

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County

Honorable DeAndrea G. Benjamin , Circuit Court Judge

MATTHEW J. EARGLE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001761

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON)	2012-GS-32-02255

STATE OF SOUTH CAROLINA)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
MATTHEW JENNINGS EARGLE)	
DEFENDANT)	

October 3, 2012
 Lexington, South Carolina

B E F O R E:

HON. ROGER M. YOUNG, SR., Judge.

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

LAWRENCE G. WEDEKIND, ASSISTANT SOLICITOR
 Attorney for the STATE

ROBERT M. MADSEN, PUBLIC DEFENDER
 Attorney for the DEFENDANT

CAROL M. THUEME, RPR
 Official Court Reporter

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EXHIBITS

(There were no exhibits marked.)

1 THE CLERK: Matthew Eargle.

2 Indictment 2012-GS-32-2255, the State versus
3 Matthew Jennings Eargle, indicted for kidnapping. He is
4 pleading as charged. He has waived presentment. He's
5 represented by Mr. Madsen.

6 Raise your right hand.

7 MATTHEW J. EARGLE, after being duly sworn,
8 testified as follows:

9 THE COURT: Matthew Eargle, is that you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Eargle, you're here today
12 because you got charged with kidnapping and you can get up
13 to 30 years in prison for kidnapping.

14 Do you want to waive your right to have a grand
15 jury review this before we proceed?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You also have the right to a jury
18 trial. You give up your right to a jury trial when you
19 plead guilty. If you want a trial, stop me, and we'll
20 arrange that for you.

21 The State then has to present enough evidence to
22 convince 12 jurors that you're guilty beyond a reasonable
23 doubt. All 12 jurors have to agree that you're guilty in
24 order to convict you. And if convicted, you have the
25 right to appeal.

1 MR. WEDEKIND: Your Honor, I'm terribly sorry to
2 interrupt.

3 This one, he did have a mental competency
4 hearing, and I would suggest that we do a Blair hearing
5 before we go into the details and his knowledgability of
6 that.

7 MR. MADSEN: Judge, we stipulate to the findings
8 in the report. I believe he's competent. I'll explain as
9 part of my mitigation the reason that I felt it necessary,
10 but we stipulate that he is competent in the report.

11 MR. WEDEKIND: And I apologize, sir. I just
12 forgot to mention that. But it occurred to me that if we
13 don't clear that first hurdle, the rest of it might not be
14 valid.

15 THE COURT: All right. I just happened to
16 notice. This is such a small world you have to ask.

17 The victim's name on this indictment is Pat
18 Vella. Yesterday we had a Ms. Vella in here. That's the
19 lady that was terminally ill. Is that one and the same?

20 MR. MADSEN: This is a man.

21 THE CLERK: I know Pat Vella, and that's a
22 gentleman.

23 THE COURT: A different person?

24 THE CLERK: Yes.

25 THE COURT: Okay. I thought I'd ask.

1 Let's see what we have here.

2 Somebody want to summarize what the findings are
3 in this?

4 MR. MADSEN: Judge, basically, Mr. Eargle has
5 had different commitments over a period of time, Patrick
6 B. Harris up in Anderson, Just Care, and also the Gillian
7 Center. He has tried to commit suicide at the detention
8 center twice. Quite honestly, if I would have never known
9 about any of those things, I would have never thought that
10 he was someone who needed to be evaluated. But quite
11 honestly, when I found those out, and additionally about
12 the suicides through the jail, I felt compelled to have
13 him evaluated for competency.

14 It came back and indicated that he did have
15 those prior commitments, but they felt beyond a reasonable
16 doubt that he was competent to stand trial, and we concur
17 and stipulate to those findings.

18 THE COURT: All right. Let me read Dr. Hanson's
19 report here.

20 (Pause.)

21 THE COURT: Anything the State want to add about
22 this report?

23 MR. WEDEKIND: No, sir. We'd stand by the
24 findings of the Department of Mental Health.

25 THE COURT: Okay. Well, it does sound like he

1 has some mental health issues, but according to the
2 examining doctor here, they do not rise to the level of
3 interfering with his ability to understand what he is
4 doing or to assist his counsel.

5 Defense counsel has concurred in that, so at
6 this point I'd have to go along with it.

7 Let me talk with him a few minutes and we'll go
8 forward.

9 MR. WEDEKIND: And, Your Honor, if I may, the
10 only thing I'd request is we make that a part of the
11 record as the findings of the Department.

12 THE COURT: We can do that.

13 MR. WEDEKIND: Yes, sir.

14 THE COURT: All right. So, Mr. Eargle, I was
15 talking to you about your rights. I believe I was telling
16 you you had the right to a jury trial.

17 You understand that if you want a jury trial,
18 all you have to do is say, "I'd like a jury trial," and
19 we'll stop?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And the State has to present enough
22 evidence to convince 12 jurors you're guilty beyond a
23 reasonable doubt. All 12 jurors have to agree that you're
24 guilty in order to convict you. And if convicted, you
25 have the right to appeal.

1 You can challenge the State's evidence, put up
2 evidence of your own, testify if you want, and if you
3 don't want to testify, the judge will instruct they're not
4 to hold that against you while they are deliberating.

5 Do you understand those rights?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you want to give those rights up
8 and plead guilty today?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you're pleading guilty to this
11 charge because you're guilty of it?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, I'm going to ask you if you are
14 taking any kind of drugs today. A lot of times people
15 think that's illegal drugs, but I also mean prescription
16 medication.

17 Are you taking any kind of drugs, either by
18 prescription or not prescribed, today?

19 THE DEFENDANT: No, sir.

20 THE COURT: You're not taking anything at the
21 jail?

22 THE DEFENDANT: Yeah. Yes, sir.

23 THE COURT: What are you taking?

24 THE DEFENDANT: Neurontin, Lamictal, Benadryl,
25 and Ativan.

1 THE COURT: Do you know why you're taking those?

2 THE DEFENDANT: Supposed to keep me calm.

3 THE COURT: Well, is it working?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is it helping you understand what
6 you're doing a little bit better or does it make it worse?

7 THE DEFENDANT: I guess a little bit better.

8 THE COURT: All right. So you take the
9 prescribed amounts?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: When's the last time you took some?

12 THE DEFENDANT: This morning.

13 THE COURT: And is that when you're supposed to
14 regularly take it?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How often do you take it?

17 THE DEFENDANT: Three times a day.

18 THE COURT: All right. So it helps you
19 understand what's going on a little bit better?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You feel all right today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand what's going on
24 here?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand why you're in
2 court?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: What are you doing here today?

5 THE DEFENDANT: Going to trial about some
6 charges that I have.

7 THE COURT: Well, you told me you don't want to
8 go to trial.

9 THE DEFENDANT: Well, I mean I'm going before
10 you on some charges I have.

11 THE COURT: All right. So you don't want a
12 trial, you want to plead guilty?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right.

15 MR. MADSEN: Judge, we had talked to the
16 Solicitor and marked it on the sentence sheet and on the
17 indictment that we intended to enter a plea under Alford.
18 I've explained that to him and the ramifications of that.
19 We had a little bit different version of the facts, but I
20 will explain at the appropriate time.

21 THE COURT: All right. Well, your lawyer's
22 telling me that you want to enter what we call an Alford
23 plea. An Alford plea is that you are maintaining you're
24 innocent of this crime. However, you state that you
25 would like to plead or enter a plea today in hopes

1 that the Court would give you some kind of benefit or take
2 it into consideration why you are here, perhaps giving you
3 a lesser sentence. That doesn't mean you'll get a lesser
4 sentence. As far as I'm concerned, you're looking at 30
5 years, and I might very well give you 30 years. I don't
6 know anything about the case.

7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: It's treated as a conviction by the
10 Court.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And a lot of times when courts are
14 considering how much time to give somebody, one of the
15 things that we consider is whether or not you have been
16 remorseful for what you've done and you begin some kind of
17 rehabilitation. It's like coming in here today to enter
18 an Alford plea, you're not doing that at all. You're
19 saying, "I didn't do it." So as far as remorse,
20 repentance, that sort of thing, you're not offering that
21 to the Court.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. So I'm not going to be
24 considering it if you're not going to be doing it.

25 Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You still want to enter a plea?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Now, you're standing next to
5 your lawyer. You got arrested, what, back in May; is that
6 right? You're been in jail since the day you got
7 arrested?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: So it's just a few months later
10 we're ready to plead.

11 You and your lawyer sit down and talk about this
12 case?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: He's told you what kind of evidence
15 the State has against you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: He's told you what the law is on
18 kidnapping?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You told him you didn't do it,
21 right?

22 THE DEFENDANT: I told him it happened
23 separately -- I mean differently than what's on the paper.

24 THE COURT: All right. So you decided you don't
25 want to get up and tell the jury your side of the story?

1 THE DEFENDANT: No, sir.

2 THE COURT: You don't want to put up a defense
3 at all?

4 THE DEFENDANT: No, sir.

5 THE COURT: You don't want to try to suppress
6 any statements that you made?

7 THE DEFENDANT: No, sir.

8 THE COURT: You don't want to try to have him
9 cross-examine any witnesses the State offers?

10 THE DEFENDANT: No, sir.

11 THE COURT: You don't want to call any witnesses
12 on your behalf?

13 THE DEFENDANT: No, sir.

14 THE COURT: No alibi witnesses?

15 THE DEFENDANT: No, sir.

16 THE COURT: You don't want him to suppress any
17 kind of evidence at all?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right. You've talked with him
20 about doing all these things, right?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Has he done everything you've asked
23 him to do?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Based on those discussions, you

1 said, I really rather just enter a plea than go to trial?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: That's your decision and your
4 decision alone?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Has anybody promised you anything or
7 threatened you to get you to enter this plea?

8 THE DEFENDANT: No, sir.

9 THE COURT: How old are you?

10 THE DEFENDANT: I'll be 35 this year.

11 THE COURT: How far did you get in school?

12 THE DEFENDANT: A high school diploma.

13 THE COURT: You work before you got arrested?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: What do you do?

16 THE DEFENDANT: Construction. Off and on
17 construction.

18 THE COURT: Are you married?

19 THE DEFENDANT: No, sir.

20 THE COURT: Have you got children?

21 THE DEFENDANT: I don't have my own, but I help
22 take care of one that's just like mine.

23 THE COURT: Okay. All right.

24 Mr. Madsen, in your opinion, does this gentleman
25 understand what he's doing here today?

1 MR. MADSEN: He does, Your Honor.

2 THE COURT: He understands what he's doing when
3 he waives his right to have it presented to the grand
4 jury?

5 MR. MADSEN: He does.

6 THE COURT: He understands what he's doing when
7 he gives up his right to a jury trial?

8 MR. MADSEN: Yes, Your Honor.

9 THE COURT: He understands what he's doing when
10 he enters an Alford plea?

11 MR. MADSEN: Yes, Your Honor.

12 THE COURT: You agree with that decision?

13 MR. MADSEN: I do, Your Honor.

14 THE COURT: All right. You've got no question
15 at all in your mind about his being competent to assist
16 you?

17 MR. MADSEN: Not whatsoever.

18 As I mentioned, Your Honor, besides some of the
19 historical stuff that I had received from him and some
20 stuff from the jail, I wouldn't have had a question as to
21 his competency if I had not have found out about those
22 things.

23 THE COURT: All right. Well, I find that his
24 plea is freely, voluntarily, intelligently made, and we'll
25 accept it if there's a substantial factual basis for the

1 plea.

2 What would the State like to tell me?

3 MR. WEDEKIND: Yes, sir.

4 The context of the Alford benefit that he'll
5 derive from this are that there's two outstanding grand
6 larceny charges; one for grand larceny of value in excess
7 of \$10,000, another grand larceny for \$5,000/\$10,000 which
8 we will be nol prossing in exchange for this plea.

9 In addition, there are two charges of attempted
10 murder, two charges of pointing and presenting, and two
11 charges of use of a handgun during a crime of violence by
12 a convicted felon that we will be nol prossing.

13 However, the victims of that attempted murder,
14 Ms. Marseau and Christopher Rumph, are present in the
15 courtroom.

16 As victims from that, I have explained to them
17 although we will be nol prossing those charges, that this
18 will be sort of a global plea with the separate unrelated
19 charge of an armed robbery and kidnapping and a possession
20 of a weapon by a convicted felon charge.

21 We'll be nol prossing the armed robbery, taking
22 away the 10 to 30-year sentence for that, and also the
23 pistol charge, but we will preserve the kidnapping.

24 So everything's going to be wrapped up into this
25 one kidnapping charge of zero to 30 years. It is a

1 violent, it is a most serious, and it is an 85-percent
2 level charge.

3 Of course, the number of years that he will have
4 to serve on that sentence is solely at your discretion,
5 sir. And that's the globalness of the context of the
6 plea.

7 THE COURT: You understand what he just said?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Have you got any questions about it?

10 THE DEFENDANT: No, sir.

11 THE COURT: Has your lawyer talked to you about
12 what a strike offense is?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: So you know about these strike
15 offenses if you get a certain number of them, you go to
16 jail for the rest of your life?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: After today you'll have one of the
19 type that you can only get two -- or you only get one, the
20 second one you go to jail for the rest of your life.
21 You've got one of those now.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If you ever get convicted of another
25 one, you're going to jail for the rest of your life.

1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand whatever sentence
4 I give you today, you're not eligible for parole?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You've got to do at least 85 percent
7 of it. If you earn some good credit time, the most you
8 can do is knock off 15 percent. So you've got to do
9 85 percent of whatever the sentence is.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You still want to plead?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. What else do you want to add?

15 MR. WEDEKIND: Your Honor, there is also one
16 quirk about the kidnapping charge: It's a default sex
17 offender registration on this. There is no allegations of
18 any sexual nature to any of his crimes, so we would ask
19 that there be an affirmative finding that there not be a
20 sex registration as a result of this. However, I think
21 it's a moot point because he is a registered sex offender
22 for other prior stuff that you would see attached in his
23 rap sheet that's on there.

24 THE COURT: Okay.

25 MR. WEDEKIND: Okay, sir. The facts alleged as

1 All the money that he did have in his possession
2 was \$40, but he'd given that over to Mr. Eargle and then
3 he drove Mr. Eargle where Mr. Eargle told him to.

4 He directed him to take him to a church which is
5 located in the block of where he
6 then told Mr. Vella to pull over the vehicle and let him
7 out. He got out and ran off into the treeline.

8 At that point Mr. Vella was unharmed and went
9 back and called the police and reported the event, and
10 therein lies the kidnapping charge for which he stands
11 before the Court today, sir.

12 THE COURT: These folks want to say something?

13 MR. WEDEKIND: At the appropriate time if you'd
14 like to hear from them, yes, sir.

15 THE COURT: Sure.

16 UNIDENTIFIED MALE: Yes, sir.

17 Really, I was a little upset as far as him
18 coming to my grandmother's house where she resides and
19 firing shots. So I never had any issues with this
20 gentleman before then.

21 And the situation resides over a motorcycle
22 that, you know, I purchased myself and reported to be
23 stolen, and for it to reside with the issues of shooting
24 at my grandmother's house only a few feet from where she
25 was sitting at, with her almost being hit, and for her

1 letting him stay on her property free of charge, you know,
2 months before that, you know, kind of makes me like, you
3 know, he doesn't have any resentment. So that's what I
4 wanted to speak to the Court about today.

5 THE COURT: Okay.

6 UNIDENTIFIED FEMALE: Well, I pretty much go
7 along with the same statement my nephew made other than
8 the fact that I don't know where it occurred from, the
9 fact of him stealing the motorcycle and making us victims
10 as far as shooting at my mom's house, almost hitting my
11 mom and several more of us that were out there. And even
12 after finding out that he was the one that stole the
13 motorcycle, with him still to taunt and the threatening
14 and the picking and everything, it never ceased until he
15 was actually appended.

16 So we feel that he's not sorry at all and it's
17 caused complete torment to the family.

18 THE COURT: Okay. Thank you.

19 Anything else from the State?

20 MR. WEDEKIND: No, sir, that would be it.

21 Of course, we would recommend that Your Honor
22 read his rap sheet and take that into consideration, sir.

23 THE COURT: Okay. What would y'all like to tell
24 me?

25 MR. MADSEN: Judge, as Matt told you, he's 34

1 years of age.

2 Both of his parents had substance abuse problem.
3 Both of them are deceased. Ultimately, he ended up
4 growing up in foster care, spent I believe quite a bit of
5 time growing up in Anderson County.

6 As the Solicitor had indicated, he does have a
7 prior record, but his last convictions were in 2003.

8 He worked as a laborer for Pat Vella, Sr., who
9 is the father of the victim on the case that he is
10 pleading to today. In fact, he and the victim at one
11 point in time had lived together.

12 Matt has had a substantial cocaine problem for a
13 period of time pretty much, and I think that this is borne
14 out in the mental evaluation report. He had indicated
15 that, quite honestly, he would spend quite a bit of his
16 time kind of trying to get the drugs, or to get the drugs
17 so that he could use it. One of the things that Matt told
18 me that he would do is he would sell drugs in order to
19 find of supplement his habit. He tells me that one of the
20 people or persons that he would sell to was Pat Vella,
21 Jr., and this is quite honestly the reason for the Alford
22 plea is Mr. Vella had owed him money for some drugs in the
23 past, Matt had gone there, tells me he did not have a gun.
24 In fact, there's no indication that law enforcement had
25 ever found a gun on him. But that ultimately he was

1 trying to get money back from Mr. Vella that Mr. Vella
2 owed him for drugs that he had previously sold him.

3 One of the interesting things that I note in the
4 report is obviously on a kidnapping or an armed robbery,
5 you would think that would be an extremely serious charge
6 to any victim. But for some reason, Mr. Vella does not
7 report it to law enforcement until the next day, which
8 obviously seems kind of odd.

9 Since Matt has been over in the detention
10 center, I know they have been very concerned. He has --
11 as I mentioned earlier, he has attempted to commit
12 suicide. I believe ultimately the first time he ended up
13 with over a hundred stitches in his arm by cutting
14 himself. That ended up with them sending him to Just
15 Care. Unfortunately, since Matt has been back, things
16 have kind of gone from bad to worse because now he's
17 pretty much kept in a tank the entire day. If he's lucky,
18 they put him in a turtle suit because they don't trust
19 him. Of course, I had kind of advised him that he could,
20 you know, potentially get out of that situation if wasn't
21 trying to kill himself, but one of the things, he's
22 impatient because if he's -- he says, I haven't done
23 anything for a couple of days. I said, Well, you know,
24 ultimately the major who's in charge of the facility I
25 don't necessarily think trusts you because you haven't

1 gained that trust over a period of time.

2 Ultimately, Matt has struggled with depression.
3 That apparently runs through his family. As I said, both
4 of his parents are dead. He had a brother who
5 unfortunately had committed suicide also.

6 He had lived in the area. He has moved to
7 Columbia. He has a girlfriend that, as he indicated to
8 the Court, he kind of helps take care of her children.

9 Ultimately, what he would like to do is get
10 treatment for the depression and the problems he has. He
11 has mentioned to me something about a facility in
12 Anderson. I would let him describe that to Your Honor
13 because it's not a place that I'm necessarily familiar
14 with.

15 As Your Honor said, you know, the reason that he
16 is pleading under Alford is because he denies ever having
17 a gun. And quite honestly, we wanted to put some context
18 to the kidnapping because I think it's the fact that it
19 was over a drug dispute. While it certainly doesn't make
20 it appropriate, I think it does add some context that this
21 wasn't just someone who went into a store and held people
22 at gunpoint. Like I said, it's still not a good situation
23 and he realizes that, you know, trying to get the money
24 that he felt was owed is not an appropriate way to handle
25 himself.

1 He has been in jail since May, which by my
2 calculation is 133 days.

3 I will mention also, I had spoken to Pat Vella,
4 Sr., who is the victim's father, today. Matt had told me
5 that the victim didn't harbor any ill will towards him.
6 Mr. Vella, Sr., gave me a number for his son. I was
7 unable to get in touch with him. That number has been
8 disconnected.

9 MR. WEDEKIND: And that's our results with our
10 victim also has a disconnected number.

11 MR. MADSEN: It's an unusual situation because
12 you have victims here on another case which he had denied
13 being a part of and that's why he's pleading to the
14 kidnapping, and that's consistent with the entire time I
15 have represented him.

16 THE COURT: Okay. What would you like to say,
17 Mr. Eargle?

18 THE DEFENDANT: First of all, I'd like to say
19 that the victims in the other case are wrong. I
20 apologized for everything I done. Maybe I've not been
21 given an opportunity to do it in front of them because
22 I've been in jail, but I do apologize for anything that I
23 was involved in that occurred in this situation.

24 THE COURT: I'm not letting whatever they said
25 influence me on your sentencing today.

1 THE DEFENDANT: Well, I appreciate that. But I
2 still apologize for it.

3 But as far as this kidnapping, it wasn't
4 kidnapping at all.

5 I went to that man's house, he owed me money.
6 We lived together for months and months. He owed me some
7 money. I asked him -- I told him that I was running from
8 the police, that I was in trouble. He said all he had was
9 \$5. He gave me the \$5. I said, Well, take me to the
10 store because I can't be seen because the police looking
11 for me. He took me to the store.

12 I got out of his truck, went in the store and
13 bought a pack of cigarettes. Now, right there, if I
14 kidnapped you, you're not going to wait for me to come out
15 of that store if I get out of that truck, and that's what
16 happened. He waited for me to come out the store with the
17 cigarettes.

18 And then I did tell him to take me down the
19 road, and I jumped out the truck a little ways down from
20 where I was hiding from the police at. I didn't want him
21 to know where I was at. That's why I feel like it wasn't
22 exactly a kidnapping. I mean, he complied with what I
23 did.

24 He was upset that I woke him up at the hour that
25 I did. And really, he said he really didn't have the

1 money to give me, but I didn't put a pistol to his head
2 and demand anything. And, I mean, I feel like if I did do
3 that, he would have reported it that night instead of
4 waiting until the next day. I mean, that part didn't make
5 sense to me.

6 And as Mr. Madsen say, I do have a cocaine
7 problem. My doctor at DMH was also my doctor at Broad
8 River Correctional Institute the last time I was
9 incarcerated. She said she'd be willing to help me get in
10 a treatment program for that if I could get this cleared.

11 I mean, I understand you see it as a serious
12 thing, and I see it as a serious thing also, but it's not
13 as serious as what it appears.

14 And I request that I believe able to have some
15 probation in order to go and get some treatment. Because
16 I was doing good on the street and I got involved with
17 cocaine and the wrong people, and that's where my mistakes
18 came along.

19 THE COURT: Okay. Anything else?

20 THE DEFENDANT: No. Just that you have mercy on
21 me, Your Honor.

22 MR. MADSEN: No, Your Honor.

23 MR. WEDEKIND: The only thing from the State,
24 sir, is we just hope there's no other mistakes in the
25 future that involve somebody's life being taken.

1 THE COURT: Well, your record has come back to
2 haunt you. You have a terrible prior record. And
3 probation is not an option for you. You're probably lucky
4 that I'm not giving you the full 30 years. I'm giving you
5 some consideration for having come in and offered this
6 plea today.

7 I'm going to go with 25 years. You'll get
8 credit for the time that you've served.

9 You don't have to register as a sex offender
10 because of this offense, but I'm putting on here that the
11 Court has advised you may have to register because of
12 other convictions.

13 And I will put on here ATU so that you can take
14 advantage of some drug counseling that is available in
15 SCDC.

16 Good luck to you, sir.

17 MR. WEDEKIND: Thank you, Your Honor.

18 MR. MADSEN: Thank you, Your Honor.

19 (The proceedings were concluded.)

20 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

21

22

23

24

25

ORIGINAL

FORM 5

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

County of Lexington

2013 JAN 15 A 10:56

Matthew Jennings Earle

Full name and prison number (if any) of Applicant
SCOC # 298691

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2013CP3200168

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional Institute
4344 Broad River Rd, Columbia S.C. 29210
2. Name and location of Court which imposed sentence Lexington County
Judicial Center 205 East Main St. Lexington S.C. 29072
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Kidnapping - 2012 G53202255
 - (b) _____

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

VW

(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

(a) 10-3-12 / 25 years

FILED

(b) _____

2013 JAN 15 A 10:56

(c) _____

6. Check whether a finding of guilty was made:

BETTY S. HANCOCK
CLERK OF COURT
LEXINGTON, SC

(a) after a plea of guilty yes

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

No

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Did not know how

(b) _____

FILED

2013 JAN 15 A 10:57

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

- (a) Did not understand plea
- (b) Ineffective assistance of counsel
- (c) Unfair trial

CARRIGG
CLERK OF COURT
LEXINGTON, SC

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

- (a) Was being treated for Mental Illness
- (b) Victims from other charges allowed to testify
- (c) Judge may have known victim and or family

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

FILED

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

2013 JAN 15 A 10 57

BETH A. DUMMIG
CLERK OF COURT
LEXINGTON, SC

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

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

FILED
2013 JAN 15 A 10:57

- (a) This is my first attempt at getting any relief
- (b) _____
- (c) _____

BETTY A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Robert M. Madsen / 407 1/2 West Main St. Lexington S.C. 29072
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. My plea and sentencing on 10-3-12
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:
I would like to ~~be~~ have this time taken
back and be able to have a new
trial

2013 JAN 15 A 10:51

20. Are you now under sentence from any other court that you have not challenged?
No

DEBRA M. HIGGINS
CLERK OF COURT
LEXINGTON, SC

2013CP3200168

STATE OF SOUTH CAROLINA)
County of Richland)

VERIFICATION

I, Matthew Jennings Eagle, 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.

Matthew Eagle

SWORN to and subscribed before me this 10th day of January, 2013.

[Signature] (L.S.)
Notary Public

My Commission Expires
My Commission Expires October 8, 2014

FILED

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

I, Matthew Jennings, 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.

Matthew Jennings
Applicant

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

[Signature]
Notary Public

My Commission Expires: October 8, 2014

2013CP3200168

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Matthew J. Eargle,
S.C.D.C. No. 298691,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No. 2013-CP-32-0168

RETURN

The Respondent, making its Return to the application for post-conviction relief (PCR) filed January 15, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted for kidnapping (2012-GS-32-2255). Applicant was represented by Robert M. Masden, Esquire. On October 3, 2012, Applicant waived presentment and pled guilty as charged pursuant to North Carolina v. Alford. Applicant was sentenced by the Honorable Roger M. Young to confinement for a term of twenty-five years. Applicant did not appeal his conviction or sentence.

II.

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

1. "Did not understand my plea."
2. Ineffective assistance of counsel
3. "Unfair trial"

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any of the above not so attached will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

In a post-conviction relief action, 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, 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. 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, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that 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.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis,

546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Respondent submits Applicant's remaining allegation is without merit because Applicant failed to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

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

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Applicant's misunderstanding

of what the sentence was is not a ground for relief. Therefore, the Court should summarily dismiss this application for post-conviction relief.

VI.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code '17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and **not the inmate**, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VIII.

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

IX.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: *J. Whitmire*
ATTORNEYS FOR RESPONDENT

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

June 12, 2013.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
)
)
 Matthew J. Eargle, # 298691)
)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent)
)
 _____)

IN THE COURT OF COMMON PLEAS
 IN THE ELEVENTH CIRCUIT

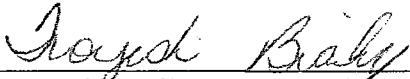
2013-CP-32-0168

AFFIDAVIT OF SERVICE BY MAIL

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

Kristy Grafton Goldberg, Esq.
1720 Main St, Suite 301
Columbia, SC 29201

DATED this 12th day of June, 2013



 Troyeshi Brailey, Legal Assistant
 For Respondent

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

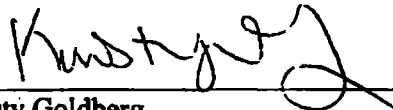
IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
CASE # 2013-CP-32-0168

Matthew Eargle,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)

**AMENDED APPLICATION FOR
POST-CONVICTION RELIEF**

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

- 11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) Ineffective assistance of counsel in that counsel stipulated to Applicant's competency at the time of his plea and failed to require the court to conduct a hearing under State v. Blair. Applicant asserts there is a reasonable probability that he was incompetent at the time of the plea.
 - (b) Ineffective assistance of counsel for failure to inform client of court date thereby preventing notice for any friends or family to attend and present character evidence in mitigation during the plea.



Kristy Goldberg
Attorney for Applicant

Kristy Goldberg
Law Office of Kristy Goldberg, LLC
1720 Main Street, Suite 301
Columbia, SC 29201
803-252-2299
803-799-4059 (fax)
kristy@kristygoldberglaw.com

BEVERLY A. OAKFORD
CLERK OF COURT
LEXINGTON, SC

OCT 10 A 11:36

FILED

Columbia, South Carolina

This 8th day of October, 2014

ORIGINAL

STATE OF SOUTH CAROLINA FILED IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON 2014 OCT 14 3:10 ELEVENTH JUDICIAL CIRCUIT

Matthew J. Eargle,

Case No. 2013-CP-32-0168

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

v.

State's Memoranda of Law

State of South Carolina,

Respondent.

Applicant contends that Attorney Madsen was deficient for failing to submit Applicant for a second competency evaluation within a reasonably proximate time prior to the plea hearing. Applicant's intends to present testimony from Dr. Martin, a recognized expert in psychiatry. Among other findings, Dr. Martin states, "Traditionally, when "competency to stand trial" is ever in question based upon a history of mental illness, a reevaluation by a trained mental professional should be performed just prior to the Blair Hearing where the defendant's current mental health condition may be presented before the Court, before any further judicial proceedings are started." (P. 6). However, Dr. Martin's "best practices" pronouncement is ancillary to this Court's Sixth Amendment inquiry regarding whether Attorney Madsen's performance was constitutionally effective. Furthermore, Dr. Martin's pronouncement runs counter to the established jurisprudence that governs this PCR allegation.

Duty to consult an expert

To prevail in a PCR action, the petitioner must prove by a preponderance of the evidence he was incompetent when he entered his guilty plea. Lee v. State, 396 S.C. 314, 320-22, 721 S.E.2d 422, 466-47. The test of competency to enter a plea is the same as required to stand trial." Id. "The accused must have sufficient capability to consult with his lawyer with a reasonable

degree of rational understanding and have a rational as well as factual understanding of the proceedings against him." Id.

The relevant inquiry before this Court is whether Attorney Madsen's decision to not submit Applicant to an additional competency evaluation was objectively reasonable. Whether Applicant produces expert findings that challenges his competency at the time of the plea is collateral to the question of ineffective assistance of counsel before this Court. See Lee, at 322, 721 S.E.2d at 447. "The case is not one of failure to act, but instead a case like Strickland itself where counsel's "decision not to seek more" fell "well within the range of professionally reasonable judgments." Bobby v. Van Hook, 558 U.S. 4, ___, 130 S.Ct. 13, 19, 175 L.Ed.2d 255 (2009). See Caro v. Calderon, 165 F.3d 1223, 1226 (9th Cir. 1999) (reciting that counsel has an obligation to conduct an investigation which will allow a determination of which experts to consult and then provide the expert with relevant information.).

The Constitution does not entitle a criminal defendant to the effective assistance of an expert witness. Wilson v. Greene, 155 F.3d 396, 401-02 (4th Cir.1998). See also Forsyth v. Ault, 537 F.3d 887, 892 (8th Cir. 2008) (finding that counsel is not ineffective for structuring a case on the basis of opinion received at the time counsel consulted expert.) "A licensed practitioner is generally held to be competent unless there is good reason for disbelief which was not shown." Fautenberry v. Mitchell, 515 F.3d 614, 625 (6th Cir. 2008). it was reasonable for counsel to rely upon the determination by the court-appointed examiners from DMH and not shop for a contrary opinion because Strickland does not require counsel to continue looking for an expert - shop for experts - just because an unfavorable opinion has been received. See Poyner v. Murray, 964 F.2d 1404, 1419 (4th Cir. 1992) ("The mere fact that his counsel did not shop around for a psychiatrist willing to testify to the presence of more elaborate or grave psychological disorders simply does

not constitute ineffective assistance”) (citing *Roach v. Martin*, 757 F.2d 1463, 1477 (4th Cir.), cert. denied, 474 U.S. 865 (1985))

Discussion

The State submits that the testimony and record before this Court will show Attorney Madsen made an objectively reasonable decision to not submit Applicant for an additional competency evaluation. The Record shows that Applicant’s mental health history was confined to behavior disorders that bore little or no impact on Applicant’s cognitive faculties. The Record will show that Attorney Madsen’s observations and interactions with Applicant during the course of the representation did not objectively necessitate a decision to submit Applicant for a second competency evaluation. The Record will show that Attorney Madsen’s performance was constitutionally effective in collecting information, etc., that served to adequately aid Dr. Hansen in her evaluation. The Record will show that Applicant is a veteran participant in the criminal justice system with a penelope of prior convictions and guilty plea hearings under his belt that evidences his acute understanding of General Sessions Court. The Record will show that Applicant made his own knowingly, intelligent, and voluntary decision to plead guilty. The State posits that Applicant’s *post hoc* dissatisfaction with Attorney Madsen is a product of his displeasure in the plea judge’s discretionary decision to sentence him along the higher end of the sentencing spectrum. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) (“Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.”).

WHEREFORE, having filed its memoranda of law, The State requests this Court deny and dismiss Applicant’s PCR at the conclusion of the evidentiary hearing.

FILED

2014 OCT 14 A 10:11

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: *A. Walt Whitmire*
ATTORNEYS FOR RESPONDENT

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

Oct. 13th, 2014

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON

FILED

CASE NO.: 2013-CP-32-0168

MATTHEW J. EARGLE, #29869

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff)
vs. BETH A. CARRIGG)
CLERK OF COURT)
LEXINGTON, SC)

STATE OF SOUTH CAROLINA)
Defendant.)

Plaintiff's Attorney: Kristy Goldberg, Bar No. 72674 Address: 1720 Main St. Ste. 301 Columbia, SC 29201 Phone: (803) 252-2299 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Walt Whitmire, Bar No. 100793 Address: PO Box 11549 Columbia, SC 29211 Phone: (803) 734-3737 Fax _____ E-mail: _____ Other: _____
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant October 14, 2014
Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE CODE _____
 Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

1 State of South Carolina)
 2 County of Lexington)
 3 Matthew Jennings Eargle,)
 4 Plaintiff,)
 5 vs.)
 6 The State of South)
 7 Carolina,)
 8 Defendant.)

In the Court

Of Common Pleas

Case No.: 2013-CP-32-0168

Transcript of Record

October 15, 2014

Lexington, South Carolina

BEFORE:

The Honorable DeAndrea G. Benjamin, Judge

APPEARANCES:

Kristy Grafton Goldberg, Esquire
Attorney for the Plaintiff

Walt Whitmire, Assistant Attorney General
Attorney for the Defendant

ALSO PRESENT:

Matthew Jennings Eargle

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1	EXHIBITS			
2	NO.	DESCRIPTION	ID	EVDS
3		Plaintiff's		
4	#1	CV of Dr. Martin	4	25
5	#2	Report of Dr. Martin	4	37
6				
7		Defendant's		
8	#1	Criminal Responsibility Capacity	4	62
9	#2	Competency to Stand Trial	4	62
10				
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1 Thereupon, the following proceedings were had;

2 (Whereupon, Plaintiff's Exhibits #1 and #2 marked
3 for Identification.)

4 (Whereupon, Defendant's Exhibits #1 and #2 marked
5 for Identification.)

6 MR. WHITMIRE: May it please the Court, Your Honor.

7 My name is Walt Whitmire. I'll be representing the
8 State. The next matter before Your Honor is Matthew
9 Eargle v. State of South Carolina. Case number
10 2013-CP-32-0168. Mr. Eargle was initially indicted for
11 kidnapping, attempted murder and other litany of
12 offenses. He was represented by Rob Madsen. During the
13 course of that representation the Public Defender Rob
14 Madsen submitted Mr. Eargle for a competency evaluation
15 and criminal responsibility evaluations. Those
16 examination results came back at the end of September
17 2012. The beginning of October of 2012 Mr. Eargle
18 decided to enter a guilty plea pursuant to an agreement
19 made with the Solicitor in which all the charges were
20 nolle prosequi and he would enter a guilty plea straight up
21 on kidnapping.

22 Mr. Eargle did enter that plea pursuant to Alford.
23 Judge Young sentenced him to a term of imprisonment of 25
24 years. Mr. Eargle did not appeal his sentence or
25 conviction. He did file a timely application for

1 conviction relief for which we are here today on. The
2 bulk of the issues or the main issue before Your Honor
3 concerns Mr. Madsen's representation as it relates to
4 waiving the Blair Hearing once he got the competency and
5 criminal responsibility evaluations back where Mr. Eargle
6 was found competent, was found criminally responsible
7 pursuant to McDonald and had the ability to conform his
8 conduct to the requirements of the law which means, of
9 course, non GBMI.

10 As I understand it, opposing counsel's case centers
11 around the decisions pursuant to waiving the Blair and
12 also maybe getting a second evaluation. At this time I
13 turn matters over to Ms. Goldberg to present her case.

14 THE COURT: Yes, ma'am.

15 MS. GOLDBERG: Thank you, Your Honor.

16 MR. WHITMIRE: I'm sorry. I apologize. Just for
17 the record, Your Honor, I did file memorandums in support
18 of denial of PCR just on the relevant case law with these
19 issues. It's been served on Ms. Goldberg and there is a
20 copy of it on the bench. I apologize for the
21 interruption.

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

23 MS. GOLDBERG: Thank you, Your Honor, and I just
24 wanted to point out an amended application was filed last
25 week. I sent it to the Court on October 8th so I'm not

1 DIRECT EXAMINATION

2 BY MS. GOLDBERG:

3 Q. Mr. Eargle, when were you arrested?

4 A. I don't remember the exact date.

5 Q. Do you remember the month?

6 A. March. Around March.

7 Q. Does May sound correct?

8 A. May.

9 Q. Of what year?

10 A. 2012.

11 Q. And when did you plead guilty? Do you remember the
12 month?

13 A. September, October. Somewhere around in there.

14 Q. Okay. Of the same year?

15 A. Yes, ma'am.

16 Q. So were you in jail for only five months?

17 A. Yes, ma'am.

18 Q. Do you understand that if your PCR here today is
19 granted, then you my have to go back to Lexington County
20 Detention Center and have all of the charges that were
21 dismissed reinstated; that you would have to face them all
22 over again? Do you understand that?

23 A. Yes, ma'am.

24 Q. But you still want to go forward on this PCR
25 anyway?

1 A. Yes, ma'am.

2 Q. What sentence did you receive?

3 A. 25 years.

4 Q. And what - do you know when your max out date is?

5 A. No.

6 Q. Where are you housed?

7 A. Kirkland.

8 Q. Why are you housed there?

9 A. Special mental health program.

10 Q. What is that?

11 A. Just counselors available 24 hours a day. People
12 that have problem can't deal with regular population. Self
13 injury behavior. I'm a cutter. I cut on myself a lot.

14 Q. Is Kirkland the only facility that has those
15 services?

16 A. Yes, ma'am.

17 Q. For your entire 25 year sentence do you think you
18 will be housed at the same place?

19 A. Yes, ma'am.

20 Q. How do you feel today?

21 A. Pretty good.

22 Q. Have your current medications been working all right
23 with you?

24 A. Yes, ma'am.

25 Q. Have you recently been hospitalized?

1 A. Yes, ma'am.

2 Q. When were you released?

3 A. I been out about a month.

4 Q. During that past month your mental health has been
5 stable?

6 A. Yes, ma'am.

7 Q. Who was your attorney in your criminal charge?

8 A. Mr. Madsen.

9 Q. And did you pay him? Was he appointed?

10 A. He was appointed.

11 Q. How many times did you meet with him?

12 A. I think twice.

13 Q. When was the first time?

14 A. When I first - first got my charge. A couple weeks
15 after I got my charges.

16 Q. Where did you meet with him?

17 A. At the jail.

18 Q. What did y'all talk about?

19 A. Just what my charges were and that was pretty much
20 it.

21 Q. Had he seen - did he know anything about your
22 case?

23 A. Not a lot. I remember he just knew about all my
24 charges and told me what I was facing for the charges.

25 Q. Do you know what discovery is?

1 A. Mmm-mmum.

2 Q. Do you know if he knew anything about the evidence
3 in your case?

4 A. I don't remember talking about it.

5 Q. Okay. Did he tell you if he had any particular
6 plans at that point in time or do you remember?

7 A. I don't think that type thing -- He told me it's
8 best for me to just sit in county for a little while.

9 Q. Did he say why?

10 A. He thought it would be easier on - he could deal
11 with the charges easier the longer I sat in the county.

12 Q. When was the second time you met with him?

13 A. I don't remember exact. It was at the county jail,
14 too.

15 Q. At some point while you were incarcerated did you go
16 to Just Care?

17 A. Yes, ma'am.

18 Q. Do you remember how long you were at Just Care?

19 A. A couple weeks.

20 Q. Was your second meeting with your attorney before or
21 after you were at Just Care?

22 A. I think it was after.

23 Q. What did y'all talk about at that time?

24 A. The mental health report. I think he had got the
25 mental health report and said it was okay.

1 Q. Did you talk about the case as well, your case?

2 A. I really -- I think we still talking about sitting
3 in county for a little while.

4 Q. Did you ask him for a plea agreement?

5 A. No. I had never asked him.

6 Q. Were you in a hurry to go to court?

7 A. No.

8 Q. Were you asking him to in any way, in any way, shape
9 or form were you saying hurry up and give me a plea deal so I
10 can go in front of the court?

11 A. No, ma'am.

12 Q. When you were arrested, when you were first taken to
13 Lexington Detention Center, how long were you in general
14 population?

15 A. About two weeks.

16 Q. What happened to change that?

17 A. I cut myself.

18 Q. Did you go to the hospital?

19 A. Yes, ma'am.

20 Q. Do you remember when you went to Just Care?

21 A. It was a couple - it was a couple - I think it was a
22 couple months after I cut myself.

23 Q. Do you know why you went to Just Care?

24 A. Well, I think I went -- Because I was cutting.
25 myself, I think they did an evaluation while I was there or

1 something.

2 Q. Before you went to Just Care and you were in the
3 Detention Center, where were you housed?

4 A. In booking.

5 Q. In booking?

6 A. In the tank in booking.

7 Q. In the tank?

8 A. Mm-hmm.

9 Q. Describe to me what the tank is?

10 A. It's a small cell with a toilet and that's it.

11 Q. By yourself?

12 A. Yes, ma'am.

13 Q. Did you have clothes?

14 A. No, ma'am.

15 Q. Did you have a mattress?

16 A. No, ma'am.

17 Q. Did you have a pillow?

18 A. No.

19 Q. Did you have a toothbrush?

20 A. No.

21 Q. Did you have any paperwork?

22 A. No, ma'am.

23 Q. This was before you went to Just Care?

24 A. Yes, ma'am.

25 Q. When you went to Just Care, did you feel any

1 different while you were at Just Care?

2 A. Yeah.

3 Q. Tell me how or why?

4 A. I feel more comfortable. I felt like the medication
5 they were giving me was working better than what Lexington was
6 giving me and I was in population around other people.

7 Q. Were you getting regular counseling?

8 A. Yes, ma'am.

9 Q. Were you cutting yourself there?

10 A. No, ma'am.

11 Q. Why did they -- Do you know why they let you go from
12 Just Care?

13 A. I'm not sure. I think that I was doing better.

14 Q. You were doing better?

15 A. Yes, ma'am.

16 Q. When you were at Just Care, that's when you were
17 evaluated, right?

18 A. Yes, ma'am.

19 Q. So you were doing better at that time?

20 A. Yes, ma'am.

21 Q. Do you have any understanding of -- Well, when
22 you went back to Lexington Detention Center, where were you
23 housed?

24 A. They put me back in the tank.

25 Q. What did you -- You said you didn't have clothes in

1 the tank. What did you wear?

2 A. They give you a little green thing that straps over
3 your shoulder.

4 Q. How did you feel in the tank?

5 A. Cold. Wanted to get out of there.

6 Q. Did you -- You said you didn't have any - they
7 didn't let you keep paperwork in that cell; is that right?

8 A. Yes, ma'am.

9 Q. Did you have access to mail?

10 A. No, ma'am.

11 Q. Did you have access to telephones?

12 A. No, ma'am.

13 Q. Do you think if you -- Let me take that back. The
14 day that you went to court, tell me what happened that day
15 from when you first woke up in the morning.

16 A. I just remember they came to the tank and gave me a
17 uniform, told me to put a uniform on, that I was going to
18 court.

19 Q. What time did they come to the tank?

20 A. I don't remember. It was early. I remember it was
21 early.

22 Q. Did they wake you up?

23 A. I think so.

24 Q. What happened next?

25 A. I was getting ready to leave. I saw the mental

1 health lady. She sees me every morning. I saw her when I was
2 getting ready to leave and I told her my medicine wasn't
3 working and I wasn't sleeping right.

4 Q. What did she say?

5 A. She said she was gonna see me --

6 MR. WHITMIRE: Objection. Hearsay.

7 THE COURT: Sustained.

8 MS. GOLDBERG: Thank you.

9 BY MS. GOLDBERG:

10 Q. You can answer that.

11 A. Pardon me?

12 Q. You can answer that.

13 A. What did you ask me?

14 Q. Did she tell you what she was going to do about your
15 complaints?

16 A. She would see me when I got back.

17 MR. WHITMIRE: Objection. Hearsay.

18 THE COURT: Sustained.

19 BY MS. GOLDBERG:

20 Q. Go ahead.

21 A. I mean, that was documented.

22 Q. Well, what was your understanding of what was going
23 to happen next in response to your complaints?

24 A. I didn't know. I didn't know. I wasn't ready to go
25 to court. I didn't know I was supposed to be going to

1 court.

2 Q. Okay. That's fine. After you talked to the mental
3 health lady, what happened next?

4 A. Uhm, I came - they put me on the van and brought me
5 to the courthouse.

6 Q. Did you talk with your lawyer when you got here?

7 A. Yeah, for a little bit.

8 Q. What did he tell you?

9 A. That he could get a plea to drop all the charges
10 except for kidnapping.

11 Q. Did you want to take that plea?

12 A. I didn't understand how much time or anything. I
13 didn't understand any of it. I felt overwhelmed when I got
14 here. I didn't understand.

15 Q. Did you ever want to plea to your charges?

16 A. No.

17 Q. Did your lawyer ever explain to you what a plea
18 under North Carolina versus Alford means?

19 A. No. I heard him say that, but I don't understand
20 what it means.

21 Q. Do you know what it means today even?

22 A. Mmm-mmm.

23 Q. Do you know that your case didn't go to the grand
24 jury?

25 A. No, ma'am.

1 Q. Do you know what that means?

2 A. Mmm-mmm. Not really.

3 Q. While you were in court, why did you stand up in
4 front of the judge and try and answer all his questions?

5 A. Because I was ready to go. I was ready to get out
6 of there.

7 Q. Out of where?

8 A. Out of the court. Out of the courtroom.

9 Q. How did you feel?

10 A. Just - just overwhelmed. I just felt like -- I
11 don't know. I just felt like everybody was against me. I
12 just wanted to get out of there.

13 Q. Did you ever tell anybody that you didn't want to
14 plea that day?

15 A. I didn't - I didn't want to go to court. I told
16 them I didn't want to go to court before I came.

17 Q. You told who that?

18 A. The mental health people that I didn't feel good. I
19 told them that I didn't feel good.

20 Q. Did anyone tell you that you had to go to court?

21 A. They brought me anyway so I thought I had to go.

22 Q. The jail staff?

23 A. Yes, ma'am.

24 Q. The night after you got back to the jail, did you
25 end up in the restraint chair at some point?

1 A. Yes, ma'am.

2 Q. If you had been thinking clearly on the day you were
3 in court, would you have pled guilty?

4 A. No, ma'am.

5 Q. Did you want a trial on your charges?

6 A. Yes, ma'am.

7 Q. Do you think if you had been in Just Care at the
8 time of the court date, that you would have made better
9 decisions?

10 A. Yes, ma'am.

11 Q. Why is that?

12 A. Because I felt better when I was there. I could
13 think better.

14 MS. GOLDBERG: No further questions.

15 CROSS EXAMINATION

16 BY MR. WHITMIRE:

17 Q. Good afternoon, Mr. Eargle.

18 A. All right.

19 Q. Mr. Eargle, how long were you in Lexington County
20 detention before you entered the plea after you got out of
21 Just Care?

22 A. I don't even remember. It wasn't long.

23 Q. A few weeks approximately?

24 A. A week. I'm not sure.

25 Q. Now, why didn't you tell Judge Young that you didn't

1 want to be there that day on the day of the plea?

2 A. I had already told them at the jail that I didn't
3 want to be there. They made me come anyway.

4 Q. So that's the reason you didn't tell the judge
5 anything?

6 A. I thought I had to come.

7 Q. You were just intimidated by court?

8 A. (No response.)

9 Q. I recall you said it was overwhelming; is that
10 right?

11 A. Yes, sir.

12 Q. Is this your first conviction?

13 A. No.

14 Q. In fact, in 2002 you were convicted of criminal
15 sexual conduct third degree; is that correct?

16 A. Yeah.

17 Q. Was that a plea or trial?

18 A. I don't know.

19 Q. Do you remember who your attorney was?

20 A. Mmm-mmm.

21 Q. Were you represented?

22 A. I don't remember.

23 Q. Do you recall how much time you got for that
24 conviction?

25 A. Five years.

1 Q. But you don't remember who your attorney was?

2 A. Mmm-mmm.

3 Q. Was it in Lexington County?

4 A. No.

5 Q. Anderson, correct?

6 A. Anderson County, yeah.

7 Q. Were you also screened for sexually violent
8 predator?

9 A. Yeah.

10 Q. Were you represented by counsel at that time?

11 A. (Witness shaking head.)

12 Q. Is that a I don't recall or a no?

13 A. I don't remember.

14 Q. And as a result of that first charge you're on the
15 sex offender registry, correct?

16 A. Mm-hmm.

17 Q. Now, going to, I believe it looks like 2003, you
18 were convicted for burglary second degree?

19 A. I don't remember. 2003?

20 Q. You got a ten year sentence and you don't
21 remember?

22 A. In Florence. In Florence.

23 Q. Do you remember who your attorney was?

24 A. Mmm-mmm.

25 Q. Do you recall filing a PCR in 2004 on that?

1 A. I think so.

2 Q. Now, what was that PCR about?

3 A. I don't remember. I don't remember.

4 Q. Now, during the course of all these prior charges,
5 did you ever tell your attorneys when you didn't feel good or
6 you had some sort of emotional problem?

7 A. I was fine then because I didn't have no problem.
8 No problem then when I went to court.

9 Q. So you didn't have any problems with your prior
10 attorneys?

11 A. No.

12 Q. Just Mr. Madsen?

13 A. Yes.

14 Q. Again, can you just annunciate for the Court why
15 that is?

16 A. I felt overwhelmed. I felt I didn't understand what
17 was going on.

18 Q. And I recall, Mr. Madsen, or you testified
19 Mr. Madsen told you about the plea offer that morning in
20 October. Did he communicate it to you earlier?

21 A. No. I didn't even know I was coming to court.

22 Q. Did you ever tell Judge Young you needed to stop and
23 breathe and take a break?

24 A. Mmm-mmm. No.

25 Q. Judge Young gave you that opportunity, didn't he?

1 A. I don't remember.

2 Q. You assured Judge Young that you had been taking
3 your medications?

4 A. Yes, sir.

5 Q. Do you recall telling Judge Young that they had been
6 working and helping you?

7 A. I don't remember that.

8 MR. WHITMIRE: Your Honor, referring to page 8 of
9 the plea transcript.

10 THE COURT: Yes, I have seen that.

11 BY MR. WHITMIRE:

12 Q. So but your testimony here today is you weren't
13 doing well with the medications and sleeping on the morning of
14 the plea?

15 A. Yes, sir.

16 Q. And the judge gave you an opportunity to let him
17 know about that. Did you tell Mr. Madsen you weren't feeling
18 well?

19 A. I told Mr. Madsen before. He said I had to do
20 better at the jail.

21 Q. Now, I'm interested, if you can remember, in your
22 prior cases, the Florence case and the Anderson case, would
23 you tell your attorneys if you weren't feeling well or if you
24 didn't understand something?

25 A. Yeah.

1 Q. But you just didn't do it this time?

2 A. I feel - I was feeling different.

3 Q. Do you recall when Judge Young asked Mr. Madsen if
4 you were fully there upstairs and ready to go forward that day
5 at the end of your plea?

6 A. I don't remember.

7 Q. Would that have been an appropriate time to nudge
8 your attorney and say I've got some reservations. My head
9 hurts, do you think?

10 A. I don't remember him asking.

11 Q. Have you always had memory problems?

12 A. (Witness shaking head.)

13 Q. Have you shared those issues with the mental health
14 professionals that have treated you?

15 A. Yes.

16 Q. And I believe you have a history of
17 hospitalizations?

18 A. Yes, sir.

19 Q. That's for cutting?

20 A. (Witness nodding head.)

21 Q. Just when you get upset or you're depressed or
22 angry?

23 A. (No response.)

24 Q. I'm sorry. I didn't catch that at the end.

25 A. The - the - the feelings make me do it.

1 Q. Repeat that. I apologize.

2 A. Them feelings make me cut, make me want to cut
3 myself.

4 MR. WHITMIRE: No further questions, Your Honor.
5 Thank you, Mr. Eargle.

6 THE COURT: Anything else?

7 MS. GOLDBERG: Not from this witness, Your Honor.

8 THE COURT: You may step down.

9 MS. GOLDBERG: Your Honor, at this time the
10 applicant would call Dr. Thomas Martin.

11 Thereupon,

12 THOMAS MARTIN, M.D.,
13 after having been first duly sworn, testified as follows,

14 THE CLERK: State your name for the record.

15 THE WITNESS: Thomas Victor Martin.

16 DIRECT EXAMINATION

17 BY MS. GOLDBERG:

18 Q. Dr. Martin, where are you currently employed?

19 A. I am a general and forensic psychiatrist. I'm in
20 private practice in Columbia, South Carolina.

21 Q. And what, I guess, would, what would be your title
22 or what licenses do you hold? What's the best way to explain
23 it?

24 A. Well, I have a medical license in South Carolina,
25 Georgia, Maryland and Texas. I am board certified by the

1 American Board of Psychiatry and Neurology in general
2 psychiatry as well as forensic psychiatry and I belong to a
3 number of psychiatric organizations like the American Academy
4 of Psychiatry and the Law.

5 Q. Have you ever testified as an expert in forensic
6 psychiatry?

7 A. Yes, ma'am.

8 Q. Approximately how many times?

9 A. I would imagine over 250 times in South Carolina.

10 Q. Have you ever been disqualified as an expert?

11 A. No, ma'am.

12 MS. GOLDBERG: Your Honor, at this time the
13 applicant would offer Dr. Martin as an expert.

14 MR. WHITMIRE: Without objection.

15 THE COURT: All right. Dr. Martin will be entered
16 as an expert in forensic psychiatry.

17 MS. GOLDBERG: Your Honor, I have marked his CV as
18 Plaintiff's Exhibit Number 1. I'll hand that up to you
19 if there is no objection from the State.

20 MR. WHITMIRE: Absolutely not, Your Honor.

21 THE COURT: Thank you.

22 MS. GOLDBERG: Thank you, Your Honor.

23 BY MS. GOLDBERG:

24 Q. Dr. Martin, what documents have you reviewed in
25 preparation for this case?

1 A. I reviewed a number of documents. Mental health and
2 medical records as well as police reports and what would be
3 considered, I guess, standard discovery for a crime that was
4 committed on or about May 21st, 2012. The medical and mental
5 health records would include those from Lexington County
6 Detention Center, South Carolina Department of Corrections,
7 Kirkland Correctional Institution, Patrick B. Harris State
8 Hospital, Gilliam Psychiatric Hospital and SCDC and also those
9 discharge summaries from Geo Care facilities which one is
10 called Just Care.

11 MS. GOLDBERG: Your Honor, for the record the
12 Attorney General and I spoke this morning. What we have
13 agreed to do is to take, to make the record complete to
14 take all of the documents that Dr. Martin reviewed in
15 preparation for this case and put them on a disk and then
16 we're going to supplement the record with that disk
17 tomorrow, if that's appropriate.

18 THE COURT: All right. Is that correct?

19 MR. WHITMIRE: Absolutely, Your Honor.

20 THE COURT: Okay. Please proceed.

21 MS. GOLDBERG: Thank you, Your Honor.

22 BY MS. GOLDBERG:

23 Q. Dr. Martin, what else did you do in preparation for
24 this case?

25 A. Well, after reviewing those, I actually met with Mr.

1 Eargle at the Kirkland Correctional Institution for three
2 hours on April 23rd, 2014.

3 Q. Did you find him to be a good historian?

4 A. Yes. I actually thought he was.

5 Q. What does that mean exactly?

6 A. It means that a lot of what he was giving me in
7 terms of information was consistent with the materials
8 surrounding the investigation, the crime, and I neglected to
9 mention that I reviewed the plea transcript of, I believe it
10 was October 3rd, 2012 and he was able to tell me a little bit
11 about that as well and since I didn't find a remarkable number
12 of inconsistencies I thought that he was a very good
13 historian.

14 Q. Did you form an overall opinion based on everything
15 you did in preparation for this case?

16 A. I'm sorry?

17 Q. Did you form an overall opinion for this case?

18 A. Yes.

19 Q. And I guess what I'll do is I'll ask you for the
20 general opinion and then we can go over the specifics that
21 lead up to that. So what is your general opinion regarding
22 Mr. Eargle?

23 A. I do several things on an evaluation like this.
24 First of all I try to formulate whether or not this individual
25 suffers from a major mental illness and/or personality

1 disorder, et cetera. I thought that he suffered from what I
2 would call depressive disorder not otherwise specified. I
3 believe he had a cocaine and alcohol abuse history. He also
4 had what I call a personality disorder that included
5 antisocial and borderline traits. That was actually rather
6 consistent with his past records as well.

7 Q. So the first thing you did was essentially determine
8 what diagnosis he may meet?

9 A. Yes.

10 Q. For several issues. Then what was your next - what
11 did you do next?

12 A. Then I also proceed, and this is all ongoing,
13 whether or not he's actually actively participating in the
14 evaluation. Since he was alleging that he had competency
15 issues at the time of his plea on October 3rd, 2012, I wanted
16 to make sure that he was competent to actually be giving a
17 voluntary and accurate history and participate in the
18 evaluation I was giving.

19 Q. So you were trying to determine whether he was
20 competent at the time you were actually meeting with him?

21 A. Yes.

22 Q. What did you find there?

23 A. I felt that he was. I reviewed with him his current
24 treatment. He was at Kirkland at the time and he was in
25 several programs I'm a little bit familiar with that give him

1 some interactive attention as well as psychotropic medication
2 attention and I'm familiar with the medications that he's
3 getting and he had reviewed with me accurately that those were
4 started at Geo Care or Just Care and that he had found that
5 they had continued using those when he finally got to SCDC and
6 was assigned to Kirkland. And Gilliam Hospital is in the
7 Kirkland facility and so they have the greatest probably
8 number of psychiatric and mental health resources at that
9 facility so that's where they placed him and he appeared to be
10 doing quite well and he was pleased with his state and I
11 thought his mental status was adequate to participate
12 effectively in the evaluation so I proceeded.

13 Q. And I believe you testified that the medications he
14 was on while at SCDC when you met with him appeared to be the
15 same medications he was on while at Just Care and Geo Care?

16 A. Right.

17 Q. From your review of the documents can you tell if he
18 was ever on those same medications while at Lexington County
19 Detention Center or was that changed after he was released
20 from Just Care?

21 A. I believe those were changed. He was on a previous,
22 I believe, regimen and then continued on that regimen of
23 Lamictal which is a mood stabilizer. He was also on Benadryl
24 and one other medication escaping me. But it was more
25 sedating to help his sleep. And, oh, Ativan.

1 Q. Since we are talking about the medications, you
2 reviewed the plea transcript in this case, correct?

3 A. Yes, ma'am.

4 Q. And in that transcript Mr. Eargle, the judge asked
5 Mr. Eargle to tell him what medications he was on.

6 A. Yes.

7 Q. Was there anything important that you noted about
8 that conversation in the transcript?

9 A. I don't recall anything specifically.

10 Q. Did he report the correct medications that he was
11 on?

12 A. I believe the ones that he was on in Lexington,
13 yes.

14 Q. So he did report that correctly?

15 A. Yes.

16 Q. What is the difference, and I think you started to
17 get into this a second ago, between those medications and the
18 ones he's on while at SCDC or while at Just Care or Geo
19 Care?

20 A. Well, he was started and increased on a dosage of
21 another type of a mood stabilizer named Neurontin. He was on
22 an antidepressant that was sedating called Remeron and that
23 one I believe was eventually tapered off and any sleep
24 problems were addressed with another sedative called
25 Trazodone. Another mood stabilizer is Lamictal and according

1 to Mr. Eargle he did not do well on Lamictal. He had a lot of
2 adverse effects which are possible on any of these medications
3 depending on the person and sedation was assisted by Benadryl
4 which is an antihistamine actually and he was also on Ativan
5 which is a sedative hypnotic and he told me that he felt that
6 those were not working effectively either and that he had
7 actually mentioned that to the mental health staff person at
8 Lexington prior to leaving for the courtroom on October 3rd,
9 2012. They had stopped his Lamictal because of the adverse
10 effects and that the Ativan and the Benadryl were not
11 working.

12 Q. Did the documents that you reviewed confirm that he
13 did make that complaint the day of the plea?

14 A. Yes.

15 Q. What effect would the combination of those
16 medications have on an individual?

17 A. Well, the last two, the Ativan and Benadryl, the
18 Benadryl is a drying agent as well as a sedative and Ativan is
19 a sedative hypnotic which is used sometimes to help people for
20 sleep but it's an anti-anxiety and also reduces aggressiveness
21 and so forth and acting out behaviors which Mr. Eargle has
22 quite the record. But Lamictal is supposed to be a mood
23 stabilizer in most cases. And like I said earlier, all of
24 these have side effects and he wanted to make the psychiatrist
25 aware of this before he had left. He said he didn't know he

1 was going to court that day and so that he wanted to make sure
2 that the mental health folks knew that he had actually self
3 discontinued. Apparently he didn't tell them earlier. And
4 that the other two that I mentioned, the Ativan and Benadryl
5 were not effective and he wasn't sleeping well and so
6 essentially by his report he was not in the best state of
7 mind.

8 Q. Based on his report as well as your review of the
9 medical records, do you have a question as to Mr. Eargle's
10 ability to have voluntarily and knowingly entered a guilty
11 plea on that day?

12 A. Well, I am going, like you said, by his report. The
13 Lexington County Detention Center report said that he was calm
14 and he appeared in no distress. I don't know whether or not
15 that's because he was fine or because he was sedated or
16 because his medications weren't stabilizing him. According to
17 him they were not stabilizing him. My feeling is that, well,
18 you know, as anybody who has ever performed a competency to
19 standing trial examination, and he and I reviewed that in
20 detail and did it again with me, and he remembered while at
21 Geo Care that a particular psychiatrist performed, from the
22 Department of Mental Health which are also the records that I
23 reviewed, a competency to stand trial and criminal
24 responsibility evaluation near the end of his stay at Geo Care
25 which was the end of August 2012. And he recalled that he

1 felt well and, in fact, that was the best he's ever felt and
2 he thought that the care he received at Geo Care was very good
3 and it was also his explanation that that is why he probably
4 passed or got a good bill of health from that forensic
5 examination. And that he wanted to contrast with me the fact
6 that that is not the same kind of treatment that he receives
7 at the Lexington County Detention Center and so that he felt
8 his mental stability was not as adequate in the detention
9 center and so I felt with confidence that he was competent to
10 participate in the evaluation with me so essentially I think
11 as competence is a fluid construct entity it needs to be
12 checked periodically depending on how somebody is doing and
13 since Mr. Eargle has this incredible mental health record that
14 is peppered with major mood disorder, acting out,
15 aggressiveness, often times towards himself to include
16 swallowing razor blades I believe at least two times at the
17 Lexington County Detention Center that that type of individual
18 needs to be checked regularly.

19 Q. Explain that. You mentioned that competency is a
20 fluid construct. Well, for the Court, just for the record,
21 what exactly does competency mean?

22 A. Competency actually is a species specific type of
23 construct. Competency for what competency to stand trial
24 which is a lot of what I evaluate is somebody who meets
25 certain criteria. They understand -- Well, first of all,

1 whether or not they have a major mental illness or condition
2 that would preclude them from being whatever competent is.
3 Another is to understand what charges are levied against him,
4 who their attorney is, the Solicitor, the Judge, what the
5 roles are of each of those court officers, what a jury is,
6 plea bargain, so forth. They have to have a rapport with
7 their attorney. It's not like I choose my attorney or I get
8 along well with my attorney. They have to have the ability to
9 get along with their attorney. Whether they choose to or not
10 is a different issue.

11 The other thing is that they must have a actual and
12 a rational understanding of the proceedings. They can't just
13 parrot back data to an examiner and that count as competent.
14 They have to be able to apply it. They don't need to be able
15 to represent themselves pro se, but they have to be able to
16 actively participate in formulating a defense with their
17 defense counsel and so that essentially is what competency is
18 in this type of case.

19 Q. Explain what you mean when you say that that's a
20 fluid construct.

21 A. Well, mental illness, if competence is interfered by
22 mental illness, mental illness is never a perfectly linear
23 plateau. Mental illness changes. Medications change.
24 Environment will change and that can in a positive way or in a
25 negative way affect levels of competency. And so a very easy

1 example would be someone who suffers from dementia which is a
2 lot of loss of memory and ability to speak coherently and one
3 day one person may be doing well and by that evening called
4 sundowners they may not know exactly who they are or where
5 they are and so they would not be a good candidate to go to
6 trial or perhaps file a will or anything like that when they
7 are sundowning. And so that is fluid example of competence in
8 that example. This is the same thing since he seems to have a
9 very erratic mental health history that has been very
10 difficult to manage over the years, but that would be a red
11 flag for me to say you need to watch this very closely.

12 Q. Given the medications that Mr. Eargle was on the day
13 he went to court, the housing situation he was placed in in
14 that time, what should have been done to determine his
15 competency?

16 A. Well, I believe what was done originally was a
17 formal competency exam and they also performed criminal
18 responsibility and that was done. Those are never done to
19 this extent. I've performed probably hundreds of those, but
20 they are never done right before court. The idea in my
21 opinion is that it gives the court officers at least an idea
22 of where this individual, the defendant is. If there is a lot
23 of erratic mental health history and the person is found to be
24 either competent or not competent to stand trial, before they
25 can go to a hearing again it's my practice and in my training

1 that with a history like that I would check to see how they
2 are doing for maybe a 30 minute period right before going into
3 court. I don't think that's unusual in my practice. Other
4 people have done the same thing. But that's what I would have
5 recommended.

6 Q. What is a Blair Hearing?

7 A. A Blair Hearing is a hearing in South Carolina
8 usually in criminal court that formally assesses competence to
9 proceed in either a plea or a trial usually.

10 Q. When is that done?

11 A. Before any of the proceedings and the trial or the
12 plea take place.

13 Q. Immediately before?

14 A. That would be best.

15 Q. Is your opinion that a Blair Hearing should have
16 been done in this case?

17 A. If I were evaluating the case and I actually take
18 the responsibility myself, I'm asked to do a number of these
19 cases in the state as well as federal court, I will not
20 proceed with testimony unless I'm allowed to see the
21 individual right before we go into court and so that's what I
22 would have recommended doing.

23 Q. That would have been the only way to determine
24 whether he was competent the day of the hearing, correct?

25 A. Well, the court ultimately decides, but I would like

1 to say that I would lay eyes on the individual to make sure.
2 I would say in Mr. Eargle's case if he had all these questions
3 that he says he had but he kept to himself even by his
4 testimony, that that may have been an opportunity to say, hey,
5 I don't know exactly what's going on. I don't know what an
6 Alford plea is. He cited a whole lot of interesting things
7 about the court hearing that day that were indicated in the
8 transcript like why are certain victims there. Other victims
9 were not there. So he had a lot of questions and that would
10 have perhaps maybe resolved that and perhaps could have
11 preceded. I can pretend to guess, but according Mr. Eargle he
12 was essentially in a panic and he did and said anything that
13 he thought would get him out of the courtroom.

14 Q. And based on his report does it reflect that there
15 may have been concerns with his competency on the day of?

16 A. According to him, yes. And if I were involved with
17 the case looking back on it I would have grilled him about
18 those things and how much he really understands or not.

19 Q. Did you issue a report in this case?

20 A. Yes, ma'am, I did.

21 MS. GOLDBERG: Your Honor, at this time the
22 applicant would enter applicant's exhibit number 2 which
23 is a copy of Dr. Martin's report.

24 MR. WHITMIRE: Without objection.

25 THE COURT: All right. That will be number 2.

1 MS. GOLDBERG: I'll hand this up, Your Honor.

2 BY MS. GOLDBERG:

3 Q. Dr. Martin, is there anything that I have left out
4 that's extremely relevant to your opinion regarding Mr.
5 Eargle's case?

6 A. No, I don't think so.

7 MS. GOLDBERG: All right. No further questions of
8 this witness.

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION

11 BY MR. WHITMIRE:

12 Q. Good afternoon, Dr. Martin.

13 A. Good afternoon.

14 Q. Your expert findings are as of 2014 in the report?

15 A. Yes. I met with Mr. Eargle on April 23rd of 2014
16 and I wrote the report on May 31st, 2014.

17 Q. If I'm correct, the report doesn't extend to find
18 him incompetent?

19 A. No. Well, this is not the venue for that, but
20 during my evaluation of him I found him to be competent to
21 give a adequate evaluation or participate in an adequate
22 evaluation.

23 Q. I believe you didn't find him to suffer any
24 psychosis either?

25 A. No.

1 Q. You testified today that Mr. Eargle is a good
2 historian?

3 A. He was a good historian with me.

4 Q. Were his long term/short term memories intact?

5 A. Yes.

6 Q. And again, what was the date of the report? I
7 apologize.

8 A. I submitted it on May 31st of 2014.

9 Q. Is there any reason Mr. Eargle's long term/short
10 term memories would have any deficits currently at the present
11 time?

12 A. I couldn't tell you the answer to that.

13 Q. I believe part of your diagnostic impression was
14 that Mr. Eargle suffered from a personality disorder NOS of
15 antisocial features?

16 A. Yes, and borderline.

17 Q. Tell me if I'm wrong. I'm just a novice lawyer.
18 According to the DSM a person diagnosed with antisocial
19 features or disorder is frequently deceitful, manipulative to
20 gain personal preference?

21 A. Yes.

22 Q. Also a person diagnosed with antisocial personality
23 disorder is apt to lie and malingering?

24 A. Yes.

25 Q. Also at risk of impulsivity and high risk

1 behaviors?

2 A. Yes.

3 Q. And much of your findings are anecdotal in nature
4 from Mr. Eargle?

5 A. In terms of his experiences during the transport to
6 the plea and during the plea, yes. I have no corroborating
7 indication from any other record.

8 Q. Did you inquire to see if Mr. Eargle at that point
9 in time had a copy of the plea transcript?

10 A. I believe I have one and I do remember covering it
11 with him. I don't know if he had one.

12 Q. One of your other diagnostic impressions was onset
13 of personality disorder NOS. My question is when a patient
14 suffers this mental disorder, when do they typically begin
15 suffering and for how long?

16 A. Which one?

17 Q. Personality disorder NOS.

18 A. Personality disorder develops actually from the
19 developmental years. He has antisocial which I think you
20 annotated nicely and he also has borderline which means
21 difficulty with relationships, rage control, impulsivity as
22 well as self destructive behavior. It destabilizes. And both
23 of those diagnoses are all in the same cluster and when put
24 together they can create when overly duressed a rather
25 unstable person which I think is consistent with a whole lot

1 of his acting out record behavior in all institutions
2 including mental health, but they also can contribute to mood
3 symptoms which is why I diagnosed him with depressive disorder
4 because obviously these kind of coping skills and the way he
5 sees the world is not very satisfying nor effective and so
6 oftentimes it leaves an individual depressed or low.

7 Q. So again, correct me if I'm wrong, but according to
8 the DSM section D of this particular disorder the pattern is
9 unstable of long duration and the onset can be traced back to
10 adolescence?

11 A. Yes. Personality disorders typically are, yes.

12 Q. So he would have been suffering through this in his
13 earlier court proceedings and in his early 20's, late teens?

14 A. Yes.

15 Q. I believe you just testified the depressive
16 diagnosis is an off shoot of the personality NOS?

17 A. That's my belief, yes. That he's met with constant
18 frustration and loss of relationships and not meeting his
19 goals and so forth.

20 Q. And during the onset of the time in which a patient
21 will suffer from this particular disorder, the depressive
22 disorder, how long are the intervals?

23 A. Oh, it can vary. There is no cookbook answer to
24 that.

25 Q. Is it possible that he could have been suffering

1 from this in 2003?

2 A. From the personality disorder?

3 MS. GOLDBERG: Objection. Speculation.

4 THE COURT: Sustained.

5 MR. WHITMIRE: Your Honor, I withdraw the question.

6 BY MR. WHITMIRE:

7 Q. Let me rephrase that. At what time does a patient
8 typically start suffering from a depressive disorder in age?

9 A. Well, there is no complete answer to that. The
10 reason why I gave him depressive disorder not otherwise
11 specified is because I believe that his depressive symptoms
12 although very real don't meet the classic symptoms of a major
13 depressive disorder which usually manifests on average between
14 the ages of 18 and 25. You can have depressive disorder NOS
15 relating to changes in medical condition, medications and so
16 forth. Usually there is a clarifier to denote that. But his
17 depressive disorder I think it's fair to say is very cyclic
18 and probably matches his stability in his personality. When
19 he was at Geo Care for about two weeks he got there August
20 18th and was discharged, I believe, on August 31st of 2012, he
21 was able to calm down, stabilize, medications were actually
22 managed nicely it looked like and so he did really well and so
23 he was less depressed and he was also sleeping well and he was
24 less acting out. Then he changes environment and the
25 detention center which is not as, I would say is fair to say,

1 nurturing as Geo Care is, he was changed back onto other
2 medicines and then he was destabilizing and so it comes and
3 goes in a cyclic pattern sometimes depending on certain other
4 variables.

5 Q. If I recall correctly you reviewed this General
6 Sessions file and his plea regarding the charge of which the
7 PCR is brought today?

8 A. Yes, sir.

9 Q. Did you review his 2001 CSC conviction, the
10 transcript from it?

11 A. No.

12 Q. Did you review the 2003, I believe, burglary
13 conviction transcript?

14 A. No, sir.

15 Q. Did you review the PCR action that followed the
16 burglary conviction?

17 A. No. But I believe he mentioned that he may have
18 filed for one. But no, I didn't have any of the details of
19 those records.

20 Q. Would they have been helpful in trying to
21 forensically corroborate whether Mr. Eargle is malingering or
22 not from his recollection of the plea in this case?

23 A. Well, even if he didn't have any of that kind of
24 history meaning no other criminal history, I would be trying
25 to assess for malingering with just what we have here and that

1 is what part of my focus was and I'm not saying that he was or
2 wasn't malingering. I don't have a really good handle on
3 that. As you cited clearly his personality can be quite
4 manipulative and it's not always in favor of, you know,
5 conforming to the norms of the law. My point is is that it
6 would be nice if somebody could come in and perhaps evaluate
7 it at that time to make sure that some of that kind of
8 manipulativeness or major mental illness or overdosing and
9 drug effects may be impairing the individual to allow him or
10 her to coherently work in a plea proceeding.

11 Q. And as part of rendering your diagnosis did you
12 interview counsel in this case?

13 A. Oh, no, I did not.

14 Q. Could that have been helpful having that material in
15 general?

16 A. I actually have never really done that before. I
17 wouldn't be against doing that. I know the counsel in this
18 case. I actually was primarily going by Mr. Eargle's
19 presentation at the time, his also vocalizations which we all
20 know about and also what his history was and I essentially
21 based my opinion on his history meaning Mr. Eargle's.

22 Q. The last question just to reiterate to make certain
23 I have all my ducks in a row. You weren't able to render an
24 opinion whether Mr. Eargle was malingering during your
25 evaluation?

1 BY MR. WHITMIRE:

2 Q. Good afternoon, Mr. Madsen.

3 A. Good afternoon.

4 Q. What is your current professional title?

5 A. I'm the Eleventh Circuit Public Defender.

6 Q. What is the extent of your General Sessions or
7 criminal law experience?

8 A. I pretty much have been practicing strictly criminal
9 law for about the last 18 years.

10 Q. I guess in particular to this case what is the
11 extent of your experience concerning mental health defenses
12 and issues in General Sessions cases?

13 A. I try cases with mental health defenses. I have
14 current cases with mental health defense. That's kind of a
15 part of the six years that I have been the Public Defender.

16 Q. Correct me if I'm wrong, you recently were
17 instrumental in getting some law to change on GBMI in State v.
18 Curry; is that correct?

19 A. Yeah. I had a case reversed.

20 Q. Do you recall your representation in this matter?

21 A. I do.

22 Q. Have you had a chance to review your file in
23 anticipation of testifying today?

24 A. I have.

25 Q. What were the circumstances surrounding your

1 appointment on Mr. Eargle's case?

2 A. I was initially appointed back in November or our
3 office was November of 2011. That initial appointment was for
4 a grand larceny charge that Matt had pending on him. I began
5 my representation on that - I actually met him in the jail for
6 -- His initial interview with our office was on 11/22 where he
7 went through our screening. I met with him in the jail on
8 12/5. He got out on bond. There was some issue with some
9 other charges and a bonding company going off his bond. We
10 were able to resolve that. He reposted bond. I spoke with
11 him on the phone in January of 2012. Ultimately the charges
12 that he, or the charge that he pled to he got rearrested later
13 and reincarcerated on that charge. So on the initial charge
14 the grand larceny I met with him in the office prior to his
15 new charges.

16 Q. Just a general question as to your practice and
17 procedures. What are you looking for in a new client to
18 determine if they potentially have some mental deficit at
19 least looking forward during the course of your conversations
20 and communications?

21 A. When I initially meet with a client, I not only go
22 over their various rights, the charges that I see that they
23 are facing, additionally I get a background from them.
24 Questions include whether they have ever been treated for
25 mental health and then quite honestly having done this long

1 enough you can kind of tell a lot of times there can be
2 indicators that somebody maybe has a mental health history or
3 potentially needs to be evaluated or things along those lines
4 that you just kind of pick up on.

5 Q. Kind of a smell test, eye test that comes with
6 experience?

7 A. Yes, sir.

8 Q. Now, how many times did you meet with Mr. Eargle
9 during the course of his representation?

10 A. I believe that counting back in my notes that he and
11 I including his initial charges saw each other face-to-face
12 eight times.

13 Q. Was Mr. Eargle a good communicator?

14 A. He was. There was some initial problems when he had
15 the grand larcenies that we would schedule for him to come
16 into the office and there was a number of times that he was no
17 call, no shows but we were able to reschedule those and he
18 eventually came in and went over that discovery with me in my
19 office on March 9th.

20 Q. Did he make good eye contact during the
21 conversations?

22 A. Yes, sir. I had no problem communicating with
23 him.

24 Q. All of his logical faculties were intact?

25 A. He asked appropriate questions.

1 Q. This is the first case you have represented Mr.
2 Eargle on?

3 A. These series of cases, yes.

4 Q. Just for the record, how long did your
5 representation last until that ultimate disposition and
6 plea?

7 A. It ended on 10/3 and then my first meeting with him
8 would have been 12/5/11 so just about ten months.

9 Q. Briefly again for the record describe the set of
10 events that lead to your decision to have Mr. Eargle undergo a
11 mental evaluation for competency and criminal
12 responsibility?

13 A. Well, when he was out on bond and we sat down on
14 12/5 initially, he had indicated that he had been in Just
15 Care, that he had potentially tried to commit suicide in the
16 past and that he was a cutter although I will tell you in my
17 conversations with him, you know, if he had not told me that,
18 I would not have had any question about his competency or any
19 kind of mental health. He just seemed normal. As we got more
20 into the case I became aware that he potentially had cut
21 himself at the jail. Given the fact that he had had some
22 mental health history and that he had cut himself at the jail
23 I thought that the best course of action was to have him
24 evaluated. I received consent from the Solicitor's Office
25 which is my normal procedure and I submitted a request for

1 evaluation on 7/31 of 2012.

2 MR. WHITMIRE: May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. WHITMIRE:

5 Q. Mr. Madsen, I'm handing you what is State's exhibit

6 1. Do you recognize this document?

7 A. Yes. This appears to be his criminal responsibility
8 capacity to conform document that we received per my
9 request.

10 Q. Now I'm handing you State's exhibit 2. Do you
11 recognize this document?

12 A. This is his competency to stand trial which I had
13 requested.

14 Q. When did you receive those reports from DMH?

15 A. On the competency to stand trial I received that, I
16 believe, on 9/27. On the other one it indicates 10/4 on a fax
17 here, but I believe I had received that beforehand because I
18 had in my notes that I had both of those sent to him on 9/28
19 per a letter that we had sent him in the jail.

20 Q. Have you worked with Dr. Hanson before?

21 A. I might have. I don't recognize the name.

22 Q. Do you have any reason to question the validity of
23 those reports and findings?

24 A. No. Quite honestly I expected that he would be
25 competent and would have capacity to conform just in my

1 dealings with him. But as I said, given his history and the
2 cutting that he had done in the hospital I did that just out
3 of an abundance of caution to see if potentially he would have
4 any kind of mental health defense.

5 Q. And again just for the record, did you provide the
6 DMH experts with everything that they requested from your
7 materials regarding Mr. Eargle?

8 A. As far as I know. I would tell you that generally
9 that task falls on my paralegal to give them anything that
10 they have requested including incident reports or that.

11 Q. To your recollection do you recall if they ever
12 contacted you and said we are missing certain documents that
13 are instrumental?

14 A. No, sir.

15 Q. I guess getting to the meat of Mr. Eargle's case
16 here today specifically the representation from when he left
17 Just Care to entering the plea, do you recall your meetings
18 with him during that time frame?

19 A. I do.

20 Q. How many times did you meet with him?

21 A. Total representation was eight. I have in my notes
22 one phone call that he and I had although I will tell you that
23 oftentimes if I don't have my file near me and a client calls
24 me, I will speak with them and it might not get noted in the
25 file but eight different times.

1 Q. Backtracking just a little bit just for the record.
2 Do you recall or can you describe the plea negotiations in
3 this case and the ultimate plea agreement?

4 A. Well, initially there was a plea offer made and I
5 say a plea offer, when he had his grand larceny, there was no
6 plea offer made. It was just basically a plea straight up.
7 He then got the new charges. He received a plea offer of a
8 plea to the kidnapping and the attempted murder which was from
9 a second set of charges that he got at the same time. That
10 plea offer was on 8/1 of 2012. I went over that plea offer
11 with him on 9/11 of 2012 at the jail and he told me at that
12 point in time he did not want that plea offer. Later I will
13 tell you that he is correct when he says the Solicitor put him
14 on the list to bring him over to court without any notice to
15 me and, of course, there was no notice to him since I did not
16 know saying that he was going to make a different plea offer
17 on that date. When he brought him over that morning, I sat
18 down with Matt and went over the new plea offer to him which
19 was basically to not plea to the attempted murder, to dismiss
20 all the other charges and to plea to the kidnapping charge.

21 Q. Now, considering his mental health history, did he
22 adequately communicate with you that morning?

23 A. He did.

24 Q. Did you have any concern to have to go over things
25 again and again to make certain it got through?

1 A. No, sir. In fact, I will tell you once I gave him
2 that plea or gave him the plea offer that the State had made,
3 he was adamant that he wanted to plead guilty. He and I had
4 discussions because he had always maintained through the
5 course of representation that he hadn't done it, that it was
6 kind of a quasi drug deal owing some money and so I actually
7 informed him that he could not plead guilty if he wasn't
8 guilty. That a judge would not accept that plea.

9 I don't remember how it came about, but I think it
10 was at the suggestion of the Solicitor I went over with him an
11 Alford plea because he was bound and determined that he wanted
12 to plea and so I went over the parameters of an Alford plea
13 and quite honestly I discourage clients from entering an
14 Alford plea because I think that they lose the ability to get
15 up in front of the court and say, hey, I'm sorry for what I
16 did because they're saying I didn't do anything and, in fact,
17 I think Judge Young kind of mentioned that and I had seen
18 Judge Young do that either earlier in the week or when he had
19 been here prior so that was a fear of mine and I explained
20 that to him.

21 Q. Did Mr. Eargle share with you the belief that, did
22 he believe that he was going to be convicted if the State
23 called his case?

24 A. We spoke about that in previous conversations. We
25 had spoken about the evidence against him and the witnesses on

1 the various cases and so he knew what an Alford plea was
2 because I went over that with him.

3 Q. And just again for the record, did you investigate
4 and look into all the matters that he wanted you to look
5 into?

6 A. Like I said, when he was out and about, he was kind
7 of tough because he kept on no calling, no showing. I had
8 attempted to contact the alleged victim of the kidnapping. I
9 think it was a Pat Vella, Jr. He had worked for his father is
10 what he had indicated to me in his initial meetings. I had
11 called the father who had given me a number for the son, but I
12 was unable to get in contact with him. That number was
13 disconnected and we weren't up for trial or anything any time
14 soon.

15 Q. Just a few more questions. If I'm being repetitive,
16 my apologizes. Did he complain of a lack of sleep or
17 headaches that morning?

18 A. No, sir. He seemed -- I met with him in my office.
19 I met with him at the jail. He seemed that morning the same
20 as any other time that I had met with him.

21 Q. If he appeared not all there, would you have allowed
22 him to plead that day?

23 A. I would not. I would have brought that to the
24 court's attention and, in fact, during the plea he did in my
25 opinion a very good elocution of kind of why he was doing the

1 Alford plea and telling the judge and he answered all the
2 questions appropriately so I never had any concern. If I did,
3 I would have said something.

4 Q. Did you represent Mr. Eargle to the best of your
5 ability?

6 A. I did.

7 Q. Even in considering Dr. Martin's hindsight opinion,
8 would you have changed your representation? That's a tough
9 question. It's all over the place.

10 A. I was going to say I didn't see anything that day
11 that led me to believe that he did not know what he was doing.
12 As I said, he was adamant that he wanted to plead guilty that
13 morning, but I discussed with him and told him the entire time
14 that if you didn't do it, you can't plead guilty and I
15 explained to him also that my advice to any client is if you
16 say you're not guilty, then you need to go to trial. That's
17 not what he wanted to do and so we ended up discussing the
18 Alford plea and that's what he decided he wanted to do.

19 Q. What was the strengths of the State's evidence in
20 this case?

21 A. They had an individual that he was with who had
22 given a written statement indicating on the kidnapping case
23 that basically Matt had shown up and by gun point had him take
24 him to a store. Apparently he was allegedly hiding out
25 because he knew law enforcement was looking at him for some

1 other charges. In the interim he had gotten a bench warrant
2 on that grand larceny that I had represented him on because he
3 had not shown up to a court appearance.

4 MR. WHITMIRE: Thank you very much, Mr. Madsen. No
5 further questions. Please answer any questions that
6 the applicant may have for you.

7 THE COURT: Yes, ma'am.

8 MS. GOLDBERG: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MS. GOLDBERG:

11 Q. Good afternoon now. Mr. Madsen, you first
12 represented Mr. Eargle on the grand larceny?

13 A. Yes, ma'am.

14 Q. And he was essentially on bond during that time?

15 A. He was initially in jail when I met with him. There
16 was some kind of problem with the bonding company in wanting
17 to come off his bond. From what I recall we were able to get
18 that bonding company off so that he could place the bond or
19 hire a new bonding company. We did that and he got out
20 although my notes don't reflect when he got out. Although I
21 will tell you that I returned a call to him on 1/6 so that
22 tells me he was out by that point in time.

23 Q. January 6th of 2011?

24 A. 2012.

25 Q. 2012?

1 A. Yes. Because my first meeting with him was 12/5 of
2 2011.

3 Q. And that was in jail?

4 A. Yes.

5 Q. Okay. That's what I didn't understand. So he was
6 out. He was in jail for a few months, but he was out by
7 January of 2012?

8 A. Yes.

9 Q. Rearrested in May of 2012; is that accurate?

10 A. Yes. I believe towards the end of May because he
11 missed the court appearance on the grand larceny on 5/8 of '12
12 which are my notes.

13 Q. When he was rearrested in May, that was for several
14 new serious charges, correct?

15 A. I think it was for two attempted murders, two
16 pointing and presenting, maybe a possession of a weapon and
17 then kidnapping I believe.

18 Q. And the plea in this case was October of 2012?

19 A. Yes.

20 Q. Which is five months later?

21 A. Yes.

22 Q. Would you consider that a short period of time for
23 such serious charges?

24 A. It can depend. I have had cases that go that
25 quickly. There can be some that drag out years. It just kind

1 of depends on the case and quite honestly it depends on the
2 client's wishes. If they want a trial, generally things go a
3 little bit longer. Whenever I get a plea offer I try to as
4 soon as I can take it to them and discuss the ins and the outs
5 which is what I did with him.

6 Q. On your first meeting which I believe was that one
7 in December you said that Mr. Eargle by all accounts seemed
8 normal to you?

9 A. Yes.

10 Q. Mentally healthy and stable. At some point later
11 you learned that he had cut himself in the jail?

12 A. Yes.

13 Q. How did you learn that?

14 A. I believe my paralegal had indicated that to me. We
15 had, in starting to prepare for trial, he had indicated that
16 he had a phone in his jail property that maybe had some
17 information on it so with his consent we had his jail property
18 released to us. We got the phone that was in his jail
19 property, took it to him and then he had indicated that that
20 wasn't the phone that he thought that information would be on
21 and that he wanted us to destroy the phone.

22 Q. How did the paralegal find out he cut himself?

23 A. I don't know if she had gone over to get that or
24 someone had indicated that to her. I just know that she had
25 indicated or had told that to me.

1 Q. Do you know if the jail or the Solicitor's Office
2 ever contacted you about wanting, about this case taking
3 special interest needing to be moved?

4 A. I saw something with one of my paralegal's notes
5 indicating something about that, but other than that, no. I
6 don't recall anyone calling me from the jail.

7 Q. But it appears they contacted your paralegal?

8 A. Well, I think that she had indicated in a note to me
9 that she thought that they had contacted the Solicitor's
10 Office.

11 Q. So after you found out about this, you moved to have
12 him evaluated?

13 A. Yes, just to be safe. And I knew that, I believe he
14 was on, as he said, kind of the tank or sometimes they kind of
15 have a first floor B mental health.

16 Q. Did you meet with him while he was housed in the
17 tank?

18 A. I'm not real sure. They don't necessarily -- When
19 they come up, if they are in the tank or they're on suicide
20 watch, they'll put them in a turtle suit. However, when we
21 meet with them up in the front, they would be dressed out
22 normal so I generally am not necessarily aware of where or how
23 they are housed unless they tell me.

24 Q. Did he ever describe to you how he was being housed
25 or the situation?

1 A. He had described to me at some point in time that he
2 was kind of in a turtle suit and that he had been on suicide
3 watch and he had expressed that he did not like that. Of
4 course, I counseled him that if they didn't have that fear of
5 him trying to do some kind of harm to himself, then I'm sure
6 that he would be placed with whatever his classification was
7 there. So my advise, of course, was to not do that. To try
8 to act good. He indicated, I remember one conversation where
9 he indicated that he hadn't tried anything in a couple of
10 weeks. I told him I didn't necessarily know from the jail's
11 perspective if that would be enough, but that he needed to
12 basically behave himself.

13 Q. On the day of the plea you testified that y'all were
14 not up for trial any time soon?

15 A. No. In fact, as I said, he's correct. The
16 Solicitor had just kind of put him on the list and said, hey,
17 I'm going to bring him over and make a new plea offer. My
18 habit is not to convey plea offers to clients right when they
19 come over from jail. I don't like that. I generally try to
20 go to see them at the jail beforehand because I think you get
21 more time to sit down with individuals.

22 Q. The day of the plea hearing the Solicitor -- Have
23 you reviewed the transcript in preparation for today?

24 A. I have read it.

25 Q. Okay. On the day of the plea hearing the Solicitor

1 actually stated to the court that a Blair Hearing should be
2 done, was necessary; is that right?

3 A. I don't specifically recall, but that would sound
4 right.

5 Q. And for the record that would be on page 4.

6 A. Yes. That would be normal that, you know, a Blair
7 Hearing you would pass up a copy of the report and let the
8 court review it and then go over that. As I stated, I didn't
9 have, based on that report and my interaction with him I
10 didn't have any question about his competency so I stipulated
11 to the report at that point in time.

12 Q. And that evaluation was actually done on August
13 29th, correct?

14 A. Correct. And I think we got it on the 27th.

15 Q. So over a month prior to the court date?

16 A. Yes, ma'am.

17 Q. And he was not incarcerated in Lexington when that
18 evaluation was done. He was incarcerated at Just Care or Geo
19 Care, is that your understanding?

20 A. That's my understanding now. I don't know if I
21 would have known that back then because they wouldn't have
22 necessarily let me know when they moved his housing around or
23 when they do the evaluation.

24 Q. Would you have known back then that his medications
25 changed after he was transferred back to Lexington?

1 A. I would not have.

2 Q. Would you have known the details of his housing
3 status and what he was and wasn't allowed into his room at
4 Lexington?

5 A. No.

6 MS. GOLDBERG: Nothing further, Your Honor.

7 THE COURT: Yes, sir. Anything further.

8 REDIRECT EXAMINATION

9 BY MR. WHITMIRE:

10 Q. Very quick redirect, sir. You just testified,
11 Mr. Madsen, that Dr. Hanson's competency report and criminal
12 responsibility report was presented to Judge Young?

13 A. I believe so. I definitely know the competency was.
14 I was going to say, I don't know generally if those are made
15 part of the record by the judge. I don't recall if the judge
16 did it in this case or not.

17 MR. WHITMIRE: At this time, Your Honor, the State
18 moves in exhibits 1 and 2.

19 MS. GOLDBERG: No objection.

20 THE COURT: Entered without objection.

21 MR. WHITMIRE: Thank you, Mr. Madsen.

22 THE COURT: All right. Thank you, Mr. Madsen. You
23 may step down.

24 MR. WHITMIRE: The State rests and we would just ask
25 that Mr. Madsen be released from his subpoena from this

1 case.

2 THE COURT: Any objection?

3 MS. GOLDBERG: No, Your Honor.

4 THE COURT: All right, Mr. Madsen, you're free to
5 leave. All right. I'll be glad to hear from you guys.
6 Anything else you want to add?

7 MS. GOLDBERG: Your Honor, just to summarize for the
8 record, the issue here is as Dr. Martin testified he is
9 unable as any doctor would be unable to render any
10 particular opinion as to whether Mr. Eargle is competent
11 or not competent the day of. The point is the argument
12 is that a Blair Hearing should have been done that day.
13 We do have a prior -- We have a, as Dr. Martin put it,
14 extensive mental health history that goes way back
15 through his adolescence. There is depressive disorder
16 which comes and goes I believe as Dr. Martin has
17 testified. Based on Mr. Eargle's reports he was under
18 circumstances the day of the plea where his medications
19 were not working. He was not sleeping regularly. He
20 was housed in a situation with no clothes, by himself in
21 a cell, no paperwork, no discovery, no access to
22 telephones, no access to even as little as a toothbrush.
23 Based on all of that there is a reasonable probability
24 that his mental health status and his competency may have
25 been questionable on the day of the plea as Mr. Eargle

1 reports.

2 As Your Honor knows, it's a due process violation
3 for an incompetent defendant to plead guilty or waive his
4 rights under the Constitution. Your Honor, we would
5 submit that the appropriate action to have been done here
6 would be to have had a Blair Hearing, to have an
7 evaluation, not a formal evaluation, but a brief meeting
8 with the doctor immediately before the plea to determine
9 his state of mind on that particular day. Competency is
10 not the type of thing that remains. In any particular
11 case it comes and goes when it is caused by mental health
12 issues.

13 I'll cite, for the record I'll cite to Matthews v.
14 State 358 S.C. 456, which is a very brief case, but in
15 that particular case, it's not exactly on point because
16 that individual had intellectual disabilities where I
17 believe the court ruled there should have been a Blair
18 Hearing, but I do think that individual's state of mind
19 would have been a little bit more static than what we
20 have here. Mr. Eargle's state of mind based on the
21 testimony would have been caused by the medications that
22 weren't working, the lack of sleep, the housing status,
23 all of that resulting in his inability to fully
24 understand and cooperate with his attorney on the day of
25 the plea so we would ask for an order that the case be

1 remanded and that prior to whatever plea or trial he has
2 there be a Blair Hearing, if necessary.

3 THE COURT: All right. Thank you.

4 MR. WHITMIRE: May it please the Court, briefly.
5 The State's argument for dismissal of this application is
6 in two part. First, evaluating the reasonableness of
7 Mr. Madsen's representation at this moment in time in not
8 pursuing further evaluations, if you look at the
9 circumstances of this case, what is known to him, we have
10 Mr. Madsen's very credible testimony and his observations
11 nearly a year of Mr. Eargle and his testimony I think is
12 most telling is the whole reason that he had Mr. Eargle
13 evaluated in the first place was just out of an abundance
14 of caution. There is no signs of mental deficits.
15 Mr. Eargle's problems, historical problems have been
16 behavioral, have been related to depression. Notably
17 there have been no findings that he lacks cognitive
18 function or suffers from psychosis.

19 Now going to the second prong of Strickland,
20 prejudice, I think it's most telling that applicant fails
21 to make a prima facie case of showing that they have met
22 their burden where the bulk of Dr. Martin's findings rely
23 on Mr. Eargle's post hoc testimony or that occurred well
24 after the representation. We don't know if Mr. Eargle
25 had a chance to review the plea transcript. Typically

1 plea transcripts are produced relatively soon after the
2 application is filed and sent to opposing counsel. We
3 don't know whether his malingering impacted some of his
4 disclosures at that moment. He has been diagnosed by
5 multiple, as you will see in the record, Your Honor, when
6 you get all the mental health records of antisocial
7 personality disorder.

8 What's most telling is today Mr. Eargle testified
9 that he had very little memory, very little recollection
10 of the specifics of his prior cases, his prior pleas,
11 trials, prior sentencing dates, very hazy yet very oddly
12 he apparently was a great historian for Dr. Martin which
13 goes into the antisocial personality diagnosis. That has
14 been consistent throughout his mental health records.

15 If Your Honor has any questions, I will be happy to
16 answer. If not, I'll just rest my case.

17 THE COURT: What's your position regarding her
18 underlining theory that a Blair Hearing should have
19 been heard that day regardless?

20 MR. WHITMIRE: It goes to the reasonableness of
21 counsel's conduct. He made the decision to stipulate to
22 competency. However, if you look at Judge Young's plea
23 colloquy, in fact, it is in many ways a Blair Hearing and
24 a lot of the questions are directed at have you been
25 compliant with medication? Mr. Madsen, is he able to do

1 this here today? Do you have any reservations? I think
2 that's the very end of page 13 or 14 of the plea
3 colloquy.

4 In many ways it's kind of a hybrid. However, that
5 gets to the reasonableness of counsel's conduct. He has
6 no affirmative duty to request a Blair Hearing any time
7 he has a client evaluated. He made that choice. But the
8 case is, at least what the State posits, is he made a
9 very reasonable choice with the information before him,
10 both eval reports, the criminal responsibility. Notably
11 Mr. Eargle was not found to be guilty but mentally ill.
12 He was able to conform his conduct requirements of law
13 which in many ways is the lowest rung of a beneficial
14 positive finding that can help a criminal defendant.

15 Looking at the case as a whole, Mr. Eargle did not
16 represent, did not tell his attorney. Going back, if
17 any of these problems are, in fact, real, they did exist,
18 there is a duty on Mr. Eargle under Strickland, it's a
19 two way street, for him to share his medical history or
20 his medical symptoms. My head hurts. I don't feel
21 good. I haven't slept well. Notably Mr. Madsen was
22 very silent on whether Mr. Eargle ever shared such
23 thoughts with him contrary to Mr. Madsen's testimony that
24 Mr. Eargle was very competent, lucid, good cognitive
25 function, watchful thought process throughout the course

1 of representation.

2 THE COURT: All right. Thank you.

3 MS. GOLDBERG: If I could respond briefly?

4 THE COURT: Yes, ma'am.

5 MS. GOLDBERG: Your Honor, the Attorney General
6 mentioned some things about how he wasn't found guilty
7 but mentally ill and such. None of that is the issue
8 here. The issue is whether Mr. Eargle was or was not
9 able to make a voluntary and knowing decision to enter a
10 guilty plea on that particular day. The only competency
11 evaluation was done over a month prior under completely
12 different circumstances where he was housed somewhere
13 differently on different medication. He's correct in
14 saying that Dr. Martin was not able to testify
15 definitively today as to whether Mr. Eargle was competent
16 or not on that day but that's because no one could render
17 that opinion today and that's the reason a Blair Hearing
18 should have been done. That's the only way to determine
19 whether an individual is competent on the day they go to
20 court or not.

21 THE COURT: All right. Thank you. I'll take this
22 one under advisement and get back with you all. Can I
23 get a copy of the exhibits?

24 MS. GOLDBERG: Yes, ma'am.

25 THE COURT: I'll get a chance to look at the

1 reports. All right. Thank you.

2 MS. GOLDBERG: Thank you, Your Honor.

3 MR. WHITMIRE: Thank you, Your Honor.

4 THE COURT: All right. Can I see you all for one
5 second?

6 END OF PROCEEDINGS.

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Court Reporter for the Eleventh Judicial Circuit
7 in and for the State of South Carolina, do hereby certify that
8 I reported the proceedings in the before captioned case in the
9 Court of Common Pleas in and for the State of South Carolina
10 on the 15th day of October, 2014.

11 I FURTHER CERTIFY that the forgoing 69 pages
12 constitute a true and accurate transcript of said proceedings.

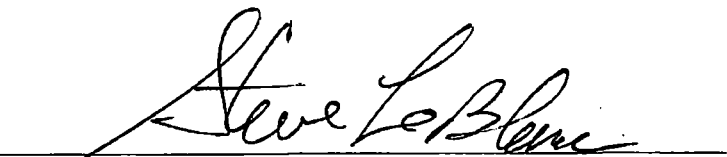
13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 8th day of August, 2015.

17

18

19


20 Steven E. LeBlanc, Sr., R.P.R.
21 Eleventh Circuit Court Reporter
22 State of South Carolina.

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CREDENTIALS

- American Board of Psychiatry and Neurology, Diplomate, Forensic Psychiatry, Board Certified.
- Clinical Examiner, Association for the Treatment of Sexual Abusers (ATSA).
- National Board of Addiction Examiners, Doctoral Addictions Counselor.
- American Board of Forensic Medicine, Diplomate, Board Certified.
- American Board of Forensic Examiners, Diplomate, Psychiatry, Board Certified, Fellow of the College.
- American Board of Psychiatry and Neurology, Diplomate, General Psychiatry, Board Certified.
- Medical Licensure: South Carolina, Georgia, Texas, and Maryland.

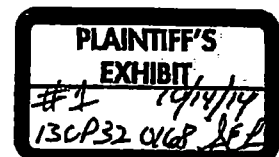
EDUCATION

- Fellowship: Forensic Psychiatry, Palmetto Health Alliance, and the University of South Carolina School of Medicine, Columbia, SC, 1999-2000.
- Residency: Psychiatry, Wilford Hall Medical Center, San Antonio, TX, 1988-92.
- Medical School: Uniformed Services University of the Health Sciences School of Medicine, Bethesda, MD; 1984-88; Doctor of Medicine.
- Graduate: Hood College, Frederick, MD; 1980-84; Masters of Science, Biomedicine.
- Undergraduate: University of Maryland, College Park, MD; 1974-79; Bachelor of Science, Clinical Psychology.

PROFESSIONAL EXPERIENCE

- Martin Psychiatric Services, PC, Columbia, SC, private practice, individual and group psychotherapy, medication management, independent medical evaluations in the General and Forensic (criminal and civil) Psychiatric assessment and treatment of juveniles and adults, sexual and criminal offenders, and child custody evaluations, 2000-present.
- Courtesy Staff Psychiatrist, Palmetto Health Baptist/Richland Hospitals, Columbia, SC, 2002-present.
- New Hope Carolinas Treatment Centers, Rock Hill, SC, Medical and Psychiatric Director, Clinical Nursing Supervisor, and Professional Staff Instructor, for a total of 135 beds in a multidisciplinary treatment High Maintenance Residential Treatment Facility for adolescent males and females with serious mental illnesses, developmental delays, sex offending and other violent behaviors, 2001-2006.
- Forensic Psychiatrist, SC Department of Juvenile Justice, Columbia, SC, psychiatric assessment, medication management and Court Ordered evaluations, University of South Carolina School of Medicine, 2000-2001.
- Medical Director, Southbridge Center, Columbia, SC, assessment, diagnosis, and treatment of forensic and sexually violent juvenile patients in a residential facility, 2000-2001.
- Senior Psychiatrist, Behavioral Disorders Treatment Program, SC Department of Mental Health, Columbia, SC, Clinician and Case Manager Supervisor in charge of assessment, diagnosis, and treatment of Sexually Violent Predators, forensic evaluations and consultations, 1999-2001.

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 Curriculum Vitae



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- Senior Psychiatrist, Columbia Area Mental Health Center, Columbia, SC, outpatient diagnostic and medication practice for indigent psychiatric patients, supervised a multi-disciplinary treatment team, 2000-2001.
- Clinical Instructor, Department of Neuropsychiatry, University of South Carolina School of Medicine, Columbia, SC, 1999-2000.
- Psychiatric Consultant, The Ethos Foundation, College Park, MD, providing initial psychiatric evaluation, medication assessment and maintenance and therapeutic treatment recommendations to federal offenders, 1998-1999.
- Clinical Director, Tri-Service Addiction Recovery Center, Inpatient, Partial hospitalization and Outpatient Services, Malcolm Grow Medical Center, Camp Springs, MD, fifteen-twenty five patient capacity, supervising psychiatric consultation, treatment team management, intense outpatient group facilitation and medication management and professional staff, psychiatric resident, physician assistant and medical student instruction, 1996-1999.
- Chief, Tri-SARC Consultation-Liaison Service, Malcolm Grow Medical Center, Camp Springs, MD, 200-inpatient medical, surgical, and intensive care service, supervising psychiatric/family practice residents, physician-assistant and medical students, 1996-98.
- Medical Services Security Clearance Officer, Malcolm Grow Medical Center, Camp Springs, MD, 1996-1999.
- Forensic Psychiatrist, Malcolm Grow Medical Center, Camp Springs, MD, Consultant to the Legal Services Agency, 1992-1999.
- Staff Attending Psychiatrist, Malcolm Grow Medical Center, Camp Springs, MD, responsible for the evaluation, treatment, and management of psychiatric inpatients on a 25-bed ward; in addition to psychiatric resident, medical student and psychology intern teaching and supervision, 1992-96.
- Chief Resident in Psychiatry, Wilford Hall Medical Center, San Antonio, TX, 1992.
- Psychiatric Technician with administrative, teaching and research responsibilities, Research Assistant, Chestnut Lodge Hospital, Rockville, MD, 1977-80.
- Health Lodge Director, Boy Scouts of America, National Capital Area Council, 1976-79.

COMMITTEE ACTIVITIES

- Medical Services Team Chairman, New Hope Treatment Centers, Rock Hill, SC, 2005-2006.
- Performance Improvement Committee, New Hope Treatment Centers, Rock Hill, SC, 2005-2006.
- Physician's Advisory Committee, New Hope Treatment Centers, Charleston, SC, 2002-2006.
- Program Implementation Team, Justice Resource Institute, Southbridge Center, Columbia, SC, 2001.
- Senior Staff Committee, Behavioral Disorders Treatment Program, South Carolina Department of Mental Health, Columbia, SC, 2000-2001.
- Environment of Care Committee, Behavioral Disorders Treatment Program, South Carolina Department of Mental Health, Columbia, SC, 2000-2001.
- Credentials Committee, Psychiatry Representative, Malcolm Grow Medical Center, Camp Springs, MD, 1997-1999.
- Medical Ethics Committee, Psychiatry Representative, Malcolm Grow Medical Center, Camp Springs, MD, 1995-1999.
- Drug Usage Evaluation Committee, Chairman, Psychiatry Representative, Malcolm Grow Medical Center, Camp Springs, MD, 1993-1999.
- Pharmacy and Therapeutics Committee, Psychiatry Representative, Malcolm Grow Medical Center, Camp Springs, MD, 1993-1999.
- Health Records Review Committee, Psychiatry Representative, Malcolm Grow Medical Center, Camp Springs, MD, 1993-1999.
- Pharmaceutical Representative Coordinator, Malcolm Grow Medical Center, Camp Springs, MD, 1993-1999.
- Test Utilization Committee, Psychiatry Representative, Malcolm Grow Medical Center, Camp Springs, MD, 1998.
- TRI-SARC Partial Hospitalization Service Integration Task Force, Malcolm Grow Medical Center, Camp Springs, MD, 1996-1997.

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- Psychiatry Grand Rounds/Continuing Medical Education Coordinator, Department of Psychiatry, Malcolm Grow Medical Center, Camp Springs, MD, 1993-1997.
- Multi-Disciplinary Psychiatric Treatment Team Working Group, Chairman, Department of Psychiatry, Malcolm Grow Medical Center, Camp Springs, MD, 1995.
- American Medical Association, Medical Student Branch, District of Columbia, 1984-1987.

PROFESSIONAL ORGANIZATIONS

- Association for the Treatment of Sexual Abusers, Clinical Member, 2000-present.
- American Academy of Psychiatry and the Law, 1995-present.
- American College of Forensic Psychiatry, 1995-present.
- American Board of Forensic Examiners, 1995-2007.
- American Psychiatric Association, 1988-present.
- American Medical Association, 1984-2008.
- Society of Uniformed Services Psychiatrists, American Psychiatric Association, 1994-1999.
- National Board of Addiction Examiners, 1997-1999.
- American Academy of Psychoanalysis, 1992-1998.
- Washington Psychiatric Society, American Psychiatric Association, 1992-1994.
- Texas Society for Psychiatric Physicians, 1988-1992.
- Bexar County, Texas Psychiatric Society, 1988-1992.

PUBLICATIONS/PRESENTATIONS

- Martin, Thomas V., McKee, Geoffrey, and Holland, Lori A., Juvenile Sex Offenses: Predicting Multiple Victims, American Academy of Psychiatry and the Law meeting (2001), Boston presentation.
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RESEARCH COLLABORATION

- Chestnut Lodge Follow-Up Study, Clinical Research Assistant, Thomas H. McGlashan, Clinical Director, Chestnut Lodge Hospital, Rockville, MD, 1997-1980.
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**Brief Forensic
Psychiatric Summary**

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EVALUATION: April 23, 2014
REPORT: May 31, 2014
EXAMINER: Thomas V. Martin, M.D.

INTRODUCTION:

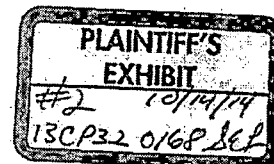
Matthew J. Eargle is a 36 year old, never married, Caucasian male with a long documented history of major depressive and other mood disorder illness, repeated suicidal attempts, substance dependence, and personality disorder, and is treated with psychotropic medication. On or about May 21, 2012, Mr. Eargle was charged in Lexington County with multiple counts of "Attempted Murder, Armed Robbery, Pointing and Presenting a Firearm, Possession of a Weapon in the Commission of a Violent Crime, and Kidnapping," and was admitted to the Lexington County Detention Center (LCDC) awaiting judicial action. On October 3, 2012, Mr. Eargle pled guilty in the Lexington County General Sessions Court to "Kidnapping" and was sentenced to 25 years at the SC Department of Corrections (SCDC). Mr. Eargle is petitioning the Lexington County Court of General Sessions for Post-Conviction Relief (PCR) due to ineffective assistance of counsel during his 2012 plea hearing. Mr. Eargle was evaluated at the Kirkland Correctional Institution. He was considered a good historian.

REASON FOR REFERRAL:

This Forensic Psychiatric Evaluation was requested by Mr. Eargle's attorney, Ms. Kristy Goldberg, Esq. in order to determine whether Mr. Eargle suffered from a psychiatric condition that should have been further recognized by the Court as a part of his criminal proceeding on October 3, 2012.

EARGLE, Matthew J.
SSN:

SENSITIVE MEDICAL MATERIAL



MARTIN PSYCHIATRIC SERVICES, PC**STATEMENT OF CONFIDENTIALITY:**

Mr. Eargle vocalized an understanding of the purpose for this consultation; and that its contents, findings, and recommendations would be submitted to his attorney, Ms. Kristy Goldberg, Esq. No part of the content, opinions or conclusions derived would be discussed with unauthorized parties.

SOURCES OF INFORMATION:

Sources of information were gathered from medical and mental health records at the LCDC, SCDC, Kirkland Correctional Institution, Patrick B. Harris Psychiatric Hospital, Gilliam Psychiatric Hospital, and the Geo Care facility. Legal documents included records from the Lexington County Sheriff's Office and the Office of the Solicitor, Eighth Judicial District. A forensic mental health evaluation by the SC Department of Mental Health (SCDMH) on August 29, 2012 and the Plea Transcript on October 3, 2012 were also reviewed. Mr. Eargle was individually examined at the Kirkland Correctional Institution for three hours on April 23, 2014.

PERTINENT DATA:

Mr. Eargle has suffered from significant mental illness dating back before his teenage years. His myriad of major mood symptoms, behavioral problems, relationship dysfunction, and self-destructive gestures have been well documented by the SC Department of Mental Health (SCDMH), the LCDC Mental Health clinic, and the SCDC Mental Health System. He has required psychiatric hospitalizations at various facilities to include the Patrick B. Harris hospital in Anderson County, the Geo Care facility in Columbia, and at the Gilliam Hospital at Kirkland Correctional Institution. Mr. Eargle gave no indication of major medical illness or history of surgical treatment.

In August 2012, Dr. Wadman at Geo Care diagnosed Mr. Eargle with "Mood Disorder Not Otherwise Specified (NOS)," in addition to polysubstance abuse, and with personality disorders. As part of an SCDMH competency evaluation, Dr. Hansen in August 2012 diagnosed Mr. Eargle with "Depressive Disorder NOS, Cocaine Dependence, and Antisocial/Borderline Personality Disorder." Dr. Hansen also felt that Mr. Eargle was competent to stand trial, was criminally responsible, and suffered no diminished mental capacity on or about the time of the alleged crimes.

Additional data were gathered from Mr. Eargle by this Examiner. Mr. Eargle was adopted at age six years through the SC Department of Social Services. He recalled since his earliest memories that he suffered emotional stress, anxiety and depression. In an effort to relieve such stress, Mr. Eargle began self-mutilation practices at age nine years. He would cut both upper and lower extremities, has swallowed bare razor blades on multiple occasions (twice at LCDC before his plea hearing) and becomes reclusive that avoids his seeking help.

Mr. Eargle's chaotic emotional lifestyle interfered with his ability to develop healthier relationship and prosocial skills. His personal attachments were hectic, impulsive, and lacked empathic communication. He repeatedly misread social cues, was oftentimes frustrated and unable to coping with disappointment, criticism, and perceived rejection.

MARTIN PSYCHIATRIC SERVICES, PC

In response to such frustration, Mr. Eargle would become outraged and self-destructive. Medical efforts to mediate his behavioral upheaval have included many various regimens of psychotropic medication. These medications were often "numbing and sedating," precluding his ability to function during his activities of daily living, although allowing him to appear calm and well-mannered. Still, unable to integrate into a healthier society, Mr. Eargle's behavior led him to criminal activity, which is represented by his criminal record.

With this Examiner, Mr. Eargle recited multiple neurovegetative symptoms of depression, combined with feelings of unsurmountable anxiety and tension. He described recurrent disturbances of sleep, loss of interest, feelings of guilt, lack of energy and concentration, and fueled by melancholy, helplessness, and hopelessness. His record clearly cites multiple serious self-destructive gestures and deliberate suicide attempts. Mr. Eargle meets the diagnostic criteria for *Depressive Disorder NOS with anxiety*.

Mr. Eargle made efforts to self-medicate his chaotic emotional symptoms and sought solace from illicit substances. These included primarily cocaine and alcohol. Mr. Eargle meets the diagnostic criteria for *Cocaine and Alcohol Abuse, by history*. He has no record of substance abuse since his detention or SCDC incarceration that began in May 2012.

Mr. Eargle's character development also deserves attention as it pertains to his major mood and substance use conditions. Mr. Eargle's chaotic relationship development, as well as his impulsive and rageful behaviors have been well documented in his record. His inability to modulate such emotions, misperceptions, and mood symptoms have also been well recorded. Mr. Eargle's inability to follow established social rules and settle into healthier manners of coping with others, i.e. managing interpersonal conflict, has been abysmal. He is oftentimes suspicious of other's motives, even when these motives and efforts are benevolent. His ongoing poor relationship and alliance styles have kept him from understanding other's feelings on an empathic level. He will at times have fleeting periods of disassociation that border on psychotic, a brief break with reality. Mr. Eargle, however, does not believe that these fleeting thought disordered moments had any bearing in his behaviors during the periods of his charged crimes. As a result, Mr. Eargle's presentation may be reckless and threatening, both to himself or others. Mr. Eargle meets the diagnostic criteria for *Personality Disorder NOS (borderline and antisocial features)*.

Due to Mr. Eargle's lack of consistency, and probably compliance with mental health treatment recommendations, it has historically been difficult to manage his psychiatric condition. There have been trials of psychotropic medications that have proven to be overly sedative, but were preventing erratic behavior and self-destructiveness. At the Kirkland Correctional Institution, the site of this evaluation, Mr. Eargle felt emotionally stable on the psychotropic, Neurontin®. He was active in the mental health support groups that address his emotional instability, self-destructive behaviors, and dysfunctional relationship development skills.

MARTIN PSYCHIATRIC SERVICES, PC**MENTAL STATUS EXAMINATION:**

On the date of this consultation, Mr. Eargle was alert and oriented to person, place, time, and situation. He was pleasant, polite, genuine, and interactive. He established an appropriate interpersonal rapport with the Examiner. Mr. Eargle's speech was of normal rate, soft tone, and normal rhythm. He described his mood as "good," and he displayed a full range of emotional expression. His thoughts were linear, and he could focus on the material examined. There was no active evidence of hallucinations or delusions. Mr. Eargle appeared to have an average level of intellectual functioning. A basic cognitive examination revealed intact memory surrounding the history examined with no apparent general impairments. Mr. Eargle gave no evidence of current suicidal or homicidal ideations, plans, or intent.

DIAGNOSTIC IMPRESSIONS:**DSM-V**

- Depressive Disorder NOS with anxiety.
- Cocaine and Alcohol Abuse, by history.
- Personality Disorder NOS (borderline and antisocial features).
- No Major Medical Illness.

DEFENDANT'S ACCOUNT OF THE PLEA HEARING (October 3, 2012):

During this Examiner's evaluation, Mr. Eargle gave the following account of the time preceding and during his plea hearing. After his arrest in May 2012, Mr. Eargle was admitted to the LCDC. There, he described escalating "stress and anger" and mounting frustration with his defense attorney. Mr. Eargle felt that his attorney was not giving him all the information surrounding his case. He felt that his attorney was promising that no evidence could convict him and he would be found "not guilty." Mr. Eargle also felt that his attorney told him he may need to "sit in jail a couple of years" before his case could be cleared-up.

Confinement in the detention center led to increased anxiety, panic, and impulsive acting-out behaviors. By Mr. Eargle's description, his character organization decompensated, he became increasingly depressed and impulsive. He was treated with several psychotropic medications including Ativan®, Benadryl®, Desyrel®, and Lamictal®. Mr. Eargle became more reckless in his behavior and further regressed. Mr. Eargle made several self-destructive gestures while at the LCDC. Mr. Eargle's erratic and sometimes destructive behaviors led to his isolation "in the tank" for his own safety and protection of others. Consistent with his personality disorder, Mr. Eargle's isolation only escalated his mood and panic symptoms.

In August 2012 and following his mental decompensation, Mr. Eargle was admitted for assessment and psychiatric treatment at the Geo Care facility. Mr. Eargle felt "stable" at Geo Care and during this several week admission, he was evaluated by Dr. Hansen from the SCDMH for competency and criminal responsibility.

Mr. Eargle described significant adverse effects from psychotropic medications. According to Mr. Eargle, he self-discontinued the Lamictal® due to "restless leg

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syndrome." His remaining medications were sedative-hypnotic in nature. "Days before the plea, I felt comatose." Mr. Eargle stated that he was not told by his defense attorney of a particular plea date. He was reportedly unaware of the hearing until moments before leaving the LCDC for Court. Mr. Eargle felt dismayed as he had not prepared for the hearing, and did not contact character witnesses on his behalf. Mr. Eargle met with mental health staff just prior to leaving LCDC and he requested that his psychiatrist be informed that the Ativan® and Benadryl® were ineffective and he could not sleep at night. He also disclosed that the Lamictal® was causing adverse medication reactions. According to Mr. Eargle, his sleep cycle was so disrupted that he slept on-and-off during different parts of the day. The mental health staff person documented that Mr. Eargle was essentially calm just prior to leaving for the Courthouse.

At the Courthouse, Mr. Eargle stated he felt "fuzzy" about what his attorney was informing him regarding the proceedings. Apparently, his attorney spoke of an "open plea," which Mr. Eargle claimed he did not understand. At the Courthouse, Mr. Eargle learned that his attorney had spoken with the Solicitor and all charges were going to be "dropped" except for "kidnapping," if he pled guilty, facing a maximum of "15 years."

Mr. Eargle expressed further "confusion" at the Courthouse since he did not see the alleged victim of "kidnapping." Instead, Mr. Eargle recalled seeing the two alleged "attempted murder" victims speaking with the Judge. "I remember asking my attorney why Rumph was there and not Vella, if I'm pleading to kidnapping." "Things were going too fast, I just needed to get out of LCDC." "I couldn't get focused," and reportedly made efforts to remain calm and not act-out. Overall, Mr. Eargle summed his mental status in the Courtroom as "overwhelmed." "All I wanted to do was get out of there." He made efforts to keep his composure, acknowledged and agreed with his attorney and short-answered the Judge to complete the plea process. "I froze and asked for mercy." Mr. Eargle was sentenced to 25 years instead of a maximum of 30 years.

Upon his return to the LCDC, what transpired in the Courtroom hearing began to dawn on him. "I flipped out." He required restraint and sedatives to regain behavioral and rage control. These LCDC events upon his return are documented in Mr. Eargle's medical record.

CONCLUSIONS:

Mr. Eargle is currently being treated with an effective psychotropic medication regimen for his mental illness and disruption of personality and behavioral dyscontrol. He appears to be tolerating the medication well and suffers from no untoward side effects.

There is a wealth of mental health and medical documentation that supports Mr. Eargle's history of major mental illness, substance abuse, and personality disorder. His condition has been very difficult to manage from a psychiatric perspective and has required multiple trials of psychotropic medication and several psychiatric hospitalizations. At the LCDC, Mr. Eargle's treatment included a form of protective isolation. Mr. Eargle decompensated, swallowed razor blades necessitating hospitalization, and maintained only marginal skills to assist his attorney in formulating a defense.

CRIMINAL RESPONSIBILITY / CAPACITY TO CONFORM EVALUATION
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH (SCDMH)

DATE OF EVALUATION: August 29, 2012

PRESIDING EXAMINER: Shannon L. Hansen, M. D.
Forensic Psychiatry Fellow
University of South Carolina School of Medicine

SECOND EXAMINER: Tia Thomas, LCSW

DIAGNOSES: AXIS I: Depression Not Otherwise Specified
 Cocaine Dependence, in a controlled environment
 AXIS II: Antisocial Personality Disorder
 Borderline Personality Disorder
 AXIS III: Status post right ankle fracture

OPINION REGARDING CRIMINAL RESPONSIBILITY: Responsible.

OPINION REGARDING CAPACITY TO CONFORM: Capable of conforming.

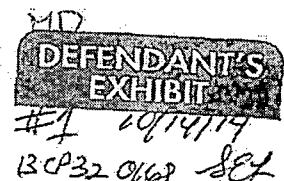
DISPOSITION: Ms. Eargle was returned to Geo-Care Columbia Regional Care Center in the custody of South Carolina Department of Mental Health transport officers.

IDENTIFYING INFORMATION: Mr. Matthew Eargle is a 34 year-old, Caucasian male who was seen at the Forensic Evaluation Service pursuant to a court order from the Lexington County Court of General Sessions. This court order requests an evaluation of his criminal responsibility and capacity to conform his behavior to the requirements of the law on or about July 18, 2011 and May 4, 2012 pursuant to S.C. Code Ann. § 17-44-10 (1976). He is currently charged with Grand Larceny, Armed Robbery, Attempted Murder, Kidnapping, and Unlawful Possession of a Weapon. According to the court order, the evaluation was requested for the following reasons: "The defendant has a history of mental health treatment, and his recent suicide attempt."

STATEMENT OF NONCONFIDENTIALITY: Prior to participating in this evaluation, Mr. Eargle was advised of the limitations of confidentiality. He was advised that the examiners were performing a court ordered evaluation. He was informed that

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the examiners work for the Department of Mental Health and are not paid by his attorney or by the solicitor. He was informed that a report would be prepared after the evaluation which would be distributed to his attorney. He was informed the report may also go to the solicitor and the judge. Finally, he was informed that the examiners could be called to testify at his trial. He appeared to understand this information and voluntarily agreed to participate in the evaluation.

SOURCES OF INFORMATION:

1. Lexington County Court Order requesting the evaluation, dated July 31, 2012 and received August 6, 2011.
2. Lexington County Arrest Warrant J-827480 for Grand Larceny, Greater than \$5,000.00.
3. Lexington County Sheriff's Office Case File Summary (case number 11-025565) by Officer J.B. Anderson.
4. Lexington County Sheriff's department Incident Report by Officer M. McCaw dated July 18, 2011.
5. Lexington County Sheriff's department Reporting Officer Narrative by Officer M. McCaw dated July 18, 2011.
6. Lexington County Sheriff's department Supplemental Report by Officer J.B. Anderson dated July 23, 2011.
7. Lexington County Sheriff's department Case Supplemental Report by Officer J.B. Anderson dated November 30, 2011.
8. Lexington County Sheriff's department Forensic Tire Examination documents for case 11-025565.
9. Lexington County Arrest Warrant M-302996 for Grand Larceny Greater than \$10,000.00.
10. Lexington County Sheriff's department Incident Report by Officer J.B. Anderson dated July 19, 2011.
11. Lexington County Sheriff's department Reporting Officer Narrative by Officer G.K. Triano dated July 19, 2011.
12. Lexington County Arrest Warrant M-304368 for Attempted Murder.
13. Lexington County Arrest Warrant M-304369 for Attempted Murder.
14. Lexington County Arrest Warrant M-304370 for Pointing/Presenting Firearms at a person.
15. Lexington County Arrest Warrant M-304371 for Pointing/Presenting Firearms at a person.
16. Lexington County Arrest Warrant M-304372 for Possession of a Weapon During a Violent Crime.
17. National Crime Information Center (NCIC) record for Matthew Eargle.
18. Lexington County Arrest Warrant M-304373 for Possession of a Weapon During a Violent Crime

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19. Lexington County Sheriff's department Incident Report by Officer J.W. Mishoe dated May 22, 2012.
20. Lexington County Sheriff's department Voluntary Statement by Chris Rumph dated May 12, 2012.
21. Lexington County Sheriff's department Incident Detail by Officer J.W. Mishoe.
22. Lexington County Arrest Warrant I-620184 for Armed Robbery.
23. Lexington County Arrest Warrant I-620185 for Kidnapping.
24. Lexington County Arrest Warrant I-620186 for Possession of a Stolen Pistol .
25. Town of Pine Ridge Incident report by reporting Officer Chief Jimmy Anderson dated May 14, 2012.
26. Pine Ridge Police Department Voluntary Statement by Pat Vella dated May 20, 2012.
27. Three year driving record for the defendant dated May 16, 2012.
28. Records from Geo-Care Columbia Regional Care Center dated August 14, 2012, through August 18, 2012.
29. Geo-Care Columbia Regional Care Center Social Work assessment of the defendant dated August 14, 2012.
30. Patrick B. Harris Psychiatric Hospital Records for the defendant dated July 21, 1998.
31. Southeast X-Ray Inc. medical records for the defendant dated August 9, 2012 and August 14, 2012 to August 16, 2012.
32. Lexington County Department of Corrections Medical Progress notes for the defendant dated August 7, 2012 through August 12, 2012.
33. Lexington County Jail Mental Health Follow-up Contact Sheet dated August 6, 2012 and August 8, 2012.
34. Lexington County Jail Mental Health Follow-up Contact Sheet dated July 12, 2012 and July 23, 2012.
35. Lexington County Jail Mental Health Follow-up Contact Sheet dated July 11, 2012 and July 14, 2012.
36. Lexington County Jail Physician's Orders and Progress Notes dated June 6, 2012 to August 14, 2012.
37. Waccamaw Mental Health Center records for the defendant dated October 16, 2010 to October 18, 2010.
38. A two hour and fifteen minute clinical forensic interview on August 29, 2012.

CLINICAL HISTORY: Mr. Matthew Eargle is a 34 year old, Caucasian male who endorsed a recent history of depressed mood. He stated, "I'm a little bit depressed." He added that at times he will cut himself in order to relieve his boredom and distressed feelings. He cited cutting as a means to distract himself and stated that it helped distract him from feelings of depression. Specifically, he stated that he is depressed because he is in jail. He endorsed that he prefers Geo-Care Hospital to the Lexington Detention Center. He specified that his recent placement in the hospital has lifted his spirits somewhat. He explained "I've cut twice at Lexington (Detention Center), they put

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me in the tank (a specialized type of jail cell for high-risk inmates)...I live in the tank, that's where the Major makes me live [sic]. I tell him that every time I get a razor I'm going to cut...nothing better to do." He expressed remorse over, "...all the stuff I messed up" and stated that he experiences significant feelings of guilt. He endorsed poor sleep; specifically he said he rarely sleeps though the night. He stated that he often wakes up "...at two A.M." and cannot fall back to sleep. He stated that he has suffered from insomnia, feelings of guilt and a sad mood for many years. He stated that he has felt depressed at various times in his life, beginning in his teen years. He stated that he has primarily received treatment for his depression as an inmate and not in the community. He endorsed that he takes the antidepressant medication mirtazapine (Remeron[®]), which was prescribed to him by Dr. Peggy Wadman at Geo-Care Hospital. He stated that he believes it helps alleviate his feelings of sadness. He added that were he not incarcerated; he might experience a better mood and a more hopeful outlook. Specifically he stated that if he were free, he would enjoy riding motorcycles. He endorsed poor concentration, and cited the fact that he finds it hard to concentrate while reading as an example. He denied recent changes in weight and he endorsed an adequate appetite. He denied feelings of worthlessness. He endorsed suicidal thoughts as recently as two weeks prior to the interview, when he was in the Lexington County Detention Center. He stated that he had not had suicidal thoughts since his transfer to Geo-Care. He elaborated that he tends to experience suicidal thoughts only when he becomes upset, frustrated, or bored.

Mr. Eargle related a long history of unstable relationships which began in his teens. Specifically, he stated that he has experienced friendships in the past would abruptly end due to disputes. He endorsed a history of unstable self-image and a history of self-injurious behaviors, specifically cutting his arms, legs or thighs when he becomes upset. He stated that he will often cut himself in an attempt to alleviate boredom and frustration. He also endorsed a history of impulsive behaviors in the past, either when upset or using powder cocaine. He endorsed making suicidal gestures and threats when he feels frustrated. Mr. Eargle stated that he often believes he must monitor other people around him and judge their emotions in order to regulate his own. He endorsed a long history of feeling uneasy around others and stated that his mood vacillates from moment to moment.

PAST PSYCHIATRIC HISTORY: Mr. Eargle stated that he went to a community mental health clinic briefly in the past, but he could not recall the name of that facility. He stated, "That's because I've been locked up most of my life." He stated he was treated as a young child once at Patrick B. Harris Psychiatric Hospital in Anderson, S.C., and stated that he could not remember the reason for that hospitalization. He recalled a long list of incarcerations beginning in his teen years. Specifically, he stated: "I've been out of the system a total of two years in my adult life." He elaborated that he had been committed to the Department of Juvenile Justice for almost five years as a teen, and was released at age 19. He stated that he had been treated at Gilliam

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Psychiatric Hospital, within the South Carolina Department of Corrections, "A lot of times for cutting [sic]".

ALCOHOL AND SUBSTANCE USE HISTORY: Mr. Eargle stated that he has used powder cocaine since he was approximately 19 years old. He stated that he would use it often if he were not incarcerated. He endorsed a history of using powder cocaine about three or four days a week for many years. He relayed a gradual need to increase his use to obtain the same high. He stated that when he has been without cocaine he felt moody and irritable. He added that he has spent the majority of his free time in pursuit of the drug. He denied periods of abstinence and stated he never seriously considered quitting. He stated that he has spent hundreds of dollars a day on powder cocaine.

Mr. Eargle denied using other illicit drugs including cannabis, crack cocaine, heroin, PCP, LSD, hallucinogenic mushrooms, inhalants, methamphetamines, illicitly obtained benzodiazepines or illicitly obtained amphetamine. He conceded that he had tried marijuana and "others". He denied using other drugs more than once, besides powder cocaine. Mr. Eargle denied receiving substance abuse treatment. Mr. Eargle denied drinking alcohol to excess. He stated that he will rarely consume more than one alcoholic beverage a day.

RELEVANT MEDICAL HISTORY: Mr. Eargle stated that he suffered a broken right ankle in his twenties. He denied other past or current medical issues. He denied allergies to medications or foods.

FAMILY HISTORY: Mr. Eargle stated that both of his parents are deceased. He stated that his mother suffered from alcohol and drug addiction and that his father was "...an alcoholic". He stated that he has one brother who is currently incarcerated and, to Mr. Eargle's knowledge, is in good health. He stated he has a deceased brother, whom he believes committed suicide. He stated that he was not close to his brother due to the foster system and that he did not know the reason for the suicide. He denied knowledge of psychiatric disorders other than substance abuse in his immediate family.

SOCIAL HISTORY: Mr. Eargle reported that he was born in South Carolina. He endorsed that his biologic parents, Bobby Paul Richardson and Nola Richardson raised him until he was six years old. At that time, he was taken into the foster system and raised by Lynn and Steve Eargle. He reported that his foster parents were strict and he stated that he is no longer in communication with them. He stated that he obtained his high school diploma when he was in the Department of Juvenile Justice. He said that he has worked as a dishwasher at the restaurant California Dreaming®. He stated that he has also worked at two different concrete companies and the retail store Lowes®. He stated his longest job was about seven months. He denied ever being married. He

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reported that he is the father of one child, Chase Alexander McKinney. He stated that he has received multiple legal charges in the past, including, "Assault and Battery of a High and Aggravated Nature, CSC, Burglary Second."

MENTAL STATUS EXAM: Mr. Eargle is a Caucasian man of average build who appeared his stated age. His grooming and hygiene were adequate. He had multiple tattoos on his arms. He displayed good eye contact throughout the exam. His speech was clear, coherent, and with a normal rate. He was calm and cooperative, with the exam. He reported his mood as "Ok today." He rarely smiled and appeared to be sad during his interview. He denied suicidal and homicidal thoughts. His thought process was logical and goal directed. He denied auditory and visual hallucinations. He did not endorse any delusional thoughts or odd beliefs. Mr. Eargle was able to immediately repeat three words and recall those words after five minutes, displaying good attention and short term memory. He was able to spell the word *world* forwards and backwards exemplifying fair concentration. He was able to abstract similarities and simple proverbs such as "*don't judge a book by its cover.*" He was able to name the current and past three Presidents of the United States, displaying adequate long-term memory. He was able to identify a famous celebrity and provide information about that celebrity. He was able to successfully complete multiple simple calculations. Mr. Eargle's judgment was intact to a hypothetical situation. Overall, his efforts appeared good.

DIAGNOSTIC FORMULATION: Based on the available data, it appears that Mr. Eargle's symptoms are best characterized by the diagnoses of Cocaine Dependence in a Controlled Environment, Antisocial Personality Disorder, and Borderline Personality Disorder.

Mr. Eargle stated that he has used powder cocaine for many years and that he would use it often if he were not incarcerated. He relayed a gradual need to increase his use to obtain the same high. He endorsed a history of moody and irritable feelings when he would not have access to the drug. He added that he has spent the majority of his free time in pursuit of cocaine. Mr. Eargle meets the diagnostic criteria for Cocaine Dependence in a controlled environment.

Mr. Eargle relayed a history of multiple charges resulting in incarcerations that began in his teen years. Mr. Eargle has failed to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest. He endorsed a long history of aggressiveness resulting in physical fights and assaults which started when he was a child and continued into adulthood. For example, he hypothesized at one point that he was being charged with attempted murder as a form of retribution. He explained that he had assaulted the alleged victim at least once in the past. He stated that the alleged victim had owed him money for cocaine, so he beat him when he was unable to pay. He reported that the charge of attempted murder was therefore a form of retribution for his past behavior. Mr. Eargle did not display remorse

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when he described the fights that he has gotten into in the past. He denied significant feelings of guilt for harm he may have caused others. Mr. Eargle has exhibited consistent irresponsibility resulting in an inability to maintain steady employment. Mr. Eargle meets the diagnostic criteria for Antisocial Personality Disorder.

Mr. Eargle related a long history of unstable relationships which began in his teens. He endorsed a history of identity disturbance and unstable self-image. He also endorsed a history of impulsive behavior including cutting himself and cocaine use. He endorsed making suicidal gestures and threats when he becomes upset. Mr. Eargle stated that he often feels as if he has to monitor other people around him and judge their emotions in order to regulate his own. He endorsed a long history of feeling uneasy around others and stated that his mood vacillates from moment to moment. Because of these findings, Mr. Eargle meets the criteria for Borderline Personality Disorder.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: Regarding the alleged offenses of Grand Larceny, Mr. Eargle reported that he did not commit those crimes. Specifically, he stated that he did not steal ATV's or HVAC units. He stated, "I let my brother-in-law and cousin take my truck and they're the ones who took them. I didn't want to tell on them. I didn't want an argument in the family. I didn't take them (the ATV's) or the air conditioners. I was working at the time. I didn't know they took the four wheelers. I was living somewhere else and had no reason to know what was in the backyard." When the defendant was asked what could happen to someone who would steal those items, he replied, "Somebody would be in trouble...I'm tired of being in trouble for somebody else." Regarding the day that the HVAC units were allegedly stolen, Mr. Eargle specifically stated, "I can't blame him for the air conditioners. I was in Pelion working with a man with a head injury. I was working on a trailer." He added, "Because it was my truck, they say I did it [sic]."

Mr. Eargle denied committing the crimes of Armed Robbery, Attempted Murder, Kidnapping, and Unlawful Possession of a Weapon. He stated that he had been arguing with his friend Chris: "They say I drove down and fired nine shots, because we were arguing over a motorcycle. Chris said it belonged to him, I said it belonged to me...I don't remember, I was at home most of the time...my brother-in-law and girlfriend called and told me the police were looking for me." Mr. Eargle stated that he did not commit the crimes of Kidnapping or Unlawful Possession of a Weapon. He stated, "I don't understand why they charged me...He's a crack head (the alleged victim, Pat Vella). I didn't know about those charges until after they caught me. He gave me a ride to the Circle K®. He took me to the store and then back to where I was hiding. We used to argue, the man owes me money. I figured it would be no problem because he owes me money. I told him I was running from the police. I jumped on him a couple of times (he was referring to times he fought with the alleged victim in the past) because he owes me money..."

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Mr. Eargle did not report a delusion or other symptom of mental illness that relates to the alleged crimes. Rather, he stated that he did not commit the crimes he is charged with. Although he has a history of treatment for personality and mood disorders while incarcerated, there is no evidence that he was suffering from a mental illness to such an extent that it would have impaired his ability to distinguish legal or moral right from legal or moral wrong or to recognize the specific acts charged as legally or morally wrong. Therefore, it is our opinion that he would have been criminally responsible pursuant to S.C. Code Ann. § 17-44-10 (1976).

CONCLUSION REGARDING CAPACITY TO CONFORM: Although Mr. Eargle has received treatment for mood disorders and personality disorders in his past, he did not report a compulsion, command auditory hallucination or other symptoms of mental illness that would have impaired his ability to conform his conduct to the requirements of the law.



Shannon L. Hansen, M.D.
Forensic Psychiatry Fellow
University of South Carolina School of Medicine

SLH/10/01/2012

EARGLE, MATTHEW
983-0382

OUTPATIENT EVALUATION
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICES 8 55145

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EARGLE, MATTHEW
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OUTPATIENT EVALUATION
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COMPETENCY TO STAND TRIAL EVALUATION
FORENSIC EVALUATION SERVICE
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH (SCDMH)

DATE OF EVALUATION: August 29, 2012

PRESIDING EXAMINER: Shannon L. Hansen, M. D.
Forensic Psychiatry Fellow
University of South Carolina School of Medicine

SECOND EXAMINER: Tia Thomas, LCSW

DIAGNOSES: AXIS I: Depression Not Otherwise Specified
 Cocaine Dependence, in a controlled environment

 AXIS II: Antisocial Personality Disorder
 Borderline Personality Disorder

 AXIS III: Status post right ankle fracture

OPINION REGARDING COMPETENCY TO STAND TRIAL: Competent

DISPOSITION: Ms. Eargle was returned to Geo-Care Columbia Regional Care Center in the custody of South Carolina Department of Mental Health transport officers.

IDENTIFYING INFORMATION: Mr. Matthew Eargle is a 34 year-old, Caucasian male who was seen at the Forensic Evaluation Service pursuant to a court order from the Lexington County Court of General Sessions. The court order requested an evaluation of his competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E. 2nd 536 (1981) and S.C. Code Ann. § 44-23-410 (1976). He is currently charged with Grand Larceny, Armed Robbery, Attempted Murder, Kidnapping, and Unlawful Possession of a Weapon. According to the court order, the evaluation was requested for the following reasons: "The defendant has a history of mental health treatment, and his recent suicide attempt."

Prior to participating in this evaluation, Mr. Eargle was advised of the limitations of confidentiality. He was advised that the examiners were performing a court ordered evaluation. He was informed that the examiners were employees of the Department of Mental Health and not paid by his attorney or by the solicitor. He was informed that a report would be prepared after the evaluation which would be distributed to his attorney, the solicitor, and the judge in his case. He was told the examiners could be called to

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**DEFENDANT'S
EXHIBIT**

#2 06/21/14
13CP320168 SEP

court to testify at a hearing about his competency to stand trial. He was able to answer the questions about this information correctly and he volunteered to proceed with the evaluation.

SOURCES OF INFORMATION:

1. Lexington County Court Order requesting the evaluation, dated July 31, 2012 and received August 6, 2011.
2. Lexington County Arrest Warrant J-827480 for Grand Larceny, Greater than \$5,000.00.
3. Lexington County Sheriff's Office Case File Summary (case number 11-025565) by Officer J.B. Anderson.
4. Lexington County Sheriff's department Incident Report by Officer M. McCaw dated July 18, 2011.
5. Lexington County Sheriff's department Reporting Officer Narrative by Officer M. McCaw dated July 18, 2011.
6. Lexington County Sheriff's department Supplemental Report by Officer J.B. Anderson dated July 23, 2011.
7. Lexington County Sheriff's department Case Supplemental Report by Officer J.B. Anderson dated November 30, 2011.
8. Lexington County Sheriff's department Forensic Tire Examination documents for case 11-025565.
9. Lexington County Arrest Warrant M-302996 for Grand Larceny Greater than \$10,000.00.
10. Lexington County Sheriff's department Incident Report by Officer J.B. Anderson dated July 19, 2011.
11. Lexington County Sheriff's department Reporting Officer Narrative by Officer G.K. Triano dated July 19, 2011.
12. Lexington County Arrest Warrant M-304368 for Attempted Murder.
13. Lexington County Arrest Warrant M-304369 for Attempted Murder.
14. Lexington County Arrest Warrant M-304370 for Pointing/Presenting Firearms at a person.
15. Lexington County Arrest Warrant M-304371 for Pointing/Presenting Firearms at a person.
16. Lexington County Arrest Warrant M-304372 for Possession of a Weapon During a Violent Crime.
17. National Crime Information Center (NCIC) record for Matthew Eargle.
18. Lexington County Arrest Warrant M-304373 for Possession of a Weapon During a Violent Crime
19. Lexington County Sheriff's department Incident Report by Officer J.W. Mishoe dated May 22, 2012.
20. Lexington County Sheriff's department Voluntary Statement by Chris Rumph dated May 12, 2012.

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21. Lexington County Sheriff's department Incident Detail by Officer J.W. Mishoe.
22. Lexington County Arrest Warrant I-620184 for Armed Robbery.
23. Lexington County Arrest Warrant I-620185 for Kidnapping.
24. Lexington County Arrest Warrant I-620186 for Possession of a Stolen Pistol .
25. Town of Pine Ridge Incident report by reporting Officer Chief Jimmy Anderson dated May 14, 2012.
26. Pine Ridge Police Department Voluntary Statement by Pat Vella dated May 20, 2012.
27. Three year driving record for the defendant dated May 16, 2012.
28. Records from Geo-Care Columbia Regional Care Center dated August 14, 2012, through August 18, 2012.
29. Geo-Care Columbia Regional Care Center Social Work assessment of the defendant dated August 14, 2012.
30. Patrick B. Harris Psychiatric Hospital Records for the defendant dated July 21, 1998.
31. Southeast X-Ray Inc. medical records for the defendant dated August 9, 2012 and August 14, 2012 to August 16, 2012.
32. Lexington County Department of Corrections Medical Progress notes for the defendant dated August 7, 2012 through August 12, 2012.
33. Lexington County Jail Mental Health Follow-up Contact Sheet dated August 6, 2012 and August 8, 2012.
34. Lexington County Jail Mental Health Follow-up Contact Sheet dated July 12, 2012 and July 23, 2012.
35. Lexington County Jail Mental Health Follow-up Contact Sheet dated July 11, 2012 and July 14, 2012.
36. Lexington County Jail Physician's Orders and Progress Notes dated June 6, 2012 to August 14, 2012.
37. Waccamaw Mental Health Center records for the defendant dated October 16, 2010 to October 18, 2010.
38. A two hour and fifteen minute clinical forensic interview on August 29, 2012.

CLINICAL HISTORY: Mr. Matthew Eargle is a 34 year old, Caucasian male who endorsed a recent history of depressed mood. He stated, "I'm a little bit depressed." He added that at times he will cut himself in order to relieve his boredom and distressed feelings. He cited cutting as a means to distract himself and stated that it helped distract him from feelings of depression. Specifically, he stated that he is depressed because he is in jail. He endorsed that he prefers Geo-Care Hospital to the Lexington Detention Center. He specified that his recent placement in the hospital has lifted his spirits somewhat. He explained "I've cut twice at Lexington (Detention Center), they put me in the tank (a specialized type of jail cell for high-risk inmates)... I live in the tank, that's where the Major makes me live [sic]. I tell him that every time I get a razor I'm going to cut...nothing better to do." He expressed remorse over, "...all the stuff I messed up" and stated that he experiences significant feelings of guilt. He endorsed

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poor sleep; specifically he said he rarely sleeps though the night. He stated that he often wakes up "...at two A.M." and cannot fall back to sleep. He stated that he has suffered from insomnia, feelings of guilt and a sad mood for many years. He stated that he has felt depressed at various times in his life, beginning in his teen years. He stated that he has primarily received treatment for his depression as an inmate and not in the community. He endorsed that he takes the antidepressant medication mirtazapine (Remeron[®]), which was prescribed to him by Dr. Peggy Wadman at Geo-Care Hospital. He stated that he believes it helps alleviate his feelings of sadness. He added that were he not incarcerated; he might experience a better mood and a more hopeful outlook. Specifically he stated that if he were free, he would enjoy riding motorcycles. He endorsed poor concentration, and cited the fact that he finds it hard to concentrate while reading as an example. He denied recent changes in weight and he endorsed an adequate appetite. He denied feelings of worthlessness. He endorsed suicidal thoughts as recently as two weeks prior to the interview, when he was in the Lexington County Detention Center. He stated that he had not had suicidal thoughts since his transfer to Geo-Care. He elaborated that he tends to experience suicidal thoughts only when he becomes upset, frustrated, or bored.

Mr. Eargle related a long history of unstable relationships which began in his teens. Specifically, he stated that he has experienced friendships in the past would abruptly end due to disputes. He endorsed a history of unstable self-image and a history of self-injurious behaviors, specifically cutting his arms, legs or thighs when he becomes upset. He stated that he will often cut himself in an attempt to alleviate boredom and frustration. He also endorsed a history of impulsive behaviors in the past, either when upset or using powder cocaine. He endorsed making suicidal gestures and threats when he feels frustrated. Mr. Eargle stated that he often believes he must monitor other people around him and judge their emotions in order to regulate his own. He endorsed a long history of feeling uneasy around others and stated that his mood vacillates from moment to moment.

PAST PSYCHIATRIC HISTORY: Mr. Eargle stated that he went to a community mental health clinic briefly in the past, but he could not recall the name of that facility. He stated, "That's because I've been locked up most of my life." He stated he was treated as a young child once at Patrick B. Harris Psychiatric Hospital in Anderson, S.C., and stated that he could not remember the reason for that hospitalization. He relayed a long list of incarcerations beginning in his teen years. Specifically he stated: "I've been out of the system a total of two years in my adult life." He elaborated that he had been committed to the Department of Juvenile Justice for almost five years as a teen, and was released at age 19. He stated that he had been treated at Gilliam Psychiatric Hospital, within the South Carolina Department of Corrections, "A lot of times for cutting [sic]".

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ALCOHOL AND SUBSTANCE USE HISTORY: Mr. Eargle stated that he has used powder cocaine since he was approximately 19 years old. He stated that he would use it often if he were not incarcerated. He endorsed a history of using powder cocaine about three or four days a week for many years. He relayed a gradual need to increase his use to obtain the same high. He stated that when he has been without cocaine he felt moody and irritable. He added that he has spent the majority of his free time in pursuit of the drug. He denied periods of abstinence and stated he never seriously considered quitting. He stated that he has spent hundreds of dollars a day on powder cocaine.

Mr. Eargle denied using other illicit drugs including cannabis, crack cocaine, heroin, PCP, LSD, hallucinogenic mushrooms, inhalants, methamphetamines, illicitly obtained benzodiazepines or illicitly obtained amphetamine. He conceded that he had tried marijuana and "others". He denied using other drugs more than once, besides powder cocaine. Mr. Eargle denied receiving substance abuse treatment. Mr. Eargle denied drinking alcohol to excess. He stated that he will rarely consume more than one alcoholic beverage a day.

RELEVANT MEDICAL HISTORY: Mr. Eargle stated that he suffered a broken right ankle in his twenties. He denied other past or current medical issues. He denied allergies to medications or foods.

FAMILY HISTORY: Mr. Eargle stated that both of his parents are deceased. He stated that his mother suffered from alcohol and drug addiction and that his father was "...an alcoholic". He stated that he has one brother who is currently incarcerated and, to Mr. Eargle's knowledge, is in good health. He stated he has a deceased brother, whom he believes committed suicide. He stated that he was not close to his brother due to the foster system and that he did not know the reason for the suicide. He denied knowledge of psychiatric disorders other than substance abuse in his immediate family.

SOCIAL HISTORY: Mr. Eargle reported that he was born in South Carolina. He endorsed that his biologic parents, Bobby Paul Richardson and Nola Richardson raised him until he was six years old. At that time, he was taken into the foster system and raised by Lynn and Steve Eargle. He reported that his foster parents were strict and he stated that he is no longer in communication with them. He stated that he obtained his high school diploma when he was in the Department of Juvenile Justice. He said that he has worked as a dishwasher at the restaurant California Dreaming®. He stated that he has also worked at two different concrete companies and the retail store Lowes®. He stated his longest job was about seven months. He denied ever being married. He reported that he is the father of one child, Chase Alexander McKinney. He stated that he has received multiple legal charges in the past, including, "Assault and Battery of a High and Aggravated Nature, CSC, Burglary Second."

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MENTAL STATUS EXAM: Mr. Eargle is a Caucasian man of average build who appeared his stated age. His grooming and hygiene were adequate. He had multiple tattoos on his arms. He displayed good eye contact throughout the exam. His speech was clear, coherent, and with a normal rate. He was calm and cooperative, with the exam. He reported his mood as "Ok today." He rarely smiled and appeared to be sad during his interview. He denied auditory and visual hallucinations. He denied suicidal and homicidal ideation. His thought process was logical and goal directed. Mr. Eargle was able to immediately repeat three words and recall those words after five minutes, displaying good attention and short term memory. He was able to spell the word *world* forwards and backwards exemplifying fair concentration. He was able to abstract similarities and simple proverbs such as "*don't judge a book by its cover.*" He was able to name the current and past three Presidents of the United States, displaying adequate long-term memory. He was able to identify a famous celebrity and provide information about that celebrity. He was able to successfully complete multiple simple calculations. Mr. Eargle's judgment was intact to a hypothetical situation. Overall, his efforts appeared good.

DIAGNOSTIC FORMULATION: Based on the available data, it appears that Mr. Eargle's symptoms are best characterized by the diagnoses of Cocaine Dependence in a Controlled Environment, Antisocial Personality Disorder, and Borderline Personality Disorder.

Mr. Eargle stated that he has used powder cocaine for many years and that he would use it often if he were not incarcerated. He relayed a gradual need to increase his use to obtain the same high. He endorsed a history of moody and irritable feelings when he would not have access to the drug. He added that he has spent the majority of his free time in pursuit of cocaine. Mr. Eargle meets the diagnostic criteria for Cocaine Dependence in a controlled environment.

Mr. Eargle relayed a history of multiple charges resulting in incarcerations that began in his teen years. Mr. Eargle has failed to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest. He endorsed a long history of aggressiveness resulting in physical fights and assaults which started when he was a child and continued into adulthood. For example, he hypothesized at one point that he was being charged with attempted murder as a form of retribution. He explained that he had assaulted the alleged victim at least once in the past. He stated that the alleged victim had owed him money for cocaine, so he beat him when he was unable to pay. He reported that the charge of attempted murder was therefore a form of retribution for his past behavior. Mr. Eargle did not display remorse when he described the fights that he has gotten into in the past. He denied significant feelings of guilt for harm he may have caused others. Mr. Eargle has exhibited consistent irresponsibility resulting in an inability to maintain steady employment. Mr. Eargle meets the diagnostic criteria for Antisocial Personality Disorder.

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Mr. Eargle related a long history of unstable relationships which began in his teens. He endorsed a history of identity disturbance and unstable self-image. He also endorsed a history of impulsive behavior including cutting himself and cocaine use. He endorsed making suicidal gestures and threats when he becomes upset. Mr. Eargle stated that he often feels as if he has to monitor other people around him and judge their emotions in order to regulate his own. He endorsed a long history of feeling uneasy around others and stated that his mood vacillates from moment to moment. Because of these findings, Mr. Eargle meets the criteria for Borderline Personality Disorder.

INFORMATION RELEVANT TO COMPETENCY TO STAND TRIAL: During Mr. Eargle's interview, he was able to adequately describe his current charges as, "Attempted murder, armed robbery, kidnapping and five gun charges. They say I shot at two people, had a gun and did all them crimes" [sic]. Further, he was able to adequately describe the nature of the charges. He correctly identified *guilty* and *not guilty* as possible pleas. He was also able to adequately define both of these pleas and recognized what court proceedings were followed if either of these pleas were entered. Mr. Eargle rationally and thoroughly explained the concept of *probation*. Mr. Eargle was able to describe the courtroom roles of the judge and jury. Regarding the jury, he stated, "They let the judge know what they think; whether I did it or not." He acknowledged that the judge was in charge of the courtroom and decided on sentencing in cases. He stated, "The judge is supposed to tell me whether or not I'm guilty and send me to jail." Mr. Eargle was educated regarding the fact that 12 jurors have to agree unanimously on a decision and that there are 12 jurors on a jury. He was able to retain that knowledge and repeated it later in the interview when queried. Mr. Eargle was not able to identify his defense attorney by name or adequately describe the role of his defense attorney. He stated that he had not spoken to his attorney. He was, however, able to retain the knowledge of the role of the defense attorney when educated and repeated it later in the interview. He was able to adequately describe the adversarial role of the solicitor. Mr. Eargle stated that both the judge and the jury are supposed to be neutral in a court case. After he was educated regarding the role of his defense attorney, he reported that his defense attorney is supposed to be for him and the solicitor is against him.

Mr. Eargle was able to define the role of a witness in a courtroom. He reported that a witness is supposed to tell the truth. He stated that a witness is a form of "evidence" and that their job is "is to be truthful in court". He stated that should someone lie about him in the courtroom he would want to let the judge know. Mr. Eargle was educated regarding speaking in order in the courtroom and he was able to retain that knowledge and reiterate it later. He was able to provide multiple hypothetical examples of *evidence* such as, "A witness, bullets, guns, fingerprints." Regarding potential evidence in his case he stated, "...shell casings or something" [sic]. He stated that should he have questions about what evidence is against him that his attorney would be the best person

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with whom to discuss this.

Mr. Eargle explained the context of plea bargaining, identifying that the solicitor will offer a deal. He adequately described the offer is less than the maximum sentence. He stated that his attorney will be the best person to offer advice in the quality of a plea offer but he understood that he has the final decision on whether or not to accept the plea bargain. He described a plea bargain as, "An agreement, I take it to spend less time in jail, to get to court faster, I have to tell them I did it."

Mr. Eargle described appropriate courtroom decorum. He reported that he is supposed to speak only when the judge calls on him. He reiterated after education that he could not simply speak out of turn in court when he chooses to do so. He acknowledged that a person disrupting the courtroom proceedings could, "...get in trouble."

Mr. Eargle reported that he was doubtful that he would receive a fair trial. He expressed a lack of faith in the legal system and stated that he would like to speak with his defense attorney. He stated he hopes that he is found not guilty that he is unsure what area to focus on his defense. He adequately stated that his attorney was the best person to provide guidance in this area. Mr. Eargle reported having limited confidence in his attorney, but stated that he will be able to tell his attorney everything he knows pertaining to his case. He reported that he believes his attorney has not spent enough time on his case thus far.

In summary based on the available data, it is our opinion that Mr. Eargle is not currently experiencing symptoms of a mental illness to such an extent that they would significantly compromise his present capacity to understanding the proceedings against him or to assist in his own defense.



Shannon L. Hansen, M.D.
Forensic Psychiatry Fellow
University of South Carolina School of Medicine

SLH/09/26/2012

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 Matthew J. Eargle,)
 S.C.D.C. No. 298691)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2013-CP-32-0168

ORIGINAL

ORDER OF DISMISSAL
 (with prejudice)

This matter comes by way of an Application for Post Conviction Relief (PCR) filed January 15, 2013. Respondent's responsive pleadings followed. The case was called for a hearing on October 15, 2014, at the Lexington County Courthouse. Applicant was present and represented by Kristy Goldberg, Esquire. Assistant Attorney General Walt Whitmire represented the State.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted for kidnaping (2012-CP-32-2255) and was represented by Eleventh Circuit Public Defender, Robert M. Madsen, Esq. Applicant pleaded guilty pursuant to Alford.¹ The Honorable Roger M. Young accepted Applicant's plea and sentenced him to a term of twenty-five (25) years imprisonment. Applicant did not appeal his sentence or conviction.

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

FILED
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 BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

ALLEGATIONS

In his Amended Application dated October 8, 2014, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of counsel in that counsel stipulated to Applicant's competency at the time of his plea and failed to require the court to conduct a hearing under State v. Blair.² Applicant asserts there is a reasonable probability the he was incompetent at the time of the plea."³

SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED

Applicant testified to his recollection with counsel's representation. Applicant testified he was transported from pre-trial detention to an inpatient facility during the pendency of his case. He testified he was admitted to the inpatient facility because he was "cutting himself." He testified to his experiences in pre-trial detention and at the inpatient facility. Applicant testified that counsel surprised him with the guilty plea.

Dr. Martin, qualified as an expert in forensic psychiatry, testified on behalf of Applicant. Dr. Martin did not interview plea counsel or review any transcripts or PCR actions related to Applicant's prior unrelated convictions. Dr. Martin relied on Applicant's self-reporting and his medical and mental health records in forming his opinion.

Based on a 2014 pre-hearing evaluation, Dr. Martin testified to his diagnosis of Applicant suffering from depressive disorder, not otherwise specified (NOS) and a personality disorder that included antisocial and borderline traits. Dr. Martin testified that those who are diagnosed with antisocial features or disorders are frequently deceitful and manipulative to gain personal preference and are also apt to lie and malingering.

² State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981).

³ Applicant also had a second allegation in the amended application, but that issue was withdrawn at the start of the hearing by Applicant's counsel.

Dr. Martin testified that "competence is a fluid construct entity [that] needs to be checked periodically depending on how somebody is doing." Dr. Martin opined that counsel submitted Applicant for an evaluation in August 2012 at time when Applicant was receiving excellent mental health care at an inpatient facility. Dr. Martin suggests that Applicant's release back to the Lexington County Detention Center constituted a destabilizing condition on Applicant's condition. Dr. Martin further suggests that when "there is a lot of erratic mental health history" a mental health professional should evaluate a defendant, such as Applicant, immediately prior to the plea. Dr. Martin also testified that counsel should have requested a Blair hearing at the guilty plea-hearing on October 3, 2012. Based on Applicant's 2012 self-reporting, Dr. Martin testified that there might have been some concerns with Applicant's competency at the guilty plea hearing.

Counsel testified to his course of conduct during the representation. Counsel, the Circuit Public Defender, gave a brief summary of what this Court finds to be an exceptional amount of experience in criminal law at the time of his representation in Applicant's case. Counsel met with Applicant on eight occasions during the course of the representation. Counsel testified to his observations of Applicant during the representation as follows: Applicant communicated effectively, made eye contact, and asked appropriate questions. Counsel testified he submitted Applicant for competency and criminal responsibility evaluations solely based upon Applicant's history of mutilation and the cutting Applicant had done. Otherwise, Applicant appeared to be normal to counsel. Dr. Hansen's 2012 evaluation reports were submitted into evidence. Applicant was found to be competent, criminally responsible, and had the ability to conform his conduct to requirements of the law. Counsel had no reason to question Dr. Hansen's qualifications or findings. Of note, counsel testified "[q]uite honestly I expected that [Applicant]

would be competent and would have the capacity to conform just in my dealings with him.” Counsel testified his office provided the Department of Mental Health (“DMH”) with the necessary records prior to the 2012 evaluations.

Counsel testified to his consultations with Applicant prior the plea that occurred after the 2012 evaluations. Near the time of the guilty plea hearing, counsel testified Applicant did not exhibit any behaviors or signs that would have indicated a change in competency. Counsel noted the State’s case against Applicant was very strong.

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 facts and conclusions of law as required by S.C. Code Ann. §17-27-80 (2015).

This Court finds Applicant entirely failed to meet his burden to prove: Ineffective Assistance of counsel in that counsel stipulated to Applicant’s competency at the time of his plea and failed to require the court to conduct a hearing under State v. Blair. Applicant asserts there is a reasonable probability the he was incompetent at the time of the plea. Applicant frames the allegation as not whether counsel sought Applicant undergo an independent evaluation, but when counsel acted accordingly. Applicant argues that competency is fluid, and that counsel’s performance was lacking for not submitting Applicant for an evaluation within an almost immediate temporal proximity of the guilty plea hearing. This Court finds Applicant’s argument ~~tenuous at best and ultimately~~ is unavailing to show either deficient performance or prejudice.

The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant." Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (citing Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052 (1984)). To prevail in a PCR action, the petitioner must prove by a preponderance of the evidence he was incompetent when he entered his guilty plea. Lee v. State, 396 S.C. 314, 320-22, 721 S.E.2d 422, 466-47. The test of competency to enter a plea is the same as required to stand trial." Id. "The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him." Id.

A.

As a general matter, this Court rejects Applicant's PCR allegation of ineffective assistance of counsel because it falls outside of a cognizable Strickland duty on a defense attorney to provide constitutionally effective representation. "The Sixth Amendment right to counsel does not provide for the right to the "effective assistance of an expert witness." Wilson v. Greene, 155 F.3d 396, 401-02 (4th Cir.1998); see also Caro v. Calderon, 165 F.3d 1223, 1226 (9th Cir. 1999) (reciting that counsel has an obligation to conduct an investigation which will allow a determination of which experts to consult and then provide the expert with relevant information.).

Based on counsel's submission, Applicant was evaluated by a competent and licensed forensic psychiatrist for competency and criminal responsibility in August 2012. Furthermore, this Court finds counsel's knowledge and experience handling mental health issues to be exceptional. This Court finds counsel's testimony that he provided DMH the necessary records

to allow Dr. Hansen to conduct a thorough evaluation of Applicant to be convincing and dispositive. See Fautenberry v. Mitchell, 515 F.3d 614, 625 (6th Cir. 2008) (“A licensed practitioner is generally held to be competent unless there is good reason for disbelief which was not shown”). Counsel gave credible testimony that Dr. Hansen’s opinions confirmed counsel’s initial impressions that Applicant was competent to stand trial and that he was of sound mind. See Forsyth v. Ault, 537 F.3d 887, 892 (8th Cir. 2008) (finding that counsel is not ineffective for structuring a case on the basis of opinion received at the time counsel consulted expert). Simply put, counsel’s astute observations coupled with Dr. Hansen’s findings negated any objective justification for a State v. Blair hearing prior to Applicant entering his guilty plea. In any event, despite counsel’s sound representations on the matter at the plea hearing, Judge Young – armed with Applicant’s evaluation reports – had the opportunity to observe Applicant’s demeanor, speech, and gait when he accepted Applicant’s plea.

Importantly, Applicant failed to produce any credible evidence that showed counsel somehow was ineffectual in the sense that he hampered DMH and Dr. Hansen’s ability to render competent evaluations. Thus, Dr. Martin’s 2014 findings and testimony at the PCR hearing equate to nothing more than a red herring to this Court’s limited inquiry of whether counsel rendered constitutionally effective assistance of counsel. Whether Dr. Hansen and DMH did not follow Dr. Martin’s best practices in 2012 in insisting on a follow-up consultation with a defendant/patient proximate to the guilty plea hearing is a dispute best left to the medical community and not this Court.

B.

Applicant has similarly fallen well short of meeting his burden to prove Strickland’s prejudice prong. First, and even post hoc, Dr. Martin was unable to render a finding on

Applicant's competency on the day of the plea, as he did not meet with Applicant until April of 2014. Notably, Applicant didn't suffer from psychosis and his cognitive faculties were intact at the time of their meeting. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result"). Second, and in the alternative, Dr. Martin testified that Applicant suffered from interval behavioral disorders. This Court finds counsel was in the best position to observe whether symptoms of Applicant's mild mental illness flared up during counsel's consultations with him between August and October of 2012. This Court finds counsel's testimony that he observed no noticeable cognitive or behavioral deficits during this juncture to be compelling and dispositive. Third, and in the alternative, this Court finds the evidentiary import of Dr. Martin's 2014 evaluation and testimony was substantially neutered by Dr. Martin's inexplicable inability to render a consistent opinion on whether Applicant's anti-social personality disorder diagnosis tainted Applicant's anecdotal self-reporting. This Court finds it hard to believe Applicant was a "good historian" as evidenced by his PCR testimony. While this Court has no reason to question Dr. Martin's professional veracity, there is substantial cause for concern regarding the veracity of Applicant's testimony. This Court finds the vast majority of Applicant's testimony to be incredible, self-serving and dubious; otherwise known as malingering.

CONCLUSION


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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 2 day of Aug, 2016.



 HONORABLE DEANDREA G. BENJAMIN
 Presiding Judge
 Eleventh Judicial Circuit

Col. J. M. King South Carolina

FILED
 2016 AUG 12 A 11:27
 BETH A. CARRIGG
 CLERK OF COURT
 KINGSTON, SC

WITNESSES

Pine Ridge Police Department

Unknown Anderson

Law Enforcement Case #: 12050001

LGW

ARREST WARRANT NUMBER

1620185

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS3202255

**The State of South Carolina
County of Lexington**

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2012

**THE STATE
vs.**

Matthew Jennings Eargle

CDR #: 0095

Indictment for

KIDNAPPING

§ 16-03-0910

DONALD V. MYERS, SOLICITOR

*Plea under North Carolina
v. Alford*

**I DO HEREBY WAIVE MY RIGHT
TO GRAND JURY PRESENTMENT**

Matthew Eargle
DEFENDANT

10/3/12
DATE

[Signature]
WITNESS

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
KIDNAPPING

§ 16-03-0910

At a Court of General Sessions, convened on SEPTEMBER 2012, the Grand Jurors of Lexington County present upon their oath:

That **Matthew Jennings Eargle** did in Lexington County, South Carolina on or about May 13, 2012, knowingly, willfully, and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Pat Vella by any means whatsoever without authority of law, and without his consent, to wit: the victim was held against his will and the defendant was armed with a hand gun, in violation of § 16-3-910 of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & E.C.

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

[Signature]
ASSISTANT SOLICITOR