

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to York County

Honorable Walton J. McLeod, IV, Circuit Court Judge

DAVID JAMES LAMONT BRICE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001527

APPENDIX

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State of South Carolina.,) In the General Sessions
) Court of York
)
) Case No. 2018-GS-46-05384
 County of York.)

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 David James Lamont Brice.,)
)
 Defendant.)
 _____)

July 9th, 2018
 York, South Carolina

B E F O R E:

The Honorable Roger L. Couch, judge.

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WITNESS

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Ct.1	SC DMH Capacity to Stand Trial Eval. Dr. Kzustubh Joshi (1-4-2017)	P.4	P
Ct.2	SC DDNS Competency to Stand Trial Eval. Dr. Alicia Hall (9-3-2017)	P.4	P.

Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's Office.

1 (COURT IN SESSION IN THE MATTER OF STATE VERSUS DAVID
2 LAMONT JAMES BRICE, MONDAY, JULY 9TH, 2018 AT 02:07 P.M.)

3 THE COURT: Thank you very much. You can be seated.

4 (WHEREUPON, COURT'S EXHIBIT NO. 1 AND 2, PREMARKED FOR
5 IDENTIFICATION.)

6 SOLICITOR NEWKIRK: Can we have David Brice from the
7 holding cell, please?

8 (DEFENDANT DAVID BRICE ENTERS COURTROOM.)

9 MADAM CLERK: Can I get you to raise your right hand?

10 (WHEREUPON, DAVID BRICE,
11 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 THE COURT: All right, Solicitor, you may call the
13 case.

14 SOLICITOR NEWKIRK: Thank you, your Honor. At this
15 time the State calls the case of David Lamont Brice. Mr.
16 Brice is present in the courtroom with his appointed
17 attorney Mr. Philip Smith with the Public Defender's Office
18 as well as Ms. Raia Hirsch of the Public Defender's Office
19 on one indictment, No. 2018-GS-46-0-5-3-8-4. That is one
20 count of burglary in the first degree.

21 That Indictment has not been presented to the York
22 County Grand Jury. The offense is a felony that carries
23 not less than fifteen years and up to life imprisonment.
24 It is both violent and most serious.

25 The negotiation in the case, your Honor, is for a cap

1 of 40 years effectively making this a range of 15 to 40
2 years. And Mr. Brice has previously served seven hundred
3 and fifty days of pretrial detention.

4 THE COURT: You said 750?

5 SOLICITOR NEWKIRK: Yes, your Honor, seven hundred and
6 fifty days. There are two preliminary matters regarding
7 Mr. Brice's mental health, and at the appropriate time the
8 State is willing to move forward and handle those on the
9 record.

10 THE COURT: All right. You want me to talk to Mr.
11 Brice briefly. Sir, your name is David Lamont James Brice;
12 is that correct?

13 MR. BRICE: Yes, sir.

14 THE COURT: Mr. Brice, you're before me today, the
15 State has presented an indictment to me. This indictment
16 is for burglary in the first degree. Are you familiar with
17 the charge?

18 MR. BRICE: Yes, sir.

19 THE COURT: Have you gone over the indictment with
20 your attorney?

21 MR. BRICE: Yes, sir.

22 THE COURT: Do I need to go over that indictment with
23 you again?

24 MR. BRICE: No, sir.

25 THE COURT: All right, sir. Now that indictment has

1 not yet been presented to a Grand Jury. You have a
2 constitutional right to have the Grand Jury consider that
3 charge before it comes to this court for either a trial or
4 a plea. Now I cannot take up your case unless either the
5 Grand Jury has acted upon the indictment, or you are
6 willing to waive or give up that step in the proceedings
7 and proceed to a hearing in this court.

8 Now it appears to me that you have initialed the
9 papers that I've received indicating that you do wish to
10 give up presentment to the Grand Jury and proceed directly
11 to this hearing; is that correct?

12 MR. BRICE: Yes, sir.

13 THE COURT: And have you discussed that right with
14 your attorney?

15 MR. BRICE: Yes, sir.

16 THE COURT: And you understand that by doing that
17 you're giving up a constitutional right that you have?

18 MR. BRICE: Yes, sir.

19 THE COURT: All right. Now, Mr. Brice, normally I
20 would ask you at this point in time about your physical and
21 mental condition of your ability to handle this plea. It's
22 my understanding that you have been evaluated in connection
23 with this matter on other occasions as well as today.

24 At this point in time I'm going to call on the
25 Solicitor to go over with me the reports that have been

1 received and when he finishes I'm going to return back to
2 you and discuss this with you a little further. So do you
3 understand what I'm doing now?

4 MR. BRICE: Yes, sir.

5 THE COURT: All right, Mr. Solicitor, if you would
6 please go over those matters.

7 SOLICITOR NEWKIRK: Yes, sir, I will. Your Honor, may
8 I approach the bench?

9 THE COURT: You certainly may.

10 SOLICITOR NEWKIRK: I'm handing up to the Court what's
11 been marked as Court's Exhibit No. 1 and No. 2.

12 THE COURT: All right.

13 SOLICITOR NEWKIRK: I have - copies of these have been
14 provided to the defense. Court's Exhibit No. 1 --

15 THE COURT: Now let's see, Mr. Smith, you've had an
16 opportunity to see these documents?

17 MR. SMITH: I have, your Honor.

18 THE COURT: You have no objection to my reviewing them
19 I assume?

20 MR. SMITH: No objection, your Honor.

21 THE COURT: All right. Yes, sir, go ahead.

22 SOLICITOR NEWKIRK: Thank you, your Honor. Court's
23 Exhibit No. 1 is a Criminal Responsibility Compactly to
24 Conform Evaluation that was conducted by Doctor Joshi of
25 the South Carolina Department of Mental Health. Doctor

1 Joshi is present in the courtroom at the request of the
2 State. This evaluation was ordered by the Honorable Dan
3 Hall and Doctor Joshi conducted that evaluation and
4 provided that report which is State's Exhibit -- Court's
5 Exhibit No. 1.

6 During the course of his evaluation Doctor Joshi found
7 that Mr. Brice would have been criminally responsible for
8 the crime in which he is now pleading guilty to that
9 occurred on June the 20th of 2016. Additionally Doctor
10 Joshi found that Mr. Brice would have had the capacity to
11 conform his behavior to the requirements of the law when
12 this event occurred on June the 20th of 2016.

13 That is State's Exhibit 1, sorry, Court's Exhibit 1.

14 Doctor Joshi is present and did evaluate the Defendant
15 this morning. I have spoken with Doctor Joshi, it is his
16 opinion that Mr. Brice still is -- had the capacity to
17 conform at the time of this incident and the criminal
18 responsibility he would still have been criminally
19 responsible. There have been no change in his findings.

20 If necessary he is present and the Court could hear
21 him if required to do so.

22 THE COURT: Mr. Smith, is that your understanding of
23 that evaluation as well?

24 MR. SMITH: Yes, it is, your Honor.

25 THE COURT: And do you wish for the Court to take any

1 testimony from that doctor at this time?

2 MR. SMITH: We do not, your Honor.

3 THE COURT: Okay. So you agree that his opinion has
4 not changed?

5 MR. SMITH: Yes, your Honor.

6 THE COURT: All right. We'll move on to the second
7 one then.

8 SOLICITOR NEWKIRK: Thank you, your Honor. The second
9 evaluation was conducted by Doctor Alicia Hall. That was
10 an evaluation of competency to stand trial. She works for
11 the Department of Disabilities and Special Needs. The
12 Honorable John Hayes ordered that evaluation; conducted it
13 in an accordance with his order; she did in fact conduct
14 that evaluation and provided both myself and the defense a
15 copy of her report.

16 That report is now in the hands of your Honor and is
17 listed as Court's Exhibit No. 2. During the course of her
18 evaluation she found that the defendant is competent to
19 stand trial. And I have spoken with her. She also
20 evaluated the defendant today Mr. Brice. I ask her if
21 there has been any change in her determination from when
22 she initially did the evaluation and she indicated to me
23 that there has not been any change in her determination and
24 that the report is still accurate.

25 Again just for the court's record, she is present and

1 if need be will testify to that effect.

2 THE COURT: Mr. Smith, have you also reviewed that
3 second opinion by Doctor Hall?

4 MR. SMITH: Yes, I have, your Honor.

5 THE COURT: And are you in agreement that the
6 Solicitor has correctly related to me the situation?

7 MR. SMITH: Yes, I am, your Honor.

8 THE COURT: Do you see any need for us to take
9 testimony from her at this point in time?

10 MR. SMITH: No, sir.

11 THE COURT: And you agree her opinion has not changed
12 since her prior written statement?

13 MR. SMITH: Yes, I do, your Honor.

14 THE COURT: Is there any objection from the Defense to
15 having these two Court's Exhibits being made exhibits for
16 the hearing?

17 MR. SMITH: No objection, your Honor.

18 THE COURT: All right. Then Exhibit 1 and 2 will be
19 entered into the record and made exhibits for the hearing.

20 (WHEREUPON, COURT'S EXHIBIT NO. 1 AND 2, IDENTIFIED
21 AND MARKED, RECEIVED INTO EVIDENCE.)

22 THE COURT: Anything further concerning -- currently
23 concerning his mental capacities at this time?

24 SOLICITOR NEWKIRK: No, your Honor, nothing concerning
25 his mental capacity.

1 THE COURT: All right. Let me return to you, Mr.
2 Brice. You were present in the courtroom, you heard me
3 discuss with the Solicitor and your attorney the reports
4 that have been rendered by the doctor's concerning your
5 mental capacity both at the time of the incident and your
6 mental capacity concerning your ability to stand trial.

7 Were you present for that?

8 MR. BRICE: Yes, sir.

9 THE COURT: And did you understand what was said?

10 MR. BRICE: Yes, sir.

11 THE COURT: Now, Mr. Brice, at this point in time are
12 you able to handle your plea today?

13 MR. BRICE: Yes, sir.

14 THE COURT: Are you able to make good decisions today?

15 MR. BRICE: Yes, sir.

16 THE COURT: Have you taken or used any drugs or any
17 medications that would affect your abilities to reason or
18 to make good decisions today?

19 MR. BRICE: No, sir.

20 THE COURT: So I take it then that you are ready to go
21 forward with this hearing and my understanding a plea in
22 this matter; is that correct?

23 MR. BRICE: Yes, sir.

24 THE COURT: And, Counselor, do you agree that given
25 your discussions with Mr. Brice that he is capable of

1 handling this plea today and making reasonable and rational
2 decisions concerning this matter?

3 MR. SMITH: Yes, I believe he is, your Honor.

4 THE COURT: All right. Okay, the reports will be made
5 exhibits and part of the record.

6 Now, Mr. Brice, I do note that there is a negotiated
7 sentence that has been proposed to the Court. My
8 understanding that is that there is a cap, I think you said
9 of 40 years on the sentence; ---

10 SOLICITOR NEWKIRK: That's correct, your Honor.

11 THE COURT: --- is that right? I hope that you are
12 aware that this charge is the charge of burglary in the
13 first degree. It carries a possible sentence of 15 years
14 up to life. That means there is a minimum of 15 years with
15 maximum sentence would be life. However given the
16 negotiations in this matter the parties, you and the State,
17 have agreed to limit the possible maximum sentence to 40
18 years. Is that your understanding of the negotiations?

19 MR. BRICE: Yes, sir.

20 THE COURT: Now I will tell you that in the case of a
21 negotiated plea that I was not a party to those discussions
22 and have not been a party to the negotiations. I certainly
23 am going to hear your plea. I will tell you that I
24 generally accept the recommendations but I'm not required
25 to do so. So if I decide that I cannot accept the

1 negotiations I will tell you at this time that I would
2 advise you of that fact should I reach that decision and at
3 that point in time I would give you an opportunity to
4 withdraw your plea if I were to take that position.

5 So do you understand how I'm going to handle the plea?

6 MR. BRICE: Yes, sir.

7 THE COURT: And is that how you expected me to handle
8 this plea?

9 MR. BRICE: Yes, sir.

10 THE COURT: All right. I note that you are here with
11 your attorney today, Mr. Smith, and I believe there is
12 another attorney participating in the matter; is that
13 correct?

14 MR. BRICE: Yes, sir.

15 THE COURT: And have you had a chance to discuss this
16 with both of your lawyers in this matter?

17 MR. BRICE: Yes, sir.

18 THE COURT: And, ma'am, I'll get you to put your
19 name on the record just so that we have that.

20 MS. HIRSCH: Yes, your Honor. Raia Hirsch York County
21 Public Defender's Office.

22 THE COURT: Okay. Thank you very much.

23 Now have you had an opportunity I said to discuss this
24 with both lawyers?

25 MR. BRICE: Yes, sir.

1 THE COURT: And have they answered your questions?

2 MR. BRICE: Yes, sir.

3 THE COURT: Is there anything else that you feel that
4 you need to discuss with them before we go forward in your
5 case?

6 MR. BRICE: No, sir.

7 THE COURT: Is there anything else you want them to do
8 for you before we proceed in your case?

9 MR. BRICE: No, sir.

10 THE COURT: Are you satisfied with your legal
11 representation thus far?

12 MR. BRICE: Yes, sir.

13 THE COURT: All right. I do need to advise you that
14 this particular event is both violent and serious as far as
15 the law is concerned. It qualifies for what is commonly
16 known as a strike. In my pretrial discussions with your
17 lawyer and with the state's lawyer in conference it's been
18 indicated to me that in this case you are aware of the fact
19 that the state at one time was seeking a mandatory life
20 sentence. Are you aware of that?

21 MR. BRICE: Yes, sir.

22 THE COURT: And I will tell you that given the
23 classification of this crime if you in the future you were
24 ever convicted of other similarly classified crimes such as
25 violent, serious, or most serious, your plea in this case,

1 along with other convictions you have, could be used to
2 make the sentences more severe, and it could be a sentence
3 of up to life without parole. Do you understand that?

4 MR. BRICE: Yes, sir.

5 THE COURT: All right. Now as to the charges of
6 burglary in the first degree, how are you pleading?

7 MR. BRICE: Guilty.

8 THE COURT: And, Counselor, I'm sure you've discussed
9 this matter thoroughly with Mr. Brice; am I correct?

10 MR. SMITH: You are correct, your Honor.

11 THE COURT: And Co-counsel has discussed it with him
12 as well; is that right?

13 MR. SMITH: That is correct, your Honor.

14 THE COURT: And I'm sure you've gone over with him the
15 plea negotiations in this matter. Have you delivered to
16 him all of the negotiations that have gone on?

17 MR. SMITH: Yes, I have, your Honor.

18 THE COURT: Now given your knowledge of his case, the
19 discovery that you've received, your discussions with him
20 concerning the statutes involved; the plea negotiations,
21 possible sentences, any defenses he may have had to the
22 charges, do you feel that his decision to enter the plea do
23 you agree with that decision at this time?

24 MR. SMITH: Yes I do, your Honor.

25 THE COURT: And, Co-counsel, do you also agree with

1 his decision to enter this plea?

2 MS. HIRSCH: I do, your Honor.

3 THE COURT: All right. Now, and Counsel, do you also
4 agree that he has been able to meaningfully participate in
5 the discussions you've had as well as these negotiations?

6 MR. SMITH: Yes, I do, your Honor.

7 THE COURT: All right. Now, Mr. Brice, my information
8 is that you are 43-years old. Is that information
9 accurate?

10 MR. BRICE: Yes, sir.

11 THE COURT: And how far did you go with your
12 education?

13 MR. BRICE: Tenth grade.

14 THE COURT: And are you currently married?

15 MR. BRICE: Single.

16 THE COURT: I'm sorry?

17 MR. BRICE: Single.

18 THE COURT: Single. Okay. And have you ever served
19 in the military?

20 MR. BRICE: No, sir.

21 THE COURT: Now I know you're incarcerated at the
22 present time and have been for a substantial length of
23 time, but prior to that time were you employed before you
24 were arrested?

25 MR. BRICE: No, sir. I was on disability.

1 THE COURT: You were on a disability. Okay. Now has
2 anyone in any way, Mr. Brice, made an effort to try to
3 force you or make you enter the plea? So has anyone
4 threatened you, put pressure on you, tried to intimidate
5 you, done anything of that nature in an effort to get you
6 to plead in this case?

7 MR. BRICE: No, sir.

8 THE COURT: The decision that you've made to enter the
9 plea has it been of your own free will?

10 MR. BRICE: Yes, sir.

11 THE COURT: Have you had an opportunity to fully
12 discuss that decision both with your attorneys and any
13 family members you would like to discuss it with?

14 MR. BRICE: Yes, sir.

15 THE COURT: Has anyone made any promises, guarantees
16 or assurances to you about such things as pardon, parole,
17 probation, early release, length of sentence, other than
18 the negotiated sentence that's gone on in this case?

19 MR. BRICE: No, sir.

20 THE COURT: And you do understand that whatever
21 sentence I give you there will be a limitation being placed
22 on your ability to be paroled for that? Do you understand
23 the law places a limitation on parole eligibility?

24 MR. BRICE: Yes, sir.

25 THE COURT: And your lawyers have discussed that with

1 you as well?

2 MR. BRICE: Yes, sir.

3 THE COURT: And what did you tell him regard to that,
4 Counsel?

5 MR. SMITH: Your Honor, I did not tell him when he
6 would be able to be released. I just told him that
7 whatever number your Honor gives there may be an
8 opportunity that he would serve less than that but I cannot
9 calculate. That would be up to the Department of
10 Corrections.

11 THE COURT: Okay. And that's the way it is and of
12 course the law might change concerning that as time goes
13 on, so, no one can predict exactly how that might go.

14 But you understand there would be limitations on your
15 parole eligibility?

16 MR. BRICE: Yes, sir.

17 THE COURT: All right. Now, has anyone offered you
18 anything of value to get you to plead in this matter?

19 MR. BRICE: No, sir.

20 THE COURT: When you offer a guilty plea you give up
21 Constitutional rights if I accept the plea, and I have to
22 be sure that you have an understanding of those rights
23 before I can accept your plea. So I'm going to go over the
24 rights with you now and if at any time during my discussion
25 you feel the need to ask a question I'll be glad to

1 entertain the question, or, I'll give you a chance to
2 consult with your lawyers about these rights if you feel
3 the need to do so as we go along. So do you understadn
4 what I'm doing now?

5 MR. BRICE: Yes, sir.

6 THE COURT: All right. We've talked about a couple of
7 your rights already. That's the right to have the case
8 presented to a Grand Jury and you told me you were waiving
9 that right. I assume that's still the case; is that right?

10 MR. BRICE: Yes, sir.

11 THE COURT: And you have a right to have legal counsel
12 and you have two attorneys with you today and they are
13 representing you still actively. And you said you were
14 satisfied with your legal representation, so I assume
15 that's still the case as well?

16 MR. BRICE: Yes, sir.

17 THE COURT: Now you have the right to have your case
18 presented to a jury during a trial. And of course I think
19 we're prepared to go forward with that trial this week if
20 you feel that you would like to do that. Now at a jury
21 trial under the law you would be presumed to be innocent.
22 That presumption would continue until such time as the
23 State proved your guilt. Now for the State to prove your
24 guilt they would have to prove the elements of the crime
25 involved, that is burglary in the first degree, to the jury

1 by proof beyond a reasonable doubt.

2 You would not be required to prove anything to a jury
3 during a trial because you are presumed to be innocent so
4 you're not required to even testify or speak at the trial
5 if you chose not to do so. Do you understand that that's
6 the case?

7 MR. BRICE: Yes, sir.

8 THE COURT: And of course I'm sure your lawyers have
9 gone over with you what the State would have to prove in
10 order for you to be found guilty of burglary in the first
11 degree. Have they discussed that with you?

12 MR. BRICE: Yes, sir.

13 THE COURT: And of course what it involves is of
14 course a illegal entry into a dwelling for the purpose of
15 committing a crime therein. The person - they must prove
16 that you intended to commit a crime at the time of your
17 entry and that that intent can be shown by certain acts.
18 And it also has to be shown some of the elements are that
19 when entering the dwelling you were armed with a weapon,
20 or that while entering the dwelling you caused physical
21 injury to someone, or that when entering the dwelling you
22 threatened someone with a dangerous object, or that you
23 entered the dwelling when you displayed what appeared to be
24 a knife, pistol, or other weapon. And of course there can
25 also be if you have two or more convictions for a burglary

1 and prior and of course it has to be done in the nighttime.

2 So are you aware of those elements for the crime?

3 MR. BRICE: Yes, sir.

4 THE COURT: And so they've discussed that with you?

5 MR. BRICE: Yes, sir.

6 THE COURT: And those are the things the State would
7 have to prove beyond a reasonable doubt.

8 Now at the trial you'd also have a Constitutional
9 right if you felt there were witnesses that were important
10 to your case to have those witnesses subpoenaed to court
11 for their attendance. You'd have the right to question or
12 confront anyone who might testify during the trial. You'd
13 had the right of course to present defenses if you chose to
14 present defenses. And you'd have the opportunity at a
15 trial to try to suppress any evidence the State may have
16 against you including any statements you might have
17 previously made. So do you understand those Constitutional
18 rights I just went over?

19 MR. BRICE: Yes, sir.

20 THE COURT: Any questions about them?

21 MR. BRICE: No, sir.

22 THE COURT: You understand that if I accept your plea
23 you give up those Constitutional rights? Do you understand
24 that?

25 MR. BRICE: Yes, sir.

1 THE COURT: And of course a trial will not be
2 conducted if you enter the plea. You understand that?

3 MR. BRICE: Yes, sir.

4 THE COURT: All right. Now, sir, I'm gonna ask the
5 Solicitor at this time to go over with me the facts of your
6 case. I want you to listen to what he tells me. I'll ask
7 you about what he's told me once he's finished going over
8 those facts.

9 Mr. Solicitor.

10 SOLICITOR NEWKIRK: Thank you, your Honor. On June
11 the 20th of 2016, in the early hours of the morning
12 officers responded to [REDACTED] Holly Dale Drive which is in
13 Rock Hill in York County, South Carolina in response to a
14 burglary.

15 Upon arrival officers spoke with the victim in this
16 case Ms. Blondell Boozer and told them that an ex-
17 boyfriend, the defendant David Brice, had broke the rear
18 window of her home and he had entered her home and he had
19 threatened her with a knife.

20 She then fled the scene and while he was in the home
21 he damaged some property that belonged to her including
22 throwing food out of her refrigerator damaging personal
23 effects and smashing a cell phone that belonged to her.

24 Officers attempted to locate the defendant but were
25 unable to do so on scene. Officers did make contact with

1 him where it appeared that he was suicidal. They were able
2 to track him using a cell phone ping and he was taken into
3 custody and taken to Piedmont Medical Center for care.

4 At the conclusion of his medical care he was
5 interviewed by the detective in this case Detective Smith
6 and Mr. Brice did give a statement to officers indicated
7 that he had in fact entered the home and had gotten into an
8 altercation with the victim.

9 Those would be the substantive facts, your Honor,
10 however at the appropriate time the State would like to be
11 heard on sentencing.

12 THE COURT: I see. Mr. Brice, did you hear what the
13 solicitor just told me about what happened?

14 MR. BRICE: Yes, sir.

15 THE COURT: Did you understand what he just told me?

16 MR. BRICE: Yes, sir.

17 THE COURT: Now is that information true?

18 MR. BRICE: Not all of it, sir.

19 THE COURT: Well tell me what you disagree with.

20 MR. BRICE: I disagree when he stated the knife part.

21 THE COURT: The what? The knife part?

22 MR. BRICE: The knife part.

23 THE COURT: Okay. What else do you disagree with?

24 MR. BRICE: I did went inside the house. That's about
25 it.

1 THE COURT: All right. Now what aggravating factors
2 are you relying on in your case?

3 SOLICITOR NEWKIRK: That the defendant did have what
4 appeared to be a knife or did have a knife and that the
5 burglary did occur in the night time.

6 THE COURT: I see. You agree that the event occurred
7 in the night time?

8 MR. BRICE: Yes, sir.

9 THE COURT: Okay. Do you agree with the other facts
10 other than that?

11 MR. BRICE: Yeah.

12 THE COURT: Okay. Now have you told me the truth
13 today, Mr. Brice?

14 MR. BRICE: Yes, sir.

15 THE COURT: Did anyone tell you how to answer my
16 questions?

17 MR. BRICE: No, sir.

18 THE COURT: The answers that you've given me were they
19 your own answers?

20 MR. BRICE: Yes, sir.

21 THE COURT: Is there any part of what you and I have
22 discussed today that you would like to go back and
23 reconsider anything that you've told me?

24 MR. BRICE: No, sir.

25 THE COURT: So if I were to ask you the same questions

1 I ask earlier you'd give me the same responses at this
2 time?

3 MR. BRICE: Yes, sir.

4 THE COURT: Now, Counselor, as to this question about
5 the knife, can you help me with that a little bit? Have
6 you discussed that with him?

7 MR. SMITH: Yes, your Honor, I have. There are in his
8 versions of events there are sort of two different knives
9 that are involved one of which the State has that he
10 believes was at the residence. There is another object, a
11 box cutter, that he had with him. He would contest that
12 but we concede it's an entry in the night time, there was
13 damage done in the residence and we think that it would
14 overwhelmingly prove the elements of burglary in the first
15 degree ---

16 THE COURT: I see.

17 MR. SMITH: --- under any burglary --

18 THE COURT: Well those elements would be sufficient to
19 establish the cause.

20 MR. SMITH: I believe it would, your Honor.

21 THE COURT: Okay. All right, at this point in time
22 I'm going to accept the plea. It's my finding that this
23 defendant is competent to handle the hearing; that he's
24 aware of the charges, he's aware of the possible penalties;
25 he's agreed with the negotiation that's gone on, he's had

1 the advice of counsel, he's satisfied with that legal
2 advice. I find there is a factual basis for the plea. So
3 at this time I'm going to consider the negotiation of the
4 sentence as well as the possible sentence and I'll be happy
5 to hear from the defense first.

6 MR. SMITH: Thank you, your Honor, may it please the
7 Court.

8 THE COURT: Yes, sir.

9 MR. SMITH: Your Honor, I've known Lamont for some
10 period of time. I represented him on another charge a
11 number of years back and I've known his family members. He
12 to me always appears younger than he is. If you look at
13 this age you see that he's in his forties. He appears a
14 young man.

15 THE COURT: I think we agreed he was 43.

16 MR. SMITH: That's correct, your Honor. But he's
17 always been fun for me to talk with about the things. And
18 he's been in jail a long time here and we mentioned sort of
19 in chambers some of the history of this case and the things
20 that have gone on.

21 THE COURT: Right.

22 MR. SMITH: Its been difficult for him because it
23 involves sort of at it's core a relationship with a woman
24 who he had feelings for. And your Honor, is aware of how
25 some -- those can go wrong when persons are under the

1 affects of some substances and not thinking and have gotten
2 angered by something and thinks someone's cheating on them
3 and all that went on here.

4 I will tell the Court he was attempting to maintain
5 work with a lawn-care service. He mentioned that he's got
6 a disability that's preventing ---

7 THE COURT: He did.

8 MR. SMITH: ---- him from working. But he's
9 attempting to work and attempting to do what he could. I
10 would like to at this time -- your Honor, heard from the
11 report, thank particularly Officer Smith. As Lamont
12 described it to me he says that officer was worried about
13 me wasn't he? And I really think he was that night. He
14 saw and noticed the state over the cell phone that Lamont
15 was in and feared that he was suicidal, probably
16 accurately, and we appreciate all that he did that evening
17 so that he can be here and be able to face this. Even
18 though it's not fun to be here facing a sentencing range of
19 15 ---

20 THE COURT: Well I would expect not.

21 THE COURT: --- to 40 years. But we do appreciate
22 what Officer Smith and all those involved did.

23 Your Honor, Ms. Hirsch became involved and took up a
24 lot of the examination of the mental health records and a
25 lot of the records involved in the case, so I would like to

1 turn it over to do the formal, the majority of the formal
2 mitigation. But I would just ask your Honor to consider,
3 it is a wide range, but at his age any sentence your Honor
4 could give would be -- he's gonna be a good bit older when
5 he gets out and would ask your Honor to consider the
6 minimum of that range.

7 THE COURT: All right. Yes, ma'am, Ms. Hirsch.

8 MS. HIRSCH: Thank you, your Honor, may it please the
9 Court.

10 THE COURT: Yes, ma'am, you can come forward.

11 MS. HIRSCH: I too have had the pleasure of knowing
12 Lamont for some time now.

13 THE COURT: Okay.

14 MS. HIRSCH: And it wasn't always a pleasure, not from
15 the very beginning anyway. But through -- over the past
16 year we have been able to assess what it is that caused him
17 to be unable to act in a reasonable manner that night. And
18 I've seen him slowly but surely accept that; own that
19 responsibility, and make peace with it to some extent.

20 He wasn't agreeing to pay that night and he knows that
21 just because somebody isn't paying doesn't mean their
22 justified in lashing out. As an adult he had a
23 responsibility to remain calm and collected even under this
24 situation where he felt as though he may have been coupled
25 it which is, you know, something that our society

1 recognizes as one of the worst feelings that you can feel
2 from Shakespear to the mitigation of manslaughter, sexual
3 jealousy is awful. But it does not justify his behavior.

4 And nothing that I'm going to get into necessarily am
5 I saying justifies his behavior but I do believe it
6 explains why this occurred and why he is not necessarily
7 going to be continuing to behave in that way if you will
8 please consider giving him the lower range in sentencing.

9 This relationship that Ms. Boozer and Mr. Brice
10 entered into was a very intense one. They both suffer from
11 diagnosed mental illnesses and not just depression and
12 anxiety. In fact the property, the [REDACTED] Holly Dale Drive,
13 is run by Catawba Mental Health; subsidized their rent
14 anywhere from half to full rent, and they are not allowed
15 to have over night guests or anybody else living with them.

16 So there was already a lot of tension I think because
17 Ms. Boozer did ask my client to stay with her very often.
18 I believe there was a concern that if they were discovered
19 she would be evicted. I've spoken with the property
20 manager there and it's very important to her to maintain a
21 calm environment because of the type of folks we're dealing
22 with that live there. And so there was -- I think that
23 that also contributed to the tension that evening. And
24 then the drinking which we know never helps a volatile
25 situation.

1 So this is a situation where we have a man who does
2 not have a stable residence. He never has. And I'll go a
3 little bit into his background. I promise I won't take up
4 too much time. It seems abnormal to many of us that we
5 wouldn't have the same address on our driver's licenses, as
6 we have on a utility bill, as we have on this. Lamont
7 doesn't even have a driver's license. I mean it's just its
8 an a typical way of living but it was his norm. And so
9 when he came there that night he felt like he saw another
10 man in his home with his girlfriend.

11 And I truly believe him when he says that is what he
12 felt. He didn't have a key for the same reasons that I
13 explained about the eviction potential but she let him stay
14 with him on an over night basis anyway. And again it
15 doesn't justify anything but it does explain a little bit
16 about the tension in context.

17 So as I became involved in this case I was able to get
18 Mr. Brice's entire social security record which was
19 thousands of pages, and he is on psychiatric disability for
20 borderline intellectual functioning. Doctor Lisa
21 Bridgewater in 2009 found him to have a 55 IQ on the
22 Wechsler Test. And because he has 80 something during his
23 developmental period its completely appropriate that Doctor
24 Hall found he didn't have an intellectual disability
25 because you have to have that lower score before you're

1 eighteen years of age.

2 THE COURT: I'm aware of that.

3 MS. HIRSCH: Okay. I wasn't. And so,

4 THE COURT: I had another case in which it was very
5 important.

6 MS. HIRSCH: Oh. And cleared up the facts and all of
7 that so I don't have to get into all the science behind it.
8 The test that Doctor Bridgewater administered I believe was
9 more sophisticated. It took into account a lot of social
10 cultural economic issues. Then he tested in 1987 for
11 children might not have. But in all fairness I do believe
12 that she noted that the score may have enlarged because the
13 truth came and it may have caused some organic brain damage
14 or temporary brain impairment. But she saw again in 2011
15 and her diagnoses did not change. It was still borderline
16 intellectual disability.

17 And Doctor Hall is correct in saying that that's not
18 grounds for finding incompetency under our statute. But I
19 do think it explains a lot about how somebody's who's not
20 -- and I don't want to say he's not prone to violence
21 because his diagnoses do cause people to be incredibly
22 impulsive, but it seemed out of character to me once I got
23 to know him.

24 What he was diagnosed with early upon is he's
25 emotionally handicapped. That's what they called it back

1 then. And it's not the same as anti-social personality
2 disorder which he has also been diagnosed with but they
3 both involve the inability to employ executive function
4 thinking the way that many of us can. Frontal lobe
5 thinking, causation, consequences to one's self and
6 another, the ability to adhere to society norms, and marked
7 impulsivity. So, I think those two separate diagnoses and
8 I can't even find emotionally handicapped in the DSM the
9 doctor's -- but it was back then that's what they called it
10 and that's under the Individual Statistically Education Act
11 that gave him an individualized education plan.

12 So he has been plagued throughout his life with this.
13 I have over 30 reports of suicidal ideations or atteempts
14 that resulted in hospitalization. Sixteen or more than 15
15 within a six-year period between 2010 and 2016. The last
16 one in January of 2016 resulting in him being helicopted to
17 CMC. He had cut himself so badly. And Detective Smith was
18 so wonderful and cognizant of that when he got on scene and
19 it was clear in the review of the records that he -- that
20 was an genuine main concern for him at that time. But when
21 Lamont hurts someone it's generally himself.

22 I want to say broad here so that I don't get
23 especially the paragraph when in fact I'm not gonna get
24 into all of that. But the psychosocial impairments over
25 all that both my client and the victim suffer from is its

1 just a ticking time bomb. They I think have a very unique
2 relationship. I think they truly loved one another. I
3 know he still loves her. And they had a uniquely dependent
4 and interdependent relationship that probably wasn't that
5 healthy for folks that weren't necessarily compliant with
6 their treatment plans.

7 I know that Ms. Boozer was continuing to go to her
8 appointments but may have been having medication issues
9 that weren't compliant and my client stopped going because
10 he gave up. I've explained to him it takes a lot to figure
11 out the right medication and all that stuff but he got
12 frustrated and continued self medicating. Practiced
13 mindfulness, we practiced being in the moment. I don't
14 think we could have gotten here today if he wasn't truly
15 listening to me in the moment right now. I mean that was
16 not the way it was at first.

17 So both emotional and handicapped and his anti-social
18 personality disorder are not things that can be medicated
19 away; it required behavioral modification. And I think he
20 understands that; I know he understands that. And so the
21 medication is not just giving the magic solution. He has
22 to modify the way he thinks and the way he acts and it is
23 possible. Beg the Court's indulgence.

24 THE COURT: Sure.

25 MS. HIRSCH: I don't need to read from my notes to say

1 that hey, appreciate the patient's and leeway that the
2 Solicitor's office and the doctor's at DMH, everyone has
3 given myself and Mr. Brice in trying to figure out why the
4 heck this happened so we can prevent it from ever happening
5 again. I am eternally grateful for that.

6 I know what the burglary first statute is. We all do.
7 I think 15 years is more than enough. And I'm not saying a
8 ton more than enough but I think it's more than enough of a
9 punishment to fit this crime, so just ask you to please
10 consider that.

11 THE COURT: Thank you very much.

12 MS. HIRSCH: Thank you. Oh, I'm sorry, your Honor, we
13 do have - April Trusdale, a good friend to both Ms. Bozzer
14 and Mr. Brice, is here today and at the appropriate time
15 would like to address the Court. If you'd like to do it
16 now?

17 THE COURT: All right. Yes.

18 MS. HIRSCH: Just come up to the edge here.

19 THE COURT: Your name is?

20 A. April Trusdale.

21 THE COURT: And your relationship?

22 MS. TRUSDALE: Friends with both David Lamont Brice
23 and Blondell Boozer.

24 THE COURT: All right. Yes, ma'am.

25 MS. TRUSDALE: I've been around Lamont for quite a

1 long time. He helped me take care of my five-year-old and
2 my seven-year-old since, well my seven-year-old since he
3 was born, since he was like one year's old. Then my
4 daughter, my five-year-old, since she was born and he was a
5 real good help to me. And they love him, they love him a
6 whole lot. And I just wanted to ask you if you could be
7 lenient --

8 THE COURT: All right. Thank you for coming forward
9 for him.

10 Anything further?

11 MS. HIRSCH: Nothing from the defense, your Honor.

12 THE COURT: Okay. Thank you.

13 The State indicated you'd like to be heard concerning
14 sentencing?

15 SOLICITOR NEWKIRK: Yes, sir. Just for the record,
16 both Detective Smith and Ms. Boozer are present in the
17 courtroom. They do not wish to address the Court but they
18 are here. Mr. Brice has a rather lengthy criminal history.
19 I'd just like to put it into the record.

20 THE COURT: I'd like to be made aware of it.

21 SOLICITOR NEWKIRK: Thank you, your Honor. In 1992
22 conviction for resisting arrest. 1994 assault and battery
23 with intent to kill, possession with intent to distribute
24 crack cocaine, possession of a pistol by a person under 21
25 and resisting arrest. 1998 discharging a firearm into a

1 dwelling. 2002 criminal domestic violence first offense.
2 2004 assault and battery of a high and aggravated nature,
3 possession of a stolen pistol, simple assault. 2007
4 malicious injury to property. In 2013 assault and battery
5 in the first degree. Well two counts and one count of
6 burglary in the second degree violent.

7 Your Honor, I read that into the record just to point
8 out that he does have a record and it is a record that
9 includes multiple convictions for acts of violence
10 including assault and batteries with intent to kill,
11 assault and batteries as high and aggravated, burglary
12 second degree violent, and I want the court to consider
13 that when fashioning a sentence for Mr. Brice.

14 Ms. Hirsch told the court that one of the most awful
15 feelings is that of sexual jealousy and the law recognizes
16 that, and I don't disagree, but one of the reasons why
17 burglary is from the common law is because you are supposed
18 to be safe in your home. I mean that is why we codified
19 it; that is why we prosecute it, that's why burglary first
20 is the most serious offense that we have in regards to
21 burglary.

22 Ms. Boozer was in her home that night when a brick was
23 smashed through the window and somebody that did not have
24 consent entered and then while he was there he damaged her
25 property. And she still has some difficulty in her home

1 and I've had multiple conversations with her about that and
2 I want you to consider that when you sentence.

3 I'm not going to belabor the point any more, but I
4 would ask you to at least consider based on his prior
5 record and based on Ms. -- based on the events that occurred
6 that night and the lasting effects that it will have on Ms.
7 Boozer somewhere north of 25 years.

8 THE COURT: All right, Mr. Brice, I will give you an
9 opportunity to speak to me if you'd like to concerning this
10 matter. This is your chance to speak to me.

11 MR. BRICE: Yes, sir. I'll tell you, Ms. Boozer when
12 I first met her, you know what I'm saying, I'm still in
13 love with Ms. Boozer, you know what I'm saying? Just that
14 I been in some bad relationships and I met her, you know
15 what I'm saying, so my life I thought it was better. It
16 was better, you know what I'm saying, and it just hurt me
17 cause she understands what I was going through by my
18 medical records cause she goes through the same stuff. And
19 I was in love with her. I ain't gonna lie, you know what
20 I'm saying? Then she usually have seizures and I was just
21 being worried about her and so much. I had -- when I went
22 to that house that night I ask her saying honey, I'm not
23 gonna do anything. She said what is it and I ask her I
24 said can I come and lay down and go to sleep because I'm
25 ready to go to bed. I was sleepy and tired, you know what

1 I'm sayinng. So I did knock on the door and talk to her
2 first, you know what I'm saying? And she said no go
3 somewhere else or something like that. So I said please
4 can I lay down and go to sleep? I said I'm gonna call the
5 police. And I told her to call the police. I didn't go in
6 there to hurt her or nothing. I was wanting to lay down
7 and get some sleep and go to work the next morning. I
8 never meant to go -- I still love her and I never meant to
9 go in there and cause her any harm. I knocked on the door.
10 I mean she came to the door and I told her, you know what
11 I'm saying, can I lay down? So I didn't just go to throw
12 the brick through the window. I was talking to her through
13 the back door.

14 THE COURT: I understand that. But later on you did
15 throw the brick through the window -

16 MR. BRICE: Yes, sir.

17 THE COURT: --- is what you told me. You hadn't said
18 that fact was true.

19 MR. BRICE: Yes, when I had told her, I told her could
20 she please let me in and she said no, you know what I'm
21 saying, so I threw the brick through the window.

22 THE COURT: All right. And then entered the house?

23 MR. BRICE: Yes.

24 THE COURT: Or the dwelling?

25 MR. BRICE: Yeah. Well I told her I wanted to change

1 my shoes.

2 THE COURT: All right, sir. Anything further you'd
3 like for me to consider?

4 MS. HIRSCH: Nothing from the Defense, your Honor.

5 THE COURT: Okay. Anything further from the State?

6 SOLICITOR NEWKIRK: No, sir.

7 THE COURT: Mr. Brice, I have considered the matter
8 and of course I took into consideration what I think to be
9 the relavent factors in connection with your case. Your
10 record obviously is not a good record. Your lawyers know
11 that, you know that it's not a good record, and of course
12 given that record you would have been exposed to a possible
13 life sentence in this particular case.

14 Burglary in the first degree is a serious and violent
15 offense under the law; most serious offense. And people
16 are supposed to be safe in their homes and of course in
17 this particular case you crossed that line by breaking in.

18 I do recognize that you do have some problems with
19 your behavior and your conditions, and I tried to take that
20 into consideration as well in fashioning the sentence.
21 I've also considered the negotiations, no negotiated
22 sentence by the state in regard to this matter in entering
23 the sentence as well.

24 So at this time I am sentencing you to be confined in
25 the State Department of Corrections for a period of 25

1 years, given credit for the 750 days that you've already
2 served. Good luck to you, Mr. Brice.

3 SOLICITOR NEWKIRK: Thank you, your Honor.

4 THE COURT: Thank you.

5 MS. HIRSCH: Thank you, your Honor.

6 THE COURT: Thank you.

7 (END OF TRANSCRIPT OF RECORD.)

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CERTIFICATE OF REPORTER

State of South Carolina }
County of York }

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 9th day of July, 2018.

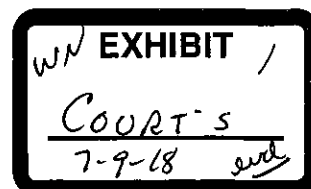
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda S. Nelson

Wanda S. Nelson, CVR-M
Certified Verbatim Reporter,
Official Circuit Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: April 10 , 2019



CAPACITY TO STAND TRIAL EVALUATION
FORENSIC EVALUATION SERVICE
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH (SCDMH)

DATE OF REPORT: January 4, 2017

PRESIDING: Kaustubh G. Joshi, M.D.
Associate Professor of Clinical Psychiatry
University of South Carolina School of Medicine

SECOND EXAMINER: Carol David, LISW-CP

PSYCHIATRIC DIAGNOSES: Unspecified Anxiety Disorder
(DSM - 5) Alcohol Use Disorder, in a controlled environment
Traits of Antisocial Personality Disorder

OPINION REGARDING CAPACITY TO STAND TRIAL: Mr. Brice currently has the capacity to stand trial.

DISPOSITION: Mr. Brice was returned to the York County Detention Center at the conclusion of this evaluation.

IDENTIFYING INFORMATION: David Brice is a 41 year-old African American male who was seen at the Forensic Evaluation Service pursuant to a court order from the Spartanburg County Court of General Sessions. This court order requested an evaluation of his competency to stand trial pursuant to State vs. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981) and S. C. Code Ann. §44-23-410 (1976). He is currently charged with Burglary 1st degree. According to the court order, this request was issued for the following reason:

"Mr. Brice is alleged to have entered his girlfriend's/ex-girlfriend's home on June 20th, 2016. He is alleged to have pulled a pocket knife and told the girlfriend that he was going to kill her. He then left the home and told police over the phone that he just wanted to die. Several hours later, he was found curled into a fetal position, directly across the street from the incident site. When found, he had multiple cuts on his hands and was clutching two cell phones. Police transported Mr. Brice to Piedmont Medical Center to evaluate his mental status, and to care for his wounds. At PMC, Mr. Brice complained of suicidal thoughts earlier and at admission, but later stated that he had no suicidal or homicidal thoughts.

The York County Detention Center noted that Mr. Brice was complaining of suicidal thoughts. He complained of anxiety and depression, and stated was currently not taking medication. It appears that he was placed on suicide watch from entry on June 20th through June 22nd when mental health advised he could be removed.

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Catawba Mental Health records indicate that he complained of Panic Attacks, Depression, and having suicidal thoughts. They diagnosed him with Panic Disorder and Major Depression.

Per my discussions with Mr. Brice, he stated he is on disability for depression and bipolar. He said that he actually attempted suicide this March. He stated that he cannot remember much about this night in question, other than feeling an overwhelming desire to die, and that he was ready to die.

Mr. Brice has a history of a variety of mental health issues, including recent suicidal ideation and attempt. This night in question, he does not recall anything other than being ready to die. He did not attempt to flee from the police and was found curled up in a fetal position across the street from the incident site. For these reasons, I believe there is legitimate basis to evaluate Mr. Brice for criminal responsibility and competency."

Prior to participating in the examination, Mr. Brice was warned regarding the limitations of confidentiality. He was informed that this evaluation was court ordered. He was informed that the evaluators were employed by the South Carolina Department of Mental Health and were not being paid by his attorney or the solicitor in his case. He was informed that after the evaluation was completed a report would be submitted to his attorney, the solicitor, and the judge in his case. Finally, he was informed that the evaluators could be called to court to testify at a hearing related to his competency to stand trial. He was able to answer questions regarding this information correctly and he voluntarily agreed to participate in the evaluation.

SOURCES OF INFORMATION:

1. Court order from the York County Court of General Sessions requesting the evaluation dated November 29, 2016.
2. A review of arrest warrant 2016A4620301273 for burglary 1st degree dated June 20, 2016.
3. A review of Rock Hill Police Department incident report dated July 6, 2016.
4. A review of the defendant's South Carolina Driver's License query dated June 20, 2016.
5. A review of Marquis Cornwell's South Carolina Driver's License query dated June 20, 2016.
6. A review of the crime scene photos taken by the Rock Hill Police Department on June 20, 2016.
7. A review of the defendant's National Crime Information Center report dated July 14, 2016.
8. A review of South Carolina Department of Corrections (SCDC) medical records from January 8, 2004 to November 23, 2005; March 6, 2007 to November 27, 2007; April 9, 2013 to November 24, 2014.
9. A review of Catawba Mental Health medical records from February 17, 2016 and March 31, 2016.
10. A review of York County Detention Center medical records from 1993 to November 28, 2016.
11. A review of Piedmont Medical Center medical records from September 18, 2008; October 4, 2008; March 6, 2009; July 8, 2009; August 30, 2010; January 7, 2011; May 4, 2011; July 4-5, 2011; March 31, 2012; April 15, 2012; June 5, 2015; December 11, 2015; June 20, 2016.
12. A review of Carolinas Medical Center medical records from January 8, 2016 to January 12, 2016.
13. A review of SCDMH Forensic Evaluation Service social work assessment conducted by Carol David, LISW-CP on December 16, 2106 with information gathered from the defendant's uncle (Mr. Frankie Brice) and conducted on December 28, 2016 with information gathered from the defendant's sister-in-law (Ms. Drema Brice).
14. A telephone interview with York County Detention Center nursing staff (Ms. Cannon) conducted on December 28, 2016 for approximately five minutes duration.

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15. An audio-recorded interview of the victim (Ms. Blondell Boozer) conducted by the Rock Hill Police Department on June 20, 2016.
16. A clinical forensic interview with the defendant conducted on January 3, 2017 for approximately one hour and thirty minutes duration.

We have requested an audio/video recorded statement made by the defendant (Mr. David Brice) from the solicitor's office. We have not received this item at the time of this report.

We reserve the right to alter our opinion should further information become available.

CURRENT PSYCHIATRIC HISTORY: Mr. Brice reported that he has been at the detention center since his arrest in June 2016. He stated that he sleeps approximately three to four hours each night (which is his baseline). The defendant denied problems with his appetite. He stated that he is prescribed "Celexa" (an antidepressant) since June 2016; however, a review of medical records revealed that he was prescribed this medication in October 2016. Mr. Brice reported that "Celexa" was prescribed because "I was depressed and sad." He stated that this medication was helpful and he denied current side effects.

The defendant denied experiencing symptoms of depression, anxiety, mania, or psychosis currently. He denied suicidal or homicidal ideations. Mr. Brice reported that he was placed on suicide watch when he was initially incarcerated, but stated that "I don't really remember too much about that time." He denied experiencing auditory or visual hallucinations.

A review of Piedmont Medical Center medical records revealed that he was taken to this facility after the alleged incident due to sustaining a laceration on his right arm from punching a glass window and endorsing suicidal ideations. He reported that he saw his girlfriend with another man and became angry. Prior to going to her house, he reported that he was "very intoxicated." In the emergency room, he denied suicidal or homicidal ideations. He was noted to be "cooperative and respectful." There was no evidence of the defendant displaying symptoms of mania or psychosis. His blood alcohol level in the emergency room was 123 mg/dL, which is consistent with legal intoxication.

Mr. Brice has been incarcerated at Your County Detention Center since his arrest on June 20, 2016. When he was initially booked at the detention center, he was placed on suicide watch because of text messages he sent law enforcement officials stating that he wanted to die. However, he told detention center staff that he denied suicidal thoughts and stated that he was intoxicated at the time of his arrest. Mr. Brice informed detention center staff that he believed his ex-girlfriend told the police that he was going to harm himself. The defendant endorsed daily alcohol consumption (beer and/or liquor). He also sustained a laceration to his right arm after allegedly breaking the window to his girlfriend's window. While on suicide watch, he did not engage in self-harm behaviors. Suicide watch was discontinued on June 22, 2016. He has not engaged in self-harm behaviors since his incarceration. Mr. Brice has not displayed symptoms of mania or psychosis. A review of York County Detention Center medical records revealed that he was prescribed citalopram (Celexa[®], an antidepressant) in October 2016 for depressive symptoms.

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A telephone interview with detention center nursing staff revealed that he has been compliant with citalopram and appeared to be less depressed since being prescribed this medication. He is in general population. Mr. Brice has not engaged in self-harm behaviors since his incarceration. He has not displayed behavioral problems. The defendant has not displayed symptoms of mania or psychosis. Mr. Brice has been attending to his activities of daily living.

PAST PSYCHIATRIC HISTORY: Mr. Brice reported that he initially sought mental health treatment when he was in the fifth grade for "dizziness, heart beating fast." He stated that the doctor at the time informed him that he had panic attacks. The defendant reported that he was prescribed alprazolam (Xanax[®], an anxiolytic) and imipramine (Tofranil[®], an antidepressant) in the past for these symptoms.

When he was not incarcerated, he received mental health services from Catawba Mental Health Center for "panic attacks, anxiety, and alcohol problems." Mr. Brice described his anxiety symptoms as "room spinning, heart beats faster, get dizzy, move around a lot, and feel hot." He stated that these symptoms last for two to six minutes at a time and has responded to medications such as clonazepam (Klonopin[®], an anxiolytic) and hydroxyzine (Vistaril[®], an anxiolytic). The defendant reported that being by himself worsens his symptoms, but being around other people helps reduce the severity of these symptoms.

He stated that he experiences sadness that lasts five to 10 minutes at a time but does not significantly impair his functioning compared to his anxiety symptoms. Mr. Brice stated that he cried spontaneously at times when he believed that "nobody cares about me." He reported that alcohol makes his sadness worse, but also admitted that alcohol drives his sadness. The defendant denied a history of experiencing symptoms of mania or psychosis. He denied a history of experiencing genuine auditory or visual hallucinations.

He presented to the Piedmont Medical Center emergency room "lots of times" with suicidal ideations in the context of alcohol intoxication. Mr. Brice stated that his last visit to the Piedmont Medical Center emergency room was in March 2016. He reported that he stabbed himself in the arm in January 2016 in the context of alcohol intoxication, which required surgical intervention (he was transported from Piedmont Medical Center to Carolinas Medical Center). The defendant denied prior psychiatric hospitalizations.

A review of available medical records revealed the following:

Mr. Brice intermittently sought mental health services from Catawba Mental Health Center between 1992 and 2016 when he was not incarcerated at SCDC. After February 25, 2015 he did not return to Catawba Mental Health Center until February 17, 2016. The defendant complained of "real bad panic attacks" and suicidal ideations one month prior to presentation to the clinic. He denied attempting to harm himself at that time but he reported a history of attempts "a long time ago" with his most recent attempt two months prior to presentation (he was hospitalized at Carolina Medical Center). During his appointment in February 2016, he denied suicidal or homicidal ideations. He continued to use alcohol, consuming three 40oz beers two to three times per week with his last reported use on February 13, 2016. Mr. Brice reported that he was prescribed sertraline (Zoloft[®], an antidepressant); citalopram (Celexa[®], an antidepressant); trazodone (Desyrel[®], a sleep aid); and busprione (Buspar[®], an anxiolytic) in the past.

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He reported that he was living with his cousin and was on probation until "2017 or beginning 2018 for two assaults and battery." There was no evidence of the defendant displaying symptoms of depression, mania, or psychosis. He denied experiencing symptoms of mania or psychosis. There was no evidence of Mr. Brice displaying memory deficits. His next appointment was on March 31, 2016 with the clinic psychiatrist. His diagnosis was Panic Disorder and Other Specified Depressive Disorder. The defendant was prescribed sertraline, trazodone, and clonazepam (Klonopin[®], an anxiolytic) at that time. He had no further appointments at Catawba Mental Health Center. He was arrested on June 20, 2016 for his current charges. His case was closed at Catawba Mental Health Center in July 2016.

Mr. Brice claimed that he had a history of anxiety since he was five or six years old during his intake at SCDC in January 2004 (he was 29 years old at that time). This was his fifth incarceration. He reported that he had psychiatric hospitalizations for his anxiety symptoms. The defendant reported that he was prescribed alprazolam (Xanax[®], an anxiolytic) and imipramine (Tofranil[®], an antidepressant) for five years. He stated that he went off these medications for several years and then prescribed sertraline (Zoloft[®], an antidepressant) when he was 16 years old. He described his anxiety as "feels nervous and shaky inside and feels like having a heart attack." He denied illicit substance use but he reported that he consumed three beers a night and liquor "couple times a month." At that time, he did not want to be on psychotropic medications and wanted counseling. He denied experiencing symptoms of depression. There was no evidence of the defendant displaying manic or psychotic symptoms. His diagnosis was Generalized Anxiety Disorder. The defendant did well during his first incarceration without medications. He did not engage in self-harm behaviors during this incarceration.

He was incarcerated for the sixth time in March 2007. His max out date was around November 2007. He did not require mental health treatment during that time. There was no evidence of the defendant displaying symptoms of depression, anxiety, mania, or psychosis. He did not engage in self-harm behaviors during this incarceration.

Mr. Brice was incarcerated for the seventh time in April 2013. During his intake in February 2014, he endorsed a history of anxiety symptoms similar to what he reported to SCDC staff in January 2004. He attended substance use counseling during this incarceration for his problems with alcohol. The defendant was noted to have difficulty with following rules and being irritable. There was no evidence of the defendant displaying symptoms of mania or psychosis. He did not engage in self-harm behaviors. Mr. Brice did not require psychotropic medications during this incarceration. He did not display symptoms of depression and anxiety during this incarceration. He was released around December 2014.

Mr. Brice was hospitalized at Carolinas Medical Center (CMC) from January 8, 2016 to January 12, 2016 for self-inflicted laceration to his left antecubital fossa (i.e. elbow pit) in the context of alcohol intoxication (blood alcohol level 297 mg/dL, which is significantly above the legal limit). He was transferred from Piedmont Medical Center to CMC for surgical stabilization of self-inflicted wound. He was initially hospitalized on the surgery service after he went operative repair of his injury. The defendant was then hospitalized on the psychiatry service for further evaluation. Mr. Brice reported that he would attend Keystone Rehabilitation Facility for his alcohol problem after being discharged from CMC. There was no evidence of the defendant displaying manic or psychotic symptoms during his hospitalization. He was not prescribed psychotropic medications.

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He has a history of endorsing suicidal ideations and engaging in self-injurious behaviors (lacerations, pouring gasoline on himself, taking an overdose of pills) in the context of alcohol intoxication for which he has been evaluated at Piedmont Medical Center emergency room multiple times between 2008 and 2015 (discharged from the emergency room on each occasion).

ALCOHOL AND DRUG USE HISTORY: Mr. Brice started consuming alcohol when he was 15 years old. He initially consumed two beers daily, which increased over time to "three 40oz beers a day with hard liquor." The defendant stated that alcohol helped him with his anxiety. He was hesitant in describing his alcohol use as a problem. Mr. Brice attempted rehabilitation treatment for his alcohol use but he did not complete the program (Keystone Rehabilitation in Rock Hill, SC). He developed a tolerance to alcohol but he denied withdrawal symptoms upon stopping its use. The defendant reported unsuccessful attempts to cut his alcohol use and he continued to use alcohol despite the legal and social problems he incurred from its use (e.g. public intoxication charges, public disorderly conduct, arguments with his ex-girlfriend). He reported that his last use was on the day of the alleged incident. After reviewing available records and conducting a clinical interview, it is our opinion that he meets diagnostic criteria for Alcohol Use Disorder, in a controlled environment.

Mr. Brice reported that he tried marijuana few times in the 1990s. He denied other illicit substance use. The defendant denied misusing prescription medications. He denied intravenous substance use.

MEDICAL HISTORY: The defendant denied a history of chronic medical problems. He reported that he had a right leg surgery in the past (medical records indicate a history of right ulnar fracture and left leg surgery). Medical records document a history of positive PPD. He denied a history of head injuries, seizures, or loss of consciousness.

ALLERGIES: Mr. Brice stated that he has an allergy to Paxil® (an antidepressant), stating that this medication gives him diarrhea; however, his reaction is more of a side effect than a genuine allergy. Medical records document a possible allergy to ibuprofen.

FAMILY HISTORY: He reported that his father has a problem with alcohol and his cousins and uncles have problems with drug use. The defendant denied a history of mental illness or suicide attempts/completions in the family.

SOCIAL HISTORY: Mr. Brice reported that he was born and raised in York County, SC. He stated that he was raised by his mother, father, and paternal grandmother. The defendant stated that his parents were not married. His mother died in 2004 from diabetes; his father is living. Mr. Brice has one younger brother. He denied being the victim of physical or sexual abuse.

The defendant attended school until the 11th grade; he stopped school due to being incarcerated for assault and battery. Mr. Brice attended special education classes for emotional and behavioral problems. He stated that he was suspended from school three times for fighting and expelled from school for fighting. The defendant denied a history of animal cruelty or fire setting behaviors. He denied

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being truant from school or skipping classes. Mr. Brice admitted to running away from home on several occasions. He stated that he was involved in the juvenile justice system three times: once for assault and battery and twice for violation of probation. When he was not incarcerated, he worked in restaurants washing dishes. He reported that his longest job was for two years as a dish washer. The defendant stated that he was fired from all his jobs due to "yelling at boss if he tells me to do something I don't like." At the time of his arrest, he was receiving disability benefits for mental health issues. He has not served in the military.

Mr. Brice was not married and has no children. He claimed that he never got a driver's license due to not passing an eye exam; however, his driver's license was suspended at the time of the alleged incident. The defendant reported seven incarcerations at South Carolina Department of Corrections since 1993 for various convictions: assault and battery, gun charges, burglary, and destruction of property. His most recent incarceration was from 2013 to 2014 for assault and battery. He also stated that he has been in jail numerous times.

A review of the defendant's NCIC report revealed the following information:

A review of the defendant's NCIC report revealed a history of legal problems since 1992. Mr. Brice was convicted for Assault and Battery with Intent to Kill, Possession of Crack Cocaine, Possession of Pistol, and Resisting Arrest in 1994 for which he was sentence under the Youthful Offender Act to South Carolina Department of Corrections; he violated parole in 1995 and resentence to SCDC. Mr. Brice was convicted of Possession of Crack Cocaine with Intent to Distribute, Resisting Arrest, Possession of Weapon, and Assault and Battery with Intent to Kill in 1997 and sentenced to SCDC for approximately 10 months. He was convicted of Discharging Firearms into a Dwelling in 1998 and sentenced to South Carolina Department of Corrections. He was convicted of assault and battery of high and aggravated nature and possession of stolen weapon in 2004 and sentenced to SCDC.

He was convicted of Malicious Injury to Personal Property and Attempt to Burn Property in 2007 for which he was sentenced to South Carolina Department of Corrections for approximately two years. The defendant was convicted of assault and battery 1st degree (2 counts) and burglary (violent) in 2013 for which he was sentenced to South Carolina Department of Corrections for approximately three years.

Mr. Brice has also been convicted for public disorderly conduct, resisting police, unlawful use of telephone, disorderly conduct (fighting), open container, public disorderly intoxication, assault and battery, , unlawful weapon, petit larceny, criminal domestic violence, trespassing, and damage to real property throughout the years for which he paid fines and/or served time in jail.

MENTAL STATUS EXAM: Mr. Brice was alert and oriented to person, place, day, date, and time. He was well-groomed and made good eye contact. There were no abnormal movements noted. His speech was normal in rate and volume. He was able to name the current President and three past Presidents. His fund of knowledge was judged to be in the average range. He was able to register three objects and he recalled two of the objects spontaneously after being distracted (he recalled the third object with prompting). He was able to recall significant past personal information and we find no evidence of clinically significant long or short term memory impairment. His performance on a test of

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concentration was good. His interpretation of similarities and proverbs was good. His judgment to a hypothetical situation was fair. If he were in a crowded theater and smelled smoke, he stated that he would "call the fire department and try to put it (fire) out." He described his current mood as "I'm in better shape now than in June." He denied suicidal or homicidal ideations. He denied experiencing auditory or visual hallucinations. There was no evidence of disturbed thought process or thought content. His thinking was logical and goal directed without loosening of associations or flight of ideas.

DIAGNOSTIC FORMULATION: Mr. Brice meets diagnostic criteria for Alcohol Use Disorder (with the specifier of *in a controlled environment*) as described in the section related to alcohol and substance abuse above.

Although Mr. Brice described a history of experiencing anxiety symptoms, his alcohol use complicates his clinical picture as alcohol intoxication and/or withdrawal can mimic anxiety symptoms. It is unclear if he has experienced prominent anxiety symptoms outside of his alcohol use, and if he has, which symptoms he has experienced. After reviewing records and conducting a clinical interview, it is our opinion that he meets diagnostic criteria for Unspecified Anxiety Disorder.

Mr. Brice has engaged in several activities as a juvenile (running away from home, fighting) that are similar to behaviors found in persons with a Conduct Disorder. He continues to engage in behaviors that result in his arrest. We are therefore noting traits of Antisocial Personality Disorder but he does not meet full diagnostic criteria for the disorder at this time.

CONCLUSION REGARDING CAPACITY TO STAND TRIAL: Mr. Brice required education on certain topics (see below) but he was able to retain the information that was presented to him. Mr. Brice stated that he could ask his attorney questions about his case, courtroom officials, and courtroom procedures. He reported that he pled *guilty* for his previous convictions.

Mr. Brice was aware of the charge against him and the alleged acts that resulted in the charge against him. He reported that his charge was a felony and was serious. The defendant stated that he could serve "life without parole" if convicted of this charge. Mr. Brice stated that he could ask his lawyer questions regarding possible sentences.

Mr. Brice identified his attorney as "Mark McKinnon." He stated that the job of his lawyer was "try to get me free." He stated that his lawyer is "on his side." The defendant reported that he trusts his lawyer and can tell his attorney everything he knows about the charge against him. The defendant stated that he would not keep a secret from his attorney because "that would be lying." He acknowledged that his attorney could assist him better if he was honest with him.

The defendant stated that the role of the solicitor was "put me in jail." He reported that the solicitor was not on his side. He understands that he should not speak to the solicitor without his attorney being present. He stated that the job of the judge was "sentence you." Mr. Brice was educated about the judge's role in ensuring order in the courtroom. He retained that knowledge during the evaluation. He was educated about the impartiality of the judge; he retained that knowledge during the evaluation.

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He was aware of the number of the people in a jury. He stated that the job of the jury was "to see if you are guilty or not." He was not aware of the unanimous requirement for a *guilty* or *not guilty* verdict. He was educated on the unanimous requirement for a *guilty* or *not guilty* verdict. He reported that a *guilty* verdict would result in a sentence and a *not guilty* verdict would result in being released from custody. He understands that he could ask his attorney should he have questions about courtroom officials.

Mr. Brice was able to state the pleas of *guilty* and *not guilty* and he correctly defined both of them. He understood that a plea bargain consists of a deal in order for him to plead guilty to get a lighter sentence. He understands that he did not have to accept a plea bargain. He understands that if he pled *not guilty* he would be going to trial. He understands that if he pled *guilty* he would be giving up his right to a trial and receiving a sentence.

Mr. Brice was able to correctly solve a hypothetical problem involving the courtroom. For example, if someone was lying about him in court, he would tell his attorney. He understands the importance of appropriate courtroom behavior and understands that if he were to be disruptive in court, he would get an additional charge. He was able to describe the role of evidence and witnesses in his case. He was able to describe the role of evidence and witnesses in a hypothetical situation presented to him. He understood the requirements involved in probation.

He understands the concept of testifying in court. He was educated about his right to not testify. The defendant retained that knowledge during the evaluation. He understood that he could ask his attorney should he have questions about testifying in the future. He stated that he could receive a fair trial. His hope for his case is to "to get the truth out so I can be set free."

It is our opinion that he has a factual as well as rational understanding of the legal system and sufficient present ability to rationally assist his attorney in the preparation of a defense. He understands the proceedings against him and he is able assist his attorney in his own defense. Therefore, it is our opinion that he has the capacity to stand trial pursuant to State vs. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981) and S. C. Code Ann. §44-23-410 (1976).

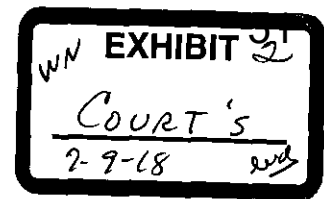


Kaustubh G. Joshi, M.D.
Associate Professor of Clinical Psychiatry
University of South Carolina School of Medicine

KGJ/mh

F/EM: 1/4/2017 (KGJ)

BRICE, DAVID
924-1395



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EVALUATION OF COMPETENCY TO STAND TRIAL

Name	David J. L. Brice	Gender	Male
County	York	Race	African-American
Date of Evaluation	9/13/2017	Date of Birth	1975
Place of Evaluation	SCDDNS Midlands Center	Age	42 years

Examiners Alicia V. Hall, PhD -Lead Examiner
 Brian Hawkins, MS- Second Examiner

Charge(s) Burglary, First Degree

Purpose of Evaluation

This evaluation was conducted pursuant to an order dated 6/20/2017 (received by DDSN on 7/7/2017) and signed by the Honorable John C. Hayes, III; Presiding Circuit Court Judge of the York County Court of General Sessions. The order required that Mr. Brice be evaluated by the Department of Disabilities and Special Needs, to determine his competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981) and Section 44-23-410, Code of Laws of South Carolina(Supp. 2012). Mr. Brice's charges stemmed from incident(s) on 6/20/2016.

Limits of Confidentiality

Before the interview started, Mr. Brice was advised of the purpose of the evaluation, and that the results and content of the evaluation would be communicated to his defense counsel, the prosecution, and the court. In addition, he was informed of the possibility that the examiner(s) might be called to testify regarding the content and results of the evaluation. He demonstrated a good understanding of the purpose of the evaluation. Mr. Brice agreed to proceed with the evaluation and signed the notification form prior to the interview.

Summary of Evaluation Results

Presence of Intellectual Disability/Related Disability	No
Competency to Stand Trial	Yes

DISTRICT I

P.O. Box 239
Clinton, SC 29325-5328
Phone: (864) 938-3497

Midlands Center - Phone: 803/935-7500
Whitten Center - Phone: 864/833-2733

9995 Miles Jamison Road
Summerville, SC 29485
Phone: 843/832-5576

DISTRICT II

Coastal Center - Phone: 843/873-5750
Pee Dee Center - Phone: 843/664-2600
Saleeby Center - Phone: 843/332-4104

dit

Evaluation Procedures

Mr. Brice was interviewed on 9/13/2017 for approximately 120 minutes by the undersigned and Mr. Hawkins, who concurs with opinions in this report.

Sources of Information

1. Interview of the defendant on 9/13/2017 for approximately two hours;
2. Social Work Assessment conducted by Ms. David, with Mr. Brice's uncle & sister-in-law, 12/16 & 12/28, 2016;
3. Court order for competency to stand trial evaluation dated 6/20/2017;
4. Catawba Mental Health Center records dated 2/17/2016 and 3/31/2016;
5. SSDI Psychiatric Review by Larry Clayton, PhD dated 12/02/2009;
6. South Carolina Department of Corrections (SCDC) medical records various dates from 2004 to 2014.
7. York County Detention Center medical records from 1993 to 2016;
8. Piedmont Medical Center medical records various dates from 2008 to 2016;
9. Carolinas Medical Center medical records from 1/08/2016 to 1/12/2016;
10. Records from York-Rock Hill County School District 3 including:
 - a. Psychological Evaluation Report dated 5/4/1987;
 - b. Individualized Education Program (IEP) dated 9/27/1993;
11. DMH Forensic Evaluation Service competency to stand trial evaluation report dated 1/4/2017;
12. The defendant's National Crime Information Center criminal history record;
13. South Carolina Driver's License query dated 6/20/2016;
14. Information from York County pertaining to his current charges including:
 - a. Arrest warrant dated 6/20/2016;
 - b. Rock Hill Police Department incident report dated 7/6/2016;
 - c. An audio-recorded interview of the victim (Ms. Blondell Boozer) conducted by the Rock Hill Police Department 6/20/2016;
 - d. Crime scene photos taken by the Rock Hill Police Department on 6/20/2016.

Relevant History

History in this section is as provided by the defendant in the interviews on 9/13/2017, and supplemented by information available in other records. Mr. David James Lamont Brice is a 42-year-old, African-American man, who was born on [REDACTED] 1975. He stated he is the child of Linda Brice, who is deceased. He reported he was raised by his grandmother, Ella Mae Simpson in Rock Hill, SC. He stated he was one of three children. Mr. Brice reported prior to his arrest he was living between his girlfriend's house and a half-way house. He reported he is single and has no children. Mr. Brice is currently being detained in the York County Detention Center. He has been in custody since June 20, 2016. He was deemed a good historian.

Educational History

Mr. Brice stated he last attended Northwestern Rock Hill High School. He reported he dropped out in the 10th grade. He stated at that time he was sent to a "YOA program." He reported he was a special education student. "I was an EH [Emotionally Handicapped] student because of my behavior in school." According to his IEP, Mr. Brice was a special education student. He was classified as an Emotionally Handicap (EH) student. EH is defined by the IDEA Act as an emotional or behavioral disability that impacts a person's ability to effectively recognize, interpret, control, and express fundamental emotions. He was being educated in the general education setting with a resource classes. Mr. Brice was expected to graduate with a regular high school diploma. According to

school records, Mr. Brice's behavior was described as markedly "poor in attention, attendance and has mood swings." Therefore he required a behavior modification plan to address his behavior in the general education and special education settings. Mr. Brice reported he earned his GED while incarcerated.

Employment History

Mr. Brice reported a history of gainful employment. He said his longest place of employment was at Jackson's Cafeteria where he worked for approximately four years. Mr. Brice said he also receives Social Security disability benefits. He stated his brother was his payee. But prior to his current arrest he was able to manage his own finances. Mr. Brice went on to clarify there have been time when he has needed his brother's assistance in caring for himself but those times were when his mental illness was untreated or poorly managed. According to records from Social Security Administration Mr. Brice's benefits are based on several mental health diagnoses and not Intellectual Disability.

Medical History

Mr. Brice denied a history of seizures, strokes, head injuries with loss of consciousness, or other serious medical conditions. He also denied current medical problems. Mr. Brice stated he is in good health over all.

Substance Use History

In regards to substance use, Mr. Brice reported a significant history for alcohol abuse. He reported he started imbibing when he was 15 years old. Prior to his current incarceration he was consuming "four to five 24oz cans of beers a day with hard liquor." Mr. Brice attempted rehabilitation treatment for his alcohol use but he did not complete the program (Keystone Rehabilitation in Rock Hill, SC. He reported unsuccessful attempts to cut his alcohol use and he continued to use alcohol despite the legal and social problems he incurred from its use (e.g. public intoxication charges, public disorderly conduct, arguments with his ex-girlfriend). He reported that his last use was on the day of the alleged incident. He denied using illicit drugs.

Mental Health History

According to Mr. Brice, he has been diagnosed with depression. He reported that he was hospitalized as a child due to "hearing voices". He denied a history of homicidal thoughts. He reported a history of suicidal gestures beginning as a teen. He reported at the time of his arrest, he was prescribed Klonopin (used to treat seizures, anxiety, and panic attacks), Celexa (an antidepressant), busprione (Buspar®, an anxiolytic) and hydroxyzine pamoate (an antihistamine often used to treat anxiety and agitation).

The following history is quoted verbatim from a report authored by Kaustubh G. Joshi, M.D., who evaluated Mr. Brice for his competence to stand trial, on the current charge, on 1/03/2017.

Mr. Brice intermittently sought mental health services from Catawba Mental Health Center between 1992 and 2016 when he was not incarcerated at SCDC. After February 25, 2015 he did not return to Catawba Mental Health Center until February 17, 2016. The defendant complained of "real bad panic attacks" and suicidal ideations one month prior to presentation to the clinic. He denied attempting to harm himself at that time but he reported a history of attempts "a long time ago" with his most recent attempt two months prior to presentation (he was hospitalized at Carolina Medical Center). During his appointment in February 2016, he denied suicidal or homicidal ideations. He continued to use alcohol, consuming three 40oz beers two to three times per week with his last reported use on February 13, 2016. Mr. Brice reported that he was prescribed sertraline (Zoloft®, an antidepressant); citalopram (Celexa®, an antidepressant); trazodone (Desyrel®, a sleep aid); and busprione (Buspar®, an anxiolytic) in the past. He reported that he was living with his cousin and was on probation until 2017 or beginning 2018 for two assaults and battery." There was no evidence of the defendant displaying symptoms of

depression, mania, or psychosis. He denied experiencing symptoms of mania or psychosis. There was no evidence of Mr. Brice displaying memory deficits. His next appointment was on March 31, 2016 with the clinic psychiatrist. His diagnosis was Panic Disorder and Other Specified Depressive Disorder. The defendant was prescribed sertraline, trazodone, and clonazepam (Klonopin®, an anxiolytic) at that time. He had no further appointments at Catawba Mental Health Center. He was arrested on June 20, 2016 for his current charges. His case was closed at Catawba Mental Health Center in July 2016.

Mr. Brice claimed that he had a history of anxiety since he was five or six years old during his intake at SCDC in January 2004 (he was 29 years old at that time). This was his fifth incarceration. He reported that he had psychiatric hospitalizations for his anxiety symptoms. The defendant reported that he was prescribed alprazolam (Xanax®, an anxiolytic) and imipramine (Tofranil®, an antidepressant) for five years. He stated that he went off these medications for several years and then prescribed sertraline (Zoloft®, an antidepressant) when he was 16 years old. He described his anxiety as "feels nervous and shaky inside and feels like having a heart attack." He denied illicit substance use but he reported that he consumed three beers a night and liquor "couple times a month." At that time, he did not want to be on psychotropic medications and wanted counseling. He denied experiencing symptoms of depression. There was no evidence of the defendant displaying manic or psychotic symptoms. His diagnosis was Generalized Anxiety Disorder. The defendant did well during his first incarceration without medications. He did not engage in self-harm behaviors during this incarceration.

He was incarcerated for the sixth time in March 2007. His max out date was around November 2007. He did not require mental health treatment during that time. There was no evidence of the defendant displaying symptoms of depression, anxiety, mania, or psychosis. He did not engage in self-harm behaviors during this incarceration.

Mr. Brice was incarcerated for the seventh time in April 2013. During his intake in February 2014, he endorsed a history of anxiety symptoms similar to what he reported to SCDC staff in January 2004. He attended substance use counseling during this incarceration for his problems with alcohol. The defendant was noted to have difficulty with following rules and being irritable. There was no evidence of the defendant displaying symptoms of mania or psychosis. He did not engage in self-harm behaviors. Mr. Brice did not require psychotropic medications during this incarceration. He did not display symptoms of depression and anxiety during this incarceration. He was released around December 2014.

Mr. Brice was hospitalized at Carolinas Medical Center (CMC) from January 8, 2016 to January 12, 2016 for self-inflicted laceration to his left antecubital fossa (i.e. elbow pit) in the context of alcohol intoxication (blood alcohol level 297 mg/dL, which is significantly above the legal limit). He was transferred from Piedmont Medical Center to CMC for surgical stabilization of self-inflicted wound. He was initially hospitalized on the surgery service after he went operative repair of his injury. The defendant was then hospitalized on the psychiatry service for further evaluation. Mr. Brice reported that he would attend Keystone Rehabilitation Facility for his alcohol problem after being discharged from CMC. There was no evidence of the defendant displaying manic or psychotic symptoms during his hospitalization. He was not prescribed psychotropic medications.

He has a history of endorsing suicidal ideations and engaging in self-injurious behaviors (lacerations, pouring gasoline on himself, taking an overdose of pills) in the context of alcohol intoxication for which he has been evaluated at Piedmont Medical Center emergency room multiple times between 2008 and 2015 (discharged from the emergency room on each occasion).

Previous Competency to Stand Trial Evaluation

On 1/03/2017 Mr. Brice was evaluated by Kaustubh G. Joshi, M.D. and Carol David, LISW-CP of the Department of Mental Health pursuant to a court order from the Spartanburg County Court of General Sessions. The order was issued to determine Mr. Brice's competency to proceed related to his current Burglary charge. In the report dated 1/4/2017, Mr. Brice was diagnosed with Unspecified Anxiety Disorder, Alcohol Use Disorder, in a controlled environment, and Traits of Antisocial Personality Disorder. The DMH examiners opined "It is our opinion that he has a factual as well as rational understanding of the legal system and sufficient present ability to rationally assist his attorney in the preparation of a defense. He understands the proceedings against him and he is able assist his attorney in his own defense. Therefore, it is our opinion that he has the capacity to stand trial pursuant to State vs. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981) and S. C. Code Ann. §44-23-410 (1976)."

DDSN History

According to the SCDDSN Consumer Data Support System, Mr. Brice is not a DDSN consumer nor has he ever been referred to the Department of Disabilities and Special Needs Board to determine his eligibility for services.

Psychological Test Results:

(Lisa G. Bridgewater, PhD)

11/20/2009	Wechsler Adult Intelligence Scale -IV	Full Scale IQ	55
		Verbal IQ (VCI)	63
		Performance IQ (PRI)	63
		Working Memory	63
		Processing Speed	53

(Rock Hill School District 3)

5/04/1987	Wechsler Intelligence Scale for Children -R	Full Scale IQ	82
		Verbal IQ	85
		Performance IQ	82

Behavioral Observations and Mental Status

Mr. Brice was seen at the SCDDSN Midlands Center on 9/13/2017 . He was transported to the evaluation by law enforcement. He is a 42-year-old, African-American man who presented with adequate hygiene. He was cooperative and exhibited appropriate eye contact throughout the evaluation. He correctly identified the date, day of the week, and location. The rate, volume, and tone of his speech were within normal limits. He presented with goal-directed, linear thinking and did not demonstrate difficulties with attention or concentration. His memory appeared intact, evident by his ability to recall three words after a short delay. He correctly identified the commonality between two concepts, demonstrating the ability to think abstractly. Mr. Brice reported his mood as "not happy, not sad" and demonstrated appropriate affect (i.e., observed expression of emotion). He denied current suicidal ideation and homicidal ideation. Mr. Brice reported experiencing visual and auditory hallucinations (e.g. hearing voices). His reports were inconsistent with his past report of his psychiatric symptoms and were inconsistent with how symptoms are manifested in individuals with psychosis. No delusions (i.e., false fixed beliefs) were noted.

Evaluation for Competency to Stand Trial

According to S. C. Code Ann. §44-23-410, "If the examiners designated by the Department of Disabilities and Special Needs find indications of mental illness but not intellectual disability or a related disability, the department shall not render an evaluation on the person's mental capacity, but shall inform the court that the person does 'not have intellectual disability or a related disability' and recommend that the person should be evaluated for competency to stand trial by the Department of Mental Health." As noted above, Mr. Brice was diagnosed with Unspecified Anxiety Disorder, Alcohol Use Disorder, in a controlled environment, and Traits of

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Antisocial Personality Disorder by Dr. Joshi of the Department of Mental Health. However, given the special circumstances with which the current order was obtained (i.e. psychological report by Dr. Bridgewater suggested the possibility Mr. Brice may have an intellectual Disability became available after DMH completed the initial competency evaluation), the undersigned completed the competency evaluation and will render an opinion.

Mr. Brice was able to state his formal charge as "Burglary, First." He was able to define his charges in his own words. He defined Burglary, First as "They said I broke into a house." He was able to provide details about the charges, such as when and where alleged incidents occurred, and who the alleged victim was by name. Mr. Brice knew that his charge is serious and he was in trouble because of the charge. He was able to describe the seriousness of his charge in relation to a more serious and a less serious charge. Mr. Brice was aware of the penalty he could receive if he was convicted of the charge. He stated "My lawyer told me I could get life."

When asked for his lawyer's name, Mr. Brice stated "I have a lot of lawyers. I have Phil Smith, Mark McKinnon and a lady." He stated he has met with his lawyer "two or three times" regarding this case. He stated he thinks his lawyer "is nice, I like him." Mr. Brice stated he trusts his lawyer and they could work together in his case. He indicated he has given his lawyer his side of the story. He was aware of the confidential nature of the communication between him and his lawyer. Mr. Brice went on to say if his lawyer broke confidentiality "he could be fired." Mr. Brice stated he had not experienced difficulties communicating with his lawyer. He stated his lawyer's role was "to prove me innocent." He knew his lawyer was for him and wanted him to be found not guilty. Mr. Brice knew that his attorney would want him to get an easier rather than a harder sentence if he is convicted.

Mr. Brice was familiar with the pleas and consequences of the pleas available in court. He was able to correctly define the pleas in his own words. He defined guilty as "You did it" and not guilty as "You didn't do it." He was able to correctly state the consequences of the guilty and not guilty pleas. Mr. Brice knew that pleading guilty means receiving a sentence such as "going to jail." He stated pleading not guilty means "You go to trial." He defined a trial as "when they see if you guilty or not."

Mr. Brice understood the use of evidence and witnesses in a hypothetical court case and in his case. He defined evidence as "stuff like the gun, gun powder on you, fingerprints." Mr. Brice defined a witness as "A person that seen it happen." He stated the possible witnesses against him were "I guess my girlfriend." In addition, Mr. Brice knew his lawyer was his best source of information regarding possible evidence and witnesses in his case. He also stated that if someone were on the witness stand giving false testimony that the appropriate course of action would be to "tell my lawyer."

Mr. Brice was familiar with the roles of the various court officials. He was able to demonstrate he understood the adversarial nature of the courtroom situation. For example, he knew the solicitor was against him and wanted to prove that he is guilty. He defined the solicitor's role as "to send me to jail." Also, he knew he should not talk to the solicitor without his attorney being present stating, "No because he could use it against me." Mr. Brice stated the judge's responsibility was "to decide if you guilty or not." He also knew judge determines the sentence should he be found guilty. He could name the penalties at the judge's disposal (prison time, probation, and house arrest). He was able to correctly define each of the possible sentences. Mr. Brice understood the role of the jury if he decided to have a jury trial. He reported the jury consists of 12 members of the community, who would decide if he is guilty or not guilty. He also understood the jury's decision had to be unanimous.

Mr. Brice was familiar with the concept of plea bargaining. He understood in order to accept a plea deal he would have to enter a guilty plea. Mr. Brice understood he would receive a lesser punishment in exchange for a guilty plea. He was able to demonstrate an ability to use his knowledge about plea bargains to make reasoned

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decisions about his case. Mr. Brice was able to state the importance of appropriate courtroom behavior. He stated that he could not be forced to talk in court, but understood his lawyer would be the best person to help him decide if he should testify on his own behalf.

Conclusion:

Mr. Brice does not meet the criteria for a diagnosis of Intellectual Disability (ID), which requires concurrent deficits in intellectual and adaptive functioning, present before the age of 18. Although his performance on a previous IQ test (WAIS-IV) resulted in a Full Scale IQ score of 55, those results alone do not suggest a diagnosis of intellectual disability to be appropriate. First, the DSM 5 requires evidence that intellectual deficits began during the developmental period in order to diagnose an intellectual disability, which is not the case with Mr. Brice. Available records indicate his Full Scale IQ was in the low average range (82) when he was 12 years old. Second, Mr. Brice was classified as a student with an emotional handicap by the school district and not ID. He was expected to graduate with a regular high school diploma. Third, Dr. Bridgewater concluded in her report "It is difficult to indicate a definitive assessment of his cognitive abilities because he evidently continues to drink quite heavily." Therefore she diagnosed Mr. Brice with "Borderline Intellectual Functioning with a rule-out of mild mental retardation." Fourth, in 2009 the Social Security Administration determined the diagnosis of borderline intellectual functioning was appropriate based on his previous IQ scores. Fifth, while Mr. Brice may have experienced deficits in adaptive functioning in the past, which is required for a diagnosis of intellectual disability, he did not exhibit these deficits during the developmental period. Mr. Brice reported he began experiencing deficits in self-care as an adult, due to his symptoms of mental illness. In addition, the complexity of Mr. Brice's thought processes, the sophistication of his language, abstract reasoning skills, and adaptive functioning, demonstrated during this evaluation, suggest a diagnosis of intellectual disability to be inappropriate. Lastly it should be noted that an intellectual and/or achievement test does not assess whether or not a person is competent to stand trial (e.g., people with intellectual disabilities and learning disorders can be opined to be competent to stand trial). It would be a misuse of those scores to do so.

Based on the available data, it appears Mr. Brice's symptoms are best characterized by a diagnosis of borderline intellectual functioning. According to the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition, a diagnosis of borderline intellectual functioning describes an individual whose intellectual functioning is the focus of clinical attention but whose symptoms do not meet criteria for intellectual disability [mental retardation]. This diagnosis is based on available records that indicated Mr. Brice has experienced some cognitive deficits in the past which probably are related to or exasperated by his history of alcohol abuse.

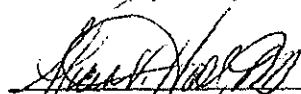
Regarding his capacity to understand the proceedings against him, Mr. Brice was able to demonstrate an understanding of his charge, as well as a factual and a rational understanding of legal proceedings. He demonstrated the capacity to apply the factual information to a rational consideration of plea options. Additionally, Mr. Brice retained the information he learned during the competency evaluation completed eight months prior (January, 2017) by the Department of Mental Health. This indicates he has the capacity to learn, retain, and apply previously acquired information.

Regarding his capacity to assist his attorney in his defense, Mr. Brice's thought processes and speech were logical, coherent, and organized, indicating he should have no difficulty communicating rationally with his attorney. He demonstrated the ability to reason logically about options related to his case and should be able to do so with counsel. His responses to hypothetical situations indicate he would be able to utilize counsel effectively should he become confused or distressed with legal proceedings. Mr. Brice acknowledged appropriate courtroom behavior, and his demeanor during our interview suggests he would be able to exhibit such behavior in the courtroom and attend adequately to the proceedings. His expectations of his attorney and the legal system appeared reasonable and logical.

In summary, Mr. Brice expressed understanding of the nature of the charge against him and the possible consequences. He demonstrated the ability to comprehend and retain new factual information regarding legal proceedings, and he demonstrated the capacity to use factual information to make rational decisions about his case. Mr. Brice's rational understanding of such proceedings appears to be good. He appears to have the ability to cooperate with his attorney in his defense and to participate meaningfully in a trial, if he chooses to do so. Thus, Mr. Brice appears to have the capacities to understand the proceedings against him and to assist his attorney in his own defense should he choose to do so.

We therefore respectfully offer the following opinions:

Presence of Intellectual Disability/Related Disability	No
Competency to Stand Trial	Yes



Alicia V. Hall, Ph.D.
Chief Psychologist
State-Level Psychological Examiner
SC License # 1068
SCDDSN Central Office

Date signed: 9/28/17



FORM 5

STATE OF SOUTH CAROLINA)

County of York County)#298937
David James Lamont Brice)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2019CP4600400

DAVID HAMILTON
C.C.P. # 298937
YORK COUNTY, SC

FILED-RECEIVED

2019 FEB -14 AM 11:53

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention York County
2. Name and location of Court which imposed sentence York County 16th
Judicial Circuit
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018 GS4605384 - 2017 GS46000699 - 2017 GS4600599

(b) 2017-GS-46000 699(c) 2017-GS-4600599

5. The date upon which sentence was imposed and the terms of the sentence:

(a) July 9th 2018 25 years~~(b)~~~~(c)~~

6. Check whether a finding of guilty was made:

(a) after a plea of guilty yes

(b) after a plea of not guilty

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. N/A~~ii.~~~~iii.~~

(b) the result in each such Court to which you appealed:

i. N/A~~ii.~~~~iii.~~

(c) the date of each such result:

~~i.~~~~ii.~~~~iii.~~

(d) if known, citations of any written opinion or orders entered pursuant to such results:

~~i.~~~~ii.~~~~iii.~~

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) My lawyer told me not to, he said that he tell all his clients no because it would do no good.

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Lawyer failed to investigate facts of the case.

(b) failure to challenge prior conviction

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

~~iv.~~ N/A

(c) the disposition thereof:

~~i.~~ _____

~~ii.~~ _____

~~iii.~~ _____

~~iv.~~ _____

(d) the date of each such disposition:

i. N/A

~~ii.~~ _____

~~iii.~~ _____

~~iv.~~ _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

~~ii.~~ _____

~~iii.~~ _____

~~iv.~~ _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO, they have not

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

~~ii.~~ _____

~~iii.~~ _____

(b) the proceedings in which each ground was raised:

i. N/A

~~ii.~~ _____

~~iii.~~ _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes
 (b) your trial, if any? Yes, I were
 (c) your sentencing? Yes, I were
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes, I were
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Mark McKinnon
York County Public Defender, P.O Box 691 York SC 29745
 ii. Phil Smith
York County Public Defender, P.O Box 691 York SC 29745
 iii. Raig Hirsch - Co Counselor
York County Public Defender P.O Box 691 York SC 29745
 (b) the proceedings at which each such attorney represented you:
 i. Trial and sentencing
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application;

Vacate conviction or Remand for New trial or
get a better Plea

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, David James Lamont Brice, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

David James Lamont Brice
David James Lamont Brice

SWORN to and subscribed before me this 29
 day of Jan, 2019.

Debra Eastredge (L.S.)
 Notary Public

My Commission Expires: 3/3/2024

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, David James Lamont Brice, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

David James Lamont Brice
Applicant

SWORN or affirmed to and subscribed before me this

29 day of Jan, 2019.

Debra Eastreid
Notary Public

My Commission Expires: 3/3/2020

PCR

Demi Kanon Bm

Question 4

- 1 my original indictment was 2017-GS-54600599, they use the LWOP notice for indictment 2017-GS-4600699, on the day that I went to trial they switched my indictment again to 2018-GS-4605384

Question 11

- 1 Co-Counsel told me 1 thing while my other attorney told me a different story
- 2 I told my attorney that I was hearing voices an prior 3 weeks before I caught the burglary charge I went to my mental health doctor an told him, my lawyer fail to investigate an contact my mental Health Dr to see what kind of problems I was sufferin from
- 3 my Co-Counsel told me that she had talked to the judge an he said that he was go give me 15 years but when I got in front of the judge he gave me 25 years
- 4 victim had brought my clothe to my lawyer office to let him know that I had clothe there an was staying with her often on my lawyer fail to challenge that

5 I did not waive my presentment to the Grand Jury
My lawyer told me that I was already indicted by the
grand Jury and him an Solicitor Ryan Newkirk
told the Judge that I was ready to go to trial that
same day I was misled on many of things by
my lawyer that I did not understand

6 Phil Smith didn't come and see me like he was
supposed to when he knew that I was up for
trial trying to fight a life sentence

STATE OF SOUTH CAROLINA
COUNTY OF YORK

David James Lamont Brice,
SCDC # 298937,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-46-00405

**RETURN AND MOTION FOR MORE
DEFINITE STATEMENT**

2019 MAY 30 AM 8:37
DAY
AVIATION
CLOCK & CO.
YORK COUNTY, SC

FILED-RECEIVED

The State of South Carolina (Respondent), making its return to the application for post-conviction relief filed February 4, 2019, by Applicant David James Lamont Brice, would respectfully show this Court:

I. Procedural History

David James Lamont Brice (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was charged with first-degree burglary (2018-GS-46-05384). Applicant waived his right to presentment to a grand jury for that charge. Applicant was represented by Assistant Public Defenders Philip Lee Smith and Raia Jane Hirsch, and Chief Deputy Assistant Public Defender Mark McKinnon¹. The case was prosecuted by Assistant Solicitor Ryan Robert Newkirk of the Sixteenth Circuit Solicitor's Office. On July 9, 2018, Applicant pled guilty before the Honorable Roger L. Couch. Pursuant to a negotiated sentence between the State and Applicant, Judge Couch

¹ Although Applicant lists Mark McKinnon in his application, it is unclear based on the transcript and Applicant's record what specific allegations he makes against McKinnon, or the extent of McKinnon's involvement in Applicant's case.

sentenced Applicant to twenty-five years' imprisonment. Applicant did not appeal his conviction or sentence.

II. Factual Summary

On June 20, 2016, in the early hours of the morning, officers responded to the home of Ms. Blondell Boozer (Victim) in response to a burglary. (GP Tr. 22). Upon arrival, officers spoke with Victim, who told the officers that Applicant, her ex-boyfriend, entered her home by breaking her window and threatening her with a knife². (GP Tr. 22). Subsequently, Victim fled from her home while Applicant damaged her property by throwing food out of her refrigerator and destroying her cellular phone. (GP Tr. 22). Although officers were unable to locate Applicant at the scene, officers eventually located Applicant. (GP Tr. 22). Applicant was taken to Piedmont Medical Center for care because he was acting suicidal. (GP Tr. 22). After receiving his medical care, Applicant was interviewed by Detective Smith. (GP Tr. 22). Applicant stated to Detective Smith that he entered Victim's home and was involved in an altercation with Victim. (GP Tr. 22).

III. Current Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. "Co-Counsel told me 1 thing while my other attorney told me a different story."
- b. "...my lawyer fail[ed] to investigate or contact my mental health [doctor] to see what kind of problems I was suffering from."
- c. "My co-counsel told me that she had talked to the judge an[d] he said that he was go[ing] to give me 15 years but when I got in front of the judge he gave me 25 years."
- d. "Victim had brought my clothe[s] to my lawyer[']s office to let him know that I had clothe[s] there an[d] was staying with her off an[d] on my lawyer fail[ed] to challenge that."

² Applicant stated that he agreed with the Solicitor's factual summary, with the exception of solicitor's statement that Applicant threatened Victim with a knife. (GP Tr. 23-24).

- e. "I did not waive my presentment to the Grand Jury. My lawyer told me that I was already indicted by the Grand Jury an[d] Solicitor Ryan Newkirk told the Judge that I was ready to go to trial that same day. I was misled on many of things by my lawyer that I did not understand."
- f. "Phil Smith didn't come an[d] see me like he was suppose[d] to when he knew that I was up for trial trying to fight a life sentence."
- g. "Lawyer failed to investigate facts of the case."
- h. "Failure to challenge prior conviction."
- i. Failure to file a direct appeal.³

As requested relief, Applicant states that he wants the Court to "vacate [his] conviction or remand for new trial or get a better plea."

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject plea challenged in this application including all pertinent transcripts, the application, and Applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

IV. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The Sixth Amendment to the United States Constitution guarantees a defendant the right

³ In his application, Applicant indicates that he did not file an appeal because, "my lawyer told me not to, he said that he tell all his clients no because it would do no good."

to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test for any of his allegations. Applicant’s allegation that counsel failed to investigate into his mental health

issues is directly refuted by the record. In fact, Applicant underwent a mental health evaluation, which was discussed at length at Applicant's guilty plea hearing. (GP Tr. 6-12). Furthermore, counsel discussed Applicant's general mental health background with Judge Couch. (GP Tr. 31-34).

Additionally, Applicant's allegation that he did not waive presentment to the grand jury and that Smith and Hirsch told him that he was already indicted is directly refuted by the record. Applicant affirmed with the Court that he previously waived his right to presentment to the Grand Jury as indicated on the indictment and that he wished to proceed directly with his guilty plea hearing. (GP Tr. 6).

Furthermore, Respondent submits Applicant's assertion that counsel promised him a fifteen year sentence is without merit. At his guilty plea hearing, Applicant indicated he understood first degree burglary carried a fifteen year to life sentence. (GP Tr. 12). Applicant further indicated he understood the State agreed to recommend a maximum sentence of forty years, but that Judge Couch was not required to accept the State's recommendation. (GP Tr. 12).

Finally, Applicant testified during his guilty plea hearing that his counsel answered his questions pertaining to his case. (GP Tr. 14). Applicant testified that he was satisfied with the representation he received from Smith, Hirsch, and McKinnon. (GP Tr. 14). Applicant also testified that there was nothing else he wanted counsel to do before the Court proceeded with his case. (GP Tr. 14). However, the allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Motion for More Definite Statement

In his application, Applicant fails to set forth with specificity the facts and circumstances upon which several of his ineffective assistance of counsel claims are based. Additionally, Applicant alleges that he did not file a direct appeal in his case because “my lawyer told me not too, he said he tell[s] all his clients no because it would do no good,” but does not specify whether or not this is meant as an allegation that his right to a direct appeal was not knowingly and voluntarily waived. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

In his application, Applicant asserts that his counsel was deficient because “co-counsel told me 1 thing while my other attorney told me a different story.” Furthermore, Applicant asserts that counsel “failed to investigate the facts of the case.” Applicant has failed to state with any specificity the specific facts giving rise to these allegations, and accordingly, it is impossible for Respondent to adequately respond to this allegation of ineffective assistance of counsel. Additionally, this allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCF, to require Applicant to provide a more definite statement of his allegations of ineffective assistance of counsel.

Additionally, since it is unclear whether Applicant is asserting that he did not knowingly or voluntarily waive his right to a direct appeal, Respondent moves pursuant to Rule 12(e), SCRCF, to require Applicant to provide a more definite statement if he does indeed intend to raise

the issue and to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. The Uniform Post-Conviction Procedure Act requires applicants to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief." Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent

to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

IX. Request for Applicant to file an Amended Application

WHEREFORE, having made its return, Respondent requests applicant, through his counsel, amend the application to provide the required specificity for the aforementioned allegations of ineffective assistance of counsel. Respondent further requests an evidentiary hearing solely as to the allegations which have been specifically and sufficiently alleged by Applicant.

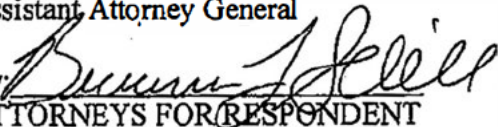
Respectfully submitted,

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By: 
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P.O. Box 11549
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May 22, 2019

1			<u>I N D E X</u>		
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	DAVID JAMES LAMONT BRICE				
4	Mr. Lifsey	6			
5	Mr. Mitchell		13		
6	Mr. Lifsey			16	
7	PHILIP SMITH				
8	Mr. Mitchell	17			
9	Mr. Lifsey		23		
10	Mr. Mitchell			34	
11	RAIA J. HIRSCH				
12	Mr. Mitchell	37			
13	Mr. Lifsey		40		
14	Certificate	46			
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E X H I B I T S

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>ID/AD</u>
S-1	True-billed Indictment	22

(Court Reporter's Note: All exhibits admitted into evidence during this hearing were duly filed with the York County Clerk of Court's Office.)

1 THE COURT: All right. State ready to proceed here?

2 MR. MITCHELL: Yes, Your Honor. May it please the
3 Court?

4 THE COURT: Yes.

5 MR. MITCHELL: This is the post-conviction relief
6 matter of *David James Lamont Brice v. State*, case number
7 2019-CP-46-00405, out of York County.

8 Cruise Mitchell on behalf of the State of South
9 Carolina. Applicant is present and represented by counsel,
10 Michael Lifsey.

11 Applicant was charged with first-degree burglary, case
12 number 2018-GS-46-05384. Applicant waived his right to
13 presentment to the grand jury on this charge. Applicant was
14 represented by Assistant Public Defenders Philip Smith and
15 Raia Jane Hirsch and Chief Deputy Assistant Public Defender,
16 Mark McKinnon. Assistant Solicitor Ryan Newkirk of the
17 Sixteenth Solicitor's Office prosecuted the case. Applicant
18 was served with the notice of intent to seek like without
19 parole due to a prior conviction.

20 On July 9th, 2018, applicant pleaded guilty before the
21 Honorable Roger L. Couch. Pursuant to a negotiated sentence
22 range of 15 to 40 years, Judge Couch sentenced applicant to
23 25 years imprisonment for first-degree burglary. Applicant
24 did not appeal the sentence.

25 Applicant timely commenced this PCR action on February

1 4th, 2019, and at this time I'll turn the case over to Mr.
2 Lifsey.

3 MR. LIFSEY: May it please the Court, Judge?

4 THE COURT: Yes, sir.

5 MR. LIFSEY: Thank you. Your Honor, I would point out
6 -- begin by pointing out that I have only been the lawyer
7 for Mr. Brice since September. There was another counsel
8 involved who filed an amended application on his behalf.

9 THE COURT: Uh-huh.

10 MR. LIFSEY: I will tell you, and I tried -- I don't
11 believe any of this is a surprise to the Attorney General's
12 Office, but I -- in addition to the issues raised by the --
13 his prior lawyer in his amended application, just -- I just
14 want to put this on the record for clarity purposes. I am
15 going to be raising issues related to the waiver or non-
16 waiver of the grand jury indictment and in regards to
17 whether or not he actually admitted guilt during the plea
18 colloquy. I hope those are not any objection. I don't know
19 if they any objection to me raising those issues at this
20 point and I guess if they do, I'd ask that we -- give me
21 time to amend his application again since I've only been on
22 the case a couple months, but I don't think that's a
23 surprise to them.

24 MR. MITCHELL: Without objection, Your Honor.

25 THE COURT: All right. So moved.

1 MR. LIFSEY: Thank you, Judge. In that case, I would
2 call Mr. Brice to the stand.

3 THE COURT: Very well.

4 (DAVID JAMES LAMONT BRICE, being first duly sworn, was
5 examined and testified as follows):

6 DIRECT EXAMINATION

7 DAVID JAMES LAMONT BRICE BY MR. LIFSEY:

8 Q. All right. Mr. Brice, would you state your full name,
9 please?

10 A. David James Lamont Brice.

11 Q. Mr. Brice, where are you currently being held?

12 A. At Lee Correctional Institution.

13 Q. All right. And why are you at Lee Correctional?

14 A. I was convicted of burglary first.

15 Q. And that was in York County you were convicted?

16 A. Yes, sir.

17 Q. All right. Who were your lawyers in York County?

18 A. First I had Mark McKinnon, Raia -- Raia Hirsch and Phil
19 Smith.

20 Q. Tell me about -- well, first of all, what were you
21 charged with?

22 A. Burglary first.

23 Q. Did any of those three lawyers that you named ever sit
24 down and explain to you the elements of the crime of
25 burglary in the first degree?

1 A. No, sir.

2 Q. What -- did you address with any of those lawyers what
3 it meant to commit a burglary? Did any of them tell you
4 what it meant about burglary?

5 A. Well, I had talked to Phil Smith, he told me that no
6 matter if I was staying there, it's still burglary because I
7 wasn't on the lease.

8 Q. Well, let me get back, though. Let's talk a little bit
9 about -- what is your -- who's the victim on the suppos- --
10 alleged victim on this case?

11 A. My ex-girlfriend.

12 Q. What's her name?

13 A. Blondell Boozer (ph).

14 Q. All right. What -- did you -- you have reviewed the
15 transcript of this case. Right?

16 A. Yes, sir.

17 Q. All right. The solicitor -- do you know what the
18 solicitor accused you of doing?

19 A. He said burglary first.

20 Q. Okay. What did you -- what's your version of what
21 happened?

22 A. Well, I had left early that morning to go to work and I
23 didn't come back 'til late that night and so I tried to get
24 in the house, knocked on the door and she came to the door
25 and told me to go back where I came -- go back over that "B"

1 house, over there where you came from, and I told her I was
2 trying to get in so I could go to sleep, get some clothes so
3 I can change for work the next morning and she wouldn't let
4 me in, whatever, so I throwed a brick through the window and
5 went in there and changed clothes.

6 Q. Okay. Did you tell that version of those facts -- of
7 what happened to Mr. Smith?

8 A. Yes, sir.

9 Q. All right. What did Mr. Smith tell you about that?

10 A. He said it was burglary because I wasn't on the lease.

11 Q. Okay. All right. Do you remember in your plea, did
12 you ever admit to anything beyond what you just told me a
13 minute ago?

14 A. No, sir.

15 Q. Okay. All right. Well, when you went to plead guilty,
16 what did your lawyers tell you about how much time you were
17 going to get?

18 A. Well, I was -- I was going for a jury trial, but then
19 told me to plead guilty 'cause I wasn't going to beat the
20 case 'cause they were going to give me a life sentence and
21 so when I went there, Raia came to see me --

22 Q. By Raia, you mean Ms. Hirsch?

23 A. Ms. Hirsch came to see me. Yes, sir.

24 Q. That's all right.

25 A. And so Ms. Hirsch --

1 Q. I just want to make sure for the record we know who
2 we're talking about.

3 A. Ms. Hirsch came to see me and she said -- told me to
4 take the plea 'cause the judge was pretty nice, know what
5 I'm saying, if I don't, I'm going to get a life sentence and
6 she said that more likely he'd give me 15 years. He's a
7 pretty nice judge.

8 Q. All right. So you thought you were going to get 15
9 year in this case?

10 A. Yes, sir.

11 Q. All right. If you had known -- how much time did you
12 actually get?

13 A. Twenty-five.

14 Q. If you had known you were going to get 25 years instead
15 of 15 years, would you have plead guilty on this charge?

16 A. No, sir.

17 Q. Would you have insisted on going to a jury trial?

18 A. Yes, sir.

19 Q. Okay. If someone had explained to you in detail that
20 the elements of burglary require you to actually enter a
21 house with the intent to commit a crime while you're in
22 there, would you have plead guilty or would you have
23 insisted on having a jury trial?

24 A. Having a jury trial.

25 Q. Tell me about the indictment. What was going on with

1 the indictment and what do you know about the indictment?

2 A. Well, I was told that I was indicted by the grand jury,
3 so I guess -- so I paid no attention to it 'til I went down
4 to SCDC, so I wrote back to the Clerk of Court and asked
5 for a copy of the indictment. They said they did not have a
6 copy of that indictment, said it was dismissed and I was
7 indicated on another indictment, but it was not sent to the
8 grand jury and so I wrote to Court Administration and asked
9 them did they have court on that date and they said didn't
10 no grand jury convene on that date.

11 Q. All right. You indicated to me at one time or what do
12 you know about any evidence or a phone or anything like
13 that? Did you discuss a cell phone or anything like that
14 with either -- any of your lawyers?

15 A. Yes. My cell phone was signed out and I wrote to the
16 Clerk of Court and everywhere trying to -- nobody know where
17 it's at.

18 Q. Okay. Okay. All right. Do you have any other issues
19 or complaints you want to raise about how your lawyers
20 represented you?

21 A. I don't think that if I would have knowed -- I didn't
22 get to have -- get any motion of discovery to really go over
23 my case 'cause when I first got locked up, I went to -- I
24 think they called it a preliminary hearing and at the
25 preliminary hearing there was no knife or nothing like that

1 and about eight months down the line, they started talking
2 about a weapon. I don't know where it came from.

3 Q. Well, let me ask -- now that you mention that, let me
4 ask that. Did any of your lawyers ever show you your
5 discovery in this case or give you copies of your discovery
6 in this case?

7 A. I never received a copy.

8 Q. Okay. How many times or tell -- you've got three
9 different lawyers involved. How did that on? How did --
10 did one lawyer -- did all three of them represent you the
11 whole time or how did that work out?

12 A. No. I had Phil Smith, but he wasn't coming to see me.
13 I wanted to talk to him about my case and he wasn't coming
14 and so I went and asked for him to be relieved, but the
15 judge would not relieve him, so I wrote to the disciplinary
16 counsel and asked for him to be relieved.

17 Q. That's Mr. Smith---

18 A. Mr. -- Mr. --

19 Q. ---or Mr. McKinnon?

20 A. Mr. McKinnon.

21 Q. Okay. All right. So you had McKinnon first?

22 A. I had McKinnon first.

23 Q. And then you said you filed a complaint with the
24 disciplinary counsel--

25 A. Yeah.

1 Q. ---regarding him? All right. Then what happened? Who
2 was your lawyer next?

3 A. I think Raia was helping -- Ms. Hirsch was helping --
4 helping him. I think she was a - I don't know the name of
5 it -- they help the lawyer, a co-counsel or something like
6 that.

7 Q. Okay.

8 A. And so I guess Mark McKinnon got off the case and Phil
9 Smith came and said he was going to be representing me.

10 Q. All right. How many times did you meet with Phil
11 Smith about this case?

12 A. I'd say maybe five times. Maybe five -- I think five
13 times.

14 Q. Okay. All right. Okay. All right. Do you have any
15 other issues you want to raise or things you want to tell
16 the Court about how they -- your representation was in this
17 matter?

18 A. I don't think I really got a fair trial, 'cause if I'd
19 knowed that -- they never told me that they had -- the
20 burglary had to have elements. Only thing I was told is
21 that about me going inside the house and I wasn't on the
22 lease, it was burglary.

23 Q. Okay. All right.

24 MR. LIFSEY: Thank you, Judge. I don't have further
25 questions.

1 THE COURT: All right. Cross-examination.

2 CROSS-EXAMINATION

3 DAVID JAMES LAMONT BRICE BY MR. MITCHELL:

4 Q. Good afternoon, Mr. Brice.

5 A. Good afternoon.

6 Q. Do you recall waiving presentment to the grand jury in
7 this case?

8 A. When I went to court, I had already been indicted by
9 the grand jury.

10 Q. On the charge you pled to at the plea hearing, you
11 waived presentment to the grand jury for that indictment.
12 Correct?

13 A. I had already -- I was shown the indictment, but I
14 already had been --

15 Q. You already were previously indicted for burglary
16 first?

17 A. Yes. I was -- I didn't know -- I was shown one that
18 was already indicted. I didn't know nothing about a new
19 indictment.

20 Q. There was a new indictment and you -- that was
21 presented to you at the plea hearing?

22 A. Well, they never told me about it was a new indictment.

23 Q. Well, you waived presentment to it at the plea hearing.

24 A. I never did -- the judge say did I want to waive it,
25 but I had already had said it was already guilty already of

1 the indictment.

2 Q. Well, when the judge asked you if you wanted to waive
3 it, what did you say?

4 A. I said no, 'cause I already had been indicted. I
5 didn't know right then.

6 Q. If you took a look at the transcript, would that help
7 change your mind?

8 A. (No response)

9 (Whereupon, Mr. Mitchell indicated on the transcript to
10 the witness.)

11 Q. Says, I received papers indicating that you wish to
12 give up --

13 MR. LIFSEY: Your Honor, just for purposes of the
14 record, can he indicate what --

15 MR. MITCHELL: Oh, yes. Yes, Your Honor. It's page
16 6,---

17 MR. LIFSEY: Okay.

18 MR. MITCHELL: ---line 8.

19 Q. And then he asked if that's correct, you're waiving
20 presentment and you responded?

21 A. Yes.

22 Q. And it says, Have you discussed this with your
23 attorney? And you responded?

24 A. Yes. I never did.

25 Q. Do you recall the judge explaining to you the terms of

1 the negotiated plea?

2 A. Said a cap of 15 to 40.

3 Q. Fifteen to 40?

4 A. Yeah.

5 Q. And he went over that with you at the plea hearing?

6 A. Yeah.

7 Q. And you said you understood that you could be sentenced
8 to 40 years?

9 A. Yeah.

10 Q. Do you remember pleading guilty to burglary in the
11 first degree?

12 A. Yes.

13 Q. Do you remember when the solicitor went over the facts
14 of your case?

15 A. Facts? You talking about the burglary? He was saying
16 burglary. What you mean by the facts?

17 Q. He went over the facts of what he was going to present
18 at trial?

19 A. Yeah.

20 Q. And then he asked you if you agreed and you said you
21 disagreed about the knife. Correct?

22 A. Yes.

23 Q. But then he asked, Do you agree with all the other
24 facts other than the knife? And you said, Yes. Is that
25 correct?

1 A. Yes. It was a knife -- yes.

2 Q. And do you remember the judge asking you if you were
3 pleading of your own free will?

4 A. Yes.

5 Q. And how'd you respond? Do you remember?

6 A. I think I told him yes, but I'm not sure.

7 MR. MITCHELL: No further questions, Your Honor.

8 THE COURT: Redirect?

9 MR. LIFSEY: Just briefly.

10 REDIRECT EXAMINATION

11 DAVID JAMES LAMONT BRICE BY MR. LIFSEY:

12 Q. The Attorney General asked you about that waiver. Did
13 you sit down with your lawyers, any of your lawyers, and
14 discuss the pros and cons of waiving or what was going on
15 with your indictment?

16 A. I never knew that I had a new indictment. I just --
17 what I was told, well, you have been indicted by the grand
18 jury, so I seen the paper where it said they had been
19 indicted. I never knew about no new presentment. I didn't
20 understand what he was saying when he was saying I had a --
21 it wasn't presented to the grand jury. I didn't know it was
22 a new indictment.

23 MR. LIFSEY: Thank you very much. I don't have
24 anything further.

25 THE COURT: Recross?

1 MR. MITCHELL: Nothing further, Your Honor.

2 THE COURT: All right. The witness may step down.

3 MR. LIFSEY: Thank you, Judge. I don't have any other
4 witnesses.

5 THE COURT: Very well. The State?

6 MR. MITCHELL: The State calls Mr. Philip Smith.

7 THE COURT: Okay.

8 (PHILIP SMITH, being first duly sworn, was examined and
9 testified as follows):

10 DIRECT EXAMINATION

11 PHILIP SMITH BY MR. LIFSEY:

12 Q. Good afternoon, Mr. Smith.

13 A. Good afternoon.

14 Q. Where are you currently employed?

15 A. At the -- still at the York County Public Defender's
16 Office.

17 Q. Okay. And you were employed there during your
18 representation of Mr. Brice?

19 A. I was.

20 Q. Can you explain how you came to represent Mr. Brice in
21 this case?

22 A. The case was originally being handled by Mark McKinnon
23 in our office. Sometime during that representation I
24 believe Ms. Hirsch was hired by our office. She looked over
25 the case, talked -- she has a lot of knowledge about mental

1 health issues. She shortly became associated with the
2 representation with Mr. McKinnon. Then at some point I
3 became aware that there was an issue, conflict, or a
4 disagreement or a misunderstanding between Mr. McKinnon and
5 Lamont -- I'm sorry -- Mr. Brice and I had represented him
6 in the past, so I was asked if I would come back and
7 represent him, which I gladly did.

8 Q. And how many times did you meet with Mr. Brice?

9 A. I can't say for certain. Five could be correct. Ms.
10 Hirsch was doing more of the contact with him in the mental
11 health issues things. I was doing things like going to Ms.
12 Boozer's home, investigating the case, preparing sort of the
13 fact side of it, but he maybe correct. It may be five
14 times.

15 Q. Going back into that, what was part of your
16 investigation of this case?

17 A. Was able to make contact, with the assistance of Mr.
18 Brice's sister, with the, at that point, alleged victim in
19 the case, Ms. Boozer. I knew, additionally, her husband, so
20 I had some knowledge of her. At some point I went out
21 there, she wouldn't let me talk to her, but eventually she
22 allowed me to come in to see the apartment, do those things.
23 She talked with me on a number of different occasions. Mr.
24 Brice talked about the issue of consent to enter the home,
25 him saying he was staying there. She brought, at some

1 point, some belongings that were his, so I had a sort of
2 rapport both with her and with him and was able to go out
3 and sort of get the basic understanding of all the facts of
4 the case.

5 Q. And did you review discovery with Mr. Brice?

6 A. Yes. Now, I would have been doing it in chunks, 'cause
7 a lot of it would have been done before then, but I went
8 over anything that was questionable, talked with him about,
9 you know, -- he's correct. His big issue was that he had
10 the right to be in there and he is correct that I told him
11 you used a brick to enter. No one's going to believe that
12 you were invited or allowed to be there when you threw a
13 brick through and I did talk to him about that he wasn't on
14 the lease and the difficulties at that that would arise
15 then, but his primary concern was he had a right to be there
16 and I certainly went over all that with him as well.

17 Q. During your discussions with Mr. Brice, did you go over
18 the elements of first-degree burglary?

19 A. Yes. We would have gone over all the burglary. In
20 fact, he signed the indicted, the waiver and it would be
21 listed there as well on the day of the plea. I should say
22 that plea affidavit, that's my handwriting, his initials of
23 the signatures, but I went over the plea affidavit with him.
24 Ms. Hirsch did talk with him longer that day as well, but I
25 went over the plea affidavit with him.

1 Q. Do you recall what the crime scene looked like or --

2 A. It's an apartment. It's a special-need housing area,
3 sort of -- not really in a remote area of York County, but
4 there's not a whole lot right around it.

5 Q. Do you remember --

6 A. You mean outside or inside?

7 Q. Inside. After -- after Mr. Brice entered? Do you
8 know?

9 A. It was -- there was glass shattered into the bedroom,
10 the brick was laying, there was sort of disarray and things
11 knocked over, particularly in the kitchen area, a whole
12 bunch of food appeared to have been thrown out of the, I'm
13 guessing, the freezer based on the condition of how it
14 looked and what it was, but it could have been the fridge as
15 well and sort of some of the stuff on the counter was in
16 disarray and that's where part of our distinction or
17 argument about the knife comes in. There's a knife that
18 somehow appears photographed. We didn't see it in all the
19 crime scene photos, but I would have suspected and Mr. Brice
20 would have indicated it was a knife from inside the
21 apartment itself, not anything that he brought. He admitted
22 that he had a box cutter, which is, I think, what he cut
23 himself with after leaving, but he -- as he indicated,
24 certainly had contention and never said that the knife that
25 they were claiming was his was anything that he used.

1 Q. Do you think the State's evidence in this case was --
2 there's a pretty -- a likelihood that he was going to be
3 convicted at a jury trial?

4 A. I do.

5 Q. And do you believe that there was enough to confirm
6 that there was intent to commit a crime in the --

7 A. Upon the -- yes.

8 Q. Yes, sir.

9 A. Yes, I do. There was -- he had sort of been outside
10 waiting and he had seen, as would have come about at trial,
11 Ms. Boozer with someone that would have upset him and there
12 would have been that as a basis of why he hung out so late
13 and why he was so late upon entry and then the throwing of
14 the food and all those sort of things that would have gone
15 on; yes, I do.

16 Q. And the indictment issue, do you remember him being
17 true billed?

18 A. I didn't until I checked down at the Clerk's today and
19 then it does refresh my memory. The original indictment had
20 been lost the day of trial, that it was discovered that they
21 did not have it and so to plea, there was discussion about
22 what to do to plea, could he plea on a copy and then it was
23 decided that we would -- the safest was just to do another
24 indictment and then do a waiver procedure and so I went over
25 him the waiver and he signed both places on the indictment

1 for the waiver of grand jury and then to enter the plea.

2 Q. Okay. Is this a copy of the original true-billed
3 indictment?

4 A. That is. It's the one that was lost, that's the 599.

5 MR. MITCHELL: Your Honor, the State would offer this
6 as State's Exhibit 1.

7 MR. LIFSEY: Oh. I don't have any objection.

8 THE COURT: All right. So admitted, State's Exhibit 1.
9 Is that not in the record on appeal, anyway?

10 MR. MITCHELL: Not the original one.

11 THE COURT: Okay.

12 MR. MITCHELL: It's just the one he was -- he pled to.

13 (Whereupon, the referenced document was marked as
14 State's Exhibit Number 1.)

15 Q. Do you remember discussing the terms of the plea to Mr.
16 Brice?

17 A. The negotiation? Yes.

18 Q. Yes, sir. The negotiation.

19 A. Yes. And Ms. Hirsch was there and doing a lot of that
20 as well. And I should say this was a very long, ongoing
21 process, the sort of getting the plea back and all this, the
22 offers, Mr. McKinnon had been involved in all that, so
23 this -- the negotiations of the plea had gone on a long time
24 and once life notice was served, that sort of changed the
25 urgency of some of that.

1 Q. Did you ever tell Mr. Brice that if he pled guilty he
2 would get 15 years?

3 A. No.

4 Q. Did you tell Mr. Brice that it was possible he could
5 get up to 40?

6 A. Yes.

7 Q. And do you remember the phone at issue here?

8 A. (Shaking head negatively) I do not.

9 Q. Okay.

10 MR. MITCHELL: Beg the Court's indulgence, Your Honor.

11 A. I should say I'm aware of screen shots of text. Now,
12 whether that's the phone that he's discussing, I don't know
13 that answer.

14 Q. Okay.

15 MR. MITCHELL: Nothing further, Your Honor. Thank you
16 so much, Mr. Smith.

17 THE WITNESS: Sure.

18 THE COURT: Cross-examination

19 MR. LIFSEY: Thank you.

20 CROSS-EXAMINATION

21 PHILIP SMITH BY MR. LIFSEY:

22 Q. Mr. Smith, you answered the Attorney General about how
23 many times you met with my client---

24 A. Yes, sir.

25 Q. ---or our client.

1 A. Yes, sir.

2 Q. Do you have notes that reflect that?

3 A. I do not. I went back through the portion of the file
4 that I maintained and it does not have notes of the number
5 of times I met with him.

6 Q. Why do you not have notes of when you would meet with
7 clients?

8 A. I -- I don't have anything showing a date. I cannot
9 answer why I do not have that.

10 Q. I mean, in addition to taking, like, physical notes,---

11 A. Yes, sir.

12 Q. ---you also could have entered on defenderData how many
13 times you met with a client.

14 A. If we were using that system at that point, yes, sir, I
15 could have.

16 Q. Well, you were using -- I mean, it was 2018, I mean, --
17 or, excuse me, yeah, 2018. Certainly we were using
18 defenderData in 2018, were we not?

19 A. I was still using files primarily, but yes, I
20 understand.

21 Q. I'm just trying to figure out, for the purposes of -- I
22 assume this is not the first PCR hearing you've ever
23 testified at.

24 A. It is not. No, sir.

25 Q. And considering how many times that is an issue, I'm

1 just trying to figure out why in the world there wouldn't be
2 a piece of paper or an electronic note that says January
3 5th, met with client, January 8th, discussed indictment
4 issue. Why do those things not exist?

5 A. I can tell the day I discussed the indictment issue
6 with him, that's at the plea and that's reflected in the
7 affidavit and in the colloquy, but as far as another date, I
8 do not have that.

9 Q. Sure. But, presumably, all of us who are good lawyers
10 are not meeting first with our clients the day of the
11 colloquy, but would not---

12 A. No. We did not meet at the date --

13 Q. ---you agree that obviously part of our duty is to meet
14 with a client before and prepare him. Correct?

15 A. Sure.

16 Q. And I'm just trying to wrap my head around why there
17 are no notes that reflect when you sit down with a client.
18 Do you have any idea as to why? I mean, is it your
19 intention to not take notes or is that you take them
20 sometimes and didn't in this case? I'm just trying to
21 figure that out.

22 A. No, sir. It was not an intention to not take notes. I
23 can't tell you if I took any. I can tell you that I don't
24 have them.

25 Q. Okay. All right. You mentioned Ms. Hirsch being

1 involved because of mental health issues. Tell me what that
2 was about.

3 A. She was involved and she knows that area of law
4 extremely well, so I believe she met with Mr. Brice and
5 thought that that may be a potential issue, so she prepared
6 that and then you can see from when I take on representation
7 with his as well, she handles a number of requests for
8 further evaluation, request for a continuance, request for
9 funding, to deal with the whole mental health side and she
10 did do all that.

11 Q. Did you find there to be mental health issues regarding
12 Mr. Brice?

13 A. Enough that warranted the evaluations. Yes; sure.

14 Q. And on the scale of clients,---

15 A. Right.

16 Q. ---I'm trying to get at, obviously, is he a client that
17 needed more detailed explanations of legal concepts and
18 issues regarding his case than the average client would?

19 A. Lamont certainly understands more than you might think
20 he does about certain things, but sometimes he will struggle
21 with some concepts. That's true.

22 Q. All right. The issue regarding the grand jury,---

23 A. Right.

24 Q. ---you testified did not arise until the day of the
25 plea, shortly before the colloquy. Is that right?

1 A. That's my memory of it.

2 Q. So your discussion of the issue on whether or not a
3 grand jury indictment, a presentment to the grand jury
4 should be waived or not,---

5 A. Yes, sir.

6 Q. ---would have only occurred at that time. Is that
7 correct?

8 A. That's correct. And he's correct. I told him he had
9 already been indicted by a grand jury, but we didn't have
10 that copy, so to do this, he would do a waiver; eighteen
11 people, twelve of them have to agree, not that you're
12 guilty, but just that there's enough evidence for the case
13 to go forward, like they had already done.

14 Q. As a person with limitations who needs more time
15 explaining to them, that's a pretty big issue to decide
16 right immediately before you do the plea colloquy, don't you
17 think?

18 A. Well, he had been indicted---

19 Q. Sure.

20 A. ---by a grand jury, so I don't think, ultimately, that
21 would have solved anything for him even if he had not wanted
22 to sign that waiver.

23 Q. Well, how often does the grand jury meet in York
24 County?

25 A. I believe every month.

1 Q. So it would have, at a minimum, delayed his case.

2 Correct?

3 A. If he didn't sign the waiver, sure. That's correct.

4 Well, potentially. We had not gotten an affirmative ruling
5 from the Court as to what was going to be done about could
6 we go forward under the copy or not.

7 Q. And Ms. Boozer, who is the victim in this case, herself
8 suffers from mental health issues?

9 A. She does. That's why she was in that house and that's
10 correct.

11 Q. So in your experience with defendants with mental
12 health issues and victims with mental health issues,
13 sometimes they're availability varies from day to day, from
14 month to month, from week to week. Is that fair to say?

15 A. It -- Ms. Boozer's sort of easy to find, but as far as
16 how cooperative she would be, that would be up and down.
17 That's correct.

18 Q. All right. I'm not asking this to be argumentative,
19 but you understand the elements of first-degree burglary.
20 Correct?

21 A. That's correct.

22 Q. And -- excuse me -- the elements of burglary in general
23 require entry into a dwelling, in this case, with the intent
24 to commit a crime therein.

25 A. That's correct.

1 Q. Correct.

2 A. That's correct.

3 Q. All right. I believe you testified in response to the
4 Attorney General that your focus, based on what the client
5 had told you, was on the entry portion of that issue.
6 Correct?

7 A. That was his focus, so I would go through and tell him
8 why I didn't think that was necessarily a good defense.
9 That's correct.

10 Q. Sure. So I'm trying to figure out and wrap my head
11 around what crime did he admit to committing, assuming the
12 entry was unlawful? What are your thoughts about what he
13 would have been admitting to doing?

14 A. A potential assault, a confrontation with Ms. Boozer
15 and he was angry that he had been paying for the things in
16 her life with his work while she was getting the subsidies
17 and that he was going to get rid of those things. Now, he
18 believed he had a right to, and whether you think that's a
19 crime or not, but I think it would be under the law and
20 that's why you see sort of stuff thrown and strewn
21 everywhere in the crime scene photos.

22 Q. Sure. And I get you believe, as you answered the
23 Attorney General's question, that he would most likely be
24 convicted at trial.

25 A. That's right.

1 Q. You believed that?

2 A. That's right.

3 Q. But, ultimately, that's not really the issue, is it? I
4 mean, isn't the issue whether he wishes to give up his jury
5 trial rights and admit that he committed a crime?

6 A. I'm a little confused.

7 Q. You're not his guardian ad litem. Correct?

8 A. I am not. That's correct.

9 Q. So you're not -- your duty is not to act in his best
10 interest. Your duty is to do -- explain the elements of the
11 crime to him and let him make a decision on whether he
12 wishes to plead guilty. Correct?

13 A. Correct. He did not want to risk a life sentence. He
14 wanted to plea.

15 Q. Well, I'm mean, I'm trying to get -- during the plea
16 colloquy, I'm trying to find some place in here where he
17 admits a crime that he committed or intended to commit in
18 the house. Because didn't he -- I mean, first of all, have
19 you had a chance to review the transcript in this case?

20 A. I have.

21 Q. I'm going to show you --

22 MR. LIFSEY: And, Your Honor, I'm referring to page 23
23 of the plea colloquy and this is after he sort of disagrees
24 with the solicitor's recitation of the facts.

25 Q. Would you agree -- would you read lines 19 through the

1 end of the page, 25?

2 A. Sure. Nineteen: THE COURT: Well, tell me what you
3 disagree with. MR. BRICE: I disagree with the stated --
4 the knife part. THE COURT: What? The knife part? MR.
5 BRICE: The knife part. COURT: Okay. What else do you
6 disagree with? MR. BRICE: I did when -- I did went inside
7 the house. That's about it.

8 Q. Okay. And then the solicitor chimes in about what
9 constitutes burglary. Would you read lines three and --
10 three through five of page 24?

11 A. Sure. Line three, SOLICITOR NEWKIRK: That the
12 defendant did have what appeared to be a knife or did have a
13 knife and that the burglary did occur in the nighttime.
14 Stop there.

15 Q. Uh-huh. And then I want to refer you on page 25 when
16 the Court raises issues about that and the Court asked you,
17 Can you help me with that a little bit? Have you discussed
18 with him? And what -- would you read your answer, 7 through
19 15.

20 A. Sure.

21 Q. Line 7 through 15.

22 A. Beginning at line 7, MR. -- me says, Yes, Your Honor, I
23 have. There are -- in the versions of the events, there are
24 sort of two different knives that are involved, one of which
25 the State has, he believes was at the residence. There is

1 another object, a box cutter, that he had with him. He
2 would contest that, but we concede it's an entry in the
3 nighttime, there was damage done in the residence and we
4 think that it would be overwhelmingly proof that the
5 elements of burglary should -- burglary in the first degree.

6 Q. Got you. So you foc- -- continued to focus both on the
7 entry into the dwelling---

8 A. That's correct.

9 Q. ---and the likelihood that he would be convicted at
10 trial?

11 A. And the damage to the residence,---

12 Q. Sure.

13 A. ---as it says in there.

14 Q. Sure; sure. All right. Then at the end of the plea
15 process, after the colloquy and after the plea's been
16 accepted, Mr. Brice gets a chance to speak, obviously, as
17 most clients do. Correct?

18 A. That's right. Yes. That's right.

19 Q. All right. And he gives his version of what happened
20 during the incident. Correct?

21 A. He did.

22 Q. Would you begin reading at line -- where it says, I
23 ain't lie, at 19, and read through the end of his recitation
24 on page -- oh, excuse me, line 13, the next page.

25 A. Sure. Beginning in the middle of 19, I ain't going to

1 lie. You know what I'm saying? Then she usually have
2 seizures and I just been worried about her so much. I had
3 -- when I went to the house that night, I asked her saying,
4 honey, I'm not going to do anything. She said what is it?
5 Then I asked her, I said, I can come and lie down and go to
6 sleep because I'm ready to go to bed. I was sleepy and
7 tired, you know what I'm saying? So I did knock on the door
8 and talk to her first, you know what I'm saying? And she
9 said, No. Go somewhere else or something like that, so I
10 said, Please can I lay down and go to sleep? I said, I'm
11 going to call the -- it says I said I'm going to call the
12 police. That's what the transcript shows. And I told her
13 to call the police. I didn't go in there to hurt her or
14 nothing. I was wanting to lay down and get some sleep and
15 go to work the next morning. I never meant to. I still
16 love her. I never meant to go in there and cause her any
17 harm. I knocked on the door. I mean, she came to the door
18 and I told her, you know what I'm saying, can I lay down?
19 So I didn't just go there to throw the brick through the
20 window. I was talking to her through the back door.

21 Q. All right. So, now, you clearly testified in response
22 to the Attorney General that you believe he would be
23 convicted at trial had he gone to trial?

24 A. I did. That's why we advised him to enter the plea.

25 Q. Sure. And so, therefore, you, I assume, do not believe

1 that his account that you just read would have been believed
2 by the jury. Or do you?

3 A. There would have been more that I think they would have
4 believed than that account. Yes.

5 Q. Got you. Hypothetically, if the jury had believed his
6 account,---

7 A. Right.

8 Q. ---he's not guilty of a burglary, is he?

9 A. That's correct.

10 MR. LIFSEY: I beg the Court's indulgence just one
11 moment. I don't have any further questions, Judge. Thank
12 you.

13 THE COURT: Redirect?

14 MR. MITCHELL: Just briefly, Your Honor.

15 REDIRECT EXAMINATION

16 PHIL SMITH BY MR. MITCHELL:

17 Q. Was Mr. Brice evaluated for competency?

18 A. He was.

19 Q. Do you know how many times?

20 A. I thought three. I see two recommendations, but I
21 believe Ms. Hirsch also described a sort of hybrid one and
22 so I would say at least twice.

23 Q. And do you remember the results of those evaluations?

24 A. He was found both competent and criminally responsible.

25 Q. And were both doctors who did the evaluations present

1 at the plea hearing?

2 A. Not to my knowledge, but I'll defer to Ms. Hirsch on
3 that.

4 Q. Would you defer to the transcript?

5 A. Oh. Sure; sure. Sure. I'm sorry.

6 Q. They -- they were --

7 MR. LIFSEY: Judge, for what it's worth, I agree the
8 transcript says that at least Dr. Joshi was there,
9 maybe --

10 A. I do remember Dr. Yoshee, but I do not know.

11 THE COURT: Obviously, whatever the transcript says it
12 says. I don't disagree with that. Of course, nobody
13 complained about that after I read the transcript, but thank
14 you, Mr. --

15 Q. You said previously, so he had been indicted on a grand
16 jury on these exact same fact pattern, exact same case?

17 A. On that 599 indictment. That's correct.

18 Q. And if Mr. Brice would have insisted on getting a new
19 grand jury to indictment him,---

20 A. Right.

21 Q. ---would the plea offer still be on the table, do you
22 believe?

23 A. I don't know that answer. I know he had had a number
24 of pleas that he didn't accept that had been taken away and
25 raised. So I don't know the answer to that, nor do I know

1 that the Court wouldn't have necessarily gone forward,
2 because a copy of the indictment was available and the
3 clerk, I don't know if they could have certified it. I just
4 don't know those answers.

5 Q. And do you recall when the solicitor was going over the
6 facts of the case he stated that Mr. Brice damaged some
7 property that belonged to her including throwing out food of
8 her refrigerator, damaging personal effects and smashing a
9 cell phone?

10 A. He did.

11 Q. Do you recall that?

12 MR. MITCHELL: No further questions, Your Honor.

13 THE COURT: All right. Anything else?

14 MR. LIFSEY: I don't have any further questions.

15 THE COURT: Witness may step down.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Next witness.

18 MR. MITCHELL: Beg the Court's indulgence, Your
19 Honor.

20 Your Honor, I call Ms. Raia Hirsch to the stand for the
21 State.

22 (RAIA HIRSCH, being first duly sworn, was examined and
23 testified as follows):

24 THE WITNESS: Hello, Your Honor.

25 THE COURT: Hello.

DIRECT EXAMINATION

RAIA HIRSCH BY MR. MITCHELL:

Q. Good afternoon, Ms. Hirsch.

A. Good afternoon.

Q. Where were you --

THE COURT: Hold on one second.

(Pause in proceeding)

THE COURT: All right. Sorry. Go ahead.

Q. Where you were employed during your representation of Mr. Brice?

A. With the York County Public Defender's Office.

Q. And will you explain he you came to be represented in this case?

A. How I came to represent Mr. --

Q. Yes; Mr. Brice.

A. So I came in in February of 2017, I think, and I was assigned to do mostly sex crimes; however, I was right across the hall from Mark McKinnon who had been here for some time and we were just discussing legal issues and sort of mental health issues that he was having trouble communicating with his client and I'd had experience in dealing with a spectrum of mental health issues with clients prior to working here when I was a public defender -- I'm sorry -- when I was in private practice as a criminal defense attorney in Columbia, South Carolina and an

1 assistant solicitor with the Fifth Judicial Circuit. So I
2 offered to sort of try to assist him with communicating to
3 Mr. Brice that the offer that was on the table was a good
4 one within the context that we found ourselves.

5 Q. And did you believe it was in the best interest of Mr.
6 Brice to plead guilty at the time?

7 A. By the time we got to that point in negotiations, yes.

8 Q. And when you were explaining or did you help explain
9 the terms of the plea deal to Mr. Brice?

10 A. Yes.

11 Q. Did you ever tell him that if he pled guilty he'd be
12 sentenced to fifteen years?

13 A. No. I don't promise when there's a range what it's
14 going to be.

15 Q. Do you remember the cell phone in the case that Mr.
16 Brice was referring to?

17 A. I do.

18 Q. Will you explain what its relevance was to the case?

19 A. Sure. It was his personal cell phone that had, I want
20 to say almost, a year of text exchanges between himself and
21 Blondell and they were incredibly and revealing regarding
22 the tumultuous nature of their relationship and also about
23 the agreed-upon living situation between the two of them.
24 It had a wealth of information for potential impeachment
25 purposes and a wealth of information that I thought was

1 necessary for any independent experts in the mental health
2 category to evaluate and look at.

3 Q. So there were issues regarding Mr. Brice's competency?

4 A. Yes. Well, mental health issues on both sides. Yes.
5 I believe there were issues regarding Mr. Brice's
6 competency.

7 Q. And can you explain what you did to investigate?

8 A. Sure. Once I met with Mr. Brice for the first time, it
9 became clear to me that he was suffering from some sort of
10 heightened perceptual awareness and I -- that could be any
11 number of things. I'm not a doctor. I will admit my
12 father's a psychiatrist and so sometimes I can get a little
13 bit fixated on this, but it was clear to me he needed to be
14 evaluated, not only for competence, but as we talked about
15 the night in question, criminal responsibility. So I
16 thought his entire Social Security -- I found that he had
17 been on disability for psychiatric reasons, which is a very
18 difficult hurdle to clear and get disability for. So I got
19 the entire Social Security file, upward of 2,000 pages, and
20 in there found that he had scored a 55 on his most recent
21 IQ test, per Lisa Bridgewater, who is a contracted
22 psychotherapist with DMH -- no -- DDSN, with one of those
23 agencies.

24 Q. And how many times was he evaluated for competency, do
25 you remember?

1 A. Well, so he was evaluated by Dr. Joshi of DMH and then
2 I asked for a separate evaluation for intellectual
3 disability from the Department of Disability and Social
4 Services and we got both of those, but there's an
5 opportunity, and I hope I'm recollecting this correctly, to
6 have a joint evaluation done so that you're not -- one is
7 not looking at intellectual disability in a vacuum when
8 there's also a potential mental health issue. It's my
9 understanding that Dr. Joshee and -- I don't think she's a
10 doctor -- Ms. Hall, which is why I was struggling with
11 remembering three doctors' evaluations, joined together and
12 kind of collaborating and creating in a report, but I'm not
13 sure that they did a third evaluation.

14 Q. And did they conclude that he was competent to stand
15 trial or to proceed to the guilty plea?

16 A. Yes.

17 MR. MITCHELL: No further questions, Your Honor.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 RAIA HIRSCH BY MR. LIFSEY:

21 Q. So you were initially involved because to help with --
22 I think you answered to assist in communicating. Is that
23 correct?

24 A. Yes.

25 Q. So I assume that implies that he had had difficulty

1 communicating with counsel prior to your involvement?

2 A. Yes.

3 Q. Okay. So -- and, in fact, you indicated the reports
4 indicated he had a 55 IQ by the latest -- by one version of
5 testing?

6 A. By the most accurate and comprehensive version of
7 testing. Yes.

8 Q. Okay. In your experience when representing people who
9 suffer from mental illness---

10 A. Uh-huh.

11 Q. ---and also have an intellectual disability that
12 results in an IQ like 55,---

13 A. Uh-huh.

14 Q. ---do you find that extra time and effort is needed to
15 communicate legal concepts to them?

16 A. Absolutely.

17 Q. Are you aware of any discussion with Mr. Brice
18 regarding the issue of indictments and waivers of indictment
19 prior to immediately before the plea colloquy?

20 A. No. I have -- I have no recollection of that.

21 Q. Do you remember if you participated in any such
22 discussions with him?

23 A. I don't remember that at all. Until today, I thought
24 that we had a regular true-billed indictment on his plea.

25 Q. Got you. Okay.

1 MR. LIFSEY: Beg the Court's indulgence just a moment.
2 Thank you, Your Honor. I don't have any further questions.

3 THE COURT: Redirect.

4 MR. MITCHELL: No further questions, Your Honor.

5 THE COURT: All right. Witness may step down. Thank
6 you.

7 MR. MITCHELL: Your Honor, at this time the State
8 rests.

9 THE COURT: All right. Anything else? Any closing
10 points you want to make?

11 MR. LIFSEY: Well, I just -- I find, and I don't mean
12 this in criticism of Mr. Smith or anything, but I find
13 oftentimes we lawyers are so used to assessing cases and
14 focusing on their strengths or their weaknesses, that we
15 almost find ourselves sliding into the role of guardian ad
16 litem and trying to talk people into doing what's in their
17 best interest instead of what I think is our real role,
18 which is to educate them as to their options and let them
19 decide.

20 It seems clear in a, not a strained lawyer-like
21 reading, but in a reading of this transcript in the way the
22 plea colloquy went down and then later on when the client is
23 relating his account of what happened, it is clear he is not
24 admitting to a burglary. He's admitting to having an
25 argument, throwing a rock and going in a house and I think

1 that's trespassing, not burglary.

2 Now, is it likely a jury would have rejected that
3 argument and agreed with extra -- with the evidence of the
4 State? That may be likely. But that's not a lawyer call to
5 make. That's a client call to make and it concerns me that
6 this man with limited intellectual functioning is allowed --
7 pleas and is sentenced to twenty-five years in prison when
8 he never stood in front of a judge and said I committed a
9 burglary, at least in any recognizable way and I recognize
10 you can strain to read some of the questions, but when you
11 focus on it holistically, I just don't see it and so I
12 understand why Mr. Smith, acting in a client's best
13 interest, in what he perceives as a client's best interest,
14 wanted that plea to go through because obviously life was a
15 possible result and maybe even a likely result if they had
16 gone to trial, but at some point it's the client's decision.
17 It's not our decision as lawyers and that's just -- in
18 addition to all the other factors we raised, I'd like the
19 Court to focus on that in your decision making. Thank you,
20 Judge.

21 THE COURT: Thank you. Anything from the State?

22 MR. MITCHELL: Your Honor, the State submits that the
23 applicant has not met his burden showing he's entitled to
24 post-conviction relief.

25 He was served an LWOP notice in this case, Your Honor,

1 and Mr. Smith and Ms. Hirsch were able to negotiate a deal
2 where he was -- negotiated a cap of 15 to 40 years.

3 During the plea hearing, Your Honor, with regard to the
4 burglary first, Mr. Brice said he pleaded guilty to first
5 degree burglary. He said he was doing it of his own free
6 will, no one promised him anything, and after the solicitor
7 recited the facts of the case, Mr. Brice made clear that he
8 agreed with all the other facts in the case with the
9 exception of the knife and in the solicitor's -- I'll let
10 you read the facts at your own leisure, Your Honor, but the
11 solicitor mentioned he threw the brick through the window
12 and damaged property to or including food out of
13 refrigerator and smashing a cell phone belong to her.

14 Mr. Brice agreed to those facts, Your Honor, and the
15 State would submit that that's admitting guilt to burglary
16 in the first degree.

17 With regard to his mental health, he was given two
18 separate competency evaluations by trained professionals and
19 both of them said he was competent to proceed to a trial and
20 he knew the difference between moral and legal, right and
21 wrong.

22 Your Honor, with regard to the -- him believing that he
23 was going to get 15 years, both Mr. Smith and Ms. Hirsch
24 both denied ever telling Mr. Brice that he was going to be
25 sentenced to 15 years if he pled guilty and the judge, in

1 the plea colloquy, specifically told Mr. Brice that he could
2 be sentenced up to anywhere in forty years and Mr. Brice
3 agreed that he understood that. So for those reasons, I see
4 no deficiency and no prejudice for the representation on the
5 part of Mr. Smith and Ms. Hirsch.

6 THE COURT: All right. I'll take it under advisement
7 and communicate to the parties' lawyers.

8 MR. LIFSEY: Thank you, Judge.

9 MR. MITCHELL: Thank you, Your Honor.

10 THE COURT: Thank you.

11 (END OF REQUESTED TRANSCRIPT)

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STATE OF SOUTH CAROLINA)
) C E R T I F I C A T E
 COUNTY OF YORK)

I, the undersigned Shannon E. McGilberry, official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Common Pleas Court for York County, South Carolina, on the 9th day of December, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

In witness whereof, I have hereunto subscribed my name, this 5th day of July, 2023.

Shannon E. McGilberry

Shannon E. McGilberry, CVR-M

My Commission Expires:

April 26, 2027

STATE OF SOUTH CAROLINA
COUNTY OF YORK

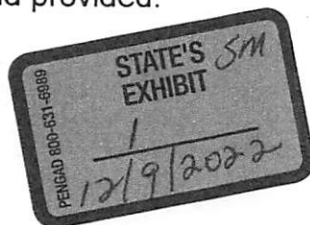
INDICTMENT

At a Court of General Sessions, convened on February 16, 2017, the Grand Jurors of York County present upon their oath:

BURGLARY, FIRST DEGREE

The defendant, David Lamont James Brice, did on or about June 20, 2016, in York County, South Carolina, enter a dwelling belonging to Blondell Denise Boozer without consent and with intent to commit a crime therein. The defendant while in the dwelling used or threatened use of a dangerous instrument and/or was armed with a deadly weapon and/or the defendant entered or remained in the residence in the nighttime hours. All in violation of 16-11-0311, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.





RYAN R. NEWKIRK
ASSISTANT SOLICITOR

WITNESSES

RHPD

Witnessing Officer: Tripp

ARREST WARRANT NUMBER

2016A4620301273

ACTION OF GRAND JURY

TRUE BILL

E. Stew
Foreperson of Grand Jury

Date: 2-16-17

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-46-00699

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 16, TERM 2017

THE STATE

VS.

DAVID LAMONT JAMES BRICE

INDICTMENT FOR

BURGLARY, FIRST DEGREE

SC Code: § 16-11-0311

CDR Code: 0079

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

SEP 27 2023

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF YORKIN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

David James Lamont Brice, SCDC #298937

Case No. 2019-CP-46-00405

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED-RECEIVED
2023 AUG 25 AM 9:42
ANGIE M. BRYANT
C.C.P. & GS
YORK COUNTY, SC**INTRODUCTION**

This matter is before the Court upon an action for post-conviction relief (PCR) commenced by David James Lamont Brice (Applicant) on February 4, 2019. On December 9, 2022, a hearing into the matter was convened before this Court, undersigned Judge Walton J. McLeod, at the Moss Justice Center. Applicant was present and represented by Michael Lifsey, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State.

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court hereby **DENIES** relief and **DISMISSES** the above captioned Application for Post Conviction Relief with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. Applicant was charged with first degree burglary (2018-GS-46-05384). Applicant waived his right to presentment to a grand jury for that charge. Applicant was represented by Assistant Public Defenders Phillip Lee Smith and Raia Jane Hirsch; and Chief Deputy Assistant Public Defender Mark McKinnon.

The case was prosecuted by Assistant Solicitor Ryan Robert Newkirk of the Sixteenth Circuit Solicitor's Office.

On July 9, 2018, Applicant pleaded guilty before the Honorable Roger L. Couch. Pursuant to a negotiated sentence range of fifteen (15) to forty (40) years, Judge Couch sentenced Applicant to twenty-five (25) years for first degree burglary. Applicant did not file a direct appeal.

STATEMENT OF FACTS

On June 20, 2016, in the early hours of the morning, officers responded to the home of Ms. Blondell Boozer (Victim) in response to a burglary. (Gp. Tr. p. 22). Upon arrival, officers spoke with Victim, who told the officers that Applicant, her ex-boyfriend, entered her home by breaking her window and threatening her with a knife.¹ (Gp. Tr. p. 22). Subsequently, Victim fled from her home while Applicant damaged her property by throwing food out of her refrigerator and destroying her cellular phone. (Gp. Tr. p. 22). Although officers were unable to locate Applicant at the scene, officers eventually located Applicant. (Gp. Tr. p. 22). Applicant was taken to Piedmont Medical Center for care because he was acting suicidal. (Gp. Tr. p. 22). After receiving medical care, Applicant was interviewed by Detective Smith. (Gp. Tr. p. 22). Applicant stated to Detective Smith that he entered Victim's home and was involved in an altercation with Victim. (Gp. Tr. p. 22).

CURRENT APPLICATION

Applicant timely commenced this PCR application on February 4, 2019. In his *pro se* application Applicant alleged he was entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel
 - a. "Co-Counsel told me 1 thing while my other attorney told me a different story."
 - b. "...my lawyer fail[ed] to investigate or contact my mental health [doctor] to see what kind of problems I was suffering from."

¹ Applicant stated that he agreed with the Solicitor's factual summary, with the exception of Solicitor's statement that Applicant threatened Victim with a knife. (Gp. Tr. pp.23-24).

- c. "My co-counsel told me that she had talked to the judge an[d] he said that he was go[ing] to give me 15 years but when I got in front of the judge he gave me 25 years."
- d. "Victim had brought my clothe[s] to my lawyer['s] office to let him know that I had clothe[s] there an[d] was staying with her off an[d] on my lawyer fail[ed] to challenge that."
- e. "I did not waive my presentment to the Grand Jury. My lawyer told me that I was already indicted by the Grand Jury an[d] Solicitor Ryan Newkirk told the Judge that I was ready to go to trial that same day. I was misled on many of things by my lawyer that I did not understand."
- f. "Phil Smith didn't come an[d] see me like he was suppose[d] to when he knew that I was up for trial trying to fight a life sentence."
- g. "Lawyer failed to investigate facts of the case."
- h. "Failure to challenge prior conviction."
- i. Failure to file direct appeal.

Pursuant to Rule 71.1, SCRCP, Applicant, through his first PCR counsel, Overture Walker, amended his application to include the following allegations:

1. Ineffective Assistance of Counsel on the grounds that:
 - a. "... trial/plea counsel failed to adequately investigate the criminal charge(s) for which Applicant was convicted and prepare a defense for trial. Further, trial/plea counsel deprived Applicant of an opportunity to review the State's evidence and assist in the preparation of his defense."
 - b. "... trial/plea counsel failed to call or contact material witnesses whose testimony would have been favorable to Applicant."
 - c. "...trial/plea counsel advised him to enter a guilty plea that was not knowingly and/or intelligently made."
 - d. "... trial/plea counsel pressured and improperly induced him to enter an involuntary guilty plea based on statements and representations made by counsel."
 - e. "... trial/plea counsel failed to inform him of his right to appeal his guilty plea and sentence, and/or failed to initiate an appeal of the same on his behalf notwithstanding Applicant's request."
 - f. "...trial/plea counsel failed to file a motion for reconsideration of his sentence."
 - g. "... trial/plea counsel failed to make timely objections to and/or move to quash a defective indictment."

At the outset of the PCR evidentiary hearing, Applicant, through counsel, Mike Lifsey, raised additional allegations of:

1. "Whether or not [Applicant] actually admitted guilt during the plea colloquy."
2. Issues related to the waiver or non-waiver of the indictment.

At the hearing, Applicant proceeded only on the following allegations:

1. Counsel failed to adequately investigate the criminal charge for which Applicant was convicted and prepare a defense for trial. Further, trial/plea counsel deprived Applicant of an opportunity to review the State's evidence and assist in the preparation of his defense.
2. Whether or not Applicant actually admitted guilt during the plea colloquy. Counsel failed to inform Applicant that intent to commit a crime is an element of first degree burglary.
3. Issues related to the waiver or non-waiver of the indictment.
4. Counsel erroneously advised Applicant he would be sentenced to fifteen years if he pleaded guilty.

STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises

a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *accord. Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRPC. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.* Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. See *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59. The applicant must further convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. 357, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if

correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court finds Applicant's claims to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Counsel Failed to Investigate and Deprived Applicant of Assisting in His Defense

Applicant contends Counsel was ineffective for failing to adequately investigate the criminal charges for which Applicant was convicted and prepare a defense for trial. Applicant further contends Counsel deprived Applicant of an opportunity to review the State's evidence and assist in the preparation of his defense. This Court disagrees and finds Counsel adequately investigated the charges and prepared a defense. This Court further finds Counsel reviewed discovery with Applicant and allowed Applicant the opportunity to assist in his own defense. This Court finds credible and persuasive the testimony of Counsel, who presented well-recalled testimony of the conversations he had with Applicant, including properly informing Applicant of all aspects of his case.

1. PCR Testimony

Applicant testified he was represented by three attorneys: first, Mark McKinnon, then Phillip Smith (Counsel Smith) and Raia Hirsch (Counsel Hirsch). Applicant testified he was charged with

burglary in the first degree. Applicant testified none of his attorneys explained to him the elements of the crime of the burglary in the first degree. Applicant testified Counsel Smith told him it did not matter if he was staying at residence of victim, it is still burglary because Applicant's name was not on the lease. Applicant testified he informed Counsel Smith of his version of events; however, Counsel Smith said it was still burglary. Applicant testified that if he was properly informed of the elements of burglary in the first degree he would not have pleaded guilty, but would have insisted on a jury trial. Applicant testified none of his attorneys reviewed discovery or gave him copies of the discovery in this case. Applicant testified he was originally represented by Mark McKinnon; however, Applicant requested Mr. McKinnon be relieved due to lack of communication. Applicant testified the judge would not relieve Mr. McKinnon so he wrote a letter to the disciplinary counsel requesting him to be relieved. Mr. McKinnon was relieved, and Phillip Smith began representing Applicant along with Raia Hirsch. Applicant testified Counsel Smith met with him maybe five times. Applicant reiterated he was never informed of the elements of burglary in the first degree, and the only information provided to him regarding his charge was that Applicant would be unsuccessful at trial because he did not sign the lease.

Counsel Smith testified he was appointed to represent Applicant following a disagreement between Applicant and Counsel McKinnon. Counsel Smith testified he did not know for certain how many times he met with Applicant, but five times seems correct. Counsel Smith testified that Counsel Hirsch made most of the contact with Applicant. Counsel Smith testified his primary responsibility was investigating the facts of the case, whereas Counsel Hirsch investigated Applicant's possible mental health issues. Counsel Smith testified that in the course of his investigation he visited with the victim, Ms. Boozer. Counsel Smith testified that initially Ms. Boozer was reluctant to talk to him, but eventually she allowed Counsel Smith to inspect the

apartment. Counsel Smith testified he spoke with Ms. Boozer several times during his investigation; at some point, Ms. Boozer brought Counsel Smith some belongings of Applicant that were left in her apartment.

Counsel Smith testified he acquired a basic understanding of all the facts of the case through his investigation. Counsel Smith testified Applicant insisted he had a right to enter Ms. Boozer's apartment. Counsel Smith testified he informed Applicant that since he broke a window with a brick to enter the apartment, nobody was going to believe Applicant was invited or had a right to enter. Counsel Smith testified he reviewed the discovery with Applicant and went over anything that was questionable including whether Applicant had a right to enter the apartment. Counsel Smith reiterated that Applicant's main concern was his right to enter, and Counsel certainly went over that with Applicant. Counsel Smith testified he went over the elements of first-degree burglary with Applicant; furthermore, Counsel's testimony is corroborated by the plea affidavit.

On cross-examination, Counsel Smith testified that although Applicant had mental issues that required evaluations, Counsel was satisfied with Applicant's general level of understanding. Counsel Smith again testified that Applicant's focus was on the right of entry and Counsel Smith explained to Applicant why he did not believe that was a good defense.

Counsel Hirsch testified she was employed with the York County Public Defender's Office during her representation of Applicant. Counsel Hirsch became involved in this case due to her knowledge and experience in dealing with a spectrum of mental health issues with clients. Counsel Hirsch testified she offered to assist in communicating with Applicant that the offer on the table was a good one. Counsel Hirsch testified she believed, at that point in the negotiations, it was in Applicant's best interest to plead guilty. Counsel Hirsch testified she explained the terms of the

plea deal to Applicant. Counsel Hirsch testified she investigated mental health issues relating to Applicant's competency to stand trial. As part of her investigation, Counsel Hirsch testified she examined the contents of Applicant's cell phone, specifically text messages between Applicant and Ms. Boozer. Counsel Hirsch testified the text messages contained a wealth of information, including possible impeachment evidence and information necessary for any independent experts in the mental health category to evaluate. Counsel Hirsch testified she investigated upwards of 2,000 pages of Applicant's Social Security file, where she found Applicant had scored a 55 on his most recent IQ test. Counsel Hirsch testified Applicant was evaluated at least twice for competency and both times Applicant was found competent to stand trial.

2. Discussion

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). Counsel Smith and Hirsch's credible testimony indicates they met with Applicant several times and thoroughly informed Applicant of his charges, potential defenses, and reviewed discovery with Applicant. Notwithstanding Applicant's testimony he was not informed of the elements of first degree burglary and never had the opportunity to review the discovery, the testimony of Counsels Smith and Hirsch, coupled with the plea affidavit signed by Applicant, refute this allegation. Counsel Smith credibly testified he informed Applicant of the elements of first degree burglary. Applicant's insistence that he had a right to enter the victim's apartment demonstrates he was aware of at least some of the elements of first degree burglary. Furthermore, Applicant signed a plea waiver form in which he acknowledges the nature of his charges and that possible defenses have been explained to him. Similarly, Counsel Smith signed the plea waiver

form certifying he discussed all charges, all discovery provided by the State, and possible defenses with Applicant. Thus, the allegation Counsels failed to inform Applicant of the elements of burglary in the first degree and review all discovery with him is without merit.

Furthermore, the credible testimony of Counsels Smith and Hirsch demonstrate they adequately investigated the case. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Id.* at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.*

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." *Id.* "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." *Id.* "In particular, what investigation decisions are reasonable depends critically on such information." *Id.*

Counsel Smith testified he visited the crime scene and spoke with victim on several occasions. Counsel Smith testified that based on his investigation and conversation with the victim, he believed Applicant would be found guilty of first-degree burglary. Counsel Smith's credible testimony show he spoke with Applicant repeatedly about this and Applicant insisted he had a right to enter the apartment. In response to this, Counsel Smith obtained some of Applicant's belongings that were left at victim's apartment to potentially use them as evidence corroborating

this defense. Counsel Smith credibly testified he informed Applicant that, after reviewing all of the evidence, a jury was likely not going to believe he had a right to enter. Counsel Smith's testimony demonstrates Applicant did assist in his own defense and Counsel investigated the case based on the information provided to him by Applicant. This Court finds Counsel Smith adequately investigated the facts of the case and allowed Applicant to assist in his own defense. Counsel adequately discussed potential defenses with Applicant, including the likelihood of those defenses succeeding at trial.

Counsel Hirsch credibly testified she investigated any potential mental health issues involved in this case. Encompassed in those investigations, Counsel Hirsch reviewed upwards of 2,000 pages of Applicant's social security file in which she discovered Applicant only had an IQ of 55. Counsel Hirsch had Applicant evaluated for mental competency twice before the guilty plea and, in both instances, Applicant was found competent to stand trial.

This Court finds Counsels Smith and Hirsch made reasonable investigations in this case, properly reviewed discovery with Applicant allowing him to assist in his own defense, and properly informed Applicant of the charge he faced. Therefore, this Court finds Counsels were NOT DEFICIENT in this regard.

Furthermore, Applicant has presented no evidence or testimony indicating how any alleged deficiency affected his decision to plead guilty. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the evidence or defenses would

have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Here, Applicant has presented no evidence or testimony of how further preparation of this case would have led to the discovery of evidence which could have affected his decision to plead guilty. Accordingly, this Court finds this allegation is **DENIED**.

Whether or Not Applicant Actually Admitted Guilt During the Plea Colloquy/Counsel Failed to Inform Applicant that Intent to Commit a Crime is an Element of First-Degree Burglary²

Applicant next contends Applicant never actually admitted guilt during the plea colloquy. Applicant contends Counsel failed to inform him that intent to commit a crime is a necessary element of the offense of burglary in the first degree and he would not have pleaded guilty had he been aware. This Court disagrees and finds Counsel did inform Applicant of all the elements of first-degree burglary. This Court further finds Applicant admitted guilt during the plea colloquy. Additionally, this allegation fails as a matter of law.

1. PCR Testimony

At the PCR hearing, Applicant testified to his version of events on the day of the incident. In short, Applicant testified that he went over to Ms. Boozer's house to get some sleep and change clothes; however, she would not let him in, so he threw a brick through her window and went inside and changed clothes. Applicant testified he never admitted to anything beyond that during the guilty plea hearing.

² This allegation was first raised at the outset of Applicant's plea hearing and testimony was given supporting both interpretations of this allegation. Therefore, the Court addresses both in this Order.

Counsel Smith testified to the condition of the inside of the apartment just after the incident occurred. Counsel testified everything was in disarray; there was glass shattered into the bedroom, a bunch of food appeared to have been thrown out of the freezer, and items on the counter were in disarray. Additionally, Counsel testified there was a knife that was photographed, but Applicant would have indicated it was a knife from inside the apartment and not anything he brought inside. Counsel testified Applicant admitted he had a box cutter on him. Counsel testified he believed the State had enough evidence to prove Applicant had an intent to commit a crime.

On cross-examination, Counsel Smith testified he believed Applicant admitted to an assault of Ms. Boozer based on the state of the apartment after the incident. Counsel Smith testified Applicant pleaded guilty because he did not want to risk a life sentence. Counsel Smith testified that, based on the facts recited by the Solicitor and the Applicant's version of the story, he believed a jury would find Applicant guilty of first degree burglary. Counsel Smith testified there would have been more that a jury would have believed than Applicant's account.

2. Guilty Plea Testimony

During the guilty plea hearing, the Court informed Applicant of the elements the State must prove in order to be found guilty of burglary in the first-degree evinced below:

The Court: And of course I'm sure your lawyers have gone over with you what the State would have to prove in order for you to be found guilty of burglary in the first degree. Have they discussed that with you?

Mr. Brice: Yes, sir.

The Court: And of course what it involves is of course a[n] illegal entry into a dwelling for the purpose of committing a crime therein. The person – they must prove that you intended to commit a crime at the time of your entry and that that intent can be shown by certain acts. And it also has to be shown some of the elements are that when entering the dwelling you were armed with a weapon, or that while entering the dwelling you caused physical injury to someone, or that when entering the dwelling you threatened someone with a dangerous object, or that you entered the dwelling when you displayed what appeared to be a knife, pistol, or other weapon. And of course there can also be if you have two or more

convictions for a burglary and prior of course it has to be done in the nighttime. So are you aware of those elements for the crime?

Mr. Brice: Yes, sir.

The Court: And so they've discussed that with you?

Mr. Brice: Yes, sir.

(GP Tr. p. 21).

The Solicitor gave the following recitation of the facts during the guilty plea hearing:

On June the 20th of 2016, in the early hours of the morning officers responded to 1313 Holly Dale Drive which is in Rock Hill in York County, South Carolina in response to a burglary. Upon arrival officers spoke with the victim in this case Ms. Blondell Boozer and told them that an ex-boyfriend, the defendant David Brice, had broke the rear window of her home and he had entered her home and he had threatened her with a knife. She then fled the scene and while he was in the home he damaged property that belonged to her including throwing food out of her refrigerator damaging personal effects and smashing a cell phone that belonged to her. Officers attempted to locate the defendant but were unable to do so on scene. Officers did make contact with him where it appeared that he was suicidal. They were able to track him using a cell phone ping and he was taken into custody and taken to Piedmont Medical Center for care. At the conclusion of his medical care Detective Smith and Mr. Brice did give a statement to officers indicated that he had in fact entered the home and had gotten into an altercation with the victim. Those would be the substantive facts, your Honor, however at the appropriate time the State would like to be heard on sentencing.

(Gp. Tr. p. 22).

The following exchange then occurred between the Court and Applicant:

The Court: I see. Mr. Brice, did you hear what the solicitor just told me about what happened?

Mr. Brice: Yes, sir.

The Court: Did you understand what he just told me?

Mr. Brice: Yes, sir.

The Court: Now is that information true?

Mr. Brice: Not all of it, sir.

The Court: Well tell me what you disagree with.

Mr. Brice: I disagree when he stated the knife part.

The Court: The what? The knife part?

Mr. Brice: The knife part.

The Court: Okay. What else do you disagree with?

Mr. Brice: I did went inside the house. That's about it.

The Court: All right. Now what aggravating factors are you relying on in your case?

Solicitor Newkirk: That the defendant did have what appeared to be a knife or did have a knife and that the burglary did occur in the night time.

The Court: I see. You agree that the event occurred in the night time?

Mr. Brice: Yes, sir.

The Court: Okay. Do you agree with the other facts other than that?

Mr. Brice: Yeah.

(Gp. Tr. pp. 23–24).

3. Discussion

This Court finds Applicant was properly informed of the elements of first-degree burglary, including the intent to commit a crime element. Although Applicant testified he would not have pleaded guilty had he known the intent to commit a crime was a necessary element of first degree burglary, the credible testimony of Counsel Smith, the plea waiver form, and Applicant's own testimony during the guilty plea hearing refute this allegation. As discussed above, Counsel Smith credibly testified he informed Applicant of all the elements of first-degree burglary prior to the guilty plea. The Court thoroughly explained the elements of first-degree burglary to Applicant *prior* to the entry of the guilty plea. Upon inquiry by the Court, Applicant stated he was aware of the elements of first-degree burglary and his attorneys have discussed the elements with him.

Counsel Smith credibly testified that he believed Applicant would be found guilty of first-degree burglary if he proceeded to trial. Counsel Smith credibly testified he informed Applicant a jury would probably not believe he had a right to be in the apartment after throwing a brick through the window. Counsel Smith was not ineffective in advising Applicant that a jury would likely find him guilty of first-degree burglary, because "the jury was free to disbelieve defendant's version of events and find that he intended to commit a crime based on his actions in forcibly breaking and entering at night." *McMillian v. State*, 383 S.C. 480, 680 S.E.2d 905 (2009). Therefore, this Court finds Counsels Smith and Hirsch were **NOT DEFICIENT** in advising Applicant of the elements of first-degree burglary and a jury could find Applicant guilty of first-degree burglary if he proceeds to trial.

This Court further finds Applicant admitted he was guilty of first-degree burglary at the guilty plea hearing. Following the Solicitor's recitation of the facts of the case, the Court inquired whether Applicant agreed with the facts or not. Applicant asserted he did not agree with the facts as it pertains to the knife; however, he agreed with all other facts. First-degree burglary in South Carolina is a statutory offense that is defined as follows:

A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either:

- (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:
 - (a) is armed with a deadly weapon or explosive; or
 - (b) causes physical injury to a person who is not a participant in the crime; or
 - (c) uses or threatens the use of a dangerous instrument; or
 - (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or
- (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or
- (3) the entering or remaining occurs in the nighttime.

S.C. Code Ann. § 16-11-311.

Here, it is undisputed Applicant entered a dwelling without consent at nighttime. Applicant maintains he was not armed with a deadly weapon, nor did he enter the apartment with an intent to commit a crime. The State indicated they had evidence of both during the guilty plea hearing. Applicant disagreed with being armed with a knife, but even taking that as true, Applicant agreed to all other facts including damaging Ms. Boozer's personal property, which constitutes a crime. Therefore, this Court finds Applicant admitted he was guilty of first-degree burglary.

Even supposing Applicant did not precisely admit guilt during the plea hearing, this allegation still fails as a matter of law. It is well settled that "a defendant need not admit guilt in order to enter a valid guilty plea; instead, a guilty plea need only represent a voluntary and intelligent choice among alternative course of action open to the defendant." *James v. State*, 377 S.C. 81, 659 S.E.2d 148 (2008) (citing *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)). Here, Applicant was facing a possible life sentence if convicted. Applicant freely and voluntarily pleaded guilty to first-degree burglary following a thorough colloquy with the Court wherein Applicant was advised of the consequences of the plea, the charge he was facing, and the Constitutional rights he was waiving by entering a guilty plea. Therefore, this Court finds Applicant's guilty plea was constitutionally valid. Accordingly, these allegations are **DENIED**.

Issues Related to the Waiver or Non-Waiver of the Indictment

Applicant further raises issues related to the waiver or non-waiver of the Grand Jury indictment. This Court disagrees and finds Applicant freely and voluntarily waived presentment to the Grand Jury.

1. PCR Testimony

Applicant testified he was initially indicted for first-degree burglary by a Grand Jury. Applicant testified he requested a copy of the indictment from the clerk of court's office, and they informed

him the indictment was dismissed and he was charged under a separate indictment that was never presented to a Grand Jury. Applicant testified he was previously shown the original indictment but did not know about a new indictment. Applicant testified he did not know he was pleading guilty to a new indictment.

Counsel testified the original indictment was lost on the day of the plea and the clerk's office did not have it. Counsel testified there were discussions about whether Applicant should plead on a copy of the indictment; however, it was ultimately decided the safest way to proceed was for Applicant to plead on a new indictment and waive presentment to a grand jury. Counsel testified he went over this with Applicant and Applicant signed both places on the indictment. Counsel testified he discussed the indictment issue with Applicant the day of the plea.

2. Plea Testimony

During the plea hearing, the court engaged in the following colloquy with Applicant:

The Court: Mr. Brice, you're before me today, the State has presented an indictment to me. This indictment is for burglary in the first degree. Are you familiar with the charge?

Mr. Brice: Yes, sir.

The Court: Have you gone over the indictment with your attorney?

Mr. Brice: Yes, sir.

The Court: Do I need to go over that indictment with you again?

Mr. Brice: No, sir.

The Court: All right, sir. Now that indictment has not yet been presented to a Grand Jury. You have Constitutional right to have the Grand Jury consider that charge before it comes to this court for either a trial or a plea. Now I cannot take up your case unless either the Grand Jury has acted upon the indictment, or you are willing to waive or give up that step in the proceedings and proceed to a hearing in this court. Now it appears to me that you have initialed the papers I've received indicating that you do wish to give up presentment to the Grand Jury and proceed directly to this hearing, is that correct?

Mr. Brice: Yes, sir.

The Court: And have you discussed that right with your attorney?

Mr. Brice: Yes, sir.

The Court: And you understand that by doing that you're giving up a constitutional right that you have?

Mr. Brice: Yes, sir.

(Gp. Tr. pp. 5-6)

3. Discussion

This Court finds Applicant freely and voluntarily waived presentment to the Grand Jury on the charge of first-degree burglary. Although Applicant testified he did not know he was pleading guilty to a new indictment, the credible testimony of Counsel Smith and the record of the guilty plea hearing refute this allegation. Counsel Smith credibly testified he discussed the new indictment with Applicant prior to his guilty plea. During the guilty plea hearing, the Court engaged in a thorough colloquy with Applicant explaining his Constitutional right to have a Grand Jury consider the charge before pleading guilty. Applicant asserted he understood and has discussed this with his attorney. Thus, this Court finds Applicant freely and voluntarily waived presentment to a grand jury on the charge of first-degree burglary. Accordingly, this allegation is **DENIED**.

Counsel Erroneously Informed Applicant He Would Be Sentenced to 15 Years

Applicant further contends Counsel informed him he would be sentenced to 15 years if he pleaded guilty. This Court disagrees and finds Applicant was properly advised of the consequences of the guilty plea.

1. PCR Testimony

Applicant testified Counsel Hirsch informed him to accept the plea deal because he was facing a life sentence. Applicant testified Counsel Hirsch informed him he would likely receive fifteen years. Applicant testified if he had known he would receive twenty-five years he would not have pleaded guilty.

Counsel Smith testified he recalled discussing the plea negotiation with Applicant; it was a very long process and once life notice was served it heightened the urgency of the negotiations. Counsel Smith testified he never told Applicant he would be sentenced to 15 years if he pleaded guilty. Counsel Smith testified he informed Applicant he could receive up to 40 years under the terms of the negotiated plea.

Counsel Hirsch testified she never informed Applicant he would be sentenced to 15 years if he pleaded guilty.

2. Guilty Plea Testimony

During the guilty plea hearing, Solicitor Newkirk explained the negotiated plea deal to the court:

Solicitor Newkirk: The negotiation in the case, your Honor, is for a cap of 40 years effectively making this a range of 15 to 40 years.

(Gp. Tr. pp. 4-5).

Furthermore, the court explained to Applicant the consequences of the plea:

The Court: I hope that you are aware that this charge is the charge of burglary in the first degree. It carries a possible sentence of 15 years up to life. That means there is a minimum of 15 years with the maximum sentence would be life. However given the negotiations in this matter the parties, you and the State, have agreed to limit the possible maximum sentence to 40 years. Is that your understanding of the negotiations?

Mr. Brice: Yes, sir.

(Gp. Tr. p. 12).

3. Discussion

This Court finds Applicant was properly advised of the terms of the negotiated plea. Counsels Smith and Hirsch both testified they never informed Applicant he would be sentenced to 15 years if he pleaded guilty. Furthermore, the plea court informed Applicant of the consequences of the guilty plea prior to entry of the guilty plea. Applicant stated he understood the terms of the negotiated sentence. Thus, Applicant's allegation he was erroneously informed he would be sentenced to 15 years if he pleaded guilty is **DENIED**.

All Remaining Allegations

This Court finds Applicant presented no evidence or testimony supporting any of the remaining allegations. Thus, the Court concludes these allegations are abandoned and, therefore, **DENIED**.

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. In so holding, the Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty. Therefore, the Court **DENIES** relief on all allegations and dismisses this PCR action with prejudice.

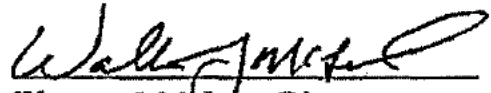
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a

notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 15 day of AUGUST, 2023.


WALTON J. MCLEOD IV
Presiding Judge
Sixteenth Judicial Circuit

Lexington, South Carolina

WITNESSES

RHPD

Witnessing Officer:

ARREST WARRANT NUMBER**ACTION OF GRAND JURY**Foreperson of Grand Jury
Date:**VERDICT**Foreperson of Petit Jury
Date:**DOCKET NO. 2018-GS-46-05384****The State of South Carolina****County of York****COURT OF GENERAL SESSIONS****JULY 19, TERM 2018****THE STATE****VS.****DAVID LAMONT JAMES BRICE****INDICTMENT FOR****BURGLARY, FIRST DEGREE**SC Code: § 16-11-0311
CDR Code: 0079

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

David Brice
DefendantI
hereby appear in my own proper person and plead guilty to the within indictment or to*David Brice*
Defendant**Witness:***Gregory Gaspard*
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

CERTIFIED TRUE COPY
2019 FEB -5 AM 9:03

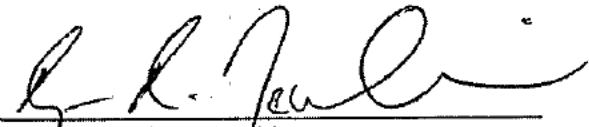
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on July 19, 2018, the Grand Jurors of York County present upon their oath:

BURGLARY, FIRST DEGREE

The defendant, David Lamont James Brice, did on or about June 20, 2016, in York County, South Carolina, enter a dwelling belonging to Blondell Denise Boozer without consent and with intent to commit a crime therein. The defendant while in the dwelling was armed with a deadly weapon. The defendant entered or remained in the residence in the nighttime hours. All in violation of 16-11-0311, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



RYAN R. NEWKIRK
ASSISTANT SOLICITOR

COUNTY OF YORK

STATE VS.

DAVID LAMONT JAMES BRICE

AKA: Lamont Brice, James David Lamont Brice

Race: Black Sex: M Age: 43

DOB: SS#

Address:

City, State, Zip: Rock Hill, SC 29730

DL# SID# SC00843170

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADS:

TO: Burglary, First Degree (NLT 15 years to Life)

In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As indicted, ☐ Lesser Included Offense,☒ Defendant Waives Presentment to Grand Jury.

DB (def.'s initials)

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

ATTEST:

Ryan R. Newkirk, Assistant Solicitor SC Bar # 100830

David Brice
DefendantAttorney for Defendant
66593
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 750 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: \$ _____

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

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$

§56-5-2995 (DUI Assessment) \$12 \$

§56-1-286 (DUI Breath Test) \$25 \$

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

§14-1-212 (Law Enforce. Funding) \$25 \$25.00

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

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

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

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

TOTAL \$1056.00

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Clerk of Court/Deputy Clerk:

David Hamilton

Court Reporter:

Wanda Nelson

Residing Judge:

Judge Code:

Sentence Date:

2135

7-9-18