

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

TARUS TRAMAIN HENRY, SR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000847

APPENDIX

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1 Q Do you have any other children?

2 A By her?

3 Q Any other children at all?

4 A Yes, I do.

5 Q And what is that child's name?

6 A [REDACTED] Minor 2 [REDACTED]

7 Q How old is he?

8 A Five.

9 Q All of you live together; is that correct at one?

10 A At the time, yes.

11 Q And where were you living?

12 A [REDACTED] [REDACTED] apartments [REDACTED].

13 THE COURT: Mr. Henry, you got to give me a little
14 more volume now. First and foremost, we got to take down
15 every single word you say and it's important to the jury
16 here. Please will you give me little more volume, please.

17 THE DEFENDANT: All right.

18 BY MS. PARROTT:

19 Q How old are you, sir?

20 A Twenty-seven.

21 Q And have you always lived in South Carolina?

22 A No.

23 Q Tell me a little bit about your background then?

24 Where have you lived?

25 A Since birth?

1 Q Yes.

2 A From the age of 2 'til 15, Baltimore, Maryland, from
3 16 to 17 Mullins, from 17 to 23 Bennettsville and
4 currently Florence.

5 Q Have you had any health problems as you have grown
6 up?

7 A Yes.

8 Q What have those been?

9 A I had seizures, diabetes, mental illness.

10 Q What kind of mental illnesses do you recall having
11 been diagnose with in the past?

12 A Psychosis and schizophrenia.

13 Q And now bipolar disorder recently?

14 A Yes.

15 Q What kind of medications have you taken?

16 A Zoloft, Geodone. For the mental illness?

17 Q Yes.

18 A Zoloft, Geodon, Trazodone, Seroquel.

19 Q Are you currently on medication?

20 A Yes, I am.

21 Q What medication are you on now?

22 A Seroquel 300 milligrams.

23 Q When did you start taking that?

24 A November '08.

25 Q While you been down at the detention center?

1 A While I was institutionalize in Columbia.

2 Q Tell me about that? How did that happen, do you
3 know?

4 A Being evaluated?

5 Q How did you get to Columbia in November, do you know?

6 A I was transported by the sheriff department.

7 Q And why were you taken?

8 A Judicial admission.

9 Q Where did you go for treatment?

10 A Columbia Care Center in Columbia, South Carolina.

11 Q How long did you stay there?

12 A From the 25th of November to February the 9th.

13 Q February the 9th of 2009?

14 A That's correct.

15 Q And what kind of treatments did you receive while you
16 were there?

17 A Anger management, medication and evaluation of my
18 behavior.

19 Q Did they help regulate your medication?

20 A Yes. I also receive treatment for my blood pressure,
21 I did not know I had blood pressure problems until I got
22 there.

23 Q You mentioned previously that you've had some
24 diabetic problems. Are those now gone?

25 A I'm still diabetic, but it's under control based on

1 diet and exercise.

2 Q So is that the extent of the medical problems that
3 you had?

4 A And I had a brain surgery.

5 Q Tell me about your brain surgery?

6 A The surgery?

7 Q Tell me about the whole illness and what was done?

8 A What was done to take care of it?

9 Q Uh-huh -- yes, I'm sorry.

10 A I was put under anesthesia gas and they operated and
11 it was successful.

12 Q All right. But what was it to treat? What was it to
13 treat?

14 A To remove the right temporal lobe.

15 Q Why did they have to take the right temporal lobe out
16 of your brain?

17 A It was a scar tissue that was causing the seizures.

18 Q So they did remove part of your brain to help get rid
19 of seizures that you were suffering?

20 A Yes.

21 Q How old were you when that happened?

22 A 17.

23 Q And have you had any seizures since then?

24 A No.

25 Q Okay. Now, does that cover all of your medical

1 history?

2 A Yes.

3 Q I'm sorry.

4 A Yes.

5 Q Have you ever had any special education classes?

6 A Yes, I did.

7 Q How many or how many years?

8 A I can't recall, but most of my life because of the
9 seizures, which cause me to stutter and caused me to be
10 picked on by the kids because I was different. And I had
11 to fight for respect, so therefore I stayed in trouble. I
12 was in self-contained classes, special ed class.

13 Q And you're saying that was most of your classes?

14 A Yes, up until graduation.

15 Q But you did graduate from high school?

16 A Yes, with a county certificate and I later went back
17 for my GED.

18 Q So they didn't actually give you a diploma whenever
19 you graduated then, they give you some sort of
20 certificate?

21 A Certificate, yes.

22 Q Were you ever diagnosed as having any kind of
23 learning disorder?

24 A Yes.

25 Q What was it?

1 A Reading and learning and speaking.

2 Q I'm sorry I didn't understand you reading, learning
3 and what?

4 A And speaking?

5 Q Speaking?

6 A I had a reading disability and a speech disability.
7 Because of the epilepsy, I stuttered real bad and I
8 couldn't retain information.

9 Q Okay. Who were you living with when all of this was
10 being taken care of?

11 A As a child to now?

12 Q Uh-huh.

13 A My mother.

14 Q But you have been married; correct?

15 A Yes.

16 Q And in fact what you stated was you married
17 Mrs. Henry or Miss Parker; is that correct?

18 A That's correct.

19 Q Were you happy having a child with her?

20 A Yes, at that time, yes.

21 Q And do you love your children?

22 A I do.

23 Q Would you ever want to hurt your children?

24 A No.

25 Q Would you ever abuse your children?

1 A No.

2 Q Would you ever neglect your children?

3 A No.

4 Q Would allow anyone to do so?

5 A No.

6 Q Did you take care of your children and by that I mean
7 feed them, clothe them, bathe them and take them to
8 doctors' appointments?

9 A Yes, I was not the only one to clothe them, but, yes,
10 I did assist.

11 Q Okay. And all that -- you helped take care of your
12 children?

13 A Yes.

14 Q You were an active father then in their lives?

15 A I was, yes.

16 Q You had car seats in your car; is that correct?

17 A That's correct.

18 Q Did you use them?

19 A Yes, it was number one priority before the vehicle
20 starts.

21 Q Is what?

22 A Make sure the kids were properly restraint and myself
23 and whoever else was in the car.

24 Q Let me -- let's go ahead go to June 23rd?

25 A Okay.

1 Q You remember living at [REDACTED] apartments on
2 that day; is that correct?

3 A I do.

4 Q Tell me what you recall about that day then?

5 A On that day, me and my former wife had a discussion
6 about how to get the rent paid. I made arrangements with
7 Judge Larry Cooper, he gave me until the evening of the
8 third day I got paid on to pay it. I was off from work,
9 provide for my family, which is my character that's what I
10 do. And it was our arrangement me and Miss Parker that I
11 was going to take care of that which came up to about --
12 everything that I had except for \$30, which would have
13 been a tank of gas. But she wanted to maybe try and
14 another place that would be cheaper, but in my mind, that
15 was not logical to do so because that would be a bad
16 representation to leave a debt that you owe to move
17 somewhere else. So I wanted to man up and take care of
18 that responsibility where I was at rather than run to
19 another location. So by me refusing to yield to her and
20 make my credit bad going to place to place to place, I
21 decided to stay. And, I guess, she did not want to. She
22 wanted to bailout. Rather than get rid of all the money,
23 she wanted to have some money rather than give it all
24 away, so that was where the first difference came from.

25 Q The first difficulty?

1 A Yeah, yes.

2 Q Okay. Do you know that was still on June 23rd?

3 A June 23rd.

4 Q Can you tell me what time of day that might have
5 been?

6 A I didn't see any time, but it was earlier it had to
7 be before ten o'clock.

8 Q Had you already been to magistrate's court when this
9 discussion was taken place?

10 A I did. And I got a notary from -- a notary I
11 presented to Chief Cooper.

12 Q What happened then with this discussion then about
13 money and the apartment?

14 A It was society and it ended, but she wanted to go to
15 job service on Evans Street next to King Cadillac. I took
16 her there. It was little, no discussion about rather the
17 child at that time to go to her mother house. Discussion
18 from home, but she wanted to go put in for a job. I was
19 all for it, so I took her there. But once we got there,
20 she didn't want to depart from the car to go in. It was
21 then that she stated that she wanted our daughter to go
22 her mother house. And I objected to it because of her
23 previous actions when she was ill previously the same
24 month, which I think was the 13th of that month.

25 Q But all of this is taking place at job service on

1 Evans Street?

2 A That's in the parking lot.

3 Q And let me make sure I understood you. You're
4 stating there wasn't an argument about whether or not she
5 could go to her mom's, it was about the job?

6 A Say that again?

7 Q You were saying -- y'all didn't argue about her mom,
8 it was about the job?

9 A No, we didn't argue about the job. I was all for her
10 going for a job.

11 Q Okay, I'm sorry didn't mean to misstate. All right.
12 What happens then?

13 A The argument was about our daughter going to her
14 mother before she finish her Albuterol, which was for her
15 inner ear infection which was backed up with milk and I
16 think the doctor said wax.

17 Q Okay. What happened next?

18 A She objected and was offended that I wanted to spend
19 time with the kids while she go in. She wanted our
20 daughter to go to her mother house because, I guess,
21 she -- I don't know why she didn't, you know, didn't -- I
22 guess, didn't trust me with the children or she just felt
23 that her mother needed sometime with her daughter. But I
24 objected because of what previously happen, I had
25 difference of opinion.

1 Q How was this resolved?

2 A She refuse to go to job service and requested slash
3 demanded to go back home, so I left and went back home.

4 Q With everyone still in the car?

5 A Yes.

6 Q You get back to the house then, do you have more
7 arguments?

8 A Not at that time not until we get inside.

9 Q Tell me about that?

10 A She gets inside, I'm asking her what's wrong, why
11 didn't you go for the job. She states when it comes to
12 TJ, you are very picky, very funny about him. And when it
13 comes to **Minor 1**, I'm the father -- I forgot how she
14 stated it, it was over a year ago, but she said -- I think
15 she said I'm the father, I'm the mother you had no say so
16 when it come to **Minor 1**. And that was it.

17 Q And how did you feel when you heard that?

18 A I felt bad. I felt disrespected because this suppose
19 to be your wife and you suppose to be a family and you
20 suppose to have equal rights to your children. And the
21 fact that she was saying that I couldn't understand where
22 she was coming from.

23 Q So again, how did this conversation resolve itself?

24 A It resulted in her throwing a tantrum, which was
25 usually for her. She threw a tantrum and she storm around

1 the house and went down the hall. I didn't think anything
2 of it.

3 Q So what did you do next then?

4 A I looked at my children and I told TJ go to his room.
5 He said he had to go to the restroom, so he went to the
6 restroom and he went to his room. And **Minor 1** was sitting
7 in the car seat.

8 Q Where is **Minor 1** in the car seat?

9 A By the desk, the computer desk to the left.

10 Q Up in the front of the apartment?

11 A Yes.

12 Q So what were you doing at this time now?

13 A Going to see what was wrong with my wife, why didn't
14 she want to go for the job? Why did she get so upset
15 about daughter not going to her mother house? Why was it
16 such an issue?

17 Q Did you follow her down the hall then?

18 A Yes.

19 Q Again what happens next?

20 A I get to the room, she's crying, she's yelling. Look
21 like she need some space, so I leave back out the room and
22 go back to make sure that **Minor 1** was okay because I
23 didn't want to leave her alone.

24 Q I'm sorry. What was she yelling at you whenever she
25 was crying and everything?

1 A Money comes in, money goes out. It never hits my
2 hand. I don't ever go nowhere. It's the same old -- can
3 I say what she said?

4 Q Yeah.

5 A It's the same old shit every month. I never get
6 nothing and I'm tired of it.

7 Q And what did you take that to mean?

8 A I felt like I was used. It wasn't about love, it was
9 more about money is what came to my mind that day.

10 Q Y'all were having money problems, weren't you?

11 A Yes, but I was the only provider there.

12 Q I'm sorry what?

13 A I was the only provider. It would have been better
14 if we both was doing the effort. I was doing all the
15 work, work versus what I want, not going to do anything.

16 Q But you left her and walk back up the hall; is that
17 correct?

18 A Yes.

19 Q And what did you do next?

20 A I was going to make a bottle of milk for the baby
21 because the baby, I guess, she was hungry, but that's when
22 I was attacked.

23 Q I'm sorry what did you just state?

24 A That's when I was attacked.

25 Q What do you mean by you were attacked?

1 A I was attacked by Miss Parker by the -- with the
2 machete.

3 Q How did this occur?

4 A She never done this before, so I didn't take it
5 seriously, took it as a joke. I reach for it, I was cut
6 and it escalated.

7 Q Who's machete was it?

8 A It was my dead stepfather's. I kept it as a
9 remembrance of him.

10 Q How long had you had it?

11 A Since 1996 when he died.

12 Q Where did you keep it?

13 A I kept it in the -- what's that -- that room that you
14 put the filters in to the right up the hall.

15 Q Like a utility closet?

16 A Yeah, utility closet.

17 Q Who all knew you had it that was in the house?

18 A Who?

19 Q Yes.

20 A Say it again?

21 Q Who knew you had it in that house?

22 A She knew and I knew.

23 Q The four year old had never touched it, had he?

24 A No.

25 Q But you both knew where it was kept?

1 A Yes.

2 Q All right. How -- where were you standing when you
3 say she excuse me -- attacked you?

4 A I was standing to the -- like if you come in the door
5 right before you get to that first entrance to the left,
6 you come into the hallway.

7 Q Hold on one second then. All right. You telling me
8 if you come in the front door and you get to the hallway?

9 A Yeah.

10 Q Before you go to the left, it's right there before
11 the kitchen, right in this doorway?

12 A Yeah, right there, right where your hand is.

13 Q All right. So kind of in the doorway to the hall?

14 A No not the doorway. Put your hand on it, go down
15 some, right there.

16 Q All right. So then kind of beside the utility closet
17 wall would that be; correct?

18 A Where the circle is.

19 Q Okay. And did you have your back to her?

20 A No, I was facing her. I was -- again, I was headed
21 towards the kitchen, which would have been in that process
22 and I was stopped by her.

23 Q All right. You stated that she came after you with
24 it, but you were able to stop her?

25 A Catch it, yes.

1 Q How did you catch it?

2 A You want me to demonstrate it, I'll stand.

3 Q You can demonstrate from there at your seat I
4 believe; correct?

5 A Yes.

6 Q Go ahead and demonstrate then?

7 A Like this.

8 Q So you held up your left -- if I'm correct, you held
9 up your left hand?

10 A Yes.

11 Q And caught ---

12 A It was cut, yes.

13 Q Okay. Now, you just closed your hand as well, so
14 that's what I'm trying to make sure I understand. You had
15 it open at one point, but you also closed it onto the
16 machete?

17 A Yes, I didn't think the impact was that great.
18 Again, she never done this before, I took it as a front.
19 I was simply trying to take it and toss it out of her
20 hand, but that was not so.

21 Q Were y'all screaming at one another during this time?

22 A No.

23 Q It was just a surprise attack?

24 A Yes, she said I had enough and there's nothing to
25 talk about.

1 Q What was the injury to you that you received?

2 A My hand -- my index finger were bleeding. At the
3 time, I got cut, I guess my blood pressure was up and my
4 blood was very warm. I was bleeding rapidly, very fast.
5 So I began to grab a rag to wrap my hand up to keep from
6 bleeding everywhere.

7 Q Did you receive one more or cuts to your hand?

8 A It was about six or seven cuts to my hand.

9 Q Did you receive medical treatment for it?

10 A I did.

11 Q And what was that treatment?

12 A I receive sutures for the two deep wounds and the
13 rest of them, I receive octaband (sic) and some kind of
14 creme.

15 Q Do you know exactly how deep or what the nature of
16 the injury was?

17 A At that time, no.

18 Q Do you know now?

19 A Yes, from on my arm, yes.

20 Q Okay. So you have a rag then around your hand at the
21 time right after she hits you?

22 A Yes.

23 Q What happens next?

24 A I reach for it in defense and that was the part that
25 I told everyone I had black out.

1 Q You had a black out?

2 A Yes, I don't recall what I did with the machete once
3 I got it.

4 Q You had the machete in your hand, but then have no
5 recollection of what occurs next; is that correct?

6 A Yes.

7 Q What is the next memory that you have?

8 A My son was calling me, Daddy. And I look to my left,
9 he was in the hall calling me. And I looked in my hand
10 and I had the machete and it had blood on it. And I
11 looked to see where the blood came from and Miss Parker
12 was laying to my right on the floor.

13 Q And then what did you do?

14 A I said, oh, shit what did I do. I start panicking.
15 I was afraid of what I was seeing. It terrified me, I was
16 shaking. And to the best of my knowledge, I was trying to
17 come to terms with what had just happened. And I ask her
18 what happened and she said, Tarus, I need help. Tarus,
19 I'm thirsty. So at this point, I'm helping her. I'm
20 trying to come to terms what just took place. At the same
21 time, I'm helping her.

22 Q Where are the children at this time?

23 A I told my son to go to the room, but he tells me he
24 got's to pee. So he goes and he pee and then I take him to
25 his room. **Minor 1** is still in the car seat carrier

1 sitting in the location I told you earlier.

2 Q By the front door?

3 A Not by the front door by the -- to the left where the
4 computer desk is from the table.

5 Q But in the living room at the front of the apartment?

6 A Yes, about maybe eight feet away from me.

7 Q I'm sorry about eight feet away from where this has
8 happened?

9 A Yes.

10 Q What did you do next?

11 A I then was helping Miss Parker.

12 Q What do you mean by helping her?

13 A Whatever she said that's what I did. She said -- she
14 told me she was cold, so I turned on the heat. I also
15 turned on the oven because that -- she said she was cold,
16 I was trying to warm her up. Based on what I saw, that's
17 -- at my state of mind that's what I did. And I also got
18 her some towels that she asked for.

19 Q You -- you only have two hands; correct?

20 A Correct.

21 Q So what had you done with the machete, so that you
22 could perform all these other acts?

23 A When I seen it in my hand after my son call me,
24 daddy, daddy, I tossed it, tossed it on the floor in front
25 of me a little bit to the left.

1 Q Was that near your daughter?

2 A No, this was -- my daughter was here and this was
3 here.

4 Q So there was no chance that that would have?

5 A Hit her, no.

6 Q So you given her water. You gotten her I'm sorry --
7 you've turned up the heat and you also from what you're
8 saying turned on the oven?

9 A Yeah, cause she told me she felt like she was going
10 into shock.

11 Q All right. Had you called 911?

12 A At the time, I was too shock what I was seeing to
13 even think reasonably to call 911. At that time, I was
14 listening to what she was saying.

15 Q What else did you do for her?

16 A He said she was thirsty. I went and got pink -- the
17 pink basin pan, which was shown on one of the exhibits
18 filled with water, and also got a glass and brought to
19 her.

20 Q Okay. But what else? We covered that you had gotten
21 her some water. What else did you do?

22 A She ask me to wash the blood out of her hair, which I
23 did in a basin pan. She said she could not see.

24 Q What did you do next?

25 A I then tried to figure out how I was going to get her

1 up and get her out of there without causing her more
2 damage and that's what took me about maybe five minutes.
3 And I couldn't come up with no way to help her.

4 Q Did you do anything with her clothing?

5 A She told me that she was hot and that she could not
6 breath. I guess, her pants were tight. Maybe, she
7 swollen, I don't know. She said she couldn't breath and
8 she ask me to help her take them off.

9 Q But this was after you had already turned the heat
10 up?

11 A Yes.

12 Q So did you help her take them off?

13 A I did.

14 Q Okay. Please continue what were you doing then to
15 help her?

16 A She unbutton it and I pulled with caution because as
17 I was pulling she was moaning and groaning, I guess she
18 was hurting. So I was kind of afraid to assist her, but I
19 did assist her in taking them off.

20 Q What did you do next?

21 A I got a red -- some kind of camping bag, you know,
22 what I'm talking about?

23 Q I believe so, it's something that was in the
24 pictures?

25 A Yes.

1 Q Okay.

2 A To try to put her on. I was going to try to maybe
3 somehow get her downstairs as fast as I could.

4 Q Did you ever leave her alone?

5 A Yes, I went out with the children so that, you know,
6 they wouldn't see what I'm seeing, it's a horrific scene.
7 I took them and put them in the car, I pulled the car up.
8 I had the AC on. And I came in and when I was coming up,
9 she was coming down. I ran past her because of how she
10 looked and I got the blanket which she stated before
11 earlier that her dead grandfather gave to her and I cover
12 her and assisted her to the car. At the time coming down,
13 I ran into my neighbor Scott.

14 Q Did you have a conversation with him?

15 A He ask me what was going on. And again, this is a
16 restatement to keep him out the business to get her to the
17 hospital fast as possible. I told him I did not know,
18 maybe somebody broke in because I didn't want no
19 confrontation between me and him when I'm trying to help
20 her.

21 Q Before you got her downstairs or at any time during
22 this, did you change clothes?

23 A Yes, I did. At the time, and that's what I forgot to
24 tell you. At the time that I assisted her in taking off
25 her pants, which was covered in blood that's when it came

1 to me that I needed to do the same for myself. I need to
2 change my clothes, so that not only -- it will slow down
3 getting her help that my children would not see this and I
4 didn't want to terrify them what was on me. So I wanted
5 to protect them by not looking at this, so, yes, I did
6 change my clothes, but, no, I did not try to hide it, I
7 left it there where it was.

8 Q Once you get her to the car, did you go back up into
9 the apartment?

10 A I can't remember.

11 Q Do you remember seeing fire from the apartment or
12 smoke?

13 A Yes, I did.

14 Q Do you know anything about that?

15 A At that time, no.

16 Q What do you know now?

17 A During the interrogation, I falsely admitted to
18 setting fire under extreme pressure from Detective Bert
19 Turner and Calvin, whatever his last name is, Timmons.

20 Q Was there another investigator present in that room?

21 A Yes, Mrs. Streett.

22 Q Okay. And you're saying that you falsely admitted to
23 the fire?

24 A Yes, because I was tired of going through all the
25 threats, all the discussions. I was tired of them not

1 believing the truth, so they told me -- basically tell
2 them what they want to hear not what happened. Each time
3 I tried to explain what happened, they cut me off. They
4 want let me tell my story. And I can't remember starting
5 from what happened that day. I had to go back to where it
6 begin from, that's how my mind operates. My mind is
7 different. So by them cutting me off and saying it's good
8 from today, I had difficulty remembering.

9 Q So is it your contention that you now have no idea
10 how that fire was started?

11 A That's correct.

12 Q So you now have her in the car; is that correct?

13 A That's correct.

14 Q Where did you proceed to go to at that time?

15 A At that time, I took what appeared to me to be the
16 fastest route to McLeod without going through too many
17 lights and too many traffic to try to get her there fast
18 as possible. I came out of the apartment complex, which I
19 forgot -- I think that's Old Marion Highway, I'm not sure.
20 When you come out of the development, the gas station to
21 your right I did made a left and went down to Price Road,
22 which is branch off to the left of that church and go to
23 the end. I made another left and came out to the
24 intersection, which make a right lead to 95. I proceeded
25 across that light and came to what is called I think

1 Quinby, North Florence, came past -- is that Wilson High
2 School or what's that?

3 Q You went up Oakland Avenue?

4 A Yeah, what was that school over there, what's where I
5 went.

6 Q Wilson High School.

7 A Proceed to McLeod.

8 Q What did you do then?

9 A After I got to McLeod?

10 Q Yes.

11 A I got out in panic state. At this time, I had on my
12 leather gloves to keep from bleeding and to try to keep
13 from infection because I was in a lot of pain from those
14 cuts.

15 Q You already had put those on?

16 A I put those on before I started the car, that was to
17 keep from getting blood everywhere, to keep from getting
18 infection. I was afraid of what might happen to my hand
19 if I was to get infected. So to best of my ability at
20 that time, putting that on was in beneficial to me. But
21 once I got to McLeod, I went inside and the security
22 officer I seen sitting behind the desk I told him my wife
23 was hurt very badly and that she needed a wheelchair. And
24 then I came back out and open the door. And when I tried
25 to lift her, she scream and I was afraid to touch her, so

1 I let him get her because I was afraid to touch her
2 because of what she was saying.

3 Q So he put her into the wheelchair or did you put her
4 into the wheelchair?

5 A He did. I couldn't do it.

6 Q Who close the car door?

7 A I did.

8 Q Who wheeled her into the ER?

9 A He did. I gave him her pocketbook and he took her
10 in.

11 Q Why did you do that?

12 A Because I had other priorities. She was priority
13 number one. Priority number two was our children get them
14 to a safe location. Not only a safe location but to
15 someone that not only cares about the child that their
16 daughter gave birth to, but cares about both children
17 equally, which was my mother. And I at that time, I
18 didn't understand that it was 11 o'clock and I went by my
19 mother's residence and I did not find her there. Then it
20 came to me to look at the time which was about 11:24. And
21 I then proceeded to her job. My time may have been off,
22 but that was on my car radio. And I then proceeded to Lee
23 County Corrections to get the children to my mother before
24 I go get treatment.

25 Q Did you tell the security guard anything at McLeod

1 whenever you were leaving her there?

2 A To the best of my knowledge, I told him that she was
3 hurt.

4 Q Did you talk to anybody in the ER about her?

5 A No, I didn't go into the -- as far as I went was to
6 the security desk and back out.

7 Q And again that was because the children were in the
8 car?

9 A Yes, if the children was not in the car, I would have
10 stayed there and been treated as well.

11 Q So you then proceeded to drive where?

12 A Came out McLeod made a right ---

13 Q I don't need it that specific. Where were you headed
14 for at that time?

15 A To Lee County to my mother's job.

16 Q And where was your mother employed?

17 A Lee County Department of Corrections.

18 Q Did you make it there?

19 A Yes, I did.

20 Q Did you met with your mother?

21 A Yes, I did after about maybe 20 minutes of waiting.

22 Q And the children were still in the car or did you
23 take them out?

24 A I had the children in with me.

25 Q What did you and your mother decide to do then?

1 A She being a good mother -- I was not going to run, I
2 was going to call after I get help. I just didn't want to
3 be in jail before I get treatment because I know how it is
4 any previous injuries that you get the jail don't care,
5 you on your own. So I was trying to get myself help,
6 which is the last priority. Children was number two, I'm
7 number three. So while there, my mother stated it's not
8 best to run, which it was not my intention to do so, but
9 she stated it's not best to run. You need to get help and
10 then you need to turn yourself in. And I already had my
11 mind made up to do so, but my mother -- guess I'm a chip
12 off the block, we think alike.

13 Q So the first thing then on your mind is children are
14 safe, now it's time to get some help for me?

15 A Say that again, please?

16 Q What you then were thinking was that the children
17 were now safe, now it's time to get some help?

18 A Yes.

19 Q Where did you go?

20 A I took my car to my older brother's house, his
21 residence. Once I got there, nobody was there. I didn't
22 want my car to be abandoned, to be vandalized, so I
23 thought it would be safer at a relative's house while I go
24 to the hospital. I wasn't able to drive my hand was
25 starting to further up. So I went to my brother house and

1 drop the car off. His mother-in-law and father-in-law
2 came out and approach me to find out who I was. I told
3 them I was TT. Everybody on my father's side know me as
4 TT rather than Tarus because I'm the baby of the family,
5 that's their name for me, so I say TT and they immediately
6 knew who I was. And they told me that Linda and my
7 brother were both not home. They was at work. And she
8 called my brother on the cell phone. At that time, I
9 didn't think to call 911. I was worried about my health
10 now and my brother told me that the closest hospital for
11 me to go to to get treated before I lose too much blood,
12 which would have been in Kershaw County, which to me is
13 closer rather then going back to McLeod.

14 Q You were in Bishopville or outside of it?

15 A I was in Bishopville, yes.

16 Q Your brother actually lives in Bishopville or outside
17 of it?

18 A Well, whatever Exit 108 is, I'm not familiar with the
19 area.

20 Q All right. So upon your brother and mother's advice
21 you went to Kershaw County?

22 A Yes.

23 Q And what did you do there?

24 A I didn't went, my mother took me.

25 Q What did y'all do there?

1 A Once there, I proceeded to get help for -- well, I
2 waited to be seen. Once I was seen, I was getting
3 sutures. The nurses wanted to know what happened to me
4 and where was I from. I was going to tell the nurses
5 exactly what happened, but I was afraid of not getting
6 treated. I told them I was afraid of being treated -- how
7 you say with extreme prejudice after they know what
8 happened. So I didn't want them to do anything to cause
9 me harm while I'm getting sutured. I wanted to tell them
10 after the fact. Out of fear that, you know, the victim
11 being a female and she being a female working on me might
12 try to do harm to me. So out of fear for my safety, I
13 diluted them with untruth at first, but afterwards, I told
14 them what really happened.

15 Q So did you receive your treatment?

16 A I did. I receive part of my treatment, which was the
17 sutures. The other treatment that I needed was to go to
18 -- I think told me a -- what you call a bone doctor?

19 Q A what?

20 A An orthopedic.

21 Q An orthopedist?

22 A Yeah, I need to go to a orthopedist.

23 Q Was that -- I'm sorry go ahead.

24 THE COURT: Hold it one second, Counsel. You at
25 orthopedist.

1 MS. PARROTT: Yes, sir.

2 THE COURT: Tell her, Mrs. Clerk.

3 THE CLERK: I got in touch and she will go get your
4 child.

5 JUROR: Thank you.

6 THE COURT: All right, okay. Thank you.
7 Proceed.

8 MS. PARROTT: Thank you, sir.

9 BY MS. PARROTT:

10 Q Why were you being told to see an orthopedist?

11 A Because my tendon was severed, it was separated and
12 as you can see, I cannot straighten it like this.

13 Q And why -- is that what you contend is from your
14 injury?

15 A Yes, it is. I was bleeding the whole time from
16 Florence to there, so it's over an hour that I had been
17 loosing blood while I'm trying to provide safety for my
18 children.

19 Q Were your children there with you at the hospital or
20 were they somewhere else?

21 A They was with me at the hospital and so was my
22 mother.

23 Q And while you were back in the room getting medical
24 attention, where were the children?

25 A With my mother in the lobby. But ---

1 Q Go ahead.

2 A But I wanted to spend as much time as I could with my
3 children at that time.

4 Q Why is that?

5 A Again, after my son called me and I saw what happened
6 to Miss Parker, I knew that I was in trouble based on what
7 I seen. And I wanted to spend as much time as I can
8 because I felt like I'll be gone for a long time based on
9 what I seen. I was scared and I was very emotional.

10 Q When you were done getting your medical treatment,
11 were you then in the presence of law enforcement?

12 A No, it wasn't until I sign the discharge papers that
13 they was there and they detain me. They didn't give me a
14 chance to call, a chance to surrender. They just came and
15 detain me.

16 Q Okay. But at that time, law enforcement had come for
17 you?

18 A Yes, I was detained, yes. I was handcuff, maybe 30
19 seconds after I sign the discharge papers.

20 Q Do you know about what time of day it is?

21 A No, there was no clock in the room.

22 Q Did you then meet with an Investigator Timmons?

23 A Yes, I did at the Kershaw County police station.

24 Q So they had transported you from the hospital to the
25 police station?

1 A Yes.

2 Q And at that time what happened?

3 A At that time what happened to me or what happened all
4 together?

5 Q What happened all together?

6 A At that time, my children and my mother was with
7 someone investigators. I did not see where they was. I
8 wanted to hug my mother or see her before I leave, but
9 that wish was not granted because she was being
10 interviewed by people that I did not know at the time.
11 And I was handcuff and taken to the police station.

12 Q And then what occurred for you?

13 A I was -- to the best of my memory, I was -- I think I
14 was read my Miranda and I was ask for a statement. If I
15 can recall, it's over a year.

16 Q Okay, and that's fine.

17 A And my medication also cause me to have memory
18 problems.

19 Q What medication do you mean by that?

20 A The Seroquel.

21 Q That you're now taking?

22 A Yes.

23 Q Were on any medication at the time?

24 A No.

25 Q Have you been told previously that you need to be on

1 medication?

2 A By my former Dr. Kohn as long as I keep my stress
3 down, but now I realize that I need to be on it for the
4 rest of my life regardless of what Dr. Kohn said.

5 Q Who is it that's given you your Miranda warnings and
6 asking you for a statement?

7 A Detective Calvin Timmons.

8 Q Where is this happening?

9 A Either Kershaw -- whatever station that I was taken
10 to, I'm not sure where I was.

11 Q Camden police department?

12 A I never been there, I don't know.

13 Q That's fine. But it wasn't in Effingham?

14 A No.

15 Q And it was prior to your trip back to Effingham?

16 A That's correct.

17 Q Did you sit down with him at that time and give a
18 statement?

19 A I think the whole time I don't remember sitting down.
20 I remember standing. I'm not sure if they had a seat for
21 me to sit in.

22 Q Did he record a statement from you at that time?

23 A I'm not sure. Again, I was in a state of mind, I
24 have no recollection a hundred percent that day.

25 Q Okay. So do you know if you gave them a statement or

1 not?

2 A I know that I did give them a statement, but what we
3 talked about I cannot a hundred percent tell you.

4 Q What happens next?

5 A On the way coming back, I guess he's trying to gain
6 my trust or trying to manipulate me if what you call it,
7 say a lot of spoon feeding, come on man tell me the truth.
8 What I told him, I guess, it was too hard for him to
9 believe that I was unaware of what happened between the
10 time I was assaulted and my son talk to me. And the whole
11 time, he was trying to convince me to tell him about that
12 I wasn't in control of my actions, to man up and that what
13 I'm saying is not the truth.

14 Q Where did the intruder story come from?

15 A I cannot answer that. I guess in my temporary sanity
16 state, the person I was seeing possibly could have been
17 myself. I'm not sure.

18 Q But you told Investigator Timmons about that did you
19 not?

20 A I recall that much, yes.

21 Q Okay. Do you recall anything more specific about
22 your conversations with him while you were going back to
23 Effingham?

24 A He just keep talking about don't spoon feed me pieces
25 of information. I need you to tell me the whole truth and

1 that's impossible for me to do when I didn't know what was
2 going on. I couldn't do that.

3 Q Was there anybody else who was in the car with you?

4 A No, to tell him anything other than that would have
5 been a lie.

6 Q Okay. You arrive back at Effingham and what was the
7 next step for you?

8 A I was took to the interrogation room, not when I
9 first got there. When I first got there, I was processed,
10 fingerprinted only my right hand because my left hand was
11 sutured and bandaged. I was then stripped, sprayed. I
12 guess, procedure for lice or whatever when you first come
13 in, put in a holding cell. After several hours, I was --
14 well, not several hours after, but maybe half an hour or
15 two hours I was questioned and taken to interrogation
16 room.

17 Q And who did that?

18 A I'm not sure was it Timmons or Bert Turner, but a
19 officer took me.

20 Q Were you ever offered food or water or opportunity to
21 go to the restroom?

22 A I was not.

23 Q Were you ever told that they would take a break if
24 you ask for one?

25 A I was not.

1 Q Did you ask for any of those things?

2 A At the time, I was going through and it didn't come
3 to me fast. This was my first time going through this,
4 all this was new to me.

5 Q Describe you're saying you were confused. Tell me
6 more about -- were you confuse, were you upset tell me
7 more about what you're thinking?

8 A You referring to after I got locked up or at the time
9 of the incident at the house.

10 Q No, I'm talking about right now whenever you're
11 locked up and they're fixing to interrogate you?

12 A I was confused on what my rights were. Somethings I
13 hear, but I didn't comprehend.

14 Q Did you sign the sheets that they placed in front of
15 you?

16 A I did.

17 Q What did you do?

18 A Again, somethings I hear, and I don't comprehend.
19 They can be saying one thing. And during my time of my
20 illness, I can be interpreting another thing and that's
21 why I signed it.

22 Q Is this due to the learning disability you previously
23 attested to?

24 A Possibility, I'm not a professional, but it could be
25 a combination of both. But based on what I heard now, I

1 would not have sign that. I would have not have given a
2 statement.

3 Q Do you know how long you were in there with the
4 officers giving a statement?

5 A No.

6 Q You had a chance to review your statement, have you
7 not?

8 A Yes, I did.

9 Q Is your statement a correct statement as to what
10 occurred?

11 A No, it is not.

12 Q How is it wrong?

13 A I can't remember off my head cause I don't have it
14 before me, but some information that I seen was not
15 accurate.

16 Q You talk with them about an intruder too, did you
17 not?

18 A Yes.

19 Q Tell me why you told all three of them?

20 A Again, I could have been seeing myself.

21 Q Were you comfortable making the statement?

22 A At that time, I'm not sure. I was under a lot of
23 pressure by Mr. Bert Turner and Calvin.

24 Q Why do you say that?

25 A Because whenever I tried to give a statement to the

1 best of my knowledge and I have to go from beginning to
2 the end and not at the end -- they cut me off and they
3 throws me off track and causing me to have to rethink
4 things and it frustrate me. And I'm --- I always been
5 short patient, that's a problem also, I'm short patient.
6 It don't take much to push me over and go on over and over
7 again. I'm frustrated, I was hungry. I was stressed and
8 I was tired. And they just kept piling what they wanted
9 to hear, rather than what I got to say and that should be
10 in the statement where they keep cutting me off, just tell
11 us what happened today not what led up to it.

12 Q So what did you finally do?

13 A Gave them what they wanted to hear so I could get up
14 out of there is what I can recall.

15 Q And is that why you did it?

16 A Yes.

17 Q Is that the only reason why?

18 A Yes, because I was tired. I was being tortured.

19 Q What did you do then?

20 A After what the investigation?

21 Q After this interview was over, what did you do?

22 A They took me and finish booking me. Before that, I
23 believe I was crying. My voice change and they took me --
24 process me took me to a cell?

25 Q Okay. Do you know what time of day it was whenever

1 this was through?

2 A Probably about maybe five, six, seven somewhere long
3 in there. Again, I didn't have any time piece.

4 Q Did you lose track of time as how this day would
5 occur?

6 A When I was arrested, I don't have a watch. There was
7 no time piece where I was at and I wasn't really worrying
8 about the time. I was trying to answer the questions that
9 was being asked. It wasn't about the time, it was about
10 what happened.

11 Q When did you realize the severity of Miss Parker's
12 injuries?

13 A Half of it when my son called me and the other half
14 when DSS -- Miss Katrina Andrews, which was formerly
15 employed by DSS of Florence, came and show me the cut up
16 -- the black and white photos of Miss Parker.

17 Q So you were shown some photos of her not too long
18 after this occurred?

19 A I'm not sure how long it was, but I was in C-pod
20 whatever month that was. And when they showed me, yes, it
21 was shocking.

22 Q Had you ever hit her previously?

23 A Yes, it was accidental.

24 Q Okay. Tell me about that?

25 A We was in the process of moving from [REDACTED] Lafayette

1 Circle, I want to say [REDACTED] She know the address better
2 than me 27 something Southborough Road. It's either
3 moving there or moving from Southborough Road to [REDACTED], it's
4 over a year. But we were either moving from [REDACTED] to
5 Southborough Road or from Southborough Road to Lafayette
6 Circle. But regardless, we was moving and she working at
7 Lowe's at the time as a cashier. Me and my friend from
8 Bennettsville, Raquel (sic) McQueen, assisted me in
9 moving. He was dressed up, so he didn't really do too
10 much dirty work, but he did assisted in whatever he could
11 without getting dirty, so I did most of the work. I was
12 tired. And I was suppose to be there for her lunch break.
13 And rather than me bringing the U-haul, which I was
14 driving to come pick her up, I didn't want people to know
15 our business that we were moving. I try to keep them out
16 the business. So I went home to get the car to do it, to
17 go pick her up. And at that time, her lunch break was
18 down from 30 minutes down to maybe about five. When I
19 pull up thinking that, you know, I'm doing something good,
20 I'm moving and trying to take off lunch. She comes out
21 I'm going to kill you, I'm going to kill you, I'm going to
22 kill you. I'm going to fucking kill you. And I'm like
23 what's wrong. I'm sitting here waiting on you and you
24 don't come. And then you got the audacity to come the
25 last five minutes. So why we arguing over her abusive

1 words towards me, I feel it's disrespectful while we
2 arguing for her to pick up the phone and be dialing
3 somebody. So I reach for the phone not knowing the force
4 that I'm reaching for the phone or how fast I'm reaching
5 or how close I was to her face, I accidentally knocked her
6 phone. And out of reflex, I tried to catch it from
7 falling and end up hitting her. I believe under her right
8 eye which give her a bruise, that was an accident.

9 Q Did she have to go to the hospital?

10 A No, she did not.

11 Q Did you love your wife?

12 A Yes. You can tell that by the front of the car.

13 Q What do you mean by that?

14 A If a man didn't love his wife, why would he go around
15 with their wedding photo for the whole world to see. A
16 person that is hoeing or cheating would not do that.

17 Q You mentioned cheating, did you ever cheat on her?

18 A No.

19 Q You were faithful the whole time?

20 A That is correct.

21 Q So what is this in this part of the statement then
22 about a fight about money and you're getting mad at her
23 because you can't -- because she's not appreciative of you
24 providing for her?

25 A You say that again, please?

1 Q What was the part -- did y'all get into fights about
2 the fact that she didn't appreciate how you provided?

3 A I wouldn't say fight because that involves hands.
4 You we got into disputes and arguments over money issues,
5 yes.

6 Q Did you argue then over how you -- what kind of
7 provider you were?

8 A Well, yes, we did, but this was -- she was working
9 prior to getting pregnant, that's where the financial
10 obligation all fell on me was -- if I may just go
11 something personal about her history?

12 Q I'm not exactly sure what it is.

13 A It's dealing with child birth.

14 MR. HILL: Your Honor, I object to that.

15 THE COURT: No, let's move on, Counsel.

16 MS. PARROTT: That's fine.

17 A So during the pregnancy, she had to have her
18 (inaudible) our baby was coming at four months
19 prematurely. By her working at Lowe's standing on the
20 concrete floors would have increased her chances of having
21 a miscarriage. So again being a good father I was, good
22 man I was at the time caring for her and the child, I told
23 her it would be best if she did not work. Her doctor also
24 back that up, which was Cynthia Cole. And she stayed out
25 because to keep **Minor 1** from dying or coming prematurely

1 like she previously had with her previous children. So
2 then therefore, I became the primary provider and I'm
3 doing the best I could. But to answer your question, all
4 the money that I have was from social security benefits
5 from being disable from the surgery and my mental illness,
6 that money basically took care of the bills, the car
7 payment, the insurance, the rent, the utilities, the
8 phone, some accessories the cable stuff like that.
9 Clothes for the children whenever they was available, see
10 what I'm saying. So there was no money to put in her hand
11 to get her hair done, which she constantly complains
12 about. If I had it, yeah, I would do it, but I didn't
13 have it. And it wouldn't make sense to me to neglect
14 paying your rent or utilities to get your hair done. It's
15 not necessity, but most women love to have it done. I
16 don't mind her looking good, but I just couldn't do it and
17 that's what the argument was about. I don't get my hair
18 done. I don't get my nails done. I don't go nowhere, I
19 don't get no money. And, yes, that was a big issue
20 constantly.

21 Q Would you ever intentionally hurt your wife?

22 A No, no.

23 Q Or your children?

24 A No.

25 Q Your mental illness that you're talking about that

1 you had -- and the lobectomy; correct?

2 A That's correct. I don't know the scientific terms.

3 Q But you discussed those with Dr. Frierson; is that
4 correct?

5 A Not to that level, no.

6 Q Not to that level is what you ---

7 A Not to distinct of those scientific terms, no.

8 Q Okay. But you talk to him about what your illnesses
9 had been?

10 A Yes.

11 Q And at this time, do you have any further
12 recollections as to what occurred then what you told me
13 here today?

14 A What occurred on the 23rd?

15 Q Yes, sir.

16 A No.

17 Q You still maintain that you blacked out?

18 A Yes.

19 Q Is there anything that I haven't asked you that you
20 wish for everyone to know?

21 A You didn't ask me how was the relationship between me
22 and the -- Miss Parker's family.

23 Q Okay. Tell us that then?

24 A Well, I don't know what's her mother's objections,
25 but to me she really wanted us not to be together. And

1 she wanted her and her, I guess, Bailey -- Brandon to be
2 together, which was not in the picture at the time, but
3 was a constant -- a constant throw in the face, as you can
4 say, whenever I'm around. She did not respect our
5 marriage. She refers to my son as a -- just little boy
6 not by his name Minor 2 or as grandson. She refers to
7 him as a object something not belonging to her family
8 because her daughter did not give birth to, that was
9 harmful, that was stressful to me. And they never done
10 anything for my son that bothers me. But I put it in the
11 back of my mind and try to move on for the best of the
12 relationship, but over time most of it add up.

13 Q So that was another stressor on your marriage?

14 A Yes, the distinction how the family cares about the
15 children because of one not being born by son, yes.

16 MS. PARROTT: Any questions the State may have for
17 you.

18 THE COURT: No. Approach the bench, Counsel.

19 MS. PARROTT: Thank you, Your Honor.

20 (WHEREUPON, a bench conference was held in the
21 presence of the jury, but out of the hearing of the
22 jury.)

23 THE COURT: All right, jurors, we're going to stop at
24 this particular juncture. Cross-examination will occur
25 tomorrow. It's ten minutes to six. Thank you for staying

1 this late. Thank you for staying with me. Be back at
2 nine tomorrow, nine o'clock, please, nine o'clock. No one
3 leaving now but the jury, no one but the jury.

4 (WHEREUPON, the jury was excused for the day.)

5 THE COURT: Yes, Mr. Solicitor.

6 MR. HILL: Your Honor, I know it's late in the
7 evening. Based on the defendant's testimony however ---

8 THE COURT: Hold it, hold it, one second. People
9 we're still in session, please.

10 Yes.

11 MR. HILL: Based upon the defendant's testimony, the
12 State would request that it be allowed to enter in an area
13 of prior bad acts based upon his testimony, that testimony
14 regarding his faithfulness to his wife. Our understanding
15 and information I been provided by law enforcement is at
16 the time he was married to the victim in this case, he was
17 still married lawfully to another woman in another county.
18 I like to be able to just delve into that issue.

19 MS. PARROTT: Your Honor, I don't really see the need
20 to do so.

21 THE COURT: Why not?

22 MS. PARROTT: Because I'm not sure that it has any
23 bearing whatsoever on this case because I think they both
24 believed that they were married lawfully. They both took
25 each other's names or at least regarded each other as

1 common-law wife and husband. Particularly, in regards to
2 her statement that she gave to law enforcement that -- I
3 believe that's where I read it, that it wasn't until
4 afterwards that they realize he was still married to the
5 other person. So I don't think there's any bad faith in
6 this on either person's part and I think it would just
7 serve to sully the record and his information.

8 MR. HILL: Your Honor, the State's in the position to
9 proffer the testimony, which will come through
10 Investigator Kathleen Streett. And we could proffer the
11 testimony in order for the Court to make a ruling, if it
12 needs to be. I don't want to suggest what the Court need
13 or doesn't need.

14 THE COURT: I will think about it over the evening.
15 The Supreme Court has been so strict in regard to State
16 vs. Lyle. Those of us who have been involved in that
17 venue in regard to appellate activities understand the
18 strictures that are imposed in regard to Lyle. It is
19 absolutely impossible almost to predict exactly what will
20 be done in regard to Lyle evidence or so call Lyle
21 testimony, very very difficult. At one time, my staff and
22 I prepared a document almost 100 pages long dealt nothing
23 but Lyle, nothing but Lyle. And people who spend time
24 looking at those cases understand the difficulty in regard
25 to the applicability of Lyle. But I will think about it

1 over the nighttttime hiatus. Anything else?

2 MS. PARROTT: Nothing further from defense, Your
3 Honor.

4 MR. HILL: What time do we begin tomorrow at nine
5 o'clock?

6 THE COURT: Nine o'clock.

7 MR. HILL: Since, Mr. Henry is under oath is he
8 prohibit or allowed to discuss things with his counsel at
9 this time?

10 THE COURT: Once again, we visit a case called State
11 vs. Perry. And in Perry vs. State, it left the State
12 Supreme Court went to the Fourth Circuit, the United
13 States Supreme Court, and the ruling in terms of Perry was
14 we didn't have it right in regard to the original ruling
15 down here. So at this point, at this point, I decline to
16 apply anything that's contrary to Perry, so I'll just
17 leave it at that.

18 MR. HILL: All right.

19 THE COURT: Then you have a good evening.

20 (WHEREUPON, the proceedings were concluded for the
21 day to be reconvened on July 30, 2009.)

22 THE COURT: Good morning, please be seated. The
23 issue yesterday was the motion by the State to be allowed
24 to probe the past record of this defendant. State vs.
25 McIntosh 358 S.C. 432, 595 S.C. Second 484 and State vs.

1 Young 364 S.C. 476, 613 S.C. Second 386, articulates the
2 rule in regard to the "opening the door" principle. Under
3 that rule, there may be some testimony allowed because the
4 defense has open the door to the testimony. The Court has
5 evaluated this record and has visited the rule dealing
6 with character evidence in this State. And finally, the
7 cases that inculcate the bench and bar as to evidence that
8 has great similarity to the case on trial. Both the South
9 Carolina Court of Appeals and the South Carolina Supreme
10 Court have simply ruled that an offense that is exactly
11 the same or similar to the offense being tried is of great
12 prejudicial impact and under 403 is not admissible. Based
13 on that precedent, I am not going to allow the State to
14 probe the past record of this defendant. And it is so
15 ordered. All right. Anything further before we proceed?

16 MR. HILL: Your Honor, yesterday afternoon and again
17 this morning Investigator Bert Turner, who was not able to
18 be present Monday morning when the jury was drawn because
19 he was in the hospital with his wife, recognized the
20 forelady of the jury as someone with whom he attended
21 school. They have no other relation -- well, he can
22 answer any questions the Court might have. He ask me to
23 bring that to your attention.

24 THE COURT: All right. Would you stand and for the
25 record your full name?

1 MR. TURNER: Bertrum Lee Turner.

2 THE COURT: And the forelady was in school with you,
3 what year?

4 MR. TURNER: Judge, that would have been high school
5 years 83, 82, 81.

6 THE COURT: Well, common sense takes precedent in
7 this regard. I've got some people I went to high school
8 with I hadn't seen and I want say how many years,
9 Ms. Bailiff, but it has been a long time. I don't see a
10 problem in this regard. I take responsibility in that
11 connection. All right. Anything else?

12 MR. HILL: No, Your Honor.

13 THE COURT: Anything?

14 MS. PARROTT: No, sir.

15 THE COURT: Bring the jury out.

16 (WHEREUPON, the jury return to the courtroom.)

17 THE COURT: Good morning jurors. Everyone feeling
18 okay? Everyone all right?

19 Mr. Henry, come back around. You remain under oath
20 as you retake the stand. Do you understand that?

21 THE DEFENDANT: I do.

22 THE COURT: All right, have a seat, please. We now
23 proceed with cross-examination.

24 Mr. Hill, you're recognized.

25 MR. HILL: Thank you, Your Honor.

CROSS-EXAMINATION

1
2 BY MR. HILL:

3 Q Okay. Mr. Henry, you've had some difficulties
4 growing up in your life; isn't that correct?

5 A That's correct?

6 Q You had a learning disability?

7 A Yes.

8 Q You had some trouble with school?

9 A Yes.

10 Q You had some trouble being teased; correct?

11 A Yes.

12 Q And you weren't able to graduate with a diploma?

13 A That's correct.

14 Q You have seizures?

15 A From the age of ---

16 Q You had seizures?

17 A Yes. All my life, most of my life.

18 Q You been able to receive a GED? You got your GED;
19 correct?

20 A I'm working on it.

21 Q I thought your testimony yesterday was that you
22 received your GED?

23 A I receive a partial, I got to take the math, which
24 I'm doing now at the jail.

25 Q Okay. And you also attended Florence Darlington

1 Tech?

2 A I was ---

3 Q You attended Florence Darlington Tech?

4 A That's correct.

5 Q And you also have held jobs?

6 A Yes.

7 Q And I believe your last job was at Prime America;
8 correct?

9 A That's correct.

10 Q And you are able to read and write and understand the
11 English language?

12 A To the best of my ability.

13 Q All right. And you've over -- the machete in this
14 case was actually kept next to the computer desk; wasn't
15 it?

16 A Not sure, but I remember best of my ability.

17 Q Do you recall your statement that you gave to law
18 enforcement?

19 A I do not.

20 Q You did make a statement to law enforcement, didn't
21 you?

22 A That's correct.

23 Q In that statement, you told them that you reach for
24 the machete it was next to the computer desk?

25 A I don't recall that.

1 Q If it's there, you don't dispute it, do you? You
2 don't dispute that that's what you told the officer that's
3 in the statement?

4 A That's correct.

5 Q So if it's in their statement, it's true?

6 A Possibility. At that time, I was in a different
7 state of mind.

8 THE COURT: Keep your voice up, Mr. Henry, keep your
9 voice up.

10 A At that time, I was in a different state of mind.

11 Q You had stop taking any medicines for mental
12 conditions in late 2004 possibly early 2005; correct?

13 A That's correct.

14 Q You had ceased going to any other doctors for that;
15 haven't you?

16 A Can you rephrase that?

17 Q You hadn't seen any doctors for any mental conditions
18 after 2005?

19 A You ask my own will or doctor orders?

20 Q Did you go to any doctor for a mental condition
21 between 2005 and June of 2008?

22 A No.

23 Q Did you take any medications for a mental condition
24 between 2005 and June the 23rd 2008?

25 A Yes.

1 Q You were upset because your wife wanted to go see her
2 mother?

3 A No.

4 Q You were upset because she wanted to take the child
5 to go -- take the child out of the house?

6 A It was a circumstantial of -- it's more than that.

7 Q But that was one of the circumstances that bothered
8 you?

9 A Yes.

10 Q You're also concerned about loosing your house?

11 A Correct.

12 Q You're also concerned about maybe loosing your car?

13 A Correct.

14 Q And you were upset with your wife; correct? You were
15 mad at her; weren't you?

16 A Possibly.

17 Q You lied to Scott -- your neighbor Scott McAleese;
18 didn't you?

19 A At that time, yes.

20 Q You lied to the nurse at Kershaw County Medical
21 Center; didn't you?

22 A No. I wouldn't call it a lie.

23 Q Okay. Your testimony yesterday ---

24 A As I said earlier, I feared for my safety because of
25 prejudice. I'm afraid they do me harm.

1 Q All right. So you didn't tell the truth because you
2 wanted to get help?

3 A Yes.

4 Q Not telling the truth is a lie; correct?

5 A I would call it diluting out of fear not a lie.

6 Q You lied about a third person coming into the house;
7 didn't you? There wasn't a third person was there?

8 A At the state of mind to me it was, but, no, it was
9 not.

10 Q There was never a third person that came in that
11 house?

12 A No.

13 MR. HILL: Thank you. Answer any questions the
14 defense might have.

15 THE COURT: Redirect.

16 REDIRECT EXAMINATION

17 BY MRS. PARROTT:

18 Q You stated just simply back just a moment ago that
19 you didn't go to the doctors between 2005 and 2008, but
20 you said something along the lines of by your own will or
21 doctor's order. What do you mean by that?

22 A Repeat that again, please.

23 Q You just stated that you didn't go to the doctor
24 between 2005 and 2008 because -- and you was asking the
25 Solicitor about whether or not it was because of your own

1 will or the doctor's order, what was it?

2 A I misinterpret what he said, I didn't understood he
3 said the time line 2005, 2008.

4 Q Okay. So ---

5 A Yes, I did go to the doctor and, yes, I was treated
6 between those times.

7 Q All right. For what?

8 A I was treated for schizophrenia and possibly bipolar.

9 MS. PARROTT: Nothing further.

10 THE COURT: Recross?

11 MR. HILL: No, Your Honor.

12 THE COURT: Thank you. You may step down. You may
13 step down.

14 (WHEREUPON, the witness leaves the witness stand.)

15 THE COURT: Next witness, please?

16 MS. PARROTT: Your Honor, if I may just confer with
17 him very quickly?

18 THE COURT: Yes.

19 (WHEREUPON, a pause in the proceedings.)

20 MS. PARROTT: Defense rest, Your Honor.

21 THE COURT: Reply by the State?

22 MR. HILL: None, Your Honor.

23 THE COURT: Testimony is closed. Jurors, I need to
24 take up a matter of law here now, I'm required to do that.
25 Please go to your jury room.

1 (WHEREUPON, the jury retire to the jury room.)

2 THE COURT: Motions by defense.

3 MS. PARROTT: Your Honor, defense would renew all
4 motions made heretofore and in particularly all the
5 objections to the exhibits. We would like to preserve all
6 rights as to those. And again, renew the directed verdict
7 or at this time. And in particular to again Counts 3 and
8 4 with the unlawful conduct towards a child counts because
9 I believe even further testimony now has again gone back
10 to the fact that there was nothing done to the children,
11 nothing done that could have hurt the children. There was
12 no abuse nor negligent. And it just -- in fact actions
13 were taken to try and protect the children from this
14 incident, so I would simply ask that the directed verdict
15 motions be granted on those two counts specifically, Your
16 Honor.

17 THE COURT: The motion for a directed verdict is
18 denied as to assault and battery with intent to kill and
19 arson. What about the last two Counts 3 and 4, Mr. Hill?

20 MR. HILL: Thank you for the opportunity, Your Honor.
21 Taking the evidence in the like most favorable to the
22 State, we believe that the actions of the defendant on the
23 date in the presence of his children, the violent nature
24 of the acts that allegedly occurred place the children in
25 extreme danger or harm, which we think would fall under

1 subsection one of the statute.

2 THE COURT: The Court has reviewed over the nighttime
3 hiatus the genesis and etiology of 20-7-50. Now, 63-5-70,
4 the history reveals with clarity that the General Assembly
5 intended this statute to be given full and complete
6 applicability in regard to a child. The protection of a
7 child is evitalicit (sic) of this statutory endeavor.
8 Because of that review, I deny the motion for a directed
9 verdict. I will submit both of those counts to the jury
10 and it will be a jury charge on the statute and will use
11 subsection one. I will not reference subsection two or
12 three. And it is so ordered. All right.

13 Lawyers give me your attention. It is the intent of
14 the Court to charge the jury as follows: I will charge
15 the jury with assault and battery with intent to kill.
16 Under my view of the evidence, there is no lesser-included
17 offense. It's either assault and battery with intent to
18 kill or not guilty. I will charge the jury on arson in
19 the second degree, not guilty or guilty of arson in the
20 second degree. I then will charge the jury in regard to
21 the child statute and it will simply be not guilty or
22 guilty of unlawful conduct toward a child. Does everyone
23 understand the charges that will be submitted?

24 MR. HILL: Yes, Your Honor.

25 THE COURT: Defense?

1 MS. PARROTT: Your Honor, I would ask that you do
2 charge the assault and battery of a high and aggravated
3 nature and also under the arson second statute, I would
4 ask that you charge the intent to burn instead also. This
5 is under 16-11-190 I believe, Your Honor, yes. And it
6 also -- it refers back to the offense of arson under
7 16-11-110, but I believe that there's at least testimony
8 that has been provided that would lend itself to the
9 possibility of assault and battery of a high and
10 aggravated nature, that the black out in the mind of
11 Mr. Henry would go not necessarily towards the -- would
12 negate any intent to kill, but go for more that it was
13 loss of control, lost of ability to appreciate what the
14 situation was and therefore, it would be high and
15 aggravated nature instead. I also would argue that as far
16 as the attempt to burn statute because it does go back to
17 the offense of arson and specifically it states, it is
18 unlawful for a person to willfully and maliciously attempt
19 to set fire to, burn, or aid counsel or procure the
20 burning of any of the buildings or property mention in
21 16-11-110 to 16-11-140 or commit an act in furtherance of
22 burning these buildings. And, of course, 16-11-110 is the
23 arson statute.

24 THE COURT: I decline to use the separate and
25 distinct statute in reference to arson in the second

1 degree. And specifically, I take responsibility, I am not
2 going to charge the jury on the assault and battery of a
3 high and aggravated nature. As I view this testimony, it
4 is specific as to the charge or the jury can simply
5 disbelieve the testimony, so I will submit it on that
6 basis.

7 MS. PARROTT: Please note my objection, Your Honor.

8 THE COURT: No exception is required under our
9 criminal procedure code at this time. The Court will
10 charge the jury in reference to the basic charge. The
11 presumption of innocence will be charged. The definition
12 reasonable doubt I will use State vs. Manning. State vs.
13 Manning will be quoted in haec verba. Please, when you
14 make your summation in this case use the correct language
15 from State vs. Manning. I then will charge the basic law
16 about the role of the jury in terms of the fact finder
17 including the responsibility to determine credibility or
18 believability. I will then charge circumstantial
19 evidence. State vs. Grippon G-R-I-P-P-O-N 327 S.C. 79
20 489, S.C. Second 462 is the leading case in this state on
21 circumstantial evidence. I then will charge expert
22 witness law. And then will go to the statement or
23 confession, that will be a very very detail specific
24 charge in regard to the law concerning a statement or
25 confession. That identifies the basic charge information.

1 Insofar as the verdict forms, I have simply place the
2 verdict insofar as separate sheets, four separate sheets
3 and will submit those sheets to the trial jury. Anything
4 else for the State?

5 MR. HILL: No, thank you, Your Honor.

6 THE COURT: Defense?

7 MS. PARROTT: No, Your Honor.

8 THE COURT: All right. Lawyers, I'm going to give
9 you a 15 minute recess, so that you might review the
10 brilliant summation that you will now present in this
11 courtroom. So we'll be back in 15 minutes.

12 MS. PARROTT: Thank you, Your Honor.

13 (WHEREUPON, a break was taken.)

14 THE COURT: State ready to proceed?

15 MR. HILL: Yes, Your Honor. Does defense wish us to
16 open on the law?

17 MS. PARROTT: Yes, Your Honor.

18 THE COURT: Okay. That's mandatory, so you'll do it
19 in that fashion.

20 MR. HILL: Yes, sir.

21 THE COURT: Bring the jury out.

22 (WHEREUPON, the jury return to the courtroom.)

23 THE COURT: Madam Forelady and members of the jury,
24 please give me your attention. The lawyers will sum up
25 the case for you shortly. Before they do that, I have

1 prepared four verdict forms. Madam forelady, you are in
2 charge of the verdict forms on behalf of the jury and you
3 are required to sign the verdict. The verdict that you
4 sign must be unanimous. Do not sign until all 12 freely
5 and voluntarily agree. Regardless of what the verdict is,
6 it must be unanimous.

7 The first pending charge is assault and battery with
8 intent to kill. I have the verdict form in that
9 connection. The first possibility is not guilty. If the
10 jury unanimously, all jurors agreeing, all jurors
11 concurring finds the defendant not guilty, sign number
12 one, Ms. Forelady. And, of course, do not sign until that
13 is unanimous, the not guilty must be unanimous. The
14 number two is guilty of assault and battery with intent to
15 kill that must be unanimous. Do not sign that until all
16 12 freely and voluntarily agree, so you just have those
17 choices.

18 The next charge is arson in the second degree. Once
19 again, not guilty. Number two guilty of arson in the
20 second degree. Number three and four relate to the same
21 pending charge but relate to different children. Count 3
22 is one not guilty. Count 2 is guilty of unlawful conduct
23 towards a child. And the lawyers will explain that to you
24 as to what they contend in terms of the child. And number
25 4, Count number 4 is one not guilty or guilty of unlaw

1 conduct towards a child. I need a separate and distinct
2 verdict that is unanimous on all four charges. And you
3 will proceed to consider these in any order that you
4 desire in regard to your jury room discussion. That is
5 totally for you to decide, but once you come to the
6 resolution of the matter use these forms, Madam Forelady.

7 Mr. Hill, you're recognize.

8 MR. HILL: Thank you, Your Honor. Ladies and
9 gentlemen, as the prosecutor in this case, I have the duty
10 under our laws to prove to you each and every element of
11 the crime we allege that the defendant committed. Based
12 on that, I'm allowed to come to you now and explain to you
13 briefly the law that applies in this case as we interpret
14 it and as we see it. If there any misstatements I give,
15 certainly pay attention to Judge Anderson because he is
16 the ultimate arbiter of the law and will give you a
17 complete and full charge in that regard.

18 However, I like to take this opportunity to express
19 and explain to you the law in this case. First, the
20 defendant is charged with a crime of assault and battery
21 with intent to kill, that means that he took an act, used
22 a deadly weapon, and used it in such a way and acted in
23 such a way that was malicious with the intent to kill the
24 victim in this case.

25 The second crime that he's accused of committing is

1 arson in the second degree. This means that he set fire
2 to, in this case, an apartment, a dwelling and that a
3 burning occurred. That's what we contend happened as far
4 the arson second degree.

5 The last two counts unlawful conduct towards a child,
6 the State contends that the acts of the defendant in this
7 case place the child in an undue risk of harm, placed an
8 undue risk of harm affecting the child's life, physical or
9 mental health and safety. That's what the State alleges
10 he did in regards to the four-month-old child and the
11 four-year-old child.

12 The judge will also charge you that the State has, as
13 I've stated, has the burden of proof in this case. And
14 the burden of proof is the standard that we must meet
15 before the jury is allowed to hand down a guilty verdict
16 in this case. If you ever run track or if you ever been
17 involved in sports, I think of the standard this way. A
18 standard in track is for instance a bar on a high jump or
19 a Pole Vault, that bars the standard and it's set and you
20 have to clear that standard. Maybe, that's not the best
21 analogy to use, by the standard that we have to clear is
22 beyond a reasonable doubt. It's the highest standard our
23 country has. It's the highest standard the court has and
24 it's that way for a reason. Because as the prosecuting
25 agency what we do is vitally important and that standard

1 is high because we certainly have the rights and liberty
2 in this country. And they're not to be taken away
3 lightly, that's why that standard is so high. The
4 standard is we believe that we met that standard and that
5 the State has proved beyond a reasonable doubt that these
6 crimes were committed. I'll come back to you in a few
7 moments after the defense has spoken to you and we'll
8 discuss some of the facts in the case as I like you to
9 recall and remember as you go back to your jury room to
10 deliberate.

11 THE COURT: Ms. Parrott, you're recognize.

12 MS. PARROTT: Thank you, Your Honor. May it please
13 the Court.

14 THE COURT: Yes.

15 MS. PARROTT: Ladies and gentlemen of the jury, we
16 are on day four of this trial as far as everything goes,
17 of course, your having been chosen on Monday. And by my
18 approximation, we have gone through about 22 or 23, 24
19 witnesses and the time that we have been taking testimony.
20 And that's a lot of people. But I trust that you have
21 paid attention and thank you for having paid attention to
22 all of the information that has been given to you. When
23 we first started this trial and I made my opening
24 statement, I ask then that you listen very carefully
25 because at the end of this matter you will be ask to

1 determine the facts. And that is exactly what we ask of
2 you now. You have heard many different stories and many
3 different statements and what we ask now is that you
4 reconcile that. And when you reconcile that, does it fit
5 what the law is, has a crime been committed and not has
6 any crime been committed, have the crimes that are
7 submitted to you been committed. Such that, it is assault
8 and battery with intent to kill.

9 There is absolutely no doubt that this is a gruesome
10 crime scene at this apartment. You seen the pictures.
11 You heard a doctor testify. And you've heard Miss Parker
12 testify as to what her injuries were. What I ask of you
13 though is to also to consider that you've also heard Dr.
14 Frierson testify and my client testify about the fact that
15 he has a mental illness.

16 In fact, he's been diagnosed with multiple mental
17 illnesses in his past. He's been told he has
18 schizophrenia. He's been told he has psychosis. And now
19 he's been told he has manic depressive syndrome or bipolar
20 disorder. He's been on so many medicines throughout his
21 life. He has a learning disability. Those aren't things
22 that you leave at the door when you come home. Those are
23 things that go with you no matter what you do in your life
24 and that's the reason why for the things that you can give
25 medicine, you take it. You're suppose to take it. But as

1 the doctor testified, it's also why certain conditions
2 lend themselves to the fact that people will quit taking
3 their medicine. Manic depressives are bipolar people and
4 schizophrenics tend to have an episode where they come up
5 they think they're doing great and they can go off of
6 their medicine. And then they have another episode where
7 they don't, they go down and they have to be put back on
8 their medicine.

9 He also told you about the temporal lobectomy. The
10 brain operation that was done on my client. In fact, that
11 he had part of his brain removed, it's not even this
12 getting in and doing a little bit, but we're actually
13 taking a portion of the brain out. And he states that one
14 of the side effects or one of the effects of this is that
15 a person doesn't have the ability to necessarily recognize
16 fear any longer, specifically that emotion.

17 I submit to you, ladies and gentlemen, that as he
18 stated sometimes when you see somebody else's reaction,
19 you realize exactly what you have said, what you have
20 done, and you didn't necessarily mean it to be that way.
21 You didn't mean for what you said or what you did to be as
22 bad as what it came out to be, but seeing them you realize
23 I've gone too far. I've made a mistake. And in this
24 case, you have my client's version of things and by his
25 testimony, a machete coming at him. He then gets an

1 injury from that, but he then seeks treatment for and they
2 have to suture it. He says he has multiple places on his
3 hand, she said he has multiple places on his hand, two of
4 which actually had to be sutured because the tendons had
5 been cut. He gets the machete away and then blacks out.
6 And as the doctor says, that's not really uncommon either,
7 that somebody just can't understand what their actions
8 are. But they don't recall exactly what their actions
9 are. That it's a protective measure that their own body,
10 your own brain, you don't willingly do it, but your brain
11 takes over and does it for you.

12 And again, we're talking about someone who has a
13 brain that has been operated on. There's been an injury
14 to the brain by the seizures that were there. He said
15 even seizures themselves can cause further damage to the
16 brain. So you got the seizure, the operation, mental
17 illness, learning disabilities, lack of medication, add to
18 that the normal aggravating stressors that almost all of
19 us have with bills, relationships, children, and that
20 usually ends up even just those three things on a normal
21 day for a normal person can be an argument. But in this
22 case, you put it with a person who's own social security
23 income even. They have found him to be deserving of social
24 security because of the level of his injury. The level of
25 his disability. And he went too far.

1 He realizes as his child brings him up out of it as
2 he hears his child. There's something that's an outside
3 source that had to jar him from the actions that, Oh, my
4 God what have I done. He has that moment of clarity
5 whenever he realizes that there's a huge problem. He has
6 caused a huge incident and done something that he has to
7 then take actions for to try and cure, to try and make it
8 better.

9 She even states that she was having problems
10 breathing and everything with the jeans on, so she was
11 asking him to get the jeans off, so he did. He helped her
12 as best he could. He knew -- he was hurting her a little
13 bit, so he was trying but trying not to hurt her. He got
14 her a blanket, he got her some rags.

15 And when it comes time for it, after he's placed the
16 children into the car, he's getting the car for her and
17 getting her into the car, taking her to the hospital. And
18 there's certainly some dispute over which route that he
19 actually takes as far as she says 378. He says going --
20 basically down Fore Road to Price Road, Old Marion Highway
21 and up through around Quinby to come up Oakland Avenue.
22 But he says that's the way that he thought was best
23 because it's the way he thought was fastest, that wouldn't
24 have as many lights and those certainly are country roads.
25 He was trying to do what he could.

1 Yes, he leaves her there. But he did ask the
2 gentleman that was the security guard at the desk to
3 please get the wheelchair. He brought her straight to the
4 emergency room entrance, he didn't just leave her at the
5 door. He went in and got the guard and he helped and he's
6 trying to help her into the chair. The guard takes her
7 in. He at that time as he already stated, he knows that
8 there's going to be trouble from this.

9 He's still bleeding from his hand. And in fact, let
10 me go back on something. The evidence is on some of these
11 items and the SLED's person talked about this, some of the
12 blood on those items is his own. Blood on the back of his
13 shirt that's in a spatter pattern is his own. So not only
14 is some of this -- that you'll be seeing or have the
15 opportunity to see is not all her blood and DNA being on
16 it as we stated in there is not just blood, okay. But
17 he's bleeding on his hand. He's got the children. And he
18 knows he has to take care of those children. He has never
19 ever wanted to hurt his children. He's always wanted to
20 be a good provider. Always wanted to be a good dad and
21 even Miss Parker says they both love their children. They
22 both provided for their children. At no time were these
23 children in any harm. They never been neglected. They
24 never been abused and even the investigators told you
25 there was no blood on them. There were no bruises, there

1 were no scrapes, there were no scratches. Whenever he had
2 the child come out, he told the child to go back in the
3 room. Protections were taken for these children. He even
4 puts them in the car seats with seat belts.

5 So the law on unlawful conduct is about neglect and
6 abuse and I submit to you that there is no negligent or
7 abuse. And, in fact, to further substantiate that,
8 whenever law enforcement did get to the children, did get
9 an opportunity that if they really had wanted to take
10 them, they didn't. They found their condition to be okay.
11 Furthermore, they already been at the hospital. Hospital
12 personnel have no interest in this action. If they had
13 seen that that these children were harmed in anyway, they
14 would have taken them on into the ER as well and sought
15 treatment for them. So while this is horrible that they
16 were present, it's not -- I would argue to you that it is
17 not to the level that it was an unlawful conduct towards
18 them. It was no abuse and it was no neglect. It wasn't
19 intended for them. It wasn't going for them. There was
20 no malice towards them whatsoever.

21 He gave his statement in this action. From the
22 stand, he tells you that he had been going for hours.
23 He'd already been in a car with an investigator for an
24 hour or so. He already been arrested in Camden. He's
25 booked in at Effingham and then he's looking at three

1 investigators in a room. And while they want you to
2 believe that it's comfortable and it's nice and
3 everything, let's be honest it's a sheriff's office. It's
4 in the sheriff's office. It's a concrete building. It's
5 not meant to be lush. It's meant to be an interview room,
6 an interrogation room and three people against one who's
7 already been in cuffs, already been booked, who's been
8 deprived of water, deprived of food, not allowed to go to
9 the restroom, who's a diabetic, is then interviewed for
10 approximately an hour.

11 And finally, at the end of the hour, he's going I'm
12 broken, I'm done. I'll tell you what you want to hear.
13 And if you notice once they've heard what they wanted to
14 hear, they tell him I bet you feel better now and they
15 stop the recording. They stop the statement. So they did
16 exactly what he thought they would do, they did back off.
17 They did let him go. They let him out of the room where
18 they control the keys to the door.

19 He says he doesn't know anything now about the arson.
20 Ladies and gentlemen, you've heard law enforcement and the
21 fire department talk about who was there and how they got
22 there. The door was open when the fire department got
23 there. Anybody could have had access to that apartment.
24 The person who was witness on that is Mr. McAleese and he
25 states that he realizes that he's looking up at the

1 apartment and he sees smoke, but he hadn't been right
2 there to see exactly what was going on with that door, who
3 might have been in. At the time, he been walking around
4 and then he shocked by seeing her and he just woken up.
5 So it was not a close scene, a contain scene, a locked
6 scene. It was one that was open.

7 Now, if you find or if you believe that his actions
8 were such that he did try to burn part of his apartment, I
9 submit to you that all he did was set fire to the bed. If
10 a person really wanted to burn a whole structure and burn
11 evidence, would they not set the fire where most of the
12 evidence was which in this case was in the living room.
13 And if you want to go even further than that, would you
14 not set fires all over the place, multiple places. It's
15 only 930 square foot apartment, it wouldn't be that hard
16 to throw whatever accelerant, throw a match, bedroom,
17 hallway, living room, it's done. Only one fire was set,
18 and it's only set to the bedding.

19 They find his car over in Bishopville or Brown Town
20 and they look in it and find a lighter fluid bottle. It's
21 been process, there are no prints on it whatsoever. That
22 black stuff on it is not smoke damage, soot from the
23 apartment. They're saying that's where it was processed,
24 so please understand that. They also state that they
25 think there might be blood on it. And I submit to you

1 that they submitted it. It didn't come back as positive.
2 If it had, it would be part of everything. It's not
3 blood. That's hoping and looking for something that's not
4 there. And again, I submit to you that they did not have
5 control of that car until they found it at where it had
6 been towed to in Brown Town. Anybody as far as they know
7 could have had access to that car prior to that time. You
8 don't know when that charcoal lighter bottle got put in
9 that car. It's not a car where they didn't keep a bunch
10 of stuff. You can look at the pictures and tell. There's
11 all kinds of stuff in the car. I know people that they
12 only keep what they absolutely have to have for that
13 moment in a car and other people live in their cars and
14 have all kinds of things in their car. I submit to you,
15 ladies and gentlemen, that this was a car that had a bunch
16 of stuff, so that they were prepared for a bunch of
17 things. They were living out of that car to a certain
18 extent as the saying is.

19 I want to go back though to his mental state and this
20 assault and battery with intent to kill because that is
21 the most serious of all of these things. The evidence in
22 this case is if you look at, there's blood on the machete
23 from both of them. It was a weapon that was kept in the
24 house. He says he had it since 1996. It's a 930 square
25 foot apartment. She's the one who cleans it. They have

1 children. As with a four year old and a seven month old,
2 you don't keep things down where a four year old and a
3 seven month old can get to them. A four year old is kind
4 of past where they put everything in their mouth, but they
5 still are so intrigued by everything that they see that,
6 they'll look at, they'll handle it, they'll try and figure
7 out what it does. So you don't keep the dangerous stuff
8 down and you would know where you had it. Especially, if
9 you clean the apartment, you're the one who's doing that.
10 You're the one who's having to put things up. You
11 wouldn't know where those kinds of things are as their
12 mother, as their father.

13 It was an available weapon. It's not one that's like
14 a gun, that somebody goes out and buys and brings to a
15 fight knowing that they need to have this fight, that
16 they're going to have this fight. It was what was there
17 and it was what was used, but it wasn't used with the
18 intent to kill. It was used with the intent to stop an
19 action from occurring and then there was a loss of
20 consciousness as to what the acts were afterwards.

21 Now, we talked about at the beginning of this case
22 that he was presumed innocent. He is still presumed
23 innocent. He is still cloaked in innocence. It is up to
24 you to look at whether or not this case has been proven on
25 every element. And I submit to you again, it's not just

1 the elements, but it's beyond a reasonable doubt. That
2 which would cause a reasonable person to hesitate to act.
3 If you have any hesitation for any of the elements, he is
4 entitled to a verdict of not guilty. I would submit to
5 you that that is the appropriate verdict in this case.
6 Thank you for your attention.

7 THE COURT: Mr. Hill, you're recognize.

8 MR. HILL: Thank you, Your Honor. Ladies and
9 gentlemen, I appreciate the attention. There's some
10 things that I'm sure you remember. Perhaps, you remember
11 the statement of the defendant during his testimony that I
12 lied. Yeah, I admit that I lied. Perhaps, you remember
13 the things he said that he lied about. He lied about a
14 third person. The reason DNA evidence and testimony was
15 brought to you was because of that potential argument that
16 that there was a third person.

17 Mr. Henry, the defendant, taken that away, so the DNA
18 evidence that we heard about and went through for quite a
19 while to negate that argument has already been taken care
20 of thanks to Mr. Henry's admission on the stand that there
21 wasn't a third person, that is something that he lied
22 about. Perhaps, you will remember that he lied to the
23 nurse in Kershaw County. Perhaps, you will remember that
24 he lied to his neighbor, Scott McAleese. Perhaps, you
25 will remember that he said that he lied to the

1 investigator. Perhaps, you'll remember as you go back to
2 your jury room and I believe that you will, that he said
3 I've just always been short tempered, that's the way I am.
4 Well, that sure manifested itself on June 23rd of 2008,
5 when he took a machete next to his computer desk, which he
6 stated in his interview, and that machete wasn't stored in
7 the hallway as he suggested yesterday. It was down next
8 to the computer. He took that machete and he brutally
9 attacked his wife with no good reason, no defense, and
10 attacked her to the point that she almost died. And then
11 left her, set the mattress on fire in the bedroom. And
12 there was no third person that did that because he's told
13 us there was no third person and then left.

14 Other things I trust that you'll remember are that
15 Dr. Frierson's testimony was that, yes, there is a history
16 of mental illness or mental problems, but according to
17 his study and according to his records and his review
18 there wasn't anything about those conditions that impaired
19 him to the point that he was unable to conform and to do
20 what was right. There wasn't anything about those acts,
21 anything about his conditions that would prevent him from
22 knowing right from wrong. And he is the expert and he is
23 the only expert that's testified in that regard and I ask
24 you take into consideration and that he gave his opinion
25 not as a doctor for the State, not as a doctor for the

1 defense, but as a doctor he said for the Court to pass an
2 opinion regarding the defendant's competency for trial.
3 And then second whether or not he understood his rights,
4 whether or not he understood right from wrong and whether
5 or not he was capable of doing what was right or wrong.

6 And his opinion was is that, yes, Mr. Henry knew
7 right from wrong on June 23rd. And, yes, he was capable
8 of doing what was right. And there wasn't anything in his
9 background that prevented that from happening. Perhaps,
10 you will remember that Dr. Frierson also said that as the
11 defense has stated, there is a time when people might
12 blackout. Well, there's an explanation for that blackout
13 in this case. What he was doing and hacking and
14 butchering his wife was horrific. No one would want to
15 remember what they were doing. No one in his mind wants
16 to think and have that image in his head. I suggest that
17 that that is why he blacked out, not because something
18 mental that was making him do this. It's because he
19 doesn't want to remember subconsciously. I don't know how
20 that works, but this attack didn't occur because he
21 blacked out. This attack didn't occur because of some
22 mental condition. This act occurred because he was short
23 tempered. This act occurred because he was embarrassed.
24 This act occurred because he didn't want his wife to
25 leave. This act occurred because he wasn't going to let

1 her leave, that's why this occurred. Almost in the same
2 way as the attack that happened in the car at Lowe's when
3 he went to see her during lunch. You'll remember that he
4 said she was mad because I hadn't arrived when I was
5 suppose to. And I went to grab the phone or reach for the
6 phone and I didn't realize how strong and fast I was and I
7 hit her. He didn't black that out. He didn't black out
8 after that did he. He didn't. Wasn't any mental
9 condition that affected that at all? That happen because
10 he was being embarrassed and that's what happen on
11 June 23rd 2008, he was embarrassed. He was frightened.
12 And he wasn't going to let her leave. And there was no
13 third person.

14 He walked over to that computer desk, got that
15 machete, which you will see in the jury room, picked it up
16 and hit her repeatedly to the point where she almost died.
17 And there's no excuse for that. He's sat here and tried
18 to explain to you that he was a responsible person, that
19 he took pride in being responsible, but he has yet to take
20 any responsibility for what he did, none. Everything was
21 her fault. Everything was everyone else's fault. None of
22 this was his fault, none of it. It's her fault she was
23 leaving. It's her fault because she didn't have enough
24 money. It was her fault because she always nitpicked. It
25 was her fault because she always complained. It was her

1 mother's fault because she didn't like him. It was the
2 family's fault. Everyone else's fault but his. I
3 remember that and I hope you will as well.

4 Other things that I trust and hope that you'll
5 remember is that he took steps to protect himself.
6 Dr. Frierson you remember stated that if a person has the
7 ability to do things after the event that are
8 self-protected, that's an indication that they weren't
9 confused acting under a mental disability. It negates he
10 said, that it negates a mental problem that causes to
11 happen. What did he do? Well, he took the children and
12 put them in a car. He went to kitchen. He then went back
13 to the bedroom. He left and unfortunately to Carol, she
14 was able to get outside. And as they were leaving, they
15 saw Scott, whom he lied again, and then smoke started
16 billowing out the apartment. He set the fire possibly to
17 cover up his tracks, that's self-protected.

18 The lies that he told were self-protected. All of
19 which Dr. Frierson said show that he knew what he was
20 doing when the act occurred. If he didn't, why would he
21 have been self-protected, there wouldn't have been any
22 reason. He wouldn't have known what he did was wrong.
23 But he did know what he did was wrong and he did know what
24 he did was awful and against the law. And he was trying
25 to protect himself. In fact, that's all he ever done.

1 Protecting himself from his wife leaving. Protecting
2 himself so he could get help at the hospital when he lied
3 to the nurse because I needed help for my hand. In fact,
4 that's why he put on the glove, so he didn't get an
5 infection in his hand. It is all about him.

6 Perhaps, you'll remember though that he said that he
7 had a lot of difficulties and these mental conditions were
8 caused maybe by those. But for someone that's had so many
9 difficulties, he sure has overcome a lot. He overcame a
10 learning disability. He overcame a hard background,
11 problems in school. He overcame the epilepsy or seizure
12 problems. The surgery proved wonderfully affected. And
13 while there maybe a small percentage of people according
14 to Dr. Frierson that may have a inability to understand
15 people's emotions, that's just a very very small study.
16 And actually, there's no indication in this case that that
17 was affecting the defendant in this case, but he's
18 overcome a lot. He still wants us to believe that this
19 articulate man who is attending Florence Darlington Tech,
20 receiving his GED and is working to provide for his family
21 and his children because that's important, was unable to
22 conform or do what was right on June 23rd. Well, remember
23 that when you go back in your jury room.

24 Regarding the children, the acts that took place in
25 that apartment, took place in front of a four-year-old boy

1 and a four-month-old girl. The girl of whom was in the
2 living room where this attack was taking place. She was
3 exposed to a danger an unreasonable risk of harm. That
4 act taking place in front of her exposed her to an
5 unreasonable risk of harm.

6 The boy, TJ, was also expose to an unreasonable risk
7 of harm as he was there as well during this attack, never
8 should have happened and especially never should have
9 happened in front of the children. There's a lot to
10 remember, a lot to consider.

11 A few last things I ask that you please remember
12 above all else and I think is that the State contends that
13 we proved beyond a reasonable doubt that we met and gone
14 over that standard of proving that Mr. Henry committed the
15 offenses of assault and battery with intent to kill. I
16 believe that we prove beyond a reasonable doubt that he
17 committed the offense of arson because as he said there
18 was no one else. No one else went inside that house after
19 he left. No one else went inside that house and set that
20 mattress on fire or that bedroom on fire. And that was
21 purposeful and that was intentional and that fire left the
22 destruction and damage of that house. And finally, we
23 believe that we have proved beyond a reasonable doubt that
24 Mr. Henry's actions on this day did place both children at
25 a unreasonable risk of harm. Finally, I will remember the

1 attention that you given to us through a very difficult
2 trial, very difficult evidence to view and testimony to
3 consider. And I will remember what you done. Thank you.

4 THE COURT: Jurors, it will take me approximately 45
5 minutes to an hour to charge you the law in detail on this
6 case. Let's take us a little short recess here now.
7 Fifteen minute recess, then we'll come back on the charge.

8 (WHEREUPON, the jury retire to the jury room.)

9 (WHEREUPON, a break was taken.)

10 THE COURT: Let me see if anyone needs to go. Folk,
11 you not going to whisper or talk in the courtroom. This
12 is serious business whether you think so or not. I don't
13 want any whispering or talking during this charge. The
14 scholars who evaluate jury charges say it's a gargantuan
15 academic exercise in the law for laypersons and we need
16 strick attention to the presentation of these legal
17 doctrines or principles. Does anyone need to leave?
18 Please leave now. Anyone need to leave? Anyone need to
19 leave? Mr. Bailiff, close the door. No one comes, no one
20 goes out. And, Deputies, I don't want anyone whispering
21 or talking, I'm not going to put up with that. Are we
22 clear?

23 (WHEREUPON, the jury return to the courtroom.)

24 THE COURT: Okay. Jurors, please turn and face me
25 and give me your attention. I now instruct you in the law

1 of this case. The State of South Carolina charges or
2 accuses the defendant with four separate offenses. You
3 must separately and distinctly consider and evaluate the
4 evidence as it relates to the four separate offenses. The
5 pending indictment is not evidence. It's simply the
6 charging paper that we use to bring the matter for court
7 action.

8 To this indictment and to all charges, this defendant
9 has pled not guilty. That plea of not guilty by the
10 defendant places the burden of proof upon the State to
11 prove the defendant guilty beyond a reasonable doubt, once
12 again considering the charges separately and distinctly.
13 A person charged with committing a criminal offense in
14 South Carolina is never required to prove himself
15 innocent. The defendant is presume to be innocent and
16 that presumption of innocence remains with the defendant
17 at all times from the moment of his arrest, throughout the
18 trial proceeding, and goes into your jury room, and
19 remains with the defendant there unless and until you, the
20 jury, remove the presumption of innocence by evidence
21 satisfying you of his guilt beyond a reasonable doubt.
22 The State must prove the defendant guilty beyond a
23 reasonable doubt.

24 What is a reasonable doubt in the law? A reasonable
25 doubt is the kind of doubt that would cause a reasonable

1 person to hesitate to act. Let me give you that again
2 because of it's importance in this case. What is a
3 reasonable doubt in the law? A reasonable doubt is the
4 kind of doubt that would cause a reasonable person to
5 hesitate to act. By the constitution and laws of the
6 State of South Carolina you, the jury, are the sole judges
7 of the facts and evidence in this case. I am not
8 permitted to intimate any opinion or feeling that I may
9 have on the facts. I tell you now I do not have an
10 opinion or feeling on the facts. But above that under the
11 constitution, I am not allowed to express an opinion on
12 the facts. I have made some trial rulings on matters of
13 law in your presence. Please, do not derive any inference
14 from any ruling that I have made as to any opinion or
15 feeling that I might be indicated. I repeat again, I am
16 not entitled to an opinion on the facts under the
17 constitution.

18 In determining what the facts are in this case, you
19 of necessity must pass the upon credibility of the
20 witnesses who have testified. Credibility in the law
21 means believability. Can I believe this witness? Is this
22 witness credible? The value and weight to be given to the
23 testimony is in your sound discretion. You alone must
24 decide the force and effect and the truth of the
25 testimony. In making a determination as to the

1 credibility of a witness, there many factors that you may
2 and should take into consideration: Such as the
3 appearance and manner of the witness on the witness stand
4 known in the law as the demeanor of the witness. Did the
5 witness have an interest in the outcome of the trial? Was
6 the witness forthright or hesitant? Was the witness'
7 testimony consist or did it contain discrepancies? What
8 was the ability of the witness to know about the facts
9 concerning which he or she gave statement testimony? Did
10 the witness have a cause or reason to be biased or
11 prejudiced in favor of the testimony that he or she gave?
12 Was the testimony of the witness corroborated and made
13 stronger by other testimony in evidence or was it
14 impeached and made weaker by other testimony and evidence
15 presented?

16 Remember, you are sole judges of the facts in the
17 case and the believability of any and all witnesses. As
18 jurors, you have the right to believe a small portion of a
19 witness' testimony and disregard the larger portion or you
20 may believe a larger portion of a witness' testimony and
21 disregard the smaller part. You may believe a witness'
22 testimony in its entirety or you may completely reject a
23 witness' testimony in totality not doing that arbitrarily,
24 but if you have sound reason in the record for doing so.
25 You may believe the testimony of a single witness against

1 several witnesses or the several as against the one. Most
2 certainly, you do not determine the matter of credibility
3 or believability merely by counting the witnesses for
4 either side.

5 Throughout this entire process, you have but one
6 single objective and that is to seek the truth regardless
7 of what source that truth may come. By the very same
8 constitution and laws which make you finders of facts in
9 this case, I am as the trial judge made the sole and only
10 instructor in the law. Under the oath that you took, you
11 must accept as correct the law as I charge it to you in
12 that regard neither the Court nor the jury should be
13 concern with what the law ought to be in this state, but
14 rather what the law actually is.

15 The defendant is entitled to every inference in his
16 favor, which can reasonably be drawn from the evidence.
17 When two inferences may be drawn from the same set of
18 facts, one consistent with a verdict of guilty and one
19 inference consistent with a verdict of not guilty, the
20 defendant is entitled to the inference which is consistent
21 with a verdict of not guilty. You cannot find the
22 defendant guilty based upon suspicion, conjecture or
23 speculation no matter how strong. A conviction can only
24 be based upon proof of guilt beyond a reasonable doubt.
25 If the proof does not meet that standard, you must find

1 the defendant not guilty.

2 In South Carolina, there two kinds of evidence. They
3 both are equally good in the law. They are direct
4 evidence and circumstantial evidence. On a contested
5 factual issue that you now decide and determine, you may
6 have some circumstantial evidence on that issue and some
7 direct evidence on that issue. Thus, a combination of the
8 types of evidence.

9 Direct evidence what is it? Direct evidence is the
10 testimony of a person who asserts or claims to have actual
11 knowledge of a fact such as an eye witness.

12 Circumstantial evidence what is it? Circumstantial
13 evidence is proof of a chain of facts and circumstances
14 indicating the existence of a fact. The law makes
15 absolutely no distinction between the weight or value to
16 be given to either direct or circumstantial evidence both
17 are equally good in the law. Nor is a greater degree of
18 certainty required of circumstantial evidence than of
19 direct evidence. You should weigh all the evidence in the
20 case. After weighing all the evidence if you are not
21 convinced of the guilt of the defendant beyond a
22 reasonable doubt, then you must find the defendant not
23 guilty.

24 Expert witnesses. Lay witnesses are limited to
25 testifying about facts within their knowledge. Lay

1 witnesses are not allowed to give opinions. There are
2 certain witnesses called expert witnesses who by training,
3 education or experience are considered as experts in a
4 particular field. Expert witnesses may give opinions in
5 the field based upon the facts of a matter. And the
6 opinions and conclusions of expert witnesses constitute
7 evidence to be considered by you. You may consider the
8 expert's opinion just as you do all other evidence in the
9 case.

10 It is for the jury to give it such weight as you and
11 your experience and discretion may determine. You must
12 weigh such evidence and accept or reject it in the same
13 manner that you treat all other evidence in the case. The
14 testimony of expert's on a subject that is little known to
15 the general public is entitled to consideration. Such
16 testimony however must be submitted to your judgment to be
17 weighed by you as a part of the evidence in connection
18 with all other facts in the case. The testimony of
19 experts is to aid and assist you as jurors, not to
20 dominate or control you in the decision of questions of
21 fact. The opinions, conclusions and deductions of expert
22 witnesses do not preclude yours. You are required to
23 decide disputed questions after comparison and
24 consideration of all the evidence in the case.

25 Statement by a defendant. There has been admitted

1 into evidence in this case a statement alleged to have
2 been made by the defendant. Before you make may consider
3 this statement as evidence for any purpose, you must
4 determine four questions: One, did the defendant make the
5 statement? Two, was the defendant warned of its
6 constitutional rights? Three, did the defendant knowingly
7 and intelligently waive his constitutional rights? Four,
8 was the statement given freely and voluntarily? The fact
9 that the Court has admitted a statement into evidence
10 should not be considered by you as any evidence
11 whatsoever, that the defendant made such a statement or
12 that the constitutional safeguards which are required were
13 in fact provided and waived by the defendant or that the
14 statement was voluntarily given because of these issues
15 are for you, the jury, to determine.

16 The State must prove beyond a reasonable doubt each
17 of the four essentials or the four requirements, which I
18 just charge to you, before you may consider the statement
19 as evidence for any purpose whatsoever. As to the first
20 requirement, did the defendant make the statement. If you
21 conclude that the defendant did not make the statement,
22 you must then completely and totally disregard the
23 statement. If you conclude the defendant did not make the
24 statement, you cannot and you must not consider the
25 statement as evidence any in manner whatsoever. And you

1 should completely disregard the statement in its entirety
2 and every part of it.

3 If you find the defendant did make the statement, you
4 must then consider the second requirement. The second
5 requirement was the defendant warned of his constitutional
6 rights. These are referred to in the law as the Miranda
7 warnings. When an individual is taken into custody or
8 otherwise deprived of his freedom of action in any
9 significant way by the police or law enforcement officer,
10 the individual must be warned of his constitutional rights
11 prior and before any custodial interrogation or custodial
12 questioning.

13 These rights are one, he has the right to remain
14 silent. Two, any statement he does make can and will be
15 used against him in a court of law. Three, he has the
16 right to select a lawyer of his choice. But if he does
17 not have the money or resources to employ a lawyer, the
18 Court will appoint and provide a lawyer to represent him
19 without cost or expense to him if he so desires. Four, he
20 has the right to consult a lawyer before answering any
21 questions or making any statement. Five, he has the right
22 to have his lawyer present with him at all times during
23 all interviews and all interrogations.

24 If you determine that these constitutional warnings
25 were not given to the defendant prior to interrogation and

1 the taking of the statement or that the defendant was not
2 afforded the opportunity to the exercise these rights, you
3 must completely disregard the statement and you cannot
4 consider the statement as evidence in any manner
5 whatsoever. If you find the defendant did make the
6 statement and if you conclude these constitutional
7 warnings were in fact given to the defendant and that the
8 defendant was afforded an opportunity to exercise these
9 constitutional rights, then you must next consider the
10 third requirement.

11 The third requirement did the defendant knowingly and
12 intelligently waive his constitutional rights. Before you
13 can consider the statement as evidence in the case, the
14 State must prove beyond a reasonable doubt that the
15 defendant after being given his constitutional warnings
16 knowingly and intelligently waived his constitutional
17 rights and agreed to answer questions and make a
18 statement. Therefore, if you find the defendant did not
19 knowingly and intelligently waive his constitutional
20 rights, then any answer given by him or any statement made
21 by him cannot be used against him. And you must
22 completely disregard all of the testimony concerning any
23 such answers or allege statement. If you find the
24 defendant did make the statement and if you conclude the
25 constitutional warnings were in fact given to the

1 defendant and that the defendant was afforded an
2 opportunity to exercise these constitutional rights and if
3 you further find the defendant after being given his
4 constitutional warnings knowingly and intelligently waived
5 his constitutional rights and agreed to answer questions
6 and make a statement, you must next consider the fourth
7 requirement.

8 The fourth requirement was the statement given freely
9 and voluntarily. The word voluntarily means the statement
10 was the expression of the defendant's own freewill and was
11 not induced by the pressure, force, fear or the influence,
12 hope or promise of some benefit or reward or extracted by
13 threats, coercion or intimidation. Voluntarily means
14 intentionally without coercion. A statement is not freely
15 and voluntarily given and may not be used against a
16 defendant unless it is the product of an essentially free
17 and unconstrained choice by its maker.

18 If the statement is freely and voluntarily given, if
19 the defendant has willed to make a statement, it may be
20 used against him. If the statement is not voluntary, it
21 cannot be used against him. The true test to be applied
22 is whether such statement is freely, voluntarily and
23 understandably made without compulsion or inducement. In
24 determining whether the allege statement of the defendant
25 was freely and voluntarily given, you must consider all of

1 the facts and circumstances surrounding the taking and the
2 making of the statement concerning and relating to the
3 voluntary or involuntary character thereof. And you must
4 consider all of the evidence in the case in reaching an
5 ultimate conclusion as to the voluntary or involuntary
6 character of any such statement. This is called in the
7 law as the totality of the circumstances.

8 The ultimate question to be resolved by you with
9 respect to the allege statement of the defendant in
10 addition to the questions of whether the defendant did in
11 fact make the statement and whether his constitutional
12 rights were observed and knowingly and intentionally and
13 intelligently waive by him, is was the statement the
14 expression of the defendant's own freewill made without
15 compulsion or inducement but representing an essentially
16 free and un-constrain choice by the defendant or was it
17 the product of the overborne will of the defendant.

18 I now proceed to the pending charges. The first
19 pending charge is a statutory offense contain in the code
20 of laws to my left as pass by the General Assembly of the
21 State. Assault and battery with intent to kill. The
22 defendant in this case is charge with assault and battery
23 with intent to kill. What is assault and battery with
24 intent to kill? Assault and battery with intent to kill
25 is an unlawful act of violent injury to the person of

1 another with malice aforethought either express malice or
2 implied malice. To prove assault and battery with intent
3 to kill, the State must prove beyond a reasonable doubt
4 that the defendant committed an unlawful act of a violent
5 nature to the person of another with malice aforethought.

6 An assault is the unlawful attempt or offer to commit
7 a violent injury upon another person coupled with the
8 present ability to complete the attempt or offer by a
9 battery. Assault has been defined as placing another in
10 apprehension of harm. While words alone do not constitute
11 an assault, if by words and conduct a person intentionally
12 creates a reasonable apprehension of bodily harm, it is an
13 assault. An assault is an attempt to do violence to the
14 person of another in a rude, angry or resentful manner.
15 An assault is the intentional creation of fear of
16 immediate bodily harm.

17 A battery is the use of force against another
18 resulting in harmful or offensive contact. It is the
19 assault brought to completion. A battery is the unlawful
20 touching or striking of another by the aggressor himself
21 or by any substance put in motion by him done with the
22 intention of bringing about a harmful or offensive conduct
23 -- contact, which is not legally consented to by the other
24 and not otherwise prejudice. It is defined as any injury
25 done to the person of another in a rude, insolent or

1 revengeful way. The presence of malice is a required
2 element of assault and battery with intent to kill.

3 What is malice in the law? Malice is defined as
4 being hatred or ill will. Malice in its legal sense does
5 not necessarily import ill will toward the individual
6 injured, but signifies rather a general malignant,
7 recklessness of the lives and safety of others or a
8 condition of the mind which shows a heart regardless of
9 social duty and fatally bent on mischief. Malice is the
10 wrongful intent to injure another person. It indicates a
11 wicked or depraved spirit intent on doing wrong.

12 Malice is a legal term implying wickedness and
13 excluding just cause or excuse. It is a doing of a
14 wrongful act intentionally and without just cause or
15 excuse. The term malice indicates a formed purpose and
16 design to do a wrongful act under the circumstances that
17 exclude any legal right to do it. Malice may be either
18 express malice or implied malice. The words express are
19 implied, add nothing to the meaning of the word malice.
20 They do not imply different kinds of malice, but merely
21 the manner in which the only kind known to the law may be
22 shown to exist, that is either by positive evidence or by
23 inference. Express malice is when there is a deliberate
24 intention to unlawfully take the life of another. Implied
25 malice is when the circumstances demonstrate a wanton or

1 reckless disregard for human life or a reasonably prudent
2 person would have known that according to common
3 experience there was a plain and strong likelihood that
4 death follow the contemplated act.

5 The law says if one intentionally shoots or stabs
6 another with a deadly weapon, the implication of malice
7 may arise. If facts are prove beyond a reasonable doubt
8 sufficient to raise an inference of malice to your
9 satisfaction, this inference would be simply an
10 evidentiary fact to be taken into consideration by you,
11 the jury, along with other evidence in the case. And you
12 may give it such weight as you determine it should
13 receive.

14 A deadly weapon is any article, instrument, device or
15 substance which is likely to cause death or great bodily
16 harm. Whether an instrument or object has been used as a
17 deadly weapon, depends on the facts and circumstances of
18 each case. Although malice must be aforethought, there is
19 no requirement that it must exist for any appreciable
20 length of time before the commission of the act. It may
21 be conceived at the very moment the act occurs. There
22 must be a combination of the evil intent and the act
23 producing the result.

24 Assault and battery with intent to kill requires the
25 intent to kill. However, this intent need only be a

1 general intent demonstrated by the acts and conduct of the
2 accused and other circumstances from which you may
3 naturally and reasonably infer intent. Specific intent to
4 kill is not an element of assault and battery with intent
5 to kill, only a general intent to kill is necessary to
6 support a charge of assault and battery with intent to
7 kill.

8 Intent may be proved with evidence of the character
9 of the means or instrument used. Intent to kill may be
10 inferred from the character of the assault and battery.
11 The use of a deadly weapon with an opportunity to
12 deliberate or to use or the use of a dangerous or deadly
13 weapon in a manner reasoning, calculated to cause death or
14 great bodily harm. Likewise, the manner in which the
15 instrument was used, the purpose to be accomplished and
16 the resulting injuries may also prove intent. Intent may
17 be inferred when it is demonstrated that the accused
18 voluntarily and willfully commits an act, the natural
19 tendency of which is to destroy another's life.

20 I've use the word intent. What is intent mean in the
21 law? What is criminal intent? Criminal intent is a state
22 of mind which operates jointly with an act or omission in
23 the commission of a crime. Criminal intent is a mental
24 state of conscious wrongdoing. Criminal intent includes
25 those consequences which A represent the very purpose for

1 which an act is done or B are known to be substantially
2 certain to result regardless of one's desire. Criminal
3 intent may be shown by acts and conduct of the defendant
4 and other circumstances from which you may naturally and
5 reasonably infer intent. Criminal intent must be proven
6 by the State beyond a reasonable doubt.

7 Arson in the second degree once again contain in the
8 code of laws of South Carolina. The defendant is charge
9 with arson in the second degree. Section 16-11-110 of the
10 South Carolina code of laws sets forth the statutory
11 provision for arson in the second degree. Quote, quote, A
12 person who willfully and maliciously causes an explosion,
13 sets fire to, burns or causes to be burned, or aids,
14 counsels or procures the burning that results in damage to
15 a dwelling house or any structure design for human
16 occupancy is guilty of arson in the second degree.

17 For purposes of this section, damage means an
18 application of fire, or explosive that results in burning,
19 charring, blistering, scorching, smoking, singeing,
20 discoloring or changing the fiber or composition of a
21 building, structure or any property specified in this
22 section. The State must prove the following three
23 elements beyond a reasonable doubt to establish second
24 degree arson. One, a willful and malicious act, willful
25 means intentioned. Willful means it was not done by

1 accident. A willful act is one done voluntarily and
2 intentionally with the specific intent to do something the
3 law forbids or with the specific intent to fail to do
4 something the law requires to be done, that is to say with
5 bad purpose either to disobey or disregard the law.

6 Heretofore, I define for you in detail criminal
7 intent. Please use that definition that I just given to
8 you in this elemental analysis. I have define malice for
9 you already. Please use the malice definition that I've
10 already given to you in this statutory provision. Two, a
11 burning that results in damage to a building or structure
12 specified in subsection B of section 16-11-110. In an
13 arson case, the corpus delicti and that's Latin, some of
14 you know I love Latin, means the body of the crime.
15 Corpus delicti, the body of the crime consist of two
16 elements: One, the burned building, structure or the
17 property and two, the criminal act of some person in
18 causing the burning. As in all other crimes, the burden
19 is upon the State to prove the corpus delicti beyond a
20 reasonable doubt. Where nothing appears but the mere fact
21 of a building structure or property that was consumed by
22 fire, the presumption is that the fire was a result of an
23 accident or some providential cause rather than a willful
24 act. The burning must result in damage to the building
25 structure or property. It is not necessary that the

1 building-structure property be consumed or destroyed only
2 that it be damaged. Three, the building and burning must
3 have been involved in the following types of buildings or
4 structures: A dwelling house or any structure design for
5 human occupancy to include any devices and properties
6 known as dwelling house, an apartment house or a building
7 defined as a structure design for habitation, shelter or
8 storage.

9 Counts 3 and 4 relate to the two children. It is
10 contained in the code of laws in section 63-5-70 entitled
11 unlawful conduct towards a child. It reads "It is
12 unlawful for a person who has charge or custody of a child
13 or who is a parent or guardian of a child or who is
14 responsible for the welfare of a child to place the child
15 at unreasonable risk of harm affecting the child's life
16 physical or mental health or safety." The defendant is
17 charge with unlawful conduct towards the two children
18 considering them separately and distinctly, Count 3 and
19 Count 4, separately and distinctly.

20 The State must prove beyond a reasonable doubt that
21 the defendant had charge or custody of the child, was a
22 parent or guardian of the child or was responsible for the
23 care and support of the child. The State must prove
24 beyond a reasonable doubt that the defendant placed the
25 child at unreasonable risk of harm affecting the child's

1 life physical or mental health or safety.

2 The verdict must be unanimous. All jurors must
3 freely and voluntarily agree to the verdict whatever it
4 is. Madam forelady, once again, do not sign any verdict
5 unless it is a unanimous verdict. Unanimity is mandated
6 by the constitution. The verdicts I have heretofore
7 explain to you just relate to the choices in regard to
8 assault and battery with intent to kill, one not guilty or
9 two guilty of assault and battery with intent to kill.
10 And arson in the second degree not guilty or guilty of
11 arson in the second degree. Count 3 not guilty or guilty
12 of unlawful conduct towards that child. And Count 4 not
13 guilty or guilty of unlawful conduct towards that
14 particular child.

15 Jurors, thank you for listening. Thank you for
16 serving with me to this point in this case. I now give
17 you this case for decision. One of the most serious
18 decisions you'll ever make in your life. One are all
19 jurors feeling well? If you are not feeling well, raise
20 your hand now? Please, do not be shy or bashful now folk,
21 this is serious. You can't send me a note later and say
22 you got a stomachache and you're not feeling well, that's
23 just not the way it works. I mean, I want to be straight
24 with you. If you're not feeling well tell me now? Now
25 please, do not hold back. Anyone not feeling well,

1 please, raise your hand? Please raise your hand? Please
2 raise your hand? Miss Court Reporter, let the record show
3 that no juror raises his or her hand in regard to my
4 query.

5 The next query relates to this. Does anyone
6 anticipate any problem staying with the case? And once
7 again, you can't send me a note out later this afternoon
8 saying I got a problem at five, I got a problem at four or
9 six. That's not the way it works. This matter is now
10 entrusted to you for a decision. And so please be open
11 and responsive to the Court. If you anticipate a problem
12 staying with this case this afternoon, please raise your
13 hand? These two alternates are ready and willing to
14 serve, I can tell by their expressions that they are
15 willing to serve. I believe that. Anyone? Anyone?
16 Please, now anyone?

17 All right. As you go to your jury room now, do not
18 begin discussion. Do not begin talking. Why? I'm
19 required to let these lawyers object to anything I've
20 said to you. And I must let them object in your absence.
21 It might be that I bring you back out. If I do not bring
22 you back out, I'll send in these verdict forms and all the
23 exhibits will be sent it. And once that occurs, please
24 start discussing the case.

25 Now, according to my Timex, it's about 11:17, which

1 means it's getting close to the lunch hour. We will bring
2 lunch in at county expense. I need to keep you together
3 now. If you decide to eat, it takes me one hour in regard
4 to the restaurant the that clerk of court deals with in
5 regard to providing food for jurors. So if you tell me
6 12, it will be one before I get it here. If you tell me
7 at one, it will be two before I get it here. So, Madam
8 Forelady, just let me know.

9 Now, Madam Forelady, you are the spokesperson on
10 behalf of the jury. You and the Court must communicate in
11 writing. So if you want something, send me a writing
12 expressing that desire and I will respond. In some
13 instances, I respond on the note. In some instances, I'll
14 bring you back out in respond in full with the jury. All
15 12 jurors go to your jury room except the two alternates.
16 The two alternates stay right here. Please go to your
17 jury room and wait for further instructions.

18 (WHEREUPON, the jury retire to the jury room at 11:18
19 a.m.)

20 THE COURT: You alternates, I have wonderful news for
21 you. I'm going to turn you loose for the week. Now, the
22 other news may have a little negativistic overtone. It's
23 the fact you're going to get a check next week in the
24 mail. Don't think about the judge when you get the check,
25 a small check, a very small check. You might be

1 embarrassed to cash it. But we couldn't pay you any way
2 in the terms of value or service. I thank you for serving
3 with me this week. I thank you for being here. I thank
4 you for the attention you gave the case. In many
5 instances, we have to use the alternate or alternates
6 both, but in this case, we did not. So thank you for
7 being with the Court this week, come by here and let me
8 just shake your hand and tell you bye, you free to go.
9 And, of course, you may stay if you like, but you are free
10 to go if you want to.

11 (WHEREUPON, the two alternates were excused.)

12 THE COURT: Exceptions or objections from the State
13 as to my charge?

14 MR. HILL: None, Your Honor.

15 THE COURT: From the defense?

16 MS. PARROTT: None, Your Honor.

17 THE COURT: All right. Counsel come forward and help
18 the Court and the bailiff and the court reporter get the
19 exhibits all identified, so that we'll take them in the
20 room and that does include the machete goes in. Here are
21 the verdict forms.

22 (WHEREUPON, a break was taken to gather exhibits.)

23 (WHEREUPON, the jury began deliberations at 11:45.)

24 THE COURT: What is full name of the four-year-old
25 child, please?

1 MS. PARROTT: It's [redacted] Minor 2 Your
2 Honor.

3 THE COURT: And the seven-month-old child?

4 MS. PARROTT: I cannot give you the full name of that
5 child, Your Honor. I know that she goes by [redacted] Minor 1 .

6 THE COURT: How do you spell [redacted] Minor 1 ?

7 MS. PARROTT: [redacted] Minor 1 Your Honor, is
8 what I'm being told.

9 THE COURT: How you spell it?

10 MS. PARROTT: [redacted] Minor 1

11 MR. HILL: Your Honor.

12 THE COURT: Yes.

13 MR. HILL: The spelling [redacted] Minor 1 .

14 THE COURT: [redacted] Minor 1 .

15 MR. HILL: [redacted] Minor 1 middle name

16 [redacted] and the last name [redacted].

17 THE COURT: Okay. The billydo from the jury reads
18 quote verdict indictment for children. Please advise
19 which age child is Count 3 and Count 4, which is T.C.,
20 which is -- and looks like she's come which is [redacted] Minor 1 .
21 And she signed it and it's dated today. Bring the jury
22 out.

23 (WHEREUPON, the jury return to the courtroom at 1:03
24 p.m.)

25 THE COURT: Okay. First, I hope your lunch was okay.

1 Second, an excellent question, an excellent question.
2 Thank you for that. Count 3, Count 3 involves the
3 four-year-old, [REDACTED] Minor 2 [REDACTED] Once again,
4 Count 3 involves the four-year-old, [REDACTED] Minor 2 [REDACTED]
5 [REDACTED] Count 4 involves the seven-month-old, [REDACTED]
6 [REDACTED] Minor 1 [REDACTED] I witness again make sure you have that.
7 Count 3 involves the four-year-old, [REDACTED] Minor 2 [REDACTED]
8 [REDACTED] [REDACTED] And Count 4 relates to the seven-month-old
9 [REDACTED] Minor 1 [REDACTED] Okay. Thank you very much,
10 excellent question.

11 (WHEREUPON, the jury return to the jury room at 1:05
12 p.m. to continue deliberations.)

13 THE COURT: The State desire to put anything on the
14 record in regard to my response from the note from the
15 jury?

16 MR. HILL: No, Your Honor.

17 THE COURT: Defense?

18 MS. PARROTT: No, Your Honor.

19 THE COURT: Okay, Counsel, stay close by. This may
20 be a note writing jury as you know sometimes some are more
21 prolific in that regard than others but, please, stay
22 close by. We'll be at ease.

23 (WHEREUPON, Court's Exhibit Nos. 3 and 4 was marked
24 for the record.)

25 (WHEREUPON, court at ease awaiting a verdict.)

1 THE COURT: Okay. Folk, I have no earthly idea what
2 the verdict is and I give to the jury the respect that
3 they deserve in deciding the facts of a case. I do not
4 allow any kind of reaction. I repeat, again, folk, I'm
5 not going to allow any kind of reaction to the jury
6 verdict. We didn't bring you here for entertainment. You
7 came for entertainment, you're in the wrong place. This
8 is serious business. And I repeat again, I'm not going to
9 have any response to the jury verdict.

10 Now, a lot of people don't understand what I say. If
11 you don't understand, slid your hand up, just like you do
12 in church, slid your hand up and I'll try to make it
13 clearer. Anyone not understand? All right. Deputies, if
14 there's any response, take the person into custody
15 immediately, put the handcuffs on them and take them in.

16 (WHEREUPON, the jury return to the courtroom with a
17 verdict at 1:44.)

18 THE COURT: Mrs. Clerk, you're recognized.

19 THE CLERK: Madam Forelady and members of the jury,
20 have you reached a verdict?

21 FOREPERSON: Yes, we have.

22 THE CLERK: The State of South Carolina vs. Tarus
23 Tramaine Henry, Sr., verdict indictment number
24 2008-GS-21-1877, Count 1 guilty of assault and battery
25 with intent to kill. Foreperson, Stephanie Sturkie, dated

1 July 30th 2009. Count 2 guilty of arson second degree.
2 Sign foreperson, Stephanie Sturkie, dated July 30th 2009.
3 Count 3 guilty of unlawful conduct towards a child. Sign
4 foreperson, Stephanie Sturkie, dated July 30th 2009.
5 Count 4 guilty of unlawful conduct towards a child. Sign,
6 Stephanie Sturkie, dated July 30th 2009. Members of the
7 jury, if this is your verdict, please raise your right
8 hand?

9 (WHEREUPON, all jurors's hands were raised.)

10 THE CLERK: That's all of them, Judge.

11 THE COURT: Let the pooling procedure show as being
12 unanimous, Miss Court Reporter. Any further request for
13 individual voir dire?

14 MS. PARROTT: None, Your Honor.

15 THE COURT: All right. Jurors, thank you so much for
16 serving on this case. Thank you for the time and talent
17 you bring to the court. Thank you for your good attitude
18 this week, it's been a pleasure to serve with you. And I
19 thank you for being a part of the judicial system. In
20 regard to your service now, it has come to an end. You
21 are welcome to stay in the courtroom as I complete the
22 matter in the way of sentencing. And you are certainly
23 privileged to stay here, but if you would like to leave,
24 if you would like to leave, you may do so now. We'll just
25 catch you the elevator. And there is some news that is

1 not so positive and that is you going to get a small check
2 next week, real small. We couldn't pay you any way in
3 terms of the value of your service, but thank you for
4 being here. And thank you being a part of the system. If
5 there's any member of the jury that would like to leave
6 now, you may come right through here. Anyone like to
7 leave?

8 All right. Bring him forward for sentencing. Any
9 motions, Counsel?

10 MS. PARROTT: Motion for a new trial, Your Honor,
11 based upon the verdict as well as the evidence that's been
12 presented.

13 THE COURT: The motion is respectfully denied.

14 All right. Mr. Hill, what is his prior record? As I
15 understand it, there's something about a CDV in his prior
16 history.

17 MR. HILL: That's it, Your Honor, that's all.

18 THE COURT: Criminal domestic violence when?

19 MR. HILL: 2005, I believe, but I'm double checking
20 for you. October 13th 2005.

21 THE COURT: Criminal domestic violence?

22 MR. HILL: Yes, Your Honor, first offense.

23 THE COURT: Where was it?

24 MR. HILL: It shows Bennettsville, South Carolina.

25 THE COURT: Is that correct, Mr. Henry?

1 THE DEFENDANT: That's correct.

2 MR. HILL: There were minor traffic infractions in
3 2007.

4 THE COURT: All right. I need the sentencing sheets.

5 MR. HILL: Your Honor, they've been printed and
6 should be delivered right now. I will fetch them.

7 THE COURT: All right. Counsel, I'll listen to you
8 as you present the matter.

9 MS. PARROTT: Your Honor, obviously, you been present
10 and listening to this trial as it has progressed, it's now
11 its fourth day. And because of all the testimony that was
12 presented quite a bit of it of which was of a personal
13 nature to Mr. Henry. I believe that you probably already
14 have a understanding as to his past, his learning
15 disability, his mental conditions that have affected him
16 and hunted him throughout his life. And that may have had
17 some affect in his actions on this day. He, of course,
18 has spoken from the stand and I believe that the Court
19 would probably take into consideration some of the things
20 that he, that he stated. But I would ask that the Court
21 to take into consideration his lack of a prior history and
22 the fact that he does have two children, Your Honor, that
23 they're now five years of age and maybe 19 months or so of
24 age probably a little bit older that than, Your Honor.

25 And that during the time that I have represented him,

1 that has been one of his upmost concerns is that he would
2 like to know his children. He does not -- he wants still
3 -- in quite a few of our conversations were about the fact
4 that he loves his children so much and that he does not
5 want be separated from them and that he -- he wanted his
6 trial, Your Honor. And, obviously, our system is built
7 for that. Our system is to allow and certainly it's a
8 privilege and a right of everyone to be afforded such
9 opportunities. And I believe he had a full and fair
10 trial, but I did go over the information with him about
11 what the consequences of a trial would be. If he was
12 found to be guilty, as to which counts were excuse me --
13 the assault and battery with intent to kill carrying as
14 much as 20 years. The arson being five to 25 and the
15 unlawful conduct towards a child being up to ten years
16 each, that he's looking at a serious offense. So that it
17 does affect parole eligibility. And in fact, he signed a
18 piece of paper for us stating that he understood all of
19 the characteristics and all of the connotations that each
20 offense counted and carried with it and wanted to go
21 forward with his trial. As I state, Your Honor, that is a
22 right that is afforded by our system. And I would ask
23 that that not be considered, that he wanted his trial as
24 oppose to just simply doing a plea.

25 THE COURT: Mr. Henry, you want to tell me anything?

1 THE DEFENDANT: Yes, all this is new to me. I pray
2 that this is my last time. Yesterday, I didn't know it
3 was all or nothing during my testimony or I would have
4 apologized to the victim and the victim's family. I just
5 wanted to apologize for my actions, but I was not in my
6 right state of mind. Had I been, it would not have
7 happened. I just want to apologize, that's it.

8 THE COURT: Does the victim want to address me,
9 Mr. Hill?

10 MR. HILL: No, Your Honor. Thank you.

11 THE COURT: Does any member of her family desire to
12 address me?

13 MR. HILL: No, Your Honor.

14 THE COURT: All right.

15 MR. HILL: Your Honor, may I approach?

16 THE COURT: Yes.

17 MR. HILL: The others are being printed.

18 THE COURT: Mr. Henry, how long have you been in
19 jail, please?

20 THE DEFENDANT: 400 days.

21 THE COURT: I'm sorry.

22 THE DEFENDANT: A little over 400 days.

23 THE COURT: Let's get it exactly because he's
24 entitled to that credit under the law.

25 MS. PARROTT: Your Honor, I apologize cause I had not

1 calculated. It would be since June the 23rd of last year.

2 THE COURT: Well, you mathematicians calculate it for
3 me.

4 MS. PARROTT: Yes, sir.

5 (WHEREUPON, a pause in the proceedings.)

6 MS. PARROTT: Your Honor, by my calculations, it
7 would be 402 days.

8 THE COURT: 402 days?

9 MS. PARROTT: Yes, Your Honor.

10 THE COURT: Thank you.

11 MS. PARROTT: I got the clerk nodding at me, so it
12 must be right.

13 THE COURT: Okay. As everyone knows who has any
14 familiarity with the judicial system, the most difficult
15 activity of a circuit judge is sentencing. And that is
16 always subject to the vastitudes and vagaries of people
17 who have a view from different standpoint. The activity
18 of sentencing is burdensome as it ought to be. After 30
19 years on the bench, Miss Court reporter, I don't want that
20 over I hope, it is still difficult to sentence, unless the
21 sentence is, of course, a mandatory sentence with no
22 discretion whatsoever. And in that circumstance, it's a
23 very easy task to simply administratively sign the
24 document.

25 Mr. Henry, you have been convicted of one the most

1 brutal, horrific, despicable acts I have ever seen in
2 regard to conduct toward a fellow human being and that
3 must be analyzed and responded to by the Court. There is
4 the absolute mandate that people be protected in terms of
5 their personal lives and that is in viewed in the sentence
6 today. Assault and battery with intent to kill the
7 defendant is committed to the custody of the State
8 department of corrections for a term of 20 years. In
9 other sentence issued today, is consecutive in regard to
10 this sentence. He's given credit for jail time for 402
11 days already served.

12 The sentence of the Court on arson second degree, the
13 defendant is committed to the state department corrections
14 for a term of 20 years. It is consecutive. It is
15 consecutive to the sentence that I just passed on assault
16 and battery with intent to kill.

17 The sentence of the Court in regard to Count 3
18 unlawful conduct toward a child is the defendant is
19 committed to the state department of corrections for a
20 term of ten years. It is concurrent. It is concurrent in
21 all aspects. The sentence of the Court on Count 4, the
22 defendant is committed to the state department of
23 corrections for a term of ten years. And it is concurrent
24 in all aspects today. Thank you, good luck.

25 MS. PARROTT: Thank you, Your Honor.

1 THE COURT: All right. So that you understand
2 jurors, the sentence in essence is a 40 year sentence.
3 The other two sentences are concurrent and they just run
4 together, but it is a 40 year sentence. The Court's in
5 recess.

6 (WHEREUPON, the proceedings were concluded for the
7 day to be reconvened on July 31, 2008.)

8 THE COURT: On yesterday the Court during this trial,
9 the jury and the Court received a presentation in regard
10 to the utilization of a mannequin. The Court then took
11 possession of the mannequin because of its use before the
12 trial jury. The Solicitor, Mr. Stephen Hill, and the
13 attorney for the defendant, Ms. Parrott, have now
14 presented to the Court a number of photographs in color in
15 regards to the mannequin that portray digitally the
16 markings by the trauma surgeon. I will now allow the
17 release of the mannequin and will substitute in lieu
18 thereof this composite group of color photographs as
19 Court's Exhibits Numbers 6-23. Let the record show, that
20 I am signing an order to that effect that allows the
21 substitution and the release of the mannequin. Thank you.

22 MR. HILL: Thank you very much.

23 (WHEREUPON, Court's Exhibits Nos. 6-23 was marked for
24 the record.)

25 END OF REQUESTED TRANSCRIPT

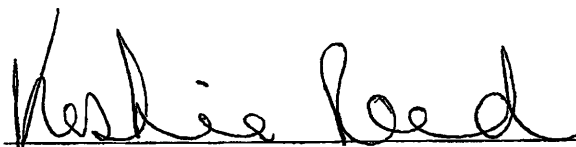
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 618, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Florence County, South Carolina, on the 27-31 day of July, 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 8th day of March 2010.



Keshia Reed, Court Reporter

My Commission Expires: 6-5-2010

WITNESSES
 LT. BRETT CAMP FCSO
 Cooper

PROS: SLH
 D/O: 06-23-2008

ARREST WARRANT NO.
 K217534 (1); K245812 (2); K245813 (3);
 K245814 (4).

ACTION OF GRAND JURY

TRUE BILL

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2008 - GS - 21 - 01877

The State of South Carolina,

County of FLORENCE

SLH

COURT OF GENERAL SESSIONS

DECEMBER TERM 2008

THE STATE

vs.

TARAS TRAMAINE HENRY, SR.

Indictment for

ASSAULT AND BATTERY
 WITH INTENT TO KILL

ARSON

UNLAWFUL CONDUCT TOWARDS
 A CHILD

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

ASSAULT AND BATTERY WITH INTENT TO KILL
ARSON UNLAWFUL CONDUCT TOWARDS A CHILD

At a Court of General Sessions, convened on NOVEMBER 20, 2008, the Grand Jurors of FLORENCE

County present upon their oath:

COUNT ONE - ASSAULT AND BATTERY WITH INTENT TO KILL

That TARAS TRAMAIN HENRY, SR. did in FLORENCE County on or about June 23, 2008, violate Sections 16-03-0620, 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did with malice aforethought, commit an assault and battery upon Carol Denise Parker, aka Carol Henry by cutting and stabbing her with a knife and/or machete with the intent to kill the said Carol Denise Parker, aka Carol Henry.

COUNT TWO - ARSON (SECOND DEGREE)

That TARAS TRAMAIN HENRY, SR. did in FLORENCE County on or about June 23, 2008, violate Sections 16-11-0110(B) and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did wilfully and maliciously cause an explosion, set fire to, burn or cause to be burned, or aided, counseled, or procured the burning of the dwelling and residence of Taurus Tramaine Henry, Carol Denise Parker aka Carol Henry, and two minor children.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR ASSAULT AND BATTERY WITH INTENT TO KILL ARSON UNLAWFUL CONDUCT TOWARDS A CHILD WITH THE AFORESAID NAME(S) OF TARAS TRAMAIN HENRY, SR. SHOWN THEREON:

COUNT THREE - UNLAWFUL CONDUCT TOWARDS A CHILD

That TARAS TRAMAIN HENRY, SR. did in FLORENCE County on or about June 23, 2008, violate Section 20-07-0050 of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully and maliciously do, or cause to be done, any bodily harm to Carol Denise Parker, aka Carol Henry, the mother of a four year old child so that said child was placed at unreasonable risk of harm affecting the child's life, physical or mental health or safety; or did or caused to be done any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered; or wilfully abandoned the child, while the said TARAS TRAMAIN HENRY, SR. had charge or custody, or is the parent or guardian, or was responsible for the welfare of said child.

COUNT FOUR - UNLAWFUL CONDUCT TOWARDS A CHILD

That TARAS TRAMAIN HENRY, SR. did in FLORENCE County on or about June 23, 2008, violate Section 20-07-0050 of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully and maliciously do, or cause to be done, any bodily harm to Carol Denise Parker, aka Carol Henry, the mother of a seven month old child so that said child was placed at unreasonable risk of harm affecting the child's life, physical or mental health or safety; or did or caused to be done any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered; or wilfully abandoned the child, while the said TARAS TRAMAIN HENRY, SR. had charge or custody, or is the parent or guardian, or was responsible for the welfare of said child.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Florence
 STATE VS.
TARAS TRAMAIN HENRY, SR.
 AKA: _____
 Race: B Sex: M Age: 27
 DOB: _____
 Address: _____
 DL#: _____

INDICTMENT/CASE#: 08-1877
 A/W#: K217534
 Date of Offense: 6/23/2008
 S.C. Code § : 16-03-0620
 CDR Code #: 0014

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was
 TO: ASSAULT AND BATTERY WITH INTENT TO KILL

in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Stephen L. Hill 13095
HILL, STEPHEN L. 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 Twenty (20) ~~months~~ years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____, plus costs and assessments as applicable, the balance is suspended with probation for _____

~~months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.~~

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: any other sentence issued today
☒ 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. Credit for jail time for 462 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 PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
 *Fine: \$ _____
 § 14-1-206 (Assessments 107.5 %) \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 § 47.12 (Public Def/Prob) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ _____
 § 14-1-213 (Drug Court Surcharge) \$100 \$ _____
 § 50-21-114(BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 § 90.7 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ _____
 TOTAL \$ 105.00

_____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol testing _____
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____
☐ Appointed PD or appointed other counsel, §47.12
 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk K. Hill
 Court Reporter: K. Hill
 SCCA/217 (06/2009)

PRESIDING JUDGE Reph King Anderson
 Judge Code: _____
 Sentence Date: 7/20/09

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 623

COUNTY OF
STATE

Florence

VS.

TARAS TRAMAIN HENRY, SR.

AKA:

Race: B Sex: M Age: 27

DOB:

Address:

DL#:

SID#:

In disposition of the said indictment comes now the Defendant who was
TO: ARSON - SECOND DEGREE

INDICTMENT/CASE#: 08-1877

A/W#: K245812

Date of Offense: 6/24/2008

S.C. Code § : 16-11-0110(B)

CDR Code #: 2551

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0110(B) of the S.C. Code of Laws, bearing CDR Code # 2551

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd 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:

HILL/STEPHEN L.

SC Bar# 13095

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 Twenty (20) days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: any other sentence issued today
☐ 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. Credit for jail time for 402 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 PTUP

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

	\$	
	\$	
\$100	\$	100.00
\$100	\$	
\$12	\$	
\$25	\$	
\$500	\$	
\$25	\$	
\$100	\$	
\$50	\$	
\$40/ea	\$	
\$5	\$	5.00
	\$	
	\$	105.00

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §47.12
requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Florence

VS.

TARAS TRAMAIN HENRY, SR.

AKA:

Race: B Sex: M Age: 27

DOB:

Address:

DL#:

SID#:

In disposition of the said indictment comes now the Defendant who was
TO: PERSON WHO HAS CHARGE/CUSTODY OF CHILD,

INDICTMENT/CASE#: 08-1877

A/W#: K245813

Date of Offense: 6/24/2008

S.C. Code § : 20-07-0050

CDR Code #: 2481

SENTENCE SHEET

in violation of § 20-07-0050 of the S.C. Code of Laws, bearing CDR Code # 2481

☐ 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:

HILL, STEPHEN L.

SC Bar# 13095

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 Ten (10) 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 on: Concurrent in all aspects☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code:

Sentence Date:

7/30/09

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 625

COUNTY OF
STATE

Florence

VS.

TARAS TRAMAIN HENRY, SR.

AKA:

Race: B Sex: M Age: 27

DOB:

Address:

DL#:

SID#:

In disposition of the said indictment comes now the Defendant who was
TO: PERSON WHO HAS CHARGE/CUSTODY OF CHILD,

INDICTMENT/CASE#: 08-1877

A/W#: K245814

Date of Offense: 6/24/2008

S.C. Code § : 20-07-0050

CDR Code #: 2481

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: PERSON WHO HAS CHARGE/CUSTODY OF CHILD, *Unlawful Conduct Towards a Child*in violation of § 20-07-0050 of the S.C. Code of Laws, bearing CDR Code # 2481
☐ 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:

HILL, STEPHEN L.

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 *Ten (10)* days/months/years or ☐ under the Youthful Offender Act not to exceed *_____* years
and/or to pay a fine of \$ *_____*; provided that upon the service of *_____* days/months/years and/or payment
of \$ *_____*; plus costs and assessments as applicable*, the balance is suspended with probation for *_____*months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: *Concurrent in all aspects*
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP *_____*
Total: \$ *_____* plus 20% fee: \$ *_____* *_____* days/hours Public Service EmploymentPayment Terms: *_____*☐ set by SCDPPPS *_____*Recipient: *_____*

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <i>100.00</i>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
§ 47.12 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§ 90.7 (SCCJA Surcharge)	\$5	\$ <i>5.00</i>
3% to County (if paid in installments)	\$	
TOTAL	\$	

Clerk of Court/ Deputy Clerk *DPHanc*Court Reporter: *K. Trew*

SCCA/217 (06/2009)

PRESIDING JUDGE *_____*Judge Code: *_____*Sentence Date: *7/30/08*

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

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Tarus Tremaine Henry, Sr.,

Appellant.

Appeal From Florence County
Ralph King Anderson, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-562
Heard November 3, 2011 – Filed December 13, 2011

AFFIRMED

Appellate Defender LaNelle Cantey Durant,
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General David Spencer; all of
Columbia, and E.L. Clements, III, of Florence, for
Respondent.

FILED
2013 AUG 29 AM 10:45
FLORENCE COUNTY, S.C.
JONNIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.
CERTIFIED: A TRUE COPY
Cornie Reel-Shearin

PER CURIAM: This appeal arises out of Appellant Tarus Tremaine Henry, Sr.'s convictions for assault and battery with intent to kill, second degree arson, and two counts of unlawful conduct towards a child. On appeal, Henry claims the trial court erred in: (1) admitting into evidence his statement to police and (2) refusing to charge the jury on the lesser-included offenses of assault and battery of a high and aggravated nature and attempt to burn. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: Berghuis v. Thompkins, 130 S.Ct. 2250, 2263 (2010) (finding no evidence defendant's confession was coerced where there was no claim that police threatened him, injured him, or that defendant was in any way fearful, during a three-hour interrogation); State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) ("The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving of a confession.") (citing Dickerson v. U.S., 530 U.S. 428, 434 (2000)); State v. Gibson, 390 S.C. 347, 356, 701 S.E.2d 766, 770 (Ct. App. 2010) (finding it appropriate to decline to charge a lesser-included offense where "it very clearly appears that *no evidence whatsoever* exists tending to reduce the crime"); State v. Lindsey, 394 S.C. 354, 714 S.E.2d 554, 558 (Ct. App. 2011) (noting an argument is deemed abandoned on appeal when it is conclusory and made without supporting authority).

AFFIRMED.

HUFF, PIEPER, and LOCKEMY, JJ., concur.

FILED

STATE OF SOUTH CAROLINA

2014 JUL 17 PM 2:30

THE COURT OF COMMON PLEAS

COUNTY OF Florence

CONNIE REEL-SHEARIN

CCCP & GS

Tarus Tramaine Henry SR. 33615

FLORENCE COUNTY, SC

2014 CP-21-1970

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

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION REVIEW

CERTIFIED: A TRUE COPY
 Connie Reel-Shearin
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

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

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

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

- SA-13
- Place of detention Lieber Correctional Institution 136 Wilborn Avenue
SA 24 Ridgewillie, SC 29472
 - Name and location of Court which imposed sentence Florence County City Complex
180 N. IRBY ST. Florence, SC 29501
 - Name(s) of co-defendant(s) (if any) N/A
 - The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - K-217534 ASSAULT with Intent to Kill (ABWIK)
 - K-245812 (2nd second Degree Arson)
 - K-245813, K-245814, unlawful neglect of a child X2 Count
 - The date upon which sentence was imposed and the terms of the sentence:
 - July 31, 2009 (ABWIK) 20 years, Arson 2nd degree 20 years
 - Consecutive to each other

Revised 3/2003

- (c) Unlawful neglect towards a child x2 10 years concurrent to other charges
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty yes
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State of South Carolina Court of Appeals
- ii. Petition for Re hearing
- iii. South Carolina Supreme Court
- (b) the result in each such Court to which you appealed:
- i. October 27th, 2010 result on December 13, 2011
- ii. N/A
- iii. Writ of certiorari petition Denied August 23, 2013
- (c) the date of each such result:
- i. October 27th, 2010 result on December 13, 2011
- ii. N/A
- iii. August 23, 2013
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See additional Page for answers, 1-of-10 Applicant Reserves the right To amend at a later Date.
- (b) See additional Page for answers 1-of-10
- (c) See additional Page for answers 1-of-10

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

- (a) See additional Page for answers 2-of-10 - 5-of-10
- (b) See additional Page for answers 6-of-10 - 7-of-10
- (c) See additional Page for answers 8-of-10 - 9-of-10

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. N/A
- iv. N/A

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

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

(c) the disposition thereof:

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

- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO / N/A
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) 1st P.C.R.
- (b) N/A
- (c) N/A
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO
- (b) your trial, if any? Public Defender Ms Karen E. Parrott
- (c) your sentencing? MS. Karen E. Parrott Public Defender
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Appellate Defender Ms. Lanette Cantey Durant
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Petition for Rehearing
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. Ms. Karen E. Parrott, Twelfth Circuit Public Defender office City-County Complex 180 N. Kirby Street, Box MSC-N Florence, SC 29501
- ii. Ms. Lanette Cantey Durant, Office of the Commission of Indigent Defense P.O. Box 11589 Columbia, SC 29211
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. Appeal Petition for Rehearing writ of Certiorari.
- iii. _____
19. State clearly the relief you seek in filing this application:
See additional Page 9 of 10
20. Are you now under sentence from any other court that you have not challenged?
NO / N/A

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Darlington)Tamara Thelma Henry Sr.

I, Tamara Thelma Henry Sr., 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.

Tamara Thelma Henry Sr.

SWORN to and subscribed before me this 11th
day of July, 2014.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

FILED
2014 JUL 17 PM 2:30
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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

Tarus Tramaine Henry Sr.

I, Tarus Tramaine Henry Sr., 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.

Tarus Tramaine Henry Sr.

Applicant

SWORN or affirmed to and subscribed before me this

11th day of July, 2014.

Ludheen Bayant
Notary Public

My Commission Expires: May 26, 2020

2014 JUL 17 PM 2:30
CONNIE REEL-SHEARIN
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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC.

The (6th) sixth Amendment of the United States Constitution provides, In all criminal prosecution, the accused shall enjoy the right... to have the assistance of counsel for his defense."

My trial counsel was deficient during my trial by failing to investigate my mental disability and my mental records; My diagnosis of mental (Blackouts) or my mental illness the records contain evidence that would have clearly supported by my theory of what happen at the time of the accusations.

Here, I was prejudiced because I was unable to present relevant and important evidence that would have supported my theory. It would also reflect mood swings characterized by emotional stress. An in camera inspection of subpoenaed materials. Also failure to use all his resources available to him to defend me against these allegations.

Post Conviction Relief

The Trial Judge erred, and abused his discretion, by The
"Statement Coerced"

In Ex parte Matthews, 601, So. 2d 52 (Ala 1992), the courts held that the Confession was Coerced where police told the defendant it will/would make a Big difference with prosecutors and Judges whether defendants cooperated or not.

In The court in Womack v. State, 205 So. 2d 579 (Ala. 1967) held that it was coercive to tell the defendant it would "go lighter on him if he Confessed." Note that a Statement induced by a Promise of leniency is involuntary only if so connected with the Inducement as to be a consequence of the promise.

We could look at "Voluntariness" in State v. Miller, 375 So. 370, 652 S.E. 2d, 444 (Ct. App. 2008) the test of Voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving Statement. [suffered prejudice as a result of the Statement that was induced with a promise. The prejudice of my Statement outweighs the probative value, the circumstance surrounding my Statements to law enforcement officers should have been required to be suppressed because of my mental condition at the time of the Statements. If we look at the following, of the Supreme court's decision in Atkins v. Virginia, 536 U.S. 304 (2002) which held that persons with mental retardation or mental illnesses, are not eligible for Capital Punishment.

From # 5 → Questions and answers from a pplcation: 10 and 11

Question #10

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

Answer #10

(A.) "Ineffective assistance of counsel" / "Doyle-violations"
"Failure to present a defense"

(B.) "Malicious Prosecution" / "Intentionally to gain a tactical advantage over the case" / "Deliberate Suppression of evidence" "Favorable to the accused"

(C.) "Fundamental Conceptions of Justice,"
"The Community's sense of fair play,"
"The State created a mandatory presumption"
"And impermissibly shifts the burden of proof to the defense."

Post-Conviction Relief

Form #5 Questions and answers from Application: 10, and 11

Question #11. State Concisely and in the same order the facts which support each of the grounds set out in (10)

Answer to #11

At this time I, Tarus T. Henry Sr., the applicant, in this application, would like to squarely present these facts/issues to this Court so they may be properly addressed; I would also like to frame all of these issues/grounds under the effective assistance of Counsel: (A) Ineffective assistance of Counsel

A(2) Doyle Violation Trial Counsel was ineffective for failing to conduct an independent investigation into the matter of which medications I was to be currently taken, lack of preparation, and failure to make an informed evaluation of the potentially viable defense when taken together, it amounts to ineffective assistance of Counsel and Doyle violations. Trial Court did not articulate any strategy for not challenging the indictment, for the indictment has (4) Four counts on one indictment.

2-04-10

A → continued:

State v. Henry

P.C.R.

639

(A-2) I do think that it was improper, to go on with the trial, without officer Calvin Timmons, it so infected the trial with unfairness as to make the resulting conviction a denial of due process. My trial Counsel did not make an standing objection to the matter, this is an Doyle violation, and presented a significant obstacle in preparing and adequate defense in receiving a fair trial. I must illustrate this point, that there are several separate showings to demonstrate, that there is a reasonable probability that, but for my trial attorney's unprofessional errors, and the Doyle violations, the result of the trial proceedings would have been different; To show both error and prejudice. There is only a (5) five page document that is certified to the court-ordered evaluation report issued pursuant to S.C. Code Ann. 44-23-410 (1976). There is no report submitted pursuant to the M'Naughten test to (Section 17-24-20(A)). Code of Law of South Carolina Department of Mental Health and South Carolina Department of mental Retardation to be evaluated.

Question # 11 A-3

Ineffective assistance of counsel/ Doyle Violations

(A3) This is an Doyle Violation, that my trial counsel did not articulate any strategy in challenging the Evaluation, "Competency to Stand Trial," pursuant to State vs. Blair Section 44-23-410, see → State vs. Blair, 275 S.C. 529, 273 S.C. Second 536 and section, 44-23-430. By Dr. Richard L. Frierson. However, at the time of the evaluation I was currently prescribed and taken medicines for my episodes for (72) days while at the detention center. I do not disagree with the finding of Dr. Frierson, as to competency to stand deficient in failing to object to the prejudice evaluation, for the order for the evaluation, should have been to examine to determine whether or not I was criminally responsible pursuant to the M'Naghten test for my actions on or about June 23, 2008, and I found responsible pursuant to the M'Naghten test, examined to determine whether or not, because of mental disease of defect, that I lack sufficient capacity without medicines to conform my conduct to the requirements of law at the time of June 23, 2008 pursuant to (Section 17-24-20 (A), Code of Law of South Carolina, 1976).

State v. Henry
Post-Conviction Relief
Doyle Violations

Continue...

Questions #11 A-3

The M'Naughten test is critical for my defense in the trial. It would have determined that at the time of June 23, 2008 I did not have the ability to differentiate right from wrong at the time of the alleged offense, also that I did not have the capacity to conform my conduct to the requirements of the law, on or about June 23, 2008. That I had a history of psychotic or other major mental disorder prior to or at the time of the alleged offenses.

It frankly surprises me that my counsel and the state would, ^{depraved} deprive me of this test. Non compliance with this test of constitutional law in order to avoid a retrial, which will do no more than assure a trial which comports with due process and fundamental fairness.

My trial counsel not challenging or objecting to the conduct of this order, was unfair, unprofessional. I suffered prejudice, violation of the due process clause, and she did not provide representation with the range of competence required in all criminal cases. That there is a reasonable probability that but for my trial counsel unprofessional errors, that the result of the trial proceedings would have been different...

5-08-10

Question #11. Continued (B.1)

Malicious Prosecution / Intentionally to gain a tactical advantage over the case:

Over borne by the circumstance surrounding my statement to the police officer, there is one simple concept, of the matter, The Prosecution / State acted intentionally to gain a tactical advantage over the case, when the state / prosecution, knewed that the statement was coerced. The statement was induced by a promise of leniency, This was in itself coercion. Considering all the circumstances pertaining to the statement into evidence, The trial court did abuse its discretion in permitting the statement into evidence to be used as it was. Letting this statement into trial, was malicious prosecution, and grossly improper; It so deprived me of my right to a fair trial. The statement should have been involuntary and should not have been allowed in trial. The state used the statement to bolster or strengthen there case. I suffered prejudice as a result of the state acting intentionally. There is nothing submitted in the report of Dr. Frierson's evaluation that I was criminally responsible at the time of the time of the act on or about June 23, 2008.

6-08-10

"Deliberate suppression of evidence"
"Favorable to the ACCUSED"

We put our complete trust in our lawyers, state attorneys, Judges, and the Judicial Courts as a whole, to do what they have been entrusted to do. In my trial, the state deliberately suppressed evidence, of the M'Naughten test that would have been favorable to the accused. This in itself would amount to a denial of due process. As a result of this deliberate suppression, there is a reasonable probability that the outcome of the trial would have been different, if the error were not committed. This suppression unquestionably influenced the trial with prejudice. That there are principles rooted in due process and the belief that justice is best served when a trial is fundamentally fair. This deliberate suppression, sufficiently charge a deprivation of rights guaranteed by the federal constitution, and if proven, would entitle me to be released from my present custody.

Questions #11 continued: C

Fundamental Conceptions of Justice, The Community's sense of fair play. The State/prosecution created a mandatory presumption and impermissibly shifts the burden of proof to the defense:

In this application it sets forth allegation that my imprisonment results from a coerced statement knowing used by the state prosecution, and state authorities to obtain my conviction, and from the deliberate usage of the said statement, the state is in violation of the fundamental conceptions of justice, and the Community's sense of fair play. This also created a mandatory presumption and impermissibly shifts the burden of proof to the defense. This is a violation of the due process clause of the (14) Fourteenth Amendment. This is to include but not limited to my rights or to the Procedural Safeguards known as the miranda warnings concerning the right to remain silent. This was in no way fair, At the time of the statement I did not have the ability or capacity to comprehend the meaning and effect of waiving any of my Constitutional rights.

Continued... C

The State created a high conflict situation, and aroused the passions and prejudices of the jurors causing them to base their decisions on their emotions. I was compelled to take the stand in my defense; This is what is called under "Duress Compel force".

The state left no other possible way for me to state my defense. This was unfair and prejudice to my case/trial. The decision whether to order a mistrial lies within the discretion of the trial judge, to be exercised upon the happening of some prejudicial events rendering a fair trial; and impartial trial impossible. The conduct in my trial was so grossly improper that the trial judge abused its discretion in failing to intervene.

I would respectfully ask this Court of Common Pleas to vacate my sentence and my conviction and also to dismiss my indictment with prejudice.

Form #5 Questions # 19

Question: State clearly the relief you seek in filing this application;

Answer: The thrust of this P.C.R. Post-Conviction Relief, are created in the miranda, are to provide safe guards to people/defendants with mental instability, controlling pressures of in-custody interrogation and to permit a defendant full opportunity to exercise his privilege against self-incrimination. That the factual allegations set forth in this P.C.R. application is sufficient to rise a right to relief, above the speculative level to the relevant portion there are, By protecting my rights to a fair trial, with all the Court's errors, trial counsel's errors, and the several Constitutional violations, that the conviction accompanied by such events, do not meet any civilized conception of due process of law, that alone is sufficient to vacate the sentence at this time and remanded this case back to Florence County for a new trial.

WITNESSED AND SUBSCRIBED before me on
this 11th DAY OF July
2014.
Ludheen Burgant
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES May 26, 2020

Respectfully Submitted,

Tarus J. Henry
Tarus Tramahe Henry SR.
Applicant

10-af-10

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Tarus Tramaine Henry, Sr., #336127,

2014-CP-21-1976

Applicant,

v.

**RETURN AND PARTIAL
MOTION TO DISMISS**

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on July 17, 2014, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the December 2008 term of the Florence County Grand Jury for two (2) counts of Unlawful Conduct Towards a Child and one (1) count of Assault and Battery with Intent to Kill and one (1) count of Arson, Second Degree. Applicant was represented by Karen E. Parrott, Esquire. Applicant was convicted by a jury of his peers on all four counts and sentenced by the Honorable Ralph King Anderson, Jr., to ten (10) years for each count of Unlawful Conduct Towards a Child to be served concurrently. Applicant was also sentenced to twenty (20) years for Assault and Battery with Intent to Kill and twenty (20) years for Arson, Second Degree, each to be served consecutively.

Applicant filed a timely appeal and this appeal was perfected by LaNelle Cantey Durant, Esquire. State v. Henry, Op. No. 2011-UP-562 (S.C. Ct. App. 2011). The remittitur was returned on August 28, 2013.

II.

In his application for post conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel: "Doyle violations. Failure to present a defense"
 - a. Failure to conduct an investigation into what medications Applicant was on; lack of preparation; "failure to make an informed evaluation of the potentially viable defense"; and counsel "did not articulate any strategy for not challenging the indictment for the indictment has (4) four counts on one indictment."
 - b. "improper[] to go on with the trial[] without officer Calvin Timmons; failure to make a "standing objection to the matter, this is a[] Doyle violation"; and failure to submit a report pursuant to the McNaughten test to be evaluated
 - c. Failure to "articulate any strategy in challenging the evaluation, 'competency to stand trial,' pursuant to State v. Blair." "I do not disagree with the finding of Dr. Frierson as to competency to stand . . . should have been examined to determine whether or not I was criminally responsible pursuant to the M'Naughten test . . ."
2. "Malicious Prosecution"
 - a. Confession was coerced; it "was induced by a promise of leniency[.] This was in itself coercion." "The trial court did abuse its discretion in permitting the statement into evidence to be used as it was."
 - b. "State deliberately suppressed evidence[] of the M'Naughten test that would have been favorable to the accused."
3. "Fundamental conceptions of justice"
 - a. The "coerced statement" . . . also created a mandatory presumption and impermissibly shifts the burden of proof to the defense . . . in violation of the due process clause of the (14) Fourteenth Amendment."
 - b. Miranda Warning – "at the time of the statement I did not have the ability or capacity to comprehend the meaning and effect of waiving any of my constitutional rights."
 - c. "State created a high conflict situation[] and aroused the passions and prejudices of the jurors causing them to base their decisions on their emotions. I was compelled to take that stand in my defense;[t]his is what is called under "Duress compel force." Trial judge "abused its discretion in failing to intervene."

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the Department of

Corrections, Applicant's appellate records, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Applicant's claim of ineffective assistance of trial counsel is without merit. In a PCR action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). 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." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of trial counsel probably raises questions of fact the record does not conclusively refute. Accordingly, 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.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the

defense, the result of the proceeding would have been different.” Id., 434 S.E.2d at 268.

V.

Additionally, the Court should dismiss Applicant’s allegations of trial court errors as barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id. This application presents allegations that could have been and were raised in Applicant’s direct appeal, to include the challenge to the admission of his statement. State v. Henry, 2011 WL 11736332 (Ct. App. Dec. 13, 2011) (unpublished). The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss these claims as barred by *res judicata*.

VI.

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

[Signature on following page]

VII.

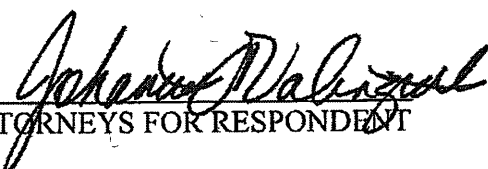
WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

September 3, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

TARUS T. HENRY, SR., #336127)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

2014-CP-21-1976

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 and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this the 14th day of September, 2016.


 Deonna Rogers, Legal Assistant
 For Respondent

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2014-CP-21-01976
	)	
Tarus Tremaine Henry,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

January 31, 2018
 Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

Jonathan Waller, Esquire
 Attorney for the Plaintiff

Lindsey McCallister, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Circuit Court Reporter

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1. JANUARY 31, 2018

2 (WHEREUPON, the proceedings began at 11:06 a.m. The
3 applicant was present, along with his counsel of
4 record.)

5 THE COURT: Miss McCallister, when you're ready, we'll
6 be glad to hear from you.

7 MS. MCCALLISTER: Thank you, Your Honor. This is Tarus
8 Henry versus the State of South Carolina, 2014-CP-21-1976.

9 Your Honor, Mr. Henry was indicted in December of 2008
10 by the Florence County Grand Jury for two counts of unlawful
11 conduct towards a child, one count of assault and battery
12 with intent to kill, and one count of arson in the second
13 degree. He was represented on those charges by Karen
14 Parrott.

15 Your Honor, he proceeded to trial before the Hon. Ralph
16 King Anderson and was convicted on all four counts. He was
17 sentenced to 10 years for each count of unlawful conduct
18 towards a child to be served concurrently. He was also
19 sentenced to 20 years for the assault and battery with intent
20 to kill and 20 years for the arson, each to be served
21 consecutively.

22 He filed a timely notice of appeal and appeal was
23 perfected by LaNelle Cantey DuRant of the Office of Appellate
24 Defense. Your Honor, that was a merits appeal and the
25 remittitur from that appeal was issued on August 28th, 2013.

1 He filed this application on July 17th, 2014, and he is
2 represented by Mr. Waller in this matter, and both Mr. Waller
3 and Mr. Henry are present in the courtroom this morning.

4 THE COURT: All right. All right. Mr. Waller, you're
5 recognized.

6 MR. WALLER: Thank you, Your Honor. Just for the
7 record, Mr. Henry, prior to my appointment, filed an
8 amendment to his application on March 18th I believe, Your
9 Honor, 2015, just for purposes of the record.

10 Your Honor, Mr. Henry has raised several allegations of
11 ineffective assistance of counsel. The ones we're going
12 forward on today are that counsel was ineffective for failure
13 to object to the jury seeing him in shackles and, Your Honor,
14 that was not pled in any of his application or subsequent
15 amendments. I have spoken with Ms. McCallister about that
16 prior to today.

17 And then issues that were raised in his -- in either his
18 application or his amendment, there was an uncommunicated
19 plea offer of guilty but mentally ill and, Your Honor, just
20 to clarify, I don't believe that it was uncommunicated, but
21 it wasn't explained to where Mr. Henry was able to understand
22 the ramifications of that. I think that's a little bit
23 difficult one to explain, particularly because it was made
24 during the actual trial. I don't think there was a lot of
25 time to discuss it.

1. And then finally, Your Honor, an allegation of
2 ineffective assistance of counsel for failure to move for a
3 continuance or to otherwise secure the testimony of Calvin
4 Timmons, who is a law enforcement officer here who was out of
5 the country, working I believe in Afghanistan, as he was a
6 very material witness.

7 THE COURT: All right. Very good. Is that all of the
8 grounds or just the amendments?

9 MR. WALLER: That is, Your Honor. That's the grounds
10 we're proceeding forward on.

11 THE COURT: Very good. All right. You may call your
12 first witness.

13 MR. WALLER: Thank you, Your Honor. I would call Tarus
14 Henry.

15 THE COURT: Mr. Henry, if you could, come forward and
16 you can place your paperwork right here beside the
17 microphone. Place your left hand on the Bible and raise your
18 right hand as the clerk administers the oath.

19 THE CLERK: Do you swear or affirm to tell the truth,
20 the whole truth, and nothing but the truth, so help you God?

21 THE APPLICANT: I do.

22 THE CLERK: Thank you.

23 THE COURT: Yes, sir.

24 MR. WALLER: Thank you, Your Honor. May it please the
25 Court.

TARUS HENRY - DIRECT BY MR. WALLER

1 TARUS HENRY, being first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. WALLER:

5 Q: Good morning still, Mr. Henry. How are you today?

6 A: I'm doing okay.

7 Q: All right. Mr. Henry, you were arrested and charged
8 with four different offenses; is that right?

9 A: That's correct.

10 Q: Okay. And who was your attorney?

11 A: Ms. Karen Parrott.

12 Q: All right. How did she come to be your attorney?

13 A: Public defender.

14 Q: Okay.

15 A: Court-appointed.

16 Q: All right. And when you first got arrested and first
17 were able to meet with Ms. Parrott, how long after your
18 arrest do you think that was?

19 A: I don't remember exactly, but I want to say maybe a
20 week.

21 Q: Okay. So a pretty short amount of time?

22 A: Yes.

23 Q: Okay. What did y'all talk about, if you remember?

24 A: About the charges.

25 Q: Okay. Do you remember what was discussed about the

TARUS HENRY - DIRECT BY MR. WALLER

1 charges?

2 A: One of them she said it would've been better -- it
3 would've been better if the victim would have died than to
4 live.

5 Q: Okay.

6 A: That was one of the things talked about.

7 Q: Okay. Did y'all have any more discussion about that?

8 A: No.

9 Q: Okay. And if I could, just so the judge understands,
10 Mr. Henry, a little bit of background. Have you had some --
11 some physical problems as a child that resulted in a surgery?

12 A: Yes.

13 Q: Okay. What -- what was going on?

14 A: I was born with what's called irretractable [sic.]
15 seizures.

16 Q: Okay.

17 A: So I started suffering paralysis seizures when I was
18 seven months. At the age of 17, I was a candidate for part
19 of my brain removal from my right temporal lobe.

20 Q: Okay. What is irretractable seizures?

21 A: Seizures that don't respond to medication.

22 Q: Okay. So the surgery you had was the only way to be
23 seizure free; is that right?

24 A: Yes.

25 Q: Okay. Has that surgery -- how does that affect you?

TARUS HENRY - DIRECT BY MR. WALLER

1 A: The surgery cured the seizures, but that was in March of
2 1999 I had the surgery, and in 2000 I had my first mental
3 episode. I started having depression and suicidal attempts
4 as a result of the brain surgery.

5 Q: Okay. And since the brain surgery, are you generally --
6 have you been diagnosed with any mental health conditions and
7 been treated for those?

8 A: I've been treated for schizophrenia and bipolar since
9 the brain surgery.

10 Q: Okay. Any depression as well?

11 A: Yes.

12 Q: Okay. With regards to this case, after you were
13 arrested, were you -- did you meet with a doctor?

14 A: After I was arrested, yes, I did.

15 Q: Okay. What -- what, if you remember, was the purpose of
16 your meeting with that doctor?

17 A: They sent me to the doctor to get me stable to put me on
18 medication.

19 Q: Okay. Was an evaluation done?

20 A: Yes, it was.

21 Q: Okay. In preparation for this case?

22 A: It originally was done -- it was voted on by both
23 parties to see what my capacity was at the time of the
24 incident.

25 Q: Okay.

TARUS HENRY - DIRECT BY MR. WALLER

1 A: At the time of the incident, I was off medications for
2 two years, doctor orders.

3 Q: Okay. So you had been taking medication for these
4 mental health conditions?

5 A: Yes, sir.

6 Q: And you -- your doctor had removed you from that
7 medication?

8 A: The doctor -- the doctor's name is Faison Kahn [ph.]
9 from Tri-County in Bennettsville, South Carolina.

10 Q: Okay.

11 A: The case was closed in 2006.

12 Q: Okay. And so in preparation for this going to trial,
13 you had an evaluation done?

14 A: Yes.

15 Q: Okay. Did they evaluate your ability to assist your
16 lawyer with the trial? Your competency to assist your
17 lawyer?

18 A: I had -- I had an evaluation at the courthouse before I
19 went to Columbia.

20 Q: Okay. At the courthouse, you had an evaluation?

21 A: Yes. Two state examiners examined me and they -- both
22 of them found me mentally ill and lack of competency to stand
23 trial. Then I was sent to Columbia Care Center and had a
24 second evaluation done with medications.

25 Q: Okay.

TARUS HENRY - DIRECT BY MR. WALLER

1 A: And that's when they found me competent after I'd been
2 medicated for 72 days.

3 Q: Okay. So the first one when you were unmedicated, you
4 were not competent to stand trial?

5 A: I was not competent.

6 Q: Okay. And did that evaluation have anything to do with
7 criminal responsibility or the ability to conform your
8 actions?

9 A: They did both. They did both tests. I believe that was
10 in August.

11 Q: Was that in Columbia or was that here?

12 A: That was here in Florence County.

13 Q: Okay. And after you were on medication, you had the
14 same test done?

15 A: I had the same test done a few months later in November.
16 In November, they gave me the same test with medication and
17 found me competent.

18 Q: Okay. And that was Dr. Frierson that did --

19 A: Yes.

20 Q: -- that evaluation? Okay. And he testified at your
21 trial; is that correct?

22 A: That's correct.

23 Q: He was a defense witness?

24 A: Yes.

25 Q: Okay. Do you recall what the result of his evaluation

TARUS HENRY - DIRECT BY MR. WALLER

1 was?

2 A: He said that I was competent to stand trial and
3 demonstrating capacity to conform.

4 Q: Okay. What about criminal responsibility? Did he say
5 you knew right from wrong?

6 A: That's what he said, but he switched the test.

7 Q: Okay. What do you mean he switched the test?

8 A: The first two tests without medication, I was found
9 mentally ill on both. Then they took me to Pee Dee Mental
10 Health in Florence and got me heavily medicated on Trazodone,
11 Vistaril, and Seroquel.

12 MS. MCCALLISTER: Your Honor, just in terms of this line
13 of questioning, I just -- I don't -- I know that there were
14 some allegations about mental health issues in the
15 application, but unless I'm misunderstanding, you're not
16 proceeding on those allegations. So I would just ask for --

17 THE COURT: I think in order for him to develop the
18 guilty but mentally ill plea, he probably needs to establish
19 that there are some problems.

20 MS. MCCALLISTER: Okay.

21 THE COURT: But I will give you some leeway in that
22 regard.

23 MR. WALLER: Thank you, Your Honor.

24 THE COURT: Is that the reason why you're doing it?

25 MR. WALLER: It is, Your Honor.

TARUS HENRY - DIRECT BY MR. WALLER

- 1 THE COURT: Okay. Go ahead.
- 2 MR. WALLER: And I was just about to finish anyway.
- 3 BY MR. WALLER:
- 4 Q: Mr. Henry -- and I'll move on. Mr. Henry, you -- when
- 5 you were first arrested, you weren't arrested in Florence
- 6 County; is that right?
- 7 A: No.
- 8 Q: Okay. Where were you arrested?
- 9 A: I was in Kershaw. I was at the medical center.
- 10 Q: Okay. In Kershaw County?
- 11 A: Yes.
- 12 Q: Okay. How did you get back to Florence?
- 13 A: I was brought back by Calvin Timmons.
- 14 Q: Okay. And who did you understand Calvin Timmons was?
- 15 A: He was an investigator.
- 16 Q: Okay. So he drove you from Camden back to Florence?
- 17 A: He got me from -- he got me from Camden Police
- 18 Department.
- 19 Q: Okay.
- 20 A: And took me back to Florence.
- 21 Q: Okay. And following -- was he the only one in the
- 22 vehicle with you?
- 23 A: The only one that I remember seeing.
- 24 Q: Okay.
- 25 A: He was the one driving.

TARUS HENRY - DIRECT BY MR. WALLER

- 1 Q: Okay. And after y'all went back to Florence, you gave a
2 statement to he and two other officers; is that correct?
- 3 A: Yeah.
- 4 Q: Okay. And there's a transcript of that statement?
- 5 A: Yes, there is.
- 6 Q: Okay. There was no transcript of your conversations
7 with him, if any, in the vehicle; is that right?
- 8 A: Yeah.
- 9 Q: Okay. Did Mr. Timmons testify at your trial?
- 10 A: No, he didn't.
- 11 Q: Okay. Do you know why he didn't?
- 12 A: He was called to Afghanistan to serve.
- 13 Q: Okay.
- 14 A: I think he was in the Army or something like that.
- 15 Q: Okay. Did you and your attorney ever discuss that he
16 would not be testifying?
- 17 A: No.
- 18 Q: Okay. Did you know he wouldn't be testifying?
- 19 A: No, I didn't. Not until -- not until my trial.
- 20 Q: Okay. Speaking of your trial, when -- when you came to
21 the courthouse for your trial, how were you dressed?
- 22 A: I was in slacks that my parents provided for me.
- 23 Q: Okay. Did you have any other sort of restraints or
24 anything like that?
- 25 A: They put me on -- they put me on restraints I want to

TARUS HENRY - DIRECT BY MR. WALLER

1 say the second day of my trial.

2 Q: Okay. Had you -- I forgot to ask you this earlier, but
3 had you bonded out or anything like that from the detention
4 center prior to --

5 A: No.

6 Q: -- proceeding to trial?

7 A: No, I did not.

8 Q: Okay. So you were incarcerated the whole time?

9 A: Yes.

10 Q: Okay. You said just a second ago you were restrained
11 starting the second day of your trial, but the first day were
12 you restrained in any way?

13 A: No, I was not.

14 Q: Okay. Do you know why you were restrained the second
15 day?

16 A: The second day, I was given -- I was given a cup of ice
17 water and I had done dranked it. I forgot the cup was empty
18 and when someone walked by, it had flew towards my lap and I
19 jumped up real quick to try to catch it. I thought there was
20 water in it. And when they saw how quick I moved, I saw
21 people whispering and they had me to stand up and they put me
22 in shackles.

23 Q: Okay. Following being put in shackles, how many more
24 days were you in the courtroom in shackles?

25 A: Two more days. It was a four-day trial, 27th to the

TARUS HENRY - DIRECT BY MR. WALLER

- 1 31st.
- 2 Q: Okay. When you entered and exited the courtroom, was
- 3 the jury present?
- 4 A: Yes, it was.
- 5 Q: Okay. And how were -- how did you enter into the
- 6 courtroom?
- 7 A: I came -- I came in from this direction to right there.
- 8 Q: Okay. Were you still wearing the shackles?
- 9 A: I was still wearing the shackles, but what --
- 10 Q: Okay.
- 11 A: But what the defense team attempted to do -- they put
- 12 some kind of rag over my arms to try to hide it, but they
- 13 still saw it.
- 14 Q: When you say a rag, what do you mean by a rag?
- 15 A: A cloth.
- 16 Q: A cloth over your arms?
- 17 A: Yeah.
- 18 Q: Okay.
- 19 A: But it was still visible that I couldn't go no further
- 20 than this.
- 21 Q: Okay. Was there any sort of other time that the jury
- 22 might have seen you in shackles?
- 23 A: For the rest of the trial?
- 24 Q: Yes, sir.
- 25 A: Yes.

TARUS HENRY - DIRECT BY MR. WALLER

1 Q: Okay. How do you know they saw you?

2 A: It's hard not to see.

3 Q: Okay.

4 A: Walking real close, hands together. It's hard not to
5 see.

6 Q: Okay. So the jury saw you walking, not just sitting at
7 the table?

8 A: Yes.

9 Q: Okay.

10 A: Before I was found guilty.

11 Q: Okay. Mr. Henry, during the course of the trial, was
12 any offer -- guilty plea offers made to you?

13 A: Before the trial?

14 Q: Before the trial or during the trial?

15 A: There was two pleas before the trial and one during the
16 trial.

17 Q: Okay. Let's talk about the one -- let's talk about the
18 first two then.

19 A: When I was in the county, they offered me the first plea
20 of 18 years without a cap to plead to assault and battery
21 with intent to kill and the other three charges would be
22 dropped.

23 Q: Okay.

24 A: And I didn't take it because without a cap, you can get
25 the whole thing at 65.

TARUS HENRY - DIRECT BY MR. WALLER

1 Q: Okay.

2 A: So a week later, they sent me a second one. It was 15
3 without the cap.

4 Q: Okay.

5 A: I didn't -- I didn't take that one either. So the day
6 of the trial, they had me to step out. When I came back in,
7 the State's final plea offer was guilty but mentally ill and
8 I asked -- and I asked my counsel how much time or what's the
9 advantage or disadvantage of taking this plea offer, and
10 Karen Parrott and Frank White both told me, son, we can't
11 tell you. We can't tell you that. It's like in a tunnel.
12 That's all they could tell me. And they left me ignorant and
13 unknowing as to what the terms was; so I didn't take it. And
14 I went --

15 Q: Okay.

16 A: And I went to trial.

17 Q: So you knew that offer had been extended, but you didn't
18 know what -- what it meant?

19 A: Yeah.

20 Q: Okay. What -- you testified it was at the trial. How
21 -- how long did you all have to talk about that offer?

22 A: It wasn't long. It was the day of the trial.

23 Q: Okay. But what I'm saying is how long-- when y'all were
24 sitting there talking, how long did you have to talk about
25 it?

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1 A: Less than -- less than -- less than 10 minutes.

2 Q: Okay. Mr. Henry, I've asked you all the questions that
3 I have for you. Is there anything you think I've left out
4 that the judge needs to be aware of of Ms. Parrott's
5 representation of you?

6 A: No.

7 Q: Okay.

8 MR. WALLER: Please answer any questions Ms. McCallister
9 has.

10 THE COURT: Ms. McCallister.

11 MS. MCCALLISTER: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. MCCALLISTER:

14 Q: Mr. Henry, you've said that you -- you were walking in
15 and out of the courtroom and the jury could see that you were
16 shackled?

17 A: Yes.

18 Q: Can you describe the shackles for me?

19 A: It's the same kind I have on today.

20 Q: So are you saying that your hands were shackled?

21 A: Just like this.

22 Q: And were your feet shackled?

23 A: Yes.

24 Q: And you had a waist chain?

25 A: Everything.

TARUS HENRY - CROSS BY MS. MCCALLISTER

1 Q: Everything?

2 A: Everything. Everything you've got on today, I had on
3 then.

4 Q: And you're saying that you would walk around the
5 courtroom and the jury could see you?

6 A: When I would come in the courtroom I was in, I would
7 come in from that direction and I was sitting where you was
8 at.

9 Q: Okay. And the jury was in the courtroom when you came
10 in?

11 A: Yes. They was over there.

12 Q: Okay. Was there any kind of -- you said that they put a
13 cloth over you?

14 A: The third day, they put a cloth over my arm where the
15 handcuffs is.

16 Q: Okay.

17 A: To try to hide it, but they still was visible.

18 Q: Okay.

19 MS. MCCALLISTER: I think that's all the questions I
20 have, Your Honor.

21 THE COURT: All right. Any redirect, Mr. Waller?

22 MR. WALLER: Just one question.

23 REDIRECT EXAMINATION

24 BY MR. WALLER:

25 Q: Mr. Henry, was the -- was there any cloth or anything

TARUS HENRY - REDIRECT BY MR. WALLER

1 over your ankles?

2 A: No.

3 MR. WALLER: Nothing further.

4 THE COURT: All right. You may step down.

5 All right. You may call your next witness.

6 MR. WALLER: Thank you, Your Honor. The applicant would
7 call Karen Parrott.

8 THE COURT: Ms. Parrott, please come forward. Watch
9 your step. Take just a moment to set down your paperwork
10 there beside the microphone, if you would. And I'm going to
11 ask you, if you could, to step back around, place your left
12 hand on the Bible, and raise your right hand as the clerk
13 administers the oath.

14 THE CLERK: Do you swear or affirm that the testimony
15 you give will be the truth, the whole truth, and nothing but
16 the truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Thank you.

19 THE COURT: Ms. Parrott, have a seat in the witness
20 chair. Pull up real close to that microphone and speak
21 loudly, clearly, and slowly in order that we can hear
22 everything that you have to say, and let's start with your
23 full name.

24 THE WITNESS: My name is Karen Elizabeth Parrott, P-a-r-
25 r-o-t-t.

KAREN PARROTT - DIRECT BY MR. WALLER

1 MR. WALLER: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. WALLER:

4 Q: Good morning, Ms. Parrott. How are you today?

5 A: Good morning, sir. How are you?

6 Q: I'm doing well. Thank you for asking. Ms. Parrott, how
7 did you come to represent Tarus Henry?

8 A: Mr. Henry, when he was arrested, was appointed to our
9 office through the normal process.

10 Q: Okay. And if you could, so the judge is a little more
11 clear, what were the nature of the allegations against Mr.
12 Henry?

13 A: Mr. Henry was charged with having assaulted his common-
14 law wife or wife with a machete and having hit her about 28
15 different times with that machete, severing her hands, almost
16 severing her head from her spine, almost severing the spine,
17 and I believe that was it, but there were significant
18 injuries to Mrs. Henry.

19 And then trying to set the apartment on fire after this
20 whole incident occurred, and there were two children that
21 were present while this incident occurred. So he got one
22 charge of assault and battery with intent to kill, one charge
23 of arson, and two charges of unlawful conduct towards a
24 child.

25 Q: Because of the presence of the children?

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1 A: Right.

2 Q: Okay. The facts weren't -- weren't really in dispute;
3 is that correct? Am I reading that correctly?

4 A: He had given -- he had given different stories, but no,
5 they really were not.

6 Q: Okay. What was your -- what was y'all's defense? I
7 guess that's the best way to put it.

8 A: He wanted it to be that she had started the argument.
9 He grabbed the machete from her. He remembered all of the
10 argument that had happened previously, but that during that
11 time period whenever he was hacking her, for lack of a better
12 term, and then trying to set the apartment on fire that he
13 had blacked out or suffered some sort of mental issue during
14 that time period, that then just evaporated while he drove
15 her to the hospital and dropped her off and then drove on to
16 Bishopville and Kershaw and then into Kershaw County as well.

17 Q: Okay. And you mentioned the term blackout. Did you
18 understand that Mr. Henry had had some previous mental health
19 issues?

20 A: After he asked me about whether or not he could get
21 probation and I told him that that was not ever going to be
22 an issue, that that was just not the kind of sentence that
23 you got with these sorts of facts, about a month after that
24 is when he started bringing up the issue that he had blacked
25 out.

KAREN PARROTT - DIRECT BY MR. WALLER

1 Q: Okay. How about any prior mental health treatment or
2 any sort of diagnoses he had prior to this incident?

3 A: After that is whenever he started bringing all of that
4 up, yes.

5 Q: Okay. Before the trial, did you become aware of those
6 issues?

7 A: Yes.

8 Q: Okay. And Mr. Henry was evaluated in this case?

9 A: Yes. He was actually taken to probate court, which I
10 have nothing -- I would have had nothing to do with, but --
11 and I think that's what he's referring to about having been
12 seen one time and then -- at the courthouse and then doing
13 that. I think he's talking about something with probate
14 court there and I would've had nothing to do with that. But
15 because of the issues that he was raising, I then made the
16 motion for him to be evaluated by DMH or Department of Mental
17 Health.

18 Q: Okay. And do you recall the results of that evaluation?

19 A: Dr. Frierson evaluated him and found him to be competent
20 and capable to stand trial.

21 Q: Okay. Did that become part of your defense?

22 A: It did because of the fact that Dr. Frierson was -- was
23 at least willing to say that because of the history, because
24 Mr. Henry had had some prior mental history and had had a
25 prior operation or a temporal lobectomy, that he may not be

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1 able to understand reading someone's expressions on their
2 face, but -- and so I think Dr. Frierson in his testimony
3 gave me as much as he could as far as a defense for Mr.
4 Henry, but he was still competent and still able to
5 understand everything that was going on in trial, as well as
6 competent to lead his life and capable of leading his --
7 leading his life outside of the courtroom prior to this whole
8 incident.

9 Q: Okay. Dr. Frierson testified that he had the ability to
10 conform his conduct, but that it might be impaired because of
11 his surgery; is that your recollection?

12 A: Dr. Frierson was basically saying that he didn't believe
13 the blackout issue because what had -- what it more came
14 across as was a rage issue. So the mental health issues
15 didn't go to that level of anything and, because of that, he
16 still was able to -- able to understand and capable of
17 conforming his conduct, yes.

18 Q: Okay. Mr. -- well, Mr. Henry was apprehended and
19 arrested in Camden. He was transported back to Florence.

20 A: Right.

21 Q: What investigation did you do as far as what took place
22 during that transport?

23 A: I believe whenever I asked questions about it, there
24 really wasn't that much conversation. I think it was general
25 small talk. There wasn't interrogations or anything like

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1 that that was done because they wanted to have witnesses I
2 believe whenever they did the -- whenever they actually did
3 the interrogation, which is why when this occurred, they had
4 three different investigators do the interrogation.

5 Q: Okay. Did you ever look to move for a continuance or
6 otherwise secure the testimony of Officer Timmons or Inv.
7 Timmons?

8 A: No.

9 Q: Okay. Did you think that would have been helpful?

10 A: No. Because Kathleen Streett was the investigator that
11 was also there for all of the interrogation process, as well
12 as Inv. Bert Turner. Bert Turner was the arson investigator
13 at the time at the Sheriff's Office; so he would have been
14 taking care of that. Kathleen Street -- I'm not sure if she
15 was at that time, but she was someone who handled a lot of
16 the violent crimes investigations. And so Calvin Timmons
17 would have been the one who would've been assigned to it, but
18 those two would have still been your primary investigators as
19 far as what was going on with the case.

20 Q: Okay. And so those were the other two that he gave the
21 statement to back here in Florence; is that right?

22 A: Those were two of the three, yes.

23 Q: Those were two of the three?

24 A: Yes.

25 Q: And Calvin Timmons being the other one?

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1 A: Yes.

2 Q: Who was --

3 A: Who was in Afghanistan.

4 Q: Sole transport of Mr. Henry though?

5 A: Yes.

6 Q: Okay. And then he was unavailable because he was in
7 Afghanistan?

8 A: Right.

9 Q: Okay. Mr. Henry testified that at the eve of trial or
10 the outset of trial that a plea offer was made to him of an
11 offer of guilty but mentally ill. Do you recall that?

12 A: And that's not true. In my discussions with Mr. Henry,
13 I had been going over with him multiple times what was going
14 on with this case, and I make notes whenever I meet with my
15 clients.

16 And so I have -- and it's simply -- it really is a quick
17 note, but on May the 29th at 3:06 p.m., I have GBMI, 15 years,
18 mental health, and then to prison. So I discussed with that
19 -- I discussed that with him on May the 29th.

20 Then on July the 15th of 2009, I have my notes where I
21 did a visit at the jail with -- or a visit with Mr. Henry, as
22 well as the investigator, Mr. White of my office, and I went
23 over at 2:10 p.m. the indictment, that guilty but mentally
24 ill would likely be a life sentence in this case.

25 He wanted a lie detector. I told him he couldn't have

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1 that. He told me then about -- or he was going over again
2 about Ms. Henry being a problem and having problems with his
3 mom, and I was letting him know then that you really can't
4 vilify her too much. I mean that's literally my note is
5 can't vilify her because of the fact that she was going to be
6 taking the stand in -- in the condition that she was.

7 I went over her injuries. I went over her meds and that
8 there were 28 stab and slash wounds and that she had to
9 relearn how to walk.

10 And then on July 17th, I made a note that Mr. White,
11 again the investigator from my office, went down to see Mr.
12 Henry with pictures of Ms. Henry and the scene. And again on
13 July the 21st, Mr. White was down there and talked with Mr.
14 Henry about -- and Mr. Henry was talking about that he wanted
15 to be exonerated and pardoned in this case.

16 So there were multiple times prior to the trial that
17 discussions were made with him about what options would be
18 available. And I also had -- because I did not believe that
19 Mr. Henry was making a correct decision, I also had him sign
20 a statement that actually I sent by way of Mr. Lawson, who
21 was my boss at the time, because Mr. Henry wanted to meet
22 with my boss, and it was witnessed by Mr. White, again the
23 investigator in my office, and I went through exactly what
24 his offers had been and as of when and that he did not want
25 me to give him any of his offers any longer because he got

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1 mad that I was still bringing him offers.

2 Q: What -- what did you explain to him about what a guilty
3 but mentally ill plea would entail?

4 A: I explained to him that a guilty but mentally ill plea
5 in this case would not have necessarily any kind of end date
6 because the simple fact is is that a person is put in for
7 treatment and if mental health never believes that that
8 person is actually cured from that, then there is no end
9 date.

10 Q: Okay. Do you have anything in your notes of when that
11 would have been explained to him?

12 A: I would've explained that to him and that's -- that's
13 what that note is back from May the 29th and from the other
14 one is that it's an un -- an unending incarceration.

15 Q: Okay.

16 THE COURT: Let me -- let me ask you a question, Mr.
17 Waller. Is that your understanding of a guilty but mentally
18 ill?

19 MR. WALLER: It is, Your Honor, is that it's -- if you
20 plead --

21 THE COURT: I was operating -- I have always operated
22 under the impression that if it's an insanity defense, then
23 they keep you until they think you get better, but if it's
24 guilty but mentally ill, it's a finite amount. Like, if you
25 get 18 years, when you max out, you're out.

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1 Or do you -- you think that if they give you treatment,
2 if they get you leveled out on meds, then you go into the
3 general population and then you max out? But you're saying
4 there's a possibility that if you go in and they never put
5 you out of the mental health facility, they can hold you
6 forever?

7 MR. WALLER: Your Honor, it's my -- I've been operating
8 under the assumption that if you're never deemed able to go
9 on to the next step or are deemed to be able to get into the
10 general population that you potentially are there forever.

11 THE COURT: All right. Is that your understanding, Ms.
12 McCallister?

13 MS. MCCALLISTER: Yes, Your Honor. That's my
14 understanding of how it would work, yes.

15 THE COURT: Okay. Very good.

16 BY MR. WALLER:

17 Q: Ms. Parrott, when Mr. Henry was brought into the
18 courtroom for the trial, do you recall him being shackled?

19 A: I remember that he got leg shackles put on, but I don't
20 remember his arms -- his hands being shackled, and I remember
21 that he had pen and paper or he had a pencil actually because
22 I usually give a pen, but law enforcement had actually given
23 him a pencil because I think maybe he had tried to bring one
24 from the jail or something like that. I can't remember
25 exactly what how, but I remember that law enforcement

KAREN PARROTT - DIRECT BY MR. WALLER

1 actually gave him a pencil. But he had pencil and paper in
2 front of him.

3 Q: Okay. Do you -- but you know for a fact that he was in
4 leg shackles?

5 Q: He got the leg shackles because Judge Anderson ordered
6 that he be shackled after the cup incident.

7 Q: Okay. Do you have any recollection of whether he was
8 ever moved in or out or around the courtroom while the jury
9 was seated?

10 A: I do not because that's always a concern and it would
11 have been Judge Anderson's extreme concern not to do that
12 either. He was very vigilant about how things were done in
13 his courtroom.

14 So I do not recall him being moved about so that the
15 jury could see him, and this court -- this trial was actually
16 up on the 11th floor. So there's actually even further space
17 between when -- where the jury sits -- excuse me -- and where
18 the defendant is seated at the table with counsel. So no, I
19 don't recall that being an issue.

20 Q: Okay. You don't have any specific recollection, but
21 that's Judge Anderson's practice-- normal practice?

22 A: That was Judge Anderson's order. I mean Judge Anderson
23 got upset about the cup being in front of him and that there
24 could've been an injury that would have happened, you know,
25 that sort of thing.

KAREN PARROTT - DIRECT BY THE COURT

1 Q: Okay.

2 MR. WALLER: I beg the Court's indulgence, please. Ms.
3 Parrott, I don't have anything further for you. Please
4 answer any questions that Ms. McAllister has.

5 THE WITNESS: Thank you.

6 DIRECT EXAMINATION BY THE COURT

7 THE COURT: Ms. Parrott, before she does that, it's your
8 recollection that his arms were not shackled, but his legs
9 were and that your recollection is that he was never in front
10 of the jury because if he had been, you would've remembered
11 it?

12 THE WITNESS: Yes, sir.

13 THE COURT: And Judge Anderson was sort of particular
14 about his courtroom, and you indicated that that was not an
15 issue?

16 THE WITNESS: No, sir.

17 THE COURT: All right. And as far as the guilty but
18 mentally ill, you had a good discussion with him on at least
19 two occasions what guilty but mentally ill was and you
20 communicated those offers to him?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: And you have notes to that effect?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: All right. And as far as Calvin Timmons,
25 there -- as far as you know, based on your investigation of

KAREN PARROTT - CROSS BY MS. MCCALLISTER

1 the case, that Calvin Timmons would not have any exculpatory
2 information?

3 THE WITNESS: No, Your Honor.

4 THE COURT: All right. Ms. McCallister?

5 MS. MCCALLISTER: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. MCCALLISTER:

8 Q: On the issue of the plea offers, I believe you said you
9 had a document that you prepared that you had Mr. Henry sign;
10 is that --

11 A: That's --

12 Q: -- correct?

13 A: That is correct.

14 Q: And that details what the offers were and that he --
15 that you had gone over them with him and that he did not wish
16 to accept those offers?

17 A: Yes. I can read it, if you would like.

18 Q: Well, that's okay. Just does that include the guilty
19 but mentally ill offer?

20 A: No.

21 Q: Okay. So that was something that was different than --
22 than the offers that are in this affidavit?

23 A: This was signed on May the 1st of 2009.

24 Q: Okay.

25 A: So as it said, offers continued to happen and then I met

KAREN PARROTT - CROSS BY MS. MCCALLISTER

1 with him on, like, July the 15th of 2009 and May the 29th of
2 2009 about the guilty but mentally ill.

3 Q: Okay. And you have notes from those two meetings that
4 you discussed the guilty but mentally ill offer?

5 A: Yes.

6 Q: And he did not want -- he did not wish to accept it?

7 A: That's correct.

8 Q: Okay. And is it your testimony that the -- that there
9 was no offer -- that this conversation that he testified to
10 that occurred on the day of the trial -- that did not happen?

11 THE COURT: Say that again now?

12 BY MS. MCCALLISTER:

13 Q: I believe Mr. Henry testified that the guilty but
14 mentally ill offer was made on the day of the trial, and I'm
15 asking if that -- I thought you said that that -- that that
16 was not correct?

17 A: No. That -- I did have a discussion with him. My point
18 is is that that was not the only time I had that discussion
19 with him.

20 Q: Okay. So you did have a discussion, again, on the eve
21 of trial as to whether he wanted to take this plea offer?

22 A: At July the -- my note is on July the 27th of 2009, I
23 wrote down his options with him, and those would be not
24 guilty, guilty where he could get up to 65 years, guilty but
25 mentally ill with up to 25 years if it was concurrent, up to

KAREN PARROTT - CROSS BY MS. MCCALLISTER

1 65 years, but in treatment until it's under control, which
2 is, again, an indeterminate sentence, and then insanity or
3 insane where he would be institutionalized possibly for life.
4 And again, that's on July the 27th at 9:58 a.m., and my note
5 is that he's taking that chance.

6 Q: Okay. In terms of Inv. Timmons and his absence, you did
7 bring that up at the trial; correct?

8 A: Yes.

9 Q: And you had a Jackson v. Denno hearing about the
10 statement and whether it should be admissible; correct?

11 A: Yes.

12 Q: And whether the absence of Inv. Timmons was an issue in
13 terms of introducing the statement; is that correct?

14 A: Yes.

15 Q: Okay. And you were able to cross-examine the other
16 officers on the fact that there was this third person there
17 who was not at trial; correct?

18 A: Yes.

19 Q: So the jury heard those circumstances?

20 A: Yes.

21 Q: And they heard that he was in the car with Mr. Timmons
22 and that there was no record of that?

23 A: Yes, I believe so.

24 Q: Okay. And then Mr. -- Mr. Henry actually testified on
25 his own behalf; correct?

KAREN PARROTT - CROSS BY MS. MCCALLISTER

1 A: Yes.

2 Q: And he was able to cover any testimony about what
3 potentially had happened in the car with Inv. Timmons; is
4 that right?

5 A: Yes.

6 Q: Okay. And he was also able to tell his story about the
7 blackout and -- and what he remembered or didn't remember
8 from that day?

9 A: Correct.

10 Q: In contrast to the expert testimony; is that right?

11 A: Yes.

12 Q: Okay.

13 MS. MCCALLISTER: Your Honor, may I approach? I just --
14 I would like to enter those notes that you have on the guilty
15 plea discussions as a State's exhibit, if I may.

16 MR. WALLER: That would be without objection.

17 MS. MCCALLISTER: May I approach the witness, Your
18 Honor?

19 THE COURT: Yes.

20 THE WITNESS: Did you want that?

21 MS. MCCALLISTER: That's all. Thank you.

22 (WHEREUPON, there was a pause in the proceedings, after
23 which the proceedings resumed as follows.)

24 MS. MCCALLISTER: Your Honor, the State would move Ms.
25 Parrott's notes as to her discussions on May 29th, July 13th,

KAREN PARROTT - REDIRECT BY MR. WALLER

1 and July 27th, 2009, into evidence as one exhibit.

2 THE COURT: Any objection from defense?

3 MR. WALLER: No objection, Your Honor.

4 THE COURT: All right. The notes are into evidence as
5 State's Exhibit 1.

6 (WHEREUPON, State's Exhibit Number 1, attorney notes,
7 was admitted into evidence.)

8 MS. MCCALLISTER: Thank you, Your Honor. Your Honor, I
9 believe that is all the questions that I have for this
10 witness.

11 THE COURT: Any redirect?

12 MR. WALLER: Briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. WALLER:

15 Q: Ms. Parrott, you -- you cross-examined the other
16 officers significantly about what might have taken place in
17 the vehicle on the way back from Camden; is that correct?

18 A: I believe so. I mean if it's in the transcript, that's
19 what I've done.

20 Q: Okay. And you pointed out that during the interrogation
21 where all three officers were present that Mr. Timmons --
22 Officer Timmons brought up some mental health issues he might
23 be suffering from at that time?

24 A: Okay. Yes.

25 Q: Saying you look like you need some help?

KAREN PARROTT - REDIRECT BY MR. WALLER

1 A: Yes.

2 Q: Would that have not -- were you aware of that
3 information prior to the trial beginning?

4 A: Yes.

5 Q: Okay. Would that information not have been useful to
6 you in your preparation for the defense as far as what might
7 have been said in the car?

8 A: I don't -- I don't think it necessarily makes a
9 different one way or another because of the simple fact is
10 that he was still found to be competent, capable of assisting
11 counsel. He was living on his own in a regular relationship,
12 had a job, carrying on life as he was supposed to be, you
13 know, just as a normal individual who happens to have had
14 some mental health problems in the past.

15 And even at the time was not I believe on any kind of
16 medication, and the only kind of medication that they put him
17 on I believe at the time whenever he was even evaluated was
18 Trazodone, which is something to help him sleep. So there's
19 nothing there as far as -- I can make that statement as a
20 general person, but where it goes from there, it didn't
21 follow.

22 Q: Did you argue against the voluntariness of the
23 statement?

24 A: The voluntariness of Mr. Henry's statement?

25 Q: Correct.

KAREN PARROTT - REDIRECT BY MR. WALLER

1 A: That was the whole Jackson v. Denno hearing.

2 Q: Correct. You argued against it?

3 A: Right.

4 Q: Is that right?

5 A: Yes.

6 Q: Okay. Partially based on the fact that he was the only
7 one with Inv. Timmons for almost an hour?

8 A: Right.

9 Q: Okay.

10 MR. WALLER: Nothing further. Thank you.

11 THE COURT: All right. You may step down. Anything
12 further from the applicant?

13 MR. WALLER: Nothing further from the applicant, Your
14 Honor.

15 THE COURT: Anything from the State?

16 MS. MCCALLISTER: No, Your Honor.

17 THE COURT: All right. I'll be glad to hear from you
18 with regard to the -- to the issue of the shackles, Mr.
19 Waller.

20 MR. WALLER: Your Honor, the testimony of both witnesses
21 was that Mr. -- Mr. Henry was definitely shackled around his
22 ankles, and Mr. Henry testified that he was also shackled
23 around his waist and both hands and that there was -- he even
24 went into the detail of that there was a cloth placed over
25 that to try to disguise that while he entered and exited.

1 Ms. Parrott did not have any specific recollection,
2 although she did remember that Judge Anderson was very
3 particular about that and his general practice would have
4 been to make sure the jury didn't see that. I think that
5 given her nonspecific recollection and the specificity that
6 Mr. Henry recalls --

7 THE COURT: But she was somewhat specific about the fact
8 that he had a pen and paper, which would have been --

9 MR. WALLER: Certainly.

10 THE COURT: Which I'm not real sure. Can you write with
11 pen and paper in shackles?

12 MR. WALLER: Your Honor, I certainly think that it's
13 very possible.

14 THE COURT: Is it?

15 MR. WALLER: That they're not completely restricted.

16 THE COURT: Right.

17 MR. WALLER: But they do limit the extent of the
18 movement. I certainly think if he's pulled up close to the
19 table that he would have an opportunity to write and take
20 notes and reach for his water cup. I know Your Honor sees it
21 here all the time where people are shackled and are able to
22 still take sips of water and drinks of water.

23 So, Your Honor, I think that the specificity of his
24 recollection is one that lends to -- it lends credibility to
25 the fact that he was shackled and that it was attempted to be

1 concealed, but it was not able to effectively conceal that
2 from the jury.

3 THE COURT: Very good. All right. Yes, ma'am?

4 MS. MCCALLISTER: Thank you, Your Honor.

5 I think Ms. Parrott does have a specific recollection as
6 well. She specifically said that she -- she -- she recalled
7 the incident that led to the shackles and that they were on
8 his feet and they were not anywhere else, and she said that
9 that was just not an issue. That it was something she would
10 have been aware of. It was something the judge would have
11 been aware of, and that it just was not an issue in terms of
12 the jury being able to see him.

13 THE COURT: Okay. All right. And, Mr. Waller, what do
14 you have to say about the issue of guilty but mentally ill
15 not being adequately explained to him?

16 MR. WALLER: Your Honor, I think there's a -- the
17 testimony is I think polar opposites, Your Honor. Mr. -- Mr.
18 Henry testified that -- that there had been previous offers
19 made to him and I believe the numbers may have matched up
20 with what he understood versus what Ms. Parrott testified
21 that was a guilty but mentally ill for a 15-year sentence,
22 and I believe he said there was a 15-year offer made to him.

23 Your Honor, his testimony was that the first time he was
24 aware of a guilty but mentally ill offer was during the
25 trial. That there wasn't sufficient time for him to

1 understand.

2 THE COURT: That's the part that she -- that's the part
3 that Ms. Parrott said was not true.

4 MR. WALLER: That is the part that --

5 THE COURT: Yes.

6 MR. WALLER: -- Ms. Parrott said was not true, Your
7 Honor, but Mr. Henry was the only one who testified that that
8 was the first time it had been offered. I believe the
9 testimony from both parties was that there was another offer
10 made at the time of the trial.

11 Your Honor, I think the discussion that the Court had
12 with the two attorneys and Ms. Parrott indicates that it's a
13 fairly complicated issue that needs more explanation than
14 just I think brief moments during the course of the trial.

15 So I think there is -- it's one that is not easily
16 explainable because there is not a specific amount of time
17 that can be relayed to a client of what they're going to
18 receive and how their -- how their sentence is going to go.

19 THE COURT: All right. Ms. McCallister, how about the
20 guilty but mentally ill?

21 MS. MCCALLISTER: Thank you, Your Honor.

22 I think Ms. Parrott's notes reflect that the guilty but
23 mentally ill certainly was discussed at least twice before
24 the day of trial and that, you know, the offer may have been
25 renewed and he may have given -- been given one last chance

1 to accept that offer on the date of trial, but they certainly
2 had discussions ongoing before that incident and -- and that
3 she sat down and explained the various options with him, what
4 -- what that meant and just what would happen if he just went
5 to trial and was convicted or he could be acquitted or she
6 went through all of those options with him.

7 And his testimony was that she wouldn't tell him
8 anything about it and she just, you know, kind of just
9 wouldn't tell him what it meant, and I think her testimony
10 and her notes reflect that that is not the case, Your Honor,
11 and that that offer was discussed and that she -- she talked
12 to him for a significant amount of time about that. And that
13 the investigator visited him as well and he could have asked
14 the investigator about it on the subsequent visits that the
15 investigator made alone.

16 THE COURT: The issue with regard to Calvin Timmons and
17 the continuance, Mr. Waller?

18 MR. WALLER: Your Honor, Mr. -- Officer Timmons
19 transported Mr. Henry from Camden -- from the Camden Police
20 Department back here to Florence. The record reflects that
21 it was approximately an hour they were in the car alone
22 together. And Ms. Parrott argued quite adamantly that the --
23 that his statement should be suppressed because -- because of
24 that fact, because of Inv. Timmons not being there to
25 testify.

1 THE COURT: Where is Mr. Timmons now?

2 MR. WALLER: Your Honor, I don't know where he is right
3 now. Your Honor, it's my understanding that he was not in
4 active military, but that he was working as a defense
5 contractor. I believe that's what the transcript reflected.

6 Your Honor, I think it was certainly a significant issue
7 and I think it was significant as played out by the -- the
8 arguments from counsel during the trial and the impeachment
9 and cross-examination of the other two officers as to what
10 could have taken place during -- during the ride. That's our
11 position.

12 THE COURT: Do you think it might have worked to his
13 benefit because they could -- she could argue that he wasn't
14 there and actually helped his position as opposed to hurting
15 it?

16 MR. WALLER: Your Honor, I think the argument could have
17 been that he was coerced into making the statements. He
18 spent a significant amount of time after --

19 THE COURT: That actually works to the benefit of the
20 defendant that you could say that probably happened, but we
21 don't have the man here who did the coercion.

22 MR. WALLER: It would --

23 THE COURT: But if we were here, I would anticipate
24 Calvin Timmons says he did not -- he would have said he did
25 not coerce him.

1 MR. WALLER: Your Honor, the statement came in
2 regardless. I think it's -- I don't want to say it's no
3 longer in doubt --

4 THE COURT: But you think that if Calvin Timmons would
5 have showed up, he would have -- it would have made the
6 statement inadmissible?

7 MR. WALLER: I don't know, Your Honor. I don't know
8 what his testimony would have been. I don't know what the
9 defendant's potential testimony about -- at the Jackson v.
10 Denno hearing, if he were called, would have been, and I
11 certainly think that if both of them had testified --

12 THE COURT: What does your client maintain that Calvin
13 Timmons did to him?

14 MR. WALLER: That he was coerced into making a
15 statement, Your Honor.

16 THE COURT: Okay. All right. What do you have to say
17 about that, Ms. McCallister?

18 MS. MCCALLISTER: Your Honor, I think in order for Mr.
19 Henry to carry his burden on that allegation, he has to show
20 what Mr. Timmons' testimony would have been and that it would
21 have been favorable.

22 I understand from Ms. Parrott and her notes to me that
23 he has now -- is now deceased. So I don't know that they
24 could have subpoenaed him to be here, but I think, you know,
25 this was in 2009. So there was time to find that testimony

1 as to what he would've said and I think they do have the
2 burden to introduce it somehow.

3 Additionally, Your Honor, I believe the record reflects
4 that there was a tape of this statement. It was played. The
5 fact that Mr. Timmons was involved in the interrogation was
6 brought out. It was extensively cross-examined. The
7 argument was made as to whether the statement was voluntary
8 in the Jackson v. Denno. The Court allowed the statement in,
9 all of that. There's no suggestion that those issues weren't
10 preserved.

11 So -- so Ms. Parrott I think certainly rendered
12 effective assistance in terms of that issue.

13 THE COURT: And you say that would be a question of law
14 in an appellate issue?

15 MS. MCCALLISTER: Correct, Your Honor.

16 THE COURT: All right. Did Mr. Timmons testify at the
17 Jackson v. Denno hearing?

18 MR. WALLER: He did not, Your Honor.

19 THE COURT: Okay.

20 MR. WALLER: That's one of the things I'm saying.

21 MS. MCCALLISTER: No. I believe that took place just
22 shortly before the trial started I think it was.

23 THE COURT: Okay. I'm going to ask each of the parties
24 to prepare a proposed order with regard to these issues.

25 And how long do you need to do that, Mr. Waller?

1 MR. WALLER: Thirty days, Your Honor.
2 THE COURT: Okay. And Ms. McCallister?
3 MS. MCCALLISTER: Thirty days, Your Honor.
4 THE COURT: Very good. All right. That would be good.
5 And we'll -- might -- Mr. Waller, do you have one this
6 afternoon as well?
7 MR. WALLER: Your Honor, I have the remainder of the
8 day.
9 THE COURT: Okay. Well, if y'all could come forward,
10 we'll talk about scheduling.
11 (WHEREUPON, the proceedings ended at 12:00 p.m.)
12
13 --- END REQUESTED TRANSCRIPT ---
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25

1 State of South Carolina)
2) Certificate
3 County of Florence)
4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 47, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Florence County, South Carolina, on the 31st
13 day of January, 2018.

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

16

17 s/Krystal J. Smith

18 Court Reporter

19

20 Florence, South Carolina

21 July 21, 2018

22

23

24

25

RECEIPT FOR EXHIBITS

CASE NO. 14-CP-21-1976 JUDGE Natiles
 PLAINTIFF: Tarus Henry Sr. PLTF'S ATTY. Wallen
 DEFENDANT: State of SC DEF'D ATTY. McCollister
 DATE TRIAL STARTED: 1-31-18 DATE TRIAL ENDED: 1-31-18

Received of Kristal J. Smith, Court Reporter for the above case, these exhibits:

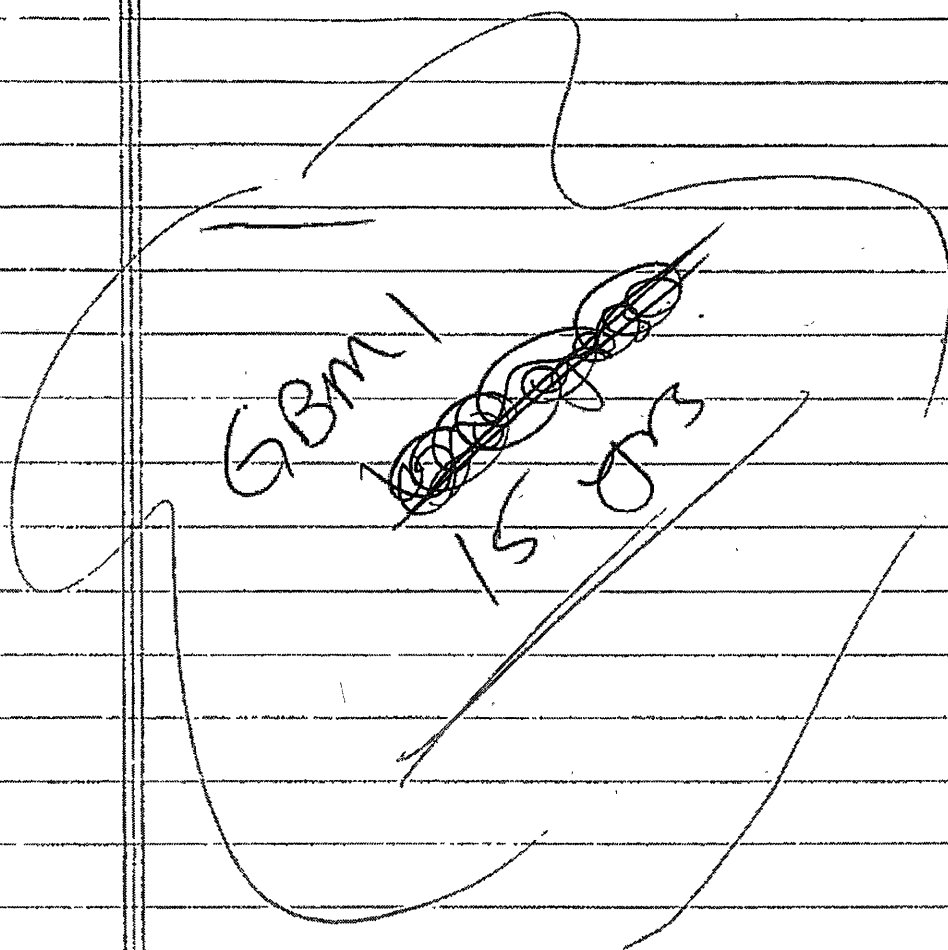
	This space for Clerk of court's use
1. <u>State's #1 notes on plea offers</u>	
2. _____	
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This 31st day of January 20 18

Page 1 of 1

FLORENCE COUNTY CLERK OF COURT

By: [Signature]



5/29

3.06p

mtt to to person

7/15/09

2:10 pm

→ indictment
→ GBM1 - life sentence

- lie detector - & CAN'T HAVE
statement - conditions

Visit
by
Henry
+ F White

3:05 pm

she = problem guy/mom
multiple stories

↓
Can't vilify her

Injuries - her med's gone over -
28 stab/slash wounds
had to re-learn how to walk

7/17 - F White to T Henry
w/ pictures of her &
scene

7/21 - F White talked w/ T Henry
looking to be exonerated/pardoned

Options

- ① Not Guilty.
- ② Guilty - up to 65 yrs -
- ③ Guilty but Mentally ill - up to 25 yrs
if concurrent
- up to 65 yrs -
[in treatment until under control]
- ④ Insane - institutionalized possibly
for
Life

1/27/09 -

~~is taking that chance~~

9:58am -

FILEDSTATE OF SOUTH CAROLINA
COUNTY OF FLORENCEIN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

2018 APR 16 PM 3:40

Tarus Tramaine Henry, Sr., #336127
DORIS POULOS O'HARA
CCCP & GS C.A. No. 2014-CP-21-1976
FLORENCE COUNTY, SC

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Tarus Henry (Applicant) on July 17, 2014. Applicant filed an amended application on March 10, 2015. Respondent made its return on September 14, 2016. An evidentiary hearing on the matter was convened on January 31, 2018, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Lindsey A. McCallister, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

Applicant testified on his own behalf. Karen Parrott, Esquire, testified for the State. The Court had before it the trial transcript, the Florence County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's application with amendments, Respondent's return, and Applicant's appellate records.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the December 2008 term of the Florence County Grand Jury for two counts of unlawful conduct towards a child, one count of assault and battery with intent to kill (ABWIK), and one count of arson – second

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 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

degree. Applicant was represented by Karen E. Parrott, Esquire (Counsel). Applicant proceeded to trial before the Honorable Ralph King Anderson, Jr., and a jury, and convicted as indicted. Judge Anderson sentenced Applicant to ten years for each count of unlawful conduct towards a child, to be served concurrently. Judge Anderson also sentenced Applicant to twenty years for ABWIK and twenty years for arson, each to be served consecutively.

Applicant filed a timely appeal, and this appeal was perfected by LaNelle Cantey Durant, Esquire, of the South Carolina Office of Indigent Defense – Appellate Defense Division. After briefing, the Court of Appeals affirmed Applicant's convictions and sentences by order filed December 13, 2011. State v. Henry, Op. No. 2011-UP-562 (S.C. Ct. App. filed December 13, 2011). Applicant filed a Petition for Rehearing, which was denied by order dated January 13, 2012. Applicant then filed a Petition for Writ of Certiorari in the South Carolina Supreme Court. The Court denied the petition by order dated August 23, 2013. The remittitur was returned on August 28, 2013.

SUMMARY OF FACTS ADDUCED AT TRIAL

Scott McAleese lived in the same apartment complex as Applicant and Victim. Tr. p. 107. McAleese woke up about 11 a.m. on June 23, 2008, and went outside to walk his cat. Tr. pp. 106, 109, 113. McAleese testified he observed Applicant walk to his car, pull up to the dumpster, and throw something in. Tr. p. 109. Applicant then parked the car and went back towards his apartment. Tr. p. 109. McAleese next saw Applicant and Victim coming down the stairs from their apartment, and Victim was covered in blood. Tr. pp. 109-10. When McAleese asked what happened, Victim answered they got in a fight, while Applicant said someone had tried to break in their apartment. Tr. p. 110. McAleese went back to his own apartment to retrieve his cell phone, and when he came back outside, he saw smoke billowing from Applicant's apartment. Tr. p. 111.

Matthew Huggins, a security guard at McLeod Hospital, testified Applicant brought Victim to the hospital, saying she had been stabbed. Tr. pp. 151-52, 154. Applicant helped Victim from the car, covered with a blanket. Tr. p. 152. Huggins asked what happened, and neither Applicant nor Victim would say. Tr. p. 152. Applicant then left in the car when Huggins took Victim inside to the emergency room. Tr. p. 152.

Applicant drove all the way to the Kershaw County Medical Center to be treated for lacerations on his hands, two of which required sutures. Tr. pp. 161, 164. He was treated by Nurse Amy Corbett, but he did not give a clear explanation as to why he had driven all the way to Kershaw for treatment. Tr. pp. 163, 167. He told Nurse Corbett he got in a fight with his wife, and one of his wife's friends attacked him with a machete. Tr. p. 167. Nurse Corbett was suspicious of the story and alerted law enforcement. Tr. pp. 164, 167.

Meanwhile, the Windy Hill Fire Department had arrived at Applicant's apartment at 11:52 a.m. and had the fire under control by 12:07 p.m. Tr. pp. 117-18. Firefighter Steve McCormick opened the door to Applicant's apartment and discovered massive amounts of blood on the floor. Tr. pp. 125-26. Deputy Darren Yarborough of the Florence County Sheriff's Department also went into the apartment and saw the blood on the living room floor. Tr. pp. 143-44. Investigator Bert Turner, an arson investigator, arrived on the scene and determined the fire had originated in the master bedroom, where the bedding materials had been set alight. Tr. p. 232, 239, 243. He found no evidence to suggest the fire was set accidentally. Tr. p. 241. Turner opined the cause of fire was arson. Tr. p. 245.

Officer Adam Moore collected evidence at the crime scene and took photographs. Tr. p. 182. He testified there were three pools of blood on the living room floor, covered by towels, and blood spread throughout the entire. Tr. pp. 195, 200. There was also considerable blood splatter in

the living room, including some on a small dresser near the front door and a toy John Deere tractor next to it. Tr. p. 195. A machete was recovered underneath a pile of clothes. Tr. pp. 192, 201, 374. DNA from swabs of the blood pools in the living room and on the file cabinet matched Victim. Tr. p. 199, 281, 285. Applicant's blood was found on various items recovered from the apartment and on cuttings from his clothes. Tr. pp. 280. Additionally, a can of charcoal lighter fluid was recovered from Applicant's car, and there was blood in the car. Tr. pp. 319-20.

Applicant was arrested in Kershaw County and brought back to Florence by Investigator Calvin Timmons of the Florence County Sheriff's Office. Tr. p. 332, 383. Investigator Timmons read Applicant his Miranda rights, and Applicant gave a statement. Tr. p. 385, 387-88. In addition to Timmons, Investigators Bert Turner, and Kathleen Streett were also present during Applicant's interview and statement. Tr. p. 322, 332. By the time of trial, Investigator Timmons was no longer available, having taken a job in Afghanistan. Tr. p. 159, 322. Following a Jackson v. Denno hearing, during which Counsel strenuously objected to Timmons's absence, the trial court found Applicant's statement was freely and voluntarily given and allowed it to be introduced into evidence. Tr. pp. 49-84.

Applicant was booked at 7:26 p.m. and was interviewed from 8:05 p.m. until 9:02 p.m. Tr. pp. 347-48, 350. He never asked the officers to stop the interview or requested counsel. Tr. p. 354. Investigator Turner testified Applicant did not appear to be under the influence or in any distress at the time of his statement. Tr. p. 325-26. Further, Turner testified he would have allowed Applicant to use the restroom, have food or water, or medical treatment, if Applicant had asked. Tr. pp. 327-28, 354. Turner further testified he put no pressure on Applicant to give or continue giving a statement, and Applicant never asked to stop the interview. Tr. pp. 327, 354, 358. Turner also

testified that "[i]f [Applicant] had shown any symptoms of any medical condition, physical or mental, the interview would have ceased, and we would have attended to him." Tr. p. 362.

Investigator Kathleen Street was the third investigator involved in the interview. Tr. p. 388. She testified Timmons told her he read Applicant his Miranda rights during the car ride back to Florence, but Timmons did not go into detail about what he and Applicant discussed, if anything. Tr. p. 385. Streett testified Applicant signed the Miranda waiver form before the interview was taped. Tr. p. 387. He was then read his Miranda rights again on tape, making the third he was Mirandized before giving his statement. Tr. p. 388. She testified her usual practice was to tell someone she is interviewing that they can go to the restroom if they need to and that she usually offers a drink at the beginning of the interview. Tr. pp. 391-92. She testified that Henry was not threatened, coerced, or abused, and she had no concerns about his ability to understand his rights or his mental state during the interview. Tr. pp. 390-91.

Victim was hospitalized for eighteen days. Tr. p. 418. Dr. Reynolds, a trauma surgeon, who treated Victim, testified Victim was close to death when she arrived at McLeod. Tr. pp. 406, 413. Dr. Reynolds identified twenty-eight wounds or injuries on Victim's body. Tr. p. 413. The worst injury was a lash to the base of the skull which caused Victim to have a stroke, likely due to the vertebral artery being transected from that lash. Tr. pp. 414, 416-17. Victim was immediately taken to surgery to repair and close her wounds. Tr. p. 416, 419. She had extensive tendon injuries and fractures to her right hand, which required surgical repair by an orthopedic specialist. Tr. p. 416, 419. She also needed chest tubes in both lungs, large wall IVs for aggressive resuscitation, and a ventilator. Tr. p. 419. Later, Victim required rehabilitation services to help her recover from the effects of the stroke. Tr. p. 420. Dr. Reynolds testified her injuries were life threatening, and she continues to suffer residual effects of her injuries. Tr. p. 420, 425.

Victim testified she and Applicant had an argument the morning of the stabbing about the well-being of their children and Victim's job search. Tr. p. 434-36. She testified she wanted her mother to watch the children, and Applicant objected. Tr. p. 435. Victim testified she went into the master bedroom to call her mother and discovered the phone line was cut. Tr. p. 437. Applicant then blocked the front door to keep Victim from leaving with their daughter. Tr. p. 438. Victim testified the room seemed to get dark, and she felt something around her neck and looked down and realized she was bleeding. Tr. pp. 438-39. She testified she fell to the floor and continued to feel Applicant hitting and cutting her back. Tr. pp. 439-40. As Applicant administered the blows, he said, "Are you going to tell on me? Are you going to tell on me? Need to be here and be a family, be here with the family." Tr. p. 440.

Victim testified Applicant's son, Taurus, Jr., entered the living room and said, "Daddy, what are you doing." Tr. p. 442. Applicant told him to go back to his room. Tr. p. 442. Victim's seven-month old daughter, who was sitting in her car seat on the living room floor, began crying, so Applicant took both children and left, locking Victim inside the apartment. Tr. pp. 440-41, 443. Victim got up, walked down the hall, looked out Taurus, Jr.'s window, came back to the living room, and sat down on the floor. Tr. p. 444. Victim testified Applicant then came back into the apartment, walked past her down the hallway, then passed her again on the way out. Tr. p. 444. Victim was lying on the floor when she smelled smoke, so she got up again, wrapped herself in a blanket, and opened the apartment door. Tr. p. 445. She testified she was at the top of the stairs when Applicant came back and helped her down. Tr. p. 445.

Applicant testified in his own defense at trial. Tr. pp. 500-57. Applicant testified he has a history of mental illness including psychosis, schizophrenia, and bipolar disorder. Tr. p. 502.

Applicant also testified he underwent a right temporal lobectomy when he was seventeen years old to treat a seizure disorder. Tr. p. 504.

Applicant testified he was having an argument with Victim when she attacked him with the machete. Tr. pp. 512-14. He said he caught the machete with his hand, which began bleeding rapidly so he grabbed a rag to keep from bleeding everywhere. Tr. pp. 516-17. Then, with a rag around his hand, Applicant said he reached for the machete, and he blacked out as soon as he got ahold of it. Tr. pp. 517-18. Applicant testified the next thing he recalled was his son calling out to him. Tr. p. 518. Applicant testified he noticed blood on the machete, and he realized Victim was laying on the floor, injured, and he panicked. Tr. p. 518.

In his statement to law enforcement, Applicant admitted setting the fire. Tr. p. 523. At trial, however, he only admitted seeing smoke or fire from the apartment, and testified he did not know anything about how the fire started. Tr. pp. 523-24. Applicant claimed he only confessed to starting the fire during his interview due to "extreme pressure" from Investigators Turner and Timmons. Tr. pp. 523-24. When asked by his counsel why he told the officers about an intruder, Applicant replied "the person [he] was seeing could have been [himself.]" Tr. p. 535, 538. Applicant claimed he was tortured during the interrogation. Tr. p. 539.

Applicant testified he changed his clothes because he didn't want to upset the children when he brought them to the car, not to try to hide anything that had happened. Tr. pp. 522-23. Applicant also testified that he told the neighbor, McAleese, in explanation of Victim's condition, "maybe somebody broke in," because he did not want a confrontation with McAleese and wanted to "keep him out the business." Tr. p. 522. Applicant testified he ended up in Kershaw County because, after taking Victim to the hospital, he went to take the children to his mother and drop his car off at his

brother's house so it wouldn't be vandalized, and by that time, Kershaw County Medical Center was the closest hospital. Tr. pp. 526-29.

On cross-examination, Applicant said it was possibly true that he got the machete from his desk as he told law enforcement in his statement, contradicting his direct testimony that he had retrieved the machete from his wife. Tr. p. 553-54. Applicant also admitted lying to McAleese, and in a roundabout way, admitted lying to Nurse Corbett. Tr. pp. 530, 555. Finally, Applicant admitted he "knew [he] was in trouble" after he saw what had happened to Victim. Tr. p. 532.

The defense called Dr. Richard Frierson who had evaluated Applicant for both competency to stand trial and his ability to distinguish right and wrong at the time of the crime. Tr. pp. 465-66. He testified Applicant was competent to stand trial, knew right from wrong at the time of the offense, and was capable of conforming his conduct to the requirements of the law. Tr. pp. 466-67. However, Dr. Frierson confirmed Applicant's testimony regarding his previous mental health issues, his seizure disorder, and the temporal lobectomy operation. Tr. pp. 467-68, 470-72. Dr. Frierson testified one of the effects of the temporal lobectomy is an impaired ability to recognize fear in others, which could impair Applicant's ability to control his behavior. Tr. pp. 468-70. Dr. Frierson testified Applicant's mental illnesses, if any, would not cause a black out like the one described by Applicant, though it could be caused by stress due to a loss of control. Tr. pp. 475-76. Dr. Frierson also noted Applicant did not report any symptoms of mental illness at the time of the offense. Tr. p. 480. Further, Dr. Frierson testified he could not determine the presence of any symptoms that would impair Applicant's knowledge of wrongfulness, nor could he opine that Applicant lacked the ability to control his conduct. Tr. pp. 470, 479, 490.

ALLEGATIONS

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

1. Ineffective assistance of counsel: "Doyle violations. Failure to present a defense"
 - a. Failure to conduct an investigation into what medications Applicant was on; lack of preparation; "failure to make an informed evaluation of the potentially viable defense"; and counsel "did not articulate any strategy for not challenging the indictment for the indictment has (4) four counts on one indictment."
 - b. "improper[] to go on with the trial[] without officer Calvin Timmons; failure to make a "standing objection to the matter, this is a[] Doyle violation"; and failure to submit a report pursuant to the McNaughten test to be evaluated
 - c. Failure to "articulate any strategy in challenging the evaluation, 'competency to stand trial,' pursuant to State v. Blair." "I do not disagree with the finding of Dr. Frierson as to competency to stand . . . should have been examined to determine whether or not I was criminally responsible pursuant to the M'Naughten test . . ."
2. "Malicious Prosecution"
 - a. Confession was coerced; it "was induced by a promise of leniency[.] This was in itself coercion." "The trial court did abuse its discretion in permitting the statement into evidence to be used as it was."
 - b. "State deliberately suppressed evidence[] of the M'Naughten test that would have been favorable to the accused."
3. "Fundamental conceptions of justice"
 - a. The "coerced statement" . . . also created a mandatory presumption and impermissibly shifts the burden of proof to the defense . . . in violation of the due process clause of the (14) Fourteenth Amendment."
 - b. Miranda Warning – "at the time of the statement I did not have the ability or capacity to comprehend the meaning and effect of waiving any of my constitutional rights."
4. "State created a high conflict situation[] and aroused the passions and prejudices of the jurors causing them to base their decisions on their emotions. I was compelled to take that stand in my defense;[t]his is what is called under "Duress compell force." Trial judge "abused its discretion in failing to intervene."

At the commencement of the evidentiary hearing, counsel for Applicant indicated he would be proceeding on three claims: (1) Counsel was ineffective for failing to object to Applicant being shackled in the presence of the jury; (2) Counsel was ineffective for failing to request a continuance

or otherwise secure the testimony of Investigator Calvin Timmons, and (3) Counsel was ineffective for failing to communicate and explain a plea offer of guilty but mentally ill (GBMI). This Court finds Applicant abandoned all other allegations raised in his application, but not addressed at the evidentiary hearing.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

¹ Because Applicant failed to present any evidence regarding the allegations contained in Applicant's original application, this Court finds Applicant abandoned such allegations, and they are waived. Therefore, they are dismissed with prejudice.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 300 S.C. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

A. Failure to Object to Applicant Being Shackled

"The law has long forbidden routine use of visible shackles during the guilt phase; it permits a State to shackle a criminal defendant only in the presence of a special need." Deck v. Missouri, 544 U.S. 622, 626 (2005). This is because "*visible* shackling undermines the presumption of innocence" and is a violation of a criminal defendant's right to Due Process. Id. at 630-31 (emphasis added).

Applicant testified during the second day of his trial, there was an incident where he spilled a cup of water and jumped up, after which Judge Anderson ordered he be shackled. Applicant testified he was not in shackles the first day, but was for the remainder of the trial. Applicant testified he had shackles around his legs, waist, and hands, which were visible to the jury when he entered and exited the courtroom. Applicant testified a towel was placed over his hands to try to hide those shackles, but nothing was done with the ones on his waist and feet.

Counsel confirmed Judge Anderson ordered the shackles after the cup incident, but she recalled only leg shackles. Counsel testified Applicant was able to have pencil and paper with

him at the defense table, which she opined would not have been possible if he was in wrist shackles. Counsel testified she did not recall the jury seeing Applicant in the shackles, and she likely would have remembered if that was an issue. Counsel also testified there was quite a bit of space in the courtroom between the jury and the defense table. Counsel testified Judge Anderson was very particular and vigilant about issues like this in his courtroom.

This Court finds no deficiency in Counsel's handling the issue of Applicant's restraints during trial. This Court finds Applicant's testimony the jurors could see his shackles when he entered and exited the courtroom to be not credible. This Court further finds Applicant did not suffer any prejudice from wearing ankle shackles during the trial because there is no indication in the record the jury was aware Applicant was restrained. This Court finds no evidence in the record tending to show Applicant walked in front of the jury with ankle shackles visible, and finds credible Counsel's testimony that Judge Anderson was "very vigilant" about issues like this in his courtroom. This allegation is therefore denied and dismissed.

B. Failure to Request a Continuance/Secure Testimony of Investigator Timmons

Applicant testified he was arrested at the medical center in Kershaw County and brought back to Florence by Investigator Calvin Timmons. Applicant testified they were the only two people in the car on the way back. Applicant further testified when he returned to Florence, he gave a statement to Investigator Timmons and two other officers, which was recorded, but there was no recording of the conversation in the car. Applicant testified Timmons was not present to testify at trial because he had been called to Afghanistan. Applicant stated he did not know Timmons would not be present and had not discussed his absence with Counsel.

Counsel testified she did not move for a continuance based on Timmons's absence because she did not feel his testimony would be helpful when the two other officers who were

present for Applicant's statement were available to testify. Counsel further testified there was no interrogation during the car ride from Kershaw to Florence, just small talk. On cross-examination, Counsel testified she challenged the voluntariness of Applicant's statement in pre-trial Jackson v. Denno hearing, during which she pointed out Applicant had been in the car with Timmons for an hour, but Timmons was not present to testify. Counsel also testified she was able to cross-examine the other officers regarding Timmons's absence, so the jury was aware of the issue. Further, Counsel testified she was well aware of Applicant's mental health history prior to trial and that it was mentioned during his statement, but Applicant had been off medication, was capable of living a normal life and holding down a job, and was able to assist her in his defense. Finally, Counsel explained Applicant testified on his own behalf, so she was able to question him about the car ride.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012), overruled on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 744 (2014). In order to prevail on a claim of ineffectiveness based on counsel's failure to call a favorable witness, the South Carolina Supreme Court has repeatedly held a PCR applicant *must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (emphasis added). Applicant's speculation the witness' testimony would have been favorable cannot, by itself, satisfy his burden of showing prejudice. Glover v. State, 318 S.C. 396, 498-99, 458 S.E.2d 538, 540 (1995).

This Court finds Applicant has failed to prove Counsel was deficient or failed to render reasonably effective assistance under prevailing professional norms in regards to the presence of Investigator Timmons at trial. This Court finds credible Counsel's explanation that she did not feel Timmons's testimony was particularly helpful to Applicant's case since the other two officers who took the statement were present and testified at trial. "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Strickland, 466 U.S. at 690. There is a strong presumption that counsel's decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy).

Further, this Court finds Applicant has failed to prove he was prejudiced by Timmons's absence from trial. Counsel was able to cross-examine the other officers on Timmons's absence, and Applicant took the stand in his defense, so Counsel was able to question him about the conversation during the car ride. Additionally, Applicant did not call Timmons, the witness he alleges should have been called at trial, to testify at the evidentiary hearing. Applicant also did

not assert Timmons's testimony would have been favorable, and, in any event, that assertion alone is not enough to meet his burden as to this allegation. See Glover, 318 S.C. at 499, 458 S.E.2d at 540 ("The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice."); accord State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 51-52 (1996) ("Where there is no showing that any other evidence on behalf of the appellant could have been produced, or that any other points could have been raised had more time been granted for the purpose of preparing the case for trial, the denial of a motion for continuance is not an abuse of discretion.") (citing State v. Squires, 248 S.C. 239, 149 S.E.2d 601 (1966)). This allegation is therefore denied and dismissed.

C. Failure to Communicate and Explain Plea Offer of GBMI

Applicant testified Counsel was appointed to represent him on these four charges, and they met to discuss the charges for the first time approximately one week after his arrest. Applicant testified he was born with intractable seizures, meaning the condition does not respond to medication. Applicant testified he had an operation to remove part of his right temporal lobe when he was 17 years old. Applicant explained the surgery cured his seizures, but since then, he has been treated for schizophrenia and bipolar disorder and has experienced depression and suicidal tendencies. Applicant testified he was evaluated for criminal responsibility in preparation for his trial because he had been off of medication for two years at the time of the crime. Applicant further testified he was evaluated at the courthouse, but found to be incompetent, so he was sent to the Columbia Care Center for treatment. Applicant stated he was medicated for 72 days, after which time he was re-evaluated and found competent to stand trial. Applicant testified the doctor who evaluated him, Dr. Frierson, was called as a defense witness at

trial, and he testified Applicant was competent and knew right from wrong at the time of the crime.

Applicant testified there three plea offers made during the course of his case – two before trial and one during trial. Applicant testified the pre-trial offers did not have a cap, and he would not accept any offer without one. Applicant further testified he was offered a plea of GBMI on the day of trial, but Counsel wouldn't tell him the terms or explain what it meant, so he turned it down. According to Applicant's testimony, he and Counsel had less than ten minutes to discuss the GBMI offer.

Counsel testified she was appointed through the normal process and assigned the case. Counsel testified Applicant gave a couple slightly different stories, but the primary facts of the case were not in dispute. Counsel further testified the defense Applicant wanted was that Victim started the fight and he grabbed the machete from her, but he did not remember hitting her or starting the fire because he had blacked out; he drove her to the hospital and then went to Kershaw. Counsel testified Applicant only brought up his mental health and began mentioning a black out after she explained to him that he would not receive a probationary sentence for these charges.

Counsel explained Applicant was initially taken to Probate Court for an evaluation, but she was not involved in that process. Counsel testified she made a motion for Applicant to be evaluated by the Department of Mental Health, and Dr. Frierson found Applicant to be competent and capable of standing trial. Counsel testified she called Dr. Frierson as a defense witness because he could testify to Applicant's mental health history and how the seizure operation affected Applicant's ability to understand facial expressions. Counsel stated she felt she got everything she could out of Dr. Frierson, because even though he did not believe the

blackout claim, he also testified Applicant may have had some impairment to his ability to conform his conduct. Counsel further testified Applicant took the stand in his own defense, so she was able to put his version of the facts, including his claim that he had blacked out, in front of the jury.

Counsel categorically denied Applicant's assertion that they had not discussed the GBMI offer prior to trial, and she testified they had multiple discussions about the options available to him. Counsel produced a document, signed by Applicant, dated May 1, 2009, in which Counsel explained the various options Applicant had at that point. Counsel's notes reflect she first discussed the GBMI offer with Applicant on May 29, 2009, and she explained Applicant would have to go to mental health treatment for an unknown period of time and then to prison for a fifteen year sentence. Counsel testified her notes also reflected a meeting between herself, Henry, and her investigator on July 15, 2009, during which they went over the indictment and Counsel told Applicant the GBMI offer was potentially a life sentence because there was no way to know how long he would be in mental health treatment. Counsel further testified Applicant's only response was that he wanted to take a lie detector test, and he continued to talk about a defense which vilified the victim, despite Counsel explaining that would not be a good idea. Counsel testified Applicant never said he wanted to accept the GBMI offer.

Generally, "defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." Bell v. State, 410 S.C. 436, 441, 765 S.E.2d 4, 6 (Ct. App. 2014) (quoting Missouri v. Frye, 566 U.S. 133 (2012)). The South Carolina Supreme Court has held that in order to prevail on claims that defense counsel failed to convey a favorable plea offer, Applicant must show (1) failure to communicate the plea offer was deficient performance, and (2) Applicant was prejudiced by the

deficient performance, or there was a reasonable probability Applicant would have accepted the original offer. Davie v. State, 381 S.C. 601, 608, 675 S.E.2d 416, 420 (2009). Failure to communicate a plea offer constitutes deficient performance, although prejudice must be evaluated on a case-by-case basis. Davie, 381 S.C. at 609, 675 S.E.2d at 420. "To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time." Frye, 566 U.S. at 147.

This Court finds Counsel was not deficient in her handling of the GBMI plea offer. Specifically, the Court finds Counsel's testimony on this issue to be credible, while also finding Applicant's testimony is not credible. This Court finds Counsel conveyed the GBMI offer to Applicant prior to trial and engaged in discussions with him about that offer on multiple occasions. Additionally, Applicant never testified he would have accepted the offer, and in fact testified he was unwilling to accept any offer without a specific cap. Due to the nature of a GBMI plea, Counsel could not give Applicant a specific end date for his sentence, and this Court finds that is why Applicant rejected the offer, not because of any lack of explanation by Counsel or insufficient time to consider it. Therefore, this Court finds Counsel's performance was not deficient, nor was Applicant prejudiced by any alleged deficiency. The allegation is therefore denied and dismissed.

CONCLUSION

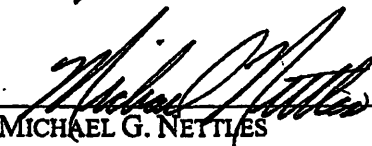
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty 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), SCRCR, 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:

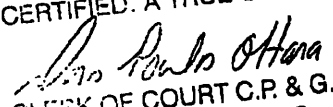
1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 16 day of April, 2018.


 MICHAEL G. NETTLES
 Presiding Judge
 Twelfth Judicial Circuit

, South Carolina.

FILED
 2018 APR 16 PM 3:40
 DORIS POULOS O'HARA
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

CERTIFIED. A TRUE COPY

 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.