk of Court/Deputy Clerk \_\_\_\_\_  
 Court Reporter: \_\_\_\_\_  
 SCCA217 (03/2011)

STATE OF SOUTH CAROLINA )  
 COUNTY OF )  
 STATE )  
 VS. )  
 AKA: )  
 Race: ) Sex: ) Age: )  
 DOB: ) SS#: )  
 Address: )  
 City, State, Zip: )  
 DL# ) SID# )  
 \*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT/CASE#: -GS-  
 A/W#: \_\_\_\_\_  
 Date of Offense: \_\_\_\_\_  
 S.C. Code §: \_\_\_\_\_  
 CDR Code #: \_\_\_\_\_

SENTENCE SHEET  
 CONVICTED OF or  PLEADS

In violation of § \_\_\_\_\_ of the S.C. Code of Laws, bearing CDR Code # \_\_\_\_\_  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
 (CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury (def.'s initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTESST: \_\_\_\_\_  
 Solicitor SC Bar # \_\_\_\_\_ Defendant Attorney for Defendant SC Bar # \_\_\_\_\_

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of \_\_\_\_\_ 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.  
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 Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:  
 RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_ days/hours Public Service Employment  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Obtain GED   
 Payment Terms: \_\_\_\_\_  
 Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_  
 Set by SCDPPPS  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling   
 Recipient: \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
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 \*Fine: \_\_\_\_\_ \$ \_\_\_\_\_  
 \$14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_  
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 TOTAL \$ \_\_\_\_\_  
 Clerk of Court/Deputy Clerk \_\_\_\_\_  
 Court Reporter: \_\_\_\_\_

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA )  
 COUNTY OF )  
 STATE )  
 VS. )  
 AKA: )  
 Race: ) Sex: ) Age: )  
 DOB: ) SS#: )  
 Address: )  
 City, State, Zip: )  
 DL# ) SID# )  
 \*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT/CASE#: -GS-  
 A/W#: \_\_\_\_\_  
 Date of Offense: \_\_\_\_\_  
 S.C. Code §: \_\_\_\_\_  
 CDR Code #: \_\_\_\_\_

SENTENCE SHEET  
 CONVICTED OF or  PLEADS

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ATTESST: \_\_\_\_\_  
 Solicitor SC Bar # \_\_\_\_\_ Defendant Attorney for Defendant SC Bar # \_\_\_\_\_

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of \_\_\_\_\_ 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.  
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SPECIAL CONDITIONS:  
 RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_ days/hours Public Service Employment  
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SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA )  
 COUNTY OF \_\_\_\_\_ )  
 STATE \_\_\_\_\_ )  
 VS. \_\_\_\_\_ )  
 AKA: \_\_\_\_\_ )  
 Race: \_\_\_\_\_ Sex: \_\_\_\_\_ Age: \_\_\_\_\_ )  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_ )  
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IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT/CASE#: \_\_\_\_\_-GS-\_\_\_\_\_  
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 Date of Offense: \_\_\_\_\_  
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SENTENCE SHEET  
 CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was TO:  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  \$17-25-45  
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ATTEST: \_\_\_\_\_  
 Solicitor SC Bar # \_\_\_\_\_ Defendant Attorney for Defendant SC Bar # \_\_\_\_\_

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of \_\_\_\_\_ 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.

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 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:  
 RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment  
 Payment Terms: Obtain GED   
 Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_  
 Recipient: May serve W/E beginning Substance Abuse Counseling   
 \*Fine: \_\_\_\_\_ \$ \_\_\_\_\_ Random Drug/Alcohol Testing   
 \$14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_ Fine may be pd. in equal consecutive weekly/monthly  
 \$14-1-211 (A1)(Conv. Surcharge) \$100 \$ \_\_\_\_\_ pmts. of \$ \_\_\_\_\_ Beginning  
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 3% to County (if paid in installments) \$ \_\_\_\_\_  
 TOTAL \$ \_\_\_\_\_  
 Clerk of Court/Deputy Clerk \_\_\_\_\_ Presiding Judge \_\_\_\_\_  
 Court Reporter: \_\_\_\_\_ Judge Code \_\_\_\_\_  
 Sentence Date \_\_\_\_\_

SCCA217 (03/2011)

STATE OF SOUTH CAROLINA )  
 COUNTY OF \_\_\_\_\_ )  
 STATE \_\_\_\_\_ )  
 VS. \_\_\_\_\_ )  
 AKA: \_\_\_\_\_ )  
 Race: \_\_\_\_\_ Sex: \_\_\_\_\_ Age: \_\_\_\_\_ )  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_ )  
 Address: \_\_\_\_\_ )  
 City, State, Zip: \_\_\_\_\_ )  
 DL# \_\_\_\_\_ SID# \_\_\_\_\_ )  
 \*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT/CASE#: \_\_\_\_\_-GS-\_\_\_\_\_  
 A/W#: \_\_\_\_\_  
 Date of Offense: \_\_\_\_\_  
 S.C. Code §: \_\_\_\_\_  
 CDR Code #: \_\_\_\_\_

SENTENCE SHEET  
 CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was TO:  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  \$17-25-45  
 (CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury, (def.'s initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: \_\_\_\_\_  
 Solicitor SC Bar # \_\_\_\_\_ Defendant Attorney for Defendant SC Bar # \_\_\_\_\_

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of \_\_\_\_\_ 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.

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 Clerk of Court/Deputy Clerk \_\_\_\_\_ Presiding Judge \_\_\_\_\_  
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SCCA217 (03/2011)

STATE OF SOUTH CAROLINA )  
 COUNTY OF )  
 STATE )  
 VS. )  
 AKA: )  
 Race: Sex: Age: )  
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IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT/CASE#: -GS-  
 A/W#: \_\_\_\_\_  
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**TOTAL** \$ \_\_\_\_\_  
 Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.  
 Clerk of Court/Deputy Clerk \_\_\_\_\_ Presiding Judge \_\_\_\_\_  
 Court Reporter: \_\_\_\_\_ Judge Code: \_\_\_\_\_  
 Sentence Date: \_\_\_\_\_

SCCA217 (03/2011)

STATE OF SOUTH CAROLINA )  
 COUNTY OF )  
 STATE )  
 VS. )  
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 Race: Sex: Age: )  
 DOB: SS#: )  
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 City, State, Zip: )  
 DL# )  
 \*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT/CASE#: -GS-  
 A/W#: \_\_\_\_\_  
 Date of Offense: \_\_\_\_\_  
 S.C. Code §: \_\_\_\_\_  
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SCCA217 (03/2011)

**STATE OF SOUTH CAROLINA** )  
**IN THE COURT OF GENERAL SESSIONS** )  
COUNTY OF \_\_\_\_\_ )  
STATE \_\_\_\_\_ )  
VS. \_\_\_\_\_ )  
INDICTMENT/CASE#: \_\_\_\_\_-GS-\_\_\_\_\_- )  
AKA: \_\_\_\_\_ )  
Date of Offense: \_\_\_\_\_ )  
Race: \_\_\_\_\_ Sex: \_\_\_\_\_ Age: \_\_\_\_\_ )  
S.C. Code §: \_\_\_\_\_ )  
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DUI \* SID# \_\_\_\_\_ )  
\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No  )  
In disposition of the said indictment comes now the Defendant who was )  
TO: \_\_\_\_\_ )  
 CONVICTED OF or  PLEADS )  
In violation of § \_\_\_\_\_ of the S.C. Code of Laws, bearing CDR Code # \_\_\_\_\_ )  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45 )  
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ATTEST: \_\_\_\_\_ )  
Solicitor SC Bar # \_\_\_\_\_ Defendant Attorney for Defendant SC Bar # \_\_\_\_\_ )  
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for a determinate term of \_\_\_\_\_ 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 )  
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Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal )  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition. )  
**SPECIAL CONDITIONS:** )  
 RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  PTUP \_\_\_\_\_ )  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment )  
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SCCA217 (03/2011)

# SENTENCE SHEET CASES

*State v. Smalls*  
364 S.C. 343, 613 S.E. 2d 754 (2005)

Signing a sentencing sheet for a charge to which a defendant has pled guilty constitutes a written waiver of presentment.

A signed document that informs a defendant of the charges against him, such as a sentencing sheet, gives rise to a presumed regularity in the proceedings and signifies that the defendant has been notified of the charges to which he has pled guilty.

*Tant v. South Carolina Dept. of Corrections*  
408 S.C. 334, 759 S.E.2d 398 (2014)

- When the Department of Corrections decides its original recordation of a sentence was erroneous, it must afford the inmate formal notice of the amended sentence and advise him of his opportunity to be heard through the grievance procedure.
- Department of Corrections is generally confined to the face of the sentencing sheets in determining the length of a sentence, but may refer to the sentencing transcript if there is an ambiguity in the sentencing sheets.
- Although the intent of the judge is controlling in determining whether sentences run concurrently or consecutively, ambiguity or doubts relative to a sentence should be resolved in favor of the accused.

*Boan v. State*  
388 S.C. 272, 695 S.E.2d 850 (2010)

- This case was distinguished by *Tant v. South Carolina Dept. of Corrections*.
- "We ...find a trial's fairness is compromised when a trial judge increases a defendant's sentence outside his presence. Accordingly, in a situation such as the one on appeal, due process requires the judge's oral pronouncement control over a conflicting written sentencing order. Here, the trial judge announced one sentence from the bench in the presence of the defendant, but later increased that sentence in his written order. If trial counsel had made the appropriate motion regarding the sentencing discrepancy, the oral pronouncement would have controlled and Petitioner would have received the twenty-year sentence."

**PLEA AGREEMENTS**

It is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced ." *State v. Armstrong*, 263 S.C. 594, 597, 211 S.E.2d 889, 890 (1975).

However, a defendant has no constitutional right to plea bargain. *State v. Easler*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *aff'd as modified*, 327 S.C. 121, 489 S.E.2d 617 (1997). Furthermore, a trial judge is not required to accept a plea. *Id.* See also *Santobello v. New York*, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971) (defendant has no absolute right to have guilty plea accepted; court may reject plea in exercise of sound judicial discretion).


  
 The Supreme Court of South Carolina

JEAN HOEFER TOAL  
 CHIEF JUSTICE

POST OFFICE BOX 10866  
 COLUMBIA, SOUTH CAROLINA 29211  
 TELEPHONE: (803) 735-1844  
 FAX: (803) 735-1781  
 EMAIL: JTOAL@SCSOUTH.COURTS.GOV

MEMORANDUM

TO: All Solicitors  
 FROM: Chief Justice Jean Hoefler Toal  
 RE: Plea Agreements and Discovery  
 DATE: March 1, 2004

On a separate issue, apparently some magistrates are setting bonds a fier *ex parte* meetings with alleged victims. This is also unethical and, although I will be communicating directly with the magistrates regarding the issue, I ask for any assistance you might be able to provide if you are aware that this is happening in magistrates courts in your area.

Furthermore, I believe it is unethical to promise a plea agreement on the defendant relinquishing the right to discovery in criminal cases. See Rule 3.4, R.I.D.E. Rule 407, SCACR. I ask that any solicitors who are currently pursuing this practice to stop immediately.

It has come to my attention that solicitors in some circuits are offering plea agreements to defendants on the condition that they forgo discovery. This practice is going to have adverse consequences in the future with claims of ineffective assistance of counsel based on a claim that the plea was not voluntary because the applicant did not have access to the solicitor's file.

*Handwritten notes:* c/o, the way they TCK

# **ENFORCING PLEA** **AGREEMENTS** **CONTRACT PRINCIPLES**

While plea agreements are a matter of criminal jurisprudence, most courts have held they are subject to contract principles. *See United States v. Ringling*, 988 F.2d 504 (4th Cir. 1993); *State v. Crockett*, 110 Nev. 838, 877 P.2d 1077 (Nev. 1994). Applying general contract principles, the First Circuit Court of Appeals, in *United States v. Papaleo*, 853 F.2d 16 (1st Cir. 1988), held a plea agreement is nothing more than an offer until it is approved by the court.

This general rule is subject to a detrimental reliance exception. Absent a plea of guilt, a defendant may only enforce an oral plea agreement upon a showing of detrimental reliance. Even if the agreement has not been finalized by the court, a defendant's detrimental reliance on a prosecutorial promise in plea bargaining could make a plea agreement binding. *United States v. Savage*, 978 F.2d 1136 (9th Cir. 1992). See also *Caldwell v. State*, 295 Ark. 149, 747 S.W.2d 99 (Ark. 1988) (absent showing of acceptance of plea of guilty based upon agreement and absent showing of other detrimental reliance upon agreement, defendant is not entitled to enforcement of it); *Shields v. State*, 374 A.2d 816 (Del. 1977) (holding State may withdraw from plea bargain agreement at any time prior to, but not after, actual entry of guilty plea by defendant or other action by him constituting detrimental reliance upon agreement)

## **COMMUNICATING PLEA OFFERS**

*Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009). The inmate contended that the PCR judge erred in ruling that plea counsel was not ineffective for failing to communicate a 15- year plea offer made by the State. Because he would have accepted the offer, the inmate asserted that he was prejudiced by counsel's deficient performance. The supreme court agreed that counsel was deficient for failing to communicate the State's 15-year plea offer to the inmate. Even if counsel was given the benefit of the doubt that he was not aware of the plea offer until after its expiration, the supreme court found that counsel was deficient in not objecting at the plea hearing. Had counsel done so, he might have been able to convince the solicitor to reinstate the plea offer or persuade the trial court judge to impose a 15-year sentence. The supreme court further concluded that the inmate proved he was prejudiced by counsel's deficient performance given the difference in the sentence received and the plea offer. The supreme court concluded that resentencing, rather than a new trial or specific performance, was the appropriate remedy.

## **PLEA NEGOTIATIONS**

# Know Your Case

Facts aka strengths/weakness

Good initial offer

# Know Yourself

What is your style

Fly/honey/vinegar/fly swatter

Don't be something your not

Be competent and hard working

Must be willing to try case.

# Know Your Solicitor

Will they try a case

Do they give multiple plea offers

What are their pet peaves

Can you make it easy on the solicitors

Give them reasons to want to help your client

Working/counseling/rehab/family

Weak case

Client on right path

Won't happen again

Client takes responsibility

They don't want to lose/it is embarrassing/power of the state

<p>_____  <b>WITNESSES</b>  Lexington County Sheriffs Department  Stephen J. Gamble  Law Enforcement Case #: 13009711</p> <p>_____  <b>ARREST WARRANT NUMBER</b>  2013A3210201731</p> <p>_____  <b>ACTION OF GRAND JURY</b>  <b>TRUE BILL</b>  <i>[Signature]</i>  Foreperson of Grand Jury  Date: 4/13/14</p> <p>_____  <b>VERDICT</b>  _____  _____  _____  Foreperson of Petit Jury  Date:</p>	<p><b>DOCKET NO. 2013GS3203462</b></p> <p><b>The State of South Carolina</b>  <b>County of Lexington</b></p> <p>_____  <b>COURT OF GENERAL SESSIONS</b>  <b>DECEMBER TERM 2013</b></p> <p>_____  <b>THE STATE</b>  <b>vs.</b>  Robert M. Madsen</p> <p>_____  <b>CDR #: 0120</b></p> <p>_____  <b>Indictment for</b>  PEEPING TOM  § 16-17-0470(A)</p> <p>_____  <b>DONALD V. MYERS, SOLICITOR</b></p>	<p>I hereby waive presentment of this indictment to the Lexington Grand Jury.</p> <p>_____  Defendant</p> <p>_____  Witness</p>
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**Know Your Client**

Date Visited: _____	In Since: _____
Trial/Plea _____	Days in Jail: _____
	Probation/Parole? _____
	Bond Amt: \$ _____

INITIAL CLIENT INTERVIEW

Name: \_\_\_\_\_ Charge(s): \_\_\_\_\_

\_\_\_\_\_  
 Other possible aspects of charge(s)  
 -  
 -  
 -

Background Info:  
 Age:  
 Education:  
 Work History:

Residence:  
 Lives with:  
 # of children and ages:  
 Military History:  
 Physical Health:  
 Mental Health:  
 Rx:  
 Alcohol:  
 Drugs:  
 Prior Record (?):

Goals/Lessons Learned/Future Plan:

Other Redeeming Factors/Notes About Client:

What Happened?

## Personal History

Military

Mental health

Work history

Prior trauma

Something unusual or interesting

What is their reason for conduct?

Use their reason as mitigation.

Avoid clichés!

# Control your Client

Don't force them to do anything  
Don't talk down to them  
Drill into them always respectful to the  
Court/Solicitors-more willing to help  
Yes sir/no sir-if don't call them on it.

# Know Your Judge

Prepare for particular judge

“A good lawyer knows the law. A great lawyer knows the judge.”

# Tips

Get officer/victim on board

Gift wrap it to Solicitors

Professional begger

Don't draw line in sand

Sometimes a trial is a long slow guilty plea that helps your client

Lying victim

Trial will not be an enjoyable experience for them

Fight tooth and nail

Will come out worse than if went to trial



**South Carolina Bar**

Continuing Legal Education Division

## Discovery, Pre-Trial and Trial Motions

*Shaun Kent*

# CRIMINAL LAW PRACTICE ESSENTIALS

Discovery, Pretrial and Trial Motions  
Presented by Shaun C. Kent

*Material Prepared by S. Harrison Saunders, VI*

1

## Rule 4. Motions in General

- Rule 4, SCRCrimP
- RULE 4. MOTIONS IN GENERAL
- Currentness
- **(a) Form of Motions.** An application to the court for an order shall be by motion which, **unless made during a hearing or trial in open court with a court reporter present, shall be made in writing**, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.
- **(b) Subsequent Applications for Order After Refusal.** If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, **no subsequent motion** upon the same set of facts shall be made to any other judge in that action. If upon such subsequent motion any order be made, **it shall be void.**

2

## Rule 4. Motions in General

- Writing if not in trial or in open court
- No subsequent motion or void

3

## Rule 5. Disclosure in Criminal Cases- *Disclosure of Evidence by the Prosecution.*

- **(a) Disclosure of Evidence by the Prosecution.**
- (1) *Information Subject to Disclosure.*
- (A) Statement of Defendant. Upon request by a defendant, the prosecution shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a prosecution agent.

4

## Rule 5. Disclosure in Criminal Cases- *Disclosure of Evidence by the Prosecution.*

- (B) Defendant's Prior Record. Upon request of the defendant, the prosecution shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

5

## Rule 5. Disclosure in Criminal Cases- *Disclosure of Evidence by the Prosecution.*

- (C) Documents and Tangible Objects. Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

6

## Rule 5. Disclosure in Criminal Cases- *Disclosure of Evidence by the Prosecution.*

- (D) Reports of Examinations and Tests. Upon request of a defendant the prosecution shall permit the defendant to inspect and copy any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

7

## Rule 5. Disclosure in Criminal Cases- *Disclosure of Evidence by the Prosecution.*

- (2) *Information Not Subject to Disclosure.* Except as provided in paragraphs (A), (B), and (D) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal prosecution documents made by the attorney for the prosecution or other prosecution agents in connection with the investigation or prosecution of the case, or of statements made by prosecution witnesses or prospective prosecution witnesses provided that after a prosecution witness has testified on direct examination, the court shall, on motion of the defendant, order the prosecution to produce any statement of the witness in the possession of the prosecution which relates to the subject matter as to which the witness has testified; and provided further that the court may upon a sufficient showing require the production of any statement of any prospective witness prior to the time such witness testifies.

8

## Rule 5. Disclosure in Criminal Cases- *Disclosure of Evidence by the Prosecution.*

- (3) *Time for Disclosure.* The prosecution shall respond to the defendant's request for disclosure no later than thirty (30) days after the request is made, or within such other time as may be ordered by the court.

9

## Rule 5. Disclosure in Criminal Cases *Disclosure of Evidence by the Defendant.*

- (1) *Information Subject to Disclosure.*
- (A) Documents and Tangible Objects. If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the prosecution, the defendant, on request of the prosecution, shall permit the prosecution to inspect and copy books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

10

## Rule 5. Disclosure in Criminal Cases

### *Disclosure of Evidence by the Defendant.*

- (1) *Information Subject to Disclosure.*
- (B) Reports of Examinations and Tests. If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the prosecution, the defendant, on request of the prosecution, shall permit the prosecution to inspect and copy any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at trial when the results or reports relate to his testimony.

11

## Rule 5. Disclosure in Criminal Cases

### *Disclosure of Evidence by the Defendant.*

- (2) *Information Not Subject to Disclosure.* Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by prosecution or defense witnesses, or by prospective prosecution or defense witnesses, to the defendant, his agents or attorneys.

12

## Rule 5. Disclosure in Criminal Cases

### *Continuing Duty to Disclose*

- **(c) Continuing Duty to Disclose.** If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material.

13

## Rule 5. Disclosure in Criminal Cases

### *Regulation of Discovery*

- **(d) Regulation of Discovery.**
- **(1) Protective and Modifying Orders.** Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an *ex parte* showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

14

## Rule 5. Disclosure in Criminal Cases

### *Regulation of Discovery*

- **(d) Regulation of Discovery.**
- (2) *Failure to Comply With a Request.* If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

15

## Rule 5. Disclosure in Criminal Cases

### *Notice of Alibi*

- (1) *Notice of Alibi by Defendant.* Upon written request of the prosecution stating the time, date and place at which the alleged offense occurred, the defendant shall serve within ten days, or at such time as the court may direct, upon the prosecution a written notice of his intention to offer an alibi defense. The notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

16

## Rule 5. Disclosure in Criminal Cases

### *Notice of Alibi*

- (2) *Disclosure by Prosecution.* Within ten days after defendant serves his notice, but in no event less than ten days before trial, or as the court may otherwise direct, the prosecution shall serve upon the defendant or his attorney the names and addresses of witnesses upon whom the State intends to rely to establish defendant's presence at the scene of the alleged crime.

17

## Rule 5. Disclosure in Criminal Cases

### *Notice of Alibi*

- (3) *Continuing Duty to Disclose.* Both parties shall be under a continuing duty to promptly disclose the names and addresses of additional witnesses whose identity, if known, should have been included in the information furnished under subdivisions (1) or (2).

18

## Rule 5. Disclosure in Criminal Cases

### *Notice of Alibi*

- (4) *Failure to Disclose.* If either party fails to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by either party. Nothing in this rule shall limit the right of the defendant to testify on his own behalf.

19

## Rule 5. Disclosure in Criminal Cases

### *Notice of Insanity Defense or Plea of Guilty but Mentally Ill*

- **(f) Notice of Insanity Defense or Plea of Guilty but Mentally Ill.**  
Upon written request of the prosecution, the defendant shall within ten days or at such time as the court may direct, notify the prosecution in writing of the defendant's intention to rely upon the defense of insanity at the time of the crime or to enter a plea of guilty but mentally ill. If the defendant fails to comply with the requirements of the subdivision, the court may exclude the testimony of any expert witness offered by the defendant on the issue of his mental state. The court may, for good cause shown, allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as is appropriate.

20

## Rule 5. Disclosure in Criminal Cases

### *Waiver*

- **(g) Waiver.** The court may, for good cause shown, waive the requirements of this rule.

21

## Rule 5 *Examples*

- Handout 1- Motion for Discovery
- Handout 2- *Brady* information, based on case law
- Handout 3- Prosecution's Reciprocal Rule 5
- Handout 4- Detailed Rule 5 and *Brady* Motion

22

RULE 6. RULE FOR CHEMICAL ANALYSIS AND  
CHAIN OF CUSTODY *Report of Chemical Analysis*

- **(a) Report of Chemical Analysis.** For the purpose of establishing the physical evidence of a controlled substance or other substance regulated by Title 44, Chapter 53 of the Code of Laws or Rule 61-4 of the Department of Health and Environmental Control, a report signed by the chemist or analyst who performed the test or tests required concerning its nature shall be evidence that the material delivered to him or her was properly tested under procedures approved by the State Law Enforcement Division (SLED), that those procedures are legally reliable and that the material is or contains the substance or substances stated. The report shall be admitted without the necessity of the chemist or analyst personally being present or appearing in court provided:

23

RULE 6. RULE FOR CHEMICAL ANALYSIS AND  
CHAIN OF CUSTODY *Report of Chemical Analysis*

- (1) the report, at a minimum, identifies each item tested, the kind of test or tests conducted on each item, and the chemist's or analyst's conclusion whether the item is or contains a controlled or other regulated substance (to include weight or quantity, if appropriate) in language which can be understood by a juror without the necessity for expert testimony; and,

24

## RULE 6. RULE FOR CHEMICAL ANALYSIS AND CHAIN OF CUSTODY *Report of Chemical Analysis*

- (2) the report is accompanied by an affidavit of the chemist or analyst who performed the test or tests that:
  - (A) he or she is certified by SLED as qualified under standards approved by SLED to analyze those substances;
  - (B) sets forth his or her training and experience as a chemist or analyst, to include the number of times he or she has been qualified as an expert witness and testified in court; and,

25

## RULE 6. RULE FOR CHEMICAL ANALYSIS AND CHAIN OF CUSTODY *Report of Chemical Analysis*

- (2) the report is accompanied by an affidavit of the chemist or analyst who performed the test or tests that:
  - (C) he or she conducted the test or tests shown on the report using procedures approved by SLED and that the report accurately reflects his or her opinion regarding the results of those tests.
- The defendant or opposing party may object to the introduction of a chemist's or analyst's report at a preliminary hearing, or if no preliminary hearing is held, not later than ten (10) days prior to the trial of the case. If such objection is properly made, the trial judge shall require the chemist or analyst to be present at trial for the purpose of personally testifying.

26

RULE 6. RULE FOR CHEMICAL ANALYSIS AND  
CHAIN OF CUSTODY *Certified or Sworn Statement*

- **(b) Certified or Sworn Statement.** For the purpose of establishing a chain of physical custody or control of evidence entered under Part A of this Rule, a certified or sworn statement signed by each successive person having custody of the evidence that he or she delivered it to the person stated is evidence that the person had custody and made delivery as stated without the necessity of the person who signed the statement being present in court provided: (1) the statement contains a sufficient description of the substance or its container to distinguish it; and (2) the statement says the substance was delivered in substantially the same condition as when received.
- The defendant or his attorney may demand appearance in court of the persons within the chain of custody in the same manner as provided in Section (a).

27

RULE 6. RULE FOR CHEMICAL ANALYSIS AND  
CHAIN OF CUSTODY *Disclosure*

- **(c) Disclosure.** In a criminal prosecution any reports or papers mentioned in Sections (a) or (b) shall be made available to the defendant or his attorney at the preliminary hearing or if no hearing is held, not later than eleven (11) days prior to the trial of the case.

28

RULE 6. RULE FOR CHEMICAL ANALYSIS AND  
CHAIN OF CUSTODY *Waiver of Rights*

- **(d) Waiver of Rights.** Nothing in this Rule shall preclude the right of any defendant to obtain an expert chemist or analyst to test a substance in his behalf, provided it is tested under the supervision of the authority having custody of the substance or of SLED. Nothing in this Rule shall preclude the right of any party to introduce any evidence supporting or contradicting reports or papers entered into evidence under this Rule.

29

RULE 6. RULE FOR CHEMICAL ANALYSIS AND  
CHAIN OF CUSTODY *Example*

- Notice of Motion and Motion as to Testimony of Chemist and Chain of Custody

30

S.C. CONST Art. I, § 9

§ 9. Courts; speedy remedy.

- All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained. (1970 (56) 2684; 1971 (57) 315.)

31

S.C. CONST Art. I, § 14

§ 14. Trial by jury; witnesses; defense.

- The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both. (1970 (56) 2684; 1971 (57) 315.)

32

## State v. Langford, 735 S.E.2d 471 (2012) Speedy Trial, etc.

- The main goals of the speedy trial right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused's defense. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.
- Delay is not an uncommon defense tactic and deprivation of the right to a speedy trial does not per se prejudice the accused's ability to defend himself. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

33

## State v. Langford (con't)

- Factors considered in the speedy trial analysis include the length of the delay, the reason for it, the defendant's assertion of his right to a speedy trial, and any prejudice he suffered; the factors are all related and must be considered along with such other circumstances as may be relevant. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

34

## State v. Langford (con't)

- If a court concludes that the speedy trial right has been violated, dismissal of the charges is the only possible remedy. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

35

## State v. Langford (con't)

- Neutral reasons for a delay in prosecution, which could include overcrowded dockets or negligence, though weighted less heavily against the State for speedy trial purposes, still count against the State because it bears the ultimate responsibility for these circumstances.

36

## State v. Hunsberger, 794 S.E.2d 368 (2016)

- ten-year delay between arrest and trial weighed heavily against State in speedy trial analysis;
- reasons for delay weighed heavily against State;
- defendant's assertion of speedy trial right was neutral factor; and
- Defendant was prejudiced and his speedy trial right was violated.

37

## Competency to Stand Trial

- § 44-23-410. Determining fitness to stand trial; time for conducting examination; extension; independent examination; competency distinguished.

38

## 44-23-410(A)

- (A) Whenever a judge of the circuit court or family court has reason to believe that a person on trial before him, charged with the commission of a criminal offense or civil contempt, is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the judge shall:

39

## 44-23-210(A)(1)

- order examination of the person by two examiners designated by the Department of Mental Health if the person is suspected of having a mental illness or designated by the Department of Disabilities and Special Needs if the person is suspected of having intellectual disability or having a related disability or by both sets of examiners if the person is suspected of having both mental illness and intellectual disability or a related disability. The examination must be made within thirty days after the receipt of the court's order and may be conducted in any suitable place unless otherwise designated by the court; or

40

#### 44-23-210(A)(2)

- order the person committed for examination and observation to an appropriate facility of the Department of Mental Health or the Department of Disabilities and Special Needs for a period not to exceed fifteen days.

41

#### 44-23-410(B)

- Before the expiration of the examination period or the examination and observation period, the Department of Mental Health or the Department of Disabilities and Special Needs, as appropriate, may apply to a judge designated by the Chief Justice of the South Carolina Supreme Court for an extension of time up to fifteen days to complete the examination or the examination and observation.

42

### 44-23-410(C)

- If the person or the person's counsel requests, the court may authorize the person to be examined additionally by a designated examiner of the person's choice. However, the court may prescribe the time and conditions under which the independent examination is conducted.

43

### 44-23-410(D)

- If the examiners designated by the Department of Mental Health find indications of intellectual disability or a related disability but not mental illness, the department shall not render an evaluation on the person's mental capacity, but shall inform the court that the person is “not mentally ill” and recommend that the person should be evaluated for competency to stand trial by the Department of Disabilities and Special Needs.

44

## 44-23-410(D) (con't)

- If the examiners designated by the Department of Disabilities and Special Needs find indications of mental illness but not intellectual disability or a related disability, the department shall not render an evaluation on the person's mental capacity, but shall inform the court that the person does “not have intellectual disability or a related disability” and recommend that the person should be evaluated for competency to stand trial by the Department of Mental Health.

45

## 44-23-410(D) (con't)

- If either the Department of Mental Health or the Department of Disabilities and Special Needs finds a preliminary indication of a dual diagnosis of mental illness and intellectual disability or a related disability, this preliminary finding must be reported to the court with the recommendation that one examiner from the Department of Mental Health and one examiner from the Department of Disabilities and Special Needs be designated to further evaluate the person and render a final report on the person's mental capacity.

46

## § 44-23-420. Designated examiners' report.

- (A) Within ten days of examination under Section 44-23-410(A)(1) or at the conclusion of the observation period under Section 44-23-410(A)(2), the designated examiners shall make a written report to the court which shall include:
  - (1) a diagnosis of the person's mental condition; and
  - (2) clinical findings bearing on the issues of whether or not the person is capable of understanding the proceedings against him and assisting in his own defense, and if there is a substantial probability that he will attain that capacity in the foreseeable future.

47

## 44-23-420(B)

- (B) The report of the designated examiners shall not contain any findings nor shall the examiners testify on the question of insanity should it be raised as a defense unless further examination on the question of insanity is ordered by the court.

48

## 44-23-420(C)

- (C)The report is admissible as evidence in subsequent hearings pursuant to Section 44-23-430.

49

## § 44-23-430. Hearing on fitness to stand trial; effect of outcome.

- Upon receiving the report of the designated examiners, the court shall set a date for and notify the person and his counsel of a hearing on the issue of his fitness to stand trial. If, in the judgment of the designated examiners or the superintendent of the facility if the person has been detained, the person is in need of hospitalization, the court with criminal jurisdiction over the person may authorize his detention in a suitable facility until the hearing.

50

## 44-23-430 (con't)

- . The person shall be entitled to be present at the hearings and to be represented by counsel.
- If upon completion of the hearing and consideration of the evidence the court finds that:

51

## 44-23-430(1)

- (1) the person is fit to stand trial, it shall order the criminal proceedings resumed; or

52

## 44-23-430(2)

- (2) the person is unfit to stand trial for the reasons set forth in Section 44-23-410 and is unlikely to become fit to stand trial in the foreseeable future, the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to Sections 44-17-510 through 44-17-610 or Section 44-20-450 within fourteen days, excluding Saturdays, Sundays, and holidays, during which time the court may order the person hospitalized, may order the person to continue in detention if detained, or, if on bond, may permit the person to remain on bond; or

53

## 44-23-430(3)

- (3) the person is unfit to stand trial but likely to become fit in the foreseeable future, the court shall order him hospitalized up to an additional sixty days. If the person is found to be unfit at the conclusion of the additional period of treatment, the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings...

54

## State v. Blair, 273 S.E.2d 536 (1981)

- defendant's failure to request competency hearing did not waive right to such hearing where his sanity was crucial issue throughout trial,
- where defendant had history of mental disorders and past admissions to state hospital in addition to past adjudication of incompetence to stand trial in subject prosecution, and statute regarding competency hearing used mandatory wording in providing that "the court shall" set date for hearing upon receiving report of designated examiners,

55

## Rape Shield Statute

- § 16-3-659.1. Criminal sexual conduct; admissibility of evidence concerning victim's sexual conduct
- is admissible if the judge finds that such evidence is relevant to a material fact and issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.
- Evidence of specific instances of the victim's sexual conduct
- opinion evidence of the victim's sexual conduct
- reputation evidence of the victim's sexual conduct
- NOT ADMISSIBLE

56

## Rape Shield Statute (con't)

- evidence of the victim's sexual conduct with the defendant
- evidence of specific instances of sexual activity with persons other than the defendant
- introduced to show source or origin of semen, pregnancy, or disease about which evidence has been introduced previously at trial
- is admissible if the judge finds that such evidence is relevant to a material fact and issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

57

## Rape Shield Statute (con't)

- Evidence of specific instances of sexual activity which would constitute adultery and would be admissible under rules of evidence to impeach the credibility of the witness may not be excluded.

58

## Rape Shield Statute (con't)

- If the defendant proposes to offer evidence described in subsection
- the defendant, prior to presenting his defense shall file a written motion and offer of proof.
- The court shall order an in-camera hearing to determine whether the proposed evidence is admissible under subsection (1). If new evidence is discovered during the presentation of the defense that may make the evidence described in subsection (1) admissible, the judge may order an in-camera hearing to determine whether the proposed evidence is admissible under subsection (1).

59

## Neil v. Biggers, 409 U.S. 188 (1972) Eyewitness Identification

- 5 criteria to evaluate the accuracy of eyewitness identifications
- -witness's credibility
- -his/her quality of view
- -the amount of attention paid to culprit
- -the agreement between witness's description and the suspect
- -the amount of time between the crime and the identification attempt
- See *State v. Liverman*, 398 S.C. 130 (2012)

60

## Jackson v. Denno, 378 U.S. 368 (1964)

- State v. Parker, 671 S.E.2d 619 (Ct. App. 2008)
- sixteen year-old defendant's confession was voluntary and admissible;
- denial of defendant's motion to reconsider the admissibility of defendant's confession was not an abuse of discretion.

61

## State v. Parker (con't)

- The process for determining whether a statement is voluntary, and thus admissible, is bifurcated; it involves determinations by both the judge and the jury. First, the trial judge must conduct an evidentiary hearing, outside the presence of the jury, where the State must show the statement was voluntarily made by a preponderance of the evidence. *Jackson v. Denno*

62

## State v. Parker (con't)

- If the statement is found to have been given voluntarily, it is then submitted to the jury, where its voluntariness must be established beyond a reasonable doubt.

63

## Bruton v. U.S., 391 U.S. 123 (1968) Codefendants and Confrontation

- held that a defendant's Confrontation Clause rights are violated when a nontestifying codefendant's confession that implicates the defendant is admitted during a joint trial.

64

## State v. McDonald, 771 S.E.2d 840 (2015)

- admission of co-defendant's statement using the phrase “another person” to refer to co-defendant and two other male individuals violated defendant's rights under the Confrontation Clause, but
- the error was harmless beyond a reasonable doubt.

65

## Zafiro v. United States, 506 S.E.2d 534 (1993) Severance

- Rule 14 of the Federal Rules of Criminal Procedure does not require severance as a matter of law when codefendants present mutually antagonistic defenses. The Supreme Court noted it repeatedly has approved of joint trials. The Supreme Court held that severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent the jury from making a reliable judgment about a codefendant's guilt. The Supreme Court left the decision to the sound discretion of the district court.

66

§ 16-11-440. Presumption of reasonable fear of imminent peril when using deadly force against another unlawfully entering residence, occupied vehicle or place of business. (STAND YOUR GROUND)

- (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:
- (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

67

## 16-11-440 (con't)

- (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

68

## 16-11-440 (con't)

- (B) The presumption provided in subsection (A) does not apply if the person:
  - (1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or
  - (2) sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or

69

## 16-11-440 (con't)

- (3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or
- (4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.

70

## 16-11-440 (con't)

- (C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

71

## 16-11-440 (con't)

- (D) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.

72

## 16-11-440 (con't)

- (E) A person who by force enters or attempts to enter a dwelling, residence, or occupied vehicle in violation of an order of protection, restraining order, or condition of bond is presumed to be doing so with the intent to commit an unlawful act regardless of whether the person is a resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder.

73

## State v. Scott, 800 S.E.2d 793, (Ct. App. 2017)

- A claim of immunity under the Protection of Persons and Property Act requires a pretrial determination using a preponderance of the evidence standard, which appellate court reviews under an abuse of discretion standard of review

74

## State v. Scott (con't)

- Defendant must establish the elements of self-defense in order to prevail on a claim for immunity under Protection of Persons and Property Act.
- To claim self-defense a defendant must demonstrate he (1) was without fault in bringing on the difficulty; (2) actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; and (3) had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

75

## State v. Scott (con't)

- Absent a showing that a defendant has been attacked, a request for immunity, pursuant to section of Protection of Persons and Property Act, which would excuse the duty to retreat, must fail, and a defendant must present his evidence of self-defense to a jury.

76

## State v. Dennis, 523 S.E.2d 173 (1999)

- defendant was not entitled to severance of trial from that of codefendant;
- co-defendant's statement to witness that defendant had shot victim was admissible under excited utterance exception to hearsay rule;
- admission of nontestifying co-defendant's excited utterance did not violate confrontation clause.

77

## RULE 19. DIRECTED VERDICT

### (a) Grounds for Motion

- On motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment. In ruling on the motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight.

78

## RULE 19. DIRECTED VERDICT

### (b) Defendant's Right to Present Evidence.

- If a defendant's motion for directed verdict at the close of the evidence offered by the State is not granted, the defendant may offer evidence without having reserved the right.

79

## RULE 19. DIRECTED VERDICT

### (c) Submission of Case to Jury.

- Submission of any charge to the jury shall constitute a denial of any motion for directed verdict previously made by the defendant and not ruled upon.

80

## RULE 19. DIRECTED VERDICT

### Motion in general

- After the State rests its case in chief, (and again after the defense rests), the defense will make a motion for a directed verdict, or the trial judge may make this motion himself. The judge will direct a verdict in the defendant's favor on any charge in the indictment if there is a failure of competent evidence tending to prove that charge. In ruling on the motion, the trial judge must consider only the existence or non-existence of the evidence and not its weight.

81

## RULE 19. DIRECTED VERDICT

### Motion in general

- Even if the defense makes a motion for a directed verdict and the judge does not rule on it, once he submits a charge to the jury, this constitutes a denial of any motion for directed verdict.

82

## Existence of Evidence- DV Motions

- When ruling on a motion for a directed verdict, the trial court is concerned with the existence of non-existence of evidence, not its weight. State v. Williams, 303 S.C. 274, 400 S.E.2d 131 (1991).
- On an appeal from the denial of a directed verdict, the appellate court must view the evidence in the light most favorable to the State. State v. Rowell, 326 S.C. 313, 487 S.E.2d 185 (1997)

83

## Circumstantial Evidence- DV Motions

- If there is any direct evidence or any substantial circumstantial evidence reasonable tending to prove the guilt of the accused, then the case was properly submitted to the jury. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998)
- When considering a motion for a directed verdict, the judge is concerned with the existence of nonexistence of evidence, not its weight, even when the State relies exclusively on circumstantial evidence. State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000)

84

## Circumstantial Evidence (con't)- DV Motions

- When a directed verdict motion is made where the State relies exclusively on circumstantial evidence, the judge should send the case to the jury if there is any substantial circumstantial evidence that reasonably tends to prove the defendant's guilt or from which his guilt may be fairly and logically deduced. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001)

85

## Self Defense- DV Motions

- The court can direct a verdict of acquittal if it finds the defendant acted in self-defense as a matter of law. State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978)

86

## Suspicion of Guilt- DV Motions

- The judge should grant a directed verdict when the evidence merely raises a suspicion of guilt. Id.
- “Suspicion” implies a belief or opinion as to guilt based on facts or circumstances which do not amount to proof. Id.; State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963)

87

## Suspicion of Guilt (con’t)- DV Motions

- A defendant should get a directed verdict on a murder charge when the circumstantial evidence merely raises a suspicion that he is guilty of murder, but a conspiracy charge can still go to the jury based on the same evidence. State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402 (2001)

88

## Presence at the Scene- DV Motions

- The trial court should grant a directed verdict where the State's case is purely circumstantial and the evidence is insufficient to establish the defendant's presence at the scene of the crime at the time of the murder. State v. Martin, 340 S.C. 597, S.E.2d 572 (2000)
- Except in cases where the crime is alleged to be procured or caused indirectly, the State has the burden of proving that the defendant was at the scene of the crime when it happened and that he committed the criminal act. State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984)S

89

## Presence at the Scene (con't)- DV Motions

- A directed verdict should be granted when the evidence establishes only the circumstances are strongly suspicious, but falls short of providing a basis upon which the jury could reasonably and logically determine the defendant's guilt. State v. Arnold, 351 S.C. 302, 569 S.E.2d 379 (App.2002)

90

## Appeal from Directed Verdict

- The State has no right of appeal from a directed verdict in a criminal case unless it was procured by the defendant through fraud or collusion. State v. Holliday, 255 S.C. 142, 177 S.E.2d 541 (1970); State v. McKnight, 353 S.C. 238, 577 S.E.2d 456 (2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	MOTION FOR DISCOVERY AND
vs.	)	INSPECTION
	)	
*****.,	)	
	)	WARRANT/TICKET#: *****
DEFENDANT.	)	
_____	)	

NOW COMES the Defendant, by and through his/her undersigned counsel of record, pursuant to Rule 5 of the Rules of Criminal Practice in the Circuit Courts, and moves the prosecution to permit the Defendant to inspect and copy or photograph, including, but not limited to, the following, with the express provision that the duty of disclosure to be a continuing one in the event that any such materials come into existence or become available after the initial disclosures:

- (a) Any written or recorded statements made by the Defendant, or copies thereof, within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;
- (b) The substance of any oral statement which the prosecution intends to offer into evidence at the trial made by the Defendant, whether before or after arrest, in response to interrogation by any person then known to the Defendant to be a prosecution agent;
- (c) A copy of the Defendant's prior criminal record, if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or

by the exercise of due diligence may become known, to the attorney for the prosecution;

- (d) All books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody, or control of the prosecution, and which are material to the defense, or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the Defendant;
- (e) All results or reports of physical or mental examinations and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial; and
- (f) The statement of any witness or prospective prosecution witness, the existence of which is known, or by the exercise of the due diligence may become known, to the attorney for the prosecution.

The Defendant further moves that compliance with the foregoing request be made within ten (10) days from the service of this Motion, and upon failure of the prosecution to so comply, the Defendant will move before the Presiding Judge of this Circuit, by Notice and Motion, for an Order prohibiting the prosecution from introducing at trial evidence not disclosed, and if the foregoing is denied, an order permitting the discovery and inspection requested, or a continuance of the trial, or such Order as the Court in its discretion deems just under the circumstances.

For purposes of this Motion, the Defendant asserts that any item requested in Paragraphs (a), (b), (c), (d), (e), and (f) above is material to the preparation of the defense in this case.

Respectfully submitted,

LAW OFFICE OF S. HARRISON SAUNDERS, VI, LLC

By:

\_\_\_\_\_  
S. Harrison Saunders, VI  
3104 Devine Street  
Columbia, South Carolina 29205  
803-779-6333  
803-724-2601 Facsimile

ATTORNEY FOR THE DEFENDANT

Columbia, South Carolina

\_\_\_\_\_ Day of May, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	
	)	WARRANT/TICKET#: *****
*****.,	)	
	)	
DEFENDANT.	)	
_____	)	

MOTION FOR BRADY AND OTHER  
FAVORABLE MATERIAL AND  
INCORPORATED MEMORANDUM OF LAW

COMES NOW the Defendant, by and through undersigned counsel, and files this Motion for Brady and other favorable material and incorporated Memorandum of Law and, as grounds therefore, the undersigned would show as follows:

1. Under the United States Supreme Court decision in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), the Solicitor has an obligation to produce all Brady material for the Defendant well in advance of the scheduled trial date.
2. Under Kyles v. Whitely, 115 S.Ct. 1555 (1995), the United State Supreme Court mandated that the Solicitor must seek out favorable or mitigating evidence from all possible state actors, including but not limited to, police officers, sheriff's deputies, SLED agents, forensic analysts, and others acting at the behest of the State.
3. Defendant claims under Brady, and its progeny, as well as the language and spirit of Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763 (1972); and Napue v. Illinois, 360 U.S. 264, 79 S. Ct. 1173 (1959); that she/he is entitled to any and all records, memoranda and documents, as well as a statement of the County Solicitor and all appropriate state, federal and local law enforcement agencies as to:

- a. Any and all promise, rewards and inducements made to all witnesses herein, whether or not they have testified before any State or Federal Grand Jury, or other investigative agency, and regardless of whether they will testify at the trial herein.
  - b. Any offers or grants of immunity in this case to any witness from loss of property, fine, forfeiture, prosecution, or punishment in this or any other case, related or otherwise.
  - c. Whether any witness called before the Grand Jury or who has or will give testimony to any investigative agency or at trial has ever been psychiatrically hospitalized or undergone psychiatric examination, treatment, mental status examination or care, and, if so, a list of names and addresses of the psychiatrists, hospitals and copies of any and all relevant records and reports.
  - d. Any “inconsistent” statements of a particular witness or between witnesses.
  - e. Any and all “rap” sheets or histories of arrests or convictions of any unindicted co-conspirator or State witness.
4. In addition, Defendant requests copies of any and all memoranda, reports and all correspondence to and from the various law enforcement agencies of the United States and all state, county, municipal and local law enforcement agencies regarding the investigation herein.
  5. Defendant also contends that he/she is entitled to any statement or admissions by a witness for or on behalf of the State with respect to the witness’ memory or loss thereof.

6. Defendant contends that this Court should specifically direct the Government in the spirit of fairness and equity, seek and produce for Defendant the documents, letters, records and other items sought, irrespective of the State's determination of whether a witness' statement or a particular letter or exhibit can "help" the Defendant. The Defendant and his/her defense and the documents relevant thereto and a necessary in support of same.
7. To the extent that specifically is required to demonstrate the materiality of the requested information, see Untied States v. Agurs, 427 U.S. 97 (1976), the Defendant submits that this requirement is satisfied in this Motion.
8. To disclose to counsel for the defense any and all evidence in the actual or constructive possession of the State which is of a favorable character for the Defendant in this case and material to the issue of guilt or innocence or to punishment in this case, pursuant to the due process clause of the Fourteenth Amendment to the United States Constitution, including, but not limited to, the following materials:
  - a. Any oral, written or recorded statements made by any person to the police, to the Solicitor, or to the Grand Jury which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit or contradict the testimony of any witness whom the Government will call at the trial of the cause. Brady v. Maryland, 373 U.S. 83, S.Ct. 1194 (1983).
  - b. Any police investigation report made to the police which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witness whom the State will call at trial of the cause. Giles v. Maryland, 386 U.S. 66, 87, S.Ct. 793 (1967).

- c. The names and addresses of witnesses who might establish the Defendant's innocence, mitigate punishment, or impeach, discredit, or contradict the testimony of any witness whom the State will call at the trial of the cause.
- d. Any information or material which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witness whom the Government will call at the trial of the cause. Napue v. Illinois, supra; Giglio v. U.S., supra.
- e. Any scientific or medical report which tends to establish the Defendant's innocence, to mitigate punishment or to impeach, discredit or contradict the testimony of any witness whom the State will call at the trial of the cause. Ashley v. Texas, 319 F.2d 80 (5<sup>th</sup> Cir.), cert. denied, 375 U.S. 931, 84 S. Ct. 331 (1963).

WHEREFORE, the undersigned prays for such Order as is just and proper.

Respectfully submitted,

LAW OFFICE OF S. HARRISON SAUNDERS, VI, LLC

By: \_\_\_\_\_

S. Harrison Saunders, VI  
3104 Devine Street  
Columbia, South Carolina 29205  
803-779-6333  
803-724-2601 Facsimile

ATTORNEY FOR THE DEFENDANT

Columbia, South Carolina

\_\_\_\_\_ Day of May, 2017

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I, \*\*\*\*\*, being first duly sworn, says that she is an employee for the attorney for the Defendant, with offices at 1720 Main Street, Suite 301, Columbia, South Carolina; that on the \_\_\_\_ day of May, 2017, she delivered a copy of a Motion for Brady and Motion for Discovery and Inspection, in the matter of State of South Carolina vs. \*\*\*\*\*, via United States Postal Service with proper postage affixed thereto, to the following person at his/her address, to wit:

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

\_\_\_\_\_  
\*\*\*\*\*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF GENERAL SESSIONS

The State of South Carolina )

**RECIPROCAL RULE 5 FOR DISCOVERY  
AND DISCLOSURE OF EVIDENCE**

-v-

\*\*\*\*\*

WARRANT NUMBER(S): \*\*\*\*\*

Defendant )

---

PLEASE TAKE NOTICE that the prosecution would, through Deputy Solicitor Daniel R. Goldberg, respectfully request the following:

Any books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant in which the defendant intends to introduce as evidence in chief at the trial.

Any results or reports of physical or mental examinations and scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at trial when the results or reports relate to his testimony.

The offense occurred on June 3, 2011 at 10008 Two Notch Road and on May 10, 2011 at 113 Blarney Drive, Columbia, South Carolina. The prosecution would request written notice of defendant's intention to offer an alibi defense stating the specific place or places at which the defendant claims to have been at the time of the offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

The prosecution would request written notice of the defendant's intention to offer a competency, insanity and/or mental illness defense, stating the names, addresses, and telephone numbers of the witnesses upon whom he intends to relay to establish such defense(s).

The prosecution would request written notice of the defendant's intention to offer a duress or necessity defense, stating the specific circumstances which the defendant claims to have been under duress at the time the offense was committed and the names and addresses of the witnesses upon whom he intends to rely to establish duress or necessity.

This Motion is pursuant to Circuit Court Rule 5, upon compliance by the prosecution with the defendant's previous Motion for discovery and disclosure based upon the same circuit court rule. The duty to make said disclosure is a continuing duty up to and during trial.

Respectfully submitted,

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Assistant Solicitor  
Fifth Judicial Circuit

Columbia, South Carolina  
April 30, 2013

The State of South Carolina,  
Plaintiffs,  
vs.  
Defendant.

Case Nos.

**BRADY MOTION AND RULE 5  
MOTION FOR DISCLOSURE**

Pursuant to the due process clause of the Fourteenth Amendment of the United States Constitution, Brady v. Maryland, 373 U.S. 83 (1963), United States v. Agurs, 427 U.S. 97 (1976), and Rule 5(a)(1)(C) of the South Carolina Rules of Criminal Procedure, Defendant

respectfully demands the disclosure of information favorable to the Defendant that is in the possession of the State, the existence of which is known or by the exercise of reasonable diligence may become known to the State, and the production of documents and tangible items within the possession, custody, or control of the State.

Please take notice that Rule 5 requires the State to respond to this disclosure demand "no later than thirty (30) days after the request is made, or within such other time as may be ordered by the court." Rule 5(a)(3) & (c), SCRCP. Please also take notice this Rule 5 request includes a demand for inspection and copying of electronically stored information (ESI). The manner in which ESI is to be collected and produced is described below. Defendant demands strict compliance with these instructions to ensure preservation and collection of material evidence.

**INSTRUCTION**

For the convenience of the Court and clarity of the record, all documents and tangible items should be Bates labeled to apply a unique identifying number to each individual document page or, in the case of native ESI files, to the native electronic document itself. **Please take**

**notice that if the State fails to Bates label its production, the Defendant will Bates label the State's production, file it with the Clerk of Court, and insist on use of that record as the exclusive, complete record of responsive information in this case.**

Documents shall be produced as they are kept in the usual course of business or organized and labeled to correspond to the categories in this Request. In making production of ESI, including, without limitation, electronic data compilations, electronic email, or documents that are kept in electronic format (such as, without limitation, Microsoft Outlook, Microsoft Word, Microsoft Excel, Microsoft PowerPoint, or any similar program or platform), produce them in their native format along with all passwords necessary to access the documents and with all metadata fully intact. If documents are processed into image format to apply bates numbers or another form of identification, the native file should be provided along with the image and all metadata should be retained within the native file fully intact.

Documents attached to each other should not be separated. Documents not otherwise responsive to this Request shall be produced if such documents mention, discuss, refer to, or explain the documents that are called for by this request, or if such documents are attached to documents called for by this document request and constitute routing slips, transmittal memoranda, or letters, comments, evaluations, or similar materials.

ESI includes all network systems, servers and other storage devices maintaining ESI pertinent to this action. Systems includes proprietary software applications utilized by law enforcement agencies to aid in case management of the criminal charges.

#### **DEFINITIONS**

"Communications" means the transmittal of oral or written information, facts, or ideas, including, without limitation, communications in the form of any discussion, conversation,

inquiry, negotiation, agreement, understanding, meeting, telephone conversation, letter, correspondence, note, memorandum, e-mail, text message, instant message, telegram, advertisement, or other form of exchange of words, whether oral or written.

The terms "document(s)" and tangible object(s)" as used in this request shall be inclusive of one another and interchangeable. "Document(s)" or "tangible object(s)" shall have the broadest meaning permitted under Rule 5 of the South Carolina Rules of Criminal Procedure, and include, without limitation, all writings of any nature whatsoever (including, specifically, all drafts), whether originals or copies, including all non-identical copies (whether different from the original because of notes made on or attached to them or otherwise), whether drafts, preliminary, proposed or final versions, whether printed, recorded, produced or reproduced by any other mechanical or electronic process, whether written or produced by hand, within your possession, custody or control, including without limitation, understandings, communications, including intra-office communications, intra-department communications, correspondence, telegrams, records, reports, memoranda (including memoranda of telephone, personal, intra-office or intra-department conversations and memoranda of conferences, notes, notices) diaries, summaries, lists, recordings, tapes, minutes, stenographic, handwritten or any other notes, working papers, disks, or any other document or writings of whatever description, including, without limitation, CD-ROMS, e-mails, instant messages, text messages and any information contained in any computer or memory system, network attached storage or server, although not yet printed out, or any material underlying, supporting or used in the preparation of any such documents. "Documents" or "document" includes ESI.

"ESI" means electronically stored information, electronically stored data or electronic data, and is to be interpreted broadly to include all types of information, regardless of the storage

media (*e.g.*, hard drive, CD-ROM, DVD, disc, tape, thumb drive, etc.), that requires a computer or other machine to read or process it.

“Native File” means the original file stored in its native application, regardless of the storage media (*e.g.*, hard drive, CD-ROM, DVD, disc, tape, thumb drive, etc.), that requires a computer or other machine to read or process it.

“Policy” means any and all written or recorded administrative work instructions adopted or enacted by the State of South Carolina, the County of Richland, the Richland County Sheriff’s Department, or any law enforcement authority involved in this case pertaining to law enforcement professionals.

“The State” means the State of South Carolina and any law enforcement agency or prosecutorial authority playing any role in the investigation or prosecution of this case, including the Richland County Sheriff’s Department and the South Carolina Attorney General’s Office, as well as any expert, company, or consultant retained by the State to offer assistance in the investigation or prosecution of this case.

“Employee” means any person employed by the State or its law enforcement agencies, in any capacity including law enforcement, clerical, or support staff.

“Computer” means any and all electronic processing equipment provided to employees of the State to perform duties or work. The term computer shall include employee issued laptops, desktop personal computers, printers, networked attached storage or servers compiling and storing ESI, mobile devices including tablets, mobile phones or any other device utilized by law enforcement or State employees.

“ACISS” means the proprietary case management system in operation by the Richland County Sheriff’s Department and includes all ESI created, stored, managed or otherwise

maintained within the ACISS system.

“Recording” means any video, sound or photograph recording by any camera taken into custody during the investigation by any employee.

“Email” means all electronic mail messages communicated using Outlook or other mail software system utilized by any party investigating or prosecuting the criminal proceedings against the Defendant in this action.

“Witness” means any person interviewed or communicated with by any employee pertaining to the facts and allegations involving this matter, including, but not limited to:

[Faint, mostly illegible text, possibly a list of names or roles]

**INFORMATION SOUGHT PURSUANT TO BRADY AND  
DOCUMENTS AND TANGIBLE OBJECTS FOR  
PRODUCTION, INSPECTIONS, AND COPYING**

Defendant: \_\_\_\_\_ respectfully demands the right to be furnished or to examine, inspect, copy, photograph or make other facsimile copies of the following information, documents, or tangible objects:

1. All evidence favorable to Defendant in the possession of the prosecution or that within the prosecutions custody or control, regardless of whether that evidence pertains to guilty/innocence or punishment/mitigation of Defendant.

2. All promises, rewards and inducements made to all witnesses, without regard for whether they have given grand jury testimony, been interviewed by an investigating agency, or will testify at trial.

3. Any offers or grants of immunity to any witness in this case relating to any fine, forfeiture, prosecution or punishment, whether in this case or another and whether relator to this case or not.

4. The names and addresses of the psychiatrists or hospitals and copies of any records relating to any psychiatric examination or treatment of any witness who has or will give testimony to the grand jury, any investigative agency, or at trial.

5. Any inconsistent statements, in the broadest sense of the word, made by a witness or between witnesses.

6. All "rap" sheets, arrest histories, or convictions of any prosecution witness.

7. All memoranda, reports, and correspondence to and from any law enforcement agency, whether federal, state, or local, regarding the investigation of Defendant or the charges filed in this action.

8. All statements or admissions by a witness concerning the witness's failure to recollect any part of any incident relating to the investigation or accusations in this case or any past loss of memory in general.

9. Written and recorded statements made by Defendant.

10. The substance of any oral statement made by Defendant, whether before or after arrest, in response to interrogation by any person known to be a prosecution agent, which the State intends to offer in evidence at the trial.

11. Defendant's prior criminal record, if any, as is within the possession, custody or control of the prosecution or as may become known to the prosecution.

12. Books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of Defendant's defense or are intended for use by the prosecution as evidence in chief at trial, or were obtained from or belong to Defendant.

13. Any results or reports of physical or mental examinations, and of scientific test or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

14. A complete native production of the ACISS case file(s) for the investigation(s) of this case.

15. All ESI concerning interviews, statements, or notes taken by the State relating to Defendant, or any witness or possible witness in this case. This request includes, but is not limited to, email, text, word processing, stored ESI in the ACISS system, or any other electronic device or any other type of ESI file used to record, transcribe, or in any way memorialize interviews, statements, or notes. This request also includes all drafts.

16. All ESI concerning investigative summaries, chronologies, or reports created by the State in this case. This request includes, but is not limited to, email, text, word processing, or

any other type of ESI file used to record, transcribe, or in any way memorialize investigative summaries, chronologies, or reports. This request also includes all drafts.

17. All communications, including ESI such as email and text messages, generated by the State concerning the investigation of the Defendant.

18. All policies relating to law enforcement's communications, interrogations, and/or interviews with suspects and/or persons subject to custodial detention.

19. All policies relating to the preparation of (a) notes, (b) reports, and (c) statements in a criminal investigation.

20. All policies relating to the storage or retention of (a) notes, (b) reports, and (c) statements in a criminal investigation.

21. All policies relating to video or audio recording of communications, interrogations, and/or interviews in a criminal investigation.

22. All policies relating to the storage or retention of video or audio recording of communications, interrogations, and/or interviews in a criminal investigation.

23. All notes, communications, and reports, including ESI, concerning any DNA testing done by the State in this case.

24. All documents, inventories, chain of custody, and photos of any DNA samples collected from Defendant or any investigation of this case.

25. All laboratory policies relating to any DNA testing conducted by the State.

26. All methodologies and statistical formulas, including any ESI, used in any DNA testing conducted by the State in this case.

27. All proficiency testing and test results concerning any DNA analyst that has conducted testing or analysis for the State in this case.

28. All software or other ESI used to conduct any DNA testing or analysis for the State in this case.

**CONCLUSION**

Defendant [redacted] respectfully moves for disclosure of the aforesaid information and, to the extent necessary to compel the State's compliance with its disclosure obligations, asks that the Court to convene a plenary hearing upon notice of impasse in obtaining disclosure and within a time frame sufficient to allow Defendant to prepare his defense.

Respectfully submitted,

[Handwritten signature and name of the attorney]

ATTORNEY FOR THE DEFENDANT

May 8, 2018  
Columbia, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF RICHLAND	)	
	)	WARRANT #: *****
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	
	)	NOTICE OF MOTION AND MOTION
*****,	)	AS TO TESTIMONY OF CHEMIST
	)	AND CHAIN OF CUSTODY
Defendant.	)	
_____	)	

Pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, the Defendant, by and through his counsel, hereby makes known his objection to the introduction of a chemist or analyst's report in the trial of the case. In addition, the Defendant hereby demands that such chemist or analyst be present at trial for the purpose of personally testifying and for the purpose of being subject to Defendant's cross-examination. And finally, the Defendant demands that all persons connected with the chain of custody in this case be present in Court for the trial of this case.

Respectfully submitted,

---

S. Harrison Saunders, VI  
3104 Devine Street  
Columbia, South Carolina 29205  
(803)779-6333 Facsimile (803)724-2601  
[Harrison@HsaundersLaw.com](mailto:Harrison@HsaundersLaw.com)

Columbia, South Carolina

\_\_\_\_\_ Day of May, 2017



**South Carolina Bar**

Continuing Legal Education Division

## Practical Trial Advocacy Tips

*April W. Sampson*  
*Shaun Kent*

## Practical Trial Advocacy Tips

- 1) Know your Judge and let him know you!
  - 1) Don't be afraid to ask for chambers meeting before, or during case, to discuss the trial.
  - 2) Keep the Judge in the loop. Inform him ahead of time what you need to address. Judges do not usually like to be surprised and put on the spot unnecessarily.
- 2) Review Indictments in advance of trial!
  - 1) For prosecution, make sure it is in proper form and True Billed
  - 2) For defense, check for insufficiencies because the time to object is limited. See State v. Gentry
- 3) Jury selection and Voir Dire
  - 1) Be aware of the limited info available on prospective jurors
  - 2) Make sure to get the List prior to jury qualifications on the first day of the term.
  - 3) Attend the qualification and take notes! Always listen to the private conferences with the Judge.
  - 4) Always act personable but professional when in the presence of any prospective juror. The trial starts the moment any juror sees you.
  - 5) Know everyone in the courthouse! Clerks, court reporter, deputies, and bailiffs
  - 6) For trial specific jury selection, have proposed voir dire and witness list ready to provide to judge.
  - 7) Know your strike limits.
- 4) Openings/Closings
  - 1) Be concise while still covering all your important points. Don't be boring or aloof, but don't leave them thinking you short changed them.
  - 2) Have a theme for your case.
- 5) Have a game plan in place before trial. Especially for trials with co-counsel.
  - 1) What Pre-trial motions you have and who will argue each.
  - 2) Who is going to handle each witness. What order to call witness's in. For subpoena witness's, be prepared to have them on phone standby if possible and explain sequester ahead of time.
  - 3) One witness/one lawyer rule
- 6) Be real/authentic/sincere. Jurors can sense insincerity and lack of conviction.
- 7) Don't be afraid to Object!! If you don't, you forever lose the opportunity and you fail to preserve the record.
- 8) Don't be afraid to take a chance or risk if it is important and worth fighting for.
- 9) Make your record!!!! Motions, objections, DV and new trial motions,colloquies. Also make sure to request that any bench conferences or chamber conferences the need to be preserved be put on the record outside the presence of the jury.



# South Carolina Bar

Continuing Legal Education Division

## Straight from the Bench— What Judges Want from Lawyers

*The Honorable Roger M. Young*

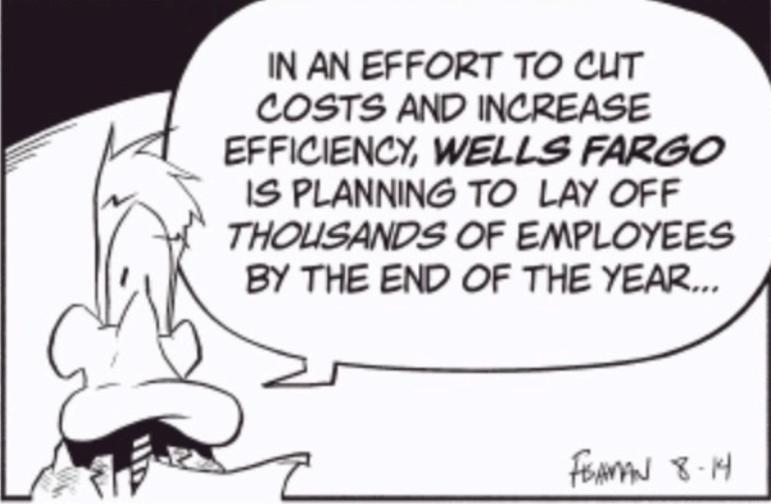
**2020 Criminal Law CLE Outline**  
**September 24, 2020**  
**Judge Roger Young**

- Spotting Mental Health issues
- Competency to assist Counsel and understand proceedings
- NGRI
- GBMI
- Mitigation
  - Autism
- Neuroscience
- Self-protection
- Texas Appleseed Project
- [https://www.texasappleseed.org/sites/default/files/Mental\\_Health\\_Handbook\\_Printed2015.pdf](https://www.texasappleseed.org/sites/default/files/Mental_Health_Handbook_Printed2015.pdf)
- Plea Preparation
- Client preparation
- Appearance
- Sobriety
- Competency and medications
- Alford pleas
- Sex crimes
- GPS Monitoring
- SVP issues
- Future Dangerousness
- Collateral consequences
- Conditional discharge pleas
- YOA
- Probation
- Shock incarceration
- Illegal immigrants
- Interpreters
- Deportation
- PCR observation
- Trial Issues
- Pre-trial motions
- Client testifying or not
  - Rule 404(b) – especially sex crimes
- Child Abuse Experts and Forensic Interviews
- Jury Instructions
- State v Beaty and closing arguments
- Sentencing

**I'd like to defend a penguin in court just to say, "Your Honour, my client is clearly not a flight risk."**

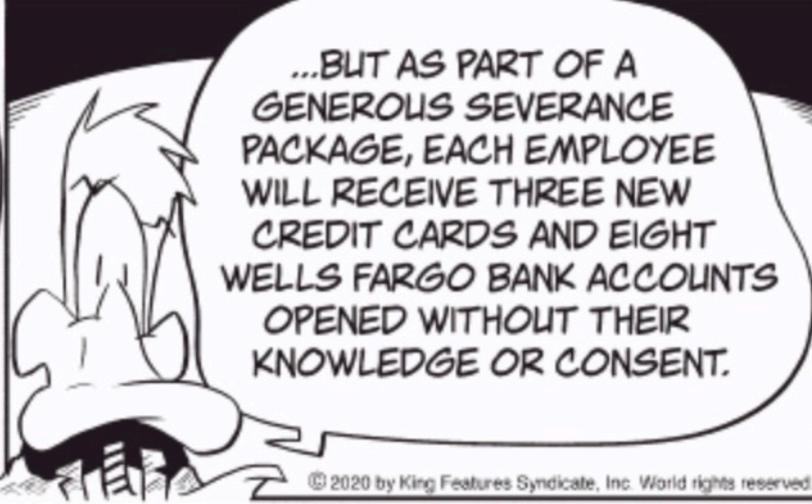


**MALLARD FILLMORE** By Bruce Tinsley



IN AN EFFORT TO CUT COSTS AND INCREASE EFFICIENCY, **WELLS FARGO** IS PLANNING TO LAY OFF THOUSANDS OF EMPLOYEES BY THE END OF THE YEAR...

FEARAN 8-14



...BUT AS PART OF A GENEROUS SEVERANCE PACKAGE, EACH EMPLOYEE WILL RECEIVE THREE NEW CREDIT CARDS AND EIGHT WELLS FARGO BANK ACCOUNTS OPENED WITHOUT THEIR KNOWLEDGE OR CONSENT.

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# Forensics — Timeframes

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In this section, we discuss the S.C. Department of Mental Health's (DMH) forensics program as it relates to initial evaluations and the restoration of individuals to competency in order to stand trial. S.C. Code of Laws §44-23-410 allows DMH 45 days to complete initial evaluations and §44-23-430 allows 60 days for DMH to restore defendants to competency. If given a longer timeframe for restoration, it is likely that more individuals would be competent to stand trial.

---

## Determination of Competency to Stand Trial Process

When a person is accused of a crime and a concern is raised that the defendant is not competent to stand trial, he is sent to either DMH or the S.C. Department of Disabilities and Special Needs (DDSN) for an initial evaluation. This evaluation is used to determine if the defendant is incompetent to stand trial and whether the defendant is able to be restored to competency (this is called a Blair hearing). Defendants can only be referred from General Sessions Court, which handles criminal cases. DMH handles defendants who may have mental health issues, while DDSN handles defendants who have developmental disabilities. In some cases, DMH and DDSN work together to determine defendants' competency.

DMH has 30 days to perform an initial competency evaluation on the defendant. DMH can also request an additional 15 days from the court to complete the evaluation (for a total of 45 days). Once DMH has completed its initial evaluation, the court is notified. The Medical University of South Carolina (MUSC) has a contract with DMH to perform the initial competency evaluations on defendants in the ten counties on the coast of South Carolina. DMH handles the other 36 counties.

In comparison, North Carolina has 60 days to complete its initial competency examination and the court may grant up to 60 days of extensions. Georgia has no time limit, while Florida has up to six months to perform the initial competency evaluation on defendants charged with a felony. Tennessee reported that it has no time limit to complete an outpatient initial competency evaluation, but has 30 days for inpatient competency evaluations.

DMH can find that the defendant is competent, is incompetent but restorable, is incompetent and not restorable, or that he is not criminally responsible for his crime. If the court finds that the defendant is competent, the case moves forward in the courts. If the court finds that the defendant is incompetent and not restorable or not criminally responsible for his crime, civil commitment proceedings are initiated against the defendant to place him in DMH's custody. If the defendant is declared incompetent, but restorable, that is when the 60 days to restore begins.

### **Incompetent, But Restorable**

If a defendant is declared incompetent, but restorable, it means that DMH staff feel that the defendant is not currently competent to stand trial but, through DMH's restoration program, he can be restored to competency and the defendant's case can move forward.

DMH staff performing the restoration and interacting with the patient include psychiatrists, psychologists, social workers, activity therapists, nurses, guards, etc. The patient is sent to Columbia for treatment at DMH's forensic facility, when a bed is available.

The restoration process is different for each patient but generally consists of such things as medication, individual and group counseling, activity therapy, and making sure the patient understands the court process (who the solicitor is, what the judge's role is, etc.). DMH holds mock trials and role playing to make sure the defendants understand the court process. For example, according to DMH staff, some defendants believe the solicitor is their friend and is on their side.

S.C. Code §44-23-430 states that DMH currently has 60 days from the date of the Blair hearing to complete its restoration process. By law, the defendant can remain hospitalized for an additional 14 days while the solicitor initiates civil commitment proceedings. However, DMH officials stated that, in most cases, after the 60 days, the defendant is released from DMH custody and sent back to the local detention center where the case is based (unless he was on bond). The court then has a second competency hearing. If the defendant is still found to be incompetent, civil commitment proceedings are started to place the defendant into DMH custody. In this case, the charges are often dismissed but can be restored if the defendant later becomes competent. DMH sends the solicitor a letter prior to releasing a patient, in case the solicitor wants to bring charges again.

---

## Program Statistics

For FY 15-16, DMH’s forensic services budget is approximately \$28 million. Also, the average cost per day per forensic patient in FY 13-14 was approximately \$383.

DMH’s forensics program has two units: the Acute/Pre-Trial Unit and the Psychosocial Rehabilitation Program (PRP). The Pre-Trial Unit patients consist of defendants who are not competent but may be restored to competency, patients needing inpatient evaluation, and emergency admissions.

The PRP patients are those who have been found Not Guilty by Reason of Insanity (NGRI) and incompetent, not restorable. Table 8 shows the average number of patients housed in DMH’s forensic facility for the past three years.

---

**Table 8: Average Number of Forensics Patients**

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FY 12-13	FY 13-14	FY 14-15
162*	178*	198*

\* NGRI residents are a significant percentage of patients and will not be released from DMH custody quickly, if at all. For example, on July 13, 2015, NGRI patients constituted 18% of the forensics population.

Source: DMH and LAC calculations

## Best Practices and Other States

Research shows that rates of competence restoration are generally high with 75% to 90% of individuals typically restored in approximately 6 months of inpatient restoration efforts. For example, one study we reviewed found that 81.3% of the patients reviewed were restored to competence during 6 months of restoration efforts. It further found that 64.2% of the patients, who were not restored to competency within 6 months, were restored to competency in 1.58 years.

We also contacted other Southeastern states to determine maximum timelines allowed for restoration and found that South Carolina’s maximum restoration time limit is not adequate.

**Table 9: Southeastern States’ Maximum Restoration Times Allowed**

STATE	MAXIMUM RESTORATION TIME ALLOWED*
SOUTH CAROLINA	60 days.
NORTH CAROLINA	Up to 5 years for a misdemeanor or 10 years for a felony.
GEORGIA	One year for a misdemeanor. For a felony, it is up to a maximum of the sentence time if the defendant was found guilty.
FLORIDA	Generally, up to five years.
TENNESSEE	Up to one year for a misdemeanor. Felonies have no maximum time specified in state law.

\* We determined these times by talking with officials in these states and reviewing their state laws.

Source: LAC

---

## Effect on Other Agencies

We contacted our state's Commission on Prosecution Coordination, the Commission on Indigent Defense, Court Administration, and the S.C. Department of Corrections (SCDC) to determine how extending DMH's restoration period to six months may affect these agencies. Only Court Administration and SCDC raised any concerns.

Court Administration is concerned that DMH does not have the staff or resources to deal with the increase in restoration patients that will occur if the restoration time limit is increased to six months. DMH would still have the same number of PRP patients it currently has, but would also see an increase in pre-trial patients because those patients would be staying with DMH longer.

SCDC is concerned with an increase in its costs since it would be receiving more prisoners. For example, if more defendants are restored then more defendants' trials would move forward and a certain percentage of those defendants would be found guilty and be sent to prison. SCDC stated it would provide a fiscal impact study, but the agency did not provide one. We originally contacted SCDC about this issue on July 24, 2015.

---

## Conclusion

Over the last three state fiscal years, DMH's data indicates that 41% of the patients who have been referred to the agency for restoration have been restored within 60 days. Research suggests that this percentage would increase if DMH had longer to perform the restoration.

According to a DMH official, the agency has the space to house the additional patients; however, it would take time and funds to open additional beds. Also, forensics will be a high-priority hiring area for the agency and the agency will use incentives to attract new employees. DMH also has other employees throughout the agency who can be reassigned to the forensics unit. Finally, DMH will use technology (such as tele-psychiatry) to deal with the increase in forensics patients.

Although Court Administration's and SCDC's concerns are valid, national research on forensics programs suggests that at least six months is needed to restore defendants. Of the other Southeastern states reviewed, one year was the minimum restoration period.

---

## Recommendation

2. The General Assembly should amend S.C. Code of Laws §44-23-430 to increase the maximum time limit the S.C. Department of Mental Health has to restore defendants to competency to stand trial to six months.

**State of South Carolina**  
**Department of Probation, Parole and Pardon Services**

**NIKKI R. HALEY**  
Governor



**JERRY B. ADGER**  
Director

1221 GREGG STREET  
COLUMBIA, SOUTH CAROLINA 29201  
Telephone: (803) 734-6320  
Facsimile: (803) 734-0020  
[www.dppps.sc.gov/](http://www.dppps.sc.gov/)

April 13, 2016

The Honorable Roger M. Young, Sr.  
Chief Administrative Judge, Ninth Judicial Circuit  
100 Broad Street, Suite 368  
Charleston, SC 29401

Re: Not Guilty by Reason of Insanity (NGRI) Quarterly Report: Defendant [REDACTED]  
Case Numbers: [REDACTED] 9

Dear Judge Young:

Please accept the following as the NGRI report for the quarter ending July 1, 2016 regarding defendant [REDACTED] under Case Numbers [REDACTED]

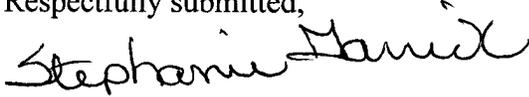
[REDACTED] was found NGRI on September 14, 2007 for the offenses of Assault with Intent to Commit Criminal Sexual Conduct-First Degree, Burglary First Degree, Assault and Battery of a High and Aggravated Nature and Possession of Burglary Tools. An order was issued discharging the defendant from hospitalization on April 16, 2013. The Richland County Office of SCDPPPS began monitoring this defendant on August 9, 2013. There have been no admissions since the defendant was released to the community in April, 2013. The case is currently assigned to me, Agent In Charge Stephanie Garrick of the Richland County Office of SCDPPPS.

Cheryl Powell, Clinical Social Worker with the South Carolina Department of Mental Health, reports that Mr. [REDACTED] has undergone tremendous physical and medical changes related to altered health issues. He was hospitalized recently, is unable to walk and is confined to a specialty bed to promote his comfort and healing. The Nurse Practitioner, Wound Nurse and Support Staff have worked diligently providing life-saving treatments to prolong and enhance his quality of life. Mr. [REDACTED] is aware of his overall situation and is most appreciative of the level of care and services he has had access to. Presently, the planned surgery to his neck and back designed to address his pain, inability to ambulate, medical and neurological condition has been delayed. Details will be presented based on his overall health, medical and safety recommendations. You

will be notified of any temporary alterations in his location, i.e. hospitalization, as necessary Ms. Powell can be contacted at 803-737-5795.

I will continue to monitor [REDACTED]'s compliance with the Order of the Court and will notify the Court immediately upon being advised of any violations. The next quarterly report will be submitted no later than October 1, 2016 .

Respectfully submitted,

Handwritten signature of Stephanie Garrick in cursive script.

AIC Stephanie Garrick  
SCDPPPS, Richland County  
1221 Gregg Street, Columbia, SC 29201

CC: Scarlett A. Wilson, Ninth Circuit Solicitor  
D. Ashley Pennington, Public Defender  
Julie J. Armstrong, Charleston County Clerk of Court  
[REDACTED], Defendant

State v. Dykes, 403 S.C. 499, 744 S.E. 2d 505 (S.C. 2013)

The Department of Probation, Parole and Pardon notified this office and asked that we remind the circuit court bench that they anticipate filings of petitions for review pursuant to State v. Dykes.

In Dykes, the South Carolina Supreme Court found **unconstitutional the mandatory imposition of lifetime electronic monitoring without judicial review**, in the case of CSC with a minor in the first degree or CSC with a minor in the third degree (lewd act), as provided in the last line of S.C. Code §23-3-540 (H). The Court struck as unconstitutional only the last line of subsection H, and found the remainder of the statute constitutional and enforceable. Consequently, the court held that Dykes and others similarly situated must comply with the electronic monitoring requirement mandated by SC Code §23-3-540 (C). However, persons convicted of CSC-first and lewd act upon a minor are entitled to avail themselves of S.C. Code §23-3-540 (H) judicial review process, as is provided for the balance of the offenses enumerated in S.C. Code §23-3-540 (G). S.C. Code §23-3-540 (H) provides that a person required to be electronically monitored may petition the chief administrative judge of the general sessions court for the County in which the person was so ordered requesting to be released from the requirement. The petition may be filed 10 years from the date of the person's ordered electronic monitoring, and the statutory amendment imposing the requirement was effective July 1, 2006. See Act No. 246, §8, effective July 1, 2006.



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## Prison system making progress meeting court mental health order



[\(/apps/pbcs.dll/personalia?ID=221\)](/apps/pbcs.dll/personalia?ID=221)

Gavin Jackson

[\(/apps/pbcs.dll/personalia?ID=221\)](/apps/pbcs.dll/personalia?ID=221)

Email (<mailto:gjackson@postandcourier.com>) Facebook

(<https://www.facebook.com/#!/GavinJacksonPostandCourier>) [@GavinJacksonPC](https://twitter.com/#!/GavinJacksonPC) (<https://twitter.com/#!/GavinJacksonPC>)

Nov 23 2015 6:10 pm Nov 23 6:21 pm





x

COLUMBIA — Nearly two years after being ordered by a judge to improve mental health care for inmates, the state’s prison system is adding counselors but remains at less than 60 percent of the staffing level set by the court.

Bryan Stirling, director of the state Department of Corrections, told the S.C. Sentencing Reform Oversight Committee on Monday that more counselors have been hired and progress is being made now that the Legislature has provided the necessary funding.

---

## What do you think?

Is it taking too long for S.C. prisons to add court-ordered mental health professionals?

Yes, they’ve been aware of the problem for years and were ordered in Jan. 2014 to start making changes.

No, they just received funding in July 2015 and hiring qualified professionals takes time.

I have no opinion.

Submit

In a 45-page order in January 2014, Circuit Court Judge Michael Baxley said several deaths could be blamed on the state having failed to meet a constitutionally mandated standard of care.

“It’s  
a



three-year plan to hire more mental health workers; we've hired 24 of the 41," Stirling said.

"We've hired a recruiter and a quality control person to make sure we're doing what we're supposed to be doing."

As of Monday, there were 20,817 prisoners incarcerated in 24 state corrections facilities. As of June 30, Stirling said, 3,141 were mentally ill — an increase of about 1,000 inmates since 2002.

During the same period of time, corrections department data show a 19 percent decrease in the nonviolent population in prisons to 35 percent. Meanwhile, longer stays are leading to more than 2,110 prisoners over age 55.

"It's very expensive to keep up with folks that get older and medical costs go up because there is a constitutional standard we have to meet," Stirling said. "Folks are coming to department of corrections and staying longer."

Based on cost models, the state Department of Probation, Parole and Pardon Services estimates it's saved \$24.8 million over the past five years by releasing more inmates. The Sentencing Reform Act allows up to 35 percent of that savings to be reinvested annually.

The committee approved the parole department's request for \$2.2 million to be reinvested in reentry services, offender computer system upgrades and other programs that Director Jerry Adger said he has asked for repeatedly.

"My agency is not properly funded in the way that it should be," Adger said. "That gets to retention, morale, everything."

The committee meets annually to evaluate progress since the 2010 sentencing reform law Sen. Gerald Malloy, D-Hartsville, spearheaded.

Since 2010 there's been a 35 percent drop in the number of nonviolent inmates entering prisons, and recidivism has fallen from 27.5 percent to 24.9 percent.

During that time, several underutilized corrections facilities have been closed, including the minimum-security Coastal Pre-Release Center in North Charleston.

Officials expect to save \$450,000 annually from the closure of the Coastal Pre-Release center

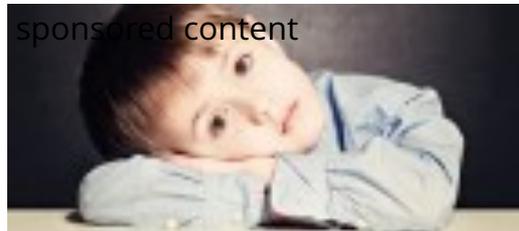
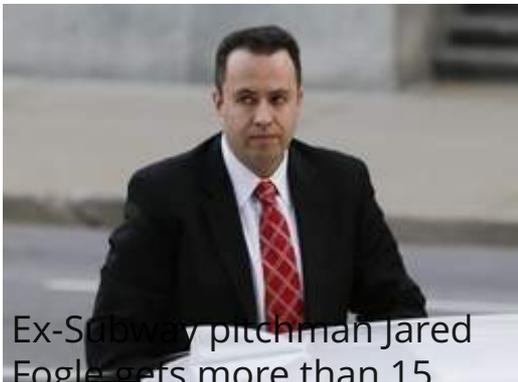
Officials expect to save \$450,000 annually from the closure of the Coastal Pre-Release Center alone. Malloy and others want that money to be reinvested in expanding re-entry programs to continue cutting incarcerations and recidivism.

“The savings have been enormous but we have not had the reinvestment that we have requested on a yearly basis,” Malloy said.

Reach Gavin Jackson at 843-708-1830 or [twitter.com/GavinJacksonPC](https://twitter.com/GavinJacksonPC).

- Keywords
- 📌 [mental health \(/section/search&facet.filter=Keywords:mental%20health\)](/section/search&facet.filter=Keywords:mental%20health)
  - 📌 [prison \(/section/search&facet.filter=Keywords:prison\)](/section/search&facet.filter=Keywords:prison)
  - 📌 [prisoner mental health \(/section/search&facet.filter=Keywords:prisoner%20mental%20health\)](/section/search&facet.filter=Keywords:prisoner%20mental%20health)
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  - 📌 [sentencing reform \(/section/search&facet.filter=Keywords:sentencing%20reform\)](/section/search&facet.filter=Keywords:sentencing%20reform)

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Tips for talking to children about death



Some drug offenders in S.C. federal prisons being

### Top Video Headlines

of 3



**GUILTY PLEA INFORMATION SHEET**

Name of Defendant: \_\_\_\_\_ Total Time Served Already: \_\_\_\_\_

Prior Conviction(s):  No  Yes: \_\_\_\_\_

Solicitor Name : \_\_\_\_\_

Defense Counsel Name: \_\_\_\_\_  Retained  Appointed

• **Pleading to Indictment(s):**

(I) Indictment No. \_\_\_\_\_  True Bill  Waiver

Offense: \_\_\_\_\_ Penalty Range: \_\_\_\_\_

Dismissed Any Charges:  No  Yes: \_\_\_\_\_

Offense to which Defendant is pleading if different: \_\_\_\_\_

If penalty range is different that indicted offense, list Penalty Range: \_\_\_\_\_

Victim Name: \_\_\_\_\_ Restitution:  Yes  No

(II) Indictment No. \_\_\_\_\_  True Bill  Waiver

Offense: \_\_\_\_\_ Penalty Range: \_\_\_\_\_

Dismissed Any Charges:  No  Yes: \_\_\_\_\_

Offense to which Defendant is pleading if different: \_\_\_\_\_

If penalty range is different that indicted offense, list Penalty Range: \_\_\_\_\_

Victim Name: \_\_\_\_\_ Restitution:  Yes  No

(III) Indictment No. \_\_\_\_\_  True Bill  Waiver

Offense: \_\_\_\_\_ Penalty Range: \_\_\_\_\_

Dismissed Any Charges:  No  Yes: \_\_\_\_\_

Offense to which Defendant is pleading if different: \_\_\_\_\_

If penalty range is different that indicted offense, list Penalty Range: \_\_\_\_\_

Victim Name: \_\_\_\_\_ Restitution:  Yes  No

• **Plea Sentencing Recommendation(s):**

Plea Recommendation: \_\_\_\_\_

Negotiated Plea For: \_\_\_\_\_

• **Youthful Offender Act Sentencing**

Eligible for Youthful Offender Act Sentencing

Ineligible for Youthful Offender Act Sentencing Due To:

Age (over age 25).

Convicted of a Violent Crime.

Prior YOA Charge(s): \_\_\_\_\_



12. Have you talked with your lawyer about and do you fully understand the elements of each crime you are pleading guilty to? Yes  No
13. Do you understand that if you plead NOT GUILTY and that if you do not take the witness stand, the jury (1) cannot take that as evidence against you and (2) the court would tell the jury that, like any citizen, you have the absolute right to remain silent, and that your silence cannot be held against you whatsoever? Yes  No
14. Do you understand that if you plead NOT GUILTY you have a right to use the subpoena power of the Court to make witnesses attend your trial and testify, whether they want to or not? Yes  No
15. Do you know that if you plead GUILTY you will be found guilty without a trial and you will have given up all the rights mentioned in questions (9) to (14) along with your right to present any defense(s), and your right to challenge or contest any of the evidence against you including any searches or seizures made by law enforcement, any statements you may have made, and any testing that was done or should have been done? Yes  No
16. If you are on Parole or Probation, do you know this plea could result in a revocation? Yes  No
17. Has your lawyer gone over your rights and all circumstances of the charge(s) with you, and done everything you have asked him or her to do on your case? Yes  No
18. Are you satisfied with your lawyer? Yes  No
19. Do you understand what you are doing and all the rights that you are giving up? Yes  No
20. Are you pleading guilty of your own free choice and will? Yes  No

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant's Signature

I certify that the above questions were answered by the Defendant after a full explanation of each question by the undersigned and in my opinion the Defendant understands the elements of the crime(s), the possible punishment(s) and his/her Constitutional rights that will be waived if the plea is accepted.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Attorney for Defendant

\_\_\_\_\_  
Attorney's Name Printed

2

South Carolina Department of Probation, Parole and Pardon Services  
Revocation Cover Sheet

Today's Date	March 4, 2019
Offender	Jason Biss
Agent	Katie L. Huffman
Attorney	Kelly Solar
Indictment #	2017-GS-10-03377
Sentencing Judge	
Original Offense	Criminal Sexual Conduct 3rd degree
Date of Sentence	12/18/2018
Sentence	10 years ss. 3 years probation
Date of Warrant/Citation	01/14/2019 (W-10-19-0021)
Date of Service	01/14/2019

**Violation**

- ✓ 3. Failed to not use controlled substance and failure to not consume alcoholic beverages. Offender tested positive for cocaine and alcohol on 01/14/2019. He admitted that he "took a bump" of cocaine on 01/12/19. He also tested positive for alcohol on 01/14/2019. He admitted to drinking between a 6pk and 12pk of beer since his last report. Offender states that he is not an alcoholic but he is "an Irishman".
- ✓ 10. Failed to follow advice and instructions of the agent. Offender tested positive for cocaine on 12/19/201, during this intake process. The offender was advised, signed, read, and given copies of his conditions of supervision. He stated that he understood.

**Recommendation**

- Enroll and successfully complete inpatient substance abuse counseling, if eligible. Weekly Alcoholic Anonymous attendance, and GPS monitoring for duration of probation.



NIKKI R. HALEY, Governor  
BRYAN P. STIRLING, Director

April 15, 2016

The Honorable Roger M. Young, Sr.  
Charleston County Judicial Center  
100 Broad St., Suite 368  
Charleston, SC 29401

RE: Offender [REDACTED], [REDACTED] SCDC# [REDACTED]  
Evaluation for Shock Incarceration Program

Judge Young:

In your term of Court in Charleston County on March 2, 2016, the above referenced offender was ordered for evaluation by the South Carolina Department of Corrections for placement in the ninety (90) day Shock Incarceration Program.

The completed evaluation indicates that Offender [REDACTED] is a suitable candidate for program participation. Offender began the SHOCK program on March 31, 2016.

Thank you for your support of this program. If any further assistance is needed in this matter, please contact Angela Deas at (803) 896-3100.

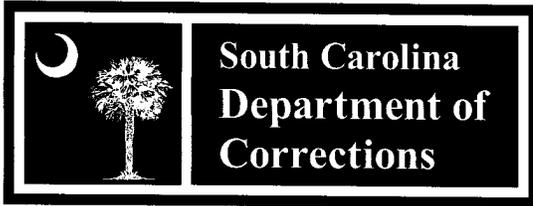
Sincerely,

A handwritten signature in black ink, appearing to read "Kelley Alston", is positioned above the typed name.

Kelley Alston for  
Angela Deas, Program Coordinator  
Shock Incarceration Program

cc:

Institutional Record  
Central Record  
SHOCK File



NIKKI R. HALEY, Governor  
BRYAN P. STIRLING, Director

12/13/16

The Honorable Roger M. Young, Sr.  
Charleston County Judicial Center  
100 Broad St., Suite 368  
Charleston, SC 29401

RE: Offender ~~XXXXXXXXXX~~  
Evaluation for Shock Incarceration Program

Judge Young

On November 14, 2016 in your term of Court in Saluda County, the above referenced offender was order to be evaluated by SCDC for placement in the Ninety (90) day Shock Incarceration Program.

The completed evaluation indicates that he is not a suitable candidate for participation in the program due to his VIOLENT DETAINER – NOTIFY A&B BY MOB, 2<sup>ND</sup> – 2015AO210201443. Since the offender arrived with an active sentence for assignment, the Reception and Evaluation Center will process him to an appropriate institution to serve his sentence.

Thank you for your support of this program. If any further information is needed, please do not hesitate to contact me (803)-896-3100.

Sincerely,  
  
Angela Deas, Program Coordinator  
Shock Incarceration Program

cc: Solicitor – Ervin Maye  
Attorney – Andrew Farley  
Institutional Record  
Shock File  
Offender Copy  
Central Record



NIKKI R. HALEY, Governor  
BRYAN P. STIRLING, Director

February 28, 2017

The Honorable Roger M. Young, Sr.  
Charleston County Judicial Center  
100 Broad St., Suite 368  
Charleston, SC 29401

RE: Offender ~~XXXXXXXXXX~~

Judge Young:

On December 13, 2016 in your term of Court in Charleston County, the above referenced offender received a Youthful Offender sentence, with a court order that he be screened for the Shock Incarceration Program. Upon reviewing his record, offender was placed within the SHOCK Program to receive services, however was removed due to the receipt of disciplinary STRIKING AN INMATE WITHOUT A WEAPON. Removal from the SHOCK Program will result in reassignment to an appropriate institution to serve the remainder of his sentence.

Thank you for your valuable support of this program. If I can be of any further assistance, please do not hesitate to contact me at (803) 896-3100.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Deas", is written over the typed name.

Angela Deas, Program Coordinator  
Shock Incarceration Program

cc: Solicitor – Daniel West Cooper  
Attorney – Nicholas Smit  
Central Records  
Institutional Record  
Shock File  
Offender Copy

# COURT'S TREATMENT OF F.I.

- 1) *State v. Douglas (2009) – OK as expert*
- 2) *State v. Jennings (2011) – Not OK admission of report*
- 3) *State v. Hill (2011) – OK as expert*
- 4) *State v. McKerley (2012) – Not OK as expert*
- 5) ***State v. Kromah (2013) – FI not an area of Expertise***
- 6) *State v. Damon Brown (2015) - blind expert OK*
- 7) *State v. Chavis (2015) – Non-scientific expert testimony*
- 8) *State v. Anderson (August 2015) – FI testimony improper*
- 9) *State v. George White (October 2015) – FI testimony affirmed*
- 10) *State v. Gerald Barrett (March 2016) – FI testimony affirmed*
- 11) *State v. Roy Lee Jones (August 2016) – Expert OK - affirmed*

# SPECIFIC HOLDING IN KROMAH

Forensic Interviewing is NOT an area of expertise in S.C., furthermore, at trial the FI should avoid the following:

1. Stating the child was instructed to be truthful;
2. Offering an opinion as to the credibility of the child's statement;
3. Indirectly vouching for the child;
4. Indicating the interviewer believes the child's allegations in the current matter; OR
5. Opining the child's behavior is an indication of the child's truthfulness.

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## *Child Advocacy Center Interview — State v. Anderson*

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“The better practice, however, is not to have the individual who examined the alleged victim testify, but rather to call an independent expert. To allow the person who examined the child to testify to the characteristics of victims runs the risk that the expert will vouch for the alleged victim's credibility. *Compare State v. Brown*, 411 S.C. 332, 768 S.E.2d 246 (Ct.App.2015) (distinguishing improper bolstering cases because in *Brown* the behavioral expert did not examine the victim).”

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# *Anderson-Brown* Procedure

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- ❖ In camera hearing — Section § 63-11-310
  - ❖ Qualifications of interviewer
  - ❖ Reliability of statements
- ❖ Interviewer introduce and play statement (w/o being qualified as expert) in front of jurors
- ❖ “Blind Expert”
  - ❖ Testimony beyond the ordinary qualifications of jurors
  - ❖ Qualifications of witness
  - ❖ Reliability of substance of testimony

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# *State v. Brown*

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- ❖ Galloway–Williams (1) was not testifying as a forensic interviewer, (2) never interviewed the victims, (3) did not prepare a report for her testimony, (4) did not express an opinion or belief regarding the credibility of child sex abuse victims' allegations, and (5) did not express an opinion regarding the credibility of the minor victims in this case.

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# *State v. Brown*

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- ❖ Further, because Galloway–Williams never commented on the credibility of the minor victims, but rather offered admissible expert testimony regarding the **general behavioral characteristics** of child sex abuse victims, we find such testimony did not improperly bolster the minor victims' testimony. Although Galloway–Williams testified that between seventy and eighty percent of children delay disclosing abuse, she never commented on the applicability of that statistic to the victims in this case. Instead, Galloway–Williams testified in **broad terms regarding various reasons sex abuse victims may delay disclosure and how the disclosure process progresses more generally**. The fact that her testimony corroborated some of the minor victims' reasons for delaying disclosure of the abuse does not mean her testimony improperly bolstered their accounts. . . . Galloway–Williams **merely offered reasons why children might delay disclosing instances of sexual abuse** to assist the trier of fact's understanding of the complex dynamics of child victims in sexual abuse cases.

## Jury Instruction on Child Abuse Dynamics Expert

I have previously instructed you about experts and expert testimony, and that same instruction about you decide how much weight to give her testimony still applies to this witness. She's been qualified as an expert in the field of child abuse dynamics and disclosure.

There is one thing I do want to caution you about with this expert's testimony. As I told you, most experts are entitled to give you an opinion about the facts and their observations. This expert is not going to give you an opinion about anything that you have heard in particular in this case. She is giving you her opinion about child abuse cases, their assessment, and their dynamics in general. It's important that you understand that she is not giving you her opinion as to whether or not the victim in this case is telling the truth or not telling the truth. That's not her role.

She's not a lie detector or truth detector. She's not giving her opinion on that. She's giving her opinion about general things that are said, or not said, that may or may not apply in these kinds of cases.

1 CAROLE SWIECICKI,  
2 having been first duly sworn,  
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. HERRING-LASH:

6 Q. Doctor, where do you work?

7 A. I'm the executive director at the Dee Norton  
8 Lowcountry Children's Center.

9 Q. What are your duties there as director?

10 A. I provide oversight to our program. It's a  
11 specialty program that responds to children and families.  
12 It helps coordinate the responses when there is a concern  
13 about child abuse and neglect.

14 Q. What is your educational background?

15 A. I have my bachelor's in psychology from the  
16 University of Florida and a master's degree and doctorate  
17 in clinical psychology from St. Louis University.

18 Q. And one thing I forgot to tell you, Dr. Swiecicki.  
19 These ladies are having to translate, so, if you would,  
20 speak a little slower than normal.

21 What is your professional background?

22 A. I specialized after my graduate training in  
23 responding and invention treatments and other responses  
24 to child abuse victims. I did an internship at Medical  
25 University of South Carolina in their psychiatry

1 department and a post-doctoral fellowship in St. John's  
2 University.

3 Q. How long have you been working in the area?

4 A. I've been independently licensed for nine years,  
5 after my post-doctorate.

6 Q. And do you have some professional affiliations?

7 A. Uh-huh. I'm a member of the Association for  
8 Behavioral and Cognitive Therapy; a member of the  
9 American Psychological Association; I'm on the board of  
10 directors of the National Children's Alliance, which is  
11 the accrediting body for centers like mine. Our model  
12 that we have at Dee Norton is a national model, and  
13 National Children's Alliance is the board that accredits  
14 the center, and I'm also on the board of directors of the  
15 South Carolina Network of Children's Advocacy.

16 Q. Have you worked on publications and peer-reviewed  
17 articles?

18 A. Yes. I've published different articles on the  
19 topic of child maltreatment and also presented at  
20 conferences.

21 Q. And have you testified as an expert in the court  
22 in the area of child sexual abuse?

23 A. Yes.

24 Q. What courts and how many times?

25 A. Prior to coming to my position here in Charleston,

1 I worked in northern Virginia, so I have testified in  
2 Norfolk family court, Norfolk criminal court; also the  
3 criminal court in Virginia Beach, Virginia; in a court  
4 martial, military court martial, and also here in  
5 criminal court here in Charleston County, approximately  
6 ten to fifteen times total.

7 MS. HERRING-LASH: And, Your Honor, at this  
8 time, we would offer Dr. Swiecicki as an expert in the  
9 area of child sexual abuse.

10 THE INTERPRETER: May the interpreters have a  
11 moment? It appears the defendant cannot hear anything.

12 THE COURT: Let's take five minutes while  
13 they try to work out the electrical problem, and we'll  
14 have you right back.

15 (In open court, jury not present.)

16 THE COURT: Do you want to voir dire her on  
17 qualifications? You do want to object to her testifying  
18 overall in this subject matter?

19 MS. FORD: Yes, Your Honor.

20 THE COURT: Okay. I'll note that for the  
21 record, and I'll deny that motion, so you won't have to  
22 do that. You said child sexual abuse. I think the field  
23 is child abuse dynamics or disclosure, okay?

24 MS. HERRING-LASH: Child abuse dynamics.

25 THE COURT: Okay.

1 MS. HERRING-LASH: And, actually, I think she  
2 does more than sexual abuse.

3 (In open court, jury present.)

4 THE COURT: You want to offer her in the  
5 field of --

6 MS. HERRING-LASH: Of child abuse dynamics  
7 and disclosure.

8 THE COURT: As I understand, the defense does  
9 not object to her being qualified as an expert in this  
10 field, correct?

11 MS. FORD: Correct, Your Honor, just as  
12 stated before.

13 THE COURT: Folks, I have been giving you an  
14 instruction about experts, and that same instruction  
15 about you decide how much weight to give her testimony  
16 still applies to this. She's been qualified as an expert  
17 in the field of child abuse dynamics and disclosure.

18 One thing I do want to caution you about,  
19 most experts are entitled to give you an opinion about  
20 the facts and observation. This expert is not going to  
21 give you an opinion about anything that you have heard in  
22 particular in this case. She is giving you her opinion  
23 about child abuse cases, their assessment, their dynamics  
24 in general. It's important that you understand that she  
25 is not giving you her opinion as to whether or not the

1 victim in this case is telling the truth or not telling  
2 the truth. That's not her role.

3 She's not a, quote, lie detector or truth  
4 detector. She's not giving her opinion on that. She's  
5 giving her opinion about general things that are said, or  
6 not said, that may or may not apply in these kinds of  
7 cases. All right?

8 BY MS. HERRING-LASH:

9 Q. Dr. Swiecicki, I get to follow up on that. Have  
10 you met with any of the family involved in this case?

11 A. No.

12 Q. Have you reviewed any of the files involved in  
13 this case?

14 A. No.

15 Q. Have you reviewed any materials from this case?

16 A. No.

17 Q. So you will be talking to us about child abuse  
18 dynamics in general?

19 A. Yes.

20 Q. Now, is there a term in your profession that is  
21 called delayed disclosure?

22 A. Yes.

23 Q. And what is that? Is that commonly seen by  
24 professionals in your area?

25 A. It is commonly seen.

1       Q.   And why -- I guess to put it just basically, why  
2   don't kids tell immediately?

3       A.   So the literature on delayed disclosure defines an  
4   immediate disclosure as within a month, 24 hours to one  
5   month of an incident of abuse. Most of the literature is  
6   on child sexual abuse. Between a half and three-fourths  
7   of children delay longer than a month in terms of  
8   telling, and about one out of every four children never  
9   tell until they're in the study that is actually looking  
10   at whether people tell about child abuse.

11      Q.   And are they adults at that point?

12      A.   Most are adults. There have been a couple with  
13   teenagers. It's a similar pattern.

14            You asked about the reasons why children delay.  
15   Some of those things involve -- they're afraid about  
16   negative consequences to themselves or to others.  
17   Children in the studies report that they are sometimes  
18   also afraid about the offender, particularly when it's a  
19   member of their family. They're afraid about negative  
20   consequences to the family so they delay telling.

21            Children are less likely to tell when the abuse  
22   started when they're younger, if the abuse started when  
23   they were younger than ten. That's -- usually the cutoff  
24   in the study is ten, and they're more likely to not tell  
25   about it when it happened earlier, when it's chronic, as

1 opposed to a one-time incident also.

2 Q. And are there certain factors that impact the  
3 child's telling, like relationships or family dynamics,  
4 things like that?

5 A. Uh-huh. One of the things they have looked at is  
6 the support of a caregiver. That's something -- when  
7 children have a supportive caregiver, they are more  
8 likely to tell and to tell more quickly. A lot of times  
9 in the studies they need corroborating information to  
10 know whether a child would be telling and it's actually  
11 abuse.

12 So there has been one study that was pretty well  
13 done that was with children who had medical evidence that  
14 abuse had happened, children with a sexually transmitted  
15 infection or a physician said that was indicative the  
16 abuse had happened.

17 Q. Like a sexually transmitted disease?

18 A. Exactly, and when they had a supportive caregiver,  
19 they were three-and-a-half times more likely to tell than  
20 if they didn't have a supportive caregiver. 17 percent  
21 of those who had an unsupportive caregiver told versus 63  
22 percent of the ones with a supportive caregiver, and  
23 that's been replicated in the other studies where  
24 children didn't have sexually transmitted infections but  
25 where law enforcement or social services had made a

1 finding that they thought that abuse had happened.

2 Q. And -- I lost my train of thought. If the  
3 child -- is there literature on the children that are  
4 even interviewed or in therapy who are undergoing abuse  
5 and do not disclose?

6 A. Do not disclose at all?

7 Q. At all.

8 A. Uh-huh. So in the study that had law enforcement  
9 or social services, some professional had made an  
10 indication that they thought abuse had happened, 15  
11 percent of those children did not tell in a professional  
12 setting. Of the 15 percent that did not tell, 5 of them  
13 actually said nothing had happened, but there was some  
14 other corroborating evidence that something had happened.

15 And in terms of the delay, children also have said  
16 that they gauge -- one study -- one child in the study  
17 kind of gauged her social worker's response and said, you  
18 know, I told her a little bit, and then kind of gauged  
19 how she reacted and then told her a little bit more and  
20 hadn't actually even said who the alleged offender was,  
21 and then she said, Then I was willing to say who it was  
22 because she felt like she had built -- I guess, for  
23 whatever reason, she didn't tell it all at first.

24 Q. And if threats are involved, either verbal to the  
25 child or to other members of the family, does that also

1 affect their telling?

2 A. Uh-huh.

3 Q. And in what ways?

4 A. Threats can work actually in both directions. So  
5 sometimes offenders will say, I'm threatening to hurt  
6 you. I'll hurt you if you tell. Sometimes they threaten  
7 to not give privileges.

8 Some of the dynamics of abuse involve the  
9 offenders having special gifts or special time, and they  
10 might threaten to say, You know what? That will go away  
11 if you tell, and that's been found rather consistently in  
12 the literature.

13 Q. And are these things true for younger and older  
14 children alone?

15 A. All of the things in terms of expected  
16 consequences to telling seem to be more relevant for  
17 older children, and, really, again, that cutoff seems to  
18 be ten, that older children have better ways to think  
19 about things.

20 They think about things more generally. Younger  
21 children are generally more concrete. Younger children,  
22 again, are less likely to tell if the abuse starts when  
23 they're young, and the older children just expect those  
24 consequences as well.

25 Q. Are there things that you have seen clinically and

1 there has been research on that may actually -- what  
2 would prompt a child to finally tell some of the things?

3 A. Uh-huh, both within my own practice, but then also  
4 there's studies and I have done one study on that. So  
5 reasons that children tell, one of the big ones is that  
6 they've been given an opportunity. Somebody asks them  
7 because they're either concerned that the child's  
8 behavior has changed or something else prompts them.  
9 There have been more prevention programs out there so  
10 children sometimes are prompted to tell because there's a  
11 professional -- you know, there's a prevention program at  
12 school and the child sees that.

13 TV programming is one of the things that children  
14 say prompts them to tell because they saw it on TV and  
15 say, Oh, that's happening to me, and they tell about it.  
16 They -- especially as children get older, the fear that  
17 the offender might be acting on somebody else so to  
18 protect a sibling or someone else, and then the stress.  
19 It's not one of the most things, actually, that's  
20 reported, but because they want the abuse to stop or they  
21 feel upset about it, that is something that they do say  
22 is the reason why they decided to tell.

23 Q. So it could be as simple as somebody asks them.

24 A. Uh-huh.

25 Q. And I you think you kind of touched on this a bit,

1 but is the disclosure process a process or an event,  
2 usually?

3 A. More frequently, it's a process.

4 Q. What does that mean?

5 A. It means that children don't necessarily tell  
6 everything at once. Things tend to come out more, you  
7 now, lengthy as a process. So the example in one of the  
8 studies was the girl who told a piece to her therapist,  
9 so it might be that she told her, Well, something's going  
10 on that I don't like with my dad.

11 That was the example in the story, was her father.  
12 And then, you know, telling a little bit more about what  
13 happens in the next session but not opening up all at  
14 once and then actually who it was. She hadn't said who  
15 it was, but she just said, Something is going on that I  
16 don't like, as an example of that.

17 Q. And I know very often after a child has disclosed,  
18 they are sent to counselling or therapy or whatever.  
19 Does that intervention also aid them in being able to  
20 better explain what is happening?

21 A. Uh-huh.

22 Q. And how so, if you can --

23 A. To best answer that, can I kind of talk about what  
24 we do at my center? So lots of times when there's a  
25 concern for child abuse or neglect in Charleston or

1 Berkeley Counties, which is where we serve, they would  
2 first be referred for a forensic interview, which is an  
3 interview by someone who is trained to ask questions that  
4 are not leading, to give a child a chance to tell, but  
5 would lead them to tell if nothing happened.

6 So that's one of those things that is really more  
7 about what's happened. Then if the child does disclose  
8 abuse, there are lots of symptoms that they might be  
9 having, so there's an assessment of behaviors or  
10 emotional problems that the child might be having, and if  
11 they're having symptoms, then they'd be referred to a  
12 treatment to actually reduce whatever symptoms they're  
13 having.

14 One of the -- well, a very common symptom is  
15 post-traumatic stress disorder, which is nightmares and  
16 intrusive thoughts. That's one of the things that we  
17 often see, so the treatment that children most frequently  
18 receive is called trauma focussed cognitive behavioral  
19 therapy. It's a treatment that's designed to help reduce  
20 those symptoms.

21 One of the symptoms is avoidance, so children  
22 don't want to be upset about what happened, so they don't  
23 talk about it as much, and during the treatment, they  
24 talk about their upsetting thoughts and feelings.

25 It's not as much about what happened as it is

1 about their thoughts and feelings about what happened.  
2 That's why they avoided talking about it. So through  
3 that treatment process, they do ultimately talk about  
4 some of the feelings.

5 Q. So it may help the process along if they get some  
6 treatment?

7 A. Uh-huh, because it's more comfortable to talk  
8 about it.

9 Q. And I think there was one article or some -- I'll  
10 just ask you, is it common for a child to tell a peer as  
11 opposed to an adult or professional?

12 A. Uh-huh. The two most common recipients of first  
13 disclosures are mothers and then peers, and it depends on  
14 the age. Younger children are more likely to tell their  
15 mothers first. Teens are more likely to tell a peer  
16 first.

17 Q. And are there common behavioral reactions to being  
18 sexually assaulted?

19 A. So in terms of behaviors, children who have been  
20 sexually abused or sexually assaulted are at higher risk  
21 for things like running away, defiance, temper tantrums,  
22 depending on the age. You see teens doing things like  
23 running away, getting into risky peer groups, self-harm,  
24 cutting behaviors. Younger kids, you might see things  
25 behaviorally like aggression and temper tantrums.

1 Q. And you said anger and explosive behavior as well?

2 A. Uh-huh, temper tantrum types of explosive  
3 behaviors.

4 Q. And are there also children on the other side of  
5 the spectrum that have no behavioral reactions that are  
6 apparent to those around them?

7 A. Uh-huh. So children who are abused are at higher  
8 risk, but it's not a 100 percent sort of thing. The most  
9 common outcome, really, is more post-traumatic stress,  
10 which I talked about, which is kind of a host of  
11 symptoms.

12 That includes things that are not external, like  
13 behavior problems, but it's more internal in your  
14 thoughts in terms of self-blame; thinking about the abuse  
15 when you don't want to, it pops into your head;  
16 nightmares; avoidance of talking or thinking about it;  
17 avoiding places where it happened; those sorts of things.

18 Q. And that may be really what my next question was,  
19 is are there common emotional reactions to abuse or is  
20 there a spectrum?

21 A. Again, it's a higher risk, so among the samples of  
22 youth who have experienced a traumatic event like sexual  
23 abuse or sexual assault, about half of them are at risk  
24 for developing full-blown post-traumatic stress disorder  
25 that could be diagnosed. The rates depend on the sample,

1 but approximately half.

2 When children have experienced multiple types of  
3 abuse, that goes up, so if it's chronic, or if it's more  
4 severe abuse that maybe involved penetration, there are  
5 higher likelihood. If they've been both physically and  
6 sexually abused, about two out of every three of those  
7 children develop full-blown post-traumatic stress  
8 disorder.

9 You might see some symptoms for children who don't  
10 develop a full disorder, but between a half and  
11 two-thirds, if they've experienced multiple types, and if  
12 it's just sexual assault, it's about half.

13 Q. And you were talking before about one of the  
14 reactions can be temper tantrums or explosive behavior,  
15 is that relating to have an inability to control what was  
16 happening --

17 MS. FORD: Objection, leading.

18 BY MS. HERRING-LASH:

19 Q. Explain what would be the temper tantrums and the  
20 anger outbursts that you were talking about.

21 A. So temper tantrums -- it's hard to say, not  
22 knowing ages. Temper tantrums are very common in young  
23 children. It's not something that's specific to sexual  
24 abuse.

25 Q. Right.

1           A. There are some behaviors that are very higher  
2 likelihood in sexually abused children. Things like  
3 inserting objects in their rectum or vagina, much more  
4 common, much more linked to sexual abuse.

5           So temper tantrums is one of the -- they're at a  
6 higher risk for having temper tantrums, but, again,  
7 that's something that -- you know, any two- to  
8 four-year-old is going to have a temper tantrum at some  
9 point, but you start seeing them with more frequency.  
10 You start seeing them differently than how they might  
11 have acted before the abuse.

12          Q. And if you see them in older children, like ten to  
13 thirteen, is that more significant than in a  
14 two-year-old?

15          A. The biggest thing is actually the change in  
16 behavior, so when behavior problems are linked to  
17 something like sexual abuse, you really would see that it  
18 is a change, that the child didn't have those before the  
19 abuse started and then they start having them after.  
20 That would be a significant red flag for an older child  
21 in particular.

22          Q. Now, as far as the emotional reaction, another  
23 question I had about that was often do you see children  
24 that have no emotional reaction during their interview --  
25 I guess you call that a flat affect.

1           A. I would. So another symptom of post-traumatic  
2 stress disorder with the avoidance is numbing, so just  
3 appearing numb, appearing as if you had no feeling at  
4 all. That's something actually that's pretty adaptive.  
5 A lot of times we hear about post-traumatic stress  
6 disorder with combat veterans. If you're in the midst of  
7 combat, it's pretty adaptive to not be very fearful, or  
8 to have a calm demeanor.

9           It's a similar sort of thing, reacting to any  
10 stressful, very highly stressful or dangerous event, that  
11 calmness is adaptive in one situation. When it's not  
12 happening and you still see that numbness, that's when it  
13 can be problematic.

14          Q. And I guess on the flip side of that, are there  
15 some children that present as being very nervous and  
16 hypervigilant about what they're talking about?

17          A. So, again, hypervigilance is another  
18 post-traumatic stress disorder symptom. It's in the  
19 cluster of anxiety. Typically, when we're at the  
20 forensic interview portion, this is one of the first  
21 appointments that children have.

22          We saw 1,500 children last year, so we see kind of  
23 a range of responses. A lot of times when they're in  
24 that interview, they are more likely to be calm as  
25 opposed to necessarily very anxious or distraught.

1       Q. I guess it kind of sounds like the bottom line is  
2 there's no specific reaction.

3       A. There's no prototype reaction, but as the time  
4 lags after an event has happened, children are at a  
5 higher risk than a child who wasn't abused for developing  
6 symptoms like aggression or post-traumatic stress  
7 disorder.

8                   MS. HERRING-LASH: Court's indulgence for a  
9 moment. Those are all the questions I have,  
10 Dr. Swiecicki. If you could, answer any from Ms. Ford.

11                   THE COURT: Cross?

12                   CROSS-EXAMINATION

13 BY MS. FORD:

14       Q. You told us a bit about delayed disclosure today.  
15 In studies, basically, a lot of people don't tell,  
16 correct?

17       A. Correct, yeah.

18       Q. However, some do tell right away, of course.

19       A. Yes.

20       Q. If someone tells right away, that doesn't mean it  
21 didn't happen, correct?

22       A. Right, uh-huh.

23       Q. If someone reveals -- makes a disclosure, they  
24 said it happened yesterday --

25       A. Uh-huh.

1 Q. -- that would be an immediate disclosure, correct?

2 A. Right, uh-huh.

3 Q. Just because it's immediate, that doesn't make it  
4 false, correct?

5 A. Correct. That happens about a fourth of the time  
6 also.

7 Q. And just because someone says something happened a  
8 long time ago or it's been happening, that doesn't  
9 automatically mean it happened.

10 A. The studies really aren't getting at, like, the  
11 disclosures in terms of whether or not something  
12 happened. Most of the children in the study, they try  
13 and rule out the ones where it was questionable. So the  
14 children in the studies are typically the ones who have  
15 some other corroborating information about whether it  
16 happened or not.

17 Q. Right. But, basically, when a child tells can't  
18 necessarily -- it's not correlated to if someone's  
19 telling the truth or not.

20 A. Right. Our studies are really not about the  
21 truthfulness as much as the process in terms of  
22 disclosure once there's some other sort of indication  
23 that it happened.

24 Q. And you told us about half to three-fourths of  
25 kids delay longer than a month?

1 A. Uh-huh.

2 Q. But there are various studies, correct?

3 A. Uh-huh.

4 Q. And so some studies actually have different  
5 results?

6 A. That's the kind of consensus across the summary of  
7 studies.

8 Q. Well, just for example, you provided some studies  
9 to the solicitor.

10 A. Uh-huh.

11 Q. And one of those studies mentions a case conducted  
12 by Kogan. I think that was the lead from 2004. Does  
13 that sound familiar?

14 A. I looked at so many. If that's one of the ones  
15 that she sent you, then that was from me.

16 Q. Well, in that case, it did sound like a result  
17 that you heard of. Immediate disclosure, meaning within  
18 a month, 43 percent of people disclosed immediately?

19 A. Right. That would be approximately the half that  
20 do tell right away.

21 Q. And there's one case referred to, Goodman Brown  
22 from 2003, 64 percent disclosed within one month.

23 A. Okay. That's not one I think I sent her. That  
24 was probably cited in the others.

25 Q. But you cited in the case itself, and 29 percent

1 within six months for that study. So sometimes there are  
2 a variety of numbers, correct?

3 A. Right.

4 Q. One reason -- you've talked a little bit about  
5 reasons for delayed disclosure. It might be because the  
6 person doesn't want the person to go to jail?

7 A. That was cited in the studies, yeah.

8 Q. That it will leave some kids without a dad.

9 A. That was the specific quote from that study, yeah.

10 Q. You told the solicitor sometimes it's just because  
11 they haven't been asked, correct?

12 A. The literature says that a question of the child  
13 is something that sometimes prompts them to tell.

14 Q. And today, you mentioned some programs out there.  
15 Schools tend to be a little more proactive these days at  
16 giving literature and things like that, about good  
17 touches versus bad touches; is that fair to say?

18 A. Erin's Law was passed in South Carolina within the  
19 last couple years which requires the schools to do child  
20 sexual abuse prevention.

21 Q. So in your experience, the schools in Charleston  
22 County, they do talk about things like that, or --

23 A. Charleston County hasn't actually started  
24 implementing it yet, but I do think they've been doing it  
25 more in general.

1 Q. Right. They have pamphlets and things like that,  
2 booklets?

3 A. I'm not aware actually that they have it.

4 Q. You told us about some behaviors, but each  
5 individual is different, correct?

6 A. Correct.

7 Q. Some children may really get withdrawn, for  
8 example?

9 A. That's definitely possible, sure.

10 Q. And you told us about post-traumatic stress  
11 disorder. Just like adults, kids can get post-traumatic  
12 disorder from a variety of reasons, correct?

13 A. Correct.

14 Q. Sometimes it might be physical abuse?

15 A. Absolutely.

16 Q. Or witnessing physical abuse by the parents.

17 A. Yes. The measures of post-traumatic stress  
18 disorder typically ask about the symptoms in response --  
19 in relation to a specific event, so it's asking if  
20 they're having these symptoms related to that event.

21 Q. So domestic -- in your work, you also deal with  
22 some domestic abuse, is that fair to say, or just kids  
23 who have been around domestic abuse?

24 A. Children who have witnessed domestic violence or  
25 experienced it themselves in terms of physical abuse,

1 yes.

2 Q. That can impact the child as well?

3 A. Yes, and that's actually what I was saying. In  
4 terms of when a child's experienced both sexual abuse and  
5 physical abuse, they're at the highest risk for  
6 developing post-traumatic stress disorder. Three out of  
7 every four of those children do, but one doesn't, so some  
8 children are resilient.

9 Q. And sometimes children can be affected by losing  
10 someone they love in their lives?

11 A. Specifically with traumatic -- with post-traumatic  
12 stress disorder, it could be diagnosed related to  
13 traumatic death, so sudden loss of someone. Typically,  
14 if a person dies due to natural causes that wasn't  
15 necessarily unanticipated, that wouldn't be related to  
16 something like post-traumatic stress disorder, typically.

17 Q. But if a kid loses someone in their lives, that  
18 could affect their behavior?

19 A. Yes.

20 MS. FORD: Beg the Court's indulgence. No  
21 further questions.

22 MS. HERRING-LASH: Just one kind of  
23 follow-up.

24 REDIRECT EXAMINATION

25 BY MS. HERRING-LASH:

1       Q.  When you were talking about some of the studies,  
2       40 percent, 29, different percentages, another thing you  
3       talked about in your direct was some of the reasons a  
4       child may not tell?

5       A.  Uh-huh.

6       Q.  Would the existence or nonexistence of some of  
7       those reasons account for whether a child told within a  
8       week or a month or waited years?

9       A.  Absolutely.

10      Q.  Can you kind of explain that.

11      A.  The differences in percentages in the studies a  
12      lot of time has to do with the exclusion criteria for the  
13      children.  So some of these studies are just done with  
14      adults, asking about their experiences as youths,  
15      regardless of whether something went to authorities; you  
16      know, whether authorities were ever notified.  They're  
17      asking, Did you tell anyone?

18                Some studies are very specific, that they're just  
19      asking children who are at a center like mine, so an  
20      authority has been notified, or some professional has  
21      typically become involved, or a parent, somebody, has --  
22      somebody has found out about it in terms of an adult, and  
23      then they're finding out the disclosure rate in the  
24      forensic interview.

25                So the rates are different based on how they let

1 children into the study. One of the studies I mentioned  
2 was just children who have a sexually transmitted  
3 infection, and so that was different. And the disclosure  
4 rate in that study, I said, you know, was -- 63 percent  
5 was the ones who had a supportive caregiver; 17 percent,  
6 unsupportive caregiver. The overall disclosure then was  
7 somewhere in the 50s, I believe.

8 So, again, that's lower than -- most of the  
9 studies do say that at some point in their lives, three  
10 out of four children will tell, even if it's not right  
11 away.

12 Q. And that could be to a peer or a spouse?

13 A. It could be to anyone.

14 Q. And some of the other factors that you talked  
15 about is if they feel threatened, if there's violence,  
16 that may affect that?

17 A. Most of the things with those are talking about  
18 impacting delay of disclosure because those children are  
19 in the studies, so at some point, they told somebody.

20 MS. HERRING-LASH: Those are all the  
21 questions I have.

22 THE COURT: Recross?

23 MS. FORD: No, Your Honor.

24 THE COURT: All right. You may step down.

25

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

The State, Respondent,

v.

Michael Vernon Beaty Jr., Appellant.

Appellate Case No. 2015-000718

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Appeal from Laurens County  
W. Jeffrey Young, Circuit Court Judge

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Opinion No. 27795  
Heard June 15, 2017 – Filed April 25, 2018

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**AFFIRMED**

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Clarence Rauch Wise and E. Charles Grose Jr., both of  
Greenwood, for Appellant.

Attorney General Alan McCrory Wilson, Deputy  
Attorney General Donald J. Zelenka, and Assistant  
Attorney General Susannah Rawl Cole, all  
of Columbia; and Solicitor David Matthew Stumbo, of  
Greenwood, for Respondent.

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**JUSTICE JAMES:** Michael Vernon Beaty Jr. (Appellant) was convicted of murdering Emily Anna Asbill (Victim) and received a life sentence. We affirmed Appellant's conviction on December 29, 2016, in *State v. Beaty*, Op. No. 27693 (S.C. Sup. Ct. filed Dec. 29, 2016) (Shearouse 2017 Adv. Sh. No. 1 at 13). We

subsequently granted the parties' petitions for rehearing and heard further argument. We affirm Appellant's conviction.

## **FACTUAL AND PROCEDURAL HISTORY**

Appellant and Victim attended an evening party in their hometown of Clinton. They decided to leave the party between 9:00 pm and 10:00 pm and agreed to give their friend Will Alexander a ride home. Appellant drove the vehicle, Victim sat in the front passenger seat, and Alexander sat in the backseat. At approximately 11:00 pm, Appellant rang the doorbell at his parents' home and asked his stepfather for help. When Appellant's stepfather approached the car, he found Victim unconscious on the front passenger side floorboard and called 911. EMS arrived shortly thereafter and found Victim sitting on the floorboard with her head laid back on the passenger seat. She was not breathing and did not have a pulse. Appellant's shirt was wrapped around Victim's right arm. Victim was found to have severe "road rash" on her right and left arms and bruising to her neck. EMS transported Victim to the hospital, where she was pronounced dead. An autopsy revealed the cause of Victim's death was asphyxia due to strangulation.

At trial, the State introduced several of Appellant's statements to law enforcement into evidence. These statements varied materially. Appellant initially suggested Victim died of a self-inflicted cutting injury. Following law enforcement's receipt of the autopsy results, Appellant voluntarily returned to the police station and repeated his earlier version of events. However, in this statement, Appellant stated he had to undo Victim's seatbelt when he realized she was unconscious after arriving at his parents' home. When Appellant was informed of the autopsy results, which showed Victim had been strangled and had "road rash," Appellant gave a written statement explaining he and Victim had argued during the car ride, Victim had opened the car door to jump out, and he had grabbed her shirt to pull her back into the car.

At trial, the State and Appellant presented expert witnesses to support their theories as to the events leading up to Victim's death. The State's theory was that Appellant strangled Victim with a USB cord after a fight during which she tried to jump out of the moving car. Appellant's theory was that when Victim tried to jump out of the moving car, he held her in by her tank top, which caused the ligature marks on her neck and rendered her unconscious, and that once he pulled her back into the car, she succumbed to positional asphyxiation due to the awkward position she assumed on the floorboard.

The pathologist who conducted the autopsy was called by the State and testified the ligature marks on Victim's neck were visible on the front and sides of her neck but not on the back of her neck. The pathologist identified a USB cord found in the car as consistent with the ligature marks and the abrasion on Victim's neck. DNA analysis of the USB cord showed Victim's DNA on the middle of the cord. The cord's ends had a mixture of at least two individuals' DNA, with Victim being the major contributor and Appellant being the minor contributor.

A forensic pathologist also testified for Appellant and stated the USB cord did not cause the injuries to Victim's neck and opined positional asphyxiation played a role in Victim's death. A mechanical engineer testified for Appellant and stated the ligature marks on Victim's neck could have been caused by someone holding her up by her tank top as she hung out of the car and that both Victim's abrasions and her blood found on the outside of the car were consistent with this scenario.

Appellant was convicted of murder and received a life sentence. Appellant timely filed a notice of appeal, and we certified the case from the court of appeals pursuant to Rule 204(b), SCACR. Appellant raised the following issues: (1) whether the State presented substantial circumstantial evidence proving Appellant committed murder; (2) whether the trial judge erred by denying Appellant's request to charge the lesser-included offense of involuntary manslaughter; (3) whether the trial judge erred in using certain language in his opening remarks to the jury; (4) whether the trial judge erred during the closing argument stage in not (a) requiring the State to open fully on the law and the facts of the case and (b) limiting the State's final closing solely to reply to new arguments presented during Appellant's closing arguments; (5) whether the trial judge erred in charging the law of circumstantial evidence as set forth in *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013); (6) whether the trial judge erred in excluding testimony concerning a prior incident when Victim threatened to jump from an automobile; (7) whether the trial judge erred in denying one of Appellant's voir dire requests; and (8) whether a new trial should be ordered based on the cumulative error doctrine.

In affirming Appellant's conviction in our prior opinion, we found two of the issues Appellant raised merited discussion. *State v. Beaty*, Op. No. 27693 (S.C. Sup. Ct. filed Dec. 29, 2016) (Shearouse 2017 Adv. Sh. No. 1 at 14–17). First, we addressed the trial judge's use of certain language in his opening remarks to the jury and the content requirements and order of closing argument. We affirmed Appellant's conviction but instructed trial judges to avoid language urging jurors to

"search for the truth," find "true facts," and render a "just verdict." Second, we adopted a rule for closing argument in criminal cases, requiring the party with the right to open and close to open fully on the law and facts and limit its reply to those matters raised by the other party in its closing argument. We affirmed all of Appellant's remaining issues under Rule 220(b), SCACR.

We granted the parties' petitions for rehearing and have heard further argument. We issue this opinion to again address both the trial judge's use of certain language in his opening remarks to the jury and the rules governing the content and order of closing argument.<sup>1</sup> We affirm Appellant's conviction.

## DISCUSSION

### I. Trial Judge's Opening Remarks

After the jury was sworn, the trial judge gave preliminary remarks to the jury. The trial judge outlined the roles, duties, and responsibilities of the lawyers and the jury and explained trial procedure. During these remarks, the judge stated:

This . . . trial . . . is a search for the truth in an effort to make sure that justice is done. Searching for the truth and ensuring that justice is done is often slow, deliberate, and repetitive.

[The attorneys] are sworn to uphold the integrity and the fairness of our judicial system and to help you as jurors to search for the truth.

You also just took an oath to listen to the evidence in this case and reach a fair and just verdict and you are expected to be professional, reasonable and ethical.

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<sup>1</sup> All remaining issues are affirmed pursuant to Rule 220, SCACR. *State v. Bailey*, 298 S.C. 1, 377 S.E.2d 581 (1989); *State v. Phillips*, 416 S.C. 184, 785 S.E.2d 448 (2016); *State v. Sterling*, 396 S.C. 599, 723 S.E.2d 176 (2012); *State v. Scott*, 414 S.C. 482, 779 S.E.2d 529 (2015); *State v. Marin*, 415 S.C. 475, 783 S.E.2d 808 (2016); *State v. Smith*, 230 S.C. 164, 94 S.E.2d 886 (1956); *State v. Vang*, 353 S.C. 78, 577 S.E.2d 225 (Ct. App. 2003).

You the jurors find [the facts] from the testimony from a witness from the witness stand or any other evidence, and after hearing that evidence you will deliberate and render a true and just verdict under the solemn oath that you just took as jurors.

In determining what the true facts are in this case you must decide whether or not the testimony of a witness is believable.

After argument of counsel and the charge on the law by me, you will then be in a position to determine what the true facts are and apply those facts to the law and thus render a true and just verdict.

Appellant objected to the use of the phrases "search[ing] for the truth," "true facts," and "just verdict." Appellant argued these phrases were especially improper when linked with the State's "misstatement" of circumstantial evidence and reasonable doubt in its opening statement, and because the State had informed the jury that it would have to pick between two competing theories. The State acknowledged to the trial judge that the "search for the truth" language is disfavored but argued that its use here was not reversible error. The trial judge denied Appellant's request for a curative instruction, concluding that his remarks were merely an opening comment and not a jury instruction.

Appellant relies upon *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000), in which we held that jury instructions on reasonable doubt which also charge the jury to "seek the truth" or "search for the truth" run the risk of unconstitutionally shifting the burden of proof to the defendant. In *Aleksey*, we found there was no reversible error because the "seek the truth" language was charged in conjunction with the credibility of witnesses charge, and not with either the reasonable doubt or circumstantial evidence charges. *Id.* at 27–29, 538 S.E.2d at 251–53; *cf. State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012) (instructing discontinuance of charge that jury's duty is to return a verdict that is just and fair to all parties).

As the trial judge noted, the disputed comments can be distinguished from *Aleksey* because they were a mere statement to the jury and not a charge on the law. Further, the remarks were not linked to either the reasonable doubt or the

circumstantial evidence charges as was condemned in *Aleksey*. However, we agree with Appellant that a trial judge should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict.<sup>2</sup> These phrases could be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict the jury believes best serves its perception of justice. We instruct trial judges to avoid these terms and any others that may divert the jury from its obligation in a criminal case to determine whether the State has proven the defendant's guilt beyond a reasonable doubt. Although there was error here, our review of the entirety of the judge's opening comments and the entire trial record convinces us that Appellant has not shown prejudice from this error sufficient to warrant reversal. *Compare State v. Coggins*, 210 S.C. 242, 245, 42 S.E.2d 240, 241 (1947) (providing trial judge's choice of words and comments, while not "happy," did not require reversal).

## II. Closing Arguments

### A. Background

During trial, before closing arguments, Appellant requested the trial judge to require the State to open fully on the law and facts of the case and then reply only to new matter raised by Appellant in his closing argument. Appellant stated to the trial judge, "I understand [the State is] going to open fully on the law and the facts, and not just open on some of the facts, but fully on the facts to explain their theory of the case so that --." The trial judge then interrupted and said, "[The State] will open and explain and then they will have final argument which I will allow them to go int[o] what they want to talk about." The solicitor responded, "[W]e believe the law in the state right now is the State [has the option] to bifurcate or to give one argument. We honestly would prefer to give one argument, but if [Appellant] demands that we open and close, I don't have any problem with it." The trial judge replied, "You can do it either way."

The State proceeded to open on the law and gave the facts only a cursory review. Appellant then gave his closing argument and stated to the jury that when

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<sup>2</sup> We acknowledge the general sessions benchbook this Court previously supplied to all circuit judges contained language virtually identical to the disputed language employed by the trial judge.

he concluded his argument, the State would give a final argument and reply to everything he said. Appellant then informed the jury:

Then what's going to happen is this. The State's then going to come up with their real theory. How the arm got scratched, exactly how this alleged strangulation took place, and we have to sit mute. We will not have the chance to come back and refute that, and yet they'll have a chance to refute everything we've laid out there. That was their choice as to how they chose to do the closing arguments. I can't make them do it any differently.

During its reply argument,<sup>3</sup> the State reviewed the inconsistencies in the statements Appellant gave to law enforcement. The State also argued the murder took place in Appellant's car on the street in front of his parents' house and that Appellant murdered Victim because she was screaming and Appellant wanted to "shut her up." Appellant argues this was improper reply argument because he mentioned none of these points during his closing argument.

Appellant argued the State's reply argument "was nothing but one big sandbag, which we discussed in chambers"<sup>4</sup> and constituted a violation of his due process rights. Appellant asserted the State presented factual scenarios for the first time in its reply argument and requested either a mistrial or the opportunity to reply to the State's argument. The trial judge denied both requests.

In this appeal, Appellant contends the trial judge erred in refusing to require the State to open fully on the law and facts in its closing argument, in refusing to limit the State's reply argument to matters raised by Appellant's counsel in his closing argument, and in refusing to allow him to reply to new matter raised by the

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<sup>3</sup> In this opinion, if used in conjunction with the State's second closing argument, the terms "the reply," "reply argument," "final argument," and "last argument" are synonymous.

<sup>4</sup> When used as a transitive verb, Merriam–Webster defines "sandbag" as "to conceal or misrepresent one's true position, potential, or intent especially in order to gain an advantage over." Merriam–Webster Dictionary, <http://www.merriam-webster.com/dictionary/sandbag>.

State in its reply argument. Appellant claims these errors violated his rights under the due process clauses of the South Carolina and United States Constitutions.<sup>5</sup>

In our prior opinion, we agreed in part, holding that in criminal trials, "where the party with the 'middle' argument requests, the party with the right to the first and last closing argument must open in full on the law and the facts, and in reply may respond in full to the other party's argument but may not raise new matter." Nevertheless, we concluded Appellant was not entitled to a new trial, as any error in the trial judge's denial of his motion to require the State to open in full on the facts and the law and to limit its reply was harmless beyond a reasonable doubt. Having revisited these issues upon rehearing, we now address the history of the rules governing the content and order of closing argument in criminal cases, and we address our authority to promulgate new rules governing the same. We also address Appellant's due process argument and conclude his conviction must be affirmed.

### **B. Rules Governing Content and Order of Closing Argument**

Prior to 1802, the practice regarding closing arguments in all public prosecutions on behalf of the State was to allow the State the privilege of opening and concluding the arguments in every case addressed to the jury. *See State v. Brisbane*, 2 S.C.L. (2 Bay) 451, 453 (1802). This partiality shown to prosecutors was a "relict of the kingly prerogative." *Id.* However, in *Brisbane*, the Constitutional Court of Appeals of South Carolina (a predecessor to this Court) formulated a rule governing closing argument in criminal courts, holding that in all cases in which a defendant calls no witnesses, he should have the privilege of concluding to the jury. *Id.* at 454.

In *State v. Huckie*, Prince Huckie and his codefendant Paris Bailey were jointly indicted and tried for burglary and larceny. 22 S.C. 298, 298–99 (1885). Following the State's presentation of evidence, Huckie declined to offer evidence in his defense, but Bailey called one witness. *Id.* at 299. Huckie argued it was error to deny him the last argument because he did not offer any evidence in his own behalf. *Id.* We noted there was no express rule giving the defendant a right to reply when the defendant offered no evidence but stated, "[R]esting upon the common law, such has been the practice." *Id.* We concluded that when a defendant in a criminal

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<sup>5</sup> Due process requires no person shall be deprived of life, liberty, or property without due process of law. U.S. CONST. amend. XIV § 1; S.C. CONST. art. I, § 3.

prosecution offers no evidence, he is entitled to the last argument; however, when two or more defendants are jointly tried, if any codefendant introduces evidence, the State is entitled to the reply argument. *Id.* at 300–01.<sup>6</sup> See also *State v. Mouzon*, 326 S.C. 199, 485 S.E.2d 918 (1997); *State v. Crowe*, 258 S.C. 258, 188 S.E.2d 379 (1972).

In *State v. Garlington*, 90 S.C. 138, 144–45, 72 S.E. 564, 566 (1911), we held that in cases in which no defendant introduces evidence, the defendant(s) have the right to open and close during closing argument but may waive the right to both arguments or may waive the right to open and instead present full argument to the jury after the State's closing argument. In *State v. Gellis*, 158 S.C. 471, 485–86, 155 S.E. 849, 855 (1930), the defendant did not call any witnesses in his own defense, but he introduced letters and telegrams into evidence through a prosecution witness. Holding the defendant did not have the right to the final argument, we clarified that "if a defendant offers *any evidence* on trial of the case, the state is not deprived of its general right to the opening and concluding arguments." *Id.* at 486–87, 155 S.E. at 855 (emphasis added). Consequently, the loss of the right to make the final argument depends upon whether a defendant introduces any evidence at all, not upon whether he calls any witnesses.

In *State v. Atterberry*, 129 S.C. 464, 469, 124 S.E. 648, 650 (1924), the defendant was indicted for possession of "a quantity of whisky" in violation of the Prohibition Law and was found guilty by a jury. For perhaps the first time, we applied a codified court rule to closing arguments in a criminal trial. The defendant introduced evidence during the trial, and prior to closing arguments, he demanded the trial court to require the State to open in full on the facts and the law. *Id.* at 471, 124 S.E. at 651. The trial judge refused the defendant's request and allowed the State to fully waive its opening argument. *Id.* At that time, Circuit Court Rule 59 provided, "The party having the opening in an argument shall disclose his entire case; and on his closing shall be confined strictly to a reply to the points made and authorities cited by the opposite party." We explained Rule 59 was clear and mandatory and held the trial court's failure to require the State to open fully on the law and facts was reversible error. *Atterberry*, 129 S.C. at 471, 124 S.E. at 651. Noting the "wisdom of this rule" was most clearly evident in circumstantial evidence cases, we explained that if the rule did not require the State to open in full on the facts and the law, an able prosecutor would be able to present a connection of

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<sup>6</sup> The rationale behind this particular rule, as explained in *Huckie*, is curious but irrelevant to the instant case.

circumstances to the jury during his last argument that the defendant would not be allowed to rebut. *Id.*

Subsequent to *Atterberry*, Circuit Court Rule 59 and any wisdom it possessed were replaced by Circuit Court Rule 58, which provided in relevant part, "The party having the opening in an argument shall disclose fully *the law* upon which he relies if demanded by the opposite party." (emphasis added). We addressed Rule 58 in *State v. Lee*, 255 S.C. 309, 178 S.E.2d 652 (1971), *overruled in part on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009). In *Lee*, the defendant introduced evidence to the jury. At the close of the trial, the defendant requested the trial judge to require the State to open fully on the law and the facts during its closing argument. *Id.* at 317, 178 S.E.2d at 656. The trial judge required the State to open on the law but refused to require the State to open on the facts. *Id.* We held "the trial judge, under the changed rule, was correct in holding that a solicitor is no longer required to make an opening argument to the jury on issues of fact." *Id.* at 318, 178 S.E.2d at 656. There was no discussion of due process concerns or "the wisdom" inherent in the former Rule 59.<sup>7</sup>

On July 1, 1985, the South Carolina Rules of Civil Procedure went into effect. *See* Rule 86, SCRPC. Rule 1, SCRPC, limits the application of those rules to civil cases.<sup>8</sup> Rule 85(b), SCRPC, also effective as of July 1, 1985, retained ten enumerated criminal practice rules contained in the Appendix of Criminal Practice Rules; according to Rule 85(b), SCRPC, those ten rules were renumbered as Criminal Practice Rules 1 through 10 and were to "continue in full force and effect." Circuit Court Rule 58 was not one of those ten retained rules. Rule 85(c), SCRPC, also effective July 1, 1985, provides that all other Circuit Court Rules were repealed

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<sup>7</sup> Both Rule 59 and Rule 58 were part of an appendix to the Code of Civil Procedure. In his concurrence in *Atterberry*, Acting Associate Justice Aycock observed that nothing limited the application of these rules to civil cases. 129 S.C. at 473, 124 S.E. at 651. Circuit Court Rules 59 and 58, while they were in effect, were properly applied to criminal cases.

<sup>8</sup> Rule 43(j), SCRPC, controls the content and order of argument in civil cases. This rule essentially provides that the plaintiff shall have the right to open and close at the trial of the case and must open in full, and in reply may respond in full but may not introduce any new matter. This rule has never been applied to criminal cases, and Rule 1, SCRPC, expressly prohibits such application.

as of that date. Consequently, Circuit Court Rule 58 no longer existed as a codified rule as of July 1, 1985.

On September 1, 1988, the South Carolina Rules of Criminal Procedure went into effect. *See* Rule 40, SCRCrimP. No rule contained within the South Carolina Rules of Criminal Procedure addresses the content and order of closing arguments in criminal trials. Rule 39, SCRCrimP, expressly repealed all existing Criminal Practice Rules. With the repeal of Circuit Court Rule 58 by Rule 85(c), SCRCrimP, and with the adoption of Rule 39, SCRCrimP, there is no codified or otherwise duly adopted court rule governing the content and order of closing arguments in criminal cases in which a defendant introduces evidence. However, Rule 37, SCRCrimP, provides in part, "In any case where no provision is made by statute or these rules, *the procedure shall be according to the practice as it has heretofore existed* in the courts of the State." Rule 37, SCRCrimP (emphasis added). In the instant case, both the content and order of closing arguments were in keeping with repealed Circuit Court Rule 58, which required the State to open only on the law. *Lee*, 255 S.C. at 318, 178 S.E.2d at 656. We must first determine whether, almost thirty years after its adoption, Rule 37 preserves the application of repealed Circuit Court Rule 58 in criminal cases in which a defendant introduces evidence. We hold it does not.

This Court cannot simply assume that from July 1, 1985 through the trial of the instant case, the criminal trial courts of this State have uniformly continued to follow repealed Circuit Court Rule 58 to the extent that it remains the "practice as it has heretofore existed" in criminal cases in which the defendant introduces evidence. We have no effective way to ascertain the prevailing practices of current and past trial judges. We can only conclude that absent a published court rule or a defined common law rule, individual trial judges have developed their own practices governing closing argument in cases in which a defendant introduces evidence. That is an untenable approach to such an important phase of a criminal trial.

One may inquire whether this Court may simply create a much-needed practice or procedural rule simply by exercising its authority to alter the common law. This is a reasonable inquiry, especially since the courts of this State attend on a daily basis to the notions of order, predictability, and due process in criminal proceedings. Indeed, "[t]he common law changes when necessary to serve the needs of the people. We have not hesitated to act in the past when it has become apparent that the public policy of the State is offended by outdated rules of law." *Russo v. Sutton*, 310 S.C. 200, 204, 422 S.E.2d 750, 753 (1992) (citations omitted). *See also Marcum v. Bowden*, 372 S.C. 452, 643 S.E.2d 85 (2007) (altering the common law

of social host liability); *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991) (abolishing contributory negligence); *Hossenlopp v. Cannon*, 285 S.C. 367, 329 S.E.2d 438 (1985) (observing that since the dog-bite law was of common law origin, it could be changed by common law mandate); *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985) (abolishing sovereign immunity).

In the foregoing cases, we certainly did alter the common law and were within our authority to do so. However, those cases involved substantive common law, not common law procedural rules. We are prohibited on two fronts from promulgating a new rule in the course of deciding the issues in this case. First, this Court does not have the power to adopt new rules of procedure for future trials by writing opinions to decide cases. Instead, when we decide an appeal from a criminal conviction—as we do here—our power is limited to correcting errors of law.<sup>9</sup>

Second, the South Carolina Constitution limits this Court's power to promulgate rules governing practice and procedure in the courts of this State. Before 1973, the South Carolina Constitution did not address in any manner the power of this Court to implement rules of practice and procedure in the courts of this State. On April 4, 1973, article V, section 4 of the South Carolina Constitution was amended to grant power to this Court, subject to statutory law, to "make rules governing the practice and procedure in all such courts [in the unified judicial system]." S.C. CONST. art. V, § 4. While this amendment was in effect, we did not make any rules governing the content and order of closing argument in criminal cases, and Circuit Court Rule 58 and other Circuit Court Rules carried the day until July 1, 1985, when the South Carolina Rules of Civil Procedure came into being, with Rule 85, SCRCPP, preserving some criminal practice rules and repealing others, including Circuit Court Rule 58.

On February 26, 1985, article V, section 4A of the South Carolina Constitution took effect. It remains in effect today and provides:

*All rules and amendments to rules governing practice and procedure in all courts of this State promulgated by the Supreme Court must be submitted by the Supreme Court to the Judiciary Committee of each House of the General*

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<sup>9</sup> See S.C. CONST. art. V, § 5 ("The Supreme Court shall constitute a court for the correction of errors at law under such regulations as the General Assembly may prescribe.").

*Assembly* during a regular session, but not later than the first day of February during each session. Such rules or amendments shall become effective ninety calendar days after submission unless disapproved by concurrent resolution of the General Assembly, with the concurrence of three-fifths of the members of each House present and voting.

S.C. CONST. art. V, § 4A (emphasis added).

On January 28, 2016, we initiated the prescribed legislative process by proposing an amendment to the South Carolina Rules of Criminal Procedure to add Rule 21. *See Re: Amendments to the South Carolina Rules of Criminal Procedure*, 2014-002673 (S.C. Sup. Ct. Order dated Jan. 28, 2016). Proposed Rule 21 stated, "Closing arguments in all non-capital cases shall proceed in the following order: (a) the prosecution shall open the argument in full; (b) the defense shall be permitted to reply; and (c) the prosecution shall then be permitted to reply in rebuttal." *Id.* However, by concurrent resolution, the General Assembly, as was its prerogative, rejected proposed Rule 21 in April 2016. *See* S. Con. Res. 1191, 121st Gen. Sess. (S.C. 2016).

While we acknowledge and respect the limitations placed on this Court's power pursuant to article V, section 4A of our constitution, in order for our criminal court system to operate efficiently, effectively, and consistently, clearly stated rules governing the content and order of closing argument are required. Our current closing argument rules consist of the following patchwork: Pursuant to the common law rule pronounced in *Brisbane* and as clarified in *Garlington*, in cases in which no defendant introduces evidence, the defendant(s) have the right to open and close, but may waive the right to both or may waive opening and present full argument after the State's closing argument. Pursuant to the common law rule set forth in *Huckie*, if two or more defendants are jointly tried, if any one defendant introduces evidence, the State has the final closing argument. Pursuant to the common law rule as clarified in *Gellis*, in cases in which a defendant introduces evidence of any kind, even through a prosecution witness, the State has the final closing argument. However, in cases in which the State is entitled to the reply argument, there is no common law or codified rule as to whether the State must open in full on the law, or the facts, or both, or neither, and there is no rule governing the content of the State's reply argument.

This case falls within the last category. Appellant introduced evidence during trial. Under our holdings in *Huckie* and *Gellis*, the State was entitled to the reply argument. Appellant asked the trial court to require the State to open in full on the facts and the law and asked the trial court to restrict the State's reply argument to rebuttal to matters raised by Appellant in his closing argument. The trial court denied these requests and essentially followed repealed Circuit Court Rule 58, allowing the State to open on the law and give the facts a cursory review. Appellant then presented his closing argument. After the State made its reply argument, Appellant asked to be allowed to rebut what he argued was new matter raised by the State. The trial court denied this request as well. Appellant claims his due process rights were violated by this procedure.

### **C. Due Process**

While this Court's authority to promulgate rules is restricted by article V, section 4A of the South Carolina Constitution, we retain the authority to determine—on a case-by-case basis—whether a defendant's due process rights have been violated by procedural methods employed during a trial. Stated another way, our authority to rectify a specific due process violation falls within our constitutional power to correct errors of law and trumps our inability to adopt a clearly stated practice or procedural rule. We must therefore determine whether Appellant's due process rights were violated in this instance.

"Due Process is not a technical concept with fixed parameters unrelated to time, place, and circumstances; rather it is a flexible concept that calls for such procedural protections as the situation demands." *State v. Legg*, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016). In any case, procedural due process contemplates a fair trial. *Id.* This concept applies to closing arguments. South Carolina case law focuses upon allegedly inflammatory or unsupported content of the State's closing argument, not upon whether the State must open in full on the facts and not upon reply arguments which have a basis in the record but to which a defendant is not allowed to respond. Generally, "[i]mproper comments [made during closing argument] do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). The relevant inquiry is whether the State's comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Id.* "A denial of due process occurs when a defendant in a criminal

trial is denied the fundamental fairness essential to the concept of justice." *State v. Hornsby*, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997).

Appellant cites *Bailey v. State*, 440 A.2d 997, 1003 (Del. 1982), in which the Delaware Supreme Court held the trial court abused its discretion in permitting the State to utilize the "sandbagging" trial strategy in its reply argument. Appellant acknowledges there is no rule in South Carolina that prohibits "sandbagging," but he asserts his due process rights were violated because the State was allowed, in its reply argument, to present to the jury for the first time "two crucial theories" and "an out of context statement of Appellant."

Appellant's defense at trial was that he accidentally strangled Victim when he pulled her back into the moving vehicle by pulling on her tank top, thereby rendering her unconscious, with Victim then succumbing to positional asphyxiation on the front passenger floorboard. The State's theory of the case was that Appellant strangled Victim to death with the USB cord found in Appellant's car. The Appellant's parents' driveway as a potential scene of the murder was put before the jury through the State's witnesses—the first responders who found Victim deceased in the driveway of Appellant's parents' house. Appellant contends the first new theory argued by the State in its reply argument dealt with the location of the murder, i.e., that Appellant strangled Victim in Appellant's car in the driveway in front of Appellant's parents' house. Appellant claims his due process rights were violated when the State was permitted, in its reply, to argue this point to the jury. Appellant contends that at the least, he should have been permitted to respond. We first note that the State's presentation of this theory during its reply was arguably a proper response to the theory Appellant advanced in his closing argument. Whatever the case, the question of exactly where Victim's death occurred was largely inconsequential to the question of whether Appellant murdered Victim or whether Victim instead died of causes unrelated to Appellant's criminal conduct.

Appellant contends the second new theory argued by the State in its reply was that Appellant murdered Victim because Victim was screaming at Appellant during the drive home, and Appellant wanted to "shut her up." The fact that the two were in an argument and Victim was screaming at Appellant was entered into evidence through Appellant's own statement to law enforcement. Again, the State's advancement of this theory in reply was arguably a proper response to the sequence of events argued by Appellant in his closing argument. Even if it could be considered new matter, we conclude the State's advancement of this theory was relatively insignificant.

During its reply argument, the State also presented a PowerPoint summary of one of Appellant's statements to law enforcement. Appellant argues the State took the statement out of context when it "implied that [Appellant] said that [Victim] made it seem like I made her want to hurt herself." Appellant's actual statement to law enforcement was, "Yet a little before or at this point, I believe, that [Victim] made it seem like I had made her want to hurt herself, which is common for us when we argue." We conclude this minor point was insignificant to the jury's consideration of the issues.

While the State perhaps did not restrict its reply argument to matters raised by Appellant, and while Appellant was not allowed to respond to the foregoing three points, we conclude Appellant did not suffer prejudice as a result. *See Humphries*, 351 S.C. at 373, 570 S.E.2d at 166 (errors in closing argument "do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument"); *id.* (noting the relevant inquiry is whether the State's comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process"). Neither the State's reply arguments on these three points nor the trial court's refusal to allow Appellant to respond denied Appellant "the fundamental fairness essential to the concept of justice." *See Hornsby*, 326 S.C. at 129, 484 S.E.2d at 873. Therefore, we conclude Appellant has not established a due process deprivation.

## CONCLUSION

We instruct trial judges to omit any language, whether in remarks to the jury or in an instruction, which might have the effect of lessening the State's burden of proof in a criminal case. Such language includes, but is not limited to, any language suggesting to the jury that its task is to "search for the truth" or to find "true facts," or that the jury should render a "just verdict." However, we hold Appellant has failed to show prejudice from these remarks sufficient to warrant reversal.

Article V, section 5 of the South Carolina Constitution limits this Court's authority to correcting errors of law and does not empower us to promulgate a procedural rule for future cases by simply issuing an opinion. Article V, section 4A, of the South Carolina Constitution prohibits this Court from adopting any rules of practice and procedure—even a much-needed rule governing the practice and

procedure of closing arguments in criminal cases—without first going through the prescribed legislative process.

Currently, there is no rule governing the content and order of closing arguments in criminal cases in which a defendant introduces evidence, except for the "constitutional rule" that a defendant's right to due process cannot be violated at any stage of a trial. Consequently, trial judges must, on a case-by-case basis, ensure that a defendant's due process rights are not violated during the closing argument stage. Absent authority to formally adopt procedural rules, our authority—and the authority of the trial court—is but to address due process considerations as they arise. In cases in which a defendant introduces evidence, trial judges clearly have the authority to require the State to open in full on the facts and the law and have the authority to restrict the State's reply argument to matters raised by the defense in closing. This authority remains in keeping with the trial judge's authority to ensure that a defendant's due process rights are not violated during a criminal trial. We remain mindful of the need for clearly articulated rules governing the content and order of closing arguments in cases in which a defendant introduces evidence. The uncertainty resulting from the absence of such rules is unfortunate. We hope the day will soon come when such rules are firmly in place.

We hold Appellant has not established prejudice resulting from the trial judge's opening remarks, and we hold Appellant was not denied due process during the closing argument stage of the trial. Appellant's conviction is therefore

**AFFIRMED.**

**BEATTY, C.J., KITTREDGE, HEARN and FEW, JJ., concur.**



I N D E X

DEFENDANT:

[REDACTED]

PAGE

3

EXHIBITS

(There were no exhibits marked.)

1 THE CLERK: Indictment [REDACTED] the  
2 State versus [REDACTED] indicted for attempted  
3 murder. He is pleading as charged. This has been  
4 true-billed. He's represented by Mr. [REDACTED]

5 Raise your right hand.

6 [REDACTED] after being duly sworn, testified  
7 as follows:

8 THE COURT: On this information sheet, there is  
9 also a possession of a weapon during a violent crime.

10 MS. [REDACTED] Yes, sir, Your Honor. That is now  
11 being nol prossed in consideration of his plea to the  
12 attempted murder charge. We can make that correction.

13 THE COURT: Okay. All right.

14 Are you [REDACTED]?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Mr. [REDACTED] you're here today, you  
17 were indicted by the Berkeley (sic) County Grand Jury for  
18 attempted murder. That's Indictment [REDACTED] That  
19 carries a sentence of up to 30 years in prison.

20 I'm told want to plead guilty to that; is that  
21 correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You have to know a few things before  
24 we proceed about some of your rights.

25 First of all, this is a strike offense of the

1 most serious type. Did your lawyer talk to you about  
2 strike offenses?

3 THE DEFENDANT: A little bit, sir, yes.

4 THE COURT: Well, let's talk about them.

5 We have -- you know the game of baseball, right?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You've heard of the phrase, three  
8 strikes and you're out?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Well, we take that phrase from  
11 baseball and carry it over here to the justice system to  
12 give you an idea of what will happen if you get convicted  
13 of too many of a certain type of crimes, the "out" in this  
14 case being life without the possibility of parole being  
15 the sentence.

16 In South Carolina, we have two-strike offenses  
17 and we have three-strike offenses. Three-strike offenses  
18 are called serious offenses, and you get three of those  
19 you're out; in other words, you go to jail for the rest of  
20 your life, there's no possibility of getting out on  
21 parole.

22 The two-strike offenses are called most serious  
23 offenses, and if you get two of those you go to jail for  
24 the rest of your life without the possibility of parole.  
25 Attempted murder is one of the two-strike offenses. So

1 after today you will have one strike against you of the  
2 two-strikes type. You get another strike during your  
3 lifetime, you'll go to jail for the rest of your life  
4 without the possibility of ever getting out. The only way  
5 you get out, they carry you out in a box.

6 Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you still want to plead guilty?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: This is also a no parole offense.

11 So whatever sentence I impose today, you have to do at  
12 least 85 percent of it. You never go up before a parole  
13 board because you're not eligible for a parole board. You  
14 can earn some good credit time, but the max that you can  
15 get out -- off your sentence is 15 percent. So whatever  
16 sentence I give, you got to do 85 percent of it.

17 Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, you also have the right to a  
20 jury trial. You give up your right to a jury trial when  
21 you plead guilty.

22 If you want a trial, you can stop me, we'll  
23 arrange that for you. The State then has to present  
24 enough evidence to convince 12 jurors that you're guilty  
25 beyond a reasonable doubt. All 12 jurors have to agree

1 that you're guilty in order to convict you, and if  
2 convicted, you have the right to appeal.

3 You can challenge the State's evidence, put up  
4 evidence of your own, testify if you want. If you want to  
5 tell the jury your side of the story, you can. If you  
6 don't want to tell the jury your side of the story, the  
7 judge will tell the jury they're not to hold that against  
8 you while they're deliberating.

9 Do you understand all of those rights?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you want to give those rights up  
12 and plead guilty today?

13 THE DEFENDANT: Yes, sir, I do.

14 THE COURT: Are you pleading guilty to this  
15 charge because you're guilty of it?

16 THE DEFENDANT: Yes, I am.

17 THE COURT: Are you under the influence of drugs  
18 or alcohol today?

19 THE DEFENDANT: No, sir.

20 THE COURT: Do you take any kind of prescription  
21 medication?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you have any mental, emotional or  
24 physical conditions which keep you from understanding what  
25 you're doing today?

1 THE DEFENDANT: No, sir.

2 THE COURT: You're standing next to your lawyer.  
3 Are you satisfied with his representation?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you need to spend any more time  
6 with him?

7 THE DEFENDANT: No, sir.

8 THE COURT: Has he done everything that you've  
9 asked him to do?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: So you all set down before we came  
12 to court today and he told you about all the evidence the  
13 State has against you; is that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: He's explained to you what this  
16 charge of attempted murder is about?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And he told you what the State has  
19 to prove to convict you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. And you also -- he  
22 probably told you about some things you might could do  
23 to -- before you went to trial, such as trying to suppress  
24 evidence maybe where you confessed, I don't know, maybe  
25 there's people who identified you, I don't know, but those

1 sort of things. You could have filed various motions.  
2 You decided you don't want to do that; is that right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. You don't want to tell  
5 the jury your side of the story?

6 THE DEFENDANT: No, sir.

7 THE COURT: This is your decision and your  
8 decision alone?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Has anybody promised you anything or  
11 threatened you to get you to plead guilty other than  
12 dropping some other charges?

13 THE DEFENDANT: No, sir.

14 THE COURT: How old are you?

15 THE DEFENDANT: 42.

16 THE COURT: How far did you get in school?

17 THE DEFENDANT: Tenth grade.

18 THE COURT: Are you -- did you work before you  
19 got arrested?

20 THE DEFENDANT: Pardon me?

21 THE COURT: Did you work before you got  
22 arrested?

23 THE DEFENDANT: No, sir. I was -- I had -- I  
24 was on an injury case, a Workman's Comp case for about  
25 four or five years.

1 THE COURT: Are you married?

2 THE DEFENDANT: No, sir, I'd just gotten  
3 divorced.

4 THE COURT: Do you have children?

5 THE DEFENDANT: I have two, sir.

6 THE COURT: All right. Mr. [REDACTED] does this  
7 gentleman understand what he's doing, waiving his right to  
8 a jury trial and pleading guilty today?

9 MR. [REDACTED] He does, Judge.

10 THE COURT: I find that his plea's freely,  
11 voluntarily, and intelligently made.

12 What would the State like to tell me?

13 MS. [REDACTED] Yes, sir, Your Honor.

14 This involves the attempted murder of the former  
15 girlfriend of the defendant. Her name is [REDACTED]

16 This had actually been an ongoing series of  
17 actions that had taken course over several months.

18 Your Honor, Ms. [REDACTED] had ended the  
19 relationship with the defendant. And following the end of  
20 their relationship, he obviously was having trouble  
21 accepting what had happened and began stalking her. As  
22 Your Honor noted, there is an aggravated stalking charge  
23 that is being nol prossed in consideration of this plea to  
24 this case.

25 I'm going to go back in time and go over the

1 facts that led up to the attempted murder charge that also  
2 involves the stalking.

3 Your Honor, in March of 2011, on March 8th  
4 specifically, law enforcement was dispatched to speak with  
5 [REDACTED]. [REDACTED] is the 24-year-old daughter of  
6 [REDACTED], and [REDACTED] made a report to law  
7 enforcement that she had been receiving harassing phone  
8 calls and unwanted text messages from the subject, [REDACTED]  
9 [REDACTED] reported [REDACTED] had been texting her cell  
10 phone about six times. [REDACTED] stated that her mother  
11 [REDACTED] and [REDACTED] had once resided together in an intimate  
12 relationship from around the middle of January of 2011  
13 until the beginning of March of 2011. [REDACTED] advised  
14 that her mother, [REDACTED] had ended the relationship with  
15 [REDACTED] due to his possessiveness, temper, and what they  
16 described as being paranoid.

17 THE COURT: Who is the girlfriend, the mother or  
18 this daughter?

19 MS. MAYES: Your Honor, the girlfriend, it was  
20 [REDACTED] --

21 THE COURT: Okay.

22 MS. MAYES: -- and [REDACTED] is the 24-year-old  
23 daughter of [REDACTED], and she's actually making the report  
24 about the unwanted contact that's going on.

25 THE COURT: Okay.

1 MS. [REDACTED] [REDACTED] mentioned that [REDACTED] had  
2 gathered all of his belongings from the residence, and  
3 [REDACTED] said that she recently had moved back into her  
4 mother's home at the incident location. And the incident  
5 location for the attempted murder, Your Honor, is [REDACTED]  
6 [REDACTED] Road in the [REDACTED] area of Lexington County.

7 [REDACTED] stated that her mother, [REDACTED], is a  
8 registered nurse and works long hours. [REDACTED] stated  
9 that her mom had been physically assaulted by [REDACTED] in the  
10 past that resulted in bruises; however, she had not  
11 notified law enforcement. [REDACTED] described that her  
12 mother was too afraid to notify law enforcement, and added  
13 that since their separation, the defendant had been seen  
14 sleeping in the woods behind that incident location at  
15 [REDACTED] Road.

16 [REDACTED] did want law enforcement to be aware of  
17 this, Your Honor. She certainly was concerned about her  
18 mother's safety.

19 She stated that she had responded back to the  
20 text messages and told him not to bother her or her mother  
21 again. She reported that her mother was angry and wanted  
22 to pursue an order of protection. She was advised to  
23 pursue that order of protection, Your Honor, and that was  
24 in March of 2011.

25 Then on April 6, 2011, which was the day before

1 the attempted murder, law enforcement again was dispatched  
2 to the victim's address at [REDACTED] Road in reference  
3 to vandalism and telephone harassment.

4 The officer reports that "Upon arrival, I met  
5 with [REDACTED] and her son, [REDACTED], who  
6 both stated that [REDACTED] had been sending multiple text  
7 messages and calling repeatedly. [REDACTED] stated that she  
8 had been in an intimate relationship with [REDACTED] for  
9 approximately a year and lived together again for that  
10 time period, from around January of 2011 until March of  
11 2011. [REDACTED] stated that since she severed the  
12 relationship, the defendant had been constantly contacting  
13 her. She also reported that he will park his silver  
14 truck" -- that's a Sierra truck, Your Honor -- "on roads  
15 near her residence and walk through the woods behind her  
16 house."

17 He also -- the officer also noted that the  
18 defendant actually made several phone calls to the victim  
19 while he was there on the scene. At one point the officer  
20 answered the phone and identified himself as a deputy with  
21 Lexington County, at which point the defendant refused to  
22 talk with him.

23 The officer also noted that the mailbox appeared  
24 to have been damaged -- did not appear to be damaged but  
25 had been displaced, and as a result, Your Honor, law

1 enforcement sort of upped their patrol in the area and  
2 obviously took that information seriously.

3 It was the following day, Your Honor, that the  
4 attempted murder occurred.

5 One thing that stands out about the contact that  
6 the defendant had with [REDACTED] and her mother  
7 [REDACTED] on the day before the attempted murder is  
8 that on April 6, he actually contacted [REDACTED]  
9 [REDACTED] -- again, that is the daughter -- leaving a  
10 voice mail message with her. [REDACTED] said that  
11 she received a call from [REDACTED] - a telephone call from  
12 [REDACTED], the two of them argued back and forth, and then  
13 [REDACTED] actually told her, "I'm not done with you and  
14 I'm not done with her, call and tell your mother good-bye,  
15 I'm going to kill her." And that was reported and  
16 documented to law enforcement the day before the attempted  
17 murder.

18 And at one point during that day, [REDACTED] was  
19 not able to reach her mother by phone and became so  
20 concerned that she asked the defendant to go check on her  
21 mother's whereabouts because she had fear at that point  
22 that he may have actually already acted out on his threat.

23 On April 7, Your Honor, which was the day after  
24 that threat to [REDACTED] was made, Deputy [REDACTED]  
25 with the Lexington County Sheriff's Department reports

1 that he responded to the victim's address at [REDACTED]  
2 Road in regard to an active shooting incident that  
3 involved [REDACTED] and the suspect, being her  
4 ex-boyfriend, the defendant [REDACTED]

5 The deputy notes that having dealt with  
6 harassment and threats involving these individuals in the  
7 past, he was already aware of the fact that [REDACTED] was  
8 likely in operation of a 2002 Sierra truck. He then  
9 notified other deputies to be on the lookout for that  
10 truck. He states that he established a perimeter around  
11 the residence and around the roads immediately surrounding  
12 the residence.

13 Deputy [REDACTED] with the sheriff's department then  
14 sighted a vehicle matching the description of [REDACTED]'s  
15 vehicle on Pond Branch Road. At that point the suspect  
16 was detained in that vehicle. The major crimes unit did  
17 respond to the scene, Your Honor. [REDACTED] her  
18 daughter [REDACTED] and her son [REDACTED]  
19 were all home when this incident occurred.

20 [REDACTED] advised that she came home at  
21 approximately 1:45 p.m., and upon walking into her front  
22 gate, she heard a gunshot which she believed was directed  
23 towards her. [REDACTED] said she ran inside and  
24 peeked out of a window in the house where she then  
25 witnessed an individual that she said she could clearly

1 identify as the defendant [REDACTED] walking in the wood  
2 line behind the residence. [REDACTED] says  
3 approximately five minutes later she heard a second shot  
4 and discovered that it had been directed at her bedroom  
5 window.

6 [REDACTED] indicated that [REDACTED] was  
7 aware of her schedule at home and knew that she typically  
8 would have been sitting just inside the bedroom near this  
9 window upon coming home. She believes that he fired the  
10 round with this knowledge in mind. [REDACTED] states  
11 that she was in fear for her life and believes the  
12 defendant likely had the intention of killing her.

13 The officer further notes that earlier that  
14 morning on April 7, he had in fact received a report from  
15 [REDACTED] about the threats from the defendant  
16 saying "I'm not done with you and I'm not done with her,  
17 tell your mother goodbye, I'm going to kill her."

18 [REDACTED] s neighbor, who is [REDACTED]  
19 he had been working in his garage with his friend who was  
20 identified as [REDACTED] Both of them confirmed to  
21 law enforcement that they did hear two distinct gunshots  
22 take place next door, and that was documented in the form  
23 of written statements.

24 [REDACTED] gave further details about what  
25 led to the shooting. She stated that her current

1 boyfriend -- she had begun a new relationship, Your  
2 Honor -- her boyfriend had dropped her off in front of her  
3 residence about 20 to 30 minutes before law enforcement  
4 got there. She stated that after he dropped her off, she  
5 was walking up her driveway when she heard a gunshot that  
6 she believes came in her direction. She then ran inside  
7 the house, looked out the window, saw the defendant in  
8 that wood line area behind her house.

9 The officers noted that once she got inside,  
10 that's when the second shot was fired. The officer notes  
11 that "I located a bullet hole in a window on the far left  
12 side of the rear house. I checked the inside of the  
13 residence and confirmed a bullet round entered through the  
14 window in the bathroom, the bathroom wall, and exited out  
15 the other side into the bedroom. There was sheetrock  
16 paper and dust on the bed. I confirmed that [REDACTED], her  
17 daughter, and her son were okay."

18 Further, Deputy [REDACTED] at the scene had radioed  
19 and stated that once he spotted the defendant in his  
20 vehicle, he conducted a traffic stop and located the  
21 defendant as the driver. Your Honor, he was the only one  
22 in the vehicle. The officer notes that a rifle could be  
23 seen in plain view in the vehicle.

24 Major crimes and crime scene investigation  
25 responded to the traffic stop and incident location. The

1 defendant was then placed under arrest, Your Honor, and  
2 the truck was processed as evidence.

3 From the driver's side window being down, the  
4 officer could observe there in plain view the butt of a  
5 gun, a rifle, in the passenger side seat. He states, "I  
6 could not identify what type of weapon was in the truck  
7 since there was a coat or blanket over most of the gun."  
8 The officer also observed a box of Ice House beer in the  
9 passenger seat.

10 The investigating officer advised [REDACTED] that he  
11 was currently under arrest for discharging a firearm into  
12 a dwelling. [REDACTED] stated that he did not understand what  
13 the investigating officer meant about discharging a  
14 firearm into a dwelling. The investigating officer told  
15 him that he shot into someone's house. The defendant  
16 stated that if he shot into someone's house, it was an  
17 accident because he had been, quote, sighting his rifle,  
18 end of quote.

19 The investigating officer told him that he could  
20 talk to him about it if he wanted to. At that point the  
21 defendant stated that he did not want to talk to the  
22 investigating officer.

23 Your Honor, once the vehicle was searched, there  
24 were numerous items that were recovered, including the  
25 Savage Model 270 caliber rifle, and it also had a scope.

1 In addition, there was one spent casing of a 270 --  
2 .27 caliber chambered in the rifle. There was also two  
3 live action caliber rounds located in the rifle.

4 Also, there were six caliber rounds in an  
5 ammunition box which were located to the left of the  
6 driver's seat, in between the seat and the door. In  
7 addition, there were 122 caliber ammunition which was  
8 located behind the driver's seat.

9 There was also a knife which was located behind  
10 the seat, a scope for a rifle which had been located  
11 behind the seat, and a training sword -- it's described as  
12 a Bokken training sword -- which was also located behind  
13 the seat.

14 One thing, Your Honor, that Ms. [REDACTED] the  
15 victim, wanted law enforcement to be aware of is that the  
16 defendant knew the layout of the house. He knew that she  
17 usually would go directly to the master bedroom when she  
18 comes home. That is where the second round was shot. She  
19 stated that -- she stated, of course, that he had also  
20 been seen in that wood line behind the home in days  
21 leading up to this incident.

22 Investigating officers searched the woods along  
23 with crime scene investigation for cartridges from the  
24 rifle. Crime scene investigation did find at least two  
25 positions where it appeared that someone had been sitting

1 in the wooded area. Both positions had turned up pine  
2 straw and alcohol containers.

3 One of the positions had two cigarette butts  
4 that were marked Maverick. [REDACTED] stated that  
5 the defendant smoked Maverick cigarettes.

6 In the other position, two cans of Ice House  
7 beer were found, and photographs. Your Honor, the Ice  
8 House beer cans were consistent with the case of Ice House  
9 beer that had been found in the defendant's vehicle once  
10 he was apprehended.

11 Investigating officers and crime scene  
12 investigation could not actually locate the spent  
13 cartridges. However, they did make contact with [REDACTED]  
14 He is the victim's uncle. He located another area behind  
15 the house where numerous beer cans and bottles were  
16 located, indicating someone appeared to have been sitting  
17 there or making camp there for some period of time. All  
18 of those items were collected as evidence, Your Honor.

19 In addition, all the text messages that had been  
20 sent to the victim and her daughter were located and  
21 photographed as evidence.

22 Your Honor, there were additional witnesses that  
23 law enforcement was able to locate. One of those was  
24 [REDACTED] He was -- he reported to law enforcement  
25 that approximately three days before the shooting incident

1 on April 4th, 2011, he had observed a dark-in-color  
2 full-size truck in the area. He did not see anyone in the  
3 vehicle or walking around, but [REDACTED] stated that his wife  
4 also saw a vehicle matching the description of [REDACTED]'s  
5 truck on two different occasions with no one in the  
6 vehicle on the same road last week, and that appears to be  
7 the area that he was parked while going into the wood line  
8 area to observe or stalk the victim.

9 Also, Your Honor, law enforcement received a  
10 report from [REDACTED], that his rifle had been  
11 stolen and that the defendant was the suspect in regards  
12 to the stolen rifle.

13 [REDACTED] reported that the defendant had  
14 actually been staying with him at his home temporarily.  
15 He stated that he had last seen [REDACTED] Thursday morning,  
16 which was the morning of the incident, walking out the  
17 back door with a can of Four Loco.

18 [REDACTED] said that he did not get a good feeling  
19 from the defendant and began looking around the house. He  
20 stated that he found his wooden ammunition box missing.  
21 He stated that he checked his rifles and noticed that his  
22 Savage rifle with a scope was missing. He also stated  
23 that another friend identified as [REDACTED] had told him  
24 that [REDACTED] had threatened to kill himself with the rifle.  
25 As a result, law enforcement made contact with this other

1 witness, [REDACTED] at her residence.

2 She stated that the defendant had stayed with  
3 her for approximately one month, from February through  
4 March of 2011. She said that he would drink alcohol most  
5 of the day and would be gone for days at a time.

6 She had last spoken with [REDACTED] on Thursday  
7 morning, which was the date of the incident, April 7,  
8 2011, around 9:30 a.m. She called to wish him good luck  
9 in a court appearance, but [REDACTED] told her that he was not  
10 going to court. [REDACTED] said that [REDACTED] told her he was  
11 going to kill somebody and then kill himself. [REDACTED] said  
12 that someone had, quote, ruined his life, end of quote.

13 [REDACTED] said that [REDACTED] finally told her he was on  
14 Ballentine Road, and when she asked him to confirm that he  
15 was on Ballentine Road, he stated yes, he was, but then he  
16 told her that he had been, quote, watching a home. He  
17 told her that he had set fire to the victim's heating and  
18 air conditioning unit. [REDACTED] then said that [REDACTED] told her  
19 that he had cut [REDACTED]'s tires and [REDACTED]  
20 [REDACTED]'s tires. [REDACTED] said that [REDACTED] told her that he  
21 had followed [REDACTED] and a new man, referring to the  
22 victim's new boyfriend. He said that he was watching the  
23 house.

24 [REDACTED] then began telling her about being a  
25 Marine, being taught how to hide in the woods, how to

1 escape, and about recon. [REDACTED] said [REDACTED] was upset with  
2 the fact that she wanted to call the police, but she  
3 didn't know his exact location in order to tell them where  
4 he was and what was going on. [REDACTED] reported to her that  
5 no one loved him and he did not have anyone. [REDACTED] then  
6 said that [REDACTED] then told her he was going to, quote, kill  
7 that bitch, end of quote. She said he told her that  
8 multiple times.

9 She said the -- she told the investigating  
10 officer that he kept repeating that no one loved him, and  
11 he began cussing at her. [REDACTED] said [REDACTED] told her that he  
12 was going to do what he had to do. She said she kept  
13 calling through the night but could not get a hold of him.  
14 The investigating officer then asked [REDACTED] who [REDACTED] was  
15 referring to as a bitch, and she replied that [REDACTED] always  
16 referred to [REDACTED] as a bitch, end of quote.

17 Your Honor, photographs were taken of the scene  
18 as well as the scene being processed by law enforcement.  
19 The investigator who worked this particular case, [REDACTED]  
20 [REDACTED] is here and present in the courtroom if Your  
21 Honor has any specific questions in that record. But I'm  
22 going to pass up to the Court photographs of the  
23 residence, the bullet holes that entered the victim's  
24 master bedroom area, as well as locations in the home  
25 where the bullet actually traveled through various walls

1 once it had gone through the window.

2 In addition, Your Honor, there's the photograph  
3 of the wood line directly behind the house where the  
4 defendant was sort of making camp and the Ice House beer  
5 that was located there in the woods behind her home as  
6 well as the photograph of the defendant's truck depicting  
7 the case of Ice House beer at the same time that the rifle  
8 was recovered by law enforcement.

9 THE COURT: All right. Anything else?

10 MS. MAYES: Your Honor, the victim, [REDACTED]  
11 [REDACTED] as well as her daughter, [REDACTED] who  
12 certainly has been a witness and subject of threats in  
13 this case are here and present in the courtroom and they  
14 do wish to address the Court when the time is appropriate.

15 THE COURT: All right. That would be now.

16 Yes, state your name for the record, please.

17 MS. [REDACTED]: [REDACTED]

18 Every day I live in constant fear of what I  
19 might come home to, of what happens if I go to sleep,  
20 glance in my rear view mirror, or even answer my  
21 telephone. The trauma that my children and I have endured  
22 left us a tremendous amount of emotional distress that we  
23 deal with on a daily basis. We lost any sense of security  
24 and stability, leaving us on guard, always afraid of what  
25 will happen next.

1           What took me a lifetime to achieve took less  
2 than a year to destroy. I lost my vehicle, my home in  
3 foreclosure, being discharged from a job that I had for 18  
4 years, and potential employers unwilling to hire me due to  
5 the uncertainty of future actions from [REDACTED]

6           I don't want to live in fear of my children  
7 being threatened again and being able to get to me or --  
8 and my life being taken away or threatened. My life has  
9 forever been changed by this. And I would like to see  
10 [REDACTED] receive the maximum sentence that he can so that  
11 hopefully I can regain some sense of security because I'm  
12 still scared of [REDACTED] and I always will be.

13           THE COURT: Thank you.

14           Your name for the record, please.

15           MS. [REDACTED] [REDACTED]

16           THE COURT: Go ahead.

17           MS. [REDACTED] In the early morning  
18 hours on April 7th, 2011, when [REDACTED] told me over the phone  
19 to kiss my mom and tell her good-bye, that he was going to  
20 kill her and I'd never see her again, I became hysterical.  
21 I knew by the tone he spoke to me in, along with the  
22 previous months of harassment and torment that led up to  
23 this, that he had every intention of making that a reality  
24 for us. He was constantly hiding in our woods behind our  
25 property, sitting and watching.

1           The day that ██████ shot at my mom from our woods  
2 in our backyard followed by the second shot that went  
3 through our house and jolted me out of what little sleep I  
4 was able to get, I awoke to a horrific sick feeling.  
5 These events affected me in such a way that I eventually  
6 had to enter rehab due to severe depression, anxiety and  
7 PTSD, which I'm still working through on a daily basis. I  
8 still have nightmares of coming home to my family being  
9 murdered.

10           ██████ has made it blatantly clear to us that he  
11 cannot and will not leave my mother alone. For the safety  
12 and well-being of my family and I, I am asking for the  
13 maximum time possible for ██████ to be served.

14           THE COURT: Thank you.

15           MS. ██████: Your Honor, as for prior record, in  
16 1989 just a conviction for public drunk and unlawful  
17 weapon. And then also in 2010, a conviction for driving  
18 under the influence 1st offense.

19           Your Honor, as part of his arrest in this case,  
20 and he was arrested, I believe, on April 8 of 2011, that's  
21 when the warrants were actually served after he was  
22 detained, there was a very strict no contact order in  
23 place.

24           Despite that restriction, he has sent multiple  
25 letters to the victim from jail. And it's pretty clear --

1 all those letters have been subsequently turned over to  
2 law enforcement, were being turned over to law enforcement  
3 along the way, and the victim has had no contact with him  
4 whatsoever and has not initiated any contact with him, she  
5 is certainly in fear -- but in these letters, he just  
6 makes it clear that he is not accepting of the end of the  
7 relationship.

8 He states in one of these letters, "Danger can  
9 be a good thing between the right people. The only real  
10 victory I want now is the only one I can't have, and  
11 that's putting you from my mind once and for all. That  
12 will come when I die. You are truly your own worst enemy.  
13 A man in love is a peculiar creature, he will do mighty  
14 strange things."

15 And based on everything that we know about this  
16 case, Your Honor, the State and the victims, both of the  
17 victims, I believe, have extreme concerns about future  
18 danger from the defendant. We've just seen too many of  
19 these cases where -- or situations where tragic things  
20 happens and victims are killed under similar  
21 circumstances.

22 THE COURT: All right. Anything further from  
23 the State?

24 MS. MAYES: Not at this time, Your Honor.

25 THE COURT: Okay. Well, [REDACTED] let's

1 start with you. I notice that throughout the litany of  
2 the factual presentation you and your client were both  
3 shaking your heads at numerous times, so what is it that  
4 you dispute about what she said?

5 MR. [REDACTED] Judge, it's just there were  
6 disputes as to the factual basis. Some of the prior  
7 history, he tells me, didn't happen, but that really has  
8 no consequences here.

9 As to the reason why we're here, attempted  
10 murder, there's just no disputing that.

11 THE COURT: Okay. So he doesn't dispute that he  
12 was stalking her and camping out in her yard and all that?

13 MR. [REDACTED] That's right. On the day that  
14 this happened, that's exactly what happened.

15 THE COURT: Okay. All right. Well, anything  
16 else you want to tell me?

17 MR. [REDACTED] Yes, sir.

18 [REDACTED] as you know, is 42 years old. I've known  
19 him for about five years. He's got a serious -- or had a  
20 serious drinking problem. When he gets drunk, he makes  
21 very bad decisions, says stupid stuff. That's no excuse.  
22 He has no excuses for what happened here.

23 The letters also that he sent the victim since  
24 he's been in jail for about a year, I've seen some of  
25 them. They also say how much he loves her. Well, you

1 have a relationship that falls a part, you've got a young  
2 man that's got a drinking problem, you're going to end  
3 up -- that's an explosive situation, there's something bad  
4 going to happen.

5 Now, one thing I do -- [REDACTED] was basically living  
6 out of his car at about the time this happened. And I'm  
7 an avid deer hunter, he was an avid deer hunter, and we  
8 used to hunt together on his brother's property. One  
9 thing I can tell you is from 100 yards, [REDACTED] doesn't miss  
10 shooting a rifle. He does not miss. And in this  
11 situation -- I tell you, one time I even challenged him  
12 after I'd known he drank about a six pack at his brother's  
13 place, shooting targets at 100 yards, and he still whipped  
14 me. We were only shooting at something about the size of  
15 a silver dollar.

16 The point of this being, thank God, he did miss  
17 this time, or the -- just intended to scare her or  
18 something, that doesn't change the facts. He picked up a  
19 deer rifle about 60 yards away and fired in her direction.  
20 That's all he did. I just wish he'd have used eggs or  
21 water balloons as opposed to a 270 rifle. It would have  
22 made it a lot better, but there's no excuses for this.

23 His drinking problem is solved since he's been  
24 in jail. That also stops all the anger as wells as the  
25 crazy allegations or threats.

1           He accepts total responsibility. He apologizes  
2 to his family, the victims and her family. Since he's  
3 been in jail, he's -- the jealousy -- the fact that  
4 he's going to jail, he knows he's going to get some time  
5 here -- he's accepted all that. He wants to move forward  
6 with his life.

7           He's sorry to his own family. His father is  
8 here, [REDACTED] He comes from a very good family.  
9 But taking a shot at an individual with a deer rifle is  
10 totally out of character for him. It was stupid, and it  
11 doesn't change the facts. He was drinking, he was drunk,  
12 he knew what he was doing, took a shot.

13           If we get time in this matter, when he gets out,  
14 he plans on staying with his father or his brother until  
15 he can get back on his feet. He's going to continue to  
16 have to have some kind of alcohol treatment no matter  
17 what. His life has taken an unfortunate path, and he's  
18 hurt a lot of people. And there's no changing that. All  
19 we can do is go forward from this point.

20           Can he be a better man? Is he a better man? I  
21 can tell you since the one year he's been in jail, he's a  
22 lot better person than I knew him immediately before all  
23 of this happened.

24           [REDACTED] has a family, Judge. They plead for mercy.  
25 His life is basically now in your hands. And that's all

1 we can ask for is something fair.

2 His father, [REDACTED] would like to say a  
3 few words.

4 THE COURT: Yes, sir. Your name for the record?

5 MR. [REDACTED]: [REDACTED].

6 THE COURT: Okay. What would you like to say?

7 MR. [REDACTED] Well, Your Honor, Mr. [REDACTED]  
8 indicated to you he has known [REDACTED] or five years prior to  
9 this incident. I've known him longer than that. And  
10 there was a period of time probably right before  
11 Mr. [REDACTED] got to know him that he had not had a drop to  
12 drink. He's not a lifetime alcoholic.

13 As he indicated to you when you asked him about  
14 his employment, he has been gainfully employed for most of  
15 his life. He had an accident at work and that put him in  
16 the category of those people who can't live with pain  
17 pills, can't live without them, and he did probably use  
18 too many pain pills and started drinking again.

19 There's not much mitigating you can say about  
20 his conduct when this incident occurred, but what may be  
21 mitigating is that this was a time in his life when he was  
22 extremely isolated. He had just gone through a divorce.

23 As Your Honor knows, many of these incidents  
24 come down to love or money. And I'm not representing  
25 anything about the factual circumstances, but just what

1 [REDACTED] communicated to me, that he believed that he had lost  
2 a great deal of money, because he had gotten a settlement  
3 from his Workman's Comp claim. And he did still love the  
4 victim. And that combination of things caused him to do  
5 something that -- I mean, he's lived 42 years, and he's  
6 never shot at anybody at any other time.

7 He does have my support and has had it before  
8 and after he was accused of these offenses, and I will  
9 support and encourage him whenever he's ultimately  
10 released from custody.

11 Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. [REDACTED] I believe Mr. [REDACTED] would like to  
14 say something.

15 THE COURT: Mr. [REDACTED]

16 THE DEFENDANT: Your Honor, I -- I truly am  
17 sorry for what I've done. If I could take it all back I  
18 would.

19 I was an avid cyclist before this, never been in  
20 trouble. I didn't drink. I just went through a bad  
21 divorce.

22 I'm sorry for what I've done and throw myself at  
23 the mercy of the Court.

24 I want to apologize to [REDACTED] and her family for  
25 what I've done. I'm sorry, and I hope you no longer live

1 in fear.

2 That's all.

3 THE COURT: All right. Anything else?

4 MR. ~~XXXXXXXXXX~~ I believe that's it, Judge.

5 THE COURT: Well, here's the deal. I mean, you  
6 know, I haven't heard a litany of facts like this ever  
7 where somebody has gone to such lengths to show  
8 premeditation. You know, there's no doubt in my mind that  
9 if they were -- if you'd have killed this lady, they'd be  
10 seeking the death penalty against you.

11 I'm sitting here listening going what can I  
12 possibly do to give you the benefit of the doubt, but the  
13 only thing I can come up with is you pled guilty to spare  
14 this lady and her family the trauma of going to court, and  
15 for that I will knock two years off the maximum. But they  
16 don't ever need to worry about you again.

17 I don't know that what ails you can be fixed.  
18 The only thing that we can do is lock you up.

19 I wish that I felt different about it, but the  
20 level of premeditation is -- it's frightening to me. So  
21 that these folks did not have to go through the trouble of  
22 going to trial, I'll take two years off the max. I'm  
23 going to give you 28 years. You'll have to serve roughly  
24 25. You get credit for the time that you've served.

25 Good luck to you.

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MR. [REDACTED] Thank you, Judge.

MS. [REDACTED] Thank you, Your Honor.

(The proceedings were concluded.)

\*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

# THE YOUTHFUL OFFENDER ACT

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S.C. Code § 24-19-10, *et. seq.*

# ELIGIBILITY

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- Generally for offenders age 17 **but less than 25** at time of conviction (not at time of offense)
- No violent crimes, with 2 exceptions:
  - burglary second degree violent
  - CSC with a minor in the 3<sup>rd</sup> degree (where the victim was over age 14 and the act was consensual)
- No 85% offenses allowed
- Youthful offenders are only supposed to get one bite at the YOA apple

# Powers of the Court Upon Conviction of a Youthful Offender – S.C. Code 24-19-50

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- Suspend the sentence and place the offender on probation (regular adult probation under supervision of PPP);
- Send the offender to SCDC for observation and evaluation for not more than 60 days, at which point the offender is returned to court with findings and recommendations for sentencing;
- Send the offender to SCDC for an indeterminate YOA sentence not to exceed 6 years; or
  - One exception to the 6 years: if adult maximum penalty for the underlying offense is less than 6 years (for example, possession of heroin carries a maximum of only 2 years), the maximum time the Youthful Offender Division would have jurisdiction over the offender would be 2 years. See Craft v. State, 281 S.C. 205, 314 S.E.2d 330 (1984).
  - Also, per the Craft v. State case, if the adult maximum sentence is 6 years or more, but the judge tries to limit the sentence to a period of less than 6 years, SCDC is not required to follow the lesser time period and can consider it a non-binding recommendation.
- Decline to sentence the offender under the Youthful Offender Act and sentence the offender as an adult.

# Reception and Evaluation (“Intake”)

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- SCDC staff are required to make a “complete study” of each youthful offender upon intake
- Intake should be completed in 30 days unless there are “exceptional circumstances”
- Males – go through intake at Kirkland R&E and then generally assigned to either Trenton or Turbeville
- Females – go through intake at Camille Graham and then placed in the YOA population at Camille Graham

# MISSION

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- To reduce recidivism of youthful offenders by utilizing evidence-based principles and practices that teach accountability, enhance skill development, and promote public safety.

# Treatment of Youthful Offenders

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- The law gives SCDC broad discretion regarding appropriate custody and treatment of youthful offenders. This includes the amount of time we keep these offenders in custody and the amount of time we supervise them in the community.
- While incarcerated, youthful offenders are generally required to be kept separate from adult offenders. Also, classes of youthful offenders are kept separated according to their particular needs. (Example: ATU)

# After Intake is Complete

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- SCDC's youthful offender division uses internal mandatory minimum guidelines to assign a youthful offender to a term of programming.
- Generally 6 months, 9 months, 18 months, or 3-year mandatory minimum for certain burglary second degree offenses

# Burglary Second Degree and the April 21, 2016 Amendment

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- Prior to April 21, 2016, both violent and non-violent second degree burglary offenses carried a three-year day-for-day sentence under the Youthful Offender Act.
- On April 21, 2016, S.C. Code 24-19-10 (d) was changed to state that only second degree burglary violent carries a three-year day-for-day sentence.
- Savings Clause in the Act: because there was a Savings Clause in the Act that amended the statute, SCDC is required to look at the offense date to determine whether the three-year day-for-day sentence applies to a non-violent burglary second degree YOA sentence.

# Conditional Release

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- Conditional release refers to release of a youthful offender to intensive supervision (also called “YOA parole”) in the community.
- The offenders are supervised by SCDC’s own “Intensive Supervision Officers” (“ISOs”).
- The law gives SCDC the authority to conditionally release a youthful offender at any time, except for those offenders required to serve a three-year mandatory minimum for burglary second degree.
- However, we are required to conditionally release a youthful offender 4 years from the date of his or her conviction.
- Typically, for compliant offenders, SCDC’s conditional release is for a period of 1 year.

# Steps Required at Conditional Release

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- Generally, offenders must agree in writing to warrantless searches and seizures (there is an exception for certain low-level misdemeanors).
  - If such a search became necessary, outside law enforcement would conduct it. SCDC's Intensive Supervision Officers are not law enforcement officers.
- Any victims must be notified that the offender is going to be conditionally released back into the community.

# Violations of Conditional Release

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- An offender who violates the terms of conditional release (again, also called “YOA parole” or “intensive supervision”) can be returned to SCDC custody any time before expiration of the statutory period we have jurisdiction over the offender
- An offender accused of a violation of conditional release has a review with appropriate staff member(s). Staff then makes a recommendation to a panel. The panel makes the final determination regarding whether to revoke the conditional release and return the offender to custody or continue the offender on conditional release.
- First revocation: 6 months (if firearm involved, 9 months). Second revocation: 9 months. Third revocation: 18 months. If there is a fourth revocation, we may keep the offender in custody until our jurisdiction over him ends.

# Unconditional Discharge

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- This means complete release from our custody and supervision in the community
- Usually occurs well before the 6-year statutory period for compliant offenders
- Just like with conditional discharge, any victims must be notified when a youthful offender is being unconditionally discharged.
  - A youthful offender CAN be unconditionally discharged one year after being conditionally released.
  - A youthful offender MUST be unconditionally discharged six years from the sentence start date.

# Expungement of YOA Sentences

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- If a youthful offender has no other convictions in the five-year period following unconditional discharge, the offender can apply for expungement of the YOA sentence.
  - NOTE: S.C. Code § 22-5-920 (B)(2)(b) specifically prohibits violent offenses from being expunged, so it would appear that a YOA sentence for burglary second violent is not eligible for expungement, even though it is allowed under the Youthful Offender Act.

# The “Non-Conforming” YOA Sentence

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- Non-conforming means the offender was not eligible for a YOA sentence pursuant to the YOA statutes.
- We typically keep nonconforming offenders for a minimum of 3 years.
- Non-conforming offenders are a great challenge for SCDC because these offenders are often violent and pose a threat the well-being of our conforming youthful offender population.

# The Shock Incarceration Program

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- The Shock Incarceration Program is **not** just for youthful offenders, but is often used in conjunction with YOA sentences.
- Per S.C. Code 24-13-1310 *et seq.*, Shock is for any offender with a non-violent, non-85% sentence who is under the age of 30 at the time of admission to SCDC and is eligible for parole in two years or less. The offender cannot have any prior SCDC commitments.
- Shock is a 90-day program designed as an alternative to traditional incarceration. It has a focus on personal accountability, discipline, skill development, community service, and character development. Daily physical activity is required, and education is mandatory. Seven hours each workday are devoted to meaningful work both on and off of SCDC property. Within a month of release, Shock inmates participate in programs designed to promote their reintegration into the community.
- Upon completion of the Shock program, offenders are released to parole supervision by PPP. (NOTE: This parole supervision lasts for the duration of the offender's potential incarcerative sentence.)

# QUESTIONS?

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- PLEASE CONTACT CHRISTINA BIGELOW OR GINNY BARR IF YOU HAVE ANY QUESTIONS RELATED TO THE YOUTHFUL OFFENDER ACT.
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