

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable R. Ferrell Cothran, Circuit Court Judge

KEVIN WAYNE MCDANIELS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001414

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

ALICIA OLIVE
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	:	
COUNTY OF YORK	)	SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,	)	
	:	
PLAINTIFF,	)	
	:	TRANSCRIPT OF RECORD
VERSUS	)	2008-GS-42-1743
	:	2008-GS-42-1744
KEVIN McDANIELS,	)	2008-GS-42-1745
	:	2008-GS-42-1746
DEFENDANT.	)	

AUGUST 26, 2008
SPARTANBURG, SOUTH CAROLINA

BEFORE:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

APPEARANCES:

FOR THE STATE:
BARRY BARNETTE, ESQ., DEPUTY SOLICITOR
ANN MARIE THOMPSON, ESQ., ASSISTANT SOLICITOR

FOR THE DEFENDANT:
ROBERT HALL, ESQ., ASSISTANT PUBLIC DEFENDER

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

1
2 **DEFENDANT WAS PLACED UNDER OATH PRIOR TO TAKING OF PLEA**

3 **NO EXHIBITS WERE ENTERED INTO THE RECORD OF THIS CASE**

4 **MR. BARNETTE: MAY IT PLEASE THE COURT.**

5 **THE COURT: YES SIR, MR. BARNETTE.**

6 **THE COURT: YOUR HONOR, THIS IS THE MATTER OF THE STATE**
7 **VERSUS KEVIN McDANIELS. HE IS PLEADING UNDER ALFORD TO FOUR**
8 **CHARGES. THE FIRST IS 2009-GS-42-1746, WHICH IS GRAND LARCENY,**
9 **BETWEEN A THOUSAND TO FIVE THOUSAND DOLLARS; 2008-GS-42-1745,**
10 **WHICH IS GRAND LARCENY, BETWEEN A THOUSAND AND FIVE THOUSAND**
11 **DOLLARS; 2008-GS-42-1744, WHICH IS BURGLARY, SECOND DEGREE,**
12 **NONVIOLENT; AND 2008-GS-42-1743, WHICH IS BURGLARY, FIRST DEGREE.**
13 **THESE HAVE ALL BEEN TRUE-BILLED BY THE GRAND JURY.**

14 **HE IS REPRESENTED BY MR. ROBERT HALL, YOUR HONOR. THIS IS A**
15 **NEGOTIATED SENTENCE.**

16 **WE HAVE THE KIMBRELL FAMILY WITH US. ME AND MS. THOMPSON**
17 **TALKED WITH THEM A LONG TIME THIS MORNING. WE EXPLAINED TO THEM**
18 **THAT HE IS FACING A LIFE WITHOUT PAROLE SITUATION. AND WE WENT**
19 **THROUGH THE FACTS OF THE CASE WITH THEM AND TALKED WITH THEM**
20 **ABOUT IT. THEY FEEL LIKE THIS IS A JUST RESOLUTION OF THIS CASE,**
21 **RECOMMENDING FIFTEEN YEARS NEGOTIATED SENTENCE, PLUS THERE IS**
22 **FEDERAL TIME IN THIS SITUATION.**

23 **I WANTED TO LET THE COURT KNOW THAT. AND OF COURSE, THEY**
24 **WILL BE GLAD TO ADDRESS THE COURT AT THE APPROPRIATE TIME.**

25 **THE COURT: VERY WELL. THANK YOU, SOLICITOR.**

1 MR. BARNETTE: YOUR HONOR, MS. THOMPSON WILL BE GIVING THE
2 FACTS OF THE CASE.

3 THE COURT: THANK YOU. YOU ARE KEVIN McDANIELS?

4 MR. McDANIELS: YES SIR, YOUR HONOR.

5 THE COURT: MR. McDANIELS, YOU ARE PRESENT TODAY WITH MR.
6 HALL. IS HE YOUR LAWYER?

7 MR. McDANIELS: YES, HE IS, YOUR HONOR.

8 THE COURT: HE REPRESENTS YOU ON ALL FOUR OF THESE
9 INDICTMENTS?

10 MR. McDANIELS: YES, YOUR HONOR.

11 THE COURT: HAVE YOU HAD THE OPPORTUNITY TO DISCUSS WITH HIM
12 THE NATURE OF THESE CHARGES?

13 MR. McDANIELS: YES SIR, I SURE HAVE, YOUR HONOR.

14 THE COURT: YOU'VE HAD THE OPPORTUNITY TO REVIEW THE
15 INVESTIGATION THAT HE'S CONDUCTED ON YOUR BEHALF?

16 MR. McDANIELS: YES SIR, YOUR HONOR.

17 THE COURT: IT APPEARS FROM THE SENTENCING SHEET THAT YOU
18 ARE DESIROUS OF ENTERING A PLEA TO EACH OF THE INDICTMENTS. IS THAT
19 CORRECT?

20 MR. McDANIELS: YES SIR, TO RUN CON CURRENT WITH MY FEDERAL
21 SENTENCE, YOUR HONOR.

22 THE COURT: AND YOU REQUESTED THAT HE NEGOTIATE FOR YOU THE
23 BEST SENTENCE THAT HE THOUGHT HE WAS ABLE TO GET. IS THAT
24 CORRECT?

25 MR. McDANIELS: YES SIR, YOUR HONOR.

1 THE COURT: AND THAT'S WHAT YOU BELIEVE IS REPRESENTED BY
2 THE DOCUMENTS I HAVE, THE SENTENCING SHEETS?

3 MR. McDANIELS: YES, YOUR HONOR.

4 THE COURT: YOU'VE FULLY DISCUSSED WITH HIM MY OPTIONS
5 NEGOTIATED SENTENCE?

6 MR. McDANIELS: YES, YOUR HONOR.

7 THE COURT: YOU UNDERSTAND THAT UNLIKE A RECOMMENDATION,
8 MY VIEW IS A NEGOTIATED SENTENCE, AFTER I HEAR IT ALL, MY OPTIONS
9 ARE EITHER TO ACCEPT IT OR REJECT IT?

10 MR. McDANIELS: YES SIR, YOUR HONOR.

11 THE COURT: I CANNOT MODIFY IT IN ANY RESPECT. DO YOU
12 UNDERSTAND THAT?

13 MR. McDANIELS: YES SIR, YOUR HONOR.

14 THE COURT: HAVE YOU ALSO DISCUSSED WITH HIM WHAT AN
15 ALFORD PLEA MEANS?

16 MR. McDANIELS: YES SIR.

17 THE COURT: THERE ARE SOME VAGARIES, BUT LET ME TELL YOU
18 WHAT MY UNDERSTANDING OF IT IS. WHILE ALFORD, THE CASE ITSELF, THE
19 PERSON WAS UNABLE TO INTELLIGENTLY MAKE A STATEMENT WHETHER
20 WAS GUILTY OR NOT, MY CONCEPT OF THE ALFORD PLEA, AND THAT CASE
21 AND ITS PROGENY, IS BASICALLY YOU'RE TELLING ME, I DIDN'T DO THESE
22 CHARGES, I DIDN'T DO THIS

23 MR. McDANIELS: THAT'S CORRECT, YOUR HONOR.

24 THE COURT: BUT, BASED ON WHAT THE STATE'S PREPARED TO PROVE,
25 IT'S MY OPINION IF I GO TO TRIAL THERE IS A PROBABILITY THAT A JURY

1 WILL FIND ME GUILTY BEYOND A REASONABLE DOUBT. IS THAT YOUR
2 UNDERSTANDING?

3 MR. McDANIELS: YES SIR, YOUR HONOR.

4 THE COURT: YOU HAVE BEEN OFFERED A BENEFIT OF WHICH YOU
5 WANT TO AVAIL YOURSELF AND AVOID A TRIAL. IS THAT TRUE?

6 MR. McDANIELS: YES SIR, YOUR HONOR.

7 THE COURT: AND THE BENEFIT IS A FIFTEEN-YEAR SENTENCE TO RUN
8 CONCURRENT.

9 MR. McDANIELS: WITH MY FEDERAL SENTENCE.

10 THE COURT: WITH YOUR FEDERAL SENTENCE.

11 MR. McDANIELS: YES SIR, YOUR HONOR.

12 THE COURT: YOU REALIZE AND UNDERSTAND THAT IN THE FUTURE,
13 NOTWITHSTANDING AN ALFORD PLEA, THAT THIS WILL BE ON YOUR RECORD
14 AND IT'S TREATED JUST THE SAME AS IF THE JURY WERE TO CONVICT YOU.
15 DO YOU UNDERSTAND THAT?

16 MR. McDANIELS: YES, YOUR HONOR.

17 THE COURT: UNDERSTANDING THAT ON INDICTMENT 2008-1743, WHICH
18 IS AN INDICTMENT THAT CHARGES YOU WITH BURGLARY IN THE FIRST
19 DEGREE, THAT IF I ACCEPTED THE PLEA I WOULD SENTENCE YOU TO FIFTEEN
20 YEARS, PLACE ON THE SENTENCING SHEET THAT IT IS TO RUN
21 CONCURRENTLY WITH YOUR FEDERAL SENTENCE, GIVE YOU CREDIT FOR
22 TIME THAT YOU'VE SERVED, WHAT IS YOUR PLEA? GUILTY UNDER ALFORD?

23 MR. McDANIELS: YES SIR, YOUR HONOR. NORTH CAROLINA VERSUS
24 ALFORD.

25 THE COURT: OKAY.

1 MR. McDANIELS: I'VE SERVED APPROXIMATELY TWO AND A HALF
2 YEARS ALREADY, YOUR HONOR

3 THE COURT: ALL RIGHT, SIR. INDICTMENT 2008-1744, IS AN
4 INDICTMENT THAT CHARGES YOU WITH THE OFFENSE OF BURGLARY IN THE
5 SECOND DEGREE. DO YOU UNDERSTAND THAT CONSISTENT WITH YOUR
6 NEGOTIATED SENTENCE, IF I ACCEPTED IT, I WOULD SENTENCE YOU TO
7 FIFTEEN YEARS, GIVE YOU CREDITED FOR THE TIME THAT YOU'VE SERVED,
8 AND RUN IT CONCURRENTLY WITH YOUR FEDERAL SENTENCE, AND
9 CONCURRENT WITH THE PREVIOUS INDICTMENT? WHAT IS YOUR PLEA?
10 GUILTY UNDER ALFORD?

11 MR. McDANIELS: YES SIR, YOUR HONOR, NORTH CAROLINA VERSUS
12 ALFORD.

13 THE COURT: OKAY.

14 MR. McDANIELS: YES, YOUR HONOR.

15 THE COURT: INDICTMENT 2008-1746 IS AN INDICTMENT CHARGING YOU
16 WITH GRAND LARCENY, MORE THAN A THOUSAND BUT LESS THAN A FIVE.
17 YOUR LAWYER'S EXPLAINED TO YOU THAT I COULD SENTENCE YOU UP TO
18 FIVE YEARS? CONSISTENT WITH YOUR NEGOTIATED SENTENCE, I WOULD
19 SENTENCE YOU TO FIVE YEARS, RUN IT CONCURRENT WITH THE PREVIOUS
20 INDICTMENTS AND WITH YOUR FEDERAL SENTENCE. HOW DO YOU PLEAD,
21 SIR?

22 MR. McDANIELS: NORTH CAROLINA VERSUS ALFORD, YOUR HONOR

23 THE COURT: GUILTY UNDER THAT PRINCIPLE?

24 MR. McDANIELS: YES, YOUR HONOR, UNDER THAT PRINCIPLE, UNDER
25 THAT CASE LAW.

1 THE COURT: INDICTMENT 2008-1745 IS AN INDICTMENT CHARGING
2 YOU WITH GRAND LARCENY, MORE THAN A THOUSAND, LESS THAN FIVE
3 THOUSAND. AGAIN, IF I ACCEPT THE NEGOTIATED SENTENCE, YOU
4 UNDERSTAND THAT I WOULD SENTENCE YOU TO FIVE YEARS, RUN IT
5 CONCURRENTLY WITH ALL OTHER INDICTMENTS, AS WELL AS YOUR
6 FEDERAL SENTENCE. HOW DO YOU PLEAD? GUILTY UNDER NORTH
7 CAROLINA VERSUS ALFORD?

8 MR. McDANIELS: YES SIR, YOUR HONOR, GUILTY UNDER NORTH
9 CAROLINA VERSUS ALFORD.

10 THE COURT: ARE YOU SATISFIED WITH YOUR LAWYER?

11 MR. McDANIELS: YES, YOUR HONOR.

12 THE COURT: ANY COMPLAINTS AT ALL ABOUT THE WAY HE'S
13 HANDLED YOUR CASE OR REPRESENTED YOU IN THIS MATTER?

14 MR. McDANIELS: NO SIR.

15 THE COURT:

16 MR. McDANIELS: YES, YOUR HONOR.

17 THE COURT: MR. HALL, YOU-- FIRST OF ALL, HAS THE SOLICITOR
18 ACCURATELY STATED THE TERMS OF THE NEGOTIATED SENTENCE?

19 MR. HALL: YES SIR, HE HAS, YOUR HONOR.

20 THE COURT: AS YOUR CLIENT HAS ALREADY INDICATED TO ME, THAT
21 IS BASICALLY THE RESULT OF THE CONVERSATIONS YOU'VE HAD WITH HIM
22 WHERE HE REQUESTED, INDICATING TO YOU AFTER HE REVIEWED THE
23 RESULTS OF YOUR INVESTIGATION THAT HE WANTED TO ENTER A PLEA BUT
24 REQUESTED THAT YOU NEGOTIATED THE BEST DEAL YOU COULD FOR HIM.

1 MR. HALL: YES SIR. WE WERE EITHER GOING TO TRIAL TODAY IF WE
2 COULDN'T WORK THIS OUT, AND WE WERE ABLE TO WORK IT OUT.

3 THE COURT: AND IN THAT REGARD, WE HAD A DISCUSSION
4 YESTERDAY. YOU HAD BEEN PREPARING FOR TRIAL, AS MOST ATTORNEYS
5 DO AND ARE REQUIRED TO DO, AND YOU WERE PREPARED TO GO TO TRIAL IF
6 NECESSARY.

7 MR. HALL: YES SIR.

8 THE COURT: DO YOU AGREE WITH THAT, MR. McDANIELS?

9 MR. McDANIELS: YES SIR, YOUR HONOR.

10 THE COURT: WITH MY CONFERENCES WITH HIM IT WAS QUITE
11 EVIDENT THAT HE WAS PREPARED; THAT HE HAD DONE THE WORK ON YOUR
12 BEHALF AND WAS READY TO TRY THE CASE, SHOULD THAT BE NECESSARY.

13 MR. McDANIELS: YES SIR, YOUR HONOR.

14 THE COURT: BASED ON YOUR INVESTIGATION AND YOUR
15 DISCUSSIONS WITH YOUR CLIENT, DO YOU BELIEVE THAT THIS SENTENCE IS
16 IN YOUR CLIENT'S BEST INTEREST?

17 MR. HALL: YES SIR, I DO.

18 THE COURT:

19 MR. McDANIELS: YES, YOUR HONOR.

20 THE COURT: YOU HAVE ADVISED HIM OF THE CONSEQUENCES OF MY
21 ACCEPTING THE NEGOTIATED PLEA?

22 MR. HALL: YES SIR. HE FULLY UNDERSTANDS THAT, UNDERSTANDS
23 BETTER THAN MOST I'VE ADDRESSED IN THE PAST SEVERAL MONTHS.

24 THE COURT: HE UNDERSTANDS THE RIGHTS THAT HE WILL BE
25 RELINQUISHING?

1 MR. HALL: YES SIR, HE DOES.

2 THE COURT: BASED ON YOUR INVESTIGATION, ARE YOU IN
3 AGREEMENT WITH HIS ASSESSMENT THAT IF THE STATE PRESENTED ITS
4 CASES, BASED ON WHAT YOU KNOW, THERE IS A PROBABILITY THAT A JURY
5 WOULD FIND HIM GUILTY BEYOND A REASONABLE DOUBT?

6 MR. HALL: YES SIR, YOUR HONOR. I KNOW MOST OF THE PEOPLE
7 INVOLVED IN THIS CASE FROM MY YEARS. I DON'T KNOW THE RICHLAND
8 COUNTY OFFICERS, BUT I HAVE EVEN SPOKEN WITH A RELATIVE WHO IS A
9 CAPTAIN OF THE RICHLAND'S COUNTY OFFICERS. AND NOT ONLY THAT, AND
10 MR. McDANIELS' TOO. AND I FEEL THERE'S A SUBSTANTIAL LIKELIHOOD IF
11 WE WENT TO TRIAL THAT THIS WOULD VERY MUCH GO AGAINST US.

12 THE COURT: OKAY. YOU HAVE EXPLAINED TO HIM THE SIGNIFICANCE
13 OF A VIOLENT OFFENSE AND A MOST SERIOUS OFFENSE?

14 MR. HALL: YES SIR.

15 THE COURT: AND HE UNDERSTANDS THAT AS WELL?

16 MR. HALL: YES SIR.

17 THE COURT: MR. McDANIELS, IS THAT TRUE?

18 MR. McDANIELS: YES SIR, YOUR HONOR.

19 THE COURT: AND I UNDERSTAND FROM CONFERENCES THAT WE'VE
20 HAD, STATUS CONFERENCES THAT WE'VE HAD PRIOR TO THIS PLEA, THAT
21 ONE OF YOUR CONCERNS, OF COURSE, IS THAT YOU NOT CHANGE YOUR
22 LOCATION WHERE YOU ARE PRESENTLY HOUSED. IS THAT CORRECT?

23 MR. McDANIELS: YES, YOUR HONOR.

24 THE COURT: DO YOU UNDERSTAND THAT WHILE I'M GOING TO
25 STRUCTURE THE PLEA CONSISTENT WITH, IF I ACCEPT IT, CONSISTENT WITH

1 WHAT YOUR AGREEMENT IS, THAT I MAKE NO GUARANTEE THAT THAT WILL
2 HAPPEN. DO YOU UNDERSTAND THAT?

3 MR. McDANIELS: YES, YOUR HONOR.

4 THE COURT: AND THAT'S NOT MOTIVATING YOU IN THIS PLEA,
5 BECAUSE I DON'T HAVE ANY CONTROL OVER THAT. DO YOU UNDERSTAND
6 THAT?

7 MR. McDANIELS: YES, YOUR HONOR.

8 THE COURT: I WANT TO BE SURE YOU UNDERSTAND THAT BECAUSE I
9 DON'T WANT LATER YOU TO COME BACK AND SAY, WAIT A MINUTE, THE
10 JUDGE DIDN'T TELL ME THAT I WAS GONNA BE MOVED, BECAUSE IF I WAS
11 MOVED, THEN I WOULDN'T HAVE ENTERED THE PLEA.

12 MR. McDANIELS: YES SIR.

13 THE COURT: MY UNDERSTANDING IS YOU HOPE THAT IT DOESN'T, BUT
14 YOU KNOW THERE'S NO ASSURANCE THAT THAT'S GONNA HAPPEN.

15 MR. McDANIELS: YES SIR.

16 THE COURT: OKAY.

17 MR. McDANIELS: AS LONG AS IT'S RUN CONCURRENT LIKE I---

18 THE COURT: SIR, THE WORDING, IF I ACCEPT IT, I'M GOING TO PUT
19 THAT WORDING. BUT I DON'T CARE WHAT WORDS YOU WANT---

20 MR. McDANIELS: RIGHT.

21 THE COURT: ---AND WHAT WORDS YOU AGREE TO..

22 MR. McDANIELS: YES SIR.

23 THE COURT: I HAVE NO CONTROL OVER WHAT HAPPENS ONCE YOU
24 LEAVE THIS COURTROOM. DO YOU UNDERSTAND THAT?

25 MR. McDANIELS: YES SIR.

1 THE COURT: IS THERE ANY QUESTION IN YOUR MIND ABOUT THAT?

2 MR. McDANIELS: NO SIR.

3 THE COURT: AND THAT DOESN'T DETER YOU FROM ENTERING YOUR
4 ALFORD PLEA?

5 MR. McDANIELS: NO SIR.

6 THE COURT: THAT'S YOUR DESIRE, TO STILL GO FORWARD WITH THIS
7 ALFORD PLEA?

8 MR. McDANIEL: YES SIR.

9 THE COURT: DO YOU UNDERSTAND THAT IF I ACCEPT YOUR PLEA
10 UNDER YOUR NEGOTIATED SENTENCE THAT YOU WILL NOT HAVE A JURY
11 TRIAL ON ANY OF THESE CHARGES?

12 MR. McDANIEL: YES SIR, YOUR HONOR.

13 THE COURT: DO YOU UNDERSTAND THE STATE WOULD HAVE TO
14 PROVE YOU GUILTY BEYOND A REASONABLE DOUBT?

15 MR. McDANIELS: YES, I DO, YOUR HONOR.

16 THE COURT: AND YOU UNDERSTAND YOU DON'T HAVE TO PROVE
17 YOUR INNOCENCE?

18 MR. McDANIELS: YES SIR, YOUR HONOR.

19 THE COURT: YOU WOULD HAVE A CHANCE TO CONFRONT THOSE
20 WITNESSES. MR. HALL COULD CROSS-EXAMINE THEM ON YOUR BEHALF. DO
21 YOU REALIZE THAT?

22 MR. McDANIELS: YES SIR, YOUR HONOR.

23 THE COURT: YOU WON'T HAVE THAT CHANCE NOW, BECAUSE UNDER
24 ALFORD, WE'RE NOT GOING TO HAVE A JURY TRIAL. DO YOU UNDERSTAND
25 THAT?

1 MR. McDANIELS: YES, YOUR HONOR.

2 THE COURT: NOTWITHSTANDING YOUR FIRST PRINCIPLE, THAT YOU
3 SAY YOU'RE NOT GUILTY, YOU REALIZE THAT?

4 MR. McDANIELS: YES SIR, YOUR HONOR.

5 THE COURT: YOUR LAWYER HAS TALKED TO YOU ABOUT WHAT IT
6 MEANS TO HAVE A VIOLENT OFFENSE?

7 MR. McDANIELS: YES SIR, YOUR HONOR.

8 THE COURT: AND YOU UNDERSTAND MOST SERIOUS IS A STRIKE. AND
9 IF YOU HAVE TWO MOST SERIOUS OFFENSES, THEN IT'S POTENTIAL LIFE
10 WITHOUT PAROLE. DO YOU UNDERSTAND THAT?

11 MR. McDANIELS: YES SIR, YOUR HONOR.

12 THE COURT: YOU REALIZE THAT IN ENTERING A PLEA UNDER ALFORD
13 THAT YOU ARE GIVING UP YOUR CONSTITUTIONAL RIGHT TO REMAIN
14 SILENT?

15 MR. McDANIELS: YES SIR, YOUR HONOR.

16 THE COURT: HAS ANYONE THREATENED YOU IN ANY WAY, MR.
17 McDANIELS, TO ENTER THIS PLEA UNDER ALFORD?

18 MR. McDANIELS: NO SIR, NOBODY HAS.

19 THE COURT: OTHER THAN THE PROMISES WHICH ARE CONTAINED IN
20 THE NEGOTIATED SENTENCE WHICH IS IN THE RECORD IN THIS PROCEEDING
21 NOW, ANY OTHER PROMISES BEEN MADE TO YOU TO GET YOU TO PLEAD
22 GUILTY UNDER ALFORD?

23 MR. McDANIELS: NO SIR.

24 THE COURT: ARE YOU SURE OF THAT, SIR?

25 MR. McDANIELS: YES SIR, YOUR HONOR.

1 THE COURT: LISTEN TO THE SOLICITOR, NOW, AS SHE TELLS ME THE
2 FACTS. I'LL NEED TO ASK YOU SOME QUESTIONS ABOUT IT.

3 SOLICITOR, IF YOU WOULD, I'LL BE HAPPY TO HEAR FROM YOU NOW.

4 MS. THOMPSON: THANK YOU, YOUR HONOR. ON MARCH 11, 2006, THE
5 DEFENDANT WAS DETAINED IN RICHLAND COUNTY BASED ON SUSPICIOUS
6 ACTIVITY. HE'D BEEN ARRESTED FOR CDV. AFTER HIS ARREST, HE
7 ADMITTED TO THE RICHLAND COUNTY OFFICERS THAT HE BROKE INTO 132
8 SOUTHLAND AVENUE IN BOILING SPRINGS, THE HOME OF ONE AMY
9 KIMBRELL. SPARTANBURG COUNTY WAS THEN NOTIFIED.

10 THE DEFENDANT WAS THEN BROUGHT UP TO SPARTANBURG COUNTY
11 WHERE HE ADMITTED TO SPARTANBURG COUNTY OFFICERS THAT HE BROKE
12 INTO A HOUSE AT [REDACTED] IN CAMPOBELLO.

13 THE ITEMS TAKEN FROM THE FIRST HOUSEHOLD INCLUDED GUNS AND
14 WEAPONS, PERSONAL EFFECTS AND JEWELRY. AND THE SECOND HOME
15 INCLUDED JEWELRY, MONEY AND CAMERAS AND OTHER PERSONAL
16 EFFECTS.

17 THE COURT: MR. McDANIELS, THAT'S A BRIEF RECITATION. YOU
18 UNDERSTAND THAT?

19 MR. McDANIELS: YES SIR.

20 THE COURT: BUT YOU BELIEVE THE STATE'S PREPARED TO PROVE
21 THOSE FACTS WHICH THE SOLICITOR HAS JUST STATED TO ME; THAT IS,
22 CALL WITNESSES WHO WILL TESTIFY TO THOSE FACTS?

23 MR. McDANIELS: YES SIR.

24 THE COURT: AND YOU BELIEVE THAT ONCE A JURY HEARS THE ENTIRE
25 CASE THEY MOST PROBABLY WOULD FIND YOU GUILTY?

1 MR. McDANIELS: YES SIR, YOUR HONOR.

2 THE COURT: SOLICITOR, I'LL BE HAPPY AT THIS POINT TO HEAR FROM
3 ANY AND ALL THE VICTIMS. THANK YOU FOR BEING HERE. I'M SORRY THAT
4 YOU HAVE TO BE HERE UNDER THESE CIRCUMSTANCES. I JUST ASK THAT IF
5 YOU CHOOSE TO SPEAK THAT YOU GIVE ME YOUR FULL NAME, PLEASE, FOR
6 THE RECORD.

7 MS. KIMBRELL: MY NAME IS JANE CHRISTINE KIMBRELL.

8 THE COURT: YES, MS. KIMBRELL.

9 MS. KIMBRELL: THE THINGS HE TOOK FROM MY HOME WERE THE
10 ONLY THINGS I HAD LEFT OF MY HUSBAND. I REALIZE THAT JEWELRY AND
11 THINGS I WILL NEVER SEE AGAIN. HE TOOK A LAPTOP THAT WAS THE LAST
12 SIX MONTHS OF HIS LIFE. IF THERE'S ANY WAY HE POSSIBLY REMEMBER
13 WHERE HE MIGHT HAVE LEFT THIS LAPTOP, I DON'T EXPECT TO GET IT BACK,
14 BUT WHOEVER MAY HAVE PURCHASED IT FROM A PAWN SHOP OR
15 SOMETHING, MAY HAVE THE HEART TO LET ME HAVE A COPY OF WHAT WAS
16 ON THE LAPTOP. IF HE CAN REMEMBER, IT WOULD BE A WONDERFUL,
17 WONDERFUL THING FOR HIS CHILDREN TO HAVE IT BACK.

18 THE COURT: I WILL CERTAINLY LET HIM TALK WITH HIS LAWYER
19 ABOUT THAT AND MAYBE THEY CAN RESPOND. I DON'T KNOW THAT. AND I
20 CERTAINLY UNDERSTAND WHY IT'S IMPORTANT. IT HAS NOTHING TO DO
21 WITH THE VALUE OF THE COMPUTER AND I UNDERSTAND THAT FULLY. IT'S
22 WHAT YOU JUST STATED.

23 IT'S ONE OF THE THINGS THAT YOU EARLY ON IN THIS JOB-- AND I
24 REALIZED IT WHEN I WAS DOING WHAT THE SOLICITOR'S DOING AND MR.
25 HALL'S DOING. BUT IT TAKES A DIFFERENT PERSPECTIVE FROM THIS SIDE OF

1 THE BENCH. BUT IT'S ONE OF THE REASONS THAT I CONSIDER BREAKING
2 INTO SOMEONE'S HOME, WHETHER IT'S BURGLARY, FIRST OR BURGLARY,
3 SECOND; DOESN'T MAKE ANY DIFFERENCE. IT'S ONE OF THE WORST CRIMES
4 AS FAR AS I CONCERNED.

5 AND I'M NOT TRYING TO SAY MURDER IS NOT SIGNIFICANT. BUT WHEN
6 YOU TAKE FROM PEOPLE SOMETHING AS CRITICAL I THINK IN THIS COUNTRY
7 AS THE LAST BASTION, YOUR LAST PLACE THAT YOU CAN GO TO BE SAFE.
8 WHEN YOU TAKE THAT FROM SOMEBODY, YOU'VE TAKEN SOMETHING MUCH
9 MORE THAN PROPERTY. AND I UNDERSTAND THAT.

10 AND GIVEN THE FACTS IN THIS CASE, IT'S EVEN MORE SIGNIFICANT.
11 AND I'M SORRY THAT YOU HAVE TO BE HERE. I'M SORRY, AS I KNOW THAT
12 YOU ARE, AND IT'S EMPTY WORDS, BUT PLEASE KNOW THEY'RE HEARTFELT
13 OF WHAT YOU'RE HAVING TO ENDURE FOR THE SACRIFICES THAT YOU, YOUR
14 FAMILY AND EVERYONE HAS MADE, AND MOST IMPORTANTLY HE MADE FOR
15 ALL OF US.

16 I JUST THANK YOU FOR BEING HERE, MA'AM. ANYONE ELSE?

17 (NO RESPONSE)

18 MR. HALL: YOUR HONOR, WE APPRECIATE IT. LIKE I SAID, WE TALKED
19 A LONG TIME ABOUT THIS AND NEVER CAME UP WITH ANY WAY WE COULD
20 GET ANYTHING BACK.

21 THE COURT: THANK YOU. I UNDERSTAND THAT. MR. McDANIELS.

22 MR. McDANIELS: YES SIR, YOUR HONOR.

23 THE COURT: THE PROCEEDING THAT WE HAVE RIGHT NOW, OF
24 COURSE, IS-- AGAIN, I HAVE TO MAKE A DETERMINATION OF WHETHER I
25 WANT TO ACCEPT OR NOT. AND I UNDERSTAND YOU AND I HAVE TALKED

1 ABOUT THE FIRST PRINCIPLE OF THIS PLEA IS THAT I DIDN'T DO THIS. IS IT
2 STILL YOUR DESIRE, SIR, THAT WE GO FORWARD WITH THIS PLEA? IS IT
3 STILL YOUR DESIRE THAT I ACCEPT YOUR NEGOTIATED SENTENCE, SIR?

4 MR. McDANIELS: YES SIR, YOUR HONOR.

5 THE COURT: AND YOU'VE BEEN TRUTHFUL IN RESPONDING TO ALL MY
6 QUESTIONS HERE THIS MORNING, SIR?

7 MR. McDANIELS: YES SIR, YOUR HONOR.

8 THE COURT: DO YOU REALIZE AND UNDERSTAND THAT I WILL BE
9 RELYING ON YOUR RESPONSES WHEN I MAKE MY DECISION AS TO WHETHER
10 OR NOT I CAN ACCEPT THIS PLEA?

11 MR. McDANIELS: YES SIR, YOUR HONOR.

12 THE COURT: VERY WELL. MR. HALL, I FIND FIRST OF ALL THAT MR.
13 McDANIELS CERTAINLY UNDERSTANDS THE SIGNIFICANCE OF AN ALFORD
14 PLEA. AND THANK YOU FOR YOUR COUNSEL IN EXPLAINING THAT TO HIM.
15 HE'S DEMONSTRATED THAT BY HIS RESPONSES IN EVERY RESPECT.

16 I FIND THAT HE HAS HAD THE BENEFIT OF COMPETENT COUNSEL AND
17 HE FULLY UNDERSTANDS THE CONSEQUENCES OF HIS PLEA, INCLUDING THE
18 CONSEQUENCE THAT HE WOULD LOSE HIS RIGHT TO A JURY TRIAL, THE
19 RIGHT TO CONFRONT THE WITNESSES AGAINST HIM, AND HIS RIGHT TO
20 REMAIN SILENT.

21 NOW, SIR, I'LL BE HAPPY TO HEAR FROM YOU AND FROM ANYONE AS
22 TO WHY I SHOULD ACCEPT AND IMPOSE THE NEGOTIATED SENTENCE.
23 THANK YOU, SIR.

1 MR. HALL: YOUR HONOR, KEVIN'S HERE TODAY. HIS MOTHER IS
2 PRESENT. SHE IS QUITE FAMILIAR WITH THE SITUATION. I DON'T KNOW IF
3 SHE WILL ADDRESS THE COURT.

4 I DO WANT TO TOUCH BASE WITH THE RETURN OF PROPERTY. I SPOKE
5 WITH MS. KIMBRELL THIS MORNING AND TOLD HER KEVIN WISHES HE
6 COULD REPLACE THE PROPERTY AND TELL THEM WHERE IT WAS, BUT HE
7 DOESN'T KNOW WHERE THE PROPERTY WAS.

8 THIS WAS AN ILL-CONCEIVED PLAN TO STOP WHAT WAS GOING ON AT
9 A CRACK DEALER'S HOUSE INVOLVING PROSTITUTING YOUNG GIRLS IN
10 RICHLAND COUNTY. IN HIS MIND AT THE TIME, OUR POSITION WOULD BE,
11 RICHLAND COUNTY, HE GAVE THEM INFORMATION ABOUT THIS BURGLARY,
12 PARTICULARLY THE KIMBRELL BURGLARY. HE SAID HE TOOK THINGS FROM
13 A POLICE OFFICER'S HOUSE TO THIS CRACK DEALER'S HOUSE AND THEY
14 WOULD IMMEDIATELY GO RAID THE HOUSE, WHICH THEY DID. THEY DID
15 NOT CATCH ANYBODY IN PROSTITUTION, BUT DID FIND SOME UNDERAGE
16 YOUNG GIRLS THERE, BUT NONE OF THE PROPERTY FROM THIS.

17 HE REGRETS THE PAIN THAT HE'S CAUSED TO THE KIMBRELL FAMILY
18 BY THIS SCHEME HE HATCHED. I THINK THAT THE NEGOTIATED SENTENCE
19 IN THIS CASE FOR THIS PLEA IS VERY REASONABLE, GIVEN ALL THE
20 CIRCUMSTANCES, SAVING BOTH OF THESE FAMILIES FROM HAVING TO GO
21 THROUGH THE TRIAL.

22 WE DO ASK THE COURT TO ACCEPT THE NEGOTIATED SENTENCE.

23 THE COURT: OKAY. MR. McDANIELS, IS THERE ANYTHING YOU WISH
24 TO SAY, SIR?

1 MR. McDANIELS: YES SIR. MAY IT PLEASE THE COURT. I APPRECIATE
2 MR. HALL SPEAKING OUT FOR ME AND EXPLAINING WHAT HAPPENED THERE
3 AS FAR AS THE CRIME AND STUFF. I FEEL AS THOUGH AFTER SPEAKING WITH
4 MY ATTORNEY, AND THAT WE WERE SCHEDULED FOR TRIAL TODAY.

5 THE COURT: YES SIR.

6 MR. McDANIELS: AND I SPOKE WITH MY MOTHER WHEN SHE WAS
7 HERE WITH MY FATHER, ABOUT THE SITUATION. WE HAVE ACCEPTED THE
8 NEGOTIATED SENTENCE.

9 I'M REALLY ASKING THE COURT HERE TODAY, WHAT I'M ASKING THE
10 COURT TO DO-- LIKE I SAY, I CHANGED MY PLEA FROM NOT GUILTY TO AN
11 ALFORD PLEA. I'M ASKING THIS HONORABLE COURT TO PLEASE ACCEPT
12 THAT, TO SENTENCE ME IN THIS STATE, AND SENTENCE ME CONCURRENT IN
13 MY CURRENT SENTENCE, WHICH I AM CURRENTLY SERVING A FIFTEEN-YEAR
14 SENTENCE IN THIS STATE, FOLLOWED BY A SEVENTEEN-YEAR SENTENCE IN
15 THE FEDERAL BUREAU OF PRISONS.

16 I ASK THIS COURT TO RUN IT CONCURRENT WITH MY FEDERAL
17 SENTENCE, NOT MY STATE SENTENCE. THANK YOU, YOUR HONOR.

18 THE COURT: JUST SO YOU UNDERSTAND, IT'S MY UNDERSTANDING
19 THAT ONCE I SENTENCE, ONCE I IMPOSE THE SENTENCE, IT LEAVES ME, IT
20 BECOMES MORE OF A PART OF THE EXECUTIVE BRANCH, AND THAT IS THE
21 ADMINISTRATIVE ASPECT WITH THE DEPARTMENT OF CORRECTIONS. WE
22 CAN PUT WHATEVER WE WANT, BUT ANY SENTENCE IMPOSED, THE
23 SENTENCE THAT YOU ARE PRESENTLY SERVING IN SOUTH CAROLINA,
24 UNLESS I PUT CONSECUTIVE, IT'S MY UNDERSTANDING IT IS TO BE SERVED

1 CONCURRENTLY. SO, THERE'S NO QUESTION THAT'S GONNA HAPPEN. DO
2 YOU UNDERSTAND THAT?

3 MR. McDANIELS: YES SIR, YOUR HONOR.

4 THE COURT: OKAY. I WISH THERE WAS SOME WAY I COULD
5 ACCOMPLISH WHAT THE VICTIM WANTS, BUT IT'S NOT, AND I'M SORRY. I
6 WISH IT WAS MORE THAT I COULD TO DO RESTORE EVERYTHING, BUT
7 THERE'S NOT.

8 I THINK THAT GIVEN ALL THE FACTS AND CIRCUMSTANCES IN THIS
9 CASE, AND GIVEN THE CANDOR THAT'S BEEN DEMONSTRATED ON BOTH
10 SIDES, THIS PROBABLY IS THE BEST RESOLUTION. AS WE TALKED
11 YESTERDAY, THE TRAUMA OF A TRIAL, AND TO GO THROUGH WITH IT
12 AGAIN, WITH WHAT YOU, THE TRAUMA THAT YOU'VE HAD TO ENDURE, TO
13 HAVE THAT AGAIN, I'M GLAD THAT YOU WON'T HAVE THAT. I THINK
14 THERE'S SOMETHING TO BE SAID FOR THAT AS WELL.

15 I WILL ACCEPT THE NEGOTIATED SENTENCE. THE SENTENCE IS AS
16 FOLLOWS, MR. McDANIELS:

17 ON INDICTMENT 2008-1743, THE SENTENCE IS YOU BE COMMITTED TO
18 THE DEPARTMENT OF CORRECTIONS FOR A TERM OF FIFTEEN YEARS.
19 YOU'RE GIVEN CREDIT FOR TIME SERVED, AND THEY WILL MAKE THAT
20 COMPUTATION AT THE DEPARTMENT OF CORRECTIONS. THIS SENTENCE IS
21 ALSO TO RUN CONCURRENTLY WITH THE FEDERAL SENTENCE YOU'RE
22 PRESENTLY SERVING, AND I HAVE WRITTEN THAT ON THE SENTENCING
23 SHEET.

24 2008-1744, THE SENTENCE IS FIFTEEN YEARS. IT IS CONCURRENT.
25 YOU'RE GIVEN CREDIT FOR THE TIME THAT YOU'VE SERVED AND THE

1 DEPARTMENT WILL COMPUTE. THIS SENTENCE IS ALSO TO RUN
2 CONCURRENTLY WITH THE FEDERAL SENTENCE YOU'RE PRESENTLY
3 SERVING.

4 THE SENTENCE OF THE COURT ON 2008-1745, IS FIVE YEARS. THAT
5 SENTENCE IS CONCURRENT. YOU'RE GIVEN CREDIT FOR TIME SERVED. AND
6 THIS SENTENCE IS ALSO TO RUN CONCURRENTLY WITH THE FEDERAL
7 SENTENCE YOU'RE PRESENTLY SERVING.

8 THE SENTENCE OF THE COURT ON 2008-1746, IS FIVE YEARS. IT IS
9 CONCURRENT. YOU'RE GIVEN CREDIT FOR TIME SERVED. AND THIS
10 SENTENCE IS TO RUN CONCURRENTLY WITH THE FEDERAL SENTENCE THAT
11 YOU'RE PRESENT SERVING.

12 GOOD LUCK TO YOU, SIR.

13 MR. HALL: THANK YOU, YOUR HONOR.

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1 CERTIFICATE

2 I, THE UNDERSIGNED PHYLLIS S. BARRETT, OFFICIAL COURT REPORTER
3 FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
4 FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD
5 OF THE HEARING HELD IN THE CAPTIONED CASE, RELATIVE TO APPEAL, IN
6 THE COURT OF GENERAL SESSIONS FOR THE SEVENTH JUDICIAL CIRCUIT,
7 SPARTANBURG COUNTY, SOUTH CAROLINA, ON THE 26TH DAY OF AUGUST,
8 2008.

9 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR
10 INTEREST TO ANY PARTY HERETO.

11
12
13 
PHYLLIS S. BARRETT

14

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WITNESSES

Spartanburg County Sheriff's Office

REPORT MADE
REPORT ENDED

CARD FILLED

INDEXED

CHECKED WARRANTS

CHECKED SIGNATURE

ARREST WARRANT AND NUMBER

K109808

VIOLATIONS COPY

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 3-27-08

VERDICT

MARC KITCHENS

Foreperson of Grand Jury

Date:

2008 APR -3 AM 11:23
CLERK OF COURT
SPARTANBURG COUNTY

DOCKET NO.

08-GS-42-1743
The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 31 2008

TERM

THE STATE
vs.

Kevin McDaniels

Indictment for

BURGLARY, FIRST DEGREE
(Dwelling)

SC Code: 16-11-0311
CDR Code: 0079
Class: FEL/EXM (V)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

MAR 27 2008

At a Court of General Sessions, convened on _____, the Grand Jurors of
 Spartanburg County present upon their oath:

BURGLARY, FIRST DEGREE

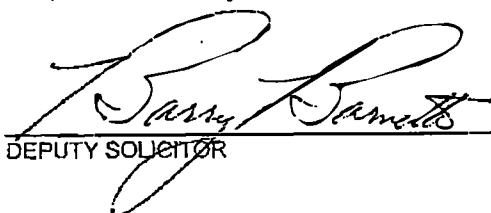
(DWELLING)

That the Defendant, Kevin McDaniels, did in Spartanburg County, between January 13, 2006 and January 14, 2006, wilfully and intentionally enter the dwelling belonging to Christine Kimbrell located at [REDACTED] Boiling Springs, South Carolina without consent and with the intent to commit a crime therein, and either:

- (1) the Defendant did enter in the nighttime and/or
- (2) armed with a deadly weapon; and/or
- (3) caused physical injury to any person who is not a participant in the crime; and/or
- (4) uses or threatens the use of a dangerous instrument; and/or
- (5) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearms

In violation of Section 16-11-311 and Section 16-1-57, Code of Laws of South Carolina (1976) as amended.

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


 DEPUTY SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

1. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND

FINE CARD MADE

ARREST WARRANT NUMBER

K109811

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 3/27/08

VERDICT

MARC KITCHENS

2008 APR -3 AM 11:29

CLERK OF COURT
SPARTANBURG COUNTY

Foreperson of Petit Jury

Date:

DOCK

08-GS-42-1744

24

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 31 2008

TERM

THE STATE

VS.

Kevin McDaniels

Indictment for

BURGLARY, SECOND DEGREE

(Dwelling)

SC Code: 16-11-0312

CDR Code: 80

Class FEL-D

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

At a Court of General Sessions, convened on MAR 27 2008, the

Grand Jurors of Spartanburg County present upon their oath:

BURGLARY, SECOND DEGREE
(Dwelling)

That Kevin McDaniels, did in Spartanburg County, on or about December 27, 2005, willfully and unlawfully enter without consent and with intent to commit a crime therein, the dwelling of Timothy Lee Ballard, located at [REDACTED] Campobello, South Carolina, in violation of §16-11-312, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


DEPUTY SOLICITOR

WITNESSES

1. SENTENCE MADE

2. REPORT ENDED

Spartanburg Co. Sheriff Dept.

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

Computer

Computer

TRAFFIC VIOLATIONS COPY

ARREST WARRANT NUMBER

K109810

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury

Date: 3/27/08

VERDICT

MARC KITCHENS

2008 APR -3 AM 11:29

SPARTANBURG COUNTY

Foreperson of Court
Date:

FILED

DOCKET NO.

08-GS-42-1745

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 31 2008

TERM

THE STATE
VS.

Kevin McDaniels

Indictment for
GRAND LARCENY

SC Code: 16-13-30 (B) (1)
CDR Code: 0478
Class FEL-F

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

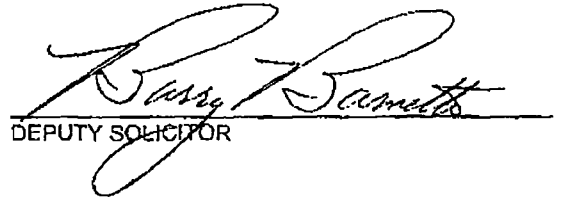
MAR 27 2008

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

GRAND LARCENY

The Defendant, Kevin McDaniels, did in Spartanburg County on or about December 27, 2005, feloniously take and carry away goods from Timothy Lee Ballard, valued more than One Thousand Dollars, described as follows: jewelry, money and a TV/DVD combo, with the intent to deprive the owner permanently of such property, in violation of Section 16-13-30 (B) (1), Code of Laws of South Carolina (1976, as amended).

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


DEPUTY SOLICITOR

DOCKET NO.

08-GS-42-1746

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 31 2008

TERM

THE STATE
VS.

Kevin McDaniels

Indictment for
GRAND LARCENYSC Code: 16-13-30(B) (2)
CDR Code: 479
Class FEL-E

WITNESSES

Spartanburg Sheriff's Office

2. CARD FILLED

4. INDEXED

5. ORDERED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND
JURY CARD MADE

8. PUBLIC VIOLATIONS COPY

ARREST WARRANT

K109809

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 3-27-08

MAKING KITCHENS

2008 APR -3 AM 11:29

SPARTANBURG COUNTY

* CLERK OF COURT

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAR 27 2008 the
Grand Jurors of Spartanburg County present upon their oath:

GRAND LARCENY

That the defendant, Kevin McDaniels, did in Spartanburg County, between January 13, 2006 and January 14, 2006, feloniously take and carry away jewelry, guns, money, knives, camcorder and a police vest of the value of more than Five Thousand Dollars, belonging to Christine Kimbrell, with the intent to deprive the owner permanently of such property, in violation of §16-13-30 (B) (2), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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


DEPUTY SOLICITOR

30 OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

Kevin Mcdaniels

AKA:

Race: W Sex: M Age: 39

DOB: SS#:

Address: ROEBUCK, SC 02937600

DL#: 99999999 SID#:

IN THE COURT OF GENERAL SESSIONS

Computer

INDICTMENT/CASE#: 2008GS4201743

A/W#: K109808

Date of Offense: 6/21/2007

S.C. Code § : 16-11-0 311

CDR Code #: 0079

SENTENCE SHEET

#CVs.

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Burglarv / Burglarv (After June 20, 1985) - First degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: *[Signature]* BARNETTE, BARRY Defendant *[Signature]* Attorney for Defendant SC Bar# 2596

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED _____

☐ set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: \$ _____ Substance Abuse Counseling _____

§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 35.13 (Public Def/Prob) \$500 \$ _____ Other: Attorney's fee is also to run

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00 concurrently with the Fed sentence

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____ he is presently serving

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

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

3% to County (if paid in installments) \$ 3.75

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.15

TOTAL \$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter: *[Signature]*

PRESIDING JUDGE

Judge Code: 2

Sentence Date: 8/26/08

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA

IN THE **Computer** GENERAL SESSIONS

COUNTY OF SPARTANBURG

STATE VS.

Kevin McDaniel

AKA:

Race: W Sex: M Age: 39

DOB:

Address: ROEBUCK, S 937600

DL#: 99999999 SID#:

INDICTMENT/CASE#: 2008GS4201744

A/W#: K109811

Date of Offense: 6/21/2007

S.C. Code § : 16-11-0312

CDR Code #: 0080

SENTENCE SHEET

NC vs
AttfordIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree

in violation of § 16-11-0312 of the S.C. Code of Laws, bearing CDR Code # 0080

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BARNETTE, BARRY

Defendant

Attorney for Defendant

SC Bar # 2596

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ set by SCDPPPS. _____

Recipient: _____

*Fine:

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

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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

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

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

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

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

3% to County (if paid in installments) \$ 3.75§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.15TOTAL \$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter: P. Barnett

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

* Other: This sentence is also to run concurrently with the sentence for Robbery. Sentence for Robbery is presently serving.☐ Appointed PD or appointed other counsel §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE P. BarnettJudge Code: 2Sentence Date: 8/26/08

SCCA/217 (07/2008)

32
STATE OF SOUTH CAROLINACOUNTY OF SPARTANBURG
STATE VS.

Kevin Mcdaniels

AKA:

Race: W Sex: M Age: 39

DOB: SS#:

Address: ROEBUCK, SC 02937600

DL#: 99999999 SID#:

IN THE COURT OF GENERAL SESSIONS

Computer

INDICTMENT/CASE#: 2008GS4201745

A/W#: K109810

Date of Offense: 6/21/2007

S.C. Code § : 16-13-0030(B)

CDR Code #: 0478

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Larcenv / Grand Larcenv. value more than \$1,000 but less than \$5,000

in violation of § 16-13-0030(B) of the S.C. Code of Laws, bearing CDR Code # 0478

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSCThe charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

BARNETTE, BARRY

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

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

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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

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

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

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

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

3% to County (if paid in installments) \$ 3.75

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.15

TOTAL \$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter: _____

PRESIDING JUDGE

Judge Code: 2

Sentence Date: 8/26/08

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

Kevin McDaniels

AKA:

Race: W Sex: M Age: 39

DOB: SS#:

Address: ROEBUCK, SC 02937600

DL#: 99999999 SID#:

IN THE COURT OF GENERAL SESSIONS

Computer

INDICTMENT/CASE#: 2008GS4201746

A/W#: K109809

Date of Offense: 6/21/2007

S.C. Code § : 16-13-0030(B)

CDR Code #: 0478

SENTENCE SHEET

NE as
AMore

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Larceny / Grand Larceny, value more than \$1,000 but less than \$5,000

in violation of § 16-13-0030(B) of the S.C. Code of Laws, bearing CDR Code # 0478

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MO ST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BARNETTE, BARRY Defendant 2596
Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$

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

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

3% to County (if paid in installments) \$ 3.75

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.15

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/L beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: The sentence is to run concurrently with the 2nd sentence he is presently serving

☐ Appointed PD or appointed other counsel §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2

Sentence Date: 8/26/08

FORM 5

STATE OF SOUTH CAROLINA)

County of SPARTANBURG)KEVIN WAYNE McDaniel #254398)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2009-CP-42-3358

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 JYGER River C.I. 200 Prison Rd. Enoree, S.C. 29335
2. Name and location of Court which imposed sentence SPARTANBURG CO. COURT of General Session
80 Magnolia St. Spartanburg SC 29304
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-42-01743- BURGLARY 1st Degree
 - (b) 2008-GS-42-01744- Burglary 2nd

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MARC KITCHENS

(c) 2008-GS-42-01745-Grand Larceny(d) 2008-GS-42-01746-Grand Larceny

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

(a) AUG. 26, 2008 - 15 yrs Concurrent w/ Federal Sentence Presently Serving(b) AUG. 26, 2008 - 15 yrs Concurrent w/ Federal Sentence Presently Serving(c) AUG. 26, 2008 5 yrs Concurrent w/ Federal Sentence Presently Serving

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ☒(b) after a plea of not guilty N/A(c) after a plea of nolo contendere N/A

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. N/Aii. N/Aiii. N/A

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

i. N/Aii. N/Aiii. N/A

(c) the date of each such result:

i. N/Aii. N/Aiii. N/A

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

i. N/Aii. N/Aiii. N/A

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

(a) - LACK OF LEGAL KNOWLEDGE -(b) "Mentally Incompetent"2009 JUN 6 AM 8:53
MARC KITCHENS

(c) Under Duress by Law Enforcement and Judicial System

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

- (a) ACTUAL INNOCENT - SEE ATTACHED AMENDMENT
 (b) COERCED - SEE ATTACHED AMENDMENT
 (c) DURESS - SEE ATTACHED AMENDMENT

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

- (a) Applicant was in the State of Florida when the Crimes were committed
 (b) Law Enforcement - Attorneys Coerced Applicant into Pleading Guilty to Crimes
 (c) Applicant Placed under Duress by Law Enforcement and Attorneys to Admit to a Crime Applicant did not Commit.

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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14. Has any ground set forth in (10) been previously presented to this or any other 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. N/A
- ii. N/A
- iii. N/A

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

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

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

(a) This PCR is the First Appeal filed in this Case.
 (b) N/A
 (c) N/A

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

2009 JUN 16 AM 8:53
 MARC KITCHENS

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. MR. Robert B. Hall, Assistant Public Defender
366 N. Church St. Suite 3000
Spartanburg, SC 29303 - 864 596-2561
 ii. N/A
 iii. N/A
 (b) the proceedings at which each such attorney represented you:
 i. Plea - And - Sentencing
 ii. N/A
 iii. N/A

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

The State to Vacate Sentence And Conviction, Expunge
All Charges From Applicants Record, grant such other Relief
As this Court may Deem Just And Proper.

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

No

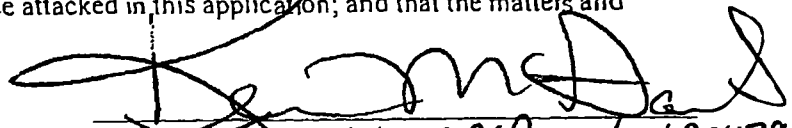
2009 JUN 16 AM 8:53
 MARC KITCHENS

STATE OF SOUTH CAROLINA)

VERIFICATION

County of SPARTANBURG)

I, Kevin L Wayne McDaniels, 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.



Kevin W. McDaniels #254398

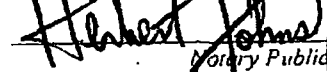
SWORN to and subscribed before me this 27th day of May, 2009.

TYLER River Corr. Inst. U-10-123

200 Prison Rd

Endoree, SC 29335

(PRO-SE)


 Notary Public

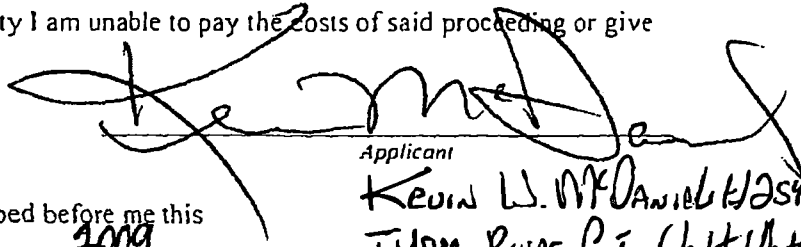
(L.S.)

My Commission Expires: 1-14-2019

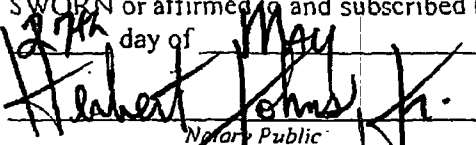
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Kevin Wayne McDaniel, 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.


Applicant

Kevin W. McDaniel H254378
Tygum River C.I. Unit 10 #123
200 Prison Rd
Endree, S.C. 29335
(Pro-Se)

SWORN or affirmed to and subscribed before me this
27th day of May, 2009

Notary Public

My Commission Expires: 1-14-2019

2009 JUN 16 AM 8:53
MARC KITCHENS

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

2010-CP-42- 2188

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

KEVIN WAYNE Mc DANIELS #14256-171

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 United States Penitentiary McCreary P.O. Box 3000 Pine Knot, KY 40261
2. Name and location of Court which imposed sentence Spartanburg County Court House Greenville Sessions
3. Name(s) of co-defendant(s) (if any) None 180 MAGNOLIA ST SPARTANBURG S.C. 29304
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-42-01743-Burglary 1st
 - (b) 2008-GS-42-01744-Burglary 2nd
 - (c) 2008-GS-42-01745/Grand Larceny / 2008-GS-42-01746-Grand Larceny
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) AUG 26, 2008 - 15 YRS / Concurrent w/ Federal 17yr Sentence
 - (b) AUG 26, 2008 - 15 YRS / Concurrent w/ Federal 17yr Sentence
 - (c) AUG 26, 2008 - 5 YRS / Concurrent w/ Federal 17 yr Sentence
 - (d) AUG 26, 2008 - 5 YRS / Concurrent w/ Federal 17 yr Sentence

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2010 APR 22 AM 8:43

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
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. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) ATTY FAILED TO FILE APPEAL WHEN ASKED TO DO SO BY PETITIONER
- (b) LACK OF LEGAL KNOWLEDGE
- (c) MENTALLY INCOMPETENT
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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CLERK OF COURT

- (a) ACTUAL INNOCENT - See Attached Amendment.
 (b) COERCED - See Attached Amendment
 (c) DURESS - See Attached Amendment
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) Applicant was in the State of Fla. When SC Crimes Were Committed
 (b) Law Enforcement/ATTY Coerced Applicant into Pleading Guilty
 (c) DURESS - See Amendment
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)? N/A
 (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. N/A
 ii. N/A
 iii. N/A
 iv. N/A
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. N/A
 iii. N/A
 iv. N/A
 (c) the disposition thereof:
 i. N/A
 ii. N/A
 iii. N/A

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SAS COUNTY

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) Applicant Relied on ATTY to file Appeal - Counsel failed to do so

(b) N/A

(c) N/A

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

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2010 APR 22 AM 8:43

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO - Relied on Counsel to file Appeal - Failed to do so
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

- (a) the name and address of each attorney who represented you:
- MR. Robert B. Hall - Assistant Public Defender's Office
 - 366 N. Church St. Suite 3000
 - Spartanburg, S.C. 29303. (864) 596-2561
- (b) the proceedings at which each such attorney represented you:
- Plea and Sentencing
 - N/A
 - N/A

19. State clearly the relief you seek in filing this application: Uprate Sentence and Conviction, Expunge All Charges From Record. Grant Such other Relief as this Court may deem just and proper.

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

- (A) 200 Month Federal Sentence - Spartanburg - Case No. 7:06-HFF-1
- (B) 15 Yrs Richard Co. Case No: 06-GS-40-2135 / Sent. Jan 24, 2007
- (C) 15 Yrs Lexington Co. Case No: 07-GS-32-2523 / Sent. Oct 1, 2007

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2010 APR 22 AM 8:43

STATE OF SOUTH CAROLINA)

County of SPARTANBURG)

VERIFICATION

Kevin W. McDaniels

I, Kevin W. McDaniels, 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.

SWORN to and subscribed before me this 15
day of April, 2010.

Louise Miller

Notary Public

(L.S.)

My Commission Expires: 8/26/12

Kevin Wayne McDaniels
Reg # 14256-171- Unit SH # 29
U.S.P. McCreary
P.O. Box 3000
Pine Knot KY. 42635
(PRO-SE)

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2010 APR 22 AM 8:43

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2009-CP-42-3350
	)	
Kevin Wayne McDaniels, #254398	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

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 2009 OCT 30 AM 9:10
 MARC KITCHEN
 CLERK OF COURT
 SPARTANBURG COUNTY

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 16, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the March 2008 term of the Spartanburg County Grand Jury for burglary – 1st degree (2008-GS-42-1743), burglary – 2nd degree (2008-GS-42-1744), and two counts of grand larceny between \$1,000 and \$5,000 (2008-GS-42-1745, 1756). He was represented by Robert Hall, Esquire. On August 26, 2008, the Applicant pled to the charges as indicted pursuant to N.C. v. Alford. He was sentenced by the Honorable R. Markley Dennis, Jr., to confinement for a period of fifteen (15) years on each burglary charge and five (5) years on each grand larceny charges, all charges to run concurrent. The Applicant did not appeal his plea or sentence.

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

Computer

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

II.

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

1. "Actual Innocent (sic)," in that "Applicant was in the State of Florida when the S.C. crimes were committed;"
2. "Coerced," in that "Law enforcement and attorney coerced Applicant into pleading guilty to crime;" and
3. "Duress," in that "Applicant placed under duress by law enforcement and attorney to admit to ac rime Applicant did not commit."

III.

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

following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

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MARC KITCHENS

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).

The allegation presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashe v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived these allegations as grounds for relief.

Additionally, the post-conviction relief court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. § 17-27-20(a)(6) (1985). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial or by review on motion for a new trial or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545 (1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Therefore, the Court should summarily dismiss this ground for relief.

IV.

Respondent interprets Applicant's claims of coercion and duress as allegations that his guilty plea was involuntary. Respondent submits that Applicant's allegations are 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 that 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.

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

VI.

WHEREFORE, having made its Return, the State moves that Applicant's first claim be summarily dismissed and requests that an evidentiary hearing be held solely on the issue of ineffectiveness of counsel.

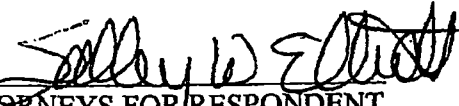
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2008 OCT 17 10 AM 9:10
CLERK OF COURT
HARRIS KITCHENS

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

October 29, 2009.

FILED
CLERK OF COURT
SOUTH CAROLINA
2009 OCT 30 AM 9:10
MARC KITCHENS

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Kevin Wayne McDaniels,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2009-CP-42-3350

AMENDED RETURN
AND MOTION TO DISMISS
WITHOUT PREJUDICE

This matter comes before the Court by way of the Applicant's application for post-conviction relief filed June 16, 2009, and Applicant's amendment filed April 22, 2010. The Respondent filed a Return on or about October 30, 2009. This Amended Return and Motion to Dismiss Without Prejudice follows. The Respondent would submit the following:

I.

The Applicant is currently incarcerated outside the State of South Carolina. The Respondent submits that it has "no duty or authority to ensure [the Applicant's] presence at the scheduled hearing" while he is incarcerated out of state. Clayton v. State, 278 S.C. 655, 658, 301 S.E.2d 133, 134 (1981). Accordingly, this Court should dismiss the application without prejudice to the Applicant's right to file another application when he returns to state custody. Id. The Respondent expressly reserves the right to assert the statute of limitations if the application is not filed in a timely manner following the Applicant's return to this jurisdiction. See Carter v. State, 337 S.C. 17, 522 S.E.2d 342 (1999).

II.

The State therefore requests that the application be dismissed without prejudice pending the

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CLERK OF COURT
SEVENTH JUDICIAL CIRCUIT
SPARTANBURG, SOUTH CAROLINA

Applicant's return to the State of South Carolina.

WHEREFORE, having made its Motion, the State requests that the case be dismissed without prejudice.

Respectfully submitted,

HENRY D. MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

BY:

Imperial
ATTORNEYS FOR RESPONDENT

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

Oct. 20, 2010.

07-06-2010
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H.HORRIGAN

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Kevin Wayne McDaniels,	)	2009-CP-42-3350
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	WITHOUT PREJUDICE
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of the Applicant's application for post-conviction relief filed June 16, 2009, and Applicant's amendment filed April 22, 2010. The Respondent filed a Return on or about October 30, 2009, and an Amended Return and Motion to Dismiss Without Prejudice on or about October 20, 2010.

I.

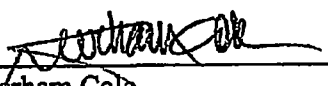
This Court finds that the Applicant is currently incarcerated outside the State of South Carolina. This Court finds that the Respondent (State) has "no duty or authority to ensure [the Applicant's] presence at the scheduled hearing" while he is incarcerated out of state. Clayton v. State, 278 S.C. 655, 658, 301 S.E.2d 133, 134 (1981). Therefore, this Court dismisses the application without prejudice to the Applicant's right to file another application when he returns to state custody. Id.

II.

IT IS THEREFORE ORDERED that the Application filed on June 16, 2009, followed by an amendment filed on April 22, 2010, be denied and dismissed without prejudice.

* /

AND IT IS SO ORDERED this 5 day of November, 2010.



J. Derham Cole
Chief Judge for Administrative Purposes
Seventh Judicial Circuit

#2

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 NOV -5 PM 4:27
K. LISA E. BLANCHETT

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

KEVIN WAYNE MCDANIELS 254398)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-42-506

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 F.C.I. Otisville-P.O. Box 1000, Otisville, NY 10968
2. Name and location of Court which imposed sentence SPARTANBURG CO. COURT OF GENERAL SESSIONS/P.O. BOX 3483, Sptz. S.C. 29304-3483
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-42-1743-1744-1745-1746
 - (b) NA
 - (c) NA
5. The date upon which sentence was imposed and the terms of the sentence: Aug 26, 2008
 - (a) Two (2) FIFTEEN YEARS SENTENCE-CONC-TO FEDERAL SENTENCE
 - (b) Two (2) FIVE YEAR SENTENCES CONC TO FEDERAL SENTENCE.

- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓ AN ALFORD PLEA WAS ENTERED UNDER COERCION
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. THE COURT OF COMMON PLEAS-(PCR) THE COURT MISCONSTRUED SUCH
- ii. AS A CIVIL ACTION-MEDICAL CLAIM---
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. DISMISSED-
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. UNKNOWN YOUR HONOR.....
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNKNOWN-YOUR HONOR-YES THERE WERE SOME BUT DURING TRANSFER
- ii. INTO FEDERAL PRISON THEY WERE LOST..
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: I AM ACTUALLY INNOCENT-I WAS NOT EVEN IN THE STATE INEFFECTIVE ASSISTANCE OF COUNSEL...

- (a) MISCARRIAGE OF JUSTICE-FOR NOT GRANTING A CONTINUANCE
- (b) INEFFECTIVE ASSISTANCE OF COUNSEL ON BEHALF OF ROBERT HALL.
- (c) ACTUAL INNOCENCE-I WAS NOT IN THE STATE WHEN THE CRIME WAS COMMITTED-POLICE COERCION-INVOLUNTARY CONFESSION.....
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) THE COURT ABUSED ITS DISCRETION IN NOT GRANTING A CONTINUANCE OF
- (b) COUNSEL FAILED TO PURSUE A ONE HOUR CONTINUANCE-----
- (c) POLICE COERCED ME INTO CONFESSION OF CRIMES I DID NOT COMMIT.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? PCR-COMMON PLEAS
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? U.S DISTRICT COURT 28 U.S.C 2254
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? CERTIORARI-DENIED OCT 15, 2013.
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
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?
YES - STATE/FEDERAL/ U.S Supreme COURT
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. ACTUAL INNOCENCE!!!!!!
- ii. INEFFECTIVE ASSISTANCE OF COUNSEL!!!!!!
- iii. FALSE IMPRISONMENT?
- (b) the proceedings in which each ground was raised:
- i. PCR-
- ii. 2254
- iii. WRIT OF CERTIORARI-US SUPREM COURT
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/A
- (b) N/A
- (c) N/A
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES-ALFORD PLEA
- (b) your trial, if any? N/A
- (c) your sentencing? YES-ROBERT HALL-PUBLIC PRETENDERS OFFICE.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES-
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? FILED THIS PRO-SE
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 HALL- 366 N. CHURCH ST. SPtG SC. 29303
- ii. PCR-KEVIN OWEN-RELIEVED OF COUNSEL - "INEFFECTIVE"
- iii. P.O. BOX 451
SPARTANBURG SC. 29304-
- (b) the proceedings at which each such attorney represented you:
- i. - KEVIN OWEN-RELIEVED OF COUNSEL - "INEFFECTIVE"
- ii. PRO-SE
- iii. PRO-SE
19. State clearly the relief you seek in filing this application: EXONERATED FROM CHARGES & conviction-I AM ACTUAL INNOCENT-OR GRANT A JURY TRIAL - THE JURORS WILL FIND ME NOT GUILTY BEYOND A REASONABLE DOUBT.....
20. Are you now under sentence from any other court that you have not challenged? NO.
- PRESENTLY SERVING A 300 MONTH FEDERAL SENTENCE -
"POSS OF A FIREARM" BY A CONVICTED FELON"
- EXHAUSTED ALL REMEDIES TO US SUPREME COURT - DENIED
"FEDERAL RELEASE DATE" 9-11-2020"

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 FEB 10 PM 2:58
M. HOPE BLACKLEY

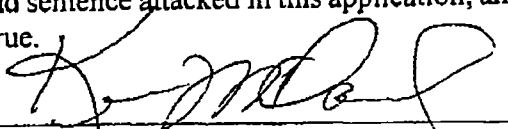
Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

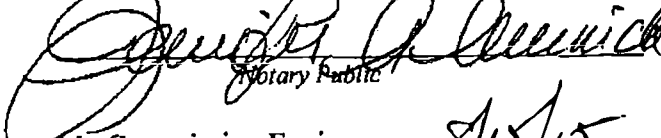
County of **SPARTANBURG**)**Kevin Wayne McDaniels**

I, _____, 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.


 Kevin Wayne McDaniels
 Fed Reg # 14256-171

[Pro-Se]

SWORN to and subscribed before me this 4
 day of February, 2014.


 Notary Public (L.S.)
 My Commission Expires: 8/15/15

Jennifer A. Aumick
 Notary Public - State of New York
 NO. 01AU6246559
 Qualified in Orange County
 My Commission Expires 8/15/15

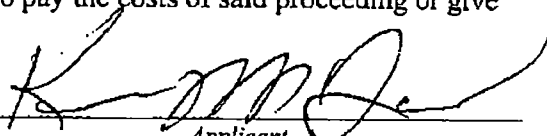
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 SPARTANBURG COUNTY
 2014 FEB 10 PM 2:58
 M. HOPE BLACKLEY

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

Kevin Wayne McDaniels

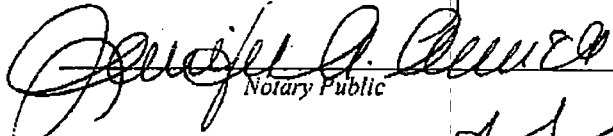
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.


Applicant

Kevin Wayne McDaniels
[Pro-Se]

SWORN or affirmed to and subscribed before me this
6 day of February, 2014.


Notary Public

My Commission Expires: 8/5/15

Jennifer A. Aumick
Notary Public - State of New York
NO. 01AU6246559
Qualified in Orange County
My Commission Expires 8/5/15

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 FEB 10 PM 2:58
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2014-CP-42-0506
Kevin Wayne McDaniels, #254398,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 10, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court¹. The Applicant was indicted at the March 2008 term of the Spartanburg County Grand Jury for burglary – 1st degree (2008-GS-42-1743), burglary – 2nd degree (2008-GS-42-1744), and two counts of grand larceny between \$1,000 and \$5,000 (2008-GS-42-1745, 1746). He was represented by Robert Hall, Esquire. On August 26, 2008, the Applicant pled to the charges as indicted pursuant to N.C. v. Alford. He was sentenced by the Honorable R. Markley Dennis, Jr., to confinement for a period of fifteen (15) years on each burglary charge and five (5) years on each grand larceny charges, all charges to run concurrent. The Applicant did not appeal his plea or sentence.

¹ Although Applicant is classified as a SCDC inmate, he is currently housed in the Federal Bureau of Prisons as a result of separate federal convictions.

The Applicant filed an initial post-conviction relief application² on June 16, 2009, with an amendment filed April 22, 2010. The Respondent filed an Amended Return and Motion to Dismiss Without Prejudice on October 2010. Because the Applicant was housed out of state in a Federal facility, the Court dismissed the application without prejudice with leave to file when Applicant returns to state custody.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Actual Innocent (sic)," in that "Applicant was in the State of Florida when the S.C. crimes were committed;"
2. "Coerced," in that "Law enforcement and attorney coerced Applicant into pleading guilty to crime;" and
3. "Duress," in that "Applicant placed under duress by law enforcement and attorney to admit to a crime Applicant did not commit."

III.

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

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

² Case No. 2009-CP-42-3350

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).

The allegation presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973).

Additionally, the post-conviction relief court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. § 17-27-20(a)(6) (1985). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial or by review on motion for a new trial or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545 (1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Therefore, the Court should summarily dismiss this ground for relief.

IV.

Respondent interprets Applicant's claims of coercion and duress as allegations that his guilty plea was involuntary. Respondent submits that Applicant's allegations are 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 that 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.

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

VL

WHEREFORE, having made its Return, the State moves that Applicant's first claim be summarily dismissed and requests that an evidentiary hearing be held solely on the issue of voluntariness of the plea.

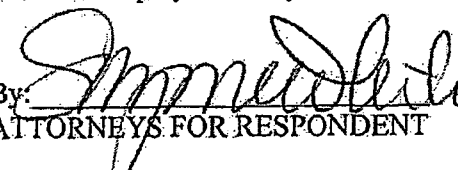
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

September 9 2014.

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

KEVIN WAYNE MCDANIELS, #254398

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

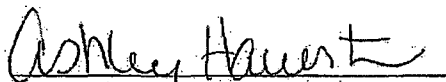
2014-CP-42-0506

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 on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Leah B. Moody
 Law Office of Leah B. Moody, LLC
 PO Box 1015
 Rock Hill, SC 29730

DATED this 9TH day of September, 2014.


 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Kevin Wayne McDaniels,
Applicant

VS.

STATE OF SOUTH CAROLINA
Respondant.

) IN THE COURT OF COMMON PLEAS

)

)

Case No.: _____

)

)

MEMORANDUM OF LAW IN SUPPORT
OF APPLICATION FOR POST-CONVICTION
RELIEF

)

)

)

)

COMES NOW, Kevin Wayne McDaniels, the applicant in the above entitled caption who hereby files this Memorandum of Law in support of attached Application for Post-Conviction relief based upon the below listed facts:

Mr. McDaniels would show unto this Honorable Court that this is a case of "FACTUAL INNOCENCE" in which applicant has obtained "Newly Discovered Evidence" being 16 Affidavits that were presented to the Courts for Trial on August 26, 2008.

STATEMENT OF CASE

Mr. McDaniels was arrested on March 11, 2006 for Public Disorderly Conduct in Richland County, S.C.

While in custody Detective Tim Tucker and Det. Easler from the Spartanburg County Sheriff's came to the Alvin S. Glenn Detention Ctr. and told Mr. McDaniels they wanted to sign him out and speak to him about two burglaries that took place on Dec 27, 2006 and January 14, 2006. They drove Mr. McDaniels to the scene and ask him if he burglarized these residence, McDaniels stated "NO" THEY CONTINUED TO INTERROGATE HIM-McDaniels ask for an Attorney they continued to Interrogate him placing him under duress and in fear of his life ,so McDaniels confessed to the crimes he did not commit.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2008 FEB 10 PM 2:58
MICHELE BLACKLEY

After the detectives drove Mr. McDaniels back to the Alvin S. Glenn detention Ctr. He Demanded a **Jury Trial**. The Court appointed **Robert Hall** -from the Public Defenders Office[used to be a judge in Sotz]. I told Mr. Hall I was in florida during Dec 27,2005& Jan 14, 2006. I have proof of this-Photo's of me in Florida and also citizens that **HAVE** submitted Affidavits.

On August 26, 2008, I along with my Mother and Step Father was in the Court of General Sessions awaiting for trial to begin and My Alibi witnesses to appear which drove 10 hours from fla. to make sure they were there to prove I Kevin W. McDaniels was in Florida on above dates. They arrived in Woodruff S.C. their vehicle breaks down[Water-Pump] and My Mother receives a call from them which it is my father and step Mother-they also brought along with them 16 Affidavits from Citizens that seen me in Florida on Dec 27, 2005 & Jan 14, 2006..

I, Kevin Wayne McDaniels, along with My Mother and Step Father who was in Court told Counsel Robert Hall this and told him we need a One-Hour Continuance so my mother could drive to Woodruff and pick up My father & Step Mother along with the 16 Affidavits to prove I was in Florida--Counsel left the room and came back and stated "THE COURT WILL NOT GRANT YOU AN CONTINUENCE"--WE NEED TO JUST PLEAD- and he stated he will ask Prosecutor Barry Barnette to take the Life Sentence Notice Off Me..we need to Plead Mr. McDaniels .I, Kevin W. McDaniels, kept telling Counsel Hall I am Not Guilty I was in florida- please get me a One Hour Continuance-My mother of which was sittinz there in a wheelchair-Colostomy on her side-Oxygen-One-Lung-Starting Crying getting upset because of Counsel not allowing my alibi witnesses to be present....knowing I am Innocent-with Counsel Coercing me into pleading to a N.C. V. Alford--so my Mother would not have to sit there and listen to the Court sentence me to a Life Sentence because my Witnesses were not present-under duress I involuntarily plead to these crimes- If the Courts would have allowed my alibi witnesses to be present the Court would have dismissed the case.

I involuntarily plead pursuant to an Alford Plea and received a 15 year sentence "NO PAROLE"-15 year sentence concurrent and two 5 year sentences running concurrent to the 200 month Federal Sentence.

I ask Counsel to file an Appeal-He refused to file an Appeal. Time had elapsed-I filed a PCR- and the Court's Misconstrued it as a Civil Action-Medical Claim- I filed another PCR and the Court Appointed Attorney KEVIN OWEN - he told me I needed to wait until My Federal sentence Expires in Sept 11, 2020- then I can file Litigation on my State Case "I HAVE NEVER HEARD THAT"-I FILED A COMPLAINT AGAINST HIM.. SEE ATTACHED EXHIBIT

I filed a 28 U.S.C. § 2254, in the U.S. District Court-then in the Court of Appeals and in the U.S Supreme Court pursuant to a "Writ of Certiorari" in which on October 15, 2013, they DENIED it. I have continuously have attempted to prove my "ACTUAL INNOCENCE" and the Courts state there is no Constitutional Violation- I am Actually Innocent- I can prove this..

"YOUR HONOR THIS COURT WAS NEVER PRESENTED WITH THE NEWLY DISCOVERED EVIDENCE OF 16 AFFIDAVITS--AND PHOTOS OF ME IN FLORIDA- which shall waive the EQUITABLE TOLLING- also the Attorney telling me that I have to wait until my Federal sentence expires then I can file litigation on my state sentence and conviction -I HAVE NEVER HEARD SUCH A THING- I have been filing Pro-Se Criminal and Civil Litigation with this Court for years-never heard of such.

Your Honor, I am Innocent of these charges, I was coerced into confessing to these burglaries by police Trickery and being threatened by Det, Tim Tucker & Det. Easler- of the Spitz County Sheriffs Dept.... I have been trying to prove this since the day of my arrest. Yes, there have been litigation filed with this Court in the past pertaining to the same matter-BUT THE NEWLY DISCOVERED EVIDENCE WAS NEVER PRESENTED-16 AFFIDAVITS-THEREFORE, THIS MATTER IS BEING BROUGHT TO THIS COURTS ATTENTION-MR. MCDANIELS IS ACTUAL INNOCENT..-I CAN PROVE THIS YOUR HONOR.

Your Honor I have been held **False Imprisonment** for almost **EIGHT(8) YEARS NOW-** for a crime I did not commit all because of **Miscarriage of Justice** and **Ineffective Assistance of Counsel-** and recently I received a Letter from the Public Defenders Office by "Clay Allen" stating that he spoke to **Robert Hall** and Mr. Hall stated he did not know that my **Alibi Witnesses** were broke down in Woodruff- a **Bold Face Lie** your Honor- He knew they were coming from Florida and I along with My Mother and Step Father made him aware of My Father being broke down in Woodruff **after traveling 10 Hours to Spartanburg** to make sure they were present to prove I Kevin McDaniels was in Florida **NOT S.C.** on above date-and **Robert Hall** a prior Judge for Spartanburg-knew this would violate my **Due Process Rights-** he still coerced I Kevin McDaniels into pleading to these crimes.

Your Honor, with all due respect one of the Victims " Ms. Christine Kimbrell" her husband was "Vince Kimbrell-who use to be a deputy for Spartanburg Co. Sheriff's Dept. was called to War and was killed in IRAQ- yes very emotional situation, leaving behind kids- and his home gets broken into-vandalized with eggs and ketchup-valuable items left untouched-- the Victim Christine Kimbrell states-her kids have been having problems with other kids in school-yes **Your Honor-Teenagersbroke into the Kimbrells residence"NOT KEVIN MCDANIELS"-** and the same thing with the house that was broken into on December 27, 2005-I did not break into that home-Coerced to plead Guilty because the Court and Counsel would not GRANT A "ONE-HOUR CONTINUANCE--- since this unlawful and Involuntarily plea was entered and since my Incarceration March 11, 2006-several family members have DIED IN WHICH IF I WAS NOT UNLAWFULLY CONVICTED THEY WOULD NOT HAD DIED...

Your Honor, it is one thing that a petitioner brings before the Court arguing Evidence-Photo-Line-Up-etc.. BUT I AM HERE BEFORE THIS COURT AN ACTUAL INNOCENT MAN)I WAS NOT EVEN IN THE STATE WHEN THESE CRIME WERE COMMITTED....I CAN PROVE THIS.....

Your Honor, just because I cannot afford to Hire the Dream Team Attorney's I should not have to sit in Prison for a crime I did not commit. I hereby move this Court to take action upon this matter and Order that an Investigator be provided to research the exact location as to where Kevin Wayne McDaniels D.O.B. [REDACTED] SS# [REDACTED] was On December 27, 2005 & January 14, 2006-the results will reveal Springhill Florida- The Sheriffs Dept and Courts have convicted the wrong person...

I have filed a Claim against the Sptg. Public Defenders Office so there would be a Conflict of Interest to Appoint them--the Courts need to Appoint a Pro-Bone Attorney so he can do his Investigation and reveal that I was in Florida Not S.C. and present the facts before this Court so that this Court can DISMISS these unlawful conviction.s

Your Honor,) I still have to serve my Federal Sentence in which I am in Federal Prison at this moment until Sept. 11, 2020.

Once I am exonerated on these false charges I still have to stay in the Feds until 9/11/2020. I have Exhausted All my remedies in the Feds...My Main concern is me being Falsely Convicted all because the Courts and Ineffective Assistance Of Counsel on behalf of Robert Hall-who use to be a Judge in Sptg. WOH-He Knew by not Granting a Continuance would Violate my Due Process Rights, and Still he didn't care he coerced me to plead guilty.

Your Honor, Barry Barnett served me with a "NOTICE OF LIFE SENTENCE" two weeks before trial-trying to scare me- BUT I STOOD THERE ON AUGUST 26, 2008-IN COURT AWAITING FOR TRIAL TO BEGIN , because I knew I was NOT GUILTY and all of a sudden my witnesses vehicle breaks down in Woodruff S.C. 20 minutes from the Courthouse Attys notified-Courts Notified allegedly by Atty-DENIED ONE HOUR CONTINUANCE..It boils down to Ineffective Assistance of Counsel- If I was granted a One-Hour Continuance- The Jury would have found me NOT GUILTY YOUR HONOR-I WAS IN FLORIDA A WHOLE OTHER STATE YOUR HONOR---I PLEAD THIS COURT LETS ME PROVE THIS-MY MOTHER IS VERY FRAGILE YOUR HONOR-PLEASE ITS NOT ABOUT ME ANYMORE. ITS ABOUT MY MOTHER-GIVE HER SOME RELIEF-HER SONS INNOCENT.

Your Honor, with all Due respect I am not going to sit here and Sugarcoat anything_-Yes I have a criminal record_ I have committed several crimes in my past only because of **Crack Addiction** but I'm here to tell you **Man to Man** I ~~did~~ **NOT BREAK INTO EITHER ONE OF THESE HOMES-** Especially "Christine Kimbrell's homes-the home was **VANDALIZED BY EGGS & KETCHUP-** THATS SOMETHING A KID WOULD DO-SOMEONE WHO KNEW THE KIMBRELL FAMILY AND KNEW THEY WERE GOING ON VACATION..MY THEORY-MRS. KIMBRELL'S KIDS"---FRIENDS IN SCHOOL_ VANDALIZING WITH EGGS AND KETCHUP-----ANOTHER THING YOUR HONOR-THE THIEVES LEFT A PAIR OF GLOVES OUTSIDE THE FRONT LAWN AS THEY LEFT- I HAVE NEVER USED GLOVES IN ANY CRIME I HAVE ever COMMITTED IN THE PAST... Again Your Honor, I am not going to sit here and paint you a picture of me being an Angel in my past-I do not sugarcoat anything..THESE "FURGLARIES" I DID NOT COMMIT- I can prove this Your Honor...

I ⁴ Have **ENCLOSED AFFIDAVITS THAT THIS COURT HAS NEVER SEEN- WHICH IS NEWLY DISCOVERED EVIDENCE -** As you know your Honor there is no Statute of Limitations on Newly Discovered Evidence.

Your Honor, this is a case of **Actual Innocence-A COUPLE OF DAYS OF INVESTIGATING -** THAT I WAS IN FLORIDA THEN I WILL BE EXONERATED YOUR HONOR...Yes Your Honor, **8 Years** I have been trying to prove my Innocence, and because Counsel never preserved anything on records I cannot present preserved issues before the Court. In addition I recently filed a "ACTUAL INNOCENCE" MOTION that was Clocked-In the Satg. County Courthouse.

Your Honor for me to take up your time with citing this and that case Law would be a waste of our time. your Honor-this claim is based upon "INEFFECTIVE ASSISTANCE OF COUNSEL" FOR NOT PURSUING A ONE HOUR CONTINUANCE-AND MISCARRIAGE OF JUSTICE FOR THE COURTS NOT GRANTING A ONE HOUR CONTINUANCE- I am being held False Imprisonment because of this.

I hereby pray before this Court that you Your Honor will take the Time to look at the Discovery in this case-NOTHING LEADS KEVIN MCDANIELS TO THESE CRIMES--NOTHING YOUR HONOR !!!!

Your Honor, I hereby argue **Actual Innocence** in this Case and if you check all my litigation on this case since 2008- you will see I have raised the same exact issue **Actual Innocence -and Ineffective Assistance Of Counsel...**Counsel was clearly Ineffective in not pursuing a One-Hour Continuance-Mv Mother & Step Father and me all ask Counsel **Robert Hall** for a continuance- now can we proceed with a trial without my alibi witnesses present- as **Robert Hall** stated-we need to just plead Guilty-if we go to trial without your witnesses you'll get a Life sentence....Counsel completely abandoning me as his client...I have never seen anything like it before-from all the Attorneys I've been through all these years and completely abandoned me on the day of trial while standing in the Courtroom awaiting for trial to start-He is a **BOLD FACE LIAR** WHEN HE SAID HE KNEW NOTHING ABOUT MY ALIBI WITNESSES BEING BROKE DOWN IN WOODRUFF AFTER DRIVING 10 HOURS FROM FLORIDA....-A LIAR...

Your Honor at this present time I hereby submit the **Attached 16 AFFIDAVITS AS "NEWLY DISCOVERED EVIDENCE"** therefore, moving this Court to waive all Equitable Tolling in this case and hear the Applicant's case based upon **"ACTUAL INNOCENCE"**- Your Honor please ORDER that this Case be placed upon the Docket for a Trial and also ORDER A PRIVATE INVESTIGATOR BE ASSIGNED TO MY CASE TO PROVE I WAS IN FLORIDA DECEMBER 27, 2005 & January 14, 2006.

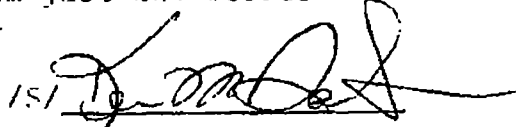
RELIEF REQUESTED

WHEREFORE, Mr.,McDaniels hereby moves this Court to **GRANT THIS** Motion and vacate his sentence and conviction based upon **Actual Innocence or GRANT A Jury Trial** -So Mr. McDaniels can prove he is Actual Innocent, then he can sue the Spartanburg Sheriff's Dept. and Robert Hall, pursuant to S.C. TORT CLAIMS ACT., grant such other and further relief as this Court may deem just and proper.

" I DECLARE UNDER PENALTY OF PERJURY THE ABOVE IS TRUE AND CORRECT.

DATED ON: Feb 6, 2014

[7]

/s/ 
Kevin W. McDaniels
[Pro-Se]

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
 COUNTY OF SPARTANBURG

KEVIN WAYNE MCDANIELS,
 Applicant
VS.

STATE OF SOUTH CAROLINA,
 Respondent

Case No. _____

MOTION TO APPOINT
PRIVATE ATTORNEY

COMES NOW: Kevin W. McDaniel, the Applicant who Acting
 Pro-Se Hereby Moves this Court to Grant a PRIVATE
 ATTORNEY IN THIS INSTANT CASE BASED UPON A CONFLICT
 OF INTEREST WITH THE SPTS CO. PUBLIC DEFENDERS OFFICE.
 In Addition, this IS A VERY COMPLEX CASE WHICH
 WILL TAKE A PRIVATE ATTORNEYS EXPERTISE IN
 PROPERLY INVESTIGATING MR. MCDANIELS ACTUAL
INNOCENCE PROVING HE WAS IN FLA NOT SC
DEC 27, 2005 & JAN 14, 2006.

RELIEF REQUESTED

WHEREFORE MR. MCDANIELS HEREBY MOVES this COURT TO
 APPOINT PRIVATE COUNSEL TO ASSIST MR. MCDANIELS IN PROVING
 HIS INNOCENCE. GRANT SUCH OTHER AND FURTHER RELIEF AS
 THIS COURT MAY DEEM JUST AND PROPER.

I declare Under Penalty of Perjury that
 Above is TRUE and Correct.

Dated Orig Feb 6, 2014


 Kevin McDaniel
 [PRO-SE]

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2014 FEB 10 PM 2:58
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

KEVIN WAYNE MCDANIELS
Applicant.

VS.

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS

CASE NO. _____

MOTION TO APPOINT PRIVATE
INVESTIGATOR

COMES NOW, KEVIN W. MCDANIELS, Applicant Acting Pro Se,
HEREBY MOVES THIS COURT TO APPOINT A PRIVATE INVESTIGATOR
TO INVESTIGATE APPLICANT'S CLAIMS OF ACTUAL INNOCENCE-
AND PROVE MR. MCDANIELS WAS IN FIA DEC 27, 2005 &
JAN 14, 2006. A PRIVATE INVESTIGATOR WILL BE ABLE
TO INTERVIEW WITNESSES AND CONTACT OTHER AGENCIES
THAT WILL PROVIDE DOCUMENTS THAT MR. KEVIN MCDANIELS
IS ACTUAL INNOCENT. YOUR HONOR, I AM AN INNOCENT
MAN. IN THE NAME OF JESUS DONT TURN YOUR BACK ON ME
ON ME YOUR HONOR - I AM INNOCENT.

RELIEF REQUESTED

WHEREFORE, MR. MCDANIELS MOVES THIS COURT TO APPOINT
PRIVATE INVESTIGATOR TO PROVE APPLICANT IS ACTUALLY INNOCENT.
GRANT SUCH OTHER RELIEF AS THIS COURT MAY DEEM JUST AND
PROPER.

I Declare Under Penalty of Perjury the Above
IS TRUE AND CORRECT.

Dated On Feb. 6, 2014


KEVIN MCDANIELS
[PRO-SE]

FILED
CLERK OF COURT
SPARTANBURG COUNTY
FEB 10 PM 2:27
X HOPE BLACKBURN

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG

KEVIN WAYNE MCDANIELS,
Applicant.

VS.

STATE OF SOUTH CAROLINA,
Respondent.

CASE NO: _____

MOTION TO PRODUCE
DISCOVERY

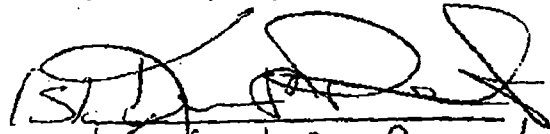
COMES NOW, Kevin W. McDaniel, Acting Pro-Se
HEREBY MOVES ALL PARTIES - SPARTANBURG COUNTY
SHERIFFS DEPT / SPARTANBURG CO. Public Defenders
OFFICE / SPARTANBURG CO. Solicitors OFFICE TO
PRODUCE ALL DISCOVERY IN THIS CASE
WHICH APPLICANT IS ENTITLED TO ALL
DISCOVERY PURSUANT TO BRADY V. MARYLAND.

RELIEF REQUESTED

WHEREFORE, MR. MCDANIELS MOVES THIS COURT
ISSUE AN ORDER FOR ABOVE PARTIES TO PRODUCE
DISCOVERY IN ITS ENTIRETY. Grant such
relief as this Court may deem just and proper.

"I declare Under Penalties Of Perjury the
Above is true and Correct.

Dated On: Feb 6, 2014


Kevin W. McDaniel
[PRO-SE]

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 FEB 19 AM 10:58
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

KEVIN W. McDaniel.
Applicant.

CASE NO: _____

VS.

STATE OF SOUTH CAROLINA.
Respondent.

INTERROGATORIES TO
BELOW PARTIES

KEVIN W. MCDANIELS HEREBY MOVES THE BELOW LISTED PARTIES TO ANSWER THE BELOW LISTED QUESTIONS UNDER OATH:

- [1]. ATTORNEY Robert B. Hall WAS KEVIN W. MCDANIELS CLAIMING ACTUAL INNOCENCE FROM DAY OF ARREST?
- [2]. ATTORNEY Robert Hall Did Kevin W. MCDANIELS Alibi Witnesses drive from FLA to Spts on Day of Trial Aug 26, 2008? And their Vehicle breakdown in Woodruff?
- [3]. ATTORNEY Robert Hall NAME ALL the Alibi Witnesses Who You Contacted, AND Subpoena'd In SPARTANBURG FILED CLERK OF COURT SPARTANBURG NOV 10 2008 BLACKLEY ASK FOR Kevin MCDANIELS?
- [4]. ATTORNEY ROBERT HALL Did Kevin MCDANIELS ASK FOR A CONTINUANCE ON DAY OF TRIAL AFTER FINDING OUT HIS FATHER & STEP MOTHER (Alibi Witnesses) WAS BROKE DOWN IN WOODRUFF SC. AFTER DRIVING - 568.50 Miles - 9 hours - 10-min.

- [5] WHAT DEFENSE WERE YOU GOING TO PRESENT ON DAY OF TRIAL AUG 26, 2008 WHEN YOU AND KEVIN W. McDANIELS WAS AWAITING FOR TRIAL TO START?
- [6]. ATTY. Robert Hall, IS THERE ANYTHING IN THE DISCOVERY THAT LINKS KEVIN W. McDANIELS TO THE BURGLARY OF CHRISTINE KIMBRELL ON JAN 13-14, 2006? OR BURGLARY OF TIMOTHY DALLID? OTHER THAN A COERCED CONFESSION?
- [7]. IS THERE ANY EVIDENCE THAT LINKS KEVIN W. McDANIELS TO THE BURGLARIES ANY?
- [8]. DO YOU THINK THAT SOMEONE OTHER THAN KEVIN W. McDANIELS COMMITTED THESE BURGLARIES?
- [9]. THE REPORT [Christine Kimbrell] STATES HER HOME WAS VANDALIZED BY EGGS & KETCHUP AND HER KIDS HAVE BEEN HAVING PROBLEMS WITH OTHER KIDS IN SCHOOL - Do you think Teenage Kids this?
- [10]. BARRY BARNETTE - Did KEVIN W. McDANIELS you with a Affidavit proving He Was on Dec 27, 2005 & JAN 13-14-2006 -
- [11]. BARRY BARNETTE, Do you think Someone other than Kevin McDaniels Committed the Burglaries?

[12] BARRY BARNETTE: Other than a "Coerced Confession" Do You Have "ANY EVIDENCE" to Place Kevin McDaniels At the Crime Scene OF Christine Kimbrell JAN 13-14 2006 OR TIMOTHY BARNES Dec 27, 2005?

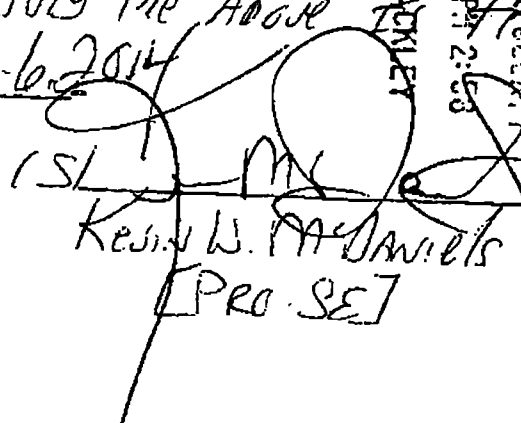
[13] BARRY BARNETTE: Did Victim Christine Kimbrell tell you that her home WAS defecalized by "Eggs and Ketchup" and her kids were having Problems with Kids in School?

[14] PRESTON JUDGE: Do you think someone OTHER THAN KEVIN McDANIELS committed these Burglaries?

[15] PRESTON JUDGE: Do you feel that Det. TIM TUCKER & Det. EASLER COERCED Kevin McDaniels INTO Confessing TO THESE Burglaries?

* I KEVIN WAHLE McDANIELS REQUEST THESE ANSWERS TO BE ANSWERED UNDER OATH

"I declare Under Penalty OF Perjury the Above
and Correct Signed ON Feb 6, 2014

151 
Kevin W. McDaniels
[PRO SE]

FILED
CLERK OF COURT
SPARTANBURG, SOUTH CAROLINA
FEB 10 PM 2:03
MADE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

AFFIDAVIT OF: Kevin W. McDaniels
NANCY L. GRIFFIN

I, NANCY L. GRIFFIN do hereby make this Affidavit Pursuant to
U.S.C. (ss) 1746 declaring under Penalty of Perjury:
This Affidavit is made in support of Kevin W. McDaniels, D.O.B. [REDACTED], S.S. [REDACTED]

4. Kevin W. McDaniels was in Florida on December 27, 2005, and January 14, 2006.
3. Kevin W. McDaniels was receiving his U.S. Mail, Paying Rent and residing at [REDACTED] Elmont Avenue, Springhill, Florida, 34610

4. Kevin W. McDaniels DID NOT Burglarize the home of Timothy Ball, 9980 Highway 9, Campobello, South Carolina, 29322, on December 27, 2005-Case # 2008GS201744 / K109811.

5. Kevin W. McDaniels DID NOT Burglarize the home of Christine Kimbrell, [REDACTED] Boiling Springs, South Carolina on January 14, 2006-Case # [REDACTED] K109808.

6. Kevin W. McDaniels was Unlawfully sentenced to 15 years (No Parole) on Both charges August 26, 2008.

7. Kevin W. McDaniels is related to me as My Son. I have known Kevin W. McDaniels for 44 Years.

8. Please contact me [REDACTED] PO [REDACTED] [REDACTED] SC, 29376
Phone#: [REDACTED] Cell#: [REDACTED]

9. I will testify in Court Kevin W. McDaniels was in Florida December 27, 2005 and January 14, 2006 and Not in South Carolina.

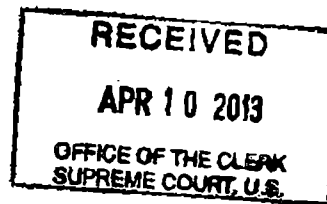
I declare under Penalty of Perjury
The above is True and Correct.

/s/ Nancy L. Griffin
Print _____

Date: 03-2
2014 FEB 10 PM 2:58
M. HOPE BLACKLEY
FILED
CLERK OF COURT
SPARTANBURG COUNTY

Appeared before me on the _____ Day of 20____

Notary Public
My commission expires: _____



STATE OF FLORIDA
COUNTY OF PASCO

AFFIDAVIT OF:

Leroy McDaniels

1. Leroy McDaniels do hereby make this Affidavit Pursuant to 28
U.S.C. (ss) 1746 declaring under Penalty of Perjury:

1. This Affidavit is made in support of Kevin W. McDaniels, D.O.B. [REDACTED] 9, S.S. #5 [REDACTED].

2. Kevin W. McDaniels was in Florida on December 27, 2005, and January 14, 2006.

3. Kevin W. McDaniels was receiving his U.S. Mail, Paying Rent and residing at: 14709 Elmout Avenue, Springhill, Florida, 34610

4. Kevin W. McDaniels DID NOT Burglarize the home of Timothy Ballard, [REDACTED]
Campobello, South Carolina, 29322, on December 27, 2005-Case # 2008GS201744 / K109811.

5. Kevin W McDaniels DID NOT Burglarize the home of Christine Kimbrell, [REDACTED]
Boiling Springs, South Carolina on January 14, 2006-Case # 2008GS4201743 / K109808.

6. Kevin W. McDaniels was Unlawfully sentenced to 15 years (No Parole) on Both charges August 26, 2008.

7. Kevin W. McDaniels is related to me as Son. I have known Kevin W. McDaniels for 43 Years.

8. Please contact me at: 14709 Elmout Ave Spring Hill FL 32061
Phone#: [REDACTED] C # [REDACTED]

9. I will Testify in Court that Kevin W. McDaniels was in the State of Florida December 27, 2005 and January 14, 2006 and Not in South Carolina.

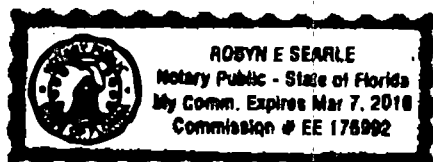
I declare under Penalty of Perjury
The above is True and Correct

Dated: 03-11-13

151 Leroy McDaniels
FILED
CLERK OF COURT
SPRINGBURG COURT
2013 MAR 10 PM 2:58
JESSIE BLAKLEY

The foregoing instrument was acknowledged before me this 11th day of MARCH, 2013

by LEROY MCDANIELS
Name of Person Acknowledging
who is personally known to me or who has produced
FLDL



as identification.
Robyn E Searle Notary Public
Signature of Notary Public
ROBYN E SEARLE
Name of Notary Typed, Printed or Stamped
Commission No. EE176992

STATE OF
COUNTY OF

Florida
Pasco

AFFIDAVIT OF:

Tommy Hill

I, Tommy Hill do hereby make this Affidavit Pursuant to 28
U.S.C. (ss) 1746 declaring under Penalty of Perjury:

My Affidavit is made in support of Kevin W. McDaniels, D.O.B. [REDACTED] 9, S.S.

2. Kevin W. McDaniels was in Florida on December 27, 2005, and January 14, 2006.

3. Kevin W. McDaniels was receiving his U.S. Mail, Paying Rent and residing at: 14709
Elmont Avenue, Springhill, Florida, 34610

4. Kevin W. McDaniels DID NOT Burglarize the home of Timothy Ballard, [REDACTED]
Campobello, South Carolina, 29322, on December 27, 2005-Case #
2008GS201744 / K109811.

5. Kevin W. McDaniels DID NOT Burglarize the home of Christine Kimbrell, [REDACTED]
Boiling Springs, South Carolina on January 14, 2006-Case #
2008GS4201743 / K109808.

6. Kevin W. McDaniels was Unlawfully sentenced to 15 years (No Parole) on Both
charges August 26, 2008.

7. Kevin W. McDaniels is related to me as Friend. I have
known Kevin W. McDaniels for 30 Years.

8. Please contact me at: PO Box 1174 Spring Hill, FL 34601
Phone#: 727-856-7303 Cell#: 727-808-1222

9. I will Testify in Court that Kevin W. McDaniels was in the State of Florida December
27, 2005 and January 14, 2006 and Not in South Carolina.

I declare under Penalty of Perjury
The above is True and Correct

/s/

Tommy Hill

Dated: 3-21-13

The foregoing instrument was acknowledged before me this 21 day of March, 13

by Tommy Hill
Name of Person Acknowledging

who is personally known to me or who has produced

Tommy Hill

FL DL

Type of Identification

as identification.

Robin E Searle

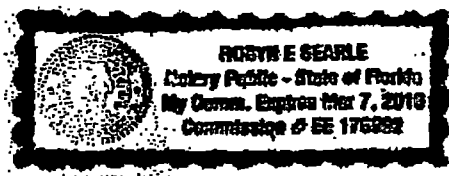
Signature of Notary Public

Notary Public

Robin E. Searle

Name of Notary Typed, Printed or Stamped

Commission No. EE176992



STATE OF Florida
COUNTY OF Polk

AFFIDAVIT OF:

Tina Hill

I, Tina Hill do hereby make this Affidavit Pursuant to 28
U.S.C. (ss) 1746 declaring under Penalty of Perjury:

1. This Affidavit is made in support of Kevin W. McDaniels, D.O.B. [REDACTED] S.S. # [REDACTED]

2. Kevin W. McDaniels was in Florida on December 27, 2005, and January 14, 2006.

3. Kevin W. McDaniels was receiving his U.S. Mail, Paying Rent and residing at: 14709 Elmont Avenue, Springhill, Florida, 34610

4. Kevin W. McDaniels DID NOT Burglarize the home of Timothy Ballard, [REDACTED] Campobello, South Carolina, 29322, on December 27, 2005-Case # 2008GS201744 / K109811.

5. Kevin W. McDaniels DID NOT Burglarize the home of Christine Kimbrell, [REDACTED] Boiling Springs, South Carolina on January 14, 2006-Case # 2008GS4201743 / K109808.

6. Kevin W. McDaniels was Unlawfully sentenced to 15 years (No Parole) on Both charges August 26, 2008.

7. Kevin W. McDaniels is related to me as Brother. I have known Kevin W. McDaniels for 23 Years.

8. Please contact me at: Candlelite Rd. Brooksville FL #17
Phone#: _____ Cell#: _____

9. I will Testify in Court that Kevin W. McDaniels was in the State of Florida December 27, 2005 and January 14, 2006 and Not in South Carolina.

I declare under Penalty of Perjury
The above is True and Correct

Dated: 3-21-13

FILED
CLERK OF COURT
SARTANBURG COUNTY
FEB 10 PM 2:58
HOPE BECKLEY

The foregoing instrument was acknowledged before

me this 21 day of March, 13

by Tina Hill

Name of Person Acknowledging

who is personally known to me or who has produce

FL DL

Type of Identification

as Identification.

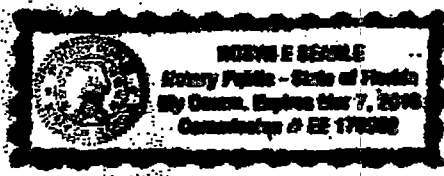
Robin E. Searle Notary Public

Signature of Notary Public

Robin E. Searle

Name of Notary Typed, Printed or Stamped

Commission No. EE 176992



STATE OF Florida
COUNTY OF Pasco

AFFIDAVIT OF:

Chris Hill

I, Chris Hill do hereby make this Affidavit Pursuant to 28
U.S.C. (ss) 1746 declaring under Penalty of Perjury:

1. This Affidavit is made in support of Kevin W. McDaniels, D.O.B. [REDACTED], S.S. [REDACTED]

2. McDaniels was in Florida on December 27, 2005, and January 14, 2006.

3. Kevin W. McDaniels was receiving his U.S. Mail, Paying Rent and residing at: 14709 Elmont Avenue, Springhill, Florida, 34610

4. McDaniels DID NOT Burglarize the home of Timothy Ballard, [REDACTED] Campobello, South Carolina, 29322, on December 27, 2005-Case # 1744 / K109811.

5. Kevin W. McDaniels DID NOT Burglarize the home of Christine Kimbrell, [REDACTED] Boiling Springs, South Carolina on January 14, 2006-Case # 2 K109808.

6. Kevin W. McDaniels was Unlawfully sentenced to 15 years (No Parole) on Both charges August 26, 2008.

7. Kevin W. McDaniels is related to me as [REDACTED] I have known Kevin W. McDaniels for 23 Years.

8. Please contact me at: Quits Blvd. # 27
Phone#: [REDACTED] Cell#: [REDACTED]

9. I will Testify in Court that Kevin W. McDaniels was in the State of Florida December 27, 2005 and January 14, 2006 and Not in South Carolina.

I declare under Penalty of Perjury
The above is True and Correct

Dated: 3. 22. 13

ISI

Chris Hill

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 FEB 10 PM 2:58
M. HOPE BLACKLEY

The foregoing instrument was acknowledged before me this 22 day of March 13 Year
by Chris Hill
Name of Person Acknowledging

who is personally known to me or who has produced

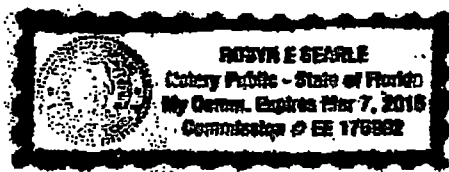
FL DL
Type of Identification

as identification.

Robin E. Searle Notary Public
Signature of Notary Public

Robin E. Searle
Name of Notary Typed, Printed or Stamped

Commission No. EE 176992



STATE OF
COUNTY OF

Florida
Pasco

AFFIDAVIT OF:

Walter Orey

I, Helen Orey do hereby make this Affidavit Pursuant to 28
U.S.C. (ss) 1746 declaring under Penalty of Perjury:

1. This Affidavit is made in support of Kevin W. McDaniels, D.O.B. [REDACTED], S.S. [REDACTED]

2. Kevin W. McDaniels was in Florida on December 27, 2005, and January 14, 2006.

3. Kevin W. McDaniels was receiving his U.S. Mail, Paying Rent and residing at: [REDACTED]
Elmont Avenue, Springhill, Florida, 34610

[REDACTED] McDaniels DID NOT Burglarize the home of Timothy Ballard, [REDACTED]
Campobello, South Carolina, 29322, on December 27, 2005-Case #
2008GS201744 / K109811.

[REDACTED] iels DID NOT Burglarize the home of Christine Kimbrell, [REDACTED]
Boiling Springs, South Carolina on January 14, 2006-Case #
2008GS4201743 / K109808.

6. Kevin W. McDaniels was Unlawfully sentenced to 15 years (No Parole) on Both
charges August 26, 2008.

7. Kevin W. McDaniels is related to me as Uncle. I have
known Kevin W. McDaniels for 43 Years.

8. Please call me at: 22 [REDACTED] 37E Dr. Lakeland FL 32024
Phone#: [REDACTED] Cell#: [REDACTED]

9. I will Testify in Court that Kevin W. McDaniels was in the State of Florida December
27, 2005 and January 14, 2006 and Not in South Carolina.

I declare under Penalty of Perjury
The above is True and Correct

Dated: 3-21-2013

/s/

Helen Orey

The foregoing instrument was acknowledged before
me this 21 day of MARCH, 2013
by [REDACTED]

Name of Person Acknowledging

who is personally known to me or who has produce

FL DL

Type of Identification

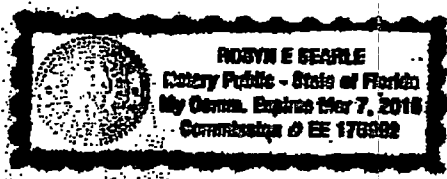
as identification.

Robyn E Searle Notary Public

ROBYN E SEARLE

Name of Notary Typed, Printed or Stamped

Commission No. FE176992



STATE OF Florida
COUNTY OF Pasco

AFFIDAVIT OF:

I, Jim Orey do hereby make this Affidavit Pursuant to 28
U.S.C. (ss) 1746 declaring under Penalty of Perjury:

1. This affidavit is made in support of Kevin W. McDaniels, D.O.B. [REDACTED], S.S.

2. [REDACTED] McDaniels was in Florida on December 27, 2005, and January 14, 2006.

3. Kevin W. McDaniels was receiving his U.S. Mail, Paying Rent and residing at: 14709
Elmont Avenue, Springhill, Florida, 34610

Kevin W. McDaniels DID NOT Burglarize the home of Timothy Ballard, [REDACTED]
[REDACTED], Campobello, South Carolina, 29322, on December 27, 2005-Case
1744 / K109811.

[REDACTED] McDaniels DID NOT Burglarize the home of Christine Kimbrell, [REDACTED]
[REDACTED] Boiling Springs, South Carolina on January 14, 2006-Case
2 K109808.

6. Kevin W. McDaniels was Unlawfully sentenced to 15 years (No Parole) on Both
charges August 26, 2008.

7. Kevin W. McDaniels is related to me as Nephew. I have
known Kevin W. McDaniels for 43 Years.

8. Please contact me at: 222.04 3722 on Lake City Fl 32024
Phone#: [REDACTED] 344 [REDACTED] Cell#:

9. I will Testify in Court that Kevin W. McDaniels was in the State of Florida December
27, 2005 and January 14, 2006 and Not in South Carolina.

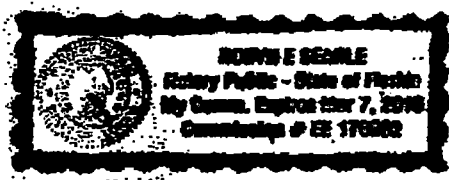
I declare under Penalty of Perjury
The above is True and Correct

Dated: 3-15-2013

ISI

The foregoing instrument was acknowledged before
me this 15 day of March, 2013
by _____
Name of Person Acknowledging

who is personally known to me or who has produced



as identification.
Royn E. Seale Notary Public
ROYN E. SEALE
Name of Notary Typed, Printed or Stamped
Commission No. EE 176492

STATE OF Florida
COUNTY OF Polk

AFFIDAVIT OF:

Joseph T. Hope III

I, Joseph T. Hope III do hereby make this Affidavit Pursuant to 28
U.S.C. (ss) 1746 declaring under Penalty of Perjury:

1. This Affidavit is made in support of Kevin W. McDaniels, D.O.B. [REDACTED], S.S. [REDACTED]

2. Kevin W. McDaniels was in Florida on December 27, 2005, and January 14, 2006.

3. Kevin W. McDaniels was receiving his U.S. Mail, Paying Rent and residing at: 14709 Elmont Avenue, Springhill, Florida, 34610

4. Kevin W. McDaniels DID NOT Burglarize the home of Timothy Ballard, [REDACTED]
Campobello, South Carolina, 29322, on December 27, 2005-Case #
2008GS201744 / K109811.

5. Kevin W. McDaniels DID NOT Burglarize the home of Christine Kimbrell, [REDACTED]
[REDACTED] Avenue, Boiling Springs, South Carolina on January 14, 2006-Case #
2008GS4201743 / K109808.

6. Kevin W. McDaniels was Unlawfully sentenced to 15 years (No Parole) on Both
charges August 26, 2008.

7. Kevin W. McDaniels is related to me as Cousins. I have
known Kevin W. McDaniels for 31 Years.

8. Please contact me at: 14237 Elmont Ave, Spring Hill, FL 34610
Phone#: _____ Cell#: [REDACTED] 269284

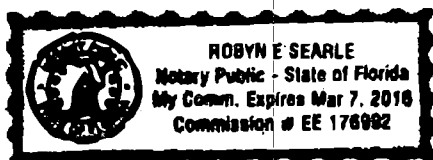
9. I will Testify in Court that Kevin W. McDaniels was in the State of Florida December 27, 2005 and January 14, 2006 and Not in South Carolina

I declare under Penalty of Perjury
The above is True and Correct

Dated: 03-11-13

/S/ [Signature]

The foregoing instrument was acknowledged before
me this 11th day of MARCH 2013
Date Month Year
by JOSEPH T. HOPE III
Name of Person Acknowledging
who is personally known to me or who has produced



ALASKA ID CARD
Type of Identification
as identification.
Robyn E. Searle Notary Public
Signature of Notary Public
ROBYN E. SEARLE
Name of Notary Typed, Printed or Stamped
Commission No. EE 176992

STATE OF Florida
COUNTY OF Palm

AFFIDAVIT OF:

DANA Gregory

1. Dana Gregory do hereby make this Affidavit Pursuant to 28
U.S.C. (ss) 1746 declaring under Penalty of Perjury:

1. This Affidavit is made in support of Kevin W. McDaniels, D.O.B. [REDACTED], S.S. [REDACTED]

2. Kevin W. McDaniels was in Florida on December 27, 2005, and January 14, 2006.

3. Kevin W. McDaniels was receiving his U.S. Mail, Paying Rent and residing at: 14709 Elmont Avenue, Springhill, Florida, 34610

4. Kevin W. McDaniels DID NOT Burglarize the home of Timothy Ballard, [REDACTED]
Campobello, South Carolina, 29322, on December 27, 2005-Case #
2008GS201744 / K109811.

5. Kevin W McDaniels DID NOT Burglarize the home of Christine Kimbrell, [REDACTED]
Boiling Springs, South Carolina on January 14, 2006-Case #
2008GS4201743 / K109808.

6. Kevin W. McDaniels was Unlawfully sentenced to 15 years (No Parole) on Both
charges August 26, 2008.

7. Kevin W. McDaniels is related to me as Friend. I have
known Kevin W. McDaniels for 25 Years.

8. Please contact me P.O. Box 11793 Spring Hill FL 34610
Phone#: [REDACTED] 4549 Cell#: [REDACTED]

9. I will Testify in Court that Kevin W. McDaniels was in the State of Florida December
27, 2005 and January 14, 2006 and Not in South Carolina.

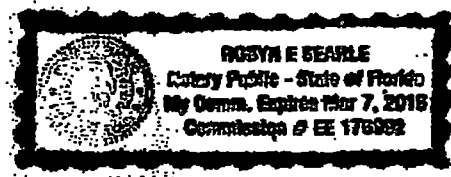
I declare under Penalty of Perjury
The above is True and Correct

Dated: 3-13-13

/s/ Dana

The foregoing instrument was acknowledged before me this 13 day of MARCH, 2013
by _____
Name of Person Acknowledging

who is personally known to me or who has produced



FL DL
Type of Identification

as Identification.

Robyn E. Searle Notary Public
Signature of Notary Public

ROBYN E. SEARLE
Name of Notary Typed, Printed or Stamped

Commission No. EE 176992

STATE OF
COUNTY OF

Florida
Polk

AFFIDAVIT OF:

Rachel Thompson

1. Rachel Thompson do hereby make this Affidavit Pursuant to 28
U.S.C. (ss) 1746 declaring under Penalty of Perjury:

1. This Affidavit is made in support of Kevin W. McDaniels, D.O.B. [REDACTED], S.S.
[REDACTED]

2. Kevin W. McDaniels was in Florida on December 27, 2005, and January 14, 2006.

3. Kevin W. McDaniels was receiving his U.S. Mail, Paying Rent and residing at: 1470
Elmont Avenue, Springhill, Florida, 34610

[REDACTED] McDaniels DID NOT Burglarize the home of Timothy Bahard, [REDACTED]
Campobello, South Carolina, 29322, on December 27, 2005-Case #
2008GS201744 / K109811.

[REDACTED] iels DID NOT Burglarize the home of Christine Kimbrell, [REDACTED]
Boiling Springs, South Carolina on January 14, 2006-Case #
2008GS4201743 / K109808.

6. Kevin W. McDaniels was Unlawfully sentenced to 15 years (No Parole) on Both
charges August 26, 2008.

7. Kevin W. McDaniels is related to me as Friend. I have
known Kevin W. McDaniels for a Years.

8. Please contact me at: 166 monterverde dr
Phone#: (727) 226-[REDACTED] Cell#:

9. I will Testify in Court that Kevin W. McDaniels was in the State of Florida December
27, 2005 and January 14, 2006 and Not in South Carolina.

I declare under Penalty of Perjury
The above is True and Correct

Dated: 3.22.13

/s/ Rachel Thompson

FILED
CLERK OF COURT
SPARTANBURG COURT
2013 FEB 10 PM 2:58
M. HOPE BLACKLE

The foregoing instrument was acknowledged before me this 22 day of March, 13

by Rachel Thompson
Name of Person Acknowledging

who is personally known to me or who has produced

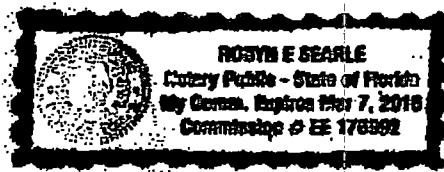
FL DL
Type of Identification

as identification.

Robin E. Searle, Notary Public
Signature of Notary Public

Robin E. Searle
Name of Notary Typed, Printed or Stamped

Commission No. EE 176992



STATE OF Florida
COUNTY OF Pasco

AFFIDAVIT OF:

Tony Livingston

I, Tony Livingston do hereby make this Affidavit Pursuant to 28
U.S.C. (ss) 1746 declaring under Penalty of Perjury:

1. This Affidavit is made in support of Kevin W. McDaniels, D.O.B. [REDACTED], S.S.

2. Kevin W. McDaniels was in Florida on December 27, 2005, and January 14, 2006.

3. Kevin W. McDaniels was receiving his U.S. Mail, Paying Rent and residing at: 14709
Elmont Avenue, Springhill, Florida, 34610

4. Kevin W. McDaniels DID NOT Burglarize the home of Timothy Ballard,
[REDACTED] Campobello, South Carolina, 29322, on December 27, 2005-Case
744 / K109811.

5. Kevin W. McDaniels DID NOT Burglarize the home of Christine Kimbrell,
[REDACTED] Boiling Springs, South Carolina on January 14, 2006-Case

2008GS4201743 / K109808.

6. Kevin W. McDaniels was Unlawfully sentenced to 15 years (No Parole) on Both
charges August 26, 2008.

7. Kevin W. McDaniels is related to me as friend. I have
known Kevin W. McDaniels for 20 Years.

8. Please contact me at: 110344 Platinum Dr. Spring Hill FL 34610
Phone#: _____ Cell#: 352 397 6559

9. I will Testify in Court that Kevin W. McDaniels was in the State of Florida December
27, 2005 and January 14, 2006 and Not in South Carolina.

I declare under Penalty of Perjury
The above is True and Correct

Dated: 3-22-13

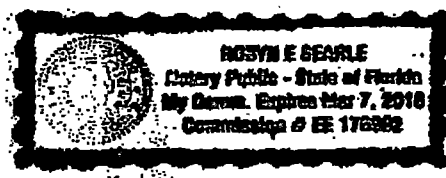
/s/ Tony Livingston

The foregoing instrument was acknowledged before
me this 22 day of MARCH, 2013
by _____
Date Month Year

who is personally known to me or who has produce
FL DL

as Identification.
Robyn E. Searle Notary Public
Signature of Notary Public

ROBYN E. SEARLE
Name of Notary Typed, Printed or Stamped
Commission No. EE176992



STATE OF Florida
COUNTY OF Pasco

AFFIDAVIT OF:

Christopher Hendrix

1. Christopher Hendrix do hereby make this Affidavit Pursuant to 28
U.S.C. (ss) 1746 declaring under Penalty of Perjury:

1. This Affidavit is made in support of Kevin W. McDaniels, D.O.B. [REDACTED], S.S. [REDACTED]

2. Kevin W. McDaniels was in Florida on December 27, 2005, and January 14, 2006.

3. Kevin W. McDaniels was receiving his U.S. Mail, Paying Rent and residing at: 14709 Elmont Avenue, Springhill, Florida, 34610

4. Kevin W. McDaniels DID NOT Burglarize the home of Timothy Ballard
Campobello, South Carolina, 29322, on December 27, 2005-Case #
2008GS201744 / K109811.

5. Kevin W. McDaniels DID NOT Burglarize the home of Christine Kimbrell
Boiling Springs, South Carolina on January 14, 2006-Case #
2008GS4201743 / K109808.

6. Kevin W. McDaniels was Unlawfully sentenced to 15 years (No Parole) on Both charges August 26, 2008.

7. Kevin W. McDaniels is related to me as Friend. I have known Kevin W. McDaniels for 10 Years.

8. Please contact me at: 308 Lake Pasco
Phone#: _____ Cell#: _____

9. I will Testify in Court that Kevin W. McDaniels was in the State of Florida December 27, 2005 and January 14, 2006 and Not in South Carolina.

I declare under Penalty of Perjury
The above is True and Correct

Dated: 3-18-13

ISI Christopher Hendrix

FILED
CLERK OF COURT
SPRINGHILL, FLORIDA
2013 FEB 10 PM 2:58
M. HOPE BLACKLEY

The foregoing instrument was acknowledged before me this 18 day of March, 13
by Christopher Hendrix
who is personally known to me or who has produce

FL DL

Type of Identification

as identification.

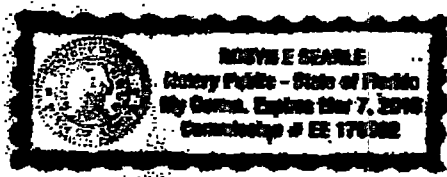
Robin E. Seale Notary Public

Signature of Notary Public

Robin E. Seale

Name of Notary Typed, Printed or Stamped

Commission No. EE 176992



STATE OF Florida
COUNTY OF Polk

AFFIDAVIT OF:

Bryan Presher

I, Bryan Presher do hereby make this Affidavit Pursuant to 28
U.S.C.(ss) 1746 declaring under Penalty of Perjury:

1. This Affidavit is made in support of Kevin W. McDaniels, D.O.B. [REDACTED] S.S. [REDACTED]

2. Kevin W. McDaniels was in Florida on December 27, 2005, and January 14, 2006.

3. Kevin W. McDaniels was receiving his U.S. Mail, Paying Rent and residing at: 14709 Elmont Avenue, Springhill, Florida, 34610

4. Kevin W. McDaniels DID NOT Burglarize the home of Timothy Ballard, [REDACTED]
[REDACTED] Campobello, South Carolina, 29322, on December 27, 2005-Case #
2008GS201744 / K109811.

5. Kevin W McDaniels DID NOT Burglarize the home of Christine Kimbrell, [REDACTED]
[REDACTED] Boiling Springs, South Carolina on January 14, 2006-Case #
2008GS4201743 / K109808.

6. Kevin W. McDaniels was Unlawfully sentenced to 15 years (No Parole) on Both
charges August 26, 2008.

7. Kevin W. McDaniels is related to me as Friend. I have
known Kevin W. McDaniels for 9 Years.

8. Please contact me at: [REDACTED] Cell: 813-316-1160
Phone#: [REDACTED] Cell#: [REDACTED]

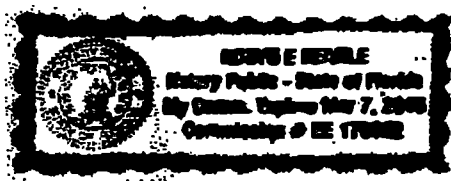
9. I will Testify in Court that Kevin W. McDaniels was in the State of Florida December
27, 2005 and January 14, 2006 and Not in South Carolina.

I declare under Penalty of Perjury
The above is True and Correct

Dated: 3-19-13

FILED
CLERK OF COURT
SARTANBURG COUNTY
FEB 10 PM 2:58
HOPE BRACKLEY

The foregoing instrument was acknowledged before
me this 19 day of March, 13
by Bryan Presher
Name of Person Acknowledging
who is personally known to me or who has produce



FL DL
Type of Identification
as Identification.
Robin E. Seable Notary Public
Signature of Notary Public
Robin E. Seable
Name of Notary Typed, Printed or Stamped
Commission No. EE 176922

STATE OF NEW YORK
COUNTY OF ORANGE

AFFIDAVIT OF KEVIN MCDANIELS
ACTUAL INNOCENCE

I, Kevin Wayne McDaniels, do hereby declare under penalty of perjury the below listed facts are true and correct:

1. I was in Florida on Dec 27, 2005 & Jan 14, 2006.
2. I Notified Counsel Robert Hall while in Court on Aug 25, 2008 awaiting Trial that I needed a **One-Hour-Continuance** because my Alibi Witnesses vehicle is broke down after driving 10 hours from florida and make it to Woodruff S.C. Atty Hall **Stated the Court will not Grant a Continuance "We need to go ahead and Plead.**
3. My Mother and Step Father informed Counsel Robert Hall that My Father and Step Mother were broke down in Woodruff and they would drive 20 minutes away to pick them up and Counsel told them the Court is NOT Granting a Continuance.
4. My Father had with them **16 Affidavits** proving I was in Florida Not S.C. on Dec 27, 2005 & Jan 14, 2006, and Counsel would not Pursue a One Hour Continuance so that my father could go and pick up my Alibi Witnesses to prove I was in Florida.
5. I Kevin Wayne McDaniels-Did **NOT** break into the Homes of Christine Kimbrell on Jan 14, 2006 & Timothy Hallard on December 27, 2005-I was in Springhill Fla-and Newport Richey Fla.
6. There are several family members along with citizens in fla right now that seen me in fla on the above dates.
7. Det. Tim Tucker & Det. Easter Coerced me under duress to falsely confess to these burglaries-telling me you better come clean.

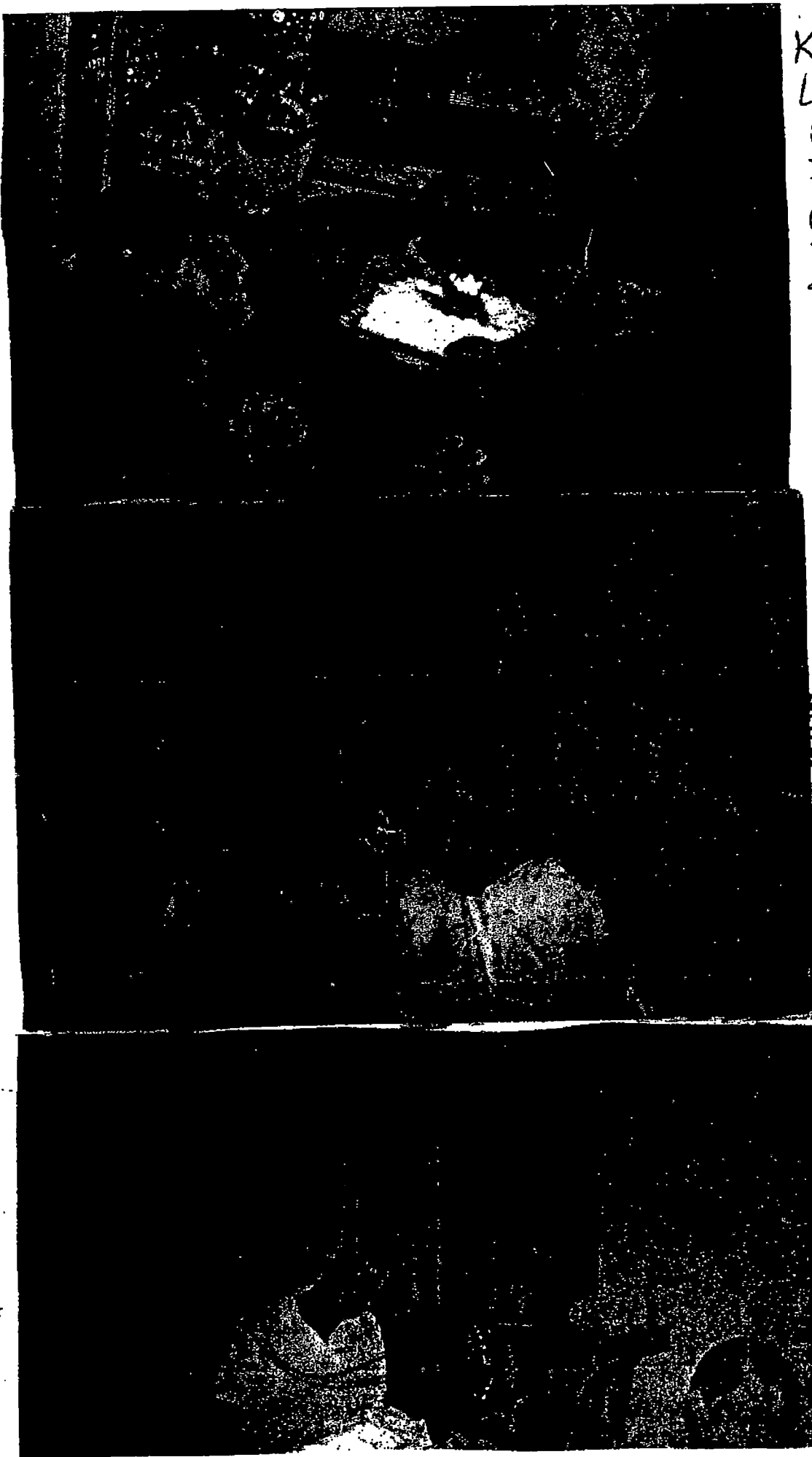
" I declare under penalty of perjury the above is true and correct. Dated On: Feb 6, 2014

Kevin W. McDaniels

Kevin W. McDaniels
[Pro-Se]

FILED
CLERK OF COURT
SPRINGFIELD COUNTY
2014 FEB 06 PM 2:57
M. HOPE BRADLEY

I AM INNOCENT - I CAN PROVE THIS!



Kevin M. Davis
Leroy M. Davis
Roger Hall
IN FLA. FROM
OCT 2005 -
THRU JAN 14,
2006
I AM
INNOCENT

Kevin M. Davis
Sisters
Tina & Julie
AT Hospital
IN FLA.
SPRINGFIELD
JAN 14, 2006
PH 2:57

I
AM
INNOCENT
I CAN
PROVE
THIS!

Kevin W. McDaniel's

Reg # 14256-171

Dated: Feb 6-2014

F.C.I. Otisville

P.O. Box 1000

Otisville, NY 10963

ALSO
CLOCK IN
EXHIBITS
RETURN CLOCK
COPY
THANK YOU!

RE: CLOCKING IN PCR-RETURN A
CLOCKED COPY FOR MY RECORDS

TO: SPARTANBURG CO. COURTHOUSE
ATTN: CLERK OF COURT
P.O. Box 3483
SPARTANBURG, SC. 29304-3483

I AM
INNOCENT
I CAN
PROVE THIS

DEAR CLERK:

I Respectfully ask that you Clock-In the Enclosed
PCR AND EXHIBITS AND RETURN A CLOCKED COPY FOR
MY RECORDS. THANK YOU SO MUCH FOR YOUR ASSISTANCE.

* PLEASE SEE (CLOCK-IN) ATTACHED EXHIBIT WHICH I
HAVE WRITTEN 20 ATTYS / President Obama ETC
ASKING them to please Help ME PROVE MY
INNOCENCE THEY REFUSE TO RESPOND? - I AM
AN INNOCENT MAN - PLEASE CLERK BELIEVE
ME - I CAN PROVE I WAS IN FLA -
NOT S.C. ON Dec 27-2005 / JAN 14-2006

I WAS NOT IN THE
STATE WHEN THIS
HAPPENED?



I AM
INNOCENT 100%

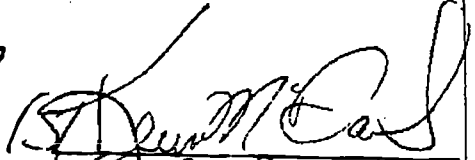
CLERK. I UNDERSTAND YOUR POSITION AS A
CLERK FOR THE COURTS. YOU ARE UNABLE TO MAKE ANY
RULINGS ON MOTIONS. ONLY THE PRESIDING JUDGE HAS
JURISDICTION.

CLERK. I RESPECTFULLY REQUEST THAT YOU
PRESENT MY PLEADINGS TO THE CHIEF JUDGE
OF YOUR COURT. ASKING HIM-HER TO LOOK
CLOSELY AT MY CASE. I AM ACTUAL INNOCENT.
I HAVE WRITTEN ALL THE ENCLOSED ATTS-ETC.
THEY DO NOT RESPOND. JUST BECAUSE I CANNOT
AFFORD AN ATTY. I SHOULD NOT HAVE TO SIT IN
PRISON UNTIL 4-6-2021. I'VE BEEN IN
PRISON SINCE MARCH 11, 2006. FOR THESE CRIMES
I DID NOT COMMIT. PLEASE CLERK. ASK
JUDGE OVER THIS CASE TO LOOK CLOSELY INTO MY
CASE. HE/SHE WILL SEE. I WAS IN FLORIDA
NOT S.C. DEC 27, 2005 - JAN 14, 2006. I WAS
COERCED INTO PLEADING TO A CRIME I DID NOT DO.

HAVE A BLESSED DAY!

THE LORD KNOWS IM INNOCENT!

I PRAY THE LORD TOUCHES THESE
JUDGES TO LOOK INTO MY CASE


Kevin McDaniels
[PRO-SE]

[2]

Dated: Feb. 6, 2014

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Kevin Wayne McDaniels,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2014-CP-42-0506

**ORDER DENYING
RELIEF**

This matter came before the Court by way of an Application for Post-Conviction Relief (PCR). The Applicant is represented by Brandt Rucker, Esq. The State of South Carolina was represented by Assistant Attorney General Josh L. Thomas. The Applicant is currently serving a Federal sentence at FCI Otisville, in Otisville, N.Y. and appeared at the hearing via conference call.

At the call of the case, the Attorney for the Applicant announced to the Court that his client wished to make a motion seeking the appointment of replacement counsel, and the removal of Mr. Rucker as his attorney. The Court entertained the Applicant's Motion. The Court reviewed the PCR file and questioned the applicant and the Attorney for the Applicant. Based on this discussion, and the review of the file, the Court was able to make the following determination regarding the Applicant's Motion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

2015 OCT 27 AM 11:19
CLERK OF COURT

The Applicant is currently serving two fifteen year State sentences and two five year State sentence with his 200 month Federal Sentence. The State sentences were negotiated by his plea attorney, Robert Hall, Esq., and resulted from a plea bargain at the beginning of trial. The plea was entered as an Alford Plea, and as part of the Alford plea, the State withdrew its previously filed Notice of Intent to pursue a sentence of life without parole notice. The Applicant claims that he is actually innocent, and claims that there were several deficiencies in Mr. Hall's representation that rise to the level of constitutionally ineffective counsel.

The Applicant testified that he was asking for a new attorney because his current attorney advised him that it was in his interest to withdraw his PCR application because he was serving a concurrent Federal sentence with his State sentence, and that if he was successful with his PCR, he could face a life sentence should he be prosecuted without the benefit of a plea bargain. The Applicant does not accept this advice. Additionally, the Applicant would like to pursue a different strategy than the one proposed by his attorney.

South Carolina law is clear in cases like this one. Generally, there is no constitutional obligation to appoint counsel in a PCR matter in South Carolina; however, if a PCR application presents questions of law or fact requiring a hearing, and the applicant is indigent, state law provides that counsel must be appointed or a knowing, intelligent waiver of the right to counsel must be obtained. S.C. Code Ann. § 17-27-60 (2003); Rule 71.1(d), SCRPC; Whitehead v. State, 310 S.C. 532, 426 S.E.2d 315 (1992).

A PCR applicant is not entitled to appointed counsel of choice. While an applicant may have the right to reject or discharge court-appointed counsel and proceed pro se or retain his own counsel, he does not have the right, without a showing of satisfactory cause to

2015 OCT 27 AM 11:19

refuse or dismiss the counsel appointed and have other counsel appointed. *State v. Jones*, 270 S.C. 587, 243 S.E.2d 461 (1978).

The Applicant does not give a satisfactory reason for the relief he is seeking. A mere disagreement between an applicant and his counsel as to how to proceed with the PCR application, including the allegations to be raised, is not sufficient cause, in itself, to require the PCR judge to replace or to offer to replace court appointed counsel with another attorney. *Richardson v. State* 377 S.C. 103, 659 S.E.2d 493 (2008). Counsel should not be relieved, and the process delayed, because an applicant is dissatisfied with counsel's legitimate refusal to pursue allegations that are meritless and/or not proper in PCR. *Id.*

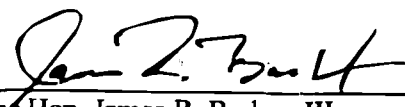
CONCLUSION

Based on the foregoing, the Court finds and concludes that the Applicant is not entitled to have his attorney relieved and appointed a new attorney. The Applicant is free to hire a new attorney, but his current appointed Attorney shall remain his attorney until any new attorney is hired.

IT IS THEREFORE ORDERED:

1. That the Applicant's motion to relieve Mr. Rucker and appoint new counsel is denied.

AND IT IS SO ORDERED this 22 day of October, 2015.


The Hon. James R. Barber, III
Presiding Judge, Seventh Judicial Circuit

FILED

2015 OCT 27 PM 11:19

Columbia
Spartanburg, SC

Date: 10/22/15

2015 OCT 27 PM 11:19
H. ROBERTSON

State of South Carolina)
)
 County of Spartanburg)

In the Court of Common Pleas
 Seventh Judicial Circuit
 2016-CP-42-0506

Kevin Wayne McDaniels,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

Transcript of Record

January 11, 2016
 Spartanburg, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Jr., Judge

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

John Brandt Rucker, Esquire
 Attorney for the Applicant

Alicia A. Olive, Esquire, Assistant Attorney General
 Attorney for the Respondent

Reported By:
 Maryann S. Nevers, CVR-M-CM

Transcribed By:
 Elizabeth B. Harris, CVR-M-CM
 Circuit Court Reporter

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E X H I B I T S.

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No exhibits introduced.			

1 MS. OLIVE: Your Honor, just some procedural history
2 on this case. This is the case of *Kevin Wayne McDaniels*
3 *vs. State*. This is 2014-CP-42-506. Mr. McDaniels was
4 indicted in March 2008 for burglary in the first degree,
5 burglary in the second degree, two counts of grand larceny.
6 He was represented by Robert Hall. Mr. McDaniels pled
7 guilty pursuant to *North Carolina vs. Alford* on August 26,
8 2008. Judge Dennis sentenced him to confinement pursuant
9 to a negotiated sentence to a period of fifteen years on
10 each count of burglary and five years on the grand larceny
11 charges, and those are all to run concurrently. Those are
12 also to run concurrently with a federal sentence that he
13 was serving at the time.

14 And, Your Honor, in his application for
15 post-conviction relief, he sets forth -- well, he claims
16 actual innocence, that he was coerced into pleading guilty,
17 and that he was under duress. That his guilty plea was
18 involuntary for these reasons, Your Honor.

19 At this time, I'll turn it over to Mr. Rucker, Brandt
20 Rucker, who is representing Mr. McDaniels.

21 THE COURT: Okay.

22 MR. RUCKER: Your Honor, may it please the court?

23 THE COURT: Yes.

24 MR. RUCKER: I call my client. Obviously he is
25 unavailable because he can't come. They will not transport

K. McDANIELS - DIRECT EXAMINATION BY MR. RUCKER

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1 him from the federal facility here. So, we're asking to go
2 forward with him through a phone call conversation.

3 THE COURT: Okay.

4 MR. RUCKER: I call my client, Kevin Wayne McDaniels.

5 KEVIN WAYNE MCDANIELS, BEING DULY

6 SWORN, TESTIFIES AS FOLLOWS VIA TELEPHONE:

7 DIRECT EXAMINATION BY MR. RUCKER:

8 Q. And, Kevin, can you hear everything? Could you hear
9 the judge fine and the assistant attorney general, as well
10 as myself?

11 A. Yes, sir. I sure can.

12 Q. Okay. Just briefly, what is your -- to make sure
13 we're clear on this, what is your current sentence?

14 A. My sentence is I'm serving a federal sentence two
15 hundred months in effect. I have two state fifteen-year
16 sentences running concurrent with my federal sentence.

17 Q. Okay, and what are you asking the judge to do today?

18 A. I'm asking this judge to please to grant a new trial
19 or based upon ineffective assistance of counsel because I
20 was coerced into pleading to something I did not even do.
21 I was in Florida when this happened.

22 Q. Okay. What are your state convictions, or what are
23 you serving the time for the state for?

24 A. I'm serving time for a burglary that happened on
25 December 27, 2005, and a burglary that happened on January

K. McDANIELS - DIRECT EXAMINATION BY MR. RUCKER

5

1 14, 2006, and I was in New Port Beach in Florida at the
2 time.

3 Q. Okay. Who was your attorney during -- did you only
4 have one attorney for your case here in Spartanburg, cases
5 in Spartanburg?

6 A. Yes, sir. I had Mr. Robert Hall, in which I spoke to
7 him one time before the trial, and that was it.

8 Q. Were you ---

9 A. Then I went ---

10 Q. Were you in jail awaiting trial?

11 A. Yes, sir. I was already in custody on a Richland
12 County sentence.

13 Q. And what was that Richland County sentence?

14 A. The Richland County was a burglary, sir.

15 Q. Okay, and how often did you meet with Mr. Hall before
16 the guilty plea?

17 A. I met with him one time; he came to Tyger River for
18 about thirty minutes, and that was it. The next thing you
19 know, I was up in court for trial awaiting on my alibi
20 witnesses. I got my father, Leroy, and stepmother which
21 brought with them sixteen affidavits ---

22 Q. All right.

23 A. --- from Florida.

24 Q. Kevin, Kevin, let's make sure it's clear to the judge
25 because he, he knows from the file what the case is about,

K. McDANIELS - DIRECT EXAMINATION BY MR. RUCKER

6

1 but I want to make sure it's clear through your testimony.

2 A. Yes, sir.

3 Q. Were, were you scheduled for a guilty plea that week
4 or a trial?

5 A. No, sir. We were in court in August 26, 2008, for
6 trial.

7 Q. Did you ever get a plea offer from the state before
8 that week?

9 A. No, sir. He said one time on the phone that I can get
10 you a plea. I said, sir, I wasn't even in the state; I was
11 in Florida, sir. I'm not, I'm not pleading to something I
12 did not do, sir.

13 Q. Okay. Do you recall when you were appointed to --
14 when Robert Hall was appointed to represent you?

15 A. It wasn't, it wasn't, it wasn't, that long. He wasn't
16 appointed me for a long period before we had conferences
17 together when we arrived at trial.

18 Q. Did solicitor Barry Barnett ever come to meet with
19 you?

20 A. Yes, he met with me. He came to Tyger River. Served
21 me notice of life sentence. He said if I find you guilty,
22 that I am going to give you a life sentence.

23 Q. Did Mr. Barnett come to meet with you before or after
24 Mr. Hall was appointed to represent you?

25 A. No, sir. This was two weeks before the trial.

K. McDANIELS - DIRECT EXAMINATION BY MR. RUCKER

7

1 Q. So, Robert Hall had already been your attorney at that
2 point?

3 A. Yes, sir.

4 Q. And you knew that he was your attorney. Had you had
5 correspondence with him?

6 A. No, sir. I wrote him a bunch, but he wouldn't write
7 back. I couldn't contact him.

8 Q. More importantly, you knew that he was your attorney
9 at that time though?

10 A. Yes, sir.

11 Q. Okay. Did you -- did Mr. Barnett speak with you about
12 the facts of the case or anything else about the case?

13 A. No, sir. They just called me up front, said you have
14 a visitor, and I went up there. Next thing I know, I was
15 served with notice of life sentence. He said if I find you
16 guilty, I'll give you life.

17 Q. Did Mr. Hall ever go over the discovery in your case
18 with you?

19 A. No, sir. He didn't discuss anything, no discovery.
20 Basically I told him, look, I was in Florida. I gave him
21 some alibi witness names to please subpoena. A lot of them
22 he didn't subpoena.

23 Q. How long before ---

24 A. I mean, the ---

25 Q. How long before the trial week did you tell him of

K. McDANIELS - DIRECT EXAMINATION BY MR. RUCKER

8

1 these alibi witnesses?

2 A. I've been telling alibi witnesses -- I wrote to
3 Spartanburg County public defender's office. At first they
4 gave me, I think, a James Cheeks [sic], and I sent all the
5 information to James Cheeks, and James Cheeks said I can
6 get you a plea, Mr. McDaniels. I said I'm telling you. I
7 wasn't even in the state, sir.

8 Q. All right. Mr. Cheek ---

9 A. He kept trying to offer pleas to me, pleas to me.

10 Q. Is, is James Cheeks [sic] an attorney with the public
11 defender's office?

12 A. Yes, sir.

13 Q. What was the offer he said he could get for you?

14 A. I can get you fifteen years nonviolent.

15 Q. Okay.

16 A. His exact words. I said, sir, I wasn't even in the
17 state.

18 Q. When did he tell you that he could get you -- how, how
19 long in reference to the trial week or plea week, we should
20 call it, did he tell you that he could get that fifteen
21 years for you?

22 A. That was at least a couple, couple months before I
23 even went to trial on August 26, 2008.

24 Q. Was that before or, was that before or ---

25 A. Because they, they, they transfer you down to the

K. McDANIELS - DIRECT EXAMINATION BY MR. RUCKER

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1 Spartanburg County courthouse.

2 Q. Okay.

3 A. I said what are you here for. I asked them what am I
4 here for. He said, well, I want to get you to plead. I
5 said, sir, I'm not pleading to nothing. I want a trial.

6 Q. Well, did, did, did you have that conversation with
7 Mr. Cheeks before or after Mr. Barnett served you with the
8 LWOP notice?

9 A. Oh, that was before.

10 Q. Okay.

11 A. Then I got served with the LWOP.

12 Q. All right. Did you discuss the implications of that
13 LWOP notice with your attorney, Mr. Hall?

14 A. No, sir. I don't know nothing about no trial or life
15 without parole. I've never been trial, sir. I don't --
16 I'm just going by whatever he's telling me. And basically
17 when I got there, I was like -- my mother came upstairs.
18 She said your father's broke down in Woodruff. I said
19 what? I turned over to Robert, Mr. Hall. My father broke
20 down in Woodruff. He said exactly what -- he says, well,
21 he's not here. Then he said the best thing you can do is
22 get you to plead, to run them concurrent with your federal
23 sentence. I said I wasn't even in the state.

24 Q. Mr. McDaniels, what's, what's your mother's name?

25 A. My mother's name is Nancy Griffin.

K. McDANIELS - DIRECT EXAMINATION BY MR. RUCKER

10

1 Q. Okay.

2 A. She was downstairs and received a phone call and came
3 upstairs and told me this right in front of Robert Hall.

4 Q. All right. Had you discussed in that thirty-minute
5 meeting with Mr. Hall your alibi witnesses and who they
6 were?

7 A. Yes, sir. My father, Leroy, my father Leroy's
8 fiancée, Faye Bakoot, and they had with them sixteen
9 affidavits and photographs of me in Florida.

10 Q. Did Mr. Hall respond to, to what you were telling him
11 about your potential alibi witnesses?

12 A. That's exactly what I said. I said, well, they broke
13 down. He said, well, they're not here. Exact words,
14 they're not here.

15 Q. But I ---

16 A. He said the best thing we can do is go ahead and get
17 you to plead. I can get you to plead, to run it
18 concurrent, which he said it, the exact words. I have it
19 in writing. He said I can get the LWOP, the life without
20 parole, off you.

21 Q. All right, Kevin, I want to make sure ---

22 A. Yes, sir.

23 Q. --- we're getting all the facts in, okay?

24 A. Yes, sir.

25 Q. Did he tell you about -- did he discuss the alibi

K. McDANIELS - DIRECT EXAMINATION BY MR. RUCKER

11

1 witnesses with you during that one meeting you had before
2 the trial week?

3 A. Oh, yes, sir.

4 Q. Okay, and did you give him a list of ---

5 A. That was my whole thing.

6 Q. Did you give him a list of names and contact
7 information?

8 A. Oh, yes, sir.

9 Q. To your knowledge ---

10 A. Yes, sir.

11 Q. --- did he file a notice of alibi with the solicitor's
12 office?

13 A. I'm not sure.

14 Q. All right. Did -- when you got back to -- when you
15 got to court for your trial week, tell the judge what
16 discussions you had with Mr. Hall.

17 A. Yeah. When I got to court, Your Honor, on August 26,
18 2008, I was going to trial. I was standing before, I was
19 standing before the court. They pulled me off into a room
20 to speak to my mother, and Robert Hall was in this room.
21 And she clearly she stated in front of Mr. Hall, she said
22 your father's broke down in Woodruff, and I turned around.
23 I said Mr. Hall, my father's broke down in Woodruff. Those
24 are my alibi witnesses. I said what can I do. I mean, we
25 need at least a one-hour continuance, something to go get

K. McDANIELS - DIRECT EXAMINATION BY MR. RUCKER

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1 them. He looked, he looked at me. His exact words was
2 he's not here. So, what I can do is get you to plead and
3 run it concurrent with your federal sentence.

4 I mean, it's plain as day. I told him this. He, he
5 completely abandoned me on the day of trial. It's not like
6 it happened before this where I'm going to wait and try to
7 get a continuance. I'm coming on the day of trial, August
8 26, 2008, the day of trial in the courtroom.

9 Q. Kevin, your father, Leroy McDaniels, did you expect
10 him to testify today?

11 A. Oh, yeah.

12 Q. All right.

13 A. Yes, sir.

14 Q. You need to understand that he -- I have sounded his
15 name repeatedly, and he is not out there. Did he ---

16 A. Yes, sir.

17 Q. Did, did, did your father, Leroy, talk with your
18 mother about trying to get to the trial that week?

19 A. Yes, sir. Oh, yeah.

20 Q. All right, and did, to your knowledge, did your mom
21 convey that information either to you or to Mr. Hall?

22 A. She said in the courtroom -- I mean, we kept telling
23 him my father and stepmother are on their way up here from
24 Florida. They drove eleven straight hours and got to, got
25 right there to Woodruff fifteen minutes from the

K. McDANIELS - DIRECT EXAMINATION BY MR. RUCKER

13

1 courthouse, and that's where the water pump went out on his
2 truck. And they called my mother, who was downstairs in
3 the courthouse, and she came direct up and told me in front
4 of Mr. Hall.

5 Q. Did ---

6 A. I said Mr. Hall, my father's broke down in Woodruff.
7 I need an alibi witness, my alibi witness to say I was in
8 Florida. His exact words, he said, well, they're not here,
9 so -- and exact what he told me, sir, is if you go to trial
10 without your alibi witnesses to verify for you, we will
11 give you a life sentence.

12 Q. All right. Did he talk -- did he explain to you the
13 trial process? That you would be able to cross-examine the
14 witnesses of the state?

15 A. No, sir. He didn't explain nothing to me. Now, I've
16 never been to a trial before in my life. If I'm guilty,
17 I'm going to plead guilty. I've never been to a trial.
18 Then Mr. Hall ---

19 Q. Did you ---

20 A. --- what he's telling me ---

21 Q. Did you ask Mr. Hall to ask for a continuance so that
22 your father and the other witnesses could appear in the
23 court?

24 A. Yes, I sure did. Right before I said please, can we
25 get at least an hour continuance so my mother can go down

K. McDANIELS - DIRECT EXAMINATION BY MR. RUCKER

14

1 there to Woodruff and get my father. He goes they're not
2 here.

3 Q. What did ---

4 A. Those were his exact words.

5 Q. How did Mr. Hall respond to you when you said that to
6 him?

7 A. His exact words, they're not here. He said I can get
8 you -- best interest, to go ahead and plead to this.

9 Q. Did he tell you ---

10 A. Run it concurrent with your feds.

11 Q. Did he tell you ---

12 A. To plead.

13 Q. Did he tell you that the judge would not continue the
14 case for an hour?

15 A. His exact words is -- I, I told him I need a one-hour
16 continuance. He goes they're not here, the exact words.
17 He left the room. He came back with a sheet, with a plea
18 sheet. I said I'm pleading this for what. I said I tell
19 you what. I'll enter by myself in an Alford plea. I will
20 maintain my innocence, and -- which if you see the
21 transcript, it's preserved on record. It's states: Mr.
22 McDaniels, are you stating you did not do this crime? It
23 says exactly on the transcript: I did not do this, sir. I
24 mean, he completely abandoned me on the day of trial.

25 Q. All right. Why, why did you go forward with the plea

K. McDANIELS - DIRECT EXAMINATION BY MR. RUCKER

15

1 rather than telling the judge on the record that you wanted
2 to go forward with the trial?

3 A. Because he's pursuing me with this life sentence.
4 He's dangling this life sentence over my head. You're
5 going to get life; you're going to get life.

6 Q. All right. Did you knowingly and voluntarily plead
7 guilty to the underlying, the underlying charges here?

8 A. No, I did not knowingly and voluntarily plead to that
9 period.

10 Q. Okay. What you do ---

11 A. I'm not ---

12 Q. Do you disagree that it was voluntary?

13 A. Yes. My guilty plea was involuntary and unintelligent
14 mainly because the counsel and the prosecutor used coercive
15 tactics to induce me into a guilty plea.

16 Q. All right. At, at this point, is there any other
17 information you want to give the judge through your
18 testimony?

19 A. Yes, sir. Your Honor, I wasn't even in the state of
20 South Carolina when this happened. I was in Florida and
21 ever since then, sir, since -- in June I filed a PCR June
22 16, 2009, presenting additional alibi witnesses and
23 photographs of me in Florida, and it was denied, telling I
24 could wait til 2020 to file additional PCRs. So, I've been
25 denied access to the court since 2009.

K. McDANIELS - DIRECT EXAMINATION BY MR. RUCKER

16

1 Q. All right, and your mom is here to testify, Kevin,
2 but is there any other information you want to give the
3 judge? I want to make sure you've had proper -- you're
4 able to communicate your thoughts to the judge.

5 APPLICANT: Mr. Cothran, how you doing, sir? My
6 attorney completely abandoned me on the day of trial while
7 I was in courtroom. He didn't -- I mean, all -- if he'd
8 have bring a one-hour continuance, if he'd have went there
9 told and told everyone listen, this is -- we need a one
10 hour -- he used to be a judge in Spartanburg. If he went
11 to court and said listen, we need a one-hour continuance.
12 His alibi witness is in down in Woodruff; I'm going to send
13 his mother down there to get him. With a one-hour
14 continuance, my father would have come in that courtroom
15 with affidavits and photos. The fact is I wasn't even in
16 the state.

17 He completely abandoned me on the day of trial. It's
18 not a case like we're talking about the evidence and
19 failure. We're talking about a factually innocent person.
20 I wasn't even in the state. I'm begging this court for a
21 new trial.

22 MR. RUCKER: All right, Kevin, thank you. I'm going
23 to let -- put you over to the attorney general for
24 cross-examination.

25 APPLICANT: Yes, sir.

K. McDANIELS - CROSS-EXAMINATION BY MS. OLIVE

17

1 CROSS-EXAMINATION BY MS. OLIVER:

2 Q. Good morning, Mr. McDaniels.

3 A. Yes, ma'am. How you doing?

4 Q. Good. How are you?

5 A. Fine, ma'am.

6 Q. Mr. McDaniels, you pled guilty under *North Carolina*
7 *vs. Alford*, correct?

8 A. Yes, ma'am. I made sure that was clear because I
9 wanted to maintain my innocence, ma'am.

10 Q. Okay, but at any time during your guilty plea, did you
11 ever tell the judge that you wanted a continuance so that
12 you could proceed to trial?

13 A. I spoke to my attorney. I told my attorney this.

14 Q. Okay, but you ---

15 A. Mr. Hall.

16 Q. But you never indicated to the judge that you wanted
17 to withdraw your plea?

18 A. No, ma'am. Basically it's like you either plead this
19 or basically if not, you'll get a life sentence.

20 Q. I'm sorry. Can you repeat that last thing you said?

21 A. I said basically it's we need to plead here. If not,
22 you will get a life sentence. He kept dangling this life
23 sentence over top of my head, life sentence, life sentence.

24 Q. Who kept dangling the life sentence over you?

25 A. That would be Robert Hall, ma'am, Mr. Robert Hall.

K. McDANIELS - CROSS-EXAMINATION BY MS. OLIVE

18

1 Q. Okay, but didn't you say that Solicitor Barnett served
2 you with that LWOP notice?

3 A. Sure did.

4 Q. Okay.

5 A. At Tyger River, ma'am.

6 Q. Okay, and how far in advance was that to your trial?

7 A. That was approximately about two weeks before trial,
8 if I recall. This is not -- this happened about two weeks
9 before trial.

10 Q. Okay. Mr. Hall went over all of the discovery in this
11 case with you, did he not?

12 A. No, ma'am.

13 Q. Okay. He didn't. Did you ---

14 A. There was no, there was basically no communication
15 between me and Robert. He came to Tyger River to see me
16 one time. He said okay, we're going to trial. The next
17 thing, August 26th, we're in trial.

18 Q. But you were familiar with the charges against you?

19 A. Uh-huh.

20 Q. Okay, and at your plea hearing.

21 A. Uh-huh.

22 Q. The solicitor went over the facts, correct? It was a
23 brief recitation?

24 A. What's that, ma'am?

25 Q. The solicitor went over the facts with you that ---

K. McDANIELS - CROSS-EXAMINATION BY MS. OLIVE

19

1 A. Yes, ma'am.

2 Q. Okay.

3 A. Yes, ma'am.

4 Q. Okay, and in those facts, she said that, that you had
5 told Richland County officers that -- that you had
6 confessed to one of these burglaries?

7 A. Ma'am, when they arrested me, I'd been on -- I was ---
8 I'd been up for four days high on drugs.

9 Q. Just ---

10 A. When they arrested me, I was barefoot. You can see
11 the interrogation is six pages, and you'll see in that
12 interrogation I confessed to two murders that purportedly
13 happened on December 27, 2005, the same day this burglary
14 happened in Spartanburg. I was confessing to two murders
15 in there. This is the car breaking. It's armed robbery.
16 Confessed to stuff I never even did. If you have that
17 record before you, I'd like to please present it to Mr.
18 Cothran.

19 Q. That ---

20 A. I confessed to other -- all kinds of crimes that I
21 never did because I'd been up for four days on drugs.

22 Q. Okay.

23 A. When they arrested me.

24 Q. Did you, did you say that to the judge in your guilty
25 plea?

K. McDANIELS - CROSS-EXAMINATION BY MS. OLIVE

20

1 A. I'm just there beside -- he's asking me questions.
2 I'm yes, Your Honor. Yes, Your Honor. Yes, Your Honor.
3 I'm standing beside Ms. Christine Kimball. She's telling
4 me the only thing she wanted back, ma'am, was her laptop.
5 That's the only memory she had of her husband before he was
6 killed in Iraq, ma'am. I didn't do this.

7 Q. Well.

8 A. I was in Florida.

9 Q. But the judge went over to you the meaning of Alford
10 plea at your hearing, correct?

11 A. Yes, and if the transcript is before you right now,
12 you go exactly over it and you'll see in there: Well, Mr.
13 McDaniels, are you saying you did not do this crime? And
14 right up underneath that, ma'am -- this is before the court
15 now -- it says: Yes, Your Honor, I did not do it.

16 Q. But ---

17 A. I said: No, sir, I did not do it.

18 Q. But you still ---

19 A. If you got that.

20 Q. But you still pleaded guilty pursuant to Alford,
21 correct?

22 A. Yes, and my, my ---

23 Q. Okay, yes or no question.

24 A. Yes, ma'am.

25 Q. You pled guilty, okay, and you never told the judge

K. McDANIELS - CROSS-EXAMINATION BY MS. OLIVE

21

1 during that hearing that you wished to withdraw your plea,
2 correct?

3 A. That's correct.

4 Q. Okay, and, in fact, he asked you if you had spoken
5 with your lawyer, and he said -- he asked you:

6 And you requested that he negotiate for you the
7 best sentence that he thought he was able to get.

8 Is that correct?

9 And you said: Yes, Your Honor. Is that right?

10 A. That was in minutes. That was minutes before we were
11 in the courtroom.

12 Q. Actually, that was ---

13 A. I, I was in court ---

14 Q. No ---

15 A. --- for trial now.

16 Q. Mr. McDaniels.

17 A. I didn't go in that courtroom to plead. I went to
18 court for trial.

19 Q. Mr. McDaniels, this is after you were sworn in in your
20 guilty plea hearing.

21 A. Uh-huh. Yes, ma'am.

22 Q. Okay, and the judge also asked you if you'd had the
23 opportunity to discuss with your attorney the nature of the
24 charges against you, did he not?

25 A. Yes, ma'am.

K. McDANIELS - CROSS-EXAMINATION BY MS. OLIVE

22

1 Q. And you said he -- you said yes?

2 A. Yes, ma'am.

3 Q. Okay, and he asked you if you'd had the opportunity to
4 review the investigation that your attorney had conducted
5 on your behalf, and you said yes, sir?

6 A. Yes, ma'am. That's basically the way it was in
7 colloquy, yes, ma'am. Go ahead.

8 Q. Okay, and then he asked you if you wanted to enter a
9 plea to each of the indictments in this case, correct?

10 A. Correct.

11 Q. Okay.

12 A. Yes, ma'am. It's either that or get life.

13 Q. Well, but you could have gone to trial, correct?

14 A. Oh, yeah. I'd have went to trial if my father had
15 showed up, exonerated, but Robert Hall completely abandoned
16 me on the day of trial in that courtroom. He knew I had
17 alibi witnesses waiting to show up.

18 Q. Well, and ---

19 A. Is that -- where -- is that -- they're not here, Mr.
20 McDaniels. The best I can do, I can get, I can get a
21 concurrent sentence to your federal sentence, Mr.
22 McDaniels. I didn't do this, sir. I wasn't even in the
23 state.

24 Q. Okay, and the judge asked you if you knew that you
25 were waiving your right to a jury trial, correct?

K. McDANIELS - CROSS-EXAMINATION BY MS. OLIVE

23

1 A. Yes.

2 Q. Okay, and he asked you if you knew that you were
3 waiving your right to confront any accusers against you,
4 correct?

5 A. Yes, ma'am.

6 Q. All right, and he advised you or he asked you if you
7 understood that you were waiving your right to remain
8 silent?

9 A. Yes, ma'am.

10 Q. And he asked you if you had been threatened or coerced
11 to plead guilty, did he not?

12 A. Yes, he did.

13 Q. Okay, but -- and you didn't tell him that you were,
14 that you were being threatened to plead guilty at that
15 time?

16 A. No. I was coerced by Robert Hall into pleading
17 guilty.

18 Q. But you didn't tell the judge that?

19 A. One thing -- no, I did not, ma'am. Basically when you
20 get before the court, you know, you're going to face life
21 or you go ahead and plead and say yes, I did everything,
22 yes, yes, yes. If not, then you're not getting -- then
23 they're, then they're not going to accept the guilty plea.

24 Q. But essentially you pleaded guilty to a negotiated
25 sentence of fifteen years versus going to trial with the

K. McDANIELS - CROSS-EXAMINATION BY MS. OLIVE

24

1 risk with -- on an LWOP notice. You would have been facing
2 life ---

3 A. Right.

4 Q. --- without parole if you'd have gone to trial,
5 correct?

6 A. Right. I was in that court to go to trial, not to
7 plead guilty.

8 Q. Okay.

9 A. I've never been to trial before, but I was in that
10 courthouse. I was waiting to go to trial. I wasn't even
11 in the state when it happened.

12 Q. Okay, but you never told the judge that?

13 A. No, ma'am, because under Rule 11, plea colloquy, I
14 have to tell them everything he needs to -- yes, yes to
15 everything. Yes, ma'am. If not, therefore he's not going
16 to accept the plea. That was what Mr. Hall told me. Make
17 sure you just tell him yes, yes, yes. If not, he just
18 won't accept the plea.

19 Q. So, then you wanted him to accept the plea?

20 A. No, I did not, ma'am. I was standing before a judge a
21 factually, not actual, but a factually innocent man.

22 Q. Okay, but you never said that ---

23 A. So, I'm here because of counsel, Robert Hall,
24 abandoning me that day of trial.

25 Q. Okay, but you never said -- you never told the judge

N. GRIFFIN - DIRECT EXAMINATION BY MR. RUCKER

25

1 you wished to withdraw your plea, yes or no?

2 A. No.

3 Q. Okay.

4 MS. OLIVE: Thank you. That's all the questions I
5 have.

6 MR. RUCKER: No further questions from me, Your Honor.

7 THE COURT: Okay.

8 MR. RUCKER: I call Nancy Griffin to the stand.

9 NANCY GRIFFIN, BEING DULY SWORN,

10 TESTIFIES AS FOLLOWS:

11 THE COURT: Counsel.

12 MR. RUCKER: May it please the court?

13 DIRECT EXAMINATION BY MR. RUCKER:

14 Q. Ms. Griffin, how are you involved in this case?

15 A. He's my son.

16 Q. And that's Kevin McDaniels?

17 A. Kevin McDaniels ---

18 Q. Okay.

19 A. --- is my son.

20 Q. And you heard his testimony earlier. Were you at the
21 trial? Were you there prepared to testify that day at the
22 trial?

23 A. Yes, sir, I was.

24 Q. Had you had previous conversations with Robert Hall,
25 his attorney?

N. GRIFFIN - DIRECT EXAMINATION BY MR. RUCKER

26

1 A. No.

2 Q. Had you ever spoken with Mr. Hall?

3 A. That day of the trial, Robert Hall called Kevin and I
4 into a room, a courtroom across from where Kevin was going
5 to go in. There was no one in there, and I thought I was
6 talking to Robert Hall, my son, and myself. And suddenly
7 this man came in and sat down, and I didn't know who he
8 was.

9 Q. Who was he?

10 A. And I said who are you, and he said I'm the
11 prosecuting attorney.

12 Q. Okay. Did you ever have an opportunity to discuss the
13 alibi witness situation with Mr. Hall?

14 A. Yes.

15 Q. And what did Mr. Hall tell you in response to your
16 questions about the alibi witness?

17 A. He said that I asked and they have -- they won't do a
18 continuance.

19 Q. Okay. Did you talk to Leroy McDaniels that day?

20 A. Yes, sir.

21 Q. To your knowledge, was he headed to the courthouse?

22 A. Absolutely. He -- his truck blew up in Woodruff.

23 Q. Okay.

24 A. So, he was just minutes away from here.

25 Q. Were you the conduit -- were, were you the person that

N. GRIFFIN - DIRECT EXAMINATION BY MR. RUCKER

27

1 was able to communicate with him because your son could
2 not ---

3 A. Yes.

4 Q. --- at the courthouse? All right. Do you believe he
5 and the other witnesses were on their way?

6 A. Absolutely. Yeah. They drove twelve hours to come up
7 here.

8 Q. Did you see them later that day?

9 A. Yes.

10 Q. Okay. So, you know ---

11 A. Briefly.

12 Q. And Mr. McDaniels is your former husband?

13 A. Yes.

14 Q. Leroy McDaniels, I apologize, and so you know he was
15 available to be called as a witness? He was in
16 Spartanburg, South Carolina, that day?

17 A. Oh, yes, sir.

18 MR. RUCKER: All right. No further questions.

19 MS. OLIVE: Your Honor, I have no questions of this
20 witness.

21 THE COURT: Okay. Thank you, ma'am.

22 MR. RUCKER: Your Honor, I have no other witnesses.
23 That is our case.

24 THE COURT: Okay.

25 WITNESS: Do I leave?

R. HALL - DIRECT EXAMINATION BY MS. OLIVE

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1 THE COURT: You can. Thank you.

2 (THE WITNESS EXITS THE STAND.)

3 MS. OLIVE: Your Honor, the state would call Robert
4 Hall to the stand.

5 THE COURT: Okay.

6 ROBERT HALL, BEING DULY SWORN,
7 TESTIFIES AS FOLLOWS:

8 DIRECT EXAMINATION BY MS. OLIVE:

9 Q. Good morning, Mr. Hall.

10 A. Good morning.

11 Q. You represent -- did you represent Mr. McDaniels on
12 these charges?

13 A. Yes, I did.

14 Q. Okay. Do you recall at what point you were appointed
15 to this case?

16 A. The office, according to the records I've looked at, I
17 think was appointed in January of 2008. I'm not sure what
18 he's talking about, but I did not become a public defender
19 in Spartanburg County until June 2, 2008, and that's when I
20 became involved in the case.

21 Q. So, do you -- to your knowledge, did other attorneys
22 from the public defender's office work with him before you?

23 A. Josh Schultz had been appointed to the case and had
24 worked on the case. There's indications of him sending
25 discovery, communicating with the solicitor's office, those

R. HALL - DIRECT EXAMINATION BY MS. OLIVE

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1 type things. And my first contact with Mr. McDaniel [sic]
2 was on June 4th, basically my third day. I was in my
3 office trying to go through files, see which were active
4 files and which were inactive files, that kind of thing,
5 and I got a call that Mr. Cheek had been asking me to come
6 over to the courthouse. He had been working with Mr.
7 McDaniel about some plea offer that had been on the table,
8 and I came over.

9 Mr. Cheek told me the deputy, then deputy solicitor,
10 Mr. Barnett had indicated they were going to serve life
11 without parole. I have a note that we spoke for over an
12 hour on that issue and went over things about the case, the
13 charges, the -- what the state had against him. Mr. Cheek
14 at that time said that he had met with him at least two
15 days and had spent well, I think, well over two hours
16 total, possibly two hours each time he had met with him
17 going over everything, and that was my first involvement
18 with him.

19 Q. Okay, and you said that was June 4, 2008?

20 A. June. June, June 4, 2008.

21 Q. And you said you met with him for about an hour and
22 went over the charges?

23 A. I met with him over an hour going over everything and
24 the LWOP and what was at stake.

25 Q. Okay. So, did you or do you know if Mr. Schultz had

R. HALL - DIRECT EXAMINATION BY MS. OLIVE

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1 filed discovery, a motion for discovery in this case?

2 A. Yes. In fact, he has -- his first note in the file
3 was:

4 On January 29, 2008, sent discovery to the
5 defendant. No cover letter. Gave it to Lisa.

6 Who was at that -- then was one of the secretaries in
7 the public defender's office who sent it through --
8 typically, I assume. We typically send those things
9 through interoffice mail to the jail.

10 Q. Okay, and, again did you review that discovery with
11 him on your first meeting?

12 A. Yes. It's ---

13 Q. Or ---

14 A. Mr. Cheek had a lot of discovery there and I took the
15 file I had, and we talked about all that.

16 Q. Okay, and did you feel like you had complete discovery
17 in this case?

18 A. As far as I can remember, yes. There were -- there
19 may have been some things that came a little bit later, but
20 I think most everything was there before I even became part
21 of the case.

22 Q. Can you briefly summarize the state's evidence against
23 Mr. McDaniels in this case?

24 A. The biggest thing they had was a confession he gave to
25 detectives in Richland County, and he told me in great

R. HALL - DIRECT EXAMINATION BY MS. OLIVE

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1 detail that he was on drugs. He had been on a -- involved
2 in some nefarious activities, Florida, Georgia, then into
3 the Columbia area, South Carolina, where he got picked up
4 on a burglary of a business or restaurant.

5 And he indicated that the detectives in Richland
6 County, because he was from this area, that he may be
7 involved in these burglaries they had up here. And he told
8 me they gave him, basically gave him information and then
9 got him to confess because he was concerned about a young,
10 as he described it, a young white teenager, female teenager
11 who was in a drug house, and the black drug dealers were
12 having sex with her, and that wasn't right. So, he
13 confessed to this and said the gun I stole in the burglary
14 in Spartanburg, I traded for crack -- or I think it was
15 crack -- to that drug dealer so they would go and raid that
16 house and rescue that young girl.

17 Q. And was that -- that was the nature of the charges
18 against him in Spartanburg?

19 A. And that's -- and then he came up in Spartanburg and
20 talked to detectives here and basically pointed out things.
21 There -- that it was based on -- what he said -- what the
22 Richland County detective said and then what the
23 Spartanburg County detective said. Any of his confessions
24 were based on information given by the police.

25 Q. And so he did share his version of what happened with

R. HALL - DIRECT EXAMINATION BY MS. OLIVE

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1 you?

2 A. Yes.

3 Q. Okay, and, in fact, you, you kind of went over that.

4 Did you go over that in your mitigation at the ---

5 A. Yes ---

6 Q. Do you recall?

7 A. I did, and I did. I even talked to the Richland
8 County detectives. I talked to the Spartanburg County
9 detectives, and of course they all denied that they had fed
10 him information. That he had given them the information
11 that was used.

12 Q. And again you said you had gone over the charges with
13 him. Did you fully explain all of the elements of the
14 charges against him and go over any defenses he might have
15 to those charges?

16 A. Yes, I did. It -- Mr. McDaniels is well versed on the
17 law and elements. He made a point of telling me that he
18 only does businesses. He doesn't do homes. This is out of
19 character for him. That he always pleads guilty to what he
20 does, and we were preparing for trial even though he is
21 going to be facing life without parole. But he, he was
22 much more knowledgeable about the, the crimes he was
23 charged with than a lot of our clients.

24 Q. So, you felt he fully understood what he was facing?

25 A. Absolutely.

R. HALL - DIRECT EXAMINATION BY MS. OLIVE

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1 Q. And did you discuss any possible witnesses with him or
2 any other leads?

3 A. Yes. In one of our conversations, he gave me a list
4 of a lot of people, and I was able to communicate with his
5 father in Florida, and I sent letters to several people.
6 There were affidavits coming to me, but of course
7 affidavits are no good in court. I need the actual people
8 to testify, and as it came closer to the trial, it was
9 going to be his father, his stepmother, and his -- I can't
10 remember if she was the ex-wife or the estranged wife.
11 Shawn Cooley I believe her name was, and those were going
12 to be our primary witnesses for alibi.

13 I had spoken with Mr. Barnett. He served the life
14 without parole, which took Mr. McDaniels out of our
15 facility here in Spartanburg and put him at Tyger River. I
16 went and met with him at Tyger River, but I had to meet
17 through a -- it was a -- it took about ten minutes of
18 sitting there before I could even see through the mesh
19 before my eyes adjusted, and we went over things there.
20 But I notified Mr. Barnett that we had alibi witnesses and
21 gave him the information on the alibi witnesses, and we
22 were preparing to go to trial.

23 Q. You were prepared to call them to testify if you had
24 gone to trial?

25 A. The ones who were going to be able to come up. I --

R. HALL - DIRECT EXAMINATION BY MS. OLIVE

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1 it's -- they -- Mr. Barnett actually wanted to try the case
2 the week of the 7th of July, I believe. And I reminded him
3 that he had told me in June that it would be tried in early
4 fall maybe, but they put it on the docket for, I think, the
5 21st of July, that week, and -- that month -- that year,
6 excuse me.

7 And we got with the witnesses. I know I had spoken
8 with his mother. I don't know that she would have added
9 anything to his defense, but his best witness, in my
10 opinion, was going to be his ex-wife even though there was
11 a problem with her testifying.

12 Q. So, there was a problem with her testifying?

13 A. She was going to say she was down in Florida during
14 all this, but that she was there pretty much involuntarily.
15 That he had forced her back down there, and she could not
16 completely alibi him, say most of the time he was down
17 there, but there was times that he was not around. And
18 she, she basically said she went along in the hopes that
19 she eventually would be able to return to South Carolina,
20 which she eventually was.

21 Q. Do you feel you had an opportunity to complete a full
22 investigation in this trial?

23 A. Yes.

24 Q. Or in this case?

25 A. Yes.

R. HALL - DIRECT EXAMINATION BY MS. OLIVE

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1 Q. And were you prepared to try the case?

2 A. Yes. I was, I was -- as far as the witnesses not
3 being here, being broken down in Woodruff, I was not going
4 to present any witnesses for at least twenty-four hours. I
5 was not at all worried about them being broken down.

6 I assumed that his father's problems may have been
7 inspired by the fact that to testify that Kevin was down in
8 Florida during all this, he would probably be charged with
9 harboring a fugitive because the federal government, the
10 FBI was looking for him and had asked him several times or
11 at least a few times is your son here. No, I haven't seen
12 him when, in fact, he would have been testifying here he
13 was with me in Florida. So, he couldn't have done it.

14 Q. So, there were going to be some issues with the
15 witnesses' testimony?

16 A. Absolutely.

17 Q. Did, did you ever tell him you were not going to get
18 -- that you were not going to request a continuance?

19 A. Oh, yeah. I told him there's no need for a
20 continuance. That by the time we picked the jury, even if
21 we started the case and the case went quickly, it would be
22 the next afternoon before we would call any witnesses. So,
23 they had plenty of time to -- I thought it was a blowout, a
24 flat tire, but they said it was broken down. I'm really
25 not sure. It could have just been miscommunication at that

R. HALL - DIRECT EXAMINATION BY MS. OLIVE

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1 time. But first they said he had not exited onto 26 and
2 gone up 95 and was running late. I said that's not a
3 problem. We're not going to present anybody for a long
4 time, and then that he was -- some, for some reason broken
5 down in Woodruff, and it's not a problem. We're not, we're
6 not -- we don't need him today.

7 Q. So, that was not the reason why you didn't go to trial
8 that day?

9 A. No. No. The, the reason was the solicitor came back
10 with the offer. They said they would do negotiated or
11 recommended concurrent time with the federal time. And he
12 requested to meet with his mother, and I spoke with the
13 jailers and arranged that. Captain Freeman came over and
14 okayed it. In fact, Captain Freeman stood at the very back
15 of the courtroom, this very courtroom, where the bailiff
16 is. Mr. McDaniels and his mother and I were up here close
17 to this side exit. There was a deputy in that hallway or
18 jailer -- excuse me, then there were jailers -- out there,
19 and I believe there was somebody back over this way, too,
20 just so there wouldn't be an escape.

21 He wanted to talk to his mother. He wanted to be able
22 to hug his mother or have his mother hug him because I
23 think he stayed in restraints. And his mother said that,
24 that she thought that if he took the plea, there'd be a
25 chance that he would be out while she was still alive but

R. HALL - DIRECT EXAMINATION BY MS. OLIVE

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1 if he went to trial, if he got convicted, she would never
2 see him again. And he decided that he did not want to run
3 -- take the risk and that he accepted the offer.

4 I checked because of some other documents that had
5 been filed, they claimed that Mr. Barnett was in the
6 courtroom. He was not. I've even spoken with Mr. Barnett
7 and he said no. I never was there in that courtroom. He
8 was out there. I don't recall. He may have stuck his head
9 in the door, but it probably would have -- had to been that
10 door in the back because that door's always locked, but he
11 was not involved in it at all, and Mr. McDaniels made the
12 decision to plead guilty.

13 The judge carefully, tried to carefully write down the
14 sentence, construct it in the right way, but there was an
15 issue with the Department of Corrections, and we even got
16 an amended sentence that complied to allow him to go back
17 into federal custody and serve the state time along with
18 the federal time.

19 Q. So, there was no prosecutor involved in this
20 conversation between you and his mother and Mr. McDaniels?

21 A. The only, the only involvement was okaying it if the
22 jail would do it. And he may have stuck his head in and
23 said we need to talk to the judge or whatever, but no, he
24 was not involved.

25 Q. So, again you said it was Mr. McDaniels's decision to

R. HALL - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 plead guilty?

2 A. Yes, it was. I know his ex-wife was relieved when he
3 made that decision, and at the time his mother was
4 relieved.

5 Q. And did you discuss all the -- all his rights with him
6 that he would be waving by pleading guilty?

7 A. Yes, I did, and Mr. Cheek had gone over those as well.
8 Mr. Cheek has a very thorough litany that he goes over with
9 people when he talks to them about pleading.

10 MS. OLIVE: That's all the questions that I have.

11 MR. RUCKER: Your Honor, may it please the court?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION BY MR. RUCKER:

14 Q. Mr. Hall, did you ever file paperwork showing you had
15 informed the solicitor's office about an alibi defense?

16 A. I can't recall if I did. I know I spoke with the
17 solicitor. I'd given him the names and information, which
18 complies with what is required by the statute. He had the
19 dates of birth. I think I had addresses in it, but ---

20 Q. But you don't -- by -- in reviewing the file, you
21 can't find a document that says you did that?

22 A. No, I can't.

23 Q. All right, and you don't deny that you spoke with Mr.
24 McDaniels about being an alibi witness, do you?

25 A. No, I spoke with him.

R. HALL - CROSS-EXAMINATION BY MR. RUCKER

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1 Q. Okay, and your -- I believe your testimony was you
2 presumed he was nervous about testifying because he could
3 get in trouble with the federal government. Is that fair?

4 A. Yes.

5 Q. Is that what you said?

6 A. And that was based on a conversation I had with him.

7 Q. All right. Did you -- he's a layman. Is that -- Mr.
8 Leroy McDaniels is not an attorney, is he?

9 A. No.

10 Q. All right. Had he been approached by the FBI saying
11 we need to find out where he is or we're going to charge
12 you?

13 A. I don't, I don't know what the FBI told him, but I --
14 based on what Kevin told me when I spoke with him, I said
15 now I understand that the FBI had been looking for him.
16 You said he wasn't there and now you're going to tell us
17 that he was. And he said pretty much, well, I'm not too
18 worried about that right now.

19 Q. But Leroy McDaniels did not have direct conversations
20 with anybody in the federal government to your knowledge,
21 right?

22 A. That was based on what Kevin told me and then what Mr.
23 Leroy McDaniels confirmed, yeah. I'm not -- but I'm not
24 really worried about that right now.

25 Q. But he, he did not have any conversations is what I'm

R. HALL - CROSS-EXAMINATION BY MR. RUCKER

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1 saying. Did he have any conversations directly with the
2 FBI?

3 A. I have no idea.

4 Q. Okay.

5 A. Other than what he told me, that the FBI -- and the
6 FBI, yeah, the FBI was looking for him. They'd come by.

7 Q. You have, you have no reason to believe Mr. McDaniels,
8 Leroy McDaniel, didn't drive up here to testify in that
9 case, do you?

10 A. No. I believe he showed up right after the plea. I
11 think he, I think he did get here, but I'm not a hundred
12 percent sure of that.

13 Q. Okay, and you understand Kevin McDaniels is alleging
14 that you refused to get him a continuance to try to proffer
15 those witnesses?

16 A. There was no need for a continuance; there was no need
17 to refuse or say yes. The time for a continuance -- if
18 they could not be here when we would have needed them, but
19 we certainly didn't need them to start the trial.

20 Q. Kevin McDaniels had no reason to believe you actually
21 served that alibi notice on the solicitor's office, right?
22 Y'all had never talked about that?

23 A. I told him, I know I told him I have to get the
24 information from the people. I think I started on the 24th
25 of -- no, it's about the 24th June when I gave the

R. HALL - CROSS-EXAMINATION BY MR. RUCKER

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1 information to the solicitor. And I think my letters to
2 the potential alibi witnesses went out on the 16th of June,
3 which was twelve days after I'd met Mr. McDaniels the first
4 time.

5 Q. You testified earlier that Mr. McDaniels is
6 extraordinarily knowledgeable about the law compared to
7 most criminal defendants you deal with. Is that right?

8 A. Yeah, much more so, yes.

9 Q. And he knows about requirements under reciprocal
10 discovery. Y'all had discussions about that, didn't you?

11 A. Yeah. I talked about -- told him I have to give
12 information. They have to run the NCIC on potential
13 witnesses, that type thing.

14 Q. There's no -- he, he would have known about alibi
15 notice then?

16 A. I, I don't know what -- I assume so, yeah.

17 Q. Did you send copies of all your correspondence to him
18 while he was in prison?

19 A. I sent some correspondence. I can't -- I've -- this
20 has been a long time ago, but over the years I've done
21 different things in the case, and I think Mr. Allen, as the
22 chief public defender, sent some things to him.

23 Q. Okay. Mr. -- is it fair to say Mr. McDaniels is a
24 letter writer?

25 A. Oh, yeah.

R. HALL - CROSS-EXAMINATION BY MR. RUCKER

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1 Q. And did he try to get in touch with you many times
2 through writing?

3 A. He's filed lawsuits. He's sent motions of actual
4 innocence. I think one of them he sent me. His mother
5 even called, and it was clear to me that -- because I had
6 it in front of me. She starts talking to me, and I got to
7 the bottom of the page. She's basically going word for
8 word from what I had in front of me, and I heard her even
9 flip the page, and I said this isn't doing anybody any
10 good. Yeah, he is a letter writer. He sends them to me.

11 Q. Okay.

12 A. To the court, to Mr. -- I assume he send them to the
13 judge. I assume he -- I know he sent them to Mr. Allen,
14 and I'm pretty sure he sent them to his mother.

15 Q. There is no reason to believe Mr. Kevin McDaniels
16 didn't think he was going to be able to -- well, let me
17 rephrase. Strike that. Kevin McDaniels did not think he
18 could bring those alibi witnesses because you didn't file
19 the notice or he didn't have copies of the -- those
20 notices, correct?

21 A. The solicitor's office knew who those witnesses were.
22 They never said they had any issue with alibi witnesses.
23 There's no reason to believe that if we had gone to trial
24 that there would have been any impediment to the alibi
25 witnesses going forward and testifying.

R. HALL - CROSS-EXAMINATION BY MR. RUCKER

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1 Q. But I'm asking what you communicated to Mr. McDaniels.
2 Mr. McDaniels reviews the file. He's very thorough for a
3 criminal defendant; he's knowledgeable for a criminal
4 defendant. Nothing you sent him would indicate you had
5 properly filed the notice of alibi.

6 A. I know I ---

7 Q. Is that fair?

8 A. I, I don't have a record of it. I can't find it. Our
9 data system has changed since then, but the solicitor was
10 aware. The solicitor never voiced any objection other than
11 -- yeah, they -- I had no reason to believe we weren't
12 going forward with our alibis.

13 I gave them notice. I gave them the information for
14 those people and that -- I know I had several affidavits
15 from people, but when it came down to -- I think there was
16 two or three that were coming from Florida and then his
17 ex-wife.

18 Q. Kevin McDaniels never told you he did these crimes,
19 did he?

20 A. No, he did not.

21 Q. He's always asserted he was innocent of the underlying
22 crimes, correct?

23 A. Yes, he is. Yes, he did.

24 Q. And you went so far as to follow up by writing letters
25 to the alibi witnesses, but at the time of trial, they were

R. HALL - CROSS-EXAMINATION BY MR. RUCKER

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1 not there in the courtroom ready to go forward. Is that
2 right?

3 A. The majority of them, either the information I had was
4 bad, or they indicated they would not come and testify.
5 The -- his father on June -- July 1st sent me an email and
6 -- saying that he would be there and Dorita Faye Bakoot and
7 Jennifer Hill. Attached the dates of birth and Social
8 Security numbers for each of those people to divulge to the
9 solicitor's office and for Ms. Cooley, already had that
10 information.

11 Q. What I'm getting at, though, is Mr. McDaniels, who is
12 well-versed in, in his case, thought, could have reasonably
13 thought at the time that he was not going to be able to
14 provide those alibi witnesses because he had no notice that
15 you sent notice to the solicitor's office.

16 MS. OLIVE: Objection. Calls for speculation.

17 THE COURT: I'll allow the question if you know the
18 answer.

19 BY MR. RUCKER:

20 A. That never came up. We were going forward as -- we
21 had the witnesses that -- yeah, one of them -- yeah, some
22 of them were broken down in Woodruff. That was not an
23 issue. They, you know, they all -- they would not testify
24 at least for twenty-four hours after when we were -- the
25 time we were having the conversation in this courtroom.

R. HALL - CROSS-EXAMINATION BY MR. RUCKER

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1 That was not a problem.

2 Q. Is it, is it fair to say when you got to court that
3 Monday morning, you thought y'all were going to trial?

4 A. Yes.

5 Q. All right. Did you prepare a witness list to -- for
6 voir dire?

7 A. I had a separate witness. I, at that point, I
8 generally wrote them out because of the system we had. You
9 couldn't prepare a witness list from defenderData, and I
10 generally just wrote them out.

11 Q. Did you keep a copy of that witness list?

12 A. I don't know if I have it or not. It may have been
13 with a -- on a pad, but I don't, I don't, I don't have one
14 in here that I've seen.

15 Q. Did you ever talk to Kevin McDaniels, or I should say
16 -- strike that. Did, did you actually show him the list of
17 the potential witnesses?

18 A. I know we discussed his list of potential witnesses,
19 the information he gave me and, like I said, I don't have
20 those notes in here that generated all the letters for the
21 people and -- let's see. I do have notes from the photos
22 that he, he sent, what they were, meeting with him July
23 30th ---

24 Q. Mr. Hall, I'm, I'm not, I'm, I'm not asking you to go
25 through all that. I'm simply asking did you provide him a

R. HALL - REDIRECT EXAMINATION BY MS. OLIVE

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1 witness list that you were going to give to the court for
2 the voir dire purposes?

3 A. No, I, I never did and I, I, I can't recall ever just
4 showing a witness list to my client before a trial.

5 MR. RUCKER: No further questions, Your Honor.

6 MS. OLIVE: Brief redirect, Your Honor.

7 REDIRECT EXAMINATION BY MS. OLIVE:

8 Q. So, you didn't show him a list, but did you -- did he
9 know what witnesses you were intending to call?

10 A. Absolutely.

11 Q. Okay, and so you told him that you were calling an
12 alibi witness or alibi witnesses?

13 A. Yes.

14 Q. So, he was aware of that?

15 A. Yes.

16 Q. Okay, and even if you had gone to trial with these
17 alibi witnesses, do you think that the state would have
18 been successful in obtaining a conviction?

19 A. Particularly in Spartanburg County, juries seem to be
20 more victim oriented, and a lot of times convictions are
21 much easier to get, I think, in Spartanburg County than
22 other counties, and I think there was a good chance he
23 would -- a substantial he would be convicted if he had gone
24 to trial.

25 MS. OLIVE: Thank you. That's all my questions.

1 MR. RUCKER: No more questions, Your Honor.

2 THE COURT: Thank you, sir. You can step down.

3 WITNESS: Thank you.

4 (THE WITNESS EXITS THE STAND.)

5 MS. OLIVE: And that would be the state's case, Your
6 Honor.

7 THE COURT: Okay. Anything else?

8 MR. RUCKER: No, sir.

9 THE COURT: All right. I'll review the file and let
10 y'all know.

11 MR. RUCKER: All right. Thank you, Your Honor.

12 MS. OLIVE: Thank you, Your Honor.

13 MR. RUCKER: Kevin, I assume you're still there?

14 APPLICANT: Yes, sir.

15 MR. RUCKER: Okay. I'm going to discontinue or I'm
16 going to stop the phone call now, okay? I'll be in touch
17 later this week.

18 APPLICANT: Okay.

19 MR. RUCKER: All right. Thanks.

20 APPLICANT: Yes, sir. Yes, sir.

21 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE PROVIDED TO ME BY MARYANN
S. NEVERS AND INTRODUCED IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR SPARTANBURG COUNTY, SOUTH CAROLINA, ON THE
11TH DAY OF JANUARY, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 21ST, 2016

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Kevin Wayne McDaniels, #254398

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-42-0506

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed February 10, 2014. Applicant filed an initial PCR application¹ on June 16, 2009, with an amendment filed April 22, 2010. Respondent filed an Amended Return and Motion to Dismiss Without Prejudice on October 2010. Because Applicant was housed outside of the state in a federal facility, the Court dismissed the application without prejudice with leave to file when Applicant returned to state custody.

Respondent filed its Return to the current application on September 11, 2014, requesting that an evidentiary hearing be held. An evidentiary hearing into the matter was convened at the Spartanburg County Courthouse before the undersigned on January 11, 2016. Applicant was present at the hearing via telephone and was represented by J. Brandt Rucker, Esquire. Alicia A. Olive, Esquire, represented Respondent.

At the evidentiary hearing, Applicant testified via telephone on his own behalf. Nancy Griffin, Applicant's mother, also testified. The State presented testimony from Robert B. Hall, Esquire. This Court also had before it the records of the Spartanburg County Clerk of Court

¹ Case No. 2009-CP-42-3350

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regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the pleadings.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections ("SCDC") pursuant to orders of commitment of the Spartanburg County Clerk of Court.² Applicant was indicted at the March 2008 term of the Spartanburg County Grand Jury for first degree burglary (2008-GS-42-1743), second degree burglary (2008-GS-42-1744), and two counts of grand larceny between \$1,000 and \$5,000 (2008-GS-42-1745, 1746). He was represented by Robert Hall, Esquire ("Counsel"). On August 26, 2008, the Applicant pleaded guilty to the charges as indicted pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), before the Honorable R. Markley Dennis, Jr. Pursuant to a negotiated sentence, Judge Dennis sentenced Applicant to confinement for concurrent terms of fifteen years on each burglary charge and five years on each grand larceny charge. Applicant did not appeal his plea or sentence.

Allegations

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

1. "Miscarriage of justice for not granting a continuance"
2. Ineffective assistance of counsel for failure to pursue a one hour continuance
3. Actual innocence, in that: "I was not in the state when the crime was committed."
4. "Police coercion—involuntary confession" "police coerced me into confession of crimes I did not commit."

² Although Applicant is classified as an SCDC inmate, he is currently housed in the Federal Bureau of Prisons as a result of separate federal convictions.

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II. SUMMARY OF TESTIMONY PRESENTED

Applicant testified that his case was on the docket for a jury trial on the date that he pleaded guilty, August 26, 2008. Applicant testified that Counsel met with him only once before his scheduled trial. Applicant testified he could not have been guilty of the charges because he was in Newport, Florida at the time the crimes were alleged to have been committed. Applicant testified that he had sixteen affidavits from individuals who would attest that he was out of the state at the time, as well as photographs of him in Florida. He testified that he had alibi witnesses that were planning to testify at his trial and that he and Counsel discussed these witnesses. Applicant testified that his father was one of his alibi witnesses. Applicant testified his father was not present to testify at the PCR hearing but that he had expected him to testify. Applicant testified that he was being pressured with a life sentence and that Counsel abandoned him. Applicant testified his father and stepmother were on their way to the courthouse the morning that the trial was scheduled to begin and that he asked Counsel to request a one hour continuance but Counsel refused to do so. Applicant alleged that these individuals were going to testify that he was in Florida at the time the crimes were committed.

Nancy Griffin, Applicant's mother, testified that she was prepared to testify on the day of trial. Griffin testified that she, Applicant, and Counsel spoke in the conference room in the rear of the courtroom on the day Applicant's trial was scheduled to begin. She testified that the prosecuting attorney was present during their conference.

Counsel testified he did not move for a continuance because a continuance was not necessary.

Counsel testified that another attorney, Joshua Schultz, Esquire, was initially appointed to represent Applicant. Counsel testified that his first contact with Applicant was on June 4, 2008, which was within days after Counsel became employed as a public defender. Counsel testified that James

nse testified that James

[illegible]

Cheek, Esquire, also of the Public Defender's Office, had been working with Applicant on obtaining a potential plea offer. Counsel testified that Cheek met with Applicant on at least two days, for at least two hours each time. He testified that Applicant's charges were discussed with him. Counsel testified that discovery was provided in full and he reviewed discovery with Applicant. At Applicant's plea, Counsel stated in mitigation that Applicant's confession "was an ill-conceived plan to stop what was going on at a crack dealer's house involving prostituting young girls in Richland County[.]" and that Applicant gave them information about the burglary thinking that the officers "would immediately go raid the house, which they did." Counsel also testified to this at the PCR hearing.

Counsel testified that all along he was planning to try the case and that he was prepared to go to trial until the day of the plea when Applicant decided he wanted to plead guilty. Counsel testified that Applicant provided him with a witness list and that he communicated with Applicant's father and sent letters to the individuals on the list, and spoke with all potential alibi witnesses. He testified that he received several affidavits but that they were "no good." Counsel testified that Applicant's father, stepmother, and mother were planning to testify. Counsel testified that there would have been problems with Applicant's father's testimony, and that his best witness was going to be Applicant's ex-wife. Counsel testified that Applicant had been served with a notice of life sentence. Counsel testified that on the day of trial, the plea offer was made. Counsel testified Applicant requested to speak with his mother. Counsel testified that there was no prosecutor involved in his discussion of the case with Applicant and his mother.

Counsel testified that he presumed that Applicant's father was nervous about testifying and had been approached by the FBI. Counsel testified that he recalled that Applicant's father showed up

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right after the plea, but that there was no need for a continuance because even if the case had gone to trial, the fact that the witnesses were running an hour late was not an issue.

III. 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, and closely pass upon their credibility. This Court has weighed their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

As a matter of general impression, this Court finds Counsel's testimony to be more credible than Applicant's testimony.

A. Ineffective Assistance of Counsel

Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where an application alleges ineffective assistance of counsel, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The applicant "must first demonstrate that counsel was deficient and then must also show the deficiency resulted in prejudice." Walker v. State, 407 S.C. 400, 404-05, 756 S.E.2d 144, 146 (2014). "The two-part test adopted in Strickland also applies to challenges to guilty

pleas based on ineffective assistance of counsel.” Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011).

First, the applicant must show that counsel’s performance “fell below an objective standard of reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial.” Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

This Court finds Applicant has failed to establish his burden of proving either prong of Strickland. This Court finds that Applicant’s attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977). This Court finds that Counsel adequately conferred with Applicant in preparation for his plea. During these conferences with Applicant, Counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the potential penalties, Applicant’s constitutional rights, Applicant’s version of the facts, and possible defenses or lack thereof. This Court further finds that Counsel conducted a proper investigation and provided thorough representation. This Court finds the

record also reflects that the plea judge reviewed questions with Applicant and Applicant understood the nature of the charges against him and knew what evidence the State had against him. Applicant told the plea court that he spoke with his mother when she was there with his father, and that he had accepted the negotiated sentence and changed his plea from not guilty to an Alford plea. Applicant told the plea court that no one had threatened him or promised him anything to plead guilty, and the record reflects that Applicant fully understood the terms of the plea. Counsel discussed all potential witnesses, including alibi witnesses, with Applicant, investigated those witnesses, and contacted those witnesses that would have been helpful for the defense. Counsel testified he was prepared to try the case if Applicant had decided he wished to proceed. This Court finds that Applicant was facing serious charges and a sentence of life without parole if he was convicted of first degree burglary. Counsel successfully negotiated a favorable plea offer for Applicant. Therefore, this Court finds Applicant failed to satisfy his burden of proving that Counsel rendered deficient performance with respect to this allegation.

Applicant alleged that Counsel was ineffective because he failed to request a one hour continuance on the basis that Applicant's witnesses were running late. In order to show that counsel was ineffective for failing to move for a continuance, Applicant must show what benefits would accrue from additional preparation. See Skeen, 325 S.C. 210, 481 S.E.2d 129 (finding applicant failed to show counsel was ineffective for failing to request a continuance where he offered no evidence as to what benefits additional preparation would have yielded). Counsel testified there was no need to request a continuance. Applicant decided to plead guilty on the morning of his scheduled trial date. The trial proceedings had not yet begun. The witnesses were only delayed by an hour and would not have been prevented from testifying had the case gone to trial regardless of whether a

continuance was requested. Applicant produced only one additional witness, his mother, at the PCR hearing. Neither has provided testimony to persuade this Court that a motion to continue was necessary. As a result, Applicant has failed to show that Counsel was deficient for not requesting a one hour continuance.

Applicant has failed to show that but for any alleged deficiency of Counsel, he would not have pleaded guilty but would have insisted on going to trial. Applicant was facing a sentence of life without parole if a jury had convicted him of first degree burglary. By entering a plea, he obtained the benefit of a negotiated, concurrent, fifteen year sentence on both burglary charges. Furthermore, Applicant confessed to committing the burglaries. Accordingly, this Court finds Applicant has failed to show there was any deficiency in Counsel's performance or that any alleged deficiency prejudiced him. Therefore, this Court denies and dismisses Applicants allegations of ineffective assistance.

B. Involuntary Guilty Plea

Applicant alleged that he was coerced to confess and was threatened with life without parole and therefore he was coerced to plead guilty. This Court interprets this as a claim that his plea was involuntary. This Court finds that Applicant has failed to show that his plea was involuntary.

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (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, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Statements "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

This Court finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. At Applicant's plea, Applicant told the plea judge that no one had threatened him in any way to get him to plead. Applicant told the plea judge that Counsel discussed with him what an Alford plea meant and agreed with the judge's explanation of what it meant. Applicant told the judge that he had requested that Counsel negotiate the best sentence for him. Applicant also told the judge that on the day of the plea, he had spoken to his mother and Counsel and that he had changed his plea from not guilty to an Alford plea, and he specifically asked the judge to accept it.

plea and sentence him and give him concurrent sentencing. Applicant has presented no evidence or valid reasons why he should be allowed to depart from his statements made at the guilty plea hearing.

Applicant was served with notice of life sentence on August 13, 2008. Regardless, the offense of burglary first carries up to life imprisonment upon conviction. S.C. Code Ann. § 16-11-311(B). Counsel advised Applicant concerning the potential penalty he faced if he was convicted of that charge. The record plainly reflects that Applicant knew that he would receive a negotiated sentence of fifteen years when he pleaded guilty pursuant to Alford. Had Applicant gone to trial, he was facing a sentence of life without parole if convicted, and as a result of pleading, he obtained the benefit of a significantly reduced sentence of concurrent terms of fifteen years.

Similarly, Applicant failed to present any evidence to show that he was coerced to give a confession. Rather, based on the testimony at the PCR hearing and Counsel's comments to the plea judge during mitigation, Richland County deputies had detained Applicant in connection with charges in that county, and at that time he gave a statement to law enforcement with the intent that his confession would induce officers to raid a house where Applicant believed prostitution was occurring. Applicant also confessed to burglarizing another home.

Applicant has failed to show that Counsel's performance was deficient in any regard, or that any alleged deficiency prejudiced him. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Therefore, this Court finds Applicant has failed to show that his plea was involuntary, and this claim is denied and dismissed with prejudice.

C. Actual Innocence

This Court finds Applicant's claim of actual innocence should be summarily dismissed for

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failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

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

The allegation presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). PCR is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973).

Additionally, the PCR court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. § 17-27-20(a)(6) (1985). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial or by review on motion for a new trial or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545

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(1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Therefore, this Court finds this allegation must be denied and dismissed.

D. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

IV. CONCLUSION

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

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

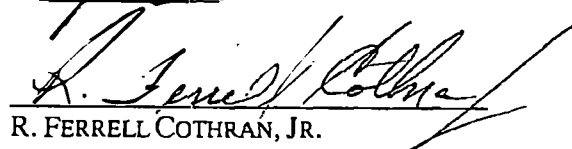
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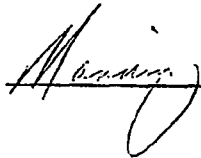
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IT IS THEREFORE ORDERED:

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 29 day of April, 2016.


R. FERRELL COTHAN, JR.
Presiding Judge
Seventh Judicial Circuit

, South Carolina

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