

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

May 14 2025

S.C. SUPREME COURT

Certiorari to Calhoun County

Honorable Paul M. Burch, Circuit Court Judge

CHARLES WINSTON, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001487

APPENDIX

DAVID ALEXANDER
Deputy Chief Attorney for Capital Appeals

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

BRYAN T. HALL
Assistant Attorney General

Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MAY 9 – MAY 12, 2016	1
APPLICATION FOR POST-CONVICTION RELIEF	132
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	145
RETURN.....	147
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 6, 2024.....	163
ORDER OF DISMISSAL.....	218
INDICTMENT.....	234
SENTENCING SHEET	236

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF CALHOUN) CASE NO.: 2014-GS-09-00260

STATE OF SOUTH CAROLINA,)
)
 v.) TRANSCRIPT OF RECORD
)
 CHARLES LAMONT WINSTON, JR.)
)
 DEFENDANT.)

ORIGINAL

Monday, May 9, 2016 - Thursday, May 12, 2016

COMMENCING AT:
 Calhoun County Courthouse
 St. Matthews, South Carolina
 Before The Honorable Maite Murphy, Judge

APPEARANCES:

Assistant Solicitor Theodore N. Lupton, Esquire
 First Circuit Solicitor's Office
 102 Courthouse Drive, Suite 117
 St. Matthews, South Carolina 29134
 Attorney for the State of South Carolina

Martin Rast Banks, Esquire
 First Circuit Public Defender, Calhoun County
 716 Huff Drive
 St. Matthews, South Carolina 29135
 Attorney for the Defendant

Heather R. Landry, CVR
 Official Court Reporter

INDEX

Stipulation for Competency	4
Motion for Change of Venue	5
Stipulation for Exhibits	8
Stipulation to the Facts	8
Opening Statements (None offered)	

State's Witnesses

<u>Witness: Courtney Glover</u>	
Direct Examination by Asst. Sol. Lupton	10
Cross-Examination by Mr. Banks	19
<u>Witness: John Patrick Regalis</u>	
Direct Examination by Asst. Sol. Lupton	23
Cross-Examination by Mr. Banks	29
Redirect Examination by Asst. Sol. Lupton.....	32

Defense Witnesses

<u>Witness: Dr. Amanda Salas</u>	
Direct Examination by Mr. Banks	37
Cross-Examination by Asst Sol. Lupton	65
Redirect Examination by Mr. Banks	81
Examination by the Court	83
Recross-Examination by Asst. Sol. Lupton	94
Further Examination by Mr. Banks	94
Defendant's Fifth Amendment Rights	100
Closing Argument by Mr. Banks	103
Closing Argument by Asst. Sol. Lupton	107
Ruling of the Court	118
Statement by Ms. Courtney Glover.....	123
Statement by Mr. Charles Winston, Jr.	124
Sentence of the Court	130
Reporter Certificate	131

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
Court's No. 1	Competency Evaluation	5
State's No. 1	Competency Evaluation	8
State's No. 2	Photo	8
State's No. 3	Photo	8
State's No. 4	CD of Winston Interview	8

1 (The proceeding began at 12:23 p.m. on Monday, May 9,
2 2016)

3 ASST. SOL. LUPTON: I wanted to put on the record some
4 stipulations on State versus -- Your Honor, this is State
5 versus Charles Lamont Winston Junior, 2014-GS-09-266 [sic],
6 a true billed case for attempted murder. It was placed on
7 the trial docket for this week. After consulting with his
8 client, Mr. Banks has informed me that the defendant through
9 counsel is agreeing to waive jury trial and go forward as a
10 bench trial. The defendant is also stipulating -- there was
11 a mental health evaluation ordered in the case for
12 competency to stand trial. There was a private evaluation
13 done as well, but the State ordered an evaluation performed
14 by the doctors through MUSC through the state. And I will
15 hand up and ask that it be marked as a Court's exhibit that
16 he was found competent. And the defense is both stipulating
17 that he is competent to stand trial and stipulating to the
18 report for use in the trial.

19 THE COURT: Is that correct, Mr. Banks?

20 MR. BANKS: That is correct.

21 THE COURT: Anything further?

22 ASST. SOL. LUPTON: No, Your Honor. We've talked about
23 this in chambers. I think this will be the most efficient
24 disposition of the case.

25 THE COURT: We'll mark this as a Court's exhibit; be

1 ready to proceed on Wednesday.

2 (Whereupon, Court's Exhibit Number 1, Competency
3 Evaluation Report, was marked for identification)

4 ASST. SOL. LUPTON: Thank you, Your Honor. I guess we
5 also probably need to mark it as a State's exhibit since it
6 will be part of our evidence in the trial.

7 MR. BANKS: You have my permission.

8 THE COURT: Do you have an extra copy of that?

9 MR. BANKS: Your Honor, as part of this, I gave you ---

10 ASST. SOL. LUPTON: Your Honor, I think what he's
11 talking about is he wants to make a motion for change of
12 venue.

13 MR. BANKS: Which I've filed. I think I gave it to ---

14 ASST. SOL. LUPTON: I have not received a copy. But I
15 am aware of the basis of it, and I do not object to it being
16 heard.

17 MR. BANKS: The change of venue motion, Your Honor, if
18 I may present, is essentially my client -- the victim in
19 this case is the niece -- his belief is, and I think he's
20 right, is that this person is the niece of our current mayor
21 of the Town of Saint Matthews. Her previous employment
22 was -- one of the previous jobs -- she has one of these
23 funeral homes, which is very popular in this community and
24 the county. And she used that popularity, I believe, to
25 become a councilwoman. And I'm not sure how many years she

1 served on council, but she was a councilwoman for a number
2 of years. So this victim's aunt is a very popular,
3 well-known person around this county. And she -- my client
4 has asked me to change the venue in this case. Or as an
5 alternative, have a jury brought from another community
6 simply because of who the victim is in this case. So I made
7 that motion.

8 THE COURT: Well, Mr. Banks, I guess first things
9 first, are you waving your client's presence per these
10 stipulations put on the record here today?

11 MR. BANKS: Yes, Your Honor.

12 THE COURT: As far as your change in venue motion,
13 obviously this is a bench trial. I don't know the victim or
14 anyone in the victim's family. So I certainly don't believe
15 that would be proper for a change of venue.

16 MR. BANKS: And I guess this should've preceded what
17 the solicitor said because essentially that's one of the
18 reasons he's doing the bench trial is to avoid a jury of her
19 peers instead of his peers.

20 THE COURT: And having said that ---

21 MR. BANKS: If you grant the change of venue or a jury
22 coming from another community, he would probably opt for a
23 jury trial.

24 THE COURT: Well, certainly he's entitled to a jury
25 trial. However, I think the question is premature because

1 we haven't even attempted to qualify a jury. I think
2 certainly that would be the first step to see if we can
3 panel a fairly impartial jury. It's a premature motion. So
4 if your client is willing to proceed with a bench trial,
5 that's appropriate. But certainly he's entitled to a jury
6 trial. If we call in the jury, we will try to impanel a
7 qualified fair and impartial jury. And if we can't do it,
8 then I think it would be appropriate to take that into
9 consideration. However, at this point your motion is
10 denied.

11 MR. BANKS: Thank you, Your Honor.

12 ASST. SOL. LUPTON: Thank you, Your Honor.

13 (The proceeding adjourned at 12:29 p.m.)

14 - - - - -

15 (Wednesday, May 11, 2016, 10:54 a.m., the proceeding
16 resumes and the following is held on the record.)

17 ASST. SOL. LUPTON: Your Honor, the State calls the
18 case of Charles Lamont Winston, Jr., indictment number
19 2014-GS-09-0260. This is a true billed indictment for
20 attempted murder. Present in the courtroom is the defendant
21 along with his attorney Martin Banks, as well as myself with
22 the State. We also have the victim present. Your Honor,
23 just to put on the record in the defendant's presence what
24 we put on the record Monday. The defendant has moved for a
25 change of venue, which was denied, and has waived his right

1 to a jury trial. So we are proceeding on this as a bench
2 trial. We have also stipulated to his competency and
3 stipulated to the report from his competency evaluation that
4 was performed by doctors at MUSC coming in as both a Court's
5 exhibit for purposes of the Blair Hearing and for the case
6 in chief.

7 Additionally, today, Martin Banks and I have premarked
8 and he has consented to the admission of State's Exhibit 1,
9 2, 3, and 4, which is a copy of that report that we
10 discussed on Monday, as well as State's 1. State's 2 and 3
11 are pictures of the victim from the night of the incident
12 showing the injuries; and State's 4 which is an audio of an
13 interview performed the night that the defendant was
14 arrested. So we will go ahead -- those are -- offer those
15 without objection.

16 THE COURT: Mr. Banks, is that your understanding of
17 the stipulations that have been made by counsel?

18 MR. BANKS: Yes, Your Honor.

19 (Whereupon, State's Exhibit Number 1, Competency
20 Evaluation Report, State's Exhibit Number 2, a Photo,
21 State's Exhibit Number 3, a Photo, and State's Exhibit
22 Number 4, CD of the Winston Interview, was received
23 into evidence.)

24 MR. BANKS: Did he say that I stipulated to the facts
25 contained in the indictment?

1 THE COURT: He has not stated that.

2 ASST. SOL. LUPTON: We've agreed to stipulate to the
3 facts in the indictment.

4 THE COURT: And just for the record, the facts of the
5 indictment are that in that the defendant Charles Lamont
6 Winston, Jr. did in Calhoun County on or about September 30,
7 2014 did with the intent to kill, attempt to kill, Courtney
8 Glover with malice aforethought by cutting the throat and
9 face area of the victim. This offense being violation of
10 16-3-29 of the South Carolina Code of Laws as amended.
11 Mr. Banks, is that your understanding of the facts contained
12 in the indictment that you're stipulating to?

13 MR. BANKS: The facts; yes, Your Honor.

14 THE COURT: All right. Thank you. Anything further,
15 Solicitor?

16 ASST. SOL. LUPTON: No, Your Honor. At this point I
17 think we've discussed the case in chambers. We certainly
18 can do opening if either you or defense counsel wish. But I
19 think we can roll straight into the first witness if it
20 pleases the Court.

21 THE COURT: Yes, sir. You may call your first witness.

22 ASST. SOL. LUPTON: Your Honor, we call the victim in
23 this case, Ms. Courtney Glover.

24 (Whereupon, the witness, Courtney Ann Glover, is duly
25 sworn.)

Direct Examination of Ms. Glover by Asst. Sol. Lupton

1 THE COURT: Your witness.

2 ASST. SOL. LUPTON: Thank you, Your Honor. May it
3 please the Court?

4 THE COURT: Yes, sir.

5 DIRECT EXAMINATION

6 BY ASST. SOL. LUPTON:

7 Q. Can you tell the judge please who you are and a little
8 bit about yourself, just briefly?

9 A. My name is Courtney Glover. I'm from Saint Matthews.
10 I was the neighbor of Charles, early, most of my life. I've
11 known him since I was about 14 years old.

12 Q. All right. And you say you've known him from about 14
13 years old?

14 A. Uh-huh.

15 Q. In that time, have you had a lot of chance to interact
16 with him, get to know him?

17 A. Uh-huh.

18 THE COURT: Ms. Glover, I'm going to interrupt you.
19 You can't say uh-huh or huh-uh; you have to say yes or no so
20 the court reporter can write down everything that you say,
21 okay?

22 MS. GLOVER: Okay.

23 Q. And you've had a lot of chances to talk to him, get to
24 know him over the years?

25 A. Yes.

Direct Examination of Ms. Glover by Asst. Sol. Lupton

1 Q. All right. And is that both in the past when y'all
2 were younger and more recently as well?

3 A. Not recently, recently. Maybe 2010, '11.

4 Q. All right.

5 A. It's when we were -- he moved away and I didn't really
6 seem again until ---

7 Q. So you sort of drifted apart at that point?

8 A. Yes.

9 Q. All right. And then did you get back together with him
10 at some point after that?

11 A. Well, I was interacting with him again after that.

12 Q. And that's what I mean.

13 A. Yes.

14 Q. Y'all interacted after that?

15 A. Yes.

16 Q. And when would that have been?

17 A. Maybe a few months before the incident.

18 Q. All right. So he started ---

19 A. Three months, four months -- yes.

20 Q. --- started talking to him again several months before
21 the incident?

22 A. Yes.

23 Q. All right. And tell the Court about how he acted and
24 how he seemed both younger and during that period that
25 several months before the he attacked you.

Direct Examination of Ms. Glover by Asst. Sol. Lupton

1 A. Well, when we were younger, just a regular person. I
2 mean, there was nothing -- I had no cause for concern. He
3 was just like a regular friend. He just, you know, talked
4 on the phone, some at school, some, you know, was . . .

5 Q. And in the several months before, did he seem normal to
6 you? The several months before the attack.

7 A. He seemed okay. He seemed like he was rational. He,
8 you know, I had no reason to think that he would ever harm
9 me.

10 Q. All right. Did he say or do anything that gave you any
11 reason to question whether or not he knew the difference
12 between right and wrong?

13 A. Between right and wrong, no. No.

14 Q. All right. Did you have any reason to believe that he
15 understood the difference between right and wrong?

16 A. I believe he did; yes.

17 Q. All right. And leading up to him attacking you, tell
18 the Court about that.

19 A. That particular night?

20 Q. Yes.

21 A. Well ---

22 Q. What was going on?

23 A. Sure. He sent me a text message that night around,
24 maybe nine-thirty or seven. And we were actually texting on
25 and off throughout the day. And he said he needed someone

Direct Examination of Ms. Glover by Asst. Sol. Lupton

1 to talk to. So I sent back a message and I said, "What time
2 do you want to call me?" And he messaged and he said, well,
3 just come by when I get off work because he was working
4 during that time. So when I got -- I got home. I got
5 settled in then I went up to the house. And I wasn't
6 planning to stay very long. I had to work the next day. So
7 I left my -- luckily I left my keys in my pocketbook in the
8 car. I went in and, you know, I said, "Well, what's wrong?
9 What do you want to talk about?" And he just kind of
10 vaguely said, "You wouldn't understand. You know, I have a
11 lot going on. I have a lot, you know, on my mind." And,
12 you know, I stayed there five more minutes and I said,
13 "Well, I'm going to go home now. I've got to get ready for
14 work." And my daughter was at home and I had to get her
15 ready for school the next day. And he said, "Well, hold on.
16 I'm going to -- I have to -- let me go to the bathroom."
17 You know, so he went to the back of the house and he came
18 back out. And I said, "Okay. Well, you know, walk me to
19 the car." Because usually, you know, he walks with me to
20 the car. I said, "Walk me to the car. I'm leaving." So
21 ---

22 Q. Let me interrupt you here. In that time that you were
23 at that house, did he do or say anything that would indicate
24 to you that he wasn't being rational?

25 A. No.

Direct Examination of Ms. Glover by Asst. Sol. Lupton

1 Q. Or that he didn't understand?

2 A. No. I was only there for like five minutes, like I
3 said. And I just said, "I'm getting ready to leave, I'm
4 going home."

5 Q. Anything that he did or said that would cause you any
6 concern that he knew right from wrong?

7 A. No.

8 Q. All right.

9 A. No. So I was leaving. I went out first. I hit the
10 light switch for the little carport light to come on. And
11 as I was walking down the steps, I walked outside, and he
12 came -- I felt him. He came behind me; he, like, jumped on
13 me.

14 Q. Well, hold on. Step back a second.

15 A. Okay.

16 Q. When you first walked out, was it dark outside?

17 A. No. He turned the light off. I walked outside ---

18 Q. Well, no. What I'm saying is before you turned the
19 light on?

20 A. It was dark before that, yes.

21 Q. All right. Did you make any comment about that?

22 A. I said I'm going to turn the light on. I mean, but it
23 wasn't like -- it wasn't anything I had to think about.

24 Q. All right.

25 A. You know, just like I'm going to turn the light on so

Direct Examination of Ms. Glover by Asst. Sol. Lupton

1 we can go outside. It wasn't, you know, a big deal. So I
2 turned the light on, walked outside, and the light went off.
3 He came behind me; he jumped on me. And at that time I
4 guess in the adrenaline and things, I didn't realize that he
5 had cut my neck. And, you know, I tried to get away from
6 him and he pushed me to the pavement. And, you know, he
7 kind of got on top of me and then he tried to -- that's when
8 I felt him cutting me I guess because I had put my head
9 down. I put my head down and he was trying to cut my throat
10 again. He cut my face instead because my head was down.
11 And I ---

12 Q. Did he grab any part of you in that attempt to try and
13 . . .

14 A. He grabbed my head, yeah. And I tried to distract him.
15 And I said, "You know, there's someone walking by."
16 Because, you know, I wanted him to be distracted so I could
17 get away. And it was like he didn't care. So I managed to
18 nudge him off me with my elbow, and I ran to my car. I got
19 in my car. And I'm glad I left the pocketbook in my car,
20 like I said, because my keys were in there and I have a push
21 start. So I tried to start the car. He grabbed the car
22 door and he kept turning it off. And every time I tried to
23 crank the car up, he would hit the switch and he said,
24 "You're not going anywhere. You're not going anywhere." He
25 kept saying that, "You're not going anywhere." And he was

Direct Examination of Ms. Glover by Asst. Sol. Lupton

1 like trying to jab at me with whatever it was he had in my
2 side. And I, like, moved over and I kept trying to push my
3 start. And finally I pushed it and the car cranked up. And
4 I hurried up and put it in reverse; I backed up. But I
5 backed up too far trying to get away and I hit the mailbox
6 across the street. And it went over the curb and my car,
7 like, stopped, and it rolled back. And he's still holding
8 onto to the car door at this point. So I kept trying to
9 push the start to start the car back up again; and he kept
10 turning it off again. When I finally got it started, I
11 pulled off and I stepped on the gas, raced down the road to
12 my house, because I'm like seven houses down from him. And
13 he held onto my car door the entire time.

14 Q. All right.

15 A. And when I finally got -- you know, I pulled into my
16 yard. He tried to stab me again and then he cursed. And he
17 jumped off the car door and ran.

18 Q. All right.

19 A. And I didn't see which way he ran because I was -- you
20 know.

21 Q. When you got to your house, did you do anything to
22 attract the attention of the people that ---

23 A. I blew the horn.

24 Q. All right.

25 A. When I pulled into the yard, yes.

Direct Examination of Ms. Glover by Asst. Sol. Lupton

1 Q. And did people start to come out?

2 A. My mother ran out of the house.

3 Q. And did they do something to make it obvious that they
4 were there?

5 A. My mother?

6 Q. Yes.

7 A. Yes. She came out of the house and she said, "What is
8 going on?" You know, "What is wrong?" Because I usually
9 don't pull into the yard and blow the horn. I just come
10 into the house.

11 Q. At that point, the defendant fled?

12 A. He fled when I first pulled into the yard; he fled.
13 But I didn't see which way -- I didn't look to see where he
14 was going because I was trying to get someone to come
15 outside. So she came outside and I told her to please help
16 me. And she saw my face was pretty much torn open. So then
17 my daughter came outside and she saw me, and she was
18 hysterical. And I tried to make it to the hospital in my
19 car, but I couldn't because I was bleeding too much. So we
20 had a pull over at Hardee's and call an ambulance. And they
21 came as soon as possible.

22 Q. All right. So when you first got to his house, he
23 didn't have a knife, did he?

24 A. No. I'm not sure if that's what he did we went to the
25 back because he said, "Hold on. I'm going to the bathroom."

Direct Examination of Ms. Glover by Asst. Sol. Lupton

1 Q. All right. And when you left the house, because it was
2 dark out in the carport, you turned on the light, and before
3 he attacked you, he turned back off?

4 A. Right; he turned it back off. Right.

5 Q. All right. And then he's known you for a long time?
6 Does he know that you have family at your house?

7 A. Yes.

8 Q. So he fled once you got -- once y'all got to your
9 house ---

10 A. Right.

11 Q. --- where you had people backing you up?

12 A. Right.

13 Q. All right. And then he fled and you didn't seem again
14 after that, right?

15 A. No. I didn't even see which way he even went. I
16 wasn't really thinking about which way he was going. I was
17 just concerned about getting somebody to help me, to come
18 outside and help me. I wasn't paying attention to which way
19 he went.

20 Q. All right. And then in your interactions with him --
21 you've know him for over 10 years, 15 years, I think?

22 A. Uh-huh. Yes, I have.

23 Q. May be more than that?

24 A. Yes.

25 Q. Is there anything that you have seen in him that would

Direct Examination of Ms. Glover by Asst. Sol. Lupton

1 cause you to believe that he didn't know right from wrong?

2 A. No. Nothing to cause me that he didn't know right from
3 wrong; no.

4 Q. And based on your observations of him, did you have
5 reason to believe that he did know right from wrong?

6 A. He did know right from wrong; yes. Yes.

7 Q. Did you see things ---

8 A. I had many -- the reason I say that is I had many
9 conversations with him about different things and it's
10 obvious that he knew the right thing to do from the wrong
11 thing to do; yes.

12 Q. All right. And where did all this happen? What county
13 was that in?

14 A. Calhoun County.

15 ASST. SOL. LUPTON: Thank you. Answer any questions
16 that defense counsel has.

17 MR. BANKS: Your Honor, I'll be very brief.

18 THE COURT: All right, sir.

19 CROSS-EXAMINATION

20 BY MR. BANKS:

21 Q. Ms. Glover, how are you?

22 A. Okay.

23 Q. I'm sorry for what you've gone through. Were you aware
24 that Winston Charles has some mental issues?

25 A. I was aware -- he's told me he has like a -- I guess,

1 like a paranoia, paranoid kind of issues. Like, you know --

2 Q. How long have you known that?

3 A. Maybe -- as of the date that it happened or just ---

4 Q. As of now.

5 A. As of now? Maybe about four years.

6 Q. Four?

7 A. Uh-huh. Yes.

8 Q. Okay. Did you know of him visiting mental health
9 facilities or doctors?

10 A. Well, I knew of him going for the paranoia. And he
11 said that Dr. Hooker told him that it was probably because
12 of marijuana use, extended marijuana use.

13 MR. BANKS: Your Honor, I move to strike. That's
14 hearsay.

15 THE COURT: Ma'am you can't say that somebody else told
16 you. Just make sure you answer the question that was asked,
17 okay?

18 MS. GLOVER: Okay.

19 ASST. SOL. LUPTON: Your Honor, that was a statement of
20 responsiveness to -- he asked her about her knowledge of his
21 condition and that was a statement made by the defendant as
22 to ---

23 MR. BANKS: From a doctor.

24 ASST. SOL. LUPTON: So I would just say that ---

25 THE COURT: I think that's hearsay.

Cross-Examination of Ms. Glover by Mr. Banks

1 ASST. SOL. LUPTON: Not for the truth of the matter,
2 but from her understanding.

3 THE COURT: You may proceed, Mr. Banks.

4 MR. BANKS: Thank you.

5 MR. BANKS: (continuing)

6 Q. Have you ever gone to a visit with him to one of those
7 places?

8 A. That's what I'm saying. When he went, Dr. Hooker told
9 him that ---

10 Q. No. I'm not asking what anybody said. I'm saying have
11 you ever gone to a visit?

12 A. Yes. He asked me to come with him to that visit.

13 Q. Okay.

14 A. And Dr. Hooker told him ---

15 Q. That was about four years ago that he did that?

16 A. Yes.

17 Q. And that night -- the night that this happened, was
18 Charles angry at you?

19 A. No.

20 Q. Okay.

21 A. Not at all. Like I said, we had been messaging
22 throughout the day, normal conversation. And he just said I
23 need someone to talk to. And usually, he would just call.
24 Because, you know, it was during the week and I have work
25 and my child has school, that's why I said, "Well, what time

1 are you going to call me," because I was still out. And he
2 said, "No. I'm at work." You know, come by the house when
3 I get off. And I didn't really question it, you know,
4 because he's right down the street.

5 Q. Y'all didn't argue that night, did you? Is that
6 correct?

7 A. No.

8 Q. Okay.

9 A. Matter of fact, we didn't even have much conversation.
10 It was just I came in, I said, "What's wrong?" He just
11 said, "You wouldn't understand. I have a lot going on."

12 Q. That evening you were saying he's asked you to come
13 over by text ---

14 A. Right.

15 Q. --- to talk?

16 A. Yes.

17 Q. And then when you addressed it, he said, "You wouldn't
18 understand."?

19 A. Yeah. He just said, "You wouldn't understand. I have
20 a lot of stuff going on with work and, you know, I'm trying
21 to get myself together and make money."

22 Q. Did that kind of confuse you a little bit?

23 A. Well ---

24 Q. He asked you to come over and then you wouldn't
25 understand.

Cross-Examination of Ms. Glover by Mr. Banks

1 A. I mean, it didn't really -- I wouldn't say it confused
2 me; no. No. I just thought that maybe, you know, he said I
3 need someone to talk to, but then once I got there I just
4 figured he just didn't really want to talk about it in
5 detail. I wasn't confused about it.

6 Q. Was there anything else unusual about him that night?

7 A. Not at all.

8 Q. Nothing?

9 A. No. Nothing at all. Nothing was, you know . . .

10 Q. He was talking sensibly?

11 A. Yes.

12 Q. But as far as you have told us here today, he had no
13 motive to attack you. Is that right?

14 A. No, he did not.

15 MR. BANKS: No further questions, Your Honor.

16 THE COURT: Andy redirect?

17 ASST. SOL. LUPTON: No, Your Honor.

18 THE COURT: You may step down, ma'am. Thank you.

19 ASST. SOL. LUPTON: Your Honor, we'll call Captain Pat
20 Regalis.

21 (Whereupon, the witness, John Patrick Regalis, is duly
22 sworn.)

23 THE COURT: Your witness.

24 DIRECT EXAMINATION

25 BY ASST. SOL. LUPTON:

1 Q. Tell the Court who you are and where you work.

2 A. I'm commonly known as Pat Regalis. I'm the Captain of
3 Investigation with the Sheriff's Office here in Calhoun
4 County. I've been employed at the Sheriff's Office since
5 2001.

6 Q. All right. Total law enforcement training -- or total
7 law enforcement experience?

8 A. Over twenty years. I graduated the Academy in 1995.

9 Q. And various other law enforcement training and
10 experience?

11 A. Correct.

12 Q. And were you working on this case?

13 A. I was.

14 Q. And it happened here in Calhoun County?

15 A. It did.

16 Q. Now, the night that this happened, that was
17 September 30, 2014, correct?

18 A. I believe.

19 Q. Tell how you got called out to that.

20 A. It's a routine call out. Investigations, if there's a
21 crime, if they occur, they have a list of call outs and
22 we're called out for.

23 Q. You got there, scene was secured?

24 A. When I got there -- got to the residences is where we
25 responded to -- the victim had already -- obviously it had

Direct Examination of Mr. Regalis by Asst. Sol. Lupton

1 transpired and already the victim already been transported
2 to the hospital. I notified my victims advocate to meet
3 with the victim at the hospital instead of coming to the
4 scene. Both myself and another investigator and some other
5 deputy that arrived on scene.

6 Q. And you viewed the scene?

7 A. I did.

8 Q. And did you observe anything that was done to try and
9 cover or conceal the evidence at the scene?

10 A. I did.

11 Q. And what was that?

12 A. There was a spot, I believe, right by the steps coming
13 out of the outdoor garage that was really clean. And then
14 there was a bucket. I believe there was a bucket that was
15 close to that area. And you could tell that something had
16 been washed. And you could still see there was a little bit
17 of residual effect; a little bit of residual residue like
18 some blood or something brown. And that's what we assumed
19 it was.

20 Q. All right. And jumping ahead, ultimately, did you
21 interview the defendant?

22 A. I did.

23 Q. And did he admit to having cleaned up the blood at that
24 scene?

25 A. He did.

1 Q. All right. Now, going back to that night. So you saw
2 that. Were you able to find the defendant that night?

3 A. No, sir.

4 Q. All right. And did you basically put out a "be on the
5 lookout" or anything of that nature to try and find the
6 defendant?

7 A. Yes. That's what we did. Yes, sir.

8 Q. All right. Ultimately, was the defendant located?

9 A. Not that night.

10 Q. Ultimately?

11 A. Yeah. Approximately A week later I believe; four or
12 five or six days later.

13 Q. So about a week later and he was arrested on October 8,
14 2014?

15 A. That sounds correct.

16 Q. So just basically a week, maybe a week and a day later?

17 A. Yeah, correct.

18 Q. All right. Where was he arrested?

19 A. In Orangeburg.

20 Q. Was he brought back to Calhoun County?

21 A. He was.

22 Q. Was he interviewed?

23 A. He was.

24 Q. And was that interview audio recorded?

25 A. It was.

Direct Examination of Mr. Regalis by Asst. Sol. Lupton

1 Q. And was he, prior to the interview, advised of his
2 rights pursuant to Miranda?

3 A. Twice.

4 Q. And that's -- at least one of those is also on the
5 audio recording?

6 A. Correct.

7 Q. Which is marked State's Exhibit 4?

8 A. Uh-huh. And there's also a reference to an earlier
9 Miranda.

10 Q. As well as State's Exhibit 2 and 3. I'll show these to
11 you. That the victim the night of the attack?

12 A. That was.

13 Q. And you interviewed the defendant, correct?

14 A. Correct.

15 Q. Or actually you and ---

16 A. Lieutenant Graham.

17 Q. Lieutenant Graham at the time?

18 A. Uh-huh.

19 Q. In that interview, did he admit to having intending to
20 kill the victim?

21 A. Yes, he did.

22 Q. He admitted to cleaning of the evidence?

23 A. Yes, he did.

24 Q. Did he admit to taking money and keys and fleeing?

25 A. He did.

1 Q. Did he tell you where he spent the time immediately
2 after the attack?

3 A. Watching us.

4 Q. He told you he hid to where he could see y'all?

5 A. He hid where he could see us, and he watched us and
6 waited until we ended up leaving or something to that effect
7 before he was able to leave and go down the road.

8 Q. And he understood -- did he explain that he understood
9 that he couldn't come talk to you because he would go to
10 jail?

11 A. A possibility, correct.

12 Q. All right.

13 A. He knew he was going to jail.

14 Q. And when you interviewed him -- and you've had, you
15 said, over 20 years law enforcement training and experience?

16 A. Correct.

17 Q. Does that include dealing with people who are mentally
18 defective?

19 A. I can say yeah.

20 Q. Did you see anything when you interviewed him?

21 Basically, just over a week after the attack, did you see
22 anything in him that would cause you to believe that he did
23 not understand right from wrong?

24 A. No.

25 Q. Did you see anything in him that would cause you to

Direct Examination of Mr. Regalis by Asst. Sol. Lupton

1 believe that he did know right from wrong?

2 A. Yeah.

3 Q. Based on your interview, you believed he understood
4 right from wrong based on his answers?

5 A. Correct.

6 Q. All right. And was there times when he said that he
7 understood right from wrong in the context of dealing with
8 law enforcement?

9 A. Yes.

10 Q. And without going into the details of those
11 conversations that you were involved in, you're aware that
12 he had expressed that he knew right from wrong?

13 A. Correct.

14 ASST. SOL. LUPTON: Beg the Court's indulgence.
15 Nothing further, Your Honor.

16 THE COURT: Mr. Banks?

17 CROSS-EXAMINATION

18 BY MR. BANKS:

19 Q. Deputy Regalis, how are you?

20 A. I'm doing good.

21 Q. You said you didn't hear anything out of him once you
22 caught up with him that indicated that he didn't know right
23 from wrong. Is that right?

24 A. Well, I wasn't the one who apprehended him or brought
25 him back. I met with him when he got back to the office.

1 Q. Okay. And you said he didn't say anything to you that
2 indicated that he might not know right from wrong?

3 A. There was -- now, this is based on my opinion through
4 my experience with dealing with everybody. I mean, there
5 was a lot of things that he did say that you could imply
6 that he knew right from wrong. On occasion, he did -- I
7 mean, he knew -- he said he knew what he did was wrong.

8 Q. I think you're inverting what I'm asking you. Didn't
9 he talk about voices?

10 A. He did.

11 Q. Okay. Didn't that give you some question about right
12 and wrong?

13 A. No.

14 Q. No?

15 A. Uh-huh.

16 Q. What did he say about the voices?

17 A. He said voices told him to -- I hadn't listened to the
18 whole -- it's been a while since I heard it. But the voices
19 were the cause of what he did.

20 Q. Okay.

21 A. The voices told him to do it.

22 Q. And did you just think he was totally making that up?

23 A. You're asking my opinion?

24 Q. Yeah.

25 A. My opinion based on my experience interviewing people,

Cross-Examination of Mr. Regalis by Mr. Banks

1 the way that it was portrayed from him, he would
2 gradually -- we would have to ask him for more information
3 about certain things. He would generalize what he did. And
4 in my opinion, he would use that as an excuse for what he
5 did. And once we started really peeling back during the
6 questions about asking him to be detailed on what he did,
7 that he would bring out more of the details and he would
8 give us a lot more details on what he did. But did I think
9 he was at the time? I mean, he did mention it about hearing
10 voices, the voices told him to do it.

11 Q. Yeah. But you just don't think he heard voices. Is
12 that what you are saying?

13 A. Just my opinion.

14 Q. At the time, you just thought he was making that up?

15 A. Correct.

16 Q. Okay. Subsequent to that interview, did you have any
17 exposure to his mental health records or probation and what
18 they knew about that?

19 A. No, I didn't.

20 Q. Okay. So you don't know anything more about it than
21 that?

22 A. Huh-uh.

23 Q. Okay. Who else was in the interview?

24 A. Stanley Graham.

25 Q. Okay. And who wrote the report?

Redirect Examination of Mr. Regalis by Asst. Sol. Lupton

1 A. I can't recall.

2 MR. BANKS: Okay. One moment, Your Honor. No further
3 questions, Your Honor.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY ASST. SOL. LUPTON:

7 Q. Regardless of whether he heard voices or believed he
8 heard voices or anything of that nature, did he indicate
9 that he knew that what those voices told him wasn't always
10 right?

11 A. Correct.

12 Q. And you know that he had said that he understands that
13 those voices tell him things that are wrong. So he
14 understands right from wrong?

15 A. Absolutely.

16 Q. So right from wrong, he knew?

17 A. In my opinion, correct.

18 Q. Whether he heard voices or not, he knew right from
19 wrong?

20 A. In my opinion, correct.

21 ASST. SOL. LUPTON: Nothing further.

22 THE COURT: Just for the record so that the Court is
23 going to understand that there has been stipulations and
24 that the Miranda -- is the Miranda form one of the exhibits
25 that has been stipulated to?

Redirect Examination of Mr. Regalis by Asst. Sol. Lupton

1 ASST. SOL. LUPTON: Your Honor, we didn't present the
2 Miranda form. But the Miranda is recorded on the audio.
3 And if we ---

4 THE COURT: I just want to make sure that there is no
5 Jackson v. Denno issues; that it's not being challenged;
6 it's a free and voluntary statement or whether we need to
7 have a Jackson v. Denno hearing?

8 MR. BANKS: You know, that never even came up in our
9 discussions. Let me consult with my client.

10 (Brief pause in the proceeding.)

11 MR. BANKS: Your Honor, he will waive any right to a
12 Jackson v. Denno hearing and let the testimony stand as it
13 is.

14 THE COURT: All right, sir. Is that correct,
15 Solicitor?

16 ASST. SOL. LUPTON: That's fine with me. But just to
17 cover the record:

18 BY ASST. SOL. LUPTON: (continuing)

19 Q. Captain Regalis, after he was advised of his Miranda
20 warnings on the audio, did he appear to understand those?

21 A. He did.

22 Q. Did he freely give that right up and speak to you?

23 A. He did.

24 ASST. SOL. LUPTON: Any questions that defense counsel
25 has?

1 MR. BANKS: Nothing further.

2 THE COURT: So, Mr. Banks, just so that the record is
3 completely clear, you've had an opportunity to discuss with
4 your client whether or not the statement given to law
5 enforcement were freely and voluntarily given after being
6 advised of his Miranda warnings?

7 MR. BANKS: Yes, Your Honor.

8 THE COURT: And in your opinion, does he understood
9 your conversation with him regarding that and feel
10 comfortable that his waiver is freely and intelligently
11 made?

12 MR. BANKS: Yes, Your Honor.

13 THE COURT: Do you need anymore time to talk to him
14 about that?

15 MR. BANKS: No, your Honor.

16 THE COURT: All right. Mr. Winston ---

17 MR. BANKS: Quite frankly, one thing I explained to him
18 was if there was a jury, we might have a different posture
19 on this. But the fact that you would hear the motion
20 anyway, that played into our decision.

21 THE COURT: Mr. Winston, is that correct? You need to
22 stand up, please, sir. Have you talked with your attorney
23 about that?

24 MR. WINSTON: Yes, Your Honor.

25 THE COURT: And so when you spoke with law enforcement

1 the night, you were given your Miranda warnings. Is that
2 correct?

3 MR. WINSTON: Yes, Your Honor.

4 THE COURT: And you freely talked to them, voluntarily
5 talked to them? You talked to them, right?

6 MR. WINSTON: Yeah, I talked to them. Yes, Your Honor.

7 THE COURT: They didn't threaten or coerce you in any
8 way?

9 MR. WINSTON: No, they didn't threaten me, Your Honor.

10 THE COURT: All right. So you freely talked to them?

11 MR. WINSTON: Yes, Your Honor.

12 THE COURT: All right, sir. Thank you. Anything
13 further from this witness?

14 ASST. SOL. LUPTON: No, Your Honor.

15 THE COURT: You may step down, sir. Thank you.

16 MR. REGALIS: Thank you, Judge. Thank you, Counsel.

17 ASST. SOL. LUPTON: Your Honor, I'll just hand up the
18 exhibits. And with that, the State rests.

19 THE COURT: Mr. Banks?

20 MR. BANKS: I'm sorry, Your Honor?

21 THE COURT: The State has rested.

22 MR. BANKS: I would ask for a recess, Your Honor.
23 Probably for lunch. My expert just arrived and she's got
24 some materials to review.

25 THE COURT: Okay.

1 MR. BANKS: She's got to review the tape that I got
2 last night that we were just discussing. And she needs to
3 reinterview my client. So I think we need to break for
4 lunch.

5 THE COURT: Sure. And it's 11:30. Would an hour and a
6 half give you enough time to eat lunch and talk with her?

7 MR. BANKS: Hour and a half?

8 ASST. SOL. LUPTON: Your Honor, may we approach?

9 (Whereupon, a bench conference is held off the record.)

10 THE COURT: We'll be at recess in this case until two
11 o'clock. Otherwise we'll proceed with the other guilty
12 pleas.

13 (The proceeding recessed at 11:30 a.m. and will resume
14 at 2:00 p.m.)

15 || - - - - -

16 (The proceeding resumed at 2:04 p.m.)

17 THE COURT: We're back on the record in regard to Mr.
18 Charles Winston's case. Mr. Banks, are you ready to
19 proceed?

20 MR. BANKS: Your Honor, I will go ahead and make the
21 defunctary (ph) motion for a directed verdict.

22 THE COURT: Yes, sir. And based upon the stipulations
23 and the Court's review of the record to include the audio of
24 the interview with law enforcement, the Court respectfully
25 denies your motion.

1 MR. BANKS: Thank you, Your Honor. We call Dr. Amanda
2 Salas to the stand.

3 THE COURT: All right.

4 (Whereupon, the witness, Dr. Amanda Salas, is duly
5 sworn.)

6 THE COURT: Your witness.

7 MR. BANKS: Thank you, Your Honor. Your Honor, at this
8 time I think to cut things short, I'd like to qualify or
9 offer Dr. Salas as an expert in forensic psychiatry.

10 THE COURT: Any objection or voir dire, Mr. Lupton?

11 ASST. SOL. LUPTON: Your Honor, I think she meets the
12 qualifications in that area, forensic psychiatry.

13 THE COURT: The Court finds her as qualified.

14 MR. BANKS: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. BANKS:

17 Q. Dr. Salas, can you tell me how you first got involved
18 in this case?

19 A. Yes. You had consulted with me to evaluate Mr. Winston
20 due to some concerns about his competency issues and some
21 bizarre thinkings that had shared with you and wanting an
22 evaluation pertaining to the same.

23 Q. Okay. And after my contact with you, did you have a
24 chance to evaluate Mr. Winston?

25 A. Yes. I have evaluated him on three separate occasions

1 including today.

2 Q. Okay. And in your evaluations you used other things
3 other than your interviews to evaluate him. Is that
4 correct?

5 A. That's correct. I have reviewed multiple sources of
6 information. This includes review of the discovery that was
7 made available including review of about a 45 minute
8 interrogation confession, whatever you want to call it;
9 What was provided to me today, I reviewed that as well. I
10 have reviewed records from Orangeburg area Mental Health
11 Center pertaining to past treatment, and I have reviewed the
12 records from MUSC where the State did a competency to stand
13 trial evaluation. I have also conducted a telephone
14 interview with his mother, Linda Winston, as well.

15 Q. Okay. And having done this -- I guess you call this
16 background information. Is that what that's called?

17 A. Background and collateral.

18 Q. Okay. Having evaluated all of this information
19 together including the three interviews with my client, do
20 you draw any conclusions as to his mental health after
21 completing your evaluation?

22 A. Yes. Mr. Winston suffers from an illness on the
23 psychiatric spectrum called delusional disorder.

24 Q. All right. Let's talk about delusional disorder. What
25 exactly is that? Is that schizophrenia?

Direct Examination of Dr. Salas by Mr. Banks

1 A. Delusional disorder is not schizophrenia. It's
2 actually very uncommon. There's a prevalence of about
3 .2 percent in the population growth whereas schizophrenia is
4 going to have a prevalence of at least three, sometimes
5 four, times greater than that. So it affects a very small
6 population of people. But what happens in a delusional
7 disorder is that a person in one realm, typically one area
8 of thinking or thought or idea, they have irrational
9 thoughts.

10 It can be paranoid type such as what Mr. Winston has.
11 It can be a belief that somebody, a movie star or somebody,
12 is in love with you, an erotic-romantic type. There are a
13 lot of varieties. But it is a limited ability to process
14 rationally in a circumscribed area that doesn't infringe on
15 your activities or your ability to perform or function in
16 other areas of life. So unlike schizophrenia whereas a
17 person may quit bathing, start isolating from others, not
18 being able to hold down a job or communicate very clearly,
19 that is not the same that happens in a delusional disorder
20 where a person can continue to work. They can continue to
21 pursue education if that is part of what they're doing.
22 They can hold and maintain relationships as long as those
23 relationships are not impaired by the false beliefs of the
24 delusional disorder from which they suffer.

25 Q. So I heard you touch on people who -- I guess the more

1 conventional approach that people understand in America,
2 these people who attach to some star and think that they are
3 in love with them. Did you mention that just a minute ago?

4 A. Yes.

5 Q. So that is a delusional disorder?

6 A. Yes.

7 Q. And that's not the same kind of -- it's a delusional
8 disorder but it's not the same type or branch that my client
9 has?

10 A. That's correct. Mr. Winston does not have the
11 erotic-romantic where he believes that somebody is in love
12 with him. He has a very paranoid delusional system and it
13 is actually subclassified as bizarre delusional system,
14 which is why some people, in my opinion, have not believed
15 him. Because for at least the last six plus, maybe even
16 eight or more, years, he has held on to a belief that people
17 in the community are inserting objects and items into his
18 body that are receivers that allow his body to be controlled
19 externally.

20 And at times this has led to physical manifestations of
21 discomfort where he has felt someone pull on his testicles.
22 He has felt people twist his insides. Things have happened
23 to his lungs. He has had times where he has felt sensations
24 of someone shocking his heart. There have been times where
25 I believe it was a pen that had been inserted into his eye

Direct Examination of Dr. Salas by Mr. Banks

1 and twisted and also into his brain. But he believes that
2 there are certain people in this world who have put these
3 devices into his body and created these discomforts for him.
4 And he finds that this is very unjust and immoral behaviors
5 that allow people to -- he calls them terrorists. At times
6 we'll refer to them as that. But these terrorists or these
7 other people are allowed to control another human being
8 remotely and torture and torment them.

9 For Mr. Winston, his symptoms have been so severe and
10 he has been very frustrated with people not believing him
11 over the course of time that it has let him to go to the
12 hospital in Orangeburg and pursue and MRI specifically to
13 look for the devices that are in his body. And he didn't
14 find any. And so when -- you, I believe, had a conversation
15 with him after this was learned that typical of a delusion
16 even when presented with information that proves that what a
17 person believes is inaccurate, wrong, not real, they
18 discredit that rational thought process. The basis of a
19 delusional system is irrational thoughts that even when
20 faced with information that says that's absolutely not
21 possible, they dismiss it. And so in that case for him even
22 though the MRI didn't show up anything being in his body,
23 that did not give him the confirmation of there truly being
24 nothing in his body. Because he still continues to feel the
25 sensations and believes that these devices are there and

1 being controlled by other people.

2 Q. So instead of a rational person saying, "Well, it must
3 not be true because they didn't see something in my brain or
4 my body," he would take an irrational approach, a delusional
5 approach, and would say that it wasn't a real MRI. Is that
6 what you're saying?

7 A. That would be one line of thought; so yes. So when you
8 try to engage someone with a delusional disorder in a
9 rational conversation, they do not follow the laws of
10 ration. They get to a point where all of a sudden they will
11 get frustrated and they will just be dismissive of the
12 person who is not believing them. There is insight into a
13 delusional disorder. And Mr. Winston demonstrates that
14 because he himself recognizes that if he were to talk about
15 his delusional system and the things that he believes that
16 other people discredit and don't think are happening to him,
17 he recognizes how bizarre it is that he himself thinks,
18 "Well, if it weren't happening to me and somebody told me
19 this was happening to them, I probably wouldn't believe
20 them."

21 So he has the inside and awareness to recognize that
22 this is implausible for a lot of people. But because he
23 feels this, and this is an experience he has day in and day
24 out where intermittently, on most days than not, he
25 experiences some strange sensation in his body that he

Direct Examination of Dr. Salas by Mr. Banks

1 attributes to the manipulation of these devices. He is
2 keenly aware in his mind that something is embedded in his
3 body. It has been implanted there. It is remotely being
4 controlled and it is torturing him. And he finds that to be
5 unjust and immoral that anybody on this planet would be in a
6 position to control and torture another person.

7 Q. Okay. So you know what he's accused of. You've read
8 the reports and what not.

9 A. Correct.

10 Q. And he was accused of assaulting, terribly, Ms. Glover.

11 A. That's correct.

12 Q. And you've interviewed him about that. What did you
13 conclude about how she fits into this scenario?

14 A. Even prior to that assault, Mr. Winston has believed
15 that the victim and at least one other person he had
16 identified by name that they are part of this terrorist
17 group of people who control the devices in his body. And he
18 finds them to be able to not control them, yet he finds that
19 they do control the devices that are embedded in his body
20 that shock his heart, that pull on his testicles, that twist
21 different body parts in his abdomen, and make changes that
22 are very painful in his hands. He believes prior to the
23 assault -- and this is years prior -- that the victim and
24 another individual by name have had access to his body and
25 have actively participated in torturing and tormenting him.

1 He has also at times believed that the sheriff in the
2 county has been able to give him thoughts into his head and
3 influence people in a way to activate the devices that make
4 him have these physical experiences of pain and discomfort.
5 He has also believed that these devices allow other people
6 to control him and to do things that he would not want to do
7 to other people. And he has had to fight and struggle with
8 these hallucinations at times to not tonight kill himself.
9 He has had to battle the idea that he should kill himself to
10 take away the torture. He's battled the idea that there is
11 a conspiracy where he is going to be set up and accused of
12 crimes that he didn't commit that would be federal crimes so
13 that he would have to face being locked away and take the
14 rap for other people. These are all ideas that he had prior
15 to the commission of the crime that brings us here today.

16 Q. Does he believe he's falsely accused of this crime?

17 A. He doesn't believe he's falsely accused of this crime.
18 He actually has the ability to recognize that the actions as
19 recorded are actions that he has admitted to and that he
20 engaged in those behaviors. He even recognizes that if you
21 look at the facts of the case from a perspective of, "Is
22 this appropriate and legally allowable behavior," he
23 recognizes, no. That this is a legal action to take a knife
24 and attack another person, severely injure another person.

25 But he also through his delusional system and as a

Direct Examination of Dr. Salas by Mr. Banks

1 derivative of the delusional disorder, at the time when this
2 act occurred in the commission of this crime, he was
3 functioning under hallucinations of instruction to harm
4 Courtney. And he was doing it out of the position in the
5 thought process of, "She's controlling my body. She's
6 torturing me, and that's unjust. That's immoral. And nobody
7 should be allowed to control another person." And so from
8 answer from his position of thought, this is a defensive
9 position from prevention of somebody who he believes has put
10 the device in him and now regulates and controls the device.

11 Q. So in his mind, it was like self-defense. Is that what
12 you're saying?

13 A. It was a self-defense act in terms of he did not see a
14 moral component of -- his moral understanding of this attack
15 was justified because he was defending himself from somebody
16 who was tormenting and torturing his body physically.

17 Q. So in your opinion, does he have any past or current or
18 active psychiatric illnesses?

19 A. His past diagnoses have been related to addiction. He
20 would meet the criteria for an alcohol use disorder and a
21 cannabis use disorder. But with the evolution of his
22 delusional disorder, he is actually diminished the amount of
23 cannabis that he was smoking because he, again with insight,
24 recognized that when he would smoke marijuana that it made
25 it much easier for people to come and tweak the device and

1 change the device so that he would experience the torture.
2 And so even though there had been a time where that wasn't
3 the case, as he's developed an awareness of what impacts
4 makes it easier for people to control his body, he has
5 actually cut back.

6 He has also continued to have these delusions persist
7 while in jail. And he has not been drinking alcohol and he
8 has not been smoking marijuana in jail. And they're not
9 only persisting, but he feels that they are intensifying.
10 That is not uncommon with the delusional disorder for it to
11 have a late onset than the age of schizophrenia and for it
12 to have an opportunity to worsen over time particularly when
13 someone is not in treatment. Mr. Winston did pursue
14 treatment. I believe that was around 2011 or 2012 at Mental
15 Health in Orangeburg. They treated him at one time with an
16 oral antipsychotic. He says he took it, but it didn't
17 change anything and he's continued to have the
18 hallucinations. He continued to have these feelings and
19 sensations in his body. So he quit taking it and went back
20 for more treatment and a different treatment.

21 And the recommendation was for him to take a shot of
22 Haldol every month. Now his mom Linda believes that the
23 Haldol was helpful on some level, but that it made him not
24 have the same facial reactions, and it made him a little bit
25 slower and not like himself. Mr. Winston says it just

Direct Examination of Dr. Salas by Mr. Banks

1 didn't help and he did not like the side effects that he
2 experienced, and so he quit going. And he said a part of
3 that is because he didn't think people were believing him
4 and the treatment that was being provided wasn't helpful.
5 At this point in time during my communication and interview
6 with him, he recognizes that others do not believe him. He
7 is very frustrated that other people do not believe him. He
8 tells me that I am the person that he has shared more about
9 the thought process ---

10 Q. Let me stop you there. When you say, "not believe
11 him," do you mean not believe that he is ill or not believe
12 the facts that he relays about all these things you've been
13 told about what he feels and experiences?

14 A. He is of the belief that other people when he has
15 shared with them -- for example, when he was being
16 questioned by the police on the tape that I reviewed today,
17 the 45 minute interrogation, he was trying to share the
18 experiences that he has had, and he felt that was being
19 dismissed. And that the people that were interviewing him
20 at the time did not believe what he was saying about having
21 these things in his body or having hallucinations. He has
22 tried to tell and talk to the doctors over at the Mental
23 Health Center, and he says that he thought that they were
24 initially believing him because they were going to give him
25 some treatment to take it away. But the treatment didn't

1 work and they kept telling him it was due to alcohol and
2 drugs.

3 And he didn't see that any of his experiences were
4 related especially when things got worse if he did try to
5 smoke marijuana. And so he quit. So he quit the marijuana
6 and he quit taking the Haldol shots. And the one doctor
7 that he felt connected to passed away during the course of
8 his treatment. And at that point, he decided that he didn't
9 want to have to go back and reexplain something to another
10 provider who would not believe him again.

11 Q. Well, up until your examination of him, how would you
12 overall characterize his previous diagnoses and treatments?

13 A. I think that it was probably a good start to try and
14 figure out if something was wrong with Mr. Winston from a
15 mental health perspective. But it appears to me that no one
16 ever got to quite the right diagnosis because I don't see in
17 the records that it was part of the differential diagnosis,
18 so it wasn't considered. Often times people with delusional
19 disorders function. And they don't come for treatment and
20 so it's not something that is at the top of, "Okay, someone
21 is telling me some things that are very bizarre. Let me
22 think of delusional disorder." So what had happened is the
23 most obvious explanation at the time when he was drinking
24 alcohol and smoking marijuana was that this was a
25 drug-induced issue. But when he quit the marijuana and his

Direct Examination of Dr. Salas by Mr. Banks

1 alcohol consumption drastically diminished, he continued to
2 have intensification of the symptoms despite the treatment
3 that he was on which, and going back for another evaluation
4 of mental health, someone finally considered rule out
5 schizophrenia.

6 But then the consideration was, well, he doesn't meet
7 criteria for schizophrenia because he was bathing, he was
8 articulate, he was working, he didn't have failures in other
9 domains of his life. He just had these endorsed symptoms of
10 psychosis with the hallucinations and the ideas of reference
11 and the bizarre thinking. And so it's kind of like the turn
12 in that diagnostic process went from a substance induced
13 issue all the way up to the most severe psychotic issue and
14 it missed things in between. One of those things being
15 missed would've been the delusional disorder. So what
16 happens is that Mr. Winston up until that time -- and that
17 all predates the commission of both the crime that we're
18 here for today -- now he's in a forensics population. And
19 appropriately so, people began to think, "Oh, well, this is
20 a person who is faking; this is a person's malingering
21 because they want to get out of trouble. They don't want to
22 face the consequences of some action that they've done and
23 they're looking for a way to reduce their accountability for
24 something." But in Mr. Winston's case, all of the
25 information that predates this would not be congruent with

1 someone who is faking symptoms because it went on for years.

2 It's like this was something that he "created or
3 invented" the week or two before hand. There is extensive
4 documentation pertaining to that. And he is not looking to
5 escape punishment or penalty. Mr. Winston's biggest desire
6 is to come to court to have it identified that there are
7 people in this world who fit devices in his body and are
8 unjust and immoral in controlling his body. And he doesn't
9 want that to happen to anybody else. And so even if he has
10 to take a consequence, that malingerers are usually tending
11 to avoid and not wanting to face, that's not even his focus
12 as to whether a punishment as part of what is going on. His
13 sole focus is to let the Court know that this device and
14 others have been put into his body and people are
15 controlling him. And he would like for that to be known to
16 the Court, and he would like for that to be something that
17 could be investigated so that this won't happen to anybody
18 else.

19 Q. You realize Mental Health did a report for this Court
20 and it's been stipulated to and offered into evidence.
21 You've you read that report, haven't you?

22 A. Yes.

23 Q. How is it you can conclude this delusional disorder and
24 it not be included in their evaluation?

25 A. They dismissed the diagnosis of delusional disorder. I

Direct Examination of Dr. Salas by Mr. Banks

1 don't think that they considered it. Their line of thought
2 as they outlined it in their report was that the
3 considerations were either -- it was just like what happened
4 in his outpatient treatment -- this is either a substance
5 induced issue or this is schizophrenia or this is malingered
6 appropriately considered because of the judicial setting for
7 which they were doing forensic evaluation. And they
8 nullified the schizophrenia diagnosis because Mr. Winston
9 does have functional capacity in so many other areas of his
10 life if one does not touch on the delusion. And that was
11 appropriate because he doesn't have schizophrenia.

12 They emphasized his history of addiction to alcohol and
13 marijuana. And at that point there was no evidence from
14 their report that a delusional disorder was even considered,
15 which is not uncommon. It's just unfortunate because they
16 missed the opportunity to come to the conclusion which I
17 have which is he actually does meet diagnostic criteria for
18 a very rare but very real mental health illness that is
19 delusional disorder. And he is the paranoid type with
20 bizarre delusions.

21 Q. Their report, not yours, but their report is dated
22 January 12, 2016. At that point, he'd been in jail for
23 quite some time. Is that right?

24 A. That's correct.

25 Q. And you said that he wasn't imbibing in marijuana and

Direct Examination of Dr. Salas by Mr. Banks

1 all that type of thing. And he also hadn't got into any --
2 he hadn't assaulted anyone that we know of in jail. Is that
3 right?

4 A. No. And in fact they asked one of the officers again
5 today, who I had spoken to apparently in the past, was over
6 at the jail. And Mr. King could not remember or recall
7 incidents where Mr. Winston was known to be purposely
8 aggressive or threatening or fighting with other people.

9 Q. In fact, did he indicate that he was pretty much a
10 model . . .

11 A. He didn't use the word model. But I didn't ask him in
12 that type of question. The real reason why I spoke with
13 Mr. King is because Mr. Winston had reported that his
14 roommates have had a difficult time tolerating being his
15 roommates because at night Mr. Winston believes he is
16 constantly talking to himself and that other people find
17 that to be disturbing. But what was confirmed is that it's
18 not happening during the daytime; it's something that's
19 happening at night where Mr. Winston is constantly talking
20 out in his sleep and just mumbling to himself. And that it
21 is a complaint that Mr. King has routinely gotten from a
22 variety of inmates that they don't want to continue to be in
23 the same space with Mr. Winston because of those
24 disruptions; but not because of acts of aggression.

25 Q. And as far as you know, is he currently on medication?

Direct Examination of Dr. Salas by Mr. Banks

1 A. He is not on medication at this point in time.
2 Mr. Winston is someone who -- because when he has tried to
3 share his concerns and his delusional beliefs with others
4 and he has felt like a majority of people have not
5 recognized what is going on. He has been quick to dismiss
6 going to ask someone for help when he believes that he is
7 not being believed. Which seems reasonable to me that if I
8 think someone is not believing me, why would I go to them
9 for help? He was telling me that I'm one of the few people
10 who has asked him questions and wanted to know more about
11 what is happening to him. And I've built some level of
12 rapport with him because he recognizes that I believe him,
13 which I find interesting because I tell him I don't believe
14 him.

15 But he at least recognizes that I don't dismiss what he
16 is saying. But that me not believing him and assigning a
17 diagnosis of delusional disorder and having conversation
18 with him about delusional disorder being something that
19 medication can take these sensations away from his body if
20 he would take treatment. He is willing to take treatment
21 from somebody who believes what he is saying even if they
22 don't believe him, which is clearly the case for me.

23 Because I believe Mr. Winston has a well-developed
24 delusional disorder. I don't think that it has been
25 recognized in his treatment records with accuracy. I think

1 his symptoms have been identified but have been mislabeled.
2 He has been started on appropriate treatment. The dose of
3 Haldol shots he had in the past would be unlikely to reduce
4 the symptoms that he had. Because often times in delusional
5 disorders, you have to go to very high doses of medications
6 to get relief. And he was on, at best, a moderate dose.
7 But recognizing that and his willingness to try newer
8 medications that would've give him side effects and might
9 give him relief from the body torture that he's having, he's
10 willing to consider treatment.

11 Q. Okay. You know, I think maybe it would be enlightening
12 to -- because, you know, this is unusual; an unusual
13 diagnosis. I think you gave a very small percentage. Is
14 that right?

15 A. .2 percent prevalence.

16 Q. Yeah. So this is very unfamiliar to me and many of the
17 others in this courtroom. So when we hear delusions, I
18 think we all fall back on schizophrenia. And I think that's
19 a very cheap misdiagnosis. If we can maybe by use of some
20 of the records that his family provided, maybe you can
21 indicate sort of the difference in what a schizophrenic
22 person would produce, or could possibly produce, and what
23 he's been able to produce. Does that make sense?

24 A. I think so. So when I obtained collateral information
25 from Mr. Winston's mother, she reported to me that he had

Direct Examination of Dr. Salas by Mr. Banks

1 for the years prior to this -- apparently he had a
2 hospitalization at MUSC around 2012-ish, and it was a
3 medical admission. It was not a mental health admission
4 because he has had no mental health admissions. That is not
5 uncommon in delusional disorder. But since the medical
6 admission, he had come home to live and reside in her house.
7 And he had confided in her some of the bizarre things that
8 he had been thinking. Some of this includes some body
9 changes that were happening with an illness that his sister
10 had that had some GI symptoms. And he initially started --
11 the delusional system doesn't just come on all of a sudden;
12 it evolves. And so if initially it started with him
13 misattributing people doing stuff to his sister who had some
14 gastrointestinal problems that were going on. And then
15 eventually it got to a point where he started hearing his
16 name called out and he was having the body sensations.

17 So we started to track this. And his mother recalled
18 these notebooks that Mr. Winston had that he had written
19 down some of his thoughts. And I reviewed that material.
20 He has things written in here, which some of it is very
21 similar to what he has told me. Some of it is actually more
22 detailed than what he has told me in interview. But he has
23 dated some of it because he thought when he was going for
24 treatment at Mental Health, he initially was very optimistic
25 that things would help ---

1 ASST. SOL. LUPTON: Your Honor, at this time, I'm going
2 to object to all of this that is based on stuff that hasn't
3 been provided. I would ask to at least see what she's
4 talking about.

5 MR. BANKS: These are materials ---

6 ASST. SOL. LUPTON: It's essentially diary.

7 THE COURT: Mr. Lupton, one at a time.

8 MR. BANKS: All right. Then rule on the objection.

9 THE COURT: Well, I need to know what ---

10 ASST. SOL. LUPTON: If she's basing her testimony on
11 material that hasn't been provided to anybody but her ---

12 MR. BANKS: This is basically a diary, Your Honor,
13 that was provided to us this morning. It's handwritten
14 notes by my client. I don't think we're putting it in.
15 She's just reviewed it; refer to it.

16 THE COURT: She's basing part of her opinion based upon
17 this diary.

18 MR. BANKS: That's right.

19 THE COURT: Certainly, the States expert should have an
20 opportunity to review it as well if need be.

21 MR. BANKS: We literally got it at 10:30 this morning.

22 THE COURT: When was it actually produced?

23 MR. BANKS: This morning.

24 THE COURT: No. I mean the actual written materials.

25 MR. BANKS: Contemporaneous, 2012 or somewhere in

Direct Examination of Dr. Salas by Mr. Banks

1 there.

2 DR. SALAS: 2010 to 2012. And one of the reasons why I
3 didn't even have it until today is because I did not know
4 any of this existed until last night. Which means had I not
5 pursued collateral information from his mother, which is
6 part of the standard process for going and doing a forensic
7 evaluation is to pursue collateral information, I would've
8 missed it as well.

9 THE COURT: How can it be authenticated? How do we
10 know it is what it is?

11 DR. SALAS: I personally see that what he has shared
12 with me in interviews that are very bizarre and not rational
13 thoughts, are congruent with what is written in there. The
14 information is not dated with a year, and that's why I had
15 to actually ask Mr. Winston when he had written this
16 material. It's got some dates that have nothing to do with
17 the incident. It will just say a month, a day identified,
18 and a time. But the information that's in there is very
19 bizarre and is very congruent with what he has shared with
20 me.

21 So from a clinical perspective, this is the type of
22 information that I would rely on in order to understand if
23 somebody is more factual in what they are doing or if
24 they're more manipulative or malingered. If this were
25 something that were malingered and made up, I don't

1 understand why it would come to me via his mother on a
2 telephone interview at the last minute and not be something
3 that would have been, well, I have these available from when
4 I first interviewed him in 2015. If this were a malingered
5 issue, I would be expecting someone to say, "Oh, have you
6 already seen these records?"

7 ASST. SOL. LUPTON: Your Honor, now I had a chance to
8 look at them and that is all I was asking for. And at this
9 point, having had the opportunity to review it, I don't
10 object to her testifying.

11 THE COURT: All right. You may proceed.

12 DR. SALAS: (continuing):

13 A. There is some profanity in here, so I will skip that
14 part. But the information that is in here -- and I prefer
15 to read it from Mr. Winston's words as opposed to my
16 handwritten notes because I think that this is more detailed
17 and more accurate than what I was able scribe and try to
18 keep up with.

19 ASST. SOL. LUPTON: Your Honor, as far as her reading
20 parts of it into the record, I certainly think it's
21 something she is permitted to review, but putting it into
22 the record, I'm not sure that that's within the bounds of
23 the rules of evidence.

24 THE COURT: Well, specifically if she used it to base
25 her opinion on -- Mr. Banks, are you moving it into

Direct Examination of Dr. Salas by Mr. Banks

1 evidence?

2 MR. BANKS: Not the physical document, but I think she
3 should be able to refer to specifics that are within it.
4 She's not going to read the entire ---

5 DR. SALAS: No.

6 MR. BANKS: --- thing by any stretch. It's about 30
7 pages or so.

8 DR. SALAS: No, this is actually not. It's written in
9 a notebook. One notebook just has one page of relevant
10 material. And the other notebook is front and back two
11 sheets and a few lines on another one. I can summarize as
12 opposed to read if that is satisfactory.

13 MR. BANKS: Yeah. I think she needs to help the Court
14 understand some of the -- at least a few the details and
15 maybe a summary of those details in order to establish
16 further her opinions.

17 THE COURT: I'll allow it.

18 DR. SALAS: (continuing):

19 A. So basically, because there's a bizarreness to what
20 Mr. Winston has shared and has identified as a part of his
21 delusional system, it is very prudent to try to find
22 evidence or collateral information especially when you
23 didn't have a diagnosis prior to me becoming involved in the
24 case that would support why his delusional diagnosis -- why
25 his delusional disorder the diagnosis and not something

1 different.

2 And so what Mr. Winston has shared to me as related to
3 body changes, and in his own writing, he records things
4 about his heart being shocked to the point he can no longer
5 sit up straight. He has implanted devices that are
6 controlling, altering, and damaging his mind and his body.
7 His eyelids have been shocked and causing pain. He has been
8 stopped from sleeping. He has been shocked in his brain,
9 his lung, his testicles, his penis, his various other body
10 parts. And this is again very congruent with what he was
11 sharing with me in the interviews. He actually refers by
12 initials to people who he believes has been tormenting him.
13 And this would reflect the victim Courtney as well as the
14 someone who is -- I believe her name was Tiffany Copper. He
15 believes that they have put commands into his subconscious
16 mind and they have manipulated equipment and controlled his
17 own mind.

18 He did not share with me, but it was evidence as to how
19 specific a delusion can get, and that's not unusual because
20 often times they do get very specific. But he does believe
21 that Tiffany had put skin eating bacteria in the house. And
22 he said that in his mind, in here, it says that's why he had
23 some changes on his skin and on his hands. And so what he
24 has described in the interviews with me, actually at the
25 very last minute through the collateral information

Direct Examination of Dr. Salas by Mr. Banks

1 gathering process, talking to his mother last night, these
2 notebooks verify what was going on. Well, Mr. Winston has
3 been locked up since this happened and he was caught. So I
4 do not believe that he had access to write material in a
5 spiral-bound book and plant it somewhere. That doesn't make
6 sense to me. It did have a smoky smell to the material that
7 was presented. It makes me think that this is not something
8 that he was hiding in jail somewhere and thus planted.

9 And so to me with him having been locked up, not having
10 access to their home, and his mother describing this as
11 being something that she couldn't date, Mr. Winston telling
12 me that this was equivalent to the time when he was in
13 treatment and explaining that this was when he wanted to be
14 able to share with his treatment providers what was
15 happening on an accurate basis, it does make sense that what
16 he is telling me would fit back into the delusional disorder
17 diagnosis.

18 Q. Let's go to the night of the crime. In your opinion,
19 at the time of the crime, was Mr. Winston able to tell the
20 difference between legal right and wrong as it pertains to
21 this charge?

22 A. He certainly could tell the difference between legal
23 right and wrong.

24 Q. Okay. Now that sounds kind of ominous to me as a
25 defense attorney. Can you elaborate.

1 A. Mr. Winston knows that it's illegal to take a knife and
2 attack somebody. That's part of where his delusional system
3 becomes very relevant is because the delusional system does
4 not change his understanding of legal right or legal wrong.
5 It changes his understanding of moral right and moral wrong.

6 Q. And what do you mean by that?

7 A. He finds that it's illegal for somebody to put devices
8 in his body and torture and torment him and make his body
9 have the bizarre strange sensations in all of his different
10 body parts. But he does believe that it's immoral for
11 someone to be able to do that. And him to not be able to
12 defend himself is a moral basis for why he would defend
13 himself.

14 And so in the events that happened, Mr. Winston was not
15 anticipating a conflict or an attack. He was not planning a
16 conflict or an attack. He still can't even describe what he
17 wanted to talk to Courtney about on that particular night,
18 but it did relate to the delusions. And she had been at one
19 of the mental health appointments with him in the past, that
20 he knew that she was well aware of some of the symptoms that
21 he had treatment for, and he was really struggling and
22 ambivalent about how do I confront somebody who is
23 "tormenting me and torturing me." But he was not
24 confronting her and asking her to come over because he was
25 planning an attack on her. That actually makes sense to me

Direct Examination of Dr. Salas by Mr. Banks

1 because if he was planning an attack on her, you surely
2 would have had better opportunity to attack her inside the
3 house in a discrete location where she would not have had
4 access to flee like she did.

5 What he describes is that the hallucinations, which
6 happened to him every day, came on and instructed him to
7 make the attack at the time when the attack occurred. Had
8 that not happened, had Courtney not been somebody who he
9 believed was putting devices into his body, this would not
10 have happened. And so for Mr. Winston, the manifestation as
11 to the commission and act of this crime is a derivative, an
12 action, of a moral issue where he feels morally justified to
13 be able to protect himself from somebody who has, in his
14 mind, the ability to kill him and to make him do things that
15 he otherwise does not want to do.

16 Q. Most people have a motive for doing a crime. And
17 you're saying he didn't have a motive; it was all due to the
18 delusion.

19 A. I did not find a motive. I would not expect to find a
20 motive and it's not -- motive, it's not relevant in the
21 context of a delusional disorder where the delusional
22 disorder is that direct link as to why the manifestation of
23 the crime occurs. And so in this event, the delusional
24 disorder, if not present, the act never would have occurred.
25 But because of the nature of his delusional disorder --

1 because Courtney was somebody who -- and even years prior he
2 had manifested her as central in the theme of the torture
3 and the tormenting that he had be going through. This act
4 fits with the manifestation of aggression as a derivative of
5 the delusional disorder.

6 Q. In your opinion, at the time of this crime, did the
7 delusional disorder impair Mr. Winston's ability to conform
8 his behaviors within the boundaries of the law?

9 A. Yes. Yes; it definitely impaired his ability not only
10 to discriminate a moral right from wrong, but also the
11 inability to conform.

12 Q. In your examination of Mr. Winston, are you able to
13 produce a report on your findings?

14 A. I did.

15 Q. Is this that report?

16 A. That is. It appears to be the original.

17 Q. And you stand by this report today?

18 A. Let me look at the end of it.

19 I do. This is actually a report addressing competency
20 to stand trial. And I do stand by the findings that are
21 included in that report. That report did not identify a
22 diagnosis. Which when I reviewed my own work, I was
23 surprised that I did not include a diagnosis. It identified
24 him as having symptoms of psychiatric illnesses. And
25 perhaps if I had included the diagnosis, the misfortune of

Cross-Examination of Dr. Salas by Asst. Sol. Lupton

1 me not doing so is that it would not have -- it could have
2 tipped off the MUSC examiners to go and consider delusional
3 disorder.

4 Q. I don't often do this, but do you believe that this
5 report would benefit this case by being admitted into
6 evidence?

7 A. If you want written documentation of more about his
8 symptomatology, I think that it would. And it would be a
9 reference for someone to be able to go back and understand
10 symptoms that are attributed to delusional disorder as in a
11 written form as opposed to having reviewed the testimony
12 that is given. In that perspective, yes; it could be
13 beneficial.

14 MR. BANKS: No further questions, Your Honor.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY ASST. SOL. LUPTON:

18 Q. You met the defendant twice prior to issuing that
19 written report, which has not been offered into evidence,
20 correct?

21 A. Did you say it was not offered into evidence?

22 Q. My understanding is it has not been placed into
23 evidence.

24 MR. BANKS: It's not.

25 A. That's correct. I met with the defendant twice before

1 issuing a report that is not being placed into evidence.

2 Q. And you met with him to do a competency evaluation for
3 his ability to stand trial?

4 A. Yes. That was a competency to stand trial evaluation.

5 Q. And there is a difference between evaluation for
6 competency to stand trial and evaluation for criminal
7 responsibility, correct?

8 A. That is correct. There are differences between the
9 two. Although at times because we don't make an
10 announcement to an individual the says, "I'm evaluating you
11 for competency to stand trial," sometimes it becomes a
12 blurring of the lines. This is information that you may
13 spontaneously receive from somebody when doing one versus
14 the other.

15 Q. In fact, under South Carolina rules and laws, we have
16 two separate evaluations that are done. When a judge orders
17 an evaluation, they are required to order a competency
18 evaluation and then they're required to order a separate
19 criminal responsibility evaluation, correct?

20 A. I do believe that the orders are usually bifurcated.

21 Q. Now, when you did this evaluation -- and I guess you
22 also talked to him again today?

23 A. I talked with him again today. That's correct.

24 Q. He was pleasant with you?

25 A. Yes.

Cross-Examination of Dr. Salas by Asst. Sol. Lupton

1 Q. Y'all got a long fine?

2 A. He was not aggressive. There was no tension that I
3 picked up on.

4 Q. Y'all weren't confrontational?

5 A. No. Well, except for the fact that I did tell him I
6 don't believe him.

7 Q. Well, he wasn't confrontational with you?

8 A. That's correct.

9 Q. All right. And you are aware that you reviewed the
10 interview of the police and as well as you reviewed the
11 report, his interview, for the competency evaluation done by
12 the MUSC examiners?

13 A. That's correct. I reviewed the police and the MUSC
14 competency evaluation.

15 Q. And he was confrontational with both of those?

16 A. I don't know how you would define confrontational. I
17 don't understand -- from what I heard on the audio, I don't
18 understand that he was physically aggressive.

19 Q. No, certainly not. But he was distrustful, less
20 forthcoming, more verbally confrontational?

21 A. I actually thought he was forthcoming. And what I
22 reviewed with the police interview, I think he was
23 forthcoming with the evaluators at MUSC. But Mr. Winston
24 has a very perceptive ability to pick up on when someone is
25 not believing him. And I do believe that he detected and

1 lost trust in both of those interviews. I believe that he
2 picked up that people were not believing him.

3 Q. All right. On page five of the evaluation done by the
4 MUSC doctors, it's States Exhibit 1 in evidence, at the top
5 is says that, "his interactional style was somewhat
6 oppositional as he often challenged, disagreed with the
7 evaluators."

8 A. That's what their report says. That's correct.

9 Q. Now, you have no way of knowing whether or not he feels
10 anything, do you? Other than him telling you, there is no
11 way to verify that independent?

12 A. It's impossible for anybody to get into his body and
13 feel the sensations that he feels.

14 Q. All right. So everything that you're talking about,
15 that's all based on his self reporting, correct?

16 A. In terms of him reporting that things are happening to
17 his body, yes. This is his delusional system and so it's
18 not a shared delusion. It's just him.

19 Q. Right. So it's all on -- it's all what he reports. So
20 how much, if any, is actually going on, only he can know for
21 certain, correct?

22 A. That's correct.

23 Q. All right. And so you're taking his word when you say
24 what he believes, and you're basing your opinions on
25 believing what he's telling you. Is that correct?

Cross-Examination of Dr. Salas by Asst. Sol. Lupton

1 A. It's not solely weather I believe Mr. Winston or not.
2 I don't believe that there are devices in his body.

3 Q. And we'll talk about that in a minute. But you have to
4 believe what he's telling you as far as how he feels and
5 what he believes to be true?

6 A. He reports what his sensations are. And then I will
7 look to other sources to figure out whether there's more or
8 less credibility in what he is saying, if it meets a
9 diagnostic definition of a psychotic illness of some sort,
10 of any kind.

11 Q. Basically, you're stuck with taking what he says as
12 wrong -- as true?

13 A. That's correct.

14 Q. All right. You talk about his reflections, his
15 reports, his recollections. But when you've talked to
16 others, the correctional officers, you mention in your
17 report, state that, "he was an unremarkable inmate without
18 significant conflicts or behavioral disruptions."

19 A. That's correct.

20 Q. And that's pretty much what everybody has said about
21 him in this case is that he appears to be basically
22 normally?

23 A. Outside the context of the delusion, yes.

24 Q. All right. So you do not believe that anyone has
25 implanted anything in him, I'm assuming. Is that correct?

1 A. I do not believe that he has devices that are being
2 remotely controlled and manipulating his body.

3 Q. And you don't believe that anybody is remotely
4 controlling him?

5 A. That's correct.

6 Q. All right. And you've explained that to him, correct?

7 A. That's correct.

8 Q. And you talked about the people that he doesn't trust
9 and doesn't believe because he believes that they are doing
10 things that are harming him. And you mention the Sheriff
11 specifically, correct?

12 A. He mentioned the Sheriff specifically.

13 Q. All right.

14 A. And I reported that that was one of the persons that he
15 has thought was part of this.

16 Q. All right. And are you aware that -- in fact you heard
17 on the beginning of the tape that the Sheriff was in the
18 room talking about conversations that they had?

19 A. I don't know if one of those persons was the Sheriff or
20 not. But if you say it was, I believe you.

21 Q. All right. Are you aware that he has gone to the
22 Sheriff and told the Sheriff that he understands that the
23 voices that are telling him things, that they are not right
24 things to do and that he knows not to do them?

25 A. I am aware that he has reported to -- I think it was

Cross-Examination of Dr. Salas by Asst. Sol. Lupton

1 the Sheriff, that he has made reports and tried to file a
2 complaint if you would. Although I don't think it was that
3 formal of a process that he pursued to report what has been
4 happening to him.

5 Q. Conversations in which he told the Sheriff, "the voices
6 are telling me to hurt people and I know that's wrong."

7 A. Yes.

8 Q. "So I'm not going to do it."

9 A. Well, I don't that he said that, "I'm not going to do
10 it." But he does know difference between legal right from
11 wrong.

12 Q. Well, he said that he knew that it was wrong, not just
13 illegal. So he understood that it was wrong, not just
14 illegal.

15 A. Well, are you referencing something that was in that
16 tape or separate conversation?

17 Q. Separate conversations.

18 A. Okay. Because what I understand from Mr. Winston is
19 that he -- there's not been any question as to his ability
20 to know the difference between legal right from legal wrong.
21 But he specifically, as he told me -- and this was in, I
22 believe, this is my second interview with him, "I'm not
23 going crazy and is happening," -- I think I missed a few
24 words when I was trying to write -- "I'm not going crazy and
25 is happening. This is a illegal, immoral, and

1 unconstitutional."

2 Q. All right. So he understands legal right and wrong,
3 and moral right and wrong?

4 A. I disagree with the difference between moral right and
5 moral wrong. Because . . .

6 Q. Well, he thinks people are hurting him. And he
7 understands that that is morally wrong not just illegal?

8 A. He understands there's a moral component to -- that it
9 is immoral for people to put things inside of him.

10 Q. It's not just the actual putting it in, it's the
11 hurting him, the torture that he talks about, the harming
12 others, that he understood to be immoral?

13 A. He understands that there is immorality in torturing
14 other people.

15 Q. All right. Now, the plan, you said that you don't
16 think he planned any of this. Do you know for certain that
17 he didn't?

18 A. I don't know anything about his delusional system with
19 100 percent certainty. In terms of his ability to describe
20 that in fashion of me being able to say with a 100 percent
21 certainty, "Yes, he planned," or "No, he did not plan." But
22 I do not find from what he has shared with me and where this
23 happened that any of this was planned. I think that he
24 planned to communicate with Courtney on that night because
25 he did text with her and he asked her to come over. So I

Cross-Examination of Dr. Salas by Asst. Sol. Lupton

1 think that was something that was planned. I do not ---

2 Q. Well, let me ---

3 A. Okay, sure.

4 Q. Wouldn't going to get a knife indicate planning?

5 A. It could indicate an opportunity to not have not gotten
6 a knife. And so, is the knife sitting next to me? I don't
7 know where the knife was retrieved or whether it was on his
8 body.

9 Q. If he had to the back of the house to get a knife, that
10 would indicate planning, going to retrieve the weapon?

11 A. Yes. It could indicate ---

12 Q. Well, what about turning off a light to gain darkness
13 so that others couldn't see an attack or so that the victim
14 wouldn't be able to see what was going on. Wouldn't that
15 indicate planning?

16 A. It could be interpreted as indicating planning.

17 Q. Trying to clean up evidence. Wouldn't that be
18 indication of understanding that somebody had done something
19 wrong?

20 A. It could indicate that -- if you're trying to get rid
21 of evidence that obviously you have some understanding of a
22 legal right, a legal wrong. I don't know that that
23 necessarily allows you the opportunity to discriminate
24 between moral right from moral wrong.

25 Q. Now, same thing for flight. Understanding that

1 something is wrong, flight would indicate that?

2 A. Yes. That's correct.

3 Q. All right. What about being less than forthcoming in a
4 forensic interview? Would that indicate somebody who had an
5 understanding that they were doing something wrong?

6 A. To be in the context of a forensic interview, to be
7 less than forthcoming?

8 Q. To be disingenuous, dishonest, to say things that
9 weren't exactly 100 percent true?

10 A. It could certainly indicate the somebody was being self
11 protective.

12 Q. All right. And are you aware that both in your
13 evaluation and the MUSC evaluation, he down -- or minimized
14 drug and alcohol use saying that he had stopped that?

15 A. He never -- he diminished.

16 Q. He diminished?

17 A. He diminished.

18 Q. All right. However in one of the documents that you
19 reviewed as part of your assessment, and it was provided as
20 part of what you reviewed, the report was that he smoked two
21 packs a day, heavy marijuana smoker, heavy liquor drinker,
22 admits still drinking an occasional beer, denies marijuana
23 use since April. But his sister says he told her that he
24 had still used. And since then, has been able to pass the
25 drug test at the parole office?

Cross-Examination of Dr. Salas by Asst. Sol. Lupton

1 A. Uh-huh. That's part of their report.

2 Q. So that could indicate that he is trying to deceive?

3 A. That could indicate deception.

4 Q. All right. Now, you talked about that he wasn't
5 looking to escape anything or any punishment in this case.

6 But you are aware that he has pled not guilty by reason of
7 insanity? So he's pled not guilty in this case.

8 A. That's correct.

9 Q. That is certainly an attempt to avoid punishment. Is
10 it not?

11 A. If someone is found not guilty, then certainly their
12 outcome is very different than someone who is guilty. But
13 his legal strategy is something that I'm probably not in the
14 position to comment on.

15 Q. All right. You talked about some old diaries. There's
16 nothing in those diaries that indicates that he has no
17 ability to understand legal or moral right, legal or moral
18 wrong, inability to conform. In fact -- well, let me stop
19 with that. Is there anything in there? Keep these separate
20 questions?

21 A. These things were written predating this event.

22 Q. He reports to you that it was somewhere around ten,
23 eleven, 12? Somewhere in that time frame?

24 A. When he was in mental health treatment. That's
25 correct.

1 Q. All right. Which was while he was on probation?

2 A. Yes.

3 Q. So had a judicial component going at that time?

4 A. Yes. And I think he had -- even on that probation, had
5 violated it at some point.

6 Q. All right.

7 A. But the context of what is in his writings does not
8 address an issue of knowing the difference between legal and
9 moral right and legal and moral wrong. Doesn't demonstrate
10 anything other than the thoughts and experiences that he was
11 having at the time when they were actually happening.

12 Q. At best it just indicates that he has some mental
13 health problems, not that he can't understand right or wrong
14 or that he can't conform?

15 A. I would say at best it helps in the diagnosis.

16 Q. To say that he had some sort of mental health problem?

17 A. Yes.

18 Q. Not that he's unable to tell right from wrong or
19 conform?

20 A. These writings do not have any anything to do with his
21 legal and moral right from wrong knowledge.

22 Q. And at one point he talks a lot in his things about
23 people trying to hurt his testicles or his penis. Is that
24 correct? Fair assessment?

25 A. That's a major recurring theme.

Cross-Examination of Dr. Salas by Asst. Sol. Lupton

1 Q. All right. He told you in one of your meetings with
2 him that he says he knows people pay attention when you talk
3 about someone doing things to your balls.

4 A. I believe that was a direct quote that he had reported
5 to me and I scribed.

6 Q. Yes. But that was from him, correct?

7 A. That's correct. I did not say that.

8 ASST. SOL. LUPTON: Beg the Court's indulgence. I'm
9 trying to . . .

10 Q. And just to be clear, you testified earlier that this
11 evaluation report that you did that's dated May 30, 2015,
12 this was a competency evaluation, correct?

13 A. That's correct.

14 Q. And it does not included any diagnosis of any kind of
15 specific disorders, correct?

16 A. That's correct.

17 Q. And it opines that he is not competent to stand trial
18 because while his knowledge of the court system is adequate,
19 he lacks rational competency because he keeps seeking to use
20 this as the opportunity to prove what he sees as the facts
21 about his delusional system. Basically, that people have
22 implanted stuff in his brain or his body.

23 A. That's correct. That's my opinion is that his
24 competency is ---

25 Q. But you're aware that he stipulated that he's

1 competent?

2 A. I am aware.

3 Q. And no where in that report does it talk about his
4 ability to have criminal responsibility?

5 A. No. That is not part of that report or evaluation.

6 Q. And since that report was written, you've met with him
7 just today, correct?

8 A. I met with him today for approximately 45 minutes or an
9 hour, I would guess.

10 Q. And did you administer an M-FAST test on him during the
11 time period?

12 A. No.

13 Q. The M-FAST test takes about 10, 15 minutes, 20 minutes
14 tops?

15 A. It's a screening instrument for malingering. And I
16 would not administer an M-FAST or spurs (ph), which would be
17 the test for malingering. I would not administer either one
18 of those tests on him because he has the ability to score
19 falsely high because of the nature of his bizarre delusions.

20

21 Q. You are aware that he was screened ---

22 A. I am aware.

23 Q. --- and that he tested, is in evidence, discusses the
24 fact that he failed that for exaggerating his symptoms?

25 A. I'm aware they administered one. And that as a screen,

Cross-Examination of Dr. Salas by Asst. Sol. Lupton

1 it suggested it needed to look further. And at MUSC, they
2 did not look further because they had no reason to because
3 they found him to be competent. They didn't find him to be
4 faking issues pertaining to his competency.

5 Q. And nor did you look further?

6 A. I attempted ---

7 Q. You didn't look further either, did you?

8 A. I would not say that I didn't look further. I did not
9 do any testing. But I would specifically not do an M-FAST.
10 I would specifically not to a spurs because I find that his
11 delusional disorder is very congruent with what we know
12 happens in a delusional disorder. It's very congruent --
13 his clinical history is congruent with how we made the
14 diagnosis.

15 Q. Based on his reports during ---

16 A. And collateral information.

17 Q. --- during the time period when he had a judicial
18 component in the past, and now that he has a judicial
19 component again?

20 A. And in the context of seeking treatment, mental health,
21 I mean, yes, there was a judicial component.

22 Q. At a time when there was a judicial component?

23 A. At that time as well.

24 Q. And so you did no testing to determine whether or not
25 the report -- that he was exaggerating his symptoms was

1 accurate?

2 A. I did no confirmatory testing to repeat an M-FAST
3 because, again, I would not utilize a test that we know
4 gives the opportunity for false-positive. I would not
5 administer that test to somebody who I know falls into the
6 likelihood of being a false-positive. And the issue is
7 because of the bizarreness of his delusions. These tests
8 ask very bizarre questions, and when you have a bizarre
9 delusion, you're likely to endorse things that are very
10 bizarre.

11 Q. And people that are exaggerating their symptoms are
12 known to readily agree to bizarre stuff. Is that not
13 correct?

14 A. They usually say very bizarre things and agree with
15 bizarre things.

16 Q. So you did nothing regarding that information?

17 A. I wouldn't say I did nothing because I acknowledged
18 that they did an M-FAST. I acknowledged that there is an
19 opportunity for malingering. And that typically in a
20 forensic population you can find malingering about one-third
21 percent of the time. So I would not go so far as to say I
22 did nothing because I did not repeat testing that was done
23 or did not do subsequent testing that does not make clinical
24 sense to do in the first place.

25 ASST. SOL. LUPTON: Thank you. Nothing further, Your

Redirect Examination of Dr. Salas by Mr. Banks

1 Honor.

2 THE COURT: Any redirect?

3 MR. BANKS: Briefly.

4 REDIRECT EXAMINATION

5 BY MR. BANKS:

6 Q. Dr. Salas, what is your opinion within a reasonable
7 degree of medical certainty as to the condition of . . .

8 A. As to, I'm sorry, the condition?

9 Q. Yeah, his condition.

10 A. His diagnosis within a reasonable degree of medical
11 certainty is that he meets diagnostic criteria for
12 delusional disorder. And in my opinion, he needs treatment
13 for the delusional disorder for which he suffers.

14 Q. And as far as, let's call it prognosis, what do you
15 envision?

16 A. I would envision him being in treatment. And if he's
17 in treatment then with delusional disorders, you anticipate
18 a need for high doses of antipsychotic medications. It is
19 beneficial to prove compliance for administration of shots
20 that last sometimes a month. We now have medications and
21 injections that last three months. But to use a shot
22 component so you can verify that somebody is compliant with
23 their treatment. And even under the circumstances,
24 typically the best you can strive for is that the person
25 will stop talking about their delusion and not act on it.

1 But if you ever come to ask and inquire about the delusion,
2 you may have to fish a little harder to find out if it's
3 still even present. But to expect the delusion to "go away"
4 and nullify itself in entirety, that's not part of what we
5 would expect of the delusional disorder.

6 Q. So in your opinion, is he mentally ill or is he insane?

7 A. Is there a difference when it's happening in your mind?
8 I mean, he meets definitional criteria for a mental
9 diagnosis, so he has mental illness. Now a question of
10 sanity is probably not something I should be giving an
11 opinion on because you're only as sane as you think you are.
12 And we don't refer to sanity and insanity as much it might
13 be used in the layman's terminology. But is there a
14 component of mental illness that impacts Mr. Winston? Yes,
15 most definitely.

16 Q. His ability to conform to ---

17 A. His ability to understand the difference between moral
18 right and wrong, and his ability to conform his behaviors to
19 the eyes of the law, it is certainly impaired by the
20 delusional system. It's very bizarre and doesn't make sense
21 unless you can find a way to put yourself into the world of
22 the delusion. If you apply rational thought to an
23 irrational belief system, you will get nowhere.

24 MR. BANKS: Thank you, Your Honor.

25 THE COURT: Anything further?

Examination of Dr. Salas by the Court

1 ASST. SOL. LUPTON: Nothing further.

2 EXAMINATION

3 BY THE COURT:

4 Q. Doctor, let me ask you a couple questions so I make
5 sure I'm clear in my mind. Tell me exactly what is the
6 diagnostic criteria for this diagnosis?

7 A. You have to have for greater than one year evidence of
8 a delusion that persist and a lack of impairments that would
9 move you into the land of schizophrenia. So the delusional
10 disorder is the presence of the circumscribed
11 well-categorized, well-formed, highly evolved belief system
12 that is false, despite evidence to the contrary. And it's
13 not something that you just come up with yesterday, last
14 month.

15 It has a definitional criteria of being present for at
16 least one year. And there's evidence in his medical records
17 to support that he meets that component of it, as well as he
18 does not meet components that would move him into
19 schizophrenia because he does not have the impairments in
20 other areas of his functioning, such as he would still be
21 able to hold down a job, he would still be able to pursue
22 education, he could go and if he's not communicating with
23 someone who is part of his delusional system. They may meet
24 Mr. Winston and not realize that he has these strange
25 thoughts or beliefs. He has -- it's also exclusionary

1 meaning that this is not due to drugs; this is not due to
2 alcohol. And so those are the components that you look for.

3 And then you can subcategorize the delusional disorder,
4 which means you recognize the delusion exists, and then you
5 can say, okay, well this is a jealous type or an
6 erotic-romantic type or this is a persecutory type. He's
7 persecutory type. And further than that, he's very bizarre.
8 So he's a delusional disorder, persecutory type with bizarre
9 delusions.

10 Q. So explain to me how you weight this evidence of the
11 delusion. From what I'm hearing you testify, it's based on
12 self-reporting and these diaries and where he previously
13 reported, I guess in 2011 or 2010. What other evidence or
14 how do you weigh that evidence to come to your conclusions?

15 A. From talking with his mother, he has talked about these
16 delusions with her as well. She disagrees with him. She
17 does not believe he has these devices. She did not
18 anticipate a phone call from me yesterday. She was not
19 prepared for a phone call from me yesterday. And she can
20 spontaneously report the symptoms very similar and congruent
21 to what Mr. Winston would spontaneously report as well. So
22 there is an internal consistency when you look at what is
23 documented through mental health. Yes, that gets documented
24 because he has to go and he has to report his symptoms. If
25 he doesn't report them, they will go unnoticed because there

Examination of Dr. Salas by the Court

1 is nothing else going on other than his brain believing
2 things that aren't real.

3 Q. Let me ask you this, if his brain believes these
4 torturous activities upon his body, wouldn't there be some
5 sort of physical manifestation? Would he not react
6 violently like he was being hurt?

7 A. Not necessarily. There are times in which he has
8 believed that he was paralyzed. This was not witnessed;
9 this was at the beginning of the evolution of the delusional
10 disorder. But he has essentially become numb and immune to
11 the idea of this getting any better. So his best approach
12 has been what he's done, "I just tolerate it; I just accept
13 it." He has the awareness when it happens. And it could be
14 happening and we wouldn't know because he is not a melodrama
15 queen who is going to sit out there and all of sudden grasp
16 his heart and fall out on the floor because he thinks he's
17 being shot. He thinks he's being shot and the next thought
18 is very irrational.

19 It is someone in this device and then the
20 hallucinations may come and it may be something like,
21 "They're trying to kill. If you can do this, if you can do
22 that then maybe you won't die right now." Or he may
23 interpret it as, "They're teasing you because they're
24 getting ready to do something more to you if you don't do
25 what they want you to do." There had been times where he's

1 been in an internal conflict because he's had instruction
2 from voices and he's tried to not act on them because he
3 doesn't want to do what they say to do. He is not going to
4 be somebody who because by observation we see that he is
5 going to have a painful reaction or any kind of reaction
6 when he experiences what is going on. It's irrational.
7 It's not going to make sense.

8 Q. In regards to -- it seems that you said that he is
9 terrorized by these people. How is it that someone is
10 terrorized? Someone is the person that is allegedly
11 terrorizing him?

12 A. Is the question how does he summons the terrorist ---

13 Q. Right. Why would he call the person who is allegedly
14 terrorizing him to his home to talk to him?

15 A. He doesn't even know. When I've asked him, he's not
16 been able to explain to me why he would've called Courtney
17 on that particular day except he felt like he needed to talk
18 to her. I can tell you that it is my assumption, and this
19 is a pure assumption, this is not anything more than that,
20 but I can anticipate that in a delusional system that he
21 would get to a point where he has had evolution of those
22 symptoms intensify and he gets to a point where he thinks
23 about, "If I talk to them, maybe they can quit doing this."

24 These are two people who were friends at one point.
25 And to me, the logical thought process that could make sense

Examination of Dr. Salas by the Court

1 is that he thinks that he could go back and perhaps try to
2 talk and explain, "Please, don't do this," or however you
3 want to put it. But confront on some level, "You're doing
4 this to me." But it's very clear that his insight into the
5 awareness that nobody else gets it, and that this does not
6 make sense, for whatever reason he initiated the
7 communication with her. His insight got in the way and shut
8 down because there is nothing sensible about the interaction
9 that has happened.

10 What I read in the report is that even Courtney doesn't
11 know why she gets over there and he says I want to talk to
12 you and then he's not going to talk to her. And in her
13 mind, she's sitting there probably thinking something along
14 the lines of their past friendship and relationship, and
15 that I would expect that to be very strange and probably
16 would've done what she did, which is, "This doesn't make
17 sense. I'm going to leave." But as far as what he told me
18 as to why he would call and text, or whatever, to ask her to
19 come over, it's been the same thing that's in the police
20 reports, which is I wanted to talk and communicate with her;
21 but nothing specific.

22 Q. And you testified that this delusional disorders is in
23 .2 percent of the population. How many cases of this have
24 you diagnosed?

25 A. The prevalence of it meaning incidents if you were to

1 go out into ---

2 Q. No; you personally. How many have you ---

3 A. Okay. No, no, no. I mean, I just want to clarify that
4 the .2 percent is prevalence, which is if you go out into
5 the community and you figure out how many people have a
6 delusional disorder then you get, for the people who are
7 existing in the population today, .2 percent of them should
8 raise their hand and say I have it. I have diagnosed it in
9 one other person who also had a persecutory delusion who
10 could function in all realms of life except for the
11 boundaries in which their delusional system overlapped.

12 Q. And you testified that in your opinion Mr. Winston
13 needs treatment. However, he's been without treatment.
14 Since his incarceration, has been able to conform his
15 conduct by not attacking or not having these delusions that
16 people are still terrorizing him. How do you explain the
17 difference in those two scenarios? If he needs treatment
18 but he hasn't received treatment and is able to conform his
19 conduct in two years, how do you rectify that?

20 A. He's distressed by what he experiences. He does not
21 like having the body sensations. If you want to call them
22 tactile hallucinations, one could. But he does not like
23 having the auditory hallucinations and these body
24 sensations, and he is all consumed with the belief system.
25 And this is something that in his mind is getting worse; it

Examination of Dr. Salas by the Court

1 is not getting better. He could be alleviated from that
2 distress and find it more comfortable to live life if he
3 took treatment. The treatment would give a benefit of
4 decreasing the risk of him acting on those in the future.

5 He has been very specific about Courtney and Tiffany
6 and loosely tying the Sheriff into this, he finds that now
7 that he is not in Calhoun County, that he is in Orangeburg
8 County, that Courtney doesn't have the same strength to
9 connect with these devices and that's not as big of an issue
10 for him to deal with her controlling the devices because of
11 the geographic distance. That really doesn't make any sense
12 to me. If they are controlled remotely, they're just
13 controlled remotely. But again, this is an insensible
14 concept. But he still believes that there are people -- a
15 lot of them are unnamed -- but a whole networking of
16 individuals that still control his body. The frustration
17 with the delusional disorder is that it doesn't make sense.
18 But it doesn't change the reality of what a person who has
19 his disorder continues to deal with and their ability to
20 feel less distress by receiving treatment.

21 Q. And, of course, there really is no test. It's like a
22 blood test where he can actually determine that he actually
23 has this disorder. This is based upon your opinion and on
24 your observations of talking with them after he's been
25 charged with this crime. Is that correct?

1 A. There is no test that you can do. You know, he went
2 and got an MRI thinking that he was going to find something;
3 and they found nothing. I mean, there's no scan that you
4 can do and say, "Okay. Well, this part of the brain is what
5 is abnormal and we can see that to verify." There is -- in
6 the world of which I work, it's gray. This is a very gray
7 area. And it unfortunately is often missed and
8 misunderstood. Because the complexities of a delusional
9 system are very well defined, well circumscribed, unless you
10 touch on it, you have the ability to completely miss it and
11 misunderstand what somebody is dealing with.

12 Q. That brings about the next question then. If it's a
13 very gray area then how would your assessment differ from
14 the one at MUSC? They decided based on their subjective
15 observations to conduct different tests. Are you saying
16 that those tests are wrong? Or just that subjectively based
17 upon your experience and education and whatnot, that you
18 felt that was the appropriate treatment? You're not
19 necessarily discounting what they did or their findings, are
20 you?

21 A. I would discount the M-FAST in terms of -- if I --
22 here's the issue. If I'm doing an evaluation of somebody
23 and I for whatever reason decide that I dismiss and
24 discredit symptoms of psychosis that they are endorsing,
25 then the next step is to do screen for malingering. And

Examination of Dr. Salas by the Court

1 that's very appropriate. So from the get go, the fact that
2 they did the M-FAST screens tells me they discredited his
3 endorsement of hallucinations. And I would not have done an
4 M-FAST because when you do an M-FAST you're asking somebody
5 to have an opportunity to endorse things that are very
6 bizarre.

7 He is bizarre through the clinical understanding of him
8 suffering with a persecutory delusional system that is
9 bizarre by nature. So I would not put him through the
10 process of doing an M-FAST that is going to just introduce
11 more bizarre qualities for him to endorse. In the other
12 case where I had a client who has delusional disorder, he
13 had a test of malingering done and he was malingering.
14 Okay. So now you've got a delusional disorder and a
15 malingerer all in one. But if you ask this guy, "Why did
16 fake these symptoms?" He says, "Well, they didn't believe
17 me, and so I was trying to give them evidence that they
18 would believe." Well, he didn't understand that was being
19 tested for faking illness, and it was appropriately picked
20 up. But it doesn't change that even though he was
21 malingering that he still had the delusional disorder. And
22 the nature and the bizarreness of Mr. Winston's delusional
23 disorder, I would not ask him questions that are very
24 bizarre from the get-go.

25 Q. What about their observations that his self reporting

1 was inconsistent with this behaviors observed during that
2 testing? How do you not take that into consideration?

3 A. I reconcile those types of things because Mr. Winston
4 is someone who -- he's not trusting. That's part of his
5 psychosis is that from the get-go of believing that there
6 are people, and he's trying to figure out who they are, and
7 he knows some of them and others are very vague. It's hard
8 to build rapport with him. I asked him today, "Why did you
9 decide to share and tell this to me? And his answer was is,
10 "Because you listened and you asked more questions." If you
11 don't ask more questions of Mr. Winston to give him an
12 opportunity to explain what he is experiencing, and you have
13 to posture yourself as if you're believing him even when
14 you're not, you will never gain his trust for him to
15 actually share with you what is going on.

16 So the concept of him having this oppositional
17 interaction, or however they characterized at MUSC, that
18 doesn't surprise me at all. He's going to be told that they
19 are hired by the State when he goes down there. Right off
20 the rip he's going to hear something that is going to bring
21 awareness to, "They're not on my side." When I go in, I get
22 to say, "I'm hired by your attorney to talk to you." There
23 at the very beginning of these evaluations, that's a very
24 different tone for how somebody is getting ready to engage
25 with you.

Examination of Dr. Salas by the Court

1 Q. So then that goes to the next question. If his opinion
2 is that the State hired the MUSC people, so therefore he
3 must behave in a certain way to get a certain result,
4 wouldn't the same apply to you if he claims that you're the
5 one person who can give an opinion to assist him to fake
6 certain symptoms to get you on his side?

7 A. In the context of what he wants, which is to make it a
8 very aware that his body has these devices, et cetera,
9 nothing that he says to me makes plausible sense because I'm
10 sitting here not believing him, telling him I'm not
11 believing him. And yet I understand what you're saying, "So
12 tell her more so that she'll go up there and she'll testify
13 in front of court and say that you're sick and then you can
14 get off on these charges." You cannot sustain six plus
15 years of documented and experienced and recorded delusions
16 of this clearly defined nature. Where there are boundaries
17 where it would benefit him to endorse more, he stops because
18 it's not part of his delusional system. It would have
19 benefited him for us to have had a Blair Hearing for him to
20 be found not competent to stand trial. But he has also come
21 here and said, "No, I want a trial." And he wants a trial
22 because he wants to be able to let the Court know that he
23 has these devices in his body and they are messing with his
24 body in these torturous ways.

25 THE COURT: Based upon my questioning of the doctor,

1 does anybody have any further questions?

2 ASST. SOL. LUPTON: Very briefly.

3 CROSS-EXAMINATION

4 BY ASST. SOL. LUPTON:

5 Q. Have you ever been through or sat in on Department of
6 Mental Health ordered evaluation?

7 A. I've done those evaluations.

8 Q. All right. And one of the first things that the doctor
9 does in that situation is tell person being interviewed that
10 basically you're not on anybody's side. You're not on the
11 State's side; you're not on the defendant's side. You are
12 reporting to the Court. You are a neutral party. Is that
13 correct?

14 A. That's correct.

15 ASST. SOL. LUPTON: Nothing further, Your Honor.

16 MR. BANKS: Very briefly, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. BANKS:

19 Q. Isn't it true the purpose of the State's evaluation is
20 completely different than the purpose of what this
21 evaluation you presented to the Court today is?

22 A. The State's evaluation ended with competency to stand
23 trial. I am not aware and I do not have a copy of
24 documentation that they did criminal responsibility or
25 capacity to conform the evaluation.

Cross-Examination of Dr. Salas by Mr. Banks

1 Q. And you alluded to it earlier, but I think the Court
2 may have been lost that they did this M-FAST or whatever the
3 test is about malingerling; they did that. And when they got
4 to a certain point, you realize, well, they didn't really
5 have to go any further because they found competency. And
6 they touched on some things that you found very interesting,
7 they didn't go any further on because they found
8 incompetency. Is that right?

9 A. That's correct. In their report, I believe it
10 indicated that they would -- I'll tell you exactly when I
11 can find it. Just one moment.

12 On the bottom of page 7, the last paragraph in their
13 report, their indications that Mr. Winston's self-reporting
14 symptoms are not genuine and may be fabricated or
15 exaggerated. First, he scores on a measure assessing
16 whether an individual is faking symptoms of mental illness
17 are elevated indicating he may not have been forthright in
18 his report of symptoms. Second, the course of illness is an
19 inconsistent with known patterns of mental illness. I
20 disagree with that. And that he reported symptom onset much
21 later in life than is typical. Next, severe mental illness
22 commonly consist of a significant decline in functioning,
23 occupational hygiene, et cetera, that often requires
24 inpatient hospitalization and stabilization of medication.
25 At this time, it would appear that Mr. Winston has not been

1 hospitalized psychiatrically and has been capable of living
2 in the community and holding a job for many years without
3 the assistance of psychiatric medication.

4 When he was admitted to MUSC for medical treatment,
5 2013, providers did not comment upon psychiatric symptoms or
6 medications as would be expected if you presented with overt
7 symptoms of psychosis such as the one he currently reports.
8 Taken together is unclear whether Mr. Winston has previously
9 experienced psychotic symptoms as a result of heavy
10 substance use or whether past symptoms were more consistent
11 with fainting. They find that he was not consistent with
12 bona fide psychosis and thus a psychotic spectrum disorder
13 is not warranted. What they failed to mention is delusional
14 disorder. They failed to recognize it. I disagree with
15 their statement that his symptom and course of illness is
16 inconsistent with known patterns of mental illness. It's
17 very congruent with the delusional disorder. It has a later
18 onset of symptoms coming than when you find schizophrenia.
19 He's 37 now. He was 30 or 31 when he began to have these
20 symptoms according to, I think it was, the mental health
21 records. Even if he had schizophrenia at an onset of 30 or
22 31, and psychotic symptoms came on at that point in time, it
23 may be in congruent with what we typically expect. But what
24 it does is it tells us that they would have a better
25 prognosis.

Cross-Examination of Dr. Salas by Mr. Banks

1 He doesn't have schizophrenia. They're dead on. They
2 got that right. So he doesn't have those symptoms. But
3 they failed to consider the diagnosis of delusional
4 disorder. If they considered it, they should've included it
5 here why they ruled it out; and it's absent. So what
6 happened is that they did the screening test for
7 malingering. They absolutely should be looking for
8 malingering. Just the nature of this evaluation is such
9 that they, as I do myself, consider, "Is this person pulling
10 my leg? Are they faking it? Are they manipulating me
11 trying to get something to become favorable for them?" But
12 what I see is that the pattern of his symptomatology, the
13 evolution of his symptoms, it is so congruent with
14 delusional disorder, I'm surprised that it's been missed
15 until this point. But when you have a prevalence of
16 .2 percent, and most delusional disorders do not go and
17 present in an outpatient clinic; most delusional disorders
18 do not go and induct these psychiatric hospitalizations.
19 They live life tortured. They just live life tortured.
20 They don't present until you have an incident like this
21 where you have somebody who now has a reason to be called
22 -- what is making sense?

23 Schizophrenia doesn't make sense. Malingering could
24 make sense. But how do you have someone sustain such
25 intense, constricted, circumscribed, well circumscribed,

1 delusions that fit a delusional disorder as a diagnosis, you
2 can't reconcile how he is able to fake without training and
3 skill? How would he do this? How would he have symptoms
4 that predate the event that he is here today on trial for?
5 I understand that he in the past has had legal problems. I
6 recognize that. I also recognize that even though he
7 doesn't say that, he was sentenced and had to serve whatever
8 the consequences were for that, and he violated his
9 probation and had more problems. He at the time was also
10 manifesting symptoms of the delusional disorder. But it was
11 so early nobody at that time would have ever picked up on
12 it. He wasn't even promoting that as part of his defense
13 for whatever was going on with the other charge. So he's
14 had symptoms when you could skew that and look at it through
15 the lense of he has this only in context of forensics; but
16 it's not. That's a misunderstanding of what he's
17 experiencing when you say that Mr. Winston only experiences
18 this in the context of forensic issue. Because for him, it
19 predates through what he reports, the information that I've
20 obtained from his mother.

21 In the evolution of a delusional disorder such that you
22 wouldn't expect it to be so well formed in the beginning
23 stages of it as you would at this stage. In the course of
24 what's going to have the propensity to happen is that
25 without treatment, it's going to continue to worsen. And

Cross-Examination of Dr. Salas by Mr. Banks

1 some people do go onto to involve into a schizophrenia. And
2 they do have failures in other areas of their life. I don't
3 anticipate that with him. But again, I don't have a crystal
4 ball to be able to sit there and say it would or wouldn't.

5 Q. Briefly, the last two lines of page 7 that you read,
6 and the top two lines of page 8; am I wrong? Does it sound
7 like they're almost making the same mistake I introduced as
8 the kind that I would make in this case where they're almost
9 describing schizophrenia. I know they didn't diagnose it;
10 but they're saying, they usually expect this onset as
11 later and so forth. That more fits -- if that were true,
12 that's almost like them describing that was schizophrenia
13 they were almost looking for. Am I right?

14 A. That's how I interpret their report. Is that they rule
15 out schizophrenia, and they should have. But the psychotic
16 spectrum includes many other illnesses, and one of those is
17 delusional disorder. And what is missing in their report is
18 the consideration or the acknowledgment of that disorder.
19 It was missing in my report.

20 MR. BANKS: Thank you. No further questions.

21 THE COURT: You may step down, Doctor. Thank you.

22 THE WITNESS: Thank you. May I be excused?

23 THE COURT: Any objection to the Doctor being excused?

24 ASST. SOL. LUPTON: No objection.

25 MR. BANKS: No objection, Your Honor.

1 THE COURT: You're free to go.

2 THE WITNESS: Thank you.

3 (Whereupon, at 3:45 p.m. the witness, Dr. Amanda Salas,
4 is excused and leaves the courtroom.)

5 MR. BANKS: Your Honor, at this time I think we need
6 to -- I need to have a discussion with my client on whether
7 he is still prepared to testify.

8 THE COURT: Yes, sir.

9 MR. BANKS: It should be fairly brief.

10 ASST. SOL. LUPTON: Your Honor, beg the Court's
11 indulgence. I'm going to check and see if there's anybody
12 back here.

13 (Whereupon, a brief break is taken at 3:46 p.m.; the
14 proceedings resume at 3:56 p.m. and the following is
15 held on the record.)

16 THE COURT: Ready to proceed, Mr. Banks?

17 MR. BANKS: Yes, Your Honor. I believe we'll rest.

18 THE COURT: Okay. I'd prefer to go ahead and place him
19 under oath just to see whether or not what his decision is
20 to testify or not before we go that route, okay. Mr.
21 Winston, if you'd please stand.

22 (Whereupon, the witness, Charles Winston, Jr. , is duly
23 sworn.)

24 THE COURT: Mr. Winston, at this time I'm going to
25 explain to you certain of your rights. If you do not

1 understand anything that I say, please let me know. If you
2 want me to explain anything in further detail, also please
3 let me know. We've now reached the stage of the trial where
4 you present your defense. And you started to do that with
5 the doctor's previous testimony. And you have the right to
6 also present whether or not you wish to testify or not. You
7 have the right to claim the protections given to you by the
8 Fifth Amendment of the Constitution of the United States,
9 which states in part, "that no person shall be compelled in
10 any criminal case to be a witness against himself."

11 This means that you cannot be required to testify in
12 your case. You have the right to testify on your own
13 behalf. However, no one can make you testify. This is a
14 personal right, and no one can waive this right except for
15 you. If you decide to testify, you will be subject to the
16 same rules that govern other witnesses and you may be
17 examined and cross-examined on any relevant issue in this
18 case. In addition, if you have any convictions involving
19 dishonesty or false statement or for crimes punishable by
20 imprisonment for more than one year in this Court and I
21 determine that the probative value of admitting this
22 evidence outweighs the prejudicial effect to you, the
23 Solicitor would be able to introduce your record and attack
24 your credibility.

25 If you decide to testify, this decision on your part

1 must be made freely, voluntarily, and intelligently with the
2 knowledge of the protections given to you by the Fifth
3 Amendment, and the consequences of your decision to testify.
4 If you decide not to testify, I will give that absolutely no
5 consideration and it is absolutely of no prejudice to you
6 because you did not testify. So that's entirely up to you
7 as to whether or not you wish to testify in your case. You
8 can talk to your attorney, your friends, your family, but
9 ultimately the decision is up to you. Do you understand
10 what I've just explained to you?

11 MR. WINSTON: Yes, Your Honor.

12 THE COURT: Do you wish to testify?

13 MR. WINSTON: No, Your Honor.

14 THE COURT: Do you need anymore time to talk to your
15 attorney regarding this decision?

16 MR. WINSTON: No, Your Honor.

17 THE COURT: Do you have any questions about this?

18 MR. WINSTON: No, Your Honor.

19 THE COURT: All right, sir. Thank you. You may have a
20 seat. Anything further, Mr. Banks?

21 MR. BANKS: No, Your Honor.

22 THE COURT: Mr. Lupton, any reply?

23 ASST. SOL. LUPTON: No, Your Honor.

24 THE COURT: Either side care to give any kind of
25 closing remarks?

1 MR. BANKS: Sure, Your Honor. Your Honor, Charles
2 Winston is my client who I have know since shortly after he
3 had been placed on probation for a thing that happened five
4 or six years ago where he had lived a normal life up to this
5 point of being placed on probation. He was convicted of --
6 I believe it was a malicious injury to real property. And
7 what he had done --

8 ASST. SOL. LUPTON: Your Honor, I'm going to object to
9 the extent that he is giving closing based on facts not
10 evidence or reasonableness. I don't mind if he has a little
11 bit of leeway, but a whole talking about his personal
12 experiences with the defendant, I do object to.

13 THE COURT: Well, I suppose since this is a bench trial
14 there's some leeway. I'm certainly capable of understanding
15 what's properly in to evidence. If there's something that
16 you would like to add as far as any kind of mitigation or
17 aggravation, I'll allow you the same latitude.

18 ASST. SOL. LUPTON: Thank you, Your Honor.

19 MR. BANKS: It won't be extensive. But I do want you
20 to know I know this guy. And he actually did his probation,
21 public service employment, at my office. And he would come
22 to my office every day. Every day that he came to my office
23 to perform his service, I would meet him at the door because
24 I knew what he had encountered with probation, and I knew he
25 had some diagnoses that were problematic.

1 The thing that got him in trouble was a malicious
2 injury to real property, and it made no sense. He lived a
3 normal life up to this point where something had snapped.
4 And he wrote some vulgar things on the side of a mobile
5 home. Made no sense. And that's kind of what today's facts
6 are.

7 We had the victim today say that he didn't have a
8 motive to harm her, and I don't think we ever heard one. He
9 doesn't deny the fact that he did harm her. The fact that
10 we stipulated to the contents of the indictment; we
11 stipulated to the pictures; we stipulated -- this was sort
12 of an extended, if you will, it's sort of an extended guilty
13 plea. And the only question is where does he fall in this
14 spectrum that is before you today? Not by reason of
15 insanity, guilty but mentally ill, flat guilty if that's
16 what you so decide. We did it as part to spare the victim.
17 We were very short on the facts and I was very short on
18 cross. We did it to spare the Court; we did it to spare the
19 family. We did these things -- like I said, it's almost as
20 an extended guilty plea. We stipulated the facts; voir
21 dire.

22 So the issue just became how did this develop? What
23 kind of guy is this? Why did he do it? And I think you've
24 heard the only expert here today who I thought she was very
25 thorough not only with her examination, but in her

1 testimony. And one of the things she pointed out, which was
2 the starting point when I first met him -- I still, in my
3 mind, go straight to schizophrenia. Because that's thing
4 that we all experience. And schizophrenics are those people
5 who -- they can't live that normal life. They don't have
6 this little set of delusions. It incorporates their whole
7 life. And so if he's clean and organized and he can hold a
8 job -- you heard how she described it. But those are the
9 people that hear voices, in the layman's mind, and that's
10 the kind of people we're dealing with. That's not this guy
11 right here. This guy, he has that delusional disorder which
12 is so, so rare. And I think she compared him to those
13 people you see on TV who are occasionally accused of
14 stalking some celebrity who -- you know, you think, "God,
15 that's crazy. Why would they do that?" And they talk about
16 being married to them and engaged to them; they loved them
17 or they loved them. And you think, "How can that be?"

18 And this is how it can be, because they have a normal
19 life and they have this one delusion, his being persecutory.
20 And those that attach themselves to the stalkers or
21 whatever, have another branch of that delusion. And they
22 live their normal lives. They do normal things. And only
23 in that dilution kind of intersects with certain people or
24 places does something like this happen. And that's how he
25 can stay in jail for two years and not go around accusing

1 people of doing things. Because he doesn't accuse
2 everybody of doing something. He'd be in fights or hurting
3 somebody all the time. It's a very compartmentalized
4 delusion that he suffers from. And you heard the testimony
5 of the expert saying that that delusion kept him from being
6 able to conform to the moral component of what he did, and
7 he couldn't conform to the law. He just absolutely meets
8 the definition of guilt by reason of insanity. Although she
9 balked at making that determination for the Court, I think
10 that is the definition of guilty by reason of insanity. And
11 I think that that is the sentence that you should impose. I
12 think that's the finding you should make.

13 And again, he would come to my office every time. You
14 know, meet him at the door and ask him if he was having a
15 good day. And he'd talk about the voices. He'd say, "Yeah,
16 the voices are -- the voices are still talking to me." And
17 he'd kind of shrugs his shoulders and goes on about his
18 business. Because those voices are schizophrenic in nature,
19 where they are, you know, saying, "Kill Martin," or "Kill
20 this guy, kill this guy." It isn't about that. They just
21 happen to intersect this one time on this one victim. He
22 had a long-standing relationship with her. He lived very
23 close by to her; you heard that it was a few doors down. He
24 could have done something to hurt her before this, and he
25 didn't. It intersected that day. You heard the doctor say

1 that he could be treated -- he could be treated differently
2 now that we have this diagnosis that we've registered. And
3 he'll be treated with a different level of drugs and it will
4 help him. And he could possibly get out sometime in the
5 future. But he's treatable. He's normal in 90-something
6 percent of his life according to my experience. But he's
7 got this one delusional disorder, a rare diagnosis, that
8 you've heard today that I think meets the criteria not
9 guilty by reason of insanity. Thank you.

10 THE COURT: Mr. Lupton?

11 ASST. SOL. LUPTON: Your Honor, thank you. May it
12 please the Court?

13 THE COURT: Yes, sir.

14 ASST. SOL. LUPTON: Your Honor, in this case, the
15 defendant stipulated that he did attempt to kill the victim
16 and that he did so with malice aforethought. I think that
17 that's enough right there for you to find him guilty. Then
18 we talk about all of this stuff with the mental health
19 issues. They stipulated that both that he was competent to
20 stand trial and stipulated to what was in the report that
21 was prepared by the MUSC examiners. So those are facts for
22 the Court to take into account that are basically, of
23 course, bound by -- and the defense presented a witness who
24 is a doctor who performed a competency evaluation on the
25 defendant. She performed a competency evaluation on him;

1 found him to be, in her opinion, not competent. A result,
2 which by stipulation, was wrong.

3 In that report, she does not say anything about the
4 diagnosis; that she came in and for the first time ever
5 reported today. And she stated that she missed it in her
6 testimony; said, "I didn't see that at the time." And she
7 testified that she has done nothing on that case between
8 that time and this trial prior to last night where she
9 talked to family members and got some stuff from the family
10 members, which she summarized as just some random statements
11 about symptoms happening at a time when he was going through
12 probation when all the stuff first started back when he was
13 going through Orangeburg Mental Health. But had nothing to
14 do with whether or not he was competent, not competent; had
15 criminal responsibility, didn't. It was just that he had
16 some symptoms back then. So she saw that and she talked to
17 him by her term -- by her testimony for about 40 minutes
18 here in the courthouse. And then suddenly we have this
19 entirely new diagnosis for the first time. Your Honor, I do
20 not believe that it is accurate. And regardless of whether
21 or not he has any mental health issues, I do not believe
22 that it mitigates to a not guilty by reason of insanity.
23 And I would argue that there is questions to whether or not
24 it even rises to the level of guilty but mentally ill.

25 She talks about -- Dr. Salas talks about that the

1 defendant's goal in all of this trial was to get his story
2 out. She emphasized that repeatedly how this was all to get
3 his story out and that's how come she believes him. That he
4 is saying all of this because he wants to get his story out,
5 that he is not trying to evade responsibility. And
6 certainly there is no obligation of the defendant to take
7 the stand at any time, and I would never ask the Court to
8 hold his failure to testify or decision not to testify
9 against him, but in determining her credibility, I think it
10 is appropriate to look at the fact that she is basing so
11 much of her willingness to believe him because she believes
12 that he is doing all of this because he wants to get his
13 story out. But he declined to get his story out when he had
14 the opportunity to go to trial, which is her basis for
15 saying that she believes what he says.

16 He had the opportunity; he wouldn't do it. He had the
17 opportunity during the evaluation with the State's
18 evaluators. He didn't avail himself of the opportunity at
19 that time. He was confrontational and oppositional with
20 them. You heard the interview that he did with the police,
21 and you can evaluate for yourself in that interview -- you
22 heard it from start to finish, whether or not his goal in
23 talking to them was to get his story out or whether he was
24 evasive. I would submit you that his answers to the
25 questions, the story that he told, showed somebody who

1 understood that he had done something that was wrong and
2 that had tried to avoid responsibility and was trying to
3 evade responsibility during that interview. He talked about
4 the voices some, but he didn't try and get his story out
5 there. He admitted the planning going back to the back. He
6 wouldn't admit that that's when he got the knife, but he
7 didn't deny it either. He admitted that he turned off the
8 light when he went out to attack her, throwing the area into
9 darkness. He attacks her; he comes back. He admits to
10 cleaning up the evidence out in the carport. Dr. Salas
11 talks about, oh, it makes no sense not to do it inside.
12 Well, it makes perfect sense to do the attack outside in a
13 dark carport where nobody can see it, and it would be easy
14 to clean up, rather than doing it inside. He attempts to
15 clean it up. Concealing evidence of a crime is a classic,
16 classic, piece of evidence of understanding right from wrong
17 and the ability to act in accordance with that.

18 He then flees. And by his own statements to the
19 police, he stands in a position nearby watching the police
20 act so, in his words, "I'd know which way to run." The way
21 he evades answering any questions about right and wrong.
22 But even then, he does during the interview at one point
23 talk about that he understands that the things that the
24 voices are telling him aren't right. The doctor admitted
25 that she is aware that he has told the Sheriff the he knows

1 that the things that the voices are telling him are wrong
2 and that he would never do them. So he understands right
3 from wrong. We had witnesses that saw him the four months
4 leading up to this attack. And I think the Court had some
5 concerns about that. If he believed that the victim -- if
6 the defendant believed that the victim was doing all of this
7 stuff to him, why would he have that four months, not just
8 that one night, but several months of contact and
9 interaction, normal interactions, with her? And I would
10 submit that he wouldn't. This is something that -- he had
11 this attack. You can hear in the audio recording of the
12 interview that he talks about his belief that they had some
13 sort of relationship prior. That wasn't addressed in the
14 courtroom, but I think that there was some prior history
15 that he could have animosity over. Not that we need to show
16 motive, but there is that. And then you've got the
17 statements about him trying to evade responsibility. It
18 talks about -- the doctor talked about the fact that she
19 asked -- when you asked her about why has he been normal in
20 the jail without treatment, and the doctor said, "Well, he
21 says that it's further away. That's Orangeburg; he's not in
22 Calhoun where she has as much control." Well, in his
23 interview with police he talks about the fact that one of
24 the people he said did this, lived in Columbia. Why would a
25 Orangeburg to Calhoun, which is a very short drive, very

1 short distance, somehow diminish this ability to control him
2 when Columbia to Calhoun didn't? I would submit that he's
3 inconsistent with his statements to suit his needs. That
4 inconsistency is also seen where he says he's doing this
5 because she's torturing him. And that, therefore, you know,
6 he's attacking her because the voices are telling him to do
7 it. Well, if she's the one controlling the voices, why
8 would the voices be telling him to kill her? He said at one
9 point that the voices said to do this to her, but then he's
10 saying somewhere else later that he attacked her because
11 she's the one controlling the voices.

12 Different statements about why, at different times,
13 inconsistent, but all of this is consistent with the
14 evaluation done by the MUSC examiners that say that he is
15 fabricating or at least exaggerating his symptoms. The fact
16 that he did not present any criteria that fit any known --
17 you know, the progression did not fit any known symptoms of
18 any disorders. And yet Dr. Salas comes in a 40-minute
19 interview and suddenly comes up with one. I would say the
20 credibility on that is suspect. And I would also refer in
21 that to the fact that she said herself that when she's
22 talking with him, that he talks about not trusting the MUSC
23 evaluators because they are hired by the State. Well, she
24 herself admitted that when they come in they say, "We're
25 neutral. We work for the Court; not for the prosecutor or

1 anybody else." So these neutral people he looks at, he's
2 oppositional to, he looks as, "I can't trust them because
3 they're not on my side." And it's only the person who says,
4 you know, "I work for you," that he's willing to tell the
5 things that he thinks is going to get him a not guilty by
6 reason of insanity.

7 And I would also note that she did nothing to check
8 whether or not, even despite the fact that she had noticed
9 that there was reason to believe that he was exaggerating or
10 manufacturing symptoms. She did nothing to see whether or
11 not that was the case. I think the Court also had some very
12 important points about -- everything that she testified to
13 is based on having to accept everything that the defendant
14 says at face value as absolute, 100 hundred percent truth
15 without any confirmation under circumstances in which
16 confirmation should be available if it were true. We
17 specifically mention about the pain. And she said, "Oh,
18 well, you know, he just takes it." If somebody feels,
19 believes, that they have just a shocking pain to their heart
20 or their testicles or something else, some other part of
21 their body, they're not going to sit there and look every
22 bit as normal as they do every other part of the day. We've
23 all experienced pain, whether real or sometimes you have
24 that phantom itch, and you react to it physically. You
25 know, when you have that itch that you just feel and you

1 scratch. You don't just walk around like it doesn't exist.
2 And a sharp, horrible pain is going to elicit some sort of
3 response. And yet nobody has ever seen that response. I
4 think that calls into serious question whether or not he is
5 exaggerating at times.

6 And the reports are all being done at times when he has
7 a judicial component or judicial process going on, back when
8 he was on probation and now he's got this going. The
9 conversations with the Sheriff that touched on where he
10 admitted he understood that the voices were telling him
11 things that were wrong; he wouldn't do them. The fact that
12 she specifically and explicitly said he understands legal
13 right and wrong. He understands this was wrong, that it was
14 illegal. And she talked about the fact that he can
15 understand immoral as well. And she evaded as best she
16 could from coming out and point blank saying -- but she said
17 that he understands that, you know, hurting somebody,
18 torturing somebody, that's immoral as well as illegal. At
19 best what she did was say that this disorder, if you believe
20 that he has it and has it to the extent that she claims, and
21 that's two separate issues, at best she talked about it and
22 it impaired his -- impacted his ability; not eliminated, but
23 impacted his ability to conform. If he was mentally ill,
24 had the capacity to know legal or moral right from legal or
25 moral wrong, but couldn't conform because of the defect,

1 that would be guilty but mentally ill. And he can go get
2 his treatment under that verdict. At most, she testified
3 that it might impact that, not that it would eliminate his
4 ability to conform, just that it might impact it.

5 And I would note that everybody else who has come into
6 contact with him, before, immediately after his arrest and
7 since then, saw nothing. I would also note that she talked
8 about his willingness to accept treatment to eliminate the
9 symptoms of the mental illness. The fact that he
10 understands that treatment for that would diminish those
11 symptoms, or he says he's willing to take that, I think is
12 significant. Because if he had this committed delusional
13 belief that this wasn't mental illness, that this was these
14 implants that were causing this, he would be committed to
15 that. The concept of, "Oh, I can take mental health
16 medicine that will eliminate these pain symptoms I'm
17 feeling," that would be a nonstarter for him. But according
18 to her, he's willing to take that if it'll get him an NGRI,
19 not guilty by reason of insanity, which I think shows his
20 true motives and his exaggerating his symptoms.

21 And I apologize, Your Honor; some of this is
22 disjointed. But, Your Honor, I think ultimately what this
23 case comes down to is the varying levels -- the varying
24 levels are the not guilty and guilty on the extremes, and
25 then the NGRI and guilty but mentally ill. Obviously,

1 nobody is saying he's not guilty. I think that he's
2 exaggerating these claims, which -- and there's no testimony
3 that he was unable to understand right from wrong and unable
4 to conform his conduct. There was some testimony that was,
5 I think, lacking in credibility that was impeached
6 thoroughly and contradicted by the stipulated evidence of
7 the MUSC examiners with regards to the fact that he is
8 exaggerating or manufacturing symptoms. But at most, I
9 don't think that that amounts to guilty but mentally ill.
10 So I would ask for a guilty verdict.

11 But between those two extremes in deciding between not
12 guilty by reason of insanity and guilty but mentally ill, I
13 would note for the Court that even if he has some mental
14 illness, some mental defect, it has to be of such a nature
15 that he is completely unable to tell right from wrong. He
16 has to be by statute standard as I know the Court is aware,
17 17-24 -- 17-24-10, at the time of the commission of the act
18 constituting the offense, the defendant as a result of
19 mental disease reduce the defect, lack the capacity to
20 distinguish moral or legal right from moral or legal wrong,
21 or to recognize particularly -- particular act charged as
22 morally or legally wrong. There simply is insufficient
23 evidence to show that. And the defendant has the burden of
24 proving that; not the State to disprove it. The defendant
25 has the burden to prove that by a preponderance of the

1 evidence. And there is simply nothing here to show that he
2 has anything that rises to that level. At most, there is
3 evidence that he has mental illness and that that is
4 something he needs treatment for; but that he had the
5 capacity to understand right and wrong by the words that he
6 -- his own words that have been relayed through others by
7 the diagnosis of the doctor and by the lay witnesses who
8 were able to testify. And all of that is admissible, and
9 all of that is sufficient to disprove any kind of not guilty
10 by reason of insanity.

11 The guilty but mentally ill requirements at the time of
12 the commission of the act, he had the capacity to
13 distinguish right from wrong or to recognize his act as
14 being wrong. But because of mental disease or defect, he
15 lacks sufficient capacity to conform his conduct to the
16 requirements of the law. I would submit that at most there
17 is a question as to whether or not he had the capacity to
18 conform his acts. And at most, this is a guilty but
19 mentally ill. Thank you, Your Honor.

20 THE COURT: It's about 4:30 right now. I think what
21 I'm going to do is I'm going to take this matter under
22 advisement over night. We'll reconvene at ten o'clock in
23 the morning for me to issue my ruling. Mr. Lupton, the
24 audio tape, is that the only copy or can I have a copy to
25 take with me? I know that's a Court's exhibit; I don't want

1 to take a Court's exhibit.

2 ASST. SOL. LUPTON: Your Honor, I do not have another
3 copy with me. I can get you a copy in a very short period
4 of time. I just need to -- I've got it on my computer; I
5 can burn another one off.

6 THE COURT: If you would do that, I'd appreciate that.
7 I'll just wait for the copy of the CD, and we'll resume at
8 ten o'clock in the morning.

9 ASST. SOL. LUPTON: Thank you, Your Honor.

10 (The proceeding adjourned at 4:27 p.m.)

11 - - - - -

12 (Whereupon, Thursday, May 12, 2016, 10:25 a.m., the
13 proceeding resumes and the following is held on the
14 record.)

15 THE COURT: Is everyone ready to proceed?

16 ASST. SOL. LUPTON: The State is ready, Your Honor.

17 THE COURT: Mr. Banks, are you ready?

18 MR. BANKS: Yes, Your Honor.

19 THE COURT: The parties are aware the Court is now in a
20 position to make a determination based upon the evidence. I
21 have reviewed the evidence and considered the arguments of
22 counsel and the testimony which was presented. Obviously,
23 the first step in analyzing this case would be the defense
24 that was brought up of not guilty by reason of insanity.
25 This is an affirmative defense to prosecution for a crime

1 that at the time of the commission and the act the
2 constituting offense, the defendant as a result of mental
3 disease or defect lacked the capacity to distinguish moral
4 or legal right from moral or legal wrong, or to recognize a
5 particular act charged is morally or legally wrong. The
6 defendant has the burden of proving the defense of insane by
7 preponderance of the evidence. And the Court finds that the
8 defendant has failed to establish that burden for the
9 following reasons.

10 Initially, the stipulation as to the facts as alleged
11 in the indictment, malice aforethought, is defined as the
12 wrongful intent to injure another and indicates a wicked or
13 depraved spirit intent on doing wrong. It is a doing of a
14 wrong intentionally and without just cause or excuse. It is
15 a formed purpose and designed to do a wrongful act required
16 under the circumstances that exclude any legal right to do
17 it. Malice must be aforethought. Clearly, the actions were
18 malicious; there's no question about that. And there was
19 aforethought when the defendant went to retrieve the knife
20 prior to committing the crime.

21 The defendant's stipulation as to the competency of the
22 defendant to stand trial discredits his own expert witness.
23 His own expert witness indicated that she felt he was not
24 competent to stand trial; but clearly, he is competent to
25 stand trial. He was appropriate in his discussions with the

1 court. He is obviously very intelligent and able to
2 communicate effectively. And certainly, his interactions
3 and his behavior and his demeanor have been evidence here
4 the courtroom. The Court does find that he is competent to
5 stand trial and his expert's witness is discredited. His
6 symptoms are clearly contradicted by his actions and he is
7 able to conform his conduct as has consistently otherwise on
8 other occasions. He's consistently been able to conform his
9 conduct to the requirements of the law without any other
10 psychological treatments since he's been incarcerated for
11 two years.

12 The Court finds the stipulation as to MUSC report that
13 he was malingering consistent with the facts of this case.
14 The interview in this case, basically the defendant
15 indicated that the voices told him to do it. However, it's
16 quite chilling because of the fact that there was absolutely
17 no remorse in his statement to the police. But he clearly
18 understood the consequences of his actions at the time
19 because he indicated that he knew he was going to go to
20 jail; he was going to make one last phone call. And the
21 only remorse he appeared to indicate in that is that he
22 didn't get to the other people on his list prior to being
23 apprehended by law enforcement. The interview clearly
24 indicates that he is oriented as to time, place, and
25 circumstance. He knows the timing of events, remembers the

1 timing of events, and alleged absolutely no disorientation
2 as to having any delusional conduct in that interview.

3 Regarding the defendant's inability to know what is
4 morally right from morally wrong is completely contradicted
5 by the defendant himself. It appears that he previously
6 told the Sheriff that he knew it was morally wrong to commit
7 these acts or what these voices told him to do. So
8 basically, he knew it was morally wrong. He knew he would
9 be punished for it. He knew he was going to go to jail.
10 And actually, the defendant's actions are contradicted by --
11 or defendant's statements that he was hearing these voices
12 are contradicted by his actions in the evidence. Therefore,
13 the Court does not find the defense -- the Court finds that
14 the defense has failed to establish the burden as required
15 to find him not guilty by reason of insanity.

16 Moving onto the defense of guilty but mentally ill, the
17 general requirements for that are that the defendant is
18 guilty but mentally ill if at the time of the commission of
19 the act constituting the offense he had the capacity to
20 distinguish right from wrong or to recognize his act as
21 being wrong as defined in Section 17-24-10, Subsection A.
22 But because of mental disease, you defect or lack the
23 sufficient capacity to conform his conduct to the
24 requirements of the law.

25 In order for this verdict to be established, guilty but

1 mentally ill, the burden of proof is on the State to prove
2 beyond a reasonable doubt that the try or fact -- or to the
3 Court in this instance that the defendant committed the
4 crime and the burden of proof is on the defendant to prove
5 by the preponderance of the evidence that when he committed
6 the crime, he was mentally ill as defined in the subsection.
7 Clearly, the evidence overwhelmingly establishes the
8 defendant's guilt. The victim survived the attack. She
9 knew her attacker. And he told her he was going to kill
10 her, and her injuries are certainly consistent with his
11 actions. The defendant is smart enough to know that he was
12 going to get caught. He certainly knew that the victim knew
13 him and knew of the potential consequences of that.

14 The only time the defendant has sought prior treatment
15 for any alleged condition is because of judicial
16 enforcement. There are no fact witnesses regarding past or
17 current condition to show sufficient evidence that at the
18 time of the attack he lacked sufficient capacity to conform
19 his conducts to the requirements of the law. Dr. Salas
20 actually testified that he knew legal right from legal
21 wrong. And the mental illness has not been established.
22 The defendant's conduct contradicts this on every stage of
23 this trial. He clearly is intelligent, articulate, and I
24 think, quite frankly, he knew that his only defense to
25 mitigate or escape his responsibility for these heinous acts

1 are to allege that he was hearing voices in order to escape
2 liability for his actions. Therefore, the Court finds the
3 defendant guilty of attempted murder.

4 Are you ready to proceed for sentencing?

5 ASST. SOL. LUPTON: Yes, Your Honor.

6 THE COURT: Would the victims care to be heard?

7 ASST. SOL. LUPTON: Your Honor, I believe the victim
8 does wish to be heard. Beg the Court's indulgence. I have
9 somewhere in here a sentencing sheet that was done up when
10 we working on negotiating a plea. It got buried somewhere
11 in my file, having trouble locating it. While I'm looking
12 for that, Ms. Glover, do you want to come up?

13 Stand up by the microphone and the tell the Court who
14 you are. Right here by the microphone. Just say your name
15 for the record and then you can talk to the Judge.

16 MS. GLOVER: Courtney Ann Glover. I just want to
17 basically say that when this happened to me, I was in a
18 state of shock for someone I've known for so long, and I've
19 been friends with for so long, to do something like this to
20 me. For a while, it really broke my spirit. I wasn't
21 willing to go out. I wasn't willing to be normal. I didn't
22 think my life would ever come together again. I prayed
23 about it, and I moved on from it. I have another semester
24 left of college before I receive my criminal justice degree.
25 And while I still suffer from PTSD and major anxiety -- and

1 my daughter actually saw me after the incident; we're both
2 still going through counseling. And she still has a lot of
3 issues because she knew him as well, and she still doesn't
4 understand. But I just couldn't believe this happened to
5 me. I just want to say that I feel like this is an attempt
6 to rape my spirit. And I just want to say that I feel like
7 I found my strength again and don't have any madness in my
8 heart for anybody. But I do feel like justice is deserved
9 and he needs to serve his time for what he did. And I'll
10 try to move on.

11 THE COURT: Thank you, Ms. Glover. Certainly, it's
12 difficult for you to go through what you went through.

13 ASST. SOL. LUPTON: Thank you, Your Honor.

14 THE COURT: What's the defendant's prior record,
15 Solicitor?

16 ASST. SOL. LUPTON: Your Honor, the victim (sic) shows
17 prior record for a conviction for malicious injury to real
18 property and a simple possession of marijuana.

19 THE COURT: Anything further from the State?

20 ASST. SOL. LUPTON: No, Your Honor.

21 THE COURT: Mr. Banks?

22 MR. WINSTON: My name is Charles Winston. First, I
23 want to apologize to the victim. We've been friends for
24 like over a decade. And what happened, shouldn't have
25 happened. It never should have. And for what it's worth, I

1 know she probably don't believe me. But I did say no. My
2 thing is, well, no one actually never believes me. I mean,
3 I've been normal all my life. And about, I don't know,
4 maybe seven, eight some odd years ago, all of sudden I
5 started feeling and hearing staff. And I know I'm not
6 crazy. But no one never believes me; no one. I ain't never
7 been in trouble a day in my life. I ain't never did nothing
8 bad to nobody a day in my life. You can probably talk to
9 anybody in this town, even though the people might not like
10 me now, they can probably testify that they never heard me
11 hurting or doing anything bad to anyone because I don't do
12 stuff like that.

13 But I've just been going through this. And the police,
14 they don't want to believe me. I mean, they make it seem
15 like I planned this out or I just out of the blue wanted to
16 kill people. I actually went and sought help years before
17 it had even came to this point. I actually mentioned it to
18 her. She actually went with me to the place. And we've
19 been friends a long time and it shouldn't have went down
20 like that. And I do apologize for that. I apologize to my
21 family too because nobody really don't know what happened.
22 I'm the only one. And when I try to tell people -- like,
23 when I talked to the mental people for the State, I mean,
24 they never talked to me about anything. Only thing they
25 wanted to know was whether I knew what a judge was, whether

1 I knew what a lawyer was, whether I knew what a solicitor
2 was, what a job was. It had nothing to do with the case of
3 me so I kind of felt like they weren't trying to do
4 anything. They were just trying to basically, okay, yeah,
5 he can just stand trial; we don't care about what happened
6 to him, what he's saying. They didn't believe me.

7 It's not like -- I mean, I know I'm not crazy. I know
8 what it's like to hear voices. I know what it's like to
9 feel things. I mean, I no nobody else probably will ever
10 understand it. But I know I ain't crazy; I ain't making it
11 up. I went to go get my head X-rayed a couple years ago; a
12 CAT scan or MRI, whatever they call it, where they put you
13 in a machine and they put your head in the thing. I went
14 and did all of that even before this even happened. I don't
15 cause no problems. I don't do nothing bad to nobody. What
16 happened, shouldn't have happened. And when I sat here and
17 listened to the police yesterday trying to make it seem like
18 I just planned this and wouldn't do this and I was sitting
19 down watching them and smirking and doing all of that.

20 That's not the type of person I am. I'm not -- I know
21 nobody probably don't believe me because half the people in
22 the courtroom don't know me anyway, but. I just wanted to
23 tell you -- I mean, that's how I am. We've been friends for
24 almost a decade and it never should've came to that, but I
25 do apologize to the victim and to my family.

1 I know wherever I'm going I guess they'll try to get me
2 some medicine and I'll just try to go on with that. But the
3 medicine I'm taking for so long hasn't been helping. I
4 still can hear the voices; I still feel stuff. Ain't
5 nothing ever change. That's why I stopped going to the
6 people in the beginning. All they want to do is put me on
7 medicine; it wasn't working. I told them that. They told
8 me because I smoke and I drink. But it ain't because of
9 that. I've been smoking and drinking a long time before
10 that. Things just started happening. I know I ain't crazy.
11 And just because I ain't running around jumping, you know,
12 in front of people, like, Oh, I feel this and feel that,
13 don't mean I'm faking. They said I took a test and I scored
14 high. So I guess because I'm stupid that means I'm faking.
15 That's just how I am. I just -- that's just what happened
16 as far as that. I just -- there's just too much I can
17 really say right now. But, I mean, I go somewhere, and --
18 wherever you going to send me; I guess to prison. You said
19 guilty, so I'll try to get some medicine and do whatever.
20 But ain't nothing help; nothing. And I ain't making it up;
21 I'm ain't. I'm listening to what you said and . . .

22 THE COURT: Anything else, Mr. Winston?

23 MR. WINSTON: No, that's it. That's it.

24 THE COURT: Mr. Banks?

25 MR. BANKS: Your Honor, as I mentioned yesterday, I've

1 known Winston a long time, and I've known him to have these
2 problems for a long time long before this happened. And I'd
3 like to remind you of how the expert described this as
4 someone who has a functional life, keep a job, he can carry
5 on a normal conversation, and has voices in their head that
6 are very compartmentalized to certain situations. But it's
7 like she compared it to the people who stalk the stars.
8 They have lives; they just think that the star is in love
9 with them and married to them. They have normal lives.

10 If these symptoms would have occurred or had been
11 reported, these feelings and thoughts and voices had been
12 reported the day after this incident occurred or during his
13 interview for the first time, I think that would be a whole
14 different story. But we're talking about records that have
15 gone back for six or eight years; approximately six years.
16 And that's from the document, the things that the doctor
17 reported to you. And I'd like to remind the Court that the
18 purpose for the stipulations were to mitigate this whole
19 proceeding for the victim. And I think I once described it
20 as sort of an extended guilty plea. But he wanted to be
21 able to have his words or his thoughts, what he's
22 experienced, to come out. And most of that was done
23 yesterday. And he just wanted to put a little stamp on it
24 today. But he changed his mind about testifying yesterday
25 because he thought Dr. Salas had done quite a good job with

1 getting out exactly what he told her, his history, his
2 experiences with mental health.

3 I've got to admit, I'm a little bit in shock with your
4 finding today. I thought we had made -- the only expert
5 here made the case that he was at least mentally ill. I'm
6 still kind of reeling from that quite frankly. However, I
7 think the reason he has behaved himself in jail isn't
8 evidence of malingering; it's evidence that what the doctor
9 said he's -- his delusion disorder is compartmentalized. He
10 can live; he can function; he can keep a job. He's a clean
11 guy. And we're so -- commonly rub our elbows with the
12 schizophrenic type of people who are much more common. And
13 this is not that kind of hearing voices; this is not that
14 kind of guy. When I think of the lack of motive, he had no
15 motive to do it. And I considered that a prime piece of
16 evidence in our favor that it was an irrational act. I
17 apologize. I'm still kind of reeling here. That's all I
18 have.

19 THE COURT: Mr. Banks, certainly I agree with your
20 client. Mr. Winston, I agree with you; I don't think you're
21 crazy. I think you're very intelligent. I think you
22 communicate well. And, Mr. Banks, as you know, despite
23 having some expert testimony to show these tendencies, the
24 Court can rely on circumstantial evidence to find the
25 defendant sane. And the circumstantial evidence, I believe,

1 proved that based upon his actions and what he did that
2 night. What is troubling is that there probably wasn't a
3 motive. That's what's most troubling. That somebody could
4 do this without a motive; that somebody can act in such a
5 malicious manner without a motive. The fact that he's a nice
6 guy and articulate and people can entrust makes him that
7 much more dangerous, in the Court's mind. And that's what
8 is extremely troubling. And I suppose, I guess, as far as
9 the defendant is concerned, if he truly does need medical
10 attention while he is incarcerated, whether it's guilty but
11 mentally ill or just guilty, the Department of Corrections
12 is required to provide mental health treatment while he is
13 incarcerated regardless. Anything further before I sentence
14 him?

15 MR. BANKS: No, Your Honor.

16 THE COURT: On indictment 2014-GS-09-260, you are
17 hereby committed to the State Department of Corrections for
18 a period of 30 years.

19 ASST. SOL. LUPTON: Thank you, Your Honor.

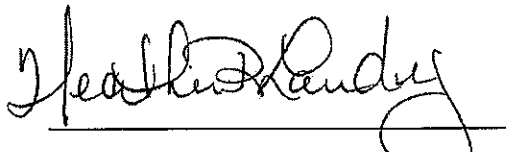
20 (Whereupon, the trial concluded at 10:47 a.m. on
21 Thursday, May 12, 2016.)
22
23
24
25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) CERTIFICATE OF REPORTER

3
4 I, HEATHER R. LANDRY, Official Court Reporter for the
5 Judicial Department of the State of South Carolina, do
6 hereby certify that the foregoing is a true, accurate and
7 complete Transcript of Record of the proceedings had in the
8 trial of the captioned case, in the Court of General
9 Sessions for Calhoun County, South Carolina, on the 9th,
10 11th, and 12th day(s) of May 2016.

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

13
14 July 18, 2016

15
16 
17
18 Heather R. Landry, CVR
19 Official Court Reporter
20
21
22
23
24
25

STATE OF SOUTH CAROLINA

County of CalhounCharles Winston 368128
Full name and prison number (if any) of Applicant

v.

State of South Carolina

2019-CP-09-00058
IN THE COURT OF COMMON PLEASFILED
APR 17 P 3:04KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

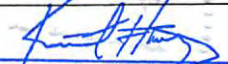
In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer 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 Broad River Correctional Institution
Monticello 241
2. Name and location of Court which imposed sentence Calhoun County
Courthouse 120 M.11 St St. Matthews, SC, 29135
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014 GS 0900260
 - (b) _____

ATTEST TRUE COPY


 KENNETH HASTY
 CLERK OF COURT
 CALHOUN COUNTY

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 12, 2016 30 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (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?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. The South Carolina Court of Appeals
- iii. The South Carolina Supreme Court
- (b) the result in each such Court to which you appealed:
- i. Appeal Denied
- ii. Petition Denied
- iii. Petition Denied
- (c) the date of each such result:
- i. May 9, 2018
- ii. June 22, 2018
- iii. Oct 18, 2018
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Direct Appeal
- ii. Petition for Rehearing
- iii. Petition for Writ of Certiorari
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attached
- (b) See Attached
- (c) See Attached
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attached
- (b) See Attached
- (c) See Attached
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (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 "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Petition for Rehearing of Appeal
- ii. Petition for Writ of Certiorari
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of Appeals Columbia, SC
- ii. South Carolina Supreme Court Columbia, SC
- iii. _____
- iv. _____

10a. Prosecutorial Misconduct ~~10a.~~ (11a.)

1. Solicitor conduct improper for commenting on accused not testifying. The solicitor violates my 5th amendment right and this was one of his many actions that infected the trial with unfairness as to make the resulting conviction a denial of due process. (p.109) ~~109~~
2. Solicitor conduct improper during closing remarks. Solicitor constantly during closing remarks refers to evidence that has not been admitted into the record. (p.115) ~~115~~
3. Solicitor conduct improper for knowingly presenting false testimony. Never had a conversation with Cpt. Regalis, nor arrested, nor interviewed by him. (p.24)
4. Solicitor conduct improper for presenting false evidence. Solicitor is the only person that states that the trip to the bathroom was to retrieve a knife that was never found. (p.73) ~~73~~

5. Solicitor conduct improper for expressing opinions about matters requiring expert knowledge. The solicitor expresses how he feels a person with a mental illness should think. (p. 115) ~~██████████~~
6. Solicitor conduct improper for stating personal opinion of credibility of defendant. The solicitor states what should have been defendant's response to what he was feeling. (p. 114) ~~██████████~~

10b. Ineffective Assistance of Counsel (11b.)

1. Trial counsel ineffectiveness due to conflict of interest.
Trial counsel, the solicitor, and the judge all were co-workers of victim's family member. Who is the mayor's daughter, and all of them worked together previously in the exact same courtroom trial was held in. (p. 5)
2. Trial counsel ineffective due to strategies and tactics that failed to subject prosecution's case to meaningful adversarial testing. Which includes, but not limited to; when judge questions whether a Jackson V. Denno hearing was needed, Trial counsel advised me it was nothing, and to just agree, because he wanted judge to hear statement. (p. 33)
3. Trial counsel ineffective due to beginning trial in absentia.
Trial counsel waives my presence without my permission. Also trial counsel had preliminary hearing in my absence. (p. 6)
4. Trial counsel ineffective with presumption of prejudice.
Trial counsel violates my 6th amendment right to an impartial jury trial, by collaborating with solicitor and judge to endorse bench trial. Counsel states on record that a jury trial by an impartial jury is what was wanted, but proceeds with bench trial. (p. 6)

5. Trial counsel ineffective due to failure to move notebook into evidence. The notebook that the doctor was reading from would have helped prove the preponderance of evidence needed for the result counsel was strategizing for. (p. 59)
6. Trial counsel ineffective due to failure to object. Trial Counsel does not object at any of the countless opportunities he had to preserve issues for direct appeal. Including when the solicitor offers statement that was never testified to. (p. 74) ~~██████████~~

10c.

I have additional claims for Post-Conviction Relief, but do not have counsel yet to make sure those claims are cognizable.

11c.

There is evidence of material facts, not previously presented or heard, that requires vacation of the conviction in the interest of justice.

(c) the disposition thereof:

i. Petition Denied

ii. Petition Denied

iii. _____

iv. _____

(d) the date of each such disposition:

i. June 22, 2018

ii. October 18, 2018

iii. _____

iv. _____

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

i. Petition for Writ of Certiorari

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?

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

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) All grounds; Appellee lawyer stated would not
 (b) _____
 (c) _____

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

(a) your arraignment and plea? No
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

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

(a) the name and address of each attorney who represented you:
 i. Martin Banks
716 North F.R. Huff Drive St. Matthews, SC, 29135
 ii. Katherine Hudgins
1330 Lady St., Suite 401, Columbia, SC, 29201
 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. Trial and Sentencing

 ii. Direct Appeal and Both Petitions

 iii. _____

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

See Attachment

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

No

STATE OF SOUTH CAROLINA)

County of Calhoun)

VERIFICATION

I, Charles Winston, 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.

Charles Winston

SWORN to and subscribed before me this 11th day of April, 2019.

Jennifer W. Nash (L.S.)
Notary Public

My Commission Expires: March 8, 2028

19. To have this conviction vacated in the interest of justice due to material facts not presented or heard and improper methods calculated to make the resulting conviction a denial of due process; which violates the United States Constitution, the South Carolina Constitution, and South Carolina State Law, which, in that setting was a denial of fundamental fairness shocking to the universal sense of justice.

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

I, Charles Winston, 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.

Charles Winston
Applicant

SWORN or affirmed to and subscribed before me this

1st day of April, 2019.

Jeanne Wash
Notary Public

My Commission Expires: March 8, 2028

**STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN**

**COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT**

Charles Winston, Jr., Applicant vs. State of South Carolina, Respondent.	Case No.: 2019-CP-09-00058 FIRST AMENDED PCR APPLICATION
---	---

The Applicant, Charles Winston, Jr. (Winston), amends his PCR Application filed in the above captioned case as follows:

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

Winston amends his response to item 10 to add the following:

m. The performance of Winston's trial counsel was deficient because he stipulated to Winston's competency to stand trial. Winston was prejudiced by this deficient performance.

n. The performance of Winston's counsel was deficient because he consented to a bench trial on Winston's charges even though Winston steadfastly maintained his desire for a jury trial. Winston was prejudiced by this deficient performance

o. Winston's trial counsel's performance was deficient because he failed to make a motion for a new trial when the presiding judge, in her explanation for her guilty verdict, referenced Winston's retrieval of a knife, a fact not in evidence. Winston was prejudiced by this deficiency.

p. Winston's counsel's performance was deficient because he did not object to the presiding judge's finding of a waiver of the jury trial right without a detailed colloquy with Winston.

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

Winston amends his response to Item 11 to add the following:

For the facts underlying the additional grounds stated above, Winston relies on the facts alleged in those grounds.

Winston requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the hearing that have not been specifically addressed in the Application, the Amended Application or this Second Amended Application.

Respectfully Submitted,

AIKEN & HIGHTOWER, P.A.

BY: s/Arthur K. Aiken

ARTHUR K. AIKEN

PO Box 90707

Columbia, SC 29290

Phone: 803-799-5205

Fax: 803-799-5206

Email: art@aikenandhightower.com

ATTORNEYS FOR APPLICANT

Columbia, South Carolina
August 29, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CALHOUN	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
Charles Winston, Jr., #368128,	)	Case No.: 2019-CP-09-00058
	)	
Applicant,	)	
	)	
	)	RETURN
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State of South Carolina (Respondent), making its Return to the application for post-conviction relief filed by Charles Winston, Jr. (Applicant) on April 17, 2019, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. During its November 2014 term, the Calhoun County Grand Jury indicted Applicant for attempted murder (2014-GS-09-00260). Martin R. Banks, Esquire, represented Applicant. Theodore N. Lupton of the First Judicial Circuit Solicitor's Office prosecuted the case. On May 9-12, 2016, Applicant proceeded to a jury trial before the Honorable Maite Murphy. The jury found Applicant guilty as indicted, and Judge Murphy sentenced him to thirty years' imprisonment.

Direct Appeal

On May 12, 2016, Applicant filed a timely Notice of Appeal. Applicant was represented by Kathrine H. Hudgins, Esquire, Appellate Defender for the South Carolina Commission on

Indigent Defense. On May 9, 2018, the South Carolina Court of Appeals affirmed Applicant's convictions in an unpublished opinion. State v. Winston, Op. No. 2018-UP-198 (S.C. Ct. App. filed May 9, 2018). On May 24, 2018, Applicant filed a petition for rehearing which was denied on June 22, 2018. A petition for writ of certiorari was perfected on Applicant's behalf on July 20, 2018. On October 18, 2018 the South Carolina Supreme Court denied certiorari. The remittitur returned to the Circuit Court on November 15, 2018.

II. FACTUAL SUMMARY

Courtney Glover was Applicant's neighbor and had known him since she was fourteen years old. R. p. 10. On September 30, 2014, Applicant texted Glover saying he needed someone to talk to. Tr. p. 12. Applicant told Glover to come over after she finished working that day. R. p. 13. Glover subsequently went to Applicant's house and asked him, "Well, what's wrong? What do you want to talk about?" R. p. 13. Applicant vaguely stated, "You wouldn't understand. You know, I have a lot going on. I have a lot, you know, on my mind." R. p. 13. Glover remained at Applicant's home for five more minutes before telling him she needed to leave. R. p. 13. Applicant then stated he needed to go to the bathroom first. R. p. 13. After Applicant returned from the bathroom, Glover asked him to walk her to her car. R. p. 13.

As Glover walked outside, Applicant turned the carport light off and jumped on Glover. R. p. 14. Glover noted that although she did not notice it initially because of the adrenaline, Applicant managed to cut her neck. R. p. 15. Glover tried to get away from Applicant; however, he managed to pin her down and was trying to cut her throat again. R. p. 15. Glover stated Applicant missed her neck and cut her face instead. R. p. 15. Glover elbowed Applicant in an effort to get free and ran to her car which was located in the driveway. R. p. 15.

Glover climbed into her car and attempted to start the car with the push start button. R. p.

15. Applicant chased after Glover and prevented her from closing the door. R. p. 15. Each time Glover attempted to start her car by pushing the button, Applicant turned off the car. R. p. 15. Applicant continuously yelled at Glover "You're not going anywhere." R. p. 15. Eventually Glover was able to start her car and attempted to drive off while Applicant refused to let go of her car door. R. 16. Glover managed to drive her car to her house while Applicant held on to the door. R. p. 16. Glover pulled into her front yard and began to honk the horn in an attempt to alert her family members to her situation. R. p. 16. Applicant then cursed and tried to stab Ms. Glover one last time. R. p. 16. Once Glover's mother ran out of her home, Applicant fled the scene. R. p. 17. Glover was ultimately transferred to the hospital via ambulance due to the loss of blood. R. 17. Glover stated that while she was inside Applicant's home, Applicant's conduct did not lead her to believe he was not rational. R. p. 13. Glover also noted she believed Applicant understood the difference between right and wrong. Glover further commented that in the many years she has known Applicant, there is nothing she has seen in him that would cause her to believe he did not know right from wrong. R. pp. 18-19.

Captain Pat Regalis of the Calhoun County Sheriff's Office responded to the scene on the evening of September 30, 2014. R. p. 24. Captain Regalis noticed there was a spot next to the steps of the home that was recently washed and had a bucket placed next to the area. R. p. 25. Regalis also observed there was a little residue remaining that looked like blood. R. p. 25. Applicant was subsequently arrested in Orangeburg on October 8, 2014. R. p. 26. Applicant was returned to Calhoun County and interviewed by law enforcement where he admitted he intended to kill Glover. R. p. 27. Applicant also confessed he cleaned up the blood at the scene of the crime. R. p. 25. Captain Regalis recounted how Applicant told investigators that immediately after the attack, "He hid where he could see us, and he watched us and waited until we ended up leaving or something

to that effect before he was able to leave and go down the road.” R. p. 28. Applicant explained he understood he could not talk to the law enforcement officers because he would go to jail. R. p. 28. Captain Regalis noted that he had over twenty years of law enforcement experience, which included dealing with people with mental illnesses, and he did not see any behavior by Applicant that would lead him to believe he did not understand right from wrong. R. p. 28. Captain Regalis stated that not only did he believe Applicant understood right from wrong, Applicant himself expressed to him that he knew right from wrong. R. pp. 28-29. Captain Regalis stated Applicant told him “the voices told him to do it.” R. p. 30. Captain Regalis opined Applicant was making up the allegation that he heard voices. R. p. 30.

On January 6, 2016, Applicant underwent a mental competency evaluation at the Medical University of South Carolina pursuant to an Order by the Honorable L. Casey Manning. R. p. 136 (Competency Evaluation R. p. 1). The basis for the Order read, “Defendant has a history of mental illness, and has a history of reporting hearing voices.” R. p. 136 (Competency Evaluation p. 1). Applicant stipulated to the report for use at trial. R. p. 4. The evaluation states:

Midway through the evaluation, nearly all of his responses centered around the voices he hears, his belief that something has been planted in him (“I think it’s government equipment that the government shouldn’t be having”) and the conspiracy against him. He frequently stated that others did not believe him, though he himself did not believe himself to be crazy.

R. p. 139 (Competency Evaluation p. 5). The forensic psychiatrists at MUSC conducted a Miller-Forensic Assessment of Symptoms Test (M-Fast) on Applicant. R. p. 140 (Competency Evaluation p. 6). The M-Fast is a screening measure designed to detect the feigning of psychiatric symptoms. R. p. 140 (Competency Evaluation p. 6). The evaluation noted:

Based on scores reported in the M-Fast manual, [Applicant’s] total score was elevated and suggests he may be feigning or exaggerating psychopathology. Mr. Winston endorsed severe and unusual psychotic symptoms, as well as symptom combinations that are unlikely and inconsistent with genuine mood and psychotic

disorders. He reported an atypical presentation and unusual course of illness for most psychiatric disorders. His self-report was inconsistent with behaviors observed during the interview. Finally, he expressed an overly negative view of himself that is more commonly endorsed by depressed or Borderline Personality Disorder patients than by genuinely psychotic patients.

R. p. 140 (Competency Evaluation p. 6).

The evaluators ultimately concluded that with respect to Applicant's competency to stand trial:

It is our opinion, to a reasonable degree of psychological certainty, that [Applicant] has the requisite rational and factual understanding of the proceedings against him and the ability to consult with his lawyer with a reasonable degree of rational understanding. Therefore, on the date of the evaluation, he is opined competent to stand trial.

R. p. 145 (Competency Evaluation p. 10). Prior to trial, Applicant stipulated that he was competent to stand trial. R. p. 4. The parties also agreed to stipulate to the facts contained in the indictment.

R. p. 9.

Dr. Amanda Salas testified for the defense at trial. R. pp. 37-100. Dr. Salas evaluated Applicant at the request of Defense Counsel. R. p. 37. Dr. Salas gathered background and collateral information and conducted three interviews with Applicant. R. p. 38. After interviewing Applicant, Dr. Salas concluded he suffers from an illness on the psychiatric spectrum called delusional disorder. R. p. 38. Dr. Salas testified delusional disorder is very rare, affecting only .2 percent of the population. R. p. 39. Dr. Salas stated Applicant believes people in the community were inserting objects in his body that are receivers that allow his body to be controlled externally. R. p. 40. Dr. Salas testified Applicant believes Glover is part of a terrorist organization that controls the devices embedded in his body. R. p. 43. Dr. Salas stated Applicant knew his behavior was not legally allowable, however "through his delusional system and as a derivative of the delusional disorder, at the time when this act occurred in the commission of this crime, he was functioning under hallucinations of instruction to harm [Glover]" R. p. 45. Dr. Salas clarified her belief

Applicant can tell the difference between right and wrong, however his delusions change his perceptions of moral right and wrong. R. pp. 61-62. Dr. Salas believes Applicant's alleged disorder also impaired his abilities to conform his behaviors within the boundaries of the law. R. p. 64. Dr. Salas admitted Applicant's act of cleaning up the crime scene and subsequently fleeing law enforcement could indicate an understanding of a legal wrong. R. pp. 73-74. In her evaluation, Dr. Salas concluded Applicant was not competent to stand trial. R. p. 77. Dr. Salas noted that she was aware that Applicant previously stipulated he was competent to stand trial. R. pp. 77-78.

The trial judge found:

The defendant's stipulation as to the competency of the [Applicant] to stand trial discredits his own expert witness. His own expert witness indicated that she felt he was not competent to stand trial; but clearly, he is competent to stand trial. He was appropriate in his discussions with the court. He is obviously very intelligent and able to communicate effectively....The Court does find that he is competent to stand trial and his expert's witness is discredited.

R. pp. 119-120. With respect to Applicant's request for a verdict of guilty but mentally ill, the trial judge ruled:

There are no fact witnesses regarding past or current condition to show sufficient evidence that the time of the attack he lacked sufficient capacity to confirm his conducts to the requirements of the law....He clearly is intelligent, articulate, and I think, quite frankly, he knew that his only defense to mitigate or escape his responsibility for these heinous acts are to allege that he was hearing voices in order to escape liability for his actions. Therefore, the Court finds the [Applicant] guilty of attempted murder.

R. p. 123. The trial judge concluded Applicant was guilty rather than guilty but mentally ill or not guilty by reason of insanity, both of which were vigorously argued by trial counsel and considered by the trial judge. R. p. 123.

III. ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held in custody

unlawfully for the following reasons:¹

1. Ineffective Assistance of Counsel

- a. Conflict of interest.
- b. “Trial counsel ineffective due to beginning trial in absentia;”
- c. Trial counsel was “ineffective with presumption of prejudice” and violated “6th amendment right to an impartial jury trial, by collaborating with solicitor and judge to endorse bench trial;”
- d. “Failure to move notebook into evidence. The notebook that the doctor was reading from would have helped prove the preponderance of evidence needed for the result counsel was strategizing for;”
- e. Trial counsel did not “object at any of the countless opportunities he had to preserve issues for direct appeal. Including when the solicitor offer[ed] statement that was never testified to.”

2. Prosecutorial Misconduct

- a. Solicitor was “improper for commenting on accused not testifying,” which violated Applicant’s Fifth Amendment right making the trial unfair;
- b. Improper remarks from Solicitor regarding “evidence that has not been admitted into the record;”
- c. Solicitor presented false testimony;
- d. Solicitor presented false evidence;
- e. Solicitor expressed “opinions requiring expert knowledge” and expressed how he felt a “person with a mental illness should think.”

IV. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant’s claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” Strickland v. Washington, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann.

¹ Unless quoted, Applicant’s allegations have been summarized for brevity and clarity.

§ 17-27-20(A) (enumerating allegations cognizable in PCR actions). 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).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney’s performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). Id. at 690-95; Butler, 286 S.C. at 442, 334 S.E.2d at 814. The defendant’s burden for proving both of these components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. Strickland, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Id. at 700.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler,

286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Strickland, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the

facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance 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. A reasonable

probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. Id. at 695.

Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” Id. at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Id. at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Strickland, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

Applicant can satisfy neither requirement of the Strickland test. 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) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

V. RESPONSE TO ALLEGATIONS OF PROSECUTORIAL MISCONDUCT

Applicant also alleges prosecutorial misconduct. Applicant alleges the assistant solicitor who prosecuted his case engaged in the deliberate deception of the Court by presenting false evidence and testimony, amounting to prosecutorial misconduct. Applicant also alleges the assistant solicitor engaged in misconduct by making an improper closing argument to the jury. However, it not clear whether Applicant intends these allegations to be stand-alone claims of prosecutorial misconduct or a claim of ineffective assistance by Counsel for failure to object to the alleged misconduct or both.

Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). If Applicant could have raised these issues on appeal, the failure to do so has waived this allegation as grounds for relief.

Accordingly, Respondent requests a more definite statement as to this claim. Applicant has failed to set forth facts to “support each ground” or to explain with any specificity whatsoever the facts upon which these claims are based. The Uniform Post-Conviction Procedure Act requires Applicant to “**specifically set forth the grounds upon which the application is based.**” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through PCR counsel, to amend his application to set forth specific facts upon which his allegations are based so Respondent may adequately prepare for the

evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

Regardless of the propriety of raising this claim now on post-conviction relief or the exact nature of the claim, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989). Respondent submits this ground for relief is without merit. However, the allegations concerning prosecutorial misconduct probably raise questions of fact that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this ground for relief. See Sharper, 279 S.C. at 264, 305 S.E.2d at 247.

V. AMENDMENTS AND DISCOVERY PROCESS

Additionally, Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. Rule 11(a), SCRPC. *Pro se* filings will not be considered at the PCR hearing. State v. Devore, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing a nullity where person was represented by counsel); Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.").

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent, or in the alternative, to continue the matter to permit adequate time to investigate and address the claims. See Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017) ("In most PCR cases... we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases."); Love v. State, 428 S.C. 231, 834 S.E.2d

196 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); see also Rules 15(a)-(b), SCRCPP (explaining how to amend a pleading).

Pursuant to section 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, pursuant to Love as discussed above.

VI. DENIAL OF ALL OTHER ALLEGATIONS

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

VII. REQUEST FOR EVIDENTIARY HEARING

WHEREFORE, Respondent requests an evidentiary hearing be held on the claims of ineffective assistance of trial counsel and prosecutorial misconduct, after amendment or clarification of Applicant's claims pursuant to Respondent's motion for a more definite statement.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Deputy Attorney General

By: s/ Lindsey A. McCallister
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 20, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CALHOUN	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
Charles Winston, Jr., #368128	)	
	)	Case No.: 2019-CP-09-00058
Applicant,	)	
	)	
v.	)	Certificate of Service by Mail
	)	
State of South Carolina	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Waller Law Group, LLC
1116 Blanding Street
Suite 2B
Columbia, SC 29201

DATED this 20th day of August, 2020.


Jennifer Jennison, Administrative Coordinator
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN
THE COURT OF COMMON PLEAS
C.A. NO. 2019-CP-09-00058

CHARLES WINSTON, JR.,

PLAINTIFF,

vs.

STATE OF SOUTH CAROLINA

DEFENDANT.

H E A R I N G
BEFORE THE HONORABLE PAUL M. BURCH

DATE: FEBRUARY 6, 2024
TIME: 1:46 P.M. - 3:10 P.M.
LOCATION: SOUTH CAROLINA CIRCUIT COURT 1
TRANSCRIBED BY: AMANDA WATSON

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

APPEARANCES:

ARTHUR AIKEN, ESQUIRE
AIKEN & HIGHTOWER
PO BOX 90707
COLUMBIA, SOUTH CAROLINA 29290
art@aikenandhightower.com

ATTORNEY FOR THE PLAINTIFF.

BRYAN T. HALL, ESQUIRE
S.C. ATTORNEY GENERAL'S OFFICE
PO BOX 11549
COLUMBIA, SOUTH CAROLINA 29211
bryanhall@scag.gov

ATTORNEY FOR THE DEFENDANT.

INDEX

PROCEEDINGS	4
CERTIFICATE OF TRANSCRIBER	55

EXAMINATIONS

WITNESSES	DIRECT	CROSS	REDIRECT
For the Plaintiff:			
Charles Winston Jr.	6	16	20
For the Defendant:			
Martin Banks	22	34	38
Theodore Lupton	39	47	

EXHIBITS

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

P R O C E E D I N G S

MR. HALL: May it please the Court. Assistant Attorney General, Bryan Hall for the State. Your Honor, this is the case of Charles Winston Jr. versus the State of South Carolina. 2019-CP-09-00058. Mr. Winston was indicted by the Calhoun County Grand Jury back in November of 2014 for attempted murder. Indictment number 2014-GS-0900260. He proceeded to a bench trial before the honorable Maite Murphy, between May 9th and 12th of 2016.

Theodore Lupton prosecuted the case, and Mr. Winston was represented by Martin Banks. The Court found Mr. Winston guilty and sentenced him to 30 years. And on May 12th of 2016, a notice of appeal was filed. He was represented by appellate defender, Kathrine Hudgins. The court of appeals affirmed his conviction, finding that the trial court did not abuse it's discretion in refusing to find that -- Mr. Winston guilty but mentally ill.

On November 15th of 2018, the (indiscernible) was sent, and this PCR was filed on April 17th of 2019. Mr. Winston alleges the following, and just paraphrasing for brevity: ineffective assistance of counsel for a conflict of interest, ineffective assistance of counsel for being absent at the beginning of trial, violations of the Sixth Amendment right to a jury trial, failure to move into evidence a notebook that Mr. Winston's expert was reading from at trial, failure

1 to object to a statement made by the solicitor that was not
2 testified to.

3 He also raises allegations of prosecutorial misconduct
4 for improper comments on Mr. Winston not testifying, improper
5 comments regarding evidence that was not admitted into the
6 record, presenting false testimony and presenting false
7 evidence, and expressing opinions requiring expert knowledge
8 about how he felt a person with mental illness should
9 (indiscernible). Your Honor, Mr. Winston is represented by
10 Arthur Aiken. Mr. Aiken sent us an amended PCR application.
11 Do you have a copy of that?

12 THE COURT: I do.

13 MR. HALL: We will allow Mr. Aiken to put on the record
14 the allegations of the amendment, but Mr. Winston is present
15 and represented by Arthur Aiken, and the State is ready to
16 proceed.

17 THE COURT: Thank you, Mr. Hall. Mr. Aiken?

18 MR. AIKEN: Yes, sir. May it please the Court.

19 THE COURT: Yes, sir.

20 MR. AIKEN: The (indiscernible) calls Charles Winston.

21 THE COURT: Come around and be sworn in, please.

22 COURT REPORTER: State your full name for the record.

23 MR. WINSTON: Charles Winston.

24 COURT REPORTER: Do you solemnly swear or affirm to tell
25 the truth, the whole truth, and nothing but the truth so help

1 you God?

2 MR. WINSTON: Yes.

3 E X A M I N A T I O N

4 BY MR. AIKEN:

5 Q. Mr. Winston, you were charged with attempted murder?

6 A. Yes, sir.

7 Q. And you took your case to trial; did you not?

8 A. Yes, sir.

9 Q. Were you convicted?

10 A. Yes, sir.

11 Q. What sentence did you get?

12 A. 30 years.

13 Q. Were you tried by a jury or by the Court?

14 A. By the Court.

15 Q. Now let's go back to the -- to the day before your actual
16 trial started. Where were you on that day?

17 A. Still at the Orangeburg County Jail.

18 Q. Were they planning on trying your case that week?

19 A. He had told me that he was -- that I was going to go to court
20 that week, but ---

21 Q. Mr. Banks?

22 A. Yes, sir.

23 Q. So we're clear. You were represented by Martin Banks?

24 A. Yes, sir.

25 Q. And Theodore Lupton was the main prosecutor; is that right?

1 A. Yes, sir.

2 Q. Okay. That first day of the work week. Were you ever, at
3 any time during that day, at the courthouse?

4 A. No, sir.

5 Q. Did you have conversations with Mr. Banks about whether he
6 should have a trial by jury or a trial by the Court?

7 A. Yes, sir.

8 Q. What would he tell you?

9 A. He said he wanted to go with the bench trial. I said I
10 wanted to go with the jury trial. I just wanted to get a
11 jury not from that town.

12 Q. So you wanted to change the venue by moving the jury from
13 another location into -- this was in Calhoun county, right?

14 A. Well, actually, I didn't know I could do that. I thought I
15 would get an actual trial in another community, but he will
16 come in, the solicitor or whoever, would try the trial.

17 Q. So you wanted a jury trial, but you also wanted a change of
18 venue?

19 A. Yes, sir.

20 Q. What was the purpose behind the change of venue?

21 A. That was my number one thing that I wanted because I felt I
22 knew I wouldn't get a fair trial in that town.

23 Q. Why not?

24 A. Because the victim's aunt is the actual mayor of the town.
25 The mayor's daughter was the court reporter that worked in

1 the courtroom with the same lawyer I had, the solicitor were
2 trying the case, and the judge. And I tried to get the proof
3 of the records, but they denied me that. They gave me the
4 dates where she worked in the courthouse, but they wouldn't
5 give me a list of people that she worked with.

6 Q. So that -- that's the nature of your conflict of interest
7 allegation?

8 A. Yes, sir.

9 Q. Now, did you ever decide you wanted a bench trial?

10 A. No, sir. I spoke with Mr. Banks, and he came to me and saw
11 me on three occasions in the county jail and brought it up.
12 But I kept telling him I wanted to change the venue, but on
13 the fourth day he came and he was like, well, I think this is
14 the best way I could say that that's what you want to do, but
15 I still wanted a jury trial.

16 Q. So you steadfastly maintain you wanted a jury trial.

17 A. Yes, sir.

18 Q. Now at any point did the -- during the trial, did the judge
19 ask you whether you wanted a jury trial or a bench trial?

20 A. No, sir.

21 Q. Did the judge engage you in any kind of conversation in open
22 court on the record concerning your decision about whether to
23 do a jury trial or a bench trial?

24 A. No, sir.

25 Q. Did Mr. Banks ever represent that you had made a decision to

1 go with a bench trial?

2 A. The day before I came to the courtroom.

3 Q. That -- that happened when you weren't even there?

4 A. Yeah, the only reason I knew that because I have a copy of
5 the transcript. That showed me that they were in court the
6 day before I came, and they did all the decision-making as
7 far as me going to a bench trial. But the judge stated that
8 the first step in that was to see if they can get an
9 impartial jury, which they never attempted to do. Even
10 though she said that was the right thing to do.

11 Q. Right, she held that the motion to change venue was
12 premature.

13 A. Yes, sir.

14 Q. Because there hadn't been a finding that you couldn't get a
15 fair trial in that locale; is that right?

16 A. Yes, sir.

17 Q. Now let's talk about the trial itself. Okay? You -- you
18 have a complaint about the prosecutor commenting on your
19 failure to testify. Tell me about that.

20 A. Yes, sir. He said that I had the opportunity to testify, to
21 get my story told, and when I had the opportunity, that I
22 wouldn't do it.

23 Q. And is it your understanding you have a Fifth Amendment right
24 to remain silent?

25 A. Yes, sir.

1 Q. And did you have a discussion with the judge on the record
2 concerning your decision about whether to testify or not
3 testify?

4 A. Yes, sir.

5 Q. Did you indicate you did not wish to testify?

6 A. Yes, sir.

7 Q. You mentioned something about the solicitor referencing
8 matters not in evidence. Tell me about that.

9 A. He kept saying, like, when he tested -- when the -- when she
10 was on the stand, she said that I went to the bathroom --
11 went to the back of the house and came back, and then we
12 walked out. And then all of a sudden, the solicitor started
13 saying that I went to the back of the house to go retrieve a
14 knife to attack her. And then he proceeded -- when the
15 doctor got on the stand, to ask the doctor, well, wouldn't
16 him going to the back -- to indicate getting a knife -- to
17 indicate that he planned to attack her?

18 And the doctor even stated that no one testified to
19 that. There was no weapon found. It wasn't with him or
20 where was it? And then he went on to proceed to say it
21 again, and then the judge said it later on. But I didn't
22 understand why they would say I went to the back of the house
23 to get a knife when the kitchen is right there in the front.
24 So why would I go to the back to get a knife? I didn't
25 understand that?

11

1 Q. Now you said something about the solicitor knowingly
2 presenting false testimony. Tell me about that.

3 A. He brought up Captain Regalis (phonetic), a man I have never
4 seen in my life. A man who's never had any conversation with
5 me. The only time he has ever been around me is when they
6 had me in the sheriff's station, and I was in there with
7 Graham and Orso (phonetic). Lieutenant Graham and, I think,
8 he's Sergeant Orso.

9 And he came in for like a minute of the last minute of
10 me being with them, and then he came to court and he
11 testified that he talked to me and we had these
12 conversations, and he felt that I knew what was going on.
13 And he stated to just continue to give opinions, when in
14 every piece of paperwork regarding my trial, his name is not
15 on none of it. Except for the one thing he did do, which was
16 go to the scene the night of the incident. That was it.

17 Q. And we already talked about this whole idea about a knife.
18 And there was never any actual evidence submitted to the
19 court about there being a knife; is that right?

20 A. Correct.

21 Q. Now you said something about expression of a personal opinion
22 about your credibility. Tell me about that.

23 A. Yeah, the solicitor was saying stuff like, when we walked
24 outside, I turned the light off to gain the edge of darkness
25 to attack her. When the actual truth is, every time that I

1 actually walk outside, I actually -- even if it's not, if the
2 light is on, I always turn it off. But they never questioned
3 her about that, because she probably would have testified to
4 it too.

5 Because that's something that I always do when we walk
6 outside. I always turn the light off. It's always just been
7 a habit. I didn't do it to gain any (indiscernible). That
8 was just his personal opinion. Trying to make it seem like
9 that's why I did it was to attack her in the dark.

10 Q. Now, this conflict of interest notion, does that fall under
11 ineffective assistance accounts?

12 A. Yeah, I guess so. Because I didn't understand why it was so
13 hard for me to get a change of venue when it was known that
14 the mayor's daughter was the court reporter working with the
15 judge I had, the solicitor, and Banks. So I didn't see it
16 never brought up as any way to get the change of venue.

17 Q. Now, you gave a pretrial statement. You gave -- you gave a
18 statement to the police; is that correct?

19 A. Oh, yeah, yeah, yeah.

20 Q. Was -- was there ever any hearing concerning that statement?

21 A. Yeah. What happened was, when I first got arrested, I didn't
22 understand why they actually took me to Calhoun County.

23 Because I thought when I got arrested I went to Orangeburg.

24 And I said something about it, but he said, "No, you had to
25 go to Calhoun -- I had to go to Calhoun County. It would

13

1 take a minute, and he would deal with me there." But when it
2 came up in the courtroom, see, I didn't know anything about a
3 *Jackson V Denno* hearing, and the judge asked Banks. But
4 Banks said it never even came up between us, which we never
5 had any conversation about it. And then when he went to
6 converse with me about it he told me, it's nothing. Don't
7 even worry about it. Just go ahead and say, yeah.

8 Q. So you never had a *Jackson v Denno* hearing?

9 A. No, sir.

10 Q. And is one of your allegations of ineffective assistance of
11 counsel, the fact that your trial was actually organized
12 before you were even at the courthouse?

13 A. Yes, sir.

14 Q. So in a way, you were tried at least partially in absentia?

15 A. Yes, sir.

16 Q. Now, you did not have a jury trial.

17 A. No, sir.

18 Q. Was -- was Mr. Banks putting pressure on you to get you to go
19 with the nonjury trial?

20 A. Yes, sir. He came to me on three or four different
21 occasions, trying to get me to go with the bench trial.

22 Q. Now, you mentioned something about failure to object. Were
23 there specific times during the trial where you think your
24 lawyer should have objected on your behalf?

25 A. Yes, sir.

1 Q. And tell me about that.

2 A. One, when the judge actually stated in her verdict that
3 malice is a forethought, and, "He had a forethought when he
4 went to the back to retrieve the weapon." I never went to
5 the back to retrieve the weapon. The only person that ever
6 testified to that was the solicitor. I mean, he didn't
7 testify to it, but he made the statement. Not the person who
8 was on the stand, me, or anyone else, said that. He said
9 that.

10 And she basically put that in her verdict as one of the
11 reasons why she was convicting me. She also said that I told
12 her I was going to kill her. Which I never stated, and she
13 never stated, and it was nowhere in the record that she ever
14 stated. So I don't know where she got that from.

15 Q. So you had an issue with the judge's decision being based on
16 matters not in evidence?

17 A. Yes, sir.

18 Q. Well, when the -- when the decision was made, and there were
19 those defects in the decision, did your lawyer do anything
20 about that?

21 A. No, sir.

22 Q. Did he make a motion for a new trial?

23 A. No, sir.

24 Q. Now, there were some factual stipulations; is that correct?

25 A. Yes, sir.

15

1 Q. And one of those stipulations was, your lawyer stipulated
2 that you were competent to stand trial.

3 A. Yes, sir.

4 Q. Was there a pretrial opinion from a psychiatrist hired by
5 your lawyer who said you were not competent to stand trial?

6 A. Yes, sir.

7 Q. And now this -- this doctor that found you not competent to
8 stand trial, is that the same doctor that was the expert
9 witness at your trial about your mental illness?

10 A. Yes, sir.

11 Q. So she had previously said you were not competent, then she
12 gave an opinion that you were not guilty by reason of
13 insanity, right?

14 A. Yes, sir.

15 Q. Is that right? And your lawyer stipulated that the doctor
16 was wrong on the competency diagnosis?

17 A. Yes, sir.

18 Q. Did -- did that affect the doctor's credibility in your mind?

19 A. Yes, sir. That's what the solicitor stated, and the judge
20 stated in her verdict.

21 Q. She stated that there was a credibility issue with the doctor
22 because of the stipulation?

23 A. Yes, she said that my defense counsel discredited his own
24 expert witness.

25 Q. Let's go back to this jury trial again. I want to make sure

1 we're clear on this. Which -- was there ever any situation
2 in open court, in the courtroom, with the court reporter
3 present, in which you had a conversation back and forth with
4 the judge about your jury trial?

5 A. No, sir. She had one with me about my right to testify, my
6 Fifth Amendment, but not the Sixth Amendment.

7 Q. If I could just check my notes for one moment, Judge. Thank
8 you, Mr. Winston. If you will answer any questions the
9 State's lawyer might have.

10 C R O S S E X A M I N A T I O N

11 BY MR. HALL:

12 Q. Mr. Winston, how old are you?

13 A. 45.

14 Q. 45. And how far did you get in school?

15 A. One year of college.

16 Q. One year of college. Do you recall meeting with Mr. Banks
17 and reviewing discovery?

18 A. You mean discovery, do you mean all that paperwork with --
19 that states what was done with the police and all that?

20 Q. Yes. That's the State's evidence against you.

21 A. No, sir. Never seen it until I actually got a copy of it
22 that my mother sent me while I was already in prison.

23 Q. Okay. When you were arrested and you were brought into
24 police custody, you made a statement, didn't you?

25 A. Yes, sir. A statement that I feel is involuntary.

1 Q. But you gave a statement?

2 A. Oh, yeah. Yes, sir. He told me I didn't have a choice.

3 Q. Now, in that statement that you gave to law enforcement, you
4 admitted to stabbing the victim, Courtney Glover, in the
5 neck, didn't you?

6 A. I believe I did.

7 Q. You did. Okay. And you also admitted to cleaning up the
8 blood before the police arrived, didn't you?

9 A. Yeah, I did that.

10 Q. Okay. And you admitted to waiting outside of the scene until
11 police left before you fled, didn't you?

12 A. Actually, no, sir.

13 Q. Okay.

14 A. But what that statement was was, I was over by the police
15 station. I wasn't at the scene. Once I left there, I was
16 gone, so I didn't wait at the scene. No, sir.

17 Q. But you waited until police were gone.

18 A. No, I wasn't -- I was by the police station. I wasn't by the
19 scene, sir.

20 Q. Okay. But you admitted to police that you knew that it was -
21 - you knew right from wrong, didn't you?

22 A. Well, the doctor seems to disagree.

23 Q. No, I'm asking, what did you say to police? Did you admit to
24 police that you knew right from wrong?

25 A. Well, I believe -- I'm not sure.

1 Q. You're not sure? Well, in the transcript, Mr. Regalis, who
2 you claim you had never seen a day in your life, but then you
3 also said he walked into the room.

4 A. Yeah, the last minute of being in there with Graham and Orso
5 was the only time he actually seen me. He might have said
6 one sentence to me. Might have.

7 Q. Okay. But you're -- the statements that you gave to law
8 enforcement those are recorded, right?

9 A. Yes, sir.

10 Q. Okay. And Mr. Regalis testified at your trial that there
11 were three times, and I'm referring to page 29 of the record
12 on appeal at line 6, there were three -- three times when
13 he's -- when you said that you understood right from wrong in
14 the context of dealing with law enforcement.

15 A. Is that a question, or...

16 Q. That's what you stated?

17 A. Oh, I'm not sure.

18 Q. If I told you that's in the transcript, would you accept it?

19 A. I mean, if it's in the transcript, sure. But I also saw in
20 the transcript where he said that, when you ask ---

21 Q. Yes or no. If I tell you that it's the transcript, do you
22 accept?

23 A. As what he said, I guess so. If it's in transcripts in black
24 and white.

25 Q. Okay. Moving on, Mr. Winston. And you say that they were

1 going to try you in your absence. You weren't present the
2 day before your trial, right?

3 A. No, sir.

4 Q. Okay. But that's in the transcript, right? That -- that
5 whatever happened at that hearing is in the transcript,
6 correct?

7 A. The day I wasn't there? Yeah.

8 Q. Okay. And they stated that they were only there on your
9 motion to change venue, correct?

10 A. No.

11 Q. Okay. But, you were there the next day, weren't you?

12 A. Yes, sir.

13 Q. Okay. And the next day, when you were present, didn't the
14 solicitor state on the record, everything that had been
15 discussed the day before?

16 A. No, sir.

17 Q. He didn't?

18 A. No.

19 Q. Okay.

20 A. I didn't know they waived my presence until I got a copy of
21 the transcript.

22 Q. But, no. When you were there the next day, didn't the
23 solicitor state on the record everything that was discussed
24 the day before when you weren't there?

25 A. No, sir.

1 Q. He did not?

2 A. No, sir.

3 Q. Okay. Referring to page seven on the record of appeal,
4 starting at line 22, the solicitor stated, "Your Honor, just
5 to put on the record in the Defendant's presence, what we put
6 on the record Monday. The Defendant has moved for a change
7 of venue, which was denied. And has waived his right to a
8 jury trial, so we are proceeding on this as a bench trial."
9 Sounds like he stated on the record what was -- what was said
10 the day before, didn't he?

11 A. No, because they waived my presence the day before ----

12 Q. That's fine.

13 A. --- but they didn't say that.

14 Q. Okay. Moving on Mr. Winston. So if you didn't waive your
15 right to a jury trial why -- and you were there and heard the
16 solicitor say that, why didn't you speak up at that point?

17 A. Because I knew that's what Banks wanted to go with.

18 Q. Okay. And you were evaluated by MUSC?

19 A. Yes, sir.

20 Q. And ultimately they found that you were competent to stand
21 trial?

22 A. Yeah.

23 Q. No, other questions, Your Honor.

24 R E - D I R E C T E X A M I N A T I O N

25

1 BY MR. AIKEN:

2 Q. Was it -- was it your feeling that you couldn't get a jury
3 trial once a bench trial was organized?

4 A. What do you mean?

5 Q. Well, you know, they said something about a bench trial --
6 you waiving your right to a jury trial. Did you understand
7 that you still had the right to say, "Hold on a minute. I
8 want my jury trial?"

9 A. No, sir.

10 Q. You didn't understand that was the case?

11 A. No, sir. I didn't -- to be honest with you, I don't even
12 remember them saying that. That I was given the bench trial.
13 I knew that's what Banks was going with. I thought that's
14 what he wanted to do. But I knew I wanted a jury trial. But
15 I know if I had been there the day before, and she said the
16 first thing we had to do was trying to panel the jury, I
17 would go with that. I just wanted the trial outside that
18 town, and Banks knew that. He even said on the record
19 himself, if I could get a jury trial from another community
20 or get the trial moved, he said he would go with the jury
21 trial.

22 Q. Thank you, very much.

23 THE COURT: (Indiscernible)

24 MR. HALL: Nothing further, Your Honor.

25 THE COURT: Thank you, sir. You may step down.

1 MR. HALL: The State calls Martin Banks.

2 COURT REPORTER: State your full name for the record.

3 MR. BANKS: Martin Banks.

4 COURT REPORTER: Do you solemnly swear or affirm to tell
5 the truth, the whole truth, and nothing but the truth so help
6 you God?

7 MR. BANKS: I do.

8 E X A M I N A T I O N

9 BY MR. HALL:

10 Q. How are you doing, Mr. Banks?

11 A. Very good.

12 Q. Mr. Banks, how long have you been practicing law?

13 A. 32 years.

14 Q. And how many of those years were devoted to criminal law?

15 A. 25.

16 Q. And what's your current job?

17 A. I'm the master in equity in Calhoun county, and I am -- I
18 have a private practice there as well.

19 Q. So you're a judge essentially?

20 A. Yes.

21 Q. Mind if I call you Judge Banks?

22 A. You're welcome.

23 Q. Judge Banks, were you aware of any conflicts that arose
24 during your representation of Mr. Winston?

25 A. Conflicts of interest?

1 Q. Of interest. I'm sorry. Yes, sir.

2 A. No.

3 Q. Can you tell us how you obtained this case?

4 A. I was appointed as public defender.

5 Q. And how many times did you meet with Mr. Winston?

6 A. Well, I started making notes on my folder of how many times I
7 went to see him. I count one, two, three, four, five, at
8 least six there. And there may have been others. There's
9 one, I think, that says I tried to see him in jail. But I
10 don't know if they had a lockdown or something. So might be,
11 it might be six that I know of. Course, I met him at
12 pretrial and some other times, but in jail, five or six that
13 I can account for probably more, though.

14 Q. And did you receive discovery from the State in this case?

15 A. Yes.

16 Q. And during those times when you met with him, did you review
17 that discovery with Mr. Winston?

18 A. Yes.

19 Q. And when you reviewed it -- before we get there, let me
20 withdraw the question. Can you briefly tell us the evidence
21 the State had against Mr. Winston?

22 A. Well, they had a live victim who was very -- could
23 communicate very well what -- what happened. They had
24 forensics. They had the blood. They had -- I don't recall
25 if they had fingerprints or not at this point, but they had a

1 pretty good case.

2 Q. And did Mr. Winston have a defense to this -- to this charge
3 for the attempted murder?

4 A. He, you know, we got the expert that said, what she said, and
5 that was going to be basically all he was going to be able to
6 hang his hat on. The problem is he's still going to -- he's
7 -- he was teetering between going to be locked up maybe for
8 life on the mental illness side of things.

9 And what I was trying to do is mitigate an indefinite
10 sentence forever to something that had a number attached to
11 it that might mitigate the time spent and mitigate the
12 complications that surround somebody in his condition.

13 Q. Okay. Addressing the mental health, did you have any
14 concerns about Mr. Winston's competency when you were
15 representing ---

16 A. No. He -- he's actually, as I recall, he -- I think he's the
17 second most intelligent appointed public defender case that
18 I've ever had. The other one was -- he's been electrocuted
19 at this point. But Mr. Winston is very smart. He's -- I
20 know he's the only one that I knew of that played chess.
21 Very intelligent, highly intelligent, I would say.

22 And on a normal daily basis -- in fact, I'll give you an
23 example. He got in some trouble with the probation
24 department before this, and they -- since I was the master in
25 equity they -- or the public defender, either way, I was

1 qualified as a site where they would -- could send public
2 service people to work on -- do filing and things like that.

3 And -- but they don't just send anybody to the master's
4 office for -- for that type of work, because it's the master
5 in equities office. And I got to know Mr. Winston through
6 this previous case, and thought a lot of him. I really -- I
7 still do. I think he -- I really like Mr. Winston, and so I
8 requested that he be screened to come and do public service
9 at my office, which he did. He completed, I think, every one
10 of his public service hours at my office. And so he's very
11 intelligent. You know, very competent to do anything you
12 tell him to do, very capable.

13 Q. And you had him evaluated by MUSC, correct? Or did you have
14 him evaluated ---

15 A. Yeah, we negotiated to get that done because I kind of
16 expected that it would come back a little different than it
17 did. But it is what it is.

18 Q. But that MUSC -- competency evaluation, was that to determine
19 his competency to stand trial, right?

20 A. Yes.

21 Q. But that wasn't regarding his mental health illnesses at all?

22 A. Right. They became very technical. I don't think they were
23 interested in really peeling the onion.

24 Q. So, can you tell us about the day before Mr. Winston was
25 tried? Were you there for a motion to change venue?

1 A. Yeah. Basically, on Mondays in court in Calhoun, we do
2 pleas. A lot of guilty pleas and things like that. Various
3 lawyers coming in and out and pretrial motions prior to any
4 trials that we have that week. And -- and -- because, if
5 something say, gets worked out, then they don't have to bring
6 the jury in on Tuesday, and saves the county money and all
7 that kind of thing. So, we did our pretrial motions on
8 Monday.

9 Q. And did you advise Mr. Winston of his Sixth Amendment right
10 to a jury trial?

11 A. Yes.

12 Q. And did you explain to him the benefits of doing so?

13 A. Yes. This might not be a good point to bring this in, but I
14 kept wondering. I'd forgotten this until recently that
15 Mr. Winston was very concerned about this one person, I think
16 he mentioned earlier. And I never -- I couldn't ever make
17 the connection as to why, the fact that this person working
18 for somebody, would somehow give him a jury that would not be
19 of his peers, and a fair trial as a result. And so it just
20 never made sense to me.

21 And I made the motion. We heard the motion. I got it
22 in my hand right here. And of course, it was denied because
23 I really couldn't articulate a reason to have a change of
24 venue. But it occurred to me that one of the reasons he did
25 decide, along with my advice, to waive the jury trial is

27

1 because he was afraid that he wouldn't get a fair trial and
2 that the judge would be more neutral than this sort of
3 conspiracy that he concocted with the lady that worked
4 somewhere there.

5 Q. And ultimately, whose decision was it to waive his right to a
6 jury trial?

7 A. It was his.

8 Q. And he made that decision?

9 A. Yes.

10 Q. Now, Mr. Banks, there were certain stipulations in this case.
11 Can you tell us about the stipulations you made with the
12 State, in this case?

13 A. I can't recall all of them. I mean, we stipulated to that
14 report. And, in my mind, I was doing that because I was
15 trying to be able to establish that if he did testify, he
16 could testify and we could go forward with a trial also. I
17 stipulated to -- let me think. You might have to refresh my
18 memory. I can't remember the other. There's at least one or
19 two others as I recall.

20 Q. Yeah, I'll refresh your memory. Beg the Court's indulgence.
21 So you stipulated to the MUSC evaluation, which you just
22 testified to. And there were certain factual stipulations.
23 Do you remember those?

24 A. Yeah, yeah. I do remember making one or two factual
25 stipulations, but I can't recall what they are at the moment.

1 Q. Well, let me ask you this.

2 A. I mean, I guess you could say we stipulated to a bench trial,
3 you know?

4 Q. So can you tell me about that? Did you and the State
5 stipulate to a bench trial? Or ---

6 A. We agreed to go forward on a bench trial. Again, as I said,
7 partly because he was worried about, now he's stuck with a
8 Calhoun county jury, and another reason is because we felt
9 that we would be able to -- I don't know how to put this.
10 What was the -- repeat the question.

11 Q. Let me rephrase.

12 A. I might have gotten sidetracked.

13 Q. That's okay. Can you tell me about the decision to proceed
14 with the jury trial and your strategic reasons for doing so?

15 A. You mean with the bench trial?

16 Q. I mean, yes, excuse me, the bench trial. Yes.

17 A. Yes. So, we as part of our discussions, you know -- of
18 course, he made offers, and Mr. Winston did not want to
19 accept any offers that were made by the solicitor. And so we
20 went into chambers and had a meeting with the judge prior to
21 the hearing and basically, kind of explained our predicament
22 and -- and tried to leverage the bench --

23 By the way, I practiced as a criminal attorney for 25
24 years, and I've never had a bench trial in general sessions
25 court. This was the one and only one I ever did. But we

29

1 explained our predicament, and we felt like we had gotten her
2 approval. That she would sentence Mr. Winston to something
3 similar to what these offers had arrived at if I tried to
4 leverage the bench trial into that. And I thought we had her
5 approval that she would consider the sentence if we went
6 forward this way.

7 Q. And do you think that you should have put that waiver on the
8 record?

9 A. The waiver of?

10 Q. The jury trial.

11 A. Yeah. I kind of assumed it would be the judge's
12 responsibility to establish that.

13 Q. But it wasn't necessary. Was it?

14 A. She didn't feel like it was. And to me, that sort of lends
15 credence to our little meeting in chambers.

16 Q. And the -- I want to turn your attention to the record on
17 appeal at page nine. That's where the stipulation of the
18 facts were. The solicitor stated, "We've agreed to stipulate
19 to the facts in the indictment at lines one and two." And
20 then the Court stated, "Just for the record, the facts of the
21 indictment are that the Defendant, Charles Lamont Winston Jr.
22 did, in Calhoun County, on or about September 30th, 2014, did
23 with the intent to kill -- attempt to kill Courtney Glover
24 with malice effort and thought by cutting the neck and face
25 of the victim." Were those the facts that were stipulated

1 to?

2 A. One moment. Yeah, I believe so.

3 Q. Okay. And so, based on -- let me back up. So Mr. Winston
4 gave a statement to law enforcement. Did he give a statement
5 to law enforcement?

6 A. Yes.

7 Q. And you mentioned the victim in this case, she was prepared
8 to testify at trial?

9 A. Oh, yes.

10 Q. And so, was there an issue regarding who did it in this case?

11 A. No.

12 Q. Was there an issue regarding what was done?

13 A. No.

14 Q. Was there any issue that Mr. Winston cut the victim?

15 A. No.

16 Q. That -- was it with the knife?

17 A. Yes.

18 Q. I want to turn your attention to some of the testimony at
19 trial. So Dr. Amanda Salas was your expert. Can you tell us
20 about her testimony and her findings?

21 A. Yeah. I felt she was very clear, and it was quite
22 interesting actually, I thought she did a great job. And
23 part of my case was, you know, I had the only expert up there
24 testifying, so I felt pretty strongly that with the only
25 expert up there testifying, that would win the day. And

1 anyway, it comes down to this. He -- she said that Mr.
2 Winston is a schizophrenic, and that he -- he hears voices,
3 but he's a very peculiar kind of schizophrenic.

4 He's the kind of schizophrenic that is like the person
5 that you find in Britney Spears' house who thinks they're
6 married to Britney Spears or someone like that, a famous
7 person. These people that go and think they're married to
8 some star have this ideation that's based in schizophrenia.
9 And -- but it's a very specialized type of schizophrenia.
10 And so they're not a crazy person walking around the streets.
11 They have a job. They -- they -- they're normal. Like
12 Mr. Winston, normally, could perform at the office. He could
13 hold a job. But they have this one ideation based in
14 schizophrenia that is -- just makes them do things that are
15 crazy.

16 Q. And Dr. Salas testified based on notebook diary entries that
17 Mr. Winston made, didn't she?

18 A. Yes.

19 Q. And as Dr. Salas used that notebook to testify at trial, the
20 solicitor objected, and you opted not to introduce the full
21 notebook into evidence. Why did you do that?

22 A. I believe the notebook would have been introduced by
23 Mr. Winston as his -- it was his journal, so I think she
24 couldn't introduce it into evidence. It would have to be
25 Mr. Winston.

1 Q. I'm sorry. I'm -- let me rephrase. Do you think it would
2 have been beneficial to Mr. Winston to have the notebook
3 entered into evidence?

4 A. No.

5 Q. Why not?

6 A. I think that it -- a, it would have introduced a number of
7 things that did not belong in that trial. It could've -- it
8 may have been areas that would help but, I think, the weight
9 of other things -- I think we knew he -- she explained it
10 well enough. Her testimony won, I thought, won the day, but
11 apparently I was wrong. I don't think that notebook would
12 have -- would have helped. It would have hurt more than
13 helped.

14 Q. And did you discuss with him his Fifth Amendment right to
15 testify or not?

16 A. Yes.

17 Q. And did you believe that -- that Mr. Winston testifying could
18 have undermined his mental health defense?

19 A. That's the -- that's the bottom line. That was my bottom
20 line advice. I thought we had the only expert testifying to
21 what she testified to. And I'll give you this, Mr. Winston
22 had -- in fact, on that same cover of my file folder, I first
23 introduced the idea of a bench trial. I believe it was first
24 introduced. I may have said something before but I've noted
25 on there about three -- three months prior to trial, and I

1 have a question mark by it.

2 So him in jail, bench trial, question mark. And that --
3 those are my notes of our meeting. So when I come back to
4 the office, I'll have to follow up on whether he decided or
5 not whether he wanted a bench trial and -- and anyway, I have
6 some other notes about what we needed. And the change of
7 venue didn't come up until March 31st which is really close
8 to trial. And I might have gotten sidetracked again. You
9 said discuss with him what?

10 Q. His Fifth Amendment right to testify.

11 A. Oh, no, that -- that was -- I already answered that one. It
12 was the one after that.

13 Q. We'll move on, Mr. Banks.

14 A. All right.

15 Q. I want to turn your attention to comments the solicitor made
16 in closing at page 109 of the record on appeal. The
17 solicitor stated, starting at line two, "She emphasized
18 repeatedly how this was all to get his story out, referring
19 to Dr. Salas, and that's how come she believes him. That he
20 is saying all of this because he wants to get his story --
21 story out, that he is not trying to evade responsibility.

22 And certain there -- certainly, there is no obligation
23 of the Defendant to take the stand at any time. And I would
24 never ask the Court to hold his failure -- failure to
25 testify, or decision not to testify against him. But in

1 determining her credibility, I think it is appropriate to
2 look at the fact that she is placing so much of her
3 willingness to believe him, because she believes that he is
4 doing all of this because he wants to get his story out. But
5 he declined to get his story out when he had the opportunity
6 to go to trial, which is her basis for saying that she
7 believes what he says. He had the opportunity, he wouldn't
8 do it." You didn't object there? Did you believe there's a
9 basis to object?

10 A. You know, I wrestle with that. I really do. You know, he's
11 -- a, he's not arguing to a jury, that -- that's a little bit
12 different. He's arguing to a judge, and you don't have to
13 play games with a judge. And so if this was a jury, I'd have
14 a much bigger problem with that.

15 Q. So do you -- did you believe that an objection would have
16 been successful because you were ---

17 A. Oh, I mean, she's heard it. You know, what's she going to
18 do? Charge herself not to pay attention to what he just
19 said?

20 Q. No further questions. Please answer any questions opposing
21 counsel may have.

22 C R O S S E X A M I N A T I O N

23 BY MR. AIKEN:

24 Q. Hello, Mr. Banks.

25 A. Good to see you, Mr. Aiken.

1 Q. All right, you -- you entered into various stipulations
2 before the trial in Mr. Winston's case?

3 A. Yes.

4 Q. And before that trial, you had an opinion from Dr. Salas that
5 Mr. Winston was not competent to stand trial; is that
6 correct?

7 A. Yes.

8 Q. So when you're entering the stipulations before the trial
9 case, you stipulated that he was not -- that he was competent
10 to stand trial?

11 A. Yes.

12 Q. Going directly against your own expert's opinion.

13 A. Apparently.

14 Q. And you paid the price for that too, because the judge
15 mentioned that in her ruling.

16 A. She did.

17 Q. That -- that -- that this expert witness is damaged.
18 Credibility has been damaged because of your stipulation.

19 A. Yeah, and I didn't have the forethought for that. I really
20 didn't think that through. But I still thought that the
21 damage would -- there would be no damage because she would
22 end up abiding by ---

23 Q. The sort of tacit understanding ---

24 A. Yeah, that's right.

25 Q. --- of how the case was going to get resolved?

- 1 A. That's right.
- 2 Q. Been there before.
- 3 A. Yeah.
- 4 Q. So as far as a jury trial is concerned, was there ever any
5 colloquy between the Court and Mr. -- Mr. Winston about --
6 about whether he wanted a jury trial or not?
- 7 A. I don't remember there being one.
- 8 Q. And the -- the -- the decision of whether to have a bench
9 trial or a jury trial belongs exclusively to the client.
- 10 A. Yes.
- 11 Q. Just -- just like whether to testify or not testify.
- 12 A. That's right.
- 13 Q. That involves -- that -- that -- that ---
- 14 A. Is his decision.
- 15 Q. --- belongs to him exclusively.
- 16 A. Right.
- 17 Q. Now, with -- under the Fifth Amendment, when you do a
18 colloquy between the Court and the Defendant to help them
19 determine whether they want to testify or not testify, that's
20 done in open court to the court reporter there. Everybody's
21 in court, the judge asks questions, the Defendant answers
22 them, and then ultimately he's told you need to make up your
23 mind?
- 24 A. That's right.
- 25 Q. That wasn't done.

- 1 A. You're talking about because of Monday?
- 2 Q. Yeah.
- 3 A. Yeah. And I assumed it would be done on Tuesday.
- 4 Q. But it was never done.
- 5 A. Not that I'm aware of.
- 6 Q. You never mentioned in court that that might be a good idea
7 to do that?
- 8 A. Well, I thought that would be the Court's decision.
- 9 Q. If I could have just one moment please, Your Honor.
10 Mr. Banks, in her ruling, Judge Murphy indicated that there
11 was evidence that during the course of these events,
12 Mr. Winston went and retrieved a knife and then used that
13 knife in (indiscernible) of the offense; is that correct?
- 14 A. I think she did, yeah.
- 15 Q. She said that in her final ruling?
- 16 A. I think so.
- 17 Q. And she was wrong about that because that wasn't in evidence,
18 was it?
- 19 A. I don't recall. I heard -- remember what y'all said here
20 today, but I don't recall. I didn't -- I don't recall
21 whether that was in evidence or not.
- 22 Q. Well, if it was not in evidence, that would have been grounds
23 for a new trial, wouldn't it?
- 24 A. Yes.
- 25 Q. If she misstated the evidence in her ruling?

1 A. It would have been grounds for a motion, yes.

2 Q. Motion for a new trial. And if it turned out to be correct
3 that the ruling had a matter not in evidence, it would have
4 to be overturned, right? We go back to square one in the
5 beginning?

6 A. I think so.

7 Q. Thank you very much, Mr. Banks.

8 A. All right, Mr. Aiken.

9 R E - D I R E C T E X A M I N A T I O N

10 BY MR. HALL:

11 Q. Mr. Banks, did you have any concerns about the voluntariness
12 of the statement Mr. Winston gave to law enforcement?

13 A. No.

14 Q. Okay. And again, there was -- there were no disputes about
15 the facts in this case that Mr. Winston cut the victim?

16 A. None at all.

17 Q. Okay. And so it doesn't matter if Mr. Winston went to the
18 back of the house to grab a knife or the kitchen. He used a
19 sharp object, a knife, to cut the victim.

20 A. That was sort of the way I felt about it. Yeah.

21 Q. Okay. And if you had moved for a new trial, do you think
22 that motion would have been successful?

23 A. Not in front of Ms. Murphy, no.

24 Q. Okay. And to clarify, whose decision was it to -- to proceed
25 to a bench trial?

1 A. It ultimately was his.

2 Q. Okay. And whose decision was it to testify or not?

3 A. Ultimately his.

4 Q. And did you explain that to him?

5 A. Yeah.

6 Q. No further questions, Your Honor.

7 THE COURT: Do you have anything further?

8 MR. AIKEN: No, sir. Thank you.

9 MR. HALL: The State calls Theodore Lupton.

10 COURT REPORTER: Raise your right hand. State your full
11 name for the record.

12 MR. LUPTON: Theodore Nichols Lupton.

13 COURT REPORTER: Do you solemnly swear or affirm to tell
14 the truth, the whole truth, and nothing but the truth so help
15 you God?

16 MR. LUPTON: I do.

17 D I R E C T E X A M I N A T I O N

18 BY MR. HALL:

19 Q. How are you doing Mr. Lupton?

20 A. Fine.

21 Q. How many -- how long have you been practicing law?

22 A. I was sworn in November of 1995. So, almost 30 years.

23 Q. And how -- and you've been a solicitor all those years?

24 A. No, I've done -- I've been in criminal law the whole time.

25 But I was -- I've been both defense attorney and prosecutor.

1 Q. How long have you been a prosecutor?

2 A. Most of that time. Probably 22, 23 years, maybe 24.

3 Q. And you were the solicitor on Mr. Winston's case?

4 A. I was.

5 Q. Okay. So you prosecuted this case?

6 A. I did.

7 Q. And did you provide discovery to Mr. Winston's attorney?

8 A. I did.

9 Q. Okay. And your prosecution of Mr. Winston, was that based on
10 the evidence that you received in this case -- or that you
11 had in this case on him?

12 A. It was based on the evidence, on the law, and my
13 interpretation of both.

14 Q. Okay. And can you tell us what evidence you had against
15 Mr. Winston?

16 A. The primary evidence was we had a victim who know -- had
17 known the Defendant for years, was very familiar with him.
18 There was no question of identity. She had -- she reported
19 what happened. Her statement was very compelling, and it was
20 also substantiated by physical injuries that matched her
21 story. There was physical evidence at the scene that
22 corroborated her story.

23 The Defendant, when he was ultimately caught after
24 fleeing the scene, was given Miranda warnings and gave a
25 confession that essentially matched her story. So all of

1 that together, it was one of the -- one of the more
2 conclusively proven cases I've had.

3 Q. Okay. And so was there any dispute in this case about who
4 committed the crime?

5 A. That was never an issue.

6 Q. Was there any dispute -- let me rephrase. Let me withdraw.
7 You stipulated with the defense regarding the facts in this
8 case? Didn't you?

9 A. We did. Ultimately, I'm not even sure why we did a
10 stipulation of that other than that -- and I can get into
11 some of Mr. Banks' comments about the conference in chambers,
12 and the understanding about treating the bench trial as
13 almost a plea in terms of sentencing. But ultimately we
14 ended up presenting evidence that proved every one of the
15 elements of the offense anyway.

16 Q. Okay.

17 A. But yes, we did stipulate.

18 Q. And are you aware of any false testimony that was presented
19 in this case?

20 A. No. The applicant has made statements about me presenting
21 false testimony. First of all, Captain Regalis, I have dealt
22 with him for years, and have found him to be a credible
23 person, and I believe his testimony that he was present.
24 There was a recorded statement that was generated from the
25 interview. I had no reason to believe that Captain Regalis

1 was not present, or that he testified to anything that was
2 not true. Now, in the extraordinarily unlikely event that he
3 did say something that was not accurate, I had no reason to
4 doubt his statements.

5 Q. And are you aware of any evidence -- any false evidence that
6 was presented in this case?

7 A. I would never -- I have prosecuted for near a quarter of a
8 century. I have never, would never, present false evidence.
9 That is a foundational ethical matter for any prosecutor.
10 Any lawyer, really, but especially a prosecutor.

11 Q. Beg the Court's indulgence. Mr. Lupton, I want to turn your
12 attention to page 109 of the record on appeal to comments
13 that you made in closing.

14 A. Before we get to that. To the extent that he talked about
15 the -- and I don't know, I don't mean to interrupt if you're
16 going to ask about the knife retrieval issue at some other
17 point, but if you were asking about that, I do have something
18 to say about that.

19 Q. What can you tell us about the knife retrieval issue?

20 A. Your Honor, that is an argument on inferences to be drawn
21 from the evidence. Which is an absolutely appropriate thing
22 for a solicitor to do in closing -- any attorney to do in
23 closing, is to make arguments as to inferences that can be
24 reasonably drawn. The testimony was that he did not have a
25 knife, that he said he needed to go back to the back of the

1 house, that when he came back from the back of the house, he
2 then escorted the victim outside and attacked her with a
3 knife.

4 I think it's a very reasonable inference to draw that
5 while he was going to the back of the house that he, at that
6 point, retrieved a knife. I made that argument. That was
7 not -- at any point, if you read the transcript, I never, at
8 any point, said anyone testified to that fact. I made the
9 argument of that which I believe the judge accepted.

10 Q. Okay. And on page one of -- 109, just referencing the
11 comments when you stated that he declined to get his story
12 out, were you referring to his right to testify?

13 A. No. And I specifically made the statement that I was not
14 referring to that. I would not, not even in a bench trial,
15 but having done quite a few trials in my time, I know you
16 can't comment on a decision not to testify. Wouldn't do
17 that. However, what I pointed out is that credibility is a
18 matter that can be impeached through anything.

19 And I think it is appropriate in this situation where
20 there was no dispute as to identity of the attacker or
21 intent, that it was intent to kill. The case came down to
22 the issue of his mental state. Whether or not he was
23 suffering from mental illness to the point that he either did
24 not know right from wrong, or that he was unable to conform
25 his actions to the requirement of the law.

1 So in that situation, the issue of whether the MUSC
2 report, which said that he was either faking or exaggerating
3 his symptoms, whether that was accurate, or the expert who
4 testified at trial saying that she believed that he was not
5 exaggerating and that he was either not competent or was not
6 able to comply with the requirements of the law; that
7 decision was critical to the outcome of the case.

8 And a very key point of her argument of why her opinion
9 should have been listened to over the MUSC opinion was her
10 saying that she believed him because he just wanted to get
11 his story out, that that was so important to him, was to get
12 his story out. And I pointed out to the Court that he said
13 -- she says that it was so important to him, and that's why
14 she believes him, but that he had the opportunity at four
15 separate points in the case to get his story out, and at each
16 point, did not do so.

17 Both -- well, starting with the pre-arrest, where he ran
18 rather than talking to the police, that he admits that he saw
19 the police that night, but that he ran rather than go and
20 tell his side of the story. Then he was caught and he was
21 interviewed. There was a waiver of rights. He was
22 interviewed. He told some stuff, but his full story that she
23 says he wanted to get out so badly, he didn't give the story
24 then. Same thing happened during his MUSC evaluation, where
25 she says, oh, well, you know, he thought that that was

1 somebody who was hired by the state and then acknowledged
2 that, well, yes, they admit that they're basically employees
3 of the court and therefore neutral, but he didn't tell them
4 when he had that opportunity either.

5 All three of those, I believe, would not be comments on
6 his failure to testify at trial. Each of those is either
7 pre-arrest and Miranda, which doesn't count, or is situations
8 where he has been advised of his rights and has waived them
9 and has told a partial story, but not the story that she says
10 she got from him. And then ultimately, the fourth one was
11 the testimony, or his decision not to testify in court, which
12 I explicitly told the judge, I am not commenting on it as a
13 decision not to testify. I'm commenting on it as part of her
14 credibility, and the credibility of her opinion as a result.

15 And I think it would have been a situation, in addition
16 to the impeachment of credibility, also a situation of them
17 opening the door by presenting through deliberate testimony
18 of their witness, their expert witness, him saying how much
19 he wanted to tell his story. They opened the door to that
20 issue of him having the opportunity to tell his story. And I
21 was responding to that comment.

22 And ultimately, I was also aware that you're dealing
23 with a circuit court judge of some experience who is not
24 going to be swayed by improper argument in any event. I
25 don't think it was improper, but I knew that she would

1 understand the limits of what she could consider that issue
2 for. That she couldn't consider that as a, you know, some
3 indication of guilt, because he didn't testify. That she
4 would understand it as what I said it was, which is simply
5 impeachment.

6 Q. Okay. And you even further clarified that point, at the
7 record on appeal page 16. Stating, "The Defendant has the
8 burden to prove that by a preponderance of the evidence,
9 referring to his mental competency."

10 A. The NG -- not the NGRI, but the guilty, but mentally ill.

11 Q. Yes, sir. And you stated, "There is simply nothing here to
12 show that he has done anything that might -- as to that
13 level. At most, there is evidence that he has mental
14 illness, and that is something he needs treatment for, but
15 that he had the capacity to understand right and wrong by the
16 words that -- that he, his own words, that have been relayed
17 through others by the diagnosis of the doctor and by the lay
18 witnesses who were able to testify." And so, your comments
19 earlier in the transcript, and those comments here that I
20 just read, were those both consistent with the point that you
21 were making that the Defendant spoke through others and
22 failed to establish his story?

23 A. I -- I see where -- where you're going with that ---

24 Q. Let me rephrase that.

25 A. I guess -- I guess, yes. But ultimately, like I said, what I

47

was trying to do was not comment on his right to remain silent, which is absolute. And Judge Murphy understood that. Everybody in the court understood that. It was a comment on the credibility of the expert witness, who says that she faced her belief that he was telling the truth because she felt he so badly wanted to get his story out that she thought that it was credible as a result. And I was pointing out a lack of -- I was impeaching that statement from her.

Q. No further questions, Mr. Lupton. Please answer anything opposing counsel has.

CROSS EXAMINATION

BY MR. AIKEN:

Q. Hello, Mr Lupton. How are you?

A. I'm doing well, thank you.

Q. Good. There were some stipulations at the beginning of this trial; is that correct?

A. Yes.

Q. And one of the stipulations was the stipulation from the defense that Mr. Winston was competent to stand trial?

A. That is correct.

Q. All right. Now, before that stipulation, they had acquired a report from Dr. Salas saying that Mr. Winston was not competent to stand trial; is that right?

A. I am aware of that at this point. Understand that, as you know from defense work, I don't necessarily get copies of

1 anything unless there's a written report generated and it's
2 turned over to me. I was aware that she was going to
3 testify. I was not aware of exactly what she was going to
4 testify to. I was aware that she was going to testify going
5 to his -- whether or not he was not guilty by reason of
6 insanity or guilty but mentally ill.

7 Q. But if, in fact, there -- there was a report by the doctor,
8 Dr. Salas, saying that he was competent -- he was not
9 competent to stand trial, and his own lawyer stipulated that
10 he was competent to stand trial. Doesn't that undermine the
11 credibility of the expert witness?

12 A. That -- yes, it could.

13 Q. And you argued that. You argued the stipulations and the
14 significance of stipulations didn't you? You know -- you
15 knew you'd been given a gift.

16 A. I wouldn't call it that. I think he was competent to stand
17 trial. I think that any competency hearing would have shown
18 that. I mean, I -- we've seen him in this courtroom. We've
19 -- I've watched him interact with others. I do not think
20 that there is a question as his -- as to his competency. The
21 defense at the time, which was from what I understand of the
22 statements from Mr. Banks to myself to the judge, including
23 the matters that were discussed in chambers, is the issue of
24 whether or not he was guilty but mentally ill or guilty.
25 Just straight guilty.

1 Q. Judge Murphy, in her statement of her verdict, she indicated
2 that Mr. Winston, during the course of these events, went --
3 went to the back of the house and retrieved the knife; is
4 that correct?

5 A. Yes.

6 Q. That -- that fact was not in evidence, was it?

7 A. It's an inference reasonably drawn from the facts that were
8 in evidence. And I -- I never -- I never said that anybody
9 testified to that. I made the argument of that, which I
10 believe she accepted, because I think it's a very reasonable
11 argument. That if he was not armed, he goes to the back, he
12 comes back armed, that he went back and he retrieved a knife
13 during that period. That is a reasonable inference drawn
14 from the evidence.

15 Q. But my point, Mr. Lupton, is that nobody said in testimony
16 that he had a knife.

17 A. Correct.

18 Q. And there was no physical evidence to show that he had a
19 knife.

20 A. I believe the use of the knife would constitute physical
21 evidence.

22 Q. I'm talking about retrieving it.

23 A. Again ---

24 Q. That he retrieved it from the back of the house.

25 A. Again ---

1 Q. There's no evidence to that. There is speculation.

2 A. Again, in any trial, bench trial, jury trial, the jury has to
3 make inferences from the evidence. And I think that is a
4 reasonable inference. It could be drawn from the evidence of
5 not having a knife going to the back, coming back, and now
6 he's got a knife.

7 Q. Well, the fact that it was in the statement of the judge's
8 verdict, that there was a knife, and there's no evidence
9 other than your inference that there was a knife. Isn't the
10 logical thing for the defense to do then is say, "Hold on,
11 wait a minute, you got a matter not in evidence you're
12 relying on to decide this case. New trial," isn't that
13 right? Isn't that what you do?

14 A. I would disagree. I think again, it is a reasonable
15 inference drawn from the evidence. I think a trier of fact,
16 be it, a jury or a judge, is allowed to make those reasonable
17 inferences, and that's what defense attorneys and prosecutors
18 do in any trial. Is they argue inferences that can be drawn
19 from the evidence that's there.

20 MR. AIKEN: May I have just one moment, please, Your
21 Honor? I'm sorry, Your Honor, I had to make sure I was clear
22 on something. That's all I have. Thank you, Mr. Lupton.

23 MR. HALL: Nothing further from the State, Your Honor.

24 THE COURT: You may step down.

25 MR. LUPTON: Thank you, Your Honor.

51

1 MR. HALL: Your Honor, that's all the witnesses the
2 State has. If Your Honor will allow, we ask for a moment for
3 closing arguments. I'll let Mr. Aiken go first, since they
4 had the burden of proof in this case.

5 MR. AIKEN: Your Honor, we've got to prove two things,
6 number one, deficient performance. And number two,
7 prejudice. In this case, there was deficient performance by
8 Mr. Winston's lawyer that he stipulated against one of the
9 opinions of one of his expert witnesses and the other opinion
10 of that expert witness he was relying on to establish his
11 case. So that's a problem -- serious problem, and it caused
12 substantial prejudice to -- to Mr. Winston's case.

13 Also, we have a situation in which there was repeated
14 instances of improper conduct by the prosecution in this
15 case, and we've gone through all those. And Mr. --
16 Mr. Winston has explained those to you. We really want to do
17 the best we can here today, to do right by Mr. Winston. And
18 the way to make that happen is to vacate this conviction and
19 this sentence. Thank you.

20 THE COURT: Thank you, Counselor.

21 MR. HALL: Your Honor, they have the burden to prove
22 deficiency and prejudice, and they can prove neither of those
23 things. Your Honor, there is no dispute regarding the
24 Defendant's competency, and that was why defense counsel
25 stipulated to the MUSC report being stipulated to as showing

1 that he was competent to stand trial. There was no issue
2 regarding who committed this crime. There was no issue about
3 the crime that was committed.

4 The only issue in this case was whether or not
5 Mr. Winston could be let off the hook based on his mental
6 illness. The reason why counsel stipulated to the report
7 coming in was because there was no issue that he was not
8 competent to stand. Counsel articulated his trial strategy
9 by proceeding on the defense of guilty but mentally ill.

10 The judge heard all the facts in the case and determined
11 that he was not entitled to that finding. Your Honor,
12 regarding the issue of the waiver of the jury trial,
13 essentially, this comes down to an issue of witness
14 credibility for this Court to determine. And, Your Honor,
15 it's -- it's your determination to make. Whether you believe
16 Mr. Winston, who has every reason to misrepresent any kind of
17 mental illness, in this case. Who went through a competency
18 evaluation and was determined to be competent.

19 At which point, he never mentioned anything about mental
20 health until he had been arrested and brought in and after
21 the fact, he came up with some reason to get out of being
22 held responsible for his actions. And even Judge Murphy --
23 Murphy mentioned that when the Court issued its verdict
24 against Mr. Winston.

25 Regarding comments made by the solicitor, Your Honor,

53

1 those comments were not proper -- I mean, were not improper.
2 The solicitor himself stated in closing that he wasn't
3 referring to his right to remain silent. He stated here on
4 the stand that he wasn't referring to his right to remain
5 silent. But, Your Honor, the standard for improper comments
6 is whether those comments so infected the trial process as to
7 result in a denial of due process.

8 Your Honor, regardless of those comments, this was a
9 bench trial. And with a judge who has experience. Who is
10 able to determine not only what comments are proper, but is
11 able to discern the facts in this case and apply the law to
12 the facts. And that judge made a decision that Mr. Winston
13 was guilty of the crimes that he committed. Regardless of
14 counsel's decisions here in this case, counsel articulated a
15 reasonable trial strategy, and there is no prejudice here.

16 The Defendant confessed to this crime, the victim
17 testified at trial that the Defendant -- that Mr. Winston,
18 committed this crime, and so there is no prejudice. The
19 evidence is overwhelming in this case, regardless of
20 Counsel's decisions here and we ask that you deny Mr.
21 Winston's PCR application.

22 THE COURT: Thank you, Mr. Hall.

23 MR. HALL: Thank you.

24 THE COURT: All right. This matter is under advisement.
25 Counsel, y'all will be advised -- did I cut -- I didn't cut

1 anybody off did I? Okay. Counsel will be advised by my law
2 clerk, Mr. Douglas, any requests by the Court. Give me some
3 time to look over this. Thank you for your able
4 presentation.

5 MR. HALL: Yes, sir. Thank you, Your Honor.

6
7
8
9
10
11
12
13
14
15
16
17 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)
18
19
20
21
22
23
24
25

CERTIFICATE OF TRANSCRIBER

State of South Carolina

County of Calhoun

I, AMANDA WATSON, a court-approved transcriber, 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 South Carolina Circuit Court 1, Aiken, South Carolina, on the 6th day of February, 2024.

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

AMANDA WATSON, TRANSCRIBER

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CALHOUN	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
	)	
Charles Winston, Jr., SCDC #368128,	)	Case No. 2019-CP-09-00058
	)	
Applicant,	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

This matter is before the Court pursuant to an application for post-conviction relief (“PCR”) filed by Charles Winston, Jr. (“Applicant”) on April 17, 2019. On February 6, 2024, an evidentiary hearing convened before the Honorable Paul M. Burch. Applicant was present and represented by Arthur K. Aiken, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf. Respondent called as witnesses Martin R. Banks, Esquire, (“Counsel”) and Assistant Solicitor Theodore Lupton. Following a thorough review of the trial transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (“SCDC”) serving a thirty-year sentence. In November 2014, the Calhoun County Grand Jury indicted Applicant for attempted murder (2014-GS-09-00260). The indictment arose from an incident in which Applicant stabbed victim with a knife in the face and neck. Between May 9-12,

2016, Applicant proceeded to a bench trial before the Honorable Maite Murphy. Assistant Solicitor Theodore Lupton prosecuted the case. Martin R. Banks, Esq., represented Applicant. The court found Applicant guilty and sentenced him to thirty (30) years.

On May 16, 2016, a notice of appeal was filed on Applicant's behalf. On appeal, Applicant was represented by Appellate Defender Kathrine Hudgins who filed a brief raising the following issue:

At this bench trial, did the trial judge err in refusing to find Appellant guilty but mentally ill when the State only evaluated Appellant for competency to stand trial and the only evidence in regard to criminal responsibility came from the forensic psychiatrist, called by the defense, who testified that Appellant suffered from a delusional disorder which impaired his ability to conform?

On May 9, 2016, following briefing and without oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence, determining the trial court did not abuse its discretion in refusing to find Applicant guilty but mentally ill.¹ On October 18, 2018, the South Carolina Supreme Court denied certiorari. The Remittitur was sent on November 15, 2018.

CURRENT APPLICATION

Applicant timely commenced this PCR action on April 17, 2019, alleging he is being held in custody unlawfully for the following reasons:

- 1) Ineffective Assistance of Counsel
 - a. Conflict of Interest
 - b. Being absent at the beginning of trial
 - c. "Ineffective with a presumption of prejudice"
 - d. Violation of 6th Amendment right to jury trial by collaborating with solicitor and judge to endorse a bench trial.
 - e. Failure to move into evidence Applicant's notebook that was read by defense's expert witness.

¹ *State v. Winston*, 2018-UP-198 (S.C. Ct. App. dated May 9, 2018).

- f. Failure to object to statement by solicitor that was not in evidence.
- 2) Prosecutorial Misconduct
 - a. Improper comments on accused not testifying.
 - b. Improper comments regarding evidence that was not admitted into the record.
 - c. Presenting false testimony.
 - d. Presenting false evidence.
 - e. Expressing opinions requiring expert knowledge about how the solicitor thought a person with mental illness should think.

Respondent filed its return. Applicant, through counsel, amended his PCR application to add the following allegations:

- 1) Ineffective Assistance of Counsel
 - a. Trial counsel was deficient for stipulating to Applicant's competency to stand trial.
 - b. Trial counsel was deficient for consenting to a bench trial where Applicant maintained his desire for a jury trial.
 - c. Failure to move for a new trial when the trial judge, in her explanation for the guilty verdict, referenced Applicant's retrieval of a knife.
 - d. Failure to object to trial judge's finding of a waiver of Applicant's right to a jury trial without a detailed colloquy with Applicant.

Before this Court are the Calhoun County Clerk of Court records of the subject conviction; Applicant's records from SCDC; the appellate records; trial transcript; and the records of the current PCR action.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant averred a conflict of interest because the solicitor and judge worked in the same courthouse. Applicant testified he was not present on the first day of trial, trial was organized before he arrived, and Applicant believed he was tried partially in abstentia. Applicant testified he did not want a bench trial but wanted a jury trial in a different

venue, and Applicant alleged Counsel pressured him to go with a bench trial. Regarding his right to testify, Applicant testified that he had an opportunity to testify but did not do so. Applicant averred Counsel should have objected to the trial judge and solicitor stating he retrieved a knife from the back of the house. Regarding his statement to law enforcement, Applicant testified he had never seen Captain Pat Regalis except at the sheriff's station, and Regalis presented perjured testimony on Applicant's statements. Applicant testified he did not discuss a *Jackson v. Denno* hearing with Counsel because Counsel told him not to worry about it. Applicant testified Counsel should have questioned witnesses regarding Applicant's habit of turning off lights after the solicitor stated Applicant turned off the lights to gain the edge of darkness. Applicant averred Counsel's performance was deficient for stipulating to Applicant's competency. On cross-examination, Applicant testified that he gave a recorded statement to law enforcement in which he admitted to stabbing the victim, cleaning the blood, and leaving the scene. Applicant alleged the statement was given involuntarily. Applicant testified the Medical University of South Carolina ("MUSC") found him competent to stand trial.

Martin R. Banks ("Counsel") testified that he met with Applicant at least five (5) to six (6) times before going to trial. Counsel testified that no conflicts of interest arose during his representation of Applicant. Regarding the state's evidence, Counsel testified he believed the state had a good case because of the testimony of the victim, who survived the attack, and forensic evidence. Counsel testified that Applicant's defense was guilty but mentally-ill. Counsel testified he had no concerns with Applicant's competency and believed Applicant to be highly intelligent and very competent. Counsel testified that on the Monday of the term, the trial judge heard pre-trial motions including a motion to change venue. Counsel testified he explained to

Applicant his Sixth Amendment right to a jury trial, and Applicant waived this right because he was concerned about the Calhoun County jury pool and an individual Applicant believed might interfere with the jury. Counsel testified it was Applicant's decision to waive his right to a jury trial and proceed to a bench trial, and believed the waiver should have been made in a colloquy. Counsel testified Applicant did not want to accept any plea offers.

Counsel testified Applicant cut victim with a knife, and there was no issue regarding who committed the crime since Applicant gave a statement to law enforcement, and the victim was going to testify at trial. Counsel testified he did not move for a *Jackson v. Denno* hearing because he did not have any concerns about the voluntariness of Applicant's statement to law enforcement. Counsel testified he presented testimony from an expert who testified that Applicant suffers from a delusional disorder. Counsel testified he did not introduce Applicant's journal in its entirety because he did not believe the journal entries would help Applicant's case. Counsel testified he discussed with Applicant his Fifth Amendment right to testify and advised Applicant that testifying could undermine his mental health defense. Regarding stipulating to the MUSC evaluation report, Counsel testified he thought the report would come back differently but stipulated to its admissibility so Applicant could testify if he chose to do so. Regarding the solicitor's comments in closing argument, Counsel testified he wrestled with the decision to object but did not because the arguments were made to a judge in a bench trial rather than a jury. Counsel testified he did not move for a new trial because he did not believe the motion would be successful.

Assistant Solicitor Theodore Lupton ("Lupton" or "the solicitor") testified that he prosecuted the case and provided discovery to the defense. Lupton testified the victim knew

Applicant and there was no issue regarding victim's identification of Applicant as her attacker. Lupton testified victim's statements were corroborated by her injuries and other physical evidence at the scene. Lupton testified Applicant confessed to law enforcement, and Lupton believe Applicant's case was one of the more conclusively proven cases the solicitor's office had. Lupton testified there was never an issue regarding who committed the crime, and stipulations were made with the defense regarding Applicant's competency to stand trial and facts. Lupton testified he thought Applicant was competent. Lupton testified he was unaware of any false testimony presented and believed Capt. Regalis' testimony that he was present and interviewed Applicant. Lupton testified he has no reason to question Regalis' credibility. Lupton further testified he has never presented false evidence. Regarding his statement that Applicant retrieved a knife, Lupton testified it was a reasonable inference to be drawn from the evidence. Regarding his statements on Applicant's words, Lupton testified he was not commenting on Applicant's right to testify but was commenting on the expert witness' credibility regarding Applicant's mental state. Lupton further testified that he told the trial judge that he was not commenting on Applicant's right to remain silent but was commenting on the context of the expert witness' credibility. Lupton further testified that in a bench trial, the trial judge would understand what evidence she could consider.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the trial transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the *Strickland* standard set forth below, this Court

finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, 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. *Strickland*, 466 U.S. at 687–88; *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. Applicant must prove prejudice by showing "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.

Conflict of Interest

This Court finds Applicant failed to prove Counsel was ineffective for having a conflict

of interest. The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction. *State v. Gregory*, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005). This Court finds **credible** Counsel's testimony that a conflict of interest did not arise during his representation of Applicant. Thus, Applicant has failed to meet his burden.

Applicant's Absence at Pre-Trial Motions

This Court finds Applicant failed to prove he was prejudiced by his absence at pre-trial motions. Under the Sixth Amendment, a defendant has the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure. *State v. Shuler*, 344 S.C. 604, 624, 545 S.E.2d 805, 815 (2001). This Court finds **credible** Counsel's testimony that Counsel was present for a hearing on pre-trial motions that was held on the Monday of the term. This Court also finds **credible** Counsel's testimony hearing was for Applicant's motion for a change venue and waiver of a jury trial, and not a trial in Applicant's absence. Further, the record reflects Counsel waived Applicant's presence at the pre-trial hearing. (R. 6:8-11). The facts from the change of venue motion and waiver of jury trial heard at the pre-trial hearing was put on the record in Applicant's presence on the Wednesday of the term. (R. 7-8). This Court finds Applicant failed to prove he was prejudiced by his absence from the pre-trial motions hearing on Monday. Thus, Applicant failed to meet his burden.

Applicant's Waiver of Right to Jury Trial

This Court finds Applicant failed to prove he did not voluntarily waive his right to a jury trial. Applicant alleges a violation of his Sixth Amendment right to a jury trial and alleges Counsel was ineffective for failing to object to the trial court's finding of Applicant's waiver without a detailed colloquy. The Sixth Amendment guarantees a criminal defendant the right to a

public trial with a jury. U.S. Const. amend VI. A defendant has the “ultimate authority” to determine whether to waive his right to a jury trial, and the defendant’s waiver of the right to a jury trial must be knowing, voluntary, and intelligent. *Moore v. State*, 399 S.C. 641, 732 S.E.2d 871 (2012). A defendant’s knowing and voluntary waiver of a statutory or constitutional right must be established by a complete record and *may* be accomplished by a colloquy between the court and defendant, between the court and defendant’s counsel, or both. *Id.* at 641, 732 S.E.2d at 873 (emphasis added). To determine whether the waiver was made knowingly and voluntarily, the court examines the particular facts and circumstances in the case including the background, experience, and conduct of the accused. *Id.*, at 641, 732 S.E.2d at 874.

In *Moore*, the Supreme Court determined a defendant did not knowingly and voluntarily waive his right to a jury trial where the record was devoid of any evidence regarding counsel’s discussions with the defendant. *Id.* at 641, 732 S.E.2d at 874-75. The defendant’s counsel could not testify at the PCR hearing that he definitely explained to the defendant the difference between a jury trial and a bench trial. *Id.* The defendant testified he did not know ahead of time that he was going to have a bench trial, and the defendant was illiterate. *Id.* The Court reasoned the complete record did not support a finding that the defendant’s waiver was voluntary. *Id.*

This Court finds Applicant’s case is distinguishable from *Moore* as there is evidence in the record to support a finding that Applicant knowingly and voluntarily waived his right to a jury trial. This Court finds **credible** Counsel’s testimony that he advised Applicant of his right to a jury trial, and Applicant made the decision to voluntarily waive his right to a jury trial. This Court also finds **credible** Counsel’s testimony that Applicant waived his right to a jury trial due to concerns about the jury pool in Calhoun County. This Court finds **credible** Counsel’s

testimony that he discussed with Applicant a bench trial early in representation. Further, the record reflects Counsel informed the trial court of the conversations Counsel had with Applicant regarding Applicant's waiver of his right to a jury trial. (R. 6:16-7:9; 7:22-8:1). Although Counsel testified the waiver should have been placed on the record in a colloquy, a colloquy is not required where there is evidence in the record to support a finding that a defendant knowingly and voluntarily waived his right to a jury trial. Thus, Applicant failed to meet his burden.

Failure to Move into Evidence Applicant's Notebook

This Court finds Applicant failed to prove Counsel was ineffective for failing to move into evidence Applicant's personal notebook. *Strickland* requires that trial counsel be given leeway to make reasonable strategic decisions. *Strickland*, 466 U.S. at 688-89 (stating "[n]o particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant"). Judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. This Court finds **credible** Counsel's testimony that he did not introduce the entirety of Applicant's notebook into evidence because such evidence could have hurt Applicant's case. This Court also finds **credible** Counsel's testimony that he believed the defense's expert, Dr. Amanda Salas, did a great job testifying to Applicant's mental health. This Court finds Counsel articulated a reasonable strategic decision for not moving the entire notebook into evidence. Further, this Court finds Applicant failed to prove he was prejudiced by Counsel's decision not to introduce the notebook as Applicant failed to show a reasonable probability that the result of trial would have been different with the notebook's admission. Thus,

Applicant failed to meet his burden.

Failure to Object to Solicitor's Comments Regarding a Knife

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to the solicitor's comments at trial. Applicant avers Counsel should have objected to the solicitor stating Applicant retrieved a knife. Failing to object does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to object). This Court finds **credible** Counsel's testimony that although he could not recall whether the fact that Applicant used a knife was in evidence, Applicant used a knife. The Court also finds **credible** Counsel's testimony that there was no dispute regarding Applicant cutting the victim. Further, Applicant failed to prove he was prejudiced by Counsel's failure to object because Applicant failed to show a reasonable probability the result of trial would have been different if Counsel had objected since the weapon used in the crime, or where it was retrieved from, was immaterial. Thus, Applicant failed to meet his burden.

Counsel's Stipulation to Applicant's Competency to Stand Trial

This Court finds Applicant failed to prove Counsel was ineffective for stipulating to Applicant's competency to stand trial. This Court finds **credible** Counsel's testimony that he believed Applicant was very competent and highly intelligent. Additionally, Applicant testified that he is a forty-five (45) year old man, who completed one (1) year of college. Further, this Court finds **credible** Counsel's testimony that the MUSC evaluation report was stipulated to establish Applicant's competency so that Applicant could testify at trial if he chose to do so. This Court finds Counsel articulated a reasonable strategic decision for stipulating to Applicant's

competency to stand trial. Thus, Applicant failed to meet his burden.

PROSECUTORIAL MISCONDUCT

This Court finds Applicant failed to prove the solicitor denied Applicant the due process right to a fair trial by engaging in misconduct. The Due Process Clauses of the Fifth and Fourteenth Amendments provide that no person may be deprived of liberty “without due process of law.” U.S. Const. amends V, XIV. When examining allegations of prosecutorial misconduct, the inquiry is whether the solicitor’s conduct so infected the trial with unfairness as to make the resulting conviction a denial of due process. *Fortune v. State*, 428 S.C. 545, 549-50, 837 S.E.2d 37, 39-40 (2019); *Riddle v. Ozmint*, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006). It is Applicant’s burden to prove actual prosecutorial misconduct. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (“the burden of proof is on the applicant to prove the allegations in his application”).

Solicitor’s Comments Regarding Applicant Not Testifying

This Court finds Applicant failed to prove he was prejudiced by the solicitor’s comments regarding Applicant failing to tell his side of the story. Improper comments do not automatically require reversal if they are not prejudicial to the defendant. *Fortune*, 428 S.C. at 550, 837 S.E.2d at 40. When reviewing a claim of prosecutorial misconduct, courts will view the alleged impropriety of the solicitor’s argument in the context of the entire record, and applicant has the burden of proving he did not receive a fair trial because of the alleged improper comment. *Id.* In closing, the solicitor stated the following:

Dr. Salas talks about that [sic] the defendant’s goal in all of this trial was to get his story out. She emphasized that repeatedly how this was all to get his story out and that’s how come she believes him. That him saying all of this because he wants to get his story out, that he is not trying to evade responsibility. And certainly there is no obligation of the defendant to take the stand at any time, and I would never

ask the court to hold his failure to testify or decision not to testify against him, but in undermining her credibility, I think it is appropriate to look at the fact that she is basing so much of her willingness to believe him because she believes that he is doing all of this because he wants to get his story out. But he declined to get his story out when he had the opportunity to go to trial, which is her basis for saying she believes what he says.

(R. 108:25-109:15).

This Court finds **credible** the solicitor's testimony that his comments were not made to comment on Applicant not testifying but to attack the credibility of Dr. Salas, the defense's expert witness. This Court also finds the records supports the solicitor's testimony as the solicitor explicitly stated at trial that Applicant was under no obligation to testify, and the solicitor was not asking the court to hold his decision not to testify against him. (R. 109:5-9). The record support's the solicitor's testimony that he made the comments to attack the credibility of Dr. Salas, as the solicitor stated, "but in determining her credibility..." (R. 109:7-9). Applicant failed to prove the solicitor's comments so infected the trial as to result in a denial of due process. Thus, Applicant failed to meet his burden.

Solicitor's Comments Regarding Applicant Retrieving a Knife

This Court finds Applicant failed to prove he was prejudiced by the solicitor stating Applicant retrieved a knife from the house to cut victim. A solicitor's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. *Vasquez v. State*, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010). In closing, the solicitor stated the following:

He admitted the planning[,] going back to the back. He wouldn't admit that that's when he got the knife, but he didn't deny it either. He admitted that he turned off the light when he went out to attack her, throwing the area into darkness.

(R. 110:5-9).

Applicant alleges the solicitor commented on evidence not admitted into the record. This Court finds **credible** the solicitor's testimony that his comments regarding Applicant retrieving a knife from the house was a reasonable inference that may be drawn from the evidence in the record. This Court finds **credible** Counsel's testimony that although he does not recall whether a knife was in the record, Applicant used a knife to cut victim. This Court also finds **credible** Counsel's testimony that there was no dispute to the fact that Applicant cut the victim. Applicant failed to prove the solicitor's comments so infected the trial with unfairness as to result in a denial of due process. Thus, Applicant failed to meet his burden.

Presenting False Testimony and Evidence

This Court finds Applicant failed to prove the solicitor engaged in misconduct by presenting false testimony and evidence. A conviction obtained through the use of false evidence, known to be such by the State, must fall under the Fourteenth Amendment. *Simmons v. State*, 416 S.C. 584, 591, 788 S.E.2d 220, 224 (2016) (quoting *Napue v. Illinois*, 360 U.S. 264 (1959)). The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected. *Id.*

This Court finds **credible** the solicitor's testimony that he provided all discovery to the defense and did not present false evidence. This Court finds **credible** the solicitor's testimony that he was unaware of any false testimony presented. This Court finds **credible** the solicitor's testimony that he believed Capt. Regalis' testimony that he was present and interviewed Applicant, and he had no reason to question Capt. Regalis' credibility. This Court also finds **credible** the solicitor's testimony that the victim's statements were corroborated by her injuries and other physical evidence obtained at the crime scene. Applicant failed to prove the solicitor

presented false testimony and evidence. Thus, Applicant failed to meet his burden.

Expressing Opinions Requiring Expert Knowledge

This Court finds Applicant failed to prove he was prejudiced by the solicitor attacking the credibility of testimony regarding Applicant's guilty but mentally ill defense. A solicitor has the right to state his version of the testimony and to comment on the weight to be given such testimony. *Vasquez*, 388 S.C. at 458, 698 S.E.2d at 566. In closing, the solicitor gave several statements attacking the credibility of testimony presented regarding Applicant's guilty but mentally ill defense. (R. 110-117). This Court finds **credible** the solicitor's testimony that the sole issue of Applicant's case was his mental health state. This Court also finds **credible** the solicitor's testimony that his comments were meant to attack the credibility of Dr. Salas. This Court finds Applicant failed to prove the solicitor's comments so infected the trial with unfairness to result in a denial of due process. Thus, Applicant failed to meet his burden.

[Space left blank intentionally. Conclusion follows on next page.]

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

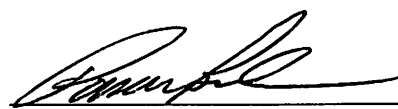
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of judgment. *See* Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCR. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 27th day of March, 2024.

, South Carolina


 PAUL M. BURCH
 Presiding Judge
 First Judicial Circuit

WITNESSES

M Trentham

Calhoun County Sheriff

ARREST WARRANT NUMBER

2014A0910100228

Arrested: October 8, 2014

TRUE BILL
ACTION OF GRAND JURY

Elizabeth Cannell
OCT 24 2014

Foreperson of Grand Jury
Date: October 24, 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS09-0260

The State of South Carolina
County of CALHOUN

COURT OF GENERAL SESSIONS

November 3, 2014 TERM

THE STATE

vs.

Charles Lamont Winston Jr

Indictment for

Attempted Murder

SC Code: 16-3-29

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.

2014 OCT 24 A 9 22

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

INDICTMENT
2014GS09-0260

As a Court of General Sessions, convened on October 24, 2014 the Grand Jurors of CALHOUN County present upon their oath:

ATTEMPTED MURDER

In that the defendant, Charles Lamont Winston Jr, did in Calhoun County on or about September 30, 2014 did with the intent to kill, attempt to kill one Courtney Glover with malice aforethought by cutting the throat and face area of the victim. This offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

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



Ted Lupton, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF

Calhoun

STATE

VS.

Charles Winston

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was TO:

In violation of §

16-3-29

of the S.C. Code of Laws, bearing CDR Code #

3410

☒ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As Indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

9517

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$	\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 80.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/Deputy Clerk
Court Reporter:

Claudia H. Pruitt
Heather Landig

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014-GS-09-260

AW#:

2014 A09 1010 0228

Date of Offense:

9-30-14

S.C. Code §:

16-3-29

CDR Code #:

RECEIVED

SENTENCE SHEET

MAY 16 2016

☒ CONVICTED OF or☒ PLEADS

SC Court of Appeals

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$	\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 80.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/Deputy Clerk
Court Reporter:

Claudia H. Pruitt
Heather Landig

days/hours Public Service Employment

ATTEST TRUE COPY

Obtain GED ☐

Attend Voc. Rehab. Of Job Corp.

KENNETH HASTY

May serve W/E beginning:

CLERK OF COURT

Substance Abuse Counseling

CALHOUN COUNTY

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$

Beginning

\$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date