

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

JUN - 5 2014

S.C. Supreme Court

GREGORY MARK CROLLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001416

A P P E N D I X

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South Carolina Commission on Indigent
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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS
COURT:**

**PETITIONER'S EXHIBIT#3 (LAW ENFORCEMENT'S IN-
CAR VIDEO)**

1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF LEXINGTON

3
4
5 STATE)
6)
7 V.) TRANSCRIPT OF RECORD
8 GREGORY MARK CROLLEY) 09-GS-32-2216
9 DEFENDANT.)

10 MAY 25, 2010
11 LEXINGTON, SOUTH CAROLINA

12
13 B E F O R E:
14 THE HONORABLE CLIFTON NEWMAN, JUDGE.

15
16 A P P E A R A N C E S:
17 J. ANGELA GARRICK, ASSIST. SOLICITOR
18 ATTORNEY FOR THE STATE
19 RICHARD L. BOLEN, ESQUIRE
20 ATTORNEY FOR THE DEFENDANT

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25
RECEIVED
CLERK OF COURT
LEXINGTON, SC
MAY 29 11:30

STACY L. SHEPPARD
CIRCUIT COURT REPORTER

1	I N D E X				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3					
4					
5	(There were no witnesses.)				
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1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	Court's 1	Competency Evaluation	21	
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1 (The following proceedings were held on May
2 25, 2010.)

3 **THE CLERK:** Indictment 2009-GS-32-2216, State
4 versus Gregory Mark Crolley, indicted for assault
5 with intent to kill. He is pleading as charged.
6 The indictment has been true billed. And he is
7 represented by Mr. Bolen.

8 GREGORY MARK CROLLEY,
9 having been duly sworn, testified as follows:

10 **MS. GARRICK:** Your Honor, before you get too
11 far into this, I'd like you to be aware that there
12 was a competency evaluation done on Mr. Crolley and
13 I believe Mr. Bolen will stipulate to the finding.
14 The date of the report was 3/9 of 2010 where he was
15 found competent to stand trial. I'd like to make
16 this a Court's Exhibit.

17 **MR. BOLEN:** I would so stipulate, Your Honor.

18 **THE COURT:** And what does this report tell you,
19 Counsel?

20 **MR. BOLEN:** That basically he understands his
21 mental facilities are intact and he's able to
22 cooperate and help me in his defense and he
23 understands the charges and he understands the
24 consequences that he's exposed to.

25 **THE COURT:** And do you agree with that, sir?

1 **DEFENDANT:** Yes, sir.

2 (Pause.)

3 **THE COURT:** Mr. Bolen, you've reviewed the
4 facts of this case with him and discussed with him
5 any defenses he might have?

6 **MR. BOLEN:** Yes, sir, I have.

7 **THE COURT:** And you're in agreement with the
8 guilty plea?

9 **MR. BOLEN:** Yes, I am, Your Honor.

10 **THE COURT:** Based on the report and
11 representation here in court, I find that he is
12 competent to stand trial and to proceed.

13 Sir, you want to plead guilty to the offense of
14 assault with intent to kill?

15 **DEFENDANT:** Yes, sir.

16 **THE COURT:** Do you understand that you can
17 receive a sentence of up to ten years for that
18 crime?

19 **DEFENDANT:** Yes, sir.

20 **THE COURT:** And do you understand that if you
21 plead guilty, you will not have a jury trial and if
22 I accept your guilty plea, that I will sentence you?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** And do you understand that in
25 addition to not having a jury trial, you'd give up

1 your right to confront any witnesses against you, to
2 offer any defense you might have, to challenge any
3 incriminating evidence the State may offer and to --
4 the right to remain silent concerning this?

5 DEFENDANT: Yes, sir.

6 THE COURT: And what did you do that makes you
7 guilty?

8 DEFENDANT: I drove my car at the trooper, near
9 him.

10 THE COURT: You were trying to run him over?

11 DEFENDANT: That wasn't really in my mind right
12 then to run him over or anything.

13 THE COURT: What were you trying to do?

14 DEFENDANT: I really don't know what I was
15 trying to do because I was shot in the head and I
16 don't remember.

17 THE COURT: You were shot in the head?

18 DEFENDANT: Yes, sir.

19 THE COURT: At that time or at some previous
20 time?

21 DEFENDANT: Right then and there.

22 THE COURT: All right. Solicitor.

23 MS. GARRICK: Thank you, Your Honor. May it
24 please the Court.

25 Your Honor, this incident date was March 16th

1 of 2009. It happened after Trooper Ledbetter with
2 the Highway Patrol made a traffic stop on Highway 6
3 near Swansea, which is in Lexington County.
4 Mr. Crolley's wife was actually driving the car.

5 And when the trooper began his contact with the
6 lady driver, it turned into a DUI investigation, so
7 the trooper had Ms. Crolley get out of the car and
8 was trying to conduct a DUI investigation and
9 Mr. Crolley became very verbally abusive. And, at
10 one point, he was out of the car. The trooper
11 talked him back into the passenger seat of the car.

12 And then to make a long story short, the
13 defendant got into the car and began to drive away.
14 The trooper was trying to tell him to stop. He was
15 calling for backup. And Mr. Crolley actually made
16 three attempts to strike -- run over the trooper.
17 And, also, he came very close to running over Ms.
18 Crolley who was outside of the car at the trooper's
19 car.

20 Your Honor, I'm going to ask you, it's not very
21 often that we have uncontroverted evidence of a
22 case, we have the trooper's in-car video. I know
23 exactly where it is. If I could ask you to look at
24 maybe 30 seconds of the video because it is -- it's
25 pretty violent. If I may approach.

1 **THE COURT:** Yes, ma'am.

2 **MS. GARRICK:** And, of course, Mr. Bolen has
3 this.

4 (Whereupon, the Judge reviewed the video.)

5 **MS. GARRICK:** Your Honor, obviously, as you can
6 tell from that, Trooper Ledbetter did fire into the
7 car and Mr. Crolley was hit. It's my understanding
8 he's been incarcerated ever since.

9 I am honoring a previous Solicitor's agreement,
10 which was to drop the companion DUI second and the
11 other assault with intent to kill in which the wife
12 was the victim. At the appropriate time, I have his
13 prior record and Trooper Ledbetter's victim impact.

14 **THE COURT:** And, sir, understanding the nature
15 of the charge, the possible punishment and the video
16 that I just reviewed, are you pleading guilty or not
17 guilty?

18 **DEFENDANT:** Guilty, sir.

19 **THE COURT:** All right. I accept the guilty
20 plea and I'll hear from the trooper and any other
21 information you have.

22 **MS. GARRICK:** Your Honor, just so you'll be
23 aware, the trooper's supervisor is here from the
24 Highway Patrol, as well as SLED. As you are well
25 aware, when there's an officer involved shooting,

1 SLED had to come in and investigate the case and
2 they're the ones who actually made the charges.
3 They're here just to see the disposition of the
4 case, but Trooper Ledbetter is here and he would
5 like to address you.

6 THE COURT: All right.

7 TROOPER LEDBETTER: Your Honor, I appreciate
8 you letting me speak in your court today. In this
9 case here, I ask that in sentencing, that you see
10 fit to give him the max time with Mr. Crolley.

11 You know, when I made this stop, it went from
12 something calm, just talking to his wife with
13 respect, to him just, you know, trying to take my
14 life within it seemed like minutes, in an instant.
15 And in seeing Ms. Crolley, you know, she was black
16 and blue from prior incidents with Mr. Crolley.

17 You know, I knew he was trying to take my life.
18 And I just want -- you know, Your Honor, when he was
19 trying to drive at me, I actually saw a smile on his
20 face when I discharged my weapon into the vehicle.
21 He was not giving up, you know, he made multiple
22 attempts to take my life.

23 You know, I've stayed up nights knowing that
24 the day that he's released, I feel certain that
25 within that period, he will take someone's life

1 whether that of his wife's or another law
2 enforcement officer. I have no doubt in my mind
3 about that.

4 You know, it's something that it was an event
5 that, you know, that happened and I feel lucky to
6 have made it through it. I just knew I was dead and
7 I feared for my life. And if it wouldn't have been
8 for the circumstances, I don't think I'd be here
9 today. I just ask you to remember that and I'm
10 asking for the max time.

11 **THE COURT:** What type of roadway was this?

12 **TROOPER LEDBETTER:** This was S.C. 6 there at
13 321 at Swansea. Where you saw on that video tape,
14 we was pulled into the side parking lot right there
15 at the corner.

16 **THE COURT:** All right. Thank you.

17 **MS. GARRICK:** Your Honor, his prior record: In
18 March of 2000, he has assault and battery with
19 intent to kill. He got five years suspended to time
20 served and three years probation.

21 **THE COURT:** What was that about, Mr. Crolley?

22 **DEFENDANT:** I didn't plead to assault and
23 battery with intent to kill. I pled to assault and
24 battery of a high and aggravated nature.

25 **THE COURT:** Involving doing what?

1 **DEFENDANT:** It was driving my car again at
2 somebody.

3 **THE COURT:** You hit somebody with it?

4 **DEFENDANT:** No, sir, I didn't hit him.

5 **THE COURT:** How was it an assault and battery?

6 **DEFENDANT:** I don't understand how. My
7 lawyer --

8 **THE COURT:** What did you do?

9 **DEFENDANT:** I just -- after -- my kids were
10 outside playing on the sidewalk and the guy that
11 came by on the motorcycle cut walked it, had the
12 wheel up in the air, and scared them real bad. And
13 I just, you know --

14 **THE COURT:** You got mad about it?

15 **DEFENDANT:** I got mad about it because they
16 were crying and hysterical.

17 **THE COURT:** What did you do, you shot at him?

18 **DEFENDANT:** No. I had my car. I got near to
19 him in my car on his motorcycle.

20 **THE COURT:** The same as this case?

21 **DEFENDANT:** Pretty much, sir.

22 **THE COURT:** All right. Go ahead.

23 **MS. GARRICK:** Your Honor, he has, in
24 December 6th of 2000, a housebreaking and a larceny.
25 He got six years suspended upon nine months and four

1 years probation. He has a disorderly conduct from
2 2001. In October of 2002, he has an arson second.

3 **THE COURT:** What was that about?

4 **DEFENDANT:** Between me and my wife, my second
5 wife.

6 **THE COURT:** You burned up her house?

7 **DEFENDANT:** A trailer, yes, sir.

8 **MS. GARRICK:** Your Honor, also, at that time,
9 there were two counts of ABHAN. And it looks like
10 on that same date, the housebreaking and the larceny
11 were revoked.

12 Your Honor, he has convictions out of Georgia
13 for DUI, assaults. These go back to the 90s, '91,
14 '92, '94.

15 Your Honor, because of the competency
16 evaluation, I do understand that Mr. Crolley has
17 some mental health issues and has certain things
18 going on, but that in combination with just his mean
19 temperament, I believe makes him a danger to the
20 community and we would ask that you send him to
21 prison.

22 **THE COURT:** Anything else from the State?

23 **MS. GARRICK:** No, Your Honor.

24 **THE COURT:** All right. Mr. Bolen.

25 **MR. BOLEN:** Please the Court, Your Honor.

1 **THE COURT:** Yes, sir.

2 **MR. BOLEN:** For general information, he has
3 served a total, as of today, 351 days in jail. So
4 it's almost a year served. In addition, he spent
5 ten days in the hospital as a result of the gunshot
6 wounds.

7 When -- just to show you, his mentality has
8 significantly changed since his record as a result
9 of the injuries. And I'll get into that a little
10 bit, but just for chronology, he was arrested
11 originally after the -- after he got out of the
12 hospital and he was brought to a preliminary hearing
13 and the charges were dismissed at the preliminary
14 hearing and then they were true billed. He was, of
15 course, released. They were then true billed and he
16 turned himself in when --

17 **THE COURT:** There was a hearing on the merits
18 at the preliminary hearing?

19 **MR. BOLEN:** No. It was just a -- it was a
20 technicality and so he was released. But my point
21 is that he -- when the warrant was issued after the
22 grand jury indictment, he turned himself in as a
23 result of finding out there was a warrant and he's
24 been in since then. So I just wanted to point out
25 that he's cooperating with the process.

1 He has a plate in his head because enough of
2 his skull was injured that they couldn't repair it
3 and they had to put a plastic Teflon plate in his
4 head which makes him vulnerable to injury. Since
5 he's been in the jail, he's been in medical the
6 whole time because of that and in addition to the
7 medications that he's on.

8 His brain damage is permanent. He will have it
9 forever. The consequences are he's got dizziness,
10 ringing in his ears. He's got seizure disorder that
11 he didn't have before this. He's got weakness,
12 headaches that are all related to his brain injury.

13 He does have -- as you can tell from his
14 record, he's obviously got some mental issues, at
15 least with anger, if not something deeper, but, in
16 fact, it is deeper. He has a full mental -- social
17 security disability for mental health conditions and
18 he has -- he has a disability stipend for that which
19 covers all of his medications.

20 And currently I believe he's on four
21 medications for his original conditions that he was
22 on SSI for. And then he's got two other conditions
23 -- or medications that he takes as a result of the
24 injuries. So he's on, like, six medications a day
25 that he would, of course, have to maintain -- he has

1 to maintain indefinitely at this point.

2 At the time of this incident, my understanding
3 or my reasoning is that he was suicidal that -- that
4 night happened to be the night two years from the
5 night his dad died and he admits that he was
6 suicidal. I don't, you know, I'm no expert in
7 psychology or anything, but it seems to me that it
8 was kind of like suicide by officer because he
9 obviously didn't -- he didn't -- it didn't look to
10 me like he was trying that hard to hit him.

11 And he didn't hit the trooper, his wife or the
12 trooper's vehicle or anything else. So he did have,
13 obviously, some ability to avoid it and that's why
14 it leads me to believe that it was basically a
15 suicide attempt.

16 Essentially, he has --

17 **THE COURT:** Meaning that he wanted the officer
18 to kill him?

19 **MR. BOLEN:** Right. And he was not far off. I
20 mean, he was almost successful and by the grace of
21 God, he wasn't.

22 So, essentially, he has a life sentence right
23 now even though he's only exposed to ten years.
24 Now, granted, it's self-imposed, but essentially
25 every criminal charge -- every criminal sentence is

1 self-imposed.

2 I personally believe that he needs treatment.

3 And his best treatment would be to be in a mental
4 health facility where he can get proper treatment
5 and be available for medical treatment for his
6 physical and mental conditions which would obviously
7 be much easier if he wasn't in corrections. He's
8 very vulnerable to injury or even death if he's in a
9 general population because of his head and the plate
10 there and so he would -- I don't believe he would be
11 able to be placed in the general population. He'd
12 probably be in medical the whole time he was at
13 corrections.

14 His mother is here and one of his brothers is
15 here. He has a place to stay. He'll be staying
16 with his mom. Incidentally, his wife has asked for
17 a divorce and he hadn't been served with papers yet,
18 but they're pending apparently. So he'll be living
19 here in Lexington County with his mom. And he's got
20 two other brothers that will live in the same
21 household with him and they've agreed to help him
22 meet his requirements, get his medical treatment and
23 be a, hopefully, productive person.

24 But the important thing is, because I know the
25 record is bad and the video is bad and he's clearly

1 capable of dangerous activity, but since his brain
2 injury, he's not the same person. And, normally,
3 you hear that excuse from an attorney talking about
4 how his defendant's got religion and he's a better
5 person now, but in my case, he really is a different
6 person because of an organic brain injury and he's
7 not capable of doing a lot of the things that he was
8 and I don't think he's as big a risk as he was that
9 they're concerned about based on the record.

10 So what I would ask is that you sentence him to
11 a five-year sentence suspended on a year -- 361 days
12 of time served and five years probation with the
13 appropriate mental health requirements and medical
14 requirements that go along with that as probation
15 may determine. He has a doctor, a private doctor,
16 that will be more than happy to help determine what
17 would be the best course of treatment for him.

18 And his mother is here and she would love to
19 address you.

20 **THE COURT:** Yes, ma'am. What's your name?

21 **MS. CROLLEY:** He has a place to live --

22 **THE COURT:** What's your name?

23 **MS. CROLLEY:** Janice Crolley.

24 **THE COURT:** Yes, ma'am.

25 **MS. CROLLEY:** At Drive, Lexington.

1 **MR. BOLEN:** Are you willing to take care of
2 Mr. Crolley?

3 **MS. CROLLEY:** Yes, I am.

4 **MR. BOLEN:** And your two other sons are also --

5 **MS. CROLLEY:** Two other sons also.

6 **MR. BOLEN:** She's been very cooperative with me
7 during this whole process and been helping me to
8 take care of Mark as much as I could.

9 **THE COURT:** Thank you, ma'am.

10 Mr. Crolley, anything you would like to say?

11 **DEFENDANT:** I'm just sorry all this happened
12 and I just want forgiveness. I didn't mean to do
13 it. I was just so -- it just hit me about my dad's
14 death and I was really grief stricken and I wanted
15 him to kill me because I couldn't do it myself. And
16 I just ask for forgiveness. And I wish I could go
17 home. That's all I have to say.

18 **THE COURT:** All right. From the State?

19 **MS. GARRICK:** Just briefly, Your Honor, as far
20 as the preliminary hearings, SLED just did not get
21 notification of the prelim and that's why it was
22 dismissed. Mr. Bolen was right, it was just a
23 technicality.

24 And then the other thing I would bring to your
25 attention is after the second time Mr. Crolley came

1 towards the trooper, Trooper Ledbetter tells me he
2 took cover behind his car and Mr. Crolley did strike
3 his car. The trooper's car was damaged and did have
4 to be repaired.

5 **THE COURT:** Any further comments, Trooper?

6 **TROOPER LEDBETTER:** Just I appreciate the
7 Court's time. And I just, again, I ask for the max
8 time.

9 **THE COURT:** All right. I notice in this
10 competency report, first of all, the substance abuse
11 history dates back to age 12. How old are you now?

12 **DEFENDANT:** Forty-three.

13 **THE COURT:** Use of marijuana at age 12,
14 drinking liquor four times a week, that -- think
15 you've been addicted to pills, that you've been
16 arrested for at least -- at least 40 times for
17 disorderly conduct, public drunk, been to prison
18 almost five years for arson, another six months for
19 housebreaking, been on probation four times,
20 attempted suicide on several occasions.

21 You know, the reason that we have prison is
22 that some people can't handle freedom. It's too
23 much of a risk to the rest of society to have that
24 person walking the streets or riding the streets
25 just in the general population and this seems to be

1 one of those situations to me.

2 **MR. BOLEN:** Your Honor, if I may interrupt?

3 **THE COURT:** Yes, sir.

4 **MR. BOLEN:** I just want to point out that he
5 has never had a problem on probation. I think he
6 was on three times and completed them all
7 successfully and was released appropriately.

8 **THE COURT:** Has he been on supervision here?

9 **PROBATION AGENT:** Your Honor, yes, sir. We
10 have supervised him five times, four with probation
11 and one was community supervision. Two of the
12 probation cases were revoked.

13 **THE COURT:** You've absorbed quite a bit of
14 State's resources, Mr. Crolley. And, of course, in
15 the department of corrections, those are additional
16 State's resources.

17 But I believe that the -- it's almost a quirk
18 in the statute where the offense is assault with
19 intent to kill, which is up to ten years, and
20 assault and battery with intent to kill is up to
21 20 years. I say a quirk in the statute in that in
22 many instances, the assaults with intent to kill can
23 be as bad as assault and batteries but for the
24 injury part or the battery part.

25 But I'm going to impose the maximum sentence in

1 this case of ten years and give you credit for time
2 served.

3 **MS. GARRICK:** Thank you, Your Honor.

4 **MR. BOLEN:** Thank you, Your Honor.

5 (Court's Exhibit Number 1, competency
6 evaluation, marked for identification.)

7

8 **END OF PROCEEDINGS**

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh 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 the proceedings had and the evidence introduced in the guilty plea of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 25th of May, 2010.

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

September 18, 2011



Stacy L. Sheppard, RPR
Circuit Court Reporter

FORM 5

SCANNED

1/5/11

STATE OF SOUTH CAROLINA

COUNTY OF *Lexington*

FILED

IN THE COURT OF COMMON PLEAS

GREGORY MARK COLLEY # 271217 2011 JAN 25 1:20

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

ETHA CARRICE
CLERK OF COURT

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2011CP3200295

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 KIRKLAND RECTOR F-2 146-B
4344 Broad River Rd
2. Name and location of Court which imposed sentence Columbia SC 29210 Lexington County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) (a.w.k.) ?
(b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) MAY 25, 2010 10 years the MAX
(b) N/A

Revised 3/2003

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P. Clerk

(c) N/A

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓(b) after a plea of not guilty N/A(c) after a plea of nolo contendere N/A7. Did you appeal from the judgment of conviction or the imposition of sentence? NO

8. If you answered "yes" to (7), list:

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

i. _____
ii. _____ N/A
iii. _____

2011CP 3200295

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

i. _____
ii. _____ N/A
iii. _____

(c) the date of each such result:

i. _____
ii. _____ N/A
iii. _____

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

i. _____ N/A
ii. _____
iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Counsel Failed to /w Asked To do so.(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) INVOLUNTARY Guilty plea
- (c) Double Jeopardy

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

- (a) Counsel Failed to timely RAISE ISSUES OR Object
- (b) APPL. was Heavily medicated.

12. Prior to this application have you filed with respect to this conviction: FOR lack OF PROSECUTION
 (a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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. _____
- ii. _____
- iii. _____
- iv. _____

2011CP 3200295

N/A

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____

N/A

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 CLERK OF COURT
 EXHIBITION SC

iv. N/A

(d) the date of each such disposition:

i. ii. iii. iv.

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

i. ii. iii. iv.

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CLERK OF COURT
LEXINGTON SC

2011CP3200295

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. 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) Counsel was ineffective & Failed to enter evidence
- (b) ON Mental Health issues (Mental Health evaluation) Counsel Failed
- (c) TO object to certain subject matter.
- Counsel told me I would get Probation

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

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

2011CP 3200295

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

- (a) the name and address of each attorney who represented you: 1st Atty/Fined
- i. Richard Bolen
- ii. 600 Columbia Ave Ste-7
- iii. Lexington SC 29072
- (b) the proceedings at which each such attorney represented you:
- i. [REDACTED]
- ii. plea, Sentencing
- iii. Preliminary Hearing, Bond Hearing
- DAVID MAULDIN
PUBLIC DEF. OFF.
204 E. MAIN ST
LEX SC 29072

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

Sentence Reduction And/or Sentence And Conviction be Vacated

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

N/A

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CLERK OF COURT
LEXINGTON SC

2011CP 3200295

STATE OF SOUTH CAROLINA

County of Lexington

VERIFICATION

I, OMC 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.

Gregory M. Chubb

SWORN to and subscribed before me this 21st
day of January, 2011.

Dayle W. Wren (L.S.)
Notary Public

My Commission Expires: My Commission Expires
October 8, 2014

FILED
2011 JAN 25 11:20
BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

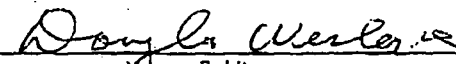
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, 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.


Applicant

SWORN or affirmed to and subscribed before me this
21 day of January, 2011.


Notary Public

My Commission Expires
My Commission Expires: October 8, 2014

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SETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2011CP3200295

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	Case No: 2011-CP-32-0295
	)	
Gregory Mark Crolley, #271217,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR), filed January 25, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the August 2009, term of the Lexington County Grand Jury for Assault with Intent to Kill (2009-GS-32-2216). Applicant was represented by David Mauldin, Esquire and Richard Bolen, Esquire. On May 25, 2010, the Applicant pled guilty as charged. Applicant was sentenced by the Honorable Clifton Newman to confinement for a period of ten (10) years. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s) and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials. The guilty plea transcript will be forwarded upon receipt.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a) failure to file an appeal
 - b) "counsel failed to timely raise issues and object and Applicant was heavily medicated;"
2. Involuntary Guilty Plea – "was told I would get probation by counsel, received the max;"
3. Double Jeopardy – "these same charges were dropped at preliminary hearing May 29, ??, for lack of prosecution."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth

of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

By: Kaelon E. May
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

September 7, 2011.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2011-CP-32-0295
	)	
GREGORY MARK CROLLEY, #271217	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christy Jones, Esquire
P.O. Box 2599
Lexington, SC 29071

DATED this 7th day of September, 2011



 Lena Pelishenko, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	__)	2011-CP-32-00295

GREGORY M. CROLLEY	)	
APPLICANT	)	
vs.	)	TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA	)	
RESPONDENT	__)	

January 31, 2013
Lexington, South Carolina

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH, JUDGE

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

-JOHN E. DUNCAN, ESQ.
Attorney for the Applicant

JOHN W. WHITMIRE, ASSISTANT ATTORNEY GENERAL
Attorney for the State

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

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EXHIBITS

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1 (WHEREUPON, APPLICANT'S Exhibits Nos. 1-4 were
2 marked for identification only.)

3 THE COURT: Are you ready to proceed, Mr.
4 Whitmire?

5 MR. WHITMIRE: Yes, Your Honor. May it please
6 the Court. The first case up today is Gregory Crolley v
7 State of South Carolina. It's CP Number 2011-CP-32-0295.

8 Mr. Crolley was indicted at the August 2009 term
9 of the Lexington County Grand Jury for assault with intent
10 to kill. Applicant was represented by Rich Bolen. On
11 May 25th, 2010, Mr. Crolley pled guilty as charged by the
12 Honorable Clifton Newman and to confinement for a period
13 of ten years. Mr. Crolley did not appeal his conviction
14 or his sentence.

15 Mr. Crolley filed his application for
16 post-conviction relief on January 11th, 2011. Respondent
17 filed its return on September 7th, 2011.

18 Mr. Crolley's present and is represented by Jack
19 Duncan.

20 And to bring Your Honor's attention, I attached
21 one of the exhibits from his plea, the mental competency
22 report, to your packet, and told Mr. Duncan yesterday
23 about it. And I believe Mr. Duncan had -- we have a few
24 stipulations regarding submittal of health records.

25 THE COURT: Okay, sir.

1 MR. DUNCAN: Your Honor, also just for the
2 record, for housekeeping purposes, the original
3 application had named David Mauldin from the Public
4 Defender's Office as a respondent. And Mr. Mauldin was
5 assigned Mr. Crolley's case just momentarily for maybe
6 30 days or so, and he didn't really have any role. So
7 we'd move to have his name stricken or removed from that
8 petition.

9 THE COURT: That sounds good.
10 What are your grounds, please, sir?

11 MR. DUNCAN: That Mr. Crolley had ineffective
12 assistance of counsel in that there was not a proper
13 examination and investigation of his criminal
14 responsibility at the time of the action and that there --
15 that that fell below the standards of reasonable conduct
16 as an attorney. And that's it.

17 THE COURT: Okay. Very good.

18 MR. DUNCAN: In addition, Your Honor, we have a
19 report from Dr. Donna Schwartz-Watts that we have
20 agreed -- counsel has it -- and that is our Exhibit
21 Number 1, pre-marked. There's also the Department of
22 Mental Health report of March 9th, 2010. That's Exhibit
23 2. Exhibit 3 is the trooper's car, in-car video of the
24 incident and the actions of Mr. Crolley. And then 4 is
25 selections from Mr. Bolen's -- attorney Bolen's file that

1 in those pages are Exhibit 4.

2 THE COURT: Any objection to any of those
3 exhibits?

4 MR. WHITMIRE: No, Your Honor. Mr. Duncan and
5 myself discussed this yesterday and he provided all of
6 this to me in advance.

7 MR. DUNCAN: We have been providing things back
8 and forth.

9 In addition, Your Honor, only for your
10 information, as I'm aware it has no prejudicial value, I
11 had provided counsel for the State and yourself a copy of
12 an order from Judge Keesley in a strikingly similar
13 post-conviction relief case.

14 THE COURT: Very good.

15 (WHEREUPON, APPLICANT'S Exhibits Nos. 1-4 were
16 admitted into evidence.)

17 MR. DUNCAN: In Coleman versus U.S -- I'm sorry,
18 versus South Carolina.

19 THE COURT: Okay. Are you ready -- I was
20 wondering what the Coleman was in this crowd.

21 MR. DUNCAN: Yes, sir.

22 THE COURT: All right. Are you ready to
23 proceed?

24 MR. DUNCAN: Yes, sir.

25 THE COURT: Call your first witness, please.

1 MR. DUNCAN: I'd call Dr. Donna Schwartz-Watts,
2 please.

3 DR. DONNA SCHWARTZ-WATTS, after being duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. DUNCAN:

7 Q Dr. Schwartz-Watts, what's your full name and
8 occupation for the record, please?

9 A Donna Marie Schwartz-Watts, S-C-H-W-A-R-T-Z hyphen
10 Watts, W-A-T-T-S. And I have two jobs. I'm a senior
11 psychiatrist at Bryan Hospital and I'm a forensic
12 psychiatrist in private practice.

13 Q And you've been qualified as an expert in what areas
14 in the courts of the state of South Carolina?

15 A Forensic psychiatry.

16 Q And that's on multiple, more than you can count,
17 occasions, I would suspect?

18 A Yes.

19 Q Did you see Mr. Crolley at my request?

20 A I did.

21 Q And you prepared, did you not, the report that we
22 have marked as Exhibit Number 1?

23 A I didn't see your actual copy, but I have a copy of
24 mine, yes, sir.

25 Q Oh, okay. This?

1 A Yes, sir.

2 Q And you prepared this report at my request, and it's
3 dated January 17th of 2013?

4 A Yes, sir.

5 Q Does your report indicate what records you reviewed?

6 A It does.

7 Q Do you feel those records were sufficient to form an
8 expert opinion in this case?

9 A Yes. That, coupled with my evaluation and some of
10 the collateral interviews, yes.

11 Q Okay. You had an in-person interview with
12 Mr. Crolley?

13 A Yes.

14 Q And in addition, we had provided you with what's been
15 marked as Exhibit Number 3, and do you recall reviewing
16 that, the video of the officer's car?

17 A I do.

18 Q Okay.

19 MR. DUNCAN: Just very briefly, Your Honor, if I
20 can?

21 THE COURT: Yes, sir.

22 MR. DUNCAN: Mr. Crolley was driving a vehicle
23 towards a highway patrolman. And the highway patrolman
24 felt threatened and shot Mr. Crolley, and that's the video
25 that we're referring to and the factual scenario, and that

1 he eventually pled to the assault with intent to kill.
2 That's the factual basis of the case.

3 THE COURT: Okay. Yes, sir.

4 BY MR. DUNCAN:

5 Q Now, did Mr. Crolley have a life-long history of
6 mental illness?

7 A He had an extensive history of mental illness. I was
8 able to determine that -- let's see -- back in at least
9 the early 2000s, there's records that he's been mentally
10 ill. I think it's very correct to say he's got a chronic
11 mental illness right now.

12 Q All right. And what is that diagnosis?

13 A Well, he's received various diagnoses throughout
14 time, but his most recent, and I think the one most
15 consistent with his presentation is called
16 schizo-affective disorder, bipolar type.

17 Q And what are -- how does that manifest itself, that
18 disease, that condition?

19 A It's a combination of a thought disorder and a mood
20 disorder. And it's a little bit different than the
21 typical manic depression because even when there's times
22 when he is not suffering the effects of the mood disorder,
23 he can become psychotic. So it's a combination of both.
24 The prognosis, it's a little bit better than
25 schizophrenia, but it's a little bit worse in prognosis

1 than bipolar.

2 THE COURT: What is the name of that again,
3 please?

4 THE WITNESS: Schizo-affective disorder.

5 THE COURT: Okay.

6 BY MR. DUNCAN:

7 Q And as a result, he is at times psychotic?

8 A Yes.

9 Q Okay. And the psychosis manifests itself with
10 auditory/visual hallucinations, that sort of thing?

11 A Yes. And he has paranoid thinking. He gets -- his
12 thoughts can get disorganized, yes. And he's on --
13 actually, he's on medications for that, and he's on pretty
14 moderate doses of medications right now to control those
15 psychotic symptoms.

16 Q And those include racing thoughts and that sort of
17 thing?

18 A It can.

19 Q Okay. Is that anything that Mr. Crolley can control?

20 A Well, if he takes his medicines and things like that,
21 then his symptoms can certainly be controlled. But, no,
22 in terms of when he has symptoms, it's a mental illness.
23 He didn't cause it. It's not caused by your lifestyle or
24 those sorts of things. It's a -- it's a medical illness.
25 It's a similar model.

1 Q It's not a question of free will or he just chooses
2 to do these things?

3 A That's correct. It's a mental -- it's a diagnosable
4 illness, and it's treatable and you need medications for
5 it.

6 Q What is the ICS?

7 A That is a program at the Department of Corrections,
8 Your Honor, in the Kirkland building here in Columbia. At
9 the Kirkland campus, there's -- that's really the hub of
10 mental health treatment right now for the Department of
11 Corrections. They have Gilliam Psychiatric Hospital
12 there, which is a 89-bed unit. And, then, the ICS program
13 is actually on the same grounds.

14 And what that is, it's a step-down program for
15 the mentally ill. They live there, they have case
16 managers. It's a -- it's a pretty intensive program.
17 It's a higher level of care than outpatient treatment.
18 They actually -- he has his own case manager. I met with
19 him. He gets his medications every day, and he's housed
20 with other mentally ill inmates.

21 And they have -- they used to have a lot more
22 dorms. They had to cut the number of beds because of the
23 budget, so it's very difficult get into that program. But
24 it's a centralized program where the mentally ill -- if he
25 were to get better, they would transfer him out to one of

1 the local institutions that has mental health care on an
2 outpatient level.

3 Q But he's been there since he was sentenced in 2010?

4 A That's correct.

5 Q And how many beds are in this unit, approximately?

6 A It used to be 400. I think they have cut down, I
7 don't want to say exactly, but I think around 200.
8 They've had to cut the -- they -- I know they cut one of
9 the dorms out.

10 Q Okay. And that's, just to pick a figure,
11 approximately 200 beds out of how many in the Department
12 of Corrections?

13 A Last time I checked, there were 22,000 inmates,
14 somewhere around that ballpark.

15 Q And do you have any idea about how many, you know,
16 the statistics or the facts are, how many inmates have
17 mental problems in the Department of Corrections?

18 A It's been a number -- I actually spoke for the
19 Department of Corrections. I did a lecture for them a few
20 years ago. And I think at the time, they had 2 to 4,000
21 males that were diagnosed as mentally ill, which is about
22 ten percent. That is a little bit lower than the country.
23 Normally, it's about 18 percent, but about 2 to 4,000 is
24 the number of inmates usually that require some kind of
25 mental health treatment.

1 Q So would it be fair to say it's highly significant
2 that Mr. Crolley was selected for this program?

3 A Absolutely. There are many mentally ill -- I've
4 treated them. There are many mentally ill inmates in the
5 Department of Corrections that need that level of
6 treatment that are in line or can't get a bed.

7 Q And, in fact, Mr. Crolley had a prior history of
8 incarceration at SCDC, did he not?

9 A Yes, he did, for an arson charge.

10 Q And he was in -- is it not true that he was in ICS
11 unit in 2005?

12 A He was. He had originally been placed in one of the
13 outpatient level cares, Your Honor, and then they moved
14 him to the ICS program because he was not adjusting well,
15 and he was having numerous symptoms while he was in the
16 local level of care at the Department of Corrections.

17 Q Okay. So -- and the date of this incident and his
18 arrest that grew out of these charges was March 15th,
19 2009?

20 A Yes.

21 Q Okay. And so for -- were you aware that Mr. Crolley
22 was receiving Social Security Disability payments for
23 mental illness?

24 A Yes.

25 Q And that was since what time?

1 A At the time he got released from the Department of
2 Corrections, from his arson charge, is my understanding.

3 Q Now, he had started those in 1999, the Social
4 Security Disability payments?

5 A Okay. I would stand corrected, then.

6 Q Okay. And he was in the ICS unit for mentally ill in
7 2005, and those records are readily available from the
8 Department of Corrections, correct?

9 A Yes.

10 Q Okay. And those are quite extensive records, are
11 they not?

12 A They are.

13 Q Okay. Now, presumably during incarceration in the
14 Department of Corrections, an inmate would not have ready
15 access to alcohol on a consistent basis, correct?

16 A No. They have to make it. If they have it, it's
17 because they're making and manufacturing it, but it's
18 not -- in the more secure programs like at Kirkland, it's
19 less likely to be found, but it can still happen.

20 Q Okay. But you found no evidence that Mr. Crolley had
21 access to alcohol during that time period?

22 A He's denied the use to me. Again, I couldn't prove
23 it, but he said he was not using.

24 Q Okay. And so during a time period when he was
25 presumably sober from alcohol, there is no doubt he was

1 mentally ill?

2 A Yes, that's correct. And that is a good question. I
3 was very concerned about that. I was looking because the
4 Department of Corrections records are extensive that
5 pre-date this most recent incident and then postdate it.
6 And I was very concerned because when I saw Mr. Crolley,
7 he's well. He's in very good shape right now. And so I
8 was concerned that some of this may have been a
9 substance-induced psychosis, so I looked very carefully
10 throughout his records. And it's very clear there really
11 are times, Your Honor, where he's been stabilized and
12 continued to have symptoms of mental illness. So in my
13 opinion, he does meet the criteria of schizo-affective
14 disorder and continues to have that mental illness.

15 Q So this is not a disorder or disease where his
16 symptoms are the same continuously?

17 A No, that's correct because it's a combination. You
18 could have the mood disorder and be bothered by that for a
19 period of time, and after the mood disorder is gone, you
20 may still be psychotic, which is why it's different from
21 bipolar disorder.

22 Q Okay. And then you examined records after this
23 incident and his arrest on March 15th, and in examining
24 those records, did you also find evidence of his mental
25 illness?

1 A Yes.

2 Q , And then he's been incarcerated since March 15th of
3 2009. And so presumably during -- from that period to
4 now, he would not have had ready access to alcohol?

5 A No, not that I'm aware of.

6 And also, I think what's important, he's also
7 been on medications during that period of time and still
8 has symptoms. There's periods of time in looking through
9 his records, especially around the time of his father's
10 death, he becomes very depressed, they usually have to
11 change his medications. He's had a number of medication
12 changes even since then, since he's been confined.

13 Q And so prior to March 15th of 2009, he had an
14 extensive, well-documented history of mental illness
15 during periods when he was sober?

16 A Yes.

17 Q Since March 15th, 2009, he has had well-documented
18 periods when he was sober, alcohol-wise, and he had
19 extensive history of mental illness?

20 A Yes.

21 Q All right. And as I understand it, did you find a
22 history of mental illness in his family, also?

23 A Yes.

24 Q Okay. And including his immediate family?

25 A Yes. His mother has an anxiety disorder, and I

1 believe he said his brother has bipolar. Yes, he has a
2 brother with bipolar. And his mother personally told me
3 that she has a history of mental illness, that she's on
4 two medications at this time as well.

5 Q Okay. And that's -- you gleaned that from speaking
6 with him and his mother?

7 A Yes.

8 Q Is that a further indication or a marker for mental
9 illness, a history of that in the family?

10 A Absolutely. And that's why we know it's more than
11 just a volitional condition or a condition just caused by
12 a substance. There's usually a family history. As with
13 diabetes or high blood pressure, mental illnesses runs in
14 families.

15 Q And for the sake of your examination, you presumed
16 that he had been drinking alcohol on the night of the
17 incident?

18 A Not only presumed, there was a -- he even told me, I
19 believe he said his blood alcohol level was .3. And it's
20 very clear in looking at the tape, he was quite
21 intoxicated.

22 Q Okay. But in looking at this tape, did you also find
23 evidence of the mental illness that had been documented
24 before this time period and since that time period?

25 A Yes.

1 Q Okay. So to a reasonable degree of medical
2 certainty, do you have any doubt that his actions on the
3 night in question were driven at least partially by his
4 mental illness?

5 A That is fair to say, and that would be my opinion.

6 There's two reasons, Mr. Duncan. First of all,
7 and you'll see, he asked for the police officer to kill
8 him. He says, excuse my French, he says: "Shoot my in
9 the God damn chest" when he gets out of the car. And then
10 right after he's shot, you can hear him say, "I'm
11 schizophrenic, man." So he -- there's certainly evidence
12 on the tape that he was suicidal. He was asking to be
13 shot, and then he volunteers that he's schizophrenic.

14 Q And he has a history of suicide attempts, does he
15 not?

16 A Yes. Two days -- even two days before this incident.

17 Q Okay. So -- and that would be a product of the
18 mental illness plus depression, also?

19 A And drinking. All of those -- all of those things.
20 He's been -- he had been drinking very heavily a few days
21 before this incident.

22 He had been going -- after he got out of the
23 prison, he went to the mental health center. He followed
24 up, just like he was supposed to do. And then he had gone
25 to a family doctor, Dr. Haile, who was giving him high

1 doses of medications. And his mother was even concerned
2 about that. He was on very high doses of anxiolytic
3 medications, medications that decrease anxiety. And he
4 reports that two days prior to this offense, he had taken
5 60 Ativan and chased it with some vodka. His mother had
6 noticed some mental status changes in him at that time as
7 well.

8 So -- he had also drank bleach in the past.
9 He's had a number of attempts where he's become very
10 impulsive and depressed and tried to kill himself.

11 MR. DUNCAN: And for the record, You Honor, I
12 believe that's H-A-I-L-E for Dr. Haile.

13 BY MR. DUNCAN:

14 Q All right. And the suicide attempts would be further
15 evidence of his mental illness?

16 A Yes.

17 Q Dr. Schwartz-Watts, his medication, I notice the
18 terms or drugs such as Risperdal. What is that for?

19 A That's an anti-psychotic medication.

20 Q And Ativan?

21 A That is for anxiety. And we also use that in people
22 with bipolar disorder with they're manic, to calm them
23 down.

24 Q And Klonopin?

25 A That is similar to the Ativan, and it's an anxiety

1 medication.

2 Q And those are all medications that Mr. Crolley has
3 been taking or is taking?

4 A In the past. He's actually changed more recently.
5 They just changed his medicine not too long ago, and he's
6 actually on a medicine called Trilafon, which is one of
7 the older medicines. But, yes, he's still on an
8 anti-psychotic medication, and he's also on an
9 anti-depressant right now.

10 Q And when -- and I don't -- I apologize for not
11 knowing the proper terms -- when he has a flare-up or an
12 increase in symptomatology or how would you refer to it?
13 I mean, he grows, he decompensates and becomes
14 increasingly less rational during those time periods.
15 What would be the effect on his physiology, his thought
16 processes and how he would be acting?

17 A Well, what happens most commonly for him is he
18 develops a mood disorder first. He gets depressed. He
19 starts thinking -- the typical pattern, from what I'm able
20 to tell, is he begins ruminating about his father.

21 His father died. He did not know. And the
22 father's ashes were delivered to the family by UPS. And
23 he had just made plans to go see his father. He had sent
24 him some pictures, and that happened in February. And
25 once the ashes were delivered, the family built a kind of

1 shrine in the backyard. They buried the ashes and had
2 like bricks in a circular area surrounding the ashes. And
3 so the family typically would go out and drink and start
4 crying and getting upset about the death of the father.
5 And those are usually the kind of factors that have caused
6 him to decompensate. And if you look in his records,
7 usually around February, around the time of the
8 anniversary of his father's death, he'll begin to get
9 depressed. Then he gets depressed, he would drink. And
10 then he would drink and he would get more psychotic. And
11 so all those things kind of happened together. It's hard
12 to tease them out, but they're all related.

13 Q And would that -- when he decompensates, would that
14 lead to a lack of sleep, increased -- where his thoughts
15 are racing, that sort of activity?

16 A Yes. He becomes irritable, he doesn't sleep well, he
17 eventually gets paranoid. Yes, all those constellation of
18 symptoms go together.

19 Q What effect would alcohol have on someone in that
20 condition?

21 A Well, it does three things for him. It can affect
22 many people in different ways, it just depends on how you
23 are. But first of all, alcohol is a depressant. It
24 depresses everyone who drinks it. If you over indulge in
25 alcohol, your mood will eventually become depressed. When

1 you have a mental illness and you're anxious, it decreases
2 your anxiety. Alcohol is a very similar chemical
3 structure to the Ativan and the Klonopin, so it reduces
4 anxiety, but unfortunately, it causes depression. And,
5 then, in people with pre-existing -- if you have brain
6 damage, it can make you quite aggressive. There are many
7 people that become disinhibited.

8 Q But one of the factors would be that it calms them
9 down, correct?

10 A Sure. It decreases anxiety. It can, yes.

11 Q And so people are self-medicating when their thoughts
12 are racing and they're decompensating?

13 A That can happen, yes.

14 Q And so that is what Mr. Crolley was trying to do, one
15 of the things he was trying to do with the drinking. It
16 helped calm him?

17 A At some level. He's also -- he also has alcohol
18 dependence. He has a horrible substance abuse history.
19 And he's alcohol dependent as well. But, yes, 80 percent
20 of the mentally ill are dually diagnosed. That's not
21 uncommon at all when you're mentally ill that they
22 self-medicate with all kinds of substances.

23 Q When you examined the videotape, what struck you as
24 particularly revealing or that aided you in your diagnosis
25 and evaluation of Mr. Crolley?

1 A Two things. First of all, the officer, Your Honor,
2 the trooper was very professional. And one of
3 Mr. Crolley's assumptions was is that somehow his wife was
4 being manhandled by this officer. She had been pulled --
5 she had evidently been driving erratically. It was -- it
6 looked like it was very late at night. The officer was
7 incredibly professional and detained his wife and was
8 trying to -- he was asking her the question, was obviously
9 going to give her a field sobriety test. And she had even
10 admitted that she had drank that night.

11 And so you can see him getting very agitated in
12 the car and trying to -- and I hope I summarize this
13 correctly -- but there's periods of time where he's
14 becoming unruly, and the officer is asking him to please
15 sit down. And the -- he -- at one time, he tries to get
16 out of the car, he's trying to get out of the window, and
17 he finally actually gets out of the car, and that's when
18 he tells the -- I mean, he takes off his shirt like he's
19 going to fight the officer, and then the officer's
20 instructing him to get back into the vehicle, and that's
21 when he says, you know, why don't you God damn shoot me
22 or -- he's very aggressive under the circumstances. But
23 what was telling to me is the officer wasn't being rude or
24 mistreating his wife at all, so that was totally an
25 unreliable perception his part.

1 Q So he reported to you that his wife was being
2 disrespected or people around that time period?

3 A Yes.

4 Q So his perception was not reality?

5 A No, not at all, not from what I could see.

6 Q And is that a product of his mental illness at the
7 time?

8 A Yes, it could be. And also, you know, it may have
9 been, also been related to the alcohol intoxication as
10 well. But certainly it was not what was happening at all.

11 Q Okay. Dr. Schwartz-Watts, do you have an expert
12 opinion on Mr. Crolley's mental state at the time of the
13 offense as far as your conclusion on pages 3 and 4 of your
14 report?

15 A Yes. It's my opinion, as he told me -- and I was
16 very surprised, Your Honor, because I interviewed him
17 first, I had not seen the DVD. And when I met with him,
18 of course this was sometime later, of course, because I
19 didn't see him around the time of the offense. But he
20 said he want to get killed by the cops. This was a
21 suicide by cop. He stated he was tired of living, he
22 missed his father, he had tried to hurt himself a few days
23 earlier. So it's my opinion he was definitely reckless
24 and asked the police officer to kill him.

25 The most telling thing, again, as he tells the

1 EMS worker after he'd been shot, this is his quote: "I
2 ain't got nothing against him for shooting me. I'm
3 schizophrenic, man." So it -- so it's my opinion he
4 clearly recognized what he was doing was wrong. He knew
5 what he doing. He knew he that he was -- he came very
6 close -- I don't know if he hit the officer or not -- but
7 came very close to hitting the officer and his wife. You
8 can see everything on the video camera. But it's clear he
9 knew what he was doing was wrong. But it was my opinion
10 to a reasonable degree of medical certainty that he lacked
11 the capacity to conform his conduct at that time.

12 Q And you also found that Mr. Crolley had a cognitive
13 disorder because of the bullet in the brain, trauma as a
14 result of being shot by the officer?

15 A Absolutely. He does now, Your Honor. He has some
16 significant frontal lobe damage. He's still competent,
17 though. He remains competent today. He's doing well
18 probably because he's not drinking and he's on medications
19 and in the structure of the prison. But, yes, he
20 definitely has a cognitive disorder now on top of it.

21 Q And he did suffer from mental illness at the time of
22 this incident?

23 A Oh, yes.

24 Q And there is no doubt in your mind that he knew legal
25 right from wrong?

1 A That's correct. Clearly he did. He knew -- he knew
2 he was driving. He knew he was driving that car awfully
3 close to his wife and the police officer. There is no
4 question.

5 Q But is there also -- is it fair to say there is no
6 doubt in your mind that he had no ability to control his
7 actions that night?

8 A In my opinion, he lacked the capacity to conform, he
9 did.

10 Q Just one second.

11 If there had been an investigation by
12 Mr. Crolley's counsel at the time or closer to the time of
13 the March 15th, 2009, incident, would that have aided the
14 development of the diagnosis of Mr. Crolley and assisted
15 in his defense as far as presentation to the trial judge
16 or to a jury?

17 A In my opinion, yes. And there is one piece of
18 information I'm missing, Your Honor, that would have been
19 much more helpful at the time. I'd wanted to speak to his
20 wife. She was in the car with him, and we've attempted to
21 try to locate her. They've since divorced, and I had some
22 numbers, and I've tried to locate her. It would have been
23 nice in terms of my methodology to be able to have
24 interviewed her.

25 Q So a time-wise much closer investigation would have

1 assisted Mr. Crolley in the development of his defense and
2 the evaluation of this case?

3 A In my opinion, yes.

4 Q Okay. And in your evaluation, also?

5 A Yes.

6 MR. DUNCAN: Answer any questions that the Court
7 or the Attorney General has.

8 THE COURT: Mr. Whitmire.

9 CROSS-EXAMINATION

10 BY MR. WHITMIRE:

11 Q Good morning, Dr. Schwartz-Watts.

12 A Good morning. Good to see you again.

13 Q So after reviewing the documents listed in your
14 report and meeting with the applicant, you concluded he
15 was competent to plead guilty?

16 A Absolutely.

17 Q And the applicant understood legal and moral right
18 from wrong at the time of the offense?

19 A Yes, he did.

20 Q Thank you.

21 The ultimate conclusion is that the applicant is
22 not criminally responsible because of his intoxication at
23 the time of the crime?

24 A No, sir, that is not correct. My -- the legal
25 standard would be he's guilty but mentally ill, and it

1 would be because of the schizo-affective disorder.

2 Q In combination with his mental health history?

3 A I'm sorry?

4 Q That in combination with his mental health history,
5 intoxication?

6 A Yes.

7 Q Just a few more questions.

8 Is it your testimony today that if you had to
9 perform the same examinations of Mr. Crolley before he
10 pled guilty, you would have reached the same conclusion?

11 A Yes. Unless for some reason the wife had some kind
12 of information that we didn't know about. But that's
13 based on -- yes, my opinion right now is going to be based
14 on the records, based on my evaluation of him, looking at
15 the discovery and the DVD. And I also spoke with his
16 mother who was -- certainly had exposure to him around the
17 time of those events, very familiar with his mental
18 illness. She's had to call the police on him in the past
19 when he was mentally ill, so she's very familiar with his
20 illness.

21 Q One final question. So your conclusions you reached
22 in your report are only applicable from December 12th
23 forward?

24 A Absolutely. As they -- as they always are. We're
25 never there when the crime happens, and our methodology,

1 we have go back and try to re-create somebody's mental
2 state at the time.

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

4 THE COURT: Any redirect?

5 MR. DUNCAN: Yes, sir. Just, first of all, I
6 want to put this up here so I don't get caught with that
7 in the file.

8 REDIRECT EXAMINATION

9 BY MR. DUNCAN:

10 Q Dr. Schwartz-Watts, the evaluation you did of the
11 records, the DVD, the interview, is that the methodology
12 that you as an expert utilized?

13 A Yes, always.

14 Q Okay. And in addition, I had forgotten to ask you.
15 Did your investigation indicate that Mr. Crolley also had
16 a history of closed head injuries?

17 A Yes, he did. He had a pre-existing history as well.

18 He -- on one occasion, one of the -- one of the
19 actual injuries, his mother had called the police to pick
20 him up, and he had said that he had gotten hit on the head
21 at that point.

22 He also had a prior -- let me find that for you.
23 He fell from a swing and hit his head when he was younger.
24 He had a car accident at age 18 which required he have a
25 rod in his leg. And so he had had a few other times where

1 he had some head injury.

2 Q All right. And those -- would those -- those
3 conditions would not help with his mental illness, either?

4 A No, they certainly wouldn't.

5 And now, especially, Your Honor, I probably
6 should say for the record, the injury he has sustained
7 since -- he had a subarachnoid hemorrhage, he had a
8 depressed skull fracture. The injury since then has been
9 very significant. But even beforehand, those -- certainly
10 those prior injuries, they can make you impulsive. But
11 that wasn't really tested at the time, so I can't opine on
12 that.

13 Q And so at the present time, he is a very calm
14 individual, his present regimen?

15 A Yes. The kind of brain damage he sustained, usually
16 when you have a closed head injury like that, you either
17 become more irritable and more hyperactive or calmer. And
18 he's definitely much calmer in his demeanor. His mother,
19 she doesn't know that, but even today in court said he's
20 not the same person. He is much flatter in his affect,
21 he's not as boisterous, he's not as aggressive as he's
22 been in the past.

23 MR. DUNCAN: That's all I have.

24 MR. WHITMIRE: No further questions from the
25 State, Your Honor.

1 THE COURT: May Dr. Schwartz-Watts be excused?

2 MR. DUNCAN: Yes. I ask that she be excused.

3 MR. WHITMIRE: The State agrees, Your Honor.

4 THE COURT: All right. Thank you.

5 Call your next witness, please, sir.

6 MR. DUNCAN: I would call Mr. Crolley.

7 GREGORY MARK CROLLEY, after being duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. DUNCAN:

11 Q What is your full name?

12 A Gregory Mark Crolley.

13 Q And, Mr. Crolley, where are you housed?

14 A I'm at the ICS program at Kirkland.

15 Q All right, sir. And you've been there -- you've been
16 incarcerated consistently since March 15th, 2009?

17 A Yes, sir.

18 Q And you have been in ICS for -- since about March of
19 2010?

20 A Yes, sir.

21 Q And you had previously been in ICS?

22 A Yes, sir.

23 Q And, Mr. Crolley, is it fair to say that you have a
24 lengthy history of mental illness?

25 A Yes, sir.

1 Q Did you -- when you spoke with Mr. Bolen, your
2 attorney at the time, did you tell him that you have a
3 long history of mental illness?

4 A Yes, sir.

5 Q And did you give him the names of doctors, hospitals
6 and treatment that you had received in the Department of
7 Corrections and on the street?

8 A Yes, sir.

9 Q Okay. Now, you pled guilty to driving a car towards
10 the trooper and trying to hit him, correct?

11 A Yes, sir.

12 Q All right. And the trooper as a result of that shot
13 you, correct?

14 A Yes, sir.

15 Q And you were shot in the arm?

16 A Yes, sir.

17 Q And in the head, correct?

18 A Yes, sir.

19 Q And if you would, stand up and show the Judge.

20 Do you have a mark on your skull?

21 A Yes, sir. And my arm.

22 Q It's approximately about a four-inch depression in
23 your skull?

24 A Yes, sir.

25 Q All right. You have been told many times that you

1 have a mental illness?

2 A Yes, sir.

3 Q Okay. And you applied for Social Security Disability
4 on the basis of that mental illness, correct?

5 A Yes, sir.

6 Q And you were -- I'm sorry, how old are you now?

7 A Forty-five.

8 Q Forty-five. Okay. And you've been -- you were
9 awarded Social Security Disability benefits for mental
10 illness in 1999?

11 A Yes, sir.

12 Q Okay. Before this incident, you were mentally ill
13 and violent, were you not?

14 A Yes, sir.

15 Q Often in fist fights?

16 A Yes, sir.

17 Q You received multiple head injuries?

18 A Yes, sir.

19 Q And what -- your condition right now, are you
20 violent?

21 A No, sir.

22 Q All right. Are you one of the calmest people you
23 know?

24 A Yes, I am.

25 Q Mr. Crolley, have you ever tried to commit suicide?

- 1 A Yes, sir.
- 2 Q When that has happened, did you feel like you were in
3 control and you could stop yourself?
- 4 A No, sir, there's no way I could.
- 5 Q When you -- are there times when you are better than
6 other times and times you're worse, mentally?
- 7 A Yes, sir.
- 8 Q Okay. When you start getting worse, is there
9 anything you can do to help -- just you decide I'm just --
10 I say, I'm going to get better. Is that possible?
- 11 A No, sir.
- 12 Q So it's not something you have control over?
- 13 A No, sir.
- 14 Q You remember that night that you were shot, correct?
- 15 A Yes, sir.
- 16 Q And you wanted to die that night, correct?
- 17 A Yes, sir.
- 18 Q And when you drove your car towards that officer, was
19 that something you were in control of?
- 20 A No, sir.
- 21 Q Was there any way you could have stopped?
- 22 A No, sir.
- 23 Q And there is no question in your mind that you knew
24 that it was wrong?
- 25 A Yes, sir.

1 Q All right. Mr. Crolley, we've -- I've given you a
2 copy of Dr. Schwartz-Watts' report, have I not?

3 A Yes, sir..

4 Q And you heard her testimony?

5 A Yes, sir.

6 Q Is that the sort of information that you would have
7 wanted to discuss with Mr. Bolen?

8 A Yes, sir.

9 Q Okay. Have you ever thought about why you have these
10 mental problems?

11 A No, sir.

12 Q All right. Whenever you have these mental problems,
13 is there anything you can do to control them?

14 A No, sir.

15 Q And is that the way it's always been?

16 A Yes, sir.

17 Q Okay. You -- did Mr. Bolen go over with you the
18 possible choices when the solicitor would call your case
19 to court?

20 A As far as a mentally ill plea or --

21 Q Right.

22 A Just the guilty plea.

23 Q Did he ever discuss with you the concept of guilty
24 but mentally ill?

25 A No, sir.

1 Q All right. Is that the information that you think
2 that you would have wanted to know before you made a
3 decision as far as what your choices were?

4 A Yes, sir.

5 Q All right. Mr. Crolley, at the time of your
6 representation by Mr. Bolen, knowing then -- if you knew
7 then what you know now as far as the diagnosis of guilty
8 but mentally ill, what would you have wanted to do at the
9 time?

10 A I would have wanted to get a jury trial to decide.

11 Q To decide what?

12 A My fate.

13 Q Okay. Because of your mental condition?

14 A Yes, sir.

15 Q You wanted that brought out?

16 A Yes, sir.

17 Q Okay. You knew you weren't right, correct?

18 A Yes, sir.

19 Q But you just didn't know why?

20 A Yes, sir.

21 Q Okay. And so when is the first time you heard about
22 the concept of guilty but mentally ill?

23 A Actually, from you.

24 Q All right. Mr. Bolen had never discussed that with
25 you?

1 A No, sir.

2 Q Okay. Answer any questions that the Attorney General
3 might have.

4 A Okay. All right.

5 THE COURT: Mr. Whitmire.

6 MR. WHITMIRE: Beg the Court's indulgence just
7 for one minute.

8 (Pause.)

9 CROSS-EXAMINATION

10 BY MR. WHITMIRE:

11 Q Good morning, Mr. Crolley.

12 A Good morning.

13 Q You're facing more than 20 years for these charges,
14 weren't you?

15 A Yes, sir.

16 Q And considering --

17 MR. DUNCAN: No, sir, that's not --

18 THE WITNESS: Well, that was ten years. Ten
19 years.

20 MR. DUNCAN: He's facing ten years, Judge.

21 MR. WHITMIRE: There's two separate assault with
22 intent to kill charges, one for the police officer, one
23 for his wife.

24 THE COURT: You need to speak up, please, sir.

25 BY MR. WHITMIRE:

1 Q That was part of the plead negotiations. But you
2 were facing three charges, weren't you, to begin with?

3 A To begin with, yes, sir.

4 Q Thank you, Mr. Crolley.

5 A All right.

6 Q And considering you're facing 20 years in prison, are
7 you satisfied that you'll be maxing out next year, 2014?
8 You say you want a jury trial today.

9 A Yes, sir.

10 MR. WHITMIRE: Your Honor, referencing page 18
11 of the plea transcript.

12 BY MR. WHITMIRE:

13 Q You told Judge Newman that you attempted the suicide
14 by cop because you were grief stricken about your father;
15 is that correct?

16 A Yes, sir.

17 Q But in 2000, didn't you commit a similar crime by
18 trying to run over a motorcyclist?

19 A Tried to commit suicide for that, no sir.

20 Q No. But you committed a similar crime, using a
21 vehicle, trying to run someone over?

22 A Well, I pled guilty to that assault of a high and
23 aggravated nature..

24 Q And didn't you have a pretty extensive record --

25 A Yes, sir.

1 Q -- for committing violent crimes while intoxicated?

2 A Not while intoxicated, no, sir.

3 Q Mr. Crolley, didn't you plead guilty to receive the
4 best possible sentence considering the evidence and
5 charges?

6 A I guess so, yes.

7 MR. WHITMIRE: Thank you. No further questions,
8 Your Honor.

9 THE COURT: Redirect.

10 REDIRECT EXAMINATION

11 BY MR. DUNCAN:

12 Q Mr. Crolley, would you have wanted the trial judge
13 who sentenced you to know about this diagnosis of guilty
14 but mentally ill if your lawyer had developed that?

15 A Yes.

16 MR. WHITMIRE: Okay. Nothing further.

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

18 THE WITNESS: Thank you, sir.

19 THE COURT: Any other witnesses?

20 MR. DUNCAN: Yes, I would call Mr. Bolen,
21 please.

22 RICHARD BOLEN, after being duly sworn, testified
23 as follows:

24 DIRECT EXAMINATION

25 BY MR. DUNCAN:

1 Q Mr. Bolen, what is your full name, please?

2 A Richard Bolen, B-O-L-E-N.

3 Q And your occupation?

4 A I'm an attorney in private practice.

5 Q And how long have you been admitted to the Bar in
6 South Carolina?

7 A Since 1995.

8 Q Okay. Did you -- when you got out of law school in
9 1995 and passed the Bar, did you have any area of practice
10 that you practiced in predominantly or thought of
11 yourself -- how would you describe yourself as an attorney
12 or your practice?

13 A Now or '95?

14 Q 1995.

15 A Green and unsure what I was going to be doing.

16 Q Okay. And so what did you eventually develop? What
17 sort of practice did you eventually develop?

18 A In '98, I opened my own practice, which was kind of a
19 general practice, anything that could pay the bills, and I
20 developed mostly into real estate and criminal defense
21 with an occasional personal injury.

22 Q All right. And how much of your practice in 1998 was
23 criminal defense?

24 A Probably 30 to 40 percent.

25 Q Okay. And did that stay constant?

1 A Yeah. I'm still doing roughly about that.

2 Q All right, sir. And can you tell me what CLEs you
3 have attended for criminal law?

4 A I usually go to the annual criminal law update that
5 reviews all the changes in the criminal law and the latest
6 developments that are relevant to criminal practice, and
7 an occasional other one for specific -- perhaps DUIs or
8 criminal domestic violence, depending on what's offered,
9 but --

10 Q And how many --

11 A And I go to the annual one.

12 Q I'm sorry. And when you say you "usually go," did
13 you go this year?

14 A I went to the 2011. I am going to the 2012.

15 Q Okay. And did you say you are going to go to the
16 2012?

17 A Yes. It's held on February 22nd.

18 Q Okay. You mean 2013?

19 A Well, it's held in 2013, but it's like the Super
20 Bowl, it's for the 2012 season.

21 Q All right. How many felony trials have you had?

22 A Actual trials, probably four, I believe.

23 Q Since 1998?

24 A Yes.

25 Q I'm going to show you a notebook, and you have

1 previously identified this?

2 A Yes.

3 Q And what is it?

4 A I believe that is a fairly complete copy from -- of
5 my file for the Greg Crolley case.

6 Q Your defense file for Mr. Crolley?

7 A That's right. And it's printed from our scanned
8 documents from our computer.

9 Q Okay. And you've previously looked over Exhibit
10 Number 4?

11 A Yes. It's a collection of documents from my -- from
12 my file.

13 Q And these documents include handwritten notes?

14 A Yes.

15 Q All right. Mr. Bolen, on the first page down at the
16 bottom, what is -- and I'm sorry -- is there a note as to
17 when -- a notation as to when this part of your file was
18 created?

19 A Yes. I took these notes, apparently, on
20 September 2nd, 2009.

21 Q September 2nd, 2009. And Mr. Crolley's offense was
22 March 15th of 2009?

23 A I'll defer to you on that. I can't remember the
24 exact date. It sounds about right.

25 Q Is that September 2nd about the time that you started

1 your defense of Mr. Crolley?

2 A Yes. I believe this may have been done at the
3 correctional -- Lexington County Detention Center.

4 Q I am going to call your attention down to the next to
5 the last entry, and would you read that for me?

6 A Sure.

7 "On Social Security Disability since 1999 for
8 schizo-affective disorder with meds for condition."

9 Q Okay. And that was -- was that your first notice
10 that Mr. Bolen had a history of mental illness?

11 A Well, I think you meant Mr. Crolley, but, yes.

12 Q I'm sorry.

13 A It was my first interview with him, so, yeah.

14 I may have talked to his mother who mentioned it
15 to me prior to that, but for all intents and purposes,
16 roughly around that time, yes.

17 Q And then the second page also has -- is that sort of
18 notes that you took down?

19 A Yeah. I believe that's the second page of these
20 notes from the same interview with Mr. Crolley at the
21 detention center.

22 Q Okay. And the last entry, you made another notation
23 that says?

24 A It says: "Defendant gets meds and treatment at
25 SDMH -- South Carolina Department of Mental Health -- dash

1 Lexington."

2 Q Did you obtain those records from DMH in Lexington?

3 A I believe I did because we applied for a competency
4 evaluation, and that part of the process, of course, is
5 getting relevant medical records to submit to the
6 Department of Mental Health.

7 Q And the third page is a form that you use in your
8 office, correct?

9 A Yes.

10 Q And it's got your initials on it?

11 A Yes.

12 Q And it says that you are satisfied that you advised
13 the defendant of his rights, that he was not under a
14 doctor's care for any mental problem?

15 A Yeah. This is a -- this is a check sheet that I use
16 when I'm doing a plea with a client, and it makes sure
17 that I cover all the relevant considerations. And that
18 may be poorly worded. Obviously, I was aware that he was
19 under -- the conditions of -- the point of that paragraph
20 is to say that he was competent to answer my questions and
21 I felt that he understood what we were discussing.

22 Q But it's not accurate, though?

23 A Right.

24 Q Because he was under a doctor's care and had been for
25 many years for mental problems?

1 A Right. That's correct. But this is an internal
2 document, so it's ...

3 Q Okay. But it comes from your file?

4 A Right.

5 Q And it's, you know, your initials?

6 A Right.

7 Q All right. And then you also say you inquired if the
8 defendant had been institutionalized for alcohol, drug
9 abuse or mental illness?

10 A That's correct.

11 Q And the answer to that was, yes?

12 A That's right.

13 Q Okay. And so at this time, what records had you
14 obtained of Mr. Crolley's mental illness?

15 A All of them that I was going to get because I did
16 this just prior to the plea. So we had already done the
17 mental evaluation and determined his competency and -- so
18 I had seen all of those medical records at some point in
19 the past. But at this point, I already had them, yes.

20 Q Okay. And when you say that I inquired if the
21 defendant had been institutionalized for mental illness,
22 the answer is yes. And it has the following note: If
23 yes, explain. And the explanation was that he had been
24 evaluated for competency?

25 A Right.

- 1 Q Okay. But not for criminal responsibility?
- 2 A That's right.
- 3 Q Okay. The next page, is that also your handwriting?
- 4 A Yes.
- 5 Q And it indicates that -- would you read that for us,
6 please?
- 7 A The top one?
- 8 Q Yes.
- 9 A "In 2001, evaluation pending an arson charge at the
10 Hall Center."
- 11 Q Okay. The Hall Center is William S. Hall Institute,
12 correct?
- 13 A Yes.
- 14 Q And what is that used for? What is the purpose of
15 the Hall Institute when it comes to --
- 16 A That is a mental evaluation center and mental health.
- 17 Q All right. So that would have been an indicator to
18 you that Mr. Crolley had a history of mental illness?
- 19 A Oh, yeah. I was -- there was never any illusion
20 about that. I was well aware of it.
- 21 Q Okay.
- 22 A And he was well aware of it as well.
- 23 Q And he related that to you?
- 24 A Yes.
- 25 Q His mother related that to you?

1 A That's correct.

2 Q In fact, you knew his mother had mental problems?

3 A Yes.

4 Q And also members of his family?

5 A That's correct.

6 Q And then there is another notation a little farther
7 down that said, "get psych meds."

8 A Right. That was a note to myself to make sure I knew
9 what medications he was on or that he was being
10 prescribed, and whether he was getting them at the jail or
11 not.

12 Q Okay. And do you recall what those medications were?

13 A No. It was the typical schizophrenic bipolar
14 medicines.

15 Q Which are -- to your mind, those are serious mental
16 illnesses?

17 A Well, yeah.

18 Q And they're not -- and you were aware at the time
19 that those are not temporary conditions?

20 A Right.

21 Q All right. And so that they would be permanent
22 conditions?

23 A I've had some familiarity with it. I'm obviously not
24 an expert, but I do understand that they affect his
25 behavior.

1 Q Now, the next page is a PeeDee Mental Health Clinic
2 record, is it not?

3 A It appears to be.

4 Q All right, sir. And what is the date of that record?

5 A The bottom where the signature is, is 3/31/08.

6 Q March 31st of '08, so less than a year prior to this
7 incident?

8 A Right.

9 Q And under reason for discharge, what does it say?

10 A "Client rejected services."

11 Q All right. Client rejected services.

12 And then down at the bottom, it has admission
13 diagnosis and discharge diagnosis. And those are numbers?

14 A That's correct.

15 Q And what do those numbers indicate? How are they
16 significant?

17 A Well, I -- I didn't know that independently. But the
18 note that indicates schizo-affective disorder, I have no
19 reason to disbelieve that, so I'm assuming that's correct.

20 Q Well, in fact, that's my office's indications.

21 A Yeah. I don't know. Obviously, it shows to me that
22 he was admitted with the condition and he left with the
23 condition, so he obviously didn't have any change in that
24 status.

25 Q But you did not -- you were not aware at the time

1 what that number diagnosis 295.70 was?

2 A Well, I don't know when I looked at these documents,
3 specifically. But I did know that because on the intake
4 interview, he mentioned it to me, and I wrote it in my
5 notes. So I was aware of it, yes.

6 Q You were aware that he had been treated at the PeeDee
7 Clinic?

8 A In Florence or?

9 Q Well, PDMHC is the initials.

10 A Yeah. That's -- these records were in my file, so,
11 yes, I was aware of them.

12 Q All right. And were you aware that a mentally ill
13 person who rejects services can be a marker and an
14 indicator of present ongoing mental health problems?

15 A Well, yeah. I mean, yeah, obviously that's --
16 it's -- if they reject services, then obviously there's
17 not going to be any improvement unless some miracle
18 happens, but -- and I was aware he was mentally ill, so it
19 wasn't exactly a startling revelation. I was already
20 aware of this.

21 Q All right. And the next page of -- where it's
22 under -- the date from the mental health center is what?

23 A 2/27/08.

24 Q February 27 of '08. And under section B. All right?

25 A Uh-huh.

- 1 Q Do you see where the indication VH is?
- 2 A Yes.
- 3 Q Okay. What does VH stand for?
- 4 A I'm not sure.
- 5 Q Visual hallucinations?
- 6 A Visual hallucinations?
- 7 Q Yes, sir.
- 8 A Okay.
- 9 Q You were not aware of that?
- 10 A No. I mean, I may have been at the time. I don't
- 11 remember it. And I didn't realize -- I didn't remember,
- 12 as I sit here today, what it stood for.
- 13 Q And then after the notation for visual
- 14 hallucinations, the entry says -- what is the handwritten
- 15 entry? Feels?
- 16 A Yeah. "Feels disconnected from reality."
- 17 Q All right. And so that would have been -- "visual
- 18 hallucinations" and "feels disconnected from reality"
- 19 would also be a red flag that there is an ongoing mental
- 20 disease process?
- 21 A Yeah. I didn't really need a red flag. I mean, it
- 22 wasn't -- as I said, I was well aware of it. There are
- 23 plenty of indications, including his own admission, his
- 24 family's admission and my interview with him was patently
- 25 obvious, so I'm not sure --

1 Q Okay.

2 A I agree with what you're saying, but I'm not sure
3 that it's particularly dispositive.

4 Q Dispositive of?

5 A Of my course of action. I mean, I understand that
6 looking back on it now that it hasn't really changed from
7 what I was thinking at the time.

8 Q So it didn't affect how you represented Mr. Crolley?

9 A Sure it did. But it wasn't the only evidence. I
10 mean, I had earlier -- this was just confirming a concern
11 I already had.

12 Q Okay.

13 A I was well aware of his mental instability and his --
14 and the relevant portion of culpability we could ascribe
15 to his mental condition. And this confirmed it.

16 Q And then the next part of that report, the written
17 part of the form says, "What are the possible causes of
18 the feelings or the condition of the patient," and it has
19 his response in quotes, does it not?

20 A Yes.

21 Q And what was his response?

22 A "I don't know. I've been going through this since I
23 was a kid."

24 Q All right. Now, the next page at the very top under
25 thought process, there is a box checked, and it's for?

- 1 A Racing.
- 2 Q Okay. The next page is dated from the PeeDee
3 emergency screening consultation form. What is the date
4 on that?
- 5 A February 20th, 2008.
- 6 Q Okay. And under presenting problems, it has?
- 7 A Again, schizo-affective disorder.
- 8 Q And depression symptoms?
- 9 A Yeah. I mean, there's more there if you'd like me to
10 read it.
- 11 Q Okay. And then the next page is January 27 of '06?
- 12 A That may be July, July 27 of '06.
- 13 Q Okay. If that's --
- 14 A It's either a one or a seven.
- 15 Q Okay. But it's from 2006?
- 16 A Yes.
- 17 Q And this is another mental health record?
- 18 A Yes, I assume.
- 19 Q And it talks about schizo-affective disorder?
- 20 A Yes.
- 21 Q All right. And then the next page -- and I think you
22 are correct, that is July 27 of '06.
- 23 A All right.
- 24 Q And that also discusses his history of mental
25 illness?

1 A Yes.

2 Q All right. And if you'll look at the last two
3 pages -- I'm sorry, the last page -- those are a history
4 of prescriptions that Mr. Crolley had from his pharmacy?

5 A It does look that -- that's what it looks like. I
6 can't verify, but it looks -- that sort of looks -- as I
7 read it, that's what it looks like.

8 Q And the date on that was March 25th, 2009?

9 A That is the fax date stamp. The date of the
10 prescriptions are various.

11 Q Okay. Oh, okay. Well, at the very top, it says,
12 beginning date, January 1st, 2008.

13 A The first page?

14 Q Yes.

15 A I guess. I see the first prescription is
16 December 29.

17 Q It may be cut off on yours.

18 A Yes.

19 Q Beginning date, January 1st, 2008?

20 A Yes.

21 Q And there are numerous psychotropic drugs in that
22 list of prescriptions, are there not?

23 A Yes, based on my limited knowledge of psychotropic
24 drugs.

25 Q And then if you flip to the page immediately before

1 that, you have Correct Care, which is the jailhouse
2 provider of mental health services at Lexington, correct?

3 A Yes.

4 Q And in that record, it indicates that Mr. Crolley was
5 taking Risperdal?

6 A Yes, I believe that --

7 Q Which is a schizophrenic -- a drug for schizophrenia?

8 A That's correct.

9 Q All right. And then in the middle of the page, it
10 says he reports "AH all day, always have that." AH means?

11 A Audio hallucinations.

12 Q Auditory hallucinations. All right.

13 And that would have been while he was presumably
14 sober after his date of arrest?

15 A Yeah, I would say that's true.

16 Q Okay. And you had access to these mental health
17 records prior to his guilty plea?

18 A Yes.

19 Q Did you explain to Mr. Crolley his rights to a
20 determination or an evaluation for a guilty but mentally
21 ill plea?

22 A I discussed with him the idea of the guilty plea, and
23 that -- how his mental health would affect the judge's
24 decision. That we would introduce as much mitigating
25 evidence as we could. And that the judge would take into

1 consideration the fact that he has obvious mental health,
2 mental conditions.

3 Q All right, sir. Now, you had Mr. Crolley evaluated
4 for competency?

5 A That's correct.

6 Q Okay. And the competency exam was to establish what?

7 A Whether he could stand trial and assist in his own
8 defense.

9 Q And that would be as of the date of the evaluation
10 forward, would it not?

11 A Yes.

12 Q And that evaluation was done or the report issued
13 March 9th, 2010?

14 A Right.

15 Q Were you concerned about his mental condition on the
16 date of the incident, March 15th, 2009?

17 A I was concerned to the extent that it was obvious he
18 had a mental condition and he was very drunk and he was
19 acting very irrationally. And all those issues were
20 relevant for the judge to consider whether or not he --
21 what sentence he deserves. But I didn't believe it was
22 sufficient to absolve him of responsibility.

23 Q But do you have any history of education in mental
24 health issues?

25 A No.

1 Q And so wouldn't it have been prudent to have had a
2 mental health specialist evaluate his condition at the
3 time of the incident?

4 A Yeah, it would have been nice. It would have been
5 great if his mom could have afforded to have a
6 professional independent psychiatrist evaluate him and
7 provide a report and help me show to the judge that he has
8 schizophrenic disorder, and he had lots of psychotropic
9 drugs, and he had lots of alcohol and he behaved like he
10 did. I mean, all the arguments you're making now would
11 have been great to me.

12 But as a practical matter, you have to afford --
13 you have to be able to afford a professional psychiatrist,
14 and you have to evaluate whether or not it's going to make
15 a difference in the legal setting. And in my opinion --
16 I've been doing criminal law in Lexington County a long
17 time, and I didn't think the cost benefit effect was
18 there. I didn't think it was worth the cost and the
19 effort to have an expert come in and say -- which was
20 patently obvious to anyone who looked at the records --
21 certainly a judge. Judge Newman was experienced enough to
22 recognize whether or not his mental illness was something
23 that he would give him a reduced sentence for.

24 And I will tell you from the sentencing, if
25 Judge Newman could have given him 50 years, he would have

1 done it. He was not happy about the fact that he was
2 limited to ten years. And he was well aware of Mark's
3 condition.

4 And so in my evaluation, I just didn't think it
5 was worth the expense and effort to go through this
6 process just to have the judge go, yeah, that's great. I
7 don't care.

8 Q And what is criminal responsibility? What is that?
9 What's your definition of that?

10 THE COURT: We know that.

11 MR. DUNCAN: Okay, sir.

12 BY MR. DUNCAN:

13 Q Mr. Bolen, were you aware of the services that the
14 Department of Mental Health provided as far as competency
15 and mental -- and criminal responsibility evaluations?

16 A Yes.

17 Q All right. Were you aware that the Department of
18 Mental Health would have conducted a criminal
19 responsibility examination at no cost to your client?

20 A If the judge ordered it.

21 Q And did you have any reason to believe that a judge
22 would not order that?

23 A Well, when we're -- when Ola Johnson, who was the
24 solicitor at the time and handled this case, and I went
25 before Judge McMahon, he essentially said, which one do

1 you want, implying you can have one or the other. And so
2 I picked the mental competency evaluation, and that's what
3 Ola was concerned about.

4 Now, it may be that Judge McMahon would have
5 gone further with evidence, and after that hearing we
6 could have, perhaps, gotten that ordered as well. But I
7 didn't do it. As I sit here today, I still don't believe
8 it would have affected the outcome of the case because he
9 was exposed to 20 years. And he was -- he also had the
10 DUI, which I can't remember if it was first, second or
11 third, but there was a significant exposure there. And it
12 all depends on the judge and whether the judge is going to
13 be willing to take that into account. And I guess looking
14 back, maybe I should have done -- I could have done more.
15 But you can always do more.

16 Q On the date that Mr. Crolley was sentenced, he was
17 not looking at 20 years, was he?

18 A No. He was -- he was only exposed to ten years as
19 part of the plea deal.

20 Q And he received the maximum?

21 A That's correct.

22 Q And Judge Newman, do you think it would have been
23 helpful to him to have seen Dr. Schwartz-Watts' report,
24 for instance?

25 A Frankly, no. As I was in front of Judge Newman,

1 there was a lot more I could have said. I could have gone
2 on and on and on and impressed upon the judge how much of
3 a mental problem Mr. Crolley's been exposed to all his
4 life, that he suffered through. And I did that, briefly.
5 And as I was reading the judge, and as I -- I have been
6 doing this long enough to know, if the judge is in a bad
7 mood and you aggravate him, he'd be more than happy to
8 take it out on your client.

9 And with all due respect to Judge Newman and to
10 all the courts, just as human nature, you have to learn
11 what battles to fight and what battles not to fight. And
12 as a professional lawyer who's been doing this a long
13 time, I recognized that. I wasn't -- I was digging a hole
14 deeper.

15 And if I were to say, Your Honor, I'd like to
16 call a witness and have her testify about what you already
17 know and confirm what I've been telling you for ten
18 minutes, and you're a little tired of hearing it, I don't
19 think that would have helped this case.

20 Now, obviously, it wouldn't hurt because he got
21 the maximum. But at the time that I was making my
22 decision about whether or not to do these things, I was
23 attempting to get the best sentence I could for him.

24 Q Can you point to anything that Judge Newman had
25 before him at the time of the plea that indicated

1 Mr. Crolley was guilty but mentally ill at the time of the
2 offense?

3 A He had all of the medical records, they're in the
4 file. I don't know that he necessarily consulted them,
5 but he certainly had my recommendation about those things,
6 my comments to the effect that he was mentally ill.

7 And as I said, perhaps I could have done more,
8 and I'm willing to concede that there's perhaps some
9 advantage to doing that, and maybe I made the wrong
10 decision, but that was the decision I made at the time.

11 Q Okay. You're saying it was the judge's obligation to
12 go through the medical records?

13 A To the extent that he wanted to. I'm not going to
14 tell him how to do his job, but he was aware of the
15 situation. I told him of Mark's mental condition.

16 Q Okay. Are you aware -- but you had no knowledge, and
17 there were no records, which showed on March 15th, 2009,
18 that Mr. Crolley was guilty but mentally ill that night?

19 A I didn't have -- I didn't use those words, but the
20 judge knew. I mean, he obviously knows that term, knows
21 the meaning, he could have taken it into consideration.
22 It was a zero to ten-year sentencing window. The judge
23 could have done whatever he wanted.

24 Q Were you aware of Title 17, Chapter 24 of South
25 Carolina Code?

1 A I'm sure I've read it. If you tell me what it is,
2 I'll tell you --

3 Q I'm going to hand you a copy there. Does that look
4 like that code section?

5 A Yes.

6 Q And what is that section to do with?

7 A The affirmative defense of mentally ill, guilty but
8 mentally ill.

9 Q And is that something that you considered in your
10 representation of Mr. Crolley?

11 A Yes. But I -- that -- I don't know that that would
12 have made any difference. I don't feel that I -- as I sit
13 here today, I still don't believe it would make any
14 difference. I believe the judge would still be able to do
15 zero to ten, and he could have done that on his own. As I
16 said, perhaps I should have done more, but I don't know
17 that it would have made any difference.

18 Q Did you -- was there in fact a copy of that statute
19 in your file?

20 A No.

21 Q Did you review that statute with Mr. Crolley as far
22 as his option before the court or a jury?

23 A No.

24 Q Do you think it would have assisted Mr. Crolley in
25 making a decision, an informed decision?

1 A Maybe. It's a fairly technical term that we as
2 attorneys understand, but I'm not sure that it would have
3 made a -- as I said, I don't think it would have made a
4 difference in the outcome of the case. I think it could
5 have -- we discussed obviously the relevance of his mental
6 status, and he was aware of that, and we talked about it.
7 I may not have -- actually, I probably did use the term
8 guilty but mentally ill. But I'm not sure that that made
9 any impression on him.

10 I mean, you've got to remember, not only is he a
11 layman, which is obvious, but he also has mental
12 conditions that complicate his understanding. And he had
13 been shot in the head. So he had organic problems as well
14 as mental problems.

15 Q Mr. Bolen, the second part of that second page of the
16 statute?

17 A The second -- the first -- the second part of the --

18 Q I'm sorry. It's the second page.

19 A Yes, sir.

20 Q It has the possible verdicts for a mentally ill
21 defendant, does it not? Possible guilt verdicts and/or
22 pleas?

23 A Yes.

24 Q And what does a -- when there is a mental defect,
25 what are the possible pleas for a mentally ill defendant?

1 A Guilty, not guilty, not guilty by reason of insanity
2 or guilty but mental ill.

3 Q Okay. And your testimony is that you did not review
4 those four possible verdicts or pleas with Mr. Crolley?

5 A I think I did. As I said, I may -- I'm sure I used
6 the terms. But I may not have elucidated them
7 sufficiently for him to remember or feel like he could
8 understand the distinctions.

9 Q Okay.

10 A But I think the only -- the only thing that could
11 have happened differently with any one of these --
12 obviously, not guilty would involve a trial. But of the
13 other three, I think he would have probably ended up in
14 the same place.

15 Now, if I tried to claim insanity, I think I'd
16 have another problem because I don't think the solicitor
17 would have taken it.

18 I think his options were not guilty, guilty or
19 guilty but mentally ill. The competency showed that he
20 was not insane. Nonetheless, I think what we decided to
21 do was the best we could do under the circumstances.

22 Q Okay. After reading Dr. Schwartz-Watts' report, do
23 you believe that this information would have been
24 assistance to Judge Newman?

25 A No. She said at the end of her thing, he knew right

1 from wrong. And he had a track record of crime that was
2 as long as your arm. And as I said, Judge Newman was not
3 happy about the fact that he was limited to ten years.

4 Q Do you think that Dr. Schwartz-Watts' report would
5 have been of assistance to Mr. Crolley in reaching a fully
6 informed decision as to what his plea or trial options
7 were?

8 A Not much. It didn't change the facts. The facts
9 were, he was looking at a trial or ten years. Or if I was
10 able to prevail, that he might get assigned to an
11 outpatient-type sentence, you know, a ten-year sentence
12 suspended on probation with, you know, combined with
13 mental health. And that's what we were going for.

14 Q Do you think that this report would have been of
15 assistance to Assistant Solicitor Johnson in his
16 evaluation of this case?

17 A No.

18 Q Okay. Insofar as this one area of your
19 representation of Mr. Crolley, do you feel your
20 representation fell below objective standards of
21 reasonableness?

22 A No. If they -- if we could -- I could have dragged
23 it out and tried to get the order to have him evaluated,
24 we could have gotten that report from Dr. Schwartz-Watts,
25 we could have gone to court, done everything we did, and

1 it would have been exactly the same. Or we could have
2 spent a whole bunch more of their money and hired a
3 private attorney -- a private psychiatrist to do it,
4 gotten the report, come to court and got the same results.

5 MR. DUNCAN: Okay. Thank you, Mr. Bolen.

6 MR. WHITMIRE: May it please the Court.

7 CROSS-EXAMINATION

8 BY MR. WHITMIRE:

9 Q I have a few quick questions for you today,
10 Mr. Bolen.

11 You inherited Mr. Crolley's case, didn't you?

12 A Well, that's one term, but, yeah, I took it over from
13 David Mauldin, the Public Defender's Office.

14 Q Can you briefly describe the charges and the
15 circumstances of those charges, just briefly?

16 A Sure. He was charged with trying to kill his wife
17 and a police officer and driving while intoxicated. There
18 was videotape of the incident, and he was looking at ten
19 years for each attempted murder -- which at the time was
20 called assault and battery with intent to kill, I
21 believe -- and a DUI, as I said, I can't remember if that
22 was first or second or third, but I think he was looking
23 at 20 years and six months.

24 Q And would you consider the facts of this offense
25 particularly aggravating at sentencing?

1 A Oh, yeah. He -- the facts that he had a long history
2 of violence and that there was a videotape that showed it
3 happening, and that it was a police officer that was the
4 victim, all of those things meant in Lexington County you
5 are going to be found guilty. And when you get found
6 guilty after trial, you get probably 20 years.

7 Q And did you explain to Mr. Crolley that voluntary
8 intoxication is not a defense in South Carolina?

9 A Yes.

10 Q Did Mr. Crolley offer you any defenses or witnesses
11 on his behalf during your investigation of the case?

12 A Well, mostly just for character. I mean, obviously
13 the only witnesses there were, of course, the all-seeing
14 eye of the video camera, the police officer, his ex-wife,
15 who wasn't particularly friendly or supportive to me as
16 I -- or to him as I was trying to work with her at the
17 beginning, and then she was totally incommunicado. So I
18 talked to his mom and I think I talked to his brother.

19 Q Now, Mr. Duncan asked questions of you at length
20 regarding previous mental health reports. Did you have
21 any reason to doubt Dr. Gaston's competency evaluation?

22 A Did I have any reason to what?

23 Q To doubt Dr. Gaston's --

24 A Doubt it? No.

25 Q -- competency eval?

1 A I basically agreed, but I just wanted to make sure
2 that a professional reviewed the situation and confirmed
3 that Mr. Crolley was competent and he knew what was going
4 on.

5 As I talked to him, even with the brain damage,
6 he was very calm, he understood what was going on, we had
7 good conversations. I really didn't feel he had a mental
8 condition that made him unable to help or even to
9 understand what was going on.

10 MR. WHITMIRE: And, Your Honor, referencing
11 page 4 of the mental health evaluation on the top of it.

12 BY MR. WHITMIRE:

13 Q Didn't Dr. Gaston find that his hallucinations were
14 substance induced? Do you recall that?

15 A I don't specifically recall the language of that, but
16 I do -- I do know that the substance abuse was a serious
17 component of the mental health problems. But, again, my
18 point of view as the attorney is trying to maximize or get
19 the best sentence I can for my client. And all those
20 factors go into it. But unfortunately, I've got to
21 evaluate how the solicitor is going to handle the case,
22 how the judge is going to handle the case and what the
23 options are for my client.

24 And there's plenty of times when I have to tried
25 to prevail upon my client and told him, he's crazy if he

1 doesn't take the offer. And there are times when they
2 refuse, and then we go forward with the case. And there
3 are other times when they defer to me, and say, yeah, I'll
4 take it.

5 Q Just a few more questions regarding your decision not
6 to seek out a second evaluation for criminal
7 responsibility.

8 Do you recall Mr. Crolley undergoing any
9 previous competency evals?

10 MR. DUNCAN: Your Honor, just for the record,
11 it's not the second evaluation for criminal
12 responsibility.

13 MR. WHITMIRE: Second evaluation, first one for
14 criminal responsibility.

15 MR. DUNCAN: It would have been the first for
16 criminal responsibility.

17 THE WITNESS: Yeah. He had the similar -- that
18 type of evaluation done when he had an arson charge, I
19 believe in like 2001 or 2002, and he was found he was
20 responsible.

21 BY MR. WHITMIRE:

22 Q I know. But he had a criminal responsibility
23 evaluation?

24 A Right. That's right.

25 Q Mr. Bolen, you're not a psychiatrist, are you?

1 A No.

2 Q And based on the information you had, you had no
3 reason to seek out an additional evaluation?

4 A Well, as I said earlier, perhaps I could have --
5 could have done more to try to show that he wasn't
6 responsible for jumping in the car and driving around like
7 a maniac and trying to hit the cop and all that. That's
8 possible. But in my professional opinion, considering all
9 the resources and all the options available at the time, I
10 didn't feel it was useful or that it would make any
11 difference in the ultimate outcome.

12 Q This was a plea from the beginning. Was this going
13 to be a plea?

14 A Well, after I got the discovery, it was clear to me
15 that a trial was futile. That when you did the trial it
16 was the same as pleading guilty except you wouldn't have
17 any leverage.

18 Q So your strategy was to obtain the best possible plea
19 deal from Ola Johnson?

20 A Right, based on all the facts I had.

21 Q And I know you discussed your plea negotiations to
22 this point, but do you believe that was the best plea
23 offer you were going to get in this case?

24 A Yeah. I, frankly, was afraid they were going to ask
25 for a minimum -- a minimum sentence. And I thought it was

1 generous of Ola to say, hey, if you can get the judge to
2 do it, I don't mind him getting the zero sentence. So I
3 was -- I thought it was a good offer from the solicitor in
4 order to try to get the judge to give him a lesser
5 sentence.

6 Q Just a few more questions regarding this plea.

7 Considering the trauma Mr. Crolley underwent to
8 his brain, did you take any additional precautions to make
9 certain that his plea was rendered freely and voluntarily?

10 A Yeah. I don't always use that checklist that I went
11 through that we were talking about earlier, but in this
12 case, I felt it was very important that I made sure he
13 understood -- I -- I wanted to make sure that he knew that
14 he was exposed to ten years, and he could get ten years.
15 And I was very thorough, making sure that he understood
16 that his options were very, very limited as far as what
17 the sentences were going to be.

18 Q And whose decision was it to enter this guilty plea?

19 A Well, ultimately, it's his. But I definitely pushed
20 and attempted to persuade him that his best option was to
21 take the plea.

22 Q And you have already discussed some of the mitigation
23 you presented at his guilty plea hearing. Do you believe
24 it would have been just as effective as having
25 Dr. Schwartz-Watts' report?

1 A Yes. My biggest argument was that he basically has a
2 life sentence because he's now got brain damage, and he
3 will have that for the rest of his life.

4 Q And didn't you argue -- well, not argue -- present to
5 the Court that Mr. Crolley is -- at this point is going to
6 be non-violent?

7 A Yes. That in spite of his voluminous violent past,
8 his future shouldn't be violent based on the evaluations
9 that I saw and his demeanor and his organic injury.

10 MR. WHITMIRE: I believe you have already
11 discussed Judge Newman's disposition at this plea. The
12 State has no further questions for Mr. Bolen.

13 THE WITNESS: Thank you.

14 REDIRECT EXAMINATION

15 BY MR. DUNCAN:

16 Q Mr. Bolen, just one last thing.

17 It's your testimony that Dr. Donna
18 Schwartz-Watts' report and her diagnosis would not have
19 been of assistance to you, to Mr. Crolley, the solicitor
20 or Judge Newman?

21 A The only one it could possibly have been of
22 assistance to is Judge Newman, and I do not believe it
23 would have been. And certainly the other three of us were
24 already aware of it. And we didn't have any -- any leeway
25 to do anything in response to that evaluation.

1 THE COURT: All right. Thank you, sir. You may
2 step down.

3 THE WITNESS: Thank you.

4 MR. DUNCAN: That's our case, Your Honor.

5 THE COURT: Mr. Duncan, explain to me, if you
6 would, the difference in sentencing if he was to plead
7 straight up or plead guilty but mentally ill.

8 MR. DUNCAN: Well, the sentencing is the same,
9 potentially, Your Honor.

10 THE COURT: So what would be the distinction in
11 this case whatsoever? Wasn't that totally up to
12 Judge Newman to impose the sentence regardless?

13 MR. DUNCAN: Judge, every defendant is entitled
14 to a -- to make an informed and knowing plea. Mr. Crolley
15 was not informed that there was any possibility of a plea
16 to the separate and distinct plea of guilty but mentally
17 ill. If the legislature had intended that there be no
18 difference, they would not have opined -- they would not
19 have written the statute as is.

20 THE COURT: Well, looking at the case law, and
21 the statute says that the reason for the distinction was
22 to limit the number of people who are absolved from
23 criminal responsibility and also to see that defendants
24 receive proper treatment while incarcerated in the
25 Department of Corrections.

1 MR. DUNCAN: Yes, sir.

2 THE COURT: Isn't that what is going on in this
3 case?

4 MR. DUNCAN: Well, Judge, the trial judge, as
5 the finder of fact, was deprived of this information.
6 Mr. Bolen's testimony that he would not -- it would not
7 have assisted him in the investigation and possible trial
8 of this case -- evaluation of this case, that Mr. Crolley
9 was not entitled to know that before he pled guilty or
10 chose to go to trial, and that the judge would not have
11 benefited from that information, to me, is beyond belief.

12 The prejudice is that by failing to investigate,
13 Dr. Schwartz-Watts testified that there would have been a
14 much better evaluation of Mr. Crolley. You heard
15 Mr. Bolen indicate that he never -- there is nothing in
16 his file about guilty but mentally ill. Now he says he
17 remembers it, but since it is a separate and distinct
18 verdict, then it still seems to be that the -- a plea to
19 guilty but mentally ill is meaningless as far as being
20 anything distinct from guilty.

21 The judge was not provided this report from
22 Dr. Donna Schwartz-Watts, and I think it defies belief
23 that this would not have had an effect on Judge Newman to
24 have known -- had this information available.

25 Mr. Crolley was entitled to know this

1 information before he chose whether to plead or to go to
2 trial. Mr. Crolley indicated that he would have wanted
3 that, and he would have wanted a jury to decide that
4 issue. As such, he did not have the privilege or the
5 right to -- he did not have what he needed to know before
6 he plead guilty.

7 You know, there is at least a reasonable
8 probability that but for what we consider to be the
9 below-standard representation here, the results could have
10 benefited the defendant. To say that the solicitor would
11 have had -- would have gained nothing from this, I think
12 is an insult to solicitors, that their job, as Mr. Johnson
13 knew and Mr. Myer's office knows is to do justice. And to
14 do justice and to be fully informed, they need to know
15 everything. And to say that an uninformed solicitor and
16 an uninformed defendant and an uninformed judge is just
17 contrary to the law.

18 THE COURT: Thank you, sir.

19 MR. WHITMIRE: I'd like to respond, Your Honor.

20 We report that Section 17-24-70, two-part code,
21 deals with two specific issues relating to a GBMI finding.
22 First, it's conditions of confinement and may be issues of
23 parole.

24 Mr. Duncan has presented no case law that a
25 judge is to take any sort of special precaution in

1 mitigation or in sentencing in a GBMI finding. His order
2 that he brought to the Court today cites persuasive
3 authority from the Indiana case, but there is no case law
4 in South Carolina, to my knowledge.

5 Under Hornsby, 326 SC 121, guilty but mentally
6 ill does not absolve a defendant from guilt. And we would
7 believe that only proves the State's case for prejudice
8 regarding the first prong of Strickland.

9 Mr. Bolen's reasonably pursued an ineffective
10 strategy. He obtained the best possible plea deal he
11 could for Mr. Crolley. Mr. Crolley was probably looking
12 at the high end of any plea deal due to the fact that this
13 involved a police officer and the potential murder of him.
14 He ran his car at him three times. Therefore, a ten-year
15 sentence was incredibly reasonable and effective.

16 The State rests, Your Honor.

17 THE COURT: Yes, sir. I'll take this under
18 advisement and give you my decision.

19 (The proceedings were concluded.)

20 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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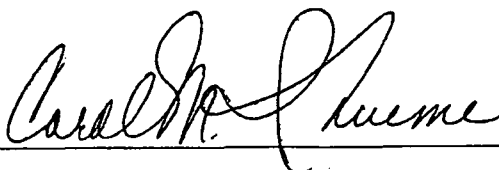
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1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5 COUNTY OF LEXINGTON)
6
78 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of Common Pleas for
14 Lexington County, South Carolina, on the 31st day of
15 January, 2013.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18
19

20 December 24, 2013

21 
2223 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

Psychiatric Evaluation
Name: Gregory Mark Crolley
Date of Evaluation: 12/31/12
Date of Report: 1/17/13

Identifying Information: Mark Crolley is a year old inmate at SCDC evaluated pursuant to a request from his attorney, John Duncan in preparation for his PCR proceedings. He was convicted of Assault and Battery with Intent to kill and sentenced to ten years.

Statement of Nonconfidentiality: Mr. Crolley understood a written report of this evaluation would be provided to his attorney and that I might be called to testify in his upcoming proceedings.

Sources of Information:

SCDMH Outpatient Mental health records 2/28/08-3/24/08
 Correct care Solutions/Lexington County Detention Center records 2/27/08-5/27/09
 Family practice records Dr. Faile 7/7/08-6/29/09
 EMS Report 3/19/09
 Richland memorial records 3/17/09-3/22/09
 SCDC records 12/7/00-2/13/12
 SLED Interview 3/17/09
 SLED investigative report 4/7/09
 Statement of Trooper Ledbetter 3/19/09
 DMH Competency Evaluation 3/9/10
 Warrants
 In car video of accident
 Telephone Interview Janice Crolley 1/17/13
 Attempted telephone interview Amelia Crolley 1/17/13

Pertinent Statements:

Mr. Crolley has a documented history of mental illness, before and after his charges and conviction. At the time of his offense, he also sustained a closed head injury with a depressed skull fracture and subarachnoid hemorrhage. He has resultant significant cognitive deficits. He also has an extensive history of alcohol abuse which further complicates his mental status.



Mr. Crolley was in the Department of Corrections for an Arson charge and was treated for mental illness at both Gilliam Psychiatric Hospital and then the ICS program. He carried various diagnoses there. He did follow-up with mental health upon his release from the department of Corrections and reported symptoms consistent with a mood and thought disorder. He was eventually awarded disability and also worked with Vocational rehabilitation. His father died in March 2007 and his mother reports he had a decline in his mental state. She states her husband is buried in her backyard and that she built a circle of bricks around his grave to memorialize him. She reports Mr. Colley was preoccupied with his death. His present SCDC records show that he remains symptomatic when ruminating about his father's death. A note from 5/12 refers to his grief about his father and a note from Lexington County Detention Center on 3/24/08 references the grief over his father's death.

Mr. Crolley reports a prior history of a bad experience with law enforcement. He states that in 12/05, four or five police officers "jumped him" while he was living at his mother's and trying to get his life together. He states he was charged with Resisting Arrest. He states he was beaten in front of his mother. He states he had a "big lump" on his arm from the baton. He states he received those injuries because he was blocking them from hitting him in the head. There is another reference in his outpatient mental health center notes on 3/24/08 he was "stopped by a cop on the way here and agitated by it."

On the night of the offense, Mr., Crolley reports that he and his wife were at his brother's. He states they were stopped on the way home, and the officer believed his wife was impaired. He states the officer was being rude to his ex-wife. (There is no evidence that Trooper Ledbetter was rude). He states; "he pissed me off." Mr. Crolley reports that two days prior to the incident, he took 60 Ativan and chased them with vodka. He states that day was the second anniversary of his father's death, and he wanted to die. He states: "nothing happened." He states his uncle had him cremated and his ashes were delivered to their house by UPS. He states he felt very guilty because he was not there to care for his father who was living in Atlanta.. He states he had just sent his father pictures of his children. And had planned to see him that summer. He states at the time of the offense, he was angry with his wife because she

"got me on vodka. I was drinking beer." He states they were having problems. He reports that once he became angry, he decided he would let the police shoot him..."suicide by cop." "It was my chance to do it out there. I didn't want to kill myself." He states: "I drove my car at him. I wasn't trying to kill him. I was fed up of living." Review of the DVD reveals that when he exited the car and removed his shirt, he stated: take your gun and god damn kill me." Mr. Crolley also stated later to the EMS worker: I ain't got nothing against him for shooting me. I'm schizophrenic man."

Mr. Crolley does have a prior history of suicide attempts. He reports he drank bleach in 1991 and then overdosed on Ativan two days before. His psychiatric history is significant for a history of ADHD as a child. He has abused many substances including XTC, speed, spice and Ritalin in addition to alcohol. A urine drug screen at Dr. Faile's was also positive for cannabis. He reports his BAL was .3mg/dl after he was shot.

Mr. Crolley has a prior history of closed head injuries. He states he fell from a swing and hit his head when he was younger. He also had a motor vehicle accident at age 18 which required he have a rod in his leg. He had a tonsillectomy at age 10.

Mr. Crolley reports he was molested at age 12.

He states his brother has bipolar disorder and his mother takes tranxene.

On mental status examination, he was alert and oriented. He maintained good eye contact. His speech was normal in rate and tone. His thinking was goal directed. He was not psychotic. He was not suicidal or homicidal. He was able to abstract similarities between objects without difficulty. He had difficulty reproducing a visual design. He was able to register three items and recall two of three after five minutes without difficulty. He required prompting to recall the third item. He perseverated and performed very poorly on a test of verbal fluency.

When asked to recall the three items after that task, he confabulated. On neurological screening, he had difficulty performing tasks of rapid motor movements. He did not have nystagmus or primitive reflexes. His Romberg sign was negative.

Opinions:

1. It is my opinion to a reasonable degree of medical certainty that Mr. Crolley was competent to stand trial for his offenses.

2. Mr. Crolley has a cognitive disorder which was most likely not present at the time of his offense.
3. He did suffer from mental illness and substance intoxication at the time of his offense.
4. He lacked the capacity to conform his conduct to the requirements of the law at the time of the offense based on mental status and his statements on the DVD.
5. He did know moral and legal right from wrong and recognized the wrongfulness of his conduct based on his statements and behaviors on the DVD.

Donna Schwartz-Watts, M.D.
Consulting Forensic Psychiatrist

DMH South Carolina
Department of
Mental Health

Division of Inpatient Services
Forensic Evaluation and Treatment Services
Building #8
7901 Farrow Road
Columbia, South Carolina 29203
Information: (803) 935-6600
Fax: (803) 935-6544

March 9, 2010

Ola Johnson
Assistant Solicitor
205 E. Main Street, 3rd Floor
Lexington, SC 29072

FILE

Re: The State of South Carolina vs. Grolley, Gregory
DMH Case #: 972-9476
Lexington County, Court of General Sessions

Dear Assistant Solicitor Johnson:

In accordance with the court order issued by the Honorable R. Knox McMahon, a competency to stand trial evaluation was conducted by the South Carolina Department of Mental Health, pursuant to S.C. Code Ann. § 44-23-410 (1976).

Please see the attached report for the results of this evaluation.

This 7 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

3/9/10
Date

Jeffrey E. Musick Ph.D., ABPP
Jeffrey Musick, Ph.D., ABPP
Chief Psychologist
Forensic Evaluation Services
Department of Mental Health

cc: Richard Bolen, Attorney at Law, 600 Columbia Avenue, Suite 7,
Lexington, SC 29072

JM/tl

Jim

Division of Inpatient Services
G. Warren Bryan Psychiatric Hospital - Williams S. Hall Psychiatric Institute - Monte Vidale Alcohol & Drug Addiction Treatment Center
Forensic Services - Sexually Violent Predator Treatment Program - Patrick B. Harris Psychiatric Hospital - C.M. Tucker, Jr. Nursing Care Center



Report on Competency to Stand Trial

Name: Crolley, Gregory

Date of Birth (Age): (43)

Date of Interview: 03/01/2010

Date of Report: 03/09/2010

Examiners: Michael D. Gassen, Psy.D. (presiding)
Cassandra Sims, LMSW

Opinion on Competency to Stand Trial: Competent

Referral Information

Mr. Crolley is a 43-year-old Caucasian male who is charged with Assault with Intent to Kill (2 counts) and Driving Under the Influence as a result of events that allegedly occurred on 03/16/2009. The State of South Carolina, County of Lexington, Court of General Sessions issued an order to evaluate his competency to stand trial. Pursuant to this order, Mr. Crolley was evaluated on an outpatient basis on 03/01/2010 at the Forensic Evaluation Service of the South Carolina Department of Mental Health (SCDMH). At the time of the evaluation, Mr. Crolley was detained at the Lexington County Detention Center, and he was returned to that facility following the evaluation.

Notification

Prior to the interview, Mr. Crolley was advised that the results and contents of this evaluation would be used to evaluate his competency to stand trial, and would be communicated to the defense counsel, the solicitor, and the judge. He displayed comprehension of the general nature of the evaluation and the limitations to confidentiality, and he read aloud and signed a form that explains these issues and agreed to proceed with the evaluation.

Sources of Information

- State of South Carolina, County of Lexington, Court of General Sessions order for competency to stand trial evaluation
- Lexington County Arrest Warrants and Indictments for the alleged offenses
- South Carolina Law Enforcement Division (SLED) records for the alleged offenses
- Records from Palmetto Richland Memorial Hospital (from 03/16/2009 to 03/24/2009)
- Records from William S. Hall Psychiatric Institute (dated 04/23/2002)
- Records from Pee Dee Mental Health Center (from 07/26/2006 to 03/31/2008)
- Records from Gaston Family Pharmacy
- Records from Lexington County Detention Center (from 01/22/2009 to 02/07/2010)
- A Psychiatric Social Work Admission Assessment, completed by Cassandra Sims, LMSW, with information provided by Janice Crolley (on 02/26/2010)
- Clinical/Forensic interview of Mr. Crolley (approximately 2.0 hours)

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE 1

Crolley, Gregory
972-9476

Background Information

Family History

Mr. Crolley reported he was born in Columbia, SC, and was raised primarily by his biological "mom and dad." He stated that he was raised along with four older brothers. When asked to describe his childhood, he responded, "I was a spoiled brat - got anything I wanted." However, he also said he was "molested" at age 11 or 12 and stated it was the "only bad break in my childhood." He reported some of his immediate family members have been diagnosed with bipolar disorder, and he indicated many of his family members abuse alcohol.

Mr. Crolley reported he has been married three times and divorced his first two wives because they were "unfaithful." He said he has three children from his second marriage. He indicated he remains married to his third wife and was living with her at the time of the alleged offenses.

Educational History

Mr. Crolley reported he discontinued his education during the 10th grade because his family moved and he was "tired of feeling like I don't fit in" and "trying to make new friends." He said he typically earned "B's and C's," but he indicated he was in special education classes for "reading and math." He stated he was in those classes for "about two periods" per day from elementary school "through middle school." He said he was diagnosed with "ADHD," but his mother wouldn't allow him to take Ritalin. Mr. Crolley reported he was retained in the 1st grade because he "wasn't up to par with class" and the 10th grade because he "was just wild and out of control." In regards to behavior problems, he stated he was in trouble for fighting, skipping, and disrespecting teachers. He said he was suspended "a few" times "for disrupting the class and fighting," and he reported he was expelled when he threatened to harm a teacher.

Employment History

Mr. Crolley reported he has worked driving an "18 wheeler" and as a cook at Waffle House. He said his longest period of employment was "truck driving" for approximately 3.5 years. He stated he has been fired on one or two occasions due to not "doing what I was supposed to" and "getting smart with the boss." He indicated he has been receiving disability benefits for the "last 10 years" for "schizoaffective disorder, bipolar type."

Medical History

Mr. Crolley reported he has sustained a few head injuries from falling off of a motor cycle, but he denied any subsequent cognitive impairments from those incidents. However, he reported he was shot in the head recently, which "tore up my dura" (i.e., fibers that enclose the brain). He said he had to have a metal plate put in that area. He complained of "memory loss" since that time, including difficulty recalling things such as "what my wife told me." He also said he has since suffered from headaches and "ringing in the ears."

Regarding his current legal situation, Mr. Crolley stated he is charged with "Assault with Intent to Kill," and he added, "My lawyer says they dropped the Assault with Intent to Kill against my wife and the DUI." He reported he is accused of driving "my car at him (i.e., the law enforcement officer)" and "had it in my mind to kill him." He said his other AWIK charge is "against my wife" and that it is alleged he "drove the car at her too." He acknowledged he was charged with DUI because they "say I was drunk" when he "drove my car near the trooper and my wife." He said he considers his charges to be serious because "they're felonies." Mr. Crolley recalled that the events that led to his arrest occurred in Swansea, SC, on March 16, 2009. He identified evidence that could be presented at trial. He reported he would "go home" if he is found not guilty, and he stated he could receive "zero to ten" years in prison or probation if he is found guilty. Mr. Crolley indicated he believes he is being treated fairly by the Court, and he acknowledged that the Court has authority over him.

Regarding his ability to assist in his own defense, Mr. Crolley stated his attorney is Richard Bolen. When asked to describe his attorney, he responded, "Seem[s] like he's a pretty good lawyer." He indicated he believes he is trying to do a good job for him and agrees with how he has handled his case so far. On questioning about how he would handle disagreements with his attorney, he responded, "Just talking to him." Mr. Crolley reported he will "write him" if he needs to communicate with Mr. Bolen about his case. Upon inquiry about how he would react if a witness lied about him in court, he stated, "Nothing but ask my attorney to deal with it." Mr. Crolley was asked if he would want to testify, and he stated, "Yes, think I could help myself." He displayed an understanding of his right to refuse to testify. He said he would follow his attorney's advice to refrain from testifying if it was recommended because "he knows better than me what's going on." On questioning, he provided a limited, but coherent account of the events that occurred at the time of the alleged offenses. He also discussed information about event that occurred at the time of the alleged offenses others have provided him. He voiced no delusions about his attorney or his current legal situation.

In summary, although it is possible that Mr. Crolley has schizoaffective disorder and/or cognitive deficits, he did not display any symptoms at the time of the interview that would interfere with his competency to stand trial. Indeed, he demonstrated an understanding of most of the general legal and case-specific information that was discussed, and he displayed an ability to readily learn and retain information he appeared to be lacking. He also indicated he would be able to work with his attorney in his own defense, and he demonstrated the capacity to interact with others appropriately. As such, it appears that he currently has the capacity to understand the proceedings against him and to assist his attorney in his own defense.

Michael Gassen, Psy.D. 3/8/10
 Michael Gassen, Psy.D. Date:
 Chief Psychologist

Records from Palmetto Richland Memorial Hospital (from 03/16/2009 to 03/24/2009) indicate Mr. Crolley was admitted there after sustaining gunshot wounds to his head and forearm. The wound to the head was considered "a grazing bullet wound," but he was diagnosed with "depressed skull fracture" and "subarchnoid hemorrhage." He also reportedly was intoxicated on admission. He underwent surgery and was considered to have handled the procedures without difficulty.

Substance Use History

Mr. Crolley reported he first consumed alcohol at age 12 and usually drinks "liquor four times a week." He said he will drink "a pint" at those times and typically becomes intoxicated. His last reported alcohol consumption was March of "last year." On questioning, he acknowledged a history of developing a tolerance to alcohol as well as experiencing blackouts from drinking. Regarding illicit substances, he said he first used marijuana at age 12 and has typically used "once a week maybe." He denied any problems arising from his use of this substance, and his last reported use is "early March [of] last year." He stated he tried cocaine once at approximately age 16. Mr. Crolley also acknowledged a history of misusing Darvocet on a daily basis for approximately one year. He stated he was "probably" addicted to the pills, but he denied any problems from the abuse. He said he last used Darvocet in "early March last year." He also stated he huffed "airplane glue" for "maybe six months" at age 14 or 15. Mr. Crolley reported he has received substance abuse treatment from two different facilities.

Mental Health History

Mr. Crolley reported he has received inpatient mental health treatment during an incarceration at "Gilliam," and he indicated he has received outpatient mental health treatment from "Waccamaw," Clarendon County Mental Health Center, Lexington Mental Health Center, and from his "general family doctor" in Johnsonville, SC. Regarding his symptoms, he stated he experiences anxiety and "panic attack[s]." He said the attacks involve becoming nervous when he is around groups of people and result in shortness of breath and an increased heart rate. He also said he has nightmares about being abused as a child, has become overly suspicious of people, avoids things that remind him of the abuse, and was concerned "about it happening again." Mr. Crolley reported he has "seen things and heard things" since he was a child, such as hearing "voices telling me to do things," and as a child, seeing ghosts. He also reported a history of attempting suicide twice by ingesting pills and bleach. He reported he is currently taking Prozac (an antidepressant) and Risperdal (an antipsychotic). He said he has taken Depakote, Ritalin, and another medication in the past.

William S. Hall Psychiatric Institute records (dated 04/23/2002) indicate Mr. Crolley was previously evaluated regarding his competency to stand trial, criminal responsibility, and capacity to conform on prior charges. During that evaluation, he reported he received treatment for "bipolar affective disorder" beginning at age 31, and his mother reported a history of episodes "in which he has had too much energy, stayed up all night, and done things he would not ordinarily have done." She said these were accompanied by periods in which he was depressed and experienced suicidal ideation. He also acknowledged a history consistent with alcohol dependence. Although he reported experiencing hallucinations (e.g., "seeing bugs"), this

was considered "characteristic of a substance induced illusions [sic] or persistent hallucinosis." Mr. Crolley was diagnosed with "bipolar affective disorder," alcohol dependence, "over-the-counter stimulant abuse," and "probably personality disorder, NOS with borderline and antisocial features."

Records from Pee Dee Mental Health Center (from 07/26/2006 to 03/31/2008) indicate Mr. Crolley briefly received services from that facility. He reported symptoms of auditory and visual hallucinations, feeling "disconnected from reality," and racing thoughts. He presented with depressed mood and labile affect (i.e., rapidly fluctuating emotional expression). He was diagnosed with schizoaffective disorder.

Legal History

Mr. Crolley reported he has been arrested "at least 40 times" for "mainly disorderly's and public drunk." He also stated he has been to prison for "almost five years...for Arson" and on another occasion for six months on a "house breaking" charge. He also indicated he has been on probation approximately four times.

Records from Lexington County Detention Center (from 01/22/2009 to 02/07/2010) indicate Mr. Crolley has received mental health services at that facility. He has complained of being depressed from "being here probably," and he has said he experiences auditory hallucinations "all day." He also indicated he was experiencing nightmares and stated he was having racing thoughts. No observation of thought disorganization was documented in the records, and there was no indication he has been observed responding to hallucinations. He reported sustaining a head injury and subsequent memory loss. His most recent diagnosis is schizoaffective disorder, bipolar type, and he has been prescribed Prozac and Risperdal.

Current Presentation:

Mr. Crolley is a 43-year-old Caucasian male of average height and build who appears his stated age. He presented for the interview in correctional garb and shackles. Aside from having an untrimmed beard, his grooming and hygiene were adequate. No physical abnormalities were observed, and no oddities in posture or movement were noted. Mr. Crolley appeared to be generally attentive, and he offered a normal amount of eye contact. On tasks used to assess concentration, he performed fairly well. More specifically, he completed a serial subtraction task without difficulty, and he correctly spelled "world" backwards. His speech was of normal rate, rhythm, and volume, and no difficulties in articulation were observed. On questioning, Mr. Crolley accurately stated his name, the city of his location, the name of this facility, the date, and the general reason for the evaluation (i.e., "to see if I'm able to go to court or not"). He repeated a list of three words without difficulty, but he appeared to recall only one of the words after approximately five minutes had elapsed. His ability to recall events from his past appeared generally intact. Based on his explanations of common proverbs and responses to questions about classifying similar objects, his capacity for abstract thinking appeared fair. His judgment seemed good, and he displayed a fair amount of insight into his mental illness. His intellectual functioning was estimated to be in the average range. His thought processes appeared generally clear and coherent. He described his mood as "depressed," but his affect (i.e., observed emotional expression) was generally normal and consistent with the contents of his speech. MR.

Crolley stated he has recently experienced auditory hallucinations (e.g., hearing voices) and visual hallucinations in the past; however, he did not appear to be experiencing or responding to internal stimuli during the interview. He endorsed a history of odd beliefs and delusions (e.g., having telepathic abilities), but he did not appear to have any current delusional beliefs. He denied any current suicidal or homicidal ideation or intent.

Diagnostic Impressions

Although Mr. Crolley may have mild memory deficits from his head injury, it is unclear at this time whether the deficits have caused clinically significant impairment. As such, no cognitive disorder diagnosis is offered at this time, but future treatment providers may want to fully assess his cognitive functioning to determine whether a cognitive disorder diagnosis is appropriate. Mr. Crolley reported a history of hallucinatory experiences, delusional beliefs, and manic symptoms. Nonetheless, there is no documentation in the available records of mental health professionals observing psychotic or manic symptoms. While he also did not display manic or psychotic symptoms during the interview, he was taking medications that may be controlling a mental illness. As such, it is unclear whether a psychotic or mood disorder diagnosis is warranted at this time, and a provisional diagnosis of schizoaffective disorder, bipolar type, is considered appropriate at this time.

Mr. Crolley appears to meet the diagnostic criteria for one or more substance-related disorders. Specifically, he reported a history of developing a tolerance to alcohol, blackouts, and legal problems associated with alcohol abuse. As such, a diagnosis of alcohol dependence, in a controlled environment, is made at this time. The specifier, in a controlled environment, refers to the fact that he is currently detained and theoretically does not have access to that substance. He also may meet the criteria for another substance-related disorder, but there is currently insufficient information to make that determination.

Competency to Stand Trial

A determination of whether Mr. Crolley is competent to stand trial is within the domain of the Court. Nonetheless, an opinion is offered by the undersigned at this time. It is opined that while Mr. Crolley reported experiencing mental illness symptoms and cognitive deficits, any symptoms or impairments he may have do not appear to adversely impact his capacity to understand the proceedings against him or assist his attorney in his own defense.

Mr. Crolley demonstrated a basic understanding of being charged with a crime; the difference between felonies and misdemeanors; the meaning of guilty, not guilty, and not guilty by reason of insanity (NGRI); being placed on probation; contempt of court; and the roles of the judge, jury, defense attorney, solicitor, and witnesses. For example, he said a guilty plea means "you did what they say you did," and he described the role of the solicitor as, "Works for the state and convince the judge or jury that I'm guilty." Mr. Crolley stated that a defendant is supposed to be "calm, cool, and collected" in the courtroom and can only speak "whenever you [are] testifying." He did not appear to understand the meaning of no contest or fully comprehend the plea bargain process, but he was able to learn and retain information that was explained to him. Indeed, at the end of the interview, he recalled that no contest means the defendant "wouldn't have to say anything to incriminate" him/herself, and he said the person is neither admitting to nor denying the crime.

Gregory
 SEPT. 2, 09 Mark Crolley
 4:20 pm Branch Rd
 Johnsonville, SC 29555

Mans -
 Lex 29073
 (803)

3rd - k-Amelia - (803) - on SSDS + lives
 PO Box in a 2006 Cooper
 Johnsonville, SC 29555 at her man's

1st - has son Christopher Crolley - 21 yo -
 2nd - has son G. - 16 yo
 2nd - has son - J.C. - 14 yo
 2nd - has daughter - A.C. - 11 yo

X on SSDS since 1999 - for schizo effective disorders
 w/ needs for condition

- \$850/mth + \$500/mth in GS.



Δ Record

- 1985 - Auto-break in - 1 yr. probation - adlt
- 1985 - house break in b.t. - 9 mos. - Lieber Corr. (2000)
- several disorderly - fines
- 2001 - Arson 2nd - 5 yrs - (80% 4/10)
- ABHAN x fan Bar Fight

2005 - picked up for resisting arrest

2009 - ABWIK x2 -
DUI

1st ABWIK was brought by SLED + they did not appear at Prelim + Judge dismissed

Δ was out for 2 months in Johnsonville

- August 10, Δ turned himself in + got a ~~200k bond~~ 200k bond

- Bond reduction - POR

* Δ gets needs + detained at SDMCH - less

13. RB I have made no representation to the defendant with respect to the length of the sentence, probation or fine, or with respect to dismissal, except as follows: (Plea Bargain negotiations)

Straight up to 1 cent AUIK
up to 10 yrs

14. RB I have explained to the defendant that even if the Solicitor has agreed to accept a guilty plea in return for an agreed upon charge(s) and/or for a specific sentence, that the actual sentence that he receives is still to be determined by the Judge, and that the Judge may or may not accept the Solicitor's recommendation; and that the defendant may not (except in unusual circumstances) then withdraw his guilty plea because he did not get the sentence that the Solicitor recommended.

15. RB I have explained to the defendant all other possible collateral consequences of a plea of guilty, such as immigration consequences (e.g. deportation, exclusion, loss of immigration documents, etc), possible civil ramifications (as right to vote, owning a firearm, joining the military, etc) and possible criminal ramifications (e.g. habitual offender, probation revocation, consecutive sentences, etc.).

16. RB I have explained to the defendant that the matter of sentence is strictly within the control of the Judge. I have explained that the Solicitor and I will have an opportunity to speak to the court before a sentence is imposed and that he will also be given an opportunity to speak to the court before sentence is imposed, if he so desires.

17. RB I have explained to the defendant that the court will not permit anyone to plead guilty who maintains innocence and that the defendant has reaffirmed that he / she is pleading guilty because he / she is in fact guilty of the offense charged.

18. RB I am satisfied that at the time I advised the defendant of his rights, he was not under the influence of alcohol or drugs, nor under a doctor's care for any mental problem, and that he is mentally capable of understanding his legal rights, and understands the consequences of his decision to plead guilty. I inquired if the defendant has ever been institutionalized for alcohol, drug abuse or mental illness? (Yes) (No)

If yes, explain: evaluated for competency - OK

19. RB Based upon my conference with the defendant, I believe that their plea of guilty is free and voluntary and of his own accord and with the full understanding of all the matters set forth in the indictment, complaint, or information, and in this advisement of rights form.

20. RB I have explained to the defendant that if he has a prior record and that if he has committed other crimes in the past that there is a possibility he could be declared an "habitual offender": and could received additional time in jail up to and including life

* 2001 eval pending an arson charge
at Hall Center maybe summer

grew up in Colo - Herrell Hill Elem.

- Caughman vms

- Brooklyn/Cayce HS
10th grade dropped out

- Depacot (ep) - seizure med
needs dilantin instead

- Only on Ibuprofen for pain

* - get psych meets.

Uncle Bill Crolley

Bonnie Crolley

Teal Crolley

Dad is Lee Crolley

} know Knox
McMahon

Janice Crolley

Lexington, SC 29073

Discharge Summary	
Discharged to another PDMHC Program ☐ Yes Program <u>MISC</u>	
1. Client Name (Last, First)	ID# <u>1017/08</u>
2. Date of Admission <u>2-27-08</u>	3. Date of Discharge <u>3-3-08</u>
4. Reason for Discharge	<u>PK</u> <u>7/7/08</u>
5. Summary of Services Rendered (dates services began and ended, and services provided): <u>Client refused services.</u> <u>pma 2-27-08 to 3-24-08</u> <u>Assmt</u>	
6. Strengths, Abilities, Needs, Desires, and Preferences <u>S</u> <u>A</u> <u>P</u> } <u>None identified by client due to case being closed before assessment completed.</u>	
7. Desired Outcomes and Expectations Established and those Achieved <u>None identified by client due to case being closed before assessment completed.</u>	
8. Final Assessment (condition at discharge and progress on goals) <u>No progress made on goals. Client requested his case be closed after becoming very agitated w/ staff and clinic director.</u>	
9. Admission Diagnosis <u>295.70</u>	10. Discharge Diagnosis <u>295.70</u>
11. Discharge Plans and Recommendations for Continued Care (referrals made, etc.) <u>Client should follow up w/ a medical professional concerning med needs.</u>	
12. Clinician Signature and Title <u>[Signature] MHC</u>	13. Date <u>3-3-08</u>

295.70
Schizoaffective
Disorder

MENTAL HEALTH CENTER

Initial Clinical Assessment

Date: 2-27-08 Source of Data: ☒ Client ☐ Family: _____
☐ School: _____
 Referred By: ☒ Self ☐ Court Order: (Type) _____ ☐ Old records ☐ Other: _____
☐ Other: _____

Section A: Identifying Data

Name: (Last) Croley (First) Gregory (MI) M CID# 979776
 Age: 41 DOB: _____ Gender: male Race: C Marital Status: D
 Other Identifying Information: _____

Section B: Perceptions and History of Presenting Problem(s)

Documentation should address the source of information and the following:

(1) What brought client here today (px, sx, hx, duration and stressors)?
 Client Response: "I need my meds". Recently moved from Livingston Co. into (Dec 07).
 Family/Guardian (Specify): _____
 Collateral Sources (Specify): _____

(2) What are the possible causes? Why does the client think she/he is having these problems/symptoms?
 Client Response: "I don't know... I've been going through this since was a kid".
 Family/Guardian (Specify): _____
 Collateral Sources (Specify): _____

(3) Who and what area of client's life are affected by this? How does this make client/family member feel about him/herself?
 Client Response: _____
 Family/Guardian (Specify): _____
 Collateral Sources (Specify): _____

(4) How does client/family think this can be solved? What will help?
 Client Response: _____
 Family/Guardian (Specify): _____
 Collateral Sources (Specify): _____

SCMH FORM
MAY 2005 (REV JUL 2006) C-103 (FM JUL 28, 2009)

PAGE 1 OF 2 (INITIAL CLINICAL ASSESSMENT SCMH)

Name: Gregory Croley CID#: 979776

Section E: Trauma History (☐ See Trauma Assessment Form)

History of Trauma/Violence/Abuse/Neglect: ☐ None apparent ☐ Signs/sx present, but denies ☒ Acknowledges
☐ Referred for assessment

Type of Trauma/Violence/Abuse/Neglect: ☐ None ☒ Sexual ☐ Physical ☐ Emotional ☐ Self/someone else was going to die/be killed
☐ Natural Disaster ☐ Accident (specify): _____

Was client: ☐ Victim ☐ Witness ☐ Perpetrator

Describe issues identified: (nightmares, flashbacks, startle reflex, avoidance): Reports being molested by a friend of the family for several months as a child.

Name: Gregory C. Carlin CID#: 9729474

Thought Process	☒ Normal, appropriate, coherent, relevant ☐ Loose associations ☐ Flight of ideas ☐ Blocking ☒ Racing ☐ Circumstantial ☐ Tangential ☐ Indecisive ☐ Disorganized ☐ Concrete Comments:
Thought Content	☒ Normal ☐ Phobias ☐ Obsessions ☐ Ideas of hopelessness ☐ Ideas of worthlessness ☐ Paranoia ☐ Persecutory ☐ Suicidal ☐ Homicidal (Note: If suicidal or homicidal, see risk assessment) Comments:
Hallucinations	☒ No evidence ☐ Auditory ☐ Command ☐ Visual ☐ Olfactory ☐ Tactile ☐ Denies Comments:
Delusions	☒ No evidence ☐ Persecutory ☐ Grandeur ☐ Reference ☐ Influence ☐ Somatic ☐ Denies Comments:
Orientation/Level of Consciousness	☒ Alert: Oriented to: ☒ Person ☒ Place ☒ Time ☒ Situation ☐ Clouded ☐ Confused Comments:
Judgement	☐ Able to make sound decisions ☐ Usually able to make sound decisions ☒ Poor decision making, adversely affects self ☐ Poor decision making, adversely affects others Comments:
Insight/Adjustment to Problems/Illness, Disabilities, Disorders	☐ Denies problems/illness ☐ Blames others ☐ Minimizes ☒ Acknowledges & understands ☐ Acknowledges but fails to understand Comments:
Memory (use example)	☒ Intact ☐ Poor remote ☐ Poor recent ☐ Poor immediate Comments:
Concentration & Calculations (use example)	☒ Able to concentrate ☐ Able to do simple math ☒ Easily distracted ☐ Daydreams Comments:
Fund of Knowledge (use example)	☐ Above average ☒ Average ☐ Below average Comments:
Other Pertinent Information: _____	

Sleep Patterns: ☐ Adequate ☐ Hypersomnia ☐ Early awakening ☒ Insomnia ☐ Short intervals ☐ Sleepwalking ☐ Nightmares ☐ Decreased need for sleep ☐ Other	Appetite/Eating Patterns: ☒ Adequate ☐ Purges ☐ Increased ☐ Binges ☐ Decreased ☐ Doesn't eat ☐ Weight changes: _____ Lbs.	Energy Levels: ☒ Adequate ☐ Increased ☐ Decreased ☐ Fatigue	Libido ☐ Adequate ☐ Increased ☐ Decreased
--	--	---	---

Pee Dee Mental Health Center Emergency Screen. Out Consultation FormLocation Code 07 Office 354 Date 2-27-08 Time 1pm AM/PMPDMHC Status: None Open Former CID#Type of Contact: Phone Face to Face After Hours: Yes No

Location of Face to Face: MHC Hospital Jail School Other

- (1) Last Name: Crollay First: Gregory MI: Suffix: Gender: Male Female
- Race: African-American Caucasian Hispanic Asian Native American Other
- Marital Status: Single Married Divorced/Annulled Separated Widowed Unknown
- (3) Address: P.O. 47 Johnsonville TN 37601 Phone: (street/apt/po box) (town) (state) (zip code) (county)
- (4) Emergency Contact/Caller's Name: Relationship: Address: Phone:
- (5) Referred by: Self Family Friend Physician School Law Enforcement EMS DSS DJJ SCDMH Facility/Center Other (specify)
- (6) Accompanied by: Relationship:
- (7) Living Situation: Alone w/family/relatives w/significant other w/non-significant other Homeless Group/Instt Living/DMH CRCF Foster home Jail Shelter Other
- (8) Prior Treatment (inpatient & outpatient): BPH MV Hall L.H. MBHC Three Rivers VA Bruce Hall PDMHC Other MHC Other Date of last service:
- (9) Presenting Problems:

Depressed, depressed. Depressive symptoms, anxiety, some difficulty sleeping, appetite, moved from Lexington Co. wants to rejoin

(10) Medical Problems (including allergies): None(11) All Medications and Dosage: Natal 25mg, Prozac 40 mg, Invega 6mg(12) Substance Abuse: AlcoholSelf pay medication in July8:30 2-27-08 8:30am

ITP Review Period:

2/27/06 to 10/27/06

PROGRESS SUMMARY

(Due at transfer, discharge, and no less often than every 90 days)

Name: <u>Gregory Croley</u>		ID #: <u>9729476</u>
Current GAF: <u>50</u>	Current CAFAS (optional):	Other Rating:
Outcome Rating Scale: 1-None 2-Limited 3-Some 4-Significant 5-Accomplished		
Check All Services Received: ☒ PMA ☐ PMA-APRM ☐ Med Adm ☐ NS ☐ CI ☐ CI-WKS ☐ ASSMT ☐ SFD ☐ IND. TL		
☐ Fm. TL ☐ Gp. TL ☐ TCM ☐ CCS ☐ PRS ☐ STAD ☐ PSS ☐ ACT-1 ☐ ACT-2		
☐ MRS-NOS ☐ SH-ES ☐ WRAPS-SI ☐ WRAPS-CG ☐ WRAPS-CCS ☐ WRAPS-TDC ☐ SH-OT		
Summary: 1. Progress on each goal & bc. Objective (outcome rating and narrative). 2. Clinical justification of the need for continuing treatment by clearly stating how the continuation of services is necessary to treat the disorder or prevent decompensation (the benefit or impact of the services) and / or criteria for discharge to another program or from Center. 3. Plan / recommendation for future treatment, include client and family feedback, integration of client into the community and changes in treatment planning. For transfer or discharge, list medications / efficacy.		
Objective Number	Outcome Rating	Narrative
1a	2	Gregory is a 39 y.o. M. diagnosed w/ Schizophrenia. He has last prescribed Risperdal 3mg, Quetiapine 50mg, and Prozac 30mg for symptoms. Client has been somewhat noncompliant during this review period and therefore, made limited improvements w/ treatment participation.
2a	2	Gregory has reported progress w/ the goals and a struggle w/ night gain due to Prozac. Services are needed to maintain discipline, monitor mood, prevent decompensation, and cope effectively. LITP met but w/ current POC and aimed when additional needs are identified.
3a	2	
4a	2	
5a	2	
6a	2	
Clinician's Signature and Title: <u>Tamara J. Jaramila, R.N.</u> Date: <u>10/27/06</u>		

ITP Review Period:

10/27/06 to 1/27/07

PROGRESS SUMMARY

(Due at transfer, discharge, and no less often than every 90 days)

Current GAF: <u>50</u>		Current CAFAS (optional):	Other Rating:	Outcome Rating Scale: 1-None 2-Limited 3-Some 4-Significant 5-Accomplished
Check All Services Received: ☐ PMA ☐ PMA-APRM ☐ Med Adm ☐ NS ☐ CI ☐ CI-WKS ☐ ASSMT ☐ SFD ☐ IND. TL				
☐ Fm. TL ☐ Gp. TL ☐ TCM ☐ CCS ☐ PRS ☐ STAD ☐ PSS ☐ ACT-1 ☐ ACT-2				
☐ MRS-NOS ☐ SH-ES ☐ WRAPS-SI ☐ WRAPS-CG ☐ WRAPS-CCS ☐ WRAPS-TDC ☐ SH-OT				
Summary: 1. Progress on each goal & bc. Objective (outcome rating and narrative). 2. Clinical justification of the need for continuing treatment by clearly stating how the continuation of services is necessary to treat the disorder or prevent decompensation (the benefit or impact of the services) and / or criteria for discharge to another program or from Center. 3. Plan / recommendation for future treatment, include client and family feedback, integration of client into the community and changes in treatment planning. For transfer or discharge, list medications / efficacy.				
Objective Number	Outcome Rating	Narrative		
1a	2	Gregory is a 39 y.o. M. diagnosed w/ Schizophrenia. He has last prescribed Risperdal 3mg, Quetiapine 50mg, and Prozac 30mg for symptoms. Client has been noncompliant during this review period and therefore, made limited progress and established expectations. He continues to struggle w/ insomnia and per Phil note 10/24/06, client flew off the handle & wanted Xanax.		
2a	2	Gregory has no chronic (2) drug abuse and is accident. Services are needed to maintain symptomatology, monitor mood, prevent hospitalizations, and cope effectively. LITP met but w/ current POC and aimed accordingly.		
3a	2			
4a	2			
5a	2			
6a	2			
Clinician's Signature and Title: <u>Tamara J. Jaramila, R.N. L.P.C.I.</u> Date: <u>1/27/07</u>				

ITP Review Period:

4/27/06 to 7/27/06

PROGRESS SUMMARY

(Due at transfer, discharge, and no less often than every 90 days)

Name: <u>Gregory Crider</u>		ID #: <u>9029416</u>	
Current GAF: <u>50</u>	Current CAFAS (optional):	Other Rating:	Outcome Rating Scale: 1-None 2-Limited 3-Some 4-Significant 5-Accomplished
Check All Services Received: ☒ PMA ☐ PMA-APRN ☐ Med Adm ☐ NS ☐ CI ☐ CHHS ☐ ASSMT ☐ SPD ☐ IND. Tx. ☐ Fm. Tx. ☐ Op. Tx. ☐ TCM ☐ CCS ☐ PRS ☐ STAD ☐ PSS ☐ ACT-1 ☐ ACT-2 ☐ MHS-NOS ☐ SHP-ES ☐ WRAPS-BI ☐ WRAPS-CG ☐ WRAPS-CCS ☐ WRAPS-TDC ☐ BH-DT			
Summary: 1. Progress on each goal & tx. Objective (outcome rating and narrative). 2. Clinical justification of the need for continuing treatment by clearly stating how the continuation of services is necessary to treat the disorder or prevent decompensation (the benefit or impact of the services) and / or criteria for discharge to another program or from Center. 3. Plan / recommendation for future treatment, include client and family feedback; integration of client into the community and changes in treatment planning. For transfer or discharge, list medications / efficacy.			
Objective Number	Outcome Rating	client has been compliant w/ treatment and has made some improvement. He continues to experience symptoms and needs on going treatment to stabilize cope. Current treatment plan review continues.	
1a	3		
1b	3		
2a	3		
2b	3		
Clinician's Signature and Title: <u>MALPCI</u> Date: <u>4/27/06</u>			

ITP Review Period:

4/27/06 to 7/27/06

PROGRESS SUMMARY

(Due at transfer, discharge, and no less often than every 90 days)

Current GAF: <u>50</u>		Current CAFAS (optional):		Other Rating:		Outcome Rating Scale: 1-None 2-Limited 3-Some 4-Significant 5-Accomplished	
Check All Services Received: ☒ PMA ☐ PMA-APRN ☐ Med Adm ☐ NS ☐ CI ☐ CHHS ☐ ASSMT ☐ SPD ☐ IND. Tx. ☐ Fm. Tx. ☐ Op. Tx. ☐ TCM ☐ CCS ☐ PRS ☐ STAD ☐ PSS ☐ ACT-1 ☐ ACT-2 ☐ MHS-NOS ☐ SHP-ES ☐ WRAPS-BI ☐ WRAPS-CG ☐ WRAPS-CCS ☐ WRAPS-TDC ☐ BH-DT							
Summary: 1. Progress on each goal & tx. Objective (outcome rating and narrative). 2. Clinical justification of the need for continuing treatment by clearly stating how the continuation of services is necessary to treat the disorder or prevent decompensation (the benefit or impact of the services) and / or criteria for discharge to another program or from Center. 3. Plan / recommendation for future treatment, include client and family feedback; integration of client into the community and changes in treatment planning. For transfer or discharge, list medications / efficacy.							
Objective Number	Outcome Rating	Client is a thirty-nine year old male, dx of Schizophrenia. He was last prescribed Risperdal 2mg po bid; Zoloft 50mg po bid; and Prozac 20mg po bid. Client was compliant w/ past appts during last period and since. Client has reported no side effects; however, reported tired. Stabilization is desired w/ shakes due to anxiety during initial face-to-face. He requested a lower frequency of services due to current debt / fixed income; reported a disability hearing scheduled for next month; and is completing a structured physical condition for auto ins. Client has made little to no progress in the goals due to attendance. Services are needed to maintain symptoms; prevent decomp.; and cope effectively. Plan: to continue w/ current doc; attend accordingly; and encourage active participation.					
1a	2						
2a	2						
2b	4						
2c	1						
3a	2						
3b	2						
3c	2						
Clinician's Signature and Title: <u>James P. [unclear]</u> Date: <u>7/27/06</u>							

PHYSICIAN'S MEDICATION ORDERS AND SERVICE NOTES

Patient's Name and I.D.#

Crolley, Gregory Mark

97-29476

Medications Prescribed and Physician's Services Notes

(cont-)

FH

2 sons - ADHD

(M) - 3 bipolar, on Tranxene + alcoholic

(F) - mental s/o

(S) - prison - 3 rape

(B) - drinking problem in past

(S) - homosexual

SH

(M) says he dropped out in 12th grade - he says 10th

Acted up in 8th grade - fights, cutting school - Expelled in 9th - Family moved several times - Went to 3 different high schools - "I couldn't handle it" - Quit

last job = driving 18 Wheeler - 10/99 - On disability since 1999

2° mental problem - Has MCR - Legal = A+B, disorderly conduct, A+B = intent to kill, arson - Off parole 12/07

Married x 2 - Divorced - 3 children - 14, 12, 10 y.o.

1 other child from 1st marriage - 20 y.o. - Tobacco =

smokes 1 1/2 ppd - down from 3 ppd - EtOH = stayed

drunk Friday → Sunday → drink 20A x 8-9 hrs - No

EtOH since 12/05 - Used to drink Bush beer by the 12-

pack - sell it drug - tried MI as a kid - "It made me

super paranoid" - "Never was a pill popper" - Has a

gr / friend - says communication between them is important

K. C. Crolley, MD
Physician's Signature2-29-08
Date

PHYSICIAN'S MEDICATION OR HS AND SERVICE NOTES

Patient's Name and I.D.#

Crolley, Gregory Mark 97-29476

Medications Prescribed and Physician's Services Notes

4/9-07 - self referral - moved from Lexington City - to Johnsonville - (B) lives close by - is less stressful here - is a "self rice" in Lexington - Girlfriend lives nearby - CC = "Experiencing a lot of depression", anxiety + jumpy feelings - Attributes to being out of Vietnam for 2 weeks. (C) #10 hearing voices + seeing things - Suvega helps - sad, tearful also because 1st anniversary of (A)'s passing is on 3/13 - It didn't find out about this until 4/11 - Loved + respected (F) - 85% / 11% - Observed

PMH prison - Kirkland - ICS pgm - therapy, group & 18 mos - released 2005

Wacoanaw MH, Manning MH, Lexington City - MH, Wake City MH

★ DX'd ^{+schizophrenia} ASHA suicide attempt - drank bleach - age 12 molested around age 12 - started Ecst, tobacco - 9 weeks at Code Park - A/A classes of ICS pgm - other abuse - self mutilation -

PMH several knee surgery's + fix leg + rod + screws (playing in tree - jumped out of tree) - PCP - looking for 1 - All - Seroquel + seafood + morphine - Meds - Prozac 40mg + QA + Vitamin 25 mg + TID + 1/4 R45 + Suvega 6 mg + QA - ASA + Ibuprofen per pain, H/A - Flier, garlic

Physician's Signature

2/29/08

Date



PROGRESS NOTES

Date/Time	Inmate Name:	ID#:	D.O.B.:
10/1/09	Craley, Gregory Mark	90148	
	Flu Pmt		
	42 yo mwm dx schizophrenia, mtdo, mtdo, mtdo & EDD def seen for Flu Pmt. No recent stressors. "dang pretty good s. we need changed", mood "kind of depressed, being here probably" casually working on hard reduction. Sleep "all night", appetite "all night" energy "kind of low", conc. "not good" denies S.I.H.I. Reports AH "all day, always have that". Reports usually just 1 voice, usually something > 1 voice casually "basically inside my head" but AH hearing rare called "outside my head". Reports racing thoughts "changing from one thing to another". Speech M. loud, J.P. logical & G.D. no attending to internal stimuli noted during Pmt. Pt requested to cont R3 peroral at current dose rather than risk S.C. by 7"mg dose. A: dx unchanged, still some residual sxs but great P: (1) Pmt running at same pm (2) Pmt Pmt (3) cont meds (4) contact with prob/caregiver		

FOR: CROLEY, GREGORY M
 CARE OF:

GASTON FAMILY PHARMACY
 1118 MACK ST.
 GASTON, SC 29053
 PHARMACIST - KM
 Store PH # - 803-939-8489
 Provider # - 4225543
 Pat. Sex - M
 Medical Record# -

CROLEY SWANSEA, SC 29053
 Store LIC# - 50008011
 Store DEA# - BG9068669
 Birth Date -
 Social Security# -

DATE	REN	DRUG (ITEM) NAME	QTY	PREScriBER	PRICE	PN	TYP
N/A	NDC#	MOQ#	D/S	DEAN			GEN IND
12/29/08	06062495	CETPHALEXIN 500 MG	20 CAP	W.B.SMITH	.00		COPAY
	NEW	00093-3147-05 TEVAV	5DAYS	FS0280379			GENERIC
	Rx DAW Ind - NO Policy#	7016562		ECS Auth # -	81321		
12/29/08	02006787	METOPROLOL 50/25 CA	40 CAP	W.B.SMITH	35.08	Rx	
	NEW	00603-4424-21 QUALT	7DAYS	FS0280379			BRAND
	Rx DAW Ind - NO Policy#	7016562		ECS Auth # -			
01/07/09	04014410	LORAZEPAM 2 MG TAB	60 TAB	FAILE,K	3.00		COPAY
	NEW	00591-0242-01 WATSO	30DAYS	BF5025615			GENERIC
	Rx DAW Ind - NO Policy#	9456909801		ECS Auth # -	00010739097801		
01/07/09	06062861	HYDROXYZINE PAM 25 120	CAP	FAILE,K	.00		COPAY
	NEW	00555-0323-02 HARR	30DAYS	BF5025615			GENERIC
	Rx DAW Ind - NO Policy#	7016562		ECS Auth # -	97991		
01/08/09	06062972	TRAMADOL HCL 50 MG 90	TAB	FAILE,K	.00		COPAY
	NEW	60505-0171-02 APTX2	30DAYS	BF5025615			GENERIC
	Rx DAW Ind - NO Policy#	7016562		ECS Auth # -	13021		
01/08/09	06062971	DICLOFENAC 500 75 62	TAB	FAILE,K	.00		COPAY
	NEW	00591-0339-01 WATSO	31DAYS	BF5025615			GENERIC
	Rx DAW Ind - NO Policy#	7016562		ECS Auth # -	98951		
01/08/09	06062970	FLUOXETINE 40 MG C 62	CAP	FAILE,K	.00		COPAY
	NEW	00781-2824-01 SANDO	31DAYS	BF5025615			GENERIC
	Rx DAW Ind - NO Policy#	7016562		ECS Auth # -	74511		
02/06/09	04014410	LORAZEPAM 2 MG TAB	60 TAB	FAILE,K	3.00		COPAY
	REFILL	00591-0242-01 WATSO	30DAYS	BF5025615			GENERIC
	Rx DAW Ind - NO Policy#	9456909801		ECS Auth # -	00010821952601		
02/06/09	06062861	HYDROXYZINE PAM 25 120	CAP	FAILE,K	.00		COPAY
	REFILL	00555-0323-02 HARR	30DAYS	BF5025615			GENERIC
	Rx DAW Ind - NO Policy#	7016562		ECS Auth # -	09851		
02/07/09	06062972	TRAMADOL HCL 50 MG 90	TAB	FAILE,K	.00		COPAY
	REFILL	60505-0171-02 APTX2	30DAYS	BF5025615			GENERIC
	Rx DAW Ind - NO Policy#	7016562		ECS Auth # -	80411		
02/07/09	06062971	DICLOFENAC 500 75 62	TAB	FAILE,K	.00		COPAY
	REFILL	00591-0339-01 WATSO	31DAYS	BF5025615			GENERIC
	Rx DAW Ind - NO Policy#	7016562		ECS Auth # -	81761		
02/07/09	06062970	FLUOXETINE 40 MG C 62	CAP	FAILE,K	.00		COPAY
	REFILL	00781-2824-01 SANDO	31DAYS	BF5025615			GENERIC
	Rx DAW Ind - NO Policy#	7016562		ECS Auth # -	81841		
03/07/09	04014410	LORAZEPAM 2 MG TAB	60 TAB	FAILE,K	3.00		COPAY
	REFILL	00591-0242-01 WATSO	30DAYS	BF5025615			GENERIC
	Rx DAW Ind - NO Policy#	9456909801		ECS Auth # -	00010902119501		
03/07/09	06062861	HYDROXYZINE PAM 25 120	CAP	FAILE,K	.00		COPAY
	REFILL	00555-0323-02 HARR	30DAYS	BF5025615			GENERIC
	Rx DAW Ind - NO Policy#	7016562		ECS Auth # -	05451		
03/09/09	06062972	TRAMADOL HCL 50 MG 90	TAB	FAILE,K	.00		COPAY
	REFILL	60505-0171-02 APTX2	30DAYS	BF5025615			GENERIC
	Rx DAW Ind - NO Policy#	7016562		ECS Auth # -	65321		

*****Mar. 25, 2009* 1:43PM*****No. 3791* P. 3
 * M E D I C A L E X P E N S E * BGN DTE:01/01/2008 END D1 3/25/2009 *

FOR: CROLEY, GREGORY M
 CARE OF:

GASTON FAMILY PHARMACY
 1118 MACK ST.
 GASTON, SC 29053
 PHARMACIST - KH
 Store PH # - 803-939-8489
 Provider # - 4225543
 Pat. Sex - M
 Medical Record# -

CROLEY, GREGORY M, SC 29053
 Store LIC# - S0008011
 Store DEA# - BC9068669
 Birth Date -
 ty# -

DATE	RX#	DRUG (ITEM) NAME	QTY	PRESCRIBER	PRICE PR TYPE
N/A	NDC#	MFG#	D/S	DEA#	GEN IND
03/09/09	06062971	DICLOFENAC SOD 75 62 TAB	TAB	FAILE, K	.00 COPAY
	REFILL	00591-0339-01 WATSO 31DAYS	31DAYS	BF5025615	GENERIC
	Rx DAW Ind	- NO Policy# 7016562		ECB Auth # - 66221	
03/09/09	06062970	FLUOXETINE 40 MG C 62 CAP	CAP	FAILE, K	.00 COPAY
	REFILL	00781-2824-01 SANDO 31DAYS	31DAYS	BF5025615	GENERIC
	Rx DAW Ind	- NO Policy# 7016562		ECB Auth # - 66271	
03/23/09	06066337	BACITRACIN OINTMENT 56.80GM	56.80GM	D. PASSER	3.00 COPAY
	NEW	00713-0280-31 G & W 15DAYS	15DAYS	BF8957308	GENERIC
	Rx DAW Ind	- NO Policy# 9456909801		ECB Auth # - 00010943166201	
03/23/09	04019137	PROPOXY-N/APAP 100 71 TAB	TAB	D. PASSER	.00 COPAY
	NEW	00406-1772-10 WALIN 9DAYS	9DAYS	BF8957308	GENERIC
	Rx DAW Ind	- NO Policy# 7016562		ECB Auth # - 22111	
03/23/09	06066336	PHENYTOIN SOD EXT 90 CAP	CAP	S. PARSONS	.00 COPAY
	NEW	51672-4111-03 TARO 30DAYS	30DAYS	BF8944816	GENERIC
	Rx DAW Ind	- NO Policy# 7016562		ECB Auth # - 16201	

48.08 TOTAL

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT

Case No: 2011-CP-32-0295

Gregory Mark Crolley,
 S.C.D.C. No. 271217,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an Application for Post-Conviction Relief (PCR) filed January 25, 2011. Respondent made its Return on September 7, 2011. An evidentiary hearing into the matter was convened on January 31, 2013 at the Lexington County Courthouse. Applicant was present at the hearing and was represented by John E. Duncan, Esquire. Respondent was represented by Walt Whitmire, Esquire, of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Donna Schwartz-Watts, M.D., testified on behalf of the Applicant. Pica counsel, Richard Bolen, Esquire, testified. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections. Additionally, this Court had before it Exhibits entered into evidence.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the August 2009, term of the Lexington County Grand Jury for assault with intent to

kill (2009-GS-32-2216). Applicant was represented by David Mauldin, Esquire and Richard Bolen, Esquire. On May 25, 2010, Applicant pled guilty as charged. Applicant was sentenced by the Honorable Clifton Newman to confinement for a period of ten years. Applicant did not appeal his conviction or sentence.

At the PCR hearing, Applicant proceeded on one claim of ineffective assistance of counsel for plea counsel's failure to investigate and have Applicant undergo a criminal responsibility evaluation.

II. SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified that he committed the assault with intent to kill offenses because he was suicidal. Applicant stated that he had a history of mental illness. Applicant stated that he provided plea counsel with medical documentation of his previous conditions and treatments. Applicant stated that he had been placed on Social Security Disability since 1999 as a result of his mental illness. Applicant stated that plea counsel never discussed a possible guilty but mentally ill ("GBMI") defense. Applicant stated that if he knew of the possibility of "GBMI," he would have pursued a jury trial instead of entering the guilty plea.

Upon cross-examination, Applicant first stated that he had previously been convicted for committing a similar offense for attempting assault a motorcyclist while operating a motor vehicle. Second, Applicant stated that he was heavily intoxicated while committing the offenses. Third, Applicant stated that he had an extensive criminal history of committing crimes while intoxicated. Last, Applicant stated that he pled guilty in order to receive the best possible prison sentence.

At the PCR hearing, Dr. Schwartz-Watts testified. Dr. Schwartz-Watts conducted a psychiatric evaluation of Applicant on December 31, 2012, in preparation for his PCR hearing.

Dr. Schwartz-Watts examined Applicant prior to this PCR hearing. Dr. Schwartz-Watts testified Applicant had a history of chronic mental illness. Applicant had various diagnoses including Schiz-Affective Disorder. Dr. Schwartz-Watts observed Applicant momentarily would become psychotic and paranoid, but that Applicant could control symptoms if he stayed on his medication regimen. Dr. Schwartz-Watts testified Applicant has currently been housed with other mentally inmates in S.C.D.C. Dr. Schwartz-Watts testified that Applicant does not suffer from a substance-induced psychosis but instead suffers from continuing mental illness manifested in divergent symptoms. Dr. Schwartz-Watts testified to Applicant's family history of mental illness. Dr. Schwartz-Watts testified that upon review of the State's evidence, Applicant attempted a "suicide by cop" while intoxicated. As a result of her evaluation, Dr. Schwartz-Watts found Applicant's actions during the offenses were driven by mental illness.

Upon cross-examination, Dr. Schwartz-Watts testified Applicant knew right from wrong but could not conform his conduct to comply with the law. Dr. Schwartz-Watts testified the combination of alcohol abuse and mental illness rendered Applicant "GBMI." Dr. Schwartz-Watts testified she would have reached the same conclusions in 2010 prior to Applicant's guilty plea. However, Dr. Schwartz-Watts testified the conclusions reached in her report are applicable from December 2012 forward.

At the PCR hearing, plea counsel testified. Plea counsel stated he inherited Applicant's case. Upon reviewing Applicant's case, plea counsel learned of Applicant's mental health history, prior diagnosis, treatments, and institutionalizations. After reviewing the discovery with Applicant, plea counsel reasoned that Applicant would inevitably lose at trial due to the strength of the State's evidence. The offense was captured by dash cam. Plea counsel testified he

reasoned Applicant understood their consultations. Plea counsel testified that he advised Applicant that voluntary intoxication was not a defense in this jurisdiction.

As a result of investigating Applicant's mental health files, plea counsel filed a motion for Applicant to undergo a psychiatric evaluation for competency at the Department of Mental Health (DMH). Plea counsel testified that it was the solicitor's position that Applicant could undergo either a competency evaluation or a criminal responsibility evaluation, but not both. Plea counsel stated, both he and the solicitor shared similar concerns regarding Applicant's possible incompetency to stand trial. Furthermore, plea counsel considered a "GBMI" defense, but stated the posture had little benefit to Applicant's case. Plea counsel testified that he could not recall but believes that he advised Applicant on pursuing a "GBMI" guilty plea.

Subsequent to Applicant being found competent to stand trial, plea counsel testified his trial strategy was to obtain a favorable plea offer for Applicant. Applicant was potentially facing a twenty plus year prison sentence. Plea counsel testified Applicant was susceptible to a potential consecutive sentence due to the aggravating factors of the offenses. Plea counsel testified Applicant had previously committed other violent crimes.

Plea counsel stated that the solicitor offered to plead Applicant to one of the assault with intent to kill charges in exchange for nolle prosequing the other two charges. The offer entailed a maximum ten year prison sentence. Plea counsel testified that he believed this was the best guilty plea offer that he would have been able to obtain for Applicant. Plea counsel conveyed the offer to Applicant and thoroughly discussed its consequences with him.

Plea counsel testified that he had no reason to doubt Dr. Gassen's findings. Thus, plea counsel testified he did not consult a second expert. Plea counsel stated that Dr. Gassen found that Applicant had a history of substance abuse, a history of substance abuse related crime, and

that he met the diagnostic criteria for having substance-related disorders. Furthermore, plea counsel stated that Applicant had previously undergone a competency and criminal responsibility evaluation in 2002 while awaiting adjudication on Arson charges. Plea counsel testified that after conducting a cost/benefit analysis on the matter, he reasoned that a second psychiatric evaluation for criminal responsibility was not warranted. Instead it was plea counsel's strategy to present Applicant's mental health history in mitigation during the guilty plea hearing.

Last, plea counsel testified that it was Applicant's decision to accept the solicitor's guilty plea offer. Due to Applicant's mental health history, plea counsel undertook additional discussions with Applicant on the consequences of pleading guilty prior to the guilty plea hearing. During the guilty plea hearing, plea counsel concisely presented mitigation. Plea counsel testified he pursued this strategy subsequent to noticing the sentencing judge's impatience and anger towards Applicant. Plea counsel stated that Dr. Gassen's evaluation and the video recording of the offenses were submitted to the sentencing judge at the guilty plea hearing.

Last, plea counsel testified that in hindsight, he believed that a beneficial finding on criminal responsibility would have had little impact on the sentencing judge's pronouncement. Plea counsel testified the sentencing judge commented that he desired imposing a harsher sentence on Applicant after he imposed the maximum term of incarceration.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings,

the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Applicant alleges that counsel was ineffective for failing to investigate a "GBMI" defense and request an additional psychiatric evaluation for criminal responsibility. This Court finds Applicant has failed to meet his burden of proof. Furthermore, this Court finds plea counsel's testimony to be credible.

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). Rompilla v. Beard emphasizes that the duty to investigate does not force defense lawyers to scour the globe on the off chance something will turn up; reasonably diligent counsel may draw a line when they have good reason to think further investigation would be a waste. Rompilla v. Beard, 125 S.Ct. 2456 (2005). The South Carolina Supreme Court in McKnight v. State stated, "this Court has recognized that strategic choices made by counsel after an incomplete investigation are reasonable only to the extent that reasonable professional judgment supports the limitations on the investigation. McKnight v. State, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (2008) (quoting Von Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004). There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). Where trial counsel articulates a valid reason for employing certain trial strategy, counsel will not be deemed ineffective. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995).

First, this Court finds that Applicant failed to prove plea counsel was ineffective for failing to pursue a second psychiatric interview. This Court finds plea counsel effectively

investigated Applicant's mental history and reasonably investigated the viable known defenses. Dr. Gassen's evaluation stated that Applicant's mental health detriments were related to substance abuse. Despite the findings of the accomplished and venerable Dr. Schwartz-Watts two years subsequent to Applicant's conviction, it was reasonable for plea counsel, during the course of representation, to believe a second psychiatric evaluation for criminal responsibility would not have yielded any benefit to Applicant's case. Criminal defense attorneys are not under the duty to be experts in psychiatry. Applicant failed to request plea counsel to pursue a second psychiatric evaluation. Furthermore, Applicant had previously undergone a criminal responsibility evaluation for an Arson conviction of which he failed to prove that yielded a benefit that should have placed plea counsel on notice of the necessity to have Applicant evaluated for criminal responsibility. Therefore, considering the costs and potential diminished returns, plea counsel's decision not to pursue an additional evaluation was reasonable.

Moreover, this Court finds that plea counsel's strategy to present Applicant's mental health history during mitigation phase of the guilty plea hearing reasonable and effective. At the guilty plea hearing, plea counsel conveyed to the sentencing court Applicant's brain damage, history of mental illness and accompanying disability status, medication regimen, suicide attempt, current proclivity for non-violence, and ability to reintegrate into society. (Tr. p. 14, line 8; p. 14, lines 14-19; p. 14, lines 20-25; p. 15, lines 3-15; p. 17, lines 6-9, p. 16, lines 14-23).

Second, this Court finds that Applicant failed to prove that the alleged ineffective assistance allegation amounted to prejudice. Any benefit realized from criminal responsibility evaluation would have only gone to mitigation in sentencing. "GBMI" does not absolve a criminal defendant from guilt. Horsnby, (326 S.C. 121), SCT 17-24-70 "GBMI" verdict only appertains to the conditions of confinement and other collateral matters post-convictions.

Furthermore, the record clearly shows that any benefits realized from a criminal responsibility examination prior to adjudication would have been negligible in the disposition in Applicant's case. Therefore, this Court is denying this allegation for post-conviction relief.

All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BML, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

V. CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

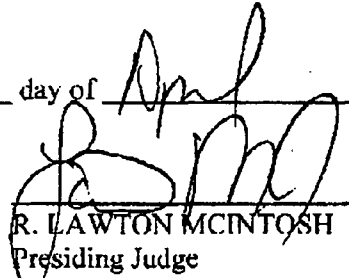
This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice

has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 4 day of April, 2013.


R. LAWTON MCINTOSH
Presiding Judge

Anderson, South Carolina

FILED
CLERK OF COURT
LEXINGTON, SC

2013 APR 11 PM 3:55

FILED

WITNESSES

SLED

Gianna Williams

Law Enforcement Case #

ARREST WARRANT NUMBER

09-STR-00147

(REF. WARRANT # J-830628)

ACTION OF GRAND JURY

TRUE BILL

Forfeiture of Grand Jury

Date 8-10-09

VERDICT

DOCKET NO. 2009GSS3202216

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2009

THE STATE

VS.

GREGORY MARK CROLEY

CDR # 10768

Indictment for

ASSAULT WITH INTENT TO KILL

COMMON LAW

DONALD V. MYERS, SOLICITOR

Forfeiture of Petit Jury

Date

A TRUE COPY

Lex. Co. C.C.C.P., U.S. & T.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

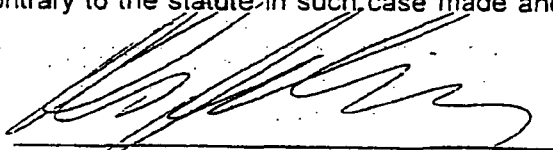
INDICTMENT FOR
ASSAULT WITH INTENT TO KILL

COMMON LAW

At a Court of General Sessions, convened on AUGUST 2009, the Grand Jurors of Lexington County present upon their oath:

That **GREGORY MARK CROLLEY** did in Lexington County, South Carolina on or about March 16, 2009, with malice aforethought, knowingly and willfully attempt to commit a violent injury to the person of another, Trooper Drew Ledbetter, accompanied by the present ability to complete the act, in that the defendant, Gregory Mark Crolley attempted to strike Trooper Drew Ledbetter while operating a vehicle, in violation of the Common Law of the State of South Carolina.

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington

INDICTMENT/CASE# 2009GS3202216

VS.
GREGORY MARK CROLLEY

AW# 09-STR-00147

AKA _____
Race _____ Sex M Age 43

Date of Offense 3/16/2009

DOB _____ SS# _____

S.C. Code S# 00-00-0000-17-25-0030

Address _____

CDR Code # 0768

City/State/Zip Swansea, SC 29160

SENTENCE SHEET

DL# _____ SID# _____

CDE Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazard Yes ☐ No ☒

☐ CONVICTED OR ☒ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO Assault, Assault with intent to kill (AWIK)

Violation of S.C. Code 00-00-0000-17-25-0030 of the S.C. Code of Laws bearing CDR Code # 0768

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST-SERIOUS ☐ Mandatory GPS ☐ \$17-25-45

The charge is ☒ As indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)

The pleas ☒ Without Negotiations or Recommendation ☐ Aggravated Sentence ☐ Recommendation by the State

ATTEST [Signature] Solicitor SC Bar # _____ Defendant [Signature] Attorney for Defendant SC Bar # _____

WHEREFORE the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center for a determinate term of 10 days/months/years or ☒ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable, the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered: PTUP

Total \$ _____ plus 20% fee \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient: _____

Fine	\$	
\$14-1-208 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
\$47-12 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
\$14-1-213 (Drug Court Surcharge)	\$100	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
\$90-7 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ <u>130.00</u>

Clerk of Court/Deputy Clerk: [Signature]
Court Reporter: [Signature]

Obtain CED ☒

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: [Signature]
Judge Code: 2121
Sentence Date: A TRUE COPY