FORTY YEARS OF DEATH: THE PAST, PRESENT, AND FUTURE OF THE DEATH PENALTY IN SOUTH CAROLINA (STILL ARBITRARY AFTER ALL THESE YEARS)

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INTRODUCTION

We now have forty years of experience under the "death belt" in South Carolina. The Supreme Court of the United States approved new death sentencing schemes in 1976[1] and the death penalty has been in business more or less full time in the Palmetto State since then.[2] Last year, two Justices of the Supreme Court called for full briefing on the constitutionality of the death penalty in light of forty years of data that demonstrate the death penalty statutes enacted in the 1970s have not lived up to constitutional demands.[3] In this Article, we will report and comment on the results of four decades of—in Justice Blackmun's words—"tinker[ing] with the machinery of death"[4] in South Carolina.

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1. Gregg v. Georgia, 428 U.S. 153 (1976).

2. As will be described in more detail in the next section of this Article, in 1974, South Carolina enacted a mandatory death penalty statute that was deemed unconstitutional in 1976, but a new statute was almost immediately enacted by the legislature and signed by the Governor. *See infra* notes 13, 23–24 and accompanying text.

3. Glossip v. Gross, 135 S. Ct. 2726, 2755 (2015) (Breyer, J., dissenting) (joined by Justice Ginsburg).

4. Callins v. Collins, 510 U.S. 1141, 1145 (1994) (Blackmun, J., dissenting from the denial of certiorari). In 2002, after twenty-five years with the current death penalty statute, one of the authors published a similar report of the status of South Carolina's death penalty. John H. Blume, *Twenty-Five Years of Death: A Report of the Cornell Death Penalty Project on the "Modern" Era of Capital Punishment in South Carolina*, 54 S.C. L. REV. 285 (2002).

It is not a pretty picture, and our bottom line is that the arbitrariness that led the Supreme Court to invalidate the death penalty in 1972 is still very much alive today. We will begin with a brief history of South Carolina's "modern" death penalty system.

I. THE BEGINNING OF THE MODERN ERA

In *Furman v. Georgia*, a bare 5-4 majority of the Supreme Court invalidated all then-existing death penalty statutes.[5] Each of the Justices in the majority wrote separately, and no clear consensus emerged as to why the death penalty, which had been upheld against constitutional attack just the year before,[6] was now unconstitutional. At the risk of oversimplification, the constitutional rub arose from the fact that the death penalty was imposed in only a fraction of cases in which it was legally available and the Justices could divine no rational basis explaining why some offenders were sentenced to death while others were spared.[7] For this reason, the Court found that all state systems of capital punishment allowed for arbitrary and capricious imposition of capital punishment.[8] Justice Brennan's concurring opinion captures this sentiment: "When the punishment of death is inflicted in a trivial number of the cases in which it is legally available, the conclusion is virtually inescapable that it is being inflicted arbitrarily. Indeed, it smacks of little more than a lottery system."[9] There was, in short, no "rational basis that could differentiate in those terms the few who die from the many who go to prison."[10] The fear that racial discrimination

5. 408 U.S. 238, 239–40 (1972).

6. *See* McGautha v. California, 402 U.S. 183, 193 (1971) (rejecting the argument that the absence of standards to guide jury's discretion in death penalty sentencing was "fundamentally lawless" and violated the Fourteenth Amendment).

7. In most pre-*Furman* schemes, including South Carolina's, the jury decided the issue of the defendant's guilt and the appropriateness of the death penalty in the same unitary proceeding. *See* S.C. CODE § 16-52 (Michie 1962), *invalidated by* Furman v. Georgia, 408 U.S. 238 (1972) (current version at S.C. CODE ANN. § 16-3-20 (2010)). If the jury found the defendant guilty of murder, it would recommend mercy if it thought a life sentence was appropriate and would not recommend mercy if it favored death. *Id.*

8. *See* Gregg v. Georgia, 428 U.S. 153, 188 (1976) ("Because of the uniqueness of the death penalty, *Furman* held that it could not be imposed under sentencing procedures that created a substantial risk that it would be inflicted in an arbitrary and capricious manner.").

9. *Furman*, 408 U.S. at 293 (Brennan, J., concurring).

10. *Id.* at 294. Justice Stewart echoed Justice Brennan's concerns: "These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. . . . I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and freakishly imposed." *Id.* at 310 (Stewart, J., concurring). Justice White voiced similar objections to imposing capital punishment, stating, "the death penalty is exacted with great infrequency even for the most atrocious crimes and that there is no meaningful basis for distinguishing the few cases

played a significant role in the death selection process was also of grave concern to several members of the Court.[11] The primary flaw in the statutes before the Court creating the intolerable arbitrariness was that jurors had complete and unguided discretion in deciding whether a capital defendant should receive the death penalty or life in prison.[12]

Many states, including South Carolina, rushed to create capital sentencing schemes that would satisfy the new constitutional standard.[13] The post-*Furman* statutes fell into two broad categories: mandatory death penalty statutes and guided discretion statutes. Both types of new death penalty laws were intended to reduce the role of jury discretion. The mandatory statutes did so by eliminating it; if a defendant was found guilty of a capital offense, then the death penalty was imposed—no ifs, ands, or buts. The guided discretion statutes attempted to reduce arbitrariness by creating new procedures. The central features of most guided discretion schemes included bifurcated trial (separating the issues of guilt-or-innocence and punishment), the creation of statutory aggravating circumstances limiting eligibility for capital punishment, permitting consideration of mitigating circumstances, and mandatory appellate review (including proportionality review). By 1976, the new laws made their way back to the U.S. Supreme Court. The Court upheld the guided discretion statutes, but concluded that the mandatory statutes violated the Eighth Amendment.[14]

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in which it is imposed from the many cases in which it is not." *Id.* at 313 (White, J., concurring).

11. *See, e.g.*, *id.* at 242 (Douglas, J., concurring) (opining it was "incontestable that the death penalty inflicted on one defendant is 'unusual' if it discriminates against him by reason of his race, religion, wealth, social position, or class, or if it is imposed under a procedure that gives room for the play of such prejudices"). Justice Marshall agreed, stating "It is immediately apparent that Negroes were executed far more often than whites in proportion to their percentage of the population." *Id.* at 364–65 (Marshall, J., concurring).

12. *See* Gregg v. Georgia, 428 U.S. 153, 189 (1976) ("*Furman* mandates that where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited as to minimize the risk of wholly arbitrary and capricious action."). The South Carolina Supreme Court, following *Furman*, struck down the South Carolina statute in *State v. Gibson*, 259 S.C. 459, 462 (1972).

13. *See* State v. Rogers, 270 S.C. 285, 288, 242 S.E.2d 215, 216 (1978)

14. The Court granted certiorari in five cases. *Gregg v. Georgia*, 428 U.S. 153 (1976), *Proffitt v. Florida*, 428 U.S. 242 (1976), and *Jurek v. Texas*, 428 U.S. 262 (1976), involved guided discretion statutes of various types that were deemed constitutional. *Woodson v. North Carolina*, 428 U.S. 280 (1976), and *Roberts v. Louisiana*, 428 U.S. 325 (1976), involved mandatory statutes that were invalidated. While beyond the scope of this article, the Texas statute was (and is) a "hybrid" falling somewhere between guided discretion and mandatory in classification and most commentators assert, and we agree, if the Supreme Court had it to do over again they would have invalidated the Texas statute in 1976 as well. *See, e.g.*, Jordan Steiker, Penry v. Lynaugh: *The*

Gregg v. Georgia was the lead case. Justice Stewart's opinion stated, "[d]espite the continuing debate, dating back to the 19th century, over the morality and utility of capital punishment, it is now evident that a large proportion of American society continues to regard it as an appropriate and necessary criminal sanction."[15] Thus, the Court concluded the death penalty was not per se violative of the Eighth Amendment. The Georgia statute passed constitutional muster even though "some jury discretion still exists" because "'the discretion to be exercised is controlled by clear and objective standards so as to produce non-discriminatory application.'"[16] The Court concluded:

> In summary, the concerns expressed in *Furman* that the penalty of death not be imposed in an arbitrary or capricious manner can be met by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance. As a general proposition these concerns are best met by a system that provides for a bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposition of sentence and provided with standards to guide its use of the information.[17]

The Court also emphasized the importance of appellate review:

> As an important additional safeguard against arbitrariness and caprice, the Georgia statutory scheme provides for automatic appeal of all death sentences to the State's Supreme Court. That court is required by statute to review each sentence of death and determine whether it was imposed under the influence of passion or prejudice, whether the evidence supports the jury's finding of a statutory aggravating circumstance, and whether the sentence is disproportionate compared to those sentences imposed in similar cases.[18]

The mandatory statutes, on the other hand, did not fare so well. In *Woodson v. North Carolina*,[19] the Court reasoned that such statutes were out of step with "contemporary" standards of decency because

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Hazards of Predicting the Future, *in* DEATH PENALTY STORIES (John H. Blume & Jordan M. Steiker eds., 2010). In 2011, after his retirement from the Court, Justice John Paul Stevens said that he would change only one vote from his tenure, his vote in *Jurek:* "I think upon reflection, we should have held the Texas statute . . . to fit under the mandatory category and be unconstitutional. In my judgment we made a mistake in that case." EVAN J. MANDERY, A WILD JUSTICE: THE DEATH AND RESURRECTION OF CAPITAL PUNISHMENT IN AMERICA 439–40 (2013)

15. *Gregg*, 428 U.S. at 179.
16. *Id.* at 198 (quoting Coley v. State, 204 S.E.2d 612, 615 (Ga. 1974)).
17. *Id.* at 195.
18. *Id.* at 198.
19. 428 U.S. 280 (1976).

they eliminated the jury's essential role in maintaining a "link" between "community values" and the capital punishment system.[20] The Court also believed that the mandatory statutes only "papered over" the problem of unguided and unchecked discretion because juries would refuse to convict many defendants of murder if forced with such a Draconian choice.[21] Due to the uniqueness of the death penalty, the Court held the Constitution required that the sentencer could not be precluded from considering the "character and record of the individual offender and the circumstances of the particular offense."[22]

Since South Carolina had initially bet on the wrong constitutional horse by enacting a mandatory capital punishment scheme,[23] the South Carolina Supreme Court was forced to find the mandatory statute invalid.[24] In 1977, the General Assembly passed the current death penalty statue,[25] which closely modeled the Georgia law approved by the High Court in *Gregg*.[26]

The South Carolina Supreme Court upheld the new statute in *State v. Shaw*.[27] The court concluded that the "statutory death penalty complex adopted by the General Assembly . . . is constitutionally indistinguishable from the statutory complex approved by the United States Supreme Court in *Gregg*."[28] In the state court's opinion, the new procedures "focus the sentencing authorities' attention on the particularized nature of the crime and the particularized characteristics of the individual defendant."[29] This guidance sufficiently reduced the likelihood of the death penalty being imposed capriciously.[30] The court also noted that the statutorily mandated appellate review, including the

20. *Id.* at 295.
21. *Id.* at 302.
22. *Id.* at 304.
23. *See* S.C. CODE § 16-52 (Michie 1962), *invalidated by* Furman v. Georgia, 408 U.S. 238 (1972) (current version at S.C. CODE § 16-3-20 (2010)).
24. State v. Rumsey, 267 S.C. 236, 239, 226 S.E.2d 894, 895 (1976) ("As our statute does not permit the exercise of controlled discretion in imposing the death penalty required by the recent decision . . . it too is constitutionally defective.").
25. *See* 1977 Act No. 177 § 1 (effective June 8, 1977).
26. See *Gregg*, 428 U.S. at 162–68 (describing Georgia's death penalty sentencing scheme). There have been no substantial changes to the South Carolina death penalty statute in the last forty years; however, the number of statutory aggravating circumstances has grown significantly, *see infra* text accompanying notes 173–74, and a capital defendant's parole eligibility (if the sentencer chooses the life option) has been extended from twenty years to thirty years and then eliminated. S.C. CODE ANN. § 16-3-20 (2010).
27. 273 S.C. 194, 205, 255 S.E.2d 799, 804 (1979).
28. *Id.* at 203, 255 S.E.2d at 803–04.
29. *Id.*, 255 S.E.2d at 804.
30. *Id.*

requirement that the court determine whether the death sentence was disproportionate or excessive, served "[as] an additional check against the random imposition of the death penalty."[31]

II. POST-*FURMAN* AND *GREGG* DOCTRINAL DEVELOPMENTS

In the forty years since it approved the new death penalty schemes, the Supreme Court has enacted new limitations on the death penalty in an attempt to ensure the states impose death sentences in a manner consistent with the constitutional demands set out in *Furman* and *Gregg*. A theme in *Furman* and *Gregg*, reaffirmed repeatedly over the last forty years, is that capital punishment should be reserved for the most culpable offenders who commit the most heinous crimes. Justice Kennedy recently stated "the death penalty is reserved for a narrow category of crimes and offenders"[32]—for the "worst of the worst."[33] This "worst of the worst" principle influenced the Court in *Gregg* to conclude that the death penalty was not disproportionate in all cases because while "[i]t is an extreme sanction, [it is] suitable to the most extreme of crimes."[34] Since *Gregg*, the Court has made clear that capital punishment should be "reserved for those crimes that are 'so grievous an affront to humanity that the only adequate response may be the penalty of death.'"[35]

The commitment to reserve capital punishment for the "worst of the worst" and conversely to prevent "average murderers" from being sentenced to death manifests itself in two discrete areas of the Court's capital punishment jurisprudence. First, the Court "has consistently confined the imposition of the death penalty to a narrow category of the most serious crimes."[36] Thus the death penalty may not be imposed

31. *Id.* at 211, 255 S.E. 2d at 807.

32. Roper v. Simmons, 543 U.S. 551, 569 (2005).

33. In *Furman*, Justice Brennan found that the low levels of infliction of capital punishment made it "highly implausible that only the worst criminals or the criminals who commit the worst crimes are selected for this punishment." 408 U.S. 238, 293–94 (Brennan, J., concurring). In fact, he noted that if "Furman or his crime illustrates the 'extreme,' then nearly all murderers and their murders are also 'extreme.'" *Id.* at 294.

34. 428 U.S. at 187. The Court further found the death penalty served the penological goal, or social purpose, of retribution when imposed for the worst crimes:

Indeed, the decision that capital punishment may be the appropriate sanction in extreme cases is an expression of the community's belief that certain crimes are themselves so grievous an affront to humanity that the only adequate response may be the penalty of death.

Id. at 184.

35. Kennedy v. Louisiana, 554 U.S. 407, 437 (2008) (quoting *Gregg*, 428 U.S. at 184, 187).

36. Atkins v. Virginia, 536 U.S. 304, 319 (2002).

for non-homicide offenses.[37] Even for those found guilty of murder, the requirement that a state prove an aggravating circumstance before a defendant is eligible to be sentenced to death is intended to provide the required narrowing and reserve the sentence for only the worst or most extreme murders. Thus states are required to "give narrow and precise definition to the aggravating factors that can result in a capital sentence."[38] Furthermore, it is not enough that an aggravating circumstance "genuinely narrow the class of persons eligible for the death penalty," it must also "reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder."[39] Where the state fails to narrowly and precisely define an aggravating circumstance, it "fail[s] adequately to channel the sentencing decision" as required by *Gregg*.[40] As a result, the Court has invalidated aggravating circumstances broadly defined to allow the imposition of the death penalty upon a defendant whose "crimes cannot be said to have reflected a consciousness materially more 'depraved' than that of any person guilty of murder."[41]

The Court has also prohibited the imposition of the death penalty on those deemed less culpable than the worst offender, holding that its "narrowing jurisprudence . . . seeks to ensure that only the most deserving of execution are put to death."[42] In order to do so, the Court requires that "[i]n any capital case a defendant has wide latitude to raise as a mitigating factor 'any aspect of [his or her] character or record . . . as a basis for a sentence less than death."[43] The Court has also barred the imposition of the death penalty on certain individuals deemed categorically undeserving of the death penalty. In *Enmund v. Florida*[44] and *Tison v. Arizona*,[45] for example, the Court held that persons guilty

37. *Kennedy*, 554 U.S. at 437 (prohibiting the imposition of the death penalty for the rape of a child); Enmund v. Florida, 458 U.S. 782, 797 (1982) (prohibiting the imposition of the death penalty for felony murder where the defendant did not kill, attempt to kill, or intend to kill); Coker v. Georgia, 433 U.S. 584 (1977) (prohibiting the imposition of the death penalty for the rape of an adult woman).

38. *Roper*, 543 U.S. at 568.

39. Zant v. Stephens, 462 U.S. 862, 877 (1983).

40. *See* Godfrey v. Georgia, 446 U.S. 420, 428, 433 (1980).

41. *Id.* at 433. In *Godfrey*, the Court considered the Georgia aggravating circumstance that made a murder found to be "outrageously or wantonly vile, horrible and inhuman" death eligible. The Court found "[a] person of ordinary sensibility could fairly characterize almost every murder as 'outrageously or wantonly vile, horrible and inhuman.'" *Id.* at 428–29.

42. *Atkins*, 536 U.S. at 319.

43. *Roper*, 543 U.S. at 568 (quoting Lockett v. Ohio, 438 U.S. 586, 604 (1978)).

44. 458 U.S. 782, 797 (1982).

45. 481 U.S. 137, 157 (1987).

of murder as an accessory but who did not actually kill could only be sentenced to death if they were major participants in the criminal offense and showed deliberate indifference to human life. Then, in *Atkins v. Virginia*, the Court created a categorical bar to execution for persons with intellectual disability (formerly classified as mental retardation), finding, "[i]f the culpability of the average murderer is insufficient to justify the most extreme sanction available to the State, the lesser culpability of the mentally retarded offender surely does not merit that form of retribution."[46] Several years later, the Court similarly found that juvenile offenders "cannot with reliability be classified among the worst offenders" and barred the execution of offenders who committed a crime before turning eighteen in *Roper v. Simmons*.[47]

In a similar vein, the Court has attempted to eliminate other forms of arbitrariness in the imposition of the death penalty, particularly arbitrariness resulting from racial discrimination. Multiple justices in *Furman* based their decision, at least in part, on the fact that the death penalty was disproportionately imposed on African Americans.[48] Since then, the Court has "engaged in 'unceasing efforts' to eradicate racial prejudice" in the administration of capital punishment and the criminal justice system as a whole.[49] For example, the Court has prohibited the exercise of prosecutorial discretion to seek the death penalty on the basis of race,[50] prohibited racially biased prosecutorial arguments,[51] prohibited prosecutors from exercising peremptory challenges to potential jurors on the basis of race,[52] and allowed defendants in capital cases to ask potential jurors about any racial biases they might harbor.[53]

The attempts of the Court to make the death penalty's administration more reliable and less arbitrary have been largely unsuccessful. These failures have led former and current members of the Court who once supported capital punishment to question whether its attempts to regulate death were worth the candle. Justice Lewis

46. *Atkins*, 536 U.S. at 319.
47. 543 U.S. at 569.
48. *See supra* note 11.
49. McCleskey v. Kemp, 481 U.S. 279, 309 (1987).
50. *Id.* at 309 n.30 (citing Wayte v. United States, 470 U.S. 598, 608 (1985)).
51. *Id.* (citing Donnelly v. DeChristoforo, 416 U.S. 637, 643 (1974)).
52. *Id.* (citing Batson v. Kentucky, 476 U.S. 79 (1986)).
53. Turner v. Murray, 476 U.S. 28, 36–37 (1986). Recognizing that the modern statutes continue to leave death sentences to the jury, the Court found capital sentencing proceedings are particularly susceptible to racial discrimination: "Because of the range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate but remain undetected." *Id.* at 35.

Powell, for example, said after his retirement that if he could change one vote during his 15-year career as a Supreme Court Justice it would be his decision to uphold the Georgia death penalty in the face of strong evidence of racial discrimination.[54] Justice Powell later expressed that he had "come to think that capital punishment should be abolished" and it "serves no useful purpose."[55] Justice Harry Blackmun concluded late in his career that the Court's efforts to curb capital punishment's flaws had been an abject failure and, as noted previously in this article, stated he would no longer "tinker with the machinery of death."[56] Justice John Paul Stevens has made clear that he finds the death penalty is an irreparably flawed government program.[57] And most recently, Justice Stephen Breyer, called for full briefing on the constitutionality of the death penalty as a whole.[58] In his dissenting opinion in a recent case involving lethal injection protocols, Justice Breyer, joined by Justice Ruth Bader Ginsburg, stated:

> In 1976, the Court thought that the constitutional infirmities in the death penalty could be healed; the Court in effect delegated significant responsibility to the States to develop procedures that would protect against those constitutional problems. Almost 40 years of studies, surveys, and experience strongly indicate, however, that this effort has failed. Today's administration of the death penalty involves three fundamental constitutional defects: (1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty's penological purpose. Perhaps as a result, (4) most places within the United States have abandoned its use.[59]

According to Justice Breyer, the first three considerations—unreliability, arbitrariness, and delays—make the punishment cruel; the abandonment of the practice makes it unusual.[60] Justice Breyer found that these unresolved and unresolvable issues make it "highly likely that the death penalty violates the Eighth Amendment" and tasked

54. John Jeffries, JUSTICE LEWIS F. POWELL: A BIOGRAPHY 451–53 (2001) (reporting that Justice Powell said in 1991 that he would change his vote in *McCleskey*, 481 U.S. 279).

55. MANDERY, *supra* note 14, at 438.

56. Callins v. Collins, 510 U.S. 1141 (1994) (Blackmun, J., dissenting from the denial of certiorari).

57. *See* Baze v. Rees, 553 U.S. 35, 71 (2008) (Stevens, J., dissenting) (finding that though it did not "justify a refusal to respect precedents," based on his own experience, "the imposition of the death penalty represents 'the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes'").

58. Glossip v. Gross, 135 S. Ct. 2726, 2755 (2015) (Breyer, J., dissenting).

59. *Id.* at 2755–56.

60. *Id.* at 2756–73.

litigators to raise these issues with the Court.[61] Given Justice Breyer's directive, the next section of this Article assesses South Carolina's death penalty in light of his constitutional concerns.

III. THE SOUTH CAROLINA DEATH PENALTY BY THE NUMBERS

A. *An Overview of Forty Years of Death Sentences and Executions*

Before directly addressing Justice Breyer's reasons questioning the constitutional legitimacy of capital punishment, we will "set the table" by providing an overview of what forty years of death in South Carolina has "produced." As of December 31, 2015, forty-four men, and no women, wait to die on South Carolina's death row.[62] Despite the fact that African Americans comprise only 28% of the state's population,[63] twenty-six of the death row inmates (59%) are black.[64] One death row inmate is Hispanic (2%) and seventeen are white (39%).[65] Seventeen of the twenty-six African American inmates (65%), the Hispanic inmate (100%), and fifteen of the seventeen white inmates (88%) were convicted of murdering one or more white victims.[66] The men currently on death row have been there for an average of 14.5 years, and no executions are expected for at least the next several years. As of the publication date of this Article, nine of the individuals currently on death row have been granted relief, either in the form of a complete retrial or a new sentencing hearing, and are currently awaiting that new proceeding or the grant of relief has been appealed by the State.[67]

In the "modern era" of capital punishment, 180 men and 1 woman have been sentenced to death.[68] Ninety-three (51%) of the 181 people

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61. *Id.* at 2776–77. Justice Breyer's call to arms is not unprecedented. In 1963, Justice Arthur Goldberg filed an opinion dissenting from the denial of certiorari in *Rudolph v. Alabama*, 375 U.S. 889 (1963), stating he thought the Court should consider whether the death penalty for the crime of rape violated the Eighth and Fourteenth Amendments. Goldberg's dissent fueled the litigation that resulted in *Furman*.

62. Appendix B to this Article lists the forty-four inmates on South Carolina's death row as of December 31, 2015.

63. Calculated using population as of 2010. *South Carolina Population by Race and Hispanic Origin (1980-2010)*, SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE, http://abstract.sc.gov/chapter14/pop12.html (last visited Apr. 9, 2016).

64. *See infra* Appendix B.

65. *Id.*

66. *Id.*

67. *See infra* Appendix B. For more on the errors found in these and other cases, *see infra* Section IV.B.

68. Appendix A to this Article lists all individuals sentenced to death in South Carolina from 1977 through 2015 with information about their race, the victim(s)'s race, and the county of conviction. Though this Article analyzes the forty years of South Carolina's post-*Furman* modern

to receive a death sentence were white, eighty-six (48%) were African American, one (.55%) was Hispanic, and one (.55%) was Native American.[69] Our statistical calculations based on the total number of death sentences use 187 death sentences because we have counted six of the 181 individuals as receiving two death sentences, either for murders committed in two different counties or individual sentences for multiple victims within the same county.[70]

There have been forty-three executions in South Carolina since 1976,[71] the most recent of which occurred on May 6, 2011 when Jeffrey Motts waived his future appeals and was executed by lethal injection.[72] Only eight states have executed more death-sentenced inmates.[73] All those executed were men; twenty-six (60%) were white, sixteen (37%) were black, and one (2%) was Native American.[74] Ten of the executions were carried out on "volunteers" who, like Motts, waived their available appeals in order to be executed.[75]

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death penalty, the sentencing data do not include death sentences under the 1974 death penalty statute, which was ultimately deemed unconstitutional and would skew the statistics drawn from the sentencing data.

69. *See infra* Appendix A.

70. *See id.* (indicating Ronald Woomer, Larry Gene Bell, Richard Longworth, James Tucker, Thomas Ivey, and Stephen Stanko received two death sentences each). In practice, most defendants convicted of murdering multiple victims receive a death sentence for each victim; however, it is not always readily apparent whether a defendant received a death sentence for each murder victim. Therefore, the authors have only counted multiple death sentences only where court records explicitly indicate the defendant received multiple death sentences.

71. Appendix C to this Article lists those individuals executed in South Carolina since the state reinstated the death penalty in 1974. The last execution in South Carolina prior to the Supreme Court's decision in *Furman* was in 1962. From 1912 to 1962, South Carolina executed 241 persons. Bruce L. Pearson, *Why the Death Penalty is at Issue*, *in* THE DEATH PENALTY IN SOUTH CAROLINA: OUTLOOK FOR THE 1980S 9 (Bruce L. Pearson ed., 1981).

72. *See infra* Appendix C. As South Carolina law currently stands, the condemned inmate is allowed to choose the method of execution, either lethal injection or electrocution. *See* S.C. Code § 24-3-530. If the inmate does not make an election, the execution method will default to lethal injection if he was sentenced after 1995 or to electrocution if he was sentenced before 1995. *Id.* § 24-3-530(B), (C).

73. Those states are Texas (524), Oklahoma (112), Virginia (110), Florida (90), Missouri (83), Alabama (56), Georgia (57), and Ohio (53). *Number of Executions by State and Region Since 1976*, DEATH PENALTY INFORMATION CENTER, http://www.deathpenaltyinfo.org/number-executions-state-and-region-1976 (last visited Apr. 9, 2016). North Carolina has executed the same number of death-sentenced inmates as South Carolina in the modern era. *Id.*

74. *See infra* Appendix D.

75. *See infra* Appendix D. Eight of the ten volunteers were white males. *See id.* For a more detailed discussion of "volunteers," *see* John H. Blume, *Killing the Willing: "Volunteers," Suicide and Competency*, 103 MICH. L. REV. 939 (2005).

B. *Cruel—Lack of Reliability*

Justice Breyer found a lack of reliability evidenced by exonerations, studies showing convincing evidence that innocent people have been executed, and in the overall error rates in capital cases.[76] Error plagues the administration of the death penalty in South Carolina. Most people sentenced to death in South Carolina are ultimately removed from death row for reasons other than their execution.

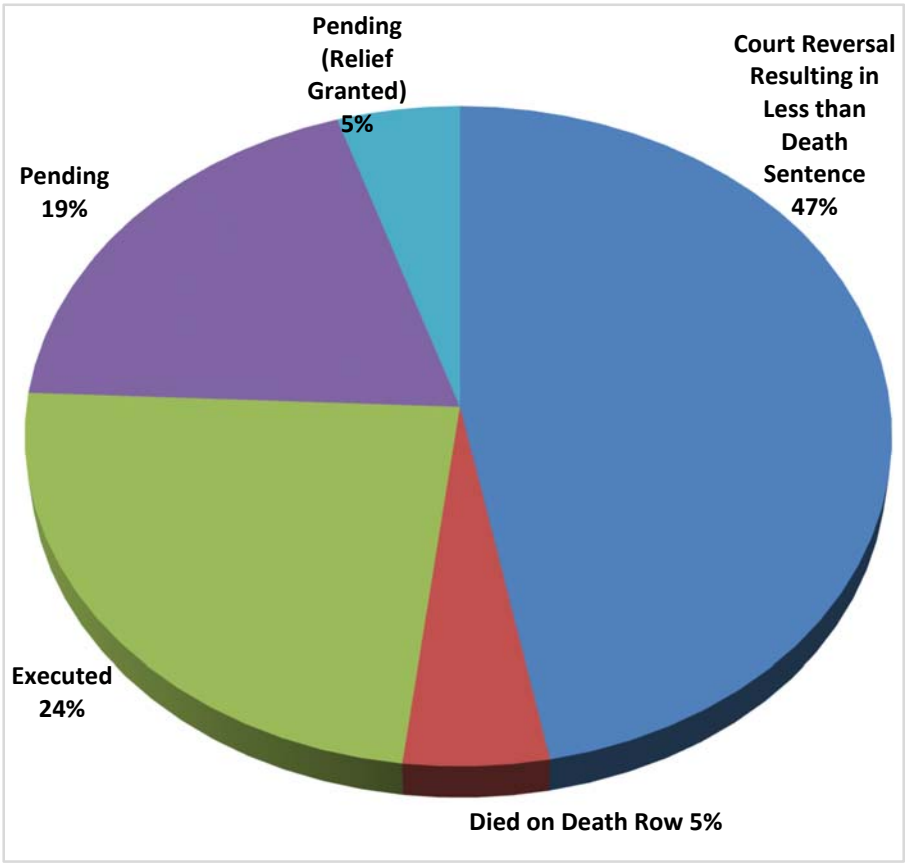

Figure 1: Outcome of death sentences

Eighty-four men and one woman who were sentenced to death are no longer on death row because their conviction and/or sentence were subsequently overturned during the capital appeals process.[77] Three

76. Glossip v. Gross, 135 S. Ct. 2726, 2756–59 (2015) (Breyer, J., dissenting).
77. *See infra* Appendix A.

were acquitted at retrials.[78] Eighty-two were sentenced to life imprisonment or a term of years after a new trial or a plea bargain.[79] Thus, approximately 47% of those individuals who were sentenced to death in the modern era of capital punishment were subsequently determined to be either not guilty, guilty of a lesser offense, or deserving of a sentence less than death. By contrast, only 24% of those sentenced to death have been executed.

During the modern era of the death penalty, three South Carolina men sentenced to death had their convictions overturned and were subsequently acquitted of murder charges at their retrials[80]—Michael Linder,[81] Jessie Keith Brown,[82] and Warren D. Manning.[83] Joseph Ard was also released from prison after a jury found he did not intentionally kill his girlfriend and their unborn child, and thus, was guilty only of manslaughter.[84] Another former death row inmate, Edward Lee Elmore, was released after strong evidence of his innocence emerged resulting in his conviction being vacated.[85] Other former death row inmates who have subsequently been released from prison, e.g. Sterling

78. *Id.*

79. *Id.*

80. *Id.*

81. Linder was convicted and sentenced to death in 1979 for the killing of a police officer. After his conviction was overturned, new ballistics evidence confirmed Linder's self-defense theory and he was acquitted. State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981); DEATH PENALTY INFORMATION CENTER, INNOCENCE CASES, http://www.deathpenaltyinfo.org/innocence-cases (last visited Apr. 9, 2016).

82. After his convictions for armed robbery and murder were twice overturned, evidence was presented that Brown's half-brother actually committed the murder and the jury acquitted Brown of murder charges. State v. Brown, 289 S.C. 581, 347 S.E.2d 882 (1986); State v. Brown, 296 S.C. 191, 371 S.E.2d 523 (1988); *'Devastated' by Verdict, Victim's Family Rips Jury*, SPARTANBURG HERALD J. Jan. 16, 1989, at A1, *available at* http://www.goupstate.com/article/19890116/NEWS/901160312.

83. On the state's fifth attempt to obtain a conviction against Manning (Manning's conviction was overturned twice and two mistrials were declared before the state prosecuted Manning for a fifth time), the jury acquitted Manning of the 1989 slaying of a police officer. State v. Manning, 329 S.C. 1, 495 S.E.2d 191 (1997); State v. Manning, 305 S.C. 413, 409 S.E.2d 372 (1991); DEATH PENALTY INFORMATION CENTER, INNOCENCE CASES, http://www.deathpenaltyinfo.org/innocence-cases.

84. John Monk, *Inmate Goes from Death Row to Freedom*, POST & COURIER, Jul. 31, 2012, *available at* http://www.postandcourier.com/article/20120731/PC16/120739886/1005/inmate-goes-from-death-row-to-freedom; *see also* Ard v. Catoe, 372 S.C. 318, 336, 642 S.E.2d 590, 599 (2007).

85. Elmore v. Ozmint, 661 F.3d 783 (4th Cir. 2011); *see also* RAYMOND BONNER, ANATOMY OF INJUSTICE: A MURDER CASE GONE WRONG (2012).

Spann[86] and Ernest Riddle,[87] had their sentences reduced due to their likely innocence.

Unreliability also occurs when individuals are erroneously sentenced to death, i.e. when the "courts failed to follow legally required procedures" in capital cases.[88] Over the last forty years, error has been found in more than sixty percent of all South Carolina death penalty trials in the course of the appellate and post-conviction review process mandated by the South Carolina death penalty scheme, including: (1) direct appeal,[89] (2) state post-conviction relief proceedings,[90] (3) federal habeas corpus,[91] and, (4) state habeas corpus.[92] For the purposes of this Article, "error" is defined as "an error occurring at trial serious enough to warrant a new trial either as to the defendant's guilt or as to the appropriate punishment." We have not counted cases in which a reviewing court found trial error but nevertheless concluded that the error was harmless.[93]

The South Carolina Supreme Court has reviewed 227 death judgments[94] in connection with the first mandatory, or "direct," appeal and has granted new trials or resentencing proceedings in eighty-one cases, for an error rate of 36%.[95] The Supreme Court of the United

86. After seventeen years on death row, Spann accepted an Alford plea when his conviction was overturned based on newly discovered evidence of innocence. He was paroled in 2006. *See* State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999); Keith Morrison, *A 20-Year Quest for Freedom*, NBC NEWS, http://www.nbcnews.com/id/19161103/ns/dateline_nbc-crime_reports/t/-year-quest-freedom/#.VrojglgrKHs.

87. After twenty-one years on death row, Riddle pled no contest after his conviction was overturned based on the fact that the State failed to turn over evidence calling into question the credibility of the main witness against Riddle. Riddle v. Ozmint, 369 S.C. 28, 631 S.E.2d 70 (2006); Tim Gulla, *Ernest Riddle of Death Row*, GAFFNEY LEDGER, Sept. 19, 2011, at 1, *available at* http://www.gaffneyledger.com/news/2011-09-19/Front_Page/Ernest_Riddle_off_death_row.html. Riddle was sentenced to thirty years in prison and was released in 2015.

88. *See* Glossip v. Gross, 135 S. Ct. 2726, 2758–59 (2015).

89. S.C. Code § 16-2-25(A) ("Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Supreme Court of South Carolina.").

90. S.C. Code § 17-27-160 (setting forth the procedures for post-conviction review in capital cases).

91. 28 U.S.C. § 2254 (providing for federal court review of state criminal convictions).

92. Butler v. State, 302 S.C. 466, 467–68, 397 S.E.2d 87, 88 (1990).

93. *See, e.g.*, State v. Stanko, 402 S.C. 252, 265, 741 S.E.2d 708, 715 (2013) (finding improper jury instruction harmless); State v. Gaskins, 284 S.C. 105, 123, 326 S.E.2d 132, 143 (1985) (finding improper malice jury instruction was harmless error beyond a reasonable doubt).

94. The number of cases reviewed is greater than the total number of individuals sentenced to death because some individuals were again sentenced to death after their original sentence was overturned, requiring the appellate review process to begin anew. Two death sentences have not yet been reviewed on direct appeal. Appendix E to this Article lists all cases reviewed on direct appeal by the South Carolina Supreme Court.

95. *See infra* Appendix E. In forty-one cases, the court granted an entire new trial. In thirty-

States found error in nine cases affirmed by the state supreme court,[96] for an overall error rate on direct appeal of 39%.[97]

The types of error detected in the direct appeal cases can be broadly categorized.[98] The three largest categories of error are instructional error, prosecutorial misconduct, and evidentiary error.[99] In twenty-nine cases (13% of all cases decided on direct appeal), prosecutorial misconduct was a reason, if not the sole reason, for reversal.[100] In forty-five cases (21%), there was prejudicial error in the

nine cases, the court ordered a new sentencing trial. In one case, the court vacated the death sentence because the defendant was a juvenile at the time of the crime, resulting in an unconstitutional death sentence under *Roper v. Simmons*, 543 U.S. 551 (2005). The direct appeal affirmance rate in capital cases in South Carolina increased significantly after the 1994 election of Attorney General Charles Condon, due in part to his making death penalty appeals a political issue. Part of Condon's campaign involved criticizing the South Carolina Supreme Court for its record in capital cases. *See* John Blume & Theodore Eisenberg, *Judicial Politics, Death Penalty Appeals, and Case Selection: An Empirical Study*, 72 S. CAL. L. REV. 465, 474–75 (1999). Between 1977 and 1994, the affirmance rate on direct appeal was only 50%. Between 1994 and 2014, the affirmance rate increased to 78%. *See infra* Appendix E. The national error rate on direct appeal as found by a study of all death sentences between 1973 and 1995 was 41%. James S. Liebman, et al., *Capital Attrition: Error Rates in Capital Cases, 1973-1995*, 78 TEX. L. REV. 1839, 1847 (2000). A more recent study determined that approximately 38% of all death sentences between 1973 and 2003, nationally, have been overturned at some point during the appellate process. Frank R. Baumgartner & Anna W. Dietrich, *Most Death Penalty Sentences are Overturned. Here's Why That Matters*, WASH. POST (Mar. 17, 2015), http://www.washingtonpost.com/blogs/ monkey-cage/wp/2015/03/17/most-death-penalty-sentences-are-overturned-heres-why-that-matters/.

96. *See* Holmes v. South Carolina, 547 U.S. 319 (2006)*;* Kelly v. South Carolina, 534 U.S. 246 (2002); Shafer v. South Carolina, 532 U.S. 36 (2001); Simmons v. South Carolina, 512 U.S. 154 (1994); Patterson v. South Carolina, 493 U.S. 1013 (1990) (order); Jones v. South Carolina, 476 U.S. 1102 (1986) (order); Plemmons v. South Carolina, 476 U.S. 1102 (order); Elmore v. South Carolina, 476 U.S. 1101 (1986) (order); Skipper v. South Carolina, 476 U.S. 1 (1986).

97. The error rate would likely be substantially higher if the South Carolina Supreme Court had not jettisoned *in favorem vitae* (in favor of life) review. For two hundred years, errors could be raised on direct appeal in capital cases even if there was no objection at trial. However, in *State v. Torrence*, 305 S.C. 45, 60–69, 406 S.E.2d 315, 324–28 (1991) (plurality opinion) (Toal, J., concurring), the court determined that the *in favorem vitae* rule was outdated and, despite the absence of evidence to support the assertion, it encouraged "sandbagging" by defense counsel. The reversal rate on direct appeal prior to *Torrence* was 51% (in fifty of ninety-nine cases, the state supreme court granted either an entire new trial or a new sentencing trial). After *Torrence*, the reversal rate fell to 24% (error was found in 31 of 127 cases). *See infra* Appendix E.

98. Appendix F to this Article sets forth the errors found by category.

99. Some cases had more than one error, and error of more than one type.

100. Most of these cases involved improper prosecutorial argument. *See, e.g.*, State v. Northcutt, 372 S.C. 207, 222–23, 641 S.E.2d 873, 881–82 (2007) (reversing based on the prosecution's improper statements during closing argument that he "expects" a death sentence and failure to return a death sentence would declare an "open season on babies in Lexington County"); State v. Cockerham, 294 S.C. 380, 381, 365, S.E.2d 22, 22–23 (1998) (reversing based on the prosecution's improper reference to the defendant's refusal to testify). However, other types of misconduct occurred as well. *See, e.g.*, State v. Bryant, 354 S.C. 390, 396, 581 S.E.2d 157, 161 (2003) (reversing based on improper law enforcement contact with qualified juror family members).

trial court's instructions to the jury.[101] In forty-two cases (19%), there was evidentiary error, which for the purposes of this Article, refers to situations where the trial judge either admitted improper prejudicial evidence or excluded relevant admissible evidence.[102] Most, but not all, detected errors fit into these categories.[103] It is also important to note a type of error that has *never* been found. The South Carolina Supreme Court has never determined that any death sentence was disproportionate to the offense.[104]

Error was found in an additional fifty cases in the post-direct appeal capital collateral appeals process.[105] Overall, when factoring in state post-conviction appeals, motions for new trial due to newly discovered evidence, federal habeas corpus, and state habeas corpus 140 of the 233 death sentences imposed in South Carolina have been

101. *See, e.g.*, State v. Cottrell, 376 S.C. 260, 265, 657 S.E.2d 451, 453–54 (2008) (reversing based on failure to give voluntary manslaughter instruction). Other cases involved the trial court giving the jury a legally incorrect instruction. *See, e.g.*, State v. Manning, 305 S.C. 413, 417, 409 S.E.2d 372, 374–75 (1991) (reversing based on incorrect reasonable doubt instruction).

102. *See, e.g.*, State v. Jones, 383 S.C. 535, 550, 681 S.E.2d 580, 588 (2009) (reversing because the trial court improperly admitted barefoot insole impression evidence); State v. Burkhart, 371 S.C. 482, 488, 640 S.E.2d 450, 453 (2007) (reversing based on admission of improper prison condition evidence).

103. *See, e.g.*, State v. Barnes, 407 S.C. 27, 37, 753 S.E.2d 545, 550 (2014) (reversing based on the trial judge's use of an improper standard in determining whether the defendant was competent to waive his right to counsel); State v. Rivera, 402 S.C. 225, 249, 741 S.E.2d 694, 707 (2013) (reversing based on a violation of the defendant's right to testify at trial); State v. Crisp, 362 S.C. 412, 417, 608 S.E.2d 429, 432 (2005) (reversing based on improper comments made by the trial judge during a guilty plea).

104. *See infra* notes 254–56 and accompanying text.

105. Appendix G to this Article lists the forty-two post-conviction relief cases where error was found in the South Carolina courts. In four other cases the Supreme Court of the United States found prejudicial error following the state court's post-conviction review. *See* Yates v. Aiken, 500 U.S. 391, 393 (1991); Truesdale v. Aiken, 480 U.S. 527, 527 (1987) (per curiam); Koon v. Aiken, 480 U.S. 943, 943 (1987) (order); Patterson v. Aiken, 480 U.S. 943, 943 (1987) (order). In one case a motion for new trial was granted due to newly discovered evidence of actual innocence. *See* State v. Spann, 334 S.C. 618, 621–22, 513 S.E.2d 98, 100 (1999). In State v. South, 310 S.C. 504, 509, 427 S.E.2d 666, 670 (1993), the trial judge granted a new sentencing trial based on newly discovered evidence that the defendant had a brain tumor at the time of the offense. On appeal, the South Carolina Supreme Court concluded that the judge applied the wrong standard and remanded the case for reconsideration. *Id.* Before the court could act on the case, South waived his appeals and was voluntarily executed. *See infra* Appendix D. In another case, a new trial was ordered in federal habeas corpus proceedings. Hyman v. Aiken, 824 F.2d 1405, 1410 (4th Cir. 1987). In two cases, the South Carolina Supreme Court granted a new trial after a petition for writ of habeas corpus was filed in the court's original jurisdiction. Tucker v. Catoe, 346 S.C. 483, 485, 552 S.E.2d 712, 713 (2001); Butler v. State, 302 S.C. 466, 467–68, 397 S.E.2d 87, 88 (1990). In two other cases, error was found in post-conviction proceedings, but the cases remain pending on appeal and have not been included in our reversal count. We also excluded one case in which a death-sentenced inmate was found incompetent to be executed. *See* Singleton v. State, 313 S.C. 75, 84, 437 S.E.2d 53, 58 (1993).

reversed—an overall reversal rate of 60%.[106] The error rate would certainly be higher if South Carolina capital cases were not reviewed in federal habeas corpus proceedings by the United States Court of Appeals for the Fourth Circuit.[107] The Fourth Circuit has historically been the stingiest federal court of appeals when it comes to granting relief in capital cases.[108] Capital habeas petitioners within the Fourth Circuit have prevailed in only 6.2% of cases.[109] The overall success rate in other federal circuits over the same time period was 40%.[110] Only one South Carolina capital federal habeas petitioner has ever obtained relief in the Fourth Circuit, and that was in 1987.[111]

The most common type of error detected in post-conviction proceedings, not surprisingly, is the denial of the right to effective assistance of counsel.[112] Twenty-six of the fifty post-conviction reversals were due to various failings by counsel.[113] Post-conviction relief has also been granted due to prosecutorial misconduct,[114] instructional error,[115] evidentiary error,[116] newly discovered evidence of

106. Of the 187 original death sentences, 119 have resulted in at least one reversal prior to either the individual's execution or a subsequent sentence of less than death—an error rate of 65%. Nationally, error is found in 68% of all capital cases. Liebman, *supra* note 96, at 1850.

107. The Fourth Circuit is the federal court of appeals for South Carolina as well as North Carolina, Virginia, Maryland, and West Virginia.

108. John H. Blume, *The Dance of Death or (Almost) "No One Here Gets Out Alive": The Fourth Circuit's Capital Punishment Jurisprudence*, 61 S.C. L. REV. 465, 470–71 (2010).

109. *Id.* at 469 n.27.

110. *Id.* at 469 (citing James S. Lebman et al., *A Broken System, Part II: Why There Is So Much Error in Capital Cases, and What Can Be Done About It* 9 (2002), http://www2.law.columbia.edu/brokensystem2/report.pdf.

111. *See* Hyman v. Aiken, 824 F.2d 1405 (4th Cir. 1987). In 2011, the Fourth Circuit granted habeas relief in the case of former South Carolina death row inmate Edward Lee Elmore, whose death sentence had previously been vacated based on a finding he is intellectually disabled. *Elmore v. Ozmint*, 661 F.3d 783, 786, 872 (4th Cir. 2011). The Fourth Circuit found Elmore received ineffective assistance of counsel and reversed his conviction. *Id.* at 872. Elmore has since been released from prison. *See infra* Appendix A. For more information about Elmore's case, conviction, and the errors that occurred in his case, see BONNER, *supra* note 85.

112. *See infra* Appendix F.

113. *See, e.g.*, Vasquez v. State, 388 S.C. 447, 698 S.E.2d 561 (2010) (reversing based on a finding that trial counsel was ineffective for failing to object to improper remarks during the solicitor's sentencing phase closing argument); Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007) (reversing based on a finding that trial counsel failed to adequately investigate and challenge gunshot residue evidence). The most common failing of counsel is the failure to adequately develop and present evidence in mitigation at the sentencing phase of trial. *See, e.g.*, Weik v. State, 409 S.C. 214, 761 S.E.2d 757 (2014); Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009); Council v. State, 380 S.C. 159, 690 S.E.2d 356 (2009).

114. *See, e.g.*, Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006) (reversing based on the prosecution's failure to disclose impeachment evidence and failure to correct false testimony).

115. *See, e.g.*, Yates v. Evatt, 500 U.S. 391, 393 (1991) (reversing because of improper burden-shifting instruction regarding implied malice).

116. *See, e.g.*, Chaffee v. State, 294 S.C. 88, 91, 362 S.E.2d 875, 877 (1987) (reversing because

actual innocence,[117] and a death sentenced inmate's mental incompetency to be executed.[118] Additionally, though not considered error at the time of trial, many individuals have been removed from South Carolina's death row because the Supreme Court later found they were categorically ineligible for the death penalty as a result of their age or intellectual capacity. Eight inmates were removed from South Carolina's death row as a result of the Supreme Court decisions categorically barring the execution of juveniles[119] and the intellectually disabled[120]—four as a result of each case.

Finally, while executive clemency is not technically part of the judicial capital appeals process, it has traditionally been deemed to be an important failsafe in any capital punishment scheme.[121] No South Carolina death row inmate has been granted clemency since the new death penalty statute has been in effect.[122] This was not true prior to

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the judge did not allow evidence of adaptability to confinement).

117. State v. Spann, 334 S.C. 618, 621–22, 513 S.E.2d 98, 100 (1999) (reversing based on the trial judge's rejection of exculpatory expert testimony at a new trial hearing).

118. Singleton v. State, 313 S.C. 75, 84, 437 S.E.2d 53, 58 (1993) (finding incompetency based on the inmate's complete inability to communicate).

119. Roper v. Simmons, 543 U.S. 551 (2005). Eric Dale Morgan, Ted Power, Herman Hughes, and Robert Conyers' sentences were vacated pursuant to *Roper*. *See* State v. Morgan, 367 S.C. 615, 626 S.E.2d 888 (2006); *infra* Appendix G. Prior to *Roper v. Simmons* in 2005, barring the execution of juveniles under the age of eighteen, South Carolina executed James Terry Roach in 1986 who was seventeen at the time of his crime. *See infra* Appendix G.; *see also* INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Resolution No. 3/87, Case 9647 (1987), http://www.cidh.org/annualrep/86.87eng/EUU9647.htm.

120. *Atkins*, 536 U.S. 304. Ricky George, Elis Franklin, Edward Lee Elmore, and Tommy Lee Davis' sentences were vacated pursuant to *Atkins*. *See infra* Appendix G. Kenneth Simmons's sentence was also vacated pursuant to *Atkins*; the state appealed. *See* Simmons v. State, No. 05-CP-18-1368 (S.C. 1st Cir. C.P. Oct. 21, 2013). Simmons also appealed the court's denial of a DNA-based false evidence claim. The South Carolina Supreme Court denied certiorari on the *Atkins* claim, but is currently considering whether Simmons's DNA claim warrants a new trial to determine his guilt or innocence. *See* Order, Simmons v. State, No. 2014.000387 (S.C. July 27, 2015). In addition, two post-conviction relief courts have granted relief based on a finding that trial counsel was ineffective in failing to investigate and present evidence of intellectual disability. *See* Evins v. State, No. 07-CP-42-2849 (S.C. 7th Cir. C.P. June 27, 2014); Mercer v. State, No. 09-CP-32-5465 (S.C. 11th Cir. C.P. June 27, 2011). One has been resentenced to life without parole (Evins) and one is pending on resentencing (Mercer). Prior to *Atkins*, South Carolina executed at least two intellectually disabled persons—it was undisputed that both Sylvester Adams and Frank Middleton were intellectually disabled. There was also very strong evidence that Larry Gilbert was intellectually disabled.

121. Herrera v. Collins, 506 U.S. 390, 415 (1993) (stating "[e]xecutive clemency has provided the 'fail safe'" in the capital punishment system) (citations omitted); *see also* Michael Heise, *Mercy By the Numbers: An Empirical Analysis of Clemency and Its Structure*, 89 VA. L. REV. 239 (2003) (exploring and criticizing interaction between executive clemency and capital punishment).

122. Not all of the forty-three inmates who have been executed have requested clemency. In addition to the ten "volunteers," at least three other inmates (Donald H. Gaskins, Ronnie Howard, and Anthony Green) elected not to ask the governor for a commutation.

Furman: we have identified at least twenty-seven death-sentenced individuals whose sentences were commuted through gubernatorial clemency in the forty years prior to *Furman*.[123] No other state has executed so many inmates in the modern era without a single commutation.[124]

C. Cruel–Arbitrariness

Forty years ago, the Supreme Court upheld new death penalty statutes only after finding they would prohibit the death penalty from being "inflicted in an arbitrary and capricious manner."[125] Justice Breyer found that "40 years of further experience make it increasingly clear that the death penalty is imposed arbitrarily, *i.e.*, without the 'reasonable consistency' legally necessary to reconcile its use with the Constitution's commands."[126] Arbitrariness, according to Justice Breyer, is demonstrated by the fact that "the factors that most clearly ought to affect application of the death penalty—namely, comparative egregiousness of the crime—often do not."[127] Instead, "circumstances that ought *not* to affect application of the death penalty, such as race, gender, or geography, often *do*."[128] Our research demonstrates the same is true in South Carolina—factors such as race, gender, and geography are greater determining factors in who receives the State's ultimate penalty than factors such as the egregiousness of the crime.

1. Race and Gender Effects

Of South Carolina's 187 death sentences in the modern era, 151 (81%) were imposed for the killing of a white victim.[129] 33 (18%) were imposed for the killing of an African American victim.[130] Three (1%) death sentences were imposed for the killing of an Asian victim.[131]

123. A list of the twenty-seven pre-*Furman* commutations is on file with the authors and was compiled by searching records maintained at the South Carolina Department of Archives & History.

124. DEATH PENALTY INFORMATION CENTER, CLEMENCY, http://www.deathpenalty info.org/clemency; *see also supra* note 73 (listing the states that have carried out the highest number of executions).

125. Gregg v. Georgia, 428 U.S. 153, 188 (1976).

126. Glossip v. Gross, 135 S. Ct. 2726, 2760 (2015) (quoting Eddings v. Oklahoma, 455 U.S. 104, 112 (1982)).

127. *Id.*

128. *Id.*

129. One hundred fifty-one of the 187 death sentences were imposed for the killing of one or more white victims; some were also charged with killing minority victims. *See infra* Appendix A.

130. *Id.*

131. *Id.*

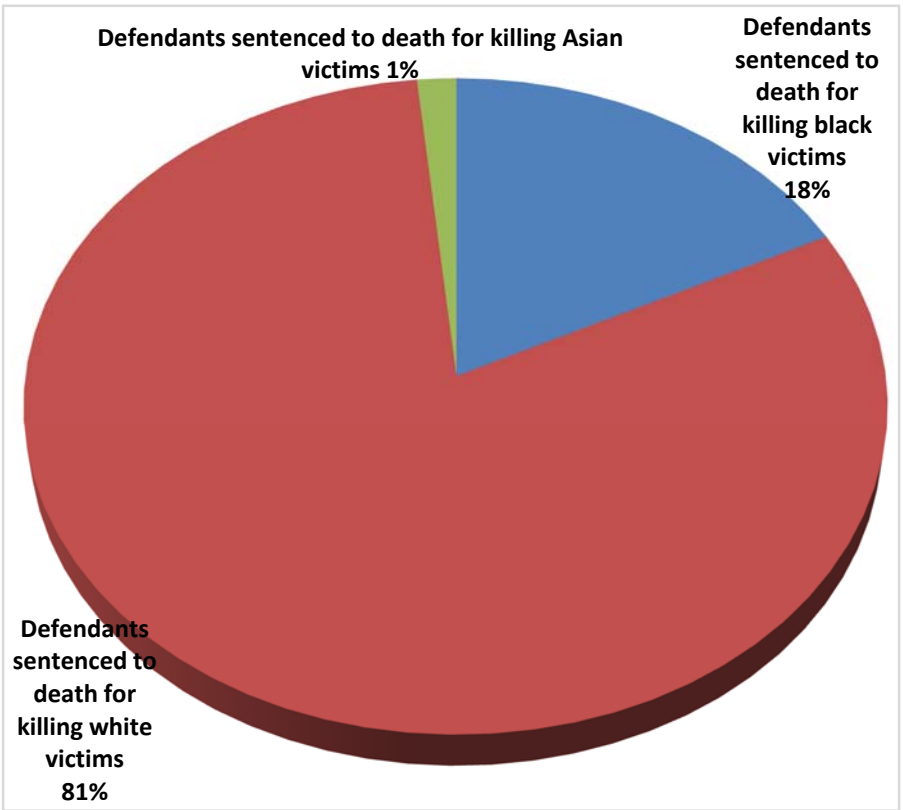

Figure 2: Death sentences by victim race

Sixty-three (34%) of the sentences were imposed on an African American defendant convicted of killing a white victim.[132] This is so despite the fact that it is far less common for a homicide to occur with a white victim/black defendant combination.[133] Death sentencing rates show the disparity cannot be explained by the demographics of murder victims. For a black male[134] defendant convicted of killing a white victim, the death sentencing rate is 8.56 per 100 murders as opposed to only 0.46 for black victims.[135] White males are also sentenced to death

132. *Id.*

133. John Blume, Theodore Eisenberg & Martin T. Wells, *Explaining Death Row's Population and Racial Composition*, 1 J. EMPIRICAL LEGAL STUD. 192 (2004).

134. Only male defendants were considered in calculating the following sentencing rates because only one female defendant was sentenced to death after *Furman*.

135. Death sentencing rates were calculated by comparing the number of arrests for murder with the number of death sentences imposed, based on the demographics of the defendants and

at a higher rate for the killing of white victims (5.26 death sentences per 100 murders) compared to black victims (3.17 death sentences per 100 murders).[136]

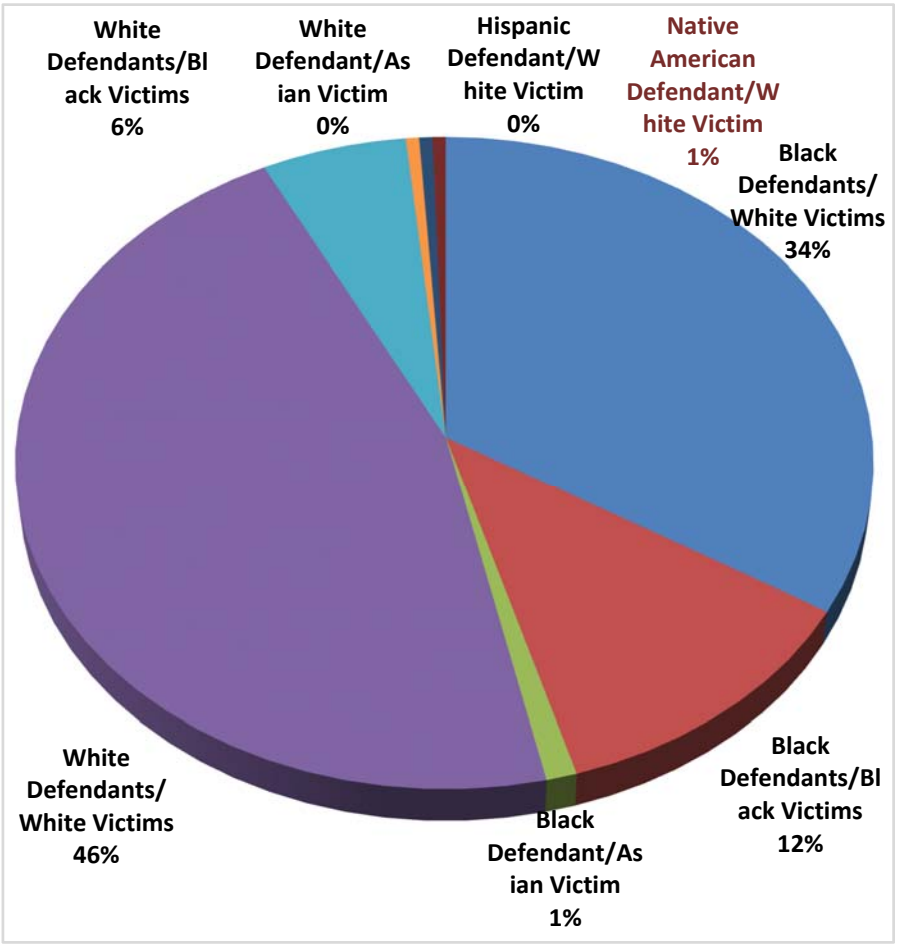

Figure 3: Death sentences by race of defendant and victim

the victims. Murder arrest data was obtained using the Supplementary Homicide Reports compiled by the National Archive of Criminal Justice Data. Fox, James A., and Marc L. Swatt. Uniform Crime Reports [United States]: Supplementary Homicide Reports With Multiple Imputation, Cumulative Files 1976-2007. ICPSR24801-v1. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2009-02-24, *available at* http://doi.org/10.3886/ICPSR24801.v1. Sentencing data can be found in Appendix A.

136. *See* Fox, *supra* note 136; *infra* Appendix A.

The gender of the victim also has a noticeable effect on the ultimate outcome of a murder case in South Carolina. Ninety-eight (53%) of all death sentences were imposed for the killing of a female victim; the lone female defendant received a death sentence for killing a male victim.[137] Though only 22% of all South Carolina murders involved a female victim,[138] 53% of the death sentences imposed, and 58% of the executions carried out, were female victim cases.[139] Death sentencing rates are higher when the victim is female regardless of the defendant's race. White male defendants convicted of killing female victims are sentenced to death at a rate of 4.89 per 100 murders, as opposed to only 2.43 per 100 when the victim is male.[140] The sentencing rate for black males convicted of killing female victims is 3.28 per 100 murders, as opposed to 0.98 per 100 for male victims.[141] Considering both race and gender of the defendant and victim demonstrates that the most likely (by far) combination to result in a death sentence is a black male convicted of killing a white female, which results in a breath-taking death sentencing rate of 15.02 per 100 murders, a rate that is statistically significant by any measure.[142]

Figure 4 below graphically demonstrates the effect the combined race and gender of the victim has on sentencing and executions. Though forty-eight percent of all murders in South Carolina involve an African American male victim,[143] only 8% of death sentences and 9% of executions involve African American male victim cases. To the contrary, only 11% of murders involve a white female victim,[144] but 42% of all death sentences and executions derive from white female victim cases.[145]

137. *See infra* Appendix A.
138. *See* Fox, *supra* note 136.
139. *See infra* Appendix A and Appendix C.
140. *See* Fox, *supra* note 136; *infra* Appendix A.
141. *See* Fox, *supra* note 136; *infra* Appendix A.
142. *See* Fox, *supra* note 136; *infra* Appendix A.
143. *See* Fox, *supra* note 136.
144. *See* Fox, *supra* note 136.
145. *See infra* Appendix A; Appendix C.

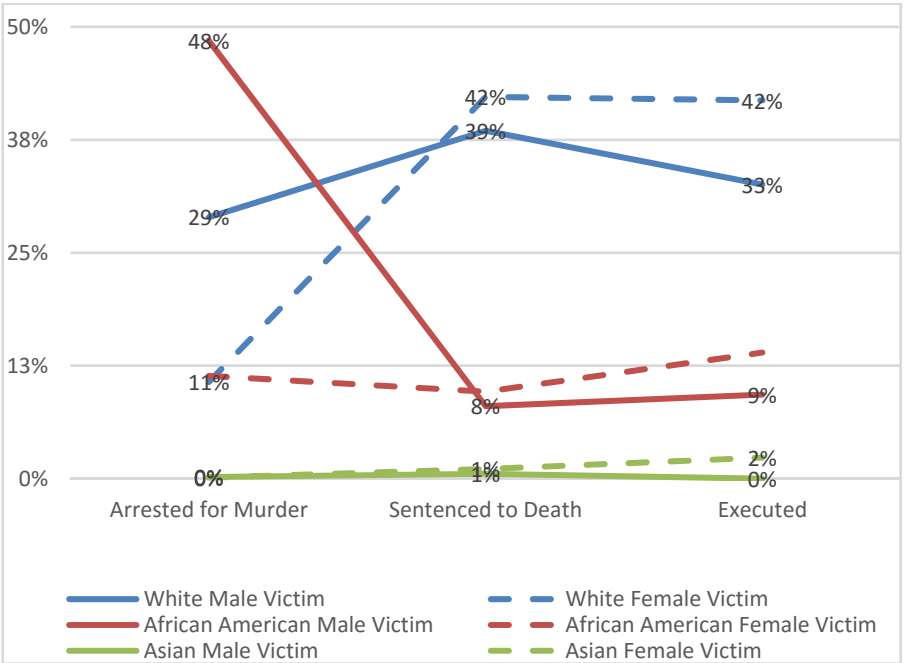

Figure 4

2. Locale

Whether a defendant receives a death sentence for a murder also largely depends on the location of the crime. As such, discussion of the "South Carolina death penalty" is a bit of a misnomer. Review of the available statistical information reveals there is wide variation from county to county and from judicial circuit to judicial circuit, in whether the death penalty will be sought, or obtained. Ten of South Carolina's forty-six (22%) counties have never produced a death sentence.[146] Other counties, even though they are relatively large and have, at least comparatively speaking, significantly more murders, produce very few death sentences.[147] By contrast, one quarter of all death sentences imposed in South Carolina arose from just two of the state's forty-six counties. Fifty-eight of the 233 death sentences[148] came from either

146. These counties are: Allendale, Bamberg, Fairfield, Hampton, Kershaw, Laurens, Lee, Marion, Marlboro, and McCormick. *See infra* Appendix A.

147. For example, Richland county (which includes the Columbia, the state capital) is the third largest county by population, with the tenth highest murder rate, but Richland county has only obtained seven death sentences and four executions.

148. This number includes death sentences obtained after the reversal of an original death sentence.

Lexington or Horry County.[149] Lexington County has produced thirty-five death sentences and Horry County twenty-three.[150] These counties also have high reversal rates; error was found in twenty-three of Lexington County's thirty-five death sentences (66%),[151] and in seventeen of Horry County's twenty-three death sentences (74%).[152] Murder rates in these, and other counties, demonstrate that the murder rate (number of murders relative to the population within a county) does not explain the high number of death sentences in those counties. Lexington County has the twenty-seventh highest murder rate and Horry County has the tenth highest murder rate while they account for the first and second highest number of death sentences, respectively.[153]

On the contrary, the likelihood of a county seeking and obtaining a death sentence depends largely on the individual solicitor in charge of criminal prosecutions for the Judicial Circuit in which the county lies.[154] Four solicitors since 1976 have been responsible for obtaining more than one-third of all modern era death sentences in South Carolina.[155] Walter Bailey's term as the First Judicial Circuit Solicitor

149. *See infra* Appendix A.

150. *Id.*

151. *Id.* In Lexington County, thirty-five death sentences have been imposed on twenty-five individuals. *Id.* Nineteen of the twenty-five individuals had their death sentence reversed at least once. *See id.* Eleven of the individuals received sentences of life imprisonment after reversal and one person was found guilty of involuntary manslaughter and released after reversal. *Id.* Six individuals currently remain on death row, one of whom has had his sentence overturned and is currently awaiting resentencing. *See infra* Appendix B. Despite having the highest number of death sentences in the state, only four individuals from Lexington County have been executed, two of whom were volunteers. *See infra* Appendix C. One individual, Larry Eugene Bell, received a death sentence in Lexington County but was executed for a Saluda County crime prior to the completion of the appellate review of the Lexington County death sentence. *See id.* Two cases were never reviewed by any court because the inmate died prior to any judicial review. *See infra* Appendix A.

152. *See infra* Appendix A. In Horry County, twenty-three death sentences have been imposed on eighteen individuals. *See id.* Sixteen of the eighteen individuals had their death sentence reversed at least once. *Id.* Eleven of those reversals resulted in a sentence of life imprisonment. *Id.* Four individuals remain on death row, one of whom had his sentence overturned in post-conviction proceedings and is awaiting the outcome of the State's appeal of that decision. *See infra* Appendix B. Only two individuals from Horry County have been executed, one of whom was a volunteer. *See infra* Appendix C. One case was never reviewed by any court because the inmate died prior to judicial review of his resentencing. *See infra* Appendix A.

153. These rates are based on the number of solved homicides and the population within the counties from 1976 through 2007 (the last year for which the data are available). *See* Fox, *supra* note 136; UNITED STATES CENSUS BUREAU, http://www.census.gov/en.html.

154. Each judicial circuit within South Carolina elects a solicitor for a term of four years. S.C. Code § 1-7-310. There are no term limits for solicitors in South Carolina.

155. *See infra* Appendix A. Walter Bailey served as the First Judicial Circuit Solicitor from 1992–2003 and obtained sixteen death sentences (80% of all death sentences obtained within the First Judicial Circuit). Charles Condon served as the Ninth Judicial Circuit Solicitor from 1980–

(Calhoun, Dorchester, and Orangeburg Counties) is especially informative. Bailey was elected solicitor in 1992. Prior to his election, only two death sentences had been obtained in the circuit since 1977—one in 1981 and one in 1984.[156] Bailey served as solicitor for eleven years, until 2003, and obtained sixteen death sentences.[157] Since Bailey's retirement in 2003, only two death sentences have been imposed in the First Judicial Circuit—one in 2006 and one in 2008.[158] Thus, Bailey's decisions as Circuit Solicitor account for 80% of the death sentences in the First Judicial Circuit. Former Ninth Judicial Circuit (Charleston and Berkeley Counties) Solicitor Charles Condon similarly accounts for 80% of the death sentences imposed in that circuit. Condon served as solicitor for thirteen years, from 1980 to 1993, and obtained sixteen death sentences.[159] Prior to his term as solicitor, only one death sentence had been obtained, and after his tenure only three death sentences have been imposed in the circuit.[160]

Also notable is Eleventh Judicial Circuit (Edgefield, Lexington, McCormick, and Saluda Counties) Solicitor Donald Myers, who has not only accounted for all death sentences within the judicial circuit, but has obtained 17% of all death sentences within the state in the modern era.[161] Myers was elected solicitor in 1977[162] and prosecuted the first modern era death penalty case in the state, obtaining death sentences against co-defendants J.D. Gleaton and Larry Gilbert on October 7, 1977.[163] Myers was reelected every four years since that time (although he has announced that he will not run for reelection in 2016 and will retire when his successor takes office in January of 2017) and has obtained a total of thirty-nine death sentences.[164] As a result, the

1993 and obtained sixteen death sentences (80% of all death sentences obtained within the Ninth Judicial Circuit). Donald Myers has served as the Eleventh Judicial Circuit Solicitor for the entire modern era of the death penalty (1977–present) obtained all thirty-nine of the death sentences within the Eleventh Judicial Circuit. Robert Arial served as the Thirteenth Judicial Circuit Solicitor from 1997–2011 and obtained ten death sentences (59% of all death sentences obtained within the Thirteenth Judicial Circuit). *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *See id.*

160. *See infra* Appendix A.

161. *Id.*

162. Adam Beam, *Emotional Life Raft for Donnie Myers*, THE STATE (Nov. 26, 2006), http://www.thestate.com/incoming/article14405219.html.

163. *See infra* Appendix A.

164. *See infra* Appendix A; Beam, *supra* note 163; Andy Shain & Tim Flach, *Veteran Lexington Prosecutor Myers Retiring*, THE STATE, Mar. 15, 2016, http://www.thestate.com/news/local/article66304792.html.

Eleventh Judicial Circuit has produced the most death sentences of any of South Carolina's sixteen Judicial Circuits, with the next highest circuit producing only twenty-five death sentences during the same time.[165]

Just as murder rates cannot explain the high number of death sentences in various counties, neither can they explain the high number of death sentences by these solicitors. From 1977 to 2007, the average death-sentencing rate in South Carolina was 1.96 death sentences per 100 murders.[166] Solicitor Myers has the highest death-sentencing rate with a rate of 6.80 death sentences per 100 murders.[167] Solicitors Bailey and Condon have similarly high death-sentencing rates of 4.79 and 2.52, respectively, death sentences per 100 murders.[168]

3. Aggravating Circumstances and "Narrowing"

Though Justice Breyer did not specifically address the constitutionally required narrowing function of statutory aggravating circumstances, *Furman* mandates that a valid capital punishment scheme must genuinely narrow the pool of death eligible defendants. Unfortunately, the South Carolina death penalty fails to do so and thus permits the type of arbitrary imposition of the death penalty condemned by the Supreme Court.

In order to sentence an individual to death, the jury or judge (depending on the fact finder) must first determine that the State proved the existence of at least one statutory aggravating circumstance

165. *See infra* Appendix A. The Fifteenth Circuit (Horry and Georgetown Counties) has imposed twenty-five death sentences on twenty individuals since 1977. *See id.*

166. These rates are based on the number of solved homicides and the death sentences imposed within the circuits from 1976 through 2007 (the last year for which the data are available). *See* Fox, *supra* note 136; *infra* Appendix A.

167. *See* Fox, *supra* note 136; *infra* Appendix A. This difference in sentencing rates has practical implications. For example, Raymond Patterson was charged with murder and armed robbery committed in a parking lot in Lexington County, which is in Solicitor Myers' judicial circuit. Had Patterson committed the crime three or four parking spots away, he would have been in Richland County, within the Fifth Judicial Circuit. The sentencing rate in the Fifth Judicial Circuit is a mere 0.53 per 100 murders as compared to the Eleventh Judicial Circuit's rate of 6.80 under Solicitor Myers. *See* Michael J. Songer & Isaac Unah, *The Effect of Race, Gender, and Location on Prosecutorial Decisions to Seek the Death Penalty in South Carolina*, 58 S.C. L. REV. 161, 206 (2006); Fox, *supra* note 136; *infra* Appendix A.

168. *See* Fox, *supra* note 136; *infra* Appendix A. The fourth highest producing solicitor, Robert Arial of the Thirteenth Judicial Circuit (Greenville and Pickens Counties), served as solicitor from 1997 to 2011 and had a slightly lower death-sentencing rate of 1.97; however, he served as solicitor in more recent years when the use of the death penalty declined throughout the state. *See infra* Section IV.E. During the time Arial was solicitor, the state average death-sentencing rate was only 1.28 death sentences per 100 murders. *See* Fox, *supra* note 136; *infra* Appendix A.

beyond a reasonable doubt.[169] In the four decades since the statute was enacted, the number of aggravating circumstances has increased from seven, with one aggravating factor including a list of eight offenses that could make a murder death eligible if it occurred during the commission of the offense,[170] to twelve aggravating circumstances with one including eleven subparts, for a total of twenty-two circumstances that make a murder "death eligible."[171] A 2010 study found the

169. S.C. Code § 16-3-20(B).

170. The original statute contained seven statutory aggravating factors. 1977 S.C. Acts 177. The first of these aggravating factors included a list of subparts making a murder death-eligible if it occurred during the commission of any one of eight different offenses: rape, assault with intent to ravish, kidnapping, burglary, robbery while armed with a deadly weapon, larceny with use of a deadly weapon, housebreaking, and killing by poison. The remaining six statutory aggravating factors were: the murder was committed by a person with a prior conviction for murder; the offender "knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person"; the murder was committed for the purpose of receiving money or a thing of monetary value; the murder of a judicial officer, solicitor, or other officer of the court (current or former) during or because of the conduct of his or her official duties; the offender either committed or caused to be committed murder-for-hire; and, the murder of a peace officer, corrections officer, or fireman while engaged in the performance of his or her official duties.

171. The legislature expanded the list of aggravating circumstances on numerous occasions:

- In 1978, physical torture was added to the list of concomitant crimes that made a murder death-eligible. 1978 S.C. Acts 555 § 1.
- In 1986, the Legislature added two more aggravating factors: "[m]urder wherein two or more persons are murdered by the defendant by one act or pursuant to one scheme or course of conduct," and murder of a child eleven years old or younger. 1986 S.C. Acts 462 § 27.
- In 1990, the list was again expanded to include murder during the commission of drug trafficking, and murder of a family member of a judicial officer, a peace officer, a corrections officer, or a fireman with "intent to impede or retaliate against the official." 1990 S.C. Acts 604 § 15.
- In 1995, dismemberment of a person was added as an aggravating factor. 1995 S.C. Acts 83 § 10.
- In 1996, the Legislature added an entirely new aggravating factor: "[t]he murder of a witness or potential witness committed at any time during the criminal process for the purpose of impeding or deterring prosecution of any crime." 1996 S.C. Acts 317 § 1.
- In 2002, the factor covering peace and correction officers was expanded to include "[t]he murder of a federal, state, or local law enforcement officer or former federal, state, or local law enforcement officer, peace officer or former peace officer, corrections officer or former corrections officer, including a county or municipal corrections officer or a former county or municipal corrections officer, a county or municipal detention facility employee or former county or municipal detention facility employee, or fireman or former fireman during or because of the performance of his official duties." 2002 S.C. Acts 224 § 1.
- In 2006, as part of the "Sex Offender Accountability and Protection of Minors Act of 2006," the Legislature expanded the list again to make sexually violent predators who commit murder death penalty eligible. 2006 S.C. Acts 342 § 2.
- In 2007, the Legislature added arson in the first degree to the list of concomitant crimes that make a murder death eligible. 2007 S.C. Acts 101 § 1.

increased number of aggravating circumstances, coupled with the expansive judicial interpretation of several of the aggravating factors,[172] resulted in a system where a vast majority of all murders are death eligible.[173] Specifically, the study found that 76% of the homicides that occurred in Charleston County between 2002 and 2007, and 77% of the homicides that occurred in Richland County between 2000 and 2008 were death eligible.[174]

Since South Carolina began requiring proof of an aggravating circumstance as a prerequisite to a death sentence in 1977, sentencers—either juries or judges—have found an average of two aggravating circumstances per case.[175] In eighty-three of 233 cases, a defendant has been sentenced to death upon the finding of a single aggravating factor.[176] The single most prevalent aggravating factor in cases where the death penalty has been imposed is murder during the commission of armed robbery.[177] The armed robbery aggravating factor was found in 115 cases; in 39 of those cases, armed robbery was the only aggravating factor found.[178] Murder during the commission of kidnapping has been found in seventy-one cases.[179] The aggravating circumstance of murder during the commission of armed larceny (an offense which does not exist under South Carolina law) was found in forty-seven cases.[180] The next most found aggravating circumstances are murder during the commission of burglary (46), rape (or criminal sexual conduct) (46), and physical torture (38).[181] Murder during the

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- And in 2010, the Legislature acted again, adding trafficking in persons to the list of concomitant crimes that make a murder death eligible. 2010 S.C. Acts 289 § 4.

172. *See* John H. Blume, et al., *When Lightning Strikes Back: South Carolina's Return to the Unconstitutional, Standardless Capital Sentencing Regime of the Pre-*Furman *Era*, 4 CHARLESTON L. REV. 479, 495–98 (2010) (describing the expansive judicial interpretation of the aggravating factors of physical torture, kidnapping, attempted robbery, and prior conviction of murder).

173. *Id.* at 498–500.

174. *Id.* at 499–500.

175. Appendix D to this Article reports the aggravating circumstances found in all death penalty trials resulting in a death sentence, including cases in which an individual was retried after reviewing courts reversed the original death sentence.

176. *See infra* Appendix D.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.* Rounding out the list of aggravating circumstances found are: murder of two or more persons (30), murder of a law enforcement officer (21), prior murder conviction (12), risk of harm to more than one person in a public place (11), murder for the purpose of receiving monetary value (11), murder of a child under eleven (11), murder as an agent for another person (4), murder by poison (1), murder during commission of arson (1), murder of a judicial officer (1), and murder

commission of trafficking in persons, drug trafficking, and dismemberment, murder of a law enforcement or judicial officer's family member, and murder by a sexually violent predator have never been found as aggravating circumstances.[182]

D. Cruel–Excessive Delays

Justice Breyer found that "problems of reliability and unfairness almost inevitably lead to a third independent constitutional problem: excessively long periods of time that individuals typically spend on death row, alive but under sentence of death."[183] Delays are created by the constitutional requirements surrounding the imposition of the death penalty, which require implementation of safeguards that must be observed when a person's life is at stake, but "[t]hese procedural necessities take time to implement."[184] The constitutional problem with lengthy delays are twofold: (1) the delay itself "subjects death row inmates to decades of especially severe, dehumanizing conditions of confinement," and (2) "lengthy delay undermines the death penalty's penological rational."[185]

Lengthy delays are common in South Carolina death penalty cases. The men currently on death row have been there for an average of 14.5 years.[186] The two longest serving death row inmates were originally sentenced to death more than thirty years ago in 1983 and 1984.[187] The average time an inmate served on death row between his original sentence and his execution was 11.8 years—13.1 years if the "volunteers" are not included in the calculation.[188] Two men served more than twenty years on death row prior to their executions (J.D. Gleaton and Larry Gilbert) and twenty-one of the forty-three men executed served more than a dozen years between their original sentence and ultimate execution.[189] As a result of lengthy delays, nine death row inmates, 5% of all those sentenced to death, died while on

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of a witness (1). *Id.* Two aggravating circumstances that are no longer part of the statute, murder during the commission of housebreaking and murder during the commission of assault with intent to ravish were found in nine and three cases, respectively. *Id.*

182. *Id.*
183. Glossip v. Gross, 135 S. Ct. 2726, 2764 (2015).
184. *Id.*
185. *Id.* at 2765.
186. Calculated as of December 31, 2015. *See id.*
187. *Id.*
188. *See* Appendix C, *infra*.
189. *See id.*

death row awaiting execution: six died of natural causes, one was killed by another inmate, and two committed suicide.[190]

Delays in carrying out an execution inevitably result from the complex review process constitutionally mandated in death penalty cases.[191] As noted above, more than 60% of all death sentences are overturned on appeal. In many cases, an inmate granted a new trial is once again sentenced to death, beginning the appellate process anew. In South Carolina, five individuals have been sentenced to death three times because their initial two trials were found to contain errors warranting reversal.[192] Of those five men, three had their third death sentences overturned and received sentences of less than death,[193] but not before each of them spent two or three decades on death row.[194] These delays, as Justice Breyer noted, undermine the penological goals of the death penalty—namely the deterrent and retribution justifications for the death penalty because an offender is more likely to have his sentence overturned or die of natural causes than to be executed after receiving a death sentence.[195]

Justice Breyer also noted that the severe conditions of confinement make the delays especially cruel on the individual offender.[196] The same is true in South Carolina where all death row inmates are kept in isolation for twenty-three hours a day. This long-term solitary confinement is well documented to "produce[] numerous deleterious harms."[197] As a result, at least in part, of solitary confinement, severe mental illness is widespread on South Carolina's death row.[198] A recent study by the Death Penalty Resource & Defense Center[199] found that

190. *Id.* Two were African American and seven were white. *See id.*

191. *See* Glossip v. Gross, 135 S. Ct. 2726, 2764 (2015) ("[D]elay is in part a problem that the Constitution's own demands create.").

192. *See* Appendix A, *infra* (showing Louis Truesdale, Edward Lee Elmore, Raymond Patterson, Jr., Ernest Riddle, and Freddie Owens were sentenced to death three times each).

193. Edward Lee Elmore, Raymond Patterson, Jr., and Ernest Riddle. *See id*.

194. Edward Lee Elmore served twenty-nine years on death row and was ultimately release after serving thirty-one years in prison despite strong evidence of his innocence. *See supra* note 85 and accompanying text. Raymond Patterson, Jr. served more than seventeen years before being sentenced to life imprisonment upon the third reversal of his death sentence. *See infra* Appendix A. Ernest Riddle spent twenty-one years on death row before receiving a thirty-year sentence upon the third reversal of his death sentence. *See supra* note 87 and accompanying text.

195. *See Glossip*, 135 S. Ct. at 2767–69.

196. *Id.* at 2765.

197. *Id.*

198. Despite constitutional protections against executing juveniles or the intellectually disabled, and despite suffering from similar mental impairments, the severely mentally ill are still eligible for execution in South Carolina.

199. The Death Penalty Resource & Defense Center has since been renamed Justice 360. The organization's mission is to promote equality in capital cases in South Carolina. It tracks data

of the forty-eight death row inmates at the time of the study, thirty-four (70%) were severely mentally disabled.[200] Mental illness—including schizophrenia, post-traumatic stress disorder, major depressive disorder, and bipolar disorder—was the most common mental disability, followed by brain trauma/organic brain damage and intellectual disability.[201] Twelve inmates suffered from multiple types of these three conditions.[202]

E. Unusual—Decline in Use of the Death Penalty

Finally, Justice Breyer found that the death penalty is made unusual by the decline in usage of the death penalty.[203] Justice Breyer specifically found that "30 States have either formally abolished the death penalty or have not conducted an execution in more than eight years" and "9 have conducted fewer than five [executions] in that time," leaving "11 States in which it is fair to say that capital punishment is not 'unusual.'"[204] Justice Breyer counted South Carolina as one of the states in which capital punishment is not unusual based on the fact that there had been more than five executions in the past eight years. However, if Justice Breyer took a closer look at South Carolina, he would see that the use of the death penalty within South Carolina has declined significantly and is becoming "unusual" in practice.

The number and rate of death sentences in South Carolina has decreased dramatically in recent years. Death sentences per year in the 1970s were low as the state's prosecutors began working with the new death penalty statute.[205] By 1981, the new machinery of death was up and running at full speed and the state had ten death sentences that year.[206] From 1981 through 1996, the state averaged nine death sentences each year, with a high in 1986 of fifteen death sentences.[207] The number of death sentences per year declined between 1997 and

related to all facets of the South Carolina death penalty and has done so since the 1980s.

200. The Death Penalty Resource & Defense Center, *Mental Disability and the Death Penalty: Why South Carolina Should Ban the Execution of the Severely Mentally Disabled* (Aug. 2014), on file with the authors.

201. *Id.* at 6.

202. *Id.*

203. Glossip v. Gross, 135 S. Ct. 2726, 2773 (2015).

204. *Id.*

205. *See infra* Appendix A. From 1977 to 1980, the state had between one and seven death sentences per year. *Id.*

206. *Id.*

207. *Id.*

2007, averaging only six death sentences per year with a high of eight death sentences in 1998 and 2001.[208] Since 2008, however, the decrease has been even more dramatic with an average of fewer than two death sentences per year.[209] Indeed, the state went four of the last five years (2011, 2012, 2013, and 2015) without a single death sentence imposed.[210]

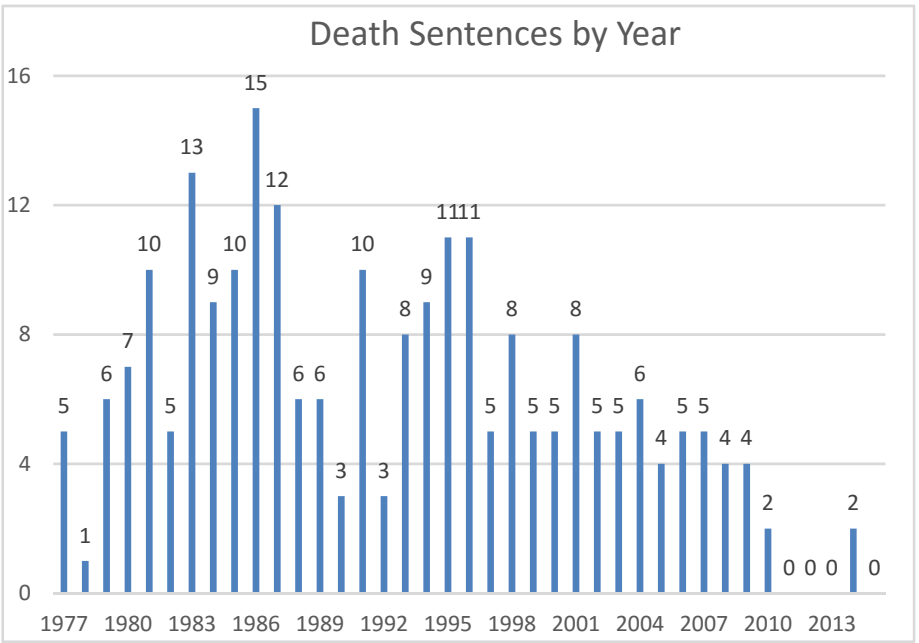

Figure 5

The decrease in death sentences cannot be explained by a decreasing number of murders during the same time period—though the number of murders per year has decreased slightly since the 1990s.[211] As the graph below demonstrates, the number of death

208. *Id.*

209. *Id.*

210. *Id.* Notably, during the three consecutive years with no death sentences, thirty-one cases where the State originally sought the death penalty were resolved with sentences of less than death. *See infra* Appendix H.

211. South Carolina's murder rate in 2013 was 6.2 murders for every 100,000 people. FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.2013/tables/4tabledatadecoverviewpdf/table_4_crime_in_the_united_states_by_region_geographic_division_and_state_2012-2013.xls. This number includes non-negligent manslaughter. *Id.* This placed South Carolina as the state with the sixth highest murder rate nationally; the national average was 4.5 per 100,000. *Id.* Like most states, the South Carolina murder rate has decreased since the mid-1990s, though the decrease in the murder rate has been less consistent in South

sentences per murder has decreased significantly from its peak in 1986, when the state saw 4.5 death sentences per 100 murders.[212] Since 2008, South Carolina has only imposed .45 death sentences per 100 murders.[213]

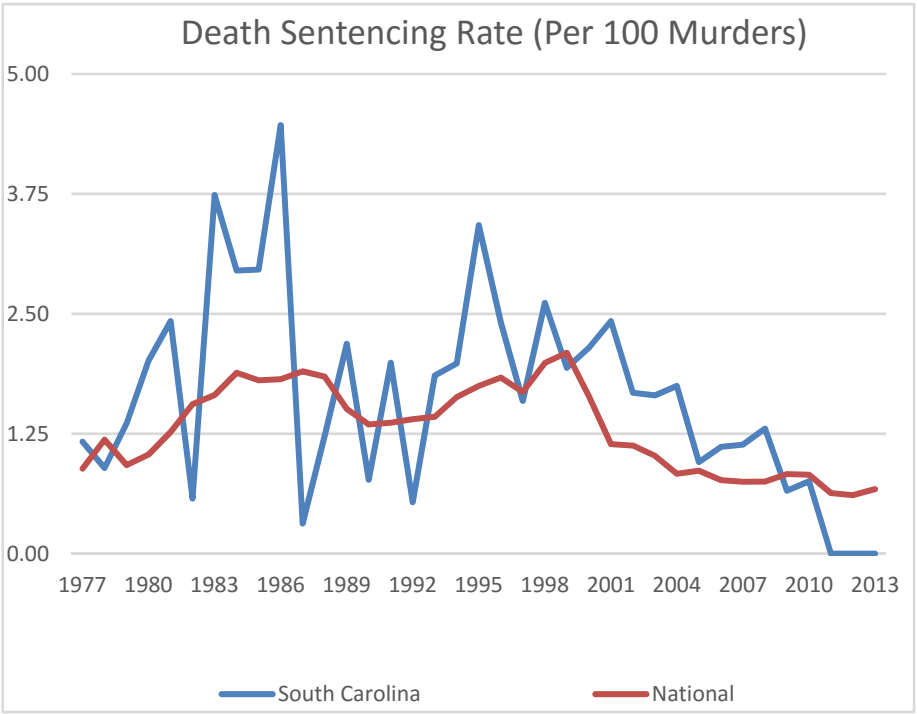

Figure 6

South Carolina's death sentencing rate has historically been about average compared to other death penalty jurisdictions. About 1.6 death sentences have been imposed per 100 murders in South Carolina since 1977.[214] The average for all death penalty jurisdictions is 1.5 per 100 murders.[215] However, there have been only two death sentences in

Carolina than the national trend. In 1996, South Carolina's murder rate was 9 per 100,000. The lowest murder rate in South Carolina since 1996 was in 2010 when the murder rate was 5.4 per 100,000. *See id.*

212. Death sentencing rates were calculated by comparing the number of death sentences from *infra* Appendix A and the number of murders in South Carolina and other death penalty jurisdictions as reported in the FBI Uniform Crime Reporting Annual Crime Reports. DISASTERCENTER.COM, *United States Crime Rates 1960-2013*, http://www.disastercenter.com/crime/uscrime.htm [hereinafter FBI Crime Report].

213. *See* FBI Crime Report, *supra* note 212; Appendix A.

214. *See* FBI Crime Report, *supra* note 212; Appendix A.

215. *See* FBI Crime Report, *supra* note 212; Appendix A.

the last five years. Murder statistics are not available for the most recent years, but with such a low number of death sentences, South Carolina's recent death sentencing rate is surely lower than the average in other death penalty jurisdictions.

Death Sentencing Rates by State, 1977-2013			
State	Death Sentence Rate (per 100 murders)	Death Sentences 1977-2013	Murders 1977-2013
Delaware	3.914	49	1,252
Oklahoma	3.552	309	8,700
Idaho	3.440	42	1,221
Alabama	3.090	456	14,756
Nevada	2.716	149	5,487
Arizona	2.442	306	12,531
Florida	2.256	939	41,617
North Carolina	2.091	447	21,377
Oregon (1978-present)	1.891	75	3,966
Mississippi	1.685	174	10,326
Arkansas	1.624	118	7,265
South Carolina	1.623	194	11,955
Ohio	1.512	333	22,026
Texas	1.484	958	64,573
Pennsylvania	1.480	374	25,269
Nebraska	1.432	28	1,955
Missouri	1.236	197	15,935
Tennessee	1.067	174	16,313
Utah	0.976	19	1,946
Kentucky	0.957	85	8,878
Georgia	0.945	233	24,646
Virginia	0.938	151	16,096
California	0.923	923	99,999
Illinois (1977-2011)	0.850	304	35,755
Louisiana	0.721	162	22,471
Indiana	0.718	98	13,657
New Jersey (1982-2007)	0.571	57	9,984
Washington	0.516	40	7,755
Maryland	0.305	53	17,388
New Mexico (1979-2009)	0.297	14	4,718
Colorado	0.227	15	6,620

Figure 7[216]

216. *See Death Sentences in the United States from 1977 By State By Year*, DEATH PENALTY INFORMATION CENTER, http://deathpenaltyinfo.org/death-sentences-united-states-1977-2008;

The recent decrease in death sentences can be attributed, at least in part, to the creation of the Capital Trial Division of the South Carolina Commission on Indigent Defense. The Capital Trial Division was created in 2008 with a staff of two lawyers and two mitigation specialists and today is staffed by three attorneys and one investigator.[217] The mission of the office is to provide representation to capital defendants at less cost to the State than through the appointment of private attorneys and to provide consultation and training for other lawyers representing South Carolina defendants facing the death penalty.[218] In practice, an attorney from the Capital Trial Division has been involved, either by formal appointment or informally prior to the issuance of a death notice, in many—43% since 2008—of the potential capital cases along with either a local public defender or a private attorney.

Since 2008, the Capital Trial Division has worked on thirty potential capital cases in which the defendant has since been sentenced.[219] Of those thirty cases, only three resulted in death sentences, one of which was overturned on direct appeal and the defendant subsequently accepted a plea to life without parole.[220] More than three-quarters of the cases handled by the Capital Trial Division (77%) have been resolved prior to trial either through a plea agreement to a sentence of life or less, withdrawal of the death penalty as a sentencing option prior to trial, or the solicitor's decision not to seek the death penalty in a death eligible case.[221] Overall, since 2008, cases in which the State was likely to seek the death penalty have been resolved prior to trial without a death sentence 80% of the time.[222] The Capital Trial Division credits its early defense involvement in potential death penalty cases with the ability to resolve so many cases pretrial. In many instances, the Division or other lawyers trained by the Division become involved in homicide cases well before the State officially indicates its intention to seek the death penalty, allowing the lawyers to conduct factual and mitigation investigation early on for use in negotiations with the solicitors. This often allows solicitors to decide

FBI Crime Report, *supra* note 212.

217. *See* SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE, CAPITAL TRIAL DIVISION, https://www.sccid.sc.gov/about-us/capital-defenders.

218. *Id.*

219. Appendix H to this Article lists all of the pretrial death penalty case outcomes since the Capital Trial Division began tracking death penalty cases in 2008.

220. *See infra* Appendix H.

221. *See id.*

222. *See id.*

a case is not "death-worthy" before ever making a public commitment to seek death, making it easier to decide not to seek the penalty. Even when solicitors formally announce that they intend to seek death, early involvement by defense counsel provides both sides with more information to use in plea negotiations, the majority of the time resulting in a plea to less than death.[223]

The number of executions per year has also decreased in recent years. Similar to the national trend, South Carolina carried out the highest number of executions in the mid to late 1990s.[224] The highest number of executions per year occurred in 1996, with six executions, and 1998, with seven executions. Since the late 1990s, the execution rate in South Carolina has declined.[225] Since 2010, South Carolina has carried out only one execution and that individual waived his pending appeals in order to be executed in 2011.[226] This trend can be explained, in significant part, by the reduced number of death sentences over the last fifteen years, the number of reversals resulting from prejudicial error, and the Supreme Court's creation of categorical bars to execution for juveniles and persons with intellectual disability.[227]

223. Capital trial units in other states have produced similar results. *See, e.g.*, Larry O'Dell, *Study: Better Legal Defense Leads to Fewer Death Penalties*, AP, Oct. 19, 2015, *available at* http://bigstory.ap.org/article/e44f4c549b6b4b5297191386abc0c399/study-better-legal-defense-leads-fewer-death-penalties (Virginia); Greg Land, *'Life Without Parole' Leads to Shrinking Death Penalty Pipeline*, DAILY REPORT, Dec. 16, 2015, http://www.dailyreportonline.com/id=1202744912371/Life-Without-Parole-Leads-to-Shrinking-Death-Penalty-Pipeline?mcode=0&curindex=0&curpage=ALL (Georgia).

224. *See infra* Appendix C; DEATH PENALTY INFORMATION CENTER, EXECUTIONS BY YEAR SINCE 1976, http://www.deathpenaltyinfo.org/executions-year.

225. *See infra* Appendix C.

226. *Id.*

227. *See supra* notes 120–21, and accompanying text.

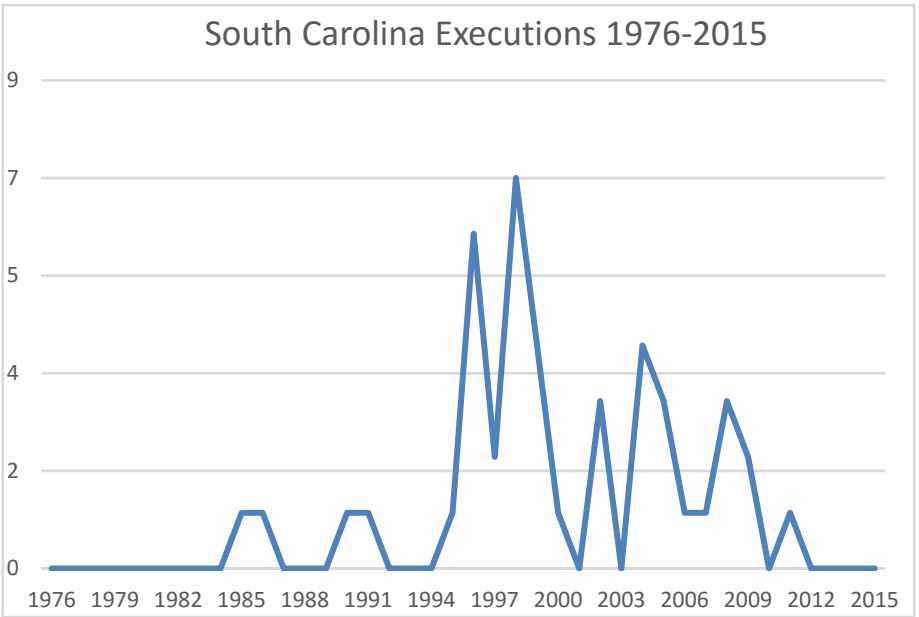

Figure 8

The death penalty in South Carolina, like the rest of the country, has become increasingly concentrated geographically.[228] Only fourteen of South Carolina's forty-six counties have sentenced a defendant to death in the last decade.[229] Only four counties (Lexington, Horry, Spartanburg, and Greenville) have imposed more than one death sentence in the last ten years.[230] Indeed, ten South Carolina counties have not imposed a death sentence since 1976.[231] Thus, for most of South Carolina, use of the death penalty has become unusual.

228. *See* Glossip v. Gross, 135 S. Ct. 2726, 2774 (2015) (noting that "66 of America's 3,143 counties accounted for approximately 50% of all death sentences imposed").
229. *See infra* Appendix A.
230. *See id.*
231. *See id.*

County	Sentences 2006-2015
Lexington	5
Horry	3
Spartanburg	2
Greenville	2
Charleston	1
Anderson	1
Dorchester	1
Greenwood	1
Calhoun	1
Sumter	1
Clarendon	1
Georgetown	1
Pickens	1
Edgefield	1

V. OBSERVATIONS BASED ON THE DATA

Despite forty years of legislative and judicial regulation, by all of Justice Breyer's measures of constitutional validity—unreliability, arbitrariness, delay and infrequency—the South Carolina death penalty is an abysmal failure. The "safeguards" put in place at trial for the purpose of improving the quality of representation (e.g., appointment of two qualified attorneys, special funding procedures, etc.),[232] and a number of decisions attempting to regulate the conduct of prosecutors and make jury decision-making more reliable have not reduced the amount of error in the system; appellate courts overturn

232. *See* S.C. Code § 16-3-26.

death sentences in approximately two out of three cases. Even after an initial reversal, death penalty cases remain error-prone, resulting in (sometimes) three or four death penalty trials of the same person. Most people sentenced to death eventually end up with life sentences (or less); however, even when a death sentenced inmate runs the entire appellate gauntlet, there is no guarantee the case is error-free, the system worked properly or even that we are executing the person who committed the crime.[233] Race, gender, and geography—more than the heinousness of the offense—determine who is sentenced to death, and innocent defendants have spent years on death row before obtaining their freedom. The South Carolina death penalty—in sum—is still arbitrary after all these years.

In *Gregg v. Georgia*, the Supreme Court allowed states to resume the use of the death penalty on the assumption that it would be imposed only in appropriate cases (i.e., not on your "average murderers") in a non-arbitrary and non-discriminatory manner. As we believe we have demonstrated in this article that is by no means the case. It is clear, after decades of trying in vain, that the South Carolina death penalty system is (literally) fatally flawed. And, given both the pre-*Furman* and post-*Gregg* capital punishment experience, it is equally clear that there is no fix or cure for its ailments. Now is the time for the United States Supreme Court, the South Carolina Supreme Court or the General Assembly to bring the experiment with capital punishment to an end.

If, instead (as is more likely), the South Carolina death penalty continues to limp along before meeting its inevitable demise, the appropriate stakeholders should at a minimum attempt to "fix" the major systemic flaws: (1) the failure to meaningfully narrow the pool of individuals eligible for the death penalty; (2) the failure to eliminate significant race and gender effects in the imposition of the penalty; and (3) the lack of meaningful appellate proportionality review. First, as discussed above, virtually all murders are "death eligible;" i.e., a prosecutor could seek the death penalty—should she choose to do so—in more than 75% of murder cases given both the expansion of the

233. *See, e.g.*, Johnson v. Catoe, 345 S.C. 389, 548 S.E.2d 587 (2001) (denying a motion for a new trial based on newly discovered evidence of actual innocence). Johnson was executed in 2002 despite calls for clemency, including from members of the victim's family, based on evidence of his innocence. *See* Application for Executive Clemency Submitted on Behalf of Richard Charles Johnson, http://deathpenaltyusa.org/usa/images/clemency/johnson_richardcharles.pdf; Rick Brundrett & Cliff Leblanc, *Lethal Injection Ends Life of Convicted Killer*, THE STATE (May 4, 2002).

number of aggravating circumstances and the broad interpretation of several commonly utilized aggravating circumstances (e.g., murder in the commission of kidnapping and murder during the commission of physical torture). Aggravating circumstances—in theory—play a "constitutionally necessary function" in defining capital murder in a way that both "genuinely narrow[s] the class of persons eligible for the death penalty" and "reasonably justif[ies] the imposition of a more severe sentence on the defendant compared to others found guilty of murder."[234] In South Carolina they clearly do not. Capital punishment is not reserved for the "worst of the worst" but all too often is imposed on the "average murderer."

One possible solution that would at least reduce arbitrariness would be to reduce the number of aggravating circumstances to capture only the worst crimes.[235] For example, the legislature could limit the application of the death penalty to persons with prior murder convictions who kill a prison guard or to serial killers.[236] Doing so would limit opportunities for race and gender bias and prosecutorial excess to infect the determination of who should live or die as *Furman* and *Gregg* originally intended.[237] In addition to restricting the number of death eligible offenses, the number of death eligible offenders should also be limited. The category of offenders most in need of a new exclusion from capital punishment given existing Eighth Amendment precedent and their intuitive lack of "death-worthiness" are persons with severe mental illness.[238] Such a limitation is a natural extension of the bans on executing juveniles and the intellectually disabled.[239] The

234. Zant v. Stephens, 462 U.S. 862, 877 (1983).

235. *See* Alex Kozinski & Sean Gallagher, *Death: The Ultimate Run-On Sentence*, 46 CASE W. RES. L. REV. 1, 29–32 (1995) (proposing to limit the number of aggravating circumstances to "ensure that the worst members of our society . . . are put to death" as a way to remove some of the objections to capital punishment, such as racial biases effecting sentencing decisions).

236. As currently practiced, remember that the high number of persons sentenced to death and executed for "garden variety" crimes such as murder during the commission of armed robbery. *See supra* notes 181–82 and accompanying text. We do not mean to minimize the significance of this type of homicide, or any homicide for that matter, but it is hardly subject to debate that this is not one of the more culpable categories of murder.

237. *See* Gregg v. Georgia, 428 U.S. 153, 193 (1976) (holding that aggravating factors "provide guidance to the sentencing authority and thereby reduce the likelihood that it will impose a sentence that fairly can be called capricious or arbitrary").

238. *See* AMERICAN BAR ASSOCIATION, *Resolution 122A* (Aug. 2006) (recommending that "defendants should not be executed or sentenced to death if, at the time of their offense, they had a severe mental disorder or disability that significantly impaired their capacity (a) to appreciate the nature, consequences or wrongfulness of their conduct, (b) to exercise rational judgment in relation to conduct, or (c) to conform their conduct to the requirements of the law"), http://www.deathpenaltyinfo.org/documents/122AReport.pdf.

239. *See, e.g.*, Christopher Slobogin, *What Atkins Could Mean for People With Mental Illness*,

juvenile and intellectual disability categorical bars were grounded in the Court's determination that their group characteristics rendered them less culpable than the average murderer and because, sometimes, their youth or intellectual disability would actually be held against them at a capital sentencing proceeding.[240] The same is true for the severely mentally ill—those individuals have similar or even greater reduced culpability and their illness has been empirically proven to be viewed by jurors as an aggravating rather than mitigating factor.[241]

In early 2015, a bill was proposed in the South Carolina legislature that would prohibit the execution of a person who had a severe mental disability at the time of the commission of the crime.[242] The bill defines severe mental disability as "a severe mental illness that significantly impairs a person's capacity to do any of the following: (i) appreciate the nature, consequences, or wrongfulness of the person's conduct; (ii) exercise rational judgment in relation to conduct; or (iii) conform the person's conduct to the requirements of the law. . ." or as "dementia or traumatic brain injury that results in significantly sub-average intellectual functioning, existing concurrently with significant limitations in adaptive functioning."[243] Adopting a ban on executing the severely mentally ill would be another step towards ensuring the worst (most culpable) offenders receive the death penalty, as opposed to a random selection of the most vulnerable offenders.

Another necessary next step is to attempt to minimize the significant race effects driving death sentencing in South Carolina. The General Assembly could accomplish this by amending the state post-conviction relief statute[244] to allow courts to consider whether race was a significant factor in the decision to seek death against the defendant.

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33 N.M. L. REV. 293, 293 (2003).

240. *See* Roper v. Simmons, 543 U.S. 551, 569 (2005); Atkins v. Virginia, 536 U.S. 304, 319 (2002).

241. South Carolina law defines the presence of a mental disability as mitigating evidence; S.C. Code § 16-3-20(b)(7) (listing "[t]he age or mentality of the defendant at the time of the crime" as a statutory mitigating circumstance), however, empirical studies have conclusively demonstrated that juries tend to view mental illness and disability as *aggravating* factors rather than reasons to spare the defendant from death. *See e.g.,* Kevin M. Doyle, *Lethal Crapshoot: The Fatal Unreliability of the Penalty Phase*, 11 U. PA. J. L. & SOC. CHANGE 275 (2008); Steven Garvey, *Aggravation And Mitigation In Capital Cases: What Do Jurors Think?*, 98 COLUM. L. REV. 1538 (1998); Joshua N. Sondheimer, Note, *A Continuing Source of Aggravation: The Improper Consideration Of Mitigating Factors In Death Penalty Sentencing*, 41 HASTINGS L. J. 409 (1990); Ellen Fells Berkman, *Mental Illness As An Aggravating Circumstance In Capital Sentencing*, 89 COLUM. L. REV. 291 (1989).

242. H. 3535, 121 Gen. Assemb., Reg. Sess. (S.C. 2015).

243. *Id.*

244. S.C. Code § 17-27-160.

Existing law allows a court to order a new trial or sentencing hearing when there has been racial bias in jury selection,[245] or racially charged arguments made to the jury,[246] but makes it virtually impossible for a defendant to prove that the decision to seek death was based on race by using statistics to prove racial bias in a solicitor's decision on the death penalty.[247] A Racial Justice Act enacted in North Carolina in 2009 outlined specific evidence and procedures a defendant could use to prove his death sentence was the result of racial bias.[248] If a defendant is able to meet his burden of proof, then the death sentence is vacated and a life sentence imposed.[249] South Carolina should adopt a similar provision to ensure that race is not a determining factor in who receives the death penalty.

Finally, the South Carolina Supreme Court could remove some of the arbitrariness from the current death penalty regime by taking seriously its statutorily required proportionality review. Under current practice, the court, in considering whether a death sentence is

245. *See* Batson v. Kentucky, 476 U.S. 79 (1986). This, of course, is all in theory. In reality, solicitors use their peremptory challenges in capital cases overwhelmingly against jurors of color and thus a not-insignificant number of African American South Carolina death row inmates were sentenced to death by all-white juries. *See* Ann Eisenberg, *The Conscience of the Community: Pre-Trial Removal of Women and African-American Jurors in South Carolina Capital Punishment Cases, 1998-2012* (unpublished manuscript), on file with authors. Through their work on South Carolina death penalty cases, the authors have identified at least three African Americans currently on death row as a result of a sentence imposed by an all-white jury: Johnny Bennett, Richard Moore, and Kevin Mercer.

246. *See* Donnelly v. DeChristoforo, 416 U.S. 637, 643 (1974). Again, this protection is largely theoretical; in fact, solicitors use explicit or implicit appeals to race in many cases and the courts turn a blind eye to it. The authors currently represent an individual on South Carolina's death row whose capital trial (before an all-white jury) included remarks by the Solicitor referring to the large African American defendant as "King Kong," a "caveman," a "big old bear," and a "beast of burden." The South Carolina Supreme Court refused to reverse the defendant's death sentence based on these comments, even though counsel uncovered evidence that one of the jurors was racially biased and referred to the defendant as a "Nigger." *See* State v. Bennett, 369 S.C. 219, 231–33, 632 S.E.2d 281, 288–89 (2006); Petition for Writ of Certiorari, Bennett v. State, No. 2009-145366 (Oct. 7, 2010); Order Denying Certiorari, Bennett v. State, No. 2009-145366 (Nov. 7, 2013).

247. *See* McCleskey v. Kemp, 481 U.S. 279 (1987). In fact, only one South Carolina case has been successful in proving racial bias in the decision to see the death penalty and that was only because the assistant solicitor admitted that the decision to seek death in a black victim case was made in order because "I felt like the black community would be upset if we did not seek the death penalty because there were two black victims in this case." *Kelly v. State*, No. 99-CP-42-1174 (Oct. 6, 2003) (Trial Court Order Granting Post-Conviction Relief).

248. N.C. S.L. 2009-464.

249. *See id.* The North Carolina Racial Justice Act was repealed in 2013 out of a "fear of too much justice," *McCleskey v. Kemp*, 481 U.S. 279, 399 (1987) (Brennan, J. dissenting), after three African-American death row inmates established race played a role in their capital trials. *See* N.C. S.L. 2013-154; Kim Severson, *North Carolina Repeals Law Allowing Racial Bias Claim in Death Penalty Challenges*, N.Y. TIMES (June 5, 2013), at A13.

disproportionate, reviews "similar cases" which it defines as other cases "with an actual conviction and sentence of death rendered by a trier of fact."[250] But defining "similar cases" as those in which a death sentence was imposed is tautological; the court is always able to find a case with similar aggravating circumstances and thus the death sentence is always proportionate to the crime, regardless of how many similar cases resulted in life sentences.[251] The court has recognized as much noting that reviewing only other cases in which a death sentence was obtained "is largely a self-fulfilling prophesy as simply examining similar cases where the defendant was sentenced to death will almost always lead to the conclusion that the death sentence under review is proportional."[252] But, to date, it has taken no action to engage in a more robust and meaningful review of whether death sentences are in fact proportionate to the offense and offender. It would be easy to do so; the South Carolina Office of Court Administration, the Circuit Solicitors and Circuit Public Defenders and the Department of Corrections have—collectively—the data needed to create the pool of relevant death and life cases. The only thing lacking is the commitment to monitor the system for disproportionate death sentences.

250. State v. Copeland, 278 S.C. 572, 591, 300 S.E.2d 63, 74 (1982).

251. The court generally uses standard language in its opinion to find a death sentence is not disproportionate:

[Appellant's] convictions and sentences are affirmed. The death sentence was not the result of passion, prejudice, or any other arbitrary factor, and the jury's finding of aggravating circumstances is supported by the evidence. Further, the death penalty is not excessive or disproportionate to the penalty imposed in similar capital cases.

See, e.g., State v. Moore, 357 S.C. 458, 593 S.E.2d 608 (2004). The court then goes on to list other death penalty cases in which the same aggravating circumstances were found as support for the conclusion that the death sentence was not disproportionate.

252. State v. Dickerson, 395 S.C. 101, 125 n.8 716 S.E.2d 895, 908 n.8 (2011). Because the issue was not raised on appeal in *Dickerson*, the court declined to overrule *Copeland*. Despite noting its concern with reviewing only cases resulting in a death sentence in its proportionality review, the Court has continued to do so since *Dickerson* and, arguably proving the "self-fulfilling prophecy," has never found a death sentence disproportionate. *See, e.g.*, State v. Inman, 395 S.C. 539, 567–68, 720 S.E.2d 31, 46 (2011).

CONCLUSION

We end where we began. The arbitrary imposition of the death penalty led a majority of the Supreme Court in *Furman* to conclude that the death penalty was a cruel and unusual punishment that violated the Eighth Amendment. In *Gregg*, the Court allowed capital punishment to resume based on its confidence that post-*Furman* improvements to state death penalty systems had eliminated that arbitrariness. That confidence, however, was misplaced. The death penalty in South Carolina is still arbitrary after all these years.

Publisher's Note: A separate PDF of the appendices below is available for download from the Duke Law Scholarship Repository, accessible through: djclpp.law.duke.edu.

APPENDIX A*
South Carolina Death Sentences - List of Those Sentenced to Death
1977-2015

	Name	Defendant Race	Victim Race	County of Conviction	Circuit of Conviction	Original Sentence Date	Sentence Date After Reversal	Final Result
1	**Gleaton, J.D.**	B/M	W/M	Lexington	11	10/7/1977	2/26/1980	Executed
2	**Gilbert, Larry**	B/M	W/M	Lexington	11	10/7/1977	2/26/1980	Executed
3	**Gill, Eric Andre**	B/M	W/M	York	16	1977		Life Imprisonment
4	**Shaw, Joseph Carl**	W/M	W/F W/M	Richland	5	12/16/1977		Executed
5	**Roach, James Terry**	W/M	W/F W/M	Richland	5	12/16/1977		Executed
6	**Tyner, Rudolph**	B/M	W/F W/M	Horry	15	8/11/1978	10/11/1980	Died on Death Row
7	**Plath, John**	W/M	B/F	Beaufort	14	2/9/1979	5/14/1982	Executed
8	**Arnold, John**	W/M	B/F	Beaufort	14	2/9/1979	5/14/1982	Executed
9	**Goolsby, Sidney Ross**	W/M	W/F	Greenwood	8	1979		Life Imprisonment
10	**Woomer, Ronald**	W/M	W/F W/M	Horry Colleton	15 14	7/20/1979 6/7/1981	7/23/1981	Executed (Horry County)
11	**Linder, Michael**	W/M	B/M	Colleton	14	1979		Acquitted
12	**Hyman, William Gibbs**	W/M	W/M	Charleston	9	10/12/1979		Life Imprisonment
13	**Adams, Sylvester**	B/M	B/M	York	16	3/3/1980	1/30/1982	Executed
14	**Thompson, Albert "Bo"**	B/M	W/M	Greenville	13	9/27/1980		Life Imprisonment
15	**Truesdale, Louis**	B/M	W/F	Lancaster	6	12/11/1980	5/17/1983[1] 9/25/1987	Executed
16	**Roberts, Sammy David**	W/M	2 W/M B/M	Berkeley	9	1/19/1981		Executed
17	**Copeland, Henry Wesley**	W/M	2 W/M B/M	Berkeley	9	1/19/1981		Died on Death Row
18	**Butler, Horace**	B/M	W/F	Charleston	9	1/26/1981		Life Imprisonment
19	**Smart, Ronald Francis**	W/M	W/M	Lexington	11	3/11/1981		Life Imprisonment
20	**Yates, Dale Roberts**	W/M	W/F	Greenville	13	5/2/1981		Life Imprisonment
21	**Butler, James Anthony**	W/M	Asian/M	Orangeburg	1	3/21/1981		Life Imprisonment
22	**Patterson, Wardell**	B/M	W/M	York	16	10/29/1980	6/20/1983	Life Imprisonment
23	**Koon, Paul Finley**	W/M	W/F	Aiken	2	6/12/1981	2/18/1983	Life Imprisonment
24	**Sloan, Michael A.**	W/M	W/F	Lexington	11	10/2/1981		Life Imprisonment
25	**Elmore, Edward Lee**	B/M	W/F	Greenwood	8	4/19/1982	4/2/1984 2/28/1987[2]	Released
26	**Spann, Sterling Barnett**	B/M	W/F	York	16	4/26/1982		Life Imprisonment
27	**Woods, Stanley Eugene**	B/M	W/M	Greenville	13	1983		Life Imprisonment
28	**Stewart, Richard**	B/M	W/F	Anderson	10	3/14/1983[3]	1/25/1985[3]	Life Imprisonment
29	**Gaskins, Donald Henry**	W/M	B/M	Richland	5	3/26/1983		Executed
30	**Chaffee, Jonathan**	W/M	W/F	Florence	12	4/2/1983[4]		Life Imprisonment
31	**Ferrell, Dallas Clarence**	W/M	W/F	Florence	12	4/2/1983[4]		Life Imprisonment
32	**Norris, John Foster**	B/M	B/F	Anderson	10	6/10/1983		Life Imprisonment
33	**Damon, Shellie**	B/M	B/F B/	Orangeburg	1	1/16/1984		Life Imprisonment
34	**Skipper, Ronald DeRay**	W/M	W/F	Horry	15	6/28/1983		Life Imprisonment
35	**Lucas, Cecil Doyle**	W/M	W/F W/M	York	16	7/27/1983		Executed
36	**Singleton, Fred**	B/M	W/F	Newberry	8	9/17/1983[5]		Found Incompetent
37	**South, Robert**	W/M	W/M	Lexington	11	11/17/1983		Executed
38	**Smith, Andrew Lavern**	B/M	B/F B/	Anderson	10	1/17/1984	10/31/1987	Executed
39	**Jones, Donald Allen**	B/M	W/F	Lancaster	6	2/7/1984	5/1/1987	Pending
40	**Plemmons, Jerry**	W/M	W/F	Union	16	2/26/1984	5/8/1987	Life Imprisonment
41	**Peterson, Mose, III**	B/M	W/M	Florence	12	8/6/1984		Life Imprisonment
42	**Stubbs, Craig Anthony**	B/M	W/M	Florence	12	8/6/1984		Life Imprisonment

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South Carolina Death Sentences - List of Those Sentenced to Death
1977-2015

	Name	Defendant Race	Victim Race	County of Conviction	Circuit of Conviction	Original Sentence Date	Sentence Date After Reversal	Final Result
43	**Drayton, Leroy**	B/M	W/F	Charleston	9	10/8/1984	4/12/1986	Executed
44	**Pierce, Marcellus, Jr.**	B/M	W/F	Richland	5	12/7/1984		Life Imprisonment
45	**Brown, Jessie Keith**	W/M	W/M	Spartanburg	7	1/28/1985	3/24/1987	Acquitted of Murder
46	**Middleton, Frank**	B/M	W/F	Charleston	9	2/4/1985	11/24/1986	Executed (for black victim only)
47	**Patrick, Gary Lee**	W/M	W/M	Oconee	10	4/15/1985		Life Imprisonment
48	**Matthews, Earl**	B/M	W/F	Charleston	9	5/13/1985	4/24/1987	Executed
49	**Arthur, Limmie**	B/M	B/M	Horry	15	8/8/1985	5/13/1987	Life Imprisonment
50	**Patterson, Raymond, Jr.**	B/M	W/M	Lexington	11	9/7/1985	11/7/1987 2/14/1995	Life Imprisonment
51	**Cooper, Kamathene**	B/M	W/M	Florence	12	10/4/1985		Life Imprisonment
52	**Kornahrens, Fred**	W/M	W/F 2W/M	Charleston	9	11/19/1985		Executed
53	**Riddle, Ernest**	W/M	W/F	Cherokee	7	2/1/1986	10/1/1987 11/15/1991[2]	30 Year Sentence
54	**Hawkins, Calvil**	B/M	W/M	Darlington	4	11/17/1985		Life Imprisonment
55	**Johnson, Richard**	W/M	B/M	Jasper	14	2/15/1986	3/13/1988	Executed
56	**Howard, Ronnie**	B/M	Asian/F	Greenville	13	6/15/1986		Executed
57	**Weldon, Dana**	B/M	Asian/F	Greenville	13	6/15/1986		Life Imprisonment
58	**Bell, Larry Gene**	W/M	W/F W/F	Saluda Lexington	11 11	2/27/1986[6] 4/2/1987[7]		Executed (Saluda County)
59	**Bellamy, Lee Grant**	B/M	B/M	Horry	15	6/28/1986		Life Imprisonment
60	**Atkins, Joseph**	NA/M	B/F W/M	Charleston	9	6/28/1986	6/25/1988	Executed
61	**Reed, Jerry Lee**	B/M	W/M	Abbeville	8	7/22/1986		Life Imprisonment
62	**Diddlemeyer, Gerald**	W/M	B/M	Horry	15	9/13/1986		Life Imprisonment
63	**West, Floyd**	W/M	W/M	Lexington	11	10/21/1986		Died on Death Row
64	**Cockerham, Harold**	W/M	W/F	Horry	15	10/11/1986		Life Imprisonment
65	**Owens, Alvin**	W/M	W/M	Horry	15	5/19/1986		Life Imprisonment
66	**Cain, James Russell**	W/M	2W/M	Chesterfield	4	11/25/1986		Life Imprisonment
67	**Gathers, Demetrius**	B/M	B/M	Charleston	9	3/21/1987		Life Imprisonment
68	**Caldwell, RickieTim**	W/M	W/M	York	16	5/23/1988		Life Imprisonment
69	**Torrence, Michael**	W/M	W/M	Lexington	11	5/28/1988	9/26/1992	Executed
70	**Victor, William Keith**	W/M	W/M	Edgefield	11	10/1/1988		Life Imprisonment
71	**Green, Anthony**	B/M	W/F	Charleston	9	10/1/1988		Executed
72	**Bell, William Henry, Jr.**	B/M	W/M	Anderson	10	3/14/1989		Pending
73	**Manning, Warren D.**	B/M	W/M	Dillon	4	4/15/1989[8]	4/3/1995[9]	Acquitted
74	**Wilson, James William**	W/M	2B/F	Greenwood	8	5/9/1989		Pending
75	**Sims, Mitchell**	W/M	2W/M	Berkeley	9	5/13/1989[10]		Pending
76	**Young, Kevin Dean**	B/M	W/M	Anderson	10	5/22/1989	6/12/1993	Executed
77	**Orr, Ronald John**	W/M	W/F W/M	Chester	6	11/14/1989		Life Imprisonment
78	**Davis, Wilbert Ray**	B/M	W/M	Florence	12	3/23/1990		Life Imprisonment
79	**Davis, Tommy Lee**	B/M	W/F	Greenwood	8	5/14/1990[11]		Life Imprisonment
80	**Smith, Rebecca**	W/F	W/M	Horry	15	12/10/1990		Life Imprisonment
81	**Simmons, Jonathan Dale**	B/M	W/F	Richland	5	6/30/1991		Life Imprisonment
82	**Cooper, Gene Tony**	W/M	W/F	Lexington	11	2/22/1991		Life Imprisonment
83	**Elkins, Michael**	W/M	W/F	Jasper	14	3/30/1991		Executed
84	**Charping, Michael**	W/M	W/F	Lexington	11	4/29/1991	9/23/1996	Life Imprisonment
85	**Ray, Johnny, Jr.**	W/M	W/F	Spartanburg	7	5/1/1991	1/20/1994	Life Imprisonment
86	**Von Dohlen, Herman**	W/M	W/M	Berkeley	9	5/28/1991		Life Imprisonment
87	**Rocheville, David**	W/M	W/M	Spartanburg	7	7/15/1991		Executed
88	**Longworth, Richard**	W/M	W/M	Spartanburg	7	9/10/1991[12]		Executed

APPENDIX A*
South Carolina Death Sentences - List of Those Sentenced to Death
1977-2015

	Name	Defendant Race	Victim Race	County of Conviction	Circuit of Conviction	Original Sentence Date	Sentence Date After Reversal	Final Result
			W/M	Spartanburg	7	9/10/1991[12]		
89	**Hall, Larry Eugene**	W/M	2 W/F	Pickens	13	1/28/1992[9]		Life Imprisonment
90	**Southerland, Robert**	W/M	W/F	Lexington	11	3/9/1992		Life Imprisonment
91	**Franklin, Ellis**	B/M	W/F	Williamsburg	3	1/22/1993		Life Imprisonment
92	**Holmes, Bobby Lee**	B/M	B/F	York	16	4/20/1993	3/28/2001	Life Imprisonment
93	**Nance, Robert Lee**	B/M	W/F	Florence	12	6/25/1993		Life Imprisonment
94	**Hudgins, Joseph**	W/M (16)	W/M	Anderson	10	7/27/1993		Life Imprisonment
95	**Tucker, Richard**	B/M	W/F	Spartanburg	7	10/28/1993		Life Imprisonment
96	**Williams, Luke, III**	W/M	W/F W/M	Edgefield	11	11/23/1993		Executed
97	**Tucker, James N.**	W/M	W/F W/F	Calhoun Sumter	1 3	12/8/1993 12/16/1994	7/17/1996	Executed (Sumter County)
98	**George, Ricky**	B/M	W/M	Horry	15	1/20/1994		Life Imprisonment
99	**McWee, Jerry**	W/M	W/M	Aiken	2	1/23/1994		Executed
100	**Conyers, Robert**	B/M (16)	W/F	Clarendon	3	2/17/1994		Life Imprisonment
101	**Whipple, James**	W/M	W/F	Horry	15	2/18/1994		Life Imprisonment
102	**Rogers, Timothy D.**	B/M	W/F	Dorchester	1	3/5/1994	12/1/1996	50 Year Sentence
103	**Humphries, Shawn**	W/M	W/M	Greenville	13	8/9/1994		Executed
104	**Simpson, Keith L.**	B/M	W/M	Spartanburg	7	9/20/1994		Life Imprisonment
105	**Ivey, Thomas**	B/M	W/M W/M	Orangeburg Orangeburg	1 1	1/20/1995 7/17/1995		Executed
106	**Byram, Jason**	W/M	W/F	Richland	5	3/9/1995		Executed
107	**Kelly, Theodore**	B/M	B/M	Spartanburg	7	8/14/1995		Life Imprisonment
108	**Hughes, Herman**	B/M (17)	W/M	Calhoun	1	9/12/1995		Life Imprisonment
109	**Hughes, Mar-Reece**	B/M	W/M	York	16	9/22/1995[13]		Pending
110	**Bennett, Johnny**	B/M	B/M	Lexington	11	10/19/1995	7/16/2000	Pending
111	**Hill, David Clayton**	W/M	W/M	Georgetown	15	10/31/1995		Executed
112	**Gardner, Joseph**	B/M	W/F	Dorchester	1	12/13/1995		Executed
113	**Powers, Ted**	W/M (17)	W/F	Lexington	11	2/23/1996		Life Imprisonment
114	**Johnson, Roger Dale**	W/M	W/F	Calhoun	1	2/27/1996		Died on Death Row
115	**Rosemond, Andre**	B/M	W/F	Spartanburg	7	3/30/1996		Life Imprisonment
116	**Ard, Joseph**	W/M	W/F &	Lexington	11	4/25/1996		Released
117	**Hicks, William**	B/M	W/M	Aiken	2	4/30/1996		30 Year Sentence
118	**Reed, James Earl**	B/M	B/F B/	Charleston	9	6/9/1996		Executed
119	**Huggins, Titus**	B/M	W/M	Horry	15	9/12/1996		Life Imprisonment
120	**Council, Donnie**	B/M	W/F	Aiken	2	10/23/1996		Pending Resentencing
121	**Stone, Bobby Wayne**	W/M	W/M	Sumter	3	1/28/1997	2/27/2005	Pending
122	**Williams, George Allen**	B/M	B/F	Lexington	11	2/7/1997		Died on Death Row
123	**Starnes, Norman**	W/M	W/M	Lexington	11	4/25/1997	11/17/2007	Pending
124	**Terry, Gary**	W/M	B/F	Lexington	11	9/21/1997		Pending
125	**Hughey, John**	B/M	B/F	Abbeville	8	10/30/1997		Pending
126	**Shafer, Wesley**	W/M	W/M	Union	16	1/21/1998		Life Imprisonment
127	**Quattlebaum, Robert Joseph**	W/M	W/M	Lexington	11	3/4/1998		Life Imprisonment
128	**McClure, David, Jr.**	W/M	W/M	Barnwell	2	4/29/1998		Life Imprisonment
129	**Aleksey, Bayan**	B/M	B/M	Orangeburg	1	9/1/1998		Pending
130	**Kelly, William**	W/M (17)	W/M	Lexington	11	9/19/1998		Life Imprisonment
131	**Locklair, Jimmy**	W/M	W/F	Spartanburg	7	9/22/1998		Life Imprisonment
132	**Jones, Jeffrey L**	B/M	W/F W/M	Lexington	11	11/10/1998	3/14/2007	Life Imprisonment
133	**Shuler, Calvin**	B/M	W/M	Dorchester	1	11/12/1998		Executed

APPENDIX A*
South Carolina Death Sentences - List of Those Sentenced to Death
1977-2015

	Name	Defendant Race	Victim Race	County of Conviction	Circuit of Conviction	Original Sentence Date	Sentence Date After Reversal	Final Result
134	**Owens, Freddie**	B/M	B/F	Greenville	13	2/17/1999	2/14/2003 11/11/2006	Pending
135	**Simmons, Kenneth**	B/M	B/F	Dorchester	1	3/2/1999		Pending
136	**Robertson, James**	W/M	W/F W/M	York	16	3/26/1999		Pending
137	**Weik, John Edward**	W/M	W/F	Dorchester	1	5/29/1999		Pending
138	**Stokes, Samuel Louis**	B/M	W/F	Orangeburg	1	10/31/1999		Pending
139	**Hill, David Mark**	W/M	W/M W/F B/F	Aiken	2	2/14/2000		Executed
140	**Burkhart, Troy Alan**	W/M	2W/M 1W/F	Anderson	10	3/18/2000	3/31/2004	Life Imprisonment
141	**Tench, Christopher Dale**	W/M	W/M	Anderson	10	5/8/2000		Died on Death Row
142	**Passaro, Michael**	W/M	W/F	Horry	15	8/17/2000		Executed
143	**Wise, Arthur Hastings**	B/M	1 W/F 3W/M	Aiken	2	2/1/2001		Executed
144	**Haselden, Jeffrey**	W/M	W/M	Lexington	11	2/13/2001		Life Imprisonment
145	**Shuler, Charles**	W/M	3W/F	Orangeburg	1	3/22/2001		Died on Death Row
146	**Bryant, James Nathaniel**	B/M	W/M	Horry	15	6/25/2001	10/9/2004	Pending
147	**Crisp, Denisona**	W/M	2B/M	Anderson	10	10/19/2001		Life Imprisonment
148	**Laney, Michael**	W/M	2B/F	Greenville	13	10/19/2001		Life Imprisonment
149	**Moore, Richard Bernard**	B/M	W/M	Spartanburg	7	10/22/2001		Pending
150	**Wood, John Richard**	W/M	W/M	Greenville	13	2/16/2002		Pending
151	**Bowman, Marion**	B/M	W/F	Dorchester	1	5/23/2002		Pending
152	**Downs, William, Jr.**	W/M	W/M	Aiken	2	6/27/2002		Executed
153	**Sigmon, Brad Keith**	W/M	W/M W/F	Greenville	13	7/21/2002		Pending
154	**Binney, Johnathan Kyle**	W/M	W/F	Cherokee	7	11/14/2002		Pending
155	**Sapp, Jesse Waylon**	W/M	W/M	Berkeley	9	5/19/2003		Died on Death Row
156	**Vasquez, Angel Joe Pierre**	B/M	W/M B/M	Horry	15	10/5/2003		Life Imprisonment
157	**Roberts, Tyree Alfonso aka: Abdiyyah ben Alkebulanyahh**	B/M	W/M B/M	Beaufort	14	10/22/2003		Pending
158	**Northcutt, Clinton**	W/M	W/F	Lexington	11	11/14/2003	6/18/2009	Pending
159	**Morgan, Eric Dale**	W/M	W/M	Spartanburg	7	3/9/2004		Life Imprisonment
160	**Lindsey, Marion**	B/M	W/F	Spartanburg	7	5/24/2004		Pending
161	**Evans, Kamell Delshawn**	B/M	W/M W/M	Greenville	13	9/21/2004		Pending
162	**Evins, Fredrick**	B/M	W/F	Spartanburg	7	11/19/2004		Life Imprisonment
163	**Williams, Charles Christopher**	B/M	W/F	Greenville	13	2/19/2005		Pending
164	**Allen, Quincy**	B/M	W/M B/F	Richland	5	3/18/2005		Pending
165	**Cottrell, Luzenski Allen**	B/M	W/M	Horry	15	4/6/2005	9/27/2014	Pending
166	**Mercer, Kevin**	B/M	B/M	Lexington	11	4/22/2006		Pending Resentencing
167	**Stanko, Stephen**	W/M	W/F W/M	Georgetown Horry	15 15	8/18/2006 11/19/2009		Pending
168	**Mahdi, Mikal D.**	B/M	W/M	Calhoun	1	12/8/2006		Pending
169	**Woods, Anthony**	B/M	W/F	Clarendon	3	12/8/2006		Pending
170	**Bixby, Steven Vernon**	W/M	W/M B/M	Greenwood	8	2/21/2007[18]		Pending
171	**Finklea, Ron Oneal**	B/M	B/M	Lexington	11	9/6/2007		Pending
172	**Motts, Jeffrey Brian**	W/M	W/M	Greenville	13	12/4/2007		Executed
173	**Winkler, Louis Michael**	W/M	W/F	Horry	15	2/7/2008		Pending

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1977-2015

	Name	Defendant Race	Victim Race	County of Conviction	Circuit of Conviction	Original Sentence Date	Sentence Date After Reversal	Final Result
174	**Bryant, Stephen C.**	W/M	W/M W/M B/M	Sumter	3	9/11/2008		Pending
175	**Torres, Andres Antonio**	H/M	W/M W/F	Spartanburg	7	10/23/2008		Pending
176	**Justus, Kenneth H.**	W/M	W/M	Dorchester	1	12/23/2008		Died on Death Row
177	**Inman, Jerry "Buck"**	W/M	W/F	Pickens	13	4/22/2009		Pending
178	**Dickerson, William Jr.**	B/M	B/M	Charleston	9	5/7/2009		Pending
179	**Rivera, Raymondeze**	B/M	B/F	Anderson	10	2/18/2010		Life Imprisonment
180	**Barnes, Steven**	B/M	B/M	Edgefield	11	11/17/2010		Pending Retrial
181	**Blackwell, Ricky Lee**	W/M	W/F	Spartanburg	7	3/16/2014		Pending

* The information in Appendix A was obtained from the reports completed by the trial judge in all cases in which a death sentence was imposed as required by S.C. Code § 16-3-25(A). *See also State v. Shaw*, 273 S.C. 194, 219-42, 255 S.E.2d 799, 811-28 (1979) (including a template of the report as Appendix B to the opinion). Copies of the sentencing reports are on file with the authors.

LEGEND FOR APPENDIX A:

[1] Tried in Chester County
[2] Jury from Newberry County
[3] Tried in Union County
[4] Tried in Sumter County
[5] Jury from Greenwood County
[6] Tried in Berkeley County
[7] Tried in Pickins County
[8] Tried in Kershaw
[9] Jury from Lancaster County
[10] Tried in Aiken County
[11] Jury from Florence County
[12] Jury from York County
[13] Jury from Aiken County
[14] Jury from Chesterfield County

TOTALS FOR APPENDIX A:

Race/Gender	#	%
Black defendants sentenced to death	86	47.51%
White defendants sentenced to death	93	51.38%
Hispanic defendants sentenced to death	1	0.55%
Native Americans sentenced to death	1	0.55%
Defendants sentenced to death for killing black victims	33	17.65%
Defendants sentenced to death for killing white victims	151	80.75%
Defendants sentenced to death for killing Asian victims	3	1.60%
Black Defendants/White Victims	63	33.69%
Black Defendants/Black Victims	22	11.76%
Black Defendant/Asian Victim	2	1.07%
White Defendants/White Victims	86	45.99%
White Defendants/Black Victims	11	5.88%
White Defendant/Asian Victim	1	0.53%
Hispanic Defendant/White Victim	1	0.53%
Native American Defendant/White Victim	1	0.53%
Male defendants	180	99.45%
Female defendants	1	0.55%
Male Defendants/Female Victims	99	52.94%
Male Defendants/Male Victims	87	46.52%
Female Defendant/Male Victim	1	0.53%

APPENDIX B*
South Carolina's Current Death Row
(As of 12/31/2015)

	Name	Defendant Race	Victim Race	County	Original Sentence Date	Time on Death Row (years)
1	**Singleton, Fred**	B/M	W/F	Newberry	9/17/1983	32.31
2	**Jones, Donald Allen**	B/M	W/F	Lancaster	2/8/1984	31.92
3	**Bell, William Henry, Jr.**	B/M	W/M	Anderson	3/14/1989	26.82
4	**Wilson, James William**	W/M	2B/F	Greenwood	5/9/1989	26.66
5	**Sims, Mitchell**	W/M	W/M	Berkeley	5/13/1989	26.65
6	**Hughes, Mar-Reece**	B/M	W/M	York	9/22/1995	20.29
7	**Bennett, Johnny**	B/M	B/M	Lexington	10/19/1995	20.21
8	***Council, Donnie***	*B/M*	*W/F*	*Aiken*	*10/23/1996*	19.20
9	**Stone, Bobby Wayne**	W/M	W/M	Sumter	1/28/1997	18.93
10	**Starnes, Norman**	W/M	W/M	Lexington	4/25/1997	18.70
11	**Terry, Gary**	W/M	B/F	Lexington	9/21/1997	18.29
12	***Hughey, John Kennedy***	*B/M*	*2B/F*	*Abbeville*	*10/30/1997*	*18.18*
13	**Aleksey, Bayan**	B/M	B/M	Orangeburg	9/1/1998	17.34
14	**Owens, Freddie**	B/M	B/F	Greenville	2/17/1999	16.88
15	***Simmons, Kenneth***	*B/M*	*B/F*	*Dorchester*	*3/2/1999*	16.84
16	**Robertson, James**	W/M	W/M	York	3/27/1999	16.78
17	***Weik, John Edward***	*W/M*	*W/F*	*Dorchester*	*6/21/1999*	*16.54*
18	**Stokes, Sammie Louis**	B/M	W/F	Orangeburg	10/31/1999	16.18
19	**Bryant, James Nathaniel**	B/M	W/M	Horry	6/25/2001	14.53
20	**Moore, Richard Bernard**	B/M	W/M	Spartanburg	10/23/2001	14.20
21	**Wood, John Richard**	W/M	W/M	Greenville	2/16/2002	13.88
22	**Bowman, Marion, Jr.**	B/M	W/F	Dorchester	5/23/2002	13.62
23	**Sigmon, Brad Keith**	W/M	W/M	Greenville	7/21/2002	13.45
24	***Binney, Johnathan Kyle***	*W/M*	*W/F*	*Cherokee*	*11/14/2002*	13.14
25	**Roberts, Tyree Alfonzo (aka Abdiyyah ben Alkebulanyahh)**	B/M	W/M	Beaufort	10/22/2003	12.20
26	**Northcutt, Clinton Robert**	W/M	W/F	Lexington	11/14/2003	12.14
27	**Lindsey, Marion**	B/M	W/F	Spartanburg	5/24/2004	11.61
28	***Evans, Kamell Delshawn***	*B/M*	*2 W/M*	*Greenville*	*9/21/2004*	*11.28*
29	**Williams, Charles Christopher**	B/M	W/F	Greenville	2/18/2005	10.87
30	**Allen, Quincy**	B/M	W/M	Richland	3/21/2005	10.79
31	**Cottrell, Luzenski Allen**	B/M	W/M	Horry	4/6/2005	10.74
32	***Mercer, Kevin Jermaine***	*B/M*	*B/M*	*Lexington*	*4/22/2006*	9.70

APPENDIX B*
South Carolina's Current Death Row
(As of 12/31/2015)

	Name	Defendant Race	Victim Race	County	Original Sentence Date	Time on Death Row (years)
33	**Stanko, Stephen**	W/M	W/F W/M	Georgetown Horry	8/18/2006 11/19/2009	9.38
34	**Mahdi, Mikal D.**	B/M	W/M	Calhoun	12/8/2006	9.07
35	**Woods, Anthony**	B/M	W/F	Clarendon	12/8/2006	9.07
36	**Bixby, Steven Vernon**	W/M	W/M	Greenwood	2/21/2007	8.86
37	**Finklea, Ron Oneal**	B/M	B/M	Lexington	9/6/2007	8.32
38	***Winkler, Louis Michael***	*W/M*	*W/F*	*Horry*	*2/8/2008*	7.90
39	**Bryant, Stephen C.**	W/M	2W/M 1B/M	Sumter	9/11/2008	7.31
40	**Torres, Andres Antonio**	H/M	W/M	Spartanburg	10/23/2008	7.19
41	**Inman, Jerry "Buck"**	W/M	W/F	Pickens	4/22/2009	6.70
42	**Dickerson, William, Jr.**	B/M	B/M	Charleston	5/7/2009	6.65
43	***Barnes, Steven***	*B/M*	*B/M*	*Edgefield*	*11/17/2010*	5.12
44	**Blackwell, Ricky Lee**	W/M	W/F	Spartanburg	3/17/2014	1.79

* The information in Appendix B was obtained by comparing the information in Appendix A, Appendix C, Appendix E, Appedix F and information about relief granted in other proceedings maintained by Justic 360 and the authors. Cases in *italics* indicate the individual has been granted either guilt or penalty phase relief. These cases are either pending retrial or resentencing or have been appealed by the State to a higher court and the appeal remains pending.

TOTALS:

Race/Gender	#	%
Black Defendants	26	57.78%
White Defendants	18	40.00%
Hispanic Defendants	1	2.22%
Defendants sentenced to death for killing black victims	11	23.91%
Defendants sentenced to death for killing white victims	35	76.09%
Black Defendants/White Victims	17	36.96%
Black Defendants/Black Victims	9	19.57%
White Defendants/White Victims	17	36.96%
White Defendants/Black Victims	2	4.35%
Hispanic Defendant/White Victim	1	2.17%
Male defendants	45	100.00%
Female defendants	0	0.00%
Male Defendants/Female Victims	24	52.17%
Male Defendants/Male Victims	22	47.83%

APPENDIX C*
South Carolina Executions - List of Those Executed
1976-2015

	Name	Defendant Race & Sex	Victim Race & Sex	County of Conviction	Original Sentence Date	Execution Date	Time on Death Row (years)	Execution Method	Other
1	**Shaw, Joseph Carl**	W/M	W/F W/M	Richland	12/16/1977	1/11/1985	7.08	Electrocution	
2	**Roach, James Terry**	W/M	W/F W/M	Richland	12/16/1977	1/10/1986	8.07	Electrocution	Juvenile
3	**Woomer, Ronald**	W/M	W/F	Horry	7/20/1979	4/27/1990	10.78	Electrocution	
4	**Gaskins, Donald Henry**	W/M	B/M	Richland	3/26/1983	9/6/1991	8.45	Electrocution	
5	**Adams, Sylvester**	B/M	B/M	York	3/3/1980	8/18/1995	15.47	Lethal Injection	Intellectually Disabled
6	**South, Robert**	W/M	W/M	Lexington	11/17/1983	5/31/1996	12.55	Lethal Injection	Volunteer
7	**Kornahrens, Fred**	W/M	W/F 2W/M	Charleston	11/19/1985	7/19/1996	10.67	Lethal Injection	
8	**Torrence, Michael**	W/M	W/M	Lexington	5/28/1988	9/6/1996	8.28	Lethal Injection	Volunteer
9	**Bell, Larry Gene**	W/M	W/F	Saluda	2/27/1986	10/4/1996	10.61	Electrocution	Competency to be exectued
10	**Lucas, Doyle Cecil**	W/M	W/F W/M	York	7/27/1983	11/15/1996	13.32	Lethal Injection	Volunteer
11	**Middleton, Frank**	B/M	B/F	Charleston	2/4/1985	11/22/1996	11.81	Lethal Injection	Intellectually Disabled
12	**Elkins, Michael**	W/M	W/F	Jasper	3/30/1991	6/13/1997	6.21	Lethal Injection	Volunteer
13	**Matthews, Earl**	B/M	W/F	Charleston	5/13/1985	11/7/1997	12.50	Lethal Injection	
14	**Arnold, John**	W/M	B/F	Beaufort	2/9/1979	3/6/1998	19.08	Lethal Injection	
15	**Plath, John**	W/M	B/F	Beaufort	2/9/1979	7/10/1998	19.43	Lethal Injection	
16	**Roberts, Sammy David**	W/M	2W/M B/M	Berkeley	1/19/1981	9/25/1998	17.69	Lethal Injection	
17	**Gleaton, J.D.**	B/M	W/M	Lexington	10/7/1977	12/4/1998	21.17	Lethal Injection	
18	**Gilbert, Larry**	B/M	W/M	Lexington	10/7/1977	12/4/1998	21.17	Lethal Injection	Evidence of Intellectual Disability
19	**Truesdale, Louis**	B/M	W/F	Lancaster	12/11/1980	12/11/1998	18.01	Lethal Injection	
20	**Smith, Andy Lavern**	B/M	B/F B/M	Anderson	1/17/1984	12/18/1998	14.93	Lethal Injection	
21	**Howard, Ronnie**	B/M	Asian/F	Greenville	6/15/1986	1/8/1999	12.58	Lethal Injection	
22	**Atkins, Joseph**	NA/M	B/F W/M	Charleston	6/28/1986	1/22/1999	12.58	Lethal Injection	
23	**Drayton, Leroy**	B/M	W/F	Charleston	10/8/1984	11/12/1999	15.10	Lethal Injection	
24	**Rocheville, David**	W/M	W/M	Spartanburg	7/15/1991	12/3/1999	8.39	Lethal Injection	
25	**Young, Kevin Dean**	B/M	W/M	Anderson	5/22/1989	11/3/2000	11.46	Lethal Injection	
26	**Johnson, Richard**	W/M	B/M	Jasper	2/15/1986	5/3/2002	16.22	Lethal Injection	
27	**Green, Anthony**	B/M	W/F	Charleston	10/1/1988	8/23/2002	13.90	Lethal Injection	
28	**Passaro, Michael**	W/M	W/F	Horry	8/17/2000	9/13/2002	2.07	Lethal Injection	Volunteer
29	**Hill, David Clayton**	W/M	W/M	Georgetown	10/31/1995	3/19/2004	8.39	Lethal Injection	
30	**McWee, Jerry**	W/M	W/M	Aiken	1/23/1994	4/16/2004	10.24	Lethal Injection	
31	**Byram, Jason**	W/M	W/F	Richland	3/9/1995	4/23/2004	9.13	Lethal Injection	
32	**Tucker, James N.**	W/M	W/F	Sumter	12/8/1993	5/28/2004	10.48	Electrocution	
33	**Longworth, Richard**	W/M	2 W/M	Spartanburg	9/10/1991	4/15/2005	13.61	Lethal Injection	
34	**Wise, Arthur Hastings**	B/M	1 W/F 3 W/M	Aiken	2/1/2001	11/4/2005	4.76	Lethal Injection	Volunteer
35	**Humphries, Shawn**	W/M	W/M	Greenville	8/9/1994	12/2/2005	11.32	Lethal Injection	
36	**Downs, William, Jr.**	W/M	B/M	Aiken	6/27/2002	7/14/2006	4.05	Lethal Injection	Volunteer
37	**Shuler, Calvin Alphonso**	B/M	W/M	Dorchester	11/12/1998	6/22/2007	8.61	Lethal Injection	
38	**Hill, David Mark**	W/M	W/M W/F B/F	Aiken	2/14/2000	6/6/2008	8.32	Lethal Injection	Volunteer
39	**Reed, James Earl**	B/M	B/M B/F	Charleston	6/9/1996	6/20/2008	12.04	Electrocution	Volunteer
40	**Gardner, Joseph**	B/M	W/F	Dorchester	12/13/1995	12/5/2008	12.99	Lethal Injection	

APPENDIX C*
South Carolina Executions - List of Those Executed 1976-2015

	Name	Defendant Race & Sex	Victim Race & Sex	County of Conviction	Original Sentence Date	Execution Date	Time on Death Row (years)	Execution Method	Other
41	**Williams, Luke, III**	W/M	W/F W/M	Edgefield	11/23/1993	2/20/2009	15.25	Lethal Injection	
42	**Ivey, Thomas**	B/M	W/M W/M	Orangeburg	1/20/1995	5/8/2009	14.31	Lethal Injection	
43	**Motts, Jeffrey Brian**	W/M	W/M	Greenville	12/4/2007	5/6/2011	3.42	Lethal Injection	Volunteer

* The information in Appendix C has been systematically maintained by Justice 360 and the authors since the first modern South Carolina execution in 1985. Itwas confirmed by a similar list maintained by the Death Penalty Information Center (www.deathpenaltyinfo.org).

TOTALS:

Race/Gender	#	%
Black Defendants	16	37.21%
White Defendants	26	60.47%
Native American Defendants	1	2.33%
Defendants sentenced to death for killing black victims	10	23.26%
Defendants sentenced to death for killing white victims	32	74.42%
Defendants sentenced to death for killing Asian victims	1	2.33%
Black Defendants/White Victims	11	25.58%
Black Defendants/Black Victims	4	9.30%
Black Defendant/Asian Victim	1	2.33%
White Defendants/White Victims	20	46.51%
White Defendants/Black Victims	6	13.95%
Native American Defendant/White Victim	1	2.33%
Male defendants	43	100.00%
Female defendants	0	0.00%
Male Defendants/Female Victims	25	58.14%
Male Defendants/Male Victims	18	41.86%

APPENDIX D*

South Carolina Death Sentences (Listed by Aggravating Circumstances) 1977-2015

Name	Sentence	Rape/CSC	Assault - Ravish**	Kidnapping	Trafficking in Persons	Burglary	Armed Robbery	Armed Larceny	House	Poison	Drug Trafficking	Torture	Dismemberment	Arson	Prior Murder	Risk	Monetary Value	Judicial Officer	Agent	Law Enforcement	Law or Judicial	2 Murders	Child <	Witness	SVP	Total
Adams, Sylvester	3/3/1980			x					x																	2
Adams, Sylvester	1/30/1982			x					x																	2
Aleksey, Bayan	9/1/1998																			x						1
Allen, Quincy	3/18/2005			Ins				Ins				Ins				x										2
Ard, Joseph	4/25/1996															x						x	x			2
Arnold, John	2/9/1979			x																						1
Arnold, John	5/14/1982		Ins	x																						1
Arthur, Limmie	8/8/1985						x																			1
Arthur, Limmie	5/13/1987						x																			1
Atkins, Joseph	6/28/1986														x											1
Atkins, Joseph	6/25/1988														x											1
Barnes, Steven	11/17/2010			x								x														2
Bell, Larry Gene (Saluda)	2/27/1986			x																						1
Bell, Larry Gene (Lexington)	4/2/1987			x																						1
Bell, William Henry, Jr.	3/14/1989						x																			1
Bellamy, Lee Grant	6/28/1986																x		x							2
Bennett, Johnny	10/19/1995			x			x	x				x														4
Bennett, Johnny	7/16/2000			x			x	Ins				x														3
Binney, Johnathan Kyle	11/14/2002					x																				1
Bixby, Steven Vernon	2/21/2007																	x								3
Blackwell, Ricky Lee	3/16/2014			x																			x			2
Bowman, Marion	5/23/2002	Ins.		x			Ins	x																		2
Brown, Jessie Keith	1/28/1985						x	x																		2
Brown, Jessie Keith	3/24/1987						x	x																		2
Bryant, James Nathaniel	6/25/2001						x	x				x								x						4
Bryant, James Nathaniel	10/9/2004						x	x				x								x						4
Bryant, Stephen C.	9/11/2008						x																			1
Burkhart, Troy Alan	3/18/2000																					x				1
Burkhart, Troy Alan	3/31/2004																					x				1
Butler, Horace	1/26/1981	x																								1
Butler, James Anthony	3/21/1981						x	x																		1
Byram, Jason	3/9/1995					x	x																			2
Cain, James Russell	11/25/1986																Ins		x							1
Caldwell, Rickie Tim	5/23/1988			x			x																			2
Chaffee, Jonathan	4/2/1983	x							x			x														3

APPENDIX D*

South Carolina Death Sentences (Listed by Aggravating Circumstances) 1977-2015

Name	Sentence Date	Rape/CSC	Assault - Ravish**	Kidnapping	Trafficking in Persons	Burglary	Armed Robbery	Armed Larceny	House Breaking**	Poison	Drug Trafficking	Torture	Dismemberment	Arson	Prior Murder	Risk >1	Monetary Value	Judicial Officer	Agent	Law Enforcement	Law or Judicial	2 Murders	Child < 11	Witness	SVP	Total
Charping, Michael	4/29/1991	x		x								x														3
Charping, Michael	9/23/1996	Ins.		x								x														2
Cockerham, Harold	10/11/1986			x																						1
Convers, Robert	2/17/1994	x				x																	x			3
Cooper, Gene Tony	2/22/1991			x			x	x																		3
Cooper, Kamathene	10/4/1985						x																			1
Copeland, Henry	1/19/1981			x			x																			2
Cottrell, Luzenski	4/6/2005															x				x						2
Cottrell, Luzenski	9/27/2014														x	x				x						3
Council, Donnie	10/23/1996	x		x		x		x		x		x														6
Crisp, Denisona	10/19/2001											x			x											2
Damon, Shellie	1/16/1984						x	x																		2
Davis, Tommy Lee	5/14/1990	x		x								x														3
Davis, Wilbert Ray	3/23/1990						x																			1
Dickerson, William Jr.	5/7/2009	x		x								x														3
Diddlemeyer, Gerald	9/13/1986																x									1
Downs, William	6/27/2002	x		x																						2
Dravton, Leroy	10/8/1984			x			x																			2
Dravton, Leroy	4/12/1986			x			x																			2
Elkins, Michael	3/30/1991						x	x																		2
Elmore, Edward Lee	4/19/1982	x	Ins.			Ins.						x														2
Elmore, Edward Lee	4/2/1984	x				x						x														3
Elmore, Edward Lee	2/28/1987	x				Ins.						x														2
Evans, Kamell	9/21/2004			x		x														x		x				4
Evins, Fredrick	11/19/2004	x		x				Ins.																		2
Ferrell, Dallas	4/2/1983	x							x			x														3
Finklea, Ron Oneal	9/6/2007											x		x												2
Franklin, Ellis	1/22/1993	x				x		x				x														4
Gardner, Joseph	12/13/1995	x		x								x														3
Gaskins, Donald Henry	3/26/1983														x				x							2
Gathers, Demetrius	3/21/1987	x																								1
George, Ricky	1/20/1994						x																			1
Gilbert, Larry	10/7/1977						x	Ins																		1
Gilbert, Larry	2/26/1980						x	x																		2
Gill, Eric Andre	1977						x																			1

APPENDIX D*

South Carolina Death Senences (Listed by Aggravating Circumstances) 1977-2015

Name	Sentence Date	Rape/CSC	Assault - Ravish**	Kidnapping	Trafficking in Persons	Burglary	Armed Robbery	Armed Larceny	House Breaking**	Poison	Drug Trafficking	Torture	Dismemberment	Arson	Prior Murder	Risk >1	Monetary Value	Judicial Officer	Agent	Law Enforcement	Law or Judicial	2 Murders	Child < 11	Witness	SVP	Total
Gleaton, J.D.	10/7/1977						x	Ins.																		1
Gleaton, J.D.	2/26/1980						x	x																		2
Goolsby, Sidney Ross	1979			x				x																		2
Green, Anthony	10/1/1988						x																			1
Hall, Larry Eugene	1/28/1992	x		x			x															x				4
Haselden, Jeffrey	2/13/2001											x											x			2
Hawkins, Calvil	11/17/1985					x																				1
Hicks, William	4/30/1996			x			x					Ins.														2
Hill, David Clayton	10/31/1995																			x						1
Hill, David Mark	2/14/2000			x												x										2
Holmes, Bobby Lee	4/20/1993	x				x																				2
Holmes, Bobby Lee	3/28/2001	x		x		x						x														3
Howard, Ronnie	6/15/1986			x			x																			2
Hudgins, Joseph	7/27/1993							x												x						2
Huggins, Titus	9/12/1996						x																			1
Hughes, Herman	9/12/1995							x	x							x										3
Hughes, Mar-Reece	9/22/1995							Ins.	Ins.											x						1
Hughey, John	10/30/1997					x		x														x				3
Humphries, Shawn	8/9/1994						x																			1
Hyman, William Gibbs	10/12/1979					Ins.	x																			1
Inman, Jerry "Buck"	4/22/2009	x		x		x																				3
Ivey, Thomas	1/20/1995															x				x		Ins.				2
Ivey, Thomas	7/17/1995			x			x	x							x						Ins.					4
Johnson, Richard	2/15/1986						x																			1
Johnson, Richard	3/13/1988																			x						1
Johnson, Roger Dale	2/27/1996			x			x	x				x														4
Jones, Donald Allen	2/7/1984	x		x			x	x	x																	5
Jones, Donald Allen	5/1/1987	x		x			x	x	x																	5
Jones, Jeffrey L	11/10/1998					x	x	x				x										x				5
Jones, Jeffrey L	11/10/1998					x	x	x														x				4
Jones, Jeffrey L	3/14/2007					x	x	x				x										x				5
Justus, Kenneth H.	12/23/2008														x											1
Kelly, Theodore	8/14/1995																					x				1
Kelly, William	9/19/1998			x		x	x	x																		4
Koon, Paul Finley	6/12/1981			x																						1

APPENDIX D*

South Carolina Death Senences (Listed by Aggravating Circumstances) 1977-2015

Name	Sentence Date	Rape/CSC	Assault - Ravish**	Kidnapping	Trafficking in Persons	Burglary	Armed Robbery	Armed Larceny	House Breaking**	Poison	Drug Trafficking	Torture	Dismemberment	Arson	Prior Murder	Risk >1	Monetary Value	Judicial Officer	Agent	Law Enforcement	Law or Judicial Officer Family	2 Murders	Child < 11	Witness	SVP	Total
Koon, Paul Finley	2/18/198			x																						1
Kornahrens, Fred	11/19/19			x		x																				2
Laney, Michael	10/19/20	x		x																		x				3
Linder, Michael	1979																			x						1
Lindsey, Marion	5/24/200															x										1
Locklair, Jimmy	9/22/199														x	x						Ins				2
Longworth, Richard	9/10/199			x			x															x				3
Longworth, Richard	9/10/199						x															x				2
Lucas, Cecil Doyle	7/27/198					x	x																			2
Mahdi, Mikal D.	12/8/200					x		x																		2
Manning, Warren D.	4/15/198																			x						1
Manning, Warren D.	4/3/1995			x			x													x						3
Matthews, Earl	5/13/198						x																			1
Matthews, Earl	4/24/198						x																			1
McClure, David, Jr.	4/29/199							x				x										x				3
McWee, Jerry	1/23/199						x	x																		2
Mercer, Kevin	4/22/200						x																			1
Middleton, Frank	2/4/1985	x					x																			2
Middleton, Frank	11/24/19	x					x																			2
Moore, Richard Bernard	10/22/20						x									x	x									3
Morgan, Eric Dale	3/9/2004						x	x																		2
Motts, Jeffrey Brian	12/4/200														x											1
Nance, Robert Lee	6/25/199	x				x	x																			3
Norris, John Foster	6/10/198	x													x											2
Northcutt, Clinton	11/14/20											x											x			2
Northcutt, Clinton	6/18/200											x											x			2
Orr, Ronald John	11/14/19					x	x	x														x				4
Owens, Alvin	5/19/198			x																						1
Owens, Freddie	2/17/199						x	x																		2
Owens, Freddie	2/14/200						x										x									2
Owens, Freddie	11/11/20						x	x																		2
Passaro, Michael	8/17/200											x											x			2
Patrick, Gary Lee	4/15/198						x	Ins																		1
Patterson, Raymond, Jr.	9/7/1985						x																			1

APPENDIX D*

South Carolina Death Sentences (Listed by Aggravating Circumstances) 1977-2015

Name	Sentence Date	Rape/CSC	Assault - Ravish**	Kidnapping	Trafficking in Persons	Burglary	Armed Robbery	Armed Larceny	House Breaking**	Poison	Drug Trafficking	Torture	Dismemberment	Arson	Prior Murder	Risk >1	Monetary Value	Judicial Officer	Agent	Law Enforcement	Law or Judicial	2 Murders	Child < 11	Witness	SVP	Total
Patterson, Raymond, Jr.	2/14/1995						x																			1
Patterson, Wardell	10/29/1980						x																			1
Patterson, Wardell	6/20/1983						x																			1
Peterson, Mose, III	8/6/1984						x	x																		2
Pierce, Marcellus, Jr.	12/7/1984	x		x				x																		3
Plath, John	2/9/1979			x																						1
Plath, John	5/14/1982		x	x																						2
Plemmons, Jerry	2/26/1984						x																			1
Plemmons, Jerry	5/8/1987						x																			1
Powers, Ted	2/23/1996					x	x	Ins.																		2
Quattlebaum, Robert Joseph	3/4/1998					x	x	x																		3
Ray, Johnny, Jr.	5/1/1991			x																						1
Ray, Johnny, Jr.	1/20/1994			x																						1
Reed, James Earl	6/9/1996							Ins.														x				1
Reed, Jerry Lee	7/22/1986						x	x																		2
Riddle, Ernest	2/1/1986					x	x																			2
Riddle, Ernest	10/1/1987					x	x																			2
Riddle, Ernest	11/15/1991					x	x																			2
Rivera, Raymondeze	2/18/2010														x											1
Roach, James Terry	12/16/1977	x		x			x																			3
Roberts, Sammy David	1/19/1981			x			x																			2
Roberts, Tyree Alfonso aka: Abdiyyah ben	10/22/2003																			x		x				2
Robertson, James	3/26/1999						x	x				x					x					x				5
Rocheville, David	7/15/1991			x			x												Ins.							2
Rogers, Timothy D.	3/5/1994															x							x			2
Rogers, Timothy D.	12/1/1996																						x			1
Rosemond, Andre	3/30/1996																					x	x			2
Sapp, Jesse Waylon	5/19/2003															x				x						2
Shafer, Wesley	1/21/1998						x																			1
Shaw, Joseph Carl	12/16/1977	x		x			x																			3
Shuler, Calvin	11/12/1998			x			x																			2
Shuler, Charles	3/22/2001					x						x										x				3
Sigmon, Brad Keith	7/21/2002					x						x										x				3
Simmons, Jonathan Dale	6/30/1991					x																				1

APPENDIX D*

South Carolina Death Sentences (Listed by Aggravating Circumstances) 1977-2015

Name	Sentence	Rape/CSC	Assault - Ravish**	Kidnapping	Trafficking in Persons	Burglary	Armed Robbery	Armed Larceny	House Breaking**	Poison	Drug Trafficking	Torture	Dismemberment	Arson	Prior Murder	Risk >1	Monetary Value	Judicial Officer	Agent	Law Enforcement	Law or Judicial	2 Murders	Child < 11	Witness	SVP	Total
Simmons, Kenneth	3/2/1999	x		x		x	x					x														5
Simpson, Keith L.	9/20/199						x										x									2
Sims, Mitchell	5/13/198						x																			1
Singleton, Fred	9/17/198	x				x																				2
Skipper, Ronald DeRay	6/28/198	x																								1
Sloan, Michael A.	10/2/198	x																								1
Smart, Ronald Francis	3/11/198						x	x																		2
Smith, Andrew Lavern	1/17/198						x	x				x														1
Smith, Andrew Lavern	10/31/19						Ins	x				x														2
Smith, Rebecca	12/10/19						x																			1
South, Robert	11/17/19																			x						1
Southerland, Robert	3/9/1992	Ins		x			x																			2
Spann, Sterling Barnett	4/26/198					x																				1
Stanko, Stephen(Georgetown)	8/18/200	x		x			x	x				x														4
Stanko, Stephen (Horry)	11/19/20						x	x																		2
Starnes, Norman	4/25/199						Ins	Ins														x				1
Starnes, Norman	11/17/20						x	x														x				3
Stewart, Richard	3/14/198		x				x	x	x																	4
Stewart, Richard	1/25/198		x				x	x	x																	4
Stokes, Samuel Louis	10/31/19	x		x								x					x		x			Ins				5
Stone, Bobby Wayne	1/28/199					x														x						2
Stone, Bobby Wayne	2/27/200					Ins																				1
Stubbs, Craig Anthony	8/6/1984						x	x																		2
Tench, Christopher Dale	5/8/2000					x	x																			2
Terry, Gary	9/21/199	x				x																				2
Thompson, Albert "Bo"	9/27/198						x																			1
Torrence, Michael	5/28/198					x	x															x				3
Torrence, Michael	9/26/199					x	x															x				3
Torres, Andres Antonio	10/23/20	x		x		x	x										x					x				6
Truesdale, Louis	12/11/19	x		x																						2
Truesdale, Louis	5/17/198	x		x																						2
Truesdale, Louis	9/25/198	x		x																						2
Tucker, James N.(Calhoun)	12/8/199					x	x	x														Ins				3
Tucker, James N.(Sumter)	12/16/19			x		x	x															Ins				3
Tucker, James N.(Calhoun)	7/17/199			x		x	x	x																		4

APPENDIX D*
South Carolina Death Senences
(Listed by Aggravating Circumstances) 1977-2015

Name	Sentence Date	Rape/CSC	Assault - Ravish**	Kidnapping	Trafficking in Persons	Burglary	Armed Robbery	Armed Larceny	House Breaking**	Poison	Drug Trafficking	Torture	Dismemberment	Arson	Prior Murder	Risk >1	Monetary Value	Judicial Officer	Agent	Law Enforcement	Law or Judicial Officer Family	2 Murders	Child < 11	Witness	SVP	Total
Tucker, Richard	10/28/199	x		x		x											x									4
Tyner, Rudolph	8/11/1978						x																			1
Tyner, Rudolph	10/11/198						x																			1
Vasquez, Angel Joe Pierre	10/5/2003			x			x															x				3
Victor, William Keith	10/1/1988			x																						1
Von Dohlen, Herman	5/28/1991						x																			1
Weik, John Edward	5/29/1999					x						x														2
Weldon, Dana	6/15/1986			x			x																			2
West, Floyd	10/21/198						x																			1
Whipple, James	2/18/1994	x					x																			2
Williams, Charles	2/19/2005			x																						1
Williams, George Allen	2/7/1997					x	x																			2
Williams, Luke, III	11/23/199																x					x				2
Wilson, James William	5/9/1989																					x	x			2
Winkler, Louis Michael	2/7/2008					x																		x		2
Wise, Arthur Hastings	2/1/2001					x																x				2
Wood, John Richard	2/16/2002																			x						1
Woods, Anthony	12/8/2006	x				x																				2
Woods, Stanley Eugene	1983						x					x														2
Woomer, Ronald (Horry)	7/20/1979	x		x																						2
Woomer, Ronald (Colleton)	6/7/1981						x	Ins									x									2
Woomer, Ronald (Horry)	7/23/1981	x		x																						2
Yates, Dale Roberts	5/2/1981						x																			1
Young, Kevin Dean	5/22/1989						x																			1
Young, Kevin Dean	6/12/1993						x																			1
Total Per Aggravating		4	3	7	0	4	11	4	9	1	0	3	0	1	1	1	1	1	4	2	0	3	1	1	0	

Total Number of Single Agg. Cases: 83
Average Number of Aggs. Per Case: 2.05

* The information in Appendix D was obtained from the reports completed by the trial judge in all cases in which a death sentence was imposed as required by S.C. Code § 16-3-25(A). *See also State v. Shaw*, 273 S.C. 194, 219–42, 255 S.E.2d 799, 811–28 (1979) (including a template of the report as Appendix B to the opinion). Copies of the sentencing reports are on file with the authors.

** Aggravating circumstances removed from earlier version of the S.C. Code § 16-3-20.

APPENDIX E* **South Carolina Capital Direct Appeal Cases 1977-2015**	
Case Name	**Result**
State v. Gill , 273 S.C. 190, 255 S.E.2d 455 (1979)	Reversed-NT[1]
State v. Shaw , 273 S.C. 194, 255 S.E.2d 799 (1979), *cert denied* , 444 U.S. 957 (1979)[2]	Affirmed[3]
State v. Tyner , 273 S.C. 646, 258 S.E.2d 559 (1979)	Reversed-S[4]
State v. Gilbert , 273 S.C. 690, 258 S.E.2d 890 (1979)[5]	Reversed-S
State v. Goolsby , 275 S.C. 110, 268 S.E.2d 31 (1980), *cert. denied* , 449 U.S. 1037 (1980)	Reversed-S
State v. Woomer , 276 S.C. 258, 277 S.E.2d 696 (1981)	Reversed-S
State v. Linder , 276 S.C. 304, 278 S.E.2d 335 (1981)	Reversed-NT
State v. Hyman , 276 S.C. 559, 281 S.E.2d 209 (1981), *cert. denied* , 459 U.S. 1122 (1982)	Affirmed
State v. Gilbert , 277 S.C. 53, 283 S.E.2d 179 (1981), *cert. denied* , 456 U.S. 984 (1982)[6]	Affirmed
State v. Adams , 277 S.C. 115, 283 S.E.2d 582 (1981)	Reversed-NT
State v. Plath , 277 S.C. 126, 284 S.E.2d 221 (1981)[7]	Reversed-S
State v. Woomer , 277 S.C. 170, 284 S.E.2d 357 (1981)	Reversed-NT
State v. (James) Butler , 277 S.C. 543, 290 S.E.2d 420 (1982)	Reversed-NT
State v. Thompson , 278 S.C. 1, 292 S.E.2d 581 (1982), *cert. denied* , 456 U.S. 938 (1982)	Affirmed
State v. (Wardell) Patterson , 278 S.C. 319, 295 S.E.2d 264 (1982)	Reversed-NT
State v. Truesdale , 278 S.C. 368, 296 S.E.2d 528 (1982)	Reversed-NT
State v. (Horace) Butler , 277 S.C. 452, 290 S.E.2d 1 (1982), *cert denied* , 459 U.S. 932 (1982)	Affirmed
State v. Sloan , 278 S.C. 435, 298 S.E.2d 92 (1982)	Reversed-NT
State v. Woomer , 278 S.C. 468, 299 S.E.2d 317 (1982), *cert. denied* , 463 U.S. 1229 (1983)	Affirmed
State v. Smart , 278 S.C. 515, 299 S.E.2d 686 (1982), *cert. denied* , 460 U.S. 1088 (1983)	Reversed-S
State v. Koon , 278 S.C. 528, 298 S.E.2d 769 (1982)	Reversed-S
State v. Copeland , 278 S.C. 572, 300 S.E.2d 63 (1982), *cert denied* , 460 U.S. 1103 (1983)[8]	Affirmed
State v. Adams , 279 S.C. 228, 306 S.E.2d 208 (1983), *cert. denied* , 464 U.S. 1023 (1983)	Affirmed
State v. Spann , 279 S.C. 399, 308 S.E.2d 518 (1983), *cert. denied* , 466 U.S. 947 (1984)	Affirmed
State v. Elmore , 279 S.C. 417, 308 S.E.2d 781 (1983)	Reversed-NT
State v. Plath , 281 S.C. 1, 313 S.E.2d 619 (1984)[9]	Affirmed
State v. Yates , 280 S.C. 29, 310 S.E.2d 805 (1982), *cert. denied* , 462 U.S. 1124 (1983)	Affirmed
State v. (Stanley) Woods , 282 S.C. 18, 316 S.E.2d 673 (1984)	Reversed-NT
State v. Stewart , 283 S.C. 104, 320 S.E.2d 447 (1984)	Reversed-S
State v. Gaskins , 284 S.C. 105, 326 S.E.2d 132 (1985), *cert. denied* , 471 U.S. 1120 (1985)	Affirmed
State v. Singleton , 284 S.C. 388, 326 S.E.2d 153 (1985), *cert. denied* , 471 U.S. 1111 (1985)	Affirmed

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Case Name	**Result**
State v. Koon **,** 285 S.C. 1, 328 S.E.2d 625 (1985), *cert. denied* , 471 U.S. 1036 (1985)	Affirmed
State v. (Wardell) Patterson **,** 285 S.C. 5, 327 S.E.2d 650 (1984), *cert. denied* , 471 U.S. 1036 (1985)	Affirmed
State v. Truesdale **,** 285 S.C. 13, 328 S.E.2d 53 (1984), *cert. denied* , 471 U.S. 1009 (1985)	Affirmed
State v. Chaffee **,** 285 S.C. 21, 328 S.E.2d 464 (1984), *cert. denied* , 471 U.S. 1009 (1985)[10]	Affirmed
State v. Lucas **,** 285 S.C. 37, 328 S.E.2d 63 (1985), *cert. denied* , 472 U.S. 1012 (1985)	Affirmed
State v. Skipper **,** 285 S.C. 42, 328 S.E.2d 58 (1985), *rev'd,* 476 U.S. 1 (1986)	Affirmed
State v. Norris **,** 285 S.C. 86, 328 S.E.2d 339 (1985)	Reversed-S
State v. Damon **,** 285 S.C. 125, 328 S.E.2d 628 (1985), *cert. denied* , 474 U.S. 865 (1985)	Affirmed
State v. South **,** 285 S.C. 529, 331 S.E.2d 775 (1985), *cert. denied* , 474 U.S. 888 (1985)	Affirmed
State v. Elmore **,** 286 S.C. 70, 332 S.E.2d 762 (1985), *rev'd in part and remanded* , 476 U.S. 1101 (1986) (per curiam)	Affirmed
State v. Plemmons **,** 286 S.C. 78, 332 S.E.2d 765 (1985), *rev'd in part and remanded* , 476 U.S. 1102 (1986) (per curiam)	Affirmed
State v. (Andrew Lavern) Smith **,** 286 S.C. 406, 334 S.E.2d 277 (1985), *cert. denied* , 475 U.S. 1031 (1986)	Affirmed
State v. Drayton **,** 287 S.C. 226, 337 S.E.2d 216 (1985)	Reversed-NT
State v. Peterson **,** 287 S.C. 244, 335 S.E.2d 800 (1985)[11]	Reversed-NT
State v. (Donald) Jones **,** 288 S.C. 1, 340 S.E.2d 782 (1985), *rev'd on other grounds,* 479 U.S. 102 (1986) (per curiam)	Affirmed
State v. Middleton **,** 288 S.C. 21, 339 S.E.2d 692 (1986)	Reversed-NT
State v. Stewart **,** 288 S.C. 232, 361 S.E.2d 789 (1986)	Reversed-S
State v. Patrick **,** 289 S.C. 301, 345 S.E.2d 481 (1986)	Reversed-S
State v. Pierce **,** 289 S.C. 430, 346 S.E.2d 707 (1986)	Reversed-NT
State v. Brown **,** 289 S.C. 581, 347 S.E.2d 882 (1986)	Reversed-NT
State v. Kornahrens **,** 290 S.C. 281, 350 S.E.2d 180 (1986), *cert. denied* , 480 U.S. 940 (1987)	Affirmed
State v. Arthur **,** 290 S.C. 291, 350 S.E.2d 187 (1986)	Reversed-S
State v. (Raymond) Patterson **,** 290 S.C. 523, 351 S.E.2d 853 (1986), *cert. denied* , 482 U.S. 902 (1987)	Reversed-S
State v. Riddle **,** 291 S.C. 232, 353 S.E.2d 138 (1987)	Reversed-S
State v. (Kamathene) Cooper **,** 291 S.C. 332, 353 S.E.2d 441 (1986)	Reversed-NT
State v. Matthews **,** 291 S.C. 339, 353 S.E.2d 444 (1986)	Reversed-S
State v. Hawkins **,** 292 S.C. 418, 357 S.E.2d 10 (1987)	Reversed-NT
State v. Bellamy **,** 293 S.C. 103, 359 S.E.2d 63 (1987)	Reversed-NT
State v. (Alvin) Owens **,** 293 S.C. 161, 359 S.E.2d 275 (1987), *cert. denied* , 484 U.S. 982 (1987)	Affirmed
State v. Atkins **,** 293 S.C. 294, 360 S.E.2d 302 (1987)	Reversed-S
State v. (Richard) Johnson **,** 293 S.C. 321, 360 S.E.2d 317 (1987)	Reversed-NT

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Case Name	**Result**
State v. (Larry) Bell **,** 293 S.C. 391, 360 S.E.2d 706 (1987), *cert. denied* , 484 U.S. 1020 (1988)	Affirmed
State v. Drayton **,** 293 S.C. 417, 361 S.E.2d 329 (1987), *cert. denied* , 484 U.S. 1079 (1988)	Affirmed
State v. Reed **,** 293 S.C. 515, 362 S.E.2d 13 (1987)	Reversed-S
State v. Cockerham **,** 294 S.C. 380, 365 S.E.2d 22 (1988)	Reversed-NT
State v. Middleton **,** 295 S.C. 318, 368 S.E.2d 457 (1988), *cert. denied* , 488 U.S. 872 (1988)	Affirmed
State v. Howard **,** 295 S.C. 462, 369 S.E.2d 132 (1988), *cert denied* , 490 U.S. 1113 (1989)[12]	Reversed-S/Affirmed
State v. Gathers **,** 295 S.C. 476, 369 S.E.2d 140 (1988), *aff'd* , 490 U.S. 805 (1989)	Reversed-S
State v. Plemmons **,** 296 S.C. 76, 370 S.E.2d 871 (1988)	Reversed-S
State v. Brown **,** 296 S.C. 191, 371 S.E.2d 523 (1988)	Reversed-NT
State v. Diddlemeyer **,** 296 S.C. 235, 371 S.E.2d 793 (1988)	Reversed-NT
State v. Matthews **,** 296 S.C. 379, 373 S.E.2d 587 (1988), *cert. denied* , 489 U.S. 1091 (1989)	Affirmed
State v. Arthur **,** 296 S.C. 495, 374 S.E.2d 291 (1988)	Reversed-S
State v. Cain **,** 297 S.C. 497, 377 S.E.2d 556 (1988), *cert. denied* , 497 U.S. 1010 (1990)	Affirmed
State v. (Donald) Jones **,** 298 S.C. 118, 378 S.E.2d 594 (1989), *cert. denied* , 494 U.S. 1060 (1990)	Affirmed
State v. (Andrew Lavern) Smith **,** 298 S.C. 482, 381 S.E.2d 724 (1989), *cert. denied* , 494 U.S. 1060 (1990)	Affirmed
State v. (Raymond) Patterson **,** 299 S.C. 280, 384 S.E.2d 699 (1989), *vacated* , 493 U.S. 1013 (1991)	Affirmed
State v. Elmore **,** 300 S.C. 130, 386 S.E.2d 769 (1989), *cert. denied* , 496 U.S. 931 (1990)	Affirmed
State v. Victor **,** 300 S.C. 220, 387 S.E.2d 248 (1989)	Reversed-NT
State v. Caldwell **,** 300 S.C. 494, 388 S.E.2d 816 (1990)	Reversed-S
State v. Riddle **,** 301 S.C. 68, 389 S.E.2d 665 (1990)	Reversed-S
State v. Truesdale **,** 301 S.C. 347, 393 S.E.2d 168 (1990), *cert. denied* , 498 U.S. 1074 (1990)	Affirmed
State v. Green **,** 301 S.C. 347, 392 S.E.2d 157 (1990), *cert. denied* , 498 U.S. 881 (1990)	Affirmed
State v. (Larry) Bell **,** 302 S.C. 18, 393 S.E.2d 364 (1990), *cert. denied* , 498 U.S. 881 (1990)	Affirmed
State v. (Raymond) Patterson **,** 302 S.C. 384, 396 S.E.2d 366 (1990), *vacated* , 500 U.S. 950 (1991)	Affirmed
State v. Atkins **,** 303 S.C. 214, 399 S.E.2d 760 (1990), *cert. denied* , 501 U.S. 1259 (1991)	Affirmed
State v. Orr **,** 304 304 S.C. 185, 403 S.E.2d 623 (1991)	Reversed-NT
State v. Sims **,** 304 S.C. 409, 405 S.E.2d 377 (1991), *cert. denied* , 502 U.S. 1103 (1992)	Affirmed
State v. (William) Bell **,** 305 S.C. 11, 406 S.E.2d 165 (1991), *cert. denied* , 502 U.S. 1038 (1992)	Affirmed

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Case Name	**Result**
State v. Torrence **,** 305 S.C. 45, 406 S.E.2d 315 (1991)	Reversed-S
State v. Young **,** 305 S.C. 380, 409 S.E.2d 352 (1991)	Reversed-S
State v. Manning **,** 305 S.C. 413, 409 S.E.2d 372 (1991), *cert. denied* , 503 U.S. 914 (1992)	Reversed-NT
State v. (Richard) Johnson **,** 306 S.C. 119, 410 S.E.2d 547 (1991), *cert. denied* , 503 U.S. 993 (1992)	Affirmed
State v. (Wilbert Ray) Davis **,** 306 S.C. 246, 411 S.E.2d 200 (1991)	Reversed-NT
State v. Wilson **,** 306 S.C. 498, 413 S.E.2d 19 (1992), *cert. denied* , 506 U.S. 846 (1992)	Affirmed
State v. (Tommy Lee) Davis **,** 309 S.C. 326, 422 S.E.2d 133 (1992), *cert. denied* , 508 U.S. 915 (1993)	Affirmed
State v. (Rebecca) Smith **,** 309 S.C. 442, 424 S.E.2d 496 (1992)	Reversed-NT
State v. Rocheville **,** 310 S.C. 20, 425 S.E.2d 32 (1993), *cert. denied* , 508 U.S. 978 (1993)	Affirmed
State v. Ray **,** 310 S.C. 431, 427 S.E.2d 171 (1993)	Reversed-S
State v. (Jonathan) Simmons **,** 310 S.C. 439, 427 S.E.2d 175 (1993), *rev'd* , 512 U.S. (1994)	Affirmed
State v. (Gene Tony) Cooper **,** 312 S.C. 90, 439 S.E.2d 276 (1994)	Reversed-NT
State v. Hall **,** 312 S.C. 95, 439 S.E.2d 278 (1994), *cert. denied* , 512 U.S. 1246 (1994)	Affirmed
State v. Elkins **,** 312 S.C. 541, 436 S.E.2d 178 (1993), *cert. denied* , 511 U.S. 1063 (1994)	Affirmed
State v. Charping **,** 313 S.C. 147, 437 S.E.2d 88 (1993)	Reversed-NT
State v. Longworth **,** 313 S.C. 360, 438 S.E.2d 219 (1993), *cert. denied* , 513 U.S. 831 (1994)	Affirmed
State v. Riddle **,** 314 S.C. 1, 443 S.E.2d 557 (1994), *cert. denied* , 513 U.S. 1003 (1994)	Affirmed
State v. Southerland **,** 316 S.C. 377, 447 S.E.2d 862 (1994), *cert. denied* , 513 U.S. 1166 (1995)	Affirmed
State v. Franklin **,** 318 S.C. 47, 456 S.E.2d 357 (1995), *cert. denied* , 516 U.S. 856 (1995)	Affirmed
State v. Young **,** 319 S.C. 33, 459 S.E.2d 84 (1995), *cert. denied* , 516 U.S. 1051 (1996)	Affirmed
State v. Hudgins **,** 319 S.C. 233, 460 S.E.2d 388 (1995), *cert. denied* , 516 U.S. 1096 (1996)	Affirmed
State v. (Richard) Tucker **,** 319 S.C. 425, 462 S.E.2 263 (1995), *cert. denied* , 516 U.S. 1080 (1996)	Affirmed
State v. (James) Tucker **,** 320 S.C. 206, 464 S.E.2d 105 (1995)	Reversed-S
State v. Holmes **,** 320 S.C. 259, 464 S.E.2d 334 (1995), *cert. denied* , 517 U.S. 1248 (1996)	Affirmed
State v. Nance **,** 320 S.C. 501, 466 S.E.2d 349 (1996), *cert. denied* , 518 U.S. 1026	Affirmed
State v. Rogers **,** 320 S.C. 520, 466 S.E.2d 360 (1996)	Reversed-S
State v. (Luke) Williams **,** 321 S.C. 327, 468 S.E.2d 626 (1996), *cert. denied* , 519 U.S. 891 (1996)	Affirmed

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Case Name	**Result**
State v. Van Dohlen **,** 322 S.C. 234, 471 S.E.2d 689 (1996), *cert. denied* , 519 U.S. 972 (1996)	Affirmed
State v. McWee **,** 322 S.C. 387, 472 S.E.2d 235 (1996), *cert. denied* , 519 U.S. 1061 (1997)	Affirmed
State v. Torrence **,** 322 S.C. 475, 473 S.E.2d 703 (1996)	Affirmed
State v. George **,** 323 S.C. 496, 476 S.E.2d 903 (1996), *cert. denied* , 520 U.S. 1123 (1997)	Affirmed
State v. (Raymond) Patterson **,** 324 S.C. 5, 482 S.E.2d 760 (1997), *cert. denied* , 522 U.S. 853 (1997)	Affirmed
State v. Whipple **,** 324 S.C. 43, 476 S.E.2d 260 (1996), *cert. denied* , 519 U.S. 1045 (1996)	Affirmed
State v. (James) Tucker **,** 324 S.C. 43, 478 S.E.2d 260 (1996), *cert. denied* , 520 U.S. 1200 (1997)	Affirmed
State v. Humphries **,** 325 S.C. 28, 479 S.E.2d 57 (1996), *cert. denied* , 520 U.S. 1268 (1997)	Affirmed
State v. Simpson **,** 325 S.C. 37, 479 S.E.2d 57 (1996), *cert. denied* , 520 U.S. 1277 (1997)	Affirmed
State v. Ivey **,** 325 S.C. 137, 481 S.E.2d 125 (1997)	Affirmed
State v. Byram **,** 326 S.C. 107, 485 S.E.2d 360 (1997)	Affirmed
State v. Conyers **,** 326 S.C. 263, 487 S.E.2d 181 (1997)	Affirmed
State v. (Herman) Hughes **,** 328 S.C. 146, 493 S.E.2d 821 (1997), *cert. denied* , 523 U.S. 1097 (1998)	Affirmed
State v. Bennett **,** 328 S.C. 251, 493 S.E.2d 845 (1997)	Reversed-S
State v. Manning, 329 S.C. 1, 495 S.E.2d 191 (1997)	Reversed-NT
Ray v. State **,** 330 S.C. 184, 498 S.E.2d 640 (1998), *cert. denied* , 525 U.S. 905 (1998) (per curiam)	Affirmed
State v. Hicks **,** 330 S.C. 207, 499 S.E.2d 209 (1998), *cert. denied* , 525 U.S. 1022 (1998)	Affirmed
State v. Powers **,** 331 S.C. 37, 501 S.E.2d 116 (1998), *cert. denied* , 525 U.S. 1043 (1998)	Affirmed
State v. (David Clayton) Hill **,** 331 S.C. 94, 501 S.E.2d 122 (1998), *cert. denied* , 525 U.S. 1043 (1998)	Affirmed
State v. Ivey **,** 331 S.C. 118, 502 S.E.2d 92 (1998), *cert. denied* , 1075 U.S. 1075 (1999)	Affirmed
State v. (Theodore) Kelly **,** 331 S.C. 132, 502 S.E.2d 99 (1998), *cert. denied* , 525 U.S. 1077 (1999)	Affirmed
State v. George **,** 331 S.C. 342, 503 S.E.2d 168 (1998), *cert. denied* , 525 U.S. 1149 (1999)	Affirmed
State v. Reed **,** 332 S.C. 35, 503 S.E.2d 747 (1998), *cert. denied* , 525 U.S. 1150 (1999)	Affirmed
State v. Ard **,** 332 S.C. 370, 505 S.E.2d 328 (1998)	Affirmed
State v. Gardner **,** 332 S.C. 389, 505 S.E.2d 338 (1998), *cert. denied* , 526 U.S. 1022 (1999) (per curiam)	Affirmed
State v. Charping **,** 333 S.C. 124, 508 S.E.2d 851 (1998), *cert. denied* , 527 U.S. 1007 (1999)	Affirmed

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Case Name	**Result**
State v. (James) Tucker **,** 334 S.C. 1, 515 S.E.2d 508 (1999), *cert. denied* , 527 U.S. 1042 (1999)	Affirmed
State v. Council **,** 335 S.C. 1, 515 S.E.2d 508 (1999), *cert. denied* , 528 U.S. 803 (1999)	Affirmed
State v. Rosemond **,** 335 S.C. 593, 518 S.E.2d 588 (1999)	Affirmed
State v. Huggins **,** 336 S.C. 200, 519 S.E.2d 574 (1999) (per cuiam), *cert. denied* , 528 U.S. 1172 (2000)	Affirmed
State v. (Mar-Reece) Hughes **,** 336 S.C. 585, 521 S.E.2d 500 (1999), *cert. denied* , 529 U.S. 1025 (2000)	Affirmed
State v. (Roger) Johnson **,** 338 S.C. 114, 525 S.E.2d 519 (2000), *cert. denied* , 531 U.S. 840 (2000)	Affirmed
State v. Rogers **,** 338 S.C. 435, 527 S.E.2d 101 (2000)	Affirmed
State v. Quattlebaum **,** 338 S.C. 441, 527 S.E.2d 105 (2000)	Reversed-NT
State v. Terry **,** 339 S.C. 352, 529 S.E.2d 274 (2000), *cert denied* , 531 U.S. 882 (2000)	Affirmed
State v. Hughey **,** 339 S.C. 439, 529 S.E.2d 524 (2000), *cert. denied* , 531 U.S. 946 (2000)	Affirmed
State v. Shafer **,** 340 S.C. 291, 531 S.E.2d 524 (2000), *rev'd* , 532 U.S. 36 (2001)	Affirmed
State v. Starnes **,** 340 S.C. 312, 531 S.E.2d 907 (2000)	Reversed-NT
State v. Locklair **,** 341 S.C. 352, 535 S.E.2d 420 (2000), *cert. denied* , 531 U.S. 1093 (2000)	Affirmed
State v. McClure **,** 340 S.C. 403, 537 S.E.2d 273 (2000)	Reversed-S
State v. Aleksey **,** 343 S.C. 20, 538 S.E.2d 248 (2000), *cert. denied* , 532 U.S. 1027 (2001)	Affirmed
State v. (William) Kelly **,** 343 S.C. 350, 540 S.E.2d 851 (2001), *rev'd* , 534 U.S. 246 (2002)	Affirmed
State v. (Jeffrey) Jones **,** 343 S.C. 562, 541 S.E.2d 813 (2001)	Reversed-NT
State v. Shuler **,** 344 S.C. 604, 545 S.E.2d 805 (2001), *cert. denied* , 534 U.S. 997 (2001)	Affirmed
State v. Stokes **,** 345 S.C. 368, 548 S.E.2d 202 (2001)	Affirmed
State v. (Freddie) Owens **,** 346 S.C. 637, 552 S.E.2d 745 (2001)	Reversed-S
State v. Burkhart **,** 350 S.C. 252, 565 S.E.2d 298 (2002)	Reversed-NT
State v. Stone **,** 350 S.C. 442, 567 S.E.2d 244 (2002)	Reversed-S
State v. Passaro **,** 350 S.C. 499, 567 S.E.2d 862 (2002)	Affirmed
State v. Weik **,** 356 S.C. 76, 587 S.E.2d 683 (2002), *cert. denied* , 539 U.S. 930 (2003)	Affirmed
State v. Shafer **,** 352 S.C. 191, 573 S.E.2d 796 (2002)[13]	Reversed-S
State v. Shuler **,** 353 S.C. 176 , 577 S.E.2d 438 (2003)	Affirmed
State v. Haselden **,** 353 S.C. 190, 577 S.E.2d 445 (2003)	Reversed-S
State v. Tench **,** 353 S.C. 531, 579 S.E.2d 314 (2003)	Affirmed
State v. (James Nethaniel) Bryant **,** 354 S.C. 390, 581 S.E.2d 157 (2003)	Reversed-NT
State v. Moore **,** 357 S.C. 458, 593 S.E.2d 608 (2004)	Affirmed
State v. Wise **,** 359 S.C. 14, 596 S.E.2d 475 (2004), *cert. denied* , 543 U.S. 948 (2004)	Affirmed

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Case Name	**Result**
State v. (Kenneth) Simmons **,** 360 S.C. 33, 599 S.E.2d 448 (2004), *cert. denied* , 543 U.S. 1124 (2005)	Affirmed
State v. Downs **,** 361 S.C. 141, 604 S.E.2d 377 (2004)	Affirmed
State v. (David Mark) Hill **,** 361 S.C. 297, 604 S.E.2d 696 (2004), *cert. denied* , 544 U.S. 1020 (2005)	Affirmed
State v. Holmes **,** 361 S.C. 333, 605 S.E.2d 19 (2004), *rev'd* , 547 U.S. 319 (2006)	Affirmed
State v. Wood **,** 362 S.C. 135, 607 S.E.2d 57 (2004), *cert. denied* , 545 U.S. 1132 (2005)	Affirmed
State v. (Freddie) Owens **,** 362 S.C. 175, 607 S.E.2d 78 (2004)	Reversed-S
State v. Binney **,** 362 S.C. 353, 608 S.E.2d 418 (2005), *cert. denied* , 546 U.S 852 (2005)	Affirmed
State v. Crisp **,** 362 S.C. 412, 608 S.E.2d 429 (2005)	Reversed-NT
State v. Vazquez **,** 364 S.C. 293, 613 S.E.2d 359 (2005)	Affirmed
State v. Sapp **,** 366 S.C. 283, 621 S.E.2d 883 (2005), *cert. denied* , 547 U.S. 1133 (2006)	Affirmed
State v. Bowman **,** 366 S.C. 485, 623 S.E.2d 378 (2005), *cert. denied* , 547 U.S. 1195 (2006)	Affirmed
State v. Sigmon **,** 366 S.C. 552, 623 S.E.2d 648 (2005), *cert. denied* , 548 U.S. 909 (2006)	Affirmed
State v. Morgan **,** 367 S.C. 615, 626 S.E.2d 888 (2006)	Vacated-*Roper* [14]
State v. Laney **,** 367 S.C. 639, 627 S.E.2d 726 (2006)	Reversed-S
State v. Bennett **,** 369 S.C. 219, 632 S.E.2d 281 (2006), *cert. denied* , 549 U.S. 1061 (2006)	Affirmed
State v. Roberts **,** 369 S.C. 580, 632 S.E.2d 871 (2006), *cert. denied* , 549 U.S. 1279 (2007)	Affirmed
State v. Evans **,** 371 S.C. 27, 637 S.E.2d 313 (2006)	Affirmed
State v. Burkhart **,** 371 S.C. 482, 640 S.E.2d 450 (2007)	Reversed-S
State v. Lindsey **,** 372 S.C. 185, 642 S.E.2d 557 (2007), *cert. denied* , 552 U.S. 917 (2007)	Affirmed
State v. Northcutt **,** 372 S.C. 207, 641 S.E.2d 873 (2007)	Reversed-S
State v. (James Nethaniel) Bryant **,** 372 S.C. 305, 642 S.E.2d 582 (2007), *cert. denied* , 552 U.S. 899 (2007)	Affirmed
State v. Evins **,** 373 S.C. 404, 645 S.E.2d 904 (2007), *cert. denied* , 552 U.S 1046 (2007)	Affirmed
State v. Stone **,** 376 S.C. 32, 655 S.E.2d 487 (2007)	Affirmed
State v. Cottrell **,** 376 S.C. 260, 657 S.E.2d 451 (2008)	Reversed-NT
State v. Stanko **,** 376 S.C. 571, 658 S.E.2d 94 (2008), *cert. denied* , 555 U.S. 785 (2008)	Affirmed
State v. (Freddie) Owens **,** 378 S.C. 636, 664 S.E.2d 80 (2008), *cert. denied* , 555 U.S. 1141 (2009)	Affirmed
State v. Mercer **,** 381 S.C. 149, 672 S.E.2d 556 (2009), *cert. denied* , 558 U.S. 843 (2009)	Affirmed
State v. Woods **,** 382 S.C. 153, 676 S.E.2d 128 (2009)	Affirmed
Mahdi v. State **,** 383 S.C. 135, 678 S.E.2d 807 (2009)	Affirmed
State v. (Jeffrey) Jones **,** 383 S.C. 535, 681 S.E.2d 580 (2009)	Reversed-NT

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Case Name	**Result**
State v. (Quincy) Allen **,** 386 S.C. 93, 687 S.E.2d 21 (2009), *cert. denied* , 560 U.S. 929 (2010)	Affirmed
State v. (Charles Christopher) Williams **,** 386 S.C. 503, 690 S.E.2d 62 (2010), *cert. denied* , 131 S. Ct. 230 (2010)	Affirmed
State v. Flinklea **,** 388 S.C. 379, 697 S.E.2d 543 (2010)	Affirmed
State v. Bixby **,** 388 S.C. 528, 698 S.E.2d 572 (2010), *cert. denied* , 131 S. Ct. 2154 (2011)	Affirmed
State v. Winkler **,** 388 S.C. 574, 698 S.E.2d 596 (2010), *cert. denied* , 131 S. Ct. 2155 (2011)	Affirmed
State v. Starnes **,** 388 S.C. 590, 698 S.E.2d 604 (2010), *cert. denied* , 131 S. Ct. 1504 (2011)	Affirmed
State v. Torres **,** 390 S.C. 618, 703 S.E.2d 226 (2010)	Affirmed
State v. (Stephen) Bryant **,** 390 S.C. 638, 704 S.E.2d 344 (2011)	Affirmed
State v. Justus **,** 392 S.C. 416, 706 S.E.2d 668 (2011), *cert. denied* , 132 S. Ct. 1095 (2012)	Affirmed
State v. Dickerson **,** 395 S.C. 101, 716 S.E.2d 895 (2011), *cert. denied* , 132 S. Ct. 1972 (2012)	Affirmed
State v. Inman **,** 395 S.C. 539, 720 S.E.2d 31 (2011), *cert. denied* , 133 S. Ct. 219 (2012)	Affirmed
State v. Rivera **,** 402 S.C. 225, 741 S.E.2d 694 (2013)	Reversed-NT
State v. Stanko **,** 402 S.C. 252, 741 S.E.2d 708 (2013), *cert. denied* , 134 S. Ct. 247 (2013)	Affirmed
State v. Barnes **,** 407 S.C. 27, 753 S.E.2d 545 (2014)	Reversed-NT

* The information in Appendix E was obtained from the Justice 360, which has systematically maintained a list of all capital cases decided by the South Carolina Supreme Court. It was confirmed by the authors' independent legal research.

[1] "Reversed-NT" means the South Carolina Supreme Court found the error in the guilt-or innocence phase of the proceedings and ordered an entirely new trial.

[2] This affirmed the death sentence of two defendants.

[3] "Affirmed" means the South Carolina Supreme Court found no reversible error in the case.

[4] "Reversed-S" means the South Carolina Supreme Court affirmed the defendant's conviction(s) but vacated the death sentence and ordered a new sentencing proceeding.

[5] This reversed the death sentence of two defendants.

[6] This affirmed the death sentence of two defendants.

[7] This reversed the death sentence of two defendants.

[8] This affirmed the death sentence of two defendants.

[9] This affirmed the death sentence of two defendants.

[10] This affirmed the death sentence of two defendants.

[11] This reversed the death sentence of two defendants.

[12] One of the defendants was affirmed and one was given a new sentencing hearing.

[13] Case decided on remand from the Supreme Court of the United States.

[14] Sentence vacated under *Roper v. Simmons* , 543 U.S. 551 (2005) (prohibiting execution of juveniles).

APPENDIX F*
Types of Error Detected in
South Carolina Death Cases
1977-2014

	Direct Appeal	Cert to SCOTUS	State PCR	Cert to SCOTUS	Federal Habeas	State Habeas	New Trial Motion	Total
Guilt Phase								
Prosecutorial Misconduct	13		2					15
Instructional Error	17			1	1			19
Evidentiary Error	19	1						20
Juror Qualification or	2	2						4
Other	14					1		15
Inadequate Assistance of			7					7
New Evidence							1	1
Penalty Phase								
Prosecutorial Misconduct	16		3					19
Instructional Error	25	3	3			1		32
Evidentiary Error	18	4	9	3				34
Juror Qualification or	3							3
Other	11							11
Inadequate Assistance of			19					19
Proportionality								0

* The information in Appendix F was obtained from the authors' review of the decisions listed in Appendix E, Appendix G, research for decisions reported in Westlaw at other levels of the appellate process, and the authors' tracking of unpublished opinions granting relief.

APPENDIX G* Post-Conviction Relief Reversals in South Carolina Courts 1977-2015
Thompson v. Aiken , 281 S.C. 239, 240, 315 S.E.2d 110, 110 (1984)
Chaffee v. State , 294 S.C. 88, 91, 362 S.E.2d 875, 877 (1987)[1]
Damon v. Aiken , 86-CP-38-211 (S.C. 1st Cir. C.P. June 22, 1987)
Smith v. Aiken , 86-CP-04-995 (S.C. 10th Cir. C.P. June 26, 1987)
Owens v. McKellar , 88-CP-26-605 (S.C. 15th Cir. C.P. Apr. 5, 1988)
Cain v. Evatt , No. 90-CP-13-382 (S.C. 4th Cir. C.P. May 4, 1995)
Whipple v. Moore , No. 97-CP-26-417 (S.C. 15th Cir. C.P. Dec. 10, 1998)
Holmes v. Moore , No. 96-CP-46-966 (S.C. 16th Cir. C.P. Jan. 15, 1998)
Southerland v. State , 337 S.C. 610, 617, 524 S.E.2d 833, 836 (1999)
Hudgins v. Moore , 337 S.C. 333, 339, 524 S.E.2d 105, 108 (1999)
Patterson v. State , No. 98-CP-32-0097 (S.C. 11th Cir. C.P. Sept. 23, 1999)
Ray v. State , (S.C. 7th Cir. C.P. May 30, 2001)
Kelly v. State , No. 99-CP-42-1174 (Oct. 6, 2003)
Hall v. Catoe , 360 S.C. 353, 365, 601 S.E.2d 335, 342 (2004)
Von Dohlen v. State , 360 S.C. 598, 614, 602 S.E.2d 738, 746 (2004)
Charping v. State , No. 99-CP-32-2316 (S.C. 11th Cir. C.P. Sept. 3, 2004);
Huggins v. State , No. 00-CP-26-1446 (S.C. 15th Cir. C.P. July 18, 2005)
Riddle v. Ozmint , 369 S.C. 39, 47-48, 631 S.E.2d 70, 75 (2006)
Simpson v. Moore , 367 S.C. 587, 608, 627 S.E.2d 701, 712 (2006)
Nance v. Ozmint , 367 S.C. 547, 558, 626 S.E.2d 878, 883 (2006)
Locklair v. State , No. 01-CP-42-0272 (S.C. 7th Cir. C.P. Aug. 22, 2006)
Ard v. Catoe , 372 S.C. 318, 336, 642 S.E.2d 590, 599 (2007)
George v. State , No. 99-CP-26-1715 (S.C. 15th Cir. C.P. Jan. 9, 2007)
Rosemond v. Catoe , 383 S.C. 320, 330, 680 S.E.2d 5, 11 (2009)
Council v. State , 380 S.C. 159, 181, 690 S.E.2d 356, 368 (2009)
Sapp v. State , No. 06-CP-08-2204 (S.C. 9th Cir. Aug. 17, 2009)
Vasquez v. State , 388 S.C. 447, 464, 698 S.E.2d 561, 570 (2010)
Rogers v. Ozmint , No. 00-CP-18-575 (S.C. 1st Cir. C.P. Dec. 10, 2010)
Hughey v. State , No. 00-CP-01-0212 (S.C. 8th Cir. C.P. May 14, 2010)
Elmore v. State , No. 05-CP-24-1205 (S.C. 8th Cir. C.P. Feb. 1, 2010)
Evans v. State , No. 06-CP-23-7719 (S.C. 13th Cir. C.P. Aug. 29, 2011)
Mercer v. State , No. 09-CP-32-5465 (S.C. 11th Cir. C.P. June 27, 2011)
Franklin v. Moore , No. 96-CP-45-117 (S.C. 3d Cir. C.P. Jan. 26, 2011)
Binney v. State , No. 2006-CP-11-223 (S.C. 7th Cir. C.P. May 11, 2012)
Weik v. State , 409 S.C. 214, 239, 761 S.E.2d 757, 770 (2014)
Evins v. State , No. 07-CP-42-2849 (S.C. 7th Cir. C.P. June 27, 2014)
William Hicks (reversing conviction pursuant to *Brady*)[2]
Ted Powers (vacating sentence pursuant to *Roper*)[2]
Herman Hughes (vacating sentence pursuant to *Roper*)[2]
Robert Conyers (vacating sentence pursuant to *Roper*)[2]
Tommy Lee Davis (vacating sentence pursuant to *Atkins*)[2]

* The information in Appendix G was obtained from Justice 360, which has systematically maintained a list of all post-conviction capital cases considered in the South Carolina courts. It was confirmed by the authors' independent legal research.

[1] This reversed the sentence of two defendants.

[2] Orders granting relief were not available. The reason for reversal was confirmed with attorneys who formerly represented the individual clients in post-conviction proceedings.

APPENDIX H* Pretrial Death Penalty Case Outcomes 2008-2015				
	Defendant	**County**	**Outcome**	**Year of Disposition**
43	Kelly, Theodore	Spartanburg	Plea to life[1]	2012
44	**Lynch, Kenneth**	**Lexington**	**LWOP[2]**	**2012**
45	McClure, David	Barnwell	LWOP/Plea[1]	2012
46	Nance, Robert	Florence	LWOP[4]	2012
47	**Nelson, Robert**	**Dillon**	**DP**	**2012**
48	**Owens, Shawn**	**Oconee**	**LWOP/Plea**	**2012**
49	**Stewart, Thomas J.**	**Chesterfield**	**DP Withdrawn**	**2012**
50	**Whatley, Julian**	**Richland**	**LWOP/Plea**	**2012**
51	Barker, Montez	Florence	LWOP/Plea	2013
52	Brown-Kelly, Tyler	Berkeley	45 years/Plea	2013
53	**Daise, Earnest Stewart**	**Beaufort**	**LWOP**	**2013**
54	Delaine, Fonnelze Travis	Florence	LWOP/Plea	2013
55	Hall, Joshua Anthony	Laurens	LWOP/Plea	2013
56	Haselden, Jeffrey	Lexington	LWOP/Plea[1]	2013
57	**Patrick, Quentin**	**Sumter**	**DP Not**	**2013**
58	**Rivera, Raymondeze**	**Anderson**	**LWOP/Plea[4]**	**2013**
59	**Rosemond, Andre**	**Spartanburg**	**DP**	**2013**
60	**Vasquez, Angel**	**Horry**	**LWOP[1]**	**2013**
61	**Blackwell, Ricky Lee**	**Spartanburg**	**Death**	**2014**
62	**Cottrell, Luzenski Allen**	**Horry**	**Death[4]**	**2014**
63	**Carter, Stephon**	**Aiken**	**LWOP/Plea[7]**	**2015**
64	Evins, Frederick	Spartanburg	LWOP/Plea[1]	2015
65	Huggins, Titus	Horry	LWOP/Plea[1]	2015
66	**Nickolas Miller**	**Kershaw**	**LWOP/Plea**	**2015**
67	Rogers, Timothy D.	Dorchester	50 Years/Plea[1]	2015
68	**Philips, Jacob**	**Charleston**	**LWOP/Plea[8]**	**2015**
69	**Smith, Cass Franklin**	**Cherokee**	**LWOP/Plea**	**2015**

* The information in Appendix H was obtained from the South Carolina Commission on Indigent Defense Capital Trial Division, which has systematically maintained a list of all potential capital trials since the Division's creation in 2008. Cases in **bold** indicate the Capital Trial Division was appointed to represent the defendant.

[1] Resentencing
[2] Judge sentencing
[3] Prosecutor elected not to seek death in a death eligible case considered by the Trial Division to be a likely capital case
[4] Retrial
[5] Death penalty withdrawn due to intellectual disability
[6] Found incompentent to stand trial
[7] Plea offered and accepted after jury selection