

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Florence County
William H. Seals, Jr., Circuit Court Judge

RECEIVED

AUG 26 2014

S.C. Supreme Court

WILLIAM L. GAINES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLANT CASE NO. 2013-002755

APPENDIX

BENJAMIN JOHN TRIPP
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

JOSHUA L. THOMAS
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

FILED
2011 JUN 15 AM 10:29

IN THE COURT OF GENERAL SESSIONS

Indictment No.(s): 2010-GS-21-1469

A/Warrant No.(s): M-376520

The State of South Carolina, et al.

Plaintiff

v.

WILLIAM L. GAINEY

Defendant.

FLORENCE COUNTY, S.C.

ORDER FOR COMPETENCY TO STAND
TRIAL EVALUATION PURSUANT TO
STATE V. BLAIR

EVALUATION BY:
(Select Only One)

☒ Department of Mental Health (Mental Illness)

OR

☐ Department of Disabilities and Special Needs
(Mental Retardation or Related Disability)

This matter is before me for an order requiring defendant WILLIAM L. GAINEY, charged with attempted murder, to submit to an evaluation for competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976).

BASIS FOR ORDER. I have considered the showing made in support of the motion requesting this evaluation and have reason to believe defendant may lack the competency to understand the criminal proceedings or to assist with the defense as a result of a lack of mental competence.

This order is issued for the following reasons:

The Δ indicated in his statement to the police that he lost it and blacked out before and after the incident.

THEREFORE, IT IS ORDERED: Defendant shall be examined and observed at an appropriate facility by two examiners of the Department of Mental Health if suspected of having a mental illness or by two examiners designated by the Department of Disabilities and Special Needs if suspected of having mental retardation or a related disability, to render an opinion whether defendant is competent to stand trial.

COMPLIANCE DEADLINE/TRANSPORT FOR EVALUATION. The examining facility shall schedule the ordered examination no later than thirty (30) days from the examining agency's receipt of this order. If defendant is currently free on bond or personal recognizance,

defendant is responsible for making transportation arrangements to attend the examination. In the event defendant does not appear at the scheduled examination, upon written notice of such failure by the examining agency to the Sheriff of the county in which this case arose, defendant shall be taken into custody by the Sheriff and held until an examination can be scheduled and completed, and thereafter shall be released. Defendant's bond or bail is hereby revoked to the extent necessary to carry out the provisions of this order, and upon completion of the examination and release of defendant, any previous bail or bond issued by the Court shall remain in effect. If defendant is in custody at the time of the scheduled examination, the Sheriff is hereby authorized and required to transport defendant to and from the examination, arriving at the examining facility at the time established by confirmed appointment with the staff of the examining facility. In the event defendant is in custody of a law enforcement agency other than a Sheriff's department, nothing herein prevents such agency from carrying out the provisions of this order.

TRANSFER TO ALTERNATE AGENCY. If the initial examination is performed by the Department of Mental Health, and examiners find indications of mental retardation or a related disability but not mental illness, the Department of Mental Health shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant is "not mentally ill" and shall provide a copy of such notification and a copy of this order to the Department of Disabilities and Special Needs. Likewise, if the initial examination is performed by the Department of Disabilities and Special Needs, and examiners find indications of mental illness but not mental retardation or a related disability, the Department of Disabilities and Special Needs shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant does "not have mental retardation or a related disability" and shall provide a copy of such notification and this order to the Department of Mental Health.

In either case, the examining agency shall make copies of any records gathered or created in connection with its examination available to examiners designated by the alternate agency, and the alternate agency shall thereafter designate examiners to evaluate defendant as to competency to stand trial within thirty (30) days of receipt of the notification from the initial examining agency.

FINDING OF DUAL DIAGNOSIS. If examiners of either the Department of Mental Health or the Department of Disabilities and Special Needs find an indication of a dual diagnosis of mental illness and mental retardation or a related disability, no opinion on defendant's mental

competency shall be rendered, and the dual diagnosis must be reported to the Court, prosecutor, and defense counsel. The examining agency shall also provide notification of the finding and a copy of this order to the other agency. Thereafter, the Department of Mental Health and the Department of Disabilities and Special Needs shall arrange for an examiner from each agency to further evaluate defendant to render a final report on defendant's mental competency. Both agencies are authorized and required to make copies of all relevant records within their possession or control available to examiners for purposes of completing the dual evaluation.

AUTHORIZATION FOR INPATIENT EVALUATION. In the event examiners from either agency determine defendant requires an inpatient examination, upon written notice to this Court from the director of the examining agency or his designee, defendant shall be committed to an appropriate facility of the requesting agency for no more than fifteen (15) days for examination and observation related to defendant's mental competency to stand trial.

REQUEST FOR EXTENSION. Before the expiration of the examination period or the examination and observation period, the Department of Mental Health or the Department of Disabilities and Special Needs, as appropriate, may apply to a judge designated by the Chief Justice of the South Carolina Supreme Court for an extension of time up to fifteen (15) days to complete the examination or the examination and observation.

DETENTION BEYOND EVALUATION PERIOD. If, in the judgment of the designated examiners, defendant is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, defendant may be detained by the requesting agency in a suitable facility for so long as deemed clinically necessary or until a hearing required and provided by S.C. Code Ann. § 44-23-430 (1976) may be conducted by this Court. An additional Court order **shall** be necessary for ongoing pre-trial inpatient detention of defendant as discussed in this paragraph.

ISSUANCE AND ADMISSIBILITY OF WRITTEN REPORT. Within ten (10) days of all examinations or the conclusion of the observation period, a written report shall be made to the Court pursuant to S.C. Code Ann. § 44-23-420 (1976). A copy of the report shall also be forwarded to the prosecutor and defense counsel. This evaluation report shall be admissible as evidence in subsequent hearings pursuant to S.C. Code Ann. § 44-23-420(c) (1976); thus, the report is a statutory exception to the rule against hearsay and shall be admissible without need for foundational

testimony. However, the report shall be inadmissible in any other proceedings except as expressly permitted by South Carolina law.

OWNERSHIP AND DISCOVERABILITY OF EXAMINING AGENCY FILES. The examining agency is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. To promote full disclosure and to assure the cooperation of defendant during the evaluation process, ownership of the examining agency's files shall be vested with the examining agency, including clinician's notes, staff reports, evaluation documents, memoranda, test results, etc. Neither these files nor any of their contents shall be provided to any party except upon presentation of a Court order authorizing such or a release authorization signed by defendant. In the event the examining agency's evaluation opinion is contested, an examiner may be appropriately and fully questioned as to the basis for the examiner's opinion at any hearing pursuant to S.C. Code Ann. § 44-23-430 (1976). However, examiners and agency staff may not be compelled to testify regarding statements made during the competency examination for any purpose other than to establish competency. Also, statements made during the examination may not be used to impeach defendant at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS. State agency examiners conducting the evaluation may need clinical and school records concerning defendant to assist in forming an opinion. It is therefore ordered, upon presentation by the examining agency of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning defendant to the Department of Mental Health or the Department of Disabilities and Special Needs, or both.

COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS. Upon written request from the examining agency, counsel for the prosecution and defense shall furnish to the agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

DUTIES OF DEFENSE COUNSEL. Unless the prosecution is the party moving for this evaluation, defense counsel has the responsibility to file, serve, and transmit this order as outlined in the final paragraph below. Defense counsel does not have the right to attend any clinical interview scheduled pursuant to this Order, nor does defendant have a constitutional right to compel counsel's attendance. State v. Hardy, 283 S.C. 590, 325 S.E.2d 320 (1985). The Court recognizes, however, that circumstances may arise through which the examining agency may request counsel's attendance to facilitate the examination. In the event that such a determination is made, the examining agency may request counsel's attendance in writing, and counsel's level of participation shall be prescribed by the examining agency's written evaluation protocol. In this event, because of the substantial number of individuals awaiting examination, such interviews cannot be rescheduled, postponed, or canceled to accommodate counsel except upon presentation to the examining agency of a written statement from a circuit court judge that counsel's attendance is required in Court at the time the examination is scheduled. Whether or not defense counsel is requested to attend the clinical interview, defense counsel must meet with defendant prior to the interview to discuss this Court order, the evaluation process, the clinical interview, defendant's rights with regard to the clinical interview, and penalties associated with non-appearance and non-cooperation. Failure to comply with these requirements may result in sanctions for defense counsel. Defendant's refusal to participate at the interview because of the absence of counsel will be deemed non-cooperation. Failure of defendant to cooperate or participate in the interview may result in cancellation of the interview, examiners being unable to offer an opinion on competency to stand trial, and the case being called for trial without completion of the evaluation.

FILING, SERVICE, AND TRANSMITTAL OF ORDER. It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the examining agency at the address listed below. To expedite commencement of the evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the examining agency to advise of the

issuance of this order and forthcoming service upon the agency:

Evaluation Order Service Information

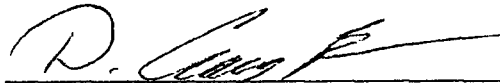
Department of Mental Health

Forensic Evaluation Service Paralegal
S. C. Department of Mental Health
CBHS Forensic Center
7901 Farrow Road
Columbia, S.C. 29203-3220
(803) 935-5540 (Phone)
(803) 935-5544 (Fax)
Email: FES-PARALEGAL@SCDMH.ORG

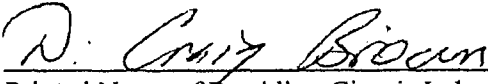
Department of Disabilities and Special Needs

Office of Clinical Services
Department of Disabilities and Special Needs
Post Office Box 4706
Columbia, S.C. 29240
(803) 898-9694 (Phone)
(803) 898-9660 (Fax)
Email: OBSForensics@ddsn.sc.gov

AND IT IS SO ORDERED.



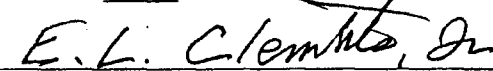
Presiding Circuit Judge



Printed Name of Presiding Circuit Judge

Florence, South Carolina

Dated: _____



Prosecutor

180 N. 18th St

Address

FLORENCE, S.C. 29501

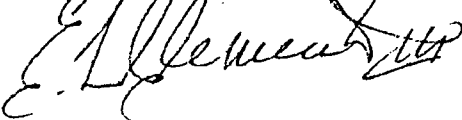
City, State, Zip

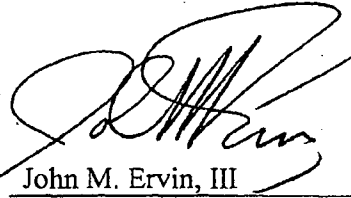
843-665-3091

Telephone

eclements@florenceco.org

Email





John M. Ervin, III

Defense Counsel

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Address

Darlington, SC 29532

City, State, Zip

843-393-5555

Telephone

jervin@jervinlaw.com

Email

2011 JUN 15 AM 10:29
CLERK
CORRECTIONAL INSTITUTE
CCCP & GS
FLORENCE COUNTY, SC

The following documents must be attached to this order upon submission to the Department of Mental Health or to the Department of Disabilities and Special Needs whichever is applicable:

1. Completed DMH/DDSN Outpatient Information Appointment Sheet
2. Copy of the indictment(s) (if issued)
3. Copy of the arresting agency's incident report
4. Copy of the warrant(s)
5. Law enforcement investigative reports
6. Defendant's statements to law enforcement, written or electronically recorded
7. Witness statements to law enforcement
8. Defendant's school psychological records (if available)
9. Autopsy reports (if applicable)

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

The State of South Carolina,)

IN THE COURT OF GENERAL SESSIONS

Indictment No.(s): 2010-GS-21-1469

A/Warrant No.(s): M-376520

ORDER FOR CRIMINAL RESPONSIBILITY
AND CAPACITY TO CONFORM
EVALUATION

(M'NAUGHTEN)

Select one of the following:

(Controls access to evaluation report as outlined below.)

- ☐ Ex parte evaluation requested by defendant prior to assertion of insanity defense.
- ☐ Evaluation requested by either party after defendant's assertion of insanity defense.
- ☒ Evaluation requested by consent of both parties at any time.

Defendant.

WILLIAM L. GAINES

FILED
2011 JUN 15 AM 10:29
CORRIE REE-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

This matter is before me for an order requiring defendant William L. Gaines, charged with attempted murder, to submit to an evaluation for criminal responsibility and capacity to conform conduct to the requirements of the law on or about 6-21-2010 pursuant to S.C. Code Ann. § 17-24-10 (1976). One of the following circumstances applies to the issuance of this order: (1) defendant has requested an evaluation to determine whether the insanity defense may apply; or (2) prosecution or defendant has requested this evaluation after defendant has affirmatively asserted the insanity defense and given appropriate notice pursuant to Rule 5(f) of the South Carolina Rules of Criminal Procedure; or (3) both parties by consent request this evaluation regardless of whether defendant has asserted the insanity defense.

BASIS FOR ORDER. I have considered the showing made in support of the motion requesting this evaluation and find defendant's mental state at the time of the alleged crime(s) will likely be at issue in this proceeding.

This order is issued for the following reasons:
The Defendant indicated in his statement to the police that he lost it and blacked out before and after the incident.

THEREFORE, IT IS ORDERED: Because the Department of Mental Health has

statutory responsibility for custody and control of individuals determined not guilty by reason of insanity, defendant shall be examined and observed at an appropriate facility of the Department of Mental Health by one or more examiners to determine whether defendant is criminally responsible pursuant to S.C. Code Ann. § 17-24-10(A) (1976) for conduct on or about _____.

If defendant is believed to be criminally responsible by the designated examiners, defendant shall be further examined to determine whether, because of mental disease or defect, defendant lacked sufficient capacity to conform conduct to the requirements of the law on or about _____ pursuant to S.C. Code Ann. § 17-24-20(A) (1976).

COMPLIANCE DEADLINE/TRANSPORT FOR EVALUATION. The examining facility shall schedule the ordered examination as soon as possible and no later than sixty (60) days from the receipt of this order by the Department of Mental Health, this time being necessary to gather required records. If defendant is currently free on bond or personal recognizance, defendant is responsible for making transportation arrangements to attend the examination. In the event defendant does not appear at the scheduled examination, upon written notice of such failure by the Department of Mental Health to the Sheriff of the county in which this case arose, defendant shall be taken into custody by the Sheriff and held until an examination can be scheduled and completed, and thereafter shall be released. Defendant's bond or bail is hereby revoked to the extent necessary to carry out the provisions of this order, and upon completion of the examination and release of defendant, any previous bail or bond issued by the Court shall remain in effect. If defendant is in custody at the time of the scheduled examination, the Sheriff is hereby authorized and required to transport defendant to and from the examination, arriving at the examining facility at the time established by confirmed appointment with the staff of the examining facility. In the event defendant is in custody of a law enforcement agency other than a Sheriff's department, nothing herein prevents such agency from carrying out the provisions of this order.

PROCEDURE IF LACK OF COMPETENCY IS INDICATED. If, during the course of the criminal responsibility and capacity to conform evaluation scheduled pursuant to this Order, the examiner finds indications that defendant may not be competent to stand trial pursuant to S.C. Code Ann. § 44-23-410 (1976) and State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), the examiner shall terminate the criminal responsibility and capacity to conform

evaluation, issue no report thereon, and by written communication recommend to the Court that a competency to stand trial evaluation should be ordered. Further, the examiner should state whether, in the examiner's opinion, such lack of competency is due to a mental illness or, in the alternative, mental retardation or a related disability. A copy of this written communication shall be sent to the prosecutor and defense counsel.

AUTHORIZATION FOR INPATIENT EVALUATION. In the event examiners from the Department of Mental Health determine defendant requires an inpatient examination, upon written notice to this Court from the director of the Department of Mental Health or his designee, defendant shall be committed to an appropriate facility of the Department of Mental Health for no more than fifteen (15) days for examination and observation related to defendant's criminal responsibility and capacity to conform. If the examination and observation of defendant has not concluded at the end of the initial inpatient fifteen (15) days, defendant may be kept in the continued custody of the Department of Mental Health for an additional period not to exceed fifteen (15) days, provided the director of the examining facility or his designee notifies this Court in writing. The issuance of an additional Court order allowing for the inpatient commitment(s) discussed in this paragraph is not necessary.

DETENTION BEYOND EVALUATION PERIOD. If, in the judgment of Department of Mental Health examiners, defendant is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, defendant may be detained by the Department of Mental Health in a suitable facility for so long as deemed clinically necessary or until a hearing on the matter may be conducted by this Court. An additional Court order **shall** be necessary for ongoing pre-trial inpatient detention of defendant as discussed in this paragraph.

ACCESS TO EXAMINER'S REPORT. The Department of Mental Health is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. It is the intention of the State of South Carolina to provide defendant an adequate opportunity for mental status investigation when the defendant's mental condition is seriously in question pursuant to Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087 (1985), either before or after defendant formally asserts the insanity defense.

The purpose of the following provisions controlling access to the examiner's report is to

strike a balance between defendant's right to explore the possibility of an insanity defense and prosecution's right to respond if such defense is raised. If defendant is requesting evaluation prior to asserting the defense of insanity, the evaluation shall be confidential until such time as defendant elects to assert the insanity defense. If defendant or prosecution is requesting evaluation after defendant's formal assertion of the insanity defense pursuant to Rule 5(f) of the South Carolina Rules of Criminal Procedure, or both parties are requesting the evaluation by consent, the evaluation shall **not** be confidential and both defense counsel and the prosecutor shall be provided a copy of the examiner's report. In either case, ownership of the examining agency's files shall be vested with the examining agency.

(A) Ex parte evaluation requested by defendant prior to assertion of insanity defense.

If defendant has requested an evaluation to determine whether the insanity defense may be viable, the examiner's report shall not be provided to the prosecution and shall not be admissible as evidence in any Court proceedings. The prosecution may not discover any portion of the evaluation files. Any written report resulting from the evaluation shall be considered confidential and provided only to defense counsel, and shall be provided within ten (10) days of all examinations or the conclusion of the inpatient examination period. Examiners and agency staff may not be compelled to testify regarding statements made during the criminal responsibility and capacity to conform examination for any purpose unless and until defendant asserts the defense of insanity. However, as a condition of accepting the evaluation provided by the State of South Carolina, defendant expressly waives any and all confidentiality privileges associated therewith if defendant subsequently asserts the insanity defense. In such case, the evaluation shall no longer be confidential, and all parties' access to the evaluation report shall be controlled by paragraph (B) below.

(B) Evaluation requested by either party after assertion of insanity defense.

Because the assertion of the insanity defense places defendant's mental status at issue, either party may discover any portion of the evaluation files upon presentation of a Court order authorizing such or a release authorization signed by defendant. Both the prosecutor and defense counsel shall be provided a copy of the examiner's report within ten (10) days of the conclusion of all examinations or the inpatient examination period. The evaluation report may be admissible as evidence in subsequent hearings concerning defendant's criminal responsibility

and capacity to conform. However, the report shall be inadmissible in any other proceedings except as expressly permitted by South Carolina law. Examiners and agency staff may not be compelled to testify regarding statements made during the criminal responsibility and capacity to conform examination for any purpose other than on the issue of criminal responsibility and capacity to conform. Also, statements made during the examination may not be used to impeach defendant at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

(C) Evaluation Requested by Consent of Both Parties.

By consent, the parties may request evaluation at any time, regardless of whether the insanity defense has been asserted by the defendant. The procedures and rules for this examination shall be the same as outlined in paragraph (B) above; however, in the event defendant does not assert the insanity defense, the examiner's report shall not be admissible for any reason, nor shall the contents of the evaluation files be used for any purpose.

MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS.

Department of Mental Health examiners conducting the evaluation may need clinical and school records concerning defendant to assist in forming an opinion. It is therefore ordered, upon presentation by the Department of Mental Health of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning defendant to the Department of Mental Health.

COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS. Upon written request from the Department of Mental Health, counsel for prosecution and defense shall furnish to the agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

DUTIES OF DEFENSE COUNSEL. Unless the prosecution is the party moving for this evaluation, defense counsel has the responsibility to file, serve, and transmit this order as outlined in the final paragraph below. Defense counsel does not have the right to attend any

clinical interview scheduled pursuant to this Order, nor does defendant have a constitutional right to compel counsel's attendance. State v. Hardy, 283 S.C. 590, 325 S.E.2d 320 (1985). The Court recognizes, however, that circumstances may arise through which the Department of Mental Health may request counsel's attendance to facilitate the examination. In the event that such a determination is made, the Department of Mental Health may request counsel's attendance in writing, and counsel's level of participation shall be prescribed by the Department of Mental Health's written evaluation protocol. In this event, because of the substantial number of individuals awaiting examination, such interviews cannot be rescheduled, postponed, or canceled to accommodate counsel except upon presentation to the Department of Mental Health of a written statement from a circuit court judge that counsel's attendance is required in Court at the time the examination is scheduled. Whether or not defense counsel is requested to attend the clinical interview, defense counsel must meet with defendant prior to the interview to discuss this Court order, the evaluation process, the clinical interview, defendant's rights with regard to the clinical interview, and penalties associated with non-appearance and non-cooperation. Failure to comply with these requirements may result in sanctions for defense counsel. Defendant's refusal to participate at the interview because of the absence of counsel will be deemed non-cooperation. Failure of defendant to cooperate or participate in the interview may result in cancellation of the interview and examiners being unable to offer an opinion on criminal responsibility and capacity to conform. Failure to cooperate may further result in the case being called for trial without completion of the evaluation, and may result in defendant being prohibited from presenting expert testimony on the issue of insanity or waiver of the insanity defense.

FILING, SERVICE, AND TRANSMITTAL OF ORDER. It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the Department of Mental Health at the address listed below. To expedite commencement of the

evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the Department of Mental Health to advise of the issuance of this order and forthcoming service upon the agency:

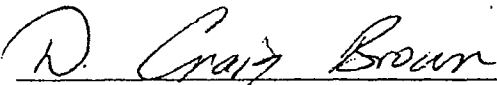
Evaluation Order Service Address for the Department of Mental Health

Forensic Evaluation Service Paralegal
S. C. Department of Mental Health
CBHS Forensic Center
7901 Farrow Road
Columbia, S.C. 29203-3220
(803) 935-5540 (Phone)
(803) 935-5544 (Fax)
Email: FES-PARALEGAL@SCDMH.ORG

AND IT IS SO ORDERED.



Presiding Circuit Judge



Printed Name of Presiding Circuit Judge

Florence, South Carolina

Dated: _____

E.L. CLEMENTS III

Prosecutor
180 N. IRBY ST

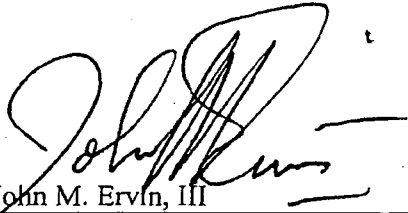
Address
FLORENCE, SC 29501

City, State, Zip
843-665-3091

Telephone
eclements@florenceco.org

Email





John M. Ervin, III
Defense Counsel
50 Public Square

Address
Darlington, SC 29532

City, State, Zip
843-393-5555

Telephone
jervin@jervinlaw.com

Email

2011 JUN 15 AM 10:29
CLERK OF COURT
LCCP & SS
FLORENCE COUNTY, SC

The following documents must be attached to this order upon submission to the Department of Mental Health:

1. Completed DMH/DDSN Outpatient Information Appointment Sheet
2. Copy of the indictment(s) (if issued)
3. Copy of the arresting agency's incident report
4. Copy of the warrant(s)
5. Law enforcement investigative reports
6. Defendant's statements to law enforcement, written or electronically recorded
7. Witness statements to law enforcement
8. Defendant's school psychological records (if available)
9. Defendant's Rule 5(f) notice of insanity defense (if applicable)
10. Autopsy reports (if applicable)

THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

THE STATE)

v.)

WILLIAM LEE GAINEY,)

DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
TWELFTH JUDICIAL CIRCUIT
Warrant/Indictment Nos.: M276520

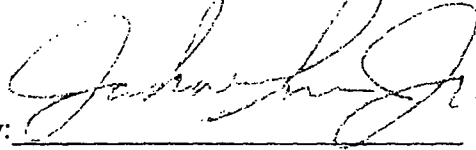
**NOTICE OF MOTION AND MOTION TO
PRODUCE PURSUANT TO RULE 5 OF THE
RULES OF CRIMINAL PROCEDURE
(Rule 5 Disclosure)**

To: Edgar L. Clements, III, Solicitor, Twelfth Judicial Circuit

YOU WILL PLEASE TAKE NOTICE that the above named Defendant by and through undersigned counsel, Michael S. Bell requests compliance by the State with the provisions of Rule 5 of the Rules of Criminal Procedure regarding any and all charges presently pending against the Defendant and/or any and all criminal charges which the State intends to introduce as evidence in the trial of the Defendant.

Respectfully submitted,

TWELFTH CIRCUIT PUBLIC DEFENDER

By: 

Michael S. Bell, Esq.
Attorney for Defendant
180 N. Irby Street, MSC-N
Florence, SC 29501
(843) 665-3055

Date: July 22, 2010

2010 JUL 22 PM 4:00
COHNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
THE STATE)
v.)
WILLIAM LEE GAINEY,)
DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
TWELFTH JUDICIAL CIRCUIT
Warrant/Indictment Nos.: M276520

NOTICE OF MOTION AND MOTION FOR
THE PRODUCTION AND INSPECTION OF
EVIDENCE AND INFORMATION WHICH
MAY LEAD TO EVIDENCE
(Brady Disclosure)

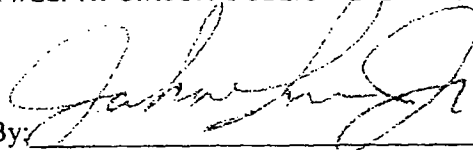
FILED
JUL 22 PM 4:00
CONNIE REEL-SHEARIN
CLERK
FLORENCE COUNTY, SC

To: Edgar L. Clements, III, Solicitor, Twelfth Judicial Circuit

YOU WILL PLEASE TAKE NOTICE that as counsel for the above named Defendant, we are requesting, under the authority of Brady v. Maryland, 373 U.S. 83 (1963); Napue v. Illinois, 360 U.S. 364 (1959); Alcorta v. Texas, 355 U.S. 28 (1957); Mooney v. Holohan, 294 U.S. 103 (1935); Giglio v. U.S., 405 U.S. 150 (1972); Moore v. Illinois, 408 U.S. 786 (1972); and, State v. Bryant, 307 S.C. 458 (1992), that your office supply to us, all information in the custody, possession, control or knowledge of the State, private parties retained by the State, or any law enforcement agency involved in the investigation of the above captioned case which may be favorable to the Defendant with regard to the offense with which he has been charged.

Respectfully submitted,

TWELFTH CIRCUIT PUBLIC DEFENDER

By: 

Michael S. Bell, Esq.
Attorney for Defendant
180 N. Irby Street, MSC-N
Florence, SC 29501
(843) 665-3055

Date: July 22, 2010

ARREST WARRANT

M-376520

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

FLORENCE

THE STATE

against



WILLIAM LEE GAINERY

Address: [REDACTED]

HARTSVILLE SC 29550

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: W Height: [REDACTED] Weight: [REDACTED]

DOB: [REDACTED] DL#: [REDACTED] Agency OR#: SC0210100

Prosecuting Agency: FLORENCE MUNICIPAL COURT

Prosecuting Officer: DRAYTON

Offense: ATTEMPTED MURDER

Offense Code: 3410

Code/Ordinance Sec. 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant WILLIAM LEE GAINERY

on 06/22/2010

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

18

ORIGINAL
MUST BE RETURNED TO
FLORENCE MUNICIPAL COURTSTATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of

FLORENCE

Personally appeared before me the affiant LARRY DRAYTON

being duly sworn deposes and says that defendant WILLIAM LEE GAINERY

did within this county and state on 06/21/2010

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of FLORENCE

in the following particulars:

DESCRIPTION OF OFFENSE: 16-03-0029 / ATTEMPTED MURDER

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT ASSAULTED THE VICTIM IN THE REAR PARKING LOT OF 312 SOUTH MCCUEEN STREET IN THE CITY OF FLORENCE. THE DEFENDANT WHOM IS THE EX-BOYFRIEND OF THE VICTIM AWAITED FOR THE VICTIM TO EXIT HER PLACE OF EMPLOYMENT. THE DEFENDANT APPROACHED AND ASSAULTED THE VICTIM AS SHE SAT IN HER VEHICLE. THE DEFENDANT USED A RAZOR TYPE INSTRUMENT TO CUT THE VICTIM ABOUT HER NECK AND THE ABDOMINAL AREA CAUSING GREAT BODILY INJURY WHICH CAUSED A SUBSTANTIAL RISK OF DEATH. THE VICTIM WAS HOSPITALIZED AND IS BEING TREATED FOR THE INJURIES THAT SHE RECEIVED. AFTER BEING MIRANDIZED THE DEFENDANT PROVIDED A TAPED STATEMENT AGAINST HIS PENAL INTEREST ADMITTING THAT HE DID CUT THE VICTIM ABOUT HER NECK AND FLED THE SCENE WITHOUT RENDERING FIRST AID.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

FLORENCE

Affiant's Address FLORENCE POLICE DEPT., 180 N. IRBY

Affiant's Telephone 843-665-3191

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THE COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that on 06/21/2010 defendant WILLIAM LEE GAINERY

did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of FLORENCE

DESCRIPTION OF OFFENSE: MURDER / ATTEMPTED MURDER

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/22/2010

Municipal Court Judge

Judge Code: JUDGE

ORIGINAL

Judge's Address BOX DD-CITY-COUNTY COMPLEX ROOM 506

FLORENCE SC 29501

Judge's Telephone 843-665-3148

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Case: 2010-005933

Form Approved by
S.C. Attorney General
July 25, 1990
SCCA 518

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE)

NOTICE OF DATE AND TIME OF INITIAL
APPEARANCE FOR DEFENDANTS

VS.)

WILLIAM LEE GAINES

DEFENDANT

INITIAL APPEARANCE: 08/18/2010DOCKET APPEARANCE: 09/30/2010TIME: 9:00AM

Warrant Numbers:

M-376520

Your Initial Appearance date and time as set forth above will be held at the City-County, 11th Floor Court Room, 180 North Irby Street, Florence, South Carolina. The date and time of your Initial Appearance CANNOT be changed.

YOU MUST BE PRESENT AT BOTH THE INITIAL APPEARANCE AND DOCKET APPEARANCE. IF YOU FAIL TO APPEAR FOR YOUR INITIAL APPEARANCE OR YOUR DOCKET APPEARANCE AT THE ABOVE STATED PLACE AND TIME, YOUR BOND WILL BE TAKEN FROM YOU (REVOKED) AND YOU WILL BE PLACED IN JAIL UNTIL THE TRIAL OF YOUR CASE, WHICH COULD TAKE MANY MONTHS. YOU WILL NOT BE GRANTED A NEW BOND IF YOU FAIL TO APPEAR.

☒ You have been approved for an attorney from the Public Defender's Office. You should contact your attorney as soon as possible at the following address and telephone: Florence County Public Defender's Office, 180 N. Irby, Florence, South Carolina 29501 (843)665-3055.

☐ Although you have applied for an attorney from the Public Defender's Office, you were REJECTED by the Court of appointment of a Public Defender attorney. You MUST hire your own attorney before your Initial Appearance date, if you wish to be represented by an attorney. You must have your attorney contact the Solicitor who is prosecuting your case before the Initial Appearance date.

If you want to have a PRELIMINARY (probable cause) HEARING in your case, you must request one through your attorney at your Initial Appearance, or in writing within five days thereafter. Once you have made a request for a preliminary hearing, one will be scheduled and you will be notified of the date and time of your preliminary hearing.

I have read this form or have had it read to me. I understand these instructions and I have been given a copy of this form.

William Lee Gaines
Defendant's Signature

6-22-10
Date

Deb O'Shea
Judge's Signature

6-22-10
Date

I, THE DEFENDANT, DO NOT WANT A COURT APPOINTED ATTORNEY:

William Lee Gaines
Defendant's Signature and Date

FILED
2010 JUL 14 PM 12:10
FLORENCE COUNTY, SC
CLERK OF COURT
REEL-SHEARER
& GS

WILLIAM LEE GAINEY

M-3764520

Name of Defendant

Warrant/Ticket No.

County/Municipality of FLORENCE

Charges: ATTEMPTED MURDER

Trial Court:

GENERAL SESSIONS

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

Directions: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. Defendant must be provided a completed copy of this form.

☐ BAIL PROCEEDING/☐ FIRST APPEARANCE (NON-BAILABLE OFFENSES)

1. Form used at bail proceeding ☐ Bond Form I (personal recognizance) ☐ Bond Form II (surety, cash, percentage) ☐ None (Non-Bailable Offense)

2. For cases in which bond was set, defendant was informed:

- ☒ a. Warrant for arrest will be issued for violation of any condition of bail bond order.
- ☒ b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
- ☒ c. Failure to appear in court as required will result in institution of additional criminal charges. Failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, additional charge has penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.

3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:

☒ Orally ☒ In writing (NOTE: Defendant must be informed of right both orally and in writing.)

- ☒ 4. Defendant was informed of the right to trial by jury.

5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:

- ☒ a. Charges against defendant and nature of the charges.
- ☒ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
- ☒ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before PUBLIC DEFENDER'S OFFICE located at ROOM 703, CITY COUNTY COMPLEX for indigency screening. Defendant is responsible for a statutory fee of \$ 40.00 for indigency screening.

- ☒ 6. In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.

- ☒ 7. If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.

Appearance or
Hearing Date:

6-22-10



Judge's Signature



RECEIVED

10-1469

State of South Carolina
Department of Mental Health

MENTAL HEALTH COMMISSION:

Aileen Y. Evans, PsyD, Chair
Joan Moore, Vice Chair
Jane B. Jones
Everard Rutledge, PhD
J. Buxton Terry

STATE DIRECTOR

John H. Magill

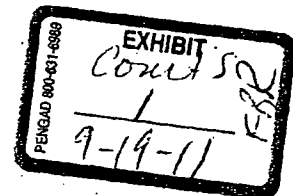
Ed Clements

Solicitor

180 N. Irby St., City-County Complex, MSC-Q
Florence, SC 29501

Re: The State of South Carolina vs. Gainey, William
DMH Case #: 1022-8291
Florence County, Court of General Sessions

Division of Inpatient Services
G. Werber Bryan Psychiatric Hospital
Forensic Evaluation and Treatment Services
7901 Farrow Road, Building #6
Columbia, SC 29203
Information: (803) 935-6586



Dear Solicitor Clements:

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

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

This 6 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

8/12/11
Date

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

c John M. Ervin, III, Attorney at Law, 50 Public Square,
Darlington, SC 29532

MISSION STATEMENT
To support the recovery of people with mental illnesses.



**SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE**

Name: GAINNEY, WILLIAM

Type of Evaluation: Competency to Stand Trial

Date of Evaluation: 7/29/11

Date of Report: 8/12/11

Evaluators: Kimberly S. Harrison, Ph.D. (Presiding)
Tia Taylor, LMSW (Second)

Referral Information

Mr. Gainey is a 42-year-old (date of birth: [REDACTED]/69) male who was ordered by the Florence County Court to undergo an evaluation of his competency to stand trial, pursuant to S.C. Code Ann §44-23-410. The court order specifies the basis for the evaluation as, "The [defendant] indicated in his statement to the police that he lost it and blacked out before and after the incident." Mr. Gainey is currently charged with Attempted Murder.

Notification

The nature and purpose of this evaluation were explained to Mr. Gainey at the beginning of the interview. He was notified that the information obtained during this evaluation would not remain confidential, and that anything he disclosed could be included in a report to the Court, solicitor, and defense counsel. Mr. Gainey demonstrated an adequate understanding of the purpose of the evaluation and the limits of confidentiality. He voluntarily signed an evaluation information form and agreed to proceed with the evaluation.

Sources of Information

1. Interview with Mr. Gainey on 7/29/11 for approximately one hour and 50 minutes
2. State of South Carolina, County of Florence, Order for Competency to Stand Trial Evaluation Pursuant to *State v. Blair*, with a file date of 6/15/11
3. Records from Florence County Detention Center, dated 6/21/10 to 7/14/11
4. Phone interview of Francis Gainey, the defendant's mother, by Tia Taylor, LMSW, on 7/20/11
5. Information from Florence County pertaining to Mr. Gainey's current charge, including:
 - a. Arrest Warrant, dated 6/22/10
 - b. Incident Report, dated 6/21/10
 - c. Incident Report Supplemental, dated 6/28/10
 - d. Incident Report Supplemental, dated 7/9/10
 - e. Voluntary Statement of Cynthia McInville, dated 6/21/10
 - f. Voluntary Statement of Pam Page, dated 6/21/10
6. Records from Darlington County pertaining to Mr. Gainey's current charge, including:
 - a. Incident Report, dated 6/21/10
 - b. Three Supplementary Incident Report Narratives, dated 6/21/10
 - c. Voluntary Statement of Kristan Jeffords, dated 6/21/10

Background InformationDevelopmental History

Mr. Gainey reported he was born in Florence County and raised in Darlington by his parents. He stated he has one older sister. He said he married his first wife when he was 24 or 25 years old, and they divorced after seven years of marriage. They had two children, now ages 18 and 15. He married his second wife when he was 40 years old. They separated after one month of marriage but have not officially divorced.

Educational History

Mr. Gainey reported he was in a special education or resource class for English during elementary school. He denied any further involvement in special education. He stated he did not repeat any grades until the 11th grade. He said he "tried to complete it three times" but would "get in a fight or lose interest or miss too many days." He subsequently dropped out of school and has not earned a GED. He described his behavior in school as "good" but acknowledged being suspended "several times" for "fights . . . over girls." He denied ever being expelled from school.

Employment History

The defendant stated he has worked primarily in construction. He reported he was employed by Sun Construction for 15 years prior to his arrest. He said he also does "welding on the side." He denied ever receiving disability benefits.

Medical History

According to Mr. Gainey, at the age of 15 he was riding a moped and "got run over by car," resulting in "three layers of [his] stomach" being "burned out." He also reportedly sustained head injuries and a broken pelvis. He stated he spent about eight months at a burn center in Charleston and "had to learn how to walk again." He reported he sustained another head injury in a motor vehicle collision when he fell asleep while driving in 2000. He denied a history of seizures, serious illnesses, or chronic medical conditions. Records from the detention center indicate he currently takes Zantac for acid reflux.

Substance Use History

The defendant reported he began drinking alcohol at the age of 16 and drank on a daily basis from age 16 until he was arrested. He initially consumed one six-pack of beer per day. Over time, his use increased to more than one case of beer per day. He stated he would drink "from when I got off work until I went to work the next morning." He endorsed having "the shakes" when he stopped drinking subsequent to his arrest. He said, "My body was dependent on it all those years." He reported using marijuana "off and on" since the age of 16 or 17. He denied daily use and said he smoked marijuana "once in a blue moon . . . around friends or at a party." He stated his last use of marijuana was four or five years ago. He reported he first used cocaine when he was in his 30s and used it "once in a blue moon . . . off and on for about 10 years." He denied ever using other illegal drugs. He denied ever participating in treatment for substance use.

Legal History

Mr. Gainey reported an arrest for DUI for which he paid a fine. He denied being arrested for any other offenses.

Mental Health History

Mr. Gainey denied a history of suicide attempts, psychiatric hospitalizations, or involvement in counseling or psychotherapy. He stated he had never taken psychiatric medications prior to his current incarceration.

According to records from the Florence County Detention Center, Mr. Gainey was prescribed Vistaril on 7/2/10. On a Psychological Progress Note dated 7/2/10, he was noted to have "mild" depression, "moderate" anxiety, and "moderate" poor sleep. The note states, "Rpts he 'snaps' mentally and does not remember his actions. Rpts feeling confused during such times. Rpts auditory hallucinations." He was diagnosed with "R/O [Rule Out] Schizophrenia" and "R/O [Rule Out] Intermittent Explosive Disorder." According to a 7/16/10 Psychological Progress Note dated 7/16/10, he reported he was "sleeping better. Mood/affect WNL [within normal limits]. Denies delusions/hallucinations." His diagnosis at this time was noted as "Intermittent Explosive Disorder." As indicated on an undated Refusal of Services/Treatment form, he refused Vistaril because he "just want[s] to get off it."

Current Mental Status

Mr. Gainey is a 42-year-old Caucasian male. He was dressed in a jail uniform, and his hygiene and grooming appeared good. He was alert and oriented. No abnormalities in gait or posture were noted. His affect (i.e., observed emotional expression) was broad and expressive. His mood seemed dysphoric, and he cried frequently throughout the evaluation. His speech was normal in rate, tone, and volume. He was polite and cooperative with the evaluation. His thought processes were organized, linear, and goal-directed. He did not express any delusional thoughts. He did not appear to be responding to internal stimuli at any time during the evaluation. He denied ever experiencing symptoms of a psychotic disorder. He stated he briefly experienced suicidal thoughts one and a half or two years ago subsequent to "girlfriend problems, money problems." He said he thought about "just ending my life, it wasn't worth it no more." He denied having a plan to harm himself and said he "went to a friend, sat down and talked. It got me away from the thought."

Mr. Gainey described his current mood as, "One minute I'll be fine, the next minute I'm upset." He explained he becomes upset about "just anything. . . . I'll just be sitting in my room and bust out crying." He reported he cries daily. He stated his appetite "goes and comes," but recently it has been "O.K." He said he sleeps "all the time . . . , 17 or 18 hours a day, like I'm depressed." He denied recent or current suicidal or homicidal ideation. He reported he is currently housed in the general population, although he was originally housed in protective custody for about four months because "I was in pieces . . . , very upset, nervous. I had never been locked up before." He said he was prescribed Vistaril "to calm my nerves down," but he stopped taking this medication about six months ago because he "didn't know what the side effects were, could never see a doctor about it." He said he spends his time sleeping and reading the Bible. He reported he is involved in a "Bible get-together" every night with other inmates. He stated he not had any disciplinary infractions in the jail. He said he currently takes Zantac for acid reflux and does not take any psychiatric medications.

In a brief mental status exam, Mr. Gainey was oriented to person, place, date, and day of the week. He demonstrated intact abilities for short-term memory, as he correctly recalled three of three items after a brief delay and intervening tasks. His concentration and attention were within normal limits, as indicated by his abilities to spell the word "world" backward and to compute an arithmetic

problem. He demonstrated abilities for abstract reasoning by identifying similarities between three pairs of objects and correctly interpreting two proverbs. His judgment to two hypothetical situations was appropriate.

Diagnostic Impressions

Based on a review of available records and an interview with the patient, it is the opinion of the undersigned that Mr. Gainey meets criteria for Alcohol Dependence, in a Controlled Environment. This disorder is characterized by the development of tolerance to alcohol, experiencing withdrawal symptoms if the alcohol is discontinued, continued use despite physical or psychological problems, and abandonment of social or occupational activities. He reported a history of daily use of alcohol since the age of 16, with the amount of alcohol consumed increasing over time. He described experiencing withdrawal symptoms when he stopped using alcohol. He acknowledged continuing to consume large amounts of alcohol despite being arrested for a DUI. The specifier "in a Controlled Environment" is applied if the individual is in an environment (e.g., jail, secure hospital) where access to the substance is restricted and no criteria for dependence or abuse have been met for at least the past month.

Information Relevant to Competence to Stand Trial

The legal criteria for determining competence to stand trial from the S.C. Code Ann. §44-23-410 is: "... a person ... is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity. ..."

Mr. Gainey described the role of the judge as, "Find me guilty or not guilty and sentence me." He initially stated the judge is on "the state's side . . . , against me" because "he works for the state." He was educated regarding the neutrality of the judge, and later in the evaluation, he stated the judge is "in the middle." He reported the role of his defense attorney is "try to prove my innocence" by tak[ing] statements, investigate." He stated his attorney's goal is for him to "go home, be free." He correctly identified his attorney as Jay Ervin. Mr. Gainey described the solicitor's job as, "Try to prove I'm guilty" by "get[ting] evidence against me." He stated he should not speak to the solicitor about his case but he said he does not know a reason for this belief. The risks of self-incrimination were explained to him, and he correctly recalled this information later in the evaluation, stating, "He can use it against me in court." He stated the job of a jury is "to find you guilty or not guilty, hear the evidence." He said there are 12 individuals on a jury; they "should be in the middle," i.e., neutral; and "all of them" must agree on a verdict.

The defendant reported he is currently charged with "attempted murder." He stated the police allege that he "cut my ex-girlfriend's neck." He correctly stated this charge is a felony, for which he could "go to prison." He said he has been informed he could be sentenced to "30 years in prison."

Mr. Gainey described the plea of guilty as telling the court, "I did it." He stated that, after entering a guilty plea, "the judge would sentence me." He described the plea of not guilty as telling the court, "I didn't do it." He stated that, after entering a not guilty plea, he would "get a jury and go to trial." He described a plea agreement as, "They offer you so much time." He stated "they" refers to "the solicitor." He stated a defendant could benefit from a plea agreement because he "could keep from getting so much time." He said a defendant would have to plead "guilty" to accept a plea bargain. He described the best possible outcome in his case as "probation and go home to my family." He described the worst possible outcome as "go to prison." He demonstrated abilities to rationally

reason about his case; for example, he identified reasons for opting for a jury trial and for accepting various plea offers. He described potential evidence and witnesses in his case.

Regarding appropriate courtroom conduct, Mr. Gainey stated a defendant should behave "with manners." He said he should "tell my lawyer" if a witness lied about him during a trial. He reported his attorney should do most of the speaking for him in court. During the current evaluation, he did not display any disruptive behaviors, such as agitation or verbal outbursts, which would be problematic in court.

Mr. Gainey demonstrated no delusional thoughts that would interfere with his ability to consult with his attorney. He stated he has met with Mr. Ervin on three occasions and reported, "He's O.K. . . . He's helped my family in the past." He said he believes his attorney will help him with his case and work in his best interest. He stated he has not had any disagreements with Mr. Ervin, but if he does, he would "fire him." He identified his attorney as the person with whom he would consult regarding issues about his case, such as deciding if he should have a jury trial. He demonstrated an understanding of attorney-client privilege and the advocacy role of the defense attorney.

Conclusions and Recommendations

Based on a clinical interview, observations, and a review of available records, it is the opinion of the undersigned, with a reasonable degree of certainty, that Mr. Gainey is currently competent to stand trial. He demonstrated an adequate factual understanding of courtroom personnel and legal procedures. He appeared to have an adequate rational appreciation of his legal situation and the ability to evaluate his options in a logical manner. He appears motivated, willing, and able to participate in his legal defense. He did not exhibit any overt difficulties with memory, attention, or concentration. There is no indication that the defendant's behaviors, thought processes, or ability to communicate are currently influenced by a mental disorder.

In summary, Mr. Gainey currently possesses the capacity to understand the legal proceedings against him and to assist in his own defense.

Kimberly S. Harrison, Ph.D.

Kimberly S. Harrison, Ph.D.

Chief Psychologist

8/12/11
Date

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

TRANSCRIPT OF RECORD
10-GS-21-1469

v.)

WILLIAM LEE GAINES,)

DEFENDANT.)

September 19, 2011
Florence, South Carolina

B E F O R E :

THE HONORABLE THOMAS A. RUSSO, JUDGE

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

E. L. CLEMENTS, III, ESQ.
Solicitor

JOHN M. ERVIN, III, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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EXHIBITS**COURT'S:**

No.	Description	I.D./EVD.
1	Department of Mental Health report	17/17

1 THE COURT: I'm going to go over their
2 rights with them at this time. Ladies and
3 gentlemen, those of you who are here to get your
4 cases taken care of, if I could have your attention.
5 Those of you who are here to enter a plea, it's my
6 understanding some of you are here to enter guilty
7 pleas. And if that's the case it's important that I
8 go over with you your constitutional rights. The
9 reason that I am doing this with you as a group
10 rather than individually is simply for the fact that
11 these are rights that we all have. It doesn't
12 matter who you are, doesn't matter what you're
13 charged with, what agency brought the case against
14 you, we all have the same constitutional rights. So
15 rather than — I am gonna take your pleas. Those of
16 you that decide to go forward with a plea I'm going
17 to take your pleas individually. And rather than
18 have you come forward and go over these rights with
19 each and every one of you 15 or 16 times, I'm gonna
20 go over them with you one time as a group. If you
21 have any question about these rights I'll give you
22 whatever time you need to talk to your attorney to
23 answer those questions.

24 It's important that you understand these
25 rights because if you decide to go forward with the

1 guilty plea for purposes of your plea you waive or
2 you give up these rights. Now the fact that I'm
3 going over these rights with you at this time does
4 not bind you or commit you to do anything. If once
5 your case is called you've changed your mind and you
6 don't want to go forward, that's fine; that's your
7 call to make. No one is going to force you to do
8 that, to go forward; but if you do decide to go
9 forward, it's important that you understand these
10 rights.

11 Solicitor, are any of these waivers?

12 MR. JEPERTINGER: They may be, Judge.

13 THE COURT: The first thing I'm going to
14 go over with you may or may not apply to all of you.
15 And it's simply this, it's your rights regarding
16 grand jury presentment. In South Carolina every
17 person that's charged with a criminal offense in
18 general sessions court has the right to have the
19 grand jury of Florence County review your case to
20 determine whether there's probable cause for your
21 case to go forward. Now a grand jury is different
22 from a trial jury. A trial jury decides whether
23 you're guilty or not guilty. A grand jury does not
24 decide guilt or innocence. A grand jury is only
25 looking at your case to determine is there probable

1 cause for your case to go forward or to go to court.

2 There are 18 members of the grand jury.

3 It takes 12 of the 18 members to find probable
4 cause. Now you don't attend a grand jury
5 proceeding; you're not there. Your lawyer is not
6 there; the State's attorney is not there. There's
7 no judge there. The people that attend the grand
8 jury proceedings are the law enforcement folks that
9 brought the case against you. They don't -- in
10 other words, the grand jury doesn't hear both sides
11 of the argument. The grand jury only hears one
12 side, and they hear the law enforcement side. And
13 what they do is they're looking to see is there
14 probable cause for your case to come to court. For
15 example, if I was charged with a criminal offense
16 then the grand jury, and say the Sheriff's
17 Department brought the case against me, a member of
18 the Sheriff's Department would show up at the grand
19 jury proceeding and they'd say, ladies and
20 gentlemen, this is the evidence we have on Tommy
21 Russo. The grand jury would look at that evidence,
22 and what they're looking to see is there any
23 evidence that would indicate that Tommy Russo may
24 have been involved in this crime. If 12 of the 18
25 find that there's some evidence that might indicate

1 I was involved in the crime, then that's enough for
2 probable cause purposes. In other words, probable
3 cause is a very low standard. And if 12 of the 18
4 find probable cause then that indictment is what we
5 call true billed and that means that your case is in
6 court and I have jurisdiction to hear your case.

7 If they do not find probable cause then
8 the case is dismissed. Now many of you your cases
9 may not have been to the grand jury yet and you
10 don't even realize that. If your case has not been
11 before the grand jury and has not been true billed,
12 then I don't have jurisdiction to hear your case.
13 But I can get jurisdiction to hear it if you decide,
14 and it has to come from you, that number one, you
15 understand your rights to grand jury presentment but
16 that you want to waive those rights or give them up.
17 In other words, basically saying, judge, it doesn't
18 matter to me whether the grand jury hears my case or
19 not. I'm asking you to go ahead and accept my plea.
20 And if you are wanting to waive presentment to the
21 grand jury and have me accept your plea, then that
22 gives me jurisdiction and I can hear your case and
23 then we'll go forward.

24 Now, the other rights that I want to
25 review with you are that we all have -- the next

1 thing I want to go over with you is your rights.
2 For example, everyone has the right to remain
3 silent. You have the right to a jury trial. If you
4 decide to go forward with a guilty plea, for
5 purposes of your plea you give up both of those
6 important constitutional rights. You will not have
7 a jury trial and your case will be decided pursuant
8 to your plea. Now associated with your right to a
9 jury trial are other rights that you have so if you
10 give up your right to a jury trial obviously you
11 give those rights up as well. For example, if you
12 had a jury trial you'd be presumed innocent of the
13 charge that you're facing and that presumption would
14 stay with you throughout the trial and that places
15 the burden of proof on the State to prove your guilt
16 beyond a reasonable doubt. The way the State would
17 attempt to do that is during that course of that
18 trial they would call witnesses to the witness
19 stand. Those witnesses would more than likely
20 testify against you. The Constitution of the United
21 States provides that every person that's charged
22 with a criminal offense has the right to face or to
23 confront their accusers. And what that means is
24 during the course of that jury trial, if you were to
25 have one, you would have the right through your

1 lawyer to question the State's witnesses, to
2 cross-examine them, ask them questions about their
3 testimony before the jury. That's your right of
4 confrontation. But when you plead guilty, by
5 telling the Court that you're guilty or pleading
6 guilty you give up that presumption of innocence and
7 you relieve the State of their burden of proof.
8 Since they no longer have to prove your guilt, then
9 they don't have to bring their witnesses into court
10 and so you give up the right to question those
11 witnesses.

12 Now the State's not the one that can call
13 witnesses. If you have a jury trial you can call
14 witnesses in your defense. You can take the witness
15 stand yourself and testify in your own defense. You
16 can do either one of those things; you can do both
17 of those things. But you're not required to do
18 either one of those things. In this country no
19 person charged with a criminal offense is ever
20 required to prove themselves innocent. You can
21 exercise your constitutional right to remain silent.
22 And if you did that, if you chose to remain silent I
23 would instruct the jury that they could not hold
24 that against you. I would tell the jury that the
25 State has the burden of proof and that you don't

1 have to prove anything. I would instruct the jury
2 that the fact that you chose to exercise your
3 constitutional right to remain silent could not even
4 be talked about in the jury room; that they couldn't
5 discuss it at all; that you are presumed innocent
6 and the State carries the burden of proof.

7 Now since the State does have that burden
8 they have to prove your guilt beyond a reasonable
9 doubt, and they have to do it to a unanimous
10 decision. In other words, all 12 members of the
11 jury would have to agree that you were guilty or
12 they could not convict you. Eleven to one doesn't
13 cut it. Ten to two doesn't cut it. It has to be
14 all twelve or they cannot convict you. If they do,
15 if you did have a jury trial and you were convicted,
16 you could appeal that conviction to a higher court
17 if you felt that that was appropriate. You also
18 have an appellate right with regards to today's
19 proceeding. If you go before the court here today
20 and enter a guilty plea, if you wish to appeal my
21 decision here today you may do that but you must
22 file that notice of intent to appeal within ten days
23 of today's date.

24 Now those are your constitutional rights,
25 ladies and gentlemen. If you have any question

1 about those rights you can discuss that with your
2 attorney and get those questions cleared up. If you
3 don't have a lawyer and you're going forward on your
4 own and you have a question, I'll be happy to answer
5 those questions for you. But it's important that
6 you understand these rights because if you do decide
7 to go forward with a guilty plea, for purposes of
8 your plea you give up these rights, you waive them,
9 you will not have a jury trial, and your case will
10 be resolved pursuant to your plea. Okay? So I know
11 a lot of some of the attorneys need to continue
12 talking with their clients so y'all can please go
13 ahead and continue that and whatever order you want
14 to call the cases in.

15 (The taking of pleas commenced.)

16 MR. CLEMENTS: If it please the Court,
17 Your Honor.

18 THE COURT: Yes, sir.

19 MR. CLEMENTS: Your Honor, the State would
20 call Florence [sic] v. William Lee Gainey,
21 indictment number 2010-GS-21-1469. He's standing
22 here with his attorney Mr. Jay Ervin. This is an
23 indictment for attempted murder. He is pleading
24 guilty straight up, Your Honor, without negotiation
25 or recommendation. I have Investigator Larry

1 Drayton here with the Florence Police Department.
2 Also, Your Honor, we have the victim Ms. Jennifer
3 Roscoe and members of her family and some coworkers
4 who were witnesses to the crime, Your Honor. I'll
5 introduce them at the appropriate time and ask that
6 you hear from them at the appropriate time.

7 THE COURT: Sure, I'll be happy to do
8 that, sir. Thank you.

9 Sir, you are William Lee Gainey?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Gainey, indictment
12 2010-GS-21-1469 is a true billed indictment on the
13 charge of attempted murder. That charge,
14 Mr. Gainey, carries a possible sentence of anywhere
15 from 0 up to 30 years.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: It is also classified under
20 our code of laws as a violent offense and a most
21 serious offense. You understand that, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Sir, understanding the nature
24 of the charge against you and the possible
25 punishment that is associated with this offense, how

1 do you plead to this charge, guilty or not guilty?

2 THE DEFENDANT: Guilty, sir.

3 THE COURT: And Mr. Ervin, you represent
4 Mr. Gainey on this matter, sir?

5 MR. ERVIN: I do, Your Honor.

6 THE COURT: Have you discussed with him
7 the charge that he is before the Court on and his
8 constitutional rights to a trial, sir?

9 MR. ERVIN: I have, Your Honor.

10 THE COURT: Did you also have an
11 opportunity to go over with him the classification
12 and how that would affect any future activity?

13 MR. ERVIN: Yes, sir.

14 THE COURT: The strike rule?

15 MR. ERVIN: Yes, sir.

16 THE COURT: Okay. Mr. Gainey, am I
17 correct that you're 42 years of age?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you married or single,
20 sir?

21 THE DEFENDANT: Separated, sir.

22 THE COURT: All right. Any children?

23 THE DEFENDANT: I have two, sir.

24 THE COURT: All right. Before you got
25 locked up, Mr. Gainey, did you work anywhere or what

1 type of work do you do?

2 THE DEFENDANT: I've been doing
3 construction work off and on 20 years, sir.

4 THE COURT: How long have you been in jail
5 on this charge, sir, if you recall?

6 THE DEFENDANT: The 21st of this month
7 will make 15 months, sir.

8 THE COURT: Now Mr. Gainey, you were
9 present earlier when I went over the rights with
10 everybody?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Did you understand those
13 rights as I went over them, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Is there anything about those
16 rights that you have a question about or do you need
17 anymore time to discuss that with Mr. Ervin?

18 THE DEFENDANT: No, sir.

19 THE COURT: You understand that by going
20 forward with this plea that you waive or you give up
21 those rights and that you will not have a trial?

22 THE DEFENDANT: Yes, sir.*

23 THE COURT: All right, sir. Now earlier I
24 mentioned to you that the South Carolina classifies
25 this crime as a violent and most serious offense and

1 I know you've talked with Mr. Ervin about that, but
2 I'm gonna -- I just want to make sure you understand
3 that, you know, under South Carolina's
4 classification of crimes that we have what is
5 typically referred to as the three strike rule; but
6 it's really, it's a three strike rule but it's also
7 a two strike rule. And basically what the law
8 provides is that there are certain charges that are
9 classified as serious offenses; and if someone is
10 convicted of three serious offenses, then the State
11 can, if they choose to, notice the defendant that
12 they are going to seek life without parole on that
13 third serious offense and if you're convicted you
14 can receive life without parole. There's also --
15 and that's where the name three strike rule came
16 from.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: But South Carolina also
19 provides that on crimes that are classified as most
20 serious, which this one is, under the most serious
21 section then the State can seek life without parole
22 if a person is convicted of two most serious
23 offenses. And just as an example, you're before the
24 court on this charge and if your plea goes through
25 you will have a conviction for a most serious

1 charge. If in the future you were to get convicted
2 of a second most serious charge, on that second one
3 the State could seek life without parole. You
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. And I'm assuming that
7 you have no prior most serious offense.

8 THE DEFENDANT: No, sir, this is my first
9 and only one.

10 THE COURT: Okay, all right. And so this
11 would be a considered a strike in that category.
12 Now I've asked you if you need anymore time to
13 discuss Mr. Ervin your constitutional rights. You
14 indicated you don't need anymore time.

15 THE DEFENDANT: No, sir.

16 THE COURT: Now has anybody promised you
17 anything, held out any hope of reward, or threatened
18 you in any way to get you to enter this plea?

19 THE DEFENDANT: No, sir, I did it on my
20 own.

21 THE COURT: All right, sir. Are you
22 satisfied with the representation and the advice Mr.
23 Ervin has provided?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you have any complaints

1 against him or any member of his office?

2 THE DEFENDANT: No, sir.

3 THE COURT: As you stand before the Court
4 here today are you under the influence of any
5 substance that would affect your ability to
6 understand what you're doing?

7 THE DEFENDANT: No, sir.

8 THE COURT: Are you entering a plea of
9 guilty on this charge of your own free will,
10 Mr. Gainey?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you guilty of this
13 offense?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right, sir. I'm going to
16 ask the solicitor to give me the facts and ask you
17 to please listen carefully, and I'll be back with
18 you in a moment.

19 Solicitor.

20 MR. CLEMENTS: Your Honor, first, before
21 we go forward with the guilty plea by a prior order
22 of this court pursuant to a motion made by Mr.
23 Ervin, Mr. Gainey was sent to the South Carolina
24 Department of Mental Health for an evaluation. Your
25 Honor, we have a report back signed by Doctor

1 Jeffrey Musick, chief psychologist there at the
2 Department of Mental Health, and also signed by
3 Kimberly Harrison, Ph.D., who is chief psychologist
4 as well at the Department of Mental Health, and they
5 found Mr. Gainey was competent to stand trial and
6 pursuant to McNaughten. So pursuant to State versus
7 Blair, Your Honor, I hand that up and ask that be
8 made a part of the Court's record. I think that
9 Mr. Ervin had a copy of this as well.

10 THE COURT: All right. Mr. Ervin, you've
11 reviewed these findings with Mr. Gainey?

12 MR. ERVIN: I have.

13 THE COURT: All right. And does the
14 Defense have any issue with regards to the doctor's
15 findings in this report?

16 MR. ERVIN: We don't have any issues with
17 the conclusions of the doctors.

18 THE COURT: All right. I'm going to
19 accept into the record these reports from the
20 Department of Mental Health along with the
21 conclusions that Mr. Gainey is competent to stand
22 trial and make this a part of the record and Court's
23 exhibit.

24 (Court's Exhibit Number 1 was marked
25 and made a part of the record.)

1 THE COURT: Yes, sir, Solicitor.

2 MR. CLEMENTS: Thank you, Your Honor, may
3 it please the Court. Your Honor, this event
4 occurred in Florence County, Your Honor, on McQueen
5 Street, in the city of Florence at Doctor Kirk Ham's
6 office on June 21st, 2010. Ms. Jennifer Roscoe was
7 an employee there, Your Honor. She was there and
8 she had recently left out of the building to head to
9 go to lunch; and she left her two friends and
10 coworkers Pam Page and Cynthia McInville there.
11 Went to her car, Your Honor. William Gainey and
12 Ms. Roscoe had dated. They dated for about a year.
13 They had broken up a good while back. She started
14 seeing someone else. She had relayed to me, Your
15 Honor, they had remained friends and would talk on
16 the phone and text and keep up with each other and
17 how each other was doing and that they went to
18 church together.

19 The Friday before Father's Day the tires
20 were slashed on her car at her house. He called and
21 talked to her, and he came and helped her change the
22 tires and took her to Wal-Mart to get a valve stem
23 for one of the tires that was cut off. And she said
24 that he acted real funny about it and just said,
25 well, you don't think I would have done that, do

1 you. And she's not for sure, but she's confident in
2 her belief that he was the one that slashed those
3 tires just by the way he acted about it. This was
4 on the Friday before Father's Day. On the Monday
5 after Father's Day was June the 21st when she was
6 attacked by Mr. Gainey. She went to her car; she
7 got in her car. She cranked it up. It was about
8 12:40. She saw him running up to the car real fast.
9 Before she could lock her door or do anything he
10 yanked open and slung open the door and pushed her
11 in the car and pulled out a razor type instrument, a
12 box cutter, and began to cut her and slash her. She
13 ended up, Your Honor, with over 97,000-dollars of
14 medical bills, Your Honor.

15 He severed her carotid artery, her jugular
16 vein, paralyzed the right side of her vocal cords,
17 and slashed her on the abdomen. She -- after he was
18 finished cutting her up he got out and she -- she
19 was able to get out and run back screaming to the
20 office where Ms. Page and Ms. McInville were. They
21 took her in, laid her on the ground, held a towel
22 and stuff to her neck, and called 9-1-1. Your
23 Honor, I'd pass up these pictures I've shown to Mr.
24 Ervin that depict the injuries that Ms. Roscoe
25 suffered at the hands of Mr. Gainey.

1 (Pause.)

2 THE COURT: All right, sir.

3 MR. CLEMENTS: Your Honor, I'm going to
4 introduce members of the family that are here and
5 her friends and coworkers. Ms. Roscoe, Jennifer
6 Roscoe, is here in the white sweater, Your Honor,
7 and Justin Bateman sitting beside her is her
8 boyfriend. Also she's got her mom with her,
9 Ms. Teresa Young, and Janet Wiggins who is an aunt,
10 I think, is here with her out in the audience. And
11 Denise Wiggins who is a cousin. Teresa Miles who is
12 a friend. Your Honor, Pam Page is a friend and
13 coworker here in the blue scrubs, and also seated
14 here with I guess the garnet colored scrubs on, Ms.
15 Cynthia McInville, who is a friend and coworker that
16 was there and was the first one to render aid to
17 Ms. Roscoe.

18 Your Honor, right now I defer to
19 Investigator Drayton if there's anything I left out
20 about what happened. Law enforcement responded to
21 the scene there. Then they got a call from the
22 Darlington County Sheriff's Office that someone had
23 turned themselves in covered with blood and said
24 that they thought that they killed their girlfriend
25 or their ex-girlfriend. And Investigator Drayton

1 responded, found out that it was Mr. Gainey and it
2 was involving this attack at Doctor Kirk Ham's
3 office. I think he mirandized Mr. Gainey and took a
4 statement from him. Any other facts I left out I
5 defer to Investigator Drayton at this time.

6 THE COURT: Investigator Drayton.

7 THE INVESTIGATOR: May it please the
8 Court, sir.

9 THE COURT: Yes, sir.

10 THE INVESTIGATOR: In conjunction with
11 what the Solicitor has stated, on the day in
12 question Mr. Gainey went to the Darlington County
13 Sheriff's Office. Like stated earlier, he did turn
14 himself in and the Darlington County Sheriff's
15 Office took possession of items he had in possession
16 of at the time, one of which being a box cutter
17 razor-type knife. After mirandizing Mr. Gainey he
18 advised me that was the knife, in fact, that was
19 used in reference to the incident. When speaking
20 with him during recorded statement, I asked him did
21 he realize that he had cut Ms. Roscoe and how to
22 severity of it and stated he saw a lot of blood, he
23 just panicked, and he left. Asked him did he
24 realize where he cut her at that time, and at the
25 time he stated he was not, unsure where he cut her.

1 The reason for the assault itself is that
2 stated he was at work at Nucorp Steel communicating
3 with her via cell phone and texting and just lost
4 it. They had broken up sometime previously, and he
5 was trying to get back with her and just lost
6 control. He came over, parked his vehicle at a
7 local restaurant across the street from where she
8 was employed at and actually just waited behind a
9 building for her to come out, actually just kind of
10 staked that location out waiting for her to come up.
11 Then in a rage, like the Solicitor said, just ran to
12 the car, drug her, opened the door and just began to
13 assault her, just left without rendering any type of
14 first aid just indicating that she was left for
15 dead.

16 THE COURT: All right, sir.

17 MR. CLEMENTS: Your Honor, at the
18 appropriate time I'd ask that you hear from her
19 coworkers who were eyewitnesses and her family and
20 Ms. Roscoe if she's able to speak. Your Honor, I
21 would ask you start with Ms. Cynthia McInville who
22 was first person there to render aid ---

23 THE COURT: I'm gonna come back.

24 MR. CLEMENTS: ---at the appropriate time.

25 THE COURT: I'm gonna come back, and we'll

1 hear from anyone who would like to address the Court
2 for sure.

3 MR. CLEMENTS: Yes, Your Honor.

4 THE COURT: But let me ask, Mr. Gainey,
5 and I realize that you may have some issues with
6 some of the things that were said; but with regards
7 to the assault itself on Ms. Roscoe, are those facts
8 correct?

9 THE DEFENDANT: Your Honor, I did not cut
10 her tires. I don't know where that come from.

11 THE COURT: Okay.

12 THE DEFENDANT: I don't know where that
13 come from.

14 THE COURT: And that's -- you're not
15 charged with that and I'm not considering that. But
16 as far as the assault on her personally, cutting
17 her?

18 THE DEFENDANT: I cut her, but I did not
19 snatch the door. She opened her door on her own
20 free will. And we talked and she swung at me, and
21 that's the last thing I remember, Your Honor.

22 THE COURT: All right. I find that the
23 State has provided a substantial factual basis to
24 support the charge that Mr. Gainey has pled to; that
25 his decision to enter that plea I believe has been

1 done freely and voluntarily and intelligently. He
2 has had the advice and counsel of a outstanding
3 lawyer in Mr. Ervin. Mr. Gainey has indicated to
4 the Court he is satisfied with the representation
5 and advice that Mr. Ervin has provided, and I'm
6 going to accept his plea. Before we go into, let me
7 get y'all to step up here real quick.

8 (WHEREUPON, counsel approached the Bench
9 for an off-the-record discussion.)

10 THE COURT: Mr. Ervin, I'll let you handle
11 that. I'll be happy to hear from you, sir.

12 MR. ERVIN: Yes, sir. As to his version
13 of what happened in the parking lot, he certainly
14 acknowledges that he cut her and he did so in his
15 statement, but also indicated that he flipped out or
16 blacked out to some degree and didn't recall what
17 exactly occurred. But he knew that he had cut her
18 and knew the blood came from her. He was concerned
19 about whether or not she had survived it. When he
20 went to the Sheriff's Department in Darlington he
21 was first met there by Investigator Andy Locklair
22 who told me that he expressed all those concerns to
23 him and that he was concerned that she may have, you
24 know, that the wounds may have been mortal. So he
25 acknowledged what his role of this offense was and

1 certainly accepting responsibility for it.

2 THE COURT: Okay, sir.

3 MR. ERVIN: What he doesn't know is what
4 caused him to -- caused him to commit --

5 THE COURT: To react that way, yeah.

6 MR. ERVIN: ---the actual offense other
7 than he reacted in a way that he never had before
8 very impulsively, like snapped the way a lot of
9 people describe that.

10 MR. CLEMENTS: Your Honor, just to further
11 flesh out the record here, the statement that
12 Officer Drayton referred to as transcribed, Drayton
13 asked: If you had to summarize in your own words
14 summarize on what happened and why, Mr. Gainey said,
15 I just lost it. Drayton: The reason you lost it
16 was? Gainey: I thought we was getting back
17 together and then I just lost it. Drayton: And as
18 a result of you losing it what happened? Gainey: I
19 just lost it. I just -- like I went to a daze.
20 Drayton: And you lost it and went into a daze and
21 then what? Gainey: That's when I went over there.
22 That's when I was over there and I cut her.
23 Drayton: Okay, anything else you want to tell us
24 about this? Gainey: That's it.

25 THE COURT: All right. Okay.

1 MR. ERVIN: And Your Honor, if I might,
2 that was one of the reasons, really the most
3 compelling reason I wanted him to be evaluated to
4 make sure there weren't any underlying issues
5 regarding his competency and his ability to enter
6 this plea today.

7 THE COURT: Sure, okay. Anything further?
8 Mr. Gainey, if you would like to address
9 the Court I'm happy to hear from you or if anybody
10 else wants to I'll be happy to hear from you.

11 THE DEFENDANT: Yes, Your Honor, I'd like
12 to speak please. I'm sorry for what I've done. You
13 know, I didn't mean no -- I've never done nothing
14 like this in my life and I'm sorry and I just want
15 to tell her I'm sorry. And you know, out of the
16 relationship I had with her I did get something good
17 out of it. She turned me over to God and, you know,
18 which is a good thing and I've got my life
19 completely in God now, and you know, that's where my
20 hands is today, in God's hands.

21 THE COURT: All right, sir.

22 THE DEFENDANT: I'm sorry. I'm sorry for
23 what I've done, Your Honor, and I just hope the
24 Court have mercy on me today. Thank you, Your
25 Honor.

1 THE COURT: Thank you, sir.

2 MS. GAINNEY: Hi, my name is Bonnie Gainney
3 Barnett (ph). I'm his sister.

4 THE COURT: Yes, ma'am.

5 MS. GAINNEY: -- we're brothers and
6 sisters. We fight and carry on. I've never known
7 my brother to hurt a soul, never. He's been -- he
8 was called the good kid; I was called the bad kid.
9 When grandma heard about this grandma said, Bonnie
10 Kay, I just knew that that was you, I didn't think
11 it was William. That's how she put it. He's never
12 been in trouble in his life. He has two beautiful
13 children he takes care of when he gets them, hadn't
14 seen them in two years now. And my mom and my son
15 and my daughter is out here. My mom is 70 years old
16 sitting here. She wanted to get here and speak, but
17 I knew she couldn't do it today. I just wanted you
18 to take mercy on my brother because he is a good
19 fellow; he really is. And I don't know what else to
20 say.

21 THE COURT: Okay. Well, I appreciate you
22 being here.

23 MS. GAINNEY: Thank you.

24 MR. FLOWERS: I just want to tell you that
25 we've been close friends.

1 THE COURT: Can I get your name for the
2 record?

3 MR. FLOWERS: Dale Flowers.

4 THE COURT: Okay, yes, sir.

5 MR. FLOWERS: 25 years or better and never
6 known him to do anything like this. Hard worker,
7 good friends. He's helped us all out over the
8 years. I've just never seen him do anything like
9 this before.

10 THE COURT: Thank you, Mr. Flowers.

11 MR. FLOWERS: And I hope you take a little
12 lenience on him.

13 MS. STOKES: I want to say, my name is
14 Kelly Stokes, and he was more of a daddy than my
15 daddy was and he was there for me through
16 everything. And he has been with my momma for 7
17 years, never put a hand on her or us. He was there
18 for us through everything and all, and I've never
19 known him to put a hand on nobody. If he'd fuss
20 he'd just leave; he wouldn't never do nothing. He's
21 really not like this.

22 THE COURT: Thank you, Ma'am.

23 MR. ERVIN: Your Honor, if I might just
24 add a few things to that. We talked about the fact
25 that he had no prior convictions and really no

1 history of violent acts at all. He candidly
2 admitted to me that one issue he was concurred, or
3 concurred a year or so prior to this incident, was
4 alcoholism. And he started going to church, you
5 know, benefited from that experience. And as he
6 indicated he was going to church with the victim in
7 this case. I wish I had an explanation for his
8 flipping out or snapping on that particular day. He
9 doesn't have one either other than to know that it
10 occurred.

11 Your Honor, he's been a hard worker. He
12 worked for Marshal Flowers at Son Construction.
13 Dale Flowers, who you just heard from, his good
14 friend, worked at Nucorp and that's where a lot of
15 the work done by Son Construction before. He's
16 interacted with him since he was a boy and has known
17 him all his, practically all his life. And again,
18 he was just surprised as anybody that this even
19 occurred. Your Honor, I think that if he is
20 sentenced and I'm sure Your Honor will see fit to
21 give him some term of incarceration, that hopefully
22 he'll be able to do some type of work because he's
23 an industrious type person.

24 The lady that he was with for seven years,
25 Ms. Acock is present. That was her daughter who

1 spoke, and you know, as they indicated this just
2 wasn't anything in his background to suggest that he
3 could commit such a violent act. He met this young
4 lady at there was a pool tournament of some type
5 over at Katie's in Darlington. He used to enjoy
6 playing pool competitively, and that's where they
7 met and then dated for about a year. And they
8 attended the Florence Gospel Temple together; and
9 again, that's where he made the decision to quit
10 drinking and really straighten his life out. He has
11 good references. Unfortunately, this event occurred
12 and it's not characteristic of the kind of person
13 he's been and really is. But he acknowledges, as he
14 did the day it occurred, that he's responsible for
15 it. He's always accepted responsibility for it and
16 knew that he would be before the court one day and
17 accept his sentence. And again, I just ask the
18 Court to consider that in mitigation, the fact that
19 there's no history in this case by way of
20 mitigation. I know it's serious, injuries are life
21 threatening. There's nothing I can say to mitigate
22 that because they are, and he knows that too. All I
23 can say is he's shown remorse from day one and he
24 continues to do so today.

25 THE COURT: All right, sir. Thank y'all

1 very much. I appreciate everyone who has come and
2 addressed the Court.

3 Solicitor, I'll be happy to hear from you.

4 MR. CLEMENTS: Thank you, Your Honor. And
5 I would ask again, any family members or friends
6 would stand and identify themselves for the record.

7 THE COURT: All right, you want to start
8 on this end then?

9 MR. CLEMENTS: Yes, Your Honor.

10 MS. MCINVILLE: Hi, I'm Cynthia McInville
11 and I was Jennifer's coworker that was present the
12 day she was attacked.

13 MR. CLEMENTS: Please tell the Court what
14 you observed and how this has affected you.

15 MS. MCINVILLE: Absolutely. Your Honor,
16 April of last year Jennifer came in Doctor Ham's
17 office where I worked and asked for a job. I had
18 been to church with her and Mr. Gainey before, and I
19 was very excited to help her and, you know, work
20 part-time at our office. From the time she started
21 and we began hearing her relationship with William
22 which prior to this incident or to this time I
23 thought was a very good relationship, it became very
24 obvious from the beginning that it was volatile and
25 disfunctional period on both parts. They were

1 always fighting, always not getting along. You
2 know, as they stated earlier, prior to this incident
3 the week before, or two weeks before actually they
4 had broken up, and I know Mr. Gainey tried to get
5 back with her and Jennifer was kind of torn between,
6 you know, him and wanting this new life that she
7 felt would be good for her. That Friday their tires
8 were slashed. Obviously there's a lot that led up
9 to it so we did believe Mr. Gainey was at fault.

10 Monday morning, June 21st of 2010, we were
11 working and all morning Mr. Gainey texted my
12 coworker wanting to meet her somewhere private, that
13 he had something to give her. At about 12:40 which
14 is, you know, ten minutes later than she would
15 normally leave, Jennifer left. And him, my coworker
16 and I were in my office at the back and heard a
17 blood curling scream, ran to the back door. And as
18 we opened the door Mr. Gainey took off. I've been
19 to church with him so I knew it was him. He stopped
20 in the open parking lot, turned around, made eye
21 contact with me, and took off running. I looked at
22 Jennifer covered from her head to her feet, blood
23 gushing about 6 inches from her neck, screaming my
24 name, and made her come inside. I was -- I was
25 fearful that Mr. Gainey might come back and try to

1 attack us so I brought her inside, put my hands
2 inside of her neck and hold hard as I could. I'm a
3 third semester nursing student -- haven't quite
4 finished it yet -- and I could tell that her artery
5 or her vein, one, was cut. I didn't know how bad
6 the damage was and held her down and prayed over her
7 and watched her bleed out.

8 Your Honor, we followed her to the
9 hospital that day. You know, most of me felt like
10 she was dead and the biggest part of me that I could
11 find inside me was praying that for some reason God
12 would let her live. By all physical means she was
13 killed that day. You know, she should have been
14 dead and, she lived by the grace of God. You know,
15 there was a lot leading up to this, and I like to
16 believe that we're all good inside somewhere, and I
17 know Mr. Gainey might be remorseful, Your Honor, but
18 that day he chose to kill her. He chose to leave
19 her three children motherless. He chose to leave
20 his two children fatherless, and he also victimized
21 myself and my coworker. There's not a day that goes
22 by that I don't close my eyes and see that woman
23 bleeding from her throat and fearful for my life.

24 Your Honor, with all due respect, I have a
25 two year old four year old little boy and I fear

1 every day. I came here today hoping that maybe I
2 could get some closure too. And I want you to take
3 into consideration that, yeah, he did hurt her and
4 she did live and this might be, you know, a lesser
5 plea because she didn't die, but she was killed that
6 day. She just lived by the grace of God; we were
7 too. He stole something from us that he can never
8 give back. He took my security and he instilled a
9 fear inside of me that I am fighting today over a
10 year later. Just want you to remember that. And I
11 want him to know that we forgive him; we do. And I
12 prayed for him that day as much as I prayed for her,
13 and I hope he thinks about us every day because we
14 think about him. Thank you.

15 THE COURT: Thank you very much, ma'am.
16 Thank you for being here.

17 MR. CLEMENTS: Your Honor, Ms. Roscoe is
18 too overcome ---

19 THE COURT: I understand.

20 MR. CLEMENTS: ---to speak, but she told
21 me back in the conference area, Your Honor, how
22 afraid she is even today and that he cut her carotid
23 artery, cut her jugular vein, severed the right side
24 of her vocal chords, tried to cut her and did cut
25 her across the abdomen, and she thought she was

1 dead. She thought she was going to die. And she is
2 still scared to death of him. She's scared to death
3 when he gets out of prison what he may do. She does
4 not know why he did what he did. The only thing I
5 can think he must have been consumed with jealousy
6 and obsessed with her that he could not just let her
7 go because they had broken up sometime before that.
8 And she thought they were still friends and were
9 still getting along. And she didn't want to believe
10 when her tires were slashed to begin with that it
11 was him; but then when he acted so funny about it
12 and she began to think on it, then she thought that
13 it was he that had done that to her tires but she
14 never thought she would be attacked like she was by
15 him and she is still scared to death, Your Honor.

16 THE COURT: I understand.

17 Ms. Roscoe, I'm -- I don't even have words
18 to tell you how sorry I am that you're having to be
19 here today and what you've been through as well as
20 the rest of you. You know, I don't understand.
21 There's a young man before me earlier this morning
22 who murdered his uncle, and it just doesn't excuse
23 it but it makes you kind of in some way understand
24 it. He was whacked out on crack. This I don't
25 understand 'cause I don't think there's any

1 allegations, nor any evidence to support that
2 Mr. Gainey was anything other than whatever it was,
3 whether it's jealousy or ang-- there's no evidence
4 of substance abuse during this time. Not that that
5 would make it okay; it doesn't. Sometimes, you
6 know, you want to reach for something that helps you
7 maybe try to understand it. And sometimes I, you
8 know, sometimes we joke when we say this, but the
9 truth is there's some things that maybe we're not
10 meant to understand, and I don't know. It's such
11 difficult -- it's such a difficult thing.

12 Mr. Gainey, I appreciate what you shared
13 with the Court today and that for most all of your
14 42 years you've lived as a law abiding citizen and I
15 appreciate that and certainly take that into
16 consideration. Unfortunately, when you did violate
17 the law you did it in such a fashion that to many
18 it's unthinkable. And I agree -- is it
19 Ms. McInville is that -- I agree with what Ms.
20 McInville said, after I saw the photographs that for
21 all intents and purposes you did kill her that day.
22 And for whatever reason God had a plan, maybe a plan
23 for her life and for yours, I don't know. I will --
24 and I'll say this, I don't always say this but I
25 always mean it every time I have someone before me

1 and I impose a sentence, I don't ever ask folks to
2 agree with my sentence. I don't say that my
3 sentence is correct. I just believe it's -- I
4 believe it to be correct, okay? And everybody has
5 opinions and how they feel about a case. I try very
6 hard in doing my job because I think it's what I'm
7 called to do, is to try to remove the emotion and do
8 what I think is appropriate under the legal
9 circumstances and so I try to do that. I'm not a
10 robot; I have feelings. You know, I'm -- but I say
11 that to tell you that this sentence that I impose, I
12 want you to understand that I do so not lightly, and
13 I do so while trying to take into consideration
14 everything that's before the Court. I don't even
15 know that this would be your desire, Ms. Roscoe, but
16 I'm not going to impose the maximum sentence in this
17 case and I'll explain that if it helps any -- I
18 don't know if it will. The legislature set
19 sentencing range on this crime for 0 to 30 years.
20 And the reason I believe that the legislature set
21 sentencing ranges is because everyone's not in the
22 same boat so to speak. Mr. Gainey stands before the
23 Court with no prior record. I have folks who are
24 before the Court with this type of a charge who have
25 a horrible prior record. I have folks that

1 sometimes come before me with this charge that have
2 prior convictions for this very offense, and so I
3 don't believe the legislature -- I believe the
4 legislature set a range because Mr. Gainey shouldn't
5 be treated the same way those folks are treated.
6 However, the crime that he committed was a horrific
7 crime and there was no real mitigation in, I mean,
8 there's no real explanation for it other than a
9 jealous rage I guess.

10 And so I don't know what is appropriate
11 and where this falls in terms of what is
12 appropriate. I just know that it's a very serious,
13 very serious offense that affected the lives of so
14 many people. And not of course y'all as victims,
15 but on this side, your family Mr. Gainey, in taking
16 you away from the loved ones, people who count on
17 you, your children who care about you. I mean,
18 there's just -- there's no winners here and there
19 never is. Sometime I run my mouth too far in trying
20 to explain a sentence, but I want people to
21 understand that there's, I guess, there's a reason
22 behind the madness. I consider a lot of things when
23 I sentence folks and just maybe give you some
24 insight as to what goes through my mind as I decide
25 what I think is appropriate.

1 Mr. Gainey, whether you think she should
2 or not, Ms. Roscoe has a very -- and the others --
3 have a very deep and real fear of you.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You're in my opinion a
6 relatively young man, and so at some point down the
7 road you're gonna be released from this sentence
8 that I'm gonna impose. And I'm gonna tell you now
9 that I'm gonna issue a restraining order in
10 connection with this. Even though I'm not gonna
11 have you on probation, I am issuing a restraining
12 order and that if any of these folks hear from you
13 at all that you're gonna be considered to be held in
14 contempt of court, and you're gonna be brought back
15 in and there's gonna be a violation of and you're
16 gonna be subject to being locked back up. Now
17 that's not something you need to worry about right
18 now 'cause you're gonna complete an active sentence;
19 but you just need to keep in mind that once you're
20 released, whenever that is, that's gonna be in
21 place. And I would strongly urge you to seek,
22 continue your faith, continue to seek the lord.

23 There are, as you know, there are bad
24 things in the Department of Corrections, but there
25 are good things in there too. Go to the good

1 things, gravitate to the good things. But you need
2 to understand that these folks for purposes of your
3 life no longer exist. You are to never contact
4 them, be around them, in any way. And if you do,
5 that's gonna be a violation and you're gonna be
6 subject to being placed back in prison. Now they're
7 gonna go on with their life, you're gonna go on with
8 yours, and the two never need to cross again.

9 THE DEFENDANT: Yes, sir.

10 MR. CLEMENTS: If it please the Court,
11 Your Honor.

12 THE COURT: Yes, sir.

13 MR. CLEMENTS: Your Honor, the victim
14 would also wish to not have any contact from his
15 family either.

16 THE COURT: Well, there's to be no contact
17 with Ms. Roscoe in this case from anyone. And if
18 there are folks that want to express ill will, that
19 better not happen. If there are folks that want to
20 express we're sorry, that doesn't need to happen. I
21 just -- I just need for Mr. Gainey and anyone
22 associated with Mr. Gainey to go forward with their
23 lives as though these folks don't exist and these
24 folks to go forward with your lives as though they
25 don't exist. That sounds harsh, but it's really in

1 the best interest of everybody, and so there's to be
2 no contact with amongst everyone.

3 On indictment 2010-GS-21-1469, on the
4 charge of attempted murder, the sentence of the
5 Court is that you're to be committed to the State
6 Department of Corrections for a period of 17 years.
7 You're to be given credit for any time that you have
8 served up to this point, and there's to be no
9 contact with the victim at any time in the future.
10 Good luck to you, sir.

11

12 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 9th day of May, 2012.

Frances B. Ray

FRANCES BAKIS-RAY, RPR

2012 CP 21⁶⁹ 43

FORM 5

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

County of Florence)

CERTIFIED: A TRUE COPY

William L. GAINCY 347717)

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

William L. GAINCY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

Respondent,)

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 MCCORMICK C.E. 336 Redemption way
MCCORMICK SC 29879 F2
2. Name and location of Court which imposed sentence Florence county
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) _____
(b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) _____
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒ _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
only Filed this PCR Application
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Florence Court of Common Plea (PCR)
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. N/A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel abandonment me in my case and did not file any appeal,
- (b) _____

(c) _____

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

- (a) MR. WILLIAM WAS INCOMPETENT TO UNDERSTAND THE PLEA INVOLUNTARY GUILTY PLEA
- (b) INEFFECTIVE ASSISTANCE OF PLEA ATTORNEY
- (c) FAILURE TO INVESTIGATE THE TOTALITY OF THE CIRCUMSTANCES STATE IS MADE UNVOLUNTARILY VIOLATE MIRANDA

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

- (a) MR WILLIAMS WAS NOT COMPETENT DURING THE INCIDENT OR PLEA COUNSEL FAILURE TO REPRESENT MY CASE AND INDUCE ME TO PLEA TO SOMETHING I WAS NOT RESPONSIBLE FOR.
- (b) AND RENDERED INEFFECTIVENESS UNDER THE SIXTH AMENDMENT COUNSEL FAILED TO ADEQUATELY INVESTIGATE THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING THE ALLEGED ATTEMPTED MURDER AND ABWIK AND STATEMENT VIOLATED MIRANDA

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

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? _____

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. N/A
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

_____ N / A

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

(a) which grounds have been presented:

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

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

- i. _____
- ii. _____ N / A
- 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) Because my counsel did not appeal my
 (b) guilty plea N/A hearing.
 (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? N/A
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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. J. ERVIN 50 public square
Darlington SC 29533
 ii. _____
 iii. _____

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

i. guilty plea hearing
Sentencing
 ii. _____
 iii. _____

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

THAT my sentence be vacated and
dismissed with time served under
ineffective assistance of attorney 6th 14th
amendment rights violated

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

N/A

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Florence)

I, Mr. William L. Gainey 347919, 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.

William L. Gainey 347919
William L. Gainey 347919

SWORN to and subscribed before me this 13
 day of February, 2012.

J. Franklin (L.S.)
 Notary Public

My Commission Expires: 12-16-2019

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

I, William L Gancy 347919, 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.

William L Gancy 347919
William L Gancy Applicant # 347919

SWORN or affirmed to and subscribed before me this

13 day of February, 2012.

J C Franklin
Notary Public

My Commission Expires: 12-16-2015

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

2012-CP-21-437

William L. Gainey, 347919)

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

Respondent, making its Return to the Application for post conviction relief (PCR) filed February 15, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the November 2010 term of the Florence County Grand Jury for attempted murder (2010-GS-21-1469) John M. Ervin, Esquire, represented Applicant.

On September 19, 2011, the Applicant pled guilty as indicted. The Honorable Larry B. Hyman sentenced Applicant to seventeen years imprisonment. Applicant did not appeal the conviction or sentence.

Attached herewith and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and the guilty plea transcript

will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Mr. William was incompetent to understand the plea"
2. "Ineffective assistance of plea attorney"
3. "Failure to investigate the totality of the circumstances"
4. "State is made unvoluntarily violate miranda"

Applicant seeks "that my sentence be vacated and dismissed with time served under ineffective assistance of attorney 6th 14th amendment rights violated" as a result of this proceeding.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. 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 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 State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

5 4, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

WILLIAM L. GAINES, #347919

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

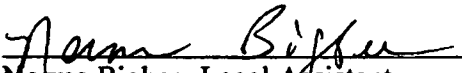
2012-CP-21-437

AFFIDAVIT OF SERVICE BY MAIL

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

Marion S. Fowler, III, Esquire
136 A. South Church St.
Lake City, SC 29560

DATED this 4TH day of May, 2012.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2012-CP-21-00437
	)	
WILLIAM L. GAINNEY,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	
	)	

October 8, 2013
Marion, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., Judge

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

WILLIAM RUNYON, Esquire
Attorney for the Plaintiff

JOSHUA THOMAS, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

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(No Exhibits Presented)

1 OCTOBER 8, 2013

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with his
4 counsel of record. The hearing began at 11:32 a.m.)

5 THE COURT: Everybody be seated.

6 THE CLERK: Mr. Gainey, just try to hold it up the best
7 way you know how. Do you swear or affirm to tell the truth,
8 the whole truth, and nothing but the truth, so help you God?

9 THE PLAINTIFF: Yes, I do.

10 THE CLERK: You can have a seat.

11 THE COURT: All right.

12 MR. THOMAS: Good morning.

13 THE COURT: All right.

14 MR. THOMAS: May it please the Court. The next case is
15 William Gainey versus the State of South Carolina. It's Case
16 Number 2012-CP-21-437. Mr. Gainey was indicted in November
17 2010 for attempted murder. He was represented on those
18 charges by John Ervin III. He pled on September 19th, 2011, as
19 indicted before the Honorable Thomas A. Russo, who sentenced
20 him to 17 years for the attempted murder.

21 His PCR was filed in February of 2012. He's present with
22 his attorney, Mr. Runyon. The State is ready to proceed.

23 THE COURT: All right. Mr. Runyon, I'm ready when you
24 are.

25 MR. RUNYON: Your Honor, we -- Mr. Gainey is prepared to

WILLIAM L. GAINNEY - DIRECT EXAMINATION BY MR. RUNYON

1 testify. We'll just go ahead and present him. We anticipate
2 he will be the only witness.

3 THE COURT: All right.

4 MR. RUNYON: He has a narrow issue.

5 THE COURT: That will be fine.

6 WILLIAM L. GAINNEY, being first duly
7 sworn, testifies as follows:

8 DIRECT EXAMINATION

9 BY MR. RUNYON:

10 Q: Mr. Gainey, how old are you, sir?

11 A: I'm 44 years old, sir.

12 Q: And you're going to have to speak up so this lady can
13 hear you.

14 A: I'm 44 years old, sir.

15 Q: Now, you unfortunately came in contact with the Court of
16 General Sessions over in Florence?

17 A: Yes, sir.

18 Q: And Mr. Ervin was your lawyer?

19 A: Yes, sir.

20 Q: All right. And you were charged and you pled guilty to
21 assaulting someone?

22 A: Yes, sir. Yes, sir.

23 Q: All right. Now -- and inflicting serious injury?

24 A: Yes, sir.

25 Q: All right. Now, Mr. Gainey, relevant to this -- we hope

WILLIAM L. GAINY - DIRECT EXAMINATION BY MR. RUNYON

1 that the Court will see it's relevant. Where were you born
2 and raised?

3 A: In Johnsonville, South Carolina.

4 Q: Okay. And did -- did you have any health issues when you
5 were growing up?

6 A: I basically -- I was -- I was a kid. I was an average
7 kid growing up. I've been hit in the head several times. I
8 played ball. But at the age of fifteen years old, I was in a
9 serious moped wreck. I was hit with a car. I was making a
10 left-hand turn riding a moped and a car hit me in my side. I
11 established third degree burns to my stomach. I got scars on
12 my legs. I have -- I had what they call head trauma.

13 Q: All right. You had a serious closed head -- head injury?

14 A: Yes, sir.

15 Q: All right. You didn't play football after that?

16 A: No, sir. My football career was over, sir.

17 Q: All right. And you went to working?

18 A: I went -- I stayed in school, in and out of school,
19 stayed in trouble in school. When I got out of school, my
20 daddy just told me one day -- he said you can get a job and go
21 ahead and work, and I've been doing construction work for
22 Sumter Construction from at the age of 25 years old and I was
23 still employed when I got arrested.

24 Q: All right. Now, the victim in this case you had a
25 relationship with?

WILLIAM L. GAINY - DIRECT EXAMINATION BY MR. RUNYON

1 A: Yes, sir.

2 Q: And you had some difficulties in that relationship?

3 A: Yes. Yes, sir.

4 Q: And on the day of the incident, I believe that -- to just
5 get right to the point -- you assaulted her. You have no --
6 do you have any recollection of assaulting this lady?

7 A: No, sir.

8 Q: What did ---

9 MR. RUNYON: And I think this is in the transcript,
10 Judge, but just very briefly.

11 Q: Did you after the assault stay around?

12 A: No, sir. No, sir. I fled the incident because I blacked
13 out during the incident and then when I realized that I had
14 did something, sir, I turned myself in to Darlington County
15 Police Department.

16 Q: All right. And now, as a result of those -- that
17 rendition of the facts, Mr. Ervin was your lawyer?

18 A: Yes, sir.

19 Q: And he sought an evaluation of your mental competence and
20 your ability to stand trial and things like that, sir?

21 A: Yes, sir.

22 Q: Now -- pardon me. Now, did you go -- did you go through
23 the evaluation process?

24 A: Yes, sir. They sent me to Columbia.

25 Q: All right. And did you see some people there?

WILLIAM L. GAINES - DIRECT EXAMINATION BY MR. RUNYON

- 1 A: Yes, sir. We set down and talked for about an hour.
- 2 Q: Did you ever see a medical doctor?
- 3 A: No, sir.
- 4 Q: Did anybody ever take your blood pressure?
- 5 A: No, sir.
- 6 Q: Did anybody ever take an x-ray?
- 7 A: No, sir.
- 8 Q: Did anyone at -- during the process ever do any type of
- 9 medical evaluation other than talking to you?
- 10 A: That's it, sir. That's all they done.
- 11 Q: All right. Subsequently, there was -- there was -- there
- 12 was a decision for you to plead guilty?
- 13 A: Yes, sir.
- 14 Q: All right. And Mr. Ervin had been the family lawyer for
- 15 years?
- 16 A: Yes, sir.
- 17 Q: And he knew you?
- 18 A: Yes, sir.
- 19 Q: And you knew him?
- 20 A: Yes, sir.
- 21 Q: And you relied upon his judgment?
- 22 A: Yes, sir.
- 23 Q: And this was a terribly tragic situation?
- 24 A: Yes, sir, it was.
- 25 Q: And y'all made the decision to plead guilty?

WILLIAM L. GAINES - DIRECT EXAMINATION BY MR. RUNYON

1 A: Yes. Yes, sir. I thought I didn't have no other choice,
2 sir.

3 Q: Okay. Well, now the choice -- the decision to plead
4 guilty was your decision; was it not?

5 A: Yes, sir, but I was too -- what I'm trying to say is I
6 was ignorant of the law. I didn't know nothing about the law,
7 sir.

8 Q: Well, I understand.

9 A: I was going on his advice.

10 Q: All right. And -- and his advice was this might be the
11 best way to approach this -- this thing?

12 A: Yes, sir. He said more than likely I would get the low
13 end -- low end of the deal because it was an open plea, sir.

14 Q: Okay. It was an open plea and no recommendation, no
15 guarantees?

16 A: Yes, sir.

17 Q: And now, that wasn't a guarantee from him that you would
18 get the low end. He just thought in his professional opinion
19 that would be something that -- for y'all to hope for;
20 correct?

21 A: Yes, sir.

22 Q: Now -- and it didn't quite turn out that way; did it?

23 A: Yes. Yes, that's true, sir.

24 Q: But it was your voluntary decision to plead guilty?

25 A: Yes, sir.

WILLIAM L. GAINES - DIRECT EXAMINATION BY MR. RUNYON

1 Q: And during the course of the hearing ---

2 MR. RUNYON: I believe the transcript is part of the
3 proceeding, Judge.

4 Q: During the course of the proceeding at or about pages 16
5 through 18, did the evaluations get presented as a -- as an
6 exhibit?

7 A: Yes, sir.

8 Q: Okay. And there were -- there was -- there were two
9 evaluation orders that your lawyer got; did -- did he not?

10 A: I believe so, sir. I really -- I really didn't see an
11 evaluation until I got my paperwork.

12 Q: Okay. One -- one was for an evaluation for competency to
13 stand trial?

14 A: Yes, sir.

15 Q: And the other was for -- an evaluation for criminal
16 responsibility and capacity to conform?

17 A: Yes, sir. That's basically -- I reckon that was
18 basically the questions she asked me when I was up there.
19 Yes, sir.

20 Q: All right. Now, did you tell the evaluators about your
21 medical history?

22 A: Yes, sir, I did.

23 Q: Did you tell them about your head injuries?

24 A: Yes, sir.

25 Q: Did you tell them about your blacking out?

WILLIAM L. GAINES - DIRECT EXAMINATION BY MR. RUNYON

1 A: Yes, sir.

2 Q: Had you ever blacked out before like that?

3 A: Yes, sir.

4 Q: All right. Now -- and you discussed the -- the
5 evaluation with your lawyer?

6 A: No, sir. I never went over with him about it.

7 Q: Okay.

8 A: He just told me how I was -- just one day I was -- I got
9 a call and said I was going to court the next day. I was
10 going to court the next day and I would stand trial. I was
11 going for trial.

12 Q: Okay. But there was a discussion and you made the
13 decision to plead guilty?

14 A: Yes, sir.

15 Q: All right. He didn't force you?

16 A: No, sir.

17 Q: All right. And y'all took your best shot?

18 A: Yes, sir.

19 Q: And didn't quite hit the target; did it?

20 A: That's -- that's right, sir.

21 Q: Okay. Now ---

22 MR. RUNYON: Your Honor, I draw the Court's attention
23 just for the -- to get to the point, page 17 -- 16 through 18
24 contains the reference to the evaluations, Judge, and the
25 solicitor submitted the orders and he submitted them pursuant

WILLIAM L. GAINNEY - DIRECT EXAMINATION BY MR. RUNYON

1 to State v. Blair.

2 THE COURT: Mm-hmm.

3 Q: Do you recall ever having a Blair hearing?

4 A: No, sir.

5 Q: Okay.

6 MR. RUNYON: We have no further questions, Judge.

7 THE COURT: All right.

8 CROSS EXAMINATION

9 BY MR. THOMAS:

10 Q: Mr. Gainney, how many times did you meet with Mr. Ervin?

11 A: Two -- two or three times.

12 Q: And did you get a chance to review the State's discovery
13 with him?

14 A: No, sir.

15 Q: He didn't tell you about witnesses?

16 A: The only thing he told me I was competent to stand trial.
17 If I remember right, I -- only time -- only time I remember
18 talking to him was the day when I went to court. I never seen
19 him after my evaluation. I never seen him until the day I
20 went to court.

21 Q: So you never reviewed the witness statements with him?

22 A: The witness statements and all that, that was the
23 evidence, yeah, we talked about that.

24 Q: So you did talk about it with him?

25 A: Yeah, about the witness statements, but not about the

WILLIAM L. GAINY - CROSS EXAMINATION BY MR. THOMAS

1 evaluation.

2 Q: Did you ever discuss any possible defenses you might
3 have?

4 A: Basically, no, not really.

5 Q: Did you give him any sort of -- did you tell him about
6 your past injuries to your head?

7 A: Yes, sir. He -- I think I did. I can't quite remember,
8 sir. It's been so long.

9 Q: Did you ever discuss with him any plea offers the State
10 made?

11 A: No, sir. He -- there wasn't never a plea offered to me.

12 Q: But you did finally decide -- you decided to plead guilty
13 to attempted murder?

14 A: Yes, sir.

15 Q: That was your decision?

16 A: Yeah. I thought that was the only chance I had because I
17 was -- I was ignorant of the law. I've never -- I've never
18 been in trouble in my life, sir.

19 Q: Well, how about the facts of this case? You remember the
20 solicitor reading the facts of the case at the plea; don't
21 you?

22 A: Yes, sir. Yeah, yes, sir.

23 Q: And you remember agreeing with him that you did, in fact,
24 cut the victim in this case; isn't that correct?

25 A: Yes, sir. I never denied that.

WILLIAM L. GAINY - CROSS EXAMINATION BY MR. THOMAS

1 Q: You said you cut her, but you didn't snatch the door
2 open?

3 A: I said -- I said -- I said I didn't remember it, but I
4 give a statement. What I gave, I don't -- I don't quite
5 remember what I said.

6 Q: So you -- you're telling us that you blacked out during
7 the incident?

8 A: Yes, sir.

9 Q: But you've never blacked out before that?

10 A: Yes, sir.

11 Q: Have you blacked out since then?

12 A: Yes, sir.

13 Q: At any point, did you ever indicate to Mr. Ervin that you
14 wanted to go to trial in this?

15 A: No, sir. It was never a -- we never discussed about me
16 going to trial. He just come to me that day and said that he
17 thought the best thing was for me to take a plea to it.

18 Q: Do you recall the judge asking you if you were satisfied
19 with his representation of you?

20 A: Yes, sir.

21 Q: And you also remember telling the judge that you didn't
22 need any more time to talk to him; don't you?

23 A: Yes, sir. Because I had already made up my mind then to
24 go ahead and make the decision.

25 Q: And so you do also remember telling the judge at that

WILLIAM L. GAINY - CROSS EXAMINATION BY MR. THOMAS

1 point that you were, in fact, guilty of attempted murder?

2 A: Yes, sir. And mean I believe yes, sir.

3 Q: And you remember the judge going over all your
4 constitutional rights?

5 A: Yes, sir.

6 Q: And waiving those?

7 A: Yes, sir.

8 MR. THOMAS: No further questions.

9 THE COURT: All right. Mr. Runyon?

10 MR. RUNYON: Very briefly.

11 REDIRECT EXAMINATION

12 BY MR. RUNYON:

13 Q: Mr. Gainey, we -- we talked -- on direct. We talked
14 about your evaluation and the attorney general asked you some
15 other questions about -- about your relationship with your
16 lawyer. Do you have any other -- this is your only chance to
17 raise any issues that you have with your representation or
18 with the proceedings. Do you have any other issues that you
19 wish to bring to the attention of the Court?

20 A: Yes, sir.

21 MR. THOMAS: Your Honor, I would just object. That's
22 outside the scope of cross.

23 THE COURT: Overruled. Go ahead.

24 A: Your Honor, my counsel was ineffective because the motion
25 under the statute -- under -- it's a violation of South

WILLIAM L. GAINES - CROSS EXAMINATION BY MR. THOMAS

1 Carolina Code, Rule Number 3, discipline of warrants. The
2 State of South Carolina has 90 days to -- to process your
3 indictment. I got a -- I got an exhibit here where it took
4 them over about 150 -- it took them over five months to
5 indict me. After 90 days, they're supposed to be -- they make
6 it a rule. In the rule, it says they're supposed to file for
7 an extension. I wrote -- I wrote the clerk of court twice and
8 asked if they had any extensions or nothing else. They never
9 pulled no extensions. They said I had no extensions or
10 nothing on me. Ms. Jane Blackwell, won her case on that
11 issue. You know, after 90 -- after 90 days, they're supposed
12 to -- if they ain't got the true bill, they're supposed to
13 file for an extension in the situation and that violates my
14 Fourteenth Amendment right of equal right protection.

15 Q: Now, is there -- is there any other issue that you have
16 that you would like to bring to the attention of the Court?

17 A: I'm good. That's it.

18 MR. RUNYON: All right. That's the case for the
19 petitioner, Your Honor.

20 THE COURT: All right. Recross?

21 MR. THOMAS: Nothing from the State, Your Honor.

22 THE COURT: All right. Call your next witness.

23 MR. RUNYON: We have no other witnesses at this time,
24 Judge.

25 THE COURT: You can go ahead and have a seat with your

JOHN ERVIN III - DIRECT EXAMINATION BY MR. THOMAS

1 lawyer. Mr. Thomas?

2 MR. THOMAS: The State would call Mr. Ervin at this time.

3 THE CLERK: Mr. Ervin, do you swear or affirm to tell the
4 truth, the whole truth, and nothing but the truth, so help you
5 God?

6 THE WITNESS: I do.

7 JOHN ERVIN, III, being first
8 duly sworn, testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. THOMAS:

11 Q: Good morning, Mr. Ervin. How long have you been
12 practicing law?

13 A: Twenty-eight years.

14 Q: And were you -- do you recall whether you were appointed
15 or retained on this case?

16 A: Retained.

17 Q: How many times did you have an opportunity to meet with
18 Mr. Gainey before the plea?

19 A: Well, not being court-appointed, I wasn't required to
20 keep a time sheet so I don't know how many times I met with
21 him, but enough that I was satisfied with my grasp of the
22 facts and the evidence in the case, and it was pretty
23 overwhelming, I know that, to say the least. And when I say
24 overwhelming, there was as much incriminating evidence as you
25 could have in a case of this nature.

JOHN ERVIN III - DIRECT EXAMINATION BY MR. THOMAS

1 Q: Well, I guess then would you kind of just briefly sort of
2 characterize the State's evidence for us?
3 A: Well, essentially what William admitted to and what their
4 evidence would show is that after his estranged girlfriend's
5 neck was cut, he left the scene and immediately went to the
6 Darlington County Sheriff's Department as you -- you've
7 already heard about that, but he met with Andy Locklear and he
8 indicated in his statement that he gave to -- to Andy Locklear
9 with the Sheriff's Department that he had flipped out or
10 blacked out as he mentioned and that was the reason, that and
11 a couple things had said to me, that I wanted to have the
12 competency evaluation and M'Naghten evaluation and, of course,
13 that was done and I didn't find anything really beneficial in
14 that. I was aware of his previous head injury and I certainly
15 didn't see any hindrance in -- in discussing the case with me
16 or anything to indicate that that would cause any type of
17 cognitive deficit.

18 But anyway, he went to the Sheriff's Department. They
19 took his clothing from him there because he had her blood.
20 They did DNA. Of course, her DNA. They recovered the weapon.
21 They, you know, did the crime scene and forensics of her
22 vehicle and of his with DNA there, too. You know, again his
23 statement was consistent with what occurred at the scene and,
24 of course, this was immediately after the incident. We had
25 the medical evidence, which was, quite frankly, pretty

JOHN ERVIN III - DIRECT EXAMINATION BY MR. THOMAS

1 horrific. In other words, if we had gone to trial, it was --
2 there were enough aggravating circumstances that were he to be
3 convicted at trial, he was looking at a maximum sentence, and
4 I suggested to him, as I would suggest today, that he try to
5 mitigate his dire situation by entering a guilty plea and
6 accept responsibility for what he did and hopefully receiving
7 the appropriate consideration from the Court by accepting
8 responsibility and begging for mercy, which is again what he
9 did. And the sentence, though harsh, was certainly fair.

10 Q: Did you -- I guess we're backing up a little bit. Did
11 you ever get an opportunity to file any discovery motions?

12 A: I'm sure I did. I don't remember.

13 MR. RUNYON: Your Honor, we stipulate that trial counsel
14 did, in fact, file the appropriate discovery motions and, in
15 fact, did receive all the discovery in an appropriate period
16 of time and appropriate response from the Solicitor's Office.

17 THE COURT: All right, good. Very good.

18 MR. THOMAS: Very good.

19 A: And I believe that I provided the discovery to him. I
20 mean I would have. You don't in federal court, but in state
21 court I always do.

22 Q: Do you specifically recall if you had an opportunity to
23 go over that material with him?

24 A: He was aware of the evidence, yes. I mean it was very
25 straightforward. I'm not trying to downplay any grounds he

JOHN ERVIN III - DIRECT EXAMINATION BY MR. THOMAS

1 might think he has, but I will say this, that there was
2 nothing in the discovery inconsistent with what he told me or
3 what he related to the investigator, Andy Locklear. I mean it
4 was all -- it fit like a glove, so to speak, and there really
5 wasn't any wiggle room in the discovery.

6 Q: Based on your review of that, what kind of defenses do
7 you think you -- you could have had to this?

8 A: The defenses were the things that I brought up in the --
9 if you review the transcript, the mitigating evidence. That's
10 all there -- that's all you could do is try to mitigate it
11 with the fact that he had no prior history, no prior record.
12 He was hard-working. He was involved in a relationship that
13 became troubled and, you know, he acted in a moment of
14 passion. His background, of course, his educational and
15 intellectual background had nothing noteworthy in it in terms
16 of problems, but he -- you know, other than having that
17 previous traumatic event when he was fifteen. I did know
18 about that that and took that into consideration, but it
19 really didn't I think offer much by way of mitigation, nothing
20 you'd want to hang your hat on as a defense attorney. But
21 those were the mitigating circumstances, the lack of a prior
22 record and -- and the turbulent relationship he had with his
23 girlfriend.

24 Q: So based on your review of all that, did you -- what kind
25 of plea negotiations did you have with the State?

JOHN ERVIN III - DIRECT EXAMINATION BY MR. THOMAS

1 A: Well, the plea negotiations were that -- you know,
2 obviously when you don't have a recommendation from the State,
3 it is to try to impress the Court with your mitigating
4 evidence and convince the Court that while the facts are
5 terrible and the injuries were life-threatening because she
6 did almost bleed out -- and all of that was in the medical
7 records. The doctor even commented on it about how close she
8 was to dying. You know, just to mitigate the case as much as
9 I could at a plea and hopefully minimize his sentence.

10 Q: So ---

11 A: Sometimes that's all you have.

12 Q: So did the State -- what kind of offers did the State
13 make ---

14 A: They didn't.

15 Q: --- prior to plea?

16 A: You know, as I say, the offer was plead guilty and get
17 whatever credit the Court deems appropriate, which is not
18 unusual. You know, quite frequently -- quite frequently in
19 serious cases, you are at the mercy of the Court and this was
20 one of those situations.

21 Q: Did Mr. Gainey ever indicate to you that he wanted to go
22 to trial on this?

23 A: No. He never did and I would not have -- I would have
24 basically tried to convince him otherwise because this isn't
25 the type of case you'd want to go to trial on unless you were

JOHN ERVIN III - DIRECT EXAMINATION BY MR. THOMAS

1 acting contrary to your client's best interest.

2 Q: But if he had wanted a trial, would you have been
3 prepared for one?

4 A: I would have and I would have basically said you're
5 making a big mistake, but he never -- he understood that he
6 didn't need to go to trial.

7 Q: So whose decision was it to ultimately plead guilty?

8 A: Well, he was ready to plead and had been for some time.
9 It was just a matter of having the evaluation conducted, which
10 was done, and once we received that, I started discussing
11 potential plea dates with Ed Clements and we went from there.

12 Q: And just so I'm clear in regards to that evaluation, how
13 did it come back?

14 A: Well, it came back that he was competent and criminally
15 responsible, and there was nothing in the evaluation to
16 indicate anything contrary to that.

17 Q: And I guess last question. Before the plea, did you
18 explain to him the -- sort of the process with a straight up
19 plea and what he was looking at?

20 A: I did and then I couldn't tell him what the sentence
21 would be, but that I intended to vigorously argue the points
22 I've already made here today and that are contained in the
23 transcript.

24 Q: I guess last question. What significance did you place
25 on the fact that he was not indicted within 90 days of being

JOHN ERVIN III - CROSS EXAMINATION BY MR. RUNYON

1 arrested?

2 A: Very little, if any. I don't really recall being aware
3 of that. I may have been, but I wouldn't have placed great
4 significance on it.

5 MR. THOMAS: Thank you.

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. RUNYON:

9 Q: Mr. Ervin, just very briefly.

10 A: Yes, sir.

11 Q: You had a very difficult case?

12 A: Yes, sir.

13 Q: And, quite frankly, you gave him very good advice on how
14 to approach it with regards to trying to mitigate it before
15 the Court versus having a horrific situation play out before a
16 jury; correct?

17 A: Yes.

18 Q: All right. Now, when -- did -- did the -- he was -- he
19 was sent for evaluation pursuant to the two orders and you got
20 a report back?

21 A: Yes, sir.

22 Q: All right. Did the State facilities send you the work
23 papers to show you what they really had done to reach that
24 conclusion?

25 A: I'm not sure without looking.

JOHN ERVIN III - CROSS EXAMINATION BY MR. RUNYON

1 Q: I don't think they did, but the very ---

2 A: Well, if you say they didn't, they probably didn't.

3 Q: Right. They didn't.

4 A: I assume they didn't.

5 Q: All right. Had they sent you those papers, you -- that
6 -- would that have assisted you in determining whether or not
7 you would have requested a formal Blair hearing?

8 A: Possibly.

9 Q: Okay. And the two -- the two resulting evaluations were,
10 in fact, submitted during the course of the plea as noted in
11 the transcript?

12 A: Correct.

13 MR. RUNYON: I have no further questions, Judge.

14 THE COURT: All right. Anything further?

15 MR. THOMAS: Nothing from the State.

16 THE COURT: All right. Call your next witness.

17 MR. THOMAS: That's all we have.

18 THE COURT: All right. I'll take the matter under
19 advisement and let you know something soon.

20 MR. RUNYON: Your Honor, can I -- can I just clarify the
21 record for -- for ---

22 THE COURT: You may.

23 MR. RUNYON: --- a moment and very briefly summarize what
24 we're -- what we're talking about here?

25 THE COURT: Mm-hmm.

1 MR. RUNYON: You know, unfortunately, in these cases they
2 talk about ineffective assistance of counsel. It's always
3 laid at the foot of the defense counsel and I've been doing
4 this 46 years and I've heard that, too, but the simple fact
5 is, is our objective here is for the Court to consider the
6 issue that under Blair, our state Supreme Court has said that
7 there is a -- that there is a responsibility on the bench when
8 there is an issue of mental competence, evaluation, ability to
9 conform, and what have you for the Court to make a separate
10 and distinct finding of that.

11 Now, in this case, the evaluation was submitted to the
12 Court and there was, in fact, no Blair hearing, and if -- if
13 there's ineffective assistance of counsel for not requesting
14 one, then it -- then that's the situation, but the simple fact
15 is with his background with the failure to properly evaluate
16 him, I'm not sure how defense counsel, unless they are in fact
17 a medical doctor, could have raised the issues that may have
18 gotten to the point. And this is extremely crucial in this
19 case, not as it relates to guilt or innocence, but as it
20 relates to exactly what Mr. Ervin was trying to do and what he
21 did do effectively, which was mitigate -- mitigate the case
22 for the Court to consider for the purpose of sentencing.

23 And that's our very, very, very, very narrow issue and I
24 realize that, but as in Mr. Ervin's case, sometimes when
25 you've got a case you've got to -- you've got to go with the

1 issue you have.

2 THE COURT: All right.

3 MR. RUNYON: Thank you, Your Honor.

4 THE COURT: Any response to that?

5 MR. THOMAS: Your Honor, we would just point out that the
6 evaluation is in the clerk's records. It was provided to the
7 Court. It came back that he was competent. Judge Russo on
8 page 17, line 18, finds that he was competent. That's it.

9 THE COURT: All right.

10 MR. THOMAS: Thank you, Your Honor.

11 THE COURT: I'll take it under advisement and let you
12 know. Thank you. I appreciate it, Mr. Ervin.

13 (Whereupon, the proceedings end at 11:59 a.m.)

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15 --- END REQUESTED TRANSCRIPT ---

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1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 Common Pleas for Florence County, South Carolina, held in
12 Marion, South Carolina, on the 8th day of October, 2013.

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

15

16

Krystal J. Smith

17

Court Reporter

18

19 Florence, South Carolina

20 March 14, 2013

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

William Gainey, #347919,)

Case No. 2012-CP-21-437

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

2013 DEC 11 PM 4:41
CLERK OF COURT
FLORENCE COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an Application for Post-Conviction Relief ("PCR") filed February 15, 2012. Respondent made its Return on or about May 4, 2012. The Court convened an evidentiary hearing into the matter on October 8, 2013, in Marion County. Applicant was present at the hearing and represented by William L. Runyon, Jr., Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, John M. Ervin, III, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Florence County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application, and the return. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. In November 2010, the Florence County Grand Jury indicted Applicant for attempted murder (2010-GS-21-1469). He was represented by John M. Ervin, III, Esquire ("plea counsel"). On September 19, 2011, Applicant pled guilty as indicted. The Honorable Thomas A. Russo sentenced Applicant to

CLERK OF COURT
FLORENCE COUNTY
SOUTH CAROLINA
2013 DEC 11 PM 4:41
Amie Spain
CLERK OF COURT & G.S.

confinement for a period of seventeen (17) years. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

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

1. "involuntary guilty plea"
 - a. "Mr. Williams was not competent during the incident or plea. Counsel failure to represent my case and induce me to plea to something I was not responsible for"
2. "ineffective assistance of plea attorney"
 - a. "And rendered ineffectiveness under the sixth amendment"
3. "Failure to investigate the totality of the circumstances state is made unvoluntarily violate miranda"
 - a. "counsel failed to adequately investigate the totality of the circumstances surrounding the alleged attempted murder and ABWIK and statement violated miranda"

At the PCR hearing, the Applicant proceeded on only the allegations of ineffective assistance of plea counsel for failure to investigate the facts of the case and failure to investigate Applicant's mental condition.

III. SUMMARY OF TESTIMONY

Applicant testified he was hit in the head several times growing up, either playing ball or riding his moped. He alleged he did not recall assaulting the victim, but remembered turning himself in to police. Applicant testified plea counsel had him evaluated, but he never saw a medical doctor. Applicant recalled two evaluations: one for competency and one for criminal responsibility. Applicant recalled telling the evaluator about his medical history, his head injuries, and his lack of recollection of the assault. He testified he never discussed the findings of the evaluation with plea counsel. On cross-examination, Applicant again testified he "black

out" when assaulting the victim, but admitted he has never "blacked out" before or since the assault.

Applicant testified plea counsel was his family's attorney and Applicant relied on plea counsel's judgment. He testified he met with plea counsel two (2) or three (3) times, but never after the evaluation was performed. He further testified Plea counsel never reviewed discovery with him. Applicant did not recall discussing any defenses to the charge. Applicant stated it was his decision to enter a plea of guilty instead of go to trial, but he never discussed the possibility of trial with plea counsel.

Plea counsel testified he was retained by Applicant's family. He did not recall the exact number of times he met with Applicant, but testified he met with Applicant enough that he was comfortable Applicant understood the nature of the charges against him. Plea counsel testified he discussed with Applicant the evidence and the State's response to plea counsel's Rule 5/Brady requests. Plea counsel testified the evidence in the case was overwhelming. Witnesses saw Applicant assault the victim with a knife, and Applicant later turned himself in covered in the victim's blood and in possession of the weapon used to inflict her injuries. Plea counsel testified he was familiar with Applicant's prior head injuries and sent him to be evaluated, but plea counsel recalled never having any doubt about Applicant's capacity.

Plea counsel testified Applicant always indicated he wanted to plead guilty, but plea counsel advised him to wait on the evaluations to be completed. Once the evaluations came back competent, he advised Applicant the only defense to the charge was to plead guilty and beg for the court's mercy in mitigation. Plea counsel testified there was no other strategic way to overcome the State's overwhelming evidence. He further testified the State refused to make an

offer to plea to a negotiated sentence length. Plea counsel testified he informed Applicant the plea was without recommendation or negotiation, and the judge would determine the appropriate sentence.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The 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.

A. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The

applicant must overcome this presumption 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 in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The Court finds Applicant failed to meet his burden of proving plea counsel ineffective. Applicant's allegation plea counsel failed to investigate his mental condition is not supported by the record. Regarding this allegation, the Court finds plea counsel's testimony to be very credible, and Applicant's to be not credible. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Here, plea counsel had Applicant evaluated for his capacity to conform his conduct to the requirements of the law and for his capacity to assist with his defense. Both evaluations were presented to Judge Russo and made part of the record. (Plea Tr. 16:20-17:25). Accordingly, Judge Russo found Applicant was competent at the time of the assault and at the

time of the plea. Applicant presented no evidence at the PCR hearing to refute these findings. Therefore, he has not shown how any further investigation into his mental condition would have changed the outcome of his case.

Applicant's allegation plea counsel failed to investigate the facts of the case is likewise without merit. The Court finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. The Court finds very credible plea counsel's assertion there was no defense to the charge other than to plead guilty and seek mercy in mitigation. See Arnette v. State, 306 S.C. 556, 557, 413 S.E.2d 803, 804 (1992) (counsel not ineffective for failing to advise of potential defense where no evidence exists to support the defense). The evidence against Applicant was overwhelming, and plea counsel fully explained the benefits of a plea versus the risks of trial. Furthermore, despite his assertion he "blacked out," Applicant freely and voluntarily admitted at his plea hearing he assaulted the victim. He has presented no reason why he should now be allowed to depart from the truth of those statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. (citing Blackledge v. Allison, 431 U.S. 63 (1977))). In sum, Applicant has shown nothing that would have affected counsel's advice to plead guilty. Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, he has not proven plea counsel was ineffective.

B. All Other Allegations

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present sufficient

evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27 day of Nov.


THE HONORABLE WILLIAM H. SEALS, JR.
Presiding Judge

, South Carolina

2013 DEC 11 PM 4:41
COMM. RECD. SEC. 1
CCRP & ERI
FULTON COUNTY

COPIES
CLERK OF COURT
CP & G.S.
2013 DEC 11 2013

115

WITNESSES

LARRY DRAYTON Florence Police Department

DOCKET NO. 2010-GS-21-1469

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2010

THE STATE

vs.

WILLIAM LEE GAINNEY

E. L. CLEMENTS, III

ARREST WARRANT NUMBER

M376520

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 11/18/10

VERDICT

Indictment for

ATTEMPTED MURDER

Foreperson of Petit Jury

Date:

2010 NOV 18 PM 1:03
COMBEE REEL-SHEARER
CCSF & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on NOVEMBER 18, 2010 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ATTEMPTED MURDER

CDR: 3410

16-03-0029

That WILLIAM LEE GAINEY did in Florence County, on or about June 21, 2010, with malice aforethought attempt to murder one, Jennifer Roscoe, by assaulting her with a razor-type instrument, knife or other sharp object and cutting her about the neck abd abdominal area causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. 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.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Florence
STATE VS.

William Lee Gainey

AKA:

Race: W Sex: M Age: 42

DOB: 1969 SS#: [REDACTED]

Address:

City, State, Zip: Hartsville, SC 29550

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Attempted Murder

IN THE COURT OF GENERAL SESSIONS

117

INDICTMENT/CASE#: 2010-GS-21-1469

A/W#: M376520

Date of Offense: 6/21/2010

S.C. Code § 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ 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:

CLEMENTS, III, E. L.

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 17 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. 15 months time served.☐ 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)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$

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\$

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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:

No contact with victims at all.

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

9-19-2011