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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Williamsburg County

George C. James, Jr., Circuit Court Judge

CARLTON J. HAMILTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001455

APPENDIX

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State of South Carolina) In the Court of Common Pleas
) Third Judicial Circuit
County of Williamsburg) 2011-GS-45-00154

State of South Carolina,)
)
)
 Plaintiff)
)
 vs.) Transcript of Record
)
 Carlton J. Hamilton,)
)
 Defendant.)
)
)

May 7 and 8, 2012
Kingstree, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge

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Attorney for the Plaintiff

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Attorney for the Defendant

Agent Smith
Department of Probation, Pardon, and Parole

Bonnie H. Kelly, CVR
Circuit Court Reporter

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- NO EXHIBITS -

May 7, 2012

(On the record at 4:21 p.m.)

THE COURT: Yes, sir. Mr. -- Mr. Hamilton, you wanted to ask me something?

THE DEFENDANT: Yes, sir.

THE COURT: All right. You gotta be on the record, so ...

THE DEFENDANT: Yeah.

THE COURT: All right. You can stand right there.

(The defendant complies.)

THE DEFENDANT: The last judge I talked to, Ferrell Cothran, he tell me I got to get my mental health record, for if I have to come to a trial. So I'd like to get evaluated, too.

THE COURT: He told you you're supposed to get your mental health records.

THE DEFENDANT: Yes, sir.

THE COURT: And what kind -- you have a mental health problem?

THE DEFENDANT: Yes, sir.

THE COURT: What kind of problem do you have?

THE DEFENDANT: Bipolar.

THE COURT REPORTER: I'm sorry?

THE DEFENDANT: Bipolar.

THE COURT: All right. Now, was that in 2009?

1 THE DEFENDANT: I got a history record.

2 THE COURT: I'm looking at -- the Clerk has just
3 handed up to me -- and was this introduced by ---

4 THE DEFENDANT: Yes.

5 MR. BROWN: It was introduced by the State on March
6 8th, Your Honor.

7 THE COURT: On March 8th?

8 MR. BROWN: Yes, sir.

9 THE COURT: Okay. I -- I'm looking at a -- a report
10 of a forensic evaluation service dated February 23, 2009,
11 by Dr. Cross and Dr. Davis, saying that they have the
12 opinion that you have -- that you are criminally
13 responsible and you do have the capacity to conform to the
14 requirements of the law.

15 In this report they said that you were being treated
16 by Santee-Wateree Mental Health in 2008, and you told the
17 detention staff that you had a prior history of psychiatric
18 treatment at a mental health center. But when they
19 searched for the records, they didn't locate anything.

20 At the detention center you were taking Zoloft for
21 depression and anxiety, and Trazodone for sleeping -- to go
22 to sleep.

23 You told them that you did not have any prior
24 psychiatric hospitalization. And they said when they
25 examined you, you had some generalized and vague mental

1 health complaints such as depressions and hearing things
2 and seeing things; of course, visions when dreaming rather
3 than hallucinary content when awake.

4 But you denied that you had used any drugs or alcohol
5 in the past; that you'd been sentenced in '99, which
6 included random drug testing.

7 Your rap sheet showed prior conviction from 1992, and
8 you'd been convicted of burglary, grand larceny, petty
9 larceny, simple assault, resisting arrest, and possession
10 of stolen vehicles or property.

11 According to the mental history, you graduated with a
12 diploma; that you had problems in school fighting; that you
13 have two children, one 18 and 10, by different women; that
14 you -- you get frustrated and quit your jobs.

15 When they examined you -- you talked about the various
16 things that you told them during the -- the exam, that you
17 denied being suicidal. And you talked about maybe wanting
18 to hurt an ex-girlfriend because she disrespected you.
19 Told them that you had gotten some treatment in the past
20 for depression, which they said may or may not be true,
21 because the records -- they don't have any records of any
22 prior treatment that they could find.

23 And you told them that, at the time that you got
24 charged, that you stopped taking your medication for
25 several months, causing you to become depressed.

1 And that -- they said, in their opinion, you "poorly
2 described the logical step linking any depression to your
3 criminal charges; that you argue that you had a lack of
4 criminal intent, claiming someone paid you several hundred
5 dollars to transport this truck." And you order that --
6 argue that later you -- you "received permission to use the
7 truck to take some scrap metal someplace."

8 It says you weren't depressed at the time; you were
9 trusting someone else. You denied anything to do with the
10 Peterbilt truck, but the warrant says you admitted to law
11 enforcement that you were in possession of the truck, and
12 that you tried to sell the International truck to scrap
13 metal.

14 They said even if you are being truthful about being
15 depressed, that's -- that's insufficient evidence to argue
16 a mental disease or defect which would cause you to not
17 know the difference from right or wrong.

18 And their conclusion that -- Dr. Cross's conclusion
19 that you knew the difference between right and wrong, and
20 had the ability to conform your conduct to the requirements
21 of the law.

22 Now, since that time, have you gotten some other kind
23 of mental health treatment?

24 THE DEFENDANT: I had a mental health treatment back
25 when I was in middle school and high school. See, the

1 hospital at MUSC, it take them 30 days in order to find my
2 record.

3 THE COURT: Right.

4 THE DEFENDANT: Then I got appeal out -- I write
5 Columbia, SCDC, Department of Correction, for my mental
6 health record, too.

7 THE COURT: All right. What do you think's wrong with
8 you?

9 THE DEFENDANT: I just -- just paranoid and stuff.
10 And I just talked to my aunt. My aunt tell me people
11 supposed to send my medical records for me to get -- signed
12 some papers for me to get my medical records. I never
13 receive the paper. That's three -- three months ago.

14 THE COURT: All right.

15 THE DEFENDANT: And I just -- I just get evaluated.
16 And I tell the judge ---

17 THE COURT: You said you got evaluated?

18 THE DEFENDANT: Yeah.

19 THE COURT: When was that?

20 THE DEFENDANT: Before I left the Department of
21 Correction.

22 THE COURT: When? What year was it?

23 THE DEFENDANT: Ten.

24 THE COURT: 2010?

25 THE DEFENDANT: Yeah.

1 THE COURT: Oh, you mean after -- did you get
2 sentenced by Judge Cothran?

3 THE DEFENDANT: No. I see Judge Cothran last month/
4 month before last, and he tell me get my records.

5 THE COURT: Yeah. Well -- all right.

6 THE DEFENDANT: I explained to him, I need to get,
7 like -- get evaluated.

8 THE COURT: All right. Is there anything else you
9 want to tell me?

10 THE DEFENDANT: Sending me to prison ain't gonna do --
11 ain't gonna help me.

12 THE COURT: All right. Mr. Carraway?

13 MR. CARRAWAY: I don't have anything to add.

14 THE COURT: All right. Mr. Brown?

15 MR. CARRAWAY: Nothing to add, Your Honor.

16 MR. BROWN: Your Honor, just this matter was heard by
17 Judge Cothran on March 8th. At that time, he found that
18 there was no grounds for another mental evaluation based on
19 this report.

20 Judge Cothran did say that if he got other medical
21 records showing some change has happened, then -- then it
22 could be reopened. But without any new medical records, I
23 -- I don't really see that this is a matter to be heard
24 again.

25 THE COURT: All right.

1 MR. CARRAWAY: And Judge Cothran ordered the first
2 evaluation.

3 MR. BROWN: That's correct. He did.

4 THE DEFENDANT: But I never went to evaluated -- get
5 evaluated.

6 THE COURT: Well, this evaluation here was ordered by
7 -- signed by Judge Cothran January 30, '09, and the report
8 from the Department of Mental Health was in February of
9 '09.

10 But the -- you know, we have several -- a couple of
11 questions: No. one is whether or not you have any problem
12 complying with the law, meaning whether you know the
13 difference between right and wrong. That's the first
14 question.

15 And the second question is whether or not you have the
16 ability to understand the charges against you; and to
17 assist your lawyer with defending you, by explaining to him
18 whatever it is you want to explain to him and otherwise
19 communicating with him.

20 THE DEFENDANT: No, Your Honor, I don't understand.

21 THE COURT: You don't understand what?

22 THE DEFENDANT: You -- you trying to explain to me
23 right now.

24 THE COURT: I'm not trying to explain anything to you.
25 I'm just telling -- I'm just -- I'm telling you I have to

1 make the decision, not you.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: So, I mean, you seem pretty sensible to
4 me. I'm trying to figure out how -- at what point your
5 mind -- your mind might be playing tricks on you. If they
6 -- if -- if your mind is playing trick -- tricks on you,
7 how is it or where is it.

8 You seem like you're -- I mean, you seem pretty
9 sensible to me. What are you trying to tell me?

10 THE DEFENDANT: I just be -- come and go. My mind
11 just go.

12 THE COURT: All right. Well, at this point, are you
13 coming or going?

14 THE DEFENDANT: Right now, I going now. I don't know
15 what's going on.

16 THE COURT: You don't know what's going on?

17 THE DEFENDANT: The lawyer ain't talked to me about
18 now.

19 THE COURT: All right. Well, we're going to start the
20 -- we're going to start with the testimony tomorrow morning
21 ---

22 THE DEFENDANT: Yes, sir.

23 THE COURT: --- so you all may do some talking -- more
24 talking today.

25 Mr. Carraway, any -- anything else?

1 MR. CARRAWAY: I know the facts of it inside out.

2 THE COURT: You're pleading not guilty or guilty?

3 THE DEFENDANT: Not guilty.

4 THE COURT: All right. And you remember the -- you
5 remember what happened?

6 THE DEFENDANT: No. I just know what they -- what
7 they got on the warrants.

8 THE COURT: You don't know if you're guilty or not
9 guilty?

10 THE DEFENDANT: I know I not guilty.

11 THE COURT: All right. How do you know that?

12 THE DEFENDANT: Something I ain't did.

13 THE COURT: All right. So that's what the -- the --
14 that's what we have the jury for, to decide; and that's
15 what the trial is all about. The State has to present
16 evidence to prove beyond a reasonable doubt that you're
17 guilty.

18 And during the course of the trial, you have the right
19 to testify or not to testify, to present any evidence or
20 any defense that you might have to the charges.

21 THE DEFENDANT: Uh-huh.

22 THE COURT: But I don't see any need for any further
23 mental evaluation. That's -- this has been looked into by
24 Judge Cothran. This is a relatively recent examination
25 from the Department of Mental Health. And you're -- you're

1 not showing me any signs that -- that you don't know what's
2 going on. You seem to understand perfectly well what's
3 going on.

4 So we're going to start with your trial at ten o'clock
5 tomorrow morning, and Mr. Carraway will be available to
6 talk with you any more today that you might -- and that --
7 anything more you need to talk with him about to be ready
8 to go in the morning.

9 Now, whether -- whether you need some kind of medical
10 attention or treatment, that's a different story from
11 whether or not you're competent to stand trial or whether
12 or not you know the difference between right and wrong.
13 You understand?

14 (No audible response.)

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

16 MR. BROWN: Thank you, Your Honor.

17 (Off the record at 4:36 p.m.)

18 May 8, 2012

19 (On the record 10:17 a.m.)

20 MR. BROWN: Next matter is the *State of South Carolina*
21 *vs. Mr. Carlton Jerome Hamilton*. I'm sorry, are we on the
22 record yet?

23 THE COURT REPORTER: Yes, sir.

24 MR. BROWN: Okay. I didn't want to mess you up.

25 This is Indictment No. 2011-GS-45-154. You already

1 have a copy of the original indictment. This case has been
2 called to trial, but it's been indicated Mr. Hamilton now
3 wants to enter a plea of guilty to one count of assault and
4 battery in the first degree, one failure to stop for a blue
5 light, and one resisting arrest.

6 Here are the sentencing sheets, Your Honor. And there
7 are no recommendations on the matter.

8 CARLTON J. HAMILTON, having been first duly
9 sworn, testified as follows:

10 MR. BROWN: And Your Honor, with him being sworn in,
11 there will also be a probation matter that will be resolved
12 during this as well.

13 THE COURT: I can't resolve any probation without the
14 probation department.

15 MR. BROWN: They're -- they're on their way in.
16 They're going to grab the file.

17 THE COURT: Okay. Now, assault and battery --
18 resisting arrest, is this a one-year statute?

19 MR. BROWN: It -- it's underneath that. Yes, Your
20 Honor.

21 THE COURT: And the assault and battery first degree
22 carries up to ...

23 MR. BROWN: Ten years, Your Honor.

24 THE COURT: Ten years.

25 MR. BROWN: Zero to ten.

DIRECT EXAMINATION BY THE COURT - CARLTON J. HAMILTON 15

1 THE COURT: And failure to stop for a blue light is up
2 to 90 days or three years.

3 MR. BROWN: That's correct, Your Honor.

4 THE COURT: Or a \$500 fine.

5 DIRECT EXAMINATION BY THE COURT:

6 Q Do you understand that to be the possible penalty for
7 this case, Mr. Hamilton?

8 A Yes, sir.

9 Q And do you want to plead guilty to these charges?

10 A Yes, sir.

11 Q Are you guilty of these charges?

12 A Yes, sir.

13 Q Now, we picked a jury and you have a right to have the
14 jury trial. You have the right to require the State to
15 prove your guilt by presenting evidence that convinces a
16 jury of your guilt beyond a reasonable doubt.

17 If you were to have the jury trial, you could testify
18 or not testify. If you did not testify, the jury will be
19 instructed that they cannot hold the fact that you did not
20 testify against you in any way.

21 You'd also have the right to have your lawyer, Mr.
22 Carraway, cross-examine any witnesses against you and
23 present any witnesses that you might have.

24 When you plead guilty, you give up those important
25 constitutional rights. Do you understand that?

1 A Yes, sir.

2 Q And has anyone promised you anything to get you to
3 plead guilty?

4 A No, sir.

5 Q And do -- do you understand that you can receive ten
6 years -- up to ten years for the assault, up to a year for
7 resisting arrest, and up to three years for failure to stop
8 for a blue light?

9 A Yes, sir.

10 Q And in addition to that, I understand that you're on
11 probation?

12 A Yes, sir.

13 Q And are -- did you willfully violate the terms and
14 conditions of the probation that you were on?

15 A Yes, sir.

16 Q Now, what are you on probation for?

17 A Receiving stolen good and possession of a stolen
18 vehicle.

19 Q Okay. And -- and you understand that that's a
20 separate proceeding that's handled through the probation
21 department?

22 A Yes, sir.

23 Q But if you plead guilty, that I'm going to handle that
24 as well?

25 A Yes, sir.

1 Q Have you had enough time to make up your mind as to
2 whether or not you want to plead guilty?

3 A Yeah. I -- I decide.

4 Q All right. Satisfied with the representation by Mr.
5 Carraway?

6 A Yes, sir.

7 Q Is there anything else that you can think of that he
8 can do to help you in this case, other than what he's
9 already done?

10 A He did what he -- he supposed to do for me.

11 Q All right. Now, we've gone through this issue
12 yesterday about your -- your being competent -- or you're
13 claiming that you're incompetent. Do you have any problems
14 understanding what I'm -- the questions that I'm asking
15 you?

16 A Mr. Carraway talked to me and explained it to me.

17 Q No. I said do you have any problems understanding
18 what I am now asking you -- questions that I'm asking you?

19 A A little bit, sir.

20 Q All right. You -- well, you -- now, you said you did
21 not want a jury trial.

22 A Yes, sir.

23 Q You know what a jury trial is?

24 A They decide if I guilty or not.

25 Q All right. You ever had a jury trial before?

1 A No, sir.

2 Q Any time you've always have a case -- had a case, you
3 always plead guilty to the case, or have you had a jury
4 trial before?

5 A I plead guilty.

6 Q All right. Never had a jury trial in your life?

7 A No, sir.

8 Q You ever had a trial before a judge before, where the
9 judge decided whether you were guilty or not guilty?

10 A Yes, sir.

11 Q You've had some of those?

12 A Yes, sir.

13 Q And --

14 A And some I had, I never see the judge -- talk to the
15 judge.

16 Q All right. All right. Did you just pay the ticket or
17 ...

18 A Mostly pay the ticket.

19 Q All right. But those -- those 13 -- 14 people we put
20 -- 13 people we put back there, 12 of them would decide
21 whether you're guilty or not guilty. And the State would
22 have to present witnesses and evidence to prove you guilty
23 beyond a reasonable doubt. You understand that process,
24 don't you?

25 A Kind of, sir.

DIRECT EXAMINATION BY THE COURT - CARLTON J. HAMILTON 19

1 Q All right. You don't want to go through that?

2 A (No audible response.)

3 Q Sir?

4 A (Shakes head back and forth.)

5 THE COURT REPORTER: Is that a "no"?

6 THE DEFENDANT: Yeah.

7 Q You want to plead guilty?

8 A Uh-huh.

9 Q Sir? You -- you got to talk to me.

10 A (No audible response.)

11 Q Sir?

12 A Yeah. I plead guilty.

13 Q Sir?

14 A Yeah.

15 Q All right. Now, what did you do that makes you
16 guilty?

17 A My family.

18 Q Say again?

19 A My family.

20 Q What about them?

21 A They having a hard time.

22 Q I -- yeah. But the question is: Tell me about the
23 crimes that you committed -- assault and battery of a --
24 first degree and resisting arrest and failure to stop for a
25 blue light. First, assault and battery first degree.

1 THE COURT: But let me -- before you answer that
2 question, Solicitor, the indictment says "assault and
3 battery of a high and aggravated nature," and he's pleading
4 guilty to assault and battery first degree.

5 MR. BROWN: That's correct, Your Honor.

6 THE COURT: Why is there a difference between the
7 indictment and what he's pleading guilty to?

8 MR. BROWN: Your Honor, I've spoken with law
9 enforcement and they are comfortable with a guilty plea
10 going to the assault and battery in the first degree. They
11 are the victims in the case. Just -- it's a lesser
12 included and it was part of the plea negotiations.

13 THE COURT: What -- what makes it a lesser included
14 offense?

15 MR. BROWN: Both require the injury or offer to
16 attempt to injure where great bodily injury harm -- great
17 bodily injury and harm results or could have resulted. It
18 -- I believe assault and battery first degree just has a
19 clause in there that it is a lesser included to ABHAN.

20 THE COURT: Is that under the statute?

21 MR. BROWN: I believe it is.

22 THE COURT: Is assault and battery or -- is it -- are
23 the -- is the penalty the same for both of them or ...

24 MR. BROWN: No, sir, Your Honor. Assault and battery
25 of a high and aggravated is considered a most serious, so

1 it has an 85 percent until parole eligibility, and it also
2 has 20 years that it carries. Assault and battery first
3 degree carries 10 years.

4 THE COURT: Okay.

5 MR. BROWN: And I'm looking at 16-3-600(c)(3), where
6 it says (as read): "Assault and battery in the first
7 degree is a lesser included offense of assault and battery
8 of a high and aggravated nature, as defined in Section
9 (b)(1) and attempted murder as defined in Section 16-3-29."

10 THE COURT: All right. Guess I'm still thinking of
11 the old law, where assault and battery of a high and
12 aggravated nature was up to 10 years --

13 MR. BROWN: Yes, sir, Your Honor.

14 THE COURT: -- and the only lesser included was simple
15 assault. So this is under --

16 MR. BROWN: This is after June, 2010.

17 THE COURT: So the indictment is under the new statute
18 and it's lesser included.

19 MR. CARRAWAY: And ---

20 THE COURT: You agree with that, Mr. Carraway?

21 MR. CARRAWAY: I do agree, and this is non-violent.

22 THE COURT: All right.

23 MR. CARRAWAY: Yeah. And I think the ABHAN that's up
24 to 20 years is violent now, as opposed to -- it was non-
25 violent before, when it was up to ten.

1 MR. BROWN: It is.

2 MR. CARRAWAY: But it is violent now and up to 20.

3 THE COURT: All right.

4 MR. CARRAWAY: So ...

5 DIRECT EXAMINATION BY THE COURT (continues):

6 Q So, Mr. Hamilton, what makes you guilty of assault and
7 battery first degree? What'd you do?

8 (Mr. Carraway and the defendant confer.)

9 A I tried to attempt to run the officer off the road.

10 Q All right. You tried to run them off the road?

11 A Yes, sir.

12 Q You were driving a car?

13 A No, sir.

14 Q You were walking?

15 A Truck.

16 Q You were driving a truck.

17 A Yes, sir.

18 Q And you tried to run them off the road with a truck?

19 A Yes, sir.

20 Q All right. What were you trying to do, cause him to
21 wreck? turn over? kill themselves?

22 A No, sir.

23 Q Then what were you trying to do?

24 A Trying to get off the road.

25 Q Trying to run them off the road.

DIRECT EXAMINATION BY THE COURT - CARLTON J. HAMILTON 23

1 A No. I been trying get to the side.

2 Q All right. So what -- what did you do that makes you
3 guilty of assault and battery first degree?

4 MR. CARRAWAY: They were chasing him -- well, anyway
5 ...

6 (Mr. Carraway and the defendant confer.)

7 A And they be chasing me. And they been behind me at --
8 the whole time, til we get to a certain place. One of the
9 car pull on the side of me, and I get out a little ahead of
10 them and I ease towards my left. When I get to my left, I
11 stop and jump out; and left the scene.

12 Q You were trying to force them off the road?

13 A No.

14 Q What were you trying -- you were trying to do what
15 then?

16 A They went on the side of me.

17 Q Right.

18 A I get out --

19 Q Right.

20 A -- enough I can get over. When I did get over, I stop
21 and get out the vehicle.

22 Q Uh-huh. And they had the blue lights on you?

23 A Yes, sir.

24 Q And you didn't stop for the blue light?

25 A No, sir.

1 Q And the -- they -- how did they catch you?

2 A They never catch me.

3 Q Well, what makes you guilty of resisting arrest?

4 A (No audible response.)

5 MR. CARRAWAY: It's my understanding that they threw
6 out a spike shield or something. They -- did they shoot
7 the tire? They threw a spike shield; he got a flat tire;
8 and he ran off the road and hit a tree.

9 MR. BROWN: When he swerved at our officers, he lost
10 control overcorrecting, and put his car in a ditch, hitting
11 a tree, then --

12 MR. CARRAWAY: -- jumped out and ran.

13 MR. BROWN: -- Officer Willie Brown came out, gun
14 drawn, ordered him to stop, that he was under arrest; and
15 he ran off into the woods.

16 MR. CARRAWAY: Okay.

17 DIRECT EXAMINATION BY THE COURT (continues):

18 Q Sir?

19 A Your Honor, when I been in the speed chase, first
20 officer came behind me. I leave, I stop; he get out, I
21 take off.

22 Spikes came out probably about -- about nine/ten miles
23 down the road. I come round the spikes, I keep on going.
24 Put the spikes down again, I going through that again. I
25 still driving.

DIRECT EXAMINATION BY THE COURT - CARLTON J. HAMILTON 25

1 I ran nobody to no ditch or nothing, I just keep on to
2 flee, til I get to 52. That when I decided just to -- time
3 for me to -- to get out.

4 Q All right. We're talking about resisting arrest at
5 this point. What -- and at some point did they tell you
6 that you were under arrest?

7 A No, sir.

8 Q All right. So you -- you deny being guilty of
9 resisting arrest?

10 A The officer get -- the officer, he get out the
11 vehicle.

12 Q Say again.

13 A The officer -- the first officer, he get out the
14 vehicle.

15 Q All right.

16 A He never approach me, he just get out the vehicle and
17 -- and pull his weapon out.

18 Q He didn't say anything?

19 A I couldn't hear.

20 Q All right. Well -- and -- but if he said he said,
21 "You're under arrest. Stop." ...

22 A I never get out the vehicle or nothing, sir.

23 Q Say again.

24 A I never get out the vehicle.

25 Q Well, you just said you got out the vehicle.

1 A I got out the vehicle -- it time for me to jump out, I
2 get out the vehicle.

3 Q Do you think you're guilty of resisting arrest?

4 A (No audible response.)

5 Q Or you're not guilty of anything?

6 A I know I -- I make the mistake.

7 Q We'll ---

8 A I did.

9 Q We'll get into the mistakes.

10 A Okay.

11 Q You obviously made a bunch of them.

12 A Yeah.

13 Q Do you think you're guilty of resisting arrest?

14 A Yeah.

15 MR. CARRAWAY: Yes, sir.

16 THE COURT: All right. Well, let me hear what the
17 State has to say about it.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Well, first, Mr. Carraway, are you in
20 agreement with the pleas?

21 MR. CARRAWAY: Absolutely I am.

22 THE COURT: All right. Mr. Brown.

23 MR. BROWN: Thank you, Your Honor. If it pleases the
24 Court. On June 17, 2011, at Don's Car Crushing, in
25 Hemingway, South Carolina, a transfer-trailer truck pulled

1 up with a full load of new crane equipment.

2 Don Brewer, who is here today, was called by his
3 officers -- or by his agents, because they were suspicious
4 that this material was stolen.

5 Mr. Brewer came in contact -- he actually met Mr.
6 Hamilton, who he has identified as Mr. Hamilton here in the
7 courtroom to me, and he basically tried holding him there
8 til law enforcement got there.

9 Mr. Hamilton, suspecting that stuff was not going
10 well, left the scene of Don's Car Crushing; and Don
11 actually got into his vehicle and followed the transfer-
12 trailer truck.

13 THE COURT: Is all that true?

14 THE DEFENDANT: I left the scene from ---

15 THE COURT: I said: Is everything he said true?

16 THE DEFENDANT: Kind of, sir.

17 THE COURT: All right. What part is not true?

18 THE DEFENDANT: But like he say, he suspect that --
19 the -- the people already call say the thing was stolen
20 already. The people --

21 THE COURT: Okay. What part of what the solicitor
22 said is not true, or is everything he said true so far?

23 THE DEFENDANT: (To the solicitor) Can you say it
24 again?

25 THE COURT: No, he can't say it again. Well, you

1 aren't listening to what he just said?

2 THE DEFENDANT: Kind of, sir.

3 THE COURT: Kind of listening?

4 THE DEFENDANT: Yeah.

5 (Mr. Carraway confers with the defendant.)

6 THE DEFENDANT: Yeah -- he -- yeah. Yes. It's true --
7 - true.

8 THE COURT: All right. Proceed.

9 MR. BROWN: Yes, Your Honor. After he had pulled out
10 of Don's Car Crushing -- which I would note that he did hit
11 one of Mr. Brewer's vehicles on the way out.

12 THE COURT: Did you do that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right.

15 MR. BROWN: Mr. Brewer got in his vehicle and followed
16 -- never losing site of the vehicle, and followed him for
17 close to 40 miles, while all the ---

18 THE COURT: Forty miles?

19 MR. BROWN: The sheriff's department and everybody was
20 trying to catch up with him, but this ---

21 THE COURT: All right.

22 MR. BROWN: --- vehicle was moving about 80 miles per
23 hour at this point.

24 THE COURT: From Hemingway through --

25 MR. BROWN: It went up to Andrews and then it cut down

1 through Greeleyville and was going back down towards
2 Charleston.

3 THE COURT: Is that true?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Go ahead.

6 MR. BROWN: Your Honor, at some point during the part
7 where Mr. Brewer was following, he actually stopped -- Mr.
8 Hamilton actually stopped his vehicle, dropped the trailer
9 off, and drove off just with the front part of the
10 transfer-trailer truck.

11 Not long thereafter, officers with the Williamsburg
12 County Sheriff's Office, as well as the Kingstree Police
13 Department, and I believe, the Andrews Police Department,
14 at least at some point, caught up with the truck. And at
15 that point Mr. Brewer backed off and law enforcement took
16 over with the chase.

17 Blue lights and sirens were on, and at no point did
18 Mr. Hamilton stop. In fact, he reached speeds of close to
19 90 miles per hour.

20 THE COURT: Is that true?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right.

23 MR. BROWN: At one point, Kingstree Police Department
24 put down a spike strip at an intersection. He went off the
25 road, going around the spike strip and nearly hit a -- a --

1 a -- a motorist who was on the other side and just stopped,
2 waiting for everything to pass.

3 The chase continued. At some point, officers were
4 ordered to back off to see if it would slow him down. It
5 did not. And at that point, seeing the danger to the
6 community, officers were ordered by the Williamsburg County
7 Sheriff's Office to use force to stop the vehicle.

8 Throughout this chase, and on numerous occasions, Mr.
9 Hamilton was noted as trying to wave the officers past him.
10 Every time that any officer got close, he would kind of
11 swerve his vehicle, trying to basically knock them off or -
12 - or keep them from passing him or anything of that nature.

13 THE COURT: You deny that part, huh? Or is that true?

14 THE DEFENDANT: What? The part of trying to knock
15 them off the road?

16 THE COURT: Yes, sir. Waiving them to come around,
17 and then they get up -- try to get around, then you swerve
18 over and try to wreck them.

19 THE DEFENDANT: No.

20 THE COURT: You didn't do that?

21 THE DEFENDANT: I wave to tell them back off.

22 THE COURT: How do you do that? Show me that kind of
23 back-off wave.

24 THE DEFENDANT: (Complies.)

25 THE COURT: And what is that supposed to do?

1 THE DEFENDANT: Tell them (indicates).

2 THE COURT: They're going to -- just because you wave,
3 they're going to stop coming after you?

4 THE DEFENDANT: No, sir.

5 THE COURT: Okay. Go ahead.

6 MR. BROWN: Yes, sir, Your Honor. After officers were
7 given authorization to use force to stop this vehicle, a
8 vehicle being driven by Investigator Collins and Lieutenant
9 Sherrod Timmons --

10 THE COURT: They said "authorization to use force"
11 like -- like shoot him?

12 MR. BROWN: Not to shoot him, but to shoot the tires
13 out, to try stopping this vehicle, and that is exactly what
14 they tried doing.

15 Officer Timmons was in the passenger seat;
16 Investigator Collins was driving. They drove up beside the
17 vehicle. It was later noted about five bullet holes around
18 the wheel well, but none up near the driving compartment.

19 At some point, while they were trying to stop the
20 vehicle in this manner, Mr. Hamilton slammed on brakes and
21 swerved directly at their vehicle. Investigator Collins
22 has told me that they came within inches of their vehicle,
23 and it was only because she swerved off the road.

24 At that point, because of his swerving at them -- he
25 tried overcorrecting, and he put himself in a ditch,

1 hitting a tree, and that's what stopped the chase itself.

2 Investigator Willie Brown pulled up behind his
3 vehicle. He approached the driver's side; another officer
4 approached the passengers's side. There was no one in the
5 passenger's seat, and -- and Officer -- and Investigator
6 Brown had his weapon drawn, ordering the stop. Mr.
7 Hamilton got out of his vehicle and ran into the woods.

8 THE COURT: Is that true.

9 THE DEFENDANT: Yeah. I ran in the woods, sir.

10 THE COURT: All right.

11 MR. BROWN: Your Honor, the way that they actually
12 tracked down Mr. Hamilton was by numerous points. First
13 off, Mr. Brewer recognized his face, as well as
14 Investigator Willie Brown. But most notably -- and this
15 would've been State's Exhibit No. 1 -- there was a receipt
16 from Don's Car Crushing that did have "Carl Hamilton" as
17 the name of the person who was going to be selling the
18 items.

19 A -- an arrest warrant was put out, and a few days
20 later -- I think about two weeks later, he was arrested in
21 Charleston and transported back to Williamsburg.

22 THE COURT: Is that true?

23 THE DEFENDANT: I get arrested on June the 25th.

24 THE COURT: Well, if this is June 17th when this
25 happened, if you got arrested June 25th, that's about a

1 week or so later.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right.

4 MR. BROWN: And -- and Your Honor, one other thing: I
5 would note that the arrest warrants were put out before he
6 was arrested in Charleston. So this wasn't just a causal
7 link, it would -- they knew who they were looking after --
8 for.

9 THE COURT: All right. I'll accept the -- the guilty
10 plea. Let's bring the jury panel in for the rest of the
11 proceedings.

12 (The jury enters the courtroom at 10:39 a.m.)

13 THE COURT: All right. You got a good looking jury
14 there, Mr. Hamilton.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You agree? All right.

17 (To the jury) Well, ladies and gentlemen, Mr. Hamilton
18 decided to plead guilty to these charges. So I'm in the
19 process of -- I've accepted his guilty plea, and rather
20 than have you all continue to stay back there, we just had
21 you to come -- come out for the rest of these proceedings.

22 The State has just explained to me a portion of the --
23 the facts, and I'll hear from anyone else that you want me
24 to hear from. I know you have Mr. Brewer here. If he
25 wants to say anything or anyone else.

1 THE COURT REPORTER: I just need him to identify
2 himself for the record, please.

3 MR. BROWN: And state your name for the record.

4 MR. BREWER: Yeah. Donnie Brewer.

5 THE COURT: All right. Yes, sir.

6 MR. BREWER: Mr. Hamilton was driving really
7 erratical, to say the least. It was something like what
8 you would probably see on a movie: his actions, coming out
9 of my yard; drove over the railroad track, running into
10 another piece of our equipment. And was a really high
11 speed chase, very, very dangerous for anybody on the road
12 at that time.

13 THE COURT: And what time of -- time of day or night
14 was this?

15 MR. BREWER: It was in the morning.

16 THE COURT: All right.

17 MR. BREWER: Around nine o'clock.

18 THE COURT: All right.

19 MR. BREWER: Nine or ten o'clock in the ---

20 THE COURT: On a weekday morning?

21 MR. BREWER: On a Friday -- Friday morning.

22 THE COURT: Friday morning. And was he charged with
23 any -- anything additionally, with causing damage to the
24 various property?

25 MR. BROWN: There was an arrest warrant issued for

1 damage to property during a -- during a chase, I believe
2 was the language, but that was not indicted.

3 THE COURT: Okay. All right. So then, Mr. Brewer,
4 you -- after he tried to sell the stolen stuff, you
5 realized it was stolen, you called the police, he decided
6 to -- to leave, and you followed him?

7 MR. BREWER: Yeah. We -- trying to hold him up there
8 on the yard till the police got there, and he eased around
9 the property and said he needed to go out to make a phone
10 call.

11 And my equipment operator parked his big wheel there
12 across the road, and I approached him at the truck there.
13 And when he asked to go use the -- a phone, I said, "Well,
14 you can use my phone," and he just took off out of the
15 property, 20 or 30 miles an hour. And rode up over the
16 railroad track with the tractor-trailer, and you know, out
17 our gate.

18 THE COURT: And was it ever determined whose property
19 he was -- who's tractor-trailer he was --

20 MR. BREWER: Yes, sir. I believe it was "All Crane"
21 was on the truck side of the trailer. That was the first
22 thing I inspected when I checked -- I realized that, you
23 know, the truck didn't have no documents on the side of the
24 truck saying whose truck it was, but the trailer had "All
25 Crane" on it. That was the company that -- on the -- on

1 the equipment.

2 MR. BROWN: And Your Honor, just to clear that up, I
3 do believe that there are pending charges in Charleston as
4 a result of that, because that was where the truck was
5 stolen from, in North Charleston area.

6 THE COURT: Okay.

7 MR. BROWN: But we are only addressing the matters in
8 Williamsburg.

9 THE COURT: All right. All right. Mr. Brewer,
10 anything else you want to add to the scenario?

11 MR. BREWER: Just a lot of law enforcement involved
12 that day, and a lot of people -- a lot of lives were in
13 danger during all that process. It went on for probably 50
14 to 60 miles before -- before he ran off the road.

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

16 MR. BROWN: Okay. Thank you, Mr. Brewer.

17 THE COURT: Anything ---

18 MR. BROWN: Investigator Collins has said that she
19 does not wish to address the Court. I think that's the
20 bulk of any victims involved.

21 THE COURT: All right.

22 MR. BROWN: Unfortunately, Officer Timmons was not
23 able to be here today.

24 THE COURT: Okay. How about his rap sheet?

25 MR. BROWN: It's extensive, Your Honor. In 1992 he

1 had a burglary, second degree. He was convicted on -- to
2 ten years, suspended to two years probation, six months --
3 I'm not sure what this abbreviation is: "INT probation."

4 He also had a grand larceny conviction of five years
5 suspended to two years probation. That ran concurrent with
6 the burglary charge.

7 In 1992 he had a simple assault. He was convicted of
8 30 days and \$200 fine.

9 In 1992, as well, he had another grand larceny
10 probation revocation, which he was convicted to five years,
11 suspended to six months, and one year and six months
12 probation. And he also had a revocation on the burglary,
13 which ran concurrent to that.

14 In 1993 he had another grand larceny charge. He was
15 convicted to four years and six months confinement.
16 Probation revocation was also included on that; as well as
17 a burglary second, which he got nine years, six months,
18 suspended to five years confinement, concurrent with
19 probation revocation.

20 In 1999 he had a resisting arrest where he received
21 probation. First six months of probation was intensive.
22 He also had a possession of stolen or dispose of stolen
23 vehicle, convicted to four years. And also a threatening
24 to a life of a public official, which he convicted to four
25 years as well.

1 In 1999 he had a resisting arrest conviction to ten
2 years, suspended to four years and four years probation.
3 It looks like this might be actually the charges when he
4 got to SCDC -- the threatening life of a public official
5 and the possession of stolen vehicle, as was named
6 previously.

7 In 2002 he had a resisting arrest, which he was
8 convicted to one year.

9 In 2003 he had a grand larceny, which he was convicted
10 of eight years, suspended to five years and three years
11 probation.

12 In 2005 he had a grand larceny, which he -- value over
13 \$5,000. He was convicted to eight years suspended sentence
14 upon five years, with three years probation.

15 In 2005 he had a possession of a stolen -- disposed of
16 stolen vehicle -- actually, that was a non-conviction. My
17 apologies, Your Honor.

18 In 2006 he had a receiving stolen goods. He was
19 convicted to three years.

20 In 2007 he had a receiving stolen goods, which he was
21 convicted to three years to run concurrent with a previous
22 sentence.

23 In 2000 and -- in 2008 he had an uninsured motor
24 vehicle, which he was convicted to time served, as well as
25 a traffic -- expired vehicle license. Same thing,

1 concurrent.

2 And I believe that may be -- actually, I'm sorry, Your
3 Honor. In 2011 there was malicious injury to personal
4 property, which he was convicted to ten years suspended
5 sentence, upon five years and five years probation; as well
6 as a receiving stolen goods, which ran concurrent to that,
7 Your Honor.

8 THE COURT: Ten years?

9 MR. BROWN: Yes, sir, Your Honor.

10 THE COURT: All right. Okay. All right. And Mr.
11 Smith, you have the probation violation?

12 AGENT SMITH: Yes, sir, Your Honor.

13 THE COURT: All right.

14 AGENT SMITH: Mr. Hamilton is currently on probation
15 for, as Mr. Brown said, malicious injury: Ten years,
16 provided upon service of five years, the balance suspended
17 to five years probation; and the same sentence for
18 receiving stolen goods. These were out of Clarendon
19 County. Indictment's 2009-GS-14-88 and -89.

20 He received the probation June 1st of 2011. It
21 appears this offense occurred June 17th of 2011. So
22 roughly two weeks after receiving probation, this offence
23 apparently took place.

24 He's being supervised out of Charleston County. Do
25 have a citation prepared to hand him at this time.

1 THE COURT: All right.

2 (Agent Smith confers with the defendant.)

3 THE COURT: Now, Mr. Hamilton, you admit to being
4 guilty of willfully violating the probation did you say?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. That's -- I so find that.
7 Anything else with him then, Mr. Smith?

8 AGENT SMITH: Your Honor, if you decided to revoke any
9 supervision, he does have restitution that needs civil
10 judgement.

11 THE COURT: Okay. Did you get a chance -- will you --
12 you said he's -- the -- the crime is in Clarendon County.

13 AGENT SMITH: Yes, sir.

14 THE COURT: And they transferred it to Charleston
15 County?

16 AGENT SMITH: Yes, sir.

17 THE COURT: So he came to court in Clarendon on the --
18 what date?

19 AGENT SMITH: June 1st he received probation, 2011.

20 THE COURT: And then did these crimes on the 17th?

21 AGENT SMITH: Yes, sir.

22 THE COURT: And the -- the dates on the -- on the plea
23 sheet, Mr. Brown, for blue light and assault and battery
24 are on the 17th, and resisting arrest is listed on the --
25 June 30th.

1 MR. BROWN: My apologies, Your Honor. I can correct
2 that.

3 THE COURT: All right. Everything occurred on the
4 17th?

5 MR. BROWN: Everything that we're noting ---

6 THE COURT: All right.

7 MR. BROWN: --- occurred on the 17th, yes, Your Honor.

8 THE COURT: All right. Mr. Carraway?

9 MR. CARRAWAY: Your Honor, Mr. Hamilton tells me that
10 he is 43 years old. He tells me he graduated from Burke
11 High School in Charleston. He tells me he's single, and he
12 tells me he has worked as a heavy equipment diesel
13 mechanic. And he tells me he is from the Charleston area.
14 He said he grew up in the City of Charleston. And he may
15 have --

16 MS. SUMMERS: Aunt.

17 MR. CARRAWAY: His aunt may want something to say --
18 may want to say something on his behalf, Your Honor..

19 THE COURT: All right. Yes, ma'am.

20 MS. SUMMERS: Your Honor, I'm Ida Summers, his aunt.

21 And ---

22 THE COURT: Ida Summers.

23 MS. SUMMERS: --- but I know he take medicine. I --
24 you know, and I try to get the medicine for him, you know,
25 through the -- through the -- the -- oh, gosh.

1 MR. CARRAWAY: Mental Health?

2 MS. SUMMERS: Through the health -- health department.
3 And I call -- I call -- I went in Charleston and they said
4 they had to go -- call, I think it's Orangeburg or
5 Columbia, near Columbia some place.

6 But I call two of them, and the last one I called she
7 said she couldn't send it -- she couldn't give it to me,
8 that I had had -- he would have to have his address where
9 he was in jail. And I gave it to them, and they were
10 supposed to send his record there with his medicine what he
11 takes. So -- but I don't -- he said he never got it.

12 THE COURT: He takes medicine for what?

13 MS. SUMMERS: I forgot what they call it, because I --
14 I wanted his sister to give me his box that he had with his
15 medicine on it and the -- you know, what kind of medicine
16 he take.

17 THE COURT: You know -- you know him, right?

18 MS. SUMMERS: Yeah. That's my nephew.

19 THE COURT: Your nephew. What do you know about him?

20 MS. SUMMERS: Well, all these things I -- he saying, I
21 heard about them now. I don't know nothing about that. I
22 even didn't -- you know, that was occurring -- you know,
23 occurring and stuff.

24 THE COURT: When last did you see him?

25 MS. SUMMERS: Last time I saw him when he was in

1 Charleston at court -- I went to court with him. I think
2 it was -- was it Charleston Court?

3 THE DEFENDANT: Yes, ma'am.

4 MS. SUMMERS: Was at Charleston Court.

5 THE COURT: How many babies does he have?

6 MS. SUMMERS: Two as I know of. I don't know if
7 there's more.

8 THE COURT: All right.

9 MS. SUMMERS: And -- but when he went to court then
10 and when he -- when they released him and I went to -- went
11 down to Charleston to the court -- I mean, to the jailhouse
12 with him, waiting for him to come out. And then they said
13 he -- they had another case on him.

14 But I leave the papers home. I -- I -- you know, I
15 don't remember. I'm getting old now, I don't remember too.

16 THE COURT: Uh-huh.

17 MS. SUMMERS: So I didn't bring the -- you know, I
18 didn't have the paper to bring to see -- to find out what
19 date that he did all the -- you know, the last stuff he
20 did.

21 So -- but I -- but they took him. They didn't ever
22 release him, because when I went back up I said, "Y'all not
23 going to release him?"

24 He said, "No. They have a -- a case with him in
25 Kingstree."

1 So that was the last -- you know ---

2 THE COURT: When did ---

3 MS. SUMMERS: --- that's the last ---

4 THE COURT: --- he start getting ---

5 MS. SUMMERS: --- I see ---

6 THE COURT: --- in trouble?

7 MS. SUMMERS: Well -- well, I wasn't already -- always
8 here, but I came -- I was living in Jersey. But then I
9 came down here, you know. I -- you know.

10 THE COURT: What year did you come down here from
11 Jersey?

12 MS. SUMMERS: Well, I came down here in '72.

13 THE COURT: Seventy-two.

14 MS. SUMMERS: Yeah, but you know, I didn't -- I didn't
15 see him that much, you know, where I live. You know, I see
16 him, but you know, not that much, so ...

17 THE COURT: Can you say anything good for him? Does
18 he have any good qualities that you can think of?

19 MS. SUMMERS: Well, yeah. He -- I think he has some
20 good qualities.

21 THE COURT: All right.

22 MS. SUMMERS: But I guess ---

23 THE COURT: Tell me about them.

24 MS. SUMMERS: Well, he's a nice fellow. He try to
25 help his mother. But I don't know what possess him to do

1 these things. I don't know whether -- you have to try to
2 get his record to find out what kind of medicine he was
3 taking. I don't ---

4 THE COURT: I've got ---

5 MS. SUMMERS: --- know whether ---

6 THE COURT: --- his records.

7 MS. SUMMERS: --- it was some ---

8 THE COURT: I've got his records right here. I went --

9 -

10 MS. SUMMERS: His medicine ---

11 THE COURT: --- through them ---

12 MS. SUMMERS: --- records?

13 THE COURT: --- yesterday.

14 MS. SUMMERS: Oh.

15 THE COURT: Yeah.

16 MS. SUMMERS: But I don't know what kind of medicine
17 he was taking, but they say he have to take some kind of
18 medicine to -- you know, said sometime when he gets out --
19 I don't know, his -- it's a -- you know, like he --
20 sometimes he can't -- you know, he go out -- you know, not
21 "go out," but you know, some kind of like a seizure or
22 something he have.

23 So -- but I don't know what kind of seizure he have,
24 and you know, what possess him to do what he did. I don't
25 know.

1 THE COURT: All right. Thank you, ma'am.

2 MS. SUMMERS: You're welcome.

3 THE COURT: Yes, sir, Mr. Hamilton.

4 THE DEFENDANT: My medicine -- they -- they changed my
5 medicine.

6 THE COURT: All right. Well, so --

7 THE DEFENDANT: And --

8 THE COURT: --- so what? What does that -- what does
9 that tell me?

10 THE DEFENDANT: But I -- I been trying to get my
11 medicine changed to make me much better.

12 THE COURT: When were you trying to do that?

13 THE DEFENDANT: I been trying to do that the longest --
14 -- even I've been in prison I been trying to do it.

15 THE COURT: Well, you -- you first went to prison in
16 what year, 1991?

17 THE DEFENDANT: No. I been -- I -- I got locked up in
18 '91.

19 THE COURT: Nineteen ---

20 THE DEFENDANT: And ---

21 THE COURT: --- that's like 20 years ago. How old are
22 you now?

23 THE DEFENDANT: I'm 43.

24 THE COURT: Forty-three.

25 THE DEFENDANT: And --

1 THE COURT: So how old were you when you first went to
2 jail, even when you were like a juvenile?

3 THE DEFENDANT: No.

4 THE COURT: When did you -- you started your crime --
5 burglary second degree in nineteen -- the sentence was in
6 '91.

7 MR. BROWN: I believe so, Your Honor.

8 THE COURT: And the crime happened when you were how
9 old, that you did the burglary? Eighteen? Nineteen?

10 THE DEFENDANT: No. I probably was 20 -- 20-
11 something; 21 or 22.

12 THE COURT: I mean, you went to -- you were sentenced
13 when you were 21.

14 THE DEFENDANT: Yeah. I been in -- I been in jail
15 then, but I went to prison in '92.

16 THE COURT: Ninety-two. All right. So --

17 THE DEFENDANT: I violated ---

18 THE COURT: So ---

19 THE DEFENDANT: --- they violate me on my probation.

20 THE COURT: All right. How many times have you been
21 to prison?

22 THE DEFENDANT: For violation?

23 THE COURT: No. Violations and new crimes and
24 everything --

25 THE DEFENDANT: New ---

1 THE COURT: -- how many ---

2 THE DEFENDANT: --- crimes --

3 THE COURT: --- times?

4 THE DEFENDANT: New crimes, three. Most all them was
5 probation violation.

6 THE COURT: You've been to prison three times, or are
7 you giving yourself the benefit of the doubt and not
8 counting -- how many times have you been sentenced, that --
9 that you've gone to prison?

10 THE DEFENDANT: All together --

11 THE COURT: Yeah. All together is what I'm talking
12 about.

13 THE DEFENDANT: I think about eight.

14 THE COURT: Eight times.

15 THE DEFENDANT: Yeah. Eight or 9.

16 THE COURT: Well, why -- why'd you tell me three?

17 THE DEFENDANT: Three for -- '90 -- '90 -- '99 and '03
18 and -- and '09.

19 THE COURT: All right. And -- and -- all right. So
20 that's maybe three. How about the other five times?

21 THE DEFENDANT: Probation violation.

22 THE COURT: All right. So you've been to prison eight
23 times in the last 20 years.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. And you were trying to

1 straighten out your medicine when?

2 THE DEFENDANT: I found out I been diagnosed off that
3 in '99 --

4 THE COURT: Ninety-nine.

5 THE DEFENDANT: -- when I went to prison. And they
6 put me on medicine. When I came out ---

7 THE COURT: Did you graduate from high school?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: At Burke High School.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay.

12 THE DEFENDANT: And during the course -- they -- they
13 put me on different medicine. When I came on, they put me
14 on different medicine, try this medicine out, try that
15 medicine. And they tell -- the medicine's not working for
16 me. They ---

17 THE COURT: Well, what's ---

18 THE DEFENDANT: --- try it out ---

19 THE COURT: What do you want the medicine to do for
20 you?

21 THE DEFENDANT: To help my problem with the problem I
22 have.

23 THE COURT: Which is what?

24 THE DEFENDANT: Seeing dead people.

25 THE COURT: Seeing ---

1 THE DEFENDANT: Hearing ---

2 THE COURT: --- dead people?

3 THE DEFENDANT: --- hearing voices, can't sleep.

4 THE COURT: Well, how's that tie into you committing
5 burglaries and receiving stolen goods and trying to sell
6 stolen stuff and all of that?

7 THE DEFENDANT: That -- that come --

8 THE COURT: How do -- how do the two things tie in?
9 How do the two things tie in with each other?

10 THE DEFENDANT: It just be depression, just
11 hallucinate, and one thing lead to another.

12 THE COURT: All right. So what else do you want me to
13 know about you before I sentence you?

14 THE DEFENDANT: I just come to you and tell you can
15 you give me help.

16 THE COURT: Well, they'd have to give you help in the
17 prison. I can't ---

18 THE DEFENDANT: Yeah.

19 THE COURT: --- there's no help I can give you. I can
20 ---

21 THE DEFENDANT: Doesn't ---

22 THE COURT: --- only give you time.

23 THE DEFENDANT: Okay. I go back to prison, it gonna
24 be same thing over, asking for medicine to help me out
25 better. The medicine I supposed to take supposed to

1 balance me out, supposed to keep me level and focused.

2 It's not doing it.

3 THE COURT: Well, when -- when last did you take this
4 medicine that you -- supposed to balance you out?

5 THE DEFENDANT: Supposed to take it this morning. I
6 didn't take it. But it's ---

7 THE COURT: I'm talking ---

8 THE DEFENDANT: --- not ---

9 THE COURT: --- about during the time you were doing
10 all this -- this high speed chase and trying to run the
11 police ---

12 THE DEFENDANT: I been out ---

13 THE COURT: --- off the ---

14 THE DEFENDANT: I been out ---

15 THE COURT: --- road and ---

16 THE DEFENDANT: --- my medicine.

17 THE COURT: You were off your medicine?

18 THE DEFENDANT: I been out. I ran out. I call --
19 they give me a number to call to get refill from the
20 hospital. I never get no respond back. I call every day,
21 and I never get no respond back.

22 THE COURT: So then what'd you do?

23 THE DEFENDANT: Try -- try to focus. It's hard to
24 focus.

25 THE COURT: Well, did you have medicine when you were

1 in the court in Clarendon County the 1st of June of that
2 same year?

3 THE DEFENDANT: They -- they prescribe my medicine
4 then --

5 THE COURT: All right.

6 THE DEFENDANT: -- to me.

7 THE COURT: Were you on medicine then?

8 THE DEFENDANT: At the time I did the crime, I've been
9 -- not been on medicine. But then when -- time I get
10 locked up, they put me ---

11 THE COURT: Well, in Clarendon County you -- you were
12 driving a stolen 18-wheeler or something like that?

13 THE DEFENDANT: I -- I get the vehicle from somebody
14 else.

15 THE COURT: And how do you -- how does that work? How
16 do you get these big trucks, a Peterbilt and a
17 International something-or-another? And what were you
18 driving this day, down at Don's Scrap Iron?

19 THE DEFENDANT: Freightliner.

20 THE COURT: How do you get these stolen Freightliners
21 and everything?

22 THE DEFENDANT: That day, just -- just go on and get
23 it.

24 THE COURT: I just want you to tell me about how --
25 how do you do that? How do -- how do you just go get a

1 stolen Freightliner?

2 THE DEFENDANT: Keys been in it.

3 THE COURT: Where'd you steal it from?

4 THE DEFENDANT: Industrial Park.

5 THE COURT: You just go there and see a truck and
6 steal it?

7 THE DEFENDANT: I just --

8 THE COURT: It had scrap iron on the back of it?

9 THE DEFENDANT: No, sir.

10 THE COURT: Where'd you steal that from?

11 THE DEFENDANT: On the side of the -- the yard.

12 THE COURT: All right. All right. Anything else, Mr.
13 Carraway?

14 MR. CARRAWAY: That's it.

15 THE COURT: Anything else from the State?

16 MR. BROWN: No, sir, Your Honor.

17 THE COURT: Well, Mr. Hamilton, you seem to be more
18 under -- I mean, when you're in prison, at least you're
19 under control at that point, aren't you?

20 THE DEFENDANT: No, sir.

21 THE COURT: You're out of control?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you cause them a lot of trouble?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: What kind of trouble you cause them?

1 THE DEFENDANT: Fights, arguments.

2 THE COURT: But then when you're out of prison, then
3 you put everyone -- everyone is at your mercy. You driving
4 down the road there from Don's Scrap Iron, to Andrews, back
5 to Greeleyville. Where did they finally stop him?

6 MR. BROWN: About 60 yards from the Charleston border.

7 THE COURT: All the way down 52.

8 MR. BROWN: Right at the Berkeley County line, Your
9 Honor.

10 THE COURT: Yeah. You about to kill everybody along
11 the way. At nine o'clock/ten o'clock on a Friday morning?
12 How many cars did you run off the road?

13 THE DEFENDANT: I -- what -- what I -- what I read in
14 the report, just one. On my warrant is one.

15 THE COURT: All right. Well, Mr. -- I'm giving you
16 ten years on the -- on the resisting arrest. That's the
17 maximum sentence. I'll give you three years on the blue
18 light, and give you one year on the -- the resisting
19 arrest.

20 MR. BROWN: Just to make sure I'm clear, Your Honor,
21 that was ten years on the assault and battery first?

22 THE COURT: Yeah.

23 MR. BROWN: Okay.

24 THE COURT: Assault and battery first, yeah. Ten
25 years on that, three years on the blue light, and one year

1 on the resisting.

2 And I'm revoking the -- you never went on probation
3 did you? You -- they gave you probation, and then you
4 immediately committed a new crime.

5 And I'm revoking the probation in full.

6 THE DEFENDANT: When I max out, I went to my probation
7 officer and they give me a agent. The agent said he's not
8 my agent and I'm supposed to have another agent.

9 THE COURT: What year did you max out?

10 THE DEFENDANT: Eleven.

11 THE COURT: And then did a new crime soon as you got
12 out? When did you get out of prison?

13 THE DEFENDANT: June 1st.

14 THE COURT: You got out of prison June 1st --

15 THE DEFENDANT: Yeah.

16 THE COURT: -- and went to court in Manning?

17 THE DEFENDANT: I get out prison June the 1st --

18 THE COURT: All right.

19 THE DEFENDANT: -- last year. I went to court in '09
20 in Manning.

21 THE COURT: '09.

22 THE DEFENDANT: In Manning.

23 THE COURT: So you did some of the time on -- on the
24 Manning charge?

25 THE DEFENDANT: Yeah.

1 THE COURT: All right. Well, we'll -- I'll let the
2 Department of Corrections figure out what kind of credit
3 you -- you're due for whatever time it is. I'm revoking it
4 in full.

5 MR. SMITH: And civil judgement, Judge?

6 THE COURT: Civil judgement for the balance. All
7 right. So good luck to you.

8 MR. BROWN: Thank you, Your Honor.

9 MR. CARRAWAY: Is all that concurrent, Your Honor?

10 THE COURT: Yes, sir.

11 MR. CARRAWAY: All right.

12 -- END OF TRANSCRIPT OF RECORD --

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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Third Circuit Court for Williamsburg County, South Carolina, on the 7th and 8th days of May, 2012.

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



Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

April 3, 2013

WITNESSES

SHERIFF'S DEPT.

Debra Collins

DOCKET NO. 2011-GS-45-0154

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

AUGUST TERM 2011

THE STATE
vs.

CARLTON J. HAMILTON

ARREST WARRANT NUMBER

M 686072 - M 686075

J/A: 06/30/2011

ACTION OF GRAND JURY

True Bill

VERDICT

Indictment for

ATTEMPTED ASSAULT AND BATTERY
OF A HIGH AGGRAVATED NATURE,
FAILURE TO STOP FOR BLUE LIGHT
AND SIREN AND RESISTING ARREST

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury

Date:

A CERTIFIED TRUE COPY
Sharon W. Staggers
CLERK OF COURT
WILLIAMSBURG COUNTYFILED
JUL 16 2011
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

INDICTMENT FOR
**ATTEMPTED ASSAULT AND BATTERY OF A
HIGH AGGRAVATED NATURE, FAILURE TO
STOP FOR BLUE LIGHT AND SIREN AND
RESISTING ARREST**

At a Court of General Sessions, convened on August 18, 2011, the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - ATTEMPTED ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

That **CARLTON JEROME HAMILTON** did in Williamsburg County on or about June 17, 2011, attempt to commit an assault and battery upon one **Lt. Debra Collins** constituting an unlawful act of violent injury to the person of the said **Lt. Debra Collins**, accompanied by circumstances of aggravation.

COUNT TWO - ATTEMPTED ASSAULT AND BATTERY OF A HIGH AGGRAVATED NATURE

That **CARLTON JEROME HAMILTON** did in Williamsburg County on or about June 17, 2011, attempt to commit an assault and battery upon one **Lt. Sherrod Timmons** constituting an unlawful act of violent injury to the person of the said **Lt. Sherrod Timmons**, accompanied by circumstances of aggravation.

COUNT THREE - FAILURE TO STOP FOR BLUE LIGHT AND SIREN

That **CARLTON JEROME HAMILTON** did in Williamsburg County on or about June 17, 2011, violate Section 56-5-750 of the Code of Laws of South Carolina (1976), as amended, in that while operating a motor vehicle upon the public streets or highways in the State of South Carolina, the said Carlton Jerome Hamilton did fail to stop when signaled to do so by a law enforcement vehicle by means of a siren or flashing light.

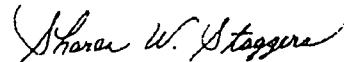
A CERTIFIED TRUE COPY
Sharon W. Staggers
 SHARON W. STAGGERS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

02113

COUNT FIVE – RESISTING ARREST

That **CARLTON JEROME HAMILTON** did in Williamsburg County on or about June 17, 2011, violate Section 16-9-320(A) of the Code of Laws of South Carolina (1976), as amended, in that he did resist the efforts of **Lt. Debra Collins and Lt. Sherrod Timmons**, law enforcements officer of this State, to make a lawful arrest of the said Carlton Jerome Hamilton.

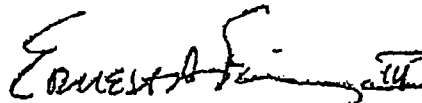
A CERTIFIED TRUE COPY



SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

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

FILED
JUN 16 2011
CLERK OF COURT
WILLIAMSBURG COUNTY



ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS ⁶¹

COUNTY OF Williamsburg

STATE VS.

Carlton Jerome Hamilton

AKA:

Race: 2 Sex: M Age: 42

DOB: 1969 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: N Charleston, SC 29405

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

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: A + B 12

in violation of § 16-3-600 of the S.C. Code of Laws, bearing CDR Code # 3412

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Barr Kimberly

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	
TOTAL	\$	

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive payments of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

SHARON W. STAGGERS

CLERK OF COURT

WILLIAMSBURG COUNTY

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

62 STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Williamsburg

STATE VS.

Carlton Jerome Hamilton

AKA:

Race: 2 Sex: M Age: 42

DOB: 1969 SS#: [REDACTED]

Address:

City, State, Zip: N Charleston, SC 29405

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

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Failure to Stop for Blue

in violation of § 56-5-750 of the S.C. Code of Laws, bearing CDR Code # 0065

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST Kimberly V. [Signature] 8443 Carl Hamilton [Signature] 13157
Bar, Kimberly V SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$

3% to County (if paid in installments) \$

TOTAL \$

Clerk of Court/ Deputy Clerk Carolyn J. WilliamsCourt Reporter: Bonnie Kelly

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2011-GS-45-0154

A/W#: M686072

Date of Offense: 6/17/2011

S.C. Code §: 56-05-0750(B)(2)

CDR Code #: 2396

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: Sharon W. StaggersA CERTIFIED TRUE COPY
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge C. Nenned

Judge Code: 2127

Sentence Date: May 8, 2012

STATE OF SOUTH CAROLINA

COUNTY OF Williamsburg
STATE VS.Carlton Jerome Hamilton

AKA: _____

Race: 2 Sex: M Age: 42DOB: 1969 SS#: _____

Address: _____

City, State, Zip: N Charleston, SC 29405

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Resisting Arrestin violation of § 16-9-320(A) of the S.C. Code of Laws, bearing CDR Code # 0326☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

Barbara Kimberly V

SC Bar# _____

Defendant

Attorney for Defendant

SC Bar# 13157WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1 ~~year~~ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ _____

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Clerk of Court/ Deputy Clerk

Court Reporter: _____

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS **63**INDICTMENT/CASE#: 2011-GS-45-0154A/W#: M686073Date of Offense: 6/30/2011 6-17-2011 (PLS)S.C. Code § : 16-21-0080CDR Code #: 3467

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSPTUP _____
_____ days/hours Public Service EmploymentObtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

DEFINITELY TRUE COPY

Sharon W. Stagers
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2127Sentence Date: May 8, 2012

64 STATE OF SOUTH CAROLINA

COUNTY OF Williamsburg

Carl J. Hamilton, #262583

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

(Please Print)

Submitted By: Carl J. Hamilton, #262583

Address: MacDougall Correctional Institute
May 2 D-8 B
1516 Old Galloway Rd.
Ridgewood, SC 29472

IN THE COURT OF COMMON PLEAS

2012-CP-45-646

CIVIL ACTION COVERSHEET

-CP-

FILED
12 NOV 29 AM 11:15
CAROLINE E. WILLIAMS
CLERK OF COURT
KIRKSTREET, S.

SC Bar #:

A CERTIFIED TRUE COPY

Telephone #:

Fax #: Sharon W. Staggars

SHARON W. STAGGERS

Other: CLERK OF COURT

WILLIAMSBURG COUNTY

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
 Previous Notice of Intent Case #
 20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- Inmate Petitions**
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799)

- Administrative Law/Relief**
☐ Reinstatement Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

- Special/Complex/Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Sexual Predator (510)

Submitting Party Signature:

Carl J. Hamilton

Date:

10/16/12

FORM 5

STATE OF SOUTH CAROLINA)

County of Williamsburg)

IN THE COURT OF COMMON PLEAS

2012-CP-45-646Carl J. Hamilton, #262583)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina

A CERTIFIED TRUE COPY

Sharon W. Staggers
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTYAPPLICATION FOR
POST-CONVICTION RELIEF12 NOV 29 AM 11:15
CAROLINA WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention MacDougall Correctional Institution
1516 Old Gilliard Rd.; Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence Williamsburg County
125 W. Main Street Kingstree, S.C. 29556
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2011-GS-45-0154-A/W# M686074

- (b) 2011-GS-45-0154-A/W# M686073
- (c) 2011-GS-45-0154-A/W# M686072

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) May 8, 2012
- (b) May 8, 2012
- (c) May 8, 2012

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty I was Told to just sign papers.
- (c) after a plea of nolo contendere _____

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

NO

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

- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____

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

- (a) My lawyer would not talk to me to be told to file.

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Insanity or other mental condition at time of offense
- (c) Prosecutorial Misconduct
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel's prejudice was evident in his lack of communication w/me.
- (b) The original Judge ordered a Mental examination
- (c) The Solicitor knew of the Mental health order and changed Judges.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) No communication with my counsel.
 (b) Counsel did not push original judge order for evaluation.
 (c) The Solicitor threatened me on several occasions

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

- (a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

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

- i. William LeGrand Carraway, Esq
15 Courthouse Sq., Kingstree, S.C. 29556
 ii. _____
 iii. _____

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

- i. The above Attorney At All,
 ii. _____
 iii. _____

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

A fair trial as granted by the constitution with fair representation and no fear tactics from the solicitor. This is the only way my innocence will be proven in this matter.

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Williamsburg County)

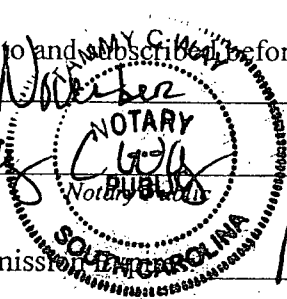
I, Carl Jerome Hamilton, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and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

Mr. Carl J. Hamilton 2625 83

SWORN to and subscribed before me this 16th day of November, 2012.

[Signature] (L.S.)

My Commission March 9, 2014



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

I, Carl J. Hamilton 262583, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Carl J. Hamilton
Applicant

SWORN or affirmed to and subscribed before me this
10th day of November, 2012.

[Signature]
NOTARY PUBLIC
SOUTH CAROLINA
My Commission Expires March 9, 2014

FILED
12 NOV 29 AM 11:15
CAROLYN F. WILLIAMS
CLERK OF COURT
KINGS TREE, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

Carl Hamilton, #262583,

) Case No. 2012-CP-45-646
)

) Applicant,
)

) v.
)

) **RETURN**
)

) State of South Carolina,
)

) Respondent.
)
_____)

The Respondent, making its Return to the application for post-conviction relief, filed November 29, 2012,¹ 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 Williamsburg County Clerk of Court. The Applicant was true bill indicted at the August 2011 term of the Williamsburg County Grand Jury for attempted assault and battery of a high and aggravated nature; failure to stop for blue light and siren; and resisting arrest. (2011-GS-45-0154). William LeGrand Carraway, Esquire, represented Applicant. Applicant pled guilty as indicted on May 8, 2012, before the Honorable Clifton Newman. Judge Newman sentenced the Applicant to ten years imprisonment for the lesser included offense of Assault and Battery—First Offense, three years for failure to stop for blue lights, and one year for resisting arrest all without negotiations or recommendations. Applicant did not file a direct appeal.

Attached herewith and incorporated herein are the records of the Williamsburg County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The guilty plea transcript has been ordered and will be

¹ The application was received by Respondent on January 17, 2013.

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. "Counsel's prejudice was evidence in his lack of communication w/me."
 - b. "Insanity or other mental condition at time of offense"
 - i. "The original Judge ordered a mental examination."
2. "Prosecutorial misconduct"
 - a. "The Solicitor knew of the Mental health order and changed Judges."

Any claims not specifically enumerated in the post-conviction 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, SCRCP.

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.

The Respondent submits that Applicant's claim of "Prosecutorial Misconduct" should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, the Court should summarily dismiss this allegation.

V.

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

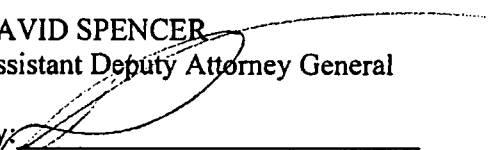
V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

April 4, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	
	)	2012-CP-45-0646
	)	
CARL HAMILTON, 262583,	)	
	)	
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:

John L. Ruffin, Esquire
Graham Law Firm, PA
383 W. Cheves Street
Florence, SC 29501

DATED this 10th day of April, 2013.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA
2 COUNTY OF Williamsburg
3
4

5 Carlton Hamilton,
6 Plaintiff

PCR Hearing
2012CP4500646

7 vs.
8

9 The State of South Carolina,
10 Defendants

February 26, 2014
Sumter, S.C.

11

12

13 Before the Honorable George C. James, Judge.
14
15
16

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

18 Mr. Adam Sinclair Ruffin,
19 Attorney for Plaintiff

20 Mr. Daniel Gourley,
21 Attorney for Defendants

22 Margaret T. Sullivan,
23 Court Reporter
24
25

	Witnesses	Direct	Cross	Redirect	Recross
1	Carlton Hamilton				
2	by Mr. Ruffin	7		21	
	by Mr. Gourley		18		
3	by the Court		23		
	Legrand Carraway				
4	by Mr. Gourley	26			
	by Mr. Ruffin		33		

5

6

E-X-H-I-B-I-T-S

7

No.
P-1

Description
Psychiatric Records

Id. Ev.
 22

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1 THE COURT: This 2012-CP-45-646 Carlton
2 Hamilton versus the State. Williamsburg County.
3 Mr. Ruffin, are you prepared to go forward?

4 MR. RUFFIN: I am, Your Honor.

5 THE COURT: Okay, you can either tell me a
6 little bit about it, or call your first witness.
7 Whatever you would like to do.

8 Mr. RUFFIN: I'll start by telling you a
9 little bit about it, if it pleases the court.

10 THE COURT: Okay.

11 MR. RUFFIN: This is my client Carlton
12 Hamilton. He was, pled guilty on May 8th 2012.
13 And on May 7th 2012, there is also a transcript,
14 with the intention with the first to plead not
15 guilty. And that's also a part of the record.
16 We're going forward today because Mr. Hamilton
17 seeks post-conviction relief on two bases
18 essentially. One, is ineffective assistance of
19 counsel. And the second was some issue regarding
20 prosecutorial misconduct. I'll be discussing the
21 first issue today and leave the second to the
22 extent that Carlton has described it in his
23 filing.

24 With regards to ineffective assistance of
25 counsel, Carl has put forth two arguments that

1 we're going to make today. And those are: One,
2 failure to communicate with counsel or counsel
3 communicate with client. And two, failure to have
4 the psychological evaluation done to determine two
5 things. One, whether he was capable of knowing
6 the difference of right and wrong at the time of
7 the alleged crime being committed. And the second
8 being whether or not he had the ability to
9 understand the charges brought him against when he
10 pleaded guilty.

11 The record reflects in the transcript that
12 in January 30th 2009, it says Judge Cothran. But
13 Carl tells me it was Judge King had ordered a
14 forensic evaluation January 30th 2009, which was
15 completed February 23rd 2009. I have not seen
16 that report, but the transcript reflects that it
17 says he was criminally responsible for crimes
18 committed prior to 2009. This crime was committed
19 I believe, and allegedly in 2011. So a couple of
20 years had passed. He initially went in front of,
21 was it Judge Cothran or Judge King that you saw
22 first. Before you were switched to Judge Newman.

23 THE PLAINTIFF: Judge Cothran.

24 MR. RUFFIN: Judge Cothran was
25 contemplating whether to order another one

1 according to Carl. And then the case went in
2 front of Judge Newman. And Judge Newman made the
3 determination that one was done in 2009, and he
4 didn't see a need to do another one. At least
5 that's how the transcript reads. It's our opinion
6 that it was ineffective assistance of counsel to
7 put -- not push the issue to get him another
8 psychological evaluation or to express to the
9 court that he could not enter a plea, because he
10 was not of sound mind either to enter the plea or
11 to have known that he was committing crimes when
12 he did commit crimes.

13 When you look at the transcript, there is
14 reported paranoia. There is reported auditory to
15 and visual hallucinations. He was taking Zoloft
16 and Trazodone at the time where we recall. But
17 now we have his mental health records from the
18 hospital where he's incarcerated. It shows he is
19 taking Remeron 45 milligrams. Risperdal
20 2 milligrams. And the third one is Desipramine
21 150 milligrams.

22 All high doses of drugs to treat anxiety
23 and antipsychotic medication often used for
24 treatment in schizophrenia or major episodes of
25 bipolar. And those are the medications that he's

1 currently on. The transcript also reflects not
2 only the audio and visual hallucinations but also
3 paranoia. He said his mind comes and goes.

4 The report that was done in 2009, said
5 that he poorly described the logical step in
6 depression and criminal history. And it's our
7 opinion that of course, you know, he would poorly
8 describe any logical steps between any actions
9 that he takes, because he's not of sound mind and
10 he wasn't at the time that he committed these
11 crimes and he wasn't during his plea. May 8th, is
12 when he entered his plea. On that date the record
13 reflects he was having trouble listening to the
14 judge's questions to him. He's having trouble
15 understanding them.

16 He was asked what makes you guilty, by
17 Judge Newman. And his answer was my family. And
18 it was difficult to understand what he meant by
19 that. Later he expressed auditory and visual
20 hallucinations again. And he says that sees his
21 own death. He sees other people's death. He sees
22 dead people. He sees himself in a coffin
23 frequently. And he's associated anytime he sees
24 himself in a coffin with, I think he says a family
25 member always dies when he sees them. So he

Carlton Hamilton-Direct by Ruffin

1 believes that he has sort of a premonition. Sort
2 of clairvoyant really as well.

3 He says he was off his medication when he
4 committed these crimes. Again these were pretty
5 substantial doses of substantial drugs that he had
6 been prescribed. He that he had a family Ida
7 Simmons, his aunt, to explain when he is off his
8 medication, he sometimes goes out, is the quote.
9 So, Your Honor, it's our position that both based
10 on the failure to communicate with the client, as
11 well as, Carl's inability to know he had done
12 wrong when he committed the crimes, and his
13 inability to understand when he was entering the
14 plea or to assist his counsel with his plea due to
15 his mental capacity; that he should be granted
16 post conviction relief.

17 THE COURT: You can call your first
18 witness.

19 MR. RUFFIN: If we may, we may call
20 Carlton Hamilton to talk about it.

21 Carlton Hamilton, Being first duly
22 sworn, testified as follows.

23 THE BAILIFF: State your name and spell
24 your last for the record.

25 A My name is Carl Jerome Hamilton.

Carlton Hamilton-Direct by Ruffin

1 DIRECT EXAMINATION by Mr. Ruffin:

2 Q How are doing this morning, Carl?

3 A Fine.

4 Q Tell me a little bit about your mental
5 health and when you first felt that you were
6 experiencing some problems with your mental
7 capacity or with issues of mental behavior issues?

8 A I was experiencing in my middle school
9 years. 82. Experience that at in 82.

10 Q Were you diagnosed with anything in 1982?

11 A Yes.

12 Q What were you diagnosed with?

13 A Bipolar.

14 Q So tell me a bit about bipolar. Is that
15 where you have highs and lows, or trouble
16 controlling your emotions?

17 A It's high and low. And then most of the
18 time controlling like emotion.

19 Q I have also heard in extreme episodes of
20 bipolar, it can lead to auditory and visual
21 hallucinations. Have you ever experienced any
22 auditory or visual hallucinations in your life?

23 A Yes.

24 Q Can you tell us a little bit about those
25 when then first started?

Carlton Hamilton-Direct by Ruffin

1 A Most of the time it started from my
2 sleeping. I visit dead people, and I visit myself
3 laying in the coffin and all.

4 Q Can you tell me when they first started
5 though.

6 A 82. Or 82.

7 Q You said when you sleep. What about when
8 you are awake, do you have any auditory or visual
9 hallucinations while you are awake?

10 A Yes.

11 Q Can you tell us about those?

12 A Sometimes seeing people, dead people while
13 I am awake. And it is hard for me to let it go.

14 Q What about auditory hallucinations,
15 hearing things in your head?

16 A Yes.

17 Q What do you hear?

18 A People talking and nobody around. I hear
19 that all the time.

20 Q And that started in around the early 80's?

21 A Yes.

22 Q Did you receive any treatment for this---

23 A Yes.

24 Q ---in the 80's? Where did you receive
25 treatment?

Carlton Hamilton-Direct by Ruffin

1 A MUSC.

2 Q At MUSC?

3 A Yes.

4 Q And did they prescribe any medication?

5 A Yes.

6 Q Do you know what medications you were
7 taking back then?

8 A No.

9 Q You don't remember?

10 A Uh-uh. (Negative.)

11 Q Tell me a little bit, I guess, did you
12 receive any treatment beyond the 80's? I guess
13 let's go through a little bit of what treatment
14 you received.

15 THE COURT: Could you put on the record
16 how old he is, or ask him?

17 Q Sure. How old are you?

18 A I am 45 right now.

19 Q So then in 82, you would have been how
20 old? Were you in middle school?

21 A Middle school.

22 Q So about 12ish?

23 A Yeah, about that time.

24 Q So right around the time that you hit
25 puberty or in your adolescence, you started having

Carlton Hamilton-Direct by Ruffin

1 mental problems.

2 A Yes.

3 Q Beyond MUSC, after MUSC, did you receive
4 treatment anywhere else? And if you have, would
5 you mind telling us when?

6 A After receiving at MUSC, I received mental
7 health treatment in the last 90's. About 2000.

8 Q 90's. Late 90's, 2000.

9 A Yeah.

10 Q Do you remember where that was?

11 A Mental health in Charleston.

12 Q Why did you get treatment from the mental
13 health in Charleston?

14 A I really don't -- I just don't know right
15 now.

16 Q You don't know right now why you did?

17 A Uh-uh. (Negative.)

18 Q But did you go voluntarily?

19 A Yes.

20 Q No one took you there. You went on your
21 own.

22 A I went on my own.

23 Q You felt you were having some issues that
24 required you to receive mental health treatment?

25 A Yes.

Carlton Hamilton-Direct by Ruffin

1 Q Tell me a little bit about your run-ins
2 with the law. I know that there's been prior
3 occasions where you have been arrested for certain
4 things, is that accurate?

5 A Yes.

6 Q And in 2009, you were arrested for
7 something, correct?

8 A Yes.

9 Q And what were you arrested for 2009? Or I
10 guess maybe was it 2009 where you had the mental
11 evaluation?

12 A Yes.

13 Q And what crime were you being charged with
14 where you were ordered to get a mental
15 evaluation?

16 A I been charged with possession of a stolen
17 vehicle.

18 Q And that was in 2009. And you received a
19 mental evaluation.

20 A Yes.

21 Q And since that time, have you taken any
22 medications that you weren't prescribed in 2009?

23 A Yeah, I am taking medication.

24 Q So you prescribed new medication since
25 2009.

Carlton Hamilton-Direct by Ruffin

1 A Yeah.

2 Q Have you received any inpatient care since
3 2009?

4 A No.

5 Q What about and since you've been -- have
6 you been incar -- since 2009, I guess I am trying
7 to say you went to jail in 2009, is that correct?

8 A Yes.

9 Q When did you get out?

10 A 11.

11 Q 2011.

12 A Yeah.

13 Q During 2009 to 2011, did you receive
14 psychiatric treatment while you were in prison?

15 A Yeah, I see my counselor.

16 Q And would you go to see the doctor for
17 issues?

18 A Yeah.

19 Q And they would adjust your medication?

20 A Yes.

21 Q And they would at times increase it?

22 A Yes.

23 Q And maybe prescribed new medications?

24 A Yeah.

25 Q And then you were out of in 2011?

Carlton Hamilton-Direct by Ruffin

1 A Yes.

2 Q And I think -- were you continuing to
3 take medication, or were you prescribed medication
4 in 2011?

5 A I have been taking in 2011, taking
6 medication.

7 Q And tell me a little bit about the crimes
8 you were charged with on the day that that
9 occurred. You were supposed to be taking
10 medication at that time?

11 A Yes.

12 Q Tell me a little bit about whether or not
13 you were able to take your medication, or whether
14 you were taking your medication on the date that
15 the charges came to be.

16 A On that time I have been like a week off
17 my medication.

18 Q And why were you off your medications?

19 A I been making phone calls trying to get
20 medication, and I never received a phone call
21 back.

22 Q Carl, what happens when you are off your
23 medications?

24 A I am a totally different person.

25 Q In what way?

Carlton Hamilton-Direct by Ruffin

1 A Bad mood. Frustrated. I'm probably going
2 to hurt somebody.

3 Q Did your hallucinations come back?

4 A Yes.

5 Q When you're on the medication, does that
6 help take away the hallucinations?

7 A A little bit.

8 Q So you were not on your medication on the
9 date that the -- when you tried to take a truck to
10 the impound to sell the truck?

11 A No, I been on my medication.

12 Q You had an aunt that said that it seems
13 like you just come and go sometimes. Like you're,
14 you know, you go out of it. Tell me about that.

15 A When I'm not on my medication, I'll just
16 be an evil person. I just don't care about
17 nothing. And just lost.

18 Q And so your issues with bipolar get worse
19 when you're not on your medication?

20 A Yes.

21 Q And if you're not on your medication, you
22 hallucinate sometimes?

23 A Yes.

24 Q You hear things sometimes?

25 A Yeah.

Carlton Hamilton-Direct by Ruffin

1 Q You're impulsive. You're paranoid.

2 A Paranoid.

3 Q And then you were arrested and charged
4 with certain crimes associated with the reason
5 you're in jail right now, is that correct?

6 A Yes.

7 Q And do you remember -- do you remember
8 pleading guilty on May 8th 2012?

9 A Not really. I just -- not really, I been
10 just frustrated.

11 Q Do you know if you understood what the
12 judge was explaining to you that day?

13 A Not carefully.

14 THE COURT: What was your answer? What
15 was your answer to that question?

16 A No.

17 Q And the transcript said that your mind
18 sometimes comes and goes. How were you that day,
19 do you remember?

20 A That day, frustrated. Been down.

21 Q And in fact, whenever he asked you what
22 makes you guilty, you said your family. Do you
23 remember saying that?

24 A Yeah.

25 Q What does that mean?

Carlton Hamilton-Direct by Ruffin

1 A My sister had heart surgery. By-pass
2 heart surgery. And my mama has got Alzheimer's
3 right then. My aunt been talking to me, and
4 that's where I, you know, that's the only reason I
5 had to plea.

6 Q Did you know what you were pleading to?
7 Did you understand?

8 A I supposed to be pleading to assault and
9 battery of a high and aggravated nature. That's
10 the charge they are supposed to have me on.

11 Q Did you understand what was going on?

12 A No.

13 Q Did you understand the questions the judge
14 was asking you?

15 A Not all of it.

16 Q Did you express to your attorney that you
17 were having trouble understanding?

18 A Attorney, didn't no one would listen.

19 Q Did your attorney tell you to---

20 A Just go ahead and plead.

21 Q Just go ahead and plead?

22 A Yeah.

23 MR. RUFFIN: Thank you. No further
24 questions.

25 THE COURT: Mr. Gourley.

Carlton Hamilton-Cross by Gourley

1 Cross Examination by Mr. Gourley:

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

4 A About four.

5 Q Four times. Did you all go over any
6 type -- go over the evidence or anything?

7 A No, sir.

8 Q So you never saw any of that?

9 A No, sir.

10 Q Did you all go over any type of defenses
11 or anything?

12 A All that he want me to just, just to
13 plead.

14 Q Just to plead?

15 A Yeah.

16 Q Did you ever give him any kind of
17 witnesses or leads to talk to?

18 A He didn't want to talk to me.

19 Q He didn't want to talk to you? What did
20 you all talk about during the four meetings?

21 A We never talked. The only person who
22 talked to me is the solicitor.

23 Q The solicitor talked to you?

24 A Yes.

25 Q Do you recall waiving your constitutional

Carlton Hamilton-Cross by Gourley

1 rights during your plea?

2 A Not if I remember.

3 Q You don't remember that?

4 A Uh-huh. (Negative.)

5 Q Do you recall telling the plea judge that
6 you were satisfied with your counsel's services?

7 A No.

8 MR. GOURLEY: And, Your Honor, that is
9 page 17 line 4 through 10.

10 Q You also told the judge that he had done
11 everything he was supposed to do on your behalf.
12 Do you recall saying that?

13 A I am not sure.

14 Q Do you recall telling the judge that you
15 were guilty of assault and battery in the first
16 degree for attempting to run an officer off the
17 road in a stolen vehicle?

18 A At the time my lawyer tell me to go ahead
19 plead guilty to it. I am making the judge mad
20 right now.

21 Q So your lawyer told you to answer certain
22 questions.

23 A Yeah.

24 Q Mr. Hamilton, who is doing the time?

25 A Huh?

Carlton Hamilton-Cross by Gourley

1 Q Who is doing the time, you or your lawyer?

2 A Me.

3 Q And you were mentally evaluated on
4 June 12th 2009, right?

5 A Yeah.

6 Q They found you competent to stand trial
7 and criminally responsible. Do you remember that?

8 A I remember they had me in front of the
9 judge.

10 Q And then you got out in 2009, and then
11 your subsequent---

12 A Yeah.

13 Q ---charge?

14 A Yeah.

15 Q And where are you currently housed?

16 A Right now?

17 Q Yes, sir.

18 A At MacDougall.

19 Q At MacDougall?

20 A Yeah. Institution.

21 Q Have you moved around any?

22 A No.

23 Q Have you ever been in Gilliam?

24 A No.

25 Q And are you on your medications today?

Carlton Hamilton-Cross by Gourley

1 A No.

2 MR. GOURLEY: No other questions, Your

3 Honor.

4 MR. RUFFIN: Just a few follow up.

5 Redirect Examination by Mr. Ruffin:

6 Q Carl, since your 2009 evaluation, have you
7 been prescribed new medications?

8 A Yes.

9 Q Have you had doses of your medications
10 increased?

11 A Yes.

12 Q Have you received treatment while in
13 prison and while incarcerated since 2009, in the
14 form of speaking with any sort of psychiatrist or
15 counselor?

16 A Only the counselor and the psychiatrist.

17 MR. RUFFIN: Your Honor, I would like to
18 admit into the record Carl's psychiatric reports
19 dating all the way back to 2010, I believe,
20 indicating all the medications that he has been
21 prescribed, his diagnosis, and how they have
22 increased.

23 THE COURT: Are these SCDC records?

24 MR. RUFFIN: I believe they are.

25 THE COURT: Any objection, Mr. Gourley?

Carlton Hamilton-Redirect by Ruffin

1 MR. GOURLEY: I believe they would be more
2 proper through Mr. Carraway, if I am not mistaken,
3 Your Honor.

4 THE COURT: Well just go ahead and at
5 least mark them for ID.

6 MR. GOURLEY: Okay.

7 THE COURT: And make sure they are one
8 exhibit. And they need to be stapled. Or somehow
9 put together so they won't get lost.

10 (Psychiatric Records of Carlton Hamilton
11 marked Plaintiff's Exhibit No. 1 for id.)

12 THE COURT: Just hand them to me, please.

13 Q Carl, just to make sure we get those into
14 evidence, did you hand me some records this
15 morning?

16 A Yes.

17 Q What did you hand me?

18 A My mental health record and my school
19 record.

20 Q How did you get your medical records?

21 A I had talked to the counselor at
22 MacDougall.

23 Q And the counsel gave them to you?

24 A She gave me the address to write to the
25 mental health, the SCDC.

Carlton Hamilton-Redirect by Ruffin

1 Q And you wrote to the mental health SCDC,
2 and they mailed you your records?

3 A Yes.

4 Q And they do so at your request?

5 A Yes.

6 Q And in those records, does it show the
7 medications that you were then prescribed?

8 A Yes.

9 Q Does it discuss the diagnosis that you
10 received?

11 A Yes.

12 Q Does it discuss your report of
13 hallucinations?

14 A Yes.

15 MR. RUFFIN: No further questions.

16 THE COURT: Any objections to me asking
17 questions, Mr. Ruffin?

18 MR. RUFFIN: No objections, Your Honor.

19 THE COURT: Mr. Gourley.

20 MR. GOURLEY: No, Your Honor.

21 THE COURT: Mr. Hamilton, you said that
22 you not taking your medications now.

23 A No, sir.

24 THE COURT: What are you supposed to be
25 taking?

Carlton Hamilton-by the Court

1 A I take it at nighttime.

2 THE COURT: No, what?

3 A Remeron and Risperdal.

4 THE COURT: Risperdal.

5 A Yeah.

6 THE COURT: And what?

7 A That's it.

8 THE COURT: And you said one other one.

9 A Remeron.

10 THE COURT: Remeron and Risperdal.

11 A Yeah.

12 THE COURT: Is that two medicines?

13 A Yes, sir.

14 THE COURT: And why aren't you taking
15 those now?

16 A They're supposed to keep me balanced and
17 supposed to keep me focused at all times.

18 THE COURT: But why aren't you taking
19 them.

20 A No, I take it at nighttime.

21 THE COURT: Oh, well he said are you
22 taking your medications now. Did you take them
23 last night?

24 A Yes, sir.

25 THE COURT: The night before?

Carlton Hamilton-by the Court

1 A Yes, sir.

2 THE COURT: And the night before?

3 A Yes.

4 THE COURT: So you are taking them like
5 you are supposed to.

6 A Yeah.

7 THE COURT: That's all I have. Any follow
8 up from you, Mr. Ruffin?

9 MR. RUFFIN: No, Your Honor.

10 THE COURT: Mr. Gourley?

11 MR. GOURLEY: Nothing, Your Honor.

12 THE COURT: Mr. Hamilton, you can step
13 down. Thank you. Mr. Ruffin.

14 MR. RUFFIN: No further witnesses, Your
15 Honor.

16 THE COURT: Mr. Gourley.

17 MR. GOURLEY: We would call Mr. Carraway,
18 Your Honor.

19 William Legrand Carraway, being first duly
20 sworn, testified as follows:

21 THE BAILIFF: State your name and spell
22 your last for the record.

23 A Legrand Carraway. C-A-R-R-A-W-A-Y.

24 Direct Examination by Gourley.

25 Q Mr. Carraway, how long have you been

Legrand Carraway-Direct by Gourley

1 practicing law?

2 A 22 years.

3 Q And were you appointed in this case?

4 A Yes, I was.

5 Q And how many times did you meet with the
6 applicant prior to his plea?

7 A I am not sure. If he said four.

8 Q Sounds about right?

9 A At least that.

10 Q Yes, sir. Did you file any Rule 5 or
11 Brady motions?

12 A Yes.

13 Q Did you review that with him?

14 A Yes, I did.

15 Q Did you all discuss his version of the
16 facts?

17 A Yes.

18 Q And could you briefly describe the State's
19 evidence in this case?

20 A I think basically he was charged with -- I
21 think he drove a large truck, and he had some
22 large piece of equipment on the back of the truck.
23 And he drove it Don's Scrap Iron in Hemingway.
24 And he was there trying to sell it. And I think
25 Don Brewer was there, the owner of Don's Scrap

Legrand Carraway-Direct by Gourley

1 Iron, and I think he became suspicious. And then
2 I think Mr. Hamilton became suspicious that
3 Mr. Brewer may be on to what was going on. And I
4 think he drove off in the truck. And Mr. Brewer
5 called Williamsburg County Sheriff's Department.
6 And Mr. Brewer followed Mr. Hamilton back towards
7 Charleston. I think he followed him for a 20, 30,
8 or 40 miles or whatever, and then the sheriff's
9 department got in behind him and followed him and
10 tried to stop him.

11 I think he actually at one point through
12 some sort of instrument that has tax in it, out in
13 front of the vehicle or whatever. And I think
14 that may have eventually -- I think it may have
15 gotten some flattened tires and the truck went off
16 the road. And they went off into -- and Mr.
17 Hamilton got out of the vehicle and ran. And I
18 think he was arrested a week later.

19 Q Would you characterize this evidence as
20 overwhelming?

21 A Yes.

22 Q Did you all discuss any possible defenses
23 or anything like that?

24 A I think he never denied any of the facts
25 of the case. His thing was, was that he was not

Legrand Carraway-Direct by Gourley

1 sure of what he was doing at time. And that he
2 thought that he was taking different medication,
3 was having certain problems and was hallucinating.
4 And just, his deal was, that he was not criminally
5 responsible at that time; that he did not right
6 from wrong. Or was not able to conform his
7 conduct to the law even if he knew what was --
8 knew right from wrong, he was not able to conform
9 his conduct to the law. That was his thing. He
10 never questioned the facts. He never said that
11 wasn't me, and that's not what I tried to do or
12 any of that stuff.

13 Q Right.

14 A He didn't say any of that.

15 Q So his argument was that he was not
16 criminally responsible and so on?

17 A He was not criminally responsible.

18 Q Did you ever seek out to have a mental
19 evaluation done on him?

20 A He -- we took him before Judge Cothran.
21 And I think back in 2009, Judge Cothran had in
22 Clarendon County -- he was up on charges in
23 Clarendon County. And I think he ordered an
24 evaluation at that time. I think back at the time
25 of that evaluation -- when that evaluation came

Legrand Carraway-Direct by Gourley

1 in, I think the examiner said that he had claimed
2 that he received treatment at a Santee facility.

3 Q Okay.

4 A And they checked in to that and they said
5 they couldn't find any record of that. And I
6 think what he kept -- and then Judge Cothran, when
7 he came he back before Judge Cothran---

8 THE COURT: In Williamsburg County?

9 A That's Williamsburg County. When he came
10 back before Judge Cothran on these charges, Judge
11 and he, he sought to have another mental
12 evaluation. Judge Cothran questioned him and he
13 said what is different now. You just had back
14 then in 2009. I ordered one in 2009, and you were
15 found to be criminally -- you were found to be
16 responsible back then. And he read through that
17 report. He said what has happened since then.
18 And he indicated back then, he said well I had
19 some more problems since then. And I have been in
20 another facility or whatever.

21 Q Uh-huh. (Affirmative.)

22 A And Judge Cothran said well, which
23 facility was that. And he couldn't, he didn't --
24 he wasn't quite sure. And he said, he kept
25 saying, well, you know, I need to get these

Legrand Carraway-Direct by Gourley

1 records from that place or whatever. And Judge
2 Cothran said you're talking about a place. You're
3 claiming that you have been treated for some
4 mental problem in a facility after 2009, is that
5 what you are saying. He said yeah, I need to get
6 those records from there. And I need my lawyer to
7 get those or whatever.

8 And but he never could tell, and before,
9 of course in 2009, they he said he had claimed
10 that he had been in the Santee facility. And they
11 claimed they couldn't find any record that he had
12 ever been there. He couldn't give me any place
13 that he had been. We couldn't find any place he
14 had been. And his family could not provide me any
15 information of a place that he had been since
16 2009.

17 And Judge Cothran did say if you can bring
18 me some further information after 2009, like from
19 a place like that Santee facility or some other
20 place you have been, I will reconsider whether you
21 are to get an evaluation or not.

22 Q Right.

23 A And that's what the deal sort of was
24 there.

25 Q So you looked into whether or not he had

Legrand Carraway-Direct by Gourley

1 been treated since 2009?

2 A Since 2009, like he claimed. He kept
3 claiming that he---

4 Q Okay.

5 A ---wanted those records, and that he'd
6 ordered those records. And that those records --
7 that we needed to get those records.

8 Q Now did you any problem communicating with
9 him---

10 A No.

11 Q ---during your representation?

12 A No.

13 Q He seemed to understand everything?

14 A Yes.

15 Q Did he ever ask you any questions or
16 anything like that?

17 A He kept -- he wanted those records. He
18 said that's what I want. He said, because Judge
19 Cothran had told him if you get these records, if
20 you get those and if those records exist, I will
21 happy to look at those records and reconsider
22 whether I will order another evaluation. But
23 without those records, you just had one in 2009,
24 you have given me no -- I don't see a reason to
25 order another evaluation.

Legrand Carraway-Direct by Gourley

1 Q Right. Did any of his family members come
2 up to and say that he was -- they had any concerns
3 about his mental competency, other than what was
4 already previously?

5 A Well they said that it seems like at some
6 time, yeah, they had some problems with him. You
7 know, that he -- I don't think there any question
8 that he was taking medication and he may have been
9 diagnosed as a certain thing. And I don't think
10 there was any question about that.

11 Q Right.

12 A But he had expressed all that to Judge
13 Cothran about all those things.

14 Q Okay.

15 A But they never told me that yes, we
16 visited him at a certain mental facility.

17 Q Right.

18 A Or that, you know, we know he was there.
19 Or, you know, we received correspondence in the
20 mail from a certain place and we opened it up and
21 it said he had been some place 2009. They never
22 said that.

23 MR. GOURLEY: Your Honor, I have no
24 further questions. Thank you, Mr. Carraway.

25 THE COURT: Mr. Ruffin.

Legrand Carraway-Cross by Ruffin

1 MR. RUFFIN: A few on cross.

2 CROSS EXAMINATION by Mr. Ruffin:

3 Q Good morning.

4 A Good morning.

5 Q First off, his family members did express
6 to you they had concerns about his mental well
7 being.

8 A It seems like at some time they did. But
9 they didn't come up. I don't know that they were
10 ever there for any of the prior hearings. They
11 just sort of -- it seems like they were there at
12 the final. You know, when he finally plead
13 guilty.

14 Q But they told you he had mental problems,
15 true?

16 A Yes.

17 Q And Carl was adamant to you that he had
18 received treatment outside of prison since 2009,
19 true?

20 A Yes, he was. Yes, he did say that.

21 Q Did you -- do you have any records of --
22 or any record of you requesting records from
23 anything mental health care facility other than
24 the one that you've mentioned?

25 A He never gave me the name of any. And

Legrand Carraway-Cross by Ruffin

1 there was never any. And I saw what had happened
2 before where he claimed that he had that. And I
3 said just tell me where was it that you were, or
4 have your parents bring me by where we need to
5 order these from. Where have you been.

6 Q What was the name of the once place that
7 you said that he named?

8 A He never told it to me. He just expressed
9 before that he had been to a Santee. Some sort of
10 Santee facility. I think I saw that in the prior
11 report.

12 Q Do you have with you today any record --
13 of you requesting record from any mental health
14 facility?

15 A No, because he never told me one that he
16 had been to.

17 Q So you never sent a request to any health
18 care facility---

19 A No, because he never gave me---

20 Q ---in this state for mental health care
21 records.

22 A No, because he never gave me one that he
23 had been to. I said, tell me where you have been.
24 What town was in it. Where might it have been, or
25 have your parents come by here and tell me where

Legrand Carraway-Cross by Ruffin

1 you've been. He couldn't tell me.

2 Q Would you agree it's difficult to get
3 records from a health care facility if no letter
4 is sent requesting it, true?

5 A I believe it is difficult to get one from
6 a place if he doesn't tell me where to send one.

7 Q And you agree that it would be difficult
8 to get health care records from a mental health
9 care facility if no request is made, true?

10 A You're not going to get one. And if he
11 doesn't tell me where he went, I won't know where
12 to send it.

13 THE COURT: You answered it. I understand
14 the point.

15 A He never Judge Newman or Judge Cothran
16 where he had been. They asked him where he'd
17 been.

18 Q And he never disputed the facts in this
19 case, did he?

20 A He never disputed the facts.

21 Q Did you express to Judge Cothran that he
22 had been taking new medications since 2009?

23 A I did not.

24 Q Did you express to Judge Cothran that his
25 doses had been increased since 2009?

Legrand Carraway-Cross by Ruffin

1 A No, I did not.

2 Q Did you express to Judge Cothran that he
3 had seen -- sought out medical treatment and
4 therapy while he was in prison at 2009?

5 A No, I did not.

6 Q Did you offer Judge Cothran the medical
7 records from the SCDC reflecting any care and
8 treatment he had received since 2009?

9 A No, I did not.

10 MR. RUFFIN: No further questions.

11 THE COURT: Redirect?

12 MR. GOURLEY: None, Your Honor.

13 THE COURT: Step down. Thank you, sir.

14 Any additional witnesses, Mr. Gourley?

15 MR. GOURLEY: No, Your Honor.

16 THE COURT: Reply?

17 MR. RUFFIN: No, Your Honor.

18 THE COURT: Anything that you would like
19 to say in closing, Mr. Ruffin?

20 MR. RUFFIN: I would. Your Honor, on the
21 issue of mental capacity, I think that his answers
22 as well as questions that were asked during the
23 transcript from the May 7th to May 8th, indicate a
24 lack of understanding in both what he was doing at
25 the time these actions were committed as well as

1 an understanding of the process that he was
2 undergoing to plead guilty.

3 THE COURT: Isn't that an issue for
4 appeal, first of all?

5 MR. RUFFIN: Your Honor, I believe that it
6 becomes an issue for this court, because it was
7 ineffective assistance of counsel to advise a
8 client who is having difficulty understanding what
9 is going on, to plead guilty. And I think that
10 that's reflected in the record.

11 THE COURT: Well isn't it trial judge's
12 responsibility to make those same determinations?
13 In other words, I find the plea has been entered
14 freely, voluntarily, knowingly with the full
15 knowledge of his rights and the consequences of
16 his decision to plea. That's either an express or
17 an implied finding in every plea when the judge
18 accepts the plea.

19 MR. RUFFIN: It is, Your Honor. And the
20 judge may make -- only make that decision on the
21 evidence that's put forward in front of him, Your
22 Honor. And without psychological evaluation, the
23 judge made a decision based on the information
24 that was in front of him. And the psychological
25 evaluation was not gained because no judge was

1 ever notified that Carl's medications had changed;
2 that there had been increase in the dosage of
3 medication that he had been receiving.

4 THE COURT: Well how could they be
5 increased in, you're talking about his new
6 medications had increased in dosage?

7 MR. RUFFIN: I think the record will show
8 that there has been some medications that he took
9 then that he continues to take, or that the doses
10 had been increased, or that stronger medications
11 have been replaced and certain other ones had been
12 supplemented.

13 THE COURT: Now did Mr. Carraway ask for
14 an evaluation?

15 MR. RUFFIN: I believe that---

16 THE COURT: Or at lease Mr. Hamilton did.

17 MR. RUFFIN: He did. Hamilton certainly
18 did. It's our position, Your Honor, that without,
19 without the judge having the benefit of knowing
20 that new medications had been prescribed, without
21 knowing that he received inpatient treatment,
22 while incarcerated, without trying to track down
23 those medical records from the other facility that
24 Carl went to after 2009; that the judge in making
25 his decision, didn't have all the facts before

1 him. And it's our position that had that
2 information been brought to the judge's attention
3 that a psychological evaluation would have been
4 ordered.

5 THE COURT: And these are -- all these
6 sentences were concurrent. The sentencing sheets
7 don't reflect concurrent or consecutive. But
8 they're concurrent?

9 MR. RUFFIN: They are. I believe he's set
10 to be released in 2016.

11 MR. CARRAWAY: That's correct, they were
12 concurrent.

13 MR. RUFFIN: And he's up for parole again
14 in October of this year. He was denied parole.

15 THE COURT: And he understands that if the
16 application is granted, he will be back in court
17 on the greater charge of ABHAN.

18 MR. RUFFIN: I have explained it to him,
19 Ad nauseam.

20 THE COURT: Anything else, Mr. Ruffin?

21 MR. RUFFIN: No, Your Honor.

22 THE COURT: So you're essentially saying
23 had Mr. Carraway asked for and received at least
24 the SCDC records, and given those to the judge or
25 given him the information that the medication had

1 changed and that dosage had been increased, that
2 the -- Mr. Hamilton's decision to plead would have
3 been different, or the judge would have asked for
4 or ordered an evaluation, which one?

5 MR. RUFFIN: Your Honor, it's our position
6 that had the judge been presented with all the
7 information that was out there to show his need
8 for a mental evaluation, then one would have been
9 granted. And therefore, it was ineffective
10 assistance of counsel to not put forth all of the
11 evidence in the light and given a psychological
12 evaluation.

13 THE COURT: And are you required at this
14 stage to establish to me, what that evaluation
15 would have shown?

16 MR. RUFFIN: Your Honor, I believe that
17 bears on prejudice in the Strickland test. It's
18 a very difficult thing to try to say what some
19 other test would have shown that wasn't offered.
20 It's our position that given his medical history
21 as well as subsequent changes since 2009, or
22 reading of the transcript showing a lack -- and I
23 think it shows a basic lack of understanding of
24 the proceedings that he was undergoing. And so,
25 Your Honor, it's our position that based upon

1 that subsequent change since his 2009 evaluation,
2 as well as the record itself and testimony from
3 the aunt that's reflected in the transcript; that
4 that information shows that in fact there was
5 prejudice against Carl.

6 THE COURT: Okay. I understand.
7 Mr. Gourley.

8 MR. GOURLEY: Your Honor, I think the view
9 already stated is a more applicable situation in
10 this case. Mr. Carraway testified that he had no
11 problem understanding Mr. Hamilton. And
12 Mr. Hamilton never expressed any concerns of
13 understanding during his course of representation.
14 Also Mr. Carraway and Mr. Hamilton both requested
15 apparently during Judge Cothran's time, to get a
16 mental evaluation. And Judge Cothran gave him the
17 opportunity to, you know, provide any records as
18 Mr. Hamilton stated. Mr. Carraway explained that
19 he was unable to locate any facility whatsoever
20 that Mr. Hamilton was at. And that he looked into
21 it. And at that point time, Mr. Carraway can't
22 find something that doesn't exist.

23 And, Your Honor, for those reasons we
24 would request that you deny his application.

25 THE COURT: Mr. Ruffin, one more

1 question. Didn't he testify today that he doesn't
2 recall the names of any places he had been?

3 MR. RUFFIN: Did you -- do you recall the
4 name of any place---

5 THE COURT: No, I think he's already
6 testified to that. He said for his late 90's and
7 2000, he doesn't know what he went for, but he
8 went voluntarily. In prison from 2009 and 2011.
9 When he got out, he took medications. The date
10 these charges arose he had been off his meds for
11 about a week because he didn't have them. He's in
12 a bad mood, frustrated, hallucinating, wanted to
13 hurt somebody. I would assume that if you had
14 information of where he had been treated after he
15 got out of prison 2 or 3 years ago, you would have
16 presented those to me.

17 MR. RUFFIN: Correct, Your Honor. It's my
18 position that the sort of the effort that was made
19 at the time to find that, was ineffective
20 assistance. And so I guess perhaps that would be
21 a reflection on mine now as well since I did not
22 make a request as well for those records.

23 THE COURT: Well, Mr. Hamilton, where were
24 you treated after you got out of prison in 2011?

25 MR. RUFFIN: Well did you get out of

1 prison in 2011 from 2009?

2 THE COURT: Where did you get treated?

3 THE PLAINTIFF: Mental health at a --
4 mental health in West Ashley, in Charleston
5 County.

6 THE COURT: Did you tell Mr. Carraway
7 that?

8 THE PLAINTIFF: Mr. Carraway never asked
9 me that did.

10 THE COURT: Did you tell him that?

11 THE PLAINTIFF: I tell him that.

12 THE COURT: Did you tell the judge that?

13 THE PLAINTIFF: I tell Judge Cothran that.

14 THE COURT: You told Judge Cothran that.

15 THE PLAINTIFF: Yeah. Judge Cothran tell
16 me, try to get my medical record. When I tried
17 to get my medical record, my aunt tried to get it
18 for me.

19 THE COURT: That's okay. He can stay
20 seated. Thank you though, I appreciate it.

21 THE PLAINTIFF: My aunt going there and
22 tell him -- explained to him why then that at the
23 time. They tell my aunt they send the paper to me
24 at the county jail. I never received the paper
25 from the mental health beside for my record.

1 THE COURT: And you said you told Judge
2 Cothran that.

3 THE PLAINTIFF: Yes, sir.

4 THE COURT: On the record.

5 THE PLAINTIFF: Yes, sir.

6 THE COURT: Anything else, Mr. Ruffin, in
7 closing?

8 MR. RUFFIN: No, Your Honor.

9 THE COURT: Anything else, Mr. Gourley?

10 MR. GOURLEY: No, Your Honor.

11 THE COURT: Mr. Grant, I will be making a
12 decision in your case. An order will be issued,
13 and Mr. Ruffin will tell you about any appeal
14 rights if you're not satisfied with my findings.
15 And I'll have a decision within a the next few
16 days or the perhaps next week.

17 THE PLAINTIFF: Thank you, sir.

18 THE COURT: Mr. Hamilton. I said
19 Mr. Grant and it's Hamilton.

20 --End of Requested Transcript of Record--

21

22

23

24

25

C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third 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 on February 26, 2014 in the Common Pleas Court, Williamsburg County, Sumter, South Carolina.

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

11--22-14
DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 9/7/2021

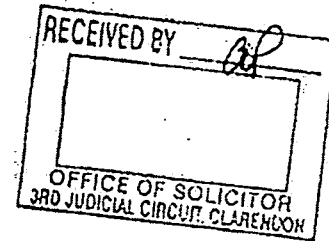
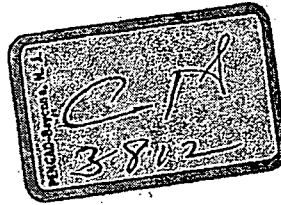


South Carolina
Department of
Mental Health

Columbia Behavioral Health System
Forensic Center
7901 Farrow Road
Columbia, South Carolina 29203
Information: (803) 935-5600
Fax: (803) 935-5544

February 24, 2009

Deborah Butcher
Attorney at Law
141 N. Main Street
Sumter, SC 29150



Re: The State of South Carolina vs. Hamilton, Carl J.
DMH Case #: 203-7012
Clarendon County, Court of General Sessions

Dear Attorney Butcher:

In accordance with the court order issued by the Honorable R. Ferrell Cothran, evaluations of criminal responsibility and capacity to conform were conducted by the South Carolina Department of Mental Health (SCDMH) pursuant to S.C. Code Ann. §17-24-10 (1976).

If the court order specifies either an "evaluation requested by either party after defendant's assertion of insanity defense" or an "evaluation requested by consent of both parties at any time," both the solicitor and the defense attorney will find a copy of the SCDMH report attached to this letter. However, if the court order specifies an "ex parte evaluation requested by defendant prior to assertion of insanity defense," only the defense attorney will find a copy of the SCDMH report attached to this letter.

This 5 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

2/26/2009
Date

Kenneth M. Kepler L.P.C.
Kenneth M. Kepler, L.P.C.
Program Coordinator
Forensic Evaluation Services
Department of Mental Health

cc: Amy Land, Assistant Solicitor, PO Drawer 70, Manning, SC 29102

RMR/t1

FORENSIC EVALUATION SERVICE

CRIMINAL RESPONSIBILITY/ CAPACITY TO CONFORM EVALUATION

DATE OF EVALUATION: February 23, 2009

DMH EXAMINERS: Michael Cross, M.D.
Carol David, LISW-CP

DIAGNOSES: AXIS I: No Diagnosis.
AXIS II: Personality Disorder Not Otherwise Specified, with Antisocial and
Narcissistic traits, provisional.
AXIS III: No Diagnosis.

OPINION OF CRIMINAL RESPONSIBILITY: Yes.

OPINION OF CAPACITY TO CONFORM: Yes.

DISPOSITION: Mr. Hamilton returned to the Clarendon County Detention Center after the evaluation.

STATEMENT OF NONCONFIDENTIALITY: At the evaluation's beginning, Mr. Hamilton demonstrated an appreciation for the nature, purpose, and lack of confidentiality for any statements he might make. He read, signed, and dated the information form and elected to proceed.

IDENTIFYING DATA: Carl Hamilton is a 40-year-old African American male seen pursuant to a court order from the Clarendon County Court of General Sessions directing an evaluation of the defendant's criminal responsible pursuant to the McNaughten test for his actions on or about January 28, 2009 [sic], and if criminally responsible, a determination of his capacity to conform his conduct to the requirements of the law.

Given the discrepant dates between the court order and alleged charges, staff telephoned defense counsel who verbally amended the date to September 20, 2008.

SOURCES OF INFORMATION:

1. Court order
2. Arrest warrants
3. Incident reports
4. The defendant's NCIC report

HAMILTON, CARL J.
203-7012

OUTPATIENT EVALUATION

5. Social history completed by Carol David, LISW-CP
6. A 90 minute forensic psychiatric evaluation on February 23, 2009
7. Clarendon County Detention Center letter written by Melissa Mendoza, RN

MUSC records were requested, but pending at the time of this report. *We reserve the right to amend this report should new information warrant.*

PERTINENT STATEMENTS: The defendant evidently began treatment at the Santee-Wateree Mental Health Center on October 15, 2008, after the alleged incident on September 20, 2008. He apparently told detention center staff that he had a prior history of psychiatric treatment at a local mental health center. However, this was not indicated in a medical records search. At the detention center, he takes sertraline (Zoloft®, a medication for depression and anxiety disorders) and trazodone (most commonly used as a sleeping medication).

He denied prior psychiatric hospitalizations.

During his 2/23/09 evaluation, he has self-reported some generalized and vague mental health complaints, such as periodic depression. He also voiced the he "hears things and sees stuff," described as anecdotes of premonitions or visions when dreaming rather than hallucinatory content when awake.

PAST SUBSTANCE USE HISTORY: He denied significant alcohol or substance use in the past. His rap sheet did not indicate an alcohol or substance use charges. His sentence on November 17, 1999 included random drug testing and substance abuse counseling. However, his NCIC did not specify what, if any, substance use issues were involved in his charges at the time.

PAST LEGAL HISTORY: His rap sheet notes his first conviction was in 1992. From his first conviction until the present day, he had regular patterns of arrests and convictions for offenses like Burglary, Grand Larceny, Petit Larceny, Simple Assault, Resisting Arrest, and Possession of Stolen Vehicles or property. His NCIC suggests he spent a significant portion of his adult life in incarcerated settings.

PAST SOCIAL HISTORY: According to his social history, he was the product of a normal pregnancy and met his developmental milestones on time. He graduated high school with a diploma, but had disciplinary problems for fighting. He never married but fathered two children, ages 18 and 10, through different mothers. He did not elaborate about his past employment history. He stated his frustration eventually leads to him quitting.

PAST MEDICAL HISTORY: He denied significant medical problems.



HAMILTON, CARL J.
203-7012
OUTPATIENT EVALUATION

MENTAL STATUS EXAM: On February 23, 2009, Mr. Hamilton was awake, alert, and oriented to all spheres. He dressed normally in detention center clothes. He was well nourished and built. His grooming and hygiene were good. His hair was short and his face was closely shaved. He maintained good eye contact throughout the interview. His demeanor was generally pleasant. His speech was clear, logical, and goal directed. There was no evidence of a reality testing disturbance. His observed mood was euthymic (normal) and his emotional responses were generally appropriate to the topics of conversation. He was overtly cooperative, but appeared to guard against accidental self-disclosure. He denied suicidal ideation. He voiced some conditional thoughts about harming an ex-girlfriend because she "disrespected" him publicly; however, he ultimately denied a plan or intention of harming her unless she intentionally confronts and provoke him. (In *Bishop v. SCDMH*, the court indicated that a duty exists warn a threatened third party, so attempts were made to notify his ex-girlfriend at the time of this report, even though he is currently detained.)

Cognitively, he registered three objects immediately and recalled two of them five minutes later. With a simple clue, he named the last item. He concentrated well as evidenced by spelling *world* forwards and backwards and his general conversation. He solved a hypothetically dangerous situation. He abstracted well as evidenced by his interpretation of proverbs and similarities. His fund of knowledge and estimated intellect were average. He read information from a form fairly, missing the more difficult words:

DIAGNOSTIC IMPRESSION: Mr. Hamilton self-reported past treatment for depression. This may or may not be true, but DMH records have not confirmed prior treatment at this time. His reasons for medication discontinuation were not compelling. Given his significant legal history and the conditional threats that he made, there may be evidence for a personality disorder involving antisocial and narcissistic traits. During the interview, there were no objective signs of a mood, anxiety, or psychotic disorder. He gave vague claims that he "heard things and saw stuff" mostly in dreams, which are full of premonitions, for they (or those things that he remembers) later prove to be "true." Presupposing his claim is genuine, such perceptions appear to be from an error in critical thinking (like confirmation bias) rather than a mental illness.

OPINION REGARDING CRIMINAL RESPONSIBILITY: Mr. Hamilton suggested that at the times of the charges, he stopped taking antidepressant medication for several months, causing him to become depressed. Such medication trial was not substantiated with records, and he gave an unconvincing explanation for why he stopped taking the medication. Nevertheless, he claimed his depression produced the alleged offenses by affecting his thinking.

However, he poorly described the logical step linking his claimed depression to his alleged criminal charges. First, he argued lacking criminal intent, claiming someone (he believed owned or operated the International truck) paid him several hundred dollars to transport it. He argued that he later received permission use the truck to take another friend's "metal container" to a scrap yard, where he was ultimately arrested. He suggested that had he not been depressed, he would have cautiously evaluated the truck's ownership rather than trusting someone's assertion.



HAMILTON, CARL J.
203-7012

OUTPATIENT EVALUATION

He denied any involvement with the Peterbilt truck. However, the arrest warrant alleged that he "admitted to law enforcement that he was in possession of the stolen vehicle and had the key to the stolen Peterbilt truck on his person when he was booked into the Clarendon County Detention Center on other charges."

The police records indicated he attempted to sell the International truck to the scrap yard, indicating a financial motive.

Even if Mr. Hamilton assertions about being depressed were true, there is insufficient evidence to argue that a mental disease or defect made him lack the capacity to distinguish legal or moral right from legal or moral wrong or to recognize the charges as legally or morally wrong at the time of the alleged offenses.

OPINION REGARDING CAPACITY TO CONFORM: Aside from his unsubstantiated self-report, the evidence did not suggest that a mental disease or defect significantly impaired his capacity to conform his behavior to the requirements of the law was at the times of the alleged offenses.



Michael Cross, M.D.
Psychiatric Service Director

MC/khr

D: 02/23/09
RT/EM: 02/23/09
F/EM: 02/25/09



HAMILTON, CARL J.
203-7012
OUTPATIENT EVALUATION

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF GENERAL SESSIONS

Indictment No.(s):

A/Warrant No.(s): M081202, M081146,

M081159 & M081160

The State of South Carolina,)

ORDER FOR CRIMINAL RESPONSIBILITY
AND CAPACITY TO CONFORM EVALUATION
(M'NAUGHTEN)

Select one of the following:

(Controls access to evaluation report as outlined below.)

CERTIFIED TRUE COPY ☒ Ex parte evaluation requested by defendant
OF ORIGINAL FILED IN THIS OFFICE prior to assertion of insanity defense.

DATE 1-30-09

Beverly S. Roberts ☐ Evaluation requested by either party after
CLERK OF COURT defendant's assertion of insanity defense.

CLARENDON COUNTY, SC

☒ Evaluation requested by consent of both
parties at any time.

CARL JEROME HAMILTON

This matter is before me for an order requiring defendant Carl Jerome Hamilton, charged with Receiving Stolen Goods, Grand Larceny (\$5,000 or more), Burglary 3rd, & Malicious Injury to Property (\$5,000 or more), to submit to an evaluation for criminal responsibility and capacity to conform conduct to the requirements of the law on or about January 28, 2009 pursuant to S.C. Code Ann. § 17-24-10 (1976). One of the following circumstances applies to the issuance of this order: (1) defendant has requested an evaluation to determine whether the insanity defense may apply; or (2) prosecution or defendant has requested this evaluation after defendant has affirmatively asserted the insanity defense and given appropriate notice pursuant to Rule 5(f) of the South Carolina Rules of Criminal Procedure; or (3) both parties by consent request this evaluation regardless of whether defendant has asserted the insanity defense.

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

This order is issued for the following reasons:

BEVERLY S. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

2009 JAN 31 AM 2:06

Defendant has a history of mental health treatment. His records indicate he has a history of hearing voices and is on medication. Defendant states he does not recall the events leading to his arrest and was not compliant with his medication at the time of the alleged incident.

THEREFORE, IT IS ORDERED: Because the Department of Mental Health has statutory responsibility for custody and control of individuals determined not guilty by reason of insanity, defendant shall be examined and observed at an appropriate facility of the Department of Mental Health by one or more examiners to determine whether defendant is criminally responsible pursuant to S.C. Code Ann. § 17-24-10(A) (1976) for conduct on or about January 28, 2009.

If defendant is believed to be criminally responsible by the designated examiners, defendant shall be further examined to determine whether, because of mental disease or defect, defendant lacked sufficient capacity to conform conduct to the requirements of the law on or about January 28, 2009 pursuant to S.C. Code Ann. § 17-24-20(A) (1976).

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

PROCEDURE IF LACK OF COMPETENCY IS INDICATED. If, during the course of

the criminal responsibility and capacity to conform evaluation scheduled pursuant to this Order, the examiner finds indications that defendant may not be competent to stand trial pursuant to S.C. Code Ann. § 44-23-410 (1976) and State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), the examiner shall terminate the criminal responsibility and capacity to conform evaluation, issue no report thereon, and by written communication recommend to the Court that a competency to stand trial evaluation should be ordered. Further, the examiner should state whether, in the examiner's opinion, such lack of competency is due to a mental illness or, in the alternative, mental retardation or a related disability. A copy of this written communication shall be sent to the prosecutor and defense counsel.

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

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

ACCESS TO EXAMINER'S REPORT. The Department of Mental Health is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. It is the intention of the State of South Carolina to provide defendant an

adequate opportunity for mental status investigation when the defendant's mental condition is seriously in question pursuant to Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087 (1985), either before or after defendant formally asserts the insanity defense.

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

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

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

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

Because the assertion of the insanity defense places defendant's mental status at issue, either party may discover any portion of the evaluation files upon presentation of a Court order authorizing

such or a release authorization signed by defendant. Both the prosecutor and defense counsel shall be provided a copy of the examiner's report within ten (10) days of the conclusion of all examinations or the inpatient examination period. The evaluation report may be admissible as evidence in subsequent hearings concerning defendant's criminal responsibility and capacity to conform. However, the report shall be inadmissible in any other proceedings except as expressly permitted by South Carolina law. Examiners and agency staff may not be compelled to testify regarding statements made during the criminal responsibility and capacity to conform examination for any purpose other than on the issue of criminal responsibility and capacity to conform. Also, statements made during the examination may not be used to impeach defendant at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

(C) Evaluation Requested by Consent of Both Parties.

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

MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS.

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

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

divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

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

FILING, SERVICE, AND TRANSMITTAL OF ORDER. It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original order without

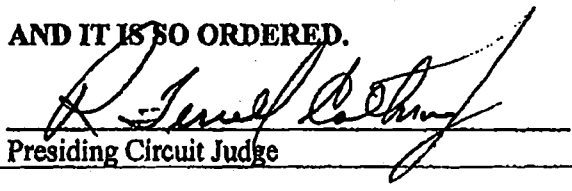
attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the Department of Mental Health at the address listed below. To expedite commencement of the evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the Department of Mental Health to advise of the issuance of this order and forthcoming service upon the agency:

Evaluation Order Service Address for the Department of Mental Health

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

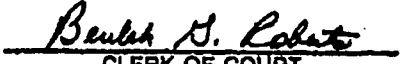
2009 JAN 31 AM 2:06
BRIAN S. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

AND IT IS SO ORDERED.


Presiding Circuit Judge

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 1-30-09


CLERK OF COURT
CLARENDON COUNTY, SC

Printed Name of Presiding Circuit Judge

Manning, South Carolina

Dated: January 28, 2009

Amy A. Land

Prosecutor

PO Drawer 70

Address

Manning, SC 29102

City, State, Zip

803-435-4071

Telephone

Email

SCCA 222 (3/2005)

Deborah Butcher

Defense Counsel

141 N. Main Street

Address

Sumter, SC 29150

City, State, Zip

803-436-2424

Telephone

Email

8034355434

06:08:41 p.m. 03-07-2012

135
14/15

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Carlton J. Hamilton, #262583,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2012-CP-45-646

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 29, 2012. Respondent made its return on April 10, 2013. An evidentiary hearing into the matter was convened on February 26, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by John Layton Ruffin, 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 Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Applicant was true bill indicted at the August 2011 term of the Williamsburg County Grand Jury for Attempted Assault and Battery of a High and Aggravated Nature; Failure to stop for Blue Light and Siren; and Resisting Arrest. William LeGrand Carraway, Esquire, represented him. Applicant pled guilty as indicted on May 8, 2012, before the Honorable Clifton Newman. Judge Newman sentenced Applicant to ten years imprisonment for the lesser included offense of Assault and Battery - First Offense, three years for Failure to

[Handwritten signature]

stop for Blue Lights, and one year for Resisting Arrest all without negotiations or recommendations. Applicant did not file a direct appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel
 - a. "Counsel's prejudice was evidence in his lack of communication w/me."
 - b. "Insanity or other mental condition at time of offense"
 - i. "The original Judge ordered a mental examination."
2. "Prosecutorial misconduct"
 - a. "The Solicitor knew of the Mental health order and changed Judges."

SUMMARY OF TESTIMONY PRESENTED

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

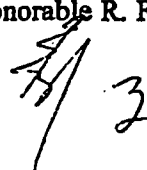
During the evidentiary hearing, Applicant testified he was forty-five years old. Applicant stated he met with Counsel approximately four times prior to his guilty plea. Applicant stated he did not review any discovery material with Counsel prior to his guilty plea. Applicant testified he did not give his Counsel any leads or witnesses to investigate on his behalf. Applicant stated he was expelled in middle school. Applicant stated he was diagnosed with bi-polar disorder. Applicant further stated he received treatment in the 1980's at the Medical University of South Carolina. Applicant stated he has visual and auditory issues. Applicant stated he sees dead

people. Applicant stated in the late 1990's to early 2000's he received medical treatment in a mental health center in Charleston, South Carolina. Applicant stated he had a mental health evaluation in 2009. Applicant stated, following his evaluation, he was receiving psychiatric treatment and received new medication. Applicant stated his bi-polar disorder progressively got worse. Applicant stated he did not understand what took place during his guilty plea. Applicant stated his attorney told him what to say during the plea proceedings. Applicant stated, since the guilty plea, he has received new medication and is in a stable mental condition. Applicant stated he has never been incarcerated at Gilliam psychiatric hospital.

Following both direct and cross examination, this Court questioned Applicant regarding his medication. In response to this Court's questions, Applicant stated he is currently taking various prescription drugs including Risperdal. Applicant stated that he is taking his medication consistently.

Following Applicant's testimony, William Legrand Carraway (Counsel), Esquire was called to testify by the State. Counsel stated he has been practicing law for twenty-two years. Counsel stated he was appointed to represent Applicant and met with him four times prior to his plea. Counsel stated he filed Rule 5 and Brady motions. Counsel stated he reviewed all discovery material with Applicant prior to his plea. Counsel stated he reviewed Applicant's version of events. Counsel stated the State had "overwhelming" evidence of guilt against Applicant. Specifically, Counsel stated that Applicant had stolen a large semi-truck loaded with scrap iron. Counsel stated Applicant attempted to sell the scrap iron, but the potential buyer called the police. Counsel stated Applicant fled the scene and a high speed chase ensued. Counsel stated Applicant was eventually stopped, fled, and later arrested.

Additionally, Counsel stated they appeared before the Honorable R. Ferrell Cothran, Jr.,



for a hearing in 2009. Counsel stated Judge Cothran ordered Applicant receive a mental health evaluation. Counsel stated the evaluation revealed Applicant was criminally responsible and had the capacity to conform to the requirements of the law. Counsel testified Applicant insisted that he was evaluated a second time. However, Counsel stated Applicant was unable to provide any records, and Counsel could not locate any records of a second mental health evaluation. Counsel stated that he did not have any problems communicating with Applicant during the course of his representation.

INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel was ineffective for failing to communicate with him and failing to urge the plea court for a mental health evaluation.

This Court finds Applicant's allegation that Counsel was ineffective for failing to communicate with him and failing to urge the plea court for a mental health evaluation to be meritless. During the evidentiary hearing, Applicant stated he is forty-five years old. He testified he was diagnosed with bi-polar disorder in middle school and that auditory and visual hallucinations started in 1982. He claimed he sees dead people and hears people talking when no one is around. Applicant stated he was treated at MUSC where he was prescribed medication and received treatment in the late 90s or early 2000s. Applicant did not recall what the treatment was for, but he went voluntarily. He was in prison from 2009-2011 and was given medications while incarcerated. When he was released, he was supposed to take medications, but when he was caught on the instant charges, he had been off his medicine for about a week. Applicant said he was frustrated, in a bad mood, hallucinating, and wanted to hurt someone.

Applicant further testified he does not really remember pleading guilty to Assault and Battery – First Degree, Failure to stop for Blue Light, and Resisting Arrest. He said he was frustrated and “down” at the time. He claims that when he met with Counsel about four times,

they never went over the evidence against him and Counsel just told him to plead guilty. He testified he does not recall waiving his rights or telling the plea Judge (The Honorable Clifton Newman) he was satisfied with his attorney. He also claims his lawyer told him to plead guilty because he was making the Judge mad.

However, Counsel testified the evidence against the Applicant was overwhelming. Counsel testified he took the Applicant before the Honorable R. Ferrell Cothran, Jr., to see about getting an evaluation in 2011, because Judge Cothran had ordered a mental health evaluation in the case arising out of criminal charges in 2009. Judge Cothran heard the request. The Applicant told Judge Cothran that he'd had more problems since 2009 and had been to another mental health facility. The Applicant and his family could not give Judge Cothran any names of facilities where Applicant had been treated. Judge Cothran ruled that if the Applicant or his family could locate his records, he would consider ordering another evaluation. However, the Applicant and his family could not identify any facilities from which to request the necessary medical records. Counsel agreed that he did not obtain any mental health records from SCDC from the 2009-2011 incarceration.¹

PCR counsel points to Judge Newman's question at the plea hearing of "What makes you guilty?" and the Applicant's response "My family" as evidence that the Applicant was not competent or otherwise entered the plea involuntarily (page 19). However, this Court finds that the colloquy in its entirety establishes that Judge Newman followed up on that response by closely questioning the Applicant about the entire sequence of events and why the Applicant was pleading guilty. The plea transcript reveals that Judge Newman was fully aware of the Applicant's mental health history. Judge Newman went over the facts of the case in detail, and

¹ Applicant's 2009-2011 medical records were not introduced at the PCR hearing. Therefore, there was no evidence presented to this Court of what those records might reveal.

there is no evidence that the Applicant was not competent at the time of the plea. There is no evidence that the Applicant did not know legal right from legal wrong at the time of the offense, and there is no evidence he could not conform his conduct accordingly. On the contrary, there is evidence that the Applicant knew what he had done was wrong in his attempt to flee Don's Scrap Iron when he was caught with the stolen rig. While Judge Newman did have to spend more time than usual going over the facts with the Applicant that certainly does not establish the plea was involuntary and it does not establish ineffective assistance of counsel. Ultimately, it was clear that the plea was entered freely and voluntarily.

Furthermore, plea counsel provided competent representation in light of the overwhelming evidence against Applicant. Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (no prejudice where there is overwhelming evidence of guilt). During the evidentiary hearing, Counsel characterized the State's evidence against Applicant as "overwhelming." The plea transcript reveals Applicant attempted to sell stolen scrap metal to Don's Car Crushing. Applicant eventually became suspicious and fled the scene traveling approximately eighty (80) miles per hour. A high speed chase ensued resulting in Applicant crashing into a tree. Applicant then exited the car and ran into the woods. Applicant was arrested two weeks later. In light of this overwhelming evidence, the Court agrees with plea counsel's advice that a guilty plea was in Applicant's best interest. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (Applicant must show "something that would have affected counsel's advice to [the Applicant] to accept the plea bargain offered or that would have caused [the Applicant] to decline to accept it").

This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing

Strickland). Furthermore, Applicant has failed to show he was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

PROSECUTORIAL MISCONDUCT

Initially, this Court notes that PCR Counsel rested on the arguments raised in the PCR application and no testimony or evidence was presented during the evidentiary hearing. This Court finds Applicant's allegation of Prosecutorial Misconduct to be without merit. As previously stated above, Counsel testified he took the Applicant before the Honorable R. Ferrell Cothran, Jr., to see about getting an evaluation in 2011, because Judge Cothran had ordered a mental health evaluation in the case arising out of criminal charges in 2009. Judge Cothran heard the request. The Applicant told Judge Cothran that he'd had more problems since 2009 and had been to another mental health facility. The Applicant and his family could not give Judge Cothran any names of facilities where Applicant had been treated. Judge Cothran ruled that if the Applicant or his family could locate his records, he would consider ordering another evaluation. However, the Applicant and his family could not identify any facilities from which to request the necessary medical records. Counsel agreed that he did not obtain any mental health records from SCDC from the 2009-2011 incarceration.² Since Applicant has failed to present any evidence to support his claim of Prosecutorial Misconduct, this Court finds the allegation should be denied and dismissed with prejudice.

² Applicant's 2009-2011 medical records were not introduced at the PCR hearing. Therefore, there was no evidence presented to this Court of what those records might reveal.

CONCLUSION

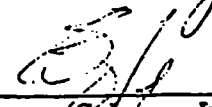
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that 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.

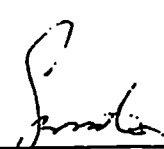
IT IS THEREFORE ORDERED:

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 16 day of May, 2014.



 GEORGE C. JAMES, JR.
 Presiding Judge
 Third Judicial Circuit


 _____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG
IN THE COURT OF COMMON PLEAS

CARLTON J. HAMILTON, #262583

Applicant,

v.

STATE OF SOUTH CAROLINA,

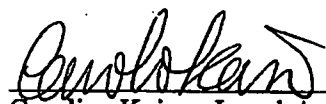
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

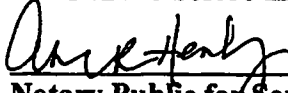
**John Layton Ruffin, Esquire
Graham Law Firm, PA
383 W. Cheves St.
Florence, SC 29501**

This 1st day of July, 2014.



Caroline Kaiser, Legal Assistant
For Respondent

SWORN to before me this 1st day of July, 2014.



Notary Public for South Carolina.
My Commission Expires: 7/8/2018