

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Hampton County
Roger L. Couch, Circuit Court Judge

VOLUME II OF II
RECEIVED
SEP 26 2016
S.C. SUPREME COURT

JOSEPH DAVIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000274

A P P E N D I X

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Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEYS FOR RESPONDENT

PAGES 501 - 715

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
APPLICANT'S EXHIBIT # 1 (CD) AND APPLICANT'S # 2 (PHOTO)**

defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

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

FILING, SERVICE, AND TRANSMITTAL OF ORDER. It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the

ALLISON
CLERK OF COURT FOR
DADE COUNTY, FLA.
DATE 1-23-14

opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the examining agency at the address listed below. To expedite commencement of the evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the examining agency to advise of the issuance of this order and forthcoming service upon the agency:

Evaluation Order Service Information

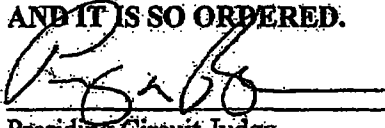
Department of Mental Health

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

Department of Disabilities and Special Needs

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

AND IT IS SO ORDERED.


Presiding Circuit Judge

Honorable Perry M. Buckner

Printed Name of Presiding Circuit Judge

Hampton, South Carolina

Dated: May 20, 2009


Tameaka Legette for Isaac McDuffie Stone, III

Prosecutor

PO Box 1880

Address

Bluffton, SC 29910

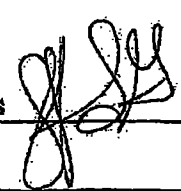
City, State, Zip

843-470-3739

Telephone

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Stephanie Smart-Gittings

Defense Counsel

PO Box 506

Address

Hampton, SC 29924

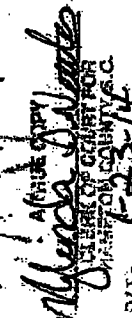
City, State, Zip

803-914-2240

Telephone

pdahj@yahoo.com

Email


A true copy
of this order
is being
submitted to
the
Clerk of Court
for
the
Circuit Court
for
Bluffton, SC
DATE: 5-23-09

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

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

#7
PMB

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JANUARY 11, 2007
DATE 1-23-07

Reverly A. H. Buscemi, Ph.D.
State Director
David A. Goodell
Associate State Director
Operations
Kathi K. Lacy, Ph.D.
Associate State Director
Policy



3440 Harden Street Ext (29203)
 P.O. Box 4706, Columbia, South Carolina 29240
 V/TTY: 803/898-9600
 Toll Free: 888/DSN-INFO
 Website: www.ddsn.sc.gov

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Deborah C. McPherson

JOINT DMH/DDSN FORENSIC EVALUATION

Name: Joseph Davis
County: Hampton
Date of Evaluation: 2/25/2010 and 3/24/2010
Place of Evaluation: DDSN Coastal Center
 Summerville, SC

Gender: Male
Race: African-American
Date of Birth:
Age: 28 years

Examiners: Gordon E. Brown, Jr., Ph.D. - DDSN Examiner
 Susan Knight, Ph.D., ABPP - DMH Examiner
Others Present: Christopher Fields, M.D., MUSC Forensic Psychiatrist (2/25/2010)
Charges: Murder, Burglary 2nd Degree, and Armed Robbery while Armed with a Deadly Weapon

Purpose of Evaluation:

This evaluation was conducted pursuant to an order dated 5/20/2009 (received 1/27/2010 by DDSN) and signed by the Honorable Perry M. Buckner, Presiding Circuit Judge, Hampton County. The order required that Mr. Davis be evaluated by the Department of Mental Health (and referred to the Department of Disabilities and Special Needs if necessary) to determine his competency to stand trial pursuant to *State v. Blair*, 275 S.C. 529, 273 S.E. 2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976). The evaluation was further pursuant to an order dated 10/12/2009, also signed by the Honorable Perry M. Buckner, requiring a re-examination of the Defendant's capacity to stand trial following a period of hospitalization and treatment.

Limits of Confidentiality:

Before the interviews started, Mr. Davis was advised of the purpose of the evaluation, and that the results and content of the evaluation would be communicated to his defense counsel, the prosecution, and the court. In addition, he was informed of the possibility that the examiner(s) might be called to testify regarding the content and results of the evaluation.

Summary of Evaluation Results:

Presence of Mental Retardation:
Presence of Mental Illness:
Competency to Stand Trial:

Deferred
YES (Psychosis NOS by history)
YES

DISTRICT I

P.O. Box 239
 Clinton, SC 29325-5328
 Phone: (864) 938-3497

Midlands Center - Phone: 803/935-7500
 Whitten Center - Phone: 864/833-2733

DISTRICT II

9995 Miles Jamison Road
 Summerville, SC 29485
 Phone: 843/832-5576

Coastal Center - Phone: 843/873-5750
 Pee Dee Center - Phone: 843/664-2600
 Salcey Center - Phone: 843/332-4104

FILED
 2010 MAY -3 AM 11:44
 MYLINDA D. NETTLES
 CLERK OF COURT
 HAMPTON COUNTY, SC

A TRUE COPY
 Mylinda D. Nettles
 CLERK OF COURT FOR
 HAMPTON COUNTY, SC
 DATE 3-25-10

Mr. Joseph Davis
Forensic Evaluation

3/24/2010
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Evaluation Procedures:

Mr. Davis was initially evaluated by the Department of Mental Health at MUSC on 8/5/2009 and 9/9/2009. The DMH Examiners, Dr. Susan C. Knight and Dr. Christopher Fields, rendered an opinion that Mr. Davis was at that time not competent to stand trial but that he could likely be restored to competency. Mr. Davis was subsequently admitted to Just Care for competency restoration on 11/12/2009 and was discharged on 1/8/2010. While Mr. Davis was hospitalized school records were obtained which indicated the possibility of mental retardation. Because there were indications of both mental illness and mental retardation, a joint evaluation with DDSN was requested.

Mr. Davis was interviewed for approximately two hours on 2/25/2010 and again for approximately two hours on 3/24/2010 by Dr. Knight (who concurs with this report) and by the undersigned, with Dr. Fields also participating in the 2/25/2010 interview. In addition, the following documents were reviewed:

Court Order for Competency to Stand Trial Evaluation dated 5/20/2009.
Court Order, Finding of Present Lack of Competence to Stand Trial But Likely to Become Competent with Treatment and Order of Commitment Up to Sixty Days, dated 10/12/2009.
Miranda Rights and Waiver for Joseph Davis, Hampton County Sheriff's Office, dated 8/22/2008, 7:55.
Miranda Rights and Waiver for Joseph Davis, Hampton County Sheriff's Office, dated 8/22/2008, 10:17.
Miranda Rights and Waiver for Joseph Davis, Hampton County Sheriff's Office, dated 9/12/2008.
Miranda Rights and Waiver for Joseph Davis, SLED, dated 2/19/2008.
Miranda Rights and Waiver for Joseph Davis, SLED, dated 9/4/2008.
Miranda Rights and Waiver for [illegible, Myron Mitchell?], Hampton County Sheriff's Office, dated 8/28/2008.
Miranda Rights and Waiver for Prince [illegible], Hampton County Sheriff's Office, dated 7/6/2007.
Miranda Rights and Waiver for Juandelrele Morce, Hampton County Sheriff's Office, dated 7/2/2007.
Miranda Rights and Waiver for [illegible, Initials D.F.], Hampton County Sheriff's Office, dated 8/2/2007.
Miranda Rights and Waiver for Jeffer's Warren, Hampton County Sheriff's Office, dated 9/25/2007.
Miranda Rights and Waiver for Christopher Williams, Hampton County Sheriff's Office, dated 8/21/2007.
Miranda Rights and Waiver for Shawn Davis, SLED, dated 9/4/2008.
Miranda Rights and Waiver for Shawn Davis, SLED, dated 9/5/2008.
Miranda Rights and Waiver for Derrick Adkins, SLED, dated 9/4/2008.
Miranda Rights and Waiver for Derrick Adkins, SLED, dated 9/5/2008.
Miranda Rights and Waiver for Derrick Adkins, SLED, dated 9/8/2008.
Miranda Rights and Waiver for Marquis Bryant, SLED, dated 9/8/2008.
Voluntary Statement (Not Under Arrest) of Joseph Davis dated 8/22/2008.
Voluntary Statement of Joseph Davis dated 9/12/2008.
Memoranda of Interview of Joseph Davis, SLED, dated 9/22/2008.
Voluntary Statement of [illegible, Myron Mitchell?] dated 8/28/2008.
Voluntary Statement (Not Under Arrest) of Christopher Lee Williams dated 8/21/2007.
Voluntary Statement (Not Under Arrest) of Shandashia Russell dated 8/17/2007.
Voluntary Statement of Doris Williams dated 8/17/2007.
Voluntary Statement of Jeremy Sullivan dated 8/2/2007.
Voluntary Statement (Not Under Arrest) of Juandelrele Morce dated 7/2/2007.
Voluntary Statement (Not Under Arrest) of James Carter, unsigned and undated.
Voluntary Statement Continuation Sheet of David Freeman dated 9/25/2007.
Voluntary Statement Continuation Sheet of Jeffer's Warren dated 9/25/2007.
Voluntary Statement (Not Under Arrest) of Prince [illegible], unsigned and undated.
Memoranda of Interview of Shawn Leonard Davis dated 9/22/2008.
Voluntary Statement of Shawn Davis, SLED, dated 9/9/2008.
Memoranda of Interviews (2) of Derrick Adkins, dated 9/22/2008.
Voluntary Statement of Derrick Adkins, SLED, dated 9/8/2008.
Voluntary Statement of Derrick Adkins, SLED, dated 9/9/2008.

Handwritten signature: Myron Mitchell
CLERK OF COURT
HAMPTON COUNTY, SC
DATE 1-23-14

**Mr. Joseph Davis
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Memoranda of Interview of Marquis Lamar Bryant dated 9/22/2008.
Voluntary Statement of Marquis Lamar Bryant, SLED, dated 9/8/2008.
Voluntary Statement of Saul Benítez Romero, SLED, dated 2/13/2009.
Voluntary Statement of Saul Benítez Romero, SLED, dated 2/18/2009.
DVD Copy of a Video-taped Confession made by Mr. Davis dated 9/4/2008.
Incident Report, Hampton County Sheriff's Office, dated 6/24/2007.
Incident Report Supplementals dated 9/20, 9/25, 10/1, and 10/3/2007; and 5/14/2008.
Investigative Notes, Officer Solomon, dated 10/3/2007.
Search Warrant, Hampton County, dated 6/26/2007 and signed by Judge on 6/27/2007.
Hampton County Arrest Warrants I-183728 through 728 dated 8/9/2008 and attached Affidavits dated 9/9/2008.
Indictment for Burglary, Hampton County, dated 12/5/2008.
Indictment for Robbery, Hampton County, dated 12/5/2008.
Indictment for Murder, Hampton County, dated 12/5/2008.
One page titled "Return" with Inventory of Property List, unsigned, undated.
Permission to Search Forms, Hampton County Sheriff's Office, dated 6/24 and 7/6/2007.
Diagrams of various types of firearms, multiple pages, most undated.
Photo Line-ups (2) dated 2/18/2009 at 5:11 and 5:16 PM.
SLED Photo Lineup Request Forms (2), undated.
Receipt for Property, SLED, dated 9/5/2008.
Receipt for Property, SLED, dated 3/10/2009.
SLED Investigative Report (Addendum) dated 9/22/2008.
SLED Laboratory Forensic Services Request, undated, incident date 6/23/2007.
SLED Laboratory Forensic Services Request, undated, incident date 6/24/2007.
SLED Laboratory Forensic Services Request dated 6/26/2007.
SLED Laboratory Forensic Services Request dated 6/29/2007.
SLED Laboratory Forensic Services Request, dark copy, unreadable.
SLED Forensic Services Laboratory Reports dated 7/25, 8/10, 8/29, 9/19, 10/19 and 10/22/2007.
SLED Preliminary Field Polygraph Report for David Freeman dated 8/15/2007.
SLED Laboratory Evidence Inventory Sheets, one undated and one dated 6/29/2007.
SLED Forensic Services Laboratory Chain of Custody dated 3/11/2009.
Evidence Transfer Sheet, MUSC Department of Pathology, dated 6/25/2007.
Forensic Autopsy Final Report, MUSC Department of Pathology and Lab Medicine, Date of Autopsy 6/25/2007.
Hampton County Coroner's Investigation Report dated 6/24/2007.
Letter from Chauncey Solomon, Hampton County Sheriff's Office, to Judge Carolyn Williams, undated.
Rap Sheet dated 2/17/2009.
Miscellaneous Court Documents related to Co-defendants, multiple dates.
Various News Articles about Alleged Incident, multiple dates.
Letter from Dale M. Davis, Criminal Mitigation Investigator, dated 9/23/2009.
Affidavit of Residency in Hampton County, date illegible.
Handwritten Note by Melinda Lamprecht-Haskell, New Life Center, dated 3/1/1994.
First Grade Report Card, First Nine Weeks, Source not identified, undated.
Handwritten Note of Teacher S. Sykes, Continuation of First Grade Report Card, undated.
First Grade Retention Sheet dated 6/1/1988.
First Grade Promotion Sheet dated 6/5/1989.
Second Grade Promotion Sheet dated 5/31/1990.
Third Grade Promotion Sheet dated 5/31/1991.
Fourth Grade Retention Sheet dated 6/5/1992.
Fifth Grade Retention Sheet dated 6/1/1994.
Report Card, Estill Middle School, 1993-1994, undated.
Report Card, Source not identified, 1994-1995, undated.
Fifth Grade Promotion Sheet dated 6/1/1995.
Report Card, Source not identified, 1996-1997, poor copy, undated.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 1-23-2010 BY SP-6
J. M. HARRIS

**Mr. Joseph Davis
Forensic Evaluation**

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Letter of Invitation-IEP, Estill Middle School, date of meeting 5/30/1996.
Letter of Invitation, Special Review, Estill Middle School, dated 11/13/1996.
Educable Mentally Handicapped Placement Form and Parental Consent for Placement dated 9/6/1996.
Letter from Jacqueline Hopkins, Principal, Estill Middle School, dated December 1996, with attachment entitled "Mentoring Program."
Individual Test Records for Test Dates 3/88, 3/89, 3/90, 3/91, 3/92, 3/93, 3/94, and 3/95.
Two Pages with Achievement Test Results for test dates 3/22/1993, 3/21/1994, 3/95, and 3/96.
Psychoeducational Evaluation Report, Hampton County School District #2, dated 5/14/1996.
Official Transcript, Estill High School, Grade 8, dated 6/8/1998.
Official Transcript, Estill High School, Grade 9, dated 6/2 [year not legible].
Report Card, Second Quarter 1999-00, Estill High School, dated 1/21 [year not legible].
Medical Records from Hampton Regional Medical Center for Emergency Room Treatment on 10/18/2006.
Medical and Psychiatric Records, SC Department of Corrections, dated 12/3/1999 - 11/12/2008.
Psychiatric Records, Orangeburg Mental Health Center, dated 10/13/2008 - 10/29/2008.
Psychiatric Records, Coastal Empire Mental Health Center, dated 2/3/2009 - 5/27/2009.
Records from Hampton County Detention Center dated 8/20/2008 - 9/1/2009.
Psychiatric Social Work Assessment, MUSC Forensic Psychiatry, dated 7/29/2009.
Competency to Stand Trial Evaluation Report, MUSC Division of Forensic Psychiatry, dated 9/17/2009.
Records from Columbia Behavioral Health System for Admission 11/12/2009 - 1/8/2010.
Discharge Summary, Columbia Care Center (Just Care), dated 1/8/2010.

Relevant History:

Historical information is primarily as reported by Dr. Knight in her report dated 9/17/2009, with her sources noted as interview data provided by Mr. Davis supplemented by available records. More recent records from the Hampton County School District #2 and from Columbia Behavioral Health System (Just Care) have provided additional information which is also incorporated.

Background Information: Mr. Davis said he was born and raised in Estill, South Carolina, by his aunt "Pearlie Mae." He was raised with two younger brothers but did not know their ages. He reported that his mother was murdered when he was young and that his father did not assist in his upbringing. There is conflicting information about whether Mr. Davis witnessed the murder of his mother who was supposedly "cut up with a chain saw" when he was five years old. The psychiatric social work assessment indicates that Mr. Davis and his brothers were removed from his mother's care by the Department of Social Services when he was five years old due to severe physical abuse of a younger brother. He was placed in the care of an aunt and uncle who raised him until he was 18. Mr. Davis said his childhood was "good and bad" and reported having had "nightmares about my mother." He reported no physical or sexual abuse as a child or adolescent. He reported a history of having set fire to trees and to buildings as an adolescent. He reported no physical abuse of animals.

There is conflicting information regarding where Mr. Davis has lived since the age of 18, although he has been incarcerated for a significant amount of time. Dr. Knight reported that he lived with his father in Fairfax for a while and at some time in his "20's" moved to Barnwell. At the time of his arrest he was reported to be living with friends. In follow-up interview Mr. Davis said he was living with his girlfriend prior to his arrest. Although he had reported to the DMH examiners that he had no children, records from the Department of Corrections noted in January 2005 that he had a six-year-old daughter, and those records also indicate a "common law wife."

Educational History: Mr. Davis reported in interview that he attended school until his tenth grade year during which he quit attending because he was sent "to prison." He reported a history of special education "early" in his school years, but did not know which grades. He said he had "some regular, some special classes." He said he repeated the second grade due to "bad grades." A psychoeducational evaluation report dated 5/14/1996 indicates that he had failed "two or more grades." School records document that he was retained in the first, fourth, and fifth grades.

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HAMPTON COUNTY, SC
DATE 3/24/2010

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**Mr. Joseph Davis
Forensic Evaluation**

3/24/2010
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School records were not available at the time of the initial DMH report but some have since been received. A document dated 6/8/1998 indicates that Mr. Davis was at that time in the eighth grade at Estill High School and was enrolled in EMD-R classes, which would be the classification of Educable Mentally Disabled in a Resource model. His highest grade in any semester for that year was a 69 in Physical Education/Health. It should be noted that his class rank was reported as 40 out of 146, which appears inconsistent with his grades. A document dated 6/2 (presumably 1999, year illegible) indicates that he was in the ninth grade and again in EMD-R classes. His highest grade for that year was 70 in Ornamental Horticulture and his class rank was recorded as 148 out of 183, more consistent with his grades. His cumulative GPA was 0.281. In December 1998 Mr. Davis was selected to participate in a mentoring program which was in conjunction with the Hampton County Solicitor's Office with ministers serving as volunteer mentors.

Only one psychoeducational evaluation report was available, and that was administered on 5/14/1998 when Mr. Davis was 15 years and 1 month old and in the sixth grade. He was in regular classes at the time of the evaluation and was referred because "all academic achievement is unsatisfactory." On the Wechsler Intelligence Scale for Children III he obtained a Full Scale IQ of 69 with a Verbal IQ of 67 and a Performance IQ of 74. His Full Scale and Verbal IQ scores fall within the Intellectually Deficient range, while his Performance IQ score falls within the Borderline range. His Full Scale IQ falls at the 2nd percentile, while his Verbal IQ falls at the 1st percentile and his Performance IQ falls at the 4th percentile. During the same evaluation Mr. Davis achieved a standard score of 68 (2nd percentile) on the Peabody Picture Vocabulary Test-Revised. His scores on measures of academic achievement during that evaluation were more variable, with his highest score on the Arithmetic subtest of the Wide Range Achievement Test-Revised (Standard Score 85, 16th percentile) and his lowest score on the Reading Comprehension subtest of the Peabody Individual Achievement Test-Revised (Standard Score <55, <1st percentile). The Vineland Adaptive Behavior Scale was administered, but it should be noted that "the informant on the Vineland Adaptive Behavior Scale was Joseph [Davis]." While his Adaptive Behavior Composite was a standard score of 78, his subdomain scores (Communication, Daily Living Skills, and Socialization) ranged from 82-86. The school psychologist concluded that Mr. Davis appeared to meet the criteria for classification as Educable Mentally Disabled. It is noteworthy that the report also included a comment that "no significant emotional problems were indicated by projective tests or anecdotal data."

Also available in school records are results of annual achievement testing using the Stanford Achievement Test Series. Mr. Davis's achievement scores varied significantly. His highest score was in March 1989 when he scored at the 92nd percentile on Math Computation. Scores were generally higher than would be expected based on the results of the 1998 psychoeducational evaluation.

Mr. Davis reported a history of disciplinary problems in school for fighting, with multiple suspensions ("a lot") and two expulsions. He reported a history of truancy and of "bad grades." Mr. Davis has received no further schooling after leaving high school.

Vocational History/Community Involvement: Mr. Davis reported a very limited work history. He initially told the DMH examiners that he worked "cutting down trees" for "not that long" and that he "quit" that job. Records from Just Care indicate that he reported working at that job for a year. During the more recent joint evaluation he reported that work as "logging" and said he did it "off and on" for about six months. He seemed unable to explain what the job entailed, but said he "used a chainsaw" and "drove a tractor." He said the tractor was used to "pick the trees up," but seemed unable to explain how. Mr. Davis reported no other formal employment. He was not working at the time of his arrest. He initially told the DMH examiners that his aunt provided financial support, but during the joint evaluation he said "family" gave him money. Although he said he manages his own money, he also reported that his girlfriend (who he said is a nurse) owns the house where they lived and said she paid the bills. Mr. Davis said he can cook, but seemed unable to explain how he would fry chicken after having said he could do that. Mr. Davis said he is not a member of a church or any other community organizations, and he said he has never been affiliated with a gang. He has never served in the military or received disability payments. Mr. Davis said he knows how to drive and does drive, but has never tried to obtain a driver's license; his explanation was that he "didn't want one" because he might "lose it" and because a person does not "get stopped" if he doesn't have a license.

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of the original
filed in Court for
JAMES J. JOHNSON, JR.
DATE 1-24-11

[Handwritten signature]

Mr. Joseph Davis
Forensic Evaluation

3/24/2010
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Legal History: Mr. Davis's criminal history includes charges from 1999 to 2005 in addition to his current charges. Prior charges include Shoplifting in 1999, two separate charges of Attempted Grand Larceny in 1999, and Grand Larceny in 2004 and 2005. He reported that he was incarcerated from age 17 to 21 (records indicate December 1999 through December 2003) under the Youthful Offender Act at Turbeville Correctional Institution and then at Lieber Correctional Institution. In January 2005 he returned to prison for approximately a year on a Grand Larceny charge. He has been incarcerated since August 2008 for his current charges of Murder, Armed Robbery, and Burglary. The court order received with his case indicates that he "has a pending Murder charge in Jasper County as well." Mr. Davis's rap sheet indicates that he is a "criminal gang member" although he denies any gang affiliation.

Substance Use History: It should be noted that Mr. Davis has not been consistent in his reports of substance use. Records from Just Care indicate less use of alcohol and other drugs; information in this section is as reported to the DMH examiners in the initial competency evaluation. Mr. Davis reported that he started drinking "young, at age 15" but "not that much" as a teenager. By age 20 he was drinking "a bottle [of gin] a week" which increased to "two to three bottles a week." His drinking increased such that he was drinking daily, "a bottle a day." He reported no blackouts from alcohol use; however, he endorsed some withdrawal symptoms from alcohol cessation. He has no history of treatment for alcohol use.

With regard to drug use, Mr. Davis reported that at age 12 he began smoking marijuana every day, "three to four blunts" per day. As a teenager he began using powder cocaine "every day sometimes." He reported using ecstasy "six times" during a previous incarceration. He reported one use of psilocybin mushrooms. He reported no history of intravenous drug use, no abuse of prescription medications and no history of substance abuse treatment. Records indicate prior diagnoses of Polysubstance Dependence and/or Abuse for alcohol, marijuana, cocaine, and hallucinogens.

Medical History: Mr. Davis did not report a history of major medical conditions. He reported no history of seizures, head injuries, or loss of consciousness. Records note a history of a gunshot wound in his back or shoulder from 2006. Collateral data do not indicate any other history of major medical conditions and he is not currently under any treatment for any type of medical condition.

Psychiatric History: Mr. Davis reported a vague family history of mental illness including "my cousin, aunt, and uncle," noting that "they went to the hospital"; he could not be more specific. He said that when he was 5 years old, just after his mother's death, he saw a mental health professional; he did not recall the details of this treatment. He also reported taking Ritalin (typically used to treat hyperactivity) from ages 5 to 13. He reported no further psychiatric treatment until his incarceration in prison when he was prescribed "Prozac and Thorazine," which are an antidepressant and an antipsychotic medication, respectively. He took psychiatric medications during both prior incarcerations and said he was prescribed medications because he was "sad and hearing voices."

Records from the South Carolina Department of Corrections (SCDC) note diagnoses of Schizophrenia, Disorganized Type; Polysubstance Dependence; Antisocial Personality Disorder; Borderline Intellectual Functioning; Psychotic Disorder Not Otherwise Specified; and Depression. He is noted to have reported auditory and visual hallucinations and to have presented with poor hygiene, inappropriate or blunted affect, and disorganized thought processes. Medications noted in the SCDC records included Trazodone (for insomnia), Prozac (antidepressant), Thorazine (antipsychotic), Vistaril (for anxiety), Cogentin (for side effects), Zoloft (antidepressant), and Valproic Acid (mood stabilizer).

Mr. Davis told the MUSC examiners that he did not follow up with psychiatric treatment on an outpatient basis after he was released from state prison and said he has never seen a psychiatrist on an outpatient basis when not incarcerated. He reported no history of psychiatric hospitalizations prior to his recent commitment to Just Care for competency restoration. However, he has previously reported that he received outpatient mental health treatment as a child/adolescent, and records from Hampton County Regional Medical Center for Emergency Room treatment on 10/18/2006 list "ritalin [sic], Prozac, thorazine" as current medications.

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 JEFFREY D. WOODS
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**Mr. Joseph Davis
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Mr. Davis has been receiving mental health treatment during his current incarceration. He was given diagnoses of Psychotic Disorder Not Otherwise Specified, Polysubstance Dependence, and Borderline Intellectual Functioning. He was initially prescribed antipsychotic medications. On 5/27/2009 it was noted that "staff suspects malingering," and it was suggested that he be sent to Just Care for an evaluation to aid in diagnostic assessment. Eventually he was hospitalized under a court order for competency restoration. Medications were discontinued during his recent hospitalization, and at the time of this evaluation Mr. Davis reported that he was taking no medications.

Mr. Davis has never been referred to the Department of Disabilities and Special Needs for an evaluation to determine whether he is mentally retarded and/or eligible for services.

Previous Psychological Test Results: (Hampton County School District #2)

5/14/1996	Wechsler Intelligence Scale for Children - III	Full Scale IQ	65
		Verbal IQ	67
		Performance IQ	74
	Vineland Adaptive Behavior Scales	Adaptive Behavior Composite	78
		Communication	83
		Daily Living Skills	86
		Socialization	82

Course of Hospitalization:

Pursuant to a court order for competency restoration, Mr. Davis was admitted to Just Care on 11/12/2009. The MUSC examiners who initiated the Competency to Stand Trial Evaluation by the Department of Mental Health had suspected that Mr. Davis might be cognitively impaired due to Haldol toxicity and were uncertain whether Mr. Davis was psychotic or possibly malingering psychosis. His initial presentation at Just Care was similar to that described in the September 2009 Competency to Stand Trial report which opined him to be incompetent to stand trial but restorable. While hospitalized Mr. Davis was seen by Psychology and was administered three different instruments which are used in an assessment of malingering. One instrument was specific to legal knowledge, one was specific to memory, and the third was specific to psychiatric symptoms. Results strongly support a conclusion that Mr. Davis was malingering on all three measures. Throughout his hospitalization Mr. Davis complained of "voices" and of his need for medication, but his descriptions were vague and were not seen as suggesting genuine psychosis. Eventually all medications were discontinued. It was noted that his behavior on the unit was "dramatically different from his demeanor in treatment team." It was observed that "he was observed laughing, joking, and conversing normally with peers and he played fairly sophisticated games like Spades and chess." When he took the competency pre-test again just prior to his discharge, he scored much lower than he had scored prior to competency restoration efforts. Upon discharge he was assigned a diagnosis of Malingering. He was also given diagnoses of alcohol, cocaine, and cannabis dependence as well as hallucinogen abuse. He was further given diagnoses of Antisocial Personality Disorder and Borderline Intellectual Functioning.

Behavioral Observations/Mental Status Examination:

Information in this section is from the interview conducted on 3/24/2010. Presentation in the interview on 2/25/2010 was similar. Mr. Davis was transported to the evaluation from the detention center. He was appropriately attired in a detention center uniform. Grooming and hygiene were adequate. Sensory systems appeared intact. No unusual mannerisms were noted. Eye contact was intermittent and he looked downward most of the time. He was alert and oriented to person, place, time, and situation. Speech was normal in rate but very soft in volume; it was difficult to understand some of his responses. Articulation was fair. Although there was some latency in responding to questions, the DMH examiner noted that this was much improved in comparison to earlier interviews. Attention and concentration skills appeared to be adequate in interview. Thought content was appropriate and no bizarre content was

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**Mr. Joseph Davis
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noted. Thought processes appeared to be linear with no disorganization noted. Affect was somewhat blunted and limited in range. Current mood appeared to be normal and was reported as "good," "straight," and "alright." Usual mood was reported as "off and on," "sometimes in a bad mood, sometimes in a good mood" and sometimes "scared." He reported no suicidal or homicidal ideation or intent. He reported auditory hallucinations of "screaming" and "people talking." There was no indication that he was responding to internal stimuli during this evaluation. No frankly delusional material was elicited, although Mr. Davis did say that he can "tell the future" . . . like a dream." Mr. Davis said he does not sleep at night but sleeps about three hours during each day. He said his appetite is "alright." Insight appears to be minimal and judgment by history appears to have been poor. Cooperation was adequate.

Mr. Davis knew his birth date and age. When questioned regarding each, he was able to correctly name the current day, month, and year. He gave the date as "25 or 24" (actually the 24th). He knew there are seven days in a week and twelve months in a year. He seemed unable to name the current season, initially responding that the current season is "weather" and that "it be changing." He was able to correctly name the four seasons and when pressed said it is presently between summer and spring (actually very early spring). He named our current location as the city of Charleston (actually nearby Summerville) and the state of South Carolina. He initially named the country as Charleston but with coaching was able to name it as the United States. He said he did not know the names of any other states besides South Carolina. When asked to name some cities he responded with Savannah, Hampton, Allendale, and Florida. He named Charleston as the capital of the United States and said he does not know the capital of South Carolina. He was able to correctly name the current president as Obama but said he does not know where the president lives. He was able to name the immediate past president as Bush; he said he did not know who preceded President Bush but when given the first name of Bill was able to respond with Clinton. He said he did not know who the first president was. Mr. Davis seemed to have difficulty explaining in a coherent manner who Martin Luther King was, although he did say that Dr. King was "a black man," a "preacher" who preached about "God" and who "died." Mr. Davis named the nearest ocean as the Pacific and named the Atlantic as another ocean. (In a previous DMH examination he had correctly named the Atlantic as the nearby ocean). When asked which direction one would go to get to Florida, he asked if that would be by driving or flying. He said one would drive through Savannah but could fly "direct." Mr. Davis correctly named the colors in the American flag as "blue, red, and white," but then added "yellow, green, and black." It is unclear what that response meant.

Mr. Davis read the time on an analog watch without numbers as 3:20 at an actual time of 3:17. He was able to register and immediately recall three words. After a delay with intervening tasks he was able to spontaneously recall one of them and was able to recall a second with a prompt. He was able to spell the word *world* forward and backward; he made one error in spelling it backward but self-corrected. He was able to count slowly backward from twenty by two's, although he twice stopped and asked "is that it?", seeming to question whether he could stop. He was easily able to name common objects and simple geometric shapes, although he called a square a "box" and seemed unable to give the more correct name. He was able to perform simple addition, subtraction, multiplication, and division, although he apparently misunderstood a simple word problem involving addition. He knew there are twenty nickels in a dollar and twenty cigarettes in a pack. He said there are "sometimes six" and "sometimes twelve" items in a dozen or beers in a case. When asked how many players are on a basketball team he seemed to have difficulty arriving at the expected answer of five, correctly observing that there are many more players on a team. Mr. Davis did not demonstrate the ability to think abstractly as he seemed unable to interpret simple proverbs and seemed to have significant difficulty identifying similarities between objects. While he was able to respond appropriately to a hypothetical question involving finding a small child on railroad tracks, he seemed unsure what to do after removing the child from danger.

Diagnostic Formulation:

There is at present no indication that Mr. Davis suffers from a psychotic disorder; based on available records he is given a diagnosis of Psychotic Disorder, Not Otherwise Specified, By History. There is strong support for a diagnosis of Malingering, which is characterized by the intentional production of false or grossly exaggerated physical or psychological symptoms motivated by external incentives. Mr. Davis's history also justifies diagnoses of Alcohol Dependence, Cocaine Dependence, Cannabis Dependence,

M. J. Davis
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and Hallucinogen Abuse based on his use of those substances. Mr. Davis has also previously been given a diagnosis of Antisocial Personality Disorder, which is a pervasive pattern of disregard for, and violation of, the rights of others that begins in childhood or early adolescence and continues into adulthood. That diagnosis is given as "by history."

Mr. Davis has also previously been given a diagnosis of Borderline Intellectual Functioning, which indicates an IQ between 71 and 84. Records from the Department of Corrections support that diagnosis. However, there is also some indication that he may meet the criteria for a diagnosis of mental retardation. A diagnosis of mental retardation requires concurrent deficits in intellectual and adaptive functioning, with both present prior to the age of 18. Further evaluation beyond the scope of this evaluation would be necessary in order to make that determination. Mr. Davis did obtain IQ scores which would be consistent with mild Mental Retardation at the age of 15. Only one score on a formal measure of adaptive functioning is available; while that score is above the range of Mental Retardation it must be noted that Mr. Davis was the informant for that instrument and anecdotal data suggests that his level of adaptive functioning has been poor in such areas as academics and employment. On the other hand, there are reports which suggest that Mr. Davis has functioned adequately as a member of a criminal gang. It is also noted that Mr. Davis attained scores on national standardized measures of achievement which are better than would be expected given his reported IQ score. A diagnosis of Mental Retardation is not given at this time, but is included as a "rule-out diagnosis" which requires further evaluation.

Competency to Proceed:

In the interview on 2/25/2010, Mr. Davis said he is charged with murder, burglary, and robbery. He defined murder as "to kill someone." He defined robbery as "taking something." He defined burglary as "breaking in." He responded that his burglary charge is "2nd degree," although he said he did not know why. He knew that 1st degree is the most serious. Mr. Davis said he has read and understood his discovery packet. He knew that his are serious charges. He said he did not know why they are serious, but he knew that they are felony charges and that a felony is more serious than a misdemeanor. He said he could be sentenced to "life" if found guilty, and initially said there are no other possible sentences. He initially said he did not know what a capital case means, but with some prodding was able to say it means "put to death."

Mr. Davis said it has "been a long time" since he was last in court prior to his current charges. He responded "No" when asked if he had found anything difficult to understand in previous court experiences and likewise responded "No" when asked if he had found anything confusing during those proceedings.

Mr. Davis said he has two attorneys, a male named "Kelly" and a female named "Smart." He said he last saw Mr. Kelly about "three weeks ago" and said his attorney is "good." He said his attorney's job is to "help me... with my case." He said one of the things his attorney would do would be to "find out what happened so he can help me." He initially said he did not know how he could help his attorney, but later said the best way to help is to "tell them the truth." He said he would be able to do that. He responded affirmatively when asked if his attorney would go to court with him and said his attorney would "represent me" there. Mr. Davis said there is no reason that he would be unable to work with his attorney.

Mr. Davis named his lawyer, the judge, and the Solicitor as persons who would be in court. He initially said there would be no one else there, but responded affirmatively when asked if he would be there and acknowledged that a jury would also be present when asked directly about that. Mr. Davis said the job of the Solicitor is to "find you guilty." He said the Solicitor is on "their side" and clarified that as being the side of "the victim." He said he did not know what the role of the judge would be, but was later able to correctly respond to questions which involved the role of the judge; he seemed to understand that the judge is in charge of the courtroom.

Mr. Davis said the jury will "find the truth." He said there are twelve members on a jury and that they would "see if you're guilty or not." He said the jury would "listen to the case" to make that decision. When

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**Mr. Joseph Davis
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asked what the jury might consider, Mr. Davis responded that the jury would consider "evidence." Mr. Davis defined evidence as "whether you did it or not." He said that in his case his "statement" to the police would likely be used as evidence and also named his "codefendants" as possible evidence. He knew that there can be evidence for, as well as evidence against, a defendant. Mr. Davis identified codefendants as potential witnesses in his case and knew that witnesses can talk about what they have seen.

Mr. Davis named "guilty and not guilty" as possible pleas. He said *not guilty* means "innocent" and equated that with "didn't" commit the crime. He said a defendant who pleads guilty is saying "they did it" and said that defendant would then "get time" which would be determined by "the judge." He said there would be no trial in such a case. He said a defendant who pleads not guilty will "go to trial." He said that at a trial the court will "find out the truth." He said the court will "ask questions" to determine the truth. Mr. Davis knew that a defendant can plead not guilty regardless of whether he actually committed the crime. He identified "how much time you get" as one factor to consider in deciding how to plead. He opined that there is a strong case against him, citing his "statement" as the primary reason. Mr. Davis initially said he did not know what a plea bargain is, but in discussing that concept was able to respond that in a plea bargain one could plead guilty to get "lesser time." He knew that his attorney can best advise him about any particular plea bargain offer. He knew that a life sentence would be a "lesser" sentence than the death penalty. Mr. Davis said that in his case going to trial could result in "more time" or even in the "death penalty."

Mr. Davis demonstrated understanding of a range of possible sentences. He demonstrated understanding of the death penalty and of a life sentence. He also demonstrated understanding of probation/parole as a sentence; he understood the basic requirements and knew that violation of probation or parole can result in getting "locked back up."

Mr. Davis said that as a defendant he cannot be required to testify in court and knew that his attorney can best advise him about that issue. He responded that "he'll [his attorney] tell me" whether or not he should testify. He knew that if he does testify he can be asked questions not only by his attorney, but also by the Solicitor. It is not clear whether he initially fully appreciated the risk incurred in testifying; he was then provided some education about that issue. When subsequently asked why a defendant might choose not to testify, Mr. Davis responded "so I will not be found guilty." He knew that the Solicitor is against him in court, and said he would not be willing to speak alone with the Solicitor but would "want my attorney there."

Mr. Davis said that in court one must "tell the truth" and must promise that he is telling the truth. He said that someone who lies in court could "get found guilty of their charge," but expressed understanding when the crime of perjury was explained to him. He knew that it is important to act "good" in court.

At the end of the evaluation of competency to proceed on 2/25/2010, a brief review was conducted to ensure that Mr. Davis understood those issues where he had seemed unsure during the initial part of the evaluation. At this time he answered the review questions correctly and demonstrated an adequate factual and rational understanding of his charges and of the court proceedings.

Mr. Davis was seen for a second interview on 3/24/2010. That interview lasted for approximately two hours and was attended by no one other than the defendant, Dr. Knight, and the undersigned. Mr. Davis's presentation was similar to that in the previous interview, although especially toward the end of the session he spoke significantly more than he had earlier. He was clearly thinking about some of the issues raised during questions related to competency, and on a couple of points even challenged points made by the examiner; for example he emphasized the point that he has more recently given statements which would cast doubt on the validity of his original statement to the police. During the mental status exam portion of the interview (conducted last in this session) he contradicted a suggestion that a lost child should be taken to the police, noting that "police are bad" and suggesting that the examiners should agree with that opinion.

Alfreda D. Niles
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DATE 3-25-10

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Upon review of competency issues on 3/24/2010, Mr. Davis was again able to name his attorneys and reasonably discuss their role. He was able to quickly name his charges ("Murder, robbery, burglary") and to state the possible sentences ("Life" or "death penalty"). He initially indicated that he could not recall whether one would get more or less time by accepting a plea bargain, but was later able to discuss various possibilities and demonstrated understanding that one would plead guilty to get a "lesser sentence." While he stated that a "life" sentence could not be "lesser" time, he clearly understood that it is certainly a less severe sentence than the death penalty.

Mr. Davis said he is not able to talk with his attorney, but said he is able to easily speak with the investigator. That seems to be based at least in part on the fact that he has spent significantly more time with the investigator than with his attorney and that he seems to have had relatively little contact with his attorney thus far. He did understand, however, that it will be his attorney(s) rather than the investigator who will be representing him in court, and he understood the importance of being able to communicate with his attorneys and giving them all the information they need to best "help" him in court. While he mentioned a "bad feeling" about talking with his attorney, in context that seemed to be more of a general concern about attorneys than a specific concern about his attorney.

It is the opinion of the examiners that Mr. Davis is currently competent to stand trial. The fact that recent psychological test results strongly suggest malingering may indicate that he may be capable of performing better than he did in the current evaluation; near the end of the interview on 3/24/2010 he acknowledged that he could probably do better. However, there may be some noteworthy weaknesses which should be considered, particularly since Mr. Davis is facing serious charges with possibly extremely severe consequences. There were times when Mr. Davis seemed to be genuinely confused in his initial answer to a question. For example, he seemed to misunderstand a simple word problem requiring addition and mistakenly interpreted it as a subtraction problem. With coaching he was eventually able to easily give the correct answer, and went on to correctly answer more difficult questions involving multiplication and division. When asked how many players are on a basketball team, most respondents reply that there are five. Mr. Davis responded that there are "a lot" and implied that there is no set number. When the question was restated in terms of how many players are on the court on a team at one time, he responded that there are ten. When asked if that is ten on each team, he was easily able to respond that there are five on each team. Because legal concepts and terminology are confusing for most people, it will be important to ensure that Mr. Davis what is being asked of him and what the possible consequences are regarding any decisions he must make.

Conclusion:

Mr. Davis has a history of mental health treatment, primarily during periods of incarceration. He has been given several diagnoses which include elements of depression, some psychotic symptoms, substance abuse, and cognitive deficits. He has been prescribed medications including antidepressants, antipsychotics, and mood stabilizers. Some providers have suggested that some of his symptoms may have been a result of malingering rather than of genuine psychiatric illness. Upon discharge from Just Care at the end of a period of competency restoration, Mr. Davis was given diagnoses of Malingering, several diagnoses related to substance abuse/dependence, Antisocial Personality Disorder, and Borderline Intellectual Functioning. At the time of this evaluation there is no indication of serious mental illness.

It is unclear whether Mr. Davis meets the criteria for a diagnosis of Mental Retardation. School records indicate special education services in the category of Educable Mentally Handicapped, but available records are insufficient to allow a diagnosis of Mental Retardation at this time. Further evaluation would be necessary to answer that question and will be conducted by the Department of Disabilities and Special Needs if the court so desires.

Regarding competency to stand trial, Mr. Davis demonstrates an understanding of the charges against him. He demonstrates an understanding of the legal proceedings he will face and of the potential

3/24/2010
JAMES H. DAVIS
CLERK OF COURT FOR
WASHINGTON COUNTY, DC
DATE 3-25-10

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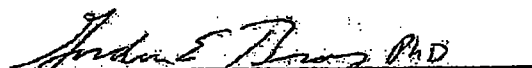
Mr. Joseph Davis
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consequences of those proceedings. He demonstrates the ability to cooperate with his attorney in his defense. Because his level of intellectual functioning is relatively low, it will be important to ensure that he understands the full consequences of any decisions he is required to make.

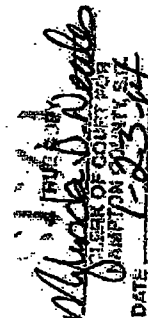
We therefore respectfully offer the following opinions:

Presence of Mental Retardation:	Deferred
Presence of Mental Illness:	YES (Psychosis NOS by history)
Competency to Stand Trial:	YES


Gordon E. Brown, Jr., Ph.D.
Chief Psychologist/State-Level Psychological Examiner
SC License # 429
SCDDSN Central Office

Date signed: 4/23/2010




MICHAEL B. WOOTEN
CLERK OF COURT FOR
CLAYTON COUNTY, GA
DATE: 1-23-11

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Operations
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FORENSIC EVALUATION

ADDENDUM

Name: Joseph Davis Gender: Male
 County: Hampton Race: African-American
 Dates of Joint DMH/DSN Evaluation: 2/25/2010 and 3/24/2010
 Date of Addendum: 6/24/2011 Date of Birth:
 Place of Evaluation: DDSN Coastal Center Age: 30 years
 Summerville, SC
 Examiner: Gordon E. Brown, Jr., Ph.D. - DDSN Examiner
 Charges: Murder, Burglary 2nd Degree, and Armed Robbery while Armed with a Deadly
 Weapon

Purpose of Evaluation:

This re-evaluation was conducted pursuant to a subpoena indicating that the defendant would stand trial the week of June 27, 2011, and was necessary because of the length of time since he was evaluated. The original evaluation was conducted pursuant to orders dated 5/20/2009 and 10/12/2009 and signed by the Honorable Perry M. Buckner, Presiding Circuit Judge, Hampton County. The orders required that Mr. Davis be evaluated by the Department of Mental Health (and referred to the Department of Disabilities and Special Needs if necessary) to determine his competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976).

Limits of Confidentiality:

Before the interview started, Mr. Davis was advised of the purpose of the evaluation, and that the results and content of the evaluation would be communicated to his defense counsel, the prosecution, and the court. In addition, he was informed of the possibility that the examiner(s) might be called to testify regarding the content and results of the evaluation.

Summary of Evaluation Results:

Presence of Mental Retardation:	Deferred
Presence of Mental Illness:	YES (Psychosis NOS by history)
Competency to Stand Trial:	YES

DISTRICT I

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 Clinton, SC 29325-5328
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Midlands Center - Phone: 803/935-7500
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DISTRICT II

Coastal Center - Phone: 843/873-5750
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 Saleeby Center - Phone: 843/332-4104

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Mr. Joseph Davis
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Evaluation Procedures:

Mr. Davis was initially evaluated for the Department of Mental Health at MUSC on 8/5/2009 and 9/9/2009. The DMH Examiners, Dr. Susan C. Knight and Dr. Christopher Fields, rendered an opinion that Mr. Davis was at that time not competent to stand trial but that he could likely be restored to competency. Mr. Davis was subsequently admitted to Just Care for competency restoration on 11/12/2009 and was discharged on 1/8/2010. While Mr. Davis was hospitalized school records were obtained which indicated the possibility of mental retardation. Because there were indications of both mental illness and mental retardation, a joint evaluation with DDSN was requested. Mr. Davis was interviewed for approximately two hours on 2/25/2010 and again for approximately two hours on 3/24/2010 by Dr. Knight and by the undersigned, with Dr. Fields also participating in the 3/24/2010 interview. A report was submitted to the court on 4/27/2010 rendering the opinion that Mr. Davis was competent to stand trial at that time. That report included a list of documents which were reviewed as a part of the evaluation process.

For the purpose of this re-evaluation, Mr. Davis was interviewed by the undersigned for approximately ninety minutes on 6/24/2011.

Relevant History:

The defendant's history will not be repeated here and is available in the previous report. Mr. Davis said he has remained incarcerated at the Hampton County Detention Center. A Medical Information Form provided by the detention center indicates a "history of mental health problems" and reports that the defendant is prescribed no medications. No other records were made available for this re-evaluation. Mr. Davis confirmed that he is prescribed no medications but said he does take Tylenol as needed for his "head."

Behavioral Observations/Mental Status Examination:

Mr. Davis was transported to the evaluation from the detention center. He was appropriately attired in a detention center uniform. Grooming and hygiene were adequate. Sensory systems appeared intact. No unusual mannerisms were noted. Eye contact was good. He was alert and oriented to person, place, time, and situation. Speech was normal in rate and somewhat soft in volume. Articulation was generally clear. Attention and concentration skills appeared to be adequate in interview. Thought content was appropriate and no bizarre content was noted. Thought processes appeared to be linear with no disorganization noted. Affect was appropriate and mood appeared to be normal. He reported no suicidal or homicidal ideation or intent. No current perceptual distortions were reported and there was no indication that he was responding to internal stimuli during this evaluation. Mr. Davis did say he occasionally hears people "calling" and sometimes sees "stars," but did not report psychotic symptoms. No delusional material was elicited. Mr. Davis said his sleep is variable, "back and forth," and said he has requested to see the nurse about that. He said his appetite also varies, but said he did not know if he has experienced any change in weight.

Competency to Proceed:

Mr. Davis presented as somewhat guarded in his responses initially and tended to say "I don't know" in response to open-ended questions. He said he was charged with "murder," but said he did not recall what the other charges were. He was able to describe in general terms the situation which resulted in his charges. He initially defined murder as to "hurt somebody," but when pressed added that his "roommate" told him it meant to "kill somebody." He was reminded of his other charges, and said that he did not know what burglary means; he was then reminded of his response in the previous evaluation in which he

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**Mr. Joseph Davis
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described it as "breaking in." He then defined robbery as "taking something" and said a "gun" was the alleged weapon. He knew that murder is the most serious charge and knew that someone convicted of murder can spend the remainder of his life in prison. He said that he is not facing the death penalty, but said he did not know why.

Mr. Davis said that "Ms. Smart" is his attorney, and said it has been "a while" since he saw her; however, he later said that he saw her in court "last week." He said his attorney is "trying to help me" and knew that she should seek the best possible outcome for him. He knew that the Solicitor is against him and opined that the Solicitor would want him to be incarcerated for the rest of his life. Mr. Davis knew that in a jury trial the jury will decide whether a defendant is guilty or not guilty. He knew that the judge is in charge of the court proceedings and knew that the judge determines the sentence when a defendant is found guilty. He knew that the judge and jury should be impartial rather than for or against him, although he expressed a strong opinion that the judge and jury would quickly see that he is innocent and would then be "for" him. He understood the adversarial nature of a trial. He understood the role of evidence and of witnesses. Although he seemed unable to spontaneously identify possible evidence and witnesses in his case, with minimal coaching he was able to discuss potential evidence and witnesses based on the police records which were available. He knew that statements he had given to the police could be used as evidence. Mr. Davis tended to minimize the strength of the evidence against him, but seemed to understand that his attorney can best address that issue with him.

Mr. Davis was familiar with the pleas of guilty and not guilty. He knew that pleading guilty will result in the judge determining the sentence, and he knew that pleading not guilty will result in a trial. He was familiar with the concept of a plea bargain, and emphasized that someone who is not guilty should not accept a plea bargain. He knew that a defendant must plead guilty in order to accept a plea bargain, and knew that in going to trial a defendant risks a more severe sentence. He knew that his attorney can best advise him about the advisability of accepting a plea bargain if one is offered.

Mr. Davis understood the importance of appropriate appearance and behavior in court. He knew that he can and should consult with his attorney in court if he does not understand something or if someone is saying something that is not true. He responded that he could not be required to testify in court as the defendant, but it is not clear whether he understood the reason that is true or if he adequately understood the risk of self-incrimination if he should choose to testify. He knew that his attorney can best advise him about that issue.

While Mr. Davis appeared to have some difficulty answering open-ended questions, he demonstrated an adequate understanding in discussion of relevant issues. At times he asked the examiner questions about some legal issues (including why he is not facing the death penalty, what evidence there is against him, and who may testify as witnesses in his case); he was advised to ask his attorney about such issues.

Conclusion:

This evaluation supports the conclusions which were reached in the previous report to the court. Although Mr. Davis has a history of mental health treatment, there is at the time of this evaluation no indication of serious mental illness. It remains unclear whether Mr. Davis meets the criteria for a diagnosis of Mental Retardation and further evaluation would be necessary to answer that question.

Regarding competency to stand trial, Mr. Davis demonstrates an understanding of the charges against him. He demonstrates an understanding of the legal proceedings he will face and of the potential consequences of those proceedings. He demonstrates the ability to cooperate with his attorney in his defense. Because his level of intellectual functioning is relatively low, it will be important to ensure that he understands the full consequences of any decisions he is required to make.

Handwritten signature: *Michael J. Smith*
JUDGE CLAYTON
CLERK OF COURT FOR
JACKSON COUNTY, MO
DATE: 6-23-11

JS

Mr. Joseph Davis
Forensic Evaluation

6/24/2011
Page 4 of 4

We therefore respectfully offer the following opinions:

Presence of Mental Retardation:

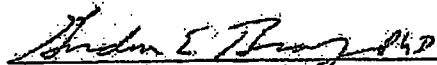
Deferred

Presence of Mental Illness:

YES (Psychosis NOS by history)

Competency to Stand Trial:

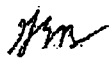
YES



Date signed: 6/26/2011

Gordon E. Brown, Jr., Ph.D.
Chief Psychologist/State-Level Psychological Examiner
SC License # 429
SCDDSN Central Office


CLERK OF COURT FOR
HAMPTON COUNTY, S.C.
DATE 6/23/11



STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH DAVIS,

APPELLANT

Appellate Case No. 2011-195246

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court reversibly erred by failing to suppress Appellant's confession in violation of his Due Process rights where, on the day of the confession, the interrogating officers gave assurances to Appellant that they would reopen the unrelated case of his mother's murder?

STATEMENT OF THE CASE

Appellant Joseph Davis (Appellant) was indicted by the Hampton County grand jury for murder, armed robbery, and second degree burglary, violent. R. 112, line 8—R. 113, line 7; R.450, 453, 456 (Indictments). The charges stemmed from Appellant's alleged participation in an incident on June 23, 2007 at Lena's Quick Stop in Hampton, South Carolina, wherein Ronnie Wooten (Wooten) was killed.

The case proceeded to trial before the Honorable Perry M. Buckner, III, and a jury. Appellant was represented by Stephanie Smart-Gittings and Kimberly Jordan, while the State was represented by Sean Thornton and Tameaka Legette. R.1. The jury found Appellant guilty as charged. R. 382, line 18—R. 383, line 9. The trial court sentenced Appellant to life imprisonment without possibility of parole for murder, thirty years for armed robbery, and fifteen years for second degree burglary, violent. R. 391, lines 12-25; R.452, 455, 458 (Sentence sheets).

ARGUMENT

The trial court reversibly erred by failing to suppress Appellant's confession in violation of his Due Process rights where, on the day of the confession, the interrogating officers gave assurances to Appellant that they would reopen the unrelated case of his mother's murder.

Appellant was interrogated on August 22, 2008, by Lieutenant Chauncey Demetrius Solomon (Solomon) and Captain Anthony Russell (Russell), both of the Hampton County Sheriff's Office; he provided a written statement at that time. Law Enforcement further initiated two more interrogations of Appellant on September 4, 2008. Russell was present, as were Agents Teddy Cone and John J. Evans of the South Carolina Law Enforcement Division (SLED). The product of the second interrogation was a videotaped confession by Appellant regarding the shooting and robbery of Ronnie Wooten (Wooten) on the night of June 23, 2007.

However, testimony from Appellant's pre-trial hearings revealed not only that Appellant was of borderline intellectual functioning and had a history of mental illness, but also that, during the September 4th interrogation, law enforcement discussed with Appellant the possibility of reopening the investigation of his mother's murder. R.399 (Jackson v. Denno Court Exhibit # 1, 6/24/11 Addendum to Mental Eval.); R. 404 (Jackson v. Denno Court Exhibit # 2, 2/25/10 & 3/24/10 Mental Health Eval.). For example, at the Jackson v. Denno¹ hearing, Russell admitted that he contacted Appellant's family shortly after the interrogation because '[Appellant] revealed to us about some—an incident that took place with his mom. And he wanted to put on the record that the killer was still on the loose. He felt like during that case, they didn't have the right guy. And I turned the case over to

¹ 378 U.S. 368, 84 S.Ct. 1774 (1964).

SLED.” R. 61, lines 15-20.² Yet, Russell maintained that “[n]o promises were made” to Appellant to reopen his mother’s murder case in an effort to have Appellant give a statement. R. 61, lines 2-4.

Further, Cone, one of two SLED agents present at the September 4th interrogation, also testified at the Denno hearing regarding the matter of whether he made a promise to Appellant during the interrogation to reopen his mother’s murder investigation. The following exchange occurred between defense counsel and Cone:

- Q. Were you present with—do you have any knowledge of telling Joseph that his mother’s murder investigation would be re-opened if he confessed to this crime?
- A. I did not promise that. There were no promises.
- Q. You didn’t promise him that. But you did tell him that you would do it?
- A. I said we could look into it.
- Q. And you didn’t tell him that to get you to confess?
- A. Absolutely
- Q. To get him to confess?
- A. —not. That’s a separate issue.
- Q. That’s a separate issue, but isn’t it true you told him prior to him telling you that he shot Ronnie Wooten that you would reopen this investigation?
- A. I said we could look into it.

² It is also notable that Russell is familiar with the members of Appellant’s family, including Appellant’s grandmother, Julia Davis, Appellant’s deceased mother, Phoebe Davis, and Appellant’s aunts, Vermill Morris and Pearlie Mae Mitchell. R. 60, line 17—R. 61, line 1.

R. 72, lines 2-16. Additionally, despite Appellant's borderline intellectual functioning, his diagnosis of a psychotic disorder not otherwise specified, and his continuing mental health treatment during his incarceration, neither Russell nor Cone claimed awareness of Appellant's mental deficiency or of him being under the influence of any prescription medications. R. 38, lines 19-25; R. 73, lines 18-22; R. 404 (Jackson v. Denno Court Exhibit # 2, 2/25/10 & 3/24/10 Mental Health Eval.). Evans also testified at the hearing, and likewise denied that any promises were made to Appellant during the September 4, 2008 interrogation, or the Appellant had any difficulty understanding the questions asked. R.77, lines 1-25.

Defense counsel also called witnesses during the Denno hearing, including Vermill Morris (Vermill), and Julia Davis (Julia). R. 93, line 7—R. 102, line 13. Vermill testified that she was contacted by Russell and told to come to the sheriff's office. Upon arriving there with her mother, Russell told Vermill and Julia that "he promised [Appellant] to open the case of his mother [Phoebe]." R. 96, line 25—R. 97, line 1. Julia confirmed Vermill's testimony. She stated that Vermill took her to the sheriff's office, where "[t]hey promised [Appellant] to open the case back up with my daughter [Phoebe]." R. 99, line 23—R. 100, line 5. Moreover, Julia identified the individuals who made the promise as "Bubba" Russell—indicating Russell—and two others. After stating again that "[t]hey had promised [Appellant] they were going to open it back up," Julia read the names off of a card given to her by one of the officers that day: J.J. Evans, and S.A. Teddy Cone. R. 101, line 14—R. 102, line 8.

The last witness called during the Denno hearing was Pecolia Mungin, a nurse from the Hampton County Detention Center (HCDC). She indicated Appellant came under her care there in October or November of 2008 after being transferred from the Orangeburg-

Calhoun County detention center. Further, Appellant was already prescribed Thorazine before he arrived at HCDC, and he remained on Thorazine while under her care. R. 104, line 16—R. 105, line 11. She also referred Appellant to a Mental Health facility after Appellant told her “on a few occasions that he was hearing voices, and that . . . he had seen his mother’s body after she was killed.” R. 105, lines 17-23.

The trial court held Appellant was advised of his rights, and that he knowingly, intelligently, and voluntarily waived them. The court further found that Appellant’s statements were given freely, voluntarily, and without duress, coercion, undue influence, promise, or compulsion of any kind. Regarding Appellant’s mental health condition, medication, and promises made to him, the trial court specifically held as follows:

I am aware that Counsel for the defendant has pointed out to the Court, and I’m aware from reviewing during the Blair hearing, Court’s Exhibits One and Two, the condition of the defendant. I am also aware of the medication that the defendant was taking, which resulted in at one point this case being held up for purposes of medication. *I am also aware of the defendant eliciting testimony concerning what the defendant believed to be promises. That goes to the weight and not the admissibility.*

R. 110, line 18—R. 111, line 1 (emphasis added). Accordingly, the court ruled Appellant’s statements were admissible. R. 111, lines 8-12.

During trial, Cone further elaborated regarding the interrogation with Appellant on September 4, 2008. He indicated that Appellant “initially did not want to talk,” and was not providing much information. R. 270, lines 15-19. Then, after denying any promises were made to Appellant to reopen his mother’s murder investigation if Appellant confessed, Cone nonetheless remembered speaking with two women at their house and giving them his card; Cone indicated that Evans was present, as were Russell and Solomon. R. 270, line 20—R. 271, line 22. Additionally, Cone told the two women “that we would look into his

mother's—we were trying to find out some information. We knew what [Appellant had told us, but wanted to establish more facts to see exactly what the deal was with his mother." R. 271, line 24—R. 272, line 2.

Russell also testified at trial, at which time the trial court admitted into evidence the DVD of Appellant's confession "subject to [its] earlier ruling," to which defense counsel stated, "Correct, Your Honor." R. 282, lines 11-21. Russell acknowledged that, in Appellant's first statements to law enforcement, Appellant denied being the shooter, and confessed only once on September 4th to murdering Wooten when he was interrogated by Russell and Cone. R. 289, lines 5-21. Moreover, Russell agreed "Cone indicated that he did tell [Appellant] he would reopen his mother's murder investigation;" however, Russell did not consider that to be a promise to get Appellant to admit guilt. R. 296, lines 4-14.

Finally, both Julia and Vermill testified at trial as well. Both reaffirmed their previous testimony from the Denno hearing, namely: (1) that they went to the station in Varnville where they met Russell, Cone, and Evans; and (2) that the officers told them they promised Appellant that they would reopen Phoebe's murder investigation. R. 304, line 2—R. 311, line 22.

"[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession." Denno, 378 U.S. at 378, 84 S.Ct. at 1781. This fundamental principle applies "even though there is ample evidence aside from the confession to support the conviction." Id. Additionally, "[e]ven absent the accused's invocation of the right to remain silent, the accused's statement during a custodial interrogation is inadmissible at trial unless the prosecution can establish that the accused in fact knowingly and voluntarily waived [Miranda] rights when making the statement." State v. Moses, 390 S.C. 502, 513,

702 S.E.2d 395, 400 (Ct. App. 2010). Therefore, “[i]n order to introduce a confession arising from custodial interrogation, the State must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda v. Arizona, 384 U.S. (1966).” Id. 390 S.C. at 512, 702 S.E.2d at 400; see also Lego v. Twomey, 404 U.S. 477, 489, 92 S.Ct. 619, 627 (1972) (“[T]he prosecution must prove at least by a preponderance of the evidence that the confession was voluntary.”).

The United States Supreme Court specified two distinct dimensions of inquiry regarding the waiver of Miranda rights: (1) that the waiver was “voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion, or deception; and (2) that the waiver was “made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” Id. 390 S.C. at 513, 702 S.E.2d at 401 (quoting Berghuis v. Thompkins, ___ U.S. ___, 130 S.Ct. 2250, 2260 (2010)). Whether these dimensions of inquiry are satisfied is distilled to the test of whether the defendant’s will was overborne by the totality of the circumstances surrounding the confession. Id.

“The test of voluntariness is whether a defendant’s will was overborne by the circumstances surrounding the given [statement]. The due process test takes into consideration the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.” State v. Miller, 375 S.C. 370, 384, 652 S.E.2d 444, 451 (Ct. App. 2007) (quoting Dickerson v. United States, 530 U.S. 428, 434, 120 S.Ct. 2326 (2000) (internal quotation marks omitted)). The potential circumstances to consider include “the crucial element of police coercion,” location and length of interrogation, its continuity, as well as the defendant’s maturity, education, physical

condition, and mental health. Id. 375 S.C. at 385, 652 S.E.2d at 452 (quoting Withrow v. Williams, 507 U.S. 680, 693-94, 113 S.Ct. 1745 (1993)).

Although “[c]oercive police activity is a necessary predicate to finding a statement is not voluntary,” it is “determined from the perspective of the suspect.” Miller, 375 S.C. at 386, 652 S.E.2d at 452. Moreover, “the blood of the accused is not the only hallmark of an unconstitutional inquisition.” Mincey v. Arizona, 437 U.S. 385, 401, 98 S.Ct. 2408, 2418 (1978) (internal quotations and citations omitted). Rather, “[d]etermination of whether a statement is involuntary requires more than a mere color-matching of cases. It requires a careful evaluation of all the circumstances of the interrogation.” Id. (internal quotations and citations omitted). For example, “[a] statement may not be extracted by any sort of threats or violence, *or obtained by any direct or indirect promises*, however slight, or obtained by the exertion of improper influence.” Miller, 375 S.C. at 386, 652 S.E.2d at 452 (internal quotations omitted) (emphasis added).

In the case at bar, Appellant’s confession was obtained by the promise from law enforcement to reopen his mother’s murder investigation. Regardless of whether Russell, Cone, or Evans interpreted their own words and actions as a promise to Appellant, the law places the analytical focus on the perspective of the suspect, not the police. Miller, 375 S.C. at 386, 652 S.E.2d at 452. Here, Appellant was of borderline intellectual functioning and had a history of mental illness. R.399 (Jackson v. Denno Court Exhibit # 1, 6/24/11 Addendum to Mental Eval); R. 404 (Jackson v. Denno Court Exhibit # 2, 2/25/10 & 3/24/10 Mental Health Eval). In fact, as indicated by the mental health evaluation report from February 25 and March 24 of 2010, Appellant’s Full Scale IQ was only 65 at the age of fifteen. Moreover, Appellant was on Thorazine to treat his mental health conditions during

his pre-trial incarceration. R. 404 (Jackson v. Denno Court Exhibit # 2, 2/25/10 & 3/24/10 Mental Health Eval).

On this background of mental deficiency, Evans, Cone, and Russell—who admittedly knew Appellant’s family—interrogated Appellant on September 4, 2008. Despite Appellant’s initial unwillingness to talk, he later gave a videotaped confession the same day that Russell, Cone, and Evans discussed reopening the murder investigation of Appellant’s mother. Indeed, Russell’s testimony during the Denno hearing readily indicates his awareness of how important the matter was to Appellant:

I contacted [Appellant’s] family shortly after the interview because of the fact that he revealed to us about some—an incident that took place with his mom. And he wanted to put on the record that the killer was still on the loose. He felt like during that case, they didn’t have the right guy. And I turned the case over to SLED.

R. 61, lines 15-20. Moreover, Russell confirmed during trial that “Cone indicated that he did tell [Appellant] he would reopen his mother’s murder investigation.” R. 296, lines 4-14.

Cone likewise confirmed that, prior to Appellant giving police the videotape confession, he told Appellant that “we could look into it,” meaning they could look into the murder case of his mother. R. 72, lines 2-16. This conversation necessarily would have occurred at the sheriff’s office where Appellant was brought by other deputies from the jail to be interrogated by Russell, Cone, and Evans.

Furthermore, testimony from Vermill and Julia corroborate the fact that Russell, Cone, and Evans promised Appellant that they would reopen the murder investigation of his mother. Both Vermill and Julia stated that the officers promised Appellant to open the case of his mother. R. 96, line 25—R. 97, line 1; R. 99, line 23—R. 100, line 5; R. 101, line 14—R. 102, line 8; R. 304, line 2—R. 311, line 22. In fact, Julia recalled the specific names of

the two officers accompanying Russell when they told her and Vermill this information by reading their names—J.J. Evans, and S.A. Teddy Cone—in court from the business card they which gave to her. R. 101, line 14—R. 102, line 8.

Therefore, under these circumstances, Appellant's confession to law enforcement was involuntarily made, as it was obtained by the promise from law enforcement—direct or indirect—to investigate the murder of Appellant's mother. See, e.g., State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987) (citing State v. Broome, 268 S.C. 99, 232 S.E.2d 324 (1977)) (“A statement induced by a promise of leniency is involuntary only if it is so connected with the inducement as to be a consequence of the promise.”). In this way, the trial court erred by admitting Appellant's confession after holding, “I am also aware of the defendant eliciting testimony concerning what the defendant believed to be promises. *That goes to the weight and not the admissibility.*” R. 110, line 18—R. 111, line 1 (emphasis added). As previously indicated, the proper perspective of analysis is from that of the Appellant. Miller, 375 S.C. at 386, 652 S.E.2d at 452 (stating that, although “[c]oercive police activity is a necessary predicate to finding a statement is not voluntary,” it is “determined from the perspective of the suspect.”). Moreover, “a statement may not be extracted by any sort of threats or violence, *or obtained by any direct or indirect promises*, however slight, or obtained by the exertion of improper influence.” Id. (emphasis added). Accordingly, although the trial court nominally acknowledged Appellant's mental health, cognitive ability, and statements made that Appellant perceived to be a promise, it nonetheless abused its discretion by admitting Appellant's statement.³

³R. 110, line 18—R. 111, line 1.

Finally, Appellant was prejudiced by the trial court's failure to suppress his written statement. "[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession." Denno, 378 U.S. at 378, 84 S.Ct. at 1781. This fundamental principle applies "even though there is ample evidence aside from the confession to support the conviction." Id.

As previously indicated, Appellant's written statement was taken under circumstances rendering the confession involuntary. Additionally, from opening statements through closing arguments the statement was utilized by the State throughout Appellant's trial in order to gain Appellant's conviction. For example, in its opening statement, the State declared to the jury that it was "going to hear a confession from the defendant, Joseph Davis." R. 117, lines 19-20. The State further exploited the trial court's erroneous ruling by repeatedly referring to Appellant's confession during closing argument. R. 345, lines 15-17; R. 348, line 7-8; R. 440, line 25—R. 349, ln. 11; R. 355, lines 8-10. For example, at one point, the State told the jury, "How much of a deal do you need? I have brought you a videotape confession of the defendant that is in evidence." R. 345, lines 15-17. Moreover, the State played a portion of the videotape shortly before finishing its closing argument. Accordingly, Appellant was prejudiced by the trial court's erroneous admission of the statement, as it was not harmless beyond a reasonable doubt; it could reasonably have affected the outcome of the trial. See, e.g., Chapman v. California, 386 U.S. 18, 87 S.Ct. 824 (1967) (establishing that errors of constitutional magnitude must be harmless beyond a reasonable doubt if it is to be deemed harmless); see, also, State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (indicating an error is harmless only when it "could

not reasonably have affected the result of the trial.”) (quoting State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971)).

CONCLUSION

For the foregoing reasons, Appellant Joseph Davis respectfully requests reversal of his convictions, and remand for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Breen Richard Stevens', with a long horizontal flourish extending to the right.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of February 12, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 12, 2013

A handwritten signature in dark ink, appearing to read "Breen R. Stevens", written over a horizontal line.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Hampton County
Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

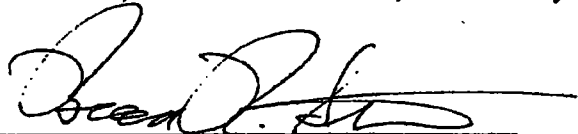
JOSEPH DAVIS,

APPELLANT

Appellate Case No. 2011-195246

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 12th day of February, 2013.



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of February, 2013.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 30 2022.

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

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SC Court of Appeals

**Appeal from Hampton County
The Honorable Perry M. Buckner, Circuit Court Judge**

Appellate Case No. 2011-195246

THE STATE,

Respondent,

v.

JOSEPH DAVIS,

Appellant.

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court reversibly erred by failing to suppress appellant's confession in violation of his Due Process rights where, on the day of the confession, the interrogating officers gave assurances to appellant that they would reopen the unrelated case of his mother's murder?

STATEMENT OF THE CASE

On June 23, 2007, appellant, Joseph Davis, murdered Ronnie Wooten in Hampton County. After an investigation that took over one (1) year, appellant was arrested and charged with murder, armed robbery, and burglary 2nd degree (violent). Three (3) co-defendants were also charged with the same crimes. Appellant was subsequently indicted by the Hampton County grand jury for murder, armed robbery, and burglary in the 2nd degree. (Indictment Numbers 2008-GS-25-588 through 590). (R.p. 112-13). Appellant was represented by Stephanie Smart-Gittings and Kimberly Jordan, Esquires. Appellant proceeded to trial before the Honorable Perry M. Buckner, III., Circuit Court Judge, and a jury from June 27-29, 2011. At the conclusion of the trial, the jury found appellant guilty as charged. (R.p. 382-83). Judge Buckner sentenced appellant to life imprisonment for murder, thirty (30) years for armed robbery, and fifteen (15) years for burglary 2nd degree, violent. (R. p. 391).¹ This appeal follows.

¹Appellant had previously been convicted of shoplifting in 1999, attempted grand larceny in 1999, grand larceny in 2004, and grand larceny in 2008. Appellant also admitted prior to trial to being a member of the "Bloods" street gang. (R. p. 386-88).

RESPONDENT'S STATEMENT OF FACTS

On June 23, 2007, appellant Joseph Davis, his brother Sean Davis, and two (2) friends [Marquis Bryant and Derrick Adkins] committed an armed robbery and burglary of Lena's Quick Stop in Hampton County. The four (4) men believed the owner/operator of the store would have a large amount of cash on his person. During the commission of those crimes, appellant shot and killed the owner of Lena's Quick Stop, Ronnie Wooten ("Wooten" or "victim"). Immediately upon his entry into the store, appellant shot Wooten in the head with a .22 caliber pistol killing him. Appellant and a co-defendant then searched Wooten's pant's pocket and wallet, stole some cigarettes, and fled the scene. (R. p. 121-167, 168-187, 197-204, 209-216, 217-222, 223-233, 234-242, 243-257, 258-275, 277-297).²

Appellant was arrested a year and approximately three (3) months later. Appellant eventually confessed to each of the crimes including the murder of Wooten. (R. p. 258-276, 277-297, 168-187, 197-204). This video and audio recorded confession was played for the jury. (R.p. 258-276, 277-297, Court's Ex. 9/State's Ex. 20). In his confession, appellant also identified the other individuals who were involved in the crimes with him, i.e. his brother Sean, Derrick Adkins, and Marquis Bryant. (R. p. 267-68, R.p. 443, 445, Court's Ex. 9/State's Ex. 20).

Appellant's co-defendants, who participated in the robbery and burglary of the store, also testified at his trial, were hostile witnesses, and were impeached with their written statements given to police, that appellant was the triggerman, they participated in the robbery and burglary of Lena's

²Police found the victim laying on his left side near some video-poker machines. His right pants pocket was turned inside out and the contents of his wallet were spread on the floor. A .22 caliber bullet was removed from the victim's head at autopsy. The victim had been shot in the face. (R. p. 170-71).

Quick Stop, and two (2) of them disposed of the murder weapon after the murder by selling it to a Hispanic male. (R. p. 217-242, R. 443-44, 445-46, State's Ex. 24, State's Ex. 25). Two (2) of their statements were also admitted in evidence. Additionally, Saul Benitez-Romero (the Hispanic male) testified appellant's brother, Sean, and another co-defendant, Derrick Adkins, sold him a .22 caliber pistol after the robbery and murder for \$100.³ (R. p. 209-216). This witness had previously identified appellant's brother Sean and the other male, Adkins, in separate photographic line-ups shown by police after the murder, as the men who sold him the pistol. (R. p. 209-216).

³This gun was recovered by police and introduced by the State at trial. (R. p. 209-215). Because the bullet removed from the victim's skull was badly damaged, a positive identification to this weapon could not be made. However, the forensic firearms examiner testified the bullet was consistent with having come from this weapon or a weapon with similar rifling characteristics. (R. p. 243-254).

ARGUMENT

Judge Buckner did not err in deciding to admit appellant's confession for the jury's consideration.

What Occurred Below

Prior to the trial beginning, Judge Buckner conducted an *in camera* Jackson v. Denno⁴ hearing on the issue of the voluntariness of appellant's statements. (R. p. 9-111). At the Denno hearing, the State called five (5) witnesses: Detectives Chauncey Solomon and James Freeman of the Hampton County Sheriff's Office, Captain Anthony Russell of the Hampton County Sheriff's Office, and SLED agents Teddy Cone and J.J. Evans, who all testified appellant's inculpatory written and video-recorded statements were made freely, voluntarily, and intelligently without any threats, promises, inducements, or coercion. (R. p. 21-92). Appellant called three (3) witnesses: his aunt, his grandmother, and a detention center nurse. (R. p. 93-108). The nurse could only testify that appellant was on an anti-psychotic drug in October or November of 2008, not August and September when appellant gave his incriminating statements. (R. p. 103-08). Appellant's aunt and grandmother testified officers told them they had promised appellant to re-open his mother's murder case. (R. p. 94-103).⁵ Appellant did not testify at the Denno hearing. (R. p. 21-111).

Appellant's Incriminating Statements

The testimony from the State at the Denno hearing established appellant gave several incriminating statements to law enforcement in August and September 2008. The first (1st) statement occurred on August 22, 2008. In this statement, appellant admitted he was present at the scene of

⁴378 U.S. 368, 84 S.Ct.1774 (1964).

⁵Appellant's mother was the victim in a different murder case.

the crime when the murder occurred, and he participated in the burglary, armed robbery, and murder as a lookout, i.e. as an accomplice. He named someone else as the shooter. In this first (1st) statement, appellant did not name any of his co-defendants who were actually present when the crimes were committed, but others. (R. p. 22-46).⁶

On September 4, 2008, after police had conducted further investigation and interviews, appellant was questioned again, and on this occasion appellant gave a video and audio recorded statement in which he admitted he was the person who shot and killed the victim, and he participated in the armed robbery and burglary of the store. (R. p. 46-72, 74-79 Court's Ex. 9/State's Ex. 20). Appellant described a plan to obtain from the victim of a large amount of cash the victim was supposed to have on his person. According to appellant, once he (appellant) shot the victim, appellant and a co-defendant could not locate the cash on the victim's person, and they fled the store after a co-defendant tried to unsuccessfully open the store's cash register and stole some cigarettes and cigars. (R. p. 46-72, 74-79, Court's Ex. 9/State's Ex. 20). Appellant also described how after the crimes he gave the murder weapon to a co-defendant. (R. p. 46-72, 74-79, Court's Ex. 9/State's Ex. 20).

On September 12, 2008, appellant gave his last statement in which he claimed to have been hired by the victim's brother to rob the victim's store, and while there, he witnessed the victim's brother shoot and kill the victim. Appellant admitted that he then searched the victim's clothing for money but was unable to find any.⁷ (R. p. 80-87, R. 440 Court's 8).

⁶While this statement was introduced at the Denno hearing to show the voluntariness of appellant's statements, the State did not introduce this first (1st) statement before the jury.

⁷While this statement was introduced at the Denno hearing to show the voluntariness of appellant's statements, the State did not introduce this last statement before the jury.

At the Denno hearing, the State's witnesses testified appellant was not promised anything or threatened in any way to give a statement. (R. p. 21-92). The officers did testify appellant gave them information regarding, or asked the officers to look into or reopen, his mother's homicide. Appellant informed the officers that the person who was convicted of his mother's death was not the person who actually murdered her. (R. p. 46-72, 74-79). However, Agent Cone testified that while he told appellant they could look into his mother's case, based on the information he provided them, they made no promises to him regarding the same to induce a statement regarding this case, the Wooten murder. This was a completely separate matter. (R. p. 69-74). It was not an inducement for appellant to give a statement. (R. p. 69-74). The other officers testified similarly. (R. p. 46-72, 74-79). Appellant did not testify at the Denno hearing. (R. p. 22-111).

Appellate Court's Standard of Review

In criminal cases, an appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Wood, 362 S.C. 520, 525, 608 S.E.2d 435, 438 (Ct. App. 2004). An appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.; State v. Landis, 362 S.C. 97, 101, 606 S.E.2d 503, 504 (Ct. App. 2004). On appeal, the appellate court is limited to determining whether the trial court abused its discretion. State v. Walker, 366 S.C. 643, 653, 623 S.E.2d 122, 127 (Ct. App. 2005). The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion. State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982).

Standard of Review /Admission of Evidence

The admission or exclusion of evidence is within the sound discretion of the trial judge and

is reversible only for an abuse of discretion. State v. Morris, 376 S.C. 189, 205, 656 S.E.2d 359, 368 (2008) State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006); State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. State v. Pittman, 373 S.C. 527, 577, 647 S.E.2d 144, 170 (2007); State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court, and a ruling will be disturbed only upon a showing of an abuse of discretion. State v. Rosemond, 335 S.C. 593, 518 S.E.2d 588 (1999).

Admissibility of a Defendant's Statements

As a general rule, it is an exception to the hearsay rule that a defendant's out of court statement may be testified to by the witness who heard an oral statement, or received a written statement. State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980); State v. Shorter, 85 S.C. 170, 67 S.E.2d 121 (1910); State v. Hambright, 310 S.C. 382, 426 S.E.2d 806 (Ct. App. 1992); State v. Good, 308 S.C. 313, 417 S.E.2d 643 (Ct. App. 1992). Anything that a defendant has stated, which is relevant to any question involved in the trial, is admissible in evidence against him. State v. Pittman, 137 S.C. 75, 134 S.E.2d 514 (1926); State v. Turner, 117 S.C. 470, 109 S.E.2d 119 (1921). This is true, so long as the statement, if made to police during custodial interrogation, was voluntarily made. State v. Childs, 299 S.C. 471, 385 S.E.2d 839 (1989); State v. Sanders, 227 S.C. 287, 87 S.E.2d 826 (1955); State v. Judge, 208 S.C. 497, 38 S.E.2d 715 (1946).

Standard of Review / Jackson v. Denno Hearing

In a pre-trial Jackson v. Denno⁸ hearing, the prosecution's burden is to present evidence

⁸378 U.S. 368 (1964).

which establishes by a *preponderance of the evidence* that the statement made by the defendant was voluntary, that Miranda warnings were properly administered, and that the statement is admissible. Lego v. Twomey, 404 U.S. 477, 92 S.Ct. 619 (1972); State v. Washington, 296 S.C. 54, 370 S.E.2d 611 (1988); State v. Neely, 244 S.E.2d 522 (1978); State v. Smith, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1977) ("It has been uniformly held a confession may be introduced upon proof of its voluntariness by a preponderance of the evidence."); State v. Moses, 390 S.C. 502, 702 S.E.2d 395 (Ct. App. 2010). In determining whether a defendant's statement should be admitted, the trial judge should not rely on whether the statement is in fact true, only whether it is voluntary and legally admissible. Rogers v. Richmond, 365 U.S. 534, 81 S.Ct. 735 (1961).

Where there is conflicting evidence as to whether the defendant's statement is voluntary, it is, in the first instance, the province of the trial court to determine this factual issue by a preponderance of the evidence. State v. Howard, 296 S.C. 481, 374 S.E.2d 284 (1988); State v. Washington, *supra*; State v. Davis, 267 S.C. 474, 229 S.E.2d 594 (1976); State v. Crowe, 258 S.C. 258, 188 S.E.2d 279 (1972); State v. Barrs, 257 S.C. 193, 184 S.E.2d 708 (1971); State v. Cannon, 248 S.C. 506, 151 S.E.2d 752 (1966), *after remand*, 250 S.C. 437, 158 S.E.2d 357 (1967); State v. Simmons, Op. No. 4569 (Ct. App., filed June 17, 2009). Whenever there is conflicting evidence relative to the validity of the statement or confession, as is quite often the case, it becomes the initial duty of the trial judge to make a factual finding as to the validity of the statement. If found valid, the court should allow the statement to go to the jury for its ultimate determination of validity. State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996); State v. Atchison, 268 S.C. 588, 599, 235 S.E.2d 294, 299 (1977); State v. Valenti, 265 S.C. 380, 218 S.E.2d 726 (1975). Validity deals with whether the statement was voluntary or not. Von Dohlen, *supra*; State v. Goolsby, 275 S.C. 110,

268 S.E.2d 31 (1980), *overruled on other grounds by State v. Torrence*.

In a Jackson v. Denno hearing, the circuit court has the opportunity to listen to the testimony, assess the demeanor and credibility of all witnesses, and weigh their testimony accordingly. State v. Miller, 375 S.C. 370, 387, 652 S.E.2d 444, 453 (Ct. App. 2007). In passing on the preliminary question of admissibility, a trial judge is not bound to accept as true the defendant's testimony as to intimidation, even if such testimony is not directly controverted by the testimony of other witnesses. State v. Boone, 228 S.C. 438, 90 S.E.2d 640 (1955), *over-ruled on other grounds State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. McAlister, 133 S.C. 99, 130 S.E. 511 (1925).

The trial court's factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. Baccus, 367 S.C. at 48, 625 S.E.2d at 220; Von Dohlen, 322 S.C. at 242, 471 S.E.2d at 695; State v. Franklin, 390 S.C. 535, 702 S.E.2d 568 (Ct. App. 2010); State v. Arrowood, 375 S.C. 359, 652 S.E.2d 438 (Ct. App. 2008). An appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Baccus, 367 S.C. at 48, 625 S.E.2d at 220. When reviewing a trial judge's ruling concerning voluntariness, the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001); State v. Franklin, 390 S.C. 535, 702 S.E.2d 568 (Ct. App. 2010); State v. Arrowood, 375 S.C. 359, 652 S.E.2d 438 (Ct. App. 2008).

The Jackson v. Denno Hearing

Prior to the admission of appellant's statements, Judge Buckner conducted a Jackson v. Denno hearing as required by South Carolina law. See State v. Simmons, 384 S.C. 145, 682 S.E.2d

19 (Ct. App. 2009); State v. Miller, 375 S.C. 370, 379, 652 S.E.2d 444, 448 (Ct. App. 2007). At the Denno hearing the State called five (5) witnesses, and appellant called three (3) witnesses. The State also introduced the Miranda⁹ waiver forms executed by appellant, the written statements signed by appellant, and the videotaped statement of appellant. (R. p. 21-92).

The State's witnesses all testified appellant was read his Miranda rights multiple times, was read his Miranda rights before each time he was questioned, understood his Miranda rights, signed waivers of his Miranda rights, waived his Miranda rights, and each statement he gave was voluntarily, intelligently, and knowingly made. (R. p. 21-92). The State's witnesses also testified appellant's 2nd statement, the video-taped statement, was not the result of any promise to re-open or look into his mother's murder case. (R. p. 46-72, 74-79, Court's Ex. 9/State's Ex. 20). All of the State's witnesses testified appellant did not appear to be under the influence of any alcohol or drugs during any of the occasions they questioned him, and they were not aware if appellant was taking any psychiatric medications or not at the time of the questioning of appellant. (R. p. 22-92). All of the State's witnesses also testified appellant appeared to understand the questions they were asking him, and had no trouble providing them answers to their questions. (R. p. 22-92).

One (1) of appellant's witnesses testified appellant began taking psychiatric medication in October and November of 2008, which was after his statements were given. (R. p. 103-08). Two (2) of appellant's witnesses, his aunt and grandmother, testified that investigators told them at some point in time after the videotaped statement that they had promised appellant they would re-open his mother's murder case. (R. p. 94-103). However, these witnesses were admittedly not present when appellant's incriminatory statements were given and could not testify that appellant's incriminatory

⁹Miranda v. Arizona, 386 U.S. 436, 86 S.Ct. 1602 (1966).

statements were the result of any promise made by law enforcement officers to re-open or look into his mother's murder case. (R. p. 94-103). Appellant did not testify at the Denno hearing. Appellant provided no testimony linking any of his incriminating statements, including the statement of September 4th, to any assurance by the State that they would look into or re-open his mother's murder case. (R. p. 21-111).

At the conclusion of the Denno hearing, Judge Buckner found by a preponderance of the evidence, after carefully considering all of the evidence offered by the State and appellant, that appellant's statements were freely and voluntarily given without duress, coercion, undue influence, reward, promise or hope of reward, promise of leniency, threat of injury, or compulsion or inducement of any kind. And, appellant's statements were a voluntary product of the free and unconstrained will of appellant. The statements were therefore admissible for the jury's consideration. (R. p. 109-11).¹⁰

At the conclusion of the trial, Judge Buckner appropriately instructed the jury that they could not consider any statement of appellant unless they found beyond a reasonable doubt that the statement was free and voluntary.¹¹ Judge Buckner also appropriately instructed the jury that the burden was on the State to prove the voluntariness of any statement of appellant beyond a reasonable

¹⁰Judge Buckner also considered the State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), hearing record and competency evaluations submitted in that hearing, and the medications appellant was receiving prior to trial, in making his determination that appellant's statements were freely, intelligently, and voluntarily given. (R. p. 109-11, Court's Ex. 1 & 2). Appellant was initially determined to be not competent to stand trial but likely to be restored. Later, appellant was determined to be competent to stand trial and most probably *malinger*ing his psychiatric symptoms. (Court's Ex. 2).

¹¹During the trial of the case, appellant also called as witnesses before the jury the nurse, his aunt, and grandmother. Their testimony was similar to that presented at the Denno hearing. Appellant did not testify before the jury.

doubt. (R. p. 363-65).

The Lack of Merit of Appellant's Sole Ground

It was in Judge Buckner's discretion to determine the credibility of the witnesses at the Denno hearing and whether to admit appellant's statements. State v. Simmons, 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2009)(in determining whether the defendant made voluntary statements, the circuit court properly considered the credibility of the witnesses, as it must); Miller, 375 S.C. at 387, 652 S.E.2d at 453 (finding in a Denno hearing, the circuit court has the opportunity to listen to the testimony, assess the demeanor and credibility of all witnesses, and weigh the evidence accordingly). See State v. Parker, 381 S.C. 68, 671 S.E.2d 619 (Ct. App. 2008)(similar). As previously stated, in passing on the preliminary question of admissibility, a trial judge is *not* bound to accept as true the defendant's claims as to intimidation, promises, or threats, even if such testimony is not directly controverted by the testimony of other witnesses. State v. Boone, 228 S.C. 438, 90 S.E.2d 640 (1955); State v. McAlister, 133 S.C. 99, 130 S.E. 511 (1925). Furthermore, before the trial judge admits a statement to the jury, the State need only show its voluntariness by a preponderance of the evidence. State v. Smith, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1977). A preponderance of the evidence is by the greater weight of the evidence.

In determining whether the State has shown by a preponderance of the evidence that a statement was freely, voluntarily, and knowingly made, the trial judge is to look at the totality of the circumstances. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041 (1973); Saltz, 346 S.C. at 136, 551 S.E.2d at 252; State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2007). Appellate courts have looked at the following factors in determining, under the totality of the circumstances, whether the prosecution has met its burden of proof to show the statement(s) was/were voluntary by

a preponderance of the evidence: the length of the interrogation, its location, its continuity, the defendant's age or maturity, education, physical condition, and mental health. Id. The factors also include the failure of police to advise the defendant of his rights to remain silent and to have counsel present during custodial interrogation, whether threats of violence were made, whether promises of leniency were made, whether police made misrepresentations regarding evidence, and whether the deprivation of food or sleep was used as a punishment. Id. The factors also include the background, experience, and conduct of the accused. Id. No one factor is determinative, but each case requires careful scrutiny of all the surrounding circumstances. State v. Parker, supra; State v. Moses, 390 S.C. 507, 702 S.E.2d 395 (Ct. App. 2010). The totality of the circumstances supports Judge Buckner's finding that the State met its burden by the preponderance or greater weight of the evidence that appellant's statements were voluntary. Id.

Appellant was advised of his constitutional rights

Appellant was read his Miranda rights not once but several times by police officers. On August 22nd, appellant was read his Miranda rights two (2) times and voluntarily admitted he was present at the crime scene and guilty of murder, armed robbery, and burglary as an accomplice, i.e. a lookout. (R. p. 22-46, Court's Ex. 3, 4, 5).

Appellant was again read his Miranda rights on September 4th before being questioned at all about the murder of Wooten. (R. p. 46-72, 74-79, Court's Ex. 6). Appellant was again read his Miranda rights a second 2nd time on September 4th before the second (2nd) statement (the video-taped statement) was taken. (R. p. 46-72, 74-79, Court's Ex. 6, 7, 9/State's Ex. 20). Appellant signed each right that was read to him indicating that he understood them, and he signed the form indicating that he was waiving and giving up those rights and voluntarily talking to investigators about the

murder of Wooten. (R. p. 46-72, 74-79, Court's Ex. 6, 7, 9/ State's Ex. 20).

Appellant was again read his Miranda rights before his last statement on September 12th. (R. p. 81-87, Court's Ex. 8). Appellant again spoke with police about the murder of Wooten. At the Denno hearing, appellant did not dispute the fact that his Miranda rights were read to him or that he understood those rights. (R. p. 21-111). Under the totality of the circumstances, this factor weighs in favor of the voluntariness of appellant's statements.

Further, appellant's willingness to talk to police on August 22, and September 12, indicates appellant's willingness to talk to police on September 4th about the burglary, armed robbery, and murder at the convenience store was not motivated by anything that occurred on September 4th, but his own desire to talk to police about Wooten's murder. (R. p. 21-46, Court's Ex. 3, 4, 5, R. p. 8, 80-87, Court's 8). This factor weighs in favor of the voluntariness of appellant's statements

The Length of the Questioning

Appellant's questioning on August 22nd, began at 7:55 p.m. (R. p. 24). The actual written statement of that date was taken around 10:17 p.m. (R. p. 27). Appellant wrote his own statement. Appellant was not questioned again until September 4th.

Appellant's 1st questioning on September 4th began around 10:07 a.m. and ended before lunch. (R. p. 58). Captain Russell testified the total questioning during this interview lasted approximately one (1) hour to one (1) hour and a half (½), and appellant was then taken back to the jail where he would have been allowed to eat lunch if he so chose. (R. p. 58-59). Appellant was not questioned again on September 4th until after 2:00 p.m. [2:19 p.m. to be exact]. (R. p. 58-59, 65). After this approximately three (3) hour break, and after reviewing and executing a 2nd Miranda waiver form, the questioning concluded approximately thirty (30) minutes later. (R. p. 287, ll. 17-

22, Court's 9/State's 20). Cf. Von Dohlen, 322 S.C. at 245, 471 S.E.2d 696 (finding three (3) hour interrogation did not render statement involuntary based on the totality of the circumstances). The length of the questioning in this case is in favor of voluntariness. See State v. Crawley, 349 S.C. 459, 562 S.E.2d 683 (Ct. App. 2002)(statement was voluntary where interrogation lasted approximately seven and a half (7 ½) hours in which defendant also received dinner and rest-room breaks); State v. Saltz, *supra* (six and a half (6 ½) hours); State v. Chaffee and Ferrell, 285 S.C. 21, 328 S.E.2d 464 (1984)(five (5) hours); State v. Cannon, 260 S.C. 537, 197 S.E.2d 678 (1973)(five and a half (5 ½) hours); State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990)(two and a half (2 ½) hours). Appellant was not questioned again until September 12, 2008.

Appellant's statement of September 12, 2008 was taken at 3:44 p.m. Appellant wrote his own statement. While there is no testimony regarding the length of this questioning, it does not appear from the record or the statement itself that it was lengthy. (R. p. 8, 80-87, Court's 8). Again, the length of questioning favors voluntariness.

The Nature of the Questioning

Investigators testified that appellant was not threatened or coerced in any way to give a statement. On September 4th, appellant was not questioned in the middle of the night, nor was he deprived of any sleep. Neither the investigators nor appellant testified that appellant was hungry and asked for anything to eat. Necessities were not withheld from appellant in an attempt to force him to give a statement. On September 4th, investigators took appellant back to the jail at lunch time, so appellant was able to eat if he wished. (R. p. 58-59). This factor weighs in favor of the voluntariness of the statements. Similarly, appellant's questioning on August 22nd and September 12th did not take place in the middle of the night. There was no testimony appellant was deprived

or food or necessities in order to get him to give these statements.

There was absolutely no evidence or testimony presented during the Denno hearing that appellant was made any promises of leniency regarding the crimes committed at Lena's Quick Stop. (R. p. 22-111). In fact, appellant makes no claim that any of the investigators who questioned him promised him leniency with regard the charges of murder, burglary, and armed robbery if he cooperated and talked with police. Compare State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987)(confession involuntary where detective promised defendant if he gave a statement State would not seek the death penalty against him). This factor weighs in favor of the voluntariness of appellant's statements.

Appellant's interrogation did not always take place in a police dominated atmosphere. Only two (2) investigators were in the conference room with appellant at the time of his first (1st) statement on August 22nd. While three (3) investigators were present during the 2nd interrogation on September 4th, appellant did not claim the number of investigators rendered his statement involuntary. Additionally, while three (3) investigators were present, appellant had already been read his Miranda rights twice on August 22nd, and was read his Miranda rights an additional two (2) times on September 4th and signed waivers of those rights. See State v. Kirton, 381 S.C. 1, 39, 671 S.E.2d 107, 123 (Ct. App. 2008)(stating that Miranda rights are meant to protect the privilege against self-incrimination during interrogation of a suspect in a police-dominated atmosphere). And, the officer's questioning of appellant was conversational. State v. Cannon, 260 S.C. 537, 544-545, 197 S.E.2d 678, 681 (1973)(relaxed and conversational manner of interrogation indicated confession was voluntary even though number of officers and intensity of interrogation questioned). Finally, during appellant's last statement, on September 12th, only one (1) investigator was present. See State v.

Dye, 384 S.C. 42, 681 S.E.2d 23 (Ct. App. 2009)(finding when defendant confessed he was not in a police dominated atmosphere as only one officer was present in the room). And, appellant was not interrogated in a cell at the jail, but in conference room at the police sub-station. This factor weighs in favor of the voluntariness of appellant's statements.

There was no evidence that appellant was ever physically assaulted or threatened with a physical assault. (R. p. 21-111). And, appellant did not testify that he was threatened with physical violence nor was any physical violence used against him. Investigators testified they did not threaten or coerce appellant in any way. There was no testimony that there was any yelling or screaming at appellant by police officers. (R. p. 21-111). There is simply no evidence of any police coercion. (R. p. 21-111). This factor weighs in favor of the voluntariness of appellant's' statements. *Compare Brown v. Mississippi*, 297 U.S. 278, 56 S.Ct. 461 (1936)(confession involuntary where physical force and torture used to extract confession); State v. Bing, 115 S.C. 506, 106 S.E. 573 (1921)(similar).

Nor was there any evidence police misrepresented any evidence during any of appellant's questioning. Appellant did not testify at the Denno hearing, and no officer testified that they misrepresented any evidence in the case to get appellant to confess. These factors all weigh in favor of the voluntariness of appellant's statements.

The Age and Experience of the Defendant

Appellant was twenty-seven (27) years old at the time he was questioned. (R. p. 31, Court's Ex. 5). This factor weighs in favor of the voluntariness of appellant's statements. See Pittman (12 year old's confession to double murder voluntary); State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001)(17 year old's statements voluntary and admissible); State v. Smith, 268 S.C. 349, 234 S.E.2d

19 (1977)(confession of 13 year old voluntary and admissible after valid Miranda waiver).

It is also clear that this was not appellant's first (1st) experience with law enforcement. Appellant had been previously charged and convicted of shoplifting, attempted grand larceny, and grand larceny (2 times) before he was questioned in this case. (Tr. pp. 487-89). That a defendant has been arrested on prior occasions and is familiar with his rights under Miranda is a factor to be considered in assessing his understanding of those rights; whether a waiver was intelligently made; and whether any statement was voluntarily made. State v. McLeod, 303 S.C. 420, 401 S.E.2d 175 (1991); State v. Linnen, 278 S.C. 175, 293 S.E.2d 851 (1982); State v. Patterson, 263 S.C. 176, 209 S.E.2d 39 (1974); In re Christopher W., 285 S.C. 329, 329 S.E.2d 769 (Ct. App. 1985). This factor weighs in favor of the voluntariness of appellant's statements. State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2007)(totality of the circumstances includes background and experience of the accused). Further, appellant's competency evaluation shows appellant had been incarcerated in prison before. Appellant was familiar with the criminal justice system. State v. Parker, 381 S.C. 68, 671 S.E.2d 619 (Ct. App. 2008)(fact that appellant had previously served time in DJJ was factor in favor of voluntariness); Fare v. Michael C., 442 U.S. 707 (1979)(considering teenager's prior arrest and time in juvenile camp as a factor in whether he understood the consequences of waiving his Miranda rights).¹²

¹²Federal authority is in agreement with this reasoning. See Correll v. Thompson, 63 F.3d 1279, 1288 (4th Cir. 1995)(confession voluntary despite low I.Q. because defendant had numerous experiences with law enforcement and was "streetwise"); United States v. Collins, 40 F.3d 95, 98 (5th Cir. 1994)(confession was voluntary because defendant had extensive criminal history and was familiar with the criminal justice system); United States v. Haynes, 301 F.3d 669, 684 (6th Cir. 2002)(confession voluntary because 43 year old defendant informed of his rights and had "ample experience with the criminal justice system"); United States v. Morris, 247 F.2d 1080, 1090 (10th Cir. 2001)(confession voluntary in part because 19 year old defendant had 5 prior arrests). See also Martin v. Wainwright, 770 F.2d 918, 925-26 (11th Cir. 1985).

The Defendant's Mentality

As with most facts considered by a trial judge in determining the voluntariness of a statement, the mental condition, or even mental deficiency of a defendant is but one factor to be considered. Colorado v. Connelly, 479 U.S. 157, 107 S.Ct. 515 (1986); Blackburn v. Alabama, 361 U.S. 199, 80 S.Ct. 274 (1960); State v. Jennings, 280 S.C. 62, 309 S.E.2d 759 (1983); State v. Tyner, 273 S.C. 646, 258 S.E.2d 559 (1979); State v. Callahan, 263 S.C. 35, 208 S.E.2d 284 (1974); State v. Cain, 247 S.C. 536, 144 S.E.2d 905 (1965); Fikes v. Alabama, 352 U.S. 191, 77 S.Ct. 281 (1957). Coercive police activity is a necessary predicate to finding that a statement is not voluntary within the meaning of the Due Process clause, and a defendant's mental condition does not justify a conclusion that his mental condition, by itself and apart from its relation to official coercion, should ever dispose of the inquiry into constitutional voluntariness. Connelly. The South Carolina Supreme Court has consistently held that mental capacity alone will not invalidate a statement or render it involuntary. State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999); State v. Jennings, 280 S.C. 62, 309 S.E.2d 759 (1983); Tyner, *supra*. In State v. Doby, 273 S.C. 704, 258 S.E.2d 896 (1979), the Court held:

We have consistently held that mental deficiency alone is not sufficient to render a confession involuntary, but that it is a factor to be considered along with all the other attendant facts and circumstances in determining the voluntariness of the confession. State v. Cain, 247 S.C. 536, 144 S.E.2d 905 (1965); State v. Callahan, 263 S.C. 35, 208 S.E.2d 284 (1974). In re Williams, 265 S.C. 295, 301, 217 S.E.2d 719 (1975).

Doby, 273 S.C. at 709, 258 S.E.2d at 899. In this case, there is simply no evidence of any police coercion. (R. p. 21-111).

When a defendant cites his mental capacity as a factor in the consideration of a statement's voluntariness, he is entitled to present the testimony of a psychiatrist, or other mental health expert

during the suppression hearing and trial. Callahan; Cain. Appellant presented only the detention center nurse, who testified that she began treating appellant in November of 2008, which would have been two (2) months after he gave his three (3) statements to law enforcement. She testified that she prescribed an anti-psychotic medication for appellant, due to his complaints to her; however, she did not testify at the Denno hearing that appellant was being treated with anti-psychotic medication in August or September of 2008 when he gave his statements to law enforcement. Appellant did not call any other psychiatric professional to testify at the Denno hearing. Out of an abundance of precaution, Judge Buckner also considered the evidence introduced at the Blair hearing contained in the competency evaluations, and the other information he was aware of regarding appellant's mentality as the case proceeded to trial.

In State v. Ballington, 346 S.C. 262, 551 S.E.2d 280 (Ct. App. 2001), this Court held that although the defendant's behavior may have indicated he was not rational, the defendant's statements, although irrationally made, were nevertheless voluntary. Additionally, a statement by the interviewing officer that advised the defendant that his earlier statements were not consistent with the physical evidence, and that he should be honest, were not such as to overcome the defendant's will, even considering his irrational mental state.

Nor is there any evidence appellant suffered from any serious mental illness *at the time of his questioning* in August and September of 2008. (R. p. 9-15, Court's Ex. 1, 2). During the video and audio recorded statement, appellant denied that he was under the influence of any alcohol or drugs. He also stated he had attended school through the 10th grade. The investigators who questioned appellant testified that he did not appear to be under the influence of alcohol or drugs when giving his statements. (R. p. 22-46, 46-72, 74-79). During the Denno hearing, there was no

testimony that appellant was under the influence of drugs or narcotics, much less taking narcotic medication, at the time he was questioned in August and September of 2008. All of the State's witnesses testified appellant did not appear to be under the influence of any alcohol or drugs during any of the occasions they questioned him, and they were not aware if appellant was taking any psychiatric medications or not, at the time of the questioning of appellant. (R. p. 22-92). All of the State's witnesses also testified appellant appeared to understand the questions they were asking him and had no trouble providing them answers to their questions. (R. p. 22-92). The recording of the videotaped statement supports the investigators' testimony that appellant's statements were freely and voluntarily given and he was not suffering from any mental illness at the time of this statement. (Court's Ex. 9/State's Ex. 20). Appellant wrote his 1st and 3rd statements to police himself. These factors weigh in favor of the voluntariness of appellant's statements. State v. Bellue, 259 S.C. 487, 193 S.E.2d 121 (1972)(where officers testified that the defendant was normal at the time he made his confession, an inference was created that the confession was voluntary, despite defendant's claim he could not waive his rights because of drug or narcotic intoxication). See State v. Collins, 266 S.C. 566, 225 S.E.2d 189 (1976)(that one is intoxicated at the time a confession is made does not necessarily render him incapable of comprehending the meaning and affect of words; thus, proof that an accused was intoxicated at the time he confessed does not render any statement made by him inadmissible as a matter of law, unless his intoxication was such that he did not realize what he was saying); State v. Saxon, 261 S.C. 523, 201 S.E.2d 114 (1973)(Proof of a defendant's intoxication, short of rendering a defendant unconscious of what he is saying, goes to the weight and credibility to be accorded to any statement made by the defendant, but does not require that the statement be excluded from evidence); McCall v. State, 257 S.C. 93, 184 S.E.2d 341 (1971). See also State v.

Ledford, 351 S.C. 83, 567 S.E.2d 904 (Ct. App. 2002)(where defendant was too intoxicated to walk, and was in and out of consciousness, the trial court erred in failing to make an initial determination as to the voluntariness of the statement); 23 C.J.S. Section 912, (1991). Appellant offered no testimony at the Denno hearing that he was so intoxicated by medication on September 4th that he did not know what he was saying. This factor also weighs in favor of the voluntariness of appellant's statements.¹³

The Lack of Credibility of Appellant's Claim

With regard to appellant's *claim* that he was coerced or induced into giving a statement, made through the testimony of his aunt and grandmother, it was within Judge Buckner's discretion to find this claim was not credible given all of the evidence before him. It is clear Judge Buckner determined that appellant's *argument* was not credible and that the investigators' testimony was credible. This is implicit in his ruling. This is supported by the fact that appellant's relatives admitted they were not present during *any* of appellant's three (3) statements to police. In fact, appellant did not testify at the Denno hearing and establish **any connection** between the State re-opening or looking into his mother's death investigation and any of the (3) statements appellant gave regarding the murder of Ronnie Wooten.

Therefore, there was a conflict between appellant's *claims* and the testimony and evidence presented by the State at the Denno hearing, which had to be resolved by Judge Buckner.

¹³While appellant's final competency evaluation showed appellant had borderline intellectual functioning and possible mental retardation, appellant had no trouble understanding or answering the investigators questions and clearly understood his rights. (Court's Ex. 9/State's 20). Correll v. Thompson, 63 F.3d 1279, 1288 (4th Cir. 1995)(confession voluntary despite low I.Q. because defendant had numerous experiences with law enforcement and was "streetwise"). Further, the competency evaluation showed most of appellant's psychiatric complaints were most probably due to *malingering*. (Court's Ex. 2).

Appellant's argument and the investigators' testimony of how appellant's statement(s) were obtained differed.

The investigator's testimony and credibility are supported by the numerous Miranda waiver forms executed by appellant and the written and videotaped statements of appellant. In the written waiver forms, appellant acknowledged, by his signature, that he was making the statements freely and voluntarily with full understanding of his constitutional rights. And, he signed each page of his written statements, indicating that his statements were given freely and voluntarily. He also acknowledged by his signature that *no* threats, force, or *promise of any kind* had been made by *anyone* to induce or cause him to waive his rights and answer questions. (R. p. 263-67, Court's Ex. 3, 4, 5, 6, 7, 8). The videotape recording of the investigator's reading appellant's Miranda rights to him and his execution of his waiver on videotape also corroborates the investigators' testimony and discredits appellant's *claim* at the Denno hearing that before he gave any statement he was promised something in order to give his statements. (Court's Ex. 9/State's Ex. 20). Under the totality of the circumstances, Judge Buckner did not abuse his discretion in finding appellant's first (1st), second (2nd), or third (3rd) statements were made voluntarily, intelligently, and knowingly given the evidence before him by a preponderance of the evidence.

Additionally, Judge Buckner, who had the opportunity to view the investigators, appellant's family's testimony, and that of the jail nurse, could judge their credibility accordingly. Miller, 375 S.C. at 387, 652 S.E.2d at 453. This determination was within his discretion. Id. He was not required to accept appellant's family's testimony or that of the nurse as credible or believable. State

v. Boone; State v. McAlister.¹⁴ He was not required to believe appellant's *allegation* of coercion or inducement. State v. Brown; State v. Howard. See State v. Dillard, 327 S.C. 340, 486 S.E.2d 278 (Ct. App. 1997)(a trier of fact must not always believe uncontradicted testimony because "[t]here remains the question of the inherent probability of the testimony and the credibility of the witness or the interest of the witness in the result of the litigation."), citing Black v. Hodge, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991)(trier of fact is not required to believe uncontradicted testimony, since there remains the question of the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation). See also State v. Wright, 354 S.C. 48, 55, 579 S.E.2d 538, 542 (Ct. App. 2003)(stating the "evaluation of demeanor and credibility [are] matters within the peculiar province of the circuit court").

Further, Judge Buckner was free to disregard the testimony of appellant's family and that of the nurse, since neither had any direct relevance or materiality to appellant's statements given in August and September of 2008; the statements were not given in the presence of any of appellant's witnesses, and the nurse could only testify she began treating appellant in November of 2008, long after his statements were given in August and September of 2008. (R. p. 103-08, 94-103).

Furthermore, the credibility of appellant's claim at the Denno hearing was dubious, at best, given the documents introduced and the videotape. Judge Buckner was entitled to reject appellant's *claims* at the Denno hearing as not credible. Miller; Boone; McAlister; Brown; Howard; Dillard; Wright.

And, given the facts and evidence developed at the Denno hearing, Judge Buckner did not

¹⁴Especially in light of the determination in the final competency evaluation which found appellant was in all likelihood malingering his psychiatric symptoms.

abuse his discretion in finding the State had proven the voluntariness of the statements by a preponderance or greater weight of the evidence. Especially, in light of the fact that in his video-taped and written statements appellant acknowledged that he was answering questions knowingly, intelligently, and voluntarily without any promises or inducements. (Court's Ex. 3, 4, 5, 6, 7, 8, 9/State's Ex. 20). Furthermore, the investigators all testified appellant's statements were voluntary, and he was not promised anything in order to get him to talk about the murder of the victim in this case. See State v. Linnen, 278 S.C. 175, 179, 293 S.E.2d 851, 854 (1982)(holding that even though interrogating officers encouraged defendant to make a statement, their actions were not coercive or threatening). And, the investigators all testified that there were no promises of leniency or promises of reward made to appellant in order to induce him to give a statement. Judge Buckner could accept or reject this testimony in his own discretion. Finally, appellant did not testify at the Denno hearing providing a link between any statement by investigators they would look into his mother's murder case or any promise to re-open his mother's murder case to the voluntariness of his statements. (R. p. 22-111). See State v. Howard, 296 S.C. 481, 374 S.E.2d 284 (1988); State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987)(a statement is involuntary only if so connected with the inducement as to be a consequence of the promise). See also State v. Dye, 384 S.C. 42, 681 S.E.2d 23 (Ct. App. 2009)(where no competing testimony was introduced to contradict officer's testimony, trial judge was free to accept officer's version of events in making its voluntariness determination) citing Miller, 375 S.C. at 387, 652 S.E.2d at 453. (finding that in a Jackson v. Denno hearing, the circuit court has the opportunity to listen to the testimony, assess the demeanor and credibility of all witnesses, and weigh the evidence accordingly).

Judge Buckner did not abuse his discretion in admitting appellant's statements. State v.

Johnson, 260 S.C. 600, 197 S.E.2d 823 (1973)(where defendant was read his Miranda warnings and stated he understood them, and then spoke with officers, an intelligent waiver was established). Given the record below, appellant has failed to show Judge Buckner's ruling is not supported by any evidence. Appellant has failed to show Judge Buckner's ruling on the preponderance of the evidence was manifestly erroneous. Baccus, 367 S.C. at 48, 625 S.E.2d at 220; Von Dohlen, 322 S.C. at 242, 471 S.E.2d at 695; State v. Franklin, 390 S.C. 535, 702 S.E.2d 568 (Ct. App. 2010); State v. Arrowood, 375 S.C. 359, 652 S.E.2d 438 (Ct. App. 2008). Therefore, this appeal must be dismissed.

Harmless Error

Even assuming *arguendo*, error in the admission of appellant's statement, its admission was harmless. Arizona v. Fulminante, 499 U.S. 279, 310, 111 S.Ct. 1246 (1991)(holding error in admission of involuntary confession is subject to harmless error analysis); Franklin v. Catoe, 346 S.C. 563, 552 S.E.2d 718 (2001)(same); State v. Perry, 74 S.C. 551, 54 S.E.764 (1906)(finding admission not prejudicial in part because defendant made same confession to others).

The Evidence against Appellant

In making a determination regarding harmless error, this Court will look at the entire record. State v. Miller, 367 S.C. 329, 626 S.E.2d 328 (2006). This Court will not set aside a conviction for an insubstantial error not affecting the result when guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached. State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995). The evidence against appellant was overwhelming.¹⁵ Guilt was conclusively proven, and no other rational conclusion could have been reached.

The evidence of appellant's guilt was overwhelming, such that the admission of his 2nd

¹⁵Appellant did not testify at his trial.

statement to police were harmless and did not effect the verdict obtained. "Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained." Pagan, 369 S.C. at 212, 631 S.E.2d at 267 (citing Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)); State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318-19 (2002).

Appellant's 2nd Statement was Cumulative to other evidence of his Guilt

The State established the victim was murdered during a burglary and armed robbery of his convenience store. The State established the victim was killed by a .22 caliber bullet wound to the head. The State established through the testimony of appellant's co-defendants that appellant was the triggerman. (R. p. 217-242, 277-281, 293, State's Ex. 24, 25). The State established through the testimony of the Hispanic male, that two (2) of appellant's co-defendants disposed of the murder weapon shortly after the murder. (R. p. 209-216). The State also established through the forensic firearms examiner that the bullet taken from the victim's head was consistent with having been fired from the weapon appellant's co-defendants disposed of after the murder, burglary, and armed robbery of Lena's Quick Stop. (R. p. 243-254).

Furthermore, Judge Buckner's admission of appellant's 1st and 3rd statements to police could not be prejudicial because the State did not offer either of these statements before the jury. The substance of part of these statements were brought out by appellant, not the State.

Therefore, the admission of appellant's statements even if erroneous, was harmless beyond a reasonable doubt. State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003)(admission of improper evidence is harmless where the evidence is merely cumulative to other evidence); State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001); State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978); see also State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996)(instructing that error in admission of

evidence is harmless where it is cumulative to other evidence which was properly admitted); State v. Douglas, 367 S.C. 498, 520, 626 S.E.2d 59, 71 (Ct. App. 2006) ("The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence"). *See also* State v. Locklair, 341 S.C. 614, 582 S.E.2d 426 (2003) (holding error without prejudice does not warrant reversal). Therefore, the admission of the 2nd statement to police was harmless beyond a reasonable doubt where it was cumulative to other evidence properly admitted. This appeal must be dismissed. Arizona v. Fulminante; Franklin v. Catoe.

CONCLUSION

Based on the foregoing, appellant's convictions and sentences for murder, burglary, and armed robbery must be affirmed and this appeal dismissed.

Respectfully submitted,

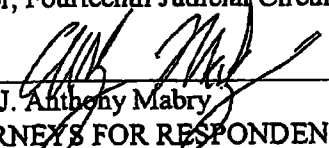
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General

ISAAC McDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

By: 

J. Anthony Mabry

ATTORNEYS FOR RESPONDENT
P.O. Box 11549
Columbia, SC 29211

February 11, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Hampton County
The Honorable Perry M. Buckner, Circuit Court Judge

Appellate Case No. 2011-195246

RECEIVED
FEB 11 2013

THE STATE,

SC Court of Appeals

Respondent,

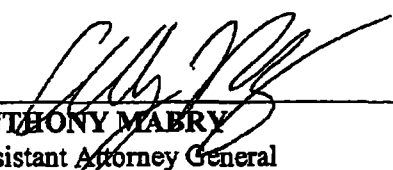
v.

JOSEPH DAVIS,

Appellant.

CERTIFICATE OF COMPLIANCE

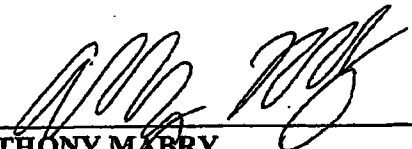
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."


ANTHONY MABRY
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

February 11, 2013

CERTIFICATE OF SERVICE

I, Anthony Mabry, hereby certify that I have served the *Final Brief of Respondent* in the foregoing action by depositing copies in the Interagency Mail to Breen R. Stevens, Appellate Defender, Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, SC 29201 this 11th day of February, 2013.



ANTHONY MABRY
Assistant Attorney General**RECEIVED**

FEB 11 2013

SC Court of Appeals

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Joseph Davis, Appellant.

Appellate Case No. 2011-195246

Appeal from Hampton County
Perry M. Buckner, Circuit Court Judge

Memorandum Opinion No. 2013-MO-031
Heard October 1, 2013 – Filed October 9, 2013

AFFIRMED

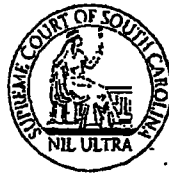
Breen R. Stevens, of Orangeburg, and Appellate
Defender Benjamin J. Tripp, of Columbia, for Appellant.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, Assistant
Attorney General J. Anthony Mabry, and Assistant
Attorney General Alphonso Simon Jr., all of Columbia;
and Solicitor Isaac McDuffie Stone, III, of Bluffton, for
Respondent.

PER CURIAM: Joseph Davis appeals his convictions for murder, armed robbery, and second degree burglary (violent). He contends the trial court erred in failing to suppress his confession as involuntarily given and therefore violated his right to due process. Specifically, he argues his confession was given in response to police officers' promises they would reopen an investigation into the murder of his mother. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: *State v. Von Dohlen*, 322 S.C. 234, 243, 471 S.E.2d 689, 694-95 (1996) ("A confession is not admissible unless it was voluntarily made[and a] determination of whether a confession was given voluntarily requires an examination of the totality of the circumstances."); *State v. Rochester*, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990) ("On appeal, the conclusion of the trial judge on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion."); *see id.* at 200, 391 S.E.2d at 246-47 ("A statement induced by a promise of leniency is involuntary only if so connected with the inducement as to be a consequence of the promise.").

AFFIRMED.

TOAL, C.J., BEATTY, KITTREDGE and HEARN, JJ., concur.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA-
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

www.sccourts.org

October 25, 2013

The Honorable Mylinda D. Nettles
Clerk of Court, Hampton County
PO Box 7
Hampton SC 29924-0007

REMITTITUR

Re: The State v. Joseph Davis
Lower Court Case No. 2008-GS-25-00588
Appellate Case No. 2011-195246

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Daniel E. Shearouse
BS

CLERK

cc:

Breen Richard Stevens, Esquire
J. Anthony Mabry, Esquire
Donald J. Zelenka, Esquire
Isaac McDuffie Stone, III, Esquire
Benjamin John Tripp, Esquire
Alphonso Simon, Jr., Esquire

AW
14
RECEIVED

JAN 08 2013

FORM 5-1

Referred to Ash Wilson/dm

Answered _____

STATE OF SOUTH CAROLINA

2013 DEC 31 PM 1:34

CLOCKED IN TIME

CANCELLED

THE COURT OF COMMON PLEAS

COUNTY OF HamptonJoseph Davis

Full name and prison number (if any) of Applicant

2014-CP-25.001

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 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 Perry Correctional Institution
2. Name and location of Court which imposed sentence Hampton County General Sessions
3. Name(s) of co-defendant(s) (if any) Marquis Bryant, Shawn Davis, Derrick Adkins
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-BS-589 (2nd degree burglary)
 - (b) 2008-BS-588 (murder)
 - (c) 2008-BS-590 (armed robbery)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) June 29, 2011 (murder - life w/parole)
 - (b) Armed robbery - thirty years

Revised 3/2003

- (c) Burglary 2nd-15-years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Trial by Jury
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. affirmed conviction and sentence
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 9, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2013-VMQ-031
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (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) Denial of Due Process
 (c) Applicant will amend as issues arise

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

- (a) Numerous deficiencies; failure to investigate etc.
 (b) Counsel's inactions denied me a fair trial
 (c) same as 10(c)

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. N/A
 ii. |
 iii. |
 iv. |

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

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

(c) the disposition thereof:

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

iv. _____

(d) the date of each such disposition:

i. N/A

ii. /

iii. /

iv. /

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

i. N/A

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?

First filing for post conviction relief

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

(a) which grounds have been presented:

i. N/A

ii. /

iii. /

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

i. N/A

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) First filing for post conviction relief

(b) /

(c) /

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

- (a) your arraignment and plea? N/A
- (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? yes
- (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. Stephanie Smart-Bittings, Hampton Bae
- ii. Benjamin Tripp, Brad Richard Stevens
- iii. N/A
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. Direct Appeal & Oral Argument
- iii. _____

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

vacate sentences and convictions remand for new trial

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

no

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

Joseph Davis

I, Joseph Davis, 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.

Joseph Davis

SWORN to and subscribed before me this 16
day of December, 213.

Tamara Conwell (L.S.)
Notary Public

My Commission Expires
My Commission Expires: September 25, 2023

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

Joseph Davis
I, Joseph Davis, 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.

Joseph Davis
Applicant

SWORN or affirmed to and subscribed before me this
16 day of December, 2013.

Lamara Cinwell
Notary Public

My Commission Expires: September 25, 2023

Joseph Davis #262813
Perry Correction Institution
430 Oaklawn RD
Pelzer, SC 29669
Hampton Clerk of Court
PO Box 7
Hampton, SC 29924

I am Requested for you to send me a copy
back clock file. I'll appreciate for your help and
kindness also.

3/ Joseph Davis
Joseph Davis

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	)	
	)	
	)	2014-CP-25-0001
	)	
Joseph Davis, #262813,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed January 2, 2014, 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 Hampton County Clerk of Court. The Applicant was indicted at the December 2008 and June 2009 terms of the Hampton County Grand Jury for murder (2008-GS-25-0588), burglary- second degree (2008-GS-25-0589), and armed robbery (2008-GS-25-0590). The Applicant was represented by Stephanie Smart-Gittings, Esquire.

The Applicant proceeded to trial and was convicted as indicted. On June 29, 2011, the Applicant was sentenced by the Honorable Perry M. Buckner to confinement for a period of life for murder, twenty-five (25) years for burglary, and thirty (30) years for armed robbery. The sentences are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Benjamin Tripp, Esquire and Breen Stevens, Esquire, of the Office of Appellate Defense. The Applicant's

convictions and sentences were affirmed by the Supreme Court. State v. Davis, No. 2013-MO-031 (S.C. Sup. Ct. October 9, 2013). The Remittitur was issued on October 25, 2013.

Attached herewith and incorporated herein are the records of the Hampton County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel and a denial of due process rights.
 - a. Numerous deficiencies.
 - b. Failure to investigate.
 - c. Counsel's inaction denied me a fair trial.

III.

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

IV.

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

V.

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

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

August 19, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

JOSEPH DAVIS, #262813

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

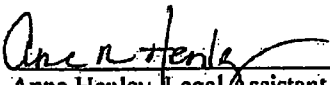
2014-CP-25-0001

AFFIDAVIT OF SERVICE BY MAIL

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

Marion C. Fairey
 PO Box 661
 4985 Savannah Hwy
 Hampton, SC 29924

DATED this 20th day of August, 2014


 Anne Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

JOSEPH DAVIS,

Plaintiff,

v.

STATE OF SOUTH CAROLINA,

Defendant.

IN THE COURT OF COMMON PLEAS
14TH JUDICIAL CIRCUIT

Case No. 2014-CP-25-0001

MOTION TO AMEND
POST CONVICTION RELIEF
APPLICATION

2015 SEP 30 AM 8:49

FILED

TO THE ABOVE-NAMED DEFENDANT AND YOUR COUNSEL:

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 15(a), SCRPC the Plaintiff hereby makes this Motion to Amend the Post Conviction Relief Application. You will take further notice that this motion shall be heard on the tenth day following service of this Motion or at such other time thereafter that this Motion may be set for hearing.

WHEREFORE, the Plaintiff respectfully prays for an Order permitting the filing of the Plaintiff's Amended Post Conviction Relief Application attached hereto as Exhibit A.

Respectfully submitted,



Marion C. Faurey, Jr.
THE FAUREY LAW FIRM
4985 Savannah Highway
Post Office Box 661
Hampton, South Carolina 29924
(803) 943-6444
bfaurey@faureylaw.com

September 29, 2015
Hampton, South Carolina

STATE OF SOUTH CAROLINA } IN THE COURT OF COMMON PLEAS
County of Hampton }

Joseph Davis #262813
Plaintiff

-VS-

STATE OF SOUTH CAROLINA
Defendant

C/A No. 2014-cp-25-0001

AMENDED

APPLICATION

For Post Conviction
relief.

FILED
2015 SEP 30 PM 8:50
CLERK OF COURT
JAMES E. BELL
JAMES E. BELL
JAMES E. BELL
JAMES E. BELL
JAMES E. BELL

Comes now, Plaintiff in the above captioned matter, bring forth this post conviction relief requesting respectfully that this Court to Grant him relief.

INTRODUCTION

Plaintiff Joseph Davis was sentenced to life with out the possibility of parole on June 29 2011 For murder, Second degree Burglary, and Armed Robbery, Plaintiff was indicted by the Hampton County Grand Jury in the following Indictment numbers. 2008-GS-25-588, 2008-GS-25-589 2008-GS-25-590

STATEMENT OF FACTS

ON or about Sept 4, 2008 at Hampton County Sheriff's Office Annex in Hampton County Plaintiff Joseph Davis was question by Investigator.

Captain Anthony Russell with Hampton County Sheriff's office, Agent Kenneth Whitler with South Carolina Law Enforcement Division also know SLED, Agent Teddy Cone with South ~~Carolina~~ Carolina Law Enforcement Division, and Detective Chauncey Solomon with Hampton County Sheriff's office, all question the Plaintiff Joseph Davis on 9-4-08.

Captain Anthony Russell AKA Bubba Promise Davis that if he confess that he committed the crime of murder, Captain Russell promise the Plaintiff that he would re open the murder case of the Plaintiff's mother Ms. Phoebe Ann Patterson. The Plaintiff at that time did not know any of the details about the crime. Captain Russell at that time wrote down the details on a notepad telling the Plaintiff what to write and say on the Voluntary statement forms for the Sheriff office and SLED statement forms. Investigators Promise Plaintiff justice in his mother's murder case and favor with the sentence of the Confession. The Plaintiff mental ability to know better or reason was limited due to Plaintiff's mental disability to know what was going on. Plus the Psychotropic medication which is Thiorazine. Plaintiff has a psychological dysfunction and Plaintiff is ment-

page 2

ally ill, and Plaintiff was promise hope for Justice and Plaintiff was Coerce into a Confession during the Interrogation.

Constitutional Claims

Plaintiff in this post-Conviction relief Civil-action claims his Constitutional rights was Violated. Plaintiff States his following rights was Violated 5th, 6th and 14th Amendments Violation of the United States Constitution.

Argument

The fifth amendment of the United States Constitution protects against Self-incrimination Since the easiest way to solve a crime is to get a Confession. Now in this case you can clearly see that the Plaintiff has a mental disability and was on psychotropic medications during the Interrogation by Investigators, Plaintiff was Coerce into Confession not only the Confession was obtain by Coercion but Investigators promise of hope and reward of Justice by re-opening Plaintiff mother murder Case, for his Confession in the murder Case of Mr. Ronnie wooten. In 1897, the Court in Bram v. ~~United States~~ Said that a Statement
see 2

must be free and Voluntary, Not extracted by any sorts of threats or violence or promises, however slight. A Confession obtained from an accused who has been threatened, promises cannot be admissible. Also in Hopt V. Utah The Supreme Court ruled that a Confession is not admissible if it is obtained by operating on the hopes or fears of the accused, and in doing so deprives him of the freedom of will or self control necessary to make a Voluntary Statement. Now let's look at the Plaintiff Confession, let's analyze the Plaintiff Confession ~~is~~ ~~an~~ inconsistent with the details of what happen, it is very clear that if someone committed a crime he or she would remember the details of the crime. During the interrogation investigators place a notbook with the details of what to say in the Confession in front of the plaintiff. This show that the Confession was coercion. Detective Chauncey Solomon with Hampton County Sheriff's office stated in the Jackson V. Denu Hearing that he instructed the Plaintiff to write his Confession, (see tp p. 37) When ask about this Confession Statement Detective Solomon stated that he explained to the Plaintiff to write the Statement so that a third party can read it (see tp p. 37 lines 13-20), In line 22) Detective

Solomon was ask What do the Plaintiff refers to himself as "Joe", Detective Solomon stated "Im not Sure what he refers to himself. I know him as Joseph Davis and I explain to him what I was looking for and that's what he wrote. - Now that's very clear that the Plaintiff Confession was not ~~Voluntary~~ Voluntarily or by his own free will, this was Coercion.

The plaintiff never once sent investigators any Correspondence stating he want to talk to any members of law enforcement at any time. Captain Anthony Russell with Hampton County Sheriff's office, stated at the Jackson V. Denno hearing, that the Plaintiff never once sent the Sheriff's Department any note, letter, or Correspondence stating he wanted to Confession, make a Confession to any Crime. But on September 4th 2008 This plaintiff was transported from the Jail to Sheriff Office.

Shortly thereafter Investigator started to interview the plaintiff at 10:07 am. but this interview was not recorded and it last a hour and a half. Investigators had audio available during this interview but decide not to record the Interrogation. Because at that time Investigators was making promises of hope and reward, Coercion, and offer of favor,

When Captain Russell was ask about the written statement in front of the plaintiff on a notepad during the interrogation, What was on that note pad, Captain Russell stated that he don't recall what was on the notepad. (see Tp P. 61 lines 14-17).

When Captain Russell was ask about the promise that law enforcement officers made to the plaintiff for his Confession, Russell stated that no promise was made, But Shortly thereafter Captain Russell stated that he contacted Joseph Davis family Shortly after the interview. Agent Teddy Cone with South Carolina Law Enforcement Division stated at the Jackson V. Denno hearing that he was at the Hampton Sheriff's Office during the Interrogation on September 4, 2008 that it was more than one interview done on the 4th of September, but he only did a audio and video recorder. Agent Teddy Cone stated absolutely the only reason that he promise the plaintiff that he would re open the plaintiff's mother murder case was to get the plaintiff to Confess (see Tp. P 73 lines 2-11) ..

Blair Hearing

Pursuant to South Carolina Code Section 44-23-410, the judge knew that the plaintiff was not fit to stand trial because the plaintiff lack the capacity

To understand the proceeding against him, and plaintiff lack understanding to assist in his own defense, as a result of a lack of mental capacity. The Judge knew that the Plaintiff has been to the department of mental Retardation. Trial Judge states that he is aware of the Plaintiff history of mental health treatment (see T.P. 14) Blair Hearing.

II. ARGUMENT

Jury Charge - Trial Judge set forth an exemplary malice charge, it was noted in State vs Lewellyn Supra, that the Elmore Charge omitted words such as rebuttable. Reasonable explanation or unless the contrary be proved even though the Elmore Charge dealt only with the prohibition of presumption of malice from the use of a deadly weapon, the principle behind the case likewise prohibits the presumption of malice from the intentional doing of an unlawful act. (see State vs. Peterson 287, S.C. 244, 335 S.E. 2d 800). In the present case, the Trial Judge followed the erroneous Instruction with the Elmore Charge, Instead of replacing the unconstitutional malice Charge, the

note 17

Elmore charge was simply added to the end of the charge merely Superimposing correct instructions over erroneous ones serves only to foster prejudice and confusion.

Conclusion

Plaintiff feels like he have been deprive of due process and equal protection of the law. Plaintiff stated a fifth amendment claim because of the statement obtain by law enforcement, was not voluntary and was obtain on the hope of reward and promise, also due to the Plaintiff learning deficit he did not understand his Constitutional rights, and his miranda rights.

It is clear that this Self-Incrimining Statement was obtain by Coercion (see 5th amend) No one shall be Compelled in any Criminal Case to be a witness against him self. It is also clear that the Court err because No Confession maybe Considered by jury unless found beyond reasonable doubt to have been given freely and Voluntarily under totality of Circumstances and if defendant was in Custody at time of alleged Confession, Jury must be Convicted that he received and understood his fifth and Sixth amendment rights, The plaintiff also have witnesses

page 8

that law enforcement made him a promise for him to Confess.

Plaintiff witnesses as follow

mrs. Vermell Morris, ms, Julia Davis,
Pecolia Mungin

Plaintiff also claim a 6th. amendment Violation for ineffective assistance of trial Counsel. Trial Counsel fail to obtain witness in his favor for Plaintiff's Retardation, Someone from mental Health or the Department of mental Retardation. Should have been offer as an expert witness.

Plaintiff also feel like the Jury was Bias and prejudice towards the Plaintiff Which he feels has deprive him from a fair trial, and to be Judge by an impartial Jury.

Last the erroneous malice charge by the trial Judge for the use of deadly weapon. implied malice to the Jury.

Plaintiff pray that the court grant him relief, for reversal and remand for New ~~trial~~ trial.

Because Plaintiff feels like he has been wrongfully convicted. This is why Plaintiff seeks relief, because wrongful convictions, occur every month in every state in this country, and the reasons are all varied and all the same - Bad Police work, Junk science, Faulty eye witness identifications, Bad defense Attorneys, lazy prosecutors, Arrogant prosecutors less than professional procedures and conduct.

Plaintiff respectfully request that this court grant him the relief requested

Respectfully Submitted,

Joseph Davis

Joseph Davis

Joseph Davis / Plaintiff

Perry Correctional Institution

430 Oaklawn Road

Pelzer, SC 29669

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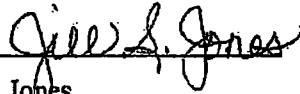
COUNTY OF HAMPTON)

RE: Joseph Davis v. State of South Carolina
Case No. 2014-CP-25-0001

The undersigned of The Fairey Law Firm, LLC, hereby certifies that she served the foregoing Motion to Amend Post Conviction Relief Application in the above-mentioned action by mailing a copy of same, sufficient postage annexed thereto, on this 1st day of October, 2015:

Via U.S. Mail

The Honorable Ashleigh Wilson
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211


Jill S. Jones

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Hampton

3

4 Case No.: 2014CP2500001

5 Joseph Davis,

6 Plaintiff(s),

7 vs. Transcript of Record

8 State of South Carolina,

9 Defendant(s).

10

11 POST-CONVICTION RELIEF

12

13

14

15

16 October 22, 2014

17 Beaufort, South Carolina

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22 BEFORE:

23 The Honorable Roger L. Couch

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APPEARANCES

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Columbia, SC 29211

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COLLOQUY

1 PROCEEDINGS

2 MR. JOHNSON: If I may have just a minute to
3 get the next case.

4 THE COURT: That will be fine. Yes, sir.

5 MR. JOHNSON: Mr. Davis.

6 MR. FAIREY: This is Mr. Marion, M-A-R-I-O-N,
7 Fairey, F-A-I-R-E-Y, Junior.

8 MR. JOHNSON: Your Honor, may I approach
9 before we get the hearing started? I handed you
10 orders of the continuation. And I'll take those
11 because they are filed in different counties.
12 Thank you, sir. I appreciate it.

13 MR. FAIREY: Your Honor, Mr. Davis' family,
14 can I have a moment to ask for them?

15 THE COURT: Yes, that will be fine.

16 (Pause.)

17 THE COURT: Thank you.

18 MR. FAIREY: We are ready to proceed, Your
19 Honor.

20 MR. JOHNSON: May it please the Court, Your
21 Honor. This is Joseph Davis versus the State of
22 South Carolina. 2014CP250001. Mr. Davis was
23 indicted at the December 2008 and June 2009 terms
24 of Hampton grand jury for murder, burglary, second
25 degree and armed robbery. They proceeded to trial

COLLOQUY

1 and was convicted as indicted. On June 29 he was
2 sentenced by Perry M. Buckner to life for murder,
3 25 for burglary, and 30 for armed robbery. All to
4 be served concurrently. There was a notice of
5 appeal filed on his behalf, an appeal perfected to
6 the South Carolina Supreme Court. After oral
7 argument, confirmed the remittances and sentences.
8 And it was remitted on and filed, the action, and
9 State filed a return on August 19, 2014. And he's
10 represented here today by Mr. Marion Fairey.

11 THE COURT: Mr. Fairey, happy to hear from
12 you, sir.

13 MR. FAIREY: Thank you, Your Honor. I would
14 waive any opening statement and proceed with
15 witnesses.

16 THE COURT: I do normally ask that you put on
17 the record the grounds in which your client is
18 proceeding today.

19 MR. FAIREY: Certainly. It is ineffective
20 assistance.

21 THE COURT: Okay. For what reasons?

22 MR. FAIREY: There are several reasons, Your
23 Honor.

24 THE COURT: Yes, sir.

25 MR. FAIREY: First, we believe that the

COLLOQUY

1 counsel was ineffective in failing to challenge
2 the initial order of the Court. Mr. Jones --
3 Mr. Davis was judged incompetent to stand trial in
4 2009. There was an order issued by the Court to
5 hold him in the mental institution for 60 days so
6 he could be -- to receive therapy to become
7 competent. And there was no request for a hearing
8 or any challenge to the order of the Court forcing
9 him to undergo therapy so he would be competent
10 for trial.

11 Second ground, Your Honor, would be based on
12 failure to object at trial to several things. The
13 first item would be Mr. Davis, not codefendants
14 but coconspirators I would say, were called to
15 testify against him at trial. They took the
16 witness stand. And they, from the witness stand,
17 and under questions from the State, stated that
18 they had already been convicted and received a
19 sentence of 30 years for the same crime.

20 There was no objection and no request for
21 instruction from the Judge on that. That was also
22 highlighted by the State in closing. The fact
23 that they had taken the stand and not denied the
24 fact that they had been convicted of the same
25 crime.

COLLOQUY

1 And also, for failure, Your Honor, to call
2 witnesses in mitigation related to Mr. Davis'
3 mental handicap. It was determined that he was
4 mentally handicapped. An expert was retained by
5 the Defense, but was not called either at the
6 trial or during the sentencing part to discuss
7 mitigation based on his mental handicap.

8 THE COURT: Okay. You may proceed.

9 MR. FAIREY: Thank you, Your Honor. I'll
10 call Joseph Davis to the stand.

11 THE COURT: Mr. Davis, come forward please,
12 over here to my right, and be sworn.

13 Thereupon,

14 JOSEPH DAVIS
15 was called as a witness, having been first duly sworn,
16 was examined and testified as follows:

17 THE CLERK: State your name for the record.

18 THE WITNESS: Joseph Davis.

19 THE COURT: Mr. Davis, have a seat in the
20 witness stand, please.

21 THE COURT: Mr. Fairey, your witness.

22 MR. FAIREY: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION

25 BY MR. FAIREY:

TESTIMONY OF JOSEPH DAVIS

1 Q Mr. Davis, can you tell the Court where you
2 are currently incarcerated?

3 A At Berry Correction.

4 Q And you were incarcerated after being found
5 guilty by a jury?

6 A Yes, sir.

7 Q And what is your understanding of the charges
8 that you were found guilty on?

9 A My understanding? What do you mean?

10 Q What charges were you found guilty on?

11 A Murder, armed robbery, deadly weapon, and
12 burglary.

13 Q And that was after a two-day trial?

14 A Yes, sir.

15 Q And you filed this petition seeking relief
16 based upon your belief that your constitutional rights
17 had been violated?

18 A Yes, sir.

19 Q Now, you initially came into custody before
20 your trial in this case in what county? When you were
21 first arrested, what county were you arrested in?

22 A Jasper County.

23 Q Okay. And were you arrested on charges
24 unrelated to the ones that were part of your trial?

25 A No, sir.

TESTIMONY OF JOSEPH DAVIS

1 Q Okay. You were arrested for these?

2 A Uh-huh.

3 Q Where were you then transferred after Jasper

4 County?

5 A Transferred to Hampton.

6 Q Okay. And then after Hampton, where were you

7 transferred?

8 A They transferred me to Orangeburg.

9 Q And Mr. Davis do you have a history, a

10 recorded history, of any psychiatric problems?

11 A Yes, sir.

12 Q Can you tell the Court what you have been

13 diagnosed with?

14 A Schizophrenia and bipolar.

15 Q And was that diagnosis long before you were

16 arrested for these charges?

17 A Yes, sir.

18 Q Now at some point, due to those diagnoses,

19 were you provided with medicine?

20 A Uh-huh.

21 Q Were you provided with any prescription

22 medicine because of your psychological disorders?

23 A Yes, sir.

24 Q And where did you first start receiving that

25 medicine?

TESTIMONY OF JOSEPH DAVIS

1 A At Orangeburg.

2 Q Okay. And what type of -- what type of
3 medicine were you given?

4 A Liquid Thorazine.

5 Q All right. And did you start with liquid
6 Thorazine, or was there -- were you given pills first?

7 A First off, Orangeburg started me off with
8 liquid Thorazine. And they sent me back to Hampton
9 and they give me pills.

10 Q Okay. And was it -- did you continue with
11 pills in Hampton, or did you have problems with the
12 pills?

13 A I did have problems with it, because someone
14 in the cell with me took them. Then they put me on
15 liquid Thorazine.

16 Q Now, on the particular charges that you were
17 tried on, you were interrogated twice; do you remember
18 that?

19 A Yes, sir.

20 Q And the first time you were interrogated, I
21 think that the record would show, was August of 2008;
22 is that right?

23 A Yes, sir.

24 Q And then you were interrogated again twice on
25 September 4th, of 2008; is that correct?

TESTIMONY OF JOSEPH DAVIS

1 A Yes, sir.

2 Q And there was a video made of your
3 interrogation, at least the second part of it on
4 September the 4th; is that correct?

5 A Yes, sir.

6 Q You wish to submit a copy of that video to
7 the Court in this case?

8 A Yes, sir.

9 Q Okay.

10 MR. JOHNSON: Your Honor, I would submit the
11 video interrogation.

12 THE COURT: Any objection?

13 MR. JOHNSON: It should be part of the
14 record. I don't have a copy of it because it was
15 part of the trial record.

16 THE COURT: Okay. It is received in evidence
17 as an applicant's exhibit.

18 MR. FAIREY: And, Your Honor, I'm happy to
19 play it. It is about 40 minutes, or let the Court
20 look at it at its leisure.

21 MR. JOHNSON: Your Honor, I do have an
22 objection, because this was the subject of the
23 direct appeal. It has already been dealt with.
24 The Supreme Court ruled it inadmissible. I would
25 object to it's not proper for PCR.

TESTIMONY OF JOSEPH DAVIS

1 MR. FAIREY: I'm not submitting it for it
2 being admissible or not admissible, I'm submitting
3 it for the fact of the interrogation. And it
4 deals with the strategy of the trial. Because
5 this was the primary evidence of the State and any
6 strategy issues would have had to deal with this,
7 as far as performance of defense counsel.

8 THE COURT: Say that again.

9 MR. FAIREY: Yes, sir, I'm not admitting it
10 or submitting it for whether it should have been
11 introduced or not introduced, I'm submitting it
12 for the fact that it was the centerpiece of the
13 defense -- I mean, the centerpiece of the State's
14 case at trial.

15 THE COURT: Yes, sir.

16 MR. FAIREY: Therefore, certainly defense
17 counsel at the trial may bring up issues -- well,
18 I did this for strategy reason or that for
19 strategy reason. I wanted the central piece of
20 evidence to be in this case so that could be in
21 context if we get into discussions about strategy.

22 THE COURT: I'll view it if I feel it is
23 necessary. We will put it in the record and then
24 it will be held by the Court Reporter at this
25 time. It is Applicant's Exhibit 1 at this time.

TESTIMONY OF JOSEPH DAVIS

1 *(Whereupon, Applicant's Exhibit No(s). 1*
2 *marked for identification and received in*
3 *evidence.)*

4 BY MR. FAIREY:

5 Q Mr. Davis, On September 4th, 2008, were you
6 interrogated at the jail where you were being kept or
7 did they take you somewhere else?

8 A They took me -- took me somewhere else.

9 Q Before they took you somewhere, do you recall
10 anything happening to you at the jail?

11 A I don't remember.

12 Q Okay. Do you remember being given any
13 mediation before you were interrogated?

14 A I was on mediation.

15 Q Huh?

16 A I was on medication.

17 Q Okay. And what mediation were you on?

18 A Liquid Thorazine.

19 Q Were you administered liquid Thorazine before
20 your interrogation?

21 A Huh?

22 Q Were you administered liquid Thorazine before
23 your interrogation?

24 A What you mean?

25 Q Did they give it to you that day, the day

TESTIMONY OF JOSEPH DAVIS

1 that they interrogated you?

2 A Yeah. Yes, sir.

3 Q Now, after you were interrogated you were
4 charged with the charges that we are here about today;
5 is that correct?

6 A Yes, sir.

7 Q All right. Do you recall having a
8 preliminary hearing on your charges?

9 A Preliminary hearing?

10 Q Yes, sir.

11 A I don't remember.

12 Q You don't remember?

13 A No.

14 Q The statements that you gave to the
15 investigators in this case that we marked as Exhibit 1,
16 were those statements given before you had a lawyer in
17 this case?

18 A The statement?

19 Q Yes, sir. Were you interrogated before you
20 had a lawyer?

21 A At one time. Well, two times.

22 Q Okay. And was that the time that they
23 videotaped your interrogation; is that correct?

24 A That was the first time. The first two
25 statements.

TESTIMONY OF JOSEPH DAVIS

1 MR. FAIREY: Your Honor, may I approach the
2 witness?

3 THE COURT: Yes, you may.

4 BY MR. FAIREY:

5 Q Mr. Davis, is this a photograph taken from
6 the video of you being interrogated?

7 A Yes, sir.

8 Q That is you sitting in the chair?

9 A Yes, sir.

10 Q Mr. Davis, do you see the paper in front of
11 you in this photograph?

12 A Yes, sir.

13 Q What was that?

14 A That was the statement.

15 Q That was a statement that you had already
16 given?

17 A Statement me and the officer talked about.

18 Q All right. Now, Mr. Davis, eventually you
19 were provided an attorney for your -- the charges
20 against you?

21 A Yes, sir.

22 Q Who was your first attorney?

23 A Gerald Kelly.

24 Q And was Mr. Kelly your attorney immediately
25 after you were charged?

TESTIMONY OF JOSEPH DAVIS

1 A No, I had -- they had give me another
2 attorney.

3 Q Okay. Do you remember who that was?

4 A Ms. Smart.

5 Q Okay. When did Ms. Smart become your
6 attorney?

7 A At that Friday.

8 Q How did you end up with Ms. Smart-Gittings as
9 your attorney?

10 A They had took me to the court and try to get
11 me to plead to the death penalty.

12 Q Okay. What happened there? How did she end
13 up being your attorney?

14 A She told me, Don't plead guilty, that she
15 will be my attorney.

16 Q Okay. Now, your interrogation occurred on I
17 think on September 4th, 2008 and your trial occurred on
18 June 27, 2011; that was almost three years later. Is
19 that right?

20 A Yes, sir.

21 Q How many times do you recall meeting with
22 Mrs. Smart-Gittings?

23 A Over five times.

24 Q Were you able to discuss your case with her?

25 A I discussed my case.

TESTIMONY OF JOSEPH DAVIS

1 Q Okay. And during all of that time, that
2 three years, where were you most of that time?

3 A Hampton County.

4 Q Hampton County jail?

5 A Yes, sir.

6 Q And was there a time that you were
7 hospitalized as well?

8 A Yes, sir.

9 Q And that was at the Department of Mental
10 Health; is that correct?

11 A Yes, sir.

12 Q But other than that, you were at the Hampton
13 County Detention Center?

14 A Yes, sir.

15 Q During those three years, were you able to
16 discuss with Ms. Smart-Gittings and tell her anything
17 that you needed to about your case?

18 A Yes, sir.

19 Q Were you able to discuss your mental
20 condition with her?

21 A Yes, sir.

22 Q Did you understand the defense of the case?

23 A What do you mean?

24 Q I mean, did you understand how the case was
25 going to be defended?

TESTIMONY OF JOSEPH DAVIS

1 A Yeah.

2 Q You understood that -- the fact that you had
3 made a confession on videotape required that the
4 case -- the strategy of the case be to try to exclude
5 that; is that correct?

6 A Huh?

7 Q Did you understand that one of the strategies
8 of the defense was to try to exclude the video
9 confession that you made; is that correct?

10 A Exclude? What does that the mean?

11 Q Exclude it as evidence, to keep it out of
12 evidence?

13 A Yes, sir.

14 Q And at the trial of the case, was there
15 evidence put up by your attorney that the statement was
16 coerced; is that right?

17 A Yes, sir.

18 Q Was there evidence put up that the statement
19 was taken while you were under the influence of
20 psychotropic drugs?

21 A Yes, sir.

22 Q Was there evidence submitted at your trial
23 that you were mentally handicapped?

24 A Say what?

25 Q Was there evidence presented at your trial

TESTIMONY OF JOSEPH DAVIS

1 that you were mentally handicapped?

2 A Yes, sir.

3 Q There was. Okay. Now, before trial you were
4 evaluated for competency; do you recall that?

5 A Cognizant?

6 Q Yes, they tested you to see if you were
7 competent to stand trial?

8 A Yes, sir.

9 Q And are you aware that you were initially
10 found incompetent to stand trial?

11 A Huh?

12 Q Were you aware that you were initially found
13 incompetent to stand trial?

14 A Yes, sir.

15 Q Did you have a chance to discuss with
16 Ms. Smart-Gittings what that meant?

17 A Not to stand trial?

18 Q That you were not competent to stand trial;
19 did you talk about that with your lawyer?

20 A Yes, sir.

21 Q Did you talk with her about what was going to
22 happen?

23 A What do you mean, what was gonna happen?

24 Q Did you think that the State was going to
25 treat you to try to make you competent to stand trial?

TESTIMONY OF JOSEPH DAVIS

1 A Did I understand?

2 Q Did you understand that that was going to
3 happen?

4 A No, sir.

5 Q Did you understand why you were put in the
6 hospital, at mental health, for 60 days?

7 A No, sir.

8 Q Did you understand that there were others
9 that were also being charged for the same events that
10 you were being charged with?

11 A She had told me that.

12 Q All right. And who were the other three
13 people that were being charged; do you remember their
14 names?

15 A That is them, yeah.

16 Q All right. Tell us who their names were?

17 A Sean Davis, Derrick Atkins, and Marquis
18 Bryant.

19 Q You were aware that they were going to be
20 called as witnesses against you at your trial?

21 A Did I know they be -- come as witnesses?

22 Q Yes. Did you know that they were going to be
23 called as witnesses?

24 A No. No, sir.

25 Q Not until they showed up the day of trial?

TESTIMONY OF JOSEPH DAVIS

1 A Yes, sir.

2 Q Did you have an opportunity before your trial
3 to go over statements that they had made to the police?

4 A Statements?

5 Q Yes, had you seen their statements before
6 your trial?

7 A I didn't see statements.

8 Q Were you aware that Sean Davis and Derrick
9 Atkins had been tried separately before your trial?

10 A Yes, sir.

11 Q And did you know what happened in that trial?

12 A No.

13 Q You didn't know the result of it?

14 A No, sir. I knew that they got time, but I
15 didn't know how much.

16 Q You knew they had been found guilty?

17 A Yes, sir.

18 Q Okay. And did you know what that might mean
19 for your trial, if they showed up as witnesses?

20 A Did I know what it would mean?

21 Q Yes, sir.

22 A Yes, sir.

23 Q And what was that?

24 A I guess they was found guilty, I guess..

25 Q Okay. Now, in preparation for trial, did you

TESTIMONY OF JOSEPH DAVIS

1 have time to discuss the physical evidence that the
2 State had against you in this case with your attorney
3 Ms. Smart-Gittings?

4 A Defense evidence?

5 Q Yes, sir.

6 A They had against me?

7 Q Yes, sir. Did you talk about that with your
8 lawyer?

9 A Yes, sir.

10 Q And what did you understand the physical
11 evidence to be?

12 A (No audible response.)

13 Q You don't remember. Did you have an
14 opportunity before your trial to tell your lawyer that
15 you had been medicated on the day of your
16 interrogation; did you talk with her about that?

17 A Yes, sir.

18 Q Did you tell her what you had been medicated
19 with?

20 A Yes, sir.

21 Q And did you talk to your attorney about the
22 paper that was sitting in front of you at your
23 interrogation?

24 A Yes, sir.

25 Q Now, were you evaluated by a Dr. Grant before

TESTIMONY OF JOSEPH DAVIS

1 your trial?

2 A Evaluated by a couple of people.

3 Q Okay. Was one of the people that you were
4 evaluated by a doctor that your lawyer had hired to
5 evaluate you; do you remember that?

6 A Yes, sir. Yes, sir.

7 Q Okay. And did that doctor testify at your
8 trial?

9 A No, sir.

10 Q Do you recall if his report was submitted to
11 the Judge or to the jury?

12 A No.

13 Q Now, I want to talk to you for a minute about
14 what happened at your trial. Your case was called for
15 trial. But before they had a hearing called a Blair
16 hearing; do you remember that?

17 A Yes, sir.

18 Q And that was a hearing as to your competency
19 to stand trial, correct?

20 A Correct.

21 Q And you were present for that hearing, right?

22 A Yes, sir.

23 Q Is that the first time you remember being in
24 front of the Court on any issue regarding your
25 competency to stand trial?

TESTIMONY OF JOSEPH DAVIS

1 A That was the first time.

2 Q Now, immediately after that there was a
3 Jackson versus Denno hearing, which is a hearing to
4 determine whether your statements were given
5 voluntarily or not. Do you recall that hearing?

6 A Yes, sir.

7 Q Okay. During either one of those hearings
8 was there any evidence presented that you had taken
9 psychotropic drugs before your confession?

10 A Any evidence?

11 Q Did anybody put evidence before the Court
12 that you had been given psychotropic drugs on the day
13 of your confession, Thorazine?

14 A Yes, sir.

15 Q Now, once your trial started, do you recall
16 that one of the detectives got on the witness stand and
17 talked about a bullet that they had recovered from the
18 body of the victim?

19 A Yes, sir.

20 Q Was that bullet at trial?

21 A No, sir.

22 Q Did you know that the bullet had been lost
23 before your trial started?

24 A No, I didn't know.

25 Q Did you have an opportunity to discuss with

TESTIMONY OF JOSEPH DAVIS

1 your attorney whether or not you should undergo
2 treatment to make you competent to stand trial? Did
3 you talk about that with your attorney?

4 A Did -- what do you mean?

5 Q Before you went into the hospital did you
6 meet with your lawyer and talk to her about whether or
7 not you should be treated by the State?

8 A Well, I know I be going there.

9 Q You knew you were going?

10 A Yeah.

11 Q Okay. Did you talk with her about whether it
12 was a good idea for you to go or not go?

13 A We didn't.

14 Q You did or you didn't?

15 A We didn't.

16 Q Okay. And when the codefendants were
17 allowed, or the other people were allowed to testify
18 and tell the jury that they had already been convicted
19 of this crime, did that surprise you?

20 A Said they had already been convicted?

21 Q That they had already been convicted of the
22 same thing?

23 A That what they say?

24 Q Was that a surprise to you when that
25 happened?

TESTIMONY OF JOSEPH DAVIS

1 A Yeah, I didn't know that they were coming.

2 Q Do you believe that that affected the
3 fairness of your trial?

4 MR. JOHNSON: Objection, Your Honor, that
5 calls for speculation.

6 MR. FAIREY: I will withdraw it, Your Honor.

7 THE COURT: Thank you.

8 BY MR. FAIREY:

9 Q Mr. Davis, is there anything that you would
10 like to tell the Court about your trial or about your
11 post-conviction relief hearing before I turn it over to
12 the State?

13 A Yes, sir.

14 Q Okay.

15 A I sat at assistant counsel said she was
16 going to bring a doctor to test my IQ and said I was
17 mental retardation. She brought him to trial on my
18 behalf, expert witness. I think he said he didn't.
19 And another thing too, right, she didn't object to the
20 Judge's decision, when he was talking to the jury
21 about the matter of charge of a weapon, she didn't
22 object to it.

23 THE COURT: Anything else?

24 THE DEFENDANT: No, sir.

25 THE COURT: Okay.

TESTIMONY OF JOSEPH DAVIS

1 MR. FAIREY: Your Honor, I have no other
2 questions. Please answer any questions that the
3 attorney for the State may have.

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you. You may
6 cross-examine.

7 CROSS EXAMINATION

8 BY MR. JOHNSON:

9 Q Mr. Davis, you are a known gang member, are
10 you not?

11 A No, sir.

12 Q Did you not admit that you are a blood member
13 of the P Road Group?

14 A What?

15 Q You are a blood member?

16 A No, sir.

17 MR. FAIREY: Your Honor, I object. I'm not
18 sure the relevance of his past affiliations. This
19 is whether or not his constitutional rights were
20 violated or not.

21 THE COURT: Relevance?

22 MR. JOHNSON: Your Honor, it is in the
23 transcript and I am showing that he was at the
24 scene. I will tie it in Your Honor.

25 THE COURT: You better tie it in.

TESTIMONY OF JOSEPH DAVIS

1 MR. JOHNSON: I withdraw that.

2 BY MR. JOHNSON:

3 Q Two co-Defendants testified at your trial,
4 one being your brother, that you were there and you
5 were the one that shot the victim in the case, correct?

6 A That is what he said?

7 Q Do you agree with me that is what they
8 testified to?

9 A Yes, sir.

10 Q And do you agree with me that you
11 testified -- well, actually the statement came in that
12 you were the -- that you confessed to killing the
13 victim in this case?

14 A Yes, sir.

15 Q Okay. And your attorney challenged that,
16 correct?

17 A Yes, sir.

18 Q And that was the issue up on appeal, whether
19 or not that confession was voluntarily given; correct?

20 A Yes, sir.

21 Q And the Supreme Court said that it was,
22 right?

23 A I don't know.

24 Q Okay. But your attorney argued that the
25 State didn't have physical evidence against you,

TESTIMONY OF JOSEPH DAVIS

1 correct?

2 A Yes, sir.

3 Q And she also brought in witnesses that
4 testified as to your medication and mental health
5 history, correct, including a nurse that was qualified?

6 A She brought a nurse in, had a nurse on the
7 stand saying, Was I taking medication or not.

8 Q Okay. But your attorney brought that out
9 during trial, right?

10 A Yes, sir.

11 MR. JOHNSON: Your Honor, that is all that I
12 have at this time.

13 THE COURT: Anything further?

14 MR. FAIREY: Nothing further, Your Honor.

15 THE COURT: Sir, you may step down. Thank
16 you very much. Have a seat at counsel table.
17 Thank you.

18 MR. FAIREY: Your Honor, we would call
19 Stephanie Smart-Gittings.

20 THE COURT: All right. Come forward please
21 and be sworn right here, please ma'am.

22 Thereupon,

23 STEPHANIE SMART-GITTINGS

24 was called as a witness, having been first duly sworn,
25 was examined and testified as follows:

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 THE CLERK: Please state your name for the
2 record.

3 THE WITNESS: Stephanie Smart-Gittings,
4 G-I-T-T-I-N-G-S.

5 THE CLERK: Thank you so much.

6 DIRECT EXAMINATION

7 BY MR. FAIREY:

8 Q Ms. Smart-Gittings, thank you for being here.
9 I certainly would not want to sit and have somebody try
10 to pick through a trial that I had done, and I
11 appreciate you being here to talk about that.
12 Ms. Smart-Gittings, what do you do for a living?

13 A I am a public defender.

14 Q And how long have you been a public defender?

15 A Since 1999.

16 Q And how did you come to represent Joseph
17 Davis?

18 A I started in the Hampton office in 2009.
19 The case was already in our office appointed to, I
20 think, maybe Mr. Hughes. And I assumed all of his
21 cases when I started.

22 Q And at the point that you became involved in
23 it, at what stage of the proceedings?

24 A I think about a month after I had been
25 appointed they served me with the notice to seek death

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 and that was -- and I was involved after that.

2 Q At the time that you were involved, had the
3 confession already been recorded?

4 A Yes.

5 Q Had there been a preliminary hearing in the
6 case?

7 A I don't know. The file didn't have any
8 notes, so I don't know whether or not there had been a
9 preliminary hearing. I don't know what was done prior
10 to my involvement because it didn't have anything in
11 the file.

12 Q Okay. And did you become involved prior to
13 the competency -- the initial competency evaluation?

14 A Yes, I requested it.

15 Q Okay.

16 MR. FAIREY: And Your Honor, may I approach?

17 THE COURT: You may.

18 BY MR. FAIREY:

19 Q Ms. Smart-Gittings, I have handed you what I
20 got out of your file. This is an order with a cover
21 sheet from Judge Buckner regarding competency; is that
22 correct?

23 A Yes.

24 Q And it attaches the report from MUSC, the
25 initial report on Mr. Davis' competency; is that

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 correct?

2 A That's correct.

3 Q And you received this at the time that it was
4 issued?

5 A Yes.

6 Q And part of the reason this evaluation was
7 being done was because initially the State had
8 indicated that it was going to seek the death penalty
9 in this case; is that right?

10 A Yes.

11 Q Now, Mrs. Smart-Gittings, you had plenty of
12 time to meet with Mr. Davis at the time that you were
13 first appointed; is that right?

14 A Yes.

15 Q And did you understand what the issues were
16 going to be going forward?

17 A When I first assumed the case, Joseph wasn't
18 very respondent to me because he was on a high dose
19 of, I don't know what the drug was. Risperdal I
20 believe.

21 Q Haldol?

22 A I knew it was a dol. Most of the time he
23 was in a daze. He could answer yes or no, but he
24 could not elaborate. I had a difficult time
25 communicating with him. So we decided that it was in

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 his best interest to have an evaluation done to
2 determine whether or not he understood what was going
3 on.

4 Q And when did you -- at that time did you have
5 an understanding that Joseph Davis' mental health would
6 be an issue in this case?

7 A Not until we started -- we had a mitigation
8 team. We had two private investigators, one for
9 mitigation and one was the fact investigator. So,
10 after our mitigation investigator researched she and I
11 discovered his school records and I believe that he
12 had prior mental health issues. So, you know, as a
13 team we realized that his family had a history of
14 mental retardation and that is how we kind of used
15 that strategy.

16 Q And you raised the issue about his competency
17 to stand trial. At some point did you raise the issue
18 of competency to confess or give a statement?

19 A I believe at trial I challenged that, yes.

20 THE COURT: Can I ask a question here? I
21 have heard his condition referred to by him as
22 bipolar and schizophrenia. I just heard this
23 witness and you refer to his condition as mental
24 retardation. Those are two widely different
25 conditions. Can you help me with what he was

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 diagnosed with?

2 MR. FAIREY: Absolutely. Your Honor, he was
3 diagnosed with all three. He had a prior history
4 of schizophrenia and bipolar and he was found --
5 and I have the report here. I believe it is
6 already in the order, the Court's competency order
7 and evaluation, all three of those mentioned as
8 well.

9 THE COURT: All three conditions diagnosed?

10 MR. FAIREY: Yes, sir, he had all three.

11 THE COURT: That helps. Thank you very much.
12 He didn't mention that as a condition when he
13 testified.

14 MR. FAIREY: That is correct.

15 THE COURT: Okay. Go ahead.

16 BY MR. FAIREY:

17 Q Okay. And it was your -- you challenged his
18 competency to give the confession at the Jackson V
19 Denno hearing at trial?

20 A Yes.

21 Q And during the trial?

22 A Yes.

23 Q And you understood that the primary evidence
24 that the State had in this case was that confession?

25 A Yes.

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 Q And what, if any, physical evidence was there
2 presented other than his confession?

3 A None.

4 Q And prior to the start of the trial in this
5 case, the State gave you the witness list?

6 A No.

7 Q They did not?

8 A Well, on the day of trial they gave me a
9 witness list.

10 Q On the day of trial they gave you a witness
11 list?

12 A Yes.

13 Q And was the first time that you understood
14 that Sean Davis and Marquis Brian and Derrick Atkins
15 were going to be called to testify?

16 A Yes.

17 Q You had previously, though, gotten a copy of
18 their statements; is that right?

19 A Yes. I had actually gone to see them where
20 they were incarcerated. They told me that they were
21 not going to testify. They, of course, was reluctant
22 to testify and did not cooperate with the Court, and
23 that is why their video confessions were admitted into
24 evidence.

25 Q Right. Now, after the evaluations were done

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 at your request, Mr. Davis was found incompetent to
2 stand trial; is that correct?

3 A Yes.

4 Q But in the order of the Court it indicates
5 that with treatment he could become competent?

6 A Yes.

7 Q Did you have an understanding as to the
8 constitutional significance as to whether the State can
9 force a Defendant to undergo treatment to become
10 competent to stand trial?

11 A No, I'm not sure if I understand your
12 question.

13 Q Okay. Were you familiar or are you familiar
14 with the United States Supreme Court cases, Sell versus
15 United States?

16 A No.

17 Q I think Riggins and -- Riggins versus Nevada
18 and Washington versus Harper?

19 A No.

20 Q After the initial investigation, or after the
21 initial competency review, did you discuss with
22 Mr. Davis whether or not he should consent to be
23 treated by the State?

24 A I did not.

25 Q Okay. And did you make a motion with the

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 Court at that time to require the State to meet their
2 burden of proof that forced treatment would be
3 appropriate?

4 A I did not.

5 Q Okay. Did you believe that it was in Joseph
6 Davis' best interest to undergo treatment so that he
7 would be competent to stand trial?

8 A I did.

9 Q Why is that?

10 A That is the only way that I would be able to
11 work with him to come up with a defense to figure out
12 what happened other than what I was told by his
13 codefendants. So, in order for him to assist me is
14 the reason why I thought that it was important for him
15 to be restored to competency, if he could be.

16 Q Could he have been tried at all if he
17 remained incompetent?

18 A No.

19 Q Now, in this case there was a Blair hearing?

20 A Yes.

21 Q And you would agree with me -- in fairness to
22 you I'll hand you a copy of the trial transcript.

23 A I have it.

24 Q You have one, okay, good. The Blair hearing
25 was convened the day that the trial started; is that

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 correct?

2 A Yes.

3 Q And at the Blair hearing the Court found
4 Mr. Davis competent?

5 A Yes.

6 Q And had Joseph Davis -- well, strike that.
7 And you would agree that once the case started at trial
8 it centered around the confession and the statements?

9 A Yes.

10 Q Without those confessions, would you agree
11 that a reasonable -- do you think that it is reasonable
12 the State's case might fail?

13 MR. JOHNSON: Objection to speculation, Your
14 Honor.

15 THE COURT: I will sustain the objection.

16 BY MR. FAIREY:

17 Q Do you agree that it was important to try to
18 exclude or limit those confessions?

19 A Yes.

20 Q Now, Mr. Davis told you during trial
21 preparation that he had been medicated the day that he
22 gave the confessions?

23 A I don't know if he told me, but I remember
24 asking one of the detectives who was involved in the
25 interview whether or not they thought he fully

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 understood what he was being asked. So I think that I
2 knew that there might have been an issue at the time
3 that he gave the confession.

4 Q And at both at the Jackson v. Denno hearing
5 and the trial you called Mr. Spicolia Mungin
6 (phonetic)?

7 A Yes.

8 Q And she was a nurse at the Hampton County
9 Detention Center?

10 A Yes.

11 Q And you asked her to discuss whether or not
12 Mr. Davis was under any prescriptions for psychotropic
13 medications?

14 A Yes.

15 Q Now, did you discuss or ask the Court to --
16 the Court's permission to retain an expert regarding
17 the effects of psychotropic medications during
18 interrogations?

19 A I did not. The expert that we did have,
20 Dr. Grant, Dr. Daniel Grant, he had explained that to
21 me during his investigation or his -- I guess when he
22 was involved in the case. And he told me that he
23 wouldn't be useful to me at trial because he thought
24 that Joseph understood what was going on at the time
25 of the confession. He thought that he fully

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 understood. So, that is why I didn't want to call him
2 as a witness.

3 Q Sure. Did you consult or ask any experts in
4 pharmacology about the effects of psychotropic
5 mediation?

6 A I did not.

7 Q About whether it made people who take them
8 sleepy or disoriented?

9 A I didn't.

10 Q Did you ask for records from the jail
11 indicating what medications might have been given to
12 him on the day of the interrogation?

13 A I didn't.

14 Q Now, at trial one of the things that I think
15 that you presented was that law enforcement had couched
16 Mr. Davis in what to say in his confession; is that
17 right?

18 A Yes.

19 Q And after the jury saw the video I believe
20 you pointed out to them that during the confession
21 there were some papers that had been put in front of
22 Mr. Davis; is that correct?

23 A Yes.

24 MR. FAIREY: May I approach Your Honor?

25 THE COURT: Yes, sir.

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 BY MR. FAIREY:

2 Q And, Ms. Smart-Gittings, that is a
3 photograph, basically a screen shot from the video?

4 A Yes.

5 Q Now, the papers that you pointed out to the
6 jury, are they visible in that photograph?

7 A Yes.

8 Q And those are the ones directly in front of
9 Mr. Davis?

10 A Yes.

11 MR. FAIREY: Your Honor, I move to mark that
12 as Exhibit 2.

13 THE COURT: Any objection?

14 MR. JOHNSON: No, Your Honor.

15 THE COURT: Without objection it will be
16 marked as Applicant's No. 2 and made a part of the
17 record.

18 *(Whereupon, Applicant's Exhibit No(s). 2*
19 *marked for identification and received in*
20 *evidence.)*

21 BY MR. FAIREY:

22 Q At what point -- did you ask for what papers
23 were laid in front of Mr. Davis from law enforcement?

24 A Yes.

25 Q Were you ever told or given what that was?

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 A They just told me that it was a notebook.

2 Q Did you raise that issue before the Court
3 before the start of the trial?

4 A I didn't.

5 Q Or seek to compel whatever document that was
6 that had been put in front of him?

7 A I didn't.

8 Q Now, you did ask permission to hire a mental
9 health expert, Dr. Graham; is that correct?

10 A I did.

11 Q And one of the purposes was to determine if
12 Mr. Davis had a mental handicap?

13 A Yes.

14 Q And you received --

15 MR. FAIREY: Your Honor, with your
16 permission.

17 MR. JOHNSON: What is that?

18 THE COURT: You may approach.

19 MR. JOHNSON: Your Honor, this is the first
20 time that I have seen this. Second of all, I was
21 not aware based on counsel's back and forth email
22 to me, that the mental health issue would even be
23 an issue in the hearing.

24 MR. FAIREY: Your Honor, I was just --

25 MR. JOHNSON: May I finish?

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 THE COURT: Let him finish his objection and
2 then I will hear from you.

3 MR. JOHNSON: I was going based on the
4 application and his admitted application, and this
5 may be too late to object to all of this mental
6 health stuff, but deficiency and failure to
7 investigate, there are no specifics in that. I
8 believe that the State would be prejudiced in all
9 of this, and that the fact that we have been given
10 no notice of specifics of what we were going
11 forward on today.

12 THE COURT: Yes, sir.

13 MR. FAIREY: Your Honor, as far as this
14 particular piece of paper, I'm just asking for
15 identification, I haven't asked for it to be
16 admitted yet.

17 THE COURT: Where are we going with it?

18 MR. FAIREY: I am going to ask her if that
19 was the report and if the report indicated that he
20 was mentally handicapped. That is it.

21 THE COURT: All right. I don't know a whole
22 lot about the case, but I'm learning about the
23 case as I sit here. I would suspect that since
24 the State was initially seeking the death penalty,
25 perhaps at some point in time they agreed he had a

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 mental handicap and therefore was not subject to
2 the death penalty. Am I correct in speculating
3 what happened?

4 MR. FAIREY: I would think that too, Your
5 Honor, but I would ask permission to ask the
6 witness. I think that she would know how that
7 came about.

8 THE COURT: I'll let you go a little ways
9 down this road. But I don't know if it's really
10 an issue in whether or not he received adequate
11 representation.

12 MR. FAIREY: Yes, Your Honor.

13 THE COURT: Because it sounds like to me he
14 avoided the death penalty, so he may have gotten
15 good representation on that part.

16 MR. FAIREY: Okay.

17 THE COURT: Go ahead.

18 BY MR. FAIREY:

19 Q And the conclusion of this report was what,
20 Ms. Smart-Gittings?

21 A That he had mental retardation, intellectual
22 disability set forth by the DSM-IV-TR and AAIDD tests
23 that were given to him.

24 Q Okay. And Mrs. Smart-Gittings, did the
25 information in that report, was that a -- I guess

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 obtained by you because the death penalty was being
2 sought against him?

3 A Yes.

4 Q Okay. And what happened as a result of you
5 getting that report?

6 A They withdrew the notice to seek death.

7 Q And you would agree that evidence of mental
8 retardation is mitigating evidence; is that correct?

9 A Yes.

10 Q Okay. And at the sentencing of this case, do
11 you recall whether or not you presented evidence of his
12 mental retardation for the Court's consideration?

13 A I did not because Judge Buckner was the
14 trial judge. He was involved -- he would have been
15 the death penalty judge, so he was aware of the mental
16 retardation. That is why the State withdrew the death
17 penalty. So, he was very familiar with it and that is
18 why I didn't bring it back up at sentencing.

19 Q But there was no evidence in the record or
20 put in the record at sentencing regarding his mental
21 retardation?

22 A No.

23 Q Mrs. Smart-Gittings, can you turn with me in
24 the transcript to Page 267. And in this part of the
25 trial Detective Solomons was talking about the bullet

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 that had been recovered from the victim's body; is that
2 correct?

3 A Yes.

4 Q Were you aware before trial that the bullet
5 had been lost?

6 A No.

7 Q You learned about that for the first time on
8 Page 267 in the middle of this trial?

9 A Yes. Yes.

10 Q And at that time did you make any motion to
11 exclude the bullet or any evidence that came from the
12 bullet?

13 A I did not.

14 Q Did you make any motions regarding the
15 subsequent testimony of the SLED expert in ballistics?

16 A I did not.

17 Q Okay. And after learning this, did you make
18 any motions for mistrial?

19 A I did not.

20 Q Now, if you read the passage on 266 and 267
21 where Detective Solomons is talking about how he lost
22 the bullet. Does he refer to another trial?

23 A Yes.

24 Q Okay. So, Detective Solomons told the jury
25 that this bullet had been used in another trial?

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 A Yes.

2 Q And you understood that the trial of Sean
3 Davis and Derrick Atkins, the coconspirators of
4 Mr. Davis, had already taken place?

5 A Yes.

6 Q You understood by this time that they were
7 both witnesses in this case?

8 A Yes.

9 Q And you knew --

10 THE COURT: Can I ask another question here?
11 I have heard that the coconspirators were
12 witnesses in the case, but then I heard that their
13 statements were produced into the record.

14 MR. FAIREY: That's correct, Your Honor.

15 THE COURT: Were they witnesses by way of
16 their statements or did they actually testify?

17 THE WITNESS: They testified but they
18 wouldn't cooperate with the State. They wouldn't
19 answer questions.

20 THE COURT: I see. So, they didn't
21 testify -- they really didn't testify, they simply
22 refused to testify?

23 MR. FAIREY: They did and they didn't, Your
24 Honor. It is in the transcript but they said, We
25 gave statements but they weren't the right kind

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 of --

2 THE COURT: So, they denied the prior
3 statements and then they refused to give a new
4 statement?

5 MR. FAIREY: That's correct.

6 MR. JOHNSON: Under 613 they came into
7 evidence, Your Honor.

8 MR. FAIREY: All of that is correct, that is
9 how they came in.

10 THE COURT: Those statements had been
11 provided to you earlier?

12 THE WITNESS: Yes.

13 THE COURT: Go ahead.

14 MR. FAIREY: Thank you, Your Honor.

15 BY MR. FAIREY:

16 Q Can you turn with me now to Page 312. And
17 this is the testimony of Sean Davis. Let me know when
18 you are ready.

19 A Yes, I'm ready.

20 Q This is the direct examination of Mr. Sean
21 Davis; is that correct?

22 A Yes.

23 Q And Mr. Davis on the witness stand, while
24 he's being questioned by the State stated, I got 30
25 years, I ain't got nothing to say.

TESTIMONY OF STEPHANIE SMART-GITTINGS

- 1 A Yes.
- 2 Q Did he say that?
- 3 A Yes.
- 4 Q And did you make an objection at that point?
- 5 A I did not.
- 6 Q On Page 315 there's another statement that he
- 7 makes under the direct examination of State's attorney.
- 8 "I can't really remember. 30 years, that has messed --
- 9 have me messed up." Line 18.
- 10 A Yes.
- 11 Q Okay. And, again, is there an objection that
- 12 you made at that point?
- 13 A No.
- 14 Q And again at Page 321.
- 15 A Which line?
- 16 Q Page 321, and this is the examination of, I
- 17 believe, also Sean Davis starting at about line seven.
- 18 And again, under questions from the State Mr. Davis was
- 19 asked -- or asked whether he went to trial because he
- 20 refused to take a deal from the State?
- 21 A Right, yes, that is correct.
- 22 Q She said, isn't it true that you didn't plead
- 23 guilty, you went to trial. He said, I went to trial.
- 24 Is that correct?
- 25 A Yes, that is correct.

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 Q Now, while he's being questioned is Mr. Sean
2 Davis dressed in a prison jump suit?

3 A Yes.

4 Q Does he have handcuffs?

5 A I don't remember.

6 MR. JOHNSON: I'm going to object to
7 relevance, Your Honor.

8 MR. FAIREY: The point -- I'm getting to
9 that, Your Honor. And the point is, is that these
10 two witnesses were allowed to testify under
11 questions from the State without objection that
12 they had already been tried and convicted for the
13 same series of events. And I think that it was --
14 that that is prejudicial, that an objection should
15 have been made. There are a line of cases saying
16 that it's unconstitutional for that type of
17 testimony, it is prejudicial. And I'm pointing
18 out that it came in and then I'm pointing out that
19 no objection was made to it.

20 MR. JOHNSON: Once again, the State has not
21 been put on notice that these are the allegations,
22 Your Honor.

23 THE COURT: It is in the application.

24 MR. FAIREY: Your Honor, it is ineffective
25 assistance of counsel performance, failure to

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 object, make objections at trial.

2 MR. JOHNSON: You have to tell me where that
3 is.

4 THE COURT: They have got a right to know
5 what you are claiming so they can be prepared for
6 it.

7 MR. FAIREY: I understand that, Your Honor.
8 Other than putting them on notice that we are
9 claiming ineffective assistance.

10 THE COURT: That can mean anything. That is
11 why when you said that at the beginning of the
12 trial I required you to be more specific.

13 MR. FAIREY: Your Honor, we get this as we
14 get it. You know, the petition was filed by
15 somebody else. It was amended by the Petitioner
16 himself.

17 THE COURT: Yes.

18 MR. JOHNSON: And, Your Honor, Counsel filed
19 an amended petition about a month ago, just
20 slapped it on the cover letter. He could have
21 taken the time to tell me exactly what he was
22 objecting to. I am going to object to lack of
23 notice of this, Your Honor. It is kind of like a
24 mistrial at this point is what I'm feeling. I
25 feel like I'm getting ambushed.

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 MR. FAIREY: Your Honor, I apologize. I
2 don't do these a lot. I have done about five or
3 six of these. I frequently try them and move to
4 amend the complaint.

5 THE COURT: Generally amendments would be
6 liberally allowed unless the State claims
7 prejudice, and I think that he is from what I'm
8 hearing.

9 MR. JOHNSON: Yes, Your Honor.

10 MR. FAIREY: Prejudice is -- prejudice means
11 that he was unfairly surprised and also that he's
12 unable -- he's lost his position to respond. I
13 don't think that is the case. It is just a review
14 of the transcript, Your Honor. That is all that
15 it is, a review of the transcript.

16 THE COURT: I'm certainly not preparing his
17 case for him. I can't tell him who he ought to
18 call or what he ought to call or how he should
19 handle it. That is not my job to do that. He's
20 claiming that these are factors that he was not
21 prepared for and wasn't prepared to respond to at
22 this point. I haven't reviewed the application
23 from that perspective. Give me a moment to do so.

24 (Pause.)

25 THE COURT: What is the most recent?

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 MR. JOHNSON: Do you have a copy of the
2 September 30th filing?

3 THE COURT: Of what year?

4 MR. JOHNSON: This year, Your Honor. And
5 this is by counsel. I have a copy if you don't
6 have it in your packet.

7 THE COURT: I don't think that I do.

8 MR. JOHNSON: May I approach, Your Honor?

9 THE COURT: Yes, you may.

10 All right. I will ask the State to tell me
11 exactly what you are objecting to.

12 MR. JOHNSON: Your Honor, Based on the
13 allegations that we got in the original
14 application and his amended complaint we were
15 prepared to defend against his confession as far
16 as undue influence as to his mother's death and
17 how the officers may or may not have coerced him
18 in that. And the Blair hearing. Nothing about
19 counsel's failure to object, nothing about not
20 calling witnesses allegation. Any of those
21 allegations, you know, we simply didn't have
22 notice of, Your Honor. I mean, ineffective
23 assistance of counsel is a huge complaint. But
24 specifically, we are entitled to notice as to what
25 we are supposed to defend.

TESTIMONY OF STEPHANIE SMART-GITTINGS

1 THE COURT: Well, generally the application
2 as filed requires the states -- on paragraph ten,
3 state the grounds on which they claim are being
4 illegally held. And then eleven asks for specific
5 facts, state concisely and in the same order the
6 facts which support each of the grounds. And then
7 in here it just says, Numerous deficiencies,
8 failure to investigate et cetera. Counsel, in
9 essence, denied me a fair trial. And then I read
10 the amended application. And I think that the
11 State is correct, Mr. Fairey, the issues that seem
12 to be raised through the amended application are
13 the question of his statements and whether or not
14 they were voluntary and should have been used
15 against him, the Blair hearing issues, and then
16 there's an argument.

17 And it really goes into no specifics in that
18 application about the matters that we are talking
19 about now. And I'm not saying that you can't
20 raise them, it's just whether or not he's entitled
21 to be prepared.

22 MR. FAIREY: I understand, Your Honor. And
23 what I would say is this: The pleading is -- the
24 point of the pleading is to give notice generally,
25 We are going to raise this issue.

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1 THE COURT: No, not generally, give notice.

2 MR. FAIREY: Give notice that we are raising
3 ineffective -- I understand the argument if I had
4 come in here, you know, with 20 documents that he
5 had never seen before. But this is the
6 transcript. This is going through the transcript
7 one at a time.

8 THE COURT: I understand that. But if you
9 read the transcript, and this is a fairly
10 voluminous transcript, there's probably many
11 things that you could consider a possible grounds
12 for someone to argue. I don't know -- there has
13 to be something to focus your attention on any
14 particulars that are being brought up.

15 MR. FAIREY: Certainly, Your Honor.

16 THE COURT: And if you read his handwritten
17 amendment, we are in matters that aren't included
18 in that handwritten amendment. And I'm not saying
19 that you can't raise them. Don't get me wrong.
20 My question is whether or not I need to stop the
21 hearing now and ask you to amend and be specific
22 for what you are going to be raising and give him
23 an opportunity to be prepared for those things.
24 That is where I am right now.

25 MR. FAIREY: Certainly, Your Honor, and I

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1 believe --and again I don't do these all of the
2 time.

3 THE COURT: I understand you are appointed to
4 do them. That is why I'm being liberal in
5 allowing amendments and that sort of thing.

6 MR. FAIREY: I understand. It's always been
7 in other cases I deal with, a complaint is
8 sufficient in giving notice of the matter that you
9 are raising.

10 THE COURT: I'm going to table the position,
11 if you say, ineffective assistance of counsel, but
12 it has to be more specific. As I did in the
13 beginning of it, before I knew that this issue was
14 coming up. When you said that, I said you have to
15 be more specific than ineffective assistance of
16 counsel. That is why I asked that question. That
17 would be the position that I would take. Do you
18 want me to stop the hearing?

19 MR. JOHNSON: May I refer to the victim's
20 family first, Your Honor?

21 THE COURT: Why don't you do that.

22 MR. JOHNSON: Thank you.

23 (Pause.)

24 MR. JOHNSON: Your Honor, in speaking with
25 the victim's family, I don't want to drag them

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1 through the mud again. They have already been
2 through the trial and now they are coming back a
3 second time. I think that I can figure out a way
4 to defend these claims.

5 THE COURT: Okay. He's going to allow us to
6 go forward.

7 MR. FAIREY: Thank you, Your Honor.

8 THE COURT: Thank you, sir.

9 BY MR. FAIREY:

10 Q Ms. Smart-Gittings, I forget which question
11 we were on. We were going through the transcript
12 identifying the areas that Mr. Davis or Mr. Atkins
13 indicated that they had been tried and convicted
14 before; is that correct?

15 A Yes.

16 Q If you could, please turn with me to
17 Page 439. And do you see the argument of the State in
18 closing, beginning at Line 13? I'm sorry, beginning at
19 Line 9.

20 MR. JOHNSON: Where page are you on?

21 MR. FAIREY: On Page 439.

22 THE COURT: Yes.

23 MR. FAIREY: And beginning there, the
24 argument of the State was, Well, if your brother
25 was on trial for murder and you knew that he

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- 1 didn't do it and the police tricked all of you
2 into confessing for something, wouldn't you want
3 to be there, what would be the first words out of
4 your mouth when Tamika Leggett with my office
5 said, Sir, what happened on June 23rd? What is
6 the first thing that you would have said? Wait a
7 minute, you have got the wrong guy, I have been
8 convicted wrongly, my brother is innocent. Did
9 the State -- the State made that argument in
10 closing?
11 A She did.
12 Q I believe this was Mr. Thornton.
13 A Sorry, he did.
14 Q No, that's fine. But did he highlight the
15 conviction of Mr. Sean Davis in his closing argument?
16 A Yes.
17 Q Was there an objection raised by you to that?
18 A No.
19 Q And was there a motion for mistrial raised
20 with respect to that?
21 A No.
22 Q Were any requests made by the Court to give a
23 limiting instruction or did you explain to the jury
24 that they were not allowed to consider the convictions
25 of the codefendants?

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1 A No.

2 Q Okay. And I'm almost finished,
3 Ms. Smart-Gittings. And again, I appreciate your
4 patience through this. On Page 436 of the trial
5 transcript, this is in the charge to the jury; do you
6 see that?

7 A What line?

8 Q Page-- beginning on Line 3.

9 A Uh-huh. (Indicating affirmatively.)

10 Q Three through seven. And prior to giving the
11 charge, am I correct Judge Buckner --

12 MR. JOHNSON: What page?

13 MR. FAIREY: Page 463, Lines 3 through 7.

14 BY MR. FAIREY:

15 Q Prior to giving his charge, had you had an
16 opportunity to go over the charge that Judge Buckner
17 was going to give?

18 A I believe that we had a charge. I believe
19 that he just told us that he was going to do his
20 general charge and what charges that we requested.
21 But, again, word for word, no.

22 Q At the time that he gave this charge was the
23 first time that you heard it?

24 A Yes.

25 Q And this charge deals with what malice may be

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1 inferred in the commission of a crime with a deadly
2 weapon; is that correct?

3 A Yes.

4 Q And did this charge include any explanation
5 that the State still had the burden beyond a reasonable
6 doubt?

7 A It didn't.

8 Q And did you make an objection to this charge?

9 A I didn't.

10 Q Or this portion of the charge?

11 A I didn't.

12 Q And finally, Ms. Smart-Gittings -- I have
13 already asked you that.

14 (Pause.)

15 MR. FAIREY: I have no further questions.

16 Please answer any questions that the State may
17 have.

18 THE COURT: Counselor, your witness.

19 MR. JOHNSON: Thank you, Your Honor. May it
20 please the Court.

21 THE COURT: Yes, sir.

22 CROSS EXAMINATION

23 BY MR. JOHNSON:

24 Q Ms. Smart-Gittings, let's go back as to your
25 first involvement with the applicant here. How many

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1 times did you meet with him?

2 A Wow, I don't remember. I know initially I
3 met with him several times but it wasn't very
4 productive so I didn't meet with him any more until
5 right before he had his evaluation. And I did go with
6 him to the competency evaluation and then I met with
7 him after the evaluation.

8 Q And you thought that the evaluation was in
9 his best interest?

10 A Yes.

11 Q And at some point after that he regained
12 competency?

13 A Yes.

14 Q And I guess that the State reinstated the
15 charges?

16 A They never dismissed the charges. We just
17 went forward with the trial.

18 Q And at that point you began preparing this
19 case for trial?

20 A Yes. Well, actually I started preparing the
21 case before the Blair hearing. I just continued.

22 Q So, we have a Blair hearing, was found
23 incompetent, regains competency, and then you further
24 prepare him?

25 A Yes.

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1 Q Okay. Did you interview witnesses in this
2 case?

3 A Yes.

4 Q Who all would those be? Are they so numerous
5 that it is hard to remember?

6 A That file was a banker's box. It was very,
7 very, very thick. I can't remember.

8 Q That included his codefendants?

9 A Yes.

10 Q And you also had their statements?

11 A Yes.

12 Q So, even though they refused to testify and
13 they were called as witnesses at trial, their
14 statements, what they said about the case wasn't a
15 surprise to you, was it?

16 A No, sir.

17 Q And you were able to cross-examine them?

18 A Yes.

19 Q Including Sean Davis?

20 A Yes.

21 Q And then when counsel pointed out -- I
22 believe that it's on Page 321 -- about taking a deal.
23 Did you not recross him and clear that up?

24 A One second.

25 Q You plead guilty, you went to trial. He

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1 said, I went to trial.

2 A Yes.

3 Q You said, You didn't take the deal. No, that
4 was a lie.

5 A Yes.

6 Q And then you rehabilitated him by saying that
7 was a lie to the officers?

8 A Yes.

9 Q And that was your theme in the case, right?

10 A Yes.

11 Q That the officers had coerced him into a
12 confession in this case based on the fact that they
13 would reopen a case on the murder of his mother; right?

14 A Yes.

15 Q Was that the central theme of this case?

16 A Yes.

17 Q Were there any other trial strategies that
18 you used in this case?

19 A I think that it was basically that his
20 confession was coerced because they didn't have any
21 other evidence other than the confession.

22 Q And that lost bullet, speaking of the
23 evidence, was the State ever able to tie that bullet to
24 your client?

25 A No.

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1 Q Or any gun to your client?

2 A No.

3 Q So, the fact that the State lost the bullet,
4 was that an advantage to you?

5 A Yes.

6 Q The Court's indulgence, Your Honor.

7 THE COURT: Yes, sir.

8 Q You already testified that you hired
9 Dr. Grant to evaluate your client?

10 A I did.

11 Q And that you didn't call him based on the
12 fact that he would not be helpful in that he would say
13 that your client was competent?

14 A Yes, or that he understood. He understood
15 what he was doing when he wrote -- when he made the
16 confession.

17 Q Okay. So you made a strategic decision not
18 to call Dr. Grant?

19 A Yes.

20 Q But you did call other witnesses on the
21 applicant's behalf; correct?

22 A Yes.

23 Q That includes the nurse?

24 A Yes.

25 Q And why would you call her?

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1 A Because I wanted the nurse -- I wanted the
2 jury to understand that Joseph was taking drugs for
3 his mental health. Although he was competent to stand
4 trial, he did have difficulties and I wanted the jury
5 to understand that.

6 Q And as far as the Blair hearing at the
7 beginning was concerned, so you had seen the reports
8 that the State produced?

9 A Yes.

10 Q Okay. And Judge Buckner, on Page 15, says,
11 It's clear to the Court that the examiners tells me
12 that he understands the charges, that he understands
13 the legal proceedings, that he understands the
14 consequences, he has the ability to cooperate with his
15 attorney; is that correct?

16 A Yes.

17 Q Do you agree with that statement?

18 A Yes.

19 Q And also one of the -- Court's Exhibit 1
20 states that it was unclear whether or not he meets the
21 standards for the diagnosis of mental retardation; is
22 that correct?

23 A Yes.

24 Q So, going forward to this trial, he was not
25 diagnosed as mentally retarded was he?

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1 A He was diagnosed prior to.

2 Q Prior to. Okay. But at the time of the
3 trial he was not diagnosed as mentally retarded?

4 A He is mentally retarded. That hasn't
5 changed.

6 Q But at the trial -- at the time of trial he
7 was competent to stand trial?

8 A Yes, he was competent to stand trial.

9 Q And at the time of his confession Dr. Grant
10 said that he was competent to give that confession?

11 A Yes.

12 Q Okay. And while there was no physical
13 evidence in this case, was there not evidence that a 22
14 caliber pistol was sold to a third party, a Hispanic
15 gentleman?

16 A Yes.

17 Q And that was by Sean Davis?

18 A Yes.

19 Q Who also confessed that your client was the
20 shooter in this case?

21 A Yes.

22 Q And that third party had no bias or interest
23 in this case whatsoever, did he?

24 A No.

25 Q And did you ever discuss with your client his

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1 version of the facts?

2 A We talked about his statement, yes.

3 Q What did he tell you about that statement?

4 A He told me that Teddy Colms (phonetic)
5 specifically told him that if he confessed that they
6 would reopen his mother's death investigation and that
7 is the reason why he said what he said.

8 Q That is what you challenged at the Jackson V
9 Denno hearing?

10 A Yes.

11 Q Okay. And one of the things that counselor
12 pointed out is that you didn't object to Sean saying
13 that he received 30 years, he had nothing to say. Is
14 there a reason you wouldn't object to that?

15 A I wasn't aware of the line of cases that
16 said that that was inadmissible.

17 Q If you had known the line of cases, would you
18 have objected?

19 A I would have.

20 Q And additionally, after that on Page 312, was
21 there not a Bench conference immediately after that
22 statement?

23 A What line on 312?

24 Q Fifteen. "Just a moment. Counsel approach."

25 A Yes.

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1 Q Do you have any recollection of what was said
2 at that Bench conference?

3 A I don't remember.

4 Q Okay. And when the Solicitor highlighted the
5 conviction of Sean Davis, is there a reason that you
6 wouldn't have objected in his closing argument?

7 A Sorry, I didn't understand.

8 Q Sorry. When the Solicitor was closing and he
9 highlighted the conviction of Sean Davis, is there a
10 reason that you didn't object to his closing argument?

11 A Again, I am not aware of the line of cases
12 that say that it's not admissible. So I didn't object
13 because I didn't know that it was not admissible.

14 Q Do you often object during closing arguments?

15 A If I think that it is objectionable, yes, I
16 will object to it.

17 Q Sometimes is it trial strategy not to re-ring
18 the bell?

19 A Well, yes.

20 Q As far as the inferred malice charge is
21 concerned, did you see anything wrong with that charge?

22 A Which one are you referring to?

23 Q Page 465 -- 463, lines three through seven.

24 A You said 463?

25 Q Yes, ma'am. "Malice being inferred by the

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1 inference of conduct, showing total disregard for human
2 life. Inferred malice may also arise when the deed is
3 done by a deadly weapon. A deadly weapon is an
4 article, instrument or substance which is likely to
5 cause death or great bodily harm?"

6 A No.

7 Q Okay. But did Judge Buckner state to the
8 jury that the State must prove everything beyond a
9 reasonable doubt?

10 A Yes.

11 Q And that is that this case is all about the
12 Defendant, it is not his codefendants? While he
13 doesn't specifically say that, does he not state that
14 your client was on trial? He never stated that the
15 other codefendants were on trial?

16 A Not that I'm aware.

17 Q But he goes over the State's burden of proof?

18 A Yes.

19 Q The presumption of innocence?

20 A Yes.

21 Q The different types of evidence?

22 A Yes.

23 Q Last few questions. Did you feel fully
24 prepared for this trial?

25 A Yes.

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1 Q And did you base your trial strategy on your
2 experience as an attorney?

3 A Yes.

4 Q And the facts of the case?

5 A Yes.

6 MR. JOHNSON: No further questions, Your
7 Honor.

8 THE COURT: You may redirect.

9 MR. FAIREY: No questions, Your Honor.

10 THE COURT: All right, ma'am. You may step
11 down. Thank you very much.

12 Applicant may call his next witness.

13 MR. FAIREY: The applicant will rest after
14 that.

15 THE COURT: Does the State have any
16 witnesses?

17 MR. JOHNSON: Not at this time, Your Honor.
18 Depending on what counsel argues, I may request
19 that we be able to submit briefs to you.

20 THE COURT: All right. I'll hear from you,
21 sir.

22 MR. FAIREY: Very, very briefly, Your Honor.
23 Obviously this was a very serious case. It was
24 serious to everybody involved, serious charges.
25 It was initially started as a death penalty case

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1 and lots of protections were granted and all of
2 that throughout the case. And I'm very fully
3 aware, Your Honor, that anyone can try a case and
4 I'm sure that somebody can come through and pick
5 apart a case that I tried and tell me 20 different
6 things that I could have done differently.

7 But in any case, Your Honor, I think that
8 there are several things that, you know, would
9 suggest that possibly there's a constitutional
10 deficiency here. Number one, the one piece of
11 physical evidence in this case was lost by the
12 police. There was not even a motion made about
13 that.

14 THE COURT: Let me ask about that briefly.

15 MR. FAIREY: Certainly.

16 THE COURT: You are talking about the bullet?

17 MR. FAIREY: Correct.

18 THE COURT: Apparently it was used in another
19 trial?

20 MR. FAIREY: That is correct.

21 THE COURT: I would assume that there was a
22 SLED ballistics done on that bullet?

23 MR. FAIREY: That's correct. And it was
24 admitted in this case.

25 THE COURT: And that report said what?

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1 MR. FAIREY: The report said that the bullet
2 could have been fired from the revolver that was
3 recovered from the third party.

4 THE COURT: The 22?

5 MR. FAIREY: Or it could have been shot from
6 other guns as well.

7 THE COURT: It was inconclusive?

8 MR. FAIREY: Inconclusive, yes.

9 THE COURT: I didn't see that you brought any
10 witnesses in that would have testified after
11 reviewing that ballistics report that had the
12 bullet been present there would have been a
13 possibility of some other findings. Because
14 normally my experience is they take some pretty
15 detailed photographs of those bullets to show the
16 tool markings and things like that on them. That
17 has been my experience in trials. Was that done
18 in this case?

19 MR. FAIREY: The ballistics report was as
20 usual, yes, plenty of photos. It had the chain of
21 custody until it left the clerk of court's hands
22 and went back to the investigating officer.

23 THE COURT: It disappeared.

24 MR. FAIREY: It disappeared.

25 THE COURT: I understand. I was just trying

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1 to see if there was any indication that had that
2 bullet been present there would be a difference in
3 the reports that was -- and of course what I heard
4 was that that gun wasn't sold by your client, but
5 by one of the other Defendants.

6 MR. FAIREY: One of the other defendants,
7 that's right.

8 THE COURT: Okay. Go ahead.

9 MR. FAIREY: The second thing, Your Honor,
10 with respect to the State, I guess this case was a
11 case built on confessions. The State called two
12 codefendants to get their testimony about their
13 confessions in. Both of them said, I have already
14 been tried, I have already been convicted in front
15 of a jury.

16 THE COURT: You referred to a line of cases.
17 Do you have a copy of those cases?

18 MR. FAIREY: I have one copy, Your Honor.

19 THE COURT: Give them to the State and let
20 him get the cites before you pass them up.

21 MR. FAIREY: Absolutely.

22 THE COURT: Give them to my clerk, please.
23 All right. I'm sorry I interrupted you. Go
24 ahead.

25 MR. FAIREY: Certainly, Your Honor. The

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1 primary issue here is, and I'm sure that Your
2 Honor can understand this. You have a jury who is
3 sitting there and they are trying a case, and
4 certainly at some point they are instructed, this
5 is a case about this man, this is not a case about
6 anybody else. And then you have two people who
7 were brought in, identified as participants in the
8 same thing, they both in front of the jury say, I
9 was convicted, I got 30 years. It was emphasized
10 by the State in closing that they had been
11 convicted. And what that does without some
12 specific instruction from the Judge, it is very
13 prejudicial because it tends to make a jury think,
14 Well, we don't have to think about this as much
15 because they have already been convicted, another
16 jury has already been here and they have already
17 done this. They have already sifted through all
18 of this and they have already determined that
19 someone was guilty.

20 Therefore, it tends to create, and the cases
21 talk about this, it tends to create a situation
22 where the jury may feel, Well, we don't have to
23 analyze, we don't have to -- our doubts, you know
24 don't have to -- a reasonable doubt is something
25 less now because another jury has already

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1 considered all of this. We don't have to re-visit
2 all of this. We don't have to challenge the
3 evidence presented. We don't have to worry about
4 the credibility of the witness that have testified
5 because they have already been found not to be
6 credible by another jury. That type of issue.
7 And that is the horn that we think.

8 The third thing, Your Honor, is the issue
9 about -- there was some evidence presented at
10 trial that he was medicated at the time that he
11 gave the statement. Our point on that would be
12 that there was no evidence presented.

13 THE COURT: My experience, with these drugs
14 that you are talking about, and while this is
15 going on I have read up a good bit on Thorazine,
16 but generally those drugs are intended to allow
17 people to function better than they would
18 otherwise function.

19 MR. FAIREY: They are, Your Honor. But they
20 also have side effects and I didn't submit the
21 package insert for Thorazine, but they make you
22 sleepy, they can make you disoriented, and in some
23 cases they can affect your ability to sit still
24 and concentrate.

25 THE COURT: But the testimony from the

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1 attorney was that she had a doctor review that
2 whole situation who indicated he would not be
3 helpful to her case had he testified.

4 MR. FAIREY: On his competency, that is
5 correct, Your Honor.

6 THE COURT: Okay. And I didn't hear that you
7 had any testimony from any medical expert to the
8 contrary?

9 MR. FAIREY: I didn't have that. But I'll
10 put that issue out there that, you know, possibly
11 there should have been. And I don't know what --

12 THE COURT: Apparently there was an
13 investigation done on it by the attorney. And,
14 you know, I used to practice law and sometimes,
15 you know, when you go digging for evidence it
16 doesn't help you.

17 MR. FAIREY: That is correct, Your Honor.
18 And that may be the case here. My question would
19 be, number one, was Dr. Grant qualified to give
20 the opinion about -- the pharmacological opinion
21 about what the --

22 THE COURT: If he is a medical doctor he's
23 charged with knowing that stuff.

24 MR. FAIREY: Okay. Moving on, Your Honor.
25 The other issue -- and this is pretrial -- that we

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1 would raise, and that would be at the point that
2 he was found incompetent to testify, and at the
3 point where the State Hospital said, He's
4 incompetent but we can treat him and make him
5 competent, the State has the burden at that point.
6 And they have the burden to meet certain criteria
7 constitutionally to force treatment on an inmate
8 or on a defendant who is accused of serious
9 crimes.

10 THE COURT: And those are?

11 MR. FAIREY: Those are, Your Honor -- I have
12 those. Let's see. "The government can
13 involuntarily administer treatment to a mentally
14 ill Defendant to make him competent to stand trial
15 if the treatment is medically appropriate, if it
16 is substantially unlikely to have side effects
17 that might undermine the trial's fairness and
18 taking into account less intrusive alternatives,
19 it is necessarily significant to further important
20 governmental related trial interests. And those
21 are all -- again, Your Honor, I have the case I
22 can hand it up.

23 THE COURT: Give him the citation and then
24 you can pass it up to me.

25 MR. FAIREY: The point of that being, these

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1 are evidentiary.

2 THE COURT: You can pass it up.

3 MR. FAIREY: Certainly. These are
4 evidentiary facts that the State would have the
5 burden of coming forward with and proving.

6 THE COURT: I didn't see that you had any --
7 you didn't present any evidence that would
8 indicate that, had that inquiry been made, that
9 those factors would not have been found.

10 MR. FAIREY: We don't know what they would
11 have found, Your Honor, because there was no
12 presentation made.

13 THE COURT: Well, I haven't heard any
14 evidence from an expert indicating that had you
15 done that inquiry then those factors would have
16 not been met.

17 MR. FAIREY: That's correct, Your Honor.
18 There was never a challenge raised. There's no
19 way that I could now, 2 years, 3 years, 4 years, 5
20 years later recreate the -- you know, all of the
21 evidence that would be presented in that
22 particular situation.

23 THE COURT: Well, it would seem to me that
24 perhaps an expert could be obtained, possibly
25 obtained, that might say that given his original

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1 conviction, as you made that inquiry, that the
2 result would have been that he should not be
3 treated. Experts give opinions.

4 MR. FAIREY: They do, Your Honor. And that
5 possibly could have been done. I, you know, I did
6 not consult with an expert about that. What I
7 would say about that is he was clearly found
8 incompetent to stand trial.

9 THE COURT: Well, there is no question about
10 that. What is interesting is that he was treated
11 and it worked.

12 MR. FAIREY: It did. And the argument is
13 that that was not in his best interest because
14 then he was able to stand trial and face charges.

15 THE COURT: The inquiry doesn't say whether
16 or not it's in his best interest or not.

17 MR. FAIREY: It is whether or not his -- that
18 is the basic inquiry.

19 THE COURT: In other words, if you came in
20 front of me and it was an issue as to whether or
21 not someone, an inmate, would receive treatment,
22 I'm not sure that I would listen to an argument,
23 Well, if we never treat him he can't be tried.
24 That is not going to flush as far as that inquiry.

25 MR. FAIREY: That may very well be the

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1 opinion of the Court, and that certainly -- the
2 Supreme Court has said --

3 THE COURT: Tell me the criteria again.

4 MR. FAIREY: I don't have the case, Your
5 Honor.

6 THE COURT: I'm going to hand it back to you.
7 Tell me those criteria again.

8 MR. FAIREY: Certainly. Is the treatment
9 medically appropriate, is it substantially
10 unlikely to have side effects that undermine the
11 trial's fairness and taking into account the less
12 intrusive alternatives, is it necessary
13 significantly to further important governmental
14 trial related interests.

15 THE COURT: Okay. That is not from the
16 Defendant's perspective, that is from the
17 Government's.

18 MR. FAIREY: That is from the Government.
19 And the point is that they have a burden, if
20 challenges, for instance --

21 THE COURT: I understand that. But see, the
22 Courts don't require attorneys to challenge
23 everything that they could challenge if they
24 realize that they are not going to be successful.
25 In fact, the Court urges attorneys not to raise

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1 issues that would be unsuccessful. Do you follow
2 me?

3 MR. FAIREY: I do. Your Honor, the point is
4 that there was no --

5 THE COURT: No inquiry?

6 MR. FAIREY: There was no inquiry into that
7 situation.

8 THE COURT: If you can pass that back up.
9 Again, I don't see anything in there that says
10 that the standard that the Judge would consider is
11 whether it is in the Defendant's best interest to
12 be treated or not, as far as his defense is
13 concerned or his ability to be tried. I didn't
14 see that.

15 MR. FAIREY: Well, the fundamental right that
16 the case is based on is the fifth amendment right
17 to liberty. So, that is what it starts with and
18 that is what the case is based on.

19 THE COURT: Generally you want somebody tried
20 who is able to participate in the trial. That is
21 what we are interested in. We don't want to try
22 somebody who can't participate.

23 MR. FAIREY: And finally, Your Honor, the
24 last issue I would raise would be the failure to
25 present Dr. Grant, not at the trial of the case, I

COLLOQUY

1 understand he was not going to be helpful at the
2 trial in the case, but at sentencing at least to
3 submit a report. I understand that the case was
4 assigned to Judge Buckner, who I know well and I
5 know --

6 THE COURT: I would expect that Judge Buckner
7 was fully familiar with his mental status, as far
8 as mentally retardation.

9 MR. FAIREY: Certainly, but as far as cases
10 like this go, there has to be a record made.

11 THE COURT: Well, that issue was in the
12 record already.

13 MR. FAIREY: It was, but not specifically in
14 mitigation of sentencing.

15 THE COURT: I see.

16 MR. FAIREY: And so, Your Honor, I would
17 suggest that, you know, it should have at least
18 been submitted as an exhibit at sentencing in that
19 regard.

20 THE COURT: Okay. I understand your
21 position.

22 MR. FAIREY: And then, Your Honor, the other
23 issue. And I have another case. And this has to
24 do with the -- Your Honor, this has to do on the
25 issue of the charge of implied malice in the

COLLOQUY

1 Supreme Court in State V Elmore has not only given
2 what the charge should be but has said, We caution
3 the Bench hereafter only slight deviations of the
4 rule will be tolerated. I would respectfully
5 submit --

6 THE COURT: I haven't looked at the timing of
7 this case as opposed to that case.

8 MR. FAIREY: This was a 1983 case. 1983.
9 This case was tried in 2011. But I would submit
10 that failure to object or to ask for reasonable
11 doubt to be included in -- specifically in the
12 implied malice charge.

13 THE COURT: Okay. You can pass that up.

14 MR. FAIREY: I certainly will. Thank you,
15 Your Honor.

16 And Your Honor, as PCR counsel, those are the
17 issues that I believe, you know, warrant some
18 scrutiny.

19 THE COURT: Thank you, sir. I'll hear from
20 the State.

21 MR. JOHNSON: Yes, sir, Your Honor, just
22 briefly. I'm looking at West Law right now. And
23 I have Shepherd versus State and Elmore looks like
24 it was overruled by State versus Lawrence in 1991.
25 That may be on a different issue. I will have to

COLLOQUY

1 look that up. I haven't had time to review that,
2 Your Honor.

3 THE COURT: In your case, you may ask for an
4 opportunity to brief this. If you are still of
5 that opinion or not.

6 MR. JOHNSON: Yes, sir. As far as all of the
7 other issues are concerned, Your Honor, I would
8 rely on Bannister versus State, which states that
9 if you are trying to cure prejudice for failure to
10 call witnesses, you must present them here at the
11 PCR hearing. That is an expert witness for the
12 Blair hearing. That is the expert witness for Dr.
13 Grant mitigation. That is an expert witness as
14 far as the ballistics are concerned. Furthermore,
15 the whole medication issue, as counsel has
16 testified, that she had him evaluated and put on
17 medicine so that he could assist in his own
18 defense. That was a strategic defense made by
19 counsel. I was looking at the Snell case. That
20 was the Government's role when they want to get
21 somebody competent. It has nothing to do with
22 whether trial counsel -- I looked it up, there is
23 no best interest of the Defendant standard there.
24 So, I would agree with your assessment of that
25 case, Your Honor.

COLLOQUY

1 As far as the lost bullet is concerned, like
2 I said, there are no witnesses here. But counsel
3 testified she used it to her advantage. And also
4 in the ballistics report, that bullet was so badly
5 damaged that there was no way they could re-test
6 it. So, there could be no other results, it could
7 never be linked to that gun and she used that in
8 her closing and in her trial strategy.

9 THE COURT: I didn't hear that the gun was
10 ever directly linked to this defendant anyway.

11 MR. JOHNSON: It was not, Your Honor. And
12 that was argued by counsel. As far as the
13 codefendants are concerned, she testified that she
14 knew about those codefendants, knew what their
15 statements were going to be, that was no surprise.

16 THE COURT: I do have a concern about the
17 fact that their prior convictions were brought up
18 at trial.

19 MR. JOHNSON: I will have to research that,
20 Your Honor.

21 THE COURT: All right.

22 MR. JOHNSON: But I was going to bring the
23 analogy of, what is the difference in that and
24 bringing a co-Defendant in who got a deal who
25 testifies to the Defendants -- and that happens

COLLOQUY

1 all of the time. It happens, you know, to the
2 Defendant's involvement. I see that in a lot of
3 transcripts.

4 THE COURT: Well, usually the Defense is
5 bringing up the fact that they have been
6 convicted, but not yet sentenced and there is a
7 deal going on and that is a reason to discount
8 anything that was said.

9 MR. JOHNSON: And that is what counsel did in
10 this case, Your Honor. Once you read the
11 transcript you will see that she said, Hey, you
12 copped a deal with the State in this case, didn't
13 you, to discount that and argued that they were
14 not credible in closing. So, I think that that is
15 a valid strategic decision.

16 But as far as the malice charge is concerned,
17 I'll have to research that. But I would state
18 that counsel has completely met her, you know, her
19 standard of the reasonableness in this case. Gave
20 him --

21 THE COURT: Well, I haven't read the whole
22 charge, but I would suspect that at some point in
23 time Judge Buckner would have charged that the
24 State has the burden of proving each and every
25 element beyond a reasonable doubt.

COLLOQUY

1 MR. JOHNSON: I believe that is the case,
2 Your Honor. He is very thorough in all of his
3 charges.

4 THE COURT: I would say that is in the
5 charge. You have to take the charge as a whole
6 and not pick it apart.

7 MR. JOHNSON: Me too, Your Honor. Todd
8 versus State, which is 355 SC 396 is South
9 Carolina law dictates that the jury charge when
10 analyzed must be considered as a whole and not,
11 you know, piece-mealed together. So, we would
12 entertain the argument that there's no -- any type
13 of prejudice to this applicant. And that he's
14 lucky that he's not facing the death penalty in
15 this case, Your Honor.

16 I mean, she used the incompetency to get the
17 death penalty off of the table and I think that
18 was in his best interest, Your Honor. So, I would
19 ask that you deny this application.

20 THE COURT: All right. Anything further,
21 Counsel?

22 MR. FAIREY: Yes, Your Honor. Very briefly.
23 On the issue of the prior convictions. And I
24 understand that, you know, usually the situation
25 is somebody has plead guilty, got a deal and they

COLLOQUY

1 come in and they use that against them. This is
2 not the case here. And these people --

3 THE COURT: I see that. And I said that.
4 Usually they have not yet been sentenced. Usually
5 they withhold sentencing and therefore they have
6 an interest in testifying at the trial. Here they
7 may have messed up because they went ahead and
8 sentenced them so when they came in they said, I'm
9 not talking, I have got my 30 years, I'm done.
10 So, I know what happened.

11 MR. FAIREY: Right. But it is a very
12 different thing to cross-examine or to have a jury
13 here, I pled guilty to doing this before. Because
14 that goes to the credibility of --

15 THE COURT: Well, that issue is of concern to
16 me. And I am going to look at that real hard.
17 I'll ask the State to inform me whether or not you
18 wish to submit any additional authority. Because
19 we had the issue of the issues that came up during
20 the hearing, if you do wish to brief something you
21 will let me know within the next seven days you
22 wish to do that.

23 MR. JOHNSON: I would certainly like to brief
24 that co-Defendant issue.

25 THE COURT: What I'll do, I will give you 30

COLLOQUY

1 days to submit a brief. And I'll give you 15 days
2 thereafter to respond to it.

3 MR. FAIREY: Thank you, Your Honor.

4 THE COURT: And then once I have both of
5 those documents then I will proceed with
6 considering the issues.

7 MR. JOHNSON: Thank you, Your Honor.

8 THE COURT: Thank you very much.

9 (Hearing concluded.)

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COLLOQUY

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2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I
7 was authorized to and did stenographically report the
8 foregoing proceedings and that the transcript is a true
and complete record of my stenographic notes.

8

DATED this 24th day of April, 2016.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

Circuit Reporter for the 14th Circuit

(850) 893-6662

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mmanley@scccourts.org

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STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

Joseph Davis, #262813,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2014-CP-25-0001

RECEIVED

FEB 17 2016

ORDER OF DISMISSAL SC SUPREME COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 2, 2014. The Respondent made its Return on August 19, 2014. An evidentiary hearing into the matter was convened on October 22, 2015, at the Beaufort County Courthouse. Marion Fairey, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Stephanie Smart-Gittings, Esquire, also testified. This Court had before it a copy of the records of the Hampton County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcript and the appellate records. Subsequently, this Court received memoranda of law from both the Applicant and Respondent.

PROCEDURAL HISTORY

The Applicant was indicted at the December 2008 and June 2009 terms of the Hampton County Grand Jury for murder (2008-GS-25-0588), burglary- second degree (2008-GS-25-

0589), and armed robbery (2008-GS-25-0590). The Applicant was represented by Stephanie Smart-Gittings, Esquire.

The Applicant proceeded to trial and was convicted as indicted. On June 29, 2011, the Applicant was sentenced by the Honorable Perry M. Buckner to confinement for a period of life for murder, twenty-five (25) years for burglary, and thirty (30) years for armed robbery. The sentences are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Benjamin Tripp, Esquire, and Breen Stevens, Esquire, of the South Carolina Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Supreme Court. State v. Davis, No. 2013-MO-031 (S.C. Sup. Ct. October 9, 2013). The Remittitur was issued on October 25, 2013.

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

1. Ineffective assistance of counsel and a denial of due process rights.
 - a. Numerous deficiencies.
 - b. Failure to investigate.
 - c. Counsel's inaction denied me a fair trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

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JP 2

Ineffective Assistance of Counsel

The Applicant alleges he is entitled to post-conviction relief on the basis that he received ineffective assistance of trial counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002). To be entitled to post-conviction relief, the applicant must prove both of the following: (1) his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) the applicant suffered prejudice by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052. (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). Under this standard, counsel's deficient performance must have prejudiced the Applicant to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

A. Trial counsel's failure to object to a co-defendant's testimony at trial.

Applicant contends Counsel was ineffective for failing to object to a co-defendant's testimony during his trial.

Bill
p 3

During the trial, Applicant's co-defendant, Shawn Davis, testified Applicant was his brother. (Tr. p. 312 line 8). The solicitor then asked Mr. Davis what he was doing on the incident date, to which Mr. Davis responded, "The only thing I can say is I got—I got 30 years. I ain't got nothing to say." (Tr. p. 312 lines 11-12). Mr. Davis proceeded to deny the fact the he had given a statement to law enforcement; however, the State introduced his statement into evidence under 613(b), SCRE. This statement fully implicated Applicant in the murder of the Victim with a .22 caliber revolver. (Tr. pp. 316-318).

This Court finds Counsel had an obligation to object to, argue against, or request a limited instruction as to the introduction of the convictions of the co-defendant by the assistant solicitor. However, although Counsel's failure to do so fell below the objective standard of reasonableness required under Strickland, this deficiency was not sufficiently prejudicial in light of the overwhelming evidence of the Applicant's guilt presented at trial.

Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001); Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C. 1991). In Ford, trial counsel failed to request an alibi instruction and his representation was found deficient as a result. However, the evidence of the applicant's guilt in Ford was overwhelming and this Court held that the applicant failed to prove the second prong of Strickland, which requires that an Applicant show prejudice by the deficient representation.

At trial, the State introduced into evidence Applicant's own voluntary verbal and video confessions fully implicating Applicant as the perpetrator of these crimes. (Tr. pp. 355-356; 377

(video confession)). The State also introduced Shawn Davis's statement to law enforcement into evidence, in where he fully implicated Applicant as the shooter of Victim. Additionally, the State introduced into evidence Mr. Derrick Adkins' statement, another co-defendant. This statement also incriminated Applicant in the shooting death of the victim. (Tr. pp. 326-328). Further, Marquis Bryant, a fourth co-defendant and driver of the vehicle, testified he gave a statement in which he knew the other co-defendants were planning to rob Victim and that Applicant threatened to kill him with a gun if he ever told anyone about the incident. (Tr. p. 308, lines 4-15). As such, this Court finds there is overwhelming evidence of Applicant's guilt in this case which would negate any deficiency of Counsel's failure to object to the co-defendant's statement concerning his conviction. Thus, this allegation is denied.

B. Failure to challenge the Blair hearing and failure to call witnesses on Applicant's behalf during mitigation.

Applicant also presented claims that Counsel was ineffective for failing to call an expert on Applicant's behalf to challenge the pre-trial Blair¹ hearing and for failing to call witnesses on Applicant's behalf during the mitigation stage of Applicant's trial.

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in

¹ State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981).

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p. 5

order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

Applicant failed to produce any witnesses to substantiate either claim at the PCR hearing. As such, Applicant has failed to meet his burden of proving prejudice under Strickland. Thus, these allegations are denied.

C. Additional Grounds Raised by Applicant

Applicant also raised several other issues in support of his Application: (a) the failure of counsel to object to evidence ballistics evidence of a recovered bullet and .22 caliber pistol where the bullet has been lost and unavailable at trial; (b) the failure of counsel to object to the trial court's order hospitalizing the Applicant, who had initially been deemed incompetent to stand trial, for treatment to restore his competency; and (c) the failure to present evidence that the Applicant had been given anti-psychotic medication prior to his interrogation and subsequent confession. These issues are without merit and can be summarily rejected for lack of evidence.

As to the issue regarding the missing bullet, there was no evidence at the PCR hearing regarding what, if any, testing may have been utilized on the missing bullet that might have changed the result of the trial. The SLED Forensics Firearms Specialist who testified at the Applicant's trial was unable link the recovered bullet to a specific firearm, let alone the specific weapon allegedly used by the Applicant. (Tr. 336). He admitted this on direct examination and further admitted on cross-examination that the bullet could have been fired from other weapons. (Tr. 342). Under the circumstances, counsel's failure to object to the introduction of evidence

regarding the bullet that disappeared before trial was neither an error by counsel nor reasonably likely to have changed the result. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant's claim that his trial counsel's failure to object to the trial court's Order, issued pursuant to S.C. Code Anno. §42-23-430, that he be hospitalized and treated so that he could become competent to stand trial, is also without merit. Prior to standing trial, the trial judge ordered the Applicant to undergo a competency evaluation. (Tr. 13). This initial evaluation concluded that the Applicant was not competent to stand trial, but that "the symptoms rendering him incompetent are often remediable, he is likely restorable to competency in the foreseeable further via psychological treatment." (Tr. Ex. 1). The Applicant was then hospitalized and treated in what turned out to be a successful effort to restore his competency as determined by the trial court at a pretrial hearing conducted pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981). The Applicant argues that his forced hospitalization and treatment violated his Fifth Amendment right against self-incrimination and that his counsel was ineffective for failing to object to the hospitalization and treatment that eventually restored his competency.

The record reflects that the procedure utilized to evaluate the Applicant's competency for trial and his hospitalization and treatment were in compliance with S.C. Code Anno. §42-23-430. Prior to the commencement of his trial the Applicant was given a proper Blair hearing where he was found to be competent to stand trial. Moreover, the record reveals no deficiency in counsel's performance either at the Blair hearing or regarding the conduct of the Applicant's mental evaluations and treatment. Further, the Applicant has failed to identify any authority that would suggest that he has a Fifth Amendment Right as an accused to refuse treatment that was

determined to be medically necessary, appropriate under S.C. Code Anno. §42-23-430 and reasonably calculated to allow him to participate in his own defense. The Court finds that the performance of Applicant's trial counsel regarding his competence was constitutionally adequate.

Additionally, the Applicant claims that his trial counsel was deficient in failing to object to the introduction of his videotaped confession on the grounds that he was under the influence of anti-psychotic medication during his interrogation. However, the record reveals that during the Jackson v. Deno hearing in this matter, trial counsel not only introduced evidence that suggested that the Applicant was on anti-psychotic medication during his interrogation, but that she also called a nurse, Pecolia Mungin, who was qualified as an expert witness to testify about this issue at trial. (Tr. 408). The court finds that trial counsel performance was adequate on this issue.

Finally, the Court notes that even if there were some evidence to suggest that his trial counsel's performance were deficient on these issues, the Applicant's Petition must still fail due to the overwhelming evidence of the Applicant's guilt and the attendant lack of prejudice. See, Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001); Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C. 1991).

After consideration of the arguments and evidence of the Applicant, the Court concludes that these claims have no merit.

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 notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention 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!

1/29, 2016
South Carolina

2014-CP-25-0001


 Roger L. Couch
 Presiding Circuit Court Judge
 Fourteenth Judicial Circuit

WITNESSES

✓ Special Agent Teddy Cone, Jr.

Solomon

ARREST WARRANT NUMBER

1813726

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: DEC 05 2008

VERDICT

Guilty

Christian H. James

Foreperson of Petit Jury
Date: 6/29/2011

INDICT

DOCKET NO. 2008GS25-0588

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

December, Term 2008

THE STATE

vs.

Joseph Davis

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code: 0116

A TRUE COPY
 Clerk of Court for
 Hampton County, SC
 DATE 12/23/11
 pages 1-2

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)

INDICTMENT

2008GS25-588

At a Court of General Sessions, convened on December 5, 2008, the Grand Jurors of Hampton County present upon their oath:

Murder / Murder

That in Hampton County on or about June 23, 2007, with malice aforethought, Joseph Davis did kill and murder Ronnie Wooten by means of shooting him with a gun, and that Ronnie Wooten did die in Hampton County as a proximate result thereof on June 23, 2007; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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


Isaac M. Stone, III
Solicitor, 14th Judicial Circuit

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Hampton
STATE VS.
Joseph Davis

AKA: _____

Race: AA Sex: M Age: 27

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Barwell, SC 29812

DL#: _____ SID#: _____

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

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

TO: Murder

in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC § 17-25-45
w/minor 1st or Lowd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

Sean P. Thornton

SC Bar# _____

Defendant

Stephanie Smith - E. King

Attorney for Defendant

SC Bar# _____

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2008-65-25-0590, 2008-65-25-0589☐ 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. Waiver Hearing ☐ Ordered PTUP _____

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fines:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u>100.00</u>
§ 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	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(7) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5.	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Deery Hill

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 0122Sentence Date: 6/29/2011

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

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

TRUE COPY
FILED IN COURT FILE
CLERK OF COURT
DATE 6/29/2011

WITNESSES

✓ Special Agent Teddy Cone, Jr.

✓ Solomon

ARREST WARRANT NUMBER

1813727

ACTION OF GRAND JURY

TRUE BILL

Robert H. Swisher, Jr.

Foreperson of Grand Jury

Date: DEC 05 2008

VERDICT

Guilty

Christine H. James

Foreperson of Petit Jury

Date: 6/29/2011

INDICT

TRUE COPY
CLERK OF COURT FOR
HAMPTON COUNTY, SC
DATE 12/23/14
PAGE 2

DOCKET NO. 2008GS25-0588

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

December, Term 2008

THE STATE

vs.

Joseph Davis

Indictment for

Burglary / Burglary (Violent) (After 06/20/85) -
Second degree

SC Code: 16-11-0312(B)

CDR Code: 0086

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)

INDICTMENT

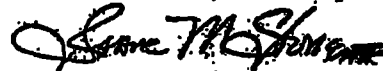
2008GS25-589

At a Court of General Sessions, convened on December 5, 2008, the Grand Jurors of Hampton County present upon their oath;

Burglary / Burglary (Violent) (After 06/20/85) - Second degree

That in Hampton County, on or about June 23, 2007 the Defendant, Joseph Davis, did enter the building of Robin's Wooten, located at 1550 Browning Gate Road without consent and with the intent to commit a crime therein. That, in addition, entry occurred at night and or the Defendant was armed with a deadly weapon or explosive and or the Defendant caused physical harm or injury to a non co-defendant during the commission of the crime; in violation of Section 16-11-312(B) 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.



Isaac M. Sims, III
Solicitor, 14th Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Hampton

VS.

Joseph Davis

AKA:

Race: AA Sex: M Age: 27

DOB: [REDACTED] SSN: [REDACTED]

Address: [REDACTED]

City, State, Zip: Barnwell, SC 29812

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: Burglary 2nd Violent

in violation of § 16-11-312(B) of the S.C. Code of Laws, bearing CDR Code # D086

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC § 17-25-45

w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiation or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sean P. Thornton

SC Bar# 15868

Defendant

Stephania Grant-Gibbs

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections; ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2008-65-25-6588, 2008-65-25-6570☐ 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 16-25-55 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

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

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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

§ 36-5-2995 (DUI Assessment) \$12 \$ _____

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

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

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

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

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

§ 56-5-29427 (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/Deputy Clerk: Melinda D. Nettles

Court Reporter: Becky Hill

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS250589

A/W#: 1813727

Date of Offense: 6/23/2007

S.C. Code § 16-11-0312(B)

CDR Code #: 0086

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUF _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive, weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 0122

Sentence Date: 6/29/2011

WITNESSES

Special Agent Teddy Cone, Jr.

Solomon

ARREST WARRANT NUMBER

1B13728

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: DEC 05 2008

VERDICT

Foreperson of Petit Jury
Date:

INDICT

ALON
#1

TRUE COPY
CLERK OF COURT FOR
HAMPTON COUNTY
DATE: 12/5/08
pages 1-2

DOCKET NO. 2008GS25-0690

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

December, Term 2008

THE STATE

vs.

Joseph Davis

Indictment for

Robbery / Armed Robbery, robbery while armed
or allegedly armed with a deadly weapon

SC Code: 16-11-0330(A)
CDR Code: 0139

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

INDICTMENT

2008GS25-590

At a Court of General Sessions, convened on December 5, 2008, the Grand Jurors of Hampton County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly

That on or about September 15, 2008, in Hampton County, South Carolina, the Defendant, Joseph Davis, at 1550 Browning Gate Road, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed, while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or moneys from the person or immediate presence of Ronnie Wooten with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) 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.


Isaac M. Stone, III
Solicitor, 14th Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Hampton

VS.

Joseph Davis

AKA:

Race: AA

Sex: M

Age: 27

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Bamwell, SC 29812

DL#:

SID#:

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

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

TO: Armed Robbery

in violation of § 16-11-33(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45

w/minor 1st or Lowd Apt)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (Defendant's Initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sean P. Thornton

SG Bar#

Defendant

Suzanne Scott - G. F. King

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable, the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2008-6S-25-0589, 2008-6S-25-0588☐ 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 ☐ Del. 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	\$ 100.00
§ 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	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 56-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2992(Q) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SOCIA Surcharge)	85	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA217 (03/2011)

Melinda D. H. H.

Becky H. H.

IN THE COURT OF GENERAL SESSIONS

10-30

INDICTMENT/CASE#: 2008GS250590

AR#: 1813728

Date of Offense:

6/23/07

S.C. Code § 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP: _____

_____ days/hours Public Service Employment

Obtain GED: ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code:

Sentence Date:

6/29/2011

Melinda D. H. H.
Clerk of Court/ Deputy Clerk
Court Reporter
SCCA217 (03/2011)