THE
BENCH TRIAL
IN
JUVENILE COURT

Children’s Law Office
University of South Carolina
School of Law
2002
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INTRODUCTION

The purpose of this manual is to provide an overview and outline of very basic trial information. It has been prepared in a 3-ring binder so that as you come across additional materials that are helpful, they can be added to suit your needs.

Although a lot of the materials included are presented from the defense attorney’s perspective, where possible, I have also included information that should be helpful to the prosecutor, as well as the family court judge, with regards to preparation and the trying of a case in juvenile court.

*All S.E.2d cases referred to are South Carolina cases unless otherwise noted.

If you have any suggestions for additions or any questions concerning the materials in this manual, you can contact me at the Children’s Law Office at (803) 576-5575.

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This project was supported by Federal Formula Grant #IJS9807 awarded by the Bureau of Justice Assistance, U. S. Department of Justice through the South Carolina Department of Public Safety. The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: Bureau of Justice Assistance, Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Points of view or opinions contained within this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.
This section reviews the following steps that must be taken by the defense attorney once appointed or hired to represent a child that is going to trial in juvenile court:

1. Obtaining Discovery
2. Interviewing the Client
3. Pre-trial Investigation
4. Finding Experts and Preparing Witnesses
5. Pre-trial Motions & Hearings
6. Examining Potential Defenses
7. Preparing a Trial Notebook
Rule 2(b) SCRFC makes Rule 5 of the South Carolina Rules of Criminal Procedure applicable to juvenile proceedings. Rule 5 provides the basis for obtaining evidence from the solicitor. As soon as an attorney is appointed or hired to represent a juvenile, the attorney should serve the solicitor with a Rule 5 Motion for Discovery.

If the case involves drugs, the attorney should file a Rule 6 Motion for chemical analysis and chain of custody. Rule 2(b) also makes Rule 6 SCRCrimP applicable to family court proceedings. (See Discovery Statutes below)

In Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, (1963) the Court held that suppression by the prosecution of evidence favorable to an accused upon request violates due process where evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of prosecution.

In Gibson v. State, 514 S.E.2d 320, S.C. (1999), the court held that a Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Kyles v. Whitley, 514 U.S. 419, 432-42, 115 S.Ct. 1555, 1565-69, 131 L.Ed.2d 490, 505-10 (1995); Brady, 373 U.S. at 87, 83 S.Ct. at 1196, State v. Von Dolen, 322 S.C. 234, 241,471 S.E.2d 689, 693 (1996). This rule applies to impeachment evidence as well as exculpatory evidence. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 3380, 87 L.Ed.2d 481, 490 (1985); State v. Von Dohlen, supra.

Brady and its progeny place the burden upon the prosecutor to know all the relevant facts of a case in order to decide what information to disclose as exculpatory or impeachment evidence. Kyles v. Whitley, 514 U.S. 419, 436-40, 115 S.Ct. 1555, 1567-68, 131 L.Ed.2d 490, 508 (1995) (prosecutor can establish procedures and regulations to carry the State's burden of disclosure and to ensure communication of all relevant information on each case to every lawyer who deals with it); accord State v. Von Dolen, 322 S.C. at 240,471 S.E.2d at 693 (information known to investigative agencies may be imputable to prosecutor, but prosecutor has no duty to go on fishing expedition to find exculpatory or impeachment evidence).

The juvenile’s attorney may make motions to exclude evidence not timely and properly disclosed by the solicitor to the defense immediately prior to or during the trial.
RULE 5. DISCLOSURE IN CRIMINAL CASES

(a) Disclosure of Evidence by the Prosecution.

(1) Information Subject to Disclosure.

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

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

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

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

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

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

(b) Disclosure of Evidence by the Defendant.

(1) Information Subject to Disclosure.

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

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

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

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

(d) Regulation of Discovery.

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

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

(e) Notice of Alibi.

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

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

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

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

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

(g) **Waiver.** The court may, for good cause shown, waive the requirements of this rule.
RULE 6. RULE FOR CHEMICAL ANALYSIS AND CHAIN OF CUSTODY

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

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

(2) the report is accompanied by an affidavit of the chemist or analyst who performed the test or tests that:

   (A) he or she is certified by SLED as qualified under standards approved by SLED to analyze those substances;
   
   (B) sets forth his or her training and experience as a chemist or analyst, to include the number of times he or she has been qualified as an expert witness and testified in court; and,
   
   (C) he or she conducted the test or tests shown on the report using procedures approved by SLED and that the report accurately reflects his or her opinion regarding the results of those tests.

The defendant or opposing party may object to the introduction of a chemist's or analyst's report at a preliminary hearing, or if no preliminary hearing is held, not later than ten (10) days prior to the trial of the case. If such objection is properly made, the trial judge shall require the chemist or analyst to be present at trial for the purpose of personally testifying.

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

The defendant or his attorney may demand appearance in court of the persons within the chain of custody in the same manner as provided in Section (a).
(c) Disclosure. In a criminal prosecution any reports or papers mentioned in Sections (a) or (b) shall be made available to the defendant or his attorney at the preliminary hearing or if no hearing is held, not later than eleven (11) days prior to the trial of the case.

(d) Waiver of Rights. Nothing in this Rule shall preclude the right of any defendant to obtain an expert chemist or analyst to test a substance in his behalf, provided it is tested under the supervision of the authority having custody of the substance or of SLED. Nothing in this Rule shall preclude the right of any party to introduce any evidence supporting or contradicting reports or papers entered into evidence under this Rule.
Once defense counsel has received the discovery from the solicitor, an attorney-client conference should be set up.

When meeting with a juvenile for the first time, the defense attorney should meet with only the juvenile and not the parents to ensure that confidentiality is protected. This also gives the juvenile an opportunity to be open with regards to what happened, as it may be more difficult for a child to discuss his involvement in front of his parents. Obviously, it will be necessary for the attorney to meet with the juvenile’s parents as well, to gather important information that they may have and to make sure that they have a clear understanding of the court proceedings and issues surrounding their child’s case.

The attorney-client privilege, defined by Black’s Law Dictionary as “the client’s right to refuse to disclose and to prevent any other person from disclosing confidential communications between the client and the attorney,” extends only to the client and not the child’s parent or guardian.

When interviewing the juvenile client, the defense attorney should obtain the following information:

Background Information:
1. Birth date
2. Address of client and parents
3. Telephone numbers (be sure to get phone numbers for a neighbor or relative in case client’s number is disconnected)
4. Names and ages of family members
5. Names of anyone living with defendant, and their relationship to defendant
6. Prior arrests, diversions & adjudications
7. Criminal history of parents and siblings
8. School, grade level, grades, attendance and disciplinary record
9. Extra-curricular activities at school and outside of school
10. Church involvement
11. Current and prior jobs
12. Is the child pregnant or a parent?
13. Does the child have a history of drug or alcohol use?
14. Medical history (including hospital stays, medications, counseling and any diagnoses)
Information regarding the alleged offense:
1. the date, time, and place of the offense
2. conversations between co-defendants prior to the offense
3. the specific details of the incident
4. names, addresses and phone numbers of any potential witnesses
5. defendant’s account of the details surrounding the arrest
6. Were any statements (written or oral) given by the defendant or co-defendants?
7. If so, be sure to find out:
   a. who was present when the statement was made?
   b. did the defendant ever request an attorney?
   c. what were the date, time, and place of the statement?
   d. what was the defendant told regarding the alleged offense?
   e. were any promises made by the officer that took the statement?
8. Did defendant or co-defendants consume any alcohol or drugs immediately prior to or during the incident?
9. What was the defendant (and co-defendants) wearing at the time of the alleged offense?
10. Were any of the following used:
    a. Lineup
    b. Polygraph examination
    c. Breathalyzer
    d. Urine test
    e. Blood test
    f. Saliva test
    g. DNA test
    h. Were fingerprints found or taken from the juvenile?
    i. Were footprints found?

Get a list of potential defense witnesses along with:

1. any nicknames or aliases
2. what they may be able to testify to
3. their addresses
4. phone numbers
Interview Witnesses- The attorney should attempt to interview any witness to the incident or witnesses who can provide an alibi for the Defendant. The same basic format of question for the client may be utilized for interviewing witnesses.

Crime Scene Investigation – The attorney may determine it is essential to personally investigate the crime scene in order to gain a better perspective and understanding of the events that transpired. When conducting a crime scene investigation, the attorney should always have an investigator present who can later testify at trial, if necessary. Furthermore, it may be helpful for the investigator to take photographs of the crime scene to better explain his testimony to the Court. If possible, the investigation should take place close in time to the alleged incident in order to find the area in a similar condition to when the crime allegedly occurred. Vacant lots may be cleaned, buildings torn down, or structures moved which would make for a drastically different environment than what the client or the police recall. Additionally, by investigating the scene close in time to the incident, witnesses or individuals who know either the client, the police officers or even the victim(s) may be present. At a minimum, a better knowledge and understanding of the crime scene will lead to an effective cross-examination of the police officer and potential direct examination of your client.

Evidentiary Test- Depending on the type of case, the attorney may want to use one of the following tests to prepare for trial: polygraph examination, urine tests, blood tests, hair samples, fingerprints, voice samples and/or hand-writing analysis. These examinations may provide information, which is useful in the defense of the client.

Competency/Psychological Evaluations – The lawyer may desire to conduct a competency evaluation or psychological evaluation to determine the nature and extent to which the child is functioning and understands his conduct. Even if a client is competent, a psychological evaluation may give more insight about IQ, self-image, environmental factors or other relevant information, which may be useful at the dispositional stage of a case.

Appointment of a Guardian – It may be necessary to have a guardian appointed for the child, especially in situations where the child’s parent is the victim or is overly antagonistic towards the child, or when the parent is not competent or available.
Subpoenaing Witnesses

- Contact any potential witness you may call to trial and let them know that you will be subpoenaing them if you need them to testify.

- **RULE 13 of the SC Rules of Criminal Procedure**

  **SUBPOENAS**

  (a) **Issuance of Subpoenas.** Upon the request of any party, the clerk of court shall issue subpoenas or subpoenas duces tecum for any person or persons to attend as witnesses in any cause or matter in the General Sessions Court. The subpoena shall state the name of the court, the title of the action, and shall command each person to whom it is directed to attend and give testimony, or otherwise produce documentary evidence at time and place therein specified. The subpoena shall also set forth the name of the party requesting the appearance of such witness and the name of counsel for the party, if any.

  (b) **Service.** A subpoena may be served by the sheriff of any county in which the witness may be found, by his deputy or by any other person who is not a party and is not less than eighteen years of age. Service of a subpoena upon an individual may be made by delivering a copy to him personally, or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service. Service may be made on any day of the week.

Witness Preparation

- When preparing for trial, whether the defense attorney or the prosecutor, it is essential to adequately prepare your witnesses.

- A few things you should review with your witnesses:
  1. Dress appropriately.
  2. The court process and applicable procedures
  3. How to address the judge (“Yes Your Honor” or “Yes Sir”…)
  4. Make eye contact with the judge.
  5. Speak clearly and loudly.
  6. If you don’t know the answer to a question, it’s OK to say “I don’t know.”
  7. If there is an objection, the witness must stop speaking and wait for the judge’s ruling before proceeding.
  8. Only answer what is specifically asked on cross-examination and don’t give long involved responses that “seem like they’re helping” since the witness will probably not know where the opposing counsel is going with the questioning.

- Be sure to meet with your witnesses well in advance so that you can set up additional meetings if necessary.
Always review all the facts surrounding the cases with each witness.

Review all the questions you will ask the witness on direct examination; make sure he or she has a clear understanding of the questions and review the answers the witness will give.

Try to prepare the witness for questions he or she may be asked on cross-examination.

**Competency of witnesses**

It is reversible error for the judge to refuse to determine a witness’ competency after a timely objection is made. In Re Robert M., 362 SE.2d 639 (1987).

**Dealing with the witness who “forgets” on the witness stand**

If you have a witness that freezes on the witness stand and is unable to provide important testimony that they should have knowledge of, you can use one of the following:

1. **Leading Question** (SCRE 611(c))
   - Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness’ testimony.

2. **Recorded Recollection** (SCRE 803(5))
   - A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.
   - To use a recorded recollection, have the witness ID the memorandum and establish that the witness wrote or adopted the memorandum when the matter was fresh in his memory, and that it correctly reflects his knowledge at the time it was recorded.

3. **Writing used to refresh memory** (SCRE 612(1))
   - (1) Have witness identify document
   - (2) Have witness read document
   - (3) Repeat the question you previously asked
   - (4) Ask if the document refreshes his/her memory
   - (5) Have witness answer previous question
   - (6) *Remember that the other side may be entitled to the writing as well.
**Alibi Witness**

Rule 5 (e), SC Rules of Criminal Procedure. Notice of Alibi by Defendant. Upon written request of the prosecution stating the time, date and place at which the alleged offense occurred, the defendant shall serve within ten days, or at such time as the court may direct, upon the prosecution a written notice of his intention to offer an alibi defense. The notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

**Related SC Rules of Evidence**

**RULE 701: OPINION TESTIMONY BY LAY WITNESSES**
If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.

**RULE 702: TESTIMONY BY EXPERTS**
If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

**RULE 703: BASES OF OPINION TESTIMONY BY EXPERTS**
The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

**RULE 704: OPINION ON ULTIMATE ISSUE**
Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

**RULE 705: DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION**
The expert may testify in terms of opinion or inference and give reasons therefore without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.
Pre-trial Motions & Hearings

**Motion for Discovery** (see Discovery section)

**Motion for Continuance**


**Motion for Dismissal for Failure to Prosecute** & **Motion for Speedy Trial**

SCRFC RULE 35(a) - Date for Hearing. The date for the adjudicatory hearing shall be set at the earliest practicable date but no later than 40 days from the filing of the petition unless otherwise delayed by order of the court, which order shall set forth the reasons for the delay. Failure to schedule the adjudicatory hearing within the prescribed 40 day period shall not operate as a ground for dismissal except upon an affirmative showing of material prejudice.

*State v. Chapman*, 344 S.E.2d 611, S.C. (1986) -The Sixth Amendment of the United States Constitution provides that an accused shall enjoy a speedy trial. This constitutional right has been applied to the states, through the Fourteenth Amendment, in *Klopf v North Carolina*, 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967) and recognized by this Court in *Wheeler v. State*, 247 S.C. 393, 147 S.E.2d 627 (1966). This right is also provided in Article 1 § 14 of the South Carolina Constitution. In *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), the United States Supreme Court adopted a four-part balancing test to determine whether a defendant has been denied his right to a speedy trial. That test assessed: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant. 407 U.S. at 530, 92 S.Ct. at 2192, 33 L.Ed.2d at 117. *State v. Tyson*, 283 S.C. 375, 323 S.E.2d 770 (1984), *cert. denied*, 471 U.S. 1006, 105 S.Ct. 1873, 85 L.Ed.2d 165 (1985).

**Motion for Competency Evaluation**

§ 44-23-410 SC Code of Laws: Whenever a judge of the Circuit Court or Family Court has reason to believe that a person on trial before him, charged with the commission of a criminal offense or civil contempt, is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the judge shall: (1) order examination of the person by two examiners designated by the Department of Mental Health if the person is suspected of having a mental illness or designated by the Department of
Disabilities and Special Needs if the person is suspected of being mentally retarded or having a related disability or by both sets of examiners if the person is suspected of having both mental illness and mental retardation or a related disability; the examination must be made within fifteen days after the receipt of the court's order and may be conducted in any suitable place unless otherwise designated by the court; or
(2) order the person committed for examination and observation to an appropriate facility of the Department of Mental Health or the Department of Disabilities and Special Needs for a period not to exceed fifteen days.

Hearing on Fitness to Stand Trial

In State v. Blair, 273 S.E.2d 536, S.C. (1981), the court ordered that when competency is at issue, a hearing is required to determine if the accused is competent to stand trial.

§ 44-23-430. Hearing on fitness to stand trial; order of court.
Upon receiving the report of the designated examiners the court shall set a date for and notify the person and his counsel of a hearing on the issue of his fitness to stand trial. If, in the judgment of the designated examiners or the superintendent of the facility if the person has been detained, the person is in need of hospitalization, the court with criminal jurisdiction over the person may authorize his detention in a suitable facility until the hearing. The person shall be entitled to be present at the hearings and to be represented by counsel. If upon completion of the hearing and consideration of the evidence the court finds that:
(1) The person is fit to stand trial, it shall order the criminal proceedings resumed; or
(2) The person is unfit to stand trial for the reasons set forth in Section 44-23-410 and is unlikely to become fit to stand trial in the foreseeable future, the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to Sections 44-17-510 through 44-17-610 or Section 44-20-450 within sixty days during which time the court shall order him hospitalized; or
(3) The person is unfit to stand trial but likely to become fit in the foreseeable future, the court shall order him hospitalized for an additional sixty days. If the person is found to be unfit at the conclusion of the additional period the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to §§ 44-17-510 through 44-17-610 or Article 1 of Chapter 21 of this title within fourteen days during which time the person shall remain hospitalized.

Motions for Severance of Co-defendants

Motion of Severance of Charges

In City of Greenville v. Chapman, 210 S.C. 157, 41 S.E.2d 865, 867 (1947), the Supreme Court held different misdemeanors can be joined in the same indictment and tried together where they (1) "aris[e] out of a single chain of circumstances," (2) "are proved by the same evidence," (3) "are of the same general nature," and (4) no "real right of the defendant has been jeopardized." In this case the offenses are of the same nature, but they are not misdemeanors, do not arise out of a single chain of circumstances, and are not provable by the same evidence. We hold joinder in this case would be prejudicial. State v. Tate, 334 S.E.2d 289, S.C.App. (1985).

Motion to Elect

State v. Lee, 145 S.E. 285, S.C. (1928) - Proper practice is to require prosecuting officer to elect on which of separate offenses not growing out of same transaction, but charged in same indictment, he will proceed.

Motions in Limine

An issue that might arise in trial may be addressed prior to trial by a motion in limine.

State v. King, 561 S.E.2d 640, S.C.App. (2002) - ("In most cases, '[m]aking a motion in limine to exclude evidence at the beginning of trial does not preserve an issue for review because a motion in limine is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced.' ") (citation omitted); see also State v. Mitchell, 330 S.C. 189, 193 n. 3, 498 S.E.2d 642, 644 n. 3 (1998) ("We have consistently held a ruling in limine is not final, and unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review.").) State v. Floyd, 295 S.C. 518, 521, 369 S.E.2d 842, 843 (1988). In Forrester our Supreme Court noted a defendant's in limine motion to suppress evidence should be renewed at trial to preserve the issue for review, but found the defendant's objection to admission of crack cocaine evidence was preserved in that particular case based on Mueller because the trial court's ruling was obtained immediately prior to the admission of the drug evidence. Id. at 642-43, 541 S.E.2d at 840 (emphasis added).

Motions Directed at the Pleadings

A motion can be made based on lack of adequate notice, which will probably do little more than briefly delay the proceedings.
In re Jason T., 531 S.E.2d 544, S.C.App. (2000) - Due process precludes a family court from exercising subject matter jurisdiction to adjudicate a juvenile delinquent for a charge not alleged in the juvenile petition unless the adjudication is for a lesser included offense or there has been a written waiver of notice; thus, the notice requirement is not satisfied by merely serving notice of a delinquency proceeding without notifying the juvenile and his parents of the charges to be considered at the family court hearing. U.S.C.A. Const.Amend. 14.

Our Supreme Court has held that the fairness and due process requirements that ensure an adult criminal defendant will receive sufficient notice of the charges against him also apply to juvenile matters. In re Corey B., 291 S.C. 108, 109-10, 352 S.E.2d 470 (1987) (holding a juvenile cannot be found guilty of a greater offense than alleged in the petition); see also In re Gault, 387 U.S. 1, 30-33, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967) (holding the due process protections requiring notice of the alleged charges extend to juveniles); In re Arisha K.S., 331 S.C. 288, 293, 501 S.E.2d 128, 131 (Ct.App.1998) ("[A] child in a juvenile proceeding has a right to fundamental due process and thus, our courts must ensure that due process and fair treatment surround a juvenile's plea of guilty.").

Based on the due process protections governing juvenile proceedings and the exemplary procedure employed in courts of general sessions to preserve adults' due process rights, we now hold that a family court lacks subject matter jurisdiction to adjudicate a juvenile delinquent for a charge not alleged in the juvenile petition unless the adjudication is for a lesser included offense or there has been a written waiver of notice. Consequently, the notice requirement is not satisfied by merely serving notice of a delinquency proceeding without notifying the juvenile and his parents of the charges to be considered at the family court hearing. See In re Gault, 387 U.S. at 33, 87 S.Ct. 1428. To hold otherwise would violate a juvenile's due process right to notice. See In re Gault, 387 U.S. at 33, 87 S.Ct. 1428 (holding due process protections extend to juveniles and require a child and his parents or guardian to be notified in writing, and sufficiently in advance of the hearing, of the specific charge or factual allegations to be considered at the hearing); In re Corey B., 291 S.C. at 109-10, 352 S.E.2d at 470.

A motion can also be made as to the adequacy of the charge contained in the petition, which again, will probably only briefly delay the proceedings.

Jackson v. Denno Hearing

Defendant objecting to admission of confession is entitled to fair hearing in which both underlying factual issues and voluntariness of confession are actually and reliably determined.

Motion to Use Closed Circuit Television (See Trial Issues)

Motions Concerning Chemical Analysis and Chain of Custody (See Trial Issues)
**Motion to Suppress Confession**

State v. Creech, 441 S.E.2d 635, S.C.App.(1994) - In Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964), the United States Supreme Court declared it axiomatic that a defendant in a criminal case is entitled to an independent evidentiary hearing to determine the voluntariness of statements made by the defendant prior to the submission of such statements to the jury. Thus, where there is conflicting evidence about a statement, the court must first make a finding as to the validity of the statement. See State v. Silver, 307 S.C. 326, 414 S.E. 2d 813 (1992), aff'd as modified, 314 S.C. 483, 431 S.E.2d 250 (1993); State v. Childs, 299 S.C. 471, 385 S.E.2d 839 (1989).

In making the determination, the trial judge should examine the totality of circumstances surrounding the utterance to determine whether the state has met its burden of proof so as to warrant admission of the confession. Part of the State's burden during this hearing is to prove that the statement was voluntary and taken in compliance with Miranda. State v. Middleton, 288 S.C. 21, 339 S.E.2d 692 (1986).

State v. Ballington, 551 S.E.2d 280, S.C.App. (2001) - The test of the admissibility of a confession is voluntariness. State v. Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 694 (1996) ("A confession is not admissible unless it was voluntarily made."). A determination of voluntariness requires examination of the totality of the circumstances. Id. at 243, 471 S.E.2d at 694-95. To introduce the statement made after a defendant has been advised of his rights, the State must prove by a preponderance of the evidence he voluntarily waived those rights. State v. Reed, 332 S.C. 35, 42, 503 S.E.2d 747, 750 (1998). "Once a voluntary waiver of the Miranda rights is made, that waiver continues until the individual being questioned indicates that he wants to revoke the waiver and remain silent or circumstances exist which establish that his 'will has been overborne and his capacity for self-determination critically impaired.' " State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990) (quoting State v. Moultrie, 273 S.C. 60, 61-62, 254 S.E.2d 294, 294-95 (1979)).

**Motion to Suppress Items Seized during an Illegal Search**

This is generally addressed when the State seeks to introduce the evidence during their case-in-chief.

In Interest of Thomas B.D., 486 S.E.2d 498, S.C.App. (1997) - Generally, a warrantless search is unreasonable per se and such a search violates the Fourth Amendment prohibition against unreasonable searches and seizures. State v. Bulton, 318 S.C. 323, 457 S.E.2d 616 (Ct.App.1995), cert. denied (December 8, 1995). However, a warrantless search will withstand constitutional scrutiny where the search falls within one of several well-recognized exceptions to the warrant requirement. The burden of establishing probable cause and the existence of circumstances constituting an exception to the general prohibition against warrantless searches is upon the prosecution. Id. at 322-33, 457 S.E. 2d at 621. With respect to probable cause, the standard for probable cause to conduct a warrantless search is the same as that for a search with a warrant. Id. at 333, 457 S.E.2d at 621.

**Motion to Suppress Out of Court Identification**

State v. Blassingame, 525 S.E.2d 535, S.C.App. (1999) - A criminal defendant may be deprived of due process of law by an identification procedure that is unnecessarily suggestive and conducive to irreparable mistaken identification.

In Interest of Jamal Rashee A, 418 S.E.2d 326, S.C.App. (1992). - The reliability of an identification depends on the facts of the case and must be determined by considering the totality of the circumstances. State v. Drayton, 293 S.C. 417, 361 S.E.2d 329 (1987). Factors to consider in evaluating the likelihood of misidentification set forth in Neil v. Biggers include: (1) the opportunity of the witness to view the accused; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. Id.

Single person show-ups are disfavored because they are suggestive by their nature. See State v. Moore, 334 S.C. 411, 513 S.E.2d 626 (.Ct.App.1999). It is well established, however, that an identification may be reliable under the totality of the circumstances even when the procedure has been suggestive. See Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972); State v. Gambrell, 274 S.C. 587, 266 S.E.2d 78 (1980); Moore, supra. Suggestiveness alone does not mandate the exclusion of evidence. Patterson, supra.

**Motions for Appointment of Experts**

**Motion to Sequester Witnesses**

Sequestration of the opposing side’s witnesses is always a good idea in order to expose any inconsistencies in their version of events. Be sure to sequester witnesses during any pre-trial motions in which they may be called to testify, as well.

The trial court may order the sequestration of witnesses upon its own motion or by motion of any party. Rule 615, SCRE.

A party is not entitled to have witnesses sequestered as a matter of right. The decision to sequester witnesses is left to the sound discretion of the trial judge. State v. Fulton, 333 S.C. 359, 509 S.E.2d 819, Ct.App. (1998) (allowing the State to recall a reply witness who was present in the courtroom during a portion of the trial).
In order to adjudicate a juvenile delinquent, the prosecutor must prove guilt beyond a reasonable doubt. In some cases, the best way to proceed may be to have the defendant remain silent, not present any witnesses and argue that the prosecutor failed to meet the burden of proof as required by law, relying on the presumption of innocence, upon which our legal system is predicated. In other cases, you may have a strong defense to base your case on and will want to focus on that defense. When preparing for trial, always examine potential defenses to determine if any may be used.

The following is a list of common defenses that should be considered to determine if they have any merit:

1. **SELF-DEFENSE**
   Self-defense is a common defense in cases involving violent crimes such as battery, aggravated assault or murder, where the defendant argues that the act was justified by other person’s threatening actions. In *State v. Davis*, 317 S.E.2d 452 (1984), our Supreme Court listed the following four elements required to establish self-defense:
   1. The defendant must be without fault in bringing on the difficulty.
   2. He must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.
   3. A reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life.
   4. He had no other probable means of avoiding the danger.

   *If the defendant is on his own premises, there is no duty to retreat before acting in self-defense.*

2. **DEFENSE OF OTHERS**
   Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults a friend, relative, or bystander if that friend, relative, or bystander would likewise have the right to take the life of the assailant in self-defense. *State v. Long*, 325 S.C. 59, 480 S.E.2d 62 (1997).

3. **INSANITY**
   Section 17-24-10 of the South Carolina Code of Laws states that:
(A) It is an affirmative defense to a prosecution for a crime that, at the time of the commission of
the act constituting the offense, the defendant, as a result of mental disease or defect, lacked
the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the
particular act charged as morally or legally wrong.

(B) The defendant has the burden of proving the defense of insanity by a preponderance of the
evidence.

(C) Evidence of a mental disease or defect that is manifested only by repeated criminal or other
antisocial conduct is not sufficient to establish the defense of insanity.

(4) **GUILTY BUT MENTALLY ILL (GBMI)**

South Carolina Code §17-24-20 outlines the general requirements for a GBMI verdict:

(A) A defendant is guilty but mentally ill if, at the time of the commission of the act constituting
the offense, he had the capacity to distinguish right from wrong or to recognize his act as
being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he
lacked sufficient capacity to conform his conduct to the requirements of the law.

(B) To return a verdict of “guilty but mentally ill” the burden of proof is upon the State to prove
beyond a reasonable doubt to the trier of fact that the defendant committed the crime, and the
burden of proof is upon the defendant to prove by a preponderance of evidence that when he
committed the crime he was mentally ill as defined in subsection (A).

(C) The verdict of guilty but mentally ill may be rendered only during the phase of a trial which
determines guilt or innocence and is not a form of verdict which may be rendered in the
penalty phase.

(D) A court may not accept a plea of guilty but mentally ill unless, after a hearing, the court makes
a finding upon the record that the defendant proved by a preponderance of evidence that when he
committed the crime he was mentally ill as provided in Section 17-24-20(A).

(5) **ALIBI**

An alibi defense is established by presenting evidence that the defendant was somewhere other
than the crime scene at the time the crime was committed.

(6) **ENTRAPMENT**

Entrapment is defined in Black’s Law dictionary as “A law-enforcement officer’s or government
agent’s inducement of a person to commit a crime, by means of fraud or undue persuasion, in an
attempt to later bring a criminal prosecution against that person…To establish entrapment, the
defendant must show that he or she would not have committed the crime but for the fraud or
undue persuasion.” (This makes it difficult to use this defense when the defendant has prior
adjudications for the same type of offense.)

The affirmative defense of entrapment is available where there is the "conception and planning of
an offense by an officer, and his procurement of its commission by one who would not have
perpetrated it except for trickery, persuasion, or fraud of the officer." State v. Jacobs, 238 S.C.
234, 244, 119 S.E.2d 735, 740 (1961).
One pleading entrapment has the burden of showing that he was induced, tricked or incited to commit a crime, which he would not otherwise have committed. Babb v. State, 240 S.C. 235, 125 S.E. 2d 467 (1962). The fact that a government official "merely affords opportunities or facilities for the commission of the offense does not constitute entrapment." Sherman v. United States, 356 U.S. 369, 78 S.Ct. 819, 821, 2 L.Ed. 2d 848 (1958).

The defense of entrapment is not available to a defendant with a predisposition, independent of government inducement and influence, to commit the crime with which the defendant is presently charged. State v. Johnson, 295 S.C. 215, 367 S.E.2d 700 (1988).

(7) **DURESS & NECESSITY**

To establish duress which will excuse a criminal act, the degree of coercion must be present, imminent, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done; coercion is no defense if there is any reasonable way, other than committing the crime, to escape the threat of harm; the fear of injury must be reasonable. State v. Benjamin, 549 S.E.2d 258 (2001).

Under the law of South Carolina duress is not a defense to the charge of murder. State v. Robinson, 363 S.E.2d 105 (1987).

(8) **ACCIDENT & MENS REA**

A homicide will be excusable on the ground of accident when (1) the killing was unintentional, (2) the defendant was acting lawfully, and (3) due care was exercised in the handling of the weapon. State v. Goodson, 312 S.C. 278, 440 S.E. 2d 370 (1994).

(9) **MERE PRESENCE**

Purpose of mere presence charge in drug case is to inform jury that any inference which is permissibly drawn from presence of defendant at location at which drugs are found is, as a matter of law, insufficient by itself to convict defendant of possession or possession with intent to distribute drugs. State v. Brownlee, 455 S.E.2d 704 (1995). In other words, mere presence without more would not be enough to convict.

(10) **INTOXICATION**

In State v. Hartfield, 388 S.E.2d 802 (1990), the Supreme Court, held that: (1) generally, voluntary intoxication or use of drugs does not constitute defense to crime but insanity caused by use of drugs or intoxication may be defense where insanity is permanent and destroys defendant's ability to know right from wrong, and (2) defendant was entitled to present defense of insanity or attempt to obtain verdict of guilty but mentally ill.
Preparing a Trial Notebook

A well-prepared and organized trial notebook is an essential and valuable tool when trying a case. It will save you time and help you stay organized while both preparing for the trial and throughout the trial proceedings.

Be sure to plan ahead and start putting your notebook together at the onset of the case. Prepare your trial notebook in a loose leaf, three-ring binder to allow for easy insertion, removal and rearrangement of materials.

Organization & Contents
- Begin with a table of contents/index outlining the sections and contents of the notebook.
- Organize the trial notebook into categories, using tabbed headings for quick and easy access.

The following is a list of essential categories, along with the information that should be included with each:

1. **Trial Preparation agenda**, to include:
   - Deadlines
   - To do list

2. **Juvenile Petition and Incident Reports**

3. **Pretrial Motions**

4. **Direct examination** outlines (one for each witness)
   - Include list of questions to ask
   - Leave space to add questions during the trial
   - Cross-reference these outlines to the exhibits you anticipate being addressed with that witness
   - Include your expert’s curriculum vitae

5. **Cross-examination** outlines (one for each witness)
   - Include list of anticipated questions to ask or at least outline key topics and questions you want answered
   - Leave plenty of space to add questions that arise during direct examination
   - Cross-reference these outlines to the exhibits you anticipate being addressed with that witness, or to specific lines of prior statements

6. **Notes for closing argument**
7. **Exhibits** or exhibit list and form for documenting exhibits offered, objected to, and received
   - Include pre-marked exhibits to be offered, unless there are too many, and then you may just want to include a list of the exhibits you will offer.
   - Be sure to cross-reference any exhibits you think will be disputed with key legal arguments for or against those exhibits.

8. Other **anticipated motions and supporting memoranda**

9. Copies of **cases and statutes** you will be arguing to the court, and extra copies for the judge and opposing counsel

10. List of **witnesses with addresses** and telephone numbers as to where they can be reached during the trial.

11. Checklist of issues to be addressed by the Court, including a list of the elements of the crime the juvenile is charged with. It is also a good idea to include a brief overview of the statute or case law in the trial notebook to be certain that counsel has addressed each element during the presentation of the testimony and evidence during the trial of the case.

12. Pertinent correspondence to or from opposing counsel

13. List of things to take to trial to include:
   - SC Code of Law books
   - other law books
   - extra pens
   - extra legal pads
   - tape
   - extra copies of cases or statutes
THE
TRIAL
I. Pre-trial Motions

II. No opening statements. Because the family court judge is both the trier of law and the trier of fact, there are rarely opening statements in juvenile court and the trial typically begins by the State calling their first witness.

III. State’s Testimony
   A. Direct-examination by state
   B. Cross-examination by defense

IV. Motion For Directed Verdict

V. Defense Testimony
   A. Direct-examination by defense
   B. Cross-examination by state

VI. Closing Arguments
   A. State may open and close. The State gets last argument if defense presents evidence.
   B. If defense does not present evidence, defense argues last

VII. Renew Motion for Directed Verdict

VIII. Verdict

IX. Motion for New Trial
   • Argue due to insufficient evidence and renew prior motions

X. Disposition / Sentencing

• **RULE 611 SC Rules of Evidence: Mode and Order of Interrogation and Presentation**
  
  (a) **Control by Court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

  (b) **Scope of Cross-Examination.** A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.

  (c) **Leading Questions.** Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

  (d) **Re-examination and Recall.** A witness may be re-examined as to the same matters to which he testified only in the discretion of the court, but without exception he may be re-examined as to any new matter brought out during cross-examination. After the examination of the witness has been concluded by all the parties to the action, that witness may be recalled only in the discretion of the court. This rule shall not limit the right of any party to recall a witness in rebuttal.
Before trying a case, you obviously want to be familiar with the SC Rules of Evidence, as these rules provide the basis for what evidence is admissible, when it is admissible and how information should be provided to the court.

Judicial Notice. SCRE 201

1. A judicially noticed fact must be one not subject to reasonable dispute in that it is either:
   (1) generally known within the territorial jurisdiction of the trial court or
   (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
2. A court may take judicial notice, whether requested or not.
3. A court shall take judicial notice if requested by a party and supplied with the necessary information.
4. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
5. Judicial notice may be taken at any stage of the proceeding.

Admissibility of certain types of evidence:

1. Prior Convictions: See SCRE 609(a)(1) & (2)
2. Character Evidence: See SCRE 404(a)(1) & (2), and SCRE 608 & 609
3. Defendant’s Prior Drug Use:
   In State v. Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990), the Court held that, where the only function of evidence concerning the defendant's use of illegal drugs "was to demonstrate [defendant's] bad character and social irresponsibility," the admission of such evidence was legal error. 301 S.C. at 60, 389 S.E.2d at 660. See also State v. Bole, 303 S.C. 41, 398 S.E.2d 494 (1990). Further, evidence of drug use is incompetent to establish motive for a crime or the state of mind of the defendant where the record does not support any relationship between the crime and the drug use. Id. (quoted in State v. Smith, 424 S.E.2d 496 (1992))
The following is a list of applicable SC Rules of Evidence. Due to limited space, not all rules have been listed in their entirety. ***Be sure to be especially familiar with the Rules that have been underlined.

RULE 102: PURPOSE AND CONSTRUCTION
RULE 103: RULINGS ON EVIDENCE
(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and
(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
(2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context.
(b) Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.
(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

RULE 104: PRELIMINARY QUESTIONS
RULE 105: LIMITED ADMISSIBILITY
RULE 106: REMAINDER OF OR RELATED WRITINGS OR STATEMENTS
When a writing, or recorded statement, or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

RULE 201: JUDICIAL NOTICE OF ADJUDICATIVE FACTS
RULE 301: PRESUMPTIONS IN GENERAL IN CIVIL ACTIONS AND PROCEEDINGS
RULE 401: DEFINITION OF "RELEVANT EVIDENCE"
"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

RULE 402: RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE
RULE 403: EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME
RULE 404: CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTION; OTHER CRIMES
(a) Character Evidence Generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:
(1) Character of Accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;
(2) Character of Victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;
(3) Character of Witness. Evidence of the character of a witness, as provided in Rules 607, 608, and 609.
(b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to
show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

RULE 405: METHODS OF PROVING CHARACTER
RULE 406: HABIT; ROUTINE PRACTICE
RULE 407: SUBSEQUENT REMEDIAL MEASURES
RULE 408: COMPROMISE AND OFFERS TO COMPROMISE
RULE 409: PAYMENT OF MEDICAL AND SIMILAR EXPENSES
RULE 410: INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS, AND RELATED STATEMENTS

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

1. a plea of guilty which was later withdrawn;
2. a plea of nolo contendere;
3. any statement made in the course of any court proceedings regarding either of the foregoing pleas; or
4. any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

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

RULE 412: ADMISSIBILITY OF EVIDENCE CONCERNING VICTIM'S SEXUAL CONDUCT IN CRIMINAL SEXUAL CONDUCT CASES

In prosecutions for criminal sexual conduct or assault with intent to commit criminal sexual conduct, the admissibility of evidence concerning the victim's sexual conduct is subject to the limitations contained in S.C. Code Ann. § 16-3-659.1 (1985).

RULE 601: COMPETENCY
(a) General Rule. Every person is competent to be a witness except as otherwise provided by statute or these rules.
(b) Disqualification of a Witness. A person is disqualified to be a witness if the court determines that (1) the proposed witness is incapable of expressing himself concerning the matter as to be understood by the judge and jury either directly or through interpretation by one who can understand him, or (2) the proposed witness is incapable of understanding the duty of a witness to tell the truth.

RULE 602: LACK OF PERSONAL KNOWLEDGE
A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness’ own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

RULE 603: OATH OR AFFIRMATION
RULE 604: INTERPRETERS
RULE 605: COMPETENCY OF JUDGE AS WITNESS
The judge presiding at the trial may not testify in that trial as a witness.

RULE 607: WHO MAY IMPEACH
The credibility of a witness may be attacked by any party, including the party calling the witness.

RULE 608: EVIDENCE OF CHARACTER, CONDUCT AND BIAS OF WITNESS
(a) Opinion and Reputation Evidence of Character
(b) Specific Instances of Conduct.
(c) Evidence of Bias.

RULE 609: IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME
(a) General Rule. For the purpose of attacking the credibility of a witness,
1. evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and
2. evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.
For the purposes of this rule, a conviction includes a conviction resulting from a trial or any type of plea, including a plea of nolo contendere or a plea pursuant to U.S. 25 (1970).

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of Pardon, Annulment, or Certificate of Rehabilitation or Other Equivalent Procedure.

(d) Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this rule if conviction of the crime would be admissible to attack the credibility of an adult.

(e) Pendency of Appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

RULE 610: RELIGIOUS BELIEFS OR OPINIONS

RULE 611: MODE AND ORDER OF INTERROGATION AND PRESENTATION

RULE 612: WRITING USED TO REFRESH MEMORY

If a witness uses a writing to refresh memory for the purpose of testifying, either -
(1) while testifying, or
(2) before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

RULE 613: PRIOR STATEMENTS OF WITNESSES

Subject to the provisions of S.C. Code Ann. §§ 19-1-80, 19-1-90 and 19-1-100:
(a) Examining Witness Concerning Prior Statement. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

RULE 614: CALLING AND INTERROGATION OF WITNESSES BY COURT

RULE 615: EXCLUSION OF WITNESSES

RULE 701: OPINION TESTIMONY BY LAY WITNESSES

RULE 702: TESTIMONY BY EXPERTS

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

RULE 703: BASES OF OPINION TESTIMONY BY EXPERTS

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

RULE 704: OPINION ON ULTIMATE ISSUE
Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

RULE 705: DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION
The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

RULE 801: DEFINITIONS
The following definitions apply under this article:
(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.
(b) Declarant. A "declarant" is a person who makes a statement.
(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

RULE 802: HEARSAY RULE
Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute.

RULE 803: HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL
The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
(1) Present Sense Impression.
(2) Excited Utterance
(3) Then Existing Mental, Emotional, or Physical Condition
(4) Statements for Purposes of Medical Diagnosis or Treatment
(5) Recorded Recollection.
(6) Records of Regularly Conducted Activity.
(7) Absence of Entry in Records Kept in Accordance With the Provisions of Subsection (6).
(8) Public Records and Reports.
(9) Records of Vital Statistics.
(10) Absence of Public Record or Entry.
(11) Records of Religious Organizations.
(12) Marriage, Baptismal, and Similar Certificates
(13) Family Records.
(14) Records of Documents Affecting an Interest in Property.
(15) Statements in Documents Affecting an Interest in Property.
(16) Statement in Ancient Documents.
(17) Market Reports, Commercial Publications.
(18) Learned Treatises.
(19) Reputation Concerning Personal or Family History
(20) Reputation Concerning Boundaries or General History.
(21) Reputation as to Character.
(22) Judgment of Previous Conviction.
(23) Judgment as to Personal, Family or General History, or Boundaries

RULE 804: HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE
(a) Definition of Unavailability.
(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(3) Former Testimony
(4) Statement Under Belief of Impending Death.
(5) Statement Against Interest.
(6) Statement of Personal or Family History.

RULE 805: HEARSAY WITHIN HEARSAY
Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

RULE 806: ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT
When a hearsay statement, or a statement defined in Rule 801(d)(2)(C), (D), or (E) has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

RULE 901: REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION
RULE 902: SELF-AUTHENTICATION
RULE 903: SUBSCRIBING WITNESS' TESTIMONY UNNECESSARY
RULE 1003: ADMISSIBILITY OF DUPLICATES
RULE 1004: ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS
RULE 1006: SUMMARIES
RULE 1007: TESTIMONY OR WRITTEN ADMISSION OF PARTY
Cross Examination

When preparing for cross-examination, remember the following:

- Use leading questions that require one-word answers (yes or no). For example: “Is it fair to say that…?” or “So the answer to my question is ‘yes’?” You don’t want to give the witness an opportunity to “explain,” or you have lost control, and you always want to have control when cross-examining a witness.

- Never ask a question on cross to which you don’t already know the answer.

- Be brief and limit cross to the strongest points you want to make. Keep your questions short and plain.

- Be sure to LISTEN to the answers, so you can tailor future questions around those answers.

- If testimony or evidence has been presented that does not hurt your case, leave it alone and don’t cross.

- Although you can never fully prepare for what you are going to ask on cross in advance of the trial, it is beneficial to have an outline of questions you might, depending on the direct, ask each witness. You will add to this during direct.

- Know when to stop.

When cross-examining a witness, you are generally trying to accomplish one of two things. One is to explain or qualify testimony given on direct. The other is to attack the credibility, knowledge, and recollection of the witness by revealing inaccuracies in the testimony given on direct, or by exposing the witness' bias or prejudice toward the other side.

Related Rules of Evidence:

**RULE 607: WHO MAY IMPEACH**

**RULE 608: EVIDENCE OF CHARACTER, CONDUCT AND BIAS OF WITNESS**
(a) Opinion and Reputation Evidence of Character; (b) Specific Instances of Conduct
(c) Evidence of Bias.

**RULE 609: IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME**

Note: The language of subsection (d) of the federal rule, which allows evidence of juvenile adjudications only in criminal cases and does not allow such evidence against the accused, was not used so that the South Carolina rule would conform with state law. Juvenile adjudications are admissible in this state to impeach any witness, including the accused, if the conduct would be criminal if it were committed by an adult. State v.
Mallory, 270 S.C. 519, 242 S.E.2d 693 (1978). It should be noted that S.C. Code Ann. § 20-7-780 (Supp. 1993), which makes juvenile records confidential unless otherwise ordered by the family court, may limit access to records of juvenile adjudications.

**RULE 610: RELIGIOUS BELIEFS OR OPINIONS**

**RULE 612: WRITING USED TO REFRESH MEMORY**

**RULE 613: PRIOR STATEMENTS OF WITNESSES**

(a) Examining Witness Concerning Prior Statement.
(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness.

**Techniques for Impeaching a Witness:**

1. Show that the witness is biased, prejudice, or has an interest
2. Prior bad acts
3. Convictions
4. Inconsistent statements
5. Recall, observe, narrative
6. Contradict using physical evidence
7. Focus on impossibilities and improbabilities
**Possible Verdicts**

I. **Guilty**

If defendant is found guilty, the judge may move into disposition and sentence the defendant, or may order a post-adjudication evaluation and continue the dispositional hearing.

II. **Not Guilty**

III. **Guilty But Mentally Ill (GBMI)**

**SECTION 17-24-20. Guilty but mentally ill; general requirements for verdict**

(A) A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.

(B) To return a verdict of “guilty but mentally ill” the burden of proof is upon the State to prove beyond a reasonable doubt to the trier of fact that the defendant committed the crime, and the burden of proof is upon the defendant to prove by a preponderance of evidence that when he committed the crime he was mentally ill as defined in subsection (A).

(C) The verdict of guilty but mentally ill may be rendered only during the phase of a trial which determines guilt or innocence and is not a form of verdict which may be rendered in the penalty phase.

(D) A court may not accept a plea of guilty but mentally ill unless, after a hearing, the court makes a finding upon the record that the defendant proved by a preponderance of the evidence that when he committed the crime he was mentally ill as provided in Section 17-24-20(A).

IV. **Not Guilty by Reason of Insanity (NGRI)**

**SECTION 17-24-40. Commitment of defendant found not guilty by reason of insanity.**

(A) In the event a verdict of “not guilty by reason of insanity” is returned, the trial judge shall order the defendant committed to the South Carolina State Hospital for a period not to exceed one hundred twenty days. During that time an examination shall be made of the defendant to determine the need for hospitalization of the defendant pursuant to the standards set forth in Section 44-17-580 of the 1976 Code.

(B) A report of the findings shall be made to the chief administrative judge of the circuit in which the trial was held, the solicitor, the defendant, and the defendant’s attorney.

(C)(1) Within fifteen days after receipt of this report by the court, the chief administrative judge of the circuit in which the trial was held shall hold a hearing to decide whether the defendant should be hospitalized pursuant to the standard of Section 44-17-580 of the 1976 Code.

(2)(a) If the chief administrative judge finds the defendant not to be in need of hospitalization, he may order the defendant released upon such terms or conditions, if any, as he shall deem appropriate for the safety of the community and the well-being of the defendant.

(b) In the event the chief administrative judge finds the defendant to be in need of hospitalization, he shall order him committed to the South Carolina State Hospital.

(c) If at a later date it is determined by officials of the State Hospital that the defendant is no longer in need of hospitalization, they shall notify the chief administrative judge, the solicitor, the defendant, and the defendant’s attorney. Within twenty-one days after the receipt of this notice the chief administrative
judge, upon notice to all parties, shall hold a hearing to determine whether the defendant is in need of continued hospitalization pursuant to the standard of Section 44-17-580 of the 1976 Code. If the finding of the court is that the defendant is in need of continued hospitalization, it shall order his continued confinement. If its finding is that the defendant is not in need of continued hospitalization, it may order the defendant released upon such terms and conditions, if any, as the chief administrative judge shall deem appropriate for the safety of the community and the well-being of the defendant.

(D) Any terms and conditions imposed by the chief administrative judge shall be therapeutic in nature, not punitive. Therapeutic terms shall include, but not be limited to, requirements that the defendant:
(1) continue taking medication for an indefinite time and verify in writing the use of medication;
(2) receive periodic examinations and reviews by psychiatric personnel;
(3) report periodically to the probation office for an evaluation of his reaction to his environment and his general welfare.
(E) The chief administrative judge of the circuit in which the trial was held shall at all times have jurisdiction over the defendant for the purposes of this chapter.

SECTION 17-24-50. Length of confinement or supervision of defendant found not guilty by reason of insanity.
In no case shall a defendant found not guilty by reason of insanity be confined or be under supervision longer than the maximum sentence for the crime with which he was charged without full civil commitment proceedings being held.

SECTION 17-24-60. Petition by attorney of defendant found not guilty by reason of insanity.
Two years from the date of commitment the defendant’s attorney may petition the chief administrative judge to be relieved as counsel.

SECTION 17-24-70. Sentencing of defendant found guilty but mentally ill.
If a verdict is returned of “guilty but mentally ill” the defendant must be sentenced by the trial judge as provided by law for a defendant found guilty, however:
(A) If the sentence imposed upon the defendant includes the incarceration of the defendant, the defendant must first be taken to a facility designated by the Department of Corrections for treatment and retained there until in the opinion of the staff at that facility the defendant may safely be moved to the general population of the Department of Corrections to serve the remainder of his sentence.
(B) If the sentence includes a probationary sentence, the judge may impose those conditions and restrictions on the release of the defendant as the judge considers necessary for the safety of the defendant and of the community.

DIRECTED VERDICT & POST-TRIAL MOTIONS
Motion for a Directed Verdict

A Motion for directed verdict should be made by defense counsel following the state’s case-in-chief (after the State has put up all of its witnesses). This motion must be renewed at the end of the trial after all the evidence has been presented, in order to make a motion for a new trial based on the insufficiency of evidence.

When reviewing a court's denial of a motion for a directed verdict, the evidence must be examined in the light most favorable to the State. State v. Myers, 301 S.C. 251, 391 S.E. 2d 551 (1990); In Interest of Bruce O., 429 S.E.2d 858, S.C.App. (1993).

The following language may be used when making this motion:
“Your Honor, at this time, the defendant would move for a Directed Verdict on the grounds that the evidence, when viewed in a light most favorable to the State, fails to prove, beyond a reasonable doubt that the defendant is guilty of …”

A motion for a directed verdict should be denied when there is any evidence, direct or circumstantial, which reasonably tends to prove the guilt of the accused or from which the guilt of the accused may be fairly and logically deduced. State v. Childs, 299 S.C. 471, 385 S.E.2d 839 (1989); In Interest of Bruce O., 429 S.E.2d 858, S.C.App. (1993).

Rule 19 (a) of the SC Rules of Criminal Procedure Grounds for Directed Verdict Motion. On motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment. In ruling on the motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight.

Directed Verdict Motion in Circumstantial Evidence Case:

When the State relies exclusively on circumstantial evidence and a motion for directed verdict is made, the circuit court is concerned with the existence or nonexistence of evidence, not with its weight. The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. State v. Mitchell, 341 S.C. 406,409, 535 S.E. 2d 126, 127 (2000). "The trial judge is required to submit the case to the jury if there is 'any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may fairly and logically be deduced.' " Id. (quoting State v. Edwards, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989).
RULE 29: POST TRIAL MOTIONS (SC Rules of Criminal Procedure)

(a) Generally. Except for motions for new trials based on after-discovered evidence, post trial motions shall be made within ten (10) days after the imposition of the sentence. In cases involving appeals from convictions in magistrate's or municipal court, post trial motions shall be made within ten (10) days after receipt of written notice of entry of the order or judgment disposing of the appeal. The time for appeal for all parties shall be stayed by a timely post trial motion and shall run from the receipt of written notice of entry of the order granting or denying such motion. The time within which to make the motion shall not be affected by the ending of a term of court or departure of the judge from the circuit, and the circuit judge shall retain jurisdiction of the action for the purpose of hearing and disposing of the motion if not heard and disposed of during the term. Except by consent of the parties, argument on the motion shall be heard in the circuit where the trial or hearing was held. The motion may, in the discretion of the court, be determined on briefs filed by the parties without oral argument.

(b) New Trials Based on After-Discovered Evidence. A motion for a new trial based on after-discovered evidence must be made within a reasonable period of time after the discovery of the evidence; provided, however, that a motion for a new trial based on after-discovered evidence may not be made while the case is on appeal unless the appellate court, upon motion, has suspended the appeal and granted leave to make the motion. Leave of the appellate court is not required if no appeal has been taken or if the appeal has been finally decided in the appellate court.
APPELLATE ISSUES AND PROCEDURES
Preserving the Record

Obviously, it is very important to preserve the record for appeal. At the appellate phase, no matter how great your argument is, if it wasn’t preserved, it’s worthless.

- Be sure that you don’t ignore record preservation at the motion stage. Motions in limine provide an excellent means of preserving the record for appeal.
- It is also essential that appropriate and timely objections be made, especially objections regarding the exclusion and admission of evidence.

Appellate Procedure

If you are a public defender and you are appealing a case, you should provide the Office of Appellate Defense with a list of all hearings and trials held in the matter. For each hearing or trial that was held, you should include the following information: the date, county, presiding judge, name of the court reporter, and a brief description of the nature of the hearing or trial. Be sure to get this information to them no later than ten (10) days after the service of notice of appeal.

A juvenile adjudicated delinquent in family court must also serve a notice of appeal within ten days after the sentence is imposed. Rule 203(b)(3), SCACR. In computing time limits under our appellate court rules, the date of the triggering event is not counted. Rule 234(a), SCACR. The last day of the period is counted, however, "unless it is a Saturday, Sunday or a state or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday." Rule 234(a), SCACR. - In re Robert R., 531 S.E.2d 301, S.C.App. (2000)
Relevant SC Rules of Appellate Procedure:

RULE 203: NOTICE OF APPEAL

(a) Notice. A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 233.

(b) Time for Service.

(2) Appeals From the Court of General Sessions. After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment. When a timely post-trial motion is made under Rule 29(a), SCRCrimP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion. In those cases in which the State is allowed to appeal a pre-trial order or ruling, the notice of appeal must be served within ten (10) days of receiving actual notice of the ruling or order; provided, however, that the notice of appeal must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief.

(3) Appeals From the Family Court. A notice of appeal in a domestic relations action shall be served in the same manner provided by Rule 203(b)(1). A notice of appeal in a juvenile action shall be served in the same manner as provided by Rule 203(b)(2).

(d) Filing.

(1) Where to File. The notice of appeal shall be filed with the clerk of the lower court and with the Clerk of the Supreme Court in the following cases:

(A) Any final judgment from the circuit court which includes a sentence of death;

(C) Any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is one of the constitutionality of the law or ordinance; provided, however, in any case where the Supreme Court finds that the constitutional issue raised is not a significant one, the Supreme Court may transfer the case to the Court of Appeals.

In all other cases, the notice of appeal shall be filed with the clerk of the lower court and the Clerk of the Court of Appeals.

(2) When and What to File. The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served. The notice filed with the appellate court shall be accompanied by the following:

(A) Proof of service showing that the notice has been served on all respondents;

(B) A copy of the order(s) and judgment(s) which are to be challenged on appeal if they have been reduced to writing; and
(C) A filing fee as set by order of the Supreme Court; this fee is not required for criminal appeals or appeals by the State of South Carolina or its departments or agencies.

(3) Effect of Failure to Timely File. If the notice is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 231.

(e) Form and Content. The notice of appeal shall be substantially in the form designated in the Appendix to these Rules. It shall contain the following information:

(1) The name of the court, judge, and county from which the appeal is taken.
(2) The docket number of the case in the lower court.
(3) The date of the order, judgment, or sentence from which the appeal is taken; and if appropriate for the determination of the timeliness of the appeal, a statement of when the appealing party received notice of the order or judgment from which the appeal is taken, or, if a cross-appeal, when the respondent received appellant's notice of appeal.
(4) The name of the party taking the appeal.
(5) The names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each.
JUVENILE APPEAL CHECKLIST
(Appeal must be filed within 10 Days of Disposition)

Name of Client: _______________________________________
File Number: _______________________________________
Docket Number: _______________________________________
Conviction Date: _______________________________________

_______ 1. Prepare “Notice Of Appeal”: {Duplicate Original & make 4 Copies}.

_______ 2. Prepare “ Proof Of Service” {Duplicate Original & make 4 Copies}.

_______ 3. File an original of the Notice of Appeal and an original of the Proof of
Service with the Family Court. Have the 4 sets of copies certified as
true copies of the originals filed. (Do This Within 10 Days of Disposition.)
DATE FILED _________.

_______ 4. Serve a certified true copy of the Notice of Appeal and Proof of Service on
opposing counsel on the same date as the filing with the Family Court.
DATE OF SERVICE _______________.

_______ 5. File the originals of the Notice of Appeal and Proof of Service with the
South Carolina Supreme Court by mailing them together with the
transmittal letter. Also include a certified true copy of any dispositional
order issued in the case. {Do this within 10 Days of Service On
Opposing Counsel.} DATE MAILED ________________.

_______ 6. Mail transmittal letter and copies of the following documents to the
Office of Appellate Defense:
   (a) Certified true copies of the Notice of Appeal and Proof of Service
   (b) The Juvenile Petition and all accompanying affidavits, statements, &
       other documents (e.g., discovery, etc.)
   (c) Certified true copies of any and all written exhibits introduced at trial
       and any written motions filed by the defense or prosecution
   (d) Copies of all transmittal letters connected with the Appeal.
   (e) A list of the dates of all hearings and the name(s) of the
       presiding judge(s).
       DATE MAILED ________________.

_______ 7. Mail transmittal letter and copies of all associated documents to client.
ETHICAL ISSUES
RULE 1.6 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
   (1) To prevent the client from committing a criminal act; or
   (2) To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

RULE 3.3 CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:
   (1) Make a false statement of material fact or law to a tribunal;
   (2) Fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
   (3) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
   (4) Offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

COMMENT:
The advocate's task is to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client is qualified by the advocate's duty of candor to the tribunal. However, an advocate does not vouch for the evidence submitted in a cause; the tribunal is responsible for assessing its probative value.
TRIAL ISSUES

In Interest of Christopher W., 329 S.E.2d 769, S.C.App. (1985) - The South Carolina Supreme Court has rejected the position a minor's inculpatory statement obtained in the absence of counsel, parent, or other friendly adult is per se inadmissible. In re Williams, 265 S.C. 295, 217 S.E.2d 719 (1975); see also State v. Smith, 268 S.C. 349, 234 S.E.2d 19 (1977). Instead, the court has adopted a totality of the circumstances test: "While the age of the individual is a factor to be taken into consideration, the admissibility of a statement or confession of a minor depends upon its voluntariness, to be determined from the totality of the circumstances under which it is made." In re Williams, 217 S.E.2d at 722; see also State v. Jennings, 280 S.C. 62, 309 S.E.2d 759 (1983). Other circumstances to be taken into consideration are the minor's "'intelligence, education, experience, and ability to comprehend the meaning and effect of his statement.'" In re Williams, 217 S.E.2d at 722 (quoting People v. Lara, 67 Cal.2d 365, 432 P.2d 202, 62 Cal.Rptr. 586 (1967)). Voluntariness must be proved by a preponderance of the evidence. State v. Smith, 234 S.E.2d at 21.
Circumstantial Evidence

Circumstantial Evidence is defined by Black’s Law Dictionary as “evidence based on inference and not on personal knowledge or observation.”

Rule regarding the use of circumstantial evidence to convict a defendant: Every circumstance relied upon by the State [must] be proven beyond a reasonable doubt; and ... all of the circumstances so proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. State v. Littlejohn, 228 S.C. 324, 328, 89 S.E.2d 924, 926 (1955).

In Interest of Simmons, 255 S.E.2d 848, S.C. (1979), the Family Court judge acted as both judge and jury. The distinction between the test to be applied by a court and that to be applied by a jury in measuring the sufficiency of circumstantial evidence in a criminal case is stated in State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955). The test by which a jury must measure circumstantial evidence is as follows: "(I)t is necessary that every circumstance relied upon by the State be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that they create a probability, though a strong one; and if, assuming them to be true, they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed." Id. 228 S.C. at 328, 89 S.E.2d at 926.

Littlejohn, supra, goes on to state: "But on motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." Id. 228 S.C. 329, 89 S.E.2d at 926.
Constructive Possession may be an issue in cases of possession of illegal substances or weapons.

Constructive possession is defined by Black’s Law Dictionary as “Control or dominion over a property without actual possession or custody of it.”

Conviction of possession requires proof of possession, either actual or constructive, coupled with knowledge of its presence. State v. Hudson, 277 S.C. 200, 284 S.E. 2d 773 (1981). "Actual possession occurs when the drugs are found to be in the actual physical custody of the person charged with possession. To prove constructive possession, the State must show a defendant had dominion and control, or the right to exercise dominion and control.... Constructive possession can be established by circumstantial as well as direct evidence, and possession may be shared." Id. at 202-03, 284 S.E. 2d at 774-75.

Possession requires more than mere presence. The State must show the defendant had dominion or control over the thing allegedly possessed or had the right to exercise dominion or control over it. State v. Ellis, 263 S.C. 12, 23, 207 S.E.2d 408, 413 (1974).

Actual knowledge of the presence of contraband is strong evidence of intent to control its disposition or use. See State v. Goldsmith, 392 S.E.2d 787 (1990).
SCRCrimP RULE 6 (See Discovery Section) - Rule for chemical analysis and chain of custody

State v. Mabe, 412 S.E.2d 386, S.C. (1991). - When a chemist or analyst signs a report of chemical analysis, he certifies that he properly tested the materials delivered to him under SLED procedures, that the procedures are legally reliable, and that the material is or contains the substances stated. Rule 6(a). Reports of chemical analysis are not conclusive, but may be contradicted by other evidence. Rule 6(d). Rule 6(d) ensures that any otherwise existing rights a defendant has to procure independent analysis or to otherwise attack reports of chemical analysis are not abrogated by the presumption of validity accorded reports of chemical analysis prepared in accordance with Rule 6. Rule 6(d) does not create a right to independent chemical analysis for the benefit of a defendant.
Children Testifying via Closed Circuit TV

In re Robert D., 530 S.E.2d 137, S.C.App. (2000) - In determining whether to permit a child to testify via closed circuit television (CCTV) or videotape, the trial judge must first make a case-specific determination of the need for videotaped testimony, considering the testimony of an expert witness, parents or other relatives, other concerned and relevant parties, and the child; second, the court should place the child in as close to a courtroom setting as possible; and, third, the defendant should be able to see and hear the child, should have counsel present both in the courtroom and with him, and communication should be available between counsel and the defendant. Code 1976, § 16-3-1550(E).

South Carolina Code Section 16-3-1550(E) requires circuit and family courts to treat certain witnesses, including the very young and the handicapped, sensitively. S.C.Code Ann. § 16-3-1550(E) (Supp.1999). Our supreme court has held a former version of this statute allows use of videotaped testimony, under certain circumstances, without offending the defendant's confrontation rights. See State v. Cooper, 291 S.C. 351, 353 S.E.2d 451 (1987) (citing S.C.Code Ann. § 16-3-1530(G) (1985)).

In State v. Murrell, our supreme court described the procedure for trial courts to follow in permitting a witness to testify via CCTV or videotape:

(1) the trial judge must make a case-specific determination of the need for videotaped testimony. In making this determination, the trial court should consider the testimony of an expert witness, parents or other relatives, other concerned and relevant parties, and the child.

(2) the court should place the child in as close to a courtroom setting as possible.

(3) the defendant should be able to see and hear the child, should have counsel present both in the courtroom and with him, and communication should be available between counsel and appellant. State v. Murrell, 302 S.C. 77, 80-81, 393 S.E.2d 919, 921 (1990).

(4) The court noted that a trial court's decision to allow testimony via CCTV will only be reversed for abuse of discretion in making the decision or in implementing the appropriate procedure. Id. at 82, 393 S.E.2d at 922.

In 1990, the United States Supreme Court addressed a confrontation clause argument against the use of child testimony via CCTV. Maryland v. Craig, 497 U.S. 836, 110 S.Ct. 3157, 111 L.Ed.2d 666 (1990). The Court ruled that a finding of necessity of such procedures must be made on a case by case basis, and is proper only if (1) the procedure is necessary to protect the welfare of the child witness; (2) the witness would be traumatized, not by the courtroom in general, but by the presence of the accused in particular; and (3) the witness's emotional distress is more than mere nervousness or reluctance to testify. Id.
In considering the effect of Craig on our state guidelines for taped or CCTV testimony, this Court reasoned: Craig did not alter the Murrell analysis but instead further amplified its first prong: a trial court's decision must be based on the case-specific finding that the use of an alternative procedure is necessary to prevent a particular child from the trauma of testifying in the defendant's presence. Only then can a state's compelling interest outweigh a defendant's Constitutional guarantee of the right to confront the witnesses against him. State v Lewis, 324 S.C. 539, 545, 478 S.E.2d 861, 864 (Ct.App.1996).