

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Honorable G. Thomas Cooper, Circuit Court Judge

SHAWNDELL Q. MCCLENTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001385

APPENDIX

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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. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). Because Applicant's claims of ineffective assistance of counsel are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

B. State's Position as to the Lack of Subject Matter Jurisdiction

A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)).

In this case, Applicant was indicted by the Charleston County grand jury and the indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State,

345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986).

Applicant here cannot show any irregularity, because the indictments in question are sufficient on their face. Therefore, Respondent would move to dismiss this allegation pursuant to S.C.

Code Ann. § 17-27-70 (2003), because there is no issue of material fact relating to this allegation and it should be dismissed as a matter of law.

V. Motion for More Definite Statement

Respondent also hereby moves for a more definite statement. The Applicant has failed to allege why the Trial Court lacked Subject Matter Jurisdiction. The Applicant has failed to allege how the State coerced the Applicant through his Attorney. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985). It is incumbent upon Applicant to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI. State's Assertion and Reservation of Rights

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only

individual authorized to file amendments to this application. See Rule 11, SCRCF. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCF.

VII. Request for Evidentiary Hearing

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

VIII. Conclusion

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of the alleged ineffective assistance of counsel and the alleged lack of subject matter jurisdiction by the trial court.

Respectfully submitted,

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Sept 15, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

SHAWNDELL MCCLENTON, #255563)
Applicant,)

vs)

STATE OF SOUTH CAROLINA,)
Respondent,)
_____)

IN THE COURT OF COMMON PLEAS
2014-CP-10-3253

AFFIDAVIT OF SERVICE BY MAIL

FILED
2017 SEP 20 AM 10:51
JULIE J. ARS THOMP
CLERK OF COURT

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:

James Kristian Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this the 15th day of September, 2017.


Jennifer Jennison, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Shawndell Q. McClenton,	)	CASE NO. 2014-CP-10-03253
	)	
APPLICANT,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	ORIGINAL
	)	
State of South Carolina,	)	
	)	
RESPONDENT.	)	
	)	

December 6, 2018

Charleston, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Jr.

A P P E A R A N C E S:

Thurmond Brooker, Esquire
For the Applicant

Benjamin H. Limbaugh, Esquire
For the Respondent

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I N D E X

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(RW) - DENOTES RESPONDENT WITNESS

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EXHIBITS - None ProfferedCERTIFICATION OF TRANSCRIPT -- 101

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

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2014-CP-10-03253

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1 MR. LIMBAUGH: May it please the court, Your Honor.

2 THE COURT: Yes.

3 MR. LIMBAUGH: The next matter is Shawndell
4 McClenton versus the State of South Carolina. Docket
5 Number 2014-CP-10-3253. During its May 2012 term a
6 Charleston County Grand Jury indicted applicant for one
7 count of burglary in the first degree and one count of
8 breaking and entering into a motor vehicle. During its
9 June 2012 term the Charleston County Grand Jury indicted
10 the applicant on another count of burglary first degree.
11 All indictments stem from two home invasions and car
12 invasion.

13 Applicant proceeded to a jury trial before the
14 Honorable Clifton Newman on April 21st, 2014. Applicant
15 was represented by Benjamin Lewis, Esquire, and Christine
16 Parnall, Esquire.

17 The jury returned a verdict of guilty on all three
18 counts on April 22nd. On April 23rd Judge Newman
19 sentenced the applicant to a term of 24 years
20 imprisonment on each burglary charge and a term of five
21 years imprisonment on the breaking and entering of a
22 motor vehicle charge, all of which are to be served
23 concurrently.

24 The applicant appealed his conviction. The Court of
25 Appeals affirmed the applicant's conviction, State v.

1 Shawndell McClenton.

2 The applicant filed his application for
3 post-conviction relief on May 21st, 2014. The applicant
4 filed a second application for post-conviction relief on
5 November 4th, 2016.

6 The Honorable Deidre L. Jefferson, chief
7 administrative judge for the Ninth Circuit by order dated
8 May 11th, 2017, and filed May 12th, 2017, consolidated
9 the two cases together.

10 In these applications the applicant alleged the
11 following: Lack of subject matter jurisdiction,
12 ineffective assistance of counsel, failed in that there
13 was a coercion from the State through the applicant's
14 defense attorney.

15 THE COURT: Say that again.

16 MR. LIMBAUGH: Failed in that there was coercion
17 from the State through applicant's defense attorney.

18 THE COURT: Okay.

19 MR. LIMBAUGH: Failed to have his client properly
20 evaluated by medical personnel based on the applicant's
21 behavior, and failed to object to the State's misleading
22 closing arguments.

23 The State made its return on September 15th, 2017,
24 requesting an evidentiary hearing be held.

25 Applicant is represented today by Mr. Thurmond

1 Brooker. And I will hand it over to him now.

2 THE COURT: Mr. Brooker.

3 MR. BROOKER: Thank you, Your Honor. May I proceed?

4 THE COURT: You may proceed.

5 MR. BROOKER: And, Your Honor, if I can just make a
6 clarification at least with respect to at least one
7 issue. That might be necessary -- or at least to make a
8 motion to at least supplement the post-conviction relief
9 application. I ---

10 THE COURT: Has any amendment been made to his
11 original?

12 MR. BROOKER: No amendment has been made to his
13 original.

14 THE COURT: Okay.

15 MR. BROOKER: But I think that the amendment in
16 which I am proposing is related to I think but one issue
17 that he had raised in his original.

18 I think in his original he specifically alleges
19 ineffective assistance of counsel and on the grounds of
20 counsel failed to move the court for a competence of
21 evaluation. And I think it would be also appropriate on
22 at least -- or if you want me to, Your Honor, I can at
23 least make a motion to supplement it after the evidence
24 is -- after the evidence has been given.

25 I think based upon the evidence that we will receive

1 and of course based upon the statute, I think it is also
2 to include at least an argument that -- that -- that the
3 court's failure to grant or failure to order a competency
4 evaluation is also a grounds underneath the post-
5 conviction relief application.

6 Because I think underneath the statute the statute
7 says that when the court becomes aware of any information
8 that would lead the court to believe - and I think that
9 is the language - it says in which the court has reason
10 to believe that competency is an issue then of course the
11 court should -- should order an evaluation. And I think
12 the statute might actually even put some of the
13 responsibility and onus on the judge to do that.

14 And I want to be cautious, because obviously he is
15 alleging ineffective assistance of counsel because
16 counsel did not move to have the evaluation performed.
17 But I think the statute says -- you know, says that if
18 the court receives any information that gives it reason
19 to believe that competency is an issue then of course is
20 the court shall order a competency evaluation. So it
21 makes it mandatory upon the court.

22 You know, at least in my opinion that might be the
23 requirement of the court. Whether or not counsel
24 requested or -- requested a competency evaluation or not.

25 THE COURT: As far as the record, was there any

Shawndell McClenton
2014-CP-10-03253

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1 discussion with Judge Newman pretrial on this issue; do
2 you know? I haven't read the record.

3 MR. BROOKER: Yes, Your Honor, there was. There
4 was. There was a robust discussion with Judge Newman.
5 And then of course is, I think Judge Newman made a
6 determination that he was competent. And then of course
7 is, is that proceed with the trial.

8 THE COURT: Okay. Did he inquire of your client --
9 I mean did he voice ---

10 MR. BROOKER: He did.

11 THE COURT: Ask questions of your client and voir
12 dire your client?

13 MR. BROOKER: Yes, Your Honor, he did.

14 THE COURT: Okay. All right. Well, are you ready
15 to proceed?

16 MR. BROOKER: Yes, Your Honor.

17 THE COURT: All right. I will keep that in mind.

18 MR. BROOKER: Thank you, Your Honor.

19 Your Honor, we would call Shawndell McClenton.

20 (WHEREUPON, the witness was duly sworn.)

21 THE CLERK: For the record please state your name
22 and spell your last name.

23 THE JUROR: My name is Shawndell McClenton. Spelled
24 M-C-C-L-E-N-T-O-N.

25 **DIRECT EXAMINATION BY MR. BROOKER OF SHAWNDELL MCCLENTON:**

1 Q. Mr. McClenton, are you under the influence of any drugs
2 or alcohol or either any sort of medication that would
3 preclude you from understanding the questions that I am about
4 to ask you?

5 A. No, sir.

6 Q. Do you know of any reason why you could not go forward
7 with this hearing today?

8 A. No, sir.

9 Q. Okay. Mr. McClenton, I think you were in the courtroom
10 of course is, is that when your charges were -- was read; is
11 that correct?

12 A. Yes, sir.

13 Q. And of course it is my understanding is, is that you were
14 at some point in time that Mr. Benjamin Lewis was assigned to
15 you possibly back in 2013 to represent you in connection with
16 these charges?

17 A. Yes, sir.

18 Q. And of course is, is that when Mr. Lewis was assigned to
19 represent you approximately how many times -- I am assume--
20 were you incarcerated at that time?

21 A. Yes, sir. I believe from September the 4th of 2013 I was
22 in the Department of Corrections up until December the 3rd or
23 something like that when I was transported back to the County
24 jail.

25 Q. Okay. And when Mr. Lewis became your counsel did you

1 have an opportunity to meet with him?

2 A. Yes, sir.

3 Q. Roughly about how many times did you meet with Mr. Lewis?

4 A. Probably about three times.

5 Q. And of course -- and I am assuming three times prior to
6 the trial of your case in April of 2014?

7 A. Yes, sir. Face to face when he came to the Detention
8 Center.

9 Q. Okay. And when you met I am assuming that you met to
10 discuss your -- discuss your charges, discuss the evidence,
11 the Rule 5 and Brady disclosure that had been presented to Mr.
12 Lewis by the prosecutor's office?

13 A. In a sense. But it was -- it was to the point where I
14 had to file -- I had to actually put a -- file a grievance in
15 order to actually obtain the actual -- the actual motion from
16 Mr. Lewis. Because it was on several events. And I was
17 asking him for the motion, and he was -- I was like not
18 receiving the motion in full.

19 Q. Okay. Let me ask you a question. On those three
20 occasions that you met with Mr. Lewis did y'all discuss your -
21 - discuss your mental health history or background?

22 A. No. Never.

23 Q. Okay. Did he ever ask you whether or not you were
24 suffering from any mental health issues or ---

25 A. I -- I made him aware that I was -- that they were

1 administering me this medication and that this medication was
2 causing me to have abnor- -- very abnormal side effects.

3 And he acknowledged that. He realized I was not the same
4 and things were very complicated. And at the hearing that I
5 had in front of Mr. Young at the March 18th transcript Mr.
6 Lewis and Ms. -- and Timmy Finch brought it to the judge's
7 attention that -- that he felt like there was competency
8 concerns with the -- with the -- with him -- he said there was
9 competency concerns and that it was affecting his ability to
10 represent me.

11 Q. Okay. And of course when you said you made it known,
12 aware, to him, you said that was in March of two thousand
13 and ---

14 A. I let him know exactly -- as soon as they put me on the
15 medications.

16 Q. Okay. And just I am going to ask you to wait until I
17 finish my question before you answer so the court reporter can
18 make a good record.

19 A. Yes, sir.

20 Q. I will ask that question again is that when did he first
21 learn that you were on the medications, to your knowledge?

22 A. It was actually as soon as they put me on them and he
23 came -- he came to see me I let him know. I said that -- it
24 was at -- in March. I believe it was in March when they put
25 me -- either in February or March of 2014 when they started

1 administering me these medicines.

2 And I told them, I said -- I said they put me on
3 psychiatric medication and it is causing me to have all type
4 of side effects and when I take the medicine I am completely
5 out of it; I feel like I am out of it. And they give it to me
6 again in the afternoon, so it is like during a period of time
7 of the day I am out of it until the medicine is like out of my
8 system.

9 Q. Okay. When you advised him that you were taking the
10 medication do you know what medication it was that you were
11 taking?

12 A. Yes, sir. I explained to him that they had put me on a
13 Zyprexa and a Cogentin. And once they put me on the medicines
14 I got in contact with my family and I asked them to do a
15 research on this medicine to find out what is going on with
16 this medicine. And they let me know that it was like an
17 antipsychotic medication that I was being put on and that it
18 was -- I was being given it because they had a recall on the
19 Risperdal which was causing manico -- growth gynecomastia,
20 which is breast -- breast tissue. So they had a recall on
21 that medication and started putting me on this medication
22 which was supposed to be under a trial basis.

23 Q. Okay. Now did you and Mr. -- and Mr. Lewis discuss the
24 reasons why you were being put on that medication?

25 A. Yes, sir.

1 Q. Okay. And what did you tell him as the reason why you
2 were being placed on that particular ---

3 A. I explained to him that I was -- I was -- that I had put
4 in a request because I was dealing with -- I requested
5 medicals. I was actually having real bad dreams and like such
6 and such voices. You know, and when I put the request in I
7 explained to him that they sent me to Mental Health and that
8 Mental Health had -- the lady came to see me. And she had
9 done said that I was bipolar, schizophrenic and stuff like
10 that and they had to -- put me on this medication.

11 So I had let him know when I got put on the medications
12 that it was causing me to have different -- different feelings
13 and side effects and stuff like that. I said it was causing
14 me to be really -- really out of it at times.

15 Q. Okay. Now when you said that you were diagnosed you were
16 diagnosed or at least there was a diagnosis of schizophrenia
17 or bipolar disorder or at least -- at least that you thought
18 that that was your diagnosis. Were you actually seeing mental
19 health professionals at the Charleston County Department of --
20 the Charleston County Detention Center at that time?

21 A. Yes. Their -- the doctor, the -- who prescribed me who
22 actually put me on the medications, I only seen her on two
23 occasions. When they did the diagnosis and prescribed me the
24 medication and then when they came back and made sure that I
25 was taking the medicines.

1 Because, you know, with the Mental Health medicines a lot
2 of times you don't take them and stuff like that, so they will
3 come back and make sure that you are taking the medications
4 and the effects that the medicines are having.

5 Q. Okay. I have in my hand at least some medical records.
6 And of course --

7 MR. BROOKER: Your Honor, if I could approach him and ask
8 him to take a look at them and see if he can identify them.

9 Q. And just look at it very briefly. I am going to ask you
10 some questions.

11 Okay. What I just handed to you I think is some medical
12 records. And the course is, if - you correct me if I'm wrong.
13 It says Shawndell McClenton. Is that you?

14 A. Yes, sir.

15 Q. And of course it's -- the date of contact is March 24,
16 2014. And it has date of birth of [REDACTED]. Is that your
17 date of birth?

18 A. Yes, sir.

19 Q. Okay. Thirty-five years of age. A black male. Single.
20 Education 10th grade. Are these medical records pertaining to
21 you?

22 A. Yes, sir.

23 Q. Okay.

24 MR. BROOKER: Your Honor, we would move to enter these
25 medical records into the record.

1 MR. LIMBAUGH: The State would object, Your Honor.

2 THE COURT: I'm sorry?

3 MR. LIMBAUGH: The State would object, Your Honor.

4 THE COURT: On what grounds?

5 MR. LIMBAUGH: The State received these medical records,
6 through no fault of Mr. Brooker, but we received these last
7 night. Also I do not believe Mr. Brooker has laid a proper
8 foundation for these to be entered.

9 Mr. McClenton was not the creator of these records and he
10 has no idea whether or not they are created in the normal
11 course of business, Your Honor. Yes, they are about him. But
12 he was not the creator of these documents.

13 THE COURT: Let me see it.

14 (WHEREUPON, documents provided to the court.)

15 THE COURT: Well, it may be a little irregular, but I am
16 going to admit them.

17 MR. BROOKER: Thank you, Your Honor.

18 (WHEREUPON, Petitioner Exhibit Number 1, medical records, was
19 marked for identification.)

20 THE COURT: I wouldn't think you could ask him very much
21 about it because he didn't -- he didn't make those records.
22 He didn't

23 MR. BROOKER: Certainly, Your Honor.

24 THE COURT: I mean they speak for themselves at this
25 point.

1 MR. BROOKER: Sure.

2 Q. I am just going to ask you some very quick questions.

3 And I want you to tell me whether or not -- whether or not it
4 is true at least on Page 1 of what has been marked as I think
5 Petitioner's 1.

6 And you correct me if I am wrong. But this medical note
7 indicates that the -- that the gentleman identified as
8 Shawndell McClenton it says: Have you ever been beaten? And
9 of course there is a "Y" for "yes". And of course it asks you
10 have you ever been raped? And there is a "Y" for "yes". Is
11 that factual information correct with respect to you?

12 A. Yes, sir.

13 Q. Okay. Did you actually tell the counsel that you had
14 been beaten and raped?

15 A. Yes, sir. Sexual abuse when I was in foster care.

16 Q. And it says here is, is that -- that the -- that the
17 abuse occurred at around what age?

18 A. I believe I was -- when I went into foster care I was
19 about eleven, ten or eleven.

20 Q. Okay. And of course is, is that did you ever receive any
21 treatment or counsel for the abuse that you received?

22 A. No, sir. I mean I received a little bit of counseling.
23 But it wasn't until -- until after I was removed from the home
24 that the abuse was -- that the abuse was happening in.

25 Q. Did you ever discuss this with Mr. Lewis, your attorney,

1 at any point in time?

2 A. No, sir. It was -- this particular issue was never
3 brought up. Because the questions about any mental
4 medications and stuff like that was never discussed with us.
5 Between me and him.

6 Q. And of course just quickly on the next page on Page
7 Number 2 of Petitioner's Number 1; and of course is, is that
8 on -- this -- the top of this note identifies Charleston
9 County Detention Center initial assessment, a mental status
10 examination.

11 And specifically it is -- I don't want to read the entire
12 note. But I want to ask you about some specific things that's
13 contained within this note and ask you whether or not you kind
14 of provided this information to the mental health
15 professional that completed this form that is dated March 24,
16 2014.

17 And I am looking at -- let me see. I think this is the
18 third sentence which is on actually the third line. At the
19 end of the third line it starts, inmate care of experiencing
20 depression, anxiety, and paranoia.

21 And of course it goes on. If you go down to Line -- one,
22 two three. Three more lines. It says he was experiencing
23 sleep disturbances, inmates that made -- it looks like
24 inmates -- inmate's mood appeared anxious. He was alert,
25 cooperative, and oriented times three. Inmate states he was

1 experiencing AH. And I think AH my understanding is, is
2 auditory hallucination, the voices telling him to do stupid
3 things, causing increased anxiety. Denies VH, which I believe
4 is visual hallucinations and delusions.

5 Did you tell the in-take personnel that complete this
6 form that you were experiencing auditory hallucinations?

7 A. Yes, sir. That is when they did the assessment on me at
8 the county jail.

9 Q. Okay. And of course there is, is that on the next
10 note -- and this will be my last question. On the third
11 note -- well, on the third page of this exhibit of a
12 petitioner's exhibit where it says list chronic and acute
13 problems, diagnosis -- diagnosed -- diagnosis treatments
14 needed. It indicated bipolar, HTN, schizophrenia. Is that
15 your understanding of what the healthcare provider told you
16 that you were suffering from? And I think this note is dated
17 5/22/2014?

18 A. Yes, sir. Yes, sir, I don't know what the HTN stands for
19 or what it means. But she did explain that it -- bi- -- that
20 I'm -- the bipolar schizophrenia disorder or whatever.

21 Q. Okay. And on the next page, Page 4 -- and this is going
22 to be my last question I am going to ask you about these
23 medical records. And let me -- sixth line -- or sixth line
24 down from the top. It starts at can't sleep due to
25 nightmares, crazy, all about when he was molested while in

1 foster care.

2 Did you provide this information to the healthcare
3 professional that generated this psychiatric note?

4 A. Yes, sir.

5 Q. And of course at the top, at the very top, it says
6 Shawndell McClenton date of birth [REDACTED]. Is that you?

7 A. Yes, sir.

8 Q. Okay. Okay. And of course is, is that the next line
9 down it says patient's reports -- reports -- let me see.

10 MR. BROOKER: Excuse me, Your Honor.

11 Q. Patient reports long - it looks like history - of
12 paranoia thoughts as well as AH - which I believe is auditory
13 hallucination. They tell him to do bad things, hurt himself,
14 others, and he feels he uses drugs to block them out.

15 Did you provide the healthcare provider, who generated
16 this psychiatric note, with that information?

17 A. Yes, sir.

18 Q. Okay. Were you in fact experiencing auditory
19 hallucinations that were telling you to do bad things and
20 sometimes hurt yourself and hurt other people?

21 A. Yes, sir.

22 Q. Now did you ever have this conversation -- did you ever
23 have this conversation -- this note -- let me correct --
24 correct myself. This note, Page 4 of petitioner's exhibits,
25 is dated 3/27/2014; is that correct?

1 A. Yes, sir.

2 Q. Did you ever have a conversation, this conversation with
3 Mr. Lewis or either any -- one of your other attorneys that
4 you were experiencing auditory hallucinations and was having
5 these other symptoms that expressed in this psychiatric note?

6 A. No, sir.

7 Q. Were you ever asked about your mental health history?

8 A. No, sir. The first time that they brought it into
9 question was I believe when we were in front of Judge Young
10 and the solicitor, Timmy Finch and Mr. Lewis, brought it to
11 his attention that they were candidly concerned with some
12 competency issues. And that's when he asked Mr. Lewis about
13 it. Mr. Lewis said that it was some out of line mental health
14 issues that was affecting his representation of me.

15 Q. And that was -- that was in March, roughly a month before
16 the trial date in April of 2014?

17 A. Yes, sir.

18 Q. Okay. Now did you continue to take the medicines and --
19 take the medicines that was prescribed to you for these
20 conditions up until the date of trial?

21 A. Yes, sir, it is mandatory -- they -- they -- when you
22 take psychiatric medications at the jail they crush them up
23 and make you take them right in front of them. That's
24 because -- that way they couldn't be put up or whatever for
25 later and people don't take them. So they will crush them up

1 and make you take them with water right in front of them.

2 Q. And how often would you have taken these medications for
3 these -- for these conditions?

4 A. They -- they -- in the morning when they came in and in
5 the afternoon.

6 Q. When you took these medications did you -- did these
7 medications produce any side effects?

8 A. Yes. They were having me to the point where I couldn't
9 really function at a normal level. It was like my body was
10 not -- was having withdrawals or was rejecting like the
11 medicine.

12 Q. Now I know that you said that your attorney learned about
13 you being on this medication roughly about a month prior to
14 the trial in April 2014; is that correct?

15 A. Yes, sir.

16 Q. Okay. At any time prior to the start of the trial did
17 y'all discuss the side effects that you were experiencing, you
18 know, as a result of the medication that you were on?

19 A. Yes, sir. Actually it was before -- on the first day
20 before trial and on the second day and -- I was only
21 experiencing -- it -- after I was administered the medication
22 and under the influence of it. It wasn't until after it wore
23 off that I was able to function under normal circumstances.

24 Q. Okay. Now on the first day of trial -- and of course
25 there is I am looking at the transcript for those -- for you

1 have it. And specifically on Page Number 6, on the first day
2 of trial the judge asked you was you okay and you expressed to
3 the judge that you were having tremors. And you specifically
4 said that as a result of the side effects of the medication -
5 and of course I am specifically looking at Line Number 10 on
6 Page Number 6 starting there - you said: That the medications
7 -- the medications got me on is having side effects. They are
8 supposed to switch it above the waiting list for me coming to
9 see you. And for the -- coming to see you for the situation.
10 It takes a long time. So odd for -- or been trying to get off
11 to switch the medication. I am having tremors and stuff like
12 that.

13 What do you mean when you are saying you are having
14 tremors and specifically stuff like that; what specifically
15 were the symptoms that you were experiencing on that first day
16 of trial which would have been on April 21st of 2014? And I
17 am specifically asking you not about general symptoms but what
18 symptoms were you experiencing that date on the first day of
19 trial?

20 A. I was having tremors causing shakes real -- shakes real
21 bad in my body. Because, like I said, it felt like the
22 medicine was caused me to have withdrawals.

23 I expressed it to the medical staff at the Charleston
24 County Detention on several occasions. I also expressed it to
25 my lawyer that I was having side effects from this medicine

1 that I was going -- that I was under. And I asked that if
2 they could do somebody and change the medications.

3 Because they -- just like I said, she said that it was
4 under a trial basis that I was taking it because of the
5 gynecomasteo situation with the Risperdal.

6 And I was having -- nodding out. I couldn't stay focused
7 or function because the medicines would have me to the point
8 where I was like nodding out for like -- you know, like a
9 minute or so I would be out and, you know, until like the
10 medicine -- I will get back up or come back. You know, so.

11 It was just a lot of different things I was experiencing
12 inside of my body at one time. You know, it was like
13 overwhelming.

14 Q. Okay. Now I think you indicated that -- and I want to
15 kind of understand what you mean when you said kind of nodding
16 out. What do you mean when you say you are kind of nodding
17 out?

18 A. Like, okay, if you take a medication and they tell you
19 don't operate a vehicle while you are under the influence of
20 this medication. It is like they tell you don't operate a
21 vehicle because it will cause you to -- you possibly sleep.
22 You know what I'm saying; it will put you to sleep or you doze
23 off and stuff like that.

24 So the medicine had me to the point where the medicine
25 was strong dosage medicine. And I've never been on

1 psychiatric medicines ever before. So it would knock me out,
2 doze me out and stuff like that.

3 Q. Okay. Now when you were having these side effects, with
4 this drowsiness and what you referred to as nodding off, how
5 long were the side effects of this -- let me ask you a
6 question -- let me scratch that question and ask you another
7 question.

8 I know that you have previously stated that you were
9 taking this medicine twice a day. Were you taking the
10 medicine in the morning before trial?

11 A. Yes, sir. They administered me the medicine every
12 morning. Whether I had trial or not, they come in 6:00, seven
13 o'clock. But when you have court they come in and administer
14 it to you early because you leave earlier than when the nurse
15 comes in.

16 Q. Now the symptoms that you just expressed are kind of
17 grogginess, nodding -- the nodding off, the, you know,
18 attention deficit -- attention deficit ---

19 A. Well -- oh, I'm sorry.

20 Q. Attention deficit that you expressed. When you were on
21 these medications how long would you experience these symptoms
22 before the medication would wear off and you began to feel a
23 little bit better?

24 A. It usually took the medication anywhere from three to
25 four hours. Two to three to four hours before it was

1 completely out of my system. And, you know, I'm -- and I
2 might be losing track of time when I say that at the time
3 because I am -- you know, I am zoning in and out. You see
4 what I'm saying? From the -- from the side effects that the
5 medicine is causing.

6 So I am zoning in and out. And I take the medicine about
7 maybe 6:00, 7:00 -- 7:00 in the morning. Probably around
8 11:00 or noon I am back to normal. And then they come in
9 again at 2:00 or three o'clock and administer me the medicines
10 again. So it is back to where I started from all over again
11 until the medicine is out of my system.

12 Q. On that first morning of the trial it's my understanding
13 that your lawyer Mr. Lewis advised the courts that you were
14 suffering these side effects and that of course is that you
15 were different then what he normally was accustomed to seeing
16 you and that he thought it was important enough to bring it to
17 the attention of the courts?

18 A. Yes, sir, the medicine was causing me to have behavioral
19 issues too, to where me and him -- me and him was like not --
20 well, kind of -- you know, it was really having me abnormal to
21 the point to where I wasn't the normal person that I would
22 usually be in certain situations.

23 Q. And that was similar to the question that I was going to
24 follow-up with is, is that how was your interaction with your
25 attorney on that morning or how did the condition that you

1 were in at the time, you know, affect the interaction and the
2 relationship that you were having with your attorney?

3 A. I mean I explained to him what I was experiencing. And
4 he did bring it before the judge that morning. You know, that
5 he let the judge know that I was going through the side
6 effects and what -- and what was happening.

7 At that time the judge, you know, asked him, well, what
8 are you -- well, I read the trans- -- it said what are you
9 asking me or what are you trying to bring to the court or
10 before this court; you know, are you asking me for something
11 because usually when someone brings this to the court's
12 attention they are asking for something.

13 I mean I was seemingly able to communicate here and
14 there. You know, he would tell me -- you know, had to let me
15 know to sit up or -- you know, I would nod off. Wake me up.
16 You know, and they were stopping the court periodically
17 throughout the whole event, you know, to see what was going
18 on.

19 Q. Now that morning did you go through jury selection in
20 that condition?

21 A. Yes, sir.

22 Q. Okay. And then of course at the point in which -- and I
23 think at the point in which we are referring to and in which
24 it was brought before the attention of the court, from the
25 transcript it gives me the appearance that it was brought to

1 the court's attention after jury -- after the jury had been
2 selected that you were having these issues.

3 You tell me, was the issue that we are talking about that
4 was brought to the judge's attention was that brought to the
5 judge's attention before or after jury selection?

6 A. It was brought to the court's -- the judge's attention
7 before jury selection and before the Jackson Denno hearing
8 that we had. And it was brought to his attention even more
9 when he stopped and said we need to get his doctors down here
10 whoever prescribed his medicine and find out what we need to
11 do. After jury selection.

12 Q. That would have been on the second day, right?

13 A. It was brought -- it was on the first date and the second
14 date.

15 Q. Yes, sir. Yes, sir. And I am on the first -- I am still
16 on the first day.

17 A. Oh.

18 Q. Okay. I want to talk about the first day. And I will
19 get to the second day. And so you are saying is, that you
20 were still feeling these symptoms when you went to jury
21 selection?

22 A. Yes.

23 Q. Okay. And then of course is, is that I think is, is that
24 y'all have a Jackson v. Denno hearing that morning?

25 A. Yes.

1 Q. Okay. And of course you participate in that Jackson v.
2 Denno hearing?

3 A. Absolutely, yes, sir.

4 Q. That you actually got on the stand and of course is,
5 testified during the Jackson v. Denno hearing; is that
6 correct?

7 A. Yes, sir.

8 Q. Okay. And when you got on the stand and you testified
9 you were you able to -- were you able to understand the
10 questions that were being asked of you and of course is give
11 appropriate responses to the questions that's being asked of
12 you by your attorney and also by the solicitor's office or the
13 prosecutor?

14 A. I answered the questions. And I mean there was
15 confusion. When Mr. Spencer asked me certain questions there
16 was confusion. And but I mean I answered them to the best of
17 my ability under that situation of the medications. So I mean
18 I just answered how best I knew how.

19 Q. Okay. Now on Page 10 of this transcript and of course is
20 that is starting on Line 8, you said something to the judge.
21 And I want to ask you at least to give clarification. The
22 judge says to ask you this question. And the question
23 actually starts on Line 6, on Page 10. The court asked you:
24 Are you able to understand your conversations with him?

25 And I am assuming he is talking about your attorney. And

1 of course your response was some of them -- some them is like
2 we get in a dispute that I really don't understand; it is
3 frustrating; I can't really understand what he's telling me.

4 What do you mean by that, you can't understand what he is
5 telling you?

6 A. My comprehension level wasn't at the level that it
7 usually be. I am a very intelligent person. Very bright. I
8 have been to high school. I took some college. Under normal
9 circumstances I am a very well-spoken person and have a lot of
10 good understanding. I am very understanding in certain -- in
11 situations.

12 But when I was under the influence of the medications it
13 was hard for me to fully function and deal -- and be on a
14 complete level of operation because the medicine was causing
15 me to have side effects that my body wasn't normally used to
16 having.

17 Q. Okay. And -- and for that first day about how long was --
18 -- and I think the trial proceeded on that first day; is that
19 correct?

20 A. Through the -- yes, sir.

21 Q. Okay. And y'all went the entire day?

22 A. Yes, sir.

23 Q. And of course is, and I think you previously testified,
24 that normally it would take around three to four hours for the
25 effects of the medication to completely wear off?

1 A. Yes, sir.

2 Q. Okay. So what you are testifying to is that at least
3 during some of the proceedings - not all of them. During some
4 of the proceedings that you underwent some of the trial
5 proceedings at a time in which you were experiencing the
6 symptoms that you previously expressed to the court?

7 A. Most of the time when I was under the influences of the
8 medicines I was experiencing the similar situations you are
9 explaining now, that it confused my -- it had my -- my
10 thinking process wasn't normal. I wasn't on a complete level
11 of comprehensive when it came to the medicines and how they
12 were affecting me.

13 I mean it is hard to comprehend -- to pay attention and
14 comprehend when your body is having withdrawals and side
15 effects from a medication that your body is not used to
16 having.

17 Q. But after about three or four hours during the day of the
18 trial did things get better for you?

19 A. Once the medicine wears off and I didn't have to take it
20 again, once it wear off -- wore off I was fine. I didn't have
21 to take it again until I got back to the county jail.

22 Q. And of course is, that I think you are referring to the
23 fact I think you said that you had to take this medicine twice
24 a day so you had to take it again in the afternoon when you
25 got back to the jail?

1 A. Yes, sir.

2 Q. And of course is, that when you got back to the jail in
3 that afternoon and you took that medications did you -- did
4 you then experience these symptoms that you previously
5 expressed all over again?

6 A. It started all over again. But only difference was I was
7 able to go to sleep.

8 Q. Okay. So at least the afternoon when you got back to the
9 jail you would not have been able to do any preparation or
10 either evaluation of what happened that first day to prepare
11 yourself in jail for the second round?

12 A. No, there wasn't any time for preparation. When I get
13 back to the jail they put me in booking and I go back -- I
14 take the medication about 7:00 or 7:30 and eat and then the
15 medication puts me completely out.

16 Q. Okay. Now that second day -- the second day of the trial
17 -- the second day of the trial --

18 MR. BROOKER: If you can indulge me for just a second,
19 Your Honor. And I think is for the second day of the trial
20 started on Page 152 of the transcript if y'all want to follow
21 me. Let me make sure that I am correct.

22 Q. On the second day of the trial your attorney informed the
23 judge again that morning that you were having the same issues
24 that you were having the first day and that he was concerned
25 about your ability to be able to proceed; is that correct?

1 A. Yes, sir.

2 Q. Okay. And I think specifically if -- specifically he
3 said to the judge -- I think specifically he was so concerned
4 about your condition that he requested that the judge contact
5 your doctor so that your doctor could be questioned with
6 respect to your medication, your condition; is that correct?

7 A. Yes, sir. The judge requested with Mr. Lewis that they
8 find the medical doctor who prescribed me these medicines so
9 they can make a determination about what needed to be done.

10 Q. Okay. And I think what the concern was is that on Page
11 153, starting on Line 4, what you told the judge when you
12 would inquire about, you told the judge that: I am jittery.
13 Messing with my head. I asked my lawyer to call and talk to
14 the mental health lady who prescribed me the medicine. It is
15 like I'm going in and out. If I sit down too long my mind
16 turns off.

17 When you said I am jittery and messing with my head do
18 you know what you were trying to express at that particular
19 period of time? What do you mean when you say it is messing
20 with my head?

21 A. It was that the medication had my thoughts -- my -- you
22 know, it had my thoughts to where I wasn't fully -- dealing
23 with reality. Because my thoughts was like if I was -- like I
24 was zoned out. Because the medicine had me to the point where
25 I am like not -- I guess you could say it is like not fully

1 lucid, I guess. You know, when you take medication, you get
2 drowsy, drowsy and you are not able to pay full attention to
3 what is going on around you.

4 Q. Okay. And now and you also described your symptoms as
5 going in and out. What do you mean when you said you were
6 going in and out?

7 A. Nodding in and out. Zoning in and out. Like, you know,
8 medication like drifting in and out, drifting off back and
9 forth like if you are trying to fight the medicines from going
10 to sleep.

11 Q. When you say nodding in and out, were there points and
12 times in which you -- in which -- in which you were falling
13 asleep and was not conscious of what was going on for a period
14 of time before you then wake yourself back up?

15 A. Yes. I would nod out and then I would, you know, get up
16 and not -- sometimes I would have the shakes and tremors real
17 bad.

18 Q. And of course is, is that as a result of you telling the
19 judge that, you know, that this medicine was kind of messing
20 with your head and that you were going in and out, did they in
21 fact get the doctor on the phone or get someone from the ---

22 A. Yes, sir. They -- they couldn't get them -- a hold of
23 the doctor. I guess the doctor wasn't available for whatever
24 reason. But Amy Craddock, which she was the head of the
25 Mental Health Department, she called back down to the

1 courthouse and had -- was on the phone with Mr. Lewis, Judge
2 Newman, and Mr. Finch. Solicitor Mr. Finch.

3 Q. Okay. And I think if my -- if my understanding is
4 correctly is, is that the -- did the -- did Amy Craddock with
5 the -- I guess with the medical department for the Charleston
6 County Detention Center did she suggest over the phone while
7 talking with the judge and your lawyers that they probably --
8 that it would probably be appropriate to have a, you know, a
9 medical assessment of you?

10 A. One second (reviewing documents).

11 Q. And specifically I am on Page 211 of the transcript, Line
12 -- starting at Line 14.

13 A. Absolutely I -- after I reviewed the transcript several
14 times afterwards, over, over and over, she -- she said her
15 professional opinion was he needs a -- she said, I am not a
16 licensed doctor; he needs a medical assessment because she's
17 not sure what type of medical history I have. And she said,
18 the medical team needs to assess him when he gets back to the
19 jail. And she said, I don't -- she said, he needs to see a
20 psychiatrist but I don't have access to one until Friday and
21 don't know how that is going to impact the trial for y'all
22 since it is Tuesday.

23 Q. Now that trial ended that day; is that correct? It was a
24 two-day trial so it ended the second day on the 22nd?

25 A. Yes.

1 Q. And I am talking about the actual trial itself. And of
2 course is, that you were sentenced I think on the 23rd. So
3 even with these symptoms, these symptoms that you were
4 experiencing, there was not a psychological assessment or a
5 psychological evaluation; you proceed on with the trial, is
6 that correct?

7 A. Well, the judge -- Judge Newman he specifically stated --
8 he said -- and I'm not sure if it is on Page 215 or 216. But
9 he talked to Mr. Finch and Mr. Lewis; and he asked them. He
10 said, what would you all like to do. Mr. Lewis and Mr. Finch,
11 my lawyer, said that he didn't have time to wait for a
12 psychiatrist, he had other case coming up.

13 At that time that is when Judge Newman said, well, under
14 the advice of his counsel and the solicitor we are going to go
15 ahead and let the jury in and continue with the trial.

16 Q. At that time when the jury is brought back how would you
17 express your condition -- or specifically let me ask it this
18 way: How would you describe your level of comprehension at
19 that particular period of time?

20 A. It was -- it was like I was still experiencing the side
21 effects. It wasn't as bad because the timeframe had wear off
22 where they were having court but they were still trying to
23 wait and give the medicines time to wear of, you know, so I
24 could actually go forward and try to be as fully comprehensive
25 and lucid as I could to continue with the trial.

1 Q. On the first day of trial after it was brought to Judge
2 Newman's attention Judge Newman did ask you a bunch of
3 questions in reference to -- in reference to whether or not
4 you understood what you were being charged with; is that
5 correct?

6 A. Yes, sir.

7 Q. And you did tell him that you understood what you were
8 being charged with; is that correct?

9 A. Yes, sir.

10 Q. He did ask you did you know what they were alleging that
11 you did; and of course is, that you told them that, yes, you
12 understood what the allegations were against you; is that
13 correct?

14 A. Yes, sir.

15 Q. Okay. And of course is, that he asked you questions in
16 reference to your prior criminal records and you were able to
17 discuss with him your prior criminal record, your prior -- and
18 prior charges that you've had and provide him information in
19 reference to the questions that he was asked; is that correct?

20 A. Yes, sir.

21 Q. All right. Now at the conclusion of the trial on day --
22 on the second date, and that is of course would have been the
23 22nd, I think the jury came back and found you guilty; is that
24 correct?

25 A. Yes, sir

1 Q. And it's my understanding is, is that at the end of that
2 day that Judge Newman made a determination that sentencing
3 would be done on the second day -- which would be done on the
4 23rd; is that correct, the afternoon of the 23rd?

5 A. Yes, sir.

6 Q. And of course is, is that he -- my understanding is that
7 he specifically -- you tell me if I am wrong. That he
8 specifically did it on the afternoon of the 23rd instead of on
9 the morning of the 23rd is that ---

10 A. So the medicines wouldn't be in my system anymore, so I
11 would be able to comprehend and function normally.

12 Q. Okay. And so he did the sentence in the afternoon to
13 make sure -- because he was concerned that you would not be
14 lucid in the morning after taking that medication and that by
15 two o'clock it would have been worn off; is that correct?

16 A. Yes, sir.

17 MR. BROOKER: If you can indulge me for just a second,
18 Your Honor.

19 Q. And with respect to -- and I will ask you this question.
20 With respect to your mental -- your mental health and your
21 competency at the time of trial is there any other information
22 that you have -- that you have that is relevant to a
23 competency that we -- that I did not ask you a question about?

24 A. I am misunderstanding the question. Could you please
25 answer that -- ask that ---

1 Q. Do you have any -- did you have any information that's
2 relevant to your competency at the time of trial that I didn't
3 ask you a question about that you would like to share?

4 A. I mean, no. To be honest, there wasn't a lot that I
5 could have remembered about the trial. The reason -- the
6 reason I know a good bit of the stuff now is because I have
7 reviewed over the transcripts. I have studied the
8 transcripts, reviewed over them back and forth. I mean I was
9 dealing with effects of the medication.

10 It wasn't until I got to Kirkland R&E that Dr. Cross
11 decided to remove me off of the medication because they said
12 they made -- he said they made a misdiagnosis and I should
13 have never been put on the medicines.

14 That's when he removed me off of the medication,
15 immediately effectively and made me -- he said I am removing
16 you off of these medicines because you should have never been
17 put on them.

18 Q. Okay.

19 MR. BROOKER: I have no further questions, Your Honor.

20 THE COURT: All right. Cross-examination, please.

21 MR. LIMBAUGH: Thank you, Your Honor.

22 **CROSS-EXAMINATION BY MR. LIMBAUGH OF SHAWNDELL MCCLINTON:**

23 Q. How many times did you say you met with Mr. Lewis before
24 your trial?

25 A. In person it was three times in person at the actual

1 jail.

2 Q. Okay. Did he communicate with you in any other ways
3 before your trial?

4 A. Only when I came down to the courthouse is on certain
5 instances. That is when we communicated actually downstairs.
6 He spoke to me about what the proceedings would be for that
7 day for whatever hearing I was there -- here for.

8 Q. Okay. Did you ever have any phone calls with him from
9 the jail?

10 A. No, sir.

11 Q. Okay. Did he discuss possible defenses with you, any
12 charges ---

13 A. The charges that were pending against me, yes, sir.

14 Q. Any defenses that you had, trial strategy?

15 A. We discussed defenses or trial strategy; but it was to
16 the point where we didn't come to a complete understanding.

17 Q. Okay. I will go ahead and get into the main issue with
18 you which is the mental competency. So in this report that
19 Mr. Brooker was reading from and asking you questions about,
20 were you self-reporting your symptoms?

21 A. I'm sorry?

22 Q. So when he was reading on Page 2 that you reported
23 experiencing depression, anxiety and paranoia, were those the
24 words that you used?

25 A. No, sir.

1 Q. Those were the evaluator's words?

2 A. Yes, sir.

3 Q. Okay.

4 A. I explained to her what I was experiencing and what I was
5 feeling, and that's -- and I guess that is how she put it or
6 whatever.

7 Q. Okay. She also noted that you were cooperative and
8 oriented. Would you agree with that?

9 A. When I spoke to her?

10 Q. Uh-huh.

11 A. Yes, sir.

12 Q. And Mr. Brooker asked you; but do you remember testifying
13 pretrial?

14 A. During the -- during the -- I remember they called me on
15 the stand during the beginning of the trial.

16 (WHEREUPON, break to turn off phone.)

17 MR. LIMBAUGH: I'm sorry, Your Honor.

18 Q. Do you recall going back and forth with the solicitor on
19 cross-examination, answering his questions?

20 A. I don't -- I mean, yeah, I remember answering his
21 questions. But I don't recall what was

22 Q. Do you recall not only discussing trial strategy with
23 your attorneys at trial but actually writing down questions to
24 give them for cross-examination?

25 A. No, sir.

1 MR. LIMBAUGH: Your Honor, I am looking at Page 156 of
2 the transcript where Mr. Lewis is speaking to the court. It
3 also says he was engaged.

4 Q. Do you also remember being integral and engaged in jury
5 selection?

6 A. Yeah, he was asking -- he was talking to me and
7 explaining to me what was going on as far as the jury
8 selection and stuff like that.

9 Q. And do you remember, as the court describes it, making a
10 critical choice of whether Andy Savage should be a juror not?

11 A. I made ---

12 MR. LIMBAUGH: Page 157, Your Honor.

13 A. I made no critical choices.

14 Q. So you don't remember your lawyers telling you it is your
15 case, it is your call to be struck or not to strike the juror?

16 A. No, that is what he was explaining to my lawyer I believe
17 when I -- when I reviewed the transcript that Mr. Newman was
18 explaining to my lawyer actually that -- he said I noticed
19 that you struck Andy Savage from your jury. He said but it is
20 your case, your call, you made the decision. That is what he
21 was telling my lawyer.

22 Q. And do you remember Judge Newman asking you whether or
23 not you were totally with us?

24 A. Yes, sir. He asked me that after the medication had some
25 time to wear off. But I wasn't totally -- I remember vaguely

1 when I read the transcript that I told him that I am about --
2 I feel about 50 percent better. I was not completely there.

3 I mean it is clear in the transcript that the medicines
4 was causing me to have side effects. And my lawyer
5 specifically -- and when he was talking with Amy Craddock he
6 explained to her that I gave my client -- I didn't give him
7 the best advice in the world; I told him you are on medicines,
8 don't come to trial and take your medicines.

9 And then he asked her in the event this case goes into
10 more days can we have your medical staff be ordered by the
11 court not to allow him to take his medicines and come here.

12 And she blatantly told him I am not a licensed physician
13 to make that decision, you are asking someone from the legal
14 world to make a medical call.

15 Q. So it is the medications specifically that were making
16 you have these issues?

17 A. It was the medication that was causing me to have the
18 side effects. When I was not on the medication I could simply
19 communicate with him on an extremely normal level. To the
20 point that we did not agree on a lot of things and we had some
21 heated conversation when I was not under the influence of the
22 medications.

23 It wasn't until after I was put on the medications,
24 granted that I was never supposed to be on, that the med- --
25 that the side effects started affecting me.

1 Q. I tend to agree with you on part of that. On Page 420
2 that the court actually characterizes you as thoroughly
3 intelligent, speaks well, and presents himself well; would you
4 agree with that?

5 A. Excuse me?

6 Q. The court, Judge Newman, stated on the record that
7 he's -- that you are thoroughly intelligent, speaks well, and
8 presents himself well. Do you agree with that
9 characterization?

10 A. To -- to an extent, when I am not under the influence of
11 medications, yeah, I am a very well-spoken and very
12 respectable -- respectable person. What anybody can be under
13 that sense and be under the influence of medications.

14 But if you are under the influence of medication it
15 diminishes your character. It diminishes things about you.
16 Especially when you are under the influence of an
17 antipsychotic medication that you are not supposed to have
18 ever been on from the start.

19 Q. Correct me if I am wrong - which I could be - but when
20 you were answering questions for Mr. Brooker on direct and he
21 asked you about your symptoms the day of the trial and he
22 asked you about what you meant by other stuff and you said
23 tremors and you were groggy, is that all that there was on the
24 day of the trial?

25 A. No, sir. I had tremors, the shakes real bad. It is like

1 if you ever see -- like in the movies have you ever seen a
2 heroin addict going through withdrawals? That is the extent
3 of the stuff I was feeling.

4 You never see a heroin addict that is under the influence
5 and going through withdraws fully competent or able to -- able
6 to not be inebriated to the point where they can do things for
7 their self. Because they are nodding out. They are zoned
8 out. Because the drug that is in their system has them
9 mentally -- mentally deficient to fully -- to fully operate.
10 And that is how the medicines had me. I was not in the
11 position to where I could operate to my full potential.

12 Q. This is a question I don't have the answer to: Was your
13 trial delayed previously?

14 A. Excuse me?

15 Q. Was your trial date delayed previously before this one?

16 A. I am not with you on that one. I don't understand what
17 you mean by my trial date was delayed previously before this
18 one.

19 Q. Have you complained of other medical issues prior to this
20 one, prior to this trial date?

21 A. No, sir, not that would have my trial date pushed back.

22 Q. Okay.

23 A. Only -- I had an issue one time when I was on my way to
24 court where the county jail did not administer me my blood
25 pressure medicine. Okay, I did not get my blood pressure

1 medicine and my blood pressure was through the roof where they
2 had to transfer me to MUSC to get the medical situation under
3 control.

4 Q. Okay.

5 A. And that was when I got here. Once the lady realized
6 that I didn't have my medicine she said hold up, we are not
7 going to even let him go forth, we are going to call the
8 ambulance and the Medical University and get him over there to
9 get this situated.

10 MR. LIMBAUGH: A moment's indulgence, Your Honor.

11 Q. And just to make sure: You did tell Judge Newman that
12 you understood everything and all of your charges and you
13 discussed some of your prior charges with him in pretty good
14 detail?

15 A. Yes, at the time when he was talking to me I was not
16 under the full effects of the medication. So there were still
17 things that I could understand and comprehend with.

18 But my demeanor greatly diminished as the medications
19 took full effect to the point where that is when my symptoms
20 and what I was experiencing was to the fullest to where he
21 was noticing that I was nodding in and out and having
22 determined -- he would say are you okay.

23 And that is when he decided, okay, we needed to get the
24 doctor down here so they can make a decision on whether he
25 needs to be taken off of this medicine or whether the medicine

1 needs to be changed or what we need to do about this
2 situation.

3 Q. Do you remember what time, was it morning or afternoon,
4 that jury selection was on your case?

5 A. It was -- I can't remember the exact time my jury
6 selection was held. But I know that I came in that morning
7 probably -- I got to the courthouse probably 6:30, seven
8 o'clock. My lawyer came to see me probably about 7:30 --
9 between 7:30, eight o'clock or something -- like 8:30. I'm
10 not sure.

11 And that is when he said -- he said what is wrong, what
12 is going on. And I said the medicines they have got me on are
13 causing me to have -- to have side effects again. And it
14 wasn't the first time that I had expressed to him that I was
15 having complications from the medicine.

16 MR. LIMBAUGH: That is all I have for this witness, Your
17 Honor.

18 THE COURT: Redirect.

19 MR. BROOKER: No, sir, Your Honor.

20 THE COURT: You may come down, sir. Thank you.

21 (WHEREUPON, court reporter retrieves exhibit from witness.)

22 THE COURT: Next witness.

23 MR. BROOKER: Thank you, Your Honor. We call Mr.
24 Benjamin Lewis.

25 THE COURT: I'm sorry?

1 MR. BROOKER: Mr. Benjamin Lewis, Your Honor.

2 THE COURT: Okay.

3 (WHEREUPON, the witness was duly sworn.)

4 THE CLERK: For the record please state your name,
5 spelling your last for the record.

6 THE WITNESS: My name is Benjamin Carter Lewis.
7 L-E-W-I-S.

8 **DIRECT EXAMINATION BY MR. BROOKER OF BENJAMIN LEWIS:**

9 Q. Good afternoon, Mr. Lewis.

10 A. Good afternoon.

11 Q. Mr. Lewis, it is my understanding - and you correct me if
12 I'm wrong - is that it was somewhere around September of 2013
13 that you started I think representing Mr. McClenton; is that
14 correct?

15 A. That is correct.

16 Q. Okay. And of course is, is that -- do you remember when
17 your first meeting was with Mr. McClenton after you started
18 your representation of him?

19 A. He was in prison. So we were discussing it via
20 telephone.

21 Q. Okay.

22 A. So my first meeting with him actually was October 27th,
23 2013, he wanted me to call his mother. November 12th, 2013, I
24 had a telephone interview with him at SCDC. Another telephone
25 interview November 20th, 2013. A jail visit December 30th,

1 2013. A video visit with him January 24th, 2014. A hearing
2 with him February 6th, 2014. A jail visit with him in March
3 of 2013. Another one with him March 12th, 2014. Crime scene
4 visit. And then visit with him March 19th, 2014. And
5 continuing on after that -- oh, another video visit with him
6 April 17th, 2014. But the first in-person looks like it
7 should have been October 27th, 2013.

8 Q. Sure. That is fine. And then of course is, is that when
9 you normally whether it would have been the telephonic contact
10 or either it would have been an in-person contact, when you
11 first meet a new client do you normally ask questions so that
12 you can do a -- to make a psychological assessment with
13 respect to whether or not that person has a history of mental
14 health illness that you may need to be concerned about?

15 A. Yeah, I mean at a normal meeting we sort of in the Public
16 Defender's Office have a screening form. And he had reported
17 both to our screener and then to me that he had no mental
18 health or medical issues.

19 Q. Okay. And the reason why I asked you that question is
20 that I notice that on the date of trial -- and I am
21 specifically referencing to on Page 7 starting on Line 3 where
22 the court asks you all right so what is his medical history
23 and you indicated that I don't have his mental health history,
24 I personally as his attorney I have never had issues with
25 competency up until recently when I had ---

1 THE COURT: What page are you on?

2 MR. BROOKER: I'm sorry, Your Honor. Page 7, starting on
3 Line 1.

4 THE COURT: Okay. Go ahead.

5 Q. And of course the court asked you whether or not you had
6 his medical history. And of course you indicated to the court
7 that you did not have his medical history but that you had
8 never had a reason to ---

9 A. Right.

10 Q. --- I guess to suspect that there was a competency issue
11 until recently. And I think you specifically said that the
12 first time you suspected it is when he -- you said he agreed
13 when I had been -- when I have been grieved by the client over
14 being a racist and other issues but set aside from that I had
15 a normal relationship with you.

16 So what do you mean at least at that particular period of
17 time when the judge asked you about his medical history and
18 you said you didn't have his medical -- his mental health
19 history?

20 A. I didn't believe there was one. I had never had any
21 reason to question his competency. And so as you can read
22 throughout sort of -- he shows up the date of trial in a
23 different way than he had in the past.

24 You know, he had made these claims about my being a
25 racist and things like that. And actually had sought to have

1 me relieved and then that was denied by Judge McDonald.

2 But I mean conflicts with clients are pretty normal.

3 Q. Yeah.

4 A. But the competency thing was sort of a surprise to me
5 until we are dealing with trial.

6 Q. Yeah, and I think you indicated I think to the judge that
7 the first time that you were aware that he was on medication
8 related to paranoid schizophrenia I think you indicated to the
9 judge -- and I am specifically referencing on Page 6 of the
10 transcript on Line 16 -- starting on Line 16, where you said,
11 Judge, I learned recently that he had been prescribed Zyprexa
12 and Cogentin; Zyprexa is usually for paranoid schizophrenia
13 and Cogentin is normally to treat the side effects of that,
14 side effects that are sometimes caused by that.

15 So it was my understanding - and you correct me if I'm
16 wrong - it is that the first time that you began to suspect
17 that, you know, maybe there might be a problem was I think the
18 month before, I think in March of 2014 when -- and I think
19 that is when the judge had a hearing on his motion to have you
20 relieved as counsel of record; is that correct?

21 A. Not the mental -- not the competency issue. Sort of just
22 sort of a deterioration of the relationship.

23 Q. Uh-huh.

24 A. But, no, I mean throughout. The reason I addressed it
25 this day was because when he came in he was acting abnormally.

1 And I think even -- I may have even said like I saw him the
2 night before or something like that.

3 After that last meet, probably in the last month he told
4 me he was on those medications, have not seen him appearing as
5 badly as he does today.

6 So I was not wanting to call my client out and say that I
7 thought he was malingering. But that was sort of the concern
8 that I was having. It is convenient that these symptoms don't
9 manifest until you are going to trial for burg first.

10 Q. So when you said -- when you said on Page 7 I think
11 starting at Line 9 that at the last meeting sometime probably
12 in the last month, would that be referencing the hearing that
13 you had I think the month before regarding him seeking to
14 relieve you as counsel of record?

15 A. Right, I think that is what it is talking about. It has
16 been a few years but ---

17 Q. Okay. And you go on to say that he told me he was on
18 these medications and I have not seen him appearing as badly
19 as he does today?

20 A. Right.

21 Q. And so I imagine is, is that, you know, that you were
22 quite concerned with -- quite concerned with respect to the
23 symptoms that he was experiencing that day?

24 A. I was -- I was concerned with how he was behaving that
25 day. I could not say whether they were valid or accurate or

1 whether he was performing that way to try to delay the trial.
2 But I know that the behavior that I was seeing that day was
3 not normal. And that is why I brought it to the court's
4 attention.

5 Because usually if you have got a competency issue with a
6 client it is something that is sort of throughout the entire
7 representation. It is not something that sneaks up on you.

8 Here I mean I thought I had seen him the day before. So
9 I assume he would have been on the medication around that same
10 time. And I did not notice this sort of behavior then.

11 Q. Okay. Okay. When you did learn that he was on that what
12 you described as the Zyprexa which is usually used from
13 paranoid schizophrenia - I think that is how you described
14 it - once you learn that, is that what action did you take to
15 try and contact the Detention Center or did you take any
16 action to contact the Detention Center to try and see whether
17 or not he was receiving treatment; because at that time, as
18 you indicated is, that he was on this medication that you
19 associated with, you know, schizophrenia?

20 A. Right. The jail has medical professionals. I didn't do
21 well enough in chemistry to go into med school, so I leave
22 that to them. If there had been a competency issue, a
23 specific competency issue, that would have been addressed.

24 A client in a criminal case with a mental health issue is
25 not rare. And so every time I have somebody who is on Zyprexa

1 or on Cogentin, which I believe is for the treatment of the
2 tremors that Shawndell was describing, it doesn't mean that I
3 automatically stop the progression of that case and every
4 single person has to be evaluated.

5 If there had been something where we could not
6 communicate at all, that is competency, if he cannot assist me
7 in his defense. He could.

8 Q. Would you agree with me is, is that if he is on
9 medication, and of course is, that you said in this note that
10 you associate that medication with schizophrenia ---

11 A. Right.

12 Q. And I understand what you're saying is. But if
13 there's -- if there's anything that suggests that a client has
14 a diagnosis of schizophrenia or either another mental health
15 or mental illness would you agree with me that that would at
16 least suggest -- doesn't necessarily mean that he is
17 incompetent but that would at least suggest that further
18 investigation needs to be done in order to rule out any
19 issues of incompetency; because I am assuming is, is that you
20 don't -- you're not -- you are not a psychiatrist; ---

21 A. Right.

22 Q. -- you don't have a degree in psychiatry?

23 A. Certainly not.

24 Q. Okay. So simply because someone put together a string
25 of -- a string of lucid words doesn't necessarily mean that

1 the person is not suffering from a mental health condition;

2 would you agree with me on that?

3 A. Absolutely. But that is not competency.

4 Q. Yeah, I understand that. I understand that.

5 A. Right.

6 Q. But of course is, is that -- and what I'm asking you is,
7 is that that assessment of competency is generally one not
8 that is made by the counsel but of course is, is that -- well,
9 it is actually I would say a clinical diagnosis that is made
10 by a psychiatrist as opposed to, you know, the attorney who is
11 representing the client?

12 A. If it gets to that level where the attorney has a doubt
13 about the person's competency or if the court on its own sua
14 sponte says, yeah, there is something wrong here.

15 Q. Okay. So and ---

16 A. Did not happen there.

17 Q. I apologize. I interrupted you.

18 A. No, no, no. You are fine.

19 Q. I apologize. So I will ask this one question, and then I
20 will move on. So what you are saying is, is that once you
21 receive notification from him the month before that he was on
22 Zyprexa which is an medication that you indicated that you
23 associate, you know, with paranoid schizophrenia, what you are
24 saying is, is that doesn't at least raise some red flags that
25 require further investigation?

1 A. Meaning meeting with my client. Which I -- I did. Like
2 I said, if I went to him and I talked to him and he and I can
3 communicate with one another and we can go through a trial and
4 he can testify at a pretrial hearing and he can communicate
5 with my second chair and he can be there throughout all of
6 this talking about strategy then he is -- then he is
7 competent.

8 If he's -- if he was sitting there incompetent then
9 hopefully both the court and I would have stopped it. He
10 wasn't.

11 Q. But you -- but on the day of trial you did become
12 concerned because you raised it -- you raised that concern
13 with the court; is that correct?

14 A. I raised the concern because he was exhibiting this
15 behavior. Again, I cannot say that it was valid. So I was
16 put sort of in a position well what am I supposed to do; I
17 don't believe that my client is incompetent to stand trial, I
18 believe he is using this as a mechanism to try to avoid going
19 to trial.

20 I can't just ignore him if he is going to sit there and
21 behave this way. So I need to bring it to the court's
22 attention. And that is why I did that.

23 I didn't think it necessarily rose to the level of
24 needing to have -- to continue the trial and have a competency
25 hearing because I didn't have any concerns about his actual

1 competency.

2 In response to any client that has paranoid schizophrenia
3 or bi-polar disorder or severe anxiety or depression, no,
4 every single client with a mental health diagnosis is not
5 automatically going to get an evaluation.

6 Q. Well ---

7 A. I have had

8 Q. I'm sorry. go ahead.

9 A. I have had plenty of clients that I personally have
10 believed were much worse off than Mr. McClenton. I have had
11 evaluations ordered and I have been shot down, and I am like I
12 still can't work with this person. But those that are smarter
13 than me have made that decision. This was not one that was a
14 close call for me.

15 Q. Okay. Well, that's not what you said to the court.
16 Because if you look at Page 15 starting on Line 11 on where --
17 Line 10 where the court says what's on your mind. And of
18 course it says Mr. Lewis -- you said: I just felt the need to
19 bring it to the court's attention. I have not witnessed it as
20 bad as I -- as I said for it appears to be -- it appears to me
21 today. I am not a doctor or medical doctor obviously. I just
22 want whatever record is created to be as good as possible. I
23 have met with him repeatedly. I am his third public defender.
24 And so as the people leave our office they are assigned a
25 different lawyer. I have represented him since September of

1 2013. And that time -- in that time we have discussed a
2 variety of his -- a variety of his cases. I have not seen him
3 in as bad as this until today.

4 So you're expressing the court -- expressing to the court
5 at least right now is that you have never seen him in as bad
6 as a condition that you have seen him in that day; and of
7 course is, that it was such concern to you that you brought it
8 to the attention of the court. That is what you told the
9 judge that day; is that correct?

10 A. I had not noticed a change in his demeanor after the
11 medicine -- until after the medicine had been prescribed.
12 Maybe it is my own ignorance. I believed a lot of that could
13 have simply been getting ready to go to trial.

14 You are right, I am not a medical doctor. Correlation
15 does not mean causation. Is it the trial or is it the meds?
16 Neither one -- I mean I believed it was the trial. He
17 appeared competent to me. I didn't have any concerns about
18 his competency.

19 The behavior, yeah, is disruptive. So in theory if
20 someone is going to behave as if they have a mental health
21 issue, throughout trial, yeah, that is going to be disruptive.
22 That is going to hurt his case.

23 But I did everything I felt that I could to have that
24 addressed. It wasn't something that I believed he could not
25 communicate and could not assist me.

1 Q. Well, and the reason why I am a little bit confused about
2 that is, is that -- is that it was such -- it appeared to be
3 such of a great concern to you that you told the judge -- you
4 told the judge that you thought it would be improper to
5 proceed forward. And let me direct your attention to that.
6 And I will get your response.

7 I am on Page 16. And of the course is, is that your
8 comments start at Line 5. And it says: Judge, specifically
9 when I met him in the booth he seemed to be nodding out, not
10 as attentive. He seems to be very intelligent; against my
11 advice of will occasionally write his own briefs, that sort of
12 thing, or his own findings; but was not acting as he normally
13 does today. The reason I need to bring it to the court's
14 attention as I don't know if it's -- I wouldn't want to speak
15 ill of him, but I don't know if it is malingering of if he is
16 having a serious reaction to these medications. And so in my
17 opinion, Judge, it would be improper for us to go forth -- go
18 forth on that, but as Mr. Finch can attest, if you ask me, I
19 am ready to resolve this case.

20 So it appears as if that you had such a concern that
21 although you are not asking the court for a competency
22 evaluation you said to the judge that you do not think it
23 would be proper to go forward.

24 If you didn't think that there was -- didn't think that
25 there reason to suspect - not that there was - because - you

1 correct me if I'm wrong - it is my understand is, is that the
2 standard under - and you correct me about this. Is it your
3 understanding that the standard under 4423-410, the competency
4 statute, says if there is reason to believe, if there is
5 reason to believe that competency is an issue -- you don't
6 have to know whether or not it is, but if you have something
7 to suggest that it might be then that then triggers the
8 statute that you have to follow procedure and then of course
9 they will send him for a competency evaluation.

10 So when you said I don't think it is proper to go forth
11 isn't it true that you are suggesting to the court that you
12 have concerns about whether or not -- whether or not he may be
13 having an issue with respect to competency?

14 A. I had no clue what was going on. It is, again, weird
15 that someone is fine every time you meet with them, even
16 though they are on these medications, but that it just
17 magically appears when the court is in session when the judge
18 is in the courtroom. That is incredibly convenient.

19 I mean, again, what am I suppose to do? I can't not
20 bring it to the court's attention if he -- when I go into a
21 meeting with him if he pretends, or rightfully so, has some
22 sort of side effect. But it is convenient if it only happens
23 at certain times, when it is not consistent.

24 Q. Were you being genuine with the courts -- were you being
25 genuine and honest with the court when you told the court in

1 your opinion you believed it was not proper to go forward?

2 A. I don't think we should ever go forward if someone is
3 going to -- whether rightfully so or pretending to have a
4 mental health issue. No, you shouldn't go forward. You
5 should get it addressed.

6 Q. Okay. And ---

7 A. That is why I deferred to the court.

8 Q. Now I assume and I think on what has been identified as
9 it is Petitioner's 1 which is Mr. Lewis' -- excuse me, Mr.
10 McClenton's medical notes.

11 MR. BROOKER: And I think it is up there? Do you have
12 it? I want to take a look at it.

13 (WHEREUPON, exhibit provided by court reporter.)

14 Q. I am looking at Page Number 1 of that medical note.

15 A. Okay.

16 Q. And of course is, is that it indicates on that medical
17 note -- and I know a lot of this stuff is kind of jumbled
18 together.

19 A. Right.

20 Q. So I will go slow. It indicated on that medical note
21 that he had had history of beating and rape. He had a history
22 of physical, emo- --

23 THE COURT: Let ---

24 A. I have never seen it before. I mean you can ---

25 THE COURT: Well, that is what I am going to ask. I mean

1 you can't cross-examine him on that document if he's -- you
2 know, unless he has seen it and knows something about it.

3 MR. BROOKER: Certainly.

4 THE COURT: Which I don't know whether he does or not.

5 MR. BROOKER: Okay. Okay. Well, I will rephrase my
6 question, Your Honor.

7 Q. Obviously -- I am assuming that you haven't received
8 this -- that you didn't -- at the time in which Mr. McClenton
9 went to trial on April 21st of 2014 that my understanding is
10 you have not -- you have not received any medical records or
11 were aware of any medical records or mental health records
12 that was in the possession of the Charleston County Detention
13 Center where he was being housed?

14 A. No.

15 Q. Okay. And I am assuming that you did not request any
16 medical records from the Charleston County Detention Center
17 when you learned the month before that he was on the
18 psychotropic medication, the Zyprexa ; ---

19 A. No.

20 Q. --- is that correct?

21 A. I did not. Again, no -- no personal beliefs about
22 competency, no personal beliefs about an argument for NGRI.
23 Nothing to -- you know, no diminished capacity. Nothing that
24 was a trigger for me to do that.

25 Q. But assuming -- assuming that once you learn in March of

1 2014, I think as you indicated I think in the transcript, once
2 you learn in March of 2014 that he was on Zyprexa, you know,
3 which you have said I think in your own words you associated
4 that with being a para -- or be a medication that is
5 associated with paranoid schizophrenia. Once you learn that
6 had you request medical records or contact the County
7 Detention Center, perceivably you would have received these
8 notes; is that correct?

9 A. If I requested them and they existed, sure.

10 Q. Yeah. Now had you received these notes -- and I am not
11 going to -- I am not going to ask you did you know about these
12 things.

13 A. Right.

14 Q. I already know -- I already know that. But of course if
15 you would take a look at the -- take at look at least the
16 exhibit. And the question I want to ask you is have you seen
17 these medical notes and seen that he had expressed to his --
18 you know, his mental health provider and specifically in the
19 psychiatric medical notes that he was alleging symptom of
20 audio hallucination and of course was -- says that he was
21 having problems sleeping and that he was hearing voices
22 telling him to hurt himself and hurt other people, had you
23 received these notes would that would have been sufficient
24 enough at that particular period of time to say, hey, there
25 might be a competency issue here that might require further

1 evaluation; do you think if you had received these notes it
2 would have -- that would have been the trigger?

3 MR. LIMBAUGH: Objection, Your Honor. Calls for
4 speculation.

5 THE COURT: Go ahead and answer the question.

6 A. No. It is our observations. As an attorney you do the
7 same thing. I am sure you have mentally ill clients. Not
8 every mentally ill client you have is a competency concern.
9 Those are not the same thing. They are not interchangeable.

10 So every paranoid schizophrenic is not automatically a
11 competency concern. Every person who has got paranoia or
12 depression or anxiety is not automatically a competency
13 concern. That is a separate category.

14 And, again, I have seen people who are much much worse,
15 in much more profound states that I would call psychosis,
16 where the doctors at MUSC have said, Mr. Lewis, you are
17 blowing the whistle and you don't need to; these people are
18 competent all day every day, stop -- stop whining.

19 Q. But under that scenario that you just explained you sent
20 that person to be evaluated and allowed a clinical expert to
21 make the determination as to whether or not there was a
22 competency issue; you didn't make that decision on your own,
23 is that correct?

24 A. Right. When I cannot effectively communicate with a
25 client. When it affects the representation..

1 Q. Now just a few other questions.

2 MR. BROOKER: Indulge me just a second, Your Honor.

3 Q. Now -- now on -- and I am specifically looking at Page
4 17. After you expressed your concern to the judge were you --
5 and I think we have already established that, on Page 17 --
6 excuse me, on Page 16 where you told the judge that in your
7 opinion you believe that the case should not go forward.

8 The judge asked you on Page 17 starting I think on
9 Line -- I think on Line 2 the judge says to you he doesn't
10 seem sleepy or groggy or something but typically when a lawyer
11 presents a problem they have some solution they've proposed as
12 well. And of course you said, I understand, Judge. And the
13 judge says not just throw it at the judge as a problem.

14 And of course is, and I think what the judge - you
15 correct me if I am wrong in whether or not your interpretation
16 is correct - the judge was asking you in light of the fact
17 that you just expressed to the judge that I think the case
18 should not -- that this case should not go forward. And
19 apparently the judge had at least some of the perception that
20 you had a concern about competency the judge was asking you
21 whether or not you had a motion that you wanted to present to
22 the court.

23 But the course is, is that in that the judge says
24 typically when a lawyer presents a problem they would have
25 some solution that they are proposing. But even with that I

1 guess subtle hint you still did not ask the judge, Judge, I
2 think, Your Honor, that a competency evaluation under 4423-410
3 would be appropriate or at least make the motion in order
4 to -- in order to protect him on that issue; is that correct?

5 A. Let me try to unpack all that.

6 Q. Sure.

7 A. I don't want to pretend to understand exactly what the
8 court was thinking.

9 Q. Sure.

10 A. If they gave me a softball that I was supposed to hit and
11 I missed it, so be it. I'd say I apologize right after that.
12 I didn't anticipate this issue coming in today. So no issue.
13 I actually saw him yesterday and he didn't seem as bad.

14 So that I knew I had -- I thought I have seen him the day
15 before. And this -- so I assumed he would have been on the
16 same medications then. Maybe I am wrong. Maybe this was --
17 the trial date was the very first day they started him on it.
18 But I didn't think so. I thought it was like a month before
19 this.

20 I told you I did not believe there was a competency
21 concern.

22 Q. And I think you went to say is, is that to the judge that
23 actually I saw him yesterday and he didn't seem as bad as he
24 does today.

25 MR. LIMBAUGH: And I am specifically on Page 17, Judge,

1 Line -- starting on Line 9 if you are following me.

2 Q. I actually saw him yesterday and he did not seem as bad
3 as he does today but he did seem slow and depressed.

4 And, again, I believe that was -- was the time to go to
5 trial. So you are expressing to the judge is, is that he did
6 seem slow and depressed when you saw him the day before but
7 that day the morning of trial he seemed to be worse than he
8 was that day is what you are expressing to the judge; ---

9 A. Yes.

10 Q. --- is that correct?

11 A. Yes.

12 Q. Okay. Okay. Now if my understanding is correctly is, is
13 that the trial continued; is that correct?

14 A. Yes.

15 Q. And I am assuming -- was jury selection pulled that
16 morning?

17 A. I mean I would have imagined all of this would have had
18 to have taken place before jury selection and then jury
19 selection should have been after that, after any pretrial
20 stuff.

21 Q. Okay. And the only reason why I ask that is because I
22 don't understand because, you know, I was not aware; because
23 if you look at the transcript that of course is, is that jury
24 selection is -- that there is no jury selection I think that
25 is in the transcript after this?

1 A. Right.

2 Q. So I was assuming because the jury selection portion is
3 not included within the transcript that it happened before.

4 A. I have no clue, honestly. I would sort of be surprised
5 by that because I would have thought that I would have wanted
6 to have had these issues addressed in front of the court and
7 let the court tell me what they want to do first before any
8 sort of jury selection.

9 If he was, you know, not conscious we would not have gone
10 into jury selection.

11 Q. And you correct me if I am wrong. Another thing that
12 suggests to me that jury selection had already took place was
13 is that after -- after this conversation had went on and the
14 course is, is that the judge asked you, you know, do you have
15 a solution to the problem that you are talking about. And you
16 apologize and said you didn't anticipate this.

17 But after that, that y'all went into discussing the
18 charges and discussing any plea agreement or plea offers that
19 had been made to him and then of course is, is that eventually
20 in the transcript you go on to then, you know, I think the
21 Jackson v Denno hearing I think at some point in time.

22 A. Right.

23 Q. So and normally -- you correct me if I am wrong.
24 Normally is, is that judges don't do Jackson v. Denno and that
25 sort of stuff; usually they do it after they pull the jury,

1 send the jury away, and then do Jackson v. Denno when they are
2 doing it on the day of the trial unless they are doing it
3 pretrial prior to the date of the trial?

4 A. I would probably disagree with you on that. Often times
5 some of these can be dispositive so you don't necessarily want
6 to have a jury waiting that has been picked if you are not
7 going to be going forward.

8 I mean usually you want to do your pretrial motions
9 completely pretrial if you can. I mean like -- but again it
10 has been several years. I have tried a few cases since ---

11 Q. Judges are different. I have done it 18 years, and
12 usually most judges will pull that jury and then of course
13 once they pull that jury they will send them away and then of
14 course they will take care of pretrial issues after they have
15 pulled that -- pulled that jury.

16 But that is not here nor there. Let's move on. And of
17 course I promise you I am going to get you off of the stand
18 pretty quickly.

19 I want to just take you into the second day. And of
20 course is, I think the second day of the trial -- and let me
21 just ask you this question before I move on to the second
22 thing.

23 So I am assuming is, is that after having these concerns
24 on -- that y'all proceeded on with the trial, had the
25 Jackson v. Denno hearing and then of course is eventually then

1 start the trial with testimony and that sort of stuff; is that
2 correct?

3 A. I believe so.

4 Q. Okay.

5 A. As best I remember.

6 Q. Okay. Now on the second day of the trial after the first
7 day -- and I think that starts on Page 152 I believe is when
8 the second day starts of the transcript. And that morning --
9 and I am looking at Page 152 and specifically Line 14.

10 THE COURT: One fifty-two?

11 MR. BROOKER: Yes, sir, Your Honor, 152. And, I'm sorry,
12 that you start at Line 10.

13 Q. Okay. And the court -- that morning the court says good
14 morning how is your guy today. And then of course you
15 responded to the court: Unfortunately, Your Honor, we are
16 going to have to have the same -- we are going to have to
17 discuss that again.

18 And the court says, yes, sir, Mr. Lewis. And you said
19 meeting with Mr. McClenton this morning he seems to be
20 exhibiting a lot of the same symptoms as yesterday.

21 And of course on Line 19 at the very end -- I am still on
22 152, Line 19, at the very end. You said I thought maybe we
23 could get his doctor in here to say that he is good to go or
24 he's not; I just don't know what is going on with him.

25 So on that second day it appears as if that you still had

1 enough concern that even after this issue was addressed on the
2 first day that you said to the judge, you know, we need to
3 have this conversation again, at the beginning of the second
4 day, because he is experiencing the same symptoms that he was
5 experiencing the first day; is that correct?

6 A. Right. I mean he was acting the same way.

7 Q. Okay. And so and the fact that you brought it to the
8 judge's attention would suggest that it was important enough
9 that you thought that even though this issue has been
10 addressed on the first date you thought it was important
11 enough to address it all over again on the second day?

12 A. I again thought what else am I going to do if he is still
13 going to behave this way. If this behavior is still taking
14 place we don't -- you know, we don't have video recordings of
15 our trials. So the only way to memorialized that for the
16 record is for me to do what I did.

17 Q. And of course on Page 153, Line 4, the defendant told --
18 Mr. McClenton told the judge when asked: I'm jittery. I'm
19 messing with my head. I asked my lawyer to call and talk to
20 the mental health lady who prescribes me the medication. It
21 is like I am going in and out. And if I sit down too long my
22 mind turns off. I don't know if it is the medicine they have
23 me on or what.

24 So those were the -- those were the symptoms that he was
25 complaining about the first day; is that correct?

1 A. I believe so. I mean tremors I think is what he said the
2 first day; jittery, tremors. Potatoe, potatoe.

3 Q. Okay. And in the course, that who requested -- requested
4 the court if they could possibly get in contact with his
5 doctor; is that correct?

6 A. I believe so, yeah.

7 Q. And I assume - and you correct me if I am wrong - that
8 the reason why you asked the judge to get in touch with this
9 doctor is because you are not a medical physician; and of
10 course is, that you would not be in a position to diagnose
11 whether or not he is experiencing, you know, you know, some
12 sort of side effects from the medication or either, you know,
13 some other mental illness, you know, that was -- that was
14 causing these symptoms; you couldn't diagnose that, could you?

15 A. No.

16 Q. Okay. Now you also testified to the fact that since you
17 have met with Mr. -- since you had been meeting with him ever
18 since I think since September -- September 13th of 2013,
19 somewhere around in September 2013 when you start representing
20 him, I think you testified to the fact that up until that
21 point that he had never -- that he have never -- that you had
22 always thought him to be bright, engaging, intelligent, and
23 y'all had always had lively conversations; is that correct?

24 A. Yes, certainly some lively conversations.

25 Q. And the symptoms that he was experiencing on the date of

1 trial that that was completely new to you and something that
2 he has never shown before; is that correct? You had never
3 seen before ---

4 A. Right.

5 Q. I think you said ---

6 A. Right. Absolutely. Like I had seen him the night
7 before. Nothing. Or depression. Typical nobody likes to be
8 in jail. I wouldn't want to be there. Day of trial new
9 behavior.

10 Q. Okay. Okay. So the fact that he -- the fact that he has
11 always been bright, in your opinion, bright and engaging and
12 you had never thought him to have faked some sort of mental
13 illness with you before, that is I am assuming is, is that,
14 you know, that would suggest to you that, hey, maybe something
15 seriously is going on because you don't know this person, you
16 don't have a history of this person being a faker?

17 A. It's the first time we had gone to trial. I mean I know
18 you -- it is different once you get to that point. He had
19 previously at a bond revocation hearing had some other
20 symptoms that again it is convenient timing.

21 Q. Okay. And is that the issue that -- I think you were in
22 the courtroom when he was testifying. Is that the issue where
23 I think that he indicated that he was on blood pressure
24 medication ---

25 A. He did.

1 Q. --- and that he had not -- that when they brought him up
2 for the bond they had not administered his blood pressure
3 medications and his blood pressure shot up and that they
4 actually had to take him to take care of that issue?

5 A. And, again, I am not going to get into the medical stuff
6 about it. Because I don't know if that, again, was legit or
7 not.

8 Q. Absolutely. And that is to be ---

9 A. It is on a bond revocation day.

10 Q. Okay. And that is the thing is, is that -- but you are
11 not suggesting to the court that he was faking it, because you
12 don't have any evidence that he was faking -- did you ever
13 check to see whether or not he did went to the hospital and
14 actually had -- had a medical issue or either whether or not
15 he was taking heart medication?

16 A. I don't want to show that he is lying about something
17 else.

18 Q. Did you ever check to see ---

19 A. No, I certainly didn't.

20 Q. Okay. So you are not trying to suggest to the court that
21 you had evidence that he was faking or lying about something
22 that day; is that correct?

23 A. All I am saying is I didn't have any medical evidence of
24 it. But if you are developing symptoms of some medical
25 condition that happens on the day that your bond revocation

1 hearing is scheduled -- it is the same thing where you have
2 lots of clients that happen to have a flat tire that day or
3 get into a car wreck that day or I just didn't get my mail
4 that day. I am not trying to be ugly negative. But it often
5 corresponds with bond revocations, trial dates ---

6 Q. And I understand that.

7 A. Bomb threats sometimes come in.

8 Q. And I understand that. I have been doing this for about
9 18 years. But wouldn't you agree with me - and I am back to
10 that, you know, that sometimes you can have -- you can have 15
11 clients lie to you but of course that 16th client might be
12 telling you the truth and that's one of the reasons why --
13 would you agree with me why that you can't develop this
14 cynical attitude, you know, that this is what they normally do
15 and he is just in the crowd, he is just like all of the other
16 ones, they do it therefore he must be doing it ---

17 A. No, absolutely true. It's part of why I didn't need to
18 pull his medical records to see if it was true or not.

19 Q. Okay. Okay. Now I am almost finished. I promise, Mr.
20 Lewis.

21 A. Okay.

22 Q. I know you have been on the stand for a long time, and I
23 thank you.

24 When -- on Page 156 -- on Page 156 after -- after the
25 judge had another discussion in reference to his symptoms and

1 the judge asked you -- and I think we are looking at I think
2 Line 18 on 156, the Judge says Mr. Lewis what are you
3 thinking.

4 And you indicated to the judge: My stance on it is it is
5 kind of the same as yesterday. I am not a medical
6 professional but as an officer of the court throughout trial
7 yesterday he seemed to be okay. He was writing questions that
8 would like -- he was writing questions that he would like me
9 to present as cross-examination. He was engaged. I can't say
10 what time he jolted -- he jotted it down, but right now his
11 appearance is not helpful.

12 So you indicated to the judge at that particular period
13 of time it is that you didn't think that his appearance as he
14 was in court on that date, you know, the state that he was in
15 was not helpful; is that correct?

16 A. Yes.

17 Q. And you expressed that to the court?

18 A. Yes.

19 Q. And of course there is to that, when you said my stance
20 upon it is -- is kind of the same as yesterday - and you
21 correct me if I'm wrong - were you telling the judge -- I
22 think the stance on the day before is that you told the judge
23 in your opinion you believe it would be appropriate to not go
24 forth with the trial. And so was that your same stance on day
25 number two?

1 A. I'm not exactly sure what I meant by that. I don't know
2 that it is I mean, yeah, I want you to continue it or I am
3 having concerns that it may be malingering. I don't know.

4 My gut would tell me that because I then go on to say he
5 is writing questions, would look -- that he would like for me
6 to present on cross-examination, he is engaged, is again
7 getting back to I think he is still competent. But I can't
8 say definitively.

9 Q. Yes, sir. And when you told him that, Judge, is you
10 believe in the state that he was in that day that he was not
11 helpful, if that is the case, if you were being sincere about
12 that - and I assuming that you were, you know, as an officer
13 of the court - that that would be an issue that would relate
14 to competency; would it not?

15 A. If it's -- if it's actually a physiological reaction and
16 not something that he is doing to manipulate the system.

17 Q. And I understand that, so ---

18 A. And I -- and again, I didn't know which it was.

19 Q. Absolutely. Absolutely. And that's the whole purpose of
20 a psychological evaluation. A lot of times, would you agree
21 with me, is that a lot of times when we send a guy to a
22 psychological -- to have a psychological evaluation done a lot
23 of times we don't know whether or not he is incompetent or
24 not. That is the whole purpose of having professionals take a
25 look at him to help figure that out for us. I

1 Of then of course when the professionals at the
2 Department of Mental Health - you correct me if I'm wrong -
3 when they are sent there and they have that psychological
4 evaluation done is that still the final determination is made
5 by the judge when the judge has a competency hearing and with
6 the aid of that psychological examination report; is that
7 correct?

8 A. First, I will only submit somebody for an evaluation if I
9 actually believe that they are not competent. So I don't just
10 sort of throw it out there and get it done in any case where
11 there might be some mental health issue.

12 Q. Okay. But that is not what the -- that is not what the
13 standard is; is that correct, underneath -- underneath 44 or
14 23-410?

15 A. I thought it said reasonably.

16 Q. Yeah, I think the standard says if you have a reason to
17 believe. But not to -- but you don't have to make a
18 determination; you don't have to believe that he is
19 incompetent. There just has to be something to suggest that
20 he might.

21 If there is something to suggest or there is evidence to
22 suggest that he might, you know, then of course is, is that
23 you send him for the evaluation so the determination can be
24 made. So that's the standard underneath 44-23-410; is that
25 correct?

1 A. Sure. I didn't think it was necessary in this case.

2 Q. I understand.

3 A. Okay.

4 Q. And of course is that on 161, Page 161 -- and I am almost
5 finished. I know I keep saying that.

6 A. Yeah.

7 Q. I apologize.

8 A. Take as long as you need. I am here all day.

9 Q. Page 161 starting on Lines 5 you said to the court I
10 would assume he would deteriorate in some way but this is --
11 but this is worse than I have seen him at all.

12 So you are telling the court on -- at that moment, of all
13 the times that you have seen him even from the previous date
14 this is the worst that you have seen him at all.

15 And of course there is on Line 14 you go on to say
16 because it appears at this moment that we might have to wait a
17 couple of hours until his medication wears off a little bit to
18 press on with the trial and wondering whether you can help us
19 figure that out.

20 So it appears as if that you at that point still have
21 that genuine concern?

22 A. It is again the same concern that I had to bring to the
23 court's attention. I don't know if it's malingering or if
24 it's real. Again, I reiterate he seems to be totally focused
25 and engaged when he is in the trial. He was on the stand

1 yesterday and talked with me all day yesterday even though he
2 started out today seemingly under the influence of medications
3 today.

4 Q. Yes, sir.

5 A. So again ---

6 Q. Yes, sir. I understand. And eventually y'all did get
7 Ms. -- y'all did get someone from the Detention Center on
8 line, someone from the I guess the medical department from the
9 Detention Center and I think that was Ms. Amy was it Craddock?

10 A. Yes.

11 Q. And of course is, that it is my understanding is, is that
12 she suggested to y'all that she was not a mental health expert
13 and suggested that he might -- he may need to have a medical
14 evaluation and that she would set one up for the psychiatrist;
15 is that correct?

16 A. Sure. I don't know exactly where that was. I don't --
17 and again --

18 Q. Page two -- 211.

19 A. Okay.

20 Q. Starting at I think Line 14.

21 A. Okay.

22 Q. I think she indicated that she would set him up for a
23 medical assessment and then of course is that I think starting
24 on the same Page on Line 22 she says that so it would be very
25 reasonable for me to get an appointment with him on Friday

1 with the psychiatrist; and so she was planning to set him up
2 with an appointment that Friday for the psychiatrist, is that
3 correct?

4 A. Sure. Yeah. I mean I don't know why she was doing it,
5 but you would have to talk to her. But, yeah, that she would
6 want to get him evaluated on Friday -- or a medical evaluation
7 done on Friday.

8 Q. If you can indulge me for ---

9 A. And ---

10 Q. I apologize. I didn't mean to interrupt you. Go ahead,
11 please.

12 A. No, just same stuff. Sorry.

13 MR. BROOKER: If you can indulge me for just a second,
14 Your Honor. I am going to consult with my client. And I
15 might be finished with my cross-examination.

16 (WHEREUPON, defense counsel confers with client.)

17 Q. I think when Amy Craddock got on the phone it is my
18 understanding I think from the transcript on that you were --
19 that you had such concern with the effect that the medication
20 was having on him that you asked Ms. Craddock whether or not
21 it was possible that the medication could be withheld from
22 him, that -- you know, that the jail not give him his
23 medication in the morning time so he wouldn't have those
24 effects.

25 Do you remember having that conversation or stating that

1 to the court and to Ms. Craddock?

2 A. Sure. Yeah.

3 Q. And I am assuming that you were saying that is, is that
4 because you had a genuine belief that the medication was
5 having on at least some of effects on him. I am not saying
6 that you believe everything that he said, but that a
7 medication was having some effect on him?

8 A. I wanted to eliminate any possible reason that this was
9 going on. So if he is not taking the medication -- if he is
10 saying the medication has caused me to act this way then let's
11 not take the medication and let's continue to get this trial
12 done.

13 Q. And it is my understanding is, is that he told the court
14 that normally whenever he takes the medication in that morning
15 it takes three to four hours for it to wear off?

16 A. I don't -- I don't know. I mean it may be in there. I
17 don't --

18 Q. Okay.

19 A. Sure.

20 Q. Okay. And I am assuming is, is that -- that the trial
21 proceeded on; is that correct?

22 A. Yes.

23 Q. Okay. And the course is, is that -- that at the
24 conclusion of that day a jury reached a verdict and he was
25 found guilty; so they -- at least he -- the case in chief of

1 the trial was two days, the 21st and 22nd?

2 A. I believe so.

3 Q. Okay. Is it also true that the judge had such a concern,
4 was so concerned, about the effects that the medication was
5 having on him that the judge said -- the judge I think
6 indicated to the lawyers, you know, that he would have the
7 sentencing the next day but he would set the sentencing to two
8 o'clock in the afternoon so that any -- that any symptoms that
9 he might be experiencing as a result of the medication he was
10 taking that those symptoms would be -- would certainly be worn
11 off by then and that of course is that he would be more -- he
12 would be lucid and good to go?

13 A. I don't necessarily remember that as the specific reason.
14 I thought we were going to like nine o'clock at night. But
15 maybe I am wrong. If -- yeah, if he said that, certainly that
16 justification in the record would speak for itself. But I
17 don't remem- -- is it in there?

18 Q. Yeah, it is in there.

19 A. Okay.

20 Q. It is in there. I think he said that -- my understanding
21 is that he said that they were not going to do the sentencing
22 that afternoon because -- that they would do it the next day
23 and that they would specifically set it at two o'clock the
24 next day instead of the next morning so that, you know, that
25 if he -- if he were having any effects from the medication it

1 would -- that would give him plenty enough time for that
2 medication to be worn off.

3 A. Can you direct me -- I'm sorry, can you direct me to
4 where that was?

5 Q. Sure, let me get that for you. I will find it as quickly
6 as possible.

7 A. No problem.

8 Q. Okay.

9 A. Because I thought I read something about nine o'clock.

10 MR. BROOKER: I am trying to find this quickly. Your
11 Honor, I apologize.

12 A. I think you are probably looking at 405.

13 Q. 405?

14 A. Where he says it is pushing nine o'clock. Yes, Your
15 Honor, I want to give everyone a full opportunity to make a
16 presentation at the sentencing.

17 Q. Yeah, and I think down at the bottom of that page it says
18 -- it says ---

19 A. Yeah.

20 Q. I think Line 15 it says so thank you for your work, we
21 are going to let you go and we will leave also. We are going
22 to do a sentence tomorrow afternoon when you -- you are going
23 to start another case tomorrow I understand in the morning.

24 And of course is, at Line 24, at 22 it says and so we
25 pick up this in the afternoon. Mr. McClenton should be fully

1 lucid by that time and we will see you when I get back at
2 2:00, 2:30, or whatever time it is.

3 And of course there is we can -- we can break. And I do.
4 So he scheduled it for 2:00 and 2:30 to make sure that he is
5 fully lucid at that time; is that correct?

6 A. Or because they were starting the other trial in the
7 morning to pick another jury. But I don't want to speak for
8 the court.

9 Q. Yeah, yeah, I understand that. I understand that.

10 A. But, you know, oftentimes we will break one, bring in
11 another, to pick another jury, and then bring the other jury
12 back for sentencing or....

13 Q. Okay.

14 MR. BROOKER: I don't believe I have any further
15 questions for this witness, Your Honor.

16 THE COURT: Is that on 405; is that what you said?

17 MR. BROOKER: Yes, Your Honor, 405 I believe ---

18 THE COURT: Okay.

19 MR. BROOKER: --- if I am correct.

20 THE COURT: I am just marking these pages.

21 MR. BROOKER: I don't believe I have any further
22 questions.

23 THE COURT: Cross-examination.

24 MR. BROOKER: Thank you, sir.

25 MR. LIMBAUGH: Thank you, Your Honor.

1 CROSS-EXAMINATION BY MR. LIMBAUGH OF BENJAMIN LEWIS:

2 Q. Mr. Lewis, I will attempt to be brief and pointed in my
3 questions. Mental health issues are different than competency
4 issues, are they not?

5 A. Yes.

6 Q. And I believe you stated earlier that you had many
7 clients in your history or practice that have had mental
8 health concerns where you've had zero concerns with their
9 competency; is that correct?

10 A. Yes.

11 Q. Was Mr. McClenton intimately involved in his trial?

12 A. Yes.

13 Q. Did he write out questions that he wanted you to use on
14 cross?

15 A. Yes. He was definitely participating.

16 Q. Was he involved in his jury selection in a very important
17 way?

18 A. As best as I can remember. I can't imagine that I would
19 have treated this case differently than all of the other ways
20 I handle cases, which is with every jury strike or seated I
21 always consult with my client because they may come up with a
22 feeling that they have about a jury that I didn't. And it is
23 their jury. So I will always defer to the client about -- as
24 long as it is race neutral, gender neutral, they can make the
25 call.

1 Q. But he was engaged, to say the least, throughout the
2 entire process; would that be correct?

3 A. Yes.

4 Q. Okay. And you met with him, as I believed you testified
5 earlier, the day before trial; is that correct?

6 A. Yes.

7 Q. And you had zero concerns with his competency at that
8 time; is that correct?

9 A. Right.

10 Q. To get to one line of questioning on direct, there was
11 some talk about his appearance not being helpful for this
12 case. Would it be accurate to say that his physical symptoms
13 were of concern to you and not so much his actual mental
14 competency?

15 A. Right. What I was meaning is I didn't think it would be
16 helpful to have a client appear disengaged. Like if he was
17 going to act like -- whether -- again, I don't like speaking
18 ill, but I did not believe that the behavior was genuine. And
19 so to behaving that way it was not helping our argument in the
20 case. It wasn't helping a jury to empathize with him.

21 Because sometimes it comes down to just that; if they
22 like your client maybe they will give him that extra benefit,
23 that extra doubt that gets you that not guilty.

24 Q. So it is more of those -- I'm sorry, I don't mean to ask
25 again; but it is more of those physical, the tremors and the

1 downtrodden look, things of that nature, that were a concern
2 rather than his competency to help you with his trial; is that
3 correct?

4 A. Right.

5 Q. When you were bringing up these concerns you said that it
6 was more the fact that you weren't -- you didn't have a
7 problem with his competency concern, it was more your bringing
8 to the judge's attention his behavioral -- or his behavior in
9 the courtroom; is that correct?

10 A. It is correct that I didn't have a specific issue with
11 his competency. It is also though that if an issue arises
12 there is no other way to memorialize it other than to have the
13 court sort of have a discussion about it.

14 So just like as if a group of people come in wearing tee
15 shirts with a victim's face on it in our system I have to
16 raise that, have the court acknowledge that that is an issue
17 and weigh in. And that is what I was doing. It was behavior
18 that I couldn't explain, but didn't really make sense. So
19 that is why I brought it up.

20 Q. And I believe every time you brought it up the judge
21 found that Mr. McClenton was intelligent, engaged, was working
22 with y'all it appeared to him, and was competent to complete
23 the trial; is that correct?

24 A. I believe so. I still don't want to stamp on anything he
25 said. But ---

1 Q. The record speaks for itself, correct?

2 A. Yes.

3 Q. Okay. And it was mentioned on direct of your concern
4 about malingering and him faking these issues and that it was
5 convenient that they were coming up on bond revocation trial
6 day; is that your recollection?

7 A. Yes.

8 Q. Just briefly --

9 MR. LIMBAUGH: Your Honor, 422, Lines 23, and 423.

10 Q. The State mentions having concerns of malingering as well
11 and that Mr. McClenton had presented cardiac symptoms amid
12 hearings on several occasions and they had concerns of
13 malingering as well; is that correct?

14 A. I'm sorry, which line?

15 Q. I'm sorry, specifically on 423 you start at two and then
16 down to eight.

17 A. Yes. I mean I don't often like to adopt much of what a
18 solicitor says but ---

19 Q. Sure.

20 A. Yeah, he has said he has eluded responsibility during
21 bond revocation hearings when Mr. McClenton then presented
22 with cardiac symptoms. That happened on several occasions.
23 The State is concerned by the nature of the presentation
24 Monday and Tuesday regarding him delaying the proceedings as
25 well as in the presentation by Ms. Lee remaining in pretrial.

1 I guess that was probably a motion to sequester issue.

2 Q. So I will let the record speak there. I know it wasn't
3 your statement at trial, but did you share those same
4 malingering concerns?

5 A. Yes. And that is why I think -- in each of mine that is
6 why I said to the court I don't know what is going on, I don't
7 want to speak ill of him, but I have this concern.

8 Q. And so even if he had been diagnosed with paranoid
9 schizophrenia or some other mental health issue and he was
10 still engaged in his trial and still understood what was going
11 on, you did not have any competency concerns specifically?

12 A. Unless it in some way impacts my ability to prepare his
13 defense, his ability to help me in that defense. So in this
14 case if he had, you know, wanted to testify but was physically
15 unable to, because of this, yeah, that would be an issue.
16 But that is not what was happening here.

17 MR. LIMBAUGH: A moment's indulgence, Your Honor.

18 Q. So as was cited earlier with the standard to get a
19 competency evaluation, if you didn't have a reason to believe
20 that he was incompetent you wouldn't have had to ask for a
21 competency hearing -- or a competency evaluation; is that
22 correct?

23 A. Yes.

24 Q. And I do not need to belabor the point, but you did not
25 have a competency specific concern with Mr. McClenton, did

1 you?

2 A. I did not.

3 Q. That is all I have for this witness, Your Honor.

4 MR. BROOKER: I will take less than a minutes, Your
5 Honor.

6 THE COURT: Sir? Go ahead.

7 REDIRECT EXAMINATION BY MR. BROOKER OF BENJAMIN LEWIS:

8 Q. I think on Page 422 I think on cross-examination where
9 the prosecutor suggests that Mr. McClenton had had a medical
10 issue on multiple bond revocations. You were not representing
11 Mr. McClenton at that time; is that correct?

12 A. He -- he had a series of charges. I don't know if it
13 was -- I know that I started -- as we brought out, I started
14 representing him on the 12th -- it looks like September 12th
15 of 2013. On our file he had had eight arrests. So like
16 eight -- so it could have occurred any time in between those.
17 And the last arrest was September 4th, 2013. So, no, I would
18 not have been his attorney. I didn't get it until the very
19 end.

20 Q. So you didn't attend any revocation hearing with him, did
21 you?

22 A. I don't believe so.

23 Q. Okay. Okay. Isn't it true is that he only had one
24 revocation hearing -- I don't know whether or not you have
25 researched the record. But isn't it true that he only had one

1 revocation hearing, and didn't have multiple revocations
2 hearings?

3 A. You have likely researched it much better than I have. I
4 was kind of brought in at the very end for the trial.

5 Q. So you can't verify that he had multiple revocation
6 hearings and he had problems in --- for ---

7 A. I cannot.

8 Q. Okay. And just one last question in the course is, is
9 that -- and I just want to be absolutely certain. On day
10 number one when you told the court that in your opinion you
11 believe that it would be appropriate to stop the case and not
12 go forth is that I am assuming is that an officer of the
13 court -- or you were giving -- giving the judge your honest
14 opinion; is that correct?

15 A. Yes.

16 Q. You were not lying to the judge; that is what you
17 actually thought, is that correct?

18 A. What I -- that is correct. But if I may explain?

19 Q. Certainly.

20 A. Whether it is we are not able to go forward because of a
21 competency concern or we are not able to go forward because he
22 is malingering, either one isn't good for my case when my
23 client is looking at life.

24 So I don't want -- whether it is true or not, if it is
25 anything, even if he is just going to pretend, we don't need

1 him pretending in front of a jury. So neither way it should
2 go forward is kind of what I would say.

3 MR. BROOKER: No further questions, Your Honor.

4 THE COURT: From anybody?

5 **EXAMINATION BY THE COURT OF BENJAMIN LEWIS:**

6 Q. You say Mr. McClenton assisted you during the trial --
7 during the trial?

8 A. Yes.

9 Q. During the State's case and his case -- the State's case?

10 A. Yes, Your Honor. So in our -- in the Public Defender's
11 Office here we always have a second chair. And unfortunately
12 will rope her into this if necessary. Ms. Parnell was my
13 second chair at the time. So she would be more directly
14 handling interactions with Mr. McClenton while I am focused on
15 the specific cross, objections, things like that.

16 But as the record noted, I noted and the court noted that
17 he was writing down questions that should have been asked in
18 regards to cross. Which means to me he is engaged.

19 Q. All right. The interaction with Judge Newman takes place
20 over a total of two days; is that ---

21 A. Yes, I think he just came -- I think that was the limit
22 of his involvement in the case. He had not ---

23 Q. All right.

24 A. --- been here previously.

25 Q. Had you witnessed this condition in the morning -- in the

1 mornings to lessen in the afternoons, did he seem more engaged
2 in the afternoons than in the mornings?

3 A. Yes.

4 Q. Okay. And I thought I read in the record that he was
5 taking -- he had just been prescribed some new medication?

6 A. That is my understanding.

7 Q. Well ---

8 A. About -- about a month prior.

9 Q. A month prior. Okay.

10 A. I know a lot of mental health meds take some time before
11 they start ---

12 Q. To kick in, sure.

13 A. --- functioning.

14 Q. What in your mind would be the difference between some
15 sort of medical affect from a new medication as opposed to a
16 mental illness?

17 A. To me the issue is about whether he can assist me or not.
18 So I have had clients who have had tremors associated with
19 antipsychotic medications. And not everybody is going to be
20 perfect before they ever come to court. But if he is able to
21 assist me then he is still competent.

22 So I didn't know if it was physiological, a medical
23 response, psychological, mental response or just ---

24 Q. Well, you must have believed one or the other?

25 A. Or he was malingering.

1 Q. Okay.

2 A. And so I didn't know what was going on definitively.

3 Q. But certainly there were symptoms that pointed to the
4 medication ---

5 A. The behavior ---

6 Q. --- as the basis for his actions?

7 A. That is had never occurred previously, absolutely.

8 Q. Okay. All right. Thank you. You may come down.

9 THE COURT: Next witness.

10 MR. BROOKER: No further witness, Your Honor.

11 THE COURT: No further witness?

12 MR. LIMBAUGH: Just briefly, Your Honor. The state would
13 call Ms. Parnall to the stand.

14 THE COURT: All right.

15 (WHEREUPON, the witness was duly sworn.)

16 THE CLERK: For the record please state your name and
17 spell your last name.

18 THE JUROR: Christina Parnall. And my last name is
19 spelled P-A-R-N-A-L-L.

20 **DIRECT EXAMINATION BY MR. LIMBAUGH OF CHRISTINA PARNALL:**

21 Q. Good afternoon, Ms. Parnall. As Mr. Lewis just cited to
22 you in his discussions with the court you -- were you more
23 engaged in direct conversation with Mr. McClenton during trial
24 than he was?

25 A. I was.

1 Q. And in those discussion during trial how did you find Mr.
2 McClenton?

3 A. I found his behavior immediately in the mornings to be a
4 bit distracting. But during our conversations I found him to
5 be an extremely gifted person. Not only in memory and in
6 intelligence and his ability to really take hold of an idea
7 and explore it and respond to me with appropriate questions.
8 I found it to be something that was very striking.

9 And I did not have any issues, you know, in those
10 communications with him once the more physical issues started
11 to subside.

12 Q. So from that answer it almost seems to me that -- was he
13 engaging on the fly during trial in strategic decisions with
14 you as new information came out?

15 A. Yes. He would pass information through me to the
16 attorney. He would ask me questions if he had them as matters
17 unfolded. On occasion, you know, I would just try and jump in
18 and make sure that he understood what was happening and
19 ascertain whether he had any questions or concerns.

20 MR. LIMBAUGH: And just to note, Your Honor, on Page --

21 Q. Do you have a copy of the transcript?

22 A. I do.

23 Q. Page 422 of the transcripts. In conversation with the
24 court, Mr. Parnell, can you read -- can you just read three
25 through ten, if you would read Lines 3 through 10 on Page 422?

1 A. Sure. Yes, Your Honor, I have been able to help with him
2 this week and from my experience speaking with him and working
3 with him during the week I have found him to be a very
4 intelligent person, very gifted at understanding what is going
5 on around him. He has been able to provide a lot of insight
6 and, Your Honor, that's partly why I do hope that you are able
7 to give him some hope because of the mental strength that he
8 possesses.

9 Q. Do you still hold that opinion today that he is indeed an
10 intelligent person, gifted at understanding things around him?

11 A. In being able to listen to his testimony today I am also
12 once again very impressed by his intelligence and his ability
13 to understand what is going on around them.

14 Q. I would tend to agree with you. His -- was his ability
15 to engage and be a part of this trial exceptional in your
16 practice; I mean was he engaged more than most?

17 A. I would say that his level of intelligence was something
18 that is -- was probably rare. Considering that a vast
19 majority of the clients that I had while I was working with
20 the Public Defender's Office a lot of them struggled as far as
21 educational comprehension with legal issues. So it was
22 something that struck me as, you know, exceptional, yes.

23 Q. So would it be fair to say that not only did you not
24 believe him to be incompetent for trial but he was actually,
25 as you said in 422, rather insightful and helpful during his

1 own trial?

2 A. That is correct.

3 MR. LIMBAUGH: That is all I have, Your Honor.

4 THE COURT: All right.

5 MR. BROOKER: Just very briefly, Your Honor.

6 THE COURT: All right.

7 **CROSS-EXAMINATION BY MR. BROOKER OF CHRISTINA PARNELL:**

8 Q. Ms. Parnell, I think you indicated that there were times
9 in which he was more engaging than at others; is that correct?

10 A. That is correct. And it really seemed to correlate
11 directly to the time of the morning.

12 Q. Okay. So in the afternoon he would tend to be a little
13 bit more engaging than in the morning?

14 A. Correct. And in fact the behavior that was disruptive
15 was really very much restrained to the very early parts of the
16 morning. I am not sure that I recall it even spilling over
17 into the afternoon. But certainly at the very start of each
18 day.

19 Q. But of course that behavior would have taken place
20 during -- during parts or procedures of the trial when things
21 were going on, whether it be jury selection or whether it be
22 other things that behavior would have existed at the time in
23 which the trial would have been going on in some -- in some
24 aspect; is that correct?

25 A. I would say that the disruptive behavior was certainly as

1 it was still kind of tamping down there were, you know,
2 important procedural things starting to happen. But again, it
3 did seem to subside very quickly as the mornings got started.

4 Q. Okay. And just -- just from my understanding is, is that
5 from the time in which he arrived in the morning to start
6 trial procedures at the very beginning of the morning until
7 the time in which he left in the afternoon were you constantly
8 engaged with him for every moment throughout the entire trial
9 process?

10 A. Very frequently. And intermittently. So, you know, it
11 would be during a direct. It would be during a cross. It
12 would be during a motion, before or after. I wouldn't say it
13 was constant. But it was very frequent.

14 Q. All right. And so when you are speaking with respect to
15 -- when you are speaking with respect to your communication
16 with him and your belief that he was able to comprehend and
17 respond to you, you are speaking with respect to those times
18 in which you have interactions with him; is that correct?

19 A. Absolutely.

20 Q. But you didn't monitor him every moment of the trial; is
21 that correct?

22 A. That's correct. I had my attention on -- I had a laptop
23 in front of me. So I had my attention on the laptop at times.
24 I had my attention focused and my visual attention focused on
25 witnesses as well.

1 Q. And I will ask you this. This is the last -- I think
2 this is going to be -- maybe my last question or close to it.
3 It is, is that your testimony that, you know, that he appeared
4 to be disruptive or what you would refer to as disruptive in
5 the morning and then of course gradually as the morning -- as
6 the morning grew older then of course is, is that his demeanor
7 changed and of course is, is that disrupt behavior -- is that
8 the disruptive behavior then gradually subsided, if that is
9 correct it is my understanding is, is that - and you correct
10 me if I'm wrong - according to due process that competency has
11 to be consistent during every last moment of the proceeding --
12 you correct me if your understanding is different. If
13 competency is up to par for 95 percent of the proceedings and
14 not up to par for five percent of the proceedings then of
15 course is, is that that was a violation of a due process
16 clause because the due process clause says that competency has
17 to be -- has to be present throughout the entire course of the
18 proceedings against him, from the time in which he is charged
19 until the time in which he is sentenced and sent off to jail.
20 So you cannot have a lapse in competency even for a little
21 moment during the trial or during other proceedings within a -
22 - you know, within a criminal process; is that you
23 understanding of the law?

24 A. That would be my understanding. And if I may expand on
25 that just a little bit. I would agree with you that a person

1 would need to be competent at all periods of time during a
2 trial, during any other hearing or criminal matter.

3 I think it is fairly rare that we encounter someone that
4 would actually be competent for 95 percent of a trial and, you
5 know, incompetent for about five percent. But certainty if
6 that were to occur I would say that that person is incompetent
7 and that due process would be violated.

8 Q. Okay. Now and just one more question. I will ask you
9 the same question I asked Mr. Lewis is, is that and in
10 addition to being a lawyer you are not a trained psychiatrist
11 with a license and able to make an assessment with respect to,
12 you know, when someone is lucid and when they are not; is ---

13 A. Not at all.

14 Q. --- that correct? Okay. Thank you, ma'am.

15 MR. BROOKER: Thank you, Your Honor.

16 MR. LIMBAUGH: One question, Your Honor?

17 THE COURT: Sure.

18 **REDIRECT EXAMINATION BY MR. LIMBAUGH OF CHRISTINA PARNALL:**

19 Q. At any point did you have reason to believe that Mr.
20 McClenton was incompetent to stand trial?

21 A. I did not.

22 MR. LIMBAUGH: Thank you, Your Honor. That is all the
23 State has.

24 THE COURT: All right. You may come down.

25 THE JUROR: Thank you.

1 THE COURT: Any other witnesses?
2 MR. BROOKER: No, sir, Your Honor.
3 MR. LIMBAUGH: The State rests, Your Honor.
4 THE COURT: Thirty days, proposed orders?
5 MR. BROOKER: Yes, sir, Your Honor.
6 MR. LIMBAUGH: Yes, sir.
7 THE COURT: Thank you very much.
8 (WHEREUPON, the hearing adjourned.)

REDIRECT EXAMINATION BY MR. BROOKER OF CHRISTINA
PARNELL

101

(NOTE: Please contact the court reporter for additional
copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court
Reporter for the Ninth Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing is a
true, accurate, and complete transcript of record of all
proceedings had and evidence introduced in the captioned
case, relative to appeal, in the court for South
Carolina, on December 6, 2018.

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



PHYLLIS NORTON, CVR

Date: September 25, 2023

Certified Transcript Provided For: W. Corbett - SCAG
Certification Reference #2023-0925

Charleston County Detention Center
Initial Mental Health Contact/Assessment Sheet (p. 1)

Name: McClinton, Shawndell Date of Contact: 3/24/14 Unit: B3K Previous#: 64186

DOB: [REDACTED] Age: 35 Race: B Sex: M Marital Status: S Educational Level: 10th Grade
Referred by: Nurse CO Family Atty Other Phone#: Name:

Report:

Previous Arrests? YN CCDC? YN Prison? YN Where? Kirkland Release Date: Dec 2013

Current Charges: Burglary 1st Degree

Attorney/Public Defender: Court Date: Release Date:

Please rate your stress regarding current situation from 1-10 (1 not at all, 10 most stress): 8 or 9

Have you ever been: N shot N stabbed X beaten X raped? Tri-city Hosp.

Have you ever had a head injury? Y yes no LOC? Y Hospitalized at: CA When: 11-12 yrs. old

Have you ever been abused: Y physically Y emotionally Y sexually Y When: At age 17

Have you ever been accused of, or convicted of a sex offense of any kind? Indecent Exposure 2005

Has anyone suggested that you have/need: N learning disorder N special education?

Have you ever been tested for HIV/AIDS? Y yes no Results: N Are you getting Tx now? yes no

Current Symptom/Behavior Checklist: (Check only those that apply)

Mood Assessment:

<u>N</u> alcohol abuse/dependency	<u>Y</u> anxiety	<u>N</u> impulsiveness	<u>N</u> Feeling blue
<u>Y</u> drug abuse/dependency	<u>N</u> appetite disturbance	<u>Y</u> labile mood	<u>N</u> Wish you were dead
<u>N</u> withdrawal symptoms	<u>Y</u> sleep difficulties	<u>N</u> manic Sx*	<u>N</u> Urge to kill self
<u>Y</u> depression	<u>Y</u> auditory hallucin.*	<u>N</u> disorientation	<u>N</u> Plan to kill self
<u>N</u> Suicidal Ideation*	<u>N</u> visual hallucin.*	<u>N</u> confusion*	<u>N</u> Hopelessness
<u>N</u> suicide gesture/attempt*	<u>Y</u> paranoia	<u>N</u> violent threat/beh	<u>Y</u> Anger/Irritable
<u>N</u> other self destructive behavior	<u>N</u> other symptoms: <u></u>		

Specify*:

Suicidal Risk: Have you ever tried to kill your self? yes no How many Times?

Method(s):

If suicidal/threat to self, contact medical immediately for placement on suicide precautions.

Medications/Treatment: (need all possible info for follow-up)

Current meds: NONE

Last took meds:

Prescribed by:

Inpatient History: NONE

Outpatient History: NONE

C/DCMHC History: Y Where? When?

Other agency/provider:

Case Mgr:

Ph#:

Prior Psych Do:

Medical Illness?: High BP

Allergies?: NKDA

Other Conditions?:

Treatment Plan:

Appropriate for MH Court? Y N (if yes make copy & file)

Psychiatrist to follow immediately:

Review w/physician for meds:

Place on list for f/u: Y

Clinician to f/u in two weeks:

Clinician to f/u prn:

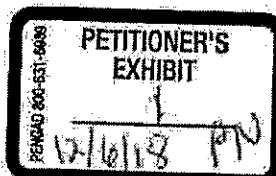
Refer to Drug Counselor:

Provide referral info:

No f/u necessary:

Refer to medical services:

Treatment Plan should reflect current status, tx status, A&D issues and clinical judgment.



Charleston County Detention Center Initial Contact/Assessment (p. 2)
Mental Status Exam

MHP met with inmate to assess his mental status and HPI. Inmate is a 35 Y/O S.B.M. who was arrested for Burglary First Degree. Inmate c/o experiencing depression, anxiety, and paranoia. Inmate reported he never received inpatient or outpatient psychiatric treatment. Inmate stated his appetite was inconsistent and he was experiencing sleep disturbances. Inmate's mood appeared anxious, affect congruent; he was alert, cooperative, and oriented x53. Inmate stated he was experiencing A/H of voices telling him to do "stupid things" causing increased anxiety, panic V/H and delusions. Inmate reported a history of drug abuse, he requested to see psychiatrist.

DX Impression: Adjustment Reaction w/ Anxious Mood.
TX Plan: MHP will refer inmate for further evaluation with the psychiatrist.

Necessary Hospitalization Information: (Collect all possible info for later needs/emergency).

Address: _____ Phone: _____

Length of Time Residing There? _____

Educational Level: _____ Veteran Status: _____ Monthly Income: _____

Insurance: _____ Next of Kin: _____

Address of Next of Kin: _____

Conducted by: Shirley W. Murphy Title: MHP Date: 3/24/14

#64186

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
HEALTH SERVICES
CONTINUITY OF CARE FOR
TRANSFER TO COURT

Inmate Name: McClenton, Shawndell SCDC Number: 255563

DOB: [REDACTED] Transferring Institution: KCI

Phone number of SCDC Inst medical office: (864) (843) (803) ☒ 896-3954

Allergies: ASA

Td date: N/A PPD 4-24-14 Result 0mm Previously+PPD N/A

If +PPD or previously+, follow-up done: CXR date/result N/A

Has patient had INH Therapy? N/A

List chronic and acute problems, diagnoses, treatments needed (included mental health info, recent significant labwork) Bipolar, HTN, Schizophrenia

Diet Healthy Heart diet

History of suicide attempts? none noted

List supplies and prosthetics: N/A

This patient has been given the following medications (KOP indicates the inmate has Keep-on-Person supply of meds).

Medications Name	Dosage	Route	Frequency	Amount Sent	KOP?
<u>Norvasc</u>	<u>10mg</u>	<u>PO</u>	<u>daily</u>	<u>5 day</u>	<u>X</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Please return any unused medications
To SCDC!!!!

[Signature] 5/22/14
Signature and Title Date

5/24/14



PSYCHIATRIST NOTE

Date/Time: 3/27/14 Inmate's Name: Shawndell McClenon 6/18/86 D.O.B.: [REDACTED]

3540 SBM - with 2 children 2yo boy, 8yo girl whom he supports. He is charged with burglary 1st degree. Has had burglary - strong arm, 2x and drug charges. He's done mushrooms before when he didn't know he hallucinated, was frightened - cocaine made him paranoid and did not. Can't sleep due to nightmares - "crazy" - all about whom he was molested while in foster care. Has mostly had a lot of rejection from mother. Patient reports long he has paranoid thoughts as well as AH - they tell him to "do bad things", hurt self, others and he feels he used drugs to block them out. Would also try to sleep during the day to block voices but then he awakes at night. Has heard voices off and on for years. Can't remember med he used to take.

Currently works as stepfather, not the man mother abandoned him for. Reports family situation can be very chaotic. No known med problems.

Reviewed PT b / SE of meds - Not aware of any med allergies. Has heard of Risperdal, but never took.

Imp - psychosis NOS, PTSD.

Pl - Zyprexa 2.5mg q am, 5mg q hr

Copaxone 1mg po Rtc. in 14 day. DMIT 100mg

FOR MENTAL HEALTH USE ONLY



COUNSELOR NOTE

Court = (843) 958-2130

BX: 12/19/13

Date: 12/20/14	IM Name: McClendon, Shaiundell	IM#: 04186	DOB: [REDACTED]
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I spoke to Judge Newman today re: the Judge's concerns about I/m's presentation in court.

Judge Newman reports I/m has been sleepy, sluggish, & shaking. He states he has had to postpone court for hours both yesterday & today until I/m's symptoms got a little better.

I/m's (M) was in the court room & suggests I/m get an evening snack & his medications.

I suggested I/m be assessed by medical staff once he returns to the jail today. I also scheduled an appointment to the psychiatrist for the soonest available appointment, which will be Friday. Judge Newman asked me to make note of the fact he is so concerned about these symptoms that he stopped the court trial to contact me. I agreed to make note of his request.

Dx Imp: R/O Psychosis NOS & PTSD.

TX Plan: will refer to medical for medical assmt ASAP. Will place on Psychiatrist list for PMH Friday.

By Crat - MSW

Patient Visit ReportPhysician Last, First Name : Jacobs, Theodolph, MD

Patient Last, First Name

DOB

Visit Date

MCCLINTON, SHAWNDELL4/14/2014

Patient is a 35 year old Male.

Current Medications :

Norvasc 10 mg Tab
Disp #90, (1 Tab PER DAY)
Take 1 Tab qd, 90days, 1 refill(s)
Notes : Medication Renewed PA Huffman

Medications Prescribed are :

Zyprexa 2.5 mg Tab
Disp #14, (1 Tab PER DAY)
Take 1 Tab qd, 14days
NOTES : MENTAL HEALTH MEDICATION RENEWED X 14 DAYS - JACOBS/ALLEN
Zyprexa 2.5 mg Tab
Disp #28, (2 Tab PER DAY)
Take 2 Tab hs, 14days
NOTES : MENTAL HEALTH MEDICATION RENEWED X 14 DAYS - JACOBS/ALLEN
Cogentin 1 mg Tab
Disp #14, (1 Tab PER DAY)
Take 1 Tab hs, 14days
NOTES : MENTAL HEALTH MEDICATION RENEWED X 14 DAYS - JACOBS/ALLEN

Jacobs, Theodolph, MD

Inmate: MCCLINTON, SHAWNDELL Inmate No: 64186 DOB: [REDACTED]
Note generated by Doctorspartner! EMR software(www.doctorspartner.com).

Charleston County Detention Center
Initial Mental Health Contact/Assessment Sheet (p. 1)

Name: McClinton, Shawndell Date of Contact: 3/24/14 Unit: B3K Previous#: 64186
DOB: [REDACTED] Age: 35 Race: B Sex: M Marital Status: S Educational Level: 10th Grade
Referred by: Nurse CO Family Atty Other Phone# Name:

Report:

Previous Arrests? ON CCDC? ON Prison? ON Where? Kirkland Release Date: Dec 2013

Current Charges: Burglary 1st Degree

Attorney/Public Defender: Court Date: Release Date:

Please rate your stress regarding current situation from 1-10 (1 not at all, 10 most stress): 8 or 9

Have you ever been: N shot N stabbed Y beaten Y raped? TV - City Hosp.

Have you ever had a head injury? Y yes N no LOC? Y Hospitalized at: CA When: 11-12 yrs. old

Have you ever been abused: Y physically Y emotionally Y sexually Y When: At age nine

Have you ever been accused of, or convicted of a sex offense of any kind? Indecent exposure 2005

Has anyone suggested that you have/need: N learning disorder N special education?

Have you ever been tested for HIV/AIDS? Y yes N no Results: Are you getting Tx now? yes no

Current Symptom/Behavior Checklist: (Check only those that apply)

Mood Assessment:

<u>N</u> alcohol abuse/dependency	<u>Y</u> anxiety	<u>N</u> impulsiveness	<u>N</u> Feeling blue
<u>Y</u> drug abuse/dependency	<u>N</u> appetite disturbance	<u>Y</u> labile mood	<u>N</u> Wish you were dead
<u>N</u> withdrawal symptoms	<u>Y</u> sleep difficulties	<u>N</u> manic Sx*	<u>N</u> Urge to kill self
<u>Y</u> depression	<u>Y</u> auditory hallucin.*	<u>N</u> disorientation	<u>N</u> Plan to kill self
<u>N</u> Suicidal Ideation*	<u>N</u> visual hallucin.*	<u>N</u> confusion*	<u>N</u> Hopelessness
<u>N</u> suicide gesture/attempt*	<u>Y</u> paranoia	<u>N</u> violent threat/beh	<u>Y</u> Anger/irritability
<u>N</u> Other self destructive behavior	<u>N</u> Other symptoms:		

Specify*:

Suicidal Risk: Have you ever tried to kill your self? yes N no How many Times?

Method(s):

If suicidal/threat to self, contact medical immediately for placement on suicide precautions.

Medications/Treatment: (need all possible info for follow-up)

Current meds: NONE

Last took meds: Prescribed by:

Inpatient History: NONE

Outpatient History: NONE

CCDMHC History: Y Where? When?

Other agency/provider: Case Mgr: Ph#:

Prior Psych Doc:

Medical Illness?: High BP Allergies?: NKDA Other Conditions?:

Treatment Plan:

Appropriate for MH Court? Y N (if yes make copy & file)

Psychiatrist to follow immediately: Review w/physician for meds: Place on list for f/u:

Clinician to f/u in two weeks: Clinician to f/u prn: Refer to Drug Counselor:

Provide referral info: No f/u necessary: Refer to medical services:

Treatment Plan should reflect current status, tx status, A&D issues and clinical judgment.

Charleston County Detention Center Initial Contact/Assessment (p. 2)
Mental Status Exam

MHP met with inmate to assess his mental status and HPI. Inmate is a 35 Y/O SBM who was arrested for Burglary First Degree. Inmate c/o experiencing depression, anxiety, and paranoia. Inmate reported he never received inpatient or outpatient psychiatric treatment. Inmate stated his appetite was inconsistent and he was experiencing sleep disturbances. Inmate's mood appeared anxious, affect congruent; he was alert, cooperative, and oriented X53. Inmate stated he was experiencing A/H of voices telling him to do "stupid things" causing increased anxiety, delirious V/H and delusions. Inmate reported to history of drug abuse, he requested to see psychiatrist.

DX Impression: Adjustment Reaction w/ Anxious Mood. T.K. Plan: MHP will refer inmate for further evaluation with the psychiatrist.

Necessary Hospitalization Information: (Collect all possible info for later needs/emergency).

Address: _____ Phone: _____

Length of Time Residing There? _____

Educational Level: _____ Veteran Status: _____ Monthly Income: _____

Insurance: _____ Next of Kin: _____

Address of Next of Kin: _____

Conducted by: Shant M. Longmy Title: MHP Date: 3/24/14



PSYCHIATRIST NOTE

Date/Time: 3/27/14 Inmate's Name: Shawndell McClenon 64186 D.O.B.: [REDACTED]

3540 SBM - with 2 children 2yo boy, 8yo girl whom he supports. He is charged with burglary 1st degree. Has had burglary - strong-arm, 2X and drug charges. He's done mushrooms before when he didn't know he hallucinated, was frightened - cocaine made him paranoid and did not. Can't sleep due to nightmares - "crazy" - all about when he was molested while in foster care. Has mostly had alot of rejection from mother. Patient reports long history of paranoid thoughts as well as AH. They tell him to "do bad things", hurt self, others and he feels he used drugs to block them out. Would also try to sleep during the day to block voices but then he awakes at night. Has heard voices off and on for years. Can't remember med he needs to take.

Currently works as skipfather, note the man mother abandoned him for. Reports family situation can be very chaotic. No known med problems.

Reviewed PT to SE of meds - Not aware of any med allergies. Has heard of Risperdal, but never took any - psychosis NOS, PTSD.

PT - Zyprexa 2.5mg q am, 5mg q hr
Cognitive Imp from ROC in 14 days. DMAT (thru)

FOR MENTAL HEALTH USE ONLY

Patient Visit ReportPhysician Last,First Name : Welssglass Barry MDPatient Last,First Name
MCCLENTON, SHAWNDELLDOB
[REDACTED]Visit Date
4/22/2014**Chief Complaint & HPI**

Patient is a 35 year old Male who presents with the following Chief Complaint of

1. NON SICK CALL.

Immunizations**In Office Lab :****Current Medications:****Norvasc 10 mg Tab****Disp #90, (1 Tab PER DAY)****Take: 1 Tab qd, 90 Days, 1 Refills****NOTES Medication Renewed PA Huffman****Zyprexa 2.5 mg Tab****Disp #14, (1 Tab PER DAY)****Take: 1 Tab qd, 14 Days****NOTES MENTAL HEALTH MEDICATION RENEWED X 14 DAYS - JACOBS/ALLEN****Zyprexa 2.5 mg Tab****Disp #28, (2 Tab PER DAY)****Take: 2 Tab hs, 14 Days****NOTES MENTAL HEALTH MEDICATION RENEWED X 14 DAYS - JACOBS/ALLEN****Cogentin 1 mg Tab****Disp #14, (1 Tab PER DAY)****Take: 1 Tab hs, 14 Days****NOTES MENTAL HEALTH MEDICATION RENEWED X 14 DAYS - JACOBS/ALLEN****Drug/Food Allergies:****Allergies - Active****Allergies**

Aspirin

Reactions

RASH/ ITCHING

ROS:**Vitals:****Vital Signs:**

Blood Pressure 123/96, Pulse Rate of 88, Respiration Rate of 16, O298.

Chart Catg. 

Inmate: MCCLENTON, SHAWNDELL Inmate No: 64186 DOB: [REDACTED]

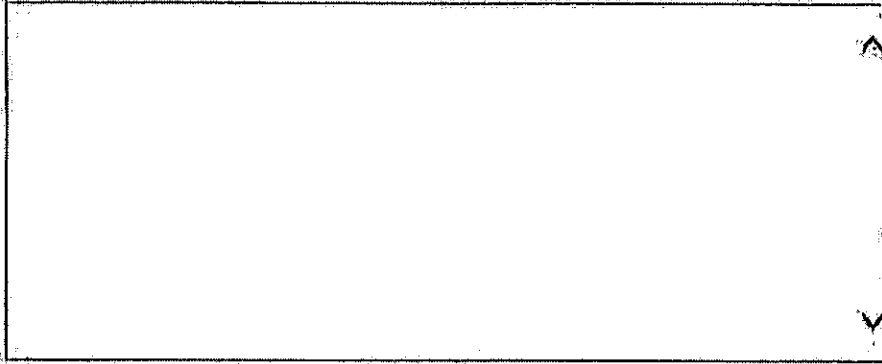
Chart Type

Select

[View growth Chart](#)**Objective Exam:**

Place Of Service : Office

Type Of Service : Medical Care

Patient Instruction:**IMPRESSION/PLAN :****Assessment Notes :**

PT WAS BROUGHT DOWN TO MEDICAL FOR AN ASSESMENT. PT HAS BEEN GOING TO COURT THE LAST 2 DAYS, AND IT WAS NOTED TODAY THAT THE JUDGE IS CONCERNED ABOUT IM. IM HAS BEEN SLUGGISH AND SHAKING. THE JUDGE HAS HAD TO STOP COURT TRAIL DUE TO BEING CONCERNED ABOUT THESE SYMPTOMS.

Plan & Treatment Notes :

PT WAS ASKED WHY HE THINKS THAT HE IS HAVING THESE SYMPTOMS? PT STATED THAT HE HAD TOLD EVERYONE THAT THE ISSUE IS DUE TO HIS ZYPREXA MEDICATION. PT USUALLY TAKES MEDICATION AND WILL GO BACK TO SLEEP, BUT DUE TO COURT HE HAS TO STAY AWAKE. PT STATED THAT HE FEELS FINE AFTER A WHILE, BUT HE IS VERY TIRED FOR THE FIRST COUPLE HRS OF TAKING MEDICATION. HE KNOWS THAT HE WILL BE SEEING MENTAL HEALTH ON FRIDAY FOR THIS ISSUE.

Medications Prescribed are:<http://www.pdr.net>[Medication Review](#)[Sample Medications](#)**The following Labs/Tests were also ordered on this visit for the patient:****NCCHC Standards**

Inmate: MCCLINTON, SHAWNDELL Inmate No: 64186 DOB: [REDACTED]

The patient was referred to community partner:

The following procedures/actions were performed in this visit:

Weissglass Barry MD

Filled Date

4/22/2014 10:49:40 PM

Filled By

rojas LPN, Jaclyn

CheckedOut Date

4/23/2014

CheckedOut By

Ancrum CMA, Annetinette

Inmate: MCCLINTON, SHAWNDELL Inmate No: 64186 DOB: [REDACTED]

Intake Start Time: 5/27/2014 5:43:34 PM

Booking Date: 12/4/2018

INTAKE SCREENING/HISTORY : PART 1

☐ Completed on paper - please refer to Document Management

LAST NAME MCCLINTON		FIRST NAME SHAWNDELL		MI QUINTEL
INMATE # IS 04188		DOB [REDACTED]		
DATE (MM/DD/YY) 5/27/2014	TIME 5:47 PM	SEX ☒ MALE ☐ FEMALE	SOCIAL SECURITY NUMBER 000000000	
Interpreter Used? ☐ Yes ☐ No Name? Insurance: ☐ Review PR Form				
Medical Allergy - Active				
Medical Allergy Name Aspirin		Allergy Reaction RASH/ITCHING		
☐ No Known Allergies				

COMMUNICABLE DISEASES ☒ No Reported Communicable Diseases

Has a doctor currently diagnosed you with... (Check all that apply)

☐ Abscess	☐ Chicken Pox	☐ Lice	☐ MRSA	☐ Shingle
----------------------------------	--------------------------------------	-------------------------------	-------------------------------	----------------------------------

Reported Medications

☐ No Reported Medications ☐ Unverified Medications

norvasc 10mg qd	^ v
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HISTORY

Major Surgical History (within 90 days) ☐ Yes Date: ☒ No	Medical Hospitalizations (within 90 days) ☐ Yes ☒ No If yes, describe: where? Date:	Ever had transplant surgery ☐ Yes ☒ No When? Type:
Selected Operation Names N/A		

Immunization

Are your immunizations current?
☒ Yes ☐ No ☐ Don't know If no, explain: tetanus UTD

Tobacco Use

Alcohol Use

Substance/Drug Use

Do you smoke? ☐ Yes ☒ No ☐ Current ☐ Former Amount? packs/day How long?	Do you drink alcohol? ☐ Yes ☒ No What? Last Use?	Do you use drugs? ☐ Yes ☒ No Do you use injectable drugs? ☐ Yes ☒ No Needlemarks? ☐ Yes ☒ No
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Inmate: MCCLINTON, SHAWNDELL Inmate No: 64188 DOB: [REDACTED]

CHRONIC ILLNESS			
Has a Doctor Diagnosed You With...			
Asthma (If no, next section) Do you have Asthma ☐ Yes ☒ No Date of onset Last episode?	Cardiovascular Disease (ask each question) Have you ever had any problems with your heart? ☐ Yes ☒ No Date of onset?	☐ Heart valve replacement ☐ Atrial Fibrillation	Cerebrovascular Disease Have you ever had a:

<http://10.20.24.126/doctorspartner/REAL/VersionCom/echo.asp?Printx=Y&FlowCwb=C...> 12/4/2018

19

ER visit in last 90 days? ☐ Yes ☒ No If yes, when? Ever intubated? ☐ Yes ☒ No If yes, when? Currently on steroids? ☐ Yes ☒ No Peak Flow Result	☐ Angina ☐ Heart attack ☐ Bypass surgery ☐ Stents ☐ CHF Date of onset? Last episode?	☐ Pacemaker ☐ Internal Defibrillator ☐ Endocarditis ☐ DVT/PE Comments	CVA (stroke)? ☐ Yes ☒ No Date of onset TIA (Mini-Stroke)? ☐ Yes ☒ No Date of onset Comments
Diabetes (If no, next section) Have you ever had diabetes or a problem with high blood sugar? ☐ Yes ☒ No When dx? How often do you check your blood sugar? ☐ QD ☐ BID ☐ TID ☐ QID Are you currently receiving medication(s)? ☐ Yes ☒ No Hospitalization last year? ☐ Yes ☒ No If yes, when? Fingerstick result:	Hypertension (If no, next section) Have you ever had high blood pressure or hypertension? ☒ Yes ☐ No Date of onset? Are you currently receiving medication(s)? ☒ Yes ☐ No	Epilepsy/Seizure (If no, next section) Have you ever had a seizure or convulsion? ☐ Yes ☒ No Frequency greater than one per month? ☐ Yes ☒ No Two or more anticonvulsants? ☐ Yes ☒ No Are you currently receiving medication(s)? ☐ Yes ☒ No Last seizure? Comments	
Gastrointestinal (If no, next section) Have you ever been treated for problems with your stomach or bowels? ☐ Yes ☒ No Have you ever been told you have cirrhosis? ☐ Yes ☒ No Have you ever had a GI bleed? ☐ Yes ☒ No Last bleed? Frequency? Comments Notes	Cancer (If no, next section) Do you currently have cancer? ☐ Yes ☒ No Cancer type When diagnosed? Treatment ☐ None ☐ Chemo ☐ Radiation ☐ Surgery ☐ Other	Dialysis (If no, next section) Are you currently on dialysis? ☐ Yes ☒ No Where are you receiving your dialysis treatments? Type? ☐ Hemodialysis ☐ Peritoneal Number of times per week? Thrill ☐ Yes ☐ No Bruit ☐ Yes ☐ No Shunt ☐ Yes ☐ No Location? Last Dialyzed? COPD/Emphysema (If no, next section) Do you have COPD or emphysema? ☐ Yes ☒ No O2 dependant? ☐ Yes ☐ No CPAP? ☐ Yes ☒ No Hospitalization? ☐ Yes ☐ No Ever been on a respirator? ☐ Yes ☐ No O2 Sat	

Inmate: MCCLINTON, SHAWNDELL Inmate No: 64186 DOB: [REDACTED]

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Sickle Cell Intake Questions

☐ Yes ☐ No	
☐ Hospitalization ☐ Transfusions Pain Episodes	O2 Saturation

EXAMINATION

Visual Acuity (Snellen) Comment: Completed? ☐ Yes ☐ No Deferred ☒ Without correction R: L: Both: With correction R: L: Both: Visual Impairment ☒ Yes ☐ No Blind ☐ R Eye ☐ L Eye ☐ Bilateral Corrective Lenses? ☒ Yes ☐ No Contact Lenses? ☐ Yes ☐ No Currently in I/M's possession? ☐ Yes ☒ No Deferred ☐ Comment:	HEENT ☒ Unremarkable ☐ Sclera injected (red) ☐ Lacerations ☐ Sclera icteric (yellow) ☐ Scalp lesions ☐ Pale conjunctiva ☐ Abnormal pupils ☐ Other ☐ Deferred Describe Oral Cavity ☒ Unremarkable ☐ Missing Teeth ☐ Thrush ☐ Edentulous ☐ Abscess ☐ Deferred ☐ Lesions ☐ Other Describe
Hearing ☒ Appears adequate ☐ Hearing loss ☐ Deaf ☐ Deferred ☐ Other Describe	Neck ☒ Unremarkable ☐ Deferred ☐ Appears Symmetrical ☐ Other ☐ Obvious masses Describe
Chest ☒ Clear ☐ Rhonchi ☐ Wheezes ☐ Surgical scar ☐ Rales ☐ Other Describe	Abdomen ☐ Unremarkable/Soft ☐ Surgical Scar ☐ Liver possibly enlarged Describe

Inmate: MCCLINTON, SHAWNDELL Inmate No: 64186 DOB: XXXXXXXXXX

☐ Deferred		☒ Deferred ☐ Other	
Heart Rate ☒ Normal ☐ Brady ☐ Tachy Rhythm ☒ Reg. ☐ Irreg. Possible murmur ☐ Yes ☒ No Deferred ☐		Skin ☐ Unremarkable ☐ Tracks ☐ Open ☒ Tattoos ☐ Lesions/sores ☐ Jaundice ☐ Lacerations ☐ Pallor ☐ Surgical scars ☐ Deferred ☐ Rash ☐ Other	
Extremities ☒ Unremarkable ☐ Deferred ☐ Edema ☐ Other ☐ Cyanosis ☐ Capillary Refill Delayed		Describe Please note: If a patient's age, sexual history, medical history past or present indicate the need for a pelvic, rectal, genitalia, or prostate exam, schedule patient for physician/physician extender evaluation.	

MENTAL HEALTH			
Past/current mental illness/complaint? ☒ Yes ☐ No	Have you been diagnosed with the following: ☒ Schizophrenia ☒ Bipolar ☐ Major depression ☐ Other		History of suicide attempt? ☐ Yes ☒ No Last attempt?
Do you feel hopeless or helpless? ☐ Yes ☒ No	Do you have thoughts of suicide now? ☐ Yes ☒ No	Family/friends history of suicide? ☐ Yes ☒ No	Do you have thoughts of hurting yourself? ☐ Yes ☒ No
Do you have thoughts about hurting others? ☐ Yes ☒ No	History of psychotropic medication? ☐ Yes ☒ No	History of hearing things? ☐ Yes ☒ No	History of seeing things? ☐ Yes ☒ No
History of psychiatric hospitalization? ☐ Yes ☒ No Within last year? ☐ Yes ☐ No			

History of special education placement? ☐ Yes ☒ No	Family history of mental illness? ☐ Yes ☒ No	History of: ☐ Mental retardation ☐ Learning disability
Neurological deficit? ☐ Yes ☒ No If yes, describe:		

MENTAL HEALTH/RESPONSE TO INCARCERATION					
Oriented To: Person ☒ Yes ☐ No Place ☒ Yes ☐ No Time ☒ Yes ☐ No	Psychomotor ☒ Normal ☐ Agitation	Speech ☒ Unremarkable ☐ Incoherent ☐ Slurred ☐ Mute	Mood ☒ Unremarkable ☐ Anxious ☐ Depressed ☐ Irritable/Angry	Affect ☒ Appropriate to mood ☐ Inappropriate to mood ☐ Labile ☐ Flat	Thought Process ☒ Logical ☐ Illogical ☐ Relevant ☐ Irrelevant

Have you ever been convicted of or a victim of a violent or sexual crime? ☐ Yes ☐ No Explain:

Work Clearance: ☐ Yes ☒ No

Referral ☐ Nursing Sick Call ☐ Routine	☐ Mental Health Referral ☐ Routine ☐ Expedited	Nursing Actions
--	--	------------------------

Inmate: MCCLENTON, SHAWNDELL Inmate No: 64186 DOB: [REDACTED]

☐ Expedited	☐ Chronic Care Clinic	☐ Routine	☐ CIWA	☐ COWS	☐ Pharm fxd or extoid
☐ MD/NP/PA Sick Call	☐ Expedited		☐ CCLog	☐ MD Communication Form	
☐ Expedited	☐ Dental Referral				

Classification	☐ Medical	☒ General Pop.	☐ Suicide Watch	☐ Medical Step Down Unit
	☐ Veteran	☐ FED	☐ ICE	☐ Mental Health Unit

COMMENTS
no work camp - court appearance

General Observation		
General Appearance	☒ NAD	☒ Appears Hydrated
		☐ Other

Mobility Restrictions ☐ Yes ☒ No ☐ Deformity ☐ Amputation ☐ Paraplegia ☐ Cast ☐ Injury Other	Hearing Disability ☐ Yes ☒ No Deaf ☐ R.Ear ☐ L.Ear ☐ Bilateral Hearing Impaired ☐ R.Ear ☐ L.Ear ☐ Bilateral Hearing Aid? ☐ Yes ☐ No Currently in VM's possession? ☐ Yes ☐ No
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VITAL SIGNS ☐ one or more vital signs refused							
Height in inches 70.6 ☒ Actual ☐ Reported	Weight 212 lbs (Weight Patient)	Temperature (sp) 97.6	Pulse 88	Respirations 16	Systolic BP 132	Diastolic BP 77	Oxygen Sat 97

HEALTH EDUCATION			
☒ Oral Hygiene	☒ Nutrition	☐ STDs	☐ Substance Abuse
☒ Exercise	☐ Tobacco Cessation	☐ HIV Testing	☐ TB
☐ Other			
Do you have any medical conditions not being addressed?			

☒ Normal Encounter

CONSENT
By signing this form, I am stating that...
I have answered these questions truthfully and the access to care and grievance policies have been explained to me. I also give CCOH and its medical personnel permission to treat me and perform routine labs to detect Hepatitis, HIV/AIDS or any other communicable disease. I understand that this would only be in the event that medical personnel or other jail staff members are exposed to my bodily fluids.

SIGNATURE

Inmate: MCCLENTON, SHAWNDELL Inmate No: 64185 DOB: [REDACTED]

		-AM -PM	
Interviewer's Name (Print/Stamp)	Interviewer's Signature	Date (MM/DD/YY)	Time: -AM -PM
Inmate's Name (Print/Stamp)	Inmate's Signature	Date (MM/DD/YY)	Time: -AM -PM

Filled Date

5/27/2014 5:47:11 PM

Filled By

Livingston RN, Brandi

CheckedOut Date

5/28/2014

CheckedOut By

Ancrum CMA, Anntinette

Signed Date

5/29/2014 7:04:45 AM

Signed By

Jacobs MD, Theodolph

Inmate: MCCLENTON, SHAWNDELL Inmate No: 64186 DOB: [REDACTED]

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Shawndell Q. McClenton, #255563,

Case No.: 2014-CP-10-3253

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED
2019 FEB 13 PM 5:54
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief filed on May 21, 2014, by Shawndell McClenton (Applicant), alleging he was entitled to post-conviction relief based on constitutionally ineffective counsel, lack of subject matter jurisdiction, and coercion from the state through his defense attorney. Applicant amended his application at the evidentiary hearing, alleging solely that counsel was deficient for failing to request a Blair hearing to determine Applicant's competency to stand trial. Respondent served its return on September 15, 2017, requesting an evidentiary hearing be convened on the application.

An evidentiary hearing was held on December 6, 2018, before this Court at the Charleston County Courthouse. Applicant was present and was represented by counsel Thurmond Booker. Respondent was represented by Assistant Attorney General Benjamin Limbaugh of the South Carolina Attorney General's Office. At the hearing, testimony was taken from trial counsel Benjamin Lewis, Christina Parnall, and Applicant.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment.

During its May 2012 term, the Charleston County Grand Jury indicted Applicant for one count of Burglary, First Degree, (2012-GS-10-02892), and one count of Breaking and Entering a Motor Vehicle, (2012-GS-10-02892). During its June, 2012 term, the Charleston County Grand Jury indicted Applicant on another count of Burglary, First Degree, (2012-GS-10-100-3189).

Applicant proceeded to a jury trial before the Honorable Clifton Newman on April 21, 2014. Applicant was represented by Benjamin Lewis, Esquire and Christine Parnall, Esquire. The State was represented by Assistant Solicitor Timmy Finch and Assistant Solicitor Greg Voigt. The jury returned a verdict of guilty on all three counts on April 22nd. On April 23rd, Judge Newman sentenced Applicant to a term of twenty-four years imprisonment on each burglary charge and a term of five years imprisonment on the Breaking and Entering a Motor Vehicle charge, all of which are to be served concurrently.

Applicant appealed his conviction. Applicant was represented by Joshua Brent Raffini, Esquire and Chief Appellate Defender Robert Michael Dudek. The Court of Appeals affirmed Applicant's conviction. State v. Shawndell McClenton, 2016-UP-306 (S.C. Ct. App. June 22, 2016).

Current Application

Applicant filed his Application for Post-Conviction Relief on May 21, 2014. The Applicant filed a second Application for Post-Conviction Relief on November 4, 2016. The Honorable Deadra L. Jefferson, Chief Administrative Judge for the Ninth Circuit, by Order dated May 11, 2017 and filed May 12, 2017, consolidated the two cases together. The Order of

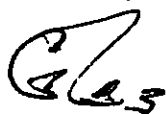
Page 2

Consolidation requires that the second case be merged into the first case. The Order also required that the Application from the first (surviving case) be considered the Application for Post-Conviction Relief and the Application from the second (ended case) be considered an Amendment to the original Application.

FACTS OF CASE FROM TRIAL

Two apartments were burglarized in the Peninsula Condominiums on James Island the night of February 25, 2012. (Tr. p. 238; pp. 273-274.) A complex resident, Jeremy Jacobs, returned home that evening then took his dog outside. (Tr. p. 128-129; pp. 143-144.) He saw a man in a white car who appeared to be looking for something in the console. (Tr. p. 144.) The vehicle's dome light illuminated the man so that Jacobs got a good look at him. (Tr. p. 144-145.) Jacobs also noted a blue Chevy Cavalier parked nearby. (Tr. p. 145.) He also observed the man walk up to the apartment below Jacobs' and approach the door as if to check that it was locked. (Tr. p. 146.) Again, the area near the door was well-lit, so Jacobs had a good view of the man. (Tr. p. 146.) Jacobs then observed Applicant get into the older model blue Chevrolet Cavalier parked nearby and leave. (Tr. p. 131.) He was able to observe that a white female with brown hair in a ponytail was driving the Cavalier. (Tr. p. 131.)

Another complex resident, Warren Johnson, also observed the man's actions at the white car. Johnson returned to his apartment that night after a trip to the grocery store. (Tr. p. 219-220.) He noticed an individual in the breezeway as he walked in with his groceries. (Tr. p. 220.) The two exchanged a brief greeting. (Tr. p. 221-222.) Johnson realized he left his cell phone in his car, and he went outside to retrieve it. (Tr. p. 222.) The man he had passed in the breezeway earlier was "now on the first floor behind a series of bushes here, and when [Johnson] looked over, ...[the man] backed...into the breezeway, just backed up [into a different breezeway]." (Tr.



p. 222.) Johnson found the man's behavior to be suspicious. (Tr. p. 223.) Johnson returned to his apartment, poured himself a glass of wine and went out onto his porch. (Tr. p. 223.) After about five minutes, Johnson heard some rustling, "an awkward sound of glass and plastic and awkward movement." (Tr. p. 223.) Looking down from the porch, Johnson observed the man with bags in a grassy area near an apartment. (Tr. p. 224; p. 231.) The man held a key fob in the air and clicked it a few times. (Tr. p. 224.) Johnson then watched as the man went to a white vehicle which lit up. (Tr. p. 224.) A blue car pulled up next to the white car. (Tr. p. 225.) Johnson then observed the man make several trips between the white car and the blue car. (Tr. p. 226.) Johnson narrated his observations to a 911 dispatcher. (Tr. p. 227.) The call ended with the police nearby. (Tr. p. 228.)

Officer Joe Teich received a dispatch at 10:25pm to respond to the Peninsula Condos as a result of Johnson's phone call. (Tr. p. 238; 306.) Teich arrived less than two minutes after receiving the dispatch. (Tr. p. 239.) Access to the Peninsula Condos could be had only by way of Daniel Ellis Drive, a road off Folly Road. (Tr. p. 239.) Daniel Ellis Drive proceeds past some businesses, including a Lowe's hardware store, and dead-ends in the Peninsula Condos. (Tr. p. 239; p. 241.) Teich parked in the Lowe's parking lot with his headlights on to see anyone leaving the complex. (Tr. p. 242.) He received a description of a blue sedan with a black male wearing a white sweatshirt or sweater. (Tr. p. 242.) A blue sedan with a black male occupant wearing a white shirt "passed through his light beam" as it exited the Peninsula Condos. (Tr. p. 243.) Teich initiated a traffic stop. (Tr. p. 243.)

Applicant was the passenger in the vehicle, wearing a white shirt. (Tr. p. 246.) The driver was a female, Dawn Lee, and there was a young infant in the car. (Tr. p. 248.) Applicant informed Teich that Lee had dropped him off at the complex to see a friend, but he had been



unable to find the friend's apartment so she picked him up. (Tr. p. 254.) Within five minutes of initiating the stop, Teich received information a forced entry was involved, and he received addition information regarding the items missing from the burglarized apartments. (Tr. p. 247; p. 251.)

Teich was given Lee's consent to look in the trunk of the car. (Tr. p. 251-253.) He immediately noticed a white trash bag as described by Johnson. (Tr. p. 257.) The bags contained wine bottles and electronic item which were reported missing from the burglarized apartments. (Tr. p. 258; p. 261.) A tire tool was in the trunk alongside the items. (Tr. p. 266.) A screwdriver, a crowbar, and a flashlight were also in the car. (Tr. p. 259; p.261; p. 264-265.) A watch, jewelry, and cameras taken form the apartments were found in the pockets of a coat Applicant was sitting on in the car. (Tr. p. 262-264.)

Meanwhile, back in his apartment, Jacobs saw blue lights outside. (Tr. p. 146.) Jacobs saw police officers with flashlights near the white car. (Tr. p. 131, p. 146-147.) Jacobs informed the officers that he had seen the man who he believed owned the car earlier, but the mand had left with someone else. (Tr. p. 132, p. 147.) Officers asked Jacobs to accompany them to see if Applicant was the man Jacobs saw at the white car. (Tr. p. 132.) Jacobs was brought to the Lowe's parking lot. (Tr. p. 132, p. 147.) Jacobs identified Applicant without hesitation as the man he had seen in the white car earlier. (Tr. p. 132-133, p. 148.) Jacobs was very certain of his identification, rating his certainty on a scale of one to ten, a "ten out of ten." (Tr. p. 132-133, p. 148, p. 150.) Jacobs recognized Applicant not only by his facial features but also by his clothing, a "white sweater pullover and dark jeans." (Tr. p. 133.) Applicant was in handcuffs when Jacobs observed him. (Tr. p. 135.) Johnson was able to identify the blue vehicle stopped by police just outside the complex as the blue vehicle he observed as he spoke to dispatch. (Tr. p. 229.)

7/6/25

One of the victims, Amanda Mitchell, reported she went over to a friend's house on the evening of February 25, 2012. Around 9:30, after she had been away from home for about 2 hours she received a phone call from police asking her to return home immediately. (Tr. p. 294.) Mitchell testified it was dark out, the sun just setting, when she left for her friend's house. (Tr. p. 294; p. 299.) Mitchell worked as a sales representative for a wine and spirits company and she kept several bottles of wine in her home. (Tr. p. 294-295.) Mitchell kept a spare key in her dresser. (Tr. p. 297.) Upon returning home, she noted several missing items: shoes, wine, personal computer, work computer, a digital camera, and jewelry. (Tr. p. 295-296.) Her missing items were among those found in Applicant's car. (Tr. p. 296.) Marks on her apartment door seemed to indicate that some sort of straight edged implement had been used to gain entry. (Tr. p. 278-279.)

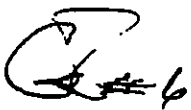
The other victim Caitlyn Horton, left her apartment the night of February 25, 2012, around 6:30 or 7:00 pm. (Tr. p. 319.) She left a window open with the screen in place. (Tr. p. 282-284; p. 320.) When police arrived, the screen was removed outside, and that was the presumed point of entry. (Tr. p. 283.) A wallet containing her social security card was taken but returned to her after it was recovered in Applicant's car. (Tr. p. 320.)

In a statement to police, Applicant claimed he was dropped off at the apartments by a friend but would not say who the friend was. (Tr. p. 316; State's Exhibit 34, video statement.)

Allegations in Application

The Applicant alleges, as a result of his Application and subsequent amendment, that he is being held unlawfully on the following grounds:

1. That the Court lacked Subject Matter Jurisdiction over the trial; and
2. That the Applicant received Ineffective Assistance of Counsel due to:



- a. The Applicant's Lawyer failed in that there was coercion from the State through the Applicant's Defense Attorney;
- b. The Applicant's Lawyer failed to have his client properly evaluated by Medial personnel based on the Applicant's behavior; and
- c. The Applicant's Lawyer failed to object to the prosecution misleading the jury during closing arguments.

At the evidentiary hearing, Applicant proceeded solely on the allegation that trial counsel was ineffective for failing to request a competency hearing.

TESTIMONY PRESENTED

Applicant

Applicant testified that he met with counsel three times face-to-face while he was at the detention center. Applicant testified that he did not discuss his mental health with counsel, but he told him that he was receiving medication and there were negative side-effects that came with it. Applicant testified that he told counsel that he was having bad dreams and was hearing voices as a result of the medication. Applicant testified that he was seeing a doctor about his mental health issues and his medications. Applicant testified that he told his counselor about being beaten and raped when he was a child in foster care. Applicant testified that he received some counseling after he was out of foster care and that he did not discuss this with counsel. Applicant testified that he did not tell counsel about hearing voices. Applicant testified that he took medications often, typically multiple times a day. Applicant testified that his main symptoms during the trial were tremors and lethargy. Applicant testified that he was feeling the side-effects of the medication into jury selection. Applicant testified that he testified during the Jackson v. Denno hearing and that he answered the questions the best he knew how. Applicant testified that he is



intelligent, bright, and well-spoken. Applicant testified that he told the judge he understood everything and discussed his prior charges in detail. Applicant testified that the judge delayed sentencing until the afternoon to make sure that he was lucid.

Counsel Benjamin Lewis

Counsel testified that he spoke with Applicant on the phone a number of times while he was incarcerated. Counsel testified that he also visited Applicant in person and spoke with him through video. Counsel testified that his normal practice would be to ask about mental health. Counsel testified that he did not have Applicant's mental health history, because he had no reason to think that it was necessary. Counsel testified that Applicant was acting abnormally the day of the trial and that this was first time he had seen this type of behavior. Counsel testified that in his experience, competency issues typically do not sneak up on you. Counsel testified that he saw Applicant the day before trial and that he was acting normally. Counsel testified that clients with mental health issues are not rare, but that does not mean they are incompetent. Counsel testified that raised the issue to the court because he was concerned with Applicant's physical symptoms during the trial. Counsel testified that he did not think Applicant was even a "close call" when it came to being competent. Counsel testified that he did not have any doubt that Applicant was competent. Counsel testified that he was concerned about Applicant's disruptive behavior and he thought that it was convenient that the symptoms showed themselves for the first time at trial. Counsel testified that he did not have the mental health records, but even if he did, it would not have given him concern that Applicant was not competent. Counsel testified that he asks for a competency evaluation when he is unable to communicate with his client or they cannot engage actively, but Applicant was highly engaged in his defense. Counsel testified that he asked the court to get in touch with Applicant's, wanted to make sure that he was

Q 48

fine. Counsel testified that Applicant was totally focused and engaged in his defense at trial. Counsel testified that he asked whether or not taking Applicant off of his medication might help alleviate some of the side-effects. Counsel testified that the judge delayed the sentencing until the afternoon to be sure that the medication had worn off. Counsel reiterated that he had zero competency concerns and had no reason to ask for a competency evaluation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has alleged numerous instances of ineffective assistance of counsel against trial counsel, Andrew Carroll. Each allegation is addressed fully below.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

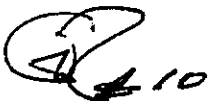
In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's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

Strickland does not guarantee perfect representation, only a " 'reasonably competent attorney.' " 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970));

Representation is constitutionally ineffective only if it “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair trial. 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. See generally Id.

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

Although courts may not indulge “post hoc rationalization” for counsel’s decision making that contradicts the available evidence of counsel’s actions, Wiggins, 539 U. S. at 526–527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a “strong presumption” that counsel’s attention to certain issues to the exclusion of others reflects



trial tactics rather than “sheer neglect.” Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694. It is not enough “to show that the errors had some conceivable effect on the outcome of the proceeding.” Id. at 693. Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” Id. at 687; Harrington, 562 U.S. 86.

“Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so 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. Strickland, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel’s representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is “all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.” Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). 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. Strickland, 466 U.S. at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is “reasonably likely” the result would have been different. Id. at 696. This does not require a showing that counsel’s actions “more likely than not altered the outcome,” but the difference between Strickland’s prejudice standard and a more-probable-than-not standard is slight and matters “only in the rarest case.” Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

However, Applicant’s sole allegation raised at the evidentiary hearing was whether or not counsel was deficient for failing to request a Blair hearing to determine his mental competency. State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981). Here, the court will use the standard as set forth in Matthews v. State. In order to find that petitioner’s trial counsel was ineffective for refusing to request a Blair hearing on petitioners competency to stand trial, petitioner must show that counsel was deficient and that the deficiency prejudiced the outcome of petitioner’s proceedings.” To show “prejudice within the context of counsel’s failure to fully investigate the petitioner’s mental capacity, ‘the [petitioner] need only show a reasonable probability that he was either insane at the time [the crime was committed] or incompetent at the time of the plea.’” Matthews, 358 S.C. at 459, 596 S.E.2d at 50 (alterations by court) (quoting Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)). Lee v. State, 396 S.C. 314, 320, 721 S.E.2d 442, 445–46 (Ct. App. 2011).

“When a PCR applicant raises issues of competency in the context of a plea proceeding, the two-prong Strickland analysis still applies; however, because of the nature of the claim, proof of deficiency of counsel is intertwined with prejudice.” Ramirez v. State, 419 S.C. 14, 21, 795 S.E.2d 841, 844–45 (2017). “Specifically, when establishing Strickland prejudice in the context of plea counsel’s failure to request a mental competency evaluation, ‘the [applicant] need only show a ‘reasonable probability’ that he was . . . incompetent at the time of the plea.’ ” Id. (quoting Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992); see also Matthews v. State, 358 S.C. 456, 458–60, 596 S.E.2d 49, 50–51 (2004) (expanding the reasonable probability standard as the burden for proving both the deficiency of counsel and the prejudice prongs). Once a PCR applicant has established his counsel was deficient in failing to obtain a mental competency evaluation, he is entitled to relief if he demonstrates a reasonable probability that he was incompetent at the time he pled guilty. Ramirez, 419 S.C. at 22, 795 S.E.2d at 845 (citing Jeter, 308 S.C. at 233, 417 S.E.2d at 596; Matthews, 358 S.C. at 459, 596 S.E.2d at 51).

Here, Applicant has failed to show a reasonable probability that he was insane at either the time the crime was committed or at the time of his trial. Applicant, through counsel, proceeded solely on the issue of whether or not counsel was deficient for failing to move for a Blair hearing to evaluate Applicant’s competency to stand trial. This court makes a point to note that symptoms of mental health issues do not automatically trigger a need for a Blair hearing on the Applicant’s competency. Applicant testified that he was intelligent, bright, and well-spoken. Applicant also testified that he understood the questions being asked of him during the Jackson v. Denno hearing. This Court found counsel’s testimony particularly credible and insightful. Counsel testified that he had no reason to believe that Applicant had competency issues and that he was actively engaged throughout the trial in strategizing his own defense.



Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to his sole allegation.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 8th day of February, 2019.



G. THOMAS COOPER JR.
Presiding Judge
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA

County of CHARLESTONShawondell McClellan
Full name and prison number (if any) of Applicant

v.

State of South Carolina

2023-CP-10-3189
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEF2023 JUN 30 PM 1:47
JULIE J. ANDERSON
CLERK OF COURT

FILED

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 Charleston County Detention Center
2. Name and location of Court which imposed sentence Charleston County
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) Warrant Numbers M-996943
 - (b) Warrant Numbers M-996600

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 24, 2014 24 yrs.
- (b) April 24, 2014 24 yrs
- (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. Court of Appeals, South Carolina
- ii. P.C.R. Court
- iii. Supreme Court of South Carolina
- (b) the result in each such Court to which you appealed:
- i. Appeal Denied
- ii. P.C.R. Denied
- iii. Remitted to lower Court or Tribunal
- (c) the date of each such result:
- i. 08/2016
- ii. 02/13/2019
- iii. 10/30/2019
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Order of Dismissal
- ii. Order of Dismissal
- iii. Remitted to lower Court or Tribunal
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) INEFFECTIVE ASSISTANCE of Counsel
(b) INEFFECTIVE COUNSEL
(c) Violation of Rule 243(d) of the (SCACR)

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

- (a) October 30, 2019 Supreme Court of South Carolina "REMITTANCE"
(b) Appellate Case No. 2019-060474 order
(c) Lower Court Case No. 2014 CP 1003253

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? YES
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
(d) any other petitions, motions or applications in this or any other Court? _____

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. Post Conviction Relief
ii. _____
iii. _____
iv. _____
(b) the name and location of the Court in which each was filed:
i. Charleston County District 9th Circuit Court
ii. _____
iii. _____
iv. _____

(c) the disposition thereof:

- i. Denied
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. February 13, 2019 order of dismissal entered
- ii. _____
- iii. _____
- iv. _____

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

- i. No
- ii. _____
- iii. _____
- iv. _____

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

No.

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) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? _____
- (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. Thurmond Booker
P.O. Box 1450, Florence, S.C. 29503
- ii. Benjamin Lewis, Charleston County Public defender
office, 101 meeting St. Suite 500
- iii. Pruitt & Pruitt law office Joshua Raffini esq
101 N. Murray Ave. Anderson, S.C. 29625

(b) the proceedings at which each such attorney represented you:

- i. Thurmond Booker P.C.R. Court
- ii. Benjamin Lewis Trial Court
- iii. Joshua Raffini Pruitt & Pruitt Direct Appeals Court

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

Belated Appeal; Entry into Supreme Court

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

No.

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

VERIFICATION

I, Shawndell McClenkin, 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.

Shawndell McClenkin

SWORN to and subscribed before me this 13th day of June 2023.

[Signature] (L.S.)
Notary Public

My Commission Expires: 09/04/2029

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

I, Shaundell McClellan, 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.

Shaundell McClellan
Applicant

SWORN or affirmed to and subscribed before me this
13th day of June 2023

[Signature]
Notary Public

My Commission Expires: 09/04/2029

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Shawndell Q. McClenton, #255563,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
)

) CASE NO. 2023-CP-10-03189
)

) **RETURN**
) **(Counsel Appointed)**
)

FILED
2024 DEC 16 AM 10:34
JULIE J. ARMSTRONG
CLERK OF COURT

The State of South Carolina ("Respondent" or "the State") hereby makes its Return¹ to the post-conviction relief ("PCR") action filed by Shawndell Q. McClenton ("Applicant") on June 30, 2023. Respondent would respectfully show this Court:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC) serving a cumulative 24-year-sentence pursuant to the orders of commitment of the Charleston County Clerk of Court. In May 2012, the Charleston County Grand Jury indicted Applicant for Burglary in the first degree (2012-GS-10-02892) and one count of Breaking and Entering a Motor Vehicle (2012-GS-10-02893). During its June 2012 term, the Charleston County Grand Jury indicted the applicant on another count of Burglary in the first degree (2012-GS-10-03189).

¹ Respondent's Return was due to be filed within ninety days of receipt. See Rule 12(a), SCRPC ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") Now, having completed the Return, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this Return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing the Court may fix the time in which the State must respond to a PCR application); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the time limit prescribed by the statute is not mandatory, but discretionary with the circuit court, and the circuit court may extend the time for filing).

On April 21, 2014, Applicant proceeded to a jury trial before the Honorable Clifton Newman. Applicant was represented by Benjamin Lewis, Esquire and Christine Parnall, Esquire. The State was represented by Assistant Solicitor Timmy Finch and Assistant Solicitor Greg Voigt. The jury returned a verdict of guilty on all three counts on April 22, 2014. On April 23, 2014, Judge Newman sentenced Applicant to a term of twenty-four years' imprisonment on each Burglary charge and a term of five years' imprisonment on the Breaking and Entering a Motor Vehicle charge, all of which are to be served concurrently.

On April 30, 2014, Applicant filed his Notice of Appeal. On appeal, Applicant was represented by Appellate Defender Joshua B. Raffini, who raised the following issues:

1. Whether trial court erred by not granting appellant a directed verdict as both counts of burglary in the first degree where there was no direct or substantial circumstantial evidence that appellant entered either residence during nighttime hours?
2. Whether the trial court erred in admitting an unreliable identification based on an unnecessarily suggestive procedure and circumstances that created a substantial risk of irreparable misidentification where the witness had limited time to observe and little need to perceive details?

Following briefing and an oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction. State v. McClenton, Op. No. 2016-UP-306 (S.C. Ct. App. filed June 22, 2016). Applicant filed a petition for rehearing which was denied on August 18, 2016. The Remittitur was sent on October 13, 2016.

First PCR Application

On May 21, 2014, Applicant filed his first application for post-conviction relief. Applicant filed a second application for post-conviction relief on November 4, 2016. The Honorable Deadra L. Jefferson, Chief Administrative Judge for the Ninth Circuit by order dated May 11, 2017, and filed May 12, 2017, consolidated the two cases together. The Order of Consolidation required that the second case be merged into the first case. The Order also required that the Application from

the first (surviving case) be considered the Application for Post-Conviction Relief and the Application from the second (ended case) be considered an Amendment to the original Application.

Applicant alleged the following grounds:

1. That the Court lacked subject matter jurisdiction over the trial; and
2. That the Applicant received Ineffective Assistance of Counsel due to:
 - a. The Applicant's lawyer failed in that there was coercion from the State through the Applicant's defense attorney;
 - b. The Applicant's lawyer failed to have his client properly evaluated by medical personnel based on the Applicant's behavior; and
 - c. The Applicant's lawyer failed to object to the prosecution misleading the jury during closing arguments.

The State made its return on September 15, 2017, requesting an evidentiary hearing to be held. An evidentiary hearing was held on December 6, 2019, at the Charleston County Courthouse. Applicant was present and represented by Thurmond Booker, Esquire. An Order of Dismissal was filed February 13, 2019. Applicant filed his notice of Appeal on March 13, 2019. The Appeal was dismissed based on Petitioner's failure to timely serve and file the petition for a writ of certiorari and appendix under Rule 243(d) of the South Carolina Appellate Court Rules. The Remittitur issued on November 1, 2019.

CURRENT APPLICATION

On June 13, 2023, Applicant filed this current PCR application alleging he is being held in custody unlawfully for the following reasons:

1. Ineffective Counsel
 - a. October 30, 2019, Supreme Court of South Carolina "Remittitur"
2. Violation of Rule 243(d) of the (SCACR)
 - a. Appellate Case No 2019-000474 Order
 - b. Lower Court Case No. 2014-CP-1003253

Applicant requests relief in the form of "belated appeal; entry into Supreme Court".

Attached herewith and incorporated herein are the records of the Charleston County Clerk

of Court regarding the underlying convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's records from his direct appeal, the records of Applicant's previous post-conviction relief action, and the records of the current post-conviction relief action. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

AUSTIN REVIEW

Respondent requests an evidentiary hearing on Applicant's claim related to a belated appeal of his first PCR application. An evidentiary hearing may be conducted regarding a successive PCR application "on the issue of whether, in fact, the petitioner requested and was denied an opportunity to seek appellate review" of his first PCR action. Austin v. State, 305 S.C. at 454, 409 S.E.2d at 396. "If the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding." Id. at 455, 409 S.E.2d at 396. Austin allows an applicant to petition the Supreme Court for discretionary review of the dismissal of his initial PCR application outside of the ordinary time limits for bringing such an appeal.

Here, Applicant's allegation can be construed as an allegation that counsel did not take proper steps to perfect his appeal. Thus, Respondent requests an evidentiary hearing on the sole issue of whether Applicant is entitled to a late appeal of the dismissal of his first PCR action.²

OTHER ALLEGATIONS DENIED

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

[CONCLUSION AND SIGNATURE PAGE FOLLOWS]

² To the extent Applicant is raising or seeks to raise any claim other than the *Austin* issue, Respondent moves to dismiss any such claim as barred by the Statute of Limitations. *See* S.C. Code Ann. § 17-27-45 (setting forth the statutory timeframe for filing an application for post-conviction relief).

CONCLUSION

WHEREFORE, Respondent requests an evidentiary hearing to be scheduled, solely to address the issue of whether Applicant is entitled to a belated appeal of his first PCR application.

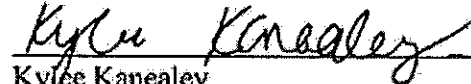
Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

KYLEE KANEALEY
Assistant Attorney General

By:


Kylee Kanealey

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

December 11, 2024

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Shawndell Q. McClenton, #255563,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

) CASE NO. 2023-CP-10-03189

) CERTIFICATE OF SERVICE BY MAIL

JULIE J. ARMSTRONG
CLERK OF COURT

2024 DEC 16 AM 10:35

FILED

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 Respondent's Return to the Application for Post-Conviction Relief in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
146 Fairchild Street, Suite 130
Charleston, SC 29492

DATED this 11th day of December, 2024.



Vickie Hall, Legal Assistant
For Respondent

State of South Carolina	)	
	)	In the Circuit Court
County Of Charleston	)	
	)	
	)	
Shawn McClenton,	)	
	)	
	)	
vs.	)	Docket #: 2023-CP-10-03189
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

Charleston County Courthouse
May 29, 2025

TRANSCRIPT OF HEARING

B E F O R E

The Honorable Carmen Tevis Mullen

A P P E A R A N C E S:

Christopher L. Murphy, Esquire
Attorney for Plaintiff

Assistant Attorney General Kylee Kanealey, Esquire
Attorneys for Defendant

FOR COPIES CONTACT: Melissa R. Singletary
Certified Verbatim Court Reporter
msingletary@sccourts.org

I N D E XWITNESS (ES)PAGE

Certificate of Service

6

E X H I B I T S

(There were no exhibits marked during this hearing)

1 THE COURT: Are you all ready to go?

2 MR. MURPHY: We are, Your Honor.

3 THE COURT: All right. You are Mr. McClenton, is
4 that correct, sir?

5 MR. McCLENTON: Yes, ma'am. That's correct.

6 THE COURT: Good morning. Sir, are you currently
7 housed at Lee?

8 MR. McCLENTON: Yes, ma'am.

9 THE COURT: Thank you. We're here on your PCR, and
10 obviously Mr. Murphy is representing you. I'm going to go
11 ahead and allow the state to go ahead and call the case and
12 we'll begin. Okay.

13 MS. KANEALEY: May it please the court. Kylee
14 Kanealey, Assistant Attorney General on behalf of the
15 state. This is the case number 2023-CP-10-3189, Shawndell
16 McClenton versus the State. Applicant is presently
17 confined to the South Carolina Department of Corrections
18 serving accumulative 24 year sentence pursuant to the
19 orders of commitment of the Charleston County clerk of
20 court. In May 2012, Charleston County grand jury indicted
21 applicant for burglary in the first degree, 2012-GS-10-
22 2892, and one count of breaking and entering a motor
23 vehicle, 2012-GS-10-2893. During its June 2012 term,
24 Charleston County grand jury indicted applicant on another
25 count of burglary in the first degree, 2012-GS-10-3189.

Shawn McClenton vs. State of South Carolina

4

1 On April 21, 2014, applicant proceeded to a jury
2 trial before the Honorable Clifton Newman. Applicant was
3 represented by Benjamin Lewis Esquire and Christine Parnell
4 Esquire. The jury returned a verdict of guilty on all three
5 counts April 22, 2014. And on April 23, 2014, Judge Newman
6 sentenced applicant to a term of 24 years imprisonment on
7 each Burglary charge and a term of five years imprisonment
8 on the breaking and entering motor vehicle charge, all of
9 which to be served concurrently. Applicant filed a direct
10 appeal, and the remittitur was sent on October 13, 2016.

11 On May 2014, applicant filed his application, his first
12 application for post-conviction relief, and a hearing was
13 held on December 6, 2019 and applicant was represented by
14 Thurmond Booker. An order of dismissal was filed February
15 13, 2019. Applicant filed his notice of appeal on March
16 13, 2019 and the appeal was dismissed on petitioners
17 failure to timely serve and file a petition for a writ of
18 certiorari and appendix under Rule 240(3)(d) of the South
19 Carolina appellant rules. The remittitur was issued on
20 November 1st of 2019. On June 13, 2023 applicant filed
21 this current application alleging that he's entitled to a
22 belated appeal pursuant to Austin of the first PCR hearing,
23 and the state would concede to that issue.

24 THE COURT: All right. Mr. Murphy.

25 MR. MURPHY: That is the whole issue whether he

1 can appeal that PCR and with consent that resolves
2 everything.

3 THE COURT: Okay.

4 MR. MURPHY: And with that order, I will file that
5 notice of appeal to the Supreme Court.

6 THE COURT: Okay. Anything further?

7 MS. KANEALEY: Just that we will prepare the
8 consent order for you by tomorrow.

9 THE COURT: I appreciate it. Thank you. Thank
10 you. All right.

11 MR. McCLENTON: Yes, ma'am. Thank you.

12 THE COURT: Thank you.

13 (End of Hearing)

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Shawn McClenton vs. State of South Carolina

6

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF CHARLESTON)

4
5 Be it known that I, the undersigned Melissa R.
6 Singletary, Certified Verbatim Reporter, for the State of
7 South Carolina, do hereby certify that the foregoing
8 transcript represents a true, accurate and complete
9 transcript of record of the testimony and evidence
10 introduced in during this testimony of the captioned case,
11 before the Circuit Court for Charleston County, South
12 Carolina, so given on May 29, 2025 to the best of my skill
13 and ability;

14 That I am not related to nor an employee of any of
15 the parties hereto, nor a relative or employee of any
16 attorney or counsel employed by the parties hereto, nor
17 interested in the outcome of this action.

18 IN WITNESS WHEREOF I have here unto set my hand this
19 22nd day of September, 2025.

20 *Melissa R. Singletary*

21 _____
22 Melissa R. Singletary, CVR

23 Certified Verbatim Reporter
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Shawndell Q. McClenton,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2023-CP-10-03189

**ORDER GRANTING BELATED
APPEAL PURSUANT TO
AUSTIN v. STATE**

FILED
2025 JUN 16 PM 12:52
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before the court by way of an application for post-conviction relief (PCR) filed by Shawndell Q. McClenton. On May 29, 2025, a hearing was convened before the Honorable Carmen T. Mullen. Christopher L. Murphy, Esquire, represented the Applicant. Assistant Attorney General Kylee M. Kanealey represented Respondent.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC), serving a cumulative 24-year sentence pursuant to the orders of commitment of the Charleston County Clerk of Court. In May 2012, the Charleston County Grand Jury indicted Applicant for Burglary in the first degree (2012-GS-10-02892) and one count of Breaking and Entering a Motor Vehicle (2012-GS-10-02893). During its June 2012 term, the Charleston County Grand Jury indicted Applicant on another count of Burglary in the first degree (2012-GS-10-03189).

On April 21, 2014, Applicant proceeded to a jury trial before the Honorable Clifton Newman. Applicant was represented by Benjamin Lewis, Esquire and Christine Parnall, Esquire. The State was represented by Assistant Solicitor Timmy Finch and Assistant Solicitor Greg Voigt. The jury returned a verdict of guilty on all three counts. On April 23, 2014, Judge Clifton Newman sentenced Applicant to concurrent terms of twenty-four years' imprisonment on each Burglary

charge and five years' imprisonment on the Breaking and Entering a Motor Vehicle.

On April 30, 2014, Applicant filed his Notice of Appeal. On appeal, Applicant was represented by Appellate Defender Joshua B. Raffini, who raised the following issues:

1. Whether trial court erred by not granting appellant a directed verdict as to both counts of burglary in the first degree where there was no direct or substantial circumstantial evidence that appellant entered either residence during nighttime hours?
2. Whether the trial court erred in admitting an unreliable identification based on an unnecessarily suggestive procedure and circumstances that created a substantial risk of irreparable misidentification, where the witness had limited time to observe and little need to perceive details?

Following briefing and an oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction. State v. McClenton, Op. No. 2016-UP-306 (S.C. Ct. App. filed June 22, 2016). Applicant filed a petition for rehearing which was denied. The Remittitur was sent on October 13, 2016.

First PCR Application

On May 21, 2014, Applicant filed his first application for post-conviction relief. Applicant filed a second application for post-conviction relief on November 4, 2016. On May 12, 2017, the Honorable Diedre L. Jefferson consolidated the two cases by merging the second case into the first case.

In his application, Applicant alleged:

1. That the Court lacked Subject Matter Jurisdiction over the Trial; and
2. That the Applicant received Ineffective Assistance of Counsel due to:
 - a. The Applicant's Lawyer failed in that there was coercion from the State through the Applicant's Defense Attorney;
 - b. The Applicant's Lawyer failed to have his client properly evaluated by Medical personnel based on the Applicant's behavior; and
 - c. The Applicant's Lawyer failed to object to the Prosecution misleading the Jury during closing arguments.

An evidentiary hearing was held on December 6, 2019. Applicant was present and

represented by Thurmond Booker, Esquire. On February 13, 2019, Judge G. Thomas Cooper Jr. filed an Order of Dismissal. Applicant filed his notice of Appeal. The Appeal was dismissed based on petitioner's failure to timely serve and file the petition for a writ of certiorari and appendix under Rule 243(d) of the South Carolina Appellate Court Rules. The Remittitur was issued on November 1, 2019.

CURRENT APPLICATION

On June 13, 2023, Applicant filed this current PCR application alleging he is being held in custody unlawfully for the following reasons:

1. Ineffective Counsel
 - a. October 30, 2019, Supreme Court of South Carolina "Remittitur"
2. Violation of Rule 243(d) of the (SCACR)
 - a. Appellate Case No 2019-000474 Order
 - b. Lower Court Case No. 2014-CP-1003253

Applicant requests relief in the form of "belated appeal; entry into Supreme Court". At the PCR hearing, Applicant proceeded forward only on the allegation that he was entitled to a belated appeal of his first PCR action.

Before this Court are the records of the Charleston County Clerk of Court regarding the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the records of Applicant's prior post-conviction relief action, and the records of this post-conviction relief action.

AUSTIN REVIEW

This Court finds Applicant is entitled to a belated appeal of the denial of his first PCR application. An evidentiary hearing may be conducted regarding a successive PCR application "on the issue of whether, in fact, the petitioner requested and was denied an opportunity to seek appellate review" of his first PCR action. *Austin v. State*, 305 S.C. at 454, 409 S.E.2d at 396. "If

the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding." *Id.* at 455, 409 S.E.2d at 396. *Austin* allows an applicant to petition the Supreme Court for discretionary review of the dismissal of his initial PCR application outside of the ordinary time limits for bringing such an appeal.

Here, the record reflects PCR counsel Thurmond Brooker failed to timely serve and file the petition for a writ of certiorari and appendix under Rule 243(d) of the South Carolina Appellate Court Rules (SCACR). The State conceded that Applicant was entitled to a late appeal of his first PCR. This Court finds that Applicant was denied an opportunity to seek appellate review of his first PCR action.

CONCLUSION

Based on the foregoing, this Court finds Applicant is entitled to petition the South Carolina Supreme Court for belated discretionary review of the dismissal of his first PCR application.

THEREFORE, IT IS ORDERED

1. Applicant is entitled to appellate review of the dismissal of his prior PCR application, 2014-CP-10-3253, pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991);
and
2. Applicant shall be remanded and remain in the custody of the State.

AND IT IS SO ORDERED this 3 day of June, 2025.


CARMEN T. MULLEN
Presiding Judge
Ninth Judicial Circuit

Beaufort, South Carolina

FORM 5

STATE OF SOUTH CAROLINA

2016-CP-10-5941

County of CHARLESTON

IN THE COURT OF COMMON PLEAS

SHAWNELL MCCLINTON

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2016 NOV -4 PM 12:53
JULIE J. ARMSTRONG
CLERK OF COURT

INSTRUCTIONS B 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 Department of Corrections South Carolina
Broad River Corr. Inst.
2. Name and location of Court which imposed sentence
Charleston County North Circuit Court
3. Name(s) of co-defendant(s) (if any) Dawn Lee
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) WARR-M996600 Burglary First Degree

(b) WARR-M996943 - Burglary First Degree

(c) _____

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

(a) April 23, 2016 24 year sentence violent

(b) with 654 days credit

(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?

from Judgment of Conviction

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

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. Affirmed Rehearing denied

ii. _____

iii. _____

(c) the date of each such result:

i. June/July 27, 2016 Affirmed

ii. August 26, 2016 Denied Rehearing

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b)

(c)

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

(a)

Ineffective Assistance of Counsel

(b)

(c)

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

(a)

lawyer failed to object to defendants actions of irrational behavior and continued trial without medical professional consult and diagnosis.

(b)

(c)

lawyer failed to object to Prosecution misleading Jury in closing Argument Statement.

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

Yes

(a)

any petition in a State Court under South Carolina Law? Appeals Court

(b)

any petition in State or Federal Courts for habeas corpus or post-convictions relief?

(c)

any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)?

(d)

any other petitions, motions or applications in this or any other Court?

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

(a)

the specific nature thereof:

i.

Appeals Court: Failure to A. Petition for Rehearing

ii.

iii.

iv.

(b)

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

i.

Court of Appeals South Carolina

ii.

iii.

iv.

(c) the disposition thereof:

i.

DENIED Rehearing

ii.

iii.

iv.

(d) the date of each such disposition:

i.

August 26, 2016

ii.

iii.

iv.

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

i.

N/A

ii.

iii.

iv.

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

N/A

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

(a) which grounds have been presented:

i.

N/A

ii.

iii.

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

i.

N/A

ii.

iii.

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

(a) was in direct Appeal Stage of Court.
 (b) _____
 (c) _____

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

(a) your arraignment and plea? _____
 (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? _____

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

(a) the name and address of each attorney who represented you:

i. Trial Lawyer: Benjamin Lewis, Charleston Public defender
101 Meeting Street, Suite 500, Charleston, S.C. 29407
 ii. Appeal Lawyer: Pruitt & Pruitt, law firm.
Attorney Joshua Raffini Esq.
 iii. 101 North Murray Avenue
Anderson, South Carolina 29625

(b) the proceedings at which each such attorney represented you:

i. Trial Benjamin Lewis
 ii. Appeals Court Joshua Raffini
 iii. _____

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

I, SHAWNDELL McCLENTON, 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.

Shawnzell McClenton
Applicant

SWORN or affirmed to and subscribed before me this
1 day of November, 2016.

[Signature]
Notary Public

My Commission Expires: 9/16/2020

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

Wrote sentence, Reversed Sentence.

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

yes

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

VERIFICATION

I, SHAWONDELL MCCLINTON, 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.

Shawondell McClinton

SWORN to and subscribed before me this 1 day of November, 2016.

[Signature]
Notary Public

(L.S.)

My Commission Expires: 11/1/17 9/16/2020

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
 STATE VS.
Shawndell Q McClenton

AKA: _____

Race: BLACK Sex: M Age: 35

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Burglary, 1st degree

INDICTMENT/CASE#: 2012GS1002892

A/W#: M996600

Date of Offense: 2/25/2012

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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

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

ATTEST: [Signature] 78223
Finch, Nmmmy SC Bar# 78223 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 24 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. (654 days credit)

☐ The Defendant is to be placed on the 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

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 \$ 100.00

§ 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 \$ 25.00

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

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

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

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL: \$ 133.90

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk: [Signature]

Court Reporter: Amanda Haffenden

SCCA/217 (03/2011)

Presiding Judge: [Signature]

Judge Code: 2127

Sentence Date: April 23, 2014

670
FCH20120201565

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1203151

ARREST WARRANT NUMBER

M996600

DATE OF ARREST

February 25, 2012

ACTION OF GRAND JURY

TRUE BILL
TRUE BILL

Foreperson of Grand Jury
Date:

MAY 07 2012

VERDICT

Guilty of Burglary 1st Degree

Kelly M. Bramble
Foreperson of Petit Jury

4/22/14
Date:

INDICT

DOCKET NO. 2012GS1002892

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2012

THE STATE

vs.

SHAWNDELL Q MCCLINTON

DOB: [REDACTED]
B/M

Indictment for

Burglary - 1st Degree

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

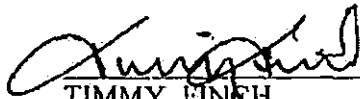
INDICTMENT

At a Court of General Sessions, convened on May 7, 2012 the Grand Jurors of Charleston County present upon their oath:

Burglary - 1st Degree

That in Charleston County, South Carolina, on or about February 25, 2012, the Defendant SHAWNDELL Q MCCLINTON, did enter the dwelling of Amanda Mitchell, located at [REDACTED] Daniel Ellis, Apt XX103, without consent and with the intent to commit a crime therein. That, in addition, the defendant entered the dwelling at night time: in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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


TIMMY FINCH
ASSISTANT SOLICITOR

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1203151

ARREST WARRANT NUMBER

M996600

DATE OF ARREST

February 25, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

MAY 07 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1002892

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2012

THE STATE

vs.

SHAWNDELL Q MCCLINTON

DOB: [REDACTED]

B/M

Indictment for

Burglary - 1st Degree

FILED

5/24/2012 8:37:41 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

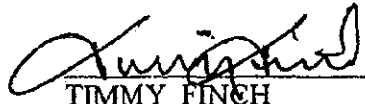
INDICTMENT

At a Court of General Sessions, convened on May 7, 2012 the Grand Jurors of Charleston County present upon their oath:

Burglary - 1st Degree

That in Charleston County, South Carolina, on or about February 25, 2012, the Defendant SHAWNDELL Q MCCLENTON, did enter the dwelling of Amanda Mitchell, located at [REDACTED] Daniel Ellis, Apt XX103 without consent and with the intent to commit a crime therein. That, in addition, the defendant entered the dwelling at night time; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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


TIMMY FINCH
ASSISTANT SOLICITOR

674

ARREST WARRANT

M-996600

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

THE STATE
against

Shawndell Q Mcclenton

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 5 10 Weight: 220

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0100100

Prosecuting Agency: Charleston City Police Department

Prosecuting Officer: Robert Feeters - 0145

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Personally appeared before me the affiant Robert Feeters *Robert Feeters* who
being duly sworn deposes and says that defendant Shawndell Q Mcclenton
did within this county and state on or about 2/25/2012 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Charleston)
in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Affiant's Address [REDACTED]

Affiant's Telephone [REDACTED]

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/25/2012 defendant Shawndell Q Mcclenton

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicableSworn to and subscribed before me
on 2/26/2012

Signature of Issuing Judge (L.S.)

Priscilla Bridges Baldwin

Judge Code: 5749

Judge's Address 3870 Leeds Avenue, Suite 106

North Charleston, SC 29405-7469

Judge's Telephone (843) 746-9822

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2000
SCCA 318

AFFIDAVIT

BAIL set by

Judge

Baldwin

on

2-26-12

Type and Amount:

NO BOND

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

DISPOSITION before

Judge

on

by

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS



FILED
 2012 MAR -1 PM 1:36
 JULIE J. ARMSTRONG
 CLERK OF COURT

Charleston Police Department

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appear before me, a magistrate of this county one, *SGT. Raven*

who first being duly sworn deposed and says that, Shawndell McClenton,

did within this county and state on the 25 February 2012 violate the criminal laws of the State of South

Carolina in the following particular:

DESCRIPTION OF OFFENSE

Burglary 1st Degree
16-11-311~~The affiant states there is probable cause to believe that the defendant named did commit the crime set forth~~

and that such probable cause is based on the following facts:

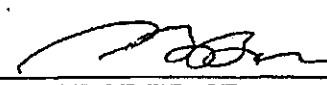
That on 25 February 2012 at or about 2224 hrs the defendant one, Shawndell McClenton did knowingly, willingly, and unlawfully commit the above list offense of Burglary 1st Degree (16-11-311) at the incident location of [REDACTED] Daniel Ellis Drive, Apartment **XX103** Charleston, SC 29412.

The defendant did enter the victim's (Amanda Mitchell) apartment without permission during nighttime hours with the intent to commit a crime. That the defendant did forcefully push in an exterior door to gain entry. Once inside the defendant did remove the following items that belonged to the victim: Lenovo Thinksmart laptop computer (S#00186030906507), valued @ \$1000, Sony Vaio laptop computer (S# 00144493910914) valued @ \$1000, one black Michael Kors watch (\$250), one pair of Aquamarine stud earrings (\$700), one Sony Cybershot camera (S#658597) valued \$300, two pairs of boots (\$300), two bottles of wine (\$40), various other pieces of jewelry (\$250).

The offender was witnessed walking to and from the victim's apartment by two separate witnesses. That the defendant and co-defendant were subsequently stopped and detained fleeing the scene a short time and distance later in the co-defendant's, 2004 Chevy Cavalier. At the traffic stop the defendant was positively identified by both witnesses. All the above items were found inside the vehicle search incident to arrest.

That all of the above is true and believable based on the observation of witnesses, Warren Johnson and Jeremy Jacobs, Ofc. Piech and investigation of Det. Feeters of the Charleston Police Department.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 26 DAY OF FEB 2012AFFIANT
180 Lockwood Blvd.
Charleston, SC 29403
843-577-7434
SIGNATURE OF JUDGE

(L.S.)

COMPLAINT #: 1203151

WARRANT#

CPD Form OT3

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Shawndell Q McClenton

AKA: _____
 Race: BLACK Sex: M Age: 35
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: [REDACTED]
 DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Burglary, 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1003189

A/W#: M996943

Date of Offense: 2/25/2012

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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

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

ATTEST:

[Signature]
 Finch, Jimmy

78223
 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 24 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. (654 days credit)

☐ The Defendant is to be placed on the 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

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/ca
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL:	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Amanda Haffenden

SCCA/217 (03/2011)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: 2127

Sentence Date: Apr 1 23, 2014

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1203165

ARREST WARRANT NUMBER

M996943

DATE OF ARREST

March 14, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

4/22/14

VERDICT

Guilty Burglary 1st Degree

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1003189

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

vs.

SHAWNDELL Q MCCLINTON a/k/a

SHAWNDELL MCCLINTON

DOB:

B/M

Indictment for

Burglary - 1st Degree

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on June 11, 2012 the Grand Jurors of Charleston County present upon their oath:

Burglary - 1st Degree

That in Charleston County, South Carolina, on or about February 25, 2012, the Defendant SHAWNDELL Q MCCLINTON a/k/a SHAWNDELL MCCLINTON, did enter the dwelling of Caitlyn Horton, located at [REDACTED] Daniel Ellis Drive, Apt XX106 without consent and with the intent to commit a crime therein. That, in addition, the defendant entered the dwelling at night time in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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


TIMMY FINCH
ASSISTANT SOLICITOR

680

ARREST WARRANT

M-996943

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

THE STATE
against

Shawndell Q McClellon

Address:

Phone:

Sex: M Race: Height: 5 10 Weight: 220

DL State: SC DL #: Agency ORI #: SC0100100

DOB: Prosecuting Agency: Charleston City Police Department

Prosecuting Officer: Ronald Hull - 0217

Offense: Burglary / Burglary (After June 20, 1985) - First

degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Personally appeared before me the affiant: Ronald Hull / *R. Hull*

being duly sworn deposes and says that defendant Shawndell Q McClellon

did within this county and state on or about 3/12/2012

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Charleston)

in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Affiant's Address

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/12/2012 defendant Shawndell Q McClellon

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.

Sworn to and subscribed before me

on 3/14/2012

Signature of Issuing Judge

Linda Schwartz Lombard

Judge Code: 7004

(L.S.)

Judge's Address 3870 Leeds Avenue, Suite 106

North Charleston, SC 29405-7469

Judge's Telephone (843)746-9822

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

MOS & 94P

who

violate the criminal laws of the

BAIL set by

LOMBARD

Judge

on

MAR 14 2012

Type and Amount:

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

DISPOSITION before

Judge

on

by

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS**WITNESSES**

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS**FILED****2012 MAR 22 PM 1:37****JULIE J. ARMSTRONG
CLERK OF COURT**

Charleston Police Department

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appear before me, a magistrate of this county one, *Gett Lowen*

who first being duly sworn deposed and says that,

Shawndell McClenton,

did within this county and state on the 2-25-12 violate the criminal laws of the State of South

Carolina in the following particular:

DESCRIPTION OF OFFENSE

Burglary-1st Degree

16-11-311

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

That on 2-25-12, at appx 2225 hrs., while at [REDACTED] Daniel Ellis Dr, Apt **XX106**, located in the City and County of Charleston, SC, one Shawndell McClenton knowingly, willingly and unlawfully did violate State Statute 16-11-311 Burglary 1st degree.

To wit: On the above date and time, which is during the hours of darkness, the defendant did unlawfully enter into the above residence through an unsecured first floor bedroom window with the intent of stealing items from within. Once in the residence, the defendant did remove and steal a silver colored purse belonging to the resident/victim. Contents of the purse include misc personal papers, cards etc with a total value of purse and contents being appx \$30.00. The defendant then fled the scene taking the items for his own benefit.

Above facts are true and believable based on observations and statements of the resident/victim Caitlyn Horton (W/F, DOB [REDACTED]); recovery of the victims property in the defendant's possession as he fled from another similar burglary in the same apartment complex involving a similar method of entry occurring at the same appx time frame; statements made by a witness (to be identified); the on scene investigations of CPD officers Piech, Dickerson and Harvill with additional flow-up investigation by CPD investigators Feeters and Hull.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS *14* DAY OF *March* 201*2*, 2012

SIGNATURE OF JUDGE

(L.S.)

COMPLAINT #: 1203165

WARRANT#

CPD Form OT3

AFFIANT

180 Lockwood Blvd.
Charleston, SC 29403
843-577-7434

FCH20120302072

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1203165

ARREST WARRANT NUMBER

M996943

DATE OF ARREST

March 14, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUN 11 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1003189

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

vs.

SHAWNDELL Q MCCLINTON a/k/a

SHAWNDELL MCCLINTON

DOB: [REDACTED]

B/M

Indictment for

Burglary - 1st Degree

FILED

7/2/2012 12:25:22 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

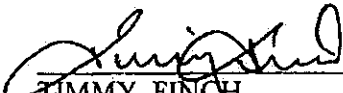
INDICTMENT

At a Court of General Sessions, convened on June 11, 2012 the Grand Jurors of Charleston County present upon their oath:

Burglary - 1st Degree

That in Charleston County, South Carolina, on or about February 25, 2012, the Defendant SHAWNDELL Q MCCLINTON a/k/a SHAWNDELL MCCLINTON, did enter the dwelling of Caitlyn Horton, located at Daniel Ellis Drive, Apt XX106 without consent and with the intent to commit a crime therein. That, in addition, the defendant entered the dwelling at night time; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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


TIMMY FINCH
ASSISTANT SOLICITOR

CC
Jmna
AG

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Shawndell Q. McClenton,	)	C/A Nos.: 2014-CP-10-3253; <u>2016-CP-10-5941</u>
SCDC No. 255563,	)	
	)	
Applicant,	)	ORDER OF CONSOLIDATION
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED
2017 MAY 12 AM 11:34
JULIE J. ARMSTRONG
CLERK OF COURT

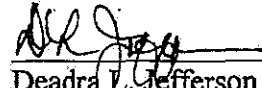
Applicant in the above-captioned matters has filed two applications for post-conviction relief; the first of those was filed May 21, 2014 (2014-CP-10-3253), and the second was filed November 4, 2016 (2016-CP-10-5941). Since an applicant is not generally allowed to have two post-conviction relief proceedings in regard to the same conviction, see Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); S.C. Code Ann. § 17-27-90, this Court hereby orders that the two proceedings be consolidated. The application for post-conviction relief filed November 4, 2016, (2016-CP-10-5941) will be considered an amendment to the initial application for post-conviction relief filed May 21, 2014 (2014-CP-10-3253).

The Clerk of Court is therefore ordered to consolidate the two cases, with docket number 2014-CP-10-3253 being the surviving case. Hereafter, the word "Application" will refer to docket number 2014-CP-10-3253; the word "Amendment" will refer to docket number 2016-CP-10-5941, which will be considered as an amendment to the application for post-conviction relief.

IT IS THEREFORE ORDERED that the Charleston County Clerk of Court consolidate docket numbers 2016-CP-10-5941 and 2014-CP-10-3253, with file **2014-CP-10-3253** being the

surviving file and all future pleadings bearing docket number 2014-CP-10-3253. Docket number 2016-CP-10-5941 will be dismissed upon the consolidation.

AND IT IS SO ORDERED this 11th day of May, 2017.


Deadra L. Jefferson
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Shawndell Q. McClenton,	)	C/A Nos.: 2014-CP-10-3253; <u>2016-CP-10-5941</u>
SCDC No. 255563,	)	
	)	
Applicant,	)	MOTION FOR MERGER
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The applicant in the above-captioned matter has filed two applications for post-conviction relief, both raising the same claims and challenging the same underlying conviction. The first of those was filed May 21, 2014 (2014-CP-10-3253). Applicant filed the second application on November 4, 2016 (2016-CP-10-5941). Since an applicant is not generally allowed to have two post-conviction relief proceedings regarding the same conviction, see Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); S.C. Code Ann. § 17-27-90, Respondent hereby moves to merge these proceedings and to incorporate the second application filed November 4, 2016 (2016-CP-10-5941) as an amendment to the initial application for post-conviction relief filed May 21, 2014 (2014-CP-10-3253). Respondent therefore moves to merge the two cases, with docket number 2014-CP-10-3253 being the surviving case.

[Signatures on the following page]

Respectfully submitted,

ALAN WILSON
Attorney General

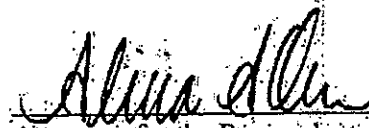
ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondent

May 4th, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SHAWNDELL Q. MCCLINTON
S.C.D.C. No. 255563,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2014-CP-10-3253

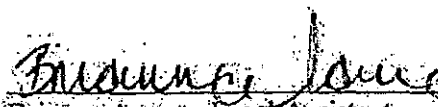
2016-CP-10-5941

AFFIDAVIT OF SERVICE BY MAIL

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 Motion for Merger on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Falk, Esquire
Falk Law Firm
PO Box 1058
Charleston, SC 29402

DATED this 4th day of May, 2017.


Brianna Arnott, Legal Assistant
For Respondent