

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Bamberg County

Edgar W. Dickson, Circuit Court Judge

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S.C. Supreme Court

MICHAEL DANIELS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001007

APPENDIX

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State of South Carolina)
) Court of General Sessions
County of Bamberg) 2011-GS-05-00017 - 00019

State of South Carolina)
Plaintiff)
vs.) Transcript of Record
Michael Daniels)
Defendant)

April 25, 2011
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

J. Strom Thurmond, Jr., Solicitor
Attorney for the Plaintiff

Laura A. McCann, Esq.
Attorney for the Defendant

Lisa H. Davenport, RPR
Official Court Reporter

I N D E X O F W I T N E S S E S

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E X H I B I T S

15	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
16	C-1	Mental Evaluation	3	
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24				
25				

1 (Whereupon, on April 25, 2012 the following
2 proceedings were held:)

3 (WHEREUPON, Court's Exhibit No. 1 was marked for
4 identification only.)

5 MR. THURMOND: Michael Daniels, Jr.

6 MICHAEL DANIELS, JR., after being duly sworn,
7 testified as follows:

8 MR. THURMOND: Your Honor, these are indictments
9 numbers --

10 THE COURT: Hold on a second.

11 Ma'am, you want to have a seat? Thank you.

12 MR. THURMOND: These are indictment numbers
13 2011-GS-05-17, an indictment for murder; 2011-GS-05-18, an
14 indictment for attempted murder; 2011-GS-05-19, another
15 indictment for attempted murder. These are all pleas
16 without recommendation. They have been true-billed by the
17 Bamberg County Grand Jury. Mr. Daniels will need to waive
18 venue and jurisdiction on these charges.

19 Also, Judge, I have a mental health report from the
20 DMH. We have a copy to make a Court's Exhibit. I wanted
21 to go ahead and put its contents on the record as well
22 before we proceed.

23 THE COURT: All right. Has he been sworn?

24 THE CLERK: Yes, sir.

25 THE COURT: Let me ask Ms. McCann a couple of

1 questions and then we'll put that on.

2 You represent Michael Daniels, Jr., in the three
3 indictments called?

4 MS. MCCANN: Yes, sir, I do.

5 THE COURT: Indictment for murder and two indictments
6 for attempted murder?

7 MS. MCCANN: Yes, sir.

8 THE COURT: And have you had an opportunity to review
9 the report from the South Carolina Department of Mental
10 Health?

11 MS. MCCANN: I have, Your Honor.

12 THE COURT: This was transmitted on January 7, 2011,
13 dated January 7, 2011. The date of the evaluation was
14 12/30 of 2010 and the report opined or the evaluator
15 opines that he -- your client -- is currently competent to
16 stand trial, has the capacity to understand the legal
17 proceedings against him and to assist in his own defense.
18 Do you have any medical records that would be contrary to
19 the report issued by the Department of Mental Health?

20 MS. MCCANN: No, sir, we do not, and, in fact, we
21 stipulate to his competency.

22 THE COURT: Mr. Thurmond, do you need to put anything
23 else on the record concerning the evaluation? We'll make,
24 obviously, the report with its findings and -- which is
25 about a seven-page report. We'll make it a part of the

1 record and it's already been marked as Court's Exhibit 1.

2 MR. THURMOND: Thank you, Your Honor.

3 THE COURT: Anything else we need to do in regard to
4 that?

5 MR. THURMOND: No, sir.

6 THE COURT: All right. Ms. McCann, as to your
7 client, indictment 11-GS-05-17 -- the indictment is for
8 murder. Have you advised your client of these charges?

9 MS. MCCANN: Yes, sir.

10 THE COURT: Have you advised him that the possible
11 punishment is a minimum of 30 years to life and whatever
12 sentence he receives he will do day for day without any
13 possibility of parole?

14 MS. MCCANN: I have, Your Honor.

15 THE COURT: And have you further advised him it is
16 classified as violent and most serious which would
17 constitute a strike under our enhancement laws?

18 MS. MCCANN: I have, Your Honor.

19 THE COURT: As to the other two indictments --
20 11-GS-05-19 and 18 -- those were for attempted murder.
21 Have you advised him that under those it's up to 30 years?

22 MS. MCCANN: I have, Your Honor.

23 THE COURT: Classified as a most serious and those
24 would be an 85 percent sentence if it worked out that way.

25 MS. MCCANN: I have, Your Honor.

1 THE COURT: Have you advised your client that he has
2 the absolute right to have these matters heard in Bamberg
3 County for jurisdictional and or venue purposes because
4 the alleged crime occurred in Bamberg County?

5 MS. MCCANN: I have, Your Honor.

6 THE COURT: Does he wish to waive any jurisdictional
7 and or venue rights and proceed here in Aiken County?

8 MS. MCCANN: He does, Your Honor.

9 THE COURT: Have you also advised your client the
10 right to trial by jury?

11 MS. MCCANN: I have, your honor.

12 THE COURT: How does he indicate he wishes to plead
13 to all three indictments -- the two attempted murder and
14 the murder indictment?

15 MS. MCCANN: He wishes to enter a plea of guilty
16 today.

17 THE COURT: Ms. McCann, obviously, you've been doing
18 this a while. Have you had an opportunity to fully
19 explore all of the materials presented to you by the
20 state, review the evidence, the law, et cetera, and are
21 you in agreement with his decision?

22 MS. MCCANN: I have, Your Honor. We've spent many
23 sessions going over all of the materials that have been
24 presented.

25 THE COURT: Mr. Daniels, good morning.

1 THE DEFENDANT: Good morning.

2 THE COURT: You stand before me on three charges.

3 The first charge on indictment 1117 is for murder. Do you
4 understand that charge?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that under our law that
7 the minimum sentence you can receive is 30 years? The
8 maximum sentence you can receive is to spend the balance
9 of your life in prison.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that whatever sentence
12 you receive that you will do it day for day? In other
13 words, there will be no early release, no good time. It
14 is whatever it is, it is day for day?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that is classified as
17 violent and most serious?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: The other two indictments: Indictments
20 11-GS-19 and 18 are for attempted murder. Those two
21 indictments carry up to 30 years. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And they are what we call no-parole
24 offenses which if you didn't have the murder charge you
25 would be eligible for an early release after doing

1 85 percent of those.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: They're likewise classified as most
4 serious and violent.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Those classifications may have some
7 effect on where you're housed in the Department of
8 Corrections. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: That they're all classified as most
11 serious which means that if you were ever released from
12 incarceration and you became involved in criminal activity
13 classified as most serious again that would be two strikes
14 or involved in activity that was classified as serious
15 twice that would be three strikes and you would be
16 subjecting yourself to the possibility of life in prison
17 without parole.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you further understand that these
20 matters arose in Bamberg County; therefore, you have the
21 absolute right to have the case heard in Bamberg County as
22 opposed to Aiken County for what we call jurisdictional
23 and or venue purposes? Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Understanding the charges, the possible

1 sentence -- in other words, you could end up spending the
2 rest of your life in jail. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: The charges, the possible punishment, the
5 classifications, your jurisdictional issues, your venue
6 issues, how do you wish to plead to these three charges,
7 not guilty or guilty?

8 THE DEFENDANT: Guilty.

9 THE COURT: Mr. Daniels, when you enter a plea of
10 guilty you'll be waiving certain of your rights. The
11 first, obviously, is your right to have it heard in
12 Bamberg County for what we call jurisdictional or location
13 or venue purposes. You waive or give up that right. Do
14 you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You will waive your right to remain
17 silent -- your constitutional right to remain silent. To
18 plead guilty you'll have to admit the murder charges and
19 the two attempted murder charges; so you'll have to admit
20 that to me, therefore giving up your constitutional right
21 to remain silent. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You'll also give up your right to a jury
24 trial. Obviously, if you plead not guilty and asked for a
25 trial the state would give you one at which time you would

1 have the right to confront and cross examine all witnesses
2 who testified against you. You would have the right to
3 present your own defense by calling your own witnesses,
4 introducing relevant exhibits, and you could testify in
5 your own defense if you chose to do so. If you exercised
6 your constitutional right to remain silent, then I would
7 inform and tell the jury they could not hold the fact that
8 you did not testify against you in any manner whatsoever
9 and I would further instruct them that they could not even
10 consider the fact that you did not testify when they
11 deliberated your guilt or innocence.

12 You would be presumed innocent throughout the trial
13 and the State of South Carolina would have the burden of
14 proving you guilty beyond a reasonable doubt to a jury of
15 12 people and in order for that jury to convict you all 12
16 would have to unanimously agree that you were, in fact,
17 guilty, and even if you were found guilty you would still
18 have the right to an appeal.

19 Now, sir, do you understand your rights to trial by
20 jury?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Understanding your rights to trial by
23 jury, do you still wish to plead guilty or do you want me
24 to set this case for trial?

25 THE DEFENDANT: Plead guilty.

1 THE COURT: Has anybody promised you anything, held
2 out any hope of reward, or threatened you in any manner in
3 order to make you plead guilty?

4 THE DEFENDANT: No, sir.

5 THE COURT: You've been represented throughout by
6 Ms. Laura McCann. Are you satisfied with her as your
7 lawyer?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: In your opinion has she had enough time
10 to research the law, investigate the facts, and spent
11 enough time with you so that she can properly defend you
12 here today?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Is there anything else you want her to do
15 for you today before we move forward other than speak up
16 on your behalf?

17 THE DEFENDANT: No, sir.

18 THE COURT: And I ask you once again, sir, are you
19 totally and completely satisfied with the legal services
20 that she's provided to you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Daniels, are you today under the
23 influence of any alcoholic beverages, drugs, or
24 prescription medications?

25 THE DEFENDANT: No, sir.

1 THE COURT: Mr. Daniels, are you today aware of any
2 mental, nervous, or emotional condition which keeps you
3 from understanding these proceedings?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you understood all of my questions?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you've -- you understand these
8 proceedings; is that correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Understood any conversations that you've
11 had with your lawyer today; is that correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Daniels, are you entering a plea of
14 guilty to the murder charge and two attempted murder
15 charges of your own free will?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Daniels, did you in Bamberg County as
18 to indictment 11-GS-05-19, did you on or about November 1
19 of the year 2010 attempt to murder one Kenneth Utz --
20 U-T-Z -- by shooting him with a handgun?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: As to indictment 11-GS-05-18, did you in
23 Bamberg County on that same date -- November 1, 2010 --
24 attempt to murder Dwight Williams by means of shooting him
25 with a handgun?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Both done with malice aforethought; is
3 that correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Sir, as to indictment 11-GS-05-17, did
6 you in Bamberg County on or about that same day August --
7 Strike that -- November 1, 2010 murder and kill with
8 malice aforethought one Alicia Dyches by shooting her with
9 a pistol, handgun, and that she did die in Olar, South
10 Carolina as a result of your shooting?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Daniels, are you pleading guilty to
13 the murder and killing of the young lady Alicia Dyches and
14 the attempted murder of the two gentlemen that I called
15 out -- Mr. Utz and Williams in Bamberg County on
16 November 1, 2010?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Pleading guilty because you are, in fact,
19 guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. I find your decision to plead
22 guilty to all three indictments to be freely, voluntarily,
23 and intelligently made. You've had the representation of
24 an excellent lawyer Ms. Laura McCann with whom you tell me
25 you're satisfied and I'll accept your plea. If you

1 disagree with these proceedings or my sentence you have 10
2 days from today's date to file a notice of intent to
3 appeal. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Solicitor?

6 MR. THURMOND: Thank you, Your Honor. May it please
7 the court. Your Honor, I have a couple of folks in the
8 courtroom that I'd like to introduce to Your Honor before
9 we cut into the facts here. Of course, Sheriff Ed Darnell
10 came up from Bamberg today along with major Ben Hay. The
11 sheriff's office saw this crime almost as soon as it
12 happened and brought us an excellent package and complete
13 investigation and I want to thank the two of them for
14 being here today and for working so hard on this matter.

15 As Your Honor can see we have lots of people in the
16 courtroom today and rather than call every one out by name
17 I want to introduce them in groups. I did want to
18 introduce to the court Mr. Mark Dyches. He is the father
19 of Alicia. If he could raise his hand or stand up. The
20 mother of Alicia Dyches, Ms. Angela Grubbs, is present.

21 THE COURT: Where is Ms. Grubbs? Thank you.

22 MR. THURMOND: Then if I could have everyone who is
23 here on behalf of Alicia Dyches to just raise their hand,
24 please.

25 THE COURT: Thank you.

1 MR. THURMOND: Additionally, Your Honor, we have a
2 surviving victim Mr. Kenny Utz is present, if he could
3 please stand; his mother Ms. Marilyn Smith and his father
4 Mr. Kenny Utz, Sr. If I could have everyone here who is
5 on behalf of Mr. Utz to please raise their hand.

6 THE COURT: Thank you.

7 MR. THURMOND: Additionally, Judge, Mr. Dwight
8 Williams who is a third victim in this matter, I spoke
9 with him last week. He is obviously very interested in
10 this proceeding. Between scheduling doctors' appointments
11 and surgery related to his ongoing recovery as a result of
12 being shot in the eye he is not going to be here, but he
13 knows that Mr. Daniels is pleading guilty today.

14 THE COURT: Thank you.

15 MR. THURMOND: Judge, back on November 1 of 2010 the
16 Tiger Express in Olar was robbed. This is located right
17 downtown Olar at Highway 64 and 321. I have been by it a
18 hundred times as I know Your Honor has as well.

19 THE COURT: That's the only gas station in Olar,
20 isn't it?

21 MR. THURMOND: Yes, sir.

22 THE COURT: I have been there many times.

23 MR. THURMOND: There were three people inside at the
24 time of the robbery. Victim number one, Alicia Dyches,
25 was shot in the back of the head. She died instantly.

1 Judge, she was autopsied the next day, November 2, 2010,
2 at 9 o'clock in the morning. Autopsy would reveal a
3 single-entrance gunshot wound on the right temporal aspect
4 of the forehead. The bullet went through her scalp,
5 skull, and brain and exited on the left side of the head
6 about the left ear. This was determined -- It was
7 determined that she died as a single gunshot wound to the
8 head and, of course, it was classified as a homicide.

9 THE COURT: You said she was shot in the back of the
10 head?

11 MR. THURMOND: In the temple, yes, sir. Victim
12 number two, Dwight Williams, was shot in the face and
13 received a serious injury to his left eye and victim
14 number three, Kenny Utz, was also shot in the back of the
15 head but survived. He was taken via helicopter to the
16 hospital to Palmetto Richland. The bullet is still in the
17 back of his neck and by the grace of God he is alive
18 today.

19 Judge, the night of the incident Bamberg County
20 Captain Eddie Williams -- this is the brother of Dwight
21 Williams who is a victim in this case -- and Deputy Alonzo
22 Jenkins were working in the Olar area. Both deputies were
23 parked at the Tiger Express until 9:54 PM when the store
24 closed and the doors were locked. After they left victim
25 number three, Kenneth Utz, comes to the store to hang out

1 while the employees clean the store. Kenneth is let in
2 and helps out while the store is closed.

3 At 10:04 PM Kenneth Utz and Alicia Dyches walk
4 outside to take the trash. At 10:55 PM Alicia Dyches and
5 Kenneth Utz are forced back into the store at gunpoint.
6 Within one minute all the victims had been shot at close
7 range and the subject leaves the store. At 10:07 PM
8 victim number two, Dwight Williams, calls his brother
9 Captain Eddie Williams and states that the store has been
10 robbed and to come quickly.

11 Captain Williams was on the scene at 10:07 and 47
12 seconds. Both Mr. Utz and Mr. Williams stated to Captain
13 Eddie Williams on the scene there that it was Michael
14 Daniels, Jr., that had robbed the store and had shot all
15 three of them. Around 10:30 PM Michael Daniels was
16 located walking down Highway 321 within an eighth of a
17 mile from from the store. He was taken to the sheriff's
18 office. He was read his Miranda warnings which he signed
19 at 12:15 in the morning on November 2. He also agreed to
20 a GSR kit -- gunshot residue kit.

21 Judge, SLED analyzed the swabs taken from his hands
22 on January 20 of 2011 and his left palm revealed round
23 lead particles. Round lead particles are one of the
24 components of gunshot residue.

25 Mr. Daniels was interviewed early that morning of

1 November 2. At some point he requested that Captain Eddie
2 Williams come to the sheriff's office to talk with him.
3 Captain Williams came to the sheriff's office and then
4 interviewed Mr. Daniels. The interview was recorded.
5 Mr. Daniels admitted to the robbery and shooting at the
6 Tiger Express. He stated that he did it because he needed
7 the money. He stated that he shot them -- all three of
8 them -- because they saw his face before he put the
9 bandanna on completely. He then then told Captain Eddie
10 Williams where he hid the gun and he also told Captain
11 Eddie Williams where he discarded some of his clothes he
12 was wearing.

13 Captain Williams was able to lead SLED crime scene by
14 phone. Captain Williams was at the Bamberg County
15 Sheriff's Office interviewing Mr. Daniels and was on the
16 phone with the SLED crime scene team directing them to
17 various locations in Olar where Mr. Daniels had disposed
18 of the gun, disposed of his clothing following the
19 shooting. Also recovered were a shirt, a bandanna that
20 were discarded shortly after the robbery. Mr. Daniels
21 also removed 25 one-dollar bills secured with a paper clip
22 from his shoe.

23 He consented to a buccal swab while in the Bamberg
24 County Detention Center. November 3, 2010, two days later
25 or a day later, officers also locate a blue glove in the

1 tree line where several other items that belong to Michael
2 Daniels were located and were secured by SLED crime scene.
3 Also located was a second glove that was black and gray.
4 This glove was located in the front yard of victim number
5 two Dwight Williams.

6 After examining the in-store security video officers
7 could tell during the robbery that Mr. Daniels was wearing
8 two different gloves that matched the ones listed above.
9 Both of those gloves had been taken to SLED for DNA and
10 gunshot residue. Judge, that analysis is in process and,
11 of course, this plea today will abate the need for
12 additional testing, but SLED received March -- Excuse me,
13 January 26 at 2011 a blue and black glove and a gray-black
14 glove turned inside out. After getting DNA samples from
15 everybody SLED was going to test those for ownership as
16 well as test them again for any blood or DNA that may have
17 got on them during the course of the robbery.

18 During the week of November 10 officers also met with
19 Dwight Williams and Mr. Kenneth Utz. They were
20 interviewed. They gave videotaped interviews and both on
21 videotape were positively able to identify Mr. Daniels as
22 the subject that robbed the Tiger Express. Officers also
23 interviewed the mother of Michael Daniels. She was able
24 to describe the clothes Michael Daniels had on that night
25 shortly before the incident that were very similar to the

1 clothes that he was in upon his arrest.

2 Judge, SLED would later confirm after Mr. Daniels
3 directed officers to the location of the gun they
4 recovered a bullet from the floor of the store that was
5 photographed and were able to match that to the handgun
6 that Mr. Daniels directed to law enforcement that he
7 discarded along the route following the thing.

8 Mr. Daniels has a prior conviction for escape --
9 apparently, escape from a juvenile facility -- and
10 received a sentence under the Youthful Offender Act. That
11 has now been revoked as a result of his arrest for these
12 offenses.

13 Judge, I have several photographs that we'd like to
14 show the court on the big screen as well as I would like
15 to play the in-store video from the Tiger Express for the
16 court. I have advised how graphic all this is to the two
17 sets of families that are here. If Your Honor would allow
18 it we would like those who would like to to briefly exit
19 the courtroom. We'll play the video and let them come
20 back in.

21 Mr. Kenny Utz has never seen the video before. He
22 and his mother would like to sit right here and watch it.

23 THE COURT: Well, if you're going to show it this way
24 nobody can see it back there.

25 MR. THURMOND: It is audio and video.

1 THE COURT: Audio. Okay. Anyone who would --
2 Obviously, these things are graphic as they can get. If
3 you'd like to leave, I certainly would not blame you.
4 Just stand right out in the hall. As soon as I have an
5 opportunity to review it I'll call for you to come back
6 in.

7 Young man, you and your mom like to come up here?
8 They'll show you where --

9 MR. THURMOND: His mother and father.

10 (Whereupon, people exited the courtroom.)

11 MR. THURMOND: Your Honor, we're going to first show
12 you a series of photographs.

13 THE COURT: Hold on one second.

14 MR. THURMOND: Judge, before he starts the video let
15 me just tell you what you're about to see. The store
16 closed at 9:54 PM. At 9:54 and 38 seconds Dwight Williams
17 cuts the side lights off and locks the door. At 10 PM
18 Alicia Dyches unlocks the door and lets Mr. Kenny Utz in
19 the store. At 10:04 PM and 55 seconds Alicia Dyches and
20 Kenny Utz leave the store to take out the trash. At 10:05
21 PM Alicia Dyches and Kenny Utz are forced back into the
22 store by Michael Daniels. At 10:05 and 52 seconds we hear
23 the first of four shots and at 10:05 and 57 seconds is the
24 last of four shots with Michael Daniels leaning over the
25 counter and shooting at Dwight Williams while he is laying

1 on the ground behind the counter and at exactly 10:06 PM
2 Michael Daniels is out of the store.

3 (Whereupon, the video is played.)

4 MR. THURMOND: That's Mr. Dwight Williams behind the
5 counter. That is Mr. Utz and Ms. Dyches walking out the
6 store to take out the trash.

7 (Whereupon, the video is stopped.)

8 MR. THURMOND: Your Honor, the crime scene took
9 several hundred photos.

10 THE COURT: Hold on a second. Let her out.

11 (Whereupon, a female exits the courtroom.)

12 THE COURT: Everybody okay?

13 MR. THURMOND: The SLED crime scene took several
14 hundred photographs. We pulled several of them to take
15 the court through some of the scenes. That's, of course,
16 the Tiger Express.

17 THE COURT: Hold on a second.

18 (Whereupon, a cellphone is heard in the courtroom.)

19 THE COURT: Go ahead.

20 MR. THURMOND: This is behind the counter where
21 Mr. Dwight Williams was shot in the eye. The next scene
22 is Ms. Alicia Dyches. The next couple of pictures, Judge,
23 in this trail of evidence that Mr. Daniels left upon
24 exiting the Tiger Express -- that was part of the shirt,
25 the bandana. He led officers to the glove -- Excuse me,

1 to the gun, a .38 caliber handgun. That purple Crown
2 Royal bag which the next scene will depict had several
3 live rounds in it.

4 Judge, that's the state's presentation. There are a
5 couple of representatives both from the Dyches family and
6 from the Utz family that would like to address the court
7 at the appropriate time and if Your Honor so chooses we
8 can probably let everybody else back in the courtroom now.

9 (Whereupon, people entered the courtroom.)

10 MR. THURMOND: Your Honor, on January 27 of this year
11 I met in Barnwell with Mr. Dyches and got him to tell me a
12 little bit about his daughter. She was 19 years old at
13 her death. He described her as his best friend. She
14 would help out with fund raisers. She liked spending time
15 with her grandmother. She went to Barnwell High School
16 and ultimately achieved her GED. She was taking some
17 online classes and he described her as somebody who was
18 always trying to help out.

19 THE COURT: Hold on one second.

20 MISS ALVES: Sorry, Judge.

21 THE COURT: All right.

22 MR. THURMOND: He described her as somebody who was
23 always trying to help out somebody else, and, Judge,
24 several members of the family may want to address you when
25 you're ready for them.

1 MS. MCCANN: If it please the court, Your Honor. In
2 no way, shape, or form am I here to make excuses for
3 Michael's behavior in anything I say or do. He has taken
4 full responsibility since day one. He cooperated with law
5 enforcement as Solicitor Thurmond said. He's been very
6 cooperative with me. This is a horrible situation and I
7 don't want anything to be reflecting that we are condoning
8 his behavior or that in any way he thinks it's okay.

9 He is 21 years of age. He is very, very young and he
10 has a lot of history that goes with that 21 years. He is
11 extremely sorry to the Utz family, to the Williams family,
12 and to the Dyches family for what has happened.

13 Every meeting I have had with Michael -- and there's
14 been several -- he's been extremely remorseful. He has
15 received Department of Mental Health reports and when you
16 look at his DMH record that was set forth today and his
17 forensic evaluation the one underlying thing that becomes
18 apparent is anger. It talks about him being an angry
19 young man.

20 One of the things we started talking about is why are
21 you so angry? I assumed with the DMH report that this was
22 the basis of this crime, though, too, was an anger issue.
23 Through speaking with his mother who had to step out of
24 the courtroom and in speaking with Michael, Michael was
25 not very forthcoming in some of his childhood issues, but

1 when I gathered the information he did confirm them. His
2 mom tells me that Michael when he was very young was
3 raised in a physically-abusive home. In addition to
4 having physical abuse against the mother particularly,
5 there was constant threats of burning the house down when
6 they slept. She feels that this was the beginning of the
7 formation when he was very young of some of the anger
8 issues that we're seeing today.

9 His parents divorced when he was 10 years old and
10 although that particular threat wasn't there he continued
11 on exhibiting behavioral problems throughout his life. At
12 13 he joined a gang. He joined the Bloods. He started
13 using drugs as young as 13 years of age. He tells me,
14 quite frankly, that he was using marijuana laced with
15 cocaine on a daily basis before this particular crime
16 happened.

17 At 14 he was placed at a DJJ group home. He had a
18 simple assault charge and at the young age of 14 he was
19 placed at a group home for eight months. He came back
20 home after that and at 16 he was back at DJJ for violating
21 his probation. He was at DJJ then for 15 months.

22 At 17 -- That was at 16, Your Honor. At 17 he was
23 given his escape charge that Mr. Thurmond talked about.
24 At 17 he went before the general sessions court on the
25 escape charge and was sentenced to a Y.O.A sentence. At

1 18 he was back at SCDC for a probation violation and again
2 spent 10 months. He came back out and this happened when
3 he was just 20. He turned 21 approximately two months
4 after this happened; so he's had a very conflictual young
5 life with a lot of history.

6 He dropped out of school when he was in the 11th
7 grade and his school up until that point was riddled with
8 behavioral problems. I asked him why he dropped out and
9 he was having some behavioral problems. At least there
10 was some direction and maybe some future there. He tells
11 me he felt school wasn't for him. He's always felt that
12 no one was there in order to help him make the better
13 decisions and help him direct.

14 He's went to William S. Hall several times during his
15 commitments to DJJ. He started being sent to William S.
16 Hall when he was as young as 15. They have thrown about
17 several diagnosis through the years on him, but bottom
18 line he is competent to be here today. He's had plenty of
19 reasons and situations to be angry and I thought, well,
20 maybe this is the underlying thing, but in this situation
21 he tells me himself this was not anger-motivated at all.

22 He tells me in the interview with Captain Williams --
23 he's known Captain Williams and Dwight, one of the
24 victims, for some time. He himself asked to speak to
25 Captain Williams. When he was interviewed by Captain

1 Williams as Solicitor Thurmond said he cooperated with
2 him. He told them where the gun was, told them where the
3 clothing was. He was very forthright with Captain
4 Williams.

5 One of the things that Captain Williams let him do,
6 though, was talk to his mom on the phone at the end of the
7 interview and he told his mom, I did it for you. I did it
8 to help you out. I did it to get the money. One of the
9 things he told me over and over again was that when he
10 actually made the decision to fire the pistol he had his
11 eyes closed. His intent was not to kill them, although
12 that certainly was the result with Alicia.

13 He is a man of few words. Michael and I have had
14 several appointments. One visit he only spoke one word
15 the entire time. He communicates a lot with shaking his
16 head yes and no. The one thing he does talk to me about
17 is the fact that he is so extremely remorseful. I think
18 in simple words that we talked about is he wishes he could
19 undo this or have a do-over. Unfortunately, in life we
20 don't have those. He has to live with what has happened
21 and what his decisions were in this situation.

22 He realizes that this situation affects a number of
23 people. He realizes that it's not just the victims and
24 their families that are affected. He realizes that it
25 also affects his own family. His mother has had a slight

1 stroke and a heart condition with the stress that this has
2 happened and the disappointment with her. It's affected
3 the community and the legal community as we all stand here
4 this morning.

5 He wishes that in some way, shape, or form he could
6 take it all back. He understands that he will serve a
7 very, very, very long time in prison and he's very
8 comfortable with that. He is extremely sorry. He has no
9 qualms about coming before this court and accepting
10 responsibility for what he's done. He has told me since
11 day one that he was guilty and he wanted to take
12 responsibility. If he could undo all of this, he
13 certainly would. He is profoundly sorry and he wishes --
14 although he's chosen not to speak today in court, he
15 wishes that an apology be extended for whatever that is
16 worth to the Dyches family, to the Utz family, and to the
17 Williams family.

18 Your Honor, his mother was going to speak on his
19 behalf. She became very upset. If she is able to return
20 to the courtroom we would ask that she be given that
21 opportunity. I don't know if any other family members
22 would like to speak. He has his cousin, his father, and
23 two of his sisters are present in the courtroom. His
24 mother and his brother have left the courtroom at this
25 time.

1 (Whereupon, the Defendant's mother enters the
2 courtroom.)

3 THE COURT: Ms. Daniels, are you okay? If you would
4 like to have a few words, you may.

5 THE MOTHER: I can't right now.

6 (Whereupon, the Defendant's mother exits the
7 courtroom.)

8 THE COURT: Ms. McCann, anyone else?

9 MS. MCCANN: His sister would like to speak, Your
10 Honor.

11 THE COURT: Give us your name, please, ma'am.

12 THE DEFENDANT'S SISTER: Spenwilla (phonetic
13 spelling) Daniels.

14 THE DEFENDANT'S SISTER: I just want to say to the
15 Dyches family and the Utz family we are very sorry and we
16 know he is sorry, too. Junie (phonetic spelling) is my
17 best friend. He still is my best friend. I love him to
18 death. I hope y'all find it in your heart to forgive him,
19 please. I love you, Junie.

20 THE COURT: Thank you.

21 Mr. Thurmond, anyone from the family?

22 MR. THURMOND: Yes, sir, Judge. Mr. Mark Dyches, the
23 father of Alicia Dyches.

24 MR. MARK DYCHES: I could stand here and talk about
25 my daughter all day, but he's destroyed my life.

1 THE COURT: Direct it to me.

2 MR. MARK DYCHES: He's destroyed my whole life and I
3 will never get her back. I have lost my marriage. I lost
4 my baby and I beg you to please give me the maximum for my
5 girl. Please.

6 THE COURT: Thank you.

7 Your name for the record, please?

8 MR. STACY OWENS: Stacy Owens.

9 THE COURT: Mr. Owens, I'll be glad to hear from you.

10 MR. STACY OWENS: Your Honor, thank you for allowing
11 me to address the court and I'd just like to say that
12 Alicia Dyches was my stepdaughter and I thought of her as
13 my own daughter. I think that I speak on behalf of her
14 family and friends and what's happened has just devastated
15 this family. It was totally uncalled for and I think that
16 whatever punishment that is handed out would be
17 appropriate and I'm sorry it has to be this way. It is a
18 shame, but, unfortunately, that's just the way life is,
19 but thank you very much.

20 MR. THURMOND: Judge, next we have Ms. Marilyn Smith.
21 She is Mr. Kenny Utz's mother.

22 THE COURT: Ms. Smith, good morning.

23 MS. SMITH: Good morning, Judge Early.

24 THE COURT: How is your son doing?

25 MS. SMITH: He's doing well. We've been very

1 blessed. He will always have those scars, the bullet in
2 his neck. Him and his father are both seeking therapy and
3 counseling. We live in a small town, as you said earlier.
4 The only service station in our town -- I pass it almost
5 on a daily basis and I have yet to this day to be able to
6 look back at that service station and not see my son
7 laying in a pool of blood.

8 I arrived there before EMS arrived there and saw my
9 son laying in a pool of blood on the floor and his father
10 and I were there to try to comfort him. I worked EMS for
11 seven years. Nothing prepares you to see your oldest baby
12 laying in a pool of blood with a gunshot wound to the back
13 of his head not knowing what the outcome may be.

14 I was there when they put him on the ambulance and
15 took him to Richland. The next time I saw my child he was
16 in ICU on a ventilator and I was trying to tell him that
17 it was going to be okay. His first question was when he
18 got off the ventilator was will I be able to play soccer
19 and wanted to go to college.

20 In a matter of about two minutes he went from looking
21 forward to graduation, being a firefighter, a great older
22 brother to thinking he was going to die. I can't express
23 to you what it's like to have your son explain to you what
24 it was like to think he was going to die and to start
25 feeling cold. He said, Mom, I was getting cold and I

1 thought I was going to die.

2 My whole family has been affected by this and this is
3 something we will never forget. We are very grateful. We
4 thank God every day for sparing our son, but we -- you
5 know, we lost a friend. We lost our ability to just go to
6 town and, you know, go into that service station and talk
7 with friends. It was more than a service station. It was
8 kind of a community place where everybody -- you know, you
9 walked in and you saw friends. We can't do that anymore.

10 I just ask that the court give Mr. Daniels the
11 maximum time that they can possibly give him. He has been
12 you know -- you heard -- in trouble numerous times. This
13 was not isolated. My son cooperated with Mr. Daniels that
14 night everything he was asked to do and was still shot and
15 come very, you know, close to losing his life. Thank you
16 for allowing me to speak.

17 MR. THURMOND: Your Honor, next and lastly is
18 Mr. Kenny Utz.

19 THE COURT: How are you doing, young man?

20 MR. KENNY UTZ: I am doing very well for the
21 circumstances. Alicia was the best friend I had at the
22 time. I was going through a lot and just having somebody
23 right down the road I could go to to talk to any time I
24 needed was really a very good thing. I had known Dwight
25 from the fire department. I knew everybody at the gas

1 station. Any time I needed to stop there was always
2 somebody there I could talk to.

3 Me and Alicia would just hang out just to hang out.
4 It was a very deep, more or less, best friends is the best
5 way I could describe it. We hung out maybe a few times.
6 I wish we could have hung out more because now I don't
7 have that opportunity.

8 That night has changed my life a lot. I have slight
9 dizzy spells every once in a while. I am able to play
10 soccer some. Sometimes I will have to stop for a second
11 just to try to get myself back together. I always have to
12 pass that gas station because between my house on the way
13 to my grandparents' house I have to pass it. I cannot
14 pass that store without replaying the entire scene in my
15 head. It keeps me up all the time. I am always thinking
16 about it.

17 I just -- I can't see how me losing her -- basically
18 my best friend -- forever could -- I am trying to think
19 of the words -- just I don't see him doing everything he's
20 done every year he's been out of incarceration, him doing
21 something else to get back in -- I don't see how he should
22 be allowed back out. Just please give him the maximum
23 time. Thank you, sir.

24 THE COURT: Mr. Thurmond, how is the other victim
25 doing? You say he's continuing to have surgery?

1 MR. THURMOND: Yes, sir. He is shot in the eye.
2 Sheriff can probably give us a little more detailed update
3 than I can, but had the pre-op meeting scheduled for this
4 week for additional surgeries yet to come.

5 SHERIFF ED DARNELL: Your Honor, he was scheduled to
6 have surgery again today, but I think that was canceled.
7 Captain Williams did not make it, and, of course, he said
8 that he was sure that Your Honor would do what was right.

9 Your Honor, I have been in this business a long
10 time -- almost as long as Tim Chiplee; close to 40
11 years -- and I have seen a lot. This was the most
12 senseless shooting case I have ever witnessed in my
13 life -- totally senseless -- and I am going to ask you to
14 give him the maximum sentence of life without parole. He
15 does not need to be back out in the streets -- not only of
16 Bamberg County, but nowhere in this state. He needs to be
17 sent away. Thank you.

18 THE COURT: Thank you, Sheriff. Anyone else?
19 Mr. Daniels, anything you'd like to tell me?

20 THE DEFENDANT: No, sir.

21 THE COURT: He said, no, sir?

22 MS. MCCANN: No, sir.

23 THE COURT: Sheriff, before you stood up to speak I
24 had written two words: Senseless and uncalled for. I
25 have been doing it 38 years now. I represented six people

1 charged with capital murder. Lord knows what I've seen
2 since I've been on the bench, but it truly was senseless.
3 I know of no other word.

4 Mr. Daniels, as to indictment 11-GS-05-17 -- that's
5 the indictment for murder -- the sentence of this court is
6 that you be committed to the State Department of
7 Corrections for the balance of your natural life.

8 As to the indictment 11-GS-05-18, attempted murder,
9 the sentence of this court is that you be committed to the
10 State Department of Corrections for a period of 30 years.
11 That runs consecutive to the murder charge.

12 As to the other attempted murder charge the sentence
13 of this court is that you be committed to the State
14 Department of Corrections for a period of 30 years. That
15 runs consecutive to the other attempted murder charge.
16 Good luck to you.

17 MS. MCCANN: Thank you, Your Honor.

18 Everybody else remain seated.

19 (End of Transcript of Record.)
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CERTIFICATE OF REPORTER

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State of South Carolina)

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County of Aiken)

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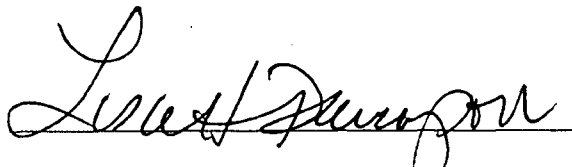
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I, Lisa H. Davenport, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Bamberg County, South Carolina, on the 25th day of April, 2011.

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

June 3, 2012



Lisa H. Davenport, Court Reporter

FILED
BAMBERG COUNTY

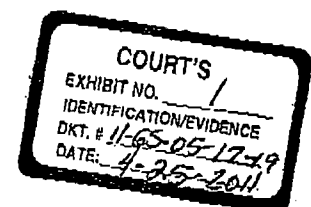
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JAMES E. PARRS
CLERK OF COURT
BAMBERG, SC

SCDMH South Carolina Department of Mental Health

 South Carolina Department of Mental Health		DMH Mailing Address: CBS44 Forensic Evaluation Center 7801 Farrow Road Building #6 Columbia, SC 29203 (803) 835-5800	
HIPAA (PHI) FAX COVERSHEET			
To: Lauren Maurice, Esq., From: Tarnika Lee Date: 01/07/11		TELEPHONE NO. PAGES INCLUDING THIS PAGE	FAX (803) 541-1112 TIME See Date Stamp
☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle			
SUBJECT: CST Report M. Daniels, Jr.			
MESSAGE: Please see attached. Thank you. cc: Laura McCann, Esq., Fax: (803) 541-7046			
THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US VIA U.S. POSTAL SERVICE. THANK YOU.			

SCDMH FORM
Rev. 2/01 (REV 2/01 2008) (REV 10/10) AM





Division of Inpatient Services
Forensic Evaluation and Treatment Services
Building #9
7901 Farrow Road
Columbia, South Carolina 29208
Information: (803) 886-8800
Fax: (803) 886-8544

January 7, 2011

Lauren Maurice
Assistant Solicitor
PO Box 895
Barnwell, SC 29812

Re: The State of South Carolina vs. Daniels, Michael
DMB Case #: 973-6797
Bamberg County, Court of General Sessions

Dear Assistant Solicitor Maurice:

In accordance with the court order issued by the Honorable Doyet A. Early, 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 8 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

1/7/11
Date:

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

cc: Laura McCann, Attorney at Law, PO Box 267, Barnwell, SC 29812

JM/cl

Division of Inpatient Services
G. Herbert Bryan Psychiatric Hospital - William B. Hall Psychiatric Institute - Morris Village Alcohol & Drug Addiction Treatment Center
Forensic Services - Sweeney Global Product Treatment Program - Rutledge B. Hester Psychiatric Hospital - C.M. Rucker, Jr. Nursing Care Center

A TRUE COPY

J. B. Hines
Attest: _____
CLERK OF COURT
BAMBERG COUNTY, SC

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE

Name: DANIELS, MICHAEL

Type of Evaluation: Competency to Stand Trial

Date of Evaluation: 12/30/10

Date of Report: 1/7/11

Evaluators: Kimberly S. Harrison, Ph.D. (Presiding)
Carol David, LISW-CP (Scribe)

Relevant Information

Mr. Daniels is a 20-year-old (date of birth: [REDACTED]/99) male who was ordered by the Bamberg 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, "Tried to commit suicide on 10-09-2010." Mr. Daniels is currently charged with Murder, three counts of Kidnapping, Armed Robbery, Burglary-2nd degree-Violent, two counts of Assault and Battery of a High and Aggravated Nature, and Possession of a Weapon during the Commission of a Violent Crime.

Notification

The nature and purpose of this evaluation were explained to Mr. Daniels 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. Daniels demonstrated an adequate understanding of the purpose of the evaluation and the limits of confidentiality. He agreed to proceed with the evaluation.

Sources of Information

1. Interview with Mr. Daniels on 12/30/10 for approximately one hour and five minutes;
2. State of South Carolina, County of Bamberg, Order for Competency to Stand Trial Evaluation Pursuant to *State v. Blair*, dated 11/16/10;
3. Records from William S. Hall Psychiatric Institute, dated 11/12/04 to 12/3/04;
4. Records from Falmotto Richland Hospital, dated 2/2/05 to 2/16/05;
5. Records from Bamberg County Detention Center, dated 11/3/10 to 11/10/10;
6. Records from Bamberg County Hospital, dated 5/4/97 to 11/9/10;
7. Records from SC Department of Corrections, dated 1/5/07 to 12/3/10;
8. Records from Columbia Care Center, DMH forensic hospital, dated 11/12/10 to 11/15/10;
9. Phone interview with Virginia Williams, the defendant's mother, by Carol David, LISW-CP, on 12/15/10;
10. Mr. Daniels' NCIC criminal history record;
11. Information from Bamberg County pertaining to Mr. Daniels' current charges, including:
 - a. Nine Arrest Warrants, dated 11/2/10;
 - b. Incident Report, dated 11/2/10;
 - c. Forensic Autopsy Preliminary Report from the Medical University of South Carolina (MUSC), dated 11/2/10;

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE

1

DANIELS, MICHAEL
973-6791

Background InformationDevelopmental History

Mr. Daniels reported he was born in Orangeburg and raised in Olat, SC. He stated he has two older and two younger siblings. He said he was raised by his parents until they divorced when he was 10 years old, at which time he lived with his mother. He also resided in DJJ group homes during his adolescence. He stated he has never married and has no children.

Educational History

The defendant stated he dropped out of school during the 11th grade because he "didn't like school." He specified that he did not like "just sitting there all day." He denied having problems with learning or attention. He denied a history of involvement in special education classes but stated he was in a "behavior class" in the 9th grade. He endorsed frequent suspensions for behaviors such as "fighting, cursing at teachers." He stated he has not earned a GED.

According to records from Calverbia Care Center, Mr. Daniels was expelled from school due to behavior problems.

Employment History

Mr. Daniels reported he was employed by a lawn service for three months. He quit that job to begin working at a fiberglass company. He stated he worked there for one month, until he was arrested. He stated he has never received disability benefits.

Medical History

Mr. Daniels denied a history of head injuries with loss of consciousness. He reported he underwent surgery to repair a hernia in 2008. He denied other surgeries, serious illnesses, or current medical concerns.

Substance Use History

The defendant reported he began drinking alcohol when he was 16 or 17 years old. He stated he drank alcohol on the weekends and denied any periods of daily use. He said, "I wasn't a big drinker." He reported he began using marijuana when he was 13 years. He reported daily use for a period of about six months prior to his arrest. During that time, he reported he was also putting cocaine on the marijuana and smoking it. He stated he never tried to reduce his use, and he denied experiencing symptoms of withdrawal when he stopped using marijuana and cocaine. He reported daily use of ecstasy when he was 18 years old. He denied using other illicit substances or ever participating in a drug treatment program.

Legal History

Mr. Daniels reported he has been in a gang, the Bloods, since he was 13 years old. He stated he was placed in a DJJ group home for eight months at the age of 14 after being adjudicated delinquent for simple assault. He was sent back to DJJ at the age of 16 for 15 months after he violated his probation on the simple assault charge. He stated that, at the age of 17, he was given a YOA sentence of one to six years for escaping from an evaluation center. At the age of 18, he was returned to SCDC for a probation violation stemming from an arrest for armed robbery. He stated this charge was dismissed, but he remained in SCDC for 10 months for the probation violation. He is currently incarcerated in SCDC for a probation violation resulting from his arrest for the current charges.

According to records from William S. Hall Psychiatric Institute, prior to the age of 15 Mr. Daniels had also been arrested for public disorderly conduct, disturbing schools, simple assault and battery, runaway, malicious injury to personal property. As indicated in the defendant's NCIC criminal history record, he was adjudicated delinquent in November 2005 for a charge of hit and run accident with death.

Mental Health History

Mr. Daniels reported his mother took him to a mental health center in Denmark, SC, when he was a teenager to talk to a counselor about his "anger problems." He stated he was prescribed medication "to keep me calm" but did not take it because he "didn't feel like [he] needed it." DMH records do not indicate that Mr. Daniels received outpatient services at any mental health center.

The defendant reported he was hospitalized at William S. Hall Psychiatric Institute for about a month at the age of 15 "when I got the escape charge and was saying I was going to kill myself." He stated he was not treated with any medications. According to records from WSHPI, he was admitted on 11/12/04, at the age of 14, on a court order from DJJ for a psychiatric evaluation. The records note, "The court order reports that patient has a diagnosis of Psychosis and Depression. According to reports, patient has been reporting one year history of auditory hallucinations and suicidal ideation. . . . He has been on Seroquel 125 mg b.i.d. that was started at DJJ." During his hospitalization, he was re-started on Seroquel. The dosage was increased "for behavior control." According to the WSHPI Final Summary, "While on the unit, patient exhibited a pattern of lying, aggression and use of threatening behavior to fill his needs. Reference from DJJ reports said that patient is prone to psychotic rages; however, while on the unit, we observed patient losing control after he was denied a pass and being confronted about behaviors in class. Patient became very hostile and verbally abusive. He left the room and threw a chair into the day area. During this incident, patient did not appear to be psychotic, but merely angry because he was not allowed to go on a pass. He further reported to us that he never heard voices in his life, but that he lied to staff at DJJ so that they would discharge him from there. He denied having ever said he was suicidal. He denied symptoms of depression. . . . He did not exhibit remorse for his behaviors. While on the unit, he did not appear to be internally preoccupied at anytime. He was able to sleep and eat well. . . . IQ testing revealed that patient functions in the low average range with a score of 83." He was diagnosed with Conduct Disorder, Reading Disorder, and Mathematics Disorder. He was discharged to DJJ on 12/3/04.

Mr. Daniels was taken to the emergency department of Palmetto Richland Hospital on 2/16/05 after he ran away from his DJJ group home and was eventually found in the woods. At the hospital, he denied homicidal or suicidal ideation and denied hallucinations. According to hospital records, "He had already had a previous workup by DJJ which showed that he had acute psychosis NOS. He was a harm to himself and others in the fact that he has threatened to attempt suicide. He has killed small animals and does admit to hearing voices." The "clinical impression" was noted as, "Acute psychosis not otherwise specified."

According to records from Bamberg County Hospital, Mr. Daniels was brought to the emergency department from the detention center on 11/3/10 after he cut himself with a light bulb on his neck and hands. Upon arrival at the hospital, Mr. Daniels "denis[d] any suicidal or homicidal thoughts or ideation, states he did it because 'of stress.'" His injuries were treated, and he was released back to

the detention center the same day. He was placed on suicide watch at the detention center. On 11/9/10 Mr. Daniels was taken to the hospital "for medical clearance and possible transfer to psy facility. Pt (Patient) denies any complaints/concerns/s [suicidal]/h [homicidal] ideations." According to detention center documentation, dated 11/10/10: "while in isolation [sic] continue [sic] to threaten employees and the jail Administrator. Subject continue [sic] to state 'He is homicide not suicide.' Threatening to kill employees and Administrator. Also subject continue [sic] to hit his head against the glass of H-2 cell. . . . Subject also stated because of his mental illness he will get off"

Mr. Daniels was admitted to Columbia Care Center, SCDMH forensic hospital, on 11/12/10. Upon admission, "he denied having suicidal or homicidal ideation. He endorsed cutting himself but asserted the act of cutting himself was not a suicide attempt. Rather, his motivation was 'I wanted the judge to think I've got a problem so he won't give me a lot of time'. . . He reports that his sleeping, appetite, and energy have been normal over the last several days. He denied depressive mood or other depressive symptoms. He denied experiencing auditory or visual hallucinations, paranoia, or delusions." The hospital Final Summary notes, "Given the evidence from Bamberg County Hospital, self-report, and clinical presentation, he appeared to have made a suicide gesture and not an actual attempt. He indicated it was to benefit his legal situation. . . . [H]e was observed by staff and he did not display any dangerous behaviors while on the unit. He displayed no aggression or attempts to harm himself. . . . There were no outward signs of a mood disorder. He was not prescribed medication." He was diagnosed with "Adjustment Disorder with Disturbance of Conduct vs. Malingering, resolved" and discharged to the detention center on 11/15/10.

Records from SCDC indicate Mr. Daniels has been seen by mental health staff, apparently due to his custody status. However, he has consistently been described as "stable" and has not been prescribed any psychiatric medications during any of his incarcerations.

Current Mental Status

Mr. Daniels is a 20-year-old male. He was dressed in a prison uniform, and his hygiene and grooming appeared adequate. He was alert and oriented. No abnormalities in gait or posture were noted. His affect (i.e., observed emotional expression) was somewhat constricted. His speech was normal in rate, tone, and volume, although somewhat difficult to understand due to a failure to articulate his words. He tended to provide brief responses to questions. His thought processes were organized, linear, and goal-directed. He did not appear to be responding to internal stimuli at any time during the evaluation.

Mr. Daniels described his recent mood as, "Up and down." He endorsed occasional feelings of sadness regarding his current situation. He described his appetite as "alright" and his sleep as "so-so . . . , restless." He stated he has felt restless due to worrying about "stuff from my case." He denied worrying about any other matters. He denied recent or current suicidal or homicidal ideation.

Mr. Daniels reported he previously had problems with his anger. When asked if he still has problems managing anger, he stated, "So-so." He was asked what angers him, and he replied, "Like if someone doesn't show me respect when they talk to me." Upon inquiry, Mr. Daniels endorsed hearing voices that "tell me to do stuff, get me in trouble all the time." He reported he began hearing these voices when he was 12 years old, and he continues to hear them. He then stated, "It's more like a thought would pop into my head." He said, "It's been a while" since this has happened. He denied ever experiencing visual hallucinations, delusions, or other psychotic symptoms. When

asked if he has any mental problems, he replied, "I don't know. So-so." He denied having problems with his thinking or with his emotions. He endorsed problems with his behavior "only when I get mad."

When asked about any past traumatic events, Mr. Daniels reported that, when he was eight or nine years old, "I saw a guy in the neighborhood get killed in a shootout." He was asked if witnessing that murder has affected him, and he stated, "I'd replay it in my head all the time. . . . It comes back every now and then, when I'm asleep." He denied other effects from witnessing that murder. He denied experiencing any other traumatic events in his childhood.

Regarding his recent self-injurious behavior at the county detention center, Mr. Daniels stated, "I stabbed myself in the hand with a light bulb." He stated he cut himself due to "stress." When asked if he wanted to die, he replied, "I don't know." He denied that he needed to be admitted to a hospital at that time. When asked what he hoped would happen as a result of his actions, he replied, "I don't know."

Diagnostic Impressions

Mr. Daniels' documented history and current presentation is consistent with a diagnosis of Antisocial Personality Disorder, which is characterized by a pattern of disregard for and violation of the rights of others occurring since age 15. Specifically, he has failed to conform to social norms as evidenced by a history of multiple arrests and repeated violations of his probation. Available records indicate a long-standing pattern of irritability and aggressiveness. He demonstrates impulsivity and a failure to plan ahead. His long-standing pattern of aggressive and assaultive behavior indicates a reckless disregard for the safety of others and a lack of remorse for his behaviors. A requirement for the diagnosis of Antisocial Personality Disorder is the presence of Conduct Disorder prior to age 15. WSHP records indicate he was diagnosed with Conduct Disorder at the age of 14. During the current evaluation, there was no evidence of symptoms of a mood or psychotic disorder.

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. Daniels demonstrated good factual understanding of basic court procedures and personnel. He described the job of the judge as to "hear both sides of the story and come up with a decision." He stated the judge is on the side of "the state." When asked if the judge is for him, against him, or in the middle, he replied, "Middle." He reported the role of his defense attorney is to "make sure I get the best deal possible" by "go[ing] by the evidence and talk[ing] on my behalf." He correctly identified his attorney as, "Laurie McCann." He stated the job of the solicitor is to "prove I'm guilty" through "evidence." He said he should not speak to the solicitor about his case because he or she can "use things I say in court." He stated the job of a jury is to "go off the evidence and see if I'm guilty." He said a jury is comprised of 12 people who sit in the "middle" in terms of neutrality. He initially stated a "majority" of the jurors must agree on a verdict. The requirement of a unanimous verdict was explained to him, and later in the evaluation he correctly recalled that "all of them" must agree.

The defendant reported he is currently charged with "murder, kidnapping, burglary, armed robbery, assault, and weapon possession." Upon inquiry, he stated he is charged with three counts of kidnapping. He stated the police are alleging he "forced two victims into a locked store, robbed the store, shot three victims, and killed one." He identified these charges as felonies, with murder being the most serious of his charges. He reported that, if he is found guilty of the charges, he could be sentenced to "a lot of time . . . , life."

Mr. Daniels described the plea of guilty as telling the court, "You did it." He stated that, after entering a guilty plea, the defendant would "get your sentence," given by "the judge." He described the plea of not guilty as telling the court, "You're innocent." He stated that, after entering a not guilty plea, "the state would try to find you guilty" by "going off the evidence they've got." He described a plea agreement as, "When the solicitor offers you a plea . . . , certain amount of time, to say you're guilty." He stated a defendant could benefit from a plea bargain by receiving "less time." He stated he does not know what evidence the solicitor has against him, but he identified some evidence he plans to use in his defense. He demonstrated abilities to rationally reason about his case; for example, he stated a defendant might choose a jury trial to "have a better chance of getting off" and "for more people to hear my side of the story."

Regarding appropriate courtroom conduct, Mr. Daniels stated a defendant should be "calm." When asked what he should do if a witness lied about him in court, he stated, "Defend yourself" by "telling your own side of the story . . . when they ask if you've got anything to say." When asked if he should inform anyone of the witness's lying, he replied, "My lawyer . . . , tell him in his ear." He stated his attorney should do most of the speaking for him in court. He reported that, during a recent court hearing, he "yelled out, cursed somebody out." As a result, he stated he was removed from the courtroom and the judge "denied my bond."

Mr. Daniels demonstrated no delusional thoughts that would interfere with his ability to consult with his attorney. He stated he has never met his attorney in person, but "she writes me and I write her back." When asked for his impressions of his attorney, he stated, "She's alright." He reported he believes she will work in his best interest and assist him with his case. He said he has not had any disagreements with Ms. McCann about his case. He stated that, if he did disagree with her, he would "fire her" and "get another." He agreed he would attempt to resolve any disagreements prior to firing her. He stated he would ask for his attorney's advice on such issues as deciding if he wants to take his case to 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. Daniels is currently competent to stand trial. He demonstrated good 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. Mr. Daniels has a long-standing history of aggressive behavior when he becomes angry. However, this behavior is not due to psychotic symptoms, and he is able to control his actions if he desires to do so.

In summary, Mr. Daniels 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

1/7/11
Date

A TRUE COPY

2011-CP-05-67

STATE OF SOUTH CAROLINA

J. B. Williams
 ASST. CLERK OF COURT
 BAMBERG COUNTY, SC

In the Court of Common Pleas

County of Bamberg

Michael/Daniel S 3/19/408
 Full name and prison number (if any) of Applicant.

vs.

State

Name of Respondent.

APPLICATION FOR POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to 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 applicant was convicted.

- Place of detention Lee Corr. Inst. 990 W. Liberty Hwy Bishopville S.C. 29010
- Name and location of Court which imposed sentence Fikep County Court house, PO Box 583 Aiken S.C. 29802
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - Assault and Battery of a high and aggravated Nature #M-580275
 - Assault and Battery of a high and aggravated Nature #M-580276
 - Murder # M-580274
- The date upon which sentence was imposed and the terms of the sentence:
 - #M-580275 4-25-2011 30 YEARS
 - #M-580276 4-25-2011 30 YEARS
 - #M-580274 4-25-2011 LIFE

FILED
 BAMBERG COUNTY
 2012 APR -9 PM 2:03
 JAMES B. HERS
 CLERK OF COURT
 BAMBERG, SC

5. Check whether a finding of guilty was made

- (☒) after a plea of guilty _____
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

No. I did not.

7. If you answered "yes" to (6), list

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

- i. _____
 ii. _____
 iii. _____

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

- i. _____
 ii. _____
 iii. _____

(c) the date of each such result:

- i. _____
 ii. _____
 iii. _____

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

- i. _____
 ii. _____
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) I did not appeal because my attorney advised me that she would file a motion of
 (b) reconsideration for all three charges.
 (c) _____

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

- (a) Ineffective assistance of counsel.
 (b) _____
 (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) My attorney deprived me of my right to a fair trial by advising me that if I
 (b) pleaded to plea guilty. I'd receive the death penalty but that if I plead
 (c) I'd receive a lighter sentence and that she'd file a motion for reconsideration U.S.C.A.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?
NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. 6
- ii. _____
- iii. _____

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

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

15. If any ground set forth in (9) 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) Effective assistance of counsel, because this is my 1st afforded opportunity
- (b) _____
- (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Laura A McLean P.O. Box 267 Barnwell SC 29812
- ii. _____
- iii. _____

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

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

18. State clearly the relief you seek in filing this application.

Am seeking a Jury trial or effective assistance of counsel to file a motion for reconsideration.

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

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of Dorchester

I, Michael Daniels, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael Daniels

SWORN to and subscribed before me this 7day of Mar.19 2012

A. Bracey Smith (L.S.)
Notary Public

My Commission Expires: 5-16-14

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

I, Michael Daniels, 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 therefor.

Michael Daniels
Applicant

SWORN or affirmed to and subscribed before me this

day of Mar.19 2012

A. Bracey Smith
Notary Public

My Commission Expires: 5-16-14

STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2012-CP-05-067

Michael Daniels , #319408,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

The Respondent, making its Return to the application for post-conviction relief filed April 9, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Bamberg County Clerk of Court. The Applicant was indicted during the March 2011 term of the Bamberg County Grand jury for Murder (2011-GS-05-00017); Attempted Murder (2011-GS-06-00018); and Attempted Murder (2011-GS-05-00019). Applicant was represented by Laura A. McCann, Esquire. On April 25, 2011, the Applicant Pled as indictments to all charges. The Applicant was sentenced by the Honorable Doyet A. Early, III to life imprisonment for murder (2011-GS-05-00017), thirty (30) years for attempted murder (2011-GS-05-00018) and an additional thirty year sentence for attempted murder (2011-GS-05-00019). All sentences were to run consecutive. The Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Bamberg County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina

Department of Corrections. The transcript of Applicant's guilty plea has been ordered and will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel

- a. "My attorney deprived me of my right to a fair trial by apprising me that if I neglected to plea guilty I'd receive the death penalty but that if I plead Id receive a lighter sentence and that shed file a motion for reconsideration U.S. Cite."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

June 25, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BAMBERG	)	
	)	
	)	2012-CP-05-0067
	)	
MICHAEL DANIELS, 319408,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

J. Christopher Wilson, Esquire
Wilson, Luginbill & Kirkland, LLC
Post Office Box 1150
Bamberg, SC 29003

DATED this 28th day of June, 2012.


 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

State of South Carolina,)

v.)

Michael Daniels)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE SECOND JUDICIAL CIRCUIT

Indictment No.: 2011-GS-05-17; 18, 19

**MOTION TO RECONSIDER
SENTENCE**

The Defendant in the above-captioned matter respectfully moves the Court to reconsider and reduce the sentence it imposed on the Defendant on April 25, 2011.

As grounds for the reconsideration and reduction, the Defendant urges that the interests of justice will be served by the granting of this request. The Defendant will present further grounds as necessary, both in open court and *in camera* at such date and time as the Court deems appropriate to set such a hearing.

Respectfully submitted,



Laura A. McCann
Attorney for Defendant

Barnwell, South Carolina
April 25, 2011

FILED
BAMBERG COUNTY
JAMES B. NIEBS
CLERK OF COURT
BAMBERG, SC
2011 APR 28 AM 10:34

1 STATE OF SOUTH CAROLINA

2 COUNTY OF BAMBERG

CIRCUIT COURT
2012-CP-05-00067

3
4 MICHAEL DANIELS,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6 STATE OF SOUTH CAROLINA,
7 Respondent.

8
9 Post-Conviction Relief Hearing

10 Heard on Thursday, January 23, 2014

11 Aiken, South Carolina

12
13 BEFORE:

14 THE HONORABLE EDGAR W. DICKSON

15
16
17 APPEARANCES:

18 Counsel on Behalf of the Applicant:
Janek C. Kazmierski, Esq.
19 J. Christopher Wilson, Esq.

20 Counsel on Behalf of the Respondent, State of SC:
Daniel Gourley, Esq.

21
22
23 Cheri L. Young, RPR
Circuit Court Reporter
24 P O Box 5232
Aiken, SC 29803-5232
25

EXAMINATION INDEX

On Behalf of the Applicant:

MICHAEL DANIELS

DIRECT BY MR. KAZMIERSKI 5

CROSS BY MR. GOURLEY 9

REDIRECT BY MR. KAZMIERSKI 11

On Behalf of the State:

LAURA A. McCANN

DIRECT BY MR. GOURLEY 13

CROSS BY MR. KAZMIERSKI 16

EXHIBIT INDEX

MAR ADM

Plaintiff's/Applicant's:

1 Motion to reconsider sentence

7 7

State's/Defendant's:

1 Guilty plea checklist

11 11

1 ON THURSDAY, JANUARY 23, 2014 AT 11:00 A.M.:

2 MR. GOURLEY: Thank you, Your Honor.

3 This is Michael Daniels versus the State of South
4 Carolina Docket Number 2012-CP-05-067. He's presently
5 confined in the South Carolina Department of Corrections
6 pursuant to orders of commitment of the Bamberg County
7 Clerk of Court. He was indicted during the March 2011
8 term of the Bamberg County Grand Jury for murder and two
9 counts of attempted murder. He was represented by
10 Ms. Laura McCann.

11 On April 25th, 2011, he pled guilty as indicted to all
12 charges. The Applicant was sentenced by the Honorable
13 Doyet A. Early the Third to life imprisonment for murder,
14 30 years for the first count of attempted murder to run
15 consecutive and 30 years for the second count of attempted
16 murder to run consecutive for a total of life plus 60
17 years.

18 He did not appeal his guilty plea or sentence. He
19 subsequently filed an application for post-conviction
20 relief on April 9, 2012, alleging that he was being held
21 in custody unlawfully based on ineffective assistance of
22 counsel.

23 The State made its return on June 28, 2012. We're
24 here today. He's represented by Mr. Kazmierski.

25 THE COURT: Mr. Kazmierski.

APPLICANT MICHAEL DANIES - DIRECT BY KAZMIERSKI

1 MR. KAZMIERSKI: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MR. KAZMIERSKI: I call Mr. Daniels to the stand.

4 THE COURT: All right. Mr. Daniels.

5 MICHAEL DANIELS, having been duly sworn, was examined
6 and testified as follows:.

7 MR. WILSON: Judge, while Mr. Daniels is coming up,
8 could we get the record to reflect, I'm James Christopher
9 Wilson sitting with Mr. Kazmierski pursuant to the rules
10 and overseeing and supervising what he's doing.

11 THE COURT: All right. Thank you, sir.

12 MR. WILSON: Thank you, your Honor.

13 MICHAEL DANIELS, having been duly sworn, was examined
14 and testified as follows:

15 THE CLERK: Please have a seat in the witness box and
16 state your full name for the Court.

17 THE APPLICANT: Michael Daniels.

18 THE COURT: All right. Mr. Daniels, I need for you to
19 speak up loudly if you don't mind. She's got to take it
20 down and everybody's got to hear you.

21 THE APPLICANT: Okay.

22 THE COURT: Thank you, sir. All right. Go ahead,
23 Mr. Kazmierski.

24 DIRECT EXAMINATION

25 BY MR. KAZMIERSKI:

APPLICANT MICHAEL DANIES - DIRECT BY KAZMIERSKI

1 Q. Mr. Daniels, where are you currently incarcerated?

2 A. Lee Correctional Institution.

3 Q. Okay. And what are you incarcerated for?

4 A. Two attempted murder charges and a murder charge.

5 Q. Okay. Did you -- were you convicted at a trial or did
6 you plead guilty?

7 A. Pled guilty.

8 Q. Who was your lawyer?

9 A. Laura McCann.

10 Q. Did you have ample amount of time to discuss your case
11 and discuss the decision to plead guilty with her?

12 A. Yes, sir.

13 Q. Okay. What was the nature of the conversations that
14 you had with Ms. McCann?

15 A. Due to the fact that pleading guilty, that I would get
16 a lesser sentence. As a matter of fact, she gave me the
17 guidelines between the charges and she said if I didn't
18 take the plea that I would get double.

19 Q. Okay. Was there anything else that you discussed with
20 Ms. McCann that she may do after -- if you pled guilty?

21 A. Yes, sir. She would file a motion for
22 reconsideration.

23 Q. And that motion was a motion to reconsider your
24 sentence; correct?

25 A. Yes, sir.

APPLICANT MICHAEL DANIES - DIRECT BY KAZMIERSKI

1 Q. Do you know if Ms. McCann filed that motion?

2 A. No, I ain't never heard of it.

3 Q. Did you ever -- did she ever discuss with you
4 afterward whether she knew it was granted or denied?

5 A. No, sir.

6 Q. Okay. Your Honor, I'd like to present a filed copy of
7 the motion to reconsider sentence.

8 THE COURT: Has Mr. Gourley seen it?

9 MR. KAZMIERSKI: He does have it.

10 MR. GOURLEY: That's fine, Your Honor. No objection.

11 THE COURT: That would be Plaintiff's One. That's a
12 motion for reconsideration. It was filed?

13 MR. KAZMIERSKI: Yes, Your Honor.

14 THE COURT: Thank you.

15 (Plaintiff's Exhibit No. 1, motion to reconsider
16 sentence, received into evidence.)

17 THE COURT: Appreciate it.

18 BY MR. KAZMIERSKI:

19 Q. Mr. Daniels, if at the time -- based on -- is it your
20 understanding that this motion now that you've seen it, it
21 was filed but you've never heard anything back on whether
22 this was heard or what the final determination of that
23 motion was; correct?

24 A. Yeah.

25 Q. If at the time that you had pled guilty if you had

APPLICANT MICHAEL DANIES - DIRECT BY KAZMIERSKI

1 known that this motion to reconsider your sentence wasn't
2 pursued, would you have pled guilty?

3 A. No, sir.

4 Q. And you -- would you describe that as an instrumental
5 piece of the negotiations and the discussions that you had
6 with Ms. McCann in order to decide whether to plead
7 guilty?

8 A. Yes, sir.

9 Q. The post -- or, the post-conviction relief that you
10 applied for was for ineffective assistance of counsel?

11 A. Yes, sir.

12 Q. Is there anything else that we haven't discussed yet
13 that you want the Court to know that would prove or show
14 that Ms. McCann provided you with ineffective assistance
15 of counsel?

16 A. Basically what's in my application.

17 Q. And your application is the lighter sentence --

18 A. Yes, sir.

19 Q. -- and taking the death penalty off the table, and
20 that she would file a motion to reconsider the sentence;
21 correct?

22 A. Yes, sir.

23 MR. KAZMIERSKI: Okay. Nothing further, Your Honor.

24 THE COURT: All right. Anything on cross?

25 MR. GOURLEY: Yes, Your Honor. Briefly.

APPLICANT MICHAEL DANIES - CROSS BY GOURLEY

CROSS-EXAMINATION

BY MR. GOURLEY:

Q. Mr. Daniels, how many times did you meet with your attorney prior to your plea?

A. Twice.

Q. Twice. Okay. Did y'all go over any type of discovery material or anything like that?

A. Yes, sir.

Q. Did y'all discuss any possible defenses?

A. No, sir.

Q. Did you give your counsel any type of leads or witnesses to investigate?

A. Yes. We talked about certain things that she could have went and checked on --

Q. Okay.

A. -- but I never heard nothing back about them.

Q. And do you recall waiving your constitutional rights during your plea?

A. Yes, sir.

Q. Okay. And do you recall telling the judge that you were satisfied with your counsel's services?

A. Yes, sir.

Q. Okay. And do you recall telling the judge that you had enough time to speak with your attorney and there was nothing else you wished for her to do?

APPLICANT MICHAEL DANIES - CROSS BY GOURLEY

1 A. Yes, sir.

2 Q. And do you recall telling the judge that no one was
3 pressuring you, threatening you or forcing you to plead
4 guilty?

5 A. Yes, sir.

6 Q. Okay. And that you were pleading guilty freely and
7 voluntarily?

8 A. Yes, sir.

9 Q. And your allegation here today is that you pled guilty
10 in order to avoid the death penalty?

11 A. Yes, sir.

12 Q. Okay. Mr. Daniels -- may I approach, Your Honor?

13 THE COURT: You may.

14 BY MR. GOURLEY:

15 Q. Mr. Daniels, do you recognize this sheet? And more
16 specifically, your signature at the bottom?

17 A. Yes, sir.

18 MR. GOURLEY: Okay. I have no further questions, Your
19 Honor.

20 THE COURT: Okay. Did you want to put that sheet into
21 evidence?

22 MR. GOURLEY: Yes, Your Honor.

23 THE COURT: What is it?

24 MR. GOURLEY: That's the guilty plea check sheet from
25 Ms. McCann's file.

APPLICANT MICHAEL DANIES - REDIRECT BY KAZMIERSKI

1 THE COURT: Any objection, Mr. Kazmierski?

2 MR. KAZMIERSKI: No, Your Honor.

3 THE COURT: So, would be Defendant's One.

4 MR. GOURLEY: Yes, Your Honor.

5 (State's/Defendant's Exhibit No. 1, guilty plea
6 checklist, marked and received into evidence.)

7 MR. GOURLEY: No further questions, Your Honor. Thank
8 you, Mr. Daniels.

9 THE COURT: All right. Mr. Kazmierski, anything on
10 redirect?

11 MR. KAZMIERSKI: Yes, Your Honor.. Just briefly.

12 THE COURT: Okay.

13 REDIRECT EXAMINATION

14 BY MR. KAZMIERSKI:

15 Q. Mr. Daniels, did you discuss with Ms. McCann the
16 possibility of -- that you would get a life sentence in
17 this case?

18 A. Yes, sir.

19 Q. And so she advised you of that. And did she also
20 advise you that if you got a life sentence, she would file
21 a motion to reconsider and pursue that?

22 A. Yes, sir.

23 Q. Did you plead guilty based on the assumption that if
24 you got life in prison, you would -- Ms. McCann would file
25 a motion to reconsider?

1 A. Yes, sir.

2 MR. KAZMIERSKI: Nothing further, Your Honor.

3 THE COURT: Anything on recross?

4 MR. GOURLEY: No, Your Honor.

5 THE COURT: All right. Mr. Daniels, you may step
6 down. Thank you, sir. All right.

7 Mr. Kazmierski, any other witnesses on behalf of the
8 Applicant?

9 MR. KAZMIERSKI: No, Your Honor.

10 THE COURT: All right. Mr. Gourley, any witnesses on
11 behalf of the State?

12 MR. GOURLEY: Yes, Your Honor. We would call
13 Ms. McCann to the stand, please.

14 THE COURT: Okay.

15 LAURA A. McCANN, having been duly sworn, was examined
16 and testified as follows:

17 THE CLERK: Please have a seat on the witness box and
18 state your full name for the Court.

19 THE COURT: Ms. McCann, you need to join us up here
20 but thank you for strolling across the courtroom before
21 you joined us.

22 THE WITNESS: Everything I can do for good health.

23 THE COURT: I understand. I understand.

24 THE WITNESS: Exercise is important.

25 THE COURT: It is, it is. And it keeps your mind

LAURA McCANN - DIRECT BY GOURLEY

1 clear.

2 THE WITNESS: I'm not sure that's the effect with me
3 but...

4 THE COURT: Okay. All right. Are you comfortable,
5 Ms. McCann?

6 THE WITNESS: Not really.

7 THE COURT: Okay. Well, Mr. Gourley, if you'd go
8 ahead with your examination.

9 MR. GOURLEY: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. GOURLEY:

12 Q. Ms. McCann, how long have you been practicing law?

13 A. Too long. Since 1989.

14 Q. Do you recall whether you were appointed or retained
15 in this case?

16 A. Appointed.

17 Q. And how many times did you meet with the Applicant
18 prior to his plea?

19 A. Several. I met with him at the county jail several
20 times. I even traveled to Lee on three occasions and met
21 with him at Lee Correctional.

22 Q. Okay. Did you file any rule five or Brady motions?

23 A. I did.

24 Q. Did you interview the Applicant?

25 A. I did. And as a matter of fact, I provided him with a

LAURA McCANN - DIRECT BY GOURLEY

1 copy on the day of the plea. He had a copy some months
2 prior, but when he was processed they made -- they got rid
3 of it so I provided him another copy.

4 Q. And did you discuss the Applicant's version of the
5 facts?

6 A. I did.

7 Q. And did you discuss any possible defenses with him?

8 A. Absolutely.

9 Q. And what were those defenses?

10 A. He had none. He admitted to it and he was on video.

11 Q. Okay. Can you briefly describe the State's evidence
12 against him?

13 A. He not only was on video, they recovered the
14 clothing. They recovered the statements. Two of the
15 people that were shot survived. They were able to
16 identify him. This happened in a very small community.
17 They all knew each other. He was identified on video.
18 The clothing was recovered. He didn't deny any of that.

19 Q. Okay. Would you characterize this evidence as
20 overwhelming?

21 A. Absolutely.

22 Q. Did you explain the elements and what the State had to
23 prove --

24 A. I did.

25 Q. -- regarding the offenses he was charged with?

LAURA McCANN - DIRECT BY GOURLEY

1 A. I did.

2 Q. Did he ever give you any potential leads or witnesses
3 to investigate?

4 A. None. We went over the discovery page by page.

5 Q. Did you review his constitutional rights with him?

6 A. Absolutely.

7 Q. Did you file a motion for reconsideration?

8 A. I did. I filed a motion, I believe, on the same day
9 he pled guilty.

10 Q. And what was the ultimate outcome of that motion?

11 A. I was informed that it was denied.

12 Q. Okay. Did you inform the Applicant of this?

13 A. I don't recall.

14 Q. Ms. McCann, I'm going to show you an e-mail and see if
15 you can recognize this document, please.

16 A. Yes. That's an e-mail between me and the solicitor.

17 Q. And what's -- basically, if you can just briefly
18 testify to what's in this e-mail.

19 A. The solicitor had offered as far as negotiations to
20 remove the death penalty from this case if he pled to two
21 counts of attempted murder and one count of murder with no
22 recommendations. He was expecting an answer on one of my
23 trips to Lee. Lee was shut down due to the flu. I
24 notified him of that. He reiterated the agreement. After
25 I met with Mr. Daniels, I informed him of the outcome and

LAURA McCANN - CROSS BY KAZMIERSKI

1 that's the e-mail that reflects all of that.

2 Q. So he was potentially facing the death penalty?

3 A. Yes, he was going to leave the death penalty off the
4 table for a potential plea until he was indicted.

5 Q. Okay. Did you explain to the Applicant prior to his
6 plea the amount of time he would be facing for the
7 charges?

8 A. We always look at the maximum on all of the charges.
9 And I described the maximum. Prepare him for the worst
10 and hope for the best.

11 MR. GOURLEY: All right. I have no further questions,
12 Your Honor. Thank you, Ms. McCann.

13 THE COURT: All right. Mr. Kazmierski, any questions
14 on cross?

15 MR. KAZMIERSKI: Yes, Your Honor.

16 THE COURT: Yes, sir. Your witness.

17 CROSS-EXAMINATION

18 BY MR. KAZMIERSKI:

19 Q. Good morning.

20 A. Good morning.

21 Q. Ms. McCann, did you file a timely motion to reconsider
22 the sentence in Mr. Daniels' case?

23 A. I did.

24 Q. What -- with your best recollection, what's the
25 resolution of that, of that motion?

1 A. That motion was denied.

2 Q. Do you remember ever filing any briefs on Mr. Daniels'
3 behalf --

4 A. None.

5 Q. -- in support of that motion? Okay. Do you remember
6 having a hearing?

7 A. No, there was not a hearing.

8 Q. And, and you never consulted with Mr. Daniels as far
9 as a resolution of the motion to reconsider sentence?

10 A. I did not make a trip up to Lee to inform him of
11 that. I don't know that it wasn't sent to him in a letter
12 or something; I don't recollect.

13 Q. Is there anything in your file that would indicate
14 that you sent a letter to him, that -- or a motion or an
15 order that shows that it was denied or granted?

16 A. No, there is not.

17 Q. Do you consider, other than this PCR hearing, your
18 involvement in this case, in Mr. Daniels' case complete?

19 A. Yes. When Mr. Daniels was leaving the courtroom upon
20 the plea, I specifically asked him if he wanted me to file
21 an appeal or anything. He told me, no, I'm good. I filed
22 the motion for reconsideration anyways, just because it
23 was such a serious case.

24 MR. KAZMIERSKI: Nothing further, Your Honor.

25 THE COURT: All right. Anything on redirect?

1 MR. GOURLEY: No, Your Honor.

2 THE COURT: All right. Ms. McCann, you may step
3 down. Thank you, ma'am.

4 THE WITNESS: Are we through?

5 THE COURT: We're already done.

6 THE WITNESS: Some things happen quick.

7 THE COURT: I won't even respond to that. Thank you,
8 ma'am.

9 THE WITNESS: Thank you. It's been a pleasure.

10 THE COURT: Yes, ma'am.

11 Gentlemen, I'll review this. And, Mr. Kazmierski, I
12 want to make sure -- Mr. Kazmierski -- his basic -- he was
13 just upset that this -- he never heard the results of
14 this; is that correct?

15 MR. KAZMIERSKI: Yes, Your Honor. And it was an
16 essential element to his decision to --

17 THE COURT: Plead.

18 MR. KAZMIERSKI: -- plead guilty.

19 THE COURT: All right. Well, I'll get back to y'all
20 with my decision. Okay? Thank you.

21 MR. KAZMIERSKI: And, Your Honor, I don't have
22 anything to prove or disprove that it was ever decided. I
23 don't know. I couldn't find anything.

24 THE COURT: Okay. So refer to Ms. McCann. All
25 right. Thank you, sir.

1 MR. KAZMIERSKI: Thank you, Your Honor.

2 THE COURT: I'll get back to you all with my decision.

3 END OF CASE: 11:17 A.M.

4 ***

5 CERTIFICATE OF REPORTER

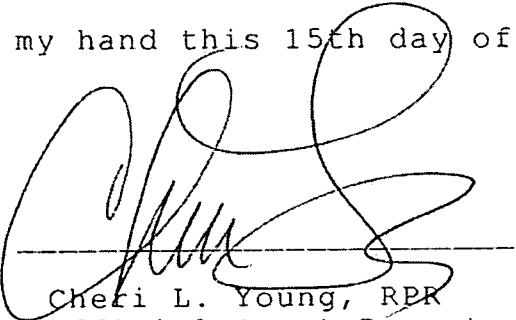
6 STATE OF SOUTH CAROLINA)

7 COUNTY OF AIKEN)

8 I, Cheri L. Young, Registered Professional Reporter
9 and Official Court Reporter for the State of South
10 Carolina, Second Circuit-At Large, do hereby certify that
11 the foregoing proceedings were written stenographically by
12 me using computer-aided translation; further, that the
13 foregoing is a true, accurate and complete record, to the
14 best of my skill and ability, of all the proceedings had
15 and evidence introduced in the hearing of the captioned
16 case, relative to appeal, in the Court of Common Pleas for
17 Aiken County, on the 23rd day of January, 2014.

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

20 I have hereunder set my hand this 15th day of July,
21 2014.

22
23
24 
25 Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG

State of South Carolina,

v.

Michael Daniels

Defendant.

IN THE COURT OF GENERAL SESSIONS
FOR THE SECOND JUDICIAL CIRCUIT

Indictment No.: 2011-GS-05-17; 18, 19

MOTION TO RECONSIDER
SENTENCE



The Defendant in the above-captioned matter respectfully moves the Court to reconsider and reduce the sentence it imposed on the Defendant on April 25, 2011.

As grounds for the reconsideration and reduction, the Defendant urges that the interests of justice will be served by the granting of this request. The Defendant will present further grounds as necessary, both in open court and *in camera* at such date and time as the Court deems appropriate to set such a hearing.

Respectfully submitted,

Laura A. McCann
Attorney for Defendant

Barnwell, South Carolina
April 25, 2011

FILED
BAMBERG COUNTY
2011 APR 28 AM 10:34
JAMES D. HERS
CLERK OF COURT
BAMBERG, SC

A TRUE COPY

Attest

CLERK OF COURT
BAMBERG COUNTY, SC

GUILTY PLEA CHECKLIST

1. FILE Name of Defendant: Michael Daniels Age: 21
Address: [REDACTED] Old SC Marital Status: S
Education: OUT Denmark HS 11th Employment: Ø
2. FILE I have read and explained the ^{warrant} indictment (or information) to the defendant and believe that he understands that he is charged with the crime(s) of Murder 2nd Degree Murder
3. FILE The defendant has told me all the facts, witnesses and circumstances known to him about the charges.
4. FILE I have explained that there must be a factual basis for a plea of guilty and I believe that such a factual basis exists. I have discussed the factual basis with the defendant and he is prepared to reiterate it in court.
5. FILE I have explained to the defendant that if he pleads guilty, the judge will ask questions concerning the offense, and if he answers these questions under oath, on the record, and in the presence of counsel, these answers may later be used against him in a perjury or false statement prosecution. I have also told him that this is the case even if his plea is not accepted or is accepted and is later withdrawn either before or after sentencing.
6. FILE I have counseled and advised the defendant on the nature of each charge, on all lesser included charges, and on all possible defenses that he might have in this case.
7. FILE I have explained to the defendant that he may plead not guilty to all of the charges now lodged against him. I have explained that if there is a plea of not guilty, the Constitution guarantees: the right to a speedy and public trial by jury; the right to confront and cross-examine all the witnesses called to testify against him; the right to use the power and processes of the court to compel the production of any evidence or witnesses in his favor; the right to have the assistance of a lawyer at all stages of the proceedings; the right to take the witness stand at his sole option. I have explained that if the defendant chooses not to take the witness stand, no inference of guilt may be drawn from such a failure, the privilege not to incriminate himself, the right to have the Government prove guilt beyond a reasonable doubt; the right to appeal from an adverse ruling on any pretrial motions or from a guilty verdict; and I have explained that if he pleads guilty, then he gives up most, if not all, of these rights. Furthermore, the defendant maintains the right to appeal a guilty plea if the appeal is filed within ten (10) days of entering the plea.
8. FILE I have explained to the defendant that if he pleads guilty, there will be no trial, either before a court or jury, and the court has the power to impose the same punishment as if he did not plead guilty, stood trial, and had been convicted by a jury.
9. FILE I have informed the defendant that the maximum punishment the law provided is 30 years ^{to life} imprisonment and a fine of _____ for the offense(s) charged in indictment: (for each individual crime) _____ years, and/or \$ _____ fine for the crime of _____; _____ years, and or \$ _____ fine for the crime of _____; _____ years, and/or \$ _____ for the crime of _____.
10. N/A If the defendant is between the ages of 18 and 25, I have explained that he may be sentenced under the Youthful Offender's Act or as a young adult offender for indeterminate sentence, which may require him to spend as long as six (6) years in a penal institution.
11. N/A If the offense is a drug offense under Section 44, Code of Laws of SC, I have explained that there may be a minimum sentence that may have to be served on some of these violations and will most probably result in a suspension of the client's drivers license.
12. FILE I have explained to the defendant that if he is currently on probation or parole, by pleading guilty, the probation or parole might be revoked, and he may be required to serve time in that case, which could be consecutive with any sentence imposed in this case. The defendant has informed me that he (is) (isn't) now on (probation/parole) for the following crime(s) _____ and/or the following time period: _____ years.
nothing but a revocation at this time has nothing else pending except these incident offenses.

STATE'S
EXHIBIT

① 2012CPO500067

1.23.14

A TRUE COPY
13.14
CLERK OF COURT
BAMBERG COUNTY, SC

13. five I have made no representation to the defendant with respect to the length of the sentence, probation or fine, or with respect to dismissal, except as follows: (Plea Bargain negotiations) all other charges will be dismissed except Murder
2x A.H. Murder
14. five I have explained to the defendant that even if the solicitor has agreed to accept a guilty plea in return for an agreed upon charge(s) and/or for a specific sentence, that the actual sentence that he receives is still to be determined by the Judge, and that the Judge may or may not accept the Solicitor's recommendation; and that the defendant may not (except in unusual circumstances) then withdraw his guilty plea because he did not get the sentence that the Solicitor recommended.
15. four I have explained to the defendant all other possible collateral consequences of a plea of guilty, such as immigration consequences (e.g. deportation, exclusion, loss of immigration documents, etc.), possible civil ramifications (e.g. habitual offender, probation revocation, consecutive sentences, etc.)
16. five I have explained to the defendant that the matter of sentence is strictly within the control of the Judge. I have explained that the Solicitor and I will have an opportunity to speak to the court before a sentence is imposed and that he will also be given an opportunity to speak to the court before sentence is imposed, if he so desires.
17. five I have explained to the defendant that the court will not permit anyone to plead guilty who maintains innocence and have reaffirmed that the defendant is pleading guilty because he is in fact guilty of the offense charged.
18. five I am satisfied that at the time I advised the defendant of his rights he was not under the influence of alcohol or drugs, nor under a doctor's care for any mental problem, and that he is mentally capable of understanding his legal rights, and understands the consequences of his decision to plead guilty. Have you ever been institutionalized for alcohol, drug abuse or mental illness? (yes) (no) if yes, explain: _____
19. five Based upon my conferences with the defendant, I believe that his plea of guilty is free and voluntary and of his own accord and with the full understanding of all the matters set forth in the indictment, complaint, or information, and in this advisement of rights form.
20. five I have explained to the defendant that if he has a prior record and that if he has committed several felonies in the past that there is a possibility he could be declared an "habitual offender" and could receive additional time in jail, up to and including life in prison. The defendant has informed me that his prior record is as follows: _____
21. five I have checked the police/Solicitor's files and their files show the following record for the defendant ESCAPE - YES has DJ staff
22. Additional Comments: NONE

Date: 4/25/2011 ATTORNEY FOR DEFENDANT: LAWA McCann

CLIENT ACKNOWLEDGMENT

My attorney, LAWA McCann Esq., has fully gone over this form with me and explained all my rights, the charges against me, and the penalties that I could receive. He/She has also told me the consequences of my pleading guilty to the charges against me and that the Judge is the only person who can decide my sentence. After having discussed all options open to me with my attorney, I freely waive my right to a jury trial and do hereby acknowledge my decision to plead guilty to the charge(s) of _____

Date: 4/25/11 Signed: [Signature]
Defendant

STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG

Michael Daniels, #319408,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2012-CP-05-067

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 9, 2012. Respondent made its return on June 28, 2012. An evidentiary hearing into the matter was convened on January 23, 2014, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Christopher Wilson, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Bamberg County Clerk of Court. The Applicant was indicted during the March 2011 term of the Bamberg County Grand Jury Murder and two counts of Attempted Murder (2011-GS-05-00017-000018-000019). Applicant was represented by Laura A. McCann, Esquire. On April 25, 2011, the Applicant pled guilty as indicted to all charges. The Applicant was sentenced by the Honorable Doyet A. Early, III, to life imprisonment for Murder, thirty years for the first count of Attempted Murder to run consecutive, and thirty years for the second count of Attempted Murder to run consecutive for a

total of life plus sixty years. The Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of trial counsel.
 - a. "My attorney deprived me of my right to a fair trial by apprising me that if I neglected to plea guilty I'd receive the death penalty but that if I plead I'd receive a lighter sentence and that she'd file a motion for reconsideration."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Laura McCann, Esquire (Counsel). This Court also had before it a copy of guilty plea hearing, the Bamberg County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant testified he was originally charged with one count of Murder and two counts of Attempted Murder. Applicant stated Counsel, Laura McCann, represented him. Applicant stated he met with Counsel twice. Applicant stated he reviewed the discovery material with Counsel. Applicant could not recall discussing any possible defense. Applicant stated he did not give Counsel any leads or witnesses to investigate. Applicant recalled waiving his constitutional rights. Applicant stated he told the plea judge that he was satisfied with Counsel's services and had enough time to talk with her prior to his guilty plea. Applicant stated he told the plea judge that no one was pressuring, threatening or forcing him to plead guilty and he was doing so freely and voluntarily. Applicant further admitted that he was guilty of Murder and two counts of Attempted Murder. Applicant stated he ultimately pled guilty to avoid a harsher punishment, i.e., the death penalty. Applicant stated if he did not

plead guilty he could potentially face the death penalty. Applicant stated that he was under the impression that Counsel was going to file a motion for reconsideration. Applicant stated he did not know if Counsel filed a motion for reconsideration or the result of the motion.

Following Applicant's testimony, Counsel was called to testify by the State. Counsel stated he had been practicing law since 1989. Counsel stated she was appointed to represent Applicant. Counsel stated she met with Applicant multiple times prior to his guilty plea. Counsel stated she reviewed the discovery material and Applicant's version of the facts. Counsel stated Applicant had no possible defenses. Counsel stated Applicant confessed to the crimes, was caught on video, and identified by the surviving Victims. Counsel characterized the evidence against Applicant as "overwhelming." Counsel stated she reviewed the elements of both Murder and Attempted Murder with Applicant. Counsel stated Applicant gave her no leads or witnesses to investigate. Counsel stated she reviewed Applicant's constitutional rights. Counsel stated she was informed that the Solicitor would notice Applicant for death if he did not plead guilty. Counsel further stated it was Applicant's decision to plead guilty. Counsel stated she filed a timely motion for reconsideration, despite the fact that Applicant did not request her to file the motion. Counsel stated the motion to reconsider the sentence was ultimately denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is less credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use 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, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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 (1985). Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel was ineffective for failing to file a motion for reconsideration following his plea hearing.

This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to file a motion for reconsideration following his plea hearing is without merit. Applicant stated that his plea was contingent on his attorney's representation that she would file a motion to reconsider his sentence and that he would not have pled absent this promise. At the evidentiary hearing, plea counsel testified that she filed a motion to reconsider sentence, which was denied. The Court finds that Applicant has failed to meet his burden under Strickland. Therefore, the application is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

The Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

ALL OTHER ALLEGATIONS

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas

Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

[Signature block on following page]



CONCLUSION

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

This Court notes that that Applicant must file and serve a notice of appeal within thirty 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 (1991), an Applicant has a right to an 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:

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

AND IT IS SO ORDERED this 7th day of April, 2014.



EDGAR W. DICKSON.
Presiding Judge
Second Judicial Circuit

Orangelus, South Carolina

WITNESSES

Bamberg County Sheriffs Office

Eddie Williams

Law Enforcement Case #: 2010-2005

ARREST WARRANT NUMBER

M580274

JST

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 3/8/11

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS0500017

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

MARCH TERM 2011

THE STATE
VS.

MICHAEL JR DANIELS

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010

J. STROM THURMOND, SOLICITOR

A TRUE COPY

Attest: *[Signature]*
CLERK OF COURT
BAMBERG COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)
)

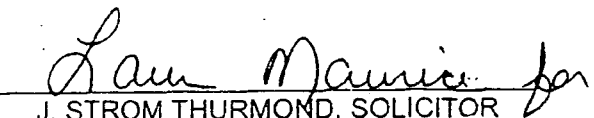
INDICTMENT FOR
MURDER

§ 16-03-0010

At a Court of General Sessions, convened on March 14, 2011, the Grand Jurors of Bamberg County present upon their oath:

That **MICHAEL DANIELS, JR.** did in Bamberg County on or about November 1, 2010, feloniously, willfully and with malice aforethought, kill and murder Alicia Dyches by shooting her with a handgun and that the victim did die in Bamberg County at 15149 Carolina Highway in Olar, South Carolina as a result thereof. All in violation of Section 16-3-10, South Carolina Code of Laws, (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

WITNESSES

Bamberg County Sheriff's Office

Eddie Williams

Law Enforcement Case #: 2010-2005

DOCKET NO. 2011GS0500016

The State of South Carolina

County of Bamberg

JST

COURT OF GENERAL SESSIONS

MARCH TERM 2011

ARREST WARRANT NUMBER

M580275

THE STATE

VS.

MICHAEL JR DANIELS

ACTION OF GRAND JURY

True Bill

CDR #: 3410

Indictment for

ATTEMPTED MURDER

§ 16-03-0029(A)

VERDICT

[Signature]
Foreperson of Grand Jury
Date: *3/8/11*

J. STROM THURMOND, SOLICITOR

Foreperson of Petit Jury
Date:

A TRUE COPY
[Signature]
CLERK OF COURT
BAMBERG COUNTY, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BAMBERG)
)

INDICTMENT FOR
 ATTEMPTED MURDER

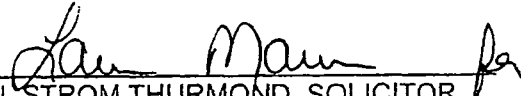
§ 16-03-0029(A)

At a Court of General Sessions, convened on March 14, 2011, the Grand Jurors of Bamberg County present upon their oath:

That **MICHAEL JR DANIELS** did in Bamberg on or about November 1, 2010, feloniously, wilfully and with malice aforethought, attempt to murder Dwight Williams by means of shooting the victim with a handgun. All in violation of Section 16-3-29 of the South Carolina Code of Laws (1976), as amended.

Y900 EUNE COPY

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


 J. STROM THURMOND, SOLICITOR

WITNESSES

Bamberg County Sheriffs Office

Eddie Williams

Law Enforcement Case #: 2010-2005

ARREST WARRANT NUMBER

M580276

DOCKET NO. 2011GS0500019

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

MARCH TERM 2011

THE STATE
VS.

MICHAEL JR DANIELS

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 3/2/11

VERDICT

CDR #: 3410

Indictment for

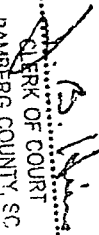
ATTEMPTED MURDER

§ 16-03-0029(A)

J. STROM THURMOND, SOLICITOR

Foreperson of Petit Jury
Date:

A TRUE COPY

Attest: 
CLERK OF COURT
BAMBERG COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)
)

INDICTMENT FOR
ATTEMPTED MURDER

§ 16-03-0029(A)

At a Court of General Sessions, convened on March 14, 2011, the Grand Jurors of Bamberg County present upon their oath:

That **MICHAEL JR DANIELS** did in Bamberg on or about November 1, 2010, feloniously, wilfully and with malice aforethought, attempt to murder Kenneth Utz by means of shooting the victim with a handgun. All in violation of Section 16-3-29 of the South Carolina Code of Laws (1976), as amended.

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


J. STROM THURMOND, SOLICITOR