

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

Deadra L. Jefferson, Circuit Court Judge

RECEIVED

JUN - 9 2014

S.C. Supreme Court

MICHAEL MAXWELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002544

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

ASHLEIGH R WILSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

COURT OF GENERAL SESSIONS
09-GS-08-0766, 08-GS-08-1444

STATE OF SOUTH CAROLINA,)
PLAINTIFF)
vs.)
MICHAEL MAXWELL,)
DEFENDANT.)

ORIGINAL

TRANSCRIPT OF RECORD

APRIL 28, 2010
MONCKS CORNER, SOUTH CAROLINA

B E F O R E:

THE HONORABLE KRISTI LEA HARRINGTON, JUDGE.

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

DORIE BIAGIANTI, ESQ.,
ANN WILLIAMS, ESQ.,
Attorneys for the State.

LEIGH HUNTER, ESQ.,
NICHELE PATRAO FORSYTHE, ESQ.,
Attorneys for the Defendant.

VIVIAN H. CROSS
OFFICIAL COURT REPORTER

I-N-D-E-X
APRIL 28, 2010
(THE STATE v. MICHAEL MAXWELL)
(08-GS-08-0766, 08-GS-08-1444)

PAGE

COLLOQUY

3

REPORTER'S CERTIFICATE

24

E X H I B I T S

IDENTIFICATION

ENTERED

*****NO EXHIBITS OFFERED*****

P R O C E E D I N G S

(CASE NO.: 08-GS-08-0766, 08-GS-08-1444)

(APRIL 28, 2010 - 9:50 A.M.)

(NOTE: FOLLOWING IS THE PLEA TAKEN IN THIS MATTER ONLY,
AS REQUESTED BY THE OFFICE OF THE ATTORNEY GENERAL.)

BAILIFF: COURT COME TO ORDER; ALL RISE.

THE COURT: THANK YOU; PLEASE BE SEATED.

THE COURT: MS. HUNTER, I UNDERSTAND YOUR CLIENT WISHES
TO CHANGE HIS PLEA?

MS. HUNTER: THAT'S CORRECT, YOUR HONOR.

THE COURT: MR. MAXWELL, PLEASE RISE. YOU ARE
MICHAEL J. MAXWELL, IS THAT CORRECT?

MR. MAXWELL: YES, MA'AM.

THE COURT: PLEASE SWEAR THE DEFENDANT.

THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

(WHEREUPON, MICHAEL J. MAXWELL WAS DULY SWORN AND
TESTIFIED AS FOLLOWS:)

THE CLERK: THANK YOU.

THE COURT: MR. MAXWELL, I UNDERSTAND I HAVE TWO
SENTENCING SHEETS THAT YOU HAVE SIGNED CHANGING YOUR PLEA
FROM NOT GUILTY TO GUILTY; IS THAT CORRECT?

MR. MAXWELL: YES, MA'AM.

THE COURT: IS IT YOUR INTENTION TO CHANGE YOUR PLEA
HERE TODAY?

(WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A

INTENTIONALLY
THIS PAGE INTENTIONALLY
LEFT BLANK

STATE () VSUS MICHAEL MAXWELL
PLEA HEARING

1 CONFERENCE, OFF THE RECORD.)

2 (WHEREUPON, COURT RESUMED.)

3 THE COURT: DO YOU -- ARE YOU PLEADING GUILTY TO THESE
4 TWO---

5 MR. MAXWELL: YES, MA'AM.

6 THE COURT: ---OFFENSES HERE TODAY? MR. MAXWELL, I HAVE
7 A FEW QUESTIONS TO DETERMINE WHETHER OR NOT YOU ARE PLEADING
8 GUILTY FREELY AND VOLUNTARILY.

9 WE ARE IN THE MIDDLE -- DAY THREE -- OF YOUR JURY TRIAL,
10 AND YOU HAVE A CONSTITUTIONAL RIGHT TO A JURY TRIAL. DO YOU
11 UNDERSTAND THAT, SIR.

12 MR. MAXWELL: YES, MA'AM.

13 THE COURT: BY PLEADING GUILTY AT THIS TIME, SIR, YOU'RE
14 WAIVING YOUR RIGHT TO THAT JURY TRIAL; DO YOU UNDERSTAND
15 THAT?

16 MR. MAXWELL: YES, MA'AM.

17 THE COURT: DO YOU WISH TO WAIVE THAT RIGHT HERE TODAY?

18 MR. MAXWELL: YES, MA'AM.

19 THE COURT: WHEN YOU HAVE A JURY TRIAL, YOU ARE -- YOU
20 HAVE THE CONSTITUTIONAL RIGHT TO HAVE A JURY DETERMINE YOUR
21 GUILT BEYOND A REASONABLE DOUBT---

22 MR. MAXWELL: YES, MA'AM.

23 THE COURT: ---BASED UPON THE EVIDENCE THAT THE STATE
24 PRESENTS AS WELL AS ANY EVIDENCE YOU MAY INTRODUCE. DO YOU
25 UNDERSTAND THAT RIGHT, MR. MAXWELL?

1 MR. MAXWELL: YES, MA'AM.

2 THE COURT: DO YOU WISH TO WAIVE OR GIVE UP THAT RIGHT?

3 MR. MAXWELL: YES, MA'AM.

4 THE COURT: BY PLEADING GUILTY, MR. MAXWELL, YOU ARE
5 GIVING UP YOUR RIGHT AGAINST SELF-INCRIMINATION, WHICH IS
6 YOUR RIGHT TO SAY NOTHING AT ALL. DO YOU UNDERSTAND THAT
7 RIGHT, SIR?

8 MR. MAXWELL: YES, MA'AM.

9 THE COURT: DO YOU WAIVE THAT RIGHT HERE TODAY?

10 MR. MAXWELL: YES, MA'AM.

11 THE COURT: BY PLEADING GUILTY, YOU ARE ALSO WAIVING
12 YOUR RIGHT TO CONFRONT AND BE CONFRONTED BY THE WITNESSES
13 AGAINST YOU.

14 WE HAVE HAD APPROXIMATELY FIVE WITNESSES COME IN AND
15 TESTIFY YESTERDAY.

16 YOU ALSO HAVE THE RIGHT TO HAVE WITNESSES CALLED ON YOUR
17 OWN BEHALF. DO YOU UNDERSTAND THOSE RIGHTS, SIR?

18 MR. MAXWELL: YES, MA'AM.

19 THE COURT: ARE YOU WAIVING YOUR RIGHT TO CONFRONT AND
20 BE CONFRONTED, AS WELL AS TO CALL ANY WITNESSES?

21 MR. MAXWELL: YES, MA'AM.

22 THE COURT: BY PLEADING GUILTY, MR. MAXWELL, YOU ARE
23 ALSO GIVING UP ANY DEFENSE YOU MAY HAVE TO EITHER ONE OF
24 THESE OFFENSES. DO YOU UNDERSTAND THAT, SIR?

25 MR. MAXWELL: YES, MA'AM.

STATE VS. MICHAEL MAXWELL
PLEA HEARING

1 THE COURT: ALL RIGHT. MR. MAXWELL, HAS YOUR ATTORNEY,
2 MS. HUNTER AND MS. FORSYTHE, EXPLAINED ALL OF THESE RIGHTS TO
3 YOU?

4 MR. MAXWELL: YES, MA'AM.

5 THE COURT: DO YOU NEED ANY ADDITIONAL TIME TO MEET WITH
6 EITHER OR BOTH OF YOUR ATTORNEYS SO -- TO EXPLAIN YOUR RIGHTS
7 ANY FURTHER TO YOU?

8 MR. MAXWELL: NO, MA'AM.

9 THE COURT: ALL RIGHT. MR. MAXWELL, YOU'RE HERE TO
10 PLEAD GUILTY. YOU ARE FACING TWO CHARGES; ONE FOR MURDER AND
11 ONE FOR BURGLARY IN THE FIRST DEGREE.

12 BOTH OF THOSE OFFENSES ARE CLASSIFIED AS VIOLENT
13 OFFENSES. DO YOU UNDERSTAND WHAT THAT CLASSIFICATION MEANS?

14 MR. MAXWELL: YES, MA'AM.

15 THE COURT: COULD YOU EXPLAIN IT TO ME?

16 MR. MAXWELL: UM -- I'M A VIOLENT PERSON PRETTY MUCH.

17 THE COURT: MR. MAXWELL, WHAT THAT CLASSIFICATION MEANS,
18 THAT HAS TO DO WITH THE LENGTH OF TIME THAT YOU HAVE TO SERVE
19 ON THESE OFFENSES. DO YOU UNDERSTAND -- DID YOUR ATTORNEYS
20 EXPLAIN TO YOU, UH, IT HAS NOTHING TO DO NECESSARILY WITH THE
21 NATURE OR THE DESCRIPTION OF THE OFFENSE, IT'S A
22 CLASSIFICATION THAT HAS TO DO WITH HOW LONG YOU MUST SERVE
23 IN CUSTODY BEFORE YOU WOULD EVEN BE ELIGIBLE FOR PAROLE. DO
24 YOU UNDERSTAND THAT?

25 MR. MAXWELL: YES, MA'AM.

1 THE COURT: ALL RIGHT. THIS IS ALSO CLASSIFIED AS A
2 MOST -- BOTH OF THEM ARE ALSO CLASSIFIED AS A MOST SERIOUS
3 OFFENSE. DO YOU UNDERSTAND THAT, SIR?

4 MR. MAXWELL: YES, MA'AM.

5 THE COURT: COULD YOU EXPLAIN WHAT THAT CLASSIFICATION
6 MEANS?

7 MR. MAXWELL: UH -- A LIFE SENTENCE.

8 THE COURT: HAVE YOU HEARD THE TERM -- PERHAPS YOUR
9 ATTORNEYS EXPLAINED IT TO YOU IN THE TERMINOLOGY OF -- OF
10 STRIKES?

11 MR. MAXWELL: YES, MA'AM.

12 THE COURT: ALL RIGHT. AND A COMBINATION OF SERIOUS AND
13 MOST SERIOUS STRIKES, SHOULD YOU COMMIT A -- AN OFFENSE OF
14 SERIOUS OR MOST SERIOUS NATURE, YOU NOW HAVE ACCUMULATED TWO
15 MOST SERIOUS STRIKES.

16 UH -- AND I'M SURE THAT YOUR ATTORNEYS HAVE EXPLAINED TO
17 YOU THAT IF YOU WERE TO COMMIT ANOTHER SERIOUS OR MOST
18 SERIOUS OFFENSE IN THE FUTURE, THE STATE COULD SEEK TO
19 SENTENCE YOU WITH LIFE WITHOUT PAROLE. DO YOU UNDERSTAND
20 THAT, SIR?

21 MR. MAXWELL: YES, MA'AM.

22 THE COURT: MR. MAXWELL, IT IS IMPORTANT THAT I EXPLAIN
23 THESE CLASSIFICATIONS TO YOU AND THAT I UNDERSTAND THAT YOU
24 HAVE HAD AMPLE OPPORTUNITY TO MEET WITH YOUR ATTORNEYS BEFORE
25 YOU ENTER INTO THIS PLEA.

STATE VS. MICHAEL MAXWELL
PLEA HEARING

1 SIR, DO YOU UNDERSTAND ALL OF THOSE THINGS THAT I HAVE
2 JUST EXPLAINED TO YOU?

3 MR. MAXWELL: YES, MA'AM.

4 THE COURT: MR. MAXWELL, YOU UNDERSTAND THAT THE
5 POSSIBLE PUNISHMENT THAT YOU ARE FACING ON A MURDER CHARGE, I
6 MUST SENTENCE YOU TO THIRTY YEARS UP TO LIFE? DO YOU
7 UNDERSTAND THAT THAT'S THE POSSIBLE PUNISHMENT?

8 MR. MAXWELL: YES, MA'AM.

9 THE COURT: DO YOU UNDERSTAND THAT THE POSSIBLE
10 PUNISHMENT IN THE BURGLARY FIRST DEGREE IS A MINIMUM OF
11 FIFTEEN YEARS UP TO LIFE IN PRISON? DO YOU UNDERSTAND THAT,
12 SIR?

13 MR. MAXWELL: YES, MA'AM.

14 THE COURT: IF I WERE TO IMPOSE THE MAXIMUM SENTENCE OF
15 TIME HERE AND RUN EACH OF THESE INDICTMENTS CONSECUTIVELY --
16 MEANING BACK TO BACK -- DO YOU UNDERSTAND THAT I CAN SENTENCE
17 YOU UP TO TWO LIFE SENTENCES?

18 MR. MAXWELL: YES, MA'AM.

19 THE COURT: KNOWING THAT, DO YOU STILL WISH TO CHANGE
20 YOUR PLEA TO GUILTY HERE TODAY?

21 MR. MAXWELL: YES, MA'AM.

22 THE COURT: HAS ANYBODY PROMISED YOU OR THREATENED YOU
23 TO PLEAD GUILTY HERE TODAY?

24 MR. MAXWELL: NO, MA'AM.

25 THE COURT: WHOSE DECISION WAS IT FOR YOU TO PLEAD

1 GUILTY?

2 MR. MAXWELL: MY DECISION.

3 THE COURT: MR. MAXWELL, HAVE YOU BEEN COMPLETELY
4 SATISFIED WITH THE SERVICES OF MS. HUNTER?

5 MR. MAXWELL: YES, MA'AM.

6 THE COURT: ANY COMPLAINTS ABOUT THE WAY SHE'S HANDLED
7 YOUR MATTERS?

8 MR. MAXWELL: NO, MA'AM.

9 THE COURT: HAVE YOU BEEN COMPLETELY SATISFIED WITH THE
10 SERVICES OF MS. FOR- -- FORSYTHE?

11 MR. MAXWELL: YES, MA'AM.

12 THE COURT: ANY COMPLAINTS ABOUT THE WAY SHE'S HANDLED
13 YOUR CASE?

14 MR. MAXWELL: NO, MA'AM.

15 THE COURT: IS THERE ANYTHING THAT EITHER ONE OF YOUR
16 ATTORNEYS COULD HAVE DONE OR SHOULD HAVE DONE TO ASSIST YOU
17 IN YOUR DEFENSE?

18 MR. MAXWELL: UH -- NO, MA'AM.

19 THE COURT: ANY COMPLAINTS ABOUT THE WAY THAT EITHER ONE
20 OF THEM HAS HANDLED THIS CASE?

21 MR. MAXWELL: NO, MA'AM.

22 THE COURT: HAVE THEY EXPLAINED TO YOU YOUR RIGHTS, YOUR
23 CONSTITUTIONAL RIGHTS, AND THE PUNISHMENT THAT YOU ARE
24 FACING?

25 MR. MAXWELL: YES, MA'AM.

STATE VS. MICHAEL MAXWELL
PLEA HEARING

1 THE COURT: MR. MAXWELL, DID YOU COMMIT THE OFFENSE OF
2 MURDER?

3 MR. MAXWELL: YES, MA'AM.

4 THE COURT: DID YOU COMMIT THE OFFENSE OF BURGLARY IN
5 THE FIRST DEGREE?

6 MR. MAXWELL: YES, MA'AM.

7 THE COURT: DO YOU -- HAS ANYONE TOLD YOU THAT I WOULD
8 SENTENCE YOU A CERTAIN WAY HERE TODAY?

9 MR. MAXWELL: NO, MA'AM.

10 THE COURT: YOU HAVE THE RIGHT TO APPEAL THIS GUILTY
11 PLEA AND THE SENTENCE THAT I IMPOSE, BUT YOU OR YOUR ATTORNEY
12 MUST DO SO WITHIN TEN DAYS. DO YOU UNDERSTAND THAT, SIR?

13 MR. MAXWELL: YES, MA'AM.

14 THE COURT: MR. MAXWELL, ON INDICTMENT 2008-GS-08-1444,
15 WHICH IS A TRUE-BILLED INDICTMENT FOR BURGLARY, THE STATE
16 ALLEGES THAT YOU DID, ON OR ABOUT NOVEMBER 11, 2007, ENTER
17 INTO THE DWELLING OF CHRISTOPHER TESENIAR WITHOUT PERMISSION
18 AND WITH THE INTENT TO COMMIT A CRIME THEREIN. IS THAT WHAT
19 YOU DID, SIR?

20 MR. MAXWELL: YES, MA'AM.

21 THE COURT: HOW DO YOU PLEA TO THAT CHARGE?

22 MR. MAXWELL: I PLEA GUILTY.

23 THE COURT: THE STATE FURTHER ALLEGES IN INDICTMENT
24 2008-GS-08-766, WHICH IS A TRUE-BILLED INDICTMENT FOR MURDER,
25 THAT YOU DID, ON OR ABOUT NOVEMBER 11TH 2007, UNLAWFULLY,

STATEISUS MICHAEL MAXWELL

PLEA HEARING

1 WILLFULLY, KNOWINGLY, AND WITH MALICE OR FORETHOUGHT KILL ONE
2 CHRISTOPHER TESENIAR BY SHOOTING HIM AND THAT MR. TESENIAR
3 DID DIE AS A PROXIMATE RESULT THEREOF. IS THAT WHAT YOU DID,
4 SIR?

5 MR. MAXWELL: YES -- YES, MA'AM.

6 THE COURT: HOW DO YOU PLEA TO THAT OFFENSE?

7 MR. MAXWELL: GUILTY.

8 THE COURT: ARE YOU PLEADING GUILTY BECAUSE YOU, IN
9 FACT, ARE GUILTY OF BOTH OF THESE OFFENSES?

10 MR. MAXWELL: YES, MA'AM.

11 THE COURT: MR. MAXWELL, I'M GOING TO LISTEN -- I HEARD
12 SOME WITNESSES YESTERDAY, BUT I'M GOING TO LISTEN TO THE
13 FACTS AS PRESENTED BY THE SOLICITOR AND I WILL HEAR FROM
14 THREE FAMILY MEMBERS, AS WELL AS ANY PRIOR CONVICTIONS THAT
15 YOU MAY HAVE.

16 PLEASE LISTEN CAREFULLY TO THE FACTS, AND I HAVE A FEW
17 MORE QUESTIONS TO ASK YOU BEFORE I WILL ACCEPT YOUR PLEA OF
18 GUILT TO THESE TWO OFFENSES.

19 YOU-ALL MAY BE SEATED.

20 MS. BIAGIANTI: THANK YOU, YOUR HONOR. MAY IT PLEASE
21 THE COURT. AS YOU KNOW, YOUR HONOR, THIS OFFENSE OCCURRED
22 NOVEMBER 11, 2007 AT 380 CYPRESS PLANTATION ROAD HERE IN
23 BERKELEY COUNTY.

24 UM -- YOUR HONOR, TO REMIND YOU, THIS VICTIM,
25 CHRIS TESNEA (PHONETIC/SIC) -- TESENIAR, EXCUSE ME --

STATE VERSUS MICHAEL MAXWELL
PLEA HEARING

1 PRONOUNCING IT THE WAY YOU'VE BEEN PRONOUNCING IT,
2 YOUR HONOR -- TESENIAR, UM, GOT OFF WORK, UM, THAT SATURDAY;
3 CAME TO HIS HOUSE WHERE HE LIVED WITH HIS BROTHER, J. D., AND
4 ANTHONY COMBS, A ROOMMATE; UM, PLAYING CARDS -- A NIGHT
5 INSIDE FOR THEM -- UM, WHEN THIS DEFENDANT SHOT AND KILLED
6 HIM, YOUR HONOR.

7 UM -- YOU KNOW THE FACTS LEADING UP TO THE EVENT.

8 THE IRONY OF THIS IS, WE HAVE -- MS. WILLIAMS AND I --
9 HAVE THOROUGHLY LOOKED AT THIS CASE, SPENT MANY, MANY, MANY
10 HOURS ON THIS CASE, AND WE ARE CONVINCED AND CONFIDENT THAT
11 THIS DEFENDANT WAS THE SHOOTER.

12 UM -- THE IRONY IS THAT MR., UM, TESENIAR DID NOT STEAL
13 THE JEWELRY. THERE'S NO QUESTION FROM EVERYTHING WE KNOW
14 THAT HE DID PARTAKE IN TAKING THE PILLS BUT HE DID NOT STEAL
15 THE JEWELRY.

16 WITNESSES WOULD TESTIFY TODAY, UM, THERE WERE TWO
17 VISITORS IN THE HOUSE AS WELL WITH THE -- J. D. TESENIAR AND
18 ANTHONY COMBS -- THAT HEARD SOMEONE KICKING IN THE DOOR.
19 UM -- MULTIPLE KICKS KICKING IN THE DOOR, RUN STRAIGHT,
20 YOUR HONOR -- STRAIGHT TO THE -- TO THE VICTIM'S BEDROOM.
21 SO, OBVIOUSLY, THE DEFENDANT HAD TO KNOW WHERE THE
22 BEDROOM WAS.

23 IT WOULD ALSO COMING (SIC) OUT -- COME OUT IN TESTIMONY
24 THAT THIS DEFENDANT HAD BEEN TO THAT HOUSE ABOUT A MONTH
25 PRIOR. FROM WHAT WE KNOW, ADAM HAS NEVER BEEN TO THAT HOUSE

1 EVER. AND THAT'S WHAT THE WITNESSES WOULD TESTIFY TO, YOUR
2 HONOR.

3 UM -- WENT STRAIGHT TO THE BACK ROOM, UM, KICKED IN HIS
4 BEDROOM DOOR. THE VICTIM, YOUR HONOR, WAS ASLEEP IN BED.
5 THIS WAS ABOUT FOUR-FORTY-FIVE IN THE MORNING.

6 AND THE WITNESSES WILL TESTIFY THAT THEY HEARD THE
7 SHOOTER SAY, YOU STOLE SOMETHING. THEY COULDN'T UNDERSTAND
8 THE REST, BUT CLEARLY YOU STOLE SOMETHING.

9 THEY HEARD, UM, THE FOOTSTEPS RUNNING OUT AND TWO CAR
10 DOORS SLAM.

11 ANTHONY COMBS IN HIS STATEMENT TOLD POLICE HE CAUGHT --
12 SAW TWO SILHOUETTES PASS HIS DOOR.

13 EVERYONE, OBVIOUSLY, WAS PANIC FROZEN; THEY DIDN'T KNOW
14 WHAT WAS GOING ON.

15 THEY ENTERED THE ROOM AND SAW, UH, THE VICTIM HAD --
16 WAS, UH -- MR. COMBS WOULD TESTIFY -- WAS ACTUALLY LITERALLY
17 SLIDING OFF HIS BED.

18 UM -- HE WAS STILL ALIVE AT THAT POINT, YOUR HONOR.
19 UM -- HAVING A DIFFICULT TIME BREATHING.

20 UH -- ANTHONY COMBS WOULD TESTIFY THAT WHEN THEY GOT TO
21 THE ROOM HE OBVIOUSLY HAD A GUNSHOT WOUND TO THE CHEST; YOU
22 UNDERSTAND -- SAW THOSE GRUESOME PHOTOS. A GUNSHOT WOUND TO
23 THE FACE.

24 THE PATHOLOGIST WOULD TESTIFY THAT THIS WAS OBVIOUSLY A
25 SAWED-OFF SHOTGUN AT VERY CLOSE RANGE; TWO TO THREE FEET

STATE ~~VERSUS~~ MICHAEL MAXWELL
PLEA HEARING

1 APPROXIMATELY. AND THAT WOULD -- COULD BE TOLD BY THE
2 SCALLOPING OF THE WOUND.

3 UM -- ANTHONY COMBS WOULD TESTIFY WHEN THEY ENTERED THE
4 ROOM THEY COULD -- HE HEARD SOMETHING THAT HE DESCRIBED TO
5 MS. WILLIAMS AND I AS A DRINK BEING POURED OUT. AND THAT WAS
6 THE VICTIM'S BLOOD, YOUR HONOR, COMING OUT.

7 UM -- YOUR HONOR, THE -- THE CODEFENDANT IN THIS CASE IS
8 GONNA TESTIFY THAT THAT NIGHT HE AND THE DEFENDANT WERE
9 TOGETHER. AND JUST TO REMIND YOU, THE CODEFENDANT IS CHARGED
10 WITH EXACTLY THE SAME THING, MURDER AND BURGLARY FIRST.

11 UH -- THAT THEY HAD BEEN DRINKING, DOING PILLS THAT
12 NIGHT, GETTING RILED UP, TALKING ABOUT GOING TO -- TO GET
13 CHRIS.

14 WHERE IT STARTED OFF IS, WE'RE GONNA GO BEAT HIS BUTT,
15 ESCALATING TO A POINT AS I'M GONNA GO KILL HIM.

16 AND THEY WENT OVER -- ADAM'S GONNA TESTIFY -- THAT THEY
17 WENT OVER TO MR. MAXWELL'S HOUSE, YOUR HONOR, THAT NIGHT IN
18 THE EARLY MORNING HOURS, AND THEY GOT A PAINT BALL MASK AND
19 GLOVES. THEY THEN WENT OVER TO T. K.'S HOUSE THAT HE TOLD
20 YOU YESTERDAY AND THE PLAN WAS FOR T. K. TO GO WITH THEM.
21 AND T. K., FOR WHATEVER REASON, DID NOT GO.

22 UH -- THEY THEN DROVE STRAIGHT TO THE VICTIM'S HOUSE,
23 YOUR HONOR. THE DEFENDANT, UH, ADAM TARPLEY, WOULD TELL YOU
24 THAT HE WAS ACTUALLY IN THE CAR WHEN THIS DEFENDANT JUMPED
25 OUT OF THE CAR AND STARTED KICKING IN THE DOOR.

STATE VERSUS MICHAEL MAXWELL
PLEA HEARING

1 THE PLAN WAS THAT MR. TARPLEY WAS GONNA STAY IN THE CAR,
2 AND AS HE TOLD US, HE DIDN'T WANT TO BE A PART OF THE
3 SHOOTING 'CAUSE HE DIDN'T NEED THAT CHARGE. UNFORTUNATELY
4 FOR HIM, HE OBVIOUSLY DOESN'T UNDERSTAND THE HAND OF ONE IS
5 THE HAND OF ALL IN THIS CASE.

6 UM -- HE SAYS THOUGH, THE DEFENDANT COULDN'T KICK IN THE
7 DOOR, SO HE GOT OUT OF THE CAR AND ASSISTED HIM IN KICKING IN
8 THE DOOR. UH -- HE SAID THIS DEFENDANT WENT STRAIGHT TO THE
9 BEDROOM AND ADAM TARPLEY FOLLOWED.

10 UM -- APPARENTLY, THE FIRST SHOT OBVIOUSLY MR., UH,
11 TESENIAR DID NOT DIE. AND THEY WERE LEFT WITH THE CHOICE OF
12 DO WE LEAVE HIM OR DO WE KILL HIM BECAUSE MR. TARPLEY DID NOT
13 HAVE A MASK ON. HE HAD THE MASK ON AND HE HAD THE GLOVES
14 ON.

15 AFTER THEY FLED THE SCENE, YOUR HONOR, THE EERIE
16 THING IS, THEY CALLED -- THE PHONE RECORDS WILL PROVE --
17 ANNETTE HENDERSON. THAT IS THE LADY WHOSE HOUSE THEY WERE
18 AT.

19 ADAM TARPLEY TOLD US THAT FROM THE GET-GO -- AND WE GOT
20 THE PHONE RECORDS LATER ON TO PROVE THAT -- AT FORTY-FORTY-
21 SEVEN THEY MADE A PHONE CALL TO ANNETTE HENDERSON AND SAID,
22 IT'S DONE, WE KILLED HIM.

23 GO STRAIGHT BACK TO HER HOUSE. ADAM TARPLEY WOULD
24 TELL YOU THAT, UM, THEY THREW OUT THE GLOVES ONE BY ONE, UM,
25 SO THAT THE POLICE WOULD NOT FIND IT. THEY GO STRAIGHT TO

1 ANNETTE HENDERSON'S HOUSE.

2 UH -- IT WAS A PUMP SHOTGUN, YOUR HONOR, SO TWO OF THE
3 SHELLS WERE, UH, DISCHARGED INTO THE VICTIM'S HOUSE. THE
4 OTHER SHELL WAS STILL IN THE WEAPON.

5 THEY TOOK THE BULLET TO NOWHERE BAR, WHICH IS A BAR ON
6 THE WAY TO ANNETTE'S HOUSE, THREW THAT IN THE DUMPSTER.

7 WHEN THEY GOT TO ANNETTE'S HOUSE, THEY PULLED THE CAR
8 THAT THEY WERE IN, WHICH WAS THE SISTER'S CAR, AROUND BACK OF
9 THE HOUSE.

10 UM -- MR. TARPLEY AND, UH, THE DEFENDANT, YOUR HONOR,
11 THEN BECAME AWARE THAT, UM, YOU KNOW, THAT THEY MIGHT HAVE
12 LEFT FOOTPRINTS ON THE DOOR. SO, THE LIGHT BULB CAME ON THAT
13 THEY NEEDED TO DO SOMETHING WITH THEIR SHOES.

14 UH -- MR. TARPLEY WOULD TELL US, BECAUSE THIS WAS SUCH A
15 CLOSE PROXIMITY SHOOTING, THAT THEY BELIEVE THEY HAD BLOOD ON
16 THEIR CLOTHES.

17 THEY GAVE THE -- THE BLOODY CLOTHES TO ANNETTE HENDERSON
18 TO WASH. SHE WASHED THOSE.

19 THEY WENT OUTSIDE AND BURNED THE SHOES. ADAM TARPLEY
20 WOULD TELL YOU THAT THEY USED PAINT THINNER, YOUR HONOR,
21 TO -- AS AN ACCELERANT.

22 AND THAT IS WHY MS. TINSKEY'S TESTIMONY YESTERDAY WAS SO
23 IMPORTANT; 'CAUSE SHE -- OBVIOUSLY IT WAS CLEAR TO THE COURT
24 THAT THIS WAS SUCH A HORRIBLE, HORRIBLE SMELL VERY EARLY IN
25 THE MORNING, THE EXACT TIMEFRAME THAT THEY WOULD BE AT

1 MS. ANNETTE HENDERSON'S HOUSE.

2 THEN THE EVEN SCARIER PART IS, YOUR HONOR, ADAM TARPLEY
3 WOULD TELL YOU THAT AFTER THIS THEY DECIDED TO GO TO WAFFLE
4 HOUSE AND EAT BREAKFAST.

5 AND, THIS DEFENDANT WAS SO, UM, DISTRAUGHT APPARENTLY
6 ABOUT HIS ACTIONS THAT HE COULD NOT PHYSICALLY EAT AT WAFFLE
7 HOUSE. SO, THEY TOOK HIM BACK TO HIS FATHER'S HOUSE.
8 MR. TARPLEY, JENNIFER MAXWELL, ANNETTE HENDERSON, AND
9 QUINTON KNIGHT -- THE OTHER MAN THAT YOU HEARD OF -- UM, ATE
10 AT WAFFLE HOUSE.

11 UM -- POLICE, UH, RESPONDED TO THE SCENE. THEY LEARNED
12 THAT, UH, THIS DEFENDANT AND T. K. HAD CALLED THE VICTIM
13 EARLIER IN THE NIGHT. AND, YOUR HONOR, THE PHONE RECORD
14 WOULD SHOW THAT THERE ARE PHONE CALLS BACK AND FORTH BETWEEN
15 THE VICTIM AND THIS DEFENDANT'S PHONE AND THEN THERE'S ALSO
16 PHONE CALLS THAT T. K. TESTIFIED TO THAT HE ACTUALLY CALLED
17 FROM HIS HOUSE PHONE TO WARN CHRIS THAT SOMETHING WAS
18 BREWING, SOMETHING WAS GONNA HAPPEN.

19 UM -- YOUR HONOR, WE WOULD ASK, UM, THAT YOU LISTEN --
20 OH, EXCUSE ME. LET ME BACK UP.

21 WE ALSO HAVE A -- THE DEFENDANT'S STATEMENT, WHICH WOULD
22 COME INTO EVIDENCE, THAT HE TOLD POLICE THAT, UH, HE DIDN'T
23 HAVE ANYTHING TO DO WITH THE SHOOTING.

24 AND AGAIN, SCARY ENOUGH, IN HIS OWN STATEMENT, HIS --
25 THE VERY LAST LINE OF HIS STATEMENT, YOUR HONOR, SAYS, A

STATE VERSUS MICHAEL MAXWELL
PLEA HEARING

1 PIECE OF JEWELRY IS NOT WORTH A LIFE.

2 UNFORTUNATELY, THAT WAS A LIE AND HE -- HE -- WE ARE
3 CONFIDENT HE WAS THE SHOOTER.

4 WE HAVE SEVERAL JAIL PEOPLE -- WE HAVE APPROXIMATELY SIX
5 TO SEVEN JAIL PEOPLE WHO WOULD TESTIFY TODAY THAT ONCE HE GOT
6 INTO JAIL THAT DAY HE BEGAN BRAGGING ABOUT KILLING, UM,
7 CHRIS TESENIAR BECAUSE HE STOLE FROM HIM. AND HE BRAGGED TO
8 THESE PEOPLE THAT HE WAS PROUD BECAUSE HE GAVE HIM A CLOSED
9 CASKET, YOUR HONOR.

10 SO, WE WOULD ASK THAT YOU, UH, LISTEN TO MR. TESNER
11 (PHONETIC/SIC) -- TESENIAR, WHICH IS THE VICTIM'S FATHER;
12 DANA COULSTON, WHICH IS CHRIS'S, UH, GIRLFRIEND, AND THEY HAD
13 A CHILD IN COMMON; AND TASHA TESENIAR WHO IS THE VICTIM'S
14 SISTER.

15 THE COURT: ALL RIGHT. ONE SECOND; PREVIOUS
16 CONVICTIONS, MS. BIAGIANTI?

17 MS. BIAGIANTI: YES, YOUR HONOR. THE ONLY PREVIOUS
18 CONVICTION -- HE HAD TWO, YOUR HONOR -- ARE A SIMPLE
19 POSSESSION OF MARIJUANA IN 2002, AND THE ATTEMPT AND
20 CONSPIRACY OF A DRUG LAW IN 2004, YOUR HONOR.

21 THE COURT: MR. MAXWELL, PLEASE STAND. YOU HEARD THE
22 FACTS AS PRESENTED BY THE STATE. ARE THOSE FACTS TRUE; IS
23 THAT WHAT YOU DID?

24 MR. MAXWELL: (NO RESPONSE.)

25 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A

1 CONFERENCE, OFF THE RECORD.)

2 (WHEREUPON, COURT RESUMED.)

3 THE COURT: MR. MAXWELL, THE -- THOSE ARE THE FACTS THAT
4 THE STATE WOULD PRESENT AT TRIAL.

5 MR. MAXWELL: YES, MA'AM.

6 THE COURT: AND MS. BIAGIANTI WAS NOT AT THE SCENE THAT
7 EVENING. IF THERE ARE DIFFERENCES IN THE FACTS, IT IS
8 IMPORTANT THAT YOU'RE PLEADING GUILTY FREELY AND VOLUNTARILY.
9 THIS IS AN OPPORTUNITY FOR YOU TO CORRECT OR, UH, INSERT ANY
10 FACTS. IF ANYTHING NEEDS TO BE CHANGED, CORRECTED OR
11 DELETED, THIS IS AN OPPORTUNITY, MR. MAXWELL.

12 YOU'RE PLEADING GUILTY TO MURDER AND TO BURGLARY IN THE
13 FIRST DEGREE.

14 MR. MAXWELL: YES, MA'AM.

15 THE COURT: IF THOSE ARE THE FACTS AS STATED, PLEASE
16 TELL ME. IF NOT, THIS IS AN OPPORTUNITY FOR YOU TO TELL ME
17 WHAT YOU DID.

18 MR. MAXWELL: YES, MA'AM; I'LL TELL YOU WOULD HAPPENED
19 THAT NIGHT.

20 AT AROUND FOUR O'CLOCK IN THE MORNING, ME AND ADAM -- I
21 DROVE ADAM TO T., UH -- T. K.'S HOUSE TO SEE IF T. K. WOULD
22 COME WITH US BECAUSE T. K. WAS THE ONLY ONE THAT COULD TELL
23 US WHERE CHRIS STAYED AT IN THE HOUSE. BECAUSE, I'VE ONLY
24 BEEN TO THE TRAILER ONE TIME AND ONLY BEEN TO THE LIVING
25 ROOM, I DID NOT KNOW WHERE CHRIS SLEPT AT.

STATE VERSUS MICHAEL MAXWELL

PLEA HEARING

1 SO, T. K. TOLD US WHERE HE WAS AT. I TOLD ADAM WHERE HE
2 HAD TO GO TO, AND I DROVE ADAM TO THE TESENIAR'S HOUSE.

3 I TRIED TO KICK IN THE DOOR, BUT I COULDN'T GET IT OPEN.
4 ADAM KICKED IT IN, RAN IN THERE, AND I WAS FOLLOWING BEHIND
5 ADAM AND I WATCHED ADAM SHOT CHRIS THREE TIMES.

6 THE COURT: AND WHAT TYPE OF GUN WAS IT, MR. MAXWELL?

7 MR. MAXWELL: IT WAS A PISTOL GRIP SHOTGUN.

8 THE COURT: AND WHO HAD THE GUN?

9 MR. MAXWELL: ADAM TARPLEY.

10 THE COURT: DID YOU KNOW THAT HE HAD A GUN?

11 MR. MAXWELL: YES, MA'AM; I DID.

12 THE COURT: AND WHAT DID YOU THINK THAT MR. TARPLEY WAS
13 GOING TO DO WITH THAT GUN?

14 MR. MAXWELL: I KNEW THAT HE WAS GONNA KILL CHRIS.

15 THE COURT: AND DID YOU STOP HIM AT ANY POINT,
16 MR. MAXWELL?

17 MR. MAXWELL: NO, MA'AM.

18 THE COURT: AND IT WAS YOU THAT KICKED THE DOOR OPEN?

19 MR. MAXWELL: I TRIED TO, BUT I COULDN'T GET IT OPEN.

20 THE COURT: ALL RIGHT; BUT IT WAS YOUR INTENTION TO KICK
21 THE DOOR OPEN, IS THAT CORRECT?

22 MR. MAXWELL: YES, MA'AM.

23 THE COURT: DID YOU HAVE THE PERMISSION TO BE AT THAT
24 HOME?

25 MR. MAXWELL: NO, MA'AM.

STATE VERSUS MICHAEL MAXWELL
PLEA HEARING

1 THE COURT: MR. MAXWELL, WITH THE -- WITH WHAT YOU HAVE
2 JUST TOLD ME, YOU AGREE THAT YOU COMMITTED THE OFFENSE OF
3 MURDER?

4 MR. MAXWELL: YES, MA'AM.

5 THE COURT: AND YOU AGREE THAT YOU ARE GUILTY OF THE
6 OFFENSE OF BURGLARY IN THE FIRST DEGREE?

7 MR. MAXWELL: YES, MA'AM.

8 THE COURT: ALL RIGHT; THANK YOU. YOU MAY BE SEATED.
9 I'LL BE HAPPY TO HEAR FROM THE VICTIMS.

10 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
11 CONFERENCE, OFF THE RECORD.)

12 (WHEREUPON, COURT RESUMED.)

13 MS. TASHA TESENIAR: OKAY, MY NAME IS TASHA TESENIAR,
14 THAT'S T-E-S-E-N-I-A-R.

15 THE COURT: AND I APOLOGIZE FOR MISPRONOUNCING YOUR
16 NAME.

17 MS. TASHA TESENIAR: THAT'S ALL RIGHT; IT HAPPENS A LOT.
18 UM -- I'M CHRIS'S LITTLE SISTER. UM -- WE WERE ELEVEN MONTHS
19 APART. UM -- WE WERE INSEPARABLE, ESPECIALLY WHEN WE WERE
20 YOUNGER. EVERYONE THOUGHT WE WERE TWINS BECAUSE WE WERE SO
21 CLOSE IN AGE.

22 I HAVE WATCHED MY FATHER CRUMBLE DOWN TO NOTHING FROM
23 LOSING HIS CHILD. AND MY FATHER IS THE MOST IMPORTANT THING
24 ON THIS PLANET TO ME, AND TO SEE HIM GO FROM SOMETHING TO
25 NOTHING BECAUSE HIS SON IS GONE HAS BEEN THE HARDEST

STATE VERSUS MICHAEL MAXWELL
PLEA HEARING

1 CHALLENGE IN MY LIFE.

2 AND TO SEE A THREE-YEAR-OLD WHO STILL KNOWS -- ALMOST
3 FOUR-YEAR-OLD -- WHO STILL KNOWS WHO HIS FATHER IS,
4 IT'S -- I'M -- I'M GLAD THAT WE HAVE HIM, BUT AT THE SAME
5 TIME IT'S NOT FAIR FOR MY BROTHER NOT TO BE HERE TO RAISE HIS
6 CHILD WHO HE LOVED SO MUCH, HE SPENT ALMOST EVERY DAY WITH
7 WHO WORKED -- UNLIKE THE OTHERS, HE HAD A JOB THAT WAS
8 PREVENTING HIM FROM DOING BAD THINGS. HE HAD A JOB;
9 SOMETHING TO KEEP HIS MIND BUSY. AND HE LOVED HIS SON,
10 YOUR HONOR.

11 AND IF -- SINCE CHRIS ISN'T HERE TO TELL YOU HOW HE IS,
12 THAT'S HIS -- THAT'S JUST A FEW OF HIS FRIENDS; AND WE DON'T
13 CONSIDER ANY OF THEM FRIENDS, THEY'RE ALL FAMILY.

14 THIS WHOLE ENTIRE COMMUNITY HAS BEEN AFFECTED. I -- I
15 REMEMBER FOR WEEKS I WAS SCARED TO WALK OUTSIDE. I DIDN'T
16 KNOW IF THIS WAS OVER; I DIDN'T KNOW IF SOMEBODY WAS GONNA
17 COME SHOT ME; I DIDN'T KNOW IF SOMEBODY WAS GONNA COME SHOT
18 MY LITTLE SISTER.

19 WE DIDN'T KNOW WHAT IT WAS ABOUT. IT'S NOT 'TIL NOW,
20 WHEN SOMEBODY PLEADS GUILTY THAT WE KNOW EXACTLY WHAT
21 HAPPENED -- WE THINK WE KNOW EXACTLY WHAT HAPPENED. WE STILL
22 DON'T KNOW.

23 AND LIKE MS. BIAGIANTI SAID ABOUT THE CLOSED CASKET,
24 UNTIL THIS DAY, THERE'S NO -- THERE WAS NO CLOSURE.

25 NOT BEING ABLE TO EVER SEE MY BROTHER AGAIN KILLS ME

1 INSIDE. WE GREW UP MOSTLY WITH JUST MY FATHER. HE WAS THE
2 BEST FATHER IN THE WORLD AND I WAS HOPING CHRIS WOULD FOLLOW
3 THAT IN HIS FOOTSTEPS, BUT HE DOESN'T HAVE THE CHANCE TO.

4 THE COURT: THANK YOU.

5 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
6 CONFERENCE, OFF THE RECORD.)

7 (WHEREUPON, COURT RESUMED.)

8 MS. COULSTON: MY NAME IS DANA COULSTON, AND IT'S
9 C-O-U-L-S-T-O-N.

10 AND I WAS CHRIS'S GIRLFRIEND, AND WE HAD OUR SON
11 JULY 10, 2006 AND HE'S ABOUT TO BE FOUR.

12 AND ME AND CHRIS GOT TOGETHER IN JUNE OF 2005 AND WE
13 WERE ALWAYS TOGETHER AND HE WAS MY BEST FRIEND. AND THIS
14 LITTLE BOY RIGHT HERE IS MY WORLD. HE ASKS ME EVERY DAY
15 WHERE HIS DADDY IS; I HAVE TO TELL HIM THAT HE'S IN THE SKY.

16 WHY DO I HAVE TO TELL MY FOUR-YEAR-OLD WHY HIS DAD IS IN
17 THE SKY?

18 THE COURT: MS. COULSTON -- MS. COULSTON, I UNDERSTAND
19 THAT THIS IS VERY, VERY UPSETTING TO YOU. BUT, I NEED YOU TO
20 ADDRESS THE COURT.

21 MS. COULSTON: I'M SORRY, YOUR HONOR.

22 MY SON HAS TO GO TO SCHOOL AND WATCH ALL HIS FRIENDS'
23 DADS PICK THEM UP.

24 I DON'T KNOW WHAT TO SAY TO HIM BECAUSE HE -- CHRIS WAS
25 WITH HIM ALL THE TIME; DID EVERYTHING FOR HIM. HE WANTED TO

STATE VERSUS MICHAEL MAXWELL
PLEA HEARING

1 DO EVERYTHING; BE THERE ON THE FIRST DAY OF SCHOOL. AND HE
2 STARTED SCHOOL IN AUGUST AND IT'S JUST BEEN ME WHO HAS TAKEN
3 HIM; HIS DAD CAN'T BE THERE.

4 HE DON'T UNDERSTAND WHEN FATHER'S DAY COMES AND ALL HIS
5 FRIENDS MAKE CARDS, HE CAN'T GIVE HIS TO HIS DAD.

6 (AFTER PAUSE) THANK YOU.

7 THE COURT: THANK YOU.

8 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
9 CONFERENCE, OFF THE RECORD.)

10 (WHEREUPON, COURT RESUMED.)

11 MR. JAMES TESENIAR: MY NAME IS JAMES TESENIAR. THAT'S
12 T-E-S-E-N-I-A-R.

13 AND I JUST -- THOSE FELLAS TOOK MY HEART FROM ME. I
14 GUESS I WAS FORTUNATE ENOUGH TO HAVE A GRANDSON AROUND. BUT
15 IT'S SO HARD BECAUSE HE ASKS FOR HIS DADDY; POINTS TO THE SKY
16 AND SAYS HIS DADDY'S IN THE SKY.

17 I JUST ASK THIS COURT TO PLEASE GIVE HIM WHAT HE
18 DESERVES. MY SON DIDN'T DESERVE THIS. HE DIDN'T TAKE THE
19 STUFF.

20 I JUST HOPE HE SITS THE REST OF HIS LIFE IN PRISON.

21 MS. BIAGIANTI: THANK YOU, YOUR HONOR.

22 THE COURT: ANYTHING FURTHER SOME THE STATE?

23 MS. BIAGIANTI: NOTHING FURTHER FROM THE STATE.

24 THE COURT: MR. MAXWELL, HAVE YOU GIVEN ME YOUR COMPLETE
25 AND TRUTHFUL RESPONSES HERE TODAY?

1 MR. MAXWELL: YES, MA'AM.

2 THE COURT: HAVE YOU UNDERSTOOD ALL OF MY QUESTIONS AND
3 EVERYTHING THAT WE'VE DONE HERE TODAY?

4 MR. MAXWELL: YES, MA'AM.

5 THE COURT: HAVE YOU RESPONDED TO MY QUESTIONS IN ANY
6 WAY BECAUSE YOUR ATTORNEY OR SOMEONE ELSE TOLD YOU HOW TO
7 RESPOND TO MY QUESTIONS?

8 MR. MAXWELL: UM -- NO, MA'AM.

9 THE COURT: IS THERE ANY ANSWERS OR ANY RESPONSES THAT
10 YOU WISH TO CHANGE AT THIS TIME?

11 MR. MAXWELL: NO, MA'AM.

12 THE COURT: AND, MR. MAXWELL, YOU UNDERSTAND THAT YOU
13 ARE FACING THE POSSIBILITY OF TWO LIFE SENTENCES?

14 MR. MAXWELL: YES, MA'AM.

15 THE COURT: AND IT IS STILL YOUR DESIRE FOR THE COURT TO
16 ACCEPT YOUR GUILTY PLEA?

17 MR. MAXWELL: YES, MA'AM.

18 THE COURT: ARE YOU PLEADING GUILTY TO MURDER FREELY AND
19 VOLUNTARILY?

20 MR. MAXWELL: YES, MA'AM.

21 THE COURT: ARE YOU PLEADING GUILTY TO BURGLARY IN THE
22 FIRST DEGREE FREELY AND VOLUNTARILY?

23 MR. MAXWELL: YES, MA'AM.

24 THE COURT: DO YOU NEED ANY ADDITIONAL TIME TO MEET WITH
25 MS. HUNTER OR MS. FORSYTHE AT THIS TIME?

STATE VS MICHAEL MAXWELL
PLEA HEARING

1 MR. MAXWELL: NO, MA'AM.

2 THE COURT: I FIND THAT THERE'S A SUBSTANTIAL FACTUAL
3 BASIS FOR YOUR PLEA.

4 YOUR DECISION TO PLEAD GUILTY HAS BEEN FREELY,
5 VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY MADE.

6 YOU'VE INDICATED TO THE COURT YOU'VE HAD THE ADVICE OF
7 COUNSEL -- OF TWO COMPETENT ATTORNEYS WITH WHOM YOU'VE TOLD
8 THE COURT YOU ARE SATISFIED.

9 I'VE ALSO INQUIRED AS TO WHETHER OR NOT YOU NEED ANY
10 ADDITIONAL TIME OR HAVE ANY QUESTIONS FOR EITHER OF YOUR
11 ATTORNEYS OR BOTH AND YOU HAVE INDICATED TO THE COURT THAT
12 YOU HAVE BEEN FULLY ADVISED OF YOUR CONSTITUTIONAL RIGHTS,
13 THE PUNISHMENT THAT YOU ARE FACING, AS WELL AS ALL THE
14 CONSEQUENCES OF THIS GUILTY PLEA.

15 I HEREBY ACCEPT YOUR PLEA OF GUILT TO MURDER AND TO
16 BURGLARY IN THE FIRST DEGREE.

17 MS. HUNTER, I'LL BE HAPPY TO HEAR FROM YOU OR ANYONE
18 REGARDING SENTENCING AT THIS TIME.

19 MS. HUNTER: THANK YOU, YOUR HONOR. UH -- JASON IS
20 TWENTY-SEVEN-YEARS-OLD.

21 UH -- HE DOES HAVE A HIGH SCHOOL DIPLOMA THAT HE
22 RECEIVED IN 2001.

23 HE HAS ALWAYS HAD STEADY EMPLOYMENT AS AN ELECTRICIAN.

24 HE DOES HAVE ONE CHILD, ADEN, WHO'S TWO-YEARS-OLD, WHO
25 HE HAS NEVER BEEN ABLE TO MEET.

1 UM -- HE DOES, UH, HAVE A VERY MINOR PRIOR RECORD THAT I
2 WOULD ASK THAT YOU TAKE INTO CONSIDERATION.

3 UM -- HE DOES HAVE A LOT OF FAMILY SUPPORT AND FRIENDS
4 OF COURSE, BUT THEY CANNOT BE HERE TODAY BECAUSE, UH, MOST OF
5 THEM ARE CODEFENDANTS OR LISTED AS WITNESSES AND THEY'VE BEEN
6 SEQUESTERED AND, UM -- UH, CAN'T -- CAN'T -- JUST CAN'T BE IN
7 THE COURTROOM AND THEY REALLY DON'T HAVE ANY IDEA OF WHAT IS
8 GOING ON RIGHT NOW. OTHERWISE THEY WOULD BE HERE ON HIS
9 BEHALF AND -- AND BE SUPPORTIVE.

10 UM -- HIS -- HIS FATHER ACTUALLY IS HERE. HE -- HE'S,
11 UH -- HE'S IN -- ON THE SECOND ROW. UM -- AND I HAVEN'T -- I
12 DON'T KNOW IF HE WOULD LIKE TO ADDRESS THE COURT.

13 BUT, I'D ALSO LIKE FOR THE COURT TO TAKE INTO
14 CONSIDERATION THAT MR. MAXWELL IS TAKING ACCOUNTABILITY AND
15 RESPONSIBILITY FOR WHAT HAPPENED. AND, UM, YOU KNOW, HE --
16 HE IS VERY REMORSEFUL.

17 UH -- HE WOULD LIKE TO ADDRESS THE COURT, UM, IN A FEW
18 WORDS IF -- IF -- IF -- IF YOU WOULD INDULGE HIM.

19 THE COURT: BE HAPPY TO HEAR FROM HIM.

20 MR. MAXWELL: YES, MA'AM. I JUST WANTED TO APOLOGIZE TO
21 THE FAMILY AND EVERYONE FOR WHAT HAPPENED THAT NIGHT.

22 I DON'T EVEN KNOW; I'M LOST RIGHT NOW.

23 THE COURT: ANYTHING FURTHER MS. HUNTER, MS. FORSYTHE?

24 MS. HUNTER: UH -- YES, HIS FATHER WOULD LIKE TO ADDRESS
25 THE COURT.

STATE VERSUS MICHAEL MAXWELL
PLEA HEARING

1 THE COURT: I'D BE HAPPY TO HEAR FROM HIM.

2 MS. HUNTER: HIS NAME IS KARL MAXWELL.

3 THE COURT: MR. MAXWELL, PLEASE COME FORWARD.

4 MR. MAXWELL, IF YOU'LL STATE YOUR FULL NAME AND SPELL
5 YOUR LAST NAME FOR THE RECORD?

6 MR. MAXWELL: IT'S KARL MAXWELL, M-A-X-W-E-L-L.

7 UH -- IT'S HARD TO COME UP WITH ANYTHING TO SAY. UH --
8 NO MATTER WHAT YOU SAY, IT'S -- IT'S NOT ENOUGH FOR THIS
9 FAMILY. I UNDERSTAND THAT.

10 UH -- JASON WAS NOT RAISED THIS WAY. HE HAS BEEN TOLD
11 HIS WHOLE LIFE TO BE CAREFUL OF THE FRIENDS YOU CHOOSE. AND
12 OBVIOUSLY, FROM THE TESTIMONY YESTERDAY, AND THIS WHOLE GROUP
13 OF KIDS THAT'S KNOWN EACH OTHER MOST OF THEIR LIFE, DESPITE
14 OF WHAT (SIC) THEIR PARENTS TRY TO TEACH 'EM, THEY HAVE
15 CHOSEN A LIFE STYLE OF IT'S FUN TO GET HIGH AND STAY UP ALL
16 NIGHT AND PARTY. THAT THAT'S FUN.

17 AND THIS IS A LESSON I THINK -- I WISH EVERY TEENAGER IN
18 THE WORLD COULD BE HERE AND SEE THIS TO SEE WHAT IT -- THE
19 MOST EXTREME CASE IT CAN LEAD TO.

20 UH -- I'VE SAID FROM THE VERY BEGINNING -- AND IT MAY
21 SOUND LIKE A CRUEL THING FOR A PARENT TO SAY -- BUT I'VE SAID
22 FROM THE VERY BEGINNING, IF JASON'S GUILTY I EXPECT HIM TO
23 SERVE TIME FOR IT.

24 UH -- IT'S NOT EASY, BUT IT'S ALSO NOT EASY FOR THE
25 FAMILY.

1 YOU KNOW, I'LL ALWAYS LOVE JASON; THAT'LL NEVER CHANGE.
2 BUT, YOU CAN'T CHANGE WHAT HAPPENED.

3 I GUESS THE ONLY THING OUT OF -- OUT OF THIS, AS BAD AS
4 IT IS, IS THAT HE HAS SAID THAT HE IS NOT THE PERSON THAT
5 PULLED THE TRIGGER.

6 AND THAT DOESN'T CHANGE THE DEATH; HE WAS PART OF IT.
7 BUT I GUESS AT LEAST I KNOW IN MY HEART AT LEAST HE'S NOT THE
8 ONE THAT ACTUALLY DID IT, EVEN THOUGH HE WAS DEEPLY INVOLVED
9 IN IT.

10 SO, UH, THAT'S ALL I'VE GOT TO SAY. THANK YOU.

11 THE COURT: THANK YOU, SIR.

12 MS. HUNTER: YOUR HONOR, IF I -- I MAY MAKE AN
13 ADDITIONAL COMMENT---

14 THE COURT: YES, MA'AM.

15 MS. HUNTER: ---I -- I -- MY CLIENT IS, OBVIOUSLY, VERY,
16 UM, UPSET AND AT A LOSS OF WORDS.

17 BUT, ON BEHALF OF JASON, I -- I KNOW THAT HE WANTS TO
18 APOLOGIZE TO CHRIS'S FAMILY AND ALL OF THEIR FRIENDS. AND,
19 UH, THAT HE IS EXTREMELY SORRY. THAT HE WAS WRONG. AND,
20 UM -- UH, AND -- AND JUST APOLOGIZE AS PROFUSELY TO THEM IN
21 HOPES THAT THIS WILL HELP BRING THEM SOME CLOSURE, UH, TO
22 WHAT HAPPENED WITH, UH, CHRIS IN NOVEMBER OF 2007.

23 THE COURT: OKAY; ANYTHING FURTHER?

24 MS. HUNTER: NO, YOUR HONOR.

25 THE COURT: ANYTHING FURTHER FROM THE STATE?

STATE VS. MICHAEL MAXWELL
PLEA HEARING

1 MS. BIAGIANTI: NO, YOUR HONOR.

2 THE COURT: BEFORE I IMPOSE SENTENCE, I JUST WISH TO,
3 UH, COMPLIMENT THE ATTORNEYS FOR THE STATE AS WELL AS THE
4 ATTORNEYS, OF COURSE, FOR MR. MAXWELL. YOU ALL HAVE ALL BEEN
5 (SIC) VERY PROFESSIONAL AND COMPETENT IN THE REPRESENTATION
6 OF YOUR CLIENTS' INTEREST THROUGHOUT WHAT EVERYONE IN THIS
7 COURTROOM WOULD AGREE IS A MOST DIFFICULT CASE.

8 I WOULD ALSO WISH TO EXTEND MY CONDOLENCES AND
9 SYMPATHIES AND COMPLIMENTS TO ALL OF THE MEMBERS OF THE
10 AUDIENCE WHO HAVE SAT THROUGH THIS. EVERYONE HAS BEEN
11 APPROPRIATE.

12 I SAY THAT WITH THE NEXT CAVEAT. I AM ABOUT TO IMPOSE
13 SENTENCE. IF THERE -- IF YOU CANNOT CONTAIN YOURSELF AT THIS
14 TIME, THIS IS AN APPROPRIATE TIME FOR YOU TO LEAVE.

15 AS I INDICATED WHEN WE STARTED THIS TRIAL, THIS
16 COURTROOM IS A PLACE OF HONOR. IT IS DEDICATED TO THE
17 PROTECTION AND PRESERVATION OF OUR JUSTICE SYSTEM.

18 AND WITH THAT BEING SAID, I WILL NOT TOLERATE ANY
19 OUTBURST. SO AGAIN, THIS IS THE OPPORTUNITY FOR YOU TO LEAVE
20 BEFORE I IMPOSE SENTENCE AT THIS TIME.

21 (ALL IN ATTENDANCE STAY.)

22 THE COURT: MR. MAXWELL, I HAVE SAT, I HAVE BEEN
23 PRESIDING OVER YOUR CASE. I HAD SOME PRE-TRIAL MATTERS, I
24 ALSO HAVE BEEN PRESIDING OVER YOUR CASE THROUGHOUT THIS TRIAL
25 THIS WEEK.

1 I HAVE OBSERVED THE AUTOPSY PHOTOS; I HAVE OBSERVED YOU
2 THROUGHOUT THIS TRIAL. I HAVE LISTENED TO THE WITNESSES, AND
3 I HAVE OBSERVED THE FAMILY MEMBERS.

4 I ALSO HAVE LISTENED TO YOUR FATHER AND HE HAS INDICATED
5 TO THE COURT THAT YOU WERE NOT RAISED THIS WAY.

6 WHAT IS MOST TROUBLING TO THE COURT IS THAT, UM, THERE
7 SEEMS TO BE SOME JUSTIFICATION GIVEN OR SOME EXCUSE GIVEN
8 THAT, UM, PERHAPS MR. TESENIAR DID STEAL THE JEWELRY OR DID
9 NOT STEAL THE JEWELRY. THAT DIDN'T -- THAT SHOULD NOT EVEN
10 BE A CONSIDERATION.

11 IT DOESN'T MATTER IF HE DID OR DID NOT STEAL THE
12 JEWELRY. THE FACTS INDICATE THAT HE DID NOT, BUT THAT IS NOT
13 A CONCERN. THAT IS WHY WE HAVE LAW ENFORCEMENT. THAT IS WHY
14 WE HAVE A JUSTICE SYSTEM. IT IS NOT YOUR DECISION TO MAKE AS
15 TO -- WE DO NOT LIVE IN A SOCIETY OF VIGILANTE JUSTICE.

16 SO, I TAKE THAT INTO CONSIDERATION THAT YOU WENT AND --
17 AND TOOK IT UPON YOURSELF TO GO INTO SOMEBODY'S HOME, WHICH I
18 CONSIDER AND I WOULD ASSUME THAT MOST PEOPLE THAT LIVE IN A
19 CIVILIZED SOCIETY CONSIDER THAT THEIR SANCTUARY.

20 THE FACT THAT YOU ENTERED INTO THIS MAN'S HOME WITH THE
21 INTENT TO TAKE BACK SOMETHING THAT YOU BELIEVED WAS YOURS IS
22 OFFENSIVE TO ME.

23 AND THE FACT THAT YOU KNEW THAT -- WHETHER OR NOT YOU
24 PULLED THE TRIGGER, YOU KNEW MR. TARPLEY HAD A WEAPON IF I AM
25 TO BELIEVE YOUR STATEMENT OF FACTS.

STATE ~~VS~~SUS MICHAEL MAXWELL
PLEA HEARING

1 MR. MAXWELL: YES, MA'AM.

2 THE COURT: AND BECAUSE YOU HAVE TOLD ME THAT THAT'S
3 WHAT HAPPENED, I AM GOING TO SENTENCE YOU ON -- ON THE BASIS
4 OF THOSE FACTS, ALL RIGHT MR. MAXWELL?

5 BUT REGARDLESS OF WHO PULLED THE TRIGGER, YOU WENT INTO
6 THAT HOME.

7 MR. MAXWELL: YES, MA'AM.

8 THE COURT: YOU KNEW WHAT WAS GOING TO HAPPEN. THERE
9 WAS NO QUESTION IN YOUR MIND THAT WHEN YOU LEFT THE RESIDENCE
10 THAT MR. TESENIAR WAS GOING TO DIE. IS THAT CORRECT?

11 MR. MAXWELL: YES, MA'AM.

12 THE COURT: MR. MAXWELL, IT'S THE ORDER OF THE COURT, ON
13 INDICTMENT 2008-GS-08-0766 THAT YOU BE COMMITTED TO THE STATE
14 DEPARTMENT OF CORRECTIONS FOR A TERM OF SIXTY YEARS.

15 GIVE YOU CREDIT FOR ANY TIME THAT YOU HAVE SERVED.

16 IT'S THE ORDER OF THE COURT, ON INDICTMENT 2008-GS-08-
17 1444 THAT YOU BE COMMITTED TO THE STATE DEPARTMENT OF
18 CORRECTIONS FOR A TERM OF TWENTY-FIVE YEARS.

19 THAT IS TO RUN CONSECUTIVE TO THE PREVIOUS INDICTMENT.

20 GOOD LUCK TO YOU, SIR.

21 COURT'S IN RECESS.

22 (WHEREUPON, PLEA CONCLUDED.)

23 *****END OF REQUESTED TRANSCRIPT*****
24
25

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT REPORTER FOR THE NINTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE PROCEEDINGS REQUESTED AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR BERKELEY COUNTY, SOUTH CAROLINA, ON THE 28TH DAY OF APRIL, 2010.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

MAY 12, 2011


VIVIAN H. CROSS
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
STATE OF SOUTH CAROLINA)
Plaintiff,)
v.)
MICHAEL J. MAXWELL,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT
INDICTMENT NUMBERS:
2008-GS-08-0776 MURDER
2008-GS-08-1444 BURGLARY 1ST DEGREE

NOTICE OF MOTION AND
MOTION TO RECONSIDER SENTENCE

BARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2010 MAY -6 AM 9:05

FILED

The Defendant, by and through the undersigned attorneys, moves that this Honorable Court reconsider the sentence ordered on the 28 day of April, 2010, at 300-B California Avenue at the Berkeley County Court House. This Motion is based on the following grounds:

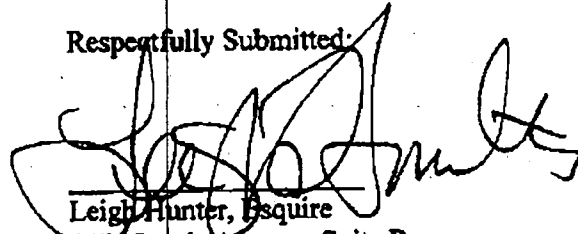
1. That the Defendant was charged with Murder on November 11, 2007; Ten days afterwards, he was directly indicted for Burglary in the first degree;
2. The trial date was scheduled and heard/began on April 26, 2010;
3. Pre-trial Motions and Motions in Limine were entertained by the Court;
4. The Defendant was offered a plea of 20 years (10 years for voluntary manslaughter and 10 years for Burglary in the 2nd degree- although the solicitors stated they did not have any recollection or notes to that effect) several months prior to the trial; The Defendant was then offered a plea of 25 years several weeks prior to trial;
5. On or about April 27, 2010, Solicitors and Counsel met in chambers with the Court to discuss whether or not a plea was an option;
6. The jury was selected and the trial began on the morning of April 27, 2010;

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7. The Defendant pled guilty as charged on April 28, 2010.
8. The Defendant was forthright, remorseful, polite and admitted his involvement. However, he was not the Defendant who shot the victim and was in the co-defendant's company when the murder occurred;
9. There are four co-defendants in this case and this Defendant is the only one who has gone to Court for his charges.
10. The Court sentenced the Defendant for 60 years for the Murder charge and 25 years for the Burglary in the 1st degree;
11. The Defendant respectfully requests this Court to reconsider his sentence as it is fundamentally a life sentence.

Respectfully Submitted:



Leigh Hunter, Esquire
4476 Leeds Avenue, Suite B
Charleston, SC 29405
(843) 554-6363 Phone
(843) 554-6366 Fax

Michele Forsythe, Esquire
The Wappoo Centre
147 Wappoo Creek Drive
Suite 202
Charleston, SC 29412
(843) 795-9500 Phone
(843) 762-1500 Fax

April 5, 2010
Moncks Corner, SC

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

STATE OF SOUTH CAROLINA,)

VS.)

Michael J. Maxwell,)

DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

INDICTMENT #s: 2008-GS-08-776 & 1444

STATE'S RESPONSE TO MOTION
FOR RECONSIDERATION
OF SENTENCEMARY F. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2010 MAY -6 PM 2:40

FILED
BY

TO: LEIGH HUNTER, ESQUIRE, ATTORNEY FOR THE DEFENDANT

PLEASE TAKE NOTICE that on Thursday, May 13, 2010 at 2:30 p.m. or as soon as counsel can be heard, the State will move before the Honorable Kristi Harrington, Circuit Court Judge, for an Order Denying Defendant's Motion to Reconsideration Sentence. The State in its response to Defendant's Motion to Reconsider Sentence, states that the sentence imposed by the Court remains appropriate and proportionate to the nature and severity of the crime, in the above mentioned matter.

The Court imposed sentence after the Defendant changed his plea from not guilty to guilty on all charges, Murder and Burglary First Degree, in the middle of a jury trial. The facts presented at trial and the subsequent guilty plea involved the brutal murder of the victim, Christopher Teseniar and the burglary of his residence. The Court heard testimony from numerous witnesses and heard arguments from counsel during the guilty plea and was in the best position to evaluate the case, observe the witnesses and defendant and impose the appropriate sentence after the defendant admitted to his guilt. The Court imposed a sentence that was proportionate to the brutal nature of the crimes.

The Defendant stated in its Motion to Reconsider Sentence that the State offered a plea of 20 years several months prior to trial. That is patently untrue and the Court should not consider any plea offer that may or may not have been offered. The Court specifically inquired before trial as to any formal plea offer currently on the table and there was none. That is why the defendant pled guilty in the middle of trial without any negotiations or recommendations by the State.

THEREFORE, the State respectfully requests, based on the reasons stated herein, that the Court deny Defendant's Motion to Reconsider Sentence.

Respectfully Submitted,

22-581
5-6-10
KA

22-581


Dorie C. Biagianti
Senior Assistant Solicitor

May 6, 2010
Moncks Corner, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
STATE OF SOUTH CAROLINA)
Plaintiff,)
v.)
MICHAEL J. MAXWELL,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT
INDICTMENT NUMBERS:
2008-GS-08-0776 MURDER
2008-GS-08-1444 BURGLARY 1ST DEGREE

ORDER TO RECONSIDER SENTENCE

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2010 JUL -8 PM 1:44

FILED

Date of Hearing:

May 13, 2010

Presiding Judge:

The Honorable Kristi L. Harrington

Attorneys for the State:

Dorie Biagiatti, Senior Assistant Solicitor

Anne Williams, Assistant Solicitor

Attorneys for the Defendant:

Leigh Hunter, Esquire

Michele Forsythe, Esquire

This matter came before me on May 13, 2010 on Motion to Reconsider the Sentence imposed on Michael Jason Maxwell on April 28, 2010. The sentence imposed by the Honorable Judge Kristi L. Harrington on April 28, 2010 was sixty (60) years on indictment number 2008-GS-08-0776, the charge of Murder; and twenty five (25) years on indictment 2008-GS-08-1444, the charge of Burglary in the First (1st) degree. These sentences were to run consecutively.

Attorneys for the Defendant filed a Motion for to Reconsider the Sentence and this Motion was heard on May 13, 2010. Present in the Courtroom were the above-named Attorneys and Solicitors.

The Court heard arguments from Attorney Michele Forsythe on behalf of the Defendant. Thereafter, Senior Assistant Solicitor Dorie Biagiatti argued against this Motion on behalf of the State of South Carolina.

cc: 301
7.12.10
K
Pena from up stair

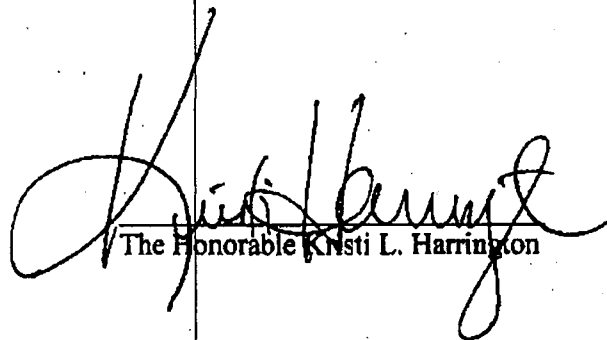
7/8/10

SP

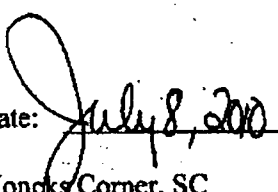
Upon hearing arguments, as stated above, the Court finds that it is proper and appropriate to reduce the original sentence imposed to sixty (60) years on indictment 2008-GS-08-0776 for the charge of murder and twenty five (25) years on indictment 2008-GS-08-1444 for the charge of Burglary in the First (1st) Degree, with these sentences to run concurrent with each other.

THEREFORE, IT IS HEREBY ORDERED that original sentence imposed to sixty (60) years on indictment 2008-GS-08-0776 for the charge of murder and twenty five (25) years on indictment 2008-GS-08-1444 for the charge of Burglary in the First (1st) Degree, with these sentences to run concurrent with each other.

IT IS SO ORDERED!


The Honorable Kinsti L. Harrington

Date:


Moncks Corner, SC

FORM 5

20 10 -CP-08-3244

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Michael Maxwell)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF2010 SEP 14 PM 2:53
MAY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention : Lieber Correctional Institute
2. Name and location of Court which imposed sentence General Seccions, Berkeley County
3. Name(s) of co-defendant(s) (if any) Adam Tarpley, Annette Henderson, Jennifer Maxwell
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 13 May 2010; 60 years, Murder, 25 Years, Burglary 1st
 - (b) _____

Revised 3/2003

CC: MF
MM 4/8/08

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Yes
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Wrongfully Charged do to ineffective assistance of counsel
- (b) Failur of Counsel to make timely objections
- (c) Due process violation

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

- (a) Trail Counsel failed to conduct a through investigation of my case
- (b) Trial counsel failed to move to objections regarding the contradictions of States

witnesses

(c) Trail Counsel failed to protect applicants rights , violated due process clause of the 14th Amendment to the U.S. Constitution.

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(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. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

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

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

(a) the name and address of each attorney who represented you:

i. Leigh Hunter, 4476 Leeds Place West, Suite B; Charleston, SC 29408ii. Michele Forsyth; 147 Wappoo Creek Drive, Suite 202; Charleston, SC 29412

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Berkeley County General Sessions Court

ii. _____

iii. _____

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

Appointment of Attorney as afforded by my rights for counsel for a retrial of my case

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

No

STATE OF SOUTH CAROLINA)

County of Berkeley)

VERIFICATION

I, Michael J. Maxwell, 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.

Michael J. Maxwell

SWORN to and subscribed before me this 03rd
day of Sept, 2010.

Quincean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

FILED
2010 SEP 14 PM 2:53
MAFY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

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

I, Michael J. Maxwell, 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.

Michael J. Maxwell
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of Sept, 2020.

Ludreen Bryant
Notary Public

My Commission Expires: May 26, 2020

MAF P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2019 SEP 14 PM 2:53

FILED

MICHAEL MAXWELL
#340524

v.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

Case No.: 2011CP1002363

MOTION TO AMEND
APPLICATION FOR POST
CONVICTION RELIEF

3246

2012 JAN -9 PM 12:26
CLERK OF COURT
SOUTH CAROLINA

FILED

TO: STATE OF SOUTH CAROLINA, BY AND THROUGH ITS COUNSEL
THE ATTORNEY GENERAL:

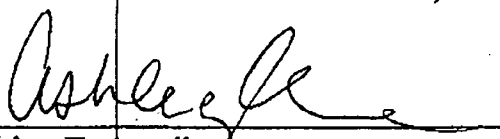
Pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, the applicant, through his counsel, moves to amend his application for post-conviction relief, attached as exhibit #1 and incorporated by reference to said motion to amend petition in case number 2010-CP-08-3244, as follows:

§ II.

10(d): Failure to turn over necessary evidence denying client the capability of fairly defending himself prior to and at the plea hearing.

LAW OFFICE OF ASHLEY AMEIKA, LLC

BY:


Ashley E. Ameika
7555 Northside Drive
North Charleston, SC 29420
Telephone: (843) 820-7917
Facsimile: (843) 820-9720
Email: ashleyameikalaw@me.com
ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF BerkeleyMichael Maxwell

Plaintiff,

vs.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

Ninth JUDICIAL CIRCUITCASE NO.: 2010-CP-08-3244MOTION AND ORDER INFORMATION
FORM AND COVERSHEETPlaintiff's Attorney: Ashley E. AmeikaBar No. 76323Address: 755 S Northside Dr. W. Charleston, SCPhone: 843-820-9719 Fax: 843 820 9710

E-mail: _____ Other: _____

Defendant's Attorney: _____

Bar No. _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____ Other: _____

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Amend PetitionEstimated Time Needed: 30Court Reporter Needed: ☒ YES/ ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff ☐ DefendantDate submitted 1/4/12

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

FILED
2012 JAN -9 PM 12:25
CLERK OF COURT
BERKELEY COURT

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Michael Maxwell, #340524,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2010-CP-08-3244

RETURN

The Respondent, making its Return to the application for post-conviction relief (PCR), filed September 14, 2010 and received by Respondent on November 10, 2010, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. Applicant was indicted at the May 2008 and August 2008 terms of the Berkeley County Grand Jury for murder (2008-GS-08-766) and burglary - 1st degree (2008-GS-08-1444). Leigh Hunter, Esquire, and Michele Forsythe, Esquire, represented him. On April 28, 2010, Applicant pled guilty as indicted. The Honorable Kristi L. Harrington sentenced him to confinement for sixty (60) years for murder and twenty-five (25) years for burglary - 1st degree. The sentences were to run consecutively. Applicant filed a motion to reconsider sentence on May 6, 2010. By Order filed July 8, 2010, Judge Harrington ordered that the original sentence be changed to run concurrently. Applicant did not appeal the plea or sentence.

FILED
2010 JUN 27 AM 11:34
HARRINGTON
CLERK OF COURT
BERKELEY COUNTY, SC

mk

✓

Attached herewith and incorporated herein are the records of the Berkeley County Clerk of Court regarding the subject conviction, the records of the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of plea counsel in that counsel
 - a. Failed to conduct a thorough investigation of the case.
 - b. Failed to move to objections regarding contradictions of State's witnesses.
 - c. Failed to protect Applicant's rights.
2. Due process violation.

III.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the 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 (1984); Butler, 286 S.C. 441, 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).

Respondent submits that 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, 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.

The Applicant further alleges that he was denied due process of law. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455

(1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

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

VI.

WHEREFORE, having made its Return, the State requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 23, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

MICHAEL MAXWELL, #340524

Applicant,

vs

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS

2010-CP-08-3244

AFFIDAVIT OF SERVICE BY MAIL

HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

JUN 27 AM 11:34

FILED

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

Ashley Ameika, Esquire
7555 Northside Drive
North Charleston, SC 29420

DATED this 23th day of June, 2011


Anne R. Henley, Legal Assistant
For Respondent



ALAN WILSON
ATTORNEY GENERAL

June 23, 2011

The Honorable Mary P. Brown
Berkeley County Clerk of Court
300 California Ave.
Moncks Corner, SC 29461

Re: Michael Maxwell #340524 v. State of South Carolina
2010-CP-08-3244

Dear Ms. Brown:

Enclosed please find the original Return of the Respondent in the above-captioned case for filing in your office.

Sincerely,

Matthew J. Friedman
Assistant Attorney General

MJF/arh

Enclosures

Berkeley County Clerk's Records
SCDC Records
Guilty plea transcript

cc: Ashley Ameika, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
	)	
MICHAEL J. MAXWELL,	)	CASE NO. 2010-CP-08-3244
	)	
APPLICANT,	)	
	)	
VS.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	

July 24, 2013

Charleston, South Carolina

B E F O R E:

The Honorable Deadra L. Jefferson

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

William L. Runyon, Jr., Esquire
for the Applicant

Ashleigh R. Wilson, Esquire
for the State

I N D E X

(AW) - DENOTES APPLICANT'S WITNESS

(SW) - DENOTES STATE'S WITNESS

POST-CONVICTION RELIEF HEARING -- 4WITNESSES(AW) Michael Maxwell:

Direct Examination by Mr. Runyon -- 4

Cross-Examination by Ms. Wilson -- 10

(AW) Michele Forsythe:

Direct Examination by Mr. Runyon -- 14

Cross-Examination by Ms. Wilson -- 19

Redirect Examination by Mr. Runyon -- 24

(AW) Burding:

Direct Examination by Mr. Runyon -- 25

Cross-Examination by Ms. Wilson -- 29

Redirect Examination by Mr. Runyon -- 30

(SW) Michele Forsythe:

Direct Examination by Ms. Wilson -- 31

Cross-Examination by Mr. Runyon -- 32

(SW) Ann Miller Williams:

Direct Examination by Ms. Wilson -- 33

Cross-Examination by Mr. Runyon -- 37

ORDER OF THE COURT

-- 41

EXHIBITS - None ProfferedCERTIFICATION OF TRANSCRIPT

-- 46

Look for an original signature in blue ink on the certification sheet to verify that the court reporter has certified the transcript you are viewing.

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

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

1 THE COURT: This is Michael Maxwell versus the State of
2 South Carolina, 2010-CP-08-3244. It is before the court on
3 an application for post-conviction relief which was filed on
4 September 14th of 2010. The State's return was filed on
5 June 27th of 2011.

6 Is the applicant ready to proceed?

7 MR. RUNYON: Yes, Your Honor.

8 THE COURT: Is the State ready to proceed?

9 MS. WILSON: Yes, Your Honor.

10 THE COURT: And the applicant is represented by William
11 Runyon. The State is represented by Ashleigh Wilson. You
12 may proceed.

13 MR. RUNYON: Your Honor, at this time we would call the
14 applicant, Mr. Maxwell.

15 THE COURT: Sir, if you would come to the stand to be
16 sworn.

17 (WHEREUPON, the witness was duly sworn.)

18 THE CLERK: Please be seated. Please state your full
19 name, spelling your last name for the record.

20 MR. MAXWELL: Michael Jason Maxwell, M-A-X-W-E-L-L.

21 THE COURT: You may proceed.

22 MICHAEL MAXWELL, having first been
23 duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. RUNYON OF MICHAEL MAXWELL:

25 Q. Mr. Maxwell, how old are you, sir?

1 A. Thirty.

2 Q. And how old were you at the time of your conviction
3 roughly?

4 A. When I got convicted I was 27.

5 Q. All right. And who represented you in the action in
6 Berkeley County?

7 A. Leigh Hunter did. But about a month before my trial
8 started I had Michelle Forsythe.

9 Q. Well; she ---

10 A. As they were put together at the same time.

11 Q. All right. So Ms. Hunter was your primary trial
12 counsel, and Ms. Forsythe was co-counsel?

13 A. Yes, sir.

14 Q. All right. Now you were charged with some right
15 serious charges?

16 A. Yes, sir.

17 Q. And ultimately you tendered a plea during the course of
18 a trial; is that not correct?

19 A. Yes, sir, on the third day.

20 Q. Okay. Now let me ask you this: Were you ever offered
21 any type of plea bargains by the State?

22 A. I was in the first year by a solicitor Michael -- I
23 think his last name was Douglas. He offered me ten years
24 for involuntary manslaughter, ten years for burglary second.
25 But my attorney denied it before she even told me about it.

1 Q. All right. Well, let's talk about that for a minute
2 now. How do you know that you were offered ten years and
3 ten years by the State?

4 A. Because when I called her from the county jail she told
5 me I was offered a deal and she denied it because there was
6 no evidence against me at the time.

7 Q. All right. Had you approved any denial of any plea
8 bargain ---

9 THE COURT: I need for you to quantify for me when --
10 what timeframe you are talking about, Mr. Runyon.

11 MR. RUNYON: All right.

12 BY MR. RUNYON:

13 Q. When was this, Mr. Maxwell?

14 A. This was the first year I was locked up in about I
15 would say 2008 towards the fall of 2008 possibly.

16 Q. And had you authorized Ms. Hunter to turn down any plea
17 bargain offers?

18 A. No, sir.

19 Q. Okay. Were you even made aware that the offer had been
20 extended?

21 A. No, sir.

22 Q. All right. Were you ever offered any other plea
23 bargains after that?

24 A. No, sir.

25 Q. All right.

1 A. I was told they were going to trial.

2 Q. Okay. Now did you in fact go to trial?

3 A. Yes, sir, I did.

4 Q. All right. Y'all pulled the jury, so to speak?

5 A. Yes, sir.

6 Q. And in the course of that trial was there a decision
7 made to terminate the trial?

8 A. Yes, sir.

9 Q. All right. Now during the course of the trial did
10 anything occur that was significant to you?

11 A. The fact that a solicitor just overturned some more
12 evidence on the second day to my lawyer.

13 Q. Now ---

14 A. And ---

15 Q. --- the solicitor's office turned over what kind of
16 evidence are you talking about?

17 A. More statements that was accusing me of the crime.

18 Q. And had you -- had you been aware of that before?

19 A. My lawyer, Leigh Hunter, told me she has been trying
20 and trying and trying but the State wouldn't overturn it.

21 Q. Okay. And that was given to you on the second day of
22 the trial?

23 A. Yes, sir, after we done did the jury selection and
24 right before the judge came into the courtroom on the second
25 day.

1 Q. Okay. Now ultimately did you terminate the trial?

2 A. Yes, sir, I did.

3 Q. And what did you do?

4 A. I took a plea thinking that I was going to get 30
5 years.

6 Q. All right. Now what made you think you were going to
7 get 30 years?

8 A. The end of the second day of trial I called my lawyer.
9 My lawyer told me that her and the judge talked and the
10 judge said if I stopped trial I would get 30 years and not
11 two life sentences.

12 Q. Okay. What sentences did you in fact get?

13 A. I got 60 years for murder and 25 for burglary first,
14 ran consecutive.

15 Q. Okay. Did you in fact -- strike that. As a practical
16 matter did you -- and there was another sentence that was
17 run consecutive, was there not?

18 A. They went back two weeks after I got sentenced; came
19 back from a motion to reconsider sentence, and she ran it
20 concurrent.

21 Q. All right. And the judge ran it concurrent legally and
22 properly on that?

23 A. Yes, sir.

24 Q. Now during the course of the representation did you
25 have an opportunity to speak with your counsel whenever you

1 wanted to?

2 A. Sometimes. The times that I would try to call, her law
3 firm would hang up on me and I wouldn't be able to talk to
4 her. I would sent her letters and wouldn't get a response
5 back. But she's probably seen me in the two-and-a-half
6 years maybe six, seven times.

7 Q. All right. So in the course of discussions with her
8 either by telephone or in person you saw her an adequate
9 number of times?

10 A. Yes, sir.

11 Q. And in any of these discussions did -- was there a
12 discussion about tendering a plea?

13 A. At first no, because she said they didn't have a case
14 against me because all there was was hearsay.

15 Q. So then and that is when ultimately you heard in 2008
16 that there had been a plea bargain offered and turned down
17 by -- by your defense counselor?

18 A. Yes, sir.

19 Q. Okay. Now in the course of the trial on the second day
20 of the trial and you say that there was some evidence turned
21 over to defense counsel ---

22 A. Yes, sir.

23 Q. --- from the solicitor's office?

24 A. Yes, sir.

25 Q. Did that play a role in your reaching a decision to

1 plead guilty?

2 A. Yes, sir, because my lawyer did not have the adequate
3 evidence to be able to cross-examine or impeach the State
4 witnesses.

5 Q. So this wasn't given to the defense until after the
6 trial was started?

7 A. Yes, sir.

8 Q. And that played a role in your decision to plead
9 guilty?

10 A. Yes, sir, because I was facing two life sentences and a
11 judge stated a number of times if I get found guilty she is
12 giving me too life sentences.

13 Q. All right.

14 MR. RUNYON: I have no further questions of this
15 witness at this time, Judge.

16 THE COURT: Ms. Wilson.

17 CROSS-EXAMINATION BY MS. WILSON OF MR. MAXWELL:

18 Q. Good morning, Mr. Maxwell.

19 A. Good morning. How are you doing?

20 Q. Good. Thank you. Can you recall about how many times
21 you met with Ms. Hunter or Ms. Forsythe before you went to
22 trial?

23 A. Michelle Forsythe I probably seen her in that month
24 time period maybe four or five times.

25 Q. What about Ms. Hunter?

1 A. I seen her about six, seven times throughout the
2 two-and-a-half years. Because I seen mostly paralegals.

3 Q. But you did have some interaction with her office; is
4 that what you are saying?

5 A. Yes, ma'am, but it would be different paralegals at the
6 time because they would go to coll- -- her school and then
7 come back and

8 Q. Okay. And did she go over any discovery that she
9 received from the State with you?

10 A. She did. The stuff that she actually had.

11 Q. And did she discuss like possible defenses that you
12 could present at trial?

13 A. Yes, ma'am. She told me about that she was going to
14 use that these were all hearsay and that she was going to
15 throw most of them out for impeach because they would write
16 multiple different statements. So she was going to do that.
17 But she never actually did that.

18 Q. Okay. Did you give her any witnesses or anything to
19 investigate?

20 A. Not me personally. Because everybody was against me,
21 saying they understand I did it. So I actually had her show
22 that all these people were offered deals because they were
23 all in jail mostly.

24 Q. Okay. And you gave some testimony today, that your
25 attorney -- well, I guess -- let me take a step back. How

1 did you find out about the supposed ten-year plea from the
2 State?

3 A. After a couple days I finally got a hold of her and she
4 told me over the phone that I was offered a deal and she
5 denied it because of lack of evidence.

6 Q. Okay. Well, did you tell her hey I want to take that
7 plea; you know, try to get it back or ---

8 A. Yes, but by then it was already no way to get it back.

9 Q. Okay. Did you -- did the State ever offer you any
10 other plea offers?

11 A. No, ma'am.

12 Q. Okay. But eventually you pled guilty, right?

13 A. Yes, ma'am.

14 Q. And was that -- did that have any -- did the State
15 offer any negotiations or recommendations for you to plea?

16 A. No, ma'am, because the judge said the solicitor did not
17 want to give me no plea offer, she wanted me to have two
18 life sentences. So the judge did this with my lawyer.

19 Q. And so on the date you pled guilty was it your decision
20 to plead guilty?

21 A. At the time, yes, ma'am, with what we had before trial.

22 Q. Do you recall telling the court that you were guilty?

23 A. Yes, ma'am.

24 Q. Do you recall agreeing with any facts that the State
25 presented at the plea about what happened during the

1 incident?

2 A. No, I actually told them some of the things that were
3 actually different.

4 Q. Okay. But ultimately you agreed with the facts
5 overall?

6 A. At the time, yes, ma'am.

7 Q. And do you recall waiving your constitutional rights
8 when you pled guilty like the right to remain silent, your
9 right to a jury trial, and your right to confront witnesses?

10 A. Yes, ma'am.

11 Q. Do you --- did you tell -- did you tell the plea judge
12 that you were satisfied with your attorney's representation?

13 A. Yes, ma'am.

14 Q. Did Ms. Hunter talk to you about the possible sentences
15 that you could be facing?

16 A. Yes, ma'am, she did. But she told me that it would
17 carry 85 percent. And when I found out later on that it is
18 a straight sentence of 100 percent.

19 Q. Thank you.

20 A. Yes, ma'am.

21 MR. RUNYON: Come down, Mr. Maxwell.

22 THE COURT: You don't have any further questions?

23 MR. RUNYON: Beg your pardon?

24 THE COURT: Do you have any further questions of the
25 witness?

1 MR. RUNYON: I have no further questions of this
2 witness.

3 THE COURT: Sir, you may step down.

4 MR. MITCHELL: Thank you.

5 THE COURT: You may call your next witness.

6 MR. RUNYON: I was looking for Ms. -- I mean Ms.
7 Forsythe. The applicant would call Michelle Forsythe,
8 Esquire.

9 (WHEREUPON, the witness was duly sworn.)

10 THE CLERK: State your full name and spell your last.

11 MS. FORSYTHE: Michelle Patrao Forsythe,
12 F-O-R-S-Y-T-H-E.

13 THE COURT: You may proceed.

14 MICHELE FORSYTHE, having been
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. RUNYON OF MS. FORSYTHE:

17 Q. Ms. Forsythe, are you licensed to practice law in the
18 State of South Carolina?

19 A. Yes, sir, I am.

20 Q. And when were you so licensed?

21 A. I was licensed in 2003, Your -- sir.

22 Q. And you are a graduate of which law school?

23 A. I went to the University of South Carolina School of
24 Law.

25 Q. And during the course of your practice after being

1 licensed did you have an occasion to be co-counsel with Ms.
2 Leigh Hunter, Esquire, in the representation of the
3 applicant, Mr. Maxwell?

4 A. Yes, I did, sir.

5 Q. Now how did that come to be; were you working in her
6 office, or how did it come about that you became co-counsel?

7 A. No, sir, I had had previous experience in murder
8 trials. Ms. Hunter had been an assistant solicitor for some
9 time, and she had been doing criminal defense work for many
10 years. It had been some time since she had worked on a
11 murder case.

12 I practiced with Grady Query, Michael Sautter. And at
13 the time I practiced with Bentley Price. She asked me if I
14 would associate as co-counsel with her. I went to my firm
15 and asked them if in fact they would allow me to do so. And
16 they agreed based on my previous experience and theirs.

17 Q. Now let's just clarify for the record. Ms. Hunter is
18 not available to testify because she has passed away?

19 A. Yes, sir, she has. She passed away in August of last
20 year.

21 Q. All right. Now there were a number of meetings with
22 Mr. Maxwell by Ms. Hunter, yourself, and/or paralegals from
23 Ms. Hunter's office?

24 A. Yes, sir, I know that to be correct.

25 Q. And in your opinion there was a sufficient number of

1 meetings so that you were able to prepare your case?

2 A. Yes, sir, I know that be correct as well.

3 Q. All right. Now are you aware of any plea bargain
4 offers?

5 A. I was aware of a plea bargain offer./

6 Q. Which plea bargain offer was that?

7 A. I was aware that he had been offered 20 years and that
8 he had rejected the plea.

9 Q. All right. How did -- how did you know he rejected the
10 plea?

11 A. I understand that based on the conversations that I had
12 had with Mr. Maxwell and Ms. Hunter.

13 Q. Okay. Now when was that plea bargain offer made?

14 A. I am not aware of when it was made because I was not at
15 that point involved in the case.

16 Q. All right. But it is your recollection that Mr.
17 Maxwell had in fact rejected the plea bargain offer?

18 A. Yes, he had because he continued to maintain his
19 innocence.

20 Q. All right. Now during the course -- ultimately y'all
21 drew a jury?

22 A. Yes, we did.

23 Q. And during the course of the jury trial specifically
24 the second day did the State provide additional discovery to
25 the defense?

1 A. I am not aware that the State provided additional
2 discovery to the defense. If they had done so on that day I
3 would have asked the court to consider prosecutorial
4 misconduct for failing to deliver discovery to me in a
5 timely basis.

6 Q. Ultimately did Mr. Maxwell tender a plea?

7 A. Yes, sir, he did.

8 Q. And what were the circumstances of his tendering the
9 plea?

10 A. By that third day of trial we had gone through some of
11 the witnesses that the State had initially put on the stand.
12 Those witnesses I had been able to cross-examine fairly
13 effectively. None of the hard evidence had been brought in
14 at that point in time.

15 The problem at that point in time is that Mr. Maxwell's
16 cell phone which was located at the scene was going to be
17 introduced into evidence. We had filed a number of pretrial
18 or motions in limine to exclude certain evidence, and we
19 were successful. However, there was certain evidence that
20 was going to be admitted including some of the autopsy
21 photos.

22 We had worked really hard in order to get some of those
23 autopsy photos excluded. And although the judge initially
24 decided she wanted all of them into evidence, she went ahead
25 and reconsidered and mitigated by redacting a number of the

1 photographs.

2 At that point in time I asked Mr. Maxwell if he was
3 ready to continue to proceed because of the evidence that
4 was going to be laid out before him.

5 He understood the significance of that. And so he
6 decided at that point that he would accept a plea offer.
7 And he knew that it was going to be a plea straight up. The
8 judge had indicated to us that she was considering life.

9 Q. All right. So as a practical matter you had a direct
10 conversation with Mr. Maxwell during the course of the trial
11 about tendering the plea?

12 A. Not just once but several times.

13 Q. Okay. And the decision to plead was his?

14 A. Yes, sir.

15 Q. Okay. And you don't recall the State giving you any
16 additional evidence after the trial started?

17 A. No, sir.

18 Q. Okay. And you're not aware of the circumstances of the
19 plea offer made prior to -- strike that.

20 As it relates to the prior plea and rejection of the
21 plea of the 20 years that you say you recall, you weren't
22 party to that plea offer of the State, were you?

23 A. That's correct.

24 Q. And so -- and you don't know anything prior to that
25 having occurred at any time?

1 A. That's correct.

2 Q. Okay.

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

4 THE COURT: Any questions for the witness?

5 MS. WILSON: Briefly, Your Honor.

6 THE COURT: You may proceed.

7 **CROSS-EXAMINATION BY MS. WILSON OF MS. FORSYTHE:**

8 Q. Good morning, Ms. Forsythe.

9 A. Good morning.

10 Q. Did you -- were you involved in the process of going
11 through the evidence and the discovery with Mr. Maxwell
12 before trial?

13 A. Yes, I did. At one point we were allowed to go into
14 the Berkeley County Sheriff's office into their evidence
15 room and take a look at the actual -- at the physical
16 evidence.

17 I understand and we reviewed with Mr. Maxwell some of
18 the discovery. He actually had the opportunity to review
19 the discovery early on. This was prior to my involvement.
20 There was a significant amount of discovery in the file and
21 letters regarding discovery that were sent to Ms. Hunter.

22 And I have by virtue of her passing away her trustee
23 delivered the file to me. And so I have that file with me.

24 Q. Thank you. And what type of possible defenses did you
25 discuss with Mr. Maxwell prior to trial while you were

1 preparing?

2 A. It was difficult to discuss defenses. We certainly
3 felt that although the cell phone could potentially place
4 him at the scene we believed that he was sharing the cell
5 phone with another person who actually testified at trial.

6 I believe it was the State's intention at that point
7 and that the State really believed that the -- that the
8 witness was a codefendant and they were trying to place that
9 person at the scene as well.

10 That was what we believed to be a key defense for him
11 to be able to say in fact that he was not at the scene, that
12 somebody else had his cell phone.

13 Unfortunately, some of the additional evidence and the
14 eyewitnesses indicated that he was trying to destroy his
15 clothes the day after. And so we really had the deck
16 stacked against us.

17 Q. Could you kind of characterize some of the evidence
18 that y'all predicted the State would present at trial in
19 addition to that.

20 A. Well, we predicted that the State - and in fact they
21 did - have cell phone records. The cell phone records
22 showed calls back and forth between the decedent and that
23 particular cell phone.

24 Again, the argument on our part was there was no way to
25 indicate whether Mr. Maxwell was using the cell phone or

1 whether someone else once.

2 In fact, I believe during the course of the trial that
3 the prosecutor did get the witness to admit that he did use
4 the cell phone on occasion, but he denied using it that
5 night.

6 The cell phone calls, however, I think would have
7 established a pattern that the State -- would show some
8 strong evidence there.

9 There were also State's witnesses that were going to be
10 called including other people who were in the jail with Mr.
11 Maxwell and they were prepared to testify against him as
12 well.

13 Q. And can you talk about what type of investigation was
14 done in this case?

15 A. I believe the investigation was significant. Ms.
16 Hunter had retained the services of a private investigator.
17 Early on she had gone out and spoken to several witnesses.
18 She had I know been in daily contact with Mr. Maxwell's
19 father.

20 I understand that -- actually several weeks before the
21 trial we were speaking with witnesses on a regular basis.
22 In fact, just two weeks before the trial I specifically
23 recall on a Sunday afternoon where Mr. Hunter was talking to
24 a key witness for us and we were able to secure some
25 information from him, not information that wouldn't -- that

1 would absolve Mr. Maxwell of any type of criminal wrongdoing
2 but certainly evidence to impeach people that were prepared
3 to testify on behalf of the State.

4 Q. And so it's your testimony today that you're not aware
5 of a ten-year offer being made from the State; is that
6 correct?

7 A. I was aware of a 20-year offer, not 10.

8 Q. Oh, go ahead. I'm sorry.

9 A. That's okay. And in fact I was also aware that the
10 prosecution had discussed that offer with Ms. Hunter. We
11 had discussed it I believe previously before trial. But of
12 course once trial began all deals were off the table. And
13 Mr. Maxwell was aware of that.

14 Q. Okay. And so he rejected that 20-year offer?

15 A. I understand that he did, yes, ma'am.

16 Q. And did he ever give any other indication before trial
17 that he wanted to plead guilty?

18 A. No, ma'am. He continued to maintain his innocence.

19 Q. And before Mr. Maxwell pled guilty did y'all talk to
20 him about the consequences of pleading guilty and what type
21 of rights he would be waving?

22 A. At length. We had this conversation several times
23 before the plea. The judge gave us a large window of time
24 to have this discussion.

25 Of course, you know, the jury had already been

1 impaneled. We had -- they had already heard witness
2 testimony. And so before he made that decision he needed to
3 make it consciously and deliberately. So we had at length
4 discussions.

5 I made it very clear to him that knowing the judge in
6 her interest in this case that she had intended to give them
7 a life sentence. We were trying to mitigate the life
8 sentence. And he understood that. He also understood that
9 there was no guarantee what she would do. And he was
10 willing to take that chance.

11 Q. And do you think that Mr. Maxwell always understood the
12 discussions that y'all had with him about his case?

13 A. Yes, I believe he always understood the discussions.

14 Q. And was it -- in your opinion was it Mr. Maxwell's
15 decision to plead guilty?

16 A. Yes, it was his decision to plead guilty.

17 Q. And ---

18 A. It was however -- sorry. It was however, after the
19 plea and the severity of the sentence that we filed the
20 motion to reconsider the sentence.

21 And I wanted to clarify a point. And that was when we
22 filed the motion to reconsider the sentence it wasn't so
23 that the Court could then run the sentences concurrent. We
24 were actually looking for a reduction of time.

25 On the record we indicated to the court and gave the

1 court a series of other pleas for murder in the last six
2 months. And those sentences ranged anywhere from 30 to 45
3 years. She understood that.

4 Q. And what was the outcome of that motion?

5 A. As a result of that motion she did not want to reduce
6 the time. She indicated that the -- she indicated that the
7 significant injuries to the decedent and the way that the
8 crime unfolded she believed this to be the proper sentence.
9 But she did concede that she could go ahead and give him
10 concurrent sentences instead of consecutive to minimize the
11 time that he would be potentially incarcerated.

12 MS. WILSON: Thank you Ms. Forsythe.

13 MR. RUNYON: Very briefly, Your Honor.

14 THE COURT: Yes, sir, you may proceed.

15 **REDIRECT EXAMINATION BY MR. RUNYON OF MS. FORSYTHE:**

16 Q. Ms. Forsythe, do you recall whether or not any of the
17 codefendants or witnesses were -- made -- had proffer
18 agreements?

19 A. I believe they did.

20 Q. All right. When -- when did you -- when did y'all --
21 when I say y'all, I'm sorry but southern on this. But when
22 did ---

23 A. That's okay. I've been here long enough.

24 Q. Okay. When did the defense have -- receive those
25 proffer agreements?

1 A. I don't recall that. I do not recall, Mr. Runyon, when
2
3 the defense received those proffer agreements.

4 Q. Well, let me try to simplify it because I am a simple
5 kind of guy. Did they receive the proffer agreements before
6 the trial or after the trial started?

7 A. I believe we received them before the trial.

8 MR. RUNYON: No further questions, Your Honor.

9 THE COURT: You may step down.

10 MS. FORSYTHE: Thank you, Your Honor.

11 THE COURT: I assume you had no further questions, Ms.
12 Wilson?

13 MS. WILSON: None from the State, Your Honor.

14 (WHEREUPON, the witness was duly sworn.)

15 THE CLERK: Please state your name, spelling your last
16 name for the record.

17 THE WITNESS: Bruce Burding, B-U-R-D-I-N-G.

18 THE COURT: You may proceed.

19 **DIRECT EXAMINATION BY MR. RUNYON OF MR. BURDING:**

20 Q. Mr. Burding, how old are you, sir?

21 A. Fifty-nine.

22 Q. All right. And are you -- are you employed; are you
23 retired; what is your occupation?

24 A. I am twice retired and currently teach for the South
25 Carolina Fire Academy. I am a fire instructor.

1 Q. All right. And prior to being a fire instructor what
2 was your job?

3 A. I was 20 years United States Navy. Retired from that
4 and I was employed with North Charleston Fire Department as
5 well as Saint Johns Fire Department for 15 -- 17 1/2 years
6 and then retired.

7 Q. All right, sir. And are you -- and are you married?

8 A. I am married now.

9 Q. And what relationship do you have with Mr. Maxwell?

10 A. I am his step-father.

11 Q. All right. Now calling your attention to Mr. Maxwell's
12 legal difficulties which have landed him in prison, do you
13 have any knowledge -- just generally were you aware that he
14 was charged with murder and what have you?

15 A. I found out about him being charged with murder that
16 morning -- well, the next morning from the incident
17 approximately nine o'clock in the morning as I was returning
18 from teaching.

19 Q. All right. Now did you have an occasion to talk to Ms.
20 Hunter?

21 A. Yes, I did on several occasions.

22 Q. All right. And what subjects -- and what was the
23 subject matter of your discussions with Ms. Hunter as it
24 relates to Mr. Maxwell's problem?

25 A. I was trying to assist her in establishing some

1 information regarding everything leading up to as well as
2 possibilities around the alleged crime.

3 Q. All right. Did you -- and she had more than one
4 conversation with you?

5 A. Yes, sir.

6 Q. And she in fact knew that you were -- you were a
7 potential witness as relates to peripheral issues if not the
8 issues in chief?

9 A. Yes, she did.

10 Q. All right. And were you subpoenaed for the trial or
11 told to be at the trial?

12 A. No. Actually Ms. Hunter sat there and asked me to go
13 away, don't be anywhere near the courthouse because she felt
14 that the State was going to try to call me as a witness and
15 throw the entire trial into a tailspin.

16 Q. And so you didn't come to the trial?

17 A. No, sir, I did not.

18 Q. And what would you have offered had you been called to
19 testify in the defense of Mr. Maxwell?

20 A. Pretty much information leading up to the timeframe
21 around where the alleged crime was committed.

22 Q. Okay. What information was that?

23 A. Ah, at approximately one o'clock in the morning Jason
24 had called me saying that he had gotten into a fight with a
25 friend of his which I was not very fond of named Thomas

1 Knox, III, and that he was trying to get his cell phone back
2 from him and whether I could go to his house and get the
3 cell phone.

4 I had to ask him where they lived at which was off of
5 Etling Drive in Goose Creek. Went to the house, acquired
6 the cell phone, charger, the charger, and a jacket.

7 Went back to the house because I had to get up at six
8 o'clock -- six o'clock in the morning for work. At
9 approximately 5:00, 5:30 in the morning Jason as well as an
10 Adam - and I can't remember what his last name is - came to
11 the house to get the cell phone back. And then they left.

12 I also had the entire phone records because Jason's
13 phone, his sister's, Jennifer's, were all on my plan.

14 Q. Now when did this -- these circumstances occur as it
15 relates to the death of the victim approximately?

16 A. It was on the 27th of November.

17 Q. Okay.

18 A. Because I was working that Monday morning on the
19 28th -- or Monday morning, the 27th. So it would have
20 been -- right, okay. It was after midnight.

21 Q. So you would have placed the cell phone in the hands of
22 at least two other individuals other than Mr. Maxwell?

23 A. Yes, sir.

24 MR. RUNYON: No further questions at this time, Your
25 Honor.

1 THE COURT: Any questions for the witness?

2 MS. WILSON: Briefly, Your Honor.

3 CROSS-EXAMINATION BY MS. WILSON OF MR. BURDING:

4 Q. Okay. I am just trying to get the timeframes here
5 right from your testimony here today. So you testified that
6 at 1:00 a.m. the defendant called you?

7 A. Yes.

8 Q. Okay. And then as a result of his phone call you went
9 to pick up a cell phone?

10 A. Correct.

11 Q. And at what time was that?

12 A. It was approximately 1:30 when I showed up at his door.

13 Q. And could you tell me what was the next -- what was the
14 next step or the next thing that happened.

15 A. It was approximately 5:00, 5:30 in the morning ---

16 Q. Okay.

17 A. --- that him and Adam came to the house to get the cell
18 phone, charger, and jacket back.

19 Q. So the person whom you picked up the cell phone from
20 came back to get the cell phone around 5:30 -- or 5:00 a.m.?

21 A. No, Jason as well as Adam who was with him -- that's
22 Michael Jason Maxwell. I know him by Jason.

23 Q. That threw me off there.

24 A. Okay.

25 Q. So Mr. Maxwell and then someone by the name of Adam

1 returned home to get the cell phone?

2 A. Correct.

3 Q. Okay. Thank you so much.

4 THE COURT: Any redirect?

5 MR. RUNYON: Just briefly.

6 REDIRECT EXAMINATION BY MR. RUNYON OF MR. BURDING:

7 Q. Mr. Burding, did you have any conversations with Ms.
8 Hunter about any plea bargain offer offered to Mr. Maxwell?

9 A. No.

10 Q. Okay.

11 MR. RUNYON: No further questions, Your Honor, at this
12 point in time.

13 THE COURT: Any objection to the witness being excused
14 from the applicant?

15 MR. RUNYON: None. None, Your Honor.

16 THE COURT: From the State?

17 MS. WILSON: None, Your Honor.

18 THE COURT: Sir, you are excused. You may proceed.

19 MS. WILSON: That is the case for the applicant, Your
20 Honor.

21 THE COURT: Any witnesses from the State?

22 MS. WILSON: Yes, Your Honor.

23 THE COURT: You may proceed.

24 MS. WILSON: Thank you, Your Honor. We would like to
25 recall Ms. Forsythe.

1 THE COURT: Ms. Forsythe, if you can come to the stand.
2 I will remind you are still under oath.

3 (Witness is seated.)

4 THE COURT: You may proceed when you are ready.

5 MS. WILSON: Thank you.

6 DIRECT EXAMINATION BY MS. WILSON OF MS. FORSYTHE:

7 Q. Ms. Forsythe, are you aware of this testimony from Mr.
8 Burding?

9 A. I'm aware of the discussion of the cell phone, yes.

10 Q. And is it your understanding that he was or was not
11 subpoenaed at trial to testify?

12 A. I don't know if the State subpoenaed him to appear at
13 the trial. I have no idea if they did that or not.

14 Q. And the defense did not subpoena him?

15 A. We did not.

16 Q. And is there any reason behind not calling Mr. Burding
17 as a witness?

18 A. There is a problem with his timeline and what he
19 alleges. And the problem is is that the cell phone records
20 don't -- don't match it.

21 So unfortunately we understand that that -- that was
22 his position. But the cell phone records indicated calls at
23 a time where there probably shouldn't have been any phone
24 calls. And that's my recollection.

25 MS. WILSON: Thank you.

1 CROSS-EXAMINATION BY MR. RUNYON OF MS. FORSYTHE:

2 Q. Just to clarify, so the -- the records indicated that
3 there were calls when there shouldn't have been calls.

4 A. There was this idea that he did or did not have the
5 cell phone in his position. Again, the time line just
6 didn't match what the cell phone records showed.

7 Q. Okay. But the cell phone records would show -- did in
8 fact show that there were telephone calls?

9 A. Yes.

10 Q. And as you testified to previously, the records cannot
11 show who in fact made the phone calls?

12 A. That's correct.

13 Q. So the fact that the calls were made would not
14 necessarily have placed it in the hands of the defendant
15 afterward?

16 A. That's correct.

17 Q. No further questions, Your Honor.

18 THE COURT: Anything further?

19 MS. WILSON: Nothing from this witness.

20 THE COURT: You may step down. Any further witnesses
21 from the State?

22 MS. WILSON: Yes, Your Honor, the State would like to
23 call Ms. Ann Williams.

24 THE COURT: Ms. Williams, if you would come forward to
25 be sworn.

1 (WHEREUPON, the witness was duly sworn.)

2 THE CLERK: Please state your name, spelling your last
3 name for the record.

4 MS. WILLIAMS: Ann Miller Williams, W-I-L-L-I-A-M-S.

5 THE COURT: You may proceed.

6 ANN MILLER WILLIAMS, having
7 first been duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. WILSON OF MS. WILLIAMS:

9 Q. Thank you for being here today with us, Ms. Williams.
10 Were you the prosecutor assigned to Mr. Maxwell's case?

11 A. I was.

12 Q. And were you working in conjunction with any other
13 solicitors?

14 A. Before I took the case over there were two other
15 assistant solicitors that had it. But myself and Dorie
16 Biagianti had the case for about a year and a half before it
17 was tried.

18 Q. And about how long have you been practicing law?

19 A. Fourteen years.

20 Q. And has a good bit of it been in criminal law?

21 A. Actually 16 years. All of it has been in criminal law.
22 All of it has been as a prosecutor.

23 Q. And can you kind of talk about the discovery process in
24 this case. After approximately how much -- how much time
25 passed after I would assume Ms. Hunter filed regular Rule 5

1 motions were you able to turn that information over?

2 A. All of the discovery was turned over to Ms. Hunter on a
3 timely basis. The only items that were turned over to her
4 within a couple of months of trial were two proffer
5 agreements, one with Thomas Knox and one with Adam Tarpley.
6 And those were turned over at least a month before trial.

7 Adam Tarpley was the codefendant and was with Maxwell
8 when they shot the victim. And he was prepared to testify
9 as an eyewitness to the shooting.

10 THE COURT: I'm sorry, could you tell me the name of
11 the codefendant, the other person.

12 MS. WILLIAMS: Adam Tarpley.

13 THE COURT: And what was the other person's name?

14 MS. WILLIAMS: Thomas Knox.

15 THE COURT: And when were those proffer agreements
16 turned over?

17 MS. WILLIAMS: They were turned over at least a month
18 beforehand. And I'm sorry, Your Honor, I didn't know I was
19 testifying or I would have looked that up. But we had
20 lengthy discussions with Ms. Hunter about -- about those
21 agreements. They were both represented by counsel.

22 THE COURT: Thank you. I apologize, Ms. Wilson.

23 BY MS. WILSON:

24 Q. Well, did you turn over any discovery to Ms. Hunter or
25 Ms. Forsythe the day of trial or the week of trial?

1 A. No.

2 Q. And can you kind of walk through the plea negotiation
3 process with Ms. Hunter. About how far into the case did it
4 start, and kind of give us a progression.

5 A. I was unaware of a 20-year offer. If a solicitor in
6 the past had made it, I am not aware of it. And I don't
7 remember that in the file.

8 I do remember Ms. Hunter telling us repeatedly that Mr.
9 Maxwell was not there, that he maintained his innocence and
10 he was not going to plead to anything.

11 In fact, I think Ms. Hunter believed him up until the
12 evidence started unfolding. But she told us on numerous
13 occasions that she had had conversation with him and that
14 there was this mix-up with the phones and that he was not at
15 the incident location at the time of the crime.

16 It wasn't until she got the phone records that she
17 realized that it didn't match up with the stories that he
18 was telling.

19 Q. Are you aware of a ten-year plea offer?

20 A. I am aware of no ten-year plea offer.

21 Q. So it is your testimony that you are not aware of a
22 10-year plea offer or a 20-year plea offer?

23 A. I'm not aware of either of those. We had a discussion
24 with Ms. Forsythe and Ms. Hunter; and we told them before
25 the trial began we can't make an offer, if they were willing

1 to consider an offer to give us a number and we would talk
2 to the family about it.

3 But at that point they told us that Mr. Maxwell had
4 maintained his innocence, that he was not at the location,
5 and that he wasn't guilty, that he wasn't interested in any
6 offer.

7 Q. Can you kind of briefly describe the State's evidence
8 or the evidence that you were going to present at trial or
9 you started to present at trial.

10 A. We had a cell phone that belonged to Mr. Maxwell that
11 was located at the scene. We found out early on that he
12 shared the cell phone with a man named Thomas Knox.

13 At about one o'clock or at midnight right before the
14 murder Mr. Maxwell went over with some of his friends and I
15 think his stepfather as well and confronted Mr. Knox in
16 front of lots of witnesses and got the cell phone back.
17 There was a physical fight that occurred. The cell phone
18 was then returned to Mr. Maxwell.

19 Mr. Tarpley was with Mr. Maxwell the whole time. And
20 he testified that at that point Mr. Maxwell had the cell
21 phone.

22 Mr. Tarpley was going to testify that at the early
23 morning hours, a couple, three hours after they got the cell
24 phone back, they were using a lot of drugs, they were
25 drinking a lot, and that they thought that the decedent,

1 Christopher Teseniar, had stolen some jewelry from Mr.
2 Maxwell's mother who was deceased. And they were very very
3 angry about, that.

4 And Mr. Tarpley was going to testify that actually in
5 the weeks preceding the murder they had talked about killing
6 him.

7 And on the early morning hours after they got the cell
8 phone back Mr. Tarpley would testify that they got to the
9 trailer, that they kicked the door in, that they located Mr.
10 Teseniar asleep in his bed and that they shot him repeatedly
11 in the face and in the body and then that they ran out.

12 And all of the phone calls that Mr. Tarpley said were
13 made -- because he said right afterward they called two
14 codefendants. All the phone records matched up with Mr.
15 Tarpley's story.

16 So we were prepared to present the phone records and
17 then Mr. Tarpley's testimony. And because it was
18 corroborated by that objective evidence we felt that it was
19 going to be very credible.

20 Q. Thank you, Ms. Williams.

21 **CROSS-EXAMINATION BY MR. RUNYON OF MS. ANN WILLIAMS:**

22 Q. Good morning, Ms. Williams. How are you doing?

23 A. Good morning.

24 Q. And so as a practical matter let me see if I
25 understand, because I am a little slow on the uptake the

1 older I get.

2 You are not saying that plea offers were not made or
3 plea discussions weren't made before you got in the case;
4 you are just not aware of it?

5 A. What I'm saying is I didn't see any plea offers in the
6 file, but if Mr. -- if another solicitor made one, of course
7 I can't say what they did. I do know that -- that Leigh
8 Hunter told me that she had discussed pleading with her
9 client and that he was innocent and he wasn't interested in
10 pleading guilty but that she had had discussions with him.

11 Q. Okay. Well, we all know that as lawyers we talk about
12 evidence in the case and resolution of a case that sometimes
13 doesn't necessarily fit within the scope of what our
14 client's beliefs are; isn't that correct?

15 A. I'm sorry, could you say that again.

16 Q. Well, we don't always -- we do discuss resolution of a
17 case as whether -- whether our clients would believe that
18 would be best course of action or not; isn't that correct?

19 A. I don't know what y'all discuss with your client. I
20 don't know how that process ---

21 Q. I'm not talking about with a client. I am talking
22 about with solicitors.

23 A. I mean I guess. We usually document the offers we make
24 in writing. So I just don't remember seeing any offers in
25 that case. And I know that I didn't discuss any offers with

1 the family. And we would always discuss it with the family
2 before we made an offer.

3 Q. Who were the solicitors prior to your taking over the
4 case that handled this file?

5 A. Okay. Michael -- his name has just escaped me right
6 now. I can't think of his last name. I'm so sorry. I'm
7 having a middle-age moment.

8 Q. He left and went to Georgia?

9 A. Michael Henderson.

10 Q. Michael Henderson. Right. His wife received a big
11 honor of teacher of the year or something and got a big
12 award and went to California to get it one time, right?

13 A. That's correct.

14 Q. All right. Now so you are not saying that Michael
15 Henderson didn't make an offer; you are just saying you have
16 no record of that offer being made?

17 A. I am saying that I have -- I didn't see an offer in the
18 file. And that is usually how offers are made is that we
19 document them in writing.

20 Q. That's right. So if -- and it is your testimony that
21 if you don't have a document then it is your testimony it
22 probably wasn't made but you don't know that it wasn't made?

23 A. Well, also the family was not aware of any offers.
24 Because we had discussions with them. And it would be
25 unusual for a solicitor to make an offer, not tell the

1 family. I mean that would be he wouldn't document it in
2 writing and also not tell the family. But I can't say what
3 Michael did.

4 Q. Okay. What -- who was the solicitor after Mr.
5 Henderson?

6 A. That would be me, Dorie Biagianti.

7 Q. Okay. So Mr. Henderson -- there was a solicitor named
8 Michael who is Michael Henderson, and there is no indication
9 or there is no evidence that there was an offer made?

10 A. There is no evidence, and I can't imagine a 20-year
11 offer being made in a case that heinous quite frankly.

12 Q. Well, and that is your opinion?

13 A. That is my opinion.

14 Q. Okay. No further questions, Your Honor.

15 THE COURT: Any redirect?

16 MS. WILSON: Nothing from the State.

17 THE COURT: You may step down.

18 MR. RUNYON: Excuse me one second, Your Honor.

19 (Mr. Runyon confers with client.)

20 MR. RUNYON: No further questions, Your Honor.

21 THE COURT: You may step down.

22 THE COURT: Anything further from the State?

23 MS. WILSON: Nothing further from the State.

24 THE COURT: Anything further from the applicant?

25 MR. RUNYON: Nothing further from the applicant, Your

1 Honor.

2 THE COURT: The applicant in this case has filed an
3 application for post-conviction relief alleging that his
4 counsel was ineffective on several basis: That she failed
5 to conduct a thorough investigation, that she failed to move
6 to objections regarding the contradictions of State's
7 witnesses, and that she failed to protect applicant's
8 rights, violate a due process clause of the 14th amendment,
9 and that he was wrongfully charged due to ineffective
10 assistance of counsel.

11 In considering an application for post-conviction
12 relief the court is required to look at prevailing precedent
13 which is Butler versus State, Strickland versus Washington,
14 and Cherry versus State.

15 The court must look at -- it is a two-pronged test to
16 measure proper performance. The burden is on the applicant
17 by a preponderance of the evidence to show that counsel's
18 conduct so undermined the proper functioning of the
19 adversarial process that the trial cannot be relied upon as
20 having produced a just result.

21 In this case which happens in some instances the trial
22 had proceeded for several days after which the defendant
23 chose to change his plea from not guilty to guilty. And in
24 considering that standard the court must look at whether
25 counsel's performance was deficient and whether the

1 applicant was prejudiced.

2 And prejudice is measured by whether the applicant
3 would not have pled guilty but would have insisted on going
4 to trial or continuing his trial in this instance. And he
5 must show that but -- that there is a reasonable probability
6 that but for counsel's alleged errors he would not have pled
7 guilty and would have insisted on going to trial.

8 I have reviewed the record in this case and find that
9 there is no support for the contention that counsel was
10 ineffective or that their ineffective performance was such
11 that Mr. Maxwell would have insisted on continuing the trial
12 and would not have pled guilty.

13 What we have frankly is a case of what I can best term
14 buyer's remorse which most defendants or applicants in this
15 situation would feel.

16 Most go into a plea situation hoping for the best
17 however knowing and being cognizant of the fact that you
18 cannot control the court or how the court will rule in a
19 matter or the court's perception of the matter. However,
20 most individuals plead guilty, and I think aptly in the
21 words of Ms. Forsythe he knew he was pleading straight up
22 and he was willing to take that risk in hopes that he would
23 get a beneficial sentence, and it just didn't turn out that
24 way.

25 Without belaboring the hour and without going through

1 the transcript line and page - which I certainly could do,
2 but I will do in the written order instead - it is very
3 clear from his thorough questioning by the trial court that
4 he knew the nature of the charges. He understood his
5 constitutional rights. He knew the nature of the penalty
6 and that he believed waived -- freely, voluntarily,
7 knowingly and intelligently waived those rights and entered
8 into a plea of guilty in this case and then was subsequently
9 sentenced by Judge Harrington.

10 And then on the motion for reconsideration I find
11 credible Ms. Forsythe's testimony that they presented
12 sufficient mitigation to try to sway the court but due to,
13 in Ms. William's words, the heinous nature of this offense
14 she did not feel it appropriate to reduce his sentence.
15 However, she did give him the benefit of some mitigation and
16 change the sentence from a consecutive sentence to a
17 concurrent sentence.

18 But there is absolutely no support in the record that
19 his plea was forced, that it was not freely and voluntarily
20 made, intelligently made.

21 There is no testimony in the record to support that a
22 10-year offer was made in this case or that it was not fully
23 communicated to him or that he did not even if extended
24 reject it.

25 There is testimony in the record that a plea offer of

1 20 years was offered to him, but the credible evidence in
2 the record supports that he was adamant in his desire to
3 have a trial and that he rejected any plea offers that were
4 given to him.

5 The record supports that his counsel, both Ms. Hunter
6 and Ms. Forsythe, were more than adequately prepared for
7 trial, that Ms. Hunter had hired a private investigator to
8 fully examine the facts and circumstances of this case and
9 any defenses that the defendant may have had, that he -- his
10 counsel fully went over discovery with him and his defenses
11 and they made certain strategic decisions that they thought
12 were in his best interest or in the best interest of his
13 advocacy which were appropriate in light of the fact that
14 the posture he was taking regarding the cell phone simply
15 was not supported by the objective evidence in the record,
16 that being the cell phone records.

17 So in light of the transcript in this matter as well as
18 those witnesses I found to be credible, that Ms. Forsythe
19 and Ms. Williams, the motion -- the application for
20 post-conviction relief is denied.

21 The attorney general will provide the Court with a
22 proposed order within 15 days of today with the appropriate
23 findings of fact and conclusions of the law. And I give her
24 leave to make any consistent findings with the record.

25 And the order will also be sent to Mr. Runyon so that

1 he can review it prior to the court issuing its final
2 position. Thank you.

3 MR. RUNYON: Thank you, Your Honor.

4 MS. WILSON: Thank you, Your Honor.

5 THE COURT: You are welcome.

6 (Whereupon the hearing concluded 11:03 a.m.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Court for Charleston County, South Carolina, on July 24, 2013.

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



PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: December 31, 2013

Certified Transcript Provided For: SCCID

Certification Reference # 12/31/13 DR16

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Michael Maxwell, #340524,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2010-CP-08-3244

ORDER OF DISMISSAL

HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

OCT 30 AM 11:16

FILED

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:

The Honorable Deadra L. Jefferson
William L. Runyon Jr., Esquire
Ashleigh R. Wilson, Esquire
Leigh Hunter, Esquire
Michele P. Forsythe, Esquire
July 24, 2013
Phyllis Norton

Date of Hearing:
Court Reporter:

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 14, 2010. The Applicant amended his application on January 9, 2012. The Respondent made its Return on June 23, 2011. An evidentiary hearing into the matter was convened on July 24, 2013 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by William L. Runyon Jr., Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Applicant's plea counsel, Michele P. Forsythe, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Berkeley County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Berkeley County. The Applicant was indicted at the May 2008 term of the Berkeley County Grand Jury for Murder (2008-GS-08-0766) and Burglary-First Degree (2008-GS-08-1444). Leigh Hunter, Esquire,¹ and Michele P. Forsythe, Esquire, represented the Applicant. The Applicant pled guilty as indicted. The Honorable Kristi L. Harrington sentenced the Applicant to confinement for sixty (60) years for Murder and twenty-five (25) years for Burglary. Originally, the sentences were to be served consecutively; however, subject to the Applicant's July 8, 2010 Motion For Reconsideration of Sentence they were later amended to reflect that the sentences are to be served concurrently. The Applicant did not appeal the plea or sentences.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

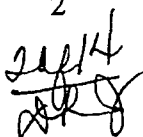
1. Ineffective Assistance of Counsel
 - a. Counsel failed to conduct a thorough investigation of the case.
 - b. Counsel failed to object to the contradictions of the State's witnesses.
2. Brady Violation
 - a. Failure to turn over necessary evidence denying client the capability of fairly defending himself prior to and at the plea hearing.
3. Due Process Violation
 - a. Counsel failed to protect the Applicant's rights.

At the hearing, the Applicant proceeded solely on the allegations outlined in his application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the

¹ Leigh Hunter, Esquire passed away prior to the Applicant's evidentiary hearing.

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opportunity to observe each witness who testified at the hearing and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2003).

Summary of the Testimony

The Applicant testified he met with Forsythe four (4) or five (5) times and he met with Hunter and her paralegals six (6) or seven (7) times prior to trial. The Applicant testified he reviewed the discovery with counsel prior to trial. He testified he discussed possible defenses and inconsistent witness statements with counsel prior to trial. He testified that he did not give his attorneys any witness names to investigate.

The Applicant testified he was offered a plea with a sentence of ten (10) years for Voluntary Manslaughter and Burglary-Second Degree in the fall of 2008. The Applicant testified he learned of the ten (10) year plea from counsel prior to trial after counsel had already rejected the offer. He testified he did not tell counsel to reject the offer. He testified that after learning of the rejection he told counsel to try and get the offer back on the table. The Applicant testified the State made no other plea offers.

The Applicant testified the solicitor found new evidence on the second day of trial. The Applicant testified counsel did not have evidence to cross-examine or impeach the witnesses against him at trial. He testified this played a role in his decision to plead guilty. The Applicant testified he pled guilty the third day of trial thinking he would receive a thirty (30) year sentence. He testified ultimately it was his decision to plead guilty and he was aware he was waiving his rights when pleading guilty. He also testified he was advised of the possible sentences he was

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facing. Lastly, the Applicant testified his counsel filed a motion to reconsider after his plea and his sentences were amended to run concurrently.

Also present and testifying was Michele P. Forsythe, Esquire. Counsel testified she was licensed in 2003. She testified she served as co-counsel to Leigh Hunter, Esquire. Counsel testified she associated with Hunter as co-counsel on Murder cases. Counsel testified Hunter passed away in August 2012. She testified she met with the Applicant enough to prepare the Applicant's case for trial.

Counsel testified they reviewed the physical evidence and discovery material with the Applicant. She testified that she and the Applicant went over the physical evidence and discovery material and on another occasion with the Applicant and Hunter. She testified she and Hunter were allowed to go into the evidence room to review the physical evidence. Counsel testified she discussed possible defenses with the Applicant. She testified the cell phone records were problematic to the Applicant's defense because they placed him at the scene of the crime. She further testified that they argued at trial that the cell phone was shared with another individual and that the Applicant was not at the scene.

Counsel testified they engaged in a very extensive investigation of the Applicant's case. She testified they hired a private investigator and spoke with all the witnesses. Counsel testified they had regular contact with several witnesses and the Applicant's family.

Counsel testified she was aware of a twenty (20) year plea offer through her discussions with Hunter and the Applicant. Counsel testified the Applicant maintained his innocence and rejected the twenty (20) year plea offer. She testified she was never made aware of a ten (10) year plea offer. Counsel testified the Applicant did not want to plead guilty because he

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maintained his innocence. Counsel further testified that the Applicant was well aware that all plea offers would be withdrawn once the matter went to trial.

Counsel testified she was not aware of any additional discovery disclosed at the last minute during trial. She testified that, had the Solicitor failed to turn over discovery, she would have made a prosecutorial misconduct motion during trial. Counsel testified she was aware the Applicant's co-defendants had signed proffer agreements with the State prior to trial. She testified she did not recall when she received those statements, but it was prior to trial.

Counsel testified she was aware of the cell phone evidence. She testified they did not subpoena Bruce Burding, the Applicant's stepfather, to testify at trial. She testified that Burding's testimony and timeline about the cell phone did not match the cell phone records. She testified the cell phone records show that calls were made, but they do not show who made the calls.

Counsel testified the Applicant pled guilty on the third day of trial. She testified they cross-examined all the State's witnesses effectively and were told by the defendant that he did not want to proceed because of the cell phone evidence the State was about to present against him. Counsel testified they spoke with the Applicant several times about pleading guilty. She testified the court made it very clear to the Applicant that he would receive a life sentence if he was convicted after a trial. She testified the court gave them time during trial to discuss the plea. Counsel testified they informed the Applicant of the consequences of his plea and what the State was required to prove at trial. She testified the Applicant knew he was pleading guilty "straight up" and it was the Applicant's decision to plead guilty. She testified the Applicant clearly understood that there were "no guarantees" on sentencing and he was willing to go forward with the change to a plea of guilty. She testified it was the Applicant's decision to plea and "take the

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risk." She further testified that once the Applicant decided to plead guilty the defense posture changed and shifted to a goal of "mitigation" in presenting his case to the court.

Lastly, counsel testified they filed a Motion to Reconsider the sentence on the Applicant's behalf after trial. She testified they requested a decrease in the Applicant's sentence. She testified they presented the court with examples of other murder sentences in the area. Counsel testified the court changed the sentences from consecutive to concurrent and cited the nature of the crime and significant injuries to the victim as the basis for her sentence.

Anne Williams, Assistant Solicitor, also testified at the evidentiary hearing. Williams testified regarding the procedural history of the Applicant's case. She testified she took the case from two (2) other solicitors. She testified she has been practicing criminal law as a prosecutor for sixteen (16) years.

Williams testified she was unaware of any twenty (20) year or ten (10) year plea offers from the State. She testified that usually offers are documented in writing. She testified she reviewed the file and did not see any written offers in the file. She testified it is possible that a previous solicitor much earlier in the case could have made a twenty (20) year offer. However, she testified the family was not aware of any previous plea offers and any offers would have been discussed with them prior to being extended to the Applicant. She further testified that a ten (10) year offer was "never" made in this case. She also testified that she could not imagine an offer of twenty (20) years being made in a case this heinous. She testified that she discussed a plea with Hunter and was told that the Applicant was not present at the murder and not interested in a guilty plea. She further testified that she and Hunter had discussions regarding the potential of a plea offer and that Hunter advised her that the Applicant maintained his innocence and would not plead to anything. She testified that she told Hunter and Forsythe to give the state a

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number and we will discuss it with the family and the Applicant's position was that he was "never" at the scene so they would not do that. She testified it was her perception that Hunter believed the Applicant until the evidence started to unfold.

Williams also testified that she turned over all discovery materials to counsel prior to trial. She testified the only thing that she turned over within one (1) month of trial were the proffers from the Applicant's co-defendants. She further testified that she and Hunter had lengthy discussions about the proffer agreements and that both co-defendants were represented by counsel. She also testified that both co-defendants planned to testify against the Applicant and counsel was aware of this. Williams testified the State had the following evidence against the Applicant: Applicant's cell phone found at the scene; Applicant's cell phone was shared with co-defendant Knox; testimony that the Applicant went over to the victim's home to confront him and get the cell phone back; testimony from the Applicant's co-defendant that he thought the victim had stolen jewelry from the Applicant's mother, that one (1) week in advance the Applicant had talked about killing the victim and testimony of co-defendant that the Applicant shot the victim several times; and phone records to support the co-defendant's story.

The Applicant also called Bruce Burding, the Applicant's stepfather, to testify. Burding testified he was aware of the Applicant's charges and tried to assist Hunter with information about what happened leading up to the incident. He testified he was a potential witness, but was not subpoenaed for trial. He testified if he was called to testify he would have provided information about the events leading up to the time of the incident. He testified the Applicant called him around 1 *ante meridian* (AM) to say he got into a fight and was trying to get the cell phone back from the victim. Burding testified he went to the home of the victim around 1:30 AM

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to pick up the cell phone for the Applicant. He testified the Applicant returned to the home around 5 AM to retrieve the cell phone from him.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant 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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

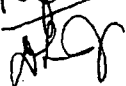
The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a

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reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 52, 106 S. Ct. 366, 366 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C. 95, 98, 535 S.E.2d 926, 927 (2000); Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994)).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000) (citing Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (1999)).

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This Court finds the testimony of both Michele Forsythe and Anne Williams credible, while finding the testimony of the Applicant and Bruce Burding lack credibility. This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the range of penalty, the Applicant's constitutional rights, the Applicant's version of the facts, and possible defenses or lack thereof.

This Court finds and the record reflects that the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The Applicant was advised of the facts as presented by the State and told the court his version of the facts. (Tr. 11:11-21:4). The Applicant was advised of his range of penalty and potential sentence. (Tr. 8:4-13). The Applicant was advised of his right to a jury trial (Tr. 4:9-5:3), his right to remain silent (Tr. 5:4-10), and his right to confront the witnesses against him (Tr. 5:11-21). The Applicant acknowledged that he was guilty of these offenses. (Tr. 10:1-6, 11:8-10). The Applicant told the plea court that he was satisfied with his attorneys and that no one had threatened him or promised him anything to plead guilty. (Tr. 9:3-25, 8:22-24). The Applicant was advised of his right to appeal. (Tr. 10:10-13). This Court finds the Applicant was fully aware of the rights he was waiving by pleading guilty and aware of the consequences of his guilty plea.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorneys demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. Pendergrass, 270 S.C. at 4-5, 239 S.E.2d at 751-52; Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Butler,

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[Signature]

286 S.C. at 442, 334 S.E.2d at 814. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that trial counsel was not ineffective for failing to conduct a thorough investigation of the case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (citing Edwards v. State, 392 S.C. 449, 710 S.E.2d 60, 64 (2011)). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." Porter v. State, 368 S.C. 378, 385–86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, "a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521–22, 123 S. Ct. 2527, 2535 (2003) (quoting Strickland, 466 U.S. at 690–91, 104 S. Ct. at 2066).

This Court finds counsel provided credible testimony that they hired a private investigator and conducted extensive investigation on this case. Counsel testified she reviewed the physical evidence and spoke with all witnesses involved in the case. This Court finds counsel was aware of the testimony of Bruce Burding through their investigation of the case. This Court finds counsel made a strategic decision not to call him as a witness because his story was inconsistent with the cell phone records presented at trial. This Court further finds the Applicant has failed to prove what counsel would have discovered after further investigation of the matter. This Court finds that this allegation is without merit and the Applicant has failed to carry his

burden of proving counsel was ineffective and prejudice resulted from counsels' performance.

This Court finds that trial counsel was not ineffective for failing to object to the contradiction of the State's witnesses. This Court finds the Applicant has failed to show specifically what contradictions counsel should have objected to during trial. This Court also finds that counsel's objections become irrelevant since, by pleading guilty, the Applicant waived any challenges to the State's evidence at trial. This Court also finds the Applicant's testimony that counsel's examination of the State's witnesses affected his decision to enter a plea of guilty unpersuasive. This Court finds this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to object to contradictions of the State's witnesses and has failed to carry his burden of proving prejudice resulted from counsel's performance.

Brady Violation/ Due Process Violation

This Court finds the State did not violate Brady v. Maryland prior to or during the Applicant's trial and subsequent guilty plea. Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963) ("the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution"). The Applicant alleges the State failed to turn over necessary evidence denying him the capability to fairly defend himself prior to and at the plea hearing. This Court finds this allegation is wholly without merit. "The government's obligation to make such disclosures is pertinent not only to an accused's preparation for trial but also to his determination of whether or not to plead guilty." Gibson v. State, 334 S.C. 515, 523-24, 514 S.E.2d 320, 324 (1999) (quoting United States v. Avellino, 136 F.3d 249, 255 (2d Cir. 1998)). A defendant may challenge the voluntary nature of his guilty plea

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in a post-conviction relief action by asserting an alleged Brady violation. Id. at 524, 514 S.E.2d at 324. "A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Id. (citing Kyles v. Whitley, 514 U.S. 419, 432-42, 115 S. Ct. 1555, 1565-69 (1995)); Brady, 373 U.S. at 87, 83 S. Ct. at 1196; State v. Von Dohlen, 322 S.C. 234, 241, 471 S.E.2d 689, 693 (1996)).

This Court finds the Applicant has failed to present any credible evidence to support his claim that the State violated Brady. This Court finds both counsel and the Solicitor gave credible testimony that all discovery was disclosed to the defense prior to trial and nothing was handed over to the defense during the trial. Therefore, this Court finds the Applicant's due process rights were not violated.

Ultimately, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by counsel's representation. See Strickland, 466 U.S. at 688, 104 S. Ct. at 2065. Therefore, the Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this

matter and not specifically addressed in this Order; this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations. Therefore, all other allegations are hereby denied and dismissed.

CONCLUSION

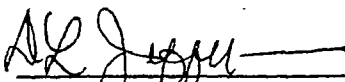
Based on the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations occurring before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25th day of October, 2013.


 The Honorable Deadra L. Jefferson
 Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.

WITNESSES

BCSO, Gerald Merrithew

2007-15-JCP-03417

for M. Merrithew

DOCKET NO. 2008-GS-08-0766

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

May, Term 2008

ARI WARRANT NUMBER

I-728372

THE STATE

VS.

Michael J. Maxwell

ACTION OF GRAND JURY

True Bill

Presented
Person of Grand Jury

5-14-08

VERDICT

Indictment for

Murder

SC Code: 16-03-0010, 0020

CDR Code: 0116

Foreperson of Petit Jury
Date:

INDICT

FILED
2008 MAY 14 PM 1:07
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF Berkeley)

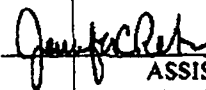
INDICTMENT
Murder

At a Court of General Sessions, convened on May 14, 2008 the Grand Jurors of Berkeley County present upon their oath:

Murder

That Michael J. Maxwell did in Berkeley County on or about November 11, 2007, willfully, knowingly, unlawfully, and with malice aforethought, kill one Christopher Teseniar by shooting the victim and the victim did die as a proximate result thereof. This action in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

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



ASSISTANT SOLICITOR
Jennifer Porter

COUNTY OF Berkeley
 STATE VS.
Michael J Maxwell
 AKA: _____
 Race: W Sex: M Age: 27
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: Goose Creek, SC 29445
 DL#: _____ SID#: _____
 *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder

INDICTMENT/CA#: 2008-GS-08-0766
 A/W#: 1728372
 Date of Offense: 11/11/2007
 S.C. Code § : 16-03-0010, 0020
 CDR Code #: 0116

SENTENCE SHEET

Max: 30 yrs - Life

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Dorie C. Blaganti 71661 Don Thel Spesh 04300
 Blaganti, Dorie C. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 60 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
§ 47.12 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$100	\$ 25.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§ 90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk Linda J. Hill

Court Reporter: Vivian Cross

SCCA/217 (11/2009)

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge Christina Smith

Judge Code: 2171

Sentence Date: 11/28/10

1/28/11

MMH2007-11-03417

WITNESSES

Gerald Merrihew

Berkeley County Sheriff

Gerald Merrihew

Renee Ramsey

AGENCY CASE NUMBER

0711045376

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DATE OF ARREST

November 13, 2007

ACTION OF GRAND JURY

True Bill

For: *Gene Linn*
Person of Grand Jury

Date: 8-20-08

VERDICT

DOCKET NO. 2008-CS-08-1444

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

August Term 2008

THE STATE

vs.

Michael J Maxwell

DOB:

W/M

Indictment for

Burglary

Foreperson of Petit Jury

Date:

INDICT

2008 AUG 20 PM 2:21

✓

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

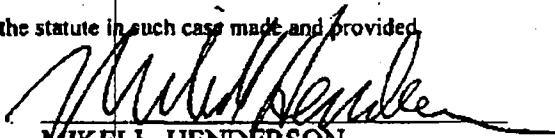
INDICTMENT

At a Court of General Sessions, convened on August 20, 2008 the Grand Jurors of Berkeley County present upon their oath:

Burglary

That Michael J. Maxwell did in Berkeley County, South Carolina, on or about November 11, 2007, willfully, unlawfully, and feloniously enter the dwelling of Christopher Teseniar and/or James D. Teseniar, Jr, and/or Anthony W. Combs, located at _____ a Road, Moncks Corner, South Carolina, without consent and with the intent to commit a crime therein, to wit: murder and/or larceny. These acts occurring with the following circumstances of aggravation: to wit: the entering or remaining occurred in the nighttime hours and/or when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime was armed with a deadly weapon, to wit: a shotgun, and/or did cause physical injury to a person who was not a participant in the crime and/or did display what was a shotgun. This is in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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


MIKELL HENDERSON
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley
STATE VS.
Michael J Maxwell

AKA: _____
Race: W Sex: M Age: 27
DOB: _____ SS#: _____

Address: _____
City, State, Zip: Goose Creek, SC 29445
DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Burglary, 1st degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: Dorie C. Biagianti 71661 Michael J Maxwell
Biagianti, Dorie C. SC Bar# Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2008-GS-08-0766
☐ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____	
*Fine: _____	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <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 (SCCA Surcharge)	\$5 \$ <u>5.00</u>
3% to County (if paid in installments)	\$ <u>3.90</u>
TOTAL	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk Linda J. Hill
Court Reporter: Vivian Cross
SCCA/217 (11/2009)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-08-1444
A/W#: 08GS081444
Date of Offense: 11/11/2007
S.C. Code § : 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

Max: 15 Yrs - Life

☐ CONVICTED OF or ☒ PLEADS

☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ § 17-25-45

Attorney for Defendant Heidi Hunter 64300
SC Bar#

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 Quinn
Judge Code: 412810
Sentence Date: 4/28/10

COUNTY OF Berkeley
STATE VS.Michael J Maxwell

AKA:

Race: W Sex: M Age: 27DOB: SS#:

Address:

City, State, Zip: Goose Creek, SC 29445DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary, 1st degreeINDICTMENT/CASE#: 2008-GS-08-1444A/W#: 08GS081444Date of Offense: 11/11/2007 - 11/11/2007S.C. Code §: 16-11-0311CDR Code #: 0079Amended
SENTENCE SHEET☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Maganti, Dorie C.76463
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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: 2008-GS-08-766☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

§ 56-5-2995 (DUI Assessment)

\$12

§ 56-1-286 (DUI Breath Test)

\$25

Proviso 47.9 (Public Def/Prob)

\$500

§ 14-1-212 (Law Enforce. Funding)

\$25

§ 14-1-213 (Drug Court Surcharge)

\$150

§ 50-21-114(BUI Breath Test Fee)

\$50

§ 56-5-2942(I) (Vehicle Assessment)

\$40/ca

Proviso 90.5 (SCCA Surcharge)

\$5

§ 44-53-450(C) (Conditional Discharge)

\$350

3% to County (if paid in installments)

\$

TOTAL

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2159Sentence Date: 7/28/10