

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Kershaw County

G. Thomas Cooper, Circuit Court Judge

BRIAN EVANS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001596

APPENDIX

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1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

2
3 COUNTY OF KERSHAW

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5
6 State of South Carolina,

7
8 vs. 2011-GS-28-0110, 0111

9
10 Brian Franklin Evans,

11
12 Defendant.

13
14
15 Date: October 14, 2013

16 BEFORE: The Honorable DeAndrea G. Benjamin,

17
18 APPEARANCES:

19 Brett Perry, Esq.,
20 Deputy Solicitor

21 Brian Shealey, Esq.,
22 Luke Shealey, Esq.,
23 Kenneth Sutherland, Esq.,
24 Attorneys for Defendant

25 Phyllis M. Campo, RPR
Court Reporter

INDEX TO EXHIBITS

(NO EXHIBITS PROFFERED)

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1 MR. PERRY: Your Honor, we are here before
2 you in Richland County this afternoon on a
3 Kershaw County matter, two matters, in fact,
4 which I believe the defendant is waiving
5 jurisdiction, waiving venue, I should say.

6 The matters are two warrants for murder in
7 098873 and in 098874, Kershaw County
8 Indictments, respectfully, 2011-GS-28-0111 and
9 2011-GS-28-0110. The defendant is Brian Evans.
10 He is here with his attorneys Luke and Brian
11 Shealey and Ken Sutherland to enter pleas to
12 both murder indictments. This is a negotiated
13 plea, your Honor, for 30 years.

14 THE JUDGE: Is that correct, Mr. Shealey?

15 MR. BRIAN SHEALEY: Yes, your Honor.

16 THE JUDGE: Mr. Brian Shealey will be
17 speaking for the purposes of the court reporter.
18 You will be speaking on his behalf?

19 MR. BRIAN SHEALEY: That's fine.

20 THE JUDGE: Have you explained to your
21 client the charges contained in the indictments,
22 the possible punishment, and his constitutional
23 rights?

24 MR. BRIAN SHEALEY: I have, your Honor.

25 THE JUDGE: Have you explained to him the

1 rights to have these two indictments heard in
2 Kershaw County, and does he waive that right?

3 MR. BRIAN SHEALEY: He does waive that
4 right.

5 THE JUDGE: How does he wish to plea?

6 MR. BRIAN SHEALEY: Guilty to both counts.

7 THE JUDGE: Do you agree with his decision
8 to plead guilty?

9 MR. BRIAN SHEALEY: I do.

10 THE JUDGE: Are you Mr. Brian Franklin
11 Evans?

12 THE DEFENDANT: Yes, ma'am.

13 BRIAN FRANKLIN EVANS, being duly sworn,
14 testified as follows:

15 THE JUDGE: You are Brian Franklin Evans?

16 THE DEFENDANT: Yes, sir.

17 THE JUDGE: First of all, on these
18 indictments, you have the right to have them
19 heard in Kershaw County. Do you waive your
20 right to have them heard in Kershaw County being
21 that we are in Richland County today?

22 THE DEFENDANT: Yes, ma'am.

23 THE JUDGE: Sir, I am going to ask you some
24 questions about yourself and then I will let the
25 solicitor state the allegations from their

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5.

1 perspective and then I will come back to you.

2 How old are you, sir?

3 THE DEFENDANT: Forty nine.

4 THE JUDGE: Are you married?

5 THE DEFENDANT: No, ma'am.

6 THE JUDGE: Do you have minor children?

7 THE DEFENDANT: No, ma'am.

8 THE JUDGE: Who do you live with? I know
9 you are in jail now, but who were you living
10 with?

11 THE DEFENDANT: With my wife.

12 THE JUDGE: Sir, are you on probation or
13 parole?

14 THE DEFENDANT: No, ma'am.

15 THE JUDGE: Within the last 24 hours, have
16 you taken any medication, drugs, or alcohol?

17 THE DEFENDANT: No, ma'am.

18 THE JUDGE: Listen closely to the
19 solicitor as he states the facts.

20 MR. PERRY: Your Honor, back toward the
21 end of 2010, the defendant, Brian Evans, and his
22 wife, Elizabeth Marie Evans, had somewhat been
23 on the outs. They were sort of together and
24 sort of not together. He had been living with a
25 gentleman by the name of Jerry Geiger who lived

1 at _____ in the northern part of
2 Kershaw County.

3 Your Honor, I am a little bit uncertain
4 about the dates, but at some point between
5 December 16th, 2010 and February 2, 2011, the
6 defendant was with his wife, Marie Evans. They
7 had been visiting with some friends, partying
8 with some friends, I guess. During the course
9 of that visit, things went kind of badly with
10 the party and the two of them left. They left
11 in a Chevrolet automobile that was owned by Ms.
12 Evans.

13 At some point following that, your Honor,
14 the defendant ended up on Flat Rock Road in the
15 northern part of Kershaw County with Ms. Evans
16 and we believe, your Honor, there in Kershaw
17 County, or perhaps in Lancaster County coming
18 into Kershaw County, he killed his wife,
19 Elizabeth Marie Evans, with malice of
20 forethought by strangling her and leaving her
21 body in the woods off of Flat Rock Road in
22 northern Kershaw County.

23 At some point following that, your Honor,
24 again, not entirely certain about the dates,
25 between January 23 and February 2 of 2011, the

1 defendant with malice and forethought killed
2 Jerry Geiger in his house at
3 in Kershaw County striking him in the head
4 multiple times with a stick of wood, binding and
5 gagging him, and shooting him multiple times
6 with a pistol.

7 After that, your Honor, the defendant on
8 at least one occasion, perhaps multiple
9 occasions, took the vehicle that belonged to
10 Mr. Geiger to the Myrtle Beach area. He was on
11 his way back from the Myrtle Beach area on or
12 about February 2, whenever he was stopped by
13 deputies.

14 Mr. Geiger's family had noticed that they
15 hadn't seen or talked to him in a while, had
16 gone to the house looking for him. They found
17 him dead there in the house. They called law
18 enforcement. Law enforcement, realizing there
19 was a vehicle of Mr. Geigers missing, put out a
20 BOLO on that vehicle and it was spotted by a
21 Florence County deputy on the way back from a
22 trip to the beach. He was stopped at that point
23 in time.

24 Kershaw County deputies went down to
25 Florence and took him into custody. On the ride

1 back between Florence and Kershaw County,
2 Mr. Evans not only admitted to having taken
3 Mr. Geiger's life but also to having taken his
4 wife, Elizabeth Marie Evan's life, which at that
5 point in time we only knew she was missing. It
6 wasn't known yet that her body hadn't been
7 discovered, and it wasn't known that she was
8 deceased. In fact, not only did he admit to
9 taking her life, he instructed deputies on
10 exactly where to go to find her body.

11 Those are the facts in a nut shell, your
12 Honor.

13 THE JUDGE: All right. Sir, do you agree
14 with the facts as stated by the solicitor?

15 THE DEFENDANT: Yes, ma'am.

16 THE JUDGE: Is there anything that you
17 disagree with in what he is saying?

18 THE DEFENDANT: No, ma'am.

19 THE JUDGE: Sir, you understand that on
20 these two counts of murder they carry up to
21 anywhere from 30 to life; do you understand
22 that?

23 THE DEFENDANT: Yes, ma'am.

24 THE JUDGE: Knowing that, you still wish
25 to plead guilty?

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1 THE DEFENDANT: Yes, ma'am.

2 THE JUDGE: You understand these are
3 classified as violent most serious offenses?
4 First of all, you will be classified for
5 purposes of the Department of Corrections as
6 violent; and also, you will have to serve 85
7 percent of any sentence you will get. Do you
8 understand that, sir?

9 THE DEFENDANT: Yes, ma'am.

10 THE JUDGE: Knowing that, do you still
11 wish to plead guilty?

12 THE DEFENDANT: Yes, sir.

13 THE JUDGE: Also, sir, do you understand
14 on the most serious, if you were to get another
15 most serious conviction, the State could move
16 before the Court for life without parole. Do
17 you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE JUDGE: Knowing that, do you still
20 wish to plead guilty?

21 MR. PERRY: Your Honor, these are 30
22 years, day for day, correct? You mentioned 85
23 percent earlier.

24 THE JUDGE: I am sorry. You will have to
25 serve all 30 years, you understand that? And

1 you understand on the murder that it is the most
2 serious -- it is one strike because he is
3 pleading to both today; is that correct?

4 MR. PERRY: Yes, your Honor.

5 THE JUDGE: Is that your understanding
6 also, Mr. Shealey?

7 MR. BRIAN SHEALEY: Yes. He is aware of
8 that.

9 THE JUDGE: Is that your understanding?

10 THE DEFENDANT: Yes.

11 THE JUDGE: All right. Sir, you
12 understand that you have a right to a jury
13 trial. At a jury trial, the State would have to
14 prove you guilty beyond a reasonable doubt. You
15 and your attorneys would have the opportunity to
16 cross-examine any witnesses that they would
17 present. You, yourself, without having to
18 testify, you would have the right to remain
19 silent, sir. The burden would be solely upon
20 the State to prove you guilty beyond a
21 reasonable doubt.

22 Sir, if you gave any incriminating
23 statements, you would have the opportunity to
24 challenge the admission of those statements. If
25 you, sir, had any defenses that you wished to

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1 present through your attorneys, you would have
2 the opportunity to do that. However, you do not
3 have to present any evidence. You do not have
4 to present any witnesses, you would not have to
5 testify. You would be instructed that you would
6 not have to testify at trial, sir, because the
7 burden is upon the State to prove you guilty
8 beyond a reasonable doubt. Sir, there is no
9 burden upon the defense under our constitution.
10 Do you understand that, sir?

11 THE DEFENDANT: Yes.

12 THE JUDGE: Knowing that, do you wish to
13 give up those constitutional rights and your
14 right to a jury trial, is that what you wish to
15 do?

16 THE DEFENDANT: Yes, ma'am.

17 THE JUDGE: Sir, you have been represented
18 by Mr. Brian Shealey, Mr. Luke Shealey, and
19 Mr. Kenneth Sutherland. Are you satisfied with
20 their representation?

21 THE DEFENDANT: Yes, ma'am.

22 THE JUDGE: Do you need any more time to
23 speak with them?

24 THE DEFENDANT: No, ma'am.

25 THE JUDGE: Have they done everything for

1 you that you know they could have done or should
2 have done?

3 THE DEFENDANT: Yes, ma'am.

4 THE JUDGE: Sir, have they promised you
5 anything other than the negotiations in exchange
6 for your plea today?

7 THE DEFENDANT: No, ma'am.

8 THE JUDGE: Do you need any more time to
9 speak with them?

10 THE DEFENDANT: No, ma'am.

11 THE JUDGE: Sir, are you completely
12 satisfied with their services?

13 THE DEFENDANT: Yes, ma'am.

14 THE JUDGE: Is anyone forcing you to plead
15 guilty today?

16 THE DEFENDANT: No, ma'am.

17 THE JUDGE: Has anyone forced you into
18 pleading guilty today?

19 THE DEFENDANT: No, ma'am.

20 THE JUDGE: Has anyone offered you any
21 hope or reward in exchange for your guilty plea
22 today? Understanding this is negotiated plea,
23 but other than the negotiations between your
24 lawyer and the solicitor, has anyone offered you
25 anything in exchange for your plea today?

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1 THE DEFENDANT: No, ma'am.

2 THE JUDGE: All right. Sir, are you
3 pleading guilty to these charges of your own
4 free will?

5 THE DEFENDANT: Yes, ma'am.

6 THE JUDGE: Sir, have you understood my
7 questions?

8 THE DEFENDANT: Yes, ma'am.

9 THE JUDGE: Have you answered them
10 truthfully?

11 THE DEFENDANT: Yes, ma'am.

12 THE JUDGE: And also, have the answers you
13 have given me been your answers?

14 THE DEFENDANT: Yes, ma'am.

15 THE JUDGE: Has anyone suggested to you
16 how to answer my questions today? I know your
17 lawyers have gone over the questions with you,
18 but are your answers your answers?

19 THE DEFENDANT: Yes, ma'am.

20 THE JUDGE: Sir, you have the right to
21 appeal the guilty plea and sentence of this
22 Court within 10 days of today's date. If you
23 cannot afford an attorney for that appeal, an
24 attorney will be appointed for you. Do you
25 understand that, sir?

1 THE DEFENDANT: Yes, ma'am.

2 THE JUDGE: Knowing all of that, sir. Do
3 you still wish for me to accept your guilty plea
4 to these two counts of murder?

5 THE DEFENDANT: Yes, ma'am.

6 THE JUDGE: I find there is a substantial,
7 factual basis for this plea. I also find that
8 the defendant's decision to plead guilty is
9 freely, voluntarily, knowingly, and
10 intelligently made, and he is represented by
11 counsel to whom he has indicated to me he is
12 completely satisfied with. I further find that
13 the defendant waives his right to have this
14 matter heard in Kershaw County and have it heard
15 today here in Richland County.

16 I will accept the plea, his priors, and if
17 the victims wish to speak.

18 MR. PERRY: Your Honor, I do have victims
19 here that wish to speak if your Honor might let
20 them speak.

21 THE JUDGE: Yes, ma'am.

22 MS. TAYLOR: My name is Kathy Taylor.

23 THE JUDGE: Could I get you to speak up a
24 little bit. I know it is difficult for you, but
25 the court reporter has to have an accurate

1 record. If you would like, you can speak in
2 that microphone.

3 MS. TAYLOR: Your Honor, Jerry is my
4 uncle, and I have been asked to speak on behalf
5 of the family. It has been hard for us to move
6 on with our lives since the day we have found
7 out that Jerry has been killed. That day will
8 forever remain in our minds. We have lost
9 family members before by the hands of God, but
10 losing Jerry by the hand of another human being
11 has made it so much harder to grieve and let go.

12 This tragic death has hurt so bad. Jerry
13 was a kind, goodhearted man that would help
14 anyone any way he could as he was doing at the
15 time of his death. He was simply trying to help
16 what he thought at the time was a friend get
17 back on his feet. He didn't deserve this.

18 Since that day we have hurt, we have
19 cried, and we have screamed out of anger so many
20 times wondering why someone could do something
21 like this to such a loving and caring man. We
22 also pray many times for comfort to ease the
23 pain in our hearts. We also pray that the
24 person responsible for taking our family member
25 away too soon would be punished to the maximum

1 for his actions.

2 Death leaves a heartache no one can heal.
3 Jerry may have been taken away from us
4 physically but our love for him will leave a
5 memory that no one can ever steal.

6 THE JUDGE: Thank you for your comments.
7 I am sorry for your loss.

8 Yes, ma'am. Please state your name for
9 the record.

10 MS. MATTHEWS: Christina Ellen Matthews.
11 I am the eldest child of Elizabeth Marie Evans.
12 I cannot begin to explain the hurt my family has
13 gone through since my mom was murdered. My mom
14 was the most generous, compassionate God loving
15 person that I have known. My mom was the best
16 mom that any child could ask for. My mom was my
17 secure foundation that I did not know that I
18 counted on so much until one equal man stripped
19 it from me overnight.

20 I do not understand and maybe it is not
21 for me to understand. I do know that my mom
22 through her whole life was caring and helping
23 other people. She did not judge others and told
24 us the same. Her kindness and generosity got
25 her into the hands of the wrong man. In my

1 mom's mind, she was helping a man out. Little
2 be known, he had a plan of his own. He took a
3 great advantage of her and took all she had,
4 then he took her life. He took a mother, a
5 grandmother, and a friend. He took a believer
6 until I will see her again beyond this earth.
7 May God have mercy on your soul.

8 One of the last days I saw her physically
9 and got to spend at least a moment of time with
10 her was December 25th, 2010. She wrote a letter
11 either before or after I left her house. I did
12 not know this until we found this letter in her
13 bible approximately four months after she was
14 found. My sister will read that letter to the
15 Court.

16 THE JUDGE: Yes, ma'am. Please state your
17 name.

18 MS. DYKES: My name is Jessica Dykes. I
19 am the middle daughter of Ms. Elizabeth Marie
20 Bailey. This is my mother's words. I have
21 never written a letter like this to anyone but I
22 have a story to tell, part accomplishment and
23 part a horror story. Around 1997 I developed
24 Type 2 Diabetes. I had a weight gain of 170
25 pounds in three years. I had joint AA adjust

1 prior to this weight gain and I believe I just
2 swapped one addiction for another, food.
3 Between the diabetes, high blood pressure, a few
4 months on home health, and other complications,
5 I knew if my health didn't kill me all of the
6 medications would.

7 In the fall of 2006 I had a gastric
8 bypass. In the past four years, I lost 170
9 pounds and my health improved. I was fortunate
10 enough to work from home and was able to scrape
11 up enough money for a down payment in a small
12 home here in Lancaster. All of my family and
13 grandchildren live here. I have even found a
14 small church that I adore. I was just waiting
15 on my retirement where I could get 401(k) and
16 pay off my mortgage and reconstruction that I
17 wanted because of the weight loss.

18 Now comes the horror story. On June 5th
19 of this year, this is 2011, I met a gentleman in
20 my neighbor's yard. He was my neighbor's
21 cousin. He had just got out of jail and had no
22 place to go. I gave him my couch to sleep on.
23 Within a week, he was in my bed. By July 19th,
24 we were married. I was totally in love. We
25 could talk, laugh, and I had never met anyone I

1 could just be myself with like I was with him.
2 I was introduced to sex and drugs. I had been
3 celibate for five years by choice and remember
4 my addictive personality.

5 I was introduced to a love of love I had
6 never experienced. My children liked Brian at
7 first until his lies and theft became obvious.
8 They were devastated when I married him and I
9 was warned by so many people and did not listen.

10 On August 5th, Brian went to jail for
11 counterfeiting, conspiracy, and other charges.
12 His bail was \$45,000. Like the fool I am, I
13 retired from my job, got my 401(k), put my house
14 up and got him out. For several weeks
15 everything was good. I bought a truck utility
16 trailer, riding lawn mower. Brian and I started
17 Evans Lawn Service. It was all good until a
18 friend of his moved in on October 1st. Then the
19 lies, the stealing, the writing checks in my
20 name, stealing my debit card all to support him
21 and his friend's addiction to crack and cocaine.
22 He would disappear for days on his binges and
23 always come back telling me he loved me.

24 We got counseled by my pastor and Brian
25 stayed clean for while. Then he left again and

1 again. We would argue so bitterly that if he
2 wasn't leaving I was throwing him out. Right
3 after Thanksgiving, he called from Columbia,
4 South Carolina and said he had a job and wanted
5 us to try again. I went and had a great eight
6 days at which time I came home to check on the
7 house. Everything was gone. All I had bought,
8 my TV, VCR, radios and my grandmother's antique
9 jewelry was all gone. He had arrest warrants in
10 York County and Lancaster County looking for
11 him. I ended up in the hospital here on
12 December 17th because of possible heart attack.

13 He cost me my dreams, my savings, and I
14 probably will lose my home. I have no money
15 left at all. Sorry to have written a book, but
16 just by writing this I feel better. Sincerely
17 Elizabeth Marie Evans. There is much more to
18 tell, but this is not enough.

19 If that wasn't enough, he also had to take
20 her life. And I know that he realizes what he
21 has taken from me, but he cannot take a bond
22 between a loving mother and a child and a strong
23 foundation and a higher power that I have.

24 I would like to read this on behalf of the
25 Geiger family as well if you don't mind. This

1 was my mama's favorite verse. Trust in the Lord
2 and lean not on your own understanding. In all
3 ways acknowledge him and he will make your path
4 straight. This is from Romans 14. Even though
5 I am not physically present, I am with you in
6 spirit and that I have already passed judgement
7 on the one who did this just as if I were
8 present. When you are assembled in the name of
9 our Lord, Jesus and I are with you in spirit and
10 the power of our Lord Jesus is present. Hand
11 this man over to satin that the sinful nature
12 can be destroyed and his spirt saved in the name
13 of the Lord.

14 Thank you, your Honor, for your short
15 notice.

16 THE JUDGE: Thank you for your comments.
17 I am sorry for your loss. Thank you all.

18 MR. PERRY: Your Honor, I have his record
19 right here. It is lengthy your Honor. 1981,
20 larceny charge. 1982, larceny of an auto.
21 1982, escape, petit larceny. 1985, burglary
22 second degree. 1989, disorderly conduct,
23 possession marijuana. 1989, petit larceny.
24 1990, burglary second degree. 1990, larceny.
25 1995, possession stolen goods. 1997, two

1 fraudulent checks. 1997, possession of a stolen
2 vehicle. In 1997, sale of a pistol or
3 possession by person not allowed to have it,
4 burglary second degree. 1998, petit larceny,
5 and burglary second, and receiving that petit
6 larceny is part of the injunction. Then in
7 2010, conviction of possession of marijuana.

8 THE JUDGE: Anything else you want to say?

9 MR. PERRY: No, your Honor. The State at
10 this time would simply ask you to accept the
11 plea and enforce the sentence on the
12 negotiation.

13 THE JUDGE: The negotiated --

14 MR. PERRY: Yes, ma'am, it is a
15 negotiated 30 years.

16 THE JUDGE: Mr. Shealey.

17 MR. BRIAN SHEALEY: Thank you, your Honor.
18 May it please the Court. We would also ask you
19 to follow the negotiations in this case.
20 Mr. Evans has in exchange for this plea relied
21 specifically on negotiations outlined in the
22 sentencing sheet. Also, I would like to state
23 for the record that it is 30 years on murder,
24 day for day, concurrent to the other murder
25 charge. Mr. Evans has been incarcerated

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23

1 February 3rd of 2011 for 984 days.. He does not
2 wish to speak.

3 THE JUDGE: All right. On Indictment
4 2011-GS-28- 0110 and 0111, sir, you will be
5 sentenced to the State Department of Corrections
6 for 30 years. The sentences will run
7 concurrent. He will be given credit for the
8 time he served of 984 days. I will follow the
9 negotiations and recommendations.

10 MR. PERRY: Thank you, your Honor.

11 MR. BRIAN SHEALEY: Thank you, Judge.

12 (Whereupon, the above-entitled matter was
13 concluded.)
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C E R T I F I C A T I O N

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STATE OF SOUTH CAROLINA

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COUNTY OF KERSHAW

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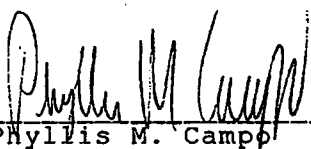
24

25

I, Phyllis M. Campo, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings at the time and place herein in the above-entitled matter.

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

December 8, 2014



Phyllis M. Campo
Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF)

Brian Franklin Evans #111089)

2014-CP-28-946

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

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally 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 Kershaw County Detention Center
2. Name and location of Court which imposed sentence Kershaw County Court house.
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) Murder 2011-63-28-0110
 - (b) Murder 2011-63-28-0111
 - (c)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 10/14/13 Plead Guilty 30yrs Concurrent / Be returned for Sentence
 - (b) 10/14/13 Plead Guilty 30 yrs Concurrent departure hearing which is To be filed within 1yr.

FILED FOR RECORD
2014 OCT -9 AM 10:53
JOYCE H. HARRIS
CLERK OF COURT
KERSHAW COUNTY

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ~~***~~
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) ~~I was told I had 10 days to appeal which I believed was to be done by my attorneys automatically.~~
- (b) I was told I had 10 days to appeal which I believed was to be done by my attorneys automatically.
- (c) _____
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
KERSHAW COUNTY, S.C.

- (a) see attached memorandum
- (b) see attached memorandum
- (c) _____

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

- (a) see attached memorandum
- (b) see attached memorandum
- (c) _____

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

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

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

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

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 CLERK OF COURT
 Kershaw County, S.C.

iv. _____

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. _____

iv. _____

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

i. N/A

ii. N/A

iii. _____

iv. _____

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CLERK OF COURT
KERSHAW COUNTY, S.C.

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?

N/A

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. _____

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

i. N/A

ii. N/A

iii. _____

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

(a) This is the first opportunity that I have gotten to raise these issues.

(b) _____

(c) _____

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? No trial was held
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No appeal filed
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
 - i. Brian Stealey, Luke Stealey Travis Satterland
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Represented me at plea and Sentencing
 - ii. _____
 - iii. _____

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 CLERK OF COURT
 KERSHAW COUNTY, S.C.

19. State clearly the relief you seek in filing this application:
Guilty plea vacated and this case remanded to Kershaw County for new trial.
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, Brian Evans, 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.

Brian Evans

SWORN to and subscribed before me this 15th
day of September, 2014.

Nancy C. Merchant (L.S.)
Notary Public

My Commission Expires: 1-23-2023

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CLERK OF COURT
KERSHAW COUNTY, S.C.

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

I, Brian Egan, 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.

Brian Egan

Applicant

SWORN or affirmed to and subscribed before me this

15th day of September, 2014.

Nancy C. Muchant
Notary Public

My Commission Expires: 1-23-2023

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CLERK OF COURT
KERSHAW COUNTY, S.C.

State of South Carolina
County of Kershaw

In the Court of General Sessions
5th Judicial Circuit

Brian Franklin Evans #111069
Applicant

Case No:

Memorandum of law
In Support of Application
For Post-Conviction Relief

vs
State of South Carolina
Respondant

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JOYCE A. JOHNSON, CLERK
CLERK OF COURT
KERSHAW COUNTY, SC

Comes Now, the applicant named above, who ask this Court to grant him Post-Conviction Relief in this matter because his rights to effective assistance of Counsel as guaranteed to him under the Sixth Amendment of the United States and Article I, § 14 of the South Carolina Constitution and his rights to Due Process of Law as guaranteed to him under the Fourteenth Amendment of the United States Constitution and Article I, § 3 of the South Carolina Constitution has been violated.

The applicant contends that his arguments and citation to pertinent case will justify this Court in granting the requested relief.

s/ Brian Evans
Brian Franklin Evans #111069
P.E.I.
430 Oaklawn Rd
Pelzer SC, 29669

Counsel was ineffective in advising the applicant to plead guilty where counsel failed to conduct a reasonable investigation of the facts and circumstances surrounding this case which rendered the applicants Pleas of guilty, Not knowingly or intelligently made and denied him due process of law.

The applicant contends that Counsel was ineffective, when he advised the applicant to Plead guilty when Counsel didn't investigate the discovery material to enable him to decide a guilty plea would have been the best course of resolving the matter. Counsel failure to investigate this matter before he decide on presenting a guilty plea was prejudicial to the applicant.

In *Arday v. State*, 642 S.E.2d 590, 597 (S.C., 2007) the Supreme Court stated without a doubt, [a] Criminal defense attorney has a duty to investigate but this duty is limited to a reasonable investigation. It was unreasonable for Counsel not to investigate the facts of the case before advising the applicant to plead guilty. Failure to conduct a investigation of the case before advising the applicant to plead guilty cannot be viewed as strategic but rather is negligence.

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CLERK OF COURT
Kershaw County, S.C.

Conclusion

The applicant believes that evidentiary hearing is necessary in this matter to present the grounds on ineffective assistance of Counsel See *Sharper v State* 279 S.C. 269, 305 S.E. 2d (1983)

The applicant reserves the right to amend his original application pursuant to S.C. Code § 17-27-40 in which it is required that all grounds for relief available to the applicant is to be raised in the original, supplemental or amended application.

Also, the applicant request that this Court appoint Counsel to represent him in this matter pursuant S.C. Code § 17-27-60 of the uniform Post-Conviction Procedure Act and Rule 711(d) of the South Carolina Rules of Civil Procedures.

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CLERK OF COURT
KERSHAW COUNTY, S.C.

Respectfully Submitted

Brian Evans

Brian Franklin Evans #111059
P.C.I.
430 Oaklawn
Pelzer SC 29669

STATE OF SOUTH CAROLINA
COUNTY OF Kershaw

Brian F. Evans, #111059,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-28-946

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed October 9, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Kershaw County. Applicant was indicted at the February 2011 term of the Court of General Sessions for Kershaw County for two counts of Murder (2011-GS-28-0110; -0111). Applicant was represented by Brian Shealey, Esq.; Luke Shealey, Esq.; and Tivis Sutherland, Esq. Applicant appeared before the Honorable DeAndrea G. Benjamin on October 14, 2014 and pleaded guilty as indicted. Pursuant to negotiations, Judge Benjamin sentenced Applicant to concurrent terms of thirty (30) years' imprisonment. Applicant did not appeal his sentence or convictions.

Attached herewith and incorporated herein by reference are the records of the Kershaw County Clerk of Court regarding the subject conviction(s), the transcript from Applicant's plea hearing, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance Counsel, in that;
 - a. "Counsel was ineffective in advising the applicant to plead guilty where counsel failed to conduct a reasonable investigation of the facts and circumstances surrounding this case which rendered the applicants pleas of guilty, not knowingly or intelligently made and denied him due process of law",
 - b. "... Counsel was ineffective when he advised the applicant to plead guilty when Counsel didn't investigate the discovery material to enable him to decide a guilty plea would have been the best course of resolving the matter, counsel failure to investigate . . . was prejudicial to the applicant"

III.

Applicant's first claim is an allegation of ineffective assistance of plea counsel. Respondent contends that Applicant's plea counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

Respondent further submits Applicant's allegation his guilty plea was involuntary is without merit. 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)). Admissions "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)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

Applicant also alleges due process violations. These allegations appear to be merely recitations of his grounds for ineffective assistance of counsel. Therefore, Respondent submits these allegation are without merit and incorporates its response in Part III, supra.

In the event Applicant alleges independent claims of due process violations, Respondent submits such claims are likewise without merit. A due process violation only occurs "when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice." State v. Hornsby, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997) (citing 21 Am.Jur.2d, Criminal Law § 640 (1981)). Respondent submits the record fully demonstrates Applicant's plea procedures fully complied with the requirements of due process. Accordingly, Respondent submits this allegation should be dismissed pursuant to Rule 12(b)(6), SCRCPP.

VI.

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

VII.

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

VIII.

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

IX.

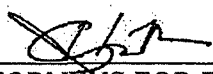
WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claims of ineffective assistance of counsel.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

June 8, 2015

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

BRIAN F. EVANS, #111059

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

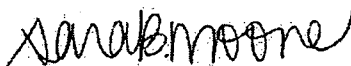
IN THE COURT OF COMMON PLEAS

2014-CP-28-0946

AFFIDAVIT OF SERVICE BY MAIL

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

Kristy Grafton Goldberg, Esquire
Law Office of Kristy Goldberg, LLC
1720 Main Street, Suite 301
Columbia, SC 29201

DATED this 8th day of June, 2015.


Sara B. Moore, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	DOCKET NO.: 2014-CP-28-946
	)	
BRIAN EVANS, SCDC # 111059,	)	
SCDC # 347471	)	
Applicant,	)	
v.	)	AMENDED APPLICATION FOR
	)	POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
Respondent,	)	

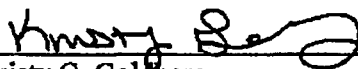
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2016 MAR -7 AM 9:13
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

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

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

- (a) Ineffective Assistance of counsel for advising Applicant to accept plea offer conditioned on "1. statewide protective custody 2. Downward departure."
- (b) Ineffective assistance of counsel for failing to ensure that the conditions within the plea agreement were met, and for failing to file a motion to withdraw plea when it became apparent that conditions of plea agreement were not fulfilled.
- (c) Applicant's plea was involuntary in that he relied on representations by counsel that he would be guaranteed "1. statewide protective custody 2. Downward departure" after pleading guilty, and Applicant would not have plead guilty otherwise.

- Respectfully Submitted, -


Kristy G. Goldberg
Attorney for Applicant

Columbia, South Carolina

This 4 Day of March, 2016.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW)

DOCKET NO.: 2014-CP-28-946

BRIAN EVANS, SCDC # 111059,)
SCDC # 347471)

Applicant,)

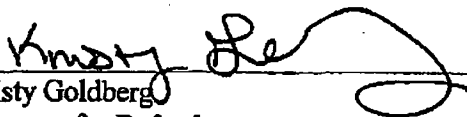
v.)

STATE OF SOUTH CAROLINA,)
Respondent,)

CERTIFICATE OF SERVICE

FILED FOR RECORD
2016 MAR -7 AM 9:14
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.


 Kristy Goldberg
 Attorney for Defendant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 303
 Columbia, SC 29201
 803-667-6633
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 4TH day of March, 2016

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Kershaw	)	2014-CP-28-0946
	)	
BRIAN EVANS,	)	
	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT,	)	

March 29, 2016
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE.

APPEARANCES:

KRISTY GOLDBERG, ESQ.
Attorney for the Applicant

CLAY MITCHELL, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S
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JOETTE SCARBOROUGH

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BRETT PERRY

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BRIAN SHEALEY

Cross By Mr. Mitchell	72
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CERTIFICATE OF REPORTER	78
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APPLICANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Kirkland R&E document	4	18
2	Inmate record	35	41
3	Inmate record	35	41
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6	Memorandum	35	41

7

Letter

46

1 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
2 identification only.)

3 THE COURT: This is a plea case?

4 MR. MITCHELL: Yes, sir.

5 THE COURT: All right. Is there an amended
6 application?

7 MS. GOLDBERG: Yes.

8 MR. MITCHELL: There is.

9 MS. GOLDBERG: It was filed March 7th, 2016.

10 THE COURT: It's not in the file.

11 (Pause).

12 All right. Mr. Mitchell, you may proceed.

13 MR. MITCHELL: All right. May it please the Court.
14 This is Brian Evans vs. the State of South Carolina,
15 2014-CP-28-946. This application was filed October 9th,
16 2014.

17 Mr. Evans was indicted February 2011, two counts of
18 murder. He was represented on those charges by Mr. Brian
19 Shealey, Mr. Luke Shealey, and Mr. Tivis Sutherland. He
20 pled before Judge Benjamin October 14, 2014 as indicted to
21 both murder charges.

22 He pled to a negotiated sentence of 30 years. There
23 was no appeal taken. This application was filed timely
24 and pursuant to the amendment, we have two issues going
25 forward on, one dealing with whether Mr. Evans goes to his

1 protective custody status in SCDC, and the second issue
2 dealing with Solicitor -- the plea negotiation of whether
3 the Solicitor needed to make a motion for substantial
4 assistance to reduce Mr. Evans' sentence.

5 THE COURT: Whether the Solicitor should have?

6 MR. MITCHELL: Right, whether that was part of the
7 plea agreement whether the solicitor needs to make the
8 motion for substantial assistance, whether that was part
9 of the plea agreement or whether that was a breach of the
10 plea agreement in not making that motion.

11 THE COURT: All right.

12 MR. MITCHELL: So...

13 THE COURT: Let's hear about it then, Ms. Goldberg.

14 MS. GOLDBERG: Thank you, Your Honor. May it please
15 the Court. You do have in front of you the amended
16 application.

17 I'd also ask you before we begin to just go ahead and
18 look at the sentencing sheet in this matter. There's
19 two --

20 THE COURT: I've got it.

21 MS. GOLDBERG: -- that are virtually identical except
22 for the fact that they're for two different charges.

23 I'll just note that in the sentencing, it says a plea
24 is to a negotiated sentence. Under that it does have
25 written in one, statewide protective custody, and two,

1 downward departure.

2 THE COURT: Downward departure?

3 MS. GOLDBERG: That's what it says.

4 THE COURT: And this is Judge Benjamin?

5 MS. GOLDBERG: Yes, Your Honor.

6 THE COURT: Okay.

7 MS. GOLDBERG: All right. At this time, Applicant
8 would call Brian Evans.

9 THE COURT: Come around, Mr. Evans.

10 BRIAN EVANS, after being duly sworn,
11 testified as follows:

12 THE COURT: All right. Have a seat in the witness
13 box. State your full name for the record, please.

14 (There was no response).

15 DIRECT EXAMINATION:

16 BY MS. GOLDBERG:

17 Q All right. Mr. Evans, can you state your full name
18 for the record?

19 A Brian Franklin Evans.

20 Q Where are you currently housed?

21 A Perry Correctional Institution.

22 Q What sentence are you serving?

23 A Thirty years concurrent.

24 Q For what charges?

25 A Murder.

- 1 Q Are they two separate murder charges?
- 2 A Yes, ma'am.
- 3 Q When were you arrested?
- 4 A February 2, 2011.
- 5 Q Who was your attorney -- well, when you were
- 6 arrested, were you taken to Kershaw jail?
- 7 A Yes, ma'am.
- 8 Q And who was your attorney right at the beginning
- 9 there?
- 10 A Nick Riley.
- 11 Q And what happened with that?
- 12 A I have no idea.
- 13 Q Okay. Who was your next attorney?
- 14 A Doug Strickler and Jason Kirincich.
- 15 Q All right. How long did they represent you?
- 16 A A year or so, I guess.
- 17 Q And then did their representation end also?
- 18 A Yes, ma'am.
- 19 Q Who represented you next?
- 20 A Mr. Brian and Luke Shealey and Tivis Sutherland.
- 21 Q When did that start to the best of your memory?
- 22 A 2013.
- 23 Q Were they appointed?
- 24 A Yes, ma'am.
- 25 Q When was your guilty plea?

1 A October 14th, 2013.

2 Q The entire time this charge was pending, were you
3 incarcerated?

4 A Yes, ma'am.

5 Q All right. So when you met with your lawyers, they
6 had to come and visit with you at the jail?

7 A Yes, ma'am.

8 Q Tell me -- in general, tell me about what happened
9 with plea negotiations in this -- in this case. What did
10 they first tell you? What was your response? Just tell
11 me how that progressed.

12 A Me and Mr. Sutherland was at the sheriff's office,
13 and we were standing outside. I mentioned an incident
14 that had happened at the jail, and he says, "Well, you
15 know, you can get help with -- help on your sentence
16 because of that."

17 I didn't know nothing about that. It had done been a
18 month or so. So anyway, I explained the incident, and I
19 guess -- I can't remember if I informed Mr. Shealey or...

20 THE COURT: Sir, will you speak up just a little bit?
21 I've got to hear what you're saying, okay.

22 THE WITNESS: I can't remember if Mr. Shealey or
23 Mr. Sutherland told Mr. Shealey and them about it.

24 BY MS. GOLDBERG:

25 Q What about other issues? What about -- let's just

1 say your sentence, okay. How did the plea negotiations go
2 with regards to your sentence itself?

3 A (There was no response).

4 Q Currently -- let me ask it this way. Currently,
5 you're doing two 30-years sentences that are concurrent,
6 correct?

7 A Yes; yes, ma'am.

8 Q Was that the only plea offer you ever had sentence
9 wise, or was it higher or lower at any time?

10 A That was it.

11 Q That was the original plea offer?

12 A Uh-huh.

13 Q Okay. When the plea offer was a 30 year -- two
14 30-year concurrent sentences period --

15 A Right.

16 Q -- were you willing to accept that plea offer?

17 A No, ma'am.

18 Q Why not?

19 A Because after what happened at the jail with the gang
20 members, I felt that just taking the plea like that and
21 throwing me in the general population was not -- not going
22 to be good for me.

23 Q Go ahead and tell the court what happened at the
24 jail.

25 A Lucius Green, Jonathan Goad, Franklin Singleton,

1 Franklin Graham, and another inmate got in a fight and --

2 THE COURT: This is Alvin S. Glenn?

3 THE WITNESS: No. This was at Kershaw County
4 Detention Center.

5 THE COURT: Kershaw, okay.

6 THE WITNESS: There was a fight. Two of the inmates
7 when the officers came went out and sat on the stairs
8 where the officer wanted them to.

9 Franklin Graham and another inmate who is Folk was
10 still in room one with Frank Singleton, and Mr. Robinson,
11 the guard, was between them trying to keep them away. And
12 I run in. I grabbed Frank and brought him outside the
13 room, and then Mr. Robinson slammed the door. That was
14 it.

15 BY MS. GOLDBERG:

16 Q You grabbed Frank Singleton?

17 A Right.

18 Q And what lasting consequence did you believe that
19 had?

20 A Because they're gang members and gangs are prevalent
21 through SCDC. I mean, I...

22 Q Do you know what gang specifically?

23 A Yeah. You got Folks, and Frank is either a Blood or
24 Crip. I'm not sure. Jonathan Goad, he was no gang
25 member. He was just in it with them.

1 Q A part of the fight?

2 A Right.

3 Q When you grabbed Frank Singleton, what effect did
4 that have on the correctional officer?

5 A He was -- I grabbed Frank, came out the door with
6 him, and Mr. Robinson came out and slammed the door on the
7 other two.

8 Q So they were able to diffuse the situation?

9 A Yes, ma'am.

10 Q All right. Now, back to your plea negotiations, you
11 said that you thought that would have some sort of lasting
12 consequences of your stay at SCDC?

13 A Right.

14 Q Can you explain why a little bit more?

15 A Gang members are throughout SCDC, and if you are for
16 a guard, then you're against anybody.

17 Q Okay. So this was all known by you and your lawyers
18 prior to you pleading guilty?

19 A Right.

20 Q So how did this factor in your plea negotiations?
21 What did you ask for?

22 A The sentence -- that I accept the sentence and
23 placement on statewide protective custody, do my time
24 and...

25 Q Was your -- go ahead. Go ahead.

1 A I don't -- I'm not sure if it was Mr. Sutherland or
2 Mr. Shealey and them, but the downward departure came in
3 there, and I mean, I agreed to it.

4 Q Okay. Was your acceptance of the plea conditional on
5 a promise that you be put in protective custody?

6 A Yes, ma'am.

7 Q Okay. Otherwise, without that promise, would you
8 have pled guilty?

9 A No, ma'am.

10 Q What would you have done instead?

11 A Trial.

12 Q Now, prior to this happening in Kershaw Detention
13 Center -- you've been in SCDC before; is that right?

14 A Yes, ma'am.

15 Q Okay. You've been in protective custody before?

16 A Yes, ma'am.

17 Q Briefly, what was that related to?

18 A A Muslim inmate, Burnett is the last name, Burnett I
19 believe. In 2007, he was threatening me to have a
20 visitor, my visitor, pick up drugs, and my visitor was
21 scared.

22 I told the investigator there at the institution,
23 McCormick Correctional Institution, that -- what was
24 happening, and two SLED agents came to see me. I told
25 them what was happening. They -- it was a male and a

1 female.

2 They gave me a phone number and told me to give it to
3 the Muslim and I did. The Muslim's family called the
4 female who acted like she was my visitor, I guess, and
5 arranged a meeting.

6 Later that night they came and locked me and the guy
7 up, me and the Muslim, but they had done busted his family
8 with a package of drugs coming in the prison. I was
9 placed on statewide protective custody at Kirkland.

10 Q You said -- you called this individual the Muslim.
11 Are you saying that because of his association with a
12 particular group?

13 A Right. You got real Muslim, I mean that believe in
14 the thing, but you also got ones that use it.

15 Q Is there an origination at SCDC called the Muslim
16 Brotherhood?

17 A Yeah.

18 Q Is that what you're talking?

19 A (Indicating).

20 Q Is that essentially a gang?

21 A No. You got --

22 Q - Is that like a gang?

23 A You got -- you got some believers, and you got some
24 that use it for that.

25 Q Okay. Okay. Did this all actually play into your

1 request for protective custody, as well?

2 A Yes, ma'am, because I left -- when I left SCDC, I
3 left from statewide protective custody.

4 THE COURT: Is he in protective custody now?

5 BY MS. GOLDBERG:

6 Q I'm going to get into that. I can ask that question
7 right now.

8 When you -- after your guilty plea in this case, when
9 you went to SCDC, were you originally placed in protective
10 custody?

11 A Yes, ma'am, right away.

12 Q Okay. At any point, were you released from
13 protective custody?

14 A April 2015 I was told to pack my stuff and I did.
15 They kicked me out of the dorm, told me to go to the
16 general population.

17 Q Are you in protective custody now?

18 A No. They -- I was put in a room with a Muslim and
19 that gang member Frank Singleton was there at Perry. I
20 spoke with Warden Cartilage in front of the cafeteria
21 about my concerns, and they just shrugged me off.

22 I went back to the dorm, and I wrote you and told you
23 that I had word that -- somebody had become a friend, told
24 me that a hit was planned on me. So I done tried to talk
25 to Mr. Cartilage, then I wrote you. You informed SCDC on

1 I believe it was June 30th. Nobody did nothing. On
2 July 4th, I was assaulted by my roommate, the Muslim, and
3 I protected myself. He got the worst, but I ended up on
4 lockup.

5 Q So you're on like security detention now?

6 A Right.

7 Q But that has an end date; is that correct?

8 A I really don't know.

9 Q Okay. What is the difference between security
10 detention and protective custody?

11 A I'm in a room on lock up. They don't -- they're
12 short staffed. We don't get showers, hard to get
13 haircuts.

14 THE COURT: Are you worried about that?

15 THE WITNESS: Yes, sir. I mean, it goes towards how
16 you feel. You should have seen me this morning, a beard.

17 THE COURT: Go right ahead. I'm just playing with
18 you there.

19 THE WITNESS: You're just stuck in a room all day, no
20 rec., I mean nothing. You just sit in there. You don't
21 -- you can't have no property, none of your property. If
22 you're on statewide protective custody, you can have your
23 property in your room, canteen privileges, visitation
24 privileges.

25

1 BY MS. GOLDBERG:

2 Q There's also a difference between whether your
3 location is public information or not also; is that right?

4 A Right. If you're in the general population or where
5 I'm at on lockup, cell phones are everywhere in prison.
6 They call from this prison to the other prison.

7 You can go online and get people's locations in
8 prison. SCDC has got some -- a website that gives
9 locations of people. You can't run. I mean, there's no
10 -- there's nowhere to run, but if you're on statewide
11 protective custody, nobody can find out your information.

12 Q When you went to court in October of 2013 to plead
13 guilty, what was your understanding of the plea agreement?

14 A I would accept the 30 years in placement on
15 protective custody, and within a year I'd come back for a
16 downward departure which Mr. Sutherland explained to me it
17 would be the Solicitor Brett Perry's motion. He would
18 file it.

19 It got right at a year later, and I don't know how to
20 file a PCR or nothing. A guy filled out the paperwork. I
21 signed it, sent it in because I was just a few days away
22 from that deadline, and I hadn't heard nothing.

23 Q That was -- as far as what the plea agreement was,
24 that was your understanding after talking to all three of
25 your lawyers?

1 A Yes, ma'am.

2 Q Did you ever see the sentencing sheet?

3 A Yes, ma'am.

4 Q Did you see it when you signed it that day?

5 A Yes, ma'am.

6 Q Did it have any notations on it?

7 A At the top.

8 Q What did it stay?

9 A Placement in statewide protective custody and
10 downward departure.

11 Q And those were already written on there when you
12 signed the sentencing sheet? Do you remember?

13 A I think so. I know -- I think so.

14 Q When you were told by your lawyers that a part of the
15 deal was that you would be in statewide protective
16 custody, what did you think that meant as far as how long
17 you would be there or any -- what the agreement was? What
18 did you think that meant?

19 A I would serve my sentence in statewide protective
20 custody.

21 Q The entire sentence?

22 A Yes, ma'am.

23 Q When you agreed to this plea offer, did you think
24 that the fact that it was written on your sentencing sheet
25 carried any significance?

1 A Yes, ma'am.

2 Q What is that? Why was that important?

3 A Well, when I got to SCDC, they told me that while I
4 was in the holding cell with a bunch of other guys and
5 then the officer came and rushed over there and got me
6 out, said, "Why didn't you tell us about your statewide
7 protective custody?"

8 I mean, I didn't know. I just got there. So they
9 took me to the classification building, and they told me
10 that due to being court ordered, I would just go.

11 Q Because you were court ordered into it?

12 A Right.

13 Q May I approach?

14 I'm going to hand you what's been marked as
15 Applicant's Exhibit Number 1 which I showed Mr. Mitchell
16 previously.

17 Any objection to this document?

18 MR. MITCHELL: No objection.

19 MS. GOLDBERG: Okay.

20 (WHEREUPON, Applicant's Exhibit No. 1 was admitted
21 into evidence.)

22 BY MS. GOLDBERG:

23 Q Mr. Evans, what is the document you're looking at?

24 A South Carolina Department of Corrections Kirkland
25 Reception and Evaluation Center.

1 Q And who -- that's what the -- where the form is from,
2 right?

3 A Yes, ma'am.

4 Q Who wrote out that form?

5 A I did.

6 Q Okay. Can you read it to the Court? It's not long.

7 A Gave a statement, Fifth Circuit Solicitor's Office
8 taped the interview about a Nick Miller who was facing the
9 death penalty.

10 I also have several inmates on protective keep away
11 list to be kept from. One, Burnett Baker was involved in
12 a gang, and I was put in on a statewide P.C. because of
13 him in 2008. I was released in June '09 and left from
14 statewide P.C. The judge ordered also as part of my plea
15 deal that I be placed in statewide protective custody.
16 That's where they stopped.

17 Q Okay.

18 A They stopped me there and said all we need is for you
19 to say the judge ordered, and that was it.

20 Q What was the purpose of filling out that form?

21 A That's when I went to the classification booth, and
22 they just handed it to me and told me to write it down. I
23 thought they wanted the whole thing, but all they wanted
24 was the -- the plea negotiations, me write out the plea
25 negotiations. They stopped me and told me that was it.

1 Q Okay. What do you want this court to do?

2 A If -- if the court can't order me to do my time on
3 statewide protective custody as I thought I was going to
4 be getting, then I would like it to vacate my sentence.

5 Q Why?

6 A Because I mean, I stand no chance in the general
7 population. Going to trial, I mean, there's that chance.

8 Q You -- you know if you go to trial, you could get
9 convicted and sentenced, and there would be no guarantees
10 as to your housing?

11 A Right.

12 Q You just want that chance at a trial?

13 A Right.

14 Q When you pled guilty, the protective custody was a
15 material part of that guilty plea to you?

16 A Yes, ma'am.

17 Q When you filed this PCR, that was a year later,
18 October of 2014. At that point, you knew that neither of
19 these things had been fulfilled; is that correct?

20 A No. I was still on protective custody then.

21 Q Okay.

22 A But I know that --

23 Q You've since been taken off?

24 A I know the downward departure. I wrote
25 Mr. Sutherland. He told me that -- if I needed to, file

1 the PCR and do it, you know. It was just six months
2 later. I know the downward departure hadn't come through,
3 and I was kicked out of statewide protective custody.

4 Q So now we have both issues?

5 A Right.

6 Q Did any of your three lawyers ever talk with you
7 about the possibility of a motion to vacate your plea?

8 A No, ma'am.

9 Q Did you know that that was a thing that exists? Did
10 you know that's a possibility?

11 A No, ma'am.

12 Q At the time you knew the downward departure had not
13 been filed within the year?

14 A Right.

15 Q And then again at the time you knew you had been
16 taken out of protective custody, would you have wanted
17 them to file a motion to vacate your plea?

18 A Yes, ma'am.

19 Q If you had known it existed?

20 A Right. I mean, I just thought it was up to me to do
21 the PCR thing.

22 MS. GOLDBERG: Okay. No further questions.

23 THE COURT: Cross-examination?

24 CROSS-EXAMINATION:

25

1 BY MR. MITCHELL:

2 Q Good morning, Mr. Evans.

3 A Good morning.

4 Q So you had two separate murder charges; is that
5 right?

6 A Yes, sir.

7 Q That was your wife?

8 A Yes, sir.

9 Q And then --

10 A And another guy.

11 Q Was it Jerry Geiger, is that --

12 A Geiger.

13 Q Geiger excuse me. Okay. So two separate murder
14 charges, and you're not here contesting your innocence,
15 right?

16 A No.

17 Q But you're not saying that you're not guilty; is that
18 right?

19 MS. GOLDBERG: Objection, Your Honor.

20 THE COURT: I'll allow it. Go ahead.

21 THE WITNESS: I'm not saying either way.

22 BY MR. MITCHELL:

23 Q Okay.

24 A I mean, I -- I pled guilty.

25 Q You did plead guilty, right? I'm not trying to trap

1 you or anything. I'm just saying you're not here
2 challenging that you're not guilty upon certain evidence
3 or anything like that. You're just challenging those two
4 issues; is that right?

5 A To me, the two issues go with the whole thing.

6 Q Okay. Which is what I'm saying doesn't have anything
7 to do with your guilt though, right?

8 A Oh, I ain't -- I ain't going to answer that.

9 Q Okay. All right. So murder is a minimum of 30
10 years. Are you aware of that?

11 A Yes.

12 Q Okay. That's a maximum of life, right?

13 A Uh-huh.

14 Q And you were advised by your attorneys that's what
15 the charge carried, correct?

16 A Yes, sir.

17 Q Okay. Now, there's an incident at the jail. That
18 was at the Kershaw jail; is that right?

19 A Yes, sir.

20 Q Okay. And that involved a few what you believed to
21 be gang members?

22 A They are gang members.

23 Q Okay. Now this happened -- when did that happen?

24 A 2012 or 2013.

25 Q Okay. Definitely before you pled guilty though,

1 right?

2 A Right.

3 Q Okay. So the incident happened at the jail while you
4 were -- those charges were pending?

5 A Right.

6 Q All right. Let's start with the protective custody.
7 So your -- your goal behind this plea was to be put into
8 protective custody when you went to prison, right?

9 A Right.

10 Q Okay. And your lawyers effectuated that, and you
11 were put into custody, right?

12 A Correct.

13 Q And that was made part of the record at the guilty
14 plea, right?

15 A Yes, sir.

16 Q Okay. So the deal was that you would get into
17 protective custody, right?

18 A My understanding I was going to do my time in
19 statewide protective custody.

20 Q So you thought you were going to do 30 years in
21 protective custody?

22 A Yes, sir.

23 Q That's what your lawyers told you?

24 A That's what I believed when I told them I wanted
25 statewide protective custody. That's where -- because

1 whether -- whether I'm in statewide protective custody a
2 year or two years, them gangs have long memories.

3 Q Right.

4 A They ain't going nowhere.

5 Q You were worried about your safety, right?

6 A Right.

7 Q You wanted to be in protective custody because you
8 didn't want to get hurt, right?

9 A Right.

10 Q Because you may have had some dealings where they may
11 wanted to come after you or something, right?

12 A Right.

13 Q Okay. So you thought you were going to be in
14 protective custody for 30 years no matter what?

15 A Yeah.

16 Q So even if you were to be disciplined in protective
17 custody, you thought you could stay there --

18 A They got a lockup. They got a lockup in protective
19 custody for this.

20 Q Okay. So you thought you could just stay in
21 protective custody. You could act out, do whatever you
22 wanted and then still be in protective custody the whole
23 time?

24 A I never acted out in protective custody.

25 Q Okay. Well, why were you --

1 A Never had a write up in protective custody.

2 Q Why were you removed from protective custody?

3 A Four people held a meeting: Ms. Scarborough, Larry
4 Cartilage, Christine Long, and Nicka Gray, and the
5 memorandum I seen, all it stated was they were moving me
6 from protective custody because the court order is
7 insufficient.

8 Q Okay. So you had no incidents in protective custody?

9 A Nothing to get moved for.

10 Q So you had --

11 A I had a job in the library.

12 Q Did you have any incidents while you were in
13 protective custody, disciplinary?

14 A Yeah.

15 Q You did?

16 A I had one fight.

17 Q Okay.

18 A I got 20 days lock up for it and a money card or
19 something like that, a financial card.

20 Q Like an internal disciplinary --

21 A Right.

22 Q -- type deal?

23 A Both of them was handled administratively.

24 Q Okay. So you don't think that had anything to do
25 with you being moved out of protective custody?

1 A Not according to the memorandum.

2 Q Okay. I'm moving to the -- I'm going to call it a
3 motion for substantial assistance. I think that's the
4 more appropriate term. So in your discussions with your
5 lawyers, it was your belief that Mr. Perry, the Solicitor,
6 would file a motion for down -- substantial assistance
7 within a year; is that right?

8 A Yes.

9 Q Okay. And what -- you were going to base that
10 substantial assistance motion off of your actions at the
11 Kershaw jail, right?

12 A Right.

13 Q Okay. That was all before the plea, correct?

14 A Right.

15 Q So you testified that you had no other plea offers
16 other than the 30 years? Were there negotiations going on
17 that you were aware of?

18 A I mean, I have no idea.

19 Q All right. You were never brought another offer
20 higher than 30 years? If you don't --

21 A Not that I remember.

22 Q But you weren't willing to accept a 40-year offer,
23 right?

24 A No. I mean, protective custody, that was -- that was
25 in -- part of what I wanted.

1 Q Okay. So your main thing is protective custody, is
2 that --

3 A And the downward departure.

4 Q -- fair to say?

5 A I didn't know nothing about the downward departure,
6 but if you put a thing out there saying that if people
7 will help a guard in trouble and you got -- you got
8 something over here, you know, your little prize for doing
9 it, then if you fall back on that, you can't go --

10 Q I mean, you're charged with two murders, and you get
11 30 years. You don't think that was taken into
12 consideration when you -- in that offer?

13 A Hey, I'm not the Solicitor. The Solicitor is the one
14 that agreed to it.

15 Q Right, right.

16 A He signed his name on it.

17 Q I understand but I'm saying you don't think -- do you
18 believe that was taken into account with the 30-year
19 offer?

20 MS. GOLDBERG: Objection, speculation.

21 MR. MITCHELL: It was his understanding.

22 THE COURT: Overruled.

23 THE WITNESS: Say it again.

24 BY MR. MITCHELL:

25 Q So the 30-year offer, the Solicitor -- well, okay.

1 Your talks with the -- your lawyer, did they discuss your
2 actions at the jail in working the plea negotiations?

3 A Again, I wasn't in there with them when they spoke
4 about that.

5 Q You just don't know. That's fine.

6 A I just know that at the trial, at the end of it, it
7 says in the transcript were --

8 Q Right. We're clear on that, though. Let's -- let's
9 stick with this: So the other part about substantial
10 assistance was where you were planning to give some
11 testimony or cooperate with the Solicitor on the Nicholas
12 Miller case, right?

13 A Right.

14 Q And that never happened, right?

15 A Right.

16 Q Because he pled?

17 A I have no idea. I've never heard nothing.

18 Q Okay. So that was talked about, as well, wasn't it?

19 A That's when Mr. Tivis Sutherland found out about the
20 incident at the jail, nothing about Nick Miller in our
21 word came up in there.

22 I mean, I don't know, but I know when I told
23 Mr. Sutherland and we were standing outside about the
24 incident at the jail, he said, "Oh, you get help on that."

25 Q Right, right. Okay. But the Nick Miller thing did

1 come up, though, right? I mean, you talked to your
2 lawyers about some information you may have in that case,
3 right?

4 A Yeah.

5 Q Okay. But to your knowledge, did your lawyers talk
6 to the Solicitor about your willingness to assist on that
7 case?

8 A I believe so.

9 Q Okay. So what you are asking the court to do today
10 is to vacate the plea and start this thing over?

11 A What I'm asking is if I -- if I can't be placed back
12 on statewide protective custody which is the agreement --

13 Q Right.

14 A -- the downward departure nobody ever told me that I
15 was going to get ten years knocked off or anything. They
16 said that I would be brought back, and it would be left up
17 to the judge. It might be six months. You know, six
18 months might get knocked off. It would be totally up to
19 her. I was fine with that.

20 Q But you knew murder was -- the minimum was 30,
21 though, right?

22 A Yeah.

23 Q Okay.

24 A And I believe they spoke. Mr. Shealey, I believe he
25 spoke with SCDC.

1 Q So it was something feasible they could maybe have
2 some kind of sentence lower than 30. Is that what you're
3 saying?

4 A Right. I believe they was told that because murder
5 carries 30 years and not a lesser sentence, and if say six
6 months got knocked off, they would just knock my sentence
7 down. It would still be day for day.

8 Q Okay. Well, there was no offer to voluntary
9 manslaughter or anything like that, was there?

10 A No.

11 Q It was still a murder, right?

12 A Right.

13 Q Okay. So it's your testimony that if you did not
14 have these two conditions fulfilled, you would have taken
15 the case to trial?

16 A Right.

17 Q You would have taken both separate murders to trial,
18 right?

19 A Without them conditions, we did go to trial one time.
20 The judge called a mistrial for some reason. I have no
21 idea. That was before the jail. That was before any of
22 this statewide protective custody thing.

23 Then when I was appointed Mr. Shealey and
24 Mr. Sutherland and them, that's when -- that's when all of
25 this came about. So yeah, I was willing to go to trial.

1 MR. MITCHELL: All right. No further questions.

2 Thank you.

3 THE COURT: Redirect?

4 MS. GOLDBERG: Briefly, Your Honor.

5 REDIRECT EXAMINATION:

6 BY MS. GOLDBERG:

7 Q I just want to make sure this is clear on the record.
8 Mr. Evans, you're saying that what you really want is your
9 plea agreement to be enforced first and foremost, correct?

10 THE COURT: Ms. Goldberg.

11 MS. GOLDBERG: Yes, sir.

12 THE COURT: Just...

13 MS. GOLDBERG: I'm just trying to make it clear.

14 THE COURT: I want to be clear.

15 MS. GOLDBERG: Yes, sir.

16 THE COURT: I just read the plea transcript. There
17 is absolutely nothing in the plea transcript about this.

18 MS. GOLDBERG: I can give you -- I can argue on that
19 in a little bit and give you --

20 THE COURT: Okay.

21 MS. GOLDBERG: -- one citation where it's mentioned.

22 THE COURT: That's fine.

23 MS. GOLDBERG: Okay.

24 THE COURT: Go ahead.

25

1 BY MS. GOLDBERG:

2 Q First and foremost, you want the plea agreement to be
3 enforced.

4 A Yes, ma'am.

5 Q Is that what you really want?

6 A Yes, ma'am.

7 Q Okay. But you're saying that if the Court feels it
8 cannot enforce those orders, then you want what?

9 A Vacate the sentence and start over.

10 Q Completely start over?

11 A Yes, ma'am.

12 Q Okay. Understanding there is no guarantees of what
13 will happen?

14 A Right.

15 Q Because you would be willing to go to trial?

16 A Yes, ma'am.

17 MS. GOLDBERG: Okay. No further questions.

18 THE COURT: All right. That's it?

19 MS. GOLDBERG: That's it.

20 THE COURT: Any redirect -- brief recross?

21 MR. MITCHELL: No, Your Honor.

22 THE COURT: Thank you very much.

23 MS. GOLDBERG: Your Honor, before I call my next
24 witness, just to address what you just said, if you'll
25 look on page 22 of the transcript --

1 THE COURT: I have it.

2 MS. GOLDBERG: -- line 17 through 25. That's the
3 only place it's mentioned but I'll provide.

4 THE COURT: So the...

5 MS. GOLDBERG: I will have testimony from counsel --

6 THE COURT: Okay.

7 MS. GOLDBERG: -- to supplement that.

8 THE COURT: The section you're referring to said we
9 would also -- this is Mr. Shealey to the Court.

10 MS. GOLDBERG: Right.

11 THE COURT: We would also ask you to follow the
12 negotiations in this case. Mr. Evans has in exchange for
13 this plea relied specifically on negotiations outlined on
14 the sentencing sheet.

15 MS. GOLDBERG: Correct.

16 THE COURT: But...

17 MS. GOLDBERG: It's referring specifically to what's
18 written on the sentencing sheet.

19 THE COURT: Oh, but there's nothing in there?

20 MS. GOLDBERG: There's no more details said on the
21 record.

22 THE COURT: All right. Go ahead.

23 MS. GOLDBERG: Your Honor, at this time the Applicant
24 would call Joette Scarborough.

25 JOETTE SCARBOROUGH, after being duly

1 sworn, testified as follows:

2 THE COURT: Please have a seat in the witness box.

3 State your full name for the record.

4 (There was no response).

5 All right. Let me get her full name.

6 (WHEREUPON, Applicant's Exhibits Nos. 2 - 6 were
7 marked for identification only.)

8 DIRECT EXAMINATION:

9 BY MS. GOLDBERG:

10 Q Full name for the record, please.

11 A Joette D. Scarborough.

12 Q Ms. Scarborough, where do you work?

13 A I work for the South Carolina Department of
14 Corrections.

15 Q And what is your title?

16 A Division Director, Division of Classification and
17 Inmate Records.

18 Q Are you -- is your position related to a specific
19 facility, or is it related to the Department of
20 Corrections statewide?

21 A Statewide Department of Corrections.

22 Q What -- you told us what your title was, what does
23 that mean? What are your responsibilities?

24 A It's a lot. Basically, I'm responsible for the
25 management of the classification and inmate sections of

1 the Department of Corrections. That would include in this
2 case chairing the Statewide Protective Custody Committee,
3 supervising the classification staff in -- of 24 prisons,
4 the Reception and Evaluation Center, the Inmate Records
5 Office, et cetera.

6 Q So regarding Mr. Evans, have you -- are you familiar
7 with his file?

8 A Yes. I did review Mr. Evans' file prior to coming
9 today.

10 Q Does it appear that you served as a chair for the
11 Statewide Protective Custody Committee in reviewing his
12 case in the past?

13 A Yes, I did.

14 Q All right. Does it -- can you tell the Court, was
15 Mr. Evans originally placed in protective custody when he
16 got to SCDC?

17 A Yes, he was.

18 Q Okay. Can you -- on behalf of the Department of
19 Corrections, can you tell us why he was put in protective
20 custody?

21 A He was originally placed -- well, the committee that
22 I chaired was the October 2013 committee. Now, in
23 reviewing his record, it appears that during his prior
24 incarcerations, he had a total of 17 placements in and out
25 of protective custody.

1 Q Okay. And so for October 2013, that's when he went
2 into SCDC for this particular stay, this particular
3 incarceration. Can you tell me why he was put in
4 protective custody on that occasion?

5 A On that occasion, he was placed in protective custody
6 because of the notation that was on the commitment order.

7 Q On the sentencing sheet?

8 A On the sentencing sheet, yes.

9 Q Can you tell when he was removed from...

10 A He was removed on April 17th, 2015.

11 Q Can you tell the Court why he was -- were you a part
12 of that decision?

13 A Yes, I was.

14 Q Okay. Can you tell the Court why he was removed?

15 A He was removed because -- part of the process is that
16 every six months we review the committee, review each
17 inmate on protective custody to -- basically to ensure
18 that the original threat is still present. In his case,
19 we asked Investigator Long from our Police Services
20 Division to go and speak with Mr. Evans and to investigate
21 to determine whether there was a substantiated threat
22 because in order for an inmate to be placed, it has to be
23 a verified threat.

24 Based on the information that was relayed to us by
25 Investigator Long, Inmate Evans did not give him enough

1 information to verify the threat. So he reported to us
2 that the -- he didn't feel like the threat was verified at
3 that time.

4 So based on that information and based on his prior
5 history of going in and out of statewide protective
6 custody, we did vote to release him.

7 Q And what about the fact that it was written on his
8 sentencing sheet?

9 A Well, that -- that's not normally something that we
10 see. Actually, that was the first time I've ever seen
11 that where it was written on the commitment order. As far
12 as we were concerned, that was basically a recommendation.
13 The inmate had been on protective custody for several
14 years at that time.

15 I think it was over two years, so based on that and
16 the fact that the report that we received from
17 Investigator Long, the inmate was released from statewide.

18 Q If -- as a result of this PCR, if this court decided
19 to attempt to enforce the order and order South Carolina
20 Department to -- Department of Corrections to keep
21 Mr. Evans in protective custody throughout the entirety of
22 his sentence, is that something that SCDC would or could
23 comply with?

24 A I can't speak to that. That's probably a question
25 that our general counsel would need to answer. I know

1 that I would seek their guidance on that.

2 Q Okay.

3 A We don't have any inmates that's placed in that unit
4 permanently.

5 Q No inmates are placed in there permanently?

6 A No.

7 Q Okay.

8 A That's why, they're all reviewed every six months.

9 Q And you're involved in the review of all of the
10 inmates in protective custody?

11 A Yes.

12 Q Is that fair?

13 A That's correct.

14 Q Okay. Are any of them placed there by court order?

15 A No.

16 Q Generally, does SCDC comply with court orders to
17 house inmates in any particular facility or place?

18 A It's -- it's looked at as a recommendation. It's not
19 the same as a court order telling us how much time that an
20 inmate has and that kind of thing.

21 It's looked at as a recommendation, and generally, we
22 try to comply to recommendations from the court as it
23 relates to housing.

24 MS. GOLDBERG: Beg the Court's indulgence.

25 (Pause.)

1 May I approach the witness, Your Honor?

2 THE COURT: Yes.

3 BY MS. GOLDBERG:

4 Q I'm going to hand you what's been premarked as
5 Applicant's Exhibit number 5 and 6. These are both -- you
6 can tell me. What are those documents?

7 A Okay. Exhibit 5 is a memorandum from the Statewide
8 Protective Custody Review Board dated April 13th, 2015.

9 Q Okay. And the other one?

10 A The other one is Exhibit 6, and it is also a
11 memorandum from the Statewide Protective Custody Review
12 Board dated October 16th, 2015.

13 Q Do those documents just memorialize exactly what
14 you've already testified to?

15 A Yes, they do.

16 MS. GOLDBERG: Okay. Your Honor, I'd like to offer
17 those exhibits into evidence for the record. I believe
18 there's no objection by the Attorney General.

19 MR. MITCHELL: No objection.

20 MS. GOLDBERG: Your Honor, there's -- I also have
21 Exhibits 3, 4 -- 2, 3 and 4 which are the inmate's prior
22 records which just show that he was, in fact, in
23 protective custody for a period of time, and it was
24 periodically reviewed.

25 We don't need get into those because I don't think

1 the testimony, any testimony on it would be helpful, but
2 the Attorney General has allowed those to be in the
3 record, as well.

4 THE COURT: Well, they're part of the file that the
5 Attorney General has provided to the Court.

6 MS. GOLDBERG: The SCDC records? Oh, these are
7 different, but they just show that he was in protective
8 custody.

9 THE COURT: All right.

10 MS. GOLDBERG: Thank you, Your Honor.

11 (WHEREUPON, Applicant's's Exhibits Nos. 2, 3, 4, 5, 6
12 were admitted into evidence.)

13 MS. GOLDBERG: No further questions for this witness.

14 THE COURT: Cross-examination?

15 CROSS-EXAMINATION:

16 BY MR. MITCHELL:

17 Q All right. Good morning, Ms. Scarborough.

18 A Good morning.

19 Q How are you doing?

20 A Good. Thank you.

21 Q Okay. So you're very familiar with how the statewide
22 protective custody works. That's --

23 A Yes, sir.

24 Q -- about correct? Okay. So about how many people
25 are on statewide protective custody?

1 A We have -- it's a 48-bed unit, and right now we have
2 21 vacancies.

3 Q Okay. So that's the entire state, just a few dozen?

4 A Yes.

5 Q Okay. So the process is every six months they're
6 reviewed for whether the threat is still existing?

7 A Yes.

8 Q Is that correct?

9 A Yes.

10 Q So when someone, a judge, writes these -- writes
11 something on a sentencing sheet saying shall be referred
12 to protective custody or shall be referred to Perry,
13 that's not something that's binding on y'all, your
14 understanding; is that correct?

15 A That's correct.

16 Q Okay. You keep that as a recommendation, correct?

17 A Yes.

18 Q Okay. And then it's y'all's position that those are
19 recommendations that the judge doesn't have the power to,
20 you know, determine or order where different inmates are
21 held and different inmate classification levels; is that
22 right?

23 A That is my understanding.

24 Q Okay. And that's based on your years of experience
25 and from your experience with general counsel's office at

1 SCDC; is that correct?

2 A Yes, sir; that's correct.

3 Q Okay. So Mr. Evans was put into protective custody
4 and -- when he was admitted, right?

5 A Yes, sir, on this incarceration, yes, sir.

6 Q And then he was taken out because the review board
7 determined that the threat did not exist or was not
8 substantiated?

9 A Exactly. Investigator Long said that he couldn't get
10 any specifics from Inmate Evans.

11 Q Okay.

12 A That he didn't give him anything. He didn't give him
13 any information.

14 Q Okay. So it wasn't specific enough to keep him in
15 the program or in the custody level, right?

16 A Exactly because I think he was saying, you know, just
17 like his testimony talking about the Muslims and the Folk
18 Nation but no specifics. So he felt like the threat -- it
19 wasn't -- wasn't substantiated.

20 MR. MITCHELL: Okay. That's all the questions I
21 have. Thank you.

22 THE COURT: Counsel, approach the bench.

23 (There was a bench conference.)

24 MS. GOLDBERG: Your Honor, no further questions for
25 Ms. Scarborough. She was under subpoena by the Applicant.

1 She can be released at this time.

2 THE COURT: Any objection?

3 MR. MITCHELL: No objection.

4 THE COURT: You're free go, ma'am. Thank you very
5 much for coming.

6 THE WITNESS: Thank you.

7 THE COURT: Next witness?

8 MS. GOLDBERG: Your Honor, at this time the Applicant
9 would call Brett Perry.

10 BRETT PERRY, after being duly sworn,
11 testified as follows:

12 THE COURT: Have a seat in the witness box. State
13 your full name for the record.

14 THE WITNESS: Brett Perry.

15 DIRECT EXAMINATION:

16 BY MS. GOLDBERG:

17 Q All right. Mr. Perry, where do you work?

18 A I work for the Solicitor's Office in Kershaw County.
19 I'm the Deputy Solicitor there.

20 Q Were you the solicitor assigned to handle Brian
21 Evans' case?

22 A Yes.

23 Q Do you recall that case?

24 A Yes.

25 Q All right. I'm going to hand you a copy of a

1 sentencing sheet that's already a part of the record in
2 this case --

3 A Uh-huh.

4 Q -- just to refresh your memory. Do you see the
5 notations on the sentencing sheet that say protective
6 custody and downward departure?

7 A I do.

8 Q Do you remember who wrote those?

9 A I don't have any idea who wrote those. From the
10 looks of the pens, from the looks of the thicknesses of
11 the writing, it would be -- it looks like the same pen
12 that perhaps Brian Evans signed the sheet with. I don't
13 know. I mean, it's clearly not the pen that I signed it
14 with. You can see it's a much narrower -- much narrower
15 script. I don't know.

16 Q To your recollection, do you remember those two
17 issues, those two factors being a part of the plea
18 negotiations and talked about during the plea
19 negotiations?

20 A I remember there were discussions about it.
21 Specifically, there were discussions about the statewide
22 protective custody. Apparently, as I recall, Mr. Evans
23 had been on statewide protective custody before. He had
24 some issues whenever he was in SCDC.

25 He was gravely concerned about going back into SCDC,

1 you know, and not being on protective custody, but my
2 understanding from the outset was, just as the lady from
3 SCDC testified earlier, that anything that was put on here
4 was -- was a recommendation. That's what we were doing,
5 agreeing to recommend that he be placed in protective
6 custody.

7 I understood from the outset that it was up to SCDC
8 to determine whether or not he was appropriate for
9 protective custody and that is something that's reviewed
10 periodically to determine whether or not he's -- it's
11 still necessary for him to be there.

12 Q Okay. May I approach, Your Honor?

13 (WHEREUPON, Applicant's Exhibit No. 7 was marked for
14 identification only.)

15 BY MS. GOLDBERG:

16 Q Mr. Perry, I'm going a hand you Applicant's Number 7.
17 Can you tell me what that document is?

18 A It appears to be a letter from Chris Florian to me.

19 Q And who was Chris Florian?

20 A Chris Florian at the time was Deputy General Counsel
21 for SCDC. This letter is dated October 10th, 2013.

22 Q Do you remember that letter?

23 A I do. He -- Mr. Florian indicated that Mr. Evans --
24 Evans appeared to be a good candidate for placement in
25 protective custody so the department couldn't guarantee

1 placement in protective custody until after offender is
2 actually in custody, but he is likely to be placed in
3 protective custody upon his incarceration at the
4 Department. Please advise their office once he has been
5 sentenced.

6 Q Did you that request that letter from SCDC, or did
7 someone else request it?

8 A I'm not sure who requested this letter. I talked
9 with Mr. Florian on the phone at one point about, you
10 know, protective custody over there. I don't know if he
11 sent this to me in response to a telephone conversation we
12 had, or if this was sent to me in response to, you know,
13 someone else discussing Mr. Evans' possible placement in
14 protective custody or what.

15 Q The phone conversation you had with him was about Mr.
16 Evans specifically?

17 A It was about -- it was about the request that he had
18 made through counsel to be placed in protective custody.

19 Q This was all prior to the guilty plea, correct?

20 A Yes.

21 Q And have you ever called SCDC or asked for a letter
22 like this before for any other defendant?

23 A I didn't ask for this letter.

24 Q Had you ever had a phone conversation with SCDC like
25 that for any other about protective custody?

1 A I have had conversations with SCDC about a great many
2 things. I speak with them, you know, from time to time
3 about cases that we may have.

4 Q Did you understand that getting that information
5 that's in that letter was important prior to Mr. Evans
6 accepting a guilty plea?

7 A Again, discussions had been had about it. I don't
8 know how important this letter was but, you know, I know
9 that through counsel he had indicated he wanted to be
10 placed in protective custody.

11 I think he had been placed in protective custody
12 previously and had grown accustomed to the -- the
13 differences of being in protective custody versus the
14 differences in being in general population and quite
15 wanted to go back there.

16 Q The sentencing sheet also has the words downward
17 departure written on it. Can you tell us what that means?

18 A You know, downward departure isn't something that --
19 it's certainly not language I would have used. It's not
20 language that we use, you know, in state court. It's not
21 language that's referenced in the statute.

22 In Federal Court, you know, there is a motion that
23 can be made for a downward departure, a departure from the
24 sentencing guidelines for various things.

25 You know, as I recall with respect to any discussions

1 about, you know, assistance with this client with respect
2 to, you know, any cooperation, there were two things that
3 had gone on here. There was the information about the
4 fight that you had mentioned earlier.

5 I'll be happy to address that information that I
6 gathered at your request with respect to that, but there
7 was also an indication that he had information that he was
8 sharing and wanted to continue to share with respect to
9 the death penalty case that was at that time pending
10 against Nicholas Miller.

11 In fact, he was moved from the Kershaw County
12 Detention facility to Alvin S. Glenn because Miller was at
13 Kershaw County, and they wanted to keep them separate
14 because Mr. Evans was supposedly going to testify against
15 him. That never happened. I didn't -- I wasn't involved
16 in the Miller case. That was a case that Ms. McDuffie and
17 Ms. Campbell were handling here out of the Columbia
18 office.

19 Ultimately, Mr. Miller pled guilty to life without
20 parole when the State took the death penalty off the table
21 not because of any testimony that anybody was going to
22 give or any cooperation that anybody was going to give but
23 merely because he had the chance to take the death penalty
24 off the table as I understand it.

25 They can answer those questions more thoroughly than

1 I could, but as I understood it, that never happened.
2 There was never any cooperation. There was never any
3 testimony. There was never any -- by anyone who had, you
4 know, possibly talked about helping in that case.

5 With respect to the fight that took place, you know,
6 I contacted Lieutenant Catoe over at the Kershaw County
7 Detention Facility to ask them to send me anything that
8 they could about that at your request once this PCR had
9 been filed.

10 Detective Catoe responded by an email indicating two
11 things: First of all, that Evans had been sent to ASGDC,
12 Alvin S. Glenn, because of the possibility of testifying
13 against Miller not because of the fight; and second of
14 all, apparently institutional knowledge at the Kershaw
15 County Detention Center comes from inmates who are
16 regularly there versus some sort of documentation.

17 Lieutenant Catoe indicated that there was no
18 documentation in Evans' old file about the fight, about
19 any involvement with the fight, but that he had questioned
20 Lucius Green who was an inmate there at the jail on quite
21 a regular basis and that Mr. Green had been there in that
22 pod when the fight took place and that really all that had
23 happened was that, you know, that during the course of the
24 scrum Sergeant Robinson had asked Mr. Evans to grab ahold
25 of Frank Singleton, which he did, and pretty much the

1 fight, you know, was broken up after that.

2 That took place prior to the sentence, and you know,
3 with respect to, you know, the sentence, the 30 years, you
4 know, I certainly took into consideration the fact that he
5 had -- you know, that he had done that with respect to the
6 negotiations.

7 Q What -- did the State ever file a motion for a
8 reduced sentence under 17-25-65?

9 A No, we didn't. You know, several things, again, as I
10 mentioned, there was never any -- there was never any
11 substantial assistance. There was never any, you know,
12 cooperation that took place after his sentencing as is
13 required by the statute.

14 You know, second of all, in looking at it closely, it
15 would seem that any sentence less than 30 years would be
16 an illegal sentence as the legislature has promulgated
17 that murder is punishable by 30 years to life. He
18 received 30 years for not one but two murders.

19 You know, so the effect of making that motion would
20 basically have been that he couldn't be sentenced any
21 lower than he is currently sentenced without it appearing
22 to be an illegal sentence.

23 MS. GOLDBERG: All right. No further questions.

24 THE COURT: Solicitor?

25 CROSS-EXAMINATION:

1 BY MR. MITCHELL:

2 Q All right. Good morning, Mr. Perry.

3 A Good.

4 Q So to your recollection, how did the plea
5 negotiations go? I mean, do we start off -- were there
6 any other offers made?

7 A We had various different attorneys that were involved
8 in it. Quite honestly, I can't remember, you know, all of
9 the discussions that were had.

10 Neil Riley represented him at one point.
11 Mr. Kirincich and Mr. Strickler represented him at one
12 point. I think they ended up having it conflicted out
13 because they were representing Miller in the death penalty
14 case.

15 Eventually, the Shealeys and Tivis Sutherland got the
16 case. That's whenever we finally, you know, got to the
17 point that we were either going to, you know, have the
18 case tried or ultimately it, in fact, pled.

19 You know, I know there had been discussions at -- on
20 several occasions with several different counsel for, you
21 know, considerably more than 30 years.

22 You know, it seems to me that 30 years for two
23 murders is a pretty good deal, and that was what the
24 Shealeys and Mr. Sutherland ultimately negotiated. And
25 quite frankly, I'm not sure that the families were

1 altogether happy with that. I don't know if they would
2 have been altogether happy if he had gotten life without
3 parole, but nonetheless, there had been discussions of
4 higher amounts, you know, both with prior counsel and with
5 the Shealeys.

6 You know, they prevailed upon me to, you know, go to
7 the families and see if they could live with 30 years.
8 That was something that they had a real hard time with,
9 but everybody came to an agreement that that was something
10 that we could all live with, and ultimately, that was the
11 sentence he got: 30 years for two murders.

12 Q In coming to the 30 years, you testified you took
13 into account his actions at the jail; is that right?

14 A We were aware of that. Quite honestly, I don't know
15 that -- that grabbing an inmate in the midst of a fight --
16 I mean, it's not like they were holding a knife to the
17 CO's throat or anything. I don't know that that -- I
18 think that sort of pales by comparison to killing two
19 people, but nonetheless, it was taken into consideration
20 and also the possibility of his cooperation with respect
21 to -- to Miller in that death penalty case, but you know,
22 it's hard to ask two families who have lost loved ones to
23 say hey, you know, let us help this guy out because he is
24 going to help somebody else who lost a loved one.

25 You know, they -- they all lost loved ones that

1 matter to them just as much as the young lady that
2 Nicholas Miller killed. Nonetheless, that's where we got
3 to, 30 years on these two murders. You know, they took
4 into consideration, you know, Mr. Evans' advanced age.
5 For all intents and purposes, a 30-year sentence day for
6 day would, you know, be an awful long time for him.

7 Q As far as the protective custody classification --
8 actually, I withdraw that. With the substantial
9 assistance, it was that he may testify?

10 A As I understood --

11 Q In --

12 A -- the statute, and I did look at the statute before
13 we talked about this. As I understood the statute, the
14 statute, you know, basically provides that, you know, any
15 assistance that's rendered after sentencing, you know,
16 there's a provision for within a year, and then there's
17 also provisions for in excess of a year if information
18 is -- is of substantial assistance to -- to the
19 government.

20 You know, and ultimately, there was never any
21 testimony. There was never any -- any cooperation that
22 led to -- to the plea of Nicholas Miller. Nicholas Miller
23 pled, as I understand it, because they took death off the
24 table.

25 Q So you didn't believe filing a motion for substantial

1 assistance was proper. Is that fair to say?

2 A I didn't.

3 Q Also --

4 A At the time of sentencing, I thought that there may
5 be a point in the future where it could possibly be, but
6 even then, you know, further looking at the sentence, you
7 know, I think even if he had helped, I'm not entirely
8 certain that -- that anything below 30 years would have
9 been a legal sentence.

10 Q You would be asking the Court to impose an illegal
11 sentence below the mandatory minimum, right?

12 A And I couldn't do that.

13 Q And that's your reason for not filing the motion?

14 A Well, the reason for not filing the motion was that
15 nothing ever took place that justified it as far as -- I
16 mean, you know, he never sat on the stand and testified
17 against Nicholas Miller that resulted in a conviction that
18 led to the death penalty. You know, that after-sentencing
19 assistance never took place.

20 You know, I'll concede he helped out Officer Robinson
21 in the jail. You know, again, I don't know what risk
22 Officer Robinson was, but he did help, and I feel like
23 that was taken into consideration.

24 Q Okay. And that was before it was taken into
25 consideration on the 30-year offer, right?

1 A Yes.

2 MR. MITCHELL: That's all the questions I have.

3 Thank you.

4 THE COURT: Anything further?

5 MS. GOLDBERG: No, Your Honor.

6 THE COURT: You may come down. Thank you very much.

7 MS. GOLDBERG: Mr. Perry is here pursuant to my
8 subpoena, as well. I'm okay with him being released at
9 this time.

10 THE COURT: All right. You're free to go if you wish
11 to do so, Mr. Perry.

12 MS. GOLDBERG: At this time, I'm going to call Brian
13 Shealey.

14 THE COURT: Come around, Mr. Shealey.

15 BRIAN SHEALEY, after being duly sworn,
16 testified as follows:

17 THE COURT: Proceed to the witness box. State your
18 full name for the record.

19 THE WITNESS: Brian Shealey.

20 BY MR. MITCHELL:

21 Q All right. Mr. Shealey, you're aware of Brian Evans?

22 A Yes.

23 Q Were you appointed to represent him?

24 A I was. I was appointed probably the end of March or
25 the beginning of April on both murder charges.

1 Q What year was that?

2 A 2013.

3 Q So maybe six months before his plea?

4 A Yes.

5 Q And where were you employed when you were appointed?

6 A Same place I am now, the Shealey Law Firm. I do take
7 some appointments from the 608 Richland County contract
8 list whenever there is a conflict.

9 Q Where was Mr. Evans housed while you represented him?

10 A When I represented him, he was -- he may have briefly
11 been at Richland County. I know when I first met with
12 him, I believe it was at Kershaw County Detention Center.

13 Q And then did he go to Alvin S. Glenn after that or do
14 you recall?

15 A I just -- he did. He did go to Alvin S. Glenn
16 sometime afterwards. So some of the visits were at
17 Kershaw and some were at Alvin S. Glenn.

18 Q You met with him at both facilities?

19 A Yes.

20 Q What types of things did you do in preparation for
21 this case, not for this case here today but your case
22 representing Mr. Evans?

23 A There was a -- you know, we had to fully review
24 discovery. There were four or five different lawyers
25 before. My understanding was that this was conflicted out

1 to our office due to his, you know, attempts to provide
2 assistance on the Nicholas Miller case which Doug
3 Strickler represented.

4 We pored through all of the discovery, two different
5 murder cases, you know, about six boxes worth of hard copy
6 discovery. Once we reviewed that, we prepared defenses
7 with him. We hired experts. We had -- we had funding for
8 Steven Lambert who is a DNA expert.

9 There was DNA involved in this case. We had a false
10 confession expert, Deborah Davis, retained on this case.
11 We had a pathologist hired, Kim Collins, and we had our
12 own investigator, Jay Phillips, involved in this case.

13 This was a collaboration between myself and Tivis
14 Sutherland and my brother, Luke Shealey, who was also not
15 technically appointed but was helping assist.

16 Q So when you received the case in March or April
17 of 2013, you had all the information you need day one?

18 A It took a while to get through it but we did, yes.

19 Q And as you represented him, were you preparing this
20 case for trial?

21 A Yes.

22 Q With all of the experts and everything?

23 A Yes.

24 Q Okay. At first --

25 A I'll just -- I'll say one thing.

1 Q Okay.

2 A The only thing we didn't have initially later on
3 towards the end, we did get sent to us by the Solicitor's
4 Office a statement against Brian by somebody at the jail
5 trying to, you know, say that Brian had said something
6 about his case. So there was a snitch statement that came
7 in later, but everything else was available early.

8 Q When you first started meeting with Mr. Evans, did
9 you have an idea of if he wanted a plea or a trial?

10 A He talked a lot about trial. We prepared it
11 vigorously for trial. I mean, we knew it was a tough
12 situation that he was in. You know, these were confession
13 cases. There was audio confessions. That's why we had
14 our false confession expert. We were preparing
15 self-defense possibility, some other stuff.

16 The case that was our focal point was against
17 Mr. Geiger, that victim, because that was what the State
18 was letting us know they would be proceeding on first. So
19 we were really kind of gearing up for that one not so much
20 on the other case. That was essentially back burnered.
21 We were preparing vigorously for trial on the Geiger case.

22 Q At what point and how did plea negotiations start?

23 A We -- you know, according to my notes, I mean, we --
24 as early as September we had an offer of 30 negotiated on
25 murder for both murder cases. You know, I -- you know, he

1 was very specific. If he were to accept a plea, that it
2 was going to -- you know, he wanted the condition that he
3 be placed in protective custody. He had experience with
4 that. He felt those threats were similarly apparent.

5 We were aware of the Kershaw County situation with
6 the gang members, him assisting the guard. Brett Perry
7 was aware of that.

8 There was the prior reasoning for him being in
9 protective custody that I think was in the back of his
10 mind, and then he was also fully cooperating -- well, he
11 was never -- they never used him, but the Nick Miller case
12 at that time, he and Tivis had mostly I think assisted,
13 met with law enforcement about that case, you know, the
14 cooperation would essentially be here is what Nick Miller
15 told me about these -- what was going on in his case.
16 That never came to fruition, but it was a threat at the
17 time.

18 Everyone was aware Nick Miller had essentially been
19 putting hits out on people, and that was a real threat.
20 So when I was discussing the case, the protective custody
21 situation, with Chris Florian, we were going over all
22 these issues. I can go into that further.

23 Q You originally contacted Chris Florian with SCDC?

24 A I did. I think I had almost all of the
25 conversations. I think I was aware that Brett had maybe

1 spoken to him. There were a lot of questions about it.
2 We had never done this. My understanding is maybe it has
3 never been done.

4 I talked to Chris Florian on a number of occasions
5 about whether we could basically essentially guarantee he
6 would get in the program. You know, Chris was letting me
7 know it was a little bit irregular, but that we could
8 essentially prescreen him based on his past and based on
9 the current threats.

10 That's I think why Brett got involved, as well
11 because I think in this prescreening process, they wanted
12 information about the current threats with Nick Miller and
13 the stuff going on at the jail with the gang members.

14 Based on my discussions -- so at that point we had
15 negotiated 30, but we didn't have protective custody. We
16 eventually got that. He was essentially prescreened.

17 Q Let me stop you right there.

18 A Sure.

19 Q I'm going to show you Applicant's Exhibit No. 7 which
20 has already been admitted by consent. What is that?

21 A This is a letter that essentially -- I believe I
22 requested it, and Brett Perry was aware that we were
23 essentially trying to make this deal possible, and Brett,
24 you know, didn't care where he was in the Department of
25 Corrections, but it was really important to Brian.

1 So this is a letter that Chris sent. It should have
2 been e-mailed to all of us, Brett, myself, Tivis, my
3 brother, essentially saying that he had been, you know, he
4 would be a good candidate. That was kind of a
5 prescreening as it was described to me. And I don't think
6 they wanted to put in writing you're guaranteed to get in.

7 They don't want anybody -- they don't want
8 necessarily negotiations, plea negotiations, being
9 dictated and housing being part of that. He said,
10 listen -- he was -- my recollection of the conversation
11 was he had already been in it, and the current nature of
12 the threats with Nick Miller and the gang stuff going on
13 down at the jail, and he had been involved with that
14 breakup with the fight with the guard that he would be a
15 candidate.

16 This letter, I felt was essential because Brian
17 wanted something in writing. This was about as good as it
18 would get. We were told he would -- once he got down
19 there and got in custody, he would go in there and he did.

20 Q You said Brian Evans requested something in writing?

21 A I can't recall if he requested it specifically, or I
22 just knew that he would want it. You know, writing is
23 writing versus just talk, and this -- this really made the
24 plea happen.

25 Q You had possession of that letter prior to the plea?

1 A Absolutely. I went down to the jail. This was Alvin
2 S. Glenn in a number of our meetings with him about how
3 the negotiations were taking place. I gave him this
4 letter.

5 I think I even called it the Golden Ticket. I said,
6 here you go. This is -- this is what we have, and he
7 reviewed it. That note gave him a level of comfort for
8 protective custody which was, you know...

9 Q Did you feel that -- did you feel that getting that
10 letter was necessary before Brian Evans was going to plead
11 guilty?

12 A Yes.

13 Q Do you remember the day of the plea?

14 A It was October 13th or 14th.

15 Q Prior to the actual plea happening, what kind of
16 discussions were happening that day?

17 A Well, typically, you know, he knew as early as
18 September that we had the 30 negotiated on both
19 concurrent, and he knew that we were -- essentially then
20 talked about getting protective custody. I don't think I
21 had a letter until this date.

22 Q What's the date again?

23 A The date of this letter to Brett is October 10th,
24 2013. That kind of came in later. I honestly think that
25 Brian wasn't going to do it without the letters. I think

1 that's why it was necessary to get the letter, but what
2 happened on the day of his plea was we had protective
3 custody issues sorted out.

4 It was negotiated 30. I mean, Brian didn't even say
5 anything at the plea other than answering the questions
6 from Judge Benjamin. I didn't say a whole lot other than
7 that he was relying on the specific negotiations.

8 The other aspect of this was there certainly was a
9 downward departure negotiation that Brett Perry was aware
10 of. I wrote that on the sentencing sheet. That's my
11 handwriting, number one, for statewide protective custody;
12 and number two -- and I think I in-artfully said downward
13 departure. That state statute had been enacted somewhat
14 recently. It's the substantial assistance kind of adopted
15 from the feds, the federal system, but it was known to all
16 parties including Brett Perry that it was -- he was going
17 to file a motion within a year.

18 We explained this to Brian. I think it was somewhat
19 of a sensitive subject to Mr. Perry because of the close
20 negotiations, 30 years on two separate murders, and with
21 the families involved, I don't think he wanted to
22 articulate that on the record. But I never write anything
23 on a sentencing sheet unless I --

24 Q Again, that's what I was about to ask you about. You
25 wrote it on the sentencing sheet.

1 A Uh-huh.

2 Q Was it written on the sentencing sheet before
3 Mr. Evans signed it?

4 A Yes.

5 Q Why wasn't more -- go into detail about why more
6 wasn't said on the record about it.

7 A I think Brett was very sensitive to that being
8 vocalized. He was in complete agreement or else I
9 wouldn't have written it on the sentencing sheet.

10 You know, obviously, Brett at the time was aware of
11 that. Whether or not he has forgotten that now, but it
12 was for -- there were two potential downward departure
13 issues. One was agreed upon by the State to be filed
14 within one year, and that was for assisting the guard in
15 the Kershaw County Detention Center.

16 We reviewed the statute and looked at it, felt that,
17 you know, would be -- I haven't looked at it in a long
18 time, but you know, assisting or helping, aiding law
19 enforcement from a dangerous situation, a correctional
20 officer qualified.

21 Brett was in agreement. He didn't want to
22 necessarily articulate that on the record, but we also
23 went and talked about this case in chambers with Judge
24 Benjamin. It was all laid out, and that's why I simply
25 say we're relying specifically on the negotiations

1 outlined in the sentencing sheet.

2 I mean, I know there's been a discussion about a
3 recommendation to the Department of Corrections and this
4 kind of stuff. It was definitely negotiated.

5 Now, whether the Department wants to handle it that
6 way is another thing, but it was certainly negotiated that
7 Mr. Perry would file a downward departure within one year
8 for the correctional officer assistance.

9 There was this separate issue that was not part of
10 the negotiations that was if -- you know, if he cooperated
11 and had to testify in the Nick Miller case, well
12 potentially the State could assist and do another downward
13 departure, but that really was not part of our
14 negotiations but what was, was saving the guard at the
15 jail. And we got all that information from Brett. Tivis
16 was aware of it. Tivis met with Brian a lot and was --
17 you know, kind of -- Tivis had a bunch of clients down at
18 the Kershaw County Detention Center. I only had Brian at
19 the time. So Tivis was down there a good bit and was
20 aware of what Brian had done to aid that guard.

21 Q Now, as far as the fact that Mr. Evans is serving
22 30-year mandatory minimum sentences for murder charges,
23 did you ever contact or make any effort to research
24 whether or not the downward departure as we're calling it
25 here today is even a possibility in sentencing?

1 A Yes. I -- again, I spoke to then Deputy Counsel of
2 SCDC, Chris Florian. He said, we will honor a downward
3 departure even if it is below a statutory minimum because
4 that was an issue.

5 That -- it was -- we were talking to Brett about that
6 issue. So we had to do -- you know, this was kind of a
7 joint effort, really, because Brett, I think, had made the
8 offer he felt was appropriate on the 30.

9 The other issues he didn't necessarily care so much
10 about, but you know, we were making it clear to him that
11 these were the counter proposals that Brian had, and if we
12 could do them, we can do them.

13 So that was a question whether or not SCDC would
14 honor that. It was explained to me by Mr. Florian that
15 they would kind of similar to when a judge would sentence
16 a violent offense into the YOA program.

17 You're not supposed to do it, but they'll do it.
18 They'll just keep them there for the four years. They'll
19 just say it's a nonconforming sentence but they would.

20 Brian was made to understand we can't -- we could not
21 guarantee any kind of downward departure that a judge
22 would give. It could be nothing. It could be one day.
23 It could be six months.

24 The only thing that was part of the negotiations were
25 that Brett would certainly go ahead and file for that

1 because the State had to -- that was our understanding.
2 The State had to file for that. We couldn't do that
3 ourselves.

4 Q So you advised Mr. Evans that you couldn't guarantee
5 what a judge would do with that motion, but essentially,
6 you were guaranteeing to him that such a motion would be
7 filed?

8 A Yes. And then -- you know, and if Brian assisted on
9 the Nick Miller case, well, potentially that could be a
10 separate -- separate downward departure down the road, but
11 that was not part of the deal.

12 Q As to the protective custody issue, did you have any
13 conversations with Brian Evans as to what that meant in
14 terms of length?

15 A You know, he had been in the program before. I mean,
16 he was more familiar with it than we were. I can't -- I
17 would never have advised him that he would be in it
18 forever and ever.

19 It was important for him to be, you know, put into
20 it. You know, if something happened, and you know if he
21 murdered someone in P.C., I would never say, well, you're
22 going to stay there.

23 So I don't recall us having any conversations like
24 that. It was simply that you're getting there. You know,
25 I can't predict the future. You have a 30-year sentence,

1 but you are placed in P.C.

2 Now, I did have a conversation with Chris outlining
3 the specific threats to Brian, and that's why he was
4 dealing with Mr. Perry because there was the whole Nick
5 Miller thing as a threat. And it was going nowhere but to
6 SCDC.

7 Then there was the gang situation as he got involved
8 with the guards, and then whatever he had previously. So
9 Chris, you know, didn't just answer me. He did -- he
10 talked to the protective custody people and talking in
11 extreme layperson terms, but he got back to me and said,
12 yeah, he is going to be in it. We can't say we're going
13 to guarantee it, but he is prescreened. Let's get him
14 over in here. We will get it. Here is a letter that we
15 can do for you to kind of have your client rest assured,
16 but we never would have advised him that he was going to
17 be there forever and ever.

18 Obviously, I -- we felt that as long as he was good,
19 you know -- I think we even said be good, be good down
20 there and -- but he didn't to me have so many questions
21 about that aspect because he had been in it before. I
22 think to me it was more I need to -- you guys have got to
23 get me in here before I take this plea.

24 Q And to the opposite point, did you ever specifically
25 advise him that it was a temporary thing?

1 A No, not really. I mean, he -- his questions with us
2 were really more about I'll take the plea if I'm in P.C.

3 Q Perry?

4 A I don't recall a whole lot of advanced discussions
5 about what if and how long. Again, he had come from the
6 program, so I kind of felt like he -- you know, once he
7 got there, he would know -- you know, he was familiar with
8 it. So we did not have a whole lot of advanced
9 discussions about that.

10 Q So if he had held an assumption that the protective
11 custody would be for the entire term of his sentence, you
12 never discussed anything with him that would say contrary
13 -- that would be contrary to that?

14 A I was learning all about it, to be honest. It's like
15 Shangri-La, to be honest. They don't want to talk about
16 it. SCDC doesn't want to have plea negotiations based on
17 it, but I think this was a tricky case.

18 I think both Brett Perry and all of his lawyers were
19 involved to really make this possible for him, but if he
20 had asked me, listen, is there anything they could ever do
21 to kick me out.

22 I'd say well, I don't know, maybe. Once you get
23 there, you will be placed there once you get there. That
24 was our job.

25 Q The protective custody was a necessary -- was it --

1 would you consider it a material element of the plea
2 negotiations?

3 A Yes.

4 Q Was it a downward departure, as well?

5 A Yes.

6 Q In October of 2014, which I'm sure you don't have any
7 specific recollection of that time, but about a year after
8 this sentencing took place, were you aware that a downward
9 departure motion had not been filed?

10 A We were aware. I mean, Brian would routinely write
11 us. He would mostly write think Tivis probably saw him
12 more than anybody. You know, I may have seen him seven
13 times. Tivis may have seen him 30 times. I'm not sure.

14 But he would write Tivis as opposed to writing us all
15 three separately. We were aware that as we were
16 approaching that year mark that the downward departure
17 substantial assistance motion had not been filed.

18 I know that Tivis reached out to Brett about that,
19 and that Brett said he didn't think he could do it.

20 Q Did any of -- to your knowledge, did any of you ever
21 discuss a possible motion to vacate the plea with
22 Mr. Evans?

23 A I'm not exactly sure what Tivis wrote him back
24 regarding, but I -- I did not write him saying well, you
25 could a vacating of the plea or a withdrawal of the plea.

1 I did not do that.

2 Q To your knowledge, was one ever filed?

3 A We did not, no. What we would typically do on all of
4 our pleas is do an advice of rights form which is probably
5 included in the clerk's file advising him of all of his
6 rights, PCR rights, motion to reconsider.

7 I don't think a plea withdrawal based on lack of
8 performance is included in that kind of template, but
9 yeah, we didn't file anything for him. I didn't write a
10 letter saying that he could or should do that.

11 MS. GOLDBERG: No further questions.

12 THE COURT: Cross?

13 CROSS-EXAMINATION:

14 BY MR. MITCHELL:

15 Q All right. Good morning, Mr. Shealey.

16 A Good morning.

17 Q So taking this case on -- it was a pretty substantial
18 case, wasn't it, a double murder?

19 A Yeah, it was really substantial.

20 Q Did you believe the State had a strong case on both
21 murders?

22 A I did. Well, and it was always going to be if we
23 were trying it, it was going to be a false confession
24 case. That's why we got Deborah Davis involved because he
25 was picked up in Florence and then began talking to an

1 officer about various murders. He was brought to the
2 Kershaw County Sheriff's Department and gave an audio
3 confession to his involvement in both of them.

4 Q Okay. So he had kind of given two separate
5 statements sort of that implicated himself. Is that fair
6 to say?

7 A Yes.

8 Q All right. Did you believe the plea to be in his
9 best interest?

10 A I did, yes.

11 Q So the protective custody issue, was it your
12 understanding it would be to get him into protective
13 custody?

14 A Yeah. It was to have him placed within it. Again, I
15 was learning about it. I wasn't necessarily aware of its
16 existence. It wasn't often discussed. Brian had been in
17 the program so I mean, I think -- he was talking to us
18 about it.

19 Then we -- we pretty much had a guarantee that he
20 would be placed into it. It was written on the sentencing
21 sheet. That would have been shown to Brett Perry along
22 with the downward departure but yeah, I mean, duration --

23 Q So that wasn't part of the deal, though. It was part
24 of the deal that he would stay in there for 30 years?

25 A I mean I --

1 Q You never advised --

2 A I never would have advised him that whatever happened
3 at the Department of Corrections that he would stay there.
4 I advised him that you're going there. The rest is up to
5 you would be what I would have advised him.

6 Like I said, if something seriously bad happened in
7 SCDC that was on him, you know, they house people in
8 supermax for that kind of stuff, so -- but he was going to
9 P.C. We were confident in that, made a letter.

10 Q Right. So you wouldn't have advised him that if, you
11 know, the threats went away that he was still going to be
12 guaranteed to be in protective custody, right?

13 A You know, I -- if the threats went away, I mean, he
14 provided a lot of assistance on the Nick Miller case. I
15 assume Nick was either going to be sentenced to death or
16 give him life but yeah, I mean the threats were there.
17 They were foreseeable, but yeah, I never said this is for
18 30 years.

19 Q As far as the motion for substantial assistance, were
20 you aware that the statute specifies that these actions
21 are after sentencing?

22 A I don't have a statute. I'm not aware of the
23 specifics other than they were negotiated with Brett
24 Perry.

25 Q Nothing happened after sentencing where he gave any

1 assistance, right?

2 A What -- yeah. What we negotiated was based on the
3 conduct that he did and the assistance he gave to that
4 guard. That was before the plea. Again, I don't have the
5 statute. I'm a trial lawyer. I'm working on getting the
6 State's involvement in negotiating, you know, particulars
7 of this case. So but yeah, our understanding with Brett
8 was that he would file that motion within a year based on
9 him saving the guard at Kershaw.

10 Q Okay.

11 A And nothing else. It had nothing to do with the Nick
12 Miller stuff. That was maybe in the future if there was
13 substantial assistance, but it was not relied upon like
14 the guard situation was.

15 Q Okay. Okay. So when you talked to Mr. Forney, it
16 was kind of to get his okay if they would enforce an
17 illegal sentence if Judge Benjamin was to go below the 30;
18 is that right?

19 A Absolutely. You raise that, and that was second or
20 third phone call with Chris. I said, listen, this -- we
21 have a downward departure that the State is willing to do,
22 but he is at a statutory minimum. What would you do? We
23 would honor it.

24 Judge Benjamin had a question about that, as well, in
25 chambers, and I relayed that information from Mr. Florian

1 that they would honor it. That was important to Brett --
2 or excuse me, to Brian.

3 Q Okay.

4 A That was an issue.

5 MR. MITCHELL: All right. No further questions.

6 Thank you.

7 THE COURT: Anything further?

8 MS. GOLDBERG: No, Your Honor.

9 THE COURT: You may come down. Thank you very much.

10 Ms. Goldberg?

11 MS. GOLDBERG: No further witnesses, Your Honor.

12 MR. MITCHELL: Judge, the State has no other
13 witnesses. I know one thing for the record, we had
14 Mr. Tivis Sutherland subpoenaed in the case. He is tied
15 up in another matter. We did not feel his testimony would
16 be necessary and are going forward without him, just for
17 the record.

18 THE COURT: All right. How much time do you need for
19 proposed orders?

20 MS. GOLDBERG: At least 30 days.

21 THE COURT: All right, 30 days. Proposed orders in
22 30 days, no 45s.

23 MR. MITCHELL: No 45s.

24 THE COURT: No 45s.

25 MS. GOLDBERG: No thank you, Your Honor.

1 THE COURT: Thank you very much counsel.
2 (Whereupon, the proceedings were concluded.)
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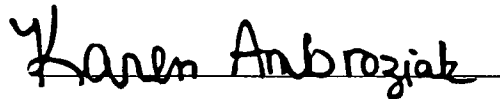
CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Kershaw County, South Carolina, on the 29th day of March,
2016.

September 28, 2016



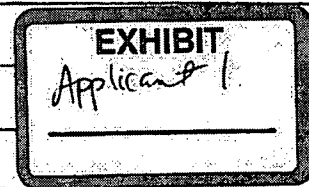
Karen Ambroziak, RPR
Circuit Court Reporter

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
KIRKLAND RECEPTION AND EVALUATION CENTER

HANDWRITTEN AFFIDAVIT

I, Evans, Brian SCDC# 111059 am an inmate at Kirkland Reception and Evaluation Center. I freely make this statement to MS. Cofer with no promise or threats made to or against me:

I have given 5th Circuit Solicitors office taped interview about Nick Miller who is facing Death Penalty. I also have several inmates on "Protective Keep away list" to be kept from a One (Burnett Baker) was (is) involved in gang and I was put on State-wide P.C. because of him in 2008 and I was released in June 09 and left from Statewide P.C. The Judge ordered also as part of my plea deal that I be placed in Statewide P.C.



I do swear or affirm that this is a true statement and do acknowledge the receipt of a copy of same this date.

Date: 10/15/13

Signature: Brian Evans

Witness: [Signature]

Witness: [Signature]

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records
EVALUATION OF PROTECTIVE CONCERNS

Inmate Name: EVANS, Brian SCDC#: 111059 Institution: KCI R+C
Interviewing Employee (Print/Title): Margueta Cooper Program Assistant

SECTION I: PROTECTIVE CONCERNS EVALUATION

Inmate's Reason(s) for Requesting SMU placement due to Protective Concerns:
- Good, Craig 186898 - Good, Timothy - Bunker, Burnette 18030
Inmate(s) Involved: See C.I. Evans C.I. McClurkin C.I.

Employee(s) Involved: Margueta Cooper Program Assistant

- ☒ I do want to be placed in SMU due to protective concerns (SP)
☐ I do not want to be placed in SMU due to protective concerns (SP)

Inmate Signature: Brian Evans Date: 10/15/13

NOTE: Your signature on this line refusing SMU placement due to Protective Concerns does not prohibit the Agency, in the exercise of its' discretion, from placing you in SMU (SP).

Interviewing Officials Recommended Action:

- ☐ Return to General Population (indicate reason) _____
☒ Recommended Placement in SP for further investigation _____
☐ Other: Inmate Moved out from SWPC.

Approved/Disapproved: Andrea Ship Date: 10/15/13
Warden/Duty Warden/ Approved Designee

Date Forwarded to Institutional Protective Custody Committee (IPCC): 10/15/13

SECTION II: INSTITUTIONAL PROTECTIVE CUSTODY COMMITTEE

Disposition (Check one): ☒ Valid ☐ Invalid ☐ Further Investigation

Reason/Recommendation: Due to previous PC status, if inmate is still in SCDC institutions and nature of current offense.

IPCC Chairperson: Denise W. Staley Date: 10/16/13

Date Forwarded to Institutional Classification Committee (ICC): _____

SECTION III: STATE CLASSIFICATION COMMITTEE REVIEW

Disposition (check one): ☐ Valid ☐ Invalid
☐ Transfer to General Population at _____
☐ Approved for Placement on Statewide Protective Custody _____

Recommendation: _____

SI: _____

Date: _____



SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records
STATE CLASSIFICATION PROTECTIVE CUSTODY REVIEW

Inmate Name: Evans, Brian SCDC#: 111059 Date: 04/03/15

Institution/Location: Perry

Date of Initial Placement in Statewide Protective Custody: 10/23/2013

The above mentioned inmate was reviewed for release from Statewide Protective Custody Status on the above date. Based on information reviewed in the inmate's institutional record, conversations with the inmate, unit staff and Institutional Classification Committee Representatives, the State Classification recommendation is as follows:

- ☒ Approved the inmate to remain in Statewide Protective Custody.
- ☐ Recommended the inmate to be released from Statewide Protective Custody and transferred to an appropriate general population.

Recommendation for release from Statewide Protective Custody requires review and approval from both the Division Director of Classification and Inmate Records and the Division Director of Operations. (OP – 22.23, Item 7.2)

If the inmate is approved for release from Statewide Protective Custody, State Classification will make the appropriate institutional assignment.

S/ F. Oglesby
Reviewing State Classification Official

Date: 04/03/15

S/ Brian Evans
Inmate

Date: 4/3/15

S/ _____
Warden

Date: / /

Comments:

6 Months, Base on your record, you will remain on PC.

White: Institutional Record
Canary: Central Records
Pink: Inmate



SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records
STATE CLASSIFICATION PROTECTIVE CUSTODY REVIEW

Inmate Name: Evans, Brian SCDC#: 111059 Date: 10/22/14

Institution/Location: Perry

Date of Initial Placement in Statewide Protective Custody: 10/23/44¹³₈

The above mentioned inmate was reviewed for release from Statewide Protective Custody Status on the above date. Based on information reviewed in the inmate's institutional record, conversations with the inmate, unit staff and Institutional Classification Committee Representatives, the State Classification recommendation is as follows:

- ☒ Approved the inmate to remain in Statewide Protective Custody.
- ☐ Recommended the inmate to be released from Statewide Protective Custody and transferred to an appropriate general population.

Recommendation for release from Statewide Protective Custody requires review and approval from both the Division Director of Classification and Inmate Records and the Division Director of Operations. (OP - 22.23, Item 7.2)

If the inmate is approved for release from Statewide Protective Custody, State Classification will make the appropriate institutional assignment.

S/ Christine Loney
Reviewing State Classification Official

Date: 10/22/14

S/ Brian Evans
Inmate

Date: / /

S/
Warden

Date: / /

Comments:

SCC - Annual Statewide PC Review -
Remain in SWPC.

White: Institutional Record
Canary: Central Records
Pink: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records
STATE CLASSIFICATION PROTECTIVE CUSTODY REVIEW

Inmate Name: Evans, Brian SCDC#: 111059 Date: 4/16/14

Institution/Location: Perry

Date of Initial Placement in Statewide Protective Custody: 10/23/13

The above mentioned inmate was reviewed for release from Statewide Protective Custody Status on the above date. Based on information reviewed in the inmate's institutional record, conversations with the inmate, unit staff and Institutional Classification Committee Representatives, the State Classification recommendation is as follows:

- ☒ Approved the inmate to remain in Statewide Protective Custody.
- ☐ Recommended the inmate to be released from Statewide Protective Custody and transferred to an appropriate general population.

Recommendation for release from Statewide Protective Custody requires review and approval from both the Division Director of Classification and Inmate Records and the Division Director of Operations. (OP - 22.23, Item 7.2)

If the inmate is approved for release from Statewide Protective Custody, State Classification will make the appropriate institutional assignment.

S/ Christine Amy
Reviewing State Classification Official

Date: 4/16/14

S/ Brian Evans
Inmate

Date: 4/16/14

S/ _____
Warden

Date: / /

Comments:

SCC - Six months Statewide PC Review -
Remain in SWPC -

White: Institutional Record
Canary: Central Records
Pink: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC# 111059
Institution: Perry CT Date Inmate Placed in SMU: 10/15/13
Inmate Assignment (if applicable): ☐ Security Detention ☐ Death Row ☒ Statewide Protective Custody

The Institutional Classification Committee met on 2/10/15 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 30 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Released from SMU and Returned to the General Population
- ☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level I ☐ Level II
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ Level I
(circle one) ☐ Level II
- ☐ Advanced/Reduced/Remain Death Row Level Assignment: ☐ Level I
(circle one) ☐ Level II
☐ Level III
- ☒ Remain in Protective Custody Status.
- ☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain on SWPC
(list any other special restrictions/needs here)

The justification for this decision was: Due to no significant change in the degree of protection that the agency can provide.

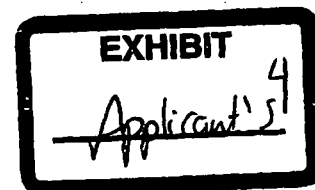
SI/ [Signature]
Institutional Classification Committee Person

SI/ _____
Warden/Duty Warden (only for placement and release from SD)

Date: 2/10/15

Date: / /

White: Institutional Record
Canary: Central Records
Green: Inmate



SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC# 111059

Institution: Perry C I Date Inmate Placed in SMU: 10/15/13

Inmate Assignment (if applicable): ☐ Security Detention ☐ Death Row ☒ Statewide Protective Custody

The Institutional Classification Committee met on 1/28/15 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 30 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Released from SMU and Returned to the General Population
- ☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level I ☐ Level II
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ Level I
(circle one) ☐ Level II
- ☐ Advanced/Reduced/Remain Death Row Level Assignment: ☐ Level I
(circle one) ☐ Level II
☐ Level III
- ☒ Remain in Protective Custody Status.
- ☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain on SWPC
(list any other special restrictions/needs here)

The justification for this decision was: Due to no significant change in the degree of protection that the agency can provide.

S/ [Signature]
Institutional Classification Committee Person

S/ _____
Warden/Duty Warden (only for placement and release from SD)

Date: 1/29/15

Date: / /

White: Institutional Record
Canary: Central Records
Green: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC# 111059
 Institution: Perry C. I. Date Inmate Placed in SMU: 10/15/13
 Inmate Assignment (if applicable): ☐ Security Detention ☐ Death Row ☒ Statewide Protective Custody

The Institutional Classification Committee met on 12/9/14 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 30 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Released from SMU and Returned to the General Population
- ☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level I ☐ Level II
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ Level I
 (circle one) ☐ Level II
- ☐ Advanced/Reduced/Remain Death Row Level Assignment: ☐ Level I
 (circle one) ☐ Level II ☐ Level III
- ☒ Remain in Protective Custody Status.
- ☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain PC
 (list any other special restrictions/needs here)

The justification for this decision was: Due to no significant change in the degree of protection that the
agency can provide.

SI/ [Signature]
 Institutional Classification Committee Person

SI/ [Signature]
 Warden/Duty Warden (only for placement and release from SD)

Date: 12/9/14

Date: / /

White: Institutional Record
 Canary: Central Records
 Green: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC# 111059

Institution: Perry Correctional Institution Date Inmate Placed in SMU: 10/15/13

Inmate Assignment (if applicable): ☐ Security Detention ☐ Death Row ☒ Statewide Protective Custody

The Institutional Classification Committee met on 11/19/14 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 30 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Released from SMU and Returned to the General Population
- ☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level I ☐ Level II
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ Level I
(circle one) ☐ Level II
- ☐ Advanced/Reduced/Remain Death Row Level Assignment: ☐ Level I
(circle one) ☐ Level II ☐ Level III
- ☒ Remain in Protective Custody Status.
- ☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain PC
(list any other special restrictions/needs here)

The justification for this decision was: Due to no significant change in the degree of protection that the agency
can provide.

S/ [Signature]
Institutional Classification Committee Person

Date: 11/19/14

S/ [Signature]
Warden/Duty Warden (only for placement and release from SD)

Date: / /

White: Institutional Record
Canary: Central Records
Green: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC# 111059

Institution: Perry Correctional Institution Date Inmate Placed in SMU: 10/15/13

Inmate Assignment (if applicable): ☐ Security Detention ☐ Death Row ☒ Statewide Protective Custody

The Institutional Classification Committee met on 10/15/14 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 30 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Released from SMU and Returned to the General Population
- ☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level I ☐ Level II
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ Level I
(circle one) ☐ Level II
- ☐ Advanced/Reduced/Remain Death Row Level Assignment: ☐ Level I
(circle one) ☐ Level II ☐ Level III
- ☒ Remain in Protective Custody Status.
- ☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain PC
(list any other special restrictions/needs here)

The justification for this decision was: Due to no significant change in the degree of protection that the agency can provide.

S/ [Signature]
Institutional Classification Committee Person

Date: 10/20/14

S/ _____
Warden/Duty Warden (only for placement and release from SD)

Date: / /

White: Institutional Record
Canary: Central Records
Green: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC# 111059
 Institution: Perry Correctional Institution Date Inmate Placed in SMU: 10/15/13
 Inmate Assignment (if applicable): ☐ Security Detention ☐ Death Row ☒ Statewide Protective Custody

The Institutional Classification Committee met on 9/18/14 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 30 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Released from SMU and Returned to the General Population
- ☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level I ☐ Level II
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ Level I
 (circle one) ☐ Level II
- ☐ Advanced/Reduced/Remain Death Row Level Assignment: ☐ Level I
 (circle one) ☐ Level II
☐ Level III
- ☒ Remain in Protective Custody Status.
- ☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain PC
 (list any other special restrictions/needs here)

The justification for this decision was: Due to no significant change in the degree of protection that the agency can provide.

S/ [Signature]
 Institutional Classification Committee Person

Date: 9/18/14

S/ _____
 Warden/Duty Warden (only for placement and release from SD)

Date: / /

White: Institutional Record
 Canary: Central Records
 Green: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC# 111059

Institution: Perry Correctional Institution Date Inmate Placed in SMU: 10/15/13

Inmate Assignment (if applicable): ☐ Security Detention ☐ Death Row ☒ Statewide Protective Custody

The Institutional Classification Committee met on 8/22/14 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 30 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Released from SMU and Returned to the General Population
- ☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level I ☐ Level II
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ Level I
(circle one) ☐ Level II
- ☐ Advanced/Reduced/Remain Death Row Level Assignment: ☐ Level I
(circle one) ☐ Level II
☐ Level III
- ☒ Remain in Protective Custody Status.
- ☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain PC
(list any other special restrictions/needs here)

The justification for this decision was: Due to no significant change in the degree of protection that the agency can provide.

S/ [Signature]
Institutional Classification Committee Person

Date: 8/22/14

S/ _____
Warden/Duty Warden (only for placement and release from SD)

Date: / /

White: Institutional Record
Canary: Central Records
Green: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC# 111059
 Institution: Penitentiary Date Inmate Placed in SMU: 10/15/13
 Inmate Assignment (if applicable): ☐ Security Detention ☐ Death Row ☒ Statewide Protective Custody

The Institutional Classification Committee met on 7/15/14 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 30 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Released from SMU and Returned to the General Population
- ☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level I ☐ Level II
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ Level I
 (circle one) ☐ Level II
- ☐ Advanced/Reduced/Remain Death Row Level Assignment: ☐ Level I
 (circle one) ☐ Level II ☐ Level III
- ☒ Remain in Protective Custody Status.
- ☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate

Remain PC
 (list any other special restrictions/needs here)

The justification for this decision was: due to no significant change in the degree of protection that the agency can provide

SI/ [Signature]
 Institutional Classification Committee Person

Date: 7/15/14

SI/ _____
 Warden/Duty Warden (only for placement and release from SD)

Date: / /

White: Institutional Record
 Canary: Central Records
 Green: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

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SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC# 111059

Institution: Penit Date Inmate Placed in SMU: 10/15/13

Inmate Assignment (if applicable): ☐ Security Detention ☐ Death Row ☒ Statewide Protective Custody

The Institutional Classification Committee met on 6/17/14 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 30 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Released from SMU and Returned to the General Population
- ☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level I ☐ Level II
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ Level I
(circle one) ☐ Level II
- ☐ Advanced/Reduced/Remain Death Row Level Assignment: ☐ Level I
(circle one) ☐ Level II
☐ Level III
- ☒ Remain in Protective Custody Status.
- ☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain PC
(list any other special restrictions/needs here)

The justification for this decision was: due to no significant change in the degree of protection that the agency can provide

S/ [Signature]
Institutional Classification Committee Person

Date: 6/18/14

S/ _____
Warden/Duty Warden (only for placement and release from SD)

Date: / /

White: Institutional Record
Canary: Central Records
Green: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC# 111059
 Institution: Perry Date Inmate Placed in SMU: 10/15/13
 Inmate Assignment (if applicable): ☐ SD-Level 1 ☐ SD-Level II ☐ SD-Level III ☒ Protective Custody

The Institutional Classification Committee met on 5/14/14 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 30 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Released from SMU and Returned to the General Population
☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level 1 ☐ Level II ☐ Level III
 (NOTE: INITIAL Placement in Security Detention Requires State Classification Approval)
☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ SD-Level I
 (circle one) ☐ SD-Level II
☐ SD-Level III
☐ Protective Custody
☒ Remain in Protective Custody Status.
☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain PC
 (list any other special restrictions/needs here)

The justification for this decision was: due to no significant changes in the degree of protection that the agency can provide

S/ [Signature]
 Institutional Classification Committee Person

Date: 5/15/14

White: Institutional Record
 Canary: Central Records
 Green: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC# 111059
Institution: Perry Date Inmate Placed in SMU: 10/15/13
Inmate Assignment (if applicable): ☐ SD-Level 1 ☐ SD-Level II ☐ SD-Level III ☒ Protective Custody

The Institutional Classification Committee met on 4/9/14 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 30 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Released from SMU and Returned to the General Population
☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level 1 ☐ Level II ☐ Level III
(NOTE: INITIAL Placement in Security Detention Requires State Classification Approval)
☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ SD-Level I
(circle one) ☐ SD-Level II
☐ SD-Level III
☐ Protective Custody
☒ Remain in Protective Custody Status.
☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain PC
(list any other special restrictions/needs here)

The justification for this decision was: due to no significant change in the degree of protection that the agency can provide

S/ [Signature]
Institutional Classification Committee Person

Date: 4/9/14

White: Institutional Record
Canary: Central Records
Green: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC #: 111059

Institution: Perry Date Inmate Placed in SMU: 10/15/13

Inmate Assignment (if applicable): ☐ SD-Level I ☐ SD-Level II ☐ SD-Level III ☒ Protective Custody

The Institutional Classification Committee met on: 3/18/14 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 30 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Release from SMU and Returned to the General Population
- ☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level I ☐ Level II ☐ Level III
(NOTE: INITIAL Placement in Security Detention Requires State Classification Approval)
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ SD-Level I
(circle one) ☐ SD-Level II
☐ SD-Level III
☐ Protective Custody

- ☒ Remain in Protective Custody Status.
- ☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate

Remain PC
(list any other special restrictions/needs here)

The justification for this decision was

due to no significant change in the degree of protection that the agency can provide

S/

Y. Buttery
Institutional Classification Committee Chairperson

Date:

3/19/14

White: Institutional Record
Canary: Central Records
Pink: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC# 111059
 Institution: Perry Date Inmate Placed in SMU: 10/15/13
 Inmate Assignment (if applicable): ☐ SD-Level 1 ☐ SD-Level II ☐ SD-Level III ☒ Protective Custody

The Institutional Classification Committee met on 2/25/14 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 30 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Released from SMU and Returned to the General Population
☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level 1 ☐ Level II ☐ Level III
 (NOTE: INITIAL Placement in Security Detention Requires State Classification Approval)
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ SD-Level I
 (circle one) ☐ SD-Level II
☐ SD-Level III
☐ Protective Custody
- ☒ Remain in Protective Custody Status.
☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain PC
 (list any other special restrictions/needs here)

The justification for this decision was due to no significant change in the degree of protection that the agency can provide.

[Signature]
 Institutional Classification Committee Person

Date: 2/25/14

White: Institutional Record
 Canary: Central Records
 Green: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC# 111059
 Institution: Perry Date Inmate Placed in SMU: 10/15/13
 Inmate Assignment (if applicable): ☐ SD-Level 1 ☐ SD-Level II ☐ SD-Level III ☒ Protective Custody

The Institutional Classification Committee met on 1/14/14 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 30 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Released from SMU and Returned to the General Population
☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level 1 ☐ Level II ☐ Level III
 (NOTE: INITIAL Placement in Security Detention Requires State Classification Approval)
☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ SD-Level I
 (circle one) ☐ SD-Level II
☐ SD-Level III
☐ Protective Custody
☒ Remain in Protective Custody Status.
☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain PC
 (list any other special restrictions/needs here)

The justification for this decision was due to no significant change in the degree of protection that the agency can provide

[Signature]
 Institutional Classification Committee Person

Date: 1/15/14

White: Institutional Record
 Canary: Central Records
 Green: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC # 111059

Institution: Kerry Date Inmate Placed in SMU: 10/23/13

Inmate Assignment (if applicable): ☐ SD-Level I ☐ SD-Level II ☐ SD-Level III ☒ Protective Custody

The Institutional Classification Committee met on: 12/19/13 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled ☐ 7 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Release from SMU and Returned to the General Population
- ☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level I ☐ Level II ☐ Level III
(NOTE: INITIAL Placement in Security Detention Requires State Classification Approval)
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ SD-Level I
(circle one) ☐ SD-Level II
☐ SD-Level III
☐ Protective Custody
- ☒ Remain in Protective Custody Status.
- ☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate

Remain PC
(list any other special restrictions/needs here)

The justification for this decision was

Due to no significant change in the degree of protection that the Agency can provide

S/ [Signature]
Institutional Classification Committee Chairperson

Date: 12/19/13

White: Institutional Record
Canary: Central Records
Pink: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name:

Evans, Brian

SCDC #:

111059

Institution:

Perry

Date Inmate Placed in SMU:

10/23/13

Inmate Assignment (if applicable):

☐ SD-Level I☐ SD-Level II☐ SD-Level III☒ Protective CustodyThe Institutional Classification Committee met on: 12/12/13 to conduct a☐ Initial seven-day Review☒ Regularly Scheduled 7 Day Review

The Committee recommends that the above referenced inmate be:

☐ Release from SMU and Returned to the General Population☐ INITIALLY Placed in Security Detention in the following SD-Level:☐ Level I☐ Level II☐ Level III**(NOTE: INITIAL Placement in Security Detention Requires State Classification Approval)**☐ Advanced/Reduced/Remain in Security Detention Level Assignment:
(circle one)☐ SD-Level I☐ SD-Level II☐ SD-Level III☐ Protective Custody

Remain in Protective Custody Status.



Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate

Remain PC
(list any other special restrictions/needs here)

The justification for this decision was

Due to no significant change in the degree of protection that the Agency can provide

S/

[Signature]
Institutional Classification Committee Chairperson

Date:

12/12/13

White: Institutional Record
Canary: Central Records
Pink: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC #: 11105-9

Institution: Perry Date Inmate Placed in SMU: 10/23/13

Inmate Assignment (if applicable): ☐ SD-Level I ☐ SD-Level II ☐ SD-Level III ☒ Protective Custody

The Institutional Classification Committee met on: 12/6/13 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 7 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Release from SMU and Returned to the General Population
- ☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level I ☐ Level II ☐ Level III
(NOTE: INITIAL Placement in Security Detention Requires State Classification Approval)
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ SD-Level I
(circle one) ☐ SD-Level II
☐ SD-Level III
☐ Protective Custody

- ☒ Remain in Protective Custody Status.
- ☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain PC
(list any other special restrictions/needs here)

The justification for this decision was due to no significant change in the degree of protection that the agency can provide

S/ [Signature] Date: 12/6/13
Institutional Classification Committee Chairperson

White: Institutional Record
Canary: Central Records
Pink: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records
SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC #: 111059

Institution: Perry Date Inmate Placed in SMU: 10/23/13

Inmate Assignment (if applicable): ☐ SD-Level I ☐ SD-Level II ☐ SD-Level III ☒ Protective Custody

The Institutional Classification Committee met on: 11/27/13 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 7 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Release from SMU and Returned to the General Population
- ☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level I ☐ Level II ☐ Level III
(NOTE: INITIAL Placement in Security Detention Requires State Classification Approval)
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ SD-Level I
(circle one) ☐ SD-Level II
☐ SD-Level III
☐ Protective Custody
- ☒ Remain in Protective Custody Status.
- ☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain PC
(list any other special restrictions/needs here)

The justification for this decision was: due to no significant change in the degree of protection that the agency can provide

S/ [Signature]
Institutional Classification Committee Chairperson

Date: 11/27/13

White: Institutional Record
Canary: Central Records
Pink: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Zuans, Brian SCDC# 111059
 Institution: Penry Date Inmate Placed in SMU: 10/23/13
 Inmate Assignment (if applicable): ☐ SD-Level 1 ☐ SD-Level II ☐ SD-Level III ☒ Protective Custody

The Institutional Classification Committee met on 11/21/13 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 7 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Released from SMU and Returned to the General Population
☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level 1 ☐ Level II ☐ Level III
 (NOTE: INITIAL Placement in Security Detention Requires State Classification Approval)
☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ SD-Level I
 (circle one) ☐ SD-Level II
☐ SD-Level III
☐ Protective Custody

- ☒ Remain in Protective Custody Status.
☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain PC
 (list any other special restrictions/needs here)

The justification for this decision was due to no significant change in the degree of protection that the agency can provide

S/ [Signature]
 Institutional Classification Committee Person

Date: 11/21/13

White: Institutional Record
 Canary: Central Records
 Green: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC #: 111059

Institution: Perry Date Inmate Placed in SMU: 10/23/13

Inmate Assignment (if applicable): ☐ SD-Level I ☐ SD-Level II ☐ SD-Level III ☒ Protective Custody

The Institutional Classification Committee met on: 11/14/13 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 7 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Release from SMU and Returned to the General Population
- ☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level I ☐ Level II ☐ Level III
(NOTE: INITIAL Placement in Security Detention Requires State Classification Approval)
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ SD-Level I
(circle one) ☐ SD-Level II
☐ SD-Level III
☐ Protective Custody

- ☒ Remain in Protective Custody Status.
- ☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate

Remain PC
(list any other special restrictions/needs here)

The justification for this decision was

due to no significant change in the degree of protection that the agency can provide

S/ [Signature]
Institutional Classification Committee Chairperson

Date: 11/14/13

White: Institutional Record
Canary: Central Records
Pink: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records
SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC #: 111059

Institution: Perry Date Inmate Placed in SMU: 10/23/13

Inmate Assignment (if applicable): ☐ SD-Level I ☐ SD-Level II ☐ SD-Level III ☒ Protective Custody

The Institutional Classification Committee met on: 11/7/13 to conduct a ☐ Initial seven-day Review
☒ Regularly Scheduled 7 Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Release from SMU and Returned to the General Population
- ☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level I ☐ Level II ☐ Level III
(NOTE: INITIAL Placement in Security Detention Requires State Classification Approval)
- ☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ SD-Level I
(circle one) ☐ SD-Level II
☐ SD-Level III
☐ Protective Custody

- ☒ Remain in Protective Custody Status.
- ☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate

Remain PC
(list any other special restrictions/needs here)

The justification for this decision was: Due to no significant change in the degree of protection that the agency can provide

S/ [Signature]
Institutional Classification Committee Chairperson

Date: 11/7/13

White: Institutional Record
Canary: Central Records
Pink: Inmate

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification and Inmate Records

SMU INSTITUTIONAL CLASSIFICATION COMMITTEE REVIEW

Inmate Name: Evans, Brian SCDC# 111059
 Institution: Penney Date Inmate Placed in SMU: 10/23/13
 Inmate Assignment (if applicable): ☐ SD-Level 1 ☐ SD-Level II ☐ SD-Level III ☒ Protective Custody

The Institutional Classification Committee met on 10/29/13 to conduct a ☒ Initial seven-day Review
☒ Regularly Scheduled _____ Day Review

The Committee recommends that the above referenced inmate be:

- ☐ Released from SMU and Returned to the General Population
☐ INITIALLY Placed in Security Detention in the following SD-Level: ☐ Level 1 ☐ Level II ☐ Level III
 (NOTE: INITIAL Placement in Security Detention Requires State Classification Approval)
☐ Advanced/Reduced/Remain in Security Detention Level Assignment: ☐ SD-Level I
 (circle one) ☐ SD-Level II
☐ SD-Level III
☐ Protective Custody

- ☒ Remain in Protective Custody Status.
☐ Released from Protective Custody and Returned to the General Population.

The Committee further recommended that the inmate Remain PC
 (list any other special restrictions/needs here)

The justification for this decision was: due to no significant change in the degree of protection that the agency can provide

S/ [Signature]
 Institutional Classification Committee Person

Date: 10/29/13

White: Institutional Record
 Canary: Central Records
 Green: Inmate

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF CLASSIFICATION & INMATE RECORDS**

MEMORANDUM

TO: Michael McCall, Deputy Director, Division of Operations

FROM: Joette D. Scarborough, Assistant Division Director – Central Classification

SUBJECT: SWPC REVIEW BOARD RECOMMENDATION
(INMATE BRIAN EVANS, SCDC # 111059)

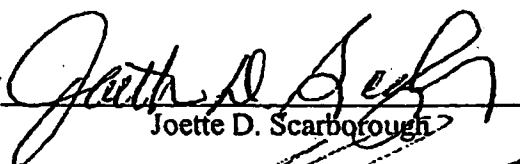
DATE: April 13, 2015

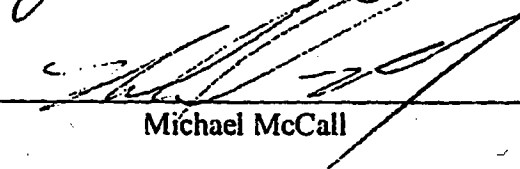
On April 8, 2015, the Statewide Protective Custody Committee met to evaluate Inmate Evans SCDC # 111059, for release from the SWPC Unit at Perry Correctional Institution. The committee was composed of the following:

Joette Scarborough – Assistant Division Director – Central Classification
Larry Cartledge, Warden - Perry
Donikia Gray, Mental Health
Christine Long, SWPC Coordinator – Central Classification

Inmate Evans was placed in SWPC on October 23, 2013, due to being court ordered for Statewide PC. His current commitment order requests placement on SWPC.

The committee recommended unanimously for Inmate Evans to be released to general population at Perry CI due to court order not sufficient enough to remain in Statewide PC.

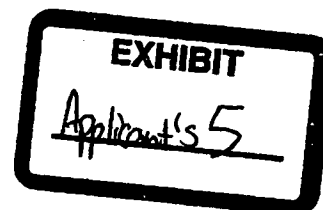
S/ 
Joette D. Scarborough

Concur/Non-concur: 

Michael McCall

JDS/cel

cc: Institutional Record
Inmate Records
SWPC File



**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF CLASSIFICATION & INMATE RECORDS**

MEMORANDUM

TO: Michael McCall, Deputy Director, Division of Operations

FROM: Joette D. Scarborough, Division Director of Classification & Inmate Records

SUBJECT: SWPC REVIEW BOARD RECOMMENDATION
(INMATE BRIAN EVANS, SCDC # 111059)

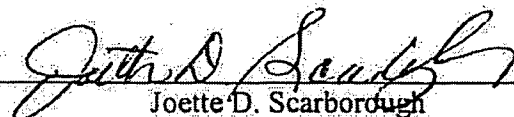
DATE: October 16, 2015

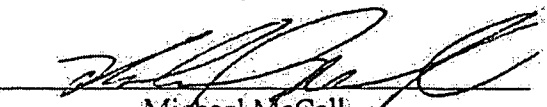
On October 14, 2015, the Statewide Protective Custody Committee met to evaluate Inmate Evans, SCDC # 111059, for placement into the SWPC Unit at Perry Correctional Institution. The committee was composed of the following:

Joette Scarborough, Division Director
Larry Cartledge, Warden - Perry
Donikia Gray, Mental Health
Christine Long, SWPC Coordinator - Central Classification

The IPCC at Perry has recommended that Inmate Evans be returned to Statewide PC. He was originally placed in SWPC on October 23, 2013, due to being court ordered for Statewide PC. His current commitment order requests placement on SWPC. Also, Inmate Evans claimed that gang members has put a "hit" on him, however, Investigator Long with Police Services interviewed him and nothing could be substantiated. The committee recommended and it was approved on April 13, 2015 for Inmate Evans to be released to general population at Kershaw due to court order not sufficient enough to remain in SWPC. Since being released, his attorney has written several emails to Dan Crooks, Office of General Counsel requesting he be placed back in SWPC.

The committee recommended unanimously for Inmate Evans to remain in general population due to Police Services inability to substantiate any threats on his life and due to the inmate's failure to give specific information about his gang related concerns.

SI 
Joette D. Scarborough

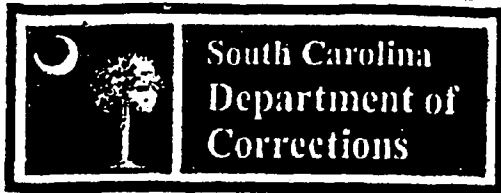
Concur/Non-concur: 

Michael McCall

JDS/cel

EXHIBIT

Applicant # 56



NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Acting Director

October 10, 2013

Mr. Brett A. Perry, Esq.
Solicitor's Office, 5th Judicial Circuit
112 1/2 Broad Street
Camden, SC 29020

Re: **Brian Franklin Evans, Former # 111059**

Mr. Perry,

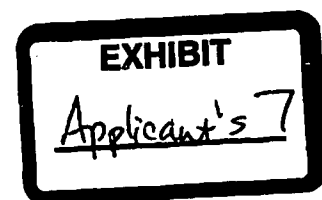
In response to your letter dated October 9, 2013, the Department of Corrections has conducted an initial review of the possible placement of Mr. Evans in protective custody. Following the review, the Department has determined that Mr. Evans appears to be good candidate for such a placement. Although the Department cannot guarantee placement in protective custody until an offender is actually in its custody, Mr. Evans is likely to be placed in protective custody upon his incarceration at the Department.

Please advise my office once Mr. Evans' has been sentenced so the Reception and Evaluation Center will be prepared to initiate the official protective custody review procedure upon his arrival.

If I can be of further assistance in this matter, please feel free to contact me.

Sincerely,

Chris Florian
Deputy General Counsel



STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Brian F. Evans, #111059,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-28-0946

ORDER OF DISMISSAL

FILED FOR RECORD
2016 MAY 18 AM 11:09
JOYCE MC DONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 9, 2014. Respondent filed a Return on June 10, 2015, requesting an evidentiary hearing be convened. Kristy G. Goldberg, Esquire, was appointed to represent Applicant. An amended application was filed on March 7, 2016. An evidentiary hearing was held on March 29, 2016, at the Richland County Courthouse. Applicant was present and represented by Counsel Goldberg. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying were Applicant's plea counsel, Brian R. Shealey, Jr., Esquire, Joette Scarborough of the South Carolina Department of Corrections (SCDC), and Kershaw County Deputy Solicitor Brett A. Perry, Esquire. This Court had before it the Kershaw County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Kershaw County. Applicant was indicted at

GE

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Joanne M. [Signature]
Clerk of Court Kershaw County

the February 2011 term of the Court of General Sessions for Kershaw County for two counts of Murder. (2011-GS-28-0110; -0111). Applicant was represented by Brian Shealey, Esq.; Luke Shealey, Esq.; and Tivis Sutherland, Esq. Applicant appeared before the Honorable DeAndrea G. Benjamin on October 14, 2014 and pleaded guilty as indicted. Pursuant to negotiations, Judge Benjamin sentenced Applicant to concurrent terms of thirty (30) years' imprisonment. Applicant did not appeal his sentence or convictions.

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

1. Ineffective assistance of counsel in:
 - a. Advising Applicant to accept plea offer on conditions that he be placed in statewide protective custody and that a downward departure motion be filed by the State.
 - b. Failing to ensure that the conditions within the plea agreement were met, and for failing to file a motion to withdraw the plea when it became apparent that the conditions of the plea agreement were not fulfilled.
2. Involuntary plea in that Applicant relied on representations by counsel that he would be placed in statewide protective custody and that a downward departure motion would be filed.

II. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

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rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

CT 3

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

This Court will first address the allegation that Applicant pled guilty to a conditional plea. A guilty plea cannot have any qualifications or conditions attached to it. State v. Peppers, 346 S.C. 502, 552 S.E.2d 288 (2001). Here, the guilty plea was not based on any conditions. The plea was a negotiated sentence with terms regarding placement in statewide protective custody and a motion for sentence reduction. There is nothing before the Court to prove the plea was conditional.

This Court turns to Applicant's other allegations and addresses them in turn.

Involuntary Plea/Misadvise Concerning the Plea

Statewide Protective Custody

Applicant alleges Counsel was ineffective for advising him to accept a plea offer with negotiated terms regarding placement in statewide protective custody and a motion for sentence reduction for substantial assistance. Applicant testified that he was previously in protective custody when he was in prison on unrelated charges and that he wanted to be placed in protective custody when he entered SCDC. He testified that he witnessed an incident involving the Muslim Brotherhood which affirmed his desire to be placed in protective custody.

Ms. Scarborough is the Division Direct of Inmate Classification and Inmate Records at SCDC. She gave an overview of the inmate classification system in place at SCDC. Inmates who are held in protective custody have their status reviewed every six months. She testified that she was familiar with Applicant's file and that she took part in the decision to remove Applicant

from protective custody. Ms. Scarborough explained that Applicant was removed from protective custody because the committee did not feel there was a verified threat to justify his placement in protective custody. The committee then gave a recommendation that he be removed. She noted that it is not common for inmates to remain in protective custody for very long and that it was certainly not common for inmates to serve an entire sentence in protective custody. She emphasized that the threat level would dictate the duration in protective custody. Ms. Scarborough further explained that any orders from a court attempting to direct SCDC to classify an inmate in a certain way, would be viewed as a recommendation and not a directive. She clarified that this was consistent with her understanding of the law and that General Counsel would be consulted on these matters.

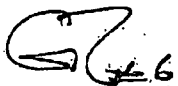
Solicitor Perry also testified in Applicant's case. He recalled that SCDC seemed to be willing to place Applicant in protective custody. A recommendation would be made to SCDC that he could return to protective custody. Solicitor Perry testified he believed Applicant became accustomed to life in protective custody and hoped to make his time less demanding by being placed there again.

Counsel's testimony that the plea deal was for Applicant to be placed in statewide protective custody, not that he would serve his entire sentence in protective custody is credible and persuasive on the issue. Counsel testified he did not advise Applicant that he would remain in protective custody for the duration of his sentence. Counsel testified that he did not have an extensive discussion with Applicant regarding the conditions of protective custody because Applicant had prior knowledge of the procedures. Counsel testified that Applicant was most concerned with getting into protective custody.



This Court finds circuit court judges do not have the authority to order, as part of the sentence, that a defendant be placed in protective custody because it infringes on SCDC's statutory authority. South Carolina law is clear that SCDC is vested with the authority to determine where an inmate is housed. See S.C. Code 24-3-30(A) ("Notwithstanding any other provision of law, a person convicted of an offense against the State must be in the custody of the Department of Corrections, and the department shall designate the place of confinement where the sentence must be served."); S.C. Const. art. XII, § 2 ("The General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates."); see also Skipper v. South Carolina Department of Corrections, 370 S.C. 267, 274-75, 633 S.E.2d 910, 914 (2006); Davis v. State, 274 S.C. 549, 551, 265 S.E.2d 679, 681 (1980). Applicant failed to meet his burden in proving Counsel was deficient in any manner. Acknowledging Applicant's concern that he would be harmed if he was placed in the general prison population, Counsel acted reasonably in successfully having Applicant placed in protective custody. This Court finds that Applicant was never advised or guaranteed that he would remain in protective custody for the duration of his sentence. The Department of Corrections makes the ultimate decision as to whether the circumstances justify holding him in protective custody. It was concluded that there were no verifiable threats to Applicant, and this Court does not have the authority to review that decision.

This Court also finds Applicant failed to meet his burden in proving he was prejudiced in any way. Applicant's testimony that he would have gone to trial if he was not placed in protective custody is not credible considering that he was facing two murder charges and was able to plead to the mandatory minimum sentence of thirty years.



Motion for Substantial Assistance

Next, Applicant alleges Counsel was ineffective for failing to ensure the plea agreement was enforced.

Solicitor Perry testified he had discussions with Counsel regarding the filing of a motion for substantial assistance. He recalled that Applicant aided a guard at Alvin S. Glenn Detention Center when a fight broke out. There was also the chance that Applicant would testify in a death penalty case for the State. He noted that this never came to fruition as the death penalty defendant pled guilty. Solicitor Perry testified that he considered Applicant's assistance he gave to the guard when offering him the plea deal of thirty (30) years. Solicitor explained that he did not file a motion for substantial assistance because nothing took place after sentencing to warrant its filing. He also believed it would not be proper for him to file a motion asking Judge Benjamin to impose an illegal sentence.

Counsel testified that the discussions with Solicitor Perry regarding sentence reduction were based on his assistance with the guard at the jail. He emphasized that he did not guarantee that Judge Benjamin would actually reduce his sentence. Counsel testified that he had discussions with counsel at SCDC to ensure they would honor an illegal sentence if Applicant was granted a reduction. Counsel believed that Solicitor Perry was required to make the motion pursuant to the plea agreement.

This Court finds Counsel cannot be found to be ineffective because the language of S.C. Code Ann. § 17-25-65 clearly indicates the State, not defense counsel, is the party who must move for a sentence reduction. The statute reads, in part:

(A) Upon the state's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided: (1) substantial assistance in investigating or prosecuting another person;

GR # 7

(C) A motion made pursuant to this provision shall be filed by that circuit solicitor in the county where the defendant's case arose.

S.C. Code Ann. § 17-25-65.

The statute unambiguously sets forth that it is incumbent on the State, not defense counsel to move for a sentence reduction hearing. It is not logical or prudent to find counsel ineffective for failing to do something which he has no statutory authority to do. Such a finding would effectively misconstrue the statute to include defense counsel as a party with an obligation to move for a sentence reduction. In construing a statute, the Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature. Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008); Lancaster Cty. Bar Ass'n v. S. Carolina Comm'n on Indigent Def., 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008). Such a finding of ineffectiveness and its resulting effect on statutory interpretation would be absurd.

Most importantly, Applicant's testimony that he would have taken the two separate murder cases to trial if the solicitor did not file a motion for substantial assistance is not credible. It is clear from Counsel's testimony that Applicant's was most concerned with his placement in protective custody, not with whether his sentence would be reduced. The State had substantial evidence against Applicant including his confessions to both murders. Applicant was motivated to accept the plea deal because he was able to receive the mandatory minimum of thirty (30) years on two separate murder charges running concurrently.

This Court further finds that a motion for substantial assistance would not be granted. First, the motion would not be made in accordance with the statute. The statute is based on information obtained or actions that take place *after* sentencing. It is undisputed that Applicant provided no information and took no action to warrant the motion after sentencing. Applicant's

claims that he was entitled to a sentence reduction are based on information known at the time of the plea. Solicitor Perry's testimony that he took Applicant's actions with the jail into consideration at the time of the plea is persuasive. It seems that if Applicant provided the State with favorable testimony in the death penalty case, then Solicitor Perry would have moved to reduce the sentence. No such testimony or information was given after sentencing.

Second, Judge Benjamin would not have reduced Applicant's sentence below the mandatory minimum of thirty (30) years. To go any lower would be to impose an illegal sentence. Mandatory minimum sentences are exactly that, mandatory minimum sentences. See State v. Taub, 336 S.C. 310, 314, 519 S.E.2d 797, 800 (App. 1999)(ruling that the mandatory nature of the statute in question was clear under the plain meaning the word mandatory). Taking into account the weight of evidence and the brutality of the two separate murders, this Court is not convinced Judge Benjamin would reduce Applicant's sentence. This allegation is denied and dismissed with prejudice.

Failure to move to Withdraw Plea

Finally, Applicant alleges Counsel was ineffective in failing to move to withdraw Applicant's guilty plea when the conditions of the sentence were not met.

Motions to withdraw a plea of guilty must be filed within ten (10) days of the entry of the plea. See State v. Campbell, 376 S.C. 212, 656 S.E.2d 371 (2008)(holding that the trial court does not retain authority to entertain a motion which is not made within ten (10) days of sentencing); State v. Warren, 392 S.C. 235, 708 S.E.2d 234 (App. 2011)(timely post-trial motion limits the court's authority to the issue raised in the motion, and any amendments to the motion raising additional issues are subject to the Rule 29 deadlines).

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Here, considering that Applicant alleges Solicitor Perry had a year to file the motion for sentence reduction, a proper motion could not have been made within the ten day time limits imposed by Rule 29, SCRCrimP. Judge Benjamin could not have properly heard a motion to withdraw the plea filed more than ten days after Applicant's guilty plea. This allegation is denied and dismissed.

All Other Allegations

As to any and all allegations that were raised and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594. (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCrP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf.

Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 18 day of May, 2016.


G. THOMAS COOPER, JR.
Presiding Judge

Cowab-A, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Brian F. Evans, #111059,
Applicant,

Case No. 2014-CP-28-946

v.

**MOTION TO ALTER/AMEND
JUDGMENT**

State of South Carolina,
Respondent.

Counsel for the Applicant received the Order of Dismissal regarding the Applicant's claims for Post-Conviction Relief on May 19, 2016. Pursuant to South Carolina Rule of Civil Procedure Rule 59(e) the Applicant hereby requests this Court Alter or Amend the current Judgement based upon the following argument:

The Applicant plead guilty to two counts of murder on October 14, 2014 with the assistance of his attorneys, Brian Shealey and Tivis Sutherland. The sentencing sheets provided for two negotiated thirty year sentences to be served concurrently and also contained the following provisions: "1. state wide protective custody and 2. downward departure." During the plea trial counsel stated that "Mr. Evans has in exchange for this plea relied specifically on negotiations outlined in the sentencing sheet." (Tr. 22, ll. 20-22). The Judge was aware of these terms when she signed the sentencing sheets and she said on the record "I will follow the negotiations and recommendations." (Tr. 23, ll. 8-9).

The State has argued that a guilty plea cannot have any qualifications or conditions attached to it. State v. Peppers, 346 S.C. 502, 551 S.E.2d 288 (2001). The Applicant would agree and insist this is precisely why the Applicant's plea and sentence in its current form should not stand. Peppers differs from the case at hand because that case speaks to instances where a

Defendant pleads guilty conditioned upon the right to appeal certain constitutional challenges. That is not what we have in the Applicant's case. However, the concept still applies that guilty pleas must be unconditional and otherwise should be considered "void." The State attempts to argue that the plea "was not based on any conditions" but rather was "a negotiated sentence with terms regarding placement in statewide protective custody and a motion for a sentence reduction." The State provides no authority to differentiate between a "term" and a "condition" – especially when the "terms" are things that are expected and promised to happen in the future after the plea. Accordingly, the Applicant would ask this Court not to adopt the State's argument.

Regardless, the Applicant asks this Court to grant his Post-Conviction Relief action based on the fact that his guilty plea was involuntary. A defendant who pleads guilty upon the advice of counsel may attack the voluntary and intelligent character of the guilty plea only by showing the advice he received from counsel was not within the range of competence demanded of attorneys in criminal cases. Carter v. State, 329 S.C. 355, 495 S.E.2d 773 (1998). During trial Brian Shealey testified that his advice to Evans was that the plea agreement "guaranteed" that the Applicant would be placed in statewide protective custody and that the State would file a Motion for a reduced sentence. During the plea Shealey informed the Judge that "Mr. Evans has in exchange for this plea relied specifically on negotiations outlined in the sentencing sheet." TT. 22, lines 17-25. There was nothing offered by the State which meaningfully challenged the credibility of the witnesses in regard to the Applicant's reliance on advice of counsel. The transcript backs up the testimony of the witnesses. This Court should find that the Applicant reasonably and determinately relied on the advice of counsel regarding the notations or "terms" written on the sentencing sheet in his decision to plead guilty and forego his right to a jury trial.

Counsel's advice to his client that admission into statewide-protective custody would be "guaranteed" as a court order was unreasonable. The Circuit Court "does not have the authority to dictate to the SCDC where an inmate should be housed. In South Carolina, the authority to determine where an inmate is housed is vested in the Department of Corrections." Skipper v. SCDC, 370 S.C. 267, 273 (Ct. App 2006) *citing* §24-3-30(A) *and also* S.C. Const. art. XII, §2. Applicant agrees with the State that classification status in the Department of Corrections is not something that the Court can order, and therefore not something that can be made a part of plea negotiations. Counsel's advice to the Applicant that this was an enforceable part of his plea negotiations was erroneous advice. Further, counsel's admitted failure to advise the Applicant that his classification in statewide protective custody could be temporary and was not mandatory was also unreasonable. The Applicant's reliance on counsel's advice and lack of clarification in deciding to plea calls into question the voluntariness of his plea in its entirety.

Regarding the "term" of the plea that a motion under §17-25-65 for a reduction of sentence for substantial assistance to the state would be filed by the State, this Court should find that the advice of counsel to rely on this term was also unreasonable and fell below the range of competence required in criminal cases. If the Court believes that this "term" was based on the possibility that the Applicant would testify in a future trial, then the Court should find that it was improper for the State to make this a part of the plea negotiations. Further, the Solicitor testified that he was going to take the position that a Judge could not grant a sentence of less than thirty years for murder on a motion under §17-25-65. According to the Solicitor's version of the facts, the notation on the sentencing sheet was an improper illusory promise and a meaningless inducement to get the Applicant to plead guilty based on a false hope of reward. If defense counsel had advised client to rely on such an empty sentiment by the State it would clearly have been unreasonable advice.

In contrast, if the Court were to believe the position of defense counsel and the Applicant, that the motion under §17-25-65 would have been based on the Applicant's assistance to security staff at the jail, then defense counsel gave the Applicant incorrect legal advice in informing him that he could be eligible for a reduced sentence. Code section §17-25-65(A) allows the court to reduce a sentence if the defendant provided substantial assistance in a prosecution or provided aid to a corrections employee if these things are done after sentencing. Code section §17-25-65(B) allows the court to reduce a sentence for new information or acts done to assist correctional employees more than one year after sentencing. No provision in this statute allows a Court to reduce a sentence based on acts that occurred before sentencing. Therefore, the advice to the Applicant by Shealey and Sutherland that he may be eligible for a time reduction was incorrect, and accordingly, the attempt to make the State promise to file the Motion as a part of the plea negotiations was meaningless.

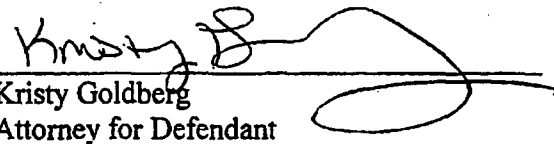
Regardless of which factual scenario described above is true, this Court should find that the defendant's plea was induced by erroneous information and advice and therefore rendered involuntary. But for the erroneous advice the defendant would not have plead guilty and instead would have insisted on going to trial. In this matter at hand, the defendant's reliance on this information in deciding to plead guilty justifies reversal of his guilty plea. See, Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001).

Finally, this Court should reject the State's contention that the Applicant was not credible in testifying that he would have gone to trial if he was not offered these "terms." Applicant and trial counsel both testified that this case was prepared as a trial since the beginning and several experts had been retained and consulted in preparation for trial. Trial counsel testified that he had prepared defenses to assert at trial and that the Applicant had not discussed ever discussed wanting to plea until the conversations about protective custody and sentence reductions began

to take place.

As to the Applicant's remaining claims not addressed in this Motion, Applicant asserts that all allegations offered in his Post-Conviction Relief application and during the hearing were valid claims for Post-Conviction Relief that were sufficiently addressed factually on the record and argued in the Applicant's proposed order submitted to the Court. Applicant does not have any additional argument but wishes to preserve all arguments previously made.

Based on all of the foregoing, this Court should find and conclude that the Applicant has established constitutional deprivations that would require this court to grant his application. Regarding the Applicant's other allegations not addressed in this motion,


Kristy Goldberg
Attorney for Defendant

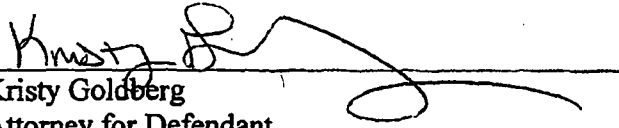
Kristy Goldberg
Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 303
Columbia, SC 29201
803-667-6633
803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 20th day of May, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	DOCKET NO.: 2014-CP-28-946
	)	
BRIAN EVANS, SCDC # 111059,	)	
SCDC # 347471	)	
Applicant,	)	
v.	)	
	)	CERTIFICATE OF SERVICE
STATE OF SOUTH CAROLINA,	)	
Respondent,	)	

I certify that on this date I served the Motion to Alter/Amend Judgment in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.


 Kristy Goldberg
 Attorney for Defendant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 303
 Columbia, SC 29201
 803-667-6633
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 20TH day of May, 2016

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

2016 JUL 22

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Brian F. Evans, #111059,

2014-CP-28-0946

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND
JUDGMENT**

This matter comes before the Court by way of Applicant's Motion to Alter or Amend the Judgment pursuant to Rule 59(e), SCRCF. Specifically, Plaintiff asks this Court to reconsider its Order of Dismissal filed May 18, 2016.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Accordingly, this Court hereby **DENIES** Plaintiff's Motion under Rule 59(e), SCRCF, to reconsider this Court's Order filed May 18, 2016. Furthermore, pursuant to Rule 59(f), SCRCF, the Court is of the opinion that oral argument is not necessary.

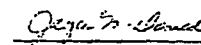
IT IS SO ORDERED.


G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

Columbia, South Carolina

July 20, 2016

ATTEST True, Correct & Certified
Copy of Original on File in this
Court


Clerk of Court Kershaw County

WITNESSES

(S) J Dill - Kershaw County Sheriff

ARREST WARRANT NUMBER

M098874

ACTION OF GRAND JURY

TRUE BILL

William Morris
Foreperson of Grand Jury
Date:

SEP 12 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-28-0110

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2011

K96

**THE STATE
vs.**

Brian Franklin Evans

AMENDED
**Indictment for
MURDER**

SC Code: **16-03-0010**
CDR Code: **0116**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
2012 SEP 12 PM 2:29
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Olego P. ...
Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

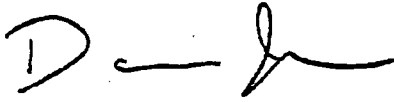
AMENDED INDICTMENT

At a Court of General Sessions, convened on FEBRUARY 16, 2011, the
Grand Jurors of Kershaw County present upon their oath:

MURDER

That Brian Franklin Evans did in Kershaw County, on or about January 23, 2011, willfully, feloniously, and intentionally kill the victim, JERRY GEIGER, with malice aforethought, either express or implied, by means of STRIKING VICTIM IN THE HEAD WITH BLUNT OBJECT AND SHOOTING HIM, and the victim did die as a proximate result thereof on or about BETWEEN JANUARY 23, 2011 AND FEBRUARY 2, 2011 in Kershaw County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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


DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Kershaw
STATE VS.

Brian Franklin Evans

AKA:

Race: WHITE Sex: M Age: 49

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Lancaster, SC 29720

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

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-28-0110

A/W#: M098874

Date of Offense: 1/23/2011

S.C. Code § : 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

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

ATTEST:

Brett

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE nine hundred eighty four
☒ 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. 98 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ 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	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender Fund

Other:

Referral to State wide
Protective Custody at DOC
per plea negotiations☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation. Original on File in this

Clerk of Court Kershaw County

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2161
10-14-13

WITNESSES

(S) J Dill – Kershaw County Sheriff

ARREST WARRANT NUMBER

M098873

ACTION OF GRAND JURY

TRUE BILL

William Morris
Foreperson of Grand Jury
Date:

SEP 12 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-28-0111

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2011

K96

THE STATE
vs.

Brian Franklin Evans

AMENDED
Indictment for
MURDER

SC Code: 16-03-0010
CDR Code: 0116

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
2012 SEP 12 PM 2:29
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Clara S. Williams
Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

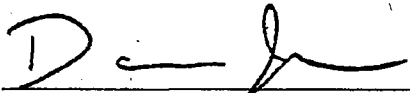
AMENDED INDICTMENT

At a Court of General Sessions, convened on FEBRUARY 16, 2011, the
Grand Jurors of Kershaw County present upon their oath:

MURDER

That Brian Franklin Evans did in Kershaw County, on or about December 16, 2010, willfully, feloniously, and intentionally kill the victim, ELIZABETH EVANS , with malice aforethought, either express or implied, by means of STRANGULATION, and the victim did die as a proximate result thereof on or about BETWEEN DECEMBER 16, 2010 AND FEBRUARY 2, 2011 in Kershaw County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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


DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Kershaw
 STATE VS.
Brian Franklin Evans

AKA:

Race: WHITE Sex: M Age: 49DOB: [REDACTED] SS# [REDACTED]

Address:

City, State, Zip: Lancaster, SC 29720DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

INDICTMENT/CASE#: 2011-GS-28-0111A/W#: M098873Date of Offense: 12/16/2010S.C. Code § : 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC 30 yrs w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BrettSC Bar# 6991Defendant Brian EvansAttorney for Defendant [REDACTED]SC Bar# 72467WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed — yearsand/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or paymentof \$ —; 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 and☒ 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. 90 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ — plus 20% fee: \$ —

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
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Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Jeanette McBride/c
P. Campo

PTUP

— days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. —May serve W/E beginning —Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ — beginning —\$ — paid to Public Defender Fund

Other:

Referred to State Wide
probation
per plan
per plan

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation of Court Kershaw CountyPresiding Judge 113Judge Code: 2161Sentence Date: 10-14-13