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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Anderson County
Carmen T. Mullen, Circuit Court Judge

DANIELLE BOWEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000429

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF ANDERSON) 10TH JUDICIAL CIRCUIT

 THE STATE) TRANSCRIPT OF RECORD
 -VS-) 08-GS-04-00617
 DANIELLE BOWEN,)
DEFENDANT.)

APRIL 15, 2009

ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. CORDELL MADDOX, JR., JUDGE

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

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ATTORNEY FOR THE STATE

ANDREW POTTER, DEPUTY PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

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CIRCUIT COURT REPORTER

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NO EXHIBITS WERE INTRODUCED

1 Wednesday, April 15, 2009

2 THE COURT: Yes, ma'am?

3 MS. REEVES: Your Honor, before you is Danielle
4 Bowen. She is pleading guilty to homicide by child abuse on
5 indictment number 2008-GS-04-617. There is no recommendation
6 in this case.

7 THE COURT: This is a straight-up plea?

8 MR. POTTER: It is, Your Honor.

9 THE COURT: All right. Ms. Bowen, if you would,
10 raise your right hand.

11 DANIELLE BOWEN, after having been duly sworn,
12 testified as follows:

13 THE COURT: How old are you?

14 THE DEFENDANT: I'm 19 years old?

15 THE COURT: How far did you go in school?

16 THE DEFENDANT: Tenth grade. I got my GED in here,
17 in the county.

18 THE COURT: How long have you been in jail?

19 THE DEFENDANT: For 15 months.

20 THE COURT: Where did you last work?

21 THE DEFENDANT: Fred's. I didn't work there long
22 though.

23 THE COURT: You what?

24 THE DEFENDANT: I didn't really work --

25 MR. POTTER: Fred's, Your Honor.

1 THE COURT: Okay. Have you had any drugs or alcohol
2 within the last 24 hours?

3 THE DEFENDANT: No, sir.

4 THE COURT: Has anybody promised you anything or
5 threatened you in any way to force you to plead guilty today?

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you understand that this plea carries
8 with it a sentence of -- what's the sentence range?

9 MS. REEVES: Twenty to life, Your Honor.

10 THE COURT: The minimum sentence is 20 years; do you
11 understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you had any drugs or alcohol within
14 the last 24 hours?

15 THE DEFENDANT: No, sir.

16 THE COURT: Are you taking any kind of prescription
17 or anything like that?

18 THE DEFENDANT: I take medication at the county.

19 THE COURT: What do you take, just so I know?

20 THE DEFENDANT: Vistaril, Mucinex, ibuprofen and
21 Somas.

22 THE COURT: All right. None of those prevent you
23 from knowing what's going on here today, right?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you had plenty of time to speak

1 with your lawyer about this plea?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And are you satisfied with his services?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And Mr. Potter is your attorney; is that
6 correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And Mr. Phillips is standing with you
9 because he's done some work in the past for you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Sort of moral support?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand you have to waive your
14 constitutional rights if you want to plead guilty today?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And are you waiving your right to a jury
17 trial?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you waiving your right to remain
20 silent? You have to waive it if you want to plead guilty.

21 THE DEFENDANT: Oh. Okay. Yes, sir.

22 THE COURT: And are you waiving your right to
23 confront the witnesses that would come to testify against you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: That's the right of confrontation that

1 you have. Are you going to waive that right?

2 THE DEFENDANT: For right now?

3 THE COURT: Yeah. You have a right to have the

4 State bring in witnesses to testify against you and have a

5 trial, but you have to waive that right if you want to plead

6 guilty.

7 THE DEFENDANT: But I don't want a trial, sir.

8 THE COURT: Right. So you're going to waive that

9 right?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And are you also waiving your right to

12 put up a defense to these charges? You have a right to put up

13 certain defenses but if you want to plead guilty you have to

14 give up or waive that right.

15 THE DEFENDANT: Okay. Yes, sir.

16 THE COURT: Mr. Potter, have you had plenty of time

17 to speak to her?

18 MR. POTTER: I have, Judge.

19 THE COURT: And do you think she understands her

20 waiver of constitutional rights?

21 MR. POTTER: Judge, she understands those.

22 THE COURT: And the elements of the crime?

23 MR. POTTER: Yes, sir.

24 THE COURT: Ms. Bowen, do you want to plead guilty

25 to this charge?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And are you guilty of this charge?

3 THE DEFENDANT: I'm pleading guilty.

4 THE COURT: But are you guilty?

5 THE DEFENDANT: I don't think I am but I'm going to
6 plead guilty.

7 THE COURT: Well, here's the thing, and I understand
8 what you are telling me, but I can't take a plea unless you
9 tell me that you're guilty because what you're telling me
10 today is that you are guilty of this charge. If you need to
11 talk to your lawyer.

12 THE DEFENDANT: I'm going to plead guilty.

13 THE COURT: And are you guilty?

14 THE DEFENDANT: Yes, sir.

15 MR. POTTER: If it pleases the Court.

16 THE COURT: Yes.

17 MR. POTTER: We have had this conversation. We
18 have discussed the nature of what a guilty plea is and that,
19 in essence, she's admitting to the facts as stated by the
20 State. She understands that. She tells me that's what she
21 wants to do.

22 It's a difficult case to start with, Your Honor, but
23 I think she understands the ramifications of a guilty plea,
24 what results of a guilty plea will be, the fact that she will
25 not have a trial. She told me she does not want to have a

1 trial. She tells me that she does want to enter a guilty plea
2 and that she will be admitting the facts as being true and
3 accurate and pleading guilty.

4 THE COURT: All right. And there's no question of
5 competency or anything like that?

6 MR. POTTER: No, Your Honor. I've had
7 Dr. Schwartz-Watts, who's in court today, we're going to have
8 her testify a little bit in regards to mitigation. She has
9 done an evaluation with her in regards to competency and in
10 regards to N. G. R. I. and has found that Danielle is
11 competent, and she also met with Danielle this morning to
12 confirm that fact, is comfortable that Danielle understands
13 what is going on today and the ramifications of her plea and
14 understands that she's giving up and waiving certain rights to
15 enter that guilty plea.

16 THE COURT: And just for the record,
17 Dr. Schwartz-Watts is obviously a very good friend of mine.
18 We talked this morning but not about this case. I mean, we
19 touched on it but nothing substantive. Is there any problem
20 with that?

21 MR. POTTER: No, Your Honor.

22 MS. REEVES: No, sir.

23 THE COURT: All right. So you do want to plead
24 guilty?

25 THE DEFENDANT: Yes, sir.

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

2 MS. REEVES: Thank you, Your Honor. May it please
3 the Court. On January 8th, 2008 Minor was six
4 months old. That morning her mother, this defendant, who was
5 19, claims to have laid Minor on the floor inside the living
6 room in their trailer in Anderson County.

7 She then claims to have been chasing her other child
8 who is 18 months old through the house when she stomped on the
9 victim. She demonstrated to the detectives that she used the
10 heel of her right foot to stomp on the victim.

11 She then picked the victim up, became frustrated
12 when she would not stop trying, was holding her with her right
13 hand by the victim's neck forcefully and then struck her with
14 her left hand on the victim's right side of her head.

15 The defendant then put the victim down and went
16 outside to clean up some trash in the yard, came in
17 approximately 20 minutes later when she returned to bathe both
18 of the children and that's when she finally noticed that the
19 victim was not breathing. Obviously, the State does not
20 believe that this stomping incident was an accident.

21 The victim was transported to the hospital where she
22 later died that day, and autopsy reports noted bruising to the
23 victim's neck and the side of her head which were consistent
24 with being struck in the manner that the defendant described
25 as well as wearing rings on her left hand and the child had

1 bruises on her head. The cause of death was blunt force
2 trauma to the abdomen which resulted in internal injuries and
3 multi-organ failure.

4 The defendant originally claimed that nothing had
5 happened to this child violently or otherwise that morning, it
6 was a typical morning and that the child had just stopped
7 breathing. After several explanations given to the detectives
8 she eventually admitted to the above.

9 Just as a side note, the defendant did agree to give
10 up her parental rights as to the other child in family court.

11 Present today are --

12 THE COURT: Who has that child?

13 MS. REEVES: I'm sorry?

14 THE COURT: Where is that child?

15 MS. REEVES: That child is with the father's parents
16 -- or the father's family.

17 THE COURT: Okay.

18 MS. REEVES: Present here today are Detectives Owens
19 and Geving. I don't believe they wish to address the Court
20 but they are here in support of this plea.

21 Also from the victim's family are several members.
22 Of course, her father is present, the father's sister. The
23 father's uncle, Dwayne Wilson, who is here to speak at the
24 appropriate time, his wife, and the grandmother.

25 THE COURT: All right. Ms. Bowen, you admit to

1 those facts?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Yes, sir.

4 MR. POTTER: Judge, if it pleases the Court.

5 Danielle's date of birth is , . Just had

6 turned 18 when this occurred.

7 I do have Dr. Schwartz-Watts here and I would ask if

8 Your Honor would hear from her. There is some mental issues

9 as well as some postpartum depression issues that

10 Dr. Schwartz-Watts was able to determine and I'd ask that Your

11 Honor hear from her.

12 THE COURT: Yeah. Let me do this before I hear from

13 her. Let me hear from the family so that I can then hear from

14 Dr. Schwartz-Watts. That may make it simpler.

15 If you would, just give us your name when you

16 testify.

17 MS. REEVES: Judge, may I approach and give you some

18 pictures?

19 THE COURT: Sure. All right.

20 MR. WILSON: Your Honor, I'm Dwayne Wilson. I'm the

21 great uncle of baby Minor and S.W. . As we,

22 the family, have presented the photos there for you to view

23 they have asked me to be the spokesperson for the family.

24 Your Honor, on behalf of Minor , the ultimate

25 victim of this tragedy, S.W. , Minor 's

1 two-and-a-half-year-old brother, and the entire Wilson family
2 wishes to express to you how our lives have been changed
3 forever.

4 We have given you a copy of our last picture taken
5 of Minor. As you look at this precious face of this baby,
6 please keep in mind that she deserved to live and have the
7 American dream and not to endure the heinous abuse inflicted
8 by the woman that gave her life.

9 We thought this type of tragedy could never touch
10 our family. We were wrong. Our lives will never be as they
11 once were. Currently we are living a new normal.

12 Since January the 8th, 2008 we have suffered through
13 an ordeal that we pray to God no other family ever endures.
14 We accept that bad things happen to good people as this had
15 come to pass for our family. We are a strong family with an
16 unyielding Christian value. Our comfort is in knowing that
17 Minor is safe in the hands of our savior.

18 Our priority is S.W. My mother was
19 granted temporary custody of S.W. l by D. S. S. Then in July
20 '08 Danielle Bowen terminated her parental rights to S.W. in
21 which time -- that time permanent custody was granted to my
22 mother. The lower picture was taken of S.W. shortly after
23 Minor 's funeral.

24 S.W. tested positive for marijuana. He was
25 exposed in his home. The top picture of S.W. is most

1 current. It's his Easter picture. S.W. is thriving in his
2 new home, in his new normal. He is an exceptionally gifted
3 child. He has a bright future ahead of him with a family that
4 loves him and wants the best for him. We were unable to
5 protect Minor or S.W. prior to January the 8th; however,
6 with God's grace and mercy we will do whatever it takes to
7 protect S.W. now.

8 Your Honor, our family requests that Danielle be
9 given enough time that S.W. will be allowed to finish
10 college and be of a mature age before Danielle Bowen is
11 released on parole. At that time if Danielle pursues S.W.
12 even though she has terminated her parental rights he will be
13 mature enough to make his own decisions.

14 Second, Douglas Wilson, can we have the same
15 stipulation as set at Danielle's bond hearing, once paroled
16 she cannot come around him. And lastly, Your Honor, that you
17 send a strong message that being a parent is a privilege, one
18 that should not be taken lightly and homicide by child abuse
19 will not be tolerated.

20 Thank you for allowing us to have a voice and may
21 God bless you and this entire courtroom.

22 THE COURT: All right. Thank you.

23 All right. Anyone? I'll be happy to hear from
24 anyone.

25 MS. REEVES: I believe that's all, Your Honor. I

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1 just wanted to add that the family did want to ask for no
2 contact with S.W. as well as Doug, who is the father of
3 these children.

4 THE COURT: All right. I'll be happy to hear from
5 anybody you have.

6 MR. POTTER: Your Honor, if it pleases the Court.
7 We'd ask that you hear from Dr. Schwartz-Watts.

8 THE COURT: Sure.

9 MR. POTTER: Do you want her to take the stand or --

10 THE COURT: No. Dr. Schwartz-Watts, are you okay
11 standing right there talking, right there by Andy?

12 DR. SCHWARTZ-WATTS: Yes. That's fine.

13 THE COURT: Rather than sit.

14 DR. DONNA SCHWARTZ-WATTS, after having been
15 duly sworn, testified as follows:

16 THE COURT: You are okay testifying there?

17 DR. SCHWARTZ-WATTS: Yes, sir.

18 MR. POTTER: May it please the Court?

19 THE COURT: Sure.

20 DIRECT EXAMINATION

21 BY MR. POTTER:

22 Q. You are Dr. Donna Schwartz-Watts; is that correct?

23 A. Yes.

24 Q. And how are you employed?

25 A. At the University of South Carolina School of

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1 Medicine.

2 Q. And you have a medical license; is that correct?

3 A. Yes, since 1989.

4 Q. Can you briefly describe your experience and work
5 history.

6 A. Sure. I graduated from medical school at the
7 University of South Carolina in 1989. I completed a residency
8 in psychiatry at the Department of Mental Health in 1993. I
9 completed an additional year of training in forensic
10 psychiatry at the Department of Mental Health in 1994.

11 I worked at the Department of Mental Health for two
12 or three years conducting court-ordered competency to stand
13 trial and criminal responsibility evaluations. I went over to
14 the University of South Carolina around 1997 full time. I'm
15 presently a professor of psychiatry there and I direct
16 forensic services, and basically what I do is evaluations and
17 also I teach.

18 Q. Okay. Do you have any board certifications?

19 A. Yes. I'm board certified in general psychiatry and
20 I have added qualifications in forensic psychiatry.

21 Q. Okay. Did you have an opportunity to meet with
22 Danielle Bowen?

23 A. Yes. I met with her June 27th, 2008, and again this
24 morning.

25 Q. And can you briefly tell the Court or me what you

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1 found.

2 A. Yes. And, Your Honor, at the time, as you know, we
3 trained the residents in psychiatry and I had a child resident
4 with me, Dr. Lakesha Watson, who also participated in this
5 evaluation. She had already finished her general psychiatric
6 training and was taking additional as a child psychiatrist.
7 We met with Ms. Bowen for two hours. After that, we requested
8 some medical records that we needed, and we also spoke with
9 her aunt and her mother, did an evaluation in terms of
10 interview.

11 There's a number of factors I think that are
12 important for the Court to consider. I diagnosed her with
13 postpartum depression, and this is the first case I've ever
14 seen where she actually had what I call a double postpartum
15 depression.

16 When Ms. Bowen was 15 years old she was pregnant and
17 had a miscarriage. At the age of 16 she became pregnant and had
18 her son. And then within six weeks of giving birth to her son
19 she became pregnant with a daughter whom she killed. So
20 within three years she had three pregnancies, and by the time
21 she was 17 this was her third pregnancy.

22 She began experiencing symptoms of depression after
23 the birth of her first son; however, because she was pregnant
24 again was unable to be treated, and after giving birth to this
25 daughter she had a severe postpartum depression.

DR. DONNA SCHWARTZ-WATTS - DIRECT BY MR. POTTER

1 Now, complicating this she is very immature for her
2 age, and that has to do with her personality structure. She
3 often appears to be very unattached, nonchalant at times, and
4 that's due to some of her upbringing and her environment.

5 She actually was very attached to her son. She was
6 not that attached to her daughter due to her depression. Her
7 aunt and mother tell us that she weighed 120 pounds. She's
8 now up to 150 pounds. She's gained weight while she's been in
9 prison. She was clearly depressed at the time.

10 In my opinion, I opine she lacked capacity to
11 conform her conduct. She had numerous stressors. She had
12 the postpartum depression, she was having some domestic
13 difficulties with her significant other, and she had the
14 childcare responsibility. She had the toddler and she had
15 the new baby.

16 In postpartum depressions, I did some research for
17 you, they affect -- 85 percent of women in postpartum can have
18 a mood disturbance. She had a prior diagnosis of mood
19 disorder when she was at the Department of Juvenile Justice.
20 She was at D. J. J. when she was an adolescent for truancy and
21 was sent there again for contempt of court, for violating
22 probation because she had a shoplifting charge. She was
23 diagnosed with a mood disorder the. Her mother has mood
24 disorder and has also been treated for depression and anxiety.

25 Eighty-five percent of women postpartum have

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1 depression. Not to the point that she does but the postpartum
2 depression can affect 10 to 15 percent of women. So she was
3 genetically loaded for it, her age, she's certainly been very
4 immature, she had multiple pregnancies at age 15, 16 and 17.

5 So I think, in my opinion -- she was on medication
6 when I saw her. She was on Paxil. She later was placed on
7 Prozac at the detention center, and presently I'm concerned
8 because she's on no antidepressant medication. But it's my
9 opinion that she had a major medical illness. She needs
10 continued treatment when she's confined.

11 THE COURT: Will she get that in the Department of
12 Corrections?

13 DR. SCHWARTZ-WATTS: Yes. I've already given her --
14 I know Dr. Pam Crawford works at Camille Graham, and Dr. Jimmy
15 Pacheco works at Lee. So wherever she ends up being
16 classified she will have access to mental healthcare there.

17 THE COURT: Okay. Thanks. Any further questions?

18 MR. POTTER: No further questions. Judge, the
19 reason we're presenting this testimony, we're not standing
20 before Your Honor saying this is an excuse on what has
21 happened. It's more of a reason for why it happened.

22 We're not before Your Honor saying she's not
23 responsible for her actions. She is responsible for her
24 actions; however, there are additional factors that resulted
25 in what happened, and we wanted Your Honor to understand that

1 and have a grasp of that.

2 Judge, a couple things I wanted to address. There
3 was marijuana in the home. She started keeping house with the
4 father of Minor around 15 years old. The father was 18 at the
5 time. They both were actively smoking marijuana in the home,
6 and I wanted Your Honor to be aware of that.

7 She had three years of being pregnant. And having
8 experience with a wife being pregnant there's a significant
9 change in the body, as Your Honor is aware. Hormones change
10 to be able to handle pregnancy then after the birth of the
11 child there's going to have to be a reduction in those
12 hormones and things happen. That never happened. She was
13 pregnant, had a miscarriage, got pregnant again, delivered that
14 baby to term. At 16, got pregnant within six weeks after
15 delivery of that baby and Minor was born.

16 Judge, we've all been there as parents. We've all
17 been there. We've all had a child who's crying, we've all had
18 a child who you've done everything you thought you can do to
19 get that baby to stop crying and she won't. You're tired,
20 you're frustrated, you've got a toddler who's in the house
21 running around, you're responsible for toddler, getting him
22 fed, also getting the baby fed. It's a hard situation for
23 even us to handle, Judge.

24 And we have spouses, we have family members who we
25 can call and we have ability and maturity to say the baby can

1 cry, I can step outside and gather my whits. And we have a
2 17-year-old girl who's had these two babies and is in a
3 situation, quite honestly, that she shouldn't have been in.
4 She was over her head, and that's not Minor 's fault, but it
5 happened. And like I said, Judge, we've all been there.
6 Judge, what I'd ask you to consider is a reasonable
7 sentence. We're not asking Your Honor not to take this
8 seriously. We're asking Your Honor to fashion a reasonable
9 sentence. There is a 20 year minimum; however, Your Honor can
10 split that sentence. And we'd ask Your Honor to consider all
11 the factors, the factors of Minor 's family, of Minor , and the
12 factors that we've presented in regards on behalf of Danielle
13 and we'd ask you to fashion a reasonable, fair sentence.
14 That's all I'd have.

15 THE COURT: Was anybody else in the home? Was the
16 father there?

17 MS. REEVES: No, sir. The father had left for work
18 that morning already.

19 THE COURT: Okay.

20 MS. REEVES: So it was just the defendant and the
21 two victims, two children.

22 THE COURT: And there hadn't been any type of
23 physical harm to this child prior to the day? I mean, was
24 there a report or anything?

25 MS. REEVES: No, sir, none reported that we know of.

1 To give you a full picture, Your Honor, Dr. Deborah
2 Otto Sunderman actually went to the jail and spoke with the
3 defendant two days after she was arrested. Her opinion was
4 that she found no signs of postpartum depression, not even
5 signs of depression.

6 So just to give you a full picture, that she
7 interviewed the defendant extensively and did not see those
8 same signs. Apparently, Dr. Schwartz-Watts did see those
9 signs six months later but they were not present two days
10 after the incident.

11 THE COURT: Who was that? I'm sorry.

12 MS. REEVES: Dr. Otto Sunderman. She's present but
13 she's sitting back there.

14 THE COURT: Okay.

15 MR. POTTER: Judge, there was no report done in
16 regards to that meeting, and so I haven't even seen whether
17 any notes were taken or any record keeping was taken in
18 regards to that meeting, however --

19 THE COURT: You all come here. Let me ask you
20 something about that.

21 (WHEREUPON, a bench conference was had.)

22 MR. POTTER: If it pleases the Court?

23 THE COURT: Yes, sir.

24 MR. POTTER: Judge, in the history that Danielle
25 gave to Dr. Schwartz-Watts as well as through

1 Dr. Schwartz-Watts' investigation there was a previous
2 diagnosis of depression at the age of 13. There was
3 apparently a suicide attempt at the age of 13. She was
4 admitted into Marshall Pickens for a period of time.

5 And Dr. Schwartz-Watts may have a little bit more
6 detail in regards to the history of when she was an
7 adolescent, a young adolescent in regards to there was a
8 diagnosis of depression and there was medication and there was
9 treatment related to that suicide attempt.

10 THE COURT: Yeah. Do you know anything about that?

11 DR. SCHWARTZ-WATTS: Yes, sir. And she was placed
12 on Paxil at the time. She also was later then diagnosed with
13 a mood disorder at the Department of Juvenile Justice.
14 Additionally, postpartum depressions are very difficult to
15 diagnose, especially in someone as immature as she is. She
16 has no insight. She doesn't recognize her symptoms.

17 It's imperative in those cases to talk to family
18 members, which is why we talked to her aunt, her mother. She
19 had lost 30 pounds. She was not eating. She was seen by then
20 to be frequently tearful, and in my opinion she clearly met
21 the criteria for postpartum, and those symptoms can persist up
22 to, I believe nine months after the birth of a child.

23 THE COURT: Okay. All right. Anything else?

24 MR. POTTER: No, Your Honor.

25 THE COURT: Anything else from the State?

1 MS. REEVES: No, sir.

2 THE COURT: And how old is her son? How old is the
3 child?

4 MS. REEVES: He is two and a half.

5 THE COURT: He's two and a half?

6 Ma'am, is there anything you want to tell me?

7 THE DEFENDANT: I do want to apologize to the Wilson
8 family and any family for the sorrow and loss, and that's all
9 I can say is that I apologize from the bottom of my heart.

10 THE COURT: Well, do you remember this?

11 THE DEFENDANT: Yeah, a little bit.

12 THE COURT: Well, what happened?

13 THE DEFENDANT: I really don't know.

14 THE COURT: Well, what do you remember?

15 THE DEFENDANT: Getting up that morning, and I can't
16 remember everything, how it all went. I really can't. I
17 mean, it's been 15 months ago.

18 THE COURT: And you don't remember because of the
19 time?

20 THE DEFENDANT: Well, no, I don't know. I just -- I
21 can't remember it. I mean, there's a lot of things I can't
22 remember, you know.

23 THE COURT: Is that normal?

24 DR. SCHWARTZ-WATTS: Yes. With that kind of trauma
25 people can have some difficulty. I would expect some details

1 but it would not be uncommon to not remember some details.

2 THE DEFENDANT: I really don't.

3 THE COURT: Well, what do you remember? Just tell
4 me.

5 THE DEFENDANT: I mean, that's -- I really -- I
6 remember getting up that morning and I started cleaning.
7 First I got Doug ready for work, like I always done, and then
8 I fed my son and I fed my daughter. And then that's when I
9 cleaned. And then I had Minor , she was on the floor doing her
10 tummy time. I always laid her on the floor in the mornings.

11 And S.W. , he went into the back room and he
12 grabbed a piece of glass, and he come running up the hall with
13 it. And I come running up behind him to get it. When I went
14 to jump over her I missed and I accidentally stomped on her.
15 My foot caught her in the stomach.

16 And then I remember picking her up. She calmed
17 down. She ate a bottle. You know, she drank her milk. And,
18 oh, what else. I can't remember. S.W. , I got him to sleep.
19 I took him in the room. He laid down. I had her in her
20 bassinet. But then he went to sleep like five minutes later.

21 Then I went outside to clean my backyard because
22 Doug told me to because that was on Wednesday -- or Tuesday,
23 and the trash man comes on Wednesday and I had to go get the
24 trash up because the dog, he done strung trash everywhere. So
25 I went out there to clean it up and I heard my son, he was

1 screaming. He had woke up and he was standing at the back
2 door when I went in.

3 I went running in, and I grabbed him and he wanted
4 to take a bath. So I went to put him in the tub and I ran his
5 water a little bit. And then I went to go get her, and when I
6 did that's when her little head fell. It just fell back. And
7 I was going to give her a bath with him like I always done.

8 THE COURT: Okay.

9 THE DEFENDANT: That's when I called -- I called the
10 police.

11 MR. POTTER: She did call 911. She did call her
12 sister-in-law. Her sister-in-law came afterwards and she was
13 administering C. P. R. When the sister-in-law showed up the
14 sister-in-law began giving C. P. R. to baby, and when she went
15 to the hospital, when they carried the baby to Greenville.

16 THE COURT: All right. So, Dr. Schwartz-Watts, it
17 would be real normal for her not remember?

18 DR. SCHWARTZ-WATTS: No. There should be more
19 details for that but in the actual trauma itself, actually
20 harming the child, her personality structure is such that it
21 may be difficult. My opinion is she's probably able to give
22 more details than she has at this point, but it's certainly
23 consistent with a severe trauma to disassociate parts of that
24 and not remember some details.

25 THE COURT: Okay.

1 MS. REEVES: Judge, she certainly gave a more
2 detailed statement right after this happened.

3 THE COURT: Okay. Have you got a copy of that?

4 MS. REEVES: Yes, sir.

5 THE COURT: Yeah. Let me look at that.

6 [PAUSE]

7 THE COURT: Okay. All right. Anything else?

8 MR. POTTER: Judge, again, I just echo my previous
9 comments. She was barley 18 when this happened. I just echo
10 on my previous comments, Your Honor.

11 THE COURT: All right. Thanks. I'm going to accept
12 the plea and find it freely and voluntarily made and based
13 upon the advice of counsel.

14 Ms. Bowen, I'm sitting here looking at this picture
15 of your beautiful child and thinking of my own children. I
16 listened to Mr. Potter sort of choke up. Everybody has been
17 there with your children.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And as he said, you know, most people
20 walk out and understand it.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I can't ever remember being as
23 conflicted with really anger and just sadness for you, and for
24 this whole family and for this baby. I don't know which --
25 you know, I don't think you're telling me the whole truth.

1 THE DEFENDANT: I'm telling you everything I can
2 remember.

3 THE COURT: Okay. Well, and you may not be able to
4 remember it. Dr. Schwartz-Watts is obviously an expert, has
5 testified all over the State and she's got my greatest
6 respect, I trust her with life. So I think she's telling me
7 the truth that you are not going to remember some things.

8 Maybe you will some day. Boy, if there was anything I could
9 do to make this go away and bring her back I would. I can't.

10 What I'm really concerned about is your son, apart
11 from punishing you and carrying out the letter in the spirit
12 of the law. So what I'm going to do, the sentence is 25 years
13 provided upon the service of 20 years, the balance suspended
14 with probation for 5. The reason I'm doing this, I want to
15 get this child past the age of majority. I want there to be
16 some probation. It won't really matter because there will be
17 a community service but I want some restrictions on contact
18 with this other child.

19 I mean, I really do feel bad for you. I think that
20 for you to be pregnant at 15 and 16, and 16, you know,
21 somebody really messed up here. I mean, you were a child
22 yourself.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And what I'm wondering is if anybody
25 could have ever stepped in and stopped it, but I don't have

1 that in front of me. All right. Thanks.

2 MS. REEVES: No contact, Your Honor?

3 THE COURT: No contact with the son.

4 MS. REEVES: How about with the father?

5 THE COURT: He's an adult. I mean, you know, how
6 old is he?

7 MR. POTTER: He's 21 now, Your Honor.

8 MS. REEVES: I think he's 23.

9 THE COURT: If he doesn't want to talk to her he
10 doesn't have to talk to her. I'm assuming there won't be any
11 contact but I'm not going to restrict him.

12 MR. POTTER: Thank you, Judge.

13 THE COURT: Thank you.

14 (WHEREUPON, the hearing was concluded.)

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C E R T I F I C A T E

I, Sharon L. Vizer-Hanks, Official Court Reporter
for the 10th Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had and
the evidence introduced in the hearing of the captioned case
in Circuit Court on the 15th day of April 2009.

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

April 8, 2010



SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA)

County of Anderson)

South Carolina)

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

Danielle Marie Lec Bowen)
#334349)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2010-CP-04-01002

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 Anderson County Detention Center
2. Name and location of Court which imposed sentence Anderson County Circuit Court
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) Homicide by Child Abuse - 2008-GS-04-617
 - (b) _____

A TRUE COPY

MAR 15 2010

Cathy M. Phillips
CLERK OF COURT

FILED-CLERK'S OFFICE
 ANDERSON SC
 2010 MAR 15 A 9:1
 GENERAL SESSIONS

(c) _____

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

(a) April 15th 2009 sentenced to 25 years suspended

(b) to 20 years in prison and 5 years probation.

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty YES

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) My mom Rebecca Grice called the Public Defenders office and Andrew Potter my Public Defender stated I could do a P.C.R but not an appeal, because of my plea.

(b) _____

(c) _____

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

- (a) It was an accident I didnt mean to step on
- (b) my daughter. I love my daughter and I
- (c) miss her dearly.

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

- (a) I was chasing my son through the house
- (b) because he was running with a piece of
- (c) glass in his hand, I went to jump over her and misjudged

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~~ NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

and my heel caught he in the abdomen.

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) I felt like he didn't fight this matter because
- (b) he wasn't getting paid, plus I was just another
- (c) docket number he was trying to get out of the way.

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? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Andrew Potter Office of Public defenders
301 Camson Rd. Anderson SC. 29625
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Board hearing, Preliminary hearing, and
Court.
 - ii. _____
 - iii. _____

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

I feel that I should be released or at least get my time reduced to a lower sentence and a lower charge due to it being an accident. (Added sheet of paper)

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

None

STATE OF SOUTH CAROLINA)

County of Anderson)

VERIFICATION

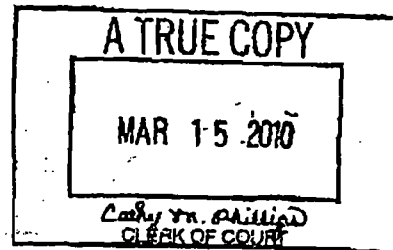
I, Danielle Marie Lee Bowen, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application;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

Danielle M L Bowen

SWORN to and subscribed before me this 10th day of March, 2010.

Kathy R. Barnes (L.S.)
Notary Public

My Commission Expires: My Commission Expires August 12, 2015



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ANDERSON SC
2010 MAR 15 A 9:18
GENERAL SESSIONS
Revised 3/2003

Question #19:

I had a psychiatrist Mrs. Schwartz-Whyatts Out of Columbia who stated clearly that I suffered from (PPD) post-partum depression. She wanted me to plea Guilty by Mentally Ill but my public defender said I couldn't. So I also wanted to come back on this matter.

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

I, Danielle Marie Lee Bowen, 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:

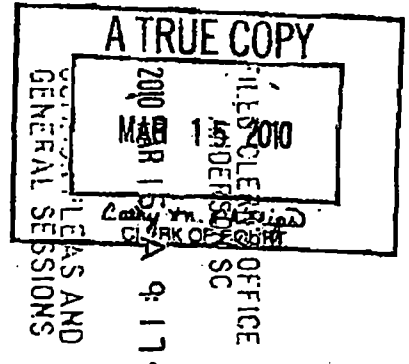
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Danielle M. L. Bowen
Applicant

SWORN or affirmed to and subscribed before me this
10th day of March, 2010.

Kathy R. Barner
Notary Public

My Commission Expires: My Commission Expires August 12, 2015



STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

2010-CP-04-1002

Danielle Bowen, #334349,
Applicant,

v.

RETURN

State of South Carolina,
Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 15, 2010, 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 Anderson County Clerk of Court. The Applicant was indicted at the April 2008 term of the Anderson County Grand Jury for Homicide by Child Abuse (2008-GS-04-0617). She was represented by Andrew Potter, Esquire. On April 15, 2009, the Applicant pled guilty as charged. She was sentenced by the Honorable J. Cordell Maddox to confinement for a period of twenty-five (25) years, provided that upon the service of twenty (20) years, the remainder would be suspended with five (5) years probation. The Applicant did not appeal her guilty plea or sentence.

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

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

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

- I. Ineffective Assistance of Counsel
 - a. Failure to present to the court the defense of accident.
 - b. Conflict of interest- "I felt like he didn't fight this matter because he wasn't getting paid."

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 336 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.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

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

v.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

May 13, 2010.

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WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
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EXHIBITS

No	DESCRIPTION	ID	EV
A-1	<i>No exhibits were presented during the hearing</i>		
A-2			
A-3			

1 (WHEREUPON, court convened with all parties present,
2 and the following proceedings were had commencing at
3 approximately 1:24 p.m.)

4 THE COURT: All right.

5 MR. WHITMIRE: May it please the Court.

6 THE COURT: Yes.

7 MR. WHITMIRE: The next case before Your Honor
8 is Danielle Bowen v. State of South Carolina, 2010-CP-04-
9 1002. Ms. Bowen was indicted for homicide by child abuse
10 in April 2008. She was represented by Mr. Andy Potter.
11 On April 15, 2009, she pled guilty as indicted. She was
12 sentenced by Judge Maddox to a term of twenty-five years
13 imprisonment provided on -- well, suspended provided on
14 the service of twenty years with five years probation.
15 She did not appeal her sentence or her conviction. She
16 did, however, file a timely application for post-
17 conviction relief.

18 She is present and represented by counsel. At this
19 time, we turn matters over to Mr. Welborn.

20 THE COURT: Yes, sir?

21 MR. WELBORN: May it please the Court. We call
22 at this time Danielle Bowen.

23 THE COURT: Come on up, Ms. Bowen, to be sworn
24 right here.

25 (WHEREUPON, the witness was duly sworn.)

Danielle M. Bowen - Direct Examination by Mr. Welborn

4

1 MR. WELBORN: May it please the Court.

2 THE COURT: Yes, sir?

3 DANIELLE M. BOWEN,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. WELBORN:

7 Q.: You're Danielle Bowen?

8 A. Yes, sir.

9 Q. Ms. Bowen, you pled guilty to homicide by child
10 abuse on about the 15th of April, 2009; is that correct?

11 A. Yes, sir.

12 Q. And you were given a twenty-five year sentence
13 provided you'd serve twenty years and get a five years
14 probation after that; is that correct?

15 A. Yes, sir.

16 Q. And you did not appeal your guilty plea or your
17 sentence; is that correct?

18 A. Yes, sir.

19 Q. Now, I'm going to ask you some questions. You filed
20 an application for post-conviction relief with this
21 court. And you timely did that. And in your
22 application, you've alleged that your lawyer, Mr. Andrew
23 Potter, was ineffective as your counsel?

24 A. Yes, sir.

25 Q. And you allege that he was ineffective because he

Danielle M. Bowen - Direct Examination by Mr. Welborn

5

1 failed to present to the court the defense of accident;
2 is that correct?

3 A. Yes, sir.

4 Q. Now, for the Court's knowledge and edification, this
5 was a child that was your child. And this child on that
6 particular date this event happened was -- died as a
7 result of something that brought charges against you; is
8 that correct?

9 A. Yes, sir.

10 Q. And I think it was alleged that you intentionally
11 hurt that child. And I'm not trying to be too graphic.
12 But I think they say you put your foot on the child or
13 stomped or something like that were allegations; is that
14 correct?

15 A. Yes, sir.

16 Q. And now you've alleged in your application that Mr.
17 Potter should have told the court that this was an
18 accident of yours and there should have been a defense of
19 that. Did you talk with Mr. Potter about that?

20 A. Yes, sir.

21 Q. What did you tell him?

22 A. I told him that it was an accident when I was
23 chasing my son, but he didn't put anything up for like
24 any kind of defense for me whenever I came into the
25 court. Nothing. He didn't say anything for me.

1 Q. But when you told ---

2 A. But presented what was being said.

3 Q. Well, you told him this was an accident. He did
4 have an expert at some point retained, Dr. Donna
5 Schwartz-Watts; is that correct?

6 A. Yes, sir.

7 Q. And she gave you -- excuse me. She gave you an
8 evaluation of sorts; is that correct?

9 A. Yes, sir.

10 Q. And were you aware or familiar with her findings
11 before you went into the courtroom that day?

12 A. Yes, sir.

13 Q. Now, if you had -- if Mr. Potter had told the court
14 that this was an accident, what evidence do you have that
15 this would have given a different result, and if you'd
16 tried this case, you'd have gotten a different result
17 because of the accident?

18 A. I ---

19 Q. What evidence would have been shown that it was an
20 accident is my question.

21 A. I have no proof of what he was saying to me because
22 there was no recordings. Nothing. He barely even came
23 to see me, write me or anything.

24 Q. Well, let me rephrase my question. I might not have
25 been too clear. You're telling the Court that he should

Danielle M. Bowen - Direct Examination by Mr. Welborn

7

1 have alleged that this was an accident, and that was a
2 defense for you; is that correct?

3 A. Yes, sir.

4 Q. Now ---

5 A. That and Ms. Schwarts-Watts testifying for me before
6 we even went in. She had talked to me that morning, and
7 she talked to the judge that morning.

8 Q. And what would the facts have indicated had you gone
9 to a jury that it was an accident is my question?

10 A. I had no -- just -- I don't know. I can't prove it.
11 There's no way to prove that it was an accident. There
12 was no one there but me and my son.

13 Q. Well, then tell the Court what happened that shows
14 that it was an accident that you would have told the jury
15 about?

16 A. How do you prove when you was chasing your nineteen-
17 month-old through the house and your little girl is right
18 there and you fall on her when she's laying right there?
19 You don't expect her to be there. How do you prove that?
20 There's no way to prove it.

21 Q. To prove what, ma'am?

22 A. That you fell on your daughter. There's no way to
23 prove that. You can't prove something like that.

24 Q. Okay. Well ---

25 A. They're saying I put her in the floor and stepped on

1 her. Who would do that in their right mind to their
2 child?

3 Q. So did you tell Mr. Potter this was an accident?

4 A. Yes, sir, I did.

5 Q. And what was his response to that?

6 A. There's no way it could have been an accident.

7 Q. And how did he conclude that, or do you know?

8 A. He -- I don't know. I don't know.

9 Q. Now, did you ask him to try this case on that
10 theory?

11 A. No, sir, I didn't. I asked him what he thought was
12 going to happen. He said if it wasn't going to be
13 anything over twenty or twenty-five, that we was going to
14 go on to the courtroom. Ms. Schwartz-Watts had came down
15 there and talked to me and told me that she wanted me to
16 go in and plead guilty but mentally ill. But he had me
17 to go ahead and sign a paper, I guess. I don't know
18 anything about this stuff. I got locked up when I was
19 eighteen. I've never been locked up before. I don't --
20 they don't have any kind of law libraries or anything in
21 the County for anybody to study anything. I don't know
22 nothing. I was dumb to this kind of stuff. I didn't
23 know.

24 Q. Okay. Now, are you aware that had you pled guilty
25 but mentally ill ---

1 A. I didn't know none of this.

2 Q. Let me finish my question. Are you aware that if
3 you had pled guilty but mentally ill, you would have had
4 the same sentence, you just would have had some treatment
5 for your mental illness?

6 A. Right.

7 Q. Were you aware of that?

8 A. Yes, sir, I'm aware of that. Now I am.

9 Q. All right. Well, are you complaining then to the
10 Court about the lack of treatment for your mental
11 illness? Is that what you're saying?

12 A. That and that he didn't defend me in no kind of way.

13 Q. Well ---

14 A. Even if it is the less, it doesn't matter. He
15 didn't defend me.

16 Q. Would you -- knowing what you know now -- let me
17 rephrase the question. When did you decide that this was
18 indeed an accident? Was it before you met with him and
19 talked with him, or did you decide that after you had
20 already pled guilty?

21 A. No. I been knowing that this was an accident.

22 Q. And you told him that?

23 A. Yes, sir.

24 Q. Now, did you -- why did you not insist upon going to
25 trial then if that was your position?

1 A. Because he told me if I go to trial I was getting
2 life in prison.

3 Q. Now, knowing that ---

4 A. That would scare somebody right there.

5 Q. Well, knowing that and being scared, would you still
6 even right now this very day want to have another trial
7 on this and risk that possibility happening to you?

8 A. Yes, sir.

9 Q. Do you feel like you were forced then into this plea
10 in effect?

11 A. Yes, sir.

12 Q. It was sort of an involuntary plea of sorts?

13 A. Yes, sir. I didn't even want to plead guilty. When
14 they kept asking me over and over again in the courtroom,
15 I didn't even want to say I was guilty.

16 Q. I understand. Now, you also allege -- let me
17 rephrase this question. What evidence besides what
18 you've already told the Court could you have presented to
19 the jury that you think would have given you a different
20 outcome?

21 A. I don't have any.

22 Q. All right.

23 A. It was just me and my child there that day. I had
24 nobody there. I was screaming. I called 9-1-1 screaming
25 to these people, "Please come." They had all this.

1 Q. They also alleged that there was a conflict of
2 interest. You felt like he didn't fight this matter
3 because he wasn't getting paid. Can you explain -- is
4 there more to the conflict of interest than just he
5 wasn't getting paid? I want the Court to understand what
6 you're trying to say.

7 A. I just feel like I was just another docket number to
8 him just to get on through the system. He kept telling
9 me he was going to get me in for a bond reduction for a
10 whole year. Never got me in. Month after month I was
11 getting a paper saying, "I'm going to get you in for your
12 bond reduction." Never got in for a bond reduction ever.

13 Q. Okay. Now, we've talked a couple of times by phone;
14 is that correct?

15 A. Yes, sir.

16 Q. Is there anything else besides these things right
17 here that we've gone over that you want the Court to know
18 about today?

19 A. No, sir.

20 Q. Are you telling the Court then that you feel like
21 that you were -- this was an involuntary plea and but for
22 what you've told the Court, you would have insisted on
23 going to trial and you think it would have been a
24 different result?

25 A. Yes, sir.

1 Q. All right. Thank you. Answer anything the Court
2 would have or opposing counsel.

3 MR. WHITMIRE: May it please the Court.

4 CROSS-EXAMINATION

5 BY MR. WHITMIRE:-

6 Q. Good afternoon, Ms. Bowen.

7 A. Good afternoon.

8 Q. Mr. Potter was appointed to your case after you were
9 arrested?

10 A. Yes, sir.

11 Q. How many times do you remember meeting with him?

12 A. Very few.

13 Q. Less than five? More than five?

14 A. Maybe five at the most.

15 Q. And you had already given statements to police
16 before he was even on the case?

17 A. Yes, sir.

18 Q. Now, originally when your child was taken to the
19 hospital, did you tell police about the accident and
20 stepping on her?

21 A. I told them the day that they called me in there,
22 yes, sir.

23 Q. So you never gave a contradictory statement?

24 A. I told them about me falling on her. Yes, sir, I
25 did tell them about that. When the DSS people called me

1 in there and talked to me, I told them what had happened.
2 And then the very next day, they came and asked me for a
3 guided tour of what had happened that day. And I told
4 them. And they told me they was locking me up.

5 MR. WHITMIRE: Referring to page 9 of the
6 transcript, Your Honor.

7 Q. I mean, when you took your child in to emergency
8 care.

9 A. They didn't ask me. No. When I went to the
10 hospital that day, we was in the ambulance. And we went
11 straight in. I told them she had stopped breathing. She
12 had stopped breathing. I was on the phone with 9-1-1
13 screaming to these people to please come to my house.
14 And they telling me, "They're coming, they're coming."
15 It took them forty-five minutes to get to my house. And
16 they was trying to teach me how to do CPR over the phone
17 on a child.

18 Q. And you told -- and your testimony today is you told
19 all this to your attorney right away?

20 A. Yeah. When we spoke to each other, yes, sir.

21 Q. And you wanted to fight these charges?

22 A. The charge -- yeah, this charge that I'm having now.

23 Q. Did y'all review your statement to police during the
24 representation?

25 A. What do you mean?

1 Q. The statement that you gave police or DSS, did you
2 guys talk about that?

3 A. I don't remember talking to him about that.

4 Q. Did you talk about any of the State's evidence?

5 A. We talked about some of the stuff, the autopsy.

6 That's about all he pulled out with me is the autopsy.

7 Q. That was it? Did he tell you about the elements of
8 homicide by child abuse?

9 A. Yes, sir.

10 Q. And I believe I recall -- and correct me if I'm
11 wrong -- that you just testified that this was your first
12 experience in general sessions criminal court, and you
13 just really didn't know what was going on.

14 A. I've never been locked up for something like this
15 ever. I just had turned eighteen. It was three days
16 after my eighteenth birthday.

17 Q. You got your GED when you were in lockup?

18 A. Yes, sir. In the County.

19 Q. Did you ever ask him to look into how maybe y'all
20 could prove evidence at trial?

21 A. No, sir. I didn't know anything -- I don't know
22 anything about none of this stuff. I had no access to
23 anything. I kept asking these people for law library
24 books, just something that I could look into to study up
25 on some stuff. And they couldn't get us access to

1 anything.

2 Q. Did you share these concerns with Mr. Potter?

3 A. No, sir. I did write the Public Defender's office
4 one time about it.

5 THE COURT: Ms. Bowen, let me ask you a
6 question.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: It seems in here that on the
9 autopsy report there was also some bruising on your child
10 on the neck and on the right side of the child's face.

11 THE WITNESS: Yes, ma'am. The ---

12 THE COURT: Did you have any way to explain
13 that?

14 THE WITNESS: I didn't know -- I told them I
15 don't know how that happened. That's what I was trying
16 to tell them. They tried to say something about choking
17 or something. I would never choke my child. Now, when I
18 burp my child, that's how I hold my child when I burp my
19 child. But I would never choke my child.

20 CROSS-EXAMINATION

21 CONTINUED BY MR. WHITMIRE:

22 Q. And I recall your testimony was that you pled guilty
23 because Dr. Schwarts-Watts told you to do it?

24 A. Yes, sir.

25 Q. And why was that again?

Andrew Potter - Direct Examination by Mr. Whitmire

16

1 A. She said that I suffered from the worst case of
2 postpartem depression she had ever seen. And she had
3 wanted me to plead guilty but mentally ill.

4 Q. And Mr. Potter presented that to the judge?

5 A. She did that morning.

6 Q. You were facing life for this?

7 A. Yes, sir.

8 Q. How much time are you actually doing in jail?

9 A. Twenty-five.

10 MR. WHITMIRE: At this time, Your Honor, I have
11 no further questions.

12 MR. WELBORN: Nothing further.

13 THE COURT: Okay.

14 You may step down, ma'am.

15 MR. WELBORN: That's our case.

16 THE COURT: Okay. Thank you.

17 MR. WHITMIRE: The Respondent calls Mr. Andy
18 Potter to the stand.

19 THE COURT: Come forward, Mr. Potter.

20 (WHEREUPON, the witness was duly sworn.)

21 ANDREW T. POTTER,

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. WHITMIRE:

25 Q. Good afternoon, Mr. Potter.

Andrew Potter - Direct Examination by Mr. Whitmire

17

- 1 A. Hello.
- 2 Q. Mr. Potter, do you recall your representation in
3 this matter?
- 4 A. I do.
- 5 Q. Have you had a chance to review your file?
- 6 A. I have.
- 7 Q. How long have you practiced criminal law here in
8 Anderson?
- 9 A. I came to Anderson in 1997. Worked for Mr. Laniel
10 Chapman. Spent a year and a half in Greenville with a
11 firm in Greenville. And then came back and started full
12 time with the Public Defender's office June of 2001.
13 Prior to that, I was licensed to practice in the state of
14 Ohio. Practiced for five years as a public defender in
15 Cincinnati, Ohio.
- 16 Q. Do you recall the circumstances surrounding Ms.
17 Bowen's arrest when you were appointed in this case?
- 18 A. Yes.
- 19 Q. And during the representation, how many visits did
20 you make?
- 21 A. Probably about five, and to the detention center.
- 22 Q. Now, what is your general policy in opening a file
23 in taking on a new client?
- 24 A. You know, at that time, typically I'm handed the
25 file with a copy of the warrant. I usually go out and

1 meet initially with the client to find out their side of
2 the story, circumstances surrounding the case. Begin to
3 explore whether there's any defenses, if there's any
4 defects in the warrant, any defects related to the
5 investigation. That type of thing.

6 Q. Did you receive your discovery all at once, or was
7 it a piecemeal affair?

8 A. I think I got it all at once.

9 Q. Were you able to independently evaluate it and
10 develop an opinion of the State's case?

11 A. When I met with Danielle, there was concerns --
12 there was CPR that was done on the child. And I had some
13 concerns whether that CPR that was done on the child
14 could have resulted in the injuries. And I had
15 informally consulted -- I called Bruce Byrholdt who'd had
16 a case like this in Greenville. He gave me the name of a
17 Dr. Michael Ward over in Greenville who was the
18 Greenville County pathologist. I sent a copy of the --
19 my client's statements, a copy of the autopsy to Dr.
20 Ward. And Dr. Ward gave me a call, and we consulted
21 briefly on the phone about her case. And it was
22 ultimately determined that Dr. Ward was not going to be
23 someone who could be retained on the case to help us out
24 in regards to the stepping on the child story.
25 Specifically, instances regarding the bruising around the

1 head and the trauma that he found in the autopsy and in
2 his evaluation.

3 Q. Was there a fair amount of media around this case?
4 Do you recall?

5 A. A little bit. There was -- you know, it's a small
6 town. There were articles and such. Don't recall if
7 there was any media at the bond hearings or anything of
8 that sort.

9 Q. Cameras at the sentencing hearing?

10 A. There may have been. I don't -- there may have been
11 photographs, I think.

12 Q. Now, did you share all relevant case developments
13 with Ms. Bowen?

14 A. Yes.

15 Q. At what point did the representation start turning
16 towards a plea versus trial?

17 A. You know, probably halfway through the
18 representation, it seemed like a plea would probably be
19 the best route to go, especially when I got the opinion
20 from Dr. Ward. I had Dr. Schwartz-Watts evaluate her to
21 determine whether it was a potential N.G.R.I. issue in
22 regards to the post-partem. She had just had a baby, and
23 then six weeks later she was pregnant again.

24 Her home life was something that was disturbing.

25 And it was not necessarily through something of her own

1 fault. So that's why I retained Dr. Schwartz-Watts. Dr.
2 Schwartz-Watts did an evaluation of her. Determined that
3 an N.G.R.I. would not be applicable, but did diagnose her
4 with the post-partem depression issues.

5 Q. I guess at this point, halfway through
6 representation, what was Ms. Bowen's attitude about
7 pleading guilty versus going to trial?

8 A. It was my understanding it was going to be headed
9 towards a plea. In my letters to her, I explained to her
10 the nature of what a guilty plea would be, that she in
11 essence would be admitting facts. And if she had a
12 problem with that, if there was an issue with that, we
13 needed to go ahead and prepare for trial. Wrote to her
14 numerous times describing to her what the plea process
15 would be and what the trial process would be. At no
16 point in time did she ever say, "Andy, I didn't do this.
17 I want a trial."

18 Q. And just for the record, Mr. Potter, can you testify
19 to your general practice in advising a client regarding a
20 plea offer versus having a trial?

21 A. I tell them what the offer is, if there is in fact
22 an offer. If I remember correctly, this was just a
23 straight-up plea with no recommendation of sentencing.
24 The hope was -- and the reason why I had Dr. Schwartz-
25 Watts testify was to kind of give the judge a sense of

- 1 the home life that Danielle had been experiencing and
2 kind of the oppressive environment that she was in
3 resulted in something like this happening. And it was
4 the hopes that we would convince Judge McIntosh [sic] to
5 split the sentence and allow probation to follow after
6 serving a little bit of -- you know, serving some time.
7 There was some speaking between Judge Maddox and
8 Danielle, and there was some answers that I don't think
9 the judges were pleased with from Danielle and Dr.
10 Schwartz-Watts who was straight down the line said so.
11 And I think that's what ultimately ended up in the
12 sentence that she got. Did that answer your question?
- 13 Q. Very much. That was just for the record. I
14 sincerely appreciate it. Did Ms. Bowen ever approach you
15 wanting law books or wanting to learn more about her
16 charges?
- 17 A. I sent her a copy of the statute and that type of
18 paperwork. I don't recall whether she asked for law
19 books. I can't provide her with those types of items in
20 the detention center, mainly because I don't have them.
21 Because all I have is one book that is mine that I need
22 for other cases. So anything that she would need, she
23 would have to take that up with the detention center
24 people.
- 25 Q. Describe her level of involvement in her case during

1 your representation. Did she write a lot of letters?

2 A. A fair amount of letters. She stayed in tune in
3 regards to what was going on. I kept her advised as to
4 what was happening. So she seemed somewhat up to date
5 with what was going on.

6 Q. Now, just a few questions for you on G.B.M.I. What
7 was your strategy or desire to not ask for a G.B.M.I.
8 verdict or sentencing?

9 A. You know, I don't recall ever talking with Dr.
10 Schwartz-Watts about guilty but mentally ill. My
11 impression with guilty but mentally ill is it doesn't
12 resolve the ultimate sentence. It just kind of results
13 in where she goes and whether she gets treatment or not.
14 And I was under the impression she was going to get
15 treatment whether she entered a guilty plea or a guilty-
16 but-mentally-ill plea. My fear with guilty but mentally
17 ill has always been that there may be a potential she'd
18 be held past a potential sentencing, max sentencing date,
19 because of the fact she would be deemed as being mentally
20 ill. But I -- I mean, that was my impression of it. And
21 then there was something when Dr. Schwartz-Watts was up
22 there, and she was there for the entire plea. It wasn't
23 something where Dr. Schwartz-Watts grabbed me and said,
24 "No, no, no. This needs to be a guilty-but-mentally-ill
25 plea." So ...

1 Q. So basically get the benefits not the detriments?

2 A. Yeah.

3 Q. For the record, can you describe potentially what
4 those detriments would be within the Department of
5 Corrections on a G.B.M.I.?

6 A. Well, my understanding just the potential of ending
7 up having to serve more time than what was originally
8 sentenced. And the fact that she ultimately received any
9 type of mental health treatment would have been provided
10 for her in general population.

11 Q. Did you share your approach with Ms. Bowen regarding
12 how you were going about this G.B.M.I.?

13 A. I don't recall specifically talking with her about
14 guilty but mentally ill, and I don't think she ever
15 mentioned it to me.

16 Q. And ultimately, whose decision was it to plead
17 guilty?

18 A. It was hers. It was Danielle's.

19 Q. Did you try this case to the best of your ability?

20 A. Yes, sir.

21 Q. No further questions. Thank you very much, Mr.
22 Potter.

23 MR. WELBORN: No questions.

24 THE COURT: Okay. You may step down.

25 Anything further?

Andrew Potter - Direct Examination by Mr. Whitmire

24

1 MR. WHITMIRE: The Respondent rests and we'd be
2 happy to answer any questions Your Honor may have. Even
3 on G.M.B.I. even though I just lost that case in the
4 Court of Appeals.

5 THE COURT: Anything further from you, Mr.
6 Welborn?

7 MR. WELBORN: No, Your Honor.

8 THE COURT: All right. Thank you.
9 Good luck to you, Ms. Bowen.

10 (WHEREUPON, the hearing ended at approximately 1:50
11 p.m.)

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

1 CERTIFICATE OF REPORTER

2
3 I, the undersigned Renee H. Tollison, Official Court
4 Reporter for the Tenth Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of all
7 the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal,
9 in the Circuit Court for Anderson County, South Carolina,
10 on the 1st day of December 2014.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 April 27, 2015

16

17

s/ Renee H. Tollison

18

Circuit Court Reporter

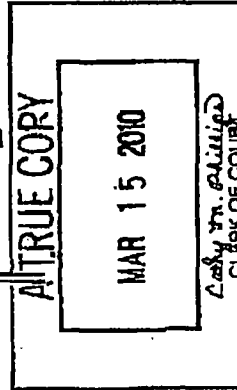
DOCKET NO. 2008 GS04 - 617

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

APR 15 2008

Term



WITNESSES

OWENS T, ACSD

ARREST WARRANT NUMBER

J895382

ACTION OF GRAND JURY
TRUE BILL

APR 15 2008

William C. Fulmer
Foreperson of Grand Jury
Date: Foreperson

VERDICT

THE STATE

vs.

Danielle Marie Bowen

COMMITMENT

04-16-09/cmg

MSM

Indictment for

Murder / Homicide by child abuse

SC Code: 16-03-0085(A)(1)(B)(1)
CDR Code:2356

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF Anderson)

At a Court of General Sessions, convened on APR 15-2008, the Grand Jurors of Anderson County present upon their oath:

Murder / Homicide by child abuse

That Danielle Marie Bowen did in Anderson County, on or about January 8, 2008, commit the crime of Homicide by Child Abuse in that the defendant did cause the death of one Minor , a child who was under the age of eleven (11) at the time of her death, and that the defendant did cause the death of said child while committing child abuse or neglect, and the death of said child occurred under circumstances manifesting an extreme indifference to human life. This is in violation of 16-3-85(A)(1) of the South Carolina Code of Laws (1976) as amended

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) FOR THE TENTH JUDICIAL CIRCUIT

Danielle Bowen,
S.C.D.C. No. 334349,

A TRUE COPY
FEB 12 2015
Richard M. Kintz
CLERK OF COURT

C.A. No. 2010-CP-04-1002

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

COMMON PLEAS AND
GENERAL SESSIONS

2015 FEB 12 09:11:02

FILED-CLERK'S OFFICE
ANDERSON, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed March 15, 2010. Respondent subsequently filed its responsive pleadings. An evidentiary hearing into the matter was convened on December 1, 2014 at the Anderson County Courthouse. Applicant was present and was represented by Hugh W. Welborn, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. Applicant was indicted at the April 2008 term of the Court of General Sessions for Anderson County for homicide by child abuse (2008-GS-04-0617). She was represented by Andrew Potter, Esq. On April 15, 2009, Applicant entered a guilty plea as indicted before the Honorable J. Cordell Maddox Jr. Judge Maddox accepted Applicant's plea and sentenced her to a term of twenty-five (25) years imprisonment, provided that upon the service of twenty (20) years, the remainder would be suspended with five (5) years probation. Applicant did not appeal her guilty plea or sentence.

At the PCR hearing, Applicant proceeded on the limited allegations of ineffective assistance of counsel in her assertions that she was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. failure to investigate and pursue an accident theory of the case;
 - b. failure to move for a GBMI plea during sentencing;
 - c. failure to remain on Applicant's case because of a purported conflict of interest.

Summary of Evidence and Testimony from the PCR Hearing

Applicant testified that counsel did not adequately investigate an accident theory of the case. She testified that explained her version of the facts of the child-victim's death to counsel. In summary, Applicant told counsel that "I was chasing my nineteen month old through house and fell on my daughter." She testified that Applicant rejected her version that her conduct was accidental. Yet, Applicant testified that "there was no way to prove" her version of the facts. She was unable to explain the bruising on the child-victim's neck. She acknowledged that she did not request counsel further pursue an accident theory of the case. Applicant testified that she met with counsel on five occasions prior to the entering a guilty plea. She testified that she gave statements to law enforcement and to the Dept. of Social Services concerning the child-victim's death prior to counsel's appointment on her case.

Applicant testified that she has since spent significant time in the prison library where she has become more informed on relevant law concerning her case. In retrospect, Applicant would have proceeded to trial under an accident theory of defense. She testified that counsel and his retained mitigation expert, Dr. Schwartz-Watts, were heavy handed in their insistence that she enter a guilty plea.

Applicant testified that counsel did not advise her of the possibility of entering a Guilty But Mentally Ill (GBMI) plea. She opined that counsel's conduct here constituted an abandonment of counsel's duty as an advocate. She also testified that she believed that counsel's station as a public defender constituted a conflict of interest because "he was not paid" to represent her.

Counsel testified to his course of conduct during the representation. He provided the Court a synopsis of his career as a criminal defense attorney in addition to his general procedures and policies at the outset of a new representation. Subsequent to discussing Applicant's version of the facts, obtaining discovery disclosures from the State, and independently evaluating the State's evidence, counsel solicited an independent medical expert, Dr. Ward. Counsel noted that his course here was predicated from his concerns whether CPR could have caused the injury. Dr. Ward examined the State's evidence and phoned counsel to discuss his findings. Because Dr. Ward rendered an unfavorable opinion to the defense's case, counsel did not request an examination report on the matter.

As a result Counsel noted that the posture of the case changed to a disposition by guilty plea. Counsel apprised Applicant of the consequences and constitutional implications of forgoing a trial to enter a guilty plea and vice versa. Counsel was adamant that Applicant never told him "I didn't do this. I want to go to trial." He noted that Applicant was involved in her case and often sent correspondence to him throughout the representation. Counsel provided the Court a synopsis of his general practice in advising clients on the advising a client on the terms of a plea agreement. Counsel noted that this plea offer here was "straight up."

Counsel testified to his labor in developing a mitigation case for sentencing. He solicited an independent forensic psychologist, Dr. Schwartz-Watts, in this matter. He made the decision

to present Dr. Schwartz-Watts favorable GBMI findings without actually requesting Judge Maddox accept Applicant's plea under as GBMI. Counsel explained that Applicant was already receiving the possible benefits of that GBMI would have provided her in the Dept. of Corrections. He reasoned that his posture benefited Applicant because it would not expose her to the detriments of a GBMI sentence in Corrections.

APPLICABLE LAW

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

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Kolle v. State, 386 S.C. 578, 588, 690 S.E.2d 73, 78 (2010)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject's convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant reaped the benefit of exceptional assistance of counsel concerning his performance on the allegations at issue. The facts of the child-victim's death were particularly gruesome where the record refutes Applicant's version of accident. Counsel's decision to forego presenting Applicant's plea as a GBMI plea was unquestionably a product excellent trial strategy. Ultimately, the difference between guilty and GBMI was a distinction with an administrative difference. Because the Applicant was already receiving mental health treatment from one of the State's most renowned experts and practitioner, she suffered no tangible detriment.

A.

Applicant failed to meet her burden to prove that counsel's performance was either deficient or ineffective for failing to investigate and pursue an accident theory of the case. Counsel has dual investigative responsibilities recited Mickey v. Ayers, 606 F.3d 1223, 1236-37 (9th Cir. 2010) to investigate possible defenses and then to select the most appropriate one. The facts of the crime may weigh against particular defenses. Poindexter v. Mitchell, 454 F.3d 564, 575 (6th Cir. 2006) (defense of crime of passion negated by planning activity and defendant's insistence that he did not do it). For a homicide to be excusable on the ground of accident, it must be shown the killing was unintentional, the defendant was acting lawfully, and due care was exercised in the handling of the weapon. State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994).

This Court finds Counsel's testimony on the matter credible and convincing. Counsel conducted a thorough evaluation of the State's evidence and made the appropriate decision to seek an advice from an independent medical expert on the matter. Simply, counsel is entitled to and can rely on reports from a qualified expert. Stokley v. Ryan, 659 F.3d 802, 814 (9th Cir. 2011). Applicant has presented no credible evidence or testimony to undercut counsel's sound performance here. See Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (applicant's allegations, alone, will not support a finding of prejudice when applicant claims counsel was ineffective for failing to investigate witnesses; instead, applicant must show the results of an investigation would have resulted in a different outcome at trial). This Court finds it significant that Applicant testified that she was unaware of how one could prove an accident theory in her case. See Cannon v. Mullin, 383 F.3d 1152, 1165 (10th Cir. 2004) (where the petitioner provided no indication of what helpful information would come to fruition). Therefore, this allegation is denied and dismissed with prejudice.

B.

Applicant failed to meet her burden to prove that counsel's performance was either deficient or ineffective for failing to pursue a GBMI sentence at the plea. This Court finds counsel's performance on the matter was sound and was strategically executed with precision.

The purposes for the enactment of GBMI statutes are (1) to reduce the number of defendants being completely relieved of criminal responsibility and (2) to insure mentally ill inmates receive treatment for their benefit as well as society's benefit while incarcerated. State v. Wilson, 306 S.C. 498, 413 S.E.2d 19 (1992). In this jurisdiction, "a defendant found GBMI is entitled to ~~immediate treatment and evaluation.~~" ~~State v. Hornsby~~, 326 S.C. 121, 126, 484 S.E.2d 869, 872 (1997) (citing S.C. Code Ann. § 17-24-70) (emphasis added). This Court agrees with counsel that Applicant reaping the benefits prior to entering her plea. Thus, counsel shielded Applicant from the administrative detriments inherent in a GBMI classification within the Dept. of Corrections while retaining the ability to present Dr. Schwartz-Watts findings in the mitigation phase of the plea hearing. See Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) ("Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.").

Regardless, this Court finds the allegation, as presented, is *per se* without merit. South Carolina does not recognize a diminished capacity defense, and a defendant who is found GBMI is not less guilty than a defendant who is simply found guilty. See also Gill v. State, 346 S.C. 209, 220, 552 S.E.2d 26, 32 (2001) See People v. Manning, 227 Ill. 2d 403, 422, 883 N.E.2d 492, 504 (2008) (citing Estelle v. Gamble, 429 U.S. 97 (1976)) ([T]here is virtually no difference in the treatment that defendant will receive under GBMI as opposed to a guilty plea. The eighth

amendment to the United States Constitution requires that inmates receive adequate medical care.”). Therefore, this allegation is denied and dismissed with prejudice.

C.

Applicant’s allegation that counsel’s representation constituted ineffective assistance of counsel because of a purported conflict of interest is entirely without merit. “To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney’s performance.” Jordan v. State, 406 S.C. 443, 449, 752 S.E.2d 538, 541 (2013) (citing Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001)). “[U]ntil a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.” Id. (internal citations omitted). Claiming a defense attorney is less motivated or involved in a case because she is employed by indigent defense is base. Instead, the record shows that Applicant received exceptional representation from a distinguished and accomplished attorney. Therefore, this allegation is summarily denied and dismissed with prejudice.

D.

Except as discussed above, this Court finds that the Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. “An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable.” Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant’s

failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.



CONCLUSION

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

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

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

AND IT IS SO ORDERED this 16 day of Feb., 2015.

CARMEN T. MULLEN
Presiding Judge
Tenth Judicial Circuit

Beaufort, South Carolina

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